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17 JUN 30 AM 9:00

CIRCUIT COURT OF THE STATE OF OREGON
FOR LANE COUNTY

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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

17CV27235

KORI WARE, an individual, E.W., a minor
by and through her Guardian Ad Litem,
KORI WARE; and C.R., a minor, by and
through his Guardian ad Litem REBECCA
REDINGER,

Plaintiffs,

vs.

NORTH CENTRAL INDUSTRIES, INC., a
foreign corporation; FUNDZ 4 KIDZ, INC.,
an Oregon corporation; and AARON
TAYLOR,

Defendants.

Case Number:

COMPLAINT

Negligence; Strict Product Liability

(Demand for Jury Trial)
(Not Subject to Mandatory Arbitration)

Amount in Controversy: \$300,000.00

Plaintiffs jointly allege the following facts common to all of their claims for relief:

1.

At all times material, defendant Fundz 4 Kidz (hereinafter referred to as "F4K"), an
affiliate of Crossfire Ministries, was an Oregon corporation with its principal place of business
in Lane County, Oregon, engaged in the seasonal sale of for profit fireworks to families
celebrating the Fourth of July holiday.

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Complaint
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2.

At all times material, defendant F4K acted through its employee agents, who were acting in the course and scope of their employment, or non-employee agents, whose conduct was on behalf of, authorized by, and subject to the control of defendant F4K in a manner similar to how F4K, would control employee agents engaged in similar work. The above agents included defendant Aaron Taylor.

3.

At all times material, defendant North Central Industries, Inc. (“NC Industries”) was a foreign corporation, and was, among other things, engaged in the business of selling and distributing fireworks to Oregon firework retailers, including F4K, who in turn sold the fireworks to Lane County families.

4.

At all times material, defendant Aaron Taylor resided in Lane County Oregon and was the President and Secretary of F4K. He also was the designated “Responsible Party” for F4K to obtain the Eugene Fire Permit to operate the business. He was directly responsible for licensing, safety regulations, marketing, and sales of fireworks through that corporation and in turn he also personally profited from the revenue generated by the corporation. As the “Responsible Party” for F4K, Aaron Taylor had a non-delegable duty to ensure that F4K did not harm the Lane County families that bought its products.

5.

In 2015, before the July 4th holiday, defendant NC Industries sold fireworks to retailers

1 in Oregon, and specifically sold fireworks to defendants Aaron Taylor and F4K, who in turn
2 intended to sell the products directly to Lane County families. Among the fireworks sold,
3 was a firework type referred to as a Mammoth California Candle, which was sold under the
4 several marketing names of “Dazzling Diamonds,” “Glow Beam”, and “Touch of Sparkler”
5 (hereinafter jointly referred to as “California Candles”). The instructions on the tube of the
6 California Candles indicated that the user should “hold in hand – point away from the body”
7 and “light fuse.” It also indicated that it was appropriate for children to use if subject to “adult
8 supervision.”
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11 6.

12 Defendant F4K specifically solicited parents with small children to buy its fireworks
13 by using marketing techniques to specifically target those family oriented consumers,
14 including using “bouncy castles” at their retail tents to attract small children to their retail
15 tents and specifically selling fireworks that were intended for use by children, like the
16 California Candle described above.
17

18 7.

19 On or about June 24, 2015, after selling California Candles to F4K, defendant NC
20 Industries sent a letter to F4K and Aaron Taylor that expressly informed them that the
21 California Candles sold under the names “Glow Beam/Dazzling Diamonds/Touch of
22 Sparkler” were known to “misfire” and cause “burn and injury hazard[s] to the user and or
23 bystanders.” The letter further informed F4K that the firework’s “risk to the public” requires
24 that they be “remove[d] . . . from sale, immediately” and that the persons that had already
25
26

1 purchased the fireworks "should be advised to stop using the product."

2 8.

3
4 Upon receipt of that letter, Aaron Taylor and F4K did not remove the California
5 Candles from their retail tents and did not warn any of the consumers who had already
6 purchased the firework that they or their children could be seriously burned. Instead, Aaron
7 Taylor and F4K profited from the hazardous products by continuing to sell them to families
8 through the Fourth of July holiday. Numerous customers were burned.
9

10 9.

11 After sending the June 24 letter to Aaron Taylor and F4K, defendant NC Industries
12 apparently believed that it had no responsibility to further warn families who purchased its
13 products, and accordingly did not perform a formal public recall of the product, did not
14 perform any outreach to potential fireworks users about the dangers of the California Candles,
15 and did not follow up with retailers, including F4K, to ensure that they were taking the steps
16 necessary to account for the dangerous products and prevent harm to families celebrating the
17 national holiday. Instead, defendant NC Industries waited five months after all sales of the
18 California Candles for the 2015 holiday were final and after numerous adults and children
19 were burned by the product to make a formal public recall of the product through the
20 Consumer Safety Protection Commission.
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C.R.' s FIRST CLAIM FOR RELIEF: NEGLIGENCE AGAINST ALL DEFENDANTS

10.

Plaintiff Rebecca Redinger, in her capacity as guardian *ad litem* for C.R., re-alleges paragraphs 1-9.

11.

C.R. was 7 years old in July of 2015. In the days before July 4, 2015, the father of C.R. decided to purchase fireworks at F4K's retail tent in preparation for his family's Fourth of July celebrations. At the retail tent, he was directed by the salesperson to the F4K's "manager's special" which he was told was a specially picked assortment of fireworks for \$99. The manager's special included the California Candle fireworks, which Aaron Taylor and F4K were already informed were dangerous to the families. Upon the salesperson's advice, C.R.'s father purchased the "manager's special."

12.

During the Fourth of July holiday weekend, the family of C.R. gathered to light some of the fireworks from the F4K's "manager's special" assortment. C.R.'s father removed the California Candle, read the instructions that the user should "hold in hand," "point away from the body," and that it was appropriate for children to use under "adult supervision." As instructed, he allowed his son to hold the firework and had his son point the California Candle away from his body. The father lit the firework and stepped back. Flaming sparks reaching 1000-2000 degrees Fahrenheit shot out the back of the California Candle directly at C.R. even

1 | though he had pointed the tip of the firework away from his body as instructed by the
2 | manufacturer. The skin of his torso melted away and he suffered serious burn injuries.

3 |
4 | 13.

5 | Defendant NC Industries was negligent in one or more of the following ways, when
6 | it chose to:

- 7 | (a) Distribute California Candles that could malfunction and burn users;
- 8 | (b) Not adequately warn retailers against selling California Candles;
- 9 | (c) Not adequately warn consumers against using the California Candles;
- 10 | (d) Not contact the Consumer Product Safety Commission to perform a national
11 | recall before the July 4th holiday;
- 12 | (e) Not adequately publicize the dangers of the California Candles after distributing
13 | them for sale; and
- 14 | (f) Sell California Candles with labels indicating that they could be held when lit
15 | and used near or by children.

16 |
17 | 14.

18 | Defendant NC Industries knew or should have known that the above acts or
19 | omissions could cause injury to consumers, including C.R.

20 |
21 | 15.

22 | Defendants Aaron Taylor and F4K were negligent in one or more of the following
23 | ways, when they chose to:

- 24 | (a) Sell California Candles that could malfunction and burn users;

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- (b) Not adequately warn consumers against using the California Candles;
- (c) Not adequately publicize the dangers of the California Candles after selling them to the public;
- (d) Continue to sell California Candles after being informed that they could cause burn injuries to users; and
- (e) Sell California Candles with labels indicating that they could be held when lit and used near or by children.

16.

Defendants Aaron Taylor and F4K knew or should have known that the above acts or omissions could cause injury to consumers, including C.R.

17.

All defendants' acts and omissions were a substantial factor in causing serious injuries to C.R. including melting his skin and causing severe burns and open wounds to his torso, excruciating pain and discomfort, terror and distress, and loss of enjoyment of life and interference with normal activities, all to his human damage in an amount to be determined by the jury in accordance with the law, but not to exceed \$100,000.

C.R.' s SECOND CLAIM FOR RELIEF: STRICT PRODUCT LIABILITY AGAINST ALL DEFENDANTS

18.

Plaintiff Rebecca Redinger, in her capacity as guardian *ad litem* for C.R., re-alleges paragraphs 1-12.

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19.

At all times material defendant NC Industries was engaged in the business of selling and distributing California Candle products that were in a defective condition unreasonably dangerous to the users or consumers of those products.

20.

At all times material, defendant NC Industries expected that its California Candle products would reach consumers and users without substantial change in the condition in which NC Industries sold the products. The products did in fact reach consumers and users, including C.R. and his family, without substantial change in the condition in which NC Industries sold the products.

