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8 ATTORNEY FOR PLAINTIFFS

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF OREGON**

11 **GRANT J. BAILEY,**

12 Plaintiff,

13 vs.

14 **UNITED STATES DEPARTMENT OF**
15 **JUSTICE BUREAU OF ALCOHOL,**
16 **TOBACCO, FIREARMS AND**
17 **EXPLOSIVES,**

18 Defendant.

19 Case No.

20 **COMPLAINT**

21 **(Interference With Right**
22 **to Pursue Business, Civil Rights - Denial**
23 **of Due Process)**

24 **Demand for Jury Trial**

25 **I. INTRODUCTION**

26 1.1. Grant J. Bailey has been licensed by defendant, United States Department of Justice Bureau of Alcohol, Tobacco, Firearms, and Explosives (hereafter “ATF”) since June of 2002 to engage in the business buying and selling firearms.

1.2 Mr. Bailey has had his business interfered with by ATF since January 2006 with the ATF making false and misleading statements to plaintiff and with the ATF forbidding plaintiff’s business contacts from doing business with plaintiff.

II. JURISDICTION

2.1 ATF is an agency of the United States of America. Jurisdiction is vested in this court by 28 USC §1346.

1 **III. PARTIES**

2 3.1 Grant J. Bailey is a citizen of the State of Oregon and the United States of America.

3 3.2 ATF is an agency of the United States of America.

4 **IV. FACTUAL ALLEGATIONS**

5 4.1 Plaintiff has a license to buy and sell firearms. Said license was issued to him by the ATF.

6 *See Exhibit 1 attached hereto and by this reference made a part hereof.*

7 4.2 Plaintiff formed a corporation, Jay Baileys Antiques and Firearms Inc., in August of 2003.

8 4.3 Plaintiff did not transfer his firearms inventory or records to that corporation. He conducted
9 banking business resulting from his firearms business through his corporation on the advice
10 of his accountant, for income tax purposes.

11 4.4 Plaintiff was audited by ATF in January 2006.

12 4.5 ATF staff told plaintiff he was operating a firearms business without a license because his
13 corporation did not have a license.

14 4.6 ATF agent, Chuck Spalding directed plaintiff to immediately stop buying and selling firearms
15 because plaintiff did not have license from the ATF to engage in the firearms business. This
16 communication from Agent Spalding to plaintiff was done by telephone. Plaintiff has
17 received no written document confirming the phone call.

18 4.7 Plaintiff, relying on Agent Spalding's direction, ceased buying and selling firearms from
19 February 13, 2006 until March 6, 2006.

20 4.8 On March 2, 2006 and March 3, 2006 plaintiff's attorney exchanged letters with ATF staff.
21 Copies of said letters are marked Exhibits 2, 3, and 4, are attached hereto, and made a part
22 hereof.

23 4.9 Plaintiff, relying on the exchange of letters of March 2 and 3, 2006, resumed buying and
24 selling firearms on March 6, 2006.

25 4.10 On or about March 10, 2006 plaintiff attempted to have the Oregon State Police (hereafter,
26 "OSP") conduct an insta check for one of plaintiff's customers. OSP staff informed plaintiff

1 he was not eligible for insta check because the ATF had informed the OSP that plaintiff did
2 not have an ATF license to engage in the firearms business.

3 4.11 Plaintiff faxed OSP a copy of the ATF's March 3, 2006 letter (Exhibit 3). Since that letter
4 said plaintiff has a valid license to buy and sell firearms, OSP resumed providing insta check
5 for plaintiff and no sales were lost.

6 4.12 On March 16, 2006 OSP staff informed plaintiff that OSP had received a written order from
7 the ATF forbidding OSP from providing plaintiff with any insta checks of plaintiff's
8 customers. From that time to the present, plaintiff has been unable to sell any firearm to any
9 retail customer as he must first obtain an insta check of a retail customer before completing a
10 sale of firearm to a retail customer.

11 4.13 On March 16, 2006 plaintiff's gunsmith, Tom Hart, informed plaintiff that the ATF had
12 forbidden him (the gunsmith) from transporting any firearms to plaintiff.

