

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

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TONY E. RARDON, *individually and as  
Personal Representative of the Estate of*  
Decedent DANETTE L. RARDON,

Plaintiff,

v.

FALCON SAFETY PRODUCTS, INC.,  
WALMART INC., WAL-MART STORES,  
INC., WAL-MART STORES EAST, LP, WAL-  
MART STORES EAST, LLC,  
JOHN DOE COMPANY DEFENDANTS #1-10,

Defendants.

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Case No. 5:20-cv-06165-BP

**AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL**

COMES NOW, Plaintiff Tony E. Rardon, individually and as Personal Representative for the Estate of Danette L. Rardon, who for his causes of action against Defendants, states and alleges:

**INTRODUCTION**

1. Inhalant abuse has been known and prevalent in the United States for decades. Many common household products are used to get high because they are cheap and easily accessible, such as aerosols, glue, cleaning fluids, and gasoline, as examples.

2. One type of inhalant that people commonly abuse to get high is computer dust remover sprays. These products are compressed gas in a can that are used to spray off dust and debris from whatever surface is being cleaned. However, they contain a gas—difluoroethane—that, if inhaled, causes the person to lose consciousness and control of their bodily movements nearly immediately.

3. These dust removers are cheap and available at retail locations throughout the United States, meaning anyone with a few dollars can purchase the product to get high. Dust removers are popular among inhalant abusers, so much so that the companies who design, manufacture, distribute, and sell these products profit greatly as a result. Manufacturers, distributors, and sellers of dust removers—such as Falcon Safety Products, Inc., Walmart Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Wal-Mart Stores East, LLC (collectively “Defendants”)—know that people inhale their dust removers to get high.

4. Dust remover abuse comes at a terrible price for many innocent bystanders. Because dust remover is so cheap, highly accessible, and produces such a quick high, people abuse them nearly anywhere, including while driving. When someone gets high on dust remover while driving, they can quickly lose consciousness or control of their bodily movements and crash their vehicle, often resulting in catastrophic and deadly injuries.

5. There have been numerous public reports of injuries and deaths to innocent bystanders caused by people driving while high on dust removers stretching back for at least twenty years. The manufacturers, distributors, and sellers of these dust removers are fully aware of these predictable and foreseeable injuries and deaths. Every one of these injuries and deaths was preventable, yet the manufacturers, distributors, and sellers of these dust removers—like Defendants in this case—have failed to deter or prevent people from inhaling their dust removers.

6. One person in particular whose injuries and death were foreseeable and preventable was the decedent in this case, Danette L. Rardon (also, “Danette Rardon”). Danette Rardon was predictably and foreseeably struck and killed by a person who was driving his motor vehicle while high on Falcon Safety Products, Inc.’s dust remover, Dust-Off. Danette Rardon’s tragic death would have been avoided altogether if Defendants had not defectively and negligently designed,

manufactured, distributed, and sold Dust-Off, knowing it was reasonably foreseeable that someone would inhale Dust-Off to get high while driving and strike and harm and kill innocent bystanders, like Danette Rardon.

## **PARTIES, JURISDICTION AND VENUE**

### **The Rardon Family**

7. Danette Rardon died on November 25, 2017 in Livingston County, State of Missouri. At the time of Danette Rardon's death, she was 39 years old, having been born on April 3, 1978. Danette Rardon was living in the City of Chillicothe, Livingston County, State of Missouri. At the time of her death, Danette Rardon was survived by her parents Tony E. Rardon and Vickie M. Wolf, and her brother.

8. Tony E. Rardon (also, "Tony Rardon") is Danette Rardon's surviving father who resides in the City of Chillicothe, Livingston County, State of Missouri.

9. Vickie M. Wolf is Danette Rardon's surviving mother who resides in the City of Wheeling, Livingston County, State of Missouri.

10. Tony E. Rardon is the Personal Representative for the Estate of Danette L. Rardon, having been conferred authority to administer Danette L. Rardon's Estate and having been conferred authority to litigate on behalf of Danette L. Rardon's Estate, by and through the laws of the State of Missouri and by and through an Order issued by the 43rd Judicial Circuit Court of Livingston County, Probate Division, of the State of Missouri, on December 20, 2017, granting Tony E. Rardon Letters Testamentary as Personal Representative of Danette L. Rardon's Estate. The Order granting Tony E. Rardon Letters Testamentary as Personal Representative of Danette L. Rardon's Estate is attached hereto as Exhibit 1.

11. Tony Rardon is suing in his individual capacity as the natural father of Danette Rardon pursuant to Mo. Rev. Stat § 537.080, and in his capacity as the court-appointed Personal Representative of the Estate of Danette L. Rardon.

12. To the extent that any claims asserted in this Complaint are authorized or required to be brought by individuals in their own names, Tony Rardon brings this action in his individual capacity against Defendants.

### **The Defendants**

13. Defendant FALCON SAFETY PRODUCTS, INC. (hereinafter “Falcon Safety Products”) is a New Jersey Corporation with its principal place of business located at 25 Imclone Drive, Branchburg, New Jersey, 08876. At all material and relevant times, Falcon Safety Products has overseen and/or engaged in the designing, testing, producing, processing, assembling, formulating, inspecting, researching, promoting, labeling, marketing, advertising, distributing, and selling of Dust-Off and other branded dust remover sprays, either directly or through third parties or related entities, for ultimate sale and use in the United States, including within and throughout the State of Missouri.

14. Defendant WALMART INC. is a Delaware corporation with its principal place of business located in Bentonville, Arkansas. Wal-Mart Inc. owns and operates many retail stores throughout the state of Missouri and is registered to do business and receive service of process in Missouri. WAL-MART STORES, INC. formally changed its name to Walmart Inc. in 2018.

15. Defendant WAL-MART STORES EAST, LLC is a Delaware limited liability corporation with its principal place of business located in Bentonville, Arkansas.

- a. The sole member of WAL-MART STORES EAST, LLC is WALMART INC., which is incorporated in Delaware with its principal place of business in Arkansas.

16. Defendant WAL-MART STORES EAST, LP is a Delaware limited partnership with its principal place of business located in Bentonville, Arkansas.

a. WAL-MART STORES EAST, LP is a limited partnership with two partners: WSE Management, LLC (general partner) and WSE Investment, LLC (limited partner), both of which are incorporated in Delaware with principal places of business in Arkansas.

i. The sole member of each partner (WSE Management, LLC and WSE Investment, LLC) is WAL-MART STORES EAST, LLC.

1. The sole member of WAL-MART STORES EAST, LLC is WALMART INC., which is incorporated in Delaware with its principal place of business in Arkansas.

17. Upon information and belief, Wal-Mart Stores East, LP and Wal-Mart Stores East, LLC are subsidiaries of Walmart Inc. and also own and operate many retail stores throughout the state of Missouri (Walmart Inc. and any of its affiliates, subsidiaries, successors or assigns, including Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Wal-Mart Stores East, LLC are referred to collectively as “Walmart”). At all material and relevant times, Walmart has been involved in the designing, testing, producing, processing, assembling, formulating, inspecting, researching, promoting, labeling, marketing, advertising, distributing, and selling of Dust-Off for ultimate sale and use in the United States, including within and throughout the State of Missouri.

18. John Doe Company Defendants #1–10, whose specific identities are currently unknown to Plaintiff, are the individuals, business entities, and corporations within the chain of commerce that designed, sold, distributed, and/or manufactured Dust-Off for marketing, sale, and distribution into the stream of commerce, including throughout the State of Missouri, to Shawn M.

Yuille and other consumers and users. The pseudonymous designations are being used to preserve claims against these parties who will be named more fully if and when their identities are discovered.

19. At all material and relevant times, Falcon Safety Products and Walmart (collectively, “Defendants”) were all active and knowing participants in the chain of commerce that resulted in the designing, testing, manufacturing, producing, processing, assembling, formulating, inspecting, researching, promoting, labeling, marketing, advertising, distributing, and selling of Dust-Off, either directly or through third parties or related entities, to consumers throughout the United States, including throughout the State of Missouri. At all material and relevant times, all Defendants exercised significant control over the designing, testing, manufacturing, producing, processing, assembling, formulating, inspecting, researching, promoting, labeling, marketing, advertising, distributing, and selling of Dust-Off.

### **Jurisdiction & Venue**

20. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship exists between Plaintiff and Defendants, and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest, costs and disbursements.

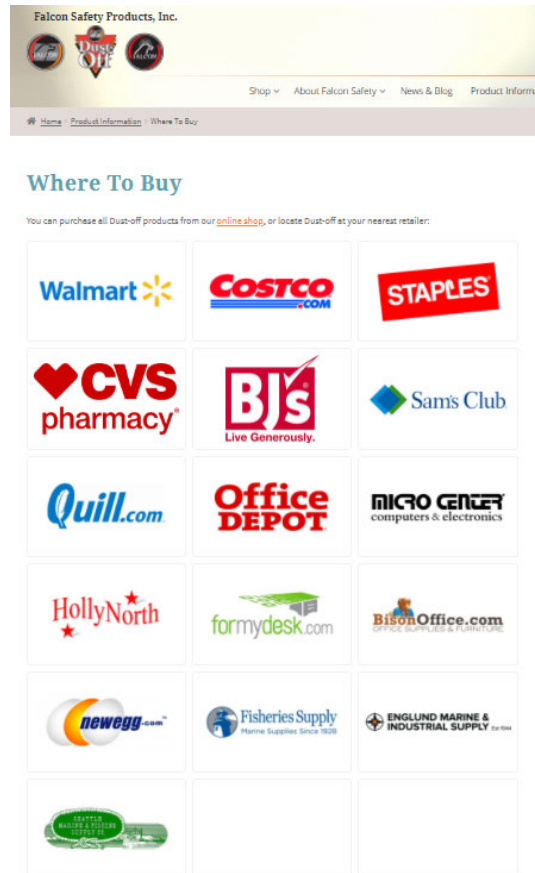
21. This Court has personal jurisdiction over all Defendants because at all material and relevant times, Defendants’ Dust-Off product was sold and caused injuries in the State of Missouri, resulting in the severe injury and death of a Missouri woman, Danette Rardon. Defendants’ Dust-Off product was involved in motor vehicle crashes in multiple states, including the State of Missouri, and was defective and without proper, reasonable, and necessary warnings, labels, or instructions. Upon information and belief and at all times material, Defendants transacted business

in the State of Missouri, have continuous and systematic contacts with the State of Missouri, have purposely targeted their commercial activities at residents in the State of Missouri, including the sale of the Dust-Off product at issue to residents of the State of Missouri, targeted advertising to potential Dust-Off consumers in the State of Missouri, made material omissions and representations in the State of Missouri, carried product liability insurance coverage for acts and omissions in the State of Missouri, and breached warranties in the State of Missouri.

22. Upon information and belief, and at all times material, Defendants have sold and distributed hundreds of thousands of their Dust-Off product within the State of Missouri each year, and have engaged in distribution agreements to sell their Dust-Off product in all fifty states, including throughout the State of Missouri. Upon information and belief, Falcon Safety Products entered into distribution agreements with various retailers to sell Dust-Off, knowing that the retailers conduct business nationwide, including significant business in and throughout the State of Missouri.

23. At all times material and relevant, Defendants sold the Dust-Off product to consumers at physical locations in the United States and throughout the State of Missouri directly and through retailers.

24. Upon information and belief, at all times material and relevant, Falcon Safety Products directed potential Dust-Off purchasers to all of the “nearest” retailers from where they could purchase Dust-Off in the United States and throughout the State of Missouri.<sup>1</sup>



25. Upon information and belief, and at all times material and relevant, Walmart has had over 150 physical retail locations in the State of Missouri, all of which have sold Dust-Off.<sup>2</sup>

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<sup>1</sup> Falcon Safety Products, Inc., *Where to Buy*, <https://falconsafety.com/product-information/where-to-buy/> (website links for retailers where consumers “can purchase all Dust-off products from [Falcon Safety Products, Inc.’s] online shop, or locate Dust-off at [the consumer’s] nearest retailer”).

<sup>2</sup> Walmart, *State of Missouri Location Facts*, <https://corporate.walmart.com/our-story/locations/united-states/missouri> (last accessed Oct. 22, 2020) (listing total of 156 retail units in Missouri and 40,502 employees in Missouri).



26. At all times material and relevant, Defendants sold Dust-Off directly to consumers in the United States and throughout the State of Missouri through their websites. For example, Falcon Safety Products sells Dust-Off through its “Online Shop”.<sup>3</sup>

## Shop Falcon



**Cart**

✕ 7 oz. Disposable Duster  
Count: 1 unit  
Style: Dark  
1 × \$10.49

Subtotal: \$10.49

View cart →

Checkout →

27. Defendants’ Dust-Off product has—and continues to—kill and seriously injure Missouri residents. Defendants have consented to jurisdiction in the State of Missouri, and have purposefully availed themselves of the privilege of conducting business activities within the State of Missouri, thus invoking the benefits and protections of its laws.

28. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 18 U.S.C. § 1965 because a substantial part of the events and/or omissions giving rise to this action occurred in the State of Missouri— Livingston County—and because Defendants are subject to this Court’s exercise of personal jurisdiction.

<sup>3</sup> Falcon Safety Products, Inc., *Shop Falcon*, <https://falconsafety.com/shop/>; see also *supra* Paragraph 24.

## FACTS

### INHALANT ABUSE

29. Inhalant abuse has been a public health issue in the United States for many years and continues to this day.<sup>4</sup>

30. Inhalant abuse is the deliberate inhaling or sniffing of common products found in homes and schools to get high.<sup>5</sup>

31. Inhalants include a variety of products, such as nitrous oxide, cleaning fluids, aerosols, gasoline, and spray paint.<sup>6</sup>

32. Inhalants are known to be abused for their intoxicating effects because they are often cheap, easily accessible, and easy to conceal.<sup>7</sup>

33. Numerous organizations and governmental entities dedicate resources to raising awareness of inhalant abuse, such as the National Institute on Drug Abuse, Substance Abuse and Mental Health Services Administration, and American Addiction Centers.

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<sup>4</sup> National Institute on Drug Abuse, *Review of Inhalants: Euphoria to Dysfunction* (Oct. 1977), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.152.2815&rep=rep1&type=pdf#page=23>.

<sup>5</sup> United States Consumer Product Safety Commission, *A Parent's Guide to Preventing Inhalant Abuse: "Inhalant Abuse: It's Deadly. Inhalant Abuse Can Kill,"* <https://www.cpsc.gov/safety-education/safety-guides/containers-and-packaging/parents-guide-preventing-inhalant-abuse> (last accessed Apr. 27, 2020).

<sup>6</sup> Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*. <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last accessed Apr. 27, 2020).

