

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

2023 JUN 14 P 12:54 RECEIVED

STEPHEN BANASZAK, as Personal Representative of the Estate of DANIEL LEE BANASZAK, SR., Deceased,

Plaintiff,

vs.

# - 23 67429

No. 23 NO

MARGARET ZUZICH BAKKER P-31035

DUNHAM'S SPORTS, an assumed name of DUNHAM'S ATHLEISURE CORPORATION; A foreign profit corporation,

Defendant.

Matthew L. Turner (P48706) Robert B. Sickels (P29086) SOMMERS SCHWARTZ, P.C. Attorneys for Plaintiff One Towne Square, 17th Floor Southfield, MI 48076 (248) 746-4039 mturmer@sommerspc.com rsickels@sommerspc.com

Douglas Letter (Pending Pro Hac Vice) Erin C. Davis (Pending Pro Hac Vice) Robert Cross (Pending Pro Hac Vice) BRADY Co-Counsel for Plaintiff 840 Street NE, Suite 400 Washington DC 20002 (202) 370-8106 dletter@bradyunited.org edavis@bradyunited.org rcross@bradyunited.org

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

/s/ Matthew L. Turner Matthew L. Turner (P48706)

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

NOW COMES Plaintiff, STEPHEN BANASZAK, as Personal Representative of the Estate of DANIEL BANASZAK, SR., Deceased, through his attorneys, SOMMERS SCHWARTZ, P.C.,

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and states the following for his Complaint against Defendant, DUNHAM'S SPORTS, an assumed name of DUNHAM'S ATHLEISURE CORPORATION, ("DUNHAM'S") pursuant to the provisions of the Michigan Wrongful Death Act (M.C.L. § 600.2922):

**INTRODUCTION**

1. This case arises from DUNHAM'S<sup>1</sup> choice on August 6, 2020 to unlawfully and negligently sell a 12-guage Escort shotgun ("the Shotgun") to Heidi Lynn Yancy ("Yancy") at its store in South Haven, Michigan, 49090 despite actual or constructive knowledge that Yancy was acting as an illicit straw purchaser.<sup>2</sup>

2. Yancy was, like many straw purchasers, operating at the direction of a person prohibited by law from possessing and owning a firearm (a "prohibited possessor").

3. That individual was Robert Eakins.

4. Eakins was prohibited from owning and possessing a firearm by virtue of a prior felony conviction from 1990 in Illinois.

5. As a direct and foreseeable consequence of DUNHAM'S knowing violations of law and standards of reasonable care, DUNHAM'S armed Eakins with the Shotgun (through the intermediary of Yancy).

6. This enabled Eakins to use the Shotgun to murder Plaintiff's decedent within hours of the illicit purchase.

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<sup>1</sup> Unless otherwise dictated by context, DUNHAM'S shall be read to include all agents, employees, officers and or other parties working for or on behalf of DUNHAM'S as well as any parents, subsidiaries and/or affiliates of DUNHAM'S.

<sup>2</sup> A "straw purchase" is one in which "a person . . . buys a gun on someone else's behalf while falsely claiming that it is for himself." *Abramski v. United States*, 573 U.S. 169, 171-72 (2014).

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7. DUNHAM'S is liable for its affirmative misconduct which contributed to this foreseeable tragedy.

8. When DUNHAM'S chose to become a Federal Firearms Licensee ("FFL") it assumed a responsibility to act as an agent of law enforcement in complying with and enforcing all relevant gun laws, including laws designed to prevent straw purchases and/or barring prohibited purchasers like Eakins from owning firearms.

9. DUNHAM'S further assumed a responsibility to exercise the highest degree of reasonable care in terms of going beyond statutory requirements and following industry standards and common sense in terms of implementing safeguards to prevent arming dangerous parties.

10. DUNHAM'S had a duty to carefully train, monitor and supervise all its employees to make sure that they were detecting and stopping attempted straw purchases and reporting such criminal activity to law enforcement.

11. Another one of DUNHAM'S duties was to train, monitor and supervise its employees to make sure that they would never transfer a firearm to an individual showing a propensity to misuse the firearm to harm themselves or others as a result of an emotional disturbance.

12. Another one of DUNHAM'S duties was to carefully investigate if and when it learned that its safeguards had failed to detect a straw, illicit or reckless sale and to consistently seek to reform and improve its business practices if it learned of flaws in its protocols that were letting unlawful or dangerous transactions occur.

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13. Since well before August 6, 2020, DUNHAM'S had actual or constructive notice that the violation of these duties would very likely result in one or more of its firearms being misused in an unlawful act of violence like the murder of Plaintiff's decedent.

