

This case has been designated as an eFiling case, for more information please visit [www.oakgov.com/efiling](http://www.oakgov.com/efiling).

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MATTHEW MUELLER and MARY MUELLER, as Co-Next Friends for ELIJAH MUELLER., a minor,

2023-202821-NO

JUDGE JACOB J. CUNNINGHAM

Plaintiffs,

vs.

No. 23

NO

ACME SHOOTING GOODS, LLC,

Defendant.

---

Matthew L. Turner (P48706)  
Lisa M. Esser (P70628)  
SOMMERS SCHWARTZ, P.C.  
Attorneys for Plaintiffs  
One Towne Square, 17<sup>th</sup> Floor  
Southfield, MI 48076  
(248) 746-4039  
[mturner@sommerspc.com](mailto:mturner@sommerspc.com)  
[lesser@sommerspc.com](mailto:lesser@sommerspc.com)

Erin C. Davis (*admission pending*)  
Robert Cross (*admission pending*)  
Jenna Tersteegen (*admission pending*)  
Co-Counsel for Plaintiffs  
840 Street NE, Suite 400  
Washington DC 20002  
(202) 370-8106  
[edavis@bradyunited.org](mailto:edavis@bradyunited.org)  
[rcross@bradyunited.org](mailto:rcross@bradyunited.org)  
[jklein@bradyunited.org](mailto:jklein@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**

NOW COME Plaintiffs MATTHEW MUELLER and MARY MUELLER, as Co-Next Friends for their son ELIJAH MUELLER., a minor, by and through their attorneys, SOMMERS SCHWARTZ, P.C., and state the following for their Complaint against the Defendant:

## INTRODUCTION

This case is about the tragic but foreseeable consequences of a gun dealer choosing to negligently and unlawfully sell a firearm.

Gun dealers, when they enter the business of selling guns, assume a duty to comply with all standards of reasonable care and all relevant state and/or federal firearms laws in order to keep guns out of the hands of criminals, juveniles and dangerous parties likely to misuse firearms.

When those within the system we trust breach their duty to prevent prohibited or otherwise dangerous parties from acquiring firearms, mass shootings like the November 30, 2021 attack at Oxford High School are a predictable result.

Upon information and belief, Acme Shooting Goods, LLC (“ACME”) negligently and unlawfully supplied the minor shooter (hereafter, “E.C.”) with a firearm he could not lawfully possess by providing the gun (hereafter, the “Acme gun” as defined below) to the shooter’s father despite actual and/or constructive knowledge that the father was engaging in an illicit straw purchase (as defined below) and that the Acme gun was intended for the shooter, E.C. But for ACME’s decision to place profit over public safety by illegally putting the Acme gun in the hands of a juvenile likely to misuse it, the shooter would not have been able to use the Acme gun in the November 30, 2021 shooting.

It was eminently foreseeable that an act of gun violence like the mass shooting was a probable consequence of Defendant’s negligent and/or unlawful misconduct. Thus, the negligent and/or unlawful misconduct of ACME directly and proximately contributed to the harm inflicted upon various Oxford High School students on November 30, 2021.

While the shooter can and should face criminal accountability for his role in the shooting, our system of civil justice entitles the families of students killed or injured during the mass shooting at Oxford High School to hold ACME to account for its own contributions to this tragedy.

One of the victimized students was Plaintiffs' minor son, ELIJAH MUELLER.

His parents now appear before this Court to vindicate his right to redress and to prevent similar systemic failures from happening again and contributing to the epidemic of gun violence affecting our youth.

ELIJAH MUELLER survived the shooting but has suffered irreparable harm.

### **JURISDICTION, VENUE AND PARTIES**

1. MARY MUELLER and MATTHEW MUELLER are the parents of ELIJAH MUELLER, a now sixteen-year-old child who was the victim of a gunshot with the bullet traveling through his hand and into the face, causing serious injuries and damages while a student at Oxford High School on November 30, 2021. They bring this action in their capacity as the Co-Next Friends of Minor Plaintiff, ELIJAH MUELLER against the Defendant for the severe and grievous injuries ELIJAH MUELLER suffered. MARY MUELLER and MATTHEW MUELLER are not seeking damages for themselves individually and are proceeding here only for the sole benefit of ELIJAH MUELLER

2. At all relevant times hereto, ELIJAH MUELLER has resided with his parents, MARY MUELLER and MATTHEW MUELLER, in the Township of Oxford, County of Oakland, State of Michigan.

