

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

SARAH B. VAN BOGART, as trustee for heirs
and next of kin of JORDAN LANCE MARKIE

Case No. 27-CV-24-13319
Judge Karen Janisch

Plaintiff,

v.

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

SCHEELS ALL SPORTS, INC. and
WILLIAM BALLANTYNE

Defendants.

Plaintiff Sarah B. Van Bogart, as trustee for the heirs and next of kin of Jordan Lance Markie ("Plaintiff") respectfully submits this memorandum of law in opposition to the motion of Defendants Scheels All Sports, Inc. ("Scheels") and William Ballantyne ("Ballantyne") (collectively, "Defendants") to dismiss Plaintiff's First Amended Complaint ("Complaint").

INTRODUCTION

Plaintiff filed this action to hold Defendants accountable for the harm they caused by negligently entrusting a handgun to 19-year-old Jordan Markie, who then used the gun to tragically end his own life just moments after receiving it from Ballantyne in Scheels' store. Defendants could have prevented Jordan from obtaining access to the gun by exercising reasonable care. But even though Jordan looked far younger than his age and well below the 21 years of age required to buy a handgun from a gun store, Defendants did not request or receive proof of Jordan's age before placing a firearm in his hands. Further, even though Jordan walked in and out of the gun

department several times, appearing anxious and confused just minutes before asking to see a handgun, Defendants did not hesitate to hand him the weapon. In an act of further negligence, Defendants delivered the handgun to Jordan without a trigger lock or other disabling device, and with a magazine in place and ready to receive ammunition, which was easily accessible on the shelves in Scheels' store. Defendants' carelessness made it too easy for Jordan to use the gun negligently entrusted to him to end his life.

In short, Plaintiff has stated a textbook claim for negligent entrustment according to section 390 of the Restatement (Second) of Torts, which Minnesota courts have adopted. But in an attempt to shirk responsibility for their role in this tragedy, Defendants argue that Plaintiff's claim fails to meet two elements of negligent entrustment. Specifically, Defendants argue they did not entrust the handgun to Jordan "for use" because they did not specifically intend for Jordan to discharge the weapon, and that they had no reason to know that Jordan would likely use the gun entrusted to him in a manner involving unreasonable risk of harm. The Court should reject both arguments. First, Defendants' intent in supplying the handgun is not an element of a negligent entrustment claim. Second, Jordan's age was sufficient to put Defendants on notice that they should not entrust him with a firearm. In any event, Defendants ignore other well-pleaded facts in the Complaint that were sufficient to put them on notice that Jordan was unfit to handle a firearm, and Defendants also fail to account for the heightened standard of care expected of licensed firearm dealers.

The Court should deny Defendants' motion and permit Plaintiff's case to proceed to discovery.

BACKGROUND

On August 22, 2022, William Ballantyne was working as a sales clerk in the gun sales department at Scheels' Eden Prairie Store ("Store"). Compl. ¶ 23. Surveillance video from the Store captures Ballantyne approaching a young man later identified to be Jordan Lance Markie,

who can be seen looking into a locked gun cabinet. *Id.* ¶ 30. Ballantyne speaks with Jordan for approximately 30 seconds before he unlocks the gun cabinet, retrieves a Taurus G2C 9mm handgun (the “Taurus Handgun”), and puts it into Jordan’s hands. *Id.* ¶¶ 30, 32. The Taurus Handgun was not secured with a trigger lock or plastic tie, or otherwise disabled, and was equipped with a magazine ready to be loaded with ammunition. *Id.* ¶ 30.

Surveillance video shows Jordan handling the gun for approximately 28 seconds in front of Ballantyne. *Id.* Jordan appears to examine whether the handgun contains a magazine. *Id.* It does. Jordan then runs off with the Taurus Handgun to another part of the Store, loads it with a round of 9mm ammunition, points it at himself and pulls the trigger, tragically ending his life. *Id.*

Surveillance video throughout the Store captures the following events leading up to Jordan’s tragic death in detail: the moments when Jordan enters the Store and walks up to the firearms department on the second floor, *id.* ¶ 25; the moments when Jordan meanders aimlessly throughout the firearms department, looking nervous, *id.* ¶ 27; the moments when Jordan waits for minutes behind another customer before he can speak to an employee and asks to use the Store’s telephone, *id.*; the moment the employee denies Jordan’s request and Jordan proceeds back into the aisles of the firearms department, fidgeting nervously, *id.* ¶ 29; and the moment he appeared to test whether the gun cabinets were locked, as if considering trying to steal a firearm, *id.* ¶ 27.

