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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 MIA TRETТА AND IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY
ADJUDICATION**

Date: June 29, 2022
Time: 8:30 a.m.
Dept: F-49

Reservation No.: 716019033796

24 Defendant TERRENCE J. OSMAN DBA 1911 BUILDERS (hereinafter "Defendant")
25 respectfully submits the following Reply to Opposition of Plaintiff MIA TRETТА (hereinafter
26 "PLAINTIFF") and in Support of Motion for Summary Judgment, or in the Alternative, Motion for
27 Summary Adjudication.
28

1 **I. INTRODUCTION**

2 The shooting incident at issue in this matter that took place on November 14, 2019 at Saugus High
3 School in Santa Clarita, California. was a terrible tragedy. The shooter intentionally and criminally caused
4 the horrific shooting. This criminal act is the sole cause of Plaintiff’s injuries. The shooter’s responsibility
5 for Plaintiff’s injuries is clear. As proven by the evidence presented by Defendant with its Motion, the
6 “80% Kit” sold to the shooter’s father does not meet the definition of “firearm” as a matter of law.
7 Therefore, the sale is not subject to the statutes and special duties that Plaintiff cites in her Complaint as
8 a basis for liability. Plaintiff’s sole basis for liability against Defendant in this matter relies on allegations
9 that Defendant unlawfully sold a “**firearm**” to the shooter’s father. Therefore, Plaintiff’s causes of action
10 in this matter all depend on a finding that the “80% Kit” that was sold to the shooter’s father met the
11 definition of a “**firearm**” under the law. The Federal Gun Control Act of 1968 or 18 U.S.C. § 921, defines
12 a firearm as “(A) any weapon (including a starter gun) which will or is designed to or may readily be
13 converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon;
14 (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an
15 antique firearm.” California Penal Code section 16520 defines a firearm as “a device designed to be used
16 as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other
17 form of combustion.” The “80% Kits” sold by Defendant to the shooter’s father prior to the shooting do
18 not meet the definition of “firearm” under Federal or California law and therefore are not firearms as a
19 matter of law.

20 The laws relating to “80 Kits” have recently been changed to require certain markings with serial
21 numbers and background checks, which previously only applied to “firearms.” At the time of the sale of
22 the subject “80% Kit” to the shooter’s father and until very recently, there were no background checks or
23 markings with serial numbers required for the sale of “80 Kits” like the ones sold by Defendant to the
24 shooter’s father. Further, since Defendant was not selling “firearms” as a matter of law, he was not
25 required to have a Federal Firearms License to sell “80% Kits.” The “80% Kits” do not qualify as
26 “firearms,” which is what is required for all of the statutes that Plaintiff alleges Defendant violated.
27 Defendant followed all applicable laws at the time of the sale of the “80 Kit” to the shooter’s father. In
28 order to have sensible and enforceable laws regarding gun sales in light of the established constitutional

1 right to bear arms, the law cannot be retroactive and sellers cannot be punished for following the applicable
2 laws at the time of the sale.

3 Plaintiff attempts in her Opposition to make this case about policy issues and arguments that would
4 be similar to those made to the legislature in seeking changes to existing laws. This case is not about
5 policy and whether Plaintiff agrees with the sale of “80% kits” and other parts to later put together what
6 could become a “firearm.” The Court cannot address morality, but can only address the reasonableness
7 under the law. This matter and Defendant’ Motion depends on whether Defendant owed any legal duty
8 to Plaintiff relating to certain alleged legal obligations in selling “80 Kits” and whether Defendant violated
9 any laws or breached any duty to Plaintiff at the time of the sale.

10 As evidenced by Plaintiff’s Complaint in this matter, Plaintiff relies on Defendant’s **alleged**
11 **violations** of Federal and California law relating to the manufacture and sale of “**firearms**” to allege and
12 support her causes of action against Defendant. Defendant abided by the law and Plaintiff has not
13 presented any admissible evidence in her Opposition to support her causes of action for Negligence,
14 Negligent Entrustment and Public Nuisance against Defendant because Defendant did not owe any duty
15 to her relating to the sale of the “80% Kit.”

