

STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE

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KIMBERLY CHIAPPERINI, as representative of the
ESTATE OF MICHAEL CHIAPPERINI; JOSEPH
HOFSTETTER; MARIAN KACZOWKA and JANINA
KACZOWKA, as representatives of the ESTATE OF
TOMASZ KACZOWKA; THEODORE SCARDINO; and
KAREN SCARDINO,

Plaintiffs,

-vs-

GANDER MOUNTAIN COMPANY, INC., DAWN NGUYEN,
and the ESTATE OF WILLIAM SPENGLER,

Defendants.
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Index No. _____

COMPLAINT

Plaintiffs Kimberly Chiapperini, as representative of the Estate of Michael Chiapperini; Joseph Hofstetter; Marian and Janina Kaczowka, as representatives of the Estate of Tomasz Kaczowka; Theodore Scardino; and Karen Scardino (together the “Plaintiffs”), by their undersigned counsel, for their Complaint against Defendants Gander Mountain Company, Inc. (“Gander Mountain”), Dawn Nguyen and the Estate of William Spengler (together the “Defendants”) allege as follows:

SUMMARY OF THE ACTION

1. Plaintiffs assert claims against Gander Mountain, Dawn Nguyen and the Estate of William Spengler arising from the senseless and tragic shootings of Michael Chiapperini, Tomasz Kaczowka, Joseph Hofstetter and Theodore Scardino by William Spengler (“Spengler”) on December 24, 2012 in Webster, New York, with a Bushmaster .223 caliber semi-automatic rifle (the “Assault Rifle”) sold unlawfully by Gander Mountain to Nguyen and Spengler.

2. Using the Assault Rifle, Spengler shot and killed Mr. Chiapperini and Mr. Kaczowka, and seriously injured Mr. Hofstetter and Mr. Scardino when they responded to a 911 call reporting a fire set by Spengler at his family's property in the early morning of Christmas Eve, 2012.

3. Spengler and Nguyen purchased the Assault Rifle on June 6, 2010 from Gander Mountain's retail store in Rochester, New York, with Nguyen acting as an illegal straw purchaser. Upon information and belief, Spengler, then a 61-year-old convicted murderer, accompanied by the then 22-year-old Nguyen, entered the Gander Mountain retail store and, in plain view of a Gander Mountain salesperson, selected and purchased two guns, including the Assault Rifle. In the presence of Spengler and the Gander Mountain salesperson, and with the aid and assistance of the Gander Mountain salesperson, Nguyen completed the firearms purchase paperwork by falsely and illegally identifying herself to be the actual buyer of the guns. Given the circumstances of the purchase, Gander Mountain knew or should have known, and should have taken steps to confirm, that Spengler and not Nguyen was the actual purchaser and intended end user of the guns, and that the sale to Nguyen, a straw purchaser, was illegal.

4. As a direct result of Gander Mountain's unlawful and negligent conduct, aided by the illegal conduct of Nguyen, Spengler, a convicted murderer, acquired the Assault Rifle which he later used to kill or seriously injure four firefighters volunteering their services on Christmas Eve.

5. Plaintiffs bring this action to hold Defendants accountable for their unlawful conduct, to obtain an order requiring Gander Mountain to reform its policies, procedures and training with regard to the sale of firearms to prevent any further avoidable tragedies like the one at issue here, and to compensate Plaintiffs for their harm.

PARTIES

6. Plaintiff Kimberly Chiapperini, the 31-year-old widow of decedent Michael Chiapperini, is and was at all times relevant hereto a resident of Webster, New York.

7. Plaintiff Joseph Hofstetter, a 34-year-old firefighter, is and was at all times relevant hereto a resident of Webster, New York.

8. Plaintiffs Marian and Janina Kaczowka, the parents of decedent Tomasz Kaczowka, are and were at all times relevant hereto residents of Webster, New York.

9. Plaintiff Theodore Scardino, a 50-year-old volunteer firefighter, is and was at all times relevant hereto a resident of Webster, New York.

10. Plaintiff Karen Scardino, the wife of Theodore Scardino, is and was at all times relevant hereto a resident of Webster, New York.

11. Defendant Gander Mountain Company, Inc. is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business at 180 East 5th Street, Suite 1300, Saint Paul, Minnesota 55101-1664.

12. Defendant Gander Mountain Company, Inc. sells firearms in New York State.

13. Defendant Gander Mountain Company, Inc. sold the Assault Rifle used to shoot and kill Mr. Chiapperini and Mr. Kaczowka and seriously injure Mr. Hofstetter and Mr. Scardino.

14. Defendant Dawn Nguyen was at all times relevant hereto a resident of Webster, New York.

15. On April 15, 2014, Defendant Nguyen was convicted of first-degree falsification of a business record in New York State Supreme Court, arising out of her and Spengler's unlawful purchase of the Assault Rifle and another firearm from Gander Mountain. Defendant

William Spengler was a convicted murderer who shot and killed Mr. Chiapperini and Mr. Kaczowka, and shot and seriously injured Mr. Hofstetter and Mr. Scardino.

