DOCKET NO: UWY-CV 23-6072791S PREFIX: X06	:	SUPERIOR COURT,
NATHANIEL GETZ, EXECUTOR OF THE ESTATE OF SUZANNE FOUNTAIN,	:	COMPLEX LITIGATION DOCKET AT WATERBURY
v.	:	
STURM, RUGER & COMPANY, INC.	:	SEPTEMBER 22, 2023

PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION TO REQUEST TO AMEND

Plaintiff Nathaniel Getz, executor of the Estate of Suzanne Fountain ("Plaintiff"), respectfully submits this reply to Defendant Sturm, Ruger & Company, Inc.'s ("Defendant" or "Ruger") Objection to Plaintiff's Request to Amend, dated August 23, 2023 [Entry No. 129.00] (the "Objection").

INTRODUCTION

Mr. Getz is the son of Suzanne Fountain, one of the victims of the March 22, 2021, mass shooting at a King Soopers supermarket in Boulder, Colorado. A 21-year-old shooter killed Ms. Fountain and nine other people in a matter of minutes with a short-barreled rifle unlawfully designed, manufactured, marketed, and sold by Connecticut-based Ruger. The shooter had purchased the short-barreled rifle a mere six days earlier, on March 16, 2021.

The National Firearms Act (the "NFA") and the Gun Control Act impose heightened regulation on manufacturers, sellers, and purchasers of short-barreled rifles, over and above the baseline federal regulation of all firearms. Proposed Amended Complaint ("Am. Compl.") ¶¶ 39–53 [Entry No. 120.00]. Notably, prospective civilian retail purchasers must complete a multi-step application process and receive approval from the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF") before buying a short-barreled rifle. Am. Compl. ¶¶ 52–53. On average,

this process takes approximately seven months to complete. *Id*. This rigorous oversight is commensurate with the elevated danger presented by short-barreled rifles. The Ruger weapon at issue here, for instance, resembles full-length AR-15-style rifles in function and firepower, but offers greater concealability and maneuverability due to its shorter barrel. Am. Compl. ¶¶ 32–38, 43; *see also* Original Complaint[1] ¶¶ 9–11. As alleged in both the Original and proposed Amended Complaints, Ruger sought to evade this heightened federal regulation by designing, marketing, and selling short-barreled rifles with alternative shoulder stocks and under the model name "AR-556 Pistol." Am. Compl. ¶¶ 5–13, 16, 21, 56–82; Original Compl. ¶¶ 8–14. Ruger engaged in this evasive conduct knowing that its AR-556 short-barreled rifles would be purchased by consumers, like the shooter, who did not complete the proper screening. Am. Compl. ¶ 14; Original Compl. ¶ 26. To maintain the charade, Ruger deceptively marketed and sold the AR-556 short-barreled rifles as "pistols." Am. Compl. ¶ 112; *see also* Original Compl. ¶ 14. At the same time, Ruger's direct and indirect marketing promoted assaultive uses of the AR-556 "Pistol" and its similarity to rifles. Am. Compl. ¶¶ 34, 112(e); Original Compl. ¶¶ 14, 16, 36. It was a likely and foreseeable consequence of Ruger's conduct that a shooter with malintent would be attracted to a loophole around the NFA process and misuse the Ruger AR-556 short-barreled rifle. Am. Compl. ¶ 124.

That is what happened here. Ruger's conduct enabled the shooter to obtain his short-barreled rifle of choice in one day, while avoiding the lengthy NFA application process. Am Compl. ¶¶ 99–109. Ruger's conduct expedited the shooter's purchase of his weapon, enabling him to obtain it in time to kill Suzanne Fountain six days later. *Id*. Had Ruger followed federal law, the shooter would not have been able to obtain the weapon he used in time. Ruger's conduct

[1] For the sake of clarity, Plaintiff here uses the term "Original Complaint" to refer to the pleading styled as the "Revised Complaint" [Entry No. 114.00], which Plaintiff filed on July 7, 2023, and which is the currently operative complaint.

proximately caused the death and related injuries of Suzanne Fountain. Am. Compl. ¶¶ 109, 148–152; *see also* Original Compl. ¶¶ 39–43 (alleging that Ruger's conduct, including alleged evasion and marketing conduct, proximately caused Ms. Fountain's death and injuries).

