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1 C.D. MICHEL – SBN 144258  
Jason A. Davis – SBN 224250  
2 MICHEL & ASSOCIATES, P.C.  
3 180 E. Ocean Blvd, Suite 200  
Long Beach, CA 90802  
4 Telephone: (562) 216-4444  
Facsimile: (562) 216-4445  
5 Email: CMichel@michellawyers.com

6 Attorneys for Petitioners - Plaintiffs  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

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FRANKLIN ARMORY, INC. and  
CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
XAVIER BECERRA, in his official capacity  
as Attorney General for the State of California,  
and DOES 1-10,

Respondents-Defendants.

) Case No.: **20STCP01747**  
)  
) **VERIFIED COMPLAINT FOR**  
) **DECLARATORY AND INJUNCTIVE**  
) **RELIEF; PETITION FOR WRIT OF**  
) **MANDATE AND/OR PROHIBITION OR**  
) **OTHER APPROPRIATE RELIEF**  
)  
) **UNLIMITED JURISDICTION**

1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE AND PISTOL ASSOCIATION petition  
2 this court for declaratory relief, injunctive relief and a writ of mandate relating to CALIFORNIA  
3 DEPARTMENT OF JUSTICE, XAVIER BECERRA and DOES 1-10 (collectively “DEFENDANTS”)  
4 implementation of unlawful technological barriers preventing the lawful transfer of firearms and failure  
5 and/or refusal to timely perform the duties relating to the sale, loan, transfer, purchase and processing of  
6 firearms that are neither “handguns,” “shotguns,” nor “rifles,” including the FRANKLIN ARMORY,  
7 INC. firearms designated with the model name “Title 1.”

8 **PARTIES**

9 1. Plaintiff FRANKLIN ARMORY, INC. (“FAI”) is a federally licensed firearms manufacturer  
10 incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a  
11 manufacturing facility in Morgan Hill, California. FAI specializes in manufacturing firearms for  
12 civilian sporting and recreation, military and law enforcement applications.

13 2. Pertinent here, FAI manufactures a series of firearms which are neither “rifles,” “pistol,” nor  
14 “shotguns” under California law and which are designated with the model name “Title 1” by FAI.

15 3. The FAI Title 1 firearms, as designed and sold by FAI, are lawful to possess, sell, transfer,  
16 purchase, loan, or otherwise be distributed within California through licensed California firearm dealers  
17 to persons who are not otherwise prohibited from possessing firearms.

18 4. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”), is a nonprofit,  
19 membership and donor-supported organization qualified as tax-exempt under 26 U.S.C. § 501(c)(4) with  
20 its headquarters in the City of Fullerton, in Orange County, California. Founded in 1875, CRPA seeks to  
21 defend the civil rights of all law-abiding individuals, including the fundamental right to acquire and  
22 possess FAI Title 1 firearms.

23 5. CRPA regularly provides guidance to California gun owners regarding their legal rights and  
24 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and providing  
25 education, training and organized competition for adult and junior shooters. CRPA members include law  
26 enforcement officers, prosecutors, professionals, firearm experts and the public.

27 6. In this suit, the CRPA represents the interests of its many citizen and taxpayer members and  
28 members of CRPA who reside in California and who wish to sell, purchase, acquire, transfer and possess

1 lawful firearms, including the Title 1, but are prohibited from doing so by the technological limitations  
2 implemented by DEFENDANTS. The CRPA brings this action on behalf of itself and its tens of  
3 thousands of supporters in California, including FAI, who have been, are being, and will in the future be  
4 subjected to DEFENDANTS' refusal and/or delay in removing the technological barrier designed,  
5 implemented and maintained by DEFENDANTS that prohibits the lawful sale, loan, transfer and  
6 purchase of certain lawful firearms, including but not limited to the FAI Title 1.

7 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully constituted  
8 executive agency charged with implementing, enforcing and administering the State of California's  
9 firearm laws and systems for processing firearm transfers and loans. The DOJ is under the direction and  
10 control of the Attorney General. (Gov't C. §15000.) The DOJ is composed of the Office of the Attorney  
11 General and those other divisions, bureaus, branches, sections or other units as the Attorney General  
12 may create within the department pursuant to Section 15002.5. (Gov't C. § 15001.) The Bureau of  
13 Firearms ("BOF") was created by the Attorney General within the Division of Law Enforcement for the  
14 purposes of designing, implementing and enforcing California's firearm laws, rules, regulations and  
15 support systems. The DOJ is responsible for the design, development, maintenance and enforcement of  
16 the Dealer Record of Sale Dealer Entry System, the system by which licensed California firearm dealers  
17 submit purchaser and firearm information to the California Department of Justice for processing in  
18 accordance with California's firearm transfer laws and regulations.

19 8. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of California. He is the  
20 chief law enforcement officer of California. Defendant Becerra is charged by Article V, Section 13 of the  
21 California Constitution with the duty to see that the laws of California are uniformly and adequately  
22 enforced. BECERRA also has direct supervision over every district attorney and sheriff in all matters  
23 pertaining to the duties of their respective officers. Defendant BECERRA's duties also include informing  
24 the public, local prosecutors and law enforcement regarding the meaning of the laws of California,  
25 including restrictions on the transfer of firearms at issue herein. He is sued in his official capacity.

26 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and  
27 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.  
28 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through

1 10 is responsible in some capacity or manner for the adoption or enforcement of the unlawful  
2 regulations as alleged in this Complaint and Petition. Plaintiffs pray for leave to amend this Complaint  
3 and Petition to show the true names, capacities and/or liabilities of DOE Defendants 1 through 10 if and  
4 when they are determined.

5 **JURISDICTION AND VENUE**

6 10. This Court has jurisdiction under Article I, section 3 and Article VI section 10 of the California  
7 Constitution, and Code of Civil Procedure sections 525, 526, 1060, 1085 and 1087. This Court also has  
8 jurisdiction because Plaintiffs/Petitioners lack a “plain, speedy, and adequate remedy, in the ordinary  
9 course of law.” (Code Civ. Proc. § 1086.)

