

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

WAYNE JONES, Individually and as Administrator
of the Estate of CELESTINE CHANEY,

INDEX NO.: 810316/2023

Hon. Paula L. Feroletto

Plaintiff,

-against-

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

Oral Argument Requested

Defendant.

**AFFIRMATION OF SEAN R. LIST IN SUPPORT OF DEFENDANT VINTAGE
FIREARMS, LLC’S MOTION TO DISMISS COMPLAINT OR, IN THE
ALTERNATIVE, STAY THE PENDING PROCEEDINGS**

Sean R. List, an attorney admitted to practice law *pro hac vice* before this Honorable Court, affirms the following to be true to the best of his knowledge under penalties of perjury:

1. I am a partner at the law firm Lehmann Major List, PLLC, and *pro hac vice* counsel for Defendant VINTAGE FIREARMS, LLC (“Vintage”). I am familiar with the facts of this matter based upon my review of the record of this action, the file maintained by my office, documents of Vintage, my own research, and/or my personal knowledge.

2. I respectfully submit this Affirmation in support of Vintage’s Motion to Dismiss Complaint or, in the Alternative, Stay the Pending Proceedings.

PROCEDURAL POSTURE

3. This action commenced on August 15, 2023, by the filing of a Summons and Complaint (NYSCEF Docs. #1&2). A true and correct copy of the Complaint is attached as **Exhibit 1.**

4. Issue was joined by Defendants Paul Gendron and Pamela Gendron, collectively

“Parent Defendants”, on October 17, 2023, by the filing of an Answer in which they raised crossclaims against Vintage and codefendants for contribution (NYSCEF Doc. #3). A true and correct copy of the Parent Defendants’ Answer is attached as **Exhibit 2**.

5. Issue was joined by Defendant RMA Armament on November 6, 2023, by the filing of an Answer in which it raised crossclaims against Vintage and codefendants for contribution and indemnification (NYSCEF Doc. #30). A true and correct copy of RMA Armament’s Answer is attached as **Exhibit 3**.

6. No other defendants have joined issue through an answer.

FACTUAL BACKGROUND

7. On May 14, 2022, Payton Gendron (“Gendron”) entered Tops Friendly Market in Buffalo, New York, and carried out unspeakable acts of violence that were racially motivated. Ex.1, Compl. ¶¶1, 115-118. He murdered ten people and wounded three others. *Id.*

8. Gendron legally purchased the firearm (“Subject Rifle”) he criminally misused in his attack from Vintage on January 19, 2023, after passing a background check. **Exhibit 4** is a true and correct redacted copy of Vintage’s acquisition and disposition records pertaining to the sale of the Subject Rifle to Gendron on January 19, 2022. Redactions are included to protect the privacy of uninvolved private parties. **Exhibit 5** is a true and correct redacted copy of the Firearms Transaction Record (known as the “4473” Form) pertaining to Gendron’s purchase of the Subject Rifle. As indicated on page 2, box 27.c of Exhibit 5, Gendron passed the NICS background check and Vintage was provided the instruction to “proceed” with the sale. The form is redacted to protect the address of the Parent Defendants.

9. The Subject Rifle, a Bushmaster model “XM-15E2S Target,” was manufactured in Windham, Maine between 1994 and 2006 according to its serial number, therefore traveling in

interstate commerce to reach New York. *Id.*, **Exhibit 6** is a true and correct copy of a serial number FAQ information page that I retrieved from Bushmaster's official website on October 28, 2023, utilizing the following link: <https://www.bushmaster.com/support/frequently-asked-questions/>.

10. Vintage is an FFL with a small firearm retail store located at 120 S. Nanticoke Avenue in Endicott, New York. Ex. 1, ¶30; Ex. 7. **Exhibit 7** is a true and correct copy of ATF's FFLeZCheck result for Vintage Firearms, LLC, dated October 25, 2023. Vintage is owned and operated by Robert Donald. *Id.*

