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4TH DISTRICT COURT
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Attorneys for Plaintiffs

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

ERIK ZENGER and MICHAEL ZENGER,

Plaintiffs,

v.

D.C. 1980, INC., formerly known as
CONNECTICUT VALLEY ARMS, INC.;
A.F. GUN & SPORT, INC.; DIKAR, S.
COOP. LTDA.; and JOHN DOES 1
through 10,

Defendants.

**COMPLAINT AND
JURY DEMAND**

Civil No.: 0304027

Judge: 7

Plaintiffs, Erik Zenger and Michael Zenger, through their attorneys, complain against defendants and allege as follows:

1. Plaintiffs are residents of Utah County, State of Utah.
2. Defendant D.C. 1980, Inc., formerly known as Connecticut Valley Arms, Inc. (hereafter, "D.C. 1980"), is a Georgia corporation supplying services and goods in the State of Utah and otherwise transacting business within the State of Utah.

3. Defendant A.F. Gun & Sport, Inc. (hereafter, "A.F. Gun"), is a Utah corporation transacting business in the State of Utah.

4. On information and belief, defendant Dikar, S. Coop. Ltda. (hereafter, "Dikar"), is a foreign corporation with its principal place of business in Bergara, Spain. On information and belief, Dikar was involved in the design and manufacture of the Connecticut Valley Arms ProHunter Black Powder Rifle that is the subject matter of this action.

5. Defendants John Does 1 through 10 are other persons or entities who may be responsible for the plaintiffs' injuries and damages and whose names and identities are unknown at this time. The actual names and identities of these persons or entities will be substituted when known.

6. The Court has jurisdiction in this matter pursuant to UTAH CODE ANN. § 78-3-4(1).

7. On information and belief, sometime before September 1999 Dikar designed and manufactured, for or on behalf of D.C. 1980, a Connecticut Valley Arms ProHunter Black Powder Rifle, serial number 61-13-013872-96 (hereafter the "Rifle").

8. On information and belief, Dikar distributed the Rifle to D.C. 1980, which marketed and distributed the Rifle in the United States.

9. On information and belief, the Rifle was distributed to and resold by one or more of the John Doe defendants sometime before September 13, 1999.

10. At some time unknown to plaintiffs, but before September 13, 1999, the Rifle was sold to defendant A.F. Gun in Utah County, Utah.

11. On September 13, 1999, plaintiff Erik Zenger purchased the Rifle from defendant A.F. Gun.

12. The Rifle was designed, manufactured and distributed in an unreasonably dangerous and defective condition.

13. In 1997, defendant D.C. 1980 began a recall of its defective black powder rifles, which recall applied to the Rifle purchased by plaintiff Erik Zenger. However, plaintiffs were never notified by defendants of the recall and remained unaware of the dangerous and defective condition of the Rifle until after November 4, 2001.

14. On November 4, 2001, plaintiffs, Erik and Michael Zenger, were target practicing with the Rifle in Utah County, Utah.

15. At all times mentioned herein, plaintiffs were careful and prudent and did nothing to contribute to their injuries and used the Rifle in the manner intended.

16. On November 4, 2001, while plaintiff Erik Zenger was firing the Rifle and plaintiff Michael Zenger was standing close to and behind his brother, the Rifle catastrophically failed and exploded in the faces of both plaintiffs.

17. The catastrophic failure of the Rifle was due to the dangerous and defective condition of the rifle.

18. As a result of the catastrophic failure of the Rifle, plaintiff Erik Zenger suffered serious and permanent injuries, both physical and emotional, including permanent disfigurement, nerve damage, and other injuries to his face.

19. As a result of the catastrophic failure of the Rifle, plaintiff Erik Zenger has incurred medical expenses for his care and treatment and will incur substantial medical expenses in the future for medical care and treatment in amounts to be determined at trial.

20. As a result of the catastrophic failure of the Rifle, plaintiff Erik Zenger has incurred lost income, and has incurred future lost earning capacity and other economic damages, including loss of household services, in amounts to be determined at trial.

21. As a result of the catastrophic failure of the Rifle, plaintiff Michael Zenger, who was in the immediate zone of danger, suffered physical and emotional injuries, resulting in medical bills and other damages in amounts to be determined at trial.

FIRST CLAIM FOR RELIEF
(Strict Liability)

22. Plaintiffs incorporate by reference all preceding averments as if fully set forth herein.

23. The defendants were engaged in the business of selling black powder rifles and their component parts.

24. The Rifle was expected to and did reach the plaintiffs without substantial change in the condition in which it was sold.

25. The Rifle and one or more of its component parts were in a defective condition or contained defects which rendered them unreasonably dangerous to the user or consumer. The Rifle was not reasonably safe but was dangerous to an extent beyond that which an ordinary and prudent user or consumer would contemplate.

26. The Rifle was also defective in that it was not accompanied by adequate warnings to protect the user or consumer.

27. The injuries and damages sustained by plaintiffs were a direct and proximate result of defects in the Rifle and its component parts.

28. Defendants are strictly liable for the injuries and damages sustained by the plaintiffs.

29. Defendants' acts and omissions manifested a knowing and reckless indifference toward, and a disregard of, the rights and safety of consumers and users of the defective black powder rifles.

SECOND CLAIM FOR RELIEF
(Negligence)

30. Plaintiffs incorporate by reference all preceding averments as if fully set forth herein.

31. Defendants failed to exercise reasonable care in their design, testing, manufacture, inspection, sale, distribution, advertising, and recall of the Rifle and its component parts and failed to exercise reasonable care in their attempts to notify and warn users of the Rifle of its defective and dangerous condition and of the foreseeable hazards associated with its use.

32. For a long time prior to the catastrophic failure of the Rifle that injured plaintiffs, defendants were aware of the defective and dangerous condition of this model rifle and were further aware of other users who had been seriously injured by the same defects. The defendants failed to take reasonable steps under the circumstances to carry out the recall of the black powder rifles and otherwise failed to exercise appropriate care and efforts to remove the defective rifles from the market or notify other consumers, such as plaintiffs, of the rifles' defective and dangerous condition.

33. Defendants' acts constituted, at a minimum, negligence, which was the proximate cause of the plaintiffs' injuries and damages.

34. Defendants' acts and omissions also manifested a knowing and reckless indifference toward, and a disregard of, the rights and safety of consumers and users of the defective black powder rifles.

THIRD CLAIM FOR RELIEF
(Breaches of Warranties)

35. Plaintiffs incorporate by reference all preceding averments as if fully set forth herein.

36. Defendants expressly or impliedly warranted that the Rifle and its component parts were free from defects, of merchantable quality and safe, fit for their general and reasonably foreseeable uses and fit for the purpose for which they were intended.

37. Defendants breached their express and implied warranties.

38. The defendants' breaches of warranties were a proximate cause of the plaintiffs' injuries and damages.

WHEREFORE, the plaintiffs demand judgment against defendants as follows:

- (a) For past and future special damages including, but not limited to, medical and related expenses, lost income, lost future earning capacity, loss of household services and other economic expenses and losses, in amounts to be determined at trial;
- (b) For general damages in amounts to be determined at trial;
- (c) For punitive damages to the extent allowed by law, in amounts to be determined at trial;
- (d) For costs, interest and attorney fees to the extent allowed by law; and
- (e) For such other relief as the court deems appropriate.

JURY DEMAND

The plaintiffs demand a jury trial of all issues that may be tried of right by a jury.

DATED this 28th day of February, 2003.

DEWSNUP, KING & OLSEN

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