3. Defendant Acme Shooting Goods, LLC ("ACME") is a limited liability company selling firearms, including the one that was sold to James Crumbley and E.C. and subsequently used in the shooting at Oxford High School on November 30, 2021.

4. Defendant ACME conducts business in the Township of Oxford, County of Oakland, State of Michigan. ACME is being sued for negligence, negligent entrustment, and public nuisance.

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

6. Venue is proper in Oakland County, State of Michigan under §600.1629(1)(b) because ELIJAH MUELLER was shot with the Acme gun in the County of Oakland, State of Michigan, and Plaintiffs resided in the County of Oakland, State of Michigan.

### STATEMENT OF FACTS

***A. Unfortunately, for many years now in the United States, school shootings have been a real and ongoing threat in our K-12 schools.***

7. From 2009 to 2019, school shootings occurred in over 177 schools in the United States, resulting in 356 deaths.<sup>1</sup>

8. CNN's investigation into 10 years of shootings on K-12 campuses found two truths: (1) school shootings are increasing, and (2) no type of community is spared.

9. In 2021 alone, there were 202 incidents of gunfire on school grounds, resulting in 49 deaths and 126 injuries.<sup>2</sup>

---

<sup>1</sup> *Ten Years of School Shootings*, CNN (July 2019)  
<https://www.cnn.com/interactive/2019/07/us/ten-years-of-school-shootings-trnd/>.

<sup>2</sup> *Gunfire on School Grounds in the United States*, EVERYTOWN RESEARCH & POLICY (2021)  
<https://everytownresearch.org/maps/gunfire-on-school-grounds/>.

10. In 2022, there were 177 incidents of shootings on school grounds<sup>3</sup> – including a massacre at an elementary school in Uvalde, Texas, which claimed the lives of 19 students and 2 teachers.<sup>4</sup>

11. In 2023, there have been 68 incidents of shooting on school grounds.<sup>5</sup>

12. It is well established that many shooters in mass shooting events were suicidal before the attack commenced.<sup>6</sup>

13. A recent study of 134 schools and attempted school shootings found that 91% of the shooters were students or former students, 98% were males, 87% were in crisis before the shooting, and 80% were suicidal before the attack.<sup>7</sup>

14. Tragically, gun violence in schools is a foreseeable risk that creates a duty on federally licensed firearm dealers to ensure that all reasonable precautions are taken to prevent guns from getting into the hands of minors.

***B. UPON INFORMATION AND BELIEF ON NOVEMBER 26, 2021, SEVERAL DAYS BEFORE THE MASS SHOOTING AT OXFORD HIGH SCHOOL, ACME UNLAWFULLY AND NEGLIGENTLY SOLD THE GUN USED IN THE SHOOTING VIA A STRAW SALE***

15. ACME, when it chose to become a federally licensed firearms dealer (“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

---

<sup>3</sup> *Gunfire on School Grounds in the United States*, EVERYTOWN RESEARCH & POLICY (2022) <https://everytownresearch.org/maps/gunfire-on-school-grounds/>

<sup>4</sup> Holly Yan, *What We Know About The Victims of Robb Elementary School*, CNN (June 6, 2022), <https://www.cnn.com/2022/05/25/us/victims-ualde-texas-school-shooting/index.html>.

<sup>5</sup> *Gunfire on School Grounds in the United States*, EVERYTOWN RESEARCH & POLICY (2023) <https://everytownresearch.org/maps/gunfire-on-school-grounds/>

<sup>6</sup> Maggie Koerth, *Can We Prevent Mass Shootings By Preventing Suicide?* FIVETHIRTYEIGHT (Aug. 22, 2019), <https://fivethirtyeight.com/features/can-we-prevent-mass-shootings-by-preventing-suicide/>.

