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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

KENT TERRY AND JOSEPHINE
TERRY,

Plaintiffs,

v.

LONE WOLF TRADING COMPANY,
L.L.C., an Arizona limited liability
company; ANDRE L. HOWARD AND
JANE DOE HOWARD, husband and wife;
JOHN AND JANE DOES 1-5; and BLACK
AND WHITE BUSINESS ENTITIES I-V,

Defendants.

Case No. _____

COMPLAINT

(Negligence; Negligence *Per Se*;
Aiding and Abetting Tortious Conduct)

(Jury Trial Demanded)

Plaintiffs Kent Terry and Josephine Terry, for their Complaint, allege as follows:

INTRODUCTION

1. On December 14, 2010, Plaintiffs' son, U.S. Border Patrol Agent Brian Terry, was murdered in the desert near Rio Rico, Arizona.
2. Two AK-47 style firearms purchased by Jaime Avila ("Avila") from Defendant Lone Wolf Trading Company, L.L.C., a gun shop in Glendale, Arizona ("Lone Wolf"), on January 16, 2010 were the only firearms recovered from Brian's murderers.

1 3. Immediately following Brian Terry's murder, Avila was arrested and
2 charged with illegally purchasing weapons from Lone Wolf as part of a criminal
3 conspiracy orchestrated by Mexican drug cartels to acquire military-grade assault rifles
4 and other high-powered weapons from Arizona gun sellers like Lone Wolf.

5 4. Avila had purchased AK-47 style firearms and other guns from Lone Wolf
6 on at least two other occasions in the previous six weeks, purchasing ten weapons in all,
7 before purchasing the weapons used to murder Brian Terry.

8 5. Avila's purchase of the Brian Terry murder weapons were among dozens of
9 other illegal purchases of firearms from Lone Wolf by Avila, Uriel Patino, Julio Carrillo,
10 Alfredo Celis, Sean Christopher Steward, Jacob Wayne Chambers, Erick Avila Davila,
11 Jonathan Earvin Fernandez, Dejan Hercegovac, Kristi Gail Ireland, Jacob Anthony
12 Montelongo, Joshua David Moore, Danny Cruz Morones, Jose Angel Polanco, Francisco
13 Javier Ponce, Manuel Fabian-Acosta, and other illegal buyers on behalf of the cartels in
14 late 2009 and 2010. All of these illegal firearms purchases occurred under extremely
15 suspicious circumstances.

16 6. Patino had introduced Avila to the criminal conspiracy to illegally purchase
17 deadly firearms for the Mexican drug cartels, had accompanied Avila on his first Lone
18 Wolf gun purchase in November 2009, and had bought ten AK-47 style assault rifles
19 himself on January 15, 2010, the day before Avila's purchase of the weapons used in the
20 murder of Brian Terry.

21 7. Prior to Avila's January 16, 2010, purchase of the weapons used to kill
22 Brian Terry, Defendant Andre L. Howard ("Howard") discussed this pattern of
23 suspicious firearms purchases with representatives of the Bureau of Alcohol, Tobacco,
24 Firearms and Explosives ("ATF"), and ATF confirmed the obvious, that these illegal
25 firearms purchases were being made by "straw buyers" for Mexican drug cartels.

26 8. But Defendants proceeded with the illegal sales to known straw purchasers
27 for the cartels, selling hundreds of weapons and realizing hundreds of thousands of
28 dollars in profits from these sales.

1 9. Defendants knew or should have known that Avila's purchase of firearms
2 from Lone Wolf on January 16, 2010, was both illegal and would cause a substantial risk
3 of serious harm to others.

4 10. Defendants had a duty not to take actions that would create a substantial
5 risk of serious physical harm to others.

6 11. As federal firearms licensees ("FFL"), Defendants also had an independent
7 legal obligation under federal and state law to refuse to make illegal firearms sales.

8 12. Defendants ignored this obligation and proceeded with dozens of sales of
9 firearms to the straw buyers for the Mexican drug cartels, realizing hundreds of thousands
10 of dollars in profits from these illegal firearms sales.

