

IN THE DISTRICT COURT OF LYON COUNTY, KANSAS

MARQUISE JOHNSON,)	
)	Case No. 2020-CV-000085
Plaintiffs,)	
)	
v.)	
)	Pursuant to K.S.A. Chap. 60
BASS PRO OUTDOOR WORLD, LLC,)	
FABBRICA D'ARMI PIETRO)	
BERETTA S.p.A.,)	
BERETTA U.S.A. CORP., and)	
and)	
ANDRÉ LEWIS,)	
)	
Defendants.)	

SECOND AMENDED PETITION

COMES NOW plaintiff Marquise Johnson, by and through his counsel, Lynn R. Johnson, David R. Morantz, and Richard L. Budden of Shamborg, Johnson & Bergman, Chartered, Michael C. Helbert of Helbert & Allemang, and Jonathan E. Lowy of Brady United Against Gun Violence, and for his cause of action against the defendants alleges and states as follows:

PARTIES

1. Plaintiff Marquise Johnson is a Kansas citizen and resident who resides at 1839 Merchant Street, Apartment 311, Emporia, Kansas 66801.
2. Defendant Bass Pro Outdoor World, LLC (hereinafter “Bass Pro”) is a Missouri limited liability company that is registered to do business in the state of Kansas and was actively transacting business in the state of Kansas at all relevant times.
3. Defendant Bass Pro can be served through its Kansas registered agent: The Corporation Company, Inc., 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

4. Upon information and belief, defendant Fabbrica d'Armi Pietro Beretta S.p.A. is a corporation organized and existing under the laws of the nation of Italy with its principal place of business in Brescia, Italy.

5. Upon information and belief, at all times relevant to this petition, defendant Fabbrica d'Armi Pietro Beretta S.p.A. designed, manufactured, assembled and/or imported guns which were marketed, distributed and/or sold in the United States, and which were distributed, marketed, sold and/or possessed within Kansas, including the handgun involved in the unintentional shooting of Marquise Johnson.

6. Defendant Beretta U.S.A. Corp. is a Maryland corporation with its principal place of business in Maryland.

7. Upon information and belief, at all times relevant to this petition, defendant Beretta U.S.A. Corp. designed, manufactured, assembled and/or imported guns which were marketed, distributed and/or sold in the United States, and which were distributed, marketed, sold and/or possessed within Kansas, including the handgun involved in the unintentional shooting of Marquise Johnson.

8. Defendant Beretta U.S.A. Corp. can be served through its Maryland registered agent: Steven Biondi, 17601 Beretta Drive, Accokeek, Maryland 20607.

9. The remainder of this petition collectively refers to defendant Fabbrica d'Armi Pietro Beretta S.p.A. and defendant Beretta U.S.A. Corp. as "Beretta" or "the Beretta defendants."

10. Defendant André Lewis is and was at all relevant times a Kansas citizen residing at 835 E. 9th Street, Unit 9, Ottawa, Kansas 66067.

11. Defendant André Lewis can be served personally at 6860 W. 115th Street, Ottawa, Kansas 66076.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this cause of action under Art. III, §§1 and 6 of the Kansas Constitution, as well as K.S.A. § 20-301.

13. This Court has personal jurisdiction over defendant Bass Pro because, among other reasons, Plaintiff's claims against defendant Bass Pro arose in Kansas, defendant Bass Pro has consented to personal jurisdiction by registering with the Kansas secretary of state under K.S.A. § 17-7931, defendant Bass Pro transacts business in Kansas, defendant Bass Pro committed a tortious act in Kansas, and defendant Bass Pro entered into a contract with a resident of Kansas.

