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EUGENE EVAN BAKER

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EUGENE EVAN BAKER,

Plaintiff,

vs.

ERIC R. HOLDER, JR., in his
official capacity as ATTORNEY
GENERAL OF THE UNITED STATES,
with offices at 950
Pennsylvania Avenue, N.W.,
Washington, D.C., 20530-0001

Defendant.

Case No: CV 10-3996-SVW(AJWx)

**PLAINTIFF'S RESPONSE TO
DEFENSE MOTION TO DISMISS
COMPLAINT**

Complaint Served On USAO:
5/27/10

Current Response Date:
10/4/10

Current Hearing Date:
10/25/10

Hon. Stephen V. Wilson
United States District Judge

Plaintiff EUGENE EVAN BAKER herewith submits his Response to
the defense Motion to Dismiss the within Complaint.

Dated: September 25, 2010.

Respectfully submitted,

LAW OFFICES OF FRANKLIN S. ADLER

/s/

FRANKLIN S. ADLER
Attorney for Plaintiff
EUGENE EVAN BAKER

1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
2 PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

3 -INTRODUCTION-

4 As was mentioned in his Motion To Continue Response Date, after
5 plaintiff was served with defendant's Motion to Dismiss it was
6 discovered that Paragraph 15 of the Complaint contained inaccurate
7 information concerning the events of early June, 2009. When
8 documentary materials were obtained supporting the true events of
9 that time, notice was promptly transmitted to counsel for the
10 defendant as well as copies of the documents. The import of this
11 new information has a significant impact on the Standing and
12 Ripeness arguments of the Motion to Dismiss; and, as a consequence
13 of these events, the Response and Hearing dates of the Motion to
14 Dismiss were continued.

15 On June 8th, 2009, plaintiff attempted to purchase firearms from
16 Ojai Valley Surplus and was rejected because of his 1997 conviction
17 for domestic abuse. Given this, he has standing to pursue the
18 within matter and the matter is ripe because of the personal injury
19 he has suffered.

20 The crux of the matter is whether, given the set-aside of that
21 conviction pursuant to California Penal Code §1203.4,¹ [hereafter
22 _____

23 ¹ California Penal Code Section 1203.4: "(a) In any case in which a
24 defendant has fulfilled the conditions of probation for the entire period of
25 probation, or has been discharged prior to the termination of the period of
26 probation, or in any other case in which a court, in its discretion and the
27 interests of justice, determines that a defendant should be granted the relief
28 available under this section, the defendant shall, at any time after the
termination of the period of probation, if he or she is not then serving a
sentence for any offense, on probation for any offense, or charged with the
commission of any offense, be permitted by the court to withdraw his or her
plea of guilty or plea of nolo contendere and enter a plea of not guilty; or,
if he or she has been convicted after a plea of not guilty, the court shall set
aside the verdict of guilty; and, in either case, the court shall thereupon

1 "\$1203.4."] plaintiff comes within the relief offered by 18 U.S.C.
2 §921(33)(B)(ii)² [hereafter "\$921(33)(B)(ii)"] to escape the lifetime
3 ban on the possession of firearms by one convicted of domestic
4 violence pursuant to 18 U.S.C. §922(g)(9).³ [hereafter "\$922(g)(9)."]

5 The defense relies exclusively on holding in the recent Ninth
6 Circuit case of Jennings v. Mukasey, 511 F.3d 894 (9th Cir. 2007)
7 [hereafter "Jennings".] in support of their contention that
8 plaintiff's §1203.4 set-aside of his California misdemeanor
9 domestic violence does not expunge his conviction for the purposes
10 of §922(g)(9).

11 Plaintiff contends that because the Jennings court failed to
12 observe and follow binding United States Supreme Court precedent it
13 used the wrong criteria by which to evaluate §1203.4 and reached a
14 demonstrably wrong result.

15 Further, their misreading of applicable precedent infected
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17 dismiss the accusations or information against the defendant and except as
18 noted below, he or she shall thereafter be released from all penalties and
disabilities resulting from the offense of which he or she has been convicted,

19 Dismissal of an accusation or information pursuant to this section does not
20 permit a person to own, possess, or have in his or her custody or control any
firearm or prevent his or her conviction under Section 12021. ... "

21 ² 18 U.S.C. §921(33)(B)(ii): "A person shall not be considered to have
22 been convicted of such an offense for purposes of this chapter if the
23 conviction has been expunged or set aside, or is an offense for which the
24 person has been pardoned or has had civil rights restored (if the law of the
applicable jurisdiction provides for the loss of civil rights under such an
offense) unless the pardon, expungement, or restoration of civil rights
expressly provides that the person may not ship, transport, possess, or receive
firearms."

25 ³ 18 U.S.C. §922(g)(9): "It shall be unlawful for any person - who has
26 been convicted in any court of a misdemeanor crime of domestic violence
[hereafter, "MCDV"], to ship or transport in interstate or foreign commerce, or
27 possess in or affecting commerce, any firearm or ammunition; or to receive any
firearm or ammunition which has been shipped or transported in interstate or
28 foreign commerce."

1 their analysis of another Ninth Circuit case, United States v.
2 Laskie, 258 F.3d 1047 (9th Cir. 2001), which addresses a significant,
3 and we believe, compelling issue concerning the effect of a \$1203.4
4 set-aside⁴ upon federal firearms law.

5 For these, and the resolution of additional topics mentioned
6 herein, it is urged that the Motion To Dismiss be denied.

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27 ⁴ For the purposes of this Response, plaintiff uses the words
28 "expungement," "dismissal" and "set-aside" almost interchangeably, given that
we believe there is no issue presented concerning the import of these words
upon the issues raised herein.

ARGUMENT

1. THIS CASE PRESENTS A LIVE CONTROVERSY WHICH THIS COURT SHOULD
RESOLVE.

A. Standing

On June 8th, 2009, plaintiff attended a Ventura County, California gun show and examined firearms at the booth of Ojai Valley Surplus, [hereafter "Ojai".] a federally-licensed firearms dealer. Plaintiff fully and honestly completed a "Dealer's Record of Sale of Firearm ["DROS"]," and paid for the purchase of two firearms and two federally-mandated firearm transfer fees (one for each weapon) subject to the mandatory 10-day waiting period before he could physically obtain either weapon. (Attached hereto is Exhibit 4, a copy the DROS form, and incorporated by reference as though fully set forth at this place.)

The information on the DROS form was immediately transmitted to the Bureau of Firearms of the Division of Law Enforcement of the California Department of Justice. [hereafter "Bureau" or "DOJ".] On the same date the Bureau sent Ojai a letter stating, inter-alia, that plaintiff "is a person not eligible to posses (sic) a firearm." (Attached hereto is Exhibit 5, a copy of said June 8, 2009, DOJ letter, and incorporated by reference as though fully set forth at this place.) Ojai refunded the monies paid and plaintiff never obtained those weapons.

On August 25th, 2010, in response to an inquiry from plaintiff's counsel, the Bureau sent plaintiff a letter explaining why his attempted firearms purchase had been rejected. The letter states that the DOJ has "...identified a record in a state or federal database which indicates that you are prohibited by state and/or

1 federal law from purchasing or possessing firearms." The specific
2 reason given is "Misdemeanor domestic violence convictions (273.5PC,
3 243(E)(1)PC Convictions over 10 years old)-Federal Brady Act,
4 effected November 30, 1998." (Attached hereto is Exhibit 6, a copy
5 of said August 25, 2010, DOJ letter, and incorporated by reference
6 as though fully set forth at this place.)