<sup>7</sup> *Key Findings: Analysis of School and Workplace Shootings*, THE VIOLENCE PROJECT, (2019 Data) <https://www.theviolenceproject.org/mass-shooter-database-3/key-findings/>.

weapons are not obtained by individuals whose possession of them would be contrary to the public interest.” *Abramski v. United States*, 573 U.S. 169, 186 (2014) (internal quotation omitted).

16. A key aspect of ACME’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.

17. One such law that Acme accepted the duty to comply with when it became an FFL is the requirement that Acme timely file all required forms, such as the Form 3310.4, “Report of Multiple Sale” Form.

18. Another key aspect of this duty involved applying reasonable safeguards in addition to those required by statute to prevent firearms from being entrusted, either directly or indirectly, to individuals showing a propensity to misuse them because of age, emotional disturbance or other reasons.

19. Such safeguards 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 the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) and/or calling law enforcement to enable further investigation if circumstances suggest a potentially unlawful transaction.

20. Pursuant to ACME’s gatekeeper duty, ACME had an important obligation to carefully train, supervise, and monitor its employees to make sure that they successfully identify and do not engage in so-called “straw purchases.”

21. 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*, 573 U.S. at 169.

22. ACME, since well before 2021, has been on notice that straw purchases are a primary way in which dangerous and/or legally disqualified possessors – including juveniles – gain access to firearms.

23. In fact, the ATF, in a public report from 2000, emphasized that straw purchases were the most common source of firearms in investigations involving youth and juveniles – accounting for over half of all firearms associated with these investigations. ATF, *Commerce in Firearms*, 22 Table 12 (Feb. 2000).

24. ACME also knew or should have known, since well before 2021, that guns sold in actual or alleged straw sales have repeatedly been linked to violent crimes.

25. It was foreseeable to ACME that completing a straw sale would likely end up arming a juvenile such as E.C. who was prone to misuse a firearm in an unlawful act of violence.

26. 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 as 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.

27. 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.

28. A gun dealer knowingly violates one or more additional laws, either directly and/or as an accomplice/co-conspirator, if it completes a straw transaction despite actual and/or constructive knowledge that the actual purchaser (*i.e.*, the intended user) of the firearm is a juvenile.

29. The laws a seller knowingly violates, either directly or as an accomplice/co-conspirator, when it completes such a straw sale, 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. A requirement to report multiple sales of handguns within 5 business days (§ 923(g));
- e. Prohibitions on obscuring evidence of crimes committed by a third-party (§§ 3, 4);
- f. Prohibitions on minors under 18 possessing handguns absent significant restrictions (§ 922(x); M.C.L. § 750.234f) and a prohibition on the creation of a public nuisance (M.C.L. § 600.3801).

30. Because it is well-known that straw purchasers supply prohibited possessors and/or dangerous parties prone to misuse firearms, provision of a firearm to a straw purchaser also violates the common law prohibition on providing a dangerous instrument to a party showing a propensity to use it to cause harm.

31. Upon information and belief, ACME knowingly violated one or more state and/or federal statutes -- including some or all of the statutes listed above -- and/or its duty of reasonable care, by completing a straw sale of the Sig Sauer 9 mm semi-automatic handgun ("the Acme gun") ultimately used by E.C. in the Oxford High School shooting to James Crumbley despite actual or constructive knowledge that James Crumbley was straw purchasing the Acme gun for E.C.

32. Upon information and belief, the circumstances of the sale provided ACME with, at minimum, constructive knowledge that E.C., rather than his father was the actual purchaser of the Acme gun based on a collection of “red flags” which ACME willfully ignored.

