IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEELY ROBERTS, individually and as parent and next friend of C.R. and L.R., and JASON ROBERTS, individually and as parent and next friend of C.R. and L.R., Plaintiffs, v. SMITH & WESSON BRANDS, INC., SMITH & WESSON SALES COMPANY, SMITH & WESSON, INC., BUDSGUNSHOP.COM, LLC, RED DOT ARMS, INC., ROBERT CRIMO, JR., and ROBERT CRIMO, III, Defendants.	Lead Case No. 1:22-cv-06169 Related Case Nos. 1:22-cv-06178 1:22-cv-06181 1:22-cv-06183 1:22-cv-06171 1:22-cv-06185 1:22-cv-06186 1:22-cv-06190 1:22-cv-06191 1:22-cv-06193 1:22-cv-06359 1:22-cv-06361 Lead Case Removed from Case No. 22 LA 00000497 in the Circuit Court of Lake County, Illinois Hon. Steven C. Seeger

SMITH & WESSON'S SURREPLY IN OPPOSITION
TO PLAINTIFFS' MOTIONS TO REMAND

The Turnipseed Plaintiffs' Reply Brief in Support of Motion to Remand incorrectly claims that the Turnipseed Plaintiffs' interpretation of *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 817 (1986), is "binding precedent," and that under *Merrell*, where there is no federal cause of action, federal question jurisdiction cannot be found. (ECF 50 at 10.) Rather than deem this interpretation of *Merrell* "binding precedent," the United States Supreme Court *expressly rejected* it in *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 317 (2005), holding that the "want of a federal cause of action" does not "preclude[] removal to federal court." *Id.* at 310.

Grable involved a quiet title claim brought under state law, with no corresponding federal cause of action. *Id.* at 310, 317. The claim turned on whether the plaintiff had received proper notice under a federal statute relating to the seizure and sale of property to satisfy a tax delinquency. *Id.* at 314. The Supreme Court concluded that the lack of a federal cause of action did *not* bar federal question jurisdiction. *Id.* at 314-16.

As the Supreme Court put it, *Merrell* "cannot be read whole as overturning decades of precedent" by "converting a federal cause of action from a sufficient condition for federal-question jurisdiction into a necessary one." *Id.* at 317. In other words, while a federal private right of action alone confers federal question jurisdiction, it is not a *requirement* for federal question jurisdiction. In any event, the argument is a distraction because a federal cause of action exists here, based on the National Firearms Act and the Administrative Procedure Act. (ECF 48 at 14-15.)

The Turnipseed Plaintiffs also incorrectly claim that "Smith & Wesson's Opposition does not address this binding precedent." (ECF 50 at 10.) Smith and Wesson addressed this argument in a footnote, explaining that "the Supreme Court has rejected Plaintiffs' premise, holding that 'the absence of a private right of action' is 'not dispositive' of 'congressional intent.'" (ECF 48 at 14 n.13 (quoting *Grable*, 545 U.S. at 317).) That was all the attention it required, given its lack of merit. The statement simply is another attempt to create an issue where none exists, requiring this clarification.

The Roberts Plaintiffs' Reply Brief in Further Support of Motion to Remand incorrectly asserts that Smith & Wesson's "Opposition begins with a false statement – that 'Plaintiff's counsel have publicly proclaimed that the purpose of this case is to "stop" the "sale" of "assault rifles" like the M&P rifle.'" (ECF 51 at 1.) Their quibble here is that the exact words were uttered by the Turnipseed Plaintiffs' counsel. (ECF 48-1.) But the Roberts Plaintiffs' counsel did not draw such

a fine distinction when they held a joint press conference with the Turnipseed Plaintiffs' counsel, at which *both* the Roberts Plaintiffs' and the Turnipseed Plaintiffs' counsel referred to the combined group as a joint "legal team" and stated that the Plaintiffs were seeking to impose liability on Smith & Wesson for how the M&P rifle was "designed," not just how it was marketed. Romanucci & Blandin, LLC, *Press Conference: Highland Park Victims sue Smith & Wesson, others for role in July 4 mass shooting*, at approximately 0:08, 2:13, 1:00:00, 1:01:19, and 1:01:50 (posted Oct. 2, 2022), available at https://www.youtube.com/watch?v=RVCLuxMl7Tk.

The Roberts Plaintiffs' quibble also ignores their own Complaint, which effectively seeks to ban the sale of the M&P rifle. The NFA makes it illegal for a company to manufacture and sell a "machinegun" for civilian use. (*See* ECF 1 ¶¶ 11, 14.) The Roberts Plaintiffs seek to enjoin Smith & Wesson's allegedly "deceptive marketing campaigns," (Roberts Complaint, at 53), including the purported failure to identify the M&P rifle as an NFA weapon, i.e., a "machinegun" (*id.* ¶¶ 168, 189-190, 212-214, 238-41). If the M&P rifle were found to be an NFA "machinegun," it would impose the very ban that the Roberts Plaintiffs now claim they do not seek. There was nothing "false" about Smith & Wesson's statement.

Conclusion

For these reasons, and for the additional reasons set forth in Smith & Wesson's Brief in Opposition to Plaintiffs' Motions to Remand, the Court should deny Plaintiffs' Motions to Remand.

Dated: February 27, 2023

Respectfully submitted,

Smith & Wesson Brands, Inc. (f/k/a American Outdoor Brands Corporation), Smith & Wesson Sales Company, and Smith & Wesson, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2023, I electronically filed **Smith & Wesson's Surreply in Opposition to Plaintiffs' Motions to Remand** using the court's electronic filing system, which will automatically send notice of filing to all counsel of record.

/s/ Kenneth L. Schmetterer