14. This Court has personal jurisdiction over Beretta because, among other reasons, Plaintiff's claims against Beretta arose in Kansas; Beretta had continuous and systematic contacts with the State of Kansas by delivering its products into the stream of commerce with the expectation that the products would reach users within the state of Kansas; Beretta has minimum contacts with the state of Kansas from which Plaintiff's causes of action arose; Beretta transacts business with Plaintiff in Kansas; Beretta committed a tortious act in Kansas; and defendant Beretta caused an injury to a Kansas resident arising out of an act or omission outside Kansas while Beretta was engaged in solicitation activities in Kansas and products, materials, and things processed, serviced, or manufactured by Beretta were used or consumed in Kansas in the ordinary course of trade or use.

15. This Court has personal jurisdiction over defendant André Lewis because he is a resident and citizen of the state of Kansas.

16. Venue is proper in Lyon County, Kansas, where this action arose.

AGENCY

17. All actions and failures to act of the respective employees, agents, and servants of defendants Bass Pro and Beretta, including but not limited to store managers, salespeople, clerks and cashiers, were performed within the scope of their respective employment or agency with defendants Bass Pro and Beretta, and defendants Bass Pro and Beretta are vicariously liable for the respective actions and failures to act of said persons.

NATURE OF THE SUIT

18. This is a civil action arising from the decisions and actions of Beretta and Bass Pro to unreasonably and negligently design, market, distribute, and sell to the general public a lethal product without feasible, and adequate life-saving safety features.

19. Beretta and Bass Pro are not liable simply because they made and sold a gun, a product that is capable of causing lethal injury. Defendants are liable because they chose to design, manufacture, market, distribute, and sell that product in an unreasonably and unnecessarily dangerous manner, without feasible safety features and warnings that would have prevented Marquise Johnson from being shot and injured.

20. The tortious conduct of Beretta and Bass Pro foreseeably caused catastrophic injuries to Marquise Johnson.

21. For more than a century, the firearms industry—including Beretta and Bass Pro—have been well aware of the grave risk of injury and death their products pose to gun owners, their families, friends, and others when unauthorized, untrained, or irresponsible persons obtain access to their firearms, and they have been aware of feasible safety features that can prevent many gun injuries and deaths.

22. Beretta and Bass Pro know that many of their customers will foreseeably misuse and mishandle their guns; many customers will store guns that are unlocked and loaded, enabling children or others who cannot be expected to responsibly use guns to obtain them; and that as a result many children and adults die or are injured by those firearms unless the guns are made with safety features to prevent those deaths and injuries.

23. Beretta and Bass Pro know that guns could easily be made and sold with safety features that would prevent these deaths, and would greatly reduce the risk that people will be injured or killed from unintentional shootings.

24. For example, Beretta and Bass Pro know that many people are often 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.

25. Beretta and Bass Pro know that many people 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.

26. For more than a century, magazine disconnect safeties have been an easy and inexpensive fix to this problem that would save lives.

27. Magazine disconnect safeties are devices that prevent a gun from firing when the magazine is removed.

28. 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.

29. Beretta and Bass Pro have known or should have known that firearms with no magazine disconnect safety, inadequate loaded chamber indicators, or other safety features and designs will foreseeably result in unintentional discharges.

30. These safety features would reduce 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.

31. When Beretta and Bass Pro chose to design, manufacture, market, and sell the firearm used in the unintentional shooting of Marquise Johnson, they knew or should have known all of the above.

32. Despite this knowledge, Beretta and Bass Pro chose to design, manufacture, market, distribute, and sell firearms without feasible safety features that would prevent foreseeable deaths and injuries.

33. As a result of the negligent and otherwise tortious actions and choices of Beretta and Bass Pro, they placed the lives of their customers and others at risk.

34. As a result of the negligent and otherwise tortious actions and choices of Beretta and Bass Pro, Marquise Johnson was inadvertently and unintentionally shot at the age of 21 years old.

35. The shooting left Marquise Johnson without his left leg.

36. Kansas law provides a redress to Marquise Johnson for the damages caused by the negligence and otherwise tortious conduct of Beretta and Bass Pro. Under Kansas law, the firearm used to shoot Marquise Johnson was negligently designed, manufactured, marketed, distributed, and sold, and its design, warnings and instructions were defective and unreasonably dangerous.

