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3 **LAW OFFICES OF ADRIENNE D. COHEN**

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8 Attorneys for Defendant, **TERRANCE J. OSMAN dba 1911 BUILDERS (erroneously sued as**
9 **TERRANCE J. OSMAN a/k/a 1911builders.com)**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES, CHATSWORTH COURTHOUSE**

12 MIA TRETТА, through her guardian ad litem
13 Tiffany Shepis-Tretta,

14 Plaintiff,

15 vs.

16 TERRANCE J. OSMAN, an individual a/k/a
17 1911builders.com; MAMI MATSURA-
18 BERHOW, an individual; and DOES 1 through
19 50,

20 Defendants.

CASE NO.: 20STCV48910

[Complaint filed: 12/22/2020]

JUDGE: STEPHEN P. PFAHLER
DEPT.: F-49

NOTICE OF DEMURRER AND
DEFENDANT TERRANCE J. OSMAN
DBA 1911 BUILDERS' DEMURRER
TO PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF SEAN R. FERRON

Date: June 28, 2021

Time: 8:30 a.m.

Dept: F-49

Reservation No.: 66284714409

21 TO PLAINTIFF AND TO HER ATTORNEYS OF RECORD HEREIN:

22 PLEASE TAKE NOTICE that on June 28, 2021 at 8:30 a.m., or as soon thereafter as the matter
23 may be heard in Department F-49 of the above-entitled court, Defendant TERRANCE J. OSMAN dba
24 1911 BUILDERS (hereinafter "Defendant") will and hereby does, pursuant to California Code of Civil

1 Procedure §430.10, demurrer to the Complaint of Plaintiff MIA TRETТА, by and through her Guardian
2 Ad Litem (hereinafter “Plaintiff”), on each of the following grounds as set forth below:

3 **DEMURRER TO FIRST CAUSE OF ACTION**

4 The First Cause of Action for Negligence in Plaintiff’s Complaint does not allege facts sufficient
5 to constitute a cause of action pursuant to California Code of Civil Procedure section 430.10(e).

6 **DEMURRER TO SECOND CAUSE OF ACTION**

7 The Second Cause of Action for Negligent Entrustment in Plaintiff’s Complaint does not allege
8 facts sufficient to constitute a cause of action pursuant to California Code of Civil Procedure section
9 430.10(e).

10 **DEMURRER TO SIXTH CAUSE OF ACTION**

11 The Third Cause of Action for Public Nuisance in Plaintiff’s Complaint does not allege facts
12 sufficient to constitute a cause of action pursuant to California Code of Civil Procedure section
13 430.10(e).

14
15 This Demurrer is based upon this Notice and Demurrer, the attached Memorandum of Points,
16 and on all pleadings, papers and files made part of this Court’s record herein, and as to which the Court
17 is respectfully requested to take judicial notice pursuant to California Evidence Code §452(d), and upon
18 any such additional evidence as may be presented to the Court at the time of hearing on this Demurrer.

19
20
21 DATED: March 31, 2021

LAW OFFICES OF ADRIENNE D. COHEN

22
23 By: 

24 **ADRIENNE D. COHEN,**
25 **SEAN R. FERRON,**
26 Attorney for Defendant,
27 **TERRANCE J. OSMAN DBA 1911**
28 **BUILDERS**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This matter involves a shooting that took place on November 14, 2019 at Saugus High School in
4 Santa Clarita, California. The shooter was sixteen-year-old Nathaniel Burhow (“the shooter”).
5 Defendant lawfully sells “1911 80% Officer Build Kits” (hereinafter “80% Kits”) online. Plaintiff
6 alleges that an “80% Kit” sold by Defendant was used in the shooting. The sale of the “80% Kit” is not
7 subject to the same Federal and State Laws as the sale of completed firearms. The shooter intentionally
8 caused the shooting and engaged in criminal activity that has caused Plaintiff’s alleged injuries. The
9 shooter’s responsibility for Plaintiff’s injuries is clear. Plaintiff has alleged that Defendant unlawfully
10 sold a “firearm” to the shooter or to his father and makes claims against Defendant for damages that
11 were solely caused by the criminal actions of the shooter. Plaintiff makes these allegations even though
12 she admits that Defendant did not sell a completed firearm and only sold an “80% Kit” that was
13 allegedly then later finished to the point of being a firearm. These “80% Kits” are not firearms and
14 therefore Defendant was not negligent and did not commit any public nuisance. Defendants could not
15 have violated the statutes relating to the sale of firearms that Plaintiff uses to support her causes of
16 action. Plaintiff attempts to call the “80 Kit” a “firearm” throughout the Complaint, but admits that kits
17 like the one sold by Defendants are not completed “firearms.” (Complaint, Page 9).