What surveillance video does *not* show, however, is any attempt by Defendants to ascertain whether Jordan was of legal age to purchase a firearm. *Id.* ¶ 31. Jordan was 19 at the time of his death, though he appeared much younger. *Id.* ¶ 3. Federal law prohibits the sale of handguns by licensed firearms dealers, such as Defendants, to persons under 21 years old. 18 U.S.C. § 922(b)(1) (“It shall be unlawful for any ... licensed seller ... to sell or deliver [a handgun] to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.”).

Yet, contrary to industry custom and practice, Defendants did not ask for Jordan's identification prior to placing the Taurus Handgun in his hands. Compl. ¶ 37.

Industry custom also requires firearms dealers and their employees, when delivering a handgun to a customer, to take steps reasonably necessary to ensure that the customer does not use the handgun to harm himself or others, including, but not limited to, placing trigger locks or plastic ties on the handgun to disable it, removing the magazine from the handgun so that it cannot be loaded with ammunition, and questioning customers to ascertain the legality of a potential sale. *Id.* ¶ 38. Defendants did none of these things.

Defendants ignored Jordan's unusual behavior during the entire time he was in the firearms department, *id.* ¶ 27, and failed to take even the most basic step to ensure compliance with industry law and custom—*i.e.*, ask Jordan for his identification to determine his age. *Id.* ¶ 31. Instead, Defendants negligently entrusted an operable handgun to a person who was not old enough to purchase a handgun from them. *Id.* ¶ 46.

LEGAL STANDARD

Rule 12.02(e) of the Minnesota Rules of Civil Procedure sets a high bar for a party seeking a motion to dismiss: “[I]f it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded,” then the motion to dismiss must be denied. *Radke v. Cnty of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005) (citation omitted). Indeed, courts view motions to dismiss with disfavor because they undermine the preference for deciding causes of action on their merits. *See Glen Edin of Edinburgh Ass'n v. Hiscox Ins. Co.*, 992 N.W.2d 393, 400 (Minn. 2023) (“[T]he rules are to be liberally construed so as to serve the interests of justice and so as to discourage reliance on technicalities and form.”) (citation omitted).

Conversely, notice pleading merely requires that the Complaint include “information sufficient to fairly notify the opposing party of the claim against it.” *Walsh v. U.S. Bank, N.A.*,

851 N.W.2d 598, 605 (Minn. 2014). In fact, Minnesota courts have expressly rejected the “factual enhancement” required by the plausibility standard enshrined in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *Id.* at 603–04, 606; *see also* Minn. R. Civ. P. 8.01. Thus, a complaint is sufficient so long as it contains the pleading of events by way of a broad general statement. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). Plaintiff has easily met these requirements.

A Rule 12.02 motion to dismiss tests the legal sufficiency of a claim, not the facts supporting that claim. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). In ruling on a motion to dismiss for failure to state a claim, the trial court must “accept the facts alleged in the complaint as true” and “construe all reasonable inferences in favor of the nonmoving party.” *Walsh*, 851 N.W.2d at 606.

ARGUMENT

I. MS. VAN BOGART HAS PROPERLY PLEADED A CLAIM FOR NEGLIGENT ENTRUSTMENT

Minnesota has adopted the definition of negligent entrustment articulated in the Restatement (Second) of Torts section 390. *See Johnson v. Johnson*, 611 N.W.2d 823, 826 (Minn. Ct. 2000); *Axelson v. Williamson*, 324 N.W.2d 241, 243–44 (Minn. 1982) (“the tort of negligent entrustment . . . is described in the Restatement (Second) of Torts § 390”). Thus, “[t]o state a claim for negligent entrustment under Minnesota law, the complaint must plausibly allege that: (1) [Defendants] ‘supplie[d] directly or through a third party’; (2) ‘a chattel for the use of another whom [Defendants] know[] or ha[ve] reason to know to be likely because of [their] youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to [themselves] and others whom the supplier should expect to share in or be endangered by its use’; and (3) that physical harm resulted.” *Minnesota v. Fleet Farm*, 679 F. Supp. 3d 825, 846 (D. Minn. 2023) (quoting Restatement (Second) of Torts § 390)).