On August 8, 2023, Plaintiff filed a request to amend to amplify and expand on his allegations. Both the Original and proposed Amended Complaints contain two intertwined sets of fact allegations: (a) Ruger evaded federal regulation of short-barreled rifles in designing, producing, and distributing its line of civilian short-barreled rifles, which it misleadingly labeled as AR-556 "Pistols," and (b) Ruger unfairly, deceptively, unscrupulously, and recklessly marketed the same. To be sure, the Original Complaint placed greater emphasis on Ruger's marketing conduct, while the proposed Amended Complaint clarifies and expands the allegations relating to the ways in which Ruger circumvented federal regulation of short-barreled rifles. But neither the evasion nor the marketing theory is either brand new or abandoned in the Amended Complaint.

Nor are they conflicting or siloed theories. Whether Ruger unlawfully produced and sold short-barreled rifles will turn on whether Ruger designed, made, and intended its AR-556 "Pistols" to be fired from the shoulder. 26 U.S.C. § 5845(a)(3)–(4), (c); 18 U.S.C. § 921(a)(7)–(8). That inquiry will involve examining objective evidence of Ruger's intent, which could include both the weapon's design and Ruger's marketing. *Cf. Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 602 (1st Cir. 2016) ("[I]t is hard to believe that Congress intended to invite manufacturers to evade the [National Firearms Act's] carefully constructed regulatory regime simply by asserting an intended use for a part that objective evidence in the record—such as a part's design features—indicates is not actually an intended one."). Likewise, whether Ruger unlawfully marketed its AR-556 "Pistols" will turn in part on whether those weapons are, in fact, short-barreled rifles.

Ruger has objected to Plaintiff's request on the sole ground that Plaintiff's new allegations

do not relate back to the Original Complaint and are thus time-barred. Defendant's Objection is wrong on the facts and the law.

Defendant conspicuously ignores the controlling Connecticut Supreme Court case *Briere v. Greater Hartford Orthopedic Group*, 325 Conn. 198, 157 A.3d 70 (2017), which clarified that the relation back doctrine requires a "case-by-case inquiry" and that the pleadings should be construed "broadly and realistically, rather than narrowly and technically." *Id.* at 209–10, 78–79. Relying solely on cases that predate *Briere*, Defendant advocates a narrow, hyper-technical approach, which, if adopted, would preclude a plaintiff from ever amending a complaint after the statute of limitations has expired.

Defendant also repeatedly mischaracterizes Plaintiff's proposed amendments, by erroneously asserting that Plaintiff has "abandoned" the claims and factual allegations in the Original Complaint and "replaced them with an entirely different set of facts and new legal theories." Objection at 11; *see also id.* at 3, 4, 12. But as discussed below, Plaintiff's amended allegations arise out of the very same transaction as in the Original Complaint. More specifically, the new allegations involve substantially similar types of conduct by the same actor, during the same time period, at the same locations, resulting in the same injury. *See* Section II.B *infra*.

Accordingly, Plaintiff's request to amend his Original Complaint should be granted.

<u>ARGUMENT</u>

I. AMENDMENTS TO COMPLAINTS ARE LIBERALLY GRANTED

Practice Book § 10-60(a) permits a plaintiff to request an amendment of a complaint at any time, and courts grant such requests liberally. *See, e.g.*, *Jacob v. Dometic Origo AB*, 100 Conn. App. 107, 111, 916 A.2d 872, 875 (2007) ("In the interest of justice courts are liberal in permitting amendments; unless there is a sound reason, refusal to allow an amendment is an abuse of discretion.") (quoting *Tedesco v. Julius C. Pagano, Inc.*, 182 Conn. 339, 341, 438 A.2d 95 (1980));

McNeil v. Riccio, 45 Conn. App. 466, 473, 696 A.2d 1050, 1055 (1997) ("Our courts have pursued a liberal policy in allowing amendments.") (quoting *Johnson v. Toscano*, 144 Conn. 582, 587, 136 A.2d 341 (1957)). This liberal policy applies even when a request is made during or after trial. *See Wagner v. Clark Equip. Co.*, 259 Conn. 114, 128–30, 788 A.2d 83, 94 (2002) (reversing denial of motion to amend complaint after first trial).

