

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOHNNY L. BRUINS,)
)
 Plaintiff,)
) Civil Action File
 v.)
) No. _____
 JAKE’S FIREWORKS, INC.)
)
 Defendant.)

COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND

COMES NOW Plaintiff Johnny L. Bruins and hereby files this **Complaint for Damages and Jury Trial Demand**, respectfully showing the following:

INTRODUCTION

1. This is a diversity action seeking recovery for personal injuries and damages suffered by Plaintiff Johnny L. Bruins after a “YoYo Sparkler” that was designed, manufactured, and marketed by Defendant Jake’s Fireworks, Inc. ignited in Mr. Bruin’s left hand, causing him to suffer severe burns and permanent scarring. This lawsuit is brought under the substantive product liability and negligence laws of the State of Georgia.

PARTIES, JURISDICTION, SERVICE, AND VENUE

2. *Plaintiff.* Johnny L. Bruins is an adult citizen of the State of Georgia and resides at 304 Booker T. Washington St., Tennille, Washington County,

Georgia 30248. By filing this action, Mr. Bruins avails himself of the jurisdiction and venue of this court.

3. *Defendant.* Defendant Jake's Fireworks, Inc. (hereinafter "Jake's"), is a foreign corporation maintaining its principal office at 1500 E. 27th Terrace, Pittsburg, Kansas 66762. At all times pertinent hereto, Jake's was in the business of designing, manufacturing, marketing, and distributing fireworks, including the subject YoYo Sparker. Jake's is duly registered to do business in the State of Georgia and derives substantial revenues from ongoing and continuous sales of its products in Georgia, including but not limited to the sale of the subject YoYo Sparkler product, which was purchased within the State of Georgia. Jake's maintains a registered agent in Fulton County, Georgia where it may be served with process: CT Corporation System, 1201 Peachtree Street, NE, Atlanta, Fulton County, Georgia 30361.

4. *Personal Jurisdiction.* This Court has personal jurisdiction over Jake's because of its continuous and systematic business contacts with the State of Georgia, because its product was sold in Georgia and caused harm in Georgia, and because Jake's is duly registered to do business in the State of Georgia through its registered agent located in Fulton County, Georgia, which is within this District and Division.

5. *Subject-Matter Jurisdiction.* This Court has subject matter jurisdiction over this case pursuant to diversity jurisdiction prescribed by 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

6. *Venue.* Venue is proper in the United States District Court for the Northern District of Georgia, Atlanta Division pursuant to L.R. 3.1(B)(1)(a) because Jake's is a resident of Fulton County through its registered agent. Venue is also proper pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(c)(2) because Defendant Jake's is deemed to reside in any judicial district in which it is subject to the Court's personal jurisdiction. As outlined above, this Court has personal jurisdiction over Defendant through Defendant's systematic and continuous contacts with the State of Georgia, the fact that the subject YoYo Sparkler was sold and caused harm in the Georgia, and because Defendant maintains a registered agent in Fulton County, Georgia, within this Judicial District and Division. Accordingly, Jake's is deemed to be a resident of Fulton County, and venue is proper in this Court.

OPERATIVE FACTS

7. On July 4, 2015, in Sandersville, Georgia, Plaintiff Johnny Bruins was doing what millions of people around the country were doing, and what Defendant Jake's derives substantial profits from: celebrating Independence Day with

friends and family with sparklers or other fireworks. At approximately 9:30 p.m., Mr. Bruins lit a YoYo Sparkler, which was purchased and sold as new at a fireworks stand in Sandersville. He was not intoxicated, was using an ordinary method of lighting the sparkler, and was in all respects acting reasonably and undertaking a foreseeable and intended use of the YoYo Sparkler. The Sparkler had been purchased in a new condition by Mr. Bruins, and had not been substantially modified from its condition when first purchased new.

8. After lighting it, Mr. Bruins had intended to hand the sparkler to one of the children at the holiday party, also consistent with the marketing and intended use of Jake's YoYo sparklers. But as soon as he lit the sparkler, rather than it merely emitting sparks, it exploded in his hand, catching fire and engulfing Mr. Bruins' left hand in fire, causing severe and painful burns to Mr. Bruins' left hand.

