

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY
COMMONWEALTH OF PENNSYLVANIA

MARK AND LEAH GUSTAFSON,
individually and as Administrators and
Personal Representatives of the ESTATE of
JAMES ROBERT ("J.R.") GUSTAFSON,

Plaintiffs,

v.

SPRINGFIELD, INC. d/b/a SPRINGFIELD
ARMORY,

and

SALOOM DEPARTMENT. STORE; and
SALOOM DEPT. STORE, LLC d/b/a
SALOOM DEPARTMENT STORE,

Defendants.

CIVIL DIVISION

Case No. 1126 of 2018

COMPLAINT

FILED ON BEHALF OF PLAINTIFFS

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PROTHONOTARY'S OFFICE

MAR 19 2018

BY:

CLERK

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MARK AND LEAH GUSTAFSON,
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CIVIL ACTION

Case No. _____

Plaintiffs,

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SPRINGFIELD, INC. d/b/a SPRINGFIELD
ARMORY, SALOOM DEPARTMENT.
STORE; and SALOOM DEPT. STORE, LLC
d/b/a SALOOM DEPARTMENT STORE,

Defendants.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within **TWENTY (20)** days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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SALOOM DEPARTMENT STORE,

Defendants.

COMPLAINT

Plaintiffs Mark and Leah Gustafson, as Administrators of the Estate of James Robert Gustafson, deceased, and in their own right, by the undersigned counsel, hereby allege as follows.

Nature of the Action

1. This is a civil action arising from the decision of a product manufacturer, Springfield Armory, to design, market and sell to the general public a lethal product without feasible, life-saving safety features; the decision of a retail dealer, Saloom Department Store, to sell that unsafe product; and the tragic shooting death of James Robert ("J.R.") Gustafson, a thirteen-year-old boy, who was foreseeably killed as a result.

2. For over a century, the firearms industry, including Defendants, has been well aware of the grave risk of injury and death their products pose to gun owners, their families, visitors

to their homes, and others. The industry has known that many of its customers will store guns unlocked and loaded, accessible to children; many children and adults die from those firearms; guns could easily been made and sold with safety features that would prevent some of these deaths, and would greatly reduce the risk that people will be injured or killed from unintentional shootings by children.

3. For example, the firearms industry has known for over a century that many children – and adults – often are deceived by the design of semiautomatic firearms to believe that they are unloaded after the ammunition magazine is removed, even though a live round may remain in the chamber. The industry has known that many people, often children, die or are seriously wounded when someone fires a gun he or she thinks is unloaded because there is no magazine in the gun, but, unbeknownst to the person handling the gun, a bullet is in the chamber.

4. The industry has known for over a century that magazine disconnect safeties are an easy and inexpensive fix to this problem that would save lives. Magazine disconnect safeties are devices that prevent a gun from firing when the magazine is removed. Magazine disconnect safeties were invented over a century ago precisely to prevent the risks – well known even then – that people are killed in unintentional shootings with guns that were thought to be unloaded.

5. When Defendants Springfield Armory and Saloom Department Store made and sold the gun that caused the death of J.R. Gustafson, they knew or should have known all of the above. Defendants knew or should have known that a substantial number of people who possessed their products (their customers, or persons to whom their customers transferred guns) would store their guns unlocked and loaded; that children would gain possession of those guns; that unless they included feasible safety devices and warnings in and with their guns, children could discharge a

gun they thought was unloaded after the magazine was removed; and that people – including many children – would die or be seriously injured as a result.

6. Despite this knowledge, Defendants chose to make and sell firearms without feasible safety features that would prevent foreseeable deaths and injuries. These safety features would eliminate the unsafe character of the firearm (and the high degree of risk associated with it) without impairing its usefulness or making it too expensive to maintain its utility.

7. As a result of Defendants' actions and choices, they placed the lives of their customers, their families, visitors, and others at risk.

8. As a result of Defendants' actions and choices, J.R. Gustafson was inadvertently and unnecessarily killed at the age of thirteen, and Mark and Leah Gustafson lost their son.

9. To be clear, Defendants are not liable because they made and sold a gun, a product that is capable of causing lethal injury. Defendants are liable because they chose to make and sell that product unreasonably and unnecessarily dangerous, without feasible safety features and warnings that would have prevented J.R.'s death.