16
17 **II. PLAINTIFF’S CLAIMS DO REST ON WHETHER THE “80 KIT” SOLD BY**
18 **DEFENDANT WAS A “FIREARM” SINCE PLAINTIFF RELIES ON CERTAIN**
19 **STATUTES TO PROVE HER CAUSES OF ACTION THAT WOULD ESTABLISH**
20 **ANY DUTY FOR DEFENDANT**

21 Plaintiff argues in her Opposition that her claims do not rest on whether or not the “80 Kit” sold
22 by Defendant was a “firearm,” as Defendant would owe a “general duty” to her regardless. Plaintiff does
23 not specifically define or describe in her Opposition what “general duty” Defendant would owe to
24 Plaintiff, especially when Plaintiff relies on certain violations of statutes to prove her causes of action in
25 her Complaint. The general rule in California regarding duty is that “everyone is responsible, not only for
26 the result of his or her willful acts, but also for an injury occasioned to another by his or her want of
27 ordinary care or skill in the management of his or her property or person, except so far as the latter has,
28 willfully or by want of ordinary care, brought the injury upon himself or herself.” (California Civil Code

1 section 1714(a)). The proper conduct of a reasonable person in a particular situation may become settled
2 by judicial decision or may be established by statute or administrative regulation. (*Ramirez v. Plough, Inc.*
3 (1993) 6 Cal.4th 539, 547). In the present matter, any duty relating to the sale of guns or parts used to
4 build a gun is defined by the law. Plaintiff has outlined certain statutes that she alleges Defendant violated
5 in her Complaint and uses these alleged violations as the basis for liability. There can be no other
6 interpretation of an alleged duty owed in this instance other than the laws that apply to and govern the sale
7 of “80% Kits.” It is undisputed that Defendant abided by the law that existed at the time of the sale.

8
9 **III. THERE ARE NO TRIABLE ISSUES OF MATERIAL FACT AS TO WHETHER**
10 **THE “80 KITS” SOLD BY DEFENDANT ARE “FIREARMS” AND THEREFORE**
11 **PLAINTIFF’S CAUSES OF ACTION FAIL**

12 Plaintiff cites to several Federal and State statutes in her Complaint as the basis for liability against
13 Defendant. If the “80% Kits” that Defendant sells are not “firearms”, then the statutes that Plaintiff uses
14 to support her causes of action against Defendant do not apply. The evidence presented by Defendant
15 with his Motion makes it clear that the “80% Kits” are not “firearms.”

16 There is no dispute that the “80% Kits” sold by Defendant cannot be fired until they are machined
17 and further assembled using tools that are not sold as part of the kit. [SSUF 10]. It takes an expert an
18 estimated eight (8) hours to put together a completed 1911 firearm using all of the required parts and tools.
19 [SSUF 11]. The “80% Kits” sold by Defendant are not firearms. The frames that are contained in the
20 “80% Kits” like the one sold and at issue in this matter need to be machined and drilled with tools not
21 included in the kit prior to the kit being completed and made into a firearm. [SSUF 21]. The United States
22 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (“hereinafter “ATF”)
23 previously determined that the “1911-style frame” sold with the “80% Kits” by Defendant **does not** meet
24 the definition of a "firearm." [SSUF 22]. The “1911-style frame” that the United States Department of
25 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives determined does not meet the definition of
26 “firearm” pursuant to the Federal Gun Control Act of 1968 or 18 U.S.C. § 921 is the same frame that was
27 sold by Defendant to Mark Berhow with the subject “80% Kit” which is at issue in this matter. [SSUF
28 23].

1 Plaintiff has not presented any admissible evidence to controvert the evidence presented by
2 Defendant that the “80% Kits” sold by Defendant do not meet the definition of “firearm.” Plaintiff has
3 only presented several irrelevant and inadmissible articles and a declaration from a retired ATF agent
4 regarding alleged “ghost guns” that have no applicability to this Motion and whether the “80% Kit” sold
5 by Defendant is a “firearm.” Plaintiff presented no admissible evidence to controvert Defendant’s
6 evidence that the “80% kits” cannot be fired until they are machined further and assembled using tools
7 that are not sold as part of the kit. Also, Plaintiff presented no admissible evidence to controvert the
8 evidence presented by Defendant that it takes an expert an estimated eight (8) hours to put together a
9 completed “80% Kit.” Since it is undisputed that it takes an expert an estimated eight (8) hours to put
10 together an “80% Kit” using other parts and tools not sold as part of the kit and the “80% Kit” cannot be
11 fired until they are machined and further assembled using tools not included as part of the “80% Kit,” it
12 is undisputed that the kit is not “readily converted” to “expel a projectile” as required by the law to qualify
13 as a “firearm.”

14 Plaintiff argues in her Opposition that since the ATF approval letter received by Defendant relating
15 to the “1911-style frame” from the ATF is dated after the sale of the subject “80 Kit” to Mr. Berhow in
16 this matter, it is “irrelevant, inadmissible, and invalidated.” (Plaintiff’s Opposition, Page 17). The letter
17 received by Defendant from the ATF approving the “1911-style frame” involved review of the same frame
18 that was sold by Defendant to Mark Berhow with the subject “80% Kit” which is at issue in this matter.
19 [SSUF 23]. Plaintiff has presented no admissible evidence to controvert the evidence presented by
20 Defendant that the submission to the ATF and approval involved the same frame as what was sold to Mr.
21 Berhow.

22 Further, Plaintiff argues that the whole kit should have been submitted for review. The ATF was
23 reviewing the frame presented by Defendant under the Federal Gun Control Act of 1968 or 18 U.S.C. §
24 921, which defines a firearm as “(A) any weapon (including a starter gun) which will or is designed to or
25 may readily be converted to expel a projectile by the action of an explosive; (B) **the frame or receiver of**
26 **any such weapon;** (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term
27 does not include an antique firearm.” [Emphasis added] [SSUF 22, 23, Exhibit 2 to the Osman
28 Declaration]. The frame would have been the only thing submitted for approval by the ATF relating to

1 whether it constituted a “firearm,” as that is the only part sold by Defendant as part of the “80% Kit” that
2 would be regulated and governed by 18 U.S.C. § 921 as “the frame or receiver of any such weapon.” At
3 the time of the sale of the “80% Kit” at issue in this matter, the ATF reviewed and approved the “1911-
4 style frame” which is all that would apply to Defendant under the Federal Gun Control Act of 1968 or 18
5 U.S.C. § 921, as it is undisputed that the “80% Kit” sold by Defendant is not “readily converted to expel
6 a projectile.” Further, it is undisputed that the “80% Kits” sold by Defendant require machining and
7 further assembly using tools that are not sold as part of the kit [SSUF 21]. Plaintiff’s unsupported
8 argument regarding submitting all parts that would be required to complete a “firearm” to the ATF for
9 approval would have required Defendant to submit several other parts and tools that are not sold as part
10 of the “80% Kit” and that are not controlled or reviewed by the ATF pursuant to the Federal Gun Control
11 Act of 1968 or 18 U.S.C. § 921.

12 Plaintiff also alleges in her Opposition that Defendant violated other State statutes, namely the
13 California Unsafe Handgun Act. (Plaintiff’s Opposition, Page 22). Plaintiff does not dispute that
14 Defendant’s “80% Kit” did not qualify as a “firearm” under California law at the time of the subject sale,
15 but instead argues that because the statute includes “causes to be manufactured...an unsafe handgun,” the
16 statute governs the sale of parts like Defendant sells. Plaintiff makes this argument even though it is
17 undisputed that Defendant’s “80 Kits” require additional parts, tools, and machining to be a fully be
18 converted into a functional “firearm.” Defendant is not manufacturing or causing to be manufactured
19 firearms in the “80% Kit” it sells, as the kits require many more hours of completion, further parts, tools
20 and machining. [SSUF 10, 11, 21]. Since Defendant did not sell a “**firearm**” or cause to be manufactured
21 what would constitute an “unsafe handgun,” this statute would not apply to Defendant’s sale of the “80%
22 Kit” at issue in this matter.

23
24 **IV. PLAINTIFF’S CAUSE OF ACTION FOR PUBLIC NUISANCE FAILS AS WELL**
25 **BECAUSE DEFENDANT’S “80 KIT” DOES NOT QUALIFY AS A FIREARM AND**
26 **DEFENDANT WAS NOT A SUBSTANTIAL FACTOR IN CAUSING PLAINTIFF**
27 **HARM**

28 Plaintiff argues in her Opposition that she can proceed on her cause of action for Public Nuisance
using the same policy arguments and incorrect analysis regarding Federal and State Statutes relating to

1 the sale of “firearms” applying to Defendant. As discussed above, it is undisputed that Defendant was not
2 selling “firearms” and therefore the statutes that Plaintiff uses to support all of her causes of action do not
3 apply to Defendant. “‘Where negligence and nuisance causes of action rely on the same facts about lack
4 of due care, the nuisance claim is a negligence claim.’ The nuisance claim ‘stands or falls with the
5 determination of the negligence cause of action’ in such cases.” (*Melton v. Boustred* (2010) 183
6 Cal.App.4th 521, 542).