To determine whether to grant a request to amend, courts consider "the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment." *Id.* at 128. "The ***essential tests*** are whether the ruling of the court will work an injustice to either the plaintiff or the defendant and whether the granting of the motion will unduly delay a trial." *Wilburn v. Mount Sinai Medical Center*, 3 Conn. App. 284, 287, 487A.2d 568, 570 (1985) (emphasis added). Defendant does not allege that Plaintiff's request to amend—filed a mere five months after commencement of this action and before Defendant has produced a single document or sat for a single deposition—will cause any delay or prejudice. Nor does Defendant allege any negligence on Plaintiff's part. Instead, Defendant raises a single objection—that the amendments raise new causes of action that do not relate back to the original complaint and are therefore time-barred. For the reasons that follow, Defendant's argument lacks merit.

II. THIS COURT SHOULD GRANT PLAINTIFF'S REQUEST TO AMEND THE COMPLAINT

A. The Allegations in the Proposed Amended Complaint Relate Back to the Earlier Pleading and Are Thus Timely Filed.

The standard for application of the relation back doctrine is a broad one intended to "serve the purpose of promoting substantial justice." *Briere*, 325 Conn. at 210. A plaintiff may amend his or her complaint to "amplify or expand" the allegations as long as the "identity of the cause of action remains substantially the same." *Wagner*, 259 Conn. at 129 (2002). "A change in, or addition to, a ground of negligence or an act of negligence arising out of the single group of facts

which was originally claimed . . . does not change the cause of action." *Id.* If an alternate theory of liability may be supported by the original factual allegations, then that does not negate the "identity of the cause of action" or bar the application of the relation back doctrine. *Gurliacci v. Mayer*, 218 Conn. 531, 549, 590 A.2d 914, 924 (1991). A proposed amendment "relates back" so long as the original complaint provided "fair notice that a claim is being asserted stemming from a particular transaction or occurrence." *Grenier v. Comm. of Transportation*, 306 Conn. 523, 559, 51 A.3d 367, 391 (2012).

The Supreme Court in *Briere* affirmed this State's broad policy of allowing amendments to relate back liberally and clarified the factors that should be considered to determine whether an amendment relates back to the original complaint. The Court emphasized that where the amended claims fall within the same "transaction or occurrence," the new claims relate back. *Briere*, 325 Conn. at 210–211. To determine whether the new allegations fall within the same transaction or occurrence, courts consider several non-exhaustive factors, including whether the original and new allegations involve the same actor or actors, the same time period, the same location, the same injury, substantially similar types of conduct, and require the same type of evidence. *Id.* at 211.

Here, the relation back doctrine as clarified in *Briere* indisputably applies to Plaintiff's proposed amendment. Plaintiff's Original Complaint and proposed Amended Complaint arise from the same nucleus of operative facts—Ruger's negligence and recklessness in designing, manufacturing, and marketing the AR-556 short-barreled rifle as if it was a pistol—and are based on the same injury—the wrongful death of Plaintiff's mother. "Reading the original complaint broadly and realistically," as this Court is required to do, each of the factors discussed in *Briere* support application of the relation back doctrine here. *First*, the actor remains the same—Ruger. *Second*, the new allegations involve the same time period—the period during which Ruger

designed, manufactured, marketed, and sold the AR-556, leading to the death of Plaintiff's mother in March 2021. *Third*, the location of Ruger's conduct remains the same. *Fourth*, Plaintiff has not alleged a new injury; both the Original Complaint and proposed amendments allege wrongful death as a result of Ruger's unlawful conduct. *Finally*, both the Original Complaint and new allegations involve substantially similar types of conduct—namely, Ruger's improper design and marketing of the AR-556—and thus will necessarily require the same types of evidence.