10. Pennsylvania law provides a redress to Plaintiffs for their losses. Under Pennsylvania law, the firearm used to shoot and kill J.R. was negligently designed, marketed, and sold, and its design and warnings were defective, unreasonably dangerous, and negligently made and sold. The death of J.R. was foreseeably caused by Defendants' negligence and defective design, warnings and marketing.

11. J.R.'s parents bring this suit to hold these companies accountable for their wrongful actions that caused the death of their son.

Parties

12. Plaintiffs Mark and Leah Gustafson are the parents of J.R. Gustafson, deceased, who was a resident of 25 N. Shupe Street, Mt. Pleasant, Pennsylvania, at the time of his death on March 20, 2016.

13. Mark and Leah Gustafson, authorized personal representatives and Administrators of the Estate of James Robert Gustafson, are adult individuals who are and at all times relevant hereto were residents of Mt. Pleasant, Pennsylvania.

14. On or about March 14, 2018, Plaintiffs were appointed Administrators of the Estate of James Robert Gustafson, by the Register of Wills of the County of Westmoreland, Pennsylvania at No. 6518-0516.

15. Plaintiffs, as Administrators of the Estate of James Robert Gustafson, bring this action on behalf of all persons entitled to recover damages under Pennsylvania's Wrongful Death and Survival Statutes. Pa. Cons. Stat. §§ 8301-02.

16. By virtue of their parental relationship to the decedent, persons entitled to recover damages pursuant to both § 8301 and § 8302 include:

- a. Mark Gustafson (Father), 25 N. Shupe Street, Mt. Pleasant, Pennsylvania.
- b. Leah Gustafson (Mother), 25 N. Shupe Street, Mt. Pleasant, Pennsylvania.

17. J.R. Gustafson did not bring any action during his lifetime to recover damages for the injuries alleged herein and no other action has been filed to recover damages for the wrongful death of J.R. Gustafson.

18. Defendant Springfield, Inc. d/b/a Springfield Armory ("Springfield Armory") is a corporation organized and existing under the laws of Illinois, with its principal place of business

at 420 West Main Street, Geneseo, Illinois. Springfield Armory designed, manufactured, and sold the handgun.

19. Defendant Saloom Dept. Store, LLC d/b/a Saloom Department Store is a limited liability company organized and existing under the laws of Pennsylvania, with its principal place of business at 508 West Main Street, Mt. Pleasant, Pennsylvania. Prior to the 2017 registration of Saloom Dept. Store, LLC, Defendant operated, upon information and belief, as an unregistered business in Pennsylvania under the name Saloom Department Store. Defendant Saloom Dept. Store, LLC and Defendant Saloom Department Store will be collectively referred to herein as “Saloom.” No fictitious name registration was on file with the Pennsylvania Department of State at the time of Saloom’s sale of the handgun at issue in this Complaint. Saloom sold the handgun at retail.

Factual Allegations

A. The Shooting Death of J.R Gustafson.

20. On March 20, 2016, a Springfield Armory semiautomatic handgun, model XD-9 (“the handgun”), was in the home of Joshua Hudec in Mt. Pleasant, Westmoreland County, Pennsylvania.

21. The handgun had not been modified in any significant way from the time it was manufactured by Springfield Armory and sold by Saloom, and had the same safety features – and lack of safety features – as it did when it was manufactured by Springfield Armory and sold by Saloom.

22. J.R. was visiting the Hudec home.

23. A fourteen-year old boy (“the boy”), who was also visiting the home and was friends with J.R., came to possess the handgun.

24. The boy knew that the ammunition magazine of the handgun had been removed.

25. The boy thought that the handgun was unloaded, because the magazine was removed and there were no adequate indicators or warnings to inform him that a live round remained in the chamber.

26. Thinking the handgun was unloaded, the boy pulled the trigger of the handgun.

27. Unbeknownst to the boy, a live round remained in the chamber.

28. The live round discharged, killing the boy's friend and Mark and Leah's son, J.R.

29. Upon information and belief, the boy pled guilty to a delinquency involuntary manslaughter in juvenile court in connection with J.R.'s death.

B. Defendants Were Aware Of The Need To Include Safety Features In Order To Prevent Foreseeable Injuries or Deaths

30. Defendants could reasonably foresee that guns they sold will be stored, carried, and used in environments that include those in which children will be present and will gain access to these deadly weapons, such as family homes. Guns are not products, such as sophisticated industrial machines, intended and expected to be used only by specially educated and trained users in situations where children are not expected to be present and able to obtain access to them.

