

**Final Notice of Denial of Application, Revocation,
Suspension and/or Fine of Firearms License**

In the matter of:

The application for license as a/an _____, filed by:

License Number 5-48-091-01-4A-03643 as a/an dealer in firearms other than destructive devices

_____, issued to:

Name and Address of Applicant or Licensee (*Show number, street, city, state and ZIP Code*)

Blue Valley Sales, Inc. d/b/a Blue Valley Firearms
9601 Lowell Ave
Overland Park, Kansas 66212

Notice Is Hereby Given That:

A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your

license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:

15 calendar days after receipt of this notice, or _____,

license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your

application for license described above is denied, pursuant to 18 U.S.C. 923(d).

application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:

15 calendar days after receipt of this notice, or _____,

license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:

15 calendar days after receipt of this notice, or upon Notice receipt,

license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 1251 NW Briarcliff Parkway Suite 600 Kansas City MO 64116, prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.

Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official	Signature
02/03/2022	William J. Miller Director, Industry Operations ATF Kansas City Field Division	<i>William J. Miller</i>

I certify that, on the date below, I served the above notice on the person identified below by:

- Certified mail to the address shown below.
 Tracking Number: 7017 2620 0000 8869 7339
- Or**
- Delivering a copy of the notice to the address shown below.

Date Notice Served	Title of Person Serving Notice	Signature of Person Serving Notice
02/03/2022	Executive Assistant	(b)(6)

Print Name and Title of Person Served	Signature of Person Served

Address Where Notice Served
 Blue Valley Sales, Inc. d/b/a Blue Valley Firearms, 9601 Lowell Ave, Overland Park, Kansas 66212

Note: Previous Edition is Obsolete

Blue Valley Sales, Inc. d/b/a Blue Valley Firearms
9601 Lowell Ave
Overland Park, Kansas 66212

RE: FFL 5-48-091-01-4A-03643

Blue Valley Sales, Inc. d/b/a Blue Valley Firearms, 9601 Lowell Ave, Overland Park, Kansas 66212 (“Licensee”) holds a Federal firearms license, under number 5-48-091-01-4A-03643, as a dealer in firearms other than destructive devices, issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On September 22, 2021, ATF issued a Notice to Revoke License, ATF Form 4500, (“Initial Notice”) based upon violations discovered during an inspection commencing on June 30, 2021. By letter dated October 5, 2021, Licensee timely requested a hearing to review the Initial Notice.

The hearing was held on December 22, 2021, at the ATF Kansas City Field Division Office located in Kansas City, Missouri. The hearing was conducted by ATF Kansas City Director, Industry Operations (DIO) William J. Miller. The Government was represented by ATF Kansas City Division Counsel (b)(6) ATF Industry Operations Investigator (IOI) (b)(6) (b)(6) and IOI (b)(6) appeared as witnesses on behalf of the Government.

Licensee appeared by and through Licensee’s sole responsible person and corporation president, James “Doug” Cochran, along with attorney (b)(6). The hearing was recorded and transcribed through a court reporting service. DIO Miller allowed the hearing record to remain open until December 29, 2021, for Licensee to provide any additional information or exhibits, which Licensee offered by way of e-mail and attachments. The testimony and exhibits provided by both parties at the hearing constitute the administrative record in this proceeding.

Findings and Conclusions

Having considered the record in this proceeding, I make the following findings and conclusions:

Licensee obtained a Federal firearms license in 2014. At that time, ATF held a qualification inspection with Licensee and reviewed the pertinent Federal firearms laws and regulations with Doug Cochran as the president and sole responsible person for the licensed incorporated business entity, Blue Valley Sales, Inc.¹ ATF provided Licensee with resources and reference information regarding the expectations and requirements for a Federal firearms licensee.

