

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GEORGE MONTES,

Plaintiff,

v.

REMINGTON ARMS COMPANY, INC.,

Defendant.

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**Civil Action No. _____
JURY TRIAL**

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff, George Montes, complaining of Remington Arms Company, Inc. ("Remington") Defendant, and files this, his Original Complaint, and for his cause of action would show the Court and the jury the following:

I.

JURISDICTION AND VENUE

1. The jurisdiction of this Court attaches under the provisions of 28 U.S.C. §1332, in that the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000, and the parties are citizens of different states.

2. Federal court jurisdiction is based on diversity of citizenship, and venue is proper according to 28 U.S.C. §1391 (a) and (c) in a federal forum located in an area where a defendant is deemed to reside and subject to personal jurisdiction based on the defendant's contacts with the forum. Remington has continuous and systematic contacts with the Eastern District of Texas, Marshall Division and throughout the United States.

3. The Eastern District of Texas, Marshall Division, has jurisdiction in this case on

grounds of diversity of citizenship, and the Eastern District of Texas is also a proper venue under 28 U.S.C. §1391(a) and (c). In this cause, there is only one Defendant, Remington, so all defendants reside in the same state. 28 U.S.C. §1391(a)(1). Further, for purposes of the federal venue statute, Remington is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. §1391(c). Remington currently sells its firearms products throughout the Eastern District of Texas, Marshall Division. Thus, Remington's contacts with the Eastern District of Texas are continuous and systematic. Venue is proper in the Eastern District of Texas, Marshall Division.

II.

PARTIES

4. Plaintiff George Montes is a citizen of the State of New Mexico.

5. Defendant Remington Arms Company, Inc. is a corporation foreign to the State of Texas being organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of Texas by selling, manufacturing and distributing rifles through its distributors and sales force. Remington will be asked to waive service under Federal Rule of Civil Procedure 4.

III.

FACTUAL BACKGROUND

6. On March 22, 2009, at approximately 10:45 p.m., Plaintiff was attempting to unload a Model 700 rifle (Model 700 PSS; Serial # C6747095; Manufactured in 1993 Purchased in April 1993). When Mr. Montes lifted the bolt or otherwise tried to unload the weapon, and without pulling the trigger, the rifle fired, blowing the bolt back and injuring Mr. Montes eye.

7. Remington is now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action rifle including the action, fire control system, and safety (hereinafter "rifle"), knowing and expecting that the rifle would be used by consumers and around members of the general public.

8. The Remington Model 700 bolt action rifle contains a dangerously defective "Walker" fire control system that may (and often does) fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped.

9. Remington continues to utilize the "Walker" fire control design and manufactures, distributes and sells its product lines, including the Remington Model 700 bolt-action rifle. Remington has designed a new trigger mechanism that is safe (and that represents a safer alternative design), but it only installs the new mechanism into some of its rifles.

10. Plaintiff brings this action to recover damages from Defendant arising from George Montes's personal injuries caused by this incident. Plaintiff's damages include mental and physical pain and suffering, loss of earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

IV.

COUNT I: STRICT LIABILITY

11. Defendant is strictly liable to Plaintiff for selling a Remington Model 700 bolt action rifle through a dealer because it was not merchantable and reasonably suited to the use intended at the time of its manufacture or sale. Plaintiff reasonably expected that the Remington Model 700 purchased would not fire unless the trigger was engaged. Remington is strictly liable for manufacturing and selling (placing into the stream of commerce) the Remington Model 700

bolt action rifle with a defective trigger that was the proximate cause of these personal injuries sustained by Plaintiff.

12. The Remington Model 700 bolt-action rifle was in a defective and dangerous condition because Remington had actual or constructive knowledge that the rifle was dangerous to users, specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger, and Remington failed to warn of the rifle's danger. The risk was known or, at a minimum, reasonably foreseeable by the Defendant.

13. Plaintiff had no knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

14. Remington's failure to warn of the 700 rifle's propensity to unexpectedly discharge without pulling the trigger was a direct and proximate cause of Plaintiff's injuries, and Plaintiff is entitled to recover the damages from Remington.

V.

COUNT II: NEGLIGENCE

15. Defendant was negligent in the design, manufacture and marketing of the Model 700 rifle. Defendant acted unreasonably in selecting the design of the Model 700 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant to take necessary steps to eliminate the risk. Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the rifle. Defendant's negligence was a proximate cause of the occurrence in question and of Plaintiff's damages.

16. Defendant knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing injury to George Montes. Defendant had actual knowledge of the means of designing such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, Defendant failed to equip the product in question with an adequate fire control system to prevent the injuries to George Montes.

17. Defendant had actual or constructive knowledge of the problems with its Model 700 rifle at the time it was sold, in particular the rifle's propensity to unexpectedly discharge without pulling the trigger, such that the danger was known or, at a minimum, was reasonably foreseeable, but failed to notify or warn Plaintiff of the rifle's dangerous condition.

18. Defendant owed Plaintiff the duty of reasonable care when it designed, manufactured, and marketed the product in question. Defendant violated its duties and was negligent as set forth above.

19. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and damages to Plaintiff.

VI.

COUNT III: FAILURE TO WARN

20. Both before and after selling a new Remington Model 700 rifle, Defendant knew, or in the exercise of ordinary care should have known, of problems with its Model 700 rifle and its other rifles, but failed to notify or warn Plaintiff or the purchaser of the rifle prior to or after the purchase of the rifle.

21. Specifically, Defendant knew, or in the exercise of ordinary care should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge without

pulling the trigger, yet Defendant failed to notify or warn the purchaser or the Plaintiff either before or following the purchase of the new rifle.

22. Defendant failed to use reasonable care in the design, and/or had knowledge of a defect in the design, of the Remington Model 700 rifle, and owed a duty to Plaintiff and the general public to adequately warn of the defect prior to the sale of the product and thereafter. Failure to warn Plaintiff of the risks associated with the Model 710 rifle constitutes a breach of Defendant's duties to Plaintiff and the general public to provide adequate warnings, both before and after the sale of the defective product, of the dangerous conditions of the product.

23. As a direct and proximate result of Defendant's failure to warn Plaintiff of the risks associated with the Remington Model 700 rifle, Plaintiff has been seriously injured and is entitled to damages.

VII.

COUNT IV: EXEMPLARY OR PUNITIVE DAMAGES

24. Defendant Remington's actions, when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Remington's consumers and the general public, including Plaintiff. Remington had (and has) actual, subjective awareness of the risk involved in utilizing a fire control mechanism for the 700 rifle but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Remington's actions clearly reflect willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that raises a presumption of conscious indifference to consequences. Exemplary damages should be assessed against Remington pursuant to Texas law to punish and penalize the Defendant, and to deter it and others from disregarding the rights, safety and welfare of the general public.

25. Despite a defect that has been known to Remington for sixty years—a defect resulting in over 4,000 documented complaints of unintended discharge, many jury verdicts finding that the design is defective (including at least 2 findings of gross negligence), and more than \$20 million in settlements paid to injured consumers since 1993—millions of unsuspecting users hunt today with a rifle that will fire absent a trigger pull.

26. Remington redesigned its fire control mechanism, but perceived financial strain prevents Remington from recalling millions of rifles it knows are defective. This “profits over people” or “profits over safety” mentality is exactly the conduct that exemplary damages are designed to prevent.

27. Over 100 injured individuals have sued or made claims against Remington over the same defective design, and several juries, including at least two federal court juries, have found Remington’s fire control to be defective.

28. As early as January 25, 1990, an internal Remington memo reveals: “The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned.” Ignoring thousands of customer complaints, however, Remington refuses to recall its rifles or warn its customers.

29. Remington’s defective trigger mechanism uses an internal component called a “connector”—a design component not used by any other rifle manufacturer. The connector floats on top of the trigger body inside of the gun, but is not physically bound to the trigger in any way other than spring tension. The connector cannot be seen or controlled by the gun handler. When the trigger is pulled, the connector is pushed forward by the trigger, allowing the sear to fall and

the rifle to fire.

30. The proper position of the connector under the sear requires an overlap—or “engagement”—of only approximately 25/1000ths of an inch (half the width of a dime or eight human hairs). But because the connector is not bound to the trigger, during the recoil action after each firing of the rifle, the connector separates from the trigger body several times and creates a gap between the two parts. This separation is recorded in Remington’s own high-speed video footage of the fire control during discharge. Any dirt, debris or manufacturing scrap can then become lodged in the space created between the connector and the trigger, preventing the connector from returning to its original position.

31. Remington’s own experts have admitted the existence of this dangerous condition:

Q. From a performance standpoint, the trigger connector, by the time the Model 710 was introduced, did nothing to truly enhance performance.

A. I think that’s true.

Q. Are there any circumstances, in your judgment or experience, depending upon, you know, again, what other factors may be at play, where the trigger connector does increase the risks or the safety concerns with use of the Walker fire-control system?

A. It theoretically adds one more point at which you could put in debris and prevent the connector from returning underneath the sear, and that is between the trigger and the connector.

Q. Let me see if I understand what you just said. On a theoretical level, the trigger connector does present a moving part that under certain circumstances could result in debris getting between the trigger connector and the trigger body, correct?

A. Right.

Deposition of Remington liability expert Seth Bredbury, *Williams v. Remington*.

32. When enough displacement occurs, the connector will no longer support the sear

(either no engagement is present, or insufficient engagement is present) and the rifle will fire without the trigger being pulled. This can occur in a variety of ways including when the safety is released, when the bolt is closed, or when the bolt is opened. These unintended discharges occur so frequently that Remington actually created acronyms for internal use (Fire on Safe Release—"FSR"; Fire on Bolt Closure—"FBC"; Fire on Bolt Opening—"FBO"; and Jar Off—"JO"). The various manifestations notwithstanding, all of the unintended discharges result from the same defective condition—the susceptibility of the connector to be displaced from its proper position. Even one of the designers believes housing of the fire control parts is incorrectly designed.

33. When questioned about this susceptibility shown in Remington's own high-speed video footage, Remington engineer Michael Keeney offered the following:

Q. In those frames, does the connector appear to be separated from the trigger body?

A. Yes.

Q. And if debris is inside the housing, that would provide an opportunity for debris to come between the connector and the trigger body; correct?

A. That is correct.

Deposition of Remington engineer Michael Keeney, *Williams v. Remington*.

34. Derek Watkins, another Remington engineer, explained that this defect could lead to a dangerous situation:

Q. If the trigger doesn't return for whatever reason to full engagement. . . , that is not safe; would you agree with me? Because the gun is now more susceptible --

A. It is more—it is more sensitive, yes; it is more sensitive.

Q. It is more sensitive to forces that would jar the rifle in such a way for that engagement, basically, for the trigger no longer to be underneath the sear and the gun to discharge?

A. Yes.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

35. James Ronkainen, another Remington engineer, also admits that failure of the connector to properly engage leads to a dangerous condition:

Q. One common factor in a fire on safe-release and a theoretical firing on bolt-closure is that the connector is not in its appropriate condition — position; correct?

A. Yes. It is unable to support the sear.

Deposition of Remington engineer James Ronkainen, *Williams v. Remington*.

36. This dangerous condition caused Remington to embark on redesign efforts many times in the 1980's and 1990's. The goal of these efforts was to eliminate the defect:

Q. The goal while you were there was to — is to achieve a design that did not result in a fire on safety-release; is that correct?

A. The design was to eliminate any type of-- any type of debris or any type of firing from that standpoint. Fire on bolt-closure, yeah, we did-- we definitely did not want that to happen.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

37. When Remington again contemplated a recall of the Model 700 rifle (and similar firearms) in the mid-nineties, Kenneth D. Green, Manager of Technical & Consumer Services, drafted a forthright warning letter to owners of Remington rifles, which included the following language (emphasis in original):

"This safety notice is being sent to be sure you understand that if your Model 700, Model Seven or Model 40X rifle is loaded, the gun may accidentally fire when you move the safety from the "safe" position to the "fire" position, or when you close the bolt."

38. Mr. Green sent the draft warning to Remington's Bob Lyman for approval. Mr. Lyman did not approve the draft. Instead, he wrote in the margin to the left of the above

language, "Needs to be rewritten; too strong." Mr. Lyman, likely speculating that the language would hurt sales or confirm Remington's knowledge of the defect, ensured that Remington's customers never received the warning.

39. Remington's defective fire control also could have been redesigned to eliminate the harm or danger very inexpensively. Several companies sell connector-less replacement triggers for the Model 700. There is no valid engineering reason why the successfully utilized connector-less designs could not have been used by Remington in its Model 700.

40. Remington has recently removed the connector for some of its Model 700 rifles with a newly designed trigger mechanism, the X-Mark Pro. That design was completed in 2002. Even Remington's President and CEO, Thomas L. Millner, agreed in his 2007 deposition that the X-Mark Pro is a safer design (Question: "Did [Remington] make a safer fire control with the X-Mark Pro?" Answer: "Yes, I believe so.").

41. Not only did Mr. Millner admit that the design is safer, he admits that the new design prevents the rifle from firing upon release of the safety (Question: "And this new design precludes [fire on safety release] from occurring, true?" Answer: "True."). Finally, he admits that the old design—the design placed into Mr. Montes's rifle even after Remington had the new design—does not have safety features precluding fire on safety release (Question: "And that's the fire control that does not have the safety features that preclude the fire on safe release, true?" Answer: "That's correct."). But Remington still has not taken action to include the new fire control in all of its bolt-action rifles or even warn the public regarding a known safety issue. Remington still widely uses the old fire control today, knowing that it is subjecting users to the gravest of dangers.

42. Jury verdicts and appellate court opinions provide a succinct account of

Remington's long-standing knowledge of its defective fire control. In *Lewy v. Remington*, the Eighth Circuit upheld a finding of punitive damages against Remington in 1985:

We hold that there was sufficient evidence from which the jury could find that Remington knew the M700 was dangerous. The following evidence was before the jury: complaints from customers and gunsmiths that the Model 700 would fire upon release of safety, some of these complaints dating back as far as the early 1970s (footnote text in opinion omitted); Remington's own internal documents show that complaints were received more than two years before the Lewy rifle was produced; Remington created a Product Safety Subcommittee to evaluate M700 complaints and on two occasions decided against recalling the M700; and Remington responded to every customer complaint with a form letter that stated that they were unable to duplicate the problem, that the customer must have inadvertently pulled the trigger and that Remington could not assume liability for the discharge.

We believe that in viewing this evidence, and permissible inferences, in the light most favorable to the Lewys a jury could reasonably conclude that Remington was acting with conscious disregard for the safety of others. Remington maintains that their actions in investigating and responding to customer complaints and in creating the Product Safety Subcommittee to study the customer complaints reflect their good faith and sincerity in dealing with the M700. However, another permissible view to be drawn from all of this evidence may be that Remington was merely "gearing up" for a second round of litigation similar to the litigation involving the M600 which resulted in the ultimate recall of the M600. Remington's Product Safety Subcommittee concluded that of approximately two million M700s held by the public about 20,000 of them may have a potential defect (footnote omitted). A recall was not pursued because of the relatively small number of rifles that may have the defective condition. *See, e.g., Kehm v. Proctor & Gamble Mfg. Co.*, 724 F.2d 613, 620 (8th Cir.1983) ("[I]n determining whether a manufacturer has a duty to warn, courts inquire whether the manufacturer knew that there were even a relatively few persons who could not use its product without serious injury, and whether a proper warning would have helped prevent harm to them."). Thus, the jury may have concluded that rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 rifles held by the public will not cause an accident. Such a view, if true, would certainly establish that Remington acted with conscious disregard for the safety of others.

43. On March 24, 1992, The United States Court of Appeals, Ninth Circuit, affirmed a jury verdict of \$724,000 in a case alleging discharge on bolt closure. *Campbell v. Remington Arms Co.*, 1992 WL 54928, *2 (C.A. 9 (Alaska) 1992) (unpublished opinion).

44. On December 31, 1992, the Texas Supreme Court, in *Chapa v. Garcia*, 848

S.W.2d 667, 671-74 (Tex. 1992), specifically describes Remington's fire control as "defective":

Luis Chapa clearly established the relevance of and his need for the documents, by offering evidence demonstrating that the NBAR program had as its goal improvement of the defective fire control on the Model 700 and that Chapa faced a significant time gap in the record as to Remington's *knowledge* of the defect (footnote omitted). Included in Chapa's showing was:

- a 1985 Remington memorandum describing the NBAR program as one to design a "replacement for the Model 700".
- another Remington memorandum declaring that an improved fire control be installed in the Model 700 no later than October 1982 "to put us in a more secure position with respect to product liability".
- a memorandum evidencing an increase of \$130,000, in early 1981, in the research budget for development of an improved Model 700 fire control.
- proof of the abrupt discontinuation of further research into the fire-control system of the Model 700 after December 1981 coincident in time with the commencement of the NBAR program.
- deposition testimony that models of new, improved fire controls had been designed and assembled as part of NBAR, that prototypes had been built and tested, and that the NBAR fire controls could be retrofitted to the Model 700.
- Remington's admission that the fire control alternatives under consideration in the NBAR program and those it claims were geared solely to the Model 700 "attempt to execute the same *idea* (simultaneous blocking of the sear and trigger)" (footnote omitted).
- Remington's concession that the fire-control system research adopted the name "NBAR" in "late 1980 or 1981," about the time of the substantial increase in research funds for the Model 700 fire-control system.
- Remington's admission that "NBAR components which are or have been under consideration include a ... different fire control."
- Statements by Remington that NBAR information has relevance to the relative safety of its models compared to its competitors and the possible need for warnings.

45. Then, on May 7, 1994, a Texas jury rendered a verdict after Glenn Collins lost his foot to a Model 700 accidental discharge (Fire on Safety Release allegation). Not only did the jury find that the fire control was defective, it also awarded \$15,000,000 in exemplary damages. The total verdict, which was in excess of \$17 million, sent a clear message to Remington—past and *certainly* future use of the defective fire control is unacceptable.

46. It is difficult to ascertain exactly how many times Remington has embarked on designing a new Model 700 fire control. It clearly tried with the “NBAR” program, and it clearly tried on several occasions in the 1990’s, and it clearly again tried beginning in approximately the year 2000. By 1995, Remington openly acknowledged the need to “fix” the fire control. As its documents show, it decided to “[e]liminate ‘Fire on Safety Release’ malfunction.”

47. Before work continued on a new fire control, Remington’s Fire Control Business Contract (January 27, 1995) outlined the project and foreshadowed its end:

The goal is to provide a fire control that “feels” the same to our customers yet provides additional safeguards against **inadvertent or negligent discharges**.

. . .

The purpose of the redesign of the fire control is to reduce the number of parts required, lower cost and to add design characteristics that **enhance the safety attributes** of our firearms.

48. The following paragraph of Remington’s January 27, 1995, memo however laments that safety “is not considered a highly marketable feature.” The next full paragraph in the document speaks for itself. Under “Financial Analysis,” appears this telling quote:

This is where the rubber meets the road. Is this project worth doing? What are the minimum forecasts to insure profitability and does our pricing structure support these expected profits?

49. The project to “enhance the safety attributes of our firearms” is only “worth

doing” if Remington can “insure profitability.” True to form, the M700 Improvements Program was cancelled on August 28, 1998.

50. Remington has repeatedly made a clear economic choice against recalling the Model 700. But the Model 710 was to be a new rifle. In 1997, and against this sordid and costly fifty-year historical backdrop, Remington faced an important but easily answered question regarding the new low cost bolt-action rifle it intended for beginner users: What fire control should Remington use?

51. When embarking on the design of the Model 710, Remington originally elected against the use of the Model 700 fire control, which contains the connector. Instead, Remington embarked on the design of a “connectorless” fire control.

52. Derek Watkins, a Remington Engineer, designed a connector-less fire control based on the work performed during the cancelled M700 improvements program. Watkins touted the benefits of his new design within Remington.

53. Once again, Remington had a new and safe design. But the design was allegedly too expensive to implement, and project spending was put on hold in May 1998.

54. Even though Watkins design was favored within Remington, the engineering department could not get approval for the economics of the project.

55. In August 1998, Watkins’ safe design was abandoned due to an estimated cost increase. Motivated once again by the prospect of saving money and increasing its profit margin, Remington decided to pull the unsafe Model 700 fire control off the shelf and use it in the new Model 710 to eliminate development cost and time. This is the same fire control that it had specifically rejected for the new rifle 18 months earlier.

56. As Remington began its internal testing of the new Model 710 (with the defective

and dangerous Model 700 fire control installed), it is important to note that Remington, knowing the history of the design, even warned its Model 710 testers of the possibility of inadvertent discharge.

57. No such warning is provided to customers that purchase the Model 710. And the Model 710 *did* fire on bolt closure and on safety release during testing.

58. Remington Consumer Team Meeting minutes from December 13, 2001 reveal that Remington actually planned for personal injuries of its customers as a result of inadvertent discharge from Model 710 rifles:

- **Safety/Injury Calls and the Model 710 - Ken**

If a consumer calls with a safety concern, (i.e. FSR, fires when closed, personal injury or property damage, etc), these calls AND firearms go to Dennis or Fred.

59. Predictably, Remington began receiving reports of injury and accidental discharge from a fire control almost identical to the Model 700 fire control.

60. Remington is defiant in its reluctance to recall or stop using its fire control, a product that it knows is dangerous and that will kill or injury again, through no fault of the unsuspecting user. The two or more "replacement campaigns" (recalls) contemplated by Remington were seen as too expensive. Remington has elected to defend its product in court rather than embark on a recall that would likely save lives.

61. No government agency can force Remington to recall its product, and Remington has made its internal customer service advisors aware of that fact. It is only through the court system that Remington may be made to answer for its product.

62. Remington has consistently elected against a recall of its dangerous product for financial reasons, even though it has designed a new product that removes the problematic connector and eliminates the danger. Even Remington's past President admits that the new

design is safer. This is improper, and Remington should recall all of its rifles containing a "Walker"-based fire control. Until that time, Plaintiff in this action seeks all measure of damages against Remington to compensate him for his injuries and to make an example of Remington's improper conduct.

VIII.

DAMAGES AND JURY DEMAND

63. As a result of Defendant's acts and/or omissions, Plaintiff George Montes has experienced past medical damages (past and possibly future), physical pain and suffering in the past and in all reasonable probability will sustain physical pain and suffering in the future.

64. Plaintiff has suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future.

65. Plaintiff, as described above, requests that Remington be assessed exemplary or punitive damages.

66. The above and foregoing acts and/or omissions of Defendant have caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

67. Plaintiff demands a jury.

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For all monetary damages allowed under law and described, without limitation, above, plus interest;
2. For punitive damages;
3. For costs of suit; and
4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Stephen W. Drinnon
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COUNSEL FOR PLAINTIFF

diversity of citizenship, and the Eastern District of Texas is also a proper venue under 28 U.S.C. §1391(a) and (c). In this cause, there is only one Defendant, Remington, so all defendants reside in the same state. 28 U.S.C. §1391(a)(1). Further, for purposes of the federal venue statute, Remington is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. §1391(c). Remington currently sells its firearms products throughout the Eastern District of Texas, Marshall Division. Thus, Remington's contacts with the Eastern District of Texas are continuous and systematic. Venue is proper in the Eastern District of Texas, Marshall Division.

II.

PARTIES

4. Plaintiff Thomas Hull is a citizen of the State of Washington and resides in Port Angeles, Washington.
5. Defendant Remington Arms Company, Inc. is a corporation foreign to the State of Georgia being organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of Texas by selling, manufacturing and distributing rifles through its distributors and sales force. Remington will be asked to waive service under Federal Rule of Civil Procedure 4.

III.

FACTUAL BACKGROUND

6. On October 26, 2009, a hunting buddy of Plaintiff's was attempting to unload his Model 700 rifle. To unload the rifle, which, on information and belief, was manufactured by Remington before 1982 with serial number B6343732 (before Remington removed the bolt lock from the

design in 1982), the user is required to move the safety from the "S" or "safe" position to the "F" or "fire" position. The user in this case attempted to open the bolt or otherwise unload the weapon. Without pulling the trigger, the rifle fired, sending a bullet through a truck, splitting the bullet into pieces, and lodging into Plaintiff's right leg.

7. Remington is now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action rifle including the action, fire control system, and safety (hereinafter "rifle"), knowing and expecting that the rifle would be used by consumers and around members of the general public.

8. The Remington Model 700 bolt action rifle contains a dangerously defective "Walker" fire control system that may (and often does) fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped.

9. Remington continues to utilize the "Walker" fire control design and manufactures, distributes and sells its product lines, including the Remington Model 770 bolt-action rifle. Remington has designed a new trigger mechanism that is safe (and that represents a safer alternative design), installing the new design in almost all of its bolt-action rifles.

10. Plaintiff brings this action to recover damages from Defendant arising from Plaintiff's personal injuries caused by this incident. Plaintiff's damages include past and future medical expenses from his injuries, mental and physical pain and suffering, loss of earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

IV.

COUNT I: STRICT LIABILITY

11. Defendant is strictly liable to Plaintiff for selling a Remington Model 700 bolt action rifle

through a dealer because it was not merchantable and reasonably suited to the use intended at the time of its manufacture or sale. Plaintiff and the public reasonably expected that the Remington Model 700 purchased would not fire unless the trigger was engaged. Remington is strictly liable for manufacturing and selling (placing into the stream of commerce) the Remington Model 700 bolt action rifle with a defective trigger that was the proximate cause of these personal injuries sustained by Plaintiff.

12. The Remington Model 700 bolt-action rifle was in a defective and dangerous condition because Remington had actual or constructive knowledge that the rifle was dangerous to users, specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger, and Remington failed to warn of the rifle's danger. Further, requiring that the safety be moved to the "fire" position for unloading also creates a defective and dangerous condition. The risk was known or, at a minimum, reasonably foreseeable by the Defendant.

13. Plaintiff nor his hunting partner had knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

14. Remington's failure to warn of the 700 rifle's propensity to unexpectedly discharge without pulling the trigger was a direct and proximate cause of Plaintiff's injuries, and Plaintiff is entitled to recover the damages from Remington.

V.

COUNT II: NEGLIGENCE

15. Defendant was negligent in the design, manufacture and marketing of the Model 700 rifle. Defendant acted unreasonably in selecting the design of the Model 700 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant to take necessary steps to

eliminate the risk. Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner that it was intended to be used, and for foreseeable misuses of the rifle. Defendant's negligence was a proximate cause of the occurrence in question and of Plaintiff's damages.

16. Defendant knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing injury to Plaintiff. Defendant had actual knowledge of the means of designing such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, Defendant failed to equip the product in question with an adequate fire control system to prevent the injuries to Plaintiff.

17. Defendant had actual or constructive knowledge of the problems with its Model 700 rifle at the time it was sold, in particular the rifle's propensity to unexpectedly discharge without pulling the trigger, such that the danger was known or, at a minimum, was reasonably foreseeable, but failed to notify or warn of the rifle's dangerous condition.

18. Defendant owed Plaintiff the duty of reasonable care when it designed, manufactured, and marketed the product in question. Defendant violated its duties and was negligent as set forth above.

19. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and damages to Plaintiff.

VI.

COUNT III: FAILURE TO WARN

20. Both before and after Defendant sold the Remington Model 700 rifle at issue, Defendant knew, or in the exercise of ordinary care should have known, of problems with its Model 700

rifle and its other rifles, but failed to notify or warn Plaintiff or the public.

21. Specifically, Defendant knew, or in the exercise of ordinary care should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge without pulling the trigger, yet Defendant failed to notify or warn the purchaser or the Public either before or following the purchase of the rifle. Defendant also knew that requiring the safety to be in the fire position during loading and unloading was unsafe, and it failed to warn about this danger also.

22. Defendant failed to use reasonable care in the design, and/or had knowledge of a defect in the design, of the Remington Model 700 rifle, and owed a duty to Plaintiff and the general public to adequately warn of the defect prior to the sale of the product and thereafter. Failure to warn Plaintiff of the risks associated with the Model 700 rifle constitutes a breach of Defendant's duties to Plaintiff and the general public to provide adequate warnings, both before and after the sale of the defective product, of the dangerous conditions of the product.

23. As a direct and proximate result of Defendant's failure to warn Plaintiff and the public of the risks associated with the Remington Model 700 rifle, Plaintiff has been seriously injured and is entitled to damages.

VII.

COUNT IV: EXEMPLARY OR PUNITIVE DAMAGES

24. Defendant Remington's actions, when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Remington's consumers and the general public, including Plaintiff. Remington had (and has) actual, subjective awareness of the risk involved in utilizing a fire control mechanism for the Model 700 rifle but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Remington's actions clearly reflect

willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that raises a presumption of conscious indifference to consequences. Exemplary damages should be assessed against Remington to punish and penalize the Defendant, and to deter it and others from disregarding the rights, safety and welfare of the general public.

25. Despite a defect that has been known to Remington for sixty years—a defect resulting in over 4,000 documented complaints of unintended discharge, many jury verdicts finding that the design is defective (including at least 2 findings of gross negligence), and more than \$20 million in settlements paid to injured consumers since 1993—millions of unsuspecting users hunt today with a rifle that will fire absent a trigger pull.

26. Remington redesigned its fire control mechanism, but perceived financial strain prevents Remington from recalling millions of rifles it knows are defective. This “profits over people” or “profits over safety” mentality is exactly the conduct that exemplary damages are designed to prevent.

27. Over 100 injured individuals have sued or made claims against Remington over the same defective design, and several juries, including at least two federal court juries, have found Remington’s fire control to be defective.

28. As early as January 25, 1990, an internal Remington memo reveals: “The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned.” Ignoring thousands of customer complaints, however, Remington refuses to recall its rifles or warn its customers.

29. Remington’s defective trigger mechanism uses an internal component called a “connector”—

a design component not used by any other rifle manufacturer. The connector floats on top of the trigger body inside of the gun, but is not physically bound to the trigger in any way other than spring tension. The connector cannot be seen or controlled by the gun handler. When the trigger is pulled, the connector is pushed forward by the trigger, allowing the sear to fall and the rifle to fire.

30. The proper position of the connector under the sear requires an overlap—or “engagement”—of only approximately 25/1000ths of an inch (half the width of a dime or eight human hairs). But because the connector is not bound to the trigger, during the recoil action after each firing of the rifle, the connector separates from the trigger body several times and creates a gap between the two parts. This separation is recorded in Remington’s own high-speed video footage of the fire control during discharge. Any dirt, debris or manufacturing scrap can then become lodged in the space created between the connector and the trigger, preventing the connector from returning to its original position.

31. Remington’s own experts have admitted the existence of this dangerous condition:

Q. From a performance standpoint, the trigger connector, by the time the Model 710 was introduced, did nothing to truly enhance performance.

A. I think that’s true.

Q. Are there any circumstances, in your judgment or experience, depending upon, you know, again, what other factors may be at play, where the trigger connector does increase the risks or the safety concerns with use of the Walker fire-control system?

A. It theoretically adds one more point at which you could put in debris and prevent the connector from returning underneath the sear, and that is between the trigger and the connector.

Q. Let me see if I understand what you just said. On a theoretical level, the trigger connector does present a moving part that under certain circumstances could result in debris getting between the trigger connector and the trigger body, correct?

A. Right.

Deposition of Remington liability expert Seth Bredbury, *Williams v. Remington*.

32. When enough displacement occurs, the connector will no longer support the sear (either no engagement is present, or insufficient engagement is present) and the rifle will fire without the trigger being pulled. This can occur in a variety of ways including when the safety is released, when the bolt is closed, or when the bolt is opened. These unintended discharges occur so frequently that Remington actually created acronyms for internal use (Fire on Safe Release—"FSR"; Fire on Bolt Closure—"FBC"; Fire on Bolt Opening—"FBO"; and Jar Off—"JO"). The various manifestations notwithstanding, all of the unintended discharges result from the same defective condition—the susceptibility of the connector to be displaced from its proper position. Even one of the designers believes housing of the fire control parts is incorrectly designed.

33. When questioned about this susceptibility shown in Remington's own high-speed video footage, Remington engineer Michael Keeney offered the following:

Q. In those frames, does the connector appear to be separated from the trigger body?

A. Yes.

Q. And if debris is inside the housing, that would provide an opportunity for debris to come between the connector and the trigger body; correct?

A. That is correct.

Deposition of Remington engineer Michael Keeney, *Williams v. Remington*.

34. Derek Watkins, another Remington engineer, explained that this defect could lead to a dangerous situation:

Q. If the trigger doesn't return for whatever reason to full engagement. . . , that is not safe; would you agree with me? Because the gun is now more susceptible --

A. It is more—it is more sensitive, yes; it is more sensitive.

Q. It is more sensitive to forces that would jar the rifle in such a way for that engagement, basically, for the trigger no longer to be underneath the sear and the gun to discharge?

A. Yes.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

35. James Ronkainen, another Remington engineer, also admits that failure of the connector to properly engage leads to a dangerous condition:

Q. One common factor in a fire on safe-release and a theoretical firing on bolt-closure is that the connector is not in its appropriate condition — position; correct?

A. Yes. It is unable to support the sear.

Deposition of Remington engineer James Ronkainen, *Williams v. Remington*.

36. This dangerous condition caused Remington to embark on redesign efforts many times in the 1980's and 1990's. The goal of these efforts was to eliminate the defect:

Q. The goal while you were there was to — is to achieve a design that did not result in a fire on safety-release; is that correct?

A. The design was to eliminate any type of-- any type of debris or any type of firing from that standpoint. Fire on bolt-closure, yeah, we did-- we definitely did not want that to happen.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

37. When Remington again contemplated a recall of the Model 700 rifle (and similar firearms) in the mid-nineties, Kenneth D. Green, Manager of Technical & Consumer Services, drafted a forthright warning letter to owners of Remington rifles, which included the following language (emphasis in original):

“This safety notice is being sent to be sure you understand that if your Model 700, Model Seven or Model 40X rifle is loaded, the gun may accidentally fire when

you move the safety from the “safe” position to the “fire” position, or when you close the bolt.”

38. Mr. Green sent the draft warning to Remington’s Bob Lyman for approval. Mr. Lyman did not approve the draft. Instead, he wrote in the margin to the left of the above language, “Needs to be rewritten; too strong.” Mr. Lyman, likely speculating that the language would hurt sales or confirm Remington’s knowledge of the defect, ensured that Remington’s customers never received the warning.

39. Remington’s defective fire control also could have been redesigned to eliminate the harm or danger very inexpensively. Several companies sell connector-less replacement triggers for the Model 700. There is no valid engineering reason why the successfully utilized connector-less designs could not have been used by Remington in its Model 700, 710 and 770.

40. Remington has recently removed the connector for some of its Model 700 rifles with a newly designed trigger mechanism, the X-Mark Pro. That design was completed in 2002. Even Remington’s President and CEO, Thomas L. Millner, agreed in his 2007 deposition that the X-Mark Pro is a safer design (Question: “Did [Remington] make a safer fire control with the X-Mark Pro?” Answer: “Yes, I believe so.”).

41. Not only did Mr. Millner admit that the design is safer, he admits that the new design prevents the rifle from firing upon release of the safety (Question: “And this new design precludes [fire on safety release] from occurring, true?” Answer: “True.”). Finally, he admits that the old design—the design placed into Mr. Bledsoe’s rifle even after Remington had the new design—does not have safety features precluding fire on safety release (Question: “And that’s the fire control that does not have the safety features that preclude the fire on safe release, true?” Answer: “That’s correct.”). But Remington still have not taken action to include the new fire control in all of its bolt action rifles or even warn the public regarding a known safety issue.

Remington still widely uses the old fire control today, knowingly subjecting users to the gravest of dangers.

42. Jury verdicts and appellate court opinions provide a succinct account of Remington's long-standing knowledge of its defective fire control. In *Lewy v. Remington*, the Eighth Circuit upheld a finding of punitive damages against Remington in 1985:

We hold that there was sufficient evidence from which the jury could find that Remington knew the M700 was dangerous. The following evidence was before the jury: complaints from customers and gunsmiths that the Model 700 would fire upon release of safety, some of these complaints dating back as far as the early 1970s (footnote text in opinion omitted); Remington's own internal documents show that complaints were received more than two years before the Lewy rifle was produced; Remington created a Product Safety Subcommittee to evaluate M700 complaints and on two occasions decided against recalling the M700; and Remington responded to every customer complaint with a form letter that stated that they were unable to duplicate the problem, that the customer must have inadvertently pulled the trigger and that Remington could not assume liability for the discharge.

We believe that in viewing this evidence, and permissible inferences, in the light most favorable to the Lewys a jury could reasonably conclude that Remington was acting with conscious disregard for the safety of others. Remington maintains that their actions in investigating and responding to customer complaints and in creating the Product Safety Subcommittee to study the customer complaints reflect their good faith and sincerity in dealing with the M700. However, another permissible view to be drawn from all of this evidence may be that Remington was merely "gearing up" for a second round of litigation similar to the litigation involving the M600 which resulted in the ultimate recall of the M600. Remington's Product Safety Subcommittee concluded that of approximately two million M700s held by the public about 20,000 of them may have a potential defect (footnote omitted). A recall was not pursued because of the relatively small number of rifles that may have the defective condition. *See, e.g., Kehm v. Proctor & Gamble Mfg. Co.*, 724 F.2d 613, 620 (8th Cir.1983) ("[I]n determining whether a manufacturer has a duty to warn, courts inquire whether the manufacturer knew that there were even a relatively few persons who could not use its product without serious injury, and whether a proper warning would have helped prevent harm to them."). Thus, the jury may have concluded that rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 rifles held by the public will not cause an accident. Such a view, if true, would certainly establish that Remington acted with conscious disregard for the safety of others.

43. On March 24, 1992, The United States Court of Appeals, Ninth Circuit, affirmed a jury

verdict of \$724,000 in a case alleging discharge on bolt closure. *Campbell v. Remington Arms Co.*, 1992 WL 54928, *2 (C.A. 9 (Alaska) 1992) (unpublished opinion).

44. On December 31, 1992, the Texas Supreme Court, in *Chapa v. Garcia*, 848 S.W.2d 667, 671-74 (Tex. 1992), specifically describes Remington's fire control as "defective":

Luis Chapa clearly established the relevance of and his need for the documents, by offering evidence demonstrating that the NBAR program had as its goal improvement of the defective fire control on the Model 700 and that Chapa faced a significant time gap in the record as to Remington's *knowledge* of the defect (footnote omitted). Included in Chapa's showing was:

- a 1985 Remington memorandum describing the NBAR program as one to design a "replacement for the Model 700"
- another Remington memorandum declaring that an improved fire control be installed in the Model 700 no later than October 1982 "to put us in a more secure position with respect to product liability"
- a memorandum evidencing an increase of \$130,000, in early 1981, in the research budget for development of an improved Model 700 fire control
- proof of the abrupt discontinuation of further research into the fire-control system of the Model 700 after December 1981 coincident in time with the commencement of the NBAR program
- deposition testimony that models of new, improved fire controls had been designed and assembled as part of NBAR, that prototypes had been built and tested, and that the NBAR fire controls could be retrofitted to the Model 700.
- Remington's admission that the fire control alternatives under consideration in the NBAR program and those it claims were geared solely to the Model 700 "attempt to execute the same *idea* (simultaneous blocking of the sear and trigger)" (footnote omitted).
- Remington's concession that the fire-control system research adopted the name "NBAR" in "late 1980 or 1981," about the time of the substantial increase in research funds for the Model 700 fire-control system.

- Remington's admission that "NBAR components which are or have been under consideration include a ... different fire control."

- Statements by Remington that NBAR information has relevance to the relative safety of its models compared to its competitors and the possible need for warnings.

45. Then, on May 7, 1994, a Texas jury rendered a verdict after Glenn Collins lost his foot to a Model 700 accidental discharge (Fire on Safety Release allegation). Not only did the jury find that the fire control was defective, it also awarded \$15,000,000 in exemplary damages. The total verdict, which was in excess of \$17 million, sent a clear message to Remington—past and *certainly* future use of the defective fire control is unacceptable.

46. It is difficult to ascertain exactly how many times Remington has embarked on designing a new Model 700 fire control. It clearly tried with the "NBAR" program, and it clearly tried on several occasions in the 1990's, and it clearly again tried beginning in approximately the year 2000. By 1995, Remington openly acknowledged the need to "fix" the fire control. As its documents show, it decided to "[e]liminate 'Fire on Safety Release' malfunction."

47. Before work continued on a new fire control, Remington's Fire Control Business Contract (January 27, 1995) outlined the project and foreshadowed its end:

The goal is to provide a fire control that "feels" the same to our customers yet provides additional safeguards against **inadvertent or negligent discharges**.

. . .

The purpose of the redesign of the fire control is to reduce the number of parts required, lower cost and to add design characteristics that **enhance the safety attributes** of our firearms.

48. The next paragraph, however, laments that safety "is not considered a highly marketable feature." The next full paragraph in the document speaks for itself. Under "Financial Analysis," appears this telling quote:

This is where the rubber meets the road. Is this project worth doing? What are the minimum forecasts to insure profitability and does our pricing structure support these expected profits?

49. The project to "enhance the safety attributes of our firearms" is only "worth doing" if Remington can "insure profitability." True to form, the M700 Improvements Program was cancelled on August 28, 1998.
50. Remington has repeatedly made a clear economic choice against recalling the Model 700. But the Model 710 (now the Model 770) was to be a new rifle. In 1997, and against this sordid and costly fifty-year historical backdrop, Remington faced an important but easily answered question regarding the new low cost bolt-action rifle it intended for beginner users: What fire control should Remington use?
51. When embarking on the design of the Model 710, Remington originally elected against the use of the Model 700 fire control, which contains the connector. Instead, Remington embarked on the design of a "connectorless" fire control.
52. Derek Watkins, a Remington Engineer, designed a connector-less fire control based on the work performed during the cancelled M700 improvements program. Watkins touted the benefits of his new design within Remington.
53. Once again, Remington had a new and safe design. But the design was allegedly too expensive to implement, and project spending was put on hold in May 1998.
54. Even though Watkins design was favored within Remington, the engineering department could not get approval for the economics of the project.
55. In August 1998, Watkins' safe design was abandoned due to an estimated cost increase. Motivated once again by the prospect of saving money and increasing its profit margin, Remington decided to pull the unsafe Model 700 fire control off the shelf and use it in the new

Model 710 to eliminate development cost and time. This is the same fire control that it had specifically rejected for the new rifle 18 months earlier.

56. As Remington began its internal testing of the new Model 710 (with the defective and dangerous Model 700 fire control installed), it is important to note that Remington, knowing the history of the design, even warned its Model 710 testers of the possibility of inadvertent discharge.

57. No such warning is provided to customers that purchase the Model 710. And the Model 710 *did* fire on bolt closure and on safety release during testing.

58. Remington Consumer Team Meeting minutes from December 13, 2001 reveal that Remington actually planned for personal injuries of its customers as a result of inadvertent discharge from Model 710 rifles:

- **Safety/Injury Calls and the Model 710 - Ken**

If a consumer calls with a safety concern, (ie FSR, fires when closed, personal injury or property damage, etc), these calls AND firearms go to Dennis or Fred

59. Predictably, Remington began receiving reports of injury and accidental discharge from a fire control almost identical to the Model 700 fire control.

60. Remington is defiant in its reluctance to recall or stop using its fire control, a product that it knows is dangerous and that will kill or injure again, through no fault of the unsuspecting user. The two or more “replacement campaigns” (recalls) contemplated by Remington were seen as too expensive. Remington has elected to defend its product in court rather than embark on a recall that would likely save lives.

61. No government agency can force Remington to recall its product, and Remington has made its internal customer service advisors aware of that fact. It is only through the court system that Remington may be made to answer for its product.

62. Remington has consistently elected against a recall of its dangerous product for financial reasons, even though it has designed a new product that removes the problematic connector and eliminates the danger. Even Remington's past President admits that the new design is safer. This is improper, and Remington should recall all of its rifles containing a "Walker"-based fire control. Until that time, Plaintiff in this action seeks all measure of damages against Remington to compensate him for his injuries and to make an example of Remington's improper conduct.

VIII.

DAMAGES AND JURY DEMAND

63. As a result of Defendant's acts and/or omissions, Plaintiff has experienced medical expenses, past and future, physical pain and suffering in the past and in all reasonable probability will sustain physical pain and suffering in the future.

64. Plaintiff has suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future.

65. Plaintiff, as described above, requests that Remington be assessed exemplary or punitive damages.

66. The above and foregoing acts and/or omissions of Defendant have caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

67. Plaintiff demands a jury.

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For all monetary damages allowed under law and described, without limitation, above, plus interest;
2. For punitive damages;
3. For costs of suit; and
4. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

/s/ Jeffrey W. Hightower, Jr.

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IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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Plaintiff,
v.
REMINGTON ARMS COMPANY,
INC.; and DON HANKS, d/b/a/
BOONDOK SPORTING
GOODS & OUTFITTERS,
Defendants.