31. As Defendants knew or should have known, it is common and highly foreseeable to gun manufacturers and sellers that guns will be stored accessible to children.

32. For example, a study of data from the National Center for Health Statistics indicated that a majority of gun owners living with children do not store their guns locked, unloaded, and separate from ammunition, and that approximately 40 percent do not store their guns locked in any manner. The study estimated that 8.3 million children in the U.S. live in homes where a firearm is stored unlocked, and 2.6 million live in a home where the firearm is also stored loaded or with ammunition.

33. Other studies have reached similar conclusions about high levels of unsecure gun storage where guns are accessible to children.

34. Although there have been important initiatives to change the behavior of parents concerning guns and firearms storage, such efforts have not eliminated the problem of children accessing unsecure guns. Gun manufacturers and sellers know or should know that guns they sell will be stored unlocked and accessible to children.

35. As Defendants knew or should have known at all relevant times, failure to incorporate the safety features and warnings discussed herein results in many unintentional shootings every year, such as when a child finds a gun and fires it, injuring or killing himself or another child.

36. Data indicates that every day in the United States, an average of more than one person is killed, and 45 more are injured, in unintentional shootings.

37. A study by the federal Center for Disease Control found that the U.S. leads the industrialized world in rates of gun-related deaths among children, with unintentional fatal shootings of children 0 to 14 years of age occurring here at rates 11 times higher than in the other 25 industrialized nations studied.

38. Studies have found that most of these incidents occur when children obtain access to a loaded, unlocked gun without adult supervision. A substantial number of these deaths and injuries would be prevented if gun manufacturers equipped guns with safety features to prevent children from discharging them.

39. As Defendants knew or should have known at all relevant times, handguns are involved in a disproportionately high number of unintentional shooting deaths, as compared to rifles and shotguns, and handguns are particularly likely to be stored unsafely.

40. Defendants knew or should have known that messaging from the firearms industry misleads many people into incorrectly thinking that guns in the home enhance safety and are more likely to save lives, even though studies have consistently shown for years that a gun in the home greatly increases the risk of injury and death and is more likely to be used against family members than in their defense.

41. Defendants knew or should have known that these misperceptions lead some people to buy and possess guns, and bring guns into their homes, with an inaccurately low assessment of the risks those guns pose, compared to an inaccurately high assessment of their safety benefits.

42. Defendants knew or should have known that these misperceptions make it more likely that people will store guns unsafely, accessible to children.

43. Defendants knew or should have known that advertising, marketing and messaging by the firearms industry suggests that people need guns immediately accessible and useable in order to defend themselves and their families, and that these communications lead people to store guns unsafely, accessible to children.

44. For example, Defendant Springfield Armory advertises some handguns for use, “When the police are minutes away and the threat is seconds away.”

45. Defendants knew or should have known that users of guns, and particularly children, would be deceived by its design to think that it was unloaded even though a live round was in the chamber. And as a result, many people, including children, would be killed or seriously injured as a result.

C. The Springfield Armory Handgun’s Lack of Safety Features.

46. This tragedy resulted from the unnecessarily and unreasonably dangerous actions of Defendants, including their design, marketing and sale of a handgun without a magazine

disconnect safety, an effective loaded chamber indicator, an internal lock, or other feature that that would have prevented it from being fired by a child or any other person who did not have proper authority to use it, or effective warnings. Any one of these would have prevented the shooting and J.R.'s death.

47. The handgun did not include feasible features in its design that could have prevented it from being fired when users were led to believe that it was unloaded because the ammunition magazine was removed.

48. The handgun did not include feasible features that would prevent it from being fired by a child or other person without authorization to use it.

49. The handgun did not include feasible features and warnings that would effectively alert users that a live round was in the chamber.

50. It has long been technologically and economically feasible to design guns so that they include any of these features.

51. Magazine disconnect safeties have been used in firearms for over 100 years, to prevent guns from firing when users think that the gun is unloaded because the ammunition magazine has been removed.

52. A 1910 patent for the magazine disconnect stated its intention "to insure absolutely against the dangerous unintentional firing sometimes liable to occur if the trigger is pulled after the magazine has been withdrawn in the belief that all cartridges have been removed from the arm with the magazine."

