IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:11-CV-01526-CMA-MJW

KIM F. SMITH and YULDUZ SMITH individually and as parents and next friend of STANTON AZAM SMITH,

Plaintiffs,

v.

MONESSEN HEARTH SYSTEMS CO.; CFM MAJESTIC U.S. HOLDINGS, INC.; CFM U.S. CORPORATION; CFM CORP., 2089451 ONTARIO LTD.; CFM CANADA; VAIL SUMMIT RESORTS, INC., d/b/a BRECKENRIDGE PROPERTY MANAGEMENT; PAUL BENGTSON; MARY BENGTSON; SHEILA SCHULTHESZ; HENRY SCHULTHESZ; and JOHN DOE DEFENDANTS 1 and 2

Defendants.

SECOND AMENDED COMPLAINT FOR DAMAGES AND JURY DEMAND

Plaintiffs KIM F. SMITH and YULDUZ SMITH, individually on their own behalf, and as parents and next friend of STANTON AZAM SMITH, allege against Defendants MONESSEN HEARTH SYSTEMS CO.; CFM MAJESTIC U.S. HOLDINGS, INC.; CFM U.S. CORPORATION; CFM CORP., 2089451 ONTARIO LTD.; CFM CANADA; VAIL SUMMIT RESORTS, INC., d/b/a BRECKENRIDGE PROPERTY MANAGEMENT; PAUL BENGTSON; MARY BENGTSON; SHEILA SCHULTHESZ; HENRY SCHULTHESZ; and JOHN DOE DEFENDANTS (1 and 2) as follows:

INTRODUCTION

1. Defendant MONESSEN HEARTH SYSTEMS CO., and/or Defendants CFM MAJESTIC U.S. HOLDINGS, INC., CFM U.S. CORPORATION, CFM CORP., 2089451

EXHIBIT A

ONTARIO LTD., CFM CANADA, and/or Defendants JOHN DOE 1 and JOHN DOE 2 is the designer, manufacturer, distributor, builder and/or seller of a Majestic brand sealed, single glass–paned, gas fireplace that was designed and built so as to reach unreasonably high temperatures capable of causing third degree burns after contact with the surface of the sealed glass front of the fireplace for only a few seconds.

2. In June 2009, Plaintiffs were on vacation and were staying in Room 1403 of the Mountain Thunder Lodge & Town Homes ("Mountain Thunder Lodge"), a two bedroom condominium located at 50 Mountain Thunder Drive, Breckenridge, Colorado, 80424-8269, which was owned by Defendants PAUL BENGTSON and MARY BENGTSON (hereafter referred to individually and collectively as "BENGTSON"), and SHEILA SCHULTHESZ and HENRY SCHULTHESZ (hereafter referred to individually and collectively as "SCHULTHESZ"), and managed and maintained by Defendant VAIL SUMMIT RESORTS, INC., d/b/a BRECKENRIDGE PROPERTY MANAGEMENT (hereinafter "VAIL"). On June 27, 2009, Plaintiff STANTON AZAM SMITH accidentally came into contact with the glass front of the fireplace and suffered severe, life-altering burns on his hands. His injuries resulted in both irreparable physical injury and emotional distress.

3. Plaintiffs are seeking compensatory and other damages from Defendants resulting from Defendants' conduct in manufacturing and installing a Majestic brand sealed, single glass–paned, gas fireplace described as Item #B25A0B and Model#36BDVTRN (referred to herein "the HAZARDOUS FIREPLACE") in Room 1403 and failing to warn Plaintiffs of the danger presented by the HAZARDOUS FIREPLACE.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because this action is between citizens of different states and the amount in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs. None of the causes of action stated herein has been assigned or otherwise given to any other court or tribunal.

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(a)(2) because a substantial part of the events or omissions that gave rise to the injuries to Plaintiff, STANTON AZAM SMITH, occurred within this Judicial District and a substantial part of the real property where he was injured and that is the subject of this action is situated in this District. Venue also lies in this District pursuant to 28 U.S.C. §§1391(a)(3) and (c) because Defendants do substantial business within the State of Colorado and one or more of the Defendants is subject to personal jurisdiction in Colorado and in this Judicial District. Defendants MONESSEN HEARTH SYSTEMS CO., CFM MAJESTIC U.S. HOLDINGS, INC., CFM U.S. CORPORATION, CFM CORP., 2089451 ONTARIO LTD., CFM CANADA, JOHN DOE DEFENDANTS 1 and 2, and their owners, parent companies, subsidiaries, affiliates, and agents distribute, build, package and/or sell the HAZARDOUS FIREPLACES (defined below) within this Judicial District, including the HAZARDOUS FIREPLACE that burned Plaintiff STANTON AZAM SMITH. Defendant VAIL and its owners, parent companies, subsidiaries, affiliates, and agents manage and maintain resort condominiums and other resort lodging in this District that were and are furnished with the HAZARDOUS FIREPLACES, including the HAZARDOUS FIREPLACE that burned Plaintiff STANTON AZAM SMITH. Defendants BENGTSON and SCHULTHESZ are currently, and at all times relevant herein were, the legal

owners of Room 1403, a two-bedroom condominium at Mountain Thunder Lodge & Town Homes ("Mountain Thunder Lodge") located within this Judicial District, where the HAZARDOUS FIREPLACE was installed which burned Plaintiff STANTON AZAM SMITH. Room 1403 is leased by Defendants BENGTSON and SCHULTHESZ as vacation lodging and is otherwise owned and held by Defendants as investment property for the purpose of renting it to individuals who used and use Room 1403 as vacation accommodations.

6. The business activities of all Defendants in this Judicial District generate substantial compensation and profits for Defendants from the sale, building, distribution, furnishing, offering to consumers using resort accommodations of, and leasing of vacation condominiums with, HAZARDOUS FIREPLACES in this Judicial District. Defendants have also materially concealed critical information about the safety of the HAZARDOUS FIREPLACES in this Judicial District and continue to conceal and materially omit to disclose such critical information in this District so as to subject them to in personam jurisdiction here. Moreover, on information and belief, all Defendants own real property in the State of Colorado or are doing business within the State of Colorado, and otherwise maintain the requisite minimum contacts with the State of Colorado.

