



Mulehead Dan’s Firearms (“Delashaw”) and in support thereof, Plaintiffs respectfully show the Honorable Court the following:

### **SUMMARY OF THE ACTION**

1. In recent years, mass shooters<sup>1</sup> in the state of Texas have ended 69 innocent lives in Odessa, El Paso, Sutherland Springs, Santa Fe and Dallas.

2. This lawsuit is brought on behalf of Leilah Hernandez and Joseph Griffith, who were murdered in the Odessa shooting on August 31, 2019, and their families who continue to suffer from their own wounds, mental anguish and trauma they experienced on that deadly day.

3. The Plaintiffs in this lawsuit seek to hold accountable the actors that manufactured, profited from, distributed, sold and/or supplied the firearm that was used in the shooting. The Plaintiffs also hope that by imposing accountability on the Defendants for their negligence and/or one or more knowing violations of the law, that they might prevent future gun violence and future gun deaths in Texas, and beyond.

4. This lawsuit does not in any way challenge the right of law-abiding citizens to bear arms. This lawsuit also does not challenge in any way the right of responsible gun dealers to operate a business of selling guns to law-abiding citizens. This lawsuit is about the criminal use of guns and gun dealers that negligently and/or illegally supply the criminal market. Negligently and/or illegally supplying the criminal market with guns not only causes foreseeable harm (such as shooting incidents underlying this case), it unfairly tarnishes the responsible gun sellers who supply law abiding citizens with arms for lawful purposes.

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<sup>1</sup> To what defines a mass shooting, in a 2015 study, the Congressional Research Service said FBI criminal profilers use “mass murder” for incidents in which “four or more victims are murdered — not including (the offenders) — within one event, and in one or more geographical locations relatively near one another.”

### **A. DISCOVERY CONTROL PLAN**

5. Plaintiffs intend for discovery to be conducted pursuant to a Level 3 discovery control plan. Texas Rule of Civil Procedure 190.4.

### **B. PARTIES**

6. Plaintiffs are members of the general public in the United States and Texas, and therefore members of the class of persons that federal and/or state firearms laws including, but not limited to, the Gun Control Act of 1968 (18 U.S.C. §§ 921 *et seq.*) are designed to protect.

7. Plaintiff Joanna Leyva brings this suit in her individual capacity and as Representative of the Estate of Leilah Hernandez, Deceased. Joanna Leyva resides in Ector County, Texas. The last three digits of her Texas Driver's license number are 224. The last three digits of her Social Security number are 204.

8. Plaintiff Nathan Hernandez is an individual who resides in Ector County, Texas. The last three digits of his Texas driver's license number are 490. The last three digits of his Social Security number are 445.

9. Plaintiff Rodolfo Trejo is an individual who resides in Ector County, Texas. The last three digits of his Texas driver's license number are 086. The last three digits of his Social Security number are 683.

10. Plaintiff Gary Griffith is an individual who resides in Ector County, Texas. The last three digits of his Texas Driver's license number are 633. The last three digits of his Social Security number are 117.

11. Plaintiff Sharon Griffith is an individual who resides in Ector County, Texas. The last three digits of her Texas Driver's license number are 919. The last three digits of her Social Security number are 071.

12. Defendant Marcus Anthony Braziel is an individual who, upon information and belief, resides in Lubbock, Lubbock County, Texas. Defendant Braziel has been served and filed an answer herein and is properly before the Court.

13. Defendant Wm. C. Anderson Inc. d/b/a Anderson Manufacturing has been served and filed an answer herein and is properly before the Court.

14. Defendant Fat Boy Tactical, LLC is a corporation which sells firearms and/or firearms parts and upon information and belief, has its principal place of business in Bixby, Oklahoma. It is incorporated under the laws of the State of Oklahoma and may be served by serving its registered agent for service, Todd Aeron Cole, 7232 E. 130<sup>th</sup> Street, Bixby, OK 74008.

15. Defendant Danny Delashaw d/b/a Mulehead Dan's Firearms is an individual who, upon information and belief, resides in Lubbock County, Texas. Defendant Danny Delashaw d/b/a Mulehead Dan's Firearms has been served and filed an answer herein and is properly before the Court.

16. Upon information and belief, Anderson Manufacturing, Fat Boy and Delashaw were all Federal Firearms Licensees ("FFLs") engaged in the commercial sale of firearms and/or firearms parts at all times relevant to this petition.

### **C. JURISDICTION & VENUE**

17. Plaintiffs seek monetary relief of over \$1,000,000.00. The damages Plaintiffs seek are within the jurisdictional limits of the Court.