53. At least as early as January 1958, the National Rifle Association has recognized the life-saving potential of magazine disconnect safeties. January 1958 issue of the NRA's *American Rifleman* magazine stated: "There is a magazine safety to prevent the gun being fired unless the

magazine is in place, the idea being to prevent accidents caused by people thinking they have unloaded the gun when they have merely removed the magazine and left a cartridge in the chamber.”

54. For years the firearms industry has been well aware that magazine disconnect safeties are feasible, inexpensive, and successful at saving lives, without detrimental effects to the proper, legitimate use of firearms. Magazine disconnect safeties are used by many manufacturers, without incident or harm to legitimate, appropriate users.

55. Loaded chamber indicators are also feasible and, if effectively made, can alert foreseeable users that a round is in the chamber, even if the magazine is removed.

56. Adequate warnings, on the firearm and/or in other materials, can make the loaded chamber indicator more effective in warning users of a live round in the chamber.

57. The recognition that a gun can and should be made so that children cannot operate it has been well known in the gun industry for more than a century.

58. At the time of the manufacture of the handgun, it was feasible to incorporate a lock into the gun that would secure it against unintentional use. Feasible locking devices include key-operated or push button locks similar to those that have been used on briefcases for decades. These and other locking devices have been successfully incorporated into guns, and would have prevented the shooting and death of J.R. Gustafson.

59. Locking systems that are internal or integrated into the gun are more effective and more likely to be used than locks that are a separate, external device that is not part of the gun, such as a “trigger block” device that attaches over the gun’s trigger to prevent it from being pulled or a bicycle-style “cable lock” device that is threaded through the gun barrel or chamber. Unlike internal locks, an external lock is not always available to the gun user or reminding the gun user

of its availability, can be installed incorrectly, defeated by cutting or prying apart the lock, or lost after being removed from the gun.

60. It was also feasible at the time of the manufacture of the handgun to incorporate “user recognition” technology in the gun, which prevents the gun from firing unless it “recognizes” the user.

61. Childproof safeties, internal locking systems, user recognition systems, and other safety features to prevent the unintentional use of guns by children have been proposed and available to gun manufacturers for many years and were feasible and known and available to Springfield Armory at the time it manufactured the handgun. Despite this fact, Springfield Armory failed to equip the handgun with any safety feature to prevent its unintentional use by children.

62. For example, a trigger lock was patented in 1969.

63. For over a decade, Taurus has sold firearms with features that “engage[] with the turn of a special key to render the firearm inoperative, and is entirely contained within the firearm, with no parts to misplace.” Only inserting and rotating the special key will render the gun ready to fire. Unlike a “trigger lock” that is not an integrated part of the gun, this integral lock cannot be installed incorrectly, pried apart, or lost after it is removed. Taurus has stated that the Taurus Security System was implemented “to help prevent unauthorized use by children,” and that it is superior to “trigger block” style devices and other locks that are a separate, external device and not an integrated part of the gun and which can be lost when not in use.

64. Taurus describes the internal lock as providing “additional security for home and family,” as follows:

Focusing on an ever-increasing awareness of firearms safety, Taurus International introduced in 1997 the internationally patented TAURUS SECURITY SYSTEM.

This system renders a firearm inoperable by use of a special key. Taurus listened carefully to its customers and believes the TAURUS SECURITY SYSTEM responds to their desire for additional security for their home and personal defense handguns. This system, a world's first, gives the owner the option of storing their firearm in a locked condition, without cumbersome external devices.

65. Technology equally or more effective than the Taurus Security System was feasible at the time the handgun was made and sold, and would have secured the handgun against the unintentional use that occurred here.

D. The Negligent Warnings and Marketing of the Springfield Armory Handgun.

66. Studies have repeatedly shown that a gun in the home increases the risk of death or injury to those in the household and visitors. For example, studies have found that:

- a. An estimated 41% of gun-related homicides and 94% of gun-related suicides would not occur under the same circumstances had no guns been present.
- b. The risk of homicide is three times higher in homes with firearms.
- c. Higher gun ownership puts both men and women at a higher risk for homicide, particularly gun homicide.
- d. Keeping a firearm in the home increases the risk of suicide by a factor of 3 to 5 and increases the risk of suicide with a firearm by a factor of 17.
- e. The association between firearm ownership and increased risk of suicide cannot be explained by a higher risk of psychiatric disorders in homes with guns.
- f. It is 11 times more likely that a gun will be used for completed and attempted suicides than to be used in self-defense.
- g. It is 7 times more likely that a gun will be used in criminal assaults and homicides than to be used in self-defense.

h. It is 4 times more likely that a gun will be used to cause unintentional shooting deaths or injuries than to be used in self-defense.