PARTIES

7. At all times herein relevant, Plaintiffs were individuals residing in Katy, Texas in Fort Bend County. Plaintiffs KIM F. SMITH and YULDUZ SMITH are the parents and next friend of STANTON AZAM SMITH, twelve months and three weeks old at the time of the incident which occurred on June 27, 2009.

8. As the parents of Plaintiff, STANTON AZAM SMITH, Plaintiffs KIM F. SMITH and YULDUZ SMITH are legally responsible pursuant to Colorado Revised Statutes Annotated ("C.R.S.A") § 14-6-110 and Texas Family Code §151.001(a)(3) (Vernon 2007) for the medical bills incurred for the past, present and future medical care and treatment of STANTON SMITH during the time of his minority, including but not limited to, the medical bills related to the burn injuries that STANTON SMITH sustained on June 27, 2009.

9. At all times referenced herein, Defendant MONESSEN HEARTH SYSTEMS CO. and its owners, parent companies, subsidiaries, affiliates, agents, distributors and vendors designed, manufactured, assembled, distributed, supplied, packaged, marketed, advertised, provided instructions and warnings for, and/or sold the HAZARDOUS FIREPLACE using the brand name "Majestic". Defendant MONESSEN HEARTH SYSTEMS CO. is a privately held company organized under the laws of the State of Kentucky with a principal place of business at 149 Cleveland Drive, Paris, Kentucky 40361. Defendant Monessen's agent for service of process is CT Corporation Systems, 306 West Main Street, Suite 512, Frankfort, Kentucky 40601.

10. On information and belief, at all times referenced herein, Defendants CFM MAJESTIC U.S. HOLDINGS, INC. and CFM U.S. CORPORATION and their owners, parent companies, subsidiaries, affiliates, agents, distributors and vendors (hereafter "CFM US") designed, manufactured, assembled, distributed, supplied, packaged, marketed, advertised, provided instructions and warnings for, and/or sold the HAZARDOUS FIREPLACE using the brand name "Majestic". On information and belief, Defendants CFM US are privately held companies organized under the laws of the State of Delaware. Defendant CFM MAJESTIC U.S.

HOLDINGS, INC.'s agent for service of process is Wilmington Trust SP Services, Inc., 1105 N. Market Street, Suite 1300, Wilmington, Delaware. Defendant CFM U.S. CORPORATION's agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware.

11. On information and belief, at all times referenced herein, Defendants CFM CORP., 2089451 ONTARIO LTD. and CFM CANADA and their owners, parent companies, subsidiaries, affiliates, agents, distributors and vendors (hereafter "CFM CANADA") designed, manufactured, assembled, distributed, supplied, packaged, marketed, advertised, provided instructions and warnings for, and/or sold the HAZARDOUS FIREPLACE using the brand name "Majestic". On information and belief, Defendants CFM CANADA are privately held Canadian companies.

12. On information and belief, JOHN DOE DEFENDANTS 1 and 2 distributed and/or sold the HAZARDOUS FIREPLACE that injured PLAINTIFF STANTON AZAM SMITH. The names and addresses or residences of JOHN DOE DEFENDANTS (1 and 2) are presently unknown to the Plaintiffs.

13. At all times referenced herein, Defendant VAIL and its owners, parent companies, subsidiaries, affiliates, and agents managed and maintained the Mountain Thunder Lodge condominium that Plaintiffs stayed in during their vacation between June 25, 2009 and July 9, 2009, where the HAZARDOUS FIREPLACE was situated that severely burned STANTON AZAM SMITH on June 27, 2009. Defendant VAIL is incorporated under the laws of the State of Delaware and has a principal place of business at 390 Interlocken Crescent, Broomfield,

Colorado 80021. Defendant VAIL's agent for service of process is Corporation Service Company, 1560 Broadway, Suite 2090, Denver, Colorado 80202.

14. At all times referenced herein, Defendants BENGTSON and SCHULTHESZ were the legal owners of Room 1403, a two bedroom condominium at Mountain Thunder Lodge, which Defendants BENGTSON and SCHULTHESZ rented to Plaintiffs pursuant to an executed rental agreement or other authorization granting Plaintiffs permission to occupy Room 1403 for their family vacation between June 25, 2009 and July 9, 2009. Defendants BENGTSON are citizens of the State of Illinois, residing in DuPage County at 22W075 Stratford Court, Glen Ellyn, IL 60137. Defendants SCHULTHESZ are citizens of the State of Illinois, residing in DuPage County at 22W336 Glen Valley Drive, Glen Ellyn, IL 60137.

15. Plaintiffs are informed and believe and thereon allege that each Defendant was at all times herein mentioned the agent, servant, controlling and actively participating parent, subsidiary, affiliate, relation, or employee of each of the other Defendants and were at all times herein mentioned acting within the course and scope of said agency, service, relationship and/or employment and acting with the consent and knowledge of, or in consort with, each other Defendant.

16. In engaging in the conduct alleged herein, each Defendant acted as the agent for each of the other Defendants, or the predecessors in interest for each of the other Defendants, and as a single, unified going concern.

GENERAL ALLEGATIONS

17. Defendants MONESSEN, CFM US and CFM CANADA (hereafter collectively referred to as "MONESSEN") offered for distribution and sale the HAZARDOUS FIREPLACE

with the specific intention and purpose that it be installed by builders in vacation and resort homes and dwellings throughout the State of Colorado, including Room 1403 of the Mountain Thunder Lodge, the condominium occupied by Plaintiffs on June 27, 2009. Defendant MONESSEN represented that its HAZARDOUS FIREPLACES were safe, of merchantable quality, fit for their intended and reasonably foreseeable uses, and affixed with warnings and information regarding potential dangers and hazards which reasonable consumers would expect and assume to be provided.

18. Defendant MONESSEN failed to disclose or warn of the true facts, to wit, that the HAZARDOUS FIREPLACE is a dangerous and patently unsafe hazard to be used in a residence given the ability of the unguarded single pane glass sealed front to heat up to temperatures in excess of 400 degrees Fahrenheit — well in excess of a temperature necessary to cause third degree burns to skin contacting the glass even momentarily. This hazard, previously known to Defendants, creates an unreasonable potential for harm to consumers of the HAZARDOUS FIREPLACES, including consumers using vacation and resort accommodations which are furnished with HAZARDOUS FIREPLACES throughout the State of Colorado.

