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| DONNA L. SOTO, ADMINISTRATRIX OF |) | SUPREME COURT |
| THE ESTATE OF VICTORIA L. SOTO, ET AL, |) | |
| Plaintiffs/Appellants |) | STATE OF CONNECTICUT |
| v. |) | |
| |) | |
| BUSHMASTER FIREARMS INTERNATIONAL, |) | |
| LLC, A/K/A, ET AL, |) | |
| Defendants/Appellees |) | April 5, 2019 |

**MOTION TO STAY PENDING DECISION BY
THE UNITED STATES SUPREME COURT**

Pursuant to Practice Book § 71-7, Defendants REMINGTON ARMS COMPANY, LLC (“Remington Arms Company”) and REMINGTON OUTDOOR COMPANY, INC. (“Remington Outdoor Company” and, together with Remington Arms Company, “Remington”) move the Court for an order staying proceedings pending resolution of Remington’s Petition for Writ of Certiorari before the United States Supreme Court. In support of this Motion, Remington states as follows:

I. BRIEF HISTORY OF THE CASE

On March 19, 2019, the Court officially released its Opinion affirming the trial court’s order striking “most of” Plaintiffs’ claims alleging that the Defendants, including Remington, were liable for wrongful death and personal injury damages resulting from Adam Lanza’s criminal misuse of a Remington firearm at Sandy Hook Elementary School on December 14, 2012. *Soto v. Bushmaster Firearms Int’l, LLC, et al.*, 331 Conn. 53, 65-66 (2019).

The Court held that Plaintiffs’ negligent entrustment claim was properly stricken under Connecticut common law. *Id.* at 75-85. As a result, the Plaintiffs “cannot proceed under the negligent entrustment exception to immunity under the [Protection of Lawful

Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* (“PLCAA”)].” *Id.* at 85. The Court further held that Plaintiffs’ allegation that the act of selling the firearm in the civilian market violated the Connecticut Unfair Trade Practices Act (“CUTPA”) “should have” been stricken because it was barred by the applicable statute of limitations. *Id.* at 105.¹

The Court also addressed the impact of the PLCAA on Plaintiffs’ remaining claim—that certain Remington advertisements “illegally” promoted “criminal use” of firearms for “offensive civilian assaults,” and the advertisements were “a direct cause” of the shooting. *Id.* at 131. The Court held that this CUTPA claim is not time barred on the face of the First Amended Complaint [*id.* at 133, n. 56], and that it is also not barred by the PLCAA because it fit within the PLCAA’s predicate exception to immunity based on a knowing violation of a statute applicable to the sale or marketing of firearms. *Id.* at 116-56.²

II. SPECIFIC FACTS RELIED ON

Remington is filing a Petition for Certiorari in the United States Supreme Court in accordance with the applicable Rules of the United States Supreme Court. The basis for jurisdiction in the Supreme Court is this Court’s decision on an important federal question that conflicts with a decision of a United States court of appeals. U.S. Sup. Ct. R. 10. Specifically, Remington will ask the United States Supreme Court to consider and decide whether CUTPA is the type of statute Congress intended to serve as a

¹ The Court also concluded that while Plaintiffs’ “primary theory—that the legal sale of the AR-15 assault rifle to the civilian market constitutes an unfair trade practice” was barred by the statute of limitations, even “if timely presented, [that theory] also would be barred by PLCAA immunity and/or the Product Liability Act, General Statutes § 52-572n(a).” See *Soto*, 331 Conn. at 70, n. 14.

² The Remington advertisements Plaintiffs allege promoted “criminal use” of firearms for “offensive civilian assaults” are described in paragraphs 78 through 83 of Plaintiffs’ First Amended Complaint. A75. The actual advertisements are attached hereto as Exhibit A.

“predicate statute” under § 7903(5)(A)(iii) of the PLCAA, a violation of which may deprive firearm manufacturers and sellers threshold immunity against being sued. See 15 U.S.C. § 7902(a) (“A qualified civil liability action may not be brought in any Federal or State court.”). As this Court recognized, “courts that have construed the predicate exception are divided” on whether Congress intended for violation of statutes, like CUTPA, to serve as an exception to PLCAA immunity. *Soto*, 331 Conn. at 136.

