

EVERYTOWN LAW

September 27, 2022

Kristen de Tineo
Special Agent in Charge
U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Chicago Field Office
175 W. Jackson Blvd., 15th Floor
Chicago, IL 60604

Re: Westforth Sports, Inc. (license no. 4-35-089-01-7B-37399)

Dear SAC de Tineo:

Our firm is outside counsel to the City of Chicago, Illinois (“the City”) in ongoing civil litigation against defendant Westforth Sports, Inc. (“Westforth”). As you are aware, Westforth is a licensed firearms dealer located in Gary, Indiana that has for years been the single largest out-of-state source for crime guns recovered by the Chicago Police Department (“CPD”).¹ In its lawsuit, the City contends that Westforth reached this prominence by unlawfully selling firearms to straw purchasers whom it knows are buying guns for others.

We write to share evidence of Westforth Sports’ longstanding practice of selling assault weapons to residents of Chicago and other Illinois jurisdictions that prohibit such weapons, in violation of the Gun Control Act (“GCA”), 18 U.S.C. § 922(b)(3). We also write to share evidence that in 2021, Westforth provided false information in response to an ATF trace request in circumstances that may have frustrated the detection of firearms trafficking originating at the store. In both instances, evidence of Westforth’s violations has come to light during the course of litigation and is now a matter of public record through legal filings.

As explained in prior correspondence with your office,² Westforth has a lengthy history of violating the GCA that is documented in ATF’s inspection records, including repeated instances where ATF cited Westforth for illegal straw sales. *See* 2014 ATF FIR at 3, attached as Exhibit B (noting 2012 violations for having “transferred firearms to a straw purchaser after NICS denied transactions to associates of the straw purchaser”); *see also* 2017 ATF FIR at 12, attached as Exhibit C (violation for transferring firearm without a background check and without verifying identification of transferee).³ ATF inspectors have twice recommended revoking the store’s license

¹ City of Chicago, TRACING THE GUNS: THE IMPACT OF ILLEGAL GUNS ON VIOLENCE IN CHICAGO, at 6 (May 27, 2014). <https://www.chicagobusiness.com/Assets/downloads/20151102-Tracing-Guns.pdf>. (515 crime guns traced to Westforth between 2009 and 2013); City of Chicago, GUN TRACE REPORT, at 20 (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf> (341 crime guns traced to Westforth between 2013 and 2016).

² The City’s July 9, 2021 letter to your office is attached for reference, as Exhibit A.

³ Exhibits B and C were obtained pursuant to the Freedom of Information Act, and were publicly filed as Exhibits A-19 and A-20 in support of the City’s September 16, 2022 Opposition to Westforth’s motion to dismiss.

(both times after identifying illegal straw sales), and the store's owner has attended at least four warning conferences as a result of these violations. *See* Ex. B at 3-4 (noting revocation recommendations in 2011 and 2012); *see also* ATF Warning Conference Letters dated June 26, 2013, July 20, 2009, April 19, 2007, and May 16, 1996, attached as Exhibit D.⁴ Despite these repeated warnings, the store continues to operate in flagrant disregard for the law. In Westforth's most recent compliance inspection in 2021 (resulting in a warning letter), ATF inspectors observed store employees destroying and discarding transaction forms for suspicious purchase attempts—which not only contravenes the GCA, but also impedes efforts to detect and stop straw purchasing at the store. *See* 2021 ATF FIR at 3-4, attached as Exhibit E.⁵

1. False Statements in Response to ATF Trace Request

Store records produced during litigation show that in 2021 Westforth on at least one occasion provided false information to ATF in response to a trace request relating to a handgun recovered by the CPD. The trace in question concerns a Glock 33 Gen4 sold by Westforth to a straw purchaser named Kadeem Fryer on July 8, 2020.⁶ *See* April 14, 2021 Firearms Disposition Fax Request, attached as Exhibit F.⁷ The gun was recovered by the CPD from a prohibited possessor on March 8, 2021, during an investigation into a suspected shooting. At the time of recovery, the gun had been modified with an auto sear to shoot fully automatic, and ballistics evidence links it to at least two other shootings. The National Tracing Center contacted Westforth on behalf of CPD to trace this handgun on or about April 14, 2021.

Westforth's response to ATF—which it produced during the parties' ongoing litigation—contains at least three distinct false statements. First, Westforth falsely stated that this handgun was not part of a multiple sale transaction when in fact it was: the straw purchaser bought a second Glock handgun only two days before Westforth sold him the handgun being traced. *See* July 8, 2020 Multiple Sale Form, attached as Exhibit G.⁸ Second, Westforth falsely stated that no additional firearms had been purchased by this straw purchaser. In reality, the handgun being traced was the nineteenth gun that Westforth had sold this particular straw purchaser over the course of thirteen transactions spanning March to July, 2020. *See* A&D and transaction records for

⁴ The documents in Exhibit D were obtained pursuant to the Freedom of Information Act, and were publicly filed as Exhibit A-22 in support of the City's September 16, 2022 Opposition to Westforth's motion to dismiss.

⁵ This document was obtained pursuant to the Freedom of Information Act, and was publicly filed as Exhibit A-1 in support of the City's September 16, 2022 Opposition to Westforth's motion to dismiss.

⁶ Fryer was charged in August 2020 with making false statements in connection with the purchase of firearms in violation of 18 U.S.C. § 922(a)(6), and pled guilty in February 2021. *See* Complaint, *U.S. v. Fryer*, No. 2:20-cr-00114-PPS-JEM (N.D. Ind. Aug. 17, 2020); Indictment, *U.S. v. Fryer*, No. 2:20-cr-00114-PPS-JEM (N.D. Ind. Aug. 20, 2020); Minute Entry for Change of Plea Hearing, *U.S. v. Fryer*, No. 2:20-cr-00114-PPS-JEM (N.D. Ind. Feb. 12, 2021).

⁷ This exhibit is the publicly filed version of this document, bearing redactions, that was attached to the City's December 3, 2021 Reply in Support of Its Motion to Compel Production of Documents.

⁸ This exhibit is the publicly filed version of this document, bearing redactions, that was attached to Westforth's August 16, 2021 Motion to Dismiss as Exhibit A-7.

sales to Kadeem Fryer, attached as Exhibit H.⁹ Indeed, the CPD had already recovered three *other* guns that Westforth had sold to Kadeem Fryer by the time this Glock was traced, and it would recover a fifth only days later. Finally, Westforth also misrepresented that this straw purchaser was not known to it, a representation belied by the store's lengthy transaction history with him. These multiple false statements concealed indicators that Westforth's customer was engaged in straw purchasing and firearms trafficking, and obfuscated the store's role as a source of crime guns trafficked to Chicago. They also appear to be criminal false statements under 18 U.S.C. Section 1001.

In sworn deposition testimony, store president and owner Earl Westforth identified the store employee who responded to this request. *See* Westforth Tr. 77:11-23, attached as Exhibit I.¹⁰ Asked why the store provided incorrect responses to this trace request, Mr. Westforth explained that store employees do not consult the store's acquisition & disposition records or 4473 forms to respond to the question about additional firearm purchases by the customer at issue. *Id.* at 78:24-79:17. Instead, the employee responds based on his or her personal recollection alone: "[i]f he knew this person for sure and recognized him as buying other firearms." *Id.* at 79:2-5.

Westforth's false statement about this trace not being part of a multiple sale is closely connected to a violation identified during ATF's 2021 compliance inspection: Westforth's failure to timely report multiple handgun sales. *See* Ex. E at 5. Evidence uncovered during litigation revealed that Westforth sold two handguns to a straw purchaser named Darryl Ivery, Jr. in June 2020, but did not submit the required multiple sale form to ATF until July 15, 2021—more than a year later. *See* July 15, 2021 Report of Multiple Sale or Other Disposition of Pistols and Revolvers, attached as Ex. J.¹¹ But by the time Westforth made this late multiple sale report, one of the guns (a Smith & Wesson SD9VE 9mm handgun, serial no. FBE4508) had already been recovered by Chicago Police in the hands of an unlicensed possessor and (presumably) traced. This raises the distinct possibility that Westforth provided inaccurate information to ATF in response to a second trace request, again potentially misrepresenting that the traced gun was not part of a multiple sale transaction and again frustrating efforts by law enforcement to identify and interdict traffickers in Chicago.

At a minimum, this evidence appears to establish corporate criminal culpability as to the store for falsely responding to the April 2021 trace request concerning Kadeem Fryer. In addition, it seems likely that the evidence will support charges against individuals for lying on this and likely many other trace requests sent back with false information. *See* Ex. I, Westforth Tr. 78:23-79:17 (testifying that store employees respond to trace request question about purchase of other firearms solely based on personal recollection, and without consulting the store's A&D records or 4473 forms).

⁹ This exhibit is the publicly filed version of these records, bearing redactions, that were attached as Exhibit A-10 to the City's September 16, 2022 Opposition to Westforth's Motion to Dismiss.

¹⁰ Mr. Westforth's testimony was publicly filed as Exhibit A-4 to the City's September 16, 2022 Opposition to Westforth's Motion to Dismiss. Pages 77:4 through 84:4 of this testimony concern the trace request at issue; this excerpt of the publicly filed testimony is attached as Exhibit I to this letter.

¹¹ This exhibit is the publicly filed version of this document, bearing redactions, that was attached to Westforth's August 16, 2021 Motion to Dismiss as Exhibit A-2.

2. Sales of Assault Weapons to Illinois Residents in Violation of the GCA

Second, transaction records produced during litigation make clear that Westforth has a longstanding practice of selling assault weapons to Illinois customers who cannot legally purchase or possess these firearms where they live. These sales violate Section 922(b)(3) of the GCA, which prohibits an FFL from selling a firearm to someone that it knows or has reasonable cause to believe resides in a different state unless (among other things) the firearm is a long gun and the “sale, delivery, and receipt fully comply with the legal conditions of sale in both such States.” 18 U.S.C. § 922(b)(3). As explained in the subsequent sentence of the statute, the phrase “legal conditions” encompasses both “State laws” as well as “published ordinances.” *See id.*

Several local governments in Illinois—including both the City of Chicago and Cook County—have published ordinances that restrict assault weapons. *See* CHI. IL. MUN. CODE § 8-20-075, CODE OF ORD. COOK CTY § 54-212.¹² While the text of these ordinances varies somewhat, they all prohibit the sale, transfer, and possession of assault weapons. They also all define “assault weapon” in similar fashion, as (among other things) a rifle or shotgun: (1) that is semiautomatic, can accept a detachable magazine, and has one or more specified features such as a pistol grip or folding stock; or (2) that is contained on a non-exhaustive list of rifle and shotgun models. *See* CHI. IL. MUN. CODE § 8-20-10; CODE OF ORD. COOK CTY. § 54-211. Violation of these local ordinances is also a predicate violation of Illinois state law. *See* Ill. Admin. Code tit. 20, § 1235.30 (requiring FFLs to “abide by all federal and State laws *and local ordinances*”) (emphasis added).

Between 2018 and 2021, Westforth sold at least 70 firearms to Illinois residents that meet the definition of assault weapon under the local ordinance(s) of the purchaser’s place of residence. The store sold at least 47 of these assault weapons to residents of the City of Chicago. Westforth knew at the time it made these sales precisely where these individuals resided, because it recorded their addresses in its acquisition and disposition records.¹³ Westforth is also charged with knowing the local ordinances that these sales violate: under Section 922(b)(3), FFLs are “presumed, for the purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States.” 18 U.S.C. § 922(b)(3). And Westforth is well-aware that its over-the-counter sales to Illinois customers must fully comply with Illinois law, having been cited for a failure to do so during a 2002 compliance inspection. *See* Ex. B at 7 (2014 ATF FIR, describing compliance history).

¹² ATF also compiles these applicable state and local laws in ATF Publication 5300.5, State Laws and Published Ordinances. (34th Ed.), <https://www.atf.gov/file/133796/download>.

¹³ The A&D records for these transactions document both the customer’s place of residence, as well as Westforth’s awareness of this information. Because of a protective order entered in the City’s lawsuit with Westforth, the customer names and street addresses (though not city, state, and zip code) of Illinois customers are redacted from all publicly filed documents. The redacted A&D records for Westforth’s long gun sales to Illinois residents were publicly filed as Exhibit A-7 to the City’s September 16, 2022 Opposition to Westforth’s motion to dismiss, and can be found at <https://everytownlaw.org/case/chicago-sues-westforth-sports-for-illegal-gun-sale/>. As these records are voluminous, they are not attached to this letter.

This evidence, produced from Westforth's own records, makes clear that the store continues to operate in open disregard for its obligations under the law. We therefore continue to urge the ATF to immediately take steps to investigate Westforth's misconduct, revoke the store's license to deal in firearms, and to hold both the store and culpable employees criminally responsible for these violations of the law. We also once again reiterate the City's willingness to meet with ATF to present this evidence in detail. We look forward to your prompt reply.

Sincerely,



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