

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY
COMMONWEALTH OF PENNSYLVANIA**

LYNSAY R. FOX, as Administrator and
Personal Representative of the Estate of
BRADLEY M. FOX, and LYNSAY R. FOX,
On Her Own Behalf
104 Fox Lane
Gilbertsville, PA 19525

Plaintiff,

v.

L & J SUPPLY, LLC d/b/a
IN SITE FIREARMS & LAW
ENFORCEMENT SUPPLIES
2101 West Main Street
Jeffersonville, PA 19403

and

L & J SUPPLY, LLC
34 Miami Road
Jeffersonville, PA 19403

and

LUKE J. KELLY, III
34 Miami Road
Jeffersonville, PA 19403

and

CIVIL ACTION

No. 2014-24619-0

JURY TRIAL DEMANDED

Officer Fox survived two tours of duty in Iraq but was killed in Plymouth Township, Pennsylvania, while pursuing a suspected hit and run driver, Andrew Thomas (“Thomas”).

2. In the early evening of September 13, 2012, Officer Fox and several other Plymouth Township officers were responding to a traffic accident near the intersection of Conshohocken Road and Ernest Station Road.

3. A vehicle driven by Thomas sped by the stopped traffic in the opposite direction, and the officers pursued. Thomas’ car then struck another vehicle and Thomas fled on foot along the Schuylkill River Trail. Officer Fox radioed for backup and began searching for the suspect with his K-9 partner, Nick.

4. Thomas ambushed Officer Fox and fired at least four shots, killing Officer Fox with a single gunshot to the head and wounding Nick. Thomas then turned the gun on himself.

5. Officer Fox was a day away from his 35th birthday when he was killed. He left behind Plaintiff, his wife, who was then three months pregnant with their second child and first son, subsequently named Bradley Jr., as well as an infant daughter, Kadence.

6. Thomas obtained the 9mm Beretta semi-automatic pistol used to kill Officer Fox from In Site, just three and a half months earlier, on May 30, 2012.

7. In Site, acting through its owners, operators, employees and/or agents, including the individual defendants named herein, unlawfully sold the handgun used to kill Officer Fox to Michael Henry (“Henry”), a known drug addict, who acted as a “straw purchaser” for Thomas.

8. Thomas was prohibited by federal law from purchasing or possessing firearms due to a 2005 felony arrest. Thomas also was the prime suspect in the disappearance of his fiancé in 1999. Despite being unable to pass a background check himself, Thomas was able to acquire the 9mm Beretta from In Site by having Henry act as a straw purchaser and illegally and

fraudulently complete firearm purchase paperwork required under both federal and Pennsylvania law, falsely claiming to be the actual purchaser. *See* Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) Form 4473 and Pennsylvania State Police Form SP4-113.

9. In fact, from April 10, 2012 through July 31, 2012, Henry straw purchased at least nine different guns for Thomas. Six of the guns Thomas bought through Henry were acquired from In Site. The gun used to kill Officer Fox is the only gun of the nine to have been recovered. According to authorities, the remaining guns are believed to remain in circulation in the criminal market.

10. On each occasion that Henry straw purchased a gun for Thomas, In Site allowed Henry to submit and/or aided and abetted him in submitting the required Form 4473 and Form SP4-113, falsely claiming to be the actual and qualified purchaser of the guns.

11. In Site was aware of facts and circumstances sufficient for it to have known or to have had reasonable cause to believe that Henry was a straw purchaser and a drug addict, who was not purchasing the handgun lawfully for himself but rather was profiting by making an unlawful purchase for another individual prohibited from buying a firearm.

12. In Site knew or should have known and/or had reasonable cause to believe that selling to the straw purchaser Henry created an unreasonable and foreseeable risk that the handgun would be diverted to the criminal market and used to cause harm, including death, as was the actual result here.

13. In fact, at the time Thomas acquired the 9mm Beretta from In Site, Thomas had an expressed suicidal and homicidal intent, having told Henry that Thomas was not going back to jail and would shoot a police officer rather than go to jail alive.

14. At Henry's sentencing hearing after pleading guilty to crimes he committed in connection with the above straw purchases, the presiding judge found the above circumstances to be aggravating factors justifying an upward departure from applicable sentencing guidelines, leading him to sentence Henry to a prison term of 20 to 66 years.

