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12 *Attorneys for Plaintiffs, RORY FOLEY and AMY FOLEY*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 14 **FOR THE COUNTY OF LOS ANGELES**

15 RORY FOLEY, an individual; and AMY  
16 FOLEY, an individual,

17 Plaintiffs,

18 v.

19 EAGTAC, LLC; LONGHORN TACTICAL  
 20 L.L.C.; LUMEN TACTICAL LLC DBA  
 21 LONGHORN TACTICAL; WALMART INC.;  
 22 and DOES 1 through 50, Inclusive,

23 Defendants.

24 **CASE NO.**

25 **COMPLAINT FOR DAMAGES**

- 26 1. **STRICT PRODUCT LIABILITY –**  
27 **MANUFACTURING DEFECT**
- 28 2. **STRICT PRODUCT LIABILITY –**  
**DESIGN DEFECT**
3. **STRICT PRODUCT LIABILITY –**  
**FAILURE TO WARN**
4. **NEGLIGENCE**
5. **BREACH OF IMPLIED**  
**WARRANTIES**
6. **LOSS OF CONSORTIUM**

**REQUEST FOR JURY TRIAL**

COME NOW, Plaintiffs, RORY FOLEY and AMY FOLEY, for causes of action against Defendants, and each of them, and who, on information and belief, allege and complain as follows:

1 **PARTIES, JURISDICTION, AND VENUE**

2 1. Plaintiff, RORY FOLEY, is a resident of the County of Los Angeles, State of  
3 California, and the valid and lawful spouse of Plaintiff AMY FOLEY.

4 2. Plaintiff, AMY FOLEY, is a resident of the County of Los Angeles, State of California,  
5 and the valid and lawful spouse of Plaintiff RORY FOLEY.

6 3. Defendant, EAGTAC, LLC (hereinafter referred to as “EAGTAC”), is a Washington  
7 limited liability company with its principal place of business in Washington that, at all material  
8 times hereto, was doing business in the County of Los Angeles, State of California. In business  
9 since 2009, EAGTAC is a worldwide designer/manufacturer/seller/distributor of flashlights and  
10 accessories, including batteries. It currently has authorized dealers in Florida, Illinois, North  
11 Carolina, Texas, and in multiple countries around the world, including Canada, Germany, the  
12 United Kingdom, Poland, the Netherlands, France, Italy, Slovakia, Sweden, Israel, Australia,  
13 Peru, South Africa, Japan, Malaysia, Korea, Vietnam, and Saudi Arabia. EAGTAC also has had  
14 multiple authorized dealers located in California advertising and selling EAGTAC products to  
15 California residents over the course of many years, including but not limited to: Perzi Enterprice,  
16 LLC in Union City, CA in approximately 2011; IVPStore in Los Angeles in approximately 2015;  
17 illumn in San Jose from approximately 2015 to 2020; and Night Owl Gear in Folsom from  
18 approximately 2015 to 2020. In addition, EAGTAC advertises its products directly to consumers,  
19 including those residing in California, and tells consumers where to buy EAGTAC products in  
20 California online through its interactive website: <https://www.eagtac.com>. Upon information and  
21 belief, EAGTAC has earned substantial revenue from advertising and selling many of its batteries  
22 (including the same make and model as the battery that is the subject of this litigation) in  
23 California over the course of many years. Indeed, multiple current EAGTAC authorized dealers  
24 located in the United States but outside of California sell and ship EAGTAC products, including  
25 batteries, directly to California consumers, including [www.longhorn tactical.com](http://www.longhorn tactical.com),  
26 [www.illuminationgear.com](http://www.illuminationgear.com), [www.andrew-amanda.com](http://www.andrew-amanda.com), [www.lightjunction.com](http://www.lightjunction.com),  
27 [www.killzoneflashlights.com](http://www.killzoneflashlights.com), and [www.opticsplanet.com](http://www.opticsplanet.com).

28 4. Defendant, LONGHORN TACTICAL L.L.C. (hereinafter referred to as

1 “LONGHORN”), is a Texas limited liability company with its principal place of business in Texas  
2 that, at all material times hereto, was doing business in the County of Los Angeles. LONGHORN  
3 is an international online seller/distributor of flashlights and accessories, including batteries. It is  
4 an authorized dealer of EAGTAC products and an authorized seller of said products with  
5 WALMART INC. LONGHORN also advertises and sells EAGTAC products to consumers,  
6 including those residing in California, online through its interactive website:  
7 <https://www.longhorntactical.com>.

