

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

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	)	
<b>JEFF KANDT,</b>	)	
	)	Civil Action No. <u>5:09-cv-507</u>
Plaintiff,	)	(NAM/DEP)
	)	
-vs-	)	
	)	
<b>TASER INTERNATIONAL, INC.,</b>	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The plaintiff, by and through his attorneys, S. Robert Williams, Esq. and Patrick J. Burke, Esq., complaining of the defendant herein respectfully alleges as follows:

**I.**  
**PARTIES**

1. The plaintiff, Jeff Kandt, at all time hereinafter mentioned, was a citizen and resident of Oswego County, New York and employed by the Oswego County Sheriff's Department.

2. Defendant Taser International, Inc. is a Delaware corporation and upon information and belief licensed to do business in the State of New York and in fact conduct numerous business activities in the Northern District of New York, such that the defendant is subject to personal jurisdiction in the District.

**II.**  
**JURISDICTION AND VENUE**

3. This court has original subject matter jurisdiction over this case pursuant to 28

U.S.C.A. §1372(a) in that there exists complete diversity of citizenship between plaintiff and defendant in this action and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

4. Venue is proper in the Northern District of New York pursuant to 28 U.S.C.A. §1391(a) because defendant continuously and systematically does business within the Northern District of New York, is subject to personal jurisdiction in the District and is deemed a resident of the District pursuant to 28 U.S.C.A. §1391(c). Further, venue is proper in the Northern District of New York because this Court possesses jurisdiction over the subject matter of this controversy.

**III.**  
**FACTUAL ALLEGATIONS**

5. That at all times hereinafter mentioned, defendant was in the business of designing, manufacturing, assembling, selling, marketing, and distributing an electric stun gun commonly known as Advanced Taser M26 (hereinafter referred to as “M26”)

6. That the plaintiff at all times hereinafter mentioned was a deputy sheriff with the Oswego County Sheriff’s Department.

7. That the plaintiff was advised by his department that the M26 would be made available to all officers who underwent training procedures from a “certified trainer” approved by the defendant.

8. That in order to be “properly certified” the plaintiff was required to be exposed to a procedure whereby he was stunned by the M26 during a Taser training class.

9. That the Defendant trained its certified instructors that anyone who wanted to be user certified to carry Defendant's electromagnetic devices (hereinafter EMD) weapons was required to receive a sample exposure or "hit" during Taser training.

10. That at all times hereinafter mentioned, the certified trainers or instructors were acting in their capacity as Defendant's agents when conducting Taser training sessions.

11. That the Defendant communicated to its Certified Instructors who in turn communicated to police officers undergoing Taser training that there was no risk of long-term injuries or effects from receiving a hit during a training session.

12. That the Defendant prior to the time plaintiff was injured in a training session had received numerous reports of injuries sustained by law enforcement officers in Taser training sessions.

13. The Defendant made no attempts to investigate these incidents and in fact engaged in a concocted policy to conceal information from law enforcement agencies to whom the Defendants were marketing, selling and distributing its EMD weapons.

**AND FOR A FIRST CAUSE OF ACTION**  
**ON BEHALF OF THE PLAINTIFF**

14. Plaintiff hereby adopts and incorporates by reference the allegations contained in the above paragraphs.

15. That on or about May 29, 2007, while in a Taser training session, the Plaintiff, Jeff Kandt, was exposed to a hit from an M26 and sustained severe and permanent physical injuries that have left him permanently and severely disabled.

16. That the aforementioned occurrence was caused solely and wholly by reason of the carelessness and negligence of the Defendant herein, its agents, servants, and/or employees and without any negligence on the part of the plaintiff contributing thereto.

17. That the Defendant owed a duty to the plaintiff and others similarly situated to warn them regarding the inherent dangers in being exposed to a “hit” from Defendant’s EMD weapons.

18. That the negligence of the Defendant consisted of negligently and carelessly manufacturing, designing, assembling, marketing, selling, distributing the M26 and in negligently and carelessly failing to test the aforesaid product; in causing, allowing and permitting the M26 to be used on members of law enforcement and the general public; in designing, producing, marketing, selling and distributing the aforesaid product in the stream of commerce without taking into consideration and understanding the health consequences inherent in being exposed to the product.

20. At all times material defendant was engaged in the business of manufacturing, marketing, distributing and/or selling the EMD weapon for ultimate retail sale to police departments and the general public. Defendant designed, manufactured, assembled, marketed, distributed and/or sold and placed in the stream of commerce the unreasonably dangerous and/or defective EMD weapon, which were unsafe, adulterated and/or misbranded at the time they left the control of the Defendant.

21. Defendant had superior knowledge of the defective and/or unreasonably dangerous nature of the EMD weapons and held itself out to police departments and the general public as having superior knowledge as to alleged safety and efficiency of the EMD weapons. Plaintiff neither knew nor had reason to know of the faulty design and/or defective condition of the EMD weapons and the Defendant had the superior opportunity to conduct proper testing of the EMD weapons prior to the plaintiff being exposed to the use of said weapons on him.

