

**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 1-56-021-07-3L-12539 as a/an  
Manufacturer of Firearms Other Than Destructive Devices, issued to:

Name and Address of Applicant or Licensee (Show number, street, city, state and Zip Code)  
Tumbleweed Enterprises Inc.  
dba PF Custom Guns  
18 Sunset Drive  
Ashville, NC 28806

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  \_\_\_\_\_  
 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 2635 Century Parkway NE, Suite 400, Atlanta, GA 30345

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 06/09/2022	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official Dr. Scena B. Webb, Director, Industry Operations, Atlanta Field Division	Signature <i>Scena B. Webb</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: 777110784953 Or  Delivering a copy of the notice to the address shown below.

Date Notice Served 6/13/2022	Title of Person Serving Notice Senior Operations Officer	Signature of Person Serving Notice (b)(6)
Print Name and Title of Person Served		Signature of Person Served
Address Where Notice Served		

Note: Previous Edition is Obsolete

Tumbleweed Enterprises, Inc., doing business as P.F. Custom Guns (Licensee), 18 Sunset Drive, Asheville, North Carolina, 28806, a Manufacturer, holds Federal firearms license #1-56-021-07-6A-85250 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 February 1, 2022, ATF issued a Notice of Revocation and/or Fines of License, ATF Form 4500, to the Licensee via FedEx delivery. The Licensee timely requested a hearing to review that Notice. The hearing was scheduled for April 21, 2022 at the ATF Asheville Office.

The hearing was conducted by ATF Director of Industry Operations (DIO) Scena B. Webb, Atlanta Field Division, sitting by designation. ATF was represented by Charlotte Division Counsel (b)(6) ATF Industry Operations Investigators (b)(6) and Area Supervisor (b)(6) appeared as witnesses on behalf of the Government. The Sole Responsible Person, Marion Phillip Flack (Phil Flack), and (b)(6) attorney for Licensee, appeared at the hearing. The hearing was recorded and transcribed by the Government through a court reporter service. The Government offered testimony and exhibits.

### **Findings of Fact**

Having reviewed the record in this proceeding, I make the following findings:

1. At the hearing, ATF introduced evidence of a compliance inspection conducted by Investigator (b)(6) and others at the licensed premises M. Phil Flack doing business as PF Custom Guns on or about September 19, 2017. Almost immediately after initiating the inspection, Investigator (b)(6) learned that Phil Flack had begun operating as a corporate entity, Tumbleweed Enterprises, Inc., without having obtained a license to do so. Investigator (b)(6) instructed Mr. Flack to cease all operations and complete an ATF Form 7 Application for a new license. Investigator (b)(6) testified that he expedited the approval process, and a new Federal Firearms License was issued for the corporation within approximately seven business days.
2. At the conclusion of the compliance inspection, Investigator (b)(6) prepared a Report of Violations citing M. Phil Flack doing business as PF Custom Guns with eleven (11) violations of the GCA and its regulations. Some of the violations cited included possession of firearms with obliterated serial numbers, failing to conduct FBI NICS checks on law enforcement officers, failing to report the multiple sales of handguns, (b)(6) instances of failing to timely record the acquisition and disposition of firearms, and other record-keeping violations.
3. Investigator testified that the Report of Violations was reviewed and signed by Investigator (b)(6) and Phil Flack on December 11, 2017. *See* Government Exhibit 6.
4. Investigator (b)(6) testified that he reviewed GCA laws and regulations with Phil Flack after the conclusion of the compliance inspection. ATF introduced a signed

Acknowledgement of Federal Firearms Regulations dated December 11, 2017 demonstrating that ATF reviewed the legal requirements applicable to Licensee. *See* Government Exhibit 7.

