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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MIA TRETTA, through her guardian ad litem Tiffany Shepis-Tretta,

Plaintiff,

v.

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

Defendants.

CASE NO. 20STCV48910

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT MAMI MATSUURA-BERHOW'S MOTION FOR SUMMARY JUDGMENT

Date: February 21, 2023
Time: 8:30 a.m.
Dept.: F-49
Reservation No.: 236764373135

Action Filed: December 22, 2020

Trial Date: June 26, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

On November 14, 2019, Defendant Mami Matsuura-Berhow's 16-year-old son took one of the numerous unsecured firearms lying around their house and used it to intentionally murder two students in cold blood at Saugus High School. Nathaniel Berhow (the "Shooter") tried to kill three others, including then-15-year-old Plaintiff Mia Tretta, who was shot in the stomach and airlifted to a hospital where she spent the next six days recovering from a gunshot wound and subsequent surgery. The Shooter—too young to legally possess firearms on his own—had access to numerous weapons in his home, including a handgun that he kept in his desk drawer, a handgun kept under his mother's bed, a semiautomatic rifle stored unlocked in a refrigerator in the garage, a bayonet on top of the mattress of his upper bunk bed, and a machete on the floor of his mother's room. While Defendant Matsuura-Berhow's motion paints a sympathetic set of circumstances, she fails to acknowledge the veritable arsenal of weapons littered all around the house that *she* controlled and shared with her minor son.

The weapons were not the only concerning items scattered around the house. In his room, which Defendant Matsuura testified that she cleaned on a regular basis, her son kept papers in which he described himself as "partially psychotic, and sadistic," and wrote about his plan "to make [a] mark in the U.S.A." He also kept court paperwork and newspaper clippings from the early 1980s concerning his deceased father's arrest detonating explosive devices. There were clear signs that Defendant Matsuura-Berhow's son had a dangerous fascination with violence and hurting himself and other living beings. Despite this, Defendant Matsuura-Berhow failed to take any precautions to prevent harm to others, even though as a parent, she had a duty to supervise her minor child, who lived with her full-time. She also had a general duty to use a heighted standard of care concerning the storage and access of the firearms in her home. Her breach of these duties foreseeably led to the shooting of Plaintiff Mia Tretta. For this, Defendant Matsuura-Berhow should be held accountable.

II. FACTUAL BACKGROUND

Sixteen-year-old Nathaniel Berhow was the son of Mark Berhow and Mami Matsuura-Berhow. (Plaintiffs' Separate Statement of Additional Undisputed Material Facts ("PMF") No. 1.) Guns were a hobby for Mark Berhow, and he shared that hobby with his son. (PMF No. 2.) At one

point, Mark had at least 42 guns in the home, some of which were loaded and easily accessible. (PMF No. 3.) In 2015, Mr. Berhow became a prohibited possessor and purchaser of firearms after being taken to a psychiatric hospital for a review pursuant to Welfare and Institutions Code Section 5150. (PMF No. 4.) Despite knowing he could not lawfully obtain a firearm, Mr. Berhow ordered the gun used to shoot Mia from 1911Builders.com, a website operated by Defendant Terrance J. Osman. (PMF No. 5.)

Mr. Berhow died suddenly in 2017, two years before the shooting, leaving Defendant Matsuura-Berhow as the sole guardian of their son, and the sole adult in control of the house that they shared. (PMF Nos. 6, 20.) Years after his passing, unsecured guns were still everywhere in the home. PMF Nos. 7-9.) One unmarked handgun was under Defendant Matsuura-Berhow's bed. (PMF No. 7.) A semiautomatic rifle, along with other gun parts, was in an unlocked refrigerator that had been converted into a gun safe in the garage. (PMF No. 8.) The Shooter had a handgun in his desk drawer. (PMF No. 9.) Eleven pages worth of instructions for assembling the frame of a semi-automatic handgun were found in the living room. (PMF No. 10.)