CASE NO. 3AN-10-10376 Civil

COMPLAINT FOR DAMAGES

Plaintiff Jay Rambo alleges the following causes of action against Defendants Remington Arms Company, Inc., and Don Hanks, d/b/a/ Boondock Sporting Goods & Outfitters:

1 PARTIES

2 1. Plaintiff Jay Rambo was at all relevant times hereto and is a resident of
3 Anchorage, Alaska.

4 2. Defendant Remington Arms Company, Inc. ("Remington"), was and is organized
5 and incorporated under the laws of the State of Delaware and its principal place of business is
6 located in North Carolina. At all times relevant to this action, Remington is with sufficient
7 minimum contacts to subject it to personal jurisdiction in Alaska, including selling,
8 manufacturing and distributing rifles through its distributors and sales force.

9 3. Defendant Don Hanks, d/b/a/ Boondock Sporting Goods & Outfitters
10 ("Boondock"), was and is at all relevant times material hereto a resident of the state of Alaska,
11 doing business in Eagle River, Alaska.

12 FACTUAL BACKGROUND

13 4. Defendant Remington manufactures, markets and distributes the Remington
14 Model 700 bolt action rifle, including the action, fire control system, and safety (hereinafter the
15 "rifle" or "Remington Model 700 rifle"). The rifle contains a dangerously defective "Walker"
16 fire control system that may (and often does) fire without a trigger pull upon release of the
17 safety, movement of the bolt, or when jarred or bumped. This rifle and the injuries caused by the
18 same is the basis of this lawsuit.

19 5. The Remington Model 700 rifle was defective in its design and/or manufacture.
20 Defendant Remington continues to utilize the "Walker" fire control design and manufactures,
21 distributes and sells its product lines, including the Remington Model 700 rifle. Although
22 Defendant Remington has designed a new trigger mechanism that is safe, it only installs the new
23 mechanism in some of its rifles.

24 6. In the summer of 2008, Plaintiff's father, Dale Rambo, purchased a Remington
25 Model 700 rifle from Defendant Boondock in 2008. Neither Plaintiff nor Dale Rambo was
26 aware of the defective and dangerous propensity of the rifle to fire without a trigger pull, and
27 neither received a warning from either Defendant Remington or Defendant Boondock of this
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1 propensity, either before or after that purchase.

2 7. On or about September 11, 2009, Plaintiff and Dale Rambo were preparing to go
3 hunting near Fairbanks, Alaska. Both were experienced hunters. While preparing their gear and
4 loading it on a four wheeler, Dale Rambo was in the process of loading his rifle when the rifle
5 fired. He did not pull or in any way touch or engage the trigger. The rifle discharged striking
6 Plaintiff in the forearm, then exiting and entering his left gluteus and then right gluteus with a
7 continued path into the trees.

8 8. Plaintiff brings this action to recover damages from Defendants Remington and
9 Boondock arising from his personal injuries caused by this incident. Plaintiff's damages include
10 the following: past and future medical and related expenses; past and future mental and physical
11 pain and suffering; past and future lost quality and enjoyment of life; past and future physical
12 impairment; loss of earnings; impaired earning capacity; past and future disability; past and
13 future disfigurement; and other general and special damages in an amount to be determined by
14 the jury at the trial of this action.

15 **FIRST CAUSE OF ACTION**
16 **(Strict Products Liability – Design Defect)**

17 9. Plaintiff hereby incorporates by reference all above allegations as if fully set forth
18 herein.

19 10. At all relevant times, Defendant Remington was engaged in the business
20 designing, manufacturing, assembling, distributing and selling firearms, and in this regard did
21 design, manufacture, distribute, sell, and place into the stream of commerce the Remington
22 Model 700 rifle, knowing and expecting that the rifle would be used by consumers and around
23 members of the general public in the state of Alaska. At all relevant times, Defendant Boondock
24 was engaged in the business of selling rifles, including the Remington Model 700 rifle, to the
25 public.

26 11. Defendants Remington and Boondock are strictly liable to Plaintiff for selling a
27 Remington Model 700 rifle to Dale Rambo because the rifle was defective, unsafe, unreasonably
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1 dangerous, not merchantable, and not reasonably suited to the use intended at the time of its
2 manufacture or sale. Defendants knew, or in the exercise or ordinary care should have known, of
3 the defective condition of the rifle at the time of that sale. Defendants are strictly liable for
4 manufacturing, selling, and placing into the stream of commerce the Remington Model 700 rifle
5 with a defective trigger that was the proximate cause of those personal injuries sustained by
6 Plaintiff.

7 12. At all relevant times, the Remington Model 700 rifle was defective and/or
8 unreasonably dangerous to Plaintiff and other foreseeable users, and to persons in the vicinity of
9 the users, at the time it left the control of Defendants. Defendants had actual or constructive
10 knowledge that the rifle was dangerous to users, and to persons in the vicinity of the users,
11 specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger.

12 13. Neither Plaintiff nor Dale Rambo had knowledge of this defective condition and
13 had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

14 14. As a direct and proximate result of the defective and dangerous condition of the
15 Remington Model 700 rifle sold to Dale Rambo, Plaintiff sustained serious injuries and damages,
16 including but not limited to pain and suffering, permanent disability, medical expenses and lost
17 wages.

18 **SECOND CAUSE OF ACTION**
19 **(Strict Products Liability - Failure to Warn)**

20 15. Plaintiff hereby incorporates by reference all above allegations as if fully set forth
21 herein.

22 16. At all relevant times, Defendant Remington designed, manufactured and
23 distributed the Remington Model 700 rifle. Defendant Boondock was in the business of selling
24 this model rifle to the public.

25 17. Defendants Remington and Boondock knew, or in the exercise of ordinary care
26 should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge
27 without pulling the trigger, yet Defendants failed to notify or warn Plaintiff or Dale Rambo of
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1 this propensity, either before or after Dale Rambo's purchase of the rifle from Defendant
2 Boondocks.

3 18. Neither Plaintiff, nor Dale Rambo, nor the general public recognized the risks
4 associated with the Remington Model 700 rifle without such a warning.

5 19. Defendants Remington and Boondock owed a duty to Plaintiff and Dale Rambo to
6 adequately warn of the defect of the Remington Model 700 rifle prior to the sale of the product to
7 Dale Rambo and thereafter. Failure to warn Plaintiff and Dale Rambo of the risks associated
8 with the Remington Model 700 rifle was a breach of Defendants' duties to Plaintiff to provide
9 adequate warnings, both before and after the sale of the defective product, of the dangerous
10 conditions of the product.

11 20. As a direct and proximate result of the Defendants' failure to warn Plaintiff and
12 Dale Rambo of the defective and dangerous condition of the Remington Model 700 rifle,
13 Plaintiff sustained serious injuries and damages, including but not limited to pain and suffering,
14 permanent disability, medical expenses, and lost wages.

15 **THIRD CAUSE OF ACTION**
16 **(Negligence)**

17 21. Plaintiffs hereby incorporate by reference all above allegations as if fully set forth
18 herein.

19 22. Defendants Remington and Boondock were negligent in the design, manufacture,
20 marketing, and sale of the Remington Model 700 rifle to Dale Rambo. Defendant Remington
21 breached its duty to Plaintiff by acting unreasonably in selecting the design of the Model 700
22 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed
23 by the design, the usefulness of the rifle in such a condition, and the burden on Defendant
24 Remington to take necessary steps to eliminate the risk. Defendants Remington and Boondock
25 knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle
26 was defective and unreasonably dangerous to those persons likely to use, or to be near those
27 persons likely to use, the product for the purpose and in the manner it was intended to be used,

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1 and for foreseeable misuses of the rifle. Defendants' negligence was a proximate cause of the
2 occurrence in question and of Plaintiff's damages.

3 23. Defendants Remington and Boondock knew, or in the exercise of ordinary care
4 should have known, of the means of equipping the rifle with an adequate fire control system,
5 thereby preventing injury to Plaintiff. Defendants had actual knowledge of the means of
6 designing or adding such a product, which would not fail in one or more of these ways.
7 Notwithstanding this knowledge, Defendants failed to equip the product in question with an
8 adequate fire control system to prevent the injuries to Plaintiff.

9 24. Defendants Remington and Boondock had actual or constructive knowledge of
10 the problems with the Remington Model 700 rifle at the time it was sold to Dale Rambo, in
11 particular the rifle's propensity to unexpectedly discharge without pulling the trigger, such that
12 the danger was known or, at a minimum, was reasonably foreseeable, but negligently failed to
13 notify or warn Plaintiff or Dale Rambo of the rifle's dangerous condition.

14 25. Defendants Remington and Boondock owed Plaintiff the duty of reasonable care
15 when they designed, manufactured, marketed, and sold the product in question. Defendants
16 violated these duties and were negligent, as set forth above.

17 26. Each of the above-mentioned negligent acts or omissions was a proximate cause
18 of the injuries and damages to Plaintiff.

19 **FOURTH CAUSE OF ACTION**
20 **(Punitive Damages)**

21 27. The actions of Defendants Remington and Boondock involved an extreme degree
22 of risk, considering the probability and magnitude of the potential harm to their consumers and
23 the general public, including Plaintiff. Defendants had and have actual, subjective awareness of
24 the risk involved in utilizing a fire control mechanism for the Remington Model 700 rifle derived
25 from the Walker fire control mechanism, but they nevertheless proceeded with conscious
26 indifference to the rights, safety, and welfare of others to manufacture, distribute, market, and
27 sell that rifle.

1 28. The actions of Defendants Remington and Boondock were outrageous, including
2 actions done with malice or bad motives, and they evidenced reckless indifference to the interest
3 of Plaintiff and the general public. Punitive damages should be assessed against Defendants to
4 deter them and others from disregarding the rights, safety and welfare of the general public.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for the following relief, jointly and severally, against
7 Defendants Remington and Boondock:

- 8 A. An award of damages in excess of \$100,000, in an amount to be proved at trial;
9 B. An award of prejudgment interest;
10 C. An award of punitive damages, in an amount to be proved at trial;
11 D. An award of his costs and attorney's fees; and
12 E. Such other and further relief as the Court may deem just and proper.

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14
15 DATED September 1, 2010, at Anchorage, Alaska.

16 **WINNER & ASSOCIATES, P.C.**

17
18 By: 

19 _____
20 Russell L. Winner

21 **THE DRINNON LAW FIRM, LLP**
22 **STEPHEN W. DRINNON**

23 **HIGHTOWER ANAGELLEY, LLP**
24 **JEFFREY W. HIGHTOWER, JR.**

25 Attorneys for Plaintiff
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Civil Action No. 6:10-CV-1373
JURY TRIAL (NAM/GHL)

center of warranty work on Model 700 rifles and the only Remington facility in which repair work on Model 700 rifles is performed. The Ilion, New York facility is also the site where all testing, examination, repair, and replacement of rifles occurs following customer safety complaints regarding the "Walker fire control."

3. Venue is also proper in the Northern District of New York, Utica Division, under 28 U.S.C. §1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred there. Specifically, the design, testing, and assembly of the Model 700 rifle, including the assembly and installation of the "Walker fire control" into the Model 700 rifle, occurred in Ilion, New York.

II.

PARTIES

4. Plaintiff Steven Carroll is a citizen of the State of Pennsylvania.

5. Defendant Remington is a Delaware corporation with its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of New York by selling, manufacturing, repairing and distributing rifles through its facility in Ilion, New York.

III.

FACTUAL BACKGROUND

6. On the morning of November 23, 2007, Plaintiff was hunting with a Remington Bolt Action Rifle (Model 700, .30-06; Serial # C6869064). Plaintiff was hiding in a deer blind and had laid his rifle against the bench upon which he was sitting. At some point, Plaintiff reached across the rifle to get a bottle of water. When he did this, his arm bumped the rifle causing it to move and fall to the ground. When the rifle hit the ground, it fired without warning

and without a trigger pull. The bullet from the rifle entered Mr. Carroll's right arm and injured him so severely that his right arm had to be amputated above the elbow.

7. Plaintiff alleges that the inadvertent firing of the rifle and his resulting injuries are the direct result of a defect within the trigger mechanism of many Remington Model 700 rifles. The faulty trigger mechanism was designed several decades ago by a Remington employee named John Walker, and the mechanism has since been named the "Walker Fire Control." The defects in the Walker Fire Control allow rifles to fire inadvertently in one or more of the following circumstances: (a) when the safety lock is moved from safe mode to fire mode; (b) when the bolt is moved to chamber a bullet; and/or (c) when the bolt is touched, jarred or bumped after a bullet has been chambered.

8. Remington has known about this defect and its dangers for many years but refuses to recall rifles with the Walker Fire Control installed and refuses to warn consumers about the defect. Notwithstanding its failure to recall or warn, however, Remington has designed a new trigger mechanism that is safe (and that represents a safer alternative design) known as the X-Mark Pro. Remington currently installs the X-Mark Pro trigger mechanism into all of its new consumer bolt action rifles and into all military and law enforcement bolt action rifles that it assembles in house.

9. Plaintiff brings this action to recover damages from Defendant arising from his personal injuries caused by this incident. Plaintiff's damages include mental and physical pain, disfigurement, disability, loss of earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

IV.

STRICT LIABILITY

10. Remington is, and at all relevant times was, engaged in the business of designing, manufacturing, assembling, testing, distributing and selling firearms, including the Model 700 and the subject rifle. Remington placed the subject rifle into the stream of commerce knowing and expecting that the rifle would be used by consumers, such as Plaintiff.

11. At all relevant times hereto, and prior to November 23, 2007, the subject rifle was being used for the purpose for which it was designed, manufactured, assembled, tested, distributed, marketed, sold, and intended to be used, and was being used in a manner reasonably foreseeable to Remington.

12. Plaintiff further alleges that at all relevant times hereto, and prior to November 23, 2007, the subject rifle had not been altered, modified or otherwise changed from the condition in which it was originally placed into the stream of commerce by Remington.

13. Plaintiff alleges that the subject rifle was defective, unreasonably dangerous and not reasonably safe by reason of the propensity of the Walker Fire Control to fire without a trigger pull, and because Remington failed to warn of such defects. The defects in the subject rifle existed at the time of its manufacture and were of such a nature that a reasonably prudent person, who knew of the defects, could not find that the utility of the rifle outweighed its risks.

14. Plaintiff alleges that his injuries and resulting damages were directly and proximately caused by the defects in the subject rifle, including the Walker Fire Control, and Remington's failure to warn of such defects. Plaintiff had no knowledge of this defective condition and had no reason to suspect the subject rifle was not reasonably safe prior to the inadvertent discharge. Accordingly, Remington is strictly liable to Plaintiff pursuant to New

York law.

V.

NEGLIGENCE

15. Remington owed Plaintiff a duty to use reasonable care in designing, manufacturing, assembling, testing, distributing, and marketing the subject rifle, and owed a further duty to provide warnings regarding dangers concerning the subject rifle, including the Walker Fire Control, that were known to Remington but not to Plaintiff.

16. Remington breached its duties to Plaintiff in that it designed, manufactured, assembled, tested, distributed and marketed the subject rifle with the Walker Fire Control, which was known by Remington to be defective because it could fire inadvertently absent a trigger pull. Remington further breached its duties to Plaintiff by failing to warn of the dangerous propensities of the subject rifle.

17. Defendant acted unreasonably in selecting the design of the Model 700 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant to take necessary steps to eliminate the risk. Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the rifle.

18. Plaintiff alleges that his injuries and resulting damages were directly and proximately caused by Remington's negligence with regard to the subject rifle as set forth above, including the Walker Fire Control, and by Remington's negligence in failing to warn of such defects.

VI.

BREACH OF WARRANTY

19. The purchase of the rifle by Plaintiff constituted a sale of goods and accompanying warranty by Defendant.

20. Remington expressly and/or impliedly warranted to Plaintiff that the subject rifle was of merchantable quality, fit and safe for the ordinary purposes for which it was designed, manufactured, assembled, tested, distributed, marketed and sold, and that it was free from defects.

21. Remington breached its warranties to Plaintiff in that the subject rifle was not of merchantable quality, was not fit and safe for the ordinary purposes for which it was designed, manufactured, assembled, tested, distributed, marketed, sold and used, and was not free from defects. Specifically, the subject rifle was designed, manufactured, assembled, tested, distributed and marketed with the Walker Fire Control, which was known by Remington to be defective because it could fire inadvertently absent a trigger pull.

22. Plaintiff's injuries and resulting damages were directly and proximately caused by Remington's breaches of its express and/or implied warranties.

VII.

PUNITIVE DAMAGES

23. Remington's acts, omissions and breaches were wanton, reckless and/or malicious and involved an extreme degree of risk considering the probability and magnitude of the potential harm to users of the Model 700 rifle, including Plaintiff. Remington had (and has) actual, subjective awareness of the risk involved in utilizing a defective fire control mechanism for the 700 rifle, including the subject rifle, but nevertheless proceeded with conscious

indifference to the rights, safety, and welfare of others, including Plaintiff.

24. As early as January 25, 1990, an internal Remington memo reveals: "The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned." Ignoring thousands of customer complaints, however, Remington refuses to recall its rifles or warn its customers.

25. When Remington once actually contemplated a recall of the Model 700 rifle (and similar firearms) in the mid-nineties, Kenneth D. Green, Manager of Technical & Consumer Services, drafted a forthright warning letter to owners of Remington rifles, which included the following language (emphasis in original):

"This safety notice is being sent to be sure you understand that if your Model 700, Model Seven or Model 40X rifle is loaded, the gun may accidentally fire when you move the safety from the "safe" position to the "fire" position, or when you close the bolt."

26. Mr. Green sent the draft warning to Remington's Bob Lyman for approval. Mr. Lyman did not approve the draft. Instead, he wrote in the margin to the left of the above language, "Needs to be rewritten; too strong." Mr. Lyman, likely speculating that the language would hurt sales or confirm Remington's knowledge of the defect, ensured that Remington's customers never received the warning.

27. Nonetheless, by 1995 Remington openly acknowledged the need to "fix" the fire control. As its documents show, it decided specifically to eliminate the fire on safety release malfunction.

28. Before work continued on a new fire control, however, Remington's Fire Control Business Contract (January 27, 1995) outlined the project and foreshadowed its end:

The goal is to provide a fire control that "feels" the same to our customers yet provides additional safeguards against **inadvertent or negligent discharges**.

The purpose of the redesign of the fire control is to reduce the number of parts required, lower cost and to add design characteristics that **enhance the safety attributes** of our firearms.

29. The following paragraph of Remington's January 27, 1995, memo however laments that safety "is not considered a highly marketable feature." The next full paragraph in the document speaks for itself. Under "Financial Analysis," appears this telling quote:

This is where the rubber meets the road. Is this project worth doing? What are the minimum forecasts to insure profitability and does our pricing structure support these expected profits?

30. The project to "enhance the safety attributes of our firearms" is only "worth doing" if Remington can "insure profitability." True to form, the Improvements Program was cancelled on August 28, 1998.

31. Remington's long-standing knowledge of the defects in the trigger mechanisms of its Model 700 rifles, including the subject rifle, and its continued refusal to warn consumers, including Plaintiff, about such defects and its continued refusal to recall and/or remedy such defects constitutes fraudulent concealment of such defects.

32. Jury verdicts and appellate court opinions provide a succinct account of Remington's long-standing knowledge of its defective fire control. In *Lewy v. Remington*, the Eighth Circuit upheld a finding of punitive damages against Remington in 1985:

We hold that there was sufficient evidence from which the jury could find that Remington knew the M700 was dangerous. The following evidence was before the jury: complaints from customers and gunsmiths that the Model 700 would fire upon release of safety, some of these complaints dating back as far as the early 1970s (footnote text in opinion omitted); Remington's own internal

documents show that complaints were received more than two years before the Lewy rifle was produced; Remington created a Product Safety Subcommittee to evaluate M700 complaints and on two occasions decided against recalling the M700; and Remington responded to every customer complaint with a form letter that stated that they were unable to duplicate the problem, that the customer must have inadvertently pulled the trigger and that Remington could not assume liability for the discharge.

We believe that in viewing this evidence, and permissible inferences, in the light most favorable to the Lewys a jury could reasonably conclude that Remington was acting with conscious disregard for the safety of others. Remington maintains that their actions in investigating and responding to customer complaints and in creating the Product Safety Subcommittee to study the customer complaints reflect their good faith and sincerity in dealing with the M700. However, another permissible view to be drawn from all of this evidence may be that Remington was merely "gearing up" for a second round of litigation similar to the litigation involving the M600 which resulted in the ultimate recall of the M600. Remington's Product Safety Subcommittee concluded that of approximately two million M700s held by the public about 20,000 of them may have a potential defect (footnote omitted). A recall was not pursued because of the relatively small number of rifles that may have the defective condition. See, e.g., *Kehn v. Proctor & Gamble Mfg. Co.*, 724 F.2d 613, 620 (8th Cir.1983) ("[I]n determining whether a manufacturer has a duty to warn, courts inquire whether the manufacturer knew that there were even a relatively few persons who could not use its product without serious injury, and whether a proper warning would have helped prevent harm to them."). Thus, the jury may have concluded that rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 rifles held by the public will not cause an accident. Such a view, if true, would certainly establish that Remington acted with conscious disregard for the safety of others.

33. Over 100 injured individuals have sued or made claims against Remington over the same defective design, and several juries, including at least two federal court juries, have found Remington's fire control to be defective.

34. Remington eventually redesigned its fire control mechanism, but perceived financial strain prevents Remington from recalling millions of rifles it knows are defective. This "profits over people" or "profits over safety" mentality is exactly the conduct that exemplary damages are designed to prevent.

35. Accordingly, punitive damages should be assessed against Remington pursuant to

New York law to punish it for such actions, including its fraudulent concealment of the defects, and to deter it and others from disregarding the rights, safety and welfare of the general public.

VIII.

DAMAGES AND JURY DEMAND

36. As a result of Defendant's acts and/or omissions, Plaintiff Steven Carroll has suffered in the past and will continue to suffer in the future, physical pain, physical disfigurement, physical disability, loss of earning capacity and /or earnings, loss of enjoyment of life, and emotional suffering. The injuries Plaintiff suffered as a result of the accident also required a significant amount of medical treatment and expenses.

37. The above and foregoing acts and/or omissions of Defendant have caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

38. Plaintiff, as described above, requests that Remington be assessed exemplary or punitive damages.

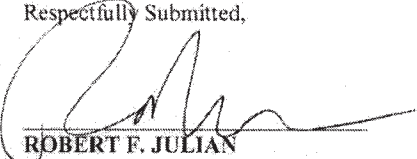
39. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- For all monetary damages allowed under law and described, without limitation, above, plus pre and post-judgment interest;
- For punitive damages;
- For costs of suit; and
- For such other and further relief as this Court may deem just and proper.

Dated: November 12, 2010

Respectfully Submitted,



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COUNSEL FOR PLAINTIFF

forum. Defendant has continuous and systematic contacts within the Western District of Louisiana and throughout the United States.

3. The Western District of Louisiana, Alexandria Division, has jurisdiction in this case on grounds of diversity of citizenship, and the Western District of Louisiana is also a proper venue under 28 U.S.C. §1391(a) and (c). For purposes of the federal venue statute, Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. §1391(c). Defendant currently sells their firearms products throughout the Western District of Louisiana, Alexandria Division. Thus, Defendant's contacts with the Western District of Louisiana are continuous and systematic. Venue is proper in the Western District of Louisiana, Alexandria.

4. For the convenience of the parties and witnesses, who may all be found in Rapides Parish, plaintiffs request that this Complaint be allocated to the Alexandria Division.

PARTIES

5. Plaintiff Jim Stanley is a citizen of the State of Louisiana and resides in Boyce, Louisiana, within the Parish of Rapides.

6. Plaintiff Denise Stanley is a citizen of the State of Louisiana and resides in Boyce, Louisiana, within the Parish of Rapides.

7. Plaintiff Amanda Land, a minor, is a citizen of the State of Louisiana and resides in Boyce, Louisiana, and is the natural daughter of Denise Stanley.

8. Defendant Remington Arms Company, Inc. is a corporation foreign to the State of Louisiana being organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times relevant to this action, Remington was doing business in the State of Louisiana by selling, manufacturing and distributing rifles

through its distributors and sales force. Remington will be asked to waive service under Federal Rule of Civil Procedure 4.

FACTUAL BACKGROUND

9. On November 15, 2009, Plaintiffs were hunting on a deer lease camp not far from Leesville, Louisiana in Vernon Parish. As plaintiff Jim Stanley drove a four wheeler into deer camp with Amanda Land, a minor, riding as a passenger, Richard Lee Durison was in the process of stowing his Remington Model 700 bolt action rifle into a rifle case. As Mr. Durison was doing so, the Remington Model 700 fired absent a trigger pull. Plaintiffs Jim Stanley and Amanda Land, a minor, were hit by shrapnel from the gun shot. Plaintiff Denise Stanley was just a few feet away from the four wheeler at the time the rifle fired and injured her daughter and husband which she witnessed contemporaneously as the incident occurred.

10. Remington has been engaged in the business of designing, manufacturing, assembling, distributing and selling firearms for well over a century and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action rifle including the action, fire control system, and safety (hereinafter "rifle"), knowing and expecting that the rifle would be used by consumers and around members of the general public.

11. The Remington Model 700 bolt action rifle contains a dangerously defective "Walker" fire control system that may (and often does) fire without a trigger pull upon the rifle experiencing a vibration which can and does occur as a result of different normal conditions in which a sporting rifle is intended to be used, including but not limited to, release of the safety, movement of the bolt, or when otherwise jarred or bumped.

12. Remington continues to utilize the "Walker" fire control design and manufactures,

distributes and sells its product lines, including the Remington Model 700 bolt-action rifle. Remington designed a new trigger mechanism known as the X-Mark Pro that is safe (and that represents a safer alternative design). Remington began installing the X-Mark Pro design in almost all of its bolt-action rifles beginning on or about the time period 2007 and 2008.

13. Defendant's actions, when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Defendant's consumers and the general public, including Plaintiffs. Defendant had (and has) actual, subjective awareness of the risk of serious and significant injury or death to others as a result of its decision to continue to utilize the Walker fire control mechanism for the Model 700 rifle. Defendant nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others by utilizing a known defective component in the rifles sold and millions of which remain in the hands of an unsuspecting public. Defendant's actions clearly reflect willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that raises a presumption of conscious indifference to consequences. Exemplary damages should be assessed against Remington to punish and penalize the Defendant, and to deter it and others from disregarding the rights, safety and welfare of the general public.

14. Despite a defect that Remington has known of for sixty years and subsequently over the decades in at least the form of over 4,000 documented complaints of unintended discharge from the American hunting community, many jury verdicts finding that the design is defective (including at least 2 findings of gross negligence), and more than \$20 million in settlements paid to injured consumers since 1993—millions of unsuspecting users hunt today among and around their friends and families with a rifle that will fire absent a trigger pull.

15. Remington put its profits over the safety of hunters and their families and friends. It finally began to use its safer alternative design, the X-Mark Pro trigger mechanism, on or around 2007 or 2008. However, Remington continues to refuse to own up to its responsibility to warn the public and recall the millions of rifles it sold while knowing the trigger mechanism was faulty and defective. This “profits over people” or “profits over safety” mentality is exactly the conduct that exemplary damages are designed to prevent.

16. Over 100 injured individuals have sued or made claims against Remington over the same defective design, and several juries, including at least two federal court juries, have found Remington’s fire control to be defective.

17. In January 25, 1990, an internal Remington memo reveals: “The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned.” Ignoring thousands of customer complaints of Remington rifles that contained the Walker fire control, Remington refuses to recall its rifles or warn its customers.

18. Remington’s defective trigger mechanism uses an internal component called a “connector”—a design component not used by any other rifle manufacturer. The connector floats on top of the trigger body inside of the gun, but is not physically bound to the trigger in any way other than spring tension. The connector cannot be seen or controlled by the gun handler. When the trigger is pulled, the connector is pushed forward by the trigger, allowing the sear to fall and the rifle to fire.

19. The proper position of the connector under the sear requires an overlap—or “engagement”—of only approximately 25/1000ths of an inch (half the width of a dime or eight

human hairs). But because the connector is not bound to the trigger, during the recoil action after each firing of the rifle, the connector separates from the trigger body several times and creates a gap between the two parts. This separation is recorded in Remington's own high-speed video footage of the fire control during discharge. Any dirt, debris or manufacturing scrap can then become lodged in the space created between the connector and the trigger, preventing the connector from returning to its original position.

20. Remington's own experts have admitted the existence of this dangerous condition:

Q. From a performance standpoint, the trigger connector, by the time the Model 710 was introduced, did nothing to truly enhance performance.

A. I think that's true.

Q. Are there any circumstances, in your judgment or experience, depending upon, you know, again, what other factors may be at play, where the trigger connector does increase the risks or the safety concerns with use of the Walker fire-control system?

A. It theoretically adds one more point at which you could put in debris and prevent the connector from returning underneath the sear, and that is between the trigger and the connector.

Q. Let me see if I understand what you just said. On a theoretical level, the trigger connector does present a moving part that under certain circumstances could result in debris getting between the trigger connector and the trigger body, correct?

A. Right.

Deposition of Remington liability expert Seth Bredbury, *Williams v. Remington*.

21. When enough displacement occurs, the connector will no longer support the sear (either no engagement is present, or insufficient engagement is present) and the rifle will fire without the trigger being pulled. This can occur in a variety of ways including when the safety is released, when the bolt is closed, or when the bolt is opened. These unintended discharges occur

so frequently that Remington actually created acronyms for internal use (Fire on Safe Release—"FSR"; Fire on Bolt Closure—"FBC"; Fire on Bolt Opening—"FBO"; and Jar Off—"JO"). The various manifestations notwithstanding, all of the unintended discharges result from the same defective condition—the susceptibility of the connector to be displaced from its proper position. Even one of the designers believes housing of the fire control parts is incorrectly designed.

22. When questioned about this susceptibility shown in Remington's own high-speed video footage, Remington engineer Michael Keeney offered the following:

Q. In those frames, does the connector appear to be separated from the trigger body?

A. Yes.

Q. And if debris is inside the housing, that would provide an opportunity for debris to come between the connector and the trigger body; correct?

A. That is correct.

Deposition of Remington engineer Michael Keeney, *Williams v. Remington*.

23. Derek Watkins, another Remington engineer, explained that this defect could lead to a dangerous situation:

Q. If the trigger doesn't return for whatever reason to full engagement. . . , that is not safe; would you agree with me? Because the gun is now more susceptible --

A. It is more—it is more sensitive, yes; it is more sensitive.

Q. It is more sensitive to forces that would jar the rifle in such a way for that engagement, basically, for the trigger no longer to be underneath the sear and the gun to discharge?

A. Yes.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

24. James Ronkainen, another Remington engineer, also admits that failure of the connector to properly engage leads to a dangerous condition:

Q. One common factor in a fire on safe-release and a theoretical firing on bolt-closure is that the connector is not in its appropriate condition — position; correct?

A. Yes. It is unable to support the sear.

Deposition of Remington engineer James Ronkainen, *Williams v. Remington*.

25. This dangerous condition caused Remington to embark on redesign efforts many times in the 1980's and 1990's. The goal of these efforts was to eliminate the defect:

Q. The goal while you were there was to — is to achieve a design that did not result in a fire on safety-release; is that correct?

A. The design was to eliminate any type of-- any type of debris or any type of firing from that standpoint. Fire on bolt-closure, yeah, we did-- we definitely did not want that to happen.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

26. When Remington again contemplated a recall of the Model 700 rifle (and similar firearms) in the mid-nineties, Kenneth D. Green, Manager of Technical & Consumer Services, drafted a forthright warning letter to owners of Remington rifles, which included the following language (emphasis in original):

"This safety notice is being sent to be sure you understand that if your Model 700, Model Seven or Model 40X rifle is loaded, the gun may accidentally fire when you move the safety from the "safe" position to the "fire" position, or when you close the bolt."

27. Mr. Green sent the draft warning to Remington's Bob Lyman for approval. Mr. Lyman did not approve the draft. Instead, he wrote in the margin to the left of the above language, "Needs to be rewritten; too strong." Mr. Lyman, likely speculating that the language would hurt sales or confirm Remington's knowledge of the defect, ensured that Remington's customers never received the warning.

28. Remington's defective fire control also could have been redesigned to eliminate the harm

or danger very inexpensively. Several companies sell connector-less replacement triggers for the Model 700. There is no valid engineering reason why the successfully utilized connector-less designs could not have been used by Remington in its Model 700, 710 and 770.

29. Remington has recently removed the connector for some of its Model 700 rifles with a newly designed trigger mechanism, the X-Mark Pro. That design was completed in 2002. Even Remington's President and CEO, Thomas L. Millner, agreed in his 2007 deposition that the X-Mark Pro is a safer design (Question: "Did [Remington] make a safer fire control with the X-Mark Pro?" Answer: "Yes, I believe so.>").

30. Not only did Mr. Millner admit that the design is safer, he admits that the new design prevents the rifle from firing upon release of the safety (Question: "And this new design precludes [fire on safety release] from occurring, true?" Answer: "True.>"). Finally, he admits that the old design—the design placed into Mr. Bledsoe's rifle even after Remington had the new design—does not have safety features precluding fire on safety release (Question: "And that's the fire control that does not have the safety features that preclude the fire on safe release, true?" Answer: "That's correct.>"). But Remington still have not taken action to include the new fire control in all of its bolt action rifles or even warn the public regarding a known safety issue. Remington still widely uses the old fire control today, knowingly subjecting users to the gravest of dangers.

31. Jury verdicts and appellate court opinions provide a succinct account of Remington's long-standing knowledge of its defective fire control. In *Lewy v. Remington*, the Eighth Circuit upheld a finding of punitive damages against Remington in 1985:

We hold that there was sufficient evidence from which the jury could find that Remington knew the M700 was dangerous. The following evidence was before the jury: complaints from customers and gunsmiths that the Model 700 would

fire upon release of safety, some of these complaints dating back as far as the early 1970s (footnote text in opinion omitted); Remington's own internal documents show that complaints were received more than two years before the Lewy rifle was produced; Remington created a Product Safety Subcommittee to evaluate M700 complaints and on two occasions decided against recalling the M700; and Remington responded to every customer complaint with a form letter that stated that they were unable to duplicate the problem, that the customer must have inadvertently pulled the trigger and that Remington could not assume liability for the discharge.

We believe that in viewing this evidence, and permissible inferences, in the light most favorable to the Lewys a jury could reasonably conclude that Remington was acting with conscious disregard for the safety of others. Remington maintains that their actions in investigating and responding to customer complaints and in creating the Product Safety Subcommittee to study the customer complaints reflect their good faith and sincerity in dealing with the M700. However, another permissible view to be drawn from all of this evidence may be that Remington was merely "gearing up" for a second round of litigation similar to the litigation involving the M600 which resulted in the ultimate recall of the M600. Remington's Product Safety Subcommittee concluded that of approximately two million M700s held by the public about 20,000 of them may have a potential defect (footnote omitted). A recall was not pursued because of the relatively small number of rifles that may have the defective condition. *See, e.g., Kehm v. Proctor & Gamble Mfg. Co.*, 724 F.2d 613, 620 (8th Cir.1983) ("[I]n determining whether a manufacturer has a duty to warn, courts inquire whether the manufacturer knew that there were even a relatively few persons who could not use its product without serious injury, and whether a proper warning would have helped prevent harm to them."). Thus, the jury may have concluded that rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 rifles held by the public will not cause an accident. Such a view, if true, would certainly establish that Remington acted with conscious disregard for the safety of others.

32. On March 24, 1992, The United States Court of Appeals, Ninth Circuit, affirmed a jury verdict of \$724,000 in a case alleging discharge on bolt closure. *Campbell v. Remington Arms Co.*, 1992 WL 54928, *2 (C.A. 9 (Alaska) 1992) (unpublished opinion).

33. On December 31, 1992, the Texas Supreme Court, in *Chapa v. Garcia*, 848 S.W.2d 667, 671-74 (Tex. 1992), specifically describes Remington's fire control as "defective":

Luis Chapa clearly established the relevance of and his need for the documents, by offering evidence demonstrating that the NBAR program had as its goal improvement of the defective fire control on the Model 700 and that Chapa faced

a significant time gap in the record as to Remington's *knowledge* of the defect (footnote omitted). Included in Chapa's showing was:

- a 1985 Remington memorandum describing the NBAR program as one to design a "replacement for the Model 700"
- another Remington memorandum declaring that an improved fire control be installed in the Model 700 no later than October 1982 "to put us in a more secure position with respect to product liability"
- a memorandum evidencing an increase of \$130,000, in early 1981, in the research budget for development of an improved Model 700 fire control
- proof of the abrupt discontinuation of further research into the fire-control system of the Model 700 after December 1981 coincident in time with the commencement of the NBAR program
- deposition testimony that models of new, improved fire controls had been designed and assembled as part of NBAR, that prototypes had been built and tested, and that the NBAR fire controls could be retrofitted to the Model 700.
- Remington's admission that the fire control alternatives under consideration in the NBAR program and those it claims were geared solely to the Model 700 "attempt to execute the same *idea* (simultaneous blocking of the sear and trigger)" (footnote omitted).
- Remington's concession that the fire-control system research adopted the name "NBAR" in "late 1980 or 1981," about the time of the substantial increase in research funds for the Model 700 fire-control system.
- Remington's admission that "NBAR components which are or have been under consideration include a ... different fire control."
- Statements by Remington that NBAR information has relevance to the relative safety of its models compared to its competitors and the possible need for warnings.

34. Then, on May 7, 1994, a Texas jury rendered a verdict after Glenn Collins lost his foot to a Model 700 accidental discharge (Fire on Safety Release allegation). Not only did the jury find

that the fire control was defective, it also awarded \$15,000,000 in exemplary damages. The total verdict, which was in excess of \$17 million, sent a clear message to Remington—past and *certainly* future use of the defective fire control is unacceptable.

35. It is difficult to ascertain exactly how many times Remington has embarked on designing a new Model 700 fire control. It clearly tried with the “NBAR” program, and it clearly tried on several occasions in the 1990’s, and it clearly again tried beginning in approximately the year 2000. By 1995, Remington openly acknowledged the need to “fix” the fire control. As its documents show, it decided to “[e]liminate ‘Fire on Safety Release’ malfunction.”

* 36. Before work continued on a new fire control, Remington’s Fire Control Business Contract (January 27, 1995) outlined the project and foreshadowed its end:

The goal is to provide a fire control that “feels” the same to our customers yet provides additional safeguards against **inadvertent or negligent discharges**.

. . .

The purpose of the redesign of the fire control is to reduce the number of parts required, lower cost and to add design characteristics that **enhance the safety attributes** of our firearms.

37. The next paragraph, however, laments that safety “is not considered a highly marketable feature.” The next full paragraph in the document speaks for itself. Under “Financial Analysis,” appears this telling quote:

* This is where the rubber meets the road. Is this project worth doing? What are the minimum forecasts to insure profitability and does our pricing structure support these expected profits?

38. The project to “enhance the safety attributes of our firearms” is only “worth doing” if Remington can “insure profitability.” True to form, the M700 Improvements Program was cancelled on August 28, 1998.

39. Remington has repeatedly made a clear economic choice against recalling the Model 700. But the Model 710 (now the Model 770) was to be a new rifle. In 1997, and against this sordid and costly fifty-year historical backdrop, Remington faced an important but easily answered question regarding the new low cost bolt-action rifle it intended for beginner users: What fire control should Remington use?

40. When embarking on the design of the Model 710, Remington originally elected against the use of the Model 700 fire control, which contains the connector. Instead, Remington embarked on the design of a "connectorless" fire control.

41. Derek Watkins, a Remington Engineer, designed a connector-less fire control based on the work performed during the cancelled M700 improvements program. Watkins touted the benefits of his new design within Remington.

42. Once again, Remington had a new and safe design. But the design was allegedly too expensive to implement, and project spending was put on hold in May 1998.

43. Even though Watkins design was favored within Remington, the engineering department could not get approval for the economics of the project.

44. In August 1998, Watkins' safe design was abandoned due to an estimated cost increase. Motivated once again by the prospect of saving money and increasing its profit margin, Remington decided to pull the unsafe Model 700 fire control off the shelf and use it in the new Model 710 to eliminate development cost and time. This is the same fire control that it had specifically rejected for the new rifle 18 months earlier.

45. As Remington began its internal testing of the new Model 710 (with the defective and dangerous Model 700 fire control installed), it is important to note that Remington, knowing the history of the design, even warned its Model 710 testers of the possibility of inadvertent

discharge.

46. No such warning is provided to customers that purchase the Model 710. And the Model 710 *did* fire on bolt closure and on safety release during testing.

47. Remington Consumer Team Meeting minutes from December 13, 2001 reveal that Remington actually planned for personal injuries of its customers as a result of inadvertent discharge from Model 710 rifles:

- **Safety/Injury Calls and the Model 710 - Ken**

If a consumer calls with a safety concern, (ie FSR, fires when closed, personal injury or property damage, etc), these calls AND firearms go to Dennis or Fred

48. Predictably, Remington began receiving reports of injury and accidental discharge from a fire control almost identical to the Model 700 fire control.

49. Remington is defiant in its reluctance to recall or stop using its fire control, a product that it knows is dangerous and that will kill or injure again, through no fault of the unsuspecting user. The two or more "replacement campaigns" (recalls) contemplated by Remington were seen as too expensive. Remington has elected to defend its product in court rather than embark on a recall that would likely save lives.

50. No government agency can force Remington to recall its product, and Remington has made its internal customer service advisors aware of that fact. It is only through the court system that Remington may be made to answer for its product.

51. Remington has consistently elected against a recall of its dangerous product for financial reasons, even though it has designed a new product that removes the problematic connector and eliminates the danger. Even Remington's past President admits that the new design is safer. This is improper, and Remington should recall all of its rifles containing a "Walker"-based fire

control. Until that time, Plaintiffs in this action seeks all measure of damages against Remington to compensate them for their injuries and to make an example of Remington's improper conduct.

52. Plaintiffs bring this action to recover damages from Defendant arising from Plaintiffs' personal injuries caused by this incident. Plaintiffs' damages include past and future medical expenses from their injuries, mental and physical pain and suffering, loss of earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

COUNT I: STRICT LIABILITY

53. Defendant is strictly liable to Plaintiffs for selling a Remington Model 700 bolt action rifle with a Walker fire control through a dealer because it was not merchantable and reasonably suited to the use intended at the time of its manufacture or sale. Plaintiffs and the public reasonably expected that the Remington Model 700 purchased would not fire unless the trigger was engaged. Defendant is strictly liable for manufacturing and selling (placing into the stream of commerce) the Remington Model 700 bolt action rifle with the defective Walker fire control trigger that was the proximate cause of these personal injuries sustained by Plaintiffs.

54. The Remington Model 700 bolt-action rifle was in a defective and dangerous condition when it left Remington's possession because Remington had actual or constructive knowledge that the Walker fire control contained in the rifle was dangerous to users, specifically, that the Walker fire control has a propensity to unexpectedly discharge without pulling the trigger, and Remington failed to warn of the danger. Further, requiring that the safety be moved to the "fire" position for unloading also creates a defective and dangerous condition. The risk was known or, at a minimum, reasonably foreseeable by Defendant.

55. Neither Plaintiffs nor the rifle handler had knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous because of a propensity to fire without

a trigger pull prior to the inadvertent discharge out of which this legal action arises.

56. Remington's failure to warn of the 700 rifle's propensity to unexpectedly discharge without pulling the trigger was a direct and proximate cause of Plaintiffs' injuries, and Plaintiffs are entitled to recover all damages from Remington.

57. *Res Ipsa Loquitur* doctrine is particularly applicable to the factual circumstances and the product at issue in this case. A rifle with a trigger that is manufactured and sold to American hunters is not reasonably expected to fire without the trigger being pulled. If it does, the rifle is defective.

COUNT II: NEGLIGENCE

58. Defendant was negligent in the design, manufacture and marketing of the Model 700 rifle. Defendant acted unreasonably in selecting the design of the Model 700 rifle, by specifically including the Walker fire control trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant to take necessary steps to eliminate the risk. Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle containing the Walker fire control was defective and unreasonably dangerous to those persons likely to use the product, and other people in the range of danger, for the purpose and in the manner that it was intended to be used, and for foreseeable misuses of the rifle. Defendant's negligence was a proximate cause of the occurrence in question and of Plaintiffs' damages.

59. Defendant knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing injury to Plaintiffs. Defendant had actual knowledge of the means of designing such a safe product, which would not fail in one or more of the methods identified. Notwithstanding this knowledge, Defendant failed

* to equip the product in question with an adequate fire control system to prevent the injuries to Plaintiffs.

