



6. On or about June 17, 2008, Plaintiff moved a lounge chair across a deck.
7. The lounge chair Plaintiff moved was part of the Martha Stewart Everyday brand Amelia Island Collection and was purchased at Kmart.
8. The tubular front legs of the lounge chair were attached to other tubular bars, the base of the chair, with one bolt per leg.
9. As Plaintiff moved the chair, the tubular front legs collapsed under the chair and Plaintiff's right index finger was crushed between one of the chair legs and one of the tubular bars on the base of the chair, resulting in loss of the tip of his finger.
10. Plaintiff's crushed finger tip fell beneath the deck and was later retrieved by one of Plaintiff's relatives.
11. Other consumers have experienced similar injuries involving patio furniture sold at Kmart. In 1997, Kmart recalled "Sling Garden Chairs," due to six reports of finger tip amputations and crushed fingers resulting from consumers' fingers being caught in the folding arms of the chairs as they collapsed.
12. After the lawn chair that caused the injury in this case was manufactured, designed and merchandised by Martha Stewart Living Omnimedia, Inc., Defendant Martha Stewart Living Omnimedia, Inc., redesigned the chair.
13. The redesigned lounge chair is substantially different from the one that caused the injury insofar as two bolts, rather than one bolt, connect each leg to the base of the chair preventing the two tubular front legs from inadvertently collapsing and causing injury.

#### **COUNT I - STRICT LIABILITY**

14. Plaintiff repleads Paragraphs 1 through 13 as if fully set forth herein.

15. Martha Stewart Living Omnimedia, Inc. designed and manufactured the lounge chair at issue and at all times material hereto has been engaged in the business of manufacturing such chairs.
16. Kmart Corporation was the retailer of the lounge chair and at all times material hereto has been engaged in the business of selling such chairs.
17. The lounge chair was in a defective condition; specifically, only one bolt connected each front leg of the chair to the base of the chair.
18. The defective condition of the chair was unreasonably dangerous to consumers who engaged in the reasonably foreseeable activity of moving lounge chairs on decks.
19. The defective condition of the chair, namely the existence of one bolt connecting each leg of the chair to the base of the chair, existed at the time the chair was sold.
20. The defective condition of the chair was the proximate cause of damages to Plaintiff, as more fully set forth below.

### **COUNT II - NEGLIGENCE**

21. Plaintiff repleads Paragraphs 1 through 20 as though fully set forth herein.
22. Defendants were negligent in failing to warn Plaintiff of the defective condition, failing to inspect the chair, and in designing the chair.
23. Defendants' negligence was the proximate cause of damages to Plaintiff, as more fully set forth below.

### **COUNT III - BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

24. Plaintiff repleads Paragraphs 1 through 23 as though fully set forth herein.
25. Defendant Kmart was a merchant of patio furniture at the time it sold the lounge chair.

26. The lounge chair was not merchantable, due to its defective condition.
27. Lack of merchantability was a proximate cause of the Plaintiff's damages, as more fully set forth below.

### **DAMAGES**

28. Plaintiff repleads Paragraphs 1 through 27 as though fully set forth herein.
29. As a result of Defendants' negligence, Plaintiff has sustained damages including, but not limited to, the following:
  - a. Past and future medical expenses;
  - b. Past and future physical and mental pain and suffering;
  - c. Past loss of wages;
  - d. Loss of past and future full mind and body;
  - e. Permanent partial disfigurement; and
  - f. Loss of earning capacity.

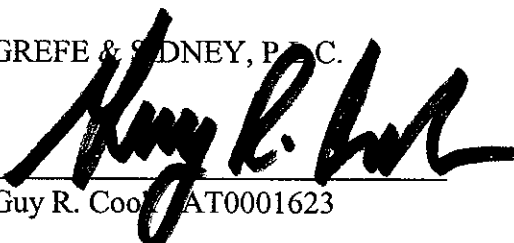
WHEREFORE, the Plaintiff, Patrick J. Albanese, respectfully requests that judgment be entered against Defendants for damages, together with interest thereon as provided by law, plus the costs of this action and any other relief as the Court may deem proper under these circumstances.

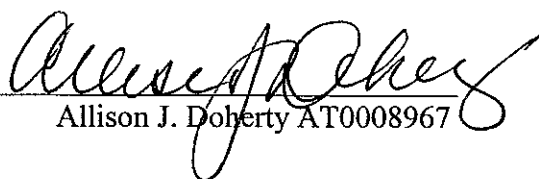
### **JURY DEMAND**

Plaintiff respectfully requests that all factual matters raised by this Petition be tried to a jury.

Respectfully submitted,

GREFE & SIDNEY, P.A.C.

By   
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By   
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ATTORNEYS FOR PLAINTIFF

Original filed.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed in the pleadings on Nov 17 2008

By:  U.S. Mail                       FAX  
 Hand Delivered                 Overnight Courier  
 Certified Mail                    Other

Signature 