10 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure  
11 sections 393 subdivision (b) and 394 subdivision (a). Also, venue properly lies within this Court  
12 because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc. §401.)

13 **AUTHENTICITY OF EXHIBITS**

14 12. All exhibits accompanying this Complaint and Petition are true and correct copies of the original  
15 documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint  
16 and Petition.

17 **GENERAL ALLEGATIONS**

18 [THE DEFENDANTS’ GENERAL DUTIES]

19 13. The California Constitution vests the office of the Attorney General, currently held by  
20 BECERRA, with enormous powers over the lives of the citizens of the state. “Subject to the powers and  
21 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the  
22 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced.”  
23 (Cal. Const. art. V, §13.)

24 14. In addition to being the “chief law officer” and the state’s chief attorney, the Attorney General is  
25 also the head of the Department of Justice. (Gov. C. §12510.)

26 15. The Attorney General’s proper performance of his or her duties ensures that the state’s firearms  
27 laws are administered fairly, enforced vigorously and understood uniformly throughout California.

28 16. The Attorney General is required to provide oversight, enforcement, education and regulation of

1 many facets of California’s firearms laws. And, the Attorney General performs these legislative duties  
2 through their Law Enforcement Division’s Bureau of Firearms (“BOF”).

3 17. The BOF’s mission statement reiterates their obligation to educate and promote legitimate  
4 firearm sales and education, and is as follows:

5 **The Bureau of Firearms serves the people of California through**  
6 **education, regulation, and enforcement actions regarding the**  
7 **manufacture, sales, ownership, safety training, and transfer of**  
8 **firearms.** Bureau of Firearms staff are leaders in providing firearms  
9 expertise and information to law enforcement, legislators, **and the general**  
10 **public in a comprehensive program to promote legitimate and**  
11 **responsible firearms possession and use by California residents.**

12 (emphasis added)

13 18. The practical application of the BOF’s mission requires the BOF and its staff to be on the  
14 forefront of leadership, innovation and collaboration.

15 19. Over the years, the State of California’s legislature has used its law-making authority to make  
16 California’s firearms laws the most comprehensive, complex and restrictive in the nation, with over 800  
17 state statutes regulating firearms and firearms transactions within the state.

18 20. In general, the laws governing control of firearms are expansive and are found within Part 6 of  
19 the Penal Code, beginning at section 16000 and ending at section 34370.

20 21. As part of its legislative firearm regulation scheme, the State of California regulates firearms in a  
21 wide variety of approaches. Some laws focus on the transfer of firearms (e.g., registering firearms and  
22 prohibiting certain prohibited persons from possessing firearms), some laws focus on the use of firearms  
23 (e.g., regulating the carrying of firearms in public places), some laws focus on the location (e.g.,  
24 prohibiting firearms within school zones) and some focus on the technological aspects of particular  
25 firearms (e.g., regulating firearms based upon their function, design and physical characteristics.)

26 [CALIFORNIA’S RELEVANT DEFINITIONS]

27 22. In regulating the technological aspects of particular firearms, the State of California has provided  
28 specific definitions. For example, the State of California defines the term “firearm” in multiple ways,

1 generally including “a device, designed to be used as a weapon, from which is expelled through a barrel,  
2 a projectile by the force of an explosion or other form of combustion.” (Pen. C. §16520.)

3 23. The State of California further divides the term “firearm” into two types for transfer regulation:  
4 long guns and handguns.

5 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code  
6 section 26860, “long gun” means any firearm that is not a handgun *or a machinegun*. (Pen. C. §16865.)

7 b. “*Handgun*” means any *pistol, revolver, or firearm capable of being concealed upon the person*;  
8 and, nothing shall prevent a device defined as a “handgun” from also being found to be a *short-barreled*  
9 *rifle*<sup>1</sup> or a *short-barreled shotgun*<sup>2</sup>. (Pen. Code §16640.) The terms “*firearm capable of being*  
10 *concealed upon the person*,” “*pistol*,” and “*revolver*” apply to and include any device designed to be  
11 used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of  
12 combustion, and that has a barrel less than 16 inches in length. These terms also include any device that  
13 has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16  
14 inches in length. (Pen. C. §16530. *See also* Pen. C. §§17010 and 17080.)

15 24. Below these two classifications (long gun and handgun) are a myriad of statutorily defined  
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18 <sup>1</sup> “*Short-barreled rifle*” means any of the following: (a) A rifle having a barrel or barrels of less than  
19 16 inches in length;

20 (b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether  
21 by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than  
22 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily  
23 restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c),  
inclusive; and (e) Any part, or combination of parts, designed and intended to convert a device into a  
device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device  
defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession  
or under the control of the same person. (Pen. C. § 17170.)

24 <sup>2</sup> “*Short-barreled shotgun*” means any of the following: (a) A firearm that is designed or redesigned  
25 to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length; (b) A firearm that  
26 has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun  
27 shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that  
28 weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18  
inches in length; (d) Any device that may be readily restored to fire a fixed shotgun shell which, when so  
restored, is a device defined in subdivisions (a) to (c), inclusive; and (e) Any part, or combination of  
parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c),  
inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive,  
can be readily assembled if those parts are in the possession or under the control of the same person.

1 subtypes, the most common of which are deemed rifles<sup>3</sup> and shotguns<sup>4</sup> under the long gun classification.

2 25. The State of California uses these types and subtypes for the purposes of regulating firearms in  
3 distinct ways based upon their design and technology.

4 26. While a device may be considered a “firearm” under California law, it may also fall outside of  
5 the statutorily defined subcategories due to the design and features of the firearm. In other words, a  
6 “firearm” can be neither a “handgun,” “rifle,” nor “shotgun.”

7 [UNDEFINED “FIREARM” SUBTYPES]

8 27. The FAI Title 1 is a firearm with an undefined subtype, as its overall design renders the device to  
9 be a “firearm,” but not a “rifle,” “handgun,” nor “shotgun.”

10 28. As “firearms,” the FAI Title 1 and other firearms with undefined “firearm” subtypes” are subject  
11 to California “firearm” transfer laws.

