

*SEND TO
CANNON*

Jason A. Davis

From: Alison Merrilees [Alison.Merrilees@doj.ca.gov]
Sent: Friday, February 23, 2007 11:58 AM
To: Jason A. Davis
Subject: draft agreement re receivers
Attachments: ben cannon - agreement to destoy receivers and cease crimi_.pdf

Let me know what you think.

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Agreement Regarding Disposition of 228 Lower Receivers and the Criminal Investigation by the California Department of Justice of Benjamin Cannon Sale of Those Receivers

Benjamin Cannon

Without admitting any criminal culpability, I, Benjamin Cannon, agree that I was the original purchaser of 228 (two hundred and twenty-eight) AR-15 style lower receivers that were seized by agents of the Firearms Division of the California Department of Justice (DOJ) from RMB Enterprises on January 27, 2006 during a routine inspection of that state and federally licensed firearms dealer. The receivers were seized because they were not "secured" under the definition of California Penal Code section 12071(a)(20)(G)(ii) as required by Penal Code section 12071(a)(14). Attachment A, an inventory listing of the receivers, is attached hereto and incorporated by reference as a complete list of the receivers that are involved.¹

NO

I purchased the receivers from a federally licensed firearms dealer other than RMB, and sold them to other individuals. I was unable to lawfully sell the receivers because I am not a firearms dealer (FFL). I am not licensed as an FFL by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, or licensed as a firearms dealer in the state of California by DOJ.

NO

The 228 receivers could be used as evidence against me, although I deny having any ownership interest in the receivers. By signing this agreement, I hereby relinquish any claim of ownership that I have in the 228 receivers. I understand that the receivers will be destroyed by DOJ. I hereby release DOJ from all civil claims arising from the seizure and destruction of the receivers. I also agree that I will cease and desist all involvement – either as a purchaser or a seller – in any group purchase of firearms in the state of California which violates any provision of state or federal law.

Benjamin Cannon

Date

Jason A. Davis
Attorney for Benjamin Cannon

Date

¹ Although [228 + x] receivers were seized and listed on Attachment A, [x number] receivers were returned to the lawful purchasers of those receivers. Therefore, a total of 228 receivers are affected by this agreement.

California Department of Justice – Firearms Division

Agents of the Firearms Division of the California Department of Justice (DOJ) seized hundreds of AR-15 style lower receivers from RMB Enterprises on January 27, 2006 during a routine inspection of that firearms dealer because the receivers were not “secured” under the definition of Penal Code section 12071(a)(20)(G)(ii) as required by Penal Code section 12071(a)(14). Subsequent investigation by the Firearms Division disclosed that the receivers were originally purchased by Benjamin Cannon, who subsequently sold virtually all of the receivers to other individuals. Mr. Cannon was (and is) not licensed to sell firearms as required by federal and state law. Therefore, Benjamin Cannon violated both state and federal law by selling firearms without a dealer’s license.

While Mr. Cannon could have lawfully purchased all of the receivers and retained them, he could not lawfully sell the firearms to private parties without being either licensed as a dealer (by both ATF and DOJ), or being listed on the DROS form as the private party transferor (in which case the transactions would only have been lawful if they were “occasional and without regularity”). Mr. Cannon clearly conducted the transactions through RMB in order to avoid the requirement in Penal Code section 12070(a) that he be licensed by ATF and DOJ as a firearms dealer and/or to avoid the requirement in Penal Code section 12072(d) that private parties must conduct firearms transactions through a licensed firearms dealer (and even then, may only do so “occasionally and without regularity” without being properly licensed). The number and profitability of the firearms transactions made Mr. Cannon a “person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objection of livelihood and profit through the repetitive purchase and resale of firearms” who violates federal law by selling firearms without a federal firearms license. (18 U.S.C. § 921(a)(21)(C).)

Because the transactions between Mr. Cannon and his customers were illegal, and the receivers are evidence of a crime, the Firearms Division has not returned the receivers to RMB Enterprises, to the attempted purchasers of the firearms, or to Mr. Cannon. In our opinion, the receivers are not lawfully owned by anyone. Mr. Cannon did not submit a DROS form to purchase the receivers, or any of the other paperwork that is necessary for one private party to transfer a firearm to another private party. In fact, the DROS paperwork that *was* submitted for the transactions was fraudulent because it failed to accurately reflect the true buyers and sellers of the receivers. It is a crime to knowingly furnish any incorrect information on a DROS form. (Pen. Code § 12076(b)(1).)

Nevertheless, the Firearms Division of the California Department of Justice hereby agrees that it will neither file criminal charges, nor request that any district attorney or city attorney in the state of California, file or pursue criminal charges against Benjamin Cannon based on his involvement in the purchase, constructive possession, sale, or attempted sale of related of the 228 AR-15 style lower receivers that were seized by agents of the Firearms

Division of the California Department of Justice (DOJ) from RMB Enterprises on January 27, 2006.

By signing this agreement, DOJ hereby agrees to destroy the receivers and end its criminal investigation into the possible criminal activities of Benjamin Cannon associated with his purchase, constructive possession, sale, and/or attempted sale of the receivers. The Firearms Division agrees to provide proof of destruction of the receivers to all the parties to this agreement within 30 days of the date of the execution of this agreement.

Randy Rossi, Director
Firearms Division
California Department of Justice

Date

Alison Y. Merrilees
Deputy Attorney General
Attorney for Firearms Division
California Department of Justice

Date