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d/b/a Delia's Gun Shop*

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
	:	
<i>Plaintiff</i>	:	CIVIL DIVISION
	:	
v.	:	
	:	
Tanner Operations, LLC, <i>et. al.</i>	:	
	:	
<i>Defendants</i>	:	

**DEFENDANT MAD MINUTE ENTERPRISES, LLC'S REPLY BRIEF IN OPPOSITION
TO PLAINTIFF'S OMNIBUS DISCOVERY MOTION**

AND NOW COMES, Mad Minute Enterprises, LLC, d/b/a Delia's Gun Shop (hereinafter "Delia's"), by and through its attorneys, Goldstein Law Partners, LLC, to file the following Reply Brief in Opposition to Plaintiff's Omnibus Discovery Motion, by averring as follows;

I. Matter Before the Court

Presently before the Court is Plaintiff's Omnibus Discovery Motion as to Delia's ("Motion").

II. Questions Presented

- A. Should this Court compel Delia's to produce Justin Evans, Steve Winston, Thomas Hazell, and Charles Rastetter for depositions.

Suggested Answer: No.

- B. Should the Court apply, and instruct the finder of fact that it may apply, an adverse inference that Delia's customer purchase histories, had they been produced, would show that Delia's employees had actual or constructive knowledge of each customer's purchase history when making a gun sale?

Suggested Answer: No.

C. Should this Court overrule Delia's objections to the City's Second Requests for Production of Documents and compel Delia's to produce all records responsive to requests number 19, 21, 22, 23, 25, and 26?

Suggested Answer: No.

A. Facts

Plaintiff filed a complaint seeking to hold Delia's liable under theories of public nuisance, negligence, negligence per se, negligent entrustment, and violation of 18 Pa.C.S.A. § 6111(g)(6), for the acquisition and misuse of firearms by third-party criminals beyond Defendants' control. In support of its claims, Plaintiff attempts to lay at Delia's feet, through baseless claims, generalizations and broad statics, essentially the entirety of the City of Philadelphia's scourge of gun violence based on 31 alleged straw purchases over a three-year period.

Plaintiff among other relief, seeks the appointment of a special master for a minimum of five years to oversee Defendants' operations, asks that Defendants be ordered to undertake administrative practices in excess of those required by federal and state law, ask Defendants to post a bond against future violations, ask Defendants to pay into an abatement fund to address "continuing harms", and demand monetary damages from Defendants including incurred costs [i.e., Plaintiff's costs for providing police and first responders services to the City of Philadelphia] as well as pre- and post-judgment interest, punitive and exemplary damages, and attorney's fees.

To date, Delia's has produced over 600 pages in responsive documents and has had one corporate representative and three employees deposed, as much or more than any other defendant in this case. Despite this substantial production, Plaintiff now seeks to compel the production of clearly overbroad and wholly irrelevant documents and compel the deposition of four additional employees, one of whom has already sat for a deposition.

B. Argument

1. The City is not entitled to depose Mr. Evans, Winston, Rastetter and [Hazell]¹.

The Fifth Amendment, in relevant part, provides that no person “shall be compelled in any criminal case to be a witness against himself.” *U.S. Const. Amend. V*. “The Fifth Amendment not only protects the individual against being **involuntarily called as a witness against himself** in a criminal prosecution but also privileges him not to answer official questions put to him in **any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.**” *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973) (emphasis added). “[T]he availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites.” *Estelle v. Smith*, 451 U.S. 454, 462 (1981) (*citation omitted*).

At the heart of the City’s suit is that Delia’s and its employees violated 18 Pa.C.S.A. § 6111(g), which carries with it criminal liability. While Delia’s unequivocally denies this allegation, the potential criminal threat from the City’s allegation remains, which therefore grants Delia’s employees the irrefutable right to invoke their Fifth Amendment privilege when called to testify in any proceeding. *See Id.*

Delia’s employees invocation of their Fifth Amendment privilege however is just one half of the equation. The second half is that compelling four more additional depositions when the record is clear that the deponents will invoke their Fifth Amendment privilege throughout serves only to cause unnecessary financial hardship on Delia’s. Every deposition cost Delia’s thousands of dollars yet no additional information or testimony will be gained that has not already been disclosed in the depositions of Mr. Evans and Ms. Andrejczyk. *See Pa. R.C.P No. 4011*

¹ The parties have agreed to the deposition of Mr. Hazell and are actively working to schedule the deposition.

