

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Troy Rote, et al., :
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 Plaintiffs, :
 :
 v. : Case No. 2:13-cv-1189
 :
 Zel Custom Manufacturing, LLC, : JUDGE JAMES L. GRAHAM
 et al., : Magistrate Judge Kemp
 Defendants. :

ORDER

This case is before the Court to resolve an outstanding issue relating to discovery. On January 26, 2017, Defendant Dirección General de Fabricaciones Militares (DGFM) filed a motion to compel discovery seeking to obtain some of the ammunition in Plaintiffs' possession that came from the same box as the cartridge which is the subject of this case. The motion represented that if any destructive testing occurred, other parties would be invited to attend and record that process. DGFM claimed, however, that Plaintiffs conditioned any release of the cartridges on Plaintiffs' being able to dictate what testing could be performed.

The Court subsequently convened a telephone conference at which it appeared that this issue could be resolved without the need for further motions practice. However, shortly after the conference, Plaintiffs filed an opposing memorandum, and then a supplemental opposing memorandum, stating that although Plaintiffs stand ready to produce the ammunition once a written agreement as to the production and testing is prepared and signed, that has not occurred. That has led DGFM to file a reply in which it agrees not to perform destructive testing and to bear the cost of any production and testing of the cartridges.

The Court is unable to find any actual disagreement in the positions set forth in the briefing. Ordinarily, those

circumstances lead to an agreement rather than a Court order. Because that has not happened here, the Court grants the motion to compel (Doc. 130). Within seven days of the date of this order, Plaintiffs shall deliver two of the cartridges in question to counsel for DGF. DGF may conduct such visual inspection, measuring, photographing, and other non-destructive procedures as it deems necessary. It shall return the cartridges to Plaintiffs, in an unchanged condition, at the conclusion of the inspection. All reasonable costs associated with the delivery, inspection, and return of the cartridges shall be borne by DGF.

/s/ Terence P. Kemp
United States Magistrate Judge