

IN THE CIRCUIT COURT OF LAFAYETTE, MISSOURI  
AT LEXINGTON

JANET S. DELANA )  
Individually, and as the wife of decedent )  
Tex C. DELANA, )  
711 131 Highway )  
Wellington, MO 64097 )  
 )  
Plaintiff, )  
v. )  
 )  
CED Sales, Inc. d/b/a/ )  
ODESSA GUN & PAWN, )  
CHARLES E. DOLESHAL, )  
BRETT DOLESHAL and )  
DERRICK DADY, )  
210 S. 2<sup>nd</sup> St. )  
Odessa, MO 64076 )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**PETITION FOR DAMAGES**

COMES NOW Plaintiff Janet S. Delana individually and as a wrongful death beneficiary pursuant to RSMo. § 537.080, and on behalf of all wrongful death beneficiaries, of Tex C. Delana, for her cause of action against CED Sales, Inc. d/b/a Odessa Gun & Pawn (“Odessa Gun & Pawn” or “Odessa”), Charles E. Doleshal, Brett Doleshal and Derrick Dady (“Dady”) (Charles E. Doleshal, Brett Doleshal and Dady are hereinafter referred to collectively as “Individual Defendants” and with Odessa Gun & Pawn, as “Defendants”), and alleges as follows:

**SUMMARY OF ACTION**

1. This is a civil action stemming from the shooting of Tex Delana on June 27, 2012 with a pistol purchased from Odessa Gun & Pawn. Odessa negligently sold the pistol to Colby Sue Weathers (“Weathers”), despite knowing that Weathers had a long history of mental illness with resultant hospitalizations, erratic behavior and suicidal tendencies, and posed a substantial

and highly foreseeable risk of causing harm to herself or others with the firearm. Approximately one hour after Odessa sold Weathers the pistol, Weathers used the gun to shoot and kill her father, Tex Delana.

2. This lawsuit does not in any way challenge the right of law-abiding, responsible citizens to keep and bear arms, nor does it challenge responsible gun dealers' proper operation of their business of selling guns to law-abiding, responsible citizens. However, negligently supplying guns to the dangerously mentally ill causes grave harm. It is reasonably foreseeable that those individuals will cause injury to themselves or others. Gun dealers owe a duty to use reasonable care – indeed, the highest degree of care – in their business operations to prevent supplying foreseeably dangerous persons such as Colby Weathers with lethal firearms. Odessa breached that duty, and as a foreseeable result Tex Delana was killed.

3. At the time of the gun sale, Weathers had a well-established history of mental illness, substance abuse and suicidal ideations and, upon information and belief, had been determined to be severely mentally ill by the United States Social Security Administration (“SSA”). She began to manifest a high level of paranoia in 2006 and was diagnosed with schizophrenia in 2011 by a doctor evaluating her for Medicaid eligibility, who concluded that Weathers exhibited a well-informed paranoid delusional system and was severely impaired by her psychosis. Weathers was hospitalized on several occasions for suicidal ideations and/or attempts and had a history of overdosing on psychotropic and over-the-counter medications, as well as abusing alcohol and illegal drugs. In fact, less than one month prior to the shooting of Tex Delana, Weathers contemplated committing suicide with another gun purchased from Odessa.

4. On the day Odessa sold Weathers the gun she used to kill her father, Odessa knew or should have known that Weathers was a danger to herself and/or others. Two days prior, Plaintiff Janet Delana, Weathers' mother, called Odessa and notified the store that Weathers was severely mentally ill and should not be sold a gun due to her suicidal tendencies and increasingly erratic behavior. Plaintiff provided Odessa with Weathers' identifying information and warned that Weathers would try to buy a gun in the next few days with the money from her forthcoming Social Security check. Odessa ignored Plaintiff's pleas to not sell Weathers the gun and sold her the pistol regardless.

5. This complaint seeks damages against Defendants, jointly and severally, for negligence, negligent entrustment and negligence per se, which proximately and directly led to the death of Tex Delana.

#### **PARTIES AND JURISDICTION**

6. Plaintiff Janet S. Delana ("Plaintiff" or "Delana") is the wife and next of kin of Tex C. Delana, deceased ("Decedent" or "Tex Delana").