37. The injury to Marquise Johnson was foreseeably caused by the negligence of Beretta and Bass Pro and the firearm's defective design and defective warnings and instructions which rendered the firearm unreasonably dangerous.

38. Marquise Johnson brings this suit to hold the companies accountable for their wrongful actions that caused his injuries.

39. Under Kansas law, "a firearms dealer must exercise the highest standard of care when selling firearms." *Shirley v. Glass*, 297 Kan. 888, 898–901, 308 P.3d 1 (2013).

40. Under Kansas law, defendants Beretta and Bass Pro owed the highest degree of care in selling and in transacting firearms at all relevant times. *See Shirley v. Glass*, 297 Kan. 888, 898–901, 308 P.3d 1 (2013).

FACTUAL ALLEGATIONS

A. The shooting of Marquise Johnson.

41. In February 2018, André Lewis, then a 21-year-old college student, purchased a new handgun from defendant Bass Pro Outdoor World, LLC in Olathe, Kansas.

42. The handgun André Lewis purchased was a Beretta APX 9mm handgun manufactured and distributed by defendant Beretta.

43. On August 18, 2018, André Lewis was driving his Dodge Charger in Emporia, Kansas, with three of his teammates from the Emporia State University football team as passengers.

44. The passengers included plaintiff Marquise Johnson, who was sitting in the front passenger seat next to André Lewis.

45. In the car, André Lewis revealed the Beretta APX 9mm handgun to his passengers and removed the magazine, believing this would render the Beretta APX 9mm unloaded and safe.

46. Upon information and belief, the Beretta APX 9mm handgun had not been modified in any significant way from the time it was manufactured and sold by Beretta and Bass Pro and had the same safety features—and lack of safety features and warnings—as it did when it was manufactured and sold by Beretta and Bass Pro.

47. André Lewis was unaware that one bullet remained in the chamber of the Beretta APX 9mm handgun even after his removal of the magazine.

48. André Lewis mistakenly believed that the Beretta APX 9mm handgun could not fire with the magazine removed.

49. While André Lewis was holding the Beretta APX 9mm handgun, the weapon discharged, firing the live round that remained hidden in the chamber.

50. The lack of safety features and unsafe design of the Beretta APX 9mm handgun caused the gun to be discharged.

51. As a result of the lack of safety features and unsafe design of the Beretta APX 9mm handgun, a bullet entered and exited Marquise Johnson's left thigh before entering and exiting his right thigh.

52. As a result of the lack of safety features and unsafe design of the Beretta APX 9mm handgun, Marquise Johnson's left leg was initially amputated below the knee and then later above the knee.

53. As a result of the lack of safety features and unsafe design of the Beretta APX 9mm handgun, Marquise Johnson has suffered and will continue to suffer damages including but

not limited to past and future expenses for medical care and treatment, loss of past wages and future earning capacity, pain, suffering, disability, disfigurement, emotional distress, and loss of enjoyment of life.

54. Marquise Johnson's injuries and resulting damages were directly and proximately caused by the discharge of the Beretta handgun.

B. Defendants Beretta and Bass Pro were aware of the need to include safety features to prevent foreseeable injuries or deaths.

55. Defendants Beretta and Bass Pro knew or should have known at all relevant times that when it designed, marketed, distributed and sold firearms, they should ensure that those products were reasonably safe and included feasible safety features and warnings that would prevent injuries caused by their foreseeable use and foreseeable misuse.

56. Defendants Beretta and Bass Pro knew or should have known at all relevant times that many consumers and users would not pay sufficient attention to instructions in owners' manuals or purported safety warnings or check lists provided by sellers, but that it was foreseeable that their guns would be misused in dangerous ways that would result in injuries or deaths, unless they were designed and sold with feasible safety features.

57. Defendants Beretta and Bass Pro knew or should have known at all relevant times that distributing and selling firearms with unsafe designs and without the safety features and adequate warnings discussed herein results in many unintentional shootings every year.