(“Limitations of Scope of Discovery. No discovery...shall be permitted which...(b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party...”).

2. The City is not entitled to an adverse inference regarding Delia’s customer profiles.

The City seeks an order directing the Court to instruct the finder of fact that it may apply “an adverse inference” that Delia’s employees had actual or constructive knowledge of each customer’s complete purchase history. Quite frankly, this request is much ado about nothing, save for the adverse inference which is unwarranted.

Delia’s has already admitted to the fact it maintains customer’s purchase history in both deposition testimony and in its Answers to Plaintiff’s Requests for Admission.² Delia’s has also produced all transaction documents related to the individuals in question, which includes their purchase history. Given Delia’s admission and document production, it can hardly stand to reason that an “adverse inference” would be warranted for failing to produce the very items it did in fact produce.

The problem, if anything, is the City improperly redefined what it meant. The City’s Request #2 sought documents sufficient to show all *customer profiles* of Delia’s Straw Purchasers. However, the City did not define what it meant by customer profile and therefore Delia’s understood the request to mean its customary definition which would be demographic information and preferences. Only later, after Delia’s responded to the Request, did the City define customer profiles to *actually* mean a customer’s purchase history, a clearly distinguishable difference. Notwithstanding the fact it would be wholly improper to apply an adverse inference for an item

² REQUEST NO. 4: Admit that Your employees have access to computerized customer records showing all previous firearms purchases since 2015 by the customer, either via Quickbooks or AXIS.

ANSWER: Admitted.

which was not actually requested in the Request for Production, Delia's has, as stated above, resolved the issue via its Admissions and document production.

3. The City's additional document requests seeks privileged information, is overbroad and seeks documents with no relevance to the case at hand.

While the City claims that Delia's objections to Document Requests 19 and 21 are an attempt to relitigate the statutory privilege previously rejected by this Court, Delia's argues that the information requested in Requests 19 and 21³ are drastically different and would respectfully request the Court re-visit the basis for Delia's objection as it applies to these requests.

Unlike in the previous request where the City sought documents related to individuals that were *convicted* of firearms related crimes, Request 19 seeks transaction documents related to **anyone in the past seven years** who bought 4 or more firearms in any 12-month period. What purpose does this information serve? It is not a crime to purchase four firearms in one year and it is not proof of straw purchasing; it is nothing more than a fishing expedition to collect confidential information on customers. And this is precisely the sort of disclosure Section 6111(i) of the Uniform Firearms Act ("UFA") was intended to prevent:

CONFIDENTIALTY - - All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 **shall be confidential and not subject to public disclosure....**(emphasis added).

The General Assembly, by enacting 6111(i), intended to vigorously protect the privacy of a firearms purchaser from any unauthorized disclosure of their information and the Commonwealth Court agreed, "[a]ny other interpretation of Section 6111(i) of the UFA where a [purchasers'] confidentiality is not safeguarded would be inconsistent with the UFA's purpose and

³ The City alleges these individuals are straw purchasers but has provided no documentation in support of that claim.

structure.” *Doe v. Franklin Cnty.*, 139 A.3d 296, 307 (Pa.Cmwlt. 2016), *rev’d*, 174 A.3d 593 (Pa. 2017).

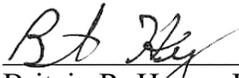
As to Requests 22 through 26, Delia’s objects to these requests as overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the production of relevant information and not proportional to the needs of the case. The City, in these requests, seeks employment records and Delia’s financial records. However, the premise of the City’s case is that Delia’s knowingly and willing sold firearms illegally to a defined set of individuals. Delia’s employee handbook and profit and loss statements will shed no light on whether Delia’s failed to properly conduct those firearms sales. The City’s claim that the information will shed light on the financial incentive to engage in illicit straw purchases, is directly contradicted by the sworn testimony of Mr. Evans and Ms. Andrejczyk both of whom testified that Delia’s did not have sales quotas, did not provide sales commissions and routinely turned away sales with even the hint of suspicion attached to them.

C. Relief

For the foregoing reasons, Defendant Mad Minute Enterprises, LLC, respectfully requests that this Court deny Plaintiff’s Motion.

Respectfully submitted,
Goldstein Law Partners, LLC

Date: 08/15/2025



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Enterprises, LLC*