33. On November 26, 2021, then 15-year-old E.C. accompanied his father, James Crumbley, to ACME.

34. One of the ACME employees who assisted in the sale of the Acme gun, Cammy Back, recognized James Crumbley because he had previously purchased multiple firearms from Acme.<sup>8</sup>

35. Cammy Back was the office manager at ACME on the date of the sale.<sup>9</sup>

36. Cammy Back noticed that E.C. was with James Crumbley.<sup>10</sup>

37. Cammy Back noticed that E.C. was a juvenile.<sup>11</sup>

38. Cammy Back had never seen E.C. with James Crumbley during any of his prior firearms purchases<sup>12</sup>.

39. At the time of the actual sale, Cammy Back had left the counter, returned to her office and was not in position to witness or observe the interactions between James Crumbley, E.C., and the “counter guy” in the store.<sup>13</sup>

40. Upon information and belief, E.C. and/or James Crumbley engaged in behavior or made one or more statements while in the store which further indicated that the Acme gun was intended for E.C.

---

<sup>8</sup> *Prelim. Ex. Tr., vol. 2, at 86:25; 87:1-25; 88:1-25; 89:1-7.*

<sup>9</sup> *Id. at 79-80.*

<sup>10</sup> *Id. at 86:25; 87-1-25; 88:1-25; 89:1-7.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

41. E.C. asked his father, James Crumbley, to purchase the Acme gun for him.<sup>14</sup>

42. E.C. gave his father, James Crumbley, his own money to purchase the Acme gun for him.<sup>15</sup>

43. Upon information and belief, the Acme gun was purchased in a cash transaction.

44. E.C. was the one to pick out the Acme gun for purchase.<sup>16</sup>

45. In picking out the Acme gun, E.C. deliberately directed or conspired with his father to purchase the 9-millimeter Acme gun despite already having access to a “puny 22 LR KelTec” because E.C. believed the 9-millimeter to be the “most efficient for killing”.<sup>17</sup>

46. E.C. also referenced his need and desire for, and intent and attempts to, obtain a 9-millimeter gun through his father in his journals.<sup>18</sup>

47. The Acme gun was not kept in a locked container or safe in the Crumbley home, after the purchase.<sup>19</sup>

48. After the sale, E.C. and/or one or both of his parents openly and publicly referred to the Acme gun as E.C.’s firearm.

---

<sup>14</sup> See video of October 24, 2022 plea hearing at <https://www.youtube.com/watch?v=C8epNCeUGjg> (last visited 10/24/22).

<sup>15</sup> See video of October 24, 2022 plea hearing at <https://www.youtube.com/watch?v=C8epNCeUGjg> (last visited 10/24/22).

<sup>16</sup> See video of October 24, 2022 plea hearing at <https://www.youtube.com/watch?v=C8epNCeUGjg> (last visited 10/24/22).

<sup>17</sup> Miller Hearing Tr. at 54:17-21 (July 27, 2023).

<sup>18</sup> *Id.* at 28:23-25; 40:13-15; 52:11-13.

<sup>19</sup> See video of October 24, 2022 plea hearing at <https://www.youtube.com/watch?v=C8epNCeUGjg> (last visited 10/24/22).

49. On the same day ACME sold the Acme gun, E.C. posted a photo of the Acme gun to his public Instagram account with the caption: “[J]ust got **my** new beauty today [heart eyes emoji] Sig Sauer 9 mm. Any questions I will answer.” [emphasis added]

50. This post was readily accessible to any person on the internet, including Defendant ACME.

51. On November 27, 2021, E.C.’s mother, Jennifer Crumbley took E.C. to Accurate Firearms & Range in Clarkston, Michigan, so that E.C. could practice shooting the Acme gun.

52. On November 27, 2021, Jennifer Crumbley posted a photo on her Facebook page of a target at the shooting range with the caption: “[M]om and son day testing out **his** new Christmas present.”<sup>20</sup>

53. This social media post referred to E.C. firing the Acme gun.

54. At all relevant times, Jennifer Crumbley’s social media accounts were set to “public,” allowing any person on the internet to view her posts, including Defendant ACME.

55. The above statements are illustrative, rather than exhaustive, examples of how the Crumbleys did not believe there was a reason to hide the fact that the Acme gun was E.C.’s.