58. A substantial number of these deaths and injuries would be prevented if gun manufacturers and sellers equipped guns with safety features to prevent young adults, children, and others from discharging them.

59. 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.

60. Defendants knew or should have known that advertising, marketing and messaging from the firearms industry misleads many people into incorrectly thinking that guns enhance safety and are more likely to save lives, even though studies have consistently shown for years that possession of a gun increases the risk of injury and death.

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

62. 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.

63. Defendants knew or should have known that these misperceptions make it more likely that people will use and store guns unsafely.

64. Defendants knew or should have known that ordinary users of the Beretta APX 9mm handgun would be deceived by its design to think that it was unloaded even though a live round was in the chamber.

65. Defendants knew or should have known that as a result of this deception, many people would be killed or seriously injured.

C. The Beretta APX 9mm Handgun's Lack of Safety Features.

66. This tragedy resulted from the negligent, reckless, unnecessarily and unreasonably dangerous actions of defendants Beretta and Bass Pro, including their design, manufacturing, marketing, distribution, and sale of a handgun without a magazine disconnect safety, effective loaded chamber indicator, effective warnings, or other safety features that would have prevented it from being fired by defendant Lewis.

67. Any one of these feasible features would have prevented the shooting that injured Marquise Johnson.

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

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

70. Pursuant to § 402A of the Restatement (Second) of Torts, the Beretta APX 9mm handgun was unreasonably dangerous to an extent not contemplated by André Lewis when he purchased it and when he possessed and used it.

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

72. For example, 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.

73. Magazine disconnect safeties are used by many manufacturers, without incident or harm to legitimate, appropriate users.

74. A 1910 patent for the magazine disconnect safety 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.”

75. At least as early as January 1958, the National Rifle Association recognized the life-saving potential of magazine disconnect safeties.

76. More than 60 years ago, the 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.”

77. Effective loaded chamber indicators are also feasible and, if effectively designed and manufactured, they can alert foreseeable users that a round is in the chamber, even if the magazine is removed.

78. 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.

79. The recognition that a gun can and should be made to prevent the unintentional discharge of a bullet left in the chamber has been well known in the gun industry for more than a century.

80. At the time of the manufacture of the handgun, it was also feasible to incorporate a lock into the gun that would secure it against unintentional use.

81. Feasible locking devices include key-operated or push button locks similar to those that have been used on briefcases for decades.

82. These and other locking devices have been successfully incorporated into guns, and would have prevented the shooting of Marquise Johnson.

83. Locking systems that are internal or integrated into the gun are more effective and more likely to be used than locks that are separate and external and 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.

84. Unlike external locks, internal locks are always available to the gun user, reminding the gun user of its availability, and its inclusion indicates that the manufacturer believes it is very important to use.

85. External locks also may be installed incorrectly, defeated by cutting or prying apart the lock, or lost after being removed from the gun.

86. Magazine disconnect safeties, loaded chamber indicators, internal locking systems, and other safety features to prevent the unintentional use of guns have been proposed and available to gun manufacturers for many years, and were feasible and known and available to Beretta at the time it manufactured the Beretta APX 9mm handgun.

87. Guns lacking features to prevent the unintentional discharge of a bullet are unreasonably dangerous.

88. Despite this fact, Beretta failed to equip the Beretta APX 9mm handgun with any safety feature to prevent its unintentional use.

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

90. For over a decade, another major gun manufacturer, 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.

91. 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.

92. Taurus has stated that the Taurus Security System 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.

93. 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.

94. Technology equally or more effective than the Taurus Security System was feasible at the time the Beretta APX 9mm handgun was made and sold.

95. Such technology would have secured the Beretta APX 9mm handgun against the unintentional shooting that occurred here.

D. The Inadequate and Negligent Warnings and Instructions regarding the Beretta APX 9mm Handgun.

96. Upon information and belief, the warnings and instructions provided by defendants Beretta and Bass Pro failed to adequately educate and alert people as to the risks posed by their guns, including the foreseeable risks that guns will be unintentionally fired, that

users will mistakenly believe that a gun is unloaded when the magazine is removed, and that shooting injuries and deaths will result.

