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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b)) FIREARM CASE Including actions: *People, et al. v. Arcadia Machine & Tool, Inc., et al.* *People, et al. v. Arcadia Machine & Tool, Inc., et al.* *People, et al. v. Arcadia Machine & Tool, Inc., et al.*	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4095 [The Honorable Vincent P. DiFiglia] **DEFENDANT BROWNING ARMS COMPANY'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER COMPELLING PRODUCTION OF DOCUMENTS AND RESPONSES TO INTERROGATORIES** San Francisco Superior Court No. 303753 Los Angeles Superior Court No. BC210894 Los Angeles Superior Court No. BC214794 Date: March 6, 2001 Time: 8:30 a.m. Dept: 65 The Honorable Vincent P. DiFiglia Date Action Filed: May 25, 1999 Motion Cut-Off: None Set Discovery Cut-Off: None Set Trial Date: None Set

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I.

SUMMARY OF ARGUMENT

Plaintiffs apparently believe they are entitled to documents and/or interrogatory responses encompassing virtually all of Browning Arms Company's ("Browning") entire business activities in the entire United States, including all of Browning's advertising information, financial information, distributor information, contracts, monetary incentives, communications with its clients and competitors, lobbying efforts, and the list goes on. They are not. This is not a nationwide class action lawsuit. The scope of plaintiffs' discovery requests are for all intents and purposes unlimited! While the scope of discovery is broad, it is not unlimited. See California Code of Civil Procedure ("C.C.P.") Section 2017(a).

Moreover, plaintiffs' overbroad, far-reaching, nationwide discovery which seeks information and documents from every state in the Union, is simply not relevant to this lawsuit. The focus of this lawsuit is essentially whether or not defendants are engaging in unfair business practices in California. See Pacific Telephone & Telegraph Co. v. Sup. Ct., 2 Cal.3d 161, 173 (1970)(held that in large, complex cases with diverse issues, there is a more "restrictive standard [of relevance] to contain discovery within manageable limits.").

Even if plaintiffs' nationwide discovery requests are somehow relevant, which they are not, plaintiffs are not entitled to nationwide discovery because any value the information may have, which is minimal at best, is far outweighed by the burden placed on defendants to respond to such open-ended, burdensome, and oppressive discovery. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 384-385 (1961)(discovery disallowed if the requests place more burden upon the adversary than the value of the information warrants); see also,Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Industries, Inc.), 53 Cal.App.4th 216, 225 (1977).

The fact is, this is a California lawsuit, not a nationwide class action. Plaintiffs chose to file their action in state court and under state statutes. Accordingly, it would be unfair to allow them to pursue such broad far-reaching nationwide discovery in a case limited to whether or not Browning is engaged in unfair business practices in California. Plaintiffs cannot and should not be allowed to turn this state action into a nationwide class action by making vague allegations

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that Browning firearms sold on the east coast may somehow find their way into California and on that flimsy basis alone they are entitled to conduct discovery nationwide.

Browning agreed to produce responsive documents and information regarding California to virtually all of plaintiffs' requests. Yet, plaintiffs demand that Browning provide every document—in fact all the information about Browning's operations spanning the entire United States. Plaintiffs insist on turning this case into a death march of discovery for no other reason than to harass Browning and the other defendants. Such tactics are disfavored and plaintiffs' request that Browning supplement its document production and interrogatory responses to include nationwide discovery should be denied.

Regarding plaintiffs' request for lobbying and financial information, Browning incorporates Sturm Rugers' arguments as though fully set forth herein. See, Sturm Rugers' Opposition to Plaintiffs' Ex Parte Application. For the convenience of the Court, Browning will not repeat the arguments here.

At the end of the day, the Court must put some limits on plaintiffs' discovery, and the line should be drawn at California. To decide otherwise is contrary to California procedural law, and would render this case unmanageable.

II.

BROWNING HAS MADE SIGNIFICANT GOOD FAITH EFFORTS TO PROVIDE PLAINTIFFS WITH DISCOVERY

Plaintiffs propounded three separate discovery requests on Browning: (1) City of Los Angeles' First Request for Production of Documents to Manufacturer Defendants; (2) City of San Francisco's First Request for Production of Documents to Manufacturer Defendants; and (3) City of San Francisco's First Set of Special Interrogatories to Specific Manufacturer Defendants. Thereafter, Browning provided separate responses to plaintiffs' requests. On or about October 13, 2000, Browning agreed to supplement their responses. Browning provided supplemental responses to plaintiffs, but plaintiffs were still not satisfied. On or about January 22, 2001, plaintiffs sent a 52-page "meet and confer" letter demanding that Browning respond by January 29, 2001. Because of the length of the "meet and confer" letter, and its virtually

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unlimited scope, Browning felt that the parties would be better served by meeting in person rather than exchanging lengthy letters, which would probably not resolve this dispute. Accordingly, Browning contacted plaintiffs' counsel, set up an in-person "meet and confer" in San Diego, and flew from Little Rock, Arkansas, to meet personally with plaintiffs in an effort to resolve this issue. Despite Browning's best efforts, and numerous concessions, plaintiffs are still not satisfied and brought their motion to compel, moving on no less than 38 separate requests for production and/or special interrogatories.

III.

PLAINTIFFS ARE NOT ENTITLED TO UNLIMITED NATIONWIDE DISCOVERY IN THIS STATE COURT ACTION

A. The Nationwide Discovery Requested By Plaintiffs Is Barred Because It Not Relevant And Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence.

Although the right to discovery is broad, it is not absolute. There are limits. The information sought by plaintiffs must be (1) "not privileged"; (2) "relevant to the subject matter" of the action, and (3) either itself admissible or "reasonably calculated to lead to the discovery of admissible evidence." See C.C.P. Section 2017(a). Here, plaintiffs request documents and information from around the nation. Documents and/or information about Browning activities outside California are simply not relevant to whether or not Browning is engaged in unfair business practices in California. Even if they are relevant, which they are not, the nationwide discovery sought is not itself admissible or likely to lead to the discovery of admissible evidence and thus barred.

1. A Restrictive Relevance Standard Is Necessary And Proper In This Case.

Because this case is so large, complex, and deals with such diverse issues, the scope of relevancy in this case is more restrictive than would otherwise be the case for smaller garden variety lawsuits. As the California Supreme Court noted in Telephone & Telegraph Co.:

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"[I]n a small case dealing with facts and issues of moderate quantity, the trial court could adopt a very relaxed view of relevancy and still keep the discovery under control; in a large, complex case dealing with numerous and diverse issues, a court could adopt more restrictive standards to contain discovery within manageable limits." Pacific Telephone & Telegraph Co. v. Sup. Ct., 2 Cal.3d 161, 173 (1970).

Here, it cannot be reasonably disputed that this is a "large, complex case dealing with numerous and diverse issues." Indeed, it is so large, so complex, and so diverse in its issues, the Court and the parties have already agreed to special procedures (i.e., filings via JusticeLink) to keep the case under control. Accordingly, this is exactly the type of case the California Supreme Court envisioned when it held that the relevancy standard should be restricted. Id. Moreover, to open this state case up to nationwide discovery would render the case completely unmanageable. For example, if plaintiffs are allowed to go on a fishing expedition around the United States, it would force the defendants to propound discovery to numerous law enforcement agencies and municipalities around the United States to rebut whatever nationwide claims may be made by plaintiffs. At the end of the day, such discovery would result in a colossal waste of time, money, and effort because this lawsuit is about whether or defendants are engaged in unfair business practices in California.

2. Documents And Information Outside Of California Are Not Relevant To This Case.

Plaintiffs' theory of why their requests are relevant is summed up in its initial "Introduction," where they state:

> "inally, Browning's attempt to unilaterally limit discovery exclusively to Browning's involvement in the sale and distribution of firearms in California is improper as plaintiffs' complaints allege that all defendants, including Browning, over-saturate weak gun control jurisdictions and fail to adequately monitor their distributors to prevent the flow of its weapons into California's illegal secondary market. As a result, discovery relating to Browning's distribution of firearms in jurisdictions other than California is discoverable."
>
> Plfs. Ex Parte Application 1:9-15.

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Plaintiffs' reasoning is nonsensical. If plaintiffs want to know whether there is an "illegal secondary market" in California, and whether Browning is somehow contributing to this alleged market, they need only conduct California discovery asking Browning to identify any Browning "crime guns" in California or questions about Browning's distribution practices in California or any number of other interrogatories or document requests directed at California contacts. The number of firearms Browning sells in Maine, or some other state, and the number of Browning distributors in other states, is completely irrelevant to whether there is an "illegal secondary market" in California and, if so, whether Browning is somehow involved.

Further, plaintiffs' claim that "[t]hese requests seek to discover the scope of Browning's knowledge as to how many of its guns throughout the country are winding up in the hands of criminals and unauthorized users. . ." Plfs. Ex Parte Appl. 8:10-13. While Browning does not condone or contribute to criminal misuse or unauthorized use of its firearms, the question one must ask is "so what?" Whether or not Browning firearms are being used by "unauthorized users" in other states is irrelevant to whether Browning is engaging in unlawful business practices in California. Plaintiffs are simply grabbing at straws in a failed attempt to establish the relevance of non-California activities.

Even with a more relaxed standard of relevance, plaintiffs' claim that non-California information relating to unit sales, contracts, distributors, and the like, is relevant to California unfair business practices does not pass muster. With the more restrictive standard required in this case, the relevance question regarding non-California discovery is not even close.

3. Documents And Information Outside Of California Are Not Reasonably Calculated To Lead To Discovery Of Admissible Evidence.

The phrase "reasonably calculated to lead to the discovery of admissible evidence" defines the scope of permissible discovery. See C.C.P. Section 2017(a). Thus, the scope of permissible discovery is one of reason, logic, and common sense. Lipton v. Sup. Ct. (Lawyers' Mut. Ins. Co.), 48 Cal.App.4th 1599, 1611 (1996). Here, it defies reason, logic, and common sense to allow plaintiffs to propound nationwide discovery about the number of units sold in each state or the number of distributors in each state to ascertain whether Browning and others

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are involved in unfair business practices in California. To allow discovery in a far-away state to determine whether there are unfair business practices taking place in California turns logic on its head. It simply does not make sense. Discovery directed towards distributors in Maine or Rhode Island tells us little or nothing about alleged unfair business practices in California and is not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, plaintiffs should be barred from conducting unlimited nationwide discovery.

B. Plaintiffs Are Not Entitled To Nationwide Discovery Because the Burden of Such Discovery on Defendants Is Far More Than The Value Of The Information Warrants.

Courts may intervene to control discovery requests that place more of a burden upon the adversary than the value of the information warrants. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 384-385 (1961); see also,Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Ind ustries, Inc.), 53 Cal.App.4th 216, 225 (1977).

Here, plaintiffs demand nationwide discovery in virtually every category of documents and information requested and special interrogatory requested against Browning. Even if such discovery were somehow relevant, which it is not, the burden on Browning to scour its files nationwide and collect information nationwide to respond to plaintiffs' document demands and special interrogatories is far outweighed by whatever value of the information may reasonably have. For example, plaintiffs' claim that they need nationwide discovery on defendant's distributors to find out if "defendants fail to adequately monitor its distributors to ensure compliance with federal and local state laws." Plfs. Ex Parte Appl. 6:25-27. However, Browning and Sturm Ruger have agreed to provide discovery on its California distributors. Plaintiffs can find out if defendants adequately monitor its California distributors by conducting discovery on California distributors. Put simply, plaintiffs can get the information they need by other means besides conducting nationwide discovery. Accordingly, whatever value nationwide discovery may have, it is far outweighed by the burden on defendants of responding to nationwide discovery.

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IV.

CONCLUSION

For all the foregoing reasons, plaintiffs' motion to compel Browning to produce supplemental documents and interrogatory responses should be denied.

Respectfully submitted,

Dated: March 2, 2001

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DECLARATION OF SERVICE

In re Firearm Case
No. JCCP 4095

(*People, et al. v. Arcadia Machine & Tool, Inc., et al.*)
San Francisco Superior Court No. 303753
Los Angeles Superior Court No. BC 210894
Los Angeles Superior Court No. BC 214794

I, Terri Randerson, declare:

1. That I am and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of 18 years, and not a party to or interested in the within action; that my business address is 2029 Century Park East, 26th Floor, Los Angeles, California 90067.

2. That on March 2, 2001, I served **DEFENDANT BROWNING ARMS COMPANY'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER COMPELLING PRODUCTION OF DOCUMENTS AND RESPONSES TO INTERROGATORIES** by JusticeLink Electronic filing on all persons appearing on the Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of March 2001 at Los Angeles, California.

Terry Randerson

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