56. Upon information and belief, had ACME adequately trained, supervised, and/or monitored its employees to comply with the law and its duty of reasonable care in detecting and stopping straw purchases, ACME would not have sold the Acme gun to the Crumbleys on November 26, 2021, and E.C. would not have had access to the Acme gun on the date of the Oxford High School shooting.

---

<sup>20</sup> *Prelim. Ex. Tr.*, vol. 1, at 207:4-6 (emphasis added).

57. On the morning of November 30, 2021, E.C. returned to Oxford High School with his gun and 48 rounds of ammunition in his backpack. He also had a journal in his backpack that contained 21 pages of his plans for the mass shooting.<sup>21</sup> The journal stated in part: “First off, got my gun. It’s an SP2022 Sig Sauer 9-millimeter. Second, the shooting is tomorrow, I have access to the gun and ammo.”<sup>22</sup> It also contained two separate drawings of bullets. One drawing was labeled “.22”. The other drawing was labeled “9-millimeter”. The .22 drawing has next to it “kill range, 25M, max”, and the 9-millimeter drawing has next to it “kill range, 100M.”

58. At approximately 8:59 a.m., E.C.’s math class participated in a test review. On his math worksheet, E.C. drew a picture of the Acme gun. Under the gun, he wrote: “The thoughts won’t stop. Help me.” To the right, he drew a person with two gunshot wounds: one in the chest and one in the abdomen with blood coming from the mouth. Beside this, he wrote “blood everywhere” and drew a shell casing or bullet. Below, E.C. drew a laughing/crying emoji. Finally, he wrote: “My life is useless” and “The world is dead.”

59. This drawing and these statements were clearly violent and disturbing, were an obvious cry for help, and openly expressed E.C.’s thoughts of suicide and/or homicide.

60. Subsequently that morning, E.C. altered his drawings on the worksheet. He scratched out the drawings of the gun, the bloody person, and the words “Help me”, “My life is useless,” “The world is dead,” and “Blood everywhere.” E.C. added phrases that, in this context, were equally disturbing: “video game this is”, “harmless act,” “I love my life so much!!!!”, “OHS rocks!”, and “we’re all friends here.”

---

<sup>21</sup> *Prelim Ex. Tr.*, vol. 2, at 223:2-25; 224:1-20.

<sup>22</sup> *Id.* at 226:3-6.

61. E.C.'s math teacher reported the drawings and writing to Nicholas Ejak, Dean of Students at Oxford High School.

62. Nicholas Ejak came to Shawn Hopkins' office around 9:00 a.m. to let Hopkins know that he had seen a picture of the writings and drawings on E.C.'s math worksheet.

63. Thereafter, Hopkins went to E.C.'s math classroom to remove E.C. for a meeting in the counseling office.

64. Ejak returned to the math classroom and retrieved E.C.'s backpack, which contained the Acme gun and 48 rounds of ammunition.

65. Less than two hours after E.C. was released from the safety and security of the counseling office, E.C. took his backpack into a bathroom and loaded the Acme gun.

66. E.C. first shot a student inside the bathroom, then emerged and began shooting students in the hallway.

67. E.C. would ultimately kill four students, and seriously injure seven others, including ELIJAH MUELLER, who was shot in the face.

68. ELIJAH MUELLER has undergone extensive surgical care and treatment for the injuries the gunshot caused to his face, jaw and teeth.

69. ELIJAH MUELLER has also undergone and continues to undergo regular mental health counseling for post-traumatic stress disorder as a result of this traumatic event.

70. At approximately 12:52 p.m., the authorities were notified of an active shooter at Oxford High School.

71. Upon information and belief, E.C.'s shooting rampage was halted when he was apprehended by law enforcement.

72. On December 1, 2021, E.C. was arraigned and charged as an adult with one count of terrorism causing death, four counts of first-degree murder, seven counts of assault with intent to murder, and twelve counts of possession of a firearm in the commission of a felony.

73. Because, upon information and belief, ACME chose to violate its duty to detect and stop straw purchases, it armed a juvenile (E.C.) with the Acme gun he used in the unlawful violence which harmed ELIJAH MUELLER.

