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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOHN R. JAMISON,

Case No. 3-03-01036-KI (lead case)

Plaintiff(s),

v.

OLIN CORPORATION-WINCHESTER
DIVISION; U.S. REPEATING ARMS
CO., INC.; BROWNING; BROWNING
ARMS CO.; and G.I. JOE'S, INC.,

Defendants.

**CONSOLIDATED SECOND
AMENDED COMPLAINT
(Patent Infringement, Misappropriation
of Trade Secrets, Breach of Contract,
Quasi-Contract, Breach of Implied
Covenant of Good Faith and Fair
Dealing, Tortious Breach of Duty of
Good Faith and Fair Dealing, and
Intentional Interference with Economic
Relations)
AND DEMAND FOR JURY TRIAL**

Plaintiff John R. Jamison complains of defendants as follows:

JURISDICTION AND VENUE

1.

This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1338, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Venue is proper pursuant to 28 U.S.C. § 1391(b).

2.

This Court has personal jurisdiction over defendants by virtue of, among other things, their tortious acts of patent infringement, which have been committed in the State of Oregon, and their transactions of business in the State of Oregon.

THE PARTIES

3.

Plaintiff John R. Jamison (“Jamison”) is a resident of Eugene, Oregon. Jamison is the owner of the following patents relating to ammunition and firearms: U.S. Patent Nos. 6,550,174, entitled “Short-Action Firearm For High-Power Firearm Cartridge” and legally issued to Jamison on April 22, 2003; 6,595,138, entitled “High Power Firearm Cartridge” and legally issued to Jamison on July 22, 2003; 6,675,717, entitled “Ultra-Short High-Power Firearm Cartridge” and legally issued to Jamison on January 13, 2004; and 6,678,983, entitled “Ultra-Short-Action Firearm for High-Power Firearm Cartridge” and legally issued to Jamison on January 20, 2004 (the “patents in suit”). Jamison manufactures and sells cartridges and rifles.

4.

Defendant Olin Corporation-Winchester Division (“Winchester”) is a Virginia corporation with its principal place of business in East Alton, Illinois. Winchester is in the business of manufacturing, selling, marketing and distributing ammunition. Winchester conducts business in Oregon by, among other things, selling and shipping its products, including ammunition that infringes Jamison’s patents, into interstate commerce, which are then sold in

Oregon. Winchester entered into a confidential and contractual relationship with Jamison in Oregon, and sent representatives to Jamison's residence in Oregon to obtain Jamison's trade secrets and confidential information.

5.

Defendant U.S. Repeating Arms Co., Inc. ("U.S. Repeating Arms") is a Delaware corporation with its principal place of business in New Haven, Connecticut. U.S. Repeating Arms is in the business of manufacturing, selling, marketing and distributing rifles and shotguns under the Winchester brand name. U.S. Repeating Arms conducts business in Oregon by, among other things, selling and shipping its products, including rifles that infringe Jamison's patents, into interstate commerce, which are then sold in Oregon.

6.

Defendant Browning is a Utah corporation, with its principal place of business in Salt Lake City, Utah. Browning is a seller of sporting goods, including firearms. Browning acquires merchandise from related and unrelated manufacturers and resells it to distributors and dealers. Browning conducts business in Oregon by, among other things, selling and shipping products, including rifles that infringe Jamison's patents, into interstate commerce, which are then sold in Oregon.

7.

Defendant Browning Arms Co. ("Browning Arms") is a Utah corporation, with its principal place of business in Morgan, Utah. Browning Arms is in the business of manufacturing, selling, marketing and distributing firearms. Browning Arms conducts business in Oregon by, among other things, selling and shipping its products, including rifles that infringe Jamison's patents, into interstate commerce, which are then sold in Oregon.

8.

Defendant G.I. Joe's, Inc. ("G.I. Joe's") is an Oregon corporation, with its principal place of business in Wilsonville, Oregon. G.I. Joe's is a retailer of sporting goods, and sells

ammunition and firearms that infringe Jamison's patents. G.I. Joe's is a defendant only on Jamison's First Claim for Relief.

FACTS

9.

Jamison has invented, developed and patented several revolutionary types of hunting rifle and cartridge concepts. Jamison's inventions relate to "short, fat" and "super short, fat" cartridges and mating rifles. Jamison's cartridge concepts can be manufactured in various calibers and lengths and offer numerous advantages over traditional cartridges of the same calibers, which traditional cartridges are relatively long and thin in comparison to Jamison's cartridge concepts. Among the advantages offered by Jamison's cartridges are the ability to use high power "magnum" ammunition in short action rifles, greater accuracy, equivalent bullet velocity with substantially less gun powder, and less recoil.