16. Defendant Spengler was at all times relevant hereto a resident of Webster, New York.

17. Defendant Spengler died on December 24, 2012 of a self-inflicted gunshot wound after shooting Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino.

JURISDICTION

18. This Court possesses jurisdiction over this action pursuant to N.Y. C.P.L.R. §§ 301 and 302(a).

VENUE

19. Venue is appropriate in Monroe County, New York because Plaintiffs reside in Monroe County, New York.

FACTUAL ALLEGATIONS

20. The following allegations are made on the best information and belief of the Plaintiffs:

A. The Volunteer Firefighters

21. Michael Chiapperini, a lieutenant in the Webster Police Department, served for more than twenty years as a volunteer firefighter with the West Webster Fire Department. Mr. Chiapperini was a dedicated volunteer, serving as Chief of the Fire Department for six years and as the advisor to the Explorers program, through which young men and women between the ages of 14 and 18 interested in firefighting careers can obtain training and experience in firefighting disciplines, including Emergency Medical Services. He lived with his wife, Kimberly

Chiapperini, his young daughters K.J.C. and K.R.C., and his nineteen-year-old son, Nicholas Chiapperini. Mr. Chiapperini was 43 years old at the time of his death.

22. Tomasz Kaczowka, a 911 dispatcher for Monroe County, served as a volunteer firefighter with the West Webster Fire Department for just over one year. From ages 14 through 18, Mr. Kaczowka participated in the Explorers program. He was selected to serve as a volunteer firefighter at a very young age based on his maturity, skills and dedication to public service. In addition to being a 911 dispatcher and a volunteer firefighter, Mr. Kaczowka was taking college courses in fire protection services with the goal of becoming a full-time firefighter. Mr. Kaczowka was 19 years old at the time of his death.

23. Joseph Hofstetter, a full-time firefighter in Rochester, has served as a volunteer firefighter with the West Webster Fire Department for fifteen years. Like Mr. Kaczowka, Mr. Hofstetter participated in the Explorers program during high school and trained to be a firefighter from a very young age. Mr. Hofstetter was 33 years old at the time of the shooting.

24. Theodore Scardino, an Infrastructure Architect in Rochester, has served as a volunteer firefighter with the West Webster Fire Department for three years, and served with the Laurelton Fire Department for fourteen years. Mr. Scardino was 48 years old at the time of the shooting.

B. The Shootings of Michael Chiapperini, Tomasz Kaczowka, Joseph Hofstetter and Theodore Scardino

25. At approximately 5:35 a.m. on December 24, 2012, the West Webster Fire Department received a 911 call reporting a fire at 191 Lake Road, the home of William Spengler.

26. Shortly after 5:35 a.m., Mr. Hofstetter, responding to the call, arrived at 191 Lake Road in his personal vehicle. When he arrived, he found that, in addition to a fire at the property located at 191 Lake Road, a car parked in front of the property was also on fire.

27. Shortly thereafter, Mr. Chiapperini and Mr. Scardino arrived at the scene in a fire truck and Mr. Hofstetter walked from his car to the truck.

28. As soon as Mr. Hofstetter arrived at the truck, Spengler, who had been hiding behind a berm across the street from the house, began shooting at the firefighters.

29. Sometime thereafter, Mr. Kaczowka arrived at the property in a Fire Department vehicle.

30. Believing that the shooting was coming from the house, Mr. Chiapperini and Mr. Scardino exited the fire truck on the passenger side, placing themselves in Spengler's direct line of fire. Spengler shot Mr. Chiapperini in the head and shot Mr. Scardino in the back of his shoulder.

31. Mr. Scardino crawled under the fire truck where he remained, pretending to be dead, while Spengler continued his shooting rampage.

32. Spengler fired numerous rounds. Mr. Scardino sustained a second gunshot wound to his right leg, and Mr. Hofstetter was shot in the lower back and pelvis.

33. Mr. Kaczowka was shot while walking from his vehicle to the fire truck.

34. Spengler threw two bottles of gasoline at the fire truck and shot at the ground in an attempt to ignite the truck on fire.

35. Despite his injuries, Mr. Hofstetter crawled to the driver's side door of the truck in order to communicate via radio the approximate location of the shooter and to alert other responding personnel to the danger.

36. While hanging out of the driver's side door, Mr. Hofstetter was able to drive the fire truck, using his left hand to press the gas pedal while he steered with his right hand, approximately 150 feet away from the house before the fire truck crashed.

37. Mr. Hofstetter ultimately escaped the scene in his own vehicle.

38. Mr. Scardino was forced to remain on the ground and “play dead” for over ninety minutes while Spengler continued moving about the scene. Mr. Scardino eventually was rescued by a SWAT team.

