

IN THE CIRCUIT COURT OF THE  
SIXTH JUDICIAL CIRCUIT, IN AND  
FOR PINELLAS COUNTY, FLORIDA

CASE NO:

JEAN ALLEN, as Personal  
Representative of the Estate of Kelley Allen,  
Deceased; JOEY BISHOP, as prospective Personal  
Representative of the Estate of Imari Shibata,  
Deceased, and natural guardian of Justus Bishop,

Plaintiffs,

**JURY TRIAL DEMANDED**

v.

GERALD TANSO d/b/a LOCK N LOAD

Defendant.

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**COMPLAINT**

Plaintiffs, JEAN ALLEN, as Personal Representative of the Estate of KELLEY ALLEN, deceased; and JOEY BISHOP, as prospective Personal Representative of the Estate of IMARI SHIBATA, deceased, and natural guardian of JUSTUS BISHOP, sue the Defendant, GERALD TANSO d/b/a LOCK N LOAD, and allege:

1. This wrongful death action arises out of the tragic double murder of KELLEY ALLEN and IMARI SHIBATA on October 28, 2012. Allen and Shibata lost their lives because a firearm dealer, GERALD TANSO D/B/A LOCK N LOAD (TANSO and LOCK N LOAD are collectively referred to herein as "Defendant"), negligently and in knowing violation of federal

and state law sold a pump action shotgun to a teenage boy who Defendant knew or should have known was serving as an illegal straw purchaser for his mentally and criminally disturbed friend.

2. This lawsuit does not in any way challenge the right of law-abiding, responsible citizens to keep and bear arms, nor does it challenge responsible gun dealers' proper operation of their business of selling guns to law-abiding, responsible citizens. Negligently supplying guns and ammunition to straw purchasers and the dangerously mentally ill, however, causes grave harm. It is reasonably foreseeable that firearms and ammunition transferred to such individuals will be used in a way that causes injury to others. "Congress chose to make the dealer the principal agent of federal enforcement in restricting criminals' access to firearms." *Abramski v. U.S.*, 573 U.S. \_\_\_, 16 (2014). Gun dealers owe a duty to use reasonable care – indeed, the highest degree of care – in their business operations to prevent supplying foreseeably dangerous persons with lethal firearms. Defendant breached that duty, and as a foreseeable result KELLEY ALLEN and IMARI SHIBATA were killed. In addition, the deaths of KELLEY ALLEN and IMARI SHIBATA were proximately and actually caused by Defendant's knowing violations federal, state, and local statutes, regulations, and ordinances, including but not limited to Sections 790.065(1)(a), 790.17, 790.23, 777.04(3), 777.011, Florida Statutes, and 18 U.S.C. § 922(d).

3. This is an action for damages in excess of Fifteen Thousand dollars (\$15,000.00), exclusive of interest, attorney's fees, and costs.

## PARTIES

4. Plaintiff, JEAN ALLEN, is a resident of Hillsborough County, Florida and is at all times relevant hereto *sui juris*. JEAN ALLEN was the mother of KELLEY ALLEN, who was a resident of Hillsborough County, Florida, at the time of his death on October 28, 2012. JEAN ALLEN is the Personal Representative of the estate of KELLEY ALLEN. JEAN ALLEN is a “survivor” of KELLEY ALLEN, as that term is defined in Section 768.18(1), Florida Statutes.

5. Plaintiff, JOEY BISHOP, is a resident of Pinellas County, and is at all times relevant hereto *sui juris*. JOEY BISHOP is the former husband of IMARI SHIBATA, who was a resident of Pinellas County, Florida at the time of her death on October 28, 2012. JOEY BISHOP and IMARI SHIBATA were divorced at the time of her death. JOEY BISHOP is the prospective personal representative of the estate of IMARI SHIBATA. IMARI SHIBATA and KELLEY ALLEN met in 2010 and, at the time of their deaths, were involved in a romantic relationship.

