

1 C. D. Michel – S.B.N. 144258  
Joseph A. Silviso, III – S.B.N. 248502  
2 Anna M. Barvir – S.B.N. 268728  
Michel & Associates, P.C.  
3 180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802  
4 Tel: (562) 216-4444  
Fax: (562) 216-4445  
5 E-mail: cmichel@michellawyers.com

6 Attorneys for Claimant Chris Cook

7  
8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 APPROXIMATELY 3,804 FIREARMS,

14 Defendant,

15 CHRIS COOK,

16 Claimant.  
17

No. 1:14-CV-01999-JAM-SAB

**VERIFIED ANSWER TO VERIFIED  
COMPLAINT FOR FORFEITURE IN REM**

18  
19 Claimant, Chris Cook, by and through his undersigned counsel, hereby files his Answer  
20 and Affirmative Defenses to the Plaintiffs’ Verified Complaint for Forfeiture *In Rem* and admits,  
21 denies, and alleges as follows:

22 **NATURE OF ACTION**

- 23 1. Answering Paragraph 1 of the Complaint, Claimant admits that this is a civil action *in*  
24 *rem*. Claimant denies that the remaining allegations contained in Paragraph 1 are true and correct.  
25 2. Answering Paragraph 2 of Complaint, Claimant denies that the allegations of the  
26 Complaint are true and correct.  
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**JURISDICTION AND VENUE**

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2 3. Answering Paragraph 3 of the Complaint, Claimant denies that the Court has jurisdiction  
3 pursuant to 18 U.S.C. § 924 because the EP Precursors at issue in this case are not “firearms” and  
4 thus not subject to 18 U.S.C. § 924. Claimant admits the remaining allegations contained in  
5 Paragraph 3.

6 4. Claimant admits the allegations contained in Paragraph 4 of the Complaint.

7 **BACKGROUND**

8 **Definition of a Firearm**

9 5. Answering Paragraph 5 of the Complaint, Claimant admits that Title 18, United States  
10 Code, Section 921(a)(3) defines a “firearm” as “any weapon . . . which will or is designed to or  
11 may readily be converted to expel a projectile by the action of an explosive.” Claimant admits  
12 that this definition includes “the frame or receiver of any such weapon.” Claimant denies that the  
13 remaining allegations contained in Paragraph 5 are true and correct.

14 **The AR-15 Platform**

15 6. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
16 that an example of an AR-15 is depicted in Paragraph 6 of the Complaint because there is no way  
17 to determine whether the depicted firearm is an AR-15 without physically examining the rifle  
18 itself, and on that basis denies that allegation. Claimant denies that the remaining allegations  
19 contained in Paragraph 6 are true and correct.

20 7. Answering Paragraph 7 of the Complaint, Claimant admits that “the AR-15 style rifle is a  
21 two-part system generally comprised of a lower and upper receiver.” Claimant is without  
22 sufficient knowledge to form a belief as to the truth of the allegation that the major parts of an  
23 AR-15 style rifle are labeled and depicted in Paragraph 7 of the Complaint because there is no  
24 way to determine whether the depicted firearm is an AR-15 without physically examining the  
25 rifle itself, and on that basis denies that allegation. Claimant denies that the remaining allegations  
26 contained in Paragraph 7 are true and correct.

27 8. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
28 that the firearm depicted in Paragraph 8 of the Complaint is an AR-15 rifle (disassembled)

1 because there is no way to determine whether the depicted firearm is an AR-15 without physically  
2 examining the rifle itself, and on that basis denies that allegation.

3 9. Claimant admits the allegations contained in Paragraph 9 of the Complaint.

4 10. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
5 that a lower receiver for an AR-15-style rifle is depicted in Paragraph 10 of the Complaint.

6 Claimant denies that the remaining allegations contained in Paragraph 10 are true and correct.

7 11. Claimant denies that the allegations contained in Paragraph 11 of the Complaint are true  
8 and correct.

