

CV-0086848

CAUSE NO. _____

CHASE YARBROUGH, DONNA § **COUNTY COURT AT LAW**
YARBROUGH AND TROY YARBROUGH §
Plaintiffs §

VS. § **NUMBER _____**

ANTONIOS PAGOURTZIS, ROSE MARIE §
KOSMETATOS, DIMITRIOS PAGOURTZIS, §
LUCKYGUNNER, LLC d/b/a § Galveston County - County Court at Law No. 3
LUCKYGUNNER.COM, RED STAG §
FULFILLMENT, LLC, §
MOLLENHOURGROSS, LLC, JORDAN §
MOLLENHOUR, and DUSTIN GROSS, §
Defendants § **GALVESTON COUNTY, TEXAS**

PLAINTIFFS CHASE YARBROUGH, DONNA YARBROUGH, AND
TROY YARBROUGH'S ORIGINAL PETITION, REQUEST FOR DISCLOSURE
AND REQUEST FOR JURY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Chase Yarbrough, Donna Yarbrough and Troy Yarbrough (“the Yarbrough’s” and/or “the Yarbrough Plaintiffs”) file this Original Petition, Request for Disclosure, and Request for Jury Trial complaining of the conduct of Antonios Pagourtzis, Rose Marie Kosmetatos, Dimitrios Pagourtzis, Luckygunner, LLC d/b/a Luckygunner.com, Red Stag Fulfillment, LLC, MollenhourGross, LLC, Jordan Mollenhour, and Dustin Gross and would respectfully show this Court as follows:

I.

DISCOVERY CONTROL PLAN AND REQUEST FOR DISCLOSURE

1.1 Pursuant to Texas R. Civ. P. 190.4(a) and (b), the Yarbrough Plaintiffs request that discovery be conducted in accordance with Level 3.

1.2 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the Yarbrough Plaintiffs request that each Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2(a) through (1).

II.

PARTIES

2.1 Plaintiff Chase Yarbrough is an individual who resides in Galveston County, Texas. At the time of the shooting made the basis of this claim, Chase Yarbrough was a minor and student at Santa Fe High School. He is now over the age of eighteen (18). Donna and Troy Yarbrough are the parents and guardians of Chase Yarbrough

2.2 Plaintiff Donna Yarbrough is an individual who resides in Galveston County, Texas.

2.3 Plaintiff Troy Yarbrough is an individual who resides in Galveston County, Texas.

2.4 Defendant Antonios Pagourtzis is a citizen of Texas and resides in Galveston County, Texas. Defendant Antonios Pagourtzis can be served with process at his place of residence at 1130 CR 136A, Alvin, Texas 77511 and by agreement by and through his counsel of record Ron Rodgers, Rodgers Law Group, PLLC, One Harbor Square, 3027 Marina Bay Drive, Suite 230, League City, Texas 77573.

2.5 Defendant Rose Marie Kosmetatos is a citizen of Texas and resides in Galveston County, Texas. Defendant Rose Marie Kosmetatos at her place of residence at 1130 CR 136A, Alvin, Texas 77511 and by agreement by and through her counsel of record Ron Rodgers, Rodgers Law Group, PLLC, One Harbor Square, 3027 Marina Bay Drive, Suite 230, League City, Texas 77573.

2.6 Defendant Dimitrios Pagourtzis is a citizen of Texas and at all relevant times resided in Galveston County, Texas. Defendant Dimitrios Pagourtzis can be served with process at North Texas State Hospital at 4730 College Drive, Vernon, Texas 76384 or wherever he can be found.

2.7 Defendant Luckygunner, LLC d/b/a Luckygunner.com (“Luckygunner”) is a foreign limited liability company located in the State of Tennessee which conducts business in the State of Texas. This lawsuit arises from Luckygunner's performance of business in Texas. Luckygunner does not maintain a regular place of business in Texas and does not maintain a designated registered agent for service of process in Texas. In accordance with Tex. Civ. Prac. & Rem. Code § 17.044(a)(1) and/or §17.044(b), the Texas Secretary of State is the agent for service of Luckygunner and may be served with process by mailing the citation via certified mail return receipt requested to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. Luckygunner's most recent home office for service of process is 448 N. Cedar Bluff Road, #201, Knoxville, Tennessee 37923.

2.8 Defendant Red Stag Fulfillment, LLC ("Red Stag") is a foreign limited liability company located in the State of Tennessee which conducts business in the State of Texas. This lawsuit arises from Red Stag's performance of business in Texas. Red Stag does not maintain a regular place of business in Texas and does not maintain a designated registered agent for service of process in Texas. In accordance with Tex. Civ. Prac. & Rem. Code §17.044(a)(1) and/or §17.044(b), the Texas Secretary of State is the agent for service of Red Stag and may be served with process by mailing the citation via certified mail return receipt requested to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. Red Stag's most recent home office for service of process is 5502 Island River Dr., Knoxville, Tennessee 37914.

2.9 Upon information and belief, Defendant MollenhourGross, LLC ("MollenhourGross") is the sole managing member of Luckygunner and Red Stag. MollenhourGross is a foreign limited liability company located in the State of Tennessee which conduct business in the State of Texas. This lawsuit arises from MollenhourGross' performance of business in Texas. MollenhourGross

does not maintain a regular place of business in Texas and does not maintain a designated registered agent for service of process in Texas. In accordance with Tex. Civ. Prac. & Rem. Code § 17.044(a)(1) and/or § 17.044(b), the Texas Secretary of State is the agent for service of MollenhourGross and may be served with process by mailing the citation via certified mail return receipt requested to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. MollenhourGross' most recent home office for service of process is 11409 Municipal Center Dr., Unit 23434, Knoxville, Tennessee 37933.

2.10 Defendant Jordan Mollenhour ("Mollenhour") is a co-founder of Defendant Luckygunner and Defendant Red Stag and is a principal of MollenhourGross. Defendant Jordan Mollenhour is a non-resident of Texas who conducts business in the State of Texas. This lawsuit arises from Jordan Mollenhour's performance of business and commission of a tort in the State of Texas. Jordan Mollenhour does not maintain a regular place of business in Texas. Jordan Mollenhour does not have a designated agent for service of process in Texas. In accordance with Tex. Civ. Prac. & Rem. Code § 17.044(a)(1) and/or § 17.044(b), the Texas Secretary of State is the agent for service of MollenhourGross and may be served with process by mailing the citation via certified mail return receipt requested to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. Upon information and belief, Jordan Mollenhour may be served with process at 3057 Kingston Pike, Apt. 4, Knoxville, Tennessee 37919.

2.11 Defendant Dustin Gross ("Gross") is a co-founder of Defendant Luckygunner and Defendant Red Stag and is a principal of MollenhourGross. Defendant Dustin Gross is a non-resident of Texas who conducts business in the State of Texas. This lawsuit arises from Dustin Gross' performance of business and commission of a tort in the State of Texas. Dustin Gross does not maintain a regular place of business in Texas. Dustin Gross does not have a designated agent

for service of process in Texas. In accordance with Tex. Civ. Prac. & Rem. Code § 17.044(a)(1) and/or § 17.044(b), the Texas Secretary of State is the agent for service of MollenhourGross and may be served with process by mailing the citation via certified mail return receipt requested to the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079. Upon information and belief, Dustin Gross may be served with process at 11124 Kingston Pike # 41-119, Knoxville, Tennessee 37934.

2.12 Defendants Luckygunner, MollenhourGross, Mollenhour, and Gross are jointly and collectively referred to as "Luckygunner Defendants."

III.

JURISDICTION AND VENUE

3.1 Venue for this action properly lies in Galveston County, Texas, pursuant to Texas Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial portion of the events giving rise to the claim occurred in Galveston County.

3.2 Jurisdiction is proper because this is a civil case in which the matter in controversy is within the Court's jurisdictional limits. Pursuant to Texas R. Civ. P. 47(c)(5), the Yarbrough Plaintiffs seek more than \$1,000,000.00 in monetary damages.

IV.

REQUEST PURSUANT TO RULE 28 MISNOMER/MISIDENTIFICATION/ALTER EGO

4.1 To the extent that any Defendant is conducting business pursuant to a trade name or assumed name, then suit is brought against Defendants pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Plaintiffs demand that, upon answer to this petition, Defendants answer in their correct legal and assumed name.

4.2 In the event any party is misnamed or not included herein, it is Plaintiffs' contention that such was a "misidentification", "misnomer", and/or such parties are/were "alter ego" of parties named herein. Alternatively, Plaintiffs contend that such corporate veil should be pierced to hold such parties properly included in the interest of justice.

V.

FACTUAL SUMMARY

5.1 On March 2, 2018, a mere two weeks after a 19-year-old former student went on a murderous rampage at Marjory Stoneman Douglas High School in Parkland, Florida, 17-year-old Dimitrios Pagourtzis went to Luckygunner.com to purchase ammunition for his own school shooting.

5.2 Using a prepaid American Express gift card, Dimitrios Pagourtzis seamlessly and quickly purchased handgun and shotgun ammunition using his own name and address. Even though Pagourtzis was too young to legally purchase or possess handgun ammunition under federal law, Luckygunner did not require that he provide identification or proof of age. Instead, in less than two minutes, Luckygunner's automated system approved his purchase.

5.3 Less than two weeks later, Dimitrios Pagourtzis went on to Luckygunner.com once again, and ordered shotgun ammunition. This time, he used another prepaid American Express gift card. Once again, the 17-year-old did not need to produce any identification or provide proof of age to complete the purchase, and his order was approved in two minutes.

5.4 Two months later, on May 18, 2018, Dimitrios Pagourtzis carried out one of the deadliest school shootings in American history. Using the ammunition that he purchased from Luckygunner and his parents' firearms, Pagourtzis shot and killed ten of his classmates and teachers and wounded at least thirteen others.

5.5 Plaintiff Chase Yarbrough was a junior at Santa Fe High School. Chase was a good student. He loved all sports. He played football, baseball and soccer in his youth. He loved playing basketball with his friends on the weekends. Chase was shot six times. One bullet grazed his arm and another bullet grazed his temple area. He still has four bullets in his body, one in his head, one in his back, and one in his left arm. He was shot in the right side of his neck and that bullet fragment traveled to his right ventricle where it remains.

5.6 After Chase was shot, he escaped from the closet in which he was hiding and ran to get out of the school building. The shooting rampage continued. While running for cover, Chase called his father Troy Yarbrough. Chase told his father that he had been shot and that the shooter was still at the school. Mr. Yarbrough could hear the shots over the phone. Mr. Yarbrough told Chase to run away from the school. Mr. Yarbrough was by the school. Mr. Yarbrough stayed on the phone with his son. Mr. Yarbrough raced to the school and jumped from his vehicle in an attempt to find his son. He finally found his wounded and bloody son and picked him up and carried him to a first responder vehicle.

5.7 Defendant Dimitrios Pagourtzis is a former student at Santa Fe High School who deliberately murdered ten of his classmates and teachers and wounded many others on May 18, 2018, using his parents' weapons, a .38 caliber handgun and a shotgun, each loaded with the ammunition that he purchased from Luckygunner.

5.8 Several students were killed. Plaintiff Chase Yarbrough was among those injured by Defendant Dimitrios Pagourtzis. They were murdered and injured less than three weeks before the end of the school year. Each person shot by Dimitrios Pagourtzis was looking forward to the end of school and to spending their summer with family and friends.

5.9 Dimitrios Pagourtzis planned his attacks to kill, wound, maim, and terrify as many of his teachers and fellow students as he could. He took steps to obtain weapons and ammunition, and even planted homemade explosives on school grounds. However, Dimitrios Pagourtzis could not have carried out this mass murder if he had not had access to weapons and ammunition.

5.10 This mass shooting was enabled by the illegal and negligent actions of the Luckygunner Defendants, who conspired to profit from and aid the sale of ammunition to juveniles, who are legally prohibited from purchasing or possessing handgun ammunition, by establishing and maintaining a webstore platform designed to avoid actually verifying the single most important characteristic of an ammunition customer under federal law- the customer's age.

5.11 The shooting was also enabled by Defendant Red Stag, who knew that Luckygunner did not require proof of age of its customers from most states, but nevertheless shipped ammunition to Dimitrios Pagourtzis, a juvenile under federal law, via FedEx without a required adult signature for receipt of the package.

5.12 Finally, the shooting was enabled by the negligent actions of Defendants Antonios Pagourtzis and Rose Marie Kosmetatos, who knew that their son was at risk of harming himself or others but still irresponsibly and negligently stored their firearms, so that their son could access them.

Providing Juveniles and Minors with Access to Guns and Ammunition is a Well-Known Danger

5.13 It has long been recognized that providing juveniles (those under the age of 18) and minors (those under the age of 21) with access to deadly weapons and ammunition poses a grave and unacceptable risk to public safety. For this reason, federal law, and many state laws, restrict access to both firearms and ammunition for juveniles and minors.

5.14 Pursuant to the Youth Handgun Safety Act, individuals under the age of 18 are prohibited from knowingly possessing ammunition suitable only for use in a handgun. 18 U.S.C. § 922(x)(2). It is also illegal to aid or abet, willfully cause, or conspire to cause, the illegal possession of such ammunition by a juvenile under the age of 18. 18 U.S.C. §§ 2, 371. In addition, it is illegal for anyone to sell, deliver or otherwise transfer handguns and handgun ammunition to individuals they know or have reasonable cause to believe are under the age of 18. 18 U.S.C. § 922(x)(1).

5.15 When the federal Youth Handgun Safety Act was passed, the accompanying House Conference Report noted that the act was aimed at preventing juvenile misuse of handguns and associated crimes.¹

5.16 In addition to the provisions of the Youth Handgun Safety Act, licensed gun companies ("FFLs") are prohibited from selling handguns or handgun ammunition to anyone who they know or have reason to believe is under the age of 21. 18 U.S.C. § 922(b)(1). FFLs are also prohibited from selling shotguns, rifles or ammunition for shotguns or rifles to anyone they know or have reason to believe is under the age of 18. *Id.*²

5.17 As the Senate Report accompanying the passage of the federal Gun Control Act in 1968 noted, "[t]he clandestine acquisition of firearms by juveniles and minors is a most serious problem facing law enforcement and the citizens of this country."³

5.18 Upon information and belief, the Luckygunner Defendants and Defendant Red Stag knew (or consciously avoided knowing) that juveniles and minors are particularly at risk of misusing ammunition.

¹ H.R. Conf. Rep. No. 103-711

² While Luckygunner is believed to have had a federal license at some point in time prior to the sales at issue here, it is not known at the time of this filing whether this license was lain surrendered, revoked, or is currently maintained under a different name

³ S. Rep. No. 90-197, at 79 (1968)

5.19 More specifically, the dangers of providing firearms and ammunition to individuals under the age of 21 has never been more apparent than in recent years. Some of the country's most infamous tragedies have been perpetrated by juveniles and minors, including:

- The Columbine High School shooting perpetrated in 1999 by a 15-year-old and an 18-year-old; resulting in the deaths of 13 people, including 12 students;
- The Sandy Hook Elementary School shooting in 2012 by a 20-year-old, killing 26 people, including 20 first-graders;
- The Marjory Stoneman Douglas Shooting in February 2018 by a 19-year-old, killing 17 people and injuring 17 others;

5.20 Of course, these mass shootings are just a fraction of all shootings committed by juveniles and minors. 18 to 20-year-olds are offenders in gun homicides at a rate nearly four times higher than adults 21 and older.

5.21 Since December 2012, there have been at least 74 shootings perpetrated by individuals under the age of 21 at K-12 schools.

5.22 The defendants in this action who provided Dimitrios Pagourtzis with his weaponry and ammunition callously and inexcusably ignored these known and obvious dangers.

5.23 The dangers posed by juveniles and minors purchasing ammunition has not abated since the Santa Fe Shooting. In June 2019, a 20-year old purchased one thousand rounds of ammunition online. On August 3, 2019, a few days after turning 21, he drove from Allen, Texas to a Wal-Mart in El Paso. That day, he murdered 22 people and injured many others.

**The Luckygunner Defendants Established a Business that Intentionally
Avoids Knowledge of the Customer's Age**

5.24 It is a well-known problem that youth attempt to buy ammunition illegally. It is also well known that consumers seeking to purchase a product that they are not legally allowed to purchase may seek to do so using an internet commerce site.

5.25 The Luckygunner Defendants knew (or consciously avoided knowing or learning) that juveniles and minors who want to illegally obtain ammunition, including for illegal purposes, were highly likely to attempt to purchase ammunition on websites, such as Luckygunner.

5.26 However, instead of designing a website that enabled them to verify the purchase age for every customer, the Luckygunner Defendants made a decision not to ask for proof of age unless the shipment was destined for a small handful of states where certain proof is expressly required by state law.

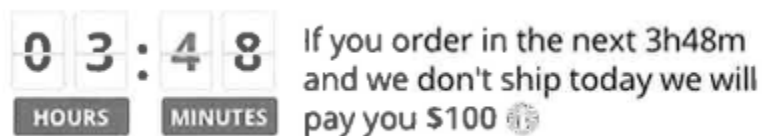
5.27 In other words, for customers from most states, the Luckygunner Defendants made a deliberate choice to remain ignorant of a fact-age-that is determinative of whether the transaction is legal under federal law.

5.28 Upon information and belief, Defendants Mollenhour and Gross launched Luckygunner in 2009 through their limited liability company, MollenhourGross.

5.29 From approximately 2009 and 2010, Luckygunner did business under the names Luckygunner.com, Luckysurvival.com, Gunsforsale.com, Ammoforsale.com, Bulk-ammo.com, Bulkammo.com, Ammo.net, and Military Ballistics Industries.

5.30 From the very beginning, speed took precedence over safety at Luckygunner. As Luckygunner brags on its website, prior to the establishment of its webstore, "[ammunition] backorders were the law of the land as guns went hungry and shooters grew frustrated."

5.31 Speed remains priority number one for Luckygunner to this day. Customers are promised \$100 if any order placed by 3 pm on a business day is not shipped on the same day.



5.32 Once orders are placed, Luckygunner's "100% automated" system approves them within minutes, and the orders are sent to Defendant Red Stag (also owned by MollenhourGross) for shipment.

5.33 While the Luckygunner Defendants have dedicated significant resources to designing their webstore and shipping methods to provide customers with fast and easy access to ammunition, they have failed to take similar steps to ensure that ammunition is not shipped to juveniles and minors, even though they knew or, at a minimum, were aware of a high likelihood that juveniles and minors regularly attempt to buy ammunition in violation of federal law and have committed violent crimes, including murder, with such illegally purchased ammunition.

5.34 Instead, upon information and belief, the Luckygunner Defendants intentionally designed their website and shipping protocols to avoid verifying the age of the vast majority of its customers. The Luckygunner Defendants do not require that customers from most states-such as Texas-provide a copy of identification or a firearms permit or other form of proof of age. Defendant Red Stag does not require proof of age in most states when its packages are shipped. Neither company even requires that an adult sign for the packages they ship.

5.35 This failure is striking, because the Luckygunner Defendants have the capability to verify the age of its customers, and apparently do so for a small handful of states. Since certain state laws-such as in Connecticut, Illinois, and New Jersey-affirmatively require that customers show their

identification cards or pistol permits to purchase ammunition, Luckygunner requires customers from those states to scan or email a copy of that identification or permit to their email address.

5.36 However, these requirements are conspicuously absent for customers from most other states to which Luckygunner ships, even though federal law makes it illegal for anyone under the age of 18 to purchase or possess handgun ammunition, for anyone to aid or abet or willfully cause the purchase or possession of handgun ammunition by anyone under 18, or to conspire to cause the purchase or possession of handgun ammunition by anyone under 18, and for anyone to sell, deliver or transfer handgun ammunition to anyone they know or have reasonable cause to believe is under the age of 18.

5.37 While Luckygunner states on its website that it does not sell ammunition to anyone under the age of 21, Luckygunner takes no meaningful steps to verify the age of its customers from most states, such as Texas. Requiring customers to check a box indicating that they agree with the "Terms and Conditions" or asking customers to simply input a birthdate is not verification of age. This is especially true for an online seller-which, unlike a traditional "brick and mortar" seller, has no opportunity to see or interact with the prospective purchaser to make an in-person assessment of their likely age or age range.

5.38 The website's current "Terms and Conditions," which contain a single line stating that the customer agrees that he or she is "not currently less than twenty-one (21) years old," is a far cry from verifying the legality of the online transactions. This may be why Dimitrios Pagourtzis took no steps to conceal his identity or address. He knew that no one would care enough to check and see if the sale was legal.

5.39 The Luckygunner Defendants agreed and conspired to set up their business to avoid knowing whether or not their customers were old enough to purchase or possess handgun

ammunition-despite knowing that there was a high likelihood that such an approach to selling ammunition would result in prohibited juveniles unlawfully purchasing and possessing ammunition.

5.40 This decision stands in marked contrast to the way that many other online sellers of regulated products take steps to verify purchaser age. From alcohol to tobacco to prescription drugs, online sellers frequently set up a system that requires the purchaser to either upload identification or provide proof of age upon delivery.

5.41 The Luckygunner Defendants' disregard for public safety is particularly irresponsible because they have been placed on notice that their website has been used to purchase ammunition with which to carry out at least one other mass shooting. In 2012, Luckygunner sold over 4,000 rounds of ammunition to a 24-year-old severely-mentally ill man who used the ammunition to kill 12 people and injure 58 others at the Aurora Century 16 movie theater in Aurora, Colorado.

5.42 Back-to-back school shootings involving underage shooters in early 2018 served as another tragic opportunity for Luckygunner to reform its business. In January 2018, a 15-year-old high school sophomore, obsessed with Nazis, killed two of his classmates and injured 18 others at Marshall County High School near Benton, Kentucky. A few weeks later, and just two weeks prior to Pagourtzis' first purchase from Luckygunner, a 19-year-old killed 17 students and educators at Marjory Stoneman Douglas High School in Parkland, Florida. Yet, upon information and belief, Luckygunner did not take any steps in the aftermath of these shootings to ensure that juveniles and minors could not purchase ammunition from its webstore.

**Defendants Luckygunner and Red Stag Illegally and Negligently
Sold and Delivered Ammunition to a Juvenile**

5.43 On March 2, 2018, 17-year-old Dimitrios Pagourtzis went on to Luckygunner.com and ordered 50 rounds of handgun ammunition and 105 rounds of shotgun ammunition. To complete his order, the 17-year-old did not have to show his ID or verify his age. He did not have to create a Luckygunner account or set up a secure two-step authorization. He did not even need to show that he was old enough to possess a validly issued credit card. Instead, Pagourtzis simply used an American Express gift card to place his purchase and declined the "adult signature required" option for shipping.

5.44 Upon information and belief, Pagourtzis was so confident that Luckygunner would not check his age that he felt comfortable using his own name to illegally purchase the ammunition. At most, and upon information and belief, all he was required to do was check a box agreeing to a standard set of terms and conditions, one of which is that the purchaser is not under 21.⁴

5.45 In less than two minutes, Luckygunner approved his order and sent it to Red Stag for fulfillment. Upon information and belief, Red Stag mailed the ammunition to Pagourtzis via FedEx two days later without verifying his age and without requiring that an adult sign for the package.

5.46 Less than two weeks later, on March 13, 2018, Pagourtzis went onto Luckygunner.com once more, and ordered additional shotgun ammunition. Once again, the 17-year-old did not have to provide proof of his age; to the contrary, at most, and upon information and belief, he was only required to check a box agreeing to the standard terms and conditions set forth above. This time he completed the purchase using another American Express gift card, and

⁴ Documents produced by Luckygunner in response to a subpoena calling for all documents relating to purchases by Dimitrios Pagourtzis appear to contain no indication or record that this terms and conditions box was even checked off.

once again, declined the "adult signature required" shipping option. Like the previous purchase, the order was approved in two minutes and sent to Red Stag for shipment.

5.47 Upon information and belief, Red Stag mailed the ammunition via FedEx the next day without verifying Dimitrios Pagourtzis' age and without requiring that an adult sign for the package. Upon information and belief, Red Stag Fulfillment does not verify the age of the customers to whom it ships ammunition.

5.48 Upon information and belief, Luckygunner falsely warranted to American Express that Pagourtzis' purchases were lawful, when they were not. This warranty is required in American Express' standard merchant agreements as to all transactions. Luckygunner's failure to verify customer age for most handgun ammunition sales prevents it from knowing whether that warranty is true or for any such sale.⁵

5.49 Dimitrios Pagourtzis' use of prepaid American Express gift cards was a red flag. Had the Luckygunner Defendants had any measures in place to flag suspicious-that is, potentially illegal- transactions, the use of a prepaid gift card should have given rise to additional scrutiny. A gift card can be bought by anyone and is not attached to a verifiable address. Just like a "burner" cell phone, a prepaid gift card is difficult to trace to its user. For this reason, gift cards are a well- known mechanism for engaging in illegal online transactions.

5.50 Upon information and belief, Defendant Dimitrios Pagourtzis used the ammunition sold and shipped to him by the Luckygunner Defendants to perpetrate the mass shooting at Santa Fe High School on May 18, 2018.

⁵ It is not known whether American Express further requires that its merchants who sell ammunition verify that the purchasers of handgun ammunition are of legal age.

Defendants Antonios Pagourtzis and Rose Marie Kosmetatos Knew Their Son Was At Risk of Harming Others But Still Did Not Prevent Their Son From Accessing Firearms

5.51 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos knew that their son was at risk of harming himself or others but still irresponsibly and negligently stored their firearms, so that their son could access them. In the months and weeks leading up to the shooting, Defendant Dimitrios Pagourtzis exhibited many warning signs that Defendants Antonios Pagourtzis and Rose Marie Kosmetatos noticed but did not address.

5.52 Any reasonable parent would have ensured that their child, who was exhibiting signs of emotional distress and violent fantasies, did not have access to weapons that he could use to kill others (or himself). Defendants Antonios Pagourtzis and Rose Marie Kosmetatos did not do even the bare minimum to prevent their son from accessing deadly weapons. Without their negligent actions and irresponsible firearms storage, their son would not have had access to the firearms that he used to kill and injure so many people in one of the worst mass shootings in Texas history.

5.53 There were many warnings that Defendant Dimitrios Pagourtzis harbored violent and hateful impulses and was a danger to himself and others. Had Defendants Antonios Pagourtzis and Rose Marie Kosmetatos heeded the obvious warning signs and prevented their son from accessing their firearms, Defendant Dimitrios Pagourtzis would have been unable to access their guns to murder ten of his classmates and teachers and injure thirteen more.

5.54 Defendant Dimitrios Pagourtzis had a fascination with the Columbine High School shooting that should have been a red flag to his family.

5.55 Defendant Dimitrios Pagourtzis took pains to dress like the Columbine shooters - wearing a full-length black trench coat and black combat boots regularly to school, despite the South Texas heat. Among the insignia pinned to his trench coat was a medallion identical to one worn by one of the Columbine shooters.

5.56 Defendant Dimitrios Pagourtzis' fixation on the Columbine shooting was so obvious that his friends even joked that he dressed like the Columbine shooters.

5.57 Many of the details of Defendant Dimitrios Pagourtzis' attack on his classmates and teachers indicate that he took inspiration from the Columbine shooters-down to details such as how he constructed explosive devices that he planted around the school.

5.58 There were other warning signs that would have been visible or accessible to his parents. On social media, Defendant Dimitrios Pagourtzis followed numerous gun-related accounts and evinced a fascination with firearms. On his Instagram account, he posted a photograph of a semiautomatic pistol, a knife, and a flashlight, captioned "Hi fuckers," in late April 2018-only a few weeks before the day of the shooting.

6.59 Also in the weeks before the shooting, Defendant Dimitrios Pagourtzis uploaded a photograph to his Facebook page of a t-shirt reading, "BORN TO KILL"; he wore this t-shirt along with his trench coat and combat boots on the day he murdered ten of his schoolmates and teachers.

5.60 Defendant Dimitrios Pagourtzis had also demonstrated an interest in the guns used by the German army in World War II. He posted on Facebook an image of a jacket with Nazi and fascist insignia. On his Facebook page, he also posted artwork inspired by an electronic musician with a following among neo-Nazi groups.

5.61 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos knew that something was gravely wrong with their son.

5.62 In an interview that he provided to a Greek radio station not long after the shooting, Defendant Antonios Pagourtzis said that he believed that his son had been teased and bullied at school.

5.63 Defendant Antonios Pagourtzis also told the Greek radio station that he had been so worried about his son's well-being in the two weeks leading up to the shooting that he had stayed home from work to be with him- "as if I knew something would happen."

5.64 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos owned the two weapons that their son used on the day of the Incident and knew that their son was experiencing extreme emotional distress. Yet they did not take basic steps to prevent their son from accessing the guns.

5.65 To the contrary, Defendants Antonios Pagourtzis and Rose Marie Kosmetatos stored firearms in an irresponsible and negligent manner that allowed them to be accessible to their emotionally unstable son-a son who was so troubled that his father had taken two weeks off of work to stay at home with him.

5.66 At seventeen years of age, Defendant Dimitrios Pagourtzis could not lawfully purchase a firearm from a dealer. He depended upon his parents' irresponsible and negligent storage of their firearms in order to carry out his murderous plans.

5.67 If Defendant Dimitrios Pagourtzis had not had his parents' weapons, he would not have been able to carry out the massacre at Santa Fe High School.

Defendant Dimitrios Pagourtzis Murdered Ten Victims and Injured Many Others with the Ammunition and Firearms He Obtained from the Defendants

5.68 Early on the morning of May 18, 2018, Defendant Dimitrios Pagourtzis took his parents' two firearms from his family's house.

5.69 The weapons taken by Defendant Dimitrios Pagourtzis and used in his killing spree were a .38 caliber handgun and a Remington Model 870 shotgun.

5.70 Upon information, Defendant Dimitrios Pagourtzis loaded his weapons with the ammunition that he purchased from Luckygunner and took the remainder with him.

5.71 At or around 7:30 a.m. on May 18, 2018, Defendant Dimitrios Pagourtzis carried the two firearms onto the campus of Santa Fe High School.

5.72 When he arrived on campus, Defendant Dimitrios Pagourtzis hid his parents' guns in his trench coat. He went to a four-room arts complex within Santa Fe High School and opened fire. Defendant Dimitrios Pagourtzis later told authorities that he spared some students he liked, so that they could tell his story.

5.73 Hearing the shots, many students, including Chase Yarbrough, Chris Stone, Riley Garcia, Jared Conard Black and Sabika Aziz Sheikh had sought refuge in the supply closets, but the shooter knew that several people were hiding there, and he began shooting into the closets. He taunted the students as he fired. Chase Yarbrough was shot multiple times. His friends died right next to him. He waited until he believed the shooter left the area, then ran for his life.

5.74 More police officers from various agencies arrived, exchanging gun fire with the shooter. At around 8 a.m., after negotiations with the police, Defendant Dimitrios Pagourtzis left the classrooms and surrendered.

5.75 In total, Defendant Dimitrios Pagourtzis killed eight students and two teachers by shooting them with his parents' guns. He wounded an additional thirteen others.

5.76 Defendant Dimitrios Pagourtzis' violent acts destroyed many lives. For the families of his victims and for those who he wounded, there is no end to their suffering. Each person that he killed had dreams, hopes, and aspirations, but Defendant Dimitrios Pagourtzis ended those dreams and cut off those hopes and aspirations.

5.77 Had the Luckygunner Defendants and Defendant Red Stag acted responsibly and in compliance with federal law, and not blinded themselves to the fact that they were selling and

shipping ammunition to juveniles and minors, Dimitrios Pagourtzis would not have been able to commit his murderous rampage.

5.78 Had Defendants Antonios Pagourtzis and Rose Marie Kosmetatos responsibly stored their firearms in the face of their son's dangerous disposition and erratic behavior, the Yarbrough Plaintiffs would not have to relive the nightmare every day.

5.79 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos failed to take basic measures to ensure that their emotionally disturbed son who harbored violent fantasies did not have access to deadly weapons.

5.80 Had Defendants Antonios Pagourtzis and Rose Marie Kosmetatos taken these basic measures- securing firearms and warning the school district-Chase would not have suffered multiple gun wounds which remaining bullets in his body are a daily reminder.

5.81 While Defendant Dimitrios Pagourtzis pulled the trigger, the remaining Defendants' irresponsible actions placed the guns and ammunition in his hands.

VI.

CAUSES OF ACTION

COUNT 1 **NEGLIGENCE**

AS TO DEFENDANTS ANTONIOS PAGOURTZIS AND ROSE MARIE KOSMETATOS

6.1 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.2 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury and had a duty to exercise reasonable care in making available firearms and to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others.

6.3 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos breached their duty in one or more of the following ways:

- a. In storing their firearms in such a manner that they could be accessed by their teenage son, who was emotionally unstable and harbored violent fantasies;
- b. In failing to pay attention or reasonably respond to Defendant Dimitrios Pagourtzis' emotional disturbance;
- c. In failing to intervene to prevent Defendant Dimitrios Pagourtzis from acting in furtherance of his violent fantasies;
- d. In failing to seek assistance from mental health professionals to prevent their son from acting in furtherance of his violent fantasies;
- e. In failing to inform the school district that their son was emotionally disturbed and harboring violent fantasies;
- f. In failing to inform law enforcement that their son was emotionally disturbed and harboring violent fantasies; and
- g. In failing to secure all dangerous objects in their home so that their son could not access them.

6.4 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos knew or should have known that acting responsibly required them to store their firearms in a manner that would not have allowed access by their teenage son.

6.5 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos nonetheless stored their firearms in an irresponsible manner in which they were easily accessed by Defendant Dimitrios Pagourtzis.

6.6 Defendant Dimitrios Pagourtzis' behavior in the weeks leading up to the shooting made criminal activity reasonably foreseeable.

6.7 Each of the above facts or omissions by Defendants Antonios Pagourtzis and Rose Marie Kosmetatos constitutes negligence, and that negligence was a proximate cause of the injuries and damages by the Yarbrough Plaintiffs.

COUNT II
NEGLIGENCE

AS TO THE LUCKYGUNNER DEFENDANTS AND DEFENDANT RED STAG

6.8 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.9 The Luckygunner Defendants and Defendant Red Stag were subject to the general duty imposed on all persons not to expose others to reasonably foreseeable risks of injury.

6.10 The Luckygunner Defendants and Defendant Red Stag had a duty to exercise reasonable care in selling and shipping ammunition and to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others. In fact, companies that sell or deliver firearms and ammunition have an obligation to exercise the highest duty of care in transferring these products because of the potential for harm if firearms and ammunition get in the wrong hands.

6.11 On March 2, 2018, Luckygunner sold 105 rounds of gauge Winchester Super-X and 50 rounds of 38 Special Magtech 158 grain, semi-jacketed hollow-point ammunition ("38 Special Ammunition") to 17-year-old Dimitrios Pagourtzis. The 38 Special ammunition is advertised as handgun ammunition on Luckygunner's website and is only suitable for use in a handgun.

Pagourtzis paid for the ammunition by using an American Express card which listed an expiration date 8 years into the future. This card was a prepaid gift card, and easily identified as such.

6.12 Even though Luckygunner states on its website that it only sells ammunition to individuals over the age of 21, it allowed Dimitrios Pagourtzis to choose a shipping option that does not require an adult to sign for the package.