7. Plaintiff is entitled to bring a cause of action for the wrongful death of Decedent pursuant to RSMo. § 537.080.

8. Janet Delana and Tex Delana, were at the time of the acts herein mentioned, individual citizens and residents of Wellington, Lafayette County, Missouri, and Plaintiff is currently residing there.

9. Defendant CED Sales, Inc. d/b/a Odessa Gun & Pawn, was at all relevant times herein mentioned, a place of business located in Odessa, Lafayette County, Missouri. At all times relevant herein, Odessa Gun & Pawn is and was a legal corporation doing business in

Missouri, and it maintains offices and agents in Lafayette County, Missouri, to carry out its ordinary and customary business interest of selling firearms.

10. Upon information and belief, Defendant Charles E. Doleshal is a resident of Missouri and is a principal or individual directing the activities of Odessa Gun & Pawn.

11. Upon information and belief, Defendant Brett Doleshal is a resident of Missouri and is involved in the management of Odessa Gun and Pawn.

12. Upon information and belief, Defendant Dady is a resident of Missouri and is involved in the management of Odessa Gun and Pawn.

13. Venue is proper in the Circuit Court of Lafayette County, Missouri, pursuant to State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194 (Mo. En Banc. 1991) and pursuant to RSMo. § 508.010 because Plaintiff was first injured was in Lafayette County, Missouri.

**COLBY SUE WEATHERS' HISTORY  
OF MENTAL ILLNESS AND SUBSTANCE ABUSE**

14. Weathers had a long history of severe mental illness, suicidal tendencies, erratic behavior and substance abuse.

15. Weathers began to manifest high levels of paranoia and anxiety at least as early as 2006. In 2007, she began to hear voices and complain of a chip being implanted in her brain through her nose. From 2007 through 2010, she was hospitalized four times due to suicidal ideations and/or attempts, typically by overdose of psychotropic medication and over-the-counter pills. Medical records from this time period indicate that Weathers was paranoid, in fear of her neighbors and exhibiting outbursts of temper. Weathers entered an outpatient treatment center in 2010, where she was treated through 2012 with antipsychotic and antidepressant medications.

16. In April 2011, as part of her evaluation for Medicaid eligibility, Weathers was diagnosed with paranoid schizophrenia. At that time, and continuing at least through the time of

the shooting, Weathers was severely impaired by her psychiatric illness. Weathers exhibited a well-formed paranoid delusional system, which included hearing hallucinatory voices, believing that she was being monitored by a chip implanted inside her nose and being stalked by people who were planning to kill her. Weathers' paranoid schizophrenia was poorly controlled with medicine and the physician evaluating her for Medicaid eligibility concluded that Weathers should be considered a significant risk to injure herself.

17. Upon information and belief, in 2011, SSA determined that Weathers was severely mentally ill and was unable to work due to her mental defect. Weathers began receiving SSA benefits in June or July 2011 and continued receiving these benefits through the time of the shooting of Tex Delana.

18. In the years leading up to Weathers' purchase of the gun that killed her father, Weathers was treated with psychotropic medications such as Saphris, Bupropion (Wellbutrin), and Effexor.

19. At times Weathers self-medicated, over-dosed and inconsistently complied with her psychotropic and over-the-counter medications.

20. In addition to her severe psychiatric illness, Weathers has a documented history of substance abuse. She began drinking heavily in 2008 and by 2010, was drinking up to a fifth of a gallon of liquor per day. She also has a history of illegal drug use, including marijuana, cocaine and methamphetamines.

**ODESSA SELLS WEATHERS A GUN  
AS SHE IS SPIRALING OUT OF CONTROL**

21. In the months leading up to the shooting of Tex Delana, Weathers began to spiral out of control. Her family became fearful – noting that Weathers referred to everyone as Satanists and at one point told her brother that he wasn't on her list. Weathers herself acknowledged that in the months prior to the shooting, her mental health was deteriorating.

22. On May 29, 2012, less than one month prior to shooting her father, during this period when she was in the throes of her hallucinatory and out-of-control mental state, Weathers entered Odessa with the intent to buy a firearm in order to kill herself with it. Odessa personnel were in a position to observe her and speak with her while she was in her hallucinatory, suicidal state. Notwithstanding Weathers' highly unusual and unstable mental state, Odessa sold her a Hi-Point JCP .40 caliber semi-automatic pistol ("Hi-Point JCP .40 Cal Pistol").

