



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 3A

**MEETING DATE:** March 30, 2022

**SUBJECT:** Staff Recommendation on Felony Forfeiture Enforcement for Thomas (Tom) Lu

**SUBMITTED FOR:** \_\_\_ Consent      X Deliberation and Action      \_\_\_ Receive and File

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### RECOMMENDATION

Based on the factual evidence obtained and presented in this Felony Forfeiture matter regarding Thomas (Tom) Lu (hereinafter "Member"), staff recommends that the Retirement Board:

- (1) Find that member was convicted of a felony for conduct arising out of or in the performance of his official duties as a Sacramento County Sheriff's Deputy;
- (2) Find that the felony for which Member was convicted was first committed on August 11, 2011;
- (3) Find that the "forfeiture date" pursuant to Government Code section 7522.72 is September 29, 2016;
- (4) Exercise and enforce the felony forfeiture statutes against Member's retirement benefits and reduce Member's retirement benefit effective April 1, 2022.

### BACKGROUND

Member is a 52-year-old former **Deputy Sheriff**, who previously worked for the Sheriff's Department and accrued **9+ years of service in Safety Tier 2** in the Sacramento County Employees' Retirement System (SCERS). **Member began his employment with the Sheriff's Department as a temporary Deputy Sheriff in October 2003, became a permanent Deputy Sheriff in September 2004, and terminated his employment in May 2012.**

In reviewing this matter, staff followed the due process procedures outlined in the SCERS Felony Forfeiture Policy (Policy). The Policy directs staff to conduct an investigation and analysis when a SCERS member has been convicted of a felony arising out of or in the performance of the member's official job, then present a recommendation concerning forfeiture to the Board of Retirement at a Special Board Meeting. Staff reviewed various records and reports including the Indictment filed with the United States District Court, Eastern District of California on May

31, 2012); Thomas Lu's Plea Agreement (filed August 28, 2012); Thomas Lu's Sentencing Memorandum (filed on September 22, 2016); the Joint Sentencing Agreement for Thomas Lu (filed on September 22, 2016); and the Judgment in a Criminal Case (filed on October 3, 2016).

SCERS also requested Nossaman LLP perform an analysis regarding Member's felony conviction to determine whether the conviction was work-related and fell within the scope of the felony forfeiture statutes set forth in Government Code sections 7522.72 or 7522.74. Nossaman's comprehensive legal analysis, along with supporting documents and evidence, is attached to this memo. Member was provided the required notice under the Policy that this recommendation will be presented to the Board.

Additionally, since Member's retirement date of February 28, 2020, the California Supreme Court issued the *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association and Board of Retirement of ACERA (Alameda)* decision on July 30, 2020, which requires SCERS to exclude certain pay elements from compensation used to calculate retirement benefits. Member's retirement benefits are impacted by the *Alameda* decision, thus pursuant to the *Alameda* decision staff has also reconciled and corrected Member's retirement benefit to comply with the *Alameda* ruling.

### **SUMMARY FACTUAL BACKGROUND**

California and federal law prohibit members of the public from purchasing certain firearms known as "off-roster" or "non-roster" firearms, or "unsafe handguns." Peace officers in California are exempt from these laws and therefore can purchase guns that the general public cannot. There is another exception to the prohibition of firearm purchases that allows private party transfers of off-roster firearms, meaning that once an off-roster firearm is owned by a private party, it can be sold to another private party.

According to the Indictment, from on or about March 2008, and continuing through at least November 2011, Member used his peace officer exemption as a Sacramento County Deputy Sheriff to buy weapons and sell them to others for a profit without the requisite license, thereby violating Title 18, United States Code, section 922(a)(1)(A). Specifically, a query of the Automated Firearms System showed that Member purchased thirty-four (34) firearms between March 2008 and November 2011, twenty-seven (27) of which were off-roster firearms, twenty-three (23) of which were then sold in private party transactions.

On August 28, 2012, Member signed a Plea Agreement whereby he acknowledged that he reviewed the entire factual basis contained in the supporting documentation of the Plea Agreement. Pursuant to the Plea Agreement, Member would plead guilty to the felony offense of engaging in the business of dealing in firearms without a license.

As a further condition of the Plea Agreement, Member agreed to cooperate fully with the government and any other federal, state, or local law enforcement agency, as directed by the government with respect to its prosecution of Member's co-defendants, including another Sacramento County Sheriff's Deputy.

On September 22, 2016, Member and the United States District Attorney entered into a Joint Sentencing Agreement agreeing that the appropriate sentence in Member's federal criminal case would be a two-year probation. The court entered a Judgment on September 29, 2016,

accepting the sentence outlined in the Joint Sentencing Agreement and ordering Mr. Lu to the two-year probation period.

## **LEGAL FRAMEWORK**

The felony forfeiture statutes are set forth in Government Code sections 7522.72 and 7522.74. Section 7522.72 applies to public employees first employed before January 1, 2013, while section 7522.74 applies to public employees first employed after January 1, 2013.

Because Member began his employment with the County before January 1, 2013, section 7522.72 applies. As relevant here, subdivision (b) of that section provides, in part:

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

Subdivision (c) of section 7522.72 in turn provides:

(c)(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

\* \* \*

(c)(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

## **ANALYSIS**

### **A. Conviction Arose Out Of / In the Performance of Official Duties**

To fall within the scope of Government Code section 7522.72, subdivision (b)(1), a public employee must be convicted of a felony for conduct either (i) arising out of or in the performance of his or her official duties; (ii) in pursuit of the office or appointment, or, (iii) in connection with obtaining salary, disability retirement, service retirement, or other benefits. (See Gov. Code § 7522.72, subd. (b)(1).)

As a relatively recently enacted statute, case law interpreting and applying section 7522.72 is limited. However, in one of few cases which addresses the application of the statute, the California Court of Appeal held that the public retirement board is responsible for ensuring that a member is afforded due process (i.e., notice and an opportunity to be heard by the retirement

board or an administrative hearing officer) prior to implementing a forfeiture. (*Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal.App.5th 671, 700.)

The court goes on to assert that the job-related nature of a felony “is evident when the conviction, on its face, necessarily stems from a public employee’s performance of official duties.” (Ibid.) Where the job-related nature of a felony is evident, the court concludes that “[t]he criminal proceeding leading to conviction of a crime that per se involves the public employee’s official duties and which therefore, as a matter of law, subjects the employee to benefit forfeiture under section 7522.72, necessarily satisfies any due process concerns.” (Id. at p. 701.)

Here, Member’s federal felony conviction for Engaging in the Business of Dealing in Firearms Without a License is reasonably construed as arising out of or in the performance of his official duties, i.e., was job-related. As noted above, the firearms Member purchased and resold were not on the roster of approved firearms for sale to the public in California and could only be purchased new from an FFL by a peace officer. Therefore, it was only due to his ability to take advantage of his status as a Sacramento County Deputy Sheriff that Member was able to engage in the unlawful activity of purchasing and reselling off roster firearms.

Pursuant to the Plea Agreement, Member admitted to the statement of facts supporting the plea, which included a statement confirming that “California law prohibits a person from buying more than one handgun from a FFL within any 30 day period,” but that “peace officers in California are exempt from the law and therefore can purchase as many handguns as they wish within a 30 day period.” Therefore, it was only because of Member’s status as a Sacramento County Deputy Sheriff that he was able (on several occasions) to purchase more than one handgun within a 30 day period.

Although the records reflect that Member’s purchase of firearms was traced to at least November 4, 2008, Member admitted to the August 11, 2011, sale of three off-roster firearms to an undercover ATF agent. Member’s admission of this sale provided an irrefutable date of the commission of the felony crime, and although several firearms were purchased and sold by Member before August 11, 2011, staff identifies this date as the date of the earliest commission of the crime resulting in Member’s felony conviction.

Because Member’s felony conviction arose out of the performance of his official duties, i.e., was job-related, subdivision (c) of section 7522.72 requires the forfeiture of all rights and benefits Member earned or accrued from the earliest date of the commission of any felony (i.e., August 11, 2011) to the date of his conviction (September 29, 2016).

## **B. Date of Member’s Conviction**

Although Member entered into a Plea Agreement on August 28, 2012, that agreement came with conditions that could be violated by Member which would then subject him to full prosecution by the government for any federal criminal violation of which the government had knowledge even if the statute of limitations for that crime had expired before the Plea Agreement had been violated by Member. Thus, the Plea Agreement, as is stated throughout the agreement, was an agreement that Member would plead guilty once he met his obligations pursuant to the Plea Agreement. Accordingly, Member was convicted when the judgment was entered against him on September 29, 2016.



## **CONCLUSION**

Staff consulted with Nossaman in drafting this memorandum. Based on the factual information contained in the investigatory and court records obtained relating to Member's felony conviction, Staff has determined that Member's conviction falls within the scope of the felony forfeiture statutes set forth in Government Code sections 7522.72 and 7522.74 and that Member is subject to felony forfeiture from the date of his earliest commission of a felonious act resulting in conviction, Engaging in the Business of Dealing in Firearms Without a License, which Member first committed on August 11, 2011, for which he was convicted in federal court on September 29, 2016.

In addition to the foregoing, Member's retirement benefits are also impacted by the *Alameda* decision. Pursuant to the *Alameda* decision staff has also reconciled and corrected Member's retirement benefit to comply with the *Alameda* ruling.

Member's current benefit, before any adjustments due to Felony Forfeiture or *Alameda*, is \$2,355.31 monthly. After applying the Felony Forfeiture statutes, Member's retirement benefit is reduced to \$2,072.81, and is further reduced to \$1,950.73 in order to comply with the *Alameda* decision. The benefit adjustments will be made effective April 1, 2022.

After adjustments have been made, inclusive of overpayment and contribution refund reconciliations, Member's monthly retirement allowance will be reduced to \$1,950.73 and he will be due a net refund of contributions of \$212.50.

On March 9, 2022, the Chief Benefits Officer spoke with Member to discuss and explain the calculations and adjustments to his retirement benefit respective of the Felony Forfeiture and Alameda impacts that were described in the written Notice of Special Board Meeting Regarding Felony Forfeiture sent to him on February 10, 2022. During this phone conversation, Member also confirmed that (1) he did not intend to speak to the Board or contest staff's recommendation to enforce the felony forfeiture statutes against his retirement benefit, stating that "it was only a \$200-\$300 reduction which will be recouped with future COLAs..." and (2) he agreed to sign and return a waiver or whatever was needed to close this matter. To date, Member has not returned or responded to the written waiver that was sent to him on March 14, 2022.

## **ATTACHMENTS**

- Board Order
- Legal Memorandum by Nossaman LLP, with Supporting Exhibits

Prepared by:

Reviewed by:

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Mario Sierras  
Chief Benefits Officer

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Eric Stern  
Chief Executive Officer



# Retirement Board Order

## Sacramento County Employees' Retirement System

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Before the Board of Retirement  
March 30, 2022

AGENDA ITEM:

**Staff Recommendation on Felony Forfeiture Enforcement  
for Thomas (Tom) Lu**

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to exercise and enforce the felony forfeiture statutes against Thomas (Tom) Lu, a former Deputy Sheriff who previously worked for the Sacramento County Sheriff's Department as follows:

- (1) Member was convicted of a felony for conduct arising out of or in the performance of his official duties as a Sacramento County Sherriff's Deputy;
- (2) The felony for which Member was convicted was first committed on August 11, 2011;
- (3) The "forfeiture date" pursuant to Government Code section 7522.72 is September 29, 2016;
- (4) Exercise and enforce the felony forfeiture statutes against Member's retirement benefits and reduce Member's retirement benefit effective April 1, 2022.

I HEREBY CERTIFY that the above order was passed and adopted on March 30, 2022 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:



# Retirement Board Order

## Sacramento County Employees' Retirement System

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ABSTAIN:

ALTERNATES (Present but not voting):

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Richard B. Fowler II  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary



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Refer To File # - 290949.0028

March 22, 2022

Sacramento County Board of Retirement  
980 9th Street, Suite 1900  
Sacramento, CA 95815

Re: SCERS' Felony Forfeiture Determination re Thomas Lu

Dear Members of the Board:

The Sacramento County Employees' Retirement System's ("SCERS") staff submits this letter brief in support of its determination that SCERS member, Thomas Lu, is subject to felony forfeiture. Specifically, staff has determined that: (1) Mr. Lu was convicted of a felony for conduct arising out of or in the performance of his official duties as a Sacramento County Sherriff's Deputy; (2) the felony for which Mr. Lu was convicted was first committed on August 11, 2011; (3) the "forfeiture date" pursuant to Government Code section 7522.72 is September 29, 2016. As a consequence, staff recommends a reduction of Mr. Lu's monthly retirement benefits and, after taking into account effects of the *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association and Board of Retirement of ACERA* decision ("*Alameda*"), addressing of both overpayments and a refund of contributions resulting in a net refund to Mr. Lu in the amount of \$212.50.

## I. FACTUAL BACKGROUND

Mr. Lu began his employment with the County of Sacramento Sheriff's Office as a Deputy Sherriff on October 5, 2003. He resigned on May 6, 2012.

The following factual summary is based on information contained in the federal criminal Indictment (filed in the United States District Court, Eastern District of California on May 31, 2012) (Exhibit A); Thomas Lu's Plea Agreement (filed August 28, 2012) (Exhibit B); Thomas Lu's Sentencing Memorandum (filed on September 22, 2016) (Exhibit C); the Joint Sentencing Agreement for Thomas Lu (filed on September 22, 2016) (Exhibit D); and the Judgment in a Criminal Case (filed on October 3, 2016) (Exhibit E).

SCERS also relies on the following articles: *State Exemptions for Authorized Peace Officers*, State of California Department of Justice, <https://oag.ca.gov/firearms/exemptpo> (Exhibit F); *Law enforcement officers may be illegally selling guns, ATF says*, LOS ANGELES TIMES (April 13, 2017), <https://www.latimes.com/local/lanow/la-me-ln-illegal-gun-sales-20170412-story.html> (Exhibit G); *Jury Returns Guilty Verdicts for Former Sacramento County Sheriff's Deputy and Federal Firearms Licensee in Firearm Straw-Buyer Scheme*, UNITED STATES DEPARTMENT OF JUSTICE (June 11, 2015), <https://www.justice.gov/usao-edca/pr/jury-returns-guilty-verdicts-former-sacramento-county-sheriff-s-deputy-and-federal> (Exhibit H); and *Former*

*Sacramento County Sheriff's Deputy Sentenced to 18 Months in Prison for Unlawful Sale of Firearms*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (June 30, 2016) (Exhibit N).

SCERS also relies on the following statutes in its analysis: California Penal Code section 32000(b)(4) (Exhibit I); California Penal Code section 28050 (Exhibit J); California Penal Code section 32110(a) (Exhibit K); California Penal Code section 27535(b)(5) (Exhibit L); California Penal Code section 830.1(a) (Exhibit M); and California Government Code section 7522.72 (Exhibit O). Finally, staff presents their reconciliation of both felony forfeiture and the impact of the *Alameda's* decision on Mr. Lu's retirement benefits account. (See Exhibit P [Reconciliation of Felony Forfeiture and Alameda Exclusions].)

California and federal law prohibit members of the public from purchasing certain firearms known as "off-roster" or "non-roster" firearms, or "unsafe handguns." (See Exhibit I [Cal. Penal Code § 32000(c)(1) (prohibiting the sale of unsafe handguns to the general public)].) Peace officers in California are exempt from these laws and therefore can purchase guns that the general public cannot. (See Exhibit F [*State Exemptions for Authorized Peace Officers*, State of California Department of Justice, <https://oag.ca.gov/firearms/exemptpo>]; see also, Exhibit I [Cal. Penal Code § 32000(b)(4)].) As stated above, Mr. Lu was a Sacramento County Deputy Sheriff.

There is another exception to the prohibition of firearm purchases that allows private party transfers of off-roster firearms, meaning that once an off-roster firearm is owned by a private party, it can be sold to another private party. (See Exhibit J [Cal. Penal Code § 28050] and Exhibit K [Cal. Penal Code § 32110(a)].) According to the Indictment, from on or about March 2008, and continuing through at least November 2011, Mr. Lu used his peace officer exemption as a Sacramento County Deputy Sheriff to buy weapons and sell them to others for a profit without the requisite license, thereby violating Title 18, United States Code, section 922(a)(1)(A). (See Exhibit A [Indictment], at pp. 2, 10.)

Specifically, a query of the Automated Firearms System showed that Mr. Lu purchased thirty-four firearms between March 2008 and November 2011, twenty-seven of which were off-roster firearms, twenty-three of which were then sold in private party transactions. (See Exhibit B [Plea Agreement], at Ex. A, p. 11.) As noted in Mr. Lu's Plea Agreement, while California law prohibits a person from buying more than one handgun from a Federal Firearms Licensee ("FFL") within any 30 day period, there is an exemption for peace officers. (*Id.* at p. 14; see also, Exhibit L [Cal. Penal Code § 27535(b)(5)].) A review of the Dealer Record of Sale and Automated Firearm System records showed that Mr. Lu took advantage of this exception when he purchased two off-roster handguns on July 22, 2010; two off-roster handguns on August 12, 2010; two off-roster handguns on September 2, 2010; two off-roster handguns on September 23, 2010; two off-roster handguns on October 4, 2010; two off-roster handguns on October 18, 2010; and two off-roster handguns on November 22, 2010. (Exhibit B [Plea Agreement], at Ex. A, pp. 14-15.) Mr. Lu also purchased (and then sold) multiple firearms of the same make, model, and caliber between 2008 and 2011. (*Id.* at Ex. A, pp. 15-16.)