11 13. But for Defendants' negligent and illegal sales of dangerous firearms to
12 Avila, Brian Terry would not have been murdered in the Arizona desert on December 14,
13 2010.

14 14. This action is brought by Kent and Josephine Terry against Defendants to
15 recover damages for the wrongful death of their son, Brian Terry.

16 **PARTIES, JURISDICTION, AND VENUE**

17 15. Plaintiffs incorporate by reference all previous allegations in this complaint.

18 16. Plaintiff Kent Terry, Sr., is, and was at all times material hereto, a resident
19 of the State of Michigan.

20 17. Plaintiff Josephine Terry is, and was at all times material hereto, a resident
21 of the State of Michigan.

22 18. Before his murder, Brian Terry was a resident of Cochise County, Arizona.

23 19. Brian Terry was murdered in the desert west of Rio Rico in Santa Cruz
24 County, Arizona.

25 20. Defendant Lone Wolf Trading Company, L.L.C. is, and was at all material
26 hereto, an Arizona limited liability company authorized to do and doing business in
27 Maricopa County, Arizona at 5140 West Peoria Avenue, Suite 110, Glendale, Arizona,
28

1 85302. At all relevant times, it acted through its members, agents, and employees
2 including, but not limited to, Defendant Andre L. Howard.

3 21. Upon information and belief, Defendant Andre L. Howard is, and was at all
4 times material hereto, a resident of Maricopa County, Arizona.

5 22. Upon information and belief, Defendant Jane Doe Howard is, and was at all
6 times material hereto, a resident of Maricopa County, Arizona. Jane Doe Howard is a
7 fictitiously-named defendant whose true identity is presently unknown to plaintiffs. Jane
8 Doe Howard is, upon information and belief, Mr. Howard's wife. Plaintiffs will amend
9 this complaint when Jane Doe Howard's true name becomes known.

10 23. Defendants John Does 1-5 and Black and White Business Entities 1-5 are
11 fictitious defendants, whose true names or capacities, whether individual, corporate,
12 associate or otherwise, are unknown to plaintiffs at this time. Plaintiffs therefore sue the
13 defendants by such fictitious names and will ask leave of this Court to amend this
14 complaint to show their true names and capacities as if the same had been asserted.

15 24. All individual Defendants are husbands and wives and at all times material
16 hereto were acting on behalf of their marital community as well as themselves.

17 25. At all relevant times, the Defendants, and each of them, were the agents,
18 joint venturers, partners, employees, employers, or representatives of each other and,
19 participating in the acts and omissions hereafter alleged, were acting within the course
20 and scope of their authority as such servants, joint venturers, partners, employees,
21 employers, or representatives and were acting with the permission and consent of the
22 other Defendants.

23 26. Defendants caused events to occur in Maricopa County, Arizona, out of
24 which the following causes of action arise.

25 27. Plaintiffs have incurred damages in an amount far exceeding the minimum
26 jurisdictional limit of this Court.

27 28. The Superior Court in and for the County of Maricopa has jurisdiction over
28 this matter.

1 29. Venue is proper in Maricopa County under A.R.S. § 12-401 because
2 Defendants reside and conduct business in Maricopa County.

3 **COUNT I**
4 **(NEGLIGENCE)**

5 30. Plaintiffs incorporate by reference all previous allegations in this complaint.

6 31. Defendants owed Brian Terry and all members of the general public a duty
7 not to create a risk of harm.

8 32. Defendants breached this duty by, *inter alia*, making sales of dangerous
9 firearms to Avila and other parties that Defendants knew or should have known were
10 straw purchasers for Mexican drug cartels, including the sale of two AK-47 style assault
11 rifles to Avila on January 16, 2010.

12 33. Defendants knew or should have known that Avila and other straw
13 purchasers were not buying firearms for their own personal use but rather were being
14 paid by the Mexican drug cartels to make the firearms purchases and convey the weapons
15 to the cartels, and Defendants knew or should have known that once the weapons were
16 conveyed to the cartels by Avila they were very likely to be used to commit acts of
17 violence against others, particularly law enforcement agents like Brian Terry.

