

5. The Defendant BRK Brands, Inc. ("BRK"), is a foreign corporation doing business by agent in Conecuh County, Alabama, and was such at all times material herein.

6. The Defendant Weaver Rental Properties, LLC ("WRP"), is an Alabama limited liability company with its principal office in Conecuh County, Alabama, and was such at all times material herein.

7. The Defendant Francis M. Weaver ("Weaver") is an adult resident of Conecuh County, Alabama, and was such at all times material herein. Weaver is and was at all times material herein a Member of the limited liability company WRP.

8. Defendants WRP and Weaver are referred to collectively herein as "the Weaver Defendants."

9. The Defendant Underwriters Laboratories, Inc. ("UL"), is a foreign corporation doing business by agent in Conecuh County, Alabama, and was such at all times material herein.

10. The Defendant Intertek Testing Services NA, Inc. ("Intertek"), is a foreign corporation doing business by agent in Conecuh County, Alabama, and was such at all times material herein.

11. A, B, C, D, E and F are those persons, firms, corporations or other legal entities that sold, designed and/or manufactured smoke alarms that were defective and unreasonably dangerous, and were installed in the premises located at 63 North Avenue, Castleberry, Alabama, and/or failed to adequately warn about said smoke alarms' defective and unreasonably dangerous condition, and/or negligently or wantonly sold, designed, manufactured and/or failed to warn about said smoke alarms, and/or impliedly warranted that said smoke alarms were merchantable, as more fully set out below, whose true identities are presently unknown but who will be added by amendment when ascertained.

12. G, H, I, J, K and L are those persons, firms, corporations or other legal entities that owned, leased or were otherwise responsible for the repair and maintenance of the premises located at 63 North Avenue, Castleberry, Alabama, and who negligently or wantonly failed to properly repair and maintain the electrical system of said premises, or negligently or wantonly failed to warn Plaintiffs about defects in the same, as more fully set out below, whose true identities are presently unknown but who will be added by amendment when ascertained.

13. M, N and O are corporations that tested ionization smoke alarms of the type installed in the premises located at 63 North Avenue, Castleberry, Alabama, for compliance with UL Standard 217, and negligently or wantonly certified them as compliant, as more fully set out below, whose true identities are presently unknown but who will be added by amendment when ascertained.

14. At all times material herein, Plaintiffs Latosha Hosford, Chad Barley and the minor decedent Nevaeh Nichole Johnson were tenants of the Weaver Defendants residing in a dwelling owned and maintained by the Weaver Defendants and located at 63 North Avenue, Castleberry, Alabama.

15. At all times material herein, Defendant Weaver was an agent, servant or employee of Defendant WRP. Defendant Weaver's duties in the line and scope of his capacity as an agent, servant or employee of Defendant WRP included maintenance and repair of the dwelling located at 63 North Avenue, Castleberry, Alabama.

16. Venue is proper in Conecuh County, Alabama, pursuant to Ala. Code 1975 § 6-3-2(a)(3) and § 6-3-7(a)(1) and (3), and Ala. R. Civ. Proc. 82(c).

FACTUAL ALLEGATIONS

17. On or about May 20, 2011, Plaintiffs Latosha Hosford and Chad Barley and the minor decedent Nevaeh Nichole Johnson were tenants of the dwelling owned by the Weaver Defendants and located at 63 North Avenue, Castleberry, Alabama ("the subject dwelling"). The subject dwelling is and was at all times material herein owned, managed and controlled by the Weaver Defendants, and was leased by the Weaver Defendants to Plaintiffs Latosha Hosford and Chad Barley.