10.

In early 1997, under protection of confidentiality agreements, Jamison presented his short, fat cartridge and mating rifle concepts, and the results of substantial testing performed to validate the cartridge concept and its advantages, to defendant Winchester and another company, Ruger, and the three parties commenced a joint project. Winchester believed that the advantages of Jamison's concept made the project a "Must Do." Pursuant to the joint project, defendant Winchester would produce the cartridges, Ruger would produce the mating rifles, and Jamison would assist both Winchester and Ruger. Winchester and Ruger named the cartridges "JRW," representing the initials of the three parties, Jamison, Ruger and Winchester. The project did not include Jamison's "super short, fat" cartridge design.

11.

Jamison made clear from the start to both Ruger and Winchester that he expected to be paid a royalty or license fee from sales of cartridges and rifles using his concepts. Jamison and

Ruger reached agreement early in the project on the amount of the royalty from sales of the rifles. Winchester was aware of the agreement between Jamison and Ruger. Jamison repeatedly asked Winchester to agree to the amount of the royalty from sales of ammunition, and was told and led by Winchester to believe that a royalty would be paid, but that the amount would be negotiated at a later date. Unknown to Jamison, Winchester never intended to pay any royalty to Jamison. Instead, as alleged herein, Winchester took Jamison's confidential information, used Jamison's knowledge and talents to ready the JRW cartridge for manufacture and sale, and then Winchester tried to use its leverage to force Jamison to forego any royalty for his substantial contribution to the project, including any royalties on mating rifles. When Jamison refused, Winchester simply used other parties to manufacture and sell the mating rifles - - defendants U.S. Repeating Arms, Browning, and Browning Arms (collectively, "Browning") - - and began selling short, fat cartridges nearly identical to the JRW cartridges under a different name and without Jamison's permission.

12.

Three Winchester representatives (Alan Corzine, Mike Jordan and Glen Weeks) visited Jamison's lab on or about April 9, 1997. Each Winchester representative signed identical confidentiality agreements titled "Acknowledgment of Confidentiality" (sometimes referred to herein as the "confidentiality agreement"). The "Acknowledgment of Confidentiality" states that Jamison "has developed certain confidential information relating to ammunition and ballistics," and obligates Winchester to maintain strict confidentiality of the information received from Jamison. The Winchester representatives obtained confidential information from Jamison during this visit, and throughout the duration of the project, that is subject to the confidentiality agreement. Despite the fact that the project did not include the "super short, fat" cartridge concept, Winchester's representatives received confidential information from Jamison relating to the "super short, fat" cartridge concept.

13.

In a letter to Jamison dated October 5, 1998, Alan Corzine of Winchester stated that Winchester did not intend to pay Jamison for his contributions to the project, and that Winchester would not proceed with the project unless Jamison agreed to provide Winchester a royalty-free license. Jamison responded that he was not willing to proceed without compensation. Winchester proceeded with the project, and the parties continued to negotiate over Jamison's royalty.

14.

The project was successful. In early 1999, Jamison received a fax from Glen Weeks of Winchester, congratulating Jamison on the superior results of the cartridge developed by Jamison, which had become the JRW. Weeks congratulated Jamison on the efficiency of Jamison's cartridge design, which allowed the cartridge to reach the same velocity as other production cartridges of the same caliber, with substantially less gun powder.

15.

Winchester scheduled the public introduction of the JRW cartridge for February 22, 1999. Winchester arranged to introduce the cartridge at a hunt in Texas. On February 19, 1999, Glen Weeks faxed to Jamison a list of ".300 JRW Design Features," for distribution to the participants in the hunt. The draft press release announcing the cartridge stated "When two major arms and ammunition companies such as Ruger and Winchester get together and utilize the talents and **concepts** of an advanced reloader/writer like Rick Jamison, exciting things are bound to happen - and they have! . . . **Conceptualized by Rick Jamison** of Shooting Times, backed by Bill Ruger himself and developed by the new product staffs of Ruger Firearms and Winchester Ammunition, this could be the defining moment for performance for the 21st century." (Bold added for emphasis.)

16.

Later in the day of February 19, 1999, the eve of the public introduction of the cartridge, Jamison received an unsigned fax from Corzine of Winchester. Corzine reiterated Winchester's demand, rejected five months earlier, for a royalty-free license, and stated that Winchester would not introduce the cartridge without such an agreement. Jamison again advised Winchester in writing that he would not agree to a royalty-free license, and that Jamison understood that Winchester would not introduce the cartridge due to the parties' inability to reach a satisfactory agreement as to Jamison's compensation. As a result, Jamison did not attend the hunt in Texas.

17.

Winchester went ahead with the hunt as scheduled, pursuant to a last-minute contract negotiated between Winchester and Jamison. On February 22, 1999, Jamison's attorney spoke with Corzine by phone. Corzine stated that he did not intend for the unsigned letter to go to Jamison on February 19. Jamison's attorney confirmed the conversation in a letter dated February 22, 1999. The letter states:

Mr. Jamison will not object to your public announcement, scheduled for today, of Winchester's intent to market JRW cartridges, nor to the hunt which you have scheduled to demonstrate the cartridges, on the condition that you first fax to me a brief letter **agreeing that Winchester will not sell JRW-type cartridges until a written license agreement has been executed by Mr. Jamison.** You agreed that the terms of such license agreement are yet to be negotiated. You indicated that you would fax to me the requested letter, and thereafter have Winchester's patent attorney contact me to commence negotiations regarding the license.

(Bold added.) The same day, a Winchester attorney confirmed by letter the parties' agreement that Winchester would not sell JRW-type cartridges without a written license agreement executed by Jamison. The letters exchanged between Jamison's counsel and Winchester's counsel on February 22, 1999 constitute a contract (hereinafter referred to as the "February 22, 1999 Contract").

18.

Jamison and Winchester continued to negotiate through December 1999. At all times until December 1999, Winchester told Jamison that Winchester wished to proceed with the project to sell the JRW cartridges, and Jamison told Winchester that he also wished to proceed if Winchester would pay a reasonable fee to Jamison. The negotiations terminated in December 1999 after Winchester refused to pay any royalty on the cartridges and insisted on the right to license without royalty any mating rifles.

19.

Winchester considered the parties' JRW developments to be so confidential that Winchester demanded that Jamison return all JRW cartridges to Winchester.

20.

Unknown to Jamison, beginning in at least 1998 Winchester and Browning discussed a potential Winchester/Browning joint JRW-type project, and beginning in at least 1999 Winchester and Browning secretly met and had communications regarding the JRW concept in preparation for a Winchester/Browning joint JRW-type project. Winchester shared with Browning confidential information from the JRW project which confirmed the outstanding ballistics achieved with the JRW concept. Browning was aware that Winchester had developed the JRW project jointly with Jamison and Ruger, and of Jamison's patent rights in the concept. Indeed, Winchester and Browning took steps to make it appear as though Browning independently developed a JRW-type cartridge and brought the concept to Winchester, including the orchestration of an exchange of cartridge drawings of JRW-type cartridges from Browning to Winchester and the submission of a JRW-type cartridge by Browning to the Sporting Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI"), a submission generally made by a cartridge manufacturer.

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21.

From the beginning of the JRW project, Winchester preferred to proceed with Browning as the rifle manufacturer instead of Ruger. However, Jamison would not agree to proceed without Ruger, and Winchester, confident of the commercial value of Jamison's concept and concerned that Jamison would go to one of Winchester's competitors, continued to work with Jamison and Ruger. Once development was complete, Winchester caused the joint JRW project to fail and immediately took the JRW concept to Browning.

22.

The Winchester/Browning joint development proceeded at a rapid pace made possible by the substantial development and testing already done on the JRW, testing and development that was conducted by Jamison, Ruger, and Winchester. Winchester and Browning knowingly used the JRW project to their benefit in order to speed up the process of bringing their JRW-type cartridges and mating rifles to market. The work done on the JRW project and the consequent rapid pace of development resulted in significant savings of time and expense, and allowed Winchester and Browning to achieve a commercial advantage over their competitors by securing a proprietary position with SAAMI and by being the first SAAMI members to market JRW-type cartridges and mating rifles.

23.