97. Upon information and belief, the Beretta APX 9mm handgun also did not include adequate warnings about the lack of a magazine disconnect, or the lack of other feasible safety features.

98. Defendants' actions in marketing, distributing and selling the Beretta APX 9mm handgun with negligent warnings and 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.

COUNT I – STRICT LIABILITY: UNREASONABLY DANGEROUS AND DEFECTIVE DESIGN AND LACK OF ADEQUATE WARNINGS AND INSTRUCTIONS (DEFENDANTS BERETTA AND BASS PRO)

99. Plaintiff hereby incorporates all previous paragraphs.

100. The Beretta APX 9mm handgun is a “product” under the Kansas Product Liability Act, K.S.A. 60-3302, *et seq.*

101. Defendant Beretta is a “manufacturer” within the meaning of K.S.A. 60-3302(b).

102. Defendant Bass Pro is a “product seller” within the meaning of K.S.A. 60-3302(a).

103. Defendant Beretta designed, engineered, manufactured, marketed, and/or sold the subject defective Beretta APX 9mm handgun and other defective Beretta handguns.

104. Defendant Bass Pro marketed, serviced and sold the subject defective Beretta APX 9mm handgun and other defective Beretta APX 9mm handguns.

105. Defendant Bass Pro had knowledge of the unreasonably dangerous and defective condition of the Beretta APX 9mm handgun, or would have discovered the gun's unreasonably

dangerous and defective condition while exercising reasonable care in the performance of the duties it performed or was required to perform.

106. The Beretta APX 9mm handgun was unreasonably dangerous and defective in design and lacked elements 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 another safety system that would prevent it from being unintentionally fired, and effective and appropriate warnings and instructions.

107. The Beretta APX 9mm handgun failed to perform as safely as an ordinary consumer would expect in this incident, which was a reasonably foreseeable use of the Beretta APX 9mm handgun, because of its unreasonably dangerous and defective design, and as a result Marquise Johnson was shot.

108. The risks of harm resulting from the unreasonably dangerous and defective design of the Beretta APX 9mm handgun were reasonably foreseeable.

109. Alternative designs existed at the time of design, manufacture, and sale of the Beretta APX 9mm handgun that were safer, feasible, practical, and cost efficient.

110. The danger posed by the unreasonably dangerous and defective design is severe, because injuries resulting from it are likely to be extremely serious, including catastrophic physical injuries or death.

111. This danger has been known to designers, manufacturers, distributors and dealers of the product for many years.

112. The likelihood that the danger would occur is great.

113. It is common and foreseeable for guns to be used and stored in an unsecure manner that enables users to unintentionally discharge them.

114. The risks created by, and harmful characteristics or consequences of, the Beretta APX 9mm handgun's design outweigh any benefits of the design.

115. A safer design is feasible.

116. There are no adverse consequences to the product or to the consumer that would result from the safer design.

117. A safer design can eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility.

118. It is feasible for the designer or manufacturer to spread any costs of a design change through the price of the product or liability insurance.

119. A reasonable person would conclude that the probability and seriousness of harm caused by the Beretta APX 9mm handgun outweigh the burden of cost of taking the safety precautions addressed herein.

120. Defendants Beretta and Bass Pro failed to adopt safety precautions proportionate to the magnitude of the expected risk of the Beretta APX 9mm handgun.

121. The Beretta APX 9mm handgun at issue was unreasonably dangerous and defective in design and manufacture and for lack of adequate warnings and instructions when it left the hands of Beretta and Bass Pro and remained in such condition at all times thereafter until ultimately causing Marquise Johnson's severe and permanent injuries.

122. The Beretta APX 9mm 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.

123. At the time the Beretta APX 9mm handgun was placed into the stream of commerce, it was or should have been reasonably expected and foreseeable by Defendants

Beretta and Bass Pro that it would be used in the manner and application in which it was used at the time of the unintentional shooting that resulted in Marquise Johnson's injuries.

