DIVISION "E"

JAMES BALDWIN and TRUDY BALDWIN, Individually and on behalf of the minor, TRENT BALDWIN

CIVIL DOCKET NO. 110926

VERSUS

17TH JUDICIAL DISTRICT COURT

REMINGTON ARMS COMPANY, INC; SPORTING GOODS PROPERTIES, INC.; E. I. DU PONT DE NEMOURS COMPANY; AND JOHN THERIOT and MALETTE THERIOT Individually and on behalf of the minor, TYLER THERIOT, AIG INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, and LOUISIANA CITIZENS PROPERTY INSURANCE

PARISH OF LAFOURCHE

PETITION FOR DAMAGES

The Petition of **JAMES BALDWIN and TRUDY BALDWIN, individually and on behalf of the minor, TRENT BALDWIN,** residents of Louisiana, respectfully represent the following, to wit:

1.

Plaintiffs were at all times material to this action residents of LaFourche Parish, Louisiana.

2.

At all times pertinent herein, Plaintiffs JAMES BALDWIN and TRUDY BALDWIN were the natural parents of TRENT BALDWIN.

PARTIES DEFENDANT

3.

Made defendants herein are:

a. Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case with its principal place of business located at 870 Remington Drive, P O Box 700, Madison, North Carolina 27025-0700 and may be served through The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;

b. Defendant, SPORTING GOODS PROPERTIES, INC., (hereinafter SGPI) is a foreign corporation, engaged directly or indirectly in the manufacturing and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at c/o CT Corporation System, One Corporate Center, Floor 11, Hartford, CT 06103-3220;

c. Defendant, E. I. DU PONT DE NEMOURS AND COMPANY, (hereinafter "DU PONT") is a foreign corporation, engaged directly or indirectly in the manufacturing and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at 1007 Market St., D-13039, Wilmington, DE 19898;

d. AIG INSURANCE is a foreign insurer authorized to do and doing business in the State of Louisiana having appointed the Honorable Jay Dardenne for service of process for suits filed against it in this state;

e. TYLER THERIOT, a minor who does not have a court authorized and appointed tutor, through an attorney at law, duly appointed by the court;

f. JOHN THERIOT, the father of Tyler Theriot, an individual who is a resident of LaFourche Parish, Louisiana;

g. MALETTE THERIOT, the mother of Tyler Theriot, an individual who is a resident of Terrebonne Parish, Louisiana;

h. ALLSTATE INSURANCE COMPANY, a foreign insurance company, authorized to do and doing business in the State of Louisiana, having appointed the Honorable Jay Dardenne for service of process for suits filed against it in this state;

i. LOUISIANA CITIZENS PROPERTY INSURANCE, who issued a policy of insurance in favor of Malette Theriot, which affords liability coverage for the accident in question;

j. Any other defendants, whose names are learned during the course of discovery to have had contributing responsibility in the production and marketing of the firearm in question; and

k. Any successor in business or subsidiary to any of the above.

JURISDICTION OF THIS COURT

4.

This Honorable Court has personal jurisdiction over the defendants, Remington, SGPI, and DuPont pursuant to the Louisiana Long Arm Statute (La. R.S. 13:3201) with citation and service of process to be made in accordance therewith.

5.

MALETTE THERIOT is a resident of Terrebonne Parish.

6.

MALETTE THERIOT is the mother of the minor Tyler Theriot.

7.

JOHN THERIOT is a resident of LaFourche Parish.

8.

JOHN THERIOT is the father of the minor Tyler Theriot.

9.

MALETTE THERIOT is liable for the tortuous conduct, if any, of her son, Tyler Theriot.

10.

JOHN THERIOT is liable for the tortuous conduct, if any, of his son, Tyler Theriot.

11.

LOUISIANA CITIZENS PROPERTY INSURANCE issued a policy of insurance in favor of Malette Theriot.

12.

The Louisiana Citizens Property Insurance policy issued in favor of Malette Theriot provided coverage for the incident in question.

13.

MALETTE THERIOT is an insured under the aforementioned Citizens insurance policy.

14.

TYLER THERIOT is an insured under the Louisiana Citizens Property Insurance policy issued to Malette Theriot.

15.

ALLSTATE INSURANCE COMPANY issued a policy of insurance in favor of John Theriot.

16.

JOHN THERIOT is an insured under the aforementioned Allstate insurance policy.

17.

The Allstate Insurance Company policy issued in favor of John Theriot provided coverage for the incident in question.

18.

TYLER THERIOT is an insured under the Allstate Insurance policy issued to John Theriot.

19.

The hereinabove defendants are justly, legally, and jointly and severally indebted unto the Plaintiff by reason of the following, to wit:

20.

AIG offers product liability coverage of torts committed by the Remington defendants and is brought in under Louisiana Direct Action Statute.

21.

Defendants, John and Malette Theriot, as the mother and father of Tyler Theriot, are responsible and answerable in damages for their minor child's misconduct. As divorced parents, they are recognized as the co-tutors of their minor child. At the time of the accident, neither divorced parent had been appointed by the Court as tutor and as such the Court should appoint the mother and father as tutors. In the event that the Court determines that Tyler Theriot does not have a duly appointed tutor, this action is brought directly against the minor pursuant to Code of Procedure Article 732 and the Court should appoint an Attorney at Law to represent the minor.

FACTS OF ACCIDENT

22.

Trent Baldwin is the unemancipated minor son of James and Trudy Baldwin.

23.

On or about January 3, 2008, TRENT BALDWIN was preparing to go hunting with his friend, Tyler Theriot.

24.

On or about January 3, 2008, Tyler Theriot was attempting to unload his grandfather's Remington Model 700 rifle, bearing Serial Number A6618304.

25.

On the date of the incident, Tyler Theriot was an unemancipated minor.

26.

At the time, the Remington Model 700 rifle was in the "on safe" condition.

27.

The Model 700's design required that to unload the gun, the gun's manual safety has to be moved from "safe" to "fire."

28.

When Tyler Theriot moved the gun's manual safety button from the "safe" to "fire," the rifle discharged.

29.

The firearm's trigger was neither intentionally pulled nor touched by any person or object at the time the gun discharged.

30.

The bullet from the gun struck Trent Baldwin in the leg, later requiring amputation below the knee.

31.

Upon information and belief, at all times pertinent herein, the firearm in question was in as-manufactured condition and had not been materially altered or modified other than a reduction in the gun's trigger pull.

32.

The Remington defendants provided a design whereby users could reduce the trigger pull on Model 700 rifles.

33.

The Remington defendants knew that users of the Model 700 reduce the trigger pull of the Model 700's.

34.

The reduction in the gun's trigger pull was foreseeable and anticipated by the Remington defendants.

35.

The shooting occurred in Copiah County, Mississippi.

36.

At all times pertinent herein, Tyler Theriot handled the firearm in question in a manner foreseeable and anticipated by the Remington defendants.

37.

Tyler Theriot did not know and had no reason to suspect that the Remington rifle could discharge under the aforementioned circumstances.

38.

Plaintiff did not know and had no reason to suspect that the Remington rifle could discharge under the aforementioned circumstances.

39.

Plaintiffs have suffered pain, disability, loss of a limb, and emotional distress, as well as substantial medical bills, loss of earning capacity, and other damages as a result of this shooting and the fault of the defendants.

40.

At the time of the incident, there was in full force and effect a policy of homeowner's insurance, which contained separate coverage for liability issued by defendant, ALLSTATE INSURANCE COMPANY, to and in favor of defendant, JOHN THERIOT, which policy affords coverage for liability of the nature of that alleged herein and which policy insures to the benefit of the petitioners, thereby entitling them to maintain this direct action against the defendant insurer, and thereby also rendering the defendant insurer liable, *in solido*, with the other defendants for damages as sued for herein.

41.

At the time of the incident, there was in full force and effect a policy of homeowner's insurance, which contained separate coverage for liability issued by defendant, LOUISIANA CITIZENS PROPERTY INSURANCE, to and in favor of defendant, MALETTE THERIOT, which policy affords coverage for liability of the nature of that alleged herein and which policy insures to the benefit of the petitioners, thereby entitling them to maintain this direct action against the defendant insurer, and thereby also rendering the defendant insurer liable, *in solido*, with the other defendants for damages as sued for herein.

FAULT OF THE DEFENDANTS REMINGTON, SGPI, AND DUPONT

42.

The Remington defendants are liable under Mississippi law (Miss. Code §11-1-63) for the damages sustained by plaintiffs, including punitive damages under Miss. Code §11-1-65.

43.

Alternatively, the Remington defendants are liable under Louisiana law, for the defects of the firearm in question and the fault as set forth herein, including but not limited to the Louisiana Product Liability Act and other Louisiana laws relating to fault.

44.

A state-of-the-art firearm, in proper working order, should not fire unless its trigger is pulled.

45.

A state-of-the-art firearm should not require the gun's handler to disengage the gun's manual safety in order to unload the gun.

46.

The purpose of a bolt-action rifle's manual safety is to guard against an inadvertent pull of the gun's trigger.

47.

The Remington defendants should not have required that its users disengage the gun's manual safety to unload it, same being a defect in design that caused or contributed to the injuries sustained by the plaintiffs.

48.

At all times pertinent herein, Defendants, Remington, DuPont and SGPI were engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

49.

Defendants, Remington, DuPont and SGPI 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. A6618304 (hereinafter "bolt action rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

50.

At all times pertinent to this action Defendants Remington, SGPI and/or DuPont were and are the alter ego of each other and in essence constitute one legal entity which is otherwise the same as a division of DuPont.

51.

DuPont exerted complete dominion and/or absolute control over the corporate activity and function of the other companies.

52.

The conduct of DuPont and/or Remington and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of any corporate veil resulting in each corporate Defendant being liable for the acts and omissions of the others as they were in reality one legal entity.

53.

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

54.

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.

55.

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

56.

SGPI retained certain non-income producing assets, some with significant environmental liabilities and other liabilities such that its net worth was reduced to a small fraction of its former worth and in fact SGPI likely has a negative net worth.

57.

The 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.

58.

Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of an Asset Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI.

59.

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.

60.

Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt-action rifle.

61.

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

62.

Remington acquired the entire company from SGPI through an asset purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont.

63.

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.

64.

Remington, DuPont and SGPI acted fraudulently with respect to the asset purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington from the debts of SGPI, particularly its product liability.

65.

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.

66.

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 Remington, or by adopting and ratifying SGPI's acts or omissions.

67.

In addition, at all times pertinent to this action, SGPI itself, 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.

68.

Hereinafter, the defendants Remington, DuPont and SGPI are collectively referred to as the "Remington defendants."

69.

A properly working Remington rifle should not fire unless its trigger is pulled.

70.

A properly working Remington rifle should not fire if its manual safety switch is engaged or in the "on safe" position.

71.

A properly working Remington rifle should not fire when its manual safety is moved from "safe" to "fire," if the gun's trigger is not pulled.

72.

A firearm that will discharge when its trigger is not pulled presents a risk of harm.

73.

A firearm that will discharge when its trigger is not pulled presents an unreasonable risk of harm.

74.

A bolt-action rifle that requires the user to disengage the gun's manual safety in order to open the gun's bolt is defective and unreasonably dangerous.

75.

The injuries to TRENT BALDWIN were caused by the unreasonably dangerous conditions and design features of the Remington gun.

76.

The firearm was defective and unreasonably dangerous for normal or foreseeable use and handling conditions.

77.

At all times pertinent herein plaintiff's conduct was foreseeable by defendants.

78.

At all times pertinent herein, Tyler Theriot's conduct was foreseeable by the Remington defendants.

79.

The defendant, REMINGTON ARMS COMPANY, INC, had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

80.

Upon information and belief, the defendant, SPORTING GOODS PROPERTIES, INC., had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

81.

Upon information and belief, the defendant, DU PONT, had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

82.

The said firearm was designed, manufactured, constructed, fabricated, assembled, merchandised, advertised, promoted, sold and/or distributed by the defendants, Remington, SGPI, and DuPont, individually and/or in combination herein, for use and general distribution and sale throughout the United States including and without limitation the State of Louisiana.

83.

DuPont manufactured the firearm in question.

84.

Sporting Goods Properties, Inc. manufactured the firearm in question.

85.

Remington Arms Company, Inc. manufactured the firearm in question.

86.

The Remington defendants could have predicted and anticipated the use and accident conditions (as alleged herein) with the use of reasonable care and proper safety engineering and design practices.

87.

The Remington defendants are guilty of gross negligence and a reckless disregard for safety and at fault also by having failed to adequately warn and instruct any and all potential

and foreseeable persons exposed to the dangers of the product and the dangers in using the firearm.

88.

With the use of reasonable effort and care, the Remington defendants could have included in the design, production, and sale of the product in question, reasonably feasible and available safety systems or devices so as to have prevented the injuries to TRENT BALDWIN.

89.

At the time of the design, production, and sale of the product in question, alternative designs and systems were reasonably feasible and available with reasonable effort that would have eliminated or greatly reduced the risk of the accident in question.

90.

The Remington defendants failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraph.

91.

At the time of the sale of the product in question, there were reasonably available safety and design concepts in existence that would have eliminated or greatly reduced the risks causing TRENT BALDWIN's injuries if utilized in the firearm in question.

92.

The magnitude of the risks presented by the product in question under the accident circumstances as alleged herein outweighed utility of the firearm as sold.

93.

TRENT BALDWIN did not appreciate the magnitude of the risk associated with the use of the firearm and under the accident conditions as alleged herein.

94.

Tyler Theriot did not appreciate the magnitude of the risk associated with the use of the firearm and under the accident conditions as alleged herein.

95.

The Remington defendants failed to appreciate the magnitude of the risks of injury or death under the accident conditions as alleged herein causing the injuries to TRENT BALDWIN.

96.

The Remington defendants failed to warn and make certain that all potential risks of accidental discharge by the product in question were known by the general American public, and particularly those in the position of the plaintiff.

97.

Upon information and belief, the Remington defendants failed to properly and fully test and inspect the firearm prior to releasing and marketing it to the public.

98.

The Remington defendants failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of accidental discharge during foreseeable or predictable handling conditions.

99.

The Remington defendants failed to correct the fact that the firearm was designed and produced with risks of discharge without the trigger being pulled.

100.

The Remington defendants failed to correct the fact that the Model 700 was designed that the gun's manual safety had to be disengaged before the gun's bolt was opened.

101.

The Remington defendants failed to recall the firearm in question and place public notices and warnings concerning the defective and ultra dangerous characteristics of the firearm in question so as to eliminate the risks causing the injuries to TRENT BALDWIN.

102.

The Remington defendants failed to use reasonably available alternative safety designs and safety systems in the firearm in question.

103.

The Remington defendants failed to reduce or prevent the risk of accidental discharge under circumstances other than when the trigger is pulled in the normal fashion.

104.

The Remington defendants failed to retro-fit and install reasonably available state-of-the-art accident prevention devices in the product.

105.

The Remington defendants breached their duties and failed to take necessary steps to prevent and eliminate the risks in their firearms, and warn, advise, and give notice to the public of the risks inherent in the product in question.

106.

At the time of the production and commercialization of the firearm in question, there were reasonably available alternative safety designs and systems which, with the use of reasonable care and available alternative technology, could have been used in the firearm in question to greatly reduce or prevent the risk of accidental discharge.

107.

Had reasonably feasible and available alternative designs and safety systems been used with the product in question, the risk of injury to and the injuries to TRENT BALDWIN, under the accident circumstances described, would have been eliminated or greatly reduced.

108.

At the time of the sale and distribution of the firearm, it was reasonably feasible to have taken additional steps to make certain to a reasonable degree of probability that the user understood the degree of danger and avoided exposure to the risks presented by the firearm as designed and sold.

109.

The Remington defendants failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraphs, and such was a cause in fact and the proximate cause of the injuries to TRENT BALDWIN.

110.

In addition to the above, the Remington defendants were guilty of negligence and fault by having failed to:

a. Anticipate the reasonably foreseeable and/or predictable uses or manners of use of the firearm in question;

b. Take reasonably feasible steps to provide adequate instructions to the users and those exposed to the risks inherent in the product;

c. Warn, instruct, and fully caution users of the full extent of the dangers inherent in the foreseeable and predictable misuse of the firearm in question, as well as the chance or risk that such dangers would manifest themselves in injury or death in the absence of extraordinary caution;

d. To cause users to appreciate the risks inherent in the product in question;

e. Provide feasible and reasonably practical alternative methods of use without substantial risks.

111.

The fault of the Remington defendants referenced in the preceding paragraphs was a cause in fact and the proximate cause of the injuries to TRENT BALDWIN and the concomitant damages to James and Trudy Baldwin.

112.

