

STATE OF SOUTH CAROLINA }
 }
COUNTY OF CHARLESTON }

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-10- 322

ERIC WAYNE CROFT, }
 }
Plaintiffs, }

vs. }

COMPLAINT

SOFA SUPER STORE, INC., }
GOLDSTEIN FAMILY LIMITED }
PARTNERSHIP, FELTMANN & ASSOC., }
INC., MILLER CONCRETE, CONKLIN }
COMPANY, INC., DUPONT }
PERFORMANCE ELASTOMERS, LLC, }
ALBANY INDUSTRIES, INC., BEST }
CHAIRS, INC., HUGHES FURNITURE }
INDUSTRIES, INC., MOTION-EAZE }
RECLINERS, OVERNIGHT SOFA }
CORPORATION, PRIMO INTN'L, }
PEMBROOK CHAIR CORP. and }
ROBINSON & ROBINSON FURNITURE }
d/b/a SOFA TREND and }
LEATHERTREND, }

Defendants. }

2010 JAN 13 PM 4: 26
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

NOW COMES the Plaintiff above-named, complaining of the Defendants herein, and would respectfully show unto this Honorable Court as follows:

NATURE OF THE ACTION

1. This is a civil action arising from the severe, permanent and debilitating injuries suffered by the Plaintiff during and after, as direct and proximate result of, the Sofa Super Store fire which occurred on June 18, 2007, in Charleston, South Carolina.

2. This action also includes claims for general negligence, gross negligence, reckless

conduct and as to certain defendants, strict products liability and loss of consortium.

3. Plaintiff brings this action for monetary damages against the above Defendants for acts and/or omissions that all contributed to the injuries of Plaintiff. These acts and/or omissions include, but are not limited to the following:

- a) The modification(s) of the structure(s) comprising the West Ashley Sofa Super Store facility in a manner that allowed the fire to spread rapidly from one portion of the facility to another;
- b) The modification(s) of the Sofa Super Store facility's structure(s) in violation of the applicable building code(s) and/or standard(s), including but not limited to undertaking multiple additions without obtaining requisite permits;
- c) The manufacture, design, sale, and storage of unreasonably dangerous, highly flammable furniture items designed, manufactured and sold by the manufacturers and for suppliers of furniture to Defendant SOFA SUPER STORE, INC.;
- d) The storage of highly flammable items (including furniture containing polyurethane foam) without the installation and/or proper maintenance of reasonable fire suppression systems;
- e) The usage and installation of highly flammable, unreasonably dangerous roofing and ceiling materials and roofing component materials, at the Sofa Super Store facility;
- f) The failure of the manufacturers and/or suppliers of the highly flammable items(including furniture containing polyurethane) to warn of the danger of storing significant quantities of these types of products without the use of reasonable fire suppression system(s); and
- g) The failure of the manufacturers and/or suppliers of the highly flammable roofing materials and/or roofing component materials to warn of the dangers of flammability of these products and/or components.

JURISDICTION, PARTIES AND VENUE

4. At all times relevant, Plaintiff Eric Wayne Croft was and is a resident of Charleston, South Carolina.

5. Defendant SOFA SUPER STORE, INC., (“SOFA SUPER STORE”) is a South Carolina Corporation authorized to do and doing business as well as headquartered in South Carolina with it’s principal place of business located 708 Johnnie Dodds Blvd., Mount Pleasant, South Carolina, 29464¹, and whose registered agent for service of process is Herbert A. Goldstein. SOFA SUPER STORE conducted substantial business in South Carolina and these causes of action arise out of torts committed in South Carolina and therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff’s personal injuries.

6. Defendant SOFA SUPER STORE operated the facility at 1807 Savannah Highway, the location of the subject fire, and was at all times relevant engaged in the sale of furniture items.

7. Defendant GOLDSTEIN FAMILY LIMITED PARTNERSHIP, (“GOLDSTEIN LP”) is a South Carolina Limited Partnership authorized to do and doing business as well as headquartered in South Carolina and whose registered agent for service of process is Robert B. Pearlman, 751 Johnnie Dodds Blvd., Mount Pleasant, South Carolina, 29464. GOLDSTEIN LP conducted substantial business in South Carolina and these causes of action arise out of torts committed in South Carolina and, therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff’s personal injuries.

8. Subsequent to April 21, 1995, Defendant GOLDSTEIN LP owned and maintained the property at 1807 Savannah Highway on which Defendant SOFA SUPER STORE operated its

¹ The facility at 1807 Savannah Highway at this address was destroyed in the fire that forms the basis of this action. Plaintiff notes that subsequent to the fire, upon information and belief, Defendant SOFA SUPER STORE moved its business operations to its facility located at 708 Johnnie Dodds Blvd., Mount Pleasant, South Carolina, 29464.

business.

9. Defendant FELTMANN & ASSOCIATES, INC., (“FELTMANN”), is a South Carolina corporation authorized to do business, and which is doing business and headquartered in South Carolina with it’s principal place of business located at 18 Broad St., Room 802, Charleston, South Carolina 29401 and whose registered agent for service of process is Mr. Dean Feltmann. FELTMANN conducted substantial business in South Carolina and the cause of action arises out of a tort committed in South Carolina and, therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff’s personal injuries.

10. Upon information and belief, FELTMANN played a substantial role in the unpermitted, improper removal and replacement of the exterior roof at the Sofa Super Store facility and the installation of non-flameworthy roofing materials and components.

11. Defendant MILLER CONCRETE (“MILLER”), is a South Carolina Corporation authorized to do and doing business as well as headquartered in South Carolina with it’s principal place of business located at 5085 Towles Road, Hollywood, South Carolina, 29449. MILLER conducted substantial business in South Carolina and the cause of action arises out of a tort committed in South Carolina and, therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff’s personal injuries.

12. Upon information and belief, MILLER played a substantial role in the construction of unpermitted “fill-in” additions to the Sofa Super Store facility.

13. Defendant CONKLIN COMPANY, INC. (“CONKLIN”), is a Minnesota corporation with its principal place of business located at 551 Valley Park Drive, Shakopee, Minnesota, 55379.

CONKLIN is authorized by the South Carolina Secretary of State to conduct, and conducts, business in this State. CONKLIN's registered agent for service of process in this State is C.T. Corporation System, 75 Beattie Place, Greenville, South Carolina, 29601. CONKLIN is in the business of manufacturing, distributing and selling roofing products, including products containing polystyrene material. At all times relevant herein, CONKLIN conducted substantial business in South Carolina, made and distributed goods sold and used here and the causes of action asserted herein arise out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

14. Upon information and belief, CONKLIN's unflameworthy materials utilized at the Sofa Super Store site contributed to the tragic and uncontrollable conflagration on June 18, 2007.

15. Defendant DUPONT PERFORMANCE ELASTOMERS, L.L.C. ("DUPONT"), is a Delaware corporation with its principal place of business located at 3000 Bellvue Parkway, Suite 300, Wilmington, Delaware, 19809. DUPONT is authorized by the South Carolina Secretary of State to conduct, and conducts business, in this State. DUPONT's registered agent for service of process is in this State is C.T. Corporation System, 75 Beattie Place, Greenville, South Carolina, 29601. DUPONT is in the business of manufacturing, distributing, and selling polyethylene polymer products. At all times relevant herein, DUPONT conducted substantial business in South Carolina, made and distributed goods sold and used here, and the causes of action asserted herein arise out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

16. Upon information and belief, DUPONT's unflameworthy materials utilized and/or incorporated into materials utilized at the Sofa Super Store site contributed to the tragic and

uncontrollable conflagration at the Sofa Super Store on June 18, 2007.

17. Defendant ALBANY INDUSTRIES, INC., (“ALBANY”) is a Mississippi corporation with its principal place of business located at 504 North Glenfield Rd., New Albany, Mississippi, 28652, and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.*, and South Carolina R. Civ. P. 4(d)(8). ALBANY is in the business of manufacturing, distributing and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, ALBANY conducted substantial business in South Carolina, made and distributed goods used here and the cause of action arises out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.*, to recover damages for Plaintiff’s injuries.

18. Upon information and belief, ALBANY is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

19. Defendant BEST CHAIRS, INC., (“BEST”) is an Indiana corporation with its principal place of business located at 1 Best Drive, Ferdinand, Indiana 47532 and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). BEST is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, BEST conducted substantial business in South Carolina, made and distributed goods used here, and

the cause of action arises out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries. Upon information and belief, BEST is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation..

20. Defendant HUGHES FURNITURE INDUSTRIES ("HUGHES") is a North Carolina corporation with its principal place of business located at 952 Stout Road, Randleman, North Carolina 27317, and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). HUGHES is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, HUGHES conducted substantial business in South Carolina, made and distributed goods used here, and the cause of action arises out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

21. Upon information and belief, HUGHES is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

22. Defendant MOTION-EAZE RECLINERS ("MOTION-EAZE") is a North Carolina

business entity with its principal place of business located at 1 Parrish Drive, Randleman, North Carolina 27317 and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). MOTION-EAZE is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, MOTION-EAZE conducted substantial business in South Carolina, made and distributed goods used here, and the cause of action arises out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

23. Upon information and belief, MOTION-EAZE is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

24. Defendant OVERNIGHT SOFA CORPORATION ("OVERNIGHT") is a North Carolina corporation with its principal place of business located at 143040 First Avenue S.W., Hickory, North Carolina 28601, and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). OVERNIGHT is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, OVERNIGHT conducted substantial business in South Carolina, made and distributed goods used here, and the cause of action arises out

of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

25. Upon information and belief, OVERNIGHT is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

26. Defendant PRIMO INTERNATIONAL ("PRIMO"), a Canadian corporation, is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. PRIMO maintains its principal place of business at 700 rue Hochelaga EST, Montreal, Quebec H1N 1Y7, Canada and can be served process pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. At all times relevant herein, PRIMO conducted substantial business in South Carolina and the cause of action arises out of a tort committed in South Carolina and, therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* The exercise of personal jurisdiction over the Defendant PRIMO does not offend traditional notions of due process as set forth in the Fourteenth Amendment to the United States Constitution in that the Defendant has conducted itself in a manner exhibiting substantial efforts to serve the market for the product at issue in the State of South Carolina and Defendant PRIMO's contacts with the State of South Carolina confer both specific and general jurisdiction upon this Court.

27. Defendant PEMBROOK CHAIR CORP., ("PEMBROOK") is a North Carolina corporation with its principal place of business located at 2702 Heart Drive, Claremont, North

Carolina 28610, and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). PEMBROOK is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, PEMBROOK conducted substantial business in South Carolina, made and distributed goods used here, and the cause of action arises out of a tort committed in South Carolina. Therefore, personal jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

28. Upon information and belief, PEMBROOK is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

29. Defendant ROBINSON & ROBINSON FURNITURE d/b/a SOFA TREND and LEATHERTREND., ("ROBINSON") is a Delaware corporation with its principal place of business located at 8409 Kerns St. - Station100, San Diego, California 92154, and can be served process pursuant to certified mail, return receipt requested in conformity with the South Carolina Long Arm Statute, South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* and South Carolina R. Civ. P. 4(d)(8). ROBINSON is in the business of manufacturing, distributing, and selling upholstered furniture products, including products containing polyurethane foam. At all times relevant herein, ROBINSON conducted substantial business in South Carolina, made and distributed goods used here, and the cause of action arises out of a tort committed in South Carolina. Therefore, personal

jurisdiction is proper under South Carolina Code Annotated §§ 36-2-802 and 803 *et. seq.* to recover damages for Plaintiff's personal injuries.

30. Upon information and belief, ROBINSON is one of many potentially involved furniture manufacturers and suppliers contributing to the tragic uncontrollable conflagration at the Sofa Super Store on June 18, 2007 and who supplied certain furniture whose identity and location within the facility have been identified to date in related litigation.

31. Venue is proper as to SOFA SUPER STORE under South Carolina Code Annotated § 15-7-30(E)(2) as it is a domestic corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

32. Venue is proper as to GOLDSTEIN LP under South Carolina Code Annotated § 15-7-30(E)(2) as it is a domestic limited partnership and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

33. Venue is proper as to FELTMANN under South Carolina Code Annotated § 15-7-30(E)(2) as it is a domestic corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

34. Venue is proper as to MILLER under South Carolina Code Annotated § 15-7-30(E)(2) as it is a domestic corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

35. Venue is proper as to CONKLIN under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

36. Venue is proper as to DUPONT under South Carolina Code Annotated § 15-7-

30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

37. Venue is proper as to ALBANY under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

38. Venue is proper as to BEST under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

39. Venue is proper as to HUGHES under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

40. Venue is proper as to MOTION-EAZE under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

41. Venue is proper as to OVERNIGHT under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

42. Venue is proper as to PRIMO under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

43. Venue is proper as to PEMBROOK under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts

and omissions giving rise to the Plaintiffs cause of action occurred in Charleston County.

44. Venue is proper as to ROBINSON under South Carolina Code Annotated § 15-7-30(F)(1) and/or § 15-7-30(G)(1) as it is a foreign corporation and the most substantial part of the acts and omissions giving rise to the Plaintiff's cause of action occurred in Charleston County.

45. Additionally, as joint tortfeasors, Defendants are subject to the jurisdiction and venue of this Court.

46. At all times relevant, jurisdiction and venue are proper in this county.

CONDITIONS PRECEDENT

47. All conditions precedent to the filing of this action and to the Plaintiffs right to the relief sought have occurred, have been performed, or have been excused.

BASIC FACTS COMMON TO ALL COUNTS

48. This action arises out of the tragic and deadly blaze which occurred at the Sofa Super Store on June 18, 2007, which took the lives of nine (9) of Plaintiff Eric Croft's fellow City of Charleston Professional Firefighters.

49. Prior to the injuries sustained as a direct result of the aforementioned fire, Plaintiff Eric Croft was a firefighter/third driver on Ladder 5 which is housed at Fire Station 10 at 1 Nicholson Drive in the Byrnes Down Subdivision of Charleston, South Carolina. Plaintiff Eric Croft had been stationed at that location for approximately 3½ years on the day of the subject fire. Plaintiff Eric Croft had been a firefighter with the City of Charleston since 1999, having been officially hired in April of that year.

50. On June 18, 2007, at approximately 7:00 p.m. local time, a fire suddenly ignited and rapidly spread throughout the Sofa Super Store, a 42,000 sq. ft. single-story steel trussed showroom

building with a 17,000 sq. ft. attached warehouse, owned by Defendant SOFA SUPER STORE located on property now owned by the City of Charleston² at 1807 Savannah Highway in the West Ashley area of Charleston, South Carolina.

51. Defendant SOFA SUPER STORE began its business operations at the property located at 1807 Savannah Highway on or about 1992 pursuant to an initial five-year lease agreement with BBG, Inc., a local business, that was signed by BBG's President Donald Barkowitz and Secretary James Brabham, dated January 15, 1991.

52. The initial lease between Defendant SOFA SUPER STORE and BBG was modified pursuant to the terms of a subsequent lease agreement, dated August 9, 1993.

53. Defendant GOLDSTEIN LP, by and through Herbert Goldstein, acquired full ownership of the property located at 1807 Savannah Highway, know as "Tract A" from BBG and Barkowitz on April 21, 1995.

54. Defendant GOLDSTEIN LP, by and through Herbert Goldstein, acquired full ownership of the property located at 1838 Pebble Road, known as "New Tracts D&E" from BBG and Barkowitz on April 21, 1995.

55. On February 1, 2005, Herbert Goldstein, as lessor on behalf of Defendant GOLDSTEIN LP, leased the premises to Defendant SOFA SUPER STORE; Goldstein signed this document as lessee and lessor.

56. Prior to the June 18, 2007 fire, multiple additions had been constructed at the Sofa Super Store and other construction work was also performed.

² Note: At the time of the complained of fire, the property at 1807 Savannah Highway which was owned by Defendant Goldstein, LP

57. Upon information and belief, on a number of occasions the Defendants SOFA SUPER STORE, GOLDSTEIN LP, and/or their agents, contractors, employees and predecessors in interest failed to timely and properly seek proper permission and permitting following adequate disclosures of all of the planned design, installation and construction of modifications to the existing structure at the Sofa Super Store facility at issue in this matter.

58. Between 1993 and 1996, at least three (3) additions to the pre-existing former Piggly Wiggly supermarket (hereinafter the “Central Showroom”) were erected. City of Charleston records indicated that these three (3) additions were each treated as separate buildings.

59. The interpretation of these buildings as four (4) separate structures allowed the additions, discussed below, to be constructed without automatic sprinklers. The floor area of each individual building was below the threshold for sprinkler installation.

The West Showroom Addition

60. Pursuant to the terms of the August 9, 1993 lease agreement between BBG and Defendant SOFA SUPER STORE, BBG agreed to construct an additional 7,080 square feet of showroom space on Tract A (hereinafter the “West Addition”), with the caveat that construction was subject to receiving proper approval from the City of Charleston.

61. This addition was in fact designed, planned and constructed in 1993 and 1994.

62. At no time during the design, planning, or construction of any the 1993-1994 additions and/or modifications to the Sofa Super Store did Defendant SOFA SUPER STORE, and/or its agents, employees, contractors and predecessors in interest incorporate and/or employ all appropriate and economically feasible fire safety suppression, detection, warning and escape plans and measures.

63. At no time during the during the design, planning, or construction of any of the 1993-1994 additions and/or modifications to the Sofa Super Store did SOFA SUPER STORE and/or their agents, contractors, employees and predecessors in interest move the facility's electrical disconnect system to an area outside the building, thereby increasing the oxygen available to fuel a blaze by necessitating that firefighters would have to enter the structure to shut off power.

64. At no time during the during the design, planning, or construction of any additions and/or modifications to the Sofa Super Store did SOFA SUPER STORE or GOLDSTEIN LP, and/or their agents, contractors, employees and predecessors in interest properly plan or implement designated smoking areas away from combustible liquids and materials to prevent a catastrophic fire, or warn its agents, contractors, or employees of the risk of smoking in the presence of such materials.

The East Showroom & Warehouse Additions

65. Subsequent to the acquisition of Tracts A, D and E from BBG, and after the erection of the West Addition, Defendants SOFA SUPER STORE and GOLDSTEIN LP, by and through Herbert Goldstein, initiated further expansion of the Sofa Super Store facility.

66. Defendants SOFA SUPER STORE and GOLDSTEIN LP retained architect Robert Pollard and general contractor Gambill Construction to erect a second addition to the Sofa Super Store in 1995 (hereinafter the "East Showroom") and then in 1996 Pollard and Gamble erected a warehouse (hereinafter the "Warehouse") on the Pebble Road tract.

67. As part of the construction of the Warehouse, an enclosed sheet metal corridor was erected, connecting the Warehouse to the original building.

68. During the permitting process for the Warehouse, Mr. Goldstein, on behalf of SOFA SUPER STORE and GOLDSTEIN LP, specifically appealed classification of the property as being

within a fire district, seeking to avoid expenditure for fire walls.

69. In his March 12, 1996 appeal to City of Charleston Board of Adjustment and Appeals, Mr. Goldstein asserted that the expenditure to install fire walls was an undue hardship, and further noted that the walls were unnecessary because the Warehouse was:

...[A] separate building which is separated in this building by 50 feet. It's all non-combustible material. This is made of metal, steel, and concrete. That's all you got in here, and that's all got in here. Common sense tells you you don't need to spend \$20,000 for a fire wall if it's 50 feet apart and it can't catch fire.

70. At no time during the during the design, planning, or construction of the additions of the East Showroom or the Warehouse did SOFA SUPER STORE, GOLDSTEIN LP, and/or their agents, contractors, employees and predecessors in interest incorporate and employ all appropriate and economically feasible fire safety suppression, detection, warning and escape plans and measures.

71. Upon information and belief, the variance granted to Mr. Goldstein was premised on the then-existing physical separation distances from the adjacent structures, and from the property lines, as well as the Board's interpretation of the meaning of "fire district."

The Unpermitted Additions

72. Subsequent to the addition of the Warehouse, and after Mr. Goldstein had obtained his variance allowing the absence of fire walls, premised on Mr. Goldstein's representations to the City of Charleston Board of Adjustment and Appeals cited above, Defendants SOFA SUPER STORE and GOLDSTEIN LP retained Tony Stanley and Chris Ward.

73. Upon information and belief, in 1997-1998 Stanley and Ward, at the behest and direction of Defendants SOFA SUPER STORE and GOLDSTEIN LP, undertook a construction project to enlarge an existing wooden deck appurtenant to the Sofa Super Store facility, abutting the

Warehouse.

74. Upon information and belief, in 1997-1998 Stanley and Ward, at the behest and direction of Defendants SOFA SUPER STORE and GOLDSTEIN LP, in fact did enlarge the wooden deck, which was to be used as a staging area appurtenant to the Warehouse.

75. Upon information and belief, in 1997-1998 Stanley and Ward, at the behest and direction of Defendants SOFA SUPER STORE and GOLDSTEIN LP, partially enclosed the wooden deck with a metal roof, approximately nine (9) feet high.

76. Upon information and belief, in 1997-1998 Stanley and Ward, at the behest and direction of Defendants SOFA SUPER STORE and GOLDSTEIN LP, did not obtain any construction, occupancy, or other permits required by relevant government entities for their work done at the Sofa Super Store facility.

77. Upon information and belief, during this 1997-1998 construction neither SOFA SUPER STORE nor GOLDSTEIN LP replaced an existing electric garage door, which provided no fire suppression, located in the Holding Room area abutting the deck.

78. On or about November 1999, Defendants SOFA SUPER STORE and GOLDSTEIN LP, by and through Mr. Herbert Goldstein, did retain Defendant FELTMANN to remove and replace the existing roof at the Sofa Super Store facility.

79. Upon information and belief, Defendant FELTMANN, through its principal Dean Feltmann and employees Terry Lupton and Matt Bliss, undertook to remove layers of tar and gravel roofing that had built up at the Sofa Super Store facility, and to replace the roof with roofing materials, and/or roofing material components designed, manufactured, and sold by Defendants CONKLIN and DUPONT.

80. During Defendant FELTMANN'S work at the facility, a dispute arose with Defendant SOFA SUPER STORE regarding the intrusion of fluids through holes in the metal roof system.

81. Upon information and belief, Defendant FELTMANN failed to properly remove all tar and gravel from the Central Showroom roof, resulting in tar residue from the roof dripping through void spaces in the metal roof. This tar eventually ignited inside the void space created by the drop-down ceiling inside the showroom.

82. Upon information and belief, the polyurethane foam, polystyrene insulation and/or other roofing components added by Defendant FELTMANN and manufactured, designed, and sold by Defendants CONKLIN and DUPONT, in conjunction with residual tar left on the roof, also increased the potential for the retention of heat and flammable gasses within the Sofa Super Store facility.

83. Upon information and belief, Defendant SOFA SUPER STORE paid Defendant FELTMANN approximately \$70,000 for its work at the Sofa Super Store facility.

84. Upon information and belief, in 1999 neither Defendant FELTMANN, nor Defendants SOFA SUPER STORE and GOLDSTEIN LP, obtained any construction, occupancy, or other required permits for the exterior roofing work done by FELTMANN, including the installation of roofing materials and/or roofing material components manufactured, designed, and sold by Defendants CONKLIN and DUPONT, at the Sofa Super Store facility.

85. On or about 1999, Defendants SOFA SUPER STORE and GOLDSTEIN LP, by and through Mr. Herbert Goldstein, did retain CDI Construction to install a drop down suspended ceiling at Sofa Super Store facility.

86. Upon information and belief, CDI Construction did install a drop-down ceiling,

utilizing flammable materials that in the event of a fire could increase the spread of flame and flammable gasses within the open space between the metal roof and the drop down ceiling.

87. Upon information and belief, in 1999 neither CDI Construction, nor Defendants SOFA SUPER STORE and GOLDSTEIN LP, obtained any construction, occupancy, or other required permits for the interior drop ceiling installed by CDI at the Sofa Super Store facility.

88. On or about 1999, Defendants SOFA SUPER STORE and GOLDSTEIN LP, by and through Mr. Herbert Goldstein, did retain Gambill Construction to construct a workshop at the Sofa Super Store facility.

89. Gambill, at the request of Defendants SOFA SUPER STORE and/or GOLDSTEIN LP, did erect a workshop on the East of the corridor connecting the Warehouse to the central show room.

90. This workshop, constructed out of wood frame and sheet metal, further connected the Warehouse and the Central Showroom, increasing the likelihood that flame and hot gasses could easily spread to previously isolated areas of the Sofa Super Store facility in the foreseeable event of a fire.

91. At no time prior to or during the construction of this initial workroom did Gambill or Defendants SOFA SUPER STORE or GOLDSTEIN LP obtain any required permits for this construction at the Sofa Super Store facility.