39. Mr. Chiapperini and Mr. Kaczowka were deceased when the SWAT team arrived.

40. A few hours after the ambush, Spengler was found dead of a self-inflicted gunshot wound to the head.

41. Spengler was found with three weapons by his side, including the Assault Rifle used to shoot Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino: a Bushmaster .223 caliber semi-automatic rifle, Model XM15-E2S, bearing serial number BFI650937, purchased by Nguyen and Spengler from Gander Mountain. A second weapon found next to Spengler, a Mossberg 12-gauge shotgun, Model 500, bearing serial number T546254 (the “Mossberg Shotgun”), was also purchased by Nguyen and Spengler from Gander Mountain during the same sale at which they purchased the Assault Rifle.

42. Messrs. Scardino and Hofstetter suffered serious physical injuries as a result of the shootings that required, and continue to require, substantial medical and rehabilitative treatment and monitoring.

C. Gander Mountain’s Negligent and Unlawful Sale of the Assault Rifle

43. Gander Mountain is engaged in the business of selling firearms, including long guns such as the Assault Rifle.

44. On June 6, 2010, Gander Mountain—through its retail store located at 300 Jay Scutti Boulevard in Rochester, New York (the “Rochester Store”)—illegally and negligently sold the Assault Rifle and the Mossberg Shotgun to Nguyen and Spengler, with Nguyen acting as an

illegal straw purchaser. Gander Mountain knew or should have known that Nguyen was not buying these firearms for her personal use. Nguyen, aided and assisted by a Gander Mountain salesperson, completed the requisite firearms purchase paperwork by falsely identifying herself as the actual purchaser and intended end user of the firearms.

45. On June 6, 2010, Nguyen and Spengler entered the Rochester Store together. At the time, Spengler was 61 years old and Nguyen was 22 years old.

46. A Gander Mountain salesperson observed Spengler and Nguyen looking at a display of long guns in the Rochester Store. The salesperson approached them and asked if they needed help. Spengler responded that they did not.

47. With both Spengler and the Gander Mountain salesperson present, and with the aid and assistance of the Gander Mountain salesperson, Nguyen completed and signed the federal and state required firearms purchase paperwork as though she were the actual purchaser.

48. Nguyen paid \$1,425.58 in cash for the guns.

49. Nguyen did not purchase any ammunition, nor did she inquire about ammunition, how to load or operate the guns, or where shooting ranges were located.

50. Based on the above facts and others, Gander Mountain knew or should have known that Nguyen was not the real purchaser and intended end user of the firearms but, rather, that she was an illegal straw purchaser, who was purchasing firearms on Spengler's behalf. A reasonable and law-abiding gun seller would have sought to determine whether Nguyen was the actual, intended purchaser of the firearms.

51. A reasonable and law-abiding gun seller would have screened and/or questioned Nguyen, including, but not limited to, asking why she was buying multiple guns at that time;

why she was paying for the guns in cash; whether she was buying the guns for someone else; the intended use of the guns; and other inquiries.

52. A reasonable and law-abiding gun seller would have had doubts about the legality of this sale.

53. A reasonable and law-abiding gun seller would not have sold the guns if it had doubts about the legality of the sale.

54. A reasonable and law-abiding gun seller would not have sold the guns to Nguyen and Spengler.

55. Despite the strong indicators that Nguyen was not a legal purchaser, Gander Mountain sold the guns to Nguyen and Spengler, and aided and assisted Nguyen in completing the required firearms paperwork, without making any reasonable attempt to determine whether Nguyen was an illegal straw purchaser.

56. As Gander Mountain knew or should have known, it was reasonably foreseeable that the guns it sold to Nguyen and Spengler would be obtained by a dangerous or prohibited person (such as Spengler) for use in crimes, and that innocent persons (such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino) would be shot and injured or killed.

57. Nguyen subsequently provided the Assault Rifle and the Mossberg Shotgun to Spengler, who used the Assault Rifle to shoot and kill Mr. Chiapperini and Mr. Kaczowka, and to shoot and injure Mr. Hofstetter and Mr. Scardino.

58. Gander Mountain's failure to exercise reasonable care in its sale of the Assault Rifle and the Mossberg Shotgun to Nguyen and Spengler was a substantial factor in bringing about the deaths of Mr. Chiapperini and Mr. Kaczowka, and the injuries to Mr. Hofstetter and Mr. Scardino.

59. As a seller of firearms, including long guns such as the Assault Rifle, Gander Mountain knew or should have known that unless it used reasonable care in the sale of firearms, criminals such as Spengler would obtain firearms and use them to cause injury or death.

60. Gander Mountain knew or should have known that unless it used reasonable care to prevent straw purchases of firearms, wherein a person who is not the actual, intended purchaser of a firearm completes the required firearms purchase paperwork stating, inaccurately and fraudulently, that he or she is the actual intended purchaser, criminals such as Spengler would obtain firearms and use them to cause injury or death.

