

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES M. MALONEY,

CV-03-0786 (PKC) (AYS)

Plaintiff,

JOINT PRE-TRIAL ORDER
FOR CONTINUED TRIAL

- against -

MADLINE SINGAS,

Defendant.

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Pursuant to the Individual Practices and Rules of the Hon. Pamela K. Chen, the parties submit the within Joint Pre-Trial Order in connection with the continued portion of the trial which is to resume on June 4, 2018.

I. **Caption**

The full caption is as set forth above.

II. **Parties and Counsel**

Plaintiff:

James M. Maloney, Esq. (proceeding *Pro Se*)
33 Bayview Avenue
Port Washington, New York 11050
(516) 767-1395 (Phone)
(516) 708-1395 (Fax)

Defendant:

Jared A. Kasschau, Nassau County Attorney
One West Street
Mineola, New York 11501
By: Liora M. Ben-Sorek, Deputy County Attorney
(516) 571-3014 (Phone)
(516) 571-6604 (Fax)

III. **Jurisdiction**

The Court has subject matter jurisdiction over this action seeking a declaratory judgment on the issue of the constitutionality of New York State Penal Law §§ 265.00 and 265.01.

IV. **Claims and Defenses**

Plaintiff:

Plaintiff's claim is that sections 265.00 and 265.01 of the New York Penal Law, to the extent that those statutes define and punish as a crime, the simple possession of nunchaku within one's home, are unconstitutional and of no force and effect by virtue of the Second Amendment's protection of the right to keep "arms."

Defendant:

In addition to the affirmative defenses set forth in Defendant's Answer to the Second Amended Complaint (*see* DE 118), Defendant contends that nunchaku are not commonly used for legitimate purposes and, therefore, are not entitled to protection under the Second Amendment. Defendant argues, in the alternative, should this Court determine that nunchaku are subject to protection under the Second Amendment, that the Penal Law sections at issue herein are rationally related to a legitimate State interest.

V. **Jury or Bench Trial**

The trial will be a continuation of the Bench Trial which was held in January 2017. The parties anticipate proceedings to take one (1) day.

The parties would also consent to presentation of the case in the form of a "trial by papers" whereby each party would submit its arguments in writing.¹

VI. **Consent to Trial by a Magistrate Judge**

This matter is a continuation of the Bench Trial with District Judge Chen presiding.

¹ Hon. Forrest conducted trial in a remanded case "largely on papers" through submission of affirmative arguments through declarations. (*See e.g.* CV-11-3918, SDNY Docket Entry 181 and 197, at pages 3-4). The parties herein would be amenable to proceeding in a similar fashion, should same be acceptable to this Court.

VII. **Additional Witnesses**

Plaintiff:

None.

Defendant:

None.

VIII. **Deposition Testimony**

Neither party intends to utilize deposition testimony in their respective case-in-chief.

IX. **Stipulations**

A. In 2000, Plaintiff was charged with criminal possession of a weapon in the fourth degree, a misdemeanor, for possessing nunchaku in his home in violation of New York Penal Law § 265.01.

B. A Bench Trial was held on January 9, 10 and 12, 2017.

C. The parties stipulate to the authenticity and Plaintiff waives any potential hearsay objection related to the data provided by various martial arts manufacturers and suppliers (detailed in section “X” *infra*). Plaintiff retains the right to object on grounds of relevance, however.

X. **Additional Exhibits**

Plaintiff:

1. <https://www.youtube.com/watch?v=CHYZtPA2Tss>

Defendant:

A. Sales data for the years 2016 and 2017 from American Nunchaku Company (www.usanunchaku.com)

B. Sales data for the years 2002 – 2018 from Zengu (www.zengu.com) and KarateDepot (www.karatedepot.com)

C. Sales data for the years 2006 – 2018 from Macho Products Inc. (www.macho.com)

- D. Sales data for the years 2012 – 2018 from Swords Knives and Daggers (www.swordsknivesanddaggers.com)
- E. Sales data for the years 1995 – 2018 from Martial Arts Mart (www.martialartsmart.com) and from 1998 – 2018 from Tiger Claw (www.tigerclaw.com)
- F. Sales data from Karate Mart (www.karatemart.com)
- G. <https://www.ispot.tv/ad/Ar9E/2017-subaru-outback-take-the-subaru> (an explanation of the commercial which Plaintiff seeks to introduce).

Dated: May 23, 2018

SO ORDERED:

Hon. Pamela K. Chen
United States District Judge