8 5. Defendant, LUMEN TACTICAL LLC DBA LONGHORN TACTICAL (hereinafter  
9 referred to as “LUMEN”), is a Texas limited liability company with its principal place of business  
10 in Texas that, at all material times hereto, was doing business in the County of Los Angeles.  
11 LUMEN does business as LONGHORN and NITECORE STORE. Upon information and belief,  
12 LONGHORN TACTICAL L.L.C. is an alter ego and/or joint venturer of LUMEN. Upon  
13 information and belief, LUMEN and LONGHORN have maintained such a unity of interest and  
14 ownership that the separate personalities of the corporate entities no longer exist, and an  
15 inequitable result would follow if they were treated as separate entities. LUMEN and  
16 LONGHORN are collectively referred to as “LONGHORN/LUMEN” herein.

17 6. Defendant, WALMART INC. (hereinafter referred to as “WALMART”), is a Delaware  
18 corporation with its principal place of business in Arkansas that, at all material times hereto, was  
19 doing business in the County of Los Angeles. WALMART is an international online  
20 seller/distributor of many different products, including flashlights and accessories such as  
21 batteries. According to its website, it currently employs 101,312 California residents and has 310  
22 retail units in California, including 144 Supercenters, 68 Discount Stores, 67 Neighborhood  
23 Markets, 30 Sam’s Clubs, and 1 Other Pharmacy Formats. It also has 17 distribution centers and  
24 4 fulfillment centers in California. In addition, WALMART collected \$1.3 billion and paid \$608.5  
25 million in taxes and fees in California for its fiscal year end in 2022. It can be served with process  
26 in California via its agent for service of process, C T Corporation System, 330 N Brand Blvd Ste  
27 700, Glendale, California 91203. WALMART advertises and sells EAGTAC products to  
28 consumers, including those residing in California, online through its interactive website:

1 <https://walmart.com>.

2 7. The true names and capacities, whether individual, corporate, associate or otherwise,  
3 of defendants DOES 1 through 50, inclusive, are unknown to Plaintiffs, who are therefore sued  
4 by those fictitious names pursuant to the provisions of California Code of Civil Procedure section  
5 474. Plaintiffs are informed and believe, and therefore allege, that each of those defendants was  
6 in some manner tortiously responsible for the events and happenings alleged in this complaint  
7 and legally caused the injuries and damages alleged herein; Plaintiffs will amend this complaint  
8 to show their true names and capacities when the same have been ascertained.

9 8. Plaintiffs are informed and believe and thereupon allege that at all times mentioned  
10 herein, Defendants, and each of them, including DOES 1 through 50, inclusive, and each of them,  
11 were the agents, servants, employees and/or joint venturers of their co-Defendants, and each was,  
12 as such, acting within the course, scope and authority of said agency, employment or venture, and  
13 that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the  
14 selection and hiring of each and every other Defendant as an agent, employee and/or joint  
15 venturer.

16 9. There exists, and at all times herein alleged, there existed, a unity of interest in  
17 ownership between certain Defendants and other certain Defendants such that any individuality  
18 and separateness between the certain Defendants has ceased and these Defendants are the alter-  
19 ego of the other certain Defendants and exerted control over those Defendants. Adherence to the  
20 fiction of the separate existence of these certain Defendants as an entity distinct from other certain  
21 Defendants will permit an abuse of the corporate privilege and would sanction fraud and would  
22 promote injustice.

23 10. At all times herein mentioned, each of the Defendants identified herein acted as the  
24 authorized agents and representatives of each of the other Defendants in the acts, errors and/or  
25 omissions herein alleged, and each acted within the course and scope of that agency and/or  
26 employment, and/or with the knowledge, consent, acquiescence and/or ratification of the  
27 remaining Defendants.  
28

1           11. The negligence and/or other wrongful conduct of each Defendant identified herein  
2 combined and cooperated with the negligence of each of the remaining Defendants so as to cause  
3 and/or contribute to the herein described occurrence and the resulting loss, damage and/or injuries  
4 to Plaintiffs.

5           12. The Court has personal jurisdiction over Defendants pursuant to California Code of  
6 Civil Procedure section 410.10 because they purposefully availed themselves of conducting  
7 activities within California, this action arises out of or relates to Defendants' contacts with  
8 California, and exercising jurisdiction over Defendants would be constitutionally reasonable.  
9 Upon information and belief, Defendants, through their websites (which are the equivalent of  
10 having a physical store in California), advertising, partners, agents, and authorized dealers,  
11 continuously and deliberately exploited the California marketplace over the course of many years  
12 by advertising and/or selling products to consumers in California such that they should reasonably  
13 anticipate being haled into court in California for harm caused by those products. In this case, and  
14 as part and parcel to their continued contacts with California, Defendants manufactured, sold,  
15 and/or shipped a defective battery to a California resident where it caused harm. This was not an  
16 isolated occurrence, but instead arose from Defendants' efforts to serve, directly or indirectly, the  
17 market for their products in California by advertising and making repeated sales of their products  
18 to California residents over many years through the stream of commerce. Also, through express  
19 or implied sales and authorized dealer agreements between and amongst the Defendants, they  
20 were at all times acting as the authorized agents of each other in making sales of their products to  
21 California residents such that each of the Defendants' individual contacts with California can be  
22 imputed onto the other Defendants.

23           13. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
24 395 because the damages to Plaintiffs were caused by the wrongful actions and omissions of  
25 Defendants, and each of them, all of which resulted in injury within Los Angeles County,  
26 California. The events giving rise to this action occurred in the County of Los Angeles, State of  
27 California, and this Judicial District.  
28

1           14. The amount in controversy as to each Plaintiff exceeds the jurisdictional minimum of  
2 this Court.

3                   **FACTUAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

4           15. Plaintiff RORY FOLEY purchased an EAGTAC battery (hereinafter referred to as the  
5 “SUBJECT BATTERY”) from WALMART’s website. The order was fulfilled by  
6 LONGHORN/LUMEN, an EAGTAC authorized dealer, on behalf of WALMART and shipped  
7 directly to RORY FOLEY in Los Angeles County, California.

8           16. EAGTAC designed, manufactured, tested, packaged, promoted, marketed,  
9 distributed, labeled and/or sold the SUBJECT BATTERY.

10           17. On November 9, 2020, the SUBJECT BATTERY suddenly exploded in the pocket of  
11 Plaintiff RORY FOLEY’s pants, causing him to suffer severe burns on his body.

12           18. The SUBJECT BATTERY was a lithium-ion cell battery. It has a protection circuit  
13 located on the negative end of the cell that is connected to the cell can by a metal tab, and is also  
14 connected to the positive lid of the cell by another metal tab to provide power to the circuit.

15           19. The SUBJECT BATTERY failed due to a defect in its design and/or manufacture. The  
16 protection circuit is attached to the negative end of the cell and therefore cannot protect the cell  
17 from an external short circuit caused by a metallic object that simultaneously contacts the positive  
18 cell terminal and the exposed negative surface of the can.

19           20. At the time that the SUBJECT BATTERY failed, a metallic object (such as a coin or  
20 keys) came into contact with the cell, causing an external short circuit whereby the cell vented  
21 and expelled part of its contents.

22           21. In addition, the SUBJECT BATTERY was defective because it failed to warn the user  
23 that metallic objects coming into contact with the SUBJECT BATTERY can cause an external  
24 short circuit, making the cell overheat and explode. Defendants, therefore, failed to give  
25 instructions regarding the safe use of and necessity of precautions around using the SUBJECT  
26 BATTERY.

27           22. At all times relevant, Plaintiff RORY FOLEY was unaware of the hazards of  
28 Defendants’ SUBJECT BATTERY.



1           30. The SUBJECT BATTERY was defective in manufacture in that the Defendants knew,  
2 or should have known, that the SUBJECT BATTERY could suffer a short circuit and explode  
3 when a metal object simultaneously came into contact with its positive cell terminal and the  
4 exposed negative surface of the can, causing serious and life-threatening injuries. The Defendants  
5 knew at all relevant times, and for an uncertain time prior thereto, that the SUBJECT BATTERY  
6 was used in a reasonably foreseeable manner by Plaintiff, RORY FOLEY and others similarly  
7 situated, as consumers and for the intended purposes for which the SUBJECT BATTERY was  
8 specifically supplied.

9           31. When Plaintiff RORY FOLEY was exposed to the Defendants' SUBJECT BATTERY  
10 and when the aforementioned SUBJECT BATTERY left their possession, said SUBJECT  
11 BATTERY was defective in one or more of the following respects:

- 12           a. It was produced in a substandard condition;
- 13           b. The end product differed from the intended result; and,
- 14           c. It departed from the intended design.

15           32. As a proximate result of the Defendants' defective SUBJECT BATTERY, Plaintiff,  
16 RORY FOLEY, suffered severe burns to his body.

17           33. As a legal result of the Defendants' acts or omissions, Plaintiffs have suffered damages  
18 in an amount in excess of \$25,000, the exact amount to be determined at the time of trial.

19           34. As a direct and proximate result of the acts of the Defendants, as aforesaid, Plaintiff,  
20 RORY FOLEY sustained the following injuries and damages;

- 21           a. Injuries to the body and limbs, all to the general damage in an amount to be  
22           ascertained;
- 23           b. Necessary medical expenses in an amount not yet fully ascertainable; and
- 24           c. Loss of earnings in an amount not yet fully ascertainable.

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1 component parts left their control.

2 37. At the time of the design, formulation, manufacture, processing, distribution, sale,  
3 and/or use of the Defendants' products, said products were defective as designed and/or combined  
4 when put to the use anticipated by the Defendants, as a result, among other things, of their  
5 SUBJECT BATTERY being susceptible to a short circuit and exploding when a metal object  
6 comes into contact with its positive cell terminal and the exposed negative surface of the can,  
7 causing serious and life-threatening injuries.

8 38. As a result of the propensity of the Defendants' products and the component parts  
9 thereof to cause serious and life-threatening injuries, as described above, said products and their  
10 components were unreasonably dangerous and defective when put to the intended and reasonably  
11 foreseeable use anticipated by the Defendants.

12 39. Plaintiff's harm was not caused by an inherent characteristic of the Defendants'  
13 products, which is a generic aspect of their products that cannot be eliminated without  
14 substantially compromising the products' usefulness or desirability.

15 40. A practical and technically feasible alternative design or formulation or packaging was  
16 available for the Defendants' products and the component parts that would have prevented the  
17 harm to Plaintiff, RORY FOLEY, without substantially impairing the usefulness or intended  
18 purpose of said products.

19 41. As a proximate result of the defect of the SUBJECT BATTERY and the exposure of  
20 Plaintiff, RORY FOLEY, to the SUBJECT BATTERY, Plaintiff, RORY FOLEY, suffered severe  
21 burns to his body.

22 42. As a legal result of the Defendants' acts or omissions, Plaintiff, RORY FOLEY, has  
23 suffered damages in an amount in excess of \$25,000, the exact amount to be determined at the  
24 time of trial.

25 43. As a direct and proximate result of the acts of the Defendants, as aforesaid, the  
26 Plaintiff, RORY FOLEY, sustained the following injuries and damages;

- 27 a. Injuries to the body and limbs, all to the general damage in an amount to be  
28 ascertained;



1 Plaintiff, RORY FOLEY, as well as other similarly situated consumers, did not and would not  
2 comprehend the dangerous condition of the SUBJECT BATTERY manufactured/distributed by  
3 Defendants and each of them.

4 51. As a result of the Defendants' failure to adequately instruct and warn of the dangerous  
5 characteristics of the products, said products were defective and unreasonably dangerous when  
6 put to the use reasonably anticipated by the Defendants.

7 52. As a direct and proximate result of the Defendants' lack of sufficient warnings or  
8 instructions, or their failure to provide warnings or instructions, as aforesaid, the Plaintiff, RORY  
9 FOLEY sustained the following injuries and damages:

- 10 a. Injuries to the body and limbs, all to the general damage in an amount to be  
11 ascertained;
- 12 b. Necessary medical expenses in an amount not yet fully ascertainable; and
- 13 c. Loss of earnings in an amount not yet fully ascertainable.

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

##### 15 **Negligence**

16 **(By Plaintiff RORY FOLEY Against Defendants and DOES 1-50 and Each of Them)**

17 53. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
18 contained in Paragraphs 1 to 52, inclusive, as though fully set forth herein.

19 54. At all times relevant hereto, it was the duty of the Defendants to use reasonable care  
20 in the manufacturing, design, distribution, and/or sale of the aforesaid SUBJECT BATTERY  
21 manufactured and distributed by Defendants, and they failed to use reasonable care.

22 55. In disregard of the aforesaid duties, the Defendants were guilty of one or more of the  
23 following careless and negligent acts or omissions:

- 24 a. Manufacturing, producing, processing, promoting, formulating, creating,  
25 developing, designing, selling, and distributing the SUBJECT BATTERY without  
26 using reasonable care in adopting a safe plan or design;
- 27 b. Manufacturing, producing, processing, promoting, formulating, creating,  
28 developing, designing, selling, and distributing the SUBJECT BATTERY without

1 thorough and adequate testing before the product was in the stream of commerce,  
2 and while the product was in the stream of commerce;

3 c. Failing to undertake sufficient studies and conduct necessary tests to determine  
4 whether or not the SUBJECT BATTERY was safe for its intended use;

5 d. Failing to acquire and maintain the knowledge of an expert to manufacture,  
6 produce, process, promote, formulate, create, develop, design, sell, distribute,  
7 and/or supply their products free from defects and/or latent defects;

8 e. Failing to disclose and/or adequately warn of product defects and/or hazards,  
9 which duty continued even after the sale of said SUBJECT BATTERY;