23. Defendant Dady, the Odessa manager who would later sign off on the purchase of the gun which Weathers used to kill her father, was also involved in the sale of the Hi-Point JCP .40 Cal Pistol to Weathers on May 29, 2012.

24. After Odessa sold Weathers the Hi-Point JCP .40 Cal Pistol, Weathers sat with it for over an hour and tried to get the courage to shoot herself. After sitting with the loaded gun and contemplating suicide, Weathers became scared and informed her parents that she had bought a gun. Tex Delana promptly got rid of it.

25. However, Weathers continued to spiral. Her mother noticed that she was acting more strangely and in a hostile manner. In the days leading up to the shooting, Delana reported to Weathers' case manager that her daughter was getting worse and threatening suicide. Weathers herself reported that she was in a manic phase in the two days leading up to the shooting of her father and that the voices inside her head told her to buy a gun and kill herself.

**PLAINTIFF WARNS ODESSA OF WEATHERS' SEVERE MENTAL ILLNESS  
AND INCREASINGLY ERRATIC BEHAVIOR**

26. On the morning of June 25, 2012, hoping to avert a tragedy, Janet Delana called Odessa to inform the shop of the severe nature of Weathers' mental illness and the likelihood that Weathers would attempt to buy another gun from Odessa for the purpose of committing suicide.

27. Janet Delana spoke with a male employee of Odessa alerting him to her daughter's mental condition, her history of hospitalizations, her suicidal tendencies and her desire to buy a gun. Delana detailed her daughter's medical history and mental condition, including her diagnosis with paranoid schizophrenia and/or severe mental illness. Delana told the employee about Weathers' close call with her previous gun purchase from Odessa. Delana emphatically and urgently requested that Odessa not sell Weathers a gun because of the great likelihood that Weathers would use the gun to shoot herself or others.

28. The conversation should have made it abundantly clear to Odessa that Weathers was mentally ill and posed a serious threat to herself and/or others if she obtained a firearm.

29. In the same conversation, Janet Delana further informed Odessa that her daughter would be receiving her Social Security check, which she was entitled to receive due to her mental illness, in the next few days and would likely come to the store to purchase a gun with the money from the check. Delana pled with the Odessa employee to not sell Weathers a gun because of the grave risk of physical injury that Weathers' possession of a firearm would pose.

30. Janet Delana identified herself as Weathers' mother and provided identifying details to the employee, including her daughter's name, date of birth and Social Security number, so that the store could be certain that Weathers was the woman Janet Delana described. Delana

requested that the employee write down Weathers' name and post it near the cash register, so that other employees would also be aware of the situation and not sell her a firearm.

31. Despite Missouri state law which specifically permits firearms dealers, their agents and employees to refuse to sell a firearm to a customer based on individual judgment, so long as such refusal is not based on race, gender, religion or creed of the buyer, the Odessa employee told Delana that if Weathers came in, the store would have little control over whether or not to sell her the gun.

32. During the phone call, the employee did not indicate that Odessa would take any extra precautions, such as asking screening questions or investigating Weathers' background, before selling a gun to Weathers.

**DESPITE DELANA'S WARNING, ODESSA NEGLIGENTLY AND IN VIOLATION OF LAW SELLS WEATHERS A GUN WITH WHICH SHE KILLS HER FATHER**

33. Just two days later, on the morning of June 27, 2012, Weathers arrived at Odessa with the express purpose of buying a gun in order to kill herself – exactly as Delana feared and predicted.

34. Odessa knew or should have known that Weathers had purchased a similar firearm less than a month before.

35. Odessa knew or should have known that Weathers had a severe mental illness that made her possession of a gun a highly foreseeable danger to herself or others.

36. Odessa knew or should have known that Weathers had been determined to be mentally defective by the SSA, such that she was considered incompetent to work, since Weathers was receiving SSA benefits due to her mental illness.

37. Odessa further knew or should have known that Weathers was in a habitually drugged condition due to her diagnosis of paranoid schizophrenia and/or severe mental illness



and treatment for same, given that it is commonly known that schizophrenia and other severe mental illnesses are most frequently treated with psychotropic medications.