60. Defendant had actual or constructive knowledge of the problems with its Model 700 rifle at the time it was sold, in particular the Walker fire control's propensity to unexpectedly discharge without pulling the trigger, such that the danger was known or, at a minimum, was reasonably foreseeable, but failed to notify or warn of the rifle's dangerous condition.

61. Defendant owed Plaintiffs the duty of reasonable care when it designed, manufactured, and marketed the product in question. Defendant violated its duties and was negligent as set forth above.

* 62. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and damages to Plaintiffs.

COUNT III: FAILURE TO WARN

63. Both before and after Defendant sold the Remington Model 700 rifle at issue, Defendant knew, or in the exercise of ordinary care should have known, of problems with its Model 700 rifle and its other rifles, but failed to notify or warn Plaintiffs or the public.

64. Specifically, Defendant knew, or in the exercise of ordinary care should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge without pulling the trigger, yet Defendant failed to notify or warn the purchaser or the public either before or following the sale of the rifle. Defendant also knew that requiring the safety to be in the fire position during loading and unloading was unsafe, and it failed to warn about this danger also.

* 65. Defendant failed to use reasonable care in the design, and/or had knowledge of a defect in the design, of the Remington Model 700 rifle, and owed a duty to Plaintiffs and the general public to adequately warn of the defect prior to the sale of the product and thereafter. Failure to

warn Plaintiffs of the risks associated with the Model 700 rifle constitutes a breach of Defendant's duties to Plaintiffs and the general public to provide adequate warnings, both before and after the sale of the defective product, of the dangerous conditions of the product.

66. As a direct and proximate result of Defendant's failure to warn Plaintiffs and the public of the risks associated with the Remington Model 700 rifle, Plaintiffs have been seriously injured and are entitled to damages.

COUNT IV: SPOILIATION OF EVIDENCE

67. Upon information and belief, the Defendant has intentionally impaired Plaintiffs' claims by intentionally destroying Walker fire control systems which Defendant knew had exhibited its defect by firing without a trigger pull. The destroyed Walker fire control systems would have provided evidence unfavorable to Remington's Defense.

DAMAGES AND JURY DEMAND

68. As a result of Defendant's acts and/or omissions, Plaintiffs have experienced lost income, diminished earning capacity, medical expenses, past and future, physical pain and suffering in the past and in all reasonable probability will sustain physical pain and suffering in the future.

69. Plaintiffs have suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future.

70. The above and foregoing acts and/or omissions of Defendant have caused actual damages to Plaintiffs in an amount in excess of the minimum jurisdictional limits of this Court.

71. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs Jim Stanley and Denise Stanley, Individually and As Natural Tutrix of her daughter, Amanda Land, a minor prays judgment against Defendant as follows:

1. For all monetary damages allowed under law and described, without

limitation, above, plus interest from the date of judicial demand until paid;

2. For costs of suit; and
3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

/s/ Melvin D. Albritton

MITCHELL J. HOFFMAN (La 6896)
(Lead Attorney)

MELVIN D. ALBRITTON (LA. 27936)
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Pro hac application to be filed

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Pro hac application to be filed

COUNSEL FOR PLAINTIFFS

JESSE FISKE,
Plaintiff,

vs.

RICHARD BATES, REMINGTON
ARMS COMPANY, INC. and
WAL-MART STORES EAST, INC.
d/b/a WAL-MART;
Defendants.

) IN THE COURT OF COMMON PLEAS
)
) OF ERIE COUNTY, PENNSYLVANIA
)
) CIVIL DIVISION
)

) No. 15415-10

TO: Richard Bates
Remington Arms Company, Inc. and
Wal-Mart Stores East, Inc. d/b/a Wal-Mart

NOTICE

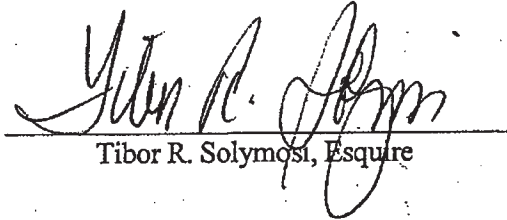
YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFFS. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY

OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyers Referral Service
P.O. Box 1792
Erie, Pennsylvania 16507
(814) 459-4411
Monday-Friday
8:30 a.m. to 3:00 p.m.



Tibor R. Solymosi, Esquire

JESSE FISKE,
Plaintiff,

vs.

RICHARD BATES, REMINGTON
ARMS COMPANY, INC. and
WAL-MART STORES EAST, INC.
d/b/a WAL-MART;
Defendants.

) IN THE COURT OF COMMON PLEAS
)
) OF ERIE COUNTY, PENNSYLVANIA
)
) CIVIL DIVISION
)
)
)
) No. 15415-10

CIVIL COMPLAINT

AND NOW, this 20th day of January, 2011, comes the Plaintiff, Jesse Fiske, by and through his attorneys, Segel & Solymosi, and brings this action against the Defendants above-named upon a cause of action whereof the following is a statement.

1. The Plaintiff, Jesse Fiske, is an adult individual residing at P. O. Box 11192, Erie, Erie County, Pennsylvania.
2. The Defendant, Richard Bates (hereinafter "Bates"), is an adult individual residing at 3087 Buffalo Road, Erie, Erie County, Pennsylvania.
3. The Defendant, Remington Arms Company, Inc. (hereinafter "Remington"), is a corporation organized and existing pursuant to the laws of the State of Delaware and having its principal place of business at 870 Remington Drive, P.O. Box 700, Madison, North Carolina.
4. The Defendant, Wal-Mart Stores, East, Inc. d/b/a Wal-Mart (hereinafter "Wal-Mart"), is a corporation organized and existing pursuant to the laws of the Commonwealth of Pennsylvania and having a place of business at 1825 Downs Drive, Erie, Erie County, Pennsylvania.

COUNT I

JESSE FISKE V. RICHARD BATES

5. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 through 4 of this Complaint as though more fully set forth.

6. On or about December 1, 2008, Plaintiff and a number of friends were walking in the woods in Waterford Township, Erie, Erie County, Pennsylvania.

7. On the date aforesaid, Bates offered to drive Plaintiff and his friends back to their vehicles which were parked approximately three miles away.

8. Plaintiff took a seat on the left wheel well in the bed of Bates' pickup truck.

9. Unbeknownst to Plaintiff, Bates placed what he believes was a loaded Remington Series 700 30-06 rifle leaning against the rear bench seat of Bates' vehicle.

10. As Bates was proceeding on what he believed to be Soroka Road or thereabouts in Waterford Township, the truck struck a bump and Bates hit his brake causing Plaintiff to fall. At the same time, Bates' rifle inside the cab discharged.

11. The discharge of the rifle shattered the rear window of the truck, causing shards of glass to strike Plaintiff in the face.

12. A bullet from the rifle grazed the left side of Plaintiff's head above his left ear.

13. As a result of the discharge of the rifle, Plaintiff suffered serious and permanent injuries more fully set forth hereinafter.

14. The injuries and damages suffered by Plaintiff resulted from the following negligence and recklessness of Bates:

- (a) Failing to insure the rifle was unloaded prior to placing it into his vehicle;
- (b) Failing to properly stow the rifle; and

(c) Failing to ensure that the safety was properly engaged.

15. As a direct result of Bates' negligence, Plaintiff suffered the following injuries:

- (a) Lacerations, cuts and abrasions to his face;
- (b) Contusions to his back and chest;
- (c) Destruction of his left eardrum resulting in total or near total loss of hearing on the left side;
- (d) Scarring of the face;
- (e) Trauma;
- (f) Inability to enjoy life's pleasures.
- (g) Past, present and future mental anguish;
- (h) Shock, fear, humiliation, anxiety, irritation, annoyance, tension and other forms of stress;
- (i) Pain, suffering and inconvenience;
- (j) Physical disfigurement;
- (k) Inability to continue his usual activities;
- (l) Impairment of his general health, strength and vitality;
- (m) Mental and physical dysfunction; and
- (n) Loss of life's pleasures.

16. As a proximate result of the aforementioned injuries, Plaintiff has suffered and may and probably will in the future suffer great pain and suffering.

17. As a proximate result of the negligence of Bates, Plaintiff had to undergo surgical procedures and may be required to undergo an extended period of treatment including possible future surgery.

18. As a proximate result of the negligence of Bates, Plaintiff has suffered a loss of earnings and earning capacity.

19. Plaintiff has been obliged to expend large and various sums of money for medical attendance in endeavoring to cure said injuries. Plaintiff will, by reason of the aforementioned injuries, be obligated to expend further large sums.

20. As a proximate result of the impairments described, Plaintiff has suffered substantial pain, suffering, anxiety, inconvenience and mental distress from the date of the accident to the present date, all of which will continue indefinitely into the future.

21. As a result of the negligence of Bates, Plaintiff has suffered irreversible and permanent damage severely restricting all of his activities.

WHEREFORE, Plaintiff, Jesse Fiske, demands judgment in his favor and against Defendant, Richard Bates, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, together with compensatory damages, interest and costs of suit.

COUNT II

JESSE FISKE V. REMINGTON AND WAL-MART

22. Plaintiff incorporates herein by reference the allegations of Paragraph 1 through 21 of this Complaint as though more fully set forth at length.

23. At all times mentioned herein, Remington was in the business of designing, manufacturing, producing, distributing and selling rifles.

24. At all times mentioned herein, Wal-Mart, owned a retail store at 1825 Downs Drive, Erie, Erie County Pennsylvania, wherein it was engaged in the business of selling various consumer goods to the general public, including but not limited to rifles.

25. At some time prior to December 8, 2008, Remington manufactured and sold a Remington Series 700 30-06 rifle to Wal-Mart or otherwise placed the rifle in the stream of commerce.

26. Remington expected the rifle to reach consumers and users in the condition it was sold.

27. On or before December 8, 2008, Bates purchased a Remington Series 700 30-06 rifle from what Plaintiff believes was the Wal-Mart store at 1825 Downs Drive, Erie, Erie County, Pennsylvania.

28. On or about December 8, 2008, Bates offered to drive Plaintiff and several others to their vehicles which were located approximately three miles from where they were walking in the woods in Waterford Township, Erie County, Pennsylvania.

29. Plaintiff took a seat in the left wheel well of Bates' vehicle.

30. Bates placed the loaded rifle so that it leaned up against the back seat bench of his vehicle facing out the rear window.

31. As Bates was proceeding along Soroka Road in Waterford Township, his vehicle struck a bump and he braked at which time the rifle discharged and shattered the rear window, resulting in the injuries and damages to Plaintiff more fully set forth in Count I of this Complaint.

32. Immediately prior to the time Plaintiff sustained his injuries, the rifle was in the same condition existing when Remington sold and delivered it to Wal-Mart.

33. Immediately prior to the time Plaintiff sustained his injuries, the rifle was in the same condition existing when Wal-Mart sold the rifle to Bates.

34. The rifle was in a defective condition unreasonably dangerous to a consumer or user.

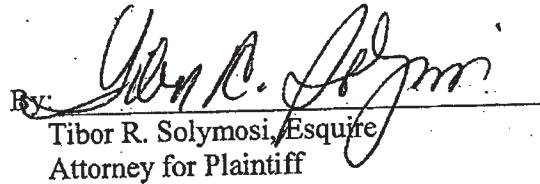
35. As a result of the defective condition of the rifle, Plaintiff suffered the injuries and damages more fully set forth in Count I of this Complaint.

WHEREFORE, Plaintiff, Jesse Fiske, demands judgment in his favor and against Defendants, Remington Arms Company, Inc. and Wal-Mart Stores East, Inc. d/b/a Wal-Mart, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with compensatory damages, interest and costs of suit.

A TRIAL BY JURY OF TWELVE IS DEMANDED.

Respectfully submitted,

SEGEL & SOLYMOSI

By: 
Tibor R. Solymosi, Esquire
Attorney for Plaintiff

818 State Street
Erie, Pennsylvania 16501
Phone: (814) 454-1500
Fax: (814) 454-1502

JESSE FISKE,
Plaintiff,

vs.

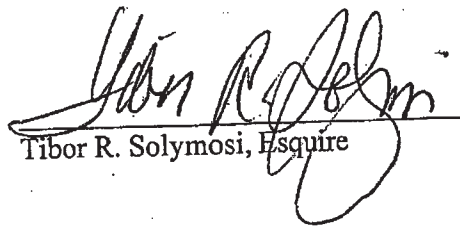
RICHARD BATES, REMINGTON
ARMS COMPANY, INC. and
WAL-MART STORES EAST, INC.
d/b/a WAL-MART;
Defendants.

) IN THE COURT OF COMMON PLEAS
)
) OF ERIE COUNTY, PENNSYLVANIA
)
) CIVIL DIVISION
)

) No. 15415-10
)

VERIFICATION

Tibor R. Solymosi, counsel for the Plaintiff, deposes and says that he is of counsel for said Plaintiff in the above matter; that he is authorized to make this Verification on behalf of said Plaintiff; that the facts set forth in the foregoing Civil Complaint are true and correct, not of his own knowledge, but from information supplied to him by said Plaintiff; that the purpose of this Verification is to expedite litigation; and that a Verification by Plaintiff will be furnished if requested. This statement is made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.


Tibor R. Solymosi, Esquire

Dated: 1/28/11

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STEVEN SANTANELLI

VS.

CA NO: 11-

REMINGTON ARMS COMPANY,
INC., ALIAS and/or DOE
CORPORATION, ALIAS; and/or
JOHN DOE and/or JANE DOE,
ALIAS individually and as agents
of Remington Arms Company
and/or Doe Corporation, Alias

COMPLAINT AND DEMAND FOR JURY TRIAL

COUNT I

1. Plaintiff, Steven Santanelli, is a resident of the Town of Scituate, County of Providence, State of Rhode Island.
2. Defendant, Remington Arms Company, Inc., Alias is a corporation authorized to do business in the State of Rhode Island and operating pursuant to Rhode Island Law and sells its manufactured products in the State of Rhode Island.
3. Defendant, Doe Corporation, Alias whose identity is presently unknown, but expected to be revealed through discovery is a corporation and/or business entity with sufficient minimum contacts with the State of Rhode Island to establish an assertion of jurisdiction.
4. Defendants, John Doe and/or Jane Does, Alias whose identities are presently unknown but expected to be revealed through discovery are individuals with sufficient minimum contacts with the State of Rhode Island to establish an assertion of jurisdiction and are being sued individually and as agents of Remington Arms Company, Inc. and/or Doe Corporation.
5. Defendant(s) are engaged in business of designing, manufacturing and selling rifles and/or bolt-action rifles. Defendant designed, manufactured and sold the firearm involved in this action.
6. Defendant(s) engage in the business of designing and/or manufacturing and/or selling for profit rifles and/or Bolt-action rifles.

7. On or about October 27, 2003 Plaintiff owned a rifle and/or bolt-action rifle and at that time had possession of the rifle and/or bolt-action rifle designed and/or manufactured and/or made by Defendants.
8. On or about October 27, 2003 Plaintiff loaded the rifle and/or bolt-action rifle with live ammunition, Plaintiff placed the safety device of the rifle and/or bolt-action rifle in the "safe" position and attempted to hunt for game.
9. On that date, Plaintiff received a serious, painful and permanently disabling injury when the firearm described above unexpectedly discharged or fired. As a result of Plaintiff's injury, Plaintiff has suffered physical pain and mental anguish, has sustained physical and mental impairment, and has incurred medical expenses and lost wages. Plaintiff will continue to have physical pain and mental anguish, physical and mental impairment, medical expenses, and loss of earning capacity for the remainder of his natural life.
10. The firearm involved in the accident described above was defective and unreasonably dangerous at the time it left the possession, custody and control of Defendant(s) due to defects in the rifle and/or bolt-action rifle's design, manufacture and/or marketing. These defects were the proximate cause of the injuries and damages to Plaintiff.
11. At the time the firearm was delivered into Plaintiff's possession and at all times prior and subsequent to that time until the time of Plaintiff's injury the firearm was in the same condition as when it left the possession of Defendant(s).
12. At the time Plaintiff was injured, Plaintiff was using the rifle and/or Bolt-action rifle in a manner reasonably anticipated and for the purposes for which the firearm was intended.
13. Defendant(s) wantonly and recklessly disregarded known facts which showed that the firearm was defective and unreasonably dangerous. In conscious disregard of the rights of the purchasers and users of the firearm, Defendant(s) failed to remedy those defects. As a result, Plaintiff is entitled to recover punitive or exemplary damages from Defendant(s).
14. As a direct and proximate result of the defective condition of the rifle and/or bolt-action rifle, Plaintiff was injured and sustained medical expenses, loss of earnings and pain and suffering in amounts sufficient to establish the jurisdiction of this Honorable Court.

WHEREFORE, Plaintiff demands judgment against Defendant(s) plus interest, costs and attorneys fees.

COUNT II

15. Plaintiff reasserts paragraphs one through fourteen of his complaint as if fully set forth herein.

16. At all times mentioned in this action, Defendant(s) were engaged in the business of repairing, manufacturing, developing, testing inspecting, labeling and/or advertising firearms known as rifles and/or bolt-action rifles.

17. On or about October 27, 2003 representations were made to Plaintiff by Defendant(s) as to material facts regarding the quality and character of the rifle and/or bolt-action rifle: to wit the rifle and/or bolt-action rifle would not discharge while the safety was engaged. These misrepresentations were made under circumstances in which Defendant(s) acting through its agents and employees knew or should have known through the exercise of reasonable care that those representations were not true or were not known to be true.

18. While using the rifle and/or bolt-action rifle for hunting in accordance with Defendant(s)' instructions, the rifle and/or bolt-action rifle discharged. As a result of that discharge, Plaintiff was injured and sustained medical expenses, loss of earnings and pain and suffering in amounts sufficient to establish the jurisdiction of this Honorable Court.

19. The method of manufacture and contents of the rifle and/or bolt-action rifle was a direct and proximate cause of the injury suffered by the Plaintiff as alleged above. Were it not for Defendant(s)' representations regarding the safety of the product, Plaintiff would not have purchased it and were it not for the use of Defendant(s) product Plaintiff would not have sustained the injuries that he sustained.

WHEREFORE, Plaintiff requests judgment against Defendant(s) plus interest, costs and attorneys fees.

STEVEN SANTANELLI,
By Counsel,

FAY LAW ASSOCIATES, INC. by
Christopher E. Fay, Esq. #4651
917 Reservoir Avenue
Cranston, RI 02910
(401) 944-9600

Andrew L. Alberino, III, Esq. #5610 is hereby appointed trial counsel.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK
NORTHERN DIVISION**

CREIGH LANDIS AND BRENT LANDIS
Individually

Plaintiffs,

vs.

**REMINGTON ARMS COMPANY, INC.,
REMINGTON ARMS COMPANY, LLC.,
SPORTING GOODS PROPERTIES, INC.
and E. I. DuPONT DE NEMOURS AND
COMPANY,**

Defendants.

Case No. 8:11-CV-1377 (DNH/RFT)

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs Creigh and Brent Landis individually, by and through their attorneys, and for their claim for relief against Defendants, Remington Arms Company, Inc., Remington Arms Company, LLC., Sporting Goods Properties, Inc. and E.I. DuPont De Nemours and Company state and allege as follows:

PARTIES

1. Plaintiff Creigh Landis and her husband Brent Landis (hereinafter "Plaintiffs") are citizens and residents of Brushton, Franklin County, New York.
2. Defendant Remington Arms Company, Inc. (hereinafter "Remington") is a Delaware Corporation and is authorized to do business in the State of New York. Service should be made upon its registered agent, CT Corporation System 111 Eighth Avenue, New York, New York, 10011, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P. On July 1, 2011, Remington changed its corporate organization from a corporation to an LLC according to the laws of the state of Delaware. Remington Arms Company, LLC is the successor to Remington Arms Company, Inc. and is responsible for its legal liabilities. These defendants herein will be collectively referred to as "Remington."
3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware corporation and authorized to do business in the State of New York. Service should be made

upon its registered agent, CT Corporation System 111 Eighth Avenue, New York, New York, 10011, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

4. Defendant E.I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and not authorized to do business in the State of New York so service should be made at its corporate office at 1000 Market Street, Room 8042, DuPont Building, Wilmington, Delaware, 19898 or upon the New York Secretary of State pursuant to New York CPLR Rule 307 unless Defendant E.I. DuPont de Nemours, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiffs are citizens of the State of New York, and that the Defendants are all corporate citizen states other than New York. Accordingly, there is complete diversity of citizenship between the parties, and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the Northern Division because Plaintiffs are residents of Franklin County, New York, and the incident which gives rise to this complaint occurred within Franklin County, New York.

COMMON ALLEGATIONS

7. Plaintiffs Creigh and Brent Landis reside at ~~XXXXXXXXXXXX~~ ~~22 Remond Avenue~~ Brushton, NY 12916 and they are citizens of the State of New York.

8. Defendants, Remington, DuPont and SGPI were, and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, .308 caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number A6469668 (hereinafter "rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

9. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI). On or about November 30, 1993, Remington Arms Acquisition Corporation, Inc. (hereinafter "RACI") purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

10. At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one legal entity.

11. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spreads responsibility and authority for product liability claims among the three Defendants as it is unclear who bears the contractual liability for this claim.

12. Remington and/or DuPont expressly and impliedly agreed to assume certain debts

and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

13. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

14. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

15. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

16. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

17. On November 23, 2008, Plaintiff Creigh Landis (hereinafter "Landis") had taken a walk in the woods behind her house in Brushton, Franklin County, New York. She took her father's Remington M700 .308 Caliber rifle with her that day. On her walk back to her home, she sat the rifle down as there was a tree that had fallen across the pathway. After she made her

way under the tree, she reached down to pick up her rifle and it suddenly and unexpectedly discharged. The trigger was not pulled or contacted in any manner, but instead the rifle fired as a result of being moved due to forces exerted on the fire control system during this process. The bullet from the rifle traveled into her abdomen ultimately causing serious permanent injury and scarring.

18. Remington Arms Company, Inc., Remington Arms Company, LLC, Sporting Goods Properties, Inc., and E.I. DuPont de Nemours and Company are collectively referred to herein as "Defendants."

19. Plaintiffs Creigh and Brent Landis are bringing this action to recover damages from Defendants arising from Creigh's personal injuries caused by this incident. Plaintiffs' damages include past and future: medical expenses, physical pain and suffering; loss of earnings, impaired earning capacity, permanent disability, disfigurement; loss of consortium and companionship and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

20. Plaintiffs incorporate herein by reference each and every allegation contained in Paragraphs 1 through 19 of the Complaint as though set forth at length herein.

21. The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

22. Creigh Landis used the rifle in a reasonably foreseeable manner.

23. The rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

24. The rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

25. Plaintiff Creigh Landis was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

26. Plaintiffs' have suffered and are entitled to recover damages from Defendants as a

direct and proximate result of the defective design, manufacture, sale and distribution of the rifle. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle demonstrated a high degree of moral turpitude, wanton dishonesty and is indicative of criminal indifference to the civil obligations Defendants owed to Plaintiff and the general public. Such conduct was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT II

STRICT LIABILITY FAILURE TO WARN

27. Plaintiffs' incorporate herein by reference each and every allegation contained in Paragraphs 1 through 26 of the Complaint as though set forth at length herein.

28. The Remington Model 700 bolt action rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

29. Plaintiffs' had no knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured Creigh Landis.

30. As a direct and proximate result of the failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Plaintiffs have suffered and are entitled to recover damages from Defendants.

31. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle demonstrated a high degree of moral turpitude, wanton dishonesty and is indicative of criminal indifference to the civil obligations Defendants owed to Plaintiff and the general public. Such conduct was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

32. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 31 of the Complaint as though set forth at length herein.

33. Defendants negligently designed, manufactured, sold and distributed the Remington Model 700 bolt action rifle in its defective and unreasonably dangerous condition.

34. Defendants were negligent in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in

- the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
 - p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
 - q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle;
 - r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

35. As a direct and proximate result of Defendants' negligent design, manufacture, sale and distribution of the rifle, Plaintiffs have suffered and are entitled to recover damages from Defendants.

36. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle demonstrated a high degree of moral turpitude, wanton dishonesty and is indicative of criminal indifference to the civil obligations Defendants owed to Plaintiff and the general public. Such conduct was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT IV

NEGLIGENT FAILURE TO WARN

37. Plaintiffs incorporate herein by reference each and every allegation set forth herein in Paragraphs 1 through 36 of the Complaint as though set forth herein.

38. Defendants negligently failed to warn of the Remington Model 700 bolt action rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

39. Plaintiffs had no knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which injured Creigh Landis.

40. As a direct and proximate result of Defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiffs have suffered and are entitled to recover damages from Defendants.

41. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle demonstrated a high degree of moral turpitude, wanton dishonesty and is indicative of criminal indifference to the civil obligations Defendants owed to Plaintiff and the general public. Such conduct was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT V

SPOILATION OF EVIDENCE

42. Plaintiffs incorporate herein by reference each and every allegation set forth herein in Paragraphs 1 through 41 of the Complaint as though set forth herein.

43. Defendants knew that various items of evidence, including but not limited to customer complaints, gun examination reports, committee minutes, internal memoranda, testing results, tested rifles, returned rifles and fire control systems removed from returned rifles would be relevant and probative, albeit damaging, in litigation regarding whether or not the Remington Model 700 bolt action rifle is defective and unreasonably dangerous.

44. Defendants had a duty to preserve said evidence for use in litigation so that a fair and just resolution of the issues can be reached with all relevant evidence.

45. Defendants breached their duty owed to Plaintiffs and Plaintiffs' decedent in this litigation, as well as to other past and future Plaintiffs with similar claims, by destroying relevant evidence including, but not limited to that evidence set forth above.

46. Defendants destroyed incriminating evidence with full knowledge of past, pending, and future claims regarding the Remington Model 700 so as to prevent Plaintiffs in this and other similar litigation from obtaining access to same.

47. Defendants next adopted a written Record Retention Policy upon which they relied to

destroy incriminating evidence based upon a stated destruction schedule with full knowledge that said evidence was relevant to past, pending, and future Remington Model 700 claims.

48. Defendants destroyed relevant evidence in contravention of their Record Retention Policy. Defendants knew that said evidence established that the Remington Model 700 is defective and that Defendants knew of said defects.

49. Defendants knew that if the evidence which has been destroyed was made available through the course of litigation discovery to Plaintiffs handling this and other similar Model 700 cases, Defendants' respective liability would be enhanced or confirmed, and their exposure to both actual and punitive damages would be significantly greater.

50. This destruction of relevant evidence occurred when legal proceedings regarding the Remington Model 700 were pending or reasonably foreseeable and after Defendants knew of the defective condition of the Model 700 and its liability for same.

51. Defendants' conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

52. Defendants' conduct was reprehensible in that Defendants intended to: deny Plaintiffs a fair and impartial trial with all relevant evidence; defraud this Court and its officers; continue the production of its defective Model 700 rifle; ignore the danger resulting from millions of Remington Model 700 rifles already in the hands of the general public; secure profits from their activities; and to generally deny justice to Plaintiff and others similarly situated.

53. American jurisprudence through the common law provides redress for grievances in this Court in the form of either; monetary damages assessed against Defendants for the reduction in value of Plaintiff's claims or the increase in the cost of proving them as the result of the destruction of relevant evidence or equitable relief by striking Defendants pleadings, prohibiting their arguments or resolving issues to which destroyed evidence would be probative in favor of Plaintiff; or whatever other action the court deems just and proper.

54. Plaintiff seeks monetary damages or in the alternative injunctive relief as the Court deems just and proper after review of the facts and the nature of evidence which has been destroyed.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of seventy-five Thousand Dollars (\$75,000).
- B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future.
- C. For attorney's fees and costs incurred in this action as permitted by law.
- D. For interest from the date of the accident as permitted by law.
- E. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of their peers.

RESPECTFULLY SUBMITTED this 22nd day of November, 2011.

POISSANT, NICHOLS, GRUE & VANIER, P.C.



**Stephen A. Vanier, Bar Code # 506419
376 West Main Street
Malone, New York 12953
Tele: 518-483-1440
Fax: 518-483-4984**

**MONSEES, MILLER, MAYER,
PRESLEY & AMICK**

s/ Timothy W. Monsees
A Professional Corporation
Timothy W. Monsees, MO # 31004
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Kansas City, MO 64112
Tele: 816-361-5550
Fax: 816-361-5577

FILED THS. 13th DAY
OF Sept 20th
AT 2:10 M O'CLOCK
Jesse B. Galt, CLERK
12TH/278TH JUDICIAL DISTRICT COURT
MADISON COUNTY, TEXAS

CAUSE NO. 11-12847-278-10

JOEL LOVELL

Plaintiff

VS.

REMINGTON ARMS COMPANY, LLC,
ERNEST CANNON, CARTER'S
COUNTRY, LLC, and WENDY HILL
RENTS, LLC

Defendants

IN THE DISTRICT COURT OF

MADISON COUNTY, TEXAS

278th JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now JOEL LOVELL and files this Plaintiff's Original Petition complaining of REMINGTON ARMS COMPANY, LLC, ERNEST CANNON, CARTER'S COUNTRY, LLC, and WENDY HILL RENTS, LLC ("Defendants") and respectfully shows as follows.

I.

DISCOVERY PLAN LEVEL 3

1. Plaintiffs request that this lawsuit be governed by Discovery Plan Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.

PARTIES

2. Plaintiff is an individual resident of Erath County, Texas.

3. Remington Arms Company, LLC ("Remington Arms") is a foreign limited liability corporation, which is doing business in the State of Texas but which does not maintain a registered agent in Texas. REMINGTON ARMS COMPANY, LLC, has sufficient contacts with Texas that, under the Texas Long-Arm Statute, Section 17.044 *et seq.* of the Texas Civil Practice and Remedies

Code, it can be served with process by serving the Texas Secretary of State, with process to be forwarded to Defendant via its President, Vice-President, Secretary, Treasurer or it's Agent at the home address located at 870 Remington Drive, Madison, NC 27025-0700. **Service of citation is requested at this time.**

4. Ernest Cannon is an individual resident of Madison County, Texas. He may be served with citation at his residence: 201 S. Madison, P.O. Box 129, Madisonville, TX 77864. **Service of citation is requested at this time.**

5. Carter's Country, LLC ("Carter's Country") is a Texas corporation doing business in Harris County, Texas and may be served at: Carter's Country, LLC, Attention: President or CEO, 6231 Treaschwig Road, Spring, Texas 77373. **Service of citation is requested at this time.**

6. Wendy Hill Rents, LLC ("Wendy Hill Rents") is a Texas limited liability company doing business in Madison County, Texas and may be served through its registered agent: Ernest Cannon, 201 S. Madison, P.O. Box 129, Madisonville, TX 77864. **Service of citation is requested at this time.**

III. **JURISDICTION AND VENUE**

7. This court has jurisdiction over this case and the damages sought are within the jurisdictional limits of this court.

8. Venue is proper in Madison County, Texas, because one or more of the Defendants resides in Madison County, Texas and all or a substantial part of the events or omissions giving rise to the accident occurred in Madison County, Texas.

IV.
FACTUAL BACKGROUND

9. Remington Arms for decades has refused to modify its defective trigger design for the Model 700 rifle. Despite thousands of consumer complaints, numerous lawsuits, and national publications concerning the defective design, Remington refuses to sell a safer product. On November 8, 2009, a Remington Model 700 rifle (serial number S6517121) fired a bullet into Mr. Lovell's left foot when Mr. Lovell picked up the gun without pulling the trigger.

10. Remington Arms engages in the business of designing, manufacturing, assembling, distributing and selling firearms, and designed, manufactured, distributed, sold, and placed into the stream of commerce the Remington Model 700 bolt action rifle including the action, fire control system, and safety (hereafter "the rifle"), knowing and expecting that the rifle would be used by consumers and around members of the general public.

11. The Remington Model 700 rifle contains a dangerous defective "Walker" fire control system that may fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped. Remington Arms continues to utilize the "Walker" fire control design and manufactures, distributes and sells its product lines, including the Remington Model 700 bolt action rifle. Remington Arms has designed a new trigger mechanism that is a safer alternative design, but it only installs the new mechanism into some of its rifles.

12. Ernest Cannon gave the rifle to Joel Lovell in Madison County, Texas. On information and belief, Mr. Cannon knew that the Remington Model 700 bolt action rifle was known for having a defective trigger. Despite this knowledge, Mr. Cannon did not warn Mr. Lovell that the rifle may have a defective trigger. The accident occurred on property owned by Wendy Hill Rents,

LLC.

13. Ernest Cannon purchased the Remington Model 700 bolt action rifle from Carter's Country. Carter's Country knew when it sold the Remington Model 700 bolt action rifle to Ernest Cannon that the gun had a defective trigger. Carter's Country has been in the business of selling guns for over fifty years. For over forty years, there have been publications and complaints stating that the Remington Model 700 bolt action rifle has a defective trigger. Despite knowledge of the gun's defect, Carter's Country did not warn Ernest Cannon about the defect when it sold him the gun.

14. Plaintiff brings this action to recover damages from Defendants arising from Joel Lovell's personal injuries caused by this incident. Plaintiff's damages include mental and physical pain and suffering, loss of earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

V.
STRICT LIABILITY
Against Remington Arms

15. Remington Arms is strictly liable to Plaintiff for selling a Remington Model 700 bolt action rifle through a dealer because it was not merchantable and reasonably suited to the use intended at the time of its manufacture or sale. Plaintiff reasonably expected that the Remington Model 700 purchased would not fire unless the trigger was engaged. Remington Arms is strictly liable for manufacturing and selling the Remington Model 700 bolt action rifle with a defective trigger that was the proximate cause of these personal injuries sustained by Plaintiff.

16. The Remington Model 700 bolt action rifle was in a defective and dangerous condition because Remington Arms had actual or constructive knowledge that the rifle was

dangerous to users, specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger, and Remington Arms failed to warn of the rifle's danger. The risk was known or, at a minimum, reasonably foreseeable by Remington Arms.

17. Plaintiff had no knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

18. Remington Arm's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger was a direct and proximate cause of Plaintiff's injuries, and Plaintiff is entitled to recover the damages from Remington Arms.

VI.
NEGLIGENCE
Against Remington Arms

19. Remington Arms was negligent in the design, manufacture and marketing of the Model 700 rifle. Remington Arms acted unreasonably in selecting the design of the Model 700 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant to take necessary steps to eliminate the risk. Remington Arms knew or should have known that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the rifle. Remington Arms' negligence was a proximate cause of the gun misfiring and injuring Mr. Lovell.

20. Remington Arms knew and/or should have known how to equip the rifle with an adequate fire control system to prevent the rifle from firing without a trigger pull. Remington Arms failed to equip the rifle with an adequate fire control system to prevent injuries.

21. Remington Arms has actual and/or constructive knowledge of the problems with its

Model 700 rifle at the time it was sold, in particular the rifle's propensity to unexpectedly discharge without pulling the trigger. Remington Arms failed to warn Mr. Lovell about the rifle's dangerous condition.

22. Remington Arms owed Mr. Lovell a duty to use reasonable care when it designed, manufactured, and marketed the rifle. Remington Arms violated its duties.

23. Each of the acts and omissions mentioned above was a proximate cause of the injuries suffered by Mr. Lovell.

VII.
NEGLIGENCE
Against Ernest Cannon

24. On information and belief, Mr. Cannon was aware that the Remington Model 700 rifle was defective and had a propensity to unexpectedly discharge without pulling the trigger. Mr. Cannon allowed Mr. Lovell to use the gun, but did not warn Mr. Lovell about the rifle's defect.

25. Mr. Cannon owed Mr. Lovell a duty of reasonable care when he allowed Mr. Lovell to use the rifle. Mr. Cannon violated his duties when he failed to warn Mr. Lovell.

26. Mr. Cannon's failure to warn Mr. Lovell was a proximate cause of his injuries.

VIII.
NEGLIGENCE
Against Carter's Country

27. Carter's Country was aware that the Remington Model 700 rifle was defective and had a propensity to unexpectedly discharge without pulling the trigger. Carter's Country sold the gun to Ernest Cannon, but did not warn Ernest Cannon about the rifle's defect.

28. Carter's Country owed Mr. Cannon and Mr. Lovell a duty of reasonable care when it

sold the rifle with a known defect. Carter's Country violated its duties when it failed to warn Mr. Cannon.

29. Carter's Country's failure to warn Mr. Cannon or Mr. Lovell about the defect was a proximate cause of Mr. Lovell's injuries.

IX.
NEGLIGENCE and PREMISES LIABILITY
Against Wendy Hill Rents, LLC

30. Joel Lovell entered onto the premises owned by Wendy Hill Rents with its permission. On information and belief, Wendy Hill Rents through one or more of its agents was aware that Joel Lovell was entering the premises to hunt with the defective Remington rifle.

31. Wendy Hill Rents failed to warn Joel Lovell about the defective rifle, and instead, permitted Joel Lovell to use the defective Remington rifle on its property known as Shoe Bar Ranch. Wendy Hill Rents breached its duty of reasonable care when it permitted Joel Lovell to hunt on its premises with the defective Remington rifle.

32. Wendy Hill Rents did not maintain any safety standards on its property with regard to hunting or the use of fire arms. This failure to maintain safety standards caused an unreasonably dangerous condition to exist on the property.

33. Wendy Hill Rents' failure to warn Mr. Lovell about the defect or maintain safety standards was a proximate cause of Mr. Lovell's injuries.

X.
EXEMPLARY DAMAGES
Against Remington Arms

34. Remington Arms has known about the defect in its Model 700 rifle for sixty years, but it continues to put profits over people and safety. Remington is aware of over 4,000 documented

complaints about its rifles discharging involuntarily. Numerous jury verdicts have found the gun defective. As early as January 25, 1990, an internal Remington Arms memo reveals: "The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned." Ignoring thousands of customers complaints and the admissions of its own engineers that the rifle design may lead to dangerous situations, Remington Arms refuses to recall its rifles or warn its customers.

35. Remington Arms acted with willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care that raises a presumption of conscious indifference to consequences. Remington Arms' actions, when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Remington's consumers and the general public, including Mr. Lovell.

36. No government agency can force Remington Arms to recall its product, and Remington Arms has made its own employees aware of that fact. Remington Arms contemplated alternative designs and recalls but decided that they were too expensive. Remington Arms has chosen to defend its defective product in court rather than implement a new design that would save lives. Remington Arms' decision to place profit over people's safety is wrong. Punitive damages should be awarded against Remington Arms to prevent its improper conduct in the future.

XI.
DAMAGES

37. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Joel Lovell has incurred the following damages:

- a. Reasonable medical care and expenses in the past;
- b. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- c. Physical pain and suffering in the past;
- d. Physical pain and suffering in the future;
- e. Mental anguish in the past;
- f. Mental anguish in the future;
- g. Physical impairment in the past;
- h. Physical impairment which will, in all reasonable probability, be incurred in the future;
- i. Loss of earnings in the past
- j. Disfigurement in the past; and
- k. Disfigurement in the future.

38. By reason of the above, Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

XII.
JURY DEMAND

39. Pursuant to Texas Rule of Civil Procedure 216, Plaintiff requests a trial by jury and would show that the appropriate fee is paid contemporaneously with the filing of this Petition.

XIII.
REQUESTS FOR DISCLOSURE

40. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this request.

XIV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and as allowed by Sec. 41.008, Chapter 41, Texas Civil Practice and Remedies Code; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and to all such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

THE LANIER LAW FIRM, P.C.

By: 

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PATRICK O'HARA

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9 matt.macleod@gknet.com
10 Attorneys for Plaintiffs

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

CV2011-019277

9 GUILLERMO QUINONEZ and
10 DELMA QUINONEZ, husband and wife,

11 Plaintiffs,

12 v.

13 REMINGTON ARMS COMPANY, L.L.C.,
14 a Delaware corporation; JOHN DOES I-X
15 AND JANE DOES I-X; BLACK AND
16 WHITE CORPORATIONS I-X ; AND
17 ABC PARTNERSHIPS I-X,

18 Defendants.

No. _____

COMPLAINT
(Strict Products Liability; Negligence)

(Jury Trial Demanded)

18 Plaintiffs Guillermo Quinonez and Delma Quinonez allege the following causes
19 of action against Defendant Remington Arms Company, L.L.C.:
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21
22

MICHAEL K. JEANES
Clerk of the Superior Court
By Kristy Kee, Deputy
Date 10/27/2011 Time 16:33:34
Description Amount
----- CASE# CV2011-019277 -----
CIVIL NEW COMPLAINT 301.00
TOTAL AMOUNT 301.00
Receipt# 21730303

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1 7. Prior to October 2010, Plaintiffs had no actual knowledge of the facts
2 Defendants concealed, and could not and did not discover these facts using reasonable
3 diligence.

4 8. Defendants caused the events to occur in Coconino County, Arizona, out
5 of which the following causes of action arise.

6 9. Plaintiffs' initial injuries occurred in Coconino County, Arizona, and
7 further injuries and damages occurred in Maricopa County, Arizona.

8 10. Plaintiffs have incurred damages in an amount exceeding the minimum
9 jurisdictional limit of this Court.

10 11. Jurisdiction and venue are proper in Maricopa County, Arizona.

11 **FACTUAL BACKGROUND**

12 12. Defendants manufacture, market, and distribute the Remington Model 700
13 bolt action rifle, including the action, fire control system, and safety (hereinafter the
14 "Rifle" or "Remington Model 700 rifle"). The Rifle contains a dangerously defective
15 "Walker" fire control system that may (and often does) fire without a trigger pull upon
16 release of the safety, movement of the bolt, or when jarred or bumped. This Rifle and
17 the injuries caused by it are the basis of this lawsuit.

18 13. The Remington Model 700 rifle was defective in its design and/or
19 manufacture. Defendants have designed and incorporated a new trigger mechanism that
20 is safe, and Remington installs the new mechanism in all of its consumer rifles.

21 14. In the first week of October 2003, Plaintiff Guillermo Quinonez borrowed
22 a Remington Model 700 rifle from his friend, Jim Schroeder. Mr. Schroeder and

1 Guillermo Quinonez were not aware of the defective nature and dangerous propensity of
2 the Rifle to fire without a trigger pull, and neither received a warning from Defendants
3 of this propensity, either before or after the purchase of the subject Rifle.

4 15. On or about October 5, 2003, Plaintiff Guillermo Quinonez was preparing
5 to go hunting near Flagstaff, Arizona, with his friend, James Smeltzer.

6 16. Plaintiff Guillermo Quinonez borrowed the Rifle from his friend, Jim
7 Schroeder.

8 17. Plaintiff Guillermo Quinonez and his friend, James Smeltzer, parked their
9 vehicle near a hunting trail and proceeded to exit the vehicle.

10 18. Plaintiff Guillermo Quinonez exited the vehicle and attempted to remove
11 the Remington 700 rifle from the vehicle.

12 19. As Mr. Quinonez removed the Remington 700 rifle, it discharged and a
13 bullet entered his left foot. As a result, his left leg was later amputated below the knee.

14 20. Mr. Quinonez did not touch the trigger or trigger guard of the Rifle at any
15 time.

16 21. In October 2010, Mr. Quinonez viewed a television program, Remington
17 Under Fire: A CNBC Investigation, that described defects of the Remington 700 rifle.
18 Prior to this time, Mr. Quinonez was unaware there were any defects with the subject
19 Rifle.

20 22. As a result of this incident, Plaintiffs sustained physical and emotional
21 injuries and general and special damages in an amount according to proof at trial.
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1 persons in the vicinity of the users. Specifically, the Rifle has a known propensity to
2 unexpectedly discharge without contemporaneously pulling the trigger.

3 28. Plaintiffs had no knowledge of this defective condition and had no reason
4 to suspect the Rifle was unreasonably dangerous prior to the unexpected discharge.

5 29. As a direct and proximate result of the defective and dangerous condition
6 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
7 has sustained physical, emotional, and psychological injuries, some of which are
8 permanent in nature, all to his general damage in a sum to be proven at trial.

9 30. As a direct and proximate result of the defective and dangerous condition
10 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
11 has incurred medical bills and related expenses, and will continue to incur expenses in
12 the future in an amount presently unknown.

13 31. As a direct and proximate result of the defective and dangerous condition
14 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
15 has incurred has incurred wage loss and lost earning capacity.

16 32. As a direct and proximate result of the defective and dangerous condition
17 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Delma Quinonez has
18 suffered a loss of consortium.

19 33. Upon information and belief, Defendants knew or should have known
20 about the defects alleged in this Complaint and that death and/or catastrophic injuries
21 could occur and have occurred due to defects in the Rifle. Nonetheless, the defects
22 were not corrected by Defendants, nor did Defendants warn the public about these

1 defects and the risks they posed. Instead, they deliberately and intentionally concealed
2 such information from the public. Such acts and/or omissions constitute willful,
3 wanton, reckless, and malicious behavior and/or a conscious disregard of the substantial
4 risk that such conduct might threaten the life, health and safety of the public and
5 Plaintiffs.

6 34. Plaintiffs are accordingly entitled to punitive damages against Defendants.