5. Investigator (b)(6) testified that the compliance inspection resulted in an initial recommendation to initiate revocation proceedings. Instead of pursuing revocation, ATF conducted a warning conference with the Licensee on March 15, 2018. During the warning conference, Licensee provided ATF with a letter dated March 10, 2018 that addressed the violations and remedial actions taken to ensure future compliance. *See* Government Exhibit 8.
6. Investigator (b)(6) testified that one of Licensee's voluntary remedial actions was that it would conduct annual inventories of its firearms. He testified that ATF does not require Licensees to do inventories but doing so was a good business practice to accurately account for the acquisition and disposition of firearms.
7. ATF issued a warning conference follow-up letter dated March 26, 2018 to Licensee. The letter addressed what occurred during warning conference and advised Licensee that future violations could be viewed as willful and result in revocation of the license. *See* Government Exhibit 9.
8. Investigator (b)(6) testified that after the compliance inspection but prior to the warning conference, he emailed Licensee a publication titled "Facilitating Private Sales: A Federal Firearms Licensee Guide". *See* Government Exhibits 15A, 15B and 15C. The publication addresses how licensees should comply with NICS requirements.
9. Investigator (b)(6) testified that occasionally ATF conducts education seminars for licensees (FFL Seminar). ATF invited Licensee to attend an FFL Seminar on May 23, 2018. *See* Government Exhibit 10. Licensee responded that he and several of his employees would attend. *See* Government Exhibit 11. Investigator (b)(6) testified that he saw Phil Flack and at least two of his employees at the FFL Seminar on May 23, 2018.
10. Investigator (b)(6) testified that Industry Operations Investigator (b)(6) who has since retired, presented a PowerPoint presentation on Gun Shows and Conduct of Business. The Conduct of Business portion of the PowerPoint addressed the topic of NICS and North Carolina. Specifically, the presentation advised Licensees that a NICS Check is valid for 30 calendar days from the date the check is initiated. *See* Government Exhibit 12.
11. Industry Operations Investigator (b)(6) testified that she conducted a compliance inspection of Licensee's business premises on or about May 2<sup>nd</sup> or 3<sup>rd</sup> of 2021. As a result of the inspection, Investigator (b)(6) cited Licensee with multiple violations of the GCA.
12. As set forth in paragraph 1 of the Notice of Revocation, Licensee willfully failed in two (2) instances to initiate a new NICS background check for a transferee after 30 days had

lapsed since a prior NICS check was conducted in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(c). The Government produced a sample Firearms Transaction Record, ATF Form 4473 that Investigator (b)(6) used to indicate how she determined that Licensee committed the violation on two occasions. *See* Government Exhibit 12. When asked whether Licensee provided an explanation for the violation, Investigator (b)(6) testified that Licensee stated that he was unaware that it had to conduct another NICS check after 30 days.

13. As set forth in paragraph 2 of the Notice of Revocation, Licensee willfully failed on (b)(3) - 112 Public Law 55 125 Stat 552 occasions on (b)(3) - 112 Public Law 55 125 Stat 552 forms to ensure that the transferee correctly recorded the required information on the ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1). During the hearing, the Government introduced testimony regarding (b)(3) - 112 Public Law 55 125 Stat 552 of the (b)(3) - 112 Public Law 55 125 Stat 552 violations. Counsel for the Government asked Counsel for Licensee if doing a representative sample of to support the violation as acceptable instead of having Investigator (b)(6) testify to all (b)(3) - 112 Public Law 55 125 Stat 552 instances. Counsel for Licensee agreed.
14. As set forth in paragraph 3 of the Notice of Revocation, Licensee willfully failed on (b)(3) - 112 Public Law 55 125 Stat 552 occasions on (b)(3) - 112 Public Law 55 125 Stat 552 forms to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.21a. The Government introduced testimony to support each of the violations cited. Investigator (b)(6) also testified that the violation was a repeated violation as cited by Investigator (b)(6) in 2017. Specifically, it was cited as violation #6 on the Report of Violations issued on December 11, 2017. *See* Government Exhibit 6.
15. As set forth in paragraph 4 of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 Public Law 55 125 Stat 552 instances to timely and/or accurately record the disposition of firearms to a licensee in its Acquisition and Disposition Record in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.123(b). The Government introduced testimony and evidence to support each of the violations cited. *See* Government Exhibits 16A, 16B, and 16C. Investigator (b)(6) also testified that the violation was a repeated violation as cited by Investigator (b)(6) in 2017. Specifically, it was cited as violation # 11 on the Report of Violations issued on December 11, 2017. *See* Government Exhibit 6.
16. As set forth in paragraph 5 of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 Public Law 55 125 Stat 552 instances to timely and/or accurately record the disposition of firearms to nonlicensee in its Acquisition and Disposition Record in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.123(d). Using Appendix A of the Notice of Revocation and copies of Licensee's A&D record, the Government introduced testimony and evidence regarding (b)(3) - 112 Public Law 55 125 Stat 552 of the (b)(3) - 112 Public Law 55 125 Stat 552 violations. *See* Government Exhibits 1, 17A, 17B, 17C, and 17D.
17. As set forth in paragraph 6 of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 Public Law 55 125 Stat 552 instances to timely and/or accurately record the Manufacture or acquisition of firearms in its Acquisition and Disposition Record in violation of 18 U.S.C. §

923(g)(1)(A) and 27 C.F.R. § 478.123(a). The Government introduced testimony and evidence to support the violation cited in the Notice of Revocation. *See* Government Exhibits 18A, 18B, and 18C.

