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August 20, 2007

Via: **U.S. Mail and Facsimile**

Alison Y. Merrilees, DAG
Department of Justice
Bureau of Firearms
P.O. Box 160487
Sacramento, California 95816-0487

Fax: (916) 263-0676

Re: Eugene Hoffman – Release of Property

Dear Alison:

I am in receipt of your August 13, 2007 letter. Thank you for the response. I sent a letter on August 14, 2007 requesting an update. The letters probably crossed in the mail.

You correctly cite the law in paragraph two of your letter, including the indented paragraphs regarding the return of firearms for persons claiming title. Then inexplicably you depart from the law in the rest of your letter. I am not aware of any case, statute or regulation that equates the Dealer Record of Sale (DROS) with “title.” Title, for most personal property in California (vehicles and vessels being an exception) is proved by possession or bill of sale.

The receivers in questions are in the possession of law enforcement. We presented you with a bill of sale showing Mr. Hoffman as the new owner. The Automated Firearms System will not show Mr. Hoffman as a registered owner of these receivers because they are not handguns, nor are they assault weapons. Are you are telling me that the State of California maintains a database of long gun receiver purchases?

You cite no authority for the proposition that Mr. Hoffman must have owned the firearm before it was seized. Harrot v. County of Kings is a case in which the legal owner of a firearm, transferred to him subsequent to its seizure, had standing to retrieve the property.

My client and I are aware of the numerous state and federal firearm laws and regulations, including the use of a licensed “transfer” dealer for sales and transfer of firearms. But no such language appears in Penal Code § 12021.3. And since it is a government law enforcement agency holding the firearm (for much more than the 10 day waiting period now) and since the background check was already performed by your agency, I fail to understand why you are raising the issue.

Furthermore, the Penal Code Sections you cite (12070, 12072, *et.seq.*) do not apply to deliveries, transfers or the return of firearms pursuant to Penal Code § 12021.3. See subsections (i)(3) and (i)(4) of that section.

However, to facilitate the transfer from Law Enforcement to Mr. Hoffman, and to avoid any further delay in my client enjoying his property, we will agree (without prejudice) to have the receivers turned over to any California firearms dealer to effect the transfer to Mr. Hoffman.

If you are in agreement, please notify me in writing within seven (7) days and I will designate the dealer.

As a friendly reminder, please take notice that prevailing party legal fees are at stake in any civil action to enforce Penal Code § 12021.3 *et.seq.*, pursuant to subsection (k).

Thank you.

Cordially,

Donald E. J. Kilmer, Jr.
Attorney for Eugene Hoffman, Jr.

cc: file, client