UNTY IN WHICH ACTION AROSE: Oakland

44C
(Rev. 12/84)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SUSAN LUECK, individually and as Next Friend of DENNIS LUECK, a minor

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) Oakland

DEFENDANTS

RIVA SPORT, INC., a California corporation and AQUA SLING, INC., a California corporation, jointly & severally

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

JONATHAN L. WALKER (P27893)
165 N. Woodward Ave.
Birmingham, MI 48009
(313) 642-5044

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 USC 1332 Personal Injury - Products Liability

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury-Med Malpractice
- ☒ 365 Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence 28 USC 2255
- ☐ 530 Habeas Corpus
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Food & Drug
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt Relations
- ☐ 730 Labor/Mgmt Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ret Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes
- ☐ 871 IRS Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION ☐ UNDER F.R.C.P. 23 | DEMAND $ | Check YES only if demanded in complaint: JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASES(S) IF ANY JUDGE Anna Diggs Taylor DOCKET NUMBER 92-CV-71374-DT

DATE 6/26/92 | SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

29

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN LUECK, individually
and as Next Friend of
DENNIS LUECK, a minor,

Plaintiffs,

-v-

Case No: 92-CV-71374-DT
HON: Anna Diggs Taylor

RIVA SPORT, INC., a Calforina
corporation and AQUA SLING, INC.,
a California corporation, jointly
and severally,

Defendant.

FILED
92 JUN 29 PM 4:28
CLERK
U.S. DISTRICT COURT
EAST. DIST. MICH.
DETROIT

JONATHAN L. WALKER (P27893)
Attorney for Plaintiffs
165 N. Woodward Ave.
Birmingham, Michigan 48009
(313) 642-5044

PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, through their attorney, JONATHAN L. WALKER, hereby amend their Complaint against the Defendant as follows:

JURISDICTION

1. Plaintiffs are residents of the State of Michigan and are mother and son.

2. Defendant, RIVA SPORT, INC., upon information and belief, is a California corporation whose business is located in the State of California and which has purposely availed itself of jurisdiction within the State of Michigan.

3. Defendant, AQUA SLING, INC., upon information and belief, is a California corporation whose business is located in the

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State of California and which has purposely availed itself of jurisdiction within the State of Michigan.

3. Jurisdiction is based upon 28 USC §1332 since there exists diversity of citizenship and the amount in controversy is in excess of $50,000.00.

ALLEGATIONS

4. On or about October 2, 1989, Plaintiff-minor, DENNIS LUECK, then ten years old was, along with two minor companions, playing with a "Aqua Sling" water balloon sling-shot, designed, manufactured and supplied by Defendants, RIVA SPORT, INC.. and AQUA SLING, INC.

5. At the above time, Plaintiff-minor, DENNIS LUECK, was using the "Aqua Sling" when he and his youthful companions placed a rock in the sling and it backfired, causing Plaintiff-minor serious and permanent facial and dental injuries.

6. The Defendants, RIVA SPORT, INC., and AQUA SLING, INC., owed the Plaintiffs the following duties and obligations, among others:

a. To avoid the supplying of inherently dangerous products which, as their sole purpose, propel objects at "targets" with little or no social utility;

b. To properly and adequately discourage the use of these devices by minors;

c. To properly and adequately warn and instruct against foreseeable misuses of the product.

7. Despite the above enumerated duties and obligations, the Defendant violated each and every one of them, among others.

8. The Defendants, RIVA SPORT, INC., and AQUA SLING, INC., warranted that the subject product was safe and free of defects for its foreseeable use and misuse.

9. Despite these implied warranties, the Defendant breached each and every one of them.

10. As a direct and proximate result of the negligence and breach of warranty by the Defendant, Plaintiff-minor, DENNIS LUECK, sustained the following injuries and damages:

a. Fracture of the mandible;

b. Severe lacerations to the lip and chin;

c. Several fractured and misplaced teeth;

d. extensive reconstructive oral surgery;

e. Pain, suffering and disfigurement, past and future.

11. Plaintiff, SUSAN LUECK, Plaintiff'minor's parent has sustained the following damages, amonng others:

a. Liability for medical and dental expenses, past and future.

WHEREFORE, Plaintiffs seek judgment against the Defendants in an amount in excess of Fifty Thousand ($50,000.00) Dollars and in an amount which is deemed fair and just as the jury shall determine plus interest, costs and attorney fees.

Respectfully submitted,

JONATHAN L. WALKER (P27893)
Attorney for Plaintiffs
165 N. Woodward Ave.
Birmingham, MI 48009
(313) 642-5044

Date: June 26, 1992

DEMAND FOR JURY TRIAL

The Plaintiffs, through their attorney, JONATHAN L. WALKER, hereby demand trial by jury for the above-captioned matter.

Respectfully submitted,

JONATHAN L. WALKER (P27893)
Attorney for Plaintiffs
165 N. Woodward Ave.
Birmingham, MI 48009
(313) 642-5044

Date: June 26, 1992

JAMES N. MARTIN
JOHN G. BACON
JONATHAN E. MARTIN
PAUL R. VAN TOL
STUART A. FRASER IV
MICHAEL R. JANES
KEVIN L. MOFFATT
JOHN W. CRIMANDO
VICTOR T. VAN CAMP
THOMAS G. VAN BELKUM
C. GRANT VANDER VEER
DEBORAH S. FORSTER
KEITH P. FELTY

LAW OFFICES OF
MARTIN, BACON & MARTIN, P.C.
44 FIRST STREET
P.O. BOX 2301
MOUNT CLEMENS, MICHIGAN 48043
(313) 979-6500

DETROIT OFFICE
2300 BUHL BUILDING
DETROIT, MICHIGAN 48226
TELEFAX
(313) 468-7016

313-254-7517 (R)

September 28, 1993

NOTARIZED & RETURNED BY FEDEX 9-29-93

Mr. Robert Jacobs
6054 Caminito De La Taza
San Diego, CA USA 92120

RE: LUECK -v- RIVA SPORT, INC.
Our File: 09692

Dear Mr. Jacobs:

Please review the Amended Affidavit I have prepared following receipt of Plaintiff's Response to our Motion to Set Aside Default Judgment in this case. The Amended Affidavit acknowledges notification of Plaintiff's intent to proceed with entry of default and default judgment, but states that you were again assured that the entry of default and default judgment was merely a procedural necessity prior to formal dismissal of the action. If the Affidavit is correct and meets with your approval, please have it notarized and sent back to my attention by overnight mail so that I can file it with the court no later than Thursday.

If you have any questions or comments please feel free to call me Wednesday.

Very truly yours,

Vic Van Camp

VICTOR T. VAN CAMP

VVC/bmc
Enclosure

~~9/2/93~~ - Fedex delivered 9/30/93
10/1/93
10$
Battan 10:26 AM

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN LUECK, Individually
and as Next Friend of DENNIS
LUECK, a Minor,

Plaintiffs,

vs.

No: 92 CV 71374 DT
HON. ANNA DIGGS TAYLOR

RIVA SPORT, INC., A California
Corporation and AQUA SLING, INC.
a California Corporation, Jointly
and Severally,

Defendants.
_____/

JONATHAN L. WALKER P27893
Attorney for Plaintiffs
165 N. Woodward Ave.
Birmingham, MI 48009
(313) 642-5044

VICTOR T. VAN CAMP P38471
Attorney for Defendants
44 First Street
Mt. Clemens, MI 48043
979-6500

AMENDED AFFIDAVIT

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

ROBERT JACOBS, being first duly sworn, says:

1. That I am the President and Chief Operating Officer of Riva Sport, Inc.

2. Riva Sport, Inc. is a California Corporation incorporated in January, 1992. Riva Sport, Inc. manufactures and sells water balloon sling shots.

LAW OFFICES OF
MARTIN, BACON
& MARTIN, P.C.
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P.O. BOX 2301
MOUNT CLEMENS,
MICHIGAN 48043
(313) 979-6500

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3. On July 7, 1992 the registered agent for Riva Sport, Inc., John Doerst was served with a Summons and Complaint in the action entitled Lueck v Riva Sport, Inc., case number 92-71374, pending in the United States District Court for the Eastern District of Michigan. Mr. Doerst mailed the Summons and Complaint to my attention and I received it a couple of days later.

4. Contemporaneous with my receipt of the Summons and Complaint I was notified by Plaintiffs' attorney, Jonathan L. Walker, that if there was no insurance applicable to the allegations in the Complaint, he would dismiss the lawsuit and not pursue it any further.

5. I immediately contacted my insurance agent and sent a copy of the Summons and Complaint to the agent's attention. On the front of the Summons I wrote a note to the insurance agent notifying the agent that the Plaintiffs' attorney said he would dismiss the case if a letter was sent to him verifying that no insurance existed for the alleged claim.

6. That on July 23, 1992 a letter was sent to Plaintiffs' counsel, Jonathan Walker by Ray Mendez, insurance agent for the Farmer's Insurance Group. The letter notified Plaintiffs' counsel that Riva Sport, Inc. was not insured until April, 1991, approximately one and one half years after the alleged injury to Plaintiff in October, 1989. Following this notification to Plaintiffs' counsel I assumed that no further action was necessary and that the case would be dismissed.

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MICHIGAN 48043
(313) 979-6500

7. Following the July 23, 1992 letter from Ray Mendez, insurance agent for the Farmer's Insurance Group, to Plaintiffs' counsel, Jonathan Walker, I was notified that Plaintiffs' counsel intended on proceeding with entry of default and default judgment against Riva Sport, Inc. I immediately contacted Plaintiffs' counsel by telephone and discussed his intentions. I again explained to him that Riva Sport, Inc. was not insured at the time of Plaintiff's incident in October, 1989 and was not insured until April, 1991 through the Farmer's Insurance Group, as explained in Mr. Mendez's letter of July 23, 1992. Plaintiffs' counsel again assured me that the entry of default and default judgment against Riva Sport, Inc. was merely a procedural formality before the case could be dismissed and that if Riva Sport, Inc. did not have any applicable insurance as represented, then no further activity would be initiated. Based on this conversation with Plaintiffs' counsel, I again assumed that no further action was necessary and that the case would be dismissed.

8. I heard nothing further until early August, 1993. when I received Plaintiffs' Affidavit and Request for Writ of Execution. I immediately contacted Sara Caplan, attorney in California for Plaintiffs and advised her of the above-stated agreement. She promised to investigate and call me back prior to doing anything further.

LAW OFFICES OF
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& MARTIN, P.C.
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MOUNT CLEMENS,
MICHIGAN 48043
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9. I again heard nothing from Plaintiffs' counsel about this case until August 26, 1993 when I received notice from the Bank of America that Riva Sport, Inc.'s savings and checking accounts had been executed against pursuant to a Notice of Levy issued by the United States District Court for the Central District of California. The Notice of Levy was purportedly issued after entry of default judgment against Riva Sport, Inc., in this litigation.

10. I immediately contacted counsel to represent me in an attempt to have the default judgment set aside and an injunction issued to prohibit and enjoin further execution on any of Riva Sport, Inc.'s assets.

11. That at no time did I willingly ignore this court's Summons. I believed, based on my communications with Plaintiffs' counsel, Jonathan L. Walker, that the case would be dismissed and no answer would be required because there was no applicable insurance.

12. Riva Sport, Inc. now stands ready to defend this litigation on the merits. Because Riva Sport, Inc. was not in existence at the time of Plaintiff's alleged injury on October 2, 1989, Riva Sport, Inc. could not have manufactured the water sling-shot Plaintiff was allegedly using. In addition, the allegations in Plaintiffs' Complaint clearly show a misuse of the product in question and a use that was unanticipated by Riva Sport, Inc.

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& MARTIN, P.C.
44 FIRST STREET
P.O. BOX 2301
MOUNT CLEMENS,
MICHIGAN 48043
(313) 979-6500

Further deponent sayeth not.

ROBERT JACOBS, On behalf of
RIVA SPORT, INC.

Subscribed and sworn to before
me this 29 day of September, 1993

Kathy Harmel
Notary Public

My Commission Expires: April 29, 1994

OFFICIAL SEAL
KATHY HARMEL
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires April 29, 1994

LAW OFFICES OF
MARTIN, BACON
& MARTIN, P.C.
44 FIRST STREET
P.O. BOX 2301
MOUNT CLEMENS,
MICHIGAN 48043

(313) 979-6500

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HOME SAVINGS OF AMERICA™

Date 9/29/93

Received from Robert Jacobs

Cash/check/passbook amount Five and no/00 Dollars $ 5.00

Savings account # _____ $ _____ Effective date _____

Checking account # _____ $ _____ Effective date _____

Credit card # _____ $ _____ Effective date _____

Other # _____ $ _____ Effective date _____

For Notary Fee

Customer signature (if applicable)

Authorized signatures K. Harmel

Counter receipt

Branch

SF-221-2 (Rev. J - 5/90)

SERVE

50

Rec'd 8/24/93 10:32 AM W Martin

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): TELEPHONE NO.: (310) 278-1720

FOR RECORDER'S USE ONLY

[X] Recording requested by and return to
Sara L. Caplan, Esq.
9100 Wilshire Boulevard, 530 East Tower
Beverly Hills, California 90212-3404

ATTORNEY FOR (Name): Susan Lueck, individually and as Next Friend of Dennis Lueck, a minor

NAME OF COURT: United States District Court
STREET ADDRESS: 312 N. Spring Street
MAILING ADDRESS: 312 N. Spring Street
CITY AND ZIP CODE: Los Angeles, California 90012
BRANCH NAME: Central District of California

PLAINTIFF: SUSAN LUECK, individually and as Next Friend of DENNIS LUECK, a minor
DEFENDANT: RIVA SPORT, INC. and AQUA SLING, INC.

PAY TO THE ORDER OF THE U.S. MARSHAL

LEVYING OFFICER (Name and Address)
DEPARTMENT OF JUSTICE
U.S. MARSHALS SERVICE
312 N. SPRING ST. G-23
U.S. COURTHOUSE
LOS ANGELES, CA 90012-

LEVYING OFFICER FILE NO. | COURT CASE NO.
GVMisc.296

NOTICE OF LEVY
under Writ of [X] Execution (Money Judgment) [ ] Sale

TO THE PERSON NOTIFIED (name): Bank of America
Jackson-Hyde Branch
7404 Jackson Drive
San Diego, CA

1. The judgment creditor seeks to levy upon property in which the judgment debtor has an interest and apply it to the sati of a judgment as follows:
   a. judgment debtor (name): Riva Sport, Inc.
   b. the property to be levied upon is described
      [ ] in the accompanying writ of possession or writ of sale.
      [X] as follows: all personal property in which the judgment debtor has any inte including deposit accounts, safe deposit boxes, securities, notes, instruments and any proceeds thereof in the possession, custody or c of Bank of America.

2. The amount necessary to satisfy the judgment creditor's judgment is (specify total amount due under the writ less part factions plus daily interest from the date of the writ until the date of levy):

   $ 76,706.72 + interest at $7.73 per day after 9/5/93

3. You are notified as
   a. [ ] a judgment debtor.
   b. [X] a person other than the judgment debtor (state capacity in which person is notified):

(Read Information for Judgment Debtor or Information for Person Other Than Judgment Debtor on reverse.)

Notice of Levy was
[ ] mailed on (date):
[ ] delivered on (date):
[ ] posted on (date):
[ ] filed on (date):
[ ] recorded on (date):

CRAIG L. MEACHAM
U.S. MARSHAL
8112

Signed by:

[ ] Levying officer [ ] Registered process server

(Continued on reverse)

McINNIS, FITZGERALD, REES, SHARKEY & McINTYRE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1230 COLUMBIA STREET, SUITE 800
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 236-1711
FAX (619) 236-0387

JOHN W. McINNIS
(1910-1980)
WILLIAM T. FITZGERALD
(1922-1981)

EARL H. MAAS, III
DIRECT DIAL (619) 595-3334

NORTH COUNTY OFFICE
235 W. FIFTH AVENUE, SUITE D
ESCONDIDO, CALIFORNIA 92025
TELEPHONE (619) 480-6404
FAX (619) 480-6194

July 22, 1992

David R. Cadwell, Esq.
DAVID CADWELL & ASSOCIATES
8530 Wilshire Blvd., Suite 505
Beverly Hills, CA 90211

Re: Taylor v. Jacobs, et al.

Dear Mr. Cadwell:

We are accepting the $3,200 demand in full and final settlement of this entire matter. We will forward to you a settlement agreement and Request for Dismissal and will forward a draft in the amount of $2,200 in the next few days and another draft in the amount of $1,000 within 60 days of the case being dismissed.

Please contact my office if you have any questions in regard to the settlement of this case.

Sincerely,

Earl H. Maas, III
for
McINNIS, FITZGERALD, REES,
SHARKEY & McINTYRE

EHM:ly
cc: Robert Jacobs
2469/121515

BLIND P.S. TO MR. JACOBS:

Please send your checks in the amount of $2,200 and $1,000, payable to Charles D. Taylor, II, Gina Taylor and their attorney of record, David Cadwell. We will hold the $1,000 check for 60 days and will send you copies of the closing documents when received.

McINNIS, FITZGERALD, REES, SHARKEY & McINTYRE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1230 COLUMBIA STREET, SUITE 800
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 236-1711
FAX (619) 236-0387

JOHN W. McINNIS
(1910-1980)
WILLIAM T. FITZGERALD
(1922-1981)

NORTH COUNTY OFFICE
235 W. FIFTH AVENUE, SUITE D
ESCONDIDO, CALIFORNIA 92025
TELEPHONE (619) 480-6404
FAX (619) 480-6194

WILLIAM G. BAILEY
DIRECT DIAL (619) 595-3304

December 11, 1991

Robert Jacobs
President
AQUA SLING
6054 Caminito De La Taza
San Diego, California 92120

Re: Taylor v. Jacobs, et al

Dear Mr. Jacobs:

I took the deposition of Charles Taylor, the plaintiff. He is 25 years old. He was a jet engine mechanic in the U.S. Navy for three years. After leaving the Navy, he moved to Apple Valley and is now a real estate appraiser.

On June 17, 1990, Mr. Taylor and many family members were at San Elijo State Park (near Encinitas). His mother-in-law, Vicki Lovelady, gave Taylor, his brother, and brother-in-law a slingshot to use. The mother-in-law had purchased it months before.

These three men were using the slingshot to shoot rocks into the ocean. When Taylor put a "baseball size" rock into the device pulled back the sling and released it, the sling went forward and the rebounded, with the rock still in the sling.

It hit him in the face, breaking his nose, upper jaw, destroying front teeth and his right eye.

All of his care has been through Kaiser. He has a prosthetic right eye. He is going to have reconstructive surgery on his nose.

It is clear that Taylor never read any printed instructions or warnings. He was using your slingshot in a potentially dangerous manner and got hurt.

At this point, I do not believe a jury would be very sympathetic with him.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
OCT 30 1992
DON E. AUSTIN, COURT CLERK
STATE OF OKLA. TULSA, COUNTY

RANDY WILLIS, father and next friend of BRANDON WILLIS, a minor,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-92-567
RIVA SPORT, a foreign corporation, ROBERT JACOBS and TITAN ENTERPRISES, INC., a Texas corporation, d/b/a GADZOOKS,	)	
Defendants.	)	

RECEIVED
NOV 12 1992
BOONE SMITH DAVIS
HURST & DICKMAN

AMENDED PETITION

COMES NOW Plaintiff and for this, his claim and cause of action against the Defendants and each of them states and alleges:

COUNT I

I.

At all times material herein, Plaintiff, Randy Willis, has been a resident of Tulsa County, State of Oklahoma, and he is the father and next friend of Brandon Willis, who is a minor.

Defendant Riva Sport, Inc., is a corporation organized and existing under the laws of a state other than the State of Oklahoma, but doing business in the State of Oklahoma.

Defendant Robert Jacobs is a citizen of the State of California, doing business in the State of Oklahoma.

Defendant Titan Enterprises, Inc., is a Texas corporation, doing business in the State of Oklahoma as Gadzooks.

44

II.

On or about the 5th day of August, 1990, Brandon Willis, then 11 year of age, was using a product made or marketed by one or more of the Defendants, which product is known as the "Aqua Sling," which was made and marketed as a toy.

III.

Said Aqua Sling was defective and unreasonably dangerous in its design, and as a result of its defective and dangerous nature, Brandon Willis did receive severe, painful and permanent injuries while using said product.

IV.

As a result of the defective and unreasonably dangerous nature of the Aqua Slint and the resulting injuries to Brandon Willis, he has been prevented from transacting his business and has suffered severe, painful and permanent injuries to his person. Said injuries are disfiguring in their nature and will cause Brandon to expend large sums of money in the future for medical expenses and have caused great pain and suffering and will do so in the future. Additionally, the minor has suffered an impaired capacity to earn a living in the future.

V.

At the time of the injuries to the minor, he was 11 years of age with a normal life expectancy of 62.2 years according to the United States Life Tables.

COUNT II

VI.

Randy Willis, as the father and next friend of Brandon Willis, has been forced to expend large sums of money in order to effect a cure to his

son and will be forced to expend large sums of money in the future for medical expenses, as a result of the injuries inflicted on his son.

WHEREFORE, premises considered, Plaintiff prays for judgment against the Defendants and each of them in a sum in excess of $10,000 as and for actual damages and for a sum in excess of $10,000 punitive damages, the costs of this action, and such other and further relief to which Plaintiff may be deemed entitled.

Respectfully submitted,

FRASIER & FRASIER

BY: _____

Steven R. Hickman OBA#4172
1700 Southwest Blvd, Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724

ATTORNEY'S LIEN CLAIMED:

_____
Steven R. Hickman

JURY TRIAL DEMANDED:

_____
Steven R. Hickman

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CERTIFICATE OF MAILING

I hereby certify that on the 30th day of October, 1992, I mailed a true and correct copy of the foregoing instrument to:

Reuben Davis
100 W. 5th St., Suite 500
Tulsa, OK 74103

with proper postage thereon fully prepaid.

Steven R. Hickman

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SERVICE COPY

ALIAS
SUMMONS

SERVICE COPY

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA, 500 SOUTH DENVER, TULSA, OKLAHOMA 74103

RANDY WILLIS, Father and next friendoof BRANDON WILLIS, a minor,
Plaintiff(s)

vs.

RIVA SPORT, INC., a foreign corporation,
Defendant(s)

Case No. CJ 92-00567

Attorney(s) for Plaintiff(s)
Name James E. Frasier OBA#3108
Address 1700 Southwest Blvd, Suite 10
P.O. Box 799
Tulsa, Oklahoma 74101
Telephone 918/584-4724

Appointed to serve. PSL #

Authorized by

To the above-named Defendant(s)
Riva Sport, Inc.
c/o John A. Doerst
12694 Montana
Los Angeles, CA 90049

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 27 day of July, 1992.

Don E. Austin, Court Clerk

By _____, Deputy Court Clerk

(Seal)

This summons and order was served on _____
(date of service)

_____
(Signature of person serving summons)

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YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
FEB 0 - 1992
DON E. AUSTIN, COURT CLERK
STATE OF OKLA. TULSA COUNTY

RANDY WILLIS, Father and next friend of BRANDON WILLIS, a minor,	)	
Plaintiff,	)	
vs.	)	Case No.: CJ 92 00567
RIVA SPORT, INC., a foreign corporation,	)	
Defendant.	)	

PETITION

COMES NOW the Plaintiff and for this his claim and cause of action against the Defendant alleges and state as follows:

COUNT ONE

I

That at all times material herein this Plaintiff is a resident of Tulsa County and of the State of Oklahoma.

That the facts that give rise to this cause of action occurred in Tulsa County, State of Oklahoma.

That this Court has jurisdiction of the parties and the subject matter of this action.

That on or about the 5th day of August, 1990, Brandon Willis, then age 11 years, was using the product made by the Defendant known as the Aqua Sling which was a device made and marketed by the Defendant as a toy.

That said Aqua Sling was defective and unreasonably dangerous in its design, and a result of its defective and dangerous nature, Brandon Willis did receive severe, painful and permanent injuries while using said Aqua Sling.

II

That as a result of the defective and unreasonably dangerous nature of the Aqua Sling and the resulting injuries to Brandon Willis, he has been prevented from transacting his business and has suffered severe, painful and permanent injuries to his person.

That said injuries are disfiguring in their nature, and will cause Brandon to expend large sums of money in the future for medical expenses, and have caused great pain and suffering and will do so in the future.

III

That at the time of the injuries to Brandon he was 11 years of age, with a normal life expectancy of 62.2 years according to the United States Life Tables.

COUNT TWO

IV

That Randy Willis, as the father and next friend of Brandon Willis, been forced to expend large sums of money in order to effect a cure to his son as a result of the injuries inflicted thereon.

That in addition to those sums heretofore expended, Randy Willis can expect to expend additional sums in the future by way of medical expenses.

WHEREFORE, premises considered, the Plaintiff does pray for judgment against the Defendant in a sum in excess of $10,000.00 as and for actual damages, and for a sum

in excess of $10,000.00 as and for punitive or exemplary damages, together with all costs of this action, and such other relief to which this Plaintiff may be entitled.

Respectively submitted,

FRASIER & FRASIER

By: _____

James E. Frasier OBA #3108
1700 Southwest Blvd, Suite 100
P. O. Box 799
Tulsa, Oklahoma 74101
918/584-4724

JURY TRIAL DEMANDED
ATTORNEYS LIEN CLAIMED

_____
James E. Frasier

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

RANDY WILLIS, father and next friend of BRANDON WILLIS, a minor,	)	Note: An unsupervised 11 year old boy was given our game by an adult and hurt himself when shooting a rock. My deposition was taken by Plaintiff over 1 year ago- I have heard nothing from them since. I thinh injuries healed & no contingency lawyer could be found for such a weak case.
Plaintiff,	)	
vs.	)	Case No. CJ-92-567
RIVA SPORT, INC., a foreign corporation,	)	
Defendant.	)	

ANSWERS TO INTERROGATORIES

COMES NOW Plaintiff and answers the Interrogatories propounded by Defendant as follows:

General objection: Plaintiff objects to the two pages of instructions and definitions which precede the Interrogatories, but will respond to the Interrogatories as the terms used therein are understood in their ordinary meaning in the English language. Additionally, Plaintiff will respond to them to the extent required by law. Finally, Plaintiff will not supply in the answers any information which is subject to an attorney-client privilege or an attorney work product privilege.

INTERROGATORY NO. 1: Please identify the person(s) responsible for responding to these Interrogatories.

RESPONSE TO INTERROGATORY NO. 1: Randy Willis and Frasier & Frasier.

INTERROGATORY NO. 2: Please provide Plaintiffs' full name(s), home and business address(es), home and business telephone

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number(s), dates of birth, Social Security numbers, spouse's name and spouse's Social Security number.

RESPONSE TO INTERROGATORY NO. 2: Randall Greer Willis, 2505 S. Fir, Broken Arrow, Oklahoma 74012, 5756 E. 21st, Tulsa, Oklahoma 74135, 451-1486, 665-1000, 5/21/53, 448-56-8890, Patty Willis. Plaintiff objects to the production of the spouse's Social Security number under the Federal Privacy Act.

INTERROGATORY NO. 3: Identify who owned the Aqua Sling which is described in Plaintiffs' Petition and where that product was purchased.

RESPONSE TO INTERROGATORY NO. 3: Hank Schroeder or his son, Jason; Gadzooks, 7021 S. Memorial Drive, Tulsa, Oklahoma.

INTERROGATORY NO. 4: Specifically describe how Plaintiff, Brandon Willis, was injured by the use of the Aqua Sling. Include in your description the identity of those operating the product, the location, time of day, and those present when Plaintiff was injured by the Aqua Sling.

RESPONSE TO INTERROGATORY NO. 4: Brandon and Jason Schroeder were operating the product, having the ends made fast and pulling the center back to shoot a rock. When Brandon let go so the rock would shoot, the sling went forward, but did not release the rock, but released the rock on the way back and the rock collided with Brandon. The incident occurred at Wolf Creek Park in Broken Arrow in mid-afternoon. No one else whose identity is known was present. However, it was a public park and undoubtedly there were other people in the area.

INTERROGATORY NO. 5: Specifically describe how " . . . said Aqua Sling was defective and unreasonably dangerous in its design . . ." as stated in Plaintiffs' Petition.

RESPONSE TO INTERROGATORY NO. 5: It is the belief of the undersigned that there was a grossly inadequate warning and in fact there was no warning at all on the product. Further, that the product was so inherently defective and unreasonably dangerous that it should not have been on the market. It is believed that further evidence of the defective and unreasonably dangerous nature of the product will be developed as discovery goes further.

INTERROGATORY NO. 6: Specifically describe all injuries, temporary and permanent, allegedly sustained by Brandon Willis while he was using the Aqua sling, and state which injuries are permanent and which injuries were temporary.

RESPONSE TO INTERROGATORY NO. 6: Brandon's jaw was shattered, he lost three permanent teeth, broke another permanent tooth in half, and two other teeth had to have root canals. Additionally, there was a laceration completely through the lip. Further information is to be gleaned from the medical records.

INTERROGATORY NO. 7: Please specifically describe how Plaintiff, Brandon Willis, " . . . has been prevented from transacting his business . . ." as alleged in Plaintiffs' Petition.

RESPONSE TO INTERROGATORY NO. 7: Brandon was unable to participate in sports in school for a years, was unable to eat because his mouth was wired shut for a period of time and was otherwise prevented from doing the things which he would otherwise have done.

INTERROGATORY NO. 8: Identify all non-medical expenses incurred and monetary damages suffered by Plaintiffs as a direct result of the occurrence alleged in Plaintiff's Petition.

RESPONSE TO INTERROGATORY NO. 8: Other than medical bills, past and future, the pain and suffering and the inability to transact the business, together with the permanent disfigurement and permanent impairment constitute the monetary damages asked about herein. Additionally, Brandon has suffered a slurring of his speech, apparently as a result of the accident because of the damage to his face and mouth.

INTERROGATORY NO. 9: Please list all medical expenses incurred by Plaintiffs as a direct result of the occurrence alleged in Plaintiffs' Petition.

RESPONSE TO INTERROGATORY NO. 9: See documents produced.

INTERROGATORY NO. 10: Identify all physicians and other health care providers who have treated Plaintiff, Brandon Willis, since his birth.

RESPONSE TO INTERROGATORY NO. 10: In addition to those identified in the medical bills produced, the following: St. John Medical Center, Tulsa, Oklahoma; Wayne Jones, M.D., Tulsa, Oklahoma; Dr. Scott, a pediatrician, Tulsa, Oklahoma; Glass Nelson Clinic/Wheeling Medical Group, Tulsa, Oklahoma; Dr. Denslaw, Tulsa, Oklahoma; Dr. Bryant, Tulsa, Oklahoma; (the last two being eye doctors); Springer Clinic, Tulsa, Oklahoma.

INTERROGATORY NO. 11: Identify all physicians and other health care providers who treated Plaintiff, Brandon Willis, for the alleged

injury suffered as a direct result of the occurrence alleged in Plaintiffs' Petition.

RESPONSE TO INTERROGATORY NO. 11: See answers above.

INTERROGATORY NO. 12: Please list all expenses Plaintiffs contend they will suffer in the future as a direct result of the occurrence alleged in Plaintiffs' Petition.

RESPONSE TO INTERROGATORY NO. 12: Discovery is continuing and this is not fully known at this time. However, there will be future medical care and treatment which is best described by the doctors involved. Obviously, there will be a lifetime of dental care required for these injuries; there may also need to be reconstructive plastic surgery.

INTERROGATORY NO. 13: Identify all medication (prescription and non-prescription) taken by Plaintiffs since August 5, 1990, which of those medications were prescribed for injuries directly related to Plaintiffs' Petition, how long Plaintiff took those medications, and who prescribed those medications.

RESPONSE TO INTERROGATORY NO. 13: Plaintiff objects to this to the extent that it seeks information regarding anyone other than Brandon Willis. However, with regard to Brandon Willis, this will be answered. See documents produced. Additionally, Tylenol, aspirin or some other non-prescription pain medication.

INTERROGATORY NO. 14: Please list all expenses (not already listed above) incurred as a direct result of the injuries sustained by Brandon Willis on or about August 5, 1990.