Defendant focuses exclusively on the final two factors, arguing Plaintiff's amendment "abandoned the factual allegations of their original complaints and replaced them with an entirely different set of facts and new legal theories." Objection at 11. Specifically, Defendant argues Plaintiff has "abandoned" his "marketing cause of action" in favor of "an entirely new cause of action based on firearm's design." *Id.* at 3. But Defendant misleadingly summarizes Plaintiff's allegations, cherry-picking those that suit its argument while wholly disregarding others that make clear that the core of Plaintiff's theory of liability has not changed. As demonstrated *supra*, at 1–3, Plaintiff's Original and Amended Complaints both allege that Ruger deliberately evaded federal regulation of short-barreled rifles in designing, manufacturing, and selling its AR-556 "Pistols" and that Ruger unlawfully, recklessly, and unscrupulously marketed the same. Plaintiff has from the beginning alleged this range of conduct as the basis for liability under the Connecticut Unfair Trade Practices Act ("CUTPA"), which broadly prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a); *see Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53, 112, 202 A.3d 262, 298 (2019) ("[W]e frequently have remarked that 'CUTPA's coverage is broad and its purpose remedial.'" (citation omitted)); *see also* Am. Compl. ¶¶ 110–118 (CUTPA claim); Original Compl. ¶¶ 1–39 (CUTPA claim).

First, from the outset, Plaintiff has alleged, among other things, that Ruger deliberately

"***designed***" the AR-556 "Pistol" in a way that made it function as a rifle while still purportedly preserving its pistol classification for regulatory purposes. *See* Original Compl. ¶¶ 10–14. Ruger argues that the Amended Complaint's allegations regarding Ruger's violation of the NFA and the Gun Control Act "have no relevance to, nor bearing on" Plaintiff's Original Complaint. Objection at 6. But Plaintiff explicitly alleged in his Original Complaint that Ruger's conduct was intended to "***evad[e] regulations*** targeted at limiting AR-15-style rifles." Original Compl. ¶ 14.[2] That Plaintiff did not specifically reference the "National Firearms Act" and the "Gun Control Act" as the regulations being evaded is immaterial and improperly elevates form over substance. By identifying such Acts in the proposed Amended Complaint, Plaintiff is simply expanding and amplifying his initial allegations. *Compare* Original Compl. ¶¶ 10−14 *with* Am. Compl. ¶¶ 13, 54−70, 112(a). While Plaintiff's proposed amendments provide significantly more detail regarding Ruger's alleged evasion of federal law, the Amended Complaint does not represent Ruger's first notice of Plaintiff's theory on this front. To reject Plaintiff's proposed Amended Complaint on the grounds that it adds too many additional, clarifying allegations would turn the fact-pleading standard on its head. *See, e.g., O'Donnell v. AXA Equitable Life Ins. Co.*, 210 Conn. App. 662, 679, 270 A.3d 751, 762 (2022) ("The purpose of fact pleading is to put the defendant and the court on notice of the important and relevant facts claimed and the issues to be tried."). Here, Plaintiff's proposed Amended Complaint provides additional factual detail to allegations already noticed in the Original Complaint in order to frame the issues for Defendant and the Court at an early stage.

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[2] In its Objection, Defendant "anticipates" that Plaintiff will rely on his allegations in Paragraph 12 of the Original Complaint that Ruger designed the AR-556 pistol to "preserve its classification as a pistol for regulatory purposes" (Objection at 11−12), but remarkably fails to address Plaintiff's more direct allegation of wrongful conduct just two paragraphs later in Paragraph 14. This is emblematic of Defendant's selective, self-serving reading of Plaintiff's allegations.