21.

At all times material defendants Aaron Taylor and F4K were engaged in the business of selling California Candle products that were in a defective condition unreasonably dangerous to the users or consumers of those products.

22.

At all times material, defendants Aaron Taylor and F4K expected that the California Candle products would reach consumers and users without substantial change in the condition in which defendants Aaron Taylor and F4K sold the products. The products did in fact reach consumers and users, including C.R. and his family, without substantial change in the condition in which defendants Aaron Taylor and F4K sold the products.

23.

All defendants failed to provide consumers, including C.R. and his family:

- (a) Non-defective products;
- (b) Adequate warnings for the California Candle products; and
- (c) Adequate instructions to use the California Candle products.

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24.

Defendants' conduct in distributing and selling the products described in paragraphs 18-23 were a substantial factor in causing the damages to C.R. described in paragraph 17.

E.W.' s FIRST CLAIM FOR RELIEF: NEGLIGENCE AGAINST ALL DEFENDANTS

25.

Plaintiff Kori Ware, in her capacity as guardian *ad litem* for E.W., re-alleges paragraphs 1-9.

26.

E.W. was an infant child less than one year old in July of 2015. On or about July 3, 2015, her parents decided to purchase fireworks at F4K's retail tent in preparation for his family's Fourth of July celebrations. They chose to purchase F4K's "manager's special" an special assortment of fireworks created by F4K, which included the California Candle fireworks, which Aaron Taylor and F4K were already informed would put Lane County families at risk of being burned.

27.

During the Fourth of July holiday weekend, the Ware family with their infant E.W. gathered to light some of the fireworks purchased from F4K. After lighting several fireworks, E.W.'s father removed the California Candle, read the instructions that the user should "hold in hand," "point away from the body," and that it was appropriate for children to use under "adult supervision." He asked Kori Ware, his wife and E.W.'s mother, if she would hold it

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in one hand pointed away from the body while holding E.W. in her far arm so he could take a photograph of his family celebrating the holiday. She held the California Candle away from her body and pointed directly opposite of E.W. E.W.'s father lit the fuse and stepped back. Flaming sparks reaching 1000-2000 degrees fahrenheit shot out the back of the California Candle directly at E.W. and her mother. The flaming sparks engulfed the child, burning Kori and her dress away. Skin of the infant's face, arms, hands, and legs melted away and she suffered serious burn injuries.

28.

Defendant NC Industries was negligent in one or more of the following ways, when it chose to:

- (g) Distribute California Candles that could malfunction and burn users;
- (h) Not adequately warn retailers against selling California Candles;
- (i) Not adequately warn consumers against using the California Candles;
- (j) Not contact the Consumer Product Safety Commission to perform a national recall before the July 4th holiday;
- (k) Not adequately publicize the dangers of the California Candles after distributing them for sale; and
- (l) Sell California Candles with labels indicating that they could be held when lit and used near or by children.

29.

Defendant NC Industries knew or should have known that the above acts or

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omissions could cause injury to consumers, including E.W.

30.

Defendants Aaron Taylor and F4K were negligent in one or more of the following ways, when they chose to:

- (f) Sell California Candles that could malfunction and burn users;
- (g) Not adequately warn consumers against using the California Candles;
- (h) Not adequately publicize the dangers of the California Candles after selling them to the public;
- (i) Continue to sell California Candles after being informed that they could cause burn injuries to users; and
- (j) Sell California Candles with labels indicating that they could be held when lit and used near or by children.

31.

Defendants Aaron Taylor and F4K knew or should have known that the above acts or omissions could cause injury to consumers, including E.W.

32.

All defendants' acts and omissions were a substantial factor in causing serious injuries to E.W. including melting her skin and causing severe burns and open wounds to her face, arms, hands, and legs, excruciating pain and discomfort, terror and distress, and loss of enjoyment of life and interference with normal activities, all to her human damage in an amount to be determined by the jury in accordance with the law, but not to exceed \$100,000.

**E.W.' s SECOND CLAIM FOR RELIEF: STRICT PRODUCT LIABILITY
AGAINST ALL DEFENDANTS**

33.

Plaintiff Kori Ware, in her capacity as guardian *ad litem* for E.W., re-alleges paragraphs 25-27.

34.

At all times material defendant NC Industries was engaged in the business of selling and distributing California Candle products that were in a defective condition unreasonably dangerous to the users or consumers of those products.