19. On information and belief, JOHN DOE DEFENDANTS 1 and 2 distributed and/or sold the HAZARDOUS FIREPLACE that injured PLAINTIFF STANTON AZAM SMITH.

20. At all times relevant herein, Room 1403 of the Mountain Thunder Lodge was owned by Defendants BENGTSON and SCHULTHESZ. Either Defendants BENGTSON and/or SCHULTHESZ, or Defendant VAIL purchased and installed the HAZARDOUS FIREPLACE in Room 1403. Defendant VAIL controlled access to and was responsible for

maintaining Room 1403 in a reasonably safe condition during Plaintiffs' occupancy from June 25, 2009 through July 9, 2009. Defendant VAIL, as manager of the leasing arrangements for Room 1403, secured the rental of the condominium by Defendants BENGTSON and SCHULTHESZ, to Plaintiffs.

21. Defendant VAIL also provided Plaintiffs with access to the condominium and permission to occupy it during the relevant time period, knowing of the dangers posed by the HAZARDOUS FIREPLACE or recklessly disregarding the damages posed by the HAZARDOUS FIREPLACE and failing to warn Plaintiffs about the HAZARDOUS FIREPLACE or failing to take measures to prevent the injuries to Plaintiffs, including but not limited to, installing a safety device to protect against the risk of severe burns.

22. As on-site managers of the Mountain Thunder Lodge condominiums, Defendant VAIL owed Plaintiffs a duty of care to provide them with safe, danger-free vacation lodging during their use and occupation of Room 1403, and to warn Plaintiffs of the risks and dangers posed by the HAZARDOUS FIREPLACE. Defendant VAIL breached this duty of care by failing to warn Plaintiffs of the risks of the HAZARDOUS FIREPLACE and by failing to take corrective measures to prevent burn injuries to renters and guests using Room 1403 as vacation lodging.

23. Defendants BENGTSON and SCHULTHESZ, as owners of Room 1403 of the Mountain Thunder Lodge, also owed Plaintiffs a duty of care to provide safe, danger-free lodging. Despite Defendants BENGTSON's and SCHULTHESZ' knowledge of the risks and dangers posed by the HAZARDOUS FIREPLACE and their receipt from Plaintiffs of substantial compensation for safe and healthy resort lodging during the relevant time period, they breached

their duty by failing to warn Plaintiffs about the risks and dangers and failing to take measures to prevent the injuries to Plaintiffs, including but not limited to, installing a safety device to protect against the risk of severe burns.

24. In addition, Defendants BENGTSON and SCHULTHESZ warranted to Plaintiffs through the rental agreement that Room 1403 was safe and habitable. This warranty was false because Room 1403 was furnished with the HAZARDOUS FIREPLACE that caused severe burn injuries to Plaintiff, STANTON AZAM SMITH. Defendants failed to provide a safe premises for Plaintiffs' vacation lodging, given the presence of, and the dangers posed by, the HAZARDOUS FIREPLACE.

25. As a result of the acts and omissions of Defendants and each of them, on June 27, 2009, Plaintiff STANTON AZAM SMITH, only one year and three weeks old, suffered second and third degree burns to his hands upon making accidental contact with the unprotected glass of the HAZARDOUS FIREPLACE in Room 1403 of the Mountain Thunder Lodge. Plaintiff STANTON AZAM SMITH's injuries are severe, life-altering and permanent in nature.

26. The fireplace which burned STANTON SMITH is a Majestic brand sealed, single glass–paned, gas fireplace described as Item #B25A0B and Model#36BDVTRN sold by Defendant MONESSEN. Defendant MONESSEN was aware that this model of fireplace under normal conditions heats and heated the surface of the glass exposed to the room up to an outrageous temperature in excess of 400 degrees Fahrenheit. By way of comparison, water boils at 212 degrees Fahrenheit and the highest standard setting on a clothes iron is approximately 205 degrees Fahrenheit.

27. Defendant MONESSEN distributed the HAZARDOUS FIREPLACES through builders of resort and vacation condominiums and homes, with the knowledge, understanding and obvious intent that these fireplaces would be installed at heights for which the decorative glass front was perfectly suited to contact by infants and small children. Yet, Defendant MONESSEN took no steps to guard against direct contact with the super-heated glass or to meaningfully warn about the extreme glass heat and burn potential.

28. No guard or other device to prevent or deter children from coming into direct contact with the super-heated glass was provided by Defendant MONESSEN or Defendant VAIL. Defendants' pattern of conduct of ignoring basic safety issues concerning its product, Plaintiffs allege, shocks the public conscience.

29. The gravity of Defendant MONESSEN's conscious disregard is amplified by its inaction in the face of remediation by other manufacturers in the fireplace market. One of MONESSEN's main competitors in the home gas fireplace market, Home and Hearth Technology (hereafter "HHT"), began selling its fireplaces with a standard glass guard several years before STANTON AZAM SMITH was injured. HHT's continued viability in the fireplace market despite the negligible cost expended to produce the guards and despite the risk to ambiance the guards present provided Defendant MONESSEN with a compelling indication that the consumer market would have tolerated well a change to their product that would have addressed elementary safety issues. Any alleged justification by MONESSEN for continuing to provide fireplaces which posed the danger of children making direct contact with the super-heated decorative glass was and is frivolous and contrived.

30. Based on information and belief, for years Defendant MONESSEN has tested its fireplaces, including the HAZARDOUS FIREPLACE for compliance with ANSI standard Z21.88. In order to obtain certification of the HAZARDOUS FIREPLACE under this standard, Defendant MONESSEN had to have known the extreme temperatures the decorative glass of its fireplaces, including the HAZARDOUS FIREPLACE, were reaching. This is because ANSI standard Z21.88, with which Defendant tests for compliance, requires that the exposed room-sided glass surface be tested, recorded, and preserved. As a result, Defendant MONESSEN cannot claim it was not aware of the temperatures that the HAZARDOUS FIREPLACE could reach.