Moreover, even if the Original Complaint had not included allegations of Ruger's evasion of federal law, the relation back doctrine does not preclude assertion of new or alternate theories of liability so long as they are based, as they are here, on the ***same transaction or occurrence*** as the original allegations. *See Briere*, 325 Conn. at 210; *see also Gurliacci*, 218 Conn. at 546–49.

Second, far from abandoning its marketing claim, Plaintiff's proposed Amended Complaint maintains and expands its allegations with respect to Ruger's unlawful marketing. *See, e.g.*, Am. Compl. ¶¶ 22, 34, 112-13, 123.[3] To be sure, Plaintiff's Amended Complaint does not include every fact allegation that appeared in his Original Complaint. But removing or reframing certain allegations of fact does not amount to a wholesale abandonment of Plaintiff's theory of Ruger's marketing-based liability.

Ruger had fair notice of Plaintiff's design-based claims. The Court should reject Ruger's arguments that ignore current law and an accurate reading of the Amended Complaint.

B. Defendant Relies on Case Law That Is Distinguishable From This Case.

None of the cases relied on by Defendant provide a legal basis for this Court to deny Plaintiff's request to amend his complaint. The majority of the decisions cited by Defendant (Objection at 8–10) are unavailing since the amendments in those cases, unlike here, raised entirely new core claims that did not have allegations to support them in the original complaints. *See Sharp v. Mitchell*, 209 Conn. 59, 546 A.2d 846 (1988) (negligent supervision v. design defect); *Alswanger v. Smego*, 257 Conn. 58, 776 A.2d 444 (2001) (informed consent to procedure v. informed consent to surgical resident's involvement in surgery); *Sandvig v. A. Dubreuil & Sons, Inc.*, 68 Conn. App. 79, 789 A.2d 1012 (2002) (failure to finish floor v. actively damaged tiles on

[3] These allegations concern Ruger's deceptive and unfair marketing of the AR-556 short-barreled rifles as: (1) "pistols" available for lawful civilian purchase, (2) designed like rifles, and (3) having assaultive/militaristic uses.

floor); *Patterson v. Szabo Food Serv. of New York, Inc.*, 14 Conn. App. 178, 540 A.2d 99 (1988) (failure to clean floor v. created a dangerous condition on floor). Moreover, the plaintiff in *Dimmock v. Lawrence & Mem'l Hosp., Inc*., 286 Conn. 789, 945 A.2d 955 (2008) sought not only to raise entirely new claims, but one that "directly contradicted" those in her original complaint. *Id.* at 805. Specifically, the plaintiff in that case initially alleged "that the defendants should *not* have performed a spinal fusion because there was *no spinal instability*;" in her amendment, she alleged "that the defendants *should* have performed a spinal fusion, but that they did not use the proper material." *Id.* No such contradictions exist here. Nor does Defendant allege there are any.

Unlike those cases, Plaintiff's Original Complaint gave Defendant sufficient notice of Plaintiff's design-based claims, even before his requested amendments. As discussed above, the Original Complaint alleged that Ruger designed, produced, and sold the AR-556 in a manner intended to evade federal regulations. The Amended Proposed Complaint merely clarifies *which* federal regulations Ruger violated and expands on the ways in which it did so. *See* Section II.A. *supra*. Moreover, both the Original and Amended Complaints allege Ruger's unlawful marketing of the AR-556 short-barreled rifle. *See* Introduction and Section II.A, *supra.* And, importantly, Plaintiff's allegations concerning Ruger's unfair and deceptive marketing and its evasion of federal regulation are all of a piece. They are part and parcel of Ruger's effort to reach consumers wishing to purchase short-barreled rifles outside the NFA process and to profit from the sale of those weapons without the hassle of increased federal oversight. In other words, Ruger's objection to Plaintiff's requested amendments is premised on a false dichotomy between Ruger's design and production of its AR-556 short-barreled rifles and its marketing of the same.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's request for leave to amend his complaint.

THE PLAINTIFF,

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CERTIFICATION

I certify that a copy of the above document was mailed or delivered electronically or non-electronically on the 22nd day of September, 2023 to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

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