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

125. In selling the Beretta APX 9mm handgun to André Lewis, defendant Bass Pro failed to adequately instruct him on the danger of a live round remaining in the weapon's chamber after the magazine has been removed.

126. Beretta also provided inadequate warnings on the firearm itself, including failing to effectively inform and instruct foreseeable users that a live round could be in the chamber and could be fired after the magazine is removed, and to have an effective loaded chamber indicator prominently and clearly inform and alert users when the chamber was loaded.

127. It was feasible to place a specific warning on the handgun itself to identify the loaded chamber indicator's purpose and to identify and instruct purchasers when the chamber is loaded.

128. It was feasible to provide stronger warnings and training about the additional risks posed by handguns without magazine disconnect safeties.

129. Placing a more effective warning regarding the loaded chamber indicator and magazine disconnect safeties 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.

130. A reasonable person would conclude that the probability and seriousness of harm caused by the Beretta APX 9mm handgun outweigh the burden or cost of implementing the safety precautions, warnings, and instructions addressed herein.

131. These defendants failed to adopt safety precautions, warnings, and instructions proportionate to the magnitude of the expected risk of the Beretta APX 9mm handgun and failed to adequately instruct purchasers and users of the existence and seriousness of the potential dangers.

132. At the time the Beretta APX 9mm handgun was placed into the stream of commerce, it was or should have been reasonably expected and foreseeable by Defendants Beretta and Bass Pro that it would be used in the manner and application in which it was used at the time of the unintentional shooting that resulted in Marquise Johnson's injuries.

133. Here, the shooter thought the handgun was unloaded because the magazine clip was not in it.

134. Had the loaded chamber indicator or other warning effectively provided the requisite warning to André Lewis that the Beretta APX 9mm handgun was loaded, Marquise Johnson would not have been shot and injured.

135. These defendants placed the Beretta APX 9mm handgun into the stream of commerce and are strictly liable for the injuries and damages caused by the failure to warn, failure to provide information, and failure to instruct on the defective condition of the Beretta APX 9mm handgun.

136. The failure of these defendants to warn, instruct, or otherwise protect against this dangerous use or misuse of the product was a direct, legal, and proximate cause of and

substantial factor in causing the shooting of Marquise Johnson and his severe and permanent injuries and damages, in an amount to be proven at trial.

137. Defendants Beretta and Bass Pro placed the Beretta APX 9mm handgun into the stream of commerce and are strictly liable for the injuries and damages caused by the unreasonably dangerous and defective design and lack of adequate warnings and instructions regarding the Beretta APX 9mm handgun.

138. These defendants' actions and inactions were direct, legal, and proximate causes of and substantial factors in causing the shooting of Marquise Johnson and his severe and permanent injuries and damages, in an amount to be proven at trial.

**COUNT II – NEGLIGENT DESIGN AND LACK OF ADEQUATE WARNINGS AND
INSTRUCTIONS
(DEFENDANTS BERETTA AND BASS PRO)**

139. Plaintiff hereby incorporates all previous paragraphs.

140. At all relevant times, defendants Beretta and Bass Pro were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury. These defendants had a duty to exercise reasonable care in designing, manufacturing, marketing, distributing, and selling their product to protect against foreseeable risk of injury, including providing effective and appropriate warnings and instructions, and to refrain from engaging in any affirmative activity creating reasonably foreseeable risks of injury to others.

141. Defendants Beretta and Bass Pro breached their duty not to expose others to reasonably foreseeable risks of injury by designing, manufacturing, marketing, distributing, and selling the Beretta APX 9mm 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 accidentally fired, and effective and appropriate warnings and instructions.

142. Defendants Beretta and Bass Pro 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.

143. Defendants Beretta and Bass Pro could have and should have included strong, detailed, and prominent language, materials and training to effectively inform potential users as to the risks of firearms and the need to store them safely.