On August 11, 2011, Mr. Lu sold three off-roster firearms to an undercover agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). (Exhibit B [Plea Agreement], at Ex. A, pp. 11-12.) On August 26, 2011, Mr. Lu sold two more firearms to the undercover ATF agent and showed the undercover agent additional firearms in Mr. Lu's firearms inventory. (*Id.* at pp.12-13.) On September 7, 2011, Mr. Lu sold four more firearms to the undercover ATF agent, provided the agent with high capacity magazines for each of the firearms,

and instructed the undercover ATF agent how to convert one of the firearms to an automatic firearm. (*Id.* at pp. 13-14.)

On August 28, 2012, Mr. Lu signed his Plea Agreement whereby he acknowledged that he reviewed the entire factual basis contained in Exhibit A of the Plea Agreement, including the facts referenced above, and stipulated that a sufficient basis existed to find, beyond a reasonable doubt, that he violated 18 U.S.C. § 922(a)(1)(A). (See Exhibit B [Plea Agreement], at p. 16.) Pursuant to the Plea Agreement, Mr. Lu would plead guilty to the felony offense of engaging in the business of dealing in firearms without a license, in violation of 18 U.S.C. section 922(a)(1)(A); and, if he fully complied with the terms of the Plea Agreement, the government would recommend a reduction in Mr. Lu's sentence. (*Id.* at pp. 2-3; 5.) Pursuant to the Plea Agreement, Mr. Lu agreed to waive the right to appeal the conviction and the right to appeal any aspect of the sentence imposed in the case. (*Id.* at p. 8.) Mr. Lu also waived the right to file a post-appeal attack on his conviction or sentence. (*Id.*)

As a further condition of the Plea Agreement, Mr. Lu agreed to cooperate fully with the government and any other federal, state, or local law enforcement agency, as directed by the government. (*Id.* at pp. 2-3.) In general, Mr. Lu's "cooperation" agreement required that he cooperate with the U.S. government with respect to its prosecution of Mr. Lu's co-defendants, including another Sacramento County Sheriff's Deputy. (*Id.*)

The Plea Agreement further provided that if Mr. Lu committed any crime, gave knowingly false, misleading, or materially incomplete statements or testimony, or otherwise violated the Plea Agreement in any way, the government would no longer be bound by the Plea Agreement. (*Id.* at p. 3.) If Mr. Lu violated the Plea Agreement, he would be subject to prosecution for any federal criminal violation of which the government had knowledge including any prosecutions that were not time-barred as of the date of the Plea Agreement even if the statute of limitations had expired after the signing of the Plea Agreement and before the subsequent prosecution was begun. (*Id.* at pp. 3-4.)

After Mr. Lu fulfilled his obligations in his Plea Agreement, on September 22, 2016, Mr. Lu and the United States District Attorney entered into a Joint Sentencing Agreement agreeing that the appropriate sentence in Mr. Lu's federal criminal case would be a two-year probation, which would include: (1) a one-year period of home confinement with electronic monitoring; and (2) at least 400 hours of community service. (See Exhibit D [Joint Sentencing Agreement], at p. 3.) The court entered a Judgment on September 29, 2016, accepting the sentence outlined in the Joint Sentencing Agreement and ordering Mr. Lu to the two-year probation period. (See Exhibit E [Judgment].)

## **II. MR. LU IS SUBJECT TO FELONY FORFEITURE**

The felony forfeiture statutes are set forth in Government Code sections 7522.72 and 7522.74. Section 7522.72 applies to public employees first employed, elected, or appointed before January 1, 2013. Section 7522.74 applies to public employees first employed, elected, or appointed after January 1, 2013.

Because Mr. Lu began his employment with the County before January 1, 2013, section 7522.72 applies. As relevant here, subdivision (b) of that section provides, in part:

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of

his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

Subdivision (c) of section 7522.72 in turn provides:

(c)(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

\* \* \*

(c)(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

Therefore, to fall within the scope of Government Code section 7522.72, subdivision (b)(1), a public employee must be convicted of a felony for conduct either (i) arising out of or in the performance of his or her official duties; (ii) in pursuit of the office or appointment, or, (iii) in connection with obtaining salary, disability retirement, service retirement, or other benefits. (See Gov. Code § 7522.72, subd. (b)(1).)

**a. Mr. Lu's Conviction Arose Out Of or In the Performance of Official Duties**

Mr. Lu's federal felony conviction for Engaging in the Business of Dealing in Firearms Without a License arose out of or in the performance of his official duties, i.e., was job-related. As noted above, the firearms Mr. Lu purchased and resold were not on the roster of approved firearms for sale to the public in California and could only be purchased new from an FFL by a peace officer. (See Exhibit I [California Penal Code § 32000(b)(4) (permitting the sale and purchase of handguns by sworn members of certain agencies identified in the statute, including police departments and sheriff's officials)].) Therefore, it was only due to his ability to take advantage of his status as a Sacramento County Deputy Sheriff that Mr. Lu was able to engage in the unlawful activity of purchasing and reselling off-roster firearms. It is the volume of purchases and subsequent reselling and/or private party transfers of firearms by Mr. Lu that resulted in his conviction for engaging in the business of dealing in firearms without a license. Mr. Lu admitted in the Factual Basis for Plea (Exhibit B [Plea Agreement], at Ex. A) that he sold approximately twenty-five firearms over the years in question. (*Id.* at p. 16.)

The intent behind California's laws enacted to allow peace officers to purchase firearms otherwise restricted from the general public was to give peace officers every possible advantage in protecting their lives in the line of duty and the lives of the public they serve to protect.<sup>1</sup>

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<sup>1</sup> ATF Special Agent in Charge, Jill A. Snyder, stated with respect to co-defendant Ryan McGowan's conviction: "Ryan McGowan used his position as a law enforcement officer to purchase firearms and sell them illegally. In doing so, he violated federal law and public trust." (See Exhibit N [June 30, 2016, ATF

Selling firearms obtained with the peace officer purchase exemptions to the public is contrary to the intent behind those peace officer firearm purchasing exemptions and puts more lives at risk of harm due to firearm accessibility.

About five years after Mr. Lu pled guilty in his Plea Agreement, a memorandum distributed by the then head of the ATF in Los Angeles, Eric Harden, described an “emerging problem” resulting from law enforcement officers purchasing multiple off-roster firearms and reselling those firearms to non-law enforcement entities for a profit, without the required Federal Firearms License. (See Exhibit G [April 13, 2017, L.A. Times article].)

Pursuant to the Plea Agreement, Mr. Lu admitted to the statement of facts supporting the plea, which included a statement confirming that “California law prohibits a person from buying more than one handgun from a FFL within any 30 day period,” but that “peace officers in California are exempt from the law and therefore can purchase as many handguns as they wish within a 30 day period.” (See Exhibit B [Plea Agreement], at p. 14.) Indeed, California Penal Code section 27535, subdivision (a), provides that “[a] person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period.” Section 27535, subdivision (b)(5), provides that subdivision (a) does not apply to “[a]ny person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of employment as a peace officer.” In turn, California Penal Code section 830.1(a) provides that “[a]ny sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county... is a peace officer.” (See Exhibit M [Cal. Penal Code § 830.1].) Therefore, it was only because of Mr. Lu’s status as a Sacramento County Deputy Sheriff that he was able (on several occasions) to purchase more than one handgun within a 30-day period.

Although Mr. Lu’s purchase of firearms was traced to at least November 4, 2008, (Exhibit B, Ex. A, p. 15), Mr. Lu admitted to the August 11, 2011, sale of three off-roster firearms to an undercover ATF agent. (*Id.* at pp. 11-12.) Mr. Lu’s admission of this sale provides an irrefutable date of the commission of the felony of engaging in the business of dealing in firearms without a license. Although several firearms were purchased and sold by Mr. Lu before August 11, 2011, staff identifies the August 11, 2011, date as the date of the earliest commission of the act resulting in Mr. Lu’s felony conviction.

Because Mr. Lu’s felony conviction arose out of the performance of his official duties, i.e., was job-related, subdivision (c) of section 7522.72 requires the forfeiture of all rights and benefits Mr. Lu earned or accrued from the earliest date of the commission of the felony (i.e., August 11, 2011) to the date of his conviction, discussed below.

#### **b. Date of Conviction**

Although Mr. Lu entered into a Plea Agreement on August 28, 2012. The agreement came with conditions that could be violated by Mr. Lu which would then subject him to full prosecution by the government for any federal criminal violation of which the government had knowledge even if the statute of limitations for that crime had expired before the Plea Agreement

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statement re conviction].) United States Attorney, Benjamin Wagner, shared this sentiment at the time of Mr. McGowan’s federal court conviction, stating, “[w]hen law enforcement officers misuse their badges to funnel dangerous weapons to the highest bidder, they compromise the safety of the public. By putting personal profit ahead of public safety, they undermine the very essence of their duty.” (See Exhibit H [U.S. Dept. of Justice statement re conviction].)



had been violated by Mr. Lu. (Exhibit B [Plea Agreement], at pp. 3-4.) Thus, the Plea Agreement, as is stated throughout the agreement, was an agreement that Mr. Lu would plead guilty once he met his obligations pursuant to the Plea Agreement, i.e., he cooperated with the government throughout its prosecution of Mr. Lu's co-defendants. Accordingly, Mr. Lu was convicted when the Judgment was entered against him on September 29, 2016.

### III. CONCLUSION

In light of the foregoing, staff have determined that Mr. Lu is subject to felony forfeiture from the first verifiable date of his earliest commission of a felonious act resulting in a conviction, Engaging in the Business of Dealing in Firearms Without a License, which Mr. Lu first committed on or about August 11, 2011, and for which he was convicted in federal court on September 29, 2016.

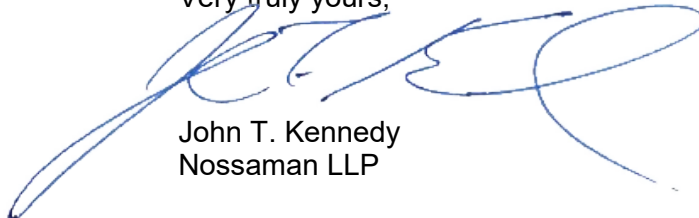
Additionally, since Mr. Lu's retirement date of February 28, 2020, the California Supreme Court issued the *Alameda* decision, which requires SCERS to exclude various pay elements from compensation used to calculate retirement benefits. Mr. Lu's final compensation is impacted by the *Alameda* decision. Pursuant to that California Supreme Court decision and subsequent action by the Board of Retirement for SCERS, staff recommends the exclusion from Mr. Lu's final average monthly compensation calculation the portion of pay differentials, allowances, or other incentives that include overtime.

The excluded pay elements and corresponding earnings; the contributions paid on the excluded earnings and interest on those contributions; the amount of overpaid benefits; and any refund amounts due are listed in Exhibit P [Reconciliation of Felony Forfeiture and Alameda Exclusions]. Interest has been applied to the refunded contributions based on the semi-annual interest crediting rate for Member Reserves.

Pursuant to the Board's actions regarding *Alameda* and the resulting Board Order, overpaid contributions on excluded pay items have been offset against the overpayment of monthly benefits that occurred before August 31, 2020, the effective Board Order date of the *Alameda* decision, and overpaid benefits that occurred on or after that date must be recouped from Mr. Lu.

Once all adjustments are considered, staff recommends that Mr. Lu's monthly allowance should be reduced to \$1,950.73 per month effective April 1, 2022 (before the COLA for 2022 is applied). Further, staff recommends a refund in the amount of \$212.50 to Mr. Lu after applying returned contributions against overpayments made by SCERS. (See Exhibit P [Reconciliation of Felony Forfeiture and Alameda Exclusions].)

Very truly yours,



John T. Kennedy  
Nossaman LLP

JK:jb6

Enclosure: Exhibits A to P

cc: Thomas Lu – w/enc. (via email & mail)  
Mario Sierras, Chief Benefits Officer, SCERS – w/enc. (via email)

# **Exhibit A**

1 BENJAMIN B. WAGNER  
United States Attorney  
2 WILLIAM S. WONG  
MICHAEL D. ANDERSON  
3 Assistant U.S. Attorneys  
501 I Street, Suite 10-100  
4 Sacramento, CA 95814  
Telephone: (916) 554-2700

**FILED**

MAY 31 2012

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
DEPUTY CLERK

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 RYAN MCGOWAN,  
14 ROBERT SNELLINGS,  
15 ULYSSES SIMPSON GRANT  
EARLY, IV, and  
16 THOMAS LU,

17 Defendants.

Case No. **212 - CR - 0207 LKK**

VIOLATIONS: 18 U.S.C. §  
922(a)(1)(A) - Engaging in the  
Business of Dealing in Firearms  
Without a License (2 counts); 18  
U.S.C. § 371 - Conspiracy to  
Make a False Statement With  
Respect to Firearm Records  
(5 Counts); 18 U.S.C. §  
924(d)(1) and 28 U.S.C. §  
2461(c) - Criminal Forfeiture

18  
19 I N D I C T M E N T

20 The Grand Jury charges: T H A T

21 At all times relevant to this Indictment:

22 1. The Bureau of Alcohol, Tobacco, Firearms and Explosives  
23 (ATF) is an agency of the United States Government tasked with  
24 the responsibility of supervising, controlling, and licensing the  
25 sale of firearms.

26 2. A Federal Firearms Licensee (FFL) is an individual or  
27 entity, who after submitting an application and undergoing an  
28 investigation by ATF, is then granted a license to sell certain

1 firearms, and other controlled items. Federal firearms laws  
2 require anyone who is a firearms dealer to obtain a federal  
3 firearms license. Private persons can sell firearms without a  
4 license, provided they are not engaged in the business of selling  
5 firearms, such as the occasional sale of a portion of a personal  
6 firearms collection.

7 3. An ATF Form 4473 is a document required to be completed  
8 by the actual buyer of a firearm from any FFL. Under California  
9 law, private persons who sell a firearm must use an FFL to  
10 transfer the firearm. The FFL must assure that ATF Form 4473 is  
11 completed by the actual buyer of a firearm prior to the sale or  
12 transfer of the firearm between private parties and must retain  
13 the original completed ATF Form 4473 on his/her premises. The  
14 ATF Form 4473, Section A must be completed by the actual buyer  
15 and must contain, among other information, the name and residence  
16 address of the actual buyer, along with the assurance that the  
17 buyer is the actual buyer of the firearm and is not acquiring the  
18 firearm on behalf of another person.

19 4. Pursuant to State law, certain firearms known as "off  
20 roster" firearms are not on the approved list of firearms and may  
21 not be offered for sale to the public as a new firearm by FFLs in  
22 California, but may only be purchased new by sworn law  
23 enforcement officers. Such firearms may later be lawfully sold  
24 by a law enforcement officer to the public in a "private party"  
25 transaction conducted through an FFL.

26 //  
27 //  
28 //

1 COUNT ONE: [18 U.S.C. § 922(a)(1)(A) - Engaging in the  
2 Business of Dealing in Firearms Without a  
3 License]

4 The Grand Jury charges: T H A T

5 RYAN McGOWAN,

6 defendant herein, beginning on or about February 2008, and  
7 continuing through at least November 2011, in the County of  
8 Sacramento, State and Eastern District of California, and  
9 elsewhere, not having received a license to engage in the  
10 business of dealing in firearms as required by Title 18 of the  
11 United States Code, Section 923, did engage in the business of  
12 dealing in firearms and, in the course of such business, received  
13 firearms that had been shipped and transported in interstate and  
14 foreign commerce, in violation of Title 18, United States Code,  
15 Section 922(a)(1)(A).

16 COUNT TWO: [18 U.S.C. § 371 - Conspiracy to Make a False  
17 Statement with Respect to Firearm Records]

18 The Grand Jury further charges: T H A T

19 RYAN McGOWAN, and  
20 ROBERT SNELLINGS,

21 defendants herein, beginning on or about July 1, 2009, and  
22 continuing through July 27, 2009, in the County of Sacramento,  
23 State and Eastern District of California, and elsewhere, did  
24 conspire with each other, and with other persons known and  
25 unknown to the Grand Jury, to knowingly make a false statement  
26 and representation with respect to information required to be  
27 kept under federal law by an FFL, specifically representing on  
28 Form 4473 that defendant RYAN McGOWAN was the actual buyer of a  
Sturm, Ruger & Co., Model LCP, .380 caliber handgun, serial  
number 37182507, when he was not the actual buyer, in violation  
of Title 18, United States Code, Section 924(a)(1)(A).

Overt Acts

1  
2 As part, and in furtherance of the conspiracy, overt acts  
3 were committed including, but not limited to, the following:

4 1. On or about July 1, 2009, defendant ROBERT SNELLINGS  
5 purchased a Sturm, Ruger & Co., model LCP, .380 caliber handgun,  
6 serial number 37182507, as an FFL (on behalf of Snellings'  
7 Firearms), for \$359.70 in cash. The gun was delivered that same  
8 day by River City Gun Exchange to Snellings' Firearms as an FFL  
9 to FFL transfer.

10 2. The very next day, on or about July 2, 2009, defendant  
11 RYAN MCGOWAN purchased the same Sturm, Ruger & Co., model LCP,  
12 .380 caliber handgun, serial number 37182507, from Snellings'  
13 Firearms. This handgun is not on the roster of approved handguns  
14 for sale to the public in California and can only be purchased  
15 new from an FFL by a peace officer. Defendant RYAN MCGOWAN was  
16 able to purchase this firearm due to his peace officer status.

17 3. During the purchase of this firearm, on or about July  
18 2, 2009, defendant RYAN MCGOWAN filled out ATF Form 4473.  
19 Question 12a on ATF Form 4473, asks: "Are you the actual buyer  
20 of this firearm(s) listed on the form?" On the form, defendant  
21 RYAN MCGOWAN answered "yes" to question 12a. If defendant RYAN  
22 MCGOWAN did not answer "yes", the sale would have been prohibited  
23 by law.

24 4. On July 13, 2009, 11 days after the purchase, and one  
25 day after the expiration of the ten day waiting period under  
26 California law, defendant RYAN MCGOWAN private party transferred  
27 the firearm back to defendant ROBERT SNELLINGS as a private party  
28 (not as an FFL).



1           5.     On July 27, 2009 (14 days after defendant RYAN MCGOWAN  
2 transferred the firearm to defendant ROBERT SNELLINGS), defendant  
3 ROBERT SNELLINGS private party transferred the firearm to W.P.  
4 This gun was later listed on a CCW (carry concealed weapon)  
5 permit for W.P. on April 20, 2011.

6           All in violation of Title 18, United States Code, Section  
7 371.

8     COUNT THREE:     [18 U.S.C. § 371 - Conspiracy to Make a False  
9                             Statement With Respect to Firearm Records]

10           The Grand Jury further charges:   T H A T

11   ROBERT SNELLINGS,  
12 defendant herein, beginning on or about June 17, 2010, and  
13 continuing through July 5, 2010, in the County of Sacramento,  
14 State and Eastern District of California, and elsewhere, did  
15 conspire with other persons known and unknown to the Grand Jury,  
16 to knowingly make a false statement and representation with  
17 respect to information required to be kept under federal law by  
18 an FFL, specifically representing on Form 4473 that unindicted  
19 coconspirator C.L. was the actual buyer of a Sturm, Ruger & Co.,  
20 Model LCP, .380 caliber handgun, serial number 37437161, when he  
21 was not the actual buyer, in violation of Title 18, United States  
22 Code, Section 924(a)(1)(A).

23   Overt Acts

24           As part, and in furtherance of the conspiracy, overt acts  
25 were committed including, but not limited to, the following:

26           1.     On June 17, 2010, Sacramento Police Officer C.L. started  
27 the Dealer's Record of Sale (DROS) process for two Sturm, Ruger &  
28 Co., model LCP, .380 caliber handguns with serial numbers

1 37437161 and 37437405. This transaction was completed by  
2 defendant ROBERT SNELLINGS as an FFL for Snellings' Firearms.  
3 These firearms were "off roster" firearms, not on the approved  
4 list of handguns for sale in California, and could only be  
5 purchased new from an FFL by a peace officer. At the time C.L.  
6 filled out ATF Form 4473, he and defendant ROBERT SNELLINGS knew  
7 that B.G. was the actual buyer and not C.L.

8 2. Approximately 19 days later, on July 5, 2010, C.L.  
9 private party transferred the Sturm, Ruger & Co., model LCP, .380  
10 caliber handgun, with serial number 37437161, to B.G. The  
11 private party transfer was completed by defendant ROBERT  
12 SNELLINGS as an FFL.

13 3. In furtherance of the conspiracy, B.G. paid defendant  
14 ROBERT SNELLINGS directly for the firearm.

15 All in violation of Title 18, United States Code, Section  
16 371.

17 COUNT FOUR: [18 U.S.C. § 371 - Conspiracy to Make a False  
18 Statement with Respect to Firearm Records]

19 The Grand Jury further charges: T H A T

20 ROBERT SNELLINGS,  
21 defendant herein, beginning on or about August 12, 2010, and  
22 continuing through on or about September 13, 2010, in the County  
23 of Sacramento, State and Eastern District of California, and  
24 elsewhere, did conspire with other persons known and unknown to  
25 the Grand Jury, to knowingly make a false statement and  
26 representation with respect to information required to be kept  
27 under federal law by an FFL, specifically representing on Form  
28 4473 that unindicted coconspirator C.L. was the actual buyer of a



1 Carl Walther, model PK 380, .380 caliber handgun, serial number  
2 PK038993, when he was not the actual buyer, in violation of Title  
3 18, United States Code, Section 924(a)(1)(A).

4 Overt Acts

5 As part, and in furtherance of the conspiracy, overt acts  
6 were committed including, but not limited to, the following:

7 1. On or about August 12, 2010, Sacramento Police Officer  
8 C.L. started the DROS process for a semiautomatic, Carl Walther,  
9 model PK380, ".38 caliber" handgun, serial number PK038993.

10 Defendant ROBERT SNELLINGS was listed as the FFL that completed  
11 the paperwork for this firearm. The entry of the caliber on  
12 August 12, 2010 as ".38" is not correct. This handgun is not on  
13 the roster of approved handguns for sale to the public in  
14 California and can only be purchased new from an FFL by a peace  
15 officer.

16 2. On September 13, 2010, approximately 32 days later,  
17 C.L. private party transferred the same firearm to defendant  
18 ROBERT SNELLINGS as a private person to complete the "straw  
19 purchase" transaction. The firearm was transferred to defendant  
20 ROBERT SNELLINGS, using defendant ROBERT SNELLINGS' business as  
21 the FFL to conduct the paperwork.

22 All in violation of Title 18, United States Code, Section  
23 371.

24 COUNT FIVE: [18 U.S.C. § 371 - Conspiracy to Make a False  
25 Statement with Respect to Firearm Records]

26 The Grand Jury further charges: T H A T

27 ROBERT SNELLINGS,

28 defendant herein, beginning on or about July 9, 2009, and

1 continuing through on or about August 4, 2009, in the County of  
2 Sacramento, State and Eastern District of California, and  
3 elsewhere, did conspire with other persons known and unknown to  
4 the Grand Jury, to knowingly make a false statement and  
5 representation with respect to information required to be kept  
6 under federal law by an FFL, specifically representing on Form  
7 4473 that unindicted coconspirator C.K. was the actual buyer of a  
8 Carl Walther, Model PPS, .40 caliber handgun, serial number  
9 AD3719, when he was not the actual buyer, in violation of Title  
10 18, United States Code, Section 924(a)(1)(A).

11 Overt Acts

12 As part, and in furtherance of the conspiracy, overt acts  
13 were committed including, but not limited to, the following:

14 1. On or about July 9, 2009, Roseville Police Officer C.K.  
15 started the DROS process for the purchase of a Carl Walther,  
16 model PPS, .40 caliber handgun, serial number AD3719. This  
17 handgun is not on the roster of approved handguns for sale to the  
18 public in California and can only be purchased new from an FFL by  
19 a peace officer. Defendant ROBERT SNELLINGS was the FFL that  
20 completed the ATF Form 4473 paperwork. C.K. listed himself as  
21 the actual buyer of the handgun, when in fact the actual buyer of  
22 the handgun was defendant ROBERT SNELLINGS.

23 2. The same firearm was later transferred to defendant  
24 ROBERT SNELLINGS, as a private person, using ROBERT SNELLINGS, as  
25 the FFL, to complete the transfer. This is the same firearm C.K.  
26 obtained the month prior.

27 All in violation of Title 18, United States Code, Section  
28 371.

1 COUNT SIX: [18 U.S.C. § 371 - Conspiracy to Make a False  
Statement With Respect to Firearm Records]

2 The Grand Jury further charges: T H A T

3  
4 ROBERT SNELLINGS, and  
ULYSSES SIMPSON GRANT EARLY, IV,  
5 defendants herein, beginning on or about April 29, 2010, and  
6 continuing through on or about May 27, 2010, in the County of  
7 Sacramento, State and Eastern District of California, and  
8 elsewhere, did conspire with each other, and other persons known  
9 and unknown to the Grand Jury, to knowingly make a false  
10 statement and representation with respect to information required  
11 to be kept under federal law by an FFL, specifically representing  
12 on Form 4473 that unindicted co-conspirator C.K. was the actual  
13 buyer of a Sturm, Ruger & Co., model LCP, .380 caliber handgun,  
14 serial number 37300127, when he was not the actual buyer, in  
15 violation of Title 18, United States Code, Section 924(a)(1)(A).

16 Overt Acts

17 As part, and in furtherance of the conspiracy, overt acts  
18 were committed including, but not limited to, the following:

19 1. On or about April 29, 2010, Roseville Police Officer  
20 C.K. started the DROS process to purchase a Sturm, Ruger & Co.,  
21 model LCP, .380 caliber handgun, serial number 37300127, from  
22 Snellings' Firearms. This handgun is not on the roster of  
23 approved handguns for sale to the public in California and can  
24 only be purchased new from an FFL by a peace officer. Unindicted  
25 co-conspirator C.K. was able to purchase this firearm due to his  
26 peace officer status.

27 2. During the purchase of this firearm, C.K. filled out  
28 ATF Form 4473. Question 12a asks: "Are you the actual buyer of

1 this firearm(s) listed on the form?" On the form, C.K. answered  
2 "yes" to question 12a. If C.K. did not answer "yes", the sale  
3 would have been prohibited by law. At the time C.K. filled out  
4 ATF Form 4473, he and defendants ROBERT SNELLINGS and ULYSSES  
5 SIMPSON GRANT EARLY, IV, had no doubt that C.K. was not the  
6 actual buyer, but that the true actual buyer was defendant  
7 ULYSSES SIMPSON GRANT EARLY, IV.

8 3. On May 27, 2010, approximately 28 days later, C.K.  
9 private party transferred the Sturm, Ruger & Co., model LCP, .380  
10 caliber handgun, serial number 37300127, to ULYSSES SIMPSON GRANT  
11 EARLY, IV. The private party transfer was completed by defendant  
12 ROBERT SNELLINGS as the FFL.

13 All in violation of Title 18, United States Code, Section  
14 371.

15 COUNT SEVEN: [18 U.S.C. § 922(a)(1)(A) - Engaging in the  
16 Business of Dealing in Firearms Without a  
License]

17 The Grand Jury further charges: T H A T

18 THOMAS LU,

19 defendant herein, on or about March 2008, and continuing through  
20 at least November 2011, in the County of Sacramento, State and  
21 Eastern District of California, and elsewhere, not having  
22 received a license to engage in the business of dealing in  
23 firearms as required by Title 18, United States Code, Section  
24 923, did engage in the business of dealing in firearms and, in  
25 the course of such business, received firearms that had been  
26 shipped and transported in interstate and foreign commerce, in  
27 violation of Title 18, United States Code, Section 922(a)(1)(A).

28 ///

1 FORFEITURE ALLEGATION: [18 U.S.C. § 924(d)(1) and 28 U.S.C. §  
2 2461(c) - Criminal Forfeiture]

3 1. Upon conviction of one or more of the offenses alleged  
4 in Counts One through Seven of this Indictment, defendants RYAN  
5 MCGOWAN, ROBERT SNELLINGS, ULYSSES SIMPSON GRANT EARLY, IV, and  
6 THOMAS LU shall forfeit to the United States pursuant to  
7 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), any firearms and  
8 ammunition involved in or used in the knowing or willful  
9 commission of the offenses.

10 2. If any property subject to forfeiture, as a result of  
11 the offenses alleged in Counts One through Seven of this  
12 Indictment, for which defendants are convicted:

- 13 a. cannot be located upon the exercise of due diligence;  
14 b. has been transferred or sold to, or deposited with, a  
15 third party;  
16 c. has been placed beyond the jurisdiction of the Court;  
17 d. has been substantially diminished in value; or  
18 e. has been commingled with other property which cannot  
19 be divided without difficulty;

20 it is the intent of the United States, pursuant to 28 U.S.C. §  
21 2461(c), incorporated by 21 U.S.C. § 853(p), to seek forfeiture  
22 of any other property of said defendants, up to the value of the  
23 property subject to forfeiture.

24 A TRUE BILL.

25  
26 15/  
FOREPERSON

27 Benjamin Wagner  
28 BENJAMIN B. WAGNER  
United States Attorney



**UNITED STATES DISTRICT COURT**

*Eastern District of California*

*Criminal Division*

**THE UNITED STATES OF AMERICA**

vs.

**RYAN MCGOWAN, ROBERT SNELLINGS,  
ULYSSES SIMPSON GRANT EARLY, IV,  
and THOMAS LU,**

**INDICTMENT**

**VIOLATION(S):** 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License (2 Counts); 18 U.S.C. § 371 - Conspiracy to Make a False Statement With Respect to Firearm Records (5 Counts); 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) - Criminal Forfeiture

A true bill,

15/

Foreman.

Filed in open court this 31 day

of may, A.D. 20 12

*[Signature]*  
Clerk.

Bail, \$ \_\_\_\_\_

*Summons to issue as to Defendant McGowan, Early and Lu*

GPO 863 525

*As to Defendant Snellings → NO BAIL WARRANT*

*[Signature]*

2:12 - CR - 0207 LKK

**PENALTY SLIP**

**Penalties on COUNT ONE for the following defendant:**

**RYAN McGOWAN**

**VIOLATION:** 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License

**PENALTY:** Not more than 10 years imprisonment  
Not more than a \$250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT TWO for the following defendants:**

**RYAN McGOWAN, and  
ROBERT SNELLINGS**

**VIOLATION:** 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

**PENALTY:** Not more than 5 years imprisonment  
Not more than a \$ 250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT THREE for the following defendant:**

**ROBERT SNELLINGS**

**VIOLATION:** 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

**PENALTY:** Not more than 5 years to life imprisonment  
Not more than a \$250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT FOUR for the following defendant:**

**ROBERT SNELLINGS**

**VIOLATION:** 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

**PENALTY:** Not more than 5 years to life imprisonment  
Not more than a \$250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT FIVE for the following defendant:**

**ROBERT SNELLINGS**

**VIOLATION:** 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

**PENALTY:** Not more than 5 years to life imprisonment  
Not more than a \$ 250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT SIX for the following defendants:**

**ROBERT SNELLINGS**

**ULYSSES SIMPSON GRANT EARLY, IV**

**VIOLATION:** 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

**PENALTY:** Not more than 5 years to life imprisonment  
Not more than a \$ 250,000.00 fine, or both  
At least 3 years of supervised release

**Penalties on COUNT SEVEN for the following defendant:**

**THOMAS LU**

**VIOLATION:** 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License

**PENALTY:** Not more than 10 years to life imprisonment  
Not more than a \$250,000.00 fine, or both  
At least 3 years of supervised release

**FORFEITURE**

**ALLEGATION:** 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) - Criminal Forfeiture

**PENALTY:** As Stated in the Indictment

**ASSESSMENT:** \$100.00 special assessment for each count



# **Exhibit B**

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United States Attorney  
WILLIAM S. WONG  
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Telephone: (916) 554-2751

**FILED**  
AUG 28 2012  
CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]*  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 2:12-cr-0207 LKK  
)  
Plaintiff, ) PLEA AGREEMENT FOR  
) DEFENDANT THOMAS LU  
v. )  
)  
THOMAS LU, )  
)  
)  
Defendants. )

I.

INTRODUCTION

**A. Scope of Agreement:** Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, the defendant THOMAS LU ("defendant") will plead guilty to Count Seven of the Indictment in this case. The defendant will be entering a guilty plea to the specific charge set forth below:

COUNT SEVEN: 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License.

**B. Court Not a Party:** The Court is not a party to this Plea Agreement. Sentencing is a matter solely within the discretion of the Court, the Court is under no obligation to accept any

1 recommendations made by the government, and the Court may in its  
2 discretion impose any sentence it deems appropriate up to and  
3 including the statutory maximum stated in this Plea Agreement. If  
4 the Court should impose any sentence up to the maximum established by  
5 the statute, the defendant cannot, for that reason alone, withdraw  
6 his guilty plea, and he will remain bound to fulfill all of the  
7 obligations under this Plea Agreement. The defendant understands  
8 that neither the prosecutor, defense counsel, nor the Court can make  
9 a binding prediction or promise regarding the sentence he will  
10 receive.

11 **II.**

12 **DEFENDANT'S OBLIGATIONS**

13 **A. Guilty Plea:** The defendant will plead guilty to Count Seven,  
14 of the Indictment. The defendant agrees that he is in fact guilty of  
15 this charge and that the facts set forth in the Factual Basis  
16 attached to this Plea Agreement as Exhibit A are sufficient to  
17 establish a violation of 18 U.S.C. § 922(a)(1)(A).

18 **B. Special Assessment:** The defendant agrees to pay a special  
19 assessment of \$100 at the time of sentencing by delivering a check or  
20 money order payable to the United States District Court to the United  
21 States Probation Office immediately before the sentencing hearing.  
22 The defendant understands that this Plea Agreement is voidable by the  
23 government if he fails to pay the assessment prior to that hearing.  
24 If the defendant is unable to pay the special assessment at the time  
25 of sentencing, he agrees to earn the money to pay the assessment, if  
26 necessary by participating in the Inmate Financial Responsibility  
27 Program.

28 **C. Agreement to Cooperate:** The defendant agrees to cooperate

1 fully with the government and any other federal, state, or local law  
2 enforcement agency, as directed by the government. As used in this  
3 plea agreement, "cooperation" requires the defendant: (1) to respond  
4 truthfully and completely to all questions, whether in interviews, in  
5 correspondence, telephone conversations, before a grand jury, or at  
6 any trial or other court proceeding; (2) to attend all meetings,  
7 grand jury sessions, trials, and other proceedings at which the  
8 defendant's presence is requested by the government or compelled by  
9 subpoena or court order; (3) to produce voluntarily any and all  
10 documents, records, or other tangible evidence requested by the  
11 government; (4) not to participate in any criminal activity while  
12 cooperating with the government; and (5) to disclose to the  
13 government the existence and status of all money, property, or  
14 assets, of any kind, derived from or acquired as a result of, or used  
15 to facilitate the commission of, the defendant's illegal activities  
16 or the illegal activities of any conspirators.

17 If the defendant commits any crimes or if any of the defendant's  
18 statements or testimony prove to be knowingly false, misleading, or  
19 materially incomplete, or if the defendant otherwise violates this  
20 plea agreement in any way, the government will no longer be bound by  
21 its representations to the defendant concerning the limits on  
22 criminal prosecution and sentencing as set forth herein. The  
23 determination whether the defendant has violated the plea agreement  
24 will be under a probable cause standard. If the defendant violates  
25 the plea agreement, he shall thereafter be subject to prosecution for  
26 any federal criminal violation of which the government has knowledge,  
27 including but not limited to perjury, false statements, and  
28 obstruction of justice. Because disclosures pursuant to this plea

1 agreement will constitute a waiver of the Fifth Amendment privilege  
2 against compulsory self-incrimination, any such prosecution may be  
3 premised on statements and/or information provided by the defendant.  
4 Moreover, any prosecutions that are not time-barred by the applicable  
5 statute of limitations as of the date of this plea agreement may be  
6 commenced in accordance with this paragraph, notwithstanding the  
7 expiration of the statute of limitations between the signing of this  
8 plea agreement and the commencement of any such prosecutions. The  
9 defendant agrees to waive all defenses based on the statute of  
10 limitations or delay of prosecution with respect to any prosecutions  
11 that are not time-barred as of the date of this plea agreement.

12 If it is determined that the defendant has violated any  
13 provision of this plea agreement or if the defendant successfully  
14 moves to withdraw his plea: (1) all statements made by the defendant  
15 to the government or other designated law enforcement agents, or any  
16 testimony given by the defendant before a grand jury or other  
17 tribunal, whether before or after this plea agreement, shall be  
18 admissible in evidence in any criminal, civil, or administrative  
19 proceedings hereafter brought against the defendant; and (2) the  
20 defendant shall assert no claim under the United States Constitution,  
21 any statute, Rule 11(f) of the Federal Rules of Criminal Procedure,  
22 Rule 410 of the Federal Rules of Evidence, or any other federal rule,  
23 that statements made by the defendant before or after this plea  
24 agreement, or any leads derived therefrom, should be suppressed. By  
25 signing this plea agreement, the defendant waives any and all rights  
26 in the foregoing respects.

27 After the defendant pleads guilty, the defendant and his  
28 attorney agree that the government and any law enforcement personnel

1 may interview the defendant at any time and that they can do so  
2 without the defendant's attorney present.

3 **III.**

4 **THE GOVERNMENT'S OBLIGATIONS**

5 **A. Recommendations:**

6 **1. Acceptance of Responsibility:** If the United States  
7 Probation Office determines that a three-level reduction in  
8 defendant's offense level for his full and clear demonstration of  
9 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,  
10 the government will not oppose such a reduction and will so move  
11 under § 3E1.1(b), so long as the defendant pleads guilty, meets with  
12 and assists the probation officer in the preparation of the pre-  
13 sentence report, is truthful and candid with the probation officer,  
14 and does not otherwise engage in conduct that constitutes obstruction  
15 of justice within the meaning of U.S.S.G. § 3C1.1, either in the  
16 preparation of the pre-sentence report or during the sentencing  
17 proceeding.

18 **2. Recommended Sentence:** Pursuant to U.S.S.G. § 5K1.1 -  
19 Substantial Assistance to the Government, the government will  
20 recommend a reduction in the sentence of not more than fifty (50)  
21 percent of the applicable guideline sentence should the defendant  
22 fully satisfy all the terms and conditions of his cooperation  
23 Agreement with the government as set forth previously in II,  
24 paragraph D - "Agreement to Cooperate." The defendant is not  
25 precluded from receiving a further reduction in his sentence for  
26 substantial cooperation in other criminal cases in which he was not a  
27 participant and is not the subject of this Indictment. The defendant  
28 understands and agrees that the government shall have the sole



1 discretion to determine the amount of reduction made pursuant to  
2 U.S.S.G. § 5K1.1. If the defendant, however, fails to fulfill his  
3 obligations under "Agreement to Cooperate," the government may  
4 request the Court to set aside his plea agreement and prosecute him  
5 on the charge contained in the Indictment.

6 **IV.**

7 **ELEMENTS OF THE OFFENSES**

8 **A. Elements of the Offenses:** At a trial, the government would  
9 have to prove beyond a reasonable doubt the following elements of the  
10 following offense to which the defendant is pleading guilty:

11 COUNT SEVEN: 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of  
12 Dealing in Firearms Without a License.

13 The government must prove:

14 First, beginning no later than on or about March 2008, and  
15 continuing thereafter up to and including on or about November 2011,  
16 the defendant was not licensed to engage in the business of dealing  
17 in firearms as required by Title 18, United States Code, Section 923;

18 Second, during a sufficient portion of that time period, the  
19 defendant did engage in the business of dealing in firearms as an  
20 unlicensed firearms dealer; and

21 Third, in the course of such business, the defendant did receive  
22 firearms that had been shipped and transported in interstate and  
23 foreign commerce.

24 **V.**

25 **MAXIMUM SENTENCE**

26 **A. Maximum Penalties:** The maximum sentence which the Court can  
27 impose on Count Seven is no more than five (5) years in prison, a  
28 period of supervised release of three (3) years, a fine of \$250,000

1 and a special assessment of \$100. In addition, the defendant may be  
2 ineligible for certain federal and/or state assistance and/or  
3 benefits, pursuant to 21 U.S.C. § 862.

4 **B. Violations of Supervised Release:** The defendant understands  
5 that if he violates a condition of supervised release at any time  
6 during the term of supervised release, the Court may revoke the term  
7 of supervised release and require the defendant to serve up to two  
8 (2) additional years in prison.

9 **VI.**

10 **SENTENCING DETERMINATION**

11 **A. Statutory Authority:** The defendant understands that the  
12 Court must consult the Federal Sentencing Guidelines (as promulgated  
13 by the Sentencing Commission pursuant to the Sentencing Reform Act of  
14 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
15 modified by United States v. Booker and United States v. Fanfan,  
16 543 U.S. 220 (2005)) and must take them into account when determining  
17 a final sentence. The defendant understands that the Court will  
18 determine a non-binding and advisory guideline sentencing range for  
19 this case pursuant to the Sentencing Guidelines. The defendant  
20 further understands that the Court will consider whether there is a  
21 basis for departure from the guideline sentencing range (either above  
22 or below the guideline sentencing range) because there exists an  
23 aggravating or mitigating circumstance of a kind, or to a degree, not  
24 adequately taken into consideration by the Sentencing Commission in  
25 formulating the Guidelines. The defendant further understands that  
26 the Court, after consultation and consideration of the Sentencing  
27 Guidelines, must impose a sentence that is reasonable in light of the  
28 factors set forth in 18 U.S.C. § 3553(a).



VII.

WAIVERS

1  
2  
3       **A. Waiver of Constitutional Rights:** The defendant understands  
4 that by pleading guilty he is waiving the following constitutional  
5 rights: (a) to plead not guilty and to persist in that plea if  
6 already made; (b) to be tried by a jury; (c) to be assisted at trial  
7 by an attorney, who would be appointed if necessary; (d) to subpoena  
8 witnesses to testify on his behalf; (e) to confront and cross-examine  
9 witnesses against him; and (f) not to be compelled to incriminate  
10 himself.

11       **B. Waiver of Appeal and Collateral Attack:** The defendant  
12 understands that the law gives him a right to appeal his conviction  
13 and sentence. He agrees as part of his plea, however, to give up the  
14 right to appeal the conviction and the right to appeal any aspect of  
15 the sentence imposed in this case. ~~unless the sentence exceeds the~~  
16 ~~statutory maximum for the offense.~~ *MBW HC*

17       Regardless of the sentence he receives, the defendant also gives  
18 up any right he may have to bring a post-appeal attack on his  
19 conviction or his sentence. He specifically agrees not to file a  
20 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or  
21 sentence.

22       If the defendant ever attempts to vacate his plea, dismiss the  
23 underlying charges, or reduce or set aside his sentence on any of the  
24 counts to which he is pleading guilty, the government shall have the  
25 right (1) to prosecute the defendant on any of the counts to which he  
26 plead guilty; (2) to reinstate any counts that may be dismissed  
27 pursuant to this Plea Agreement; and (3) to file any new charges that  
28 would otherwise be barred by this Plea Agreement. The decision to

1 pursue any or all of these options is solely in the discretion of the  
2 United States Attorney's Office. By signing this Plea Agreement, the  
3 defendant agrees to waive any objections, motions, and defenses he  
4 might have to the government's decision. In particular, he agrees  
5 not to raise any objections based on the passage of time with respect  
6 to such counts including, but not limited to, any statutes of  
7 limitation or any objections based on the Speedy Trial Act or the  
8 Speedy Trial Clause of the Sixth Amendment.

9 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees  
10 to waive all rights under the "Hyde Amendment," Section 617, P.L.  
11 105-119 (Nov. 26, 1997), to recover attorneys' fees or other  
12 litigation expenses in connection with the investigation and  
13 prosecution of all charges in the above-captioned matter and of any  
14 related allegations (including, without limitation, any charges to be  
15 dismissed pursuant to this Plea Agreement and any charges previously  
16 dismissed).

17 **VIII.**

18 **ENTIRE PLEA AGREEMENT**

19 Other than this Plea Agreement, no agreement, understanding,  
20 promise, or condition between the government and the defendant  
21 exists, nor will such agreement, understanding, promise, or condition  
22 exist unless it is committed to writing and signed by the defendant,  
23 counsel for the defendant, and counsel for the United States.


24  
25  
26 **THIS SPACE LEFT BLANK.**  
27  
28

IX.

APPROVALS AND SIGNATURES

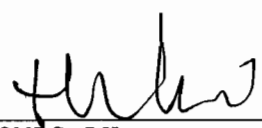
**A. Defense Counsel:** I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Plea Agreement.

DATED: 8-28-12

  
BRADLEY WISHEK, Esq.  
Attorney for Defendant

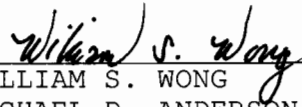
**B. Defendant:** I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines and the sentencing factors pursuant to 18 U.S.C. § 3553, et seq., that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea Agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: 8-28-12

  
THOMAS LU  
Defendant

**C. Attorney for United States:** I accept and agree to this Plea Agreement on behalf of the government.

DATED: August 28, 2012

BENJAMIN B. WAGNER  
United States Attorney  
By:   
WILLIAM S. WONG  
MICHAEL D. ANDERSON  
Assistant U.S. Attorneys

1 **EXHIBIT A**  
2 **Factual Basis for Plea**

3 This Factual Basis does not include each and every individual,  
4 event, or item of evidence known to defendant LU or to the  
5 government. Instead, it is a summary of facts highlighting the facts  
6 sufficient for a guilty plea under Rule 11. Some facts and events  
7 have specifically not been included in this Factual Basis because  
8 they are not necessary for the Court to determine that there is a  
9 factual basis for this guilty plea.

10 **COUNT SEVEN - Engaging in the Business of Dealing in Firearms**  
11 **Without a License**

12 Thomas LU has been identified as a Sacramento County Sheriff's  
13 Deputy. Per the Sacramento County Known Person Files (KPF), LU was  
14 identified as an Asian male, 5'7, approximately 165 pounds, black  
15 hair and brown eyes.

16 A query of AFS (Automated Firearms System) indicates that LU has  
17 obtained 34 (handguns) firearms since 2008. Twenty-seven of the 34  
18 firearms were off roster firearms. LU has private party transferred  
19 a total of 23 firearms. Eighteen were private party transferred  
20 within one year of the initial purchase.

21 DROS records show that 29 of the 34 firearms obtained by LU were  
22 transferred to him through Snellings' Firearms.

23 ATF Area Supervisor for Industry Operations, Roger Root reviewed  
24 ATF records and concluded that LU does not possess a Federal Firearms  
25 License.

26 **Count Seven**

27 **August 11, 2011- UC Meeting With LU**

28 On August 9, 2011, TFO Halstead, acting in an undercover  
capacity on behalf of UC #1 on the CalGuns website arranged a  
firearms purchase with "Tom." McGOWAN operating under the screen  
name "dldeguz" told TFO Halstead that his friend "Tom" had a Tec DC9  
and a MasterPiece Arms, .45 caliber pistol, for sale for \$500 each.  
McGOWAN sent a picture via text message of the firearms from his cell  
phone to UC #1's cell phone. McGOWAN also provided "Tom's" phone  
number. UC #1 verified the phone number by calling it the day of the  
firearms purchase and speaking to "Tom" directly.

On August 11, 2011, UC #1 met Thomas LU in the River City Gun  
Exchange parking lot. Similar to the meetings with McGOWAN, UC #1  
walked over to LU'S vehicle and was able to view/manipulate the  
firearms. UC #1 purchased three off roster firearms which include a  
MasterPiece Arms, MPA10, .45 caliber pistol, serial number A0494, for  
\$450, a Vector Arms, HR4332, 9 millimeter pistol, serial number  
507186, for \$1400, and a Intratec, Tec-dc9, 9 millimeter pistol,  
serial number D062624, for \$450 from LU, for a total of \$2300. UC  
#1 negotiated \$100 off the initial asking price of the Tec DC9 and



1 MasterPiece Arms, .45 caliber handgun, for sale for \$500 each.

2 During the meeting, LU explained to UC #1 that several of the  
3 high capacity magazines had a wooden peg inserted in the magazine.  
4 The wooden peg is inserted in the magazine so the magazine could  
5 accept only 10 rounds of ammunition. However, LU told UC #1 that UC  
6 #1 can simply take the magazine apart and take out the wooden peg.  
7 LU continued to instruct to UC #1 how to circumvent the California  
"Assault Weapons Act" in regards to possessing high capacity  
magazines. LU told UC #1 that if the police asked him how he came  
into possession of the high capacity magazines, he needed to say: "I  
owned the magazines way before the ban and shit." Furthermore, LU  
informed UC #1: "they can't check."

8 The selling, lending and/or giving of a high capacity magazine  
9 is a felony violation of the California Penal Code Section 12020  
10 (Unlawful carrying and Possession of Weapons). A high capacity  
11 magazine is a magazine capable of holding more than 10 rounds of  
12 ammunition. The condition in which LU transferred the high capacity  
magazines to UC #1 is a felony violation of California Penal Code  
section 12020 because the magazines were not permanently modified to  
hold 10 rounds or less.

13 During the meeting, UC #1 asked LU if he was on www.CalGuns.net.  
14 LU stated that he was on www.CalGuns.net under screen name "Teabag." LU  
15 stated that he had some other guns he wanted to sell. Specifically, LU  
16 indicated that he had "Norinco AKs" for sale.

17 While filling out the private party transfer paperwork, LU  
18 provided his California identification card to the employee at River  
19 City Gun Exchange. The identification card stated his name was  
20 Thomas LU. When the transfer paperwork was complete, UC #1 and LU  
21 exited the River City Gun Exchange. LU informed UC #1 that he had a  
22 few more firearms in his vehicle. LU informed UC #1 that he had a  
23 Mossberg shotgun and another Uzi. UC #1 asked if the firearms were  
24 online. LU indicated that they weren't online because you can't put  
25 too much stuff online.

26 **August 26, 2011-Purchase of Two Off Roster Firearms From LU**

27 On August 16, 2011, TFO Halstead, acting in an undercover  
28 capacity began conversing with LU on the CalGuns website on behalf of  
UC #1. LU has an account with the screen name "Teabag" (which he  
identified as his screen name on the August 11 meeting). TFO Halstead  
expressed interest in purchasing an off roster Lancaster AK pistol  
(manufactured by Nodan Spud LLC) and an off roster Kel-Tec PLR 16  
pistol. LU requested UC #1's private email account so that he could  
email photos, a list of 6 firearms and the corresponding sale prices  
that he had for sale. LU sent an email to UC #1 from an email  
account titled sac\_thuq4u@yahoo.com on August 22, 2011, with the  
above information.

///  
///

1 On August 26, 2011, UC #1 met with LU at the River City Gun  
2 Exchange to purchase a Nodac Spud, LLC, Model NDS-3, 7.62 caliber,  
3 serial number M006659, and a Kel Tec, PLR16, .223 caliber pistol,  
4 serial number P4Y17, for \$1550 which was videotaped/recorded. LU led  
5 UC #1 to his vehicle to show UC #1 the firearms. LU was driving a  
6 white, 4-door, Lexus sedan. A query through DMV revealed that the  
7 4-door, Lexus sedan, is registered to LU. LU opened the trunk of the  
8 vehicle, which contained boxes and firearm cases. UC #1 successfully  
9 purchased the above listed firearms from LU.

10 LU provided a few other firearms for UC #1 to review while they  
11 were still at his vehicle. LU provided UC #1 with a GSG5 pistol, a  
12 Norinco Uzi pistol with a wooden stock, and an AK-47 style rifle. UC  
13 #1 manipulated the action on each firearm and reviewed other features  
14 such as manufacturer markings and the bullet buttons. A bullet button  
15 is a magazine locking device. UC #1 ultimately told LU he would  
16 check to see if he knew anyone interested in the other firearms.

17 While filling out the transfer documents at the River City Gun  
18 Exchange, UC #1 overheard an employee of the gun store ask LU if he  
19 had recently received the Lancaster (manufactured by Nodac Spud, LLC)  
20 pistol. UC #1 observed the Lancaster pistol in a postal box. LU  
21 indicated that he had recently received the firearm. Additionally, LU  
22 indicated the firearm was delivered in the same postal box. UC #1  
23 asked if LU bought the rifle online. LU responded affirmatively.

24 **September 7, 2011 - Meeting With LU**

25 On September 6, 2011, TFO Halstead acting in an undercover  
26 capacity on behalf of UC #1 conversed with LU via email  
27 ([Sac\\_thug4u@yahoo.com](mailto:Sac_thug4u@yahoo.com)) regarding the purchase of four firearms (see  
28 attachment C for email). LU stated that he had the following  
firearms for sale: Interdynamics KG-9, 9 millimeter pistol for \$  
1,500 (off roster); Kel Tec PF-9 pistol for \$400 (off roster);  
Intratec, TECDC 9, 9 millimeter pistol, serial number D029008, for  
\$500 (off roster); and a Norinco, Model 320, 9 millimeter rifle  
serial number A10709, for \$700. TFO Halstead told LU that he was  
interested in purchasing the four firearms for \$3100. The meeting  
was set up for September 7, 2011, at River City Gun Exchange.

On September 7, 2011, UC #1 and LU met in the parking of the  
River City Gun Exchange, which was videotaped/recorded. UC #1 and LU  
walked over to LU's vehicle, a white Lexus sedan, to see the firearms  
LU would be selling. UC #1 observed LU open his trunk, which  
contained cardboard boxes and hard case firearm containers. UC #1  
observed that the firearms appeared consistent with the photographs  
of the firearms listed in LU's email. In regard to the KG-9 pistol,  
LU told UC #1 that the firearm could easily be converted to an  
automatic firearm by altering a piece of metal in the firearm.  
Furthermore, LU told UC#1 that because of the relative ease at which  
the firearms could be converted, the ATF directed the manufacturer to  
stop making the firearm in this manner.

///  
///

1 In addition to showing the firearms to UC #1, LU provided UC #1  
2 with high capacity magazines for each of the firearms. LU informed UC  
3 #1 that he had inserted a wood peg in the high capacity magazines  
4 thereby restricting the ability to insert more than the legal amount of  
ammunition in a magazine under California guidelines. LU has used this  
method of rendering large capacity magazines legal in the past. However,  
LU told UC #1: "it's up to you what you want to do after that."

5 On this occasion, LU suggested that he and UC #1 make the money  
6 transfer inside of his vehicle. UC #1 negotiated a deal from the  
7 initial \$3100 asking price to the purchase price of \$3000. LU agreed  
8 on a purchase price of \$3000 for all four firearms. Following the money  
exchange in the vehicle, LU and UC #1 entered River City Gun Exchange  
and filled out the private party transfer paperwork.

8 **Suspicious Firearms Transactions Made by LU**

9 **A. Multiple Purchases on Same Date**

10 On numerous occasions, Deputy Thomas LU has purchased multiple  
11 handguns on the same day. People engaged in the business of dealing  
12 firearms or trafficking firearms will often purchase multiple  
13 firearms at once. California law prohibits a person from buying more  
14 than one handgun from a FFL within any 30 day period. However, peace  
officers in California are exempt from the law and therefore can  
purchase as many handguns as they wish within a 30 day period. A  
review of the DROS and AFS records show the following multiple  
handgun sales made by LU:

15 November 22<sup>nd</sup>, 2010

- 16 · MasterPiece Arms, model MPA30 (off roster handgun)
- 17 · Taurus, model Raging Bull (off roster handgun)

18 October 18<sup>th</sup>, 2010

- 19 · Intratec, model DC-9 (off roster handgun)
- 20 · Intratec, model DC-9 (off roster handgun)

21 October 4<sup>th</sup>, 2010

- 22 · MasterPiece Arms, model MPA380 (off roster handgun)
- 23 · DSA, model TP9US (off roster handgun)

24 September 23<sup>rd</sup>, 2010

- 25 · Interdynamic, model KG9 (off roster handgun)
- 26 · Kel Tec, model PF9 (off roster handgun)

27 September 2<sup>nd</sup>, 2010

- 28 · IMI, model Micro Desert Eagle (off roster handgun)
- Masterpiece Arms, model MP10 (off roster handgun)
- Intratec, model Tec-DC9 (off roster handgun)



August 12<sup>th</sup>, 2010

- IMI, model Micro Desert Eagle (off roster handgun)
- Kel Tec, model P3AT (off roster handgun)
- Kel Tec, model PF9 (off roster handgun)

July 22<sup>nd</sup>, 2010

- Interdynamic, model KG99 (off roster handgun)
- Intratec, model Tec-DC9 (off roster handgun)

**B. Multiple Purchases of Same Make, Model, and Caliber**

Deputy Thomas LU has also purchased multiple firearms that are the same make, model and caliber. People engaged in the business of selling or trafficking firearms often will purchase multiple firearms of the same make, model and caliber. Below is a summary of the transactions:

Norinco, 1911A1

LU purchased three Norinco, model 1911A1 handguns from Snellings' Firearms. He purchased them on the following dates: 08-05-2010, 08-14-2010 and 10-07-2010. LU private party transferred the handgun he purchased on 10-07-2010 to another person on 07-28-2011.

IMI, Desert Eagle

LU purchased two IMI/Magnum Research, Desert Eagle, .50 caliber handguns. He purchased one from Snellings' Firearms on 12-02-2010 (gold in color) and later private party transferred it to another person on 08-17-2011. LU purchased a second IMI, Desert Eagle, .50 caliber handgun on 09-03-2011 from Personal Defense Weapons.

IMI, Micro Desert Eagle

LU purchased three Micro Desert Eagles, .380 caliber handguns from Snellings' Firearms. LU purchased one on 07-09-2009 and later private party transferred it to another person on 07-29-2011. LU purchased the second one on 08-12-2010 and later private party transferred it to another person on 09-03-2011. LU purchased the third one on 09-02-2010 and later private party transferred it to another person on 03-21-2011.

Kel Tec, P3AT

LU purchased two Kel Tec, P3AT handguns, one from Snellings' Firearms on 08-12-2010 and one from River City Gun Exchange on 11-04-2008. The firearm he purchased on 11-04-2008 was later private party transferred to another person on 07-31-2010.

Kel Tec, PF9

LU purchased two Kel Tec, PF9 handguns from Snellings' Firearms.

1 He purchased one on 08-12-2010 and later private party transferred it  
2 to another person on 03-21-2011. He purchased the second one on 09-  
23-2010 which he sold and private party transferred to UC #1 on 09-  
07-2011.

3  
4 Intratec, Tec-DC9

5 LU purchased six Intratec, TEC-DC9 handguns from Snellings'  
6 Firearms. LU has private party transferred four of the six handguns  
after he purchased them.

7 LU purchased one of the handguns on 05-20-2010 and he later  
private party transferred it to another person on 04-23-2011.

8 LU purchased the second handgun on 06-07-2010 and he later sold  
it to UC #1 on 09-07-2011.

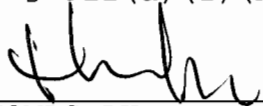
9 LU purchased the third handgun on 07-22-2010 and the fourth  
10 handgun 09-02-2010.

11 LU purchased the fifth and sixth handguns on 10-18-2010. LU sold  
one of them to UC #1 on 08-11-2011. He private party transferred the  
12 other handgun to another person on 04-23-2011.

13 On 04-23-2012, defendant Thomas LU and his counsel, Brad Wishek,  
14 met at the U.S. Attorney's Office in order to give a proffer. In  
summary, LU admitted selling approximately 25 firearms over the past  
15 few years. LU acknowledged that the majority of the firearms were  
off roster firearms. LU sold the firearms for at least \$12,000 and  
16 he averaged a profit margin of \$100-\$150 per firearm. LU stated that  
he made more profit off of the Desert Eagle, .50 caliber handguns  
17 than any other firearm that he had in his inventory. LU also stated  
that on at least one occasion, LU had to admonish McGOWAN to be  
18 careful on how quickly McGOWAN was selling the firearms after he  
bought them to avoid suspicion.

19 I have reviewed the entire factual basis in Exhibit A  
above. I stipulate that a sufficient basis exists to find beyond a  
20 reasonable doubt that I violated 18 U.S.C. § 922(a)(1)(A).

21 DATED: 8-28-12

22   
THOMAS LU  
23 Defendant

# **Exhibit C**

1 M. BRADLEY WISHEK (SBN 121875)  
ROTHSCHILD WISHEK & SANDS LLP  
2 765 University Avenue  
Sacramento, CA 95825  
3 Telephone: (916) 444-9845  
Facsimile: (916) 640-0027  
4 bwishek@rwslaw.com

5 Attorneys for Defendant,  
THOMAS LU  
6

7  
8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 THOMAS LU,  
15 Defendant.  
16

Case No.: 2:12-CR-0207 TLN  
DEFENDANT THOMAS LU'S  
SENTENCING MEMORANDUM

Date: September 29, 2016  
Time: 9:30 a.m.  
Ctrm: 2 (TLN)

17 Thomas Lu will appear before the Court on September 29,  
18 2016, for sentencing following his plea of guilty to engaging in  
19 the business of dealing in firearms without a license in  
20 violation of 18 USC 922(a)(1)(A). Counsel for Mr. Lu submits  
21 this sentencing memorandum on his behalf. Mr. Lu respectfully  
22 asks the Court to follow the Joint Sentencing Agreement and  
23 recommendation of the government: one year of home confinement,  
24 not less than 400 hours of community service, and two years  
25 probation. (Joint Sentencing Agreement for Thomas Lu, September  
26 22, 2016, pp. 3, 5.)

27 /////

28 /////

INTRODUCTION

1  
2 Mr. Lu is a very good man who made a serious mistake. He  
3 immigrated with his family to the United States at the age of  
4 four, worked from the time he was in middle school contributing  
5 his earnings to assist his family, and overcame previously  
6 undiagnosed Attention Deficit Hyperactivity Disorder and  
7 learning disabilities through tenacity and hard work. He  
8 graduated high school, earned an associate's degree from  
9 community college, and eventually earned a four-year criminal  
10 justice degree California State University, Sacramento. He  
11 married his wife, Pam, and they now have three children: Ashley,  
12 age 20, Alexis, age 9, and Adam, age 3. Adam has exceptional  
13 medical needs which resulted from meningitis and a massive  
14 stroke when he was just six weeks of age. (Report of Forensic  
15 Evaluation, Christopher Mulligan, LCSW, June 6, 2016, at pp. 3-  
16 4. A copy of Mr. Mulligan's report and his curriculum vitae are  
17 appended to this memorandum.)

18 Mr. Lu became a Sacramento County Sheriff's Deputy and was  
19 a good provider for his family. His conduct in this case led to  
20 his resignation in disgrace from the Sacramento County Sheriff's  
21 Department. He entered a guilty plea at his first appearance.  
22 Mr. Lu has expressed remorse, genuine acceptance of  
23 responsibility, and has provided substantial assistance to the  
24 government in the prosecution of co-defendants.

25 The consequences of his uncharacteristic mistake, for him  
26 and his family, have been nothing short of extraordinary. He  
27 and his family have lived with the uncertainty of the sentence  
28 to be imposed for the past four years. With the loss of his

1 career position with the Sacramento County Sheriff's Department,  
2 his family now depends upon the income earned by his self-  
3 employed wife, which in the year 2015 was less than one-third of  
4 their household income during Mr. Lu's last year of employment  
5 as a law enforcement officer. (Presentence Investigation  
6 Report, page 14.) The probation report confirms that total  
7 household expenses for Mr. Lu's family exceed household income  
8 based upon Mr. Lu's modest estimate of expenses for necessities  
9 such as groceries, which Mr. Lu estimated at \$300 each month for  
10 his household of three adults and two children. (*Id.*)

11 In one way, the loss of Mr. Lu's employment has been  
12 serendipitous. He was available to become the fulltime  
13 caretaker for Adam who has extraordinary medical needs. Mr. Lu  
14 is responsible for all of Adam's exceptional care requirements,  
15 including taking Adam to school, taking him to speech therapy  
16 and physical therapy, administering his medications, and taking  
17 him to medical appointments. Mr. Lu's wife has explained:

18 Thomas is a very good man. He is not a  
19 criminal. He made a mistake and he owns his  
20 mistake. He has never had any problems with  
21 the law and is someone who respects the law  
22 and wants to do the right thing. He is also  
23 a loving and devoted father to all of our  
24 children, but most especially Adam. Every  
25 day he provides for Adam's care, which is  
26 complicated and draining. I honestly don't  
27 know how he manages to take care of Adam  
28 without support or assistance, as I am at  
work all day. I am genuinely scared for  
Adam's well-being if Thomas has to go to  
prison. We don't have the financial  
resources to hire care and no one in our  
family is available to provide the type of  
supervision that Adam requires. I am  
praying every day that Thomas will be able  
to stay at home and care for Adam.

(Forensic report of Christopher Mulligan, LCSW, pp. 11-12.)



1 The probation officer concurs, observing in the Presentence  
2 Investigation Report that "it is apparent that if the defendant  
3 is incarcerated, even for a minimal amount of time, that care of  
4 his son will be negatively impacted." (Presentence  
5 Investigation Report, p. 16.)

6 The government agreed to join in the Joint Sentencing  
7 Agreement based upon Mr. Lu's acceptance of responsibility at a  
8 very early stage in the investigation, cooperation with the  
9 government (a Section 5K1.1. letter will be submitted at that  
10 time of sentencing), and based upon Adam's special medical needs  
11 which require Mr. Lu to act as his primary caregiver. (Joint  
12 Sentencing Agreement for Thomas Lu, September 22, 2016, p. 3.)

13 **MR. LU IS THE PRIMARY CARETAKER FOR HIS THREE YEAR-OLD SON ADAM**  
14 **WHO HAS EXCEPTIONAL MEDICAL NEEDS**

15 The facts relating to Adam's exceptional medical needs and  
16 Mr. Lu's care of Adam are not in dispute. Mr. Lu provided the  
17 probation officer with records including discharge documents  
18 from Kaiser Foundation Hospital from 2012 confirming diagnoses  
19 for Adam of an intracranial subdural abscess, ischemic stroke  
20 without coma, seizure disorder, hydronephrosis, gram negative  
21 bactremia, pyelonephritis, and meningitis, for which Adam was  
22 hospitalized from May 7, 2012 through June 18, 2012.

23 Documentation was also provided to the probation officer to  
24 confirm weekly speech therapy appointments, medical  
25 appointments, special services in the California Children's  
26 Services program, and a Pre-Kindergarten Individual Education  
27 Program.

28 Mr. Mulligan interviewed Mr. Lu and other family members

1 including Mr. Lu's wife, Pam, whom he met with for approximately  
2 two hours. He reports:

3 Adam developed meningitis at just six weeks  
4 of age and while in the hospital for  
5 treatment for meningitis had a massive  
6 stroke. The stroke resulted in permanent  
7 brain damage and compromised his immune  
8 system. Currently, Adam is unable to speak  
9 and must use a picture book to communicate.  
10 Adam can only walk with the assistance of  
11 leg braces and, due to his depleted immune  
12 system, is frequently ill. Adam is prone to  
13 running high fevers, which can result in  
14 seizure activity. As a result, Adam is  
15 often taken to the emergency room in order  
16 to receive medical intervention to reduce  
17 his fever.

18 Due to the scope of Adam's brain damage, he  
19 cannot be left alone for any period of time.  
20 He is impulsive and lacks basic safety  
21 skills. Adam also requires an adult to  
22 administer anti-seizure medication as well  
23 as medication to strengthen his immune  
24 system. It is important to note that Adam  
25 **will not** make substantial progress due to  
26 the brain damage caused by the stroke. That  
27 is, Adam will continue to require a very  
28 high level of care by his family.

1 With respect to providing care, Mr. Lu is  
2 Adam's primary caregiver. Pam works full-  
3 time at a hair salon, which leaves Mr. Lu to  
4 provide care for Adam on a 24-hour, seven  
5 day a week basis. Mr. Lu wakes up at 6:30  
6 a.m., prepares Adam for school, transports  
7 him to school and then picks him up and  
8 brings him home.

9 Once at home, Mr. Lu must administer  
10 medication, feed Adam, and supervise his  
11 play. Mr. Lu is also responsible for  
12 bathing Adam and watching for early signs of  
13 a cold or fever. Mr. Lu must be in a  
14 constant state of observation in order to  
15 prevent Adam from catching a cold and  
16 running a high fever that could result in a  
17 seizure.

18 In my interview with Pam, she reported that  
19 her husband is a patient and devoted  
20 caregiver who is able to meet Adam's  
21 exceptional needs. She also reported that

1           there is no other family member that can  
2           take care of Adam. Without Mr. Lu's care  
3           Pam said the family would be unable to  
4           provide adequate care for Adam's needs.

4 (Forensic report of Christopher Mulligan, LCSW, pp. 4-5.)

5           While the probation officer's report and Mr. Mulligan  
6           appropriately focused on Adam's medical needs, a separation  
7           occasioned by any period of incarceration could have a profound  
8           impact on Adam's emotional wellbeing as well. While this may be  
9           self-evident, Senior District Judge Weinstein of the Eastern  
10          District of New York noted the scholarly support for this point:

11           "Incarceration of a parent normally causes  
12           major negative economic, social, and  
13           psychological consequences to the child, and  
14           may have life-long [adverse] repercussions."  
15           (Michal Gilad, *The Young and the Helpless:  
16           Redefining the Term "Child Victim of Crime,"*  
17           32 U. Penn Law School, Working Paper No. 14-  
18           23); cf. Jean C. Lawrence, *ASFA In the Age  
19           of Mass Incarceration: Go to Prison -- Lose  
20           your Child?* 40 Wm. Mitchell L.Rev. 990, 1003  
21           (2014).

22           For children under the age of five, both  
23           lack of parent-child bonding and disruption  
24           of an existing bond can create difficulties  
25           in cognitive and language development as  
26           well as informing relationships and  
27           regulating emotions later in life..."  
28           (Citations omitted.)

21 (U.S. v. G.L. (2015) 305 F.R.D. 47, 50-51.) Judge Weinstein  
22          relied upon a defendant's cooperation and the impact of  
23          imprisonment upon her special-needs child to impose a sentence  
24          of time-served (one day) and supervised release in lieu of an  
25          advisory guidelines imprisonment range of 37-46 months for  
26          conspiracy to import cocaine. (*Id.*)

27          A period of probation, home detention, and community  
28          service will serve to punish Mr. Lu for his uncharacteristic

1 violation of the law while at the same time allowing him to  
2 continue to care for his son. Mr. Lu's conduct, while serious,  
3 does not warrant or require a sentence which would foreclose him  
4 from continuing as the primary caretaker for Adam.

5 **MR. LU HAS ACCEPTED RESPONSIBILITY AND PROVIDED SUBSTANTIAL**  
6 **ASSISTANCE TO THE GOVERNMENT**

7 As confirmed in the Joint Sentencing Agreement, the  
8 government will be submitting a Section 5K1.1 letter in support  
9 of the government's sentencing recommendation.

10 Mr. Lu has acknowledged responsibility even prior to the  
11 time the indictment was returned. He pled guilty at his first  
12 appearance. As noted by the probation officer in the  
13 Presentence Investigation Report:

14 ...Lu was the first defendant in this case  
15 to plead guilty.<sup>1</sup> He has been more than  
16 forthcoming about his involvement with both  
17 the government and the probation officer.  
Likewise, the defendant was cooperative with  
the probation officer during the presentence  
investigation.

18 (Presentence Investigation Report, p. 17.)

19 The probation officer also observed:

20 He takes full responsibility for his conduct  
21 and knew it was unlawful. He did it to make  
22 extra money and to buy more firearms. The  
23 defendant understands the seriousness of the  
24 offense and resigned from his position as a  
deputy sheriff because he is now a convicted  
felon. He is deeply ashamed and sorry for  
his conduct. His family has also been hurt  
by his actions.

25 (Presentence Investigation Report, p. 8.)

26 /////

27 \_\_\_\_\_  
28 <sup>1</sup> Counsel is not aware of any defendants who pled guilty other than Mr. Lu.

1 **A SENTENCE CONSISTENT WITH THE JOINT SENTENCING AGREEMENT WOULD**  
2 **AVOID SENTENCE DISPARITIES**

3 The probation officer has appropriately noted that co-  
4 defendants Robert Snellings and Ryan McGowan received downward  
5 variances of between 3 and 15 months respectively from the low-  
6 end of their respective guidelines ranges after being found  
7 guilty after jury trials. Mr. Lu's acceptance of responsibility  
8 from the outset of the case, and cooperation with and  
9 substantial assistance to the government support the Joint  
10 Sentencing Agreement recommendation by avoiding sentence  
11 disparities.

12 **CONCLUSION**

13 Based upon the Presentence Investigation Report, the Joint  
14 Sentencing Agreement for Thomas Lu, the government's anticipated  
15 5K1.1 letter, and the attached report of the forensic evaluation  
16 of Chris Mulligan, LCSW, Mr. Lu respectfully requests that he be  
17 granted probation for two years on the terms set forth in the  
18 Joint Sentencing Agreement to include one year of home  
19 confinement and not less than 400 hours of community service.

20 Respectfully submitted.

21 DATED: September 22, 2016

By: //s//M. Bradley Wishek  
M. BRADLEY WISHEK,  
ROTHSCHILD WISHEK & SANDS  
LLP, Attorneys for  
Defendant Thomas Lu

# **Exhibit D**



1 PHILLIP A. TALBERT  
Acting United States Attorney  
2 WILLIAM S. WONG  
MICHAEL D. ANDERSON  
3 Assistant United States Attorneys  
501 I Street, Suite 10-100  
4 Sacramento, CA 95814  
Telephone: (916) 554-2700  
5 Facsimile: (916) 554-2900

6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
Plaintiff,  
12  
v.  
13 THOMAS LU,  
14  
Defendant,

CASE NO. 2:12-CR-0207 TLN  
**JOINT SENTENCING  
AGREEMENT FOR THOMAS LU**  
DATE: SEPTEMBER 29, 2016  
TIME: 9:30 A.M.  
COURT: HON. TROY L. NUNLEY

15  
16  
17 **I. INTRODUCTION**

18 **A. Scope of Agreement:**

19 The indictment in this case charges defendant Thomas Lu with a violation of Conspiracy  
20 to Make a False Statement with Respect to Firearm Records; 18 U.S.C. § 371. The defendant  
21 entered into a plea agreement wherein he pled guilty to the single count charged in the  
22 indictment. This document contains the complete post-conviction sentencing agreement between  
23 the United States Attorney's Office for the Eastern District of California (the "government") and  
24 defendant Thomas Lu regarding this case. This Joint Sentencing Agreement is limited to the  
25 United States Attorney's Office for the Eastern District of California and cannot bind any other  
26 federal, state, or local prosecuting, administrative, or regulatory authorities.  
27  
28

1           **B.     Court Not a Party:**

2           The Court is not a party to this agreement. Sentencing is a matter solely within the  
3 discretion of the Court, and the Court may take into consideration any and all facts and  
4 circumstances concerning the criminal activities of defendant, including activities which may not  
5 have been charged in the indictment. The Court is under no obligation to accept any  
6 recommendations made by the government, and the Court may in its discretion impose any  
7 sentence it deems appropriate up to and including the statutory maximum stated in this  
8 agreement.

9           If the Court should impose any sentence up to the maximum established by the statute,  
10 the defendant cannot, for that reason alone, withdraw from this sentencing agreement, and he will  
11 remain bound to fulfill all of the obligations under this agreement. The defendant understands  
12 that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or  
13 promise regarding the sentence he will receive.

14   **II. DEFENDANT'S OBLIGATIONS**

15           **A.     Admission of Guilt:**

16           The defendant agrees that he is in fact guilty of the charge in the Indictment in Case No.  
17 2: 12-cr-0207 TLN for which he pled guilty to a violation of 18 U.S.C. § 922 (a) (1) (A)-  
18 Engaging in the Business of Dealing in Firearms without a License (Count Seven) pursuant to a  
19 plea agreement. He further agrees that evidence of his testimony introduced at trial and the facts  
20 contained in Exhibit A of the plea agreement are true, sufficient, and competent evidence of his  
21 guilt of the offense beyond a reasonable doubt insofar as his own conduct is concerned.

22           The defendant agrees that this agreement will be filed with the Court and become a part  
23 of the record of the case. The defendant understands and agrees that he will not be allowed to  
24 withdraw from this agreement should the Court decline to follow the Joint Sentencing  
25 Recommendations of the government and the defendant suggests.

26           The defendant agrees that the statements made by him in signing this agreement,  
27 including the factual admissions set forth herein, shall be admissible and useable against the  
28 defendant by the United States in any subsequent criminal or civil proceedings. The defendant

1 waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent that these  
2 rules are inconsistent with this paragraph or with this Sentencing Agreement generally.

3 **B. Sentence:**

4 Under this Joint Sentencing Agreement, the defendant and the government agree that the  
5 appropriate sentence in this case should be a two-year period of probation with the following  
6 terms and conditions of probation: (1) a one-year period of home confinement with electronic  
7 monitoring, the cost of which shall be borne by the defendant; and (2) at least 400 hours of  
8 community service. The government's agreement to join in the Joint Sentencing Agreement is  
9 based on the following: (1) the defendant accepted responsibility for his conduct at a very early  
10 stage in the investigation and cooperated with the government, including testifying against his  
11 codefendants at trial (a §5K1.1 letter will be submitted at time of sentencing in support of the  
12 Government's sentencing recommendation based in part on substantial assistance to the  
13 government); and (2) the government has received medical information provided by the defense  
14 regarding the defendant's very young son, Adam, who has special medical needs requiring the  
15 defendant to act as his primary caregiver. The defendant's duties as the primary caregiver would  
16 include taking his son to medical appointments, including speech therapy and physical therapy,  
17 dental appointments, hospitalization if needed, preschool and related preschool events, and any  
18 other related medical needs of the child. The defendant shall notify his probation officer prior to  
19 leaving his home confinement. The parties agree that the defendant may leave his home  
20 confinement for reasons not stated herein only after notifying and receiving consent from his  
21 probation officer. The parties agreed that the probation officer shall have the discretion to  
22 establish rules and guidelines to effect when the defendant may leave home confinement.

23 **C. Special Penalty Assessment:**

24 The defendant agrees to pay a special assessment of \$100 for the count of conviction at  
25 the time of sentencing by delivering a check or money order payable to the United States District  
26 Court to the United States Probation Office on the date the sentencing hearing. The defendant  
27 understands that this agreement is voidable at the option of the government if he fails to pay the  
28 assessment on the date of his sentencing hearing.

1           **D. Waiver of Appeal and Collateral Attack:**

2           The defendant understands that the law gives him a right to appeal his conviction and  
3 sentence. He agrees as a part of this Joint Sentencing Agreement, however, to give up the right  
4 to appeal the conviction and the right to appeal any aspect of the sentence imposed in this case as  
5 long as the sentence does not exceed the statutory maximum for the offense for which he was  
6 convicted. Regardless of the sentence imposed, the defendant understands and knowingly gives  
7 up any right he may have to bring a post--appeal or collateral attack of his conviction(s) or  
8 sentence. The defendant specifically agrees not to file a motion under 28 U.S.C § 2255 or  
9 § 2241 attacking his conviction or sentence.

10           If the defendant ever attempts to vacate his conviction or modify his sentence, the  
11 government shall have the right: (1) to prosecute the defendant on any of the counts to which  
12 were dismissed; (2) to reinstate any counts that may be dismissed pursuant to this Sentencing  
13 Agreement; and (3) to file any new charges that would otherwise be barred by this Sentencing  
14 Agreement. The decision to pursue any or all of these options is solely in the discretion of the  
15 United States Attorney's Office. By signing this Joint Sentencing Agreement the defendant  
16 agrees to waive any objections, motions, and defenses he might have to the Government's  
17 decision. In particular, he agrees not to raise any objections based on the passage of time with  
18 respect to such counts, including, but not limited to, any statutes of limitations or objections  
19 based on the Speedy Trial Act or the Speedy Trial Clause of the Fifth or Sixth Amendment.

20           **E. Violation of Agreement by Defendant:**

21           If the defendant violates this Joint Sentencing Agreement in any way, withdraws from  
22 this agreement, or tries to withdraw from this agreement, this Agreement is voidable at the  
23 option of the government. The government will no longer be bound by its representations to the  
24 defendant concerning the limits on criminal prosecution and sentencing as set forth herein. The  
25 determination whether the defendant has violated the Joint Sentencing Agreement will be under  
26 a probable cause standard.

27           One way a cooperating defendant violates the agreement is to commit any crime or  
28 provide any statement or testimony which proves to be knowingly false, misleading, or

1 materially incomplete. Any post-agreement conduct by a defendant constituting obstruction of  
2 justice will also be a violation of the Joint Sentencing Agreement. The determination whether  
3 the defendant has violated this Joint Sentencing Agreement will be under a probable cause  
4 standard.

### 5 **III. THE GOVERNMENT'S OBLIGATIONS**

#### 6 **A. Recommendations:**

##### 7 1. Sentence

8 The government will recommend that the defendant be sentenced to a two-year term of  
9 probation with the terms and conditions of probation previously stated in Paragraph II. B. The  
10 government agrees not to seek a two-level enhancement for abusing a position of trust.

### 11 **IV. SENTENCING DETERMINATION**

#### 12 **A. Statutory Authority:**

13 The defendant understands that the Court must consult the Federal Sentencing Guidelines  
14 and must take them into account when determining a final sentence. The defendant understands  
15 that the Court will determine a non-binding and advisory guideline sentencing range for this case  
16 pursuant to the Sentencing Guidelines and must take them into account when determining a final  
17 sentence. The defendant understands that the Court will determine a non-binding and advisory  
18 guideline sentencing range for this case pursuant to the Sentencing Guidelines. The defendant  
19 further understands that the Court will consider whether there is a basis for departure from the  
20 guideline sentencing range (either above or below the guideline sentencing range) because there  
21 exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken  
22 into consideration by the Sentencing Commission in formulating the Guidelines. The defendant  
23 further understands that the Court, after consultation and consideration of the Sentencing  
24 Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C.  
25 § 3553(a).

### 26 **V. ENTIRE SENTENCING AGREEMENT**

27 Other than this Sentencing Agreement, no agreement, understanding, promise, or  
28 condition between the government and the defendant exists, nor will such agreement,

1 understanding, promise, or condition exist unless it is committed to writing and signed by the  
2 defendant, counsel for the defendant, and counsel for the United States.

3 **VI. APPROVALS AND SIGNATURES**

4 **A. Defense Counsel:**

5 I have read this Joint Sentencing Agreement and have discussed it fully with my client.  
6 The Joint Sentencing Agreement accurately and completely sets forth the entirety of the Joint  
7 Sentencing Agreement. I concur in my client's decision to enter into the terms as set forth in this  
8 Joint Sentencing Agreement.

9 Dated: September 22, 2016

/s/ BRADLEY WISHEK

10  
11 

---

BRADLEY WISHEK  
Attorney for Defendant

12 **B. Defendant:**

13 I have read this post-conviction Joint Sentencing Agreement and carefully reviewed  
14 every part of it with my attorney. I understand it, and I voluntarily agree to it. I have consulted  
15 with my attorney and fully understand my rights with respect to the provisions of the Sentencing  
16 Guidelines that may apply to my case. I have consulted with my attorney and he has explained  
17 my rights to appeal and collaterally attack my conviction(s) and sentence to my satisfaction. I  
18 fully understand my rights to appeal and to collaterally attack my conviction(s) and sentence, and  
19 hereby waive them. No other promises or inducements have been made to me, other than those  
20 contained in this Joint Sentencing Agreement. In addition, no one has threatened or forced me in  
21 any way to enter into this Joint Sentencing Agreement. Finally, I am satisfied with the  
22 representation of my attorney in this case.

23  
24 Dated: September 22, 2016

/s/ THOMAS LU

25 

---

THOMAS LU  
Defendant



1           **C.     Attorney for United States:**

2           I accept and agree to this Joint Sentencing Agreement on behalf of the government.

3           Dated: September 22, 2016

4                                   PHILLIP A. TALBERT  
5                                   Acting United States Attorney

6                                   /s/ WILLIAM S. WONG

7                                   \_\_\_\_\_  
8                                   WILLIAM S. WONG  
9                                   Assistant United States Attorney

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# **Exhibit E**

**UNITED STATES DISTRICT COURT**  
**Eastern District of California**

UNITED STATES OF AMERICA

v.

**THOMAS LU**

**AKA: Thang A. Lu, Thang Lu, Tom A. Lu**

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:12CR00207-04**

Defendant's Attorney: M. Bradley Wishek, Retained

**THE DEFENDANT:**

- pleaded guilty to count 7 of the Indictment.
- pleaded nolo contendere to count(s)      which was accepted by the court.
- was found guilty on count(s)      after a plea of not guilty.

**ACCORDINGLY**, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 U.S.C. § 922(a)(1)(A)	Engaging in the Business of Dealing in Firearms Without a License (Class D Felony)	11/2011	7

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)      and is discharged as to such count(s).
- Count (s)      dismissed on the motion of the United States.
- Indictment is to be dismissed by District Court on motion of the United States.
- Appeal rights given.  Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**9/29/2016**

Date of Imposition of Judgment



Signature of Judicial Officer

**Troy L. Nunley**, United States District Judge

Name & Title of Judicial Officer

10/3/2016

Date

DEFENDANT: THOMAS LU  
CASE NUMBER: 2:12CR00207-04

### SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A.  Lump sum payment of \$ \_\_\_ due immediately, balance due  
 Not later than \_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B.  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C.  Payment in equal \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after the date of this judgment; or
- D.  Payment in equal \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E.  Payment during the term of supervised release/probation will commence within \_\_\_ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or
- F.  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

# **Exhibit F**

**ROB BONTA***Attorney General*

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# State Exemptions for Authorized Peace Officers

## Non-Roster Handguns (Unsafe Handguns)

The following agencies may purchase non-roster firearms for use in the discharge of their official duties (Pen. Code, § 32000, subd. (b)(4)):

- Department of Justice
- A police department
- A sheriff's official
- A marshal's office
- The Department of Corrections and Rehabilitation
- The Department of the California Highway Patrol
- Any district attorney's office
- Any federal law enforcement agency
- The military or naval forces of this state or of the United States

Penal Code section 32000 does not prohibit the sale to, or purchase by, sworn members of the above agencies of a handgun.

Additionally, any of the following entities or sworn members of these entities who have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training pursuant to Penal Code section 832 may purchase non-roster handguns (Pen. Code, § 32000, subd. (b)(6)):

- The Department of Parks and Recreation
- The Department of Alcoholic Beverage Control
- The Division of Investigation of the Department of Consumer Affairs
- The Department of Motor Vehicles
- The Fraud Division of the Department of Insurance
- The State Department of State Hospitals
- The Department of Fish and Wildlife
- The State Department of Developmental Services
- The Department of Forestry and Fire Protection
- A county probation department
- The Los Angeles World Airports, as defined in Penal Code section 830.15
- A K-12 public school district for use by a school police officer, as described in Penal Code section 830.32
- A municipal water district for use by a park ranger, as described in Penal Code section 830.34
- A county for use by a welfare fraud investigator or inspector, as described in Penal Code section 830.35
- A county for use by the coroner or deputy coroner, as described in Penal Code section 830.35
- The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Penal Code section 830.36
- A fire department or fire protection agency of a county, city, city and county, or the state for use by either of the following:



- A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Penal Code section 830.37
- A member other than a member of an arson-investigation unit, regularly paid and employed in that capacity pursuant to Penal Code section 830.37
- The University of California Police Department, or the California State University Police Departments, as described in Penal Code section 830.2
- A California Community College police department, as described in Penal Code section 830.32

Individuals who have obtained a non-roster firearm under any of the exemptions listed in Penal Code section 32000, subdivision (b), paragraph (6) may not sell or transfer the non-roster firearm to an individual who is not exempt from the requirements of Penal Code section 32000.

A person licensed pursuant to Penal Code sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in Penal Code section 32000, subdivision (b), paragraph (6) and a person who is not exempt from the requirements of Penal Code section 32000 (Pen. Code, § 32000, subd. (c)(1)).

## Large Capacity Magazines

A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is authorized to carry a firearm in the course and scope of that officer's duties may borrow, purchase, receive, or import into this state a large-capacity magazine (Pen. Code, § 32405.)

## 10 Day Waiting Period Exemption

The waiting period described in Penal Code section 26815 does not apply to the sale, delivery, or transfer of firearms made to any person who satisfies both of the following requirements:

- The person is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.
- The officer's employer has authorized the officer to carry firearms while in the performance of duties (Pen. Code, § 26950, subds. (a)(1) and (2).)

Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of duties, and authorizing the purchase or transfer (Pen. Code, § 26950, subd. (b)(1).)

# **Exhibit G**

CALIFORNIA

## Law enforcement officers may be illegally selling guns, ATF says



One sale involved a buyer who converted two guns to assault weapons and later got into a six-hour standoff with a SWAT team. He was sentenced in June to 18 months in prison. (Sign up for our free video newsletter here <http://bit.ly/2n6VKPR>)

BY GREG MORAN, LYNSAY WINKLEY

APRIL 13, 2017 3 AM PT



Reporting from San Diego — The head of the ATF’s office in Los Angeles has sent a memo to Southern California police chiefs and sheriffs saying the agency has found law enforcement officers buying and reselling guns in what could be a violation of federal firearms laws.

The memo from Eric Harden, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives’ Los Angeles Field Division special agent in charge, describes the finding as an “emerging problem” and expresses concern about “the growing trend of law enforcement officials engaging in the business of unlicensed firearms dealing.”

He did not say how many officers the agency has found purchasing and reselling weapons, but the memo — dated March 31 — says some officers had bought more than 100 firearms. Some of the guns have been recovered at crime scenes.

But Harden wrote that the goal is “to educate, not investigate, to ensure law enforcement officials comply with federal law in order to avoid unnecessary public embarrassment to themselves and your department/agency.”



His memo focuses on the purchase and resale of “off roster” firearms. Those are guns that are not on an approved list of weapons that can be sold to the public.

The California law establishing the roster has an exemption that allows sworn peace officers to purchase such weapons, and an additional one that allows officers to resell the guns under certain conditions. But if officers are buying and reselling weapons for profit as a business, they need a federal firearms license, or FFL.

The lack of a license is the conduct that ATF has uncovered and is the subject of the memo.

That amounts to a violation of federal law, the memo said. In addition, if a gun is bought with the intent to sell it or on behalf of someone else and that was not disclosed on federal transaction records — known as a “straw purchase” — that also breaks federal law for lying on a federal firearms form.

PAID CONTENT

## **People On Medicare Are Getting a Big Surprise This September** □

By Comparisons.org

People On Medicare Are Getting a Big Surprise This September

Selling without a license can carry a maximum sentence of five years in prison. Lying on the federal form carries a maximum 10-year penalty.

It is unclear when the ATF discovered the problems, or what specifically prompted the memo.

Ginger Colbrun, spokeswoman for the ATF Los Angeles office, said the agency noticed that some firearms recovered at crime scenes were found to have been purchased within the past three years.

That “time to crime” measure developed by the ATF shows the time frame from when a gun is sold by a licensed dealer to when it is recovered by police during a criminal investigation. The national average is 10 years. A shorter time period can indicate the gun was the product of a straw purchase — bought in order to be sold quickly.

After spotting the trend in routine trace reports, the agency looked closer, Colbrun said. “After further investigation, ATF noticed some law enforcement officers had been making significant purchases of firearms,” she said.

She declined to be more specific, saying there were ongoing investigations.

Colbrun said the memo, addressed to “Dear Law Enforcement Partner,” didn’t indicate that officers who might be breaking federal gun laws were getting special treatment.

“There is no extra consideration,” she said. “We believe the most effective way to stop the behavior is to educate law enforcement in what the laws are and aren’t.”

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The California Police Chiefs Assn., which represents chiefs and sheriffs across the state, emailed the memo to its members this week. It was then forwarded to local agencies.

Federal prosecutions of state law enforcement officers for selling off-roster weapons are rare. The most recent occurred in Sacramento County, when former Sheriff’s Deputy



Ryan McGowan was found guilty in June 2015 of selling guns illegally and falsifying federal records to do it.

Prosecutors said he sold 25 guns at an inflated price between 2008 and 2011. McGowan also worked with a licensed gun shop to further circumvent federal law.

One sale involved a buyer who converted two guns to assault weapons and later got into a six-hour standoff with a SWAT team. He was sentenced in June to 18 months in prison.

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**Moran and Winkley write for the San Diego Union-Tribune**

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# **Exhibit H**



THE UNITED STATES ATTORNEY'S OFFICE  
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**Department of Justice**  
U.S. Attorney's Office  
Eastern District of California

FOR IMMEDIATE RELEASE

Thursday, June 11, 2015

**Jury Returns Guilty Verdicts for Former Sacramento County Sheriff's Deputy and Federal Firearms Licensee in Firearm Straw-Buyer Scheme**

SACRAMENTO, Calif. — After a nine-day trial, a federal jury returned guilty verdicts for two defendants in a firearm straw-buyer scheme involving firearms that are not on California's roster of approved handguns, United States Attorney Benjamin B. Wagner announced.

Former Sacramento County Sheriff's Deputy Ryan McGowan, 33, of Elk Grove, was found guilty of one count of engaging in the business of dealing in firearms without a license and one count of conspiracy to make a false statement in federal firearms records. Federal Firearms Licensee Robert Snellings, 63, of Rancho Murieta, was found guilty of five counts of conspiracy to make false statements in federal firearms records.

Under state law, California has an approved roster of firearms that may be sold to the public. A Federal Firearms Licensee is required to make sure any handgun sold is on the approved roster. There is an exemption, however, for peace officers to purchase certain firearms known as "off-roster" firearms. Peace officers who own off-roster firearms may sell them in a private sale, as long as it is brokered by a Federal Firearms Licensee. They may not, however, use these private sales to conduct a business whose principal objective is livelihood and profit through the repetitive purchase and resale of firearms.

Because off-roster firearms cannot be purchased directly by the general public, they command high prices. According to evidence produced at trial, McGowan used his position as a sheriff's deputy to purchase off-roster guns at the retail price, and then he resold them at an inflated price on the private market in California. From 2008 to 2011, McGowan purchased 41 handguns, many of them high-caliber guns, and sold 25 of them within a year after purchase. Thirty-three of the guns were purchased through Snellings Firearms, which was owned by co-defendant Snellings. Some of those weapons were then transferred back to Snellings personally, thereby allowing Snellings to own the weapons himself or sell them to the public.

"When law enforcement officers misuse their badges to funnel dangerous weapons to the highest bidder, they compromise the safety of the public. By putting personal profit ahead of public safety, they undermine the very essence of their duty," said U.S. Attorney Wagner. "I want to specifically thank the Sacramento Sheriff's Office, the Sacramento Police Department, the Sacramento County District Attorney's Office, and other regional law enforcement agencies for their partnership in the course of this investigation."

Both defendants were found guilty of conspiracies to make false statements in federal firearms records. In order to circumvent the restrictions on purchasing off-roster firearms, they falsely stated on the ATF Form 4473 that a police officer was the actual purchaser when buying the off-roster handgun when the actual purchaser was intended to be a non-officer who was not permitted to buy the off-roster handgun. Therefore, McGowan and other police officers were acting as a straw purchasers who then transferred the handguns to the real purchasers within a short period of time.

“The individuals who unlawfully sell firearms and falsify official firearm transaction records are in violation of the federal firearms laws and should be held accountable,” stated Acting Special Agent in Charge Eric D. Harden. “One of ATF’s top priorities is to aggressively investigate those suspects who are illegally trafficking in firearms that may ultimately end up as crime guns.”

After pleading guilty on August 28, 2012, to one count engaging in the business of dealing in firearms without a license, co-defendant Thomas Lu, 42, of Elk Grove, is scheduled for sentencing on July 9, 2015. According to court documents, Lu was a Sacramento County Sheriff’s deputy who obtained 27 off-roster firearms and sold 23 of them, 18 of which were sold within one year.

This case is the product of an investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives with the active involvement of the Sacramento Sheriff’s Office and the Sacramento Police Department. The Roseville Police Department and other law enforcement agencies assisted. Assistant United States Attorneys William S. Wong and Michael D. Anderson are prosecuting the case.

The defendants are scheduled to be sentenced on August 27, 2015. The maximum statutory penalty for each of the conspiracy charges is five years in prison, a \$250,000 fine, and a term of supervised release. The maximum penalty for the charge of engaging in the business of dealing firearms without a license is 10 years in prison, a \$250,000 fine, and a term of supervised release. The actual sentences will be determined at the discretion of the court after consideration of any applicable statutory factors and the Federal Sentencing Guidelines, which take into account a number of variables.

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**Component(s):**  
USAO - California, Eastern

**Press Release Number:**  
2:12-cr-207 TLN

Updated June 11, 2015

# **Exhibit I**


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### PENAL CODE - PEN

**PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370]** ( Part 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**TITLE 4. FIREARMS [23500 - 34370]** ( Title 4 added by Stats. 2010, Ch. 711, Sec. 6. )

**DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR TYPES OF FIREARMS OR FIREARM EQUIPMENT [30210 - 33690]** ( Division 10 added by Stats. 2010, Ch. 711, Sec. 6. )

**CHAPTER 4. Handguns and Firearm Safety [31500 - 32110]** ( Heading of Chapter 4 amended by Stats. 2013, Ch. 761, Sec. 12. )

**ARTICLE 5. Rules Governing Unsafe Handguns [32000 - 32030]** ( Article 5 added by Stats. 2010, Ch. 711, Sec. 6. )

**32000.** (a) (1) A person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(2) The failure to report to the Department of Justice in accordance with the provisions of paragraph (2) of subdivision (f) the sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(3) In addition to any criminal penalty provided in paragraph (1), the unlawful sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not prohibit the sale to, or purchase by, sworn members of these agencies of a handgun.

(5) The sale, purchase, or delivery of a handgun, if the sale, purchase, or delivery of the handgun is made pursuant to subdivision (d) of Section 10334 of the Public Contract Code.

(6) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun for use as a service weapon, if the handgun is sold to, or purchased by, any of the following entities for use by, or sold to or purchased by, sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST) pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

(A) The Department of Parks and Recreation.

- (B) The Department of Alcoholic Beverage Control.
- (C) The Division of Investigation of the Department of Consumer Affairs.
- (D) The Department of Motor Vehicles.
- (E) The Fraud Division of the Department of Insurance.
- (F) The State Department of State Hospitals.
- (G) The Department of Fish and Wildlife.
- (H) The State Department of Developmental Services.
- (I) The Department of Forestry and Fire Protection.
- (J) A county probation department.
- (K) The Los Angeles World Airports, as defined in Section 830.15.
- (L) A K-12 public school district for use by a school police officer, as described in Section 830.32.
- (M) A municipal water district for use by a park ranger, as described in Section 830.34.
- (N) A county for use by a welfare fraud investigator or inspector, as described in Section 830.35.
- (O) A county for use by the coroner or the deputy coroner, as described in Section 830.35.
- (P) The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Section 830.36.
- (Q) A fire department or fire protection agency of a county, city, city and county, district, or the state for use by either of the following:
  - (i) A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.
  - (ii) A member other than a member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.
- (R) The University of California Police Department, or the California State University Police Departments, as described in Section 830.2.
- (S) A California Community College police department, as described in Section 830.32.
- (T) A harbor or port district or other entity employing peace officers described in subdivision (b) of Section 830.33, the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles.
- (U) A local agency employing park rangers described in subdivision (b) of Section 830.31.
- (V) The Department of Cannabis Control.
- (7) (A) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun, if the handgun is sold to, or purchased by, any of the following entities for use as a service weapon by the sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:
  - (i) The California Horse Racing Board.
  - (ii) The State Department of Health Care Services.
  - (iii) The State Department of Public Health.
  - (iv) The State Department of Social Services.
  - (v) The Department of Toxic Substances Control.
  - (vi) The Office of Statewide Health Planning and Development.
  - (vii) The Public Employees' Retirement System.
  - (viii) The Department of Housing and Community Development.
  - (ix) Investigators of the Department of Business Oversight.
  - (x) The Law Enforcement Branch of the Office of Emergency Services.
  - (xi) The California State Lottery.
  - (xii) The Franchise Tax Board.



(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(c) (1) Notwithstanding Section 26825, a person licensed pursuant to Sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in paragraph (6) or (7) of subdivision (b) and a person who is not exempt from the requirements of this section.

(2) (A) A person who obtains or has use of an unsafe handgun pursuant to paragraph (6) or (7) of subdivision (b) shall, when leaving the handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

(B) A violation of subparagraph (A) is an infraction punishable by a fine not exceeding one thousand dollars (\$1,000).

(C) For purposes of this paragraph, the following definitions shall apply:

(i) "Vehicle" has the same meaning as defined in Section 670 of the Vehicle Code.

(ii) A vehicle is "unattended" when a person who is lawfully carrying or transporting a handgun in the vehicle is not within close proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.

(iii) "Locked container" has the same meaning as defined in Section 16850.

(D) Subparagraph (A) does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course of their official duties.

(E) This paragraph does not supersede any local ordinance that regulates the storage of handguns in unattended vehicles if the ordinance was in effect before January 1, 2017.

(d) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

(e) (1) The Department of Justice shall maintain a database of unsafe handguns obtained pursuant to paragraph (4), (6), or (7) of subdivision (b). This requirement shall apply retroactively to include information in the department's possession. The department may satisfy this requirement by maintaining this information in any existing firearm database that reasonably facilitates compliance with this subdivision.

(2) A person or entity that is in possession of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b), shall notify the department of any sale or transfer of that handgun within 72 hours of the sale or transfer in a manner and format prescribed by the department. This requirement shall be deemed satisfied if the sale or transfer is processed through a licensed firearms dealer pursuant to Section 27545. A sale or transfer accomplished through an exception to Section 27545 is not exempt from this reporting requirement.

(3) By no later than March 1, 2021, the department shall provide a notification to persons or entities possessing an unsafe handgun pursuant to paragraph (4), (6), or (7) of subdivision (b) regarding the prohibitions on the sale or transfer of that handgun contained in this section. Thereafter, the department shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred pursuant to those provisions.

*(Amended by Stats. 2021, Ch. 70, Sec. 109. (AB 141) Effective July 12, 2021.)*

# **Exhibit J**


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### PENAL CODE - PEN

**PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370]** ( Part 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**TITLE 4. FIREARMS [23500 - 34370]** ( Title 4 added by Stats. 2010, Ch. 711, Sec. 6. )

**DIVISION 6. SALE, LEASE, OR TRANSFER OF FIREARMS [26500 - 28490]** ( Division 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**CHAPTER 5. Procedure For a Private Party Firearms Transaction [28050 - 28070]** ( Chapter 5 added by Stats. 2010, Ch. 711, Sec. 6. )

- 28050.** (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Sections 26700 to 26915, inclusive, in accordance with this chapter in order to comply with Section 27545.
- (b) The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm.
- (c) The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with Section 27540.
- (d) If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 26815 and 27540, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of Section 27500, 27505, 27515, 27520, 27525, 27530, or 27535.
- (e) Until July 1, 2024, if the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county, who shall then dispose of the firearm in the manner provided by Sections 18005 and 34000.
- (f) If Commencing July 1, 2024, if the dealer cannot legally return the firearm to the seller, transferor, or person loaning the firearm, then the following procedure shall apply:
- (1) The seller, transferor, or person loaning the firearm may request, and the dealer shall grant, that the dealer retain possession of the firearm for a period of up to 45 days so that the transferor or seller or the person loaning the firearm may designate a person to take possession of that firearm in accordance with Section 27540. This 45-day period shall be in addition to the waiting period described in Sections 26815 and 27540, and any time necessary to process a transaction.
  - (2) If, before the end of the 45-day period, the seller, transferor, or person loaning the firearm designates a person to receive the firearm and that person completes an application to purchase, the dealer shall process the transaction in accordance with the provisions of Section 27540.
  - (3) If the seller, transferor, or person loaning the firearm, does not request that the firearm be held by the dealer pursuant to this subdivision, or the firearm cannot be delivered to the designated person, the dealer, shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county, where the dealership is located, who shall then dispose of the firearm in the manner provided by Sections 18000, 18005, and 34000.
- (g) (1) If a dealer retains possession of a firearm pursuant to subdivision (f), the dealer shall within 72 hours after retaining possession of the firearm, notify the Department of Justice in a manner and format prescribed by the department.

(2) If a dealer delivers possession a firearm to a law enforcement agency pursuant to subdivision (e) or (f), the dealer shall notify the Department of Justice within 72 hours after the delivery of the firearm in a manner and format prescribed by the department.

*(Amended by Stats. 2021, Ch. 250, Sec. 13. (SB 715) Effective January 1, 2022.)*

# **Exhibit K**


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### PENAL CODE - PEN

**PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370]** ( Part 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**TITLE 4. FIREARMS [23500 - 34370]** ( Title 4 added by Stats. 2010, Ch. 711, Sec. 6. )

**DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR TYPES OF FIREARMS OR FIREARM EQUIPMENT [30210 - 33690]** ( Division 10 added by Stats. 2010, Ch. 711, Sec. 6. )

**CHAPTER 4. Handguns and Firearm Safety [31500 - 32110]** ( Heading of Chapter 4 amended by Stats. 2013, Ch. 761, Sec. 12. )

**ARTICLE 6. Exceptions to Rules Governing Unsafe Handguns [32100 - 32110]** ( Article 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**32110.** Article 4 (commencing with Section 31900) and Article 5 (commencing with Section 32000) shall not apply to any of the following:

- (a) The sale, loan, or transfer of any firearm pursuant to Chapter 5 (commencing with Section 28050) of Division 6 in order to comply with Section 27545.
- (b) The sale, loan, or transfer of any firearm that is exempt from the provisions of Section 27545 pursuant to any applicable exemption contained in Article 2 (commencing with Section 27600) or Article 6 (commencing with Section 27850) of Chapter 4 of Division 6, if the sale, loan, or transfer complies with the requirements of that applicable exemption to Section 27545.
- (c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 32000.
- (d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purposes of the service or repair of that firearm.
- (e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, to its owner where that firearm was initially delivered in the circumstances set forth in subdivision (a), (d), (f), or (i).
- (f) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purpose of a consignment sale or as collateral for a pawnbroker loan.
- (g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.
- (h) The sale, loan, or transfer of any semiautomatic pistol that is to be used solely as a prop during the course of a motion picture, television, or video production by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.
- (i) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.
- (j) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.
- (k) The return of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where it was initially delivered pursuant to subdivision (j).

*(Added by Stats. 2010, Ch. 711, Sec. 6. (SB 1080) Effective January 1, 2011. Operative January 1, 2012, by Sec. 10 of Ch. 711.)*



# **Exhibit L**


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### PENAL CODE - PEN

**PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370]** ( Part 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**TITLE 4. FIREARMS [23500 - 34370]** ( Title 4 added by Stats. 2010, Ch. 711, Sec. 6. )

**DIVISION 6. SALE, LEASE, OR TRANSFER OF FIREARMS [26500 - 28490]** ( Division 6 added by Stats. 2010, Ch. 711, Sec. 6. )

**CHAPTER 4. Crimes Relating to Sale, Lease, or Transfer of Firearms [27500 - 28000]** ( Chapter 4 added by Stats. 2010, Ch. 711, Sec. 6. )

**ARTICLE 1. Crimes Relating to Sale, Lease, or Transfer of Firearms [27500 - 27590]** ( Article 1 added by Stats. 2010, Ch. 711, Sec. 6. )

**27535.** (a) A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period. This subdivision does not authorize a person to make an application to purchase both a handgun and semiautomatic centerfire rifle within the same 30-day period.

(b) Subdivision (a) does not apply to any of the following:

- (1) Any law enforcement agency.
- (2) Any agency duly authorized to perform law enforcement duties.
- (3) Any state or local correctional facility.
- (4) Any private security company licensed to do business in California.
- (5) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of employment as a peace officer.
- (6) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.
- (7) Any person who may, pursuant to Article 2 (commencing with Section 27600), Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700), claim an exemption from the waiting period set forth in Section 27540.
- (8) Any transaction conducted through a licensed firearms dealer pursuant to Chapter 5 (commencing with Section 28050).
- (9) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.
- (10) The exchange of a handgun or semiautomatic centerfire rifle where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.
- (11) The replacement of a handgun or semiautomatic centerfire rifle when the person's firearm was lost or stolen, and the person reported that firearm lost or stolen pursuant to Section 25250 prior to the completion of the application to purchase the replacement.
- (12) The return of any handgun or semiautomatic centerfire rifle to its owner.
- (13) A community college that is certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission-certified law enforcement training.

(c) This section shall become operative on July 1, 2021.

*(Repealed (in Sec. 4) and added by Stats. 2019, Ch. 737, Sec. 5. (SB 61) Effective January 1, 2020. Section operative July 1, 2021, by its own provisions.)*

# **Exhibit M**


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### PENAL CODE - PEN

#### PART 2. OF CRIMINAL PROCEDURE [681 - 1620] *( Part 2 enacted 1872. )*

TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE [777 - 883] *( Heading of Title 3 amended by Stats. 1951, Ch. 1674. )*

#### CHAPTER 4.5. Peace Officers [830 - 832.19] *( Chapter 4.5 added by Stats. 1968, Ch. 1222. )*

**830.1.** (a) A sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, a chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, a police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, a chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, a marshal or deputy marshal of a superior court or county, a port warden or port police officer of the Harbor Department of the City of Los Angeles, or an inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

- (1) As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.
  - (2) If the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within a county.
  - (3) As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.
- (b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.
- (c) A deputy sheriff of the County of Los Angeles, and a deputy sheriff of the Counties of Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Mono, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of the officer's respective employment and for the purpose of carrying out the primary function of employment relating to the officer's custodial assignments, or when performing other law enforcement duties directed by the officer's employing agency during a local state of emergency.

*(Amended by Stats. 2021, Ch. 588, Sec. 1. (AB 779) Effective January 1, 2022.)*

# **Exhibit N**



## Department of Justice

U.S. Attorney's Office  
Eastern District of California

For Immediate Release

Thursday, June 30, 2016

Phillip A. Talbert, United States Attorney

Contact: Lauren Horwood

916-554-2706

[www.justice.gov/usao-edca](http://www.justice.gov/usao-edca)

### **Former Sacramento County Sheriff's Deputy Sentenced to 18 Months in Prison for Unlawful Sale of Firearms**

SACRAMENTO, Calif. — Ryan McGowan, 34, of Elk Grove, was sentenced today by United States District Judge Troy L. Nunley to 18 months in prison and a \$7,000 fine for dealing firearms without a license and for conspiracy to make a false statement on a firearms record, Acting United States Attorney Phillip A. Talbert announced.

Former Sacramento County sheriff's deputy McGowan and his co-defendant Robert Snellings were convicted last year following a jury trial. Snellings, 64, of Rancho Murieta, a former federal firearms licensee, was sentenced last week to one year in prison.

Under state law, California has an approved roster of firearms that may be sold to the public. A federal firearms licensee is required to make sure any handgun sold is on the approved roster. There is an exemption, however, for peace officers to purchase certain firearms known as "off-roster" firearms. Peace officers who own off-roster firearms may sell them in a private sale, so long as it is brokered by a federal firearms licensee. They may not, however, use these private sales to conduct a business whose principal objective is livelihood and profit through the repetitive purchase and resale of firearms.

According to evidence produced at trial, McGowan used his position as a deputy sheriff to purchase off-roster guns at retail price and then because the firearms could not be purchased directly by the general public, resold them at an inflated price on the private market in California. From 2008 to 2011, McGowan purchased 41 handguns and sold 25 of them within a year after purchase. Thirty-three of the guns were purchased through Snellings Firearms, which was owned by co-defendant Snellings. Some of those weapons were then transferred back to Snellings personally, thereby allowing Snellings to own the weapons himself or sell them to the public.

Both defendants were found guilty of conspiracies to make false statements in federal firearms records. In order to circumvent the restrictions on purchasing off-roster firearms, they falsely stated on ATF forms that a police officer was the actual purchaser when the actual purchaser of the off roster handgun was intended to be a non-officer who was not permitted to buy the gun. Therefore, McGowan and other police officers were acting as a straw purchasers who then transferred the handguns to the real purchasers within a short period of time.

ATF Special Agent in Charge Jill A. Snyder stated: "Ryan McGowan used his position as a law enforcement officer to purchase firearms and sell them illegally. In doing so, he violated federal law and public trust."

This case was the product of an investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives with the active involvement of the Sacramento Sheriff's Office and the Sacramento Police Department. The



Roseville Police Department and other law enforcement agencies assisted. Assistant United States Attorneys William S. Wong and Michael D. Anderson prosecuted the case.

####

San Francisco Field Division

# Exhibit O


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### GOVERNMENT CODE - GOV

**TITLE 1. GENERAL [100 - 7931.000]** (*Title 1 enacted by Stats. 1943, Ch. 134.*)

**DIVISION 7. MISCELLANEOUS [6000 - 7599.104]** (*Division 7 enacted by Stats. 1943, Ch. 134.*)

**CHAPTER 21. Public Pension and Retirement Plans [7500 - 7523.2]** (*Heading of Chapter 21 renumbered from Chapter 19 (as added by Stats. 1974, Ch. 1478) by Stats. 1977, Ch. 579.*)

**ARTICLE 4. California Public Employees' Pension Reform Act of 2013 [7522 - 7522.74]** (*Article 4 added by Stats. 2012, Ch. 296, Sec. 15.*)

- 7522.72.** (a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, and, on and after that date, Section 7522.70 shall not apply.
- (b) (1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.
- (2) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.
- (c) (1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.
- (2) Paragraph (1) shall apply to the extent permissible by law.
- (3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.
- (d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.
- (2) Any funds returned to the public employee pursuant to subdivision (d) shall be disbursed by electronic funds transfer to an account of the public employee, in a manner conforming with the requirements of the Internal Revenue Code, and the public retirement system shall notify the court and the district attorney at least three business days before that disbursement of funds.
- (3) For the purposes of this subdivision, a "distribution event" means any of the following:
- (A) Separation from employment.
- (B) Death of the member.
- (C) Retirement of the member.

(e) (1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:

(A) The date of conviction.

(B) The date of the first known commission of the felony.

(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) The public employer that employs or employed a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(g) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

(h) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to do either of the following:

(1) Recover the forfeited rights and benefits as adjusted for the contributions received pursuant to subdivision (d).

(2) Redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits.

(i) The forfeiture of rights and benefits provided in this section, with respect to judges, are in addition to and supplement the forfeitures and other requirements provided in Section 75033.2, 75062, 75526, or 75563. If there is a conflict between this section and Section 75033.2, 75062, 75526, or 75563, the provisions that result in the greatest forfeiture or provide the most stringent procedural requirements to the claim of a judge shall apply.

(j) A public employee first employed by a public employer or first elected or appointed to an office on or after January 1, 2013, shall be subject to Section 7522.74.

*(Amended by Stats. 2014, Ch. 238, Sec. 3. (AB 2476) Effective January 1, 2015.)*

# **Exhibit P**

## Reconciliation of Felony Forfeiture and Alameda Exclusions

**Notes:**

Felony first commission date 8/11/11; all service and contributions earned after felony commission removed  
 Retirement date 2/28/2020; Option 2 monthly allowance with COLA paid thru 3/31/22

	Benefit at Retirement	Benefit with Felony Forfeiture Applied	Benefit with Alameda Applied
Final Average Salary Period	5/5/2009-5/4/2012	8/11/2008-8/10/2011	8/11/2008-8/10/2011
Service Years	9.2127	8.4889	8.4889
Final Average Salary	\$8,900.35	\$8,506.01	\$8,011.91
Monthly Allowance without COLA	\$2,263.85	\$1,992.32	\$1,874.98
Monthly Allowance with COLA	\$2,355.31	\$2,072.81	\$1,950.73

**Step 1: Identify Felony Forfeiture Overpayment or Refund (8/11/2011-3/31/2022)**

		(A) Excluded Contributions
		(\$9,029.06)
(B) Monthly Allowance	(C) Felony Forfeiture Monthly Allowance	(D) Monthly Overpayments Including COLA
\$2,263.85	\$1,992.32	\$7,003.78
<b>Felony Forfeiture - Refund (A-D)</b>		<b>(\$2,025.28)</b>

**Step 2: Identify Alameda Overpayment or Refund Before Court Ruling (2/28/2020 to 7/31/2020)**

(E) Pay Element	(F) Excluded Earnings	(G) Contributions and Interest from Excluded Earnings
Education Allowance Paid on Overtime	\$17,787.79	(\$1,207.95)
(H) Felony Forfeiture Monthly Allowance	(I) Alameda Monthly Allowance	(J) Monthly Overpayments Including COLA
\$1,992.32	\$1,874.98	\$598.45
<b>Total Alameda Before Court Ruling - Refund (G-J)</b>		<b>(\$609.50)</b>

**Step 3: Identify Alameda Overpayment or Refund After Court Ruling (8/1/2020 to 3/31/2022)**

(K) Felony Forfeiture Monthly Allowance	(L) Alameda Monthly Allowance	(M) Monthly Overpayments Including COLA
\$1,992.32	\$1,874.98	\$2,422.28
<b>Total Alameda After Court Ruling - Overpayment</b>		<b>\$2,422.28</b>

<b>Grand Total (Step 1 + Step 2 + Step 3)</b>	<b>(\$212.50)</b>
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