If in fact the use employed by Tyler Theriot is claimed by the Remington defendants, to be or constitute a "misuse" of the firearm, then the defendants unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

113.

If in fact the reduction of the trigger pull is claimed by the Remington defendants, to be or constitute a "misuse" of the firearm, then the defendants unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

114.

The Remington defendants improperly failed to anticipate that Tyler Theriot would or may well use the firearm in a foreseeable and predictable manner, as he did, causing the risks inherent in the firearm to manifest themselves in the circumstances of his shooting.

115.

Upon information and belief, and notwithstanding notice of prior accidents similar to that made the subject matter of this litigation, the Remington defendants have still failed to retro-fit or install safety systems, guards, or devices designed and intended to eliminate or greatly reduce the risk of other shootings under the same or similar conditions as the shooting made the subject matter of this litigation.

116.

The Remington defendants failed to use reasonably available alternative and/or state-of-the-art technology in firearm design and safety systems to prevent the accidental discharge and resulting injuries in the product in question at moments when the trigger had not been pulled.

117.

Reasonably feasible alternative and state-of-the-art designs and safety systems were available at the time the production of the firearm in question but were not used.

118.

The Remington defendants consciously withheld and continue to withhold information relating to prior incidents, accidents and other information, which would have influenced Tyler Theriot or his family members not to use this firearm.

119.

The Model 700 bolt action rifle is defective and/or unreasonably dangerous due to the lack of any or adequate warnings of its propensity to suddenly and unexpectedly discharge without pulling the trigger.

120.

The Model 700 bolt action rifle is also defective and/or unreasonably dangerous as a result of inadequate or incorrect operation, adjustment, cleaning, maintenance and/or safety instructions which caused or contributed to cause the discharge.

121.

Plaintiffs James Baldwin, Trudy Baldwin and Trent Baldwin have suffered, and will continue to suffer damages as a direct and proximate result of the Remington Defendants' failure to warn of the rifle's propensity to unexpectedly discharge and failure to otherwise properly instruct as set forth above.

122.

The Remington defendants' conduct in the design, manufacture, and sale of the bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference and/or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive damages.

123.

As a direct and proximate result of all defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to otherwise properly instruct, Plaintiff Trent Baldwin now suffers and will in the future continue to suffer as described below.

124.

The Remington defendants designed, manufactured, distributed and sold the bolt action rifle, thereby expressly and impliedly warranting to Tyler Theriot and the public that the bolt action rifle was of merchantable quality, fit, safe and proper for the ordinary purposes for which it was intended as a hunting and/or target rifle.

125.

The gun's owners reasonably relied upon said express and implied warranties made by the Remington defendants.

126.

The Remington defendants did not warn or give notice to Mr. Theriot's family 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, nor did Defendants properly instruct on the operation, adjustment, cleaning, maintenance and/or safety of the rifle.

127.

The Remington defendants breached said expressed and implied warranties in that the bolt action rifle was not fit and suitable for its intended purpose, nor was it of merchantable quality.

128.

Notwithstanding said warranties, the bolt action rifle was not fit for the ordinary purpose for which it was intended nor was it of merchantable quality.

129.

The Remington defendants knew, or should have known, of defects in the fire control system and safety of all Model 700 bolt action rifles including the subject bolt action rifle, but took no action to warn, recall, retrofit and/or otherwise modify or remedy the unreasonably dangerous condition of the bolt action rifle and/or make it reasonable safe for its ordinary and intended use.

130.

In the alternative, the Remington defendants knew of defects in the fire control system and safety of all Model 700 bolt action rifles, including the subject bolt action rifle, admitted a duty to warn, recall, retrofit and/or otherwise modify or remedy these defective firearms, discussed and otherwise considered recalling the Model 700 for these same defects, but negligently failed to do so.

131.

As a direct and proximate result of all the Remington defendants' failure to recall and/or retrofit the bolt action rifle, Plaintiff Trent Baldwin suffered, now suffers, and will in the future continue to suffer from those injuries described herein.

132.

Plaintiffs, James Baldwin and Trudy Baldwin, have also suffered damages as a direct and proximate result of all defendants' failure to recall and/or retrofit the bolt action rifle, including all those injuries described below.

133.

The defect in the bolt action rifle was substantial, obvious, notorious and known to the Remington defendants to the extent that their conduct in the design, manufacture, and sale of the bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference and/or conscious disregard for the rights and safety of users and consumers of the rifle and the general public.

134.

The Remington defendants knew that various evidence including but not limited to customer complaints, gun examination reports, various committee minutes and memoranda, and fire control systems removed from returned rifles would be significant in litigation regarding whether or not the Model 700 is defective and unreasonably dangerous, and as a consequence, had a duty to preserve said evidence for use in litigation so that a fair resolution of the issues can be reached with all relevant evidence in hand.

135.

Upon information and belief, the Remington 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 set forth above.

136.

Upon information and belief, the Remington defendants first destroyed relevant evidence with full knowledge of past, pending, and future claims regarding the Model 700 bolt action rifle so as to prevent Plaintiff in this and other similar litigation from obtaining access to said evidence.

137.

Upon information and belief, the Remington defendants adopted a written record retention policy upon which it relied to destroyed relevant evidence based upon its stated retention schedule with full knowledge that said evidence was relevant to past, pending, and future Model 700 claims.

138.

Upon information and belief, the Remington defendants destroyed relevant evidence in contravention of its stated record retention policy because it knew that said evidence established that the Model 700 is defective and that the Remington defendants knew of said defects.

139.

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

140.

Upon information and belief, this destruction of relevant evidence occurred when legal proceedings regarding the Model 700 were pending or reasonable foreseeable and after the Remington defendants knew of the defective condition of the Model 700 and its liability for same.

141.

Upon information and belief, the Remington defendants' conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

142.

By virtue of the Remington defendants' actions as set forth above, the Remington defendants have been guilty of fraud and misrepresentation pursuant to Louisiana law and, particularly, Articles 2545 and 1953 *et seq.* of the Louisiana Civil Code and/or under Mississippi law.

143.

By virtue of the Remington defendants' actions as set forth above, the Remington defendants have been guilty of fraud and misrepresentation pursuant to Louisiana law and, particularly, Articles 2545 and 1953 *et seq.* of the Louisiana Civil Code and/or under Mississippi law.

144.

The conduct of the Remington defendants amounts to actual notice, fraud and/or gross negligence that evidences a willful, wanton, or reckless disregard for the safety of others.

FAULT OF THE DEFENDANT TYLER THERIOT

145.

Petitioners aver that a cause of the incident and resulting injuries and damages was the fault of Tyler Theriot.

146.

Tyler Theriot was handling the Remington rifle at the time it discharged.

147.

Tyler Theriot allowed the muzzle to be pointed in a direction such that if the gun was unintentionally discharged, there was a risk that the shot could injure Trent Baldwin.

148.

When the Remington rifle discharged, the shot injured Trent Baldwin.

149.

The fault of Tyler Theriot caused the defects in the Remington rifle to manifest and injure Trent Baldwin.

DAMAGES CAUSED BY DEFENDANTS

150.

Due to the defendants' fault in causing the injuries to JAMES BALDWIN, TRUDY BALDWIN and TRENT BALDWIN, Plaintiffs have suffered and will suffer damages in the following, but not exclusive, particulars, to wit:

a. Loss of enjoyment of life;

b. Extreme emotional distress;

c. Extreme pain and suffering;

d. Disability;

e. Loss of a leg;

f. Other special damages;

g. Healthcare and surgical expenses; past, present and future;

h. Loss of future earning capacity;

i. Loss of Consortium, services, and society; and

j. Any and all damages for the injuries to TRENT BALDWIN as shall be determined to have been sustained and/or allowed by law, in addition to punitive damages.

151.

The damages resulting to Plaintiffs were occasioned and proximately caused by the faulty, defective, and unreasonably dangerous conditions and vices of the firearm manufactured and marketed by the Remington defendants and/or Tyler Theriot.

WHEREFORE PLAINTIFFS PRAY that a certified copy of the foregoing Petition be served upon the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana Citizens Property Insurance and that the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana

Citizens Property Insurance be duly cited to appear and answer and after the necessary legal delays, requisites, formalities, and trial had, there be Judgment herein in favor of the plaintiffs, JAMES BALDWIN and TRUDY BALDWIN, individually and on behalf of the minor, TRENT BALDWIN, and against the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana Citizens Property Insurance, jointly and severally, for any and all damages as shall be determined to be just, fair, and reasonable under the circumstances, together with legal interest from date of judicial demand until paid, and for all costs of these proceedings.

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PLEASE WITHHOLD SERVICE

FILED
DEC 30 2008
CLERK OF COURT

JAMES BALDWIN and TRUDY BALDWIN,
Individually and on behalf of the minor,
TRENT BALDWIN

156187

CIVIL DOCKET NO. _____

VERSUS

32nd JUDICIAL DISTRICT COURT

REMINGTON ARMS COMPANY, INC;
SPORTING GOODS PROPERTIES, INC.;
E. I. DU PONT DE NEMOURS COMPANY;
AND JOHN THERIOT and MALETTE THERIOT
Individually and on behalf of the minor,
TYLER THERIOT, AIG INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY, and
LOUISIANA CITIZENS PROPERTY INSURANCE

PARISH OF TERREBONNE

PETITION FOR DAMAGES

The Petition of **JAMES BALDWIN and TRUDY BALDWIN, individually and on behalf of the minor, TRENT BALDWIN,** residents of Louisiana, respectfully represent the following, to wit:

1.

Plaintiffs were at all times material to this action residents of LaFourche Parish, Louisiana.

2.

At all times pertinent herein, Plaintiffs JAMES BALDWIN and TRUDY BALDWIN were the natural parents of TRENT BALDWIN.

PARTIES DEFENDANT

3.

Made defendants herein are:

a. Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case with its principal place of business located at 870 Remington Drive, P O Box 700, Madison, North Carolina 27025-0700 and may be served through The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;

b. Defendant, SPORTING GOODS PROPERTIES, INC., (hereinafter SGPI) is a foreign corporation, engaged directly or indirectly in the manufacturing and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at c/o CT Corporation System, One Corporate Center, Floor 11, Hartford, CT 06103-3220;

c. Defendant, E. I. DU PONT DE NEMOURS AND COMPANY, (hereinafter "DU PONT") is a foreign corporation, engaged directly or indirectly in the manufacturing and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at 1007 Market St., D-13039, Wilmington, DE 19898;

TIMOTHY C. ELLENDER
JUDGE, DIVISION C

d. AIG INSURANCE is a foreign insurer authorized to do and doing business in the State of Louisiana having appointed the Honorable Jay Dardenne for service of process for suits filed against it in this state;

e. TYLER THERIOT, a minor who does not have a court authorized and appointed tutor, through an attorney at law, duly appointed by the court;

f. JOHN THERIOT, the father of Tyler Theriot, an individual who is a resident of LaFourche Parish, Louisiana;

g. MALETTE THERIOT, the mother of Tyler Theriot, an individual who is a resident of Terrebonne Parish, Louisiana;

h. ALLSTATE INSURANCE COMPANY, a foreign insurance company, authorized to do and doing business in the State of Louisiana, having appointed the Honorable Jay Dardenne for service of process for suits filed against it in this state;

i. LOUISIANA CITIZENS PROPERTY INSURANCE, who issued a policy of insurance in favor of Malette Theriot, which affords liability coverage for the accident in question;

j. Any other defendants, whose names are learned during the course of discovery to have had contributing responsibility in the production and marketing of the firearm in question; and

k. Any successor in business or subsidiary to any of the above.

JURISDICTION OF THIS COURT

4.

This Honorable Court has personal jurisdiction over the defendants, Remington, SGPI, and DuPont pursuant to the Louisiana Long Arm Statute (La. R.S. 13:3201) with citation and service of process to be made in accordance therewith.

5.

MALETTE THERIOT is a resident of Terrebonne Parish.

6.

MALETTE THERIOT is the mother of the minor Tyler Theriot.

7.

JOHN THERIOT is a resident of LaFourche Parish.

8.

JOHN THERIOT is the father of the minor Tyler Theriot.

9.

MALETTE THERIOT is liable for the tortuous conduct, if any, of her son, Tyler Theriot.

10.

JOHN THERIOT is liable for the tortuous conduct, if any, of his son, Tyler Theriot.

11.

LOUISIANA CITIZENS PROPERTY INSURANCE issued a policy of insurance in favor of Malette Theriot.

12.

The Louisiana Citizens Property Insurance policy issued in favor of Malette Theriot provided coverage for the incident in question.

13.

MALETTE THERIOT is an insured under the aforementioned Citizens insurance policy.

14.

TYLER THERIOT is an insured under the Louisiana Citizens Property Insurance policy issued to Malette Theriot.

15.

ALLSTATE INSURANCE COMPANY issued a policy of insurance in favor of John Theriot.

16.

JOHN THERIOT is an insured under the aforementioned Allstate insurance policy.

17.

The Allstate Insurance Company policy issued in favor of John Theriot provided coverage for the incident in question.

18.

TYLER THERIOT is an insured under the Allstate Insurance policy issued to John Theriot.

19.

The hereinabove defendants are justly, legally, and jointly and severally indebted unto the Plaintiff by reason of the following, to wit:

20.

AIG offers product liability coverage of torts committed by the Remington defendants and is brought in under Louisiana Direct Action Statute.

21.

Defendants, John and Malette Theriot, as the mother and father of Tyler Theriot, are responsible and answerable in damages for their minor child's misconduct. As divorced parents, they are recognized as the co-tutors of their minor child. At the time of the accident, neither divorced parent had been appointed by the Court as tutor and as such the Court should appoint the mother and father as tutors. In the event that the Court determines that Tyler Theriot does not have a duly appointed tutor, this action is brought directly against the minor pursuant to Code of Procedure Article 732 and the Court should appoint an Attorney at Law to represent the minor.

FACTS OF ACCIDENT

22.

Trent Baldwin is the unemancipated minor son of James and Trudy Baldwin.

23.

On or about January 3, 2008, TRENT BALDWIN was preparing to go hunting with his friend, Tyler Theriot.

24.

On or about January 3, 2008, Tyler Theriot was attempting to unload his grandfather's Remington Model 700 rifle, bearing Serial Number A6618304.

25.

On the date of the incident, Tyler Theriot was an unemancipated minor.

26.

At the time, the Remington Model 700 rifle was in the "on safe" condition.

27.

The Model 700's design required that to unload the gun, the gun's manual safety has to be moved from "safe" to "fire."

28.

When Tyler Theriot moved the gun's manual safety button from the "safe" to "fire," the rifle discharged.

29.

The firearm's trigger was neither intentionally pulled nor touched by any person or object at the time the gun discharged.

30.

The bullet from the gun struck Trent Baldwin in the leg, later requiring amputation below the knee.

31.

Upon information and belief, at all times pertinent herein, the firearm in question was in as-manufactured condition and had not been materially altered or modified other than a reduction in the gun's trigger pull.

32.

The Remington defendants provided a design whereby users could reduce the trigger pull on Model 700 rifles.

33.

The Remington defendants knew that users of the Model 700 reduce the trigger pull of the Model 700's.

34.

The reduction in the gun's trigger pull was foreseeable and anticipated by the Remington defendants.

35.

The shooting occurred in Copiah County, Mississippi.

36.

At all times pertinent herein, Tyler Theriot handled the firearm in question in a manner foreseeable and anticipated by the Remington defendants.

37.

Tyler Theriot did not know and had no reason to suspect that the Remington rifle could discharge under the aforementioned circumstances.

38.

Plaintiff did not know and had no reason to suspect that the Remington rifle could discharge under the aforementioned circumstances.

39.

Plaintiffs have suffered pain, disability, loss of a limb, and emotional distress, as well as substantial medical bills, loss of earning capacity, and other damages as a result of this shooting and the fault of the defendants.

40.

At the time of the incident, there was in full force and effect a policy of homeowner's insurance, which contained separate coverage for liability issued by defendant, ALLSTATE INSURANCE COMPANY, to and in favor of defendant, JOHN THERIOT, which policy affords coverage for liability of the nature of that alleged herein and which policy insures to the benefit of the petitioners, thereby entitling them to maintain this direct action against the defendant insurer, and thereby also rendering the defendant insurer liable, *in solido*, with the other defendants for damages as sued for herein.

41.

At the time of the incident, there was in full force and effect a policy of homeowner's insurance, which contained separate coverage for liability issued by defendant, LOUISIANA CITIZENS PROPERTY INSURANCE, to and in favor of defendant, MALETTE THERIOT, which policy affords coverage for liability of the nature of that alleged herein and which policy insures to the benefit of the petitioners, thereby entitling them to maintain this direct action against the defendant insurer, and thereby also rendering the defendant insurer liable, *in solido*, with the other defendants for damages as sued for herein.