Plaintiff sufficiently pleads each element of negligent entrustment under Minnesota law. Indeed, the Restatement’s plain language tracks Plaintiff’s negligent entrustment claim, which alleges that Defendants (1) “knew or should have known” that Jordan Markie “was an incompetent trustee by virtue of his age” and “unusual behavior” in the Store; and (2) “knew or should have known” that entrusting a handgun that was “not secured with a trigger lock and containing a magazine ready to receive ammunition” to a “vulnerable” individual like Jordan would lead to the “foreseeable” and “likely” consequence that Jordan would “use the Taurus Handgun in a manner involving unreasonable risk of physical injury to himself or others,” including “Jordan’s actions in taking his own life.” Compl. ¶¶ 44–55. These allegations more than meet the definition of “negligent entrustment” under Minnesota law.¹

A. Defendants’ Intent In Supplying A Handgun To Jordan Is Not An Element Of A Negligent Entrustment Claim

Defendants claim that “the chattel” at issue in a negligent entrustment claim—here, the Taurus Handgun provided to Jordan—“must be entrusted for *its intended actual use* in order for the owner of the chattel to be liable.” Mot. at 7–8 (emphasis added). Defendants wrongly suggest that because the Complaint does not allege that Defendants entrusted the gun to Jordan specifically to “discharge[]” it, but rather to “inspect,” Plaintiff’s claim fails. Not so. In attempting to read in

¹ Defendants seem to suggest that the facts of this case are better suited for a straight negligence claim and that negligent entrustment cases apply only in the context of automobiles. Mot. at 3–6. While it is true that historically, negligent entrustment claims are often brought in the context of automobiles, firearms are also dangerous instrumentalities and courts regularly allow negligent entrustment cases to proceed against firearm sellers. *See, e.g., First Tr. Co. of N. Dakota v. Scheels Hardware & Sports Shop, Inc.*, 429 N.W.2d 5, 14 (N.D. 1988) (permitting negligent entrustment case to proceed against Scheels for gun sale); *Fleet Farm*, 679 F. Supp. 3d at 846 (permitting negligent entrustment claim to proceed against seller of firearms); *see also Shirley v. Glass*, 308 P.3d 1, 9 (Kan. 2013) (“the rules relating to negligent entrustment of firearms are nothing more than particularized applications of general tort principles”).

an element of intent and interpret “use” to mean only “discharge,” Defendants attempt to rewrite the law of negligent entrustment.

The Restatement does not limit the tort of negligent entrustment to situations where the entrustor intended specific use of the chattel by the trustee. Indeed, the very first illustration provided in section 390 demonstrates that the intent of the entrustor is immaterial; rather, it is the act of entrustment itself (i.e., the supplying of chattel) and the foreseeable nature of the trustee’s use and resulting harm that creates the cause of action. The illustration states: “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.” Restatement (Second) of Torts § 390 (emphasis added). It is sufficient to allege the supplying of chattel, *for whatever reason*, and foreseeable use that leads to harm.

Although this precise fact pattern has not appeared in Minnesota caselaw, decisions from around the country similarly demonstrate that an entrustor’s intent regarding actual use is immaterial. *See, e.g., Foster v. Arthur*, 519 So. 2d 1092, 1094 (Fla. 1st DCA 1988) (“Consent to use a firearm ... may be given indirectly through the conduct of the gun owner, such as when, under certain circumstances, he *provides the opportunity* for another person to use the gun.”); *Bernethy v. Walt Failor’s, Inc.*, 653 P.2d 280, 282–83 (Wash. 1982) (finding gun seller could be subject to liability where seller left a gun and shells on the sales counter while checking customer’s credit and customer subsequently picked up the gun and ammunition, left the store, and proceeded to kill his spouse); *McGinnis v. Kinkaid*, 437 N.E.2d 313, 318 (Ohio App. 8th Dist. 1981) (parents allowing their child “*to keep or have access to*” a weapon could constitute negligence). In *Foster*, for example, a Florida appellate court considered a case in which a gun owner kept a gun between her mattress and box spring in her unlocked room. 519 So. 2d at 1093. The gun owner asked her

