STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Sarah B. Van Bogart, as trustee for heirs and next of kin of Jordan Lance Markie,

Plaintiff,

vs.

Scheels All Sports, Inc., William Ballantyne,

Defendants.

Case File No.: 27-CV-24-13319
Case Type: Wrongful Death
Judge: Karen A. Janisch

Order Denying Motion to Dismiss

This matter came before Judge Karen A. Janisch of District Court on January 16, 2025 for a hearing on Defendants' Motion to Dismiss. Defendants Motion to Dismiss was brought in lieu of an Answer as allowed under Minn. R. Civ. P. 12.01.

Jason Pederson, Esq. appeared on behalf of Plaintiff Sarah B. Van Bogart in her capacity as trustee for heirs and next of kin of Jordan Lance Markie.

Heather Marx, Esq. appeared on behalf of Defendants, Scheels All Sports, Inc. and William Ballantyne.

Based upon all the files, records, and proceedings herein, the Court issues the following:

Order:

1. The Defendants' Motion to Dismiss is **Denied**.
2. The attached Memorandum is incorporated as part of this Order.
3. Defendants must serve and file their Answers to the Amended Complaint within 14-day of this Order.
4. The parties are directed to meet and confer and file a Joint Discovery Plan within 21 days of the date of this Order.

By The Court:

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Karen A. Janisch
Judge of District Court

Memorandum

This civil action arises out of a tragic incident involving decedent, Jordan Lance Markie's ("Markie") use of a handgun to end his life. As alleged in the Amended Complaint, Markie went the Scheels store in Eden Prairie, requested that he be shown a handgun from the locked case in the firearms department and employee William Ballantyne ("Ballantyne") allowed Markie to handle the unloaded handgun. Markie ran from the counter with the gun, loaded it, and shot himself in the store, resulting in his death. Plaintiff 's Amended Complaint asserts a wrongful death claim against Defendant Scheels All Sports Inc. ("Scheels") and Ballantyne for negligent entrustment arising from the provision of the handgun to Markie. In lieu of an Answer, Defendants jointly move for dismissal of Plaintiff's Amended Complaint under Minn. R. Civ. P. 12.02(e) asserting the Amended Complaint fails to state a claim upon which relief may be granted. Plaintiff opposes the motion arguing the pleadings are sufficient to state the claim for negligent entrustment.

I. Standard of Review

In addressing a motion to dismiss, the Court must consider that Minnesota civil actions are governed by a broad notice pleading standard. *See Walsh v. U.S. Bank, N.A.,* 851 N.W.2d 598, 605 (Minn. 2014) (rejecting the plausibility standard adopted in federal court*)*. *Walsh* reinforced the Minnesota pleading standard under Minn. R. Civ. P. 8.01 that notice pleading:

> permit[s] the pleading of events by way of a broad general statement which may express conclusions rather than, as was required under code pleading, by a statement of facts sufficient to constitute a cause of action. The functions of a pleading today are simply to give fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based, to permit the application of res judicata, and to determine whether the case must be tried by the jury or a

> court. No longer is a pleader required to allege facts and every element of a cause of action.

Id. at 602 *(citing N. States Power Co. v. Franklin*, 265 Minn. 391, 394-5, 122 N.W.2d 26, 29 (Minn. 1963)).

A pleading that fails to state a claim on which relief can be granted must be dismissed. Minn. R. Civ. P. 12.02(e). In reviewing a motion to dismiss, the Court must accept the facts pleaded in the complaint as true, and the non-moving party is entitled to have the benefit of all favorable and reasonable inferences. *See*, *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). In addition to the statements in the pleadings, the Court may consider documents referenced in the pleading subject to the motion. *See Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739, n. 7 (Minn. 2000).

The critical inquiry on the motion is whether the pleading states a legally cognizable claim.

> A claim is sufficient against a motion to dismiss based on Rule 12.02(5) if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded… [U]nder this rule a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.