7 Defendant's standing argument is flawed because it relied on
8 the inadvertent misinformation contained in Paragraph 15 of the
9 complaint. We acknowledge that a plaintiff must demonstrate an
10 "injury in fact" to establish "a case or controversy" within the
11 meaning of Article III, and that that "injury in fact" must be
12 concrete and not conjectural. Lujan v. Defenders of Wildlife, 504
13 U.S. 555, 560 (1992). But, whereas defendant cites Lujan only as
14 black-letter law for its' holding, plaintiff prefers to cite the
15 Lujan case for its' specific enunciation of the three elements of
16 standing:

17 "Over the years, our cases have established
18 that the irreducible constitutional minimum of
19 standing contains three elements. First, the
20 plaintiff must have suffered an 'injury in
21 fact'-an invasion of a legally protected
22 interest which is (a) concrete and
23 particularized,..., and (b) "actual or imminent,
24 not 'conjectural' or 'hypothetical,'
25 Second, there must be a causal connection
26 between the injury and the conduct complained
27 of-the injury has to be 'fairly... trace[able]
28 to the challenged action of the defendant, and
not... th[e] result [of] the independent action
of some third party not before the court.'
Third, it must be 'likely,' as opposed to merely
'speculative, that the injury will be 'redressed
by a favorable decision.'" Lujan, supra, at 560-
561. (Cases and citations omitted.)

27 Taking these elements in order: Mr. Baker has suffered an
28 "injury in fact;" defendant's refusal to allow him to enjoy his

1 Second Amendment rights. Second, that injury is a direct result of
2 his placement upon a list of persons restricted from enjoying their
3 Second Amendment rights pursuant to §922(g)(9). Third, the removal
4 of plaintiff's name from the list of proscribed individuals pursuant
5 to the Order of this court will fully redress plaintiff's injury.

6 In light of the above, it is beyond dispute that plaintiff
7 attempted to purchase two firearms from Ojai, that he was denied the
8 purchase of those firearms pursuant to federal law and that the
9 within Complaint represents his claim that he was unlawfully denied
10 a firearm. There is no conjecture as to the events of June, 2009,
11 nor as to plaintiff's standing to sue.

12 **B. Ripeness**

13 Plaintiff agrees with defendant that the issue of "Ripeness"
14 prevents "premature adjudication," that is, complaints brought
15 involving no "injury in fact." Plaintiff has sustained an injury in
16 fact because the government has placed his name upon the list of
17 person's prohibited from purchasing firearms pursuant to §922(g)(9)
18 because of his earlier conviction of a misdemeanor crime of domestic
19 violence [hereafter: "MCDV."] when that conviction has been set-
20 aside pursuant to state law with no express provision that the
21 individual may not ship, transport, possess or receive firearms."

22 These events took place in the past and our desired relief is
23 not contingent upon future events. The allegations and proof of
24 those allegations are to be found in Exhibits 4, 5, and 6. He
25 asserted his Second Amendment rights when he attempted to purchase
26 firearms.

27 The government argues that the defendant has not notified Mr.
28 Baker that he will be prosecuted for unlawful possession or use of

1 a firearm. (Motion to Dismiss [hereafter "MOD"], Pg. 4.) We are
2 unaware of any requirement that the government affirmatively notify
3 all who fall within the reach of §922(g)(9), but a letter from the
4 California DOJ to one having been refused the purchase of two
5 firearms because that person is prohibited from possessing a firearm
6 is fairly good notice that if he/she is found by law enforcement to
7 possess a firearm, he/she will be prosecuted.

8 Mr. Baker has demonstrated his fealty to the law by coming to
9 this court to proclaim his rights rather than obtain a firearm
10 through "other" means, thus rendering himself a criminal.

11 He has asserted and continues to assert his rights. His case
12 is ripe for adjudication.

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1 II THE WITHIN COMPLAINT SUCCESSFULLY STATES A CLAIM UPON
2 WHICH RELIEF SHOULD BE GRANTED.

3 A. Introduction

4 The resolution of this matter turns upon an understanding
5 of the manner in which our High Court has addressed the interplay of
6 state expungement statutes and federal firearms law, the two primary
7 federal statutes involved in this matter, the specific content of
8 the two primary California set-aside and firearms laws involved in
9 this matter, a thorough analysis of why the Jennings decision is
10 flawed and not worthy of precedential merit, why this court should
11 follow the Ninth Circuit Laskie case, and the two recent landmark
12 decisions from the United States Supreme Court concerning the Second
13 Amendment. Plaintiff believes that a fair and equitable analysis of
14 these topics will result in his obtaining a favorable ruling in this
15 case.

16 B. The Treatment of State Expungement Laws By the United States
17 Supreme Court.

18 In 1983, the United States Supreme Court decided Dickerson
19 v. New Banner Institute, 460 U.S. 120 (1983), evidencing a most
20 grudging treatment of state expungement laws. Mr. Justice Blackmun
21 decried the range of topics presented by the panoply of the
22 expungement laws of the states and sneeringly wrote that they
23 amounted to "nothing less than a national patchwork." (Dickerson, at
24 123.)

25 "Finally, a rule that would give effect to
26 expunctions under varying state statutes would
27 seriously hamper effective enforcement of Title
28 IV. Over half the States have enacted one or
more statutes that may be classified as
expunction provisions that attempt to conceal
prior convictions or to remove some of their

1 collateral or residual effects. These statutes
 2 differ, however, in almost every particular.
 3 Some are applicable only to young offenders,...,
 4 Some are available only to persons convicted of
 5 certain offenses, ...; others, however, permit
 6 expunction of a conviction for any crime
 7 including murder, Some are confined to
 8 first offenders,... . Some are discretionary,
 9 ... while others provide for automatic
 10 expunction under certain circumstances,
 11 The statutes vary in the language employed to
 12 describe what they do. Some speak of expunging
 13 the conviction, others of "sealing" the file or
 14 of causing the dismissal of the charge. The
 statutes also differ in their actual effect.
 Some are absolute; others are limited. Only a
 minority address questions such as whether the
 expunged conviction may be considered in
 sentencing for a subsequent offense or in
 setting bail on a later charge, or whether the
 expunged conviction may be used for impeachment
 purposes, or whether the convict may deny the
 fact of his conviction. Some statutes, too,
 clearly were not meant to prevent use of the
 conviction in a subsequent prosecution."
 (Dickerson, at 121) (cases and citations
 omitted.)

15 Mr. Justice Blackmun closed by seemingly saying that the
 16 federal judiciary couldn't be bothered with deciphering the
 17 expungement laws of the 50 states because Congress surely did not
 18 intend for that to occur:

19 "... . In short, the record of a conviction
 20 expunged under Iowa law is not expunged
 completely.

21 Under the decision below, perplexing
 22 problems would confront those required to
 23 enforce federal gun control laws as well as
 24 those bound by their provisions. Because, as we
 25 have noted, Title IV [of the Omnibus Crime
 26 Control and Safe Streets Act of 1968, 82
 27 Stat.226, amended by the Gun Control Act of
 28 1968, 82 Stat. 1214, now appearing as 18 U.S.C.
 §921, et. seq.] 'is a carefully constructed
 package of gun control legislation,' Scarborough
v. United States, 431 U. S., at 570, Congress,
 in framing it, took pains to avoid the very
 problems that the Court of Appeals' decision
 inevitably would create, such as individualized
 federal treatment of every expunction law.
 Congress used unambiguous language in attaching

1 gun control disabilities to any person "who has
2 been convicted" of a qualifying offense. We give
3 full effect to that language." (Dickerson, at
122.)

4 It only took Congress three years to prove that Mr. Justice
5 Blackmun had misread their intentions. In May, 1986, Congress
6 passed Public Law (P.L.) No. 99-308, The Firearms Owners' Protection
7 Act. Section 101(5) of P.L. 99-308 reverses Dickerson's rationale.