31. Based on information and belief, Defendant MONESSEN disregarded several inquiries and complaints by customers specifically identifying the heat of the decorative glass and its burn potential, all of which provided MONESSEN with knowledge of the problem and its probable consequences for infants and children prior to the development of the HAZARDOUS FIREPLACE which burned Plaintiff STANTON AZAM SMITH. These complaints were received and directed to directors and officers of MONESSEN, imparting clear knowledge of the problem to those at the highest level of Defendant MONESSEN's operations.

32. At the same time, Defendant MONESSEN callously disregarded and ignored important sources for information pertinent to the hazard posed by the HAZARDOUS FIREPLACE including, inter alia, The American Burn Association and burn physicians. Defendant MONESSEN did so in the face of a growing body of published evidence that clearly identified a dramatic and increasing risk of severe burns to infants and children directly correlated to fireplaces like the HAZARDOUS FIREPLACE. By way of example, a

January/February 2004 article in the American Burn Association – Journal of Burn Care and Rehabilitation entitled "Contact Palmar Burns in Toddlers from Glass Enclosed Fireplaces" reached the following conclusions:

- "We have seen an alarming increase in the incidence of pediatric palm burns associated with gas fireplaces. The increasing popularity of these units places more children at risk."
- During the period of review, "A 15-fold increase in incidence was observed."
- "Pediatric burns resulting from palmar contact with the glass enclosures of gas fireplaces have emerged as an avoidable new danger within the home. Although most of these injuries heal with conservative treatment alone, many require surgery or other intensive management to regain acceptable function."

33. On information and belief, Defendant MONESSEN attempts to justify its conduct and its distribution of the HAZARDOUS FIREPLACE based upon its alleged compliance with and certification of the HAZARDOUS FIREPLACE under American National Standards Institute ("ANSI") standard Z21.88. This assertion itself reinforces the depths of MONESSEN's conscious disregard of the rights of consumers and vulnerable children, for the simple reason that standard Z21.88 does not in any way regulate the temperature of the glass. Glass temperature is tested solely for purposes of calculating the estimated interior glass temperature to assess the heat resistant properties of the chosen glass material. In other words, the ANSI standard results in MONESSEN knowing what the room-sided glass temperature is but provides no regulatory consideration or oversight of that temperature, no matter how hot.

34. At the same time, the ANSI standard upon which Defendant MONESSEN purports to rely in justifying its conduct provides a maximum surface temperature for everything but the decorative glass. Specifically, in order to obtain ANSI certification, the exposed surfaces, excluding the glass, must be tested to a temperature not in excess of 117 degrees

Fahrenheit plus ambient room temperature. The purpose of this test is to "mitigate potential burning of flesh." Despite realizing that the maximum temperature standard for the decorative glass of the HAZARDOUS FIREPLACE would be far in excess of the maximum temperature applicable to the non-glass surfaces, Defendant MONESSEN continued to manufacture and sell the HAZARDOUS FIREPLACE.

35. The apparent dissonance between the maximum temperature test for the exposed surface of everything but the glass and the extreme temperatures the decorative glass will achieve has been a topic of discussion at a large number of ANSI meetings over the past several years. On information and belief, Defendant MONESSEN attended these ANSI meetings where the topic of the extreme temperatures reached by the decorative glass was discussed, or was otherwise aware of these discussions at ANSI meetings.

36. In the end, Defendant MONESSEN, including its managing agents, directors, officers and employees, knew full well of the extreme danger its HAZARDOUS FIREPLACES posed and the probable consequences of normal consumer use of the HAZARDOUS FIREPLACES, i.e., severe pediatric burns, yet chose to forego expending the negligible cost of manufacturing the HAZARDOUS FIREPLACES with the protective guards and chose to promote the "ambiance" of the HAZARDOUS FIREPLACES over basic child safety and protection. MONESSEN engaged in this conduct in order to reap substantial profits in the resort and vacation accommodations building market, which has existed in Colorado over the last decade. In so conducting itself, Defendant MONESSEN acted in conscious disregard of the rights of consumers and their children.

37. On information and belief, Defendant VAIL was aware that the HAZARDOUS FIREPLACE that burned Plaintiff STANTON AZAM SMITH heated to extremely high temperatures, sufficient to inflict severe burns on people, including small children, renting and/or lodging in the vacation condominiums maintained and managed by Defendant VAIL, where such HAZARDOUS FIREPLACES were installed. Defendant VAIL knew or should have known that measures were required to remediate the dangerous condition posed by the HAZARDOUS FIREPLACE, including simply disconnecting it, installing a protective guard or other safety device, and/or posting an appropriate warning of the hazard it presented. Defendant VAIL disregarded the known risk and dangers posed by HAZARDOUS FIREPLACES on its premises, including the HAZARDOUS FIREPLACE located in Room 1403 of the Mountain Thunder Lodge, and failed to provide a safe premises for Plaintiffs.

38. On information and belief, Defendants BENGTSON and SCHULTHESZ were aware that the HAZARDOUS FIREPLACE in Room 1403 of the Mountain Thunder Lodge that burned Plaintiff STANTON AZAM SMITH heated to extremely high temperatures, sufficient to inflict severe burns on people, including small children, renting and/or lodging in Room 1403. Defendants BENGTSON and SCHULTHESZ knew or should have known that measures were required to remediate the dangerous condition posed by the HAZARDOUS FIREPLACE, including simply disconnecting it, installing a protective guard or other safety device, and/or posting an appropriate warning of the hazard it presented. Consequently, Defendants consciously disregarded the known risk and dangers posed by the HAZARDOUS FIREPLACE in Room 1403, and despite having received substantial compensation from Plaintiffs for the lease of the unit, failed to provide a safe premises for Plaintiffs.

FIRST CLAIM FOR RELIEF
Strict Products Liability
(by STANTON SMITH Against Defendants MONESSEN, JOHN DOE DEFENDANT 1 and JOHN DOE DEFENDANT 2)

39. Plaintiff STANTON AZAM SMITH incorporates by reference all paragraphs and allegations in this Complaint as if fully set forth herein.