13 4.14 No rule, regulation, or statute authorized the ATF's communications to the OSP or to
14 plaintiff's gunsmith, Tom Hart. To the contrary, 18 USC 923(e) and 27 CFR 478.73 provide
15 a process by which the ATF can revoke or restrict one of its licenses. ATF has not utilized
16 those processes to plaintiff's harm and in violation of plaintiff's right to receive adequate
17 notice and an opportunity for a hearing.

18 **VI. JURY TRIAL DEMAND**

19 6.1 Plaintiff demands a jury trial.

20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs ask the Court for the following relief:

22 7.1 To immediately order the ATF to communicate to OSP and gunsmith, Tom Hart that
23 plaintiff has a valid license to buy and sell firearms and that the OSP and gunsmith, Tom
24 Hart are authorized to conduct business with plaintiff.

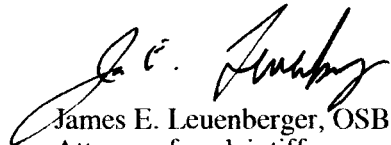
25 7.2 For damages caused by the ATF's unauthorized communications with plaintiff, OSP, and
26 gunsmith, Tom Hart, in an amount to be proven at trial.

1 7.3 Plaintiffs' costs and reasonable attorney fees pursuant to 42 USC 1988.

2 7.4 Such other relief as the Court deems appropriate.

3 Dated this 21st day of March 2006.

JAMES E. LEUENBERGER PC

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6 James E. Leuenberger, OSB 89154
7 Attorney for plaintiff
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ATF

Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice



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Federal Firearms License Results

Warning: No one may use this screen, in lieu of the required certified copy of a Federal Firearms License, to acquire a firearm.

License Number: 9-93-XXX-XX-XX-00470

Expiration Date: 06/01/2008

License Name: BAILEY, GRANT JACK

Trade Name: JAY BAILEYS ANTIQUES & FIREARMS

Premise Address: 232 E PINE ST
CENTRAL POINT
OR - 97502

License Name: 232 E PINE ST
CENTRAL POINT
OR - 97502

LOA Issue Date:

LOA Expiration Date:

NOTE: In the event all of the information on the license you are verifying does not match the information displayed above, or if the license has expired, there is a possibility that this may be an attempt at a fraudulent transaction. You should not complete the transaction without first contacting ATF at 1-877-560-2435 for assistance.

The data obtained from this site is not a substitute for a certified copy of the license.

If you have general questions concerning this web site, or the information displayed above, please contact ATF using the Problem Report link provided at the end of the page.

Select [Problem Report](#) to Report errors to ATF.

The data provided above was last updated on: 02/24/2006



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ATTENTION: Users may experience compatibility problems when attempting to view PDF files using Internet Explorer browser version 5 and above and Adobe Acrobat Reader 4.0. If problems occur, consider the following options: Right-click on PDF link and save to local drive; Use

Exhibit 1 Page 1 of 2

an earlier version of Adobe Acrobat Reader; Use an earlier version of Internet Explorer; or convert PDF to text using [ATF's PDF Conversion Engine](#).

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Exhibit 1 Page 2 of 2

JAMES E. LEUENBERGER PC

ATTORNEY AND COUNSELOR AT LAW

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FACSIMILE (503) 419-6415

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March 2, 2006

Caleb J. Rushing
Industry Operations Investigator
BATFE
1201 NE Lloyd Blvd Ste 720
Portland, OR 97232
Fax: (503) 331-7831

Re: Grant Jack (Jay) Bailey and Jay Bailey Antiques & Firearms, Inc.

Dear Mr. Rushing:

I have been retained by Mr. Bailey to represent him as he addresses the February 13, 2006 Report of Violations.

I have received a copy of the February 13, 2006 Report of Violations. I have read the regulations cited in the Report. I have also read 27 CFR 478.11 definitions for "Antique firearms," "Business premises," "Dealer," "Firearm," and "Person."

It is my understanding that some of the originally unaccounted "firearms" were "antique firearms." According to 27 CFR 478.11 "antique firearms" are not "firearms." Moreover, 27 CFR 478.11 does not define "firearm" to be an object entered into an ATF form 4473 - hence if an antique firearm is incorrectly entered into an ATF form 4473 it is not transformed from an antique firearm into a firearm.

As I read the Report, the serious violation is violation 9. I am sure you do not make allegations of false statements lightly as false statements are very serious. After reading the 27 CFR 478.11 definitions for "Dealer," "Business premises," and "Person," it is not clear to me that Mr. Bailey made a false statement to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE").

Having spoken with Mr. and Mrs. Bailey, I am certain they did not intend to make a false statement.

Mr. Bailey is, as you know, legally blind. He relies on his wife to handle much paperwork associated with the business. She is the person who completed and mailed the last license application - the application that resulted in the renewal of license 9-93-029-01-8F-00470. She does not believe she made a copy of the application before mailing it to the BATFE.

The check Mrs. Bailey used to pay the fee for the license was drawn on a bank account owned by Jay Bailey Antiques & Firearms, Inc. A copy of that check is transmitted herewith. It was her intent and belief that the license would be issued to and for Jay Bailey Antiques & Firearms, Inc.

Exhibit 2 Page 1 of 5

She did not carefully inspect the license to determine to whom it was issued and, even if she had carefully inspected it, she would not have drawn a distinction between Grant Jack Bailey and Jay Bailey Antiques & Firearms, Inc. In her mind, her husband is Jay Bailey Antiques & Firearms, Inc.

As one reads the 27 CFR 478.11 definitions for "Dealer," "Business premises," and "Person," it appears that the BATFE has not required licensees to elect which business form must be the "applicant" as the term "applicant" is used in 27 CFR 478.47.

A "Dealer" is any "Person" engaged in the business of selling firearms at wholesale or retail. Grant Jack Bailey is a person. Jay Bailey Antiques & Firearms, Inc. is a person. *See* 27 CFR 478.11.

It is common for businesses, whether sole proprietorships or corporations, to hire employees.

It is my understanding that before Grant Jack Bailey created Jay Bailey Antiques & Firearms, Inc. he was entitled under his BATFE license to hire employees to assist him in the operation of his firearms business and that none of his employees was required to obtain his or her own BATFE license in order to be an employee of Grant Jack Bailey or to handle purchases or sales of firearms.

No BATFE regulation required Grant Jack Bailey to form a corporation in order to do business.

No BATFE regulation required Grant Jack Bailey to do business as Jay Bailey Antiques and Firearms, Inc. after Jay Bailey Antiques & Firearms, Inc. was created.

Assuming that for certain purposes, such as for income tax purposes, Jay Bailey Antiques & Firearms, Inc. is deemed to conduct a retail business. Assuming further that Jay Bailey Antiques & Firearms, Inc. hires a BATFE licensee, such as Grant Jack Bailey to handle firearms buying and selling, I see no BATFE regulation that requires that Jay Bailey Antiques & Firearms, Inc. obtain a BATFE license separate and distinct from Grant Jack Bailey's BATFE license.

The BATFE regulations seem to require but one BATFE license per "Business property." *See* 27 CFR 478.41(b). Grant Jack Bailey's BATFE license seems sufficient to operate a wholesale and retail firearms business located at 232 E Pine St, Central Point, Oregon.

Interestingly, when read literally, 27 CFR 478.47(b)(1) would preclude Jay Bailey Antiques & Firearms, Inc. from becoming a licensee as Jay Bailey Antiques & Firearms, Inc. was formed and created on August 25, 2003 – fewer than 21 years ago.

Mr. Bailey reports that he has been told his BATFE license has been revoked. Mr. Bailey reports he was told orally that his BATFE license has been revoked.

I don't know if Mr. Bailey is just confused or not. I do know he is so scared of violating the law that he has stopped buying and selling firearms based on the phone call he says he received from the BATFE.

According to 27 CFR 478.73(a), notice of revocation must be made by way of ATF form 4500. Although Mr. Bailey has provided me with a copy of the February 13, 2006 Report of Violations, that report is on ATF E form 5030.5, not on ATF form 4500. Hence, unless Mr. Bailey has just not provided me with all the forms he has been served with, Mr. Bailey's license 9-93-029-01-8F-00470 is still in force and has not been revoked.

Mr. Bailey is a conscientious, hard working man, who is overcoming his blindness to build a fine, reputable business so that he can serve the public of southern Oregon and so that he can raise his family.


He and his wife want to operate the business legally and in conformity with all rules that apply to it, particularly BATFE's regulations. They have been devoting themselves to resolving all the violations identified in the February 13, 2006 Report of Violations as quickly as is possible.

Unless you tell me otherwise, I will instruct Mr. Bailey that his license is sufficient to operate a firearms wholesale and retail business located at 232 E Pine St, Central Point, Oregon.

I hope that we can quickly resolve your remaining concerns as outlined in the February 13, 2006 Report of Violations. Mr. Bailey assures me he will cooperate fully with you and the BATF.

Sincerely,

JAMES E. LEUENBERGER PC


James E. Leuenberger

cc: Grant Jack Bailey

JAY BAILEY ANTIQUES & FIREARMS, INC. 5019
 GRANT OR AMY BAILEY
 232 E. PINE ST.
 CENTRAL POINT, OR 97602
 PH. 541-885-2169

Date 4-4-05 98-638-1232

Pay to the order of A.T.F. \$ 90.00
ninety & 00/100 Dollars @

PremierWest Bank
 People doing business with people.
 INFORMATION CENTER 800-708-4378
 24-HOUR TELEBANK 877-488-2265

For General 9-93-029-05F-00470 [Signature]
 005019 @: 123 206 590: 053002927*

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 01-173 12-053 01-27014-5
 01-2757 TRC=3767 PK=25

2237564911

0800771854

\$90.002005001593604/11/2005

Exhibit 2 Page 4 of 5

TRANSMISSION VERIFICATION REPORT

TIME : 03/02/2006 15:14
NAME : JAMES LEUENBERGER
FAX : 5034196415
TEL : 5035427433
SER.# : BROA2J911723

DATE, TIME	03/02 15:12
FAX NO./NAME	15033317831
DURATION	00:01:31
PAGE(S)	04
RESULT	OK
MODE	STANDARD ECM



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

1201 NE Lloyd Blvd Ste 720
Portland, Oregon 97232-1274

www.atf.gov

March 3, 2006

787040:VSC
5300

VIA FACSIMILE TRANSMISSION

James E. Leuenberger, Esquire
4800 SW Meadow Road, Suite 300
Lake Oswego, Oregon 97035
Facsimile Number: (503) 419-6415
In re: Grant Jack (Jay) Bailey

Dear Mr. Leuenberger:

I am in receipt of your letter regarding Mr. Grant Jack Bailey which I received by facsimile transmission on March 2, 2006. As you know, we have advised Mr. Bailey that he must cease firearms dealing operations due to the fact that he is licensed as a sole proprietor and has incorporated his business without obtaining a new federal firearms dealer's license for his corporation. You indicated in your letter that you intend to instruct Mr. Bailey that his sole proprietor license is sufficient for the corporation, Jay Bailey Antiques & Firearms, Inc., to lawfully engage in a firearms dealing business unless we advised you otherwise. We disagree. Because Jay Bailey Antiques & Firearms, Inc., does not possess a federal firearms dealer's license, that entity is not authorized to engage in the business of dealing in firearms. If Jay Bailey Antiques & Firearms, Inc., engages in the business of dealing in firearms without the requisite federal firearms dealers license, it will be in violation of 18 U.S.C. § 922(a)(1), a felony.

As required by 18 U.S.C. § 923(a), no person (defined to include a corporation by 18 U.S.C. § 921(a)(1)) shall engage in the business of dealing in firearms until receiving a license to do so. A federal firearms license entitles only the person to whom the license is issued to engage in the activity specified on the license. 27 C.F.R. § 478.49. As provided by 27 C.F.R. § 478.51, federal firearms licenses are not transferable. This regulation further provides, with certain exceptions not applicable in this case, that a successor business must obtain a license prior to commencing operations requiring a federal firearms license.

Although your letter seems to suggest it, I am not aware of any information that establishes that Jay Bailey Antiques & Firearms, Inc., hired Mr. Bailey as an employee to conduct licensed firearms dealing on its behalf. Nor do I agree that such an

arrangement would negate the need for the corporation to obtain its own firearms dealer's license. Finally, I want to correct Mr. Bailey's misunderstanding that the license issued to him has been revoked. It has not.

I am aware that Jay Bailey Antiques & Firearms, Inc., has submitted an application for a firearms dealer's license. That application is currently in the review process and the corporation will be notified whether its application will be granted or denied in due course. In the meantime, the corporation has no legal authority to engage in a firearms dealing business.

We appreciate Mr. Bailey's cooperation in this matter. Please contact me if you have further questions.

Sincerely yours,



Charles F. Spaulding
Area Supervisor
Portland III (IO) Field Office



FAX COVER SHEET

To: James E. Leuenberger

Phone:

Fax: 503-419-6415

From: Charles Spaulding

Title: Area Supervisor

Phone: 503-331-7830

Fax: 503-331-7831

Pages: 3 including this coversheet

Date: 3-Mar-06

Subject: RE: Grant Jack Bailey

CC:

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Remarks:

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JAMES E. LEUENBERGER PC

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March 3, 2006

Charles F. Spaulding
Area Supervisor
BATFE
1201 NE Lloyd Blvd Ste 720
Portland, OR 97232
Fax: (503) 331-7831

Re: Grant Jack (Jay) Bailey and Jay Bailey Antiques & Firearms, Inc.

Dear Mr. Spaulding:

I thank you for your extraordinarily prompt response to my March 2, 2006 letter to Mr. Rushing.

From reading your March 3, 2006 letter and the regulations I referenced in my March 2, 2006 letter to Mr. Rushing, nothing prohibits Grant Jack Bailey from operating a firearms wholesale and retail business as he is a current BATFE licensee.

I have never been to 232 E Pine St, Central Point, Oregon, I am not familiar with the signage on display there. I assume the exterior of the building has at least one sign which says, "Jay Bailey Antiques & Firearms, Inc."

I see no signage requirements in the BATFE regulations for firearms dealers.

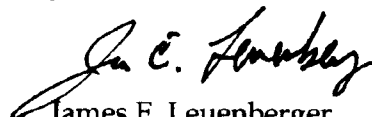
In light of the absence of signage requirements, I suspect that all that BATFE requires is that Grant Jack Bailey inform his customers and his employees that he is the person who is selling and buying firearms.

Of course, Grant Jack Bailey is the person who is also required to maintain records of firearms purchased, sold, and held in inventory and to comply with all other BATFE regulations.

After I sent Mr. Rushing my March 2, 2006 letter, Amy Bailey informed me that there were antique firearms entries made into the business' bound books - not onto a ATF form 4473. My letter implying antique firearm entries onto form 4473 was inaccurate.

Sincerely,

JAMES E. LEUENBERGER PC



James E. Leuenberger

cc: Grant Jack Bailey

Exhibit 4 Page 1 of 2

TRANSMISSION VERIFICATION REPORT

TIME : 03/03/2006 16:00
NAME : JAMES LEUBENBERGER
FAX : 5034196415
TEL : 5035427433
SER. # : BRCA2J911723

DATE, TIME	03/03 15:58
FAX NO./NAME	15033317831
DURATION	00:00:26
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

Minimum Process Pursuant to Statute and Rule

18 USC §923(e) reads:

The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter or fails to have secure gun storage or safety devices available at any place in which firearms are sold under the license to persons who are not licensees (except that in any case in which a secure gun storage or safety device is temporarily unavailable because of theft, casualty loss, consumer sales, backorders from a manufacturer, or any other similar reason beyond the control of the licensee, the dealer shall not be considered to be in violation of the requirement to make available such a device). The Attorney General may, after notice and opportunity for hearing, revoke the license of a dealer who willfully transfers armor piercing ammunition. The Secretary's action under this subsection may be reviewed only as provided in subsection (f) of this section.

27 CFR 478.73 reads:

Notice of revocation, suspension, or imposition of civil fine.

(a) Basis for action. Whenever the Director of Industry Operations has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the Director of Industry Operations has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. 922(g) or 922(n) or State law.

(b) Issuance of notice. The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The Director of Industry Operations shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to suspension or revocation of the license, or imposition of a civil fine. If the licensee does not file a timely request for a hearing, the Director of Industry Operations shall issue a final notice of suspension or revocation and/or imposition of a civil fine on ATF Form 4501, as provided in Sec. 478.74.