22. The economically and technologically feasible design alternatives including the use

of EMD weapons without the amount of power and length of exposure used by the Defendant were available at the time the subject device that inflicted the plaintiff's injuries left the control of the defendant and continued in this state up until the time of plaintiff's exposure to the EMD weapon. Nonetheless, Defendant knowingly and intentionally failed to incorporate any safer alternative designs into the EMD weapons. Because of the defects in the design, manufacture and/or marketing of the EMD weapon, such devices possessed risks of injury that would not have been contemplated or understood by the ordinary consumer, and the risk to police officers being exposed to the device with the defective design and the failure to warn, especially given the availability of safer alternative designs greatly outweighed the utility of the product as designed, especially given the alternatives of safer alternative design, which safer alternatives were known to the defendant, but were intentionally not utilized in the EMD weapon in question.

23. The EMD weapons failed to contain adequate warnings concerning the defective and unreasonably dangerous condition, characteristics, and risks associated with such products, as outlined in the aforementioned paragraphs.

24. As a direct and proximate consequence of defendant's manufacture, assembly, marketing, distribution and/or sale of the subject EMD weapon, plaintiff sustained severe personal injuries, incurred medical expenses, lost wages, endured physical pain and suffering, mental anguish and damages as further described in this complaint.

**THIRD CAUSE OF ACTION**  
**STRICT LIABILITY FOR MISREPRESENTATION**  
**OF PRODUCT CHARACTERISTICS**

25. Plaintiff hereby adopts and incorporates by reference the allegations continued in the above paragraphs.

26. Defendant Taser International is also strictly liable for misrepresentation of the

qualities and characteristics of the EMD weapon in question.

27. Defendant represented in product advertising and through its employees and agents that the EMD weapons, and more particularly the M26, were safe for their intended and foreseeable uses, when, in fact, such products were known to be defective and/or unreasonably dangerous for their ordinary uses and foreseeable misuses, which defects and dangers were also known to defendant to have been the cause of dozens of similar injuries and complications as suffered by the plaintiff.

28. Defendant knew that its representation regarding the safety of its EMD weapons and more particularly the M26 were false and the plaintiff justifiably relied on the misrepresentations of the defendants and its employees and/or agents to his detriment.

29. The above described acts and/or omissions of defendant were a proximate and producing cause of the occurrence in question, and the resulting injuries and damages as further detailed in this complaint.

**FOURTH CAUSE OF ACTION**  
**FRAUDULENT CONCEALMENT**

30. Plaintiff hereby adopts and incorporates by reference the allegations contained in the above paragraphs.

31. Defendant and certain of its executive officers and employees conspired with each other to defraud police departments and the general public including the plaintiff for purposes of avoiding a manufactures notification campaign, commonly known as a recall and further attempted to avoid liability to litigants and individuals killed, maimed or otherwise injured over a period of several years by the defendants' EMD weapons.

32. Defendant deliberately and fraudulently understated and minimized the number of

known incidents, claims and lawsuits involving their EMD weapons and concealed accurate information for the purpose of securing reports and studies which inaccurately understated the risks of severe injuries from exposure to defendants EMD weapons.

33. That at the time of plaintiff's exposure to defendants' EMD weapon, there existed studies and literature which clearly identified the risks of fractures, and in particular spinal fractures, which could be caused by muscle contraction induced by electric current.

34. Defendant Taser, by and through its corporate officers, agents and employees, implemented a marketing plan based on misinformation, exaggeration and false statements in an effort to substantiate its claims that "hits" from Taser weapons do not cause death or significant and/or permanent injuries.

35. Defendants misrepresentations were made deliberately, willfully, wantonly, maliciously, and/or recklessly for the purpose of misleading police departments and the general public including the plaintiff into reliance and action based on those misrepresentations.

36. The plaintiff had no way of determining that the defendant's representations were false and misleading and reasonably relied on defendant's misrepresentations to his detriment.

37. The defendant's misrepresentations were motivated solely by profit and were made at the expense of the life and health of the public, including the plaintiff.

38. As a direct and proximate consequence of plaintiff's reliance on defendant's misrepresentations, plaintiff incurred medical expenses, lost wages, endured physical pain and suffering, mental anguish, and sustained physical injuries and damages as a result of being exposed to defendant's EMD weapons.

39. Defendant's conduct above constitutes malice, oppression, and fraud, and thereby

warrants the imposition of punitive damages against Defendant. Defendant is liable for punitive damages for its reckless and/or willful and wanton disregard for the public's safety in the design, manufacture, assembly, distribution, marketing and/or sale of the defendants EMD weapons as described more fully in this complaint.

**FIFTH CAUSE OF ACTION**  
**BREACH OF EXPRESS AND IMPLIED WARRANTIES**

40. Plaintiff hereby and adopts and incorporates by reference the allegations contained in the above paragraphs.

41. At the time of the sale of the EMD weapon in question to the Oswego County Sheriff's Department and/or Oswego County the defendant expressly and impliedly warranted and represented to said parties and by extension to the plaintiff and other potential users that the subject EMD weapons were safe and effective when used in the training classes which the plaintiff was required to participate in for the purpose of utilizing defendant's weapon in the course of his job.

