NO. FBT CV 15 6048103 S	**:**	**SUPERIOR COURT**
	:	
DONNA L. SOTO, ADMINISTRATRIX	**:**	
OF THE ESTATE OF	**:**	**JUDICIAL DISTRICT**
VICTORIA L. SOTO, ET AL	**:**	**OF FAIRFIELD**
	:	
V.	**:**	**AT BRIDGEPORT**
	:	
BUSHMASTER FIREARMS	**:**	
INTERNATIONAL, LLC, ET AL	**:**	**NOVEMBER 5, 2015**

OBJECTION TO TRANSFER TO COMPLEX LITIGATION DOCKET

There is no compelling reason to transfer this case to the Complex Litigation Docket. Doing so would unfairly cede the choice of venue to the Bushmaster Defendants.

The plaintiffs are ten families who lost loved ones or were injured in the Sandy Hook Elementary School shooting, and who chose to bring their case in Bridgeport Superior Court. Bridgeport is a major courthouse with highly competent judicial officers and with a long history of handling significant and lengthy trials; it can fairly and efficiently adjudicate this case. Bridgeport is also a convenient courthouse for the plaintiff families.

This is the Bushmaster Defendants' second attempt to forum shop. For nearly eight months, this action was stayed while the plaintiffs fought the Bushmaster Defendants' first effort to move the case out of Bridgeport Superior Court and into federal court. The federal court ultimately rejected their arguments and returned the case to Bridgeport, where it was originally filed. Now the Bushmaster Defendants are forum shopping again. In this second effort to take this case away from the plaintiffs' chosen venue, they now look to the Complex Litigation Docket.

As further set forth below, their Application must be denied:

1. The court's discretion to transfer an action from the jurisdiction in which it was legally filed "is to be exercised with caution." *Mill Plains Homes, Inc. v. Great Am. Ins. Co.*, 2 Conn. Cir. Ct. 124, 126 (1963). "It is the general rule that where the jurisdiction of courts is concurrent over a subject matter, that tribunal which is first in possession of it exercises its jurisdiction to the exclusion of all others." *Id.* at 127. This rule recognizes the deference that is owed to a plaintiff once he has selected a forum: "That which he [the plaintiff] has elected to do, he should be permitted to do unless the interests of justice require it otherwise." *Id.* at 126; *see also id.* ("It would be highly improper to transfer a cause from the comparatively current docket to the probably overloaded docket of another trial tribunal for no other reason than that the defendant might prefer that course to be taken.").

2. This case arises out of the tragic and notorious Sandy Hook school shooting on December 14, 2012. But tragedy and notoriety do not equate to complexity. The case is relatively simple.

3. The plaintiffs are nine families who lost loved ones in the Sandy Hook Elementary School shooting on December 14, 2012, and a tenth plaintiff who was seriously injured in that shooting.

4. The plaintiffs brought this action in Bridgeport Superior Court. Bridgeport is a convenient venue for the plaintiff families, who plan to attend hearings as their work schedules permit and attend the entire trial of this action.

5. Shortly after this case was filed, the Bushmaster Defendants removed it to the United States District Court for the District of Connecticut rather than allow the case to move forward in Bridgeport Superior Court. In support of removal, the Bushmaster Defendants alleged that diversity jurisdiction existed. They made this allegation despite the presence of a non-diverse Connecticut defendant—Riverview Sales, Inc., the seller of the Bushmaster XM15-E2S used in the shooting. The

United States District Court (Chatigny, J.) rejected that argument and remanded the case back to this Court. *Soto v. Bushmaster Firearms International, LLC*, 3:15-cv-00068-RNC, Order Granting Motion to Remand & Order of Remand, Docket Nos. 159, 160, 161.

6. However, within days of the formal transfer of this action back to Bridgeport Superior Court, the Bushmaster Defendants moved to override the plaintiffs' properly chosen forum yet again – this time to the Complex Litigation Docket in Stamford Superior Court.

7. This second attempt at forum shopping must also fail. Bridgeport Superior Court has highly competent judicial officers and is equally able to handle this case efficiently. Indeed, Bridgeport has already effectively handled or is presently handling multiple complex cases and multi-party matters, including the asbestos docket. This case will be fairly and efficiently adjudicated in Bridgeport.

8. Bridgeport Superior Court is the plaintiffs' choice of venue, and it is more convenient for the plaintiff families.

9. The Bushmaster Defendants overstate the complexity of the case in all respects in their effort to move it out of Bridgeport.