18 34. Defendants knew or should have known that the sales of dangerous
19 firearms to Avila and other straw purchasers for the cartels constituted violations of
20 federal and Arizona law.

21 35. In December 2009, discussions with ATF about the illegal straw purchases,
22 ATF indicated to Defendants that it knew the straw purchases were illegal and that it was
23 surveilling some of the illegal firearms purchasers and purchases as part of its "Operation
24 Fast and Furious."

25 36. Defendants, however, knew that ATF subsequently did nothing to arrest the
26 purchasers or otherwise stop the purchases since the same straw buyers continued to
27 make illegal firearms buys.

28

1 37. Defendants could not reasonably rely on any ATF representations that ATF
2 was tracking or surveilling the illegal firearms purchasers or the illegally purchased
3 firearms to make the sales because Defendants had statutory and common law duties not
4 to make illegal sales of firearms, especially illegal sales of firearms to violent criminals.

5 38. Defendants proceeded with violating their statutory and common law duties
6 not to make illegal firearms sales because Defendants realized substantial profits from the
7 sales.

8 39. As a direct and proximate cause of the breaches of Defendants' duties of
9 care, Brian Terry was murdered.

10 40. As a direct and proximate cause of the breaches of Defendants' duties of
11 care, Plaintiffs sustained substantial and permanent injuries as a direct and proximate
12 result of the wrongful death of their son.

13 41. Plaintiffs' injuries include, *inter alia*, loss of love, income, affection,
14 companionship, care, protection, and guidance and experiencing disability, pain, anguish,
15 sorrow, mental suffering, stress, and shock.

16 42. The amount of Plaintiffs' damages will be proved at trial.

17 **COUNT II**
18 **(NEGLIGENCE *PER SE*)**

19 43. Plaintiffs incorporate by reference all previous allegations in this complaint.

20 44. By selling weapons to Avila and other straw purchasers, Defendants
21 violated numerous federal and state statutes and regulations including, *inter alia*,
22 provisions of the Gun Control Act, 18 U.S.C. § 921, *et seq.*, and A.R.S. Title 13, Chapter
23 31, §§ 33-3101, *et seq.* These statutes, other firearms trafficking laws and regulations,
24 and other criminal and public safety laws and regulations violated by Defendants are
25 designed to protect the safety of the general public from the substantial risk of serious
26 harm posed by illegal firearms trafficking.

27 45. Defendants' violation of these statutes and other federal and state criminal
28 statutes constitutes negligence *per se*.

1 55. As a direct and proximate result of Defendants' aiding and abetting of
2 Jaime Avila's and the Mexican drug cartels' conspiracy to commit tortious conduct,
3 Brian Terry was murdered.

4 56. As a direct and proximate result of Defendants' aiding and abetting of
5 Jaime Avila's and the Mexican drug cartels' conspiracy to commit tortious conduct,
6 Plaintiffs suffered damages as described above.

7 **JURY TRIAL DEMAND**

8 57. Plaintiffs request a trial by jury in this matter.

9 **PRAYER**

10 WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

11 A. For general damages to compensate Plaintiffs for the loss of love, income,
12 affection, companionship, care, protection, and guidance of their son, Brian Terry, and
13 for the disability, pain, anguish, sorrow, mental suffering, stress, and shock that they have
14 experienced, and will continue to experience in the future, as a result of Brian's wrongful
15 death;

16 B. For the reasonable value of funeral and burial expenses incurred for
17 services rendered for Brian;

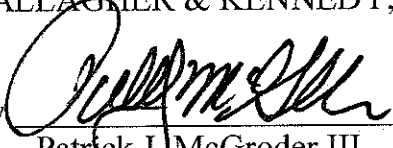
18 C. For other general and special damages available under law;

19 D. For Plaintiffs' cost of suit; and

20 E. For such other and further relief as the Court deems just and proper.

21 DATED this 1st day of February, 2012.

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