Following the 2014 qualification inspection, Doug Cochran signed the Acknowledgment of Federal Firearms Regulations form indicating that ATF explained and reviewed the information listed on the form relating to firearms laws and regulations and answered all questions regarding the information. Mr. Cochran further acknowledged his responsibilities as a responsible person

¹ Although the licensed entity is the corporation, Mr. Cochran is the only decisionmaker for the entity with exclusive control and authority over all the licensed activity. Therefore, the two are addressed interchangeably in this Notice.

for Licensee to be aware and familiar with all the laws and regulations governing a licensed firearms business. Several reference sources and resource materials regarding the GCA requirements were provided to Licensee.

Beginning on June 30, 2021, ATF conducted a compliance inspection at Licensee's business premises. The violations found during this inspection were the basis for the Initial Notice and corresponding Appendix and are discussed more as follows:

Violation #1 Failure to Maintain Required Records

From December 2014 through June 2021, Licensee willfully failed to maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of firearms as the regulations prescribe in the provisions of Title 18, United States Code, Chapter 44 or Title 27, Code of Federal Regulations, Part 478, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.121(c).

At the beginning of the inspection, Licensee presented Excel spreadsheets with firearms information listed, but these were not in the required format as prescribed. Licensee knew the spreadsheets (also referenced as inventory sheets) being used for firearms inventory were not compliant. At this time, Licensee also admitted the need to transcribe the information into a compliant record book (also known as an A&D record book) but said he had gotten too busy to do so. Licensee indicated compliant A&D books were kept from 2014 until June 2020. However, Licensee was never able to produce any such books during the course of the inspection and ultimately had to reconstruct the entire A&D records into the prescribed format.

Even still, and as reflected throughout Government's Exhibit #2 and the Licensee's Exhibits #18 and #19, there were several occasions where disposition information was not documented in the spreadsheets, such as none for 2020 and less than half for 2021. Throughout the pendency of the inspection, it was necessary for Licensee to continually correct and/or update the Excel spreadsheets for ATF to review and work to reconcile firearms acquisitions and dispositions. This was all due to Licensee's failure to keep a compliant A&D record. Licensee owned a compliant A&D record book, which was available on the premises to use, but it was completely blank when the inspection commenced. [Gov. Ex. 1].

I find that Licensee did not maintain a compliant acquisition and disposition record, as the regulations prescribe and require, from approximately 2014 until the inspection began in June 2021. I further conclude that this violation was willful. Licensee was aware of this requirement based upon the instructions provided when the license was first issued, as well as Mr. Cochran's own admissions at the inspection and at the hearing.

Violations #2 & #3 Acquisition and Disposition Records

On (b)(3) occasions, Licensee willfully failed to timely and/or accurately record the acquisition of firearms, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

On (b)(3)-(1)(2) occasions, Licensee willfully failed to timely and/or accurately record the disposition of firearms, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

I find that Licensee willfully failed to record the firearm acquisitions for the firearms located in inventory at the time of the inspection. I also find that Licensee willfully failed to record the dispositions of (b)(3)-(1)(2) firearms, resulting in those firearms not being accounted for in any manner. This violation made it necessary to report the (b)(3)-(1)(2) firearms as lost or stolen in the national law enforcement database (know more officially as the National Crime Information Center system). [Gov. Ex. 3].

At the time of the qualification inspection, Licensee was instructed on, and was aware of, the obligations to timely and correctly record firearms acquisitions and dispositions. Licensee further acknowledged knowing of this requirement. I find that it willfully failed to do so.²

Violation #4 Background Checks

On four occasions, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (“NICS”)³ and waiting three days before allowing the transfer, in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(a).

Upon reviewing Government’s Exhibit 4 and Licensee’s Exhibits 20 through 26, along with the testimony provided for these violations, I make the following determinations:

As to the NICS violations involving the transfers to (b)(6) on March 20, 2021 [Gov. Ex. 4 pp. 4-6] and (b)(6) on April 3, 2020 [Gov. Ex. 4 pp. 7-9], in both transactions the evidence on the corresponding ATF Forms 4473 establishes from the signed and certified dates that a NICS check was conducted two days *after* each transfer occurred. This is further confirmed per the NICS audit log and Licensee’s NICS E-Check sheets⁴ and/or Excel inventory spreadsheets. [Gov. Ex. 2 pp. 9, 36; Gov. Ex. 4 p. 28; Lic. Exs. 21 & 22]. The NICS section on the (b)(6) form is completely blank and the NICS section on the (b)(6) form documents the NICS check on April 5, 2020 (two days after the listed transfer date). At the hearing, Licensee could not provide a clear explanation for these violations but generally asserted that a background check is always done before a transfer, despite tangible evidence to the contrary. Therefore, I find that in both of these instances a NICS background was conducted after the transfer of a firearm and not before, as required by the law and regulations.⁵

Regarding the NICS violations associated with the transfers to (b)(6) on May 9, 2021, and to (b)(6) on May 6, 2021, I make the following determinations:

² Although there were other firearms that could have been cited for these violations, this Notice only cites the 35 firearms located in physical inventory at inspection and the (b)(3)-(1)(2) firearms that were identified by supplier records as transferred to Licensee but could not be found.

³ NICS is operated by the Federal Bureau of Investigation (FBI).

⁴ These were informally referenced as “rip sheets” at the hearing.

⁵ The Initial Notice Appendix indicates a NICS check was not conducted for (b)(6). Upon considering all the information in the hearing record, my finding is that a check occurred but this was after the transfer.

- As to (b)(6) the certified/signed dates by both the transferee and Licensee establish (b)(3) - 112 Public Law 55 125 Stat 552 [Gov. Ex. 4 pp. 1-3]. This same date and transferee are also listed in Licensee's Excel spreadsheet. [Gov. Ex. 2 p. 41]. There is no information transcribed in the required NICS section of the Form 4473. [Gov. Ex. 4 p. 2]. Per the NICS audit log, Licensee did not contact NICS on May 9, 2021. [Gov. Ex. 2 p. 28]. Licensee provided the NICS E-Check sheet showing a background check for (b)(6) on June 17, 2020, but this was for a transaction occurring almost a year earlier. [Lic. Ex. 20].

At the hearing, Licensee was confused regarding when the transfer took place and could not provide an explanation why there was no record of a NICS contact for the May 9, 2021, transfer. The record was kept open until December 29, 2021, for Licensee to offer any additional information on this violation but nothing further was provided. Therefore, I find there is no record or information that a NICS background check was ever conducted for (b)(6) on May 9, 2021, as required by law.

- As to (b)(6) the certified/signed dates by both the transferee and Licensee establish the (b)(3) - 112 Public Law 55 125 Stat 552 [Gov. Ex. 4 pp. 17-19]. This transferee and the transfer date correspond with the information provided in Licensee's Excel spreadsheet. [Gov. Ex. 2 p. 42]. The NICS Transaction Number (NTN)⁶ recorded on the ATF Form 4473 is NTN (b)(6). However, this is the exact same NTN issued for the transfer of a pistol to a purchaser named (b)(6) the day earlier on May 5, 2021. [Gov. Ex. 4 p. 21]. The NICS audit log shows Licensee contacted NICS once on May 5, 2021, and received a "proceed" on that date under the NTN (b)(6) [Gov. Ex. 4 p. 28]. There is no contact listed on the NICS audit log for the (b)(6) transfer on May 6, 2021. [Gov. Ex. 4 p. 28].

At the hearing, Licensee submitted a NICS E-Check sheet for (b)(6) but this check was from several months prior in November 2020. [Lic. Ex. 24]. Licensee stated this was to show the purchaser had previously passed a background, although I find that this was well outside the legally permitted timeframe for a transfer in May 2021. The "purged" NTN on the last page of Licensee's Exhibit 24 is again the same NTN (b)(6) associated with the prior purchaser (b)(6) who is unrelated to this (b)(6) transaction. The hearing record was kept open to allow Licensee to enter any records showing a NICS check was conducted for the May 6, 2021, rifle transfer to (b)(6). However, Licensee was only able to provide the NICS E-Check sheet again confirming that (b)(6) NTN was improperly reused on May 6, 2021. [Lic. Ex. 26]. Therefore, I find there is no record or information that a NICS background check was ever conducted for Transferee (b)(6) on May 6, 2021, as required by law.

