

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 DIKAR S. COOP.**

COMES NOW Dikar S. Coop. (“Dikar”) named as a Defendant in the above styled matter, 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.

**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.

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

3.

Paragraph 3 of Plaintiff's Complaint is denied as pled. In further response, however, Dikar does admit that it is a foreign corporation and its principal place of business is in Bergara, Spain, and that all times pertinent hereto it was engaged in the business of designing, assembling, manufacturing, and exporting finished muzzleloading products to be used by consumers in various countries including the United States. Defendant further admits that the Kodiak model of muzzleloading rifle was sold by BPI in the United States. Defendant also admits that it is subject to service of process pursuant to the Hague Convention.

4.

Paragraph 4 of Plaintiff's Complaint does not allege a fact relative to this Defendant, 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.

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.

Paragraph 11 of Plaintiff's Complaint is denied as to this Defendant.

12.

Paragraph 12 of Plaintiff's Complaint is denied as to this Defendant.

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.

Paragraph 14 of Plaintiff's Complaint is denied as pled. In further response, however, this Defendant does admit generally that the Kodiak model of muzzleloader was designed in part by this Defendant, exported by this Defendant, and imported, and marketed in the United States by BPI. The remainder of paragraph 14 of Plaintiff's Complaint is denied.

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.

Paragraph 32 of Plaintiff's Complaint is denied as pled. In further response, however, Defendant Dikar does admit it developed, participated in the design, manufactured, and sold the Kodiak model muzzleloading firearm.

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 to the extent Plaintiff alleges, implies, or attempts to allege any warranty or representation other than, or inconsistent with, that as set forth in the instruction manual.

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 contributory 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, failing to

familiarize himself with and to have knowledge of the warnings given for the use of the muzzleloader, and knowing that he was assuming the risk of any injury and damages, 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 the 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**

Personal jurisdiction may be improper as to this Defendant in the United States.

**JURY DEMAND**

Defendant Dikar S. Coop. requests trial by jury on all issues herein.

WHEREFORE, Defendant Dikar S. Coop. 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 Dikar, 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.

This 5<sup>th</sup> day of April, 2010.

s/ James E. Singer  
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Attorneys for Cabela's, Inc.,  
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Dikar S. Coop.

**CERTIFICATE OF SERVICE**

I hereby certify the foregoing **Answer of Dikar S. Coop.** 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 5<sup>th</sup> day of April, 2010.

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