10. For example, in their moving papers, the Bushmaster Defendants represent that the plaintiffs assert product liability claims and nuisance claims. That is not so. The plaintiffs do not and have never asserted product liability claims, and they no longer assert nuisance claims. In addition, the plaintiffs do not challenge PLCAA's constitutionality.

11. In fact, the legal claims at issue are straightforward. The plaintiffs allege two familiar tort claims: negligent entrustment and violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a *et seq*. The defendants will all rely on the Protection of Lawful Commerce in

Arms Act, 15 U.S.C. §§ 7901-03, as a defense. While it is true that these claims raise questions of first impression, Bridgeport's judicial officers are equally competent to resolve them as the judicial officers on the Complex Litigation Docket.

12. The Bushmaster Defendants also have not been candid concerning the number of entities involved in the case. They currently state in their Application for Referral to Complex Litigation that there are eleven defendants in the case. That statement is misleading and directly contradicts their earlier representations to the federal court. First, seven of those eleven "defendants" are Bushmaster entities: Bushmaster Firearms International, LLC; Freedom Group, Inc.; Bushmaster Firearms; Bushmasters Firearms, Inc.; Bushmaster Holdings, LLC; Remington Arms Co., LLC; and Remington Outdoor Company, Inc. Second, in their removal papers, the Bushmaster Defendants admitted that only two of those seven entities even exist. *Soto v. Bushmaster Firearms International, LLC,* United States District Court for the District of Connecticut, 3:15-cv-00068-RNC, Notice of Removal, Docket No. 1, at pp. 1-2 (these pages attached at Ex. A). The rest, they claimed, were "non-existent entities. . . [which had] not been 'properly joined and served as defendants.'" *Id.* The Bushmaster Defendants now count these "nonexistent" entities as additional defendants in an attempt to manufacture an appearance of complexity.

13. In fact, the alignment of the parties is simple. The plaintiffs are represented by a single firm; their claims are uniform. There are only three sets of defendants, and the Bushmaster Defendants have taken the lead in all briefing. The Camfour Defendants (Camfour, Inc. and Camfour Holding, LLP) and the Riverview Defendants (Riverview Sales, Inc. and David LaGuercia) have taken positions

only on scheduling and by joining the Bushmaster Defendants. Motion practice in the federal court on the remand issues was just like that in a two-party case.[1]

14. The Bushmaster Defendants assert that the transfer of *Gilland v. Sportsmen's Outpost, Inc.*, X04-HHD-CV09-5032765, to the Complex Litigation Docket militates in favor of transfer of this case. That is not so. It was the plaintiff in *Gilland* that sought transfer, and that transfer was unopposed. X04-HHD-CV09-5032765, Docket No. 113.50 (Plaintiff's Application for Transfer to Complex Litigation Docket & Order Granting Transfer).

15. Transfer to the Complex Litigation Docket under these circumstances would be fundamentally unfair and a departure from longstanding principles that reserve to plaintiffs the choice of venue. *See Mill Plains Homes, Inc.*, 2 Conn. Cir. Ct. at 126. The defendants' maneuvering has already kept the plaintiffs in jurisdictional limbo for nearly a year. This case belongs in Bridgeport Superior Court.

16. For these reasons, the Application should be denied.

---

[1] By contrast, *Estate of Palmer v. SCA, Inc.*, FBT-CV15-6049420-S, is a medical malpractice wrongful death action now pending in Bridgeport Superior Court with eight defendants. The interests and positions of those eight defendants are much less uniform than those of the Bushmaster, Camfour, and Riverview defendants, all of whom will simply assert the PLCAA defense. Indeed, if the pattern continues from federal court, the Camfour and Riverview defendants will likely adopt the Bushmaster Defendants' briefs on these issues.

THE PLAINTIFFS,

By **/s/**

JOSHUA D. KOSKOFF
ALINOR C. STERLING
KATHERINE MESNER-HAGE
jkoskoff@koskoff.com
asterling@koskoff.com
khage@koskoff.com
KOSKOFF KOSKOFF & BIEDER
350 FAIRFIELD AVENUE
BRIDGEPORT, CT 06604
PHONE: (203) 336-4421
FAX: (203) 368-3244
JURIS #32250

CERTIFICATION

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed this day to all counsel of record, to wit:

For Bushmaster Firearms International LLC, a/k/a;
Freedom Group, Inc., a/k/a;
Bushmaster Firearms, a/k/a;
Bushmaster Firearms, Inc., a/k/a;
Bushmaster Holdings, Inc., a/k/a
Remington Arms Company, LLC, a/k/a;
Remington Outdoor Company, Inc., a/k/a