15. But for the wrongful conduct of In Site, straw purchaser Henry would not have succeeded in buying the handgun for Thomas, and Officer Fox would not have been shot and killed.

16. Plaintiff's suit does not in any way challenge the right of law-abiding citizens to keep and bear arms, nor does it challenge responsible, licensed firearms dealers' proper and lawful operation of their business of selling guns to law-abiding citizens. In fact, Plaintiff recognizes that approximately 90% of firearms dealers sell no guns traced to crimes.

17. But when gun dealers irresponsibly supply the criminal market with unlawfully obtained firearms, they cause harm that is reasonably foreseeable, such as the senseless murder of a decorated police officer, Bradley Fox, and they profit from sales that endanger the public. They also unfairly tarnish the reputations of responsible gun sellers who supply responsible, law-abiding citizens with firearms for lawful purposes.

18. Plaintiff's suit is about the criminal use of guns and a gun dealer that, by its wrongful acts and omissions, supplied the criminal market with an illegally purchased gun that was used for criminal means, resulting in the tragic loss of Officer Fox's life.

19. Plaintiff brings this suit as Administrator and Personal Representative of the Estate of Officer Bradley M. Fox as well as on her own behalf, pursuant to Pennsylvania's Wrongful Death Act, 42 Pa. Cons. Stat. § 8301 and Survival Act, 42 Pa. Cons. Stat. § 8302, as well as the Pennsylvania Rules of Civil Procedure and applicable decisional law, to recover

damages against In Site and each of the Defendants jointly and severally, all of which were a reasonably foreseeable consequence of Defendants' wrongful conduct.

PARTIES

20. Plaintiff Lynsay R. Fox, as Administrator and Personal Representative of the Estate of Officer Bradley M. Fox, and on her own behalf, is a citizen of the Commonwealth of Pennsylvania and the widow of decedent Officer Bradley M. Fox. She is also the mother and sole guardian of Officer Fox's two minor children, Kadence and Bradley Jr. She resides at 104 Fox Lane, Gilbertsville, PA 19525, along with her minor children. Mrs. Fox and the minor children are the sole persons entitled to recover damages as beneficiaries of Officer Fox's estate under the Pennsylvania Wrongful Death Act, 42 Pa. Cons. Stat. § 8301. As Plaintiff, Mrs. Fox seeks all available damages pursuant to the Pennsylvania Wrongful Death and Survival Acts, as well as applicable decisional law.

21. Defendant L & J Supply, LLC is a Pennsylvania limited liability company acting as a federally licensed firearms dealer. The sole members of L & J Supply, LLC are and/or were at all relevant times Luke J. Kelly, III and Jacqueline Kelly, husband and wife. The registered office address of L & J Supply, LLC is 34 Miami Road, Jeffersonville, PA, the same address as the Kelly's personal residence. L & J Supply, LLC does and at all relevant times has done business from its location at 2101 West Main Street, Jeffersonville, PA 19403 as In Site Firearms & Law Enforcement Supplies. In Site sold the gun used to kill Officer Fox.

22. Defendant Luke J. Kelly, III is, and/or at all relevant times was, a co-member of L & J Supply, LLC through which, along with this wife Jacqueline, he has owned, operated, managed and controlled the licensed retail firearms dealer doing business as In Site. Mr. Kelly also is a former West Norriton Township police officer, having spent more than 20 years in law

enforcement. Mr. Kelly's current address is 34 Miami Road, Jeffersonville, PA 19403. Unless otherwise stated, any reference to In Site in this Complaint includes Mr. Kelly.

23. Defendant Jacqueline Kelly is and/or at all relevant times was a co-member of L & J Supply, LLC through which, along with her husband Luke, she owned, operated, managed and controlled the retail licensed firearms dealer doing business as In Site. Both Mrs. Kelly and her estate are sued because, on information and belief, Mrs. Kelly may have passed away in February 2013, after the events at issue in this case. Mrs. Kelly's address and/or the address of Mrs. Kelly's estate is 34 Miami Road, Jeffersonville, PA 19403. Unless otherwise stated, any reference to In Site in this Complaint includes Mrs. Kelly and/or the Estate of Mrs. Kelly.

