

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

OCT 25 2024

JAMES W. McCORMACK, CLERK
By: _____ DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

HERBERT SULLINS and TAMMY
SULLINS, His Wife,

PLAINTIFFS

v.

CAUSE NO. 4:04-CV-792 GH

BLACKPOWDER PRODUCTS, INC., and
HODGDON POWDER COMPANY, INC.,

DEFENDANTS

**SEPARATE ANSWER OF BLACKPOWDER PRODUCTS, INC.
TO AMENDED COMPLAINT**

COMES NOW Blackpowder Products, Inc. (hereinafter "BPI"), Defendant in the above-styled matter, and, by and through undersigned counsel, hereby answers Plaintiffs' Amended Complaint as follows:

1. All allegations not herein specifically admitted are denied.
2. This Defendant is without information with which to admit or deny the allegations contained in Paragraph 1 of Plaintiffs' Amended Complaint, and therefore denies same.
3. The allegations contained in Paragraph 2 of Plaintiffs' Amended Complaint are admitted.
4. This Defendant is without information with which to admit or deny the allegations contained in Paragraph 3 of Plaintiffs' Amended Complaint, and therefore denies same.
5. As Paragraph 4 of Plaintiffs' Amended Complaint pertains to this Defendant, it is denied. Further, this Defendant is without information with which to admit or deny that separate Defendant Hodgdon Powder Company, Inc. is authorized to do business and is doing business in Arkansas. Therefore, those allegations are denied as well.

6. This Defendant is without information with which to admit or deny the allegations contained in Paragraph 5 of Plaintiffs' Amended Complaint, and therefore denies same.

7. The allegations contained in Paragraph 6 of Plaintiffs' Amended Complaint are denied.

8. The allegations contained in Paragraph 7 of Plaintiffs' Amended Complaint are denied.

9. This Defendant is without information with which to admit or deny the allegations contained in Paragraph 8 of Plaintiffs' Amended Complaint, and therefore those allegations are denied.

10. The allegations contained in Paragraph 9 of Plaintiffs' Amended Complaint are denied. Further, it is affirmatively pled that separate Defendant BPI did not manufacture the "muzzleloader" referenced in Paragraph 9 of Plaintiffs' Amended Complaint.

11. The allegations contained in Paragraph 10 of Plaintiffs' Amended Complaint are denied. Further, it is affirmatively pled that the "muzzleloader" referenced in Paragraph 10 of the Amended Complaint was not manufactured by BPI. Further, it is affirmatively pled that the "muzzleloader" referenced in Paragraph 10 of the Amended Complaint was not defective or unreasonably dangerous.

12. The allegations contained in Paragraph 11 of Plaintiffs' Amended Complaint are denied.

13. In response to the allegations contained in Paragraph 12 of Plaintiffs' Amended Complaint, it is specifically denied the Plaintiff was using Pyrodex at the time of his injury. This Defendant is without information with which to admit or deny the remainder of the allegations in Paragraph 12, and therefore denies same.

14. In response to Paragraph 13 of Plaintiffs' Amended Complaint, it is specifically denied the Plaintiff was using Pyrodex at the time of the incident described in the Amended Complaint. Further, it does not appear the balance of the allegations contained in Paragraph 13 pertain to this Defendant, however, to the extent they do, they are denied.

15. In response to the allegations contained in Paragraph 14 of Plaintiffs' Amended Complaint, it is specifically denied that the Plaintiff was using Pyrodex at the time of the incident described in the Amended Complaint. Further, it does not appear that the balance of the allegations contained in Paragraph 14 pertain to this Defendant, however, to the extent they do, they are denied.

16. The allegations contained in Paragraphs 15, 16, and 17 of Plaintiffs' Amended Complaint are denied. Further, it is affirmatively pled that Defendant BPI did not manufacture the "muzzleloader" referenced in Paragraphs 15, 16, and 17 of Plaintiffs' Amended Complaint.