38. Upon information and belief, Odessa did not conduct any investigation into Delana's statements, nor did it take any extra precautions when selling Weathers the gun, or ask Weathers why she wanted the gun, or why she needed another gun having bought one less than a month before, despite having been placed on notice of Weathers' dangerous condition, and having observed her on at least two occasions, including when she was in a suicidal state.

39. At approximately 11:00 a.m., Odessa sold Weathers a Hi-Point .45 caliber pistol ("Hi-Point .45"). Dady, the same manager who was present for the May 29, 2012 gun sale to Weathers, oversaw the sale of the firearm.

40. Defendant knowingly violated state and federal laws applicable to the sale of firearms, including RSMo. § 571.060 and RSMo. § 571.070.1(2).

41. As a direct result of Defendant's negligence and knowing violation of state and federal firearms laws, Tex Delana was shot and killed.

42. After Odessa sold her the gun, Weathers drove home, sat down and loaded the gun with two bullets – in case the first one jammed. Then, as Tex Delana sat in a chair in front of a computer, Weathers shot him from behind and he died shortly thereafter. At 12:11 pm, Weathers texted her mother – "Dad is dead."

43. After the death of Tex Delana, it was determined that Weathers suffered from paranoid schizophrenia on the day of the shooting. Weathers was committed to the Missouri Department of Mental Health on September 13, 2013 and admitted to the Fulton State Hospital on October 1, 2013.

**ODESSA KNEW OF THE DANGERS THAT FIREARMS POSE  
WHEN POSSESSED BY INDIVIDUALS WITH MENTAL ILLNESS**

44. Defendant Odessa Gun & Pawn knew or should have known that selling firearms to persons who are dangerous because of mental illness poses a serious risk of death or injury to those persons and others.

45. Odessa Gun & Pawn is a retail store operating since 1987 and is engaged in the business of selling firearms, including pistols. Odessa is a federally licensed firearms dealer.

46. As an experienced firearms dealer, Odessa knew or should have known that firearms should not be supplied to persons who may pose a foreseeable risk of harm, including persons with dangerous mental illnesses such as Weathers.

47. In their conversation with the detective investigating the death of Tex Delana, Odessa employees admitted that they had previously sold a gun to a young man who used it to commit suicide. Thus, Odessa and its employees and/or agents had first-hand knowledge of the dangers of selling firearms to the dangerous mentally ill.

48. Further, in the years leading up to Weathers' June 2012 purchase of the Hi-Point 45, there were numerous highly-publicized incidents of individual with mental illnesses using guns to kill and injure innocent people. These incidents should have put Odessa on notice of the dangers of selling a gun to a severely mentally ill individual such as Weathers:

- a. On April 16, 2007, a lone gunman, Seung-Hui Cho, killed 33 people on Virginia Tech's campus, including himself, in one of the deadliest shootings in U.S. history. In the aftermath of the Virginia Tech tragedy, many news outlets reported on Cho's mental illness, including the fact that Cho was briefly admitted into a psychiatric ward and had met with school counselors who labeled him as "troubled;" that two female students complained of his stalking behavior; and that a roommate had voiced concerns about Cho's suicidal intentions. Although a Virginia court ruled that Cho was mentally ill, a danger to himself, and in need of psychiatric treatment, Cho was able to purchase multiple firearms including a .22 caliber Walther P22 and 9mm Glock 19 and over 150 rounds of ammunition prior to the shooting.

- b. On November 5, 2009, Major Nidal Hasan, an army psychiatrist, who evaluating supervisors described as “paranoid,” “schizoid,” and “mentally unstable,” killed 13 people and wounded 32 others in the worst mass murder at a military base in U.S. history. A few months prior, Hasan purchased an FN Herstal tactical pistol and a .357 Smith & Wesson from a Texas gun shop called Guns Galore.
- c. On January 8, 2011, Jared Lee Loughner shot 19 people, including U.S. Representative Gabrielle Giffords, and killed six others in Tucson, Arizona. He was diagnosed with paranoid schizophrenia and deemed incompetent to stand trial. Loughner became erratic and delusional in the months leading up to the shooting, but was able to purchase the Glock 9mm handgun used in the shooting at a sporting goods store.
- d. On July 22, 2011, Anders Behring Breivik killed almost seventy people and wounded over thirty in a massacre on the Norwegian island of Utoya. He used a 9mm Glock and a .223 caliber Ruger Mini-14 Rifle to kill or maim teenagers and young adults at a rival political party’s youth camp. He called 911 twice to surrender during the attacks, and while in custody he claimed that he deserved a medal of honor for his “necessary” killings. One set of forensic psychiatrists diagnosed Breivik with paranoid schizophrenia and deemed him psychotic at the time of the attacks.