7 **SECOND CAUSE OF ACTION**
8 **(Strict Products Liability – Failure to Warn)**

9 35. Plaintiffs hereby incorporate by reference all above allegations as if fully
10 set forth herein.

11 36. At all relevant times, Defendants designed, manufactured and distributed
12 the Remington Model 700 rifle.

13 37. Defendants knew, or in the exercise of ordinary care should have known,
14 of the Remington Model 700 rifle's propensity to unexpectedly discharge without
15 pulling the trigger, yet Defendants failed to notify or warn Plaintiffs of this propensity,
16 either before or after Mr. Schroeder's purchase of the Rifle.

17 38. Neither Plaintiffs nor the general public recognized the risks associated
18 with the Remington Model 700 rifle without such a warning.

19 39. Defendants owed a duty to Plaintiffs to adequately warn of the defect of
20 the Remington Model 700 rifle prior to the sale of the product to Jim Schroeder and
21 thereafter. Failure to warn Plaintiffs of the risks associated with the Remington Model
22

1 700 rifle was a breach of Defendants' duties to Plaintiffs to provide adequate warnings,
2 both before and after the sale of the defective product.

3 40. As a direct and proximate result of the defective and dangerous condition
4 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
5 has sustained physical, emotional, and psychological injuries, some of which are
6 permanent in nature, all to his general damage in a sum to be proven at trial.

7 41. As a direct and proximate result of the defective and dangerous condition
8 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
9 has incurred medical bills and related expenses, and will continue to incur expenses in
10 the future in an amount presently unknown.

11 42. As a direct and proximate result of the defective and dangerous condition
12 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
13 has incurred has incurred wage loss and lost earning capacity.

14 43. As a direct and proximate result of the defective and dangerous condition
15 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Delma Quinonez has
16 suffered a loss of consortium.

17 44. Upon information and belief, Defendants knew or should have known
18 about the defects alleged in this Complaint and that death and/or catastrophic injuries
19 could occur due to defects in the Rifle. Nonetheless, the defects were not corrected by
20 Defendants, nor did Defendants warn the public about these defects and the risks they
21 posed. Instead, they deliberately and intentionally concealed such information from the
22 public. Such acts and/or omissions constitute willful, wanton, reckless, and malicious

1 behavior and/or a conscious disregard of the substantial risk that such conduct might
2 threaten the life, health and safety of the public and the Plaintiffs.

3 45. Plaintiffs are accordingly entitled to punitive damages against Defendants.

4 **THIRD CAUSE OF ACTION**
5 **(Negligence)**

6 46. Plaintiffs hereby incorporate by reference all above allegations as if fully
7 set forth herein.

8 47. Defendants were negligent in the design, manufacture, marketing, and sale
9 of the Remington Model 700 rifle. Defendants breached their duty to Plaintiffs by
10 acting unreasonably in selecting the design of the Model 700 rifle, specifically the
11 trigger mechanism, given the probability and seriousness of the risk posed by the
12 design, the usefulness of the Rifle in such a condition, and the burden on Defendants to
13 take necessary steps to eliminate the risk.

14 48. Defendants knew, or in the exercise of ordinary care should have known,
15 that the Remington Model 700 rifle was defective and unreasonably dangerous to those
16 persons likely to use, or to be near those persons likely to use, the product for the
17 purpose and manner it was intended to be used, and for foreseeable misuses of the Rifle.

18 49. Defendants knew, or in the exercise of ordinary care should have known,
19 of the means of equipping the Rifle with an adequate fire control system, thereby
20 preventing injury to Mr. Quinonez. Defendants had actual knowledge of the means of
21 designing or adding such a product, which would not fail in one or more of these ways.
22

1 Notwithstanding this knowledge, Defendants failed to equip the Rifle with an adequate
2 fire control system to prevent the injuries to Plaintiff Guillermo Quinonez.

3 50. Defendants had actual or constructive knowledge of the problems with the
4 Remington Model 700 rifle at the time it was sold to Jim Schroeder, in particular the
5 Rifle's propensity to unexpectedly discharge without pulling the trigger, such that the
6 danger was known or, at a minimum, was reasonably foreseeable, but negligently failed
7 to notify or warn Plaintiffs of the Rifle's dangerous condition.

8 51. Defendants owed Plaintiffs the duty of reasonable care when it designed,
9 manufactured, marketed, and sold the Remington Model 700 rifle. Defendants violated
10 their duties and were negligent, as set forth above.

11 52. As a direct and proximate result of the defective and dangerous condition
12 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
13 has sustained physical, emotional, and psychological injuries, some of which are
14 permanent in nature, all to his general damage in a sum to be proven at trial.

15 53. As a direct and proximate result of the defective and dangerous condition
16 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
17 has incurred medical bills and related expenses, and will continue to incur expenses in
18 the future in an amount presently unknown.

19 54. As a direct and proximate result of the defective and dangerous condition
20 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Guillermo Quinonez
21 has incurred has incurred wage loss and lost earning capacity.
22

1 55. As a direct and proximate result of the defective and dangerous condition
2 of the Remington Model 700 rifle sold to Jim Schroeder, Plaintiff Delma Quinonez has
3 suffered a loss of consortium.

4 56. Upon information and belief, Defendants knew or should have known
5 about the defects alleged in this Complaint and that death and/or catastrophic injuries
6 could occur due to defects in the Rifle. Nonetheless, the defects were not corrected by
7 Defendants, nor did Defendants warn the public about these defects and the risks they
8 posed. Instead, they deliberately and intentionally concealed such information from the
9 public. Such acts and/or omissions constitute willful, wanton, reckless, and malicious
10 behavior and/or a conscious disregard of the substantial risk that such conduct might
11 threaten the life, health and safety of the public and the Plaintiffs.

12 57. Plaintiffs are accordingly entitled to punitive damages against Defendants.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for the following relief, jointly and severally,
15 against Defendants:

- 16 A. For general damages to compensate Plaintiffs for their damages;
17 B. For the reasonable value of past and future medical expenses incurred for
18 the accident-related care of Plaintiffs;
19 C. For other general and special damages available under law;
20 D. For punitive damages against Defendants to punish and deter Defendants,
21 and others similarly situated, from engaging in like conduct in the future;
22

- 1 E. For Plaintiffs' cost of suit;
2 F. For Plaintiffs' reasonable attorneys' fees as allowed by law; and
3 G. For such other and further relief as the Court deems just and proper.

4 DATED this 26th day of October, 2011.

5 GALLAGHER & KENNEDY, P.A.

6
7 By 

8 Patrick J. McGroder III
9 Matthew P. MacLeod
10 2575 East Camelback Road
11 Phoenix, Arizona 85016-9225
12 Attorneys for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES A. PIENAAR and
STEPHANIE S. PIENAAR,
Individually

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, LLC,
SPORTING GOODS PROPERTIES, INC.
and E. I. DuPONT DE NEMOURS AND
COMPANY,

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiffs Charles A. Pienaar and Stephanie S. Pienaar, individually, by and through their attorneys, Bruce E. Dice, Esquire, Chelsea Dice, Esquire, Bruce E. Dice & Associates, P.C., Timothy W. Monsees, Esquire and Monsees, Miller, Mayer, Presley & Amick and for their claim for relief against Defendants, Remington Arms Company, LLC, Sporting Goods Properties, Inc. and E.I. DuPont De Nemours and Company state and allege as follows:

PARTIES

1. Plaintiffs are Charles A. Pienaar and Stephanie S. Pienaar, husband and wife, (hereinafter collectively "Plaintiffs") who reside at 1439 4th Avenue, Latrobe, Westmoreland County, Pennsylvania 15650.

2. Defendant Remington Arms Company, LLC (hereinafter "Remington") is a Delaware Corporation, and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Remington Arms Company, LLC waives service pursuant to Rule 4(d), F.R.Civ. P.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware

corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

4. Defendant E.I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System at 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant E.I. DuPont de Nemours, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiffs are citizens of the Commonwealth of Pennsylvania, and that the Defendants are all corporate citizens of the State of Delaware and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the Western Division of Pennsylvania because Plaintiffs are residents of Westmoreland County, Pennsylvania, and the incident which gives rise to this complaint occurred near Derry Township, Westmoreland County, Pennsylvania.

COMMON ALLEGATIONS

7. Defendants, Remington, DuPont and SGPI (hereinafter collectively "Defendants") were and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

8. Defendants, Remington, DuPont and SGPI, did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700 BDL, .270 Winchester caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number B6626127 (hereinafter "Rifle"), knowing and expecting that said Rifle would be used

by consumers and around members of the general public.

9. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, LLC (now SGPI).

10. On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, LLC (now known as SGPI), including the corporate name.

11. The company formerly known as Remington Arms Company, LLC changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, LLC.

12. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

13. At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont.

14. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI.

15. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI.

16. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public.

17. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one (1) legal entity.

18. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein.

19. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spread responsibility and authority for product liability claims among the three (3) Defendants as it is unclear who bears the contractual liability for this claim.

20. Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI, and therefore DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

21. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes.

22. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase.

23. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

24. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

25. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

26. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions

those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

27. On November 30, 2009, Plaintiff Charles A. Pienaar (hereinafter "Charles") was deer hunting in Westmoreland County, Pennsylvania and had taken the Rifle along with him.

28. When Charles saw and heard branches breaking from a deer, he had taken the safety off of the Rifle while it was pointed down toward the ground in anticipation of shooting said deer; however the Rifle suddenly and unexpectedly discharged.

29. The trigger was not pulled or contacted in any manner, but instead the Rifle fired as a result of being moved due to forces exerted on the fire control system during this process.

30. The bullet from the Rifle traveled into Charles' left leg, ankle and foot ultimately causing serious permanent injury and scarring.

31. Plaintiffs are bringing this action to recover damages from Defendants arising from Charles' personal injuries caused by this incident.

32. Plaintiffs' damages include past and future: medical and out of pocket expenses, mental and physical pain and suffering; loss of earnings, impaired earning capacity, permanent disability, disfigurement; loss of consortium and companionship and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

Plaintiffs incorporate herein by reference each and every allegation contained in Paragraphs 1 through 32 of the Complaint as though set forth at length herein.

33. The Rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

34. Charles, a consumer of the general public, used the Rifle in a reasonably foreseeable manner.

35. The Rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

36. The Rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

37. Plaintiff Charles was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

38. The defective design, manufacture, sale and distribution of the Rifle were the cause or a substantial factor in causing the accident in question.

39. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Charles has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

40. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Charles has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

41. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Charles has and will continue to incur loss of earnings.

42. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

43. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

44. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

45. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be prevented from carrying on his ordinary household duties.

46. Plaintiffs' have suffered and are entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the

Rifle.

47. Defendants' conduct in the design, manufacture, sale and distribution of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the Rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law;

E. For such further and additional relief as this Court deems just and proper;

COUNT II

STRICT LIABILITY FAILURE TO WARN

48. Plaintiffs' incorporate herein by reference each and every allegation contained in Paragraphs 1 through 47 of the Complaint as though set forth at length herein.

49. The Rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

50. Plaintiffs had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured Charles.

51. As a direct and proximate result of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct

about its care and maintenance, Charles has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

52. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Charles has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

53. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Charles has and will continue to incur loss of earnings.

54. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

55. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

56. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

57. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be prevented from carrying on his ordinary household duties.

58. Defendants' conduct in the failure to warn of the Rifle's defective condition was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general

public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;
- C. For attorney's fees and costs incurred in this action as permitted by law;
- D. For interest from the date of the accident as permitted by law;
- E. For such further and additional relief as this Court deems just and proper;

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

59. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 58 of the Complaint as though set forth at length herein.

60. Defendants negligently designed, manufactured, sold and distributed the Rifle in its defective and unreasonably dangerous condition.

61. Defendants were negligent, careless and reckless in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of

manufacturing burrs or debris;

- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the Rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the Rifle;
- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

62. As a direct and proximate result of Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, Charles has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

63. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Charles has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

64. By reason of the Defendants' negligent, careless and reckless design, manufacture,

sale and distribution of the Rifle, and the direct and proximate cause thereof, Charles has and will continue to incur loss of earnings.

65. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

66. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

67. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

68. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be prevented from carrying on his ordinary household duties.

69. Defendants' conduct in the design, manufacture, sale and distribution of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the Rifle and the general public, justifying punitive exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law;

E. For such further and additional relief as this Court deems just and proper;

COUNT IV

NEGLIGENT FAILURE TO WARN

70. Plaintiffs' incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 69 of the Complaint as though set forth herein.

71. Defendants negligently, carelessly and recklessly failed to warn of the Rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

72. Plaintiffs' had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which injured Charles.

73. As a direct and proximate result of Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Charles has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

74. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Charles has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

75. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Charles has and will continue to incur loss of earnings.

76. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

77. By reason of the Defendants' negligent, careless and reckless failure to warn of the

Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

78. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

79. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be prevented from carrying on his ordinary household duties.

80. Defendants' negligent, careless and reckless conduct in the design, manufacture, sale and failure to warn of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights of safety of users and consumers of the Rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law;

E. For such further and additional relief as this Court deems just and proper;

COUNT V

LOSS OF CONSORTIUM

81. Plaintiffs incorporate herein by reference each and every allegation set forth herein in

Paragraphs 1 through 80 of the Complaint as though set forth herein.

82. By reason of the negligence, carelessness and recklessness of Defendants and resulting injuries to Plaintiff – Husband, Plaintiff-Wife, Stephanie S. Pienaar, has been, and may in the future, be obligated to expend substantial sums of money for medical and out of pocket expenses, all to her financial loss and detriment.

83. By reason of the negligence, carelessness and recklessness of Defendants and resulting injuries to Plaintiff – Husband, Plaintiff-Wife, Stephanie S. Pienaar, has been and may continue in the future to be deprived of the care, companionship, consortium and society of her husband, all to her loss and financial detriment.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law;

E. For such further and additional relief as this Court deems just and proper;

COUNT VI

SPOILATION OF EVIDENCE

84. Plaintiffs incorporate herein by reference each and every allegation set forth herein in Paragraphs 1 through 83 of the Complaint as though set forth herein.

85. Defendants knew that various items of evidence, including but not limited to customer

complaints, gun examination reports, committee minutes, internal memoranda, testing results, tested rifles, returned rifles and fire control systems removed from returned rifles would be relevant and probative, albeit damaging, in litigation regarding whether or not the Rifle is defective and unreasonably dangerous.

86. Defendants had a duty to preserve said evidence for use in litigation so that a fair and just resolution of the issues can be reached with all relevant evidence.

87. Defendants breached their duty owed to Plaintiffs in this litigation, as well as to other past and future Plaintiffs with similar claims, by destroying relevant evidence including, but not limited to that evidence set forth above.

88. Defendants destroyed incriminating evidence with full knowledge of past, pending, and future claims regarding the Remington Model 700 so as to prevent Plaintiffs in this and other similar litigation from obtaining access to same.

89. Defendants next adopted a written Record Retention Policy upon which they relied to destroy incriminating evidence based upon a stated destruction schedule with full knowledge that said evidence was relevant to past, pending, and future Remington Model 700 claims.

90. Defendants destroyed relevant evidence in contravention of their Record Retention Policy. Defendants knew that said evidence established that the Remington Model 700 is defective and that Defendants knew of said defects.

91. Defendants knew that if the evidence which has been destroyed was made available through the course of litigation discovery to Plaintiffs handling this and other similar Model 700 cases, Defendants' respective liability would be enhanced or confirmed, and their exposure to both actual and punitive damages would be significantly greater.

92. This destruction of relevant evidence occurred when legal proceedings regarding the Remington Model 700 were pending or reasonably foreseeable and after Defendants knew of the defective condition of the Model 700 and its liability for same.

93. Defendants' conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

94. Defendants' conduct was reprehensible in that Defendants intended to: deny Plaintiffs a fair and impartial trial with all relevant evidence; defraud this Court and its officers; continue

the production of its defective Model 700 rifle; ignore the danger resulting from millions of Remington Model 700 rifles already in the hands of the general public; secure profits from their activities; and to generally deny justice to Plaintiffs and others similarly situated.

95. American jurisprudence through the common law provides redress for grievances in this Court in the form of either; monetary damages assessed against Defendants for the reduction in value of Plaintiff's claims or the increase in the cost of proving them as the result of the destruction of relevant evidence or equitable relief by striking Defendants pleadings, prohibiting their arguments or resolving issues to which destroyed evidence would be probative in favor of Plaintiffs; or whatever other action the court deems just and proper. Plaintiffs seek monetary damages or in the alternative injunctive relief as the Court deems just and proper after review of the facts and the nature of evidence which has been destroyed.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiffs' losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00).
- B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future.
- C. For attorney's fees and costs incurred in this action as permitted by law.
- D. For interest from the date of the accident as permitted by law.
- E. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs pray that the causes of action alleged herein be tried in this Court before a jury of their peers.

RESPECTFULLY SUBMITTED this 17th day of November, 2011.

BRUCE E. DICE AND ASSOCIATES, P.C.

Bruce E. Dice /s/

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PRESLEY & AMICK**
A Professional Corporation

Timothy W. Monsees /s/

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VERIFICATION


We, CHARLES A. PIENAAR and STEPHANIE PIENAAR, husband and wife, verify that the statements and averments made in this COMPLAINT are true and correct to the best of our knowledge, information and belief.

We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

11/17/2011
Date


Charles A. Pienaar

11/17/2011
Date


Stephanie S. Pienaar

Cause No. CC-12-01595-A

BIANCA ELLIOTT COLGIN,
INDIVIDUALLY AND AS NEXT FRIEND OF
ARDEN LOUISE COLGIN, A MINOR,

Plaintiff,

VS.

REMINGTON ARMS COMPANY, LLC,
SPORTING GOODS PROPERTIES, INC.,
ROBERT M. FARRELL, ROBERT M.
FARRELL, LLC, ROBERT M. FARRELL
DEVELOPMENT, LTD., ROBERT M.
FARRELL FAMILY PARTNERSHIP #1, LTD.,
ROBERT M. FARRELL FAMILY
PARTNERSHIP #2, LTD, and NORTH RIO
VISTA, LTD,

Defendants.

IN THE COUNTY COURT

AT LAW NO. 1

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff, in both her individual and representative capacities, complains of Defendants,
as follows:

PARTIES, JURISDICTION, AND VENUE

Plaintiff, Bianca Elliott Colgin, individually, and as “Next Friend” of Arden Louise Colgin, a minor, resides in Dallas County, Texas.

Defendant REMINGTON ARMS COMPANY, LLC (“Remington”) is organized and incorporated under the laws of the State of Delaware and its principal place of business is located in North Carolina.

Defendant SPORTING GOODS PROPERTIES, INC. is organized and incorporated under the laws of the State of Delaware and its principal place of business is located in North Carolina.

Defendants above shall be referred to as "the Remington Defendants".

Defendant ROBERT M. FARRELL is an individual residing in Dallas County, Texas.

Defendant ROBERT M. FARRELL, LLC is a Texas Domestic Limited Liability Company, with its principal office at 8235 Douglas Ave., Suite 815, Dallas, Texas 75225.

Defendant ROBERT M. FARRELL, DEVELOPMENT, LTD. is a Texas Domestic Limited Partnership, with its principal office at 8235 Douglas Ave., Suite 815, Dallas, Texas 75225.

Defendant ROBERT M. FARRELL FAMILY PARTNERSHIP #1, LTD. is a Texas Domestic Limited Partnership, with its principal office at 8235 Douglas Ave., Suite 950, Dallas, Texas 75225.

Defendant ROBERT M. FARRELL FAMILY PARTNERSHIP #2, LTD. is a Texas Domestic Limited Partnership, with its principal office at 8235 Douglas Ave., Suite 950, Dallas, Texas 75225.

Defendant North Rio Vista, Ltd. Is a Texas Domestic Limited Liability Company, with its principal office at 8235 Douglas Ave., Suite 815, Dallas, Texas 75225.

The six Defendants immediately above shall be referred to as "the Landowner Defendants."

At all times relevant to this action, the Remington Defendants had sufficient minimum contacts to subject them to personal jurisdiction in Texas, including selling, manufacturing and

distributing rifles through its distributors and sales force. The Remington Defendants knew that the subject product could and would arrive and be used in Texas.

Plaintiff, in both of her capacities, has incurred damages in an amount exceeding the minimum jurisdictional limit of this Court.

Venue is proper in this Court because the Landowner Defendants have their principal offices in Dallas County, Texas.

FACTUAL BACKGROUND

On November 7, 2010, Clinton Colgin was killed when a Remington Model 700 rifle (hereinafter the "Subject Rifle" or "Remington Model 700 rifle") discharged without a trigger pull. At the time of the incident, Clinton Colgin and William Hullem were in the cab of a pickup truck on a ranch near Palo Pinto, Texas. One or more of the Landowner Defendants owned the ranch. Further, at the time of the incident, William Hullem was employed by one or more of the Landowner Defendants and was acting within the course and scope of his employment. Clinton Colgin is survived by his wife, Bianca Elliott Colgin, and one daughter, Arden Louise Colgin, a minor, who is the natural child of Clinton Colgin and Bianca Elliott Colgin.

The Remington Defendants manufactured, marketed, and distributed the Subject Rifle, and its component parts, including its action, fire control system, and safety. A picture of the Subject Rifle is included below:



At the time of the incident, the Subject Rifle contained an unreasonably dangerous and defective fire control system that was known by Remington to fire without a trigger pull under various scenarios. "Substantial evidence reveals that a portion of the trigger mechanism of these rifles, known as the "Walker fire control," is defective and can cause the rifle to fire without a trigger pull." Order Granting Barber's Motion to Intervene (Dkt. 424; February 6, 2012), *Aleksich v. Remington*, 2:91-cv-00005-RFC (Dist. Montana). Defendants have designed and incorporated a new trigger mechanism that is safe, and Remington installs the new mechanism in all of its new consumer rifles.

The Walker Fire Control System, which was the trigger mechanism included in the Subject Rifle, was patented and assigned to Remington Arms Company in 1948. Remington first heard complaints from the field in the 1940s regarding the Model 721-722 Rifle, the predecessor of the Model 700 which contained essentially the same fire control mechanism. The complaints centered on discharge upon safety release and also upon closing of the firing bolt.

Remington explored the redesign of the trigger mechanism in both the 1940s and in the 1970s. Each time, it determined that comprehensive redesign was cost prohibitive. An internal Remington document from 1977 discussed problems with the Model 700. This information was not disseminated to the general public.

A Remington memorandum from 1981 recommended redesign of the Model 700's fire control system (or trigger mechanism) for a price of 32 cents per gun. Remington, however, opted to continue with the unreasonably dangerous design.

Remington described a redesign of the Model 700's existing fire control system in an internal memorandum in 1985. That redesign was not implemented.

A Remington document from 1990 red-flagged the alarmingly large number of Model 700 Rifles being returned to the factory due to accidental discharges. A Remington document from 1993 indicated that Remington, were it to adopt a new design, would have to come up with a readily defensible reason for the departure from the previous design, implying that the company knew of, but did not want to publically admit, the existence of the defect.

In 1995, Remington indicated that it desired to eliminate the "Fire on Safety Release" malfunction and touted a redesign. Yet, Remington questioned whether it made financial sense to implement the new design in an internal document also from 1995. Nonetheless, various internal Remington documents, dated well before the date of the subject incident, clearly describe the defects that cause the unintended discharge events and explain the need to redesign the Model 700 fire control mechanism.

Remington has often advertised that its firearms will last for generations:



Plaintiff in this case specifically pleads that Remington has repeatedly represented to the public on numerous occasions at or near the time of manufacture and sale of the subject rifle, before the manufacture and sale of the subject rifle, and after the manufacture and sale of the subject rifle, that Remington firearms, including its bolt-action rifles, will last a "lifetime", will last for "generations", or words and representations to that effect.

**FIRST CAUSE OF ACTION AGAINST THE REMINGTON DEFENDANTS
(Strict Products Liability)**

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein.

At all relevant times, the Remington Defendants were engaged in the business of designing, manufacturing, assembling, testing, inspecting, distributing, and selling firearms, and in this regard, did design, manufacture, assemble, test, inspect, distribute, sell, and place into the stream of commerce the Remington Model 700 rifle, including the Subject Rifle, knowing and expecting that the Rifle would be used by consumers, and around members of the general public in the State of Texas.

On November 7, 2010, the Subject Rifle and its component parts, including the trigger mechanism, were being operated and used for the purpose and in the manner for which they were designed, manufactured, assembled, tested, inspected, serviced, distributed, sold and intended to be used, and in a manner foreseeable to the Remington Defendants and for which adequate and safe instructions and warnings were required to be issued.

Prior to and on November 7, 2010, including when the Subject Rifle left the control of the Remington Defendants, the Subject Rifle and its component parts, including the trigger mechanism, was unreasonably dangerous, not suitable for its intended purpose, and unsafe by reason of the Remington Defendants' defective design, manufacture, assembly, testing, inspection, service, distribution and sale of the Subject Rifle and its component parts, and because the Subject Rifle was sold and distributed without adequate instructions and/or warnings regarding its defective characteristics.

Defects in the design, manufacture, assembly, instructions, manuals and warnings, testing, inspection, service, distribution and sale of the Subject Rifle and component parts, including but not limited to the Subject Rifle's propensity to fire without a trigger pull in

instances including safety release and bolt closure, caused the Subject Rifle to fire without a trigger pull, resulting in the death of Clinton Colgin. Neither Colgin nor William Hullem had knowledge of this defective condition and neither had reason to suspect that the Subject Rifle was unreasonably dangerous prior to the unexpected discharge. The Remington Defendants, however, knew, or in the exercise of ordinary care should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge without pulling the trigger

By reason of the foregoing, the Remington Defendants are strictly liable for the damages sustained by plaintiffs.

As a result of the death of Clinton Colgin, plaintiffs and plaintiffs' decedent have sustained damages and are entitled to recover all fair and just compensatory damages allowed by law, including pain and suffering and mental anguish of plaintiffs' decedent, loss of future earnings of the decedent, loss of support, future contributions and pecuniary benefits, loss of services, loss of inheritance or prospective accumulations, parental care, attention, advice, maintenance, counsel, grief and mental anguish, intellectual and moral training, guidance and education; and decedent's survivors were caused to incur funeral and burial expenses; loss of personal property and other damages, and are therefore entitled to compensation.

SECOND CAUSE OF ACTION AGAINST THE REMINGTON DEFENDANTS (Negligence)

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein. On and before November 7, 2010, the Remington Defendants owed plaintiffs and plaintiffs' decedent a duty to exercise reasonable care in the design, manufacture, assembly, testing, inspection, servicing, distributing, sale and/or repair of the Subject Rifle and its component parts, including but not limited to the trigger mechanism. The Remington Defendants further owed

plaintiffs and plaintiffs' decedent a duty of care to warn of any condition regarding the Subject Rifle and its component parts that could and did render the Subject Rifle unsafe.

The death of Clinton Colgin and resulting damages were proximately caused by the negligence of the Remington Defendants by and through their officers, agents, employees, servants and others under their employ and control, in that they breached their aforesaid duties by carelessly failing to properly design, manufacture, assemble, test, inspect, service, distribute and sell the Subject Rifle and its component parts, including but not limited to the trigger mechanism. The Remington Defendants further breached their duties by failing to detect, correct and/or warn or instruct about the dangerous and unsafe characteristics of the Subject Rifle.

Specifically, the Remington Defendants were negligent in one or more of the following respects:

- a. In designing a fire control with a "trigger connector;"
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off;"
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;

- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle; and
- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

By reason of the foregoing, the Remington Defendants proximately caused the death of Clinton Colgin.

As a result of the death of Clinton Colgin, plaintiffs and plaintiffs' decedent have sustained damages and are entitled to recover all fair and just compensatory damages allowed by law, including pain and suffering and mental anguish of plaintiffs' decedent, loss of future earnings of the decedent, loss of support, future contributions and pecuniary benefits, loss of services, loss of inheritance or prospective accumulations, parental care, attention, advice, maintenance, counsel, grief and mental anguish, intellectual and moral training, guidance and education; and decedent's survivors were caused to incur funeral and burial expenses; loss of personal property and other damages, and are therefore entitled to compensation.

THIRD CAUSE OF ACTION AGAINST THE REMINGTON DEFENDANTS (Breach of Warranty)

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein. Prior to November 7, 2010, the Remington Defendants expressly and/or implicitly warranted and represented that the Subject Rifle and component parts, including but not limited to the trigger mechanism, were of merchantable quality, fit and safe for the purposes for which it was designed, manufactured, assembled, tested, serviced, distributed, sold, intended to be used, and was used, and that the instructions, manuals and warnings which had been issued were adequate and safe, and further that the Subject Rifle and its component parts,

including the trigger mechanism, were free from defects.

The Remington Defendants breached said express and implied warranties in that on November 7, 2010 the Subject Rifle and component parts, including but not limited to the trigger mechanism, was not of merchantable quality, fit and safe for the purposes for which it was designed, manufactured, assembled, tested, serviced, distributed, sold, intended to be used, and was used, and the instructions, manuals and warnings which had been issued were not adequate and safe, but were defective.

By reason of the foregoing, the Remington Defendants proximately caused the death of Clinton Colgin.

As a result of the death of Clinton Colgin, plaintiffs and plaintiffs' decedent have sustained damages and are entitled to recover all fair and just compensatory damages allowed by law, including pain and suffering and mental anguish of plaintiffs' decedent, loss of future earnings of the decedent, loss of support, future contributions and pecuniary benefits, loss of services, loss of inheritance or prospective accumulations, parental care, attention, advice, maintenance, counsel, grief and mental anguish, intellectual and moral training, guidance and education; and decedent's survivors were caused to incur funeral and burial expenses; loss of personal property and other damages, and are therefore entitled to compensation.

**FOURTH CAUSE OF ACTION AGAINST THE REMINGTON DEFENDANTS
(Punitive and/or Exemplary Damages)**

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein. Despite a defect that has been known to Remington for decades—a defect resulting in approximately 10,000 documented complaints of unintended discharge, many jury verdicts finding that the design is defective (including at least 2 findings of gross negligence on the part of Remington), and millions of dollars in settlements paid—unsuspecting users still hunt today

with a rifle that will fire before the trigger is pulled.

Remington redesigned its fire control mechanism, but perceived financial ruin prevents Remington from recalling millions of rifles it knows are defective. This “profits over people” or “profits over safety” mentality is exactly the conduct that exemplary damages are designed to prevent.

Over 100 injured individuals have sued or made claims against Remington over the same defective design, and several juries, including at least two federal court juries, have found Remington’s fire control to be defective. As early as January 25, 1990, an internal Remington memo reveals:

“The number of Model 700 rifles being returned to the factory because of alleged accidental firing malfunctions is constantly increasing. 170 were returned to Product Service for examination in 1989 with various accidental firing complaints. To date this year, 29 have been returned.”

Ignoring approximately ten thousand customer complaints, however, Remington refuses to recall its rifles or warn its customers.

Remington’s Model 710, which uses the Walker fire control, was introduced in 2001. Even though the 710 has only been on the market for about eight years, Remington has already received hundreds of complaints of unintended discharge, mirroring the complaint history of the Model 700.

Remington’s defective trigger mechanism uses an internal component called a “connector”—a design component not used by any other rifle manufacturer. The connector floats on top of the trigger body inside of the gun, but is not physically bound to the trigger in any way other than spring tension. The connector cannot be seen or controlled by the gun handler. When the trigger is pulled, the connector is pushed forward by the trigger, allowing the sear to fall and the rifle to fire.

The proper position of the connector under the sear requires an overlap—or “engagement”—of only approximately 25/1000ths of an inch (half the width of a dime or eight human hairs). But because the connector is not bound to the trigger, during the recoil action after each firing of the rifle, the connector separates from the trigger body several times and creates a gap between the two parts. This separation is recorded in Remington’s own high-speed video footage of the fire control during discharge. Any dirt, debris or manufacturing scrap can then become lodged in the space created between the connector and the trigger, preventing the connector from returning to its original position.

Remington’s own experts have admitted the existence of this dangerous condition:

Q. From a performance standpoint, the trigger connector, by the time the Model 710 was introduced, did nothing to truly enhance performance.

A. I think that’s true.

Q. Are there any circumstances, in your judgment or experience, depending upon, you know, again, what other factors may be at play, where the trigger connector does increase the risks or the safety concerns with use of the Walker fire-control system?

A. It theoretically adds one more point at which you could put in debris and prevent the connector from returning underneath the sear, and that is between the trigger and the connector.

Q. Let me see if I understand what you just said. On a theoretical level, the trigger connector does present a moving part that under certain circumstances could result in debris getting between the trigger connector and the trigger body, correct?

A. Right.

Deposition of Remington liability expert Seth Bredbury, *Williams v. Remington*.

When enough displacement occurs, the connector will no longer support the sear (either no engagement is present, or insufficient engagement is present) and the rifle will fire without the trigger being pulled. This can occur in a variety of ways including when the safety is

released, when the bolt is closed, or when the bolt is opened. These unintended discharges occur so frequently that Remington actually created acronyms for internal use (Fire on Safe Release—"FSR"; Fire on Bolt Closure—"FBC"; Fire on Bolt Opening—"FBO"; and Jar Off—"JO"). The various manifestations notwithstanding, all of the unintended discharges result from the same defective condition—the susceptibility of the connector to be displaced from its proper position. Even one of the designers believes housing of the fire control parts is incorrectly designed.

When questioned about this susceptibility shown in Remington's own high-speed video footage, Remington engineer Michael Keeney offered the following:

Q. In those frames, does the connector appear to be separated from the trigger body?

A. Yes.

Q. And if debris is inside the housing, that would provide an opportunity for debris to come between the connector and the trigger body; correct?

A. That is correct.

Deposition of Remington engineer Michael Keeney, *Williams v. Remington*.

Derek Watkins, another Remington engineer, explained that this defect could lead to a dangerous situation:

Q. If the trigger doesn't return for whatever reason to full engagement. . . , that is not safe; would you agree with me? Because the gun is now more susceptible --

A. It is more—it is more sensitive, yes; it is more sensitive.

Q. It is more sensitive to forces that would jar the rifle in such a way for that engagement, basically, for the trigger no longer to be underneath the sear and the gun to discharge?

A. Yes.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

James Ronkainen, another Remington engineer, also admits that failure of the connector to properly engage leads to a dangerous condition:

Q. One common factor in a fire on safe-release and a theoretical firing on bolt-closure is that the connector is not in its appropriate condition — position; correct?

A. Yes. It is unable to support the sear.

Deposition of Remington engineer James Ronkainen, *Williams v. Remington*.

This dangerous condition caused Remington to embark on redesign efforts many times in the 1980's and 1990's. The goal of these efforts was to eliminate the defect:

Q. The goal while you were there was to — is to achieve a design that did not result in a fire on safety-release; is that correct?

A. The design was to eliminate any type of-- any type of debris or any type of firing from that standpoint. Fire on bolt-closure, yeah, we did-- we definitely did not want that to happen.

Deposition of former Remington engineer Derek Watkins, *Williams v. Remington*.

When Remington again contemplated a recall of the Model 700 rifle (and similar firearms) in the mid-nineties, Kenneth D. Green, Manager of Technical & Consumer Services, drafted a forthright warning letter to owners of Remington rifles, which included the following language (emphasis in original):

“This safety notice is being sent to be sure you understand that if your Model 700, Model Seven or Model 40X rifle is loaded, the gun may accidentally fire when you move the safety from the “safe” position to the “fire” position, or when you close the bolt.”

Mr. Green sent the draft warning to Remington's Bob Lyman for approval. Mr. Lyman did not approve the draft. Instead, he wrote in the margin to the left of the above language, “Needs to be rewritten; too strong.” Mr. Lyman, likely speculating that the language would hurt sales or confirm Remington's knowledge of the defect, ensured that Remington's customers

never received the warning.

Remington's defective fire control also could have been redesigned to eliminate the harm or danger very inexpensively. Several companies sell connector-less replacement triggers for the Model 700. There is no valid engineering reason why the successfully utilized connector-less designs could not have been used by Remington in its Model 700 and 710.

Remington has recently removed the connector for some of its Model 700 rifles with a newly designed trigger mechanism, the X-Mark Pro. That design was completed in 2002, before the incident in question. This safer design would have prevented the death of Clinton Colgin. But Remington chose to continue installing its prior design. Even Remington's President and CEO, Thomas L. Millner, agreed in his 2007 deposition that the X-Mark Pro is a safer design (Question: "Did [Remington] make a safer fire control with the X-Mark Pro?" Answer: "Yes, I believe so.").

Not only did Mr. Millner admit that the design is safer, he admits that the new design prevents the rifle from firing upon release of the safety (Question: "And this new design precludes [fire on safety release] from occurring, true?" Answer: "True.>"). Finally, he admits that the old design—the design placed into the rifle that killed Clinton Colgin even after Remington had the new design—does not have safety features precluding fire on safety release (Question: "And that's the fire control that does not have the safety features that preclude the fire on safe release, true?" Answer: "That's correct.>"). Simply put, Remington's new design would have prevented this accident. But Remington took no action to retrofit the new fire control into the rifle that killed Clinton Colgin, nor did Remington warn the public.

Jury verdicts and appellate court opinions provide a succinct account of Remington's long-standing knowledge of its defective fire control. In *Lewy v. Remington*, the Eighth Circuit

upheld a finding of punitive damages against Remington in 1985:

We hold that there was sufficient evidence from which the jury could find that Remington knew the M700 was dangerous. The following evidence was before the jury: complaints from customers and gunsmiths that the Model 700 would fire upon release of safety, some of these complaints dating back as far as the early 1970s (footnote text in opinion omitted); Remington's own internal documents show that complaints were received more than two years before the Lewy rifle was produced; Remington created a Product Safety Subcommittee to evaluate M700 complaints and on two occasions decided against recalling the M700; and Remington responded to every customer complaint with a form letter that stated that they were unable to duplicate the problem, that the customer must have inadvertently pulled the trigger and that Remington could not assume liability for the discharge.

We believe that in viewing this evidence, and permissible inferences, in the light most favorable to the Lewys a jury could reasonably conclude that Remington was acting with conscious disregard for the safety of others. Remington maintains that their actions in investigating and responding to customer complaints and in creating the Product Safety Subcommittee to study the customer complaints reflect their good faith and sincerity in dealing with the M700. However, another permissible view to be drawn from all of this evidence may be that Remington was merely "gearing up" for a second round of litigation similar to the litigation involving the M600 which resulted in the ultimate recall of the M600. Remington's Product Safety Subcommittee concluded that of approximately two million M700s held by the public about 20,000 of them may have a potential defect (footnote omitted). A recall was not pursued because of the relatively small number of rifles that may have the defective condition. *See, e.g., Kehm v. Proctor & Gamble Mfg. Co.*, 724 F.2d 613, 620 (8th Cir.1983) ("[I]n determining whether a manufacturer has a duty to warn, courts inquire whether the manufacturer knew that there were even a relatively few persons who could not use its product without serious injury, and whether a proper warning would have helped prevent harm to them."). Thus, the jury may have concluded that rather than suffer the expense of a recall, Remington would rather take their chances that the 20,000 potentially dangerous M700 rifles held by the public will not cause an accident. Such a view, if true, would certainly establish that Remington acted with conscious disregard for the safety of others.

On March 24, 1992, The United States Court of Appeals, Ninth Circuit, affirmed a jury verdict of \$724,000 in a case alleging discharge on bolt closure. *Campbell v. Remington Arms Co.*, 1992 WL 54928, *2 (C.A. 9 (Alaska) 1992) (unpublished opinion).

On December 31, 1992, the Texas Supreme Court, in *Chapa v. Garcia*, 848 S.W.2d 667,

671-74 (Tex. 1992), specifically describes Remington's fire control as "defective":

Luis Chapa clearly established the relevance of and his need for the documents, by offering evidence demonstrating that the NBAR program had as its goal improvement of the defective fire control on the Model 700 and that Chapa faced a significant time gap in the record as to Remington's *knowledge* of the defect (footnote omitted). Included in Chapa's showing was:

- a 1985 Remington memorandum describing the NBAR program as one to design a "replacement for the Model 700"
- another Remington memorandum declaring that an improved fire control be installed in the Model 700 no later than October 1982 "to put us in a more secure position with respect to product liability"
- a memorandum evidencing an increase of \$130,000, in early 1981, in the research budget for development of an improved Model 700 fire control
- proof of the abrupt discontinuation of further research into the fire-control system of the Model 700 after December 1981 coincident in time with the commencement of the NBAR program
- deposition testimony that models of new, improved fire controls had been designed and assembled as part of NBAR, that prototypes had been built and tested, and that the NBAR fire controls could be retrofitted to the Model 700.
- Remington's admission that the fire control alternatives under consideration in the NBAR program and those it claims were geared solely to the Model 700 "attempt to execute the same *idea* (simultaneous blocking of the sear and trigger)" (footnote omitted).
- Remington's concession that the fire-control system research adopted the name "NBAR" in "late 1980 or 1981," about the time of the substantial increase in research funds for the Model 700 fire-control system.
- Remington's admission that "NBAR components which are or have been under consideration include a ... different fire control."
- Statements by Remington that NBAR information has relevance to the relative safety of its models compared to its competitors and the possible need for warnings.

Then, on May 7, 1994, a Texas jury rendered a verdict after Glenn Collins lost his foot to a Model 700 accidental discharge (Fire on Safety Release allegation). Not only did the jury find that the fire control was defective, it also awarded \$15,000,000 in exemplary damages. The total verdict, which was in excess of \$17 million, sent a clear message to Remington—past and *certainly* future use of the defective fire control is unacceptable.

It is difficult to ascertain exactly how many times Remington has embarked on designing a new Model 700 fire control. It clearly tried with the “NBAR” program, and it clearly tried on several occasions in the 1990’s, and it clearly again tried beginning in approximately the year 2000.

By 1995, Remington openly acknowledged the need to “fix” the fire control. As its documents show, it decided to “[e]liminate ‘Fire on Safety Release’ malfunction.” Before work continued on a new fire control, however, Remington’s Fire Control Business Contract (January 27, 1995) outlined the project and foreshadowed its end:

The goal is to provide a fire control that “feels” the same to our customers yet provides additional safeguards against **inadvertent or negligent discharges**.

. . . .

The purpose of the redesign of the fire control is to reduce the number of parts required, lower cost and to add design characteristics that **enhance the safety attributes** of our firearms.

The next paragraph, however, laments that safety “is not considered a highly marketable feature.” The next full paragraph in the document speaks for itself. Under “Financial Analysis,” appears this telling quote:

This is where the rubber meets the road. Is this project worth doing? What are the minimum forecasts to insure profitability and does our pricing structure support these expected profits?

The project to “enhance the safety attributes of our firearms” is only “worth doing” if

Remington can “insure profitability.” True to form, the M700 Improvements Program was cancelled on August 28, 1998.

Remington has repeatedly made a clear economic choice against recalling the Model 700. But the Model 710 was to be a new rifle. In 1997, and against this sordid and costly fifty-year historical backdrop, Remington faced an important but easily answered question regarding the new low cost bolt-action rifle it intended for beginner users: What fire control should Remington use?

When embarking on the design of the Model 710, Remington originally elected against the use of the Model 700 fire control, which contains the connector. Instead, Remington embarked on the design of a “connectorless” fire control.

Derek Watkins, a Remington Engineer, designed a connector-less fire control based on the work performed during the cancelled M700 improvements program. Watkins touted the benefits of his new design within Remington.

Once again, Remington had a new and safe design. But the design was allegedly too expensive to implement, and project spending was put on hold in May 1998. Even though Watkins design was favored within Remington, the engineering department could not get approval for the economics of the project.

In August 1998, Watkins’ safe design was abandoned due to an estimated cost increase. Motivated once again by the prospect of saving money and increasing its profit margin, Remington decided to pull the unsafe Model 700 fire control off the shelf and use it in the new Model 710 to eliminate development cost and time.

Remington is defiant in its reluctance to recall or stop using its fire control, a product that it knows is dangerous and that will kill or injury again, through no fault of the unsuspecting user.

The two or more "replacement campaigns" (recalls) contemplated by Remington were seen as too expensive. Remington has elected to defend its product in court rather than embark on a recall that would likely save lives.

No government agency can force Remington to recall its product, and Remington has made its internal customer service advisors aware of that fact. It is only through the court system that Remington may be made to answer for its product.

Remington has consistently elected against a recall of its dangerous product for financial reasons, even though it has designed a new product that removes the problematic connector and eliminates the danger. Even Remington's past President admits that the new design is safer. This is improper, and Remington should recall all of its rifles containing a "Walker"-based fire control. Until that time, Plaintiffs in this action seek punitive and/or exemplary damages against Remington for its willful acts of malice and gross negligence.