6.13 Neither Luckygunner nor Red Stag attempted to verify or obtain proof of Pagourtzis' age before shipping him the ammunition that he ordered on March 2, 2018. To the contrary, the Luckygunner Defendants set up a website to avoid any such verification or knowledge of age.

6.14 Defendant Red Stag knew that Luckygunner did not verify the age of most of its ammunition customers.

6.15 On March 13, 2018, Luckygunner sold 35 additional rounds of 12-gauge ammunition to 17-year-old Dimitrios Pagourtzis. Pagourtzis paid for the ammunition by using another American Express gift card. This card also expired over eight years later and was also easily identified as a gift card.

6.16 Neither Luckygunner nor Red Stag attempted to verify or obtain proof of Pagourtzis' age before shipping him the ammunition that he ordered on March 13, 2018.

6.17 The Luckygunner Defendants and Defendant Red Stag breached their duty in the following ways:

- In selling and shipping ammunition into the possession of a 17-year-old;
- In setting up and maintaining a webstore that did not utilize any mechanism to verify the age of its ammunition purchasers from Texas (to the contrary, the Luckygunner Defendants set up and maintain a website designed to avoid any such verification or knowledge of ammunition purchasers' age for most states);
- In setting up and maintaining shipment protocols that did not involve verifying the age of most ammunition customers;

- In intentionally blinding themselves to the age of most of their ammunition customers; and
- In knowingly allowing a 17-year-old to purchase ammunition using only a gift card, which can be bought by anyone and is not attached to a verifiable address.

6.18 The Luckygunner Defendants and Defendant Red Stag knew or should have known that acting responsibly required them to sell and ship ammunition only after verifying the purchaser was not underage.

6.19 The Luckygunner Defendants and Defendant Red Stag are vicariously liable for the actions or inactions of its agents and/or employees while acting within the scope of their agency and/or employment.

6.20 Each of the above acts or omissions by the Luckygunner Defendants and Defendant Red Stag constitutes negligence, and that negligence was a proximate cause of the damages and injuries suffered by the Yarbrough Plaintiffs.

6.21 By designing a web store that deliberately avoids determining the actual age of most of its ammunition customers - including customers from Texas - the Luckygunner Defendants conspired to violate the federal restrictions on handgun ammunition purchases by minors. See 18 U.S.C. §§ 371, 922(x)(1)(B), 922(x)(2)(B); see also 18 U.S.C. § 2.

6.22 By selling and delivering ammunition that is suitable only for use in a handgun into the possession of a 17-year-old, while deliberately taking steps to avoid verifying the age of the purchaser, the Luckygunner Defendants and Defendant Red Stag knowingly violated 18 U.S.C. § 922(x)(1)(B) and aided and abetted the violation of 18 U.S.C. § 922(x)(2)(B); see also 18 U.S.C. § 2.

6.23 These violations of law were a proximate cause of the injuries and damages suffered by the Yarbrough Plaintiffs.

COUNT III
NEGLIGENT ENTRUSTMENT
AS TO DEFENDANTS ANTONIOS PAGOURTZIS AND ROSE MARIE KOSMETATOS

6.24 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.25 Defendant Dimitrios Pagourtzis was an incompetent trustee for a .38 caliber handgun and a Remington model 870 shotgun. As described in detail above, the shooter evinced a fascination with the Columbine shooting and Nazis and made social media posts advocating violence.

6.26 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos were so worried about Defendant Dimitrios Pagourtzis in the weeks leading up to his massacre of his fellow students and teachers that Defendant Antonios Pagourtzis stayed home from work for two weeks to take care of his son.

6.27 A reasonably prudent person would have recognized that Defendant Dimitrios Pagourtzis was an incompetent trustee for the firearms at issue.

6.28 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos had, at all material times, control of the firearms at issue and permitted them to be used by Defendant Dimitrios Pagourtzis.

6.29 Defendant Dimitrios Pagourtzis was able to be in possession of the firearms at issue only by consent of Defendants Antonios Pagourtzis and Rose Marie Kosmetatos.

6.30 A firearm is an exceedingly dangerous article to keep in a manner that allows an emotionally disturbed teenager with violent fantasies, such as Defendant Dimitrios Pagourtzis, to access it.

6.31 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos knew or reasonably should have known that by not entrusting the firearms at issue to Defendant Dimitrios Pagourtzis, they could have prevented him from possessing and dangerously using the guns against himself or innocent third parties.

6.32 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos nonetheless permitted Defendant Dimitrios Pagourtzis to use the firearms, knowing or having reason to know, that he would use the product in a manner involving unreasonable risk of physical injury to himself or others.

6.33 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos' negligent entrustment of the firearms to Defendant Dimitrios Pagourtzis was a direct and proximate cause of the injuries and damages suffered by the Yarbrough Plaintiffs.

COUNT IV
NEGLIGENCE PER SE
AS TO THE LUCKYGUNNER DEFENDANTS AND DEFENDANT RED STAG

6.34 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.35 On March 2, 2018, Luckygunner sold 50 rounds of 38 Special Magtech 158 grain, semijacketed hollow-point ammunition to 17-year-old Dimitrios Pagourtzis. The 38 Special ammunition is advertised as handgun ammunition on Luckygunner's website and is only suitable for a handgun.

6.36 Dimitrios Pagourtzis paid for the ammunition by using an American Express card which expired over eight years later. This card was a prepaid gift card.

6.37 Luckygunner permitted Dimitrios Pagourtzis to decline the "adult signature required" shipping option even though it had not verified his age.

6.38 On March 4, 2018, Red Stag shipped the 38 Special Ammunition to Dimitrios Pagourtzis via FedEx.

6.39 Neither Luckygunner nor Red Stag attempted to obtain proof of Pagourtzis' age before shipping him the ammunition that he ordered on March 2, 2018.

6.40 Upon information and belief, the Luckygunner Defendants intentionally designed and maintain their webstore and shipping protocols to avoid learning the age of most of its ammunition consumers, despite knowing that it is illegal for minors to possess handgun ammunition.

6.41 Defendant Red Stag knew that Luckygunner does not verify the age of most of its customers.

6.42 By designing a webstore that deliberately avoids determining the actual age of most of its ammunition customers - including customers from Texas - the Luckygunner Defendants conspired to violate the federal restrictions on handgun ammunition purchases by minors. See 18 U.S.C. §§ 371, 922(x)(1)(B), 922(x)(2)(B); see also 18 U.S.C. § 2.

6.43 By selling and delivering ammunition that is suitable only for use in a handgun into the possession of a 17-year-old, while deliberately taking steps to avoid verifying the age of the purchaser, the Luckygunner Defendants and Defendant Red Stag knowingly violated 18 U.S.C. §922(x)(1)(B) and aided and abetted the violation of 18 U.S.C. § 922(x)(2)(B); see also 18 U.S.C. § 2.

6.44 These statutory provisions are designed to prevent irresponsible and illegal handgun and ammunition possession and use by individuals who are too young to possess and use it responsibly.

6.45 The Yarbrough Plaintiffs are within the class of people that the statute is designed to protect.

6.46 The Luckygunner Defendants and Defendant Red Stag are vicariously liable for the actions or inactions of its agents and/or employees while acting within the scope of their agency and/or employment.

