

IN THE COMMON PLEAS COURT OF WAYNE COUNTY, OHIO

Estate of Bryan Galliher
Through its Administrator
Gerri A. Galliher
c/o Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, Ohio 43221,

Plaintiff,

v.

Cabela's, LLC f/k/a Cabela's, Inc.
c/o Registered Agent
The Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

and

Bass Pro Group, LLC
c/o Registered Agent
The Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

and

Paul R. Claren
c/o Dave Marquis, Warden
Richland Correctional Institution
1001 Olivesburg Road
Mansfield, Ohio 44905,

Defendants.

Case No. 2018 CVC-H 000309

Judge MARK K WIEST

JURY DEMAND
ENDORSED HEREON

COMPLAINT

The Estate of Bryan Galliher brings this action against Cabela's, LLC, Bass Pro Group, LLC, and Paul R. Claren for damages and other proper relief resulting from Cabela's and/or Bass Pro Group's illegal, negligent, and reckless sale of a firearm to Paul Claren, who used the

firearm to shoot and kill his 21-year old neighbor, Bryan Galliher. Claren was a violent convicted felon, prohibited by Ohio law from purchasing or possessing firearms, including the “black powder” gun at issue in this dispute, which is a fully-functioning replica of an antique revolver. Even though Cabela’s and/or Bass Pro knew or should have known about Claren’s violent felony record and that he was prohibited from purchasing such a firearm in Ohio, Cabela’s and/or Bass Pro knowingly violated Ohio law and sold Claren the firearm that he foreseeably used to kill Bryan Galliher.

This complaint does not challenge the right of law-abiding citizens to bear arms. This complaint also does not challenge the right of responsible gun dealers to properly sell guns to law-abiding citizens. Rather, this case focuses on the foreseeable dangers that arise when gun dealers illegally, negligently, and recklessly transfer guns to individuals prohibited from owning firearms, and thereby enable dangerous people to injure and kill innocent people. Gun dealers, including Cabela’s and Bass Pro, owe a duty to not expose others to reasonably foreseeable risks of harm. Cabela’s and Bass Pro breached this duty, and, as a foreseeable result, Bryan Galliher was fatally shot and killed.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, The Estate of Bryan A. Galliher, was opened in Wayne County, Ohio, and Gerri Galliher has been appointed Administrator by the Wayne County Probate Court. Gerri is Bryan’s mother. Bryan is also survived by his sister, Alissa.

2. Defendant Cabela’s, LLC f/k/a Cabela’s Inc. is a Delaware limited liability company. The entity’s registered agent information is the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801. Cabela’s is a wholly owned subsidiary of Bass Pro Group, LLC. Cabela’s is one of the world’s largest direct

marketer of hunting, fishing, camping and related outdoor merchandise. Among other things, Cabela's sells firearms, including handguns such as the black powder revolver used to kill Bryan Gallihier. Cabela's owns and operates four retail stores in Ohio, through which it conducts substantial business. In addition to its retail presence, Cabela's conducts substantial business in Ohio over the phone and the Internet, which it uses to advertise and sell products directly to Ohio residents, including those in Wayne County. Cabela's also conducts substantial business in Ohio—including Wayne County—through its print catalogs, which it mails directly to Ohio residents and uses to advertise and sell products directly to Ohio residents.

3. Bass Pro Group, LLC is a Delaware limited liability company with its principal place of business in Springfield, Missouri. Bass Pro Group, LLC is a leading national retailer of outdoor gear and apparel. The address of Bass Pro Group, LLC is 2500 East Kearney Street, Springfield, Missouri 65803. Bass Pro Group, LLC completed its acquisition of Cabela's on or about September 25, 2017.

4. Cabela's, LLC and Bass Pro Group, LLC are referred to collectively below as "Cabela's".

5. Paul Claren is an Ohio resident. Mr. Claren is currently incarcerated at the Richland Correctional Institution serving a life sentence for the murder of Bryan Gallihier.

6. Jurisdiction is proper because all relevant events occurred in Wayne County, Ohio and defendants conduct business in Wayne County, Ohio.

7. Venue is proper in this Court because the events giving rise to this lawsuit occurred in Wayne County, Ohio.

BACKGROUND ALLEGATIONS

8. Ohio Revised Code § 2923.20(A)(1) prohibits any person, including Cabela's, from recklessly selling, lending, giving, or furnishing any firearm to someone who is prohibited by Ohio Revised Code § 2923.13 from acquiring, having, carrying, or using any firearm.

9. Ohio Revised Code § 2923.20(A)(2) prohibits any person, including Cabela's, from possessing a firearm with the purpose to dispose of it in violation of § 2923.20(A).

10. Ohio Revised Code § 2923.13(A)(2) prohibits any person who has been convicted of any "felony offense of violence," from acquiring, having, carrying, or using any firearm.

11. Paul Claren is an Ohio resident with a violent history, including a 2001 conviction of felonious assault, a violation of Ohio Revised Code § 2903.11(A)(2). He received a seven-year sentence for his crime. Felonious assault is a "felony offense of violence," as that term is used in Ohio Revised Code § 2923.13.

12. In or around November or December 2014, Claren called a Cabela's store. Upon information and belief, the Cabela's store was located in Ohio. Claren asked to speak with the person in charge of the gun department. Claren spoke with a Cabela's employee or store manager. Upon information and belief, the Cabela's employee knew or should have known that Claren had a felony conviction on his record.

13. Upon information and belief, the Cabela's employee did not inquire further into Claren's criminal record and did not make any effort to check his criminal record.

14. Upon information and belief, the Cabela's employee then nevertheless advised Claren that Cabela's would sell him black powder firearms.

15. It was illegal for Cabela's to sell Claren a black powder firearm under Ohio law because of his criminal record.

16. Cabela's and its employees knew and/or should have known firearms law in Ohio, the state in which it was operating, including the law that prohibited Cabela's from selling a black powder firearm to Claren.

17. Cabela's is vicariously liable for the actions and inactions of its agents and employees while in the scope of their agency or employment, including the actions and inactions of its agents and employees when selling firearms.

18. As Cabela's knew or should have known, the gun industry recognizes that black powder firearms are subject to the same laws and regulations in Ohio as other firearms. A simple glance at the National Rifle Association – Institute for Legislative Action (“NRA-ILA”) website informs that in Ohio, “Antique and antique replica rifles, shotguns, or handguns are treated like modern arms for possession, carrying and purchase purposes.”

19. Claren had every right to assume that Cabela's would tell him the accurate truth about whether he could buy a black powder gun.

20. The public, including Bryan Galliher, had every right to assume that Cabela's would follow the law, including the law that barred felons such as Claren from buying and possessing firearms.

21. Cabela's website states that residents of Hawaii, Illinois, Massachusetts, Michigan, New Jersey, New York, and Washington should “check your local laws for restrictions before ordering black powder guns.” Cabela's website does not advise residents of Ohio to do the same.

22. Cabela's also has a duty not to sell black powder firearms to prohibited purchasers in states such as Ohio where it is illegal to do so. Simply advising consumers in certain states to check their local laws does not satisfy this duty.

23. Cabela's either advised Claren that it was legal for him to buy, and Cabela's to sell him, a black powder firearm, even though it was illegal; and/or Cabela's advised Claren that it was illegal, but that Cabela's was willing to violate the law; and/or Cabela's simply informed Claren that it would sell him the gun without informing him about the law.

24. Upon information and belief, Claren truthfully answered all questions asked of him by Cabela's.

25. At this point, Cabela's knew or should have known that Claren had a felony conviction on his record, and that Ohio law prohibited him from purchasing any firearm.

26. Nonetheless, on or about December 12, 2014, Cabela's sold Claren an 1858 Army .44 caliber black powder revolver, serial number R458522 (the "Black Powder Revolver") over the telephone, in knowing violation of Ohio Revised Code § 2923.20.

27. The Black Powder Revolver at issue is a replica of an antique firearm, made from modern materials and modern construction techniques. Researchers have also shown that such black powder revolvers have all the wounding capability of modern firearms, and that they are similarly capable of causing death. Researchers have also shown that the kinetic energy of a missile from such a black powder gun is comparable to the kinetic energy of a missile of a modern, non-black powder revolver.

28. Cabela's shipped (or arranged for the shipment of) the Black Powder Revolver directly to 930 N. Ella St., Apt. 11, Orville, Ohio 44667, the shipping address Claren provided to Cabela's.

29. At the time Cabela's sold and shipped the Black Powder Revolver to Claren, Cabela's made no attempt to determine whether Claren was legally prohibited from purchasing the firearm or whether it could legally sell the firearm to him.

30. Upon information and belief, Cabela's did not require Claren to come into any store, appear in person, provide identification, or subject himself to a background check to purchase the firearm.

31. In or around July 2016, Cabela's sold Claren a black powder loading kit that Claren used to load the Black Powder Revolver.

32. Selling firearms to a prohibited purchaser, particularly one who is prohibited because of prior violent felonies, creates a reasonably foreseeable risk of harm, in this case causing the senseless murder of Bryan Galliher.

33. Research and studies show that convicted felons are much more likely to commit subsequent violent crimes than non-felons. Research and studies also show that criminals often engage in escalating acts of criminality, culminating in the most violent and serious offenses.

34. Social scientists have further estimated that denying a handgun purchase to those convicted of a felony is associated with a reduction in risk for later criminal activity of approximately 20% to 30%.

35. Moreover, studies show that crimes committed with a gun are far more likely to result in greater injuries or death than crimes committed with other weapons or by unarmed individuals. The number of fatal injuries from guns has been reported to be five times greater than for injuries caused by knives, the second most lethal weapon.

36. Cabela's knew or should have known of the grave foreseeable risks posed to Bryan Galliher and others when guns are sold to felons.

37. Cabela's knew or should have known that black powder guns may be used in a criminal manner to cause severe injury and death to individuals.

38. Cabela's previously sold a black powder gun to violent convicted felon, who then used it in a 2004 triple homicide in Armstrong County, Pennsylvania.

39. Black powder guns have been used by other prohibited purchasers, such as convicted felons, to commit crimes around the country, including murder.

40. Cabela's knew or should have known that it should never entrust a firearm, including a black powder firearm, to anyone without first checking their background to determine their criminal history, and other indicators that might prohibit them from possessing firearms or indicate that they posed an unreasonable risk of harm when in possession of a firearm.

41. Cabela's is aware that criminals routinely seek to obtain firearms from its stores. For example, Cabela's was the fourth largest supplier of recovered crime guns in Chicago between 2013 – 2016. Cabela's has also sold firearms that were used in high-profile crimes, such as by the 2013 Boston Marathon bombers.

42. Given that Cabela's knew or should have known that Claren was convicted of a felony, Cabela's knew or should have known that Claren was likely to use the firearm in a manner that posed an unreasonable risk of physical injury to others, such as Bryan Galliher.

43. On August 18, 2016, Claren used the Black Powder Revolver to shoot and kill his 21-year old neighbor, Bryan Galliher.

44. Claren was convicted of Aggravated Murder under Ohio Revised Code § 2903.01(A) for killing Bryan Galliher. Claren was also convicted of Weapons Under Disability under Ohio Revised Code § 2923.13(A)(2) for possessing the Black Powder Revolver. Claren was sentenced to life in prison.

45. Bryan Galliher's death was a foreseeable and proximate result of Cabela's knowing violation of Ohio law and its negligent sales, training, and supervision.

COUNT I - NEGLIGENCE PER SE
(Against Cabela's and Bass Pro Group)

46. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

47. According to Ohio Revised Code § 2923.11(B), the Black Powder Revolver is a "firearm," as that term is used in Ohio Revised Code § 2923.20.

48. In violation of Ohio Revised Code § 2923.20(A)(1), Cabela's recklessly sold, gave, and furnished a firearm to Claren, who was prohibited by Ohio Revised Code § 2923.13 from acquiring, having, carrying, or using a firearm.

49. In violation of Ohio Revised Code § 2923.20(A)(2), Cabela's possessed a firearm with the purpose to dispose of it in violation of Ohio Revised Code § 2923.20(A)(1).

50. The statutory purpose of Ohio Revised Code §§ 2923.13 and 2923.20 is to protect citizens from being injured or killed by dangerous individuals – such as violent convicted felons – by keeping firearms out of their hands. This law is intended to protect public safety by doing so. The law is designed to avoid and/or diminish the likelihood of harm that results from violations of this law and to protect Plaintiff from the particular type of harm that was suffered here.

51. Cabela's sale to Claren of the Black Powder Revolver knowingly violated state laws applicable to and governing the sale of firearms, including, but not limited to, Ohio Revised Code § 2923.20.

52. Cabela's had a duty to exercise care in selling and transferring guns and in refraining from engaging in any activity that would create reasonably foreseeable risks of injury

to or death of others. This duty included following state gun laws concerning the sale of firearms to prohibited purchasers.

53. Cabela's could reasonably foresee that, as a result of its reckless conduct, Claren would likely use the firearm in a manner that posed an unreasonable risk of physical injury to others, such as Bryan Galliher.

54. Cabela's is negligent *per se*.

55. As a proximate result of Cabela's conduct described above, Bryan Galliher suffered permanent and severe injuries, including conscious pain, suffering, and mental anguish, a loss of reasonably expected earning capacity, and permanent and substantial physical injuries.

COUNT II – NEGLIGENCE

(Against Cabela's and Bass Pro Group)

56. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

57. Cabela's is engaged in the business of selling firearms, including black powder guns such as the revolver use to shoot Bryan Galliher.

58. At all relevant times, Cabela's and its employees were subject to the general duty imposed on all persons to use reasonable care and not to expose others to reasonable foreseeable risks of injury.

59. Cabela's and its employees had a duty to exercise reasonable care in selling firearms and to refrain from engaging in any activity that would create a reasonably foreseeable risk of injury to others. This duty includes, but is not limited to, following state gun laws concerning the sale of firearms to prohibited purchasers. Cabela's breached this duty by selling the Black Powder Revolver to Claren. Breach of this duty constitutes negligence.

60. Cabela's also breached its duty to exercise reasonable care by, among other ways: wrongly informing him that he could legally purchase the Black Powder Revolver; selling the

Black Powder Revolver to Claren without confirming at the time of sale whether the sale was legal and/or whether Claren had been convicted of a felony and not permitted to purchase firearms; selling the firearm without taking any precautionary steps such as conducting any type of background check, inquiring about the reason for purchasing the particular firearm, or requiring any proof of identification; selling the gun to Claren without exercising reasonable care to determine if he would use it safely and not expose others to a foreseeable risk of injury or death.

61. At the time of the sale, Cabela's and its employees knew or reasonably should have known that Claren was prohibited by Ohio law from acquiring, having, carrying, or using the Black Powder Revolver. Nonetheless, Cabela's sold a firearm to Claren. A reasonable gun dealer would not sell a firearm to a person who is prohibited by state law from purchasing a firearm.

62. A reasonable gun dealer would have policies, procedures, and protocols in place that would identify and stop sales of firearms to individuals who are prohibited by state law from possessing firearms. Cabela's policies, procedures, and protocols regarding the sale of black powder firearms, if any, did not stop Cabela's from selling the Black Powder Revolver to Claren.

63. A reasonable gun dealer would not falsely inform a prohibited purchaser that he is legally allowed to purchase a firearm. Cabela's told Claren that he could purchase a black powder gun despite knowing that he was prohibited from doing so under Ohio law.

64. A reasonable gun dealer would not sell, transfer, or supply a person with a firearm, including a black powder firearm, without using reasonable care to determine that the person can and foreseeably will use it safely, in a way that does not subject others to a foreseeable risk of injury or death.

65. A reasonable and law-abiding gun seller would have known that there was a substantial and unacceptable risk that Claren would likely use the Black Powder Revolver in a manner that would involve unreasonable risk of physical injury to others.

66. As a proximate result of Cabela's conduct described above, Bryan Galliher suffered permanent and severe injuries, including conscious pain, suffering, and mental anguish, a loss of reasonably expected earning capacity, and permanent and substantial physical injuries.

COUNT III – NEGLIGENCE *PER SE*
(Against Paul Claren)

67. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

68. Claren was convicted of Aggravated Murder under Ohio Revised Code § 2903.01(A) for killing Bryan Galliher.

69. The statutory purpose of Ohio Revised Code §§ 2923.13 is to protect citizens from being injured or killed by dangerous individuals – such as violent convicted felons – by keeping firearms out of their hands. This law is intended to protect public safety by doing so. The law is designed to avoid and/or diminish the likelihood of harm that results from violations of this law and to protect Plaintiff from the particular type of harm that was suffered here.

70. Claren's possession and use of the Black Powder Revolver violated state law applicable to having weapons while under disability.

71. Claren had a duty to exercise care in following state gun laws concerning the possession and use of firearms.

72. It is reasonably foreseeable that Claren would use the firearm in a manner that posed an unreasonable risk of physical injury to others, such as Bryan Galliher.

73. Claren is negligent *per se*.

74. As a proximate result of Claren's conduct described above, Bryan Galliher suffered permanent and severe injuries, including conscious pain, suffering, and mental anguish, a loss of reasonably expected earning capacity, and permanent and substantial physical injuries.

COUNT IV - NEGLIGENT ENTRUSTMENT
(Against Cabela's and Bass Pro Group)

75. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

76. At all relevant times, Cabela's had control of the Black Powder Revolver that it sold to Claren, and which was used to shoot and kill Bryan Galliher.

77. Claren became entitled to possess the Black Powder Revolver only by the consent of Cabela's and/or its employees.

78. Cabela's and/or its employees knew that, by withholding consent to Claren, it could have prevented Claren—a person prohibited by Ohio law from having such firearms—from possessing or using the Black Powder Revolver.

79. Cabela's and/or its employees negligently permitted Claren to acquire possession of the Black Powder Revolver in a manner that would create a substantial and unacceptable risk of physical injury to others.

80. Cabela's knew or reasonably should have known that Claren was likely to use the Black Powder Revolver in a manner involving unreasonable risk of injury to others, including Bryan Galliher.

81. Such activity included, but was not limited to, unlawfully and reckless selling or distributing the Black Powder Revolver in reliance and in accordance with inadequate policies, procedures, or protocols to a person, such as Claren, who was prohibited by law from having the firearm.

82. In turn, it was reasonably foreseeable that the criminal use of the firearm by a person unauthorized to possess it, such as Claren, would cause an innocent individual, such as Bryan Galliher, to be seriously injured or killed.

83. Cabela's negligent entrustment of the Black Powder Revolver to Claren directly and proximately caused serious physical injury and death to Bryan Galliher.

84. As a proximate result of Cabela's conduct described above, Bryan Galliher suffered permanent and severe injuries, including conscious pain, suffering, and mental anguish, a loss of reasonably expected earning capacity, and permanent and substantial physical injuries.

COUNT V - NEGLIGENT TRAINING AND SUPERVISION

(Against Cabela's and Bass Pro Group)

85. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

86. Cabela's recklessness, gross negligence, and/or negligence in training and/or supervising of employees was a proximate cause of the shooting and death of Bryan Galliher.

87. Cabela's placed its employees in a position to cause foreseeable harm to the public by negligently failing to implement adequate protocols for training and supervising its employees to prevent illegal sales to individuals such as Claren and by failing to train its employees accordingly.

88. On information and belief, Cabela's had notice and/or knowledge of its employees' consistent reliance on and conduct in accordance with the company's inadequate screening techniques to determine whether it was reasonable and legal to sell the prospective purchaser a firearm yet was reckless and grossly negligent in failing to take any corrective action, as well as its training and supervision that were grossly inadequate, and did not even ensure that employees knew and/or followed the laws governing firearms sales in Ohio.

89. Had Cabela's adequately trained and supervised its employees to ensure compliance with industry guidelines for screening potential purchasers, Claren would not have acquired the Black Powder Revolver.

90. Accordingly, Cabela's negligent training and supervision of its employee(s) directly and proximately caused serious injury and death to Bryan Galliher.

91. As a proximate result of Cabela's conduct described above, Bryan Galliher suffered permanent and severe injuries, including conscious pain, suffering, and mental anguish, a loss of reasonably expected earning capacity, and permanent and substantial physical injuries.

COUNT VI - WRONGFUL DEATH

(Against Cabela's, Bass Pro Group, and Paul Claren)

92. Plaintiff repeats the preceding paragraphs as if fully rewritten herein.

93. The Estate of Bryan Galliher asserts a claim under Ohio Revised Code § 2125.01, et seq., for the exclusive benefit of Bryan Galliher's next of kin.

94. Defendants' conduct described above constituted negligence and negligence *per se*.

95. As a proximate result of Defendants' conduct described above, Bryan Galliher suffered a wrongful death on August 18, 2016.

96. As a further direct and proximate result of the conduct described above, Bryan Galliher's next of kin have suffered mental anguish and pecuniary and non-pecuniary losses for which they seek damages exceeding \$25,000. These damages include, but are not limited to, loss of companionship, support, services, society, and severe mental anguish resulting from the death of Bryan Galliher.

PRAYER FOR RELIEF

The Estate of Bryan Galliher requests that this Court enter judgment in its favor and against Cabela's, Bass Pro Group, and Paul Claren and award as follows:

- (a) for compensatory damages, in an amount to be determined at trial, but in excess of \$25,000;
- (b) for punitive damages based on Defendants' wanton, intentional, reckless, and grossly negligent conduct, in an amount to be determined at trial;
- (c) for an order compelling Cabela's and Bass Pro Group to reform their policies, procedures, protocols, and training with regard to the sale of firearms, including taking steps necessary to prevent unlawful sale of black powder firearms and to otherwise prevent the unlawful entrustment of firearms to persons who are legally prohibited from purchasing or possessing them;
- (d) Costs and attorneys' fees;
- (e) All other relief this Court deems proper.

Respectfully submitted,

/s/ Sean R. Alto

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JURY DEMAND

Pursuant to Rule 38(B) of the Ohio Rules of Civil Procedure, plaintiff hereby
demands a trial by jury.

/s/ Sean R. Alto