12 29. Firearms with undefined “firearm” subtypes have been manufactured for decades and have been  
13 known to the DOJ for at least the last ten years.

14 30. The FAI Title 1 was originally designed in 2012, at which time the BOF was notified of the  
15 design and features and of FAI’s intent to manufacture, produce, sell and distribute the firearm within  
16 the State of California.

17 [CALIFORNIA DEALERS’ CENTRAL ROLE]

18 31. Significantly, the State of California has reserved the entire field of licensing and registration of  
19 firearms to itself. (Pen. C. §53071.)

20 32. With limited exception, nearly all firearm transfers within California must be processed through  
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23 <sup>3</sup> As used in Penal Code Sections 16530, 16640, 16650, 16660, 16870, and 17170, Sections 17720 to  
24 17730, inclusive, Section 17740, subdivision (f) of Section 27555, Article 2 (commencing with Section  
25 30300) of Chapter 1 of Division 10 of Title 4, and Article 1 (commencing with Section 33210) of  
26 Chapter 8 of Division 10 of Title 4, “*rifle*” means a weapon designed or redesigned, made or remade,  
and intended to be fired from the shoulder and designed or redesigned and made or remade to use the  
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each  
single pull of the trigger. (Pen. C. §17090.)

27 <sup>4</sup> As used in Penal Code Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730,  
28 inclusive, Section 17740, Section 30215, and Article 1 (commencing with Section 33210) of Chapter 8  
of Division 10 of Title 4, “*shotgun*” means a weapon designed or redesigned, made or remade, and  
intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy

1 a dealer licensed by the United States, California, and the local authorities to engage in the retail sale of  
2 firearms. (Pen. C. §§26700 and 27545.)

3 33. And, the State of California mandated that upon presentation of identification by a firearm  
4 purchaser, a licensed California firearms dealer *shall* transmit the information to the Department of  
5 Justice. (Pen. C. 28215(d).)

6 34. As such, the State of California has made licensed firearms dealers state agents in connection  
7 with the gathering and dispensing of information on the purchase of firearms.

8 35. The State of California also mandated that the DOJ *shall* examine specified records to determine  
9 whether the applicant is prohibited from owning or possessing firearms once it receives the information  
10 from the dealer. (Pen. C. §28220.)

11 [CALIFORNIA'S FIREARM TRANSFER SCHEME OVERVIEW]

12 36. As part of the firearm transfer process, each purchaser of a firearm must meet certain standards  
13 and provide certain documentation in order to purchase a firearm (and the licensed California dealer  
14 must receive, verify, retain and/or transmit the related information to the DOJ,) including but not limited  
15 to:

- 16 • Valid photo identification to establish age (Pen. C. §§ 16400, 26845, and 27510);
- 17 • Complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ATF Form 4473;
- 18 • Complete the California Dealer's Record of Sale (DROS) form;
- 19 • Pass a comprehensive background check performed by the State of California (Pen. C. §  
20 29820), which reviews records in the following databases:
  - 21 ○ Criminal History System (ACHS);
  - 22 ○ California Restraining and Protective Order System (CARPOS);
  - 23 ○ California Department of Motor Vehicles (DMV);
  - 24 ○ California Mental Health Firearm Prohibition System (MHFPS);
  - 25 ○ California Wanted Persons System (WPS);
  - 26 ○ Federal Bureau of Investigation (FBI) National Instant Criminal Background Check

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28 of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles



1 System (NICS);

- 2 ○ FBI Interstate Identification Index (III);
- 3 ○ FBI National Crime Information Center (NCIC); and
- 4 ○ Immigration Customs & Enforcement (ICE);

- 5 ● Pay a background check fee;
- 6 ● Pay a Firearm Safety & Enforcement fee;
- 7 ● Pay a Firearm Safety Device fee;
- 8 ● Wait a 10 day waiting period: 10 24-hour periods must pass once the DROS is submitted
- 9 before the purchaser can acquire their firearm. (Pen. C. § 26815.) Certain people/transfers are
- 10 exempt from the waiting period (peace officers, special weapon permit holders). (Pen. C. §§
- 11 26950-26970.)
- 12 ● Obtain a Firearm Safety Device: All firearms must be sold with a Firearms Safety Device
- 13 (FSD). (Pen. C. § 23635.)
- 14 ● Possess a Firearm Safety Certificate (FSC): Firearm purchasers must take an exam on
- 15 handgun safety from an instructor and obtain a minimum 75% passing score to receive a
- 16 certificate. (Pen. C. § 31615.) Certain people are exempt from the FSC requirement (peace
- 17 officers, military, California Concealed Carry License holders). (Pen. C. § 31700.)

18 [CALIFORNIA'S FIREARM REGISTRY – INFORMATION AND FORM REQUIREMENTS]

19 37. Certain aspects of licensing and registration has been delegated to the DOJ and/or the Attorney  
20 General. This includes the licensing of the California retailers engaged in the sale of firearms, as well  
21 as the recordkeeping, background checks and fees related to the sale, lease, loan or transfer of firearms.  
22 For example:

- 23 a. “As required by the Department of Justice, every dealer shall keep a register or record of
- 24 electronic or telephonic transfer in which shall be entered” certain information relating to
- 25 the transfer of firearms. (Pen. C. §28100.)
- 26 b. “The Department of Justice shall prescribe the *form* of the register and the record of
- 27

28 (ball shot) or a single projectile for each pull of the trigger. (Pen. C. §17190.)

1           electronic transfer pursuant to Section 28105.” (Pen. C. §28155.)