N. States Power Co. 265 Minn at 395, 122 N.W.2d at 29. The Court is not bound by legal conclusions stated in a complaint. *Finn v. Alliance Bank*, 860 N.W.2d 638, 653-654 (Minn. 2015). And "[a] plaintiff must provide more than labels and conclusions." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). However, for purposes of review under Rule 12.02(e), "it is immaterial whether or not the pleader can prove the facts alleged." *Martens,* 616 N.W.2d at 739.

II. Summary of Factual Allegations[1]

Plaintiff Sarah Bay Van Bogart ("Plaintiff") is the mother of decedent, Jordan Lance Markie ("Markie"). *(Am. Compl. ¶7).* On June 4, 2024, Plaintiff was appointed as Trustee on behalf of the next of kin and trustee for Markie's heirs. *(Id.)*

Scheels All Sports Inc. ("Scheels") is a sporting goods chain which operates a store at 8301 Flying Cloud Drive, Eden Prairie, MN 55344 ("Store"). *(Am. Comp. ¶8).* William Ballantyne ("Ballantyne") was a Scheels employee working at the Store at the times relevant to Plaintiff's claims. *(See Id. ¶9)*. Ballantyne worked as a sales clerk in the firearms department and was a Certified Instructor on safe and proper use of firearms. *(Id. ¶¶23-24).*

The Store has a large firearms department, and its handguns are stored in locked showcases. *(Id. ¶20).* The handguns on display are unloaded. *(Id. ¶20).* The ammunition magazines are inserted in the handgun, but empty. *(Id.)* The handguns do not have trigger locks or any mechanism that prevents firing. *(Id.)* Ammunition boxes are separately displayed on open shelves and are accessible to customers without assistance or supervision from employees. *(Id. ¶21)*.

On August 22, 2022, Markie rode his bicycle to the Store and proceeded to the firearms department. *(Id. ¶25).* Markie was 19 years old, appeared younger than 21 and appeared younger than his age. *(Id. ¶26).* Markie was dressed like a typical teenager wearing jeans, sneakers and a plaid shirt. *(Id. ¶26).*

While in the store, Markie walked into and out of the firearms department several times, appearing anxious and confused. *(Id. ¶27)*. Employees at the store were located at the sales

[1] This is not a summary of all facts pled in the Complaint and is provided for the purpose of context for the Court's decision.

counter and in the aisles of the firearms department and had an opportunity to observe Markie's behavior. *(Id.)* Most of the employees did not pay attention to Markie. *(Id.)*

Markie asked an employee to use the store's telephone, which was denied. *(Am. Compl. ¶28).* Markie then walked around the firearms department for several more minutes exhibiting unusual behavior. *(Id. ¶29*). Markie was fidgeting nervously and appeared to be testing whether the showcases holding the handguns were locked. *(Id.)* Under the circumstances, it appeared he may have been considering stealing one of the displayed firearms. *(Id.)*

Markie approached Ballantyne and asked to see a Taurus G2C 9mm handgun (the "Handgun") located in a locked showcase. *(Am. Compl. ¶30*). The unloaded Handgun was equipped with an empty magazine, but did not have a trigger lock or other impediment to its capability to be fired. *(Id.)* Ballantyne did not ask Markie for identification or verify Markie's age before providing the Handgun. *(Id. ¶31*). Ballantyne unlocked the case and handed Markie the Handgun. *(Id. ¶32*). Markie handled the Handgun for about 28 seconds, appearing to examine whether the Handgun contained a magazine. *(Id ¶33*). Markie then ran from the counter with the Handgun. *(Id. 34).* Markie ran to another part of the store, loaded the gun with a round of 9mm ammunition, pointed it at himself, and pulled the trigger. *(Id.)* Markie died from his injuries. *(Id.)*

The ammunition Markie used was available on the shelves of the Store, and because of its easy availability, on two occasions prior to August 22, 2022 Markie was able to steal ammunition from the Store. *(Am. Compl. ¶36*).

