

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RUAG AMMOTEC USA, INC. and :
RUAG AMMOTEC AG, :
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 Plaintiffs and Counterclaim :
 Defendants, :
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 v. : C.A. No. N18C-11-043 AML CCLD
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 :
 CITIZENS AMMUNITION, LLC, : JURY TRIAL DEMANDED
 :
 :
 Defendant and Counterclaim :
 Plaintiff. :

ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM

Defendant, Citizens Ammunition, LLC (“Defendant”), by its undersigned counsel, Morton, Valihura & Zerbato, LLC, hereby answers the Amended Complaint filed by RUAG Ammotec USA, Inc. (“RUAG USA”) and RUAG Ammotec AG (“RUAG AG”) (collectively, “RUAG” or “Plaintiffs”), and states as follows:

THE PARTIES

1. At all times material hereto, the Plaintiff, RUAG USA, was and is a Delaware Corporation with its principal place of business in Tampa, Florida.

ANSWER: Admitted.

2. At all times material hereto, the Plaintiff, RUAG AG, was and is a Swiss company with its principal place of business in Thun, Switzerland.

ANSWER: Admitted.

3. At all times material hereto, the Defendant Citizens was and is a Delaware limited liability corporation with its principal place of business in Las Vegas, Nevada. Defendant Citizens may be served through its Delaware registered agent, Cogency Global Inc., 850 New Burton Road, Suite 201, Dover, Delaware 19904.

ANSWER: It is denied that Defendant is a limited liability corporation. It is admitted that Defendant's principal place of business is in Las Vegas, Nevada, and that Defendant may be served through its Delaware registered agent, Cogency Global Inc., 850 New Burton Road, Suite 201, Dover, Delaware 19904.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under Art. IV, §7 of the Delaware Constitution and 10 *Del. C.* §§ 541 and 6501, *et seq.*

ANSWER: The allegations contained in Paragraph 4 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 4 are denied.

5. This Court has personal jurisdiction over Citizens because Citizens is a limited liability corporation organized under the laws of the State of Delaware.

ANSWER: The allegations contained in Paragraph 5 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 5 are denied.

6. Assignment to the Complex Commercial Litigation Division of the Superior Court is appropriate because the amounts in controversy exceed ONE MILLION DOLLARS (\$1,000,000.00).

ANSWER: Denied. The amount in controversy pled by Plaintiffs in the Amended Complaint is \$772,147.27, an amount that does not exceed the ONE MILLION DOLLAR (\$1,000,000.00) threshold warranting assignment to the Complex Commercial Litigation Division of the Superior Court.

FACTUAL ALLEGATIONS

7. On or about March 17, 2015, RUAG and Citizens entered into a Supply Agreement (“Supply Agreement”) (the Supply Agreement is attached hereto and incorporated herein as Exhibit A), under which RUAG would supply Citizens with varied calibers of ammunition, according to an initial supply schedule attached as Exhibit B to the Supply Agreement (“Initial Supply Schedule”), including: .22LR auto; .22LR bolt; .22LR subsonic; 9mm (9x19); .40 S&W; .45 ACP; .223 REM; .308 Winchester; .338 Lapua; 12-gauge 2 ¾ smooth slug; and 12-gauge 2 ¾ 00-Buck ammunition.

ANSWER: Admitted that the March 17, 2015 Supply Agreement between Plaintiffs and Defendant (the “Supply Agreement”) is attached as Exhibit A to the Amended Complaint. By way of further answer, the Court is respectfully referred to the Supply Agreement for the full terms thereof.

8. RUAG maintained all title, interest and ownership in the ammunition supplied by RUAG to Citizens under the Supply Agreement, including the ammunition in the Initial Supply Schedule, until such time that the ammunition was sold by Citizens and paid for by Citizens.

ANSWER: The allegations contained in Paragraph 8 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 8 are denied, and the Court is respectfully referred to the Supply Agreement for the terms thereof.

9. Pursuant to the Supply Agreement, Citizens was required to sell the ammunition in the Initial Supply Schedule under the “Prime” or “Primeclub” brand name and to pay RUAG a fixed price per round for the ammunition.

ANSWER: The allegations contained in Paragraph 9 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 9 are denied, and the Court is respectfully referred to the Supply Agreement for the terms thereof.

10. The Supply Agreement provided that, during the first two (2) years after initial shipment of the ammunition in the Initial Supply Schedule, Citizens was required to pay RUAG for all of the ammunition when such ammunition was sold or given away as samples by Citizens. After the two (2) year period, any remaining ammunition from the Initial Supply Schedule, and any additional ammunition

ordered by Citizens, was to be paid for by Citizens within 30 days of Citizen's receipt of the ammunition.

