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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b))) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4095
FIREARM CASE) PLAINTIFFS' OPPOSITION TO FORJAS
) TAURUS, S.A. AND TAURUS
Including actions:) INTERNATIONAL MANUFACTURING
) INC.'S MOTION TO COMPEL
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>)
) San Francisco Superior Court No. 303753
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>)
) Los Angeles Superior Court No. BC210894
<i>People, et al. v. Arcadia Machine & Tool, Inc., et al.</i>)
) Los Angeles Superior Court No. BC214794

1 **I. INTRODUCTION**

2 Plaintiffs are surprised by the motion filed by Forjas Taurus S.A. and Taurus International
3 Manufacturing, Inc ("defendants"). Counsel for plaintiffs were awaiting a telephone call from
4 counsel for defendants – a call which counsel said it would make – to discuss discovery issues for
5 these defendants. Counsel for defendants failed to call plaintiffs and instead filed a procedurally-
6 defective motion one day later when plaintiffs were prepared to discuss these discovery issues.

7 **II. PROCEDURAL HISTORY**

8 According to defendants' motion, defendants served discovery in late 1999 upon only four
9 of the municipalities involved in this action: the City and County of San Francisco, the City of
10 Berkeley, the City of Sacramento, and the County of Alameda.¹ As defendants apparently fail to
11 realize, there was a stay of proceedings shortly thereafter pending the assignment of a coordination
12 trial judge in accordance with Rule 1529 of the California Rules of Court, which provides the
13 following:

14 When an order granting coordination is filed in an included action, all further
15 proceedings in that action are automatically stayed, except as directed by the
16 coordination trial judge or by the coordination motion judge pursuant to subdivision
17 (c).

18 After the assignment of the coordination trial judge, plaintiffs and defendants entered into
19 a Written Discovery Stipulation and Order the Court signed which provides the following:

20 Responses to core discovery and supplementation of prior responses are due
21 thirty (30) days from the date of service.

22 All responses to and motion practice relating to written discovery, other than the core
23 discovery identified above, shall be deferred for a period of ninety (90) days from the
24 date of this agreement, at which time the parties will meet-and-confer regarding the
25 timing for responses to deferred written discovery.

26 As defendants admit in their motion, the collective defendants did not identify the discovery
27 requests for Taurus and Forjas Taurus as "core" discovery. According to the provision of the Order,

28 ¹Since defendants move to compel with respect to only four of the municipalities – the City
and County of San Francisco, the City of Berkeley, the City of Sacramento, and the County of
Alameda – the term plaintiffs for the purposes of this motion shall only refer to these entities.

1 therefore, the parties could meet-and-confer 90 days from the date of the Order to discuss the timing
2 for responses to the deferred written discovery.²

3 While plaintiffs and defendants were in the midst of discussing Taurus' and Forjas Taurus'
4 deferred discovery, defendants chose not to call plaintiffs as they said they would and instead filed
5 their motion although the meet-and-confer processing was continuing. Thus, defendants did not
6 make a reasonable attempt to informally resolve these issues before bringing their motion.

7 **III. ARGUMENT**

8 **A. Because Defendants' Motion Is Defective, It Must Be Denied**

9 **1. Defendants Failed to Properly Meet and Confer With Plaintiffs 10 Before Filing Their Motion**

11 This court should not be burdened by disputes which the parties are capable of handling
12 themselves. This motion is one such instance. Contrary to defendants' suggestion, plaintiffs have
13 not refused to respond to defendants' discovery. Plaintiffs, however, intended to discuss various
14 issues with defendants during the meet-and-confer process. Such issues included the following: (1)
15 the extent to which defendants' discovery is duplicative of the discovery sought by defendants
16 collectively in the "core" discovery; (2) the extent to which plaintiffs' upcoming production of
17 documents would be responsive to defendants' requests; and (3) defendants' complete failure to
18 respond to plaintiffs' discovery requests.³ See Sams Decl., ¶3. Because counsel for defendants failed
19 to complete the meet-and-confer process with plaintiffs, plaintiffs were unable to discuss these issues
20 before defendants chose to file their motion. See Sams Decl., ¶3.