FAULT OF THE DEFENDANTS REMINGTON, SGPI, AND DUPONT

42.

The Remington defendants are liable under Mississippi law (Miss. Code §11-1-63) for the damages sustained by plaintiffs, including punitive damages under Miss. Code §11-1-65.

43.

Alternatively, the Remington defendants are liable under Louisiana law, for the defects of the firearm in question and the fault as set forth herein, including but not limited to the Louisiana Product Liability Act and other Louisiana laws relating to fault.

44.

A state-of-the-art firearm, in proper working order, should not fire unless its trigger is pulled.

45.

A state-of-the-art firearm should not require the gun's handler to disengage the gun's manual safety in order to unload the gun.

46.

The purpose of a bolt-action rifle's manual safety is to guard against an inadvertent pull of the gun's trigger.

47.

The Remington defendants should not have required that its users disengage the gun's manual safety to unload it, same being a defect in design that caused or contributed to the injuries sustained by the plaintiffs.

48.

At all times pertinent herein, Defendants, Remington, DuPont and SGPI were engaged in the business of designing, manufacturing, assembling, distributing and selling firearms.

49.

Defendants, Remington, DuPont and SGPI 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. A6618304 (hereinafter "bolt action rifle"), knowing and expecting that said rifle would be used by consumers and around members of the general public.

50.

At all times pertinent to this action Defendants Remington, SGPI and/or DuPont were and are the alter ego of each other and in essence constitute one legal entity which is otherwise the same as a division of DuPont.

51.

DuPont exerted complete dominion and/or absolute control over the corporate activity and function of the other companies.

52.

The conduct of DuPont and/or Remington and/or SGPI has harmed or will harm Plaintiffs and the general public, justifying piercing of any corporate veil resulting in each corporate Defendant being liable for the acts and omissions of the others as they were in reality one legal entity.

53.

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

54.

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.

55.

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

56.

SGPI retained certain non-income producing assets, some with significant environmental liabilities and other liabilities such that its net worth was reduced to a small fraction of its former worth and in fact SGPI likely has a negative net worth.

57.

The 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.

58.

Remington and/or DuPont expressly and impliedly agreed to assume certain debts and responsibilities, including the product liability of SGPI by the terms of an Asset Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI.

59.

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.

60.

Remington continues in the design, manufacture, distribution and sale of all Remington Arms product lines including the Remington Model 700 bolt-action rifle.

61.

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

62.

Remington acquired the entire company from SGPI through an asset purchase in order to avoid and/or limit the liability resulting from an outright purchase of the stock from DuPont.

63.

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.

64.

Remington, DuPont and SGPI acted fraudulently with respect to the asset purchase in that its purpose was to avoid and/or limit the responsibility of DuPont and/or Remington from the debts of SGPI, particularly its product liability.

65.

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.

66.

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 Remington, or by adopting and ratifying SGPI's acts or omissions.

67.

In addition, at all times pertinent to this action, SGPI itself, 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.

68.

Hereinafter, the defendants Remington, DuPont and SGPI are collectively referred to as the "Remington defendants."

69.

A properly working Remington rifle should not fire unless its trigger is pulled.

70.

A properly working Remington rifle should not fire if its manual safety switch is engaged or in the "on safe" position.

71.

A properly working Remington rifle should not fire when its manual safety is moved from "safe" to "fire," if the gun's trigger is not pulled.

72.

A firearm that will discharge when its trigger is not pulled presents a risk of harm.

73.

A firearm that will discharge when its trigger is not pulled presents an unreasonable risk of harm.

74.

A bolt-action rifle that requires the user to disengage the gun's manual safety in order to open the gun's bolt is defective and unreasonably dangerous.

75.

The injuries to TRENT BALDWIN were caused by the unreasonably dangerous conditions and design features of the Remington gun.

76.

The firearm was defective and unreasonably dangerous for normal or foreseeable use and handling conditions.

77.

At all times pertinent herein plaintiff's conduct was foreseeable by defendants.

78.

At all times pertinent herein, Tyler Theriot's conduct was foreseeable by the Remington defendants.

79.

The defendant, REMINGTON ARMS COMPANY, INC, had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

80.

Upon information and belief, the defendant, SPORTING GOODS PROPERTIES, INC., had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

81.

Upon information and belief, the defendant, DU PONT, had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

82.

The said firearm was designed, manufactured, constructed, fabricated, assembled, merchandised, advertised, promoted, sold and/or distributed by the defendants, Remington, SGPI, and DuPont, individually and/or in combination herein, for use and general distribution and sale throughout the United States including and without limitation the State of Louisiana.

83.

DuPont manufactured the firearm in question.

84.

Sporting Goods Properties, Inc. manufactured the firearm in question.

85.

Remington Arms Company, Inc. manufactured the firearm in question.

86.

The Remington defendants could have predicted and anticipated the use and accident conditions (as alleged herein) with the use of reasonable care and proper safety engineering and design practices.

87.

The Remington defendants are guilty of gross negligence and a reckless disregard for safety and at fault also by having failed to adequately warn and instruct any and all potential

and foreseeable persons exposed to the dangers of the product and the dangers in using the firearm.

88.

With the use of reasonable effort and care, the Remington defendants could have included in the design, production, and sale of the product in question, reasonably feasible and available safety systems or devices so as to have prevented the injuries to TRENT BALDWIN.

89.

At the time of the design, production, and sale of the product in question, alternative designs and systems were reasonably feasible and available with reasonable effort that would have eliminated or greatly reduced the risk of the accident in question.

90.

The Remington defendants failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraph.

91.

At the time of the sale of the product in question, there were reasonably available safety and design concepts in existence that would have eliminated or greatly reduced the risks causing TRENT BALDWIN's injuries if utilized in the firearm in question.

92.

The magnitude of the risks presented by the product in question under the accident circumstances as alleged herein outweighed utility of the firearm as sold.

93.

TRENT BALDWIN did not appreciate the magnitude of the risk associated with the use of the firearm and under the accident conditions as alleged herein.

94.

Tyler Theriot did not appreciate the magnitude of the risk associated with the use of the firearm and under the accident conditions as alleged herein.

95.

The Remington defendants failed to appreciate the magnitude of the risks of injury or death under the accident conditions as alleged herein causing the injuries to TRENT BALDWIN.

96.

The Remington defendants failed to warn and make certain that all potential risks of accidental discharge by the product in question were known by the general American public, and particularly those in the position of the plaintiff.

97.

Upon information and belief, the Remington defendants failed to properly and fully test and inspect the firearm prior to releasing and marketing it to the public.

98.

The Remington defendants failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of accidental discharge during foreseeable or predictable handling conditions.

99.

The Remington defendants failed to correct the fact that the firearm was designed and produced with risks of discharge without the trigger being pulled.

100.

The Remington defendants failed to correct the fact that the Model 700 was designed that the gun's manual safety had to be disengaged before the gun's bolt was opened.

101.

The Remington defendants failed to recall the firearm in question and place public notices and warnings concerning the defective and ultra dangerous characteristics of the firearm in question so as to eliminate the risks causing the injuries to TRENT BALDWIN.

102.

The Remington defendants failed to use reasonably available alternative safety designs and safety systems in the firearm in question.

103.

The Remington defendants failed to reduce or prevent the risk of accidental discharge under circumstances other than when the trigger is pulled in the normal fashion.

104.

The Remington defendants failed to retro-fit and install reasonably available state-of-the-art accident prevention devices in the product.

105.

The Remington defendants breached their duties and failed to take necessary steps to prevent and eliminate the risks in their firearms, and warn, advise, and give notice to the public of the risks inherent in the product in question.

106.

At the time of the production and commercialization of the firearm in question, there were reasonably available alternative safety designs and systems which, with the use of reasonable care and available alternative technology, could have been used in the firearm in question to greatly reduce or prevent the risk of accidental discharge.

107.

Had reasonably feasible and available alternative designs and safety systems been used with the product in question, the risk of injury to and the injuries to TRENT BALDWIN, under the accident circumstances described, would have been eliminated or greatly reduced.

108.

At the time of the sale and distribution of the firearm, it was reasonably feasible to have taken additional steps to make certain to a reasonable degree of probability that the user understood the degree of danger and avoided exposure to the risks presented by the firearm as designed and sold.

109.

The Remington defendants failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraphs, and such was a cause in fact and the proximate cause of the injuries to TRENT BALDWIN.

110.

In addition to the above, the Remington defendants were guilty of negligence and fault by having failed to:

a. Anticipate the reasonably foreseeable and/or predictable uses or manners of use of the firearm in question;

b. Take reasonably feasible steps to provide adequate instructions to the users and those exposed to the risks inherent in the product;

c. Warn, instruct, and fully caution users of the full extent of the dangers inherent in the foreseeable and predictable misuse of the firearm in question, as well as the chance or risk that such dangers would manifest themselves in injury or death in the absence of extraordinary caution;

d. To cause users to appreciate the risks inherent in the product in question;

e. Provide feasible and reasonably practical alternative methods of use without substantial risks.

111.

The fault of the Remington defendants referenced in the preceding paragraphs was a cause in fact and the proximate cause of the injuries to TRENT BALDWIN and the concomitant damages to James and Trudy Baldwin.

112.

If in fact the use employed by Tyler Theriot is claimed by the Remington defendants, to be or constitute a "misuse" of the firearm, then the defendants unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

113.

If in fact the reduction of the trigger pull is claimed by the Remington defendants, to be or constitute a "misuse" of the firearm, then the defendants unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

114.

The Remington defendants improperly failed to anticipate that Tyler Theriot would or may well use the firearm in a foreseeable and predictable manner, as he did, causing the risks inherent in the firearm to manifest themselves in the circumstances of his shooting.

115.

Upon information and belief, and notwithstanding notice of prior accidents similar to that made the subject matter of this litigation, the Remington defendants have still failed to retro-fit or install safety systems, guards, or devices designed and intended to eliminate or greatly reduce the risk of other shootings under the same or similar conditions as the shooting made the subject matter of this litigation.

116.

The Remington defendants failed to use reasonably available alternative and/or state-of-the-art technology in firearm design and safety systems to prevent the accidental discharge and resulting injuries in the product in question at moments when the trigger had not been pulled.

117.

Reasonably feasible alternative and state-of-the-art designs and safety systems were available at the time the production of the firearm in question but were not used.

118.

The Remington defendants consciously withheld and continue to withhold information relating to prior incidents, accidents and other information, which would have influenced Tyler Theriot or his family members not to use this firearm.

119.

The Model 700 bolt action rifle is defective and/or unreasonably dangerous due to the lack of any or adequate warnings of its propensity to suddenly and unexpectedly discharge without pulling the trigger.

120.

The Model 700 bolt action rifle is also defective and/or unreasonably dangerous as a result of inadequate or incorrect operation, adjustment, cleaning, maintenance and/or safety instructions which caused or contributed to cause the discharge.

121.

Plaintiffs James Baldwin, Trudy Baldwin and Trent Baldwin have suffered, and will continue to suffer damages as a direct and proximate result of the Remington Defendants' failure to warn of the rifle's propensity to unexpectedly discharge and failure to otherwise properly instruct as set forth above.

122.

The Remington defendants' conduct in the design, manufacture, and sale of the bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference and/or conscious disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive damages.

123.

As a direct and proximate result of all defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to otherwise properly instruct, Plaintiff Trent Baldwin now suffers and will in the future continue to suffer as described below.

124.

The Remington defendants designed, manufactured, distributed and sold the bolt action rifle, thereby expressly and impliedly warranting to Tyler Theriot and the public that the bolt action rifle was of merchantable quality, fit, safe and proper for the ordinary purposes for which it was intended as a hunting and/or target rifle.

125.

The gun's owners reasonably relied upon said express and implied warranties made by the Remington defendants.

126.

The Remington defendants did not warn or give notice to Mr. Theriot's family 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, nor did Defendants properly instruct on the operation, adjustment, cleaning, maintenance and/or safety of the rifle.

127.

The Remington defendants breached said expressed and implied warranties in that the bolt action rifle was not fit and suitable for its intended purpose, nor was it of merchantable quality.

128.

Notwithstanding said warranties, the bolt action rifle was not fit for the ordinary purpose for which it was intended nor was it of merchantable quality.

129.

The Remington defendants knew, or should have known, of defects in the fire control system and safety of all Model 700 bolt action rifles including the subject bolt action rifle, but took no action to warn, recall, retrofit and/or otherwise modify or remedy the unreasonably dangerous condition of the bolt action rifle and/or make it reasonable safe for its ordinary and intended use.

130.

In the alternative, the Remington defendants knew of defects in the fire control system and safety of all Model 700 bolt action rifles, including the subject bolt action rifle, admitted a duty to warn, recall, retrofit and/or otherwise modify or remedy these defective firearms, discussed and otherwise considered recalling the Model 700 for these same defects, but negligently failed to do so.

131.

As a direct and proximate result of all the Remington defendants' failure to recall and/or retrofit the bolt action rifle, Plaintiff Trent Baldwin suffered, now suffers, and will in the future continue to suffer from those injuries described herein.

132.

Plaintiffs, James Baldwin and Trudy Baldwin, have also suffered damages as a direct and proximate result of all defendants' failure to recall and/or retrofit the bolt action rifle, including all those injuries described below.

133.

The defect in the bolt action rifle was substantial, obvious, notorious and known to the Remington defendants to the extent that their conduct in the design, manufacture, and sale of the bolt action rifle was outrageous, done with actual knowledge and malice, exhibiting a complete indifference and/or conscious disregard for the rights and safety of users and consumers of the rifle and the general public.

134.

The Remington defendants knew that various evidence including but not limited to customer complaints, gun examination reports, various committee minutes and memoranda, and fire control systems removed from returned rifles would be significant in litigation regarding whether or not the Model 700 is defective and unreasonably dangerous, and as a consequence, had a duty to preserve said evidence for use in litigation so that a fair resolution of the issues can be reached with all relevant evidence in hand.

135.

Upon information and belief, the Remington 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 set forth above.

136.

Upon information and belief, the Remington defendants first destroyed relevant evidence with full knowledge of past, pending, and future claims regarding the Model 700 bolt action rifle so as to prevent Plaintiff in this and other similar litigation from obtaining access to said evidence.

137.

Upon information and belief, the Remington defendants adopted a written record retention policy upon which it relied to destroyed relevant evidence based upon its stated retention schedule with full knowledge that said evidence was relevant to past, pending, and future Model 700 claims.

138.

Upon information and belief, the Remington defendants destroyed relevant evidence in contravention of its stated record retention policy because it knew that said evidence established that the Model 700 is defective and that the Remington defendants knew of said defects.

139.

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

140.

Upon information and belief, this destruction of relevant evidence occurred when legal proceedings regarding the Model 700 were pending or reasonable foreseeable and after the Remington defendants knew of the defective condition of the Model 700 and its liability for same.

141.

Upon information and belief, the Remington defendants' conduct in destroying evidence was done with actual knowledge in order to avoid liability for both actual and punitive damages.

142.

By virtue of the Remington defendants' actions as set forth above, the Remington defendants have been guilty of fraud and misrepresentation pursuant to Louisiana law and, particularly, Articles 2545 and 1953 *et seq.* of the Louisiana Civil Code and/or under Mississippi law.

143.

By virtue of the Remington defendants' actions as set forth above, the Remington defendants have been guilty of fraud and misrepresentation pursuant to Louisiana law and, particularly, Articles 2545 and 1953 *et seq.* of the Louisiana Civil Code and/or under Mississippi law.

144.

The conduct of the Remington defendants amounts to actual notice, fraud and/or gross negligence that evidences a willful, wanton, or reckless disregard for the safety of others.

FAULT OF THE DEFENDANT TYLER THERIOT

145.

Petitioners aver that a cause of the incident and resulting injuries and damages was the fault of Tyler Theriot.

146.

Tyler Theriot was handling the Remington rifle at the time it discharged.

147.

Tyler Theriot allowed the muzzle to be pointed in a direction such that if the gun was unintentionally discharged, there was a risk that the shot could injure Trent Baldwin.

148.

When the Remington rifle discharged, the shot injured Trent Baldwin.

149.

The fault of Tyler Theriot caused the defects in the Remington rifle to manifest and injure Trent Baldwin.

DAMAGES CAUSED BY DEFENDANTS

150.

Due to the defendants' fault in causing the injuries to JAMES BALDWIN, TRUDY BALDWIN and TRENT BALDWIN, Plaintiffs have suffered and will suffer damages in the following, but not exclusive, particulars, to wit:

a. Loss of enjoyment of life;

b. Extreme emotional distress;

c. Extreme pain and suffering;

d. Disability;

e. Loss of a leg;

f. Other special damages;

g. Healthcare and surgical expenses; past, present and future;

h. Loss of future earning capacity;

i. Loss of Consortium, services, and society; and

j. Any and all damages for the injuries to TRENT BALDWIN as shall be determined to have been sustained and/or allowed by law, in addition to punitive damages.