8 In Caron v. United States, 524 U.S. 308 (1998), the High Court
9 fully recognized the intent of Congress in repudiating the words of
10 Mr. Justice Blackmun:

11 "... . Until 1986, federal law alone determined
12 whether a state conviction counted, regardless
13 of whether the State had expunged the
14 conviction. Dickerson v. New Banner Institute,
460 U. S. 103, 119-122 (1983). Congress
modified this aspect of Dickerson by adopting
the following language:

15 "What constitutes a conviction of
16 such a crime shall be determined in
17 accordance with the law of the
18 jurisdiction in which the proceedings
19 were held. Any conviction which has
20 been expunged, or set aside or for
21 which a person has been pardoned or
22 has had civil rights restored shall
23 not be considered a conviction for
purposes of this chapter, unless such
pardon, expungement, or restoration
of civil rights expressly provides
that the person may not ship,
transport, possess, or receive
firearms." § 921(a)(20)." Caron, at
312-313.) (emphasis added)

24 The import of the Caron recognition that Congress fully
25 intended that the expungement law(s) of each state be individually
26 interpreted by the federal courts is of inestimable importance in
27 the adjudication of our case. Congress instructed us that the
28 expungement law of one state, in terms of both procedural and

1 substantive elements, is to be interpreted *sui generis*, and not in
2 comparison with the expungement law of another state or states. For
3 instance, if the issue to be addressed by a federal court concerns
4 whether an expunged "State X" conviction may be plead and proven as
5 a prior conviction in that state, the topic of whether the relief
6 afforded by that expungement statute is discretionary with the court
7 or automatically granted has no relevance to the case at bar.

8 There is no "Model Penal Code Expungement Statute" and federal
9 courts are not free to impose their perceived shortcomings upon a
10 state set-aside statute and, if they rule that statute wanting as to
11 one or more of those "shortcomings," that ruling does not pass
12 muster and is not worthy of respect from other judges or tribunals
13 analyzing other state set-aside statutes.

14 There are only three issues which should be addressed in our
15 case: first, does California have an expungement or set-aside
16 statute; second, was Mr. Baker properly granted relief under that
17 statute; and third, does the law itself or the document affording
18 him the relief promised by that statute contain an express provision
19 that he may not "ship, transport, possess or receive firearms?"
20 (§921(33)(B)(ii.))

21 C. 18 U.S.C. §922(G)(9) and 18 U.S.C. §921(33)(B)(ii)

22 §922(g)(9) is a most straightforward and precise statute:
23 anyone who has been convicted of a misdemeanor crime of domestic
24 violence is forever barred from shipping, transporting in interstate
25 or foreign commerce, or possessing in or affecting commerce, any
26 firearm or ammunition; or to receive any firearm or ammunition which
27 has been shipped or transported in interstate or foreign commerce.
28 Plaintiff has been convicted of such a crime and is, unless in

1 possession of an Order granting him the relief sought herein,
2 forever barred. The foremost issue we face is whether he now stands
3 convicted of that offense for the purposes of §922(g)(9).

4 We respectfully submit that that conviction no longer stands
5 because, pursuant to requirements of §921(33)(B)(ii), his 1997
6 conviction has been "expunged or set aside" pursuant to the laws of
7 the State of California and neither the statute itself nor the
8 document setting aside that conviction contain any wording or
9 implication that Mr. Baker may not "ship, transport, possess or
10 receive firearms." A review of Exhibit 1 clearly demonstrates the
11 absence of such language from the instrument denoting the set-aside
12 of the earlier conviction. The question now becomes: do any other
13 California statutes have the same import as "he may not ship,
14 transport, possess or receive firearms?"

15 **D. California Penal Code §§1203.4 And 12021(c)**

16 The California set-aside statute we consider, §1203.4, contains
17 a clause pertinent to our discussion: "Dismissal of an accusation or
18 information pursuant to this section does not permit a person to
19 own, possess, or have in his or her custody or control any firearm
20 or prevent his or her conviction under Section 12021." How does
21 this clause affect, if at all, this case?

22 One of the conditions of probation imposed upon Mr. Baker
23 during his October 20th, 1997 sentencing hearing was: "Not own,
24 possess, or have access to any firearm or dangerous weapon."
25 (Attached hereto is Exhibit 7, Pages 4 through 6 of the complete
26 Minute Order of his misdemeanor conviction, and incorporated by
27 reference as though fully set forth at this place.) Another
28 condition was: "Obey all laws city, county, state and federal."

1 However, one convicted of violating California Penal Code
2 §273.5 (the California domestic abuse statute) is automatically
3 subject to a ten-year ban on firearm possession pursuant to
4 California Penal Code §12021(c) [hereafter "§12021(c)"]: "... , any
5 person who has been convicted of a misdemeanor violation of Section
6 ... 273.5, ... , and who, within 10 years of conviction owns,
7 purchases, receives, or has in his or her possession or under his or
8 her custody or control, any firearm is guilty of a public offense,
9 which shall be punishable"

10 Plaintiff contends that neither the condition of probation
11 concerning firearms nor §12021(c) are express provisions fitting the
12 "unless" clause of §922(g)(9). The condition that Mr. Baker not
13 possess firearms during the term of his probation obviously expired
14 at the conclusion of his probationary term.

15 The specific clause of §1203.4 mentioning §12021 must be
16 understood to inform the probationer that the successful completion
17 of probation and the elimination of the probationary ban on firearm
18 provision does not render his or her susceptibility to prosecution
19 under §12021(c) nugatory; in this sense, the probationary term that
20 Mr. Baker obey "all laws ... state and federal" compelled him to
21 forsake any connection with firearms during the ten years. Which he
22 did.

23 Conclusive evidence of this reading is provided by the ruling
24 of Ventura County Superior Court Judge Edward Brodie rendered during
25 the hearing on plaintiff's March 11th, 2010, to restore Mr. Baker's
26 Second Amendment right to own and possess a firearm. (Please see
27 Exhibit 2.) Despite numerous requests by counsel to rule that
28 plaintiff could fully enjoy his Second Amendment rights under both

1 state and federal law, Judge Brodie avoided any appearance of making
2 a ruling on federal law as a moth avoids a flame. The three-page
3 transcript is an amalgam of counsel repeatedly asking for relief
4 from federal law and the Judge repeating his theme first rendered on
5 the first page of the hearing: "He's asking me to somehow decide
6 what federal law is. That's not my job." Judge Brodie was correct;
7 it was not his job, it is the job of this court. But what the Judge
8 did do is of paramount significance as concerns the topic of this
9 section of the Response: he ordered that plaintiff "...is entitled
10 to purchase, own and possess firearms consistent with the laws of
11 the State of California." (Exhibit 3.)

12 Plaintiff's ten-year ban on firearm possession ended on the ten
13 year anniversary of his sentencing, October 20th, 2007; Judge Brodie
14 recognized the fact that as of that date, plaintiff could possess
15 any firearm any citizen of the State of California could legally
16 possess.

17 There was never any express provision that plaintiff could not
18 "ship, transport, possess or receive firearms" in the sense that
19 said preclusion is a life-time ban on such; everyone on probation in
20 California is ordered to obey all laws and §12021(c), like laws
21 prohibiting driving under the influence, must be obeyed.

22 E. Jennings v. Mukasey, 511 F.3d 894 (9th Cir. 2007).

23 The defense has based the entirety of their case on
24 Jennings v. Mukasey and, given the holding of the case, their stance
25 is understandable. It is also wrong.

26 The Jennings court masterfully dissected §1203.4 listing all of
27 its deficiencies and shortcomings and thereafter concluded: "...,
28 although Jennings obtained relief under 1203.4 by the 1999 State

1 court order, that relief did not expunge his conviction for purposes
2 of 18 U.S.C. §922(g)(9). (Jennings, at 899.) Nowhere in the
3 opinion is there any mention of Dickerson (*supra*) or Caron (*supra*)
4 and because of their absence, the Jennings opinion is worthless as
5 precedent because they measured §1203.4 by a yardstick which had
6 been broken 21 years earlier.