Jonathan P. Whitcomb, Esq.
Diserio Martin O'Connor & Castiglioni, LLP
One Atlantic Street
Stamford, CT 06901
jwhitcomb@dmoc.com
TEL: (203) 358-0800
FAX: (203) 348-2321

For Camfour, Inc.;
Camfour Holding, LLP, a/k/a

Scott Charles Allan, Esq. – MAIL TO THEM
Renzulli Law Firm, LLP
81 Main Street, #508
White Plains, NY 10601
sallan@renzullilaw.com
TEL: (914) 285-0700
FAX: (914) 285-1213

For Riverview Sales, Inc.;
David LaGuercia
Peter Matthew Berry, Esq.
Berry Law LLC
107 Old Windsor Road, 2nd Floor
Bloomfield, CT 06002
firm@berrylawllc.com
TEL: (860) 242-0800
FAX: (860) 242-0804

/s/

JOSHUA D. KOSKOFF
ALINOR C. STERLING

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, *et al.*	)	
Plaintiffs,	)	
VS.	)	Civil Action No.
BUSHMASTER FIREARMS INTERNATIONAL, LLC a/k/a FREEDOM GROUP, INC. a/k/a REMINGTON OUTDOOR GROUP, INC, *et al.*	)	
Defendants.	)	

DEFENDANTS REMINGTON ARMS COMPANY, LLC AND REMINGTON OUTDOOR COMPANY, INC.'S NOTICE OF REMOVAL

Defendants Remington Arms Company, LLC and Remington Outdoor Company, Inc. (collectively, the "Remington Defendants"), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, notify this Court that they are removing the above captioned action currently pending in the Superior Court of the Judicial District of Fairfield County (at Bridgeport) to the United States District Court for the District of Connecticut. In support, the Remington Defendants state as follows:

INTRODUCTION

1. On December 13, 2014, Plaintiffs filed their Complaint against (1) the Remington Defendants,[1] (2) Camfour, Inc. and Camfour Holding, Inc. (collectively, the "Camfour

[1] This Notice of Removal is filed on behalf of Defendants "Remington Arms Company, LLC" and "Remington Outdoor Company, Inc." For clarification, Defendant "Remington Arms Company, LLC" was formerly known as "Remington Arms Company, Inc." Thus, "Remington Arms Company, Inc." does not exist. Defendant "Remington Outdoor Company, Inc." was formerly known as "Freedom Group, Inc." Thus, "Freedom Group, Inc." does not exist. "Bushmaster Firearms International, LLC" is also a named defendant but does not exist as it was merged into and is only an unincorporated brand of Remington Arms Company, LLC. Plaintiffs have also named or listed as "a/k/a" several other entities that do

2015 JAN 14 A 11:32
OFFICE OF THE CLERK
SUPERIOR COURT

Defendants"),[2] and (3) Riverview Sales, Inc. and David LaGuercia (collectively, the "Riverview Defendants"), in the Superior Court of the Judicial District of Fairfield County (at Bridgeport).

2. The Remington Defendants were served with the Complaint on December 15, 2014. This notice of removal is timely filed within thirty (30) days after the Remington Defendants were served.

3. The United States District Court for the District of Connecticut is the federal judicial district encompassing Fairfield County, Connecticut. Therefore, venue lies in this Court pursuant to 28 U.S.C. § 1441(a).

4. Copies of all papers, pleadings, process, and orders, if any, served on the Remington Defendants are attached as Exhibit A, including the Summonses and Plaintiffs' Complaint ("Compl.") and exhibits thereto.

DIVERSITY JURISDICTION

5. The basis for removal to federal court is diversity jurisdiction pursuant to 28 U.S.C. § 1332, because: (1) Riverview Sales, Inc. is improperly joined, (2) there is complete diversity of citizenship between Plaintiffs, on the one hand, and the diverse defendants, that is, the Remington Defendants, the Camfour Defendants and David LaGuercia, on the other hand, and (3) the amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars ($75,000.00).

---

not exist: (1) "Remington Arms Co., LLC"; (2) "Remington Outdoor Group, Inc."; (3) "Remington Outdoor Company"; (4) "Remington Outdoor Co."; (5) "Freedom Group, LLC"; (6) "Freedom Group"; (7) "Bushmaster Firearms"; (8) "Bushmaster Holdings, LLC"; (9) "Bushmaster Firearms, Inc."; and (10) "Bushmaster Firearms Int., Inc." These non-existent entities have not been "properly joined and served as defendants[.]" 28 U.S.C. § 1441(b)(2). For diversity purposes, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1).

[2] Plaintiffs have also named "Camfour Holding, LLP" as a defendant, but that entity does not exist.