roommate to repair her bed slat and the roommate discovered the gun. *Id.* A few weeks later, the roommate used the gun to shoot another individual. *Id.* The appellate court affirmed the trial court's finding of negligent entrustment, holding "that by [the gun owner's] actions under these circumstances[,] an invitation for [the roommate] to use the gun may be implied." *Id.* at 1094. The gun owner's intent was not part of the court's analysis.

There is no support for Defendants' contrary view. The two cases Defendants rely on do not even raise the issue of "intended" and "actual" use. *See* Mot. at 7–8 (citing *Axelson*, 324 N.W.2d at 241 and *Jones v. Fleischhacker*, 325 N.W.2d 633 (Minn. 1982)). *Axelson* and *Jones* are no different from other cases interpreting negligent entrustment under the Restatement: in both cases, liability hinged on the defendant's supply of the chattel at issue and the foreseeability of the trustee's ultimate use. In *Axelson*, for example, the court held the respondent liable for negligent entrustment where he supplied his car "to a person whom he could have foreseen would operate that car in a negligent manner." 324 N.W.2d at 244–45. And in *Jones*, the Minnesota Supreme Court refused to set aside the trial court's finding that a father negligently permitted his son "to have possession of the keys to [his] vehicle" because the jury could reasonably infer from the evidence that the son's ultimate "joyride" was foreseeable. 325 N.W.2d at 635, 640. In neither case was the entrustor's intent analyzed as an element of the claim.

Taking a step back, accepting Defendants' argument at face value would lead to absurd results and would fly in the face of well-established negligent entrustment jurisprudence. Defendants could presumably defeat Plaintiff's claim for negligent entrustment even if Jordan had walked into the Store and told Ballantyne he wanted to die by suicide—merely because Defendants did not *intend* that Jordan discharge the gun that they provided to him. By Defendants' logic, they could not possibly be liable for stocking handguns on shelves accessible to all customers in their

Store since they only intend “inspection,” even though it is not hard to imagine the harm that could result from allowing, for example, a felon, an obviously intoxicated individual, or a toddler, easy access to a firearm. In short, Defendants’ intent regarding use is irrelevant to Plaintiff’s claim. The viability of Plaintiff’s claim hinges only on the supply of the firearm and the foreseeability of the ultimate use and resulting harm—all elements which Plaintiff has sufficiently pleaded.

Having stretched their “intent” theory to its limits, Defendants briefly throw one more idea at the wall hoping it will stick: that negligent entrustment does not apply within the context of a sale. Mot. at 8 (citing *Johnson*, 611 N.W.2d 823). As an initial matter, this case doesn’t involve a completed sale. And even if it did involve a sale (it doesn’t), Defendants misstate the law. In *Johnson*, the court “assum[ed],” without deciding, that “the sale *was* an entrustment.” See *Johnson*, 611 N.W.2d at 826–27 (emphasis added); see *id.* (holding only that the harm caused by boyfriend’s negligent driving of his girlfriend’s truck six weeks after she purchased it was not reasonably foreseeable to the sellers of the vehicle); see also *Fleet Farm*, 679 F. Supp. 3d at 846 (holding plaintiff sufficiently stated claim for negligent entrustment against a firearms dealer that sold firearms to straw purchasers). As comment a to Restatement section 390 says, negligent entrustment liability “applies to anyone who supplies a chattel for the use of another. *It applies to sellers*, lessors, donors or lenders, and to all kinds of bailors. . . .” (emphasis added). While there are a few states—*unlike* Minnesota—that have refused to adopt the Restatement section 390 and therefore do not recognize negligent entrustment liability where there has been a transfer of title through a completed sale,² this outdated view is irrelevant and inapplicable here because there was no completed sale.

