

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM BAZZELL and)
TONI BAZZELL, Husband)
and Wife,)
)
 Plaintiffs,)
)
v.)
)
DIKAR S. COOP. LTD.,)
a foreign corporation, and)
WAL-MART STORES, INC.,)
d/b/a Wal-Mart, and)
SAM’S WEST, INC.,)
d/b/a Sam’s Club, and)
BLACKPOWDER PRODUCTS, INC.,)
d/b/a Blackpowder Products, and)
CONNECTICUT VALLEY ARMS, INC.)
d/b/a Connecticut Valley Arms,)
)
 Defendants.)

CASE NO.:
4:07-cv-01104-CAS

**DEFENDANTS CONNECTICUT VALLEY ARMS, INC. AND BLACKPOWDER
PRODUCTS, INC.’S ANSWER AND RESPONSE TO PLAINTIFFS’ COMPLAINT**

COME NOW, Connecticut Valley Arms, Inc. (“CVA”) and Blackpowder Products, Inc. (“BPI”), erroneously named as Defendants in the above matter, by and through their undersigned counsel, and hereby responds to Plaintiff’s Complaint as follows:

I. PARTIES

1. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1 of Plaintiffs’ Complaint, and therefore can neither admit nor deny same.
2. Denied as pled.
3. Denied as pled.

4. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

5. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 5 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

VENUE AND JURISDICTION

6. Denied as pled.

7. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 7 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

8. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

GENERAL ALLEGATIONS

9. Denied as pled.

10. Denied as pled.

11. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 11 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

12. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 12 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

13. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 13, including all subparts of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

COUNT I

STRICT LIABILITY OF DEFENDANTS DIKAR, BPI, CVA, WAL-MART, AND SAM'S

14. Denied.

15. Denied.

Responding to the Wherefore, on Count I, clause in Plaintiffs' Complaint following Paragraph 15, Defendants state that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief as the Court deems just and proper.

COUNT II

NEGLIGENCE OF DEFENDANT DIKAR

16. These Defendants deny all allegations of Paragraph 16 of Plaintiffs' Complaint, including all subparts.

NEGLIGENCE OF DEFENDANTS BPI, CVA, WAL-MART, AND SAM'S

17. Paragraph 17 of Plaintiffs' Complaint is denied, including all subparts.

18. Paragraph 18 of Plaintiffs' Complaint is denied, including all subparts.

Responding to the Wherefore, on Count II, clause in Plaintiffs' Complaint following Paragraph 18, Defendants state that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief as the Court deems just and proper.

COUNT III

FAILURE TO WARN

19. In response to Paragraph 19 of Plaintiffs' Complaint, Defendants incorporate and adopt their responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

20. Denied.

21. Denied.

Responding to the Wherefore, on Count III, clause in Plaintiffs' Complaint following Paragraph 21, Defendants state that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief as the Court deems just and proper.

COUNT IV

NEGLIGENTLY SUPPLYING DANGEROUS INSTRUMENTALITY

22. In response to Paragraph 22 of Plaintiffs' Complaint, Defendants incorporate and adopt their responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

Responding to the Wherefore, on Count IV, clause in Plaintiffs' Complaint following Paragraph 27, Defendants state that no answer is required. To the extent any response or answer

is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief as the Court deems just and proper.

COUNT V

PLAINTIFF TONI BAZZELL'S DAMAGES FOR LOSS OF SPOUSAL CONSORTIUM AND SERVICES

28. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 28 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

Responding to the Wherefore, on Count V, clause in Plaintiffs' Complaint following Paragraph 28, Defendants state that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief as the Court deems just and proper.

COUNT VI

PUNITIVE DAMAGES

29. In response to Paragraph 29 of Plaintiffs' Complaint, Defendants incorporate and adopt their responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

30. Denied.

31. Denied.

Responding to the Wherefore clause in Plaintiffs' Complaint following Paragraph 31, Defendants state that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendants pray that Plaintiffs' Complaint be dismissed, that judgment

be entered in favor of Defendants and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Defendants deny each and every allegation in Plaintiffs' Complaint which is not specifically admitted herein.

2. The Plaintiffs' Complaint fails to state a claim against these Defendants upon which relief may be sought.

3. Defendants CVA and BPI state that they did not design, manufacture, import, distribute, or sell the firearm at issue, and therefore Defendants CVA and BPI are not liable to Plaintiff in any regard based upon Plaintiff's allegations.

4. Defendants state that whatever injuries or damages Plaintiffs may have sustained, if any, may have been the direct and proximate result of Plaintiffs' own carelessness, negligence, and/or comparative fault.

5. Defendants state that Plaintiff William Bazzell failed to use ordinary care.

6. Defendants state that any alleged injury or damage sustained by the Plaintiff was the result of Plaintiff's assumption of the risk of any injury or damage, and therefore Plaintiff is unable to recover any sum whatsoever from Defendants CVA and BPI.

7. Plaintiff William Bazzell's claims against Defendants CVA and BPI are barred, in whole or in part, as a result of the improper use of the subject muzzle loader, if any, and said improper use was not reasonably foreseeable or expected by Defendants CVA and BPI.

8. Plaintiffs' damages, if any, were the proximate result, in whole or in part, of Plaintiffs' failure to reasonably mitigate his damages.

9. Defendants state that there was an intervening and/or superseding cause such that Defendants have no liability to Plaintiffs.

10. At all times and places mentioned in the Complaint, Defendants CVA and BPI allege that no act, omission, conduct, or product attributable to them caused or contributed to any injury or damage sustained by the Plaintiffs, and that if Plaintiffs' injuries and damages, if any, were not solely caused by Plaintiffs' own acts, omissions, and other conduct, then said injuries and damages were proximately caused or contributed to by the negligent or other tortious acts, omissions, conduct and products of persons and parties other than Defendants CVA and BPI; any damages recoverable by Plaintiffs must be diminished in proportion to the amount of fault attributable to said other persons and parties. There should also be an apportionment of the harm and damage claimed.

11. Defendants state that the product, at the time of the alleged accident, was not in a substantially similar condition as it was at the time of manufacture.

12. Defendants state that the product at issue was state of the art.

13. Plaintiffs' action may be preempted by federal and/or state law.

14. Plaintiffs William Bazzell's claims may be barred by any applicable statute of repose.

15. Plaintiff William Bazzell's claims may be barred, in whole or in part, by the failure to read and heed the applicable warnings on the product label.

16. Defendants CVA and BPI reserve the right to amend or supplement this Answer as its inquiry continues and/or additional information becomes known through discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants pray for judgment in its favor and against Plaintiffs, that all costs be cast against Plaintiffs, for trial by a jury on all triable issues, and for such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2007, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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