18 Plaintiff has alleged causes of action against Defendants for Negligence, Negligent Entrustment,
19 and Public Nuisance. Plaintiff’s causes of action fail to allege sufficient facts to constitute causes of
20 action against Defendants. Also, Plaintiff’s causes of action for Negligence and Public Nuisance do not
21 allege facts sufficient to constitute a cause of action against Defendant, as Defendant is immune to these
22 causes of action pursuant to 15 USC §§ 7901-7903 or the Protection of Lawful Commerce in Arms Act
23 (hereinafter “PLCAA”).

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1 **II. A DEMURRER IS PROPERLY SUSTAINED WHERE THE COMPLAINT FAILS**
2 **TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION**

3 California Code of Civil Procedure §430.10 provides, in relevant part:

4 The party against whom a complaint or cross-complaint has been filed may object, by demurrer
5 or answer as provided in Section 430.30, to the pleading on any one or more of the following
6 grounds:

- 7 (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.
8 (b) The person who filed the pleading does not have the legal capacity to sue.
9 (c) There is another action pending between the same parties on the same causes of action.
10 (d) There is a defect or misjoinder of parties.
11 (e) **The pleading does not state facts sufficient to constitute a cause of action.**
12 (f) The pleading is uncertain.

11 As used in this subdivision, “uncertain” includes ambiguous and unintelligible . . .
12 [Emphasis added]

13 Additionally, California Code of Civil Procedure §430.30 provides:

- 14 (a) When any ground for objection to a complaint, cross-complaint or answer appears on the
15 face thereof, or from any matter of which the court is required to or may take judicial
16 notice, the objection on that ground may be taken by a demurrer to the pleading.

17 “A demurrer ‘only tests the legal sufficiency of the complaint, not the truth of its factual
18 allegations...’” (*Title Ins. Co. v. Comerica Bank* (1994) 27 Cal.App.4th 800, 807). Further, in reviewing
19 the sufficiency of a complaint, the court must treat the demurrer as admitting all material facts properly
20 pleaded, but not contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39
21 Cal.3d 311, 318). “While it is well settled that a demurrer admits the truth of all facts that are well
22 pleaded in the complaint, it does not, however, confess any omitted circumstance which is indispensable
23 to the cause of action upon which it is based, or essential to remedy an allegation specially challenged
24 for uncertainty or ambiguity. (*Goldstein v. Healy* (1921) 187 Cal. 206, 210.) Further, the complaint
25 allegations must be supported by “ultimate facts,” not legal conclusions. (*Burke v. Superior Court*
26 (1969) 71 Cal.2d 276.) More clearly stated, a Demurrer rejects “contentions, deductions or conclusions
27 of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)
28

1 As discussed below, Plaintiff's causes of action against Defendant for Negligence, Negligent
2 Entrustment and Public Nuisance are not supported by sufficient facts to constitute causes of action
3 against Defendant.

4
5 **III. THE STATUTES THAT PLAINTIFF ALLEGES DEFENDANT VIOLATED IN**
6 **SUPPORT OF HER CAUSES OF ACTION DO NOT APPLY TO DEFENDANT AND**
7 **THEREFORE PLAINTIFF IS UNABLE TO PLEAD SUFFICIENT FACTS TO**
8 **CONSTITUTE CAUSES OF ACTION AGAINST THIS DEFENDANT**

9 Plaintiff cites several Federal and California statutes in her Complaint and alleges that
10 Defendant's alleged violations of these statutes support her causes of action against Defendant
11 (Plaintiff's Complaint, Page 15, 16). Plaintiff alleges that Defendant was required to obtain a Federal
12 firearms license, sold "unsafe handguns," sold guns without required serial numbers, and failed to
13 perform a background check. Plaintiff attempts to use these alleged violations to support her causes of
14 action for Negligence, Negligent Entrustment, and Public Nuisance. Plaintiff's allegations do not allege
15 facts sufficient to support her causes of action though. Plaintiff is alleging violations of Federal and
16 California statutes that apply to sellers of completed or what is considered a completed "firearm" and
17 Plaintiff admits in the Complaint that Defendant was selling "80 Kits." (Plaintiff's Complaint, Page 11).
18 **These are not completed firearms.** These kits that Defendant was selling and Plaintiff alleges was
19 sold to the shooter or his father are not considered "firearms" and therefore the alleged statute violations
20 Plaintiff attempts to use to plead her causes of action are not applicable pursuant to the current law.
21 Accordingly, Plaintiff is unable to plead sufficient facts to support her causes of action.