ANSWER: The allegations contained in Paragraph 10 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 10 are denied, and the Court is respectfully referred to the Supply Agreement for the terms thereof.

11. Citizens regularly sold the ammunition in the Initial Supply Schedule and issued payment to RUAG upon such sales. However, Citizens was unable to sell all of the ammunition in the Initial Supply Schedule by the two (2) year anniversary.

ANSWER: Admitted.

12. On or around August 9, 2017, RUAG and Citizens entered into an Addendum to the Supply Agreement ("Addendum") (the Addendum is attached hereto and incorporated herein as Exhibit B) which provided that Citizens would receive an extension until September 30, 2017 to pay RUAG for the balance of the ammunition in the Initial Supply Schedule. The precise remaining inventory balance was outlined in the Addendum.

ANSWER: Admitted that Plaintiffs and Defendant entered into an Addendum to the Supply Agreement dated August 9, 2017 (the "Addendum") and

that the Addendum is attached to the Amended Complaint as Exhibit B. The remaining allegations contained in the balance of Paragraph 12 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in the balance of Paragraph 12 are denied, and the Court is respectfully referred to the Addendum to the Supply Agreement for the terms thereof.

13. In addition, the Addendum stated that Citizens' failure to make payment in full to RUAG for the balance of the ammunition in the Initial Supply Schedule by September 30, 2017, would result in the relinquishment of Citizens' rights to sell, transfer, or dispose of the ammunition, and such ammunition would have to be returned to RUAG at its discretion.

ANSWER: The allegations contained in Paragraph 13 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 13 are denied, and the Court is respectfully referred to the terms of the Addendum to the Supply Agreement for the terms thereof.

14. Citizens failed to meet the September 30, 2017 deadline for the payment of the remaining ammunition in the Initial Supply Schedule. The parties never reached any formal agreement related to the extension of the September 30th deadline.

ANSWER: Denied.

15. In fact, Citizens fail to issue any payment for the sold Prime ammunition after approximately January of 2018.

ANSWER: Denied.

16. Between March of 2018 and August of 2018, Citizens advised RUAG in writing of its sale of various ammunition from the Initial Supply Schedule. However, no corresponding payment was issued to RUAG by Citizens.

ANSWER: Denied.

17. Based on the written sales information provided by Citizens, RUAG issued numerous invoices to Citizens for payment for the Citizens-sold ammunition including the following:

- a. On March 30, 2018, Invoice No. 2147300 was issued to Citizens by RUAG for the unpaid balance of \$408,574.13 for over 728,000 rounds of ammunition sold by Citizens.
- b. On April 30, 2018, Invoice No. 2163900 was issued to Citizens by RUAG for the unpaid balance of \$112,819.13 for over 218,000 rounds of ammunition sold by Citizens.
- c. On May 31, 2018, Invoice No. 2178400 was issued to Citizens by RUAG for the unpaid balance of \$138,785.50 for over 153,000 rounds of ammunition sold by Citizens.

- d. On June 29, 2018, Invoice No. 2193700 was issued to Citizens by RUAG for the unpaid balance of \$31,047.38 for over 122,000 rounds of ammunition sold by Citizens.
- e. On August 7, 2018, Invoice No. 221400 was issued to Citizens by RUAG, demonstrating an unpaid balance of \$80,921.13 for over 71,000 rounds of ammunition sold by Citizens.

ANSWER: Denied, except that RUAG issued numerous invoices to Citizens numbered: Invoice No. 2147300, Invoice No. 2163900, Invoice No. 2178400, Invoice No. 2193700 and Invoice No. 221400.

18. Citizens never submitted payment to RUAG for any of the invoices referenced in paragraph 17, which amounts to \$772,147.27.

ANSWER: Denied.

19. Citizens never disputed any of the amounts owed or claimed any issues or problems with the Prime ammunition supplied by RUAG.

ANSWER: Denied.

20. On July 15, 2018, Citizens again informed RUAG that it could not afford to pay any overdue amounts owed to RUAG.

ANSWER: Denied.

21. On July 19, 2018, RUAG served on Citizens a Notice of Default (the Notice of Default is attached hereto and incorporated herein as Exhibit C) relating

to Citizens' failure to pay RUAG what was at that time in excess of \$744,000.00 in overdue payments. RUAG demanded the immediate payment of the outstanding amount and return any unsold ammunition.

ANSWER: Denied, except admitted that Defendant received the letter attached as Exhibit C to the Amended Complaint.

22. On July 31, 2018, RUAG served on Citizens its Notice of Termination (the Notice of Termination is attached hereto and incorporated herein as Exhibit D) of the Supply Agreement and Addendum, advising Citizens that now over \$770,000.00 was overdue to RUAG.