61. Gander Mountain knew or should have known that:

- a. Criminals and other dangerous persons seek to obtain guns from gun sellers to use in crimes, including those that result in injury or death;
- b. Federal firearms laws exist to prohibit and/or hinder criminals and other dangerous persons from obtaining guns through illegitimate channels;
- c. Firearms dealers, as agents of enforcement of federal firearms laws, are tasked as gatekeepers who prevent criminals and other dangerous or prohibited persons from acquiring guns; and
- d. Criminals and other dangerous and prohibited persons often obtain guns illegally from straw purchasers and/or traffickers.

62. Gander Mountain knew or should have known that certain factual scenarios may be indicative of criminal activity, including but not limited to:

- a. Multiple sales of firearms at the same time or during a short period of time;
- b. Purchases made in cash, especially substantial sums of cash; and
- c. Facts suggesting a straw purchase, such as where one person appears to select a firearm or firearms and another person pays for them, or the presence of a person who is unauthorized to purchase firearms and the selection of the firearms by that person.

63. Gander Mountain knew or should have known that its sales practices could have a substantial impact on criminals' acquisition of firearms.

64. Gander Mountain knew or should have known that the gun industry's trade association, the National Shooting Sports Foundation ("NSSF"), with the assistance of ATF, has issued a recommended sales protocol pursuant to which gun dealers should screen suspicious purchasers with a battery of questions, beyond those required by federal law, and not sell firearms to a person unless the dealer has no doubts about the legitimacy of the sale, even if the purchaser is not prohibited by federal or state law from buying guns.

65. Gander Mountain knew or should have known that this program, referred to as "Don't Lie for the Other Guy," recommends that retailers establish the following basic procedures in an attempt to prevent illegal straw purchases:

[T]o simply have your customer provide identification, fill out the required forms and undergo the criminal background check may not be enough under certain circumstances. . . .

By including a couple of questions regarding the identity of the actual purchaser in [the] pre-sales screening, retailers can provide a valuable service to law enforcement and to their community without offending a legitimate customer.

An effective way to do this is to establish a store policy that every potential firearm purchaser will be asked the same sequence of questions. You may even want to post a sign in your store that informs the customer of this policy. The sign may read: To assist law enforcement it is our policy to go beyond the law in verifying the identity of the actual purchaser of a firearm.

Questions for All Purchasers You Do Not Personally Know: 1. Is the firearm for you or someone else? 2. If someone else, is this a gift? 3. What is the intended use – personal protection, deer hunting, target shooting? 4. What type of firearm are you interested in or most comfortable with? . . .

The key is to engage the customer and ask enough questions to draw out information on their background and intentions. If suspicions arise, it is more

prudent to follow the precautionary principle of politely refusing the sale to protect yourself from the risk of contributing to a possible illegal transaction.¹

66. In reports of which Gander Mountain knew or should have known, ATF and others have stated that multiple sales and straw purchases are used by criminals to obtain firearms. Reports and studies, including those issued by the federal government of which Gander Mountain was on notice, have made these facts clear for many years.

67. Gander Mountain intentionally chose to sell the Bushmaster XM-15, a semiautomatic, military-style rifle. Gander Mountain knew or should have known that unless it used reasonable care in the sale of assault weapons like the Assault Rifle, criminals such as Spengler would obtain these types of firearms and use them to cause injury or death to innocent persons such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino.

68. Gander Mountain knew or should have known that unless it used reasonable care and followed the law to prevent multiple sales of guns, criminals (such as Spengler) would obtain firearms and use them to cause injury or death to innocent persons (such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino)—an outcome that is reasonably foreseeable.

69. Gander Mountain knew or should have known that unless it used reasonable care and followed the law to prevent straw purchases of guns, criminals (such as Spengler) would

¹ NSSF & ATF, Don't Lie for the Other Guy: A Retailers Guide to Recognizing and Deterring Strawman Purchases; *see also id.* (providing the following example of circumstances indicative of a straw purchase: “Bob brings his girlfriend Kay to a gun shop. Bob points out a pistol to Kay, who asks to see it. She briefly looks at the pistol and hands it to Bob who nods his approval and hands the pistol back to Kay. Kay then fills out Form 4473 to purchase the pistol. Observing this, you have reason to believe that Kay may not be the actual purchaser. Bob may simply be helping Kay select her first handgun or, he may be ineligible to purchase a firearm and is using her as a strawman purchaser. . . . If, after asking a few helpful questions, you are still not comfortable with the identity of the actual purchaser, **politely refuse the sale.**”) (emphasis in original).

obtain firearms and use them to cause injury or death to innocent persons (such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino)—an outcome that is reasonably foreseeable.

70. Gander Mountain knew or should have known that unless it used reasonable care and followed the law in the sale of firearms, criminals (such as Spengler) would obtain firearms, and that tragic shootings, such as the shootings underlying the present case, would result.

71. Nevertheless, Gander Mountain failed to adopt and/or implement adequate training, policies and procedures to prevent straw purchases.

72. The provisions of C.P.L.R. Article 16 do not apply in this case, or an Article 16 exemption or exemptions will apply.

CLAIMS FOR RELIEF

COUNT I – NEGLIGENCE **(Against Defendant Gander Mountain)**

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

74. Gander Mountain is vicariously liable for the actions or inactions of its agents and/or employees while in the scope of their agency and/or employment, including the actions of its salespeople when selling firearms.

75. At all relevant times, Gander Mountain was subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury.

76. Gander Mountain therefore had a duty to exercise reasonable care in selling guns and to refrain from engaging in any activity that would create reasonably foreseeable risks of injury to others. Breach of this duty constitutes negligence.

77. Federal and state gun laws—including, but not limited to, 18 U.S.C. § 922(a)(6), 18 U.S.C. § 922(d), 18 U.S.C. § 922(m) and 18 U.S.C. § 924(a)(1)(A)—bar the sale of firearms

or ammunition to “straw buyers” who acquire firearms from a gun dealer on behalf of a person prohibited by law from possessing or purchasing such firearms.

78. Nguyen was a straw buyer for the convicted felon, Spengler, who was the actual buyer of the Mossberg Shotgun and the Assault Rifle used to shoot and kill Mr. Chiapperini and Mr. Kaczowka, and to shoot and injure Mr. Hofstetter and Mr. Scardino.

79. Gander Mountain knew or had reasonable cause to believe that Nguyen was an illegal straw buyer, and that the provision of a firearm to a straw buyer violated various federal and state laws, including but not limited to 18 U.S.C. § 922(a)(1)(A), (a)(6), (d)(1), (g)(1), (m) and 18 U.S.C. § 924(a)(1)(A).

80. Gander Mountain acted both unlawfully and negligently when it sold the Assault Rifle and the Mossberg Shotgun to Nguyen and Spengler because, at the time, Gander Mountain and its employees were aware of circumstances that it knew or should have known were indicative of an unlawful straw sale. Relevant indicators include, but are not limited to, Spengler accompanying Nguyen when she shopped for firearms at the Rochester Store, Spengler selecting the specific firearms for which Nguyen, with the aid and assistance of the Gander Mountain salesperson, completed and signed the firearms purchase paperwork, Nguyen and Spengler purchasing multiple guns at the same time, and Nguyen and Spengler paying cash for the guns.

81. The circumstances of Nguyen’s straw purchase, considered individually or in the aggregate, would have informed a reasonable and law-abiding gun seller that there was a substantial and unacceptable risk that Nguyen was an unlawful purchaser who did not seek to purchase the Assault Rifle and Mossberg Shotgun for personal use.

82. As set forth above, Gander Mountain and its employees also failed to exercise reasonable care by implementing and following the NSSF’s recommended protocols for

detering straw purchase sales, including screening suspicious purchasers by asking simple questions.

83. Gander Mountain knew or should have known that it was foreseeable that innocent persons, such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino, would be injured or killed as a result of the unlawful sale of firearms.

84. By breaching its duty not to expose others to reasonably foreseeable risks of injury through the unlawful and negligent sale of firearms to a person who was prohibited from possessing or purchasing firearms, the conduct of Gander Mountain and its employees was a substantial factor in bringing about the (i) wrongful deaths of Michael Chiapperini and Tomasz Kaczowka and (ii) serious physical injury and associated harm to Plaintiffs Joseph Hofstetter and Theodore Scardino.

85. Such conduct was in knowing violation of various federal and state firearms statutes governing the sale and marketing of firearms including, but not limited to, 18 U.S.C. § 922(a)(1)(A), (a)(6), (d)(1), (g)(1), (m) and 18 U.S.C. § 924(a)(1)(A).

86. Gander Mountain's violation of the federal and state firearms laws was a substantial factor in bringing about the deaths or injuries suffered by Plaintiffs.

87. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT II – NEGLIGENT ENTRUSTMENT
(Against Defendant Gander Mountain)

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

89. At all relevant times, Gander Mountain had control of the firearms it sold to Nguyen and Spengler, including the Assault Rifle that was used in the shootings that fatally

wounded Mr. Chiapperini and Mr. Kaczowka, and permanently injured Mr. Scardino and Mr. Hofstetter.

90. Nguyen became entitled to possess the firearms only by the negligence and consent of Gander Mountain. In turn, Spengler became entitled to possess said firearms through the negligence of Gander Mountain and the consent of Nguyen.

91. Gander Mountain and its employees knew or should have known that, by withholding consent to Nguyen, it could have prevented Nguyen from possessing or unlawfully transferring the firearms to a person prohibited by law from having such firearms, such as Spengler.

92. Gander Mountain and its employees negligently permitted Nguyen to acquire possession of the Assault Rifle and the Mossberg Shotgun under circumstances in which it knew or should have known that Nguyen would engage in activity that would create a substantial and unacceptable risk to others. Such activity included, but was not limited to, unlawfully reselling or distributing the Assault Rifle and Mossberg Shotgun to a person, such as Spengler, who was prohibited by law from having the firearms.

93. As set forth above, Gander Mountain and its employees were aware of a number of facts demonstrating that it either knew or should have known that Nguyen was not purchasing the Assault Rifle and Mossberg Shotgun for personal use or possession. Rather, based on the circumstances of the sale, Gander Mountain knew or should have known that Nguyen intended to purchase the firearms for an unlawful or unreasonable use, including the illegal transfer of the weapons to a person prohibited by law from purchasing the firearms from Gander Mountain.

94. At the time of sale, therefore, it was reasonably foreseeable to Gander Mountain that supplying Nguyen with the Assault Rifle and Mossberg Shotgun would result in Nguyen

aiding, abetting and conspiring to unreasonably use and/or unlawfully transfer the weapons in violation of federal and state laws, including, but not limited to, 18 U.S.C. § 2, 18 U.S.C. § 371, 18 U.S.C. § 922(a)(1)(A), (a)(6), (d)(1), (g)(1), (m) and 18 U.S.C. § 924(a)(1)(A).

95. In turn, it was reasonably foreseeable that the criminal use of a firearm by a person unauthorized to possess it would cause innocent individuals, such as Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino, to be physically injured or killed.

96. Accordingly, Gander Mountain's negligent entrustment of the Assault Rifle and the Mossberg Shotgun to Nguyen and Spengler was a substantial factor in bringing about the (i) wrongful deaths of Mr. Chiapperini and Mr. Kaczowka and (ii) serious physical injury and associated harm to Mr. Hofstetter and Mr. Scardino.

97. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT III – NEGLIGENT ENTRUSTMENT
(Against Defendant Dawn Nguyen)

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

99. Following Gander Mountain's unlawful sale, Nguyen was in control of the Assault Rifle and the Mossberg Shotgun.

100. Nguyen permitted Spengler, an unlawful possessor and/or purchaser, to possess and use the Assault Rifle and Mossberg Shotgun.

101. Nguyen either knew or should have known in the exercise of ordinary care that Spengler intended or was likely to use the Assault Rifle and Mossberg Shotgun in a manner that would create an unreasonable risk of physical injury to others.

102. Nguyen's negligent entrustment of the Assault Rifle and Mossberg Shotgun was a substantial factor in bringing about the (i) wrongful deaths of Mr. Chiapperini and Mr. Kaczowka and (ii) serious physical injury and associated harm to Mr. Hofstetter and Mr. Scardino.

103. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT IV – ASSAULT AND BATTERY
(Against Defendant Estate of William Spengler)

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

105. Spengler had the unlawful intent, and present ability, to do physical harm to Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino.

106. Spengler made menacing physical movements towards Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino that were sufficiently close to them to justify a reasonable fear of physical harm. Spengler's conduct included, but was not limited to, pointing firearms at Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino at close range and attempting to ignite their vehicle by shooting at bottles of gasoline.

107. As a result of the actions of Spengler, Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino reasonably feared that Spengler both intended to, and was capable of, causing immediate and harmful bodily contact and/or physical harm to them.

108. Spengler intended to cause Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino harm or intended to put them in fear that physical harm or death was to be committed upon them.

109. At no time did Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino consent to being assaulted by Spengler.

110. Spengler intentionally caused bodily harm to Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino by shooting them multiple times with the Assault Rifle.

111. At no time did Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino consent to being battered or shot by Spengler.

112. Spengler's assault and battery on Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino was a substantial factor in bringing about the (i) wrongful deaths of Mr. Chiapperini and Mr. Kaczowka and (ii) serious physical injury and associated harm to Mr. Hofstetter and Mr. Scardino.

113. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT V – NEGLIGENCE PER SE
(Against Defendants Gander Mountain and Dawn Nguyen)

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

115. By engaging in an illegal straw sale to an unlawful purchaser, Gander Mountain and Nguyen knowingly violated various federal and state laws governing the sale and marketing of firearms, including, but not limited to 18 U.S.C. § 2, 18 U.S.C. § 371, 18 U.S.C. § 922(a)(1)(A), (a)(6), (d)(1), (g)(1), (m) and 18 U.S.C. § 924(a)(1)(A).

116. For example, Nguyen, with the aid and assistance of Gander Mountain, completed ATF Form 4473 on which Nguyen falsely identified herself as the actual buyer of the Assault Rifle and Mossberg Shotgun in Box 11a on the ATF Form 4473, in direct violation of federal laws 18 U.S.C. § 922(a)(6) and 18 U.S.C. § 924(a)(1)(A). In turn, Gander Mountain also

violated 18 U.S.C. § 922(m) by transferring the Assault Rifle and Mossberg Shotgun based on information in ATF Form 4473 that it knew or had reason to believe was false.