² See *In re Acad., Ltd.*, 625 S.W.3d 19, 30–31 (Tex. 2021) (refusing to adopt section 390 and holding that Texas state law does not recognize negligent entrustment liability where title to the chattel has been transferred via sale).

B. Plaintiff Plausibly Alleges That Defendants Knew Or Had Reason To Know That Jordan Would Use The Taurus Handgun In A Manner Involving Unreasonable Risk of Physical Harm

Defendants next argue that Plaintiff does not adequately plead the “foreseeability” element of negligent entrustment. Mot. at 9–12. Specifically, Defendants claim that Plaintiff’s allegations about Jordan’s age are insufficient to show that Defendants “knew or had reason to know” that Jordan would be likely to use the handgun in a manner involving unreasonable risk of physical harm. *Id.* at 9–10. As a preliminary matter, Defendants raise classic fact-specific arguments about proximate cause that are generally reserved for the jury and are not properly resolved at this stage. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 373 (Minn. 2008). Only “where reasonable minds can arrive at only one conclusion,” does “causation become a question of law which may be disposed of by summary judgment.” *Jasperson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, No. A06-1904, 2007 WL 3153456, at *5 (Minn. Ct. App. Oct. 30, 2007) (quoting *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995)). Further, Defendants’ argument should be rejected for the following four reasons.

First, Plaintiff’s allegations about Jordan’s age and youthful appearance are sufficient by themselves to show that Defendants knew or had reason to know that Jordan would be likely to use the handgun in a manner involving unreasonable risk of physical harm. Minnesota courts have noted that it is reasonable to foresee that entire classes of people—based on age or otherwise—are unsuited to operate dangerous instrumentalities. *See Axelson*, 324 N.W.2d at 244 (“When defendants permitted Dean [a 15-year-old] to drive knowing he did not have a license, they were negligent, a foreseeable result of this negligence was that Dean would drive negligently.”) (citation omitted); *see also Granley v. Crandall*, 180 N.W.2d 190, 192 (1970) (taking “judicial notice of what is commonly experienced juvenile conduct”). Courts in other jurisdictions have noted the same. *See Rocky Mountain Gun Owners v. Polis*, No. 23-1251, 2024 WL 4677573, at *23 (10th

Cir. Nov. 5, 2024) (upholding Colorado law establishing 21 as the minimum age for the sale and purchase of guns based in part on findings that such an age restriction is “consistent with [the] current scientific consensus concerning the cognitive, emotional, and social capacities of people [aged 18, 19, and 20] relative to those who are 21 and older”). Indeed, an Arizona appellate court held that a gun store negligently entrusted a handgun to an underage purchaser based on her age alone:

If Janet had been 22 when she purchased the gun from Raymond, we would require that she have exhibited some type of conduct which would have triggered a warning in Raymond’s mind about her intended use of the gun. Because Janet was only 17, however, she comes within the ambit of the statute, which is a statement of concern by the legislature about children possessing guns without the knowledge and consent of their parents. . . . The existence of the statute itself expresses an awareness by the legislature that children in possession of guns are at risk of injuring either themselves or others, either negligently or intentionally.

Crown v. Raymond, 764 P.2d 1146, 1149 (Ariz. Ct. App. 1988).

Second, while Jordan’s age was reason enough not to give him a handgun, Defendants’ argument ignores additional well-pleaded facts in the Complaint that could lead a fact finder to determine that Defendants knew or had reason to know that Jordan was likely to use the gun “in a manner involving unreasonable risk of physical harm” to himself or others. *See Axelson*, 324 N.W.2d at 244 (quoting Restatement (Second) of Torts § 390). Specifically, Plaintiff alleges many facts demonstrating that Jordan’s conduct in the Store was so unusual that a reasonable firearms dealer would have decided against supplying Jordan with a handgun ready to receive ammunition. For example, Plaintiff alleges that (1) Jordan was “acting nervously in the minutes before Defendants handed him the weapon,” Compl. ¶ 3; (2) “Jordan walked in and out of the gun department several times, appearing anxious and confused,” *id.* ¶ 27; (3) “Jordan asked an employee at the sales counter of the firearms department to use the store’s telephone,” a request which was denied, *id.* ¶ 28; and (4) “Jordan continued to walk around the firearms department for

several more minutes” during which time “his behavior was unusual”—“[h]e fidgeted nervously and appeared to test whether the gun cabinets were locked as if he were considering trying to steal a firearm,” *id.* ¶ 29. Defendants’ motion does not address these allegations and their motion should be denied for this reason alone.