Concerning the transaction with (b)(6) although not properly recorded in any manner on the corresponding ATF Form 4473, I find there is sufficient proof this purchaser provided Licensee a valid Kansas concealed carry license, and therefore a NICS check was not required. [Gov. Ex. 4 p. 16]. In this instance there is not a 27 C.F.R. § 478.102(a) violation.

⁶ The NTN is a unique number generated by FBI used only once for a specific date, transfer, and person.

Regarding the transaction with (b)(6) on May 18, 2020, while the record is unclear as to the timing of the transfer, it appears this transfer likely occurred within the allowable 30-day period after the NICS check was initially conducted for this specific transferee and firearm. Therefore, I make no additional findings on this (b)(6) transfer and do not consider this violation as a basis for revocation.⁷

The ATF Form 4473 explicitly states, directly above the sections for the NICS information, that a licensee must complete these sections and the NICS background prior to the transfer of the firearm(s). [Gov. Ex. 16]. The corresponding instructions on the Form 4473 further provide guidance to licensees on the NICS process and clearly state 18 U.S.C. § 922(t) requires that *prior* to transferring any firearm to an unlicensed person a dealer must first contact NICS. The importance of background check compliance is stressed throughout the Form 4473 and its instructions to ensure a prohibited person does not receive a firearm from a licensee.

Licensee often asserted a NICS check is always completed prior to a firearm transfer. However, in these cited instances, this assertion is contradicted by the certified dates on the respective ATF Forms 4473, the NICS audit log and/or NICS records provided by Licensee, and additional information provided during the hearing. Despite repeated opportunities, Licensee provided no documentation to contradict this evidence. Rather, Licensee admitted that he was aware of the requirement to contact NICS prior to the transfer of a firearm, set up the E-Check NICS account, reviewed the instructions and other resource materials related to NICS, and demonstrated on other occasions the ability to properly follow the NICS background requirements.

Given the evidence, especially as there is no documentation to contradict it, I conclude that the NICS violations involving the transfers to (b)(6) occurred as documented and discussed and that each one was willfully committed.

Violation #5 Falsified Entries

On (b)(3) - 112 occasions, Licensee willfully made a false entry in the records required by the GCA, in violation of 18 U.S.C. § 922(m) and 27 C.F.R. § 478.121(c).

Upon reviewing the exhibits and the testimony provided for this violation, I find the following:

As to (b)(6), the signed and certified dates by (b)(3) - 112 Public Law 55 125 Stat 552 and Licensee on the ATF Form 4473 establish (b)(3) - 112 Public Law 55 125 Stat 552. This is corroborated by the information provided in Licensee's Excel spreadsheet. [Gov. Ex. 2 p. 35], (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) (b)(3) - 112 Public Law 55 125 Stat 552. Inexplicably, this same firearm/serial number is listed in the Licensee's Excel spreadsheet as acquired by Licensee from (b)(3) - 112 Public Law 55 125 Stat 552. To help understand the circumstances of this transaction, IOI (b)(6) contacted purchaser (b)(6) who stated he did not conduct a transaction for the same gun a month apart in this scenario.

⁷ This is just one example of how Licensee's own record keeping problems and failure to maintain a compliant A&D record book added confusion to the circumstances and discussions of many transactions.

Licensee could provide no clear explanation for this violation. Therefore, I find that a false record was created by Licensee on the Form 4473 dated (b)(3) - 112 Public Law 55 125 Stat 552 (b)(3) - 112 P was transferred on that date. That recorded information was not true since the rifle was already transferred the month prior.⁸ I conclude this violation was willful.