151.

The damages resulting to Plaintiffs were occasioned and proximately caused by the faulty, defective, and unreasonably dangerous conditions and vices of the firearm manufactured and marketed by the Remington defendants and/or Tyler Theriot.

WHEREFORE PLAINTIFFS PRAY that a certified copy of the foregoing Petition be served upon the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana Citizens Property Insurance and that the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana

Citizens Property Insurance be duly cited to appear and answer and after the necessary legal delays, requisites, formalities, and trial had, there be Judgment herein in favor of the plaintiffs, JAMES BALDWIN and TRUDY BALDWIN, individually and on behalf of the minor, TRENT BALDWIN, and against the defendants, Remington, SGPI, DuPont, John Theriot and Malette Theriot, individually and on behalf of the minor, Tyler Theriot, AIG Insurance Company, Allstate Insurance Company, and Louisiana Citizens Property Insurance, jointly and severally, for any and all damages as shall be determined to be just, fair, and reasonable under the circumstances, together with legal interest from date of judicial demand until paid, and for all costs of these proceedings.

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By:_____
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PLEASE WITHHOLD SERVICE

FILED
DEC 30 2008
/s/ Ramie A. Hebert
Deputy Clerk of Court
Parish of Terrebonne, LA

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

GEORGE MONTES,	§	
	§	
Plaintiff,	§	**Civil Action No. _____**
	§	**JURY TRIAL**
v.	§	
	§	
REMINGTON ARMS COMPANY, INC.,	§	
	§	
Defendant.	§	

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 is 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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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JERRY SHOOK AND JEANETTE SHOOK, Husband and Wife,

Plaintiffs,

vs.

REMINGTON ARMS CO.,

Defendant.

Case No: CV-09-46-M-DWM-JCL

FIRST AMENDED COMPLAINT

COME NOW the Plaintiffs, and for their Complaint allege and aver as follows:

I.

Plaintiffs are residents of Ravalli County, Montana. Defendant is a North Carolina corporation organized and authorized under the laws of that state.

II.

Plaintiffs' are citizens of the state of Montana. Defendant is a North Carolina corporation. This case is brought in U.S. District Court pursuant to diversity of citizenship and 28 U.S.C. §1332(a).. Plaintiffs' damages exceed $75,000.00.

III.

On the 31st day of October, 2007, Jerry Shook went on a hunting trip

with his friend, Steve Burson, in the Bitterroot Range, in an area known as "West Fork" in Ravalli County, Montana. They traveled by vehicle to a point where they made camp and left their pickup truck and horse trailer. They brought both four-wheeler vehicles and horses with them. They were in the area for two days before they began hunting.

IV.

On the day they began hunting they left their four-wheeler recreational vehicles at the camp and departed on horseback to a point several miles as the crow flies into the mountains from the camp.

V.

Mr. Burson had a Remington 700 Series rifle with him for the hunting trip. Prior to the injury-causing events, Burson proceeded on foot ahead of Plaintiff and the horses to look for game, with Plaintiff following, riding his horse and leading Burson's horse. Finding no game, Burson returned to where Plaintiff and the horses were to unload his weapon and switch with Plaintiff, who was to take his turn moving ahead on foot as the hunter. When Burson arrived, Plaintiff dismounted his horse and stood between the two animals. Burson prepared to unload his rifle to put it in a scabbard on his saddle.

VI.

The bolt-action 700 Series rifle manufactured by the Defendant required the rifle to be taken off-safety in order to be unloaded. Burson aimed his rifle into the air in a direction where nothing could be shot. He then put the gun off safety preparatory to moving the bolt for the purpose of ejecting the shells in the weapon.

VII.

When Burson put the gun off-safety preparing to, or actually moving, the bolt to unload the rifle, the rifle fired. Immediately thereon, the two

horses spooked and began to react uncontrollably. Plaintiff Jerry Shook was between the two horses and the two animals initially came together, squeezing him between them. This caused Shook to fall to the ground. The horses were rearing out of control and were stepping and stomping in the area where Shook fell to the ground. One of the horses stepped on Shook's head and caused a skull fracture. The commotion continued for the space of several seconds and Shook was stomped by one of the horses several times, in addition to the one stomp that struck him in the face. Burson was also knocked to the ground by the horses.

VIII.

Shook was severely injured by the blows to his head and body. The animals spooked and ran away from both of the men. They could not be retrieved and the men were left, with Plaintiff Jerry Shook critically injured, several miles away from where the vehicles had been left at camp.

IX.

Mr. Burson left Shook to go back to the vehicles. Burson went all the way back down the road and trail on foot. He was not able to get to the camp where the vehicles had been left until one to two hours after Shook's injury had occurred.

X.

Using a different route accessible to four-wheel vehicles, Burson returned to the accident scene on one of the four-wheelers that the two men had left behind with their pickup truck. Burson loaded Shook onto the four-wheeler directly behind him and held onto Shook's arm during the lengthy trip back to the gate. After arriving, Burson loaded Shook into a pickup truck and drove him to a wilderness telephone to call for medical emergency assistance. The men were forced to wait for a helicopter which ended up being delayed due to a misunderstanding of where to go.

XI.

Plaintiff Shook was eventually removed from the west fork of the Bitterroot by helicopter and transported to the trauma center at St. Patrick Hospital in Missoula, Montana, where he was treated for a serious, life-threatening skull fracture and other injuries. Plaintiff Shook was hospitalized in acute care for five days, and was sent thereafter to a rehabilitation unit at a second hospital, where he remained for approximately another ten days.

XII.

Plaintiff Shook had a serious brain injury as a result of the skull fracture and the violent blow from the kicking and stomping horses that had been spooked by the Remington 700 Rifle when it unexpectedly fired.

XIII.

Plaintiff Jerry Shook is married to Jeanette Shook, who has been required to provide extensive physical and emotional assistance to Plaintiff Jerry Shook, whose life has been permanently impacted by the injury that he suffered. Jeanette Shook has been required by circumstances to provide aid and services not previously needed to Jerry Shook and to adjust to the emotional swings from which Shook now suffers as a result of his head injury.

XIV.

Defendant Remington Arms Co. has been aware for many years that the unloading of its Model 700 rifles, as well as other rifles manufactured by the company, will sometimes cause the rifle to fire when it is being loaded or unloaded.

XV.

As a result of Defendant Remington Arms Co's long awareness of this characteristic of its rifles, Defendant has for some time made available a modification to the bolt action of the Model 700 rifle to enable it to be unloaded

without having to be placed off-safety. Plaintiffs believe, however, that the Defendant has failed and refused to notify individual owners of the Model 700 rifles and similarly-designed rifles that this modification is available to repair a known defect that constitutes a hazard to the user and others.

XVI.

The failure and refusal of Remington Arms Co. to conduct a recall of Remington Model 700 rifles as well as other Remington rifle models to correct a defect that is unreasonably dangerous and which has caused injury and death to a number of people over the course of several decades merits an award of punitive damages.

XVII.

Defendant Remington Arms Company's conduct in placing a rifle with a bolt action known in certain circumstances to misfire when the weapon is being unloaded constitutes the sale of a defective product unreasonably dangerous to the consumer and others, and Defendant Remington Arms Co. is liable therefor under Montana law in strict liability in tort.

XVIII.

The actions of Defendant Remington Arms Co. in placing a defective product into commerce was the direct and proximate cause of the injuries to Plaintiff Jerry Shook, and Remington Arms Co. is responsible for all damages proximately flowing from such action.

XVIX.

Defendant Remington Arms Co. is responsible for the damages suffered by Jeanette Shook as the spouse of Plaintiff Jerry Shook, for the services that she provides and for the loss of companionship, aid, protection and society in the marital course of life.

WHEREFORE, Plaintiffs pray:

1. For damages for medical expenses incurred by Plaintiff Jerry Shook in connection with the incident described above, and to be incurred in the future as a result of the defective product of the Defendant Remington Arms Co.;

2. For other economic losses caused to Jerry Shook as a result of Defendant's defective product;

3. For Plaintiff Jerry Shook's pain and suffering, to the time of trial and thereafter, resulting from the Defendant's placement of a defective product in the course of commerce which cause injured injury to Jerry Shook;

4. For Plaintiff Jerry Shook's loss of established course of life resulting from Defendant's placement of a defective product in the course of commerce which cause injured injury to Jerry Shook;

5. For Plaintiff Jerry Shook's emotional suffering resulting from his head injury and the resulting permanent changes in his emotional makeup, all of which are the result of Defendant's placement of its defective product in the stream of commerce;

6. For Plaintiff Jeanette Shook's loss of aid, protection, affection, society and other attributes of the marital relationship resulting from the injuries to Plaintiff Jerry Shook in this case;

7. For Plaintiff's the reasonable value or cost of goods and services provided, to be provided and necessitated for Jerry Shook as a result of his injury in this case;

8. For such other and further damages as are allowable under the law and deemed appropriate by the Court and Jury in this case.

DATED this 9th day of April, 2009.

Howard Toole
HOWARD TOOLE LAW OFFICES
211 N. Higgins, #350
Missoula, MT 59802-4537

By: _____
Howard Toole

VERIFICATION

I, Jerry Shook, affirm that the foregoing statements are true.

Jerry Shook
Jerry Shook

SUBSCRIBED AND SWORN to before me this 9th day of April, 2009.

Signature of Notary

Howard Toole
Printed Name
Notary Public for the State of Montana
Residing at Missoula,
My Commission Expires 12/1/2009

(seal)
Montana

VERIFICATION

I, Jeanette Shook, affirm that the foregoing statements are true.

Jeanette Shook

Jeanette Shook

SUBSCRIBED AND SWORN to before me this 9th day of April, 2009.

Signature of Notary

Howard Toole

Printed Name

Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires 12/1/2009

(seal)

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED this 9th day of April, 2009.

Howard Toole
Attorney for Plaintiff

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

HARTMUT WRIGHT,	§	
	§	
Plaintiff,	§	**Civil Action No. _____**
	§	**JURY TRIAL**
v.	§	
	§	
REMINGTON ARMS COMPANY, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff, Hartmut Wright, complaining of Remington Arms Company, Inc. ("Remington") Defendant, and files this, his First 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 Hartmut Wright is a citizen of the State of Colorado and resides in Colorado Springs, Colorado.

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 November 16, 2008, a hunting buddy of Plaintiff's was attempting to unload his Model 700 rifle. To unload the rifle, which was manufactured by Remington in March 1980 with serial number A6831966 (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 tree and into the back of Plaintiff.

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 Hartmut Wright'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 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 Hartmut Wright. 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 Hartmut Wright.

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 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):

"<u>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</u>

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 and 710.

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 the subject 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 is 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 Hartmut Wright has experienced 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

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

JERRY MATTHEWS and ANGIE MATTHEWS	**No._____**
	JUDGE _____
Plaintiffs,	
v.	**MAGISTRATE-JUDGE _____**
REMINGTON ARMS COMPANY, INC; SPORTING GOODS PROPERTIES, INC.; E. I. DU PONT DE NEMOURS AND COMPANY; and OLIN CORPORATION, WINCHESTER-WESTERN DIVISION	
Defendants.	

COMPLAINT

The Complaint of JERRY MATTHEWS and ANGIE MATTHEWS, residents of Richland Parish, Louisiana, respectfully represent that:

1.

Plaintiffs were at all times material to this action residents of Richland Parish, Louisiana.

2.

At all times pertinent herein, Plaintiff, JERRY ("Jerry") MATTHEWS was married to Plaintiff, ANGIE MATTHEWS.

PARTIES DEFENDANT

3.

Made defendants herein are:

a. Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served through The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;

b. Defendant, SPORTING GOODS PROPERTIES, INC., (hereinafter SGPI) is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at c/o Remington Arms Company, Inc., Tony Beldon, 870 Remington Ave., P. O. Box 700, Madison, N.C. 27025-0700;

c. Defendant, E. I. DU PONT DE NEMOURS AND COMPANY, (hereinafter "DU PONT") is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at Room 8042 Dupont Bldg. 1007 Market Street, Wilmington, DE 19898;

d. OLIN CORPORATION, WINCHESTER-WESTERN DIVISION, 275 Winchester Avenue, New Haven, Connecticut 06504, a foreign corporation authorized to do and doing business in the State of Louisiana, with C.T. Corporation System, 601 Poydras Street, New Orleans, Louisiana 70130, as its designated agent for service of process in the State of Louisiana;

e. Any other defendants, whose names are learned during the course of discovery to have had contributing responsibility in the production and marketing of the firearm in question and/or ammunition in question; and

f. Any successor in business to any of the above.

JURISDICTION OF THIS COURT

4.

This Honorable Court has **personal jurisdiction** over the defendants, Remington, SGPI, DuPont, and Olin pursuant to the Louisiana Long Arm Statute (La. R.S. 13:3201) with citation and service of process to be made in accordance therewith and by their having committed a tort, in whole or in part, in this state.

5.

This Court has **jurisdiction over the subject matter** of this case because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and because all plaintiffs are diverse from all defendants, in the following particulars, to wit:

a. Plaintiffs are residents and citizens of the State of Louisiana.

b. Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation with its principal place of business located at 870 Remington Drive, P. O. Box 700, Madison, North Carolina 27025-0700.

c. Defendant, SPORTING GOODS PROPERTIES, INC, is a foreign corporation, which may be served at c/o Remington Arms, Company, Inc., 870 Remington Drive, P. O. Box 700, Madison, North Carolina 27025-0700.

d. Defendant, E.I. DU PONT DE NEMOURS AND COMPANY is a foreign corporation, which may be served at Room 8042 Dupont Building, 1007 Market Street, Wilmington, DE 19898.

e. OLIN CORPORATION, WINCHESTER-WESTERN DIVISION is a foreign corporation authorized to do and doing business in the State of Louisiana, with its principal place of business at 275 Winchester Avenue, New Haven, Connecticut 06504, with C.T. Corporation System, 601 Poydras Street, New Orleans, Louisiana 70130, as its designated agent for service of process in the State of Louisiana.

f. Based on the investigation of this matter conducted to date, the matter in controversy, by virtue of Plaintiff's claim of personal injury, past and future pain and suffering, past and future medical expenses, and past and future lost wages, exceeds the sum of $75,000.00, exclusive of interest and costs.

6.

The hereinabove defendants are justly, legally, and jointly and severally indebted unto the Plaintiff by reason of the following, to wit:

FACTS OF INCIDENT

7.

On or about October 29, 2006, Jerry Matthews was injured while using a Remington 710.270 caliber rifle, bearing Serial Number 7131709 and .270 caliber ammunition manufactured by Olin.

8.

On that date, Jerry was target shooting in Columbia, Richland Parish, Louisiana with the subject rifle and ammunition.

9.

Upon information and belief, at all times pertinent herein, the firearm in question was in as-manufactured condition and had not been materially altered or modified.

10.

Upon information and belief, at all times pertinent herein, the Olin ammunition was factory-loaded and had not been materially altered or modified.

11.

Upon information and belief, when Jerry closed the bolt and started to pull the trigger, the rifle exploded, sending parts of the rifle through his eye and into his head.

12.

Jerry's eye was permanently blinded and would later have to be surgically removed.

13.

Plaintiff did not know and had no reason to suspect that the Remington rifle would or could explode under the aforementioned circumstances.

14.

JERRY MATTHEWS has suffered pain, disability, disfigurement, loss of his right eye, and emotional distress, as well as substantial medical bills and other damages as a result of this explosion, along with the concomitant losses of consortium by him and Plaintiff ANGIE MATTHEWS.

FAULT OF THE DEFENDANTS REMINGTON, SGPI, AND DUPONT

15.

Defendants Remington, SGPI, and DuPont (hereinafter "Remington") are liable under the Louisiana Product Liability Act for manufacturing and selling a rifle that is defective in design, construction, and/or warning with said defects causing damages to Plaintiffs, as described in more detail below.

16.

The firearm in question was defective and unreasonably dangerous for normal or foreseeable use and handling conditions and particularly the incident facts as disclosed herein and at the trial hereof.

17.

REMINGTON manufactured a Model 710 .270 caliber bolt-action rifle, bearing Serial Number 7131709.

18.

The injuries to Jerry were caused by the unreasonably dangerous conditions and design features of the Remington rifle.

19.

The firearm in question was defective and unreasonably dangerous for normal or foreseeable use and handling conditions.

20.

At all times pertinent herein Plaintiff's conduct was foreseeable by defendants.

21.

The defendant, REMINGTON ARMS COMPANY, INC, had an interest in and played a part in allowing the rifle to be sent to and/or remain in the market place and stream of commerce, exposing the general public, including Jerry Matthews, to injury or death.

22.

Upon information and belief, the defendant, SPORTING GOODS PROPERTIES, INC., had an interest in and played a part in allowing the rifle to be sent to and/or remain in the market place and stream of commerce, exposing the general public, including Jerry Matthews, to injury or death.

23.

Upon information and belief, the defendant, DU PONT, had an interest in and played a part in allowing the rifle to be sent to and/or remain in the market place and stream of commerce, exposing the general public, including Jerry Matthews, to injury or death.

24.

The firearm in question was designed, manufactured, constructed, fabricated, assembled, merchandised, advertised, promoted, sold and/or distributed by the defendants, Remington, SGPI, and DuPont, individually and/or in combination herein, for use and general distribution and sale throughout the United States including and without limitation the State of Louisiana.

25.

Had Jerry been given notice by **REMINGTON** of the risk of the faulty rifle in question, he would not have accepted nor attempted to use the rifle at the time of the incident in question.

26.

REMINGTON could have predicted and anticipated the use and accident conditions (as alleged herein) with the use of reasonable care and proper safety engineering and design practices.

27.

REMINGTON is guilty of gross negligence and a reckless disregard for safety and at fault also by having failed to adequately warn and instruct any and all potential and foreseeable persons exposed to the dangers of the firearm and the dangers in using the firearm.

28.

With the use of reasonable effort and care, **REMINGTON** could have included in the design, production, and sale of the firearm in question, reasonably feasible and available safety systems or devices so as to have prevented the injuries to Jerry Matthews.

29.

At the time of the design, production, and sale of the firearm in question, alternative designs and systems were reasonably feasible and available with reasonable effort that would have eliminated or greatly reduced the risk of the accident in question.

30.

REMINGTON failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraphs.

31.

At the time of the sale of the firearm in question, there were reasonably available safety and design concepts in existence that would have eliminated or greatly reduced the risks causing Jerry Matthews' injuries if utilized in the firearm in question.

32.

The magnitude of the risks presented by the firearm in question under the accident circumstances as alleged herein outweighed utility of the firearm as sold.

33.

The firearm in question was unsafe to an extent beyond which would be contemplated by an ordinary consumer.

34.

The firearm in question was sold and distributed by defendants, Remington, SGPI, and DuPont, individually or in concert with each other.

35.

A rifle, in proper working order, should not explode apart under normal conditions with factory-loaded ammunition.

36.

A rifle that will explode apart under normal conditions with factory-loaded ammunition presents an unreasonable risk of harm.

37.

REMINGTON could foresee that Mr. Matthews, or someone in his position, would load the rifle with factory-loaded .270 ammunition.

38.

The danger of a rifle that will explode apart when fired using factory-loaded ammunition outweighs the utility of the rifle.

39.

The magnitude of the risks presented by the product in question under the incident circumstances as alleged herein, outweighed utility of the rifle as sold.

40.

Jerry Matthews did not appreciate the magnitude of the risk associated with the use of the rifle under the incident conditions as alleged herein.

41.

REMINGTON represented that the firearm in question was safe when used properly.

42.

REMINGTON impliedly and/or expressly warranted that the rifle in question was of merchantable quality, fit, and safe for shooting at targets with factory-loaded .270 caliber ammunition.

43.

The firearm in question was not of merchantable quality, fit, or safe for use, because it exploded and sent parts into Mr. Matthews' face when Mr. Matthews closed the bolt and started to pull the trigger.

44.

REMINGTON knew the users of their rifles would aim and fire factory-loaded ammunition with the rifle.

45.

REMINGTON did not tell the users of their rifles that the rifle would or could explode apart under the circumstances set forth above.

46.

REMINGTON failed to appreciate the magnitude of the risks of injury or death to the rifle's users from handling the rifle as stated above.

47.

Upon information and belief **REMINGTON** failed to properly and fully test and inspect the rifle prior to releasing and marketing it to the public.

48.

REMINGTON failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of exploding during foreseeable or predictable handling conditions.

49.

REMINGTON did not recall the rifle in question and place public notices and warnings concerning the rifle to let people know that it could explode during foreseeable or predictable handling conditions.

50.

A rifle using factory-loaded ammunition does not explode in the absence of fault.

51.

The injury-producing characteristics of the firearm in question were at all times within the exclusive control of **REMINGTON.**

52.

Plaintiffs did not contribute to the injury-causing attributes of the firearm in question.

53.

At the time of its manufacture, the Remington rifle, as designed, was not reasonably safe because the likelihood that the rifle would cause Jerry's harm and the seriousness of that harm, outweighed the burden on Remington to design a rifle that would have prevented the harm and any adverse effect that a practical and feasible alternative design would have on the usefulness of the rifle that caused harm to Jerry.

54.

The unsafe condition of the firearm in question was a proximate cause of the harm and damages caused to Jerry Matthews and his wife.

55.

Remington, SGPI, and DuPont are liable to Jerry Matthews and his wife for the harms and losses caused by its product.

FAULT OF THE DEFENDANT OLIN CORPORATION, WINCHESTER-WESTERN DIVISION

56.

Defendant, **OLIN CORPORATION, WINCHESTER-WESTERN DIVISION**, is liable under the Louisiana Product Liability Act for manufacturing and selling ammunition that is defective in design, construction, and/or warning with said defects causing damages to Plaintiff, Jerry Matthews, as described in more detail below.

57.

The ammunition in question was defective and unreasonably dangerous for normal or foreseeable use and handling conditions and particularly the incident facts as disclosed herein and at the trial hereof.

58.

The ammunition in question was unsafe to an extent beyond which would be contemplated by an ordinary consumer.

59.

OLIN could foresee that Mr. Matthews, or someone in his position, would load a .270 caliber rifle with their factory-loaded .270 caliber ammunition.

60.

The magnitude of the risks presented by the ammunition in question under the incident circumstances as alleged herein outweighed utility of the ammunition as sold.

61.

Jerry Matthews did not appreciate the magnitude of the risk associated with the use of the ammunition under the incident conditions as alleged herein.

62.

OLIN failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of causing a gun to explode during foreseeable or predictable use conditions.

63.

OLIN did not recall the ammunition in question and place public notices and warnings concerning the ammunition.

64.

Had Jerry been given notice by **OLIN** of the risk of faulty ammunition, he would not have accepted nor attempted to use the ammunition at the time of the incident in question.

65.

The injury-producing characteristics of the ammunition in question were at all times within the exclusive control of **OLIN.**

66.

Plaintiffs did not contribute to the injury-causing attributes of the ammunition in question.

67.

At the time of its manufacture, the Olin ammunition, as designed, was not reasonably safe because the likelihood that the ammunition would cause Jerry's harm and the seriousness of that harm, outweighed the burden on **OLIN** to design ammunition that would have prevented the harm and any adverse effect that a practical and feasible alternative design would have on the usefulness of the ammunition that caused harm to Jerry.

68.

The unsafe condition of the ammunition in question was a proximate cause of the harm and damages caused to plaintiff, Jerry Matthews and his wife.

69.

OLIN is liable to Plaintiffs for the harms and losses caused by its product.

70.

The ammunition and/or rifle were defective in that they failed to perform safely under the reasonably anticipated circumstances.

71.

The rifle was clean and had always been maintained in a prudent and expected manner by the Matthews family.

72.

Plaintiff avers that the rifle and ammunition reached Plaintiffs without any change in their condition from the time they left the hands of their respective manufacturers.

73.

JERRY MATTHEWS noticed nothing about either the rifle or ammunition that should have reasonably called to his attention the latent defects before the explosion.

DAMAGES CAUSED BY DEFENDANTS

74.

Due to Defendants' fault in causing the injuries to Jerry Matthews, Plaintiffs have suffered and will suffer damages in the following, but not exclusive, particulars, to wit:

a. Loss of enjoyment of life;

b. Extreme emotional distress;

c. Extreme pain and suffering;

d. Permanent disfigurement;

e. Disability;

f. Loss of his right eye;

g. Loss of income and other special damages;

h. Loss of future earning capacity;

g. Any and all damages for the injuries to JERRY MATTHEWS as shall be determined to have been sustained and/or allowed by law.

75.

The damages resulting to Plaintiff were occasioned and proximately caused by the faulty, defective, and unreasonably dangerous conditions and vices of the firearm manufactured and marketed by the defendants and/or those of the ammunition in question.

76.

Plaintiff, ANGIE MATTHEWS, has suffered a loss of consortium as a result of the aforementioned incident and the fault of the defendants.

WHEREFORE PLAINTIFFS PRAY that a certified copy of the foregoing Complaint be served upon the defendants, Remington, SGPI, DuPont, and Olin and that the defendants, Remington, SGPI, DuPont, and Olin be duly cited to appear and answer and after the necessary legal delays, requisites, formalities, and trial had, there be Judgment herein in favor of the plaintiffs, JERRY MATTHEWS AND ANGIE MATTHEWS, and against the defendants, Remington, SGPI, DuPont, and Olin, jointly and severally, for any and all damages as shall be determined to be just, fair, and reasonable under the circumstances, together with legal interest from date of judicial demand until paid, and for all costs of these proceedings.

GOFF and GOFF
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PLEASE WITHHOLD SERVICE

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLES P. BLEDSOE,	§	3-09CV0734-L
	§	
Plaintiff,	§	Civil Action No. _____
	§	
v.	§	30611
	§	
REMINGTON ARMS COMPANY, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff, Charles P. Bledsoe, complaining of Remington Arms Company, Inc., Defendant, 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. Jurisdiction in this case is founded on diversity of citizenship, and venue is proper in the Northern District of Texas under 28 U.S.C. §1391(a) and (c). Here, there is only one Defendant, 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 Northern Judicial District of Texas. Thus, Remington's contacts with the Northern District of Texas are continuous and systematic. Venue

is proper in the Northern Judicial District of Texas.

II.

PARTIES

3. Plaintiff Charles Phillip Bledsoe is a citizen of the State of Georgia and resides in Americus, Georgia.

4. Defendant Remington Arms Company, Inc. (hereinafter "Remington") 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. Service of process will be accomplished privately or waived under Federal Rule of Civil Procedure 4. The Texas Comptroller reports the following information regarding Remington Arms Company, Inc.:

Entity Information:	**REMINGTON ARMS COMPANY INC** PO BOX 700 MADISON, NC 27025-0700
Status:	**IN GOOD STANDING NOT FOR DISSOLUTION OR WITHDRAWAL through May 15, 2009**
Registered Agent:	C T CORPORATION SYSTEM 350 N. ST. PAUL ST. DALLAS, TX 75201
State of Formation:	DE
File Number:	0009787306
SOS Registration Date:	November 22, 1993
Taxpayer Number:	15103509350

III.

FACTUAL BACKGROUND

5. On December 29, 2006, Plaintiff released the safety on his Remington Model 710 rifle. He did not pull or in any way touch or engage the trigger. Upon safety release, the rifle fired, shooting Plaintiff in the foot. The gunshot caused serious medical injuries, and Plaintiff, then a United States Marine (he was off duty at the time of the incident in question) was ultimately discharged honorably from the Marines resulting from his disabling injuries.

6. 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 710 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.

7. The Remington Model 710 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.

8. Remington continues in the design, manufacture, distribution and sale of its product lines, including the Remington Model 710 bolt-action rifle (the rifle is now known as the Model 770). Remington has designed a new trigger mechanism that is safe, but it only installs the new mechanism into some of its rifles.

9. Plaintiff brings this action to recover damages from Defendant arising from Charles Bledsoe's personal injuries caused by this incident. Plaintiff's damages include past and future medical and related 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 the trial of this action.

IV.

COUNT I: STRICT LIABILITY

10. Defendant is strictly liable to Plaintiff for designing, manufacturing, and placing into the stream of commerce the Remington Model 710 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.

11. The Remington Model 710 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.

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

13. As a direct result of Remington's failure to warn of the 710 rifle's propensity to unexpectedly discharge without pulling the trigger, Plaintiff has been injured and is entitled to recover the damages from Remington.

V.

COUNT II: NEGLIGENCE

14. Defendant was negligent in the design, manufacture and marketing of the product in question. Defendant knew, or in the exercise of ordinary care should have known, that the Remington Model 710 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. Defendant was negligent as set forth in this and the preceding paragraph, and Defendant's negligence was a

proximate cause of the occurrence in question.

15. 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 Charles Bledsoe. 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 Charles Bledsoe.

16. Defendant knew, or in the exercise of ordinary care should have known, of problems with its Model 710 rifle and its other rifles but failed to notify or warn owners or the general public prior to or after Charles Bledsoe's injuries.

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

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

VI.

COUNT III: EXEMPLARY OR PUNATIVE DAMAGES

19. 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 Charles Bledsoe. Remington had (and has) actual, subjective awareness of the risk involved in utilizing a fire control mechanism for the 710 rifle derived from the Walker fire control mechanism but nevertheless proceeded with conscious indifference to the rights, safety,

and welfare of others. Exemplary damages should be assessed against Remington to deter it and others from disregarding the rights, safety and welfare of the general public.

20. Despite a defect that has been known to Remington for decades—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.

21. 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.

22. 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.

23. 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.

24. Remington's Model 710, which uses the old 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.

25. 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.

26. 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.

27. 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.*

28. 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 Phil Haskell, who designed the fire control along with Merle Walker (both Walker and Haskell's names appears on the patent), wrote in 1992: "I also think now that the housing of the [fire control] parts is all wrong. There is too much opportunity for small debris, foreign material to become trapped within that housing and then change the 'fit' or clearances of the internal parts."

29. 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.*

30. 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.*

31. 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.*

32. 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.*

33. 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."

34. 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.

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

36. 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 injuries to Mr. Bledsoe. 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.").

37. 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."). Simply put, Remington's new design would have prevented this accident, and Remington knew it. But Remington did not take action to include the new fire control in Mr. Bledsoe's rifle or even warn him regarding a known safety issue. Remington still widely uses the old fire control today, knowingly subjecting users to the gravest of dangers.

38. 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.

39. 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).

40. 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.

41. 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.

42. 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 voluminous documents show, it decided to "[e]liminate 'Fire on Safety Release' malfunction."

43. 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.

44. 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?

45. 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.

46. 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?

47. Remington's answer was appropriately given in terms of exclusion—Not the M700 fire control:

> **Project Description:**
> A low cost bolt action rifle accommodating short and long action calibers; standard barrel lengths; synthetic and wood stocks; magazine box, reasonable grade trigger (not the M/700 fire control); accepts scope bases; optional adjustable sights; and Matthewe metal finish.

48. Derek Watkins designed a connectorless fire control based on the work performed during the cancelled M700 improvements program. Discussing two of the designs from that program in his January 1998 presentation, Watkins indicates that one design (the "6-Bar") was sensitive to assembly procedures, and for another (the "4 x 4"), tolerance issues were identified with the safety and system return. But Watkins concisely reports that "[t]he [newly designed] M710 fire control addresses all these issues, while adding features and reducing the part count even further."

49. Once again, Remington had a new and safe design. But the design began to meet its end during economic analysis. From a February 1998 memo:

> Our impression of the designs is that they represent a great deal of potential. Some of the concepts deviate substantially from the processing capabilities at Ilion [New York], and therefore would require fairly substantial investments in capital and technical resources to implement.

50. Though Remington documents clearly show that Watkins' design was favored ("The new concept barrel and fire control analysis was complete with excellent results"), project spending was put on hold in May 1998 "until economics and project is approved." That approval never came.

51. On August 25, 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.

52. 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:

> For each of the four rounds in the magazine the tester will close the bolt "smartly"—(i.e. as quickly as practical)—and be prepared for the rifle to inadvertently follow down or fire.

53. 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.

54. 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

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

56. 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 user. On June 1, 1994, Remington's Ken Green estimated that a "replacement campaign" would cost approximately $22,700,000. This cost estimate did "not include any new equipment necessary to manufacture the [new] trigger assemblies." Remington again elected against a recall.

57. The following note from a Remington trainee reveals Remington's defiance:

> **"SAMMI-Shooting Arms Ammunition Manufacturers Institute.** This is our governing regulator -- not the federal government. Federal government has no say in anything. We issue recalls -- not the government. SAMMI makes regulations for this -- not the federal government. Ken Weadon is on the board [of directors] of SAMMI. He was a vice president for Remington."

58. These are contemporaneous notes taken by someone in training to work for Remington. So confident is Remington that no one or no organization can mandate a recall of its dangerous

product, the company actually brags about it to new hires. This is improper.

VII.

DAMAGES AND JURY DEMAND

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

60. Plaintiff has suffered impairment, incapacity and disability in the past. He will suffer impairment, incapacity and disability in the future.

61. Plaintiff has incurred other pecuniary damages in the past and in reasonable probability will continue to suffer pecuniary loss in the future, including loss of earnings, benefits and earning capacity and the ability to conduct household tasks and other aspects of personal care and service.

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

63. Plaintiff has 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.

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

65. 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.

66. Plaintiff demands a jury.

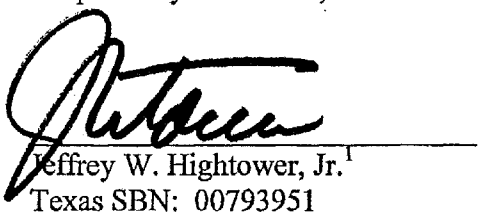
WHEREFORE, Plaintiff prays judgment against Defendant as follows:

1. For all monetary damages allowed under law and described, without limitation, above, plus interest;

2. For costs of suit; and

3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,



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

THOMAS DEAN HULL, JR.	§	
	§	
Plaintiff,	§	**Civil Action No. _____**
	§	**(ECF)**
v.	§	
	§	
REMINGTON ARMS COMPANY, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW Plaintiff, Thomas Hull ("Plaintiff"), complaining of Remington Arms Company, Inc. ("Remington") Defendant, and files this, his First 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 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):

"<u>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</u>

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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 is 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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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY RAMBO,
Plaintiff,

v.

REMINGTON ARMS COMPANY, INC.; and DON HANKS, d/b/a/ BOONDOCK 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:

PARTIES

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

2. Defendant Remington Arms Company, Inc. ("Remington"), was and is organized and incorporated 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 Alaska, including selling, manufacturing and distributing rifles through its distributors and sales force.

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

FACTUAL BACKGROUND

4. Defendant Remington manufactures, markets and distributes the Remington Model 700 bolt action rifle, including the action, fire control system, and safety (hereinafter the "rifle" or "Remington Model 700 rifle"). The 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. This rifle and the injuries caused by the same is the basis of this lawsuit.

5. The Remington Model 700 rifle was defective in its 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. Although Defendant Remington has designed a new trigger mechanism that is safe, it only installs the new mechanism in some of its rifles.

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

propensity, either before or after that purchase.

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

8. Plaintiff brings this action to recover damages from Defendants Remington and Boondock arising from 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; loss of earnings; impaired earning capacity; 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.

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

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

10. At all relevant times, Defendant Remington was engaged in the business 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 Alaska. At all relevant times, Defendant Boondock was engaged in the business of selling rifles, including the Remington Model 700 rifle, to the public.

11. Defendants Remington and Boondock are strictly liable to Plaintiff for selling a Remington Model 700 rifle to Dale Rambo 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 or 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.

12. 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.

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

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

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

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

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

17. Defendants Remington and Boondock 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 or Dale Rambo of

this propensity, either before or after Dale Rambo's purchase of the rifle from Defendant Boondocks.

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

19. Defendants Remington and Boondock owed a duty to Plaintiff and Dale Rambo to adequately warn of the defect of the Remington Model 700 rifle prior to the sale of the product to Dale Rambo and thereafter. Failure to warn Plaintiff and Dale Rambo 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.

20. As a direct and proximate result of the Defendants' failure to warn Plaintiff and Dale Rambo 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.

THIRD CAUSE OF ACTION
(Negligence)

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

22. Defendants Remington and Boondock were negligent in the design, manufacture, marketing, and sale of the Remington Model 700 rifle to Dale Rambo. 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 Boondock 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, 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.

23. Defendants Remington and Boondock 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. 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.

24. Defendants Remington and Boondock had actual or constructive knowledge of the problems with the Remington Model 700 rifle at the time it was sold to Dale Rambo, 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 or Dale Rambo of the rifle's dangerous condition.

25. Defendants Remington and Boondock 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.

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

FOURTH CAUSE OF ACTION
(Punitive Damages)

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

28. The actions of Defendants Remington and Boondock 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.

PRAYER FOR RELIEF

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

A. An award of damages in excess of $100,000, in an amount to be proved at trial;

B. An award of prejudgment interest;

C. An award of punitive damages, in an amount to be proved at trial;

D. An award of his costs and attorney's fees; and

E. Such other and further relief as the Court may deem just and proper.

DATED September 1, 2010, at Anchorage, Alaska.

WINNER & ASSOCIATES, P.C.

By: _____
Russell L. Winner

THE DRINNON LAW FIRM, LLP
STEPHEN W. DRINNON

HIGHTOWER ANAGELLEY, LLP
JEFFREY W. HIGHTOWER, JR.

Attorneys for Plaintiff

FILED

IN THE CIRCUIT COURT FOR THE COUNTY OF BUCHANAN
STATE OF MISSOURI

JAN 1 - 19

BEVERLE SCOTT
CLERK OF CIRCUIT COURT
BY _____

Michael D. Eshenroder)
)
Plaintiff)
) Case No. CV384-54CC
v)
)
) Division No. 1
K-Mart Discount Stores, a)
division of SS Kresgee Company)
or K-Mart Corporation)
2901 North Belt Highway)
St. Joseph, Missouri)
)
Remington Arms Company, Inc.)
Serve: Registered Agent, CT)
Corporation Systems)
314 North Broadway)
St. Louis, Missouri)
)
Defendants)

PETITION FOR PERSONAL INJURIES
AND PROPERTY DAMAGE

COUNT ONE

Comes now Plaintiff and for his cause of action against Defendants, on this Count One, alleges and states:

¶1. That at all times herein mentioned, Plaintiff was a citizen and resident of St. Joseph, Buchanan County, Missouri; that Defendant K-Mart is a corporation duly organized and existing according to law, authorized to do business in the State of Missouri and maintaining an office for the doing of such business at 2901 North Belt Highway, St. Joseph, Missouri, and engaged in the sale and distribution of certain goods, wares and merchandise, including, but not limited to, guns and rifles; that Defendant Remington is a corporation duly organized and existing according to law, authorized to do business in the State of Missouri and maintaining as their registered agent, CT Corporation

Systems, 314 North Broadway, so that service of process should be directed to the Sheriff of the City of St. Louis for service upon this Defendant.

¶2. That on or about July 16, 1985, Plaintiff purchased a certain rifle, to-wit: a Remington 243, Model 700, Serial Number B6543473 from Defendant K-Mart, which said rifle was manufactured and distributed by Defendant Remington.

¶3. That said rifle was then in a defective condition, unreasonably dangerous when put to the use reasonably anticipated, in that on or about October 19, 1985, when said rifle was fired for the first time, the barrel exploded, causing injuries to Plaintiff. That at the time of first using said rifle, it was used in the manner reasonably anticipated by Defendants.

¶4. That Plaintiff relied on Defendants' skill and expertise in the manufacture and sale of such rifles and the occurrence is such that would not happen, had the rifle not been in a defective condition.

¶5. That as a direct and proximate result of the occurrence, Plaintiff sustained violent, severe, lasting, serious and permanent personal injuries to his left hand and wrist and arm, in that the bones, muscles, tendons, ligaments thereof were strained, sprained, torn, bruised, contused, abraded; that Plaintiff was forced to seek the services of physicians and hospitals, to his damage in the amount of $_____; that Plaintiff lost time from his employment as a result of the injuries sustained to his damage in the amount of Seven Hundred Fifty Dollars ($750.00), all to his damage in the sum of Twenty-five Thousand Dollars ($25,000.00).

WHEREFORE, Plaintiff prays judgment against Defendants and each of them in the sum of Twenty-five Thousand Dollars ($25,000.00) and for his costs in this behalf expended.

COUNT TWO

Comes now Plaintiff and for his cause of action against Defendants, alleges and states:

¶1. This Plaintiff adopts by reference as fully as if set out herein and incorporates herein, each and every statement, allegation and averment contained in Count One of Plaintiff's Petition.

¶2. That as a result of the allegations contained in Count One, this Plaintiff has been damaged for the destruction and total loss of his rifle in the amount of Two Hundred Eighty-six Dollars, Forty-four Cents ($286.44).

WHEREFORE, Plaintiff prays judgment against Defendants and each of them on his property damage in the sum of Two Hundred Eighty-six Dollars, Forty-four Cents ($286.44) and for his costs in this behalf expended.

DON PIERCE, P.C.

By /s/ Don Pierce

Don Pierce - 14376
Suite 202 Donnell Court Building
507 Francis Street
St. Joseph, Missouri 64501
Telephone: 279-5642
ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

At Law

JAMES C. ABBOTT, Plaintiff, vs. JOHN DEIGNAN; REMINGTON ARMS COMPANY, INC.; G. I. JOES, INC; WILLIAM S. YOUNG, dba Young's Sporting Goods; RUTH E. ABLE, JO ANNE ABLE, JOSEPH R. ABLE, dba Starkey Trading Post, Defendants.	NO. 82-5-347 CLAIM FOR RELIEF FOR PERSONAL INJURY

As and for a first claim for relief, Plaintiff alleges that:

I

At all times herein mentioned, Defendant Remington Arms Company, Inc. was and is a duly organized corporation authorized to do business under and by virtue of the laws of the State of Connecticutt. At all times herein mentioned, Defendant Remington Arms Company, Inc. transacted business within the State of Oregon in that they caused their products to be available for sale in retail stores in Oregon.

II

At all times herein mentioned, Defendant G. I. Joes, Inc. was and is a duly organized corporation authorized to do business under and by virtue of the laws of the State of Oregon.

III

At all times herein mentioned, Defendant William S. Young

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PHONE 581-2421

owned and operated Young's Sporting Goods, a duly organized business, authorized under and by virtue of the State of Oregon.

IV

At all times herein mentioned, Defendants Ruth E. Able, Jo Anne Able and Joseph R. Able owned and operated the Starkey Trading Post, a duly organized business, authorized by and under the laws of the State of Oregon.

V

At all times herein mentioned, Defendant John Deignan was and is domiciled at 23051 S. Hunter Road, City of Colton, County Clackamas, State of Oregon.

VI

At all times herein mentioned, Plaintiff was an invitee on Defendant Deignan's property located at 23051 S. Hunter Road, City of Colton, County of Clackamas, State of Oregon.

VII

At all times herein mentioned, Defendant John Deignan owned and maintained exclusive control over the hereinafter referred to Remington 7mm Rifle.

VIII

At all times herein mentioned, Defendant Deignan owned three boxes of Remington 7mm cartridges, which boxes he had purchased one each from Defendant G. I. Joes, Inc., Defendant William S. Young, dba Young's Sporting Goods, and Defendant Ruth E. Able, Jo Anne Able and Joseph R. Able, dba Starkey Trading Post.

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IX

On or about the 25th day of May, 1980, Defendant Deignan' above mentioned Remington Rifle exploded when, while engaged i target shooting, Defendant Deignan handed Plaintiff said Remin Rifle and then handed Plaintiff one rifle cartridge chosen at random from among several cartridges he had dumped into his poc from one of the aforementioned boxes of cartridges. Plaintiff inserted said cartridge into the rifle and fired, causing said rifle to explode, propelling metal fragments into Plaintiff's fa and eyes. The aforementioned cartriqe was in fact a Winchester cartridge, which was smaller in diameter than a 7mm cartridge an therefore fit loosely in the Remington Rifle resulting in the explosion when said cartridge was discharged. Said explosion resulted from the negligent acts of Defendants as hereinafter set forth, causing personal injury to Plaintiff as hereinafter set forth.

X

Defendants were guilty of negligence in the following particulars:

1. Defendant Deignan provided the rifle and cartridge to Plaintiff, an invitee, and failed to inspect said rifle and cartridge to assure their safety;

2. Defendant G. I. Joes, Inc., Defendant Williams S. Young, dba Young's Sporting Goods, and Defendants Ruth E. Able, Jo Anne Able, and Joseph R. Able, dba Starkey Trading Post, each sold one box of Remington 7mm cartridges to Defendant Deignan, one of which

boxes contained four Winchester 270 cartridges;

3. Defendant Remington Arms Company, Inc., manufactured, package and distributed the three boxes of Remington 7mm cartridges, one of which contained four Winchester 270 cartridges.

The negligent acts of the Defendants as hereinabove alleged were the sole, direct and proximate cause of the explosion hereinabove referred to.

XI

As a sole, direct and proximate result of the negligent acts of the Defendants as hereinabove alleged, and of the explosion hereinabove alleged, Plaintiff sustained the following injuries:

1. Metal fragments were imbedded in his right cornea;

2. Metal fragments were imbedded in the conjuctiva of his right eye;

3. Metal fragments were imbedded in the conjunctiva of his left eye;

4. Metal fragments were imbedded in his right upper and lower eyelids near the medial canthus;

5. Metal fragments were imbedded in his left lower eyelid, near the medial canthus;

6. Metal fragments were imbedded in his right thumb near the distal interphalangeal joint;

7. Severe headaches;

8. Partial loss of sight in both eyes;

9. General body stiffness; and

10. Mental upset and anguish.

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SALEM, OREGON 97301
PHONE 581-2421

Said injuries to Plaintiff are permanent in nature.

XII

As a direct and proximate result of the negligent acts of the Defendants and of the injuries hereinabove referred to, Plaintiff has incurred necessary medical expenses to date in the sum of $1,500.00, which is the reasonable value of the services rendered, all to Plaintiff's special damage in the sum of $1,500.00.

As a direct and proximate result of the negligent acts of the Defendants and of the injuries hereinabove referred to, Plaintiff has lost wages in the amount of $2,200.00, all to his special damage in the sum of $2,200.00.

XIII

By virtue of the negligent acts of the Defendant and the injuries hereinabove referred to, Plaintiff has suffered pain and agony and will for the balance of his life continue to suffer pain and agony, has been permanently, partially disabled, and will suffer a future impairment of earning capacity, all to Plaintiff's general damage in the sum of $ 69,000.00.

As and for a second claim for Relief, Plaintiff alleges that:

XIV

Plaintiff incorporates paragraphs I through IX and paragraph XI of Plaintiff's first claim for relief as though fully set forth herein.

XV

At all times herein mentioned, the aforementioned Remington Rifle and boxes of shells were within the exclusive control of the

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PHONE 581-2421

Defendants.

XVI

The aforementioned explosion would not have occurred, but for the negligence of the Defendants.

XVII

The aforementioned explosion was not caused by any voluntary action of the Plaintiff.

XVIII

As a direct and proximate result of the negligent acts of the Defendants and of the injuries hereinabove referred to, Plaintiff has incurred necessary medical expenses to date in the sum of $1,500.00, which is the reasonable value of the services rendered, all to Plaintiff's special damage in the sum of $1,500.00. As a direct and proximate result of the negligent acts of the Defendants and of the injuries hereinabove referred to, Plaintiff has lost wages in the amount of $2,200.00, all to his special damage in the sum of $2,200.00.

XIX

By virtue of the negligent acts of the Defendants and the injuries hereinabove referred to, Plaintiff has suffered pain and agony and will for the balance of his life continue to suffer pain and agony, has been permanently, partially disabled, and will suffer a future impairment of earning capacity, all to Plaintiff's general damage in the sum of $ 69,000.00.

/ / /

ATTORNEYS AT LAW
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SALEM, OREGON 97301
PHONE 581-2421

XX

Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays for judgment against the Defendants in the sum of $ 69,000.00 general damages, for $3,700.00 special damages, and for his costs and disbursements incurred herein.

BROWN, BURT, SWANSON, LATHEN & ALEXANDER

By: Neil F. Lathen
NEIL F. LATHEN, OSB# 74182
Of Attorneys for Plaintiff

STATE OF OREGON)
) ss.
County of Marion)

I, JAMES C. ABBOTT being first duly sworn on oath, depose and say that I am Plaintiff in the within entitled cause, and that the foregoing Claim for Relief for Personal Injury is true as I verily believe.

James C. Abbott
JAMES C. ABBOTT

SUBSCRIBED AND SWORN to before me this 21 day of May, 1982.

Raelynn V. Henson
Notary Public for Oregon
My Commission expires: 9-30-84

Certified to be a true and correct copy of the original and the whole thereof filed herein:

Neil F. Lathen
of attorneys for Plaintiff

ATTORNEYS AT LAW
1000 CAPITOL TOWER
SALEM, OREGON 97301
PHONE 581-2421

FILED

JUL 03 1990

RICHARD R. MORROW, CLERK
WAYNE CIRCUIT/DISTRICT COURTS
BY: _____ D.C.

COMMONWEALTH OF KENTUCKY
WAYNE CIRCUIT COURT
CASE NO. 90-CI-141

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY, Plaintiff

vs: C O M P L A I N T

REMINGTON ARMS COMPANY, INC., Defendant

* * * * * * *

Comes the plaintiff, Kentucky Farm Bureau Mutual Insurance Company, by and through counsel, and for its complaint against the defendant states as follows:

COUNT I

1. That the plaintiff is a licensed insurance company doing business in the Commonwealth of Kentucky.

2. That on November 8, 1987, the plaintiff issued a policy of insurance to Kenneth Ringley the step-father of a minor, Anthony Baker.