9. After the incident, Mr. Bruins was taken to the emergency room at Washington County Regional Medical Center, where he was diagnosed with second and third degree burns to his left hand. Mr. Bruins subsequently underwent a skin graft, painful wound treatments, and physical therapy to treat the burns. He now has permanent scarring on his left hand.

10. Regrettably, Johnny Bruins is not the only victim of the defective YoYo Sparkler. This sparkler, which was designed, manufactured, and marketed by Defendant Jake's Fireworks, was recalled on July 9th, 2015, just five days after

this incident, after Jake's received reports that a number of users, like Mr. Bruins, suffered second and third degree burns to their hands while using this exact sparkler. According to the recall published by the U.S. Consumer Product Safety Commission, "The sparklers burn faster and with a larger flame than normal and can burn down the stick towards users' hands, posing a burn hazard."¹ The recall also advised consumers to immediately stop use using the YoYo Sparkler and to take them away from children.²

11. Jake's marketed the YoYo Sparkler as a safe product, suitable for use by adults and children when, in fact, the risks of the sparkler outweighed its utility, and the sparkler was unreasonably dangerous and posed a serious burn hazard to users, like Johnny Bruins, with no adequate warning of its dangers of suddenly catching fire. The YoYo Sparkler was negligently designed and/or manufactured as it posed an unreasonable risk of harm during ordinary, foreseeable, and proper use.

12. As a direct and proximate cause of Defendant's negligent design and/or manufacturing of the YoYo Sparkler, Plaintiff sustained severe and painful second and third degree burns to his left hand, for which Defendant is liable.

¹ "Jake's Fireworks Recalls YoYo Sparklers Due to Burn Hazard," July 9, 2016. <http://www.cpsc.gov/en/Recalls/2015/Jakes-Fireworks-Recalls-YoYo-Sparklers/>

² Id.

Plaintiff has incurred substantial medical bills and expenses, has lost time from work, and has suffered and continues to pain and suffering.

13. Plaintiff seeks recovery from Defendant for all damages allowed under Georgia law, and in amount to be determined by the jury at trial, but in an amount greatly exceeding this Court's \$75,000 jurisdictional minimum.

14. Mr. Bruins was not negligent in his use of the subject sparkler, nor did he do or fail to do anything that caused or contributed to the above-referenced incident or his injuries or damages.

SPECIFIC COUNTS

COUNT I:

Strict Liability

15. Plaintiff incorporates the preceding paragraphs verbatim into this count.

16. At all times material to the allegations in this Complaint, Defendant Jake's was in the business of designing and manufacturing fireworks and did design, manufacture, market, and distribute the subject YoYo Sparkler giving rise to the subject matter of this lawsuit.

17. Under O.C.G.A. § 51-1-11 and other applicable case law, Jake's is strictly liable to Plaintiff for the design and/or manufacturing defects in the YoYo Sparkler because the sparkler was not merchantable or reasonably suited for its

intended use when it was sold as new, and its defective condition when sold was the proximate cause of Mr. Bruins' injuries. In other words, the YoYo Sparkler was defective when it left control of Jake's, as the designer and manufacturer of the product, and the product's defect proximately cause severe burns to Mr. Bruins' left hand. That the YoYo Sparkler was defective when it left the control of Defendant Jake's is evident from the number of users, including Johnny Bruins, injured by this product and the subsequent recall of the YoYo Sparkler, only days after July 4, 2015.

18. Jake's is strictly liable to Plaintiff for the design defects in the YoYo Sparkler because the risks inherent in the sparkler's design outweigh any utility or benefit derived from the product, particularly considering the availability of safe alternative designs for the sparkler. At all times pertinent hereto, Jake's knew, as a product designer and manufacturer, that the YoYo Sparkler had to be designed and manufactured to minimize risks versus utilities, yet Jake's designed, manufactured, marketed, and placed into the stream of commerce a defective and unreasonably dangerous product, exposing consumers, like Johnny Bruins, to a serious risk of harm.