74. Further, had Acme complied with its duties by timely complying with its reporting duties, upon information and belief, law enforcement would have been provided with an opportunity to investigate the sales to James Crumbley and E.C. and to intervene and confiscate all guns in James Crumbley and E.C.'s possession, thereby preventing this tragedy.

75. E.C. later confirmed that he used the Acme gun to kill and injure students including Minor Plaintiff, ELIJAH MUELLER, on November 30, 2021 at Oxford High School.<sup>23</sup>

76. Such a tragic consequence was a predictable result of ACME's misconduct in completing the relevant straw sale on November 26, 2021.

77. ELIJAH MUELLER is entitled to redress for the foreseeable injury inflicted upon him with the Acme gun as a consequence of ACME's negligent and/or unlawful misconduct.

78. Upon information and belief, ACME has not meaningfully changed its practices to prevent negligent and/or unlawful sales to straw purchasers and/or otherwise dangerous and/or disqualified parties since the E.C.'s use of the Acme gun in the attack on Oxford High School.

---

<sup>23</sup> See video of October 24, 2022 plea hearing at <https://www.youtube.com/watch?v=C8epNCeUGjg> (last visited 10/24/22).

79. This suit in no way seeks to impose liability on gun sellers who act responsibly and reasonably in terms of complying with relevant laws and common-sense safeguards when selling guns or to infringe upon the Second Amendment rights of individual citizens.

80. Instead, it seeks only to hold ACME accountable for its, upon information and belief, *irresponsible* and *unreasonable* decision to place profit over the safety of the community by negligently and/or unlawfully selling the Acme gun in violation of one or more federal and/or state statutes and in breach of the relevant standard of care.

### **COUNT I Negligence**

81. Plaintiffs incorporate by reference all of the previous and subsequent paragraphs.

82. ACME 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.

83. ACME knowingly violated this duty in this case in a manner which allowed E.C. to gain access to a gun straw purchased by James Crumbley.

84. Specifically, ACME employees, at minimum, willfully blinded themselves to a collection of clear indicators informing them that James Crumbley was a straw buyer supplying a juvenile.

85. A juvenile's use of a gun obtained via a straw purchase in an unlawful act of gun violence – such as E.C. attacking one or more parties including ELIJAH MUELLER at Oxford High School – was a foreseeable consequence of ACME's breach.

86. Because ACME's breach directly and foreseeably contributed to ELIJAH MUELLER's injuries, he is entitled to recover under the law of negligence.

87. Additionally, the various state and/or federal firearms laws that ACME knowingly violated, either directly or as an accomplice/co-conspirator, by completing the straw sale of the Acme gun were designed to prevent precisely the type of gun violence that foreseeably caused injury to ELIJAH MUELLER.

88. These laws include, but are not necessarily limited to 18 U.S.C. §§ 3, 4, 922(a)(6), 922(m), 922(t), 922(x), 923(g), 924(a) and M.C.L. §§ 600.3801, 750.234f.

89. These laws were designed to protect all members of the public, including individuals like ELIJAH MUELLER.

90. As explained above, ACME's knowing violation of one or more of these laws proximately led to E.M's harm by arming E.C. with the Acme gun.

91. Thus, ACME's violation of these or more laws also constitutes prima facie evidence establishing the merits of Plaintiffs' negligence claim.

## **COUNT II Negligent Entrustment**

92. Plaintiffs incorporate by reference all of the previous and subsequent paragraphs.

93. ACME was subject, at all times, to a duty to avoid entrusting a dangerous instrument like the Acme gun to a party showing a heightened propensity to misuse it either directly or through one or more intermediaries.

94. In this case, such a party would include a juvenile like E.C. whose access to firearms is limited by law because of a legislative recognition of the heightened danger of juvenile misuse of firearms.

95. ACME knowingly breached this duty by supplying the Acme gun to James Crumbley with actual or constructive knowledge that he would transfer the Acme gun to E.C. and that E.C. was the intended user.

96. A juvenile's use of a gun in an unlawful act of gun violence – such as the attack at Oxford High School – was a foreseeable consequence of ACME's breach.

97. Because ACME's breach directly and foreseeably contributed to ELIJAH MUELLER's injuries, he is entitled to recover under the law of negligent entrustment.

### **COUNT III Public Nuisance**

98. Plaintiffs incorporate by reference all of the previous and subsequent paragraphs.

99. Michigan law defines a "nuisance" to include "[a] building, vehicle, boat, aircraft, or place . . . if . . . [i]t is used to facilitate armed violence in connection with the unlawful use of a firearm or other dangerous weapon." M.C.L. § 600.3801(1)(g).

100. All parties are subject to a duty not to create a nuisance in violation of this law.

101. ACME breached this duty because it chose to operate its store as a "building" or "place" that facilitated E.C.'s unlawful use of the Acme gun in the attack on Oxford High School.

102. Specifically, ACME used the store as a venue to conduct an unlawful straw sale known to be a primary mechanism for parties like E.C. to acquire firearms later misused in crimes.

103. ELIJAH MUELLER's injury with a bullet fired from the Acme gun was a foreseeable consequence of ACME's choice to create a public nuisance.

104. Upon information and belief, ACME has persisted in the negligent and/or unlawful practices associated with the sale of the Acme gun since the attack on Oxford High School.

105. As such, ACME is creating an ongoing public nuisance which continues to threaten ELIJAH MUELLER and other members of the Oxford community.

106. Plaintiffs have suffered a unique harm different from the harm inflicted upon other members of the community exposed to this public nuisance.

107. Under Michigan law, “any resident of the county in which a nuisance described in section 3801 is located . . . may maintain an action for equitable relief . . . to abate the nuisance.” M.C.L. § 600.3805.

108. Plaintiffs thus have standing to seek, and are entitled to, an injunction requiring ACME to cease its reckless and/or unlawful practices related to the sale of firearms at the ACME Store which perpetuate an ongoing nuisance.

### **DAMAGES**

109. As a direct and proximate result of the actions of the Defendant ACME, ELIJAH MUELLER has suffered terror, shock, awareness of imminent death, excruciating pain, suffering and fear.

110. As a further direct and proximate cause of the actions of the Defendant ACME, ELIJAH MUELLER has suffered severe emotional distress, post-traumatic stress disorder, sleep disturbance, nightmares, flashbacks, fear of attending school, and can be expected to continue to suffer such damages into the future.

111. As a further direct and proximate cause of the actions of the Defendant ACME, ELIJAH MUELLER has suffered and will suffer losses into the future due to the injuries and damages he suffered to his mental health, face, jaw, and teeth, including, but not limited to the

reasonable expenses of necessary medical care and treatment, loss of earnings capacity, and all other damages that may be learned through the course of discovery.

WHEREFORE, Plaintiffs claim judgment against the Defendant ACME in the amount to which ELIJAH MUELLER is found to be entitled, together with interest, costs, attorneys' fees, exemplary damages, punitive damages and relevant injunctive relief.

Respectfully submitted,

SOMMERS SCHWARTZ, P.C.

By: /s/ Matthew L. Turner

Matthew L. Turner (P48706)

Lisa M. Esser (P70628)

Attorneys for Plaintiffs

One Towne Square, 17<sup>th</sup> Floor

Southfield, MI 48076

(248) 746-4039

[mturner@sommerspc.com](mailto:mturner@sommerspc.com)

[lessers@sommerspc.com](mailto:lessers@sommerspc.com)

BRADY

Erin C. Davis (*admission pending*)

Robert Cross (*admission pending*)

Jenna Tersteegen (*admission pending*)

Co-Counsel for Plaintiffs

840 Street NE, Suite 400

Washington DC 20002

(202) 370-8106

[edavis@bradyunited.org](mailto:edavis@bradyunited.org)

[rcross@bradyunited.org](mailto:rcross@bradyunited.org)

[jklein@bradyunited.org](mailto:jklein@bradyunited.org)

Dated: September 22, 2023