9 12. Answering Paragraph 12 of the Complaint, Claimant admits that drill presses, hand drills,  
10 and Dremel tools are readily available at most hardware/home improvement stores. Claimant  
11 denies that the remaining allegations contained in Paragraph 12 are true and correct.

12 13. Claimant denies that the allegations contained in Paragraph 13 of the Complaint are true  
13 and correct.

14 14. Claimant denies that the allegations contained in Paragraph 14 of the Complaint are true  
15 and correct.

16 15. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
17 contained in Paragraph 15 of the Complaint that “[t]he ATF Firearms Technology Branch  
18 (“FTB”) provides expert technical support to ATF, other Federal agencies, state and local law  
19 enforcement, the firearms industry, Congress and the general public is the specific office within  
20 the ATF that examines and classifies firearms in accordance with the definition provided in 18  
21 U.S.C. § 921(a)(3)(A),” and on that basis denies that allegation. Claimant denies that FTB seized  
22 and reviewed AR-15 lower receivers, but admit that FTB classified the EP Precursors at issue as  
23 “firearms” as defined by 18 U.S.C. § 921(a)(3)(A). Claimant also admits that this determination  
24 was based on the following findings, but deny the accuracy of those findings: “the material  
25 comprising the main body of the lower receiver is formed at a different time in the manufacturing  
26 process than the material that comprises the plug, thus, when the fire control cavity is formed, the  
27 casting reaches a point in the process to be classified as a “firearm”; the purpose of the insert---  
28 the white polymer material above---is to index [footnote omitted] the fire control cavity; and a

1 second indexing exists because the receivers contain excess exterior material that indicate the  
2 selector, the trigger pin, and hammer.” Claimant denies that the allegations contained in  
3 Paragraph 15, footnote 2, are true and correct.

4 16. Claimant denies that the allegations contained in Paragraph 16, including footnote 3, of  
5 the Complaint are true and correct.

6 17. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
7 contained in Paragraph 17 of the Complaint, and on that basis denies each and every allegation  
8 contained therein.

9 18. Answering Paragraph 18 of the Complaint, Claimant admits that he owns and operates a  
10 business known as EP Armory, EP Lowers, EP Arms, and The Armory. Claimant denies that the  
11 remaining allegations contained in Paragraph 18 are true and correct.

12 **Undercover Controlled Purchase – Fresno County Gun Show**

13 19. Answering Paragraph 19 of the Complaint, Claimant admits that there was a Fresno  
14 County Gun Show in Fresno, California, on January 25, 2014. Claimant also admits that  
15 EPLOWERS.com redirects to a website that he owns. Claimant is without sufficient knowledge  
16 to form a belief as to the truth of the remaining allegations contained in Paragraph 19 of the  
17 Complaint, and on that basis denies the remaining allegations contained therein.

18 20. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
19 contained in Paragraph 20 of the Complaint, and on that basis denies each and every allegation  
20 contained therein.

21 21. Answering Paragraph 21 of the Complaint, Claimant denies selling lower receivers on the  
22 website [www.eplowers.com](http://www.eplowers.com). Claimant is without sufficient knowledge to form a belief as to the  
23 truth of the remaining allegations contained in Paragraph 21 of the Complaint, and on that basis  
24 denies those allegations.

25 **Undercover Controlled Purchase – Phone Order**

26 22. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
27 contained in Paragraph 22 of the Complaint, and on that basis denies each and every allegation  
28 contained therein.

1 23. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
2 contained in Paragraph 23 of the Complaint, and on that basis denies each and every allegation  
3 contained therein.

4 **Cook's Licensing Status and ATF's Notification that EP Armory's AR-15 Lower**  
5 **Receivers Are Firearms**

6 24. Answering Paragraph 24 of the Complaint, Claimant denies that he never applied for an  
7 FFL 07 license. Claimant admits the remaining allegations contained in Paragraph 24.

8 25. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
9 contained in Paragraph 25 of the Complaint, and on that basis denies each and every allegation  
10 contained therein.

11 26. Answering Paragraph 26 of the Complaint, Claimant denies that he "[t]o become a FFL,  
12 Cook received training or information from the ATF regarding "the unlawfulness of the  
13 possession of a firearm transferred in violation of the above; the unlawfulness of the possession of  
14 a firearm which was manufactured in violation of the above; the unlawfulness of the receipt or  
15 possession of a firearm which was not registered to the possessor." Claimant admits the  
16 remaining allegations contained in Paragraph 26.

17 27. Answering Paragraph 27, Claimant admits that his attorney sent correspondence to the  
18 FTB in July 2013 seeking a determination on whether the item that Claimant designed and  
19 manufactured was a "firearm" under applicable laws. Claimant denies that the remaining  
20 allegations contained in Paragraph 27 are true and correct.

21 28. Claimant denies that the allegations contained in Paragraph 28 of the Complaint are true  
22 and correct.

23 29. Answering Paragraph 29 of the Complaint, Claimant admits that a determination letter  
24 was delivered from FTB to EP Armory's attorney on or around February 13, 2014. Claimant  
25 denies that the EP Precursors are lower receivers/AR-15 lower receivers, but admit that the EP  
26 Precursors were classified as "firearms" as defined by 18 U.S.C. section 921(a)(3). Claimant also  
27 admits that Cook, through his attorney in a letter dated March 4, 2014, requested the FTB to  
28 reconsider its classification of the EP Precursors as "firearms," but deny that the EP Precursors

1 are AR-15 polymer lower receivers. Claimant admits that the FTB declined to reconsider its  
2 determination.

3 **Undercover Controlled Purchase – EP Armory Website**

4 30. Answering Paragraph 30 of the Complaint, Claimant admits that EP Armory’s shipping  
5 address is 7850 White Lane, Suite E271, Bakersfield, CA 93309 (an address corresponding to a  
6 box at a mail store). Claimant admits that the EP Armory website did not initiate a background  
7 check and did not complete ATF Form 4473. Claimant denies that the EP Armory website did  
8 not request the ATF Agent’s personal information. Claimant denies that ATF received in the mail  
9 six lower receiver firearms. Claimant denies that the items received did not possess the “required  
10 markings, such as a serial number or manufacturer name,” because EP Precursors are not  
11 receivers or firearms subject to federal regulation. Claimant is without sufficient knowledge to  
12 form a belief as to the truth of the remaining allegations contained in Paragraph 30, and on that  
13 basis denies those allegations.

14 31. Answering Paragraph 31 of the Complaint, Claimant admits that EP Armory’s shipping  
15 address is 7850 White Lane, Suite E271, Bakersfield, CA 93309. Claimant admits that the EP  
16 Armory website did not initiate a background check and did not complete ATF Form 4473.  
17 Claimant denies that the EP Armory website did not request the ATF Agent’s personal  
18 information. Claimant denies that ATF received in the mail a lower receiver firearm. Claimant  
19 denies that the item received did not possess the “required markings, such as a serial number or  
20 manufacturer name,” because EP Precursors are not receivers or firearms subject to federal  
21 regulation. Claimant is without sufficient knowledge to form a belief as to the truth of the  
22 remaining allegations contained in Paragraph 31, and on that basis denies those allegations.

23 **Conversion of an EP Armory Lower Receiver to a Functional Rifle**

24 32. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
25 contained in Paragraph 32 of the Complaint, and on that basis denies each and every allegation  
26 contained therein.

27 33. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
28 contained in Paragraph 33 of the Complaint, and on that basis denies each and every allegation

1 contained therein.

2 **Undercover Controlled Purchase – Cook Storefront**

3 34. Answering Paragraph 34 of the Complaint, Claimant admits that his retail store is located  
4 at 7400 District Boulevard, Suite A, Bakersfield, California. Claimant also admits that, on  
5 February 20, 2014, the exterior signage of Claimant’s retail store separately promoted ‘EP  
6 ARMORY’ and ‘THE ARMORY.’ ” Claimant admits that, on February 20, 2014, his retail “store  
7 contained various items for sale,” including “firearm parts and firearm paraphernalia,” Claimant  
8 denies that his retail store contained firearms for sale to the public on February 20, 2014.

9 Claimant also denies that ATF agents purchased “eleven AR-15 polymer lower receivers” on  
10 February 20, 2014. Claimant is without sufficient knowledge to form a belief as to the truth of the  
11 remaining allegations contained in Paragraph 34, and on that basis denies those allegations.

12 35. Answering Paragraph 35 of the Complaint, Claimant denies the allegation that it sold an  
13 AR-15 polymer lower receiver that did not possess the required markings, such as a serial number  
14 or manufacturer name, because the EP Precursor is not a lower receiver and thus not subject to  
15 regulations. Claimant is without sufficient knowledge to form a belief as to the truth of the  
16 remaining allegations contained in Paragraph 35, and on that basis denies those allegations.

17 36. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
18 in Paragraph 36 of the Complaint that “Cook mentioned several instructional videos available on  
19 YouTube that assisted in the milling process,” and on that basis denies that allegation. Claimant  
20 denies that the remaining allegations contained in Paragraph 36 are true and correct.

21 **Execution of Federal Search Warrants and Interview of Chris Cook**

22 37. Answering Paragraph 37 of the Complaint, Claimant admits that “on March 7, 2014, ATF  
23 agents executed federal search warrants at EP Armory’s retail store at 7400 District Boulevard,  
24 Suite A, Bakersfield, California, and Cook’s personal residence in Bakersfield.” Claimant denies  
25 that the remaining allegations contained in Paragraph 37 are true and correct.

26 38. Claimant is without sufficient knowledge to form a belief as to the truth of the allegation  
27 in Paragraph 38 of the Complaint that the items seized by ATF from Claimant’s store are  
28 “identical to the lower receivers ATF agents purchased from EP Armory’s website and Person A

1 (at the gun show and over the phone),” and on that basis denies that allegation. Claimant is also  
2 without sufficient knowledge to form a belief as to the truth of the allegation that the examples  
3 depicted in Paragraph 38 are examples of the items seized from EP Armory on March 7, 2014.  
4 Claimant denies that the remaining allegations contained in Paragraph 38 are true and correct.

5 39. Claimant denies that the allegations contained in Paragraph 39 of the Complaint are true  
6 and correct.

7 40. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
8 contained in Paragraph 40 of the Complaint, and on that basis denies each and every allegation  
9 contained therein.

10 41. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
11 contained in Paragraph 41 of the Complaint, and on that basis denies each and every allegation  
12 contained therein.

13 **Rollover Seizures of Defendant Firearms**

14 42. Claimant denies that the allegations contained in Paragraph 42 of the Complaint are true  
15 and correct.

16 43. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
17 contained in Paragraph 43 of the Complaint, and on that basis denies each and every allegation  
18 contained therein.

19 44. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
20 contained in Paragraph 44 of the Complaint, and on that basis denies each and every allegation  
21 contained therein.

22 45. Claimant is without sufficient knowledge to form a belief as to the truth of the allegations  
23 contained in Paragraph 45 of the Complaint, and on that basis denies each and every allegation  
24 contained therein.

25 46. Claimant denies that the allegations contained in Paragraph 46 of the Complaint are true  
26 and correct.

27 47. Answering Paragraph 47 of the Complaint, Claimant is without sufficient knowledge to  
28 form a belief as to the truth of the allegation on what the review of databases revealed, and on that



1 basis denies that allegation. Claimant denies that the sale or transfer of the EP Precursor requires  
2 the execution of ATF Form 4473 and the initiation of the required background check because  
3 such precursors are not lower receiver firearms and thus are not subject to federal regulation.

4 **ANSWER TO FIRST CLAIM FOR RELIEF**  
5 **18 U.S.C. § 924(d)(1)**

6 48. All responses made to Paragraphs 1 through 47 of the Complaint are re-alleged and  
7 incorporated herein, by reference.

8 49. Claimant denies the allegations contained in Paragraph 49 of the Complaint.  
9 The remainder of the Complaint, beginning with the word “WHEREFORE” constitutes a prayer  
10 for specific relief to which no answer is required. To the extent a response is appropriate,  
11 Defendants deny that the relief requested is proper or justified by the facts of this case.

12 50. Claimants deny any and all allegations not specifically admitted above.

13 51. The affirmative defenses set forth below are asserted based on information and belief.

14 **CLAIMANT’S AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**  
16 **[Failure to State a Cause of Action]**

17 52. The Complaint for forfeiture *in rem* fails to state a claim upon which relief can be granted.

18 **SECOND AFFIRMATIVE DEFENSE**  
19 **[Estoppel]**

20 53. This Court lacks jurisdiction pursuant to 18 U.S.C. § 924 because the EP Precursors at  
21 issue in this case are not “firearms” and thus not subject to 18 U.S.C. § 924.

22 **THIRD AFFIRMATIVE DEFENSE**  
23 **[Good Faith]**

24 55. The Government is estopped from obtaining a forfeiture judgment because it obtained the  
25 seizure warrant through incorrect, misleading, or incomplete allegations.

26 **FOURTH AFFIRMATIVE DEFENSE**  
27 **[Innocent Owner]**

28 56. Claimant acted in good faith at all times relevant to the Complaint.

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**FIFTH AFFIRMATIVE DEFENSE**  
**[Bad Faith]**

57. Claimant, as an innocent owner, did not know, or have reason to know, that the property in question was being employed or was likely to be employed in criminal activity.

**SIXTH AFFIRMATIVE DEFENSE**  
**[Fourth Amendment]**

58. The Government cannot obtain a forfeiture judgment because it has not acted in good faith.

**SEVENTH AFFIRMATIVE DEFENSE**

59. Plaintiff's seizure of the defendant property violates the Claimant's Fourth Amendment right to be free from illegal searches and seizures.

**RELIEF**

60. WHEREFORE, this answering Claimant respectfully prays that the Court will:
- a. Dismiss the Government's Complaint and enter judgment on behalf of the Claimant;
  - b. Deny issuance of a certificate of probable cause pursuant to 28 U.S.C.A. § 2465 and award cost and attorney's fees to the Claimant; and
  - c. Provide such relief as the Court deems proper and just.

Date: February 6, 2015

Respectfully submitted,  
**Michel & Associates, P.C.**

/s/ C.D. Michel  
C.D. Michel  
*Counsel for Claimant*

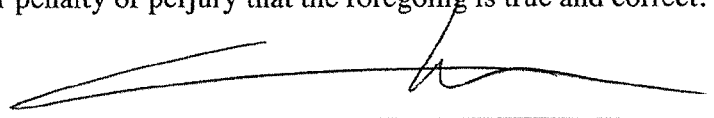
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**VERIFICATION**

I, Chris Cook, hereby verify and declare under penalty of perjury that I have read the foregoing Verified Answer to Verified Complaint for Forfeiture *In Rem* and know the contents thereof, and that the matters contained in the Answer are true to the best of my knowledge, information, and belief.

I hereby verify and declare under penalty of perjury that the foregoing is true and correct.

Date: February 6, 2015



Chris Cook  
*Claimant*

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPROXIMATELY 3,804 FIREARMS,

Defendant,

CHRIS COOK,

Claimant.

No. 1:14-CV-01999-JAM-SAB

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

I am not a party to the above-entitled action. I have caused service of:

**VERIFIED ANSWER TO VERIFIED COMPLAINT FOR FOREFEITURE *IN REM***

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them:

Benjamin B. Wagner  
United States Attorney  
Kevin C. Khasigian  
Assistant U.S. Attorney  
501 "I" Street, Suite 10-100  
Sacramento, CA 95814  
*Attorneys for the United States*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2015

/s/ C. D. Michel  
C.D. Michel  
*Counsel for Plaintiffs*