

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL NO. 3:10cv00747</b>
<b>v.</b>	)	
	)	<b>JUDGE HAYNES</b>
	)	
<b>EBONY WOOD IN VARIOUS FORMS,</b>	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF’S MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL RESPONSE TO MOTION TO DISMISS**

Pursuant to Local Rule of Court 7.01(b), the undersigned requests permission to file a supplemental response to Claimant Gibson Guitar Corp.’s (“Gibson”) Motion to Dismiss. (D.E. 7). A copy of the proposed response is attached.

As grounds for this motion, the United States avers that its supplemental response will address Gibson’s claim that the exportation of the ebony fingerboards from Madagascar was not a violation of Madagascar law and that the Lacey Act was not enforceable at the time of the exportation.

The United States filed its Preliminary Response to Gibson’s Motion to Dismiss on November 18, 2010. (D.E. 13). As set forth in that response, Gibson had not at that time responded to the United States’ Special Interrogatories served on Gibson on November 17, which were designed to establish whether Gibson has standing to file a claim in this matter. The United States filed its Preliminary Response as a prophylactic measure even though its response to Gibson’s motion to dismiss was not due until twenty-one days after Gibson served its responses to the Special

Interrogatories. See Fed. R. Civ. P. Supp. R. G(6)(c), G(8)(b)(i). The parties have been working together diligently since that time to obtain final responses to the government's Special Interrogatories from Gibson and to finalize briefing on Gibson's motion.

On February 17, 2011, the parties agreed that Gibson would "take a second look at Special Interrogatory No. 2. In Special Interrogatory No. 2, the United States sought a description of the exact condition of the seized items at the time of its receipt at Gibson's facility at 641 Massman Drive, Nashville, Tennessee, including what had been done to the product and what remained to be done, whether at Gibson or elsewhere." Government's Response to Gibson Guitar Corp.'s Notice (D.E. 24).

On March 11, 2011, the parties agreed "that Gibson may have until April 1, 2011, to supply additional information in response to certain interrogatories and that, after receiving the information, the Government will supplement its response to Gibson's pending motion and/or file a motion of its own by April 19, 2011." Joint Notice (D.E. 26).

On May 4, 2011, the parties agreed "to extend plaintiff's time to file a response to claimant's motion to dismiss from its present deadline to Monday, June 6, 2011, base on the unavailability of the Government's agent who has been called out of the country." Joint Notice of Agreement to Extend Time to Respond to Claimant's Motion to Dismiss (D.E. 29).

For the foregoing reasons, the United States requests leave of the Court to file the attached supplemental response to Gibson's motion to dismiss its complaint.

Respectfully submitted,

JERRY E. MARTIN  
United States Attorney

s/Debra T. Phillips  
Debra T. Phillips (BPR 011706)  
110 Ninth Avenue South, Suite A-961  
Nashville, Tennessee 37203-3870  
Telephone: (615) 736-5151

Attorneys for the United States of America

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of June, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, notice was mailed by regular U.S. Mail to:

Steven Allen Riley  
Timothy G. Harvey  
W. Russell Taber, III  
Riley, Warnock & Jacobson  
1906 West End Avenue  
Nashville, TN 37203

Alexander Fardon  
Harwell, Howard Hyne, Gabbert, and Manner  
315 Deaderick Street, Suite 1800  
Nashville, TN 37238-1800

and sent FedEx International Air Waybill # /0003/0050/0028338167/2 to:

Hans Rudolf Schuler  
Am Hunengrab 1  
21521 Aumuhle, Germany

By: /s Debra Teufel Phillips  
DEBRA TEUFEL PHILLIPS