18. On or about May 20, 2011, an electrical fire originated in the bedroom of the minor decedent Nevaeh Nichole Johnson, within the subject dwelling. Smoke from the fire spread throughout the dwelling, proximately causing the following injuries and damages to the dwelling's occupants:

- a. The minor decedent Nevaeh Nichole Johnson was killed.
- b. Plaintiff Latosha Hosford underwent physical pain and suffering and mental anguish, and will continue to so suffer in the future; she was caused to incur medical expenses for the treatment of her injuries; she lost time from work; and her future earning capacity has been at least temporarily impaired.
- c. Plaintiff Chad Barley underwent physical pain and suffering and mental anguish, and will continue to so suffer in the future; he was caused to incur medical expenses for the treatment of his injuries; he was permanently scarred; he lost time from work; and his future earning capacity has been at least temporarily impaired.

19. Two (2) ionization smoke alarms were installed in the subject dwelling, which were designed, manufactured and sold by Defendants BRK, A, B, C, D, E and F. These

smoke alarms were defective, and failed to sound in a timely manner when the above-described fire occurred. The failure of the smoke alarms to sound in a timely manner proximately caused or contributed to the death of the minor decedent Nevaeh Nichole Johnson, and the injuries to Plaintiffs Latosha Hosford and Chad Barley.

20. The electrical system of the subject dwelling was defective, and its defective condition proximately caused or contributed to the fire described above.

21. The defects in the electrical system of the subject dwelling were latent and unknown to Plaintiffs, but were known to the Weaver Defendants and Defendants G, H, I, J, K and L at the time the premises were leased to Plaintiffs Latosha Hosford and Chad Barley.

COUNT ONE
(Alabama Extended Manufacturer's Liability Doctrine Against Defendants
BRK, A, B, C, D, E and F)

Plaintiff Latosha Hosford, individually, and as the mother of the minor decedent Nevaeh Nichole Johnson, and Plaintiff Chad Barley, allege as follows against Defendants BRK, A, B, C, D, E and F, jointly and individually:

22. Plaintiffs incorporate by reference all preceding allegations.

23. The ionization smoke alarms manufactured, designed and sold by Defendants BRK, A, B, C, D, E and F were defective and unreasonably dangerous, and were in this condition when they left said defendants' hands. Said defendants are in the business of manufacturing, designing and selling ionization smoke alarms.

24. The ionization smoke alarms did not perform according to the reasonable expectations of the consumer. Said ionization smoke alarms were expected to, and did, reach the consumer without substantial change in their condition at the time they left the hands of said defendants.

25. Said ionization smoke alarms were defective and unreasonably dangerous in one or more of the following respects:

- a. By design, in that they failed to sound in a timely manner in the presence of smoke;
- b. Because said defendants failed to warn, or failed to adequately warn, ultimate users and consumers, including Plaintiffs Latosha Hosford and Chad Barley, that the smoke alarms would not sound in a timely manner in the presence of smoke, as opposed to flame.

26. As a proximate result of the ionization smoke alarms' defective and unreasonably dangerous condition, the minor decedent Nevaeh Nichole Johnson was killed, and Plaintiffs Latosha Hosford and Chad Barley suffered injuries and damages as aforesaid.

WHEREFORE, Plaintiffs Latosha Hosford and Chad Barley demand judgment against Defendants BRK, A, B, C, D, E and F, jointly and individually, for compensatory and punitive damages for their personal injuries, and Plaintiff Latosha Hosford, as the mother of the minor decedent Nevaeh Nichole Johnson, demands judgment against said defendants, jointly and individually, for punitive damages for the death of her minor child; plus the costs of this action.

COUNT TWO
(Negligence or Wantonness Against Defendants BRK, A, B, C, D, E and F)

Plaintiff Latosha Hosford, individually, and as the mother of the minor decedent Nevaeh Nichole Johnson, and Plaintiff Chad Barley, allege as follows against Defendants BRK, A, B, C, D, E and F, jointly and individually:

27. Plaintiffs incorporate by reference all preceding allegations.

28. Defendants BRK, A, B, C, D, E and F were negligent or wanton in one or more of the following respects:

- a. By designing ionization smoke alarms in such a way that they would fail to sound in a timely manner in the presence of smoke;
- b. By manufacturing ionization smoke alarms that would fail to sound in a timely manner in the presence of smoke;
- c. By selling ionization smoke alarms that would fail to sound in a timely manner in the presence of smoke;
- d. By failing to adequately warn, or failing to adequately warn, the ultimate user or consumer, including Plaintiffs, that ionization smoke alarms would fail to sound in a timely manner in the presence of smoke, as opposed to flame;
- e. By failing to adequately warn consumers, including Plaintiffs, that ionization smoke alarms do not detect slow smoldering fires in a timely fashion;
- f. By failing to advise and inform consumers, including Plaintiffs, concerning the material differences between ionization smoke alarms, photoelectric smoke alarms, and combination smoke alarms;
- g. By failing to advise and inform consumers, including Plaintiffs, that a superior smoke alarm which will provide a faster alarm response is manufactured and available from the defendants;
- h. By failing to adequately instruct the ultimate user, including Plaintiffs, on how and where to install the smoke alarms.

29. As a proximate result of said negligence or wantonness, Plaintiffs were damaged as aforesaid, and the minor decedent Nevaeh Nichole Johnson was killed.

WHEREFORE, Plaintiffs Latosha Hosford and Chad Barley demand judgment against Defendants BRK, A, B, C, D, E and F, jointly and individually, for compensatory and punitive damages for their personal injuries, and Plaintiff Latosha Hosford, as the mother of the minor decedent Nevaeh Nichole Johnson, demands judgment against said defendants, jointly and individually, for punitive damages for the death of her minor child; plus the costs of this action.

COUNT THREE
(Breach of Warranty by Defendants BRK, A, B, C, D, E and F)

Plaintiffs Latosha Hosford and Chad Barley, individually, and Plaintiffs Latosha Hosford and Rhonda Hosford, as Personal Representatives of the Estate of Nevaeh Nichole Johnson, a minor, deceased, allege as follows against Defendants BRK, A, B, C, D, E and F, jointly and individually:

30. Plaintiffs incorporate by reference all preceding allegations

31. Defendants BRK, A, B, C, D, E and F impliedly warranted that the smoke alarms, the failure of which proximately caused the injuries to Plaintiffs Latosha Hosford and Chad Barley, and the injuries to and death of the minor decedent Nevaeh Nichole Johnson, were merchantable and fit for the ordinary purposes for which such goods are used, when said Defendants sold the smoke alarms. Said defendants are merchants with respect to smoke alarms.

32. Said defendants breached their implied warranty in that the smoke alarms failed to properly function and operate on the occasion made the basis of this suit. Therefore, said smoke alarms were not merchantable as warranted.

33. Plaintiffs Latosha Hosford and Chad Barley, and the minor decedent Nevaeh Nichole Johnson, were third-party beneficiaries of the implied warranty of merchantability pursuant to Ala. Code 1975 § 7-2-318.

34. Pursuant to Ala. Code 1975 § 7-2-316(5), said defendants could not limit or exclude their liability for damages for personal injury proximately caused by the unmerchantable condition of the smoke alarms, which were consumer goods.

35. As a proximate result of said breach of implied warranty, the minor decedent Nevaeh Nichole Johnson was caused to undergo physical pain and suffering and mental anguish before she died, and Plaintiffs Latosha Hosford and Chad Barley suffered injuries and damages as aforesaid.

WHEREFORE, Plaintiffs Latosha Hosford and Rhonda Hosford, as Personal Representatives of the Estate of Nevaeh Nichole Johnson, a minor, deceased, demand judgment against Defendants BRK, A, B, C, D, E and F, jointly and individually, for compensatory damages for the pain and suffering of Nevaeh Nichole Johnson before her death; and Plaintiffs Latosha Hosford and Chad Barley demand judgment against said defendants, jointly and individually, for compensatory damages for their personal injuries; plus the costs of this action.