After his father's death, the Shooter began writing about murder, self-harm, and his own sadism on documents that he kept in this room. (PMF Nos. 11-14, 16.) For example, a single sheet of 5 x 7 paper, with writing on both sides, was laying on a bookshelf in his room (PMF No. 11.). One side was dated December 29, 2017—about three weeks after his father's death—and read:

> "Innocence is not defined by knowledge or know how, but is a measure of how far an individual is willing to go to keep the peace, in the perspective of others. Who is to say whom is guilty for not preparing a murder, to the eyes of the outsider they are all guilty. Matter as it does not as with any situation there is no truth for we are all guilty of the crime itself Society rules are not can hide that fact."

(PMF. No. 12.) The other side of the paper was dated February 5, 2018, and read:

> "I've begun to mark myself, it doesn't hurt as much as it would seem. I like to see the blood flow, as well as seeing the scar. So, I am careful where the mark falls, as I don't wish any attention by it. I do realize to whomever reviews my writing may already doubt this is true expression, well I assure you this: I am a troubled one who is aware of what I've done and accept what I will do. I like to bleed, for the site of Scarlet Rose on the account that's there. On another note, relations are well. My school grades have improved, due to being more focused rather than chasing girls. I want to focus at the task at hand. I've learned to control my emotions better, to only use them when necessary. I've also learned that I may be partially psychotic, and sadistic. Captains log dismissed."

(PMF. No. 13.) There was another writing in his room where he wrote that he was going to live in Germany, but before leaving he was "going to make my mark in the USA. There's something definitely wrong with me." (PMF No. 14.) Other items in the Shooter's room shed light on his fascination with violence. (PMF Nos. 15-16.) Newspaper clippings, court documents, and a police report related to the 1983 arrest of his father for denotating an explosive device on the campus of California State University, Bakersfield in 1983 were recovered. (PMF No. 15.) A green handmade notebook that he kept in a cardboard box on the floor described, in graphic detail, the shooting and killing of a rabbit and depicted a fictional story with references to shotguns, a character who "killed 15 citizens," and drawings of dead characters and others armed with rifles. (PMF No. 16.)

In addition to writings demonstrating the Shooter's violent tendencies, his room contained weapons and ammunition. (PMF Nos. 9, 17-18). A .22 caliber handgun was found inside the Shooter's bedroom desk drawer, along with five cartridges and a magazine. (PMF No. 9.) A bayonet was lying on an uncovered mattress on the upper bunkbed. (PMF No. 17.) Additionally, there were two BB rifles leaning against a bedroom wall; a BB pistol and a .45 caliber magazine laying on the upper bunkbed; a second BB pistol on a shelf; shotgun shells on top of a wooden chest; and two more BB rifles in the chest recovered from the Shooter's bedroom. (PMF No. 18.)

Unlike some parents, Defendant Matsuura-Berhow was frequently in her son's room, cleaning, dusting, sweeping, and moving things around. (PMF No. 19.) She testified that she cleaned his desk (which contained a handgun). (PMF Nos. 9, 19.) She would dust (the single sheet of 5 x 7 paper in which the Shooter declared himself psychotic and sadistic was lying on a bookcase shelf; ammunition was on top of a wooden chest). (PMF Nos. 11-13, 18-19.) She would change the sheets (the bayonet was lying near eye level on the uncovered top bunk). (PMF Nos. 17, 19.) She would sweep and pick clothes up off the floor (the green, handmade notebook containing drawings of dead people and stories referencing murder was in a box on the floor). (PMF No. 16, 19.) It is undisputed that Defendant Matsuura-Berhow was the only adult in the home—everything inside it was under her control. (PMF No. 20.)

On November 14, 2019, the day of the shooting, Defendant Matsuura-Berhow and her son

left their home at 6:50 a.m. and drove to Saugus High School, arriving five minutes later. (PMF No. 21.) At 7:30 a.m., then 15-year-old Plaintiff Mia Tretta, a high school freshman, arrived on the quad of Saugus High School and walked over to see her best friend, 14-year-old Dominic Blackwell. (PMF No. 22.) At 7:36 a.m., the Shooter pointed the handgun he brought from home at a crowd of students and fired several times. (PMF No. 23.) The Shooter murdered Blackwell and 16-year-old Gracie Ann Muehlberger. (PMF No. 24.) The Shooter used the last bullet to kill himself. (PMF No. 25.) Three other students, including Mia, were found by first responders in other areas of the campus, as they had run for their lives from the quad. (PMF No. 26.) Mia was shot in the stomach, and she was airlifted to a hospital where she spent the next six days recovering from a gunshot wound and subsequent surgery. (PMF No. 27.) Mia survived but continues to suffer both physical pain and psychological repercussions. (PMF No. 28.)