40. On or about June 27, 2009, Plaintiff STANTON AZAM SMITH suffered severe physical and emotional injuries when he accidentally came into contact with the sealed glass front of the HAZARDOUS FIREPLACE in Room 1403 of the Mountain Thunder Lodge, which was rented by his parents as vacation accommodations.

41. Defendant MONESSEN designed, engineered, manufactured, tested, assembled, marketed, advertised, distributed, installed, and/or sold the HAZARDOUS FIREPLACE and at all times relevant herein was engaged in the business of selling the HAZARDOUS FIREPLACES in a defective condition that was unreasonably dangerous to its users.

42. Defendant MONESSEN is strictly liable to Plaintiff STANTON AZAM SMITH because the HAZARDOUS FIREPLACE was defective and unreasonably dangerous for normal use due to its defective design, manufacture, production, assembly, marketing, advertising, testing, sale, maintenance and service, and due to MONESSEN'S failure to provide adequate warnings of the substantial dangers known or knowable at the time of the HAZARDOUS FIREPLACE's design, engineering, manufacturing, testing, assembly, marketing, advertising, inspection, maintenance, sale and/or distribution. Defendant MONESSEN is also strictly liable to Plaintiff STANTON AZAM SMITH because it failed to provide a safety device to prevent burns of small children and other foreseeable users of the HAZARDOUS FIREPLACE.

43. Defendant designed, engineered, manufactured, tested, assembled, marketed, advertised, inspected, maintained, sold, distributed, and placed on the market and in the stream of commerce a defective product, the HAZARDOUS FIREPLACE, unreasonably dangerous to the consumer, expecting and/or knowing that the product would reach and did reach the ultimate consumer without substantial change in the defective condition it was in from the date when it left the Defendant's control.

44. Defendant MONESSEN knew or should have known that the ultimate users or consumers of this product would not, and could not, inspect the HAZARDOUS FIREPLACE so as to discover the latent defects described above. As a result, the HAZARDOUS FIREPLACE was in an unreasonably dangerous condition when it left Defendant's control that was not contemplated by the ultimate user of the fireplace.

45. Defendant MONESSEN knew or should have known of the substantial dangers involved in the reasonably foreseeable use of the HAZARDOUS FIREPLACE, whose defective design, manufacturing and lack of warnings caused it to have an unreasonably dangerous propensity to heat up to dangerous and injury—producing temperatures under normal and reasonable use, and thus the HAZARDOUS FIREPLACE had and has a high propensity to cause injury and/or death to those near said FIREPLACE.

46. The HAZARDOUS FIREPLACE was, at the time of Plaintiff STANTON AZAM SMITH's injury, being used in the manner intended by Defendant MONESSEN, and in a manner that was reasonably foreseeable by Defendant as involving a substantial danger not readily apparent if adequate warnings of the danger were not given.

47. Plaintiff STANTON AZAM SMITH was a foreseeable user of the HAZARDOUS FIREPLACE.

48. Defendant MONESSEN, despite clear knowledge of the extreme and hidden danger posed by the defect in the HAZARDOUS FIREPLACE, failed to provide adequate warnings of the defect to consumer operators of HAZARDOUS FIREPLACE so that operators could protect themselves and their children from the danger posed by the HAZARDOUS FIREPLACE.

49. Plaintiff STANTON AZAM SMITH's damages and injuries were the legal and proximate result of Defendant MONESSEN's failure in design and in failing to provide adequate warnings of the risks of substantial harm associated with the foreseeable use of the HAZARDOUS FIREPLACE. Said Plaintiff has suffered compensatory and general damages in excess of the jurisdictional minimum of this Court as a result, which will be shown according to proof at the time of trial.

50. In the event jurisdiction cannot be obtained over the manufacturer of the HAZARDOUS FIREPLACE, the JOHN DOE DEFENDANTS, as sellers and/or distributers of the HAZARDOUS FIREPLACE, will be deemed the "manufacturer" of the product under C.R.S. § 13-21-402. As "manufacturers", the JOHN DOE DEFENDANTS are strictly liable to Plaintiffs for the injuries and damages suffered as a result of the defective and unreasonably dangerous HAZARDOUSE FIREPLACE.

SECOND CLAIM FOR RELIEF

Negligence
(by STANTON SMITH Against Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2)

51. Plaintiff STANTON AZAM SMITH incorporates by reference all paragraphs and allegations in this Complaint as if fully set forth herein.

52. Defendant MONESSEN owed a duty of care to Plaintiff STANTON AZAM SMITH to use reasonable care in the design, engineering, manufacturing, testing, assembly, marketing, advertisement, inspection, maintenance, sale, warning, distribution, placement, and installation of the HAZARDOUS FIREPLACE as used by the public and ultimate users, like Plaintiffs, for the purpose for which it was intended.

53. DEFENDANTS JOHN DOE 1 and JOHN DOE 2 owed a duty of care to Plaintiff STANTON AZAM SMITH to use reasonable care in the sale, warning, distribution, placement, and installation of the HAZARDOUS FIREPLACE as used by the public and ultimate users, like Plaintiffs, for the purpose for which it was intended.

54. Defendants breached their respective duties of care and are guilty of one or more of the following negligent acts and/or omissions:

a. Failing to use due care in the design, engineering, manufacturing, testing, assembly, marketing, advertising, inspection, maintenance, sale and/or distribution of the HAZARDOUS FIREPLACE and/or to utilize and/or implement reasonably safe designs and/or warnings in its manufacture;

b. Failing to provide adequate and proper warnings to the public and to Plaintiffs of the HAZARDOUS FIREPLACE'S danger when used in the manner for which it was intended;

c. Failing to design, manufacture and incorporate or to retrofit the HAZARDOUS FIREPLACE with reasonable safeguards and protections against burns and injuries reasonably foreseeable when used in the manner for which it was intended;

d. Failing to adequately identify and mitigate hazards in accordance with good engineering practices and to give reasonable warnings;

e. Failing to make timely and adequate corrections to the manufacture and design of the HAZARDOUS FIREPLACE;

f. Failing to use due care in the testing, inspection, maintenance and servicing of the HAZARDOUS FIREPLACE at all times prior to the incident; and

g. Otherwise being careless and negligent.