<sup>7</sup> Carrie E. Anderson, M.D. & Glenn A. Loomis, M.D., *Recognition and Prevention of Inhalant Abuse*, *American Family Physician*, (Sep. 1, 2003), <https://www.aafp.org/afp/2003/0901/p869.html>.

34. The National Institute on Drug Abuse has stated that the number of inhalant-related deaths in the United States was approximately 100-200 people per year as of July 2012.<sup>8</sup>

35. In 2018, the National Survey on Drug Use and Health reported that approximately two million people over 12 years old have used inhalants in the past.<sup>9</sup>

36. American Addiction Centers refers to inhalant abuse as “the forgotten drug epidemic.”<sup>10</sup>

37. According to Sara Stickler, Executive Director of the Alliance for Consumer Education, inhalant-related deaths are vastly underreported: “You’re looking in the hundreds probably, annually, just from the alerts and the cases we are able to track on our own. But there’s probably many, many more that are being recorded as something else.”<sup>11</sup>

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<sup>8</sup> National Institute on Drug Abuse, *Inhalants: What are the Medical Consequences of Inhalant Abuse?*,

<https://www.drugabuse.gov/publications/research-reports/inhalants/what-are-other-medical-consequences-inhalant-abuse> (last updated July 2012).

<sup>9</sup> Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*.

<https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last accessed Apr. 27, 2020).

<sup>10</sup> American Addiction Centers, *The Dangers of Inhalants*,

<https://americanaddictioncenters.org/inhalant-abuse> (last updated June 10, 2019).

<sup>11</sup> Carter Sherman, *Inhalants — The Easy to Acquire but Deadly Drug That Nobody Talks About*, Houston Press (September 6, 2016),

<https://www.houstonpress.com/news/inhalants-the-easy-to-acquire-but-deadly-drug-that-nobody-talks-about-8730670>.

## COMPRESSED GAS DUSTING SPRAYS

38. One particular category of inhalants that are known to be abused for their intoxicating effects is compressed gas dusting sprays.<sup>12</sup>

39. Compressed gas dusting sprays are often referred to in many different ways, including “keyboard cleaner,” “electronics cleaner,” “computer cleaner,” “dusting spray,” “canned air,” “compressed gas cleaner,” “compressed gas duster,” as examples. For purposes of this Complaint, this category of products will be referred to as “dust remover” or “dust removers.”

40. Dust removers typically share similar characteristics, both physically and chemically.

41. Dust removers are physically similar in that they are sold in a handheld can that is topped by a spray nozzle and an actuator trigger that opens a valve to release a pressurized stream of gas through and out the spray nozzle.

42. Dust removers are nearly identical in appearance and function, which is to spray a highly pressurized gas out of the can to clear a surface of dust and debris.

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<sup>12</sup> Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last accessed Apr. 27, 2020).

43. Falcon Safety Products, for example, at all material and relevant times and upon information and belief, designed, manufactured, tested, labeled, distributed, and sold a dust remover called Dust-Off.



44. At all material and relevant times, the function of Dust-Off was similar to other dust removers on the market, which was to remove dust and lint.<sup>13</sup>

45. At all material and relevant times, Falcon Safety Products advertised and marketed Dust-Off as a “compressed gas duster” that provides “potent dust-removing power for practically any task. Use in your office space to clean keyboards, CPU, laptop, or desk area. Great for

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<sup>13</sup> Falcon Safety Products, Inc., *Dust-Off Product Description*, <https://falconsafety.com/shop/dusters/disposable/disposable-duster-10-oz/>.

removing dust around the home like window blinds, collectibles, sewing machines, holiday ornaments, craft projects and silk flower arrangements.”<sup>14</sup>

46. The primary function of a similar product, 3M Dust Remover, according to its manufacturer, is to “Remove[] Dust & Lint in Home or Office.”<sup>15</sup> 3M Dust Remover is marketed as a “Compressed Gas Duster.”

**3M Dust Remover**  
Compressed Gas Duster  
Removes Dust & Lint  
in Home or Office

**GREAT FOR:**

- Silk Plants
- Audio/Video
- Automobiles
- Household Items
- Woodworking
- Printers

**WARNING!** ABUSE by inhaling contents may cause INSTANT DEATH or injury. **FLAMMABLE!** Contents under pressure. Store at temperatures below 120°F (49°C). Read side/back panel carefully for more information.

NET WT 10 OZ. (283 g.)

AV152B-10

**3M Dust Remover**  
Dry spray removes dust, lint and dirt from home and office items!

**KEEP OUT OF REACH OF CHILDREN.**

**Directions:** Point nozzle away from yourself and others. Remove small tab on top of actuator. Insert straw firmly. Position approximately 2" from item to be dusted. Always hold can upright to avoid spraying liquid. Pull trigger in a series of short blasts. Do not shake or turn upside down.

**WARNING:**

**KEEP OUT OF REACH OF CHILDREN.**

- **Do not abuse.** This product is not canned air. Abuse by inhaling contents may cause INSTANT DEATH or injury. For more information on inhalant abuse, visit [www.3mdustremover.com/advisory](http://www.3mdustremover.com/advisory).
- **FLAMMABLE.** Liquid and vapor may ignite. Do not use while smoking or near open flames, pilot lights, spark-producing equipment or other ignition sources. Do not spray into paper shredders or enclosed spaces. Always use with adequate ventilation.
- **Possible reactions:** Use may cause nose and throat irritation, dizziness, headache, nausea or unconsciousness.
- **Sensitive users:** People with asthma or sensitivity to odors or fumes may react to contents.
- **Avoid spraying liquid.** Always hold container upright to avoid spraying liquid. Liquid sprayed on skin or in eyes may cause irritation. Dried liquid spray may leave a bitter residue, resulting in a bad taste if transferred to the mouth. To remove dried spray, wipe with a cloth dampened with a 50/50 mix of isopropyl alcohol and water.
- **Avoid heat—** contents under pressure. Container may BURST and become a PROJECTILE when hot. Store in a cool place, at temperatures below 120°F (49°C). Do not expose to heat or prolonged sunlight. Do not store in a vehicle or in any area where product may become hot. Do not puncture or burn container, even when empty.

Contains 1:1 difluoroethane

**Suggested First Aid:** Eye Contact: Flush eyes with large amounts of water. If irritation persists, get medical attention. Skin Contact: Wash affected area with soap and water. If irritation occurs, get medical attention. Inhalation: Move to fresh air. Get immediate medical attention. Ingestion: No need for first aid is anticipated.

**Note to Physicians:** Exposure may increase myocardial irritability. Do not administer sympathomimetic drugs unless absolutely necessary.

**Additional Product Safety and Health Information Source:**  
Material Safety Data Sheet (MSDS 19-1982-7)

Made for:  
3M Stationery Products Division  
3M Center  
St. Paul, MN 55144-1000  
1.800.328.6276

Made in China. Packaged in the U.S.A.  
© 2008 3M. 3M is a trademark of 3M.  
34 3792 0101 8  
DOT-SP 11516  
DOT 2Q M5749

<sup>14</sup> Falcon Safety Products, Inc., *Dust-Off Product Description*, <https://falconsafety.com/shop/dusters/disposable/disposable-duster-10-oz/>.

<sup>15</sup> 3M Company, *3M Dust Remover Label*, <http://www.3m.com/us/office/advisory/Artwork3MDustRemoverApprovedOctober2008.pdf>.

47. The primary function of a similar product, Ultra Duster branded dust remover, according to its manufacturer, is to “blast dust, dirt, and unwanted micro-articles away from computers, keyboards, printers plus many more.”<sup>16</sup>



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<sup>16</sup> AW Distributing, Inc., *Ultra Duster Product Description*, [http://www.awdus.com/products\\_01\\_01.html](http://www.awdus.com/products_01_01.html).

48. The primary function of a similar product, CRC Duster, according to its manufacturer, is to “provide[] a powerful blast of product to remove embedded debris without damaging sensitive components or surface finishes.”<sup>17</sup>



49. Dust removers are chemically similar in that they typically contain a pressurized volatile, fluorinated hydrocarbon gas called 1-1, difluoroethane (hereinafter “difluoroethane” or “DFE”).<sup>18</sup>

50. DFE is used in many consumer products—such as deodorants, hair spray, mousse, air fresheners, disinfectants, household cleaners, and automotive cleaners and waxes—as an aerosol propellant or foaming agent to propel the main product out of its container or create the foaming properties of certain products.<sup>19</sup>

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<sup>17</sup> CRC Industries, Inc., *CRC Duster Product Description*, <https://www.crcindustries.com/products/duster-8482-moisture-free-dust-lint-remover-8-wt-oz-05185.html>.

<sup>18</sup> Falcon Safety Products, Inc., *Dust-Off Compressed Gas Duster Safety Data Sheet*, [https://falconsafety.com/wp-content/uploads/SDS\\_dust-off-compressed-gas-duster.pdf](https://falconsafety.com/wp-content/uploads/SDS_dust-off-compressed-gas-duster.pdf).

<sup>19</sup> National Center for Biotechnology Information, PubChem Database, 1,1-Difluoroethane, CID=6368,



51. Because DFE is a central nervous system depressant, when inhaled, it causes debilitating and impairing effects such as unconsciousness, drowsiness, dizziness, and suffocation.<sup>20</sup>

52. Inhaling products that contain DFE can also cause paralysis, which partially or completely interferes with a person's ability to move normally or control their bodily movements.<sup>21</sup>

53. The impairing effects of inhaling products containing DFE commonly result in dizziness, loss of inhibitions, inability to make sound decisions, and slurred speech.<sup>22</sup>

54. When inhaled, DFE can also cause death by cardiac arrest.<sup>23</sup>

55. As early as 1936, scientists began testing fluorinated hydrocarbons as a potential surgical anesthesia because of their analgesic effects.<sup>24</sup>

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<https://pubchem.ncbi.nlm.nih.gov/compound/1%2C1-difluoroethane#section=Use-and-Manufacturing> (last accessed Apr. 27, 2020).

<sup>20</sup> International Programme on Chemical Safety, Internationally Peer Reviewed Chemical Safety Information, 1,1-Difluoroethane, ISCS: 1729 (March 2009), <http://www.inchem.org/documents/icsc/icsc/eics1729.htm>;

Novotny, Clara B et al., "Acute Psychosis Following 1,1-Difluoroethane Inhalation," *Cureus* vol. 11,9 e5565, Sep. 4, 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6820689/>;

Alexis L. Cates and Matthew D. Cook, "Severe Cardiomyopathy after Huffing Dust-Off," *Case Reports in Emergency Medicine*, vol. 2016, Article ID 9204790 (2016), <https://www.hindawi.com/journals/criem/2016/9204790/#B2>.

<sup>21</sup> American Addiction Centers, *Huffing Canned Air or Dust-Off: Side Effects, Signs, and More*. <https://americanaddictioncenters.org/inhalant-abuse/side-effects> (last updated Jun. 17, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> Avella, Joseph et al., "Fatal Cardiac Arrhythmia After Repeated Exposure to 1,1-Difluoroethane (DFE)," *The American Journal of Forensic Medicine and Pathology*. 27(1):58-60 (March 2006), <https://www.ncbi.nlm.nih.gov/pubmed/16501351> [abstract].

<sup>24</sup> Harold Booth & May E. Bixby, "Fluorine Derivatives of Chloroform," *Industrial and Engineering Chemistry*, 24(6):637-41 (June 1932), <https://pubs.acs.org/doi/pdf/10.1021/ie50270a012> [first page].

56. Researchers continued their research into the anesthetic properties of fluorinated hydrocarbons in 1960, specifically testing DFE on dogs and human volunteers.<sup>25</sup>

57. The volunteer human testers inhaled the DFE and “noted good analgesia and impending loss of consciousness.”<sup>26</sup>

58. While the DFE exhibited good anesthetic properties, researchers eliminated DFE as a possible surgical anesthetic because of its explosive properties.<sup>27</sup>

59. According to the American Addiction Centers, inhaling DFE also causes immediate psychoactive, intoxicating-like side effects, such as a rush of euphoria, hallucinations, and delusions.<sup>28</sup>

60. Because of these effects, DFE is, and has been at all material and relevant times herein, a popular substance of abuse.<sup>29</sup>

61. In fact, reports started surfacing in the 1960s of teenagers dying after inhaling volatile hydrocarbons similar to DFE.<sup>30</sup>

62. DFE use can lead to addiction, which is a form of Substance Abuse Disorder.<sup>31</sup>

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<sup>25</sup> Alan Poznak and Joseph F. Artusio, Jr., “Anesthetic Properties of a Series of Fluorinated Compounds: I. Fluorinated Hydrocarbons,” *Toxicology and Applied Pharmacology*, vol. 2(4):363-73 (July 1960), <https://www.sciencedirect.com/science/article/pii/0041008X60900028> [abstract].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> American Addiction Centers, *Huffing Canned Air or Dust-Off: Side Effects, Signs, and More*. <https://americanaddictioncenters.org/inhalant-abuse/side-effects> (last updated Jun. 17, 2019).

<sup>29</sup> Regina Liu & Thomas Blair, MD, *Skeletal Fluorosis and “Sniffer’s Dermatitis” After Inhalant Abuse with 1,1-Difluoroethane*, *Proceedings of UCLA Health*, vol. 23 (2019), <https://www.proceedings.med.ucla.edu/wp-content/uploads/2019/03/Liu-A190213RL-BLM-edited.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> National Institute on Drug Abuse, *Inhalants: What are Inhalants?*, <https://www.drugabuse.gov/publications/drugfacts/inhalants> (last updated April 2020).

63. Reports of people getting hurt, dying, and killing and injuring others after inhaling products containing DFE, such as dust removers, continue to this day.

### **DUST REMOVER ABUSE**

64. Predictably and foreseeably, when a person intentionally inhales a propellant—such as a dust remover containing DFE—that person frequently exhibits some or all of the aforementioned adverse health effects along with the sought-after intoxicating, psychoactive side effects.

65. Reports of dust remover abuse in the public domain are numerous and easily accessible, for example by a simple online search of widely available public media, like newspapers.

66. Reports of people getting high on dust remover, driving, and causing harm and death to others are also numerous, easily accessible, and in the public domain.

67. Governmental agencies, organizations, researchers, and media from around the country have compiled data and reported on people intentionally inhaling propellants, including dust removers since at least the 1990s.