18. As set for in paragraph 7, as amended, of Notice of Revocation<sup>1</sup>, failed on (b)(3) - 112 Public Law 5 occasion to report the multiple sales or other dispositions of pistols or revolvers in violation of 18 U.S.C. § 923(g)(3)(A) and 27 C.F.R. § 478.126a. The Government introduced testimony and evidence to support the violation cited in the Notice of Revocation. *See* Government Exhibits 19 and 20. Investigator (b)(6) also testified that the violation was a repeated violation as cited by Investigator (b)(6) in 2017. Specifically, it was cited as violation #5 on the Report of Violations issued on December 11, 2017. *See* Government Exhibit 6.
19. As set forth in paragraph 8, as amended, of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 Public Law 5 instances to verify and record identification documents on the ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(i). The Government produced testimony to support the violation. Investigator (b)(6) also testified that the violation was a repeated violation as cited by Investigator (b)(6) in 2017. Specifically, it was cited as violation #8 on the Report of Violations issued on December 11, 2017. *See* Government Exhibit 6.
20. As set forth in paragraph 9, as amended, of the Notice of Revocation, Licensee willfully failed in (b)(3) - 112 Public Law 5 instance to document NICS information on the ATF Form 4473 in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv). The Government produced testimony to support the violation. Investigator (b)(6) also testified that the violation was a repeated violation as cited by Investigator (b)(6) in 2017. Specifically, it was cited as violation #10 on the Report of Violations issued on December 11, 2017. *See* Government Exhibit 6.
21. Investigator (b)(6) testified that by the conclusion of the compliance inspection, she had provided Licensee sufficient time to reconcile firearms missing from inventory for which there was no record of a disposition. Investigator (b)(6) determined that Licensee was unable to account for (b)(3) - 112 Public Law 5 firearms; however, Licensee only agreed to accept that (b)(3) - 112 Public Law 55 firearms were missing from inventory even though Licensee could not verify disposition of the firearm. Licensee completed a theft/loss report for (b)(3) - 112 Public Law 55 firearms. *See* Government Exhibit 14.
22. Investigator (b)(6) testified that she asked Phil Flack how and why the violations she cited occurred. Mr. Flack's responses were that he was very busy, did not take the time to double-check things, and was not unaware of some of his obligations. Investigator (b)(6) also testified that Mr. Flack advised that he had not conducted regular inventories.

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<sup>1</sup> During the hearing, Counsel for Licensee noted that Government Exhibit 1, Notice of Revocation, contained two violations numbered as #6. Counsel for the Government acknowledged the error and verbally amended the Notice to change the numbering of the remaining violations cited.

23. Area Supervisor (b)(6) testified for the Government. Supervisor (b)(6) testified about the warning conference she held with Licensee on March 15, 2018 and the warning conference follow-up letter she mailed to him on March 26, 2022. See Government Exhibit 9.

### Conclusions of Law

Pursuant to the GCA, ATF may, after notice and opportunity for hearing, revoke a Federal firearms license if the licensee has willfully violated any provision of the GCA or the regulations issued thereunder. 18 U.S.C. § 923(e); 27 C.F.R. § 478.73. For purposes of 18 U.S.C. § 923, a “willful” violation occurs when the Licensee had knowledge of the GCA and either purposefully disregards the requirements or is plainly indifferent to them. *American Arms, Int'l v. Herbert*, 563 F.3d 78, 85 (4<sup>th</sup> Cir. 2009); *CEW Props v. United States DOJ*, 979 F.3d 1271, 1279 (10<sup>th</sup> Cir. 2020); *Simpson v. AG United States*, 913 F.3d 110, 114 (3<sup>d</sup> Cir, 2019); *The General Store v. Van Loan*, 560 F.3d 920, 924 (9<sup>th</sup> Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 648 (6<sup>th</sup> Cir. 2008); *On Target Sporting Goods, Inc. v. Attorney General*, 472 F.3d 572 (8<sup>th</sup> Cir. 2007); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492 (7<sup>th</sup> Cir. 2006); *Willingham Sports, Inc. v. BATF*, 415 F.3d 1274 (11<sup>th</sup> Cir. 2005). See also, *Bryan v. United States*, 524 U.S. 184, 197-198 (1998). In several instances, the courts have held that ATF may revoke a FFL based on a single willful GCA violation. *Fairmount Cash Mgmt., L.L.C. v. James*, 858 F. 3d 356, 362 (5<sup>th</sup> Cir, 2017); *American Arms, Int'l v. Herbert*, 563 F.3d at 86; *DiMartino v. Buckles*, 129 F. Supp. 2d 824, 827 (D. Md. 2001). It is not necessary that a licensee act with “bad purpose or evil motive.” *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 497-98 (7<sup>th</sup> Cir. 2006); *Prino v. Simon*, 606 F.2d 449, 451 (4<sup>th</sup> Cir. 1979) (“no showing of malicious intent is necessary” to show willfulness).

The evidence and testimony support the contention that the Licensee understood the requirements that it must conduct NICS checks when required, timely and accurately record the acquisition and disposition of firearms in the A&D record, timely and accurately report the multiple sale of pistols and revolvers, accurately record required NICS information on the ATF Form 4473 and ensure that the ATF Form 4473 is accurately completed by the transferee and Licensee in all instances.

As indicated in the Notice of Revocation, ATF previously cited the Licensee for some of the same violations as the result of a compliance inspection in 2017. During the 2017 inspection, ATF reviewed the federal laws and regulations with the Licensee’s Sole Responsible Person, Marion Phillip Flack, with which the Licensee is required to comply as a holder of a federal firearms license. The review included Marion Phillip Flack signing the acknowledgments certifying that all the information was explained to him, any questions were answered, and he received a copy of the form.

Additionally, the Licensee’s Sole Responsible Person, Marion Phillip Flack, met with the Area Supervisor in a warning conference following the 2017 compliance inspection. In that instance, Mr. Flack listened as each of the violations and regulatory requirements were again reviewed and explained with him. Mr. Flack also provided ATF with a remedial plan indicating that he would

implement procedures to ensure that future violations did not occur. Mr. Flack was warned that future violations could lead to the loss of the federal firearms license.

One of the remedial measures Licensee promised to implement in 2018 was an annual inventory of firearms. Investigator (b)(6) testified that Phil Flack told her that he did not conduct inventories. During questioning by Counsel for the Government, Phil Flack stated initially that he did conduct inventories but acknowledged only doing “spot checks” when pressed on the matter.

Counsel for the Government questioned Phil Flack about the (b)(3) - 112 Public Law 55 125 Stat 552 firearms missing at the conclusion of the compliance inspection that began in May 2021. Mr. Flack testified that a Taurus 63 firearm reported missing after the inspection was located on April 3, 2022. When asked to clarify that a firearm reported missing almost a year earlier had been in the Licensed premises the entire time, Phil Flack testified that, “it was squirreled away somewhere” in his shop.

A review of Licensee’s A&D record introduced by the Government demonstrates that Licensee periodically logged the acquisition and disposition of firearms accurately and timely. It is evident that Licensee’s failures to do so on numerous occasions demonstrates plain indifference to its known responsibilities.

A federal firearms licensee has a duty to be cognizant of the rules and regulations issued by ATF and to follow those mandates. It was apparent that the Licensee, who was a veteran firearms dealer, knew and understood his responsibilities, and was repeatedly advised of the responsibilities, and periodically complied with the GCA, yet was plainly indifferent to the firearms laws and regulations. *See CEW Props v. United States DOJ*, 979 F.3d at 1279-1281 (veteran FFL who had been trained by ATF regarding compliance with GCA and periodically complied with GCA was plainly indifferent to these responsibilities when he violated the GCA); *Simpson v. AG United States*, 913 F.3d at 114-15 (same).

I find that Licensee willfully violated 18 U.S.C. § 922(t) and 27 CFR § 478.102(c) when it failed to initiate a new NICS background check for a transferee after 30 days had lapsed since a prior NICS check was conducted.

I find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1) when it failed to ensure that the transferee correctly recorded the required information on the ATF Form 4473.

I find that Licensee willfully violated 18 U.S.C. § 922(g)(1)(A) and 27 C.F.R. §§ 478.21a when it failed to ensure that the ATF Form 4473 was complete and accurate as required prior to transferring a firearm.

I find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.123(b) when it failed to timely and/or accurately record the disposition of firearms to a licensee in its Acquisition and Disposition Record.

I find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.123(d) when it failed to timely and/or accurately record the acquisition and disposition of firearms to a nonlicensee in its Acquisition and Disposition Record. I further find that Licensee's willful violation resulted in Licensee's inability to account for the disposition of at least [REDACTED] firearms requiring the filing of a theft/loss report.

I find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.123(a) when it failed to timely and/or accurately record the Manufacture or acquisition of firearms in its Acquisition and Disposition Record.

I find that Licensee violated 18 U.S.C. § 923(g)(3)(A) and 27 C.F.R. § 478.126a when it failed to report the multiple sales or other dispositions of pistols or revolvers in [REDACTED] instance; however, I do not find the violation to be willful.

I find that Licensee willfully violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(i) when it failed to verify and record identification documents on the ATF Form 4473.

I find that Licensee violated 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv) when it failed to document NICS information on the ATF Form 4473 in [REDACTED] instance; however, I do not find the violation to be willful.

As such, I conclude that the Licensee willfully violated the provisions of the Gun Control Act, as amended, and the regulations issued thereunder. Accordingly, as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Tumbleweed Enterprises, Inc., doing business as P.F. Custom Guns, is hereby REVOKED.