18. This Court has personal jurisdiction over Defendant Marcus Anthony Braziel because he is a resident of the state of Texas.

19. This Court has personal jurisdiction over Anderson Manufacturing because Anderson Manufacturing was conducting business in Texas at the time this cause of action accrued, and Plaintiffs' claims arise out of said contacts.

20. This Court has personal jurisdiction over Fat Boy because Fat Boy was conducting business in Texas at the time this cause of action accrued – including, upon information and belief, by shipping firearms and/or firearms parts to customers residing in and/or operating in Texas either directly and/or through intermediaries– and Plaintiffs' claims arise out of said contacts.

21. This Court has personal jurisdiction over Danny Delashaw d/b/a Mulehead Dan's Firearms because he is a resident of the State of Texas.

22. This Court has subject-matter jurisdiction over this lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements and the events or conditions from which this lawsuit arises occurred in Texas.

23. Venue is proper in Ector County, Texas pursuant to § 15.002(A)(1) of the Texas Civil Practice & Remedies Code, because all or a substantial portion of the events and/or omissions giving rise to Plaintiffs' claims occurred in Ector County, Texas.

#### **D. GENERAL ALLEGATIONS**

24. In order to keep the public safe, both federal and state laws regulate firearm possession and transfers. These laws are designed to keep guns out of the hands of prohibited persons, such as minors, people with felony convictions, people with mental illnesses and domestic abusers and to assist law enforcement if a firearm is used in a crime.

25. The Bureau of Alcohol, Tobacco, Firearms, and Explosives' ("ATF's") Federal Firearms Licensing Center issues and renews Federal Firearms Licenses under the Gun Control Act of 1968. Federally licensed firearms dealers are the "principal agent(s) of federal enforcement"

in ‘restricting [criminals’] access to firearm’” and accept “the responsibility to ‘[e]nsure that, in the course of sales or other dispositions... weapons [are not] obtained by individuals whose possession of them would be contrary to the public interest.’” *Abramski v. United States*, 134 S. Ct. 2259, 2273 (2014) (quoting *Huddleston v. United States*, 415, U.S. 814, 825 (1974)).

26. Under 18 U.S.C. § 922(d), it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person “has been adjudicated as a mental defective or has been committed to any mental institution.”

27. One important way that this regulatory framework works to keep guns out of the hands of prohibited persons is by requiring anyone who intends to “engage in the business” of dealing in firearms to first obtain a federal firearms license. *See* 18 U.S.C. §§ 922(a)(1), 923(a). Without a federal firearms license, it is illegal for anyone to buy and sell guns repeatedly for the purpose of making a profit. It is also illegal for anyone to aid and abet or conspire to deal in firearms without a license. *See* 18 U.S.C. §§ 2, 371.

28. Prior to transferring a gun to an unlicensed individual, a dealer or manufacturer must conduct a background check, examine the individual’s identification, and record the transaction on a firearms transaction record (“ATF Form 4473”). 18 U.S.C. § 922(t)(1), 27 C.F.R. §§ 478.102, 478.124(a). The licensee seller must also keep a record of all transactions to non-licensees in an acquisition and disposition book. 27 C.F.R. §§ 478.123(d), 478.125(e).

29. Before any transfer to an unlicensed individual, the true purchaser of the firearm must fill out ATF Form 4473, which asks the following question with the following warning. **“Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person.**

**If you are not the actual transferee/buyer, the dealer cannot transfer the firearm(s) to you.”**

It is unlawful for a buyer to inaccurately fill out this form and for any seller to accept this form if they know or have reason to believe that it is inaccurate.

30. Licensees must also complete a portion of ATF Form 4473 prior to transferring a firearm, certifying that is their “belief that it is not unlawful [ ] to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.” Licensees must truthfully complete this portion of the form.

31. The form also explains that a gun dealer “must stop the transaction if there is reasonable cause to believe that the transferee/buyer is prohibited from receiving or possession a firearm[.]” There is a clear warning that states, **“WARNING: Any person who transfers a firearm to any person he/she knows or has reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the transferor/seller has complied with the Federal background check requirements.”**

32. The purchase of multiple weapons in a short period of time is an indicator of gun trafficking, so if multiple guns are purchased by the same individual within a short timeframe, the licensee must also complete a multiple-sale form and send it to the ATF and local law enforcement. 18 U.S.C. § 923(g)(3)(A); 27 C.F.R. § 478.126a.