On or about September 13, 2000, only nine months after Winchester, Ruger and Jamison terminated their negotiations, defendants announced "A revolutionary short magnum" cartridge, to be sold in 2001 under the name ".300 WSM." The .300 WSM cartridge was described as "short and fat," developed by Winchester "[i]n cooperation with rifle makers Browning and U.S. Repeating Arms," and "a new development by Winchester/Browning . . . not based on any pre-existing case." The latter representation was false and misleading, because the WSM is not a

new development, but derives from Jamison's concepts and contains only slight, inconsequential changes from the .300 JRW; was not developed by Winchester and Browning, but by Jamison and Winchester; and was, in truth, based on pre-existing cases, including the JRW and Jamison's "Jamison" cartridges. As a result of this announcement, Jamison reminded Winchester of its contractual obligations to Jamison, by letter dated November 20, 2000. On December 8, 2000, Jamison advised Winchester to alert Browning and U.S. Repeating Arms of possible infringement of Jamison's patents. On February 8, 2001, Jamison advised Browning of his proprietary and patent rights in the concept and his relationship with Winchester. Browning made no investigation in response.

24.

Defendants began making, offering to sell and selling .300 WSM cartridges and rifles manufactured to chamber the WSM cartridges in 2001. The cartridges are identical in all material respects to the .300 JRW cartridge concept, and utilize confidential information provided by Jamison to Winchester. Furthermore, the marketing materials for the .300 WSM are nearly identical to the marketing materials developed for use with the .300 JRW, with the material exception that the WSM marketing material does not mention Jamison or attribute credit to Jamison for developing the cartridge. Defendants continue to introduce new calibers of WSM and WSSM cartridges, and mating rifles, which also infringe Jamison's patents and/or utilize confidential information provided by Jamison to Winchester. The WSSM cartridges are derived from confidential, trade secret information obtained from Jamison relating to the "super short, fat" cartridge concept.

FIRST CLAIM FOR RELIEF

(Patent Infringement Against All Defendants)

25.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

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26.

Since the dates of issuance, Jamison has been and still is the owner of the patents described in paragraph 3.

27.

Defendants have infringed and are infringing the patents in suit by, among other things, making, using, selling or offering to sell in the United States, including in this judicial district, ammunition and firearms covered by one or more of the patents in suit, and/or ammunition and firearms constituting a material part of the patented inventions knowing the same to be especially made or adapted for use in products which infringe the patents in suit.

28.

Defendants have actively induced infringement of the patents in suit in the United States by, among other things, providing marketing assistance for advertising and promotion of the accused ammunition and firearms, inducing others to sell, offer to sell and distribute the accused ammunition and firearms, and otherwise promoting the accused ammunition and firearms to others for resale. Defendants intended to cause these acts which they knew or should have known would induce infringement.

29.

On information and belief, defendants' acts of infringement have been willful and deliberate, having been done with full knowledge of the patents in suit, and knowledge that the accused firearms and ammunitions infringed Jamison's patents.

30.

Jamison has been damaged by the infringing acts of defendants, and is entitled to recover damages from defendants in an amount adequate to compensate him for the infringement that has occurred, but in no event less than a reasonable royalty for the use made by defendants of the inventions, plus attorney fees pursuant to 35 U.S.C. § 285, interest and costs.

31.

By reason of the foregoing conduct of defendants, Jamison will suffer irreparable harm and damage, which damage will be difficult to ascertain. Jamison has no adequate remedy at law. To remedy the irreparable harm that Jamison continues to suffer, Jamison is entitled to injunctive relief enjoining defendants from infringing Jamison's patents.

SECOND CLAIM FOR RELIEF

(Misappropriation of Trade Secrets Against All Defendants Except G.I. Joe's)

32.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

33.

This claim arises under the Oregon Trade Secrets Act, ORS 646.461-646.475.

34.

Winchester entered into written agreements to maintain the confidentiality of trade secret information supplied by Jamison. The confidential information received by Winchester from Jamison was misappropriated by Winchester as defined in the Oregon Trade Secrets Act. On information and belief, U.S. Repeating Arms, Browning, and Browning Arms obtained such trade secret information from Winchester without Jamison's consent while knowing or having reason to know that the information was acquired by Winchester under circumstances giving rise to a duty to maintain its secrecy or limit its use.

35.

The confidential information taken and used by defendants constitutes trade secrets within the definition of the Oregon Trade Secrets Act. The trade secrets derive independent economic value from not being generally known at the time they were taken and used.

36.

As a result of the misappropriation, Jamison has suffered, will continue to suffer and is entitled to recover damages in an amount to be ascertained at trial.

37.

Defendants have been unjustly enriched by the use of Jamison's trade secrets.

38.

By reason of the foregoing conduct of defendants, Jamison will suffer irreparable harm and damage, which damage will be difficult to ascertain. Jamison has no adequate remedy at law. To remedy the irreparable harm Jamison continues to suffer by defendants' misappropriation, Jamison is entitled to injunctive relief enjoining defendants from misappropriating any trade secrets of Jamison.