67. There are many additional studies that demonstrate the increased dangers created by bringing a gun into the home.

68. Nonetheless, Defendants do not inform customers or potential users of any of these studies, or the general fact that they demonstrate that guns increase the risk of harm, rather than increase safety.

69. On the contrary, Defendants exaggerate the safety benefits of guns, and minimize the documented data as to their risks.

70. The warnings and instructions provided by Defendants, both in the manual and one the firearm, fail to adequately educate and alert people as to the risks posed by guns, including the foreseeable risks that children will obtain possession of guns, that users will mistakenly believe that a gun is unloaded when the magazine is removed, and that shooting injuries and deaths will result.

71. Defendants' actions in selling guns, including the handgun, despite their defective design were outrageous, undertaken for bad motives including putting financial gain above safety, and undertaken with conscious disregard or reckless indifference to the interests of others and known dangers.

WRONGFUL DEATH ACTION
COUNTS 1 THROUGH 3

72. Plaintiffs hereby incorporate the previous paragraphs.

73. Plaintiffs, as Administrators of the Estate of James Robert Gustafson and in their own right, bring this action on behalf of the beneficiaries of J.R. Gustafson under and by virtue of the Pennsylvania Wrongful Death Act, 42 Pa. C.S.A. § 8301, on Counts 1 through 3 listed below.

74. As the result of the wrongful death of J.R. Gustafson, his parents have been deprived of the love, companionship, comfort, aid, assistance, support, society, and services they would have received from him for the remainder of his natural life.

75. Plaintiffs also claim damages for the pecuniary loss suffered by reason of their son's death, including the loss of contributions and the replacement value of J.R.'s services, as well as reimbursement for medical bills, funeral and burial expenses, expenses of administration, and other expenses incurred in connection therewith.

Count 1
(Products Liability – All Defendants)

76. Plaintiffs hereby incorporate all previous paragraphs.

77. The handgun was defective in design, unreasonably dangerous, and lacked an element necessary to make it safe for its intended use because it lacked safety features including a magazine disconnect safety, an effective loaded chamber indicator, an internal locking system or other safety system that would prevent it from being unintentionally fired by a child, a safety feature that would personalize the gun and allow it to be fired only by recognized and authorized users, or a child-proof or child-resistant safety device, and effective and appropriate warnings.

78. The risks of harm resulting from the defective design of the handgun were reasonably foreseeable. Alternative designs existed at the time of design, manufacture, and sale of the handgun that were safer, feasible, practical, and cost efficient.

79. The danger posed by the defective design is severe, because injuries resulting from it are likely to be extremely serious, including catastrophic physical injuries or death. This danger has been known to manufacturers of the product for many years. The likelihood that the danger would occur is great, because it is common and foreseeable for guns to be stored in an unsecure manner that enables children to obtain access to them and unintentionally discharge them.

80. The safer design is feasible, there are no adverse consequences to the product or to the consumer that would result from the safer design, the safer design can eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility, and it is feasible for the manufacturer to spread the cost through the price of the product or liability insurance.

81. A reasonable person would conclude that the probability and seriousness of harm caused by the handgun outweigh the burden of cost of taking the safety precautions addressed herein. Defendants failed to adopt safety precautions proportionate to the magnitude of the expected risk of the handgun.

82. The defective design of the handgun was a direct, legal, and proximate cause of and substantial factor in causing the shooting death of J.R. Gustafson and all the injuries alleged herein. J.R. Gustafson would not have been shot with the handgun if the alternative design had been used, because a child would not have been able to fire the handgun, and/or the shooter would have become aware that the handgun was loaded and would not have fired it, and therefore all injuries suffered by J.R. Gustafson and Plaintiffs alleged herein are attributable to the defective design.

83. Springfield Armory engaged in the business of manufacturing and selling guns, and Saloom engaged in the business of selling guns.

84. Springfield Armory designed, manufactured, and sold the handgun, and Saloom sold the handgun.

85. The defect in the design of the handgun existed at the time it left the possession of Springfield Armory, at the time it left the possession of Saloom, and at the time it came into the possession of the boy who shot J.R. Gustafson.

86. The handgun did not undergo any substantial change after the time of its manufacture, and was expected to and did reach the public without substantial change.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

Count 2
(Negligent Design and Sale – All Defendants)

87. Plaintiffs hereby incorporate all previous paragraphs.

88. At all relevant times, Defendants were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury. Springfield Armory had a duty to exercise reasonable care in designing and selling its product to protect against foreseeable risk of injury, and Saloom Department Store had a duty to exercise reasonable care in selling products to protect against foreseeable risk of injury.

89. Springfield Armory breached its duty not to expose others to reasonably foreseeable risks of injury by designing and selling the handgun without safety features including a magazine disconnect safety, an effective loaded chamber indicator, an internal locking system, or other safety system that would prevent it from being fired by a child or other unauthorized person, a safety feature that would personalize the gun and allow it to be fired only by recognized and authorized users, or a child-proof or child-resistant safety device, and effective and appropriate warnings.

90. Saloom breached its duties not to expose others to reasonably foreseeable risks of injury by selling the handgun despite knowing or having reason to know of its dangerous condition and lack of such safety features.

91. Defendants' breaches of their duties not to expose others to reasonably foreseeable risk of injury were direct, legal, and proximate causes of and substantial factors in causing the shooting death of J.R. Gustafson and all the injuries to him and to Plaintiffs alleged herein.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

Count 3
(Negligent Warnings and Marketing – All Defendants)

92. Plaintiffs hereby incorporate all previous paragraphs.

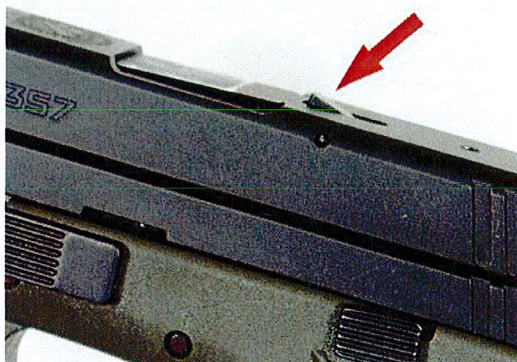
93. At all relevant times, Defendants were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury. Defendants therefore had a duty to exercise reasonable care in distributing and selling guns and to refrain from engaging in any affirmative activity creating reasonably foreseeable risks of injury to others.

94. Springfield Armory and Saloom breached their duty not to expose others to reasonably foreseeable risks of injury by negligently marketing guns, and by misleading consumers as to the risks and benefits of handguns.

95. Defendants could have and should have included stronger, more detailed, and more prominent language and materials to effectively inform potential users as to the risks of firearms and the need to store them safely.

96. Defendants also negligently provided inadequate warnings on the firearm itself, including by failing to inform foreseeable users that a live round could be in the chamber and could be fired after the magazine is removed, and to have a loaded chamber indicator prominently and clearly inform and alert users when the chamber was loaded.

97. For example, Defendants' handgun's loaded chamber indicator is barely noticeable and, certainly to a child, unintelligible, as pictured in the exemplar below:



98. Whereas, it was feasible to place a specific warning on the handgun itself to identify the loaded chamber indicator's purpose and to identify when the chamber is loaded, as pictured in the exemplar below:



99. Placing such a warning on the loaded chamber indicator is feasible, there are no adverse consequences to the product or to the consumer that would result from the safer design that includes such a warning, the safer design can eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility, and it is feasible for the manufacturer to spread the cost through the price of the product or liability insurance.

100. Here, the boy thought the handgun was unloaded because the magazine clip was not in it. Had the loaded chamber indicator provided the requisite warning to the boy that the handgun was loaded, the death of J.R. Gustafson would not have occurred.

101. A reasonable person would conclude that the probability and seriousness of harm caused by the handgun outweigh the burden of cost of taking the safety precautions and warnings addressed herein. Defendants failed to adopt safety precautions and warnings proportionate to the magnitude of the expected risk of the handgun.

102. The defective design of the handgun was a direct, legal, and proximate cause of and substantial factor in causing the shooting death of J.R. Gustafson and all the injuries alleged herein.

103. J.R. Gustafson would not have been shot with the handgun if Defendants had not been negligent in their marketing and warnings.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

SURVIVAL ACTION
COUNTS 4 THROUGH 6

104. Plaintiffs hereby incorporate all previous paragraphs.

105. Plaintiffs, also bring this action on behalf of the Estate of James Robert Gustafson, under and by virtue of the Pennsylvania Survival Act, 42 Pa. C.S.A. § 8302, on Counts 4 through 6 listed below.

106. As a result of the death of J.R. Gustafson, his Estate has been deprived of the economic value of his life including potential earnings and prospective net accumulations of his

estate, and Plaintiffs claim damages for the pecuniary loss sustained by the Estate as a result of his death.

107. Plaintiffs also claim damages on behalf of the Estate of James Robert Gustafson for pain and suffering undergone by J.R. Gustafson between the time he sustained injury and his death.

Count 4
(Products Liability – All Defendants)

108. Plaintiffs hereby incorporates all previous paragraphs.

109. The handgun was defective in design, unreasonably dangerous, and lacked an element necessary to make it safe for its intended use because it lacked safety features including a magazine disconnect safety, an effective loaded chamber indicator, an internal locking system or other safety system that would prevent it from being unintentionally fired by a child, a safety feature that would personalize the gun and allow it to be fired only by recognized and authorized users, or a child-proof or child-resistant safety device, and effective and appropriate warnings.

110. The risks of harm resulting from the defective design of the handgun were reasonably foreseeable. Alternative designs existed at the time of design, manufacture, and sale of the handgun that were safer, feasible, practical, and cost efficient.

111. The danger posed by the defective design is severe, because injuries resulting from it are likely to be extremely serious, including catastrophic physical injuries or death. This danger has been known to manufacturers of the product for many years. The likelihood that the danger would occur is great, because it is common and foreseeable for guns to be stored in an unsecure manner that enables children to obtain access to them and unintentionally discharge them.

112. The safer design is feasible, there are no adverse consequences to the product or to the consumer that would result from the safer design, the safer design can eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain

its utility, and it is feasible for the manufacturer to spread the cost through the price of the product or liability insurance.

113. A reasonable person would conclude that the probability and seriousness of harm caused by the handgun outweigh the burden of cost of taking the safety precautions addressed herein. Defendants failed to adopt safety precautions proportionate to the magnitude of the expected risk of the handgun.

114. The defective design of the handgun was a direct, legal, and proximate cause of and substantial factor in causing the shooting death of J.R. Gustafson and all the injuries alleged herein. J.R. Gustafson would not have been shot with the handgun if the alternative design had been used, because a child would not have been able to fire the handgun, and therefore all injuries suffered by J.R. Gustafson and Plaintiffs alleged herein are attributable to the defective design.

115. Springfield Armory engaged in the business of manufacturing and selling guns, and Saloom engaged in the business of selling guns.

116. Springfield Armory designed, manufactured, and sold the handgun, and Saloom sold the handgun.

117. The defect in the design of the handgun existed at the time it left the possession of Springfield Armory, at the time it left the possession of Saloom, and at the time it came into the possession of the boy who shot J.R. Gustafson.

118. The handgun did not undergo any substantial change after the time of its manufacture, and was expected to and did reach the public without substantial change.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests

and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

Count 5
(Negligent Design and Sale – All Defendants)

119. Plaintiffs hereby incorporate all previous paragraphs.

120. At all relevant times, Defendants were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury. Springfield Armory had a duty to exercise reasonable care in designing and selling its product to protect against foreseeable risk of injury, and Saloom Department Store had a duty to exercise reasonable care in selling products to protect against foreseeable risk of injury.

121. Springfield Armory breached its duty not to expose others to reasonably foreseeable risks of injury by designing and selling the handgun without safety features including a magazine disconnect safety, an effective loaded chamber indicator, an internal locking system, or other safety system that would prevent it from being fired by a child or other unauthorized person, a safety feature that would personalize the gun and allow it to be fired only by recognized and authorized users, or a child-proof or child-resistant safety device, and effective and appropriate warnings.

122. Saloom breached its duties not to expose others to reasonably foreseeable risks of injury by selling the handgun despite knowing or having reason to know of its dangerous condition and lack of such safety features.

123. Defendants' breaches of their duties not to expose others to reasonably foreseeable risk of injury were direct, legal, and proximate causes of and substantial factors in causing the shooting death of J.R. Gustafson and all the injuries to him and to Plaintiffs alleged herein.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

Count 6
(Negligent Warnings and Marketing – All Defendants)

124. Plaintiffs hereby incorporate all previous paragraphs.

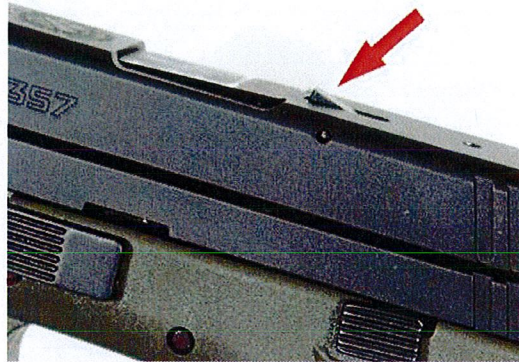
125. At all relevant times, Defendants were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury. Defendants therefore had a duty to exercise reasonable care in distributing and selling guns and to refrain from engaging in any affirmative activity creating reasonably foreseeable risks of injury to others.

126. Springfield Armory and Saloom breached their duty not to expose others to reasonably foreseeable risks of injury by negligently marketing guns, and by misleading consumers as to the risks and benefits of handguns.

127. Defendants could have and should have included stronger, more detailed, and more prominent language and materials to effectively inform potential users as to the risks of firearms and the need to store them safely.

128. Defendants also negligently provided inadequate warnings on the firearm itself, including by failing to inform foreseeable users that a live round could be in the chamber and could be fired after the magazine is removed, and to have a loaded chamber indicator prominently and clearly inform and alert users when the chamber was loaded.

129. For example, Defendants' handgun's loaded chamber indicator is barely noticeable and, certainly to a child, unintelligible, as pictured in the exemplar below:



130. Whereas, it was feasible to place a specific warning on the handgun itself to identify the loaded chamber indicator's purpose and to identify when the chamber is loaded, as pictured in the exemplar below:



131. Placing such a warning on the loaded chamber indicator is feasible, there are no adverse consequences to the product or to the consumer that would result from the safer design that includes such a warning, the safer design can eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility, and it is feasible for the manufacturer to spread the cost through the price of the product or liability insurance.

132. Here, the boy thought the handgun was unloaded because the magazine clip was not in it. Had the loaded chamber indicator provided the requisite warning to the boy that the handgun was loaded, the death of J.R. Gustafson would not have occurred.

133. A reasonable person would conclude that the probability and seriousness of harm caused by the handgun outweigh the burden of cost of taking the safety precautions and warnings addressed herein. Defendants failed to adopt safety precautions and warnings proportionate to the magnitude of the expected risk of the handgun.

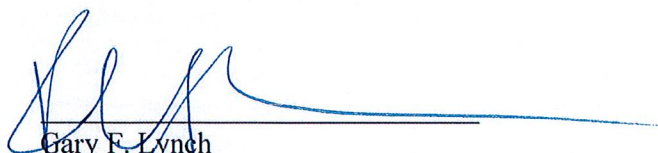
134. The defective design of the handgun was a direct, legal, and proximate cause of and substantial factor in causing the shooting death of J.R. Gustafson and all the injuries alleged herein.

135. J.R. Gustafson would not have been shot with the handgun if Defendants had not been negligent in their marketing and warnings.

WHEREFORE, Plaintiffs request judgment in their favor and against Defendants and an award of: (a) compensatory damages in excess of fifty thousand dollars (\$50,000.00), plus interests and costs; (b) punitive damages based on defendants' outrageous, intentional, and reckless conduct; and (c) such other and further relief as the Court may deem appropriate.

Dated: March 19, 2018

Respectfully submitted,



Gary F. Lynch

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Kelly K. Iverson

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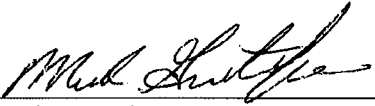
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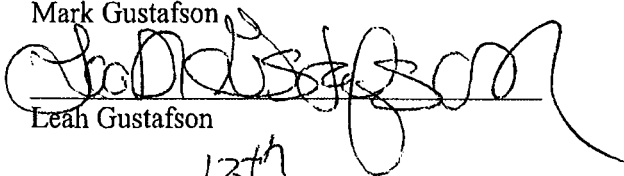
VERIFICATION

I, Mark and Leah Gustafson, hereby verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information and belief.

I understand that the statements made herein are subject to the penalty provisions of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Mark Gustafson



Leah Gustafson

Date: March 13th, 2018