22 According to Plaintiff's Complaint, Federal Law requires the seller to obtain Federal firearm
23 licenses prior to engaging in the business of dealing in **firearms**. The Federal Gun Control Act of 1968
24 or 18 U.S.C. § 921, defines a firearm as "(A) any weapon (including a starter gun) which will or is
25 designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame
26 or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive
27 device. Such term does not include an antique firearm." According to the United States Department of
28 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives on its website, a frame-casting or frame-
blank like a kit sold by Defendant where the fire-control cavity area is completely solid and un-
machined have not reached the stage of manufacture which would result in classification as a "firearm"

1 under the Federal Gun Control Act of 1968.¹ California Penal Code section 16520 defines a firearm as
2 follows:

- 3 (a) As used in this part, “firearm” means a device designed to be used as a weapon, from which
4 is expelled through a barrel, a projectile by the force of an explosion or other form of
5 combustion.
- 6 (b) As used in the following provisions, “firearm” includes the frame or receiver of the weapon.

7 Although California Penal Code section 16520(b) states that “firearm” includes the frame or
8 receiver of the weapon, California Penal Code section 16520(g), states ““firearm” includes the
9 unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a
10 finished firearm or receiver.” The “80% Kits” sold by Defendant are not “readily converted to the
11 functional condition of a finished firearm or receiver” and still require assembling, purchasing further
12 parts and drilling holes in the components to complete a “firearm.” Defendant does maintain a Federal
13 Firearms License, but the “80% Kits” that he sells do not qualify as “firearms.”

14 A “firearm” made by a Federally licensed manufacturer must be engraved with identifying
15 information: a unique serial number, as well as the make and model. However, under both Federal and
16 California law, this prerequisite is only required for a completed firearm. California Penal Code section
17 29180 states, “Prior to manufacturing or assembling a firearm, a person manufacturing or assembling the
18 firearm shall do all of the following... apply to the Department of Justice for a unique serial number or
19 other mark of identification pursuant to Section 29182...” Accordingly, an unfinished firearm is not
20 required to have a serial number and the person finishing and assembling the firearm is required to have
21 it registered with a serial number. If a person buys an “80 Kit” like the ones sold by Defendant, the
22 person who buys further parts and final assembles the firearm is required to obtain a serial number.

23 The Complaint also alleges that Defendant failed to perform a background check on the shooter’s
24 father and therefore did not determine that he was prohibited from owning a firearm pursuant to

25 ¹ “Receiver blanks that do not meet the definition of a “firearm” are not subject to regulation under the GCA. The ATF has
26 long held that items such as receiver blanks, “castings” or “machined bodies” in which the fire-control cavity area is
27 completely solid and un-machined have not reached the “stage of manufacture” which would result in the classification of a
28 firearm per the GCA.” <https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal>

1 California Welfare and Institutions Code section 5150. Defendant was not required by law to perform a
2 background check on the shooter's father to determine whether he was ineligible to own a firearm, as
3 Defendants sell 80% unfinished kits that do not qualify as firearms. (California Penal Code section
4 26710).

5 Plaintiff alleges that Defendant sold an "unsafe handgun" to the shooter or his father. As
6 discussed above, Defendant did not sell a "firearm" and therefore could not have sold an "unsafe
7 handgun" pursuant to California law. According to California Penal Code section 32000(a), "a person
8 who manufactures or causes to be manufactured, imports for sale into the state for sale, keeps for sale,
9 offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a
10 county jail not exceeding one year." However, as stated in the Complaint, an "unsafe handgun" is
11 defined as "any [[pistol, revolver, or other firearm capable of being concealed upon the person" that
12 does not have certain safety devices, meet firing requirements, or satisfy drop safety requirements. *Id.*
13 Here, the "80% Kit" does not meet the definition of firearm pursuant to the law, let alone an "unsafe
14 handgun".

15 Plaintiff relies on Defendant's alleged violations of Federal and California law relating to the
16 manufacture and sale of "firearms" to allege her causes of action against Defendant. Plaintiff is unable
17 to allege sufficient facts to constitute causes of action against Defendant for Negligence, Negligent
18 Entrustment, and Public Nuisance, as all of the alleged violations of law do not apply to Defendant.