III. LEGAL GROUNDS RELIED ON

The Court should stay proceedings pending the United States Supreme Court’s decision to either deny Remington’s Petition for Certiorari or its decision on the merits of the case. Practice Book § 71-7 provides:

When a case has gone to judgment in the state Supreme Court and a party to the action wishes to obtain a stay of execution pending a decision in the case by the United States Supreme Court, that party shall, within twenty days of the judgment, file a motion for stay with the appellate clerk directed to the state Supreme Court. The filing of the motion shall operate as a stay pending the state Supreme Court’s decision thereon.

If proceedings are not stayed and Remington is required to undergo the costly and time-consuming burdens of litigation, including further discovery, motion practice and possibly trial, it will irreparably lose the intended benefit of threshold PLCAA immunity from suit. The United States Supreme Court has consistently recognized that “[u]ntil ... threshold immunity is resolved, discovery should not be allowed.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This common sense principle is based on fairness because when an immunity depends on resolution of “an essential legal question” a defendant should not have to “stand trial or face the other burdens of litigation.” *Siegert v. Gilley*, 500 U.S.226, 232-33 (1991) (addressing qualified immunity).

Immunity is, after all, “an entitlement to not stand trial or face the other burdens of litigation.” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “To defer the question” of whether immunity from suit exists “is to frustrate [the] significance and benefit” of the immunity provided to the defendant. *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 39 (D.C. Cir. 2000). This Court adheres to this principle and recognizes that the purpose behind immunities is protection from “having to litigate at all.” *Shay v. Rossi*, 253 Conn. 134, 166 (2000).³

Among the stated purposes of the PLCAA is “[t]o prevent the use of ... lawsuits to impose unreasonable burdens” on firearms manufacturers. 15 U.S.C. § 7901(b)(4); *see also City of New York v. Beretta*, 524 F.3d 384, 394-95 (“Congress explicitly found that the third-party suits that the Act bars are a direct threat to the firearms industry,” and have a “substantial effect on the industry.”); *Ileto v. Glock, Inc.* 565 F.3d 1126, 1135 (9th Cir. 2009) (recognizing that the PLCAA’s primary purpose is to prohibit causes of action). Congress plainly intended that PLCAA immunity would serve as threshold immunity, not merely a defense to liability decided following discovery or trial. *See Jeffries v. District of Columbia*, 916 F. Supp. 2d 42, 44 (D.D.C. 2013) (PLCAA immunity is a threshold issue). Indeed, Congress provided that lawsuits pending when the PLCAA became law, which were within the PLCAA’s protection against being sued, were to “be immediately dismissed.” 15 U.S.C. § 7902(b).

As the final arbiter of federal law, the Supreme Court is charged with ensuring the proper interpretation of the PLCAA and the predicate exception. *See Cooper v.*

³ Substantial discovery was conducted in this case before judgment was entered in Defendants’ favor by the trial court on November 1, 2016. Remington had produced thousands of pages of documents requested by Plaintiffs, and submitted witnesses for depositions on the company’s sales and marketing practices.

Aaron, 358 U.S. 1 (1958); see also *Nitro–Lift Technologies, L.L.C. v. Howard*, 133 S.Ct. 500, 503 (2012) (*per curiam*) (“It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.” (quoting *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312 (1994) (internal quotation marks omitted))). Indeed, this Court implicitly recognized that guidance from the Supreme Court is needed by acknowledging that congressional intent to protect firearm manufacturers from litigation is not clear, and it is “possible that Congress intended to broadly immunize firearm sellers from liability” for the conduct that Plaintiffs have alleged. *Soto*, 331 Conn. at 156. This Court also found that federal courts have faced “difficulties” in “attempting to distill a clear rule or guiding principle from the predicate exception.” *Id.* at 156-57. For this reason alone, the Court should stay proceedings and allow the parties to focus their resources on arguments before the United States Supreme Court on whether CUTPA is the type of statute that Congress intended to serve as a predicate statute under the predicate exception to PLCAA immunity. 15 U.S.C. § 7903(5)(A)(iii)

IV. CONCLUSION

For all of the foregoing reasons, Remington requests that this Court stay proceedings pending resolution of this case in the United States Supreme Court.