14. In particular, DUNHAM'S had actual or constructive notice that straw purchasers are one of the primary ways by which prohibited possessors like Eakins illicitly gain access to firearms.

15. DUNHAM'S also had actual or constructive knowledge that such prohibited possessors are likely to misuse firearms acquired through straw purchasers in unlawful acts of violence.

16. DUNHAM'S also had actual or constructive knowledge that individuals suffering from an emotional disturbance are disproportionately likely to misuse a firearm to harm themselves or others.

17. Further, upon information and belief, DUNHAM'S, since well before August 6, 2020, had actual or constructive knowledge from sources including, *inter alia*, media reports, court filings and/or communications with law enforcement, that criminals – including straw purchasers like Yancy, were repeatedly exploiting DUNHAM'S negligent and unlawful business practices in order to acquire firearms.

18. Despite awareness of the significant risks associated with straw purchases and that its existing practices were not effectively catching and stopping straw purchases and/or otherwise unlawful or dangerous transactions, DUNHAM'S, upon information and belief, failed to appropriately investigate flaws in its business practices or to change these practices in any significant manner so as to prevent bad actors from accessing firearms in the years leading up to August 6, 2020.

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19. Instead, DUNHAM'S actions during the transaction with Eakins and Yancy on August 6, 2020 show that DUNHAM'S decided to persist in negligent and unlawful practices which exacerbated the risk of criminals gaining access to firearms, violated its duties and placed profit over public safety.

20. On August 6, 2020, DUNHAM'S observed Eakins and Yancy engaged in a course of conduct which displayed a constellation of "red flags" indicative of a straw purchase.

21. DUNHAM'S observed Eakins coach Yancy through the entire sale of the Shotgun, from the time Yancy and Eakins entered the store, to the time that he actually paid for the Shotgun.

22. Upon information and belief, Eakins coaching of Yancy together with these other red flags, collectively, made it obvious to DUNHAM'S that Yancy was acting as a straw buyer for Eakins.

23. DUNHAM'S knowingly violated applicable state and/or federal firearms laws and relevant standards of care by falsely certifying the transfer of a firearm to a clear straw purchaser as lawful and running the background check on the wrong party.

24. Further, DUNHAM'S observed Eakins displaying aggressive behavior during the transaction which telegraphed that he was undergoing a significant emotional disturbance and was likely to misuse the firearm when Yancy foreseeably provided it to him.

25. DUNHAM'S negligently entrusted the firearm in breach of relevant standards of care by placing it, albeit indirectly, into Eakins's hands.

26. Had DUNHAM'S appropriately trained, monitored and supervised its employees to comply with the law and relevant standards of care on and/or before August 6, 2020, DUNHAM'S would have stopped the sale of the Shotgun to Yancy and/or contacted law enforcement.

27. Had DUNHAM'S acted reasonably and responsibly, Eakins would not have been able to use the Shotgun to kill Plaintiff's decedent.

28. Instead, DUNHAM'S breach of its duties directly and foreseeably contributed to the Shotgun being used to murder Plaintiff's decedent.

29. This lawsuit does not seek to prohibit the ability of responsible FFLs to sell firearms in a safe and lawful manner that reasonably minimizes the risk of firearms being diverted to dangerous criminals and/or emotionally disturbed individuals like Eakins.

30. Instead, this suit seeks to hold DUNHAM'S accountable for its misconduct in selling firearms in an *irresponsible* and *unlawful* manner that foreseeably enabled a dangerous, unstable criminal to acquire the Shotgun and use it to murder Plaintiff's decedent.

31. It further seeks to force DUNHAM'S to learn from its mistakes and prevent future, foreseeable tragedies.

**JURISDICTION AND VENUE**

32. This Court has jurisdiction over this matter by virtue of M.C.L. § 600.601 because it arises under the common law and Plaintiff seeks relief in excess of Twenty-Five Thousand (\$25,000.00) Dollars, exclusive or interest and costs.

33. Venue is proper in Allegan County, State of Michigan, by virtue of § 600.1629(1)(b) because Plaintiff's decedent was murdered with the Shotgun in County of Allegan, State of Michigan and Plaintiff's decedent resided in County of Allegan, State of Michigan.

**THE PARTIES**

34. STEPHEN BANASZAK is the Personal Representative of the Estate of DANIEL BANASZAK, SR. and is a resident of the State of Texas and was appointed by the Probate Court in the County of Allegan, State of Michigan on August 15, 2022.