33. It is unlawful for licensed manufacturers and/or dealers to knowingly make false statements or misrepresentations, to fail to make appropriate entries in, or to fail to properly maintain, the records described above. 18 U.S.C. §§ 992(m), 924(a)(3); *see also* 18 U.S.C. § 924(a)(1)(A). These laws are intended to prevent trafficking and straw purchasing. Straw purchasing occurs when a person buys a gun on someone else’s behalf while falsely claiming that

it is for himself. Gun dealers and manufacturers are trained on how to spot traffickers and straw purchases through programs and publications sponsored by both the ATF and the gun industry.

#### E. FACTS

34. On August 31, 2019, Seth Ator (“mass shooter” or “shooter”) drove around Midland and Odessa Texas wielding an AM-15 assault rifle that was illegally and/or negligently manufactured, distributed, supplied and/or sold by the Defendants.

35. Using this firearm, the mass shooter opened fire in the streets of Midland and Odessa, killing 7 and injuring 25 more.

36. Anderson Manufacturing manufactured the firearm used by the shooter and sold this firearm as a lower receiver.<sup>2</sup>

37. Upon information and belief, Anderson Manufacturing sold this firearm to Fat Boy.

38. Upon information and belief, Braziel directly purchased the firearm from Fat Boy and had the firearm shipped to Delashaw for pickup and transfer.

39. Braziel was, at all relevant times, operating as an unlawful, unlicensed firearms dealer in violation of, at minimum, 18 U.S.C. § 923(a).

40. Braziel sold the relevant firearm to the shooter as part of this illicit enterprise.

41. Joseph Griffith was driving his wife and children to take pictures on August 31, 2019 when the shooter pulled up next to their vehicle with the firearm. The next thing he and his wife and children saw was an AR-15 pointed directly at them. Seconds of consistent and burning fear went by before the shooter decided to end Joseph Griffith’s life.

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<sup>2</sup> A “firearm receiver” is “[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” 27 C.F.R. 478.11. Under 18 U.S.C. § 921(a)(3), the receiver is the regulated firearm, and licensed manufacturers and importers are required to mark the designated receiver with a serial number under 18 U.S.C. § 923(i). *See also* 27 C.F.R. 478.92.

42. Joanna Leyva and her family were at the Freedom Buick GMC dealership test driving vehicles when the chaos ensued. Moments before the family was leaving, gunshots rang through the dealership. The family was forced to separate and take shelter behind various vehicles. While in cover fearing the shooter herself, Joanna Leyva watched her daughter Leilah get shot multiple times while her son Nathan Hernandez, jumped on top of Leilah’s body to protect her getting wounded in the process. It took hours for ambulances to arrive. Joanna’s last memory of her daughter is Leilah pleading “help me, help me.”

43. Both families witnessed the murder of their loved ones pictured below.



44. Under federal law, the shooter was prohibited from buying or possessing a weapon due to a disqualifying mental health issue and, upon information and belief, could not have passed a relevant background check. He purchased the murder weapon from Braziel in a private sale not subject to a background check under federal law. Had Braziel been a properly licensed FFL, he would have been required to conduct a background check on this transaction and, upon information and belief, would have been blocked from transferring the gun to the shooter. *See* 18 U.S.C. § 922(t).

45. Here, Braziel manufactured and sold AR-type rifles and other firearms without holding a federal license authorizing him to engage in the business of selling firearms as required by § 923(a). Braziel was obtaining firearms, receivers and/or other component parts of firearms and using them to manufacture AR-type rifles and/or other firearms, which he would sell as part of his unlawful firearms business.

46. Braziel commonly purchased receivers, firearms and/or other firearms parts through Delashaw.

47. Between approximately April 2014 and October 2017, Braziel purchased ninety-four (94) firearms from local FFLs, including Delashaw. Of the ninety-four (94) firearms, seventy-one (71) are presumed to have been sold by Braziel.

48. Braziel regularly conducted business, including purchasing firearms and components necessary for the manufacture and sale of AR-type rifles, handguns and/or other firearms, with numerous firearms businesses – including Anderson Manufacturing and Fat Boy – prior to the subject shooting.

49. Upon information and belief, all Defendants had either actual and/or constructive knowledge that either they and/or downstream distributors and/or sellers of their dangerous products were supplying, directly and/or indirectly, dangerous parties like Braziel and/or the shooter who had an intent to unlawfully misuse said products prior to the subject shooting.

50. Upon information and belief, the frequency, volume and circumstances surrounding transactions between the Defendants and downstream distributors, sellers and/or customers combined to make it clear to the Defendants that their products were not destined for lawful use prior to the subject shooting.

51. Such “red flags” of unlawful downstream use included, but are not necessarily limited to, Braziel’s purchases of large numbers firearms and/or firearms parts from one or more Defendants – sometimes in a single transaction – at a rate and amount and under circumstances which indicated his likely intent to use the items to illicitly sell large quantities of firearms as part of his unlicensed firearms business.

