

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EVERYTOWN FOR GUN SAFETY  
SUPPORT FUND,

Plaintiff,

v.

BUREAU OF ALCOHOL, TOBACCO,  
FIRARMS AND EXPLOSIVES,

Defendant.

Case No. 1:18-cv-02296-AJN

**SUPPLEMENTAL DECLARATION OF CHARLES J. HOUSER  
IN FURTHER SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

1. I, Charles J. Houser, am the Chief, National Tracing Center Division in the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), U.S. Department of Justice. I have served in this position since 2005.

2. The statements made in this declaration are based on knowledge that I have acquired in the performance of my official duties. I have read and am familiar with the Complaint in this action.

3. The purpose of this declaration is to provide background on the use of trace data in the *Ron Peterson, LLC. v. Jones*, Case No. 11 Civ. 678 (D.N.M. Mar. 30, 2012), and *10 Ring Precision, Inc., et al. v. Jones*, Case No. 11 Civ. 663 (W.D. Tex. Mar. 26, 2012), Administrative Procedure Act cases cited on pages 15-16 of Plaintiffs’ Memorandum of Law in Support of its Cross Motion for Summary Judgment and in Opposition to Defendant’s Motion for Summary Judgment (“Plaintiff’s Brief”), which was filed in this case on November 2, 2018. The purpose of this declaration is also to briefly describe the capabilities of the “eTrace” system cited on page 21 of Plaintiff’s Brief.

4. As Chief, National Tracing Center Division, I am responsible for the oversight of ATF’s firearms tracing operations, various associated programs and approximately 340 personnel at the NTC whose mission is to produce investigative leads for criminal investigations involving firearms used or

1 suspected to have been used in crimes. Furthermore, I was also personally involved in the  
2 aforementioned Administrative Procedure Act litigations.

3 5. ATF is the federal agency responsible for, among other things, enforcing Federal firearms  
4 laws including the Gun Control Act of 1968 (“Gun Control Act”), 18 U.S.C. §§ 921-930 (2000)  
5 (originally enacted as Act of Oct. 22, 1968, Pub. L. No. 90-618, § 1, 82 Stat. 1213). The Gun Control  
6 Act established a licensing system for persons engaged in manufacturing, importing, dealing, and  
7 collecting firearms. ATF enforces the licensing provisions of the Gun Control Act, which, among other  
8 things, regulates the interstate movement of firearms.

9 6. In December 2010, ATF announced a proposed reporting requirement regarding multiple  
10 dispositions within five business days of semi-automatic rifles capable of accepting a detachable  
11 magazine and of a caliber greater than .22. Noting the utility of the statutory multiple sales reporting  
12 requirement for handguns, ATF explained that the proposed reporting requirement for certain rifles  
13 would assist the investigation of firearms trafficking to Mexico. ATF held a sixty-day comment period,  
14 which was subsequently extended for an additional thirty days.

15 7. On July 12, 2011, ATF exercised its authority under 18 U.S.C. § 923(g)(5)(A) to issue  
16 demand letters to certain Federal Firearm Licensees (“FFLs”) in four Southwest Border States—the  
17 primary source States of firearms trafficked to Mexico. These demand letters required certain FFLs to  
18 submit to ATF a one-page report whenever they sold or otherwise disposed of two or more semi-  
19 automatic rifles meeting certain specifications to a single unlicensed person within a period of five  
20 consecutive business days.

21 8. Through a series of litigations, including *10 Ring Precision, Inc. v. Jones*, 11 Civ. 663  
22 (“*10 Ring Precision*”), filed in the Western District of Texas, and *Ron Peterson Firearms, LLC v. Jones*,  
23 11 Civ. 678 (“*Ron Peterson Firearms*”), filed in the District of New Mexico, the issuance of these  
24 demand letters was challenged as a violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)  
25 *et seq.* (“APA”). Attached as **Exhibit D** is a true and correct copy of the Complaint filed in *Ron*  
26  
27  
28

1 *Peterson Firearms*. Attached as **Exhibit E** is a true and correct copy of the Complaint filed in *10 Ring*  
2 *Precision*.

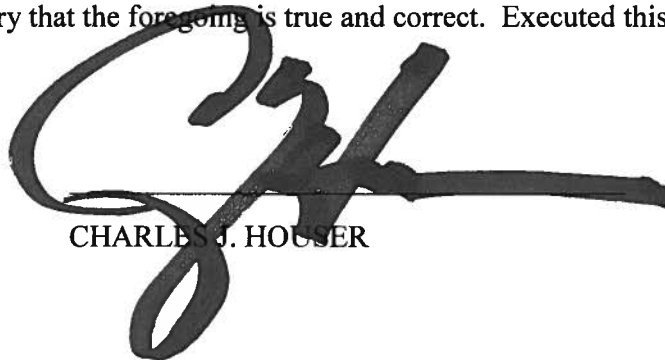
3 9. In responding to these APA challenges, ATF introduced a number of documents as part  
4 of the Administrative Records filed by the agency in those cases in February 2012 and March 2012.  
5 Included among those records were statistical aggregate trace data regarding firearms recovered in  
6 Mexico, with the names of FFLs redacted due to privacy and law-enforcement concerns. These records  
7 were specifically introduced to refute claims that ATF acted in an arbitrary and capricious manner in  
8 violation of the APA while exercising its authority to issue demand letters under 18 U.S.C.  
9 § 923(g)(5)(A).

10 10. ATF understood that the production of trace data as part of the Administrative Records in  
11 these cases was permitted under the Consolidated and Further Continuing Appropriations Act, 2012,  
12 Pub. L. No. 112–55, 125 Stat. 552 (2011) (“2012 Appropriations Act”), which permits the disclosure of  
13 “part or all of the contents of the Firearms Trace System database . . . in a proceeding commenced by the  
14 [ATF] to enforce the provisions of chapter 44 of such title [18 U.S.C. §§ 921–931], or a review of such  
15 an action or proceeding.” Given that Plaintiffs’ APA claims in both cases sought judicial review of  
16 ATF’s authority to enforce the provisions of 18 U.S.C. Chapter 44, specifically, 18 U.S.C. § 923(g),  
17 both cases fell within the scope of this provision in the 2012 Appropriations Act.

18 11. As described in Paragraph 14 of my Declaration dated October 1, 2018 (“October 1  
19 Declaration”), since 2005, ATF has made available an eTrace system to authorized law enforcement  
20 agencies. The system, among other things, provides real-time capabilities that allow law enforcement  
21 agencies to submit electronic firearms trace requests, monitor the progress of traces, retrieve completed  
22 trace results, and query firearms trace-related data in the Firearms Trace System database. However,  
23 eTrace’s data query capacities are highly limited in scope. An authorized law enforcement agency may  
24 only use eTrace to generate basic statistical reports of the Firearms Trace System database to retrieve  
25 information relating to trace requests submitted by *that* agency—*e.g.*, the number of traces submitted by  
26 that agency over a certain time period. Moreover, query results of eTrace searches are limited to 500  
27 returns per query, which means that if a particular data query is likely to return 1,000 results, for  
28

1 example, eTrace will only display the first 500 results to the authorized user. eTrace is not capable of  
2 generating the statistical reports sought by Plaintiff in this case. Rather, the only process by which ATF  
3 can create the reports sought by Plaintiff's FOIA Request is described in Paragraphs 20, 21, 30, 31, and  
4 32 of my October 1 Declaration.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day  
6 of November, 2018.



A large, bold, handwritten signature in black ink, appearing to read 'CH' with a long horizontal stroke extending to the right.

CHARLES J. HOUSER

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

RON PETERSON FIREARMS, LLC  
4418 Central Avenue Southeast  
Albuquerque, NM 87108-1210

Plaintiff

v.

