

STATE OF NEW YORK SUPREME COURT
COUNTY OF ERIE

FRAGRANCE HARRIS STANFIELD;
YAHNIA BROWN-MCREYNOLDS;
TIARA JOHNSON; SHONNELL HARRIS-
TEAGUE; ROSE MARIE WYSOCKI;
CURT BAKER; DENNISJANEE BROWN;
DANA MOORE; SCHACANA GETER;
SHAMIKA MCCOY; RAZZ'ANI MILES;
PATRICK PATTERSON; MERCEDES
WRIGHT; QUANDRELL PATTERSON;
VON HARMON; NASIR ZINNERMAN;
JULIE HARWELL, individually and as
parent and natural guardian of L.T., a minor;
LAMONT THOMAS, individually and as
parent and natural guardian of L.T., a minor;
LAROSE PALMER; JEROME BRIDGES;
MORRIS VINSON ROBINSON-
MCCULLEY; KIM BULLS; CARLTON
STEVERSON; and QUINNAE THOMPSON,

Hon. Paula L. Feroletto
Index No. 810317/2023

Plaintiffs,

v.

MEAN LLC; VINTAGE FIREARMS, LLC;
RMA ARMAMENT, INC.; ALPHABET
INC., GOOGLE, LLC; YOUTUBE, LLC;
REDDIT, INC.; PAUL GENDRON; and
PAMELA GENDRON,

Defendants,

**AFFIRMATION OF ERIC TIRSCHWELL IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT VINTAGE FIREARMS, LLC'S MOTION TO
DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, STAY THE
PENDING PROCEEDINGS (Motion #004)**

Eric Tirschwell affirms the following to be true to the best of his knowledge and states the following under penalty of perjury:

1. I am an attorney duly licensed to practice law in the State of New York and serve as the Executive Director and Chief Litigation Counsel of Everytown Law. I am counsel for the Plaintiffs in two related actions: *Jones v. MEAN LLC, et al.* (No. 810316/2023) and *Stanfield, et al. v. MEAN LLC, et al.*, (No. 810317/2023). As such, I am familiar with the facts and circumstances of the litigation and the facts stated herein.

2. I submit this Affirmation in support of Plaintiffs' consolidated opposition to the motions to dismiss filed by to Defendant Vintage Firearms, LLC ("Vintage") in the cases referenced in the preceding paragraph.

3. **Exhibit A** to this Affirmation is a news article by Ashley Southall et al., "Before the Massacre, Erratic Behavior and a Chilling Threat," in *The New York Times* (May 15, 2022), available at <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>. It contains the following quote from Robert Donald, owner of Vintage Firearms, LLC, regarding the rifle sold to the Shooter: "Even with all of those safety features on it — which is the only way I sell it — any gun can be easily modified if you really want to do it."

4. Counsel for Plaintiffs have also reviewed a true and correct copy of the diary of the Shooter (Payton Gendron), which he wrote and kept on the social media platform Discord. (This document is cited in the Complaints as the "Discord Diary" with the dates in month/day/year format on which entries were made. *See* Jones Complaint ¶ 73 n.3; Stanfield Complaint ¶ 154 n.11.) In addition to passages already cited in the Complaint, paragraphs 5 through 14 below describe and copy excerpts from additional entries from the Discord Diary.

5. In an entry dated 12/24/2021, the Shooter wrote:

merry christmas

https://www.youtube.com/watch?v=MeVrHFSLVw0&ab_channel=JRobling
Seems easy enough to remove pinned mag release and install new one, if Loctite is used then it will be more tricky but I think I could use a awl and a lighter to remove it possibly, daily reminder I'm not a mechanic or a gunsmith so bear with me

https://www.youtube.com/watch?v=FINC13722I8&ab_channel=CrossArmor
y

epoxy or gorilla glue on a rod should be able to remove the part that fits in at 3:36, if glued or Loctite is used I may be able to open gun and heat treat the part until breaks off, and then replace with regular mag release.

