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Pro Querente

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

<p>MONTANA SHOOTING SPORTS ASSOCIATION, SECOND AMENDMENT FOUNDATION, Inc., and GARY MARBUT,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,</p> <p>Defendant.</p>	<p>Cause No. CV-09-147-M-DWM</p> <p><i>PLAINTIFFS' MOTION TO STRIKE PORTIONS OF DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO ALLOW FOR LEAVE TO FILE SURREPLY</i></p>
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Plaintiffs Montana Shooting Sports Association; Second Amendment Foundation, Inc.; and Gary Marbut ("Plaintiffs"), by and through their

counsel of record, hereby move the Court for an order striking portions of arguments from Defendant's Reply Memorandum in Support of Defendant's Motion to Dismiss, or, pursuant to Local Rule 7.1(d)(1)(D), to allow Plaintiffs to file a surreply brief (see copy of proposed brief attached as Exhibit A). Defendant's new issues sought to be stricken or allowed to be addressed in a surreply brief are:

1. Whether Plaintiffs' second amended complaint was filed in violation FED. R. CIV. P. 15(a). (Dkt. No. 70, fn. 2.)
2. Whether Plaintiffs intend in fact to manufacture the Montana Buckaroo youth rifle and certain "less than legal" ammunition (see Sworn Declaration of Gary Marbut dated May 25, 2010, attached hereto as Exhibit B), including whether:
 - A. Plaintiffs have "material plans" to take part "in any activity threatened by Federal law enforcement." (Dkt. No. 70, p. 6.)
 - B. Plaintiff Marbut has not claimed he has the means to manufacture MFFA-firearms, nor has he taken any steps toward realizing this commercial venture. (*Id.*)
 - C. Purchases by the hundreds of customers who have placed orders with Marbut for the Montana Buckaroo rifle is speculative. (*Id.*)
 - D. Plaintiffs have not decided to manufacture and sell MSSA firearms. (*Id.*, p. 8.)

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- E. Marbut has provided no details to describe production costs and pricing for the firearms he plans to sell; customers have provided no compensation or any assurances that they will complete their alleged orders. (*Id.*, p. 10.)
- F. ATF's letter prohibiting Marbut from taking advantage of the MFFA has no effect on his day-to-day business. (*Id.*, p. 16.)
- G. ATF's letter prohibiting Marbut from taking advantage of the MFFA has no effect on his day-to-day business. (*Id.*, p. 16.)

Undersigned has provided Defendant's counsel with a draft copy of this motion and supporting briefing seeking consent to same. Consent, however, was respectfully declined.

Dated this 2nd day of June, 2010.

Respectfully Submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: /s/ Quentin M. Rhoades
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2010, I served a true and correct copy of the foregoing on the following persons by the following means:

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