ANSWER: Denied, except admitted that Defendant received the "Notice of Termination" attached as Exhibit D to the Amended Complaint.

23. RUAG subsequently obtained physical possession of all of the Prime ammunition being held by Citizens.

ANSWER: Admitted.

24. In total, Citizens presently owes RUAG in excess of \$772,147.27 for Citizens' sale of ammunition from the Initial Supply Schedule. Citizens has conceded the amount owed in writing but has refused to issue payment and has wrongly withheld payment in an effort to re-negotiate its deal with RUAG.

ANSWER: Denied.

25. On or around August 21, 2018, in an effort to help Citizens raise capital to pay the admitted outstanding debt, RUAG accepted a Purchase Order from Citizens for the production of 155,000 rounds of 6.5 4s SAUM ammunition and 200,000 rounds of 6 Creedmoor ammunition for the pre-payment of \$399,360.00.

ANSWER: Denied that RUAG accepted a new fully paid for order to help Defendant pay outstanding debt. Admitted that Defendant placed an order with RUAG USA for 155,000 rounds of 6.5 4s SAUM and 200,000 rounds of 6 Creedmoor. By way of further answer, RUAG fraudulently induced Defendant into paying money to RUAG for ammunition RUAG never intended to provide to Defendant.

26. On or around August 22, 2018, Citizens issued the \$399,360.00 pre-payment to RUAG and RUAG continues to produce the ammunition at issue.

ANSWER: Denied that RUAG produced or continues to produce the ammunition ordered and paid for by Defendant. Admitted that Defendant paid \$399,360.00 to RUAG. By way of further answer, RUAG fraudulently induced Defendant into paying money to RUAG for ammunition RUAG never intended to provide to Defendant.

COUNT I - BREACH OF CONTRACT

27. RUAG hereby repeats each and every allegation contained in paragraphs “1” through “26” as if same were more fully set forth herein at length and verbatim.

ANSWER: Defendant repeats and realleges each and every response previously set forth herein.

28. Citizens entered into a contractual agreement, the Supply Agreement and Addendum, with RUAG for the acquisition and payment of certain quantities of ammunition.

ANSWER: Admitted. By way of further answer, that “contractual agreement” was subsequently amended on January 21, 2018 when the Plaintiffs and Defendant entered into an agreement that was reduced to a binding memorandum of understanding (the “Second Addendum”).

29. RUAG fully performed its obligations under the Supply Agreement and Addendum and provided Citizens with the ammunition referenced in Invoices No. 2147300, 2163900, 2178400, 2193700, and 221400.

ANSWER: Denied.

30. However, as of the date of this Complaint, Citizens has breached both the Supply Agreement, the Addendum, and other contractual obligations by, amongst other things, failing to pay RUAG \$772,147.27 for the ammunition sold by

Citizens under the Prime brand, failing to timely pay for all of the ammunition from the Initial Supply Schedule and/or continuing to sell ammunition from the Initial Supply Schedule without payment to RUAG after having been notified of Citizens' default.

ANSWER: Denied.

WHEREFORE, Plaintiffs demand:

- (a) Judgment in their favor in an amount in excess of \$772,147.27, together with interest, attorneys' fees and costs of suit; and
- (b) Judgment, under the Supply Agreement and Addendum, confirming RUAG's right to sell and/or otherwise transfer all remaining ammunition produced by it for Citizens in any way RUAG deems fit.

COUNT II - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

31. RUAG hereby repeats each and every allegation contained in paragraphs "1" through "30" as if same were more fully set forth herein at length and verbatim.

ANSWER: Defendant repeats and realleges each and every response previously set forth herein.

32. Citizens entered into a contractual agreement, the Supply Agreement and Addendum, with RUAG for the purchase and payment of certain quantities of ammunition.

ANSWER: Admitted. By way of further answer, that “contractual agreement” was subsequently amended on January 21, 2018 by the Second Addendum.

33. RUAG fully performed its obligations under the Supply Agreement and Addendum and provided Citizens with the ammunition referenced in Invoices No. 2147300, 2163900, 2178400, 2193700, and 221400.

ANSWER: Denied.

34. However, as of the date of this Complaint, Citizens has breached both the Supply Agreement, the Addendum, and other contractual obligations by, amongst other things, failing to pay RUAG \$772,147.27 for the ammunition sold by Citizens under the Prime brand, failing to timely pay for all of the ammunition from the Initial Supply Schedule and/or continuing to sell ammunition from the Initial Supply Schedule without payment to RUAG after having been notified of Citizens’ default.

ANSWER: Denied.