19. Defendant Jake's defective product, the YoYo Sparkler, was the proximate cause of Plaintiff's injuries, and, therefore, Jake's is strictly liable for all

injuries and damages to Plaintiff related to this incident, in an amount well in excess of the jurisdictional minimum necessary to confer jurisdiction in this Court.

COUNT II:

Negligence

20. Plaintiff incorporates the preceding paragraphs verbatim into this count.

21. At all times pertinent hereto, Defendant Jake's had a duty of reasonable care to design, manufacture, market, and distribute non-defective products, including the YoYo Sparkler, that are reasonably safe for their intended uses.

22. Jake's breached that duty when it designed, manufactured, tested, marketed, and placed into the stream of commerce a defective and unreasonably dangerous product, the YoYo Sparkler, which posed a serious safety hazard to users like Plaintiff Johnny Bruins.

23. As evident by the number of consumers injured by the YoYo Sparkler, Defendant Jake's knew, or in the exercise of ordinary care, should have known through its own testing, that the sparkler was unreasonably dangerous to those persons likely to use the product for the purpose and in the manner for which it was intended to be used. Despite this knowledge, Jake's marketed and sold a

defective product, exposing the public and Johnny Bruins to an unreasonable risk of harm.

24. Defendant Jake's owed Plaintiff, as well as the public at large, the duty of reasonable care in designing and manufacturing the subject sparkler. Jake's failed to act as an ordinary, prudent manufacturer in designing and manufacturing the subject sparkler and violated its duties to the public, including Plaintiff, and was negligent. Jake's negligence in designing and/or manufacturing the defective YoYo Sparkler was the proximate cause of Mr. Bruins' injuries and damages, as described herein.

25. Jake's is liable for its negligence for all injuries and damages to Plaintiff related to this incident, in an amount well in excess of the jurisdictional minimum necessary to confer jurisdiction in this Court.

COUNT III:

Punitive Damages

26. Plaintiff incorporates the preceding paragraphs verbatim into this count.

27. As evidenced by the number of consumers severely injured by the YoYo Sparkler, Defendant had actual knowledge that its product posed a serious burn hazard and unreasonable risk of harm to consumers, like Johnny Bruins. Despite being on notice of the dangers of this sparkler, Defendant Jake's

consciously and willfully failed to take steps to protect or warn the public, instead placing the product in the stream of commerce and continuing to sell it for profit.

28. Jake's knowing failure to act to protect the safety of the consumers, and its focus on placing profit ahead of safety, despite actual knowledge of the dangers of the YoYo Sparkler, is clear and convincing evidence demonstrating willful misconduct, malice, fraud, wantonness, oppression and/or that entire want of care, which would raise the presumption of a conscious indifference to consequences, such that punitive (exemplary) damages are necessary to deter Jake's from repeating or continuing such unlawful and dangerous conduct in the future.

DAMAGES

29. Plaintiff incorporates the preceding paragraphs verbatim into this count.

30. Johnny Bruins seeks damages from Defendant Jake's for past, present, and future medical bills and expenses, and other necessary expenses resulting from his incident-related injuries in amounts shown by the evidence at trial.

31. Johnny Bruins seeks damages from Defendant Jake's for all past, present, and future pain and suffering resulting from his incident-related injuries, in an amount as determined by the enlightened conscience of the jury.

32. Johnny Bruins seeks a recovery from Defendant Jake's for any lost income and earning capacity proximately flowing from, substantially caused by, or resulting from the subject incident, as to be shown more fully by the evidence at trial.

33. Johnny Bruins seeks a recovery of punitive damages from Defendant Jake's as described more fully above in an amount that will effectuate the societal function of punishing and deterring misconduct, but which comports with the Constitutions of the United States and the State of Georgia.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- (a) That the Court issue service of process to Defendant as authorized by law;
- (b) That Defendant Answer this Complaint as provided by law;
- (c) That Plaintiff have a trial by jury;
- (d) That Plaintiff recover from Defendant for all damages, economic and non-economic, tangible and intangible, general and special, as allowed by Georgia law and set forth above;
- (e) That all costs be taxed against Defendant; and
- (f) That the Court awards such other and further relief, as it shall deem just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

This 20th day of September, 2016.

Respectfully submitted,

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By: /s/ Cale Conley

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