49. The above incidents demonstrate the important role that firearms dealers must play in keeping guns out of dangerous hands. In fact, federally-licensed firearms dealers, as the agents of enforcement of federal firearms laws, are gatekeepers who are obligated to prevent dangerous or prohibited persons from acquiring guns.

50. Even groups such as the National Rifle Association recognize the dangers caused by supplying the dangerous mentally ill with firearms. *See e.g.*, Jonathan Weisman, *Democrats, NRA Reach Deal on Background-Check Bill*, Washington Post (June 10, 2007) (quoting Christopher W. Cox, “the NRA’s chief lobbyist,” as stating “[w]e’ve been on the record for decades for keeping firearms out of the hands of the mentally adjudicated. It’s [ ] good policy.”)

51. Both federal and Missouri firearms laws recognize the dangers of selling guns to the dangerous mentally ill, thus further putting Odessa on notice. *See* 18 U.S.C. § 922(d)(4);

RSMo. § 571.060(1); RSMo. § 571.070.1(2). And Missouri law recognizes that firearms dealers, their agents and employees are free to use their individual judgment to not complete the sale or transfer of a firearm for articulable reasons specific to that transaction so long as those reasons are not based on race, gender, religion, or creed of the buyer. RSMo. §571.014(4).

52. As a federally-licensed firearms dealer, Odessa knew or should have known that it could not simply rely on the background check system to determine whether a buyer was dangerously mentally ill, because it is well-known that substantial numbers of records indicating that persons are prohibited because of mental illness are not in the background check system.

53. The combination of (i) Janet Delana’s warning about the dangers that Weathers posed; (ii) Odessa’s previous first-hand experience with the consequences of selling a weapon to the dangerous mentally ill; (iii) the highly-publicized preceding incidents of mass shootings perpetrated by the dangerous mentally ill; (iv) the federal and state laws recognizing the dangers of selling firearms to the dangerous mentally ill; (v) statements by groups such as the NRA recognizing the same dangers; (vi) Odessa’s knowledge as firearms dealers, and (vii) common sense, lead to the undeniable conclusion that Odessa knew or should have known that putting a gun in the hands of Weathers would create a foreseeable risk of death or injury.

54. Despite this knowledge of the foreseeable risk that certain individuals with severe mental illness will cause serious injury to themselves and/or others when given access to a firearm, Odessa Gun & Pawn failed to heed a specific, credible warning about the dangerous risk posed by supplying and entrusting a specific, potential customer with a firearm, and instead negligently employed unreasonably dangerous sales practices that supplied a dangerous person with a firearm, thereby legally causing the death of Tex Delana.

**COUNT I – NEGLIGENCE (AGAINST ODESSA GUN & PAWN)**

55. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

56. Defendant Odessa Gun & Pawn is vicariously liable for the actions or inactions of its agents and/or employees while in the scope of their agency and/or employment.

57. At all relevant times, Defendant was subject to the general duty imposed on all persons and businesses not to expose others to reasonably foreseeable risks of injury, and had a duty to exercise reasonable care in selling firearms and to refrain from engaging in any activity creating reasonably foreseeable risks of injury to others.

58. Indeed, at all relevant times, Odessa Gun & Pawn was subject to a duty to use a heightened degree of care because it was selling lethal instrumentalities. Breach of this duty constitutes negligence.

59. Defendant breached its duty by negligently supplying a dangerous paranoid schizophrenic with a firearm despite a specific and detailed warning, only two days earlier, that Weathers should not be sold a gun due to her severe mental illness and her consequent history of hospitalizations, suicidal ideations and increasingly erratic behavior.

