

SALTZ MONGELUZZI & BENDESKY P.C.

BY: LARRY BENDESKY

ROBERT W. ZIMMERMAN

RYAN D. HURD

SAMUEL A. HAAZ

ID No: 51026/208410/205955/314507

1650 MARKET STREET, 52ND FLOOR

PHILADELPHIA, PENNSYLVANIA 19103

(215) 496-8282

ATTORNEYS FOR PLAINTIFF

GEORGE ABRAHAMS	:	PHILADELPHIA COUNTY
Plaintiff,	:	COURT OF COMMON PLEAS
v.	:	CIVIL DIVISION
	:	
SIG SAUER, INC.	:	JUNE TERM, 2022
Defendant.	:	No.: 1213

PLAINTIFF’S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT SIG SAUER’S
MOTION FOR POST-TRIAL RELIEF

Plaintiff, George Abrahams (“Plaintiff”), by and through his undersigned counsel, submits this Memorandum of Law in opposition to Defendant’s November 29, 2024 Motion for Post-Trial Relief and Defendant’s February 28, 2025 brief. For the reasons stated herein and based upon the evidence presented at trial, Defendant’s Motion should be denied. Plaintiff respectfully requests that this Honorable Court enter the proposed Order attached to Plaintiff’s Memorandum of Law.

TABLE OF CONTENTS

I.	MATTER BEFORE THE COURT.....	1
II.	COUNTER-STATEMENT OF QUESTIONS PRESENTED.....	2
III.	STANDARDS OF REVIEW.....	2
IV.	LEGAL ARGUMENT.....	6
	A. Defendant, Sig Sauer, is Not Entitled to JNOV on Any Aspect of the Jury’s Verdict.	
		6
	1. Defendant, Sig Sauer, is Not Entitled to JNOV on Plaintiff’s Design Defect Claim or Negligence Claim Because Plaintiff Offered Sufficient Evidence, Supported by Expert Opinion, That the P320 Was Defective, the Holster Failed to Adequately Cover the Trigger, and that a Safety Would Have Prevented Plaintiff’s Incident.	
		7
	a. Plaintiff’s P320 Discharged While in Its Holster Without Him Touching the Gun.	
		7
	b. The P320 Is Uniquely Susceptible to Unintended Trigger Actuation While in Its Holster.	
		8
	c. The P250 Holster Sold to George Abrahams Left the Trigger Exposed to Unintended Trigger Actuation from the Side.	
		11
	d. The P320’s Design, with a Pre-cocked Striker, A Trigger Travel Distance Much Shorter than its Competitors, and No External Safeties, Is Defective and Renders It Uniquely Susceptible to Unintended Discharge.	
		13
	e. The Defective Design of the P320 Was the Cause of the Unintended Discharge.	
		20

2. Defendant is Not Entitled to JNOV on the Award of Punitive Damages Because Plaintiff Presented Ample Evidence That Defendant Had a Subjective Appreciation of the Risk of Harm to Which the Plaintiff Was Exposed and that Defendant Failed to Act in Conscious Disregard of that Risk.	25
a. Defendant had a Subjective Appreciation of the Risk of Harm.	26
b. In Conscious Disregard of the Risk, Defendant Failed to Act.	30
c. Industry Standards and Testing are Irrelevant to Sig Sauer’s Defense in this Case.	34
d. Sig Sauer’s Internal Design Safety Features Are Irrelevant in this Case.	36
e. The Voluntary Upgrade Program.	38
f. Sig Sauer’s Misrepresentations as to Whether the P320 was a Single or Double-Action Pistol.	40
g. “Safety Without Compromise Promise” in Sig Sauer’s Advertisements Was a False Promise.	42

B. Defendant Is Not Entitled to a New Trial on Any Grounds.....	43
1. The Court Did Not Err in Permitting the Jury to Determine Punitive Damages Where Sig Sauer Presented Fact and Expert Witness Testimony and Evidence to Defend and Refute the Claim It Was In Any Way Liable, and Where Sig Sauer Suffered No Prejudice.	44
a. The Court Had Absolute Authority to Rescind Its Own Prior Decision and Remove Non-Suit.	44
b. Sig Sauer’s Due Process Was Not Violated Because It Had the Opportunity to and Did offer Evidence in Defense of the Causes of Action Plead by Plaintiff.	46
c. Non-Suit Should Not Have Been Initially Granted Because Defendant Chose to Submit Favorable, Self-Serving Evidence in Plaintiff’s Case-In-Chief, and Argued These Evidentiary Items In Its Motion For Non-Suit, and As Such, Sig Sauer’s Evidence Was Invasive to Any Decision on Sig Sauer’s Motion for Non-Suit.	50
2. Plaintiff’s Questioning of Matt Taylor, and Engineering Team Leader for the P320 who Defense Chose to Call in Its Case, was Proper, Not Prejudicial and Is Not a Basis for a New Trial.	53
3. The Court Correctly Permitted the Introduction of Evidence of Other Similar Incidents of P320 Discharges which were Limited in Scope Based Upon Similarity, While Precluding Inadmissible and Dissimilar Evidence.	59
a. The Court Properly Admitted Evidence of Other Similar Incidents.	59
b. The Court Properly Precluded Inadmissible “Rebuttal” Evidence.	66
c. The Court Properly Precluded Inadmissible Evidence of Incidents Involving Other Pistols.	69

4. The Court Correctly Precluded the Introduction of Evidence of Customer Preference and Sig Sauer Suffered No Prejudice by this Exclusion.	70
5. The Court Properly Precluded Evidence by Sig Sauer’s Expert, which was Not Disclosed Through the Expert’s Report in this Case.	75
6. The Court Properly Precluded Evidence by Sig Sauer’s Expert, which was Inadmissible as Other Incident Evidence of a Non-P320, Hearsay and a Host of Other Grounds, and Sig Sauer Suffered No Prejudice Because Sig Sauer Presented the Jury with Multiple Instances of Nearly Identical Testimonial Evidence.	79
7. The Trial Court Properly Charged the Jury as to Strict Liability and Design Defect.	83
8. There Was No Juror Misconduct, Nor Does Any Juror Conduct Warrant a New Trial.	87
C. Defendant is Not Entitled to Remittitur.....	87
V. CONCLUSION.....	93

SALTZ MONGELUZZI & BENDESKY P.C.

BY: LARRY BENDESKY

ROBERT W. ZIMMERMAN

RYAN D. HURD

SAMUEL A. HAAZ

ID No: 51026/208410/205955/314507

1650 MARKET STREET, 52ND FLOOR

PHILADELPHIA, PENNSYLVANIA 19103

(215) 496-8282

ATTORNEYS FOR PLAINTIFF

GEORGE ABRAHAMS	:	PHILADELPHIA COUNTY
Plaintiff,	:	COURT OF COMMON PLEAS
v.	:	CIVIL DIVISION
	:	
SIG SAUER, INC.	:	JUNE TERM, 2022
Defendant.	:	No.: 1213

**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT SIG
SAUER’S MOTION FOR POST-TRIAL RELIEF**

Plaintiff, George Abrahams (“Plaintiff”), by and through his undersigned counsel, submits this memorandum of law in opposition to Defendant’s November 29, 2024 Motion for Post-Trial Relief and Defendant’s February 28, 2025 brief. For the reasons set forth below, Defendant’s Motion should be denied.

I. MATTER BEFORE THE COURT

Plaintiff’s opposition to Defendant’s Motions for Judgement Notwithstanding the Verdict, for a new trial and remittitur. Plaintiff presented substantial and sufficient evidence that Plaintiff’s P320 discharged while in its holster without his hand touching the gun, and that the unintended trigger actuation would have been prevented had Sig Sauer not designed the P320 in a defective manner by 1) designing the P320 with a pre-cocked striker, 2) making the trigger pull length dangerously short compared to its competitors, and 3) refusing to include even one of the necessary safety mechanisms widely-used in the gun industry on George Abrahams’ P320.

The jury received, understood and thoughtfully deliberated concerning this evidence. Moreover, video and testimonial evidence of other similar incidents demonstrated to the jury that Sig Sauer was aware of others experiencing unintended discharges like Plaintiff's before Plaintiff purchased his P320, and notwithstanding that knowledge and the knowledge that it continued to happen, Sig Sauer did nothing to mitigate the substantial risk of the type of catastrophic harm that Defendant knew and predicted would happen. The evidence presented at trial was more than sufficient to support the jury's award of punitive damages, which was reasonable, thoughtful and commensurate to the evidence and Plaintiff's compensatory damages.

II. COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Should this Honorable Court deny Defendant's motion for JNOV on all grounds?

Suggested Answer: YES.

2. Should this Honorable Court deny Defendant's motion for a new trial on all grounds?

Suggested Answer: YES.

3. Should this Honorable Court deny Defendant's request for remittitur?

Suggested Answer: YES.

III. STANDARDS OF REVIEW

Sig Sauer seeks JNOV, a new trial, and/or remittitur of the verdict. Each form of relief has a distinct standard under Pennsylvania law, as summarized below. Notably, Sig Sauer failed to satisfy a single one of these standards in its own post-trial motion.

Post-Trial Relief. Under Pennsylvania law, "post-trial relief may not be granted unless the grounds therefor, (1) if then available, were raised in pretrial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and (2) are specified in the motion." "[I]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa. R.A.P. 302(a). Litigants are

required to make timely objections at trial in order to preserve issues for post-trial relief and appellate review on the merits. *Dilliaine v. Lehigh Valley Trust Co.*, 311 A.2d 114 (Pa. 1974). Under Rule 227.1(b) if no contemporaneous objection is made to an error that could have been corrected during trial, that error cannot constitute a ground for post-trial relief.

The burden Defendant must satisfy to be afforded relief is extraordinarily high: the court “must review the record in a light most favorable to the verdict winner, **who is afforded the benefit of all reasonable inferences that rise from the evidence.**” *Ellis v. City of Pittsburgh*, 703 A.2d 592, 593 (Pa. Cmwlth. 1997). A post-trial motion may only be granted in a clear case where no two reasonable minds would disagree that the verdict is improper. See *Jones v. Constantino*, 631 A.2d 1289, 1293 (Pa. Super. 1993). This is because “[o]ur system vests the responsibility of determining the facts with the jury and [the court] will not upset their findings absent a showing that the verdict is capricious, against the weight of the evidence and resulted in a miscarriage of justice.” *Mitzelfelt v. Kamrin*, 584 A.2d 888, 891 (Pa. 1990). Defendant comes nowhere close to meeting this weighty burden.

JNOV. In Pennsylvania, JNOV may be entered only where “[o]ne, the movant is entitled to judgment as a matter of law . . . and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant.” *Moure v. Raeuchle*, 604 A.2d 1003, 1007 (Pa. 1992). The Court must “consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner.” *Ty-Button Tie, Inc. v. Kincel and Co.*, 824 A.2d 685, 690 (Pa. Super. 2002). The Court must deny a JNOV motion if any basis exists upon which the jury could have properly made its award. *Griffin v. Univ. of Pittsburgh Med. Ctr.*, 950 A.2d 996, 999 (Pa. Super. 2008). Credibility and weight of the evidence remain matters for the jury, and the court will not substitute its judgment for that of

the finder of fact. See *Brown v. Trinidad*, 111 A.3d 765, 769 (Pa. Super. 2015). Importantly, JNOV is an “extreme remedy” that should only be granted in a clear case. *Koller Concrete Inc. v. Tube City IMS, LLC*, 115 A.3d 312, 321 (Pa. Super. 2015). “If there is any basis upon which the jury could have properly made its award, the denial of the motion for [JNOV] must be affirmed. *Braun v. Wal-Mart Stores Inc.*, 24 A.3d 875, 891 (Pa. Super. 2011), *aff’d*, 106 A.3d 656 (Pa. 2014).

New trial. Defendant requests a new trial on several bases, including weight of the evidence, evidentiary issues, a jury instruction, and alleged juror conduct. As to Defendant’s weight of the evidence argument, “[a] challenge to the weight of the evidence is directed to the discretion of the trial judge, who heard the same evidence and who possesses only narrow authority to upset a jury verdict.” *Commonwealth v. Sanchez*, 36 A.3d 24, 39 (Pa. 2011). The trial court’s exercise of discretion is reviewed for abuse on appeal. *Id.*

Defendant’s request for a new trial based on purported evidentiary and instructional errors relies on a well-established framework where the Court conducts a two-part analysis. First, the Court determines whether it made a mistake under the standard applicable to that purported error. See *Marsico v. DiBileo*, 796 A.2d 997, 999 (Pa. Super. 2002). Here, Defendant points to evidentiary and instructional rulings that are discretionary and reviewed for abuse of discretion. *Whitaker v. Frankford Hosp.*, 984 A.2d 512, 522 (Pa. Super. 2009). Abuse of discretion “is not merely an error of judgment.” *Poust v. Hylton*, 940 A.2d 380, 382 (Pa. Super. 2007). Rather, an abuse of discretion occurs only when “the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record.” *Id.* Second, the Court determines whether the error was prejudicial to the moving party. See *Id.* An error is prejudicial if the Court determines that a new trial would produce a different verdict. *Pennsylvania Dep’t of Gen. Servs. v. U.S. Mineral Prods.*, 898 A.2d

590, 604 (Pa. 2006). A new trial should only be granted where the jury's verdict shocks one's sense of justice because it is so contrary to the evidence admitted at trial. *Carroll v. Avallone*, 939 A.2d 872, 874 (Pa. 2007).

Remittitur. Defendant seeks remittitur of the punitive damages award. When evaluating remittitur, the Court reviews the record in light of the evidence accepted by the jury. *Renna v. Schadt*, 64 A.3d 658, 671 (Pa. Super. 2013). The decision to grant or deny remittitur of the verdict lies within the sole discretion of the trial court." *Id.* When evaluating the remittitur of either a compensatory or punitive verdict, the Court views the evidence in the light most favorable to the verdict. See *Id.*; *Neal v. Bavarian Motors, Inc.*, 882 A.2d 1022, 1028-29 (Pa. Super. 2005); *Willow Inn, Inc. v. Public Serv. Mut. Ins. Co.*, 399 F.3d 224, 231 (3d Cir. 2005). Judicial reduction of a jury award is appropriate only when the award is plainly excessive and exorbitant. See *Haines v. Raven Arms*, 640 A.2d 367 (Pa. 1994). The question for the trial court to consider is "whether the award of damages falls within the uncertain limits of fair and reasonable compensation, or whether the verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption." *Haines*, 640 A.2d at 369. Any remittitur must be to an amount no less than the highest amount the record and the law can support. *Willow Inn, Inc.*, 399 F.3d at 231.

The glaring commonality in each of these standards is that factual disputes are left to be resolved by the jury and defendant is not entitled to a new trial simply because the jury did not agree with defendant's arguments and interpretation of the facts.

IV. LEGAL ARGUMENT

A. Defendant, Sig Sauer, is Not Entitled to JNOV on Any Aspect of the Jury's Verdict.

The jury in this case found that the Sig Sauer P320 involved in the incident was defectively designed and that defective design was the factual cause of Mr. Abrahams' harm. *See* November 19, 2024 Trial Tr. (Morning Session) at 49:19-53:13. The jury further found that Sig Sauer was negligent for its design and distribution of the P320, Sig Sauer was negligent for its design and distribution of the holster it supplied with the P320, that negligence was a factual cause of harm to Mr. Abrahams, and that Mr. Abrahams was 35% negligent and Sig Sauer was 65% negligent. *Id.* The jury found that Sig Sauer failed to warn its customers of the P320 unintentionally discharging. However, the jury found that Sig Sauer's failure to warn was not a factual cause of harm to Mr. Abrahams. *Id.* The jury found that Sig Sauer showed reckless indifference to the rights of others in its distribution of the product. *Id.* Accordingly, the jury awarded Mr. Abrahams \$1,000,000 in compensatory damages and \$10,000,000 in punitive damages. *Id.* *See also*, November 19, 2024 Trial Tr. (Morning Session) at 32:9-33:13. The jury's findings were thoughtful and well-reasoned, as apparent from their repeated questions, [*See* November 19, 2024 Trial Tr. (Morning Session) at 17:5-9, 19:21-24, 21:17-20, 32:21-23, 45:2-22, 49:19-24]. The jury's findings were consistent with the evidence presented at trial. The jury did not simply "side for one side" on all questions. Rather, it considered each question individually and rendered its verdict accordingly. Sig Sauer now seeks JNOV of the jury's findings and award of compensatory and punitive damages. The Court should reject these JNOV arguments entirely.

1. Defendant, Sig Sauer, is Not Entitled to JNOV on Plaintiff's Design Defect Claim or Negligence Claim Because Plaintiff Offered Sufficient Evidence, Supported by Expert Opinion, That the P320 Was Defective, the Holster Failed to Adequately Cover the Trigger, and that a Safety Would Have Prevented Plaintiff's Incident.

a. Plaintiff's P320 Discharged While in Its Holster Without Him Touching the Gun.

The evidence Plaintiff presented established that Plaintiff's P320 discharged while in its holster, without his hand on the gun and without his finger on the trigger. These facts were established by Plaintiff's testimony, physical evidence, and testimony of several fact witnesses. Plaintiff testified that, prior to going down the steps of his home to move his car, he "secured the P320 inside its holster, put it in [his] pocket and proceeded down the steps." Oct. 31, 2024 Trial Tr. (Afternoon Session) at 11:24-25. He testified that, at the time of discharge, he was not touching the firearm. *Id.* at 12:3. As he was descending the steps, he heard a loud explosion and felt a bullet ripping through his skin. *Id.*, at 12:11-15. His P320 was secured in its holster at the time of discharge, and he was not touching the gun. Because the P320 was in the holster, the spent shell casing did not eject. Oct. 31, 2024 Trial Tr. (Morning Session) at 41:23-42:10.

Dr. Bruce Williams was present during the unintended discharge and saw George Abrahams moments later. Nov. 1, 2024 Trial Tr. (Afternoon Session) at 28:23 – 29:6. He testified that he heard the gunshot and heard George yelling in pain and saw him limping down the steps. *Id.* He then observed George Abrahams fall to the floor, explaining the gun went off as he was walking down the steps, and *pulled the gun from its holster* and threw it across the floor. *Id.*

Officer Justin Donohue testified that he received a radio call for a shooting incident at George Abrahams' address and was present on scene within "forty seconds." Nov. 4, 2024 Trial Tr. (Afternoon Session) at 8:19. Officer Donahue testified that when he arrived, Mr. Abrams stated

that “he was coming down the steps, [and] his firearm was in a holster and the gun went off.” *Id.*, at 9:2-3.

George Abrahams was also heard on Officer Donohue’s body-worn camera stating that the gun went off “in the case” referring to the holster. *See* Plaintiff’s Trial Ex. 272.

These facts squarely contradict defendant’s theory that “Plaintiff pulled the trigger with his finger.” *See* Def. Motion for Directed Verdict, at p. 11. This would be impossible if George Abrahams’ P320 was in its holster when it discharged, as testified to by George Abrahams, Dr. Bruce Williams, Officer Justin Donahue and Officer Donahue’s body-worn camera video. Defendant also ignored the fact that the holster it provided Mr. Abrahams exposed the trigger even when fully holstered, as discussed more fully below.

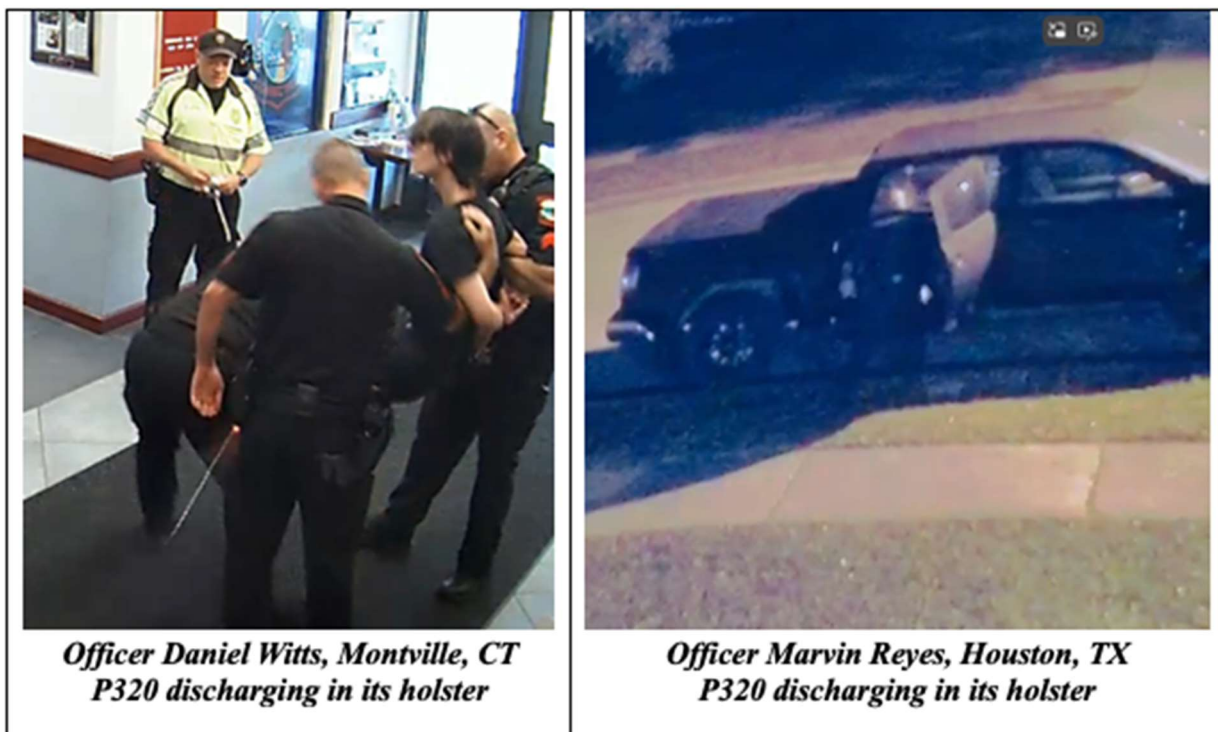
b. The P320 Is Uniquely Susceptible to Unintended Trigger Actuation While in Its Holster.