Third, as a firearms dealer, Defendants should have been especially careful to monitor and evaluate Jordan before handing him a weapon in light of dealers’ heightened duty to the public to anticipate dangerous misconduct stemming from the inherent risk of firearms. *See Mattson v. Minn. & N. W. R. Co.*, 104 N.W. 443, 445 (Minn. 1905) (“The degree of care required of persons having the possession and control of dangerous explosives, such as firearms or dynamite, is of the highest. The utmost caution must be used in their care and custody, to the end that harm may not come to others from coming in contact with them.”); *Fleet Farm*, 679 F. Supp. 3d at 843 (“[F]irearm sales can give rise to the foreseeability of subsequent gun trafficking and violence.”); *Kitchen v. K-Mart Corp.*, 697 So. 2d 1200, 1206 (Fla. 1997) (finding “[c]onsisten[cy]” between “section 390’s foreseeability standard” and Florida’s common law principle that “a person who handles or deals in firearms is expected to exercise the ‘highest degree of care’” because a firearm “involves such a high degree of risk of serious injury or death” (citation omitted); *Shirley*, 308 P.3d at 9 (citing Restatement (Second) of Torts § 298 cmt. b) (“[T]hose in possession of firearms should exercise the highest standard of care in deterring the possession of those firearms by those who are at special risk to misuse the weapons.”).

Related to this heightened duty, the gun industry’s principal trade association and the industry’s federal regulator, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, confirm that it is industry custom and practice for firearms dealers like Defendants to look for and detect warning signs that a potential customer may dangerously use a firearm based on their age and

behavior. Compl. ¶¶ 12–17, 39 (detailing training that gun stores receive about the prevalence of suicide with firearms and ways to identify individuals who may be at risk of suicide); *see also Fleet Farm*, 679 F. Supp. 3d at 846 (finding that a firearms dealer had reason to know customers were straw purchasers based on red flags that “were or should have been apparent” to a firearms dealer); *Phillips v. Roy*, 431 So. 2d 849, 853 (La. Ct. App. 1983) (“As a minimum, the salesperson should spend a reasonable time in observing the customer, watching carefully for any signs of mental disturbance or instability which would tend to alert the average individual to the possibility of problems in this area and which would require some further inquiry, including consultation with one’s superiors in the business establishment.”); *Wal-Mart Stores, Inc. v. Tamez*, 960 S.W.2d 125, 129 (Tex. Ct. App. 1997) (“Congress has expressly recognized and imposed a duty on the seller of any firearm . . . to inquire into the lawfulness of the sale.”). A fact finder could well determine that Ballantyne’s 28 seconds with Jordan does not come close to satisfying Defendants’ heightened duty to anticipate dangerous misconduct.

Fourth, Defendants’ attacks on the foreseeability of Jordan’s actions are unavailing. Their citation to *Clarine v. Addison*, 234 N.W. 295 (Minn. 1931), for example, provides no basis for dismissal. Mot. at 10–11. In *Clarine*—a nearly 100-year-old pre-Restatement case—the Minnesota Supreme Court found that the defendant was not liable for negligent entrustment where the defendant could not have foreseen his son’s negligent use of a firearm *only* because of the son’s age. *See* 234 N.W. at 296. But *Clarine*’s reasoning must be read in the context of gun regulations in 1931, as the court itself acknowledged, including the fact that “the legislative and executive branches of government permit[ted] the unrestricted possession of firearms, not only of small arms, but also of machine guns.” *Id.* Moreover, the court noted an “absence of proof” that it was unsafe to entrust the son with the firearm “because of extreme youth, mental deficiency, recklessness, or

other dangerous tendencies of which the parent was chargeable with knowledge.” *Id.* *Clarine* is completely distinguishable from this case because (1) today’s firearm regulatory landscape is vastly different than it was in 1931; and (2) unlike the clerk-customer relationship here, the close father-son relationship in *Clarine* made the “absence of proof” of dangerous tendencies over many years significant—indeed, it was proof in itself that the son could safely handle the gun.