24. Defendant Alibi Corporation d/b/a In Site Firearms Company and/or In Site Firearms Distribution Company ("Alibi Corporation") is a Pennsylvania corporation that, upon information and belief, has operated from the same location as In Site (either at In Site's location at 2101 West Main Street, Jeffersonville, PA 19403 or at In Site's prior locations) and has and continues to hold itself out to the public as part of the business that operates under the fictitious name In Site. Plaintiff is suing Alibi Corporation because, on information and belief, Alibi Corporation has or had a legal interest and/or role in the operation and control of In Site rendering it liable for the wrongful acts and omissions alleged herein. Unless otherwise stated, any reference to In Site in this Complaint includes Alibi Corporation.

25. Defendant William H. Gordon is and/or was the owner, president, secretary and treasurer of Alibi Corporation. Upon information and belief, Mr. Gordon holds himself out to the public and/or allows others to hold him out to the public as part of the business of In Site. Plaintiff is suing Mr. Gordon, whose current address is 6185 Bay Isles Drive, Boynton Beach, FL 33437 because, on information and belief, he has or had a legal interest and/or role in the

ownership, management, operation and control of In Site rendering him personally liable for the wrongful acts and omissions alleged herein. Unless otherwise stated, any reference to In Site in this Complaint includes Mr. Gordon.

JURISDICTION AND VENUE

26. This is a civil action brought pursuant to the Pennsylvania Rules of Civil Procedure, including Rules 1001, 1007, 1007.1 and 2201 and applicable decisional law. Jurisdiction exists in this Court because the defendants are and/or were at all relevant times citizens of this Commonwealth who regularly conduct(ed) and transact(ed) business in this Commonwealth and all of the acts and events at issue and the harms suffered occurred within this Commonwealth.

27. Venue lies in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2179.

FACTUAL BACKGROUND

28. Federally licensed firearms dealers are “the ‘principal agent[s] of federal enforcement’ in ‘restricting [criminals’] access to firearms’” and have “the responsibility to ‘[e]nsure that, in the course of sales or other dispositions . . . , weapons [are not] obtained by individuals whose possession of them would be contrary to the public interest.’” *Abramski v. United States*, 134 S. Ct. 2259, 2273 (2014) (quoting *Huddleston v. United States*, 415 U.S. 814, 824–25 (1974)).

29. A small percentage of firearm dealers are known to be one of the most important channels for diverting firearms from the legal market to the illegal market. Straw purchases are one of the primary ways in which guns are diverted from dealers.

30. Straw purchasers are individuals who fraudulently and illegally represent themselves as buying guns on their own behalf, but really are acting on behalf of others. In most

cases, and in this case, straw purchasers buy guns on behalf of individuals who are prohibited from doing so because of their past criminal record.

31. The vast majority of firearms used to commit crimes throughout the country are purchased from a small number of dealers and diverted to the criminal market by straw purchasers and others trafficking in guns.

32. Selling to straw purchasers who channel guns to the criminal market is by no means an inevitable or unavoidable risk of being a firearms dealer. The vast majority of firearms dealers take appropriate precautions and are successful in ensuring that they do not sell guns to straw purchasers or other persons with criminal purposes.

33. Tragically, the problem lies with a small fraction of “bad apple” dealers who act irresponsibly. Just over 1% of the nation’s firearms dealers supply roughly 60% of all crime guns traced by law enforcement.

34. Whether a firearms dealer will sell to a straw purchaser cannot be predicted by where it is located (*i.e.*, whether it is in a high crime area) or by its sales volume. What is predictive of whether a firearms dealer will sell to a straw purchaser is whether it does or does not exercise due care and follow best practices in how and to whom it sells guns. Firearms dealers’ sales practices and procedures and the business decisions they make regarding whether to sell guns to suspicious persons directly affect the probability that their guns will be diverted to criminals or into the criminal market.

35. A report released by the United States Department of Justice, entitled *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy*, details how firearms dealers’ business practices and procedures work directly to either facilitate criminal handgun acquisition or prevent it. The report advocates the implementation of “a code of

conduct and comprehensive training for dealers, to ensure that handguns are not stolen or sold to criminals or straw purchasers.” It also pledges federal support to encourage and assist gun sellers in playing an active role preventing handguns from coming into criminal hands.

