

**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:
or
 License Number 5-48-113-02-3H-12857 as a/an dealer in firearms, including pawn,
other than destructive devices, issued to:

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

Charles A. Harter d/b/a C&H Guns
368 Navajo Road
McPherson, Kansas 67460

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 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 06/10/2022	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official William J. Miller Director, Industry Operations ATF Kansas City Field Division	Signature <i>William J. Miller</i>
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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: _____
 Or
 Delivering a copy of the notice to the address shown below.

Date Notice Served	Title of Person Serving Notice Administrative Assistant	Signature of Person Serving Notice
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Print Name and Title of Person Served Charles A. Harter d/b/a C&H Guns	Signature of Person Served
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Address Where Notice Served 368 Navajo Road, McPherson, Kansas 67460

Note: Previous Edition is Obsolete

Charles A. Harter d/b/a C&H Guns
368 Navajo Road
McPherson, Kansas 67460

RE: FFL# 5-48-113-02-3H-12857

Charles A. Harter d/b/a C&H Guns, 368 Navajo Road, McPherson, Kansas 67460 (Licensee) holds a Federal firearms license, under number 5-48-113-02-3H-12857, as a dealer in firearms, including pawn, 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 December 8, 2021, ATF issued a Notice to Revoke License, ATF Form 4500 (Initial Notice) based upon violations discovered during an inspection commencing on June 2, 2021. Licensee timely requested a hearing to review the Initial Notice. [Gov. Ex. 10].

The hearing was held on March 29, 2022, at the ATF Kansas City Field Division Office located in Kansas City, Missouri. The hearing was conducted by ATF Kansas City Field Division Director, Industry Operations (DIO) William J. Miller. The Government was represented by ATF Kansas City Field Division Counsel (b)(6). ATF Industry Operations Investigator (IO) (b)(6) appeared as witnesses on behalf of the Government.

Licensee Charles A. Harter, a sole proprietor and responsible person for the license, appeared at the hearing. (b)(6) also attended the hearing as a friend/associate of Mr. Harter. The hearing was recorded and transcribed through a court reporting service. The testimony and exhibits provided by the parties at the hearing constitute the administrative record for this matter.

Findings and Conclusions

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

Licensee has operated under the current Federal firearms license since at least 1982.¹ During the history of this license, ATF conducted compliance inspections of Licensee in 1983, 1987, 2007, 2008, 2013 and 2015. [Gov. Ex. 8]. During these inspections, ATF reviewed the pertinent Federal firearms laws and regulations with Licensee and provided him with resources and reference information regarding the expectations and requirements for a Federal firearms licensee. Licensee further acknowledged at these inspections his responsibilities 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 also provided to Licensee.

Following the 2007 and 2013 inspections Licensee received a warning letter. After the 2008 inspection Licensee attended a warning conference. Licensee was informed at the conclusion of these inspection reviews that future violations, repeat or otherwise, could be considered willful and may result in a revocation of the license. [*Id.*].

¹ Licensee had a separate license issued in the 1970s that is no longer active.

Beginning on June 2, 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, as incorporated herein and discussed more thoroughly as follows:²

Violations #1 and #2 - Failure to Maintain Required Records

As to Violation #1, on [REDACTED] occasion, Licensee willfully failed to timely record the acquisition of a firearm, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e). Specifically, Hearing testimony and evidence revealed that Licensee had [REDACTED] firearm in inventory that was not recorded as an acquisition in the acquisition and disposition records (also known as the A&D book). [Gov. Ex. 1]. At the inspection, Licensee was surprised he missed entering this firearm in the book but had no further explanation for the violation. [Gov. Ex. 7; Hearing Transcript (HT), pgs. 13-14].

As to Violation #2, on [REDACTED] occasions, Licensee willfully failed to 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). Specifically, the hearing testimony and evidence demonstrated that [REDACTED] firearms were transferred to non-licensees, but the dates recorded for the dispositions were incorrectly entered in the A&D book. [Gov. Ex. 2]. During the inspection, Licensee stated that for these two entries, he used the date he logged the gun out of the book instead of using the actual date of transfer as listed on the respective ATF Form 4473. [Gov. Ex. 7].

Upon reviewing Government Exhibits 1 and 2, along with the testimony provided at the hearing for these violations, I find that Licensee failed to record a firearm acquisition of [REDACTED] firearm located in inventory at the time of the inspection. I also find that Licensee failed to accurately record the date of disposition on [REDACTED] firearms. Licensee was previously cited for acquisition or disposition violations, pursuant to 27 C.F.R. § 478.125(e), following the 2007 and 2015 inspections.³ [Gov. Ex. 8]. Licensee was aware of the requirements related to the A&D book/records and exhibited the ability to comply with these requirements on several other occasions yet failed to properly do so in these instances.

Therefore, I find Licensee willfully failed to comply with the regulatory requirements as stated in Violations #1 and #2.

Violation #3 – Background Checks

On six occasions, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (NICS)⁴ 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).

² Although several other violations were documented on the Report of Violations (ROV) issued to Licensee, the violations cited in the Initial Notice are the basis for the license revocation action.

³ At the 2015 inspection, Licensee was also specifically cited for failure to record the acquisition of a firearm located in his inventory.

⁴ NICS is operated by the Federal Bureau of Investigation (FBI).

Upon reviewing Government Exhibit 3, along with the testimony provided at the hearing for these violations, I find insufficient evidence of a willful violation and therefore do not consider these five specific instances as a basis for revocation as to the following:

(b) (6) on February 3, 2021
(b) (6) on February 3, 2021
(b) (6) on February 3, 2021
(b) (6) on February 17, 2021
(b) (6) June 11, 2021.

However, I find sufficient evidence of willfulness as to the sale to (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

(b)(3) - 112 Public Law 55 125 Stat 552

(b)(3) - 112 Public Law 55 125 Stat 552

The NICS audit log was available to review for this time period and shows that FBI NICS was contacted and FBI created NTN (b)(6) for this transaction on April 5, 2021, at 6:42 p.m. Licensee recorded on this (b)(3) - 112 Public Law 55 125 Stat 552

(b)(3) - 112 Public Law 55 125 Stat 552

(b)(3) - 112 Public Law 55 125 Stat 552

(b)(3) - 112 Public Law 55 125 Stat 552

From a review and discussion of the A&D record at the hearing, the disposition and firearm transfer to purchaser (b)(6) was recorded in the A&D book as occurring on March 31, 2021. [HT, pg. 63-65]. At the hearing, Licensee could not explain how or why the transfer dates show that the transfer occurred prior to the NICS background check. [HT, pg. 66].

In summary, the transfer date recorded on the (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) and recorded in the A&D record establishes that the transfer occurred prior to a properly completed NICS background check, as further verified per the NICS audit log. In this instance, the certification date, the recertification date, and the date transferred all occurred prior to the NICS contact date listed on the Form 4473 and confirmed via the NICS audit log.

Although Licensee indicated confusion on how to properly record the date of transfer on the Form 4473, the correct process for this requirement was explicitly reviewed with Licensee following the 2015 inspection. [Gov. Ex. 8]. At that time, Licensee was using the date that NICS was contacted and not the date the firearm was actually transferred. As a corrective action, Licensee was specifically instructed to put the date the firearm was in fact transferred in Item 36 (for the Form 4473 version used in 2015) for the date of transfer. [*Id.*; HT, pg. 30-31]. I also find Licensee was cited for NICS violations, under 27 C.F.R. § 478.102, following the 2007, 2008 and 2015 inspections. [Gov. Ex. 8]. Licensee has demonstrated the ability to properly follow the NICS background requirements on other occasions as well.

The ATF Form 4473 has explicit directions and instructions on the form to guide a licensee on the proper completion and timeline for recording all the necessary information and dates. [Gov. Ex. 9]. The ATF Form 4473 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). 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. [*Id.* (emphasis added)]. The importance of background check compliance is stressed throughout the Form 4473 and instructions to ensure a prohibited person does not receive a firearm from a licensee.

Given the evidence in the record, and further considering that Licensee offered no explanation or documentation to refute the Government's presented information, I conclude that the NICS violation involving the transfer to purchaser (b)(6) occurred as documented and discussed and that this violation was willfully committed. Furthermore, all of these violations, even the ones for which I ultimately found insufficient evidence of a willful violation, highlight the importance of timely contacting NICS and properly recording the information so as to ensure a lawful background check is done. These forms are also an example of how Licensee's own record keeping problems, and failure to comply with the directions on the Form 4473, added confusion to the circumstances and the legality the transactions.

Violation #4 – Failure to Report Multiple Sales

On (b)(3) - 112 P occasions,⁵ Licensee willfully failed to timely and/or accurately report the sale or other disposition of two or more pistols and/or revolvers during any five consecutive business days to an unlicensed person, in violation of 18 U.S.C. § 923(g)(3)(A) and 27 C.F.R. § 478.126a. Upon reviewing Government Exhibit 4, along with the testimony provided at the hearing, it is established that on these occasions, Licensee willfully transferred more than one handgun to the same purchaser within five consecutive business days without completing the necessary multiple sale forms.

Licensee explained that he was aware of the need to complete a multiple handgun sale form but believed it was only necessary for handguns sold on the same day or within a three-day timeframe, instead of within five consecutive business days as required. [Gov. Ex. 7]. Licensee also indicated that in the future he would circumvent the requirement by waiting longer before transferring additional handguns to the purchaser, *e.g.* six days, so he would not need to complete the multiple sale form. [*Id.*; HT, pgs. 38-39].

