

GEORGE F. DARRAGH JR.
Assistant U.S. Attorney
U.S. Attorney's Office
P.O. Box 3447
Great Falls, MT 59403
119 First Ave. North, #300
Great Falls, MT 59401
Phone: (406) 761-7715
FAX: (406) 453-9973
Email: george.darragh@usdoj.gov

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

RICHARD CELATA, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	2:07-CV-00024-SEH-RKS <u>DEFENDANT'S STATEMENT OF</u> <u>GENUINE ISSUES AND STATEMENT</u> <u>OF UNDISPUTED FACTS</u>
--	---

Pursuant to L.R. 56.1(b) the defendant United States of America submits the following statement of genuine issues in opposition to the plaintiff's motion for summary judgment.

1. In a notice dated August 4, 2006 Richard Celata was notified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) of forfeiture proceedings

against property which was seized pursuant to a search warrant on June 7, 2006. (Affidavit of Richard Celata, Exhibit A to Plaintiff's Statement of Undisputed Facts).

2. The property that was the subject of the administrative forfeiture was listed on an attachment to the notice to Celata which he has failed to supply to the Court. Attached as Exhibit D is the Notice with the attached list.

3. There were six items, all firearms, listed on the forfeiture notice. Those firearms are as follows:

(a) Unknown manufacturer, Model 228, pistol bearing no serial number (Item #000004);

(b) Unknown manufacturer, Model 1911, pistol bearing serial number KTO 03041002 (Item #000019);

(c) Unknown manufacturer, Model AR15, "any other weapon" bearing no serial number (Item #000020);

(d) Unknown manufacturer, Unknown Model, machine gun bearing no serial number (Item #000031);

(e) Unknown manufacturer, Model 1911, pistol bearing serial number 03041001 (Item #000037);

(f) Unknown manufacturer, Unknown model, rifle bearing no serial number (Item #000040). (Exhibit D).

4. In response to the Notice of Forfeiture Proceedings Richard Celata claimed an interest in four of the six particular firearms. Item Nos. b, c, e, and f above. Celata did not claim an interest in Item Nos. a and d above. (Exhibit C to the Plaintiff's Statement of Undisputed Facts).

5. One of the items seized during the search of June 7, 2006 is a machine gun as defined in 26 U.S.C. § 5845(b). (See Declaration of John P. Komora attached hereto as Exhibit A, ¶¶ 4,8,9, and 10).

6. A search of the ATF National Firearms Registration and Transfer Records reveals there is no record of any machine guns being registered to Richard Celata. (Declaration of John P. Komora, Exhibit A, ¶ 11).

7. Richard Celata, through his attorney has been advised on several occasions that the items seized are being retained as part of the District of New Hampshire's ongoing criminal investigation. (Declaration of Paulette L. Stewart attached hereto as Exhibit B, ¶ 3).

8. Richard Celata is a target of an on-going investigation in the District of New Hampshire and elsewhere for violations of 18 U.S.C. § 922(a)(1) (unlawful manufacturing of firearms) and 18 U.S.C. § 922(o) (unlawful possession of machine gun). (Declaration of Clyde R.W. Garrigan attached hereto as Exhibit C, ¶ 2).

9. The items seized on June 6, 2006 pursuant to a federal search warrant for Richard Celata's residence/business at 382 Adams Lane, Dillon, Montana are either contraband or potential evidence related to the offenses described above or other federal crimes. (Declaration of Clyde R.W. Garrigan, Exhibit C, ¶ 3).

DATED this 31st day of May, 2007.

WILLIAM W. MERCER
United States Attorney

/s/ George F. Darragh, Jr.
GEORGE F. DARRAGH JR.
Assistant U.S. Attorney
Attorney for Defendant