55. Defendant MONESSEN knew or should have known from its testing of the production models of the HAZARDOUS FIREPLACE, and/or its predecessors, and/or from other fireplaces it manufactured, distributed, inspected and maintained that said FIREPLACE was defective.

56. Defendant MONESSEN knew or should have known that the HAZARDOUS FIREPLACE had a propensity to become unreasonably and dangerously hot. Defendant knew safer alternatives, adequate corrections and/or inexpensive or cost-free remediation were available which would have avoided the accident and Plaintiff STANTON AZAM SMITH's damages and injuries.

57. Defendant MONESSEN designed, engineered, manufactured, tested, assembled, marketed, advertised, inspected, maintained, sold, distributed, placed on the market and in the stream of commerce, maintained, serviced, and installed the HAZARDOUS FIREPLACE in a

manner and condition that was unreasonably dangerous to the consumer. Plaintiff STANTON AZAM SMITH's damages and injuries were the legal and proximate result of the negligent acts and omissions of Defendant MONESSEN. As a result, Defendant MONESSEN is liable to Plaintiff STANTON AZAM SMITH for compensatory and general damages according to proof at the time of trial.

58. Defendants JOHN DOE 1 and JOHN DOE 2 tested, assembled, marketed, advertised, inspected, maintained, sold, distributed, placed on the market and in the stream of commerce, maintained, serviced, and/or installed the HAZARDOUS FIREPLACE in a manner and condition that was unreasonably dangerous to the consumer. Plaintiff STANTON AZAM SMITH's damages and injuries were the legal and proximate result of the negligent acts and omissions of Defendant MONESSEN. As a result, Defendant MONESSEN is liable to Plaintiff STANTON AZAM SMITH for compensatory and general damages according to proof at the time of trial.

THIRD CAUSE OF ACTION
Negligence
(by KIM SMITH AND YULDUZ SMITH Derivatively Against Defendant MONESSEN, JOHN DOE 1 and JOHN DOE 2)

59. Plaintiffs KIM SMITH AND YULDUZ SMITH incorporate by reference all paragraphs and allegations in this Complaint as if fully set forth herein.

60. Plaintiffs KIM F. SMITH and YULDUZ SMITH, next friends and parents of Plaintiff STANTON AZAM SMITH, are legally responsible for their son's past, present and future medical expenses resulting from the June 27, 2009 accident in which he was severely burned by the HAZARDOUS FIREPLACE. As a legal and proximate cause of the breach of the duty of care Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 owed to all three

Plaintiffs, Plaintiffs KIM F. SMITH, and YULDUZ SMITH have incurred and paid substantial medical bills for the medical care and treatment of their son's injuries resulting from the June 27, 2009 accident and have and will continue to incur and pay substantial sums owed for his future medical care and treatment during the time of STANTON AZAM SMITH's minority. Thus, Plaintiffs KIM F. SMITH and YULDUZ SMITH have suffered and sustained economic losses as a proximate cause of the negligence of these Defendants, and each of them.

61. As a result, Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 are liable to Plaintiffs KIM F. SMITH and YULDUZ SMITH for their compensatory and general damages according to proof at the time of trial.

FOURTH CLAIM FOR RELIEF
Premises Liability
(by STANTON SMITH Against Defendants VAIL, BENGTSON and SCHULTHESZ)

62. Plaintiff STANTON AZAM SMITH incorporates by reference all paragraphs and allegations in this Complaint as if fully set forth herein.

63. Defendants VAIL, SCHULTHESZ and BENGTSON are "landowners" of Room 1403, a two-bedroom condominium at Mountain Thunder Lodge & Town Homes, under the definition of C.R.S.A. § 13-21-115(1).

64. Plaintiffs were considered invitees during their occupancy of Room 1403, a two-bedroom condominium at Mountain Thunder Lodge & Town Homes, from June 25, 2009 through July 9, 2009. As such, Defendants VAIL, SCHULTHESZ and BENGTSON had a duty of reasonable care to protect against dangers in Room 1403, including those posed by the HAZARDOUS FIREPLACE, which they actually knew or should have known about.

65. The duty imposed on Defendants VAIL, SCHULTHESZ and BENGTSON as "landowners" is non-delegable.

66. Defendants VAIL, SCHULTHESZ and BENGTSON knew or should have known about the dangers posed by the HAZARDOUS FIREPLACE, including, without limitation, its propensity to become unreasonably and dangerously hot.

67. Defendants VAIL, BENGTSON and SCHULTHESZ provided vacation lodging to Plaintiffs STANTON AZAM SMITH, KIM F. SMITH, and YULDUZ SMITH that was unreasonably unsafe and dangerous due to the presence of the HAZARDOUS FIREPLACE.

68. Despite the fact that Defendants VAIL, BENGTSON and SCHULTHESZ knew or should have known about the dangers posed by the HAZARDOUS FIREPLACE, Defendants, and each of them, failed to remediate the dangerous condition posed by the HAZARDOUS FIREPLACE, including by simply disconnecting it, installing a protective guard or other safety device, and/or by posting an appropriate warning of the hazard it presented. As a result, Defendants VAIL, BENGTSON and SCHULTHESZ breached the duty of care they owed to Plaintiffs.

69. As a legal and proximate cause of Defendants VAIL's, BENGTSON's and SCHULTHESZ' breach of the duty of care to provide safe premises for all three Plaintiffs, Plaintiff STANTON AZAM SMITH suffered severe, permanent, and life-altering physical and psychological injuries and pain and suffering. As a result, Defendants, and each of them, is liable to Plaintiffs for compensatory and general damages according to proof at the time of trial.

FIFTH CLAIM FOR RELIEF
Premises Liability
(by KIM SMITH AND YULDUZ SMITH Derivatively Against Defendants VAIL, BENGTSON and SCHULTHESZ)

70. Plaintiffs KIM SMITH AND YULDUZ SMITH incorporate by reference all paragraphs and allegations in this Complaint as if fully set forth herein.

