

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

HAMILTON SUPERIOR COURT 1  
CAUSE NO. 29D01-1811-CT-\_\_\_\_\_

E.W., a minor, by and through her  
parents and natural guardians, CORY  
WHISTLER and JULIA WHISTLER; and  
CORY WHISTLER and JULIA  
WHISTLER, individually,

Plaintiffs,

v.

KEVIN MOORE and SARAH MOORE,

Defendants.

**JURY TRIAL DEMANDED**

### **COMPLAINT**

Plaintiffs E.W., a minor, by and through her parents and natural guardians, Cory Whistler and Julia Whistler, along with Cory Whistler and Julia Whistler, individually, by counsel, for their complaint against Defendants Kevin Moore and Sarah Moore, allege and state as follows:

### **PARTIES**

1. E.W. is a child as defined by Ind. Code § 34-23-2-1.
2. E.W.'s interests are represented in this matter jointly by her natural father and mother, Cory Whistler and Julia Whistler.
3. Cory Whistler is the natural father and guardian of E.W.
4. Julia Whistler is the natural mother and guardian of E.W.
5. Kevin Moore is the natural father and guardian of D.M.
6. Sarah Moore is the natural father and guardian of D.M.

## **PREFERRED VENUE & JURISDICTION**

7. Both Kevin Moore and Sarah Moore at all times relevant hereto were domiciled in the State of Indiana.

8. E.W., Cory Whistler, and Julia Whistler at all times relevant hereto were domiciled in the State of Indiana.

9. Both Kevin Moore and Sarah Moore at all times relevant hereto were residents of Hamilton County, Indiana.

10. E.W., Cory Whistler, and Julia Whistler at all times relevant hereto were residents of Hamilton County, Indiana.

11. All actions underlying the claims in this Complaint occurred in Hamilton County, Indiana.

## **UNDERLYING FACTS**

**May 25, 2018**

12. On May 25, 2018, D.M. entered Noblesville West Middle School possessing a .22-caliber semiautomatic handgun, a .45-caliber semiautomatic handgun, more than one hundred rounds of ammunition for each handgun, and a knife.

13. Attached to the .22-caliber semiautomatic handgun was a silencer, sometimes referred to as a suppressor.

14. At that time, D.M. was a student who was enrolled at Noblesville West Middle School.

15. D.M. placed the two handguns, ammunition, and knife into his backpack and stored the backpack with the items in his locker during his first-period classes.

16. Following his first-period class, D.M. attended his scheduled second-period class, which was taught by teacher Jason Seaman.

17. Mr. Seaman administered an examination to his students during that second-period class.

18. After D.M. completed his exam early, he requested and received permission to exit the classroom under the auspices of using the restroom.

19. While outside of the classroom, D.M. went to his locker and retrieved the backpack containing the two handguns, ammunition, and knife.

20. D.M. took the backpack and its contents into a restroom and removed the two handguns, ammunition, and knife.

21. D.M. concealed the two handguns, ammunition, and knife on his person and returned to Mr. Seaman's classroom.

22. While D.M. was outside of the classroom, Mr. Seaman continued to administer the examination to his students and made his way through the classroom to assist students with questions.

23. As D.M. returned to the classroom, Mr. Seaman was assisting E.W.

24. D.M. removed the .22-caliber handgun with the silencer affixed to the barrel of the weapon from its concealed location and pointed it in the direction of Mr. Seaman and E.W.

25. D.M. discharged multiple rounds from the .22-caliber handgun before Mr. Seaman was able to wrestle D.M. to the floor and disarm him, despite Mr. Seaman having been himself shot several times.

26. Multiple rounds also struck E.W., causing severe and life-threatening injuries.

27. E.W. was rushed to emergency care, underwent extensive emergency surgery, and was fortunate to survive.

28. E.W.'s injuries included, without limitation, fractured C5 & C6 vertebrae; severed vertebral vein; collapsed lungs; broken jaw, clavicle, and ribs; likely permanent nerve damage; scarring; and numerous related injuries.

29. E.W. still has multiple bullets lodged in her body, continues to suffer impairment and restrictions from her injuries, continues to receive medical and rehabilitative care, will almost certainly never recover fully from her physical injuries, and likely will require significant future medical care, which may include one or more future surgeries.

30. E.W. also suffers continued emotional and psychological trauma.

#### **Events Leading Up to May 25, 2018**

31. D.M. resided with his parents, Kevin Moore and Sarah Moore, in their Noblesville, Indiana home prior to the May 25, 2018 shooting.

32. The .22-caliber semiautomatic handgun and the affixed silencer, the .45-caliber semiautomatic handgun, the ammunition, and the knife were purchased by and belonged to Kevin Moore and/or Sarah Moore.

33. The handguns and ammunition were stored in a gun safe located in a storage closet in the basement of Kevin Moore's and Sarah Moore's home.

34. The storage closet was adjacent to the room in which D.M. played video games.

35. D.M. knew the location of the gun safe.

36. D.M. knew precisely where the key to the gun safe was located.

37. On information and belief, the key to the gun safe was regularly kept in visible and close proximity to the gun safe in the same storage room.

38. On information and belief, the silencer affixed to the .22-caliber semiautomatic was acquired and possessed without complete adherence to all applicable laws governing the acquisition and possession of silencers.

39. D.M. is a severely troubled person.

40. D.M. possessed deep-seated severe personality disorders.

41. D.M. takes pleasure in violence against others and lacks empathy.

42. D.M. possessed deeply felt desires to provoke fear and intimidate others, to act in ways harmful to others, and to seek to control and dominate others, and D.M. derived pleasure in doing so.

43. D.M. suffers from a-social adjustment and empathic disorders.

44. D.M. was obsessed with violence and had a distinct and highly elevated interest in violence and firearms.

45. In the days leading up to May 25, 2018, D.M. engaged in numerous internet searches regarding gun manufacturers, notable school and mass shootings, blueprints for Noblesville West Middle School, and school shooter memes.

46. On the night before the shooting, D.M. entered the basement of Kevin Moore's and Sarah Moore's home, accessed the storage room, and with the key to the gun safe opened the gun safe, removing the .22-caliber semiautomatic handgun, the .45-caliber semiautomatic handgun, a .9mm handgun, a rifle, and ammunition from the gun safe.

47. D.M. proceeded to film an approximately 110-second video holding the firearms and discussing his intention to commit the shooting.

48. The gun safe remained open and the .9mm handgun and rifle were left strewn about in front of the gun safe, where they were later found by law enforcement after the shooting.

49. Kevin Moore and Sarah Moore knew or should have known that D.M. had unusual and potentially violent propensities; that D.M. had a disconcerting attraction to and obsession with firearms and violence; that D.M. suffered from mental and psychological disorders; that D.M. took pleasure in violence in others and lacked empathy; and that D.M. had the capacity to commit violent acts.

50. Kevin Moore and Sarah Moore should have taken reasonable steps to prevent D.M.'s access to their firearms, ammunition, and other weapons; should have taken steps to more closely monitor D.M.'s behavior, including his internet and

other computer use; and should have otherwise taken other steps to prevent D.M. from causing harm to others.

### **Further Factual Allegations**

51. On November 5, 2018, D.M. admitted to commission of eleven counts alleged against him that if committed by an adult would constitute a crime.

52. On November 14, 2018, by order of the Hamilton County Circuit Court, the Indiana Department of Correction was awarded wardship over D.M. until he reaches eighteen (18) years of age.

53. The conduct alleged herein of Kevin Moore and Sarah Moore does not appear to have been either intentional or criminal.

54. The conduct of D.M. alleged herein does not appear to have been at the direction or with the consent of either Kevin Moore or Sarah Moore.

55. Neither Kevin Moore nor Sarah Moore has been charged with and/or convicted of a crime arising out of the conduct alleged herein.

56. E.W. suffered bodily injury, direct bodily impact, force, and harm.

57. E.W. further suffered emotional distress, trauma, and other psychic injuries as a direct result of suffering bodily injury.

58. Certain costs and expenses occasioned by the injuries to E.W. have been borne by Cory Whistler and Julia Whistler.

### **Count I: Negligence**

59. This Count pertains only to the actions of Kevin Moore and Sarah Moore collectively and individually; it does not assert a theory of vicarious liability

against either Kevin Moore or Sarah Moore for the actions of D.M.

60. Kevin Moore and Sarah Moore each owed a duty of reasonable care to the Plaintiffs.

61. That duty included, without limitation, the duty to exercise reasonable and ordinary care in the storage and safekeeping of their handguns, ammunition, and other weapons dangerous to the health and safety of others.

62. Kevin Moore and Sarah Moore breached their duties of reasonable care.

63. The injuries to E.W. were the foreseeable consequence of Kevin Moore's and Sarah Moore's negligence.

64. But for Kevin Moore's and Sarah Moore's negligence, E.W. would not have been injured.

65. E.W. has suffered severe, life-altering injuries and expenses as a result of Kevin Moore's and Sarah Moore's negligence.

66. Cory Whistler and Julia Whistler have also suffered compensable damages as a result of Kevin Moore's and Sarah Moore's negligence.

### **Count II: Strict Liability for Actions of D.M.**

67. Indiana Code § 34-31-4-1 makes a parent strictly liable for up to \$5,000 for the knowing, intentional, or reckless tortious acts of the parent's minor child.

68. "The responsibility for the damage caused by a minor is placed upon his parents, within certain limitations, since it is the parents who have the duty of



controlling and disciplining the behavior of their children.” *Hyman v. Davies*, 453 N.E.2d 336, 338 (Ind. Ct. App. 1983).

69. On May 25, 2018, D.M. was a minor.

70. On May 25, 2018, Kevin Moore and Sarah Moore had custody of D.M.

71. On May 25, 2018, D.M. lived with Kevin Moore and Sarah Moore.

WHEREFORE, Plaintiffs respectfully request judgment in an amount that will fairly compensate them for the losses and damages they have and will continue to sustain as a result of Defendants’ negligence, and all other just and proper relief.

**DEMAND FOR JURY TRIAL**

The Plaintiffs respectfully demand a jury trial on all of their claims.

Respectfully submitted,



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