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March 1, 2023

**VIA CM/ECF**

The Honorable Richard G. Andrews  
United States District Court  
for the District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, Delaware 19801

**Re: *Del. State Sportsmen's Ass'n, Inc., et al. v. Del. Dep't of Safety  
and Homeland Sec., et al.; Gabriel Gray, et al. v. Kathy Jennings,  
et al., C.A. No. 22-cv-951-RGA (Consolidated)***

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Dear Judge Andrews:

I write in response to the Court's Oral Order of March 1, 2023 (D.I. 49) regarding the letter from the Bureau of Alcohol, Tobacco, and Firearms displayed on slide 23 of Defendants' presentation at the preliminary injunction hearing.

The letter was posted by the National Firearms Act Trade & Collectors Association and can be found at [http://www.nfatca.org/pubs/MG\\_Count\\_FOIA\\_2016.pdf](http://www.nfatca.org/pubs/MG_Count_FOIA_2016.pdf). Because this information was not included in the briefing, Defendants advised Plaintiffs in advance of the hearing that it might rely upon the information. A copy of the email so advising Plaintiffs is attached as Exhibit A hereto.

Counsel apologizes for not including a citation to the letter in the presentation.

The Honorable Richard G. Andrews

March 1, 2023

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Respectfully submitted,

*/s/ David E. Ross*

David E. Ross (#5228)

cc: All Counsel of Record (via CM/ECF)

# **Exhibit A**

**From:** David Ross  
**Sent:** Wednesday, February 22, 2023 5:03 PM  
**To:** Pileggi, Francis; Bradley P. Lehman  
**Cc:** Wan, Kenneth (DOJ); Radinson-Blasucci, Caneel (DOJ); Garrett Moritz; Bradley Aronstam  
**Subject:** Delaware Gun Litigation  
**Attachments:** MG\_Count\_FOIA\_2016.pdf

Francis & Brad:

Good afternoon.

Attached is one document that is not included in the briefing that we may rely upon on Friday.

Best,

**David E. Ross** | Ross Aronstam & Moritz LLP  
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Bureau of Alcohol, Tobacco,  
Firearms and Explosives

[www.atf.gov](http://www.atf.gov)

February 24, 2016

REFER TO: 2016-0003 / AP-2015-05939

Mr. Jeffrey E. Folloder  
NFATCA  
20603 Big Wells Drive  
Katy, TX 77449

Dear Mr. Folloder:

This is in response to your request for information that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) initially withheld, pursuant to the reasons stated in our August 25, 2015 correspondence. By letter dated September 16, 2015, you appealed our decision to withhold the information requested to the Office of Information Policy (OIP). By letter dated December 9, 2015, OIP remanded the case for further processing. Your request has been assigned number 2016-0003. Please refer to this number on any future correspondence.

The following information corresponds to your request for an exact count of transferrable pre 86 machineguns, post May 86 machineguns, and sale sample machineguns, registered in the National Firearms Registration Transfer Record System (NFRTR).

Restricted 922(o)	297,667
Sales Samples	17,020
Pre 86	175,977

Please note that ATF utilizes customized Standard Query Language (SQL) to collect information from system databases. In the instant case, an SQL query may not capture all methods in which the requested information has been manually entered into system data fields. Thus, while each individual record is accurate, there is an inherent albeit wholly unintentional margin of error as to the aggregate statistical information requested.

Sincerely,

Stephanie M. Boucher  
Chief, Disclosure Division