As to (b)(6) Licensee recorded on the ATF Form 4473 that NICS was contacted on May 6, 2021, for this specific transferee and transaction. [Gov. Ex. 5 p. 8]. However, as also discussed in the Violation #4 findings, the NTN (b)(6) recorded for this transaction is the same as the NTN recorded the day prior for the transaction with a different purchaser (b)(6). There is no NTN or any record of a NICS contact on May 6, 2021, and Licensee could not otherwise provide any clear explanation for this violation. Therefore, I find Licensee created a false record on the ATF Form 4473 for the (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6). This false entry represented that NICS was contacted and a “proceed” was received for (b)(6) on May 6, 2021, under the listed NTN when that information was not true. I further conclude this violation was willful.

Violation #6 Transfer in Violation of Law

On (b)(3) - 112 P occasion, Licensee willfully conducted business at an unauthorized location other than the licensed premises address, in violation of 18 U.S.C. § 923(j) and 27 C.F.R. §§ 478.50 and 478.100.

While Licensee stated confusion about the impact of the COVID pandemic on conducting transactions at the licensed premises, he could point to no communication or guidance from ATF that would have excused the requirements. Licensee also noted that his wife did not like people coming to the house (i.e., the business premises). It was also unclear if there were other instances in which business was conducted away from the premises beyond this cited instance.

Upon considering all this information, I find Licensee knew of the legal requirements to conduct business at the licensed premise and properly did so on several other occasions. However, I recognize that there was generalized confusion during the early days of the pandemic. Thus, I will not consider or rely upon this violation in my decision.

Violations #7, 8, 9, 10 and 11 ATF Form 4473:

On (b)(3) - 11 P occasions, Licensee willfully failed to obtain a complete and/or accurate Firearms Transaction Record, ATF Form 4473, from the transferee prior to making an over-the-counter transfer of a firearm to a non-licensee, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1).

On (b)(3) - 112 P occasions, Licensee willfully transferred a firearm to a non-licensee without verifying the identity of the transferee by examining an identification document presented and noting the

⁸ In the alternative, I could find the November 6, 2021, ATF Form 4473 is false. Either way, one record must be incorrect as the same firearm was not acquired and disposed of twice to/from identical parties.

type on a Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(i).

On [REDACTED] occasions, Licensee willfully transferred a firearm to a non-licensee without recording on the Firearms Transaction Record, ATF Form 4473, the date Licensee contacted NICS, any response provided by the system and/or any identification number provided by the NICS system, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv).

On [REDACTED] occasions, Licensee willfully failed to identify the firearm to be transferred on the Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(4).⁹

On [REDACTED] occasions, Licensee willfully failed to sign and/or date the Firearms Transaction Record, ATF Form 4473 certifying that Licensee does not know or have reason to believe the transferee is disqualified by law from receiving the firearm described on the Form, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(5).

Licensee acknowledged familiarity with the Form 4473 and the instructions within the form. Although admitting to being at fault, Licensee contended these were merely clerical errors. However, every section of the Form 4473 is important, and the required information is on the form for specific reasons to ensure the traceability of firearms and promote public safety and therefore must be afforded care and attention.

Licensee also demonstrated the knowledge and ability to complete, and ensure completion of, other Forms 4473 reviewed during the inspection. Licensee acknowledged there were Forms 4473 (such as those located in a closed office end table/stand which came to IOI (b)(6) attention by happenstance) that Licensee was attempting to review and correct in order to obtain a “clean audit” prior to ATF’s arrival for the announced inspection. Licensee further admitted he was at fault. This conduct and admission further establish Licensee knew there was noncompliance with the legal obligations related to the Forms 4473.

Therefore, I find that each of these violations occurred based upon my review of the respective ATF Forms 4473 and the hearing testimony. Further, I conclude that each of these violations were willfully committed in violation of the law and regulations.

Violation #12 Failure to Retain Records in Order

Licensee willfully failed to retain each ATF Form 4473 in alphabetical, chronological, or numerical order in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(b).

I find Licensee failed to retain each ATF Form 4473 in alphabetical, chronological, or numerical order as required. The information established at the inspection, and provided at the hearing, established that Licensee was aware of this requirement. This is evidenced by the fact that he correctly maintained a portion of the Forms 4473 in an appropriate filing system at the time the inspection began.

⁹ As noted at the hearing [REDACTED] cited instances in Violation #10 were removed from consideration.

Despite this knowledge and ability to comply with this legal requirement, Licensee nonetheless had Forms 4473 located throughout the business premises at the time of inspection, including forms that were inappropriately placed in an end table/stand as discussed earlier. Therefore, I find that this violation occurred and conclude it was willfully committed in violation of the law and regulations.

Application of Legal Standard for Federal Firearms License Revocations

ATF may, after notice and opportunity for a hearing, revoke a Federal firearms license if it has reason to believe a licensee has willfully violated any provision of the GCA or the regulations issued thereunder. *See* 18 U.S.C. §§ 923(e) and (f)(3); 27 C.F.R. §§ 478.73 and 478.74.

For the Government to prove a willful violation of the Federal firearms statutes, it need only establish that a licensee knew of its legal obligation and “purposefully disregarded or was plainly indifferent” to the legal requirements. *See Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1042-43 (10th Cir. 2012) (holding that plain indifference towards a known legal obligation meets the willfulness requirement and that plain indifference may be shown with circumstantial evidence); *see also Lewin v. Blumenthal*, 590 F.2d 268, 269 (8th Cir.1979); *On Target Sporting Goods, Inc. v. Attorney General of the United States*, 472 F.3d 572 (8th Cir. 2007) (violations by Federal firearms licensee were deemed willful and justified ATF’s licensing action when the licensee committed violations including the failure to keep proper records on acquisition and disposition of firearms; ATF inspectors had informed the licensee’s owner of the record-keeping and firearm duties and the owner admitted falling behind in these responsibilities); *Trader Vic’s v. O’Neill*, 169 F.Supp.2d 957, 965 (N.D. Ind. 2001) (finding that a licensee has a duty to be cognizant of the rules and regulations issued by ATF and has a duty to follow those mandates in the course of his regulated business activities). The Government is also not required to show that the violations occurred with any bad purpose. *Lewin*, 590 F.2d at 269; *On Target*, 472 F.3d at 575.

Additionally, any single willful violation of the Federal statutes or regulations controlling the firearms industry can be a basis for revoking or denying a license. *See Gun Shop, LLC. v. United States Dep’t of Justice*, No. 4:10-CV-1459 (MLM), 2011 WL 2214671, at *6 (E.D. Mo. June 3, 2011) (“By the statute’s plain language, even a single willing violation can trigger ATF’s power of revocation.”), *citing American Arms Int’l v. Herbert*, 563 F.3d 78, 86 (4th Cir. 2009); *see also General Store, Inc. v. Van Loan*, 560 F.3d 920, 924 (9th Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 647 (6th Cir. 2008); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 498 (7th Cir. 2006).

Furthermore, “[i]mproper recordkeeping is a serious violation.” *Fin & Feather Sport Shop, Inc. v. U. S. Treasury Dept.*, 481 F.Supp. 800, 806 (Neb. 1979) *quoting Huddleston v. United States*, 415 U.S. 814, 824 (1974). “Thus, a firearms dealer, by failing to keep the required records, seriously undermines the effectiveness and purpose of the Act and ultimately endangers society.” *Fin & Feather*, 482 F.Supp at 806. ATF has the right to insist on total compliance with the GCA to retain the privilege of dealing in firearms. *Willingham Sports, Inc. v. ATF*, 348 F.Supp.2d 1299, 1309 n.14 (S.D. Ala. 2004) (“gravity of the policy objectives of the Gun Control Act, from both a law enforcement standpoint and a safety standpoint, strongly militates in favor of allowing the ATF to insist on total compliance as a condition of retaining the

privilege of dealing in firearms.”); *Dick's Sport Center, Inc. v. Alexander*, No. 2:04-CV-74482, 2006 WL 799178, at *5 (E.D. Mich. Mar. 29, 2006) (licensee's “failure to comply with exacting book keeping regulations may hinder the ATF's ability to perform its mandated function.”).

It is acknowledged that this was Licensee's first compliance inspection. Although prior warnings can be used to establish willfulness, they are not necessary for such a finding. *See Borchardt*, 684 F.3d at 1043; *Nat'l Lending Grp., LLC v. Holder*, 365 F. App'x 747, 749 (9th Cir. 2010) (unpublished); *Nat'l Lending Group v. Mukasey*, No. CV 07-0024-PHX-PGRET, 2008 WL 5329888, at *8 n.13 (D. Az. Dec. 19, 2008) (no requirement to show there have been prior warnings in order to establish willfulness); *Francis v. ATF*, 2006 WL 1047026, at *4 (E.D. Okla. Apr. 20, 2006) (holding it does not logically follow that repeated violations following warnings are necessary to find willfulness); *Taylor v. Hughes*, 2013 WL 752838, at *3 (M.D.Pa., 2013) (“While it is true that this was the first compliance inspection ever conducted by the ATF upon [the licensee], given the scope of the violations in this case, the duration of time in which [the licensee] failed to record any A&D information in his books, and his failure for years to take any steps prior to inspection to come into compliance demonstrates willful violation.”).

Periodic compliance, such as a licensee's occasional adherence to regulatory obligations, can also support a finding of willfulness. *CEW Properties, Inc. v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 979 F.3d 1271, 1280 (10th Cir. 2020), *citing Simpson v. Att'y Gen.*, 913 F.3d 110, 115-16 (3d Cir. 2019) (noting that a licensee's “full compliance with [Gun Control Act] requirements in some instances belies his assertion that he did not understand those requirements,” and his “inconsistent conduct suggests both that [he] knew of his obligations and was indifferent to complying with them”).

The evidence and testimony presented at the hearing revealed that Licensee understood the legal requirements concerning the violations documented in the Initial Notice. In this regard, ATF reviewed the applicable laws and regulations with Licensee during the 2013 qualification inspection. At that time, ATF provided Licensee with resource materials and informed Licensee of the opportunity to ask any questions or contact ATF as needed.

Further, Licensee acknowledged awareness of the legal requirements and responsibilities to hold a Federal firearms license. Licensee was familiar with, or had reviewed, the various written or online resources provided by ATF. This included guidance in the ATF Quick Reference Guide as well as the instructions contained within the ATF Form 4473. Licensee demonstrated on other occasions the ability to properly complete, and ensure proper completion by the transferee of, the required ATF Form 4473 and to conduct a background check for a purchaser at the licensed premises. [See Gov. Ex. 5, Lic. Ex. 26 regarding purchaser (b)(6)].

Licensee stated that one of the reasons the acquisitions and dispositions were not kept as required, and why the Excel inventory spreadsheets were a “mess” by his admission, was due to having a third-party attempt to merge the data. However, even if this problem occurred, it does not excuse Licensee from compliance. *See James v. Houston ATF*, No. G-11-457, 2012 WL 1898874, at *2 (S.D.Tex. 2012) (although licensee created an electronic A&D records program, he failed to maintain an independent A&D bound book or other recording system to back up and/or verify acquisitions and dispositions and alleged “computer crash” constitutes no defense

to these violations). Furthermore, Licensee continued to conduct firearms transactions for a substantial length of time. This was done without correcting the compliance problems or otherwise properly recording the firearms acquisitions or dispositions as the regulations prescribe, while also admitting to becoming too busy to keep up with the requirements.

Licensee further asserted that any violations committed were not intentional or were mistakes. The GCA does not require a purposeful bad act to establish willfulness. Instead, a purposeful disregard or plain indifference to a known legal obligation is legally sufficient. The conduct of Licensee also cannot be attributed to being excusable mistakes. As discussed during the inspection and at the hearing, Licensee attributed many of the violations to becoming too busy, getting distracted during transactions or other external factors in Mr. Cochran's life. He argued this then caused him to get behind in maintaining the records and failing to complete them without errors. Regardless, allowing himself to be distracted due to the volume of transactions cannot excuse Licensee's responsibilities to known legal obligations.

