

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ROBERT WOLFE,

Plaintiff,

v.

MOTOROLA MOBILITY, LLC,

Defendant.

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Case No. 6:19-cv-00972

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Robert Wolfe (hereinafter, “Robert”) files this his Original Complaint (“Complaint”) complaining of Defendant Motorola Mobility, LLC (“Motorola” or “Defendant”) and would respectfully show unto the Court as follows:

I.
PARTIES

1. Plaintiff Robert Wolfe is an individual and a citizen of the State of New Mexico.
2. Defendant Motorola is a limited liability company formed under the laws of the State of Illinois and was at all relevant times a wholly owned subsidiary of Lenovo, Inc., a Delaware Corporation with its principal place of business in the State of North Carolina. On information and belief, no member of Motorola is a citizen of the State of New Mexico. Motorola may be served with summons and copy of the Complaint through its statutory agent, CT Corporation System, 206 S. Coronado Avenue, Espanola, New Mexico 87532-2792.

II.
JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this case because there is complete diversity of citizenship between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.

4. This Court has jurisdiction over Motorola because it has purposefully availed itself of the privileges and benefits of conducting business in the State of New Mexico, and in doing so, Defendant committed torts and other illegal acts that comprise the subject matter of this suit. Specifically, Motorola manufactures phones and then markets, sells, distributes, and places the phones into the stream of commerce throughout the State of New Mexico.

5. Venue is proper in this Court and in this District because a substantial part of the events giving rise to Plaintiff's claims occurred in this District. 28 U.S.C. § 1391(b)(2).

III.
FACTUAL BACKGROUND

6. Plaintiff's claims arise out of a cellphone battery fire (the "Fire") that led to an ensuing motor vehicle crash (the "Crash").

7. On September 24, 2018, Robert was driving his Dodge pickup truck on State Road 128 in Lea County with his Moto E5 Plus smartphone (the "Phone" or "Moto Phone") on or near his person when the Phone overheated and caught fire. When the Phone caught fire, it began to burn him and caused Robert to leave his lane of travel and collide with another vehicle (a large tractor pulling a trailer) that was heading in the opposite direction.

8. The Fire resulted in Robert suffering severe 3rd-degree and 2nd-degree burns on his hips and severe 1st-degree burns on his right hand. In addition to sustaining serious and life-altering burn injuries caused by the Fire, Robert sustained other serious injuries due to the Crash.

Due to the seriousness of his injuries, Robert was flown from the scene of the Crash to Odessa Medical Center to receive emergency treatment. Robert's severe burn injuries left him in critical condition and required him to undergo multiple, painful surgeries and skin grafts. His injuries are truly life-altering and as a result, Robert will never be the same.

9. It would later be determined that prior to the Fire and Crash, the Phone was defective as that term is defined under New Mexico law. The Phone fails to meet basic industry standards in a way that renders it defective and unreasonably dangerous. The Phone's defective condition caused it to overheat and ignite, along with the flammable materials around it.

10. Motorola did not warn that the Phone was defective and unreasonably dangerous. At the time Robert purchased the Phone, Motorola knew or reasonably should have known that the phone was defective and unreasonably dangerous. One of the risks created by defects that exist in the phone is that the battery can overheat and catch fire. Such risks are well known, and both technologically and economically feasible alternative designs were known and available at the time this phone was designed and manufactured.

11. Prior to the Fire, Motorola was aware of problems with the Moto E5 Plus. In fact, Motorola is no stranger to its phones, like the Moto E5 Plus, overheating and catching fire. Post-marketing reports of the Moto E5 Plus overheating are widespread and well known. Rather than doing anything to prevent injuries from the Phone's known risk of overheating and catching fire, Motorola kept selling the Moto E5 Plus, never issued a recall or undertook efforts to properly fix the problem, and never took appropriate actions to warn consumers, i.e. Robert, about it.

12. The Phone's defective and unreasonably dangerous condition was and is a direct and proximate cause of Robert's injuries and damages. Robert's phone overheated and caught fire while it was on or near his person in his truck while he traveled down the highway. It is entirely

foreseeable that individuals will have their phone near them in their vehicles while driving. Robert Wolfe had no warning that such a mundane activity would lead to life-threatening and life-altering injuries.

IV.
CAUSES OF ACTION

COUNT ONE: PRODUCTS LIABILITY

13. Each of the foregoing paragraphs is incorporated herein for all purposes.

14. The Phone was designed, manufactured, and sold by Defendant.

15. At the time the Phone was sold, Defendant was in the business of designing, manufacturing, and selling phones like the Phone.

16. At the time the Phone was designed, manufactured, and sold by Defendant, it was defective in its design and unreasonably dangerous as designed. There was a safer alternative design than the one used that was both economically and technologically feasible. This safer alternative design would have prevented or significantly reduced the risk of the Fire that severely burned Robert Wolfe without impairing the utility of the Phone. At the time the Phone was sold, the defective design caused the Phone to catch fire unexpectedly and fail to function in a manner expected by ordinary consumers of cellphones. The defective and dangerous design of the Phone was a producing cause of the Fire that severely burned Robert Wolfe.

17. When the Phone left the possession of Defendant it was defective in its manufacture because it was an unreasonably dangerous product that departed from its intended design. The Phone was dangerous to an extent beyond that which would be contemplated by the ordinary user of the product with ordinary knowledge common to the community as to the product's characteristics. The defective and unreasonably dangerous manufacture of the Phone was a producing cause of the Fire that severely burned Robert Wolfe.

18. At the time the Phone left Defendant's possession, it did not have adequate warnings of the product's dangers that were known by, or should have been known by, Defendant. Defendant failed to give adequate instructions to avoid the dangers associated with its product such as overheating and/or unexpected and improper fires caused by the product. This failure rendered the Phone dangerous as marketed. This marketing defect was a producing cause of the Fire that severely burned Robert Wolfe.

19. At the time of the Fire, the Phone was in substantially the same condition as when it was placed into the stream of commerce. No alterations were made to the Phone. At the time of the fire, the Phone was in the same or substantially similar condition as it was when it left the control of Defendant.

COUNT TWO: BREACH OF IMPLIED WARRANTY

20. Each of the foregoing paragraphs is incorporated herein for all purposes.

21. Prior to and on the occurrence of the Fire, the Phone was used as a consumer good, mainly for personal, family, or private purposes, and used in that manner up to and including on the date of the Fire made the basis of this lawsuit.

22. Because of the defective and unreasonably dangerous condition of the Phone, Defendant, in distributing and selling the Phone in such condition, breached implied warranties of merchantability and fitness for a particular purpose. Those breaches of the implied warranties were a producing cause of the Fire that severely burned Robert Wolfe.

COUNT THREE: RECKLESSNESS, WILLFULNESS, AND/OR WANTONNESS

23. Each of the foregoing paragraphs is incorporated herein for all purposes.

24. Defendant owed Plaintiff duties that Defendant breached. Defendant committed acts of omission and commission recklessly, willfully, and/or wantonly. Those reckless, willful,

and/or wanton acts and omissions are generally described herein and include, but are not limited to:

- a. Failure to design a product that was not unreasonably dangerous;
- b. Failure to manufacture a product that was not unreasonably dangerous;
- c. Failure to provide an adequate warning about the dangers of the product;
and
- d. Distributing and selling an unreasonably dangerous product to which Defendant was consciously indifferent.

25. Each of these reckless, willful, and/or wanton acts and omissions by Defendant, singularly or in combination with others, proximately caused the Fire that severely burned Robert Wolfe.

26. Each of these reckless, willful, and/or wanton acts and omissions by Defendant, singularly or in combination with others were the direct and proximate cause of the extreme injuries and damages suffered by Robert Wolfe.

V. **DAMAGES**

27. Each of the foregoing paragraphs is incorporated herein for all purposes.

28. The conduct including, but not limited to, Defendant's unreasonably dangerous product and Defendant's negligent acts and/or omissions set forth above were a proximate cause of Plaintiff's injuries and Plaintiff's damages as follows:

- a. Past and future medical expenses;
- b. Past and future disfigurement;
- c. Past and future impairment;
- d. Past and future mental anguish;

- e. Past and future pain and suffering;
- f. Past and future loss of earnings;
- g. Pre- and post-judgment interest;
- h. Costs of court; and
- i. All other relief, in law and in equity, to which Plaintiff may be justly entitled.

VI.
PUNITIVE DAMAGES

29. Each of the foregoing paragraphs is incorporated herein for all purposes.

30. The conduct of Defendant with respect to, but not necessarily limited to, the allegations contained herein was reckless, willful, and/or wanton as those terms are defined under New Mexico law.

31. The reckless, willful, and/or wanton conduct of Defendant was committed by the agents, designees, representatives, and/or employees of Defendant and such conduct was ratified and/or acquiesced to by Defendant or in the alternative was committed by such agents, representatives, designees, and/or employees while acting in a managerial capacity with Defendant.

32. Plaintiff is entitled to an award of punitive damages in an amount to be determined by the trier of fact, but in at least an amount sufficient to punish Defendant for its conduct and deter others from similar conduct.

VII.
DEMAND FOR JURY


33. Plaintiff demands a jury trial and tenders the appropriate fee.

VIII.
PRAYER

Plaintiff respectfully requests that Defendant be cited to answer and appear, and, that upon final trial, Plaintiff recover damages as specified above from Defendant, plus costs of court, pre-judgment and post-judgment interest at the legal rate, and have such other and further relief, general and special, at law or in equity, to which Plaintiff may show himself entitled.

Respectfully submitted,

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