2           38. The State of California mandated that the register or the record of electronic transfer contain the  
3 certain information via Penal Code section 28160(a), specifically:

4           (1) The date and time of sale;

5           (2) The make of firearm;

6           (3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of  
7 Section 16585, and the agency name;

8           (4) Any applicable waiting period exemption information;

9           (5) California Firearms Dealer number issued pursuant to Article 1 (commencing with  
10 Section 26700) of Chapter 2;

11           (6) For transactions occurring on or after January 1, 2003, the purchaser’s handgun safety  
12 certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter  
13 4 of Division 10 of this title, or pursuant to former Article 8 (commencing with Section  
14 12800) of Chapter 6 of Title 2 of Part 4, as that article read at any time from when it became  
15 operative on January 1, 2003, to when it was repealed by the Deadly Weapons Recodification  
16 Act of 2010;

17           (7) Manufacturer’s name if stamped on the firearm;

18           (8) Model name or number, if stamped on the firearm;

19           (9) Serial number, if applicable;

20           (10) Other number, if more than one serial number is stamped on the firearm;

21           (11) Any identification number or mark assigned to the firearm pursuant to Section 23910;

22           (12) If the firearm is not a handgun and does not have a serial number, identification number,  
23 or mark assigned to it, a notation as to that fact;

24           (13) Caliber;

25           **(14) Type of firearm; (multiple emphasis added.)**

26           (15) If the firearm is new or used;

27           (16) Barrel length;

28           (17) Color of the firearm;

- 1 (18) Full name of purchaser;
- 2 (19) Purchaser's complete date of birth;
- 3 (20) Purchaser's local address;
- 4 (21) If current address is temporary, complete permanent address of purchaser;
- 5 (22) Identification of purchaser;
- 6 (23) Purchaser's place of birth (state or country);
- 7 (24) Purchaser's complete telephone number;
- 8 (25) Purchaser's occupation;
- 9 (26) Purchaser's gender;
- 10 (27) Purchaser's physical description;
- 11 (28) All legal names and aliases ever used by the purchaser;
- 12 (29) Yes or no answer to questions that prohibit purchase, including, but not limited to,
- 13 conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an
- 14 offense described in Chapter 3 (commencing with Section 29900) of Division 9 of this title,
- 15 the purchaser's status as a person described in Section 8100 of the Welfare and Institutions
- 16 Code, whether the purchaser is a person who has been adjudicated by a court to be a danger
- 17 to others or found not guilty by reason of insanity, and whether the purchaser is a person who
- 18 has been found incompetent to stand trial or placed under conservatorship by a court pursuant
- 19 to Section 8103 of the Welfare and Institutions Code;
- 20 (30) Signature of purchaser;
- 21 (31) Signature of salesperson, as a witness to the purchaser's signature;
- 22 (32) Salesperson's certificate of eligibility number, if the salesperson has obtained a
- 23 certificate of eligibility;
- 24 (33) Name and complete address of the dealer or firm selling the firearm as shown on the
- 25 dealer's license;
- 26 (34) The establishment number, if assigned;
- 27 (35) The dealer's complete business telephone number;
- 28 (36) Any information required by Chapter 5 (commencing with Section 28050);

1 (37) Any information required to determine whether subdivision (f) of Section 27540 applies;

2 (38) A statement of the penalties for signing a fictitious name or address, knowingly  
3 furnishing any incorrect information, or knowingly omitting any information required to be  
4 provided for the register; and

5 (39) A statement informing the purchaser of certain information.

6 39. Significantly, while the “type” of firearm (e.g. “long gun” or “handgun”) is required, the  
7 “subtype” of a firearm is not mandated by Penal Code section 28160(a) or any other provision within  
8 Penal Code sections 28200 through 28255.

9 [CALIFORNIA’S FIREARM REGISTRY – METHOD OF ELECTRONIC TRANSMISSION]

10 40. The State of California mandated that the DOJ *shall* determine the *method* by which a dealer  
11 *submits* the firearm purchaser *information* to the DOJ. (Pen. C. §28205(a).)

12 41. The State of California mandated that electronic transfer of the required information be the sole  
13 means of transmission but permitted the DOJ to make exceptions. (Pen. C. §28205(c).)

14 42. The method established by the DOJ pursuant to Penal Code section 28205(c) for the submission  
15 of purchaser information required by Penal Code section 28160(a) is the DROS Entry System (DES).

16 43. The DES is a web-based application designed, developed and maintained by the DOJ and used  
17 by firearm dealers to report the required information.

18 44. Licensed California firearm dealers are required to submit only information that is “true,  
19 accurate, and complete.” (11 CCR §4210(b)(1)(6).)

20 [NATURE OF DISPUTE]

21 45. As part of the design, implementation, maintenance and enforcement of the DES, the  
22 DEFENDANTS mandated the submission of information relating to the subsets of firearm types.

23 46. Specifically, by design, when the DES user is inputting the designated information into the DES,  
24 they must input information related to the gun type (“long gun” or “handgun”). Upon selecting “long  
25 gun,” the DES system is designed to and functions to self-populate a subset of fields, and requires one  
26 of three options to be designated before the dealer may proceed with the completion of the form and  
27 submission of the required information to the DOJ. Those three options are: “rifle,” “rifle/shotgun,”  
28 “shotgun.” Unlike the subset of fields that self-populate for “Color,” “Purchaser Place of Birth,” and

1 Seller Place of Birth”, each of which which contains the catchall “other” options, the “long guns”  
2 subset of fields does not contain the “other” option. Thus, the DES system prevents licensed firearm  
3 dealers from proceeding with the sale, transfer, loan or submission of information to the DOJ for  
4 certain firearms, including the FAI Title 1.

5 47. The actual and practical effect of this design is that licensed California firearm dealers cannot  
6 accurately submit the necessary information to the DOJ for processing because of the limited choices of  
7 subtypes in the DES, thereby barring the sale, transfer, acquisition, loan or other processing of firearms  
8 of undefined subtypes, including the FAI Title 1.

9 48. Without an alternative procedure for submission of the purchaser and firearm information  
10 established by DOJ pursuant to Penal Code section 28205(c), the DES is the only method of submitting  
11 the necessary information to permit the lawful transfer of the undefined “firearm” subtypes.

12 49. Dealers are prohibited by 11 CCR §4210(b)(1)(6) from entering inaccurate information within  
13 the system.

14 50. Because dealers cannot accurately submit the required information through the DES for “long  
15 guns” that are undefined “firearm” subtypes, they are prohibited from processing and/accepting  
16 applications from purchasers of said firearms. (Pen. C. §28215(c).)

17 51. As part of the design, implementation, maintenance and enforcement of the DES by the  
18 DEFENDANTS, the DEFENDANTS have instituted a technological barrier that functions and serves  
19 as a ban on the transfer of all undefined “firearm” subtypes that are “long guns” that are neither “rifles”  
20 nor “shotguns” nor “rifle/shotgun combinations” through a licensed California firearms dealer.

21 52. This technological barrier could be alleviated if the DES provided the “other” option for “long  
22 guns,” as it did with “Color,” “Purchaser Place of Birth,” and Seller Place of Birth.”

23 53. This technological barrier could also be alleviated by permitting the user to proceed without  
24 completing the subtype categories.

25 54. This technological barrier could also be alleviated if the DOJ authorizes any of a multitude of  
26 alternative means pursuant to the authority granted them by Penal Code section 28205(c), including but  
27 not limited to, instructions to DES users to proceed by selecting preauthorized designated options and  
28 identifying the firearm as an “other” in one of the “comment” fields within the DES.

1 55. DEFENDANTS have known of the deficiencies of the DES and intended them from inception.

2 [DOJ AND THE FAI TITLE 1]

3 56. DEFENDANTS and FAI have been in communications regarding the design and features of the  
4 FAI Title 1 since approximately 2012.

5 57. On or about October 24, 2019, FAI informed the DOJ of the defects in the DES and the inability  
6 of FAI to transmit the Title 1 firearms to their customers because of the DES. (See **Exhibit A.**)

7 58. Since then, the DOJ has neither corrected the DES, nor have they implemented alternative  
8 procedures to facilitate the lawful transfer of the Title 1.

9 59. The DOJ has also had more than an adequate and reasonable amount of time to implement  
10 alternative procedures pursuant to Penal Code section 28205(c).

11 60. The DOJ has had more than an adequate and reasonable amount of time to make the corrections  
12 necessary to permit the system to process firearms including, but not limited to, the FAI Title 1.

13 61. For example, the DOJ was able to modify the DES to address a similar deficiency reported  
14 concurrently by FAI's counsel in the same letter dated October 24, 2019. Specifically, a defect in the  
15 DES that omitted the United Arab Emirates from the list of countries available in a DES dropdown list  
16 for the counties of birth was confirmed as corrected by the DOJ on November 26, 2019. And, on or  
17 about April 4, 2020, the DOJ modified the DES to prohibit the delivery of firearms statewide by dealers  
18 after the 10-Day Waiting Period pursuant to Penal Code section 26815, in favor of a departmentally  
19 imposed delay of up to 30 days.

20 62. Still, DEFENDANTS have refused to make the necessary changes to the DES until a Tort Claim  
21 Act claim was first submitted to them on by FAI November 20, 2019. And, even then, by January,  
22 DEFENDANTS claimed that it would take months before such a correction could be made.

23 63. Now, months have passed since the DOJ responded, and neither the DES nor the alternative  
24 procedures have been updated, modified, nor implemented to permit the lawful transfer of the FAI Title  
25 1 or other undefined "firearm" subtypes that are "long guns."

26 64. On information and belief, DEFENDANTS have designed and developed alternative procedures,  
27 processes and/or updates that would cure the deficiencies of the DES specific to the issue at hand but  
28 have refused and/or intentionally delayed implementation of said alternatives to date.

1 65. On information and belief, DEFENDANTS designed, implemented, maintained and enforced the  
2 DES to intentionally prevent the transfer of “long guns” that are neither “rifles” nor “shotguns” nor  
3 combinations thereof.

4 66. On information and belief, DEFENDANTS are continuing with the deficiencies intentionally,  
5 delaying the necessary changes to the DES system that would permit the lawful transfer of lawful  
6 firearms such as the Title 1 to lawful purchasers. DEFENDANTS are doing so with malice and intent to  
7 cause harm against FAI.

8 67. As a result, FAI has been unable to transfer their Title 1 firearms reserved by licensed California  
9 firearm dealers and California residents, who are members of the CRPA, and who seek to lawfully sell,  
10 transfer, purchase, acquire and/or possess the FAI Title 1 firearms. This inability for dealers to submit  
11 the true, accurate and complete information through the DES for certain firearms, such as the Title 1,  
12 has damaged FAI by preventing them from effectuating the sale of the reserved product as well as non-  
13 reserved product in an amount to be determined at trial, and it has denied the rights of California  
14 citizens who are not prohibited from acquiring firearms from acquiring the Title 1.

15 68. DEFENDANTS could, if they desired, rectify this matter immediately, but they have chosen to  
16 perpetuate the ban on the sale of certain lawful firearms via institutionalized technological barricades.

17 69. Neither DEFENDANTS’ design, development, maintenance and enforcement of the DES in a  
18 manner that functions as a barrier to the lawful transfer of certain lawful firearms, nor DEFENDANTS’  
19 requirement for information not expressly authorized by Penal Code sections 28200 through 28255, as  
20 it pertains to firearms other than handguns, are discretionary acts.

21 70. Accordingly, an active controversy has arisen and now exists between the DEFENDANTS and  
22 PLAINTIFFS concerning their respective rights, duties and responsibilities.

23 71. The controversy is definite and concrete, and touches on the legal relations of the parties, as well  
24 as many thousands of people not before this Court whom DEFENDANTS are legally bound to serve.

25 72. The DOJ has a duty to facilitate the lawful transfer of firearms and collect certain information  
26 from the dealers in the process via a method of submission designated by the DOJ. They do not,  
27 however, have the authority to mandate alternative information or prevent the lawful transfer of a class  
28 of firearms not otherwise prohibited under California law by technological limitations of their designs,

1 either intentional or otherwise.

2 [UNDERGROUND REGULATIONS]

3 73. PLAINTIFFS also bring this action pursuant to the California Administrative Procedure’s Act  
4 (Gov. Code §11340 et seq.)(“APA”) to challenge the validity of and to enjoin enforcement of policies  
5 and procedures that prohibit the transfer of lawful firearms to lawful purchasers, including but not  
6 limited to, designing, developing, implementing, modifying and administering protocols, systems and  
7 databases that impede and/or prevent transfers from proceeding.

8 74. The APA provides a detailed statutory scheme for public notice and comment on regulations  
9 proposed by state agencies. (Gov’t C. § 11340, *et seq.*)

10 75. Mandatory procedures include providing adequate notice to the public of proposed regulations  
11 and an opportunity for public comment. (Gov’t. C. §§ 11346.2, 11346.4, 11346.5, 11346.8.)

12 76. The agency must provide reports of detailed reasons for a proposed regulation, the alternatives  
13 considered and the effect the proposed regulation is projected to have on individuals. (Gov. C §§  
14 11346.2, 11346.9.)

15 77. The APA specifically prohibits any state agency from making use of a rule that is a “regulation”  
16 as defined in Government Code section 11342.600, that should have, but has not been adopted pursuant  
17 to the detailed procedures set forth in the APA. (Gov’t C. § 11340.5 (a).)

18 78. If a rule constitutes a “regulation,” and there is no express statutory exemption excusing the  
19 agency from complying with the APA, any regulation enacted without compliance with the APA is an  
20 invalid “underground regulation” and cannot be enforced. (*Tidewater Marin Western, Inc. v. Bradshaw*  
21 (1996) 14 Cal.4th 557, 576; *see also* Gov’t C. § 11346.)

22 79. There is a narrow exception to the stringent requirements of the APA for “emergency”  
23 regulations if an “emergency situation clearly poses such an immediate, serious harm that delaying  
24 action to allow public comment would be inconsistent with the public interest.” (Gov’t C.  
25 11346.1(a)(3).)

26 80. The purpose of the APA’s comprehensive scheme is to ensure that “those persons or entities  
27 whom a regulation will affect have a voice in its creation,” (*Armistead v. State Personnel Board* (1978)  
28 22 Cal.3d 198, 204-205), to allow the public to inform the agency about possible unintended



1 consequences of a proposed regulation, and to protect against “bureaucratic tyranny.” (*Cal. Advocates*  
2 *for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508.)

3 81. The challenged rules at issue, including but not limited to the prohibition of certain lawful  
4 firearms from being transferred because of DEFENDANTS technological barriers, implement, interpret  
5 and make specific requirements for compliance with statutory law enforced by DEFENDANTS. They  
6 include policy decisions by DEFENDANTS that are subject to the open government and deliberative  
7 process requirements under the APA. But the challenged rules do not comply with the rulemaking  
8 provisions of the APA. They were adopted without prior public notice or opportunity for oral or  
9 written public comment. (*See* Gov’t C. §§ 11346.2, 11346.4, 11346.5, 11346.8.)

10 82. The APA does allow for adoption of regulations without any advance public notice and the  
11 opportunity for comment only in emergency circumstances where “the emergency situation clearly  
12 poses such an immediate, serious harm that delaying action to allow public comment would be  
13 inconsistent with the public interest.” (Gov’t C. § 11346.1, subs. (a)-(b).) No “emergency” exists that  
14 would justify bypassing the formal process for the adoption of the challenged rules here. And no other  
15 section of the California Code exempts the adoption of rules concerning the prohibition of the transfer of  
16 lawful firearms to lawful purchasers.

17 83. Accordingly, PLAINTIFFS seek declaratory and injunctive relief to invalidate and enjoin  
18 DEFENDANTS’ enforcement of the challenged rules as unlawful underground regulations.

19 84. PLAINTIFFS also seek to enjoin the enforcement of rules concerning the prohibition of the  
20 transfer of lawful firearms to lawful purchasers.

21 **FIRST CAUSE OF ACTION:**  
22 **DECLARATORY AND INJUNCTIVE RELIEF**  
23 **(AGAINST ALL DEFENDANTS)**

24 85. Paragraphs 1-84 are realleged and incorporated by reference.

25 86. The technological rules prohibiting the transfer of lawful firearms to lawful purchasers,  
26 including but not limited to the rules as related to the DES, as it is currently designed, implemented,  
27 maintained and/or enforced by DEFENDANTS, prohibit the sale of certain firearms that are not “rifles,”  
28 nor “shotguns,” nor “rifles/shotguns,” nor “handguns” under California law and apply to all firearm  
purchase applicants. They are rules of general applicability.

1 87. The rules were created by DOJ for the purpose of submitting specific information to the DOJ for  
2 and for processing registrations and background checks via the DES, a system administered by the DOJ  
3 pursuant to the Penal Code. The rules are, thus, “regulations” under the APA.

4 88. There is no express exemption from the APA in the California Code regarding the promulgation  
5 of regulations prohibiting the transfer of lawful firearms to lawful purchasers, including but not limited  
6 to the rules pertaining to the current design, implementation, maintenance and/or enforcement of the  
7 DES by DEFENDANTS; there was no emergency sufficient to justify bypassing the APA. These  
8 regulations are, thus, subject to the procedural requirements set forth in the APA.

9 89. By implementing, administering and enforcing the rules prohibiting the transfer of lawful  
10 firearms to lawful purchasers, including but not limited to the rules as applied within the DES, as it is  
11 currently designed, implemented, maintained, and/or enforced by DEFENDANTS, without providing  
12 formal notice or opportunity for public comment, DEFENDANTS have violated and continue to violate  
13 the APA.

14 90. An actual controversy exists. PLAINTIFFS contend that DEFENDANTS are violating the APA  
15 and that DEFENDANTS intend to continue to do so. PLAINTIFFS allege on information and belief that  
16 DEFENDANTS and each of them contend the regulation is in full compliance with the requirements of  
17 the APA or was not subject to them.

18 91. A judicial declaration of the legality of DEFENDANTS’ conduct, and whether the regulations  
19 prohibiting the transfer of lawful firearms to lawful purchasers, including but not limited to the rules  
20 contained within the DES, as it is currently designed, implemented, maintained, and/or enforced by  
21 DEFENDANTS, constitute an invalid underground regulation in violation of the APA, is necessary and  
22 appropriate at this time.

23 92. PLAINTIFFS, their supporters and members, as stakeholders, have been specifically harmed  
24 because DEFENDANTS’ unlawful conduct has denied them their statutory right to be heard and to  
25 provide input regarding regulations governing a program that significantly affects them.

26 93. Further, harm from this underground regulation lies in the subversion of the democratic values  
27 the APA was intended to serve. The notice, comment and review procedures of the APA were enacted to  
28 secure the public benefits of openness, accessibility and accountability in the formulation of rules that

1 implement legislative enactments. Irreparable harm to these important public benefits occurs whenever a  
2 state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground  
3 regulation.

4 94. The public in general and PLAINTIFFS specifically have an interest in preventing  
5 DEFENDANTS from enforcing the underground regulations prohibiting the transfer of lawful firearms  
6 to lawful purchasers, including but not limited to the DES, as it is currently designed, implemented,  
7 maintained, and/or enforced by DEFENDANTS, as it undermines the democratic values the APA was  
8 designed to serve and prevents PLAINTIFFS from engaging in constitutionally protected conduct.

9 95. Further, in order to resolve the controversy, FAI requests that, pursuant to Code of Civil  
10 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter  
11 and, in particular, as follows:

- 12 a. There exists a category of firearm that is neither a “rifle,” nor “shotgun,” nor “handgun”  
13 under California law.
- 14 b. The DES, as it is currently designed, implemented, maintained and/or enforced by  
15 DEFENDANTS prohibits the sale of certain firearms that are neither “rifles,” nor  
16 “shotguns,” nor “handguns” under California law.
- 17 c. DEFENDANTS’ actions in designing, implementing, maintaining and enforcing the  
18 DES, in its current form, constitute a barrier and prevent FAI, licensed dealers and the  
19 general public from acquiring, possessing, transferring and selling certain lawful  
20 firearms, including Title 1, within the State of California.
- 21 d. The DES’s technological restrictions prohibiting the transfer of certain lawful firearms,  
22 including the Title 1, violate the DOJ’s duties, including those found within Penal Code  
23 sections 28155, 28205, 28215, and 28220.
- 24 e. The DES, as it is currently designed, implemented, maintained and/or enforced, is not in  
25 compliance with the mandate imposed by Penal Code sections 28155, 28205, 28215, and  
26 28220.
- 27 f. DEFENDANTS have intentionally instituted the technological barriers designed for and  
28 implemented within DES, which is maintained and enforced by the DEFENDANTS.

- 1 g. DEFENDANTS have intentionally delayed in removing the technological barriers  
2 designed for and implemented within DES, which is maintained and enforced by the  
3 DEFENDANTS.
- 4 h. DEFENDANTS, who occupy the field of processing the lawful transfer of firearms,  
5 including the registration and licensing, and as the regulatory body charged with  
6 implementing, administering and enforcing the laws relating to the lawful transfer of  
7 firearms within the state, have a clear, present and ministerial duty to ensure that the  
8 systems developed by the DOJ to facilitate the submission of information do not act as  
9 barriers to the submission of the required information necessary for the sale, loan and/or  
10 transfer of lawful firearms.

11 96. Declaratory relief is warranted in this case because: (1) an actual controversy has arisen and now  
12 exists between PLAINTIFFS and DEFENDANTS over the validity of the rules, including those that  
13 apply to the DES system, as currently designed, implemented, maintained and enforced, and (2) there is  
14 no adequate remedy in the ordinary course of law.

15 97. Additionally, DEFENDANTS' design, implementation, maintenance and enforcement of the  
16 DES system, in conjunction with the general firearm transfer laws within the State of California and the  
17 resultant injuries to PLAINTIFFS, are and will be of a continuing nature for which PLAINTIFFS will  
18 have no adequate remedy at law.

19 98. Accordingly, PLAINTIFFS seek an injunction pursuant to Code of Civil Procedure sections 525  
20 and 526. Unless DEFENDANTS, their agents, employees, representatives and all those acting in  
21 concert with them are enjoined from enforcing administrative and/or technological barriers that prevent  
22 the sale of lawful firearms, including but not limited to the FAI Title 1, PLAINTIFFS will continue to  
23 suffer great and irreparable harm.

24 **SECOND CAUSE OF ACTION:**  
25 **PETITION FOR WRIT OF MANDATE**  
**(AGAINST ALL DEFENDANTS)**

26 99. Paragraphs 1-98 are realleged and incorporated by reference.

27 100. DEFENDANTS have a clear, present and ministerial duty to design, implement, maintain or  
28 enforce the provisions of Penal Code sections in such a manner that does not preclude or bar the sale,

1 transfer, loan or other processing of entire classes of lawful firearms by technological or administrative  
2 barriers.

3 101. PLAINTIFFS are beneficially interested in this matter, as they and/or their members are  
4 damaged by the loss of profits, sales, possession and/or acquisition of firearms because of  
5 DEFENDANTS' design, implementation, maintenance and enforcement of the DES system pursuant to  
6 Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the lawful sale,  
7 transfer and loan of an entire class of lawful firearms, including the FAI Title 1.

8 102. DEFENDANTS design, implementation, maintenance and enforcement of the DES system  
9 pursuant to Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the  
10 lawful sale, transfer and loan of an entire class of lawful firearms, including the FAI Title 1 are and will  
11 be of a continuing nature for which PLAINTIFFS have no plain, speedy or adequate remedy at law, and  
12 which have and will continue to result in irreparable harm.

13 103. PLAINTIFFS present important questions of statutory interpretation, as well as questions of  
14 public interest which further warrant prompt disposition of this matter.

15 104. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure  
16 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce  
17 updates to the DES system such that it does not proscribe the lawful sale, transfer and loan of an entire  
18 class of lawful firearms, including the FAI Title 1 and such that it comports with Penal Code sections  
19 28155, 28205, 28215 and 28220.

20 **THIRD CAUSE OF ACTION:**  
21 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**  
22 **(AGAINST ALL DEFENDANTS)**

23 105. Paragraphs 1-104 are realleged and incorporated by reference.

24 106. FAI claims that DEFENDANTS intentionally interfered with the contracts between FAI and its  
25 customers who have reserved orders and deposited moneys for the FAI Title 1, but who cannot receive  
26 their lawful firearms because of the barricades placed upon such transfers via technological defects of  
the DES and administrative delays correcting the same.

27 107. FAI currently has hundreds of contracts to sell the FAI Title 1 within California.

28 108. DEFENDANTS knew of FAI's contracts.

1 109. To date, DEFENDANTS' conduct prevented performance of the contracts.

2 110. To date, DEFENDANTS made performance more expensive or difficult.

3 111. DEFENDANTS intended to disrupt the performance of these contracts or knew that disruption  
4 of performance was certain or substantially certain to occur by their delay and/or continued refusal to  
5 correct the defects in their DES system or permit alternative means of transfers.

6 112. FAI and its customers have been harmed through the loss of sales and inability to transfer and/or  
7 receive the FAI Title 1 as obligated.

8 113. DEFENDANTS' conduct was not only a substantial factor in causing FAI and their customers  
9 harm, but it was also the sole factor.

10 114. FAI seeks damages in an amount to be determined at trial, including the amounts that FAI  
11 would have received under the contracts, extra costs that FAI has incurred because of the breach or  
12 interference with the contracts, lost profits that FAI would have made if the contracts had been  
13 performed and punitive damages.

14 **FOURTH CAUSE OF ACTION:**  
15 **TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**  
16 **(AGAINST ALL DEFENDANTS)**

16 115. Paragraphs 1-114 are realleged and incorporated by reference.

17 116. DEFENDANTS intentionally interfered with an economic relationship between FAI and FAI's  
18 customers and prospective customers that probably would have resulted in an economic benefit to FAI.

19 117. FAI and FAI's California customers and prospective customers were in an economic  
20 relationship that probably would have resulted in an economic benefit to FAI.

21 118. DEFENDANTS knew of the relationships that FAI had with its customers and prospective  
22 customers, including California dealers and consumers.

23 119. DEFENDANTS knew of the high volume of interest in the FAI Title 1 within California, and  
24 the high volume of preorders by FAI's California customers, and the amount of monies at issue.

25 120. DEFENDANTS knew that refusing to correct and/or delaying the corrections and updates to the  
26 DES necessary to facilitate the lawful transfer of the FAI Title 1, and other undefined "subtype"  
27 firearms, would prevent and/or delay the sale of said firearms.

28 121. By refusing to correct the defects in the DES and/or implementing alternative means to facilitate

1 the lawful transfer of the lawful firearms, including the FAI Title 1, DEFENDANTS intended to disrupt  
2 the relationships or knew that disruption of the relationships between FAI and its customers and/or  
3 prospective customers was certain or substantially certain to occur. DEFENDANTS intentionally  
4 interfered with such opportunities in violation of its duties to design, develop, maintain and administer a  
5 system for accepting and transmitting the necessary information for the lawful transfer of lawful  
6 firearms, including those duties found within Penal Code sections 28155, 28205, 28215, and 28220.

7 122. Those relationships were disrupted.

8 123. FAI was harmed.

9 124. DEFENDANTS' conduct was not only a substantial factor in causing FAI's harm, but it was  
10 also the sole cause of such harm.

11 125. DEFENDANTS committed these tortious acts with deliberate and actual malice, ill-will and  
12 oppression in conscious disregard of FAI's legal rights.

13 126. FAI seek damages in an amount to be determined at trial, including the amounts that FAI would  
14 have received under the contract, extra costs that FAI has incurred because of the breach or interference  
15 with the contracts, lost profits that FAI would have made if the contracts had been performed and  
16 punitive damages.

17 **FIFTH CAUSE OF ACTION:**  
18 **NEGLIGENT INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**  
19 **(AGAINST ALL DEFENDANTS)**

19 127. Paragraphs 1-126 are realleged and incorporated by reference.

20 128. FAI claims that DEFENDANTS acted with negligence and/or gross negligence, recklessness,  
21 malice and/or deceit and interfered with a relationship between FAI and FAI's California customers and  
22 prospective customers, including licensed California retailers and consumers, that probably would have  
23 resulted in an economic benefit to FAI.

24 129. FAI and customers and prospective customers, including licensed California retailers and  
25 consumers, were in an economic relationship that probably would have resulted in a future economic  
26 benefit to FAI.

27 130. DEFENDANTS knew or should have known of these relationships.

28 131. DEFENDANTS knew or should have known that these relationships would be disrupted if they

1 failed to act with reasonable care.

2 132. DEFENDANTS failed to act with reasonable care.

3 133. DEFENDANTS engaged in wrongful conduct by delaying and/or refusing to correct the defects  
4 in the DES and/or implementing alternative means to facilitate the lawful transfer of the lawful firearms,  
5 including the FAI Title 1. DEFENDANTS intended to disrupt the relationships or knew that disruption  
6 of the relationships between FAI and its customers and/or prospective customers was certain or  
7 substantially certain to occur. DEFENDANTS intentionally interfered with such opportunities in  
8 violation of its duties to design, develop, maintain and administer a system for accepting and  
9 transmitting the necessary information for the lawful transfer of lawful firearms, including those duties  
10 found within Penal Code sections 28155, 28205, 28215 and 28220.

11 134. Those relationships were disrupted.

12 135. FAI was harmed.

13 136. That DEFENDANTS' wrongful conduct was a substantial factor in causing FAI's harm.

14 137. FAI seeks damages in an amount to be determined at trial, including the amounts that FAI  
15 would have received under the contracts, extra costs that FAI has incurred because of the breach or  
16 interference with the contracts, lost profits that FAI would have made if the contracts had been  
17 performed and punitive damages.

18 **PRAYER**

19 WHEREFORE, PLAINTIFFS pray as follows:

- 20 1. A Declaration that there exists a category of firearm that is neither a "rifle," nor  
21 "shotgun," nor "handgun" under California law.
- 22 2. A Declaration that the DES, as it is currently designed, implemented, maintained and/or  
23 enforced by DEFENDANTS, prohibits the sale of certain firearms that are neither a  
24 "rifle," nor "shotgun," nor "handgun" under California law.
- 25 3. A Declaration that DEFENDANTS' actions in designing, implementing, maintaining and  
26 enforcