



## **II. PARTIES**

2.1 Plaintiff Randi Hoo-Mook is the mother of R.H., deceased. Plaintiff Randi Hoo-Mook sues individually as a wrongful death beneficiary and as administrator of the estate of R.H., a minor child. At the time of R.H.'s death, Randi Hoo-Mook was a resident and citizen of San Antonio, Texas. The last three digits of Plaintiffs Texas driver's license are 583 and the last three digits of Plaintiff's social security number are 433.

2.2 Defendant Randy Bowden Rubendall is an individual citizen and resident of Salado, Texas. Randy Bowden Rubendall may be served with process at his home located at 5977 FM 3481, Salado, Texas, 76571 or wherever he may be found.

## **III. JURISDICTION AND VENUE**

3.1 This Court has subject matter jurisdiction because Plaintiff seeks damages in excess of the Court's minimum jurisdictional limits.

3.2 Plaintiff seeks monetary relief of over \$1,000,000.

3.3 Plaintiffs expressly disavows any claims are being made pursuant to federal law, treaties, or constitutions. Although the amount in controversy exceeds \$75,000, exclusive of costs and interest, there is a lack of complete diversity because Plaintiff and Defendant are all citizens of

Texas. Any removal, or consent to removal, of this case to federal court would be improper.

3.4 This Court has personal jurisdiction over Defendant Randy Bowden Rubendall because he:

- a. Is a natural person, and was domiciled in the State of Texas at the time this cause of action accrued;
- b. Engages in foreseeable, intentional, continuous, and/or systematic contacts within Texas, rendering him “at home” in Texas; and
- c. Committed one or more of the tortious acts made the basis of this action in Texas.

3.5 There is, therefore, both specific and general personal jurisdiction over each defendant, and exercising jurisdiction over each defendant does not offend the traditional notions of fair play and substantial justice.

3.6 Venue is proper in Bell County, Texas pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(2) because Defendant Randy Bowden Rubendall is a natural person, and resided in Bell County, Texas at the time this cause of action accrued. Also, venue in this case is proper in Bell County, Texas, under the general venue rule of the Tex. Civ. Prac. & Rem.

Code §15.002(a)(1), because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

#### **IV. BACKGROUND FACTS**

4.1 Defendant Randy Bowden Rubendall possessed and kept a loaded and readily dischargeable .22 caliber pistol lying unsecured beside his recliner in his living room.

4.2 On May 16, 2020, Randi Hoo-Mook and her child, eight-year-old R.H. were guests at the home of Defendant Randy Bowden Rubendall.

4.3 Upon arrival at Defendant's home, Plaintiff discovered the loaded pistol, among others, and asked Defendant to put the gun in a place where R.H. could not access it. Sometime later, unbeknownst to Plaintiff, Defendant returned the gun to its unsecured place in the living room next to the recliner.

4.4 On the day of the incident, R.H. found the gun in Defendant's living room and picked it up. The pistol discharged and the child suffered a fatal gunshot wound to the head.

#### **V. CAUSES OF ACTION AGAINST RANDY BOWDEN RUBENDALL**

##### **A. Negligence**

5.1 Defendant Randy Bowden Rubendall committed acts of omission and commission, which collectively and severally constituted

negligence, and which were proximate causes of the subject incident, the injuries and death of R.H., and all of Randi Hoo-Mook's resulting damages.

5.2 Defendant Rubendall's negligent acts include, but are not limited to:

- a. Failing to secure a readily dischargeable firearm;
- b. Failing to secure a readily dischargeable firearm in a place not accessible to a child;
- c. Failing to prevent a child from accessing a readily dischargeable firearm;
- d. Leaving a readily dischargeable firearm in a place where Defendant knew or should have known a child would gain access;
- e. Failing to exercise reasonable care to prevent a child to gain access to a readily dischargeable firearm;
- f. Failing to heed Plaintiff's warning regarding the risk to her child;
- g. Returning the readily dischargeable firearm to its unsecured location after Plaintiff requested that it be secured; and
- h. Failing to do what an ordinary prudent person would do under the same or similar circumstances.

## **B. Negligence Per Se**

5.3 On or about May 16, 2020 Defendant Randy Bowden Rubendall, violated Texas Penal Code § 46.13.

5.4 Plaintiff Randi Hoo-Mook and her child R.H. belong to the class of persons that the above statutes are designed to protect. Texas Penal Code § 46.13 is meant to protect children and their families from injury or death due to a child's access to readily dischargeable firearms.

5.5 Plaintiff Randi Hoo-Mook and her child R.H.'s injuries are of the type the above-referenced statute was designed to prevent. Texas Penal Code § 46.13 seeks to prevent injury, suffering and/ or death due to a child's access to readily dischargeable firearms.

5.6 The above-referenced statutes are ones for which tort liability may be imposed when violated. Texas Penal Code § 46.13 is penal in nature and civil liability is consistent with its legislative intent. Furthermore, the statute defines a mandatory standard of conduct the public must refrain from doing.

5.7 Randy Bowden Rubendall violated the above-referenced statute without excuse.

5.8 Each of Randy Bowden Rubendall's violations of the above-referenced statute was a proximate cause of the occurrence or injury in question and Plaintiff's damages resulting from the occurrence or injury in

question.

### **C. Gross Negligence**

5.9 During relevant times to this action, Defendant Randy Bowden Rubendall committed acts of omission and commission, which collectively and severally constituted gross negligence, and which were proximate causes of the subject incident, the injuries and death of R.H., and all of Plaintiff Hoo-Mook's resulting damages.

5.10 The wrong done by Randy Bowden Rubendall, even after learning of, knowing, and/or realizing the potential for serious injury and/or death, was aggravated by the kind of gross negligence for which the law allows the imposition of exemplary damages.

5.11 Rubendall's conduct, when viewed objectively from his standpoint at the time of his conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Rubendall was actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others.

## **VI. DAMAGES**

### **A. Wrongful Death Damages**

6.1 Pursuant to the Texas Wrongful Death Act, Randi Hoo-Mook, Individually, seeks the following elements of damages from Defendants relating to the death of R.H.:

- a. Past loss of companionship and society;
- b. Future loss of companionship and society;
- c. Past mental anguish;
- d. Future mental anguish;
- e. Costs of past psychological treatment for Plaintiff's emotional trauma;
- f. Costs of future psychological treatment for Plaintiff's emotional trauma; and

### **B. Survival Damages**

6.2 Pursuant to the Texas Survival Statute, Randi Hoo-Mook, as Representative of the estate of R.H., seeks the following elements of damages from Defendant relating to the death of R.H.:

- a. Funeral and burial expenses;
- b. Physical pain; and
- c. Mental anguish.

### **C. Exemplary Damages**



6.3 As a result of the gross negligence committed by Defendant, Plaintiff seeks exemplary damages in an amount deemed appropriate by the jury.

#### **D. Interest**

6.4 Plaintiff seeks pre-judgment and post judgment interest at the applicable rate allowed by law.

### **VII. JURY DEMAND**

7.1 Pursuant to Tex. R. Civ. P. 216, Plaintiffs respectfully requests a trial by jury. Plaintiff is tendering the appropriate fee with the filing of this petition.

### **VIII. CONDITIONS PRECEDENT**

8.1 Pursuant to Tex. R. Civ. P. 54, all conditions precedent to Plaintiff's rights to recover herein and to Defendant's liability have been performed or have occurred.

### **IX. RESERVATION OF RIGHTS**

9.1 Plaintiff reserves the right to amend her pleadings to add additional counts and/or parties as discovery continues.

### **X. REQUESTS FOR DISCLOSURE**

10.1 Pursuant to Tex. R. of Civ. P. 194.2, Plaintiffs hereby request all Defendants respond to subsections (a) – (l) within 50 days of service of this pleading.

**XI.  
PRAYER**

11.1 WHEREFORE, RANDI HOO-MOOK, INDIVIDUALLY, AND AS REPRESENTATIVE OF THE ESTATE OF R.H. prays that Defendant RANDY BOWDEN RUBENDALL appear and answer for his tortious conduct, that this cause proceed to trial before a jury, and that Plaintiff recover a judgment of and from Defendant for damages in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment and post-judgment interest, court costs, and such other and further relief Plaintiff may show themselves to be entitled, whether at law or in equity.

Dated this the 21<sup>st</sup> day of July 2020.

Respectfully submitted,

**HILL LAW FIRM**



By: \_\_\_\_\_

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