Under the current legislative landscape, the Gun Control Act of 1968 (“GCA”) prohibits gun dealers like Defendants from selling or delivering a handgun to 19-year-olds. *See* 18 U.S.C. § 922(b)(1). Congress enacted the GCA and other firearms regulations as the government learned more about the high rate of firearm-related deaths plaguing the United States. *See, e.g., Federal Firearms Act: Hearings Before Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary, 90th Cong. 44 (July 10, 1967) (statement of Sen. Robert F. Kennedy) (stating that the “great majority” of the 17,700 firearm deaths, 9,900 of which were by suicide, in 1965 “would not have occurred if firearms had not been readily available”); 139 Cong. Rec. 28259 (1993) (statement of Senator John Chafee during the Senate debate on the 1994 Youth Handgun Safety Act) (“In a moment of teenage depression, children may impulsively use a handgun to attempt suicide: every year, nearly 1,500 children successfully commit suicide with a gun, and that number is rising.”)*. Considering current gun dealer regulations, and the bases for those regulations, a fact finder could well determine that Jordan’s use of the Taurus Handgun to harm himself or others was foreseeable to Defendants.

And while Defendants are correct that unlike the parent in *Clarine*, Defendants here had no personal relationship or history of interactions with Jordan, *see Clarine*, 234 N.W. at 296, they wrongly assert this means that harm was not foreseeable to Defendants. As a firearms retailer, Defendants should have been *extra* vigilant before handing Jordan an unlocked and operable gun,

precisely because in only the short time they had to observe him, they had reason to know he should not be entrusted with a gun in light of his underage appearance and unusual behavior in the Store. Indeed, the GCA even accounts for the different positions that firearm retailers and parents hold with regards to the purchase and possession of firearms by juveniles—for example, allowing possession by juveniles with parental permission in certain circumstances but prohibiting sales by gun stores to juveniles. *Compare* 18 U.S.C. § 922(b)(1), *with id.* § 922(x)(3)(A).

Defendants also suggest that because some Minnesota laws allow “for lawful interaction with handguns by adults between the ages of 18 and 21,” nothing about Jordan’s age “is sufficient on its own to give Defendants reason to know that handing over the firearm for purposes of inspection ... would involve unreasonable risk of physical harm.” Mot. at 10–11. This argument lacks merit. First, as set out above, Defendants’ argument ignores other well-pleaded facts regarding Jordan’s unusual behavior in the Store. Second, Defendants cite to Minnesota laws permitting a 19-year-old to buy a handgun in a private sale, receive a handgun as a gift, or obtain a permit to carry a handgun for self-defense. *Id.* at 10. But as Defendants well know, none of those laws are implicated in the facts alleged here. Jordan was not applying for nor equipped with a permit, and Defendants are neither private sellers nor giftors. Here, Defendants were prohibited from selling or delivering a handgun to a customer under the age of 21, *see* 18 U.S.C. § 922(b)(1), and therefore, should not have given a handgun to someone who looked much younger than 21 without first asking for identification.

Defendants’ reliance on *Worth v. Jacobson*, 108 F.4th 677, 685 (8th Cir. 2024) is also misplaced. Mot. at 10. In *Worth*, the Eighth Circuit upheld a ruling striking down Minnesota’s law that prohibited 18 to 20-year-olds from obtaining permits to carry a handgun. 108 F.4th at 683. The court’s reasoning was based in part on a statutory scheme that would “already” serve to

“reduce the risk of danger” potentially posed by allowing this age group permits to carry: 18 to 20-year olds who receive handgun permits are approved by state law enforcement only after they apply to the sheriff’s office, pass a criminal and mental history background check, and complete a firearms safety and legal training course. *Id.* at 694 (citing Minn. Stat. § 624.714, subds. 2, 2a, 4). These circumstances are not applicable here. Defendants, of course, did not avail themselves of any of these, or other, safeguards before handing Jordan a handgun.