The jury was presented evidence of six similar incidents that corroborate George Abrahams’ version of events. These incidents, consistent with Pennsylvania law, were used to establish Sig Sauer’s knowledge (in the case of the events that preceded the Plaintiff’s) and to establish the presence of a defect. In each incident, a user of a Sig Sauer P320 was performing routine, everyday tasks such as walking, bending over, reaching, or getting out of a car when their holstered, P320 discharged while in its holster with their hands off of the guns. Many of the incidents were captured on video, further corroborating the events.

The jury heard sworn testimony from seven individuals: Craig Jacklyn (8/26/19 Unintended Discharge); Donald Thatcher (2/7/22 Unintended Discharge)(*See* Exhibit P4); Aaron Roth (1/2/22 Unintended Discharge)(*See* Exhibit P3); Marvin Reyes (3/28/22 Unintended Discharge)(*See* Exhibit P10); David Cole (5/4/22 Unintended Discharge); Michale Lingo (1/7/23 Unintended Discharge); and Daniel Witts (7/24/23 Unintended Discharge)(*See* Exhibit P8), and

heard testimony from Sig Sauer's employee Chris Meyers that Sig Sauer had been aware of non-drop fire unintended discharges since 2016. Their testimony is contained in the binder supplied to the Court. Each of these individuals who experienced substantially similar incidents testified that their P320 was fully seated in its holster when it discharged without their touching the gun.

The jury also was able to observe video evidence proving that Officer Witts', Officer Thatcher's and Officer Reyes' P320 did, in fact, discharge in their respective holsters without either one of them touching the gun. Two of the three examples, each showing the flash of the gun fire, are shown below:



(See Plaintiff's Trial Exhibit 8 and Plaintiff's Trial Exhibit 10).

Sig Sauer has maintained throughout this litigation that the P320 cannot discharge without trigger actuation, as testified by the P320's designer, Sean Toner, and others. As such, and if Sig Sauer is to be believed, each of the above seven unintended discharge incidents necessarily were caused by unintended trigger actuation by a foreign object just like Plaintiff's unintended discharge

here. That is, the *mechanism* of discharge was unintended trigger actuation by a foreign object contacting the trigger while the P320 was properly seated in its holster. Identifying the *object* that contacted it does not change the mechanism of discharge, and is, almost without exception, unknown to each respective victim of the P320.

None of the six victims of the P320 discharging in its holster, including George Abrahams, can identify the *object* that caused the unintended discharge. Donald Thatcher testified that he did not know what caused his unintended discharge and could not identify an object that would have actuated his trigger. *See* Thatcher Dep., 35:20-24. Craig Jacklyn testified that he was not aware of anything that impacted the gun or contacted the trigger. *See* Jacklyn Dep., 45:5 – 45:13. David Cole testified that he did not know if anything was in contact with the gun or the holster when it discharged. *See* Cole Dep., 113:07 – 113:09. Despite these officers not knowing the *object* that caused their trigger to actuate, the *mechanism* of discharge is not in dispute—each incident is the result of unintended trigger actuation of the P320 while the gun was seated in its holster.

These videos depicting unintended discharges were also played during Dr. Vigilante’s testimony. Dr. Vigilante relied upon these videos which further supported his opinion that the P320 was defectively designed and was uniquely susceptible to unintended discharge.

4	Q.	What, if any, impact does that similar incident have on
5		your opinion?
6	A.	Again, it's just consistent with the susceptibility of
7		the trigger design for a Sig P320 to inadvertent actuation
8		without any handling of it by the user.

See Nov. 6, 2024 Trial Tr. (Morning Session), p. 53

c. The P250 Holster Sold to George Abrahams Left the Trigger Exposed to Unintended Trigger Actuation from the Side.

Plaintiff presented evidence to the jury demonstrating the gap in holster that Sig Sauer sold to George Abrahams. Dr. Vigilante inspected the holster. Nov. 4, 2024 Trial Tr. (Afternoon Session) 80:17-19. Dr. Vigilante was questioned in both his direct testimony and through cross examination about the gaps in the holster leaving triggers exposed. Dr. Vigilante testified that he took the below photograph, Plaintiff's Exhibit No. 85, while the gun was fully holstered. Nov. 6, 2024 Trial Tr. (Morning Session) 24:5. He testified that the P250 holster provided to George Abrahams from Sig Sauer showed a large exposure on the inside, or left-hand side of the holster. *See id.*, 20:11-12 ("It's on the backside is the largest exposure. So, you can get in down to the trigger."). Dr. Vigilante was asked about the importance of a holster covering the trigger and testified as follows:

23	Q.	When the gun is holstered, is it important to have the
24		trigger covered?
25	A.	Absolutely. That's one of the requirements for an
1		adequate holder is that it completely covers the trigger guard
2		at least as much as it can.

Id., p. 20-21.

Dr. Vigilante's gap photo is nearly identical to Mr. Watkins' gap photo contained in his report at Sig Sauer exhibit D068.



*Defense Expert Photograph
from Derek Watkin*



*Plaintiff's Expert Photograph
from Dr. William Vigilante*

Dr. Vigilante further testified about an exemplar holster that completely covered the P320 trigger which did not exhibit the vulnerabilities that George Abrahams' holster exhibited.

15 Q. How, if at all, is that holster different than the Sig
16 Sauer holster that came with Mr. Abrahams' gun?
17 A. So in this holster the trigger guard and trigger area
18 is completely covered. So there's no large, significant gap
19 along the back of it or the sides of it.
20 Q. Does that holster have the vulnerabilities that the Sig
21 Sauer holster that came with Mr. Abrahams' gun has?
22 A. It does not. This one has significantly greater area
23 for the trigger to be exposed, especially in the backside.

Id., p. 22.

Sean Toner, Sig Sauer's corporate designee on engineering and design, testified that in order for a holster to be adequate, it must cover the trigger guard entirely. *See* Oct. 31, 2024, Trial Tr. (Afternoon Session), 29:15-20. Mr. Toner testified as follows:

15	Q	So what does Sig consider to be adequate
16		trigger protection for a P320 that is holstered?
17	A	I would say it's hard to quantify, but I
18		would say anything that covers the trigger guard
19		entirely and doesn't allow your finger to get into
20		that area easily.

Id. The jury could clearly see that the P250 holster that Sig Sauer provided to George Abrahams with his P320 was not adequate, as it did not cover the trigger guard entirely. There was ample evidence that Sig Sauer was negligent for distributing this holster with Mr. Abrahams' P320. Had the holster provided adequate trigger protection, Mr. Abraham's incident would not have occurred.

d. The P320's Design, with a Pre-cocked Striker, A Trigger Travel Distance Much Shorter than its Competitors, and No External Safeties, Is Defective and Renders It Uniquely Susceptible to Unintended Discharge.

Dr. Vigilante's opinions were firmly based upon facts, investigation and testing, and are not speculative. Dr. Vigilante did an exhaustive comparative analysis between a Glock pistol, which is the Sig Sauer P320's main competitor in the striker-fired pistol market, and the P320. He took measurements, performed experiments and demonstrative testing to prove that the design of the P320 rendered it uniquely susceptible to trigger actuation from the sides of the trigger while the gun is fully holstered.

Dr. Vigilante measured the width of a Glock trigger that included a tab. He measured the tab to be a width of one millimeter (1mm). Nov. 6, 2024 Trial Tr. (Morning Session) 35:17. He also measured the width of a P320 trigger of nine millimeters (9mm). *Id.*, at 35:9. This indicated that the **surface area which would actuate a P320 trigger was nine times greater than the available surface area to actuate a Glock trigger with a safety tab.**

Dr. Vigilante measured the trigger travel distance of a Glock trigger to be 5.9mm and the trigger travel distance of a P320 trigger to be 2.9mm. *Id.*, 34:13-15. This indicated **that the trigger travel distance of a P320 is half the distance of a Glock.** *Id.*, at 34:24.¹

Dr. Vigilante opined that these measurements supported his opinion that the P320 trigger design rendered it susceptible to unintended trigger actuation from the sides.

18	Q.	What, if anything, is of significance of those
19		measurements when you compare them?
20	A.	So those measurements in conjunction with the width of
21		the trigger guard along the bottom of the trigger indicate
22		that the trigger on the Sig P320 is more exposed and easier to
23		access. It's almost, again, about 50 percent easier to access
24		the trigger on a Sig P320 than the tab on the Glock.

Id., p. 35.

Dr. Vigilante further confirmed that contact *anywhere* on a P320 trigger could cause it to actuate, whereas on a Glock trigger, the presence of a tab substantially reduced the area that would actuate the trigger.

¹ Indeed, Defendant's expert, Derek Watkins, confirmed similar numbers during cross examination in the afternoon session of Nov. 15, 2024. He testified that the P320 trigger was 60% shorter than a Glock trigger in terms of distance required to actuate the weapon.

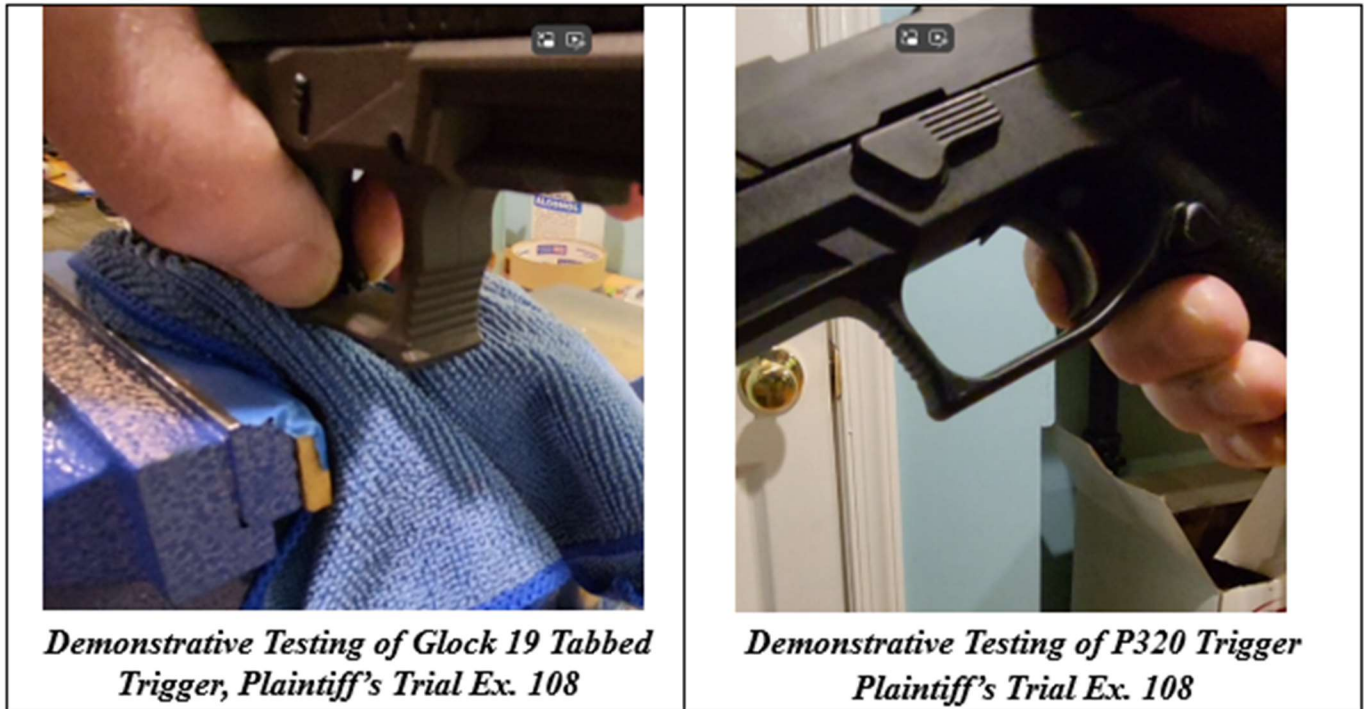
14 Q. Okay. Based on your evaluation of the subject P320
15 trigger versus a Glock and your measurements, are you able to
16 say where on the P320 can contact be made and actuation occur?
17 A. So in the area of the side of the trigger or any part
18 of the front of the triggers. So the tip, the middle, the top
19 of the front; the tip, middle, top of the left side; the tip,
20 the middle, the top of the right side.
21 Q. Anywhere?
22 A. Basically anywhere.

Id., at 36. Dr. Vigilante then explained how the short trigger travel distance and the lack of a tabbed safety trigger renders the P320 uniquely susceptible to unintended discharge. He testified as follows:

7 Q. What, if anything, or what affect, if anything, do
8 those differences have in this case?
9 A. So it's contended that something pulled the trigger to
10 have the discharge. And the way the Sig is designed, it's
11 easier to pull the trigger; the trigger is more exposed; and
12 there's a less amount of trigger movement that's required to
13 actually move. So the risk of an unintentional or unintended
14 discharge is significantly greater with the design of the Sig
15 P320 trigger system compared to something like the Glock
16 design.

Id., at p. 37. These opinions were based on measurements of George Abrahams' pistol versus a Glock pistol, they were also confirmed *via* testing which proved the effectiveness of a tabbed

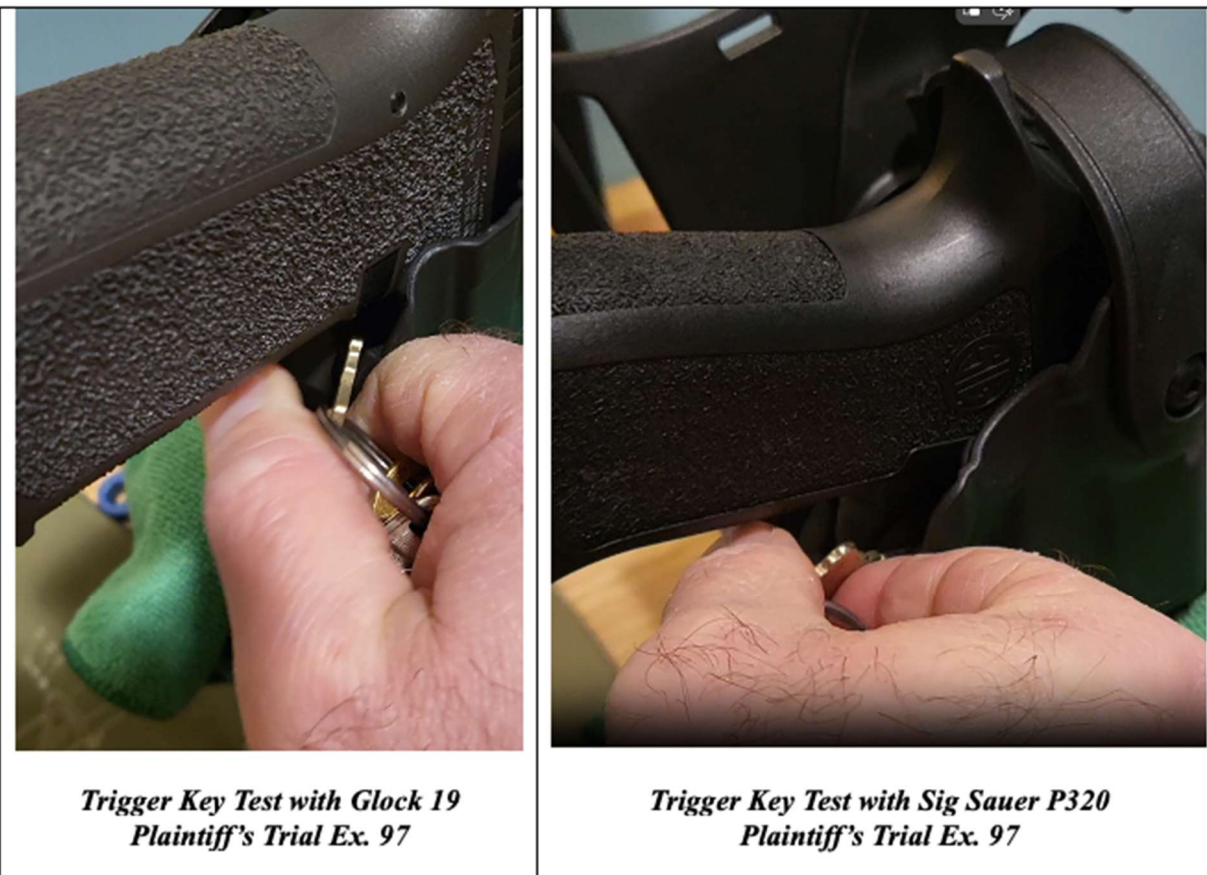
trigger in preventing unintended discharges for striker-fired pistols fully seated in their holsters. Plaintiff presented Dr. Vigilante's demonstrative testing video below showing the tabbed trigger preventing actuation from rearward pressure from the sides of a Glock trigger.



(Screen images from video shown at Exhibit 108)

Dr. Vigilante testified that his testing of the P320 versus the Glock pistol pictured above “demonstrates the increased risk of the ability of the Sig P320 trigger to be inadvertently actuated from a pressure that’s not direct across the face of the trigger.” *Id.*, at 46:2-4.

Plaintiff also presented to the jury testing performed by Dr. Vigilante which showed how a key could not actuate a Glock pistol with a tabbed safety trigger but could easily actuate a P320 trigger due to the absence of a tabbed trigger safety.



(Screen images from video shown at Exhibit 97)

Dr. Vigilante explained that this experiment “demonstrates and tests the susceptibility of the Sig P320 to inadvertently discharge due to a foreign object that gets into a holster.” *Id.*, 47:15-18. He testified that he was unable to actuate a Glock trigger with the key in the demonstrative video above.

7	Q.	What's happening?
8	A.	So I'm digging in there but I can't get it to actuate.
9		And eventually what's going to happen is I have to lift the
10		gun out of the holster to get the key across the face of the
11		trigger to engage the tab to allow the trigger to actuate.

See id., at p. 49.

Dr. Vigilante testified that he analyzed the potential for the trigger to be actuated by a foreign object while holstered as Mr. Abrahams claimed, and while the P320 trigger was susceptible to such actuation, a pistol with a tabbed trigger safety would not be because it would be nearly impossible for a foreign object to access the front of the trigger face to actuate the tab. *Id.* at 57:19-58:12. He testified: “My opinions and analysis were predicated on Sig's assertion that the gun could not be fired without a trigger pull. So if it was not Mr. Abraham's finger or hand, then it has to be a foreign object. Again, because the gun was holstered at a point it fired, that means the foreign object had to get in there some time after it's holstered, which means it's improbable to get down in the holster and across the face to engage the tab.” Nov. 6, 2024 Trial Tr. (Afternoon Session) at p. 24:24-25:8.

Dr. Vigilante also reviewed the OSI videos which was data “that’s consistent with the susceptibility of the Sig P320 trigger design to discharge without any manual input by the user when holstered.” *Id.* at 53:22-24. The OSI videos further supported his opinion that the design defect of the P320 renders the gun uniquely susceptible to unintended trigger actuation while seated in its holster when the user is not even touching the gun.

Dr. Vigilante opined that including a tabbed trigger on the Sig Sauer P320 was feasible, as they had originally designed a tabbed trigger in 2014 but inexplicably never included that necessary safety feature on the gun. *Id.*, 51:11-13. Dr. Vigilante testified that Sig Sauer should have, but did not assess the design of the firearm and identify the susceptibility to unintended discharge.

Although much of the testimony focused on the absence of a tabbed trigger safety, Dr. Vigilante also discussed the absence of a manual thumb safety. “The manual thumb safety would have locked movement of the trigger, thereby preventing the firearm from discharging regardless

of what contacted the trigger.” Nov. 6, 2024, Trial Tr. (Morning Session) 58:14-20. Sig Sauer’s expert agreed. Regardless of whether the jury believed Mr. Watkins version of the events or Mr. Abrahams, “if the pistol had been equipped with a manual thumb safety and it was on and it was functioning properly, it should have prevented the discharge.” Nov. 15, 2024, Trial Tr. (Morning Session) 83:7-21.

Sig Sauer suggests Plaintiff “affirmatively chose to purchase a gun without a manual thumb safety...” (Defendant Memo [Control No. 25030051], p. 19). Yet, he was unaware that the gun he wanted to buy- the military version- had a manual thumb safety and Sig Sauer produced no evidence that a P320 with a manual safety was shipped to or available at the store where he purchased the weapon. Oct. 31, 2024 Trial Tr. (Afternoon Session) 5;11-14). Sig Sauer provided no evidence that Mr. Abrahams saw anything to suggest that there was a standard full size P320 with a manual safety- because there was not. The P320 full size pistol did not come with a manual safety or trigger safety. Oct. 29, 2024, Trial Tr. (Morning Session) at 62:7-10.

