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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,	)	
wife and husband,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil No. 81-886
	)	
REMINGTON ARMS COMPANY, INC.,	)	
a Delaware corporation,	)	
	)	
Defendant.	)	
-----		

TELEPHONE DEPOSITION OF FRED J. AVILA.  
Taken in Behalf of Plaintiffs

BE IT REMEMBERED that, pursuant to court order and oral stipulation hereinafter set forth, the telephone deposition of FRED J. AVILA, was taken in behalf of the Plaintiffs, before Theresa Gach, a Notary Public for Oregon, on Thursday, August 5, 1982, beginning at 8:08 a.m. in the law offices of Bodyfelt, Mount, Stroup & Chamberlain, 214 Mohawk Building, Portland, Oregon.

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APPEARANCES:

Ms. Peter R. Chamberlain and Ms. Kathy Janssen, of attorneys,  
appearing in behalf of the Plaintiffs;  
Mr. James D. Huegli, of attorneys, appearing in behalf  
of the Defendant.

COMPUTER ASSISTED TRANSCRIPTION

-BY-

GEESMAN & ASSOCIATES  
310 S. W. 4TH, Suite 512  
Portland, Oregon 97204  
(503) 222-3222

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STIPULATION

(At said time and place the following stipulation was entered into between the attorneys present in behalf of the respective parties:)

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that the deposition of FRED J. AVILA may be taken in behalf of the Plaintiffs, on Thursday, August 5, 1982, at the time and place set forth in the caption hereof, before Theresa Gach, a Notary Public for Oregon, and in stenotype by the said Theresa Gach.

It is further stipulated that the deposition when fully transcribed, may be used in the trial of the above-entitled action as by the law and the Rules of Civil Procedure for District Courts of the United States provided; that all questions as to the notice of the time and place of taking the same are waived; and that all objections as to the form of questions are waived unless objected to at the time the questions are asked, but that all objections as to materiality, relevancy and competency of the questions and answers are reserved to the parties until the time of trial.

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FRED J. AVILA

was thereupon produced as a witness in behalf of the  
Plaintiffs and, having been first duly sworn on oath, was  
examined and testified as follows:

EXAMINATION

(BY MS. JANSSEN):

Q. Could you state your full name and spell it for me,  
please.

A. My name is Fred Avila, A-v-i-l-a.

Q. And could you give me your current address?

A. Tuttle Road, Walton, New York.

Q. What is your phone number there?

A. Area code 607 865-6862.

Q. Is this your permanent address?

A. Yes.

Q. Your current permanent residence?

A. Yes.

Q. Did you at one time own a Remington Model 700 rifle?

A. Yes, I did.

Q. Could you tell me what the style of it was?

A. It was a 30 aught 6, ADL.

1 Q. Do you recall the date you purchased it?  
2 A. No, I don't. I tried to get in touch with the guy I  
3 bought it from, and he had a bad fire in his store and  
4 everything was, I guess, destroyed.  
5 Q. Can you remember approximately when it was?  
6 A. I believe it was, oh, 1978, '79.  
7 Q. Was it new when you purchased it?  
8 A. Yes.  
9 Q. Is this the only Remington 700 you've owned?  
10 A. Yes.  
11 Q. Do you, by any chance, know the serial number of it?  
12 A. Yes, I do, A6347686.  
13 Q. And do you still own it?  
14 A. No, I got rid of it.  
15 Q. While you owned it, did you ever alter it in any way?  
16 A. No, I didn't.  
17 Q. How did you maintain it? Can you explain that to me?  
18 A. Well, every time I used it or shot it, I take it back  
19 in and clean it, and it was always kept in a cage and  
20 put in a gun cabinet.  
21 Q. What kind of condition was it in?  
22 A. There wasn't a scratch on it even the day I sold it.  
23 Q. Did you ever have any problems with it?  
24 A. Yes, I did.  
25 Q. Can you explain that to me?