Respectfully submitted,

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CERTIFICATION OF SERVICE AND COMPLIANCE

The undersigned hereby certifies, pursuant to Practice Book Section 62-7, as follows: (1) a copy of the foregoing Motion to Stay Pending Decision by The United States Supreme Court has been delivered by email and United States Mail to the counsel of record listed below on this 5th day of April, 2019; (2) the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and (3) that the document complies with all applicable Rules of Appellate Procedure.

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EXHIBIT A



Our hand-coated aluminum barrels are corrosion-proof, extremely lightweight and incredibly abrasion resistant.

The best barrels in the business, ours are precision-machined from Chrome-Moly Vanadium steel and hardened to C62-53 on the Rockwell scale for the utmost in accuracy and longevity. They are chrome-lined for added corrosion resistance. We also offer stainless steel barrels as an option on some models.

Our highly efficient, uniquely engineered gas operating gas mechanism (strating) system operates perfectly smooth, rapid cycling while significantly reducing felt recoil.

Our myriad of superior steel designs include those with an adjustable length of pull.

WHAT GOES INTO A BUSHMASTER® IS WHAT MAKES IT A BUSHMASTER.

Since 1978, the finest commercial AR-style platform rifles in the world. The competition, the hunt, your life — when it's all on the line, you're at a disadvantage with anything less than Bushmaster. That's exactly why we're the leading supplier of AR-style rifles and accessories in the U.S., serving hundreds of law enforcement organizations, the military of 50+ countries, countless competitive and recreational shooters, hunters and all those demanding the cutting edge in home defense and security.

Uncompromising parts of the whole. In rifle making, consistency is everything. Thus, every component of a Bushmaster has been scrutinized and precision-tuned to deliver the unmatched accuracy and unfailing reliability we've built our name on — from the barrels made exclusively from fine 4150 Chrome Moly Vanadium Steel all the way down to the tiny takedown pin spring.

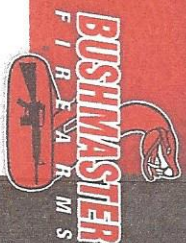
Unmatched quality control. As a Bushmaster is assembled, it undergoes a more stringent series of inspections than you'll find anywhere in the industry. This unparalleled commitment to quality control makes us the most trusted AR-style platform in the world.

Torture tested, battle proven. Bushmaster firearms and accessories undergo a rigorous testing process to ensure the highest level of ruggedness, longevity and precision. Our products are forged from 32 years of expertise, including hundreds of thousands of test rounds and the cumulative experiences of soldiers, law enforcement officers, competitive shooters and hunters worldwide.

Where there's a will, there's a Bushmaster. No one else adapts the versatility of modular firearm systems to so many specialized applications. Whether it's competitive or recreational shooting, military, law enforcement or hunting, Bushmaster builds the right tool for the job, and the modular accessories to precision match it to your mission.

FORCES OF OPPOSITION, BOW DOWN. YOU ARE SINGLE-HANDEDLY OUTNUMBERED.

Introducing the world's most adaptive modular rifle. The new Bushmaster® ACR® (Adaptive Combat Rifle) System. The best of its kind, and the only rifle you need to master the infinite number of extreme scenarios you'll face in the world of law enforcement and personal defense. Our new Bushmaster ACR System redefines the term "modular" with the extraordinary ability to change calibers, barrel lengths and stock configurations in minutes — without the use of tools. Truly the most versatile and adaptive rifle ever conceived, it was born of a collaborative effort between Bushmaster, Magpul® and Remington® to create the ultimate military combat weapons system. We're proud to unveil the evolution you see here — built specifically for our law enforcement and tactical markets. It's tested and proven reliable in the most brutal conditions on earth, truly ambidextrous and the uncompromising choice when you demand a rifle as mission-adaptable as you are. The Bushmaster ACR.



Bushmaster ACR® (Adaptive Combat Rifle)



**AS MISSION-ADAPTABLE AS THE PROFESSIONALS
IT'S BUILT TO SERVE.**

Bushmaster ACR®
Basic Configuration
(ACR SS 16M B)

NEW

Bushmaster ACR
Basic Configuration
(ACR SS 16M C)

NEW

Bushmaster ACR
Enhanced Configuration
(ACR FR 16M C)

NEW

One rifle for an infinite number of extreme scenarios.