36. The National Shooting Sports Foundation (“NSSF”) also has publicly recognized that it is not reasonable or adequate for firearms dealers to rely on the veracity of prospective purchasers’ written answers to questions on federally-required Form 4473s. A person willing to act as a straw purchaser will also be willing to lie on a federal form, as did Henry, and falsely represent that he is the actual buyer of the gun being sold.

37. NSSF issued a recommended sales protocol under which firearms dealers should screen suspicious purchasers with a battery of questions, beyond those on the Form 4473 itself, and not sell a firearm to a person unless the dealer has no doubts about the legitimacy of the sale.

38. ATF and NSSF, through this program, entitled “Don’t Lie for the Other Guy,” make clear that firearms dealers have an obligation to confirm the legality of the gun sales they make, and to not complete a sale when there is any uncertainty as to whether the purchaser is buying the gun for someone else.

39. ATF and NSSF, through the “Don’t Lie for the Other Guy” program, have set forth recommended best practices for ensuring that guns sold by gun dealers do not fall into the hands of criminals. By way of example it provides:

- (a) “To simply have your customer fill out the required forms and undergo the criminal background check may not be enough under certain circumstances. By including a couple of questions regarding the identity of the actual purchaser in this area of presales screening, retailers can provide a valuable service to law enforcement and to their community without offending a legitimate customer.
- (b) “An effective way to do this is to establish a store policy that every potential handgun purchaser will be asked the same sequence of questions. You may even want to post a sign in your store that informs the customer

of this policy. The sign may read: To assist law enforcement it is our policy to go beyond the law in verifying the identity of the actual purchaser of a handgun.

- (c) “Questions for All Purchasers You Do Not Personally Know: 1. Is the handgun for you or someone else? 2. If someone else is this a gift? 3. What is the intended use: personal protection, deer hunting, target shooting? 4. What type of handgun are you interested in or most comfortable with?
- (d) **“If suspicions arise, it is more prudent to follow the precautionary principle of politely refusing the sale to protect yourself from the risk of contributing to a possible illegal transaction. It’s not just good business. *It’s your responsibility.*”** (Bold emphasis in original; italics emphasis added)

40. ATF and NSSF have made clear that gun dealers violate their duties if they put their heads in the sand and fail to inquire about or ignore potential indicators of a straw purchase or otherwise illegal sale.

41. The fact that Thomas was able to use Henry to straw purchase the gun that killed Officer Fox reflects In Site’s failure to implement and follow, and/or its decision to ignore and/or act contrary to, the recommendations of “Don’t Lie For the Other Guy,” and/or comparable screening procedures.

42. In fact, Defendants were presented with multiple opportunities to identify Henry as a straw purchaser and drug addict before Officer Fox was tragically killed, given the many red flags raised by his purchases.

43. These red flags included but are not limited to the number and type of guns Henry purchased; that he was buying semiautomatic handguns; that he purchased multiple semiautomatic handguns; that he was the identified buyer of multiple guns on the same day; that he purchased six guns within a mere 14 weeks; that he purchased two of the same type of gun (a Colt 45) within two weeks of each other; the time frame in which he purchased multiple guns; that he paid for all of his guns with cash; as well as his drug use. In addition, upon information

and belief, when In Site illegally sold Henry the six guns and Henry completed the firearms paperwork requiring him to state his address, Henry was living in a house for recovering drug addicts.

44. With regard to Henry's specific straw purchases, between April 10, 2012 and July 31, 2012, Henry straw purchased nine firearms for Thomas – six from In Site.

45. The six straw purchases transacted between In Site and Henry in just over 14 weeks were:

- (a) On April 19, 2012, In Site sold Henry a Colt .45 ACP semiautomatic handgun, Serial # GCT34231;
- (b) Just two weeks later, on May 3, 2012, In Site sold Henry another semiautomatic handgun, a Colt .45 ACP Defender Serial # DR47133;
- (c) Just under four weeks later, on May 30, 2012, In Site sold Henry a Remington 750 30-06 Rifle Serial # D8044546 (sold, same day as Homicide Weapon);
- (d) Also on May 30, 2012, In Site sold Henry yet another semiautomatic handgun, a Beretta 92 FS Pistol Serial # BER593388, which was used to kill Officer Fox;
- (e) Three weeks later, on June 21, 2012, In Site sold Henry still another semiautomatic handgun, a Colt Mustang .380 ACP 7 3/4" Barrel Serial # PL73263; and
- (f) Five weeks later, on July 31, 2012, In Site sold Henry yet another firearm, a Stevens 200 Rifle 300 Winchester Serial # G602244.