**FIRST CAUSE OF ACTION AGAINST THE LAND OWNER DEFENDANTS
(Negligence / Respondeat Superior)**

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein. At the time of the accident, William Hullem was employed by one or more of the Landowner Defendants. Further, at the time of the accident, Hullem was in the course and scope of his employment and under the control of one or more of the Landowner defendants. Therefore, the Landowner Defendant(s) employing and controlling Hullem are vicariously liable for the acts and omissions of Hullem.

At the time of the accident, Hullem and the Landowner Defendants owed plaintiffs and plaintiffs' decedent a duty to exercise reasonable care in the handling and use of the defective Subject Rifle. The death of Clinton Colgin and resulting damages were proximately caused by the negligence of the Landowner Defendants, including by and through Hullem, in that they

breached their aforesaid duties by carelessly failing to properly handle and use the defective Subject Rifle, either with or without knowledge that it could possible fire without a trigger pull.

By reason of the foregoing, the Landowner Defendants proximately caused the death of Clinton Colgin.

As a result of the death of Clinton Colgin, plaintiffs and plaintiffs' decedent have sustained damages and are entitled to recover all fair and just compensatory damages allowed by law, including pain and suffering and mental anguish of plaintiffs' decedent, loss of future earnings of the decedent, loss of support, future contributions and pecuniary benefits, loss of services, loss of inheritance or prospective accumulations, parental care, attention, advice, maintenance, counsel, grief and mental anguish, intellectual and moral training, guidance and education; and decedent's survivors were caused to incur funeral and burial expenses; loss of personal property and other damages, and are therefore entitled to compensation.

**SECOND CAUSE OF ACTION AGAINST THE LAND OWNER DEFENDANTS
(Negligent Activity)**

Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein. At the time of the accident, the Landowner Defendants owed plaintiffs and plaintiffs' decedent a duty to exercise reasonable care in controlling the activities that took place on their land. The Landowner Defendants had a further duty to prevent and/or preclude negligent activities from occurring on their land where such activities posed a risk of bodily harm to others, such as Clinton Colgin.

The death of Clinton Colgin and resulting damages were proximately caused by the negligence of the Landowner Defendants, in that they breached their aforesaid duties by carelessly failing to properly control the activities taking place on their land and by not preventing and/or not precluding activities and conduct that could cause bodily harm to other

people on their land, such as Clinton Colgin. Specifically, among other things, the Landowner Defendants had actual and/or constructive knowledge that guns, such as the defective Subject Rifle, were being handled, used and/or fired from the cabs of pickup trucks, by people, including their own employees, and took no action to prevent or preclude such activities. The Landowner Defendants had control over the activities and practices that took place on their land and could have taken steps to ensure that such activities would not occur on their land.

By reason of the foregoing, the Landowner Defendants proximately caused the death of Clinton Colgin.

As a result of the death of Clinton Colgin, plaintiffs and plaintiffs' decedent have sustained damages and are entitled to recover all fair and just compensatory damages allowed by law, including pain and suffering and mental anguish of plaintiffs' decedent, loss of future earnings of the decedent, loss of support, future contributions and pecuniary benefits, loss of services, loss of inheritance or prospective accumulations, parental care, attention, advice, maintenance, counsel, grief and mental anguish, intellectual and moral training, guidance and education; and decedent's survivors were caused to incur funeral and burial expenses; loss of personal property and other damages, and are therefore entitled to compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief, jointly and severally, against both the Remington Defendants and the Landowner Defendants:

- A. For general damages to compensate Plaintiffs for their damages;
- B For the reasonable value of past and future medical expenses incurred for the accident-related care of Plaintiffs;
- C. For other general and special damages available under law;

D. For punitive damages against Defendants to punish and deter Defendants, and others similarly situated, from engaging in like conduct in the future;

E. For Plaintiffs' cost of suit;

F. For Plaintiffs' reasonable attorneys' fees as allowed by law; and

G. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jeffrey W. Hightower, Jr.
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COUNSEL FOR PLAINTIFF

IN THE DISTRICT COURT IN AND FOR OTTAWA COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
OTTAWA, OKLA.

MAR 25 2011

BY CLERK KEY COURT CLERK

TYSON GURLEY, a minor child, by and)
through his mother and next friend,)
CHERYL GURLEY; and KEITH)
GURLEY, a minor child, by and through)
his mother and next friend, CHERYL)
GURLEY,)

Plaintiffs,)

Vs.)

REMINGTON ARMS COMPANY, INC.,)
and JAMES HIGHLEY, individually, d/b/a)
WESTERN GUN EXCHANGE,)

Defendants.)

Case No. CJ-11-54

Judge Saney

ATTORNEY LIEN CLAIMED

PETITION

COME NOW the Plaintiffs Tyson Gurley, a minor child, by and through his mother and next friend, Cheryl Gurley, and Keith Gurley, minor child, by and through his mother and next friend, Cheryl Gurley (hereinafter collectively as "Gurleys" or "Plaintiffs"), by and through their attorneys of record Riggs, Abney, Neal, Turpen, Orbison & Lewis and for their causes of action against the Defendants allege and state as follows:

1. Cheryl Gurley is the mother and next friend of Plaintiff Tyson Gurley, a minor child. Plaintiff Tyson Gurley resides with his mother Cheryl Gurley in the City of Fairland, County of Ottawa, State of Oklahoma.

2. Cheryl Gurley is the mother and next friend of Keith Gurley, a minor child. Plaintiff Keith Gurley resides with his mother Cheryl Gurley in the City of Fairland, County of Ottawa, State of Oklahoma.

3. Defendant, Remington Arms Company, Inc. (hereinafter "Remington") is a foreign corporation being organized and incorporated under the laws of the State of Delaware and having its principal place of business in North Carolina. At all times pertinent to this Petition, Remington was doing, authorized to do, and was conducting business in the State of Oklahoma by selling and distributing rifles through its agents and representatives and otherwise.

4. Defendant, James Highley is an individual living in the City of Commerce, County of Ottawa, State of Oklahoma and he does business under the name of Western Gun Exchange (hereinafter Defendant James Highley and Western Gun Exchange are collectively referred to as "Western Gun"). Western Gun Exchange is believed to be an unincorporated entity doing business in the City of Commerce, County of Ottawa, State of Oklahoma.

5. The incident which forms the basis of Plaintiffs' claims against the Defendants all occurred in the County of Ottawa, State of Oklahoma.

6. Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

7. On December 1, 2010, Plaintiffs were accompanying two friends in a field near their home. The friends had been hunting with a Model 700 rifle manufactured in 1996 bearing the serial number E6325566. As Plaintiffs and their friends were leaving the field, they encountered a fence crossing, wherein the rifle came into contact with a

fence and the gun discharged without the trigger being pulled, sending a bullet into the left hand of Tyson Gurley, exiting and entering his abdomen, exiting and then into his sibling Keith Gurley's abdomen, where portions of the bullet remained.

8. Remington is now, and at all time relevant, engaged in the business of designing, manufacturing, assembling, distributing, and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action rifle including the fire control system, action, and safety, knowing and expecting that the rifle would be used by consumers and around members of the general public.

9. The Remington Model 700 contains a dangerously defective "Walker" fire control system that may (and often does) fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped. This rifle and the injuries caused by the same is the basis of this lawsuit.

10. The Remington Model 700 rifle was defective in design and/or manufacture Defendant Remington continues to utilize the "Walker" fire control design and manufactures, distributes, and sells its product lines, including the Remington Model 700 rifle.

11. The subject Remington Model 700 was purchased new from Western Gun Exchange in Commerce, Oklahoma. Its purchaser was not aware of the defective and dangerous propensity of the rifle to fire without a trigger pull, and did not receive any warning from either Defendant Remington or Defendant Western Gun of this propensity, either before or after the purchase.

12. Plaintiffs bring this action to recover damages from Defendants arising from Tyson Gurley's and Keith Gurley's personal injuries cause by this incident. Plaintiffs damages include: past and future medical and related expenses, past and future mental and physical pain and suffering, past and future lost quality and enjoyment of life, past and future physical impairment and disfigurement, loss of earning capacity, past and future disability, and other general and special damages.

FIRST CLAIM FOR RELIEF (STRICT LIABILITY)

13. Plaintiffs incorporate by reference Paragraphs 1 through 12 of their Petition as if set forth specifically herein.

14. Defendants Remington and Western Gun designed, manufactured, marketed, sold, and/or distributed the Remington Model 700 rifle to the public.

15. At the time the rifle left the control and possession of Defendants, it was in a defective condition so as to be unreasonably dangerous to an intended or foreseeable user or bystander because the rifle could suddenly and without notice, fire without the trigger being pulled. Plaintiffs reasonably expected that the Remington Model 700 rifle would not fire unless the safety was off and the trigger was engaged.

16. At the time the rifle left the control and possession of Defendants, it was in a defective condition so as to be unreasonably dangerous. Defendants had actual or constructive knowledge that the rifle was dangerous to users and other members of the general public, specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger, and Defendants failed to warn of the rifle's danger. The risk was known or, at a minimum, reasonably foreseeable by Defendants.

17. Defendants are strictly liable for manufacturing, selling, distributing, or otherwise placing the rifle into the stream of commerce with a defective trigger that was the proximate cause of the personal injuries sustained by Plaintiffs.

18. The defective and unreasonably dangerous condition of the rifle was not observable by Plaintiffs. Further, Plaintiffs had no knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

19. The breach of that duty by Defendants, and the defective and unreasonably dangerous condition of the product were the proximate cause of the injuries of Plaintiffs Tyson Gurley and Keith Gurley. As a direct result of the breach of duty by Defendants and the defective and unreasonably dangerous product Plaintiffs Tyson Gurley and Keith Gurley sustained injuries and damages.

SECOND CLAIM FOR RELIEF (NEGLIGENCE)

20. Plaintiffs incorporate by reference Paragraphs 1 through 19 of their Petition as if set forth specifically herein.

21. Defendants had a duty to Plaintiffs to design, manufacture, and place into commerce a product that was not defective and would not place the user's health and life at risk when the product was used for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the product.

22. Defendants knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the rifle.

23. Defendants failed to use reasonable care, commensurate with the serious risks to users, in the design, manufacture, distribution, and sale of the product and in its warning to potential users and members of the general public.

24. Defendants owed a duty to Plaintiffs when it designed, manufactured, marketed, sold, and distributed the rifle.

25. Defendants breached its duty to Plaintiffs, and each of the above-mentioned acts, omissions, and breaches were the cause of the injuries and damages to Plaintiffs.

THIRD CLAIM FOR RELIEF (FAILURE TO WARN)

26. Plaintiffs incorporate by reference Paragraphs 1 through 25 of their Petition as if set forth specifically herein.

27. At all times relevant, Defendant Remington designed, manufactured, and distributed the Remington Model 700 rifle. Defendant Western Gun was in the business of selling this model rifle to the public.

28. Both before and after selling a new Remington Model 700 rifle, Defendants knew, or in the exercise of ordinary care should have known, of problems with the rifle, including the rifle's propensity to unexpectedly discharge without pulling the trigger, yet failed to notify or warn Plaintiffs or the purchaser of the rifle of this propensity either prior to or after the purchase of the rifle.

29. Neither Plaintiffs, the purchaser of the rifle purchaser, nor the general public recognized the risks associated with the Remington Model 700 rifle without such a warning.

30. Defendants owed a duty to Plaintiffs and the purchaser of the rifle to adequately warn of the defect of the Remington Model 700 rifle prior to the sale of the product and thereafter. Failure to warn Plaintiffs and the purchaser of the risks associated with the rifle was a breach of Defendants' duties to Plaintiffs to provide adequate warnings, both before and after the sale of the defective product, of the dangerous conditions of the product.

31. As a result of Defendants' failure to warn Plaintiffs and the purchaser of the defective and dangerous condition of the Remington Model 700 rifle, Plaintiffs sustained serious injuries and damages.

PUNITIVE DAMAGES

32. Plaintiffs incorporate by reference Paragraphs 1 through 31 of their Petition as if set forth specifically herein

33. Defendants' actions in this case were done willfully and maliciously and/or recklessly without regard for the rights, health, and safety of the public, including Plaintiffs Tyson Gurley and Keith Gurley. As a result of Defendants' willful, malicious, and/or reckless actions, Plaintiffs have suffered serious injuries and damages. Under the facts and circumstances of this case, punitive and exemplary damages are appropriate to punish the Defendants for their actions and to deter Defendants and other companies from engaging in such conduct in the future.


WHEREFORE, the Plaintiffs, pray for punitive damages against the Defendants, and each of them, in an amount to be determined at the trial of this matter.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against Defendants, jointly and severally, in an amount in excess of \$75,000.00, the amount required for diversity jurisdiction, punitive damages, together with attorney fees, pre-judgment interest, post-judgment interest, costs and such other relief as the Court may deem just.

Respectfully Submitted:

By: _____


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ATTORNEYS FOR THE PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

JONATHON MOORE

Plaintiff,

vs.

**REMINGTON ARMS COMPANY, LLC.,
and
SPORTING GOODS PROPERTIES, INC.**

Defendants.

Case No. 4:12cv-41 M

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff Jonathon Moore, by and through his attorneys, Jerry P. Rhoads, Esquire and Christopher L. Rhoads, Esquire Rhoads & Rhoads, P.S.C., Timothy W. Monsees, Esquire and Monsees, Miller, Mayer, Presley & Amick, P.C. and for his claim for relief against Defendants, Remington Arms Company, LLC., and Sporting Goods Properties, Inc. states and alleges as follows:

PARTIES

1. Plaintiff is Jonathon Moore, (hereinafter "Plaintiff") who resides at 1144 Hospital Road, Dawson Springs, Kentucky 42408.

2. Defendant Remington Arms Company, LLC (hereinafter "Remington") is a Delaware Corporation, and registered to do business in the Commonwealth of Kentucky. Service should be made upon its registered agent, CT Corporation System, 306 W. Main Street, Suite 512, Frankfort, Kentucky 40601, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), Fed. R. Civ. P.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware corporation which is not authorized to do business in the Commonwealth of Kentucky and who has not designated a registered agent for service of process in the Commonwealth of Kentucky. Therefore, service should be made upon the Kentucky Secretary of State as statutory agent for

said Defendants, pursuant to KRS 454.210, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule 4(d), Fed. R. Civ. P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiff is a citizen of the Commonwealth of Kentucky, and that the Defendants are both corporate citizens of the State of Delaware and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

5. Venue is proper within the Western Division of Kentucky because Plaintiff is a resident of Hopkins County, Kentucky, and the incident which gives rise to this complaint occurred near Dawson Springs, Hopkins County, Kentucky.

COMMON ALLEGATIONS

6. Defendants, Remington and SGPI (hereinafter collectively "Defendants") were and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

7. Defendants, Remington and SGPI, did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, 25-06 REM caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number G6389425 (hereinafter "Rifle"), knowing and expecting that said Rifle would be used by consumers and around members of the general public.

8. Prior to November 30, 1993, DuPont de Nemours and Co. owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI).

9. On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name.

10. The company formerly known as Remington Arms Company, Inc. changed its name

to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc.

11. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

12. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spreads responsibility and authority for product liability claims among the three Defendants as it is unclear who bears the contractual liability for this claim.

13. Remington expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington and SGPI. Consequently, Remington is the corporate successor to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

14. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont. Consequently, Remington is the corporate successor to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

15. Remington and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of Remington for the debts of SGPI, particularly, its product liability. Consequently, Remington is the corporate successor to the product liability claims asserted, now and in the future, against SGPI, including this particular

lawsuit.

16. On April 21, 2011, Plaintiff Moore, was outside his house sitting on the ground with the rifle laid across his lap, pointing away from his body. Plaintiff Moore heard a noise of an animal, and with his left hand on the muzzle and his right hand on the ground for support, he turned to look. At the same time, his left leg contacted the stock of the rifle and it fired without a trigger pull. At the time the rifle fired, Plaintiff's only contact with the rifle was his left hand on the barrel. His finger was not on the trigger.

17. The bullet struck plaintiff in the left shoulder. An ambulance picked Plaintiff up from the house and drove him to an open field where a helicopter could fly him to St. Mary's Hospital in Evansville, Indiana, where he underwent two surgeries in four days before being transferred to Vanderbilt University Hospital where, thus far, he has undergone three different surgeries on his shoulder.

18. Plaintiff Moore was nineteen (19) years old at the time of the accident.

19. Plaintiff Moore is bringing this action to recover damages from Defendants arising from his personal injuries caused by this incident. Plaintiff's damages include past and future: medical expenses, physical pain and suffering; loss of earnings, impaired earning capacity, permanent disability, disfigurement; increased likelihood of risk of future harm; and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

20. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 20 of the Complaint as though set forth in length herein.

21. The Rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

22. Plaintiff, a consumer of the general public, used the Rifle in a reasonably foreseeable manner.

23. The Rifle as designed, manufactured, sold and distributed by Defendants was in

substantially the same condition as when it was manufactured by Defendants.

24. The Rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

25. Plaintiff Moore was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

26. The defective design, manufacture, sale and distribution of the Rifle were the cause or a substantial factor in causing the accident in question.

27. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

28. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

29. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to incur loss of earnings.

30. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

31. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

32. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life and household duties.

33. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff will suffer the increased likelihood of risk of future harm.

34. Plaintiff has suffered and is entitled to recover damages from Defendants as a direct

and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

35. Defendants' conduct in the design, manufacture, sale and distribution of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the Rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law; and

E. For such further and additional relief as this Court deems just and proper.

COUNT II

STRICT LIABILITY FAILURE TO WARN

36. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 35 of the Complaint as though set forth at length herein.

37. The Rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

38. Plaintiff had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured him.

39. As a direct and proximate result of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct

about its care and maintenance, Plaintiff has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

40. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

41. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to incur loss of earnings.

42. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

43. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

44. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life and household duties.

45. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff will suffer the increased likelihood of risk of future harm.

46. Defendants' conduct in the failure to warn of the Rifle's defective condition was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general

public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law; and

E. For such further and additional relief as this Court deems just and proper.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

47. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 46 of the Complaint as though set forth at length herein.

48. Defendants negligently designed, manufactured, sold and distributed the Rifle in its defective and unreasonably dangerous condition.

49. Defendants were negligent, careless and reckless in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of

- manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the Rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the Rifle;
- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

50. As a direct and proximate result of Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, Plaintiff has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

51. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

52. By reason of the Defendants' negligent, careless and reckless design, manufacture,

sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to incur loss of earnings.

53. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

54. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

565. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life and household duties.

56. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff will suffer the increased likelihood of risk of future harm.

57. Defendants' conduct in the design, manufacture, sale and distribution of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the Rifle and the general public, justifying punitive exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law; and

E. For such further and additional relief as this Court deems just and proper.

COUNT IV

NEGLIGENT FAILURE TO WARN

58. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 57 of the Complaint as though set forth herein.

59. Defendants knew of the Rifle's propensity to discharge unexpectedly without pulling the trigger.

60. Defendants failed to preserve and knowingly destroyed documents and reports which outlined the Rifle's propensity to discharge unexpectedly without pulling the trigger.

61. Defendants negligently, carelessly and recklessly failed to warn of the Rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

62. Plaintiff had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which injured him.

63. As a direct and proximate result of Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

64. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

65. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to incur loss of earnings.

66. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have

an impaired earning capacity.

67. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

68. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life and household duties.

69. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff will suffer the increased likelihood of risk of future harm.

70. Defendants' negligent, careless and reckless conduct in the design, manufacture, sale and failure to warn of the Rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights of safety of users and consumers of the Rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future;

C. For attorney's fees and costs incurred in this action as permitted by law;

D. For interest from the date of the accident as permitted by law; and

E. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of their peers.

RESPECTFULLY SUBMITTED this 20th day of March, 2012.

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
DEC 09 2011
[Signature]
CLERK

**CAROL O'NEAL, as Personal
Representative of the Estate of LANNY
O'NEAL, deceased.**

Plaintiff,

vs.

**REMINGTON ARMS COMPANY, LLC,
SPORTING GOODS PROPERTIES, INC.,
and E. I. DuPONT DE NEMOURS AND
COMPANY,**

Defendants.

Case No. 11-4182

COMPLAINT

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Carol O'Neal, as Personal Representative of the Estate of Lanny O'Neal by and through her attorneys, and for her claim for relief against Defendants, Remington Arms Company, LLC, Sporting Goods Properties, Inc., and E. I. DuPont De Nemours and Company, states and alleges as follows:

PARTIES

1. Plaintiff Carol O'Neal (hereinafter "Plaintiff") is a resident of Brandon, Minnehaha, County, South Dakota. She is the Personal Representative of the Estate of Lanny O'Neal, wife of deceased person Lanny O'Neal and the natural mother of their three children.

2. Defendant Remington Arms Company, LLC. (hereinafter "Remington") is a Delaware Corporation and is authorized to do business in the State of South Dakota. Service should be made upon its registered agent, CT Corporation System 319 S. Coteau Street Pierre, SD 57501-3108 unless Defendant Remington Arms Company, LLC, waives service pursuant to Rule 4(d), F.R.Civ. P.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware Corporation not authorized to do business in the State of South Dakota so service should be

made at its corporate office at 1007 N. Market Street, M10608 Wilmington, Delaware 19801 or upon the South Dakota Secretary of State pursuant to Rule 4(h)(1)(B) and SDCL §47-8-17.

4. Defendant E.I. Dupont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and is not authorized to do business in the State of South Dakota so service should be made at its corporate office at 1000 Market Street, Room 8042, DuPont Building, Wilmington, Delaware, 19898 or upon the South Dakota Secretary of State pursuant to Rule 4(h)(1)(B) and SDCL §47-8-17.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiff is a citizen of the State of South Dakota, and that the Defendants are all corporate citizens of the State of Delaware, and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the Southern Division because Plaintiff is a resident of Minnehaha County, South Dakota, and the incident which gives rise to this complaint occurred within Dewey County, South Dakota.

COMMON ALLEGATIONS

7. Plaintiff and her children reside at 212 Seth Street, Brandon, SD 57000-2533 and are citizens of the State of South Dakota.

8. Defendants, Remington, DuPont and SGPI were, and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, .243 caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number 6329626 (hereinafter "rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

9. Prior to November 30, 1993, DuPont owned 100% of the stock in the company

known as Remington Arms Company, Inc. (now SGPI). On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

10. At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity which in which SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one legal entity.

11. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spreads responsibility and authority for product liability claims among the three Defendants as it is unclear who bears the contractual liability for this claim.

12. Remington and/or Dupont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI.

Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

13. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

14. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

15. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

16. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

17. On November 9, 2008, Plaintiff's husband Lanny L. O'Neal (hereinafter "O'Neal" or "Plaintiff's decedent") was hunting deer with his hunting party near Eagle Butte, Dewey County, South Dakota. This party included four men who were sitting in the cab of a truck on private property owned by one of the hunters, Bob Booth. The truck where this incident occurred was being driven by Ted Miller. Lanny O'Neal was sitting in the front passenger seat. In the rear seat Dr. Greg Fleitz was sitting behind the driver and Mark Ritter was sitting behind O'Neal. There

were 4 other hunters in another vehicle following this truck.

18. Mark Ritter was hunting with O'Neal's Remington Model M700 rifle that day. As they were driving in the field, the men spotted a deer. Ted Miller stopped the truck. Mark Ritter opened the vehicle door and reached down to pick up the M700 rifle that was sitting in the floor of the truck. As he picked up the rifle by the stock, he used his thumb to push the safety to off. The trigger was not pulled or contacted in any manner, but instead the rifle fired on safety release, a phenomenon Defendants refer to as "FSR". The bullet from the rifle traveled through the seat cushion and struck O'Neal in the upper back traveling through his stomach, spleen and left lung. The men immediately called 911 and drove toward the town of Eagle Butte. They met an ambulance who took over care of O'Neal and he was taken to the Indian Health Center. Lanny O'Neal was pronounced dead at 4:35 that afternoon as a result of the gunshot wound.

19. Lanny L. O'Neal was 40 years old at the time of his death. He was married to Carol O'Neal and had 3 natural children. At the time of this filing, one child is yet a minor.

20. Remington Arms Co., Sporting Goods Properties, Inc., and E.I. DuPont de Nemours and Company are collectively referred to herein as "Defendants."

21. As Personal Representative of the Estate of Lanny O'Neal, Plaintiff Carol O'Neal is bringing this action to recover damages from Defendants for the wrongful death of Lanny L. O'Neal pursuant to SDCL § 21-5. Damages include funeral expenses, lost of future income and support, Lanny O'Neal's physical pain and suffering, pecuniary losses, the emotional pain, suffering, mental anguish and grief, loss of support, care, comfort and companionship, loss of society, advice, assistance and protection and other general, special and punitive damages experienced by Decedent's legal heirs in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

22. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 21 of the Complaint as though set forth at length herein.

23. The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

24. Mark Ritter used the rifle in a reasonably foreseeable manner.

25. The rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

26. The rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

27. Plaintiff's decedent was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

28. Plaintiff has suffered and is entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

29. Plaintiff's decedent suffered damages as a result of his injuries in advance of his death, including conscious pain and suffering and expectation of his impending death. Plaintiff is entitled to recover damages on behalf of Plaintiff's decedent.

30. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT II

STRICT LIABILITY FAILURE TO WARN

31. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 30 of the Complaint as though set forth at length herein.

32. The Remington Model 700 bolt action rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

33. Neither Ritter nor Plaintiff's decedent had any knowledge of such defective

conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which killed Lanny O'Neal .

34. As a direct and proximate result of the failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendants.

35. Plaintiff's decedent suffered damages as a result of his injuries in advance of his death, including conscious pain and suffering and expectation of his impending death. Plaintiff is entitled to recover damages on behalf of Plaintiff's decedent.

36. Defendants' conduct in the failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

37. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 36 of the Complaint as though set forth at length herein.

38. Defendants negligently designed, manufactured, sold and distributed the Remington Model 700 bolt action rifle in its defective and unreasonably dangerous condition.

39. Defendants were negligent in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of

manufacturing burrs or debris;

- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle;
- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

40. As a direct and proximate result of Defendants' negligent design, manufacture, sale and distribution of the rifle, Plaintiff has suffered and is entitled to recover damages from Defendants.

41. Plaintiff's decedent suffered damages as a result of his injuries in advance of his death, including conscious pain and suffering and expectation of his impending death. Plaintiff is entitled to recover damages on behalf of Plaintiff's decedent.

42. Defendants' conduct in the design, manufacture, sale and distribution of the

Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive exemplary damages.

COUNT IV
NEGLIGENT FAILURE TO WARN

43. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 42 of the Complaint as though set forth herein.

44. Defendants negligently failed to warn of the Remington Model 700 bolt action rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

45. Neither Ritter nor Plaintiff's decedent had any knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which killed Lanny L. O'Neal.

46. As a direct and proximate result of Defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendants.

47. Plaintiff's decedent suffered damages as a result of his injuries in advance of his death, including conscious pain and suffering and expectation of his impending death. Plaintiff is entitled to recover damages on behalf of Plaintiff's decedent.

48. Defendants' conduct in the design, manufacture, sale and failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights of safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

COUNT V
SPOILATION OF EVIDENCE

49. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 48 of the Complaint as though set forth herein.

50. Defendants knew that various items of evidence, including but not limited to customer complaints, gun examination reports, committee minutes, internal memoranda, testing results, tested rifles, returned rifles and fire control systems removed from returned rifles would be relevant and probative, albeit damaging, in litigation regarding whether or not the Remington Model 700 bolt action rifle is defective and unreasonably dangerous.

51. Defendants had a duty to preserve said evidence for use in litigation so that a fair and just resolution of the issues can be reached with all relevant evidence.

52. Defendants breached their duty owed to Plaintiff and Plaintiff's decedent in this litigation, as well as to other past and future Plaintiffs with similar claims, by destroying relevant evidence including, but not limited to that evidence set forth above.

53. Defendants destroyed incriminating evidence with full knowledge of past, pending, and future claims regarding the Remington Model 700 so as to prevent Plaintiffs in this and other similar litigation from obtaining access to same.

54. Defendants next adopted a written Record Retention Policy upon which they relied to destroy incriminating evidence based upon a stated destruction schedule with full knowledge that said evidence was relevant to past, pending, and future Remington Model 700 claims.

55. Defendants destroyed relevant evidence in contravention of their Record Retention Policy. Defendants knew that said evidence established that the Remington Model 700 is defective and that Defendants knew of said defects.

56. Defendants knew that if the evidence which has been destroyed was made available through the course of litigation discovery to Plaintiffs handling this and other similar Model 700 cases, Defendants' respective liability would be enhanced or confirmed, and their exposure to both actual and punitive damages would be significantly greater.

57. This destruction of relevant evidence occurred when legal proceedings regarding the

Remington Model 700 were pending or reasonably foreseeable and after Defendants knew of the defective condition of the Model 700 and its liability for same.

58. Defendants' conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

59. Defendants' conduct was reprehensible in that Defendants intended to: deny Plaintiff a fair and impartial trial with all relevant evidence; defraud this Court and its officers; continue the production of its defective Model 700 rifle; ignore the danger resulting from millions of Remington Model 700 rifles already in the hands of the general public; secure profits from their activities; and to generally deny justice to Plaintiff and others similarly situated.

60. American jurisprudence through the common law provides redress for grievances in this Court in the form of either; monetary damages assessed against Defendants for the reduction in value of Plaintiff's claims or the increase in the cost of proving them as the result of the destruction of relevant evidence or equitable relief by striking Defendants pleadings, prohibiting their arguments or resolving issues to which destroyed evidence would be probative in favor of Plaintiff; or whatever other action the court deems just and proper.

61. Plaintiff seeks monetary damages or in the alternative injunctive relief as the Court deems just and proper after review of the facts and the nature of evidence which has been destroyed. WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000).
- B. For exemplary or punitive damages against the Defendants, jointly and severally, in an amount necessary to deter or prevent similar conduct in the future.
- C. For attorney's fees and costs incurred in this action as permitted by law.
- D. For interest from the date of the accident as permitted by law.
- E. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of her peers.

RESPECTFULLY SUBMITTED this 8th day of December, 2011.

Timothy W. Monsees by John P. Blackburn

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4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE WESTERN DISTRICT OF WASHINGTON**
8

9 **DARLENE CASIMIR,**
10 **as Personal Representative of the**
11 **Estate of ALVIN CASIMIR, JR.**

12 **Plaintiff,**

13 **vs.**

14 **REMINGTON ARMS COMPANY, LLC,**
15 **SPORTING GOODS PROPERTIES, INC.,**
16 **and E. I. DuPONT DE NEMOURS AND**
17 **COMPANY,**

18 **Defendants.**

Case No. _____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

19 **COMPLAINT AND DEMAND FOR JURY TRIAL**

20 COMES NOW Plaintiff Darlene Casimir, Personal Representative of the Estate of
21 Alvin Casimir, Jr. by and through her attorneys, and for her claim for relief against
22 Defendants, Remington Arms Company, LLC, Sporting Goods Properties, Inc. and E. I.
23 DuPont De Nemours and Company, alleges as follows:

24 **PARTIES**

25 1. Darlene Casimir is a resident of Bellingham, Whatcom County, Washington.
26 She is the daughter of deceased person Alvin Casimir, Jr. Darlene Casimir is the duly
appointed qualified and acting Personal Representative of the Estate of Alvin Casimir,
Jr., deceased (hereinafter "Plaintiff"). The probate of said Estate is filed as Whatcom

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COMPLAINT AND DEMAND FOR JURY TRIAL - pg. 1

1 County Cause No. 12-4-00266-9.

2 2. Defendant Remington Arms Company, LLC. (hereinafter "Remington") is a
3 Delaware Corporation and is authorized to do business in the State of Washington.
4 Service should be made upon its registered agent, CT Corporation System, 1801 West
5 Bay DR NW, Suite 206, Olympia, Washington 98502, unless Defendant Remington
6 Arms Company, LLC, waives service pursuant to Rule 4(d), Fed. Rule Civ. Proc.

7 3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware
8 Corporation not authorized to do business in the State of Washington, so service should
9 be made at its corporate office at 1007 N. Market Street, M10608 Wilmington, Delaware
10 19801 or upon the Washington Secretary of State pursuant to RCW 23B.15.100.

11 4. Defendant E. I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a
12 Delaware Corporation and is not authorized to do business in the State of Washington, so
13 service should be made at its corporate office at 1000 Market Street, Room 8042, DuPont
14 Building, Wilmington, Delaware, 19898 or upon the Washington Secretary of State
15 pursuant to RCW 23B.15.100.

16 **JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS**

17 5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C.
18 Sec. 1332 in that the Plaintiff is a citizen of the State of Washington, and that the
19 Defendants are all corporate citizens of the State of Delaware, and the amount in
20 controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

21 6. Venue is proper within the Western District of Washington because Plaintiff
22 is a resident of Whatcom County, Washington, and the incident which gives rise to this
23 complaint occurred within Whatcom County, Washington.

24 **COMMON ALLEGATIONS**

25 7. Darleen Casimir resides at 2935 Kinley Way, Bellingham, WA 98226 and is a
26 citizen of the State of Washington.

COMPLAINT AND DEMAND FOR JURY TRIAL - pg. 2

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1 8. Defendants, Remington, DuPont and SGPI were, and are now engaged in the
2 business of designing, manufacturing, assembling, distributing and selling firearms, and
3 in this regard did design, manufacture, distribute, sell and, place into the stream of
4 commerce, the Remington Model 700 ADL, .270 caliber bolt action rifle including the
5 action, fire control system, and safety, bearing Serial Number 2514981 (hereinafter
6 "rifle"), knowing and expecting that said rifle would be used by consumers and around
7 members of the general public.

8 9. Prior to November 30, 1993, DuPont owned 100% of the stock in the
9 company known as Remington Arms Company, Inc. (now SGPI). On or about
10 November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased
11 from DuPont substantially all of the income producing assets of Remington Arms
12 Company, Inc. (now known as SGPI), including the corporate name. The company
13 formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods
14 Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI
15 retained certain non-income producing assets, some with significant environmental and
16 other liabilities such that its net worth was reduced to a small fraction of its former so that
SGPI may not be able to pay reasonable judgments in this and similar litigation.

17 10. At all times pertinent to this action, Defendants SGPI and DuPont were and
18 are the alter ego of each other and in essence constitute one legal entity within which
19 SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in
20 that it is merely a corporate veil which insulates DuPont from liability for products
21 manufactured and sold by SGPI. DuPont exerted, and currently exerts extreme influence,
22 complete dominion and/or absolute control over the corporate activity and function of
23 SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge
24 designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or
25 otherwise work an injustice on Plaintiff herein and the general public. The conduct of
26 DuPont and/or SGPI has harmed or will harm Plaintiff and the general public, justifying
piercing of the corporate veil resulting in DuPont being liable for the acts and omissions

COMPLAINT AND DEMAND FOR JURY TRIAL - pg. 3

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1 of SGPI as they are in reality one legal entity.

2 11. All Defendants are so intertwined contractually for the liabilities, past,
3 present and future, of each other that they are, in fact, one entity and therefore, the
4 corporate veils of each company should be pierced to properly ascertain the responsible
5 parties for the allegations contained herein. The Asset Sale/Purchase Agreement
6 transferring the assets of SGPI to Remington and various revised or supplemental
7 agreements spreads responsibility and authority for product liability claims among the
8 three Defendants as it is unclear who bears the contractual liability for this claim.

9 12. Remington and/or DuPont expressly and impliedly agreed to assume certain
10 debts and responsibilities, including the product liability of SGPI by the terms of the
11 Asset/Sale Purchase Agreement as well as the continuing relationship between
12 Remington, DuPont and SGPI. Consequently, DuPont and/or Remington are the
13 corporate successors to the product liability claims asserted, now and in the future,
14 against SGPI, including this particular lawsuit.

15 13. Remington continues in the design, manufacture, distribution and sale of all
16 Remington Arms product lines including the Remington Model 700 bolt action rifle,
17 without any significant changes. Remington maintains the same plants, employees,
18 organization, contracts, customers, suppliers, advertising, products and name acquired in
19 the asset purchase. Remington acquired the entire company from SGPI through an
20 asset/sale purchase in order to avoid and/or limit the liability resulting from an outright
21 purchase of the stock from DuPont. Consequently, DuPont and/or Remington are the
22 corporate successors to the product liability claims asserted, now and in the future,
23 against SGPI, including this particular lawsuit.

24 14. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale
25 purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or
26 Remington for the debts of SGPI, particularly its product liability. Consequently, DuPont
and/or Remington are the corporate successors to the product liability claims asserted,
now and in the future, against SGPI, including this particular lawsuit.

COMPLAINT AND DEMAND FOR JURY TRIAL - pg. 4

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1
2 15. At all times pertinent to this action, SGPI was an agent of DuPont acting in the
3 course and scope of its agency relationship, thereby making its principal, DuPont, liable
4 for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by
5 adopting and ratifying SGPI's acts or omissions.

6 16. At all times pertinent to this action, agents of DuPont, acting within the course
7 and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and
8 omissions those of their principal, DuPont, either by exercising direct control over SGPI,
9 or by adopting and ratifying SGPI's acts or omissions.

10 17. On November 29, 2000, Plaintiff's father, Alvin Casimir, Jr. was hunting deer
11 with his step-father, Michael Wilson and Michael Wilson's son, Randy Wilson in
12 Whatcom County, Washington. Michael Wilson was using a Remington Model 700
ADL, .270 caliber bolt action rifle.

13 18. After concluding their hunting that day, the three men walked back to where
14 their truck had been parked. Michael Wilson was standing by the open passenger door of
15 the truck while Alvin Casimir, Jr. was standing by the open driver's door of the truck.
16 Michael Wilson's rifle was pointed at the interior of the truck as he was unloading his
17 rifle. As designed, there was only one way to unload that rifle. It required that Michael
18 Wilson have the safety in the "fire" position in order for the bolt to move. It further
19 required him to pull the bolt back (or open the bolt) in order to eject the round that was in
20 the chamber, which he did. Since the rifle had been loaded with a second round, Michael
21 Wilson then had to slide the bolt forward (or close the bolt) in order to chamber the
22 second round. He would then pull the bolt back so that the second round would eject
23 from the rifle just as the first one had done. However, as Michael Wilson was pushing the
24 bolt forward to chamber the second round, while his hand and fingers were nowhere near
25 the trigger, the rifle fired striking Alvin Casimir, Jr., who had begun to climb into the
26 driver's side of the truck, in the right pelvic region.

20. Michael and Randy Wilson called 911 as soon as possible and drove to the main roadway in order to meet the ambulance that was in route. The ambulance personnel arrived, began treating Alvin Casimir, Jr., and subsequently transported him to St. Joseph Hospital's ER. Alvin Casimir, Jr. had emergency surgery soon after arriving at St. Joseph Hospital where he lived for approximately 10 hours before he died as a result of an inability to control the bleeding.

22. Plaintiff Darlene Casimir as Personal Representative of the Estate of Alvin Casimir, Jr., is bringing this action to recover damages from Defendants for the death of Alvin Casimir, Jr. pursuant to RCW 4.20.010, *et seq.*, RCW 4.20.046, and RCW 4.20.060. Damages include medical and funeral expenses, lost of future income and support, Alvin Casimir, Jr.'s physical and psychological pain and suffering in anticipation of death, loss of support, care and comfort to statutory beneficiaries, the Estate's loss of future net earnings, and other general and special damages in an amount to be determined by the jury at the trial of this action.

COUNT I
STRICT LIABILITY

23. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 22 of the Complaint as though set forth at length herein.

24. The Remington Model 700 bolt action rifle, as designed, manufactured, sold

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1 and distributed by Defendants was in a defective condition, unreasonably dangerous to
2 the user, consumer or bystander, their property and the public in general.

3 25. Michael Wilson used the rifle in a reasonably foreseeable manner.

4 26. The rifle as designed, manufactured, sold and distributed by Defendants was
5 in substantially the same condition as when it was manufactured by Defendants.

6 27. The rifle was defective and unreasonably dangerous when it was sold by
7 Defendants and at the time it left their possession and control.

8 28. Alvin Casimir, Jr. was killed as a direct and proximate result of the defective
9 design, manufacture, sale and distribution of the rifle.

10 29. Plaintiff has suffered and is entitled to recover damages from Defendants as a
11 direct and proximate result of the defective design, manufacture, sale and distribution of
12 the rifle.

13 30. Alvin Casimir, Jr. suffered damages as a result of his injuries in advance of his
14 death, including conscious pain and suffering and expectation of his impending death.
15 Plaintiff is entitled to recover damages on behalf of Alvin Casimir, Jr.

16 31. Defendants' conduct in the design, manufacture, sale and distribution of the
17 Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and
18 malice, exhibiting a complete indifference or conscious disregard for the rights, safety
19 and welfare of users and consumers of the rifle and the general public, justifying punitive
20 or exemplary damages.

21 **COUNT II**

22 **STRICT LIABILITY FAILURE TO WARN**

23 32. Plaintiff incorporates herein by reference each and every allegation
24 contained in Paragraphs 1 through 31 of the Complaint as though set forth at length
25 herein.

26 33. The Remington Model 700 bolt action rifle was in a defective and

COMPLAINT AND DEMAND FOR JURY TRIAL - pg. 7

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1 unreasonably dangerous condition because of the failure to warn of its propensity to
2 unexpectedly discharge without pulling the trigger and the failure to properly instruct
3 about its care and maintenance.

4 34. Neither Michael Wilson nor Alvin Casimir, Jr. had any knowledge of such
5 defective conditions present in the rifle and had no reason to suspect it was unreasonably
6 dangerous prior to the inadvertent discharge which killed Alvin Casimir, Jr.

7 35. As a direct and proximate result of the failure to warn of the rifle's
8 propensity to unexpectedly discharge without pulling the trigger and failure to properly
9 instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover
10 damages from Defendants.

11 36. Alvin Casimir, Jr. suffered damages as a result of his injuries in advance of
12 his death, including conscious pain and suffering and expectation of his impending death.
13 Plaintiff is entitled to recover damages on behalf of Alvin Casimir, Jr.

14 37. Defendants' conduct in the failure to warn of the Remington Model 700 bolt
15 action rifle was outrageous, done with actual knowledge and malice, exhibiting a
16 complete indifference or conscious disregard for the rights, safety and welfare for users
17 and consumers of the rifle and the general public, justifying punitive or exemplary
18 damages.

19 COUNT III

20 NEGLIGENT DESIGN AND MANUFACTURE

21 38. Plaintiff incorporates herein by reference each and every allegation
22 contained in Paragraphs 1 through 37 of the Complaint as though set forth at length
23 herein.

24 39. Defendants negligently designed, manufactured, sold and distributed the
25 Remington Model 700 bolt action rifle in its defective and unreasonably dangerous
26 condition.

- 1 40. Defendants were negligent in one or more of the following respects:
- 2 a. In designing a fire control with a "trigger connector";
- 3 b. In designing a fire control with manufacturing tolerance build up;
- 4 c. In designing a fire control that failed to include preset engagement
- 5 between the trigger connector and the sear;
- 6 d. In designing a fire control that was susceptible to the accumulation of
- 7 debris, lubrication build up, and/or the accumulation of rust;
- 8 e. In designing a fire control that was susceptible to adjustment;
- 9 f. In designing a fire control that was susceptible to the presence of
- 10 manufacturing burrs or debris;
- 11 g. In designing a fire control that will fire without a pull of the trigger;
- 12 h. In designing a fire control that will fire when the safety is shifted from
- 13 the "safe" to the "fire" position;
- 14 i. In designing a fire control that will fire when the bolt is cycled;
- 15 j. In designing a fire control that will "jar off";
- 16 k. In designing a fire control that uses improper materials, including
- 17 "powdered metal" for the sear that are unusually susceptible to normal
- 18 wear and tear;
- 19 l. In manufacturing a fire control without proper or adequate quality
- 20 control procedures or checks;
- 21 m. In failing to warn users and handlers of the rifles of the potential for
- 22 firings in the absence of a trigger pull;
- 23 n. In failing to warn users and handlers of the risks and hazards of
- 24 improper maintenance of the rifle;
- 25 o. In failing to warn users and handlers of the risks and hazards of
- 26 adjustment of the fire control;
- p. In failing to inform or advise users and handlers of the proper
- procedures for maintenance of the rifle;

43. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights, safety and welfare of users and consumers of the rifle and the general public, justifying punitive exemplary damages.

NEGLIGENT FAILURE TO WARN

47. As a direct and proximate result of Defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from

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1 Defendants.

2 48. Alvin Casimir, Jr. suffered damages as a result of his injuries in advance of
3 his death, including conscious pain and suffering and expectation of his impending death.
4 Plaintiff is entitled to recover damages on behalf of Alvin Casimir, Jr.

5 49. Defendants' conduct in the design, manufacture, sale and failure to warn of
6 the dangerous propensities of the Remington Model 700 bolt action rifle was outrageous,
7 done with actual knowledge and malice, exhibiting a complete indifference or conscious
8 disregard for the rights, safety and welfare of users and consumers of the rifle and the
9 general public, justifying punitive or exemplary damages.

10 **COUNT V**
11 **SPOILIATION OF EVIDENCE**
12

13 50. Plaintiff incorporates herein by reference each and every allegation set forth
14 herein in Paragraphs 1 through 49 of the Complaint as though set forth herein.

15 51. Defendants knew that various items of evidence, including but not limited
16 to customer complaints, gun examination reports, committee minutes, internal
17 memoranda, testing results, tested rifles, returned rifles and fire control systems removed
18 from returned rifles would be relevant and probative, albeit damaging, in litigation
19 regarding whether or not the Remington Model 700 bolt action rifle is defective and
20 unreasonably dangerous.

21 52. Defendants had a duty to preserve said evidence for use in litigation so that a
22 fair and just resolution of the issues could be reached with all relevant evidence.

23 53. Defendants breached their duty owed to Plaintiff and Alvin Casimir, Jr. in
24 this litigation, as well as to other past and future Plaintiffs with similar claims, by
25 destroying relevant evidence including, but not limited to that evidence set forth above.

26 54. Defendants destroyed incriminating evidence with full knowledge of past,
pending, and future claims regarding the Remington Model 700 so as to prevent Plaintiff

1 in this and other similar litigation from obtaining access to same.

2 55. Defendants next adopted a written Record Retention Policy upon which they
3 relied to destroy incriminating evidence based upon a stated destruction schedule with
4 full knowledge that said evidence was relevant to past, pending, and future Remington
5 Model 700 claims.

6 56. Defendants destroyed relevant evidence in contravention of their Record
7 Retention Policy. Defendants knew that said evidence established that the Remington
8 Model 700 is defective and that Defendants knew of said defects.

9 57. Defendants knew that if the evidence which had been destroyed was made
10 available through the course of litigation discovery to Plaintiffs handling this and other
11 similar Model 700 cases, Defendants' respective liability would be enhanced or
12 confirmed, and their exposure to both actual and punitive damages would be significantly
13 greater.

14 58. This destruction of relevant evidence occurred when legal proceedings
15 regarding the Remington Model 700 were pending or reasonably foreseeable and long
16 after Defendants knew of the defective condition of the Model 700 and its liability for
17 same.

18 59. Defendants' conduct in destroying evidence was done with actual
19 knowledge in order to avoid liability for both actual and punitive damages.

20 60. Defendants' conduct was reprehensible in that Defendants intended to deny
21 Plaintiff a fair and impartial trial with all relevant evidence; defraud this Court and its
22 officers; continue the production of its defective Model 700 rifle; ignore the danger
23 resulting from millions of Remington Model 700 rifles already in the hands of the general
24 public; secure profits from their activities; and to generally deny justice to Plaintiff and
25 others similarly situated.

26 61. American jurisprudence through the common law provides redress for
grievances in this Court in the form of monetary damages assessed against Defendants
for the reduction in value of Plaintiff's claims and/or the increase in the cost of proving

1 them as the result of the destruction of relevant evidence. It also provides equitable relief
2 by striking Defendants' pleadings, prohibiting Defendants' arguments, resolving issues to
3 which destroyed evidence would be probative in favor of Plaintiff, or whatever other
4 action the court deems just and proper.

5 62. Plaintiff seeks monetary damages or in the alternative, injunctive relief as the
6 Court deems just and proper after reviewing the facts and the nature of the evidence
7 which has been destroyed.

8 63. WHEREFORE PREMISES CONSIDERED, Plaintiff prays for judgment
9 against Defendants as follows:

10 A. For compensatory, special and general damages against Defendants,
11 jointly and severally, in a fair and reasonable amount as the jury deems
12 just and equitable under the circumstances and commensurate with
13 Plaintiff's losses, in an amount in excess of Seventy-Five Thousand
14 Dollars (\$75,000).

15 B. For exemplary or punitive damages against Defendants, jointly and
16 severally, in an amount necessary to deter or prevent similar conduct in the
17 future.

18 C. For attorney's fees and costs incurred in this action as permitted by law.

19 D. For interest from the date of the incident as permitted by law.

20 E. For such further and additional relief as this Court deems just and proper.

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiff prays that the causes of action alleged herein be tried in this Court
23 before a jury of her peers.

Respectfully submitted,

**Brett Murphy Coats Knapp
McCandlis & Brown, PLLC**

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1
2
3 STATE OF WASHINGTON)
4) ss:
5 COUNTY OF WHATCOM)

6 The undersigned, after being first duly sworn upon oath depose and say:

7 That she is the plaintiff above-named; that she has read the above and foregoing
8 Complaint and Demand for Jury Trial, knows the contents thereof and believes the same
9 to be true and correct.

10 Darlene Casimir
11 DARLENE CASIMIR

12 SUBSCRIBED AND SWORN to before me this 18 day of June, 2012.



Brett Murphy
NOTARY PUBLIC in and for the
State of Washington
residing at Bellingham
Printed name: Brett Murphy
My Commission Expires: 8/15/13

IN THE CIRCUIT COURT OF MONROE COUNTY
STATE OF MISSISSIPPI

JOHNNY CHENEY

PLAINTIFF

VS.

CAUSE NO. 2012-318 - PFM

REMINGTON ARMS COMPANY, INC.,
REMINGTON ARMS COMPANY, LLC,
FREEDOM GROUP, INC., CERBERUS
CAPITAL MANAGEMENT, L.P., SPORTING
GOODS PROPERTIES, INC., and E. I.
DuPONT DE NEMOURS AND COMPANY

DEFENDANTS

COMPLAINT

COMES NOW the Plaintiff, Johnny Cheney, by and through counsel, and files this Complaint against the Defendants, Remington Arms Company, Inc., Remington Arms Company, LLC, Freedom Group, Inc., Cerberus Capital Management, L.P., Sporting Goods Properties, Inc., and E. I. Dupont De Nemours and Company, and for cause would show unto this Court the following:

JURISDICTION AND VENUE

I.

Jurisdiction and venue are proper within the Circuit Court of Monroe County, Mississippi because the incident which gives rise to this complaint occurred within Monroe County, Mississippi.

II.

The Plaintiff is an adult resident citizen of Lee County, Mississippi residing at 136 CR 1640, Tupelo, MS 38804.

III.

The Defendant, Remington Arms Company, Inc., (hereinafter "Remington Inc.") is a

Delaware Corporation not licensed to do business in the State of Mississippi so service should be made at its corporate office at 870 Remington Drive, Madison, NC 27025 or upon the Mississippi Secretary of State pursuant to Rule 4(d)(4) of the Mississippi Rules of Civil Procedure.

IV.

The Defendant, Remington Arms Company, LLC, (hereinafter "Remington LLC") is a Delaware Corporation not licensed to do business in the State of Mississippi so service should be made at its corporate office at 870 Remington Drive, Madison, NC 27025 or upon the Mississippi Secretary of State pursuant to Rule 4(d)(4) of the Mississippi Rules of Civil Procedure.

V.

The Defendant, Freedom Group, Inc., (hereinafter "Freedom Group") is a Delaware Corporation not licensed to do business in the State of Mississippi so service should be made at its corporate office at 870 Remington Drive, Madison, NC 27025 or upon the Mississippi Secretary of State pursuant to Rule 4(d)(4) of the Mississippi Rules of Civil Procedure:

VI.

The Defendant, Cerberus Capital Management, L.P., (hereinafter "Cerberus") is a Delaware Corporation not licensed to do business in the State of Mississippi so service should be made at its corporate office at CT Corporation System, 111 Eighth Street, New York, New York 10011 or upon the Mississippi Secretary of State pursuant to Rule 4(d)(4) of the Mississippi Rules of Civil Procedure.

VII.

The Defendant, Sporting Goods Properties, Inc., (hereinafter "SGPI") is a Delaware Corporation not licensed to do business in the State of Mississippi so service should be made at its

corporate office at 1007 Market Street, D-13039, Wilmington, Delaware 19898 or upon the Mississippi Secretary of State pursuant to Rule 4(d)(4) of the Mississippi Rules of Civil Procedure.

VIII.

The Defendant, E.I. DuPont De Nemours and Company, (hereinafter "DuPont") is a Delaware Corporation licensed to do business in the State of Mississippi so service should be made to its registered agent for service of process, CT Corporation System 645 Lakeland East Drive, STE 101, Flowood, Mississippi 39232.

FACTS

IX.

The Defendants were and/or are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell and place into the stream of commerce, the Remington Model 700 bolt action rifle including the action, fire control system, and safety, bearing Serial No. E6638185 (hereinafter "rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

X.

Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. On or about November 30, 1993, Remington Arms Acquisition Corporation, Inc. (RACI) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc, including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc. (SGPI), and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former value so that SGPI may not be able to pay reasonable

judgments in this and similar litigation.

XI.

At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in that it is merely a corporate veil, which insulates DuPont from liability for products manufactured and sold by SGPI. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on the Plaintiff herein and the general public. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiff and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one legal entity.

XII.

Defendant, Cerberus Capital Management, L.P. (Cerberus) formed the holding company of Freedom Group for its firearm acquisitions, including Remington Inc. and/or Remington LLC. Defendants, Remington Arms Company, LLC (Remington LLC) and/or Remington Arms Company, Inc. (Remington Inc.), were acquired by Defendants, Freedom Group and Cerberus. Freedom Group is a firearms manufacturing holding company which acquired Remington Inc. and/or Remington LLC and is wholly owned by Cerberus Capital Management, L.P. (Cerberus).

XIII.

At all times pertinent to this action Defendants, Freedom Group and Cerberus were and are the alter ego of each other and in essence constitute one legal entity in which Freedom Group

operates as a division of Cerberus. The separate incorporation of Freedom Group is a sham in that it is merely a corporate veil, which insulates Cerberus from liability for products manufactured and sold by Freedom Group. Cerberus exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of Freedom Group. Cerberus' continued operation of Freedom Group as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on the Plaintiff herein and the general public. The conduct of Cerberus and/or Freedom Group has harmed or will harm Plaintiff and the general public, justifying piercing of the corporate veil resulting in Cerberus being liable for the acts and omissions of Freedom Group as they are in reality one legal entity.

XIV.

All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The various revised or supplemental purchases, agreements, etc. spreads responsibility and authority for product liability claims among all Defendants as it is unclear who bears the contractual or actual liability for this claim.

XV.

All Defendants expressly and impliedly agreed to assume certain debts and responsibilities based on prior actions, prior purchase agreements as well as continuing relationships involved. Consequently, Remington Inc., Remington LLC, DuPont and SGPI are the corporate successors to the product liability claims asserted, now and in the future, against Freedom Group and Cerberus, including this particular lawsuit.

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XVI.

Remington Inc. and/or Remington LLC continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired over the years by each of the various Defendants.

XVII.

All Defendants have acted fraudulently with respect to the asset sales and purchases and the sale, purchase and formation of the entities to avoid and/or limit their responsibility for the Remington products and resulting product liability claims.

XVIII.

At all times pertinent to this action, SGPI was an agent of DuPont, acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

XIX.

At all times pertinent to this action, Freedom Group was an agent of Cerberus, acting in the course and scope of its agency relationship thereby making its principal, Cerberus, liable for all of Freedom Group's acts and omissions, either by exercising direct control over Freedom Group, or by adopting and ratifying Freedom Group's acts or omissions. At all times pertinent to this action,

agents of Cerberus, acting within the course and scope of their agency relationship, controlled Freedom Group, thereby making Freedom Group's acts and omissions those of their principal, Cerberus, either by exercising direct control over Freedom Group, or by adopting and ratifying Freedom Group's acts or omissions.

XX.

On Sunday, December 18, 2011, the Plaintiff, Johnny Cheney, was deer hunting with his son, Jonathan Cheney, on the Renfroe place on Highway 8 in Monroe County, Mississippi. Johnny was leaving the morning hunt at approximately 9:00 a.m. in anticipation of attending church services. Upon approaching his vehicle, Johnny was carrying his rifle (Remington Model 700 Rifle, 30-06 Caliber, Serial No. E6638185) using a sling over his right shoulder. He removed the rifle from his shoulder and attempted to unload the gun. He moved his left hand under the magazine and moved his right to the bolt of the gun. Upon firmly grabbing the bolt of the gun, the gun discharged without Johnny touching the trigger. The bullet went through his great toe on his right foot.

XXI.

Plaintiff Johnny Cheney has experienced multiple surgeries and may have to incur additional surgeries. Plaintiff Johnny Cheney is bringing this action to recover damages from Defendants arising from Plaintiff's personal injuries caused by this incident. Plaintiff Johnny Cheney's damages include past and future medical and related expenses, past and future mental and physical pain and suffering, loss of earnings, loss of earning capacity, permanent disability, disfigurement and other general and special damages in an amount to be determined by the jury at trial of this action.

THEORIES OF LIABILITY

STRICT LIABILITY

XXII.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through XXI. of the Complaint as though actually set forth herein.

XXIII.

The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

XXIV.

Plaintiff Johnny Cheney used the rifle in a reasonably foreseeable manner.

XXV.

The rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

XXVI.

The rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

XXVII.

Plaintiff Johnny Cheney was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

XXVIII.

Plaintiff has suffered and is entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

XXIX.

Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a

complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

STRICT LIABILITY FAILURE TO WARN

XXX.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through XXIX. of the Complaint as though actually set forth herein.

XXXI.

The Remington Model 700 bolt action rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

XXXII.

Plaintiff had no knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured Johnny Cheney.

XXXIII.

As a direct and proximate result of the failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendants.

XXXIV.

Defendants' conduct in the design, manufacture, sale, distribution and failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary

damages.

NEGLIGENT DESIGN AND MANUFACTURE

XXXV.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through XXXIV. of the Complaint as though actually set forth herein.

XXXVI.

Defendants negligently designed, manufactured, sold and distributed the Remington Model 700 bolt action rifle in its defective and unreasonably dangerous condition.

XXXVII.

As a direct and proximate result of Defendants' negligent design, manufacture, sale and distribution of the rifle, Plaintiff has suffered and is entitled to recover damages from Defendants.

XXXVIII.

Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

NEGLIGENT FAILURE TO WARN

XXXIX.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through XXXVIII. of the Complaint as though actually set forth herein.

XL.

Defendants negligently failed to warn of the Remington Model 700 bolt action rifle's

propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

XLI.

Plaintiff had no knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge, which injured Johnny Cheney.

XLII.

As a direct and proximate result of Defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendants.

XLIII.

Defendants' conduct in the design, manufacture, sale, distribution and failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

BREACH OF WARRANTY

XLIV.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through XLIII. of the Complaint as though actually set forth herein.

XLV.

Defendants expressly and impliedly warranted to Plaintiff and the public that the Remington Model 700 bolt action rifle was of merchantable quality, fit, safe and proper for the

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ordinary purposes for which it was intended.

XLVI.

Plaintiff reasonably relied upon said express and implied warranties made by Defendants.

XLVII.

Defendants did not warn or give notice to Plaintiff or the public in any manner that the design and manufacture of the Model 700 bolt action rifle was such that it was susceptible to unexpected discharges, without pulling the trigger, nor did Defendants properly instruct on the care and maintenance of the rifle.

XLVIII.

Defendants breached said expressed and implied warranties in that the rifle was not fit and suitable for its intended purpose, nor was it of merchantable quality.

XLIX.

As a direct and proximate result of the Defendants' breaches of warranty, Plaintiff has suffered and is entitled to recover damages from Defendants.

L.

Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

FAILURE TO RECALL OR RETROFIT

LI.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through L. of the Complaint as though actually set forth herein.

LII.

Defendants knew, or should have known, in the exercise of ordinary care or diligence of the defects in the fire control system and safety of the Remington Model 700 bolt action rifle but took no action to warn, recall, retrofit, repair and/or otherwise remedy the unreasonably dangerous condition of the rifle and/or make it reasonably safe for its ordinary and intended use.

LIII.

As a direct and proximate result of the Defendants' failure to recall or retrofit, Plaintiff has suffered and is entitled to recover damages from Defendants.

LIV.

The defect in the Remington Model 700 bolt action rifle was substantial, obvious, notorious and known to Defendants to the extent that their conduct in the design, manufacture, sale and distribution of the Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive and exemplary damages.

NEGLIGENT AND/OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

LV.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through LIV. of the Complaint as though actually set forth herein.

LVI.

Defendants negligently and/or intentionally inflicted serious and severe emotional pain, suffering, grief and distress on Plaintiff by: their design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle; their failure to warn that the rifle was susceptible to

unexpected discharges without a trigger pull; their failure to properly instruct in the care and maintenance of the rifle; and by Defendants' failure to recall or retrofit the Model 700 bolt action rifle.

LVII.

The defect in the Remington Model 700 bolt action rifle was substantial, obvious, notorious and known to Defendants to the extent that their conduct in the design, manufacture, sale, distribution, failure to warn and failure to recall or retrofit the Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive and exemplary damages.

SPOILIATION OF EVIDENCE

LVIII.

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs I. through LVII. of the Complaint as though actually set forth herein.

LIX.

Defendants knew that various items of evidence including but not limited to customer complaints, gun examination reports, committee minutes, internal memoranda, and fire control systems removed from returned rifles would be relevant and probative, albeit damaging, in litigation regarding whether or not the Remington Model 700 bolt action rifle is defective and unreasonably dangerous.

LX.

Defendants had a duty to preserve said evidence for use in litigation so that a fair and just resolution of the issues can be reached with all relevant evidence.

LXI.

Defendants breached its duty owed to Plaintiff in this litigation, as well as to other past and future Plaintiffs with similar claims, by destroying relevant evidence including, but not limited to that evidence set forth above.

LXII.

Defendants first destroyed incriminating evidence with full knowledge of past, pending and future claims regarding the Remington Model 700 so as to prevent Plaintiffs in this and other similar litigation from obtaining access to same.

LXIII.

Defendants next adopted a written Record Retention Policy upon which it relied to destroy incriminating evidence based upon its stated destruction schedule with full knowledge that said evidence was relevant to past, pending and future Remington Model 700 claims.

LXIV.

Defendants even destroyed relevant evidence in contravention of its stated Record Retention Policy because it knew that said evidence established that the Remington Model 700 is defective and that Defendants knew of said defects.

LXV.

Defendants knew that if the evidence which has been destroyed was made available through the course of litigation discovery to Plaintiffs handling this and other similar Model 700 cases, the inability would be confirmed, and their exposure to both actual and punitive damages would be significantly greater.

LXVI.

This destruction of relevant evidence occurred when legal proceedings regarding the

Remington Model 700 were pending or reasonably foreseeable and after Defendants knew of the defective condition of the Model 700 and its liability for same.

LXVII.

Defendants conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

LXVIII.

Defendants conduct was reprehensible in that Defendants intended to: deny Plaintiff a fair and impartial trial with all relevant evidence; defraud this Court and its officers; continue the production of its defective Model 700 rifle; ignore the danger resulting from millions of Remington Model 700 rifles already in the hands of the general public; secure profits from their activities; and to generally deny justice to these Plaintiffs and others similarly situated.

LXIX.

American jurisprudence through the common law provides redress for greivances in this Court in the form of either; monetary damages assessed against Defendants for the reduction in value of Plaintiff's claims or the increase in the cost of proving them as the result of the destruction of relevant evidence or equitable relief by striking Defendants pleadings, prohibiting their arguments or witnesses or resolving issues to which destroyed evidence would be probative in favor of the Plaintiff; or whatever other action the court deems just and proper.

LXX.

Plaintiff seeks monetary damages or in the alternative whatever injunctive relief as the Court deems just and proper after review of the facts and the nature of evidence which has been destroyed.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff, Johnny Cheney, brings this Complaint and would respectfully pray for relief on this Court as follows:

1. For special and general damages against the Defendants, jointly and severally, in the amount of One Million Dollars (\$1,000,000.00), or as determined by the jury at trial.
2. For punitive or exemplary damages against the Defendants in an amount of Twenty Million Dollars (\$20,000,000.00), or as necessary to deter or prevent similar conduct in the future.
3. For attorneys fees and costs of litigation incurred in this action as permitted by law.
4. For interest from the date of the accident as permitted by law.
5. For such other further and additional relief as this Court deems just and proper.

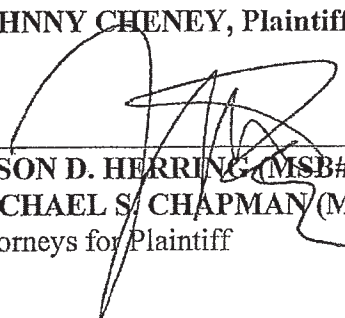
JURY TRIAL DEMANDED

That Plaintiff's causes of action be tried in this Court before a jury of his peers.

RESPECTFULLY SUBMITTED, this the 19th day of December, 2012.

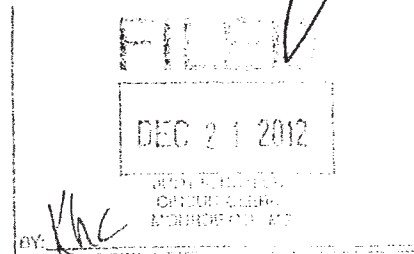
JOHNNY CHENEY, Plaintiff

By:


JASON D. HERRING (MSB#99096)
MICHAEL S. CHAPMAN (MSB#103227)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

**CHAD L. HALL and DUSKY D. HALL §
Individually and as next friends of §
BRANDEN R. HALL, §
Plaintiffs, §**

CIVIL ACTION NO. 1:12-CV-546

vs. §

JURY DEMANDED §

**REMINGTON ARMS CO., LLC. §
Defendant. §**

Plaintiffs' First Amended Original Complaint

Randy W. Williams, Trustee of the bankruptcy estate of Chad L. Hall and Dusty D. Hall and Chad L. Hall and Dusty D. Hall as Next Friends of Branden R. Hall, Plaintiffs, file this lawsuit against Remington Arms Company, Inc., Defendant, for personal injuries and for cause of action would show as follows:

II. Parties

2.1. Randy W. Williams ("Trustee") is the duly appointed Chapter 7 Trustee in the Chapter 7 bankruptcy case of Chad L. Hall and Dusky D. Hall, Case No. 10-41293-H5-7, pending before the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

2.2. Plaintiff, Chad Hall, as next friend of Branden Hall, is an individual and domiciled in Walker County, Texas.

2.3. Plaintiff, Dusky Hall, as next friend of Branden Hall, is an individual and domiciled in Walker County, Texas.

2.4. Branden R. Hall, is Chad and Dusky Hall's minor child and is domiciled in Walker County, Texas.

2.5. Defendant, Remington Arms Company, Inc., is a foreign corporation organized and

existing under the laws of the State of Delaware, and has appeared and answered herein

III. Jurisdiction

3.1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

3.2. Plaintiff incorporates herein by reference as if fully set forth at length herein Section II. Parties, *supra*, and Section V. Facts, *infra*, as if fully set forth at length herein.

IV. Venue

4.1. Venue is proper in Jefferson County, Texas because this is a suit against a non-resident that engages in interstate commerce that does not maintain a principal place of business in Texas.

4.2. Plaintiff incorporates herein by reference as if fully set forth at length herein Section II. Parties, *supra*, and Section V. Facts, *infra*, as if fully set forth at length herein.

V. Facts

5.1. On or about October 23, 2010, Chad Hall (“Chad”) and Michael Biesiada (“Biesiada”) were hunters on property operated by the Cedar Creek Hunting Club in Trinity County near Groveton, Texas (“Deer Lease”).

5.2. At approximately 5:30 a.m., Biesiada was in his cabin on the Deer Lease and began to check his Remington 700 bolt action .30-06 rifle to determine if it was loaded.

5.3. When Biesiada touched the handle of the bolt, the rifle discharged and the bullet traveled through the wall of Biesiada’s cabin and traveled through the wall of an adjacent mobile home also on the Deer Lease and occupied by Chad.

5.4. Chad was sitting on the commode when the bullet from Biesiada’s high powered rifle exploded through the wall. Chad heard the explosion and glimpsed debris flying and immediately attempted to avoid injury by pushing himself off of the commode and into the

adjacent bedroom by the use of both his legs and hands. However, when Chad put his right hand on his right thigh, it entered a hole in his right quadriceps that extended from nearly his knee to his torso. When he instinctively looked down to determine how bad he had been injured, he saw a tremendous amount of blood rushing from his body and knew his life depended on immediate help.

5.5. Chad immediately began screaming for help as he pulled himself approximately 8 feet from the bathroom to the bedroom door. Fortunately, Mr. Hall's brother Lance Hall ("Lance") and Sloan McCain ("McCain"), both registered nurses, were also staying in the mobile home and quickly came to Chad's aid.

5.6. When Lance approached his brother, he saw Chad lying in a pool of blood and blood trailing behind Chad to the bathroom.

5.7. From their training and experience, Lance and McCain knew Chad did not have long to live unless they could stop, or at least slow, the blood rushing from Chad's right leg. Lance and McCain could only slow the flow of blood. Due to the location of the Deer Lease and amount of blood Chad had and was continuing to lose, McCain and others on the Deer Lease that had now arrived to render aid helped Lance put Chad in the back of a vehicle and rush him to East Texas Medical Center of Trinity, Texas ("ETMC Trinity").

5.8. After Chad arrived at ETMC Trinity, he underwent an initial surgery to close the wound and stabilize him. A vacuum pump was installed to remove fluid and reduce the risk of infection.

5.9. After stabilizing him, ETMC Trinity informed the family that Chad would have to be transferred to a facility with a trauma 1 surgical team due to the severity of the injury. Chad was transferred to East Texas Medical Center of Tyler, Texas ("ETMC Tyler").

5.10. In the meantime, Lance went back to camp. Biesiada admitted to Lance that his rifle had discharged causing Chad's injuries.

5.11. A few days later at ETMC Tyler, Chad underwent a second surgery to remove dead tissue and replace the vacuum pump.

5.12. Chad then suffered yet another surgery to remove even more dead tissue and the bullet. A skin graft was necessary to cover the tremendous hole left after removal of the dead tissue caused by the high powered bullet. Chad lost the entirety of a major muscle in his right quadriceps.

5.13. Chad missed over a month from work as the result of the shooting.

5.14. The removal of the dead tissue has resulted in the impairment of the beauty, symmetry and appearance of Chad's right thigh wherein it appears unsightly, misshaped, imperfect and deformed. Chad has and will continue to suffer the embarrassment of the disfigurement to his right thigh into the future.

5.15. As has already been recommended, Chad needs a fourth surgery to close the wound and alleviate some of the constant pain Chad has suffered since the shooting. Even with the fourth surgery, Chad will have a 28% permanent partial impairment. He will have a misshapen right thigh and significant scar from the wound and skin graft for the remainder of his life. Although hopefully reduced, he will suffer pain for the rest of his life.

5.16. The fourth surgery will require Chad to miss approximately four weeks of work and to undergo painful rehabilitation.

5.17. There is no way to replace the muscle tissue that Chad has lost.

5.18. Chad will have pain his entire life as the result of the removal of muscle tissue in his right thigh.

5.19. While Chad has returned to work, Chad has constant pain, and he is actively seeking other employment that will not require as much use of his legs.

5.20. The injury has left Chad unable to care for his ranch, and of those tasks he can still do, it takes him longer to complete them than before the shooting.

5.21. Chad has lost or been limited in his ability to enjoy day to day activities such as, but not limited to, hobbies and other daily joys of life like playing in the yard with his son, taking care of chores around the yard, and pursuing his passion of hunting.

5.22. Branden Hall, ("Branden") has lost Chad's love, affection, protection, emotional support, services, companionship, care, and society as a result of Chad's debilitating injury and will in all likelihood continue to suffer these losses into the future as the result of Chad's injury.

5.23. Chad suffers from nightmares and flashbacks about the shooting. The long-term pain Chad lives with has resulted in depression, irritability and a loss of hope about the Halls' future.

5.24. Defendant, Remington Arms Company, Inc. ("Remington"), is and at all times relevant to the matter *sub judice* engaged in the business of designing, manufacturing, assembling, distributing and selling firearms and, more specifically, designed, manufactured, distributed, and place into the stream of commerce the rifle that improperly discharged and struck Chad.

5.25. Since the 1940's, Remington has manufactured and sold firearms with the Walker fire control system ("WFCS"). Remington has done so with full knowledge that the WFCS contains a dangerously defective design that will allow high powered rifles, such as the one that shot Chad, to unexpectedly discharge upon release of the safety, movement of the bolt or when jarred or bumped. Remington manufactured and sold the rifle in question knowing and expecting that it would be used by consumers and around members of the general public.

5.26. For decades, Remington manufactured and sold rifles containing the defective WFCS just

like the one in the rifle held by Biesiada on October 23, 2010 that discharged and permanently altered the Halls' lives.

VI. Causes of Action

6.1. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein at length.

A. Strict Liability

6.2. Remington is strictly liable to the Halls for designing, manufacturing and placing into the stream of commerce the Remington Model 700 bolt action rifle, which was unreasonably dangerous for its reasonably foreseeable uses because the rifle in question contains a design defect in the fire control system resulting in the weapons manufactured with such fire control systems to unexpectedly discharge without pulling the trigger which is what occurred on October 23, 2010 to Biesiada that was the producing cause of the Halls' injuries.

6.3. The Remington 700 bolt-action rifle was in a defective and unreasonably dangerous condition because of Remington's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger.

6.4. Chad had no knowledge of this defective condition present in the rifle and had no knowledge that Biesiada had such an unreasonably dangerous weapon prior to the inadvertent discharge.

6.5. As a direct result of Remington's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger, Chad and his family have suffered and are entitled to recover damages from Remington.

B. Negligence

6.6. Remington has had at all times relevant to this lawsuit a duty to design and manufacture

weapons that do not unexpectedly and/or improperly discharge. Remington knew, or in the exercise of ordinary care should have known, that the Remington 700 bolt action .30-06 model rifle was defective and unreasonably dangerous to anyone around the product while being used for the purpose and in the manner it was intended to be used.

6.7. As a result of Remington's actions or inaction to remedy the defective WFCS, Remington breached its duty of care. The result of this breach was a rifle in the hands of Biesiada that unexpectedly discharged and directly and proximately caused the personal injuries suffered by the Halls.

6.8. Remington knew, or in the exercise of ordinary care, should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing the rifle from unexpectedly discharging and causing injuries like those suffered by the Halls. Remington, further, had actual knowledge of the means of designing such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, Remington failed to equip the product in question with an adequate fire control system to prevent the injuries to the Halls.

6.9. Remington knew or, in the exercise of ordinary care, should have known of the unintended discharges that plague its Model 700 bolt action rifles such as the one in question and its other rifles, but Remington failed to notify or warn owners or the general public prior to the Halls' injuries.

6.10. Remington owed the Halls the duty of reasonable care when it designed, manufactured, marketed and sold the product in question. Remington violated its duty and was negligent in the particulars set forth above.

6.11. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and

damages to the Halls.

VII. Damages

7.1. Plaintiff incorporates herein by reference all of the foregoing paragraphs as if fully set forth at length.

7.2. As a direct and proximate result of the occurrence made the basis of this lawsuit, Chad has and will lose income from the gunshot wound to his right thigh requiring three painful surgeries including a skin graft. Chad also requires yet a fourth surgery to close the open hole in his right thigh as the result of the removal of dead tissue from the gunshot wound. After the fourth surgery, Chad will have a 28% permanent partial impairment and suffer pain for the rest of his life.

7.3. As a result of Defendant's acts and/or omissions, the Chad has experienced physical, emotional and psychological pain, suffering and disfigurement in the past and in all reasonable probability will sustain these injuries in the future.

7.4. Chad has lost an entire muscle in his right quadriceps thereby causing extensive physical impairment, incapacity and disability in the past, and extensive physical impairment, incapacity and disability in the future.

7.5. The Halls have incurred other pecuniary damages in the past and in reasonable probability will continue to suffer pecuniary loss in the future, including, but not limited to, loss of earnings, benefits and earning capacity and the ability to conduct household tasks and other aspects of personal care and service.

7.6. The Halls have suffered the loss of consortium in that Chad's injury has resulted in pain, anger, frustration, depression and hopelessness resulting in a loss of love, affection, protection, emotional support, companionship, care and society in the past and will in all likelihood continue

to suffer into the future.

7.7. The Halls have suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future as a result of Chad's injuries.

7.8. The Halls have incurred reasonable and necessary medical expenses in the past and based upon reasonable medical probability will incur reasonable and necessary medical expenses in the future.

7.9. The above and foregoing acts and/or omissions of Remington have caused damages to the Halls in the amount of \$1.5 million dollars.

VIII. Exemplary Damages

8.1 Plaintiff incorporates herein by reference all of the foregoing paragraphs as if fully set forth at length.

8.2 Remington's actions, when viewed objectively from the standpoint of the actor at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the general public, including the Halls. Remington had actual subjective awareness of the risk involved in utilizing the WFCM but, nevertheless, proceeded with conscious indifference to the rights, safety, and welfare of others.

8.3 Therefore, exemplary damages should be assessed against Remington in the amount of \$4.5 million dollars to deter it from disregarding the rights, safety and welfare of the general public.

IX. Jury Demand

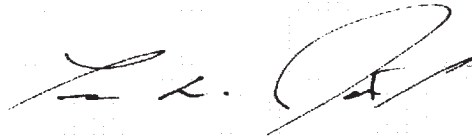
9.1 Plaintiffs have demanded a jury trial.

X. Prayer

For these reasons, Plaintiffs, Chad Hall and Dusky Hall, individually and as Next Friends of Branden R. Hall, ask that citation issue for Defendant, Remington Arms Company, Inc., requiring it to appear and answer the allegations alleged herein, and after a final trial on this matter, the Court enter judgment for the Halls against the Defendant for the damages requested herein, exemplary damages, prejudgment and post-judgment interest, costs of court and for all other relief to which the Halls demonstrate they are justly entitled.

Respectfully submitted,

ADAIR & MYERS, P.L.L.C



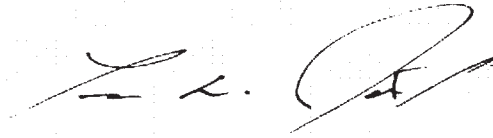
By: _____

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to and in conformity with Fed. R. Civ. P., Rules 5(a) and (b), by signing below I hereby certify that on the 30th day of November, 2012, I have served a copy of Plaintiffs' First Amended Complaint pursuant to Rule 12(B)(6) with the attached exhibits and orders (if any) by electronic transmission pursuant to the CM/ECF system [Fed. R. Civ. P., Rules 5(b)(2)(D) & (E) & 5(b)(3), and Local Rule CV-5(a) and (d)] upon the following unrepresented parties (if any) and attorneys of records.



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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

BRADLEY HUMPHREY and DIANNA
HUMPHREY,)
)
)
Plaintiffs,)
)
vs.)
)
REMINGTON ARMS COMPANY, L.L.C.,)
SPORTING GOODS PROPERTIES, INC.,)
and E. I. DuPONT DE NEMOURS AND)
COMPANY,)
)
Defendants.)

Cause No. _____

**COMPLAINT AND
DEMAND FOR JURY
TRIAL**

COMES NOW the Plaintiffs, Bradley Humphrey and Dianna Humphrey, by
and through their attorney, and for their claim for relief against Defendants,
Remington Arms Company, L.L.C., Sporting Goods Properties, Inc., and E.I.
DuPont de Nemours and Company, state and allege as follows:

Humphrey Complaint and Demand For Jury Trial
Page 1 of 25

PARTIES

1. Plaintiffs, Bradley Humphrey (hereinafter "Brad Humphrey") and Dianna Humphrey (hereinafter "Deena Humphrey"), are husband and wife, and are residents of Teton County, State of Montana.

2. Defendant Remington Arms Company, L.L.C., (hereinafter "Remington") is a Delaware Corporation and is not authorized to do business in the State of Montana.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware Corporation and is not authorized to do business in the State of Montana.

4. Defendant E. I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and is authorized to do business in the State of Montana. DuPont's registered agent is C T Corporation System which is located at 208 North Broadway Suite 313, Billings, Yellowstone County, Montana.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that the Plaintiffs are citizens of the State of Montana, and that the Defendants are all corporate citizens of the State of Delaware, and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the Billings Division because Defendant E.I. DuPont de Nemours and Company is a corporation incorporated in a state other

than Montana, and it's registered agent is located in Yellowstone County, Montana.

COMMON ALLEGATIONS

7. Plaintiffs, Brad Humphrey and Deena Humphrey reside in Fairfield, Montana 59436, and are citizens of the State of Montana.

8. Defendants, Remington, DuPont and SGPI were, and are now, engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700 ADL, 30-06 caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number 6656106 (hereinafter "Rifle"), knowing and expecting that said Rifle would be used by consumers and around members of the general public.

9. Prior to December 1, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI). On or about December 1, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing

assets, some with significant environmental and other liabilities, such that its net worth was reduced to a small fraction of its former worth so that SGPI will not be able to pay reasonable judgments in this and similar litigation.

10. At all times pertinent to this action, Defendants SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity within which SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which attempts to insulate DuPont from liability for products manufactured and sold by SGPI. DuPont exerted and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one legal entity.

11. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The Asset Sale/Purchase

Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spread responsibility and authority for product liability claims among the three Defendants as it is unclear who bears the contractual liability for this claim. Remington, DuPont and SGPI jointly defend product liability claims involving Remington rifles under the terms of a Joint Defense Coordination Agreement.

12. Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement and subsequent agreements as well as the continuing relationship between Remington, DuPont and SGPI. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

13. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase. Remington acquired the entire company from SGPI through an asset/sale purchase in order to attempt to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont. Consequently, DuPont and/or

Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

14. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

15. At all times pertinent to this action, SGPI was an agent of DuPont acting in the course and scope of its agency relationship, thereby making its principal, DuPont, liable for all SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

16. At all times pertinent to this action, agents of DuPont acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

17. Defendants manufactured, marketed, and distributed the Rifle, including the action, fire control system, and safety. The Rifle contains the "Walker" fire control system.

18. The Rifle, with the Walker fire control system, is unreasonably dangerous and defective in that it may, and in this instance did, fire without a trigger pull or trigger activation upon release of the safety, movement of the bolt, or when jarred or bumped.

19. Plaintiff Brad Humphrey purchased the Rifle new and owned the Rifle on November 26, 1989.

20. Plaintiff Brad Humphrey was unaware of the defective nature and unreasonably dangerous propensity of the Rifle to fire without a trigger pull.

21. On November 26, 1989, Plaintiff Brad Humphrey was hunting elk and deer in the Millegan area of Cascade County, Montana, with his son, Brian Humphrey (hereinafter "Brian Humphrey") and his stepson, Paul Travis Kohr (hereinafter "Trev Kohr"). It snowed heavily and was cold on the day of the hunt.

22. Plaintiff Brad Humphrey was driving his 1986 Ford SuperCab pickup on the day of the hunt. Brian Humphrey left the pickup to hunt a buck deer. Brad Humphrey and Trev Kohr saw some elk and drove in the pickup in the direction of the elk.

23. Trev Kohr got out of the pickup and took several shots at an elk with the Rifle. Trev Kohr got back into the pickup and Brad Humphrey and Trev Kohr tried to head off the elk. Trev Kohr got out of the pickup a second time to go after the elk. The elk were moving and Brad Humphrey told Trev Kohr to get back into

the truck because he thought there was a better place to try to head them off. Trev Kohr was getting back in the passenger side of the pickup when he slipped and the Rifle discharged. The bullet entered Brad Humphrey's right flank striking his spine and spinal cord. Brad Humphrey's legs and lower body were immediately paralyzed.

24. Trev Kohr helped Brad Humphrey out of the pickup and laid him in the snow to try to control the bleeding. Trev Kohr tried to drive the pickup but it got stuck. He then tried to put chains on the pickup but he was too shook up and upset and was unable to do so. Trev Kohr then ran several miles for help, crossing a creek more than once, ending up at Jack and Marion Mallery's ranch house. Jack or Marion Mallery called for emergency help. The bad weather prevented emergency personnel from getting to the scene. An emergency helicopter was finally able to get to Brad Humphrey approximately 4 ½ hours after he was shot.

25. Brad Humphrey was flown by helicopter to Deaconess Hospital in Great Falls, Montana. He underwent surgery and was hospitalized for several months. Brad Humphrey underwent numerous additional procedures and surgeries while in the hospital. Brad Humphrey has been a paraplegic since being struck by the bullet.

26. Brad Humphrey has been hospitalized numerous times as a result of complications from his injuries and paralysis. Brad Humphrey most recently had

his right leg amputated at the hip and is currently hospitalized at Benefis Hospital in Great Falls, Montana.

27. Brad Humphrey presumed that trigger activation occurred while his stepson was attempting to get into the pickup because he understood that firearms are designed to fire when the trigger is activated.

28. Brad Humphrey had no reason to suspect the firearm was defective or to make further investigation into this matter.

29. Sometime after October 2010, a relative told Brad Humphrey about the CNBC television program entitled "Remington Under Fire."

30. The CNBC program "Remington Under Fire" documented design defects with Remington Model 700 rifles. Specifically, Remington Model 700 rifles often discharge without a trigger pull. The program provided Brad Humphrey with new information which allowed him to re-evaluate the accident and how it occurred.

31. With this information, Brad Humphrey was able to consider the Rifle's defect as the cause of the accident for the first time.

32. Prior to being told about this program, Plaintiffs had no actual knowledge of the Remington Model 700 rifle's design defect, nor of its unique design component, the trigger connector, and could not have discovered these defects by using reasonable diligence.

33. Defendants' fraudulent concealment of material information concerning design, manufacturing, and other defects in the Remington Model 700 rifled prevented Plaintiffs from discovering their claims against Defendants.

34. Defendants' internal records show that Defendants have received thousands of customer complaints that Remington rifles containing the Walker fire control have fired without a trigger pull. The total number of complaints is unknown because Defendants' records also show that they have destroyed at least some of the records involving customer complaints. Between 1992 and 2004, Defendants have acknowledged receiving 3,273 customer complaints of Remington rifles with Walker fire controls firing without a trigger pull, which is an average of approximately 5 unintended firings per week for 13 years. This figure represents an average of those unintended firings which were documented reports to Remington by customers. Based upon information and belief, the actual number of unintended firings is much higher.

35. According to Defendants, they have sold approximately 5 million Remington Model 700 rifles with the Walker fire control since 1962. All of these bolt action rifles containing the Walker fire control are unreasonably dangerous because, although not all of them have fired without a trigger pull, it is foreseeable that any or all of them could fire without a trigger pull under various foreseeable circumstances.

36. The Walker fire control was designed with an additional internal part called a “trigger connector.” The connector is “resiliently mounted”, which means that it is not affixed or attached to the trigger body. The connector is held in place only by the trigger return spring and the side plates of the enclosed housing. The connector separates from the trigger body each and every time the rifle is fired, creating a gap between the two individual parts. According to Defendants’ internal documents, it is foreseeable to Defendants that contaminants can become trapped inside the enclosed housing, such as field debris, manufacturing scrap, burrs from the manufacturing process, lubrication that congealed that was applied at the factory, other lubrication build up, or moisture can interfere with the reliable function of the trigger connector. Other factors that can restrict the proper retraction of the connector to secure and reliable sear support position include various tolerance stack up conditions that have resulted in a binding of the trigger body, and/or the trigger connector on the side plates of the housing, binding of the connector on the trigger body, interferences between the connector and sear, and salt bleed out from powder metal parts. Defendants’ records show that without a secure and reliable sear and connector engagement, the rifles can inadvertently discharge without a trigger pull.

37. The trigger connector feature used in the Walker fire control is unique in the world of firearms and has been exclusively used by Remington. No other modern firearm manufacturer has adopted this two (2) piece trigger construction.

38. Defendants have known that the Walker fire control can fire without a trigger pull since at least 1947 according to Remington's internal documents. The occurrence of safety related malfunctions have been so persistent and common that Defendants have created internal acronyms to use when discussing the various ways the rifles may fire without a trigger pull. Remington's records show that the most common malfunction is what Remington has termed a "FSR," which refers to a fire on safety release.

39. Defendants' records show that other acronyms created by Defendants to describe unintended firings (without a trigger pull) are "FOS", which refers to firing off safe; "JO," or "jar off", which refers to firing if the gun is jarred or bumped; "FBO", which refers to firing on bolt opening; "FBC", which refers to firing on bolt closing; and "fails to fire", which refers a failure of the rifle to fire when the trigger is intentionally pulled but the rifle then fires when the bolt or some other part of the rifle is touched.

40. Defendants have deceived Plaintiffs and the public by claiming they have no knowledge of the dangerous and defective conditions involving the use of Walker fire control. Specifically, Defendants have repeatedly falsely claimed that

the Model 700 rifle cannot fire without a trigger pull unless the Walker fire control has been improperly adjusted or the rifle has been improperly maintained.

Defendants have also falsely claimed that no one has ever been able to replicate the unintended firing of a Model 700 without a trigger pull unless the Walker fire control has been improperly modified or improperly maintained.