7 Example #1: The Jennings court cited People v. Frawley, 82
8 Cal.App.4th 784, 790-91 (2000), for the proposition that the relief
9 provided by §1203.4 does not purport to render a conviction a "legal
10 nullity." (at 898.) Plaintiff inquires: where is the precedent that
11 says a state expungement statute must render a conviction a "legal
12 nullity?" Dickerson at pg. 121, says: "Some [expungement]
13 statutes,...., clearly were not meant to prevent use of the
14 conviction in a subsequent prosecution." Is this not the same as
15 saying that some statutes do not render the conviction a "legal
16 nullity?" And we know that Congress said Dickerson was wrong; if a
17 state says the relief offered by its' expungement statute "expunges"
18 or "sets-aside" an MCDV conviction, that conviction is eradicated
19 for the purposes of §922(g)(9).

20 Example #2: The court utilized the definition of "expunge"
21 found in United States v. Hayden, 255 F.3d 768, 771 (9th Cir. 2001),
22 which held that a §1203.4 expungement does not meet the definition
23 of "expungement" for the purposes of the Federal Sentencing
24 Guidelines. Mr. Jennings challenged the denial of his application
25 for the renewal of his federal firearms license ("ffl") by the Bureau
26 of Alcohol, Tobacco and Firearms on the ground that his prior
27 misdemeanor violence domestic conviction disqualified him for
28 consideration under §922(g)(9). How is the definition of

1 "expungement" for federal sentencing purposes in any way germane to
2 Mr. Jennings' quest for an ffl?

3 Example #3: The Jennings court cited United States v.
4 Tankersley, 269 F.Supp. 2d 1188 (D. Neb. 2003) which held that even
5 though the defendant therein "...sought and obtained a withdrawal of
6 guilty plea and a section 1203.4 dismissal of her 1998 burglary
7 conviction, the 1998 burglary remains a prior felony which may be
8 pleaded and proved" for purposes of 18 U.S.C. §922(g)(9)." (at 899.)

9 True, but Mr. Jennings was challenging the non-renewal of his
10 ffl, he was not arguing that his prior MCDV conviction could not be
11 used in a mythical future criminal prosecution.

12 The Jennings court fashioned their own criteria whereby every
13 irrelevant aspect of §1203.4 was examined and found wanting; all the
14 while shielding their eyes from the one unmistakable fact shining
15 like a beacon in the night: if a California court dismisses or
16 expunges or sets-aside a prior MCDV conviction pursuant to §1203.4,
17 that earlier conviction is a legal nullity for the purposes of
18 §922(g)(9).

19 Because of the abject failure of the Jennings court to follow
20 the federal statute specifically enacted to remedy the crabbed
21 handling of state expungement statutes vis-a-vis federal firearm
22 laws exemplified in Dickerson, and its failure to acknowledge the
23 holding in United States v. Caron that Dickerson was no longer good
24 law, plaintiff submits that Jennings has no precedential value and
25 should not be followed.

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1 F. United States v. Herron, 45 F.3d 340 (9th Cir. 1995) And
2 United States v. Laskie, 258 F.3d 1047 (9th Cir. 2001):
3 If The Wording of The Set-Aside Instrument Does Not
4 Expressly Forbid The Individual To Possess
5 Firearms, The Earlier Conviction May Not Be Used To
6 Deny Later Gun Possession

7 Both of the above-cited matters are Ninth Circuit cases
8 concerning previously-convicted felons who were later caught
9 possessing firearms and prosecuted under 18 U.S.C. §922(g)(1).⁵
10 [hereafter "\$922(g)(1)."] This section, like §922(g)(9),
11 incorporates the means whereby an earlier conviction shall not be
12 considered a "conviction" for the purposes of the statute, 18 U.S.C.
13 §921(a)(20).⁶ [hereafter "\$921(a)(20)."] Both men argued that they
14 had had their earlier felony convictions set aside pursuant to their
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18 18 U.S.C. Section 922(g)(1): "It shall be unlawful for any person - who has been
19 convicted in any court of, a crime punishable by imprisonment for a term exceeding
20 one year; to ship or transport in interstate or foreign commerce, or possess in
or affecting commerce, any firearm or ammunition; or to receive any firearm or
ammunition which has been shipped or transported in interstate or foreign
commerce."

21 6

22 18 U.S.C. Section 921(a)(20): "The term "crime punishable by imprisonment for a
term exceeding one year" does not include-

23 (A) any Federal or State offenses pertaining to antitrust violations, unfair
trade practices, restraints of trade, or other similar offenses relating to the
regulation of business practices, or

24 (B) any State offense classified by the laws of the State as a misdemeanor and
punishable by a term of imprisonment of two years or less.

25 What constitutes a conviction of such a crime shall be determined in accordance
26 with the law of the jurisdiction in which the proceedings were held. Any
conviction which has been expunged, or set aside or for which a person has been
27 pardoned or has had civil rights restored shall not be considered a conviction for
purposes of this chapter, unless such pardon, expungement, or restoration of civil
rights expressly provides that the person may not ship, transport, possess, or
28 receive firearms."

1 state set-aside statutes and could not be used as predicate offenses
2 under federal firearms law. Both appeals were successful.

3 Mr. Herron had been convicted of second degree burglary in
4 Washington and eventually discharged from custody. Upon completion
5 of his parole he received a "Certificate and Order of Discharge"
6 stating that his civil rights, lost by reason of conviction, were
7 restored. That document said nothing about firearms. A later-
8 obtained search warrant revealed firearms leading to a federal
9 indictment charging §922(g)(1). (Herron, at 340-341.)

10 The Herron court specified the basis of its' decision:

11 "Herron's civil rights were restored by the
12 certificate. That means he could not be guilty
13 of the crime unless the exception to the
14 exception, "unless such ... restoration of civil
15 rights expressly provides that the person may
16 not ship, transport, possess, or receive
firearms," applied. It does not. The document
restoring Herron's civil rights is quoted in
full above, and does not expressly provide for
firearms restrictions. That should be the end of
the case."

17 It was. They further elaborated on this point:

18 "The federal statute tells us what to read to
19 look for qualifications on a felon's restoration
20 of civil rights. Congress has told us to read
21 "such ... restoration." Herron's restoration is
22 his certificate. The certificate does not
contain the gun restriction denoted in the
federal statute, or any other qualifications
which would make the restoration less than
substantial." Herron, at 341-342.)

23 Herron instructs us to look to wording of the document
24 conferring relief; if that document is silent concerning firearms,
25 then that document and the relief it represents contains no "express
26 provision" forbidding the later possession of firearms.

27 Mr. Laskie also stood convicted of being a felon in possession
28 of a firearm in violation of §922(g)(1). He appealed on the grounds

1 that his prior Nevada felony state conviction had been "set-aside"
2 for the purposes of §921(a)(20) by an "honorable discharge" he
3 received from a Nevada court after his completion of probation. The
4 court agreed. (Laskie, at 1048-1049.)

5 Citing Caron v. United States, *supra*, the court analyzed
6 §921(a)(20) at page 1049:

7 "As that definition makes clear, a
8 conviction that has been expunged or set aside,
9 or for which a felon has been pardoned or has
10 had civil rights restored, cannot serve as the
11 predicate for a conviction under § 922(g)(1),
unless the convicting jurisdiction expressly has
12 forbidden the defendant to possess firearms."
13 Caron v. United States, 524 U.S. 308, 313 (1998)

14 The court found in favor of Mr. Laskie because the instrument
15 of his relief contained no express provision concerning his right to
16 possess firearms. (Laskie, at 1053.)

17 It must be noted that, as a California misdemeanor, none of
18 plaintiff's civil rights (the rights to vote, hold office or sit on
19 a jury [Caron v. United States, *supra*, at 922]) could be or were
20 taken from him upon his conviction; thus, the Ventura County
21 Superior Court had no "rights" to restore under §1203.4.

22 The Jennings v. Mukasey court addressed Laskie and, continuing
23 in the vein previously mentioned, compared the California and Nevada
24 set-aside statutes and wrongly distinguished the Laskie decision.
25 Finding that Mr. Jennings California §1203.4 set-aside did not "...
26 purport to restore his civil rights, in fact, it is qualified and
27 notes that he must disclose his conviction in certain
28 circumstances," they held that, "unlike Laskie, he has not been
'released from all penalties and disabilities resulting from the
offense or crime of which he has been convicted.'" (at 901)

1 Once more, Jennings used the wrong criteria; the terms employed
2 by the different state set-aside statutes need not be congruent;
3 each stands or falls on its own *vis-a-vis* the issue before this
4 court. The set-aside Order obtained by plaintiff under §1203.4 is
5 absolutely silent in all respects concerning firearms and did as
6 much for him (and Mr. Jennings) and the Washington and Nevada
7 statutes and relief documents thereunder did for Herron and Laskie.

8 **G. Recent United States Supreme Court Decisions Concerning The**
9 **Second Amendment and the Jennings Decision**

10 Within the past few years our High Court has handed down
11 two landmark rulings expanding the rights of the individual to
12 possess firearms. First, in District of Columbia v. Heller (554
13 U.S. ____ (2008)) they held that the Second Amendment protects the
14 right to keep and bear arms for the purpose of self-defense. And
15 just months ago, in McDonald v. City of Chicago (561 U.S. ____
16 (2010)), they held that the rights under the Second Amendment are
17 fully applicable to the states.

18 While neither case specifically addresses the issues brought
19 forth herein, they evidence a growing acceptance and expansion of
20 the right to bear arms. Plaintiff submits that the now-fundamental
21 right to keep and bear arms in the Second Amendment should not be
22 lost to a set-aside state misdemeanor conviction. In this sense,
23 the Jennings decision is an anomaly and not worthy of judicial
24 respect: it falls because it failed to follow earlier High Court
25 precedent, it falls because it does not accord proper value to set-
26 aside Orders issued under §1203.4, and it falls because, although it
27 is of recent vintage, it is an anachronism, reflecting yesterdays
28 grudging attitude toward firearm possession.

1
2 CONCLUSION

3 Until the events giving rise to his 1997 conviction and ever
4 since that date, Eugene Evan Baker has been a law-abiding citizen,
5 never otherwise in trouble with the law.

6 He fulfilled all of the conditions of probation imposed upon
7 him by the Ventura County Superior Court and had his 1997 conviction
8 set aside by Order of that court under California Penal Code
9 §1203.4. That Order, Exhibit 1 herein, is silent concerning the
10 issue of the right to possess firearms.

11 As of October, 2007, no California laws barred his possession
12 of firearms. On June 8th, 2009, he learned that because he had been
13 convicted in a state court of a crime of domestic violence, he was
14 also subject to federal firearm law and the specific statute in
15 question, 18 U.S.C. §922(g)(9), forever bans anyone convicted of a
16 misdemeanor crime of domestic violence from possessing a firearm.
17 He later discovered that that same set of federal laws concerning
18 firearm possession contains one statute potentially exempting him
19 from the harsh consequences of §922(g)(9). That statute, 18 U.S.C.
20 §921(33)(B)(ii), enables one who has been so convicted but who has
21 obtained an Order of relief under the set-aside legislation of the
22 state of conviction, to escape the rigors of §922(g)(9) "unless the
23 pardon, expungement, or restoration of civil rights, expressly
24 provides that the person may not ship, transport, possess, or
25 receive firearms."

26 As stated above, the Order obtained by Mr. Baker is silent
27 concerning firearms; therefore, inasmuch as plaintiff is neither
28 expressly or inferentially forbidden to possess firearms, his set-
aside Order fits precisely within the provisions of §921(33)(B)(ii)

1 and his 1997 state conviction may not be referenced insofar as
2 §922(g)(9) is concerned.

3 Mr. Baker voluntarily comes before this court seeking the
4 removal of his name from any and all computers, lists, data bases,
5 and like repositories of information maintained by defendant
6 concerning those suspected of being ineligible to possess a firearm
7 under §922(g)(9). He further desires a Declaration from this court
8 stating that he is free to exercise his rights under the Second
9 Amendment and possess firearms without fear of arrest or
10 prosecution by any and all law enforcement personnel under
11 Defendant's direct or indirect control or supervision.

12 He submits that he has successfully shouldered his burden and
13 has earned the relief sought.

14 Dated: September 29, 2010

15 Respectfully submitted,

16 LAW OFFICES OF FRANKLIN S. ADLER

17 /s/

18
19 FRANKLIN S. ADLER
20 Attorney for Plaintiff
21 EUGENE EVAN BAKER
22
23
24
25
26
27
28

VENTURA
SUPERIOR COURTS
FILED

RECEIVED

FEB 24 2001

Superior Court Clerk
Ventura County

The people of the State of California,

VENTURA COUNTY MUNICIPAL COURT
State of California

JUN 19 2002

VENTURA/SIMI VALLEY DEPARTMENT

MICHAEL D. PLANET

Executive Officer and Clerk
BY:  Deputy

Case Number 97C008304

**DECLARATION AND
APPLICATION BY DEFENDANT --
PENAL CODE SECTION 1203.4/1203.4a**

Plaintiff,

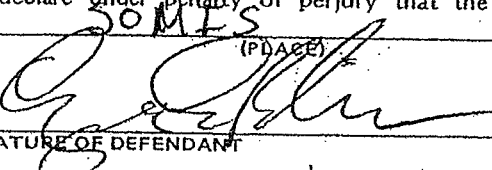
vs.

EUGENE RYAN BAKER

Defendant.

1. My date of birth is 10 - 5 - 61, my driver's license number is X587794154 CM
2. On the date of September 29, 1997, I was convicted of the misdemeanor offense(s) of violation of Section(s) 273.5(A) - Penal Code
3. I was:
☒ placed on probation, and I have fulfilled all the conditions of probation for the entire time required.
☐ sentenced more than one year ago, without probation, and I have fully complied with the sentence.
4. I am not now charged with, serving a sentence for, or on probation for any offense. Since being sentenced or placed on probation in this case, I have lived an honest and upright life, have conformed to and obeyed the laws of the land, and have not been convicted, arrested, or given a citation (ticket) except _____
5. I request that the conviction be set aside, that a plea of not guilty be entered, and that the court dismiss this action pursuant to the provisions of Section 1203.4/1203.4a of the Penal Code.
6. I understand that the requested dismissal: (a) will not affect any revocation or suspension of my driving privilege, (b) will not prevent this conviction from being pleaded and proved in any subsequent prosecution, and (c) will not relieve me of the obligation to disclose the conviction in response to a direct question in any questionnaire or application for public office or for licensure by any state or local agency.

I declare under penalty of perjury that the foregoing is true and correct. Signed on X 2/24/01 (DATE)
at X SOMERS (PLACE), California.

X 
SIGNATURE OF DEFENDANT

EUGENE RYAN BAKER
TYPE OR PRINT NAME OF DEFENDANT

X 46 Bristol St. Worcester, MA 01606
ADDRESS

CII and DMV cleared on _____ by 

ORDER

Pursuant to Penal Code Section 1203.4/1203.4a, it is ordered that the conviction be set aside, a plea of not guilty be entered, and the complaint is dismissed.

hereby certify that the annexed instrument
is a true and correct copy of the original on file
in my office, MICHAEL D. PLANET,
Executive Officer and Clerk

Dated

3-11-10

By

[Signature]

Deputy Clerk



COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

COURTROOM 12

HON. EDWARD BRODIE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

EUGENE RYAN BAKER,)

Defendant.)

No. 97C008304

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday, March 11, 2010

APPEARANCES:

For the People:

GREGORY TOTTEN
District Attorney
BY: LISA LYYTIKAINEN
Deputy District Attorney
800 South Victoria Avenue
Ventura, CA 93009

For the Defendant:

FRANKLIN S. ADLER
Attorney at Law
424 South Beverly Drive
Beverly Hills, CA 90212

Reported By:

DENISE A. POTTS, CSR 3869
Certified Shorthand Reporter

1 VENTURA, CALIFORNIA; THURSDAY, MARCH 11, 2010

2 A.M. SESSION

3 --000--

4 MS. LYYTIKAINEN: Good morning, your Honor. Would
5 the Court please call the Eugene Baker matter. Lisa
6 Lyytikainen on behalf of the People.

7 MR. ADLER: Frank S. Adler, A-d-l-e-r, on behalf of
8 Mr. Baker, your Honor.

9 THE COURT: I didn't get a response from the People.
10 Did you file one?

11 MS. LYYTIKAINEN: I did not, your Honor. I received
12 this just a couple of days ago and my only argument to the
13 Court is going to be this Court's not the proper venue for
14 this matter to be heard.

15 THE COURT: You took the words right out of my
16 mouth. He's asking me to somehow decide what federal law
17 is. That's not my job.

18 MR. ADLER: Your Honor, if I may be heard, please.

19 THE COURT: You may, but it's clear that's what you
20 want me to do. He is under no proscription against
21 firearms in the State of California. He is under federal
22 law, or not, depending on what some district court says.

23 MR. ADLER: Your Honor, this is the court where the
24 prosecution was brought.

25 THE COURT: Matters not.

26 MR. ADLER: This is the court that took my client's
27 gun rights away pursuant to 12021(c).

28 THE COURT: Pursuant to state law.

1 MR. ADLER: Pursuant to state law, that is correct,
2 your Honor. There is no case or controversy pending in any
3 federal jurisdiction involving my client. And I believe
4 that as long as this court had jurisdiction over the
5 initial prosecution, it can handle all matters relating to
6 that prosecution, including the restoration of my client's
7 gun rights.

8 THE COURT: I disagree.

9 MR. ADLER: California state courts both interpret
10 and apply federal law every day and that's all we are
11 asking to do. We are not even asking the Court to
12 interpret the law. The law is quite clear on its face.
13 And all we are asking the Court to do is apply that law in
14 this case as the Court would apply Miranda in a Miranda
15 interrogation or confession case, federal law in a
16 wiretapping case. We are asking the Court to apply federal
17 law in a case involving restoration of a client's firearm
18 rights. And I believe this Court has the authority to do
19 so.

20 THE COURT: I don't know where it would come from.
21 I don't know of any federal authority that would honor any
22 order that I made regarding federal law. It's not going to
23 happen. And I didn't just get on the bench here yesterday,
24 Counsel.

25 MR. ADLER: I'm certainly not saying that, your
26 Honor. The federal law in question compels us to look to
27 state law for interpretation. And according to state law,
28 under 1203.4, the case was dismissed, there is no

1 proscription in state law against gun rights, federal law
2 follows automatically.

3 THE COURT: I'm not buying it.

4 MR. ADLER: I take that as a no, your Honor?

5 THE COURT: The long and the short of it. Here's
6 what I will do. I'm going to line out his second amendment
7 right to bear arms is hereby fully restored. And my order
8 will then say that Mr. Baker is entitled to purchase, own
9 and possess firearms consistent with the laws of the state
10 of California. But I'm not making any comments about
11 federal law and how they see Mr. Baker's rights, that's not
12 my job.

13 MR. ADLER: I appreciate the concern of the Court,
14 your Honor.

15 THE COURT: So you're satisfied with that
16 modification?

17 MR. ADLER: I have to speak -- I'm certainly
18 satisfied with the modification, your Honor. I have to
19 speak to my client to see if he wishes to pursue this
20 matter further. But I do appreciate the Court's concern
21 and ruling.

22 THE COURT: The order now reads that Mr. Eugene Ryan
23 Baker is entitled to purchase, own and possess firearms
24 consistent with the laws of the State of California. And I
25 have signed that order.

26 MR. ADLER: Thank you, your Honor.

27 MS. LYYTIKAINEN: Thank you.

28 (Proceedings concluded.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

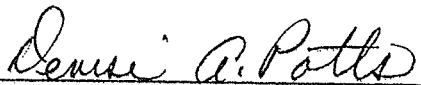
THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
VS.)
EUGENE RYAN BAKER,)
Defendant.)

No. 97C008304

Reporter's
Certificate

I, DENISE A. POTTS, CSR 3869, Certified
Shorthand Reporter of the State of California, for the
County of Ventura, do hereby certify that the foregoing
pages numbered 1 through 3, inclusive, are a full, true and
correct transcript of the proceedings held on March 11,
2010, in the above-entitled cause.

Dated at Ventura, California, this 14th day
of March 2010.


DENISE A. POTTS, CSR 3869
Certified Shorthand Reporter

1 LAW OFFICES OF FRANKLIN S. ADLER
2 State Bar Number: 056417
3 424 South Beverly Drive
4 Beverly Hills, California 90212
5 (310) 553-8533

6 Attorney for Defendant
7 EUGENE EVAN BAKER

VENTURA
SUPERIOR COURT
FILED

MAR 10 2010

MICHAEL D. PLANET
Executive Officer and Clerk
By M. D. Planet Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA

10
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 EUGENE EVAN BAKER,
16 (Originally filed as
17 EUGENE RYAN BAKER)

18 Defendant.

Case No: 97C008304

ORDER RESTORING SECOND
AMENDMENT RIGHTS TO EUGENE
EVAN BAKER

18 This matter came on regularly for hearing on 3-11-10,
19 pursuant to a notice of motion filed herein by defendant. Counsel
20 for the defendant and for the People both appeared. Counsel for
21 the defendant moved in open court for an Order restoring the
22 Second Amendment right to bear arms to defendant.

23 The Court, having read the moving papers submitted in this
24 matter and having heard the arguments of counsel on the motion,
25 and being advised in the premises;

26 / / /

27 / / /

28 / / /

ORDER RESTORING 2nd AMEND. RIGHTS TO EUGENE EVAN BAKER

1 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that Mr.
2 EUGENE EVAN BAKER' ~~Second Amendment Right to Bear Arms is~~
3 ~~restored and~~ is entitled to purchase, own and
4 possess firearms consistent with the laws of the State of
5 California.

6 A copy of this Order shall have the same force and effect as
7 the original.

8 Dated: MARCH 11, 2010

11
12 
13 JUDGE OF THE SUPERIOR COURT

12 (Seal)



CFD NUMBER: 17233

DROS NUMBER: 5273 - 00055

TRANSACTION INFORMATION

Transaction Date/Time	Firearm Type	Firearm Quantity	Transaction Type	Gun Show Transaction	Delivery Date/Time
06/08/09 10:02:18 AM	Longgun	2	Dealer Sale	Yes	

WAITING PERIOD EXEMPTIONS

Exemption Type	CFD Number	Special Weapons Permit Number
NONE	N/A	N/A

PURCHASER INFORMATION

Name:	First	Middle	Last	Suffix
	EUGENE	EVAN	BAKER	
Alias:				

Street Address	Zipcode	ID Type	ID Number	ID Source	Citizen	Country	AR# or I94#	Phone Number	Date of Birth	Place of Birth
3742 GROVES PL	93066	CDL	D7638235	CA	C			8052763792	10/05/1961	WA

Race	Sex	Eyes	Hair	Height	Weight	HSC Number	HSC Exemption Code
W	M	BLU	BLN	5' 9"	190 Lbs	N/A	

No Has purchaser ever been convicted of a felony or of an offense described in Penal Code section 12021.1, or 12001.6; or convicted of assault, battery, or other misdemeanor offense specified in Penal Code section 12021(c)(1) in the last 10 years?

No Is purchaser a danger/threat to self or others pursuant to Welfare and Institutions code (WIC) section 8100, or a person who has been admitted to a mental health facility as a danger to self or others pursuant to WIC section 5150, 5151, and/or 5152 within the past five years?

No Has purchaser ever been adjudicated by a court to be a danger to others, found not guilty by reason of insanity, found incompetent to stand trial, or placed under a conservatorship, pursuant to Welfare and Institutions Code Section 8103?

No Is purchaser currently the subject of any restraining order pursuant to Family Code Section 6380?

In addition, I have read the list of prohibited offenses, and nothing would preclude me from possessing a firearm.

By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.

Signature of Purchaser

DEALER INFORMATION

Comments: COMES WITH CERTIFIED LOCK

Salesperson's Printed Name & COE # (If Issued):

Dealer Phone Number

(805) 646-2350 ext

By signing this document, I hereby certify under penalty of perjury that the information provided is true and correct.

Signature of Salesperson

Falsification of information on this form is a crime, punishable by up to 18 months in state prison (Penal Code 12076)

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
BUREAU OF FIREARMS

P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Public: (916) 227-3752
Facsimile: (916) 227-3744

June 08, 2009

OJAI VALLEY SURPLUS
952 E OJAI AVE
OJAI, CA 93023

Re: Dealer's Record of Sale Number: 5273-00055

Dated:

Purchaser:

EUGENE EVAN BAKER

**PURCHASER PROHIBITED
DO NOT RELEASE THE FIREARM**

Dear Firearms Dealer:

You are hereby notified that the California Department of Justice records indicate that the above purchaser is a person not eligible to possess a firearm. Therefore, do not release the firearm to the purchaser.

The dealer shall make available to the person in the prohibited class a Prohibited Notice and Power of Attorney transfer form to facilitate the immediate transfer of firearms he or she may already have under his or her custody or control, provided by the department, and also inform the person that he or she may obtain from the department the reason for the prohibition.

If you have any questions, please contact Firearms Purchaser Clearance Section at (916) 227 - 3752.

Sincerely,

STEVE BUFORD, Manager
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
BUREAU OF FIREARMS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Public: (916) 227-3749
Facsimile: (916) 227-3744
August 25, 2010

EUGENE EVAN BAKER
3742 GROVES PL
SOMIS, CA 93066

Re: FIREARM DENIAL

Dear: EUGENE EVAN BAKER

When a person applies to purchase a firearm in California, the California Department of Justice (DOJ) is required by state law to examine its record in order to determine whether the purchaser is eligible under state law to purchase and possess firearms. The DOJ is also authorized to check certain federal records to determine whether the purchaser is prohibited under federal law from purchasing or possessing firearms.

You recently applied to purchase a firearm. The DOJ has tentatively identified a record in a state or federal database which indicates that you are prohibited by state and /or federal law from purchasing or possessing firearms. This determination was based upon information provided by you in your application to purchase a firearm such as your name, date of birth, driver's license number, and physical description, but has not been confirmed with fingerprint comparison. It is possible that the record may not be yours and may belong to another individual whose name and identifying information is similar to yours.

Your recent firearms purchase application has been denied based on our review of state and/ or federal records that matched your identifying information, and revealed the following firearms prohibiting information:

Misdemeanor domestic violence convictions (273.5PC, 243(E)(1) PC Convictions over 10 years old) – Federal Brady Act, effected November 30, 1998.

EXHIBIT 6

If you were denied due to a state prohibition and you wish to challenge the accuracy of our determination or the completeness of your record, please complete the portion of the LIVESCAN form dealing with identifying information and take the LIVESCAN form to any law enforcement agency or publicly listed business that offers LIVESCAN fingerprinting services to the public. LIVESCAN location and cost information can be found at the Attorney General's website, <http://ag.ca.gov/fingerprints/publications/contact.php>.

Sincerely,

Mitch Maternote

for GERRI KANELOS
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF VENTURA
MINUTE ORDER

Case Number 97C008304 M A

People Vs BAKER, EUGENE RYAN

Name: BAKER, EUGENE RYAN

Court Room: 12

For: 04/27/99 09:00 AM

Case #: 97C008304 M A

Atty Name:

Case Status: Dismissed

Mand. App: Yes

Release Status:

Charging Document: Complaint

Bail Set Amt:

<u>Docket Dt</u>	<u>Seq</u>	<u>Code</u>	<u>Text</u>
10/20/1997	48	CVDOCK	T1 0048 TAPE # 34-0158 LINE # 5439
	49	CVDOCK	T3 0049 COURT IN SESSION, ALL PARTIES PRESENT
	50	CVDOCK	A26 0050 THE ABOVE ENTITLED MATTER COMES ON AT THIS TIME UPON
	51	CVDOCK	A26 0051 ASSIGNMENT FROM THE MASTER CALENDAR DEPARTMENT FOR
	52	CVDOCK	A26 0052 SENTENCING.
	53	CVDOCK	AW 0053 ARBUCKLE WAIVED
	54	CVDOCK	T68 0054 TIME AND ARRAIGNMENT FOR JUDGMENT WAIVED
	55	CVDOCK	D56 0055 PROBATION REPORT/MEMO FILED
	56	CVDOCK	T32 0056 PEOPLE'S EXHIBIT #1 MARKED FOR IDENTIFICATION
	57	CVDOCK	A26 0057 JOANN WARD PROCEEDS TO PRESENT A VICTIM IMPACT STATEMENT
	58	CVDOCK	A26 0058 TO THE COURT.
	59	CVDOCK	PI 0059 IMPOSITION OF SENTENCE SUSPENDED.
	60	CVDOCK	PTF 0060 THE COURT HAS RELEASED YOU ON FORMAL PROBATION FOR 36 MONTHS. YOU ARE SUBJECT TO AND MUST OBEY EACH OF THE FOLLOWING CONDITIONS BELOW. IF YOU FAIL TO DO SO, THE COURT MAY IMPOSE ANY SENTENCE PREVIOUSLY SUSPENDED. IF YOU FULFILL ALL OF THE CONDITIONS, YOU MAY THEN APPLY FOR A DISMISSAL OF THE CHARGES.
	61	CVDOCK	P23 0061 YOU MUST REPORT TO THE CORRECTION SERVICES AGENCY - 800 SOUTH VICTORIA AVENUE, VENTURA, CA., CRIMINAL JUSTICE CENTER(SHERIFF'S BUILDING) ROOM A, SECOND FLOOR - REPORT IMMEDIATELY AFTER LEAVING COURT OR UPON RELEASE FROM CUSTODY BRING THIS FORM WITH YOU.
	62	CVDOCK	Z3A 0062 BE UNDER THE SUPERVISION OF A PROBATION OFFICER AND REPORT AS DIRECTED
	63	CVDOCK	Z3B 0063 MAINTAIN REGULAR EMPLOYMENT AS APPROVED BY THE PROBATION OFFICER.
	64	CVDOCK	Z3C 0064 NOT LEAVE YOUR COUNTY OF RESIDENCE FOR MORE THAN 72 HOURS OR CHANGE YOUR RESIDENCE WITHOUT PRIOR APPROVAL BY YOUR PROBATION OFFICER. YOU SHALL NOT LEAVE THE STATE OF CALIFORNIA WITHOUT PRIOR PERMISSION OF YOUR PROBATION OFFICER.
	65	CVDOCK	Z3D 0065 PARTICIPATE AS DIRECTED IN ANY TREATMENT PROGRAM DESIGNATED BY THE PROBATION OFFICER AND AUTHORIZE RELEASE OF INFORMATION BETWEEN YOUR PROBATION OFFICER AND ANY TREATMENT PROGRAM.
	66	CVDOCK	P01 0066 OBEY ALL LAWS CITY, COUNTY, STATE AND FEDERAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF VENTURA

MINUTE ORDER

Case Number 97C008304 M A

People Vs BAKER, EUGENE RYAN

Name: BAKER, EUGENE RYAN

Court Room: 12

For: 04/27/99 09:00 AM

Case #: 97C008304 M A

Atty Name:

Case Status: Dismissed

Mand. App: Yes

Release Status:

Charging Document: Complaint

Bail Set Amt:

Docket Dt	Seq	Code	Text
10/20/1997	67	CVDOCK	P02 0067 REPORT TO COURT ANY ARREST, CITATION, PROBATION VIOLATION OR CHANGE OF ADDRESS WITHIN 10 DAYS THEREAFTER. REPORT IN WRITING TO: VENTURA COUNTY MUNICIPAL COURT, PO BOX 6489, VENTURA, CA 93006-6489. INCLUDE YOUR NAME AND CASE NUMBER.
	68	CVDOCK	P03 0068 YOU SHALL PARTICIPATE FOR 80 HOURS IN THE DIRECT WORK PROGRAM AND PAY THE PROGRAM FEE AS DIRECTED. REPORT TO THE DIRECT WORK COORDINATOR, 520 HOUCK STREET (CAMARILLO AIR-PORT), CAMARILLO, CA 93010 (PHONE: 388-4478), WITHIN FIVE DAYS AND FOLLOW THEIR DIRECTIONS FOR SCREENING AND PROCESS-ING.
	69	CVDOCK	P19 0069 NOW CONSENT TO A SEARCH OF YOUR PERSON, VEHICLE, RESIDENCE AND OTHER PROPERTY BY A PEACE OFFICER OR PROBATION OFFICER AT ANY TIME, WITHOUT A SEARCH WARRANT, WARRANT OF ARREST, OR REASONABLE CAUSE.
	70	CVDOCK	P28 0070 NOT OWN, POSSESS, OR HAVE ACCESS TO ANY FIREARM OR DANGEROUS WEAPON
	71	CVDOCK	P32 0071 NOT ANNOY, MOLEST, OR HARASS JOANN WARD
	72	CVDOCK	P52 0072 NO FORCE OR VIOLENCE ON JOANN WARD
	73	CVDOCK	P52D 0073 DO NOT HARASS, ASSAULT, BLAME, DEGRADE, DEHUMANIZE, MOLEST, STALK, STRIKE, ATTACK, THREATEN, SEXUALLY ASSAULT, OR BATTER JOANN WARD
	74	CVDOCK	P59D 0074 YOU MUST ATTEND WEEKLY SESSIONS OF DOMESTIC VIOLENCE COUNSELING WITH AN APPROVED PROVIDER FOR A PERIOD OF NO LESS THAN ONE YEAR, KEEP ALL APPOINTMENTS AND PAY PROGRAM FEES. YOU MUST COMPLETE 52 SESSIONS WITHIN 58 WEEKS. A LIST OF APPROVED PROGRAM PROVIDERS AVAILABLE THROUGH PROBATION DEPT.
	75	CVDOCK	JPS 0075 AS APPROVED BY THE PROBATION DEPARTMENT
	76	CVDOCK	P59E 0076 COURT HAVING FOUND YOU HAVE THE ABILITY TO PAY A TOTAL AMOUNT OF \$300.00, TO THE VENTURA COUNTY WOMEN'S SHELTERS, PAYABLE AT THE RATE OF \$100.00 TO THE SAFE HAVEN SHELTER, \$100.00 TO PUERTO DE PAZ, C/O INTERFACE 1305 DEL NORTE DRIVE, SUITE 106, CAMARILLO, CALIFORNIA 93010
	77	CVDOCK	P59F 0077 AND \$100.00 TO COALITION BATTERED WOMEN'S SHELTER, 2064 EASTMAN AVENUE, SUITE 104, VENTURA, CALIFORNIA 93003. EACH OF THESE PAYMENTS MUST BE MADE BY 4/24/98. YOU ARE TO PROVIDE PROOF OF BOTH PAYMENTS TO YOUR PROBATION OFFICER.
	78	CVDOCK	F6 0078 PAY INV -PROBATION INV. FEE OF \$132.00
	79	CVDOCK	F6 0079 PAY REFD -RESTITUTION FEE OF \$100.00
	80	CVDOCK	F6A 0080 PAY PROBATION FEE OF \$44.00 PER MONTH

MINUTE ORDER

Case Number 97C008304 M A

People Vs BAKER, EUGENE RYAN

Name: BAKER, EUGENE RYAN

Court Room: 12

For: 04/27/99 09:00 AM

Case #: 97C008304 M A

Atty Name:

Case Status: Dismissed

Mand. App: Yes

Release Status:

Charging Document: Complaint

Bail Set Amt:

Docket Dt	Seq	Code	Text
10/20/1997	81	CVDOCK	TTC 0081 PAY AS DIRECTED BY COLLECTIONS DIVISION
	82	CVDOCK	F6 0082 PAY ARF -ADMINISTRATION FEE OF \$35.00
	83	CVDOCK	CSA 0083 PAY YOUR FINE AND/OR FEE TO: SUPERIOR/MUNICIPAL COURTS COLLECTION, 800 SOUTH VICTORIA AVENUE, ROOM 106, PO BOX 6489 VENTURA, CALIFORNIA 93006-6489. PHONE (805) 654-3101.
	84	CVDOCK	CIV 0084 THE FEE ORDER IS A CIVIL JUDGMENT AND CAN BE ENFORCED BY EXECUTION OF WAGES AND PROPERTY. NOTIFY THIS OFFICE IMMEDIATELY IF THERE IS ANY PROBLEM WITH PAYMENTS. YOU MAY PETITION THE COURT AT ANY TIME TO MODIFY OR VACATE THIS JUDGMENT IF THERE IS A CHANGE OF CIRCUMSTANCES IN YOUR ABILITY TO PAY.
	85	CVDOCK	JA1 0085 YOU ARE ORDERED TO SERVE 5 DAYS CTS 5-DAYS, ACTUAL TIME IN THE VENTURA COUNTY JAIL
	86	CVDOCK	B4A 0086 NO CONTACT WITH JOANN WARD
	87	CVDOCK	S6 0087 DEFENDANT ACCEPTS
	88	CVDOCK	B12 0088 CASH BAIL EXONERATED
	89	CVOFC	Z39 0089 BALANCE OF \$267.00 TRANSFERRED TO MCC/CRS SYSTEM
10/21/1997	90	CVOFC	Z07 0090 BAIL #0000929556 FIELD DEP:REF WAS BLANK
	91	CVOFC	Z07 0091 BAIL #0000929556 FIELD DEP:REQ WAS BLANK
10/22/1997	92	CVOFC	Z38 0092 MCC/CRS ACCT ACTIVITY. BALANCE IS \$311.00 ON 10/21/97 FINE BALANCE = \$0.00 FEES BALANCE = \$311.00
10/24/1997	93	CVOFC	Z32 0093 BAIL #0000929556, REFUND CHECK FOR \$5,000.00. PREPARED
11/06/1997	94	CVOFC	M142 0094 LETHALITY CHECKLIST FILED
	95	CVOFC	M88 0095 CHECKLIST SENT TO RECORDS TO BE ATTACHED TO FILE.
11/18/1997	96	CVOFC	M2 0096 NOTE: CSA MEMO FILED AND SENT TO THE JUDGE FOR
	97	CVOFC	M2 0097 NOTE: CONSIDERATION RE: MOD OF DIRECT WORK
	98	CVOFC	Z38 0098 MCC/CRS ACCT ACTIVITY. BALANCE IS \$0.00 ON 11/17/97 FINE BALANCE = \$0.00 FEES BALANCE = \$0.00
12/03/1997	99	CVDOCK	A26 0099 THE COURT HAVING READ AND CONSIDERED A MEMO FROM THE
	100	CVDOCK	A26 0100 DEFENDANTS PROBATION OFFICER MAKES THE FOLLOWING
	101	CVDOCK	A26 0101 MODIFICATION REGARDING THE DEFENDANTS PROBATION.