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CITY OF PHILADELPHIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	No. 230702394
v.	:	
	:	
TANNER OPERATIONS, ET AL.	:	
	:	
Defendants	:	
	:	
	:	

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**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE RESPONSE IN  
OPPOSITION TO MOTION TO COMPEL**

Pursuant to the Court’s directive at its September 24, 2024 discovery hearing, Defendant, Frank’s Gun Shop & Shooting Range LLC (“Frank’s”) files this response in opposition to plaintiff’s motion to compel.

First and foremost, Frank’s incorporates by reference the response in opposition to plaintiff’s motion filed on September 24, 2024. Frank’s also incorporates the arguments set forth in the response in opposition to the motion to compel of Mad Minute Enterprises, LLC filed on September 10, 2024.

Second, as set forth at the hearing, Frank’s submits that the Court should hold any action on plaintiff’s motion to compel in abeyance until the Commonwealth Court decides Frank’s pending petition for allowance of appeal. As the Court is aware, that

petition involves a dispositive issue of whether Frank's – and the other defendants – enjoys immunity from plaintiff's claims and whether this Court has subject matter jurisdiction over plaintiff's claims under 18 Pa.C.S.A. §§ 6120(a) and 6120(a.1). This Court should wait until the Commonwealth Court decides that petition for allowance of appeal. If the Commonwealth Court agrees to hear the appeal and ultimately decides in favor of Frank's, any order compelling discovery would cause irreparable harm to Frank's because it will have been required to produce documents in a suit in which enjoys immunity and over which this Court lacks jurisdiction. An adverse ruling before the Commonwealth Court rules, will also cause Frank's to seek further relief from the Commonwealth Court under the collateral order doctrine.

Conversely, there is no prejudice to plaintiff if the Court were to hold this matter in abeyance until after the Commonwealth Court rules. The petition for allowance for appeal have been before the Commonwealth Court for several months. As such, a ruling should be forthcoming shortly. Indeed, the lengthy consideration by the Commonwealth Court further militates in favor of an abeyance because it suggests the Commonwealth Court is interested in granting the petition for allowance of appeal considering an important issue of Commonwealth law.

Accordingly, Frank's respectfully requests that the Court deny the motion to compel.

Respectfully submitted,

/s/Walter S. Zimolong

Walter S. Zimolong, Esquire

Attorneys for Defendant, *Frank's Gun Shop & Shooting Range LLC*

Dated: September 24, 2024

### **CERTIFICATE OF SERVICE**

I, Walter S. Zimolong, hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Dated: October 8, 2024

/s/ Walter S. Zimolong