52. Upon information and belief, all of the Defendants continued to supply their downstream networks of distributors, sellers and/or customers while, at minimum, willfully blinding themselves to these and/or similar indicators of danger demonstrating that their products were being resold, or would likely be resold, to the criminal market and/or otherwise misused unlawfully and/or recklessly.

53. This rendered them knowing and culpable accomplices and/or co-conspirators to the direct criminal actions of downstream parties including, but not limited to, Braziel who were unlawfully misusing their products. *See, e.g.*, 18 U.S.C. §§ 2, 371.

54. It also renders all Defendants responsible for the foreseeable end-results of the unlawful misuse of their firearms by the dangerous parties they were supplying – including, as here, Plaintiffs’ damages stemming the subject shooting.

#### **F. NEGLIGENCE**

55. Plaintiffs incorporate and re-allege the above paragraphs as if stated fully herein.

##### **Negligence of Marcus Anthony Braziel**

56. At all relevant times, Braziel was subject to the general duty imposed on all persons and entities to not expose others to reasonably foreseeable risks of injury.

57. Braziel had a duty to exercise reasonable care in distributing and selling firearms to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others (including arming prohibited or otherwise dangerous purchasers)..

58. Braziel was also, at all times, subject to a duty to avoid negligently supplying a firearm to any other person.

59. Braziel violated his duty by providing a firearm to any person, either directly and/or through intermediaries, where he knew, or reasonably should have known, that the person receiving the firearm was likely to misuse that firearm in a manner that would create an unreasonable risk of physical harm to himself or others.

60. The incident made the basis of this suit and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent and/or unlawful conduct of Defendant Braziel. Upon information and belief, the acts of negligence/negligence *per se*/gross negligence of Defendant Braziel include, but are not limited to the following:

- a. Unlawfully engaging in the business of dealing firearms;
- b. Selling firearms to ineligible purchasers;
- c. Negligently supplying firearms to ineligible purchasers;
- d. Selling firearms to purchasers with previous criminal records;
- e. Selling the firearm to the mass shooter;
- f. Selling firearms that he knew, or consciously avoided knowing would be placed into the hands of persons ineligible to possess a firearm and/or dangerous criminals either directly and/or through intermediaries;
- g. Failing to check the background of purchasers;
- h. Unlawfully moving firearms in interstate or international commerce in Texas in violation of U.S.C. § 922(a)(1)(A) and
- i. Concealing his sale of weapons from law enforcement.

61. Braziel's negligence and/or knowing violation of one or more federal and/or state statutes and/or regulations (either directly and/or as an accomplice/co-conspirator) was a direct and proximate cause of Plaintiffs' damages set forth below.

62. Plaintiffs reserve the right to plead more specifically as facts become more fully known in discovery.

**Negligence of Wm. C. Anderson Inc. d/b/a Anderson Manufacturing**

63. When it became a licensed gun dealer, Anderson Manufacturing voluntarily assumed duties to learn and carefully follow all federal and/or state firearm laws and/or regulations and to implement reasonable safety measures to prevent illegal and/or dangerous sales.

64. Anderson Manufacturing is and was well aware of the substantial risk that negligent and/or unlawful business practices would end up supplying criminals with guns and/or firearms parts – often through gun traffickers, straw purchasers and/or unlicensed, unlawful firearms dealers such as Braziel.

65. Also, Anderson Manufacturing was under the general obligation to exercise reasonable care in selling firearm so as to never needlessly endanger the public (including by arming unlicensed dealers and/or prohibited or otherwise dangerous purchasers).

66. One aspect of this duty was an obligation to avoid negligently supplying a firearm to any other person.

67. Anderson Manufacturing violated its duty by providing a firearm to any person, either directly and/or through intermediaries, where it knew, or reasonably should have known, that the person receiving the firearm was likely to misuse that firearm in a manner that would create an unreasonable risk of physical harm to himself or others.

68. Anderson Manufacturing was, further, under a general obligation to vet and supervise downstream distributors and/or sellers of its products – such as Fat Boy and/or Delashaw – so as to verify that such parties were only selling its products in full compliance with all applicable laws and reasonable safeguards.

69. In this case, this obligation included, but was not limited to, verifying that downstream entities like Fat Boy and/or Delashaw had systems in place to identify probable illicit firearms dealers like Braziel so as to avoid supplying, aiding and abetting and/or conspiring with such illicit firearms dealers.