I will have to examine the rifle VERY carefully to make sure I can do this installation, or if not I can try using the other NY safe AR with detachable mags,

Front pin going through magazine would be concerning as well

https://www.youtube.com/watch?v=aIvWXEvt9PI&ab_channel=JoeyCuz

Gives some more info on other ways the fixed mag release is optimized

Magpul followers for my old USGI mags would also be beneficial for function

Do not comply

6. As documented in the Shooter's dairy, he visited Vintage Firearms four times in less than a month. He searched for an assault weapon with a fixed magazine that could be removed and documented his close investigation of the firearm he would later use in the shooting.

7. In an entry dated 12/21/2021, the Shooter wrote:

Then I went to Vintage Firearms and bought some 2 boxes of some old 12 gauge game ammo, priced at 50 shells for \$20. Doesn't have much in the sense of fun things that could cause a lot of damage in short periods of time. Then I went to Pennsylvania guns and ammo and checked them out, has a nice NY-safe diamondback tactical AR-15. If I can make sure I can remove the fixed mag release via tools at home then I would consider getting a fixed mag AR. But if not then NY-safe AR with detachable mags will have to do. I'm considering using a NY-safe AR-15 that has detachable magazines and proving how dumb of a law it is and it really only inconveniences regular people and not criminals who are trying to kill people. I'm gonna try out my Mossberg 500 one of these days.

8. In an entry dated 12/30/2021, the Shooter stated that he visited Vintage again, noting that "At Vintage I picked up a box of 12 gauge game ammo for \$10."

9. In an entry dated 01/11/2022, the Shooter wrote:

I investigated the AR at vintage firearms more and learned that I can take the fixed mag out if I get a screw extraction kit. Then I will have to replace it with a regular mag button and spring.

10. In another entry dated 01/11/2022, the Shooter posted a YouTube link in his diary which described how to drill into the firearm to remove the fixed magazine. He wrote: "Same fixed mag release at vintage firearms, says you have to drill it out to get it."

11. In an entry dated 01/19/2022, the Shooter documented his purchase of the Bushmaster XM-15 from Vintage:

I went to Vintage Firearms and investigated the AR they had very closely. It seems quite dry but I can fix that with some oil, and I bought it + a sling + 20 rounds of M193 for \$960. Then I went back to McClain's and bought ~\$250 worth of 5.56 and 223 Remington ammo. Then I went home and put everything in my room, filled up an ammo can with the ammo, and worked on removing the fixed mag release on the AR.

About the gun, it is a Bushmaster XM-15 E2S, It has a rifle gas tube and handguard, unthreaded muzzle, 20 in barrel, pistol grip, fixed carry handle, and fixed A2 stock. This is what God thought of when he sent Eugene Stoner to design and manufacture the M16 and AR-15.

This will be VERY effective when I pair it with M193 ammo

12. The Shooter's diary revealed that he felt comfortable with Vintage personnel, conversed with them during his visits to the store, and encouraged others to patronize the store.

13. In an entry dated 02/23/2022, the Shooter wrote:

I went to Vintage Firearm's and looked around and talked to the guy. What was strange was when I was telling the guy (Chuck?) about Matt and I's shooting experience with the bushmaster I bought from him, he was smiling, like he wasn't completely disgusted with my presence. I was able to get 4 5.56 clips and 1 of the mag loaders for my magazines from him for free. Then I played around with 2 M1 Garand's for a bit and then went to UPS right as it was about to close and got my Ops-Core liner system to them.

14. In an entry dated 03/03/2022, the Shooter wrote:

Oh I also bought 5 7/8 oz 12 gauge slugs for \$15 and 5 12 gauge Hevi Duty #4 buckshot for \$20. It is way more than what I wanted to pay but I like the guy at Vintage Firearms. He's quite a nice guy. So I was willing to help him out a bit by buying this. Apparently from /k/ the #4 buckshot rounds I got are about the deadliest round you can get for self defense, so let's try that theory out. I'll put this in my shotgun for the attack and put a slug as the fifth shell in the magazine

Also every single thing in that store has a distinct old gun smell, which I actually really like

If he's still around after the attack promise me you'll buy something off him?

15. In a second document drafted by the Shooter—referred to in the Complaints as the “Shooter’s Document,” *see* Jones Compl. ¶ 73 n.3, Stanfield Compl. ¶ 154 n.11—the Shooter included a photo of the Bushmaster XM-15 rifle that he purchased from Vintage and from which he removed the fixed magazine. The photo below is a true and correct screenshot of a portion of page 61 of the Shooter’s Document which depicts a rifle with a pistol grip that protrudes conspicuously beneath the action of the weapon.

Bushmaster XM-15 E2S Target



16. On page 27, footnote 24, of the *Jones* Complaint, NYSCEF No. 2, and on page 47, footnote 31, of the *Stanfield* Complaint, NYSCEF No. 3, a webpage address is provided for an archived webpage from the New York SAFE Act website that is currently available on the Internet Archive Wayback Machine and which captures how the website appeared on November 29, 2016: <https://web.archive.org/web/20161129092548/https://safeact.ny.gov/gun-owners?width=550&height=275&inline=true#rifle>. Because it may be difficult to access this webpage by cutting and pasting the webpage address from the Complaints, I have pasted a screenshot from the relevant portion of the webpage quoted in paragraph 121 of the *Jones* Complaint, and paragraph 202 on page 47 of the *Stanfield* Complaint:

Q: If I modify my gun by removing all design characteristics that makes it an assault weapon, do I have to register it?

close -

A: No. If you modify your gun so that it is not an assault weapon, you do not have to register it. The modification must be permanent however. This includes, for example, removing the bayonet lug by cutting or grinding, grinding off the threads on the barrel, removing the foregrip so that it cannot be readily reattached, or any change that cannot be reversed through reasonable means.

It appears that this question and answer was on the New York SAFE Act website throughout the relevant period described in the Complaints, including from November 29, 2016, through May 14, 2022.

17. A webpage from the New York SAFE Act website that is available on the Internet Archive Wayback Machine captures a webpage (as it appeared on February 28, 2020) that listed categories of “Rifles that ARE classified as assault weapons.” That webpage is available at the following web address:

<https://web.archive.org/web/20200228235253/https://safeact.ny.gov/sites/default/files/assets/documents/RiflesthatAREclassifiedasassaultweapons.pdf>. Below is a true and correct screenshot of

page 5 of that presentation, which lists as an assault weapon “Any AR-15 variant designed to fire ammunition in any caliber” manufactured by Bushmaster Firearms International:



Rifles that ARE classified as assault weapons:

Any AR-15 variant designed to fire ammunition in any caliber manufactured by the firms listed below

Bartlett Enterprises	Century Arms
Battle Born	Charles Daly firearms
BCM	Christensen Arms
Black Heart International (BHI)	CMMG
Black Hole Weaponry	Colt Canada (previously Diemaco)
Black Rain Ordnance	Colt's Manufacturing Company
Blackthorne	Continental Machine & Tool (CMT)
BOHICA	Core 15 Rifles Systems
Bushmaster Firearms International	Crusader Weaponry
C3 Defense	Dalphon
Carolina Mountain Tactical	Dane Armory
Cavalry Arms	Daniels Defense
CD Defense	
Centurion Arms	

Archived pages on the Internet Archive Wayback Machine show that this portion of the New York SAFE Act website was on the website from at least as early as November 29, 2016, through at least as late as June 20, 2020. The archived webpage from November 29, 2015, is available at this web address:

<https://web.archive.org/web/20161129221018/https://safeact.ny.gov/sites/default/files/assets/documents/RiflethatAREclassifiedasassaultweapons.pdf>. The archived webpage from June 20, 2020,

is available at this web address:

<https://web.archive.org/web/20200620145624/https://safeact.ny.gov/sites/default/files/assets/documents/RiflethatAREclassifiedasassaultweapons.pdf>.

18. Wherefore, the undersigned respectfully requests that Vintage's motions to dismiss Plaintiffs' Complaints be denied.

DATED: December 18, 2023
New York, NY



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CERTIFICATE OF COMPLIANCE

This affirmation complies with the type-volume limitation of 22 NYCRR § 202.8-b because it contains 1,661 words, excluding the parts exempted by the rules. This affirmation also complies with the typeface requirements of 22 NYCRR § 202.5(a) because it has been prepared using Microsoft Word and Times New Roman typeface, 12-point font, and 1” margins.

DATED: December 18, 2023
New York, NY



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