46. Each straw purchase at In Site was paid for by Henry with cash that he received from Thomas. Henry then immediately transferred the gun to Thomas right outside In Site's front door – in its open-air parking lot.

47. On May 30, 2012, Thomas had Henry straw purchase two firearms from In Site. These were the Beretta used to kill Officer Fox and a Remington Rifle, both paid for with cash Thomas provided to Henry.

48. Under the circumstances, even without further information, Defendants knew or reasonably should have known that (a) Henry was not the actual purchaser and intended user of the firearms, (b) Henry was a drug addict acting as an illegal straw purchaser, and (c) Henry was likely to use the firearms in a manner posing an unreasonable risk of physical injury to others.

49. As subsequent events prove, even the most minimal questioning of Henry would have led to him disclosing his unlawful purpose.

50. Only hours after Officer Fox's killing, Henry was located by police and immediately admitted to being a drug addict (which standing alone would have prevented him from buying a gun) and the straw purchaser for Thomas. He also admitted that Thomas told him that, if confronted by the police, Thomas was not going back to jail alive and he would shoot a police officer.

51. Defendants' failure to notice and/or react appropriately to the red flags raised by Henry's purchases is especially outrageous given Defendant Kelly's experience as a former West Norriton police officer, which Defendants trumpet on In Site's website. Indeed, In Site's very name, "In Site Firearms & Law Enforcement Supplies" touts and uses to its marketing advantage Kelly's connection to the law enforcement community.

52. Subsequently, Henry pled guilty to crimes he committed in connection with the illegal straw purchases and was sentenced to 20 to 66 years in prison. The presiding judge found Henry's knowledge of Thomas's suicidal and homicidal intentions, including his stated and known willingness to kill a police officer, to be aggravating factors.

53. Defendants failed to comply with their legal obligations, use reasonable care, implement best practices, and/or otherwise take appropriate and necessary steps to minimize the risk that In Site would sell firearms to straw purchasers like Henry and instead engaged in

conduct whereby they directly profited from the unlawful sale of guns and the diversion of guns to the criminal market.

54. By engaging in illegal sales to an unlawful straw purchaser, Defendants knowingly violated and/or aided and abetted others in violating federal and state laws applicable to the sales and marketing of firearms, including, but not limited to, 18 USC § 2, 18 USC § 371, 18 USC § 922(a)(1)(A), 18 USC § 922(a)(6), 18 USC § 922(b)(2), 18 USC § 922(d), 18 USC § 922(g), 18 USC § 922(m), 18 USC § 924(a)(1)(A), 18 Pa. Cons. Stat. § 306, 18 Pa. Cons. Stat. § 903, 18 Pa. Cons. Stat. § 6111, and 18 Pa. Cons. Stat. §§ 6116 and 4904. By their conduct, Defendants made it reasonably foreseeable that their guns would be acquired by straw purchasers, like Henry, and would be used to injure or kill innocent victims, which is what, in fact, occurred.

55. The acts and omissions of Defendants, and/or each of them individually, directly and proximately caused the wrongful death of Officer Fox, for which Plaintiff seeks compensatory and punitive damages, together with interest and costs, to the fullest extent allowed by Pennsylvania's Wrongful Death Act, 42 Pa. Cons. Stat. § 8301 and Survival Act, 42 Pa. Cons. Stat. § 8302, as well as applicable decisional law.

COUNT I – NEGLIGENCE
(ALL DEFENDANTS)

56. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully herein.

57. Defendants were subject to the general duty imposed on all persons to use reasonable care and not to expose others to foreseeable risks of injury.

58. Indeed, Defendants were subject to a duty to use a heightened degree of care because they were engaged in the business of selling lethal weapons that could not legally be sold to or possessed by felons, drug addicts, and other categories of persons. Further, defendant

Luke Kelly is a retired law enforcement officer, and has marketed his long career in law enforcement to the public as a demonstration of In Site's gun-related knowledge and expertise and to enhance In Site's reputation and profits.