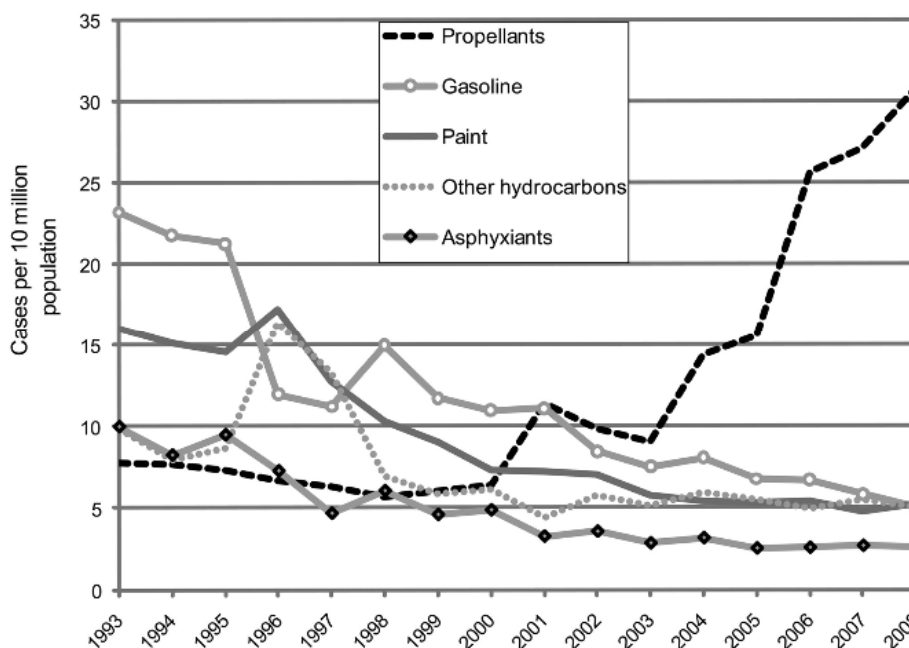
68. It is clear, and has been clear at all material and relevant times, that people have been abusing dust removers to get high and continue to do so to this day.

69. It is clear, and has been clear at all material and relevant times, that people will drive while high on dust removers.

70. It is clear, and has been clear at all material and relevant times, that people will cause injuries and death to innocent bystanders while driving high on dust removers.

71. Researchers have reported that while inhalant abuse—such as sniffing gasoline or paint—in general has been in decline over time since 1993, propellant abuse—such as intentionally

inhaling dust remover—specifically increased starting around 1998 and started to skyrocket around 2003.<sup>32</sup>



72. This same study calculated that dust remover comprised about 57% of all propellant abuse during this same time frame.<sup>33</sup>

73. In 1997, a woman struck and catastrophically injured another driver when the woman lost control of her vehicle after getting high on dust remover while driving.<sup>34</sup>

74. In 1997, researchers published a case report of two individuals who died when their vehicle crashed after the driver got high from inhaling a can of propellant containing DFE.<sup>35</sup>

<sup>32</sup> Melinda R. Marsolek, et al., *Inhalant Abuse: Monitoring Trends by Using Poison Control Data, 1993-2008*, *Pediatrics*, 125(5) 906-913 (May 2010), <https://pediatrics.aappublications.org/content/125/5/906#T1>.

<sup>33</sup> *Id.*

<sup>34</sup> Craig Peters, *Woman Submits Plea in Huffing Crash*, *GoUpstate.com* (Sep. 12, 2008), <https://www.goupstate.com/news/20080912/woman-submits-plea-in-huffing-crash>.

<sup>35</sup> LA Broussard, et al., *Two Traffic Fatalities Related to the Use of Difluoroethane*, *J. Forensic Sci.*, 42(6):1186-7 (Nov. 1997), <https://www.ncbi.nlm.nih.gov/pubmed/9397568> [abstract].

75. In 1999, five high school juniors in Pennsylvania were killed when the driver ran her vehicle off the side of the road and struck a tree after getting high on dust remover; three of the passengers were also reported to have DFE in their system.<sup>36</sup>

76. Almost exactly two years later in 2001, a Pennsylvania teenager died when she veered off the road and crashed her vehicle after she got high on dust remover.<sup>37</sup>

77. In June of 2001, a teenager in Indianapolis died after getting high on dust remover in a swimming pool, where he drowned when his heart stopped.<sup>38</sup>

78. The United States Consumer Product Safety Commission operates an injury surveillance system known as the National Electronic Injury Surveillance System (“NEISS”). The purpose of the NEISS is to collect and publish data on consumer product-related injuries occurring in the United States, including aerosol inhalant-related injuries, by cataloging some emergency room visits from 1997-2010.<sup>39</sup>

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<sup>36</sup> Michael Janofsky, *Fatal Crash Reveals Inhalants as Danger to Youth*, N.Y. Times (Mar. 2, 1999),

<https://www.nytimes.com/1999/03/02/us/fatal-crash-reveals-inhalants-as-danger-to-youth.html>.

<sup>37</sup> Katrina Macleod, *Coroner Says Inhalant Use Led to Fatality*, Daily Local News (Feb. 24, 2001),

[https://www.dailylocal.com/news/coroner-says-inhalant-use-led-to-fatality/article\\_76cc60a8-1de0-5aa7-94c5-43dd18fb828d.html](https://www.dailylocal.com/news/coroner-says-inhalant-use-led-to-fatality/article_76cc60a8-1de0-5aa7-94c5-43dd18fb828d.html).

<sup>38</sup> *Car Crash at Regatta Draws Attention to Inhalant Use*, Madison Courier (July 25, 2006), <https://madisoncourier.com/Content/News/News/Article/Car-crash-at-Regatta-draws-attention-to-inhalant-use/178/961/31258>.

<sup>39</sup> National Electronic Injury Surveillance System, *Accidents-Aerosol Containers-Years 1997-2010-All of Body*,

<http://www.hospital-data.com/accidents/1133-aerosol-containers/all-of-body/index.html> (last accessed Apr. 27, 2020).

79. The NEISS's first record of a computer duster-specific injury is 2002:

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**Date:** 01/22/2002                      **Age:** 14 years                      **Sex:** Male                      **Race:** White  
**Location:** Not recorded                      **Fire:** No fire involvement or fire involvement not recorded  
**Body part:** All Of Body                      **Diagnosis:** Poisoning  
**Product:** Aerosol containers  
14 YOM INHALED AEROSOL "PERFECT DUSTER " STATES " I NEEDED TO GET HIGH; PCC CONTACTED  
**Disposition:** Treated and transferred to another hospital

80. There are dozens of reports of dust remover abuse clearly identified in the NEISS from 2002–2010.<sup>40</sup>

81. In 2004, researchers published a research article reviewing the death of a person associated with inhaling dust removers.<sup>41</sup>

82. In 2005, Today.com alerted its readers to the increasing danger of “dusting,” or inhaling dust remover after several children were killed after getting high on dust remover in separate incidents.<sup>42</sup>

83. In 2006, a woman died after getting high on dust remover that she purchased from Walmart.<sup>43</sup>

84. In 2006, researchers published a research article reviewing the death of a person associated with getting high on dust removers and other products containing DFE.<sup>44</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> Z. Xiong et al., *Sudden Death Caused by 1,1-difluoroethane Inhalation*, J. Forensic Sci., 49(3):627-9 (May 2004), <https://www.ncbi.nlm.nih.gov/pubmed/15171188> [abstract].

<sup>42</sup> Peter Alexander, “Dusting” is the New Killer High for Teens, Today (Jul. 26, 2005), <https://www.today.com/parents/dusting-new-killer-high-teens-2D80555302>.

<sup>43</sup> *Wal-Mart, 3M Sued in Teenager’s Death from Solvent*, Reuters (May 31, 2007), <https://www.reuters.com/article/us-walmart-huffinglawsuit/wal-mart-3m-sued-in-teenagers-death-from-solvent-idUSN3122706820070531>.

<sup>44</sup> Avella, Joseph et al., *Fatal Cardiac Arrhythmia After Repeated Exposure to 1,1-Difluoroethane (DFE)*, The American Journal of Forensic Medicine and Pathology, 27(1):58-60 (March 2006), <https://www.ncbi.nlm.nih.gov/pubmed/16501351> [abstract].

85. In 2006, researchers published a case report of an individual who had crashed her vehicle and died after getting high on Dust-Off-branded dust remover.<sup>45</sup>

86. In 2006, a California TV news channel aired a special report on the dangers of huffing dust removers, focusing on the deaths of three teenagers who were believed to have been high on dust remover when their car crashed.<sup>46</sup>

87. In 2007, a man was killed as he was walking in a parking lot when he was struck by a vehicle driven by a woman who was high on 3M Dust Remover-branded dust remover.<sup>47</sup>

88. In 2007, a Nebraska man crashed his vehicle into a tree after getting high on 3M Dust Remover-branded dust remover.<sup>48</sup>

89. In 2012, researchers published a case report identifying 17 deaths involving DFE at the San Diego County Medical Examiner's Office from 2007-2011.<sup>49</sup> Among those 17 reports of death involving DFE, "Case 3" identified the death of a 50-year-old male in a car crash. Witnesses who saw the crash described the man as traveling approximately 65 mph when he "veered to the right across lanes, onto the shoulder, and down a steep embankment, overturning the vehicle many times." An intact can containing DFE was found among the crash debris.

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<sup>45</sup> T. Hahn et al., *A Motor Vehicle Accident Fatality Involving the Inhalation of 1,1-Difluoroethane*, J. Analytical Toxicology, vol. 30(8):638-42 (Oct. 2006), <https://www.ncbi.nlm.nih.gov/pubmed/17132266> [abstract].

<sup>46</sup> KCRA3, *Huffing and Teens*, YouTube (Jun. 17, 2011), <https://www.youtube.com/watch?v=b03ZSk8g40U>.

<sup>47</sup> *Downing v. City of Dothan*, 59 So. 3d 16 (Ala. 2010), <https://caselaw.findlaw.com/al-supreme-court/1539446.html>.

<sup>48</sup> Sarah Schulz, *Teen Who Ran Over Police Officer Involved in Second Accident*, The Grand Island Independent, (Jan. 18, 2007), [https://www.theindependent.com/news/teen-who-ran-over-police-officer-involved-in-second-accident/article\\_e545b1c0-af76-5a21-8062-935e80b0c920.html](https://www.theindependent.com/news/teen-who-ran-over-police-officer-involved-in-second-accident/article_e545b1c0-af76-5a21-8062-935e80b0c920.html).

<sup>49</sup> Vance, Chris, et al., *Deaths Involving 1,1-Difluoroethane at the San Diego County Medical Examiner's Office*, Journal of Analytical Toxicology, Vol. 36(9):626-33 (Nov./Dec. 2012), <https://academic.oup.com/jat/article/36/9/626/784617>.

90. In 2008, an Oklahoma man was arrested on charges of public intoxication after getting high on dust remover; the police found more than 200 cans of dust remover in the man's vehicle.<sup>50</sup>

91. In 2008, researchers published a case report of an individual who had crashed his vehicle after getting high on dust remover.<sup>51</sup>

92. In 2009, a Nebraska man was found unresponsive in his vehicle after getting high on dust remover.<sup>52</sup>

93. In 2009, an Ohio teenager died when she crashed her car after getting high on dust remover that she purchased at Walmart.<sup>53</sup>

94. In 2009, a Pennsylvania woman veered off the road after she got high on Dust-Off-branded dust remover and struck and killed a teenager and seriously injured another teenager who were walking on a sidewalk.<sup>54</sup>

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<sup>50</sup> *12-11 Crime Briefs*, The Edmond Sun (Dec. 10, 2008), [https://www.edmondsun.com/news/local\\_news/crime-briefs/article\\_a7286710-e3da-51d4-b733-111878ece7e5.html](https://www.edmondsun.com/news/local_news/crime-briefs/article_a7286710-e3da-51d4-b733-111878ece7e5.html).

<sup>51</sup> Little, Jill et al., *Inhalant Abuse of 1,1-Difluoroethane (DFE) Leading to Heterotopic Ossification: A Case Report*, *Patient Safety in Surgery*, vol. 2(1):28, (Oct. 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2584001/>.

<sup>52</sup> *Talmage Man Arrested for Huffing in Hospital Garage*, Lincoln Journal Star (Aug. 11, 2009), [https://journalstar.com/news/local/crime-and-courts/talmage-man-arrested-for-huffing-in-hospital-garage/article\\_172e2f0c-86af-11de-8056-001cc4c03286.html](https://journalstar.com/news/local/crime-and-courts/talmage-man-arrested-for-huffing-in-hospital-garage/article_172e2f0c-86af-11de-8056-001cc4c03286.html).

<sup>53</sup> *Teen Admits Huffing Before Fatal Crash*, 21WFMJ (Aug. 24, 2009), <https://www.wfmj.com/story/10951585/teen-admits-huffing-before-fatal-crash>.

<sup>54</sup> William Bender, *Cops: "Huffing" Cause of Fatal Delco Crash*, The Philadelphia Inquirer (Sep. 10, 2009), [https://www.inquirer.com/philly/hp/news\\_update/20090910\\_Cops\\_Huffing\\_cause\\_of\\_fatal\\_Delco\\_crash.html](https://www.inquirer.com/philly/hp/news_update/20090910_Cops_Huffing_cause_of_fatal_Delco_crash.html).



95. In 2009, a case study analyzed the death of a man who died after getting high on dust remover.<sup>55</sup>

96. In 2009, a man in Wyoming was found guilty of aggravated vehicular homicide stemming from charges that he killed someone when he passed out while driving and high on dust remover.<sup>56</sup>

97. In 2010, a man in Pennsylvania got high on dust remover he purchased at a local Walmart, veered into oncoming traffic, and struck and killed a music teacher.<sup>57</sup>

98. In 2010, an Illinois teenager killed the passenger in his vehicle when he crashed after getting high on dust remover.<sup>58</sup>

99. In 2010, the American Journal of Drug and Alcohol Abuse warned that dust remover abuse by adolescents was becoming a public health threat.<sup>59</sup>

100. In 2010, a TV news station aired a report on several teenagers who crashed a car after getting high on dust removers, including 3M Dust Remover-branded dust remover.<sup>60</sup>

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<sup>55</sup> C. Sasaki, T. Shinozuka, *A Fatality Due to Inhalation of 1,1-Difluoroethane (HFC-152a) With a Peculiar Device*, *Forensic Toxicology* 27:45 (2009),  
<https://link.springer.com/article/10.1007/s11419-008-0065-7>.

<sup>56</sup> William Browning, *Casper Man Faces Felony DUI*, *Billings Gazette* (Apr. 18, 2011),  
[https://billingsgazette.com/news/state-and-regional/wyoming/casper-man-faces-felony-dui/article\\_44842e90-1c24-5c11-bc49-4030c05dfd34.html](https://billingsgazette.com/news/state-and-regional/wyoming/casper-man-faces-felony-dui/article_44842e90-1c24-5c11-bc49-4030c05dfd34.html).

<sup>57</sup> Jason Nark, *Cops: Man Did Drugs Before Crash that Killed Teacher*, *The Philadelphia Inquirer* (Oct. 12, 2010),  
[https://www.inquirer.com/philly/hp/news\\_update/20101013\\_Cops\\_Man\\_did\\_drugs\\_before\\_crash\\_that\\_killed\\_teacher.html](https://www.inquirer.com/philly/hp/news_update/20101013_Cops_Man_did_drugs_before_crash_that_killed_teacher.html).