Finally, Defendants’ argument that no Minnesota law requires that a firearms dealer check identification of a potential customer prior to handing over an unloaded firearm misses the mark. *Mot.* at 10. Defendants should not have handed an operable and unlocked firearm to someone who they had reason to know was prohibited from buying it.³ Especially under these circumstances, with a customer who appeared underage and was acting unusually in the Store, Defendants should have—at the very least—followed standard industry practice to request Jordan’s identification. Defendants should have also carefully observed and engaged with Jordan, and should have taken reasonably necessary steps to ensure that a customer cannot use a display gun in a harmful way, such as by using trigger locks or plastic ties, or removing the gun’s magazine. It was Defendants’ *failure* to implement these industry customs and practices that led to Jordan’s death. At minimum, whether or not Defendants had reason to know that it was too risky to entrust Jordan with a firearm is a disputed matter of fact that is for the jury to determine, and should not be decided at this threshold stage. *See Osborne*, 749 N.W.2d at 373.

³ Defendants try to analogize this case to a situation in which a car dealership employee allows a potential customer to inspect a vehicle “while inside the glass walls of [a] dealership showroom.” *Mot.* at 11–12. But their analogy is incomplete. A gun, unlike a car, can be easily removed from inside a store, as Scheels well knows, having had multiple customers do exactly that. *See, e.g., Compl.* ¶ 5 & n.1 (listing incidents of individuals leaving Scheels with unauthorized firearms).

In sum, Plaintiff has adequately pleaded facts to show that Defendants “knew or had reason to know” that Jordan would be likely to use the handgun in a manner involving unreasonable risk of physical harm to himself or others.

II. PLAINTIFF’S WRONGFUL DEATH CLAIM STANDS

Defendants offer no independent basis for dismissal of Plaintiff’s wrongful death claim. Mot. at 12–13. Because Plaintiff states a claim for negligent entrustment, Plaintiff’s wrongful death claim is also viable. *See Delana v. CED Sales, Inc.*, 486 S.W.3d. 316, 327 (Mo. 2016) (holding that derivative individual liability claims survived based on viability of associated negligent entrustment claim).

CONCLUSION

For the reasons stated above, Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint should be denied.

Dated: November 22, 2024

FULLER WALLNER
Attorneys for Plaintiff Sarah Van Bogart

By: /s/ Jason D. Pederson

Jason D. Pederson
514 America Avenue NW
Bemidji, MN 56619-0880
Telephone: (218) 751-2221
jay.pederson@lawofficemin.com

Co-Counsel for Plaintiff Sarah Van Bogart (admitted *pro hac vice*):

Michael D. Schissel
Max Romanow
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
Telephone: (212) 836-8240
Michael.Schissel@arnoldporter.com
Max.Romanow@arnoldporter.com

Adrienne Boyd
ARNOLD & PORTER KAYE SCHOLER LLP
1144 Fifteenth Street | Suite 3100
Denver, CO 80202
Telephone: (303) 863-2393
Adrienne.Boyd@arnoldporter.com

Stacey Menjivar
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Telephone: (202) 942-3743
Stacey.Menjivar@arnoldporter.com

-and-

Alla Lefkowitz
EVERYTOWN LAW
P.O. Box 14780
Washington, DC 20044
Telephone: (202) 545-3257
ALefkowitz@everytown.org

Nina Sudarsan
EVERYTOWN LAW
450 Lexington Ave.
P.O. Box # 4184
New York, NY 10017
Telephone: (646) 324-8175
NSudarsan@everytown.org

ACKNOWLEDGEMENT

The undersigned, being counsel of record for Plaintiff in the above-entitled action, hereby acknowledges the costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party, provided that the Court finds reasonable cause for said award pursuant to the provision of Minn. Stat. § 549.211.

Dated: November 22, 2024

FULLER WALLNER

Attorneys for Plaintiff Sarah Van Bogart

BY: */s/ Jason D. Pederson*
JASON D. PEDERSON 0302958
514 America Avenue NW
P. O. Box 880
Bemidji MN 56619-0880
(218) 751-2221
jay.pederson@lawofficemn.com

MINNESOTA
JUDICIAL
BRANCH