11. Gendron's purchase of the Subject Rifle occurred more than sixteen weeks (nearly four months) prior to his murderous acts. Ex. 1, ¶¶1, 115; Ex. 4; Ex. 5. Although the Subject Rifle was compliant with New York law when it was sold by Vintage, having a fixed magazine with a ten-round capacity, Gendron followed YouTube instructions to illegally modify the rifle using a power drill and screw extracting tool known as a "Speedout" he purchased from Home Depot. Ex. 1, ¶¶ 85-86, 90; Ex. 8, (1/14/2022); Ex. 9: 61-72. He then installed separately purchased firearm parts sold by Anderson Manufacturing, that were required to allow the Subject Rifle to accept detachable magazines. *Id.* Additionally, Gendron carried out his attack using thirty-round magazines he purchased at a flea market, knowing they were illegal. *Id.* **Exhibit 8** is a true and correct excerpted copy of Discord postings by Gendron located on the internet by undersigned counsel's office, which is referred to as Gendron's "Discord Diary" in the Plaintiff's Complaint. Only the pages containing posts referenced by date are included in Exhibit 8. **Exhibit 9** is a true and correct copy of a lengthy, 180-page written statement that Gendron released on the day of the shooting, obtained by my client from the news media. Exhibit 9 has been commonly referred to as Gendron's "manifesto" and is referred to heavily in Plaintiff's Complaint.

12. New York law does not ban detachable magazines generally; it bans detachable

magazines with a capacity of more than ten rounds (termed “large capacity ammunition feeding devices”) N.Y. Penal Law §§ 265.00, 265.02. It also bans “assault weapons” which are defined as semi-automatic firearms that are capable of accepting detachable magazines and have one or more banned features. *Id.* **Exhibit 10** is a true and correct copy of an official New York State PowerPoint describing “assault weapons” and New York’s “banned features” pertaining to semi-automatic rifles with detachable magazines. It is available at the following URL link: https://gunsafety.ny.gov/system/files/documents/2020/02/rifles_banned_features.pdf.

13. Many firearms capable of accepting detachable magazines, including “featureless” AR-15s, were legal to own and possess in New York at all times relevant to this case. **Exhibit 11** is a true and correct copy of an official New York State PowerPoint entitled: “Images of Rifles That Are Not Classified As Assault Rifles,” which is available at the following link: https://gunsafety.ny.gov/system/files/documents/2020/04/images_of_rifles_that_are_not_classified_as_assault_rifles.pdf.

14. One of the non-assault rifles included in the presentation is a Ruger Mini 14. Ex. 11, p. 13. Interestingly enough, the Ruger Mini 14 is a semi-automatic firearm of the same caliber (5.56 NATO/.223 Rem) as the Subject Rifle, capable of accepting detachable magazines. *See* <https://ruger.com/products/mini14RanchRifle/specSheets/5816.html>. Large capacity magazines for the Ruger Mini 14 are readily available:

Mini-14® 5.56 NATO/.223 Rem. 30-Round Magazine



Item Number: 90035

Review Average: ★★★★★

Number of Reviews: 23

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\$53.95

Expected on: 11/20/2023

Quantity I am a US Citizen or lawful permanent resident.[ADD TO CART](#)

https://shopruger.com/Mini-14-556-NATO_223-Rem-30-Round-Magazine/productinfo/90035/

15. On the same date Gendron intentionally misused the Subject Rifle in his criminal shooting attack, ATF visited Vintage to review and take records concerning the transaction. Ex.

12. **Exhibit 12** contains a true and correct copy of a “Receipt for Property and Other Items” provided to Vintage by ATF when ATF agents visited Vintage on the evening of May 14, 2023, and took the original copy of the 4473 Form (Ex. 5) pertaining to Gendron’s acquisition of the Subject Rifle.

16. Plaintiff has not alleged Vintage was ever found in violation of state or federal law by government regulators, that its FFL was revoked, or that criminal charges were ever issued pertaining to the transaction (which was legal). *See* Ex. 1, Compl. Generally.

17. After the shooting, the New York Times posted an Article on May 15, 2022, that Plaintiff referenced in the Complaint. Ex. 1, ¶92 & fn 15; Ex. 13. **Exhibit 13** is a true and correct copy of the New York Times article referenced, published on May 15, 2022, and retrieved from the New York Times website. Robert Donald, owner of Vintage Firearms, reported to the New York Times that he had completed a background check on Gendron, who passed, and explained:

“He didn’t stand out, because if he did, I would have never sold him the gun.” *Id.* Mr. Donald explained he only sells NY-compliant firearms and stated: “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.” *Id.* (emphasis added).