39.

On information and belief, defendants' conduct has been willful and malicious and therefore warrants an award of punitive damages in an amount equal to twice Jamison's actual damages, together with Jamison's attorney fees and expenses.

THIRD CLAIM FOR RELIEF

(Breach of Express Contract Against Winchester)

40.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

41.

Jamison and Winchester entered into the February 22, 1999 Contract, a valid contract that prohibited Winchester from selling JRW-type cartridges unless and until a written license agreement was executed by Jamison. Jamison complied with all conditions of the February 22, 1999 Contract and performed as required by the contract. Winchester breached the February 22,

1999 Contract by selling JRW-type cartridges without a written license agreement executed by Jamison.

42.

Winchester assented to the "Acknowledgment of Confidentiality," a valid contract that obligated Winchester to maintain strict confidentiality of information received from Jamison. Winchester breached the "Acknowledgment of Confidentiality" by disclosing confidential information received from Jamison.

43.

Jamison was damaged as a result of Winchester's breach of these express contracts in an amount in excess of \$5 million, the exact amount of which will be proved at trial. Winchester has been unjustly enriched in an amount in excess of \$5 million, the exact amount of which will be proved at trial.

FOURTH CLAIM FOR RELIEF

(Breach of Implied-in-Fact Contract Against Winchester)

44.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

45.

Winchester's conduct in proceeding with the JRW project to substantial completion with knowledge of Jamison's demand to be paid a royalty or license fee for his contributions gave rise to an implied-in-fact contract to pay Jamison a royalty or license fee. Winchester breached this implied-in-fact contract by refusing to pay Jamison a royalty or license fee.

46.

The communications and actions giving rise to the February 22, 1999 Contract and Winchester's course of conduct following those communications gave rise to an implied-in-fact

contract to not sell JRW-type cartridges without a written license agreement executed by Jamison. Winchester breached this implied-in-fact contract by selling JRW-type cartridges without a written license agreement executed by Jamison.

47.

Winchester's and Jamison's actions gave rise to an implied-in-fact contract to keep confidential the jointly developed JRW project. Winchester breached this implied-in-fact contract by disclosing the JRW project to Browning and SAAMI, by selling the WSM and WSSM cartridges, and by assisting in and encouraging sales of the WSM and WSSM mating rifles.

48.

Jamison was damaged as a result of Winchester's breaches of these implied-in-fact contracts in an amount in excess of \$5 million, the exact amount of which will be proved at trial. Winchester has been unjustly enriched in an amount in excess of \$5 million, the exact amount of which will be proved at trial.

FIFTH CLAIM FOR RELIEF

(Quasi-Contract Against All Defendants Except G.I. Joe's)

49.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

50.

Jamison conferred a benefit upon Winchester by bringing the substantially developed short, fat cartridge and mating rifle concept to Winchester and by providing his knowledge, skills, and services, including substantial time and expense, to the JRW project. Winchester is aware that it received a benefit from Jamison. Jamison had a reasonable expectation of payment for his contributions to the JRW project, Winchester should reasonably have expected to pay

Jamison for the benefit received from Jamison related to the JRW project, and it would be unjust to allow Winchester to retain the benefit of Jamison's contributions without requiring Winchester to pay for it.

51.

Jamison conferred a benefit upon Browning by bringing the substantially developed short, fat cartridge and mating rifle concept to Winchester and by providing his knowledge, skills, and services, including substantial time and expense, to the JRW project, which formed the basis of, and gave a substantial advantage to, the Winchester/Browning joint development project. Browning is aware that it received a benefit from Jamison. Jamison had a reasonable expectation of payment for his contributions to the JRW project, Browning should reasonably have expected to pay Jamison for the benefit received from Jamison related to the JRW project, and it would be unjust to allow Browning to retain the benefit of Jamison's contributions without requiring Browning to pay for it.

52.

Winchester and Browning have been unjustly enriched in an amount in excess of \$5 million, the exact amount of which will be proved at trial.

SIXTH CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing Against Winchester)

53.

Jamison repeats and realleges the allegations made in paragraphs 3-24 in this Complaint as if fully set forth herein.

54.

Each of the contracts described in paragraphs 40-48 contained an implied covenant requiring Winchester to act in good faith and to deal fairly with Jamison. Winchester breached its

duty of good faith and fair dealing. Jamison has been damaged as a result of Winchester's breach of the implied covenant of good faith and fair dealing in an amount in excess of \$5 million, the exact amount of which will be proved at trial.