117. The violations of law by Gander Mountain and Nguyen were substantial factors in bringing about the shooting of Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino, and the harm alleged herein. These laws are intended to protect public safety by preventing unlicensed and dangerous dealing of guns and the acquisition and misuse of guns by criminals, children and other irresponsible individuals. The statutory purpose of these laws is to avoid and/or diminish the likelihood of harm that results from violations of these laws and to protect Plaintiffs from the particular type of harm that was suffered here. The violations committed by Defendants, as enumerated above, caused harm of the kind these laws were intended to avoid, and Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino were within the class of persons the laws were intended to protect.

118. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT VI – NEGLIGENCE TRAINING AND SUPERVISION
(Against Defendant Gander Mountain)

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

120. Gander Mountain is vicariously liable for the actions or inactions of its agents and/or employees while in the scope of their agency and/or employment.

121. The aforementioned Gander Mountain salesperson was an employee of Gander Mountain and acted within the scope of his employment when he sold Nguyen and Spengler the Assault Rifle and Mossberg Shotgun under circumstances in which it was apparent that Nguyen

was engaging in an unlawful straw purchase that would create a substantial and unacceptable risk to others.

122. However, even if the salesperson were found to have been acting outside the scope of his employment, Gander Mountain's negligence in supervising and/or training the salesperson would, in the alternative, be a substantial factor in bringing about the shooting of Messrs. Chiapperini, Kaczowka, Hofstetter and Scardino, and the injuries alleged herein.

123. Gander Mountain placed the salesperson in a position to cause foreseeable harm to the public by failing to implement adequate protocols for training and supervising the salesperson to prevent unlawful straw sales to individuals such as Nguyen and Spengler.

124. On information and belief, Gander Mountain had notice of the salesperson's consistent reliance on inadequate screening techniques to determine whether it was reasonable and legal to sell the prospective purchaser a firearm, yet negligently failed to take any corrective action.

125. Had Gander Mountain adequately trained and supervised the salesperson to ensure that he complied with industry guidelines for screening potential straw purchasers, Nguyen and, in turn, Spengler would not have acquired the Assault Rifle and Mossberg Shotgun.

126. Accordingly, Gander Mountain's negligent training and supervision of the salesperson was a substantial factor in bringing about the (i) wrongful deaths of Mr. Chiapperini and Mr. Kaczowka, and (ii) serious physical injury and associated harm to Mr. Hofstetter and Mr. Scardino.

127. As a result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT VII – PUBLIC NUISANCE
(Against Defendant Gander Mountain)

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

129. By failing to implement adequate policies, procedures and protocols for training and supervising its salespeople to prevent unlawful straw sales, as demonstrated by Gander Mountain's sale of firearms to Nguyen and Spengler, Gander Mountain is, upon information and belief, entrusting guns to illegal traffickers, the illegal secondary market, criminals, juveniles and/or others prohibited by law from having guns and/or persons with criminal purposes, such as Nguyen and Spengler, thereby negligently and/or knowingly participating in creating and maintaining an unreasonable interference with rights common to the general public, which constitutes a public nuisance under New York law.

130. Gander Mountain negligently, recklessly and/or intentionally engaged in this conduct.

131. Gander Mountain's interference with rights common to the public, including public health, safety, comfort, and peace, is unreasonable. This interference is not insubstantial or fleeting, and involves deaths and serious injuries and a severe disruption of public peace, order and safety. Upon information and belief, this interference is continuing, producing a permanent and long-lasting effect.

132. Gander Mountain knows or has reason to know that its conduct has a significant effect upon public rights and interests.

133. Gander Mountain's conduct in creating and maintaining this interference with public rights facilitates the circumvention and violation of federal and New York laws restricting and regulating gun sales and possession, and/or, upon information and belief, facilitates widespread violation of such laws.

134. Gander Mountain knew that it could have taken precautions that would have eliminated or minimized the injuries to the general public but chose not to do so.

135. Gander Mountain's negligence and unlawful conduct, including failing to implement adequate protocols for training and supervising its salespeople to prevent unlawful straw sales, contributed to the creation and/or maintenance of the public nuisance.

136. Gander Mountain was capable of preventing its contribution to the public nuisance and the resulting danger and harm by altering its conduct.

137. As a result of Gander Mountain's conduct and the public nuisance it participated in creating and maintaining, Plaintiffs suffered special injuries distinguishable from those suffered by the general public. Gander Mountain's participation in creating and maintaining the public nuisance was a substantial cause in bringing about Plaintiffs' injuries.

138. As a result of Gander Mountain's conduct, Plaintiffs have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT VIII – LOSS OF CONSORTIUM
(Against Defendants Gander Mountain, Dawn Nguyen and Estate of William Spengler)

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

140. Karen Scardino was the lawful spouse of Theodore Scardino at the time of the shooting incident described above. Karen and Theodore Scardino continue to be married at the time of the present filing.

141. Under the laws of the State of New York, Karen Scardino was entitled to the companionship, society, services, maintenance, aid and support of her spouse, Theodore Scardino, without interference from the Defendants.