KENNETH MELSON  
Acting Director  
Bureau of Alcohol, Tobacco,  
Firearms & Explosives  
99 New York Avenue, N.E.  
Washington, D.C. 20226

Defendant

## COMPLAINT

(For Declaratory Judgment and Injunctive Relief)

1) This is an action to secure the statutory right of licensed firearm dealers not to submit reports and information with respect to records maintained as required by statute, and to secure the privacy rights of lawful purchasers of firearms, by preventing the Bureau of Alcohol, Tobacco, Firearms & Explosives ("BATFE") from unlawfully requiring licensed firearm dealers to submit a report of sale or other disposition to unlicensed persons of two or more semi-automatic rifles of greater than .22 caliber (including .223/5.56) capable of accepting a detachable magazine within five (5) consecutive business days.

## Parties

2) Plaintiff Ron Peterson Firearms, LLC (hereinafter "Peterson") is a federally-licensed dealer in firearms pursuant to 18 U.S.C. § 923, which is incorporated under the laws of New Mexico and has its

principal place of business in Albuquerque, New Mexico.

3) Defendant Kenneth Melson is Acting Director, BATFE, a bureau of the United States Department of Justice, and has his principal place of business in Washington, D.C., and is being sued in his official capacity as such. The Attorney General has delegated the administration and enforcement of Chapter 44 of Title 18, U.S.C. to the BATFE.

### **Jurisdiction**

4) Jurisdiction is founded on 28 U.S.C. § 1331 in that this case arises under the laws of the United States, and is a controversy to which the United States is a party. Plaintiff seeks review pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 2201.

### **Applicable Statutes And Regulations**

5) 18 U.S.C. § 923(g)(1)(A) provides:

Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Secretary reports and information with respect to such records and the contents thereof, *except as expressly required by this section.* (Emphasis added).

6) Pursuant to 18 U.S.C. § 923(g)(1)(A), 27 C.F.R. § 478.125(e) provides that a licensed dealer shall maintain firearm acquisition and disposition records which include, *inter alia*, the date of sale or other disposition, the name and address of the buyer, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm.

7) 18 U.S.C. § 923(g) (3) (A) provides:

Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

8) Reports of multiple sales of rifles within any given period are not expressly required by § 923.

9) 18 U.S.C. § 923(g) (5) (A) provides:

Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

10) 18 U.S.C. § 923(g) (7) provides:

Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation.

11) 18 U.S.C. § 923(g) (1) (B) provides:

The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant -

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping

requirements of this chapter -

(I) not more than once during any 12-month period; or  
(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee.

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

12) 18 U.S.C. § 926(a) provides:

The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter [Chapter 44 of 18 U.S.C.] . . . No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act [P.L. 99-308, 100 Stat. 449 (1986)] may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Attorney General's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

13) The Consolidated Appropriations Act, 2010, Pub.L. 111-117, div. B, tit. 2, 123 Stat. 3034, 3128 (2009), provides appropriations for necessary expenses of the BATFE, with the following proviso:

Provided, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees . . . .

14) The Department of Defense and Full-Year Continuing Appropriations Act for the 2011 fiscal year, Pub.L. 112-10, div. B., tit. 1, § 1101(a)(6), 125 Stat. 38, 102-03 (2011), continued the Consolidated Appropriations Act, 2010, in effect until September 30,



2011.

### **Facts**

15) Peterson received a letter addressed to "Dear Federal Firearms Licensee" and dated July 12, 2011, from Charles Houser, Chief, National Tracing Center (hereafter "the letter"). In the letter, Houser states that Melson has delegated his authority as Acting Director to issue the letter to Houser. A copy of the letter is attached herewith and incorporated herein by reference.

16) The letter purports to demand portions of records pursuant to the BATFE's authority under 18 U.S.C. § 923(g)(5). Specifically, the letter directs Peterson to submit information from the acquisition and disposition records of Peterson concerning the sale or other disposition to an unlicensed person of two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) within five (5) consecutive business days.

17) The letter enclosed ATF Form 3310.12 (Report of Multiple Sale Or Other Disposition of Certain Rifles), which requires Peterson to report the following information about the purchaser and the firearms purchased: name, residence address, sex, race, identification number, identification type, identification State, date and place of birth, and the serial numbers, manufacturers, importers, models, and calibers of the rifles.

18) The letter requires that the reports be provided to the BATFE beginning with sales made on August 14, 2011 and until BATFE provides

written notice to stop.