6. IMARI SHIBATA, deceased, and JOEY BISHOP are the natural parents of JUSTUS BISHOP and BENJAMIN BISHOP. JUSTUS BISHOP was a ward of and in the care and custody of JOEY BISHOP at the time of the shooting. JOEY BISHOP is the natural guardian and next friend of JUSTUS BISHOP.

7. JUSTUS BISHOP is the minor child of IMARI SHIBATA, a resident of Palm Harbor, Pinellas County, Florida, and is a “survivor” of IMARI SHIBATA, as that term is defined in Section 768.18(1), Florida Statutes.

8. Defendant, GERALD R. TANSO, d/b/a/ LOCK N LOAD, is a resident of Pinellas County, Florida, who owns and operates LOCK N LOAD, a gun shop/dealership that does business in Oldsmar, Pinellas County, Florida.

### **JURISDICTION AND VENUE**

9. Jurisdiction in this court is proper because this is an action at law in which the matter in controversy exceeds the sum of \$15,000.

10. This court is the proper venue for this action because the defendant resides in Pinellas County, Florida and the cause of action accrued here.

### **Benjamin Bishops' History of Mental Illness and Violence**

11. IMARI SHIBATA and JOEY BISHOP had two sons: JUSTUS BISHOP and BENJAMIN BISHOP. The elder son, BENJAMIN BISHOP, had an extensive history of mental illness and violence.

12. As a 9th grader, BENJAMIN BISHOP began hearing voices and claiming he had been attacked by imaginary assailants.

13. As a 10th grader, BENJAMIN'S hallucinations became more frequent and he regularly abused marijuana and the designer drug known as "bath salts." As a result of his deteriorating mental health and substance abuse, BENJAMIN rarely attended school.

14. In July 2011, BENJAMIN rambled around the home he shared with IMARI SHIBATA, smashing holes through the walls with a hammer and claiming he was Osama Bin

Laden. SHIBATA reported BENJAMIN to the Pinellas County Sheriff's Office. The Sheriff's Office took BENJAMIN into custody under the Florida Mental Health Act, Chapter 394, Part I, Florida Statutes (the "Baker Act"). The Baker Act allows for forcible examination of the mentally ill. §§ 394.463-.467, Fla. Stat. (2013). BENJAMIN was later released.

15. Within a week of release, BENJAMIN tried to strangle IMARI SHIBATA. He was arrested and pled guilty to a misdemeanor domestic battery charge. The misdemeanor conviction made BENJAMIN ineligible to purchase, own or possess a firearm and/or ammunition under federal law. 18 U.S.C. § 922(g)(9).

16. Over the course of three months in 2011, BENJAMIN was detained three more times under the Baker Act.

17. A psychiatrist diagnosed BENJAMIN with schizophrenia and prescribed Risperdal, an antipsychotic drug. Citing undesirable side effects, BENJAMIN resisted medication and often skipped doses.

18. BENJAMIN was committed to a ten-month inpatient drug rehab program, but did not complete the program because he was expelled for fighting with another patient.

19. At some point, BENJAMIN brought a knife to school. When school officials discovered it they reported BENJAMIN to the police. As a result, the juvenile court declared BENJAMIN delinquent. Under Florida law, delinquents may not purchase, possess or own firearms and/or ammunition. § 790.065(2)(a), Fla. Stat. (2013). As a high school student,

BENJAMIN'S mental condition deteriorated and he often engaged in violent rants directed at IMARI SHIBATA.

20. IMARI SHIBATA and KELLEY ALLEN were involved in a romantic relationship at the time of their deaths. SHIBATA and KELLEY ALLEN maintained separate homes, but KELLEY ALLEN spent much of his time at SHIBATA'S home to protect her from her son, BENJAMIN BISHOP. Because of BENJAMIN BISHOP'S mental problems and violent acts toward his mother, SHIBATA and KELLEY ALLEN removed all sharp objects from SHIBATA'S home. KELLEY ALLEN began spending more time at SHIBATA's house to protect her, but, upon information and belief, BENJAMIN resented KELLEY ALLEN for his presence in SHIBATA's life.

**Lock N Load Illegally Sells Shot Gun to Straw Purchaser**

21. BENJAMIN decided he wanted to buy a firearm. In order to raise the money he needed to buy a gun, BENJAMIN began pawning electronics.

22. In the Fall of 2012, BENJAMIN attempted to purchase a gun from Defendant. Defendant, or one of his employees, discovered that BENJAMIN had a criminal record, and did not sell BENJAMIN a gun.

23. Upon information and belief, after Defendant denied BENJAMIN's first gun purchase attempt, BENJAMIN asked eighteen-year old Matthew Schwab, a neighborhood acquaintance, to buy the gun for him.

24. Upon information and belief, on October 17, 2012, BENJAMIN and Schwab went to LOCK N LOAD together with the intent to buy a firearm for BENJAMIN.

25. Despite the fact that Defendant knew or should have known that BENJAMIN had recently attempted to buy a gun from him and had been denied due to his criminal record, Defendant sold Schwab a 12-gauge shotgun, which Schwab paid for with \$279.00 in cash.

26. Defendant sold the shotgun despite knowing or having reason to know that Schwab was illegally buying it for BENJAMIN in an illegal “straw purchase.”

27. As a seller of firearms, Defendant knew or reasonably should have known that unless a gun seller uses reasonable care in the sale of firearms, criminals and other dangerous individuals, such as BENJAMIN, would obtain firearms and use them to cause injury or death.

28. Defendant knew or should have known that:

- a. Criminals and other dangerous persons seek to obtain guns from gun sellers to use in crimes, including those that result in injury or death;
- b. Federal and state firearms laws exist to prohibit and/or hinder criminals and other dangerous persons from obtaining guns through illegitimate channels;
- c. Firearms dealers, as agents of enforcement of federal firearms laws, are tasked as gatekeepers who prevent criminals and other dangerous or prohibited persons from acquiring guns; and
- d. Criminals and other dangerous and prohibited persons often obtain guns illegally from straw purchasers and/or traffickers.

29. Defendant further knew or should have known that:

- a. Firearms dealers are one of the most important channels for diverting firearms from the legal market to the illegal market; and

- b. Dealers' negligent and/or illegal sales practices and business decisions directly affect the probability that their guns will be diverted to criminals or into the criminal market.

30. Defendant knew or should have known that certain factual scenarios may be indicative of criminal activity, including but not limited to:

- a. Purchases made in cash, especially substantial sums of cash; and
- b. Facts suggesting a straw purchase, such as where one person appears to select a firearm or firearms and another person pays for them, or the presence of a person who is unauthorized to purchase firearms and the selection of the firearms by that person, or where a person who is prohibited from buying guns and/or has been denied a sale returns to a store to accompany another purchaser.

31. Defendant knew or should have known that its sales practices could have a substantial impact on criminals' acquisition of firearms.

32. For example, Defendant knew or should have known of a report issued by the United States Department of Justice entitled Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy ("DOJ Report"), which recognized that gun sellers' business practices can help facilitate criminal firearm acquisition.

33. In the DOJ Report, the Justice Department explained that the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), the Treasury Department and the Justice Department encouraged and would assist gun sellers, and the rest of the gun industry, to prevent criminal acquisition of firearms, including urging dealers to implement "a code of conduct and

comprehensive training for dealers, to ensure that guns are not . . . sold to criminals or straw purchasers.”

34. Defendant knew or should have known that the gun industry’s trade association, the National Shooting Sports Foundation (“NSSF”), with the assistance of ATF, has issued a recommended sales protocol pursuant to which gun dealers should screen suspicious purchasers with a battery of questions, beyond those required by federal law, and not sell firearms to a person unless the dealer has no doubts about the legitimacy of the sale, even if the purchaser is not prohibited by federal or state law from buying guns.

35. Defendant knew or should have known that this NSSF and ATF have told firearms dealers in this program, referred to as “Don’t Lie for the Other Guy,” that it is the duty of firearms dealers to refuse sales when there are doubts that the purchaser is not the ultimate, intended user of the firearm, and that firearm dealers should not simply rely on completion of the federal form 4473 and Brady background check, but should observe and screen purchasers to determine if they are straw purchasers.

36. In the “Don’t Lie for the Other Guy” program NSSF and ATF recommend that retailers establish the following basic procedures in an attempt to prevent illegal straw purchases:

- a. “[T]o simply have your customer provide identification, fill out the required forms and undergo the criminal background check may not be enough under certain circumstances. . . .”
- b. “By including a couple of questions regarding the identity of the actual purchaser in [the] pre-sales screening, retailers can provide a valuable service

to law enforcement and to their community without offending a legitimate customer.”

- c. “An effective way to do this is to establish a store policy that every potential firearm purchaser will be asked the same sequence of questions. You may even want to post a sign in your store that informs the customer of this policy. The sign may read: To assist law enforcement it is our policy to go beyond the law in verifying the identity of the actual purchaser of a firearm.”
- d. “Questions for All Purchasers You Do Not Personally Know: 1. Is the firearm for you or someone else? 2. If someone else, is this a gift? 3. What is the intended use – personal protection, deer hunting, target shooting? 4. What type of firearm are you interested in or most comfortable with? . . .”
- e. “The key is to engage the customer and ask enough questions to draw out information on their background and intentions. If suspicions arise, it is more prudent to follow the precautionary principle of politely refusing the sale to protect yourself from the risk of contributing to a possible illegal transaction.”

37. In reports of which Defendant knew or should have known, ATF and others have stated that straw purchases are used by criminals to obtain firearms. Reports and studies, including those issued by the federal government of which Defendant was on notice, have made these facts clear for many years. Additionally, articles in Florida newspapers have reported for many years that gun dealers must be vigilant about sales to straw buyers. See, e.g., John Holland, As enforcer of gun laws, dealers are gatekeepers, Sun Sentinel (April 20, 2008), [http://articles.sun-sentinel.com/2008-04-20/news/0804190285\\_1\\_gun-buyers-gun-shop-purchase-guns](http://articles.sun-sentinel.com/2008-04-20/news/0804190285_1_gun-buyers-gun-shop-purchase-guns).

38. It was reasonably foreseeable to Defendant that the shotgun it sold to Schwab would be obtained by a dangerous and/or prohibited person (i.e., BENJAMIN) for use in a

manner involving unreasonable risk of physical injury to the person or to others, and that innocent persons (such as KELLEY ALLEN and IMARI SHIBATA) would be shot and injured.

39. Further, Defendant was personally and acutely aware of the risk associated with supplying firearms to mentally unstable individuals. For example, in January, 2011, Defendant sold a gun to Julie Schenecker, a mentally deranged woman who shortly thereafter used the gun in the gruesome massacre of her 16-year old daughter, Calyx, and her 13-year old son, Beau. This case drew wide attention in local and national media and Defendant knew that he sold the gun used in that double murder. Defendant was questioned by law enforcement officials, interviewed on national television and ultimately testified at Julie Schenecker's trial that she acquired the gun under false pretenses.

40. Based on the circumstances, Defendant knew or should have known that Schwab was an illegal straw purchaser for BENJAMIN who Defendant knew or should have known was ineligible to purchase a gun. In addition, it was reasonably foreseeable that the shotgun he sold to Schwab would be used in a manner involving unreasonable risk of physical injury to the person or to others, and that innocent persons would be shot and injured. Nevertheless, Defendant sold Schwab a 12 gauge shotgun, which Schwab paid for with \$279.00 in cash.

41. Defendant knowingly violated firearms laws by selling the shotgun in a straw purchase, including but not limited to Sections 790.065(1)(a), 790.17, 790.23, 777.04(3), 777.011, Florida Statutes, and 18 U.S.C. § 922(d).

### **Lock N Load Illegally Sells Benjamin Ammunition**

42. Upon information and belief, BENJAMIN and Schwab forgot to purchase ammunition when they bought the 12-gauge shotgun from Defendant.

43. Because of his history of mental illness and his criminal background, state and federal law prohibited BENJAMIN from purchasing ammunition. Nonetheless, on October [], 2012, Defendant illegally and negligently sold BENJAMIN shotgun shells.

44. Defendant knowingly violated state laws by selling BENJAMIN the shotgun shells, including Sections 790.23, 777.04(3), and § 777.011, Florida Statutes.

### **Deaths of Kelley Allen and Imari Shibata**

45. Shortly after acquiring the shotgun and ammunition from Defendant, BENJAMIN used them to kill SHIBATA and KELLEY ALLEN.

46. Around 1:30 AM on October 28, 2012, carrying the weapon and ammunition that was illegally provided to him by Defendant, BENJAMIN entered the bedroom where SHIBATA and KELLEY ALLEN lay sleeping. BENJAMIN aimed and fired at SHIBATA first, killing her instantly. He then shot and killed KELLEY ALLEN at point blank range. In total BENJAMIN fired eight rounds.

47. After shooting SHIBATA and KELLEY ALLEN, BENJAMIN called the police and confessed.

48. BENJAMIN was arrested and charged with first degree murder.

49. Sometime after, BENJAMIN was ruled incompetent to stand trial and was sent to a mental facility for treatment until he is deemed competent for trial.

**COUNT I – WRONGFUL DEATH BASED ON NEGLIGENT ENTRUSTMENT**

50. Plaintiffs re-adopt and re-allege the foregoing Paragraphs as if fully set forth herein.

51. Defendant had control of the subject 12-gauge shotgun at all material times prior to selling it to Matthew Schwab. Defendant directly supplied the shotgun to Matthew Schwab.

52. It was reasonably foreseeable to Defendant that supplying the shotgun to Matthew Schwab would result in Schwab's unreasonable use and/or trafficking of the weapon as prohibited by law, and others would be wounded or killed with the gun. It was reasonably foreseeable that Matthew Schwab was likely to give the weapon to BENJAMIN BISHOP, who would use the weapon in a manner involving unreasonable risk of physical injury to others. It was reasonably foreseeable to Defendant, and he knew or should have known based on the circumstances surrounding the sale, that Matthew Schwab was not buying the 12-gauge shotgun for his personal and lawful use but rather intended it for unlawful use, including transferring it to someone prohibited by law from purchasing the gun from LOCK N LOAD.

53. Defendant's negligent entrustment of the 12-gauge shotgun to Matthew Schwab directly and proximately caused permanent injuries and damages to the plaintiffs and the survivors of IMARI SHIBATA and KELLEY ALLEN. JEAN ALLEN lost the benefit of KELLEY ALLEN'S companionship, assistance, instruction and guidance, and endured mental

pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

54. Defendant's breaches of his duties were legal, proximate, and factual causes of injuries suffered by Plaintiffs.

**COUNT II – WRONGFUL DEATH BASED ON NEGLIGENCE PER SE**

55. Plaintiff re-adopts and re-alleges the foregoing Paragraphs 1 through 50 as if fully set forth herein.

56. Defendant violated federal, state, and local statutes, regulations, and ordinances, including but not limited to Sections 790.17, 777.011, 790.23, 790.065(1)(a), Florida Statutes, and 18 U.S.C. § 922(d) by engaging in an illegal sale to a straw purchaser, Matthew Schwab, and an illegal ammunition sale to a prohibited person, BENJAMIN BISHOP.

57. These laws are intended to protect public safety by preventing unlicensed and dangerous dealing of guns and ammunition and the acquisition and misuse of guns and ammunition by criminals, children, and other irresponsible individuals. The statutory purpose of these laws is to avoid or diminish the likelihood of plaintiffs' harm that resulted from the violations and to protect plaintiffs from the particular type of harm they suffered here. These violations caused harm of the kind the laws were intended to avoid, and plaintiffs were within the class of persons the laws were intended to protect.

58. These laws applied to Defendant at the time of the straw purchase, ammunition purchase, and shooting.

59. Defendant's violation of federal, state, and local statutes, regulations, and ordinances directly and proximately caused permanent injuries and damages to the plaintiffs and the survivors of IMARI SHIBATA and KELLEY ALLEN. JEAN ALLEN lost the benefit of KELLEY ALLEN'S companionship, assistance, instruction and guidance, and endured mental pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

60. Defendant's violation of federal, state, and local statutes, regulations, and ordinances were a direct and proximate cause of the shooting of KELLEY ALLEN and IMARI SHIBATA and plaintiffs injuries herein.

### **COUNT III – WRONGFUL DEATH BASED ON NEGLIGENCE**

61. Plaintiff re-adopts and re-alleges the foregoing Paragraphs 1 through 50 as if fully set forth herein.

62. At all relevant times, Defendant had a duty to exercise reasonable care in selling firearms and ammunition and to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others. This duty is reflected in federal and state law. 18 U.S.C. § 922(d) prohibits any individual from selling a firearm or ammunition to a person whom they

know or have reason to know is a prohibited buyer. Section 790.17, Florida Statutes, makes it a misdemeanor to sell a firearm to a person of an unsound mind.

63. Defendant knew or had reason to know that the actual buyer of the shotgun, BENJAMIN BISHOP, was prohibited from possessing or receiving a firearm and as such selling a firearm to him was illegal.

64. Defendant breached his duty and knowingly violated federal and state law applicable to the sale or marketing of firearms when he sold a 12-gauge shotgun to Matthew Schwab having reason to believe he was not the actual buyer or intended user.

65. The sale of the 12-gauge shotgun to Matthew Schwab was unlawful and negligent in several respects. Defendant knew or should have known that Schwab was a “straw buyer” based on BENJAMIN’S previous attempt to buy a gun. Shortly before Schwab made his straw purchase, BENJAMIN came into Defendant’s store and attempted to buy a gun. At that time, Defendant, or his employee, discovered BENJAMIN’S criminal background and refused to sell him a firearm. Defendant therefore knew that BENJAMIN had a criminal history that made him unauthorized to purchase guns. Upon information and belief, BENJAMIN returned to LOCK N LOAD with Schwab after Defendant refused to sell him a weapon. And despite Schwab’s association with BENJAMIN, Defendant sold Schwab a gun without taking the reasonable steps to ensure that Schwab was the lawful purchaser.

66. Defendant further breached its duty and knowingly violated federal and state law applicable to the marketing and sale of ammunition when he sold ammunition to BENJAMIN

BISHOP. Defendant's sale of shotgun ammunition to BENJAMIN BISHOP was unlawful and negligent in several respects. First, Defendant should have known that BENJAMIN was not allowed to purchase ammunition, pursuant to Section 790.23, Florida Statutes. Defendant had previously denied BENJAMIN a firearm, citing BENJAMIN'S criminal record. Defendant therefore knew that BENJAMIN had a criminal history that made him unauthorized to purchase ammunition. But Defendant nonetheless sold BENJAMIN shotgun shells.

67. Defendant was also negligent in employing deficient questioning and screening of customers, including Matthew Schwab, to determine whether it was reasonable and legal to sell the prospective purchaser a handgun. A reasonable and law-abiding gun seller would have known that Schwab was not purchasing the shotgun for his personal use. A reasonable and law-abiding gun seller would have known that Schwab intended to distribute the shotgun to an unauthorized recipient.

68. Defendant knew or should have known that there was an unreasonably high likelihood that innocent persons such as SHIBATA and KELLEY ALLEN would be injured as a result of an illegal gun sale.

69. Defendant's conduct was in knowing violation of Florida and Federal statutes applicable to the sale and marketing of firearms, and the violation was a proximate cause of the harm to SHIBATA and KELLEY ALLEN and their survivors.

70. The negligence of Defendant, as alleged, directly and proximately caused permanent injuries and damages to the plaintiffs. JEAN ALLEN lost the companionship,

assistance, instruction and guidance of KELLEY ALLEN. In addition, JEAN ALLEN experienced mental pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

71. The breaches by Defendant of his duties were legal, proximate, and factual causes of injuries suffered by Plaintiffs.

**COUNT IV – WRONGFUL DEATH BASED ON AIDING AND ABETTING AND/OR CONSPIRING TO PROVIDE AMMUNITION TO A DISQUALIFIED PURCHASER**

72. Plaintiff re-adopts and re-alleges the foregoing Paragraphs 1 through 50 as if fully set forth herein.

73. Section 790.23, Florida Statutes, states that it “is unlawful for any person to own or to have in his or her care, custody, possession, or control any . . . ammunition” if that person is found to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age.

74. When BENJAMIN BISHOP was under 24 years of age, officials discovered that he had brought a knife to school, and a juvenile court found him to be delinquent. If BENJAMIN BISHOP had been an adult, he would have committed a felony of the third degree pursuant to Section 790.115, Florida Statutes. Accordingly, it was unlawful for BENJAMIN BISHOP to have ammunition in his possession.

75. When BENJAMIN BISHOP came to Defendant's establishment seeking to purchase ammunition, Defendant had previously run a background check on BENJAMIN BISHOP and knew or reasonably should have known that BENJAMIN BISHOP was prohibited from owning or possessing ammunition. Nevertheless, in knowing disregard of the law, Defendant sold BENJAMIN BISHOP ammunition.

76. By providing ammunition to BENJAMIN BISHOP, Defendant agreed, conspired, combined, or confederated with BENJAMIN BISHOP to commit a violation of Section 790.23, Florida Statutes. See § 777.04(3), Fla. Stat. (2013).

77. By providing ammunition to BENJAMIN BISHOP, Defendant knowingly aided and abetted BENJAMIN BISHOP to knowingly commit a violation of Section 790.23, Florida Statutes. See § 777.011, Fla. Stat. (2013).

78. As a consequence of Defendant's wrongful act, SHIBATA and KELLEY ALLEN and their survivors suffered special injuries different in kind and degree from those suffered by the general public. JEAN ALLEN lost the companionship, assistance, instruction and guidance of KELLEY ALLEN. In addition, the JEAN ALLEN experienced mental pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

79. Defendant's conspiring with and/or aiding and abetting BENJAMIN BISHOP to possess ammunition in defiance of Florida law was the legal, proximate, and factual cause of injuries suffered by Plaintiffs.

**COUNT V – WRONGFUL DEATH RESULTING FROM A PUBLIC NUISANCE**

80. Plaintiff re-adopts and re-alleges the foregoing Paragraphs 1 through 50 as if fully set forth herein.

81. By distributing and selling firearms and ammunition in a manner that ensures a steady flow of guns in large quantities to individuals who by law are not permitted to own or possess firearms or ammunition, Defendant has knowingly participated in creating and maintaining a public nuisance that has and will continue to tend to annoy the community and injure the health of the citizens in general. Additionally, because Defendant operates its business in a manner that knowingly violates State and Federal laws, Defendant has erected, established, continued, and maintained a building or place which tends to annoy the community and injure the health of the community. These behaviors constitute a public nuisance under Florida law.

82. Defendant's interference with rights common to the public, including public health, safety, comfort, and peace, is unreasonable. This interference is not insubstantial or fleeting, and involved deaths and serious injuries suffered by many people and a severe disruption of public peace, order, and safety. This interference is continuing, producing a permanent and long-lasting effect.

83. Defendant had the ability to impose conditions and exercise control over the

manner in which firearms and ammunition are sold at its establishment that would have prevented the sale of firearms and ammunition to straw purchasers, felons, the mentally unsound, and other individuals who are legally prohibited from owning or possessing such items, yet failed to do so, in knowing violation of state and federal law, including but not limited to including but not limited to Sections 790.17, 777.04(3), 777.011, 790.23, 790.065(1)(a), Florida Statutes, and 18 U.S.C. § 922(d).

84. As a result of Defendant's conduct and the public nuisance it has participated in creating and maintaining, SHIBATA and KELLEY ALLEN and their survivors suffered special injuries different in kind and degree from those suffered by the general public. JEAN ALLEN lost the companionship, assistance, instruction and guidance of KELLEY ALLEN. In addition, the JEAN ALLEN experienced mental pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

85. Defendant's participation in creating and maintaining the public nuisance, and Defendant's knowing violation of state and federal laws applicable to the sale and marketing of firearms and ammunition, were the legal, proximate, and factual causes of injuries suffered by Plaintiffs.

**COUNT VI – WRONGFUL DEATH BASED ON  
THE FURNISHING OF WEAPONS TO PERSONS OF UNSOUND MIND  
AND CREATING A PUBLIC NUISANCE IN VIOLATION OF  
CH. 772, FLA. STAT., § 790.17, FLA. STAT., AND § 823.01, FLA. STAT.**

86. Plaintiff re-adopts and re-alleges the foregoing Paragraphs 1 through 50 as if fully set forth herein.

87. Chapter 772, Florida Statutes, provides for civil remedies for criminal practices. Section 772.102(1)(a)(16), Florida Statutes, defines “criminal activity” to mean, in pertinent part, “to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit . . . [a]ny crime that is chargeable by indictment or information under . . . Chapter 790, relating to firearms.” Section 790.17, Florida Statutes, makes it a misdemeanor to sell a firearm to a person of an unsound mind. Section 823.01, Florida Statutes, makes it a misdemeanor to create a public nuisance that tends to “annoy the community, injure the health of the citizens in general, or corrupt the public morals.”

88. Section 772.104(1), Florida Statutes, creates a private cause of action for treble damages in favor of any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of Section 772.103, Florida Statutes.

89. Section 772.103(1), Florida Statutes, makes it unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any

right, interest, or equity in, real property or in the establishment or operation of any enterprise.

90. Defendant has engaged in a pattern of criminal activity by his repeated knowing violations of Section 790.17, Florida Statutes, and Section 823.01, Florida Statutes. On at least two occasions, Defendant sold a firearm to a person of unsound mind which resulted in the wrongful death of innocent individuals. Additionally, Defendant operates its business in a manner that tends to annoy the community, injure the health of the citizens in general, or corrupt the public morals, creating a public nuisance that has resulted in special injuries to Plaintiffs. These incidents and operations evidence a “pattern of criminal activity” by the Defendant, from which the Defendant has received proceeds that it has directly or indirectly, in whole or in part, used or invested in its establishment or in the operation of its business.

91. Defendant’s knowing violation of Section 772.103, as alleged, directly and proximately caused permanent injuries and damages to SHIBATA and KELLEY ALLEN and their survivors. JEAN ALLEN lost the companionship, assistance, instruction and guidance of KELLEY ALLEN. In addition, the JEAN ALLEN experienced mental pain and suffering. JUSTUS BISHOP lost the support and services of IMARI SHIBATA, and in the future will suffer the loss of her support and services, the amount of her probable net income and the replacement value of her services, loss of her companionship, assistance, instruction and guidance, and experienced mental pain and suffering.

92. The breaches by Defendant of Section 772.103 were legal, proximate, and factual causes of injuries suffered by Plaintiffs. Because Plaintiffs were injured by reason of

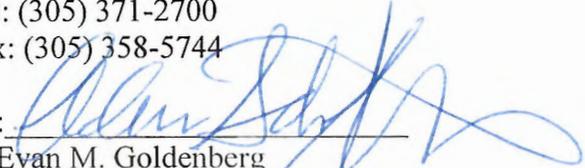
Defendant's knowing violation of the provisions of Section 772.103, Plaintiffs have a cause of action for threefold the actual damages sustained, as well as reasonable attorney's fees and court costs in the trial and appellate courts.

WHEREFORE, Plaintiffs demand trial by jury on all issues so triable and judgment against Defendant for compensatory damages and the costs of this action.

DATED this 16 day of October, 2014.

Respectfully submitted,

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