19
20 **IV. DEFENDANT IS IMMUNE FROM CIVIL ACTIONS PURSUANT TO THE PLCAA**
WITH VERY LIMITED EXCEPTIONS

21 Under Federal Law, civil actions against firearm manufacturers and sellers arising from the
22 criminal misuse of firearms are generally preempted by the PLCAA, which provides manufacturers and
23 sellers of firearms and component parts of a firearm with immunity against "civil action[s] ... for
24 damages ... injunctive relief ... or other relief, resulting from the criminal or unlawful misuse" of a
25 qualified product. 15 U.S.C. § 7903(5)(A). The PLCAA's express purpose is to "prohibit causes of
26 action against manufacturers, distributors, dealers and importers of firearms" or a component of a
27 firearm for harm "caused by the criminal or unlawful use of firearms" that "functioned as designed and
28 intended." (15 U.S.C. § 7901(b)(1)). Under the plain and unambiguous terms of the PLCAA, a cause of

1 action that meets the definition of a “qualified civil liability action” shall not be brought in any federal or
2 state court. (15 U.S.C. § 7902(a)). Congress defined a “qualified civil liability action” as follows:

3 The term “qualified civil liability action” means a civil action or proceeding or an administrative
4 proceeding brought by any person against a manufacturer or seller of a qualified product, or a
5 trade association, for damages, injunctive or declaratory relief, abatement, restitution, fines, or
6 penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by
7 the person or a third party. 15 U.S.C. § 7903(5)(A).

8 15 U.S.C. § 7903(5)(A). 15 U.S.C. 7903(4) defines “qualified product” as “a firearm (as defined
9 in subparagraph (A) or (B) of section 921(a)(3) of title 18), including any antique firearm (as defined in
10 section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a
11 **component part of a firearm** or ammunition, that has been shipped or transported in interstate or
12 foreign commerce.” (Emphasis added). Although Defendant did not sell any “firearms,” he sold a
13 component part of a firearm and therefore the statute applies to Defendant. The Federal statute creates
14 broad immunity for firearm manufacturers and sellers, subject to certain limited exceptions. (15 U.S.C.
15 §§ 7903(5)(A)(i)-(vi)). A viable state law cause of action that fits within six enumerated exceptions is
16 not prohibited. The following are the six exceptions to the immunity created by Congress for firearm
17 manufacturers and sellers.

18 (IV) An action brought against a transferor convicted under section
19 924(h) of title 18, or a comparable or identical State felony law,
20 by a party directly harmed by the conduct for which the transferee
21 is also convicted;

22 (ii) an action brought against a seller for negligent entrustment or
23 negligence per se;

24 (iii) an action in which a manufacturer or seller of a qualified product
25 knowingly violated a State or Federal statute applicable to the sale or
26 marketing of the product, and the violation was a proximate cause of the
27 harm for which relief is sought, including—

28 (I) any case in which the manufacturer or seller knowingly
made any false entry in, or failed to make an appropriate entry in,
any record required to be kept under Federal or State law with
respect to the qualified product, or aided, abetted or conspired
with any person in making any false entry or fictitious oral or
written statement with respect to any fact material to the
lawfulness of the sale or other disposition of a qualified product;
or

1 (II) any case in which the manufacturer or seller aided, abetted,
2 or conspired with any person to sell or otherwise dispose of a
3 qualified product, knowing or having reasonable cause to believe,
4 that the actual buyer of the qualified product was prohibited from
possessing or receiving a firearm under subsection (g) or (n) of
section 922 of title 18;

5 (iv) an action for breach of contract or warranty in connection with the
6 purchase of the product;

7 (v) an action for death, physical injuries or property damage resulting
8 directly from a defect in design or manufacture of the product, when used
9 as intended or in a reasonably foreseeable manner, except that when the
10 discharge of the product was caused by a volitional act that constituted a
criminal offense, then such act shall be considered the sole proximate
cause of any resulting death, personal injuries or property damage.

11 (vi) an action or proceeding commenced by the Attorney General to
12 enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

13 (15 U.S.C. §§ 7903(5)(A)(i) – (vi)).

14 As explained below, certain causes of action by Plaintiff against Defendant are barred by the
15 PLCAA and do not fit within any of the enumerated exceptions.

16 **IV. PLAINTIFF’S CAUSES OF ACTION FOR GENERAL NEGLIGENCE AND PUBLIC
17 NUISANCE AGAINST DEFENDANT ARE BARRED BY THE PLCAA**

18 General Negligence and Public Nuisance are not enumerated as exceptions under the PLCAA.
19 The PLCAA preempts common law claims like general negligence and public nuisance against sellers of
20 firearms or components of firearms like Defendants. Congress did not provide an enumerated exception
21 for general negligence or public nuisance. “Congress consciously considered how to treat tort claims”
22 and it “chose generally to preempt all common law claims” except negligent entrustment and negligence
per se. (*Illeto v. Glock* 565 F.3d 1126, 1135 n.6 (9th Cir. 2009)).