142. As a result of the wrongful and negligent acts of Gander Mountain, Nguyen, and Spengler, Karen Scardino has been deprived of the full companionship, society, services, maintenance, aid and support of her husband, Theodore Scardino, from December 24, 2012 to the present.

143. As a result of Defendants' conduct, Karen Scardino suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

**COUNT IX – WRONGFUL DEATH OF MICHAEL CHIAPPERINI
(Against Defendants Gander Mountain, Dawn Nguyen and William Spengler)**

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

145. The wrongful conduct of Defendants described herein were substantial factors in bringing about the serious injuries to Michael Chiapperini, which led to his death on December 24, 2012.

146. Michael Chiapperini died, leaving surviving distributees.

147. The wrongful death of Michael Chiapperini has caused significant pecuniary loss to his family and heirs, including, but not limited to, the deprivation of future aid, income, assistance, financial support, parental guidance, and inheritance.

148. The family and heirs of Michael Chiapperini have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT X – WRONGFUL DEATH OF TOMASZ KACZOWKA
(Against Defendants Gander Mountain, Dawn Nguyen and William Spengler)

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

150. The wrongful conduct of Defendants described herein were substantial factors in bringing about the serious injuries to Tomasz Kaczowka, which led to his death on December 24, 2012.

151. Tomasz Kaczowka died, leaving surviving distributees.

152. The wrongful death of Tomasz Kaczowka has caused significant pecuniary loss to his family and heirs, including, but not limited to, the deprivation of future aid, income, assistance, financial support, and inheritance.

153. The family and heirs of Tomasz Kaczowka have suffered damages in an amount to be proven and determined at trial that far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

COUNT XI – SURVIVAL ACTION OF MICHAEL CHIAPPERINI
(Against Defendants Gander Mountain, Dawn Nguyen and William Spengler)

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

155. The wrongful conduct of Defendants described herein were substantial factors in bringing about the serious injuries to Michael Chiapperini, which led to his death on December 24, 2012.

156. Plaintiff Kimberly Chiapperini, on behalf of the estate of decedent Michael Chiapperini, is entitled to recover any and all damages to which decedent Michael Chiapperini was or would have been entitled.

157. The amount of damages sought on behalf of Michael Chiapperini will be proven and determined at trial, and far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

**COUNT XII – SURVIVAL ACTION OF TOMASZ KACZOWKA
(Against Defendants Gander Mountain, Dawn Nguyen and William Spengler)**

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

159. The wrongful conduct of Defendants described herein was a substantial factor in bringing about the serious injuries to Tomasz Kaczowka, which led to his death on December 24, 2012.

160. Plaintiffs Marian and Janina Kaczowka, on behalf of the estate of decedent Tomasz Kaczowka, are entitled to recover any and all damages to which decedent Tomasz Kaczowka was or would have been entitled.

161. The amount of damages sought on behalf of Tomasz Kaczowka will be proven and determined at trial, and far exceeds the jurisdictional limitations of all lower courts that would otherwise have jurisdiction.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment against Defendants Gander Mountain Company, Inc., Dawn Nguyen and the Estate of William Spengler, as follows:

- a) for an Order compelling Gander Mountain to reform its policies, procedures and training with regard to the sale of firearms, including taking steps necessary to prevent unlawful sales to straw purchasers and to otherwise prevent the unlawful entrustment of firearms to persons who are legally prohibited from purchasing or possessing them;

- b) for compensatory damages on behalf of Michael Chiapperini, in an amount to be determined at a trial of this matter;
- c) for compensatory damages on behalf of each and all wrongful death beneficiaries of Michael Chiapperini, including Kimberly Chiapperini, Nicholas Chiapperini, K.J.C. and K.R.C., in an amount to be determined at a trial of this matter;
- d) for punitive damages on behalf of Michael Chiapperini based on Defendants' wanton, willful, and reckless conduct, in an amount to be determined at a trial of this matter;
- e) for compensatory damages on behalf of Tomasz Kaczowka, in an amount to be determined at a trial of this matter;
- f) for compensatory damages on behalf of each and all wrongful death beneficiaries of Tomasz Kaczowka, including Marian and Janina Kaczowka, in an amount to be determined at a trial of this matter;
- g) for punitive damages on behalf of Tomasz Kaczowka based on Defendants' wanton, willful, and reckless conduct, in an amount to be determined at a trial of this matter;
- h) for compensatory damages for the harm suffered by Joseph Hofstetter and for punitive damages based on Defendants' wanton, willful, and reckless conduct;
- i) for compensatory damages for the harm suffered by Theodore Scardino and for punitive damages based on Defendants' wanton, willful, and reckless conduct;
- j) for compensatory damages for the harm suffered by Karen Scardino, in an amount to be determined at a trial of this matter;
- k) for all costs, disbursements and actual attorneys' fees; and

l) such other and further relief as the Court may deem appropriate.

Dated: Rochester, New York
May 20, 2014

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