92. Upon information and belief, on or about the year 2001, Defendants SOFA SUPER STORE and GOLDSTEIN LP did retain A. J. Russo to enlarge, expanded, and enclose the existing deck situated between the West Showroom and the Warehouse.

93. Upon information and belief Defendants SOFA SUPER STORE and GOLDSTEIN

LP, by and through Russo, did expand the deck previously worked on by Stanley and Ward, and additionally enclosed this portion of the loading dock with a twelve (12) foot roof.

94. Upon information and belief, when completed the fully expanded loading dock covered approximately 2,2000 square feet and directly connected the West Showroom, the Warehouse and the connecting corridor to the Central Showroom.

95. Upon information and belief, the walls connecting the enclosed loading dock to the Warehouse, West Showroom and connecting corridor were simply sheet metal that provided no fire resistance.

96. Upon information and belief, during this 2001 work by A. J. Russo, neither Defendant SOFA SUPER STORE nor Defendant GOLDSTEIN LP replaced an existing electric garage door, which provided no fire suppression, located in the Holding Room area abutting the further-expanded deck.

97. At no time prior to or during the construction of this initial workroom did Russo or Defendants SOFA SUPER STORE or GOLDSTEIN LP obtain any required permits for this construction at the Sofa Super Store facility.

98. Upon information and belief, on or about 2006 Mark Davis and Defendant MILLER performed further construction work for Defendants SOFA SUPER STORE and/or GOLDSTEIN LP.

99. Mark Davis and Defendant MILLER did erect an additional workshop, adding a concrete foundation, walls and roof structures.

100. At no time prior to or during the construction of this initial workroom did Mark Davis and Defendant MILLER or Defendants SOFA SUPER STORE or GOLDSTEIN LP obtain any

required permits for this 2006 construction at the Sofa Super Store facility.

101. Upon information and belief, during the aforementioned construction on the loading dock, Defendants SOFA SUPER STORE and GOLDSTEIN LP and/or their agents, contractors, employees failed to timely and properly seek and obtain proper regulatory permission, permitting and adherence to any and all applicable building codes, regulations, as well as to make all necessary and required disclosures of all of the planned design, installation, construction and use of modifications to the existing structure at the Sofa Super Store facility at issue in this matter as well as to update and/or install additional fire suppressors, detection, warning, electrical disconnects and escape measures.

102. At no time during the during the design, planning, or construction of loading dock additions and/or modifications to the Sofa Super Store did Defendants SOFA SUPER STORE, GOLDSTEIN LP and/or their agents, employees, contractors and predecessors in interest incorporate and/or employ all technologically and economically feasible fire safety suppression, detection, warning and escape measures.

103. At no time during the during the design, planning and/or construction of any additions and/or modifications subsequent to 1994 to the Sofa Super Store did Defendants SOFA SUPER STORE and GOLDSTEIN LP and/or their agents, contractors, employees and predecessors in interest move the facility's electrical disconnect system to an area outside the building, increasing the oxygen available to fuel the blaze by necessitating that firefighters would have to enter the structure to shut off power.

104. Indeed, by failing to seek proper permission, permitting and to give specific notice of the building modifications and additions as set forth herein, the Defendants SOFA SUPER

STORE and/or GOLDSTEIN LP ensured that the City of Charleston and any other appropriate authorities would remain unaware of any additions and/or new construction, and therefore unable to require the Defendants SOFA SUPER STORE and/or GOLDSTEIN LP to adhere to all applicable building codes and property regulations as well as to install overhead interior building sprinklers and any other available fire suppressor, containment, detection as early warning devices within the new construction and throughout the rest of the Savannah Highway facility.

105. Indeed, upon information and belief, had building permits been obtained for the construction of the loading dock and the workshops erected at the behest and direction of Defendants SOFA SUPER STORE and/or GOLDSTEIN LP by Davis, Ward, Stanley, and Miller, the previous classification of the Sofa Super Store facility as four separate buildings would have been invalidated.

106. Upon information and belief, had such permits been sought and obtained, all the property encompassing the Central Showroom, the West Showroom, the Warehouse, the connecting corridor, the loading dock and the workshops would have been reclassified as a single structure due to the compromise of the fire resistive separations and the absence of open space.

107. Upon information and belief, had such permits been sought and obtained, the relevant building code would have required the installation of an automatic sprinkler system or the erection of rated fire walls to maintain required separations.

108. Upon information and belief, had an automatic sprinkler system been installed and maintained as required under relevant building codes, the fire would have been quickly extinguished with little damage, without the loss of life of the Plaintiff's friends and colleagues and without injury to the Plaintiff herein.

109. Upon information and belief, had a system of fire walls been installed and maintained,

the fire would not have spread beyond the loading dock area and the fire would have been extinguished without the loss of life of the Plaintiff's friends and colleagues and without injury to the Plaintiff herein.

June 18, 2007

110. At all times relevant, Defendants SOFA SUPER STORE and GOLDSTEIN LP were in the business of selling upholstered furniture and other household goods at the business located at 1807 Savannah Highway.

111. At all times relevant, Defendants SOFA SUPER STORE and GOLDSTEIN LP did display, warehouse, and or maintain certain items of polyurethane-foam and/or other highly flammable fabrics containing furniture manufactured, designed and distributed by a host of manufacturers, including Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON.

112. At some time prior to June 18, 2007, ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON each designed, manufactured, constructed, sold and/or delivered certain items of furniture containing polyurethane foam and/or other highly flammable fabrics to the Sofa Super Store.

113. At some time prior June 18, 2007, Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON each placed said items of polyurethane foam cushions and/or other highly flammable cushions and fabrics furniture into the stream of commerce, distributing them to Defendant SOFA SUPER STORE creating a severe toxic hazardous situation.

114. Upon information and belief, the June 18, 2007 fire ignited as the result of foreseeable

smoking related activities by a yet identified individual or individuals in the vicinity of the unauthorized and improperly constructed loading dock area designed, constructed and installed by Defendants SOFA SUPER and GOLDSTEIN LP and its agents, employees, contractors, and sub-contractors.

115. Defendants knew or should have known that SOFA SUPER STORE employees and invitees regularly smoked cigarettes in and around the premises and its adjoining structures including but not limited to the unauthorized and improperly constructed covered loading dock.

116. Upon information and belief, smoking related items came in contact with furniture varnish, garbage and/or other flammable fluids or materials located in or around the unauthorized and improperly constructed covered loading dock area at the Sofa Super Store.

117. The initial stages of the blaze triggered the SOFA SUPER STORE'S fire alarm, which, along with a 911 call placed by SOFA SUPER STORE employees, alerted the City of Charleston Fire Department ("CFD") to the blaze.

118. Shortly thereafter, employees of the CFD, including Plaintiff Eric Croft arrived at the site of the Sofa Super Store fire.

119. CFD Firefighters, including Plaintiff Eric Croft approached the Sofa Super Store in an manner as would be expected under the circumstances and as a reasonable and professional fire fighter would, as well as at the direction of his superiors and as trained and equipped in an attempt to rescue store patrons and employees and to confine and extinguish the fire to prevent further loss of life and/or property.

120. The CFD initially attempted to confine the blaze to the unauthorized and improperly constructed loading dock area where fire ignition is believed to have originated to prevent the spread

of the fire to the furniture-laden warehouse and showroom.

121. Upon information and belief, two large openings in the concrete block wall between the Loading Dock and the Holding Room allowed smoke and fire to enter the interior of the structure.

122. Subsequent efforts to shut the door and to close off all other outside environmental elements known to promote the spread of a fire failed.

123. Moreover, certain overhead fire suppression doors separating certain portions of the building including the warehouse and main showroom, which were improperly maintained, tested, and/or serviced by Defendants SOFA SUPER STORE, and GOLDSTEIN LP, failed to quickly close during the fire, further exacerbating the spread of the blaze.

124. Upon information and belief, despite the valorous efforts of employees of the CFD to combat the fire, it spread throughout the warehouse and showroom, likely through the space between the metal roofs and drop down ceilings in the West and Central Showrooms.

125. Upon information and belief, the spread of hot gas and flame through the drop down ceiling areas ignited flammable insulation and other installed materials, providing increase fuel for the flames.

126. Upon information and belief, once the smoke and fire completely filled the voids between the metal ceiling and drop down roofs, the smoke and gas quickly banked down into the showrooms, where the fire and gasses quickly ignited the polyurethane insulated furniture manufactured, assembled, constructed, designed and distributed by Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON that was stored therein.

127. The ignition of the polyurethane insulated furniture manufactured, assembled, constructed, designed and distributed by Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON quickly created a toxic, ultrahazardous situation for the Plaintiff Clinton and the other CFD firefighters valiantly and properly working in and around the burning structure.

128. Eventually, while numerous firefighters were still inside the Sofa Super Store structure, a “flash-over” occurred, which lead to the rapid collapse of the steel-trussed roof.

129. Plaintiff Eric Croft was in close proximity to the building when the roof collapsed.

130. Plaintiff Eric Croft suffered extreme fright, shock, anxiety and mental distress from the collapse of the building next to which he was standing while attempting to extinguish the blaze precipitated by the negligence, willfulness, recklessness and wantonness of the Defendants as set forth herein.

131. Plaintiff Eric Croft suffered extreme dehydration and heat related illness, which included vomiting and a brief period of “blackout”, requiring medical attention from emergency medical personnel on scene at the blaze.

132. Plaintiff Eric Croft suffered from an elevated blood pressure and smoke experienced the effects of inhaling large quantities of the rolling black smoke which was flooding out of the burning building.

Injuries and Damages

133. As a direct and proximate result of the Defendant’s collective and individual, negligence, recklessness, and/or gross negligence, Plaintiff Eric Croft has:

(a) Experienced extreme shock, fright, and severe and debilitating

emotional upset.

- (b) Suffered and continues to suffer from physical injuries and pain including, but not limited to, chest pains and tightness, achy joints, popping knees, back pain, intestinal issues, uncontrollable shaking in his hands, weakened teeth and experiences frequent bouts of sleep deprivation, among other things
- (c) Suffered and continues to suffer from serious and debilitating personal mental distress, including Post Traumatic Stress Disorder, Major Depressive Disorder, general and constant feelings of fright, shock, worry, fear, anxiety, claustrophobia, angst, apprehension, a constant sense of foreboding, feelings of uncontrollable misery, nervousness, panic, constant sense of impending doom, panic attacks, flashbacks, general restlessness and other deep and painful emotional injuries, all of which may be collectively referred to as a “nervous breakdown”.

134. As a result of the damages suffered by Plaintiff Eric Croft he has had to retain undersigned counsel to bring this suit.

135. The wrongful acts and omissions of the Defendants showed willful misconduct, malice, fraud, wantonness, oppression and that entire want of care which would raise the presumption of conscious indifference to consequences and the rights of others. In addition, the wrongful acts of the Defendants were committed with specific intent to cause harm to the Plaintiff and succeeded in so doing. Punitive damages should be imposed in an amount sufficient to keep such wrongful conduct from being repeated.

COUNT ONE
NEGLIGENCE AS TO SOFA SUPER STORE AND GOLDSTEIN LP

136. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

137. At all times relevant, the business located at 1807 Savannah Highway, Charleston,

South Carolina 29407 was operated under the control and supervision of Defendants SOFA SUPER STORE and GOLDSTEIN LP.

138. Defendants SOFA SUPER STORE and GOLDSTEIN LP each owed a duty of reasonable care to Plaintiffs and breached that duty by:

- a) failing to retain and contract with properly trained, licensed and competent building design and construction professionals to ensure that all modifications and additions to the Sofa Super Store premises were performed properly, in compliance with all applicable rules and regulations and in conformity with industry practice for the purposes of which the structure would be utilized;
- b) failing to obtain proper permitting and approval for all modifications and additions constructed and/or installed to the subject facility in order to ensure that all authorities including the City of Charleston would be placed on notice of the changing uses and involvement of new construction and thereby require adherence to any applicable industry standards, rules and regulations that may be applicable;
- c) failing to properly inspect and maintain the overhead fire suppression doors pursuant to relevant standards;
- d) failing to ensure that adequate, fire resistant materials and structures were installed and/or erected at the Sofa Super Store site;
- e) failing to ensure adequate safety measures were in place to lessen or eliminate the risk of flash overs or rapid and uncontrollable progression from foreseeable fires, including but not limited to failure to oversee the installation of sprinklers, properly functioning fire suppression doors and adequately situated and functioning emergency exit doors;
- f) failing to properly store and maintain stored goods, furniture, and toxic, hazardous fluids and compounds that are highly flammable;
- g) and in such other particulars as the evidence may show.

139. Additionally, Defendants SOFA SUPER STORE and GOLDSTEIN LP each owed a duty of reasonable care to Plaintiff and breached that duty by:

- a) failing to ensure personnel on site had or received adequate experience, warning, training and supervision about the risks of fire ignition hazards as well as allowing and permitting individuals to utilize and leave lit cigarettes in the vicinity of flammable and toxic hazardous materials, substances and liquids;
- b) failing to properly store flammable liquids;
- c) failing to properly store and maintain flammable furniture located at the premises, including but not limited to potentially ultrahazardous polyurethane cushioned furniture;
- d) failing to fulfill its duty of care as a premise owner to discover risks and take safety precautions to warn of or eliminate risks on the premises;
- e) failing to comply with all applicable National Fire Protection Association bulletins and requirements, National Electric Codes, Standard Building Codes and the regulatory directives; and
- f) in such other particulars as the evidence may show

140. Defendants SOFA SUPER STORE and GOLDSTEIN LP are also responsible for the negligent and/or grossly negligent conduct of their agents, employees, or contractors who contributed to or initiated the blaze.

141. Defendants SOFA SUPER STORE and GOLDSTEIN LP are responsible for the negligent and/or grossly negligent conduct of their agents, employees, or contractors who failed to take other appropriate actions preceding the fire to prevent or reduce the chances of such a fire occurring.

142. As a direct and proximate result of Defendants SOFA SUPER STORE'S and GOLDSTEIN LP's respective negligent, grossly negligent, reckless, wanton, and willful acts and/or omissions as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

143. Plaintiff is informed and believes he is entitled to a judgment against Defendants SOFA SUPER STORE and GOLDSTEIN LP for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT TWO
NEGLIGENCE PER SE AS TO SOFA SUPER STORE AND GOLDSTEIN LP

144. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

145. Upon information and belief, between 1997 and 2006 Defendants SOFA SUPER STORE and GOLDSTEIN LP designed and erected certain modifications and building additions in the vicinity of the loading dock at the Savannah Highway site.

146. These modifications and additions were installed without any authorization, notice or permitting from the relevant authorities and furthermore lacked important fire suppression safety features that could have lessened or eliminated the severity of the fire.

147. Had Defendants SOFA SUPER STORE and GOLDSTEIN LP obtained proper permits for these additions, prior variances to applicable fire codes lobbied for by Mr. Goldstein on behalf of Defendants SOFA SUPER STORE, INC., and GOLDSTEIN LP would have been invalidated, and the City of Charleston could have required the entire facility to be equipped with safety features, including overhead sprinklers.

148. Because SOFA SUPER STORE and its agents, contractors and employees failed to obtain the requisite building permits for these additions, SOFA SUPER STORE violated certain regulatory codes and standards including but not limited to Standard Building Code § 104.1.1 as required by the City of Charleston.

149. This violation was a direct and proximate cause of the Plaintiff's injuries, as compliance with the regulations would have prevented an uncontrollable blaze.

150. As a direct and proximate result of Defendants SOFA SUPER STORE'S and GOLDSTEIN LP's respective negligent, grossly negligent, reckless, wanton, and willful acts and/or omissions as set forth above, including the negligence *per se* of these Defendants, Plaintiff Eric Croft suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

151. Plaintiff is informed and believes he is entitled to a judgment against Defendants SOFA SUPER STORE and GOLDSTEIN LP for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT THREE
RECKLESS INFLECTION OF EMOTIONAL DISTRESS
AS TO SOFA SUPER STORE AND GOLDSTEIN LP

152. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

153. The Defendants SOFA SUPER STORE and GOLDSTEIN LP recklessly inflicted severe emotional distress on Plaintiff and was certain or substantially certain such distress would result from its conduct by:

- a) failing to retain and contract with properly trained, licensed and competent building design and construction professionals to ensure that all modifications and additions to the Sofa Super Store premises were performed properly, in compliance with all applicable rules and regulations and in conformity with industry practice for the purposes of which the structure would be utilized;
- b) failing to properly inspect and maintain the overhead fire suppression doors pursuant to relevant standards;

- c) failing to ensure adequate safety measures were in place to lessen or eliminate the risk of foreseeable fires, including but not limited to failure to oversee the installation of sprinklers, properly functioning fire suppression doors and adequately situated and functioning emergency exit doors;
- d) failure to warn of known dangers and hazards existing at the SOFA SUPER STORE;
- e) in such other particulars as the evidence may show.

154. Additionally, Defendants SOFA SUPER STORE and GOLDSTEIN LP also recklessly inflicted severe emotional distress on Plaintiff and was certain or substantially certain such distress would result from its conduct by:

- a) failing to ensure personnel on site had or received adequate experience, warning, training and supervision about the risks of fire ignition hazards as well as allowing and permitting individuals to utilize and leave lit cigarettes in the vicinity of furniture varnish and/or flammable furniture;
- b) failing to properly store flammable liquids;
- c) failing to properly store and maintain flammable furniture located at the premises, including but not limited to potentially ultrahazardous polyurethane-insulated furniture;
- d) failing to fulfill its duty of care as a premise owner to discover risks and take safety precautions to warn of or eliminate risks on the premises; and
- e) in such other particulars as the evidence may show.

155. This conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, as Defendants' conduct created a condition on the property unreasonably dangerous to foreseeable invitees such as the Plaintiff.

156. The actions of Defendants SOFA SUPER STORE and GOLDSTEIN LP caused the Plaintiff to suffer extreme emotional distress as he was battling the blaze and was in the proximity

of the collapsing building.

157. The emotional distress which the Plaintiff suffered and continues to suffer is so severe that no reasonable person could be expected to endure it.

158. Plaintiff suffered severe emotional distress as set forth herein and Plaintiff is informed and believes he is entitled to a judgment against Defendants SOFA SUPER STORE and GOLDSTEIN LP for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT FOUR
NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESSNESS AS TO FELTMANN

159. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

160. Defendant FELTMANN owed a duty of care to Plaintiff and was negligent, grossly negligent, reckless, and/or willful and wanton in its conduct herein referenced, and upon information and belief breached its duty of care owed to Plaintiff in one or more of the following respects:

- a) Failing to properly remove all tar and gravel roofing present on the Central Showroom roof, allowing tar residue to seep into the interior of the building and ignite contents therein;
- b) Failing to obtain proper permitting and approval for all modifications and additions constructed and/or installed to the subject facility in order to ensure that all authorities, including the City of Charleston, would be placed on notice of the changing uses and involvement of new construction and thereby require adherence to any applicable industry standards, rules and regulations;
- c) By installing unflameworthy roofing materials; and
- d) In such other particulars as the evidence may show.

161. As a direct and proximate cause of the grossly negligent, reckless, willful, wanton and careless acts and/or omissions of Defendant FELTMANN, as set forth above, Plaintiff suffered

injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

162. Plaintiff is informed and believes he is entitled to a judgment against Defendant FELTMANN for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT FIVE
NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESSNESS AS TO CONKLIN

163. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

164. Defendant CONKLIN, a manufacturers/designer of certain roofing materials at issue in this action, owed to Plaintiff a duty of reasonable care, and was negligent, grossly negligent, reckless, willful, wanton, and reckless and breached its duty of care owed to Plaintiff in the following manner:

165. At some time prior to June 18, 2007, Defendant CONKLIN placed into the stream of commerce certain roofing materials which were later sold and incorporated into the roof structure at the Savannah Highway facility of Defendant SOFA SUPER STORE.

166. The roofing materials designed, assembled, and manufactured by Defendant CONKLIN were assembled and incorporated by Defendant FELTMANN without substantial changes in their conditions.

167. Upon information and belief, during the Sofa Super Store fire on June 18, 2007, the unflameworthy materials manufactured, designed, and sold by CONKLIN improperly melted and/or ignited, exacerbating and contributing to the conflagration and immolation of the Sofa Super Store facility.

168. On June 18, 2007, Plaintiff sustained injuries when Defendant CONKLIN's roofing materials caught fire and/or melted, exacerbating the spread of the smoke and flames within the Sofa Super Store facility and furthering the ignition of the fuel-rich polyurethane foam furniture and items within the interior of the structure, ultimately resulting in the collapse of the structure.

169. The Plaintiff was injured as a direct and approximate result of the negligent, careless, reckless, willful, wanton, and intentional conduct of the Defendant CONKLIN and by its respective officers, employees, directors, and managers, in the following particulars:

- a) In negligently producing, designing, manufacturing, advertising, distributing, and otherwise introducing into the stream of commerce an item of roofing material which contained extreme fire hazards known to CONKLIN and FELTMANN but unknown to those foreseeably coming in contact with the product;
- b) In negligently manufacturing, designing, producing, advertising, distributing, selling and otherwise introducing into the stream of commerce roofing materials which were, by virtue of their defective and negligent design, unreasonably dangerous, which easily ignited when exposed to foreseeable circumstances and ignition sources, and which were extremely flammable when ignited, burning rapidly at high heat rates in foreseeable circumstances;
- c) In failing to incorporate feasible fire retardant features in the subject roofing materials at a negligible cost increase;
- d) In failing to incorporate fire resistive barrier or fire retardant covering materials in the subject roofing materials when doing so was commercially reasonable;
- e) In placing considerations of profits before safety in designing and constructing the subject roofing materials;
- f) In failing to properly and adequately warn users and those foreseeably impacted by the product of the ignitability and flammability characteristics of the subject roofing materials when exposed to an ignition source and/or foreseeable levels of fire-related heat;
- g) In being aware of the flammability characteristics of roofing materials and the potential for such materials to drip and flow, creating liquid pools of fire, increasing the risk of spreading to other combustibles and enhancing the speed at which the

furniture burns and in failing to warn or take steps to reduce those risks;

- h) In failing to exercise due care in the manufacture, design and supply of the subject roofing materials in that it was reasonably foreseeable that the product would ignite and create serious risk to human life; and
- i) In such other particulars as the evidence may establish.

170. As a direct and proximate cause of the respective negligent, grossly negligent, reckless, willful, wanton and careless acts and/or omissions of Defendant CONKLIN as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

171. Plaintiff is informed and believes he is entitled to a judgment against Defendant CONKLIN for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT SIX
STRICT LIABILITY AS TO CONKLIN

172. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

173. Sometime prior to June 18, 2007, CONKLIN designed, manufactured and sold into the stream of commerce roofing materials incorporated into the Sofa Super Store structure by Defendant FELTMANN.

174. CONKLIN is and was a seller engaged in the business of selling products such as the aforementioned roofing materials in question.

175. Its roofing materials were unsafe and defective, which made them unreasonably dangerous to persons such as Plaintiff who could reasonably have been expected to come into contact or be affected by them.

176. CONKLIN created a substantial risk of harm to those reasonably expected to be affected by the roofing materials including Plaintiff as a result of the roofing materials' defective condition.

177. As a direct and proximate result of the defective roofing component materials and the breaches complained herein, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

178. Plaintiff is informed and believes he is entitled to a judgment against Defendant CONKLIN for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT SEVEN

FAILURE TO WARN AS TO CONKLIN

179. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

180. Defendant CONKLIN and/or its agents, employees or servants knew or had reason to know that the roofing materials in question were or were likely to be dangerous to the general public, including firefighters like Plaintiff.

181. Defendant CONKLIN and/or its agents, employees or servants knew or had reason to know that the roofing materials posed a significant risk in the event of their being exposed to open flame, smoke and/or fire.

182. Defendant CONKLIN and/or its agents, employees or servants knew or had reason to know that the roofing materials' flammability and make-up rendered them unsuitable for use in facilities such as the Sofa Super Store where polyurethane foam containing products were to be stored, as the use of these roofing materials increased the risk of the ignition of polyurethane foam

containing materials and the attendant danger of large-scale fire and the toxic smoke release to the general public, including to firefighters such as Plaintiff.

183. Upon information and belief, Defendant CONKLIN and/or its agents, employees or servants lacked reason to believe that the general public, including roofing installation companies such as Defendant FELTMANN, furniture sellers and commercial lessors such as Defendants SOFA SUPER STORE and GOLDSTEIN LP, and firefighters such as Plaintiff would realize this potential danger.

184. Defendant CONKLIN and/or its agents, employees or servants had a duty warn the roofing installation companies, such as Defendant FELTMANN, who installed its products, the furniture sellers and commercial lessors, such as Defendants SOFA SUPER STORE and GOLDSTEIN LP, on whose premises its products were installed, and firefighters such as Plaintiff of these dangers.