According to Los Angeles County Sheriff Alex Villanueva, who reviewed surveillance footage of the attack, the Shooter "seemed very familiar with the weapon," as he took the time to fix the gun after it jammed in between the first and second shots, and the Shooter's exact knowledge of how many rounds were in the gun suggested that the shooting "wasn't a spur of the moment act." (PMF No. 29.)

The police searched Matsuura-Berhow's residence after the shooting and found the additional unsecured guns described previously. (PMF Nos. 7-9, 30.) In addition to the guns, eight knives were recovered from the top drawer of Defendant Matsuura-Berhow's nightstand, and five knives—including a machete—were recovered from a cardboard box in front of her nightstand. (PMF No. 31.)

This case was initiated on December 22, 2020, with a complaint that alleged a negligence claim against Defendant Matsuura-Berhow and negligence and public nuisance claims against Defendant Terrane J. Osman, d/b/a 1911Builders.com. Defendant Matsuura-Berhow filed an answer on April 28, 2021. Defendant Osman filed for summary judgment, which the Court denied in full on June 29, 2022. Trial is set for June 26, 2023.

III. LEGAL STANDARD

"A motion for summary judgment may be denied for any of several reasons: (1) there may be a triable issue as to a material fact; (2) the supporting affidavits may be insufficient; (3) the only proof as to a material fact may be an affidavit or declaration by the sole witness to the fact; or (4) a material fact may involve an individual's state of mind and that fact is sought to be established solely by that individual's affirmation thereof." (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal. 4th 811, 823; see also Civ. Proc. Code § 437c, subd. (e).) A triable issue of material fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

The moving defendant bears the "burden of persuasion" throughout the summary judgment process. (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 850.) Thus, the moving party "has the burden of producing evidence showing that one or more elements of the plaintiff['s] cause of action cannot be established, or that there is a complete defense to that cause of action." (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1443)To shift the burden of production, the defendant must (1) present affirmative evidence to "conclusively negate an element of the plaintiff['s] cause of action," or (2) "show that the plaintiff cannot establish at least one element of the cause of action." (*Aguilar v. Atlantic Richfield Co., supra*, at p. 853.) If the motion presents sufficient admissible evidence, the burden then shifts to the plaintiff to produce material facts showing a triable issue. Civ. Proc. Code § 437c, subd. (p)(2). On summary judgment, the court must view the evidence in the light most favorable to plaintiff. (*Ganoe v. Metalclad Insul. Corp.* (2014) 227 Cal.App.4th 1577, 1582.) "The court seeks to find contradictions in the evidence or inferences reasonably deducible from the evidence that raise a triable issue of material fact." (*Zamora v. Sec. Indus. Specialists, Inc.* (2021) 71 Cal.App.5th 1, 29, citing *Trop v. Sony Pictures Entertainment, Inc.* (2005) 129 Cal.App.4th 1133, 1143-1144.)

IV. MULTIPLE DISPUTED MATERIAL FACTS MAKE SUMMARY JUDGMENT INAPROPRIATE ON PLAINTIFF'S NEGLIGENCE CLAIM

Defendant Matsuura-Berhow's attempt to point to an absence of evidence supporting Mia's

case are quickly met with evidence to the contrary. Defendant Matsuura-Berhow's self-serving declaration cannot avoid the contradictory evidence regarding her personal negligence in failing to adhere to the general duty of care regarding firearms and her parental negligence in storing and securing the firearms in her home in a way that gave her son easy access.

A. Triable Issues of Material Fact Exist on Common Law Negligence Claim

In California, "the general rule is and should be that, *in the absence of statute or some compelling reason of public policy,* where there is negligence proximately causing an injury, there should be liability." (*Self v. Self* (1962) 58 Cal. 2d 683, 689) (emphasis added); see also *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771.) Here, Defendant Matsuura-Berhow's negligent storage of firearms was a proximate cause of Mia's injuries.

1. Defendant Matsuura-Berhow owed Mia a Legal Duty of Care

The elements of a negligence claim are a legal duty of care, breach of that duty, and proximate cause resulting in injury. (*Hernandez v. Jensen* (2021) 61 Cal.App.5th 1056, 1064, citing *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) Duty is a question of law for the court, whereas the elements of breach of duty and causation are ordinarily questions of fact for the jury's determination. (*Hernandez v. Jensen, supra,* 61 Ca.App.5th at 1064, citing *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.)

Pursuant to California Civil Code section 1714, subdivision (a), "[e]veryone is responsible not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person…" (Civ. Code § 1714, sub. (a).) "In other words, 'each person has a duty to use ordinary care and "is liable for injuries caused by his failure to exercise reasonable care in the circumstances….'" (*Garcia v. Becker Bros. Steel Co.* (2011) 194 Cal.App.4th 474, 482, quoting *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 472; *Rowland v. Christian* (1968) 69 Cal.2d 108, 112.) This is true even where a third party caused the harm–so long as that third party's conduct was foreseeable. (See *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716 ("It is well established, moreover, that one's general duty to exercise due care includes the duty not to place another person in a situation in which the other person is exposed to an unreasonable risk of harm through the

reasonably foreseeable conduct… of a third person [citations].")

When it comes to firearms, a standard greater than ordinary care is required. "The risk incident to dealing with . . . firearms… requires a great deal of care to be exercised. In other words, the standard of care required of the reasonable person when dealing with such dangerous articles is so great that a slight deviation therefrom will constitute negligence." *Warner v. Santa Catalina Island Co.* (1955) 44 Cal.2d 310, 317; see also *Jacoves v. United Merch. Corp.* (1992) 9 Cal.App.4th 88, 116.)

Reida v. Lund is directly on point. (*Reida v. Lund* (1971) 18 Cal.App.3d 698). In *Reida*, a 16-year-old Boy Scout took a gun from his home and killed three people at random before killing himself. (*Id.* at 700-01.) The shooter was described as "friendly, quiet, neat…got along well with others…never displayed emotional instability, nor had he never been in trouble with the school authorities, the police, or the juvenile authorities." (*Ibid.*) His father was sued for negligence in making firearms available to him. (*Ibid.*) The father admitted that he stored the gun and ammunition in the garage in a locked cabinet that his son could readily access with a key. (*Id.* at 703). Noting that the highest standard of due care applied to the handling of the firearm, the appellate court reversed a grant of summary judgment for the father, finding, "a triable question of fact whether his act in leaving a lethal weapon in a place accessible to his children amounted to a proper exercise of due care or whether it amounted to negligent safeguard of a deadly weapon." (*Id.* at 704, 707.)

In this current case, a 16-year-old (who was coincidentally also a Boy Scout) took a gun from his home and killed people at random before killing himself. (See Pl.'s Resp. to Def.'s Separate Statement of Undisputed Facts ¶ 13; PMF Nos. 23, 25.) There is evidence that multiple unsecured firearms were accessible to him, including the one he brought to school and used to murder two classmates and injure three others, including Mia. (PMF Nos. 5, 7-9, 23-24, 26-27.) For this reason, summary judgment in favor of Defendant Matsuura-Berhow is inappropriate.

2. No Exception to the General Heightened Standard of Care Exists in This Case

In California, the default, general rule is that "*in the absence of statute or some compelling reason of public policy,* where there is negligence proximately causing an injury, there should be

liability." (*Self v. Self* (1962) 58 Cal.2d 683, 689) (emphasis added).) No exception exists here.

In determining whether an exception to the duty of care should be crafted, courts must consider (1) the "foreseeability of the relevant injury" and (2) "public policy concerns that might support excluding certain kinds of plaintiffs" from relief. (*Hernandez v. Jensen* (2021) 61 Cal.App.5th 1056, 1065, citing *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1145.) For foreseeability, "the court's task in determining duty 'is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed ....'" (*Hernandez, supra*, 61 Cal.App.5th at 1066, quoting *Cabral, supra*, 51 Cal.4th at p. 772, original in italics.)

It is foreseeable that having unsecured firearms around the house with readily accessible ammunition would result in tragedy. In *Hernandez*, a home health care worker was shot and injured when a loaded rifle fell from a bedroom closet, and the court stated "[t]hat injury could result from the presence of an unsecured rifle in a residence is clearly foreseeable." (*Hernandez, supra*, 61 Cal.App.5th at 1067.) Here, it was also foreseeable that the presence of unsecured guns around a minor could cause an injury. (See *Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88, 116 ("One who leaves a firearm where a minor might foreseeably gain access to it may be liable for negligence." [citation].) The Shooter was a minor who was very familiar with how handguns worked. (PMF 29.) It was entirely foreseeable that easy access to unsecured handguns could lead to disaster.

The second consideration for creating an exception to the general duty of care — whether public policy concerns might support excluding certain kinds of plaintiffs or injuries from relief—weighs heavily in favor of Mia and against the finding of an exception. "These policy considerations include the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved." (*Hernandez, supra*, 61 Cal.App.5th at 1067, citing *Rowland, supra*, 69 Cal.2d at p. 113). Here, "[p]ublic policy supports the safe storage and handling

of guns, particularly in circumstances where one party has superior knowledge and the ability to prevent accidental shootings." (*Hernandez, supra*, 61 Cal.App.5th at 1068). Compared to Mia, Defendant Matsuura-Berhow had superior knowledge to her son's access to guns, and safer storage of those guns could have prevented this shooting. No exception to the general duty of care should be established in this situation.

B. Triable Issues of Fact Exist on a Negligence Claim Based on a Special Relationship Between Parent and Child

An alternate theory of liability is predicated on Defendant Matsuura-Berhow's failure as a parent to control her minor child. "California follows the Restatement rule (Rest.2d Torts, § 316), which finds a 'special relationship' between parent and child, and accordingly places upon the parent 'a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control [citation]." (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 572.) Defendant does not dispute that, as the sole custodial parent, she had the ability to control her son. And there is at least a factual dispute as to whether Defendant Matsuura-Berhow knew or should have known of the necessity for exercising control of her son when it came to firearms.

Defendant Matsuura-Berhow's self-serving declaration is contradicted by the evidence in this case on several points, and it should be left to the jury to determine her truthfulness as to what she knew or didn't know about her son. For instance, she states that she paid attention to his grades (Def.'s Ex. A, Matsuura-Berhow Decl. ¶ 31), but on multiple occasions she had no idea that his grades were low. (PMF 32.) She states that he more actively became involved with his friends after his father died (Def.'s Ex. A, Matsuura-Berhow Decl. ¶ 20) but, in reality, he often ate lunch alone. (PMF No. 33.) Defendant Matsuura-Berhow states that her son was actively involved in Boy Scouts and track and field when explaining how she never observed any violent habits or tendencies from her son (Def.'s Ex. A, Matsuura-Berhow Decl. ¶ 22)—but he hadn't gone to a Boy Scout event for months and had just decided to quit track before his death. (PMF 34.) Other evidence exists that

suggests that Defendant Matsuura-Berhow's recollection of events is, at best, inaccurate. When asked by police two days after the shooting how many guns were seized from her home after her husband's 5150 psychiatric hospital review on July 1, 2015, she estimated five or six (PMF No. 35.) The actual number was 42. (PMF Nos. 4, 35.) In her deposition, she stated that her husband understood and thought it was safter for his guns to be taken away—in contrast, his daughter said he was "livid." (PMF No. 36.)

On the most significant point—whether she knew or had reason to know of the Shooter's violent tendencies—there is conflicting evidence. Defendant Matsuura-Berhow says she did not, and she never saw any concerning writings or a gun in his room. (Def.'s Ex. A, Matsuura-Berhow Decl. ¶¶ 22-23, 26.) But she also testified that she was frequently in his room, cleaning his desk (which contained a firearm), dusting (where a single sheet of paper in his handwriting described cutting himself and his feelings that he was "partially psychotic, and sadistic" was on a shelf), and sweeping and cleaning clothes off the floor (where there was also a box with a handmade green notebook describing, in graphic detail, the shooting and killing of a rabbit and depicting a fictional story with references to shotguns, a character who "killed 15 citizens," and drawings of dead characters and others armed with rifles.) (PMF Nos. 9, 11-17, 19.) It would be inappropriate to decide as a matter of law whether Defendant Matsuura-Berhow knew or should have known about her son's violent tendencies. The evidence demonstrates the existence of disputed material facts.

The cases cited by Defendant Matsuura-Berhow do not support granting summary judgment in her favor. In *Robertson v. Wentz*, the divorced mother "lack[ed] physical custody and care of [her son] at the critical time" and had no control over her son's access to firearms at his father's house, which was different from her own. ((1986) 187 Cal.App.3d 1281, 1290-91). The court also found the boy's numerous troubles with drinking and drugs were not specific enough to the dangerous tendencies related to the robbery and homicide he would later commit. (Id. at 1285, 1290-91.) Here there is evidence (access to firearms, writings about murder and sadistic tendencies) that is specific to the crime the shooter later committed, and it is undisputed that the Shooter always lived with Defendant Matsuura-Berhow. (PMF Nos. 5-9, 11-14, 16-20.)

Costello v. Hart ((1972) 23 Cal.App.3d 898) involves parents who directly witnessed their

child's misbehavior (tripping). However, a parent directly witnessing the behavior is not required for a finding of liability. (See *Costello, supra*, 23 Cal.App.3d at 901 ("In cases where the parent did not observe the child's conduct which led to the injury, the parent has been held liable where he had been aware of the child's dangerous propensity or habit and negligently failed to exercise proper control [citations]."))[1] If that were the case, then there would never be parental liability in cases involving fatal shootings, as most minors are not given multiple opportunities to do so.

In *Costello*, which involved a 4 ½-year-old hiding and tripping a woman who fell and broke her leg, the appellate court reserved the trial court and found there was evidence that would support a verdict against the defendant. ((1972) 23 Cal.App.3d 898, 899-901.) The court remarked that the record "tells us little of what the evidence shows" and assumed there was evidence that would support a finding against the defendant based on the "cryptic statement" that the child's misbehavior was conspicuous and continuous for an appreciable period of time and that the defendant "was present." (*Id.* at 901.) In this case, the evidence is much more definite (PMF Nos. 5-9, 11-14, 16-20), and the record would likewise not support a grant of summary judgment for Defendant Matsuura-Berhow.

C. Summary Judgment is Inappropriate on Liability Under Civil Code Section 1714.3

Finally, Defendant Matsuura-Berhow argues that there is no evidence of liability under Civil Code Section 1714.3, which concerns parental liability for injuries caused by the discharge of a firearm by a minor. Some California courts have held that as long as a plaintiff has pled negligence, it is permissible to argue negligence per se on summary judgment. (See *Iversen v. California Village Homeowners Assn.* (2011) 194 Cal.App.4th 107, 112-113, review dism. Nov. 16, 2011, No. S192763 ("Negligence per se 'is not a separate cause of action, but creates an evidentiary presumption that affects the standard of care in a cause of action for negligence.' [Citations.] It does

[1] *Singer v. Marx* ((1956) 144 Cal.App.2d 637, 645-46), also cited by Defendant Matsuura-Berhow, held that the evidence supported an inference that the mother had been aware of the child's dangerous propensity for rock throwing. Even though rock throwing has been held "clearly inapposite" to the negligent safeguarding of firearms (*Reida v. Lund, supra*, 18 Cal.App.3d at p. 704), *Singer* supports Mia's position that summary judgment is inappropriate where the evidence infers that a parent had knowledge of their child's dangerous propensities.

not have to be pleaded at all [citation]."); but see *Lopez v. Baca*, (2002) 98 Cal.App.4th 1008, 1019-1020.)

Under Civil Code Section 1714.3, parents can be liable for injuries caused by their child if they either permitted the minor to have the firearm *or* left the firearm in a place accessible to the minor. (Civil Code § 1714.3; *Reida v. Lund* (1971) 18 Cal.App.3d 698, 705.) Here, the evidence shows that Matsuura-Berhow left several firearms in places accessible to her son. (PMF Nos. 4, 6-9.) Therefore, summary judgment is inappropriate on a negligence per se theory.

V. CONCLUSION

November 14, 2019 was a tragic day for all parties involved. The evidence gathered in the wake of the shooting at Saugus High School demonstrates that Defendant Matsuura-Berhow should be liable for negligence. For the foregoing reasons, her Motion should be denied.

Dated: February 7, 2023

WALKUP, MELODIA, KELLY & SCHOENBERGER

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