41. Defendants' internal documents, including memos, committee meeting minutes, testing records, research and development records, design change requests, process record change authorization forms, customer complaint memo's, gallery test failure reports, and gun examination reports, clearly show that the Walker fire control is dangerous and defective because it allows Remington bolt-action rifles, including the Model 700 rifles, to fire without a trigger pull under various foreseeable circumstances.

42. During Model 700 litigation, Defendants have routinely required broad protective orders before producing internal documents in discovery. Defendants routinely demand that all of their records be filed under seal with the court. Defendants insist that settlements be covered by confidentiality agreements or protective orders.

43. Employee testimony and internal memoranda show that Defendants have destroyed test results and other evidence concerning the Walker fire control.

44. Defendants have wrongfully withheld production of damaging internal documents in past litigation.

45. Defendants' false and fraudulent statements and actions taken to hide damaging internal documents from the public, including Plaintiffs, were designed by Defendants to prevent inquiry and escape investigation into defects in Remington rifles. Defendants' false and fraudulent statements and actions taken to hide damaging internal documents from the public are also designed to mislead the public, including Plaintiffs, and to hinder the acquisition of information concerning defects in Remington rifles. Defendants' fraudulent statements and wrongful actions prevented Plaintiffs from discovering the cause of their injuries and damage.

46. As a result of the discharge of the Rifle without a trigger pull, Plaintiffs sustained physical and emotional injuries, medical expense, lost income, loss of established course of life, loss of consortium, and other general and special damages in an amount to be determined by the jury at trial.

COUNT ONE
Strict Liability-Design Defect

47. Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein.

48. Plaintiff Brad Humphrey purchased the Rifle in a defective condition unreasonably dangerous in violation of § 27-1-719 M.C.A.

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49. At all relevant times, Defendants were engaged in the business of designing, manufacturing, assembling, distributing, and selling firearms, and in this regard, did design, manufacture, distribute, sell, and place into the stream of commerce the Rifle, knowing and expecting that the Rifle would be used by consumers including Plaintiff and members of the general public.

50. The Rifle was expected to and did reach Brad Humphrey without substantial change in the condition in which it was sold. Brad Humphrey did not modify or adjust the Walker fire control in the Rifle. Brad Humphrey did not improperly maintain the Rifle.

51. Defendants are strictly liable to Plaintiffs for Plaintiffs' general and special damages resulting from Defendants' sale of the Rifle that was in a defective condition unreasonably dangerous.

52. Specifically, Defendants' design was defective and unreasonably dangerous in one or more of the following respects:

- a. In designing a fire control with a "trigger connector;"
- b. In designing a fire control with manufacturing tolerance build up.
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, moisture, freezing, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the

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- trigger.
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- I. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;

53. Plaintiffs had no knowledge of these defective and dangerous conditions and had no reason to suspect the Rifle was defective or unreasonably dangerous.

54. As a result of the defective and dangerous condition of the Rifle, Plaintiff Brad Humphrey has sustained physical, emotional, and psychological injuries, past and future medical expense, past and future lost income, past and future lost earnings capacity, loss of consortium, loss of established course of life, and other general and special damages in an amount to be determined at trial.

55. Defendants knew or should have known about the defects alleged in this Complaint and that death and/or catastrophic injuries could occur and have occurred due to defects in the Rifle. Nonetheless, the defects were not corrected by Defendants, nor did Defendants warn the public about these defects and the risks they posed.

56. Instead, Defendants deliberately and intentionally concealed such

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information from Plaintiffs and the public. Defendants acted with malice in that Defendants had knowledge of facts and intentionally disregarded facts that created a high probability of damage to Plaintiffs and deliberately proceeded to act in conscious and intentional disregard of the high probability of injury to Plaintiffs, and deliberately proceeded to act with indifference to the high probability of injury to Plaintiffs.

57. Defendants further knowingly made false representations concerning the safety of the Remington Model 700 rifle, and concealed material facts concerning the fact that the rifles could fire without a trigger pull causing injury to Plaintiffs.

58. Plaintiffs are entitled to recover punitive damages from Defendants in an amount to be determined at trial.

COUNT TWO
Strict Liability-Failure to Warn

59. Plaintiffs hereby incorporate by reference all of the above allegations as if fully set forth herein.

60. At all relevant times, Defendants designed, manufactured and distributed the Rifle.

61. Defendants knew, or in the exercise of ordinary care should have

known, of the Rifle's propensity to unexpectedly discharge without pulling the trigger, yet Defendants failed to notify or warn Plaintiffs of this propensity, either before or after the purchase of the Rifle.

62. Neither Plaintiffs nor the general public recognized the risks associated with the Remington Model 700 rifle without such a warning.

63. Defendants owed a duty to users including Plaintiffs to adequately warn of the defect of the Remington Model 700 rifle prior to and after the sale of the product. Failure to warn Plaintiffs of the risks associated with the Remington Model 700 rifle was a breach of Defendants' duties to Plaintiffs to provide adequate warnings, both before and after the sale of the defective and unreasonably dangerous product.

64. Defendants failed to warn users regarding the following defects:

- a. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- b. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
- c. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- d. In failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle; and
- e. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

65. As a result of the defective and dangerous condition of the Rifle, Plaintiff Brad Humphrey has sustained physical, emotional, and psychological injuries, past and future medical expense, past and future lost income, past and

future lost earnings capacity, loss of consortium, loss of established course of life, and other general and special damages in an amount to be determined at trial.

66. Defendants knew or should have known about the defects alleged in this Complaint and that death and/or catastrophic injuries could occur and have occurred due to their failure to warn. Nonetheless, the defects were not corrected by Defendants, nor did Defendants warn the public including Plaintiffs about these defects and the risks they posed.

67. Instead, Defendants deliberately and intentionally concealed such information from Plaintiffs and the public. Defendants acted with malice in that Defendants had knowledge of facts and intentionally disregarded facts that created a high probability of damage to Plaintiffs and deliberately proceeded to act in conscious and intentional disregard of the high probability of injury to Plaintiffs, and deliberately proceeded to act with indifference to the high probability of injury to Plaintiffs.

68. Defendants further knowing made false representations concerning the safety of the Remington Model 700 rifle, and concealed material facts concerning the fact that the rifles could fire without a trigger pull causing injury to Plaintiffs.

69. Plaintiffs are entitled to recover punitive damages from Defendants in an amount to be determined at trial.

COUNT THREE

Negligence

70. Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein.

71. Defendants were negligent and failed to exercise reasonable care in the design, manufacture, marketing, and sale of the Rifle. Defendants breached their duty to Plaintiffs by acting unreasonably in selecting the design of the Rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the Rifle in such a condition, and the burden on Defendants to take necessary steps to eliminate the risk.

72. Defendants were negligent in one or more of the following respects;
- a. In designing a fire control with a “trigger connector;”
 - b. In designing a fire control with manufacturing tolerance build up;
 - c. In designing a fire control that failed to include preset engagement between the trigger connector and sear;
 - d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, moisture, freezing, and/or the accumulation of rust.
 - e. In designing a fire control that was susceptible to adjustment;
 - f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
 - g. In designing a fire control that will fire without a pull of the trigger;
 - h. In designing a fire control that will fire when the safety is shifted from the “safe” to the “fire” position;
 - i. In designing a fire control that will fire when the bolt is cycled;
 - j. In designing a fire control that will “jar off;”
 - k. In designing a fire control that uses improper materials,

- including “powdered metal” for the sear, that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger.
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control.
- q. In failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle; and
- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

73. Defendants knew, or in the exercise of ordinary care should have known, that the Rifle was defective and unreasonably dangerous to those persons likely to use, or to be near those persons likely to use, the product for the purpose and manner it was intended to be used, and for foreseeable misuses of the Rifle.

74. Defendants knew, or in the exercise of ordinary care should have known, of the means of equipping the Rifle with an adequate fire control system, thereby preventing injury to Plaintiff Brad Humphrey. Defendants had actual knowledge of the means of designing or adding such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, Defendants failed to equip the Rifle with an adequate fire control system to prevent the injuries to Plaintiffs.

75. Defendants had actual or constructive knowledge of the problems

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with the Remington Model 700 rifle, in particular the Rifle's propensity to unexpectedly discharge without pulling the trigger, such that the danger was known or, at a minimum, was reasonably foreseeable, but negligently failed to notify or warn Plaintiffs of the Rifle's dangerous condition.

76. Defendants owed Plaintiffs the duty of reasonable care when it designed, manufactured, marketed, and sold the Rifle. Defendants violated their duties and were negligent, as set forth above.

77. As a result of Defendants negligence, Plaintiff Brad Humphrey has sustained physical, emotional, and psychological injuries, past and future medical expense, past and future lost income, past and future lost earnings capacity, loss of consortium, loss of established course of life, and other general and special damages in an amount to be determined at trial.

78. Defendants knew or should have known about the defects alleged in this Complaint and that death and/or catastrophic injuries could occur and have occurred due to defects in the Rifle. Nonetheless, the defects were not corrected by Defendants, nor did Defendants warn the public about these defects and the risks they posed.

79. Instead, Defendants deliberately and intentionally concealed such information from Plaintiffs and the public. Defendants acted with malice in that Defendants had knowledge of facts and intentionally disregarded facts that created

a high probability of damage to Plaintiffs and deliberately proceeded to act in conscious and intentional disregard of the high probability of injury to Plaintiffs, and deliberately proceeded to act with indifference to the high probability of injury to Plaintiffs.

80. Defendants further made representations concerning the safety of the Remington Model 700 rifle with knowledge of its falsity, and concealed material facts concerning the fact that the rifles could fire without a trigger pull causing injury to Plaintiffs.

81. Plaintiffs are entitled to recover punitive damages from Defendants in an amount to be determined at trial.

COUNT FOUR
Loss of Consortium

82. Plaintiffs hereby incorporate by reference all above allegations as if fully set forth herein.

83. As a result of the injuries to Plaintiff Brad Humphrey and Defendants negligent and wrongful actions and strict liability as set forth herein, Plaintiff Deena Humphrey has been and will in the future be obligated to pay medical and other expenses.

84. As a result of the injuries to Plaintiff Brad Humphrey and Defendants negligent and wrongful actions and strict liability as set forth herein, Plaintiff

Deena Humphrey has been and will in the future be deprived of the care, companionship, consortium and society of her husband.

85. Plaintiff Deena Humphrey is entitled to recover damages for loss of consortium and other general and special damages in an amount to be determined at trial herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment, jointly and severally, against the Defendants as follows:

1. For general and special damages in an amount to be determined at trial.
2. For punitive damages in an amount to be determined at trial.
3. For Plaintiffs' costs and expenses.
4. For such and further relief as the Court deems just and proper.

DATED this 20th day of September, 2012.

Ramler Law Office, P.C.

By: /s/Richard A. Ramler
Richard A. Ramler
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorney, hereby demand a trial by jury in the above-entitled cause.

Ramler Law Office, P.C.

By: /s/Richard A. Ramler
Richard A. Ramler
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CYNTHIA SEAMON, individually, and
CYNTHIA SEAMON, as Personal
Representative of the Estate of KENNETH
SEAMON deceased

Plaintiff,

vs.

REMINGTON ARMS COMPANY, LLC,

Defendant.

Case No. 2:12-cv-895-WKW-TFM

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Cynthia Seamon, individually and as personal representative of the Estate of Kenneth Seamon by and through her attorneys, and for her claim for relief against Defendant, Remington Arms Company, Inc., states and alleges as follows:

PARTIES

1. Plaintiff Cynthia Seamon is a resident of Deatsville, Autauga County, Alabama. She is the wife of deceased person Kenneth Seamon.

2. Defendant Remington Arms Company, LLC. (hereinafter "Remington") is a Delaware Corporation and is authorized to do business in the State of Alabama. Service should be made upon its registered agent, CT Corporation System 2 North Jackson Street, Suite 605, Montgomery, Alabama 36104 unless Defendant Remington Arms Company, LLC, waives service pursuant to Rule 4(d), Fed.R.Civ.P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

3. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiffs are citizens of the State of Alabama, and that the Defendant is a corporate citizen of the State of Delaware, and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

4. Venue is proper within the Northern Division because Plaintiff is a resident of Autauga County, Alabama, and the incident which gives rise to this complaint occurred within Autauga County, Alabama.

COMMON ALLEGATIONS

5. Plaintiff Cynthia Seamon resides at 122 David Drive, Deatsville, AL 36022 and is a citizen of the State of Alabama.

6. Defendant Remington, was, and is now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, 7mm 08 bolt action rifle including the action, fire control system, and safety, bearing Serial Number G6318499 (hereinafter "rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

7. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI). On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

8. At all times pertinent to this action, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one legal entity.

9. Defendant Remington, SGPI and DuPont are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spreads responsibility and authority for product liability claims among the three entities as it is unclear who bears the contractual liability for this claim.

10. Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

11. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont. Consequently, DuPont

and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

12. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability. Consequently, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

13. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

14. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

15. On November 26, 2011, Plaintiff's husband Kenneth Seamon (hereinafter "Seamon" or "Plaintiff's decedent") was hunting deer alone on property leased and used solely by his hunting club near Deatsville, Autauga County, Alabama.

16. When calls to Seamon went unanswered, his family grew worried and began looking for him. Seamon was found by his son-in-law, dead in his tree stand as a result of a gunshot wound to the chest from his Model 700 Remington Bolt Action rifle, Serial No. G6318499.

17. When Seamon was found, his right hand was in a grasping position and the rifle was on the ground below with two ropes attached to it.

18. Seamon was shot by his own rifle as he was raising or lowering the rifle to or from the tree stand.

19. When the rifle was found, the safety was in the fire position.

20. The rifle fired without a pull of the trigger.

21. Kenneth Seamon was forty nine years old at the time of his death. He was married to Cynthia Seamon and had two natural children, Haley Seamon and Brittney Malone f/k/a Brittney

Seamon.

22. Remington Arms Co., is referred to herein as "Defendant."

23. Plaintiff Cynthia Seamon is bringing this action to recover punitive damages from Defendant for the wrongful death of Kenneth Seamon pursuant to Ala. Code § 6-5-410.

COUNT I

MANUFACTURER'S LIABILITY

24. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 23 of the Complaint as though set forth at length herein.

25. The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendant was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

26. Kenneth Seamon used the rifle in a reasonably foreseeable manner.

27. The rifle as designed, manufactured, sold and distributed by Defendant was in substantially the same condition as when it was manufactured by Defendant.

28. The rifle was defective and unreasonably dangerous when it was sold by Defendant and at the time it left their possession and control.

29. Plaintiff's decedent was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

30. Plaintiff has suffered and is entitled to recover damages from Defendant as a direct and proximate result of the defective design, manufacture, sale and distribution of the rifle.

31. Defendant's conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for Judgment under Count I of her Complaint against Defendant, for such damages in such amounts as may be determined by the jury at a trial, her costs here incurred, and for such further relief as the Court deems just and proper.

COUNT II

MANUFACTURER'S LIABILITY FAILURE TO WARN

32. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 31 of the Complaint as though set forth at length herein.

33. The Remington Model 700 bolt action rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

34. Plaintiff's decedent did not have any knowledge of such defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which killed him.

35. As a direct and proximate result of the failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendant.

36. Defendant's conduct in the failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for Judgment under Count II of her Complaint against Defendant, for such damages in such amounts as may be determined by the jury at a trial, her costs here incurred, and for such further relief as the Court deems just and proper.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

37. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 36 of the Complaint as though set forth at length herein.

38. Defendant negligently designed, manufactured, sold and distributed the Remington

Model 700 bolt action rifle in its defective and unreasonably dangerous condition.

39. Defendant was negligent in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will "jar off";
- k. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper procedures for

maintenance of the rifle;

- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

40. As a direct and proximate result of Defendant's negligent design, manufacture, sale and distribution of the rifle, Plaintiff has suffered and is entitled to recover damages from Defendant.

41. Defendant's conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive exemplary damages.

WHEREFORE, Plaintiff prays for Judgment under Count III of her Complaint against Defendant, for such damages in such amounts as may be determined by the jury at a trial, her costs here incurred, and for such further relief as the Court deems just and proper.

COUNT IV

NEGLIGENT FAILURE TO WARN

42. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 41 of the Complaint as though set forth herein.

43. Defendant negligently failed to warn of the Remington Model 700 bolt action rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

44. Plaintiff's decedent did not have any knowledge of said defective conditions present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which killed him.

45. As a direct and proximate result of Defendant's negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff has suffered and is entitled to recover damages from Defendant.

46. Defendant's conduct in the design, manufacture, sale and failure to warn of the

Remington Model 700 bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference or conscious disregard for the rights of safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for Judgment under Count IV of her Complaint against Defendant, for such damages in such amounts as may be determined by the jury at a trial, her costs here incurred, and for such further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of her peers.

RESPECTFULLY SUBMITTED this 10th day of October, 2012.

Respectfully submitted,

BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.



BENJAMIN L. LOCKLAR

(ASB-5022-C63B)

Attorney for Plaintiff

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MONICA WOOD, Personal Representative
of the Estate of Robert L. Wood, Jr., deceased,

Plaintiff,

Case No.
Hon.

REMINGTON ARMS COMPANY, LLC, a
foreign limited liability company corporation;

Defendant.

WOLFGANG MUELLER (P43728)

OLSMAN, MUELLER, WALLACE
& MACKENZIE P.C.

Attorney for Plaintiff

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COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, MONICA WOOD, Personal Representative of the Estate of Robert L. Wood, Jr., deceased, by and through her attorneys, OLSMAN, MUELLER, WALLACE & MacKENZIE, P.C., by Wolfgang Mueller, hereby complains against the Defendant, REMINGTON ARMS COMPANY, LLC, a foreign limited liability company corporation ("REMINGTON"); and states the following:

1. Plaintiff is a citizen of the State of Michigan.
2. Remington is a foreign citizen, with headquarters in North Carolina.

Remington conducts business in the State of Michigan and particularly, within this

District. Based upon information and belief, no member of Defendant is a citizen of the State of Michigan.

3. Jurisdiction is founded upon the diversity of citizenship of the parties and damages which exceed \$75,000.00 exclusive of interest and costs.

4. Venue is proper in this Court, pursuant to 28 USC §1391, as Defendant, Remington, resides, for venue purposes, in this District.

GENERAL ALLEGATIONS

5. Remington is a manufacturer of rifles, including the subject 2005 Remington Model 700-270 rifle, serial number D6618011.

6. In July, 2011, Robert L. Wood, Sr., Plaintiff's decedent's father, purchased the subject Remington 700-270 rifle at auction conducted by Belcher & McPherson Auction Co. in Marshall, Michigan.

7. In and before 2005, when the subject rifle was manufactured, Remington was aware of the danger of inadvertent firing (firing without trigger pull) on bolt-action rifles as a result of the "Walker Fire Control" trigger assembly. Remington's knowledge of the danger dated to at least the 1970s, when it chose not to recall the Model 700 rifles with the Walker Fire Control system. Remington had been sued several dozen times prior to 2005 as a result of the alleged defect in the "Walker Fire Control" trigger assembly.

8. On November 1, 2011, Robert Wood Sr. was on a hunting trip in Wyoming with his son, Plaintiff's decedent, Robert Wood, Jr., and other family friends.

9. At approximately 5:15 a.m., the hunting party was getting ready to go hunting. As Robert Wood Sr. was loading his rifle, it was laying in its case on the

tailgate of the pickup truck used to transport some of the hunters. Mr. Wood chambered a round and closed the bolt, with his fingers nowhere near the trigger or trigger guard of the rifle. Suddenly and unexpectedly, as Mr. Wood closed the bolt, the rifle fired, with the bullet piercing the gun case and striking Robert Wood, Jr., who was coming around the rear of the truck. The round struck Robert Wood, Jr. in the left buttock and traveled to his right hip, where it exited. Plaintiff's decedent suffered a fatal wound and bled to death.

10. Robert Wood, Jr. was pronounced dead at 6:00 a.m. on November 1, 2011, by Gary Gould of the Lawrence County, South Dakota Coroner's office. The cause of death was described as "*accidental discharge of a .270 cal rifle.*"

11. As a direct and proximate result of the negligence and gross negligence described below, Plaintiff's decedent, Robert L. Wood Jr., suffered severe and extreme physical and emotional pain and distress before ultimately dying.

12. As a direct and proximate result of the negligence and gross negligence described below, Plaintiff's decedent, Robert L. Wood, left the following next of kin, each having lost his society, companionship and love:

- A. Monica Wood (wife);
- B. Corey Hinton (minor stepson);
- C. Haylee Dotson (daughter);
- D. Chandler Wood (minor son);
- E. Robert L Wood, Sr. (father);
- F. Sylvia Wood (mother);
- G. Heather Orr (sibling);
- H. Gary D. Wood (sibling);
- I. Angel Arroyo (sibling)
- F. Edith Leota (grandmother);

COUNT I
NEGLIGENCE - REMINGTON

13. Plaintiff incorporates by reference all previous paragraphs as though fully restated herein.

14. At all times relevant to this action and during the time of the design and manufacture of the subject rifle, Defendant, Remington, was under a duty to design, manufacture and test its products to eliminate any unreasonable risk of foreseeable injury. Defendant was under the additional duty to manufacture its rifle to eliminate safety defects which would render the rifle or its components unfit for their intended, foreseeable uses and foreseeable misuse.

15. Despite the duties set forth above, Defendant was negligent and breached implied warranties in at least the following respects:

- a. Negligently failing to design and manufacture the subject rifle with a trigger assembly that would prevent firing without the trigger being pulled;
- b. Negligently designing and manufacturing a trigger assembly that was susceptible to inadvertent firing as a result of the "trigger connector that could cause the rifle to fire without the trigger being pulled;
- c. Negligently failing to incorporate technologically and economically feasible alternative designs, such as a trigger block mechanism which was available and had been proposed by Mike Walker decades before the manufacture of the subject rifle;
- d. Negligently failing to warn and/or instruct users of the rifle that it was susceptible to inadvertent firing without the trigger being pulled, and for failing to properly instruct users of proper maintenance procedures for the Remington-Walker trigger mechanism;
- e. Other acts of negligence that will be discovered through the course of this litigation.

Accordingly, Plaintiff respectfully requests that the trier of fact award all damages allowed under Michigan's Wrongful Death Statute, as well as damages for conscious pain and suffering experienced by Plaintiff's decedent. Plaintiff also requests that this court award pre-judgment interest, costs and attorney fees so wrongfully incurred.

COUNT II
GROSS NEGLIGENCE - REMINGTON

16. Plaintiff incorporates by reference all previous paragraphs as though fully restated herein.

17. During the time of the design and manufacture of the subject rifle, Defendant had actual knowledge of over one hundred other incidents of inadvertent firing without the trigger being pulled involving Model 700 rifles manufactured with the Remington-Walker trigger assembly. Complaints came from customers including private citizens, the United States Marine Corp., and the publisher of Consumer Reports magazine.

18. During the time of the design, manufacture and sale of the subject rifle, Defendant had actual knowledge of the defective conditions set forth above, and that there was a substantial likelihood that the defect would cause serious or fatal injuries to users or bystanders, including the same type of injury in this case. Despite such knowledge, Defendant willfully disregarded that knowledge in the manufacture or distribution of the product.

19. Based on Defendant's actual knowledge, MCL 600.2946(4), 600.2946(a), 600.2947(1)-(4), and 600.2948(2), do not apply, pursuant to MCL 600.2949(a).

20. Remington's conduct also constitutes "gross negligence," which is defined as "*conduct so reckless as to demonstrate a substantial lack of concern for whether injury results.*" MCL 600.2945.

21. Defendant's conduct was a direct and proximate cause of Plaintiff's decedent's death.

Accordingly, Plaintiff respectfully requests that the trier of fact award all damages allowed under Michigan's Wrongful Death Statute, as well as damages for conscious pain and suffering experienced by Plaintiff's decedent. Plaintiff also requests that this court award pre-judgment interest, costs and attorney fees so wrongfully incurred.

Respectfully submitted,

OLSMAN, MUELLER, WALLACE
& MacKENZIE, P.C.

s/Wolfgang Mueller
WOLFGANG MUELLER (P43728)
Attorney for Plaintiff
2684 W. 11 Mile Road
Berkley, MI 48072
(248) 591-2300
wmueller@olsmanlaw.com

Date: December 18, 2012

JURY DEMAND

NOW COMES the Plaintiff, MONICA WOOD, Personal Representative of the Estate of Robert Wood, Jr., deceased, by and through her attorneys, OLSMAN,

MUELLER, WALLACE & MacKENZIE, PC, and hereby demands a trial by jury in the above-captioned matter.

OLSMAN, MUELLER, WALLACE
& MacKENZIE, P.C.

s/Wolfgang Mueller
WOLFGANG MUELLER (P43728)
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Dated: December 18, 2012

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

LOREN KORPI

Plaintiff,

v.

REMINGTON ARMS COMPANY, LLC.,
SPORTING GOODS PROPERTIES, INC.
and E.I. DUPONT DE NEMOURS AND
COMPANY

Defendants.

Case No. _____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMPLAINT

COMES NOW Plaintiff Loren Korpi, by and through his attorneys, Kurt D. Holzer, Holzer Edwards, CHTD, and Timothy W. Monsees, Monsees & Mayer, P.C. and for his claim for relief against Defendants, Remington Arms Company, LLC., Sporting Goods Properties, Inc. and E.I. DuPont De Nemours and Company state and allege as follows:

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

PARTIES

1. Plaintiff Loren Korpi, (hereinafter collectively "Plaintiff") resides at 90788 Kennedy Road, Warrenton, OR, 97146.

2. Defendant Remington Arms Company, LLC (hereinafter "Remington") is a Delaware Corporation, and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

4. Defendant E.I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System at 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant E.I. DuPont de Nemours, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that all facts and occurrences alleged below took place in Elmore County, Idaho. Additionally, the Plaintiff is a citizen of Oregon, and that the Defendants are all corporate citizens of the State of Delaware and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the Southern Division of Idaho because the incident which gives rise to this complaint occurred within Elmore County, Idaho.

COMPLAINT AND DEMAND FOR JURY TRIAL - 2

COMMON ALLEGATIONS

7. Defendants, Remington, DuPont and SGPI (hereinafter collectively "Defendants") were and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

8. Defendants, Remington, DuPont and SGPI, did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, 30.06 bolt action rifle including the action, fire control system, and safety, bearing Serial Number 6722507 (hereinafter "Rifle"), knowing and expecting that said Rifle would be used by consumers and around members of the general public.

9. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI).

10. On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name.

11. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, LLC.

12. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

13. At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont.

14. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI.

15. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI.

16. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiff herein and the general public.

17. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiff and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one (1) legal entity.

18. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein.

19. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spread responsibility and authority for product liability claims among the three (3) Defendants as it is unclear who bears the contractual liability for this claim.

20. Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI, and therefore DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

21. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes.

22. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase.

23. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

24. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

25. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

26. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.

27. At all times pertinent to this action Remington, DuPont and SGPI were all acting in concert pursuant to Idaho Code 6-803(5), in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle and are therefore joint and severally liable for the claims outlined below.

28. On October 28, 2012, Plaintiff Loren Korpi (hereinafter "Loren") was camping and hunting in Elmore County, Idaho with his brother Mark Korpi (hereinafter "Mark") and friend, George Joy (hereinafter "George").

29. Mark was the owner of the Rifle and brought it to hunt with the next day.

30. On or about October 28, 2012, the three men planned to site in their respective rifles; they set up a target and each of the hunters loaded their rifles.

31. Mark took two shots with the Rifle and put the safety "on" while Loren also sited in his rifle. After siting in their rifles, the three hunters decided to return to the campsite.

32. Before returning to the campsite, Mark decided to unload the Rifle. The three men were standing approximately six to eight feet apart, in a triangle facing each other, with Loren to Mark's left and slightly forward of him and George to his right at the same angle.

33. On or about October 28, 2012, Mark was bent forward and had the Rifle pointed toward the ground as he tried to open the bolt to unload the Rifle. His right hand was on the bolt, while his left hand grasped the forestock of the Rifle. After his initial effort, and recognizing that the Rifle had a bolt lock, he realized he needed to take the Rifle off "safe" to unload the rifle.

34. Mark had the Rifle pointed into the ground just to his left, as Mark first attempted to unsuccessfully open the bolt. As he used his right thumb to shift the safety to the "fire" position, he also slightly changed his body position to stand somewhat more erect.

35. The slight reposition caused the muzzle to be inadvertently pointed at Loren's left lower leg. When he pushed the safety forward, the Rifle fired.

36. The trigger was not pulled or contacted in any manner, but instead the Rifle fired as a result of being moved due to forces exerted on the fire control system during this process of pushing the safety forward.

37. The bullet from the Rifle traveled into Loren's left leg, ankle and foot ultimately causing serious permanent injury and scarring.

38. Loren is bringing this action to recover damages from Defendants arising from his personal injuries caused by this incident.

39. Plaintiff's damages include past and future: medical and out of pocket expenses, mental and physical pain and suffering; loss of earnings, impaired earning capacity, permanent disability, disfigurement; and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 39 of the Complaint as though set forth at length herein.

40. The Rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

41. Mark, a consumer of the general public, used the Rifle in a reasonably foreseeable

manner.

42. The Rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

43. The Rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

44. Plaintiff was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

45. The defective design, manufacture, sale and distribution of the Rifle were the cause or a substantial factor in causing the accident in question.

46. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

47. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

48. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to incur loss of earnings.

49. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to have an impaired earning capacity.

50. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

51. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will to be deprived of the ordinary pleasures of life.

52. Plaintiff has suffered and is entitled to recover damages from Defendants as a direct

and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

53. Defendants' conduct in the design, manufacture, sale and/or failure to warn of the Rifle was outrageous or malicious or otherwise justifies an award of punitive damages and therefore Plaintiff reserves the right to seek amendment of this complaint pursuant to Idaho Code section 6-1604 to seek such damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT II

STRICT LIABILITY FAILURE TO WARN

54. Plaintiff's incorporate herein by reference each and every allegation contained in Paragraphs 1 through 53 of the Complaint as though set forth at length herein.

55. The Rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

56. Plaintiff had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured Loren.

57. As a direct and proximate result of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Loren has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

58. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly

discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

59. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will continue to incur loss of earnings.

60. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will continue to have an impaired earning capacity.

61. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

62. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will to be deprived of the ordinary pleasures of life.

63. Defendants' conduct in the design, manufacture, sale and/or failure to warn of the Rifle was outrageous or malicious or otherwise justifies an award of punitive damages and therefore Plaintiff reserves the right to seek amendment of this complaint pursuant to Idaho Code section 6-1604 to seek such damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in

excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);

- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

64. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 63 of the Complaint as though set forth at length herein.

65. Defendants negligently designed, manufactured, sold and distributed the Rifle in its defective and unreasonably dangerous condition.

66. Defendants were negligent, careless and reckless in one or more of the following respects:

- a. In designing a fire control with a "trigger connector";
- b. In designing a fire control equipped with a "bolt lock" or device that prevented the loading or unloading of the rifle while the rifle was in the "safe" condition;
- c. In designing a fire control with manufacturing tolerance build up;
- d. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- e. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- f. In designing a fire control that was susceptible to adjustment;
- g. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- h. In designing a fire control that will fire without a pull of the trigger;
- i. In designing a fire control that will fire when the safety is shifted from the "safe" to the "fire" position;
- j. In designing a fire control that will fire when the bolt is cycled;
- k. In designing a fire control that will "jar off";

- l. In designing a fire control that uses improper materials, including "powdered metal" for the sear that are unusually susceptible to normal wear and tear;
- m. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- n. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- o. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- p. In failing to warn users and handlers of the risks and hazards of improper maintenance of the Rifle;
- q. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- r. In failing to inform or advise users and handlers of the proper procedures for maintenance of the Rifle; and
- s. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

67. As a direct and proximate result of Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, Loren has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

68. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

69. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Loren has and will continue to incur loss of earnings.

70. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

71. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

72. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

73. Defendants' conduct in the design, manufacture, sale and/or failure to warn of the Rifle was outrageous or malicious or otherwise justifies an award of punitive damages and therefore Plaintiff reserves the right to seek amendment of this complaint pursuant to Idaho Code section 6-1604 to seek such damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT IV

NEGLIGENT FAILURE TO WARN

74. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 73 of the Complaint as though set forth herein.

75. Defendants negligently, carelessly and recklessly failed to warn of the Rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

76. Defendants further failed and neglected to instruct and warn owners and gun handlers of the dangerous propensities of the rifle to fire when the safety is moved to the "fire" position, as needed to load and unload the rifle.

COMPLAINT AND DEMAND FOR JURY TRIAL - 12

77. Plaintiffs' had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which injured Loren.

78. As a direct and proximate result of Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Loren has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

79. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

80. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Loren has and will continue to incur loss of earnings.

81. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

82. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to suffer from a permanent disability and disfigurement for the remainder of his lifetime.

83. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will to be deprived of the ordinary pleasures of life.

84. Defendants' conduct in the design, manufacture, sale and/or failure to warn of the

Rifle was outrageous or malicious or otherwise justifies an award of punitive damages and therefore Plaintiff reserves the right to seek amendment of this complaint pursuant to Idaho Code section 6-1604 to seek such damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of their peers.

Dated this 22 day of October, 2013.

Holzer♦Edwards, Chtd.

By: _____

Kurt D. Holzer

and

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THE LANIER LAW FIRM
6810 FM 1960 West
Houston, TX 77069
713-659-5200

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CHAD TOLBERT, an individual,

Plaintiff,

vs.

REMINGTON ARMS COMPANY, LLC.,
SPORTING GOODS PROPERTIES, INC.
and E. I. DuPONT DE NEMOURS AND
COMPANY,

Defendants.

COMPLAINT

Case No.:

Judge:

Plaintiff, Chad Tolbert, by and through counsel, hereby complains against the above-captioned Defendants, and for cause of action alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff, Chad Tolbert, is a resident of Salt Lake County, Utah.
2. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.
3. Defendant Remington Arms Company, LLC (hereinafter "Remington") is a Delaware Corporation, and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.
4. Defendant E.I. DuPont de Nemours, Inc. (hereinafter "DuPont") is a Delaware Corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System at 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant E.I. DuPont de Nemours, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.
5. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(3). This is a civil action and involves, exclusive of interest and costs, a sum in excess of \$75,000. Every issue of law

and fact in this action is wholly between citizens of different states and in which citizens or subjects of a foreign state are additional parties.

6. Venue is appropriate under 28 U.S.C. § 1391(a)(2), because a substantial part of the events or omissions giving rise to this claim occurred within this district.

GENERAL ALLEGATIONS

7. Defendants, Remington, DuPont and SGPI (hereinafter collectively “Defendants”) were and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.
8. Defendants, Remington, DuPont and SGPI, did design, manufacture, distribute, sell and, place into the stream of commerce, the Remington Model 700, 338 caliber bolt action rifle including the action, fire control system, and safety, bearing Serial Number B6869968 (hereinafter “Rifle”), knowing and expecting that said Rifle would be used by consumers and around members of the general public.
9. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI).
10. On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name.
11. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, LLC .

12. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.
13. At all times pertinent to this action Defendants, SGPI and DuPont were and are the alter ego of each other and in essence constitute one legal entity in which SGPI operates as a division of DuPont.
14. The separate incorporation of SGPI is a sham in that it is merely a corporate veil which insulates DuPont from liability for products manufactured and sold by SGPI.
15. DuPont exerted, and currently exerts extreme influence, complete dominion and/or absolute control over the corporate activity and function of SGPI.
16. DuPont's continued operation of SGPI as a separate legal entity is a subterfuge designed to defeat public convenience, justify a wrong, perpetrate a fraud and/or otherwise work an injustice on Plaintiffs herein and the general public.
17. The conduct of DuPont and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of the corporate veil resulting in DuPont being liable for the acts and omissions of SGPI as they are in reality one (1) legal entity.
18. All Defendants are so intertwined contractually for the liabilities, past, present and future, of each other that they are, in fact, one entity and therefore, the corporate veils of each company should be pierced to properly ascertain the responsible parties for the allegations contained herein.

19. The Asset Sale/Purchase Agreement transferring the assets of SGPI to Remington and various revised or supplemental agreements spread responsibility and authority for product liability claims among the three (3) Defendants as it is unclear who bears the contractual liability for this claim.
20. Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI, and therefore DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.
21. Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle, without any significant changes.
22. Remington maintains the same plants, employees, organization, contracts, customers, suppliers, advertising, products and name acquired in the asset purchase.
23. Remington acquired the entire company from SGPI through an asset/sale purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.

24. Remington, DuPont and SGPI acted fraudulently with respect to the asset/sale purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington for the debts of SGPI, particularly its product liability, and therefore, DuPont and/or Remington are the corporate successors to the product liability claims asserted, now and in the future, against SGPI, including this particular lawsuit.
25. At all times pertinent to this action SGPI was an agent of DuPont acting in the course and scope of its agency relationship thereby making its principal, DuPont, liable for all of SGPI's acts and omissions, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.
26. At all times pertinent to this action, agents of DuPont, acting within the course and scope of their agency relationship, controlled SGPI, thereby making SGPI's acts and omissions those of their principal, DuPont, either by exercising direct control over SGPI, or by adopting and ratifying SGPI's acts or omissions.
27. At all times pertinent to this action Remington, Dupont and SGPI were all acting in concert, in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt action rifle and are therefore joint and severally liable for the claims outlined below.
28. On November 20, 2013, Plaintiff was hunting elk in Weber Canyon with Tyler Tolbert, Bruce Tolbert and Brooklynn Edwards.

29. The group spotted some elk on a nearby ridge. Plaintiff instructed Brooklynn Edwards to chamber a round in the subject 338 caliber Remington 700 Rifle so she could attempt a shot at the elk.
30. When a shot was not able to be taken, the group decided to get in the vehicle and move further up the ridge toward the elk. Plaintiff instructed Brooklynn Edwards to remove the rounds from the Rifle before they entered the vehicle.
31. Brooklynn Edwards pointed the Rifle toward the ground, while her hand was not near the trigger or trigger guard the Rifle unexpectedly discharged. That round ricocheted through the door of the truck and struck Plaintiff in the right leg.
32. The discharge of the round by the Rifle split Brooklynn Edward's thumb.
33. Plaintiff was life-flighted to the University of Utah Medical Center where his leg was ultimately amputated due to the damage caused by the bullet wound.
34. Chad is bringing this action to recover damages from Defendants arising from his personal injuries caused by this incident.
35. As a result of his injuries, Plaintiff has suffered and will continue to suffer economic damages including, without limitation, past and future medical expenses, loss of wages, loss of earning capacity, and loss of the ability to provide household services.
36. Plaintiff has also suffered non-economic damages resulting from physical and emotional pain and suffering, and loss of the enjoyment of life.

FIRST CLAIM FOR RELIEF
(Strict Product Liability – All Defendants)

37. Plaintiff realleges and incorporates all preceding Paragraphs as if fully set forth herein.

38. The Rifle, as designed, manufactured, sold, and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer, or bystander, their property, and the general public.
39. The Rifle as designed, manufactured, sold, and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.
40. The Rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.
41. At the time the Rifle was placed in the stream of commerce by Defendants, the Rifle was defective and unreasonably dangerous, without limitation, as follows:
- A. Defects in the design of the Rifle;
 - B. Defects in the manufacture of the Rifle;
 - C. Defects in the warnings or labels accompanying the Rifle; and
 - D. Other defects that may later be revealed during discovery.
42. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, knew of the defects in the Rifle and knew that the Rifle could not be used safely for the purpose for which it was intended; that Defendants, and each of them, knowing of the defects associated with the Remington Model 700 Rifle, in conscious disregard of the rights and safety of the public placed them on the market without warning customers or the unknowing public of the defect and knew when they did so that said Rifle would be sold and used by the general public without inspection for defects.

43. Brooklynn Edwards, a consumer of the general public, used the Rifle in a reasonably foreseeable manner.
44. The sudden discharge of the round, and the injuries and damages sustained by Plaintiff, were a direct and proximate result of the defective design, manufacture, warnings, sale, and distribution of the Rifle.
45. As a direct and proximate result of the aforementioned conduct of Defendants and each of them, Chad Tolbert suffered and continues to suffer serious physical and emotional injuries, including, but not limited to, medical expenses, loss of earnings, impaired earning capacity, permanent disability and disfigurement, and loss of enjoyment of life. Defendants are strictly liable for the injuries and damages sustained by Plaintiff.

SECOND CLAIM FOR RELIEF
(Negligence – All Defendants)

46. Plaintiff realleges and incorporates all preceding Paragraphs as if fully set forth herein.
47. Defendants failed to exercise reasonable care in their design, manufacture, warning, sale, and distribution of the Rifle in its defective and unreasonably dangerous condition.
48. Defendants were negligent, careless, and reckless in one or more of the following respects:
- a. In designing a fire control with a “trigger connector”;
 - b. In designing a fire control equipped with a “bolt lock” or device that prevented the loading or unloading of the rifle while the rifle was in the “safe” condition;
 - c. In designing a fire control with manufacturing tolerance build up;
 - d. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;

- e. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- f. In designing a fire control that was susceptible to adjustment;
- g. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- h. In designing a fire control that will fire without a pull of the trigger;
- i. In designing a fire control that will fire when the safety is shifted from the “safe” to the “fire” position;
- j. In designing a fire control that will fire when the bolt is cycled;
- k. In designing a fire control that will “jar off”;
- l. In designing a fire control that uses improper materials, including “powdered metal” for the sear that are unusually susceptible to normal wear and tear;
- m. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- n. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- o. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- p. In failing to warn users and handlers of the risks and hazards of improper maintenance of the Rifle;
- q. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- r. In failing to inform or advise users and handlers of the proper procedures for maintenance of the Rifle; and
- s. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

49. As a direct and proximate result of the negligent, careless, and reckless acts and/or omissions of Defendants and each of them, Chad Tolbert suffered and continues to suffer serious physical and emotional injuries, including, but not limited to, medical expenses, loss of earnings, impaired earning capacity, permanent disability and disfigurement, and loss of enjoyment of life.

THIRD CLAIM FOR RELIEF
(Breach of Express Warranties – All Defendants)

50. Plaintiff realleges and incorporates all preceding Paragraphs as if fully set forth herein.
51. Defendants, and each of them, expressly warranted to Plaintiff and to that class of people who would normally be expected to use, consume, and operate the subject Rifle and related component parts, that the Rifle was merchantable, free from defects, and fit for the purpose for which it was intended to be used.
52. The Rifle and each and every component part thereof was not free from such defects nor fit for the purpose for which it was to be used, and was, in fact, defectively designed and manufactured and imminently dangerous to consumers, users, and bystanders, in that the Rifle was capable of causing, and did cause, personal injury to the user or consumer thereof, while being used in a reasonably foreseeable manner.
53. Defendants breached their express warranties, and these breaches of warranty were a proximate cause of the sudden discharge of the round and Plaintiff's resulting injuries and damages.
54. As a direct and proximate result of the Defendants' breach of express warranties, Chad Tolbert suffered and continues to suffer serious physical and emotional injuries,

including, but not limited to, medical expenses, loss of earnings, impaired earning capacity, permanent disability and disfigurement, and loss of enjoyment of life.

FOURTH CLAIM FOR RELIEF

(Breach of Implied Warranties of Merchantability and Fitness for a Particular Purpose – All Defendants)

55. Plaintiff realleges and incorporates all preceding Paragraphs as if fully set forth herein.
56. Defendants were merchants with respect to the type of goods that included the Rifle, and implicitly warranted that the Rifle was merchantable.
57. At the time of contracting for the sale of the Rifle, Defendants had reason to know the particular purpose for which the Rifle was required and that Plaintiff, Brooklynn Edwards, or another was relying on Defendants' skill and judgment to provide, select, or furnish suitable goods, and Defendants' impliedly warranted that the Rifle would be fit for that particular purpose.
58. Defendants breached their implied warranties of merchantability and fitness for a particular purpose, in that the Rifle was, in fact, not merchantable or fit for the particular purpose for which it was required.
59. Defendants' breach of implied warranties was a proximate cause of the sudden discharge of the round from the Rifle and Plaintiff's resulting injuries and damages.
60. As a direct and proximate result of the Defendants' breach of implied warranties, Chad Tolbert suffered and continues to suffer serious physical and emotional injuries, including, but not limited to, medical expenses, loss of earnings, impaired earning capacity, permanent disability and disfigurement, and loss of enjoyment of life.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) For economic damages in an amount to be determined at trial;
- (b) For non-economic damages in an amount to be determined at trial;
- (c) For costs, interest and attorney fees to the extent allowed by law;
- (d) For punitive damages for the wanton and reckless conduct as outlined herein; and
- (e) For such other relief as the Court deems appropriate.

DATED this 17th day of June, 2014.

SIEGFRIED & JENSEN

/s/ Joseph W. Steele
Joseph W. Steele

Plaintiff's Address
3202 West Starlite Drive
West Jordan, UT 84088

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 13 CVS 21261

CARLETTA MCNEIL, ADMINISTRATOR)
for and on behalf of THE ESTATE OF)
JASMINE THAR (decedent), JAHMESHA)
MCMILLIAN and, TREKA MCMILLIAN,)
individually)

Plaintiffs,)

vs.)

REMINGTON ARMS COMPANY, LLC,)

Defendant.)

COMPLAINT

RY

2013 DEC -9 AM 9:26
MECKLENBURG COUNTY, N.C.S.C.

FILED

NOW COME Plaintiffs (i) Carletta McNeil, in her capacity as Administrator for and on behalf of The Estate of Jasmine Thar (decedent), (ii) Jahmesha McMillian, individually and (iii) Treka McMillian, individually; complaining of Defendant Remington Arms Company, L.L.C. as follows:

JURISDICTION AND PARTIES

1. Plaintiff Carletta McNeil, is the duly appointed Administrator for The Estate of Jasmine Thar, the decedent, designated as File No. 13 E 2747 in the General Court of Justice of the Superior Court, Estates Division for Mecklenburg County, North Carolina, both being residents and citizens of Mecklenburg County, North Carolina at all relevant times complained of herein.
2. Plaintiff Jahmesha McMillian is a citizen and resident of Columbus County, North Carolina at all relevant times complained of herein.

3. Plaintiff Treka McMillian is a citizen and resident of Jackson County, North Carolina at all relevant times complained of herein.
4. Upon Information and belief, Defendant Remington Arms Company, L.L.C. (referred to hereinafter as "Defendant Remington") is a duly organized limited liability company with its principal place of business at located at 870 Remington Drive, Madison, Rockingham County, North Carolina. At all relevant times complained of herein, Defendant Remington engaged in the design, manufacture, distribution and sale of fire arms and ammunition products nationwide and throughout the State of North Carolina.

FACTUAL ALLEGATIONS

5. Paragraphs 1-4 of this Complaint are hereby fully realleged and reincorporated hereinafter.
6. On or about December 23, 2011, at approximately 11:00 a.m., in anticipation of preparing for and celebrating the upcoming Christmas holiday season, Plaintiff Jahmesha McMillian, Plaintiff Treka McMillian, decedent Jasmine Thar (hereinafter referred to as "Decedent Thar") and other family members had gathered at a family residence located at 312 E. Third Avenue, Chadbourn, North Carolina to go shopping that afternoon in Myrtle Beach, South Carolina.
7. Decedent Thar's mother, Carletta McNeil, her younger brother Jay and another female relative had already loaded into their Ford Escape and were waiting for the Plaintiffs and Decedent Thar to enter the vehicle.

8. Directly across the street from the Plaintiffs and Decedent Thar, inside the residence of 313 E. Third Avenue, Chadbourn, North Carolina, Mr. James Anthony Blackwell (hereinafter referred to as "Mr. Blackwell") upon information and belief, was cleaning and/or inspecting his recently obtained bolt-action Remington 700 Series Rifle that he had received as a gift from a female acquaintance.
9. As Mr. Blackwell handled the Remington 700 Series Rifle, it suddenly misfired without the trigger being pulled, sending a deadly metal projectile through the closed venetian blinds of the front window in a path directly towards the Plaintiffs and Decedent Thar who were about to enter their vehicle.
10. The bullet first struck Plaintiff Jahmesha McMillian, entering into her chest, puncturing her lungs, and exiting out of her back.
11. Upon exiting the body of Plaintiff Jahmesha McMillian, the bullet struck Decedent Thar and passed through the upper torso.
12. Fragments from the bullet then struck Plaintiff Treka McMillian in her lower back area.
13. Decedent Thar was pronounced dead upon arrival at Columbus Regional Healthcare Systems Hospital.
14. Plaintiff Jamesha McMillian sustained serious life threatening and permanent bodily injury, including pain and suffering and severe emotional distress.
15. Plaintiff Treka McMillian sustained permanent and serious bodily injury as a result of the incident, including pain and suffering and severe emotional distress.

FIRST CAUSE OF ACTION
DEFECTIVE PRODUCT / PRODUCTS LIABILITY

16. Paragraphs 1-15 of this Complaint are hereby fully realleged and reincorporated hereinafter.
17. At all relevant times complained of herein, Defendant Remington designed, manufactured, assembled, marketed, distributed and sold the Remington 700 Series Rifle nationwide and throughout the State of North Carolina, when Defendant Remington knew or should have reasonably known of existing defects with the Remington 700 Series Rifle, including but not limited to, its trigger mechanism being prone to misfire without pulling the trigger.
18. At all relevant times complained of herein, the subject Remington 700 Series Rifle involved in the misfiring, was defective and unreasonably dangerous because it was designed and manufactured in such a way that the rifle is prone to misfire under foreseeable conditions.
19. At the time of the above described incident, the subject Remington 700 Series Rifle was substantially the same as when it was manufactured, sold and distributed by Defendant Remington, with respect to the defects alleged herein.
20. Defendant Remington expected the subject Remington 700 Series Rifle to reach the ultimate consumer without substantial change in the condition in which the product was sold.
21. The subject Remington 700 Series Rifle was being used in an intended and foreseeable manner when the incident occurred and did not meet the reasonable expectations of an ordinary consumer as to its safety.

22. The foreseeable risks associated with the design of the subject Remington 700 Series Rifle exceeded any benefits associated with that design.
23. The subject Remington 700 Series Rifle was defective and unreasonably dangerous as designed, even though there was a safe, practical alternative design available at the time it was designed and manufactured.
24. Defendant Remington did not adequately warn its dealers, distributors or consumers concerning the defects associated with the Remington 700 Series Rifle.
25. Defendant Remington is liable for all injuries suffered by the Plaintiffs and Decedent Thar as a result of the defective design and manufacture of the subject Remington 700 Series Rifle and as a result of its failure to warn as cited above.
26. Defendant Remington's aforementioned failure and breach of duty to reasonably design, manufacture and inspect the defective Remington 700 Series Rifle was the proximate and direct cause of the injuries, suffering, emotional distress and terror experienced by Plaintiff Jahmesha McMillian.
27. Defendant Remington's aforementioned failure and breach of duty to reasonably design, manufacture and inspect the defective Remington 700 Series Rifle was the proximate and direct cause of the injuries, suffering, emotional distress, terror and wrongful death of Decedent Thar.
28. Defendant Remington's aforementioned failure and breach of duty to reasonably design, manufacture and inspect the defective Remington 700 Series Rifle was the proximate and direct cause of the injuries, suffering, emotional distress and terror experienced by Plaintiff Treka McMillian.

SECOND CAUSE OF ACTION
NEGLIGENCE / PERSONAL BODILY INJURY

29. Paragraphs 1-28 of this Complaint are hereby fully realleged and reincorporated hereinafter.
30. Defendant Remington had a duty to the Plaintiffs, purchasers and potential users of the subject rifle to design, manufacture, test, inspect and distribute the Remington 700 Series Rifle in a non-negligent manner.
31. Defendant Remington had a duty to the Plaintiffs, purchasers and potential users of the Remington 700 Series Rifle to design, manufacture and sell the subject rifle so that it was reasonably safe for use under foreseeable conditions.
32. Defendant Remington knew, or should have known through the exercise of reasonable care, that the Remington 700 Series rifle was defective and unreasonably dangerous.
33. Defendant Remington had a duty to the Plaintiffs, purchasers and potential users of the Remington 700 Series Rifle to adequately warn them of the possibility of the firing mechanism misfiring and of the measures necessary to take to avoid misfiring.
34. Defendant Remington breached its duty by the following negligent acts and failures to act by: (a) negligently designing the subject rifle; (b) negligently manufacturing the subject rifle; (c) placing an unsafe rifle on the market; (d) failing to inspect or inadequately inspecting the subject rifle; (e) failing to adequately warn of the possibility of firing mechanism misfiring on the subject rifle and the measures necessary to take to avoid misfiring; (f) failing to

adequately warn of the dangerous condition of the subject rifle; and (g) failing to adequately test the subject rifle.

35. Defendant Remington's negligent acts and failures to act were the direct and proximate cause of the injuries sustained by the Plaintiffs and wrongful death of Decedent Thar.

**THIRD CAUSE OF ACTION
WRONGFUL DEATH**

36. Paragraphs 1-35 of this Complaint are hereby fully realleged and reincorporated hereinafter.
37. Defendant Remington had a duty to Plaintiffs, purchasers and potential users of the subject rifle to design, manufacture, test, inspect and distribute the Remington 700 Series Rifle in a non-negligent manner.
38. Defendant Remington had a duty to Plaintiffs, purchasers and potential users of the Remington 700 Series Rifle to design, manufacture and sell the subject rifle so that it was reasonably safe for use under foreseeable conditions.
39. Defendant Remington knew, or should have known through the exercise of reasonable care, that the Remington 700 Series rifle was defective and unreasonably dangerous.
40. Defendant Remington had a duty to the Plaintiffs, purchasers and potential users of the Remington 700 Series Rifle to adequately warn them of the possibility of the firing mechanism misfiring and of the measures necessary to take to avoid misfire.

41. Defendant Remington breached its duty by the following negligent acts and failures to act by: (a) negligently designing the subject rifle; (b) negligently manufacturing the subject rifle; (c) placing an unsafe rifle on the market; (d) failing to inspect or inadequately inspecting the subject rifle; (e) failing to adequately warn of the possibility of the firing mechanism misfiring on the subject rifle and the measures necessary to take to avoid misfire; (f) failing to adequately warn of the dangerous condition of the subject rifle; and (g) failing to adequately test the subject rifle.
42. Defendant Remington's negligent acts and failures to act were the direct and proximate cause of the injuries sustained by Defendant Thar, resulting directly her untimely death.

FOURTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

43. Paragraphs 1-42 of this Complaint are hereby fully realleged and reincorporated hereinafter.
44. As a result of the negligence of Defendant Remington as described above, Decedent Thar, Plaintiff Jahmesha McMillian and Plaintiff Treka McMillian suffered grave bodily injury, including but not limited to, life threatening wounds and permanent bodily injury, all contributing to severe mental anguish, pain and suffering, and severe emotional distress by the Plaintiffs.
45. As a result of the negligence of Defendant Remington as described above, Decedent Thar experienced appreciable pain and suffering, severe emotional distress and mental anguish before all life permanently passed from her body.

46. It was reasonably foreseeable by Defendant Remington that by knowingly placing a defective and dangerous product such as the Remington 700 Series Rifle into commerce would lead to severe injury and result in traumatic emotional distress to the Plaintiffs and Decedent Thar.

FIFTH CAUSE OF ACTION
PUNITIVE DAMAGES

47. Paragraphs 1-46 of this Complaint are hereby fully realleged and reincorporated hereinafter.
48. At all relevant times complained of herein, Defendant Remington's conduct, and failure to warn, constituted egregious, willful and wanton acts of indifference towards the Plaintiffs, Decedent Thar, and the general public so as to warrant the imposition of punitive damages pursuant to North Carolina General Statute § 1D-1 et. seq.
49. As set forth with more specificity, at all times complained of herein, Defendant Remington knew and possessed actual knowledge that the Remington 700 Series Rifle posed a real and present danger to the general public due to its propensity to misfire without the trigger being pulled.
50. Defendant Remington knew and possessed actual knowledge that individuals were being killed, injured and maimed because of misfires related to defects inherent in the trigger mechanism of the Remington 700 Series Rifle.
51. Defendant Remington knew and had actual knowledge, upon information and belief, that there have been thousands of consumer complaints and more than

seventy-five (75) lawsuits instituted at various times against Defendant Remington involving defects with the Remington 700 Series Rifle firing without the trigger being pulled.

52. Defendant Remington has not remedied the problems complained of, or the defects related to, the misfires and trigger mechanism problems inherent in the Remington 700 Series Rifle, placing pecuniary gain above consumer concerns and public safety.
53. Defendant Remington's callous indifference to public and consumer safety in failing to address, correct and remedy the misfiring problems and defects inherent in the Remington 700 Series Rifle design was the direct and proximate cause of injuries to the Plaintiffs and resulted in the death of Decedent Thar.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs pray for an award and judgment against the Defendant as follows:

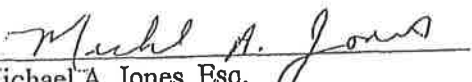
1. For judgment against the Defendant for compensatory, incidental and consequential damages in an amount exceeding Ten Thousand Dollars (\$10,000.00).
2. All damages recoverable under North Carolina General Statute § 28A-18-2, including but not limited to:
 - (i) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
 - (ii) Compensation for pain and suffering of the decedent;
 - (iii) The reasonable funeral expenses for the decedent;
 - (iv) The present money value of the decedent to the person(s) entitled to receive the damages recovered, including but not limited to compensation

for the loss of the reasonably expected, to wit:

- (a) net income of the decedent;
 - (b) services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the person(s) entitled to the damages recovered;
 - (c) society, companionship, comfort, guidance, kindly offices and advice of the decedent, to the person(s) entitled to the damages recovered.
3. For an award of punitive damages pursuant to N.C. General Statute § 1D-1 et. seq.
 4. For an award of all interest allowed by law, post-judgment and pre-judgment.
 5. For an award of attorneys fees, costs and expenses against the Defendant;
 6. For a trial by jury as to all triable issues of fact; and
 7. For such other relief as the Court may deem just and proper.

This 9th day of December 2013.

By: **Willie E. Gary, Esq.**
Pro Hac Vice Motion To Be Submitted
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WATSON & GARY, P.L.
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vgs@williegary.com
cac@williegary.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

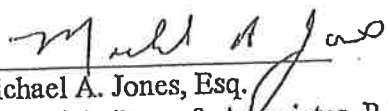
I hereby certify that a copy of the foregoing Summons & Complaint was served upon the Defendant via first class, U.S. Mail, postage prepaid, certified return receipt delivery addressed as follows:

CT Corporation System (Registered Agent)
150 Fayetteville Street
Box 1011
Raleigh, North Carolina 27601

Registered Agent for Defendant Remington Arms Company, L.L.C.

This the 9th day of December 2013.

By:


Michael A. Jones, Esq.
Michael A. Jones & Associates, P.L.L.C.
Chancellor Building
100 East Parrish Street, Suite 450
Durham, NC 27707
Ph: (919) 688-9882
Fax: (919) 688-5414
N.C. State Bar No. 19099
jonesmlaw@aol.com
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF BEDFORD COUNTY, TENNESSEE

STANLEY F. MULLINS and
HOLLY MULLINS,

Plaintiffs,

Vs.

REMINGTON ARMS COMPANY, LLC,
and WILLIAM B. HORNADAY, doing
business as PAWNBROKERS OF
SHELBYVILLE,

Defendants.

Civil Action No. 2012 CV-12534

JURY DEMANDED

COMPLAINT

The Plaintiffs would show unto the Court as follows:

1. The Plaintiffs, Stanley F. Mullins and Holly Mullins, are residents and citizens of Bedford County, Tennessee, and are husband and wife.
2. The Defendant, Remington Arms Company, LLC, is a foreign limited liability company formed in the State of Delaware with its principal place of business located at 870 Remington Drive, Madison, North Carolina. The Defendant is engaged in the business of manufacturing and selling firearms. The Defendant's agent for service of process in the State of Tennessee is C T Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee.
3. The Defendant, William B. Hornaday, is a resident and citizen of Bedford County, Tennessee, residing at 211 Megan Circle, Shelbyville, Tennessee. At all times material, the Defendant, William B. Hornaday, owned and operated a business known at Pawnbrokers of Shelbyville located at 403 North Thompson Street, Shelbyville, Bedford County, Tennessee.

Filed this 21 day of Nov 12
THOMAS A. SMITH, CLERK
CIRCUIT & GENERAL SESSIONS
BEDFORD COUNTY, TENNESSEE
BY Jane Carr
DEPUTY CLERK

4. At all times material, the Defendant, Remington Arms Company, LLC, was doing business in the State of Tennessee by releasing products it manufactured into the stream of commerce in the State of Tennessee.

5. This cause of action arises from a personal injury sustained by the Plaintiff, Stanley F. Mullins, in Bedford County, Tennessee, on or about the 21st day of November, 2011.

6. On November 21, 2011, the Plaintiff, Stanley F. Mullins, was the owner of a Remington 700 rifle, 30.06 Springfield model, bearing serial number E6820441. Mullins purchased the rifle in its new and unused condition from the Defendant, William B. Hornaday, doing business as Pawnbrokers of Shelbyville, a licensed gun dealer located in Bedford County, Tennessee.

7. The Defendant, Remington Arms Company, LLC, manufactured, distributed and placed into the stream of commerce the Remington 700 rifle purchased by the Plaintiff from Defendant Hornaday. The Defendant Remington knew and expected that said rifle would be used by consumers and members of the general public. The Defendant Remington placed the subject rifle into the Bedford County, Tennessee community by supplying the rifle to Pawn Brokers for sale in Bedford County, Tennessee, to citizens of Bedford County, Tennessee.

8. On November 21, 2011, the Plaintiff, Stanley F. Mullins, loaded his Remington 700 rifle for the purpose of engaging in deer hunting on the Plaintiff's property. After loading the rifle, the Plaintiff placed the rifle's safety mechanism in the "on" position. The Plaintiff then walked to the location where he routinely hunted, all the while keeping the rifle's safety mechanism "on."

9. The Plaintiff remained at his deer hunting location for approximately two (2) hours during which time he never fired the rifle or had any reason to turn the safety mechanism

off. After the two hour period, the Plaintiff left the location due to the onset of rain and returned to his residence.

10. At all times material, the subject rifle was equipped with a shoulder strap that the Plaintiff used to carry the rifle. Upon his return to his residence, the Plaintiff took the rifle from his shoulder and held it in his left hand as he placed certain items in a vehicle. As the Plaintiff held the rifle in his left hand, the rifle suddenly and without warning discharged without having its trigger mechanism pulled or contacted in any way. The bullet that discharged from the rifle struck the Plaintiff in his left foot, causing a severe and permanent injury.

11. At the time the rifle discharged as described in the preceding paragraph, the safety mechanism remained in the "on" position as it had been at all times since the Plaintiff loaded the weapon earlier that day.

12. On November 21, 2011, the Plaintiff's Remington 700 rifle was not altered and was in the same condition, in all material respects, at the time of its manufacture and its distribution by the Defendant.

13. Due to the injuries he sustained from the gunshot wound on November 21, 2011, the Plaintiff, Stanley F. Mullins, has undergone surgical and medical procedures, has endured pain and suffering, loss of enjoyment of life, and has sustained physical and mental scars, disability and disfigurement. The Plaintiff, Stanley F. Mullins, has incurred health care expenses as a direct result of his injuries.

14. The Plaintiff, Stanley F. Mullins, has sustained a loss of earnings and a reduction in his earning capacity as a result of the injuries he sustained.

15. Plaintiff, Holly Mullins, alleges that all of the injuries suffered by her husband, Stanley F. Mullins, are serious and permanent and that she has been rendered permanently

disadvantaged and injured. Plaintiff, Holly Mullins, has suffered a loss of consortium and has been denied the services of her husband in being denied the same care, consideration, companionship, aid and society of her husband, as well as the pleasure and assistance of her husband in her daily activities.

16. The subject Remington 700 rifle contains a dangerously defective "Walker" fire control system that can fire without a trigger pull.

17. The Defendant, Remington Arms Company, LLC, is strictly liable to Plaintiff for designing, manufacturing, and placing into the stream of commerce the Remington Model 700 bolt action rifle, which was unreasonably dangerous for its reasonably foreseeable uses because of the following design defects, which were a producing cause of the occurrence in question: The rifle in question has a propensity to unexpectedly discharge without pulling the trigger.

18. The Remington Model 700 bolt-action rifle was in a defective and unreasonably dangerous condition because of Remington's failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger.

19. The Plaintiff, Stanley F. Mullins, had no knowledge of this defective condition present in the rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge.

20. The Defendant, Remington Arms Company, LLC, was negligent in the design, manufacture and marketing of the product in question. The Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 700 Rifle was defective and unreasonably dangerous to those persons likely to use the product for the purpose and in the manner it was intended to be used. The Defendant was negligent in the particulars set forth in

this and the preceding paragraph and such negligence was a proximate cause of the occurrence in question.

21. The Defendant, Remington Arms Company, LLC, knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate fire control system, thereby preventing injury to Stanley F. Mullins. The Defendant further had actual knowledge of the means of designing such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, the Defendant failed to equip the product in question with an adequate fire control system to prevent the injuries to Stanley F. Mullins.

22. The Defendant, Remington Arms Company, LLC, owed Plaintiff the duty of reasonable care when it designed, manufactured, and marketed the product in question. The Defendant violated its duty and was negligent in the particulars set forth above.

23. The Defendant, William B. Hornaday, doing business as Pawnbrokers of Shelbyville, sold a dangerous and defective product to the Plaintiff when he sold the Plaintiff the subject Remington Model 700 Rifle.

24. The Defendant, William B. Hornaday, doing business as Pawnbrokers of Shelbyville, failed to warn the Plaintiff of the dangers associated with the Remington Model 700 Rifle, in particular the use of the "Walker" fire control system and the resulting propensity of the gun to discharge suddenly and without warning when the trigger mechanism was not pulled.

25. The Defendants knew, or in the exercise of ordinary care should have known, of problems with such failures to its Model 700 Rifle and its other rifles but failed to notify or warn owners or the general public prior to Stanley F. Mullins' injuries.

26. Each of the above-mentioned acts or omissions was a proximate cause of the injuries and damages to Plaintiff

27. The Defendant, Remington Arms Company, LLC, was negligent, and its negligent acts and omissions to act were the proximate cause of the damages sustained by the Plaintiffs.

Those negligent acts include, but are not limited to:

- A. Designing, manufacturing, producing, assembling, distributing, promoting, marketing and selling a defective and unreasonably dangerous product which they knew subjected users like Stanley F. Mullins to an unreasonable risk of harm.
- B. Failing to appropriately warn the known and expected users of the product, including the Plaintiff, Stanley F. Mullins, of the dangerous characteristics of the Remington 700 rifle in terms the known and expected users of the product could understand.
- C. Failing to design and manufacture the Remington 700 Rifle to be reasonably safe for its known and expected use.
- D. Failing to exercise ordinary and reasonable care under the circumstances.

28. The Defendant, Remington Arms Company, LLC, violated the Tennessee Consumer Protection Act, T.C.A. 47-18-104 (5), (9), (21) and (27).

29. The Remington 700 Rifle was designed, manufactured, produced, assembled, distributed, labeled, marketed and sold by the Defendant, Remington Arms Company, LLC, and subsequently sold by the Defendant, William B. Hornaday, doing business as Pawnbrokers of Shelbyville, in an unreasonably dangerous and defective manner, making the Defendants strictly liable to the Plaintiffs for their injuries and damages.

30. The Remington 700 Rifle was defective and unreasonably dangerous at the time it left the custody and control of the Defendants and was dangerous to an extent beyond that which would have been contemplated by the ordinary consumer who purchased it with the ordinary knowledge common to the community with regard to the product's characteristics.

31. The Defendant, Remington Arms Company, LLC, breached implied warranties in favor of the Plaintiffs. T.C.A. 47-2-318. The product was not appropriately labeled and packaged so as to adequately warn the expected users of the dangers associated with the product.

32. These Defendants breached the implied warranty of merchantability of T.C.A. 47-2-314(2)(c) and T.C.A. 47-2-314(2)(e).

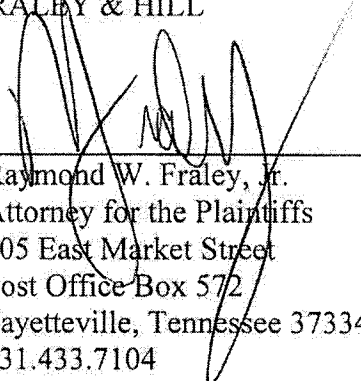
33. As a direct result of the Defendants' failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger, Plaintiff has suffered and is entitled to recover the damages from Remington.

34. Defendant Remington's actions, when viewed objectively from the standpoint of the actor at the time of the occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Remington's consumers and the general public, including Stanley F. Mullins. Remington had actual subjective awareness of the risk involved in utilizing a fire control mechanism for the 700 rifle derived from the Walker Fire Control Mechanism but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. Therefore, punitive damages should be assessed against Remington to deter it from disregarding the rights, safety and welfare of the general public.

WHEREFORE, the Plaintiffs demand a judgment against the Defendants as follows:

1. Compensatory damages in the amount of \$200,000.00;
2. Punitive damages in the amount of \$1,800,000.00;
3. Pre-judgment and post-judgment interest;
4. Cost of suit; and
5. Such other and further relief to which they may be entitled.

FRALEY & HILL



Raymond W. Fraley, Jr.
Attorney for the Plaintiffs
205 East Market Street
Post Office Box 572
Fayetteville, Tennessee 37334
931.433.7104

P

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM A. McCOY

Plaintiff,

vs.

**REMINGTON ARMS COMPANY, LLC.,
SPORTING GOODS PROPERTIES, INC.
and E. I. DuPONT DE NEMOURS AND
COMPANY,**

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff William McCoy, by and through his attorneys, Timothy W. Monsees and Andrew S. LeRoy, Monsees & Mayer, P.C. and for his claim for relief against Defendants, Remington Arms Company, LLC., Sporting Goods Properties, Inc. and E.I. DuPont De Nemours and Company state and allege as follows:

PARTIES

1. Plaintiff William McCoy, (hereinafter "Plaintiff") resides at 308 E. Bowers, Sedan, Kansas, 67361.
2. Defendant Remington Arms Company, LLC is a Delaware Corporation, and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Remington Arms Company, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.
3. Sporting Goods Properties, Inc. is a Delaware corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule

4(d), F.R.Civ. P.

4. E.I. DuPont de Nemours, Inc. is a Delaware Corporation and registered to do business in the Commonwealth of Pennsylvania. Service should be made upon its registered agent, CT Corporation System at 1635 Market Street, Philadelphia, Pennsylvania 19103, unless Defendant E.I. DuPont de Nemours, Inc. waives service pursuant to Rule 4(d), F.R.Civ. P.

JURISDICTION, VENUE AND SERVICE OF PROCESS ALLEGATIONS

5. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1332 in that all facts and occurrences alleged below took place in Chautauqua County, Kansas. Additionally, the Plaintiff is a citizen of Kansas, and the Defendants are all corporate citizens of the State of Delaware and the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

6. Venue is proper within the District of Kansas because the incident which gives rise to this complaint occurred within Chautauqua County, Kansas.

7. Plaintiff requests the case be assigned to the Kansas City, Kansas Court location.

COMMON ALLEGATIONS

8. Defendant Remington Arms Company, LLC; Sporting Goods Properties, Inc.; and E.I. DuPont de Nemours, Inc. (hereinafter collectively "Defendants") are engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

9. Defendants did design, manufacture, distribute, sell and, place into the stream of commerce, Remington Model 700, Model 22 .250, bolt action rifle including the action, fire control system, and safety, bearing Serial Number S6263361 (hereinafter "Rifle"), knowing and expecting that said Rifle would be used by consumers and around

members of the general public.

10. Prior to November 30, 1993, DuPont owned 100% of the stock in the company known as Remington Arms Company, Inc. (now Sporting Goods Properties, Inc., hereinafter "SGPI").

11. On or about November 30, 1993, Remington Arms Acquisition Corporation, Inc., hereinafter "RACI") purchased from E.I. DuPont De Nemours and Company substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name.

12. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, LLC.

13. On February 14, 2012, Plaintiff William McCoy (hereinafter "McCoy") and his friend, Jason Nordel (hereinafter "Nordel"), were coyote hunting on their way home from work in Chautauqua County, Kansas.

14. Nordel had loaded the Rifle, put the Rifle on safe and placed the Rifle in his Toyota pickup truck that morning prior to leaving for work.

15. The Rifle was positioned with the barrel down toward the floorboard, the stock near the gear shifter and the butt in between the seats.

16. On or about February 14, 2012, Nordel drove the truck onto a field and stopped the vehicle. McCoy, who was sitting in the passenger seat, reached with his left hand to pick up the Rifle.

17. McCoy grasped the Rifle by the forestock and as he moved the Rifle upward, the safety moved from the safe to the fire position and the Rifle fired.

18. McCoy was struck in the top of the right foot, causing serious and permanent injury.

19. McCoy and Nordel heard the safety click off as McCoy moved the rifle.

20. McCoy did not pull the trigger on the rifle prior to the discharge.

21. McCoy immediately put the rifle down and Jason drove him to Sedan City Hospital, approximately 10 miles away.

22. On or about February 14, 2012, x-rays at the hospital revealed fractures in 5 metatarsals in McCoy's right foot.

23. McCoy is bringing this action to recover damages from Defendants arising from his personal injuries caused by this incident.

24. Plaintiff's damages include past and future: medical expenses, mental and physical pain and suffering, loss of earnings, impaired earning capacity, permanent disability, disfigurement, and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 24 of the Complaint as though set forth at length herein.

25. The Rifle, as designed, manufactured, sold and distributed by Defendants was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

26. McCoy, a consumer of the general public, used the Rifle in a reasonably foreseeable manner.

27. The Rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition as when it was manufactured by Defendants.

28. The Rifle was defective and unreasonably dangerous when it was sold by Defendants and at the time it left their possession and control.

29. Plaintiff was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

30. The defective design, manufacture, sale and distribution of the Rifle were the causes or substantial factors in causing the accident in question.

31. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

32. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

33. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to incur loss of earnings.

34. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to have an impaired earning capacity.

35. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will suffer from a permanent disability for the remainder of his lifetime.

36. By reason of the Defendants' defective design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will be deprived of the ordinary pleasures of life.

37. Plaintiff has suffered and is entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT II

STRICT LIABILITY FAILURE TO WARN

38. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 37 of the Complaint as though set forth at length herein.

39. The Rifle was in a defective and unreasonably dangerous condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

40. Plaintiff had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge that injured McCoy.

41. As a direct and proximate result of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, McCoy has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

42. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

43. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will continue to incur loss of earnings.

44. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will

continue to have an impaired earning capacity.

45. By reason of the Defendants' failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will suffer from a permanent disability and disfigurement for the remainder of his lifetime.

46. By reason of the failure to warn of the Rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will be deprived of the ordinary pleasures of life.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

47. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 46 of the Complaint as though set forth at length herein.

48. Defendants negligently designed, manufactured, sold and distributed the Rifle in its defective and unreasonably dangerous condition.

49. Defendants were negligent, careless and reckless in one or more of the

following respects:

- a. In designing a fire control with a “trigger connector”;
- b. In designing a fire control with manufacturing tolerance build up;
- c. In designing a fire control that failed to include preset engagement between the trigger connector and the sear;
- d. In designing a fire control that was susceptible to the accumulation of debris, lubrication build up, and/or the accumulation of rust;
- e. In designing a fire control that was susceptible to adjustment;
- f. In designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
- g. In designing a fire control that will fire without a pull of the trigger;
- h. In designing a fire control that will fire when the safety is shifted from the “safe” to the “fire” position;
- i. In designing a fire control that will fire when the bolt is cycled;
- j. In designing a fire control that will “jar off”;
- k. In designing a fire control that uses improper materials, including “powdered metal” for the sear that are unusually susceptible to normal wear and tear;
- l. In manufacturing a fire control that has burrs or manufacturing debris within the fire control;
- m. In manufacturing a fire control without proper or adequate quality control procedures or checks;
- n. In failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
- o. In failing to warn users and handlers of the risks and hazards of improper maintenance of the Rifle;
- p. In failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- q. In failing to inform or advise users and handlers of the proper

procedures for maintenance of the Rifle; and

- r. In failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

50. As a direct and proximate result of Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, McCoy has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

51. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

52. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, McCoy has and will continue to incur loss of earnings.

53. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

54. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will suffer from a permanent disability and disfigurement for the remainder of his lifetime.

55. By reason of the Defendants' negligent, careless and reckless design, manufacture, sale and distribution of the Rifle, and the direct and proximate cause thereof, Plaintiff has and will be deprived of the ordinary pleasures of life.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and

00/100 (\$75,000.00);

- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT IV

NEGLIGENT FAILURE TO WARN

56. Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 55 of the Complaint as though set forth herein.

57. Defendants negligently, carelessly and recklessly failed to warn of the Rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

58. Defendants further failed and neglected to instruct and warn owners and gun handlers of the dangerous propensities of the rifle to fire when the safety is moved to the "fire" position, as needed to load and unload the rifle.

59. Plaintiffs' had no knowledge of said defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the inadvertent discharge which injured McCoy.

60. As a direct and proximate result of Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, McCoy has and will continue to incur mental and physical pain and suffering, inconvenience and embarrassment.

61. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will continue to undergo medical treatment and incur medical and out of pocket expenses.

62. By reason of the Defendants' negligent, careless and reckless failure to warn

of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, McCoy has and will continue to incur loss of earnings.

63. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will continue to have an impaired earning capacity.

64. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will suffer from a permanent disability and disfigurement for the remainder of his lifetime.

65. By reason of the Defendants' negligent, careless and reckless failure to warn of the Rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, and the direct and proximate cause thereof, Plaintiff has and will be deprived of the ordinary pleasures of life.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants, jointly and severally, in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars and 00/100 (\$75,000.00);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff prays that the causes of action alleged herein be tried in this Court before a jury of their peers.

RESPECTFULLY SUBMITTED this 15th day of January, 2014.

MONSEES & MAYER, P.C.
A Professional Corporation

/s/ Timothy W. Monsees

Timothy W. Monsees, KS # 13507

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NO. 14-0201

WILLIAM DAN EDGE
AND JESSIE EDGE

VS.

REMINGTON ARMS COMPANY, INC.
AND WAL-MART STORES, INC

§
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§
§
§
§

IN THE DISTRICT COURT OF

HOUSTON COUNTY, TEXAS

3rd JUDICIAL DISTRICT

FILED
10-12-14
H. J. [Signature]
Deputy

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES WILLIAM DAN EDGE and JESSIE EDGE, hereinafter referred to as Plaintiffs and files this Original Petition against REMINGTON ARMS COMPANY, INC. and WAL-MART STORES, INC., jointly and severally, and for cause of action would respectfully show unto the Court and Jury, by a preponderance of the evidence, the following:

I.

Pursuant to TEXAS RULES OF CIVIL PROCEDURE 190, Plaintiffs intend to conduct discovery in this cause under Level 3. At this time, the full extent of Plaintiff, William Dan Edge's injuries are not known. At the time of filing this lawsuit, Plaintiffs seek monetary relief "over \$1,000,000.00" in accordance with TRCP paragraph (c) (5) of R. 47. Plaintiffs reserves the right to amend this Petition, including this provision, as the case continues.

II.

REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Plaintiffs request Defendants disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2.

III.
PARTIES

Plaintiff, WILLIAM DAN EDGE, is an individual and resident of Houston County, Texas.

Plaintiff, JESSIE EDGE, is an individual and resident of Houston County, Texas.

Defendant REMINGTON ARMS COMPANY, INC., is a corporation, organized and existing under the laws of the state of Delaware and its principal place of business is located in North Carolina. At all times relevant to this action, Remington is with sufficient minimum contacts to subject it to personal jurisdiction in Texas, including selling, manufacturing and distributing rifles through its distributors and sales force. Remington Arms Company, Inc. may be served with process through its registered agent for service in the state of Texas, to wit: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136. Service of said Defendant can be effected by certified mail, return receipt requested.

Defendant Wal-Mart Stores, Inc. is a corporation organized and existing under and by virtue of the law of some state other than the state of Texas, with an agent for service in the state of Texas, to wit: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136. Service of said Defendant can be effected by certified mail, return receipt requested.

IV.
VENUE

Venue is proper in Houston County, Texas pursuant to Section 15.002 (a) (2) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Houston County, Texas.

V.

FACTS

Defendant Remington manufactures, markets and distributes the Remington Model 700 bolt action rifle, including the action, trigger mechanism, fire control system, and safety (hereinafter the "rifle" or "Remington Model 700 rifle"). The rifle contains a dangerously defective "X-Mark Pro" ("XMP") trigger mechanism that may (and often does) fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped. This rifle and the injuries caused by the same is the basis of this lawsuit.

The Remington Model 700 rifle was defective in its design and/or manufacture. Defendant Remington continued to utilize the "XMP" trigger design and manufactured, distributed and sold its product lines, including the Remington Model 700 rifle until its recall in April of 2014.

In December, 2011, Plaintiff William Dan Edge purchased a Remington Model 700 rifle from Defendant Walmart. Plaintiffs were not aware of the defective and dangerous propensity of the rifle to negligently discharge, and neither received a warning from either Defendant Remington or Defendant Walmart of this propensity, either before after that purchase.

On or about November 13, 2012, Plaintiff William Dan Edge was returning from a hunting trip near his home in Crockett, Texas. Plaintiff was an experienced hunter and military veteran. While removing his Remington Model 700 rifle from his truck, the rifle unintentionally discharged. He did not pull or in any way touch or engage the trigger. The rifle negligently discharged striking Plaintiff in the left foot resulting in the partial loss of the left foot including the loss of his second and third toe.

Plaintiff William Dan Edge brings this action to recover damages from Defendants Remington and Walmart for his personal injuries caused by this incident. Plaintiff's damages include the following: past and future medical and related expenses; past and future mental and

physical pain and suffering; past and future lost quality and enjoyment of life; past and future physical impairment; past and future disability; past and future disfigurement; and other general and special damages in an amount to be determined by the jury at the trial of this action.

VI.

Strict Products Liability – Design Defect

Plaintiff William Dan Edge hereby incorporates by reference all the above allegations as if fully set forth herein.

At all relevant times, Defendant Remington was engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 rifle, knowing and expecting that the rifle would be used by consumers and around members of the general public in the state of Texas. At all relevant time, Defendant Walmart was engaged in the business of selling rifles, including the Remington Model 700 rifle, to the public.

Defendants Remington and Walmart are strictly liable to Plaintiff for selling a Remington Model 700 rifle to William Dan Edge because the rifle was defective, unsafe, unreasonably dangerous, not merchantable, and not reasonably suited to the use intended at the time of its manufacture or sale. Defendants knew, or in the exercise of ordinary care should have known, of the defective condition of the rifle at the time of that sale. Defendants are strictly liable for manufacturing, selling, and placing into the stream of commerce the Remington Model 700 rifle with a defective trigger that was the proximate cause of those personal injuries sustained by Plaintiff.

At all relevant times, the Remington Model 700 rifle was defective and/or unreasonably dangerous to Plaintiff and other foreseeable users, and to persons in the vicinity of the users, at the time it left the control of Defendants. Defendants had actual or constructive knowledge that the

rifle was dangerous to users, and to persons in the vicinity of the users, specifically, that the rifle has a propensity to unexpectedly discharge without pulling the trigger.

Plaintiff William Dan Edge did not have knowledge of this defective condition and had no reason to suspect the rifle was unreasonably dangerous prior to the inadvertent discharge.

As a direct and proximate result of the defective and dangerous condition of the Remington Model 700 rifle sold to William Edge, Plaintiff sustained serious injuries and damages, including but not limited to pain and suffering, permanent disability, medical expenses, and lost wages.

VII.

Strict Products Liability – Failure to Warn

Plaintiff William Dan Edge hereby incorporates by reference all above allegations as if fully set forth herein.

At all relevant times, Defendant Remington designed, manufactured and distributed the Remington Model 700 rifle. Defendant Walmart was in the business of selling this model rifle to the public.

Defendants Remington and Walmart knew, or in the exercise of ordinary care should have known, of the Remington Model 700 rifle's propensity to unexpectedly discharge without pulling the trigger, yet Defendants failed to notify or warn Plaintiff William Dan Edge of this propensity, either before or the purchase of the rifle from Defendant Walmart.

Neither William Dan Edge, nor the general public recognized the risks associated with the Remington Model 700 rifle without such a warning.

Defendants Remington and Walmart owed a duty to Plaintiff William Dan Edge to adequately warn of the defect of the Remington Model 700 rifle prior to the sale of the product and thereafter. Failure to warn Plaintiff of the risks associated with the Remington Model 700

rifle was a breach of Defendants' duties to Plaintiff to provide adequate warnings, both before and after the sale of the defective product, of the dangerous conditions of the product.

As a direct and proximate result of the Defendants' failure to warn Plaintiff William Dan Edge of the defective and dangerous condition of the Remington Model 700 rifle, Plaintiff sustained serious injuries and damages, including but not limited to pain and suffering, permanent disability, medical expenses, and lost wages.

VIII.
**THIRD CAUSE OF ACTION
NEGLIGENCE**

Plaintiff William Dan Edge hereby incorporates by reference all the above allegations as if fully set forth herein.

Defendants Remington and Walmart were negligent in the design, manufacture, marketing, and sale of the Remington Model 700 rifle to Plaintiff William Dan Edge. Defendant Remington breached its duty to Plaintiff by acting unreasonably in selecting the design of the Model 700 rifle, specifically the trigger mechanism, given the probability and seriousness of the risk posed by the design, the usefulness of the rifle in such a condition, and the burden on Defendant Remington to take necessary steps to eliminate the risk. Defendants Remington and Walmart knew, or in the exercise of ordinary care should have known, that the Remington Model 700 rifle was defective and unreasonably dangerous to those persons likely to sue, or to be near those persons likely to use, the product for the purpose and in the manner it was intended to be used, and for foreseeable misuses of the rifle. Defendants' negligence was a proximate cause of the occurrence in question and of Plaintiff's damages.

Defendants Remington and Walmart knew, or in the exercise of ordinary care should have known, of the means of equipping the rifle with an adequate trigger mechanism and fire control

system, thereby preventing injury to Plaintiff. Defendants had actual knowledge of the means of designing or adding such a product, which would not fail in one or more of these ways. Notwithstanding this knowledge, Defendants failed to equip the product in question with an adequate fire control system to prevent the injuries to Plaintiff.

Defendants Remington and Walmart had actual or constructive knowledge of the problems with the Remington Model 700 rifle at the time it was sold to William Dan Edge, in particular the rifle's propensity to unexpectedly discharge without pulling the trigger, such that the danger was known or, at a minimum, was reasonably foreseeable, but negligently failed to notify or warn Plaintiff of the rifle's dangerous condition.

Defendants Remington and Walmart owed Plaintiff the duty of reasonable care when they designed manufactured, marketed, and sold the product in question. Defendants violated these duties and were negligent, as set forth above.

Each of the above-mentioned negligent acts or omissions was a proximate cause of the injuries and damages to Plaintiff.

IX. PUNITIVE DAMAGES

The actions of Defendants Remington and Walmart involved an extreme degree of risk, considering the probability and magnitude of the potential harm to their consumers and the general public, including Plaintiff William Dan Edge. Defendants had and have actual, subjective awareness of the risk involved in utilizing the trigger mechanism for the Remington Model 700 rifle, but they nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others to manufacture, distribute, market, and sell that rifle.

The actions of Defendants Remington and Walmart were outrageous, including actions done with malice or bad motives, and they evidenced reckless indifference to the interest of

Plaintiff and the general public. Punitive damages should be assessed against Defendants to deter them and others from disregarding the rights, safety and welfare of the general public.

X.

Plaintiff, William Dan Edge would show the Court that prior to his injuries, he was a hardworking, loving and dependable husband. As a result of his injuries, he is unable to perform any of the usual household services a husband furnishes to his family. Plaintiff, Jessie Edge would show that she is entitled to not only the support of her husband, but also his care, attention, affection, counsel and protection. Jessie Edge, wife of Plaintiff William Dan Edge, joins in this cause of action as a named Plaintiff, and specifically incorporates all the allegations set forth above, and asserts her individual cause of action for the loss of her husband's consortium. Plaintiffs would show the Court that consortium is the mutual right of husband and wife to that affection, solace, comfort, companionship, society, assistance, and sexual relations, necessary for a successful marriage, for which elements of damages said Plaintiff would show that she is entitled to recover of and from the Defendants.

As a direct and proximate producing result of the aforesaid acts of negligence by the Defendants, Plaintiff, Jessie Edge has sustained injuries and damages as set forth above, for which she seeks to recover of and from the Defendants in an amount in excess of the minimum jurisdictional limits, and which amount she herein requests this honorable Court to award her as her sole and separate property.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs prays that the Defendants be duly cited to appear and answer herein and that upon final trial of this cause, Plaintiffs be awarded a judgment against the Defendants for the following:

- a. Actual damages;

- b. Pre-judgment and post-judgment interest as allowed by law;
- c. Punitive damages in an amount to be proved at trial;
- d. Court costs and attorney's fees; and
- d. All other relief to which Plaintiff is entitled.

Respectfully submitted,

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STATE BAR NO. 24028070
Attorney for Plaintiff

PLAINTIFF DEMANDS TRIAL BY JURY