

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Glen Underwood,)	
)	
Plaintiff,)	
)	Case No. 2:10-cv-104
v.)	
)	Judge: Marbley
Connecticut Valley Arms, Inc.,)	
Blackpowder Products, Inc., Cabela’s, Inc.,)	Magistrate Judge: King
Hodgdon Powder Company, Powerbelt)	
Bullets, Dikar S. Coop., Ltd., and John)	
Doe Defendants #1-5,)	
)	
Defendants.)	

ANSWER OF CABELA’S, INC.

COMES NOW Cabela’s, Inc. (“Cabela’s”) and hereby answers Plaintiff’s Complaint in the time allowed by law, as extended, as follows:

FIRST DEFENSE

Plaintiff’s Complaint fails to state a claim against this Defendant upon which relief may be granted.

SECOND DEFENSE

Plaintiff’s claims for punitive damages fail to state a claim upon which relief may be granted.

THIRD DEFENSE

There is no basis in law or fact for the imposition for punitive damages with respect to Plaintiff’s claims against this Defendant, as Defendant at all times acted in good faith and without malice.

FOURTH DEFENSE

The Plaintiff's Complaint, to the extent that he seeks punitive damages, violates Defendant's rights to procedural due process under the Fourteenth Amendment of the United States Constitution, and therefore fails to state a cause of action or set forth a claim upon which damages can be awarded.

FIFTH DEFENSE

The Plaintiff's Complaint, to the extent that he seeks punitive damages violates Defendant's right to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution, and violates Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendment of the United States Constitution, and therefore fails to state a cause of action or set forth a claim supporting the punitive damages claims.

SIXTH DEFENSE

The claims for punitive damages are barred by the provision of Article VI of the Constitution of the United States.

SEVENTH DEFENSE

Responding to the specifically enumerated allegations of Plaintiff's Complaint, Defendant shows the Court the following:

1.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

2.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 2 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

3.

Paragraph 3 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

4.

Paragraph 4 of Plaintiff's Complaint is denied as pled as to this Defendant. However, upon information and belief this Defendant does admit that it did operate a location in Triadelphia, West Virginia, and further that Defendant's principal place of business is in Nebraska.

5.

Paragraph 5 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

6.

Paragraph 6 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

7.

Paragraph 7 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

8.

Paragraph 8 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

9.

Paragraph 9 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

10.

Paragraph 10 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

11.

This Defendant admits that jurisdiction is proper in the Federal Court where this matter is now pending as removed.

12.

This Defendant admits that venue is proper in this Court as removed.

13.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 13 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

14.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 14 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

15.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 15 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

16.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 16 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

17.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 17 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

18.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

19.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 19 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

20.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 20 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

21.

Paragraph 21 is denied as to this Defendant.

22.

Paragraph 22 is denied as to this Defendant.

23.

In response to paragraph 23 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

24.

Paragraph 24 of Plaintiff's Complaint is denied to the extent it implies or alleges any duty owed by any Defendant greater than or inconsistent with that set forth in Ohio law. Defendant further denies any breach of any applicable duty.

25.

Paragraph 25 of Plaintiff's Complaint is denied.

26.

Paragraph 26 of Plaintiff's Complaint is denied.

27.

Paragraph 27 of Plaintiff's Complaint is denied.

28.

Paragraph 28 of Plaintiff's Complaint is denied.

29.

Paragraph 29 of Plaintiff's Complaint is denied.

30.

In response to paragraph 30 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

31.

Paragraph 31 of Plaintiff's Complaint is denied.

32.

Upon information and belief, Defendant Cabela's sold the muzzleloader at issue. The remainder of this paragraph is denied.

33.

Paragraph 33 of Plaintiff's Complaint is denied.

34.

Paragraph 34 of Plaintiff's Complaint is denied.

35.

Paragraph 35 of Plaintiff's Complaint is denied.

36.

Paragraph 36 of Plaintiff's Complaint is denied.

37.

Paragraph 37 of Plaintiff's Complaint is denied.

38.

Paragraph 38 of Plaintiff's Complaint is denied.

39.

In response to paragraph 39 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

40.

Paragraph 40 of Plaintiff's Complaint is denied.

41.

Paragraph 41 of Plaintiff's Complaint is denied.

42.

Paragraph 42 of Plaintiff's Complaint is denied.

43.

In response to paragraph 43 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

44.

Paragraph 44 of Plaintiff's Complaint is denied.

45.

Paragraph 45 of Plaintiff's Complaint is denied.

46.

Paragraph 46 of Plaintiff's Complaint is denied.

47.

Paragraph 47 of Plaintiff's Complaint is denied.

48.

Paragraph 48 of Plaintiff's Complaint is denied.

49.

Paragraph 49 of Plaintiff's Complaint is denied.

50.

Paragraph 50 of Plaintiff's Complaint is denied.

51.

Paragraph 51 of Plaintiff's Complaint is denied.

52.

In response to paragraph 52 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

53.

Paragraph 53 of Plaintiff's Complaint is denied as pled. Defendant further states that Ohio law with respect to any implied warranties speaks for itself.

54.

Paragraph 54 of Plaintiff's Complaint is denied.

55.

Paragraph 55 of Plaintiff's Complaint is denied.

56.

Paragraph 56 of Plaintiff's Complaint is denied.

57.

Paragraph 57 of Plaintiff's Complaint is denied.

58.

In response to paragraph 58 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

59.

Paragraph 59 of Plaintiff's Complaint is denied as to this Defendant.

60.

Paragraph 60 of Plaintiff's Complaint is denied.

61.

Paragraph 61 of Plaintiff's Complaint is denied.

62.

Paragraph 62 of Plaintiff's Complaint is denied.

63.

Paragraph 63 of Plaintiff's Complaint is denied.

64.

In response to paragraph 64 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

65.

Paragraph 65 of Plaintiff's Complaint is denied.

EIGHTH DEFENSE

The alleged injury and damages sustained by the Plaintiff was the direct and proximate result of Plaintiff's own sole negligence and conduct, or in the alternative, Plaintiff's comparative negligence, in failing to properly maintain the muzzleloader, failing to follow the instructions for use of the muzzleloader, failing to follow basic firearm safety handling and failing to familiarize himself with and to have knowledge of the warnings given for the use of the muzzleloader, all of which serves to completely bar or reduce any recovery herein.

NINETH DEFENSE

Plaintiff's claim is barred by the doctrine of assumption of risk.

TENTH DEFENSE

At all further times relevant herein, the Plaintiff was properly warned in the use of the muzzleloader allegedly being used at the time of the accident, and said muzzleloader was not defective in design, manufacture, construction, composition, installation, operation, warnings, or for the use for which it was intended.

ELEVENTH DEFENSE

At all times relevant herein, the Plaintiff failed to mitigate his damages.

TWELFTH DEFENSE

Alternatively, and at all further times relevant herein, the cause of this accident was the negligence of third persons for whom this Defendant is not responsible or liable.

THIRTEENTH DEFENSE

At all times Defendant complied with all provisions of relevant product safety and/or product liability statutes and/or other laws applicable to it.

JURY DEMAND

Defendant, Cabela's, Inc., requests trial by jury on all issues herein.

WHEREFORE, Defendant Cabela's, Inc., prays that its Answer be filed and that after all legal delays and due proceedings are had, that there be judgment herein in favor of Cabela's, Inc., and against Plaintiff Glen Underwood, dismissing his original Complaint, with prejudice, and at Plaintiff's costs, and for trial by jury on all issues herein.

Respectfully submitted,

/s/ David A. Herd
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by Electronic Pacer to all Counsel this 1st day of March 1, 2009:

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