SEVENTH CLAIM FOR RELIEF

(Tortious Breach of the Duty of Good Faith and Fair Dealing Against Winchester)

55.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

56.

Winchester owed Jamison a duty of good faith and fair dealing. Jamison and Winchester had a special relationship by virtue of their confidential dealings.

57.

Winchester knew that the special relationship existed and knew that Jamison relied upon Winchester to act in Jamison's best interest.

58.

Jamison relied upon the special relationship between Jamison and Winchester.

59.

Winchester breached its duty to Jamison.

60.

Jamison has been injured as a result of Winchester's breach, in an amount in excess of \$5 million, the exact amount of which will be proved at trial.

EIGHTH CLAIM FOR RELIEF

(Intentional Interference with Economic Relations Against Winchester)

61.

Jamison repeats and realleges the allegations made in paragraphs 3-24 of this Complaint as if fully set forth herein.

62.

Jamison and Ruger entered into a license agreement. At all relevant times, Winchester was aware of the contractual relationship between Jamison and Ruger. Winchester intentionally, and with improper purpose and motive, interfered with that relationship. As a result of Winchester's wrongful interference, the contract between Jamison and Ruger was rendered valueless and ultimately terminated.

63.

Jamison applied substantial time and effort toward bringing his cartridge and mating rifle concept to market and had a reasonable expectation of securing a royalty or license agreement with a cartridge and/or firearm manufacturer. At all relevant times, Winchester was aware of Jamison's desire and intent to secure an ammunition manufacturer to bring his concept to market and to receive compensation for his concept. Winchester intentionally, and with improper purpose and motive, interfered with Jamison's ability to secure a manufacturer to bring his cartridge concept to market and to receive compensation for his concept. Winchester convinced Jamison to continue to work on the JRW project with the expectation of receiving a reasonable royalty. Once the JRW project was complete, Winchester took the JRW concept to Browning and, with Browning, used the JRW project to quickly secure the primary position in the market and a proprietary position with SAAMI. Winchester's wrongful interference caused Jamison to be unable to secure an ammunition manufacturer to bring his concept to market and to receive compensation for his concept.

64.

Jamison has been injured as a result of Winchester's wrongful interference in an amount in excess of \$5 million, the exact amount of which will be proved at trial. On information and belief, Winchester's conduct has been willful and malicious and therefore warrants an award of punitive damages in an amount of at least \$1 million.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment in his favor and against defendants requiring defendants to appear and answer and, at trial or final hearing, that plaintiff recover from and against defendants the following relief:

- A. Actual and statutorily increased damages in an amount not less than \$5 million dollars, the exact amount of which has yet to be ascertained;
- B. An award and/or order for an accounting of damages and/or unjust enrichment;
- C. Punitive damages on the trade secrets claim in an amount equal to twice plaintiff's damages and punitive damages on the other tort claims of at least \$1 million;
- D. Costs of Court;
- E. Jamison's attorney fees and expenses pursuant to 35 U.S.C. § 285, ORS 646.467, and 15 U.S.C. § 1117(a);
- F. For an order permanently enjoining defendants, their agents, officers, assigns and others acting in concert with defendants from infringing, inducing infringement of, and contributing to infringement of the patents in suit, from using or disseminating plaintiff's trade secrets, and from further breaches of the February 22, 1999 Contract; and
- G. All other relief to which plaintiff is justly entitled.

DEMAND FOR JURY TRIAL

65.

Plaintiff demands a trial by jury on all issues.

DATED this 3rd day of January, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **CONSOLIDATED SECOND AMENDED COMPLAINT** on the following named person(s) on the date indicated below,

[X] By Electronic Service in accordance with LR 100.13

to said persons a true copy thereof, addressed to said person at their last known addresses indicated below,

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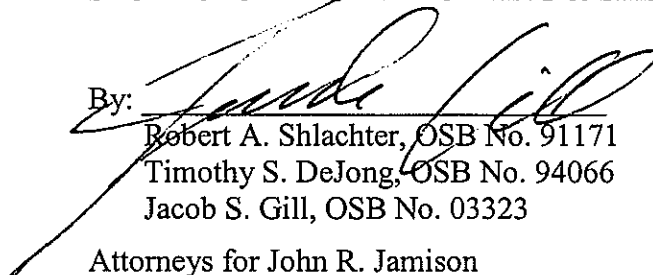
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DATED this 3rd day of January 2005.

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