71. Plaintiffs KIM F. SMITH and YULDUZ SMITH, next friends and parents of Plaintiff STANTON AZAM SMITH, are legally responsible for their son's past, present and future medical expenses resulting from the June 27, 2009 accident in which he was severely burned by the HAZARDOUS FIREPLACE. As a legal and proximate cause of Defendants VAIL's, BENGTSON's and SCHULTHESZ' breach of the duty of care each Defendant owed to all three Plaintiffs, Plaintiffs KIM F. SMITH, and YULDUZ SMITH have incurred and paid substantial medical bills for the medical care and treatment of their son's injuries resulting from the June 27, 2009 accident and have and will continue to incur and pay substantial sums owed for his future medical care and treatment during the time of STANTON AZAM SMITH's minority. Thus, Plaintiffs KIM F. SMITH and YULDUZ SMITH have suffered and sustained economic losses as a proximate cause of the Defendants VAIL's, BENGTSON's and SCHULTHESZ' breach of the duty of care owed to each of the Plaintiffs.

72. As a result, Defendants VAIL, BENGTSON and SCHULTHESZ are liable to Plaintiffs STANTON AZAM SMITH, KIM F. SMITH and YULDUZ SMITH for their compensatory and general damages according to proof at the time of trial.

SIXTH CAUSE OF ACTION
Breach of Colorado Consumer Protection Act
(By All Plaintiffs Against Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2)

73. Plaintiffs incorporate by reference all paragraphs and allegations in this Complaint as set forth herein.

74. Defendant MONESSEN is in the business of designing, manufacturing, advertising and selling the HAZARDOUS FIREPLACES for use by consumers such as Plaintiffs. In the course of its business dealings with numerous customers and consumers in Colorado, Defendant has wrongfully concealed and omitted to disclose the dangers and risks of severe burn injuries presented by the HAZARDOUS FIREPLACES, of which Defendant was aware, as more particularly described below.

75. On information and belief, Defendants JOHN DOE 1 and/or JOHN DOE 2 are in the business of advertising and selling the HAZARDOUS FIREPLACES for use by consumers such as Plaintiffs. In the course of their business dealings with numerous customers and consumers in Colorado, Defendants have wrongfully concealed and omitted to disclose the dangers and risks of severe burn injuries presented by the HAZARDOUS FIREPLACES, of which Defendants were aware, as more particularly described below.

76. By knowingly concealing and failing to disclose the threat of severe burns to small children that the HAZARDOUS FIREPLACES present, Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 have engaged in deceptive or unfair trade practices and have violated the Colorado Consumer Protection Act, C.R.S.A. § 6-1-105(1)(u).

77. By designing, manufacturing, selling, distributing, marketing and advertising the HAZARDOUS FIREPLACES without providing an adequate warning about the danger they

pose to consumer users like Plaintiffs, and by otherwise causing the FIREPLACES to be placed into the stream of commerce for use by consumers in the State of Colorado and throughout the United States without disclosing the serious burn hazard they posed, and by continuing to conceal this critical safety information regarding the dangers associated with use of the HAZARDOUS FIREPLACES, Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 made available for consumer use a dangerous and patently unsafe product which is not safely useable for its intended purpose. In so conducting its business, Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 engaged in deceptive or unfair trade practices and violated the Colorado Consumer Protection Act, C.R.S.A. § 6-1-105, in at least the following ways:

a. Knowingly making false representations as to the characteristics, uses or benefits of the HAZARDOUS FIREPLACES by representing that they operate correctly and are safe while concealing the risks of severe burn injuries they pose in violation of C.R.S.A. § 6-1-105(1)(e);

b. Representing that the HAZARDOUS FIREPLACES were of a particular standard, quality, or grade while knowing that they were of another, namely that they posed risks of severe injury to unsuspecting consumer users in violation of C.R.S.A. § 6-1-105(1)(g); and

c. Advertising the HAZARDOUS FIREPLACES with intent not to sell them as advertised (as safe for areas of dwellings that are likely to have small children), in violation of C.R.S.A. § 6-1-105(1)(i).

78. Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 were and remain obligated to disclose the danger associated with the HAZARDOUS FIREPLACES because of the public's reasonable expectation that the fireplaces would not under normal and expected use

heat up on the surface of the exposed glass to temperatures sufficient to inflict third degree burns and other catastrophic injuries on persons having a brief inadvertent contact with the surface of the glass front. In failing to disclose this critical safety issue, which was known and readily apparent to Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 but not to reasonable consumers, including Plaintiffs, these Defendants engaged in deceptive or unfair trade practices.

79. Defendants MONESSEN, JOHND DOE 1 and JOHN DOE 2 represented, by the conscious omission and concealment of critical safety information well-known to it, that the HAZARDOUS FIREPLACE: (a) had characteristics, uses or benefits that it did not have; (b) was of a particular standard, quality or grade when it was of another; and (c) was advertised by Defendants with an intent not to sell it as advertised. In addition, Defendants consciously omitted and concealed the hazards posed by the HAZARDOUS FIREPLACE, and the material facts of the dangers of severe burn injuries that the HAZARDOUS FIREPLACE posed of which Defendants were well aware.

80. The deceptive or unfair trade practices described herein, and other deceptive or unfair trade practices to be revealed in discovery, were committed by Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 in the ordinary course of their business of designing, engineering, manufacturing, testing, assembling, marketing, advertising, inspecting, maintaining, selling, warning, distributing, placing, and installing the HAZARDOUS FIREPLACES throughout the State of Colorado and the United States. Defendants have derived significant compensation and profits from these deceptive practices which have enabled Defendants to reap the benefit of substantial sales of the HAZARDOUS FIREPLACES without disclosing their dangers, providing adequate warnings, or making them safe for small children.

81. The alleged consumer injury is substantial, creating an unreasonable risk for catastrophic physical injury to any persons coming into contact with the HAZARDOUS FIREPLACES, including actual and potential consumer users of the fireplaces. The deceptive or unfair trade practices of Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 as described in this Complaint significantly impact the public as actual or potential consumers of the respective goods and services of Defendants. There is no countervailing benefit to allowing Defendants to sell the HAZARDOUS FIREPLACES and reap substantial profits from their sale without disclosing their dangers, or otherwise permitting Defendants to continue to conduct themselves in the wrongful manner averred to herein.