60. Plaintiff further informed Odessa that Weathers would likely attempt to purchase a firearm from Odessa within the next few days, as Weathers' Social Security check was due to arrive. Plaintiff also fully identified Weathers by providing her name, date of birth and Social Security number. Therefore, there was no doubt as to Weathers' identity or the dangers she posed to herself or others if she acquired a firearm.

61. Defendant was negligent in ignoring the warnings of Janet Delana regarding her daughter's mental illness, hospitalizations and previous history with a firearm.

62. Upon information and belief, Defendant took no additional precautions and did not investigate further to determine if Weathers was mentally ill and a danger to herself or others.

63. Defendant was negligent in employing deficient questioning and screening of customers, including, but not limited to, failing to determine whether it was reasonable to sell a prospective purchaser a handgun, and failing to adequately train and supervise employees to properly, reasonably and legally sell firearms.

64. As a seller of firearms for many years, Defendant knew or should have known that its employees and agents were well within their rights, and in fact, under an obligation, to use their individual judgment as firearms dealers to refuse to sell a firearm to a buyer who was a dangerous paranoid schizophrenic with a history of substance abuse.

65. The facts described above, considered individually or in the aggregate, would inform a reasonable and prudent gun seller that Weathers was dangerously mentally ill and that there was a substantial and unacceptable risk that Weathers would gravely injure either herself or others if she was given a firearm. Similarly, it was reasonably foreseeable that Weathers would cause injury or death to an innocent person if she acquired a firearm.

66. Nevertheless, Odessa sold Weathers a firearm on June 27, 2012, with which she killed her father approximately one hour later.

67. Defendant's negligence directly and proximately caused the wrongful death of Tex Delana.

68. As a direct and proximate result of Odessa's negligence and the resulting death of Tex Delana, Plaintiff is entitled to recover damages including, but not limited to, the pain and suffering of the Decedent prior to his death, medical expenses, pecuniary loss, funeral expenses,

and the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support of Decedent, against Defendant Odessa Gun & Pawn.

**COUNT II – NEGLIGENT ENTRUSTMENT (AGAINST ODESSA GUN & PAWN)**

69. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

70. Weathers was an incompetent trustee for a firearm since she was and is a paranoid schizophrenic with a history of multiple hospitalizations due to her mental illness and corresponding suicidal ideations and attempts; and has a long history of abusing psychotropic medications, alcohol and illegal drugs.

71. Further, in the months prior to the June 27, 2012 purchase of the Hi-Point .45 pistol, family members, medical professionals and Weathers herself noted that Weathers was spiraling out of control, was behaving extremely erratically and was at a high risk of suicide.

72. The facts as described above, individually or in the aggregate, make clear to Odessa that Weathers was an incompetent trustee for a firearm, by reason of habitual recklessness or otherwise.

73. Two days before Odessa negligently sold Weathers the firearm used to kill her father, Odessa was explicitly warned of Weathers' incompetence. Weathers' mother called the store and provided an employee with details of Weathers' dangerous mental illness and her eligibility for Social Security Disability payments, as well as Weathers' history of gun ownership and suicidal ideations.

74. A reasonably prudent gun seller would have recognized that Weathers was an incompetent trustee for a firearm, as there was an unreasonable and foreseeable risk that that possession of the firearm by Weathers was likely to result in serious injury or death.

75. Defendant had, at all material times, control of the firearm it sold to Weathers and Weathers became entitled to possess the firearm only by consent of Defendant.

76. A firearm is an exceedingly dangerous article to place in the hands of a paranoid schizophrenic such as Weathers who had a long history of hospitalizations due to her mental illness and had exhibiting hostile and suicidal behavior.

77. Defendant knew or should have known that by withholding consent to sell the gun to Weathers, it could prevent her from possessing and dangerously using the gun against herself or an innocent third party such as Tex Delana.

78. Defendant had a non-discriminatory articulable reason to not complete the transfer of the firearm to Weathers.

79. Defendant knew or should have known that its employees and agents were well within their rights, and in fact, under an obligation, to use their individual judgment to refuse to sell a firearm to a buyer who was a dangerous paranoid schizophrenic with a history of substance abuse.

80. Nevertheless, Defendant negligently entrusted Weathers with a firearm knowing, or having reason to know, that Weathers would use the product in a manner involving unreasonable risk of physical injury to herself or others.

81. Defendant's negligent entrustment of the Hi-Point .45 caliber pistol to Weathers directly and proximately caused the wrongful death of Tex Delana one hour later.

82. As a direct and proximate result of Defendant's negligent entrustment and the resulting death of Tex Delana, Plaintiff is entitled to recover damages including, but not limited to, the pain and suffering of the Decedent prior to his death, medical expenses, pecuniary loss,



funeral expenses, and the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support of Decedent, against Defendant Odessa.

**COUNT III – NEGLIGENCE PER SE (AGAINST ODESSA GUN & PAWN)**

83. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

84. Under Missouri law, a person who is “habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent” is prohibited from possessing a firearm. RSMo. § 571.070.1(2).

85. Further, under Missouri law “[a] person commits the crime of unlawful transfer of weapons if he [ ] knowingly sells, leases, loans, gives away or delivers a firearm...to any person who, under the provisions of 571.070, is not lawfully entitled to possess such.” RSMo. § 571.060.

86. Additionally, federal law prohibits the sale of firearms to certain individuals, including those who have been adjudicated as mentally defective or are unlawful users of, or addicted to, any controlled substances. 18 USC § 922(d).

87. The above laws were enacted to protect persons or property, conserve public health, or promote public safety.

88. As detailed above, Weathers was a paranoid schizophrenic who had been hospitalized on numerous occasions. The reasons for Weathers’ hospitalizations included overdoses on psychotropic medications. Weathers also had a history of both alcohol and illegal drug abuse.

89. Further, upon information and belief, the SSA determined that Weathers was suffering from a serious mental illness and thereby was incompetent to work, and the SSA determination was in effect at the time of sale.

90. By providing Weathers with the Hi-Point .45 pistol, Defendant knowingly violated RSMo. § 571.060 and 18 USC § 922(d).

91. Defendant knew or should have known that Weathers was in a habitually drugged condition due to her diagnosis of paranoid schizophrenia and/or severe mental illness and treatment for same, given that it is commonly known that schizophrenia and other severe mental illnesses are most frequently treated with psychotropic medications.

92. Defendant also knew or should have known that at the time, Weathers was adjudged to be mentally deficient by the SSA, based on her incompetence to work, as she was purchasing the Hi-Point .45 pistol with the proceeds of her Social Security check.

93. As a direct and proximate cause of Defendant's knowing violation of RSMo. § 571.060 and 18 USC § 922(d), Tex Delana was shot and killed.

94. Tex Delana's death was exactly the type of injury that RSMo. § 571.060, RSMo. § 571.070 and 18 USC § 922(d) were designed to prevent.

95. Tex Delana was in the class of persons for whose protection RSMo. § 571.060, RSMo. § 571.070 and 18 USC § 922(d) were enacted.

96. As a direct and proximate result of Defendant's negligence per se and the resulting death of Tex Delana, Plaintiff is entitled to recover damages including, but not limited to, the pain and suffering of the Decedent prior to his death, medical expenses, pecuniary loss, funeral expenses, and the reasonable value of services, consortium, companionship, comfort, instruction, guidance, counsel, training and support of Decedent, against Odessa.

**COUNT IV – PIERCING THE CORPORATE VEIL  
(AGAINST INDIVIDUAL DEFENDANTS)**

97. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

98. Upon information and belief, Odessa Gun & Pawn is the alter ego of Defendant Charles E. Doleshal who effectively controls its operations.

99. Individual Defendants have used Odessa Gun & Pawn, Inc. as a vehicle for improper, negligent, and unlawful conduct.

100. Upon information and belief, Odessa Gun & Pawn is inadequately capitalized and its corporate formalities are not followed.

101. The Court should hold Individual Defendants jointly and severally liable for any and all obligations or liabilities of Odessa Gun & Pawn as described in this Complaint.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

- i. award judgment against Defendants for a reasonable sum of money in excess of Twenty-Five Thousand Dollars (\$25,000) that will fairly compensate Plaintiff for the wrongful death of Tex Delana;
- ii. award prejudgment interest in accordance with RSMo. § 408.040;
- iii. award exemplary damages;
- iv. award attorneys' fees and costs of this action; and
- v. grant such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 12, 2014

Respectfully submitted,

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