21 Courts have denied motions to compel where one party – as defendants have done here –
22 rushes to court without properly seeking to resolve the issues informally. For instance, the court in

23 ²Defendants' position is that plaintiffs' discovery responses were due at the expiration of the
24 90-day period despite the explicit language in the Order which provides that the parties were to meet-
25 and-confer regarding the timing of deferred discovery after the 90-day period. See Declaration of
26 Ex Kano S. Sams II in Support of Plaintiffs' Opposition to Motion to Compel ("Sams Decl."),
Exhibit 3. As plaintiffs explained, the Order does not require plaintiffs to unilaterally respond to
defendants' deferred discovery without meeting-and-conferring regarding a date for responding. See
Sams Decl., Exhibits 4 and 5.

27 ³Interestingly, defendants' request to discuss the discovery served by Taurus and Forjas
28 Taurus came only after plaintiffs sent meet-and-confer letters to counsel for these defendants
describing the numerous deficiencies of their discovery responses to plaintiffs. See Sams Decl., Exs.
1 and 2.

1 *Volkswagenwerk Aktiengesellschaft v. Superior Court*, 122 Cal. App. 3d 326 (1981), declared the
2 following:

3 It is clear from the facts before the trial court on the motion to compel that
4 [defendant] made no reasonable effort to settle the disputed issues before moving to
5 compel.... That effort was not a reasonable attempt to resolve the disputed issues, or
6 indeed to even learn what plaintiff's position and objections were.

7 *Id.* at 333-34. Since plaintiffs were waiting to discuss these discovery issues with defendants and
8 defendants failed to make a reasonable effort to resolve the issues before moving to compel,
9 defendants' motion should be denied for their failure to properly meet-and-confer.

10 **2. Because Defendants Did Not Seek Leave To File Their Motion,
11 It Must Be Denied**

12 This Court has a specific rule regarding discovery motions: "Prior to the filing of ANY
13 discovery motion, the moving party is required to appear *ex parte* in this Department to seek leave
14 to file such motion." (Dept. 65 Policies and Procedures). Although defendants are aware of the
15 Court's procedure, they did not even pretend to file an *ex parte* application – instead, they filed a
16 notice of motion and motion. Additionally, even if defendants intended to file an *ex parte*
17 application for hearing on February 20, they needed to provide at least seven court days notice to
18 plaintiffs, which they failed to do. The defendants' failure to follow the Court's procedures afforded
19 plaintiffs only four days to respond to a substantive motion.

20 Moreover, defendants' improper tactic circumvents the normal notice requirements pursuant
21 to the California Code of Civil Procedure. Section 1005(b) provides that "[u]nless otherwise ordered
22 or specifically provided by law, all moving and supporting papers shall be served and filed at least
23 21 calendar days before the hearing." As the California Supreme Court stated, "[t]he general rule
24 is that notice of motion must be given whenever the order sought may affect the rights of an adverse
25 party." *McDonald v. Severy*, 6 Cal. 2d 629, 631 (1936). With such short notice, plaintiffs should
26 not be expected to respond to a substantive motion to compel. Accordingly, defendants' improper
27 motion should be denied.

28 **3. Defendants Failed To File A Separate Statement As Required
 By Rule 335 of the California Rules of Court**

 Rule 335 of the California Rules of Court provides the following:

1 A motion to compel further responses to interrogatories, inspection demands,
2 or admission requests and a motion to compel answers to questions propounded at
3 a deposition or to compel production of documents or tangible things at a deposition
4 *shall* be accompanied by a separate document which sets forth each interrogatory,
item or category of items, request, question, or document or tangible thing to which
further response, answer, or production is requested, the response given, and the
factual and legal reasons for compelling it.

5 CRC 335(a) (emphasis added). Not only have defendants failed to comply with Rule 335, but *they*
6 *have not presented the Court with any legal reasons to compel responses to their discovery.* Thus,
7 the Court has no legal basis before it to compel the production of the requested discovery. Since
8 defendants have failed to provide any legal justification to support their defective motion, it must
9 be denied.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court should deny defendants' motion.

12 DATED: February 15, 2001

Respectfully submitted,

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