42. These warranties included oral and written representations regarding the qualities, characteristics and overall safety of the EMD weapon in question. Defendant breached such express and implied warranties, as the subject product was defective, not of merchantable quality, and not fit for the ordinary, intended and foreseeable user of the product.

43. That the Oswego County Sheriff's Department and/or County of Oswego relied on the defendant's express and implied warranties.

44. At the time of making said warranties, defendant knew of the true defectives and/or unreasonably dangerous condition of the subject weapon and recklessly and/or

intentionally gave the warranties regardless of the knowledge, making the breach of warranties, reckless and/or intentional.

45. As a direct and proximate consequence of defendant's breach of warranties, plaintiff has incurred medical expenses and bills, lost wages, endured physical pain and suffering, mental anguish, and sustained physical injuries and damages as a result of plaintiff's exposure to the EMD weapon in question.

**SIXTH CAUSE OF ACTION**  
**POST-SALE FAILURE TO WARN AND TIMELY RECALL**

46. Plaintiff hereby adopts and incorporates by reference the allegations contained in the above-paragraphs.

47. That prior to plaintiff's exposure to the EMD weapon in question, defendant knew or reasonably should have known that the product posed a substantial risk of harm to persons in the plaintiff's position and that plaintiff reasonably could be assumed to be unaware of the risk of harm posed by the product and that the risk of harm was sufficiently great to justify the burden to defendant of providing a warning after the time of sale or distribution of the product.

48. Those users of defendant's product to whom a warning might have been provided could have easily identified and an adequate post-sale warning could have been effectively communicated to and acted upon by such persons including the plaintiff. The defendant failed to provide any warning of the unreasonably dangerous condition of the EMD weapon in question under circumstances where a reasonable person would have provided such a warning, given defendant's detailed special knowledge and understanding of the specific risks and dangers posed by the EMD weapon.

49. That after defendant became aware of the defective and dangerous nature of its EMD weapon and even though the risk was sufficiently great, defendant failed to issue any

additional warnings, instructions or restrictions, failed to communicate to its foreseeable users of the EMD weapon regarding the dangers referenced in the complaint and failed to timely recall the product so as to reduce the risk of injury posed by the product.

50. The failure to provide additional warnings and failure to timely recall the subject product was the proximate of the damages sustained by the plaintiff as hereinbefore alleged.

### **COMPENSATORY DAMAGES**

51. Plaintiff hereby adopts and incorporates by reference the allegations contained in the above paragraph.

52. As a result of the acts and omissions of the defendant herein, the plaintiff has sustained serious personal injuries and damages, experience physical pain and mental anguish in the past and will with reasonable certainty, continue to suffer physical pain and mental anguish in the future because of the nature and severity of the injuries plaintiff sustained. Plaintiff has incurred medical charges and expenses in the past and with reasonable certainty expects to incur said expenses in the future, said damages having been proximately cause by the defendant. In addition, plaintiff has also suffered lost wages, lost wage earning capacity, loss of enjoyment of life, physical impairment and physical impairment and physical disfigurement.

53. The plaintiff would respectfully allege that the foregoing elements of actual damages have a monetary value well in excess of the seventy-five thousand dollars (\$75,000.00) jurisdictional value of this court, for which actual damages plaintiff now sues.

54. Plaintiff also seeks the recovery of their costs, expenses as allowed by law.

### **MALICE AND EXEMPLARY DAMAGES**

55. Plaintiff hereby adopts and incorporates by reference the allegations contained in the above paragraphs.

56. The acts and omissions of the defendant Taser International, Inc. described above were not the result of a simple mistake, accident or inadvertence, but instead defendant acted with the knowledge that individuals had been exposed to dangers that had adversely affected them and which would in all reasonable probability adversely affect the plaintiff and others similarly situated in the future.

57. The defendant had actual knowledge of the extreme degree of risk associated with the EMD weapons and in particular the M26, when used in a manner as the plaintiff was exposed, and yet the defendant nevertheless manufactured, marketed, distributed, and sold the subject weapon in its unreasonably dangerous condition while materially misrepresenting the weapon and therefore failed to warn and recall the product, all with conscious indifference to the rights, safety and welfare of others.

58. The misconduct of the defendant, as detailed above, was malicious and/or intentional thereby justifying an award of exemplary damages in an amount sufficient to punish defendant for its wrongdoing and to deter others who are similarly situated from engaging in similar misconduct in the future.

59. The misrepresentations of the defendant as detailed above were fraudulent in that defendant knew that its misrepresentations were false but made them with the specific intent that users of the weapon, such as persons being trained on the use of the weapon, like the plaintiff and others similarly exposed, would rely on the misrepresentations in deciding to be exposed to the subject weapon and the plaintiff did in fact rely on the defendant's misrepresentations to his detriment.

60. Plaintiff would show that the amount to be awarded to him as exemplary damages also has a value well in excess of the minimal jurisdictional limits of this Court, to which exemplary damages plaintiff here and now sues for.

**JURY DEMAND**

61. Plaintiff asserts his right to a trial by jury regarding all issues of fact presented by this claim.

Dated: April 30, 2009

/s S. Robert Williams  
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