<sup>58</sup> Dave Haney, *Teen Gets Prison for Fatal Crash*, *Peoria Journal Star* (Aug. 20, 2011),  
<https://www.pjstar.com/article/20110820/NEWS/308209911>.

<sup>59</sup> Eric Garland, & Matthew Howard, *Inhalation of Computer Duster Spray Among Adolescents: An Emerging Public Health Threat?*, *The American Journal of Drug and Alcohol Abuse*, vol.36(6):320-24 (Jul. 21, 2010),  
<https://www.tandfonline.com/doi/full/10.3109/00952990.2010.504874> [abstract].

<sup>60</sup> 40/29 News, *Police Say Teens High on Duster*, YouTube (Sep. 3, 2010),  
<https://www.youtube.com/watch?v=K1hNUrWuYKo>.

101. A video uploaded to YouTube.com on November 27, 2010 shows at least one person inhaling dust remover while sitting in a parked car.<sup>61</sup>

102. In 2011, a man in Wyoming was reported to have crashed his vehicle after getting high on dust remover.<sup>62</sup>

103. Two days later, yet another man in Wyoming was reported to have crashed his vehicle after getting high on dust remover he purchased at a local Walmart beforehand.<sup>63</sup>

104. A video posted to YouTube.com in 2011 shows a young man getting high on dust remover while sitting in the driver's seat of a vehicle.<sup>64</sup>

105. Another video posted to YouTube.com in 2011 shows a young man getting high on dust remover while sitting in the driver's seat of a vehicle. The young man shares the can of dust remover with his passengers, who also inhale from the can.<sup>65</sup>

106. In 2011, an Illinois man crashed his vehicle after getting high on dust remover that he purchased at a local Walmart beforehand, killing three of his passengers.<sup>66</sup>

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<sup>61</sup> @shurden, *Bella Inhaling Dust Remover*, YouTube (Nov. 27, 2010), <https://www.youtube.com/watch?v=7kRttfMkSro>.

<sup>62</sup> William Browning, *Casper Man Faces Felony DUI*, Billings Gazette (Apr. 18, 2011), [https://billingsgazette.com/news/state-and-regional/wyoming/casper-man-faces-felony-dui/article\\_44842e90-1c24-5c11-bc49-4030c05dfd34.html](https://billingsgazette.com/news/state-and-regional/wyoming/casper-man-faces-felony-dui/article_44842e90-1c24-5c11-bc49-4030c05dfd34.html).

<sup>63</sup> *19-Year Old Faces DUI Charge After Allegedly Huffing*, Casper Star Tribune (Apr. 20, 2011), [https://trib.com/news/local/casper/year-old-faces-dui-charge-after-allegedly-huffing/article\\_33bd9038-2683-5537-9ba4-9ac8d3e5ca19.html](https://trib.com/news/local/casper/year-old-faces-dui-charge-after-allegedly-huffing/article_33bd9038-2683-5537-9ba4-9ac8d3e5ca19.html).

<sup>64</sup> @swifferkillsdogs, *Jimmy Huffing Dust Remover*, YouTube (Dec. 14, 2011), <https://www.youtube.com/watch?v=FjlazUNE2-8>.

<sup>65</sup> @allenpalin, *Doing Duster at Whataburger*, YouTube (Dec. 26, 2011), [https://www.youtube.com/watch?v=GYRQN-7raLM&has\\_verified=1](https://www.youtube.com/watch?v=GYRQN-7raLM&has_verified=1).

<sup>66</sup> *People v. Blakey*, 44 N.E.3d 1186 (Ill. App. Ct. 2015), <https://caselaw.findlaw.com/il-court-of-appeals/1719505.html>.

107. In 2011, a California woman crashed her vehicle after getting high on dust remover.<sup>67</sup>

108. In 2011, researchers published a research article reviewing three deaths associated with inhaling dust removers.<sup>68</sup>

109. In two videos posted to YouTube.com in 2011, several young men are shown getting high on dust remover in the woods; the resulting debilitating and mind-altering effects visibly present.<sup>69</sup>

110. In 2012, researchers published an article reviewing the death of a person associated with inhaling dust removers.<sup>70</sup>

111. In February of 2012, a woman struck and seriously injured two men who were standing in their own driveway after the woman lost control of her vehicle when she got high on dust remover.<sup>71</sup>

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<sup>67</sup> Melissa Pinion-Whitt, *Madd to Honor Rialto Police Officer*, Los Angeles Daily News (Mar. 11, 2011, updated Aug. 28, 2017), <https://www.dailynews.com/2011/03/11/madd-to-honor-rialto-police-officer/>.

<sup>68</sup> C. Sasaki, T. Shinozuka, *A Fatality Due to Inhalation of 1,1-Difluoroethane (HFC-152a) With a Peculiar Device*, *Forensic Toxicology*, 27:45 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/20875935> [abstract].

<sup>69</sup> @theicedub, *Duster Trip Part 1*, YouTube (Apr. 29, 2011), <https://www.youtube.com/watch?v=4yR9MJl3OQk>; @theicedub, *Duster Trip Part 2*, YouTube (Apr. 29, 2011), <https://www.youtube.com/watch?v=xdbH2PXS2kU>.

<sup>70</sup> PC Kurniali et al., *Inhalant Abuse of Computer Cleaner Manifested as Angioedema*, *American Journal of Emergency Medicine*, 30(1): 265e3-5 (Jan. 2012), <https://www.ncbi.nlm.nih.gov/pubmed/21295430> [abstract].

<sup>71</sup> Julius Whigham II, *Woman, 19, Charged with DUI in Delray Beach Crash that Injured Two; Accused of "Huffing" Aerosol Can*, *The Palm Beach Post* (Oct. 23, 2012), <https://www.palmbeachpost.com/article/20121023/NEWS/812023237>.

112. A woman was convicted of third-degree murder in Pennsylvania after she huffed Dust-Off-branded dust remover she purchased at a local Walmart before she struck and killed another driver in August of 2012.<sup>72</sup>

113. In September 2012, a Vermont man struck and killed a teenager who was walking to her father's car after the man lost control of his vehicle when he got high on Dust-Off-branded dust remover.<sup>73</sup>

114. In October 2012, a man crossed the median and struck and killed two siblings after getting high on dust remover while driving.<sup>74</sup>

115. In 2012, a woman was charged with reckless homicide after local authorities said she struck and killed a five-year-old girl while driving high on dust remover.<sup>75</sup>

116. In 2012, a TV station aired a story featuring a teenager who lost consciousness and caused a multi-vehicle crash after she got high on dust remover while driving.<sup>76</sup>

117. In 2013, researchers published a case study of a man who suffered from acute renal failure after inhaling twenty cans of Ultra Duster-branded dust remover in twenty hours.<sup>77</sup>

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<sup>72</sup> Steve Bauer, *Judge Rejects New Trial in Fatal Huffing Case*, StateCollege.com (June 10, 2015), <http://www.statecollege.com/news/local-news/judge-rejects-new-trial-in-fatal-huffing-case,1464214/>.

<sup>73</sup> Brent Curtis, *Man Guilty of Manslaughter in Crash While "Huffing,"* Times Argus Online (Jan. 17, 2015), [https://www.timesargus.com/news/man-guilty-of-manslaughter-in-crash-while-huffing/article\\_f72d7085-c65c-5b5a-9420-dc234b33b782.html](https://www.timesargus.com/news/man-guilty-of-manslaughter-in-crash-while-huffing/article_f72d7085-c65c-5b5a-9420-dc234b33b782.html).

<sup>74</sup> *Man Sentenced for Crash that Killed Ole Miss Siblings*, WMC5 Action News (Sept. 23, 2013, updated June 30, 2013), <https://www.wmcactionnews5.com/story/23505970/man-sentenced-for-crash-that-killed-ole-miss-siblings/>.

<sup>75</sup> *Suit: "Huffing" Teen Driver May Have Run Over Girl Twice*, CBS Chicago (Sep. 20, 2012), <https://chicago.cbslocal.com/2012/09/20/suit-huffing-teen-driver-may-have-run-over-girl-5-twice/>.

<sup>76</sup> Wood TV8, *Driver on "Duster" Causes 3-Car Crash*, YouTube (Dec. 13, 2012), <https://www.youtube.com/watch?v=sDpnX0m7a8E>.

<sup>77</sup> Danxuan Long et al. "A Case of Ultra Duster Intoxication Causing Acute Renal Failure," CHEST, Volume 144, Issue 4, 290A (Oct. 29, 2013), [https://journal.chestnet.org/article/S0012-3692\(16\)42923-5/fulltext](https://journal.chestnet.org/article/S0012-3692(16)42923-5/fulltext).

118. In 2014, a TV news station reported a twenty-one-year-old had died after huffing dust remover.<sup>78</sup>

119. In 2014, law enforcement in Greenwich, New York were prompted to warn the public of the dangers associated with huffing after a man was hospitalized for inhaling dust removers.<sup>79</sup>

120. In 2014, a woman suffered near-fatal injuries in Maine when local authorities alleged she crashed her car after getting high on dust remover.<sup>80</sup>

121. In 2014, local authorities in Texas charged a man with a felony when he was alleged to have crashed his car after getting high on dust remover, injuring himself and his passenger.<sup>81</sup>

122. In 2016, researchers published a research article reviewing the death of a person associated with inhaling dust removers.<sup>82</sup>

123. In 2016, researchers published a research article reviewing the death of another person associated with inhaling Dust-Off-branded dust removers.<sup>83</sup>

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<sup>78</sup> ABC 17 News, *21-Year-Old Dies from Inhaling Air Duster Can*, YouTube (Nov. 11, 2014), <https://www.youtube.com/watch?v=ePXED7E4-sw&feature=youtu.be>.

<sup>79</sup> *Spread of "Huffing" Feared*, The Post Star (June 2, 2014), [https://poststar.com/news/local/spread-of-huffing-feared/article\\_287eac5e-ea9c-11e3-a0bf-001a4bcf887a.html](https://poststar.com/news/local/spread-of-huffing-feared/article_287eac5e-ea9c-11e3-a0bf-001a4bcf887a.html).

<sup>80</sup> Erica Thoms, *Driver in Near-Fatal Belfast Crash Charged with Abuse of Inhalants* (May 14, 2014), <https://www.penbaypilot.com/article/driver-near-fatal-belfast-crash-charged-abuse-inhalants/33406>.

<sup>81</sup> *MPD: Man Inhales Air Duster, Injures Passenger in Crash*, MRT.com (June 2, 2014), <https://www.mrt.com/crime/article/MPD-Man-inhales-air-duster-injures-passenger-in-7411373.php>.

<sup>82</sup> S. Kumar et al., *Cardiomyopathy from 1,1-Difluoroethane Inhalation*, *Cardiovascular Toxicology* 16, 370-73 (Nov. 2015), <https://link.springer.com/article/10.1007%2Fs12012-015-9348-5> [abstract].

<sup>83</sup> Alexis L. Cates and Matthew D. Cook, *Severe Cardiomyopathy after Huffing Dust-Off*, *Case Reports in Emergency Medicine*, vol. 2016, Article ID 9204790 (2016), <https://www.hindawi.com/journals/criem/2016/9204790/>.

124. In 2017, a driver struck and fatally killed three Minnesota men who were traveling to a cabin for the weekend after the driver huffed dust remover.<sup>84</sup>

125. In 2017, a Minnesota mother and daughter suffered severe injuries when a driver crashed his vehicle after getting high on dust remover.<sup>85</sup>

126. A video posted to YouTube.com in 2017 shows a woman sitting in the driver side of her car immediately after crashing her car and then continuing to huff from a can of dust remover.<sup>86</sup>

127. In a particularly disturbing video posted to YouTube.com in 2017, a young man inhales dust remover while sitting in the driver's seat of his truck and parked in a parking lot. The video demonstrates the immediate, debilitating effects of inhaling dust remover.<sup>87</sup>

128. In 2018, a man was killed after being struck head on by another driver who was driving his vehicle while high on Falcon Safety Products's Dust-Off product.<sup>88</sup>

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<sup>84</sup> FOX 9, *Impaired, wrong-way driver in court for deaths of three cabin-bound Minnesota men*, (Aug. 9, 2017)

<https://www.fox9.com/news/impaired-wrong-way-driver-in-court-for-deaths-of-three-cabin-bound-minnesota-men>.

<sup>85</sup> Justin Labounty, *Four Hurt, One With Life Threatening Injuries In Sherburne Crash*, WJON.com, (Dec. 7, 2017)

<https://wjon.com/four-hurt-one-with-life-threatening-injuries-in-sherburne-crash/>.

<sup>86</sup> @RoadCam, *Woman Inhaling Gas Duster Caused a Crash*, YouTube (Nov. 27, 2017),

<https://www.youtube.com/watch?v=YJrroAChIW4>.

<sup>87</sup> @Diamondmytegaming, *Air Duster in a McDonald's Parking Lot*, YouTube (Oct. 2, 2017),

<https://www.youtube.com/watch?v=Wt-3JF1tgM0>.

<sup>88</sup> *Silvestry v. Falcon Safety Products*, Case No. ESX-L-003103-20 (Sup. Ct. NJ.); Brian Lock, *Savannah Man Facing Manslaughter Charge Over Deadly St. Joseph Wreck*, (June 28, 2018),

<https://www.kmzu.com/savannah-man-facing-manslaughter-charge-over-deadly-st-joseph-wreck/>.

129. In 2018, several members of a Girl Scout troop and a parent of one of those children were struck and either killed or grievously injured by a driver who was driving his vehicle while high on dust remover.<sup>89</sup>

130. In 2019, researchers published a case study of a woman who suffered from acute psychosis after inhaling a dust remover.<sup>90</sup>

131. In 2019, a Minnesota woman was struck and killed by a driver who had been huffing dust remover.<sup>91</sup>

132. In 2019, a researcher published an article about “[s]udden sniffing death” which can occur when an individual inhales dust remover—“an inexpensive easily accessible product[ ].”<sup>92</sup>

133. On May 28, 2020, a Wisconsin man struck and killed an eighteen-year-old girl who was walking after the man lost control of his vehicle when he got high on dust remover.<sup>93</sup>

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<sup>89</sup> *Kelly et al. v. AW Distributing, Inc. et al.*, Case No. 4:20-cv-06942 (N.D. Cal.); Paul Walsh and John Reinan, *The driver who killed 3 Girl Scouts on a Wisconsin road was ‘huffing,’ police say*, (Nov. 5, 2018), <https://www.post-gazette.com/news/crime-courts/2018/11/05/driver-killed-crash-Girl-Scouts-huffing/stories/201811050136>.

<sup>90</sup> Clara B. Novotny et al. “Acute Psychosis Following 1,1-Difluoroethane Inhalation,” *Cureus* vol. 11(9) e5565 (Sep. 4 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6820689/>.