19) The reports are required to be sent to the National Tracing Center.

20) A similar letter has been, or will be, sent to all federal firearms licensees in Texas, New Mexico, Arizona, and California. The BATFE has estimated that 8,479 licensees are subject to the requirements of the letter, or 13.3% of the approximately 63,535 licensees nationwide.

21) Peterson has sold two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) to the same persons within five (5) consecutive business days, and will continue to sell such rifles to the same persons within five (5) consecutive business days.

22) The information was not requested in relation to any criminal investigation.

23) The information requested did not concern the sale of pistols or revolvers.

24) Upon information and belief, when the National Tracing Center receives the forms, it retains the information from Peterson's records permanently in a consolidated and centralized database within the Department of Justice.

25) Upon information and belief, the letter sent to Peterson was authorized, caused, and approved by Melson.

26) Peterson has been, and will continue to be, threatened with, and subjected to, irreparable harm, and have no adequate remedy at law.

27) The irreparable harm inflicted on Peterson includes economic loss as a result of having to devote employee time to preparing the reports and the loss of business from both in-state and out-of-state potential purchasers of semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) who would have bought such rifles but have been dissuaded from doing so because they wish to protect their privacy rights. Peterson faces civil and criminal sanctions, including revocation of its license, should it fail to comply.

28) There is also irreparable harm to the privacy rights of Peterson's customers, an injury which Peterson may assert as the customers' privacy rights are inextricably bound up with Peterson's statutory rights and Peterson is fully as effective a proponent of its customers' rights as the customers. Further, there is a genuine obstacle to the customers' assertion of their privacy rights in that assertion of those rights in litigation results in nullification of the right.

#### **COUNT ONE**

(Unlawful Demand For Records Not Expressly Required  
by Law and Not For a Bona Fide Criminal Investigation)

29) Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30) The letter requires the submission of records and contents thereof which are not expressly required by 18 U.S.C. § 923, in violation of § 923(g)(1)(A).

31) The authority of the BATFE to require the reporting of

information contained in licensee records with respect to the multiple sale or other disposition of semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) is limited by 18 U.S.C. § 923(g)(1)(B), § 923(g)(3)(A), § 923(g)(7), and § 926(a).

32) The letter exceeds Melson's authority.

**COUNT TWO**

(Violation on Prohibition of Consolidation of Records)

33) Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34) The BATFE is an entity within the Department of Justice.

35) The letter requires reporting of "the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees."

36) By receiving and retaining such records or portions thereof within the National Tracing Center, including the name and address of the purchaser, BATFE is "consolidating or centralizing," and will continue to consolidate or centralize, such records in violation of Pub.L. 111-117 and Pub.L. 112-10.

WHEREFORE, Peterson prays that the court:

1) Enter a declaratory judgment that the letter and the Form 3310.12: (a) are beyond the scope of Melson's authority under 18 U.S.C. § 923(g)(1)(B), § 923(g)(3)(A), § 923(g)(5)(A), § 923(g)(7), and § 926(a), and contrary to the Consolidated Appropriations Act, 2010, Pub.L. 111-117, 123 Stat. 3034 (2010).

2) Issue preliminary and permanent injunctions requiring, or

otherwise compelling, Melson and his officers, agents, and employees, to refrain from initiating any administrative, civil, or criminal actions or proceedings against Peterson for not submitting information required by the letter to the BATFE, and forthwith to destroy any and all such information already submitted to the BATFE and kept there or disseminated to any other office or agency.

3) Award Peterson costs, including attorney's fees, pursuant to, *inter alia*, 18 U.S.C. § 924(d) and 28 U.S.C. § 2412.

4) Grant such other and further relief as may be proper.

Respectfully submitted,

RON PETERSON FIREARMS, LLC  
By Counsel

/s/

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**U.S. Department of Justice**

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

OMB No. 1140-0100

July 12, 2011

Dear Federal Firearms Licensee:

To assist its efforts in investigating and combating the illegal movement of firearms along and across the Southwest border, ATF is requiring licensed dealers and pawnbrokers in Arizona, California, New Mexico and Texas to submit record information concerning multiple sales of certain rifles. ATF has the authority to issue this letter to collect such record information from federal firearms licensees (FFLs) under 18 U.S.C. § 923(g)(5), and that authority has been delegated by ATF's Acting Director to the Chief of the National Tracing Center.

You must submit to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reports of multiple sales or other dispositions whenever, at one time or during any five consecutive business days, you sell or otherwise dispose of two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber) to an unlicensed person. You are required to report all such sales that occur on or after **August 14, 2011**. You must continue reporting multiple sales for the rifles subject to this demand letter until we provide written notice to stop.

The required information must be submitted on ATF Form 3310.12, Report of Multiple Sale or Other Disposition of Certain Rifles, no later than the close of business on the day the multiple sale or other disposition takes place. We have enclosed a copy of Form 3310.12 with this letter. You are encouraged to order additional forms at your earliest convenience by calling the ATF Distribution Center, 1519 Cabin Branch Drive, Landover, MD 20785, at (301) 583-4696. You may also order copies from ATF's website at [www.atf.gov/forms](http://www.atf.gov/forms). Further, we have created a fillable form that you may access through our website at [www.atf.gov](http://www.atf.gov). You may use the fillable form by typing in the information regarding the sale, printing sufficient copies, and mailing or faxing the form in accordance with the instructions. Finally, you may, if you wish, make photocopies of the enclosed form and use those copies to submit multiple sales reports.

Be advised that, in addition to the record information required by this letter, licensees remain obligated to submit reports of multiple sales or other dispositions when the licensee sells or otherwise disposes of two or more pistols or revolvers, or any combination of pistols or revolvers

-2-

Federal Firearms Licensee

totaling two or more, to an unlicensed person at one time or during any five consecutive business days. 18 U.S.C. § 923(g)(3). Reports of multiple sales or other dispositions of handguns must be reported using ATF Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, and must be submitted in accordance with the instructions on that form, separately from the information required by this letter.

If you have any questions, please contact the National Tracing Center at 1-800-788-7133.

A handwritten signature in black ink, appearing to read 'Charles Houser', with a large, stylized initial 'C'.

Charles Houser  
Chief, National Tracing Center

Enclosure

#### **Paperwork Reduction Act Notice**

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection documents certain sales or other dispositions of certain rifles for law enforcement purposes. The information is used to determine whether the buyer (*transferee*) may be involved in unlawful activity, such as straw purchasing. The information requested is mandatory and required by statute (18 U.S.C. § 923(g)(5)).

The estimate average burden associated with this collection is 12 minutes per report by each respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

10 RING PRECISION, INC.  
1449 Blue Crest Lane  
San Antonio, TX 78232

Plaintiff

v.

KENNETH MELSON  
Acting Director  
Bureau of Alcohol, Tobacco,  
Firearms & Explosives  
99 New York Avenue, N.E.  
Washington, D.C. 20226

Defendant

5:11-cv-00663

**COMPLAINT**

**(For Declaratory Judgment and Injunctive Relief)**

1) This is an action to secure the statutory right of licensed firearm dealers not to submit reports and information with respect to records maintained as required by statute, and to secure the privacy rights of lawful purchasers of firearms, by preventing the Bureau of Alcohol, Tobacco, Firearms & Explosives ("BATFE") from unlawfully requiring licensed firearm dealers to submit a report of sale or other disposition to unlicensed persons of two or more semi-automatic rifles of greater than .22 caliber (including .223/5.56) capable of accepting a detachable magazine within five (5) consecutive business days.

**Parties**

2) Plaintiff 10 Ring Precision, Inc. (hereinafter "10 Ring") is a federally-licensed dealer in firearms pursuant to 18 U.S.C. § 923,



which is incorporated under the laws of Texas and has its principal place of business in San Antonio, Texas.

3) Defendant Kenneth Melson is Acting Director, BATFE, a bureau of the United States Department of Justice, and has his principal place of business in Washington, D.C., and is being sued in his official capacity as such. The Attorney General has delegated the administration and enforcement of Chapter 44 of Title 18, U.S.C. to the BATFE.

#### **Jurisdiction**

4) Jurisdiction is founded on 28 U.S.C. § 1331 in that this case arises under the laws of the United States, and is a controversy to which the United States is a party. Plaintiff seeks review pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 2201.

#### **Applicable Statutes And Regulations**

5) 18 U.S.C. § 923(g) (1) (A) provides:

Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. Such importers, manufacturers, and dealers shall not be required to submit to the Attorney General reports and information with respect to such records and the contents thereof, *except as expressly required by this section.* (Emphasis added).

6) Pursuant to 18 U.S.C. § 923(g) (1) (A), 27 C.F.R. § 478.125(e) provides that a licensed dealer shall maintain firearm acquisition and disposition records which include, *inter alia*, the date of sale or other disposition, the name and address of the buyer, the name of the manufacturer and importer (if any), the model, serial number, type, and

the caliber or gauge of the firearm.

7) 18 U.S.C. § 923(g) (3) (A) provides:

Each licensee shall prepare a report of multiple sales or other dispositions whenever the licensee sells or otherwise disposes of, at one time or during any five consecutive business days, two or more pistols, or revolvers, or any combination of pistols and revolvers totalling two or more, to an unlicensed person. The report shall be prepared on a form specified by the Attorney General and forwarded to the office specified thereon and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place, not later than the close of business on the day that the multiple sale or other disposition occurs.

8) Reports of multiple sales of rifles within any given period are not expressly required by § 923.

9) 18 U.S.C. § 923(g) (5) (A) provides:

Each licensee shall, when required by letter issued by the Attorney General, and until notified to the contrary in writing by the Attorney General, submit on a form specified by the Attorney General, for periods and at the times specified in such letter, all record information required to be kept by this chapter or such lesser record information as the Attorney General in such letter may specify.

10) 18 U.S.C. § 923(g) (7) provides:

Each licensee shall respond immediately to, and in no event later than 24 hours after the receipt of, a request by the Attorney General for information contained in the records required to be kept by this chapter as may be required for determining the disposition of 1 or more firearms in the course of a bona fide criminal investigation.

11) 18 U.S.C. § 923(g) (1) (B) provides:

The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer without such reasonable cause or warrant -

(i) in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the licensee;

(ii) for ensuring compliance with the record keeping requirements of this chapter -

(I) not more than once during any 12-month period; or  
(II) at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee.

(iii) when such inspection or examination may be required for determining the disposition of one or more particular firearms in the course of a bona fide criminal investigation.

12) 18 U.S.C. § 926(a) provides:

The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter [Chapter 44 of 18 U.S.C.] . . . No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act [P.L. 99-308, 100 Stat. 449 (1986)] may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Attorney General's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

13) The Consolidated Appropriations Act, 2010, Pub.L. 111-117, div. B, tit. 2, 123 Stat. 3034, 3128 (2009), provides appropriations for necessary expenses of the BATFE, with the following proviso:

Provided, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees . . . .

14) The Department of Defense and Full-Year Continuing Appropriations Act for the 2011 fiscal year, Pub.L. 112-10, div. B., tit. 1, § 1101(a)(6), 125 Stat. 38, 102-03 (2011), continued the

Consolidated Appropriations Act, 2010, in effect until September 30, 2011.

### **Facts**

15) 10 Ring received a letter addressed to "Dear Federal Firearms Licensee" and dated July 12, 2011, from Charles Houser, Chief, National Tracing Center (hereafter "the letter"). In the letter, Houser states that Melson has delegated his authority as Acting Director to issue the letter to Houser. A copy of the letter is attached herewith and incorporated herein by reference.

16) The letter purports to demand portions of records pursuant to the BATFE's authority under 18 U.S.C. § 923(g) (5). Specifically, the letter directs 10 Ring to submit information from the acquisition and disposition records of 10 Ring concerning the sale or other disposition to an unlicensed person of two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) within five (5) consecutive business days.

17) The letter enclosed ATF Form 3310.12 (Report of Multiple Sale Or Other Disposition of Certain Rifles), which requires 10 Ring to report the following information about the purchaser and the firearms purchased: name, residence address, sex, race, identification number, identification type, identification State, date and place of birth, and the serial numbers, manufacturers, importers, models, and calibers of the rifles.

18) The letter requires that the reports be provided to the BATFE beginning with sales made on August 14, 2011 and until BATFE provides

written notice to stop.

19) The reports are required to be sent to the National Tracing Center.

20) A similar letter has been, or will be, sent to all federal firearms licensees in Texas, New Mexico, Arizona, and California. The BATFE has estimated that 8,479 licensees are subject to the requirements of the letter, or 13.3% of the approximately 63,535 licensees nationwide.

21) 10 Ring has sold two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) to the same persons within five (5) consecutive business days, and will continue to sell such rifles to the same persons within five (5) consecutive business days.

22) The information was not requested in relation to any criminal investigation.

23) The information requested did not concern the sale of pistols or revolvers.

24) Upon information and belief, when the National Tracing Center receives the forms, it retains the information from 10 Ring's records permanently in a consolidated and centralized database within the Department of Justice.

25) Upon information and belief, the letter sent to 10 Ring was authorized, caused, and approved by Melson.

26) 10 Ring has been, and will continue to be, threatened with, and subjected to, irreparable harm, and have no adequate remedy at law.

27) The irreparable harm inflicted on 10 Ring includes economic loss as a result of having to devote employee time to preparing the reports and the loss of business from both in-state and out-of-state potential purchasers of semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) who would have bought such rifles but have been dissuaded from doing so because they wish to protect their privacy rights. 10 Ring faces civil and criminal sanctions, including revocation of its license, should it fail to comply.

28) There is also irreparable harm to the privacy rights of 10 Ring's customers, an injury which 10 Ring may assert as the customers' privacy rights are inextricably bound up with 10 Ring's statutory rights and 10 Ring is fully as effective a proponent of its customers' rights as the customers. Further, there is a genuine obstacle to the customers' assertion of their privacy rights in that assertion of those rights in litigation results in nullification of the right.

#### **COUNT ONE**

(Unlawful Demand For Records Not Expressly Required  
by Law and Not For a Bona Fide Criminal Investigation)

29) Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30) The letter requires the submission of records and contents thereof which are not expressly required by 18 U.S.C. § 923, in violation of § 923(g) (1) (A).

31) The authority of the BATFE to require the reporting of information contained in licensee records with respect to the multiple

sale or other disposition of semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56) is limited by 18 U.S.C. § 923(g) (1) (B), § 923(g) (3) (A), § 923(g) (7), and § 926(a).

32) The letter exceeds Melson's authority.

**COUNT TWO**

(Violation on Prohibition of Consolidation of Records)

33) Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34) The BATFE is an entity within the Department of Justice.

35) The letter requires reporting of "the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees."

36) By receiving and retaining such records or portions thereof within the National Tracing Center, including the name and address of the purchaser, BATFE is "consolidating or centralizing," and will continue to consolidate or centralize, such records in violation of Pub.L. 111-117 and Pub.L. 112-10.

WHEREFORE, 10 Ring prays that the court:

1) Enter a declaratory judgment that the letter and the Form 3310.12: (a) are beyond the scope of Melson's authority under 18 U.S.C. § 923(g) (1) (B), § 923(g) (3) (A), § 923(g) (5) (A), § 923(g) (7), and § 926(a), and contrary to the Consolidated Appropriations Act, 2010, Pub.L. 111-117, 123 Stat. 3034 (2010).

2) Issue preliminary and permanent injunctions requiring, or otherwise compelling, Melson and his officers, agents, and employees,

to refrain from initiating any administrative, civil, or criminal actions or proceedings against 10 Ring for not submitting information required by the letter to the BATFE, and forthwith to destroy any and all such information already submitted to the BATFE and kept there or disseminated to any other office or agency.

3) Award 10 Ring costs, including attorney's fees, pursuant to, *inter alia*, 18 U.S.C. § 924(d) and 28 U.S.C. § 2412.

4) Grant such other and further relief as may be proper.



Respectfully submitted,

10 RING PRECISION, INC.

By Counsel

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