1 A. Okay. The first time, oh, it was about a month after I  
2 bought it, I was deer hunting and I came upon some deer  
3 and was going to shoot at one, and put the safety on  
4 and it shot into the ground, that was the first problem  
5 I had. And, oh, a little less than a year later, I was  
6 up in the woods and it was blizzard conditions, and I  
7 walked up to my truck out of the woods, and I set it on  
8 the seat to eject the shells out, pushed the safety up,  
9 and it went off, blew a hole in the side of the truck.  
10 Q. On the first occasion, did you have any of your -- any  
11 part of your body, your hands, your arm or anything  
12 like that near the trigger?  
13 A. I don't believe I did.  
14 Q. How about any other objects, any kind of pack or ----  
15 A. No.  
16 Q. How about on the second occasion, was there any part of  
17 your body near the trigger?  
18 A. No. I set the gun on the seat, and in order to eject  
19 the shells, you have to push the safety off, and when I  
20 pushed the safety off, it went off.  
21 Q. And on both occasions were you moving the safety from  
22 on safety to fire?  
23 A. Yes.  
24 Q. And it discharged?  
25 A. Right. In order to eject the shells, you have to push

1 the safety off.

2 Q. And on the second occasion, was there any object  
3 besides -- you said that there was no part of your body  
4 near the trigger. Was there any other object near the  
5 trigger ----

6 A. No, it was laying right on the seat of the truck aiming  
7 out towards the passenger side.

8 Q. Did you say this is the type of rifle where you can't  
9 unload it unless you release the safety?

10 A. Right.

11 Q. Did you send the rifle back to Remington?

12 A. I brought the gun up there personally.

13 Q. Did you exchange any correspondence with them?

14 A. I did, but I haven't got that anymore. I went to pick  
15 it up about three weeks, a month later, I drove back up  
16 there to get it, and they gave me a letter with it  
17 where it was all checked out, put through all their  
18 tests and everything else. I believe they probably  
19 have a copy of that letter.

20 MS. JANSSEN: I don't have any other  
21 questions for you.

22 MR. HEUGLI: No questions.

23 MS. JANSSEN: Mr. Avila, under the federal  
24 rules of civil procedure, you have the right to read  
25 your deposition and sign it if you want or you can

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waive that. I can tell you that the court reporters are reasonably accurate, in fact, very accurate, and you can count on their providing a accurate copy of your testimony.

THE WITNESS: I'll put my trust in you.

MS. JANSSEN: So you'll waive it?

THE WITNESS: Yes.

MS. JANSSEN: Thank you very much.

(Deposition concluded at 8:13 a.m.)



1  
2 STATE OF OREGON       )  
3                               ) ss  
4 COUNTY OF MULTNOMAH)

5               I, the undersigned, Theresa Gach, a Notary  
6 Public for Oregon, do hereby certify that FRED J. AVILA  
7 personally appeared before me at the time and place mentioned  
8 in the caption of the foregoing deposition; that Mr. Peter  
9 Chamberlain and Ms. Kathy Janssen appeared in behalf of  
10 Plaintiffs, and that Mr. James Huegli appearedd in behalf  
11 of the Defendant, and the said witness being by me first  
12 duly sworn to testify the truth, the whole truth and nothing  
13 but the truth, in answer to oral interrogatories, testified  
14 as in the foregoing annexed deposition, Pages 1 to 8, both  
15 inclusive set forth.

16               I further certify that all interrogatories pro-  
17 pounded to said witness, together with the answers of said  
18 witness thereto, and all objections and other oral proceed-  
19 ings occurring upon the taking of said deposition, were  
20 then and there taken down by me in stenotype and there-  
21 after reduced to typewriting under my direction, and that  
22 the foregoing annexed transcript, Pages 1 to 8, both  
23 inclusive, constitutes a full, true and accurate  
24 transcript of said deposition and proceedings, so taken  
25 by me in stenotype on said date, as aforesaid, and of the  
whole thereof.

1 I further certify that I am not a relative or  
2 employee or attorney or counsel for any of the parties,  
3 or a relative or employee of such attorney or counsel,  
4 or financially interested in said cause.  
5

6 IN WITNESS THEREOF, I have hereunto set my  
7 hand and notarial seal this 16th day of September, 1982.  
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9

10 Theresa Gach

11 Notary Public for Oregon

12 My commission expires: 11/01/83  
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