18. Vintage legally sold the Subject Rifle and, like other gun dealers Gendron visited, was shocked to learn of Gendron’s heinous crime. Ex. 14. **Exhibit 14** is a true and correct copy of a New Yorker Article that was published on May 22, 2022, which I retrieved from their webpage on October 24, 2023. As is reported in the article, Gendron was a frequent visitor of multiple firearms stores and had purchased a shotgun from another licensed dealer who reported “nothing abnormal” about his presentation. *Id.* Gun Dealer Mohammed Farzad, an Iranian immigrant who owns “All Star Pawn Shop,” saw the news and “had trouble believing it was the same man who had come to his store so frequently.” *Id.* He described showing Gendron an AR-15 for possible purchase himself. *Id.*

19. In accordance with New York law, every licensed gun dealer and the employees and agents of each gun dealer must partake in an annual training program pursuant to G.B.L. §875-e. According to the law, the training must include instruction concerning: “How to recognize, identify, respond, and report an individual who intends to use a firearm, rifle, or shotgun for unlawful purposes, including self-harm.” G.B.L. §875-e(2)(C). The training currently provided was published by the New York State Police on January 27, 2023, and consists of a PowerPoint presentation containing twenty-nine slides. Ex. 15. **Exhibit 15** is a true and correct copy of the current training program published by the New York State Police, which is available at the following link: <https://gunsafety.ny.gov/resources-gun-dealers>.

20. The mandatory training program for New York firearm dealers makes no reference

to G.B.L. §898 and provides only one slide purportedly identifying signs exhibited by purchasers who harbor criminal or harmful intent. Ex. 15, p. 20. The slide explains: “[i]t can be difficult to determine if a customer intends on using a gun [] to harm someone or themselves. However, here are some signs you can watch out for...” *Id.* The slide then describes that a suspicious customer is one who is disinterested in how the gun works, doesn’t ask questions, doesn’t ask about comparisons with other models, doesn’t know anything about guns, makes odd statements, and/or acts nervously. *Id.*

21. At no point does the training reference the characteristics displayed by Gendron as alleged by Plaintiff, who have described him as a frequent customer of Vintage who was interested in the Subject Rifle’s characteristics, which he “investigated.” Ex. 1, Compl. ¶¶147-152. He is not alleged to have acted nervously, disinterested, unusually, or like he was in a rush. *Id.* At no point is he alleged to have acted in an alarming manner that would put Vintage on notice of his propensity to engage in a criminal act of violence. *Id.*

GROUND FOR DISMISSAL

22. As is explained in greater detail in the accompanying Memorandum, Plaintiff’s claims against Vintage fail as a matter of law.

23. Plaintiff’s claims are squarely prohibited by the immunity provisions of the PLCAA. 15 U.S.C. §§ 7901-7903. The instant case is a “qualified civil liability action” that “may not be brought in any Federal or State court.” *Id.* at §§7902(a), 7903(5)(A).

24. Although an action for negligent entrustment can be an exception to the PLCAA, Plaintiff has alleged no factual basis to support the conclusion that Vintage had special knowledge or should have known that Gendron was likely to use the Subject Rifle in an improper or dangerous fashion involving unreasonable risk of physical injury to himself or others. 15 U.S.C. §7903(5)(B).

25. The “predicate exception” to the PLCAA is inapplicable because Plaintiff has failed to allege facts demonstrating that Vintage “knowingly violated” any state or federal law “applicable to the sale or marketing” of firearms, ammunition, or firearms components, and that “the violation was a proximate cause of the harm for which relief is sought.” 15 U.S.C. §7903(5)(A)(iii).

26. G.B.L. §898 is unconstitutionally vague both facially and as it applies to Vintage because it fails to provide a person of common intelligence “fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Further, the law fails to provide a minimal standard for enforcement, thereby permitting arbitrary application and violating the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

27. According to Plaintiff, G.B.L. §898 prohibits the sale of AR-15s (even those with magazine locking devices and restricted magazine capacity) to members of the public who are not otherwise prohibited from firearm possession pursuant to state or federal law. Because such a prohibition is inconsistent “with the Nation’s historical tradition of firearm regulation,” it violates “the Second Amendment’s unqualified command.” *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2135 (2022).

28. For the reasons set forth herein and in greater detail in the accompanying Memorandum of Law, Vintage Firearms, LLC respectfully requests that this Court grant its Motion to Dismiss all claims pending in this case against Vintage, including all of the Plaintiff’s claims and all crossclaims filed by any codefendant.

29. Alternatively, should the Court decline to dismiss Count Eight of the Plaintiff’s Complaint, the Court should stay the instant proceedings against Vintage pending the outcome of

a constitutional challenge to G.B.L. §898 currently under consideration in the United States Circuit Court of Appeals for the Second Circuit in the case of *National Shooting Sports Foundation, Inc. v. James*, No. 22-1374.

FURTHER AFFIANT SAYETH NAUGHT

Dated: Concord, New Hampshire
November 9, 2023



Sean R. List, Esq.