70. The incident that forms the basis of this suit and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent and/or unlawful conduct of Defendant Anderson Manufacturing. Upon information and belief, the acts of negligence/negligence *per se*/gross negligence of Defendant Anderson Manufacturing include, but are not limited to, the following:

- a. Failing to ensure to the general public that unlicensed firearms dealers and/or straw purchasers would not take possession of its firearms either directly and/or through intermediaries;
- b. Negligently supplying a firearm and/or firearm parts to Braziel either directly and/or through intermediaries;
- c. Selling multiple firearms and/or firearms parts to an unlicensed dealer of firearms either directly and/or through intermediaries;
- d. Failing to have a system in place that notifies Anderson Manufacturing that either a straw purchaser or an unlicensed dealer of firearms is purchasing Anderson Manufacturing firearms either directly or through intermediaries;
- e. Allowing unlicensed dealers of firearms to purchase Anderson Manufacturing firearms either directly and/or through intermediaries; and,
- f. Failing to have systems to vet and supervise downstream distributors and/or sellers of Anderson Manufacturing products – such as Fat Boy and/or Delashaw – to verify

that such downstream parties are selling such products in full compliance with all relevant laws and reasonable standards of care; and

- g. Selling firearms that it knew, or consciously avoided knowing would be placed into the hands of persons ineligible to possess a firearm and/or dangerous criminals either directly and/or through intermediaries.

71. Anderson Manufacturing's negligence and/or knowing violation of one or more federal and/or state statutes and/or regulations (either directly and/or as an accomplice/co-conspirator) was a direct and proximate cause of Plaintiffs' damages set forth below.

72. Plaintiffs reserve the right to plead more specifically as facts become more fully known in discovery.

#### **Negligence of Fat Boy Tactical, LLC**

73. When it chose to engage in the firearms and/or firearms parts business, Fat Boy voluntarily assumed duties to learn and carefully follow all federal and/or state firearms laws and/or regulations and to implement reasonable safety measures to prevent the misuse of its products.

74. Upon information and belief, Fat Boy is and was well aware of the substantial risk that negligent and/or unlawful business practices would supply criminals with guns and/or firearms parts – often through gun traffickers, straw purchasers and/or through unlicensed, unlawful firearms dealers such as Braziel.

75. Fat Boy was, at all times under the general obligation to exercise reasonable care in selling firearms and/or firearms parts so as to never needlessly endanger the public by supplying unlicensed firearms dealers and/or arming prohibited or otherwise dangerous purchasers either directly and/or through intermediaries.

76. One aspect of this duty was an obligation to avoid negligently supplying a firearm to any other person.

77. Fat Boy violated its duty by providing a firearm to any person, either directly and/or through intermediaries, where it knew, or reasonably should have known, that the person receiving the firearm was likely to misuse that firearm in a manner that would create an unreasonable risk of physical harm to himself or others.

78. Fat Boy was under a general obligation to vet and supervise downstream distributors and/or sellers of its products – such as Delashaw – so as to verify that such parties were only selling its products in full compliance with all applicable laws and reasonable safeguards.

79. In this case, this obligation included, but is not limited to, verifying that downstream entities like Delashaw had systems in place to identify probable illicit firearms dealers like Braziel so as to avoid aiding and abetting and/or conspiring with such illicit firearms dealers.

80. The incident that forms the basis of this suit and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent and/or unlawful conduct of Fat Boy. Upon information and belief, the acts of negligence/negligence *per se*/gross negligence of Defendant Fat Boy include, but are not limited to the following:

- a. Failing to ensure to the general public that unlicensed firearms dealers and/or straw purchasers would not take possession of its firearms and/or firearms parts either directly and/or through intermediaries;
- b. Negligently supplying a firearm and/or firearm parts to Braziel either directly and/or through intermediaries;
- c. Selling multiple firearms and/or firearms parts to an unlicensed dealer of firearms either directly and/or through intermediaries;
- d. Failing to have a system in place that notifies Fat Boy that either a straw purchaser or an unlicensed dealer of firearms is purchasing Fat Boy firearms and/or firearms parts either directly or through intermediaries;
- e. Allowing unlicensed dealers of firearms to purchase Fat Boy firearms either directly and/or through intermediaries;

- f. Failing to have a system to vet and supervise downstream distributors and/or sellers of Fat Boy products – such as Delashaw – to verify that such downstream parties are selling such products in full compliance with all relevant laws and reasonable standards of care and
- g. Selling firearms that it knew, or willfully avoided knowing would be placed into the hands of persons ineligible to possess a firearm and/or dangerous criminals either directly and/or through intermediaries.

81. Fat Boy’s negligence and/or knowing violation of one or more federal and/or state statutes or regulations (either directly and/or as an accomplice/co-conspirator) was a direct and proximate cause of Plaintiffs’ damages set forth below.

82. Plaintiffs reserve the right to plead more specifically as facts become more fully developed in discovery.

**Negligence of Danny Delashaw d/b/a/ Mulehead Dan’s Firearms**

83. When he became a licensed gun dealer, Delashaw voluntarily assumed duties to learn and carefully follow all federal and/or state firearm laws and/or regulations and to implement reasonable safety measures to prevent illegal sales and unlawful uses of firearms. Delashaw is and was well aware of the substantial risk that negligent and/or unlawful business practices will supply criminals with guns –often through gun traffickers, straw purchasers, unlicensed firearms dealers (such as Braziel) and/or prohibited possessors.

84. Delashaw was also under the general obligation to exercise reasonable care in selling firearms so as to never needlessly endanger the public by arming prohibited or otherwise dangerous purchasers either directly and/or through intermediaries.

85. One aspect of this duty was an obligation to avoid negligently supplying a firearm to any other person.

86. Delashaw violated its duty by providing a firearm to any person, either directly and/or through intermediaries, where he knew, or reasonably should have known, that the person receiving the firearm was likely to misuse that firearm in a manner that would create an unreasonable risk of physical harm to himself or others.

87. The incident made the basis of this suit and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent and/or unlawful conduct of Defendant Delashaw. The acts of negligence/negligence *per se*/gross negligence of Defendant Delashaw include, but are not limited to the following:

- a. Failing to ensure to the general public that unlicensed firearms dealers and/or straw purchasers would not take possession of his firearms either directly and/or through intermediaries;
- b. Negligently supplying one or more firearms and/or firearms parts to Braziel;
- c. Selling multiple firearms and/or firearms parts to an unlicensed dealer of firearms;
- d. Allowing consumers to falsify purchasing documents;
- e. Failing to have a system in place that notifies Delashaw that either a straw purchaser or an unlicensed dealer of firearms is purchasing firearms;
- f. Allowing unlicensed dealers of weapons to purchase Delashaw's firearms; and,
- g. Selling firearms that Delashaw knew, or consciously avoided knowing would be placed into the hands of persons ineligible to possess a firearm and/or other dangerous parties either directly and/or through intermediaries.

88. Delashaw's negligence and/or knowing violation of one or more federal and/or state statutes and/or regulations was a direct and proximate cause of Plaintiffs' damages set forth below.

89. Plaintiffs reserve the right to plead more specifically as facts become more fully developed in discovery.

#### **G. PUBLIC NUISANCE**

90. Plaintiffs incorporate and re-allege the above paragraphs as if stated fully herein.

91. By unlawfully engaging in the business of dealing in firearms, selling guns to unlicensed, mentally unstable, prohibited and/or otherwise dangerous persons, and negligently supplying firearms to dangerous individuals, Defendant Braziel knowingly violated one or more federal and/or state firearms laws and/or regulations.

92. Braziel's actions unjustifiably endangered, rendered insecure, interfered with, and obstructed the rights of the whole community in and around the Midland-Odessa area by knowingly placing a substantial number of AR-style rifles and handguns into the community through unlawful means. Braziel's unlawful practices enabled the acquisition of guns by persons prohibited by law from possessing them because of criminal history and/or mental illness and/or who were otherwise unreasonably dangerous.

93. Braziel's conduct has created a public nuisance by unreasonable interference with the right of the general public to life, health, and the use and enjoyment of property. The unlawful proliferation of AR-style rifles and handguns has interfered with rights common to the general public; deprived Midland-Odessa residents and visitors the peaceful use of public streets, sidewalks, parks, and other public places; interfered with commerce, travel, and the quality of daily life; and endangered the health, welfare, peace, safety, well-being, convenience, and property of considerable numbers of residents of, and visitors to the Midland-Odessa area.

94. All of the other Defendants have also contributed to this public nuisance by supplying downstream distributors, sellers and/or consumers of their firearms and/or firearms parts without instituting safeguards to prevent the dangerous and/or unlawful misuse of their products despite actual and/or constructive knowledge, prior to to 2019, that their existing business practices were supplying dangerous criminals such as Braziel and the shooter through flaws and corruption in their distribution chains.

95. Plaintiffs have suffered a special injury beyond the impairment to the general public caused by the Defendants' nuisance. Plaintiffs' family members, Joseph Griffith and Leilah Hernandez, were murdered with a gun sold unlawfully by Braziel and obtained as a direct consequence of the negligent and/or unlawful practices of the Defendants contributing to the above public nuisance. Plaintiff Nathan Hernandez was shot by the same weapon. The Plaintiffs continue to have anxiety that another member of their family or a member of the community they live in will be victimized by the gun violence they experienced, and that has been exacerbated by the Defendants' actions.

96. Upon information and belief, all Defendants other than Braziel have failed to meaningfully reform or curtail their negligent and/or business practices contributing to the aforementioned public nuisance even after the subject shooting.

97. As a result, all Defendants other than Braziel are perpetuating a continuing public nuisance that presents an ongoing risk to Plaintiffs, the residents of Texas and the residents of other jurisdictions by continuing to arm dangerous parties such as Braziel and/or the shooter even if those specific parties have been arrested, prosecuted or otherwise restrained.

98. Plaintiffs reserve the right to plead more specifically as facts become more fully developed in discovery.

#### **H. GROSS NEGLIGENCE**

99. The negligence of Defendants as alleged above was of such character as to make the Defendant guilty of gross negligence. The conduct of Defendants was in heedless and reckless disregard of the rights of Plaintiffs and involved such an entire want of care as to indicate that it was a result of conscious indifference to Plaintiffs' rights, welfare and safety. As a result of Defendants' gross negligence, Plaintiffs are entitled to exemplary damages under TEX. CIV. PRAC.

& REM. CODE § 41.003(a) in such an amount as may be found to be proper under these facts and circumstances.

100. Plaintiffs reserve the right to plead more specifically as facts become more fully developed in discovery.

### **I. DAMAGES**

101. Plaintiffs incorporate and re-allege the above paragraphs as if stated fully herein.

102. Plaintiffs request that the trier of fact consider what sum of money, if paid now in cash, would fairly and reasonably compensate them for the injuries and damages sustained in this case as a result of Defendants' negligent and/or unlawful misconduct.

#### **Personal Injury Damages for Joanna Leyva, Individually**

103. As a direct and proximate result of the negligent/negligent per se/grossly negligent conduct of the Defendants Joanna Leyva experienced the turmoil of the shooting and witnessed her daughter's tragic murder. Plaintiff seeks mental anguish damages for contemporaneously witnessing and experiencing the death of her daughter in the form of a bystander claim.

104. Plaintiff seeks fair and reasonable compensation for her damages together with pre-judgment and post-judgment interest at the maximum amount for the maximum period allowed by law.

#### **Wrongful Death Damages for Joanna Leyva**

105. Plaintiff Joanna Leyva is Leilah Hernandez's statutory wrongful death beneficiary. Specifically, Joanna Leyva is Leilah Hernandez's surviving mother.

106. At the time of her death, Leilah Hernandez was a loving and dutiful daughter to Joanna Leyva and provided love, comfort, companionship, and society to her mother.

107. Plaintiff Joanna Leyva seeks damages for the injuries and wrongful death suffered by Leilah Hernandez pursuant to the Texas Wrongful Death Act (Texas Civil Practice & Remedies Code §§ 71.001 *et seq.*).

108. As a direct and proximate result of Defendants' negligent/negligent per se/grossly negligent actions and omissions as described herein, which resulted in the wrongful death of Leilah Hernandez, Plaintiff Leyva has suffered, and in all reasonable probability will continue to suffer, damages as set forth herein. Plaintiff seeks compensation for each of the following, pursuant to Chapter 71 of the Texas Civil Practice & Remedies Code:

- a. Damages in the nature of past and future loss of companionship and society. These damages include the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiff, in reasonable probability would have received from her daughter, Leilah Hernandez, had she lived;
- b. Damages in the nature of past and future mental anguish. These damages include the emotional pain, torment, and suffering Plaintiff experienced in the past and which, in reasonable probability, she will suffer in the future from the death of her daughter, Leilah Hernandez; and,
- c. Damages in the nature of past and future pecuniary loss resulting from the death of her daughter, Leilah Hernandez. These damages include the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that Plaintiff would, in reasonable probability, have received from her daughter, Leilah Hernandez, had she lived.

**Survival Damages for Joanna Leyva as Representative of the Estate of Leilah Hernandez**

109. Plaintiff Joanna Leyva, as Representative of the Estate of Leilah Hernandez, seeks survival damages pursuant to the Texas Survival Statute (Texas Civil Practice & Remedies Code §§ 71.021.).

110. As a direct and proximate result of the negligent/negligent per se/grossly negligent acts and omissions by Defendants as described herein, Leilah Hernandez suffered injuries and

damages prior to her death, for which Leilah Hernandez could have asserted claims against Defendants had she lived.

111. Plaintiff Joanna Leyva, as Representative of the Estate of Leilah Hernandez seeks compensation for Leilah Hernandez's pre-death damages, including but not limited to the following, pursuant to Chapter 71 of the Texas Civil Practice & Remedies Code:

- a. Medical expenses;
- b. Mental anguish;
- c. Physical pain and suffering;
- d. Physical impairment;
- e. Mental impairment;
- f. Death; and,
- g. Reasonable funeral and burial expenses.

**Personal Injury Damages for Nathan Hernandez**

112. As a direct and proximate result of the negligent/negligent per se/grossly negligent conduct of the Defendants, Nathan Hernandez suffered serious personal injuries, including gunshot wounds. As a result of these injuries he has suffered from the following damages:

- a. Physical pain in the past;
- b. Physical pain in the future;
- c. Mental anguish in the past;
- d. Mental anguish in the future;
- e. Physical and mental impairment in the past;
- f. Physical and mental impairment in the future;
- g. Disfigurement in the past;

- h. Disfigurement in the future;
- i. Medical expenses in the past;
- j. Medical expenses that, in all reasonable probability, Nathan Hernandez will need in the future; and,
- k. Mental Anguish for contemporaneously witnessing and experiencing the death of his sister (bystander claim).

113. Plaintiff Nathan Hernandez seeks fair and reasonable compensation for his damages together with pre-judgment and post-judgment interest at the maximum amount for the maximum period allowed by law.

**Personal Injury Damages for Rodolfo Trejo**

114. As a direct and proximate result of the negligent/negligent per se/grossly negligent conduct of the Defendants, Rodolfo Trejo experienced the turmoil of the shooting and witnessed his stepdaughter's tragic murder. Plaintiff seeks mental anguish damages for contemporaneously witnessing and experiencing the death of his stepdaughter in the form of a bystander claim.

115. Plaintiff seeks fair and reasonable compensation for his damages together with pre-judgment and post-judgment interest at the maximum amount for the maximum period allowed by law.

**Wrongful Death Damages for Gary Griffith and Sharon Griffith**

116. At the time of his death, Joseph Griffith was a loving and dutiful son to Gary and Sharon Griffith and provided love, care, affection, nurture, advice, counsel, guidance and pecuniary support, all of which he would have continued to provide in the future, had he lived. Plaintiffs seek damages for the injuries and wrongful death suffered by Joseph Griffith pursuant to the Texas Wrongful Death Act (Texas Civil Practice & Remedies Code §§ 71.001 *et seq.*).

117. Plaintiffs are Joseph Griffith's statutory wrongful death beneficiaries. Specifically, Gary and Shannon Griffith are the surviving parents of Joseph Griffith.

118. As a direct and proximate result of Defendants' negligent/negligent per se/grossly negligent actions and omissions as described herein, which resulted in the wrongful death of Joseph Griffith, each Plaintiff has suffered, and in all reasonable probability will continue to suffer, damages as set forth herein. Plaintiffs seek compensation for each of the following, pursuant to Chapter 71 of the Texas Civil Practice & Remedies Code:

- a. Damages in the nature of past and future loss of companionship and society. These damages include the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs, in reasonable probability would have received from their son, Joseph Griffith, had he lived;
- b. Damages in the nature of past and future mental anguish. These damages include the emotional pain, torment, and suffering Plaintiffs experienced in the past and which, in reasonable probability, they will suffer in the future from the death of their son, Joseph Griffith; and,
- c. Damages in the nature of past and future pecuniary loss resulting from the death of their son, Joseph Griffith. These damages include the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of pecuniary value that Plaintiffs would, in reasonable probability, have received from their son, Joseph Griffith, had he lived.

#### **J. DOCUMENTS TO BE USED**

119. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiffs intend to use all documents exchanged and produced between the parties, including, but not limited to, correspondence and discovery responses during the trial of the above-entitled and numbered cause.

#### **K. PRAYER FOR RELIEF**

120. PREMISES CONSIDERED, Plaintiffs request that the Defendants be cited to appear and answer and that upon final hearing hereon, Plaintiffs recover as follows:

- a. Actual Damages within the jurisdictional limits of this Court;

- b. Exemplary Damages;
- c. Pre-Judgment and post-judgment interest as allowed by law;
- d. Costs of Court;
- e. An injunction requiring all Defendants other than Braziel to reform or cease their currently reckless and/or unlawful business practices so as to begin to abate the continuing public nuisance they have created and perpetuated and
- f. All such other and relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

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*/s/ John Sloan*

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## CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Civil Procedure, I hereby certify that on the 30<sup>th</sup> day of August 2021, a true and correct copy of the foregoing document has been forwarded to the following attorneys of record:

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### Automated Certificate of eService

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