The new fully modular Bushmaster ACR®. With the ability to rapidly change calibers,

barrel lengths and stock configurations, the new Bushmaster ACR adapts to varied conditions like no rifle that has come before it. In minutes, without tools, it will go from 5.56mm to 6.8mm to 6.5mm by swapping the bolt head, barrel and magazine. With an exchange of stocks, barrels and accessories, it transforms from a close-quarters weapon to a designated marksman platform. Simply put, the Bushmaster ACR is the highest evolution of modular rifle utility. Our rifle is built specifically for law-enforcement and tactical applications – with Bushmaster's unrivaled standards for durability and precision. We've nearly doubled barrel life and reduced maintenance with the addition of an innovative protective coating. This is also featured on action components for dramatically reduced wear and enhanced operation. For the ultimate blend of strength and reduced weight, we use rugged, high-density composite for the hand guard, lower receiver and stock. The heart of the ACR is our gas piston operating system. It's proven tested and proven reliable in the most brutal conditions on the planet. From the magazine release and the selector to the non-reciprocating charging handle, ambidextrous controls optimize user effectiveness. Add Bushmaster's hallmark commitment to quality down to the slightest ingredient, and you have a platform that's a natural fit for any operator and every mission.

Bushmaster ACR
Enhanced Configuration
(ACR FR 16M B)

NEW

ACR Features

- 16 1/2" cold hammer-forged barrel with innovative coating for extreme long life
- A2 "bridge-type" hider to control muzzle flash
- Adjustable, two-position gas-piston-driven system, for firing suppressed or unsuppressed, supported by hardened internal bearing rails
- Tool-less quick-change barrel system available in 10.5", 14.5", 16.5" and 18" and in multiple calibers
- Multi-caliber bolt carrier assembly quickly and easily changes from 223/5.56mm NATO to 6.8mm Rem SPC
- Free-floating MIL-STD 1913 monolithic top rail for optic mounting
- Fully ambidextrous controls include magazine release, bolt catch and release, fire selector and non-reciprocating charging handle
- High-impact composite hand guard with heat shield – accepts rail inserts well and modular grip storage
- Fixed high-impact composite A-frame stock with rubber butt pad and sling mounts
- Magpul MBUS front/rear flip sights
- Ships in oversized hard case for accessory storage, includes 30-round PMAG

Enhanced Features

- All the attributes as the basic ACR with these additional features:
- AAC Blastout flash hider with exceptional signature reduction
- Three-sided aluminum hand guard with integral MIL-STD 1913 rail for accessory mounting
- Folding and six-position telescoping high-impact polymer stock with rubber butt pad and sling mounts

FULLY MODULAR DESIGN. All major components are configurable to user preference. Barrel, stock, and bolt are all interchangeable in less than 2 minutes.



| Description | Caliber | Weight (w/o Magazine) | Overall Length | Barrel Length | Height | Stock | Receiver | Magazine |
|--------------|---------------------|-----------------------|----------------|---------------|--------|----------|------------------------------|-----------------------|
| ACR SS 16M B | 5.56mm/223 Rem. SPC | 42 lb. | 35" | 16.5" | 1 in 3 | 30-round | Chrome only, stainless steel | Gas-piston semi-auto. |
| ACR SS 16M C | 5.56mm/223 Rem. SPC | 42 lb. | 35" | 16.5" | 1 in 3 | 30-round | Chrome only, stainless steel | Gas-piston semi-auto. |
| ACR FR 16M B | 5.56mm/223 Rem. SPC | 42 lb. | 35" | 16.5" | 1 in 3 | 30-round | Chrome only, stainless steel | Gas-piston semi-auto. |
| ACR FR 16M C | 5.56mm/223 Rem. SPC | 42 lb. | 35" | 16.5" | 1 in 3 | 30-round | Chrome only, stainless steel | Gas-piston semi-auto. |



**READY FOR ANYTHING.
PREPARED FOR EVERYTHING.**