<sup>91</sup> Lakeland PBS, *One Dead After Crash In Lake Of The Woods Count*, (Jul. 23, 2019) <https://lptv.org/one-dead-after-crash-in-lake-of-the-woods-county/>.

<sup>92</sup> Kathy Prybys, DO, “Sudden Sniffing Death,” University of Maryland School of Medicine, Department of Emergency Medicine, [https://umem.org/educational\\_pearls/3622/](https://umem.org/educational_pearls/3622/) (last updated Jul. 5, 2019).

<sup>93</sup> Fox WZAW, *Court docs: Texting was a factor in fatal Adams County hit-and-run*, (May 28, 2020) <https://www.wsaw.com/content/news/Court-docs-Texting-huffing-factors-in-fatal-Adams-County-hit-and-run-570840431.html?ref=431>.

134. On June 1, 2020, researchers published a case study of a man who suffered from significant cardiomyocyte damage after inhaling multiple cans of Dust-Off-branded dust remover on a daily basis for one month.<sup>94</sup>

135. And in popular culture, dust remover abuse has been portrayed on film and TV and entertainment personalities have fallen victim to the intoxicating and addicting effects of dust removers.

136. In the movie *Thirteen*, released in 2003, two characters are portrayed getting high on dust remover.<sup>95</sup>

137. On August 11, 2008, in Season 4, Episode 19 of the TV show *Intervention* which follows people who work to overcome—and recover from—their drug addictions, the show focused on a young woman who was addicted to getting high off dust removers.<sup>96</sup>

138. In Season 14, Episode 7 of the TV show *South Park* that aired on April 28, 2010, the show portrayed one of the characters with a drug addiction and was depicted getting high on dust remover while sitting in a car.<sup>97</sup>

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<sup>94</sup> Cao A. Shiliang, et al., “Air Duster Inhalant Abuse Causing Non-ST Elevation Myocardial Infarction,” *Cureus* 12(6): e8402 doi:10.7759/cureus.8402 (Jun. 1, 2020), <https://www.cureus.com/articles/26124-air-duster-inhalant-abuse-causing-non-st-elevation-myocardial-infarction>.

<sup>95</sup> Alexandru Cojanu, *Inhalant Abuse: The Wolf in Sheep’s Clothing*, *American Journal of Psychiatry Residents’ Journal* (Feb. 2018), <https://psychiatryonline.org/doi/pdf/10.1176/appi.ajp-rj.2018.130203>.

<sup>96</sup> A&E, *Intervention: Allison*, S4 E19 (Aug. 11, 2008), <https://www.aetv.com/shows/intervention/season-4/episode-19>.

<sup>97</sup> @trilabyte700, *Towelie Inhaling 2000 Cans of Computer Air Duster a Day*, YouTube (Feb. 16, 2012), <https://www.youtube.com/watch?v=wFXzHDY5Lrc>.



139. In 2017, Aaron Carter, a popular singer, crashed his car after his friends called 911 multiple times to report Carter had been huffing dust remover all night, Carter had been driving all night, and that Carter was a danger on the road as a result.<sup>98</sup>

140. On June 23, 2020, Brandon Hall, an actor prominently known for his role in the 1994 movie *Little Rascals*, was arrested for huffing dust remover after local authorities responded to a hotel's call about a possible overdose.<sup>99</sup>

141. On November 2, 2020, the city council in Bald Knob, Arkansas voted unanimously to pass an ordinance banning the sale of dust remover products within their city's limits. The Bald Knob Police Chief asked the city to implement a ban of dust removers "because of people buying them, getting high from 'huffing' them and then having car wrecks and even in one case going the wrong way down the interstate while being high from using a duster product." The ordinance's emergency clause states that "an emergency exists for the need to prohibit the sale of any duster product" used for huffing because it is a "danger" to citizens and "the public in general."<sup>100</sup>

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<sup>98</sup> Aaron Carter: "He's Inhaling Computer Duster" Says Friend in 911 Call (Audio), TheBlast (Sep. 21, 2017, updated June 10, 2019), <https://theblast.com/c/aaron-carter-computer-duster-911-call>.

<sup>99</sup> US Weekly, 'Little Rascals' Star Bug Hall Arrested for Allegedly Huffing Air Duster: See the Mugshot, (Jun. 23, 2020) <https://www.usmagazine.com/celebrity-news/news/little-rascals-bug-hall-arrested-for-allegedly-huffing-see-his-mugshot/>.

<sup>100</sup> The Dailey Citizen, Bald Knob goes through with ban on sale of air duster products, (Nov. 5, 2020), [https://www.thedaileycitizen.com/news/bald-knob-goes-through-with-ban-on-sale-of-air-duster-products/article\\_3ed7df37-1a25-5146-9204-19d9fd19f1ee.html](https://www.thedaileycitizen.com/news/bald-knob-goes-through-with-ban-on-sale-of-air-duster-products/article_3ed7df37-1a25-5146-9204-19d9fd19f1ee.html).

## FALCON SAFETY PRODUCTS'S DUST-OFF

142. Falcon Safety Products, at all material and relevant times and upon information and belief, designed, manufactured, tested, labeled, distributed, and/or sold a dust remover called Dust-Off.



143. At all material and relevant times, the function of Dust-Off was similar to other dust removers containing DFE on the market.

144. At all material and relevant times, Falcon Safety Products advertised and marketed Dust-Off “compressed-gas” as a “Dust and Lint Remover.”<sup>101</sup>

145. At all material and relevant times, the appearance of Dust-Off was substantially similar to other dust remover products containing DFE on the market.

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<sup>101</sup> Falcon Safety Products, Inc., *10 oz. Disposable Duster Label*, <https://falconsafety.com/shop/dusters/disposable/disposable-duster-10-oz/>

146. At all material and relevant times, the main ingredient in Dust-Off—like other compressed gas dusters on the market—was DFE:<sup>102</sup>

<b>Section 3. Ingredients</b>		
<b>CAS</b>	<b>Ingredient Name</b>	<b>Weight %</b>
75-37-6	Ethane, 1,1-difluoro-	100 %

147. At all material and relevant times, DFE was the main ingredient in Dust-Off because the sole purpose of this product is to propel a pressurized burst of gas from the can at a high velocity to displace dust and other material from the surface of whatever item is being cleaned.

148. At all material and relevant times, the Safety Data Sheet that Falcon Safety Products published online for Dust-Off acknowledges the severe Central Nervous System effects of inhaling DFE.<sup>103</sup>

**Effects of Acute Exposure - Inhalation** Excessive intentional inhalation may cause respiratory tract irritation and central nervous system effect (headaches, dizziness). Vapors may cause dizziness or suffocation.

149. Because the DFE in Dust-Off causes psychoactive effects when inhaled, many people intentionally inhale Dust-Off to get high.<sup>104</sup>

150. At all material and relevant times, Falcon Safety Products and Walmart knew that people intentionally inhaled products such as Dust-Off to get high.<sup>105</sup>

<sup>102</sup> Falcon Safety Products, Inc., *Safety Data Sheet, Dust-Off Compressed Gas Duster*, [https://falconsafety.com/wp-content/uploads/SDS\\_dust-off-compressed-gas-duster.pdf](https://falconsafety.com/wp-content/uploads/SDS_dust-off-compressed-gas-duster.pdf)

<sup>103</sup> Falcon Safety Products, Inc., *Safety Data Sheet, Dust-Off Compressed Gas Duster*, [https://falconsafety.com/wp-content/uploads/SDS\\_dust-off-compressed-gas-duster.pdf](https://falconsafety.com/wp-content/uploads/SDS_dust-off-compressed-gas-duster.pdf)

<sup>104</sup> National Institute on Drug Abuse, *Inhalants: Letter from the Director*, <https://www.drugabuse.gov/publications/research-reports/inhalants/letter-director>.

<sup>105</sup> Falcon Safety Products, Inc., *Inhalant Abuse*, <https://falconsafety.com/product-information/inhalant-abuse/>.

151. At all material and relevant times, Defendants knew that people intentionally inhaled Dust-Off to get high while driving and subsequently harm or kill innocent bystanders.

152. In fact, Philip Lapin testified as the President and CEO of Falcon Safety Products on September 13, 2016 in a civil litigation commenced in April of 2013 against Falcon Safety Products involving a Florida woman who was seriously injured in 2011 after being struck by a man who was high on dust remover while driving.<sup>106</sup> A copy of that April 2013 Complaint is attached hereto as Exhibit 2. A copy of Philip Lapin's September 13, 2016 deposition transcript is attached hereto as Exhibit 3.

153. According to Philip Lapin, Falcon Safety Products's President and CEO, it is simply "background knowledge" that people abuse difluoroethane.<sup>107</sup>

10 Q. When did you first become aware that  
11 some purchasers of difluoroethane-containing duster  
12 products manufactured by your company purchased  
13 them to inhale the difluoroethane?

14 A. I can't answer that specifically.  
15 It's basically been background knowledge about  
16 these and all the 1400 other household products  
17 that are abusable and people have chosen to abuse.  
18 So it's background. There wasn't a flash of light  
19 or a lightning strike to bring that knowledge.

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<sup>106</sup> Compl., *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Apr. 24, 2013) (attached hereto as Exhibit 2); Deposition Transcript of Philip M. Lapin ("Lapin Dep.") *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016) (attached hereto as Exhibit 3).

<sup>107</sup> Exhibit 3, Lapin Dep. 14:10–19, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

154. According to Phillip Lapin, Falcon Safety Products—and Lapin personally—have known that people intentionally inhale dust remover products containing difluoroethane to “get high” since Lapin’s first or second week as Board Chairman at Falcon Safety Products in approximately 1986.<sup>108</sup>

7 Q. How long have you been an officer or  
8 employee of Falcon Safety Products?

9 A. Since November -- November 1st,  
10 1986.

11 Q. At that point in time, what role did  
12 you assume at Falcon Safety Products?

13 A. I was chairman.

11 When and you others at Falcon became  
12 aware of that, that is, that people were inhaling  
13 difluoroethane to become intoxicated, what, if  
14 anything, did Falcon do?

15 A. Well, from early on in the  
16 ownership, prior -- you know, prior to the 1993,  
17 '94 date, we -- it was somewhere in the first week  
18 or two of my ownership. I was chairman, and I was  
19 in a meeting with the then president of the  
20 company, who also invested with us, and he had told  
21 me -- showed me a news article about someone who  
22 had used a duster product. I don't -- I don't know  
23 if it was ours or someone else's, but he used a  
24 duster product and had left a suicide note and had  
25 actually used the duster to kill himself.

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<sup>108</sup> Exhibit 3, Lapin Dep. 7:7–13, 17:11–25, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

155. According to Philip Lapin, Falcon Safety Products has known that people intentionally inhale dust remover spray products containing difluoroethane manufactured by Falcon Safety products to get high since at least the 1990s:<sup>109</sup>

17 Q. By the end of the '90s, you and  
18 others at Falcon were certainly aware that some  
19 end-user purchasers of duster products containing  
20 difluoroethane manufactured by your company were  
21 inhaling the contents to become intoxicated?

22 A. Yes.

23 Q. It's common knowledge and it's --  
24 was known at Falcon and other manufacturers of  
25 duster products, right?

1 A. I can't speak for any of the others.  
2 And I don't know what you mean by "common  
3 knowledge." I knew about it.

156. In fact, Philip Lapin himself considered himself Falcon Safety Products's "first responder" who, "on behalf of the company, responded to parents or others associated with people who allegedly were injured or killed while inhaling Falcon Safety Products's duster products."<sup>110</sup>

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<sup>109</sup> Exhibit 3, Lapin Dep. 16:17–17:3, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

<sup>110</sup> Exhibit 3, Lapin Dep. 129:5–15, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

157. Philip Lapin testified under oath that Falcon Safety Products knows that children intentionally inhale its dust remover products containing difluoroethane—such as Dust-Off—to “get high.”<sup>111</sup>

1           Q.       Explain again to me what it is  
2       that's untrue about children using your product to  
3       get high.  
4           A.       Some children. A very small  
5       percentage of children. How do you define  
6       "children"? I don't know. I mean, but it's a --  
7       it's very broad generality. Some children have  
8       used those common 1400 products to get high, and  
9       ours is one of them.

158. Because Falcon Safety Products knew that people intentionally inhaled Dust-Off to get high, it provided abusers of the product with information about inhalant abuse only through online resources, but did not provide any information about the foreseeable and predictable hazards to innocent bystanders associated with driving after getting high on Dust-Off.

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<sup>111</sup> Exhibit 3, Lapin Dep. 34:1–9, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

159. At all material and relevant times, the product label for Dust-Off contained a notice to the user of the product that inhaling the product could cause a serious health hazard and result in death while also providing a link to three websites for “more information on the hazards of inhalant abuse and how to help prevent” a serious health hazard that could result in death:



160. At all material and relevant times, Falcon Safety Products published a webpage that contains facts about Inhalant Abuse (the “Falcon Inhalant Abuse Webpage”). On that webpage, Falcon Safety Products provides links to at least five different online resources for information on inhalant abuse.<sup>112</sup>

161. At all material and relevant times, the Falcon Inhalant Abuse Webpage contains a “Facts About Inhalant Abuse” section that states people inhale and abuse “common chemically based products found in homes, communities, and schools in order to get high.”<sup>113</sup> That section

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<sup>112</sup> Falcon Safety Products, Inc., *Inhalant Abuse*, <https://falconsafety.com/product-information/inhalant-abuse/>

<sup>113</sup> Falcon Safety Products, Inc., *Inhalant Abuse*, <https://falconsafety.com/product-information/inhalant-abuse/>



instructs visitors of the webpage to “look at the safety label on the back of one of [Falcon Safety Products’s] cans” for further information:

### *Facts About Inhalant Abuse*

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- What is Inhalant Abuse? Inhalant abuse is the deliberate concentration or sniffing of fumes, vapors or gases from common chemically based products found in homes, communities, and schools in order to “get high.”
- It involves over 1,400 different common household products<sup>[1]</sup> such as gasoline, propane, a number of aerosols, glue, markers, and correction fluid.
- All of these products serve a useful purpose in our everyday lives and are entirely safe when used as intended. It is only when these products are intentionally misused that they can be dangerous and even deadly.
- Inhalant abuse can be deadly. Sniffing highly concentrated amounts of chemicals in solvents, gases or aerosol sprays can induce heart failure.
- Short-term risks include death, headaches, muscle weakness, abdominal pain, severe mood swings, violent behavior, slurred speech, numbness, hearing loss, loss of consciousness, fatigue, and dizziness.
- Long-term risks include death, brain, liver and kidney damage, weight loss, muscle weakness, lack of coordination, depression, hearing loss, limb spasms, central nervous system (including brain) damage

“A cleaning duster is a serious product. Inhalant abuse is illegal and can cause permanent injury or be fatal. Please use our product responsibly.”