Plaintiff avers that it is known in the industry that suicidal individuals seek access to firearms and that Scheels is known for having lax practices in its stores related to transactions involving firearms. *(Id. ¶¶ 41-42).*

III. Analysis

Federal law precludes claims against entities and individuals arising from the sale of firearms. *See* 15 U.S.C §7903(5)(A). Where applicable, this federal statute preempts Minnesota statutory or common law claims including claims for general negligence. *Id.* The federal law does not, however, contains an exception and permits state common law claims for negligent entrustment in relation to a firearm. *See* 15 U.S.C §7903(5)(A)(ii).

Plaintiff's wrongful death action is premised upon a claim of negligent entrustment. *(Am. Compl. ¶¶ 45-55).* Minnesota recognizes a common law tort claim for negligent entrustment defining it in relation to the Restatement (Second) of Torts § 390:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

See Johnson v. Johnson, 611 N.W.2d 823, 828 (Minn. Ct. App. 2000).

Defendants raise several arguments against Plaintiff's negligent entrustment claim. First, Defendants assert Plaintiff cannot establish the necessary element of the claim because the Handgun was not given to Markie to allow him to "use" it as a firearm. Second, Defendants argue that the Amended Complaint fails to state a claim because, as a matter of law, Plaintiffs cannot establish Scheels or Ballantyne owed a duty to Markie in negligent entrustment because Plaintiff cannot establish Defendants knew or had reason to know that Markie age or other circumstances made it was likely to use the Handgun in a manner that presented an unreasonable risk of harm to himself or others. Plaintiff counters that the facts plead in the Amended Complaint are sufficient, under a notice pleading standard, to state a valid claim for negligent entrustment. The Court addresses these arguments, below.

A. The Complaint Adequately Pleads Defendants Furnished the Handgun to Markie for His "Use."

Defendants challenge Plaintiff's Amended Complaint on the first element of a negligent entrustment claim, which requires Plaintiff to establish that Defendants "supplied directly or through a third party a chattel for use of another…." Restatement (Second) § 390. Defendants focus on the language "for use" arguing it requires that they have furnished the Handgun to be used in the manner a firearm is designed to be use and what makes it potentially dangerous –use in firing the weapon. Defendants argue that the theory of negligent entrustment, as plead, establishes the Handgun was provided to Markie solely in relation to its offering Handguns for sale and for inspection and examination, at the display counter – not to be fired. Defendants argue Plaintiff cannot establish by any facts that the Handgun was provided to Markie for use in firing or for use as a firearm. Defendants argue this is also established by the facts plead that the firearm was unloaded and could not in that condition be fired.

1. Purpose or Intent of Provider Does Not Control.

Defendants argue that because the allegations in the Amended Complaint allege that Ballantyne provided Markie with the unloaded Handgun in relation to examining it in the store it was not furnished to Markie "for use" as a firearm. This argument is unpersuasive because it adds an extra-textual intent/purpose element to the language used in the Restatement and case law. By asserting that Markie was handed the gun to be inspected and not fired, i.e. "used" as a firearm, Defendants seek to limit the reach of negligent entrustment claims that would allow the party supplying the chattel directly or indirectly to avoid liability by placing express or implied purpose or condition on the manner in which a chattel may be used by the recipient. This is not supported by Minnesota case law, or the comments illustrating the scope of Section 390 of the Restatement.

Comment b to Section 390 provides: "This Section deals with the supplying of a chattel to a person incompetent to use it safely, *irrespective of whether the chattel is to be used for the suppliers' purposes* or for the purpose of him to whom it is supplied." Restatement (Second) §390, comment b (emphasis added). The Comment explains that the basis of liability is "that the actor may not assume that human beings will conduct themselves properly if the facts which are known or should be known to him should make him realize that they are unlikely to do so." *Id.* This comment reflects that the focus is not on the supplier's intended purpose for the provision of the chattel or any limitation on use imposed or believed by the supplier. Instead, consistent with issues of foreseeability, all of the circumstances of the furnishing of the chattel and the recipient are considered in determining whether the supplier knew or should have known that the receiving person because of age, inexperience or other circumstances, was likely to use it in a manner that presented an unreasonable risk of harm to himself or others.

After the comment referenced, *supra,* the first illustration provided in the Restatement describes an example of possible negligent entrustment: "1. A gives a loaded gun to B, a feeble-minded girl of ten, to be carried by her to C. While B is carrying the gun she tampers with the trigger and discharges it, harming C. A is subject to liability to C." In this example, A's purpose in giving the gun to B was not for it to be fired, but merely to held and transported to B. Thus, A's intentions in entrusting the chattel to the recipient are not determinative of whether there is potential liability. The question is whether the provider of the chattel knew or should have known that giving it to the recipient under the circumstances established carried a foreseeable risk of danger to the child or others from the recipient's use of the chattel.

As a result, "for use" in relation to a claim for negligent entrustment carries its plain and ordinary meaning. It means putting the chattel into the possession and control of another where it is subject to use (or misuse by) the recipient. This is consistent with Minnesota case law. In

Jones v. Fleischhacker, 325 N.W.2d 633 (Minn. 1982), a father, who was at work, needed to move cars around in the driveway, and his minor son, who only had a learner's permit, offered to do this. *Id.* at 635. The father gave permission to his son to move the vehicles, but did not give permission for any other use of the motor vehicles. *Id.* The son, however, used one of the vehicles without permission, picked up other teenaged friends. *Id.* The son was involved in a collision, injuring one of the passengers in the vehicle. *Id.* The claim was tried to a jury which found the father was 10% at fault for the collision, but based on the jury's answer to a separate question determined the son was operating the vehicle without express or implied consent of his father, resulting in the trial court concluding the father had <u>*no liability*</u>. *Id.* at 635-636. *Jones* briefly analyzed the question of potential liability under Section 390. *Id.* at 640-641. The Supreme Court determined there was evidence in the record to support that it was foreseeable to the father that his son would exceed the limited permission he was given to operate the vehicle. *Id.* A jury could reasonably infer from the evidence in the case that the son, having received possession of the keys to the family car, might decide to take it for a "joy ride." *Id.* The Supreme Court reimposed the father's 10% liability determined by the jury for the resulting damages. *Id.* at 641. *Jones* rejects the position that the intent of the party supplying a chattel or a limitation as to supplying the chattel precludes liability for negligent entrustment.

2. That the Handgun was Unloaded Does Not Bar Claim for Negligent Entrustment.

Defendants argue the illustration in the Restatement, *supra,* is distinguishable because it involved a <u>*loaded*</u> gun, which <u>*can*</u> be used for its intended purpose of being fired, as compared to an unloaded gun, which in that state cannot be fired. The Court agrees that the risk of harm and foreseeability of harm is certainly greater and more direct in relation to a provision of a loaded, operable firearm, as compared to an unloaded operable firearm. However, the status of the

Handgun as unload when given to Markie is not a legal bar to Plaintiff's claim for negligent entrustment.

A handgun, that includes an empty ammunition magazine, but is operable, that can be loaded with ammunition and fired, where ammunition is readily accessible to the recipient, could under sufficient evidence produced support of the claim give rise to a valid claim for negligent entrustment. At later stages of this case, Plaintiff will need to establish, through admissible evidence, that the circumstances as a whole support that Defendants knew or should have known that providing the unloaded, operable Handgun to Markie presented an unreasonable risk that Markie would take it from the counter, access ammunition and use it to harm himself or others. However, at the pleading stage, the Court cannot conclude that there is no evidence that could be produced to support Plaintiff's theory for the claim of negligent entrustment.

3. That the Delivery Occurred In the Store Does Not Bar Claim for Negligent Entrustment.

Defendants argue that negligent entrustment is not a valid claim in the context of a sale of a chattel citing *Johnson v. Johnson*, 611 N.W.2d 823 (Minn. Ct. App. 2000). In *Johnson*, the Court of Appeals noted that there was no Minnesota precedent for applying a negligent entrustment claim in the context of a sale. *Id.* at 826. The Court of Appeals left open the question of whether negligent entrustment in the context of a sale could support a valid claim, but determined in the *Johnson* case the purchaser's negligent driving which occurred six weeks after the sale of the vehicle was not reasonably foreseeable. *Id.* at 827.

Johnson is not applicable to the allegations in this case. As alleged in the Amended Complaint, Markie never *purchased* the Handgun and was not given possession of the Handgun as a result of a purchase. Moreover, at the time of the incident, Scheels could not legally sell Markie the Handgun and Markie could not legal purchase it because he was under the age of 21. *See* 18 U.S.C. §922(b)(1). Defendants do not establish that handing an unloaded, operable

Handgun to a person ineligible to purchase it precludes a claim for negligent entrustment merely because the delivery of the chattel occurred in a store where the chattel was sold. Ultimately, as in *Johnson*, the primary issue in this case is foreseeability in relation to Markie as a receiver of the Handgun and the risk presented to himself and others from being given possession over the unloaded, operable Handgun.

B. Whether Plaintiff Could Establish that Defendants Knew or Should Have Known of a Foreseeable Risk of Harm.

To establish Defendants' a claim for negligent entrustment, the Amended Complaint must allege the Defendants either "[knew] or [had] reason to know" that providing Markie the Handgun under the circumstances created an "unreasonable risk of physical harm" "because of his youth, inexperience, or otherwise[.]" Restatement (Second) Torts § 390. These general averments are present in the Amended Complaint. Defendants argue dismissal is required because Plaintiff cannot establish the legal duty in relation to negligent entrustment – that the circumstances establish that Defendants' knew or should have known that Markie's age and other factors created an unreasonable risk that he would use the chattel to harm himself or others.

In a negligence case the Court must consider whether there was a breach of a legal duty of care owed to the plaintiff. Existence of a duty of care is generally an issue of law. *Smits as Trustee for Short v. Park Nicollet Health Serv.*, 979 N.W.2d 436, 445 (Minn. 2022) (addressing legal duty in context of a professional negligence claim against mental health providers in relation to a murder/suicide). In *Short,* the Minnesota Supreme Court summarized existing case law in relation to issues of foreseeability in relation to the existence of a legal duty:

> A legal duty depends "on the relationship of the parties and the foreseeable risk involved." No duty exists when the connection between the alleged danger created by a negligent act and the injury caused is too remote. What risk is foreseeable "depends heavily on the facts and circumstances of each case." But when the issue of foreseeability is not clear and reasonable persons might draw different conclusions based on the evidence presented, "close cases" must be submitted to a jury.

Id. (internal citations omitted). If the harm is foreseeable, the specific mechanism and circumstances of the injury need not be foreseeable. *Id.* at 451 (*citing Domagala v. Rolland*, 805 N.W.2d 14, 27 (Minn. 2011)). Foreseeability of the injury also comes into play in relation to whether breach of the legal duty was the proximate cause of the injury. *See Id.* at 448; Staub as Trustee of Weeks v. Myrtle Lake Resort, LLC, 964 N.W.2d 613, 620 (Minn. 2021).

The Court understands Defendants to be arguing that the facts and circumstances presented in the Amended Complaint are insufficient to support that it had a legal duty of care for negligent entrustment in relation to the Handgun because Defendants did not know or have reason to know that allowing Markie to hold and inspect the Handgun presented an unreasonable risk of harm that Markie would use it to cause injury to himself or others.

Defendants argue that because Markie was an adult, his youthful appearance and age cannot support that he posed a risk of harm from being allowed access to the Handgun. Defendants cite *Clarine v. Addison,* 234 N.W. 295 (Minn. 1931), the only Minnesota case involving negligent entrustment in relation to a firearm as support that a 19-year old can be entrusted with possession of a firearm. Defendants argue the pleadings fail (as a matter of law) to establish that Defendants knew or should have known that providing a 19-year old adult possession of the Handgun at the counter posed an unreasonable risk of injury. Defendants also argue that, as plead, the very limited interaction between Defendants and Markie at the store cannot, as a matter of law, establish that they knew or should have known providing him the Handgun created a foreseeable risk of injury to himself or others.

1. *Clarine* and Markie's Status as an Adult Does Not Preclude Plaintiff's Claim.

Defendants correctly point out that under the law, a 19-year old can legally possess a firearm in many instances. *See e.g.* Minn. Stat.§ 624.713, subd. 1(1) (persons under age 18);

Minn. Stat. § 97B.021 (persons under 16). Defendants argue that regardless of Markie's youthful appearance, he was a 19-year old adult and his age did not establish any grounds for him presenting an unreasonable risk of harm from being allowed to handle and inspect the unloaded Handgun in the Store. Defendants cite *Clarine v. Addison* 234 N.W. 295 (Minn. 1931) as support that negligent entrustment is not a valid claim in relation to a 19 year old being given access to a firearm. In *Clarine,* the Minnesota Supreme Court held that a father was not liable in negligence for furnishing a pistol to his son, who then accidentally shot another person. *Clarine* was based on the lack of evidence that the subsequent injury was foreseeable. *Id.* at 296. However, it was based on a lack of evidence produced at trial. The Minnesota Supreme Court noted the son was 19 years old when he received the pistol, but the "[t]he record does not show whether [the son], was experienced or inexperienced, careful or careless, with firearms." *Id.*

Although *Clarine* also involves a 19-year old entrusted with a handgun that was then used in a manner that caused injury to another, it was not a case decided on a motion to dismiss. Instead, the claim proceeded to trial during which the negligent entrustment claim against the father was dismissed because the plaintiff failed to present evidence to support the son's receipt of the firearm created a foreseeable, unreasonable risk of harm. Neither the trial court nor appellate court ruled that, as a matter of law, a 19-year old could under any circumstances be entrusted with a firearm, the holding was limited to the lack of sufficient evidence presented at the trial. *Id.* at 296. At most, *Clarine* reflects that being 19-years old *without any other evidence* is not enough to establish a claim for negligent entrustment. It does not establish that negligent entrustment claims can never arise in relation to entrusting an adult over age 18 with a firearm.

The motion before the Court is for dismissal under Minn. R. Civ. P. 12.02(e) based on the sufficiency of the Amended Complaint under notice pleading standards. Plaintiffs are not required to plead all facts to support foreseeability, only provide sufficient notice of the claim.

Clarine does and Markie's status as an adult do not require dismissal under Minn. R. Civ. P. 12.02(e).

2. The Amended Complaint Sufficiently Pleads that Defendants Knew or Should Have Known the Risk of Harm Sufficient to Withstand Dismissal.

Plaintiff's Amended Complaint includes factual averments that provide notice to Defendants of Plaintiff's theory as to the relationship between Markie and Defendants and why Defendants knew or should have known of the danger in providing the unloaded, but operable Handgun to Markie. These facts fall into two general categories: (1) Markie's overall youthful appearance and failure to check any identification as to his age and eligibility to purchase the Handgun; and (2) Markie's behavior in the store suggesting that he was in a disturbed mental state and/or was a person looking to abscond with the Handgun and evidence that could be produced to establish that this is a known risk to firearms retailers.

As to Markie's age, several recent Federal Appellate decisions have put the legal landscape involving gun rights in relation to persons over the age of 18, but under age 21 in flux.[2] However, as alleged in the Amended Complaint, at the time Markie asked to examine the handgun, the status of the law in Minnesota was that he was not legally able to purchase the Handgun. The Amended Complaint alleges Markie appeared even younger than 19 and that Defendants did not check Markie's age or whether he was even an adult before allowing him to handle the Handgun. At this early stage of the case, the Court does not need to determine

[2] Handgun sales to persons under the age of 21 are prohibited under the Gun Control Act of 1968. *See* 18 U.S.C. §922(b)(1). This statute was recently ruled unconstitutional by the Fifth Circuit Court of Appeals in *Reese v. Bureau of Alcohol, Tobacco, Firearms and Explos.*, 127 F.4th 582 (5th Cir. 2025). The Eighth Circuit also recently struck down the Minnesota statute that prohibited the issuance of conceal/carry permits to individuals under 21. *Worth v. Jacobson*, 108 F.4th 677, 685 (8th Cir. 2024). These federal cases were decided *after* this incident and there is no evidence that Scheels took a position at the time of Markie's death that it was entitled under the U.S. Constitution to sell handguns to 19 year olds.

whether the subsequent federal cases (if permanent) impact the common law claim for negligent entrustment in relation to Markie's age and appearance in a negligent entrustment claim that arose prior to the federal decisions. Based on the allegations in the Amended Complaint, it is possible that Plaintiff could produce evidence that Markie appeared under age 18, that his personal attributes suggested to Defendants he may not be able to competently possess the Handgun or may act irrationally and dangerously in relation to being given access to the Handgun.

In addition to Markie's age and youthful appearance, the Amended Complaint also includes factual averments that Decedent's behavior in the lead up to his receiving the Handgun should have raised alarm bells for the Defendants about his intentions and that Defendants knew or should have known he presented an unreasonable risk of harm to self or others if given an unloaded, but operable Handgun. Defendants argue they only had "58 seconds" of experience with Markie before he took the Handgun away from the counter. Defendants base the argument as to this timing on allegations in the Amended Complaint that there was "less than half a minute" from the time Markie asked to see the Handgun to when it was supplied by Ballantyne, plus the roughly 28 seconds he held the Handgun before running away with it into the store. *(Am. Comp. ¶¶32-34).* Defendants argue that as a matter of law there was simply no way Defendants could have or should have known of an unreasonable risk of harm or likely injury from Markie's possession of the Handgun in the Store.

The Court, however, must consider <u>*all*</u> of Plaintiff's factual averments and apply the notice pleading standard considering all facts that are alleged and those that could be produced, consistent with the Amended Complaint. *See Walsh*, 851 N.W.2d at 605. The Amended Complaint alleges that Markie's behavior at the store prior to his interaction with Ballantyne was observed or observable by Defendants and reflected he was experiencing a mental crisis or that

he was otherwise unstable. These allegations include that Markie was acting nervously in the gun department, that he walked in and out of the department several times, appeared confused and anxious, asked to use the store's telephone, which was denied, and that he similarly walked around the firearms department for several more minutes after the denial. *(Am. Compl. ¶¶ 25-30).* Plaintiff alleges Markie was fidgeting nervously, and was pulling on the gun cabinets to see testing to see if any were unlocked, suggesting he was considering grabbing or stealing a firearm. *(Id. ¶ 29).*

Although notice pleading does not require factual averments as to every element of a claim, Plaintiff's Amended Complaint asserts Defendants had reason to know Markie was a very young adult (if even an adult), that he was in an unstable state of mind while in the store, exhibited unusual behavior in the firearms department, checked the locked cabinets containing firearms, and thereby presented a risk that if given a handgun he intended to abscond with it and/or misuse it to harm himself or others. Under the pleadings, Plaintiff could also potentially produce evidence that theft/absconding with a firearm by mentally unstable individuals for use in suicide or harming others is a known risk in the industry.

The Court does not determine that Plaintiff has established sufficient evidence to proceed to trial as to the duty of care, breach of the duty, or proximate cause (indeed no evidence has been produced at this stage of the case). The Court anticipates that these issues that hinge on foreseeability and what Defendants knew or should have known will remain a central issue as the case proceeds through discovery. At this early pleadings stage, the Court determines that Plaintiff's Amended Complaint is sufficient under Minnesota's liberal notice pleading standard to state a valid claim for negligent entrustment. Defendants' motion must, therefore be denied.

K.A.J.