10 f. Failing to provide adequate instructions, guidelines, and safety precautions to  
11 those whom it was reasonably foreseeable would use the SUBJECT BATTERY;

12 g. Failing to disclose and inform users that there were alternative components,  
13 products or designs;

14 h. Representing that the SUBJECT BATTERY was safe for its intended use when in  
15 fact, the Defendants, and each of them, knew and/or should have known the  
16 product was not safe for its intended purposes;

17 i. Continuing to manufacture and sell the SUBJECT BATTERY, with the  
18 knowledge that it was unsafe and dangerous; and/or

19 j. Failing to recall or retrofit the SUBJECT BATTERY, after it was sold.

20 56. The Defendants, and each of them, failed to use due care under the circumstances and  
21 were thereby negligent in the performance of their duties to Plaintiff, RORY FOLEY.

22 57. The SUBJECT BATTERY was used by Plaintiff, RORY FOLEY in a way that was  
23 reasonably foreseeable, and intended, by the Defendants. The SUBJECT BATTERY was unsafe  
24 for the use for which it was intended.

25 58. It would have been economically feasible for the Defendants, and each of them, to  
26 reduce the risk of harm by manufacturing an alternative product or design.

27 59. As a direct and proximate result of the acts of the Defendants, and each of them, as  
28 aforesaid, the Plaintiff, RORY FOLEY sustained the following injuries and damages;

- 1 a. Injuries to the body and limbs, all to the general damage in an amount to be  
2 ascertained;
- 3 b. Necessary medical expenses in an amount not yet fully ascertainable; and
- 4 c. Loss of earnings in an amount not yet fully ascertainable.

5 **FIFTH CAUSE OF ACTION**

6 **Breach of Implied Warranties**

7 **(By Plaintiff RORY FOLEY Against Defendants and DOES 1-50 and Each of Them)**

8 60. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
9 contained in Paragraphs 1 to 59, inclusive, as though fully set forth herein.

10 61. At all times mentioned herein, Defendants, and each of them were the importer,  
11 producer, and/or distributor of the SUBJECT BATTERY, which was purchased by Plaintiff,  
12 RORY FOLEY, who used said product and was severely injured by it when it suddenly, and  
13 without warning, exploded in his pants pocket.

14 62. By placing their products in the stream of commerce, Defendants, and each of them,  
15 impliedly warranted that their products and the component parts thereof here at issue were  
16 reasonably fit for their intended uses, that their products were of merchantable quality, that they  
17 were not defective, that they would function as safely as ordinary users would expect when used  
18 in an intended or reasonably foreseeable manner, and that they would not cause serious disease,  
19 harm, or death.

20 63. Defendants, and each of them, breached said implied warranties because their  
21 products and the component parts thereof were not reasonably fit for their intended uses, were not  
22 of merchantable quality, were defective, and failed to function as safely as an ordinary user would  
23 expect when used in an intended or reasonably foreseeable manner, and caused serious injuries  
24 to Plaintiff RORY FOLEY.

25 64. From his use of the SUBJECT BATTERY, Plaintiff RORY FOLEY was exposed to  
26 a sudden explosion and severe burns on his body.

27 65. Each of the products and its component parts here at issue, to which Plaintiff RORY  
28 FOLEY was exposed, were manufactured and/or supplied by Defendants and each of them.



1 **PRAYER FOR DAMAGES**

2 **WHEREFORE**, Plaintiffs pray for relief against Defendants, and each of them, on the  
3 causes of action contained in this Complaint as follows:

- 4 1. For general damages according to proof at the time of trial;
- 5 2. For special damages according to proof at the time of trial;
- 6 3. For medical expenses and other special damages, past, present, and future,  
7 according to proof at the time of trial;
- 8 4. For loss of earnings and loss earnings capacity, according to proof at the time of  
9 trial;
- 10 5. For loss of consortium according to proof at the time of trial;
- 11 6. For personal property damage according to proof at the time of trial;
- 12 7. For pre-judgment and post-judgment interest as followed by the laws of the State  
13 of California;
- 14 8. For costs of suit incurred herein; and
- 15 9. For such other and further relief as the Court may deem just and proper.

16 DATED: July 27, 2022

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

17  
18 By: Timothy A. Loranger  
19 Timothy A. Loranger  
20 Attorneys for Plaintiffs  
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**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial.

DATED: July 27, 2022

BAUM HEDLUND ARISTEI & GOLDMAN, P.C.

By: Timothy A. Loranger  
Timothy A. Loranger  
*Attorneys for Plaintiffs*

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