6.47 Each of the above facts or omissions by the Luckygunner Defendants and Defendant Red Stag was a proximate cause of the injuries and damages suffered by the Yarbrough Plaintiffs.

COUNT V
CIVIL CONSPIRACY
AS TO THE LUCKYGUNNER DEFENDANTS AND DEFENDANT RED STAG

6.48 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.49 Upon information and belief, Defendants Mollenhour and Gross established Luckygunner in or around 2009 through their limited liability company, MollenhourGross.

6.50 Upon information and belief, Defendants Mollenhour, Gross and MollenhourGross intentionally set up the Luckygunner webstore to avoid knowing customers' age, in violation of 18 U.S.C. Section 922(x).

6.51 Defendants Mollenhour and Gross established Red Stag in May 2013, through their limited liability company, MollenhourGross, to provide shipping services for Luckygunner.

6.52 Red Stag knows that Luckygunner does not attempt to obtain proof of most of its customers' ages. Yet, upon information and belief, Red Stag does not attempt to verify the age of individuals to whom it is shipping ammunition.

6.53 Upon information and belief, the Luckygunner Defendants and Defendant Red Stag had a joint objective: to sell and deliver ammunition to all who approached them, knowing full well that there was a high likelihood that many customers and recipients would be prohibited under federal and state law from purchasing ammunition.

6.54 Their lack of inquiry into most ammunition customers' age is strong evidence that they consciously avoided incriminating knowledge. That is: the Luckygunner Defendants and Defendant Red Stag knew that there was a high likelihood that, of the ammunition they sold and delivered, a certain amount would be transferred to those who are underage.

6.55 They also knew that there is a high risk that youth will misuse the ammunition often to deadly effect. Yet, they designed and maintained a website and utilized shipping methods that deliberately avoid verifying the age of most ammunition consumers. Upon information and belief, they did this to create a thin veneer of "plausible deniability," so that when they foreseeably and inevitably sold or delivered ammunition illegally to underage consumers, they could feign ignorance.

6.56 As a result of the Luckygunner Defendants' and Defendant Red Stag's actions as part of this conspiracy, the Yarbrough Plaintiffs suffered injuries and damages for which they bring suit.

COUNT VI
PIERCING THE CORPORATE VEIL
AS TO DEFENDANT MOLLENHOUR AND DEFENDANT GROSS

6.57 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully herein.

6.58 Defendants Jordan Mollenhour and Dustin Gross are the sole managing members of Defendant MollenhourGross. In sum, Defendant MollenhourGross is the sole managing member of both Defendant Luckygunner and Defendant Red Stag.

6.59 At all relevant times, there was a unity of interest and ownership between Defendants Mollenhour, Gross, MollenhourGross, Luckygunner and Red Stag.

6.60 Defendants Mollenhour and Gross effectively controlled the operations of Defendants MollenhourGross, Luckygunner and Red Stag.

6.61 Defendants MollenhourGross, Luckygunner and Red Stag currently or in the past have shared offices, employees and attorneys.

6.62 Upon information and belief, Defendants Mollenhour and Gross set up Defendant Red Stag to serve as an instrumentality or business conduit for Defendant Luckygunner.

6.63 Upon information and belief, Defendants Mollenhour and Gross have failed to maintain arms-length relationships with, and between, Defendants MollenhourGross, Luckygunner and Red Stag.

6.64 Defendants Mollenhour and Gross used Defendants MollenhourGross, Luckygunner and Red Stag as a vehicle for negligent and unlawful conduct as described above.

6.65 Defendant Mollenhour and Gross' control of Defendants Mollenhou Gross, Luckygunner and Red Stag was a direct and proximate cause of the injuries and damages suffered by the Yarbrough Plaintiffs.

6.66 Justice requires disregarding the corporate form and holding Defendants Jordan Mollenhour and Dustin Gross jointly and severally liable for any and all obligations of Defendants MollenhourGross, Luckygunner and Red Stag.

6.67 Pleading alternatively and additionally, whenever in this petition it is alleged that the Luckygunner and Red Stag Defendants did any act or thing, it is meant that Defendants' officers, directors, trustees, agents, servants, employees, or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of the Defendants or was done in the normal and routine course and scope of operations of Defendants' officers, trustees, agents, servants, employees, or representatives. Further, Plaintiffs claim that the Defendants acted as a single business enterprise and/or joint business enterprise and are therefore jointly and severally liable for the injuries and damages asserted.

COUNT VII
GROSS NEGLIGENCE
**AS TO DEFENDANTS ANTONIOS PAGOURTZIS, ROSE MARIE KOSMETATOS,
THE LUCKYGUNNER DEFENDANTS, AND DEFENDANT RED STAG**

6.68 The Yarbrough Plaintiffs hereby assert a claim for gross negligence. Therefore, the Yarbrough Plaintiffs seek punitive or exemplary damages in order to punish and deter the outrageous conduct taken in the needless, reckless, and conscious indifference for the safety of Chase Yarbrough and his fellow students and teachers.

6.69 Defendants Antonios Pagourtzis and Rose Marie Kosmetatos were grossly negligent in permitting Defendant Dimitrios Pagourtzis to have access to their weapons.

6.70 The Luckygunner Defendants were grossly negligent in selling ammunition to a juvenile, while taking steps to remain deliberately ignorant of his age and the age of most of their ammunition customers.

6.71 Defendant Red Stag was grossly negligent in delivering ammunition to a juvenile without verifying the customer's age and knowing that Luckygunner remains deliberately ignorant of its customers' age.

6.72 The Yarbrough Plaintiffs allege that the conduct of the Luckygunner Defendants, Defendant Red Stag, and Defendants Antonios Pagourtzis and Rose Marie Kosmetatos amounted to gross neglect and/or malice as those terms are defined under Tex. Civ. Prac. & Rem. Code Ch. 41, (§§ 41.001, *et. seq.*), as well as Texas common law.

COUNT VIII
ASSAULT
AS TO DEFENDANT DIMITRIOS PAGOURTZIS

6.73 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.74 Defendant Dimitrios Pagourtzis intended to cause physical harm to Chase Yarbrough.

6.75 Defendant Dimitrios Pagourtzis acted to cause Chase Yarbrough to reasonably believe that he had the present intent and ability to harm him by bringing two loaded firearms to Santa Fe High School on May 18, 2018, aiming his guns at Chase, firing his guns in his direction, and shooting Chase Yarbrough.

6.76 As a result of this assault, Plaintiff Chase Yarbrough suffered personal injuries and damages including significant past and future pain, suffering, disability, emotional distress, disfigurement, impairment, and loss of enjoyment of life; past and future medical expenses; impairment of future earning capacity; severe emotional distress in witnessing the injuries and deaths of his peers; and other compensable injuries and damages, all to his damage in an amount to be determined at trial of matter.

COUNT IX
BATTERY
AS TO DEFENDANT DIMITRIOS PAGOURTZIS

6.77 The Yarbrough Plaintiffs incorporate and re-allege the above paragraphs as if stated fully here.

6.78 Defendant Dimitrios Pagourtzis intentionally caused bodily harm to Chase Yarbrough.

6.79 As a result of this battery, as alleged, Chase Yarbrough suffered personal injuries and damages including significant past and future pain, suffering, disability, emotional distress, disfigurement, impairment, and loss of enjoyment of life; past and future medical expenses; impairment of future earning capacity; severe emotional distress in witnessing the injuries and death of his peers; and other compensable injuries and damages, all to his damage in an amount to be determined at trial of matter.