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35. Defendant DUNHAM'S was and/or is, at all times relevant hereto, an FFL engaged in the sale of firearms, ammunition and/or firearm accessories.

36. DUNHAM'S SPORTS is an assumed name of DUNHAM'S ATHLEISURE CORPORATION, a foreign profit corporation, incorporated in Delaware and registered and licensed in the State of Michigan.

**STATEMENT OF FACTS**

I. **Dunham's Assumed Responsibilities to Comply With Applicable Laws and Relevant Standards of Care and Knew that Violation of These Duties Would Enable Unlawful Acts of Gun Violence Like the Murder of Plaintiff's Decedent**

37. DUNHAM'S, when it chose to become a FFL voluntarily assumed a duty to act as the "principal agent of federal enforcement in restricting criminals' access to firearms" and to "ensure 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*, 573 U.S. at 186, 193 (internal quotation omitted).

38. A key aspect of DUNHAM'S duty as a gatekeeper controlling access to firearms involved carefully learning and strictly complying with all relevant state and/or federal firearms laws applicable to the sale, marketing possession and/or use of firearms.

39. Another key aspect of DUNHAM'S gatekeeper duty involved applying reasonable safeguards, in addition to those required by statute, to prevent firearms from being entrusted, either directly or indirectly, to straw purchasers and/or individuals showing a propensity to misuse them because of an emotional disturbance or some other reason.

40. Such safeguards would include, but are not limited to, asking screening questions such as those suggested in the "Don't Lie for the Other Guy" program supported by ATF and/or

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calling law enforcement to enable further investigation if circumstances suggest a potentially unlawful transaction.

41. Such safeguards would also require denying the sale of the firearm if a purchaser were displaying aggressive behavior indicating an emotional disturbance associated with a heightened propensity to misuse a firearm to harm himself or others.

42. An FFL, like DUNHAM'S, is vested with discretion to deny the sale of a firearm to a prospective purchaser for any reason – even if the purchaser passes a federal background check.

43. An FFL should not sell a firearm if the purchaser's behavior or statements indicate red flags of a straw purchase or likely unlawful or dangerous use of the firearm.

44. In applying the above responsibilities DUNHAM'S had an important obligation to carefully train, supervise and monitor its employees to make sure that they were successfully identifying and stopping straw purchases and avoiding the transfer of firearms to emotionally disturbed individuals.

45. Similarly, DUNHAM'S was obligated to train, supervise and monitor its employees to make sure that they would inform law enforcement of attempted or suspected straw purchases so as to give law enforcement an opportunity to investigate and intervene to prevent acts of gun violence.

46. Additionally, as discussed further below, DUNHAM'S had a responsibility to continually analyze and improve upon the protocols and safeguards it employs to prevent the diversion of firearms to criminals or bad actors – especially if and when it received indications that these protocols and safeguards may be deficient in some way.

47. Since well before August 2020, DUNHAM'S has been on notice from sources including, but not limited to, lawsuits, law enforcement reports from agencies such as the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and/or media stories that straw purchases are a key method employed by felons like Eakins to gain access to guns while evading background checks and record-keeping requirements.<sup>3</sup>

48. For example, the ATF, in a public report from 2000, surveyed trafficking investigations over an approximately 2.5 year period and found that straw purchases were the most common channel through which traffickers diverted guns away from the lawful market. ATF, *Following the Gun: Enforcing Federal Law Against Firearms Traffickers*, xi (June 2000).

49. The ATF further identified that over 40 percent of all trafficking investigations in this period ultimately led to discovery of at least one firearm in the possession of a felon like Eakins. *Id.* at 20.

50. Both Michigan and federal law classify convicted felons like Eakins as prohibited possessors based on legislative recognition that such individuals are disproportionately prone to use firearms in unlawful acts of violence. M.C.L. § 750.224f; 18 U.S.C. § 922(g).

51. Cases and media reports have provided compelling illustrations of acts of gun violence stemming from prohibited possessors like Eakins gaining access to firearms through straw purchases. *E.g.*, *Chiapperini v. Gander Mountain Co., Inc.*, 13 N.Y.S.3d 777 (N.Y. Sup. Ct. 2014) (felon used firearm acquired via straw purchaser to murder multiple firemen); *Coxie v. Academy, Ltd.*, No. 2018-CP-42-04297 (S.C. Ct. Cmmn. Pl. Jul. 29, 2019) (felon used firearm acquired via straw purchaser to commit multiple murders).