23 An action in which a seller of a firearm or component of a firearm who “knowingly violated a
24 State or Federal statute applicable to the sale or marketing” of a **firearm** and “the violation was a
25 proximate cause of the harm for which relief is sought” is an exception to PLCAA immunity. 15 U.S.C.
26 § 7903(5)(A)(iii) (hereinafter referred to as “predicate exception”). The California statutes codifying
27 Negligence and Public Nuisance are not the type of statutes that meet the predicate exception.
28 California Negligence law is codified at California Civil Code 1714, which provides that everyone is

1 responsible for injuries caused by their lack of ordinary care. Public Nuisance is codified by California
2 Civil Code section 3480, which states “A public nuisance is one which affects at the same time an entire
3 community or neighborhood, or any considerable number of persons, although the extent of the
4 annoyance or damage inflicted upon individuals may be unequal.” Plaintiff alleges that Defendant
5 committed a public nuisance.

6 In *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135-36 (2009), the Court addressed the predicate
7 exception in the context of a claim that the defendant firearm manufacturer violated California Civil
8 Code section 3480 and created a public nuisance through its sale and distribution practices. The Court
9 rejected the assertion that an alleged violation of the California public nuisance statute defeats PLCAA
10 immunity under the predicate exception. (*Id.* at 1138). The court held that “Congress had in mind only
11 ... statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate
12 the firearms industry – rather than general tort theories that happened to have been codified by a given
13 jurisdiction.” (*Id.* at 1136). Plaintiff is also unable to use the alleged violations of the other statutes that
14 she has cited to meet the “predicate exception.” As explained above, these Federal and California
15 statutes cited by Plaintiff do not apply to the sale of “80% Kits” like the ones sold by Defendant.

16 The statutes in California relating to General Negligence and Public Nuisance do not regulate the
17 firearms industry or have anything to do with the sale of firearms. Plaintiff’s causes of action for
18 Negligence and Public Nuisance against Defendant are general claims that are not specifically
19 enumerated as exceptions under the PLCAA. Accordingly, Plaintiff’s causes of action for Negligence
20 and Public Nuisance are barred by the PLCAA and therefore fail to state causes of action against
21 Defendant and should be dismissed with prejudice.

22 **V. CONCLUSION**

23 For the foregoing reasons, Defendant requests that its demurrer to Plaintiff’s Negligence,
24 Negligent Entrustment, and Public Nuisance causes of actions be granted without leave to amend.

25 DATED: March 31, 2021

LAW OFFICES OF ADRIENNE D. COHEN

26 By:  _____

ADRIENNE D. COHEN,
SEAN R. FERRON,
Attorney for Defendant,
TERRANCE J. OSMAN DBA 1911
BUILDERS

PROOF OF SERVICE
(C.C.P. SECTION 1013 (a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county aforesaid; I am over the age of eighteen and not a party to the within action; my business address is 1551 N. Tustin Ave., Ste. 750, Santa Ana, CA 92705.

On March 31, 2021, I served the foregoing document described as:

NOTICE OF DEMURRER AND DEFENDANT TERRANCE J. OSMAN DBA 1911 BUILDERS' DEMURRER TO PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF SEAN R. FERRON

in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- I caused to be delivered by courier, such envelope by hand the offices of the addressee(s).
- I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, I deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- The document was served via electronic transmission using E-mail to the address(es) listed in the attached Service List.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on March 31, 2021, at Santa Ana, California.


Justin Turbow

SERVICE LIST

RE: **MIA TRETТА, ET AL. VS TERRANCE J. OSMAN, ET AL.**
LASC Case No.: 20STCV48910

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Court Reservation Receipt

Reservation

Reservation ID:
662847144109

Status:
RESERVED

Reservation Type:
Demurrer - with Motion to Strike (CCP 430.10)

Number of Motions:
1

Case Number:
20STCV48910

Case Title:
MIA TRETТА, et al. vs TERRANCE J. OSMAN, et al.

Filing Party:
Terrance J. Osman (Defendant)

Location:
Chatsworth Courthouse - Department F49

Date/Time:
June 28th 2021, 8:30AM

Confirmation Code:
CR-YERXPRRZ5FYGCNXCR

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Demurrer - with Motion to Strike (CCP 430.10)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	13.61	1	13.61
TOTAL			\$508.61

Payment

Amount:
\$508.61

Type:
Visa

Account Number:
XXXX7364

Authorization:
03955D

[← Back to Main](#)

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