35.

At all times material, defendant NC Industries expected that its California Candle products would reach consumers and users without substantial change in the condition in which NC Industries sold the products. The products did in fact reach consumers and users, including E.W. and her family, without substantial change in the condition in which NC Industries sold the products.

36.

At all times material defendants Aaron Taylor and F4K were engaged in the business of selling California Candle products that were in a defective condition unreasonably dangerous to the users or consumers of those products.

37.

At all times material, defendants Aaron Taylor and F4K expected that the California Candle products would reach consumers and users without substantial change in the condition in which defendants Aaron Taylor and F4K sold the products. The products did in fact reach consumers and users, including E.W. and her family, without substantial change in the condition in which defendants Aaron Taylor and F4K sold the products.

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38.

All defendants failed to provide consumers, including E.W. and her family:

- (d) Non-defective products;
- (e) Adequate warnings for the California Candle products; and
- (f) Adequate instructions to use the California Candle products.

39.

Defendants' conduct in distributing and selling the products described in paragraphs 33-38 were a substantial factor in causing the damages to E.W. described in paragraph 32.

KORI WARE'S FIRST CLAIM FOR RELIEF: NEGLIGENCE AGAINST ALL DEFENDANTS

40.

Plaintiff Kori Ware, as an individual, re-alleges paragraphs 1-9 and 26-31.

41.

All defendants' acts and omissions were a substantial factor in causing serious injuries to Kori Ware including burning her skin and dress and causing her to suffer extreme terror and distress of watching her daughter burn in her arms and in providing emergency and rehabilitation care thereafter, all to her human damage in an amount to be determined by the jury in accordance with the law, but not to exceed \$100,000.

KORI WARE'S SECOND CLAIM FOR RELIEF: STRICT PRODUCT LIABILITY AGAINST ALL DEFENDANTS

42.

Plaintiff Kori Ware re-alleges paragraphs 25-27.

43.

At all times material defendant NC Industries was engaged in the business of selling

1 and distributing California Candle products that were in a defective condition unreasonably
2 dangerous to the users or consumers of those products.

3 44.

4 At all times material, defendant NC Industries expected that its California Candle
5 products would reach consumers and users without substantial change in the condition in
6 which NC Industries sold the products. The products did in fact reach consumers and users,
7 including Kori Ware and her family, without substantial change in the condition in which NC
8 Industries sold the products.

9 45.

10 At all times material defendants Aaron Taylor and F4K were engaged in the business
11 of selling California Candle products that were in a defective condition unreasonably
12 dangerous to the users or consumers of those products.

13 46.

14 At all times material, defendants Aaron Taylor and F4K expected that the California
15 Candle products would reach consumers and users without substantial change in the condition
16 in which defendants Aaron Taylor and F4K sold the products. The products did in fact reach
17 consumers and users, including Kori Ware and her family, without substantial change in the
18 condition in which defendants Aaron Taylor and F4K sold the products.

19 47.

20 All defendants failed to provide consumers, including Kori Ware and her family:

21 (g) Non-defective products;

22 (h) Adequate warnings for the California Candle products; and

23 (i) Adequate instructions to use the California Candle products.

24 48.

25 Defendants' conduct in distributing and selling the products described in paragraphs
26

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1 33-38 were a substantial factor in causing the damages to Kori Ware described in paragraph
2 41.

3 **NOTICE OF PUNITIVE DAMAGES**

4 49.

5 Oregon law provides that a jury can impose upon a corporation or individual punitive
6 damages if they act with reckless indifference to a highly unreasonable risk of harm, and acted
7 with a conscious indifference to the health, safety and welfare of others.

8 //

9 50.

10 The above allegations indicate that defendants acted with conscious disregard to the health,
11 safety, and welfare of families in Lane County when they knowingly sold them dangerous products
12 that were likely to place them and their loved ones at serious risk of being horribly burned.

13 51.

14 A Lane County Jury should be provided an opportunity to decide whether punitive damages
15 should be imposed on defendants. Accordingly, plaintiffs hereby give defendants notice that they
16 will later seek to amend this complaint to include punitive damages.

17 DATED June 30, 2017.

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19
20 ZEMPER EIVA LAW LLC

21
22 /s/Travis Eiva
23 Travis Eiva, OSB #052440
24 travis@zempereiva.com

25 of Attorneys for Plaintiffs
26 Trial Attorney: Travis Eiva