

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

**DOUGLAS WARFIELD
and TIA WARFIELD, his wife,**

Plaintiffs,

v.

**D.C. 1980, INC.; D.C. 1980, INC.,
f/k/a CONNECTICUT VALLEY
ARMS, INC.,**

Defendants.

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Docket No. 6:06-cv-65-DCR

**ANSWER OF D.C. 1980, INC.
TO PLAINTIFFS' AMENDED COMPLAINT**

COMES NOW D.C. 1980, Inc., a Georgia corporation, f/k/a Connecticut Valley Arms, Inc., erroneously named both as Defendant D.C. 1980, Inc. and D.C. 1980, Inc. f/k/a Connecticut Valley Arms, Inc., in the above-styled matter, and for its Answer to Plaintiffs' Amended Complaint responds within the time allowed by law, as follows:

FIRST DEFENSE

The Plaintiffs' Amended Complaint fails to state a claim against this Defendant upon which this Court may grant relief.

SECOND DEFENSE

Responding to the specific allegations of Plaintiffs' Amended Complaint, Defendant initially responds as follows:

COUNT I

The Parties

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 Count I of Plaintiffs' Amended 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 Count I of Plaintiffs' Amended Complaint, and therefore can neither admit nor deny same.

3.

Initially in response to Paragraph 3 of Count I of Plaintiffs' Amended Complaint, Defendant admits that it is a Georgia corporation with its principal place of business and its registered agent is as set forth in the paragraph. Further, though a current Georgia corporation, at the time of the accident which is the subject of Plaintiffs' Amended Complaint, this Defendant was not transacting any business in the State of Kentucky. However, in further, response, this Defendant has

acknowledged service of Plaintiffs' Amended Complaint, pursuant to the provisions of the Federal Rules of Civil Procedure, and does not object to either the jurisdiction or venue of this Court.

4.

Paragraph 4 of Count I of Plaintiffs' Amended Complaint is denied as pled. In further response, however, and by way of a complete answer, this Defendant states that there is only one defendant known as D.C. 1980, Inc. Defendant further admits that this Defendant was formerly known as Connecticut Valley Arms, Inc., prior to 1999. Defendant denies any relationship with, or association with, the entity listed in Plaintiff's Amended Complaint for the first time as "Connecticut Valley Arms, Inc."

5.

In response to Paragraph 5 of Count I of Plaintiff's Amended Complaint, though this Defendant admits that Blackpowder Products, Inc. is a foreign corporation incorporated in the State of Georgia with its principal place of business and its registered agent is as set forth in Paragraph 5 of Count I, Defendant denies that Blackpowder Products, Inc. is subject to the jurisdiction or venue of this Court, and denies that it sold any product which is the subject of Plaintiffs' Amended Complaint, nor was it even in existence at the time of the manufacture and sale of the product alleged by Plaintiffs to be involved in the current Amended Complaint.

6.

As Paragraph 6 does not allege a fact against this Defendant, Defendant states that no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged, and therefore can neither admit nor deny same.

COUNT II

Jurisdiction and Venue

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

Paragraph 2 of Count II of Plaintiffs' Amended Complaint is denied as pled.

3.

Paragraph 3 of Count II of Plaintiffs' Amended Complaint is admitted.

4.

Defendant shows that Paragraph 4 of Count II of Plaintiffs' Amended Complaint does not allege a fact requiring a response by this Defendant. To the

extent liability is alleged or implied by said paragraph against this Defendant, same is denied.

COUNT III

The Facts

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Court.

2.

In response to Paragraph 2 of Count III of Plaintiffs' Amended Complaint, this Defendant denies that it either designed or manufactured any product which is the subject of Plaintiffs' Amended Complaint. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 2 of Count III of Plaintiffs' Amended Complaint, and therefore can neither admit nor deny same

3.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 3 of Count III of Plaintiffs' Amended Complaint, and therefore can neither admit nor deny same.

4.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 of Count III of Plaintiffs' Amended Complaint, and therefore can neither admit nor deny same.

5.

The allegations contained in Paragraph 5 of Count III of Plaintiffs' Amended Complaint are denied.

COUNT IV

Strict Liability

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

In response to Paragraph 2 of Count IV of Plaintiffs' Amended Complaint, this Defendant denies that it designed or manufactured, in whole or in part, the product alleged at issue. However, in further response, assuming the serial number and marking identification as alleged in Paragraph 2 of Count III of Plaintiffs'

Amended Complaint are accurate, this Defendant admits that it did distribute in the United States said product new.

3.

Paragraph 3 of Count IV of Plaintiffs' Amended Complaint is denied as pled.

4.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 of Count IV of Plaintiffs' Amended Complaint, and therefore can neither admit nor deny same.

5.

Paragraph 5 of Count IV of Plaintiffs' Amended Complaint is denied as pled.

COUNT V

Negligence

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

Paragraph 2 of Count V of Plaintiffs' Amended Complaint is denied.

3.

Paragraph 3 of Count V of Plaintiffs' Amended Complaint is denied.

COUNT VI

Failure to Warn

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

Paragraph 2 of Count VI of Plaintiffs' Amended Complaint is denied.