144. Defendants also negligently provided inadequate warnings on the Beretta APX 9mm handgun itself, and failed to adequately instruct purchasers of the dangers of the weapon, including by failing to adequately 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.

145. For example, the Beretta APX 9mm handgun's loaded chamber indicator does not come standard and is an optional safety feature that must be specifically chosen by the purchaser.

146. It was feasible to make the loaded chamber indicator a standard safety feature on the Beretta APX 9mm handgun itself to identify when the chamber is loaded.

147. Making the loaded chamber indicator a standard safety feature on the Beretta APX 9mm handgun is feasible, there are no adverse consequences to the product or to the consumer that would result from the safer design that includes such standard feature, 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.

148. When loaded chamber indicators are included, they must be sufficiently prominent to alert users and to prevent foreseeable shootings that result when users believe a gun is unloaded although a live round remains in the chamber.

149. Defendants Beretta and Bass Pro negligently chose to sell an unsafe gun without an adequate loaded chamber indicator.

150. Defendants Beretta and Bass Pro negligently chose to sell an unsafe gun without a magazine disconnect safety.

151. Defendants Beretta and Bass Pro negligently chose to sell an unsafe gun without an internal lock or other safety features that would have prevented the shooting of Plaintiff.

152. Here, the shooter thought the Beretta APX 9mm handgun was unloaded because the magazine clip was not in it. Had Defendants included an effective loaded chamber indicator that provided the requisite warning to André Lewis that the Beretta APX 9mm handgun was loaded, or had Defendants included a magazine disconnect safety, internal lock, or other safety feature that would have prevented the shooting, or had Defendants properly warned and instructed André Lewis on this danger, Marquise Johnson would not have been shot and injured.

153. A reasonable person would conclude that the probability and seriousness of harm caused by the Beretta APX 9mm handgun outweigh the burden of cost of taking the safety precautions, warnings, and instructions addressed herein.

154. Defendants Beretta and Bass Pro failed to adopt safety precautions, warnings and instructions proportionate to the magnitude of the expected risk of the Beretta APX 9mm handgun.

155. The failure of these defendants to adequately warn, instruct, or otherwise protect against this dangerous use or misuse of the product was a direct, legal, and proximate cause of

and substantial factor in causing the shooting of Marquise Johnson and his severe and permanent injuries and damages, in an amount to be proven at trial.

156. These defendants' breach of their duties to adequately warn, instruct, or otherwise protect against this dangerous use or misuse of the product and to not expose others to reasonably foreseeable risks of injury was the direct, legal, and proximate cause of the shooting of Marquise Johnson and his severe and permanent injuries and damages, in an amount to be proven at trial.

COUNT III – NEGLIGENCE OF ANDRÉ LEWIS

157. Plaintiff hereby incorporates all previous paragraphs.

158. Defendant André Lewis owed Marquise Johnson a duty to use reasonable care in handling and possessing his Beretta handgun in close proximity to Marquise Johnson.

159. Defendant André Lewis breached this duty by enabling the handgun to unintentionally discharge in his vehicle in close proximity to Marquise Johnson.

160. Defendant André Lewis's negligence caused or contributed to cause Marquise Johnson to sustain injuries and damages, as set forth herein.

WHEREFORE, Plaintiff prays for judgment for compensatory damages against Defendants in an amount in excess of seventy-five thousand dollars (\$75,000.00), together with the costs of this action, interest, and other such relief as Plaintiff is entitled pursuant to Kansas law and that the Court may deem appropriate.

Respectfully submitted,

**SHAMBERG, JOHNSON & BERGMAN
CHARTERED**

By /s/ Richard L. Budden

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DEMAND FOR JURY TRIAL

COMES NOW Plaintiff and hereby demands a trial by jury on all issues in the above-captioned case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of January, 2021, a copy of the above and foregoing was electronically filed with the Clerk of Court using the District Court's electronic case filing system, and a copy was also served by electronic mail, addressed to:

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