59. As such, Defendants knew or should have known of the above described facts regarding straw purchasers and other gun traffickers obtaining guns from firearms dealers like In Site and diverting them to the criminal market.

60. Defendants also knew or should have known of the practices and procedures that responsible firearms dealers need to implement to prevent such criminal diversion, and violation of applicable firearms laws, and avoid the foreseeable and tragic consequences that occurred here.

61. Defendants knew or should have known or had reasonable cause to believe that Henry was an illegal straw buyer, and that allowing Henry to obtain a firearm as a straw buyer violated federal and state laws, applicable to the sale of firearms including, but not limited to, those set forth above. Defendants were negligent, and breached their legal duties by, among other things:

- (a) failing to develop policies and procedures to screen prospective buyers to ensure they are not straw purchasers;
- (b) failing to implement policies and procedures to screen prospective buyers to ensure they are not straw purchasers;
- (c) failing to hire employees with the knowledge and experience needed to recognize the red flags indicating a likely straw purchaser and prevent a straw purchase from taking place;
- (d) failing to train and supervise employees in policies and procedures to screen prospective buyers to ensure they are not straw purchasers;
- (e) failing to screen and ask appropriate questions of Henry which would have revealed the 9mm Beretta he purchased on May 30, 2012 was a straw purchase that foreseeably would arm and be used in crime by a dangerous person, such as Thomas, a known felon prohibited from purchasing a gun;

- (f) failing to screen and ask appropriate questions of Henry which would have revealed that he was a serial straw purchaser and drug addict who repeatedly acted on behalf of a criminal;
- (g) selling multiple handguns when they should have reasonably suspected the guns were being straw purchased fraudulently and for criminal purposes and should have declined the sales; and
- (h) failing to observe and make appropriate inquiries regarding Henry's unlawful drug use, which independently disqualified him from buying a firearm.

62. The negligent acts of Defendants, and each of them individually, in failing to develop, implement and/or enforce appropriate practices and procedures to prevent straw purchases made in violation of federal and state firearms laws directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

**COUNT II – NEGLIGENT ENTRUSTMENT
(ALL DEFENDANTS)**

63. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

64. Defendants had control at all material times of the gun used to kill Officer Fox, as well as the five other firearms In Site sold to straw purchaser Henry before the fatal shooting of Officer Fox.

65. Henry was able to act for Thomas, the actual purchaser of the gun used to kill Officer Fox as well as these multiple other guns, only with the consent of Defendants.

66. Defendants knew or reasonably should have known that by withholding consent to sell to Henry due to multiple indications that he might be a straw purchaser (not to mention a prohibited person by virtue of his drug use), they could prevent him from possessing a dangerous

weapon and transferring it to others, such as Thomas, who used the weapon for criminal purposes, including the killing of Officer Fox.

67. Defendants also knew or reasonably should have known that Henry was likely a straw purchaser who would use any gun sold to him in a manner involving unreasonable risk of physical injury to others. In fact, Henry did unlawfully divert the gun used to kill Officer Fox to an unauthorized purchaser who intended to and did use such gun for criminal purposes, thereby causing unreasonable risk of harm to others.

68. Defendants' negligent entrustment of a gun to Henry, by which Thomas obtained the weapon used to kill Officer Fox, was a direct and proximate cause of Officer Fox's death, for which Henry has been found liable and sentenced to 20 to 66 years in prison. In fact, at his sentencing hearing, the presiding judge found as aggravating factors warranting an upward departure in the sentencing guidelines that Henry knew, at the time he acquired the gun for Thomas, of Thomas' express suicidal and homicidal intent and willingness to kill a police officer rather than return to jail, which is what Thomas did.

69. Defendants are independently liable insofar as they negligently entrusted Henry with the gun used to kill Officer Fox, as well as multiple other guns, before Officer Fox was killed with the 9mm Beretta In Site sold to Henry.

