

CAUSE NO. **2017CI23341**

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| CHRIS WARD, INDIVIDUALLY AND AS  | § | IN THE DISTRICT COURT OF |
| REPRESENTATIVE OF THE ESTATES OF | § |                          |
| JOANN WARD, DECEASED AND B.W.,   | § |                          |
| DECEASED MINOR, AND AS NEXT      | § |                          |
| FRIEND OF R.W., A MINOR;         | § |                          |
| ROBERT LOOKINGBILL; AND DALIA    | § |                          |
| LOOKINGBILL, INDIVIDUALLY AND AS | § |                          |
| NEXT FRIEND OF R.G., A MINOR,    | § |                          |
| AND AS REPRESENTATIVES OF THE    | § |                          |
| ESTATE OF E.G., DECEASED MINOR;  | § |                          |
|                                  | § | BEXAR COUNTY, TEXAS      |
|                                  | § |                          |
| <i>Plaintiffs</i>                | § |                          |
|                                  | § |                          |
| Vs.                              | § |                          |
|                                  | § |                          |
|                                  | § |                          |
| ACADEMY, LTD. D/B/A ACADEMY      | § |                          |
| SPORTS + OUTDOORS                | § |                          |
|                                  | § |                          |
| <i>Defendant</i>                 | § |                          |
|                                  | § |                          |

224th JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COME NOW**, Chris Ward, Individually and as Representative of the Estates of Joann Ward, Deceased and B.W., Deceased Minor, and as Next Friend of R.W., a Minor; Robert Lookingbill; and Dalia Lookingbill, Individually and as next friend of R.G., a minor, and as Representative of the Estate of E.G., Deceased Minor, Plaintiffs, complaining of Academy, Ltd. d/b/a Academy Sports + Outdoors, hereinafter Defendant, and for cause of action would respectfully show the Court the following:

**DISCOVERY LEVEL**

1. Plaintiffs intend to conduct discovery under Level III of the Texas Rules Civil Procedure §190.3 and the Plan provided by the Court.

## **PARTIES**

2. Plaintiffs Chris Ward, R.W., and R.G. are residents of Wilson County, Texas. Robert Lookingbill and Dalia Lookingbill are residents of Bexar County, Texas. At the time of their death, Joann Ward, E.G. and B.W. were residents of Wilson County, Texas.

3. Defendant, Academy, Ltd. d/b/a Academy Sports + Outdoors, is a domestic corporation headquartered and authorized to do business in Harris County, Texas and may be served through its Agent for Service of Process, Genetha Turner, at 1540 North Mason Road, Katy, Texas 77449.

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over the controversy because damages are within the jurisdictional limits of the Court.

5. Furthermore, venue is proper in Bexar County, Texas under §15.002(a)(1) because it is the county in which all or a substantial part of the events or omissions giving rise to the claims occurred.

## **FACTS**

6. It all begins with family—yours, mine and ours. Chris and Joann Ward were the picture of a blended family. Joann had two daughters, R.G. and E.G., before entering the marriage, and Chris had R.W. Joann and Chris married in 2011 and soon thereafter their daughter B.W. was born. For Joann, her family was her world and Chris was her soulmate.



7. Her “babies” were her everything; it is because of her devotion to her family that it is no surprise that she died, sacrificing herself for her children.



8. On the morning of November 5, 2017, Joann awoke, made breakfast for her family and got the kids dressed for Church. It was her and Chris’s sixth wedding anniversary and she wanted to spend the day with her family. Chris, a truck driver, decided to stay home that morning, to sleep in after working a late shift. He promised to meet up with the family later for some much needed family time. Undeterred, Joann packed up her children as she did every weekend and made

the one mile drive to First Baptist Church in Sutherland Springs, the small town the Ward family called home. Joann and Chris family had planned on meeting up after Church for a celebratory picnic—a picnic that would never happen.



***“Everybody is gonna f\*\*\*ing die!”***

9. Just minutes into the morning church service, Joann, her four children, and the small congregation of First Baptist Church were under siege. Praise and worship songs which had filled the air were interrupted by rapid gunfire. The Church was being attacked.

10. Bullets sprayed through the wooden walls of the tiny church, shattering windows and puncturing holes in the wooden floors. Startled and confused, the congregants soon saw a man dressed in black tactical gear storm in, cursing “Everybody is gonna f\*\*\*ing die!” His face was covered by a mask with a white skull. As soon as shots rang out, Joann shoved her oldest daughter, R.G., out of the way—to hide—and Joann fell on top of her three youngest children, trying to protect her babies from the hail of bullets filling the Church. R.G.’s eyeglasses would be hit—blown off her face as she fell and crawled underneath a pew seeking cover.

11. The shooter stalked the room—determined to kill everyone in it. When he saw Joann, shielding her young children, he aimed at her—intent on killing her and anyone she was

protecting. When the gunfire ceased and the Shooter ran, nearly half of the congregation had been killed, including Joann and two of her daughters—E.G. and B.W. Another twenty congregants had been injured.



12. Joann’s stepson, R.W., had been shot five times. His stomach and groin were pierced, damaging his bladder and kidney; the five year old’s arm was so mutilated by bullets it was nearly amputated. Over a month later, R.W. remains hospitalized with several additional surgeries remaining. His shattered femur isn’t healing as well as hoped and the young boy’s kidneys continue to struggle.

13. Despite his youth and the long road ahead, R.W.’s doctors call him “brave” and a “tough guy.” Chris and his in-laws, Robert and Dalia Lookingbill, hope that R.W. is released in time for the holiday—though it’s difficult for Chris to imagine Christmas without his wife and daughters.



*Academy—The Right Stuff The Right Price*

14. Despite having his permit to carry delayed “by a possibly disqualifying issue” in 2015, the Shooter who terrorized the small First Baptist Church of Sutherland Springs, Devin Kelley, (hereinafter “Kelley”), had little difficulty purchasing a Ruger AR-556 rifle from Academy Sporting Goods in San Antonio, in April, 2016.<sup>1</sup> Months later, Kelley would use a Ruger AR-556 assault rifle as he terrorized and brutally murdered 26 innocent people—including Joann Ward, B.W., and E.G. Kelley also used the Ruger when pelting young R.W. with at least five bullets.



15. Academy, a sporting goods and apparel retailer, offers its customers the ease and

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<sup>1</sup> From 2014 to the day of the shooting, Kelley purchased four guns—two in Colorado and two in Texas. See <https://patch.com/texas/sanantonio/texas-shooters-gun-permit-delayed-disqualifying-issue>.



convenience of purchasing in the store and online. As a licensed dealer, Academy sells 581 different rifles, 401 different pistols, 238 different shotguns, 12 “modern sporting rifles,” 133 revolvers, and 2 “black powder guns.”<sup>2</sup> It is unclear how Kelley purchased the Ruger AR-556, but it is undisputed that he used the Ruger in the November 5, 2017 mass shooting.



16. At the time Kelley purchased the Ruger, he reported a Colorado Springs, Colorado address on his Firearms Transaction Record, Form 4473, a federal form. This fact alone should have disqualified Kelley from ever purchasing the assault rifle. Kelley’s identification indicated he was a resident of Colorado—not Texas. Thus, he never should have been sold the very weapon he used in the Sutherland Springs shooting as it would be illegal for Kelley to ever transport that gun to his residence. Rather, Defendant, upon Kelley purchasing the weapon, should have transferred the firearm to Colorado, for Kelley, a Colorado resident, to retrieve. The Ruger should have never been placed in Kelley’s hands in Texas. Importantly this incident is not the first incident of Academy failing to follow applicable laws—though it is, the first incident that resulted in the deaths of 26 innocent people and injuries to an additional 20 people.<sup>3</sup>

#### **CAUSE OF ACTION NO. 1—NEGLIGENCE**

17. Plaintiffs incorporate each of the preceding paragraphs as if fully restated herein in full.

18. At all material times to this suit, Defendant owed Plaintiffs a duty of reasonable care to ensure the safety, care and well-being of the public, including Plaintiffs, and had or assumed a

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<sup>2</sup> See <https://www.academy.com/shop/browse/shooting/firearms>. Academy offers its customers 1295 guns via “ship to store” delivery and 1,111 guns online only. In store, Academy offers a mere 431 guns. *Id.*

duty to exercise reasonable care in executing such duties. Defendant failed to exercise reasonable care, and such failure was negligent and a proximate cause of the incident in question and resulting damages to Plaintiff. These acts include, but are not limited to, the following:

- a. Failing to protect the safety of the public, including the Plaintiffs;
- b. Failing to follow policies and procedures in selling a firearm;
- c. Failing to properly follow applicable law in the marketing and sale of firearms;
- d. Failing to conduct a proper background check; and
- e. Other ways to be determined during discovery in this matter.

19. Plaintiffs will show that one or all of the above-mentioned acts and/or omissions constitute negligence and are a proximate cause of the occurrence in question and the injuries and damages resulting to Plaintiff.

**CAUSE OF ACTION NO. 2—NEGLIGENT HIRING, TRAINING, AND/OR SUPERVISION**

20. Plaintiffs incorporate each of the preceding paragraphs as if fully restated herein in full.

21. At all material times to this suit, Defendant owed Plaintiffs a duty of reasonable care to ensure the safety, care and well-being of the public, including Plaintiffs. These duties include, but are not limited to, the hiring, retention, and supervision of trained employees to ensure that all legally required guidelines are fulfilled at the time of purchasing any firearm. Defendant breached these duties when its employee(s) sold a gun to Kelley in violation of the existing laws.

22. Despite actual or constructive knowledge of its employees to its patrons, Defendant failed to properly supervise and/or control Defendant's actions. Specifically, Defendant's following acts constituted negligence:

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<sup>3</sup> See <http://kfor.com/2017/11/29/metro-man-says-academy-made-big-mistake-when-selling-him-a-gun/>.



- a. Entrusting Defendant's employees who lack adequate training and education concerning firearms and governing laws, with the administration and sale of firearms;
- b. Failing to properly train employees regarding the appropriate methods, safety practices, and supervision for customers purchasing firearms;
- d. Failing to properly supervise, monitor, and/or control employees tasked with selling firearms to the public;
- e. Failing to continually monitor and/or screen their employees to ensure they are fit to sell firearms to the public;
- f. Failing to appropriately discipline and/or reprimand Defendant employee after the shooting; and
- g. Failing to properly screen and perform investigative due diligence on prospective customers prior to selling them firearms.

#### **CAUSE OF ACTION NO. 3—NEGLIGENT ENTRUSTMENT**

23. Plaintiffs incorporate each of the preceding paragraphs as if fully restated herein in full.

24. At all material times to this suit, Defendant owed Plaintiffs a duty of reasonable care to ensure the safety, care and well-being of the public, including Plaintiffs. By selling the gun to Kelley without the proper oversight and by failing to follow policies, procedures, and applicable law in selling firearms pursuant to the laws, Defendant supplied Kelley with a dangerous instrumentality that caused the deaths and injuries to Plaintiffs with that instrumentality.

#### **CAUSE OF ACTION NO. 4—GROSS NEGLIGENCE**

25. Plaintiffs incorporate each of the preceding paragraphs as if fully restated herein in full.

26. The acts and/or omissions of the Defendant, as set forth herein, was also such knowing and willful failures to abide by the applicable safety guidelines regarding selling and purchasing firearms in the State of Texas, they constitute malicious, willful, wanton, grossly

negligent and/or reckless conduct. Said acts and/or omissions proximately caused or contributed to Plaintiffs' injuries as such give rise to, and warrant, the imposition by a jury of significant punitive damages in an amount to be determined by that jury of no more than \$25 million dollars against Defendant.

### **DAMAGES**

27. Plaintiffs incorporate each of the preceding paragraphs as if fully restated herein in full.

28. As a direct and proximate result of Defendant's aforementioned tortious conduct, Plaintiffs Chris Ward, Individually and as Representative of the Estates of Joann Ward and B.W.; Robert Lookingbill; and Dalia Lookingbill, Individually, as next friend of R.G., and as Representative of the Estate of E.G., bring claims as wrongful death beneficiaries, pursuant to Chapter 71 of the Civil Practice and Remedies Code, and have suffered in each of the following ways and seek compensation for each of the following, as applicable:

- a. Pecuniary loss sustained in the past by Plaintiffs;
- b. Pecuniary loss that, in reasonable probability, will be sustained in the future by Plaintiffs;
- c. Loss of spouse's services, including household and domestic services, in the past and in the future;
- d. Loss of child's services, in the past and in the future;
- e. Loss of parental consortium in the past and future;
- f. Loss of companionship and society sustained in the past;
- g. Loss of companionship and society that, in reasonable probability, will be sustained in the future;
- h. Expenses related to psychological treatment, in the past and in the future;
- i. Mental anguish sustained in the past by Plaintiffs;
- j. Mental anguish that, in reasonable probability, will be sustained in the future

by Plaintiffs; and

- k. Funeral and Burial expenses.

29. Plaintiff, Chris Ward as Next Friend of R.W., seeks to recover from Defendant the following elements of damage in regard to the injuries sustained by R.W.:

- a. Physical pain and mental anguish sustained in the past;
- b. Physical pain and mental anguish that, in reasonable probability, R.W. will sustain in the future;
- c. Disfigurement in the past;
- d. Disfigurement that, in reasonable probability, R.W. will sustain in the future;
- e. Physical impairment sustained in the past;
- f. Physical impairment that, in reasonable probability, R.W. will sustain in the future;
- g. Medical care expenses incurred in the past;
- h. Medical care expenses that, in reasonable probability, R.W. will incur in the future; and
- i. Other reasonable consequential damages.

30. Dalia Lookingbill, as next friend of R.G., seeks the following elements of damage in regard to the injuries sustained by R.G.:

- a. Physical pain and mental anguish sustained in the past;
- b. Physical pain and mental anguish that, in reasonable probability, R.G. will sustain in the future;
- c. Disfigurement in the past;
- d. Disfigurement that, in reasonable probability, R.G. will sustain in the future;
- e. Physical impairment sustained in the past; and
- f. Other reasonable consequential damages.

31. Plaintiffs reserve the right to plead additional and more specific damages in the

future as more facts become known. The above-mentioned elements of damages are those that Plaintiffs have suffered in the past up to the time of trial, but in addition, those that they, in reasonable probability, will continue to suffer in the future. As such, Plaintiffs affirmatively plead that they seek monetary relief over \$25,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; and a demand for all the other relief to which the party deems himself entitled.

### **CONDITIONS PRECEDENT**

32. All conditions precedent have been performed or have occurred as required by Rule 54 of the Texas Rules of Civil Procedure.

### **RULE 193.7 NOTICE**

33. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give actual notice to Defendant that any and all documents produced may be used against the Defendant producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

### **REQUEST FOR DISCLOSURE**

34. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose the information and material described in Rule 194.2 within **fifty (50) days** of the service of this request.

### **JURY DEMAND**

35. Plaintiffs demand a jury trial.

### **PRAYER**

**WHEREFORE PREMISES CONSIDERED**, Plaintiffs pray as follows:

a. That Defendant be cited to appear in terms of the law;

- b. That upon trial of this cause, Plaintiffs have and recover Judgments in an amount in excess of the minimum jurisdictional requirements of this Honorable Court against Defendant;
- c. That Plaintiffs recover economic and non-economic damages;
- d. That Plaintiffs recover costs of Court against the Defendant;
- e. Court Costs;
- f. That Plaintiffs recover pre-judgment and post-judgment interest at the legal rate per annum against Defendant; and, Plaintiffs further pray,
- g. That Plaintiffs receive such other and further relief, both at law and in equity, to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

**THE WEBSTER LAW FIRM**

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