For further information, please look at the safety label on the back of one of our cans.

162. At all material and relevant times, the label on Falcon Safety Products’s cans of dust remover, including Dust-off, provided no warnings that inhaling Dust-Off can cause harm or death to innocent bystanders, including the foreseeable and predictable risk that a person could lose control of their vehicle and strike and injure or kill another person when high on Dust-Off.

163. At all material and relevant times, the Falcon Inhalant Abuse Webpage only advised visitors of the website of the harms that the abuser can foreseeably experience as a result of inhaling products by Falcon Safety Products.

164. At all material and relevant times, the Falcon Inhalant Abuse Webpage provided no warnings that inhaling Dust-Off can cause harm or death to innocent bystanders, including the foreseeable and predictable risk that a person could lose control of their vehicle and strike and injure or kill another person when high on Dust-Off.<sup>114</sup>

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<sup>114</sup> Falcon Safety Products, Inc., *Inhalant Abuse*, <https://falconsafety.com/product-information/inhalant-abuse/>

165. At all material and relevant times, and upon information and belief, Falcon Safety Products never warned people who are, or who could be, exposed to Dust-Off that they should not operate a motor vehicle.

166. At all material and relevant times, the Falcon Inhalant Abuse Webpage claimed that “Falcon Safety Products was the 1st aerosol manufacturer to successfully incorporate a bittering agent into our products 10 years ago to help deter the potential abuse of our compressed-gas dusters via a patented formulation.”<sup>115</sup>

167. According to Philip Lapin, Falcon Safety Products first added a bittering agent to its dust remover products containing difluoroethane in 2005 or 2006.<sup>116</sup>

24 Q. The bitterant was added in 2006,  
25 right?

1 A. Yes. I believe 2006, 2005. You  
2 know, that's...

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<sup>115</sup> Falcon Safety Products, Inc., *Inhalant Abuse*,  
<https://falconsafety.com/product-information/inhalant-abuse/>

<sup>116</sup> Exhibit 3, Lapin Dep. 19:24–20:2, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

168. At all material and relevant times, Falcon Safety Products advertised that its products, including Dust-Off contained a “bitterant to help discourage inhalant abuse.”<sup>117</sup>

## *Description*

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Dust-Off compressed gas dusters provide potent dust-removing power for practically any task. Use in your office space to clean keyboards, CPU, laptop, or desk area. Great for removing dust around the home like window blinds, collectibles, sewing machines, holiday ornaments, craft projects and silk flower arrangements. Includes extension straw to get into hard to reach places. Contains a bitterant to help discourage inhalant abuse.

169. At all material and relevant times, the product label for Dust-Off advertised that its products, including Dust-Off contain[ed] an “inhalant abuse deterrent formulation” (hereinafter “bittering agent”).<sup>118</sup>



170. At all material and relevant times, and upon information and belief, the advertised “bittering agent,” in fact, did nothing to discourage or prevent people from inhaling Dust-Off to get high.

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<sup>117</sup> Falcon Safety Products, Inc., *10 oz. Disposable Duster Description*, <https://falconsafety.com/shop/dusters/disposable/disposable-duster-10-oz/>

<sup>118</sup> Falcon Safety Products, Inc., *10 oz. Disposable Duster*, <https://falconsafety.com/shop/dusters/disposable/disposable-duster-10-oz/>

171. At all material and relevant times, and upon information and belief, Falcon Safety Products had no intention of actually discouraging abuse of Dust-Off as an inhalant as Falcon Safety Products continued to sell Dust-Off in a form that continued to be inhaled by people seeking to get high.

172. At all material and relevant times, and upon information and belief, Falcon Safety Products only advertised the existence of a “bittering agent” because certain retailers would not sell the product without such an advertisement on the label.

173. At all material and relevant times, and upon information and belief, certain retailers, like Walmart, required Falcon Safety Products to advertise the existence of a “bittering agent” on its Dust-Off label in response to known incidents of dust remover abuse.

174. However, at all material and relevant times, the “bittering agent” that Falcon Safety Products advertised as an ingredient added to deter “inhalant abuse,” in fact, did not work for its intended or advertised purpose.

175. Or worse, reasonable further investigation and discovery may show that Dust-Off did not contain a “bittering agent” whatsoever.

176. At all material and relevant times, people continued to abuse Dust-Off in order to get high, including Shawn M. Yuille, despite the advertised “bittering agent.”

177. At all material and relevant times, Falcon Safety Products knew or should have known that people continued to abuse Dust-Off to get high, despite advertising to the public that Dust-Off contained a “bittering agent” to help discourage inhalant abuse.

178. At all material and relevant times, Falcon Safety Products and its President and CEO, Philip Lapin, have known that people continued to inhale Falcon Safety Products's dust remover products containing the advertised "bittering agent."<sup>119</sup>

1 Q. After Bitrex was added to Falcon's  
2 duster products, you were -- you became aware that  
3 there were incidents of reported inhalation of your  
4 product, right, the duster product?

5 A. Yes, I'm aware.

179. At all material and relevant times, Falcon Safety Products knew or should have known that the advertised "bittering agent" did not actually discourage abuse of Dust-Off as an inhalant.

180. Even if Falcon Safety Products successfully incorporated a "bittering agent" into Dust-Off's formulation, the physiological effects of inhaling a bittering agent mixed with DFE could potentially cause bronchial smooth muscle relaxation, thereby increasing DFE absorption in the body and increasing Dust-Off's intoxicating effects.<sup>120</sup>

181. At all material and relevant times, Dust-Off was sold in quantities far greater than what would be expected if used only for its intended use.

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<sup>119</sup> Exhibit 3, Lapin Dep. 103:1–5, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

<sup>120</sup> See, e.g., Deshpande DA, Wang WCH, Mcilmoyle EL, Robinett KS, Schillinger RM, An SS, et al. Bitter taste receptors on airway smooth muscle bronchodilate by localized calcium signaling and reverse obstruction. *NAT MED N Y* (2010), 16:1299–304, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3066567/>; Clifford RL, Knox AJ. Future bronchodilator therapy: a bitter pill to swallow? *AM J PHYSIOL-LUNG CELL MOL PHYSIOL* (2012), 303:L953–5, available at <https://journals.physiology.org/doi/full/10.1152/ajplung.00303.2012>; Liggett SB. Bitter taste receptors on airway smooth muscle as targets for novel bronchodilators. *EXPERT OPIN THER TARGETS* (2013), 17:721–31 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4437536/>.

182. At all material and relevant times, Defendants knew or should have known that Dust-Off was being sold in quantities far greater than what would be expected if used only for its intended use.

183. At all material and relevant times, Defendants knew or should have known that Dust-Off was being sold in quantities far greater than what would be expected if used only for its intended use because people were purchasing Dust-Off to get high.

184. At all material and relevant times, Defendants knew or should have known that a large portion of their sales of Dust-Off were to people who purchased the product to get high.

185. According to Philip Lapin, Falcon Safety Products placed its dust remover products—such as Dust-Off—into the stream of commerce without conducting any research or study to determine how many people were purchasing Dust-Off to inhale it:<sup>121</sup>

17 Q. But Falcon has not commissioned any  
18 sort of research or study to determine how many of  
19 the end-users purchasing its duster products are  
20 actually purchasing them to inhale them, right?

21 MR. BEDARD: Form.

22 A. We have not. We're a small company.

186. At all material and relevant times, Falcon Safety Products knew or should have known that people were using Dust-Off in a manner that resulted in death and injury to innocent bystanders in motor vehicle crashes.

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<sup>121</sup> Exhibit 3, Lapin Dep. 79:17–22, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

187. In fact, Philip Lapin testified under oath that Falcon Safety Products made an active effort to keep track of instances where people inhaled its dust remover products containing difluoroethane for the purposes of getting high:<sup>122</sup>

1                   Going back to the '90s, when Falcon  
2       began using difluoroethane as the propellant in its  
3       duster products, some of them, was there an effort  
4       by the company to chronicle or archive reports of  
5       end-users inhaling the product for the purpose of  
6       intoxication?

7                   A.        I would say that I'm not sure when  
8       it began, but there was, you know, an attempt to be  
9       aware of this. But there are thousands of other  
10      things that we're aware of running in our company.

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<sup>122</sup> Exhibit 3, Lapin Dep. 28:1-10, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

188. Further, Philip Lapin himself searched YouTube.com for, and viewed, videos of people huffing dust remover products:<sup>123</sup>

3 Q. What have you seen when you went on  
4 YouTube and did a search of huffing?

5 A. I -- I saw people who were -- who  
6 were huffing and explaining how huffing should be  
7 done, and this was early in the days of YouTube, I  
8 believe. And, in fact, I wrote a letter that had  
9 no effect, you know, to the Chairman of YouTube  
10 to...

189. Philip Lapin himself also looked at news articles and scientific literature and data regarding reports of injury and death associated with the inhalation of difluoroethane:<sup>124</sup>

19 Q. And you believe there are very few  
20 reports of injury and death associated with the  
21 inhalation of difluoroethane?

22 A. Yes.

23 Q. And you claim that you look at news  
24 articles and scientific literature and data on the  
25 subject, right?

2 A. Yes.

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<sup>123</sup> Exhibit 3, Lapin Dep. 95:3–10, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

<sup>124</sup> Exhibit 3, Lapin Dep. 120:19-25–121:2, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).



190. Yet, at all material and relevant times, Falcon Safety Products placed Dust-Off into the stream of commerce, including within the State of Missouri, despite knowing of the foreseeable misuse of Dust-Off as an inhalant.

191. At all material and relevant times, Falcon Safety Products placed Dust-Off into the stream of commerce, including within the State of Missouri, despite knowing of the foreseeable misuse of Dust-Off as an inhalant, and that this foreseeable use would cause harm to innocent bystanders, including in motor vehicle crashes.

192. At all material and relevant times, Falcon Safety Products provided false, inadequate, and misleading warnings, labels, promotions, marketing, and information, of the risks and dangers associated with the foreseeable misuse of Dust-Off that might befall not just the person inhaling Dust-Off, but innocent bystanders in motor vehicle crashes as well.

193. At all material and relevant times, Falcon Safety Products failed to provide adequate warnings of the risks and dangers associated with the foreseeable misuse of Dust-Off that might befall not just the person inhaling Dust-Off, but innocent bystanders in motor vehicle crashes as well.

194. Reasonable further investigation and discovery may show that at all material and relevant times, Falcon Safety Products falsely claimed that Dust-Off contained a “bittering agent” that would deter inhalant abuse, and, in fact, Dust-Off contained no such “bittering agent.”

195. At all material and relevant times, Falcon Safety Products falsely claimed that Dust-Off contained a “bittering agent” that would deter inhalant abuse, when in fact the “bittering agent” was completely ineffective.

196. At all material and relevant times, Falcon Safety Products failed to add a “bittering agent” or other product to Dust-Off that effectively deterred inhalant abuse.

197. At all material and relevant times, people predictably and foreseeably continued to use Dust-Off to get high, drive while high on Dust-Off, lose control of their vehicles, and injure or kill innocent bystanders, including Danette Rardon.

198. At all material and relevant times, Defendants maliciously and wantonly and willfully disregarded the rights and safety of the public, including Danette Rardon because they placed dust remover products containing difluoroethane—such as Dust-Off—into the stream of commerce and, according to Philip Lapin, Falcon Safety Products specifically opposes reasonable restrictions on the sale of its dust remover products—such as Dust-Off—to adults despite knowledge that people will continue to use Dust-Off to get high, drive while high on Dust-Off, lose control of their vehicles, and injure or kill innocent bystanders, including Danette Rardon:<sup>125</sup>

15 Q. Are you aware of company efforts to  
16 oppose restriction on the sale of duster products  
17 to those who are of the age of majority?  
18 A. Yes.

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<sup>125</sup> Exhibit 3, Lapin Dep. 118:15–18, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

199. At all material and relevant times, Defendants maliciously and wantonly and willfully disregarded the rights and safety of the public, including Danette Rardon because they placed dust remover products containing difluoroethane—such as Dust-Off—into the stream of commerce and, according to Philip Lapin, Falcon Safety Products opposes reasonable restrictions on the sale of its dust remover products—such as Dust-Off—to children, despite the fact that data indicates that teenagers may be the most prevalent users of its products as intoxicants:<sup>126</sup>

15 Q. So in spite of the fact that  
16 teenagers are the most prevalent users, according  
17 to this study, of your product as an intoxicant,  
18 you still oppose legislation to restrict sale of  
19 dusters manufactured by your company to those  
20 teens?

21 A. Yes.

200. At all material and relevant times and upon information and belief, Defendants maliciously and wantonly and willfully disregarded the rights and safety of the public in the past, including Danette Rardon, and will continue doing so into the future because, Defendants will continue to sell Dust-Off and specifically oppose any reasonable restrictions on the sale of its dust remover products—such as Dust-Off—despite knowledge that people will continue to use Dust-Off to get high, drive while high on Dust-Off, lose control of their vehicles, and injure or kill innocent bystanders, including Danette Rardon.

201. Defendant Walmart also knew that the DFE-containing dust remover products it sells, including Dust-Off, are misused inhalants, and that this foreseeable misuse would cause harm

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<sup>126</sup> Exhibit 3, Lapin Dep. 142:15–21, *Cheney v. Willson, et al.*, No. 50-2013-CA-OO7140-MB(AN), (Fla. Cir. Ct. Sep. 13, 2016).

to innocent bystanders, including in motor vehicle crashes. Plaintiffs have commenced civil lawsuits against Walmart for this exact problem. For example, in 2012 two Florida residents brought suit against Walmart and the manufacturer of another DFE-containing dust remover product, Ultra Duster, the plaintiffs were struck and seriously injured by a woman who was high on Ultra Duster while driving.<sup>127</sup> A copy of that 2012 Complaint is attached hereto as Exhibit 4. Joe Bussell testified in that case as the Corporate Representative of Walmart on October 22, 2015. A copy of his deposition transcript is attached hereto as Exhibit 5.<sup>128</sup>

202. According to Joe Bussell, Walmart is and has been aware that people inhale dust removers to get high, and that people “abuse[] it”:<sup>129</sup>

9 |           walmart is aware that consumers of canned air  
10 | purchased in it's stores often buy it to inhale it and get  
11 | high. Right?  
12 |                           MR. WOOD: Objection. Argumentative.  
13 |                           MR. SANTIAGO: Object to the form.  
14 |                           MR. WOOD: Asked answered, and move to  
15 | strike.  
16 | A.     Again, walmart is aware that customers have  
17 | purchased the product and misused it or abused it, in the  
18 | past, yes.

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<sup>127</sup> Complaint, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Nov. 20, 2012) (attached hereto as Exhibit 4).