82. Defendants MONESSEN, JOHN DOE 1 and JOHN DOE 2 engaged in these deceptive trade practices in bad faith as defined in C.R.S.A. § 6-1-113(2.3) in that Defendants' conduct was fraudulent, willful, knowing, and/or intentional conduct that caused injury.

83. As a direct and proximate cause of Defendants' deceptive trade practices and willful and malicious conduct, including but not limited to, concealing the dangers of serious burn injuries posed by the HAZARDOUS FIREPLACES, Plaintiffs STANTON AZAM SMITH, YULDUZ SMITH and KIM F. SMITH have suffered and continue to suffer injury in fact and irreparable harm and actual damages and losses as specifically averred to herein, for which they are entitled to recover in amounts to be proved at trial. Plaintiff STANTON AZAM SMITH has suffered severe physical, emotional and psychological injuries in a permanent, life-altering manner. As the result of Defendants' deceptive trade practices, Plaintiffs KIM F. SMITH and YULDUZ SMITH have been injured in having paid substantial compensation for vacation accommodations that were unsafe and caused severe physical, emotional and psychological

injuries to their minor son and in having incurred and in continuing to incur medical bills for the past, present and future medical care and treatment of STANTON SMITH's injuries related to the incident on June 27, 2009, during the time of his minority.

84. As a result of the willful and malicious conduct of Defendants as described in this Complaint, Plaintiffs have sustained and will continue to sustain substantial damages which are impossible to quantify. Equity and the principles of justice require that Defendants be enjoined from engaging in the conduct described above.

85. Plaintiffs have no plain, speedy and adequate remedy at law.

86. Based upon Defendants' knowing, willful and conscious disregard of the risk of harm that created for Plaintiffs and others similarly situated as averred to herein, Plaintiffs STANTON AZAM SMITH, YULDUZ SMITH and KIM F. SMITH are each entitled to an award of treble damages pursuant to C.R.S.A. § 6-1-113(2)(a)(III) and (2.3).

87. Plaintiffs are also entitled to an award of their attorney's fees and costs of suit pursuant to C.R.S.A. § 6-1-113(2)(b).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that judgment be entered in their favor as follows:

A. On STANTON AZAM SMITH'S First Cause of Action For Strict Products Liability:

1. For medical and incidental expenses according to proof;

2. For other special damages according to proof;

3. For damages related to the value of past, present and future parental, custodial care;

4. For damages related to rehabilitation;

5. For lost income caused by permanent physical and/or psychological deficits related to the burn injuries;

6. For damages related to physical impairment and/or disfigurement; and

7. For general and emotional distress damages.

B. On STANTON AZAM SMITH'S Second Cause of Action For Negligence:

1. For medical and incidental expenses according to proof, including but not limited to, past, present and future medical bills for the medical care and treatment of STANTON AZAM SMITH;

2. For other special damages according to proof;

3. For damages related to the value of past, present and future parental, custodial care;

4. For damages related to rehabilitation;

5. For lost income caused by permanent physical and/or psychological deficits related to the burn injuries;

6. For damages related to physical impairment and/or disfigurement; and

7. For general and emotional distress damages.

C. On YULDUZ SMITH's and KIM SMITH's Third Cause of Action for Negligence:

1. For medical and incidental expenses according to proof, including but not limited to, past, present and future medical bills for the medical care and treatment of STANTON AZAM SMITH; and

2. For other special damages according to proof.

D. On STANTON AZAM SMITH'S Fourth Cause of Action for Premises Liability

1. For medical and incidental expenses according to proof, including but not limited to, past, present and future medical bills for the medical care and treatment of STANTON AZAM SMITH;

2. For other special damages according to proof;

3. For damages related to the value of past, present and future parental, custodial care;

4. For damages related to rehabilitation;

5. For lost income caused by permanent physical and/or psychological deficits related to the burn injuries;

6. For damages related to physical impairment and/or disfigurement; and

7. For general and emotional distress damages.

E. On YULDUZ SMITH'S and KIM F. SMITH'S Fifth Cause of Action for Premises Liability

1. For medical and incidental expenses according to proof, including but not limited to, past, present and future medical bills for the medical care and treatment of STANTON AZAM SMITH; and

2. For other special damages according to proof.

F. On STANTON AZAM SMITH'S, YULDUZ SMITH'S And KIM F. SMITH'S Sixth Cause of Action For Breach of The Colorado Consumer Protection Act:

1. For injunctive relief prohibiting Defendant MONESSEN from manufacturing, selling, distributing, marketing and advertising the HAZARDOUS FIREPLACES without providing an adequate warning about the danger they pose to consumer users like Plaintiffs;

2. For an Order requiring Defendant VAIL to appropriately disclose the risk and danger of burns to all consumers who rent or lease vacation accommodations managed and maintained by VAIL in which a HAZARDOUS FIREPLACE has been installed;

3. For all actual, contractual, consequential, special, equitable, and extra-contractual damages of Plaintiffs according to proof and in an amount to be determined at the time of trial;

4. In addition, or as an alternative, to the damages listed above in no. 3., for an amount of damages equal to three times the amount of actual damages pursuant to Colorado statute; and

5. For reasonable attorney's fees as determined by the Court.

G. On All Causes of Action:

1. For costs of suit;

2. For prejudgment interest calculated from the time the cause of action arose, pursuant to C.R.S.A. §13-21-101 or under Colorado or federal law;

3. For post-judgment interest on the judgment rendered in favor of Plaintiffs as provided pursuant to C.R.S.A. §13-21-101 or under Colorado or federal law; and

4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury in this action on all issues so triable.

Dated: August 19, 2011.

Respectfully submitted,

HILL & ROBBINS, P.C.

By: */s/ Nathan P. Flynn*

Robert F. Hill
Jennifer H. Hunt
Nathan P. Flynn
Hill & Robbins, P.C.
1441 18th Street, Suite 100
Denver, CO 80202-1256
Phone: (303) 296-8100
Fax: (303) 296-2388

CLAYEO C. ARNOLD, P.C.

Clayeo C. Arnold
Cliff L. Carter
Clayeo C. Arnold, P.C.
608 University Avenue
Sacramento, CA 95825
Phone: (916) 924-3100
Fax: (916) 924-1829

Attorneys for Plaintiffs