WHEREFORE, Plaintiffs demand:

(a) Judgment in their favor in an amount in excess of \$772,147.27, together with interest, attorneys’ fees and costs of suit; and

(b) Judgment, under the Supply Agreement and Addendum, confirming RUAG's right to sell and/or otherwise transfer all remaining ammunition produced by it for Citizens in any way RUAG deems fit.

COUNT III - UNJUST ENRICHMENT

35. RUAG hereby repeats each and every allegation contained in paragraphs "1" through "34" as if same were more fully set forth herein at length and verbatim.

ANSWER: Defendant repeats and realleges each and every response previously set forth herein.

36. As a result of the conduct described above, Citizens has been, is and will continue to be, unjustly enriched at the expense of RUAG.

ANSWER: Denied.

37. Specifically, to the extent that the Supply Agreement and Addendum are found not to exist, or is found to in any way be invalid or unenforceable, in whole or in part, and to the extent that the improper, wrongful and/or unlawful acts by Citizens, including but not limited to, withholding money from RUAG; and failing to pay for ammunition ordered, delivered and sold, Citizens has been unjustly enriched by its actions and/or able to improperly retain money and valuable ammunition rightly belonging, and/or due, to RUAG at RUAG's expense.

ANSWER: The allegations contained in Paragraph 37 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 37 are denied.

WHEREFORE, Plaintiffs demand judgment in their favor requiring Defendant to disgorge this unjust enrichment in accordance with the laws of the State of Delaware, together with interest, attorneys' fees and costs of suit.

COUNT IV -DECLARATORY JUDGMENT

38. RUAG hereby repeats each and every allegation contained in paragraphs "1" through "37" as if same were more fully set forth herein at length and verbatim.

ANSWER: Defendant repeats and realleges each and every response previously set forth herein.

39. Under the Delaware Declaratory Judgment Act, 10 *Del. C.* § 6501, et seq., Delaware courts "have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed." 10 *Del. C.* § 6501. The power of Delaware courts to grant declaratory relief is to "be liberally construed and administered." *Id.* § 6512.

ANSWER: The allegations contained in Paragraph 39 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that

any response is necessary or required, the Court is respectfully referred to 10 *Del. C. § 6501, et seq.* for the full terms thereof.

40. As of the time of the filing of this Complaint, Citizens has failed to make any payments towards its \$772,147.27 obligation to RUAG under the Supply Agreement and Addendum.

ANSWER: Denied.

41. On or around August 22, 2018, Citizens issued pre-payment to RUAG by wire transfer in the amount of \$399,360.00 for future shipments of RUAG ammunition.

ANSWER: Admitted that Defendant transferred by wire to RUAG USA on August 22, 2018 the amount of \$399,360.00 for the purchase of 155,000 rounds of 6.5 4s SAUM and 200,000 rounds of 6 Creedmoor. By way of further answer, RUAG fraudulently induced Defendant into paying money to RUAG for ammunition RUAG never intended to provide to Defendant.

42. Citizens has repeatedly stated that it did not have the funds to pay towards its \$772,147.27 obligation to RUAG and/or refused to satisfy such obligation.

ANSWER: Denied.

43. Under information and belief, Citizens cannot and will not satisfy any judgment against it obtained by RUAG, and as such, declaratory relief is necessary and warranted.

ANSWER: Denied.

44. Accordingly, RUAG hereby seeks a declaration from the Court authorizing it to hold the \$399,360.00 and the corresponding ammunition in escrow until this matter is decided and/or resolved or the \$772,147.27 is otherwise paid from Citizens to RUAG.

ANSWER: The allegations contained in Paragraph 44 assert legal conclusions to which no responsive pleading is necessary. If and to the extent that any response is necessary or required, the allegations contained in Paragraph 44 are denied.

WHEREFORE, Plaintiffs demand judgment in their favor declaring that the \$399,360.00 and the corresponding ammunition in escrow can be held until this matter is decided and/or resolved and/or the \$772,147.27 is otherwise paid from Citizens to RUAG, and any other relief deemed justified by the Court.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lacks standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is guilty of unclean hands, and thus are not entitled to the relief they are seeking.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are not harmed, and therefore are not entitled to the relief they are seeking.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are not justified in withholding delivery of the ammunition paid for by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have, through self-help, granted themselves a pre-judgment attachment, and are not entitled to that relief under the law.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' wrongful, malicious and fraudulent conduct, as set forth with particularity in the Counterclaim below, does not entitle them to any relief under the law.

WHEREFORE, Defendant prays this Honorable Court to enter judgment against the Plaintiffs and in favor of Defendant, and to award Defendant its costs of this action, including its attorneys' fees.