3. That said policy of insurance provided coverage in the event that a member of the insured's household was injured with liability limits of up to $100,000 for personal injury.

4. That Anthony Baker was a member of the household of Kenneth Ringley and was covered by the terms of the aforementioned policy issued by the plaintiff to Kenneth Ringley.

5. That on July ____, 1988, Chrystal Odom was injured when a rifle manufactured by the defendant discharged while Anthony Baker was demonstrating the rifle to another in the presence of the minor Chrystal Odom.

6. That the discharge of the rifle was caused by a defect in the design of same which made the rifle unreasonably dangerous for the reason that in order to eject a live shell from the firing chamber the safety was required to be off.

7. The rifle in question is a 788 model, 243 caliber, bolt action rifle manufactured by the defendant.

8. That the defendant in manufacturing the rifle knew or by exercise of due diligence should have known that the design of the rifle was unreasonable and constituted a danger in the use of said rifle.

9. That the injuries suffered by Chrystal Odom were suffered solely as the result of the improper design, construction and use of said rifle.

10. That Chrystal Odom suffered grievous injuries as a result of being struck by a bullet discharged from the aforementioned rifle and incurred medical bills in the amount of 35,000.00, endured pain and suffering and was further reimbursed by the plaintiff in the total amount of $75,000.00.

11. That by virtue of the payment of the foregoing sum to Chrystal Odom, the plaintiff is subrogated to the rights of said Chrystal Odom to recover the aforementioned amount from

the defendant whose actions caused the injury to Chrystal Odom.

12. That the rifle at the time of the injury suffered by Chrystal Odom was in its original condition, being that it had not been altered or modified in any way by anyone but existed as manufactured by the defendant.

13. That the defendant is subject to the personal jurisdiction of this court pursuant to KRS 454.210 for the reason that the defendant transacts business in the Commonwealth; and that the defendant has caused tortious injury by act or omission in the Commonwealth and therefore summons should issue against the defendant through the office of the Commonwealth of Kentucky Secretary of State as set forth in KRS 545.210.

14. That the defendant is therefore indebted to the plaintiff in the total sum of $110,000.00.

COUNT II

1. That the plaintiff incorporates all allegations made in Count I to this Count as if fully copied at length.

2. That the plaintiff is entitled to indemnity from the defendant in the amount of $110,000.00.

COUNT III

1. That the plaintiff incorporates all allegations made in Count I and Count II to this Count as if fully copied at length.

2. That the plaintiff is entitled to contributions from the defendant in the amount of $110,000.00.

WHEREFORE, plaintiff demands judgment as follows:

1. For entry of an order awarding to the plaintiff the sum of $110,000.00, plus interest at the legal rate from July 5, 1990;

2. For all costs herein expended; and

3. For any and all other orders and relief to which the plaintiff may be entitled.

FRAZER AND JONES, P.S.C.
ATTORNEY AT LAW
P.O. BOX 686
MONTICELLO, KENTUCKY 42633

By _____
Attorney for Plaintiff

WENDELL E. BENNETT
AND ASSOCIATES
Attorneys at Law
Attorneys for Plaintiff
370 East 500 South, Suite 100
Salt Lake City, Utah 841113388
Telephone: 532-7846

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

---oooOooo---

MICHAEL M. BOONE,

Plaintiff,

vs.

REMINGTON ARMS COMPANY, INC., a Foreign Corporation,

Defendant.

C O M P L A I N T

Civil No. _____

---oooOooo---

COMES NOW the plaintiff above named and for cause of action against the defendant complains as follows:

JURISDICTION AND VENUE

1. Plaintiff is a resident of the state of Utah and of this district; and this is an action for money damage involving ten thousand dollars ($10,000.00) resulting from an action wherein plaintiff was personally injured as a result of the failure of a product known as a "Remington 7mm Express High Velocity Cartridge" manufactured by the defendant.

2. This court has jurisdiction over this matter under the provisions of 28 USC 1332 (a) since defendant's corporation is not a citizen of the state of Utah; and the venue property lies in this court under 28 USC 1391 (a); in that defendant is doing business in the state of Utah by and through its agents who are marketing said product within the state.

ammunition for recreational and hunting use, and in particularly had manufactured a rifle known as the "7mm Rem Mag" rifle, also known as a Remington Model 700, and also manufacturing and selling seven millimeter cartridges to be used therein.

4. At some time prior to October 24, 1980, the defendant had caused to be manufactured and placed in the stream of commerce a 7mm Remington Mag Model 700 rifle that had been sold to the plaintiff, and also some 7mm Express Remington High Velocity center fire cartridges that had also been sold to the plaintiff, which, when used together on October 24, 1980, caused the 7mm Express Remington High Velocity center fire cartridge to explode while being fired in the 7mm Remington Mag Model 700 rifle, which, as a result, caused multiple foreign bodies to be driven into and embedded in the plaintiff's right eye.

5. The defendent owed a duty to the plaintiff to use the care, skill and diligence in and about the process of manufacturing, designing and preparing the rifle and the cartridges, also known as ammunition, for market as a reasonable, skillful, and diligent person, would have, including the duty to warn on the package containing the 7mm Express Remington High Velocity center firing cartridges that they were unsafe for use in Remington's 7mm Remington Mag Model 700 rifle, and that in truth and in fact they were not to be used in said rifle, and that their use in said rifle could result in injuries of the type that plaintiff sustained and in fact the ammunition was not 7mm ammunition, but was actually .280 caliber ammunition renamed as 7mm Express Remington ammunition which renaming had been made by the defendant in this case as a marketing scheme in as much as their .280 caliber rifle and ammunition had not sold as they desired, whereas their 7mm rifle and ammunition had been a highly profitable and fast selling item for the defendant.

fire cartridges in light of its knowledge of its manufacture, design, preparation, sale, and advertising of the 7mm Remington Mag Model 700 rifle which negligence was the direct and proximate cause of the injuries sustained by the plaintiff to his eye.

7. As the direct and proximate result of the negligence of the defendant as hereinabove set forth, plaintiff's right eye was permanently injured and damaged. By reason of said injury the plaintiff has been caused to suffer permanent loss of function, and use of his right eye; he has been caused to incur expenses for hospital, surgical, and medical treatments; he has suffered permanent disfigurement and scarring; his ability to work and earn income has been and will continue to be permanently impaired; his activities have been restricted, and his ability to live a normal life has been adversely affected.

WHEREFORE, the plaintiff prays judgment against the defendant Remington Arms Company, Inc. for both general damages and special damages to be set by the trier of fact in this case at the time of trial.

COUNT II

DECEIT

Plaintiff incorporates herein by reference, Paragraphs 1 through 7, and further alleges in Count II that:

8. With reference to its marketing and sales of the 7mm Express Remington High Velocity center fire cartridges made either an overt false representation or a negligent misrepresentation under the following circumstances:

(a) The defendant concealed a past or present material fact or failed to disclose a past or present material fact which it had a duty to disclose;

(b) With an intent to create a false impression of the

(c) And it did so with the intent that the plaintiff or the group act or reframe from acting in a way other than that which the plaintiff or the group would have acted had the plaintiff or the group known the true facts; and,

(d) The plaintiff acted or refrained from acting in reliance on the assumption that the concealed or undisclosed fact did not exist or was different from what it actually was, and,

(e) The plaintiff's reliance was justified;

(f) The plaintiff suffered damage as a result of his reliance on the representation.

WHEREFORE, the plaintiff prays judgment against the defendant Remington Arms Company, Inc. for both general damages and special damages to be set by the trier of fact in this case at the time of trial.

COUNT III

EXPRESS WARRANTY CAUSE OF ACTION

Plaintiff incorporates Paragraphs 1 through 8 herein by reference and further alleges in Count III that:

9. The defendant, through affirmation of fact, promises, and descriptions in its literature, advertisements, through its agents and employees created express warranties as to the nature, characteristics, and qualities of the 7mm Express Remington High Velocity center fire cartridges referred to herein. These warranties run to the benefit of the plaintiff.

10. The aforementioned 7mm Express Remington High Velocity center fire cartridges were defective, both as to design and in the way they were manufactured, represented, and advertised for sale, and sold.

11. The defendant breached the express warranties to the plaintiff by marketing the defectively manufactured and advertised 7mm Express Remington High Velocity center fire

of the defendant. Defendant has been placed on notice of said defects and that the defects and breach of warranties are a proximate cause of the plaintiff's injuries and aforementioned general and special damages.

WHEREFORE, the plaintiff prays judgment against the defendant Remington Arms Company, Inc. for both general damages and special damages to be set by the trier of fact in this case at the time of trial.

COUNT IV

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

CAUSE OF ACTION

Plaintiff incorporates herein by reference, Paragraphs 1 through 11, and further alleges in this Count IV:

12. Based upon information and belief, the aforementioned 7mm Express Remington High Velocity center fire cartridges were specifically manufactured for use in hunting rifles, and in particular the 7mm hunting rifle manufactured by the defendant and being used by the plaintiff in the facts alleged in this complaint; and that the defendant-seller at the time of manufacturing the 7mm Express Remington High Velocity center fire cartridges had reason to know of the particular purpose for which the cartridges were to be used. Defendant further knew that the buyer was relying on the defendant's skill and judgment in providing 7mm ammunition.

13. In addition to warranting the 7mm Express Remington High Velocity center fire cartridges for the particular purpose they were to be used, defendant impliedly warranted to the general public and to the plaintiff that the 7mm Express Remington High Velocity center fire cartridges were merchantable and fit for the use for which they were intended. Defendant breached the aforementioned implied warranties to the plaintiff because said

which they were manufactured and advertised for use. Plaintiff personally or through others relied on the warranties made by the defendant and was caused to suffer personal injury as a direct and proximate result of the breach of the aforementioned warranties by the defendant, all to his aforementioned general and special damages alleged herein.

WHEREFORE, the plaintiff prays judgment against the defendant Remington Arms Company, Inc. for both general damages and special damages to be set by the trier of fact in this case at the time of trial.

COUNT V

STRICT LIABILITY CAUSE OF ACTION

Plaintiff incorporates by reference herein, Paragraphs 1 through 13, and further alleges in this Count V:

14. Defendant manufactured and sold the aforementioned cartridges leaving them in defective condition as to design, manufacture, warnings, instructions, and advertisements accompanying their use. In the defective state, the 7mm Express Remington High Velocity center fire cartridges were dangerous when they left the defendant's control.

15. The aforementioned 7mm Express Remington High Velocity center fire cartridges were expected to and did reach the plaintiff without substantial change in the condition in which they were sold.

16. The defendant manufactured and sold the 7mm Express Remington High Velocity center fire cartridges placing them in the stream of commerce, knowing that they would be used without the technical ability for inspection of defects; and that as a result of defendant's acts, plaintiff was injured by said defective 7mm Express Remington High Velocity center fire cartridges, or one of them failing and defendant should be held strictly liable for all of the plaintiff's aforementioned general

WHEREFORE, the plaintiff prays judgment against the defendant Remington Arms Company, Inc. for both general damages and special damages to be set by the trier of fact in this case at the time of trial.

Dated this 17th day of August, 1981.

WENDELL E. BENNETT & ASSOCIATES

By _____
Wendell E. Bennett
370 East 500 South, Suite 100
Salt Lake City, UT 841113388

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

STEVEN CARROLL,	§	
	§	
Plaintiff,	§	Civil Action No. 6:10-CV-1373
	§	JURY TRIAL (NAM/GHL)
v.	§	
	§	
REMINGTON ARMS COMPANY, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, Steven Carroll complaining of Remington Arms Company, Inc. ("Remington"), and files this Original Complaint, and for his causes of action would show the Court and the jury the following:

I.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is proper 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. Venue is proper in the Northern District of New York, Utica Division pursuant to 28 U.S.C. §1391 (a)(1) and (c). Specifically, Remington has continuous and systematic contacts with the Northern District of New York, Utica Division in that it maintains a manufacturing plant in Ilion, New York. The manufacture, design, testing, and distribution of the Model 700 rifle is centered at the Remington plant in Ilion, which is the only place where Model 700 rifles with "Walker fire controls" have ever been made. Additionally, the Ilion, New York facility is the

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 he 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., Kehm v. Procter & 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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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

DAVID RUSSELL RODGERS, Individually and on behalf of all others similarly situated,	§	
Plaintiff,	§	**Civil Action No.** 09-1054
vs.	§	**JURY TRIAL**
REMINGTON ARMS COMPANY, INC.	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL CLASS ACTION COMPLAINT

COMES NOW Plaintiff, David Russell Rodgers, individually, and on behalf of all others similarly situated, and complains of Remington Arms Company, Inc. ("Remington"), Defendant, and files this, his Original Class Action Complaint, and for his cause of action would show the Court and the jury the following:

I.

JURISDICTION AND VENUE

1. This is a nationwide class.

2. Members of the proposed Class are citizens of the states of the United States.

3. The jurisdiction of this Court attaches under the provisions of 28 U.S.C.§1332, in that this is a class action filed under Rule 23 of the Federal Rules of Civil Procedure and the matter in controversy exceeds the sum or value of $5,000,000.00, exclusive of interests and costs, and Plaintiff is a citizen of a state different from Defendant.

4. Federal court jurisdiction is based on the Class Action Fairness Act of 2005, 28 U.S.C. §§1332(d), 1453 & 1711-1715, 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 Defendant's contacts with the forum. Remington has continuous and systematic contacts with the Western District of Arkansas, El Dorado Division, and throughout the United States.

5. The Western District of Arkansas, El Dorado Division, has jurisdiction over this action and the Western District of Arkansas 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 Western District of Arkansas, El Dorado Division. Thus, Remington's contacts with the Western District of Arkansas are continuous and systematic. Venue is proper in the Western District of Arkansas, El Dorado Division.

II.

PARTIES

6. Plaintiff David Russell Rodgers ("Rodgers") is a citizen of the State of Arkansas and resides in Ashley County, Arkansas.

7. The "Members of the Class" are all natural persons within the United States who purchased a new Remington Model 700 bolt action rifle containing a "Walker" control fire control system (the "Subject Rifles") within the last five years, and continuing until a Class is certified, or who now own a Remington Model 700 bolt action rifle containing a "Walker" control fire control system purchased within that time period. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant, and Defendant's legal representatives, assigns and successors. Also

excluded is the judge to whom this case is assigned and any member of the judge's immediate family and judicial staff. The U.S. Military and all Government agencies and departments, federal, state, and local are excluded. Claims for personal injury are specifically excluded from the Class. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, Plaintiff is informed and reasonably believes the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

8. Defendant Remington Arms Company, Inc. is a corporation foreign to the State of Arkansas 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 Arkansas by selling, manufacturing and distributing rifles through its sales channels.

III.

FACTUAL BACKGROUND

9. On or about December 12, 2006, Rodgers purchased a new Model 700 Remington bolt action rifle for more than $400 with serial number G 6576270. The gun was purchased for personal, family, or household use. The Model 700 Remington bolt action rifle Rodgers purchased contains a "Walker" fire control system and is one of the Subject Rifles.

10. Remington is engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did 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 (previously defined as "Subject Rifles"), knowing and expecting that

the rifle would be used by consumers and around members of the general public.

11. The Subject Rifles contain 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.

12. All 700's now have the new fire control. The Walker fire control is still in use in military rifles and Model 770s. Remington has designed a new trigger mechanism that is safe (and that represents a safer alternative design), but it has only installed the new mechanism into some of its rifles (not the rifles that are the subject of this class action).

13. 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.

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

15. 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.

16. 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.

17. 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 it 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.

18. 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.

19. 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.*

20. 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.

21. 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.*

22. 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.*

23. 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.*

24. 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.*

25. 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."

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. 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.

28. Remington has recently removed the connector for its Model 700 rifles with a newly designed trigger mechanism, the X-Mark Pro. That design was completed in 2002 and slowly rolled into the Model 700's beginning in 2007. Even Remington's past 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.").

29. 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 Subject Rifles 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 uses the old fire control today, knowing that it is subjecting users to the gravest of dangers.

30. Jury verdicts and appellate court opinions provide a succinct account of Remington's long-standing knowledge of its defective fire control.

31. 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).

32. 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.

33. 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.

34. 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."

35. 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.

36. 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?

37. 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.

38. 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?

39. 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.

40. 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.

41. 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.

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

43. 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.

44. 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.

45. 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.

46. 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.

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

48. Remington is defiant in its reluctance to recall its defective Walker 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.

49. 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.

50. Remington has consistently elected against a recall of its dangerous product for financial reasons, even though it is 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.

IV.