70. Defendants' negligent entrustment of Henry with a gun directly and proximately led to Henry's unlawful transfer of that gun to Thomas and directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

**COUNT III – NEGLIGENCE PER SE
(ALL DEFENDANTS)**

71. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

72. By engaging in illegal sales to an unlawful straw purchaser, Defendants violated and/or aided and abetted in the violation of federal and state laws including, but not limited to, 18 USC § 2, 18 USC § 371, 18 USC § 922(a)(1)(A), 18 USC § 922(a)(6), 18 USC § 922(b)(2), 18 USC § 922(d), 18 USC § 922(g), 18 USC § 922(m), 18 USC § 924(a)(1)(A), 18 Pa. Cons. Stat. § 306, 18 Pa. Cons. Stat. § 903, 18 Pa. Cons. Stat. § 6111, and 18 Pa. Cons. Stat. §§ 6116 and 4904.

73. These laws are intended to protect persons who may be victims of gun crimes, including police officers who are at particular risk of being put in harm's way from the foreseeable damage that is likely to occur when guns are sold to straw purchasers and diverted to the criminal market where they are used to cause injury and death.

74. The purpose of these laws is to prevent the illegal sale of guns to straw purchasers and others prohibited from buying guns, which is necessary to protect persons who may become victims of gun crimes, including police officers such as Officer Fox, from the foreseeable and tragic harms that result from criminal use of guns.

75. The violations of laws committed by Defendants, as enumerated above, caused harm of the kind these laws were intended to prevent, and Plaintiff was within the class of persons the laws were intended to protect.

76. In Site's violations of law constitutes negligence *per se*, and directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

COUNT IV – GROSS NEGLIGENCE
(ALL DEFENDANTS)

77. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully herein.

78. The above-described conduct reflects repeated and persistent failures on the part of In Site to act in conformity with law and with best (or even accepted) practices for responsible and law abiding gun dealers.

79. Such repeated failures go beyond carelessness or lack of ordinary care and reflect a reckless, wanton, willful, deliberate and/or intentional disregard for law and public safety, including the safety of Officer Fox and others who Defendants knew or should have known were likely to be harmed by their failures.

80. Defendants' reckless, wanton, willful, deliberate and/or intentional misconduct was outrageous and constitutes gross negligence. Defendants' misconduct directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages, including punitive damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000, as well as punitive damages, together with interest, costs and such other relief as may be determined to be reasonable.

COUNT V – CONSPIRACY, AIDING & ABETTING
(ALL DEFENDANTS)

81. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

82. In Site, acting through its owners, agents or employees, and/or the individual named defendants, as owners and persons with control over the operations of In Site, and also in their individual capacities, explicitly, implicitly, or tacitly collaborated, agreed to, and/or participated in a conspiracy with each other and with straw purchaser Henry, and/or aided and abetted Henry for an unlawful purpose, the straw purchase of multiple guns, including the gun used to kill Officer Fox.

83. Said conspiracy involved the intentional participation of the Defendants together and/or with Henry (also in conspiracy with Thomas) in furtherance of a common design, which was to effectuate the unlawful sale of guns, in knowing disregard of the known and/or reasonably knowable risks of harm created, in order to make a profit. The Defendants' unlawful sales of guns were the overt acts in furtherance of their conspiracy.

84. Further, Defendants collectively, and/or in any combination, aided and abetted the unlawful sale of guns, in knowing disregard of the known and/or reasonably knowable risks of harm created, in order to make a profit.

85. Such conduct by Defendants collectively, and/or in any combination, was in knowing and direct violation of federal and state laws applicable to the sale and marketing of firearms as well as applicable common law.

86. Defendants' reckless, wanton, willful, deliberate and/or intentional misconduct in connection with the above-described conspiracy was outrageous. Defendants' misconduct directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages, including punitive damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000, as well as punitive damages, together with interest, costs and such other relief as may be determined to be reasonable.

COUNT VI – PUBLIC NUISANCE
(ALL DEFENDANTS)

87. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

88. By virtue of the foregoing conduct, Defendants have created or caused to be created an unreasonable and significant interference with the public health, the public safety, the public peace, the public comfort and/or the public convenience.

89. Further, as alleged herein, Defendants' conduct was of a continuing nature and has produced a permanent and long-lasting detrimental effect, and as Defendants knew or reasonably should have known, has had a significant detrimental effect upon public rights.

90. Moreover, Defendants knew or reasonably should have known that their conduct would cause unreasonable and significant interference with such public rights.