Mr. Abrahams trusted Sig Sauer that the gun he was purchasing was safe and had the necessary safeties. He testified: “As it relates to Sig, I thought Sig would -- whatever requirements and specifications Sig needed to make a safe gun would be incorporated into the firearm. So purchasing a Sig because Sig came very high on in reputation, in standards. *So purchasing the Sig I thought that whatever specifications or safety criteria would be inside of the Sig.*” Nov. 1, 2024 Trial Tr. (Morning Session) 40:4-9 (emphasis added). Dr. Vigilante agreed that a P320 with “zero external safety” was defective, and it was unreasonable for Sig Sauer to sell the P320 with no external safety. Nov. 6, 2024 Trial Tr. (Morning Session) 58:21-59:6. Had the P320 been designed and sold with a properly functioning and applied manual safety, the incident would not and could not have occurred. *Id.* at 59:7-11.

e. The Defective Design of the P320 Was the Cause of the Unintended Discharge.

Contrary to the thrust of Defendant's Motion, Dr. Vigilante's opinions are not speculative. In no uncertain terms, Dr. Vigilante opined that the defective design of the P320, with the single-action pre-cocked striker, shortest trigger travel distance of any gun any of the experts examined, and the absence of any external safeties was the cause of George Abrahams unintended discharge.

11	Q.	Okay. Do you have an opinion about Sig Sauer's use, or
12		lack thereof, of a tab trigger in the P320?
13	A.	I do.
14	Q.	What is it?
15	A.	It's unreasonably dangerous. It should have been
16		provided and failure to provide it rendered the firearm
17		defective, reasonably dangerous, and cause of the incident.

See id., at p. 55

11	Q.	Doctor Vigilante, what, if any, difference would it
12		have made had Sig Sauer integrated the tab trigger safety into
13		the design of the Sig Sauer P320?
14	A.	So globally it reduces the risk of an unintended
15		discharge as similar to what we see in the videos.
16		Specifically it would have -- Mr. Abrahams' injury would have
17		been avoided.

See id., at p. 56. Dr. Vigilante then explained the reasoning for his causation opinion, which was based upon his analysis of the physical evidence, of George Abrahams pants, his holster, the subject gun, his measurements of the P320 versus the Glock, and the key test of a holstered P320 versus the Glock. Dr. Vigilante explained his causation opinion as follows:

1 risks. I looked to see and have an understanding of what
2 happened in Mr. Abrahams' case specifically. I looked to see
3 the potential for the trigger to be actuated by a foreign
4 object while holstered as Mr. Abrahams claimed.

5 And had indicated that it was possible given the
6 design of the trigger and the design of the holster. And I
7 looked to see what the effect of the tab trigger safety would
8 have done on Mr. Abrahams' specific gun and specific holster
9 and found that it would be nearly impossible to have a foreign
10 object in that situation get down into the trigger, across the
11 trigger face, and then pull back to actuate a trigger design
12 like the Glock tab trigger safety.

Id., p. 58.

The issue is not which foreign object contacted the trigger, whether it was the bunched pants, as Mr. Toner testified could cause a discharge, or the zippers tab or drawstring or fabric. The issue is whether a foreign object contacted Mr. Abrahams' trigger and the presence of external safeties on the P320, which are present on all other similar guns, would have prevented Mr. Abrahams' unintended discharge.

Dr. Vigilante does not need to identify the exact foreign object that pulled the trigger, when the only evidence is that the gun was fully holstered without a hand or finger on the gun and when the only possibility- if Sig is to be believed that the gun can't fire without trigger actuation- is a foreign object contacted the trigger and caused it to actuate. Dr. Vigilante performed testing and analyzed Mr. Abraham's gun and his holster, along with the subject pants. He even analyzed Mr. Abrahams while Mr. Abrahams was wearing the incident and exemplar pants and took

measurements. Even based upon the other similar incident videos, even when there is video of an incident, identifying the exact, small foreign object that contacts the trigger can be impossible and is not a legal requirement to prove a design defect.

The testimony established that not only is the design of the P320 defective for lacking an external safety, but that the defect caused Mr. Abrahams' discharge in this case. Dr. Vigilante stated conclusively that, had Sig Sauer incorporated a thumb safety on the gun, the incident could not have happened. Mr. Watkin's conceded the same. Nov. 15, 2024, Trial Tr. (Morning Session) 83:7-21. Dr. Vigilante also testified that, since Mr. Abrahams' gun was fully holstered when he put it in his pocket, that a foreign object would not have been capable of entering the trigger guard, making a 90-degree right hand turn, wrap around the face of the trigger, and pull the trigger. He stated that this scenario was "nearly impossible" and performed testing confirming as much. *Id.* at 57:19-58:12. Dr. Vigilante testified that the incident would have been prevented by either a thumb safety or trigger safety.²

The mere possibility that a foreign object could have contacted the front face of the trigger did not preclude the jury from determining the disputed issues of fact in this case. Under Pennsylvania law, "[a] defendant cannot escape liability because there was a statistical possibility that the harm could have resulted without negligence." *K.H. ex rel. H.S. v. Kumar*, 2015 PA Super 177, 122 A.3d 1080, 1105 (2015); quoting *Montgomery v. S. Phila. Med. Grp., Inc.*, 441 Pa.Super. 146, 656 A.2d 1385, 1392 (1995); see also *Brozana v. Flanigan*, 309 Pa.Super. 145, 454 A.2d 1125,

² Regarding Causation, for both negligence and product liability, Plaintiff need only establish the design defect or defendant's conduct was "**a substantial factor** in bringing about the harm." See *Bibbs v. Se. Pennsylvania Transp. Auth.*, No. 2333 C.D. 2009, 2012 WL 8704635, at *3 (Pa. Commw. Ct. Apr. 13, 2012) (emphasis added) (quoting Restatement (Second) of Torts §§ 402A. See also *Eckroth v. Pennsylvania Elec., Inc.*, 2010 PA Super 235, 12 A.3d 422, 428 (2010) ("Proximate causation is defined as a wrongful act which was a substantial factor in bringing about the plaintiff's harm." Citing Restatement of Torts, (Second) § 431 (1965).

1128 (1983) (approving jury charge that informed the jury that it could find liability if the defendant's negligence "either was a substantial factor in bringing about the loss of appellant's leg or increased the risk of losing the leg and that increased risk was a substantial factor in the loss of the leg").

Although a jury is not permitted to reach a verdict based upon a guess, a jury may draw inferences from all of the evidence presented. *Cade v. McDanel*, 51 Pa.Super. 368, 679 A.2d 1266 (1996). In *Cade v. McDanel*, the Superior Court of Pennsylvania addressed a case where evidence of the cause of an injury was not direct evidence. There, Cade suffered injuries while traveling as a passenger in a motor vehicle driven by McDanel. During the trip, Cade fell asleep in the passenger seat of the vehicle, and at some point Cade fell from the vehicle and was injured. Cade alleged that McDanel was intoxicated and shoved her out of the vehicle. McDanel alleged that Cade opened the door and jumped out without warning. Just as there is no dispute that Mr. Abrahams' P320 discharged unintended and he was shot, there was no dispute that Cade fell from the vehicle or was injured. However, the trial court granted summary judgment finding that Cade failed to demonstrate that McDanel was the proximate cause of her injuries.

In reversing the trial court award of summary judgment, the Superior Court of Pennsylvania recognized:

"It is not necessary, under Pennsylvania law, that every fact or circumstance point unerringly to liability; it is enough that there be sufficient facts for the jury to say reasonably that the preponderance favors liability.... The facts are for the jury in any case whether based upon direct or circumstantial evidence where a reasonable conclusion can be arrived at which would place liability on the defendant. It is the duty of [the] plaintiffs to produce substantial evidence which, if believed, warrants the verdict they seek.... A substantial part of the right to trial by jury is taken away when judges withdraw close cases from the jury...."

Id. at 1271, 686 A.2d 18 (citations omitted).

Like the circumstantial evidence in *Cade*, Plaintiff presented sufficient evidence in this case that he did not pull the trigger, and sufficient evidence that it was highly improbable that any object could have gotten into the holster and turned across the trigger face in a manner that would have actuated a tabbed trigger. Nov. 6, 2024, Trial Tr. (Morning Session) 42:19-49:21; Plaintiff Exhibits P96 and P97. Dr. Vigilante testified that a tab trigger safety on the P320 would have prevented Mr. Abrahams discharge, and he knew this because he “looked to see what the effect of the tab trigger safety would have done on Mr. Abrahams’ specific gun and specific holster and found that it would be nearly impossible to have a foreign objection in that situation get down into the trigger, across the trigger face, and then pull back to actuate a trigger design like the Glock tab trigger safety.” *Id.* at 57:9-58:12.

Sig Sauer has repeatedly sought to preclude Dr. Vigilante’s opinions in this matter on the same grounds as in its post-trial motion. *See* Def. Motion *in Limine* to Preclude Dr. Vigilante, Control No. 24094860. In its Motion *in Limine*, Defendant advanced the identical argument it makes in its Motion for JNOV. *See* Motion *in Limine*, ¶78 (arguing preclusion of Dr. Vigilante’s causation opinion because “[i]nformation about how the trigger was pulled is critical to any claim that a tabbed trigger would have altered the outcome.”). Just as the Court properly rejected these arguments before trial and during trial and properly allowed the jury to consider Dr. Vigilante’s causation opinions, it should again deny defendant’s latest attempt here in Defendant’s Motion for JNOV.

2. Defendant is Not Entitled to JNOV on the Award of Punitive Damages Because Plaintiff Presented Ample Evidence That Defendant Had a Subjective Appreciation of the Risk of Harm to Which the Plaintiff Was Exposed and that Defendant Failed to Act in Conscious Disregard of that Risk.

The evidence Plaintiff presented for both his design defect and negligence claims supported the demand for and award of punitive damages against Sig Sauer.³

Pennsylvania adopted §908 of the Restatement (Second) of Torts and the comments thereunder regarding the imposition of punitive damages. *Chambers v. Montgomery*, 192 A.2d 355 (Pa. 1963); *Dean Witter Reynolds, Inc. v. Genteel*, 499 A.2d 637, 642 (Pa. Super. 1985); *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243, 1263 (Pa. Super. 1983). In Pennsylvania, punitive damages may be awarded for “conduct that is outrageous, because of the defendant's...***reckless indifference to the rights of others.***” *Hutchison v. Luddy*, 582 Pa. 114, 121, 870 A.2d 766, 770 (2005) (citing *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742, 747 (1984), quoting Restatement (Second) of Torts § 908(2))(emphasis added).

A punitive damages claim can reach the jury when it is supported by evidence sufficient to establish that (1) a defendant had a **subjective appreciation of the risk of harm** to which the plaintiff was exposed **and** that (2) he acted, or **failed to act**, as the case may be, in **conscious disregard of that risk**. *Hutchinson*, 582 Pa. 114 (citing *Martin v. Johns-Manville Corp* 508 Pa. 154 (1985). Another way of saying that standard, is evidence “where the ‘actor knows, or has reason to know, of facts which create a high degree of risk of physical harm to another, and Fail[s] to act, with indifference to, that risk.’” *Id.*; *See also, Focht v. Rabada*, 217 Pa. Super. 35, 38 (1970); *Medvecz v. Choi*, 569 F.2d 1221, 1227 (3rd Cir. 1977). In fact, comment (d) of §908 states

³ Sig Sauer previously attempted to escape the imposition of punitive damages by moving for partial summary judgment on this issue. See Def. Mot. filed March 4, 2024, at Control No. 24031037. Following Plaintiff’s opposition, the Honorable Sean F. Kennedy denied Sig Sauer’s motion on April 25, 2024.

that “[i]f the actor’s conduct involves a serious risk of harm to those within the range of its effect, the fact that the actor knows or has reason to know that others are within such range is conclusive of his recklessness towards them.” Restatement (Second) of Torts §908; *Evans v. Phila Transport Co.*, 212 A.2d 440, 444 (Pa. 1965)(emphasis added).

The Pennsylvania Supreme Court recognized that it is not necessary for the defendant to have actual knowledge of the other person’s peril to constitute recklessness. *Fugaglia v. Camasi*, 229 A.2d 735, 736 (Pa. 1967). Rather, recklessness is established when the defendant has knowledge of sufficient facts to cause a reasonable person to realize the existing danger for a sufficient period of time to give him a reasonable opportunity to avoid the danger and, despite this knowledge, he recklessly ignores the other person’s peril. *Id.*; *Wilson v. Pennsylvania Railroad Co.*, 219 A.2d 666, 672 (Pa. 1966); *Smith v. Brown*, 423 A.2d 743, 745 (Pa. Super. 1980).

During this trial, Plaintiff established that Sig Sauer was the first gun manufacturer in world history to design a firearm like the P320 with no external safeties, and in doing so, made incredibly reckless decisions that put its customers at a significant risk of harm – including Plaintiff. When Plaintiff cross-examined Mr. Toner, he confirmed that tabbed triggers are used for drop safety *and* prevent actuation if the trigger is subjected to ***any pressure that is not a direct trigger pull***. See October 29, 2024, Trial Tr. (Morning Session) at 48:5-10; 49:14-21. As such, there were more risks to protect consumers against than just unintentional discharges resulting from dropping or cleaning the pistol as Defendant suggests here (and suggested to the jury who disagreed).

a. Defendant had a Subjective Appreciation of the Risk of Harm.

Sig Sauer had a **subjective appreciation of the risk of harm** that Plaintiff was exposed to. On November 13, 2024, the Engineering Team Leader for the P320 design, Mathew Taylor, testified for Sig Sauer. He testified that Sig Sauer performed a Failure Modes Effects and

Criticality Analysis of the P320 in the 2016-17 time frame. *See*, November 13, 2024, Trial Tr. (Afternoon Session) at 44:4-45:8. The FMECA was required by the United States Military, with the purpose of the FMECA to assess the vulnerabilities of the P320 to certain health and safety risks associated with the use of the P320. *Id.* at 45:1-16. Sig Sauer's analysis of the vulnerabilities of the P320 preceded the purchase of Mr. Abrahams' pistol.

A "failure mode" is a possible hazard and the effects are the risks of those hazards. *Id.* at 45:13-18. "Criticality" is the probability of the risk occurring. *Id.* at 53:15-54:12. In that Failure Modes Analysis, Defendant used tables to assess those risks and mitigate those risks. *Id.* at 45:13-18. **The first five risks of the Failure Mode Analysis were unintentional discharges.** *Id.* at 47:12-48:24.

Significantly, one of those five risks that Sig Sauer assessed was the vulnerability of the P320 to unintentionally discharge by being pulled with a foreign object. *Id.* at 46:22-49:5. Taylor admitted that an unintended discharge by trigger actuation by a foreign object was a hazard that Sig Sauer was aware of. *Id.* at 49:2-9. Sig Sauer was also aware of the effect of this hazard. Mr. Taylor admitted that the risk here was that it could kill someone. *Id.* at 49:6-12. Thus, Sig Sauer knew the severity of the risk was death.

Taylor confirmed his prior testimony in another matter that the occurrence of the risk was likely sometime within the life expectancy of a particular pistol, and that it would occur several times. *Id.* at 49:10-50:23. Taylor was also unsurprised (as in someone who expects it) that there were risks in holstering and unholstering the P320. *Id.* at 51:16-19. Sig Sauer knew this. Sig Sauer told the military that the manual safety they put on every gun would reduce the probability of intentional discharges occurring. *Id.* at 50:24-51:15. Sig Sauer was aware there was a probability of injury caused by unintentional discharges like the one Plaintiff experienced. In fact, Sig Sauer

had actual knowledge of several real life examples, including Roscommon Officer Richardson's in 2016 and SEPTA Officer Craig Jacklyn's in August 2019.

Mr. Toner's testimony also demonstrated that he was aware of risks of unintended discharges. He testified:

Q Can we agree that it is foreseeable that foreign objects such as loose clothing can pull the trigger of a weapon?

A Yes, it is.

Q Just as it's foreseeable that a gun could drop and fire, correct?

A That's correct.

Q You test for one, right?

A Yes.

Q You don't test for another?

A No, we don't.

Q You protect against one, right?

A Yep.

Q And you don't against another?

A We don't have a test for that.

Oct. 29, 2024, Trial Tr. (Afternoon Session) at 22:3-17.

Dr. Vigilante testified, as a fundamental principal of the design safety hierarchy- a basic tenant of product safety- "when you identify risks with a system or a product, equipment or tools, you want to address them. So we don't want to have things that are out there that people can get hurt by when we can design it or add safeguards or provide warnings to reduce the likelihood of a bad event occurring. So the design safety hierarchy says if you have a risk or a hazard, the best

thing to do is try to eliminate it.” Nov. 4, 2024, Trial Tr. (Afternoon Session) at 83:16-84:23. If the hazard cannot be eliminated, the next level is to determine what safety features or safeguards can be implemented to reduce the likelihood of the unintended bad event from occurring. *Id.* at 84:21-85:15. “This is where external safeties come in.” *Id.* Dr. Vigilante testified:

“So if we don't do a proper risk and hazard assessment, you can throw a product out there without identifying the risks that are foreseeable otherwise. If you put a product out there with risks that are foreseeable otherwise that you didn't identify, chances are you're not going to have the safety features and functions that should be in place to address that risk and hazard in the first place.” *Id.* at 87:6-14.

Yet, as discussed below, despite acute knowledge of the risk, Sig Sauer did not assess or implement a solution to the actual risk of unintended, potentially fatal discharges due to trigger actuation by a foreign object.

President Judge Landya B. McCafferty of the United States District Court in New Hampshire in the matter *Guay v. Sig Sauer* held: “If Sig Sauer had, in fact, known about the Roscommon [OSI] incident—or any of the other alleged instances of the P320 firing without a trigger pull—before December 2016, then that knowledge may establish reckless disregard for the truth of the “Safety Without Compromise” advertisement.” *See* 1:20-cv---736, Sept. 8, 2022, *Guay* Opinion. at 18. In *Guay*, Judge McCafferty was not deciding if the P320 was defective. Rather, she was deciding if Sig Sauer violated the state’s Consumer Protection Statute by dangerously misrepresenting that the P320 would not fire unless a user wanted it to. *Guay*’s claim ultimately failed on that claim only because the plaintiff did not provide evidence that Sig Sauer was aware of the Roscommon incident before Sig Sauer published the “Safety Without Compromise advertisement.

Unlike *Guay*, here the jury heard evidence that prior to Plaintiff's unintended discharge Sig Sauer had notice of the risk of unintended discharge from Sean Toner and Matt Taylor which was sufficient to establish Sig Sauer's acute knowledge of the risks. The jury also heard that Sig Sauer had actual notice of *at least* two substantially similar instances, Roscommon Officer Richardson's 2016 incident and Septa Officer Jacklyn's August 2019 incident, and did nothing to remedy the risk.

b. In Conscious Disregard of the Risk, Defendant Failed to Act.

Nothing prevented Sig Sauer from implementing a tabbed trigger safety on manual thumb safety on every P320. In fact, the prototype of the P320 was designed with a tabbed trigger safety. Oct. 29, 2024, Trial Tr. (Morning Session) at 52:10-12. It just did not go into production. *Id.* Every military version of the P320 has a manual thumb safety. The P320 full size pistol that Mr. Abrahams purchased did not come with a manual safety or trigger safety in 2018. *Id.* at 62:7-10.

Despite knowing the risk of unintentional discharges from contact with foreign objects, their frequency potential and their severity potential, Defendant never tested whether a trigger safety could reduce or limit unintended discharges.

Sean Toner testified that Sig Sauer did not test to evaluate whether the P320 was susceptible to unintended trigger actuation. He testified:

- Q. Did you ever test in the ten years that this gun has been on the market or in the two years before it got to market whether it was susceptible or at greater risk of unintentional trigger pulls without an external safety on a short trigger?
- A. We did drop testing, that was the extent of that type of testing, yes.
- Q. I'm not talking about drop testing. I'm talking about an unintentional discharge where the trigger moves a couple of millimeters when the user doesn't want it to. Did you ever test whether this gun was at a greater risk of other guns who had longer trigger pulls, double action trigger pulls?

A. No, we did not test for that.

Nov. 13, 2024, Trial Tr. (Afternoon Session) at 19:15-20:5.

Q. You got guns in your building with trigger safeties, right?

A. Right.

Q. But it's from other companies?

A. Yes.

Q. Did you ever test any of those to see if the trigger safeties are doing what Glock said they do, which is prevent unintended trigger movement?

A. I have not, no.

Q. Do you intend to?

A. I don't have a plan to do it right now. I don't know exactly how we would test for that. We'd have to come up with a test plan.

Nov. 13, 2024, Trial Tr. (Afternoon Session) at 20:17-21:5.

This same sentiment was repeated by each of Sig Sauer's witnesses- Sean Toner, Matthew Taylor, Ethan Lessard and Brian McDonald. No testing was done to determine if a tabbed trigger would have prevented unintended trigger actuation caused by an object getting into the holster.

Sean Toner testified that he could come up with a test for that. See, October 29, 2024, Trial Tr. at 21:6-11. However, as seen in the excerpt below, Toner testified that they never did.

Q Have you tried in the last ten years that this gun was on the market, as you said before when it was in production, did you try to come up with a test and you just couldn't come up with one? A I have not.
--

See October 29, 2024, Trial Tr. (Afternoon Session) at 21:12-17.

P320 lead engineer, Matt Taylor, also testified that they *definitely* had never done formal test for that. *Id.* at 64:24-65:13. Taylor admitted that comparing tab triggers to triggers without a safety is something that could certainly be studied, but it was not something that they ever did in any formal manner. November 13, 2024, Trial Tr. (Afternoon Session) at 66:23-1.

Again, the standard here supports allowing the question of recklessness to reach the jury when the evidence is that (1) a defendant had a **subjective appreciation of the risk of harm** to which the plaintiff was exposed **and** that (2) **failed to act in conscious disregard of that risk**.

This is not a matter of constructive notice, and is unlike the matter of Wright v. Ryobi Techs. Inc., 175 F. Supp. 3d 439 (E.D.Pa. 2016) favorably cited and wholly ill-relied upon by Defendant. There, the plaintiff's basis for punitive damages was the existence of a safer alternative design which the court found insufficient to demonstrate Defendant's recklessness or culpability for purposes of punitive damages. *Id.* at 456.

Here, Sig Sauer knew acutely of the risk. Sig Sauer had the requisite **subjective appreciation of the risk**. Mr. Taylor told us that when he testified about the FMECA. Sig Sauer assessed the vulnerability of the P320 to unintentionally discharge by being pulled with a foreign object. An unintended discharge by trigger actuation by a foreign object was a hazard that Sig Sauer was aware of. Sig Sauer was also aware that the effect of this hazard was injury or death. Sig Sauer was **conscious** of the vulnerability and risk. The FMECA is addressed further in section A.2.a. above, as well as B.2 below.

The jury heard sworn testimony from seven individuals: Craig Jacklyn (8/26/19 Unintended Discharge); Donald Thatcher (2/7/22 Unintended Discharge)(See Exhibit P4); Aaron Roth (1/2/22 Unintended Discharge)(See Exhibit P3); Marvin Reyes (3/28/22 Unintended Discharge)(See Exhibit P10); David Cole (5/4/22 Unintended Discharge); Michale Lingo (1/7/23

Unintended Discharge); and Daniel Witts (7/24/23 Unintended Discharge)(See Exhibit P8), and heard testimony from Sig Sauer's employee Chris Meyers that Sig Sauer had been aware of non-drop fire unintended discharges since 2016.

Defendant's claim that the evidence of the Roscommon and Jacklyn similar incidents do not support punitive damages because neither incident provided sufficient notice due to a lack of resulting injury is baseless, yet remarkable. See Def. Memo Control No. 25030051 at p. 24. Sig Sauer is literally arguing that evidence of individuals experiencing an unintended discharge in which they reported that they did not pull the trigger with their finger is not "notice" of a defect because "[n]either incident resulted in an injury." *Id.* This argument is telling of how little Sig Sauer thinks of its customers and how reckless it is indeed in its decision making.

"[E]vidence of near-misses or fortuitous escapes would be highly probative of the existence of a danger, and thus of the existence of a defect." *Forrest v. Beloit Corp.*, 424 F.3d 344, 357 (3d Cir. 2005). Further, The Pennsylvania Supreme Court recognized that it is not necessary for the defendant to have actual knowledge of the other person's peril to constitute recklessness. *Fugaglia v. Camasi*, 229 A.2d 735, 736 (Pa. 1967). Despite knowledge of the risk, and real-world examples, Sig Sauer did nothing; and, people continued experiencing unintended discharges. The Jury heard that two victims, Mr. Lingo and Detective Cole were injured much like Mr. Abrahams. See Michael Lingo and Detective David Cole testimony.

By continuing to distribute the P320, with no external safeties, Sig Sauer **disregarded the risk**. These are exactly the type of facts which demonstrate a recklessness indifference to the rights of others as to entitle Plaintiff to punitive damages, and which warranted asking the jury whether the Defendant was reckless. Thus, there was little surprise when asked in question 13, "Did the

Defendant, Sig Sauer, Inc., show reckless indifference to the rights of others in its distribution of the product?” the Jury answered- “Yes”.

c. Industry Standards and Testing are Irrelevant to Sig Sauer’s Defense in this Case.

Defendant was successful in the admission of compliance with industry standards, over Plaintiff’s pre-trial objections through Motions in Limine. Throughout trial and through its post-trial motion, Sig Sauer argued ad nauseum that the P320 was tested “above and beyond industry standards” based on evidence and testimony elicited through Sean Toner, Sig Sauer’s corporate designee, by Sig Sauer itself. *See* Def. Memo [Control No. 25030051] p. 21. Yet, the evidence clearly demonstrated that compliance with the industry standards could not insulate Sig Sauer from liability or punitive damages.

That is because those standards and the testing performed were irrelevant to this case because this was not a case where the gun was dropped, abused or shaken. Sig Sauer knew, and had reason to know, that industry standards are not the only vehicle for ensuring the product is safe to market to consumers. There was no evidence that demonstrated these industry standards ever even contemplated a design like that of the P320 – the first and only firearm in the world with its design. Despite this, Sig Sauer chose to rely on such standards to justify their choice not to implement an external safety on the P320. It spent much of the trial on this point to their ultimate detriment.

Plaintiff demonstrated, through Plaintiff’s cross examination of Mr. Toner, that Sig Sauer had misplaced prioritization, and simply wanted to meet standards when designing the P320, as opposed to making the product necessarily safe for its consumers by the use of external safeties. Defendant elicited days of testimony and argued at length, both at trial and its Post-Trial Memorandum of Law (p. 20-23), about the safety features implemented for drop fire and cleaning

safety. *See* Oct. 29, 2024 Trial Tr. (Morning and Afternoon Session), Oct. 30, 2024 Trial Tr. (Morning and Afternoon Session) and Oct. 31, 2024 Trial Tr. (Morning Session). However, Mr. Toner’s testimony on the third day made clear, all the testing and standards were irrelevant to this case. Oct. 31, 2024 Trial Tr. (Morning Session) 22:1-23:10.

Mr. Toner admitted that the P320 was not equipped with a tabbed trigger, because it was allegedly not needed to pass the standards Sig Sauer “was trying to pass.” Oct. 29, 2024, Trial Tr. (Morning Session) at 71:13-15. What Sig Sauer conveniently ignores is that the P320’s Voluntary Upgrade Program was implemented due to its trigger *not* being drop safe, thus demonstrating another defect in their heavy reliance on industry standards. Sig Sauer moved *in limine* to preclude evidence of the Voluntary Upgrade Program on the basis that this case did not involve a drop fire. However, because Sig Sauer chose to introduce evidence of industry standards, the Voluntary Upgrade Program was relevant and admissible to rebut that assertion that the P320 was safe because it met standards.

Meeting standards did not make the P320 safe. The Voluntary Upgrade Program, which was a response to the P320 firing when dropped, was affirmative proof that P320 was not drop-safe despite Sig Sauer’s testing and industry standards. Mr. Toner admitted that there was not a standard he was aware of for determining whether an individual will be able to unintentionally actuate the trigger through a side pull. Oct. 30, 2024, Trial Tr. (Morning Session) at 55:3-5. Mr. Toner admitted this despite confirming earlier that, “just because you pass a standard that someone or some company has come up with doesn't mean that a product can't be made safer.” Oct. 29, 2024, Trial Tr. (Morning Session) at 40:7-10; 71:4-9.

d. Sig Sauer's Internal Design Safety Features Are Irrelevant in this Case.

Sig Sauer's self-proclamation that it "added multiple safety designs for the express purpose of preventing unintended discharges" does not exculpate it from its decision not to incorporate any external safety despite knowledge of the catastrophic harm which was likely to occur and was evidenced in the FMECA. *See* Def. Memo at Control No. 25030051 p. 22. Defendant was permitted to argue this point at trial, and was unsuccessful in doing so. Defendant's reliance on design features discussed by Mr. Toner which were allegedly implemented to prevent unintended discharges when cleaning the pistol, and when the pistol drops was unpersuasive because these are two scenarios that did not precede, nor cause, Mr. Abraham's unintentional discharge. It would be akin to a Defendant arguing that it knew seatbelts were needed in a car, that it did not include them, and that it is absolved of liability since it added a separate safety feature such as a child lock that has nothing to do with an incident.

Similar to the industry standards for drop safety and abuse, the implementation of these "safety features" is irrelevant. Sean Toner admitted to as much. He testified:

Q. The standards that you said that they passed, the military standards that Ms. Dennison asked you about, those were with the trigger -- the manual safety on?

A. That is what their test protocols state; yes.

Q. Okay. And when they turned it off, that's when they started failing the tests?

A. I believe so; yes.

Q. They didn't test a gun like George's without a safety since they weren't going to buy one without a safety; right?

A. That's correct.

Oct. 31, 2024, Trial Tr. (Morning Session) at 19:14-20:14.

Further demonstrating the irrelevance of the standards and testing, Mr. Toner further testified:

Q. You don't think that anyone's claiming that George started shaking his gun too hard; do you?

A. I don't believe so.

Q. Did any tests that you spent three or four hours over the last couple days talking about involve contacting the trigger in anyway?

A. I don't believe so.

Q. Or the types of forces that could pull a trigger that does have a safety versus one that doesn't, that trigger safety?

A. Not that I recall.

Q. None of the tests that you talked about over the last two days have anything to do with this case if George isn't claiming that he shook the gun too hard or dropped it; right?

A. Yes; that would be correct.

Q. Yes. None of those tests identify whether a gun with a trigger safety is less at risk of unintended discharge than one without; right?

A. Yes; that would be correct.

Oct. 31, 2024, Trial Tr. (Morning Session) at 22:13-23:13

Sig Sauer's efforts to remedy concerns regarding drop fires and unintended discharges while cleaning the gun have no bearing on their intentional decision not to include an external safety to prevent against a foreign object or the user's finger actuating the trigger unintentionally. Mr. Toner testified to as much when he admitted that the takedown lever identified as a safety feature does not have anything to do with Mr. Abraham's incident, and more importantly does not prevent the P320 from having a tabbed trigger safety or manual thumb safety. Oct. 31, 2024 Trial Tr. (Morning Session) at 18:20-19:13. Nothing prevented Sig Sauer from being able to implement the take down lever feature and also implement the tabbed trigger safety or manual thumb safety that would have prevented this incident.

e. The Voluntary Upgrade Program

Defense argued at length, that there must be a 'nexus' between the alleged conduct and Plaintiff's harm, and that the Voluntary Upgrade Program falls outside this nexus. *See* Def. Memo [Control No. 25030051] p. 26. The Voluntary Upgrade Program was actually the result of the P320 not being fully drop safe, despite Sig Sauer claiming it passed all industry standards as to drop testing. *See* October 29, 2024, Trial Tr. (Morning Session) at 72:20-73:6. Defendant opened the door when it successfully argued in Motions in Limine to be permitted to discuss industry standards. The Voluntary Upgrade evidence was the consequence of Sig Sauer's decision.

Given that the P320's alleged compliance with industry standards without the external safety is Sig Sauer's primary justification for excluding any external safety, the necessity of the Voluntary Upgrade Program is not only relevant, but the nexus is established where the Voluntary Upgrade Program inherently disproves any argument by Sig Sauer that it was sufficient to rely exclusively on industry standards in designing the P320. Thus, as Plaintiff demonstrated, if Sig Sauer had taken the position that industry standards can fall short of protecting against grave risks, especially with a brand new, one of a kind, firearm design, it would have recognized the need for an external safety, and further drop fire testing.

Plaintiff's evidence and testimony regarding Voluntary Upgrade Program also demonstrate that upon being notified of the risk of unintentional discharge, Sig Sauer waited *six months* to issue the Voluntary Upgrade Program. *See* October 29, 2024, Trial Tr. (Afternoon Session) at 41:20-42:6. During those six months, Sig Sauer – per Mr. Toner's own admission - did not communicate these issues to their customers, and *continued selling the P320* despite *knowing* it was dangerous. *See* October 29, 2024, Trial Tr. (Afternoon Session) at 41:20-23 (Q: Yes. I'll take it in steps. You keep selling this gun that you know is a hazard for six months, right? A: We did.); 44:15-45:10. It was within these six months that Plaintiff purchased the P320 that would eventually unintentionally discharge while it was holstered and while his hand wasn't touching the gun.

Regardless of *why* the voluntary upgrade was issued, Plaintiff's evidence demonstrates that Sig Sauer was purely focused on passing industry standards in order to get the P320 to market. In designing a weapon that would be the first striker fired pistol without any external safety, Sig Sauer tested the bare minimum, only that required by the industry standard group that it was seated on, because as Mr. Toner said, "if you can pass standards and create a product that doesn't need those components in them, then we wouldn't develop them in that manner." October 29, 2024, Trial Tr.

(Morning Session) at 73:20-22. This level of recklessness in designing a product that has the capacity to *kill* is inherently the type of conduct deserving of punitive damages.

f. Sig Sauer's Misrepresentations as to Whether the P320 was a Single or Double-Action Pistol

Sig Sauer, and its attorneys, cannot seem to come to a consensus as to whether the P320 is a single or double action gun - one of the biggest issues in the case. Throughout this litigation, various mouth pieces for Sig Sauer have put forth contradictory sworn representations on this matter: Mr. Toner, Sig Sauer's corporate designee and a contributing member of the P320's design team, has testified now five times under oath in relation to the P320's design. He has testified three times that the gun is single action (including during this trial), and twice that it is double action; Sig Sauer's P320 manual indicated that it was a double action; and Sig's lawyer's represented during oral argument and in their motion papers that the P320 is double action pistol. Plaintiff, however, has put forth ample evidence that the P320 is unquestionably a single-action pistol. Even Sig Sauer's own expert gave recorded testimony that the P320 was a single-action pistol. Although at trial, he was evasive and redefined what single and double action meant. Even Sig Sauer's own expert admitted that the P320 "has been a true striker fired, single action pistol from day one...". Nov. 15, 2024, Trial Tr. (Morning Session) at 68:1-4.

Sig Sauer is thus essentially asking this Court to ignore its continued inconsistencies as it relates to Plaintiff's punitive damages claim because it allegedly lacks the proper nexus to Plaintiff's harm. This assertion is purely false, as demonstrated by Plaintiff's evidence.

Plaintiff established that Sig Sauer's misrepresentations regarding the single action verse double action design run counter to the P320's product manual provided to its customers, including Plaintiff. Mr. Toner admitted on cross examination that the statement contained within Plaintiff's user manual, that the "P320 pistol is a double action only (DAO) design," was a false statement.

See October 29, 2024, Trial Tr. (Afternoon Session) at 8:16-19:25 (Q: Is there a reason you wouldn't consider that a false statement? A: Yes, it's a false statement). Plaintiff then, through Dr. Vigilante's testimony, demonstrated precisely how the trigger actuation system functions differently on a single action versus a double action. See November 4, 2024, Trial Tr. (Afternoon Session) at 92:10-96:3; November 6, 2024, Trial Tr. (Morning Session) at 7:8-15. Dr. Vigilante was then able to explain that due to a single-action pistol's trigger only performing the action of releasing the hammer, the trigger doesn't require significant movement or force to actuate. See November 4, 2024, Trial Tr. (Afternoon Session) at 94:12-18. In fact, when compared to the Glock striker-fired pistol, its biggest competitor – a striker-fired pistol with a tabbed trigger safety – Dr. Vigilante explained that the P320's trigger is *50 percent easier* to access than the Glock, and easier to pull. See November 4, 2024, Trial Tr. (Afternoon Session) at 34:17-35:24; 37:7-16. Mr. Watkin's own measurements were approximately the same as Dr. Vigilante's when comparing the distance a P320 trigger must be pulled to the much longer trigger pull of a Glock and Smith & Wesson. Nov. 15, 2024, Trial Tr. (Morning Session) at 84:1-90:2.

Lastly, Sig Sauer's claim regarding Plaintiff's testimony that he does not personally believe it matters whether the gun is double or single action is meritless, it has no bearing on whether or not the gun itself is more susceptible to unintentional discharges when fully holstered in the user's pocket. The reality is, the single action nature of the P320, without an external safety, *made it more* susceptible to unintentional discharges, and thus, was unreasonable dangerous and defective. How could the plaintiff or any purchased appreciate the risk between the options when Sig Sauer has lied time and time again on the difference between the two? Dr. Vigilante confirmed that a consumer would not know if the pistol is a double or single action without cutting open the slide to look inside. See November 4, 2024, Trial Tr. (Afternoon Session) at 95:12-17.

Sig Sauer has taken opposite positions under oath throughout this litigation, and to its consumers, regarding whether the P320 is a double action versus a single action pistol. The evidence and expert opinions which identify how important the vast differences are as it relates to trigger safety inherently rises to the level of recklessness that entitles Plaintiff to punitive damages. As a gun manufacturer, Sig Sauer knew, and had every reason to know, the differences in double versus single action pistols, and the risks posed by not taking those differences seriously when designing the pistol, and when communicating to its customers. Instead, Sig Sauer knowingly disregarded such knowledge and risks, and not only designed the P320 without any external safety, but lied to their customers and to jurors when it testified differently under oath through its corporate designee. Sig Sauer was the only gun company Mr. Watkins was aware of selling a cocked trigger striker fire pistol without any external safety until at least 2023. Nov. 15, 2024 Trial Tr. (Morning Session) at 71:7-11.

g. “Safety Without Compromise Promise” in Sig Sauer’s Advertisements Was a False Promise.

Despite Sig Sauer’s argument otherwise, Sig Sauer’s continued misrepresentation to its customers in its marketing materials is further evidence of Sig Sauer’s reckless disregard for the safety of its users. Mr. Toner admitted that in Sig Sauer’s marketing materials, the statement made “Safety without compromise,” and claim that the “trigger will not fire unless you want it to,” was Sig Sauer promising to incorporate every necessary feature into the pistol – from the trigger to the striker to the magazine. *See* October 29, 2024, Trial Tr. (Morning Session) at 70:12-25. This was not only misleading, but false. In a reckless attempt to simply pass the necessary standards, Sig Sauer marketed the P320 and then had to institute a Voluntary Recall Program because the trigger was not fully drop safe – it did not have all the necessary features. *Id.* at 71:4-72:2. Despite this,

Mr. Toner still stated that he expected customers to rely on what Sig Sauer tells them about its firearms. *Id.* at 86:21-22.

Sig Sauer, in developing, marketing and then distributing the P320 to its customers acted with complete reckless disregard and indifference for the rights, and safety, of others – including Plaintiff. When considering the evidence presented by Plaintiff, and all evidence presented by Defense that was *favorable* to Plaintiff, it is evident that Plaintiff’s punitive damages claim was well supported, appropriate to submit to the jury, and properly decided.

B. Defendant Is Not Entitled to a New Trial on Any Grounds.

Defendant is not entitled to a new trial based on its shotgun approach of evidentiary challenges. The Court must conduct a two-part analysis with respect to Defendant’s complaints. First, the Court determines whether it made a mistake under the standard applicable to that purported error. See *Marsico v. DiBileo*, 796 A.2d 997, 999 (Pa. Super. 2002). Here, Defendant points to evidentiary and instructional rulings that are discretionary and reviewed for abuse of discretion. *Whitaker v. Frankford Hosp.*, 984 A.2d 512, 522 (Pa. Super. 2009). Abuse of discretion “is not merely an error of judgment.” *Poust v. Hylton*, 940 A.2d 380, 382 (Pa. Super. 2007). Rather, an abuse of discretion occurs only when “the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record.” *Id.* Second, the Court determines whether the error was prejudicial to the moving party. See *Id.* An error is prejudicial if the Court determines that a new trial would produce a different verdict. *Pennsylvania Dep’t of Gen. Servs. v. U.S. Mineral Prods.*, 898 A.2d 590, 604 (Pa. 2006). For the foregoing reasons, Sig Sauer’s Motion for New Trial should be denied.

1. The Court Did Not Err in Permitting the Jury to Determine Punitive Damages Where Sig Sauer Presented Fact and Expert Witness Testimony and Evidence to Defend and Refute the Claim It Was In Any Way Liable, and Where Sig Sauer Suffered No Prejudice.

Punitive damages is not a claim or a cause of action against which a party formulates a defense. It is a form of damages which are appropriate where a party acts with reckless indifference to the rights and safety of others. *Hutchison v. Luddy*, 582 Pa. at 121. The right to punitive damages is merely an incident to a cause of action and not a cause of action in and of itself. See, *Delahanty v. First Pennsylvania Bank, N.A.*, 318 Pa.Super. 90, 464 A.2d 1243 (1983). “If no cause of action exists, then no independent action exists for a claim of punitive damage since punitive damages is only an element of damages.” *Judge Tech. Servs., Inc. v. Clancy*, 2002 PA Super 391, ¶ 17, 813 A.2d 879, 888 (2002).

Whether punitive damages are warranted is a question for the jury when the evidence is sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk. *Hutchinson*, 582 Pa. 114. Here, given the total sum of the evidence which was received in Plaintiff’s case-in-chief and then in Sig Sauer’s case-in-chief, it was appropriate for the Court to remove non-suit because it was apparent that the evidence was more than sufficient to support a finding that Sig Sauer acted with reckless disregard for the rights of others.

a. The Court Had Absolute Authority to Rescind Its Own Prior Decision and Remove Non-Suit.

The Court had full authority to remove non-suit and reached the correct decision. “If a motion for compulsory nonsuit is granted, the plaintiff may file a written motion to remove the nonsuit. See Rule 227.1.” Pa.R.C.P. 230.1(a). A motion to remove a nonsuit is a Post-Trial Motion, to be filed within 10 days of the nonsuit. See note to Pa.R.C.P. 230.1(2)(citing Pa.R.C.P. 227.1).

Although Plaintiff's motion was argued orally in person before the Court, Plaintiff also submitted a written Motion to Remove the Nonsuit for the same reasons stated at oral argument as a bench memorandum dated November 17, 2024 and with a docket time stamp of 9:51 AM, November 18, 2024.

Beyond Rule 230.1, this Court had the authority and discretion to remove the non-suit. The Court's decision to remove non-suit was not dependent upon *Harnish v. School District of Philadelphia*, 732 A. 2d 596 (Pa. 1999). On Plaintiff's motion to remove non-suit, Plaintiff's counsel explained, referring to Rule 230.1:

"Even if we didn't have that as a basis to ask to remove the nonsuit, Your Honor, on your own discretion, could reopen that based on the introduction of this new evidence that the defense themselves put on with Matthew Taylor. We don't need to rely on Rule 230. They put Matthew Taylor on, and evidence that was not available to Your Honor before nonsuit was entered can now be considered at our request to allow us to ask the jury if Sig Sauer was reckless."

The Court correctly responded:

"I completely agree. The evidence is in and what's before the jury with regard to, I guess, plaintiff—whatever evidence they put in in support of their punitive damages claim, you've already seen, you've had the opportunity to counter. If you chose not to counter it, that was your strategy."

Nov. 15, 2024, Trial Tr. (Afternoon Session) at 59:22-60:61:18

As provided by 42 Pa.C.S. §5505: "Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed." A Trial court's authority to modify or rescind order is almost entirely discretionary, and this power may be exercised *sua sponte*, or may be invoked by a request for reconsideration filed by the parties, and court's decision to decline to exercise such power will not be reviewed on appeal. *Verholek v. Verholek*, 741 A.2d 792, Super.1999, appeal denied 759 A.2d

388, 563 Pa. 665. Here, based upon both Rule 230.1 and/or 42 Pa.C.S. §5505, this Court had the authority and discretion to consider additional evidence, and to rely on the prior presented evidence, and decide that compulsory non-suit should be removed and that the jury should answer the question whether Defendant's conduct was reckless, which it did after thoughtful deliberation.

b. Sig Sauer's Due Process Was Not Violated Because It Had the Opportunity to and Did offer Evidence in Defense of the Causes of Action Plead by Plaintiff.

Sig Sauer's claim that its due process was violated or that it was in anyway prejudiced is false and disingenuous.

Due Process requires that "each party has opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence on his own behalf, and to make argument." *Harmar Ice Assocs. v. Lignelli*, 546 Pa. 500, 503 (1996). Here Sig Sauer had every opportunity to defend against Plaintiff's claims, unlike the circumstances in *Harmar Ice Assocs. v. Lignelli*, relied upon by Sig Sauer. And it did. In the simplest terms, *Harmar Ice Assocs.* involved the issuance of an injunction against a defendant before the defendant had any opportunity to present evidence of its defense. That is not the case here. Sig Sauer presented its entire case in defense of the causes of action against it, both during Plaintiff's case-in-chief and during its own case.

Again, punitive damages is not a "claim" *per se* or a cause of action to be defended against. Punitive damages are a type of damages, derivative to the underlying cause of action. Punitive damages are not something a plaintiff proves or that a defendant defends against. Rather, a defendant defends against a cause of action. Plaintiff's claims and causes of action were that the P320 was defective, Sig Sauer was strictly liable and negligent. Plaintiff also sought to prove that Sig Sauer's negligence rose to the level of reckless indifference. Thus, Sig Sauer's liability

inducing conduct which Plaintiff's evidence demonstrated, and which Sig Sauer sought to disprove, minimize or recharacterize, was the same conduct regardless of if it was couched as negligence, gross negligence or recklessness indifference. Sig Sauer's conduct that was the basis which allowed the jury to decide that Sig Sauer acted with reckless indifference was described in the preceding section for JNOV as well as *infra*, is incorporated here, and will only be summarily outlined for the sake of brevity.⁴

Sig Sauer's liability inducing conduct consisted of Sig Sauer:

1. Designing and distributing the P320 which was pre-cocked, with an extremely short trigger pull length, and did not possess any safety to prevent it from firing due to unintended trigger actuation by a finger or object; *See all* Trial Tr. *in passim*;
2. Distributing a holster for the P320 which left one side of the trigger fully exposed, despite actual knowledge that objects could interact with an exposed trigger and cause a discharge; November 13, 2024, Trial Tr. (Afternoon Session) at 38:1-54:12;
3. Possessing actual knowledge, demonstrated by design team leader Matthew Taylor's testimony, that Sig Sauer performed a Failure Modes Analysis and Sig Sauer was aware that:
 - a. the P320 had a risk of unintended discharge caused by a finger or foreign object, even while the gun was in the holster;
 - b. the risk was expected to happen during the life time of the product;
 - c. the seriousness of the risk was known to be potentially fatal; November 13, 2024, Trial Tr. (Afternoon Session) at 38:1-54:12;
4. Possessing actual knowledge that at least two individuals, experienced unintended discharges with their P320s (without any qualification that these were the only two incidents); *See* Craig Jacklyn transcript and Sig Sauer employee Chris Meyer's transcript;

⁴ This outline is not all inclusive. Certainly over the course of three weeks, much more testimony was elicited that supported the showing that Sig Sauer acted with reckless indifference.

5. Knowing that a tabbed trigger would prevent unintended trigger actuation by any pressure that was not a direct trigger pull as admitted to by Sig through its designee Sean Toner; October 29, 2024, Trial Tr. (Morning Session) at 48:5-10; 49:14-21;
6. Refusing to implement a tabbed trigger, despite the above admission and despite the fact that they had designed a tabbed trigger for the P320;
7. Putting a manual safety on every military version of the P320 to prevent unintended discharge but not making the thumb safety standard on all civilian P320s; November 13, 2024, Trial Tr. (Afternoon Session) at 50:24-51:15;
8. Designing the P320 to comply with testing and standards which did not account for the risk and susceptibility of P320 to fire due to unintended trigger actuation; Sean Toner testimony *passim*, Oct. 28, 2024 - Oct. 31, 2024 Trial Tr. (Morning Session) 22:1-23:10;
9. Failing to perform any testing in more than 10 years to even evaluate if a tabbed trigger would allow less unintended discharges than the P320 trigger; November 13, 2024, Trial Tr. (Afternoon Session) at 64:24-66:23; October 29, 2024, Trial Tr. (Afternoon Session) at 21:12-17;
10. Falsely telling users in sworn testimony and in user manuals that the P320 was double action, when it is actually a single action pistol with a shorter trigger pull than a double action; October 29, 2024, Trial Tr. (Afternoon Session) at 8:16-19:25;
11. Falsely telling users that the P320 would not fire unless they wanted it to; *See* October 29, 2024, Trial Tr. (Afternoon Session) at 69:9 – 71:3.

Sig Sauer had the opportunity to and did present evidence and testimony to counter the facts Plaintiff presented in support of his cause of action and which supported the question of reckless disregard reaching the jury. Sig Sauer's evidence which it introduced to refute Plaintiff's evidence is laid out by Sig Sauer throughout its own post-trial memorandum of law [Control No. 25030051] and in particular on pages 21-31. According to Sig Sauer this evidence and inferences therefrom included:

1. "P320 adhered to or exceeded all relevant safety regulations and industry Standards. *See* Oct. 30, 2024 Trial Tr. Morning Session) at 43:3-6; 53:19-21; 55:17-21; Oct. 30, 2024 Trial Tr. (Afternoon Session) at 6:2-7:3; 7:10-13". Def. Memo p. 21.

2. “SIG took great care in designing the P320, including by identifying the most frequent hazards for unintended discharges—disassembly of the pistol and drop fires—analyzing those risks, and seeking to mitigate them through deliberate design decisions. Oct. 30, 2024, Trial Tr. (Morning Session) at 25:2-4.” Def. Memo p. 21-22.
3. “SIG also added multiple safety designs for the express purpose of preventing unintended discharges.... Oct. 30, 2024, Trial Tr. (Morning Session) at 23:10-22.” Def. Memo p. 22.
4. “SIG incorporated a balanced trigger mechanism in the P320 to reduce the risk of unintended discharges from inadvertent drops. Oct. 30, 2024, Trial Tr. (Morning Session) at 24:18-25:1; Oct. 29, 2024 Trial Tr. (Afternoon Session) at 67:12-23... Nov. 13, 2024 Trial Tr. (Morning Session) at 47:9-51:22.”

The above quotes are just some of the areas which demonstrate Sig Sauer had and took advantage of its opportunity to present evidence to defend itself against Plaintiff’s causes of action. Sean Toner talked about Sig Sauer’s testing and compliance with industry standards for hours over the course of three days. Matt Taylor testified even more about testing and standards, along with its design process. Sig Sauer presented the pre-recorded testimony of former employees Ethan Lessard and Brian McDonald who testified about testing and compliance with industry standards. *See* Lessard testimony, D222at p. 30, 165:01-165:15; *See* McDonald testimony, D-225 at p. 11, 40:24- p. 12, 41:08. Each also talked about tabbed triggers and their perceived purposes for tabbed triggers. Matthew Farkas testified that the gun store where Plaintiff purchased his gun was aware of the Voluntary Upgrade program, insinuating (over Plaintiff’s objection) it was not Sig Sauer’s fault that he did not learn about it. Nov. 13, 2024, Trial Tr. (Morning Session) at 27:17 – 28:13. Sig Sauer’s expert witness, Derek Watkins, assured the jury that the P320 was not defective and that it complied with all testing and standards. Nov. 14, 2024, Trial Tr. (Afternoon Session) at 41:11-46:2.

Of course, Plaintiff disagrees with Sig Sauer's evidence, and Plaintiff presented ample evidence which the jury believed over the testimony elicited by Sig Sauer. Sig Sauer had a full opportunity to present its defense on all issues of liability, it in fact did so, and due process was not violated. Defendant did not point to a single piece of evidence it chose to withhold, since withholding evidence would be nonsensical. Sig called each witness it told counsel and the Court it intended to call when discussing the trial schedule. Non-suit was properly reinstated in this case, on the Court's authority and discretion, based on the totality of the evidence as it was entered.

c. Non-Suit Should Not Have Been Initially Granted Because Defendant Chose to Submit Favorable, Self-Serving Evidence in Plaintiff's Case-In-Chief, and Argued These Evidentiary Items In Its Motion For Non-Suit, and As Such, Sig Sauer's Evidence Was Invasive to Any Decision on Sig Sauer's Motion for Non-Suit.

Rule 230.1 provides, in relevant part, as follows:

(a)(1) In an action involving only one plaintiff and one defendant, the court, on oral motion of the defendant, may enter a nonsuit on any and all causes of action if, at the close of the plaintiff's case on liability, the plaintiff has failed to establish a right to relief.

(2) *The court in deciding the motion shall consider only evidence which was introduced by the plaintiff and any evidence favorable to the plaintiff introduced by the defendant prior to the close of the plaintiff's case.* Pa. R. Civ. P. 230.1. (emphasis added).

At trial, Plaintiff argued, pursuant to the Pennsylvania Supreme Court's decision in *Harnish v. School District of Philadelphia*, that because Defendant entered evidence in Plaintiff's case-in-chief, non-suit could not be entered. 732 A. 2d 596 (Pa. 1999). When Shepardized on Westlaw, there was and is no indication that *Harnish* has been overruled or received negative treatment. Plaintiff need not rely on *Harnish*, however.

Focusing exclusively on the mandate in Rule 230.1(a)(2) which Defendant agrees is applicable [See Def. Memo p. 36], only evidence introduced by the plaintiff or that is favorable to the plaintiff if introduced by the defendant prior to the close of plaintiff's case can be considered on a motion for nonsuit.

In Sig Sauer's motion for nonsuit as to punitive damages, Sig Sauer relied substantially—and in some parts exclusively-- on evidence that it elicited from Sean Toner during Plaintiff's case-in-chief which was favorable to Sig Sauer and adverse to Plaintiff. Plaintiff's counsel briefly summarized this favorable evidence Sig Sauer relied upon during oral argument to remove nonsuit. See Nov. 15, 2025, Trial Tr. (Afternoon Session) at 55:12-56:5. Sig Sauer's impermissible reliance on this evidence at the November 8, 2024 non-suit argument is discussed below.

Sig Sauer organized its motion for compulsory non-suit into three sections, first as to causation, second as to failure to warn, third as to punitive damages. Nov. 8, 2024, Trial Tr. (Morning Session) at 9:17-10:9. Sig Sauer's argument, nearly immediately, began by citing evidence which was directly contrary to the mandate in Rule 230.1(a)(2) regarding favorable defense evidence. Counsel for Defendant argued:

“The evidence here is that the P320 met and exceeded industry standards. This is a factor to consider in determining whether to award punitive damages.

The evidence is that Sig carefully and thoughtfully designed the P320 pistol to avoid known risks of unintentional discharge. Specifically, Sig looked at the fact that the Glock, for instance, which is the alternative design plaintiffs point to here as it relates to the tab trigger, that the Glock required the trigger be pulled to disassemble the pistol and that Sig recognized that as a significant risk of unintentional injury and took steps to design that out of the pistol.

And Dr. Vigilante yesterday opined that Glock's design in the need to pull the trigger is defective. He said that that was unreasonably dangerous yesterday. Glock's design in having to pull that trigger to disassemble it. Sig looked at that and that was their primary concern in designing the P320 was to avoid this known risk of unintentional discharge.

Sig Sauer also looked at designing this gun to be more robust against drops, drop fires, and did not include a tab trigger safety because it balanced its trigger so that it could pass all of the industry standards for drop safety testing without the need for a tab trigger.

The evidence also, that was presented by Sean Toner, is that including a tab trigger, and one of the considerations that Sig had included the tab trigger, could provide other unnecessary risks if it's an unnecessary component for the pistol. In Sig's mind at the time -- and for punitive damages we have to look at Sig's state of mind because, again, they have to show evil motive or reckless disregard. And the reckless disregard standard is a subjective standard as to what Sig knew at the time -- was that the tab trigger safety was only for drop fires. And Sig robustly tested the P320 pistol to all industry standards and passed them without including a tab trigger.

There is no evidence in this action. In fact, the evidence in this action is that no industry standards, so none of these individuals who get together and come up with standards to anticipate and try to identify risks of unintentional discharge, ever came up with a test to determine whether there was a risk of an unintended discharge from somebody accidentally pulling the trigger. This makes sense, Your Honor, because a gun is designed to discharge when the trigger is pulled.”

See Nov. 8, 2024, Trial Tr. (Morning Session) at 22:18-25:25 (emphasis added).

Counsel for Defendant continued arguing evidence, obtained during Plaintiff's case-in-chief, which was exclusively favorable to Sig Sauer, that Sig Sauer obtained on direct examination of its own witness. Counsel argued:

“In Sig Sauer's mind, all the way through this time, the claim was the pistol was discharging spontaneously. Sig went in and did extra tests. They inspected these pistols when they were permitted to do so to try to look at whether there was a problem. Did that testing that we showed through Sean Toner's testimony to confirm that, no, there's not a problem with this pistol. It's not spontaneously discharging.

They actually went and sent it to a third-party lab. They did all those tests that we showed with Sean Toner. The vibration, the shock, the rough cargo, to make sure it wasn't discharging without a trigger pull. And it wasn't until 2021 that there was this claim that there should have been a tab trigger.

See Nov. 8, 2024, Trial Tr. (Morning Session) at 30:17 -31:7 (emphasis added)

“...the evidence shows that Sig thoroughly tested this pistol and complied with not just minimum standards, but all of the possible standards that were out there, including standards that were higher. And tested at angles outside of those. So it exceeded those standards.”

See Nov. 8, 2024, Trial Tr. (Morning Session) at 32:3-9. (emphasis added)

The thrust of Sig Sauer’s argument was not merely that Plaintiff had not presented enough evidence to meet his burden. Rather, its argument was that Sig Sauer’s evidence (elicited during Plaintiff’s case) was somehow better and affirmatively proved that Sig Sauer did not do anything wrong, and certainly not with sufficient culpability to justify punitive damages.

Sig Sauer’s argument was so saturated and reliant upon evidence which pursuant to Rule 230.1(a)(2) could not be considered by the Court on motion for non-suit, that it was pervasive. Due to Sig Sauer’s overwhelming reliance on this self-serving evidence obtained during Plaintiff’s case-in-chief, non-suit could not have been properly granted in the first instance.

2. Plaintiff’s Questioning of Matt Taylor, and Engineering Team Leader for the P320 who Defense Chose to Call in Its Case, was Proper, Not Prejudicial and Is Not a Basis for a New Trial.

Sig Sauer’s opening contention that the Failure Modes Effects and Criticality Analysis (FMECA) document was not requested in discovery is patently and demonstratively false. Further, there was nothing prejudicial about the questioning of Matt Taylor over that document or otherwise. Testimony is not prejudicial merely because it favors Plaintiff’s case as Matt Taylor’s did.

As made clear throughout this case, this is one of dozens being handled by attorneys for both sides. As a matter of efficiency, fact discovery in one case has been used in other cases so, for instance, the same corporate designee or fact witness need not be deposed on the same subject 100 or more times, and the same document requests need not be sent out in every case. Nov. 5, 2024

Trial Tr. (Morning Session) at 61:8-14. Factual documents produced in one case regarding the P320 apply to all P320 cases.

In this national litigation, Plaintiff requested that Sig Sauer produce the following, in addition to other requests that encompassed the FMECA:

14. Any and all documents, illustrations, photographs and/or videos which reference and/or reflect testing performed by you or on your behalf that demonstrate the product's trigger being pulled while fully seated in a holster.

(Request for Production in *Lang v. Sig Sauer*, 1:21-cv-04196, NDGA).

25. If not produced in response to another request, any and all documents or writings of any nature which evidence the results of all testing done on the product prior to it being sold to the general public.
26. Any and all documents or writings of any nature which evidence submission to any state or federal agency regarding the results of said testing referred to in the two prior paragraphs.

(Request for Production in *Lang v. Sig Sauer*, 1:21-cv-04196, NDGA).

12. All documents identifying:

- a. The design engineers for the pistol; and
- b. Inspections and safety analyses performed on the Sig Sauer P320 specifically and/or the product line.

(Request for Production in *Slatowski v. Sig Sauer*, 2:21-cv-00729, EDPA).

Plaintiff trusted that all responsive documents had been produced. Plaintiff was unaware that Sig Sauer had intentionally withheld responsive documents. However, on the eve of trial, Plaintiff learned that Mr. Taylor was deposed in the *Glasscock v. Sig Sauer* class action, No. 22-CV-3095-MDH (WDMO) three weeks prior to the instant trial. In that deposition, Mr. Taylor was questioned about the FMECA which Sig Sauer originally failed to produce in that case as well and was forced to produce during a break. See Matthew Taylor deposition transcript from *Glasscock v. Sig Sauer*

attached at Exhibit 1. Plaintiff was never provided with the FMECA by Sig Sauer, despite now producing it in another case with another plaintiff's firm, and Plaintiff could not obtain it from the class's attorney in that case due to a confidentiality/protective order entered in that case. That plaintiff's attorney (rightfully) declined to produce the document, honoring the protective order even when Sig Sauer failed to honor its discovery obligations. The FMECA was certainly a document that was responsive to the discovery requests Plaintiff's counsel served on Sig Sauer which should have been disclosed.

When Plaintiff sought to question Mr. Taylor about this document, Sig Sauer's counsel argued it had not been produced because it was confidential and Plaintiff should have filed a motion to compel to get it. Again, because the FMECA document was not even identified by Sig Sauer in a privilege log, and because the Plaintiff never learned about it before the eve of trial, Plaintiff did not have that ability.

More importantly, there was no merit to Sig Sauer's argument. After trial, Plaintiff's counsel demanded by email to counsel for Defendant that Sig Sauer produce the FMECA. Contrary to Sig Sauer's argument, Sig Sauer soon after produced the FMECA documents to Plaintiff without the need for new discovery requests, with no fanfare, no special confidentiality agreements and without the necessity of filing a motion to compel. This was telling that this document should have been identified by Sig Sauer and produced long before Matt Taylor was ever questioned at trial. Sig Sauer chose to hide this document from permissible discovery requests and somehow wants to benefit from this choice.

Plaintiff's questioning of Mr. Taylor was proper and explained why counsel would question Mr. Taylor about his prior testimony about that document without the document itself. Nov. 13,

2024, Trial Tr. (Afternoon Session) at 46:5-13). For example, and with no objection from Sig Sauer, counsel transitioned and asked:

Q. And, sir, I'm going to continue to ask you questions about this document. *Sorry, I don't have a copy to show you.* One of those risks that was identified in the analysis was an unintended trigger pull by a foreign object, right?

A. That is correct. *Id.* at 48:25-49:5 (emphasis added).

It was not Sig Sauer who was prejudiced. It was Plaintiff who was prejudiced by Sig Sauer's withholding, limiting Plaintiff's knowledge and ability to ask questions about the document solely upon Mr. Taylor's prior deposition testimony in *Glasscock*. In fact, after the FMECA was produced shortly after trial, it revealed significant information that would have been ripe for cross examination.

The manner in which Plaintiff questioned Mr. Taylor was not procedurally improper. First, Mr. Taylor clearly had personal knowledge of the FMECA. He testified about what the FMECA was and admitted "Yes, I have seen that." *Id.* at 43:11-46:1. There was no question he knew and understood the FMECA, and knew Sig Sauer performed that analysis. *Id.* at 43:11-46:1.

Second, where necessary, Plaintiff properly refreshed Mr. Taylor's recollection when asking about prior testimony he gave about the FMECA, and Mr. Taylor was confirming that accuracy of the record as he testified. This is illustrated in the examples below.

Q. And am I correct that the first failure mode on that analysis was pistol accidentally, unintentionally discharging, and *you answered yes to that?*

A. *I honestly don't recall* what order the risk were in.

Q. Let me try to refresh your memory with your deposition testimony.

MR. ZIMMERMAN: Bill, if pull up Page 169, Lines 1 to 16. you can

BY MR. ZIMMERMAN:

Q. Sir, do you see it says the first one of our failure modes is pistol accidentally, unintentionally discharging.

A. I do see that.

Q. Not only was it the first risk, but the first five risks. I just wanted too – I'll move on.

Am I correct that it wasn't just the first risk in this analysis, unintentional discharges are the first five risks identified.

A. *I don't remember* the number but it was definite multiple.

Id. at 47:1-48:3. (emphasis added).

Q. Sir, you testified under oath that the first one, two, three, four, five of the risks that are identified were all pistols accidentally or unintentionally discharging?

Am I correct that it wasn't just the first risk in this analysis, unintentional discharges are the first five risks identified.

A. Yes, I see that. During the deposition we were looking at the documents, so *I had no reason to dispute it.*

Id. at 48:18-24.

Q. So that's the hazard. Let's talk about the effect. So failure mode is the hazard. The effect is what the risk is, right?

A. Generally.

Q. That risk was that it could kill somebody according to Sig Sauer's analysis, right?

A. As I recollect.

Q. Sig Sauer then confirmed that the occurrence of those risks was likely to occur some time within the life expectancy of a particular pistol, right?

A. Again, without the document in front of me, *I don't recall.*

Q. *I imagine you testified under oath truthfully back in September?*

A. *I did* and we were looking at the document, as I said.

Id. at 49:6-22.

Q. Sir, can you read that quietly to yourself and let me know when you're finished?

A. I've read it.

Q. Does that refresh your memory?

A. That's how I testified, and again we were looking at the document, so *I have no reason to dispute this.*

Id. at 50:7-13 (emphasis added).

Notably, Sig Sauer did not object to the vast majority of the individual questions posed to Mr. Taylor about the FMECA and his prior testimony. *See Id.* at 43:11-46:4; 47:1-48:1; 48:25-52:4; 65:24-65-15. Inasmuch, objections to the individual questions are waived. Moreover, the objections addressed in Sig Sauer's post-trial motion are baseless because there was nothing improper about the questioning. Mr. Taylor had personal knowledge of his prior testimony as well as the FMECA document. At trial, as to certain questions, he had an insufficient recollection to testify fully, as indicated by his testimony that he did not recall. The testimony from the *Glasscock* deposition was made contemporaneous to a time his memory was evidently fresh and reflected his knowledge, and Mr. Taylor confirmed the accuracy of the written record by repeatedly testifying "I have no reason to dispute this." See Pa.R.E. 803.1(3). Finally, nothing about this testimony was confusing for the jury. The Court did not err in allowing Mr. Taylor's testimony about the FMECA, nor did Sig Sauer suffer any prejudice. Sig Sauer's argument provides no basis to warrant a new trial.

3. The Court Correctly Permitted the Introduction of Evidence of Other Similar Incidents of P320 Discharges which were Limited in Scope Based Upon Similarity, While Precluding Inadmissible and Dissimilar Evidence.

a. The Court Properly Admitted Evidence of Other Similar Incidents.

The Court properly admitted evidence of seven other similar incidents (OSIs) of unintended discharges of holstered P320s. As discussed below, the next case that was set for trial in Federal Court in Massachusetts adopted the same limitations imposed by this Court in allowing evidence of other incidents. Such evidence of OSIs is admissible to establish “that a defect or dangerous condition existed or that the defendant had knowledge of the defect.” *Lockley v. CSX Transp., Inc.*, 5 A.3d 383, 395 (Pa. Super. 2010); *See also, Spino v. John S. Tilley Ladder Co.*, 671 A.2d 726, 729 (Pa. Super. 1996); *DiFrancesco v. Excam*, 642 A.2d 529 (Pa. Super. 1994); *Rogers v. Johnson & Johnson Products, Inc.*, 585 A.2d 1004 (Pa. Super. Ct. 1990); *Whitman v. Riddell*, 471 A.2d 521 (Pa. Super. 1984). Throughout this and other litigation against Sig Sauer, and despite the significant flaws in Sig Sauer’s accident reporting system that has allowed Plaintiff’s counsel’s own investigation to be more thorough than an international gun manufacturer, Plaintiff’s counsel was able to uncover at least 145 other similar incidents of the P320 discharging when the user did not knowingly and intentionally depress the trigger.

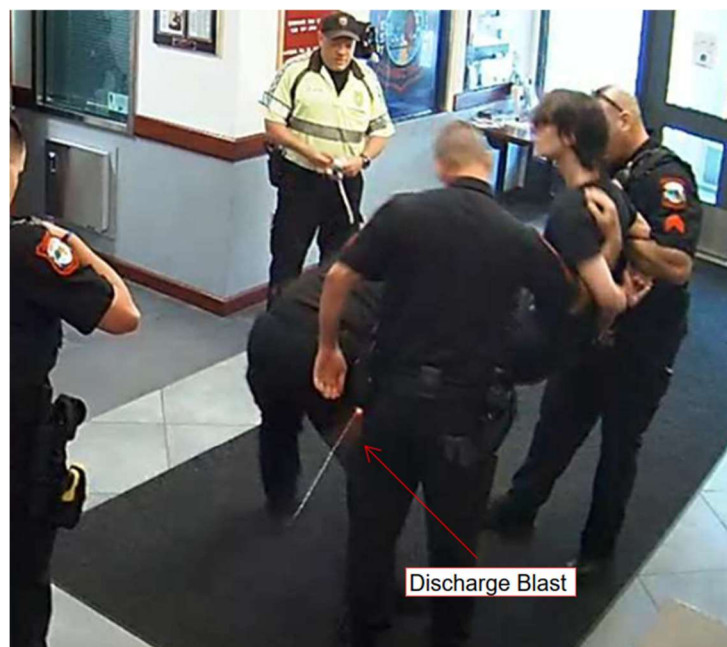
Following significant briefing and repeated, daily arguments on motions in limine to admit and/or preclude OSI evidence, this Court granted Plaintiff’s motion to admit a very select set of OSIs, limiting the scope to only those OSIs in many respects including where the user had an unintended discharge of a P320, while the gun was in a holster not being touched. See Order Admitting OSI evidence at Control No. 24094655 and precluding evidence of incidents involving non-P320s at Control No. 24094866]; See also October 28, 2024, Trial Tr. (Morning Session) at 111:6-13; *See also*, Oct. 28, 2024, Trial Tr. (Morning Session) 4:9-13; October 31, 2024, Trial Tr.

(Morning Session) at 6:4-15 (confirming understanding of the admissible OSI evidence parameters to “Sig Sauer, P320, no safety, discharge in the holster, without being touched” and including pre and post upgrade, full and compact size). Plaintiff sought scores of other similar incidents, but understood and respected the Court’s limitations which resulted in less than 5 percent of those sought to be admitted. Based on those parameters, Plaintiff presented seven similar incidents by way of video deposition and video footage.

These OSIs are briefly described below.

Officer Daniel Witts, Montville, Connecticut, July 24, 2023 I Incident Date

Plaintiff showed the jury OSI evidence from a surveillance camera at the Montville, Connecticut police department in July of 2023. This video depicted Officer Witts detaining a suspect with other officers. Officer Witts was highly experienced with the P320. He attended the Sig academy to become an armorer of the P320. (*See* Officer Witts Testimony, 8:12-23). Officer Witts’ P320 was in a holster, secured to his duty belt on his right hip. As he bent over to grab the suspect’s legs, the P320 discharged without him touching it. *Id.* at 19:13-23:20. The bullet narrowly missed a fellow officer.



Plaintiff played Officer Witts' recorded deposition testimony along with the OSI surveillance video from two angles for the jury.

Officer Craig Jacklyn, Philadelphia, Pennsylvania, August 26, 2019 Incident Date

On August 26, 2019, Southeastern Pennsylvania Transportation Authority police officer, Craig Jacklyn, experienced an unintended discharge similar to Plaintiff's. Officer Jacklyn explained the circumstances of his discharge at his video recorded deposition on April 14, 2021. Stipulated excerpts of this deposition testimony were played for the jury. He explained that on August 26, 2019, Officer Jacklyn was patrolling an area while driving a police cart with his partner. (*See* Officer Jacklyn Testimony at 26:3-27:15). He was carrying a Sig Sauer P320 which was fully holstered. (*Id.* at 27:18-28:16; 31:10-32:15; 43:14-44:3). Officer Jacklyn's hands were on the steering wheel of the police cart. (*Id.* at 38:1-7). He brought the police cart to a stop, and readied to exit the cart. (*Id.* at 38:8-23). As Officer Jacklyn raised out of the seat, his P320 unintendedly discharged. *Id.* He heard a muffled pop. He was not struck. *Id.* The bullet discharged through a bottle sitting in a cup holder in the dash of the cart and impacted the ground behind a woman walking in the area. (*Id.* at 38:8-39:22; 42:3-16). The spent shell casing did not eject. (*Id.* at 39:15-22). He only realized what happened when he reached down and felt his holster was warm to the touch. (*Id.* at 38:8-39:22). He then turned his body camera on. *Id.* Mr. Jacklyn is heard in the immediate aftermath of the incident telling fellow officers that the weapon was holstered at the time of the discharge.

Officer Aaron Roth, Milwaukee, WI, January 2, 2022 Incident Date

Plaintiff showed the jury the parking lot security footage depicting Milwaukee, Wisconsin Police Officer Aaron Roth's unintended discharge on January 2, 2021. The video showed Officer Roth getting out of a vehicle with items in both hands. As Officer Roth steps out of the vehicle,

his fully holstered P320 discharged. The shell casing did not eject. (*See* Officer Roth's Testimony, 17:11-13). The video of the incident was authenticated and described by Officer Roth when he was deposed on video, February 2, 2023. Plaintiff played Officer Roth's video recorded deposition testimony about the incident to the jury. *Id.* at 6:4-14:2; 16:25-20:4; 23:7-24:6.

Officer Donald Thatcher, Honesdale, PA, February 7, 2022 Incident Date

Plaintiff showed the jury the parking lot security footage depicting Honesdale Pennsylvania Police Officer Donald Thatcher's unintended discharge as he exited his vehicle on February 7, 2022. Officer Thatcher's duty-issued P320 was holstered on his left hip. He had a phone in his left hand. The video very clearly showed the P320 discharging from within its holster. As in this case, the shell casing did not eject. (*See* Officer Thatcher Testimony at 41:10-18). The video of the incident was authenticated and described by Officer Thatcher when he was deposed on video, October 21, 2022. Plaintiff played Officer Thatcher's video recorded deposition testimony about the incident to the jury. *Id.* at 7:20-17:11; 23:8-14; 40:5-41:3; 41:10-18; 41:23-42:18.

Sergeant Marvin Reyes, Houston, Texas, March 28, 2022 Incident Date

Yet another OSI memorialized by home security camera footage depicted Houston, Texas Police Department Sergeant Marvin Reyes loading bags into the backseat of his car on March 28, 2022 with his P320 holstered on his right hip. The video shows Sergeant Reyes's holstered P320 discharging with his hand clearly off of the trigger. Plaintiff will also played Sergeant Reyes' sworn testimony about the incident. *See* Sergeant Reyes Testimony which was played for the jury.

David Cole Discharge, Maine, May 4, 2022 Incident Date

On May 4, 2022, detective David Cole experienced an unintended discharge of his P320 in his holster. Although the immediate events after the discharge were captured on body camera footage, that footage was not permitted to be played for the jury due to hearsay and prejudice

objections related to the graphic nature of blood in the video. Detective Cole was deposed about the incident and his video deposition was played for the jury. He explained that his gun discharged from within the holster, while he was not touching it, as he walked. See Detective Cole Testimony at 107:03-142:10.

Michael Lingo Discharge, Three Forks, MT, January 7, 2023 Incident Date

On January 7, 2023, competitive shooter, Michael Lingo, experienced an unintended discharge like Plaintiff's. Mr. Lingo explained the circumstances of his discharge at his video recorded deposition on October 20, 2023. (*See* Mr. Lingo Testimony). On the date of the incident, Mr. Lingo was training for competition at a shooting range in Three Forks, Montana. He was carrying his Sig Sauer P320 and triple retention Safariland holster for the P320. (*Id.* at 11:20-12:11). The holster was mounted on his thigh. *Id.* He loaded the magazine into the P320, placed it in his holster and walked forward approximately ten yards. *Id.* When he reached the shooting area, he repositioned his feet on the ground and the holstered P320 discharged into his right leg below his knee. *Id.* His hands were at his mid-chest. (*Id.* at 12:5-9). The spent casing did not eject from the gun. (*Id.* at 22:23-24). He did not touch the gun or intend for the discharge to occur. Each of the operative facts of this discharge is substantially similar to Plaintiff's. Plaintiff played Mr. Lingo's October 20, 2023 video recorded deposition testimony about the incident to the jury.

The admission of these incidents was supported by Pennsylvania law as illustrated by the admission of evidence of *twenty-five* other similar incidents in *Blumer v. Ford Motor Co.* 2011 PA Super 99, 20 A.3d 1222 (2011). In *Blumer* the Court explained the wide latitude afforded to the trial court in determining the admissibility of other similar incident evidence.

The Superior Court explained:

Determining whether and to what extent proffered evidence of prior accidents involves substantially, similar circumstances will depend on the underlying theory of the case advanced by the plaintiffs. **If the evidence of other accidents is substantially similar to the accident at issue in a particular case, then that evidence will assist the trier of fact by making the existence of a fact in dispute more or less probable, and the greater the degree of similarity the more relevant the evidence.** Naturally, this is a fact-specific inquiry that depends largely on the theory of the underlying defect in a particular case. Accordingly, a wide degree of latitude is vested in the trial court in determining whether evidence is substantially similar and should be admitted.

Blumer v. Ford Motor Co., 20 A.3d at 1229(internal citations omitted) (emphasis added).

Defendant incorrectly suggests that *Blumer* is inapplicable and requires that Plaintiff identify the precise object that caused each unintended discharge. As in *Blumer*, each of the incidents admitted in this case (1) involved the same product and components- the P320, (2) under similar circumstances- discharging while holstered and not being touched, and (3) with no other reasonable explanation- each user testified that they did not touch the gun or the trigger, as Sig Sauer maintains that the gun cannot fire without a trigger pull, the only reasonable explanation is that a foreign object pulled the trigger.

To be clear, these seven OSIs were selected based on the substantial similarity, and the fact that each had already given recorded testimony and were well known to Sig Sauer so no prejudice could be claimed. Unsurprisingly, even after the list of OSIs were reduced from 145 to these seven, Sig Sauer still attempted to argue that they were not similar enough. Sig Sauer conjured its own hyper specific requirement that these OSIs are not sufficiently similar because the holsters were not identical. Sig Sauer highlights that five of the incidents involved Safariland holsters which have an opening that could “possibly allow access to the trigger of the holstered gun.” Def. Memo [Control No. 25030051] at p. 45. Sig Sauer conveniently ignored the fact that the holster Plaintiff

was using, distributed by Sig Sauer with Plaintiff's P320 and pictured below, also had a substantial opening on one side of the trigger which would allow access to the trigger.



***Defense Expert Photograph
from Derek Watkin***



***Plaintiff's Expert Photograph
from Dr. William Vigilante***

The Court set forth substantial similarity restrictions when 145 incidents were requested to be admitted. Plaintiff respected those restrictions. Defendant did not and attempted to add more artificial restrictions with the specific intent of knocking out the incidents that Sig knew passed the substantial similarity test rendered by the Court. The small differences Sig Sauer aimed to differentiate the OSIs this case continued to miss the mark. It is inconsequential here whether a user's gun was in a Safariland holster with a gap or the Sig Sauer holster with a gap, whether the user's gun was silver or black, whether a gun was mounted on a thigh or a hip, whether it was sunny or cloudy when a discharge occurred, or whether a user had a light on the muzzle of the gun

or not. Every difference Sig Sauer highlights is a difference without distinction. The standard demanded by Sig Sauer is not the standard under Pennsylvania law. Incidents must be similar, not identical.

Subsequent to this Court's ruling, on January 7, 2025 Federal District Court Judge Patti Saris, of the District of Massachusetts, made a nearly identical ruling which would have allowed the same OSI evidence at trial in *Catatao v. Sig Sauer* 1:22-cv-10620-PBS. Just like this Court's decision, Judge Saris limited Plaintiff's OSI evidence to holstered P320 that discharged by a foreign object, without the user's intent, and not the result of a drop. In *Catatao v. Sig Sauer* this order was issued only electronically. A screenshot of the docket entry is copied below.

01/07/2025	197	Senior District Judge Patti B. Saris: ELECTRONIC ORDER entered. Plaintiff's Motion in Limine #2 Dkt. <u>122</u> is ALLOWED IN PART, Plaintiff may offer evidence of other substantially similar incidents that meet the following criteria: (1) involve a model of the P320 with the same "light" and "short" trigger pull with no external safety measures, like the tabbed trigger pull; (2) the discharge happened after unintended trigger actuation; (3) the user's finger did not enter the trigger guard in a manner which would have made flush contact with the face of the trigger; and (4) the gun did not discharge as a result of an accidental drop or abusive handling. The Court reserves ruling on whether Defendant may offer evidence of the absence of other incidents until the record regarding Defendant's accident reporting system is more fully developed. (CGK) (Entered: 01/07/2025)
------------	-----	--

b. The Court Properly Precluded Inadmissible “Rebuttal” Evidence.

The purported “rebuttal” evidence Sig Sauer references as a basis for a new trial was categorically inadmissible and properly precluded for a host of grounds including hearsay, hearsay within hearsay, lack of foundation, and, most blatantly, failure to previously disclose.

First, Sig Sauer's late request to have Tom Taylor testify was properly rebuked because Tom Taylor was not previously identified by Sig Sauer as a witness or a corporate designee. The Court properly excluded his testimony before Sig reversed course and attempted to claim his testimony would be as a rebuttal witness. Plaintiff never had the opportunity to depose Tom Taylor prior to the trial as Sig Sauer ambushed Plaintiff with the identification of Tom Taylor on the eve of trial.

See Mudra v. Schlumberger Tech. Corp., 303 A.3d 781 (Pa. Super. Ct. 2023), *reargument denied* (Oct. 5, 2023)(Affirming preclusion of a witness identified **26 days before trial**; an employee of the corporation that operated the site where Plaintiff was injured); *See also* Plaintiff's Bench Brief to Preclude Tom Taylor filed November 6, 2024 at 5:21PM and incorporated by reference. Further, Sig Sauer purports that Mr. Taylor "received notice of the other incidents...and sought to testify as to Sig Sauer's understanding of these other incidents and how they occurred to provide some context for the jury as to how the other incidents occurred." Def. Memo [Control No. 25030051] at p. 47. There is no evidence that Tom Taylor was a witness to any OSI, that he personally spoke to any individual who had an OSI, or that he performed any firsthand investigation of any OSI. Tom Taylor had no personal knowledge which he could be permitted to testify about under any grounds. "Sig Sauer's understanding" of how these incidents occurred is not admissible. It lacked a sufficient foundation, was based upon hearsay and was properly excluded.

Second, Sig Sauer's request to have Matt Farkas, law enforcement sales and support, testify beyond his primary testimony that Sig elicited was properly rejected because he too had no personal knowledge upon which he could be permitted to testify about under any grounds. This Court confirmed with Sig Sauer's counsel: "So I'm understanding what you're saying correctly, then Farkas is going to testify about what he reviewed in connection with what someone else investigated, What Roscommon Police Department investigated; correct?" Nov. 13, 2024, Trial Tr. (Morning Session) 8:23-9:2. Notably, Plaintiff was not permitted to show the Roscommon OSI video or provide any substantive testimony about it other than one sentence from a Sig employee that they were aware of it. *Id.* at 12:25-4. Sig Sauer also sought to have Mr. Farkas testify about what he saw in the video of the Montville Connecticut incident involving Officer Witts. That testimony was going to entail Mr. Farkas pointing out that there was contact between two officers

at the time of the discharge. *Id.* at 10:2-20. Mr. Farkas would have testified without a valid bases that the contact between the officers was the cause of the incident, which he was not qualified to do nor should he have been permitted to do. Essentially, Mr. Farkas would have been a witness who watched a video that he had no personal knowledge of and tell the jury what he thinks he saw.

This Court rightly decided to preclude Mr. Farkas from “testifying about the investigation performed by others” and requiring an “expert to testify about the cause of the incident” in Montville. *Id.* at 22:16-22. The former was hearsay testimony, lacked proper foundation, and was inherently unreliable. The latter, even if expert Derek Watkins testified about it, would have been wildly speculative and prejudicial.

Mr. Watkins did not investigate the admitted OSIs aside from the inspection of Officer Cole’s gun in connection to litigation between Officer Cole and Sig Sauer. Thus, Mr. Watkins could not opine as to the cause of any of these. Mr. Watkins similarly did not offer any opinions prior to trial about the cause of these incidents. Preclusion of evidence is appropriate where a party has inexcusably failed to comply with the discovery rules and deadlines. *Kaminski v. Employers Mutual Casualty Company*, 487 A.2d 1340 (Pa. Super. 1985). The exclusion of witness testimony for failure to comply with discovery deadlines is largely within the discretion of the trial court. *Williams v. Southeastern Pennsylvania Transp. Authority*, 741 A.2d 848, 855 (1999). The purpose of Rule 4003.5 governing discovery of expert testimony is to avoid unfair surprise and allow the opposing side time to prepare an adequate response to the expert’s testimony. *Smith v. Southeastern Pennsylvania Transp. Authority*, 913 A.2d 338, 344 (2006). Absent extenuating circumstances, Rule 4003.5(b) is a rule of mandatory preclusion. *Brophy v. Brizuela*, 517 A.2d 1293 (1986). Mr. Watkins was properly precluded from testifying about any incident other than Plaintiff’s.

Sig Sauer's basis for requesting a new trial here is the error of Sig Sauer and Sig Sauer alone. Sig Sauer claims it was "entirely prevented from providing evidence for the jury to consider regarding the significant differences between other incidents and Plaintiff's, and the jury was left only with deposition testimony of individuals involved in other incidents..." Def. Memo [Control No. 25030051] at 48. Like the susceptibility of the P320 unintentionally discharging, the void in Sig Sauer's witness roster is a problem of Sig Sauer's own creation. Sig Sauer has known about the Roscommon incident since 2016 and the Montville incident within days of it occurring in 2023. It similarly knew about the other five OSIs that Plaintiff offered evidence of long before this trial. Nothing prevented Sig Sauer from identifying material witnesses to those incidents or the investigations in a timely manner during discovery. This is what Plaintiff's counsel did. Sig cannot now claim prejudice because the witnesses it brought to court were not qualified to offer the testimony Sig Sauer wanted. This Court committed no error. Sig Sauer has suffered no prejudice. There is no basis for a new trial.

c. The Court Properly Precluded Inadmissible Evidence of Incidents Involving Other Pistols.

This Court properly precluded Sig Sauer from admitting evidence of unintended discharges involving pistols other than the P320 because the evidence Sig Sauer sought to admit was hearsay, lacked foundation, could not be testified to by a witness Sig Sauer failed to previously disclose, was not authenticated and was not similar. Sig Sauer did not attempt to offer a single fact witness who experienced an OSI with a similar striker fired pistol. It instead wanted to show unverified videos it found online.

Plaintiff produced firsthand witnesses to testify about the unintended discharges they experienced with the Sig Sauer P320. Sig Sauer had the opportunity to and did depose these individuals before trial. Rather than satisfying that level of OSI investigation and reliability of

evidence, Sig Sauer attempted to backdoor the evidence and now complains of the preclusion of anecdotal and hearsay evidence through Matt Taylor and Derek Watkins.

Sig Sauer attempts to hold Plaintiff's OSI evidence to such a high scrutiny that every single fact of the unintended discharge from holster make and model to holster placement must be the same. Yet, Sig Sauer baselessly demands a new trial is necessary because Mr. Taylor and Mr. Watkins were not permitted to testify about abstract references to unintended discharges with other guns, with no indication of who it happened to or how it happened. According to Sig Sauer, firsthand testimony offered by Plaintiff's witnesses about other similar incidents they experienced involving the P320 are not sufficient to have been admitted, yet the preclusion of Sig Sauer's unsubstantiated, whisper-down-the-lane evidence from Mr. Taylor or Mr. Watkins of non-P320 discharges warrants a new trial. Clearly, this Court did not commit an abuse of discretion in precluding Sig Sauer so-called evidence, and Sig Sauer is not entitled to a new trial.

4. The Court Correctly Precluded the Introduction of Evidence of Customer Preference and Sig Sauer Suffered No Prejudice by this Exclusion.

Throughout this nationwide litigation, Sig Sauer has repeatedly argued that that it did not include a tabbed trigger safety as a standard feature on all pistols because customers did not want them. Sig Sauer repeatedly references and attempted to introduce in this case second or third hand hearsay and impermissible lay opinion evidence from law enforcement sales director Matt Farks about what the customers prefer. Sig Sauer argues that in addition to not wanting a tabbed trigger, law enforcement also wanted to disassemble the pistol without a trigger pull and it wanted a more refined trigger. Def. Memo [Control No. 25030051] p. 51. However, (1) Sig Sauer has produced no admissible evidence to establish the desires of the customers, and (2) the desires of the customers about a tabbed trigger or disassembly feature are irrelevant to Sig Sauer's obligation and failure to design and distribute a gun that does not fire while holstered on a person's body. Sig

Sauer was properly precluded from introducing unreliable second or third-hand hearsay and impermissible lay opinion to argue that customers, including law enforcement agencies, preferred not to have tabbed trigger on their pistols.

The evidentiary basis of Sig Sauer's belief about customer preferences was a "focus group meeting in early 2012 in which approximately five to six law enforcement departments visit[ed] SIG's New Hampshire headquarters to discuss what features they desired in a striker-fired pistol." Def. Memo [Control No. 25030051] p. 51. Sig Sauer sought to elicit testimony from Mr. Farkas "based upon the law enforcement agencies' feedback during these focus groups...." *Id.* at 52. Aside from being irrelevant, Mr. Farkas does not have actual knowledge of these meetings and any such testimony would be unreliable, unfounded and hearsay. As set forth in Plaintiff's Motion in Limine to Preclude Customer Preference [Control No. 24094675] which was granted, Mr. Farkas previously testified:

Q. So, there were three or four of you who were discussing the features of the P320 as it related to law enforcement sales, correct?

A. *Prior to my actual involvement in the conversations, there was conversation with several police departments around the country about the features that they would be interested in in a striker-fired pistol.*

Q. Do you have a complete list of those law enforcement departments?

A. I do not.

Q. *Do you know – were there any notes kept or any documents that would relate back to these discussion either in your internal group and/or with law enforcement departments?*

A. *I truly don't. This – those – that focus group or that polling of police departments occurred before I got involved with any actual discussions.*

Exhibit 2, Deposition of Matthew Farkas in *Powers v. Sig Sauer*, January 13, 2023, 34:25-36:1 (emphasis added).

Mr. Farkas was not even at the focus groups and is not aware of any documents that memorialize or relate to the purported discussions. These conversations predated his involvement with the P320. *Id.* at 35:22-36:1. He doesn't even know who at Sig Sauer was involved in the conversation.

Q. Do you know who at SIG would have been having the discussions with those unknown law enforcement departments?

A. I don't know.

Q. Okay. And how did you know that these unknown SIG people were talking to unknown law enforcement people about features the law enforcement people may want or not want?

A. It was a topic of the conversation.

Q. When you became part of the group?

A. Yes.

Q. So basically, when you got into that room, you heard mentions of conversations from certain law enforcement departments that had predated you, you just can't recall the specifics?

A. Yes, that's true.

Id. at 36:7-23.

Sig Sauer's reliance on *Hooker v. Farm Fire and Cas. Co.*, 880 A.2d 70 (Pa. Cmwlth. 2005) does not support its position. In that case, the alleged hearsay statement was decidedly not being used to show the truth of the matter asserted. However, here, Sig Sauer is absolutely using Mr. Farkas to testify about features law enforcement wanted as evidence that law enforcement does not want a thumb safety or tabbed trigger, and that law enforcement wanted a safer disassembly method. That is how Sig Sauer wants to use this evidence.

Sig Sauer argues that the second or third or more hand customer preference evidence from unidentified people is not being used to show those preferences were true, but rather to show why

Sig Sauer made certain design purposes- “as the listener”. Def. Meme [Control No. 25030051] at 52. This argument is disingenuous and absurd. The essence of that argument is that Sig Sauer designed the P320 in this way, regardless of whether law enforcement truly preferred these features, but because Sig Sauer heard them and thought they preferred those features. Sig Sauer’s argument is nothing more than attempt to back-door hearsay evidence. Evidence of the customers’ preference must first be offered and accepted by the jury for the truth of it for it to make any sense why Sig Sauer would have then acted on it.

Sig Sauer’s argument also ignores the reality that it presented evidence of its safety-mindedness “as a listener” in other ways. For example, P320 designer, Sean Toner explained

Q. So product management receives input from the folks within Sig Sauer who are out in touch with the customer base about what they need. And are you saying that’s what they use to give ideas to engineers, what features as well?

A. Correct, so they would go out and understand what the consumer market or LE [Law Enforcement] market or any of those different branches would want. And then they would come back and create new product specification sheets such as this one.

See, Oct. 29, 2024 Trial Tr. (Afternoon Session) at 59:12-19.

Mr. Toner spent three days discussing the P320, standards and testing and the design decisions which were made, including Sig Sauer’s decision to use the takedown lever “to avoid the need to pull the trigger in disassembling the pistol in an attempt to reduce the risk of an unintentional discharge...” *Id.* at 65:3-9. Mr. Toner had the requisite knowledge to offer that testimony- he designed that process. Mr. Farkas, on the contrary, does not. Mr. Farkas’ testimony was properly precluded.

Even if Mr. Farkas were permitted to testify about what he heard second or third hand about preferences discussed in a focus group of unidentified people, those preference or opinions about

safety features on a gun are inadmissible lay opinions. The issue in this case is whether the Sig Sauer P320's single-action trigger design combined with a lack of any external safeties renders it dangerously defective because of its unreasonable susceptibility to unintended discharges. Whether an individual fact witness prefers a certain safety feature, considers them safe or unsafe, or has a personal belief about whether a safety feature would impact their ability to use the firearm has absolutely no bearing on the issue of whether the P320 is defectively designed. Such testimony would be irrelevant and must be precluded.

Pennsylvania Rule of Evidence 701 governs lay witness testimony:

“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Pa.R.E. 701

Pennsylvania Rule of Evidence 702 governs expert testimony:

“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.” Pa.R.E. 702

Pennsylvania Rule of Evidence 701 and 702 precisely defines the narrow set of circumstances where a lay witness can testify in the form of an opinion; namely, when they are able to testify about what they “perceived,” the testimony is determinative of a fact in issue, *and* the testimony does not require specialized skill, knowledge, or training. A fact witness's preferences or opinions about external safeties certainly does not meet this definition.

First, a fact witness's preferences or opinions about safety features would not be a perception or observation of an event. Second, when the questioning is based upon a witness's experience as a law enforcement officer (or even as a regular firearms user), the answer very clearly requires specialized knowledge on the part of the witness. These individuals do not have the knowledge of the risks that Sig Sauer has- like the risks identified in the Failure Modes and Effects Criticality Analysis- to appreciate the risk of the P320 unintentionally discharging. Sig Sauer would therefore be required to introduce expert testimony to that effect. Pennsylvania law very clearly does not permit a lay witness to offer opinions about the safeties and safety features on a gun, and any such testimony must be precluded.

To the extent Sig Sauer attempted to elicit this improper testimony to make the point that it was "safety minded" in designing the P320, Sig Sauer offered such testimony through Sean Toner over the course of three days. Thus, there is no prejudice in the preclusion of Mr. Farkas' testimony.

5. The Court Properly Precluded Evidence by Sig Sauer's Expert, which was Not Disclosed Through the Expert's Report in this Case.

The discovery rules exist to prevent surprise and unfairness. *Kaminski v. Employers Mutual Casualty Co.*, 487 A.2d 1340 (1985). Rule 4003.5 of the Pennsylvania Rules of Civil Procedure states that a party may through interrogatories require: (A) any other party to identify each person whom the other party expects to call as an expert witness at trial *and to state the subject matter on which the expert is expected to testify* and (B) the other party to have each expert *so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.* See Pa. R. Civ. P. 4003.5 (emphasis added). The Explanatory Comments to Rule 4003.5 further note that if the answering party or the expert does not fully comply with the foregoing, the court under subdivision (b) may exclude or limit the

testimony of such expert if offered at trial. Preclusion of evidence is appropriate where a party has inexcusably failed to comply with the discovery rules and deadlines. *Kaminski v. Employers Mutual Casualty Company*, 487 A.2d 1340 (Pa. Super. 1985).

Plaintiff's counsel and Sig Sauer's counsel are handling many cases in this nationwide litigation involving the P320. As a matter of efficiency, fact discovery in one case has been used in other cases so, for instance, the same corporate designee or fact witness need not be deposed on the same subject 100 times. Nov. 5, 2024 Trial Tr. (Morning Session) at 61:8-14. However, although there is some overlap, expert testimony and testing is specific to each case. If expert materials in one case are intended to be used in another case, they must be properly identified in the experts' reports and identified on pre-trial exhibit lists.

In the *Abrahams*' trial, Sig Sauer intended to show the jury a video of its expert, Mr. Watkins, manipulating a key inside of a holster which held a pistol with a tabbed trigger. *See argument at* Nov. 15, 2024, Trial Tr. (Morning Session) at 5:14-20:2. Mr. Watkins caused the trigger to be pulled with the key while the gun was in the holster. This testing was prepared by Mr. Watkins in connection to the *Ashley Catatao v. Sig Sauer* case, No.: 1:22-cv-10620, in the United States District Court in the District of Massachusetts, where he was also the expert for Sig Sauer. *Id.*

In *Catatao*, Mr. Watkins' theory of the case was that a key pulled the trigger of Officer Catatao's fully holstered P320. Therefore, Mr. Watkins performed the test at issue involving the key to prove specific to the *Catatao* case that a key could pull the trigger of a Glock pistol with a tabbed trigger which was seated in the holster. Nov. 15, 2024, Trial Tr. (Morning Session) at 9:14-10:8.

In the *Abrahams*' case, Sig Sauer's experts Derek Watkins and Eric Warren produced reports specific to this case, as required to give Plaintiff notice of their theory, and the factual basis for that theory- including the testing they performed. In this case, Sig Sauer's experts opined that Mr. Abrahams' finger pulled the trigger while the gun was partially unseated.



These experts opined that that Mr. Abrahams' P320 was in the position seen in Defendant's Exhibit 084 above, with the trigger fully exposed when his finger pulled it. *See*, Def. Exhibit D-084. Mr. Watkins opined that Mr. Abrahams' finger was in the position seen in Figure 3.4.4. of his expert report identified at Defendant Exhibit D68.

At the *Abrahams* trial, Mr. Watkins testified:

- Q. Is there any evidence in this case that physical evidence to indicate that there was a key at any point in time involved in this incident.**
- A. There's been no testimony and no physical evidence to indicate that there was a key at any point in time involved in this incident.**

Nov. 11, 2024, Trial Tr. (Afternoon Session) 67:4-9.

Given Sig Sauer's theory in the *Abrahams* case, which is different than in *Catatao*, it is unsurprising that the video of Mr. Watkins' key testing was not mentioned in Mr. Watkins' expert report. Sig Sauer admits as much in its brief, stating: "Because it was not supportive of Mr. Watkins' affirmative opinions in this matter, it was not discussed in his report issued in this case." Def. Memo [Control No. 25030051] p. 56.

Dr. Vigilante did a similar type of key testing in the *Catatao* case, testing both a P320 trigger and a Glock trigger with a key while each pistol was holstered. In his expert report Mr. Watkins commented on that testing in the *Catatao* case. Nov. 15, 2024, Trial Tr. (Morning Session) at 18:23-20:5. However, although Dr. Vigilante addressed that same testing in his report in the *Abrahams* case, Mr. Watkins did not. *Id.* Mr. Watkins did not address the key testing that he performed anywhere in his reports in *Abrahams*. *Id.* Mr. Watkins also did not address or comment on Dr. Vigilante's key testing in connection to his reports in the *Abrahams* matter. *Id.* Mr. Watkins was 100% silent about the key testing and key test video in connection to the *Abrahams* matter. Sig Sauer did not even include the testing on its pre-trial exhibit list. *Id.*

Trial courts may preclude experts from testifying beyond the fair scope of their pre-trial reports. *Whitaker v. Frankford Hosp. of City of Philadelphia*, 984 A.2d 512, 523 (Pa. Super. 2009); *Brodowski v. Ryave*, 885 A.2d 1045 (Pa. Super. 2005) (trial court properly precludes expert testimony on an issue where opinions would be beyond the fair scope of the expert report). It is imperative to prevent unfair surprise that the parties' experts do not testify beyond the fair scope of their pretrial reports, and that all exhibits the parties intend to use are disclosed to the opposing party on the exhibit lists which are exchanged before trial. Sig Sauer did not comply with these requirements, and consequently, the Mr. Watkins' key testing was properly precluded from presentation to the jury.

It is worth further noting that the preclusion of this evidence did not prejudice Sig Sauer. Sig Sauer's other expert, Eric Warren, testified that a tabbed trigger on a Glock is not effective to prevent unintended discharges. Dr. Warren explained:

- A. So, again, like I said just a second ago, a common occurrence that was known in the law enforcement community that it would always take safeguards against is what's colloquially been called Glock leg. So essentially you have a higher holster on the outside that is meant to cover more of the trigger guard and if the firearm is being inserted and there's a lack of awareness for where the trigger finger is, as the holster is being -- as the firearm is being inserted into the holster, that downward motion of the firearm actually forces the finger between this upper portion and opening of the holster and the trigger and if that continued pushing occurs, it will essentially cause the finger to pull the trigger.

Nov. 11, 2024 Trial Tr. (Morning Session) at 62:21-63:10.

Dr. Warren's opinion on the ineffectiveness of the tabbed trigger is the same point that Sig Sauer and Mr. Watkins sought to make with the testing he failed to identify in his report. The preclusion of Mr. Watkin's key testing video is no basis for a new trial.

6. The Court Properly Precluded Evidence by Sig Sauer's Expert, which was Inadmissible as Other Incident Evidence of a Non-P320, Hearsay and a Host of Other Grounds, and Sig Sauer Suffered No Prejudice Because Sig Sauer Presented the Jury with Multiple Instances of Nearly Identical Testimonial Evidence.

Contrary to Sig Sauer's characterization of the evidence, Sig Sauer was not precluded from presenting evidence that use of a tabbed trigger had potential risks associated with it. Rather, Sig Sauer's expert was precluded from offering testimony of previously unidentified, totally unsubstantiated, hearsay and anecdotal evidence he referred to as "documented evidence" that users of guns with tabbed triggers have been prevented from intentionally firing a gun because of a tabbed trigger. Nov. 14, 2024 Trial Tr (Morning Session) 76:6-15; Nov. 14, 2024 Trial Tr (Afternoon Session) 21:9-22:14

Sig Sauer incorrectly contends that it is entitled to a new trial because it should have been able to present evidence that a tabbed trigger can make an intentional trigger pull uncertain. See Def. Memo [Control No. 25030051] p. 57]. What Sig Sauer failed to fully acknowledge is that it did have that opportunity and elicited testimony on this exact point. First, P320 designer, Sean Toner, testified that with a tabbed trigger, “there’s a possibility that the user could impact or touch the trigger in the wrong spot and not have it go off.” Oct 29, 2024 Trial Tr. (Morning Session) at 50:6-15.

The evidentiary point Sig Sauer claims it could not make, but did, was further expounded upon by Derek Watkins, Sig Sauer’s expert, while physically demonstrating how a tabbed trigger worked on a Glock. He testified about the tabbed trigger as follows: “So it doesn't prevent all side actuations. It doesn't prevent a majority of side actuations. It prevents a very certain case of side actuations. *And the flip side of that, the reason not everybody has a bladed trigger, is because when you do that, now you've also introduced the opportunity for the gun not to go off when you want it to go off, when you need it to go off, when you're under distress, because you failed to get your finger on that trigger in the right orientation.* And there is documented instances -” Nov. 14, 2024 Trial Tr (Morning Session) 76:6-15 (emphasis added).

At that moment, when Mr. Watkins started to testify about “documented instances”, Sig Sauer’s counsel stopped him. *Id.* at 76:16-18. The reason counsel stopped Mr. Watkins’ testimony was that the testimony he was about to give about “documented instances” of an issue with a non-P320 was not permissible, and Sig Sauer had repeatedly violated the Court’s regarding the scope of permissible evidence and testimony as discussed at sidebar. *Id.* at 77:3-80:18. Sig Sauer’s counsel initially seemed to recognize as much before reversing course. Counsel for Defendant

explained to the Court. “I specifically instructed the witness before he went on not to mention other incidents involving this Glock.” Id. at 77:8-10.

Previously, on October 30, 2024, the Court entered the Order on Plaintiff’s Motion *in Limine* to admit evidence of Other Similar Incidents (OSI) involving the Sig Sauer, P320, and expressly limited OSIs to the Sig Sauer P320 model, pre and post modified, full and compact firearms. [Order at Control No. 24094655]. That same day, the Court entered the Order denying Defendant’s Motion *in Limine* to preclude OSI evidence or, alternatively, admit non-P320 OSI evidence. [Order at Control No. 24094866]. Evidence of incidents with a non-P320 wherein an intentional discharge was prevented, as opposed to an unintentional discharge occurred, is simply the flip side of the same type of evidence which was precluded in this Court’s order. Inasmuch, the testimony was properly precluded here based on prior rulings which Sig Sauer repeatedly violated as discussed at side-bar. Nov. 14, 2024, Trial Tr. (Afternoon Session) at 5:7-7:7.

Even if such evidence was not precluded by the above referenced orders, the evidence was certainly inadmissible hearsay, unsubstantiated, not previously disclosed, and anecdotal at best. Sig Sauer did not previously identify any witness or specific evidence of a user of a pistol with a tabbed trigger experience the inability to fire due to the existence of a tab at any point during discovery in this matter or at trial. Plaintiff’s counsel could not even have anticipated such evidence to file a motion in limine because there was no notice. Thus a host of reasons existed to preclude Mr. Watkins testimony about “documented incidents” of an incident due to a tabbed trigger.