COUNT FOUR
(Negligence or Wantonness of the Weaver Defendants
and Defendants G, H, I, J, K and L)

Plaintiff Latosha Hosford, individually, and as the mother of the minor decedent Nevaeh Nichole Johnson, and Plaintiff Chad Barley, allege as follows against the Weaver Defendants and Defendants G, H, I, J, K and L, jointly and individually:

36. Plaintiffs incorporate by reference all preceding allegations.

37. The Weaver Defendants and Defendants G, H, I, J, K and L were negligent or wanton in one or more of the following respects:

- a. By failing to provide Plaintiffs Latosha Hosford, Chad Barley and the minor decedent Nevaeh Nichole Johnson with a reasonably safe place to live;

- b. By failing to comply with applicable fire safety codes and standards;
- c. By failing to maintain the electrical system of the subject dwelling in proper working condition, in good repair, and free of safety hazards;
- d. By failing to repair the known defects in the electrical system of the subject dwelling; and
- e. By failing to warn Plaintiffs Latosha Hosford and Chad Barley of the known defects in the electrical system of the subject dwelling.

38. As a proximate result of said negligence or wantonness, the minor decedent Nevaeh Nichole Johnson was killed, and Plaintiffs Latosha Hosford and Chad Barley suffered injuries and damages as aforesaid.

WHEREFORE, Plaintiff Latosha Hosford, as the mother of the minor decedent Nevaeh Nichole Johnson, demands judgment against the Weaver Defendants and Defendants G, H, I, J, K and L, jointly and individually, for punitive damages for the death of her minor child; and Plaintiffs Latosha Hosford and Chad Barley demand judgment against said defendants, jointly and individually, for compensatory and punitive damages for their personal injuries; plus the costs of this action.

COUNT FIVE
(Negligence or Wantonness of Defendant Underwriters Laboratories, Inc. [“UL”])

Plaintiff Latosha Hosford, individually, and as the mother of the minor decedent Nevaeh Nichole Johnson, and Plaintiff Chad Barley, allege as follows against Defendant UL:

39. Plaintiffs incorporate by reference all preceding allegations.

40. UL is a corporation which develops safety standards for products and tests products for compliance with those standards.

41. In the late 1970's, UL eliminated its separate ionization-smoke-alarm and photoelectric-smoke-alarm safety standards and promulgated a single smoke-alarm safety

standard known as UL Standard 217. The ionization smoke alarms installed in the subject dwelling were designed, manufactured and sold after UL Standard 217 was promulgated, and complied with UL Standard 217.

42. It was foreseeable to UL that designers, manufacturers and sellers of ionization smoke alarms would only design, manufacture or sell ionization smoke alarms that could pass UL Standard 217 and achieve an independent testing laboratory's Listing Mark.

43. It was therefore foreseeable to UL that consumers and users of ionization smoke alarms could suffer injury or death if UL did not exercise reasonable care in its formulation and implementation of UL Standard 217.

44. Defendants BRK, A, B, C, D, E and F relied upon, or were influenced by, their ionization smoke alarms' ability to pass UL Standard 217 when they designed, manufactured and sold those smoke alarms, including the smoke alarms installed in the subject dwelling.

45. If the ionization smoke alarms designed, manufactured and sold by Defendants BRK, A, B, C, D, E and F, including the ones installed in the subject dwelling, had not passed UL Standard 217, and thereby acquired a Listing Mark, said Defendants would not have designed, manufactured or sold said smoke alarms. Said Defendants would only have designed, manufactured or sold smoke alarms that passed UL Standard 217.

46. If UL had exercised reasonable care in the formulation and implementation of UL Standard 217, with respect to slow smoldering fires, ionization smoke alarms would not have passed UL Standard 217. Only photoelectric and combination ionization-photoelectric smoke alarms would have passed. Such smoke alarms, if installed in the subject dwelling, would have sounded in a timely manner and thereby prevented the injuries to Plaintiffs and the death of the minor decedent.

47. Defendant UL was negligent or wanton in one or more of the following respects:

- a. By modifying the smoldering fire test in UL Standard 217 to eliminate materials that presented foreseeable challenges to ionization smoke alarms.
- b. By increasing the minimum obscuration levels required for ionization smoke alarms to pass UL Standard 217's smoldering-fire test.
- c. By failing to formulate and implement safety standards for ionization smoke alarms that require ionization smoke alarms to detect slow smoldering fires in a timely manner and to sound in a timely manner in the presence of smoke as opposed to flame.
- d. By formulating and implementing a safety standard that an ionization smoke alarm would pass without detecting slow smoldering fires in a timely manner and without sounding in a timely manner in the presence of smoke as opposed to flame.

48. As a proximate result of said negligence or wantonness, Plaintiffs were damaged as aforesaid, and the minor decedent Nevaeh Nichole Johnson was killed.

WHEREFORE, Plaintiffs Latosha Hosford and Chad Barley demand judgment against Defendant Underwriters Laboratories, Inc., for compensatory and punitive damages for their personal injuries, and Plaintiff Latosha Hosford, as the mother of the minor decedent Nevaeh Nichole Johnson, demands judgment against said Defendant for punitive damages for the death of her minor child; plus the costs of this action.

COUNT SIX
(Negligence or Wantonness of Defendants
Intertek Testing Services NA, Inc. [Intertek], M, N and O)

Plaintiff Latosha Hosford, individually, and as the mother of the minor decedent Nevaeh Nichole Johnson, and Plaintiff Chad Barley, allege as follows against Defendants Intertek, M, N and O, jointly and individually:

49. Plaintiffs incorporate by reference all preceding allegations.

50. Defendants Intertek, M, N and O are corporations that tests products for compliance with the safety standards formulated and promulgated by Defendant UL. Defendants Intertek, M, N and O tested ionization smoke alarms designed, manufactured and sold by Defendants BRK, A, B, C, D, E and F, including ionization smoke alarms of the type installed in the subject dwelling, for compliance with UL Standard 217. Said smoke alarms passed UL Standard 217.

51. It was foreseeable to Defendants Intertek, M, N and O that designers, manufacturers and sellers of ionization smoke alarms would only design, manufacture or sell ionization smoke alarms that could pass UL Standard 217 and achieve Intertek's ETL Listing Mark.

52. It was therefore foreseeable to Defendants Intertek, M, N and O that consumers and users of ionization smoke alarms could suffer injury or death if UL Standard 217 was inadequate for its intended purpose with respect to ionization smoke alarms.

53. Defendants Intertek, M, N and O knew or should have known that UL Standard 217 allowed ionization alarms to pass its requirements without detecting slow smoldering fires in a timely manner and without sounding in a timely manner in the presence of smoke as opposed to flame.

54. Defendants Intertek, M, N and O negligent or wantonly certified the compliance of ionization smoke alarms with UL Standard 217, including smoke alarms designed, manufactured and sold by Defendants BRK, A, B, C, D, E and F that were of the type installed in the subject dwelling, when they knew or should have known that with respect to ionization smoke alarms, UL Standard 217 was inadequate for its intended purpose of assuring a timely warning to consumers and users of such smoke alarms.

55. As a proximate result of the negligence or wantonness of Defendants Intertek, M, N and O, Plaintiffs were damaged as aforesaid, and the minor decedent Nevaeh Nichole Johnson was killed.

WHEREFORE, Plaintiffs Latosha Hosford and Chad Barley demand judgment against Defendants Intertek, M, N and O, jointly and individually, for compensatory and punitive damages for their personal injuries, and Plaintiff Latosha Hosford, as the mother of the minor decedent Nevaeh Nichole Johnson, demands judgment against said Defendants, jointly and individually, for punitive damages for the death of her minor child; plus the costs of this action.

Respectfully submitted,

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PLAINTIFFS DEMAND TRIAL BY JURY

By: /s Richard H. Taylor

Defendant Underwriters Laboratories, Inc. to be served via certified mail as follows:

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Corporate Headquarters
c/o President or Managing Agent
333 Plingsten Road
Northbrook, IL 60062-2002

Intertek Testing Services NA, Inc.
Corporate Headquarters
c/o President or Managing Agent
3933 US RTE 11
Cortland, NY 13045

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following:

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