

STATE OF NEW MEXICO  
COUNTY OF RIO ARRIBA  
FIRST JUDICIAL DISTRICT

ERIC ARMSTRONG and  
LUKE ARMSTRONG,

Plaintiffs,

vs.

CASE NO.: D-117-CV-2017-00089

EXPRESS RANCHES, LLC,  
a Foreign Corporation, JAMES W.  
ROCKENFIELD, individually, JAMES  
D. WILSON, individually, and  
MICHAEL D. NORMAN, individually,

Defendants.

**SECOND AMENDED COMPLAINT FOR DAMAGES  
RESULTING FROM PERSONAL INJURIES**

COME NOW, Plaintiffs ERIC ARMSTRONG and LUKE ARMSTRONG, by and through their counsel, Hunt & Marshall (Lee R. Hunt, Esq. and Stephen R. Marshall, Esq.), and for their Complaint against Defendants EXPRESS RANCHES, LLC, a Foreign Corporation, JAMES W. ROCKENFIELD, individually, JAMES D. WILSON, individually, and MICHAEL D. NORMAN, individually, state and plead as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff Eric Armstrong is over the age of eighteen (18) years and is a resident of Colfax County, New Mexico.
2. Plaintiff Luke Armstrong is over the age of eighteen (18) years and is a resident of Pueblo County, Colorado.
3. Defendant Express Ranches, LLC is a foreign corporation.

4. Defendant James W. Rockenfield, individually, to the best of Plaintiffs' information and belief, is over the age eighteen (18) years, and is a resident of Colfax County, New Mexico.

5. Defendant James D. Wilson, individually, to the best of Plaintiffs' information and belief, is over the age of eighteen (18) years, and is a resident of Canadian County, Oklahoma.

6. Defendant Michael D. Norman individually, to the best of Plaintiffs' information and belief, is over the age of eighteen (18) years, and is a resident of Canadian County, Oklahoma.

7. On or about October 7, 2014, Plaintiffs were permitted visitors on real property known as the Ute Creek Ranch located in the County of Colfax, New Mexico, and at all times were lawfully conducting themselves on said real property. The Ute Creek Ranch lies adjacent to property owned by Defendant Express Ranches, LLC.

8. On or about October 7, 2014, Defendant Express Ranches, LLC permitted hunting and fishing on real property they owned and/or operated in Colfax County, New Mexico, known as Express Ranches, LLC.

9. Defendant Express Ranches, LLC, either owns, controls or operates the property from which the actions giving rise to this lawsuit occurred.

10. To the best of Plaintiffs' information and belief, on or about October 7, 2014, Defendants James D. Wilson and Michael D. Norman were invited guests on the Express Ranches, LLC property for purposes of hunting elk, under the direction and supervision of Express Ranches, LLC and its agents and employees who supervise and guide hunts on said property.

11. To the best of Plaintiffs' information and belief, on or about October 7, 2014, Defendant James W. Rockenfield was a guide and was working on the Express Ranches, LLC property as a hunting guide, was responsible for the safety of all engaged in the hunt, as well as those third parties who may have been within the zone of danger of the projectiles from the rifles used in the hunt, including Plaintiffs.

12. All actions of employees, agents, and representatives of Express Ranches, LLC pleaded herein are within the scope of employment and agency of Defendant Express Ranches, LLC.

13. Because large game hunting necessarily involves the use and discharge of rifles, particularly high-powered rifles, such as 30.6 rifles used herein, with large caliber ammunition, the safety and security of third parties near, adjacent to, or within gunshot range of gunshot projectiles and reach, is of critical safety concern.

14. The safety concerns of hunting operations extend to concerns of safety of individuals who may be located on adjoining, but separate, properties or other areas within gunshot range.

15. At all times material, Defendant Express Ranches, LLC owed a duty of reasonable care to all persons within range and reach of projectiles shot from the rifles of those parties they invited or permitted to hunt on their premises through their hunting operations, and to keep those third persons safe from injury potentially caused by said operation.

16. The duty of care includes the duty not to have rifles of their hunters discharged toward third parties near or over roads lying across adjacent properties, and a duty to have hunting guides trained, safety educated, and oriented with the surrounding properties so that rifle shots do not endanger third parties lawfully occupying nearby locations or adjacent properties.

17. Hunting that involves high-powered rifles is an inherently dangerous activity. As such, Express Ranches, LLC is liable for their hunters' and guides' actions.

18. On or about October 7, 2014, Defendant James W. Rockenfield, acting as guide for the Express Ranches, LLC, permitted and directed those he was guiding to discharge their rifles at elk in an unsafe location, and negligently failed to direct and prohibit Defendants James D. Wilson and Michael D. Norman from aiming and firing their rifles at elk from a position within a few yards of the Express Ranches, LLC's headquarters in a direction that threatened individuals on an adjacent road.

19. The rifle shots from Defendants James D. Wilson and Michael D. Norman traveled southward, striking other solid objects causing the shells to fragment and re-direct over the adjacent property known as Ute Creek Ranch where Plaintiffs were lawfully located on a semi-improved road located on higher ground than where the Defendants were located.

20. The projectiles shot by the rifles being used by Defendants James D. Wilson and Michael D. Norman struck Plaintiffs Eric Armstrong and Luke Armstrong, knocking them to the ground and causing them serious bodily injury.

### **FIRST CLAIM FOR RELIEF**

#### **(Negligence –Express Ranches, LLC)**

Plaintiffs re-allege and incorporate previous paragraphs, and further state:

21. Plaintiffs' injuries, damages, and losses caused by the rifle shells shot from the guns of hunters from Express Ranches, LLC's hunting operations were the result of the negligence of Express Ranches, LLC, which negligence includes, but is not necessarily limited to:

a) Permission granted to hunters under their direction and control to shoot high-powered rifles in a negligent manner and in an unsafe location. Permission, direction and control shooting high-powered rifles in a negligent manner and in an unsafe location where it is known, or reasonably should have been known, that third parties may be endangered;

b) Failure to prohibit unsafe shooting from their premises, particularly shots taken adjacent to ranch headquarters, that may travel across roads located in the vicinity;

c) Failure to notify occupants of adjoining lands, or those nearby, of the possibility of rifle shots in and from the direction which this incident occurred; and

d) Failure of the guide(s) at Defendant Express Ranches, LLC to know of the dangers involved in this hunt upon locating elk, or alternatively, the failure to adequately train and/or supervise these persons involved in his hunt.

22. As a proximate result of Defendant Express Ranches, LLC's negligence Plaintiffs were seriously injured by being shot, resulting in damages and losses.

23. Plaintiffs' damages and losses include, but are not necessarily limited to, pain, suffering, emotional distress, inconvenience, loss of enjoyment of life, scarring and disfigurement, past medical, rehabilitative and pharmaceutical expenses and the probability of those expenses for the foreseeable future, out-of-pocket expenses including the costs of Plaintiffs' hunting trip that was terminated, and associated costs.

## SECOND CLAIM FOR RELIEF

### (Negligence – Defendant James W. Rockenfield, Individually)

Plaintiffs re-allege and incorporate paragraphs above, and for their second claim for relief, negligence against Defendant James W. Rockenfield, state and plead as follows:

24. Defendant James W. Rockenfield, to Plaintiffs' best information and belief, serves as a big game hunting guide at Defendant Express Ranches, LLC's properties and is, or should be, reasonably trained to employ all sound safety measures required to keep human beings safe during the hunts he guides.

25. Hunting guides owe a duty to keep individuals and the public at large safe from harm that could be caused by firearms used in guided hunts, and are required to exercise responsible care when guiding hunts.

26. The duty of reasonable care owed by hunting guides, including Defendant James W. Rockenfield, includes the duty to ensure that rifle bullets, shells and projectiles are not aimed toward or near other individuals, to make certain that no hunter discharges his rifle over, near, or toward a roadway, to ensure that projectiles fired by hunters' rifles do not pass directly or indirectly, onto adjoining property and to generally ensure the safety of all human beings within the zone of danger in the hunt.

27. Defendant James W. Rockenfield breached said duty of reasonable care by permitting hunters in his party, who he was responsible for guiding, to shoot their rifles so as to harm Plaintiffs by failing to act to keep hunters from aiming their shots at elk that were positioned in unsafe locations endangering others, by permitting shots to be taken at the location near headquarters, and by failing to know or realize that projectiles may be likely to harm others from the positions of hunters and the elk on the date and time alleged.

28. As a proximate result of Defendant James W. Rockenfield's negligence, Plaintiffs were seriously injured by being shot, resulting in damages and losses.

29. Plaintiffs' damages and losses include, but are not necessarily limited to, pain, suffering, emotional distress, inconvenience, loss of enjoyment of life, scarring and disfigurement, past medical, rehabilitative and pharmaceutical expenses and the probability of those expenses for the foreseeable future, out-of-pocket expenses including the costs of Plaintiffs' hunting trip that was terminated, and associated costs.

### **THIRD CLAIM FOR RELIEF**

#### **(Negligence – Defendants James D. Wilson and Michael D. Norman, Individually)**

Plaintiffs re-allege and incorporate paragraphs above and for their third claim for relief against Defendants James D. Wilson and Michael D. Norman, state as follows:

30. Defendants James D. Wilson and Michael D. Norman are reasonably believed to be experienced law enforcement officers in the state of Oklahoma and have had reasonable training in gun safety.

31. The use of high-powered rifles, generally, and especially in big game hunting, is an inherently dangerous activity, requiring the implementation of measures no different than those utilized in exercising deadly force, i.e., requiring complete attention to human safety, including the safety of third parties who may not be parties to the hunt.

32. Hunters in New Mexico are required to be educated in the rules of hunting safety before obtaining permits, licenses and permission to hunt big game.

33. The rules of hunting safety include the prohibition of aiming and discharging hunting rifles toward other human beings, or in the general direction of other human beings, discharging firearms over or toward a road, and the prohibition of discharging a firearm toward

or over property adjoining the property used to hunt where third parties may be lawfully located, but perhaps not visible.

34. Defendants James D. Wilson and Michael D. Norman, by firing their hunting rifles in Plaintiffs' direction on October 7, 2014, violated various applicable safety rules and thereby breached their duty of reasonable care to Plaintiffs.

35. As a result of being shot by the projectiles from Defendants James D. Wilson's and Michael D. Norman's rifles, Plaintiffs were seriously injured and thereby have been caused damages and losses, to be proved at trial.

36. Plaintiffs' damages and losses include, but are not necessarily limited to, pain, suffering, emotional distress, inconvenience, loss of enjoyment of life, scarring and disfigurement, past medical, rehabilitative and pharmaceutical expenses and the probability of those expenses for the foreseeable future, out-of-pocket expenses including the costs of Plaintiffs' hunting trip that was terminated, and associated costs.

WHEREFORE, Plaintiffs Eric Armstrong and Luke Armstrong, each pray for judgment in their respective favors and against each Defendant, jointly and severally, for an award of damages to be proved at trial, for interest provided by law, for costs including expert witness fees, and for any and all other relief deemed just and proper by this Court.



Plaintiffs demand a Trial by Jury.

Respectfully submitted,

HUNT & MARSHALL, LLC

/s/ Lee R. Hunt

Lee R. Hunt, Esq.

Stephen R. Marshall, Esq.

518 Old Santa Fe Trail, #501

Santa Fe, New Mexico 87505

P: (505) 954-4868

F: (505) 819-0022

[lee@huntandmarshall.com](mailto:lee@huntandmarshall.com)

[steve@huntandmarshall.com](mailto:steve@huntandmarshall.com)

*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of August 2017, I filed the foregoing electronically through the Odyssey File & Serve System, for the First Judicial District Court, which caused the following parties or counsel to be served by electronic means, as per the Notice of Electronic Filing:

Terrence R. Kamm, Esq.  
KAMM & McCONNELL, LLC

P. O. Box 1148  
Raton, NM 87740

[tkamm@bacavalley.com](mailto:tkamm@bacavalley.com)

*Attorney for Defendants UU Bar Ranch,  
LLC and Express UU Bar Ranch, LLC*

Nicholas J. Rimmer, Esq.

LAW OFFICES OF LEONARD

AND ULIBARRI

3636 North Central Avenue, Suite 560

Phoenix, AZ 85012

[nicholas.rimmer@libertymutual.com](mailto:nicholas.rimmer@libertymutual.com)

*Attorney for Defendant James W.*

*Rockenfield.*

/s/ Lee R. Hunt

Lee R. Hunt, Esq.