Although I do appreciate the situations that were occurring in Mr. Cochran's personal life, these do not mitigate or alleviate the responsibility that a licensed entity must comply with the requirements under the GCA. Licensee continued to acquire firearms and conduct transactions despite these known deficiencies and problems in complying with the legal requirements. As noted in Licensee's e-mail to IOI (b)(6) on July 15, 2021, Licensee was aware of the mess it made for itself. [Gov. Ex. 2 p. 48]. However, there is no legal support for a licensee's claim that circumstances, such as poor health or being overwhelmed, excuses the failure to keep the A&D books, to have properly completed Forms 4473 with compliant background checks, or otherwise excuses cited violations from being willful. *See Taylor v. Hughes*, No. 1:12-CV-138, 2012 WL 7620316, at *11 (M.D. Pa. 2012). This continued failure to comply with the GCA requirements shows a purposeful disregard or, at a minimum, a plain indifference to the known legal obligations of a Federal firearms licensee.

Licensee asserts that it now has the licensed business in compliance, but these subsequent actions do not otherwise mitigate or change the fact that the willful violations occurred as documented during the inspection. *Post hoc* remedial efforts have little bearing on a licensee's willfulness at the time of the violation. *CEW Properties*, 979 F.3d at 1281 n.12 (disregarding a licensee's claim of no willfulness due to subsequent efforts to remedy noncompliance by compiling A&D records into a bound book); *see also Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1079 (7th Cir. 2011) (noting that "workplace changes to ensure compliance with Federal firearms laws" following a revocation notice "come too late," and that the promise to "do better if given another chance is not an argument that reaches the merits of the case"); *Cucchiara v. Sec'y of Treasury*, 652 F.2d 28, 30 (9th Cir. 1981) (concluding that a licensee's attempt to "correct his faulty recordkeeping system, after the violations ... is immaterial to the question of willfulness at the time the violations occurred"); *Sturdy v. Bensten*, 129 F.3d 122 (8th Cir. 1997) (a licensee's after-the-fact efforts to correct the specific violations cited are irrelevant to the issue of willfulness at the time the errors occurred).

It is significant to note Licensee was unable to account for four firearms which remain nationally documented with law enforcement as missing still to this day. These missing firearms, which cannot be successfully traced if used in a crime, are directly attributed to Licensee's willful

disregard of the legal obligations. This failure by Licensee undermines the public safety directive of the GCA. Licensee’s systemic problems with recording and maintaining compliant records as whole also further undermine the essential purposes of the GCA.

After presiding over the hearing and giving a full review and consideration of all the testimony and exhibits provided in the hearing record, I find and conclude that Licensee willfully violated the provisions of the GCA, and the regulations issued thereunder. Even though Licensee understood the responsibilities under the GCA, the evidence reveals that Licensee was plainly indifferent to, or purposefully disregarded, the firearms laws and regulations as documented and thoroughly discussed and reviewed herein.

Despite the knowledge and awareness of these obligations under its license, Licensee failed to maintain any legally compliant records of acquisition and disposition, failed to timely or correctly record firearms located in inventory, failed to conduct background checks as required, and was repeatedly unable to properly complete the ATF Forms 4473 under the explicit directions and instructions of the form. At the commencement of the inspection, Licensee even admitted to ATF that the business was not in compliance although having several weeks advance notice that ATF was seeking to conduct the inspection.

Therefore, except as addressed within the respective violations above, I find Licensee willfully committed Violations #1, #2, #3, #4, #5, #7, #8, #9, #10, #11 and #12 and my findings and conclusions are the basis for my license revocation determination.

Accordingly, under the provisions as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Licensee Blue Valley Sales, Inc. d/b/a Blue Valley Firearms, 9601 Lowell Ave, Overland Park, Kansas 66212, under Federal firearms license number 5-48-091-01-4A-03643, is hereby **REVOKED**.

Dated this 03 day of February 2022.



William J. Miller

Director, Industry Operations - Kansas City Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice