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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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**JAMES M. ATKINSON, pro se**

Plaintiff,

v.

**TOWN OF ROCKPORT, et al.,**

Defendants.

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**11-CV-11073-NMG**

**PLAINTIFF’S MEMORANDUM  
OF LAW RE: RESEARCH  
ELECTRONICS, LLC  
“STATEMENT OF MATERIAL  
FACTS (DOCKET NO. 13)”  
AND PERTINENT  
MATERIALS.**

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**PLAINTIFF REQUESTS ORAL ARGUMENT ON THIS MATTER**

- 8       1. An “End User Certificate” is a letter or other document that is issued  
9           by the intended person or agency (in this case in intelligence agency)  
10          certifying that they are the intended final user of the product, service,  
11          information, or other goods. This certification is required to obtain  
12          proper licenses to facilitate legal and lawful exportation as these  
13          goods are considered dual use arms, an under international treaty they  
14          must be license by the diplomatic authorities in a given country. In the  
15          case of the United States this license is issued by the PM/DDTC office  
16          within the U.S. State Department, and it can be issued by no other

17 element of the U.S. Government. The end user certificate initiates the  
18 issuance of the “End User License” and this license number has to be  
19 placed on all exportation documents. As the goods themselves are not  
20 only controlled, but also the software, manuals, books, training,  
21 consulting, and technical details then licenses but also be obtains for  
22 these as well, when they are sought prior to the actual final transaction.  
23 Additionally, each entity which brokers the transaction, or which  
24 handles the goods must also be cleared by the PM/DDTC so it is  
25 customary to drop ship these types of goods right from the factory,  
26 directly to the ultimate end user. On a legitimate transaction, these end  
27 user letters or certificates are vital to comply with international treaty.

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29 2. Exports of this type of equipment require a great deal of effort to get  
30 approved, once the end user certificate of letter gets issued, and before  
31 a legal and legitimate export may actually take place.

32  
33 3. Further, as this equipment REQUIRES a formal license from the U.S.  
34 State Department the presentation of the End-User Letter initiated the  
35 second stage of end-user licensing, which would normally take at least  
36 a few weeks, but more often months for the State Department to

37 approve both the broker (in Switzerland), and the actual end user (in  
38 Uzbekistan).

39

40 4. A “SED” is a Shipper's Export Declaration (SED) filing is required by  
41 the U.S. Census Bureau for U.S. exports that contain a single  
42 commodity's value exceeding a certain dollar amount (currently  
43 \$2500). All SED information is provided to the U.S. Census Bureau  
44 and is used for export compliance and governmental reporting.

45

46 5. The “Shipper's Export Declaration (SED)” contains a section in which  
47 the PM/DDTC license number that was issued by the U.S. State  
48 Department must be placed, and on the current “FORM 7525-V(7-18-  
49 2003)” used by the U.S. Census Bureau this section is labeled “27.

50 LICENSE NO./LICENSE EXCEPTION

51 SYMBOL/AUTHORIZATION” In the event of a fraudulent  
52 exportation of these goods the block or section will list “NLR” or “No  
53 License Required” when it should in fact contain the actual license  
54 number required by law.

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56 6. An “ITAR License Number” refers to the actual license number  
57 issued by the Directorate of Defense Trade Controls (DDTC) of the  
58 U.S. State Department, in accordance with 22 U.S.C. 2778-2780 of  
59 the Arms Export Control Act (AECA) and the International Traffic in  
60 Arms Regulations (ITAR) (22 CFR Parts 120-130). More specifically,  
61 these type of goods are tightly controlled by “Division IV - Electronic  
62 Systems (USML Commodity Category XI)” within the office of  
63 PM/DDTC of the U.S. State Department. TSCM equipment, goods,  
64 services, training, manuals, and technical data may not leave this  
65 country unless a license is first obtain from this division, each time.  
66 This permission in initiated by the aforementioned “End User  
67 Certificate” on application to the U.S. State Department.

68  
69 7. An “ECCN” or “Export Control Classification Number” is an alpha-  
70 numeric code, e.g., 3A001 that describes the item and indicates  
71 licensing requirements. All ECCNs are listed in the Commerce  
72 Control List (CCL) (Supplement No. 1 to Part 774 of the EAR). The  
73 CCL is divided into ten broad categories, and each category is further  
74 subdivided into five product groups. These ECCN’s are self-assigned  
75 by the manufacture of the goods, and not by the government. Thus, a

76 company who wishes to illegally export arms will assign to their  
77 products an ECCN that is fraudulent in an attempt to evade and  
78 subvert export controls.

79

80 8. The Department of Commerce’s Bureau of Industry and Security  
81 (BIS) is responsible for implementing and enforcing the Export  
82 Administration Regulations (EAR), which regulate the export and  
83 reexport of most commercial items. The U.S. Government often refer  
84 to the items that BIS regulates as “dual-use” – items that have both  
85 commercial and military or proliferation applications – but purely  
86 commercial items without an obvious military use are also subject to  
87 the EAR.

88

89 9. The EAR do not control all goods, services, and technologies. Other  
90 U.S. government agencies regulate more specialized exports. For  
91 example, the U.S. Department of State has sole authority over defense  
92 articles and defense services. A list of other agencies involved in  
93 export controls can be found at Resource Links or in Supplement No.  
94 3 to Part 730 of the EAR.

95

96 10. Thus, an ECCN is published by the Department of Commerce's  
97 Bureau of Industry and Security (BIS) with a description of what that  
98 ECCN means. Then the producers or manufactures of the goods  
99 match their products up with these descriptions (when it is legal for  
100 them to do so).

101  
102 11. However, Export Administration Regulations (EAR) do not apply to  
103 commodities, goods, products, or services defined by international  
104 treaty as "dual use" items, and thus Department of Commerce has no  
105 authority over them, only the U.S. State Department.

106  
107 12. Then under ITAR 121.1 XI(b), the use an ECCN code to then  
108 facilitate the exportation of a device, good, commodity, service,  
109 manual, or training that is used to "...electronic systems or equipment  
110 designed or modified to counteract electronic surveillance or  
111 monitoring" is unlawful as the goods sold by Research Electronics are  
112 sold for this purposes of "counteracting electronic surveillance or  
113 monitoring" as defined in their own textbooks, technical manuals,  
114 marketing materials, trade show presentations, and other documents.  
115 The use of an ECCN to export TSCM goods such as those

116 manufactured and exported (illegally) by Research Electronics is a  
117 fraudulent tactic to facilitate unlawful exportation and smuggling of  
118 arms.

119

120 13. Further, under ITAR Section 120.21, technical data, technical manuals,  
121 users guides, white papers, and other documents and descriptions are  
122 further restricted and controlled, and merely to send a users manual to  
123 a prospective overseas purchaser requires formal U.S. State  
124 Department Approval and the form of an End User License. The  
125 shipping of a manual to an overseas location, absent this permission  
126 by the U.S. State Department would thus be an illegal export, and  
127 defacto arm smuggling.

128

129 14. Training services on this equipment, and on this subject matter is also  
130 controlled under ITAR Section 120.8, and also controlled exclusively  
131 by the U.S. State Department, and a the student and the course must  
132 both obtain a license for the student to attend training in the United  
133 States, or for the U.S. based instructor to travel overseas to teach. Any  
134 teaching of the subject of TSCM or related disciplines to non-U.S.  
135 citizens is a very serious criminal act, unless permission is obtained

136 for each student, each instructor, and each class. Research Electronics  
137 and the employees and agents of Research Electronics has been  
138 providing this unlawful training to non-U.S. Citizens.

139

140 15. Further, under “The Wassenaar Arrangement On Export Controls For  
141 Conventional Arms and Dual-Use Goods and Technologies” or  
142 merely “Wassenaar Arrangement” the United States is obligated  
143 though the PM/DDTC office within the U.S. State Department to  
144 administer a “dual use” licensing program. This office is thus  
145 responsible for the regulation, licensing, enforcement, and control of  
146 any such devices, equipment, good, information, or training related to  
147 these subject matters.

148

149 16. The Participating States of the Wassenaar Arrangement are: Argentina,  
150 Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech  
151 Republic, Denmark, Estonia, Finland, France, Germany, Greece,  
152 Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta,  
153 Netherlands, New Zealand, Norway, Poland, Portugal, Republic of  
154 Korea, Romania, Russian Federation, Slovakia, Slovenia, South  
155 Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United

156 Kingdom and United States. Representatives of Participating States  
157 meet regularly in Vienna where the Wassenaar Arrangement's  
158 Secretariat is located.

159

160 17. The Wassenaar Arrangement has been established in order to  
161 contribute to regional and international security and stability, by  
162 promoting transparency and greater responsibility in transfers of  
163 conventional arms and dual-use goods and technologies, thus  
164 preventing destabilising accumulations. Participating States seek,  
165 through their national policies, to ensure that transfers of these items  
166 do not contribute to the development or enhancement of military  
167 capabilities which undermine these goals, and are not diverted to  
168 support such capabilities.

169

170 18. The decision to transfer or deny transfer of any item is the sole  
171 responsibility of each Participating State. All measures with respect to  
172 the Arrangement are taken in accordance with national legislation and  
173 policies and are implemented on the basis of national discretion and  
174 laws.

175

176 19. In the case of the Wassenaar Arrangement, the U.S. Statute which  
177 enforces it is “Title 22--Foreign Relations, Chapter I - Department Of  
178 State, Part 121 - The United States Munitions List.” [CITE: 22 CFR  
179 121.1] All other U.S. laws on the exportation of these dual-use items  
180 then derives from 22 CFR 121.1.

181  
182 20. As part of the Wassenaar Arrangement, there is also a “List Of Dual-  
183 Use Goods and Technologies and Munitions List” from which the  
184 United States Munitions List is thus derived. See Page 177 of WA 10  
185 29 201 ([http://www.wassenaar.org/controllists/2010/WA-](http://www.wassenaar.org/controllists/2010/WA-LIST%20%2810%29%201%20Corr/WA-LIST%20%2810%29%201%20Corr.pdf)  
186 [LIST%20%2810%29%201%20Corr/WA-](http://www.wassenaar.org/controllists/2010/WA-LIST%20%2810%29%201%20Corr/WA-LIST%20%2810%29%201%20Corr.pdf)  
187 [LIST%20%2810%29%201%20Corr.pdf](http://www.wassenaar.org/controllists/2010/WA-LIST%20%2810%29%201%20Corr/WA-LIST%20%2810%29%201%20Corr.pdf))

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189 21. Under the Wassenaar Arrangement, “Munitions List” ML11.

190 ML11. Electronic equipment, not specified elsewhere on the  
191 Munitions List, as follows, and specially designed components  
192 therefor:

193 Electronic equipment specially designed for military use;

194 Note ML11.a. includes:

195 Electronic countermeasure and electronic counter-  
196 countermeasure equipment (i.e., equipment designed to  
197 introduce extraneous or erroneous signals into radar or radio  
198 communication receivers or otherwise hinder the reception,  
199 operation or effectiveness of adversary electronic receivers  
200 including their countermeasure equipment), including jamming  
201 and counter-jamming equipment;

202 Frequency agile tubes;  
203 Electronic systems or equipment, designed either for  
204 surveillance and monitoring of the electro-magnetic spectrum  
205 for military intelligence or security purposes or for  
206 counteracting such surveillance and monitoring;  
207 Underwater countermeasures, including acoustic and magnetic  
208 jamming and decoy, equipment designed to introduce  
209 extraneous or erroneous signals into sonar receivers;  
210 Data processing security equipment, data security equipment  
211 and transmission and signalling line security equipment, using  
212 ciphering processes;  
213 Identification, authentication and keyloader equipment and  
214 key management, manufacturing and distribution equipment;  
215 Guidance and navigation equipment;  
216 Digital troposcatter-radio communications transmission  
217 equipment;  
218 Digital demodulators specially designed for signals  
219 intelligence;  
220 "Automated Command and Control Systems".

221  
222 N.B. For "software" associated with military "Software" Defined  
223 Radio (SDR), see ML21.

224  
225 b. Global Navigation Satellite Systems (GNSS) jamming equipment.

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227  
228 22. As a result, any improper exportation or importation of "Electronic  
229 systems or equipment, designed either for surveillance and monitoring  
230 of the electro-magnetic spectrum for military intelligence or security  
231 purposes or for counteracting such surveillance and monitoring;" is  
232 both a violation of U.S. Law, and a violation of International Treaty  
233 which makes a United States of America liable to sanctions for such  
234 violations. Essentially, an improper export of this type of equipment is

235 a grave diplomatic violation. Thus, there is an intricate protocol to  
236 facilitate such sales, services, goods, information, and training so as  
237 not to offend this international treaty.

238

239 23. In 1990, in the wake of the 1989 Tiananmen Square crackdown in  
240 China, Congress passed legislation to reinforce interim economic and  
241 diplomatic sanctions that President George H.W. Bush had  
242 implemented earlier to express U.S. disapproval of the Chinese  
243 government's actions. The "Tiananmen Square sanctions", as they are  
244 popularly called, included: a continuance of the suspension of export  
245 licensing for defense articles and defense services on the U.S.  
246 Munitions List, a suspension of export licenses for crime control and  
247 detection instruments and equipment; and related prohibitions. It is  
248 possible to export these items to China, but the PM/DDTC office at  
249 the U.S. State Department is not allowed to issue such a license on  
250 their own, such a license by only issue forth from the President of the  
251 United States, and form no less authority. The President thus issues  
252 the license, to the State Department, who then issues the End-user  
253 License to the exporter who will be sending these types of goods to  
254 China. It is a very serious criminal act to export TSCM or electronic

255 counter-measures equipment such as that made by Research  
256 Electronics, unless the President of the United States issues  
257 permission for the export. To date, Research Electronics International  
258 has ever applied for such a Presidentially issued license, and yet they  
259 have repeatedly exported arms illegally to China, repeatedly. Yet,  
260 Research Electronics has repeatedly claimed that they possessed such  
261 a license, when in fact they did not.

262  
263 24. Congress passed sanctions against the People Republic of China in  
264 response to Tiananmen, including the Foreign Relations Authorization  
265 Act for Fiscal Years 1990 and 1991, which, among other things,  
266 required a presidential "national interest" determination, or waiver, for  
267 the export of a TSCM or Electronics Counter Measures equipment.  
268 There have been only 13 such Presidential "national interest"  
269 determinations pursuant to the Tiananmen sanctions legislation.

270  
271 25. The U.S. Government controls the export and import of "defense  
272 articles" and "defense services" pursuant to the Arms Export Control  
273 Act. Section 38 of the Arms Export Control Act authorizes the

274 President to control the export and import of defense articles and  
275 defense services.

276

277 26. The statutory authority of the President to promulgate regulations with  
278 respect to exports of defense articles and defense services was  
279 delegated to the Secretary of State by Executive Order 11958, as  
280 amended.

281

282 27. The Arms Export Control Act is implemented by the International  
283 Traffic in Arms Regulations (ITAR), which are administered by the  
284 State Department's Office of Defense Trade Controls within the  
285 Bureau of Political-Military Affairs. These regulations are found at 22  
286 CFR parts 120-130.

287

288 28. The Arms Export Control Act provides that the President shall  
289 designate the articles and services that are deemed to be "defense  
290 articles" and "defense services." These items, as determined by the  
291 State Department with the concurrence of the Department of Defense,  
292 are included on the U.S. Munitions List.

293

294 29.No items may be removed from the U.S. Munitions List without the  
295 approval of the Secretary of Defense, and there must be 30 days  
296 advance notice to Congress.

297

298 30.The Department of Commerce or another department or agency may  
299 request a pre-license check to establish the identity and reliability of  
300 the recipient of the items requiring an export license.

301

302 31.The 1979 Act provides that the Secretary of Commerce and designees  
303 (U.S. State Department) may conduct overseas pre-license checks and  
304 post-shipment verifications of items licensed for export. A pre-license  
305 check is conducted during the normal licensing process. A post-  
306 shipment verification is an on-site visit to the location to which the  
307 controlled item has been shipped under an export license, in order to  
308 ascertain that the item is being used by the appropriate end user and  
309 for the appropriate purpose

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311 32.The Commerce Department's and U.S. State Department procedures  
312 for conducting pre-license checks and post-shipment verifications are  
313 similar.

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33. A pre-license check or post-shipment verification is initiated by sending a cable with relevant information about the case to the appropriate U.S. Embassy overseas. Specific officials at the Embassy usually have been pre-designated to conduct these checks, although special teams from Washington, D.C. also periodically conduct end-use checks.

34. The Embassy official initially collects background information on the end user (listed in the end user certificate). Next, the Embassy official visits the end user and interviews senior employees there. Upon completing the visit, the Embassy official is required to cable the Commerce Department or the U.S. State Department PM/DDTC with the information collected and an evaluation as to whether the proposed end user is considered a reliable recipient of U.S. technology.

35. Based on the cabled information, the cognizant agency evaluates whether the result of the check is favorable or unfavorable, and the license is issued or declined.

334 36. Research Electronics kept claiming that they had a license to export  
335 these goods, and when Plaintiff shared his concerns with FBI/DHS  
336 about REI possibly smuggling arms and that he was concerned  
337 because they (REI) kept claiming that they had such a license, but that  
338 Plaintiff had obtained several REI completed SED forms by accident  
339 which contained no ITAR license number, but did include an ECCN  
340 (hence, it was unlikely a legitimate exports).

341  
342 37. Research Electronics has subverted U.S. Arms Export Laws, and  
343 confected a suit in early 2011 for improper purposes, and merely to  
344 harass and annoy the Plaintiff, all the while REI was engaging in  
345 illegal arm smuggling, and actively trying to destroy the Plaintiff as a  
346 witness to the Arms Smuggling (which the Defendant REI discovered  
347 had been reported to the authorities by the Plaintiff). Thus, the efforts  
348 to file so called "Materials Facts" in this matter by REI is nothing  
349 more than a smoke screen for arm smuggling, and an attempt to  
350 intimidate and manipulate a witness.

351  
352 **CONCLUSION**

353 1. Defendant Research Electronics, *et al.* has engaged is a complex  
354 criminal enterprise in order to smuggle arms in contravention of U.S.  
355 and International treaty, and working with other did confect a  
356 conspiracy to deprive the Plaintiff of his civil rights.

357  
358 2. The conduct of the Defendant utterly shocks the conscience, and  
359 endangers national security, and destabilized international security.

360  
361 Respectfully submitted,

362 Dated: November 30, 2011

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364 \_\_\_\_\_  
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368 (978) 546-3803

369  
370 **CERTIFICATE OF SERVICE**

371  
372 I hereby certify that this document filed though the ECF System will be sent  
373 electronically to the registered participants as identified on the Notice of  
374 Electronic Filing (NEF) (by way of the clerks terminal) and paper copies by  
375 U.S. Mail will be sent to those indicated as non-registered participants this  
376 30<sup>th</sup> day of November, 2011

377  
378 \_\_\_\_\_  
379 James M. Atkinson, pro se