91. Defendants also knew or reasonably should have known that they had the ability to prevent this interference with such public rights. Specifically, as alleged above, they could and should have taken precautions that would have eliminated or minimized the injuries to the public, including to police officers like Bradley Fox. They chose not to take those precautions in order to maximize their revenues and profits. Defendants' conduct in creating and maintaining this interference with public rights facilitated and continues to facilitate the circumvention and violation of federal and state laws restricting and regulating gun sales and possession, and/or, upon information and belief, facilitated and continues to facilitate widespread violation of such laws.

92. Defendants' conduct, including negligent entrustment of firearms, constitutes the creation of a public nuisance under Pennsylvania law, which has adopted the elements of a claim for public nuisance as set forth by the Restatement (Second) of Torts § 821B.

93. Defendants' creation of a public nuisance was a direct and proximate cause of the death of Officer Fox and the harms to Plaintiff and her minor children.

94. These harms are different from the harms suffered by other members of the public, and entitle Plaintiff to seek and recover damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

COUNT VII – VEIL PIERCING
(LUKE KELLY, III, JACQUELINE KELLY and/or the ESTATE
of JACQUELINE KELLY and WILLIAM GORDON)

95. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

96. At all relevant times, defendants Luke and Jacqueline Kelly held themselves out as personally owning, operating, managing and controlling In Site.

97. By way of example, In Site's website describes how in 2006, "Luke along with his wife Jackie, opened the doors to their new location at 2101 W. Main Street directly across from the schoolhouse."

98. Similarly, the In Site website describes the history of the business as continuous, despite different names and forms, stating that a prior owner [who on information and belief was Gordon] changed the name of the business to In Site Firearms and ran it successfully and that it "has been purchased back by Luke [Kelly]" The plain import is that, Gordon and the Kellys have personally owned, operated, managed and controlled what is, for all relevant purposes, a

continuous licensed firearms dealership business —irrespective of corporate formalities—known by the shared fictitious name In Site.

99. The website also demonstrates that Gordon and the Kellys have sought to promote and profit from holding themselves out as direct owners and operators of the business in a way that ties the business to them and their reputations in the community, including Luke Kelly's prior career in law enforcement.

100. Also, there is no separation between the Kellys individually and L & J Supply, LLC, which plainly bears the initials of the Kellys' first names ("L & J"), has the same business address as the Kellys' personal residence and is, thus, the alter ego of the Kellys.

101. As such, it is proper to pierce the corporate veil and hold the Kellys (including, as appropriate, the Estate of Jacqueline Kelly) and Gordon individually and personally liable not only for their wrongful acts described above in their capacity as owners, operators and persons who manage and control In Site, but also because the Kellys, Gordon and In Site were, are and should be deemed one and the same.

102. The wrongful conduct of defendants Luke and Jacqueline Kelly, as well as William Gordon, acting through their alter ego, In Site, directly and proximately caused the wrongful death of Officer Fox, as well as other harms, for which Plaintiff seeks damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

COUNT VIII – LOSS OF CONSORTIUM
(ALL DEFENDANTS)

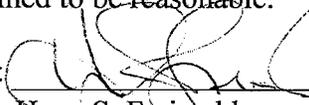
103. Plaintiff incorporates and re-alleges the above paragraphs as if stated fully here.

104. At the time of his death, Plaintiff Lynsay R. Fox and Officer Bradley M. Fox were married. They were the parents of an infant daughter, Kadence, and were expecting a son who was born after Officer Fox's death and is named in his honor, Bradley, Jr.

105. As a result of In Site's wrongful conduct, as set forth herein, Plaintiff Lynsay R. Fox has suffered a loss of consortium as she has been deprived of the love, support, comfort, care, and other services of her husband and the father of her children, for which she seeks damages.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants, individually and/or jointly and severally, in an amount in excess of \$50,000 together with interest, costs and such other relief as may be determined to be reasonable.

Dated: September 8, 2014

By: 

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Attorneys for Plaintiff Lynsay R. Fox

VERIFICATION

I, Lynsay R. Fox, hereby state:

1. I am the plaintiff in this action;
2. I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief; and
3. This Verification is made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.



Lynsay R. Fox

Dated: 9/4/14