17. In response to the allegations contained in Paragraph 18 of Plaintiffs' Amended Complaint, though "examined" is not defined by Plaintiff, it is generally admitted that a representative of Defendant BPI has seen the muzzleloader at issue. Defendant states that the remainder of the allegations do not allege a proper matter of fact requiring a response by the Defendant under the Federal Rules of Civil Procedure or the applicable law, therefore, Defendant moves they be stricken.

18. In response to the allegations contained in Paragraph 19 of Plaintiffs' Amended Complaint, Defendant denies same as pled. However, in further response, Defendant BPI does admit that Pyrodex, in an appropriate amount, is a satisfactory type powder used in muzzleloaders imported and distributed by BPI. However, it is affirmatively pled that BPI does not manufacture muzzleloaders. In further response, this Defendant is without information with

which to admit or deny the balance of the allegations contained in Paragraph 19, and therefore denies same.

19. It does not appear the allegations contained in Paragraph 20 of Plaintiffs' Amended Complaint pertain to this Defendant, however, to the extent they do, this Defendant is without information with which to admit or deny said allegations, and therefore denies same.

20. The allegations contained in Paragraph 21 of Plaintiffs' Amended Complaint are denied as to this Defendant.

21. The allegations contained in Paragraph 22 of Plaintiffs' Amended Complaint are denied as to this Defendant.

22. In response to the allegations contained in Paragraph 23 of Plaintiffs' Amended Complaint, this Defendant acknowledges Plaintiff's demand for a jury trial. Further, this Defendant also demands a trial by jury.

23. This Defendant affirmatively pleads that the Plaintiffs' Amended Complaint fails to state either facts or a claim upon which relief may be granted.

24. This Defendant has had no opportunity to conduct discovery and only a limited opportunity to investigate this matter. Therefore, Defendant affirmatively pleads the following defenses:

- A. Lack of jurisdiction over the subject matter;
- B. Failure to join a necessary party;

25. To the extent the Plaintiffs' Amended Complaint attempts to allege a cause of action for punitive damages, this Defendant requests to bifurcate the proceeding pursuant to Arkansas Code Annotated § 16-55-211.

26. This Defendant specifically pleads all affirmative defenses available to it under the Civil Justice Reform Act of 2003, Arkansas Code Annotated § 16-55-201, et seq.

27. This Defendant affirmatively pleads the alleged injury or damage suffered by the Plaintiff was the result of Plaintiff's own negligence, unmixed with any alleged negligence on the part of this Defendant, and/or Plaintiff's comparative fault, and therefore Plaintiff is unable to recover any sum whatsoever from this Defendant.

28. This Defendant affirmatively pleads that Plaintiff assumed the risk of any injury or damage by his conduct, and therefore is not entitled to any sum whatsoever from any Defendant.

29. This Defendant affirmatively pleads that Plaintiff misused the product at issue, this misuse constitutes an unauthorized and improper use, which was the proximate cause of any injury or damage sustained, and therefore Plaintiff is unable to recover any sum whatsoever from this Defendant.

30. This Defendant specifically pleads the Doctrines of Comparative Fault and Intervening Proximate Causation.

31. This Defendant specifically pleads each of those defenses found under the Arkansas Product Liability Act, Arkansas Code Annotated § 16-116-101, et seq.

WHEREFORE, PREMISES CONSIDERED, SEPARATE DEFENDANT
BLACKPOWDER PRODUCTS, INC., PRAYS THAT:

- A. Plaintiff's Amended Complaint be dismissed;
- B. For its costs, attorneys fees; and
- C. For all other relief to which it may be entitled.

RESPECTFULLY SUBMITTED,

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By:


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AR BIN 92009

-AND-

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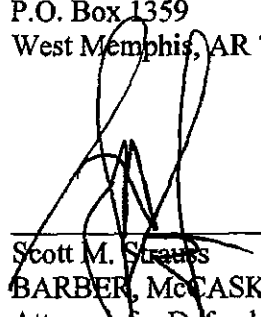
Attorneys for Defendant/Cross-Defendant Blackpowder
Products, Inc.

CERTIFICATE OF SERVICE

I, Scott M. Strauss, do hereby state on oath that I have mailed a true and correct copy of the above and foregoing pleading, this 25th day of October 2004, to the following:

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