CLASS ALLEGATIONS

NUMEROSITY

51. Based upon information and belief, Defendant has sold millions of Model 700 rifles to individuals like Plaintiff, which utilizes the defective "Walker" fire control system. Consequently, the persons or businesses in the Class are so numerous, consisting of at least one thousand consumers, that the sheer numbers of aggrieved persons makes joinder of all such persons impracticable, and the disposition of their claims in a class action, rather than in

individual actions, will benefit the parties and the Court and is the most efficient and fair way to resolve the controversy.

COMMONALITY

52. There is a well-defined commonality of interest in the questions of law and/or fact involving the Plaintiff and the class in that

(a) Rodgers and the putative class all purchased or owned the same type of Subject Rifle;

(b) All of the "Walker" fire control systems were equipped with the same defective components, as herein alleged;

(c) Rodgers and all putative class members are claiming damages and/or rights under the same warranty provisions as alleged herein;

(d) The Defendant is alleged to have breached its warranty of merchantability and/or fitness for particular purpose with respect to the Subject Rifles; and

(e) Defendants are alleged to have breached their express warranties with respect to the Subject Rifles.

PREDOMINANCE

53. The common questions of law and fact predominate over any individual questions, or over any questions that affect only the representative Class member, if there is any differentiation at all.

TYPICALITY

54. The claims of the Plaintiff are typical of those of the Class in that Plaintiff and those similarly situated seek damages that form the basis of said claims that were caused through the same or similar type of contract and/or transaction involving the Plaintiff (namely the sale of the defective Subject Rifles), and the herein-referenced violations of law were the product of the same underlying fundamental improper conduct perpetrated through the same instrumentality of

harm (the defective components warranted by the same warranties, all of which were given to Plaintiff and those similarly situated).

ADEQUACY

55. The Plaintiff will fairly and adequately represent the interests of the Class and has no interests antagonistic to the Class, and his counsel is experienced and knowledgeable in complex class-action litigation.

SUPERIORITY

56. There is no plain, speedy or adequate remedy other than maintenance of this Class action since Plaintiff is informed and believes that the prosecution of individual remedies by members of the Plaintiff class would tend to establish inconsistent standards of conduct for Defendant, would lead to inconsistent legal and factual adjudications, and would result in impairment of class members' rights and the disposition of their interest in actions to which they were not parties. Class action treatment is superior to any other means of handling these claims.

MANAGABILITY AND ASCERTAINABILITY OF THE CLASS

57. Plaintiff does not foresee any difficulties in the management or ascertainability of the case as a Class action. All putative Class members are individually identifiable through the records of the Defendant and its retailers. The Class, if certified, will proceed as an opt-out class and any class member not wanting to be bound may opt out should he or she choose to do so.

V.

FIRST CLAIM FOR RELIEF FOR BREACH OF EXPRESS WARRANTY AS AGAINST REMINGTON

58. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

59. Plaintiff and the Class Members were issued an express warranty by Remington. Specifically, Remington warranted that its guns "will be free from defects in material and workmanship." Under its warranty, Remington agreed to repair and/or replace the warranted components during the period specified. Yet, Remington knew that the Subject Rifles were defective at the time they were sold to Rodgers and others similarly situated, but Remington hid that fact from Rodgers and the Class Members.

60. Remington breached its express warranty by providing Plaintiff and the Class Members with rifles containing defective fire controls and then refusing to recall the firearms containing these defective fire controls, even after sufficient knowledge that there was a defect that could potentially cause an unintentional discharge of the firearm and impose serious harm, including possible death, upon any individual near the firearm.

61. By virtue of its knowledge of the defects, demands from purchasers, and its experience with the purchasers of the rifles containing the defective "Walker"-based fire control who complained of the unintended discharge, Remington has received notice of the breach of the warranties.

62. As a result of the foregoing, the Plaintiff and Class Members have suffered damages that were directly and proximately caused by the defects in Remington's rifles containing the "Walker"-based fire control. Plaintiff and the proposed Class Members are entitled to damages in the aggregate amount in excess of $5,000,000.00

VI.

SECOND CLAIM FOR RELIEF FOR BREACH OF IMPLIED WARRANTY AGAINST REMINGTON

63. The preceding paragraphs of this petition are incorporated by reference as if fully set forth herein.

64. Remington impliedly represented and warranted that its rifles were free of defects; of merchantable quality; and/or fit for their intended purpose. Remington warranted it would provide Plaintiff and the Class Members with firearms that were in proper working order and that were fit for their intended purposes. This included the "Walker"-based fire control systems. Remington is further obligated to inform its purchasers that the firearms containing the defective fire control system contain a defect, and to recall these firearms for the safety of the owners and those around him.

65. Remington breached these representations and implied warranties because the defective "Walker"-based fire control system installed on its rifles purchased by Plaintiff and Class Members were defective and made the rifles unsafe for its users and those around the user.

66. By virtue of its knowledge of the defects, demands from purchasers, and its experience with purchasers of the rifles containing the "Walker"-based fire control systems who complained of the defect in the rifles, Remington has received notice of the breach of implied warranties.

67. As a result of the foregoing, the Plaintiff and the Class Members have suffered damages that were directly and proximately caused by the rifles containing the "Walker"-based fire control systems. Plaintiff and proposed Class Members are entitled to damages in the aggregate amount in excess of $5,000,000.00.

WHEREFORE, Plaintiff, and those similarly situated, pray for judgment as follows:

On First Claim for Relief:

1. For special damages as an aggregate in excess of $5,000,000.00

2. For prejudgment interest, and

3. For reasonable attorneys fees, and

4. For costs of suit incurred herein, and

5. For such other and further relief as the Court deems just and proper.

On Second Claim for Relief:

1. For special damages as an aggregate in excess of $5,000,000.00

2. For prejudgment interest, and

3. For reasonable attorneys fees, and

4. For costs of suit incurred herein, and

5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: 12/10/09

Respectfully Submitted,

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COUNSEL FOR PLAINTIFF

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OCT 16 2009

PATRICIA PRESLEY, COURT CLERK
by _____ DEPUTY

JANTZ H. KINZER and JOHN W. CHERRY individually and as class representatives,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC. and SPORTING GOODS PROPERTIES, INC.,

Defendants.

Case No.

CJ - 2009 - 9806

PETITION FOR INDIVIDUAL AND CLASS ACTION RELIEF

Plaintiffs, Jantz H. Kinzer and John W. Cherry, pursuant to 12 Okla. Stat. 2001, 2023, on their own behalf and as representatives of a class of individuals as more fully described herein, for their Petition against defendants, Remington Arms Company, Inc. and Sporting Goods Properties, Inc., state and allege as follows:

PARTIES

1. Defendant Remington Arms Company, Inc. (hereinafter "Remington") is a corporation duly organized and incorporated under the laws of the State of Delaware with its corporate headquarters in North Carolina. At all times relevant to this action, Remington was doing, authorized to do, and was conducting business in Oklahoma by selling and distributing, through its agents and representatives and otherwise, new Remington Model 700 bolt action rifles each with a Walker fire control (hereinafter referred to as "Model 700"). Remington's registered agent in Oklahoma is The Corporation Company, 735 First National Building, Oklahoma City, Oklahoma 73102, and Remington can be served with process by service upon its registered agent.

2. Defendant Sporting Goods Properties, Inc. (hereinafter "Sporting Goods") is a corporation duly organized and incorporated under the laws of the State of Delaware with its corporate headquarters in Delaware since about 1985 but in Connecticut prior thereto. At all times relevant to this action, Sporting Goods was doing, authorized to do, and was conducting business in Oklahoma by selling and distributing, through its agents and representatives and otherwise, Remington Model 700 bolt action rifles each with a Walker fire control. Sporting Goods registered agent in Oklahoma is the Secretary of State, State of Oklahoma, 2300 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105-4897, and Sporting Goods can be served with process by service upon its registered agent.

3. Jantz H. Kinzer (hereinafter "Kinzer") is a citizen of Oklahoma and resides in the city of Oklahoma City, Oklahoma County, Oklahoma.

4. John W. Cherry (hereinafter "Cherry") is a citizen of Oklahoma and resides in the city of Edmond, Oklahoma County, Oklahoma.

GENERAL ALLEGATIONS

5. Defendant Remington is now and Defendants Remington and Sporting Goods have been engaged in the business of designing, manufacturing, assembling, testing, distributing and selling firearms, and in this regard Remington did design, manufacture, test, distribute, and place into the stream of commerce and sell to Kinzer a Model 700 and Sporting Goods did design, manufacture, test, distribute, and place into the stream of commerce and sell to Cherry Model 700s, as did Remington and/or Sporting Goods with respect to each putative class member.

6. After September 2004, Kinzer purchased a new Model 700 at Outdoor Outfitters, now owned by H&H Gun Range & Shooting Sports Outlet, located in Oklahoma City, Oklahoma County, Oklahoma. The Model 700 purchased by Kinzer bears serial number S6502027 and was purchased primarily for personal, family, or household use. In the early 1970s, Cherry purchased a new Model 700 at a TG&Y store (no longer in existence) located in Edmond, Oklahoma County, Oklahoma. This Model 700 purchased by Cherry bears serial number 169559 and was purchased primarily for personal, family, or household use. Later in the 1970s, Cherry purchased another new Model 700 at a gun shop in Oklahoma City, Oklahoma, which is no longer in existence. This Model 700 purchased by Cherry bears serial number 6817532 and was purchased primarily for personal, family, or household use. Each putative class member also purchased a new Model 700.

7. The Model 700 rifles purchased by Kinzer and Cherry and each rifle purchased by each putative class member have a Walker fire control. The Walker fire control is a defect in the design of the Model 700 because the Walker fire control permits the rifle to fire without a trigger pull.

8. Due to that dangerous defect, the Model 700s purchased by Kinzer, by Cherry and by each putative class member is for the same reason as each other rifle purchased by every other putative class member not fit for the ordinary purpose for which such goods are sold and used.

CLASS ACTION ALLEGATIONS

9. This action is brought by Kinzer and by Cherry individually and as class representatives against Remington and Sporting Goods to recover damages for themselves and

for all other putative class members who have purchased one or more Model 700 rifles with a Walker fire control. The damages sought in this class action are limited to those for a breach of warranty and this class action is not asserting any personal injury claims, wrongful death claims, or property damage claims. Kinzer and Cherry each seek in this case only economic damages on behalf of himself and each putative class member.

10. Kinzer and Cherry each propose to represent a class defined as all persons who are United States citizens and are the original purchaser of a new Model 700, but excluding (i) Remington employees, directors, and officers, and members of their immediate families, (ii) all judges before whom this case is pending and persons within the fourth degree of consanguinity or affinity to them, (iii) any person in a jury pool for this action who is kin to a party to the action; (iv) purchasers for use by government, military, or law enforcement agencies and (v) any person who has suffered a personal injury, wrongful death, or property damage from the use or handling of a Model 700. Kinzer's and Cherry's claims are typical of the claims of each putative class member and Kinzer and Cherry will fairly and adequately represent the interests of the class and each class member. The claims of Kinzer, Cherry, and each putative class member are based on the presence of a Walker fire control and whether that control is a breach of the same warranties given to Kinzer, Cherry, and each putative class member. The claims of Kinzer and Cherry and the claim of each putative class member concern solely the fact that the rifles each had a Walker fire control system that breached warranties and do not concern any conduct or use by Kinzer, Cherry, or any putative class member. Kinzer and Cherry have suffered the same type of damages as each putative class member and the damages of Kinzer, Cherry and each putative class member are measured in the same way.

11. On information and belief, the putative class consists of hundreds if not thousands of individuals so that joinder of each putative class member as a party to this action is impracticable. Moreover, the amount of damages suffered by each class member is such that an individual action for recovery by each individual class member is economically unfeasible and no single class member would have an interest in controlling the prosecution of his or her individual claim. Upon information and belief, no other litigation already exists which was commenced by or against members of the class concerning the controversy in the present case.

12. There are questions of law and fact common to Kinzer, Cherry, and each member of the putative class. Those common questions of law and fact include the following:

a. Whether the defect described above which is present in each Model 700 makes each rifle unfit for its ordinary purpose.

b. Whether in each instance when a putative class member purchased a Model 700 Remington, or Sporting Goods, as appropriate, breached warranties given to each putative class member;

c. Whether the economic injury suffered by each putative class member and the manner of calculating damages is the same for Kinzer, Cherry, and each putative class member.

13. Counsel for the Class, Max C. Tuepker PC, Rouse Hendricks German May PC, Monsees, Miller, Mayer, Presley & Amick PC, and Richard A. Ramler, are experienced and knowledgeable concerning this type of litigation, and will fairly and adequately represent the interests of the putative class. Kinzer and Cherry will fairly and adequately protect the interests of the putative class.

14. The common questions of law and fact predominate over any questions affecting any individual member of the putative class, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. There should be no unusual difficulties in the management of this case as a class action.

15. This action is properly maintainable as a class action because separate adjudications could result in inconsistent or varying adjudications which would establish incompatible standards of conduct for Remington and Sporting Goods and the agents and representatives through whom each acts. Adjudication of the claims of individual class members would as a practical matter be dispositive of the claims of the other putative class members. Concentrating the claims of each putative class member in a single piece of litigation would result in judicial efficiency and would not otherwise prejudice the rights of Remington, Sporting Goods, or any putative class member.

BREACH OF WARRANTY

16. Kinzer and Cherry, on their own behalf and on behalf of the putative class, restate and incorporate by reference paragraphs 1 through 15 above as though fully restated herein.

17. The purchase by Kinzer, the purchases by Cherry, and the purchase by each putative class member of a new Model 700 from Remington, through its agents or otherwise, or from Sporting Goods, through its agents or otherwise, constituted a sale of goods and an accompanying warranty by Remington and Sporting Goods, respectively.

18. In order to be merchantable and free from defects in workmanship, each Model 700 had to be able to be used safely by not being able to fire without a trigger pull.

19. Remington warranted to Kinzer and each putative class member and Sporting Goods warranted to Cherry and each putative class member that the Model 700 purchased by each and every one of them would not fire without a trigger pull, that it was fit for the ordinary purpose for which it is used, and that it was free from defects in workmanship. Firing without a trigger pull is not the ordinary purpose of the rifles and makes the rifles not merchantable and defective.

20. Remington breached its warranties to Kinzer and each putative class member and Sporting Goods breached its warranties to Cherry and each putative class member.

21. As a result of the breach of warranties by Remington and by Sporting Goods, Kinzer, Cherry, and each putative class member has suffered economic damage. Kinzer and the putative class members do not seek incidental or consequential damages, nor injunctive relief.

22. WHEREFORE, Kinzer and Cherry, individually and as representative of the putative class, pray for the following relief:

a. An order certifying this action as a class action for the following class: all persons who are United States citizens and are the original purchaser of a new Model 700, but excluding (i) Remington employees, directors, and officers, and members of their immediate families, (ii) all judges before whom this case is pending and their spouses and persons within the third degree of relationship to either of them, (iii) any person in a jury pool for this action who is kin to a party to the action; (iv) purchasers for use by government, military, or law enforcement agencies and (v) any person who

has suffered a personal injury, wrongful death, or property damage from the use or handling of a Model 700;

b. An order appointing Kinzer and Cherry as representatives of the Class;

c. An order appointing Max C. Tuepker PC, Rouse Hendricks German May PC, Monsees, Miller, Mayer, Presley & Amick PC, and Richard A. Ramler as co-counsel for the Class;

d. An order requiring Remington and Sporting Goods to pay the costs and expenses of class notice and claim administration;

e. Entry of judgment against Remington and Sporting Goods and in favor of Kinzer, Cherry, and the putative class for the total amount of damages suffered, which collectively is in excess of $10,000.00;

f. Entry of judgment awarding class counsel reasonable attorneys' fees and that all expenses of this action to be paid by Remington and Sporting Goods; and

g. Entry of judgment for pre and post-judgment interest, costs, and any further and additional relief as to which they may be entitled.

Respectfully submitted,

MAX C. TUEPKER, PC

By _____

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

JIM STANLEY INDIVIDUALLY AND DENISE STANLEY, INDIVIDUALLY AND AND AS NATURAL TUTRIX OF HER DAUGHTER AMANDA LAND, A MINOR	§	
Plaintiffs,	§	**Civil Action No. _____**
	§	**(ECF)**
v.	§	
REMINGTON ARMS COMPANY, INC.,	§	
Defendant.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

COMES NOW, Plaintiffs Jim Stanley individually and Denise Stanley, individually and As Natural Tutrix of her daughter, Amanda Land, a minor ("Plaintiff"), complaining of Defendant Remington Arms Company, Inc. ("Remington"), and files this Original Complaint, and for their cause of action would show the Court and the jury the following:

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 Defendant's contacts with the

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 is 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: SPOLIATION 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' 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
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