7 In the present matter, Plaintiff relies on the same facts about lack of due care as to Defendant
8 relating to her Public Nuisance cause of action. Accordingly, Plaintiff’s cause of action for Public
9 Nuisance is essentially a *negligence* claim. Plaintiff’s causes of action for Negligence and Negligent
10 Entrustment, Plaintiff’s causes of action in this matter depend on a finding that the “80% Kit” sold to the
11 shooter’s father qualifies as a “firearm.” The “80% Kit” sold by Defendant to the shooter’s father does
12 not qualify as a “firearm” as a matter of law. Accordingly, the undisputed facts in this matter show that
13 Defendant is entitled to summary judgment, as a matter of law, as Defendant did not owe any duty to
14 Plaintiff relating to the sale of the “80% Kit.”

15 Even if it were determined that Plaintiff’s cause of action for Public Nuisance alleges different
16 facts as her negligence claims and therefore Plaintiff does not have to prove negligence, Plaintiff’s cause
17 of action for Public Nuisance requires a showing that Defendant’s conduct was a substantial factor in
18 causing her harm. (CACI 2020). If a defendant demonstrates in his motion for summary judgement
19 through the evidence presented in the action, that the plaintiff cannot reasonably expect to establish a
20 prima facie case of causation, “the trial court [would be] justified in awarding summary judgement to
21 avoid a useless trial.” (*Saelzler v. Advanced Group* (2001) 25 Cal.4th 763, 768; *Padilla v. Rodas* (2008)
22 160 Cal.App.4th 742, 752). In the present matter, Defendant has presented admissible evidence that it did
23 not violate any law or breach any duty, if any duty was owed to Plaintiff, relating to the subject sale of the
24 “80% Kit.” Plaintiff relies on a Federal case, *Illeto v. Glock, Inc.* (9th Cir. 2003) 349 F. 3d. 1191, relating
25 to similar allegations of the negligent sale of “firearms” as sufficient to surpass the threshold of being a
26 substantial factor in causing the injuries alleged. (Plaintiff’s Opposition, Page 24). The *Illeto* matter
27 involved a defendant (Glock) that was selling what undisputedly qualified as “firearms” and the Court
28 based its analysis regarding substantial factor on the sale of “firearms.” Defendant’s “80% Kit” does not

1 qualify as a “firearm” pursuant to the law. Plaintiff has not presented any admissible evidence regarding
2 any statute that applies to Defendant or Defendant even violated to constitute Defendant being a
3 substantial factor in Plaintiff’s harm.

4 In summary, Plaintiff relies on Defendant’s **alleged violations** of Federal and California law
5 relating to the manufacture and sale of “**firearms**” to support her causes of action against Defendant.
6 Defendant was not selling “firearms” as a matter of law because the “80% Kit” sold does not meet the
7 definition of “firearm” as a matter of law and therefore the sale is not subject to the statutes and special
8 duties that Plaintiff cites in her Complaint as the basis for liability against Defendant. Defendant abided
9 by the law and Plaintiff is therefore unable to present any admissible evidence to support her causes of
10 action against Defendant.

11 **V. CONCLUSION**

12 For the foregoing reasons and those set forth in the moving papers, Defendant respectfully requests
13 that the Court grant its Motion for Summary Judgment, or in the alternative, Summary Adjudication,
14 pursuant to California Code of Civil Procedure section 437c.

15
16
17 DATED: June 24, 2022

LAW OFFICES OF ADRIENNE D. COHEN

18
19 By: 
20 **ADRIENNE D. COHEN,**
21 **SEAN R. FERRON,**
22 Attorney for Defendant,
23 **TERRENCE J. OSMAN DBA 1911**
24 **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 18300 Von Karman Avenue, Suite 410, Irvine, CA 92612.

On June 24, 2022, I served the foregoing document described as:

DEFENDANT TERRENCE J. OSMAN DBA 1911 BUILDERS' REPLY TO OPPOSITION OF PLAINTIFF MIA TRETТА AND IN SUPPORT OF MOTION FOR SUMARY JUDGMENT, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY ADJUDICATION

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 caused to be delivered overnight via FedEx, such envelope by hand to the offices of the addressee(s).
- 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 June 24, 2022, at Irvine, 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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