Although Licensee claimed confusion regarding the number of days (three versus five) for the multiple sale requirement and asserted he did not intend to do anything wrong or illegal, he has demonstrated his ability to properly comply with this requirement on other occasions. [HT, pg. 35]. The inspection revealed that Licensee transferred handguns to (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

these handgun transfers/sales occurred within one or two days of the prior transfer to those

⁵ The Initial Notice cited (b)(3) - 112 P occasions, however, the (b)(3) - 112 P occasion listed in the Appendix regarding (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) was removed from consideration at the hearing.

respective purchasers. Therefore, any alleged confusion as to the timing of transfers requiring the multiple sales form seems implausible and, at a minimum, Licensee did not comply with his own asserted belief that the multiple sale form need only be completed on the same day or within three days.

Further, in the instances cited involving transferee (b)(6) Licensee admitted that he was attempting to structure the transfer of the handguns at the request of the purchaser who did not want to be “red-flagged as a person buying a lot of firearms to sell somewhere else” and wanted to get the firearms out of the store “as soon as possible”. [HT, pgs. 36-39]. Despite stating that this idea was brought up by the transferee, Licensee admitted that he acquiesced to the transferee’s wishes and thus willfully avoided compliance with this known reporting requirement. For all these reasons, Licensee’s belated remorse is not persuasive. [HT, pg. 37].

As additional supportive evidence of Licensee’s knowledge of the multiple sale reporting requirement, both the 2016 and 2020 versions of the ATF Form 4473 explicitly provide a reminder that “By the Close of Business [Licensees Must] Complete ATF Form 3310.4 for Multiple Sales of Handguns Within 5 Consecutive Business Days”.⁶ [Gov. Ex. 9]. Licensee was also previously cited for a multiple sale violation, pursuant to 27 C.F.R. § 478.126a, following the 2007 inspection. [Gov. Ex. 8].

Therefore, I find that Licensee willfully failed to complete the multiple sales form on the (b)(3) - 112 occasions as documented in the Initial Notice and reviewed within the record.

Violations #5 and #6 – ATF Form 4473

Regarding Violation #5, on (b)(3) - 112 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 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). Specifically, five ATF Forms 4473 were completed in which the transferee’s identification information was left blank or not fully completed as required. [Gov. Ex. 5]. This failure by Licensee did not ensure a complete record of the purchaser’s identity as required. At the inspection, Licensee stated he knows that the law requires supplemental documents in these situations but attempted to excuse his acceptance of non-qualifying documents by saying that government-issued supplemental documents are hard to get. [Gov. Ex. 7].

Regarding Violation #6, on (b)(3) - 112 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).

Specifically, Licensee either did not record or failed to correctly record the required information for the NICS background check on (b)(3) - 112 ATF Forms 4473 as required. Due to this failure by Licensee, complete and accurate records of the required background check process, and the

⁶ ATF Form 4473 (2020 version) quoted.

respective dates or information necessary to ensure a proper and complete background check, were not obtained. At the inspection, Licensee stated he normally makes sure the form is all complete and did not know why the information was not recorded in these instances. [*Id.*].

Upon reviewing the Government Exhibits 5 and 6, along with the testimony provided for both these violations, I find that Licensee demonstrated the knowledge and ability to properly complete these sections on other Forms 4473 reviewed during the inspection.

Licensee was also previously cited for violations of 27 C.F.R. § 478.124(c)(3)(i) following the 2007, 2008 and 2013 inspections, and was cited for violations of 27 C.F.R. § 478.124(c)(3)(iv) following the 2007 inspection.

Therefore, upon considered all the information provided in the record, I conclude that both Violations #5 and #6 were willfully committed.

Violation #7 - 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 insufficient evidence of willfulness as to this violation and do not consider it as a basis for revocation.

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 the legal obligations 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 this 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 such as failure to keep proper acquisition and disposition records; ATF informed the licensee’s owner of the firearms record-keeping 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 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).

Although not required, repeated violations can constitute sufficient evidence to establish the requisite state of mind under the willfulness standard. *A-TAC Gear Guns Uniforms LLC v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives*, 530 F.Supp.3d

1033, 1040 (D. Colo., 2021) (holding that repeated violations can establish sufficient circumstantial evidence of willfulness). After a dealer is informed of the GCA requirements and warned of violations, subsequent repeat violations can suffice to at least show plain indifference to the statutory requirements. *Borchardt*, 684 F.3d at 1043. See *RSM, Inc. v. Herbert*, 466 F.3d 316, 322 (4th Cir.2006) (“[W]hen such errors continue or even increase in the face of repeated warnings ... one may infer as a matter of law that the licensee simply does not care about the legal requirements. At that point, the failures show the licensee's plain indifference and therefore become willful.”); see also *Borgelt v. Bureau of Alcohol, Tobacco and Firearms*, 2009 WL 3149436, 4 (W.D. Wash.) (“[T]he government often proves willfulness by showing that a licensee repeatedly violated regulations despite knowledge of them and repeated warnings.”).

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. *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 *Fairmont Cash Mgmt., L.L.C. v. James*, 858 F.3d 356, 362 (5th Cir. 2017) (“A single willful violation authorizes the ATF to revoke the violator's [license], regardless how severe, though the frequency and severity of the violations can be relevant to willfulness.”). 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.”). Periodic compliance, such as a licensee's occasional adherence to regulatory obligations, can also support a finding of willfulness. *CEW Properties*, 979 F.3d at 1280, 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 throughout the multiple inspections

conducted on his licensed business over the past thirty years. ATF provided Licensee with guidance and information on corrective actions for the violations to ensure compliance. ATF also warned Licensee following at least three of the prior inspections that future violations could be considered willful and result in revocation of the license. [Gov. Ex. 8]. Licensee acknowledged awareness of the legal requirements and responsibilities to hold a Federal firearms license. Licensee demonstrated on other occasions the ability to properly complete, and ensure proper completion by the transferee of, the required records and forms and to conduct a background check on a non-licensed transferee/purchaser.

Licensee asserted that any violations committed were not intentional and he never intended to hide anything or do anything illegally. However, the GCA does not require an intentional bad act to establish willfulness and the Government is 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. Instead, a purposeful disregard or plain indifference to a known legal obligation is legally sufficient to show willfulness. As discussed during the hearing, Licensee attributed many of the violations to becoming too busy or distracted handling external factors in his life, such as helping with his wife's health issues. He stated that these circumstances put a burden upon him, which also apparently then impacted his compliance with the GCA requirements. However, the conduct of Licensee also cannot be considered to be excusable mistakes.

Although I do appreciate the situations that were occurring in Mr. Harter's personal life, these factors do not mitigate or alleviate the responsibility for a licensee to comply with the requirements under the GCA. Such distractions or other external factors cannot excuse a licensee's responsibilities to known legal obligations. *Taylor v. Hughes*, 2013 WL 752838, at *3 (M.D. Pa., 2013) (being "overwhelmed" is not a justifiable excuse for a licensee's noncompliance with mandated laws and regulations and does not negate a finding of willfulness). Despite these personal issues, Licensee nonetheless continued to acquire firearms and conduct transactions over a significant time period since his last inspection without addressing or correcting these current compliance problems. Ultimately, there is no legal justification for a licensee's claim that circumstances, such as poor health or being overwhelmed, excuses the failure to correctly keep the A&D book, to properly complete multiple sale forms and ATF Forms 4473, or to conduct compliant background checks. 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 as a Federal firearms licensee.

Licensee offered assurances that he now has the licensed business in compliance and brought in (b)(6) to assist him with the business activities. However, 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 violations. *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).

Furthermore, every section of the Form 4473 is important. 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. Although each of the cited violations are significant and must be considered, what I find the most troubling from the record is the willful and purposeful disregard, or at a minimum plain indifference, Licensee exhibited by shirking his responsibilities as a firearms licensee and acquiescing to the wishes of a customer to avoid having the multiple handgun sales reporting form completed. Licensee did not deny that he was allowing the customer to structure the timeframe of the purchases so that the form would not need to be completed and indicated at the inspection that he would essentially structure handgun transfers on future transactions so the form could be avoided. The multiple handgun sale form is an essential reporting requirement for a licensee to help ATF identify and potentially investigate illegal firearms traffickers, yet Licensee willfully avoided this legal obligation.

A critical responsibility of a licensee is to help ensure that the Gun Control Act requirements are met, and multiple handgun sale reporting is one of those requirements. *See A-TAC Gear*, 530 F.Supp.3d at 1039 (“ATF cannot monitor every single firearms dealer at every moment. The Act’s effectiveness thus rests largely on dealers’ taking its regulations seriously.”). This failure by Licensee undermines the public safety directive of the GCA. Licensee’s systemic problems with recording and maintaining compliant records as a whole, and failure to properly conduct and record background checks, 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 his license, Licensee failed to maintain legally compliant records of acquisition and disposition, failed to comply with the background check requirement, and did not properly complete ATF Forms 4473 and multiple sale report forms despite the explicit directions and instructions of the forms.

Therefore, I find and conclude Licensee willfully committed Violations #1, #2, #3, #4, #5 and #6 and my findings and conclusions are the basis for my determination to revoke the license.

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 Charles A. Harter d/b/a C&H Guns, 368 Navajo Road, McPherson, Kansas 67460, under Federal firearms license number 5-48-113-02-3H-12857, is hereby **REVOKED**.

Dated this ____ day of June, 2022.

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