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<sup>3</sup> In recognition of the significant dangers to public safety when straw purchasers obtain firearms, the Congress recently incorporated the term "straw purchase" into the U.S. Code and added one or more specifically enumerated offenses relating to straw purchasing. 18 U.S.C. §§ 932-933.

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52. It was, thus, eminently foreseeable to DUNHAM'S that completing an obvious straw sale would likely result in a firearm being transferred by a straw buyer to a felon who was prone to use it in an unlawful act of violence.

53. A gun dealer who completes a straw sale despite actual and/or constructive knowledge that it is a straw transaction and falsely certifies such a sale is lawful on ATF Form 4473 knowingly violates, either directly and/or as an accomplice/co-conspirator, a number of state and/or federal laws applicable to the sale and/or marketing of firearms.

54. Constructive knowledge that a party is a straw purchaser can be based on a seller's willful blindness to a collection of clear red flags which, in aggregate, make it clear that a straw purchase is occurring.

55. The laws a seller knowingly violates, either directly or as an accomplice/co-conspirator, in such a situation include, but are not limited to:

- a. Prohibitions on making false statements in required firearms transaction records (18 U.S.C. §§ 922(a)(6), 922(m), 924(a));
- b. A requirement to run a background check on the actual purchaser of a firearm (see § 922(t));
- c. A requirement to keep records in compliance with regulations (§ 923(g));
- d. Prohibitions on obscuring evidence of crimes committed by a third-party (§§ 3, 4); and
- e. Prohibitions on selling guns to felons and/or felons possessing firearms (§ 922(g), (d); M.C.L. § 750.224f).

**II. DUNHAM'S Had Actual and/or Constructive Knowledge that Its Business Practices Were Failing to Adequately Detect and Stop the Diversion of Firearms to Criminals Since Well Before August 6, 2020 and DUNHAM'S Breached Its Duty to Reform and Improve Its Practices Prior to August 6, 2020**

56. DUNHAM'S is a large and sophisticated corporation that operates over 200 stores in 23 states.

57. DUNHAM'S, at all times relevant to this complaint, had the personnel, resources and institutional capacity necessary to effectively train, supervise and monitor its employees in order to verify that its stores were effectively preventing the diversion of firearms to dangerous actors through negligent and/or unlawful acts such as obvious straw sales or transfers of firearms to emotionally disturbed individuals.

58. Further, DUNHAM'S, at all times relevant to this complaint, had the personnel, resources and institutional capacity necessary to investigate when flaws in its business practices led to firearms being diverted into the wrong hands, to learn from such mistakes and to continually reform and improve its business practices to correct such flaws.

59. However, in the years leading up to August 6, 2020, DUNHAM'S, chose upon information and belief, not to fulfill its obligation to continually improve the protocols it employs to prevent the diversion of firearms to criminals.

60. In fact, even when confronted with specific warnings that its business practices were failing to adequately prevent the diversion of firearms to criminals through, *inter alia*, straw purchases, DUNHAM'S failed to meaningfully reform its procedures.

61. For example, and without limitation, DUNHAM'S, upon information and belief, was presented with multiple media reports and/or court filings in the years leading up to August 6, 2020 that showed that straw purchasers were frequently successful in acquiring firearms at one or more DUNHAM'S stores.

62. For example, an August 2017 indictment of members of a conspiracy involved with transporting firearms into the Chicago criminal market identified a straw purchaser who had

successfully acquired two handguns from a Kalamazoo, Michigan DUNHAM'S store in March 2017.<sup>4</sup>

63. Similarly, an August 2019 news article reported on a prohibited possessor using at least seven female straw purchasers to acquire over 30 handguns in the span of around two months from various dealers in the metro Detroit area – with the majority of these guns coming from multiple DUNHAM'S stores.<sup>5</sup>

64. Upon information and belief, a number of the above transactions at the various DUNHAM'S stores named in the preceding two paragraphs displayed clear indicators of straw purchasing behavior which well-trained, monitored and supervised employees could have and would have detected and appropriately responded to by stopping the sales and calling law enforcement.

65. Upon information and belief, DUNHAM'S failed to investigate the failure of its practices to prevent straw and/or otherwise illicit/dangerous sales and/or to meaningfully change its business practices surrounding the detection and prevention of illicit/dangerous firearms transfers at any point from March 2017 to August 2020.

**III. DUNHAM'S' Breached Its Duties by Knowingly Violating the Law and Failing to Comply With Relevant Standards of Care in Transferring the Shotgun on August 6, 2020**

66. On August 6, 2020, Eakins accompanied Yancy into the DUNHAM'S store in South Haven, Michigan.

67. Eakins and Yancy approached the gun counter with Eakins walking in front of Yancy.

<sup>4</sup> <https://www.mlive.com/news/kalamazoo/2017/09/5-men-indicted-for-kalamazoo-t.html>  
<sup>5</sup> <https://www.clickondetroit.com/news/2019/08/02/7-women-buy-30-guns-from-sports-stores-in-metro-detroit-for-convicted-felon-to-sell-on-streets/>

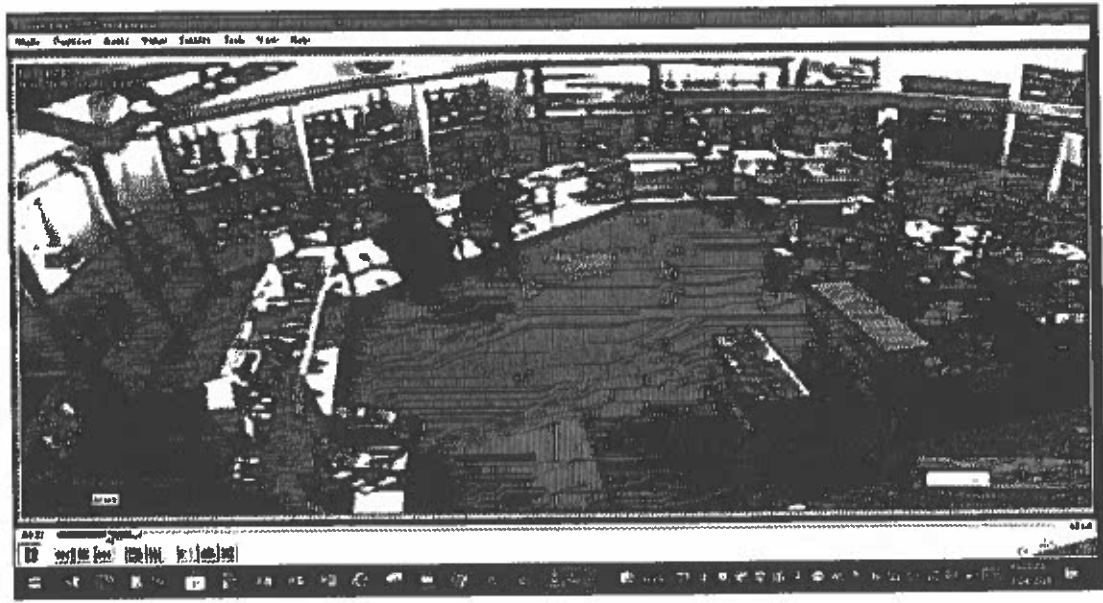
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68. Eakins and Yancy presented themselves to DUNHAM'S employee Michaela Jackson.

69. Eakins appears to have taken the lead – or at least, a significant role – in selecting the Shotgun.



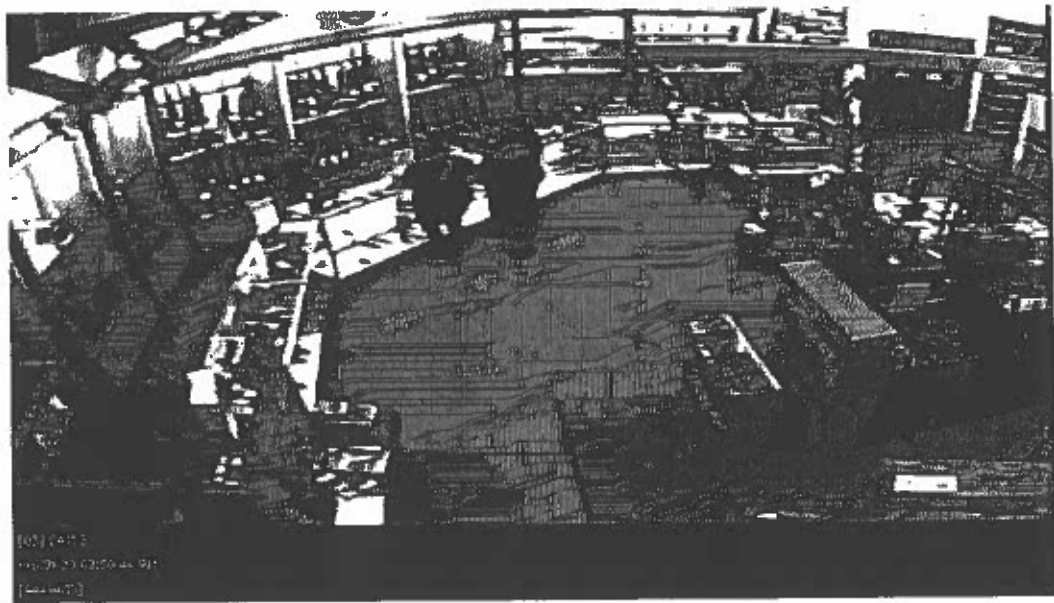
70. Eakins was animated and emotionally engaged throughout the entire interaction with Jackson whereas Yancy was passive and/or disengaged.

71. Eakins would interrupt and/or interject himself into various exchanges between Jackson and Yancy during the transaction.

72. Jackson informed Eakins that he could not handle the Shotgun without showing a valid form of identification.

73. Despite this warning, Eakins grabbed and handled the Shotgun.

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74. Jackson instructed Eakins to stop handling the Shotgun unless he displayed a valid form of identification.

75. Eakins never showed any valid form of identification.

76. DUNHAM'S manager Matt Holgren walked past and observed some part of the sequence of events associated with the transaction at around the time that Eakins was handling the Shotgun.

77. Jackson at some point during the transaction felt that Eakins was not merely agitated but was reflecting anger directly at her and instructed him not to look at her.

78. Jackson provided Yancy with ATF Form 4473 – which included a question asking Yancy whether she was the actual purchaser of the firearm.

79. Yancy struggled to fill out the form, including the question whether she was the actual purchaser.

80. Based upon his gestures and body language in the surveillance video, Eakins was actively communicating with Yancy and/or Jackson during Yancy's efforts to fill out the form.

81. Yancy initially answered honestly and marked that she was not the actual purchaser of the Shotgun.

82. Instead of stopping the sale, Jackson prompted Yancy to answer the question differently by asking if she understood the actual purchaser question.

83. Yancy then changed the answer and represented herself as the actual purchaser on a new Form 4473.

84. Upon information and belief, DUNHAM'S discarded the original Form 4473 rather than retaining it in its business records as recommended as an industry best practice.

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85. Jackson accepted this new Form 4473 and ran a federal background check on Yancy.

86. Yancy passed the background check.

87. When DUNHAM'S employee certified the transfer of the Shotgun as lawful on the new Form 4473 and ran the background check on Yancy, it had actual or constructive knowledge that this certification was false and that Yancy was not the actual purchaser.

88. The pattern of behavior and statements made by Yancy and Eakins described above and observed by one or more DUNHAM'S employees contained multiple indicators which, when considered in aggregate, made it clear that Eakins was the intended recipient of the Shotgun and that Yancy was a straw purchaser.

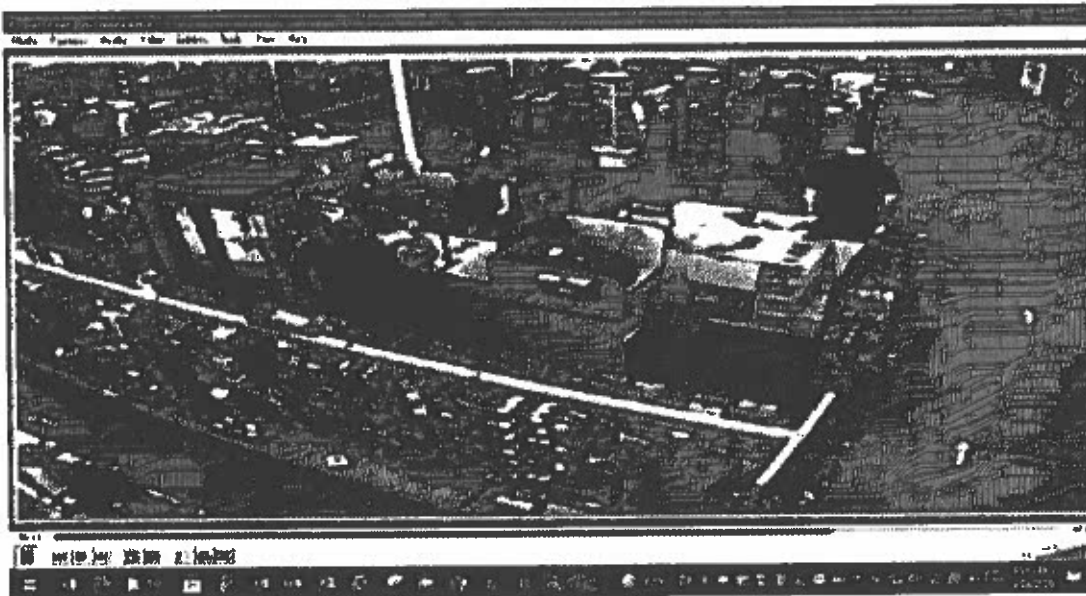
89. DUNHAM'S certification that the sale of the Shotgun was lawful and/or the decision to run the background check on an obvious straw purchaser knowingly violated, either directly and/or as an accomplice/conspirator, some or all of the applicable state and/or federal statutes listed above.

90. Similarly, by approving the transfer of a firearm to an individual showing anger and aggression, DUNHAM'S violated its common law duty to refrain from negligently entrusting a firearm to an individual displaying an emotional disturbance indicating a likelihood to misuse a dangerous instrument in an unlawful act of violence.

91. DUNHAM'S had more than enough information to recognize this transaction as a straw transaction at the point it accepted the 4473 with Yancy's name, but then received further indicators throughout the transaction reinforcing that Yancy was illicitly acting as a straw purchaser and serving Eakins.

92. Specifically, Yancy and Eakins went to the cash register area to pay for the Shotgun while DUNHAM'S employees packaged and/or prepared delivery of the Shotgun.

93. Eakins paid for the Shotgun.



94. Yancy did not contribute any funds for the purchase of the Shotgun.

95. Manager Holgren would later testify at Eakins' criminal trial that DUNHAM'S has a policy that one party can sign the Form 4473, provide an identification and submit to the background check and another party can pay for a relevant firearm.

96. This policy allows for a firearm sale to be consummated despite it being there being a clear indicator of a straw sale – the person signing the Form 4473 being different from the individual paying for the firearm.

97. Such a policy is egregiously negligent in that it contravenes an example, provided by the ATF, on the Form 4473, as to an impermissible straw purchase scenario.

98. Specifically, in August 2020, the Form 4473 included the following example: "Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith . . . **Mr. Smith gives Mr. Jones the**

money for the firearm. Mr. Jones is NOT THE ACTUAL TRANSFEREE/BUYER of the firearm . . ." (emphasis added).

99. The actual scenario in this purchase was even more obvious a straw sale because Eakins did not provide the funds to Yancey to purchase the shotgun but actually paid DUNHAM'S for the Shotgun himself.

100. Yancy was not the actual transferee/buyer and after being prompted by DUNHAM'S, lied on the second Form 4473 which DUNHAM'S accepted.

101. At no point did any DUNHAM's employee stop the sale.

102. At no point did any DUNHAM'S employee contact law enforcement to alert them to the straw purchase or provide them with any opportunity to investigate and intervene.

**IV. DUNHAM'S Knowing Violation of One or More Applicable Laws and Breach of Relevant Standards of Care Directly and Foreseeably Contributed to Plaintiff's Injury**

103. But for DUNHAM's unlawful and negligent transfer of the Shotgun and failure to contact law enforcement, Eakins would not have had access to the Shotgun or been able to use it to harm Plaintiff's decedent.

104. Instead, DUNHAM'S unlawful and negligent misconduct supplied Eakins with the Shotgun used to murder Plaintiff's decedent.

105. Consistent with her role as a straw purchaser and well-known patterns of behavior exhibited by straw purchasers, Yancy predictably transferred the Shotgun to Eakins, a prohibited possessor.

106. Within hours of the purchase, Eakins foreseeably used the Shotgun in precisely the manner anticipated by federal and/or state prohibitions on felons owning firearms and foreshadowed by other cases in which felons have obtained firearms via straw purchasers.

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107. Specifically, he used the Shotgun to turn the anger he was displaying in the DUNHAM'S store into murderous action and fatally shot Plaintiff's decedent.

108. Plaintiff's Estate is entitled to compensation for the damages foreseeably resulting to the decedent and his heirs as a predictable consequence of DUNHAM'S negligent and unlawful actions.

109. Upon information and belief, DUNHAM'S has not meaningfully changed its business practices in any way since the sale of the Shotgun.

**CLAIMS**

**COUNT I  
Negligence**

110. Plaintiff incorporates by reference all of the previous and subsequent paragraphs.

111. DUNHAM'S was subject, at all times, to a duty under both statutory and common law to responsibly train, supervise and monitor its employees to prevent straw purchasers and other dangerous parties from gaining access to firearms.

112. DUNHAM'S knowingly violated this duty in this case in a manner which allowed Eakins to gain access to a gun straw purchased by Yancy.

113. Specifically, DUNHAM'S employees, at minimum, willfully blinded themselves to a collection of clear indicators providing them with actual or constructive knowledge that Yancy was a straw purchaser supplying Eakins.

114. A felon's use of a gun obtained via a straw purchase in an unlawful act of gun violence – such as the shooting of Plaintiff's decedent – was a foreseeable consequence of DUNHAM'S breach of its duty.

115. Indeed, the various state and/or federal firearms laws DUNHAM'S knowingly violated (either directly or as an accomplice/co-conspirator) by completing the straw sale of the

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Shotgun were designed to prevent precisely the type of gun violence which foreseeably caused Plaintiff's decedent's death.

116. These laws include, but are not necessarily limited to 18 U.S.C. §§ 3, 4, 922(a)(6), 922(g), 922(m), 922(t), 923(g), 924(a); and M.C.L. §§ 750.224f

117. These laws were designed to protect all members of the public, including individuals like Plaintiff's decedent.

118. As explained above, DUNHAM'S knowing violation of one or more of these laws proximately led to Plaintiff's decedent's harm by arming Eakins with the Shotgun.

119. Thus, DUNHAM'S violation of these or more laws also constitutes prima facie evidence establishing the merit of Plaintiff's negligence claim.

120. Because DUNHAM'S breach of its duty directly and foreseeably contributed to Plaintiff's decedent's death, they are entitled to recover under the law of negligence.

**COUNT II  
Negligent Entrustment**

121. Plaintiff incorporates by reference all of the previous and subsequent paragraphs.

122. DUNHAM'S was subject, at all times, to a duty to avoid entrusting a dangerous instrument like the Shotgun to a party showing a heightened propensity to misuse it

123. This duty includes avoiding both directly providing such a dangerous instrument to such an irresponsible party and to avoid supplying an irresponsible party through one or more intermediaries.

124. Dangerous parties displaying a high risk of misusing firearms include both straw purchasers like Yancy and the felons like Eakins who DUNHAM'S knew are among the individuals who frequently rely upon straw purchasers.

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125. DUNHAM'S knowingly breached the above duty by supplying the Shotgun to Yancy for Eakins.

126. A felon's use of a gun obtained via a straw purchase to commit an unlawful act of gun violence – such as the shooting of Plaintiff's decedent – was a foreseeable consequence of DUNHAM'S breach of its duty.

127. Because DUNHAM'S breach directly and foreseeably contributed to Plaintiff's decedent's death, Plaintiff is entitled to recover under the law of negligent entrustment.

#### **DAMAGES AND INJUNCTIVE RELIEF**

128. That as a result of the wrongful death of Plaintiff Decedent, DANIEL LEE BANASZAK, SR., Plaintiff, STEPHEN BANASZAK, Personal Representative of the Estate brings this action pursuant to the Wrongful Death Statute of the State of Michigan.

129. That the Plaintiff STEPHEN BANASZAK, states that at the time of his death, DANIEL LEE BANASZAK, SR. was 50 years old; that the Plaintiff Decedent, DANIEL LEE BANASZAK, SR. is survived by his wife, four children, numerous grandchildren and siblings, among others allowed under the statute.

130. That Plaintiff, STEPHEN BANASZAK, as Personal Representative of the Estate of DANIEL LEE BANASZAK, SR., Deceased, is entitled to recover herein, such damages as shall be deemed fair and just with reference to the pecuniary injuries resulting from the death of the decedent to those persons who may be entitled to such damages when recovered. That a fair and just measure of such pecuniary injuries, pursuant to the Wrongful Death Statute of the State of Michigan, includes the following, for which Plaintiff makes demand:

- a. Reasonable compensation for the pain and suffering endured by Plaintiff Decedent, Daniel Lee Banaszak, Sr., during the interim period of time extending between the Defendants' negligence and the ultimate expiration of Plaintiff Decedent;

- b. Necessary and reasonable expenses incurred by reason of hospital, doctor, medical, funeral, and burial expenses;
- c. Economic losses to the Estate including, but not limited to: loss of income, loss of earning potential and loss of support;
- d. The loss to Decedent's family of his love, companionship, care, comfort, protection, counsel, society, affection as well as the value of the Decedent's services and inspiration;
- e. Loss of services of Plaintiff Decedent which necessarily included the value of such services as Plaintiff Decedent would have been accustomed to performing in the household by a husband and father;
- f. The loss of society and companionship generally to the Decedent's loved ones.

WHEREFORE, Plaintiff claims judgment against the Defendant in the amount to which he is found to be entitled, together with interest, costs, attorneys' fees, exemplary damages, punitive damages, injunctive relief and any other remedy that this Court deems proper.

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Dated: June 14, 2023

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