185. Defendant CONKLIN and/or its agents, employees or servants breached this aforementioned duty to warn and acted negligently, grossly negligently, recklessly, and/or carelessly in the following respects:

- a) Failing to provide necessary warning for the protection of persons coming into contact with its roofing materials;
- b) Failing to warn the general public, including firefighters such as Plaintiff of the above-mentioned defects;
- c) Failing to place adequate warnings on the shipping materials and containers in which the roofing materials were transported, which would have given notice to the recipients of the full quantum of the danger posed by unreasonably dangerous, flammable, and hazardous materials therein;
- d) Failing to use that degree of care recognized for individuals such as the Defendant CONKLIN in conducting the action alleged herein; and

e) In such other particulars as the evidence may show.

186. As a direct and proximate result of Defendant CONKLIN's failure to warn as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

187. Plaintiff is entitled to judgment against Defendant CONKLIN for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such future, similar conduct these Defendants and others.

COUNT EIGHT

NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESSNESS AS TO DUPONT

188. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

189. Defendant DUPONT, a manufacturer/designer of certain roofing materials and/or roofing material components at issue in this action, owed to Plaintiff a duty of reasonable care, and was negligent, grossly negligent, reckless, willful, wanton, and reckless and breached its duty of care owed to Plaintiff in the following manner:

190. At some time prior to June 18, 2007 Defendant DUPONT placed into the stream of commerce certain roofing materials and/or roofing material components which later sold and incorporated into the roof structure at the Savannah Highway facility of Defendant SOFA SUPER STORE.

191. The roofing materials and/or roofing material components designed, assembled, and manufactured by Defendant DUPONT were assembled and incorporated by Defendants CONKLIN and/or FELTMANN without substantial changes in their conditions.

192. Upon information and belief, during the on June 18, 2007, the unflameworthy materials and/or components manufactured, designed, and sold by DUPONT improperly melted and/or ignited, exacerbating and contributing to the conflagration and immolation of the Sofa Super Store facility.

193. On June 18, 2007, Plaintiff sustained injuries when Defendant DUPONT's roofing materials and/or roofing material components caught fire and/or melted, exacerbating the spread of the smoke and flames within the Sofa Super Store facility and furthering the ignition of the fuel-rich polyurethane foam furniture and items within the interior of the structure, ultimately resulting in the collapse of the structure.

194. The Plaintiff was injured as a direct and proximate result of the negligent, careless, reckless, willful, wanton and intentional conduct of the Defendant DUPONT and by its respective officers, employees, directors, and managers, in the following particulars:

- a) In negligently producing, designing, manufacturing, advertising, distributing, and otherwise introducing into the stream of commerce an item of roofing material and/or roofing component materials which contained extreme fire hazards known to DUPONT, CONKLIN, and FELTMANN but unknown to those foreseeably coming in contact with the product;
- b) In negligently manufacturing, designing, producing, advertising, distributing, selling and otherwise introducing into the stream of commerce roofing materials and/or roofing component materials which were by their defective and negligent design unreasonably dangerous, which easily ignited when exposed to foreseeable circumstances and ignition sources, and was extremely flammable when ignited, burning rapidly at high heat rates in foreseeable circumstances;
- c) In failing to incorporate feasible fire retardant features in the subject roofing materials and/or roofing component materials at a negligible cost increase;
- d) In failing to incorporate fire resistive barrier or fire retardant covering materials in the subject roofing materials and/or roofing component materials when doing so was commercially reasonable;

- e) In placing considerations of profits before safety in designing and constructing the subject roofing materials and/or roofing component materials;
- f) In failing to properly and adequately warn users and those foreseeable impacted by the product of the ignitability and flammability characteristics of the subject roofing materials and/or roofing component materials when exposed to an ignition source and/or foreseeable levels of fire-related heat;
- g) In being aware of the flammability characteristics of roofing materials and/or roofing component materials and the potential for such materials and/or component materials to drip and flow, creating liquid pool fires, increasing the risk of spreading to other combustible and enhancing the speed at which the furniture burns and in failing to warn or take steps to reduce those risks;
- h) In failing to exercise due care in the manufacture, design, and supply of the subject roofing materials and/or roofing component materials in that it was reasonable foreseeable that the product would ignite and create serious risk to human life;
- i) In such other particulars as the evidence may establish.

195. As a direct and proximate cause of the respective negligent, grossly negligent, reckless, willful, wanton and careless acts and/or omissions of Defendant DUPONT as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

196. Plaintiff is informed and believes he is entitled to a judgment against Defendant DUPONT for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT NINE

STRICT LIABILITY AS TO DUPONT

197. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

198. Sometime prior to June 18, 2007, DUPONT designed, manufactured and sold into the stream of commerce roofing materials and/or roofing component materials incorporated into the

Sofa Super Store structure by Defendant FELTMANN.

199. DUPONT is and was a seller engaged in the business of selling products such as the aforementioned roofing materials in question.

200. Its roofing materials and/or roofing component materials were unsafe and defective, which made them unreasonably dangerous to persons such as Plaintiff who could reasonably have been expected to come into contact or be affected by them.

201. DUPONT created a substantial risk of harm to those reasonably expected to be affected by the roofing materials including Plaintiff as a result of the roofing materials and/or roofing component materials' defective condition.

202. As a direct and proximate result of the defective roofing component materials and the breaches complained herein, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

203. Plaintiff is informed and believes he is entitled to a judgment against Defendant DUPONT for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT TEN

FAILURE TO WARN AS TO DUPONT

204. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

205. Defendant DUPONT and/or its agents, employees or servants knew or had reason to know that the roofing materials and/or roofing component materials in question were or were likely to be dangerous to the general public, including firefighters like Plaintiff.

206. Defendant DUPONT and/or its agents, employees or servants knew or had reason to

know that the roofing materials and/or roofing component materials in question posed a significant risk in the event of their being exposed to open flame, smoke and/or fire.

207. Defendant DUPONT and/or its agents, employees or servants knew or had reason to know that the roofing materials and/or roofing component materials' flammability and makeup rendered them unsuitable for use in facilities, such as the Sofa Super Store, where polyurethane foam containing products were to be stored, as the use of these roofing materials increased the risk of the ignition of polyurethane foam containing materials and the attendant danger of large-scale fire and the toxic smoke release to the general public, including to firefighters such as Plaintiff.

208. Upon information and belief, Defendant DUPONT and/or its agents, employees or servants lacked reason to believe that the general public, including roofing installation companies such as Defendant FELTMANN, furniture sellers and commercial lessors such as Defendants SOFA SUPER STORE and GOLDSTEIN LP, and firefighters such as Plaintiff would realize this potential danger.

209. Defendant DUPONT and/or its agents, employees or servants had a duty warn the roofing installation companies, such as Defendant FELTMANN, who installed its products and/or installed products containing DUPONT-made components, the furniture sellers and commercial lessors, such as Defendants SOFA SUPER STORE and GOLDSTEIN LP, on whose premises its products, or products containing DUPONT-made components, were installed, and firefighters such as Plaintiff of these dangers.

210. Defendant DUPONT and/or its agents, employees or servants breached this aforementioned duty to warn and acted negligently, grossly negligently, recklessly, and/or carelessly in at the following respects:

- a) Failing to provide necessary warning for the protection of persons coming into contact with its roofing materials and/or roofing materials containing highly flammable DUPONT-made components;
- b) Failing to warn the general public, including firefighters such as CHAMPAIGN, of the above-mentioned defects;
- c) Failing to place adequate warnings on the shipping materials and containers in which the roofing materials and/or roofing material components were transported, which would have given notice to the recipients of the full quantum of the danger posed by unreasonably dangerous, flammable, and hazardous materials therein;
- d) Failing to use that degree of care recognized for individuals such as the Defendant DUPONT in conducting the action alleged herein; and
- e) In such other particulars as the evidence may show.

211. As a direct and proximate result of Defendant DUPONT's failure to warn as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

212. Plaintiff is entitled to judgment against Defendant DUPONT for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such future, similar conduct these Defendants and others.

COUNT ELEVEN

NEGLIGENCE AS TO ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON

213. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

214. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON, the manufacturers/designers of furniture at issue in this action, owed to Plaintiff a duty of reasonable care, and were negligent, grossly negligent, reckless, willful,

wanton, and reckless and breached their individual duties of care owed to Plaintiff in the following manner:

215. At some time prior to June 18, 2007, Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON placed into the stream of commerce certain items of furniture which arrived and were warehoused and/or displayed at the Savannah Highway facility of Defendant SOFA SUPER STORE.

216. The items of furniture designed, assembled, and manufactured by Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON reached Defendant SOFA SUPER STORE without substantial changes in their respective conditions.

217. Upon information and belief, the certain items of furniture manufactured by Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON were stored in the far-right wing of the Sofa Super Store facility, which featured overhead fire doors which were improperly maintained and tested by Defendants SOFA SUPER STORE and GOLDSTEIN LP.

218. Upon information and belief, the subject fire began on June 18, 2007 and it quickly spread from the loading dock area to the adjacent room containing the furniture manufactured by Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON.

219. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON had knowledge of the dangerous propensities of the non-flame retardant polyurethane foam and/or other highly flammable fabrics incorporated into the subject

furniture, namely that if the non-flame retardant foam became exposed to an ignition source, it would burn rapidly as it constituted an ideal fuel source for a fire.

220. On June 18, 2007, Plaintiff sustained injuries when Defendants ALBANY's, BEST's, HUGHES', MOTION-EAZE's, OVERNIGHT's, PRIMO's, PEMBROOK's, and ROBINSON'S respective furniture easily caught fire within the far-right room of the SOFA SUPER STORE and burned quickly, emitting huge volumes of thick, dense, black, toxic smoke, a direct and proximate result of the negligent and reckless conduct of the Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON.

221. The Plaintiff was injured as a direct and proximate result of the negligent, careless, reckless, willful, wanton and intentional conduct of the Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and by their respective officers, employees, directors, and managers, in the following particulars:

- a) In negligently producing, designing, manufacturing, advertising, distributing, and otherwise introducing into the stream of commerce an item of furniture which contained extreme fire hazards known to ALBANY, BEST, HUGHES, MOTION EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON but unknown to those foreseeably coming in contact with the product;
- b) In negligently manufacturing, designing, producing, advertising, distributing, selling and otherwise introducing into the stream of commerce furniture which was by its defective and negligent construction unreasonably dangerous, which easily ignited when exposed to foreseeable circumstances and ignition sources and was extremely flammable when ignited, burning rapidly at high heat rates in foreseeable circumstances;
- c) In failing to incorporate feasible fire retardant foam in the subject furniture at a negligible cost increase;
- d) In failing to incorporate fire resistive barriers or fire retardant covering materials in the subject furniture when doing so was commercially reasonable;

- e) In receiving explicit flammability warnings from their respective polyurethane foam suppliers concerning the flammability characteristics of the foam, including the intense heat generated and failing to pass on those warnings;
- f) In placing considerations of profits before safety in designing and constructing the subject furniture;
- g) In failing to properly and adequately warn users and those foreseeably impacted by the product of the ignitability and flammability characteristics of the subject furniture when exposed to an ignition source;
- h) In failing to incorporate appropriate fire retardant foam and/or fire retardant covering or fire resistive barrier or interliners when a reasonable manufacturer would have done so with respect to subject furniture;
- i) In being aware of the incidence of serious injury and death in the United States from ignition of upholstered furniture in American homes and businesses and/or from prior lawsuits against furniture manufacturers because of the design and construction of its upholstered furniture products similar to the subject furniture, and in failing to take any steps whatsoever to improve the fire safety of the upholstered furniture products;
- j) In being aware of the flammability characteristic of polyurethane when burned to drip and flow, creating liquid pool fires, increasing the risk of spreading to other combustible materials and enhancing the speed at which the furniture burn and in failing to warn or take steps to reduce those risks;
- k) In negligently inspecting the previously described furniture so that it was permitted to be introduced into the stream of commerce furniture which was unreasonably dangerous and subject to easily igniting and rapidly burning under ordinary use;
- l) In failing to exercise due care in the manufacture, design, and supply of the subject furniture in that it was reasonably foreseeable that the product would ignite and create serious risk to human life;
- m) In negligently advertising furniture, the same or similar furniture which is the subject of this lawsuit, as being safe under ordinary use when it knew or should have known that such furniture was in fact unsafe and dangerous to human life under ordinary use, due to the tendency and proclivity of such furniture to catch fire quickly and burn rapidly and intensely,
- n) In negligently failing to recall its furniture, including the subject furniture, when due care and concern for human life imposed a duty to so do;

- o) In failing to act in a reasonable manner in the design and manufacture of its products, and;
- p) In such other particulars as the evidence may establish.

222. As a direct and proximate cause of the respective negligent, grossly negligent, reckless, willful, wanton and careless acts and/or omissions of Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON respectively, as set forth above, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

223. Plaintiff is informed and believes he is entitled to a judgment against Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON respectively for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT TWELVE

STRICT LIABILITY AS TO ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON

224. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

225. Sometime prior to June 18, 2007, ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON each respectively designed and manufactured furniture in question, and placed it in the stream of commerce.

226. ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON were a sellers engaged in the business of selling products such as the furniture in question.

227. Their respective furniture was unsafe and defective, which made them unreasonably dangerous to persons such as Plaintiff Eric Croft who could reasonably have been expected to come into contact or be affected by them.

228. ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON each created a substantial risk of harm to those reasonably expected to be affected by the furniture, including Plaintiff, as a result of the furniture's defective condition.

229. As a direct and proximate result of the defective furniture and the breaches complained of herein, Plaintiff suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above.

230. Plaintiff is informed and believes he is entitled to a judgment against Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON, respectively, for actual and punitive damages in an amount to be determined by the trier of fact.

COUNT THIRTEEN

FAILURE TO WARN AS TO ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON

231. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege:

232. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants knew or had reason to know that the furniture in question was or was likely to be dangerous to the general public, including firefighters like Plaintiff.

233. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants knew or had reason to know that the furniture in question would be stored with other products containing polyurethane foam when they were delivered to a furniture reseller such as SOFA SUPER STORE.

234. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants knew or had reason to know that the furniture in question when stored with other products containing polyurethane foam was or was likely to increase the danger to the general public, including firefighters such as Plaintiff.

235. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants knew or had reason to know that the furniture in question when stored with other products containing polyurethane foam was or was likely to increase the danger to the general public, including firefighters such as Plaintiff, in the event of fire, such that vendors and resellers of said furniture should have fire suppression systems in place to reduce the risk associated with the storage of said furniture.

236. Upon information and belief, Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants lacked reason to believe that the general public, including the furniture reseller(s) such as SOFA SUPER STORE to whom they sold their products, and firefighters such as Plaintiff, would realize this potential danger.

237. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants had a duty to warn the furniture reseller(s) to whom its products were sold, including SOFA SUPER STORE, the general

public, and firefighters such as Plaintiff about the dangerous and hazardous nature of their furniture.

238. Defendants ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON and/or their agents, employees or servants breached the aforementioned duty to warn and acted negligently, grossly, negligently, recklessly, and/or carelessly in at the following respects:

- a) Failing to provide necessary warning for the protection of persons using or likely to encounter the materials in said furniture;
- b) Failing to warn the general public, including firefighters such as Plaintiff of the above-mentioned defects;
- c) Failing to place adequate warnings on the shipping materials and containers in which the furniture was transported, which would have given notice to the recipients of the full quantum of the danger posed by unreasonably dangerous, flammable, and hazardous materials therein;
- d) Failing to place adequate warnings on the shipping materials and containers in which the furniture was transported, which would have given notice to the recipients of the need to implement an appropriate fire suppression system(s) to decrease the dangers of storing this product with other products containing polyurethane foam;
- e) Failing to use that degree of care recognized for individuals such the Defendants in conducting the action alleged herein; and
- f) In such other particulars as the evidence may show.

239. As a direct and proximate result of Defendants' failure to warn as set forth above, suffered injuries, including pain and suffering, mental anguish, terror and bodily injury as more particularly set forth herein above. Plaintiff is entitled to judgment against ALBANY, BEST, HUGHES, MOTION-EAZE, OVERNIGHT, PRIMO, PEMBROOK, and ROBINSON for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such future, similar conduct these Defendants and others.

WHEREFORE, having fully complained of the Defendants herein, the Plaintiffs would respectfully pray that this Honorable Court would:

- A. Find for the Plaintiffs and against the Defendants, jointly and severally, for all causes of action contained herein and award to the Plaintiffs just and equitable amounts in actual, compensatory and punitive damages as allowed by law; and
- B. Order Defendants to pay Plaintiff's attorney fees and costs, occasioned by the bringing of this action; and
- C. For pre-judgment interest;
- D. For such other and further relief as this Court deems just and proper.

THE MASON LAW FIRM, P.A.

BY: _____


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