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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 vs.

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

19 Defendants.

**CASE NO.: 20STCV48910**

**[Complaint filed: 12/22/2020]**

**JUDGE: STEPHEN P. PFAHLER**

**DEPT.: F-49**

**DEFENDANT TERRENCE J. OSMAN  
DBA 1911 BUILDERS' REPLY TO  
OPPOSITION OF PLAINTIFF AND  
IN SUPPORT OF DEMURRER TO  
PLAINTIFF'S COMPLAINT**

Date: June 28, 2021

Time: 8:30 a.m.

Dept: F-49

**Reservation No.: 66284714409**

24 Defendant TERRENCE J. OSMAN DBA 1911 BUILDERS (hereinafter "Defendant")  
25 respectfully submits the following Reply to Opposition of Plaintiff and in Support of Demurrer to  
26 Plaintiff's First Amended Complaint.

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1           **I. INTRODUCTION**

2           Defendant is a small and individual online seller of incomplete, legal, and unfinished gun  
3 component kits who follows all required and applicable rules and protocols relating to the sale of such  
4 components. Defendant has been named in this suit, even though he followed all required rules and  
5 protocols, because Plaintiff is attempting to interpret the applicable Federal and State statutes incorrectly  
6 and change the rules after a horrible criminal act was committed by an individual.

7           Plaintiff’s repetitive and lengthy arguments in her Opposition that allege Defendant sells  
8 firearms and therefore the Federal and State statutes apply to Defendant and that Defendant is not  
9 immune to her causes of action pursuant to 15 USC §§ 7901-7903 or the Protection of Lawful  
10 Commerce in Arms Act (hereinafter “PLCAA”), are incorrect. Plaintiff attempts to now argue that  
11 Defendant sells “firearms” because the components that he sells are “designed to or readily be converted  
12 to expel a projectile by the action of an explosive” are not correct. In fact, Plaintiff alleges in her  
13 Complaint that an “80% Kit” sold by Defendant was used in the shooting. Plaintiff admits in the  
14 Complaint that Defendant did not sell a completed firearm and only sold an “80% Kit” that was  
15 allegedly then later finished to the point of being a firearm. (Complaint, Page 9). These “80% Kits” are  
16 not firearms and therefore Defendant cannot be negligent and did not commit any public nuisance.  
17 Defendants could not have violated the statutes relating to the sale of firearms that Plaintiff uses to  
18 support her causes of action, as they only apply to the sale of “firearms.” Plaintiff argues that even if  
19 she is unable to allege statutory violations, Plaintiff maintains “common law” causes of action. As  
20 outlined in the Demurrer, the PLCAA preempts common law claims like general negligence and public  
21 nuisance against sellers of “qualified products” like Defendant.

22           Plaintiff further argues in her Opposition that Defendant does not have a Federal Firearm License  
23 and therefore the PLCAA does not apply to him as a “seller” of “qualified products” under the PLCAA.  
24 Defendant disputes Plaintiff’s allegations relating to the license, but a Federal Firearms License is not  
25 required to sell “80 Kits” like those being sold by Defendant. Most importantly, even if Defendant did  
26 not maintain a Federal Firearms License, the PLCAA still applies to him, as the PLCAA only requires a  
27 Federal Firearm License when selling “firearms” and not components of “firearms.” Accordingly, even  
28 if Plaintiff is correct that Defendant does not individually maintain a Federal Firearms License and

1 maintains it for another business, he still is afforded the protection of the PLCAA as he did not sell a  
2 “firearm” that is at issue in the present matter.

3 Defendant maintains that Plaintiff is unable to maintain all of her causes of action for  
4 Negligence, Negligent Entrustment and Public Nuisance against Defendant, as Plaintiff is unable to  
5 allege facts sufficient to constitute causes of action since he is not subject to the Federal and State  
6 statutes that Plaintiff alleges that he violated in the Complaint. Even if Plaintiff were able to maintain  
7 her causes of action against Defendant generally with her allegations in the Complaint, Plaintiff would  
8 only be able to legally survive a demurrer and the initial pleading stage against Defendant pursuant to  
9 her cause of action for Negligent Entrustment pursuant to the PLCAA, as Negligent Entrustment is the  
10 only exception to the PLCAA that actually applies in this matter. The “predicate exception” under the  
11 PLCAA alleging a knowing violation of a statute relating to the sale of a product does not apply to  
12 Defendant since the statute requires that the violation be the “proximate cause” of the harm for the  
13 exception to apply and the shooter’s criminal conduct is clearly the “proximate cause” of the harm being  
14 alleged here.

15 **II. PLAINTIFF’S ALLEGED VIOLATIONS OF FEDERAL AND STATE STATUTES**  
16 **TO SUPPORT HER CAUSES OF ACTION DO NOT APPLY TO DEFENDANT**

17 Plaintiff cites several Federal and California statutes in her Complaint and alleges that  
18 Defendant’s alleged violations of these statutes support her causes of action against Defendant  
19 (Plaintiff’s Complaint, Page 15, 16). Plaintiff alleges that Defendant was required to obtain a Federal  
20 Firearms License, sold “unsafe handguns,” sold guns without required serial numbers, and failed to  
21 perform a background check. Plaintiff attempts to use these alleged violations to support her causes of  
22 action for Negligence, Negligent Entrustment, and Public Nuisance. Plaintiff’s allegations do not allege  
23 facts sufficient to support her causes of action though. Plaintiff is alleging violations of Federal and  
24 California statutes that apply to sellers of completed or what is considered a completed “firearm” and  
25 Plaintiff admits in the Complaint that Defendant was selling “80 Kits.” (Plaintiff’s Complaint, Page 11).

26 The Federal Gun Control Act of 1968 or 18 USC § 921, defines a firearm as “(A) any weapon  
27 (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by  
28 the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or  
firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” As

1 discussed in Defendant's Demurrer, the United States Department of Justice, Bureau of Alcohol,  
2 Tobacco, Firearms and Explosives on its website, a frame-casting or frame-blank like a kit sold by  
3 Defendant where the fire-control cavity area is completely solid and un-machined have not reached the  
4 stage of manufacture which would result in classification as a "firearm" pursuant to the Federal statutes.  
5 (Fn. 1 to Defendant's Demurrer, Page 6.)

6 In the present matter, the "80% Kits" being sold by Defendant and at issue in this matter clearly  
7 do not meet the definition of "firearm" pursuant to the Federal requirements. The "80% Kits" sold by  
8 Defendant are not "readily converted to the functional condition of a finished firearm or receiver" and  
9 still require assembling, machining, purchasing further parts and drilling holes in the components to  
10 complete a "firearm." Plaintiff admits in her Complaint that there are further steps that need to be  
11 performed on an "80% Kit" to complete a functioning "firearm" and more products must also be  
12 purchased and machining is required. (Plaintiff's Complaint, Page 12.) Defendant is clearly not selling  
13 "firearms" that would subject him to alleged violations of the statutes being alleged by Plaintiff.

14  
15 **III. DEFENDANT IS AFFORDED THE PROTECTION OF THE PLCAA AS HE IS**  
16 **SELLING "QUALIFIED PRODUCTS" AND IS NOT SELLING "FIREARMS"**

17 Plaintiff argues that Defendant is not afforded the protections of the PLCAA on the grounds that  
18 he does not maintain a Federal Firearms License. Defendant disputes Plaintiff's allegations regarding  
19 the license, but a Federal Firearms License is not required to sell "80 Kits" like those being sold by  
20 Defendant. Furthermore, even if Defendant did not maintain a Federal Firearms License, the PLCAA  
21 still applies to him, as the PLCAA only requires a Federal Firearm License when selling "firearms" and  
22 not components of "firearms" pursuant to the statute. Accordingly, even if Plaintiff is correct that  
23 Defendant does not individually maintain a Federal Firearms License and maintains it for another  
24 business, he still is still afforded the protection of the PLCAA as he did not sell a "firearm" at issue in  
25 the present matter.

26 The PLCAA or 15 USC § 7903(6) defines a seller as either an "importer" or a "dealer" or a  
27 person selling ammunition. Applicable to Defendant, a "dealer" is one who, "is engaged in the business  
28 as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a

1 dealer under chapter 44 of title 18, United States Code [18 USC §§ 921 et seq.] (15 USC § 7903(6)(B)).  
2 18 USC § 921(a)(11) defines a dealer as:

3  
4 “The term “dealer” means (A) any person engaged in the business of selling firearms at  
5 wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or  
6 fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a  
7 pawnbroker. The term “licensed dealer” means any dealer who is licensed under the provisions  
8 of this chapter [18 UCS §§ 921 et seq].” [Emphasis added.]

9 18 USC § 923 titled “Licensing” defines a “licensed dealer.” Subsection (a) reads:

10 “No person shall engage in the business of importing, manufacturing, or dealing in **firearms, or**  
11 **importing or manufacturing ammunition**, until he has filed an application with and received a  
12 license to do so from the Attorney General. The application shall be in such form and contain  
13 only that information necessary to determine eligibility for licensing as the Attorney General  
14 shall by regulation prescribe and shall include a photograph and fingerprints of the applicant.  
15 Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each  
16 place in which the applicant is to do business, as follows . . . [Emphasis added]

17 As Defendant is not selling “firearms” or importing manufacturing ammunition, Defendant is not  
18 required to be licensed pursuant to the PLCAA to apply and receive the protections. Defendant is still  
19 selling “qualified products” since he is selling components of firearms and is therefore afforded the  
20 protections of the PLCAA. Even if Defendant were not licensed to sell the “80 Kits” as Plaintiff argues  
21 in her Opposition, Plaintiff is still barred from bringing her causes of action against Defendant pursuant  
22 to the PLCAA. Defendant maintains that Plaintiff cannot properly allege facts to constitute any of her  
23 causes of action, but if the Court finds that the PLCAA immunity is all that applies at this stage, Plaintiff  
24 could only proceed on a Negligent Entrustment cause of action. Negligent Entrustment is the only  
25 enumerated exception to the PLCAA that could potentially allow any action against Defendant to go  
26 forward pursuant to the PLCAA.

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1 **IV. PLAINTIFF’S CAUSES OF ACTION DO NOT MEET THE “PREDICATE**  
2 **EXCEPTION” TO THE PLCAA AND THEREFORE ARE BARRED AGAINST THIS**  
3 **DEFENDANT**

4 An action in which a seller of a firearm “knowingly violated a State or Federal statute applicable  
5 to the sale or marketing” of a firearm and “the violation was a proximate cause of the harm for which  
6 relief is sought” is an exception to PLCAA immunity. (15 USC § 7903(5)(A)(iii) (hereinafter referred to  
7 as “predicate exception”). Plaintiffs’ causes of action also do not meet the “predicate exception” of the  
8 PLCAA. Plaintiff argues in her Opposition that since she alleges in her Complaint that Defendant  
9 violated several Federal and State statutes relating to his sale of the “80 Kits,” which Defendant denies,  
10 she can proceed on her causes of action. The alleged statutory violation must be the “proximate cause”  
11 of the harm for it to meet the exception in the PLCAA. (15 USC § 7903(5)(A)(iii). In the present  
12 matter, the shooter clearly intentionally caused the shooting and engaged in criminal activity that has  
13 proximately caused Plaintiff’s alleged injuries. Plaintiff alleges this in her Complaint. The shooter’s  
14 responsibility for Plaintiffs’ injuries is clear and this is the proximate cause of Plaintiff’s alleged injuries.

15 The PLCAA makes it clear when defining the “products liability” exception to the PLCAA that  
16 the exception does not apply when the allegedly defective firearm discharge is the result of a “volitional  
17 act” that constitutes “a criminal offense.” The criminal act “shall be considered the sole proximate  
18 cause” of any resulting personal injuries or death. (15 USC 7903(5)(A)(v), *Chavez v. Glock, Inc.* (2012)  
19 207 Cal.App.4th 1283, 1317-1318). Accordingly, it is clear that when a shooting is the result of an  
20 intentional act that constitutes a criminal offense like in this matter, Congress intended that that act be  
21 considered the “sole proximate cause.” In the present matter, this is on all fours with the current  
22 situation as the shooter intentionally and criminally committed this horrible act that has caused  
23 Plaintiff’s alleged damages.

24 Accordingly, Defendant is immune pursuant to the PLCAA from Plaintiff’s causes of action for  
25 General Negligence and Public Nuisance. If the Court finds that the PLCAA is all that applies to bar  
26 certain of Plaintiff’s causes of action, Plaintiff may then only proceed against Defendant as to her cause  
27 of action for Negligent Entrustment, as this is the only enumerated exception to the PLCAA that applies.

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1       **V. CONCLUSION**

2               For the foregoing reasons, Defendant requests that its demurrer to Plaintiff's Negligence,  
3 Negligent Entrustment, and Public Nuisance causes of actions be granted without leave to amend.  
4

5  
6 DATED: June 18, 2021

**LAW OFFICES OF ADRIENNE D. COHEN**

7  
8  
9 By: \_\_\_\_\_



**ADRIENNE D. COHEN,**  
**SEAN R. FERRON,**  
Attorneys for Defendant,  
**TERRENCE 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 June 18, 2021, I served the foregoing document described as:

**DEFENDANT TERRENCE J. OSMAN DBA 1911 BUILDERS' REPLY TO OPPOSITION OF PLAINTIFF AND IN SUPPORT OF DEMURRER TO PLAINTIFF'S COMPLAINT**

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

SEE ATTACHED SERVICE LIST

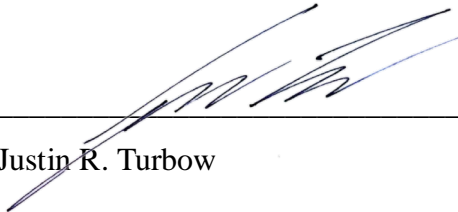
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on June 18, 2021, at Santa Ana, California.

  
Justin R. Turbow



**SERVICE LIST**

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

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