3.

Paragraph 3 of Count VI of Plaintiffs' Amended Complaint is denied.

COUNT VII

Breach of Warranties

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereafter, as if fully set forth for this count.

2.

Paragraph 2 of Count VII of Plaintiff's Amended Complaint is denied as pled.

3.

Paragraph 3 of Count VII of Plaintiff's Amended Complaint is denied as pled.

4.

Paragraph 4 of Count VII of Plaintiff's Amended Complaint is denied as pled.

COUNT VIII

Injuries and Damages

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

Paragraph 2 of Count VIII of Plaintiffs' Amended Complaint is denied as pled.

3.

Paragraph 3 of Count VIII of Plaintiffs' Amended Complaint is denied in its entirety.

COUNT IX

Damages of Plaintiff, Tia Warfield

1.

Defendant adopts, reasserts, realleges, and incorporates by reference as if fully set forth herein each and every response to all the allegations contained in Plaintiffs' Amended Complaint, as well as all defenses set forth herein and hereinafter, as if fully set forth for this Count.

2.

Paragraph 2 of Count IX of Plaintiffs' Amended Complaint is denied as pled.

THIRD DEFENSE

For a third separate and distinct defense, this Defendant asserts and relies upon each and every defense and presumption contained in the product liability act of Kentucky, KRS 411.300 et seq., as a bar, in whole or in part, to the claims asserted against it.

FOURTH DEFENSE

The injuries alleged by the Plaintiffs were a direct and proximate result of the acts and omissions of third parties, over which this Defendant had no control or were a result of a superseding or intervening cause over which this Defendant had no control.

FIFTH DEFENSE

Plaintiffs Douglas Warfield and Tia Warfield are themselves guilty of negligence which was a substantial factor in causing and contributing to the alleged injuries, and their negligence bars their claims against this Defendant in whole or in part.

SIXTH DEFENSE

Plaintiffs' injuries were caused by misuse, modification or alterations of the firearm at issue and therefore, by either Plaintiff or a person or persons or initially following the initial sale by this Defendant, and thus by Plaintiff, such that this Defendant is not liable to Plaintiffs in any respect.

SEVENTH DEFENSE

The design, manufacture, assembly, warranty and labeling of the firearm at issue were in conformity with the generally recognized state of the art at the time of the subject firearm was designed, manufactured, and labeled.

EIGHTH DEFENSE

Plaintiffs' claims for punitive damages violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment of the Constitution of the United States in that:

(1) It is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil Defendant upon the Plaintiffs

satisfying a burden of proof which is less than the “beyond a reasonable doubt” burden of proof required in criminal cases. KRS 411.184(2) fails to provide such a burden of proof.

(2) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against this Defendant which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.

(3) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.

(4) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus, violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

(5) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

(6) The due process clause of the Fifth and Fourteenth Amendments precludes the award of punitive damages against this Defendant based upon activities outside Kentucky and the United States.

(7) The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.

(8) The due process clause of the Fifth and Fourteenth Amendments precludes the award of punitive damages against this Defendant based merely upon negligent or grossly negligent conduct.

(9) This Defendant avers that if any award of punitive damages is rendered in this case, the same should be apportioned among joint tortfeasors in accordance with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tortfeasor, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights preserved to this Defendant under the Fifth and Fourteenth Amendments to the Constitution of the United States of America and deprive it of its property without due process of law.

(10) This Defendant avers that if any award of punitive damages is rendered in this case, the same should be apportioned among joint tortfeasors in accordance

with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tortfeasor, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights afforded to this Defendant under the Eighth Amendment or Fourteenth Amendment of the Constitution of the United States of America in that the same would amount to an excessive fine.

(11) This Defendant avers that if any award of punitive damages is rendered in this case, the same should be apportioned among joint tortfeasors in accordance with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tortfeasor, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate the rights afforded to this Defendant under the Fourteenth Amendment to the Constitution of the United States of America in that it would amount to a denial of equal protection of the laws.

NINETH DEFENSE

Plaintiffs' claim for punitive damages violates Section Two, Fourteen and Seventeen of the Constitution of the Common Wealth of Kentucky in that:

- (1) Such an award would result in absolute and arbitrary power over the property of this Defendant in violation of Section Two;
- (2) Such an award would deprive this Defendant of property without due process of law and in violation of Section Fourteen and
- (3) Such an award would constitute an excessive fine against this Defendant in violation of Section Seventeen.

TENTH DEFENSE

This Defendant will rely upon all defenses which become available during discovery or due to change in law.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendant prays that same be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, that all costs be cast against Plaintiff, for a jury trial on all triable issues, and for such other and further relief as this Court deems just and proper.

This 7th day of September, 2006.

/s/ James E. Singer

Admitted Pro Hac Vice

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- and -

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Attorneys for Defendant D.C. 1980, Inc.

CERTIFICATE OF SERVICE

I hereby certify the foregoing **Answer of D.C. 1980, Inc. to Plaintiffs' Amended Complaint** has been filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 7th day of September, 2006.

/s/ James E. Singer

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