VII.

BYSTANDER CLAIM OF TROY YARBROUGH

7.1 Plaintiff Troy Yarbrough is the biological father of Chase Yarbrough. Plaintiff Troy Yarbrough seeks damages for mental anguish, shock, and post-traumatic stress disorder. Defendants inflicted serious bodily injuries to Chase Yarbrough. Mr. Yarbrough was located at and/or near the scene of the shooting. Mr. Yarbrough suffered severe shock as a result of a direct emotional impact from a sensory and contemporaneous observation of the shooting and Chase Yarbrough's injuries. Mr. Yarbrough seeks damages for his bystander claim as allowed by law, including but not limited to past and future mental anguish, shock and post-traumatic stress disorder.

VIII.

COMPENSATORY DAMAGES

8.1 Plaintiff Chase Yarbrough suffered six (6) gunshot wounds, including, to his head, neck, back, and arms. Chase has bullet and/or buck shot fragments in his head, arm, back, and right ventricle. The fact that Chase Yarbrough is alive is nothing short of a miracle. One of the bullets entered Chase's neck, instead of severing the artery, the fragment traveled through the artery and rested in the right ventricle of his heart. Another bullet barely missed his spinal cord and now rests in his back. Further, while trying to escape, Chase broke through a glass door and jumped several feet to get out of the deadly rampage. Chase severely injured his foot which required reconstructive surgery. Chase continues to suffer pain as a result of his injuries. The pain will continue into the future.

8.2 The acts and omissions of Defendants Antonios Pagourtzis, Rose Marie Kosmetatos, Dimitrios Pagourtzis, Red Stag and the Luckygunner Defendants were each a proximate

cause of the injuries and damages suffered by the Yarbrough Plaintiffs. As a result thereof, the Yarbrough Plaintiffs have suffered damages, including the following elements:

- a. Medical expenses in the past;
- b. Medical expenses in the future
- c. Loss of earning capacity;
- d. Past physical pain and suffering;
- e. Future physical pain and suffering
- f. Past mental anguish;
- g. Future mental anguish;
- h. Past disfigurement;
- i. Future disfigurement;
- j. Past impairment; and
- k. Future impairment.

8.3 As discussed in this Petition, Yarbrough Plaintiffs have suffered not only easily quantifiable economic damages, but also other forms of damages such as mental anguish damages and pain and suffering and will continue to suffer these damages in the future. Both the Constitution of the United States and the Constitution of the State of Texas provide Yarbrough Plaintiffs with the inalienable fundamental right to have their case heard and decided by a jury of their peers at trial. In accordance with these fundamental rights, it will ultimately be the responsibility and province of a jury of Yarbrough Plaintiffs' peers to decide the economic value of the damages Yarbrough Plaintiffs suffered as a result of Defendants' wrongful actions and omissions which form the basis of this lawsuit. However, as Yarbrough Plaintiffs are required by law to state the maximum amount of damages they are seeking, Yarbrough Plaintiffs believe that

when the totality of their damages are considered, along with the wrongful nature of Defendants' conduct, it is possible that a jury may ultimately decide that Yarbrough Plaintiffs' damages exceed \$1,000,000.00.

IX.

EXEMPLARY/PUNITIVE DAMAGES

9.1 At the time Defendants Antonios Pagourtzis and Rose Marie Kosmetatos permitted their son to access the firearms, they were acting with reckless disregard for the safety of others. Defendants Antonios Pagourtzis and Rose Marie Kosmetatos possessed information that alerted them that Defendant Dimitrios Pagourtzis was likely to harm himself or others. Their gross negligence was a proximate cause of the damages to the Yarbrough Plaintiffs who are entitled to recover exemplary or punitive damages.

9.2 The conduct of Defendants Antonios Pagourtzis and Rose Marie Kosmetatos, when reviewed objectively from their standpoint at the time of the conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and they were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

9.3 At the time the Luckygunner Defendants and Defendant Red Stag illegally and negligently sold and delivered ammunition to 17-year-old Defendant Dimitrios Pagourtzis, they were acting with reckless disregard for the safety of others. The Luckygunner Defendants and Defendant Red Stag knew that selling and delivering ammunition to juveniles was dangerous and illegal, yet the Luckygunner Defendants designed their webstore to affirmatively avoid verifying their customers' age, and Defendant Red Stag knew that the Luckygunner webstore was designed in this

manner. Their gross negligence was a proximate cause of the damages to the Yarbrough Plaintiffs who are entitled to recover exemplary or punitive damages.

9.4 The conduct of the Luckygunner Defendants and Defendant Red Stag, when reviewed objectively from their standpoint at the time of the conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and they were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

9.5 At the time Defendant Dimitrios Pagourtzis used firearms to shoot and kill 10 people and injure 13 more, he was acting with the intent to cause substantial injury to his victims. His malicious actions were a proximate cause of the damages to the Yarbrough Plaintiffs who are entitled to recover exemplary or punitive damages.

9.6 The Yarbrough Plaintiffs claim that Defendants' conduct constitutes an exception to the Damages Act cap under §41.008 *et seq* of the Texas Civil Practices and Remedies Code.

X.

PREJUDGMENT INTEREST

10.1 In addition to the above and foregoing allegations, the Yarbrough Plaintiffs further plead that they are entitled to prejudgment interest at the highest rate allowed by law.

XI.

AUTHENTICATION AND PRESERVATION

11.1 In accordance with Texas Rule of Civil Procedure 193.7, notice is hereby given that the Yarbrough Plaintiffs intend to use at trial and/or in pre-trial proceedings, all documents produced in discovery. Defendants are hereby given notice that any document or other material including electronically stored information, that may be evidence or relevant to any issue in this case is to

be preserved in its present form until this litigation is concluded. Pursuant to the doctrine of spoliation, as that term is understood in Texas law, Defendants are further placed on notice of their obligation to safeguard and preserve all documents or other physical evidence now in their possession which might bear in any way upon either discovery or the discovery of admissible evidence in this case and of the Yarbrough Plaintiffs' intention to seek sanctions of the Court should they fail, either intentionally or by neglect, to do so.

PRAYER

For the reasons stated above, Chase Yarbrough, Donna Yarbrough and Troy Yarbrough pray that Defendants Antonios Pagourtzis, Rose Marie Kosmetatos, Dimitrios Pagourtzis, Red Stag, Luckygunner, MollenhourGross, Mollenhour and Gross be cited and required to appear and that upon final jury trial and hearing, Yarbrough Plaintiffs receive judgment as follows:

1. Actual damages against Defendants, jointly and severally, within the jurisdictional limits of this Court;
2. Exemplary damages as awarded by the jury;
3. Pre- and post-judgment interest as allowed by law;
4. Costs of court;
5. Such other and further relief, both general and special, legal and equitable, to which Yarbrough Plaintiffs are justly entitled; and
6. Yarbrough Plaintiffs demand trial by jury.

Respectfully Submitted,

THE CHANDLER LAW FIRM, LLP

/s/ Sherry Scott Chandler

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