

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

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Nos. A105309 and A103211

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THE PEOPLE, EX REL. ROCKARD J. DELGADILLO  
AS CITY ATTORNEY, et al.,  
*Plaintiffs/Appellants,*  
vs.

ELLETT BROTHERS, INC.,  
*Defendant/Respondent.*

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THE PEOPLE, EX REL. ROCKARD J. DELGADILLO  
AS CITY ATTORNEY, et al.,  
*Plaintiffs/Appellants,*  
vs.

B & B GROUP, INC., et al.,  
*Defendants/Respondents.*

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Appeal from the Superior Court of the  
State of California for the County of San Diego  
The Honorable Vincent P. DiFiglia  
Judicial Council Coordinated Proceeding No. 4095

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APPLICATION OF PLAINTIFFS/APPELLANTS FOR PERMISSION TO  
FILE REPLY BRIEF IN EXCESS OF LENGTH LIMIT PROVIDED BY  
RULE 14(C)(1); DECLARATION OF MICHAEL J. DOWD IN  
SUPPORT THEREOF; AND [PROPOSED] ORDER

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Plaintiffs/Appellants hereby apply, pursuant to California Rule of Court 14(c)(5) and 43, for permission to file a reply brief in excess of the length limit prescribed by California Rule of Court 14(c)(1), but not to exceed 25,000 words, including footnotes. This reply brief responds, in one single pleading, to the four separate response briefs filed respectively by defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A., defendants/respondents Manufacturers and Distributors, defendant/respondent Trade Associations, and defendant/respondent Ellett Brothers, Inc. This application is based on the declaration of Jonah H. Goldstein attached hereto.

DATED: July 27, 2004

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**DECLARATION OF MICHAEL J. DOWD IN SUPPORT OF  
APPLICATION OF PLAINTIFFS/APPELLANTS FOR  
PERMISSION TO FILE REPLY BRIEF IN EXCESS OF LENGTH  
LIMIT PROVIDED BY RULE 14(C)(1)**

I, MICHAEL J. DOWD, declare and state as follows:

1. I am an attorney at law, licensed to practice in the State of California. I am a partner with the law firm of Lerach Coughlin Stoia & Robbins LLP, counsel of record for plaintiffs/appellants in the above captioned appeal. I am requesting permission on behalf of plaintiffs/appellants to file a reply brief in excess of the length limit prescribed by California Rule of Court 14(c)(1), but not to exceed 25,000 words. The reply brief will address, in one single pleading, the four separate response briefs filed respectively by defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A., defendants/respondents Manufacturers and Distributors, defendant/respondent Trade Associations, and defendant/respondent Ellett Brothers, Inc.

2. No previous applications to extend length limitations have been made by plaintiffs/appellants in this matter.

3. On January 16, 2004, plaintiffs/appellants filed their opening brief. The opening brief addressed all grounds for appeal relating to defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A., defendants/respondents Manufacturers and Distributors,

defendant/respondent Trade Associations, and defendant/respondent Ellett Brothers, Inc.

4. Plaintiffs/Appellants' opening brief was 13,982 words and conformed with the length limitations prescribed by California Rule of Court 14(c)(1).

5. On April 19, 2004, defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A filed a response brief in this appeal that was 16,940 words and exceeded the length limitation prescribed by California Rule of Court 14(c)(1).

6. Prior to filing its response brief, Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A sought and received from this Court an extension of the length limitation in California Rule of Court 14(c)(1).

7. On May 6, 2004, defendants/respondents Manufacturers and Distributors filed a response brief in this appeal that was 13,992 words.

8. In the district court, defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro Beretta S.p.A and defendants/respondents Manufacturers and Distributors filed a single motion for summary judgment that resulted in Judge Vincent P. DiFiglia's March 7, 2000 Order granting summary judgment as to these defendants. Furthermore, throughout the entire course of this litigation before the district court, these defendants virtually always joined to file a single pleading. Despite this fact, defendants/respondents Beretta U.S.A. Corp and Fabricca d'Armi Pietro

Beretta S.p.A, defendants/respondents Manufacturers and Distributors each filed a separate response in this appeal.

9. On May 6, 2004, defendants/respondents' Trade Associations filed a response brief in this appeal that was 6,946 words.

10. On May 11, 2004, defendant/respondent Ellett Brothers, Inc. filed a response brief that was 727 words.

11. Plaintiffs/Appellants seek to file a singly reply to the four separate response briefs. Due to the number of response briefs, the length of those briefs, and the number and variety of issues raised, plaintiffs/appellants' position cannot be adequately stated within the 14,000 word limit provided by California Rule of Court 14(c)(1).

12. Accordingly, rather than file four separate reply briefs to address the response briefs filed by defendants/respondents, plaintiff/appellants respectfully request permission to file a singly reply brief not to exceed 25,000 words, including footnotes.

13. This application is made in good faith for the reasons stated herein.



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of July, 2004, at San Diego, California.



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MICHAEL J. DOWD

**O R D E R**

For good cause shown, the application of plaintiffs/appellants for permission to file reply brief in excess of length limit provided by rule 14(c)(1) is granted.

IT IS SO ORDERED.

DATED: \_\_\_\_\_  
PRESIDING JUSTICE

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on July 29, 2004, declarant served APPLICATION OF PLAINTIFFS/APPELLANTS FOR PERMISSION TO FILE REPLY BRIEF IN EXCESS OF LENGTH LIMIT PROVIDED BY RULE 14(c)(1); DECLARATION OF MICHAEL J. DOWD IN SUPPORT THEREOF; AND [PROPOSED] ORDER by depositing one true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. On the same date, declarant filed one original and two copies of APPLICATION OF PLAINTIFFS/APPELLANTS FOR PERMISSION TO FILE REPLY BRIEF IN EXCESS OF LENGTH LIMIT PROVIDED BY RULE 14(c)(1); DECLARATION OF MICHAEL J. DOWD IN SUPPORT THEREOF; AND [PROPOSED] ORDER with the Clerk of the Court by Federal Express, next day delivery in a sealed package.

4. 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 29th day of July, 2004, at San Diego, California.

  
\_\_\_\_\_  
KATHY SCOVILLE

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