<sup>128</sup> Deposition Transcript of Joe Bussell (“Bussel Dep.”) (attached hereto as Exhibit 5), *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015)

<sup>129</sup> Exhibit 5, Bussell Dep. 36:9–18, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

203. Joe Bussell similarly testified under oath that Walmart was aware that people misused and abused dust removers since at least 2008:<sup>130</sup>

11 Q. So walmart was aware people were actually huffing in  
12 their stores and passing out in 2008; right?  
13 A. Yes. Again, those types of incidents are what led  
14 us to request that there was a bittering agent in the  
15 products.

204. Joe Bussell also testified that Walmart “required” manufacturers of dust removers to incorporate a bittering agent into their products “to help discourage” inhalant abuse.<sup>131</sup>

19 Q. (Mr. Cornwell continued.) In fact, walmart is aware  
20 that manufacturers that it buys canned air from have  
21 claimed to have altered the chemical composition of the  
22 product to discourage the inhalation of the product;  
23 right?  
24 A. walmart actually requires that the products that we  
25 buy that are canned air contain a bitterant to help  
1 discourage that activity, yes.

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<sup>130</sup> Exhibit 5, Bussell Dep. 148:11–15, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

<sup>131</sup> Exhibit 5, Bussell Dep. 36:19–37:1, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

205. According to Joe Bussell, Walmart has “required” a bittering agent since at least 2011:<sup>132</sup>

14 | Q. (Mr. Cornwell continued.) Do you know when Walmart  
15 | required its canned air suppliers to incorporate a  
16 | bitterant in the product?  
17 | A. I believe it was 2011.

206. At all material and relevant times, the “bittering agent” that Defendants advertised as an ingredient added to “discourage inhalant abuse,” in fact, did not work for its intended or advertised purpose.

207. According to Joe Bussell, for example, Walmart did not require that manufacturers of dust removers actually test their products to ensure a “bittering agent” was actually released from the product:<sup>133</sup>

7 | Are you aware that Walmart did not require AWD to  
8 | demonstrate that bitterant actually comes out of the can?  
9 | A. I'm not even aware how they would demonstrate that,  
10 | so, no, we wouldn't require that.

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<sup>132</sup> Exhibit 5, Bussell Dep. 54:14–17, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

<sup>133</sup> Exhibit 5, Bussell Dep. 139:7–10, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

208. In fact, according to Joe Bussell's testimony in the case involving Ultra Duster, Walmart had not seen any research or data that showed whether Ultra Duster released a "bittering agent" when Ultra Duster was sprayed.<sup>134</sup> Upon information and belief, the answer would be the same concerning Dust-Off. Joe Bussell testified:

1 Q. Well, have you seen the research or data that shows  
2 that none of the bitterant comes out of the can when you  
3 spray the product called Ultra Duster?  
4 MR. WOOD: Same objection.  
5 A. Related to --  
6 MR. WARING: Object to form.  
7 MR. SANTIAGO: Join.  
8 A. I have not seen that, no.

209. Moreover, according to Joe Bussell, Walmart was not aware of any data that showed whether the "bittering agent" was even effective:<sup>135</sup>

3 So the question is yes or no. Either you have seen data  
4 research studies or something that indicates to you that  
5 bitterant has some effect on the inhalation of canned air,  
6 or you haven't. And you've not seen any such study, have  
7 you?  
8 MR. WOOD: Objection. Move to strike.  
9 MR. SANTIAGO: Object to form.  
10 A. The answer is no, because I would have no reason to.

210. At all material and relevant times, people continued to abuse dust removers, including Dust-Off, in order to get high despite the advertised "bittering agent."

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<sup>134</sup> Exhibit 5, Bussell Dep. 43:1–8, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

<sup>135</sup> Exhibit 5, Bussell Dep. 41:3–10, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

211. At all material and relevant times, Defendants knew or should have known that people continued to abuse dust removers to get high, despite advertising to the public that dust removers contained a bittering agent to help discourage inhalant abuse.

212. According to Joe Bussell, Walmart was aware that people continued to abuse dust removers despite the advertised “bittering agent” since at least 2012:<sup>136</sup>

5           walmart was well aware in 2012 after it had required  
6 a bitterant to be put in canned air products, that people  
7 continued to buy it and inhale it; right?  
8 A.       walmart was aware that these incidents occurred.  
9 Q.       Continued to occur; right?  
10 A.       Again, walmart is aware that these incidents have  
11 occurred. As far as continuing to occur or how often they  
12 do, I'm not sure what that is.

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<sup>136</sup> Exhibit 5, Bussell Dep. 74:5–12, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).



213. According to Joe Bussell, Walmart was aware that people continued to abuse dust removers in Walmart stores and Walmart parking lots:<sup>137</sup>

3 Q. (Mr. Cornwell continued.) Walmart was also aware of  
4 hundreds of incidents involving individuals inhaling Ultra  
5 Duster on store property, in the store parking lot,  
6 driving vehicles, crashing cars, killing themselves, and  
7 killing others, in 2012, wasn't it?

8 MR. WOOD: Same objection.

9 A. Again, I don't know the specific nature of the  
10 complaints. Walmart was aware that there were incidents  
11 involving people inhaling this product, and that's why  
12 Walmart engaged with the suppliers to determine what sort  
13 of action could be taken to deter that type of activity.

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<sup>137</sup> Exhibit 5, Bussell Dep. 54:3–13, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015).

214. In fact, Walmart was aware that people continued to abuse dust removers in a manner that resulted in death and injury to innocent bystanders in motor vehicle crashes in Walmart's parking lot:<sup>138</sup>

12 Q. (Mr. Cornwell continued.) well, let me read it into  
13 the record. "Deputies say Jones huffed an aerosol  
14 computer cleaner for several hours before the car he was  
15 driving struck Starnes in a crosswalk, then hit a parked  
16 truck and a tree." Do you see that?

17 A. Yes.

18 Q. It goes on to say that "huffing led Jones to lose  
19 consciousness, which he didn't regain until the air bag  
20 deployed, deputies said." okay?

21 A. It says that, yes.

22 Q. Yeah. Is this an incident that walmart would be  
23 aware of since it occurred in their parking lot?

24 A. Our asset protection team would be aware of it since  
25 it occurred in the parking lot, yes.

215. At all material and relevant times, Defendants knew or should have known that the advertised "bittering agent" did not effectively discourage abuse of Dust-Off as an inhalant.

216. At all material and relevant times, Defendants maliciously and wantonly and willfully placed Dust-Off into the stream of commerce where misusers of Dust-Off predictably and foreseeably used Dust-Off to get high, drive while high on Dust-Off, lose control of their vehicles, and injure or kill innocent bystanders, including Danette Rardon.

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<sup>138</sup> Exhibit 5, Bussell Dep. 121:12–25, *Grieco v. Merrill, et al.*, No. 50-2012-CA-021342-MB(AD), (Fla. Cir. Ct. Oct. 22, 2015). See also *id.* at 116, 120, 125, 144, 146, 147, 149, 152, 155, 157, 159, 161, 162, 166, 167, 169, 172, 174, 176, 177, 178, and 181.

## DANETTE RARDON'S FATAL INJURIES

217. On November 25, 2017, Shawn M. Yuille (hereinafter "Yuille") was driving his vehicle in the City of Chillicothe, County of Livingston, State of Missouri, with passengers Jeremy Osburn and I.R.Y. (a minor).

218. While driving, Yuille huffed a can of dust remover.

219. The dust remover that Yuille inhaled and got high from was Falcon Safety Products's Dust-Off, that Yuille and Osburn had purchased the same day from Walmart:<sup>139</sup>

collision event with the Hyundai Santa Fe. Physical evidence located in the Ford F-150 confirmed I.R.Y. was not properly restrained, which resulted in her sustaining serious physical injuries. Two cans of "Dust Off" compressed gas duster was located inside the Ford F-150, inside a white Wal-Mart sack. The cans were sold in a two-pack and the plastic packaging securing the two cans had been opened. All items seized were secured into Troop H Evidence.



220. Yuille got high from intentionally huffing Dust-Off purchased from Walmart.

221. Yuille got high from huffing Dust-Off despite the advertised presence of a bittering agent in the product.

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<sup>139</sup> *Missouri State Highway Patrol*, Incident Report, RMS Report Number: R005833115.

222. Yuille lost consciousness and/or all control of his bodily movements when he was high on Dust-Off and driving.

223. Yuille lost the ability to drive and the ability to maintain control of his vehicle when he was high on Dust-Off.

224. Because Yuille predictably and foreseeably huffed Dust-Off that he purchased in the State of Missouri, got high, lost consciousness and/or all control of his bodily movements, and lost the ability to maintain control of his vehicle, he predictably and foreseeably failed to stop for an electronic stop light on U.S. 65 at the intersection of Calhoun Street, and struck Danette Rardon's westbound vehicle as she was lawfully turning northbound on U.S. 65, causing Danette Rardon's fatal injuries.

225. The purchase of the Dust-Off, the crash, and Danette Rardon's death all occurred in the City of Chillicothe, County of Livingston, State of Missouri.

### **FIRST CAUSE OF ACTION**

#### **Wrongful Death**

226. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

227. Tony Rardon, individually and as personal representative of Danette Rardon's Estate, brings this wrongful death claim pursuant to Mo. Rev. Stat. § 537.080.

228. The negligent and wrongful acts and omissions of Defendants as alleged herein had a substantial part in bringing about Danette Rardon's death.

229. As a direct and proximate result of the negligent and wrongful acts of Defendants, Tony Rardon claims damages for grief and mental anguish.

230. Tony Rardon also claims damages for loss of the financial support and economic value that Danette Rardon would have provided to her beneficiaries and Estate during her lifetime, including, but not limited to earnings, maintenance, support, inheritance and other similar losses that such beneficiaries would have received from Danette Rardon for the rest of her natural life.

231. Tony Rardon claims damages for all pecuniary losses suffered by Danette Rardon's beneficiaries and the pecuniary value of the anticipated services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of Danette Rardon to the survivors and all other damages pursuant that may be recovered pursuant to this action brought under Mo. Rev. Stat. § 537.080.

232. Tony Rardon also claims damages for the injuries Danette Rardon suffered and incurred before the time of her death as a result of the Defendants' conduct.

233. By reason of the foregoing, Tony Rardon, individually and as personal representative, claims damages for Danette Rardon's past and future loss of consortium, services, society, support, guidance, tutelage, comfort and other similar losses.

## **SECOND CAUSE OF ACTION**

### **Strict Products Liability – Defective Design**

234. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

235. At all material and relevant times, the Dust-Off product at issue in this case was sold in the course of Defendants' business.

236. The Defendants' Dust-Off product at issue in this case was in a defective condition unreasonably dangerous when put to a reasonably anticipated use or misuse.

237. At all material and relevant times, the Dust-Off product at issue in this case was in substantially the same condition as it was when it left Defendants' control.

238. At all material and relevant times, the can of Dust-Off at issue in this case was not altered in any way since the time it left Defendants' control.

239. At all material and relevant times, the Dust-Off product at issue in this case was misused in a reasonably foreseeable and anticipated manner.

240. At all material and relevant times, Danette Rardon's injuries and death were reasonably foreseeable.

241. At all material and relevant times, Danette Rardon's injuries and death were a reasonably foreseeable result of Dust-Off's defective design, which existed at the time the product was sold.

242. At all material and relevant times, safer, technologically feasible, and practical alternative designs were, have been, and are available to Defendants that would have prevented Danette Rardon's injuries and death and the resulting damages to her family, without substantially impairing the reasonably anticipated and/or intended function of Dust-Off.

243. At all material and relevant times, safer, technologically feasible, and practical alternative designs were, have been, and are available to Defendants that would have prevented Danette Rardon's injuries and death, without rendering Dust-Off too expensive for it to be reasonably marketable.

244. At all material and relevant times, the risk of harm caused by Dust-Off's defective design has outweighed and continues to outweigh its utility.

245. At all material and relevant times, safer designs for Dust-Off were available to Defendants that were practicable, feasible, and/or otherwise reasonable alternative designs and/or

formulations that would have prevented or substantially reduced the risk of injury, harm, and death to innocent bystanders in motor vehicle crashes.

246. At all material and relevant times, safer, technologically feasible, and practical alternative designs were, have been, and are available to Defendants that would have reduced and/or prevented foreseeable misuse of Dust-Off.

247. Reasonable, safer alternative designs of Dust-Off, include, but are not limited to, modifications in the packaging of Dust-Off, including a modification so that less DFE can be released during each spray.

248. Reasonable, safer alternative designs of Dust-Off, include, but are not limited to, modifications in the formulation, and/or amount, and/or inclusion altogether of the propellant, DFE, found in Dust-Off.

249. Reasonable, safer alternative designs of Dust-Off, include, but are not limited to, modifications in the formulation, and/or amount, and/or inclusion altogether of Dust-Off's "bittering agent."

250. Reasonable, safer alternative designs of Dust-Off, include, but are not limited to, providing adequate warnings and instructions on the Dust-Off product packaging.

251. Multiple safer, feasible alternative designs of Dust-Off were, have been, and are available to Defendants, yet, Defendants have marketed and sold, and continue to market and sell, Dust-Off, a defectively designed and unreasonably dangerous product.

252. At all material and relevant times, it was reasonably foreseeable and anticipated that Danette Rardon could be injured and/or killed as a result of the design defects of the Dust-Off product at issue in this case.

253. At all material and relevant times, the design defect or defects concerning the Dust-Off product at issue in this case were a substantial, direct, and proximate cause of Danette Rardon's injuries and death and the resulting damages to her and her family.

### **THIRD CAUSE OF ACTION**

#### **Strict Products Liability –Manufacturing Defect**

254. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

255. At all material and relevant times, the Dust-Off product at issue in this case was in substantially the same condition as it was when it left Falcon Safety Products's control.

256. At all material and relevant times, the Dust-Off product at issue in this case was in substantially the same condition as it was when it left Walmart's control.

257. At all material and relevant times, the can of Dust-Off at issue in this case was not altered in any way since the time it left Defendants' control.

258. At all material and relevant times, the Dust-Off product at issue in this case contained a manufacturing defect and was not reasonably fit, suitable or safe.

259. At all material and relevant times, the Dust-Off product at issue in this case was misused in a reasonably foreseeable and anticipated manner.

260. At all material and relevant times, Danette Rardon's injuries and death were reasonably foreseeable.

261. At all material and relevant times, Danette Rardon's injuries and death were a reasonably foreseeable result of Dust-Off's defective manufacture, which existed at the time the product was sold.



262. At all material and relevant times, the Dust-Off product at issue in this case deviated from the design specifications, formulae, and performance standards of Falcon Safety Products's Dust-Off.

263. At all material and relevant times, the can of Dust-Off at issue in this case was manufactured differently than the same product as manufactured according to Falcon Safety Products's manufacturing standards.

264. At all material and relevant times, concerning the Dust-Off can at issue in this case, the "bittering agent" that Defendants advertised as an ingredient added to Dust-Off to deter "inhalant abuse," did not work for its intended or advertised purpose.

265. At all material and relevant times, Defendants have advertised that a "bittering agent," and/or formulation deters abuse. Because the Dust-Off product at issue in this case was abused, a manufacturing defect apparently existed in the Dust-Off product at issue in this case, as it was unable to deter abuse.

266. Reasonable further investigation and discovery may show that the Dust-Off product at issue in this case did not contain a "bittering agent" whatsoever.

267. Upon information and belief, reasonable investigation and discovery may show that some cans of Dust-Off manufactured by Falcon Safety Products contain a "bittering agent" and some cans do not, although Defendants' design specifications and performance standards mandate that all Dust-Off cans contain a "bittering agent."

268. Upon information and belief, reasonable investigation and discovery may show that, concerning the Dust-Off product at issue in this case, the "bittering agent" did not uniformly mix with the DFE, and, thus, the "bittering agent" simply rested inside the can and did not escape the can along with DFE when the can was sprayed.

269. At all material and relevant times, it was reasonably foreseeable that Danette Rardon could be injured and/or killed as a result of the manufacturing defect or defects of the can of Dust-Off at issue in this case.

270. At all material and relevant times, the manufacturing defect or defects concerning the can of Dust-Off at issue in this case were a substantial, direct, and proximate cause of Danette Rardon's injuries and death and the resulting damages to her and her family.

#### **FOURTH CAUSE OF ACTION**

##### **Strict Products Liability – Failure to Warn**

271. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

272. At all material and relevant times, Defendants failed to provide an adequate warning on the Dust-Off product at issue in this case.

273. At all material and relevant times, Defendants knew or should have known that drivers impaired by inhaling Dust-Off have injured bystanders in motor vehicle crashes.

274. At all material and relevant times, Defendants knew or should have known that a driver misusing Dust-Off could cause injury, harm, and/or death to innocent bystanders in motor vehicle crashes.

275. At all material and relevant times, Falcon Safety Products did not act as reasonably prudent manufacturers, distributors, or sellers would have acted because reasonably prudent manufacturers, distributors, and sellers would have kept reasonably familiar with news events and stories, scientific studies, and other reliable information concerning the foreseeable misuse of Dust-Off while driving, which has caused injury, harm, and death to innocent bystanders in motor

vehicle crashes, and reasonably prudent manufacturers, distributors, and sellers would have enhanced their warnings based on this information.

276. At all material and relevant times, Walmart did not act as a reasonably prudent retailer, because a reasonably prudent retailer would have kept reasonably familiar with news events and stories, scientific studies, and other reliable information concerning the foreseeable misuse of Dust-Off while driving, which has caused injury, harm, and death to innocent bystanders in motor vehicle crashes, and a reasonably prudent manufacturer would have enhanced its warning based on this information.

277. At all material and relevant times, Defendants provided false and misleading warnings, labels, promotions, marketing, and information about the deterrent effect of Dust-Off's "bittering agent."

278. At all material and relevant times, Defendants did not provide any warning on the Dust-Off product at issue in this case concerning the risks and dangers associated with the foreseeable misuse of Dust-Off, including the risks and dangers of causing injury, harm, and/or death to innocent bystanders in motor vehicle crashes.

279. At all material and relevant times, Defendants failed to provide adequate warnings and/or instructions to others in the chain of distribution about the risks and dangers associated with the foreseeable misuse of Dust-Off, including the risks and dangers of causing injury, harm, and death to innocent bystanders in motor vehicle crashes.

280. At all material and relevant times, Defendants failed to provide adequate warnings and/or instructions about the risks and dangers associated with the foreseeable misuse of Dust-Off that might befall not just the person inhaling Dust-Off, but might injure innocent bystanders in motor vehicle crashes. Defendants failed to convey this information to distributors and/or retailers

of Falcon Dust-Off, as well as to foreseeable misusers of Dust-Off, regulatory authorities, law enforcement authorities, legislative authorities, news organizations, and/or any other relevant service or organization that could implement restrictions concerning the improper use and/or sale of Dust-Off.

281. At all material and relevant times, had Defendants provided adequate warnings or instructions about the risks and dangers associated with the foreseeable misuse of Dust-Off, including warnings concerning the risks and dangers of causing injury, harm, and/or death to innocent bystanders in motor vehicle crashes, that warning would have been heeded by the Dust-Off misuser involved in the motor vehicle crash that injured killed Danette Rardon.

282. At all material and relevant times, Defendants' failure to provide adequate warnings to the foreseeable misuser of the Dust-Off product at issue in this case was a substantial, direct, and proximate cause of Danette Rardon's injuries and death and the resulting damages to her and her family.

## **FIFTH CAUSE OF ACTION**

### **Negligence**

283. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

284. At all material and relevant times, Defendants had a duty to exercise reasonable care in the design, research, formulation, manufacture, production, marketing, testing, supply, promotion, packaging, sale, distribution and/or monitoring of Dust-Off, including a duty to assure that the product would not cause foreseeable injuries through foreseeable misuse.

285. At all material and relevant times, Defendants' conduct, acts, and omissions were negligent and wrongful because Defendants propagated false and misleading information that Dust-Off was and/or contained an "abuse deterrent formulation" when it was and/or did not.

286. At all material and relevant times, Defendants' conduct, acts, and omissions were negligent and wrongful because Defendants knew or should have known that Dust-Off was being misused by many consumers to get high, and Defendants have either failed to convey this information or have concealed this information from foreseeable misusers of Dust-Off, regulatory authorities, law enforcement authorities, legislative authorities, news organizations and/or any other relevant service or organization that could implement restrictions concerning the improper use and/or sale of Dust-Off.

287. At all material and relevant times, Defendants' conduct, acts, and omissions were negligent and wrongful because Defendants relied on the fact that Dust-Off was widely misused in order to maintain and/or enhance sales of Dust-Off.

288. The negligent and wrongful acts and omissions of Defendants as alleged herein had a substantial part in bringing about Danette Rardon's death.

289. At all material and relevant times, Defendants' carelessness and negligence was a substantial, direct, and proximate cause of Danette Rardon's injuries and death and the resulting damages to her and her family.

## **SIXTH CAUSE OF ACTION**

### **Breach of Implied Warranty**

290. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

291. At all material and relevant times, Defendants designed, manufactured, distributed, advertised, promoted, and sold Dust-Off.

292. At all material and relevant times, Defendants impliedly warranted to others in the chain of distribution and sale, as well as end-users that Dust-Off was safe, of merchantable quality, and adequately fit for foreseeable use.

293. At all material and relevant times, Defendants were aware that consumers, including Yuille, would intentionally inhale the Dust-Off for its intoxicating effects while driving.

294. At all material and relevant times, consumers and the public, including Danette Rardon and Yuille, reasonably relied upon the judgment and sensibility of Defendants to sell Dust-Off only if it was indeed of merchantable quality and safe and fit for its foreseeable uses.

295. At all material and relevant times, Defendants breached their implied warranties, including pursuant to Mo. Rev. Stat § 400.2-315, to consumers and the public, including Danette Rardon and Yuille, because the Dust-Off was not of merchantable quality or safe and fit for its intended use.

296. At all material and relevant times, Defendants' Dust-Off product was not of the same quality as those generally acceptable in the trade, was not fit for the ordinary purposes for which the Dust-Off is used, was not adequately contained, packaged, and labeled, and did not measure up to the promises or facts stated on the product's container or label.

297. At all material and relevant times, consumers and the public, including Danette Rardon and Yuille, by the use of reasonable care, would not have discovered the breached warranty and realized Dust-Off's danger.

298. At all material and relevant times, Defendants' breach of their implied warranties was a substantial, direct, and proximate cause of Danette Rardon's injuries and death and the resulting damages to her and her family.

## **SEVENTH CAUSE OF ACTION**

### **Public Nuisance**

299. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

300. At all material and relevant times, Defendants knew or should have known that people continued to abuse Dust-Off in order to get high despite the advertised "bittering agent."

301. At all material and relevant times, Defendants knew or should have known that people were using Dust-Off in a manner that resulted in death and injury to innocent bystanders in motor vehicle crashes.

302. At all material and relevant times, Defendants engaged in deceptive, unconscionable, unfair and misleading commercial practices in the marketing and sale of Dust-Off that Defendants knew to be defective.

303. At all material and relevant times, Defendants provided false and misleading warnings, labels, promotions, marketing, and information about the risks and dangers associated with the foreseeable misuse of Dust-Off that might befall not just the person inhaling Dust-Off, but innocent bystanders in motor vehicle crashes as well.

304. At all material and relevant times, Defendants induced people to use Dust-Off in a manner that resulted in death and injury to innocent bystanders in motor vehicle crashes, with the intent that people rely thereon in connection with the sale or advertisement of Dust-Off through the use of deception, fraud, false advertising, false pretenses, misrepresentations, unfair and/or

deceptive practices and the concealment and suppression of material facts, including but not limited to fraudulent statements, concealments and misrepresentations identified herein and above.

305. At all material and relevant times, Defendants' actions and omissions have created a public nuisance. Defendants' carelessness, negligence, recklessness, deception, and concealment constitutes an unreasonable interference with the exercise of the common rights of the health, safety, and welfare to the general public, and has maintained or permitted a condition which unreasonably endangers the safety and health of Tony Rardon.

306. Defendants' failure to inform the public about the risks and dangers associated with the foreseeable misuse of Dust-Off, and failure to disclose that Dust-Off lacked the "bittering agent" to deter inhalant abuse, has prevented and continues to prevent the public the public from knowing of a real danger, and has thereby endangered the safety and health of the members of the general public by allowing more people to continue to inhale and abuse Dust-Off, resulting in an increased risk and danger of injury, harm, and death to himself and innocent bystanders in motor vehicle crashes.

307. Defendants' carelessness, negligence, recklessness, deception, and concealment is of a constant and continuing nature. Defendants' actions and omissions will undoubtedly continue to cause long-lasting effects on members of the general public, including, but not limited to innocent bystanders in motor vehicle crashes.

308. Defendants' carelessness, negligence, recklessness, deception, and concealment was specially injurious to Tony Rardon's health and personal enjoyment of life as his daughter, Danette Rardon, was killed by a driver who inhaled and abused Dust-Off, and his fear and apprehension that another person will be killed or harmed in the same manner is therefore not common to the general public.



309. Defendants' carelessness, negligence, recklessness, deception, and concealment was specially injurious to Tony Rardon and his personal enjoyment of life in that when Tony Rardon finally discovered Defendants' carelessness, negligence, recklessness, deception, and concealment, Tony Rardon experienced mental and emotional anguish because his beloved daughter, Danette Rardon, had been the victim of Defendants' carelessness, negligence, recklessness, deception, and concealment. Tony Rardon continues to experience mental and emotional anguish because he fears that Defendants' carelessness, negligence, recklessness, deception, and concealment will continue to harm and kill other innocent bystanders in Missouri, and throughout the United States.

310. At all material and relevant times, the foreseeable risks of injury, harm, and death to innocent bystanders in motor vehicle crashes due to Dust-Off far outweighed the benefits associated with Dust-Off.

311. Defendants' design, manufacture, marketing, distribution, and sale of Dust-Off, if unabated, will continue to cause an unreasonable interference with public rights of the members of the general public, including, but not limited to innocent bystanders in motor vehicle crashes.

312. As a direct and proximate result of Defendants' carelessness, negligence, recklessness, deception, and concealment, and of their design, manufacture, distribution, and sale of an unreasonably dangerous product Danette Rardon, her family, and the general public have suffered, and in the future will suffer permanent and substantial losses, harms and damages, as more fully described herein.

## **EIGHTH CAUSE OF ACTION**

### **Survivorship Action**

313. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

314. By reason of the foregoing, and as a direct and proximate result of Defendants' conduct, Danette Rardon suffered damages, including, but not limited to, bodily injury, severe physical pain and mental anguish and suffering, loss of capacity of the enjoyment of life, shortened life expectancy, loss of life, fear and anxiety, expense of hospitalization, medical treatment, and associated costs, funeral and burial expenses, and other damages prior to Danette Rardon's death.

315. By reason of the foregoing, Tony Rardon individually, as a successor in interest and/or heir, and as Personal Representative of Danette Rardon's Estate claims damages compensable against Defendants.

## **NINTH CAUSE OF ACTION**

### **Loss of Child's Services, Earnings, Companionship and Advice**

316. Tony Rardon repeats, reiterates, re-alleges and incorporates by reference every allegation contained in the previous paragraphs as if fully set forth herein at length.

317. Tony Rardon is Danette Rardon's father.

318. Tony Rardon has individually suffered damages as a result of Defendants' wrongful acts and/or omissions.

319. Tony Rardon claims damages for Danette Rardon's past and future loss of consortium, services, society, support, guidance, tutelage, comfort and similar losses.

320. Tony Rardon claims damages for loss of Danette Rardon's household chores and earnings.

321. Tony Rardon claims damages for loss of Danette Rardon's companionship, care, and all other services a child provides and/or may provide to a parent in the past, present, and future.

**NOTICE OF INTENT TO SEEK PUNITIVE DAMAGES**

322. Please be advised that after commencement of this action, Tony Rardon intends to move the Court for permission to amend this Complaint to allege a claim for punitive damages against Defendants because, on information and belief, Defendants acted with deliberate and flagrant disregard for the safety of others under Mo. Rev. Stat. § 510.261.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Tony E. Rardon, Individually and as Personal Representative for the Estate of Danette L. Rardon, prays for judgment against Defendants, as follows:

1. Awarding Plaintiff damages against Defendants in an amount reasonably in excess of Seventy-Five Thousand Dollars (\$75,000.00);
2. For injunctive relief:
  - a. prohibiting the sale of dust removers designed, manufactured, distributed, and sold by Defendants containing difluoroethane to minors;
  - b. prohibiting the sale of more than one can of dust removers designed, manufactured, distributed, and sold by Defendants containing difluoroethane per consumer within a 30-day period of time;
  - c. prohibiting Defendants from designing, manufacturing, distributing, and selling dust removers containing difluoroethane without an effective physical mechanism or chemical composition to deter inhalant abuse.

3. Ordering an abatement of the ongoing public nuisance conditions caused by Dust-Off;
4. Awarding Plaintiff pre-judgment and post-judgment interest;
5. Awarding Plaintiff his reasonable costs and disbursements;
6. Awarding Plaintiff punitive damages;
7. Awarding Plaintiff costs of investigation and reasonable attorney's fees;
8. Awarding such additional relief as the Court may deem just and equitable.

**A JURY TRIAL IS HEREBY DEMANDED BY PLAINTIFF.**

Dated: 11/17/2020

**ROBINS KAPLAN LLP**

By: /s/ Jason W. Pfeiffer

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