As importantly, even if the evidence was not properly precluded pursuant to the Rules of Evidence, which it was, it does not merit a new trial because there is no prejudice to Sig Sauer.

Despite Mr. Watkin’s being properly precluded from testifying about “documented incidents” of users inadvertently not-firing because of a tab on trigger, Sig Sauer still presented

evidence of the point it sought to make. Again, Mr. Watkins testified that “The reason not everybody has a bladed trigger, is because when you do that, now you've also introduced the opportunity for the gun not to go off when you want it to go off, when you need it to go off, when you're under distress, because you failed to get your finger on that trigger in the right orientation.” Nov. 14, 2024 Trial Tr (Morning Session) 76:6-15.

Mr. Watkins later compared a hinged trigger (which has no tab/blade) to a tabbed trigger on a Glock, and he explained: “The hinged trigger is easier for you to get your finger on and use it, and *you don't have problems with gloves and things of that nature.*” *Id.* at 40:12-41:6 (emphasis added).

Mr. Watkins also described and demonstrated a Canik trigger on which the tab/blade makes up the full face of the trigger, Mr. Watkins’ testified: “It's not really the blade anymore, this is a very fat, thick portion of the trigger now. So the way that that is completely different is such that you can get your finger on the trigger very, very quickly. *You don't have to think about it.* This is the combat version. *So if you're under stress and you've got to use this in an unimaginable position, you don't have to think so much about finger placement. You can just put your finger on the side, grab the tab and pull, and it goes off.*” *Id.* at 28:13-23. The clear inference of his testimony is that a tabbed trigger will interfere with the user being able to fire the gun, while a flat-faced P320 trigger will not.

Finally, Matt Taylor, Sig Sauer engineering team leader for the P320, testified to the exact point Sig Sauer claims it was prevented from making. Mr. Taylor testified:

- Q. What benefits are there, if any, in designing out the need for a tabbed trigger?
- A. Well, the first is one of the kind of base rules in engineering design is if you don't need parts in the system, don't put them in. They can

break. They can malfunction; right? And so if we can design them out, we do.

The other reasons are we're designing a product that we want to fire when the trigger's pulled. When somebody is in a situation that they want to shoot the gun, we want when they pull the trigger it always to fire. And so we worked very hard to make our products reliable and have that happen.

Introducing a tab trigger or a trigger safety mechanism introduces another risk point where something could fail or prevent the gun from firing. For example, if a tabbed trigger, the tab breaks, right, it could render the gun inoperable because you will never get the trigger pulled. Or if something gets behind the trigger tab -- dirt, mud, whatever -- it could prevent the trigger tab from moving far enough to allow the trigger to be actuated and the gun to be fired.” Nov. 13, 2024, Trial Tr. (Morning Session) at 50:5-24.

As apparent from the testimony above, there is zero truth or merit to Sig Sauer’s central contention that the jury was precluded from hearing the reasons why SIG designed the P320 without a tabbed trigger. See Def. Memo [Control No. 25030051] at 58.

7. The Trial Court Properly Charged the Jury as to Strict Liability and Design Defect.

Defendant takes issue with the standard civil jury instructions here. Under Pennsylvania law, when charging a jury as to strict liability in product liability cases, there is no requirement for the term “unreasonably dangerous” to be included for purposes of determining design defect. It is well settled in that the trial court has “wide discretion in charging a jury”. *American Honda Motor Co., Inc. v. Martinez*, No. 445 EDA 2015, 2017 WL 1400968 *3 (Pa. Super. Ct. Apr. 19, 2017). When charging the jury, the trial court’s goal is to explain to “the jury how it should approach its task and the factors it should consider in reaching its verdict.” *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 408 (2014) (citing *Commonwealth v. Chambers*, 980 A.2d 35, 49–50 (2009)). A trial court’s charge is thus considered inadequate when, “the issues are not made clear, the jury was misled by the instructions, or there was an omission from the charge amounting to a fundamental

error.” *Am. Honda Motor Co. v. Martinez*, No. 445 EDA 2015, 2017 WL 1400968, at *3 (Pa. Super. Ct. Apr. 19, 2017) (citing *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 351 (Pa. 2014) (emphasis added)). A new trial will not be ordered unless “an erroneous jury instruction amounted to a fundamental error or the record is insufficient to determine whether the error affected the verdict.” *Id.* (citing *Tincher*, 104 A.3d at 351).

Despite Sig Sauer’s reading of the governing caselaw, there is nothing indicating the jury was *required* to hear the specific words, “unreasonably dangerous” to determine defective design for strict liability; the omission of such language does not amount to a reversible error. In *American Honda Motor Co.*, the court, in relying on *Tincher*’s ruling, reiterated that: “***a plaintiff***, as a threshold matter, ***must establish that a product is “unreasonably dangerous” by either a risk utility analysis or consumer expectation analysis.***” No. 445 EDA 2015, 2017 WL 1400968, at *3 (citing *Tincher*, 104 A.3d at 426-27) (emphasis added); *see also* Pa.SSJI (Civ) § 16.20 (“The majority in *Tincher* adopted the view that a plaintiff is the “master of the claim” in the first instance...and declared that a plaintiff will have the option of premising their case either upon “consumer expectations” or “risk-utility” theory or both.”) (citations omitted).⁵ While Defendant is correct in that it is the jury who makes this factual determination, they do so by applying the very tests outlined in *Tincher*, its progeny, and the Pennsylvania Suggested Standard Civil Jury Instructions for strict liability.

Here, the jury was properly read Pennsylvania Suggested Standard Civil Jury Instruction (“Pa.SSJI (Civ)”) § 16.10 General Rule of Strict Liability ***and*** § 16.20 Determination of Design

⁵ Defendant has also suggested that omitting the term “unreasonably dangerous” runs afoul to the Restatement and the *Tincher* progeny. When discussing the consumer expectation test, however, *Tincher I* explained, “[t]he language of the consumer expectations test ***derives from the Second Restatement’s commentary*** on the principles designated to limit liability, i.e., “defective condition” and “unreasonably dangerous.” *Tincher v. Omega Flex, Inc.*, 628 Pa. 296, 395, 104 A.3d 328, 387 (2014) (emphasis added).

Defect to the jury. *See* Nov. 11, 2024, Trial Tr. (Afternoon Session) at 20:16 – 24: 15. Further, during deliberations, the jury submitted a question requesting the definition of “defective,” to which the court reread PA.SSJI (Civ) § 16.20, again laying out both the consumer expectation test, and the risk utility test. Nov. 19, 2024, Trial Tr. (Morning Session) at 7:13-14, 17:5-19:16. The court also properly reminded the jury that “[a] plaintiff will have the option of premising their case upon the consumer expectation test or the risk utility theory *or both*.” Nov. 19, 2024, Trial Tr. (Morning Session) at 19:18-20. When instructing the jury as to these tests, neither *Tincher I* nor *Tincher II*, which Defendant relies on heavily, require the precise term “unreasonably dangerous” to be included. Further, the subcommittee notes of Pa.SSJI (Civ) § 16.10 are incredibly instructive, explicitly stating:

...the court did not mandate specific language. Although it recognized that divorcing the concept of “unreasonably dangerous” from the factual inquiry of whether a product is defective is not consistent with strict liability theory under the Restatement (Second) of Torts (id. at 380), *the Supreme Court did not dictate that the term “unreasonably dangerous” be incorporated into jury instructions. In fact, the Supreme Court’s reliance in Tincher on the California case of Barker v. Lull Engineering Co., 573 P.2d 443 (Cal. 1978), in which use of that language was disapproved, supports use of a charge that does not include the terminology “unreasonably dangerous.”* The jury is instructed instead to make its factual determination of whether the product in question is “defective” and therefore “unreasonably dangerous,” see *Tincher*, 104 A.3d at 380 (“whether a product is defective depends upon whether that product is ‘unreasonably dangerous’), based upon specific standards for defining when a product is defective, that is, the consumer expectation test or the risk-utility test. In this regard, *Tincher* and *Azzarello* are consistent in holding that *while the phrase “unreasonably dangerous” is useful to the court to determine if the facts justify a strict liability claim, the phrase “has no place in the instructions to a jury as to the question of ‘defect.’* *Azzarello*, 391 A.2d at 1027.

16.10 [FNa1] (Civ) General Rule of Strict Liability, Pa. SSJI (Civ), §16.10 (2024) (emphasis added).

The governing law is clear, and the trial court here properly and sufficiently charged the jury as to strict liability in accordance with the governing law. Though *preferred* by Defendant in its attempt to escape the jury's verdict, there is simply no requirement for the jury to hear the phrase "unreasonably dangerous." Moreover, the jury was explicitly instructed that either test outlined in PA.SSJI (Civ.) § 16.20 can be used to establish defective design, and the jury returned a verdict which found the P320 defective. *See Davis v. Volkswagen Grp. of Am., Inc.*, No. 1405 EDA 2018, 2019 WL 3252054, at *14 (Pa. Super. Ct. July 19, 2019) ("The jury was instructed under both tests and found that the Volkswagen Passat fuel tank was defective and not crashworthy. Despite this finding, Davis was awarded no damages as against Volkswagen because the jury did not find that the defect was the factual cause of the harm claimed by Davis. Therefore, ***even if it was an error for the trial court to instruct the jury under both tests, such error was harmless because the jury found the product to be defective, regardless of which test it applied.***")

Lastly, Defendant also argues that the court erred in not using the alternative jury instruction Sig Sauer itself provided, which included the phrase "unreasonably dangerous". Def. Memo at 65-66. Defendant disregards the fact that the trial court is under no obligation to use a specific charge provided by the parties; nor does a fundamental error occur when the court chooses to use the Pennsylvania Suggested Standard Jury Instructions. *See Butler v. Kiwi, S.A.*, 604 A.2d 270, 273 (1992) ("The court is not required to utilize the exact language a party has requested...***The court was free to choose its own form of expression and was not required to accept the specific language requested by counsel.***"). Certainly, the trial court's omission of the phrase "unreasonably dangerous," and decision to use the Pennsylvania Standard Civil Jury Instructions while charging the jury as to strict liability, did not amount to a fundamental error requiring a new trial.

8. There Was No Juror Misconduct, Nor Does Any Juror Conduct Warrant a New Trial.

As stated in Plaintiff's Opposition to Sig Sauer's motion for an evidentiary hearing, a verdict-loser is not entitled to a post-verdict evidentiary hearing to interrogate jurors, when there is no allegation or supporting facts that any juror reviewed or relied upon extraneous evidence to reach their verdict or prematurely deliberated in this matter. *See* Plaintiff's opposition to Defendant's Motion for an Evidentiary Hearing at [Control No. 24120263]. In its Motion, Sig Sauer makes a dizzying sequence of inferential leaps to persuade this Court otherwise. As fully briefed in Plaintiff's opposition, and incorporated herein by reference, Sig Sauer's motion should be denied.

C. Defendant is Not Entitled to Remittitur.

Sig Sauer erroneously claims that the jury's award of punitive damages is grossly excessive, runs afoul to Pennsylvania law, and is unconstitutional. A review of the governing law and factual basis, however, clearly demonstrates that the jury's award was reasonable and within the bounds of the Due Process Clause.

The basic principles of punitive damages are well-established under Pennsylvania and federal law. As a starting point, punitive damages serve "to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct." *Hutchison v. Luddy*, 870 A.2d at 770. A jury may impose punitive liability on defendants who have committed torts willfully, maliciously, or so carelessly as to indicate wanton disregard of the rights of the party injured. *Bert Co. v. Turk*, 298 A.3d 44, 61 (Pa. 2023). Under Pennsylvania law, a jury possesses substantial latitude to determine the amount of punitive damages with the jury's decision subject to review based strictly on an evaluation of the evidence in the light most favorable to the jury's decision. *Id.* "[A] judgment that is a product of that process is entitled to a strong presumption of validity." *TXO Prod. Corp. v. All. Resources Corp.*, 509 U.S. 443, 457 (1993). "Indeed, there

are persuasive reasons for suggesting that the presumption should be irrebuttable. Or virtually so.” *Id.* (internal citations omitted). The jury retains latitude to make a “meaningful individualized assessment” based on the evidence. *Pacific Mutual Life Ins. v. Haslip*, 499 U.S. 1, 20 (1991).

Under the Due Process Clause of the Fourteenth Amendment, remittitur of punitive damages is proper only when the award is grossly excessive. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 568 (1996). “The test for whether a punitive damages award is grossly excessive analyzes the degree of reprehensibility of the defendant’s conduct, the ratio of actual or potential harm suffered to the punitive damages award, and the difference between the penalty imposed and those imposed in comparable cases. *Lloyd v. Children’s Hosp. of Philadelphia*, No. 2:19-CV-02775-JDW, 2023 WL 2940229, at *3 (E.D. Pa. Apr. 13, 2023) (citing *Gore*, 517 U.S. at 575). The Supreme Court has been clear that when analyzing an award of punitive damages, “[w]e need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness ... properly enter[s] into the constitutional calculus.” *TXO Prod. Corp.*, 509 U.S. at 458 (citing *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991)).

Defendant spends a significant portion of its argument claiming that the ratio between the jury’s award of compensatory damages and punitive damages was excessive and unconstitutional. However, the law is clear that, “[t]here is no bright line because being close to the line is not synonymous with crossing it, let alone crossing it to the point of offending constitutional principles. According to the Supreme Court, ***the ratio of punitive damages to compensatory damages is “instructive,” not binding, and the limits of a constitutionally acceptable ratio are defined by the facts of a particular case.***” *Bert Co.*, 298 A.3d at 82 (citations omitted) (emphasis added); *See also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, (2003)

(“...because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport with due process where “a particularly egregious act has resulted in only a small amount of economic damages.””). This is especially true here when Sig Sauer essentially concedes that a single digit ratio would not warrant “suspicion,” and where the jury’s award is literally a penny over the artificial line that Sig Sauer attempts to (improperly) suggest.

In *State Farm Mut. Auto. Ins. Co. v. Campbell*, the Supreme Court synthesized various factors that could help inform an understanding of the reprehensibility of the defendant’s misconduct. 538 U.S. at 419. These factors are:

- (1) the harm caused was physical as opposed to economic;
- (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;
- (3) the target of the conduct had financial vulnerability;
- (4) the conduct involved repeated actions or was an isolated incident;
and
- (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Id. The Court emphasized that every punitive damages analysis turns on “the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.” *Id.* at 425.

State Farm’s facts illuminate application of these factors. In *State Farm*, Mr. Campbell was sued after he allegedly caused a car accident that killed one person and injured another. His insurance company refused to settle the resulting claims for the policy limit. A jury returned a verdict three times that limit. The Campbells sued the insurer for bad faith. During trial, the Campbells introduced different business practices of the insurer in other states that did not impact them. The jury found in favor of the Campbells, awarding \$2.6 million in compensatory damages

and \$145 million in punitive damages. The trial court reduced the verdict to \$1 million and \$25 million, respectively. Applying *BMW of North America v. Gore*, the Utah Supreme Court reinstated the \$145 million punitive damages award. *Id.* at 412-16.

The U.S. Supreme Court reversed, explaining that while State Farm's conduct justified punitive damages, the \$145 million award exceeded the legitimate objectives of punishment and deterrence. *Id.* at 419-20. The Court focused on *the* reprehensibility guidepost and explained that factors informing reprehensibility it had identified were largely absent from the insurer's conduct, which was purely economic and did not cause physical injury.

The Court focused on the defendants' argument about the relationship between the punitive verdict and the harm suffered by the Campbells. Consistent with prior decisions including *Gore*, the Court stated that it did not recognize "a bright-line ratio which a punitive damages award cannot exceed." *Id.* at 425. "The precise award in any case, of course, must be based on the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Id.* at 425. The Court noted that State Farm's actions were legal in many states and purely economic and hence not particularly reprehensible. The lack of reprehensibility primarily drove the Court's analysis concerning Due Process, not any proportional relationship of punitive damages to harm standing on its own. *Id.*

The Supreme Court again highlighted the salience of potential harm to a punitive damages analysis. The Court repeatedly emphasized the "potential harm" suffered by the plaintiff as an important consideration when assessing whether a punitive verdict falls into the arbitrary zone beyond constitutional parameters. *Id.* at 409, 418, 424. **On remand, the Utah Supreme Court awarded punitive damages equaling nine times the roughly \$1 million compensatory award.** The U.S. Supreme Court denied certiorari of that decision, bringing the case to an end.

Campbell v. State Farm Mut. Auto. Ins. Co., 98 P.3d 409 (Utah 2004), *cert denied*, 543 U.S. 874 (2004).

Here, when considering the substantial factual basis supporting the jury's award, the proportionality issue that Defendant focuses on actually supports the award of punitive damages. Significantly here, "[p]unitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the defendant's actions caused or would likely cause in a similar situation only slight harm, the damages should be relatively small. *If the harm is grievous, the damages should be much greater.*" *TXO Prod. Corp.*, 509 U.S. at 460.

In *TXO Prod. Corp.*, the Court emphasized that it considered, **"the magnitude of the potential harm that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred."** 509 U.S. at 460-61. (emphasis added). The Court acknowledged that the punitive damages award in *TXO* may appear large, but when viewed in light of, "the amount of money potentially at stake, the bad faith of petitioner, the fact that the scheme employed in this case was part of a larger pattern of fraud, trickery and deceit, and petitioner's wealth[.] *Id.* at 62. Thus, the Court was "not persuaded that the award was so "grossly excessive" as to be beyond the power of the State to allow." *Id.* at 462.

The same is true here and addressed throughout previous sections of Plaintiff's response above. Sig Sauer P320 unintended discharges have occurred over and over again. Users have been devastatingly injured (and even killed). Sig Sauer knew about the other instances of unintended discharges and that such a discharge could be fatal. Sig Sauer has done nothing to acknowledge and/or fix the problem. Rather, than take any accountability, Sig Sauer blames the user time and

time again. These are all are important considerations here which undoubtedly render the punitive damages award reasonable.

While there are many parallels between *TXO* and this case, there is one key distinction. The award of punitive damages here are not like that in *TXO* where the potential harm was financial. Instead, in cases like this one involving bodily injury from a firearm without proper safety features, the potential harm is not just catastrophic, but **fatal**. This case perfectly demonstrates why potential harm must be considered when determining if an award of punitive damages is excessive. Testimony from Sig Sauer's own designee and P320 designer, and Sig Sauer's own FMECA proves the point that the potential harm of its defective product is that it can kill. Nov. 13, 2024, Trial Tr. (Afternoon Session) at 48:25-49:12. Sig Sauer predicted this. *Id.*

The jury's verdict must not be hindered, and their discretion must not be limited, merely because the P320 did not fatally injure Plaintiff. Sig Sauer is not entitled to a reduction of the award merely because Plaintiff was fortunate enough to not lose his life when his P320 unintentionally discharged. That Plaintiff's injuries did not reach a maximum, fatal potential does not afford Sig Sauer a break for their conduct in the form of a lower punitive damages award.

Additionally, the potential harm analysis is not isolated to Plaintiff. The Court in *TXO* determined that "TXO's pattern of behavior could potentially cause millions of dollars in damages to other victims." *Id.* With that understanding, the Court concluded that "***a 10 –to–1 ratio between punitive damages and the potential harm of petitioner's conduct passes muster***—calculating that potential harm, very generously, to be more than 50 times the \$19,000 in actual damages..." *Id.* at 472. Here, there was substantial evidence of seven other similar instances involving a P320 user's pistol unintentionally discharging. These users were deposed, and the deposition videos were played for the jury as well as discussed by Plaintiff's expert, Dr. Vigilante.

The consideration of similar harm to others has been repeatedly confirmed as a consideration determining whether an award of punitive damages is excessive. *See In re Tylenol*, 144 F.Supp.3d 680, 692 (E.D. Pa. 2015)(“[s]imilar harmful conduct towards others can be considered in determining how reprehensible the defendants' conduct was.”); *see also Phillips Morris USA, v. Williams*, 549 U.S. at 357 (“...we recognize ***that conduct that risks harm to many is likely more reprehensible than conduct that risks harm to only a few***. And a jury consequently may take this fact into account in determining reprehensibility.”).

The jury, following well settled law, used their award to, “punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct.” *Hutchison*, 870 A.2d at 770. Their message was clear. As set forth throughout, the factual record and governing law both undoubtedly support the jury’s award of punitive damages. The \$10,000,000 award is constitutional, and the ratio of compensatory damages to punitive damages is not extreme, nor warrants remittitur.

V. CONCLUSION

Based upon the foregoing reasons, Plaintiff respectfully requests this Honorable Court enter the attached Order denying Defendant’s Motion for Post-Trial Relief.

Respectfully submitted,

SALTZ MONGELUZZI BENDESKY

BY: /s/ Robert W. Zimmerman
LARRY BENDESKY
ROBERT W. ZIMMERMAN
RYAN D. HURD
SAMUEL A. HAAZ
Attorneys for Plaintiff

Date: March 17, 2025

CERTIFICATE OF SERVICE

I, Robert W. Zimmerman, hereby certify that a copy of Plaintiff's Motion was served on all counsel of record by email and by the Court's electronic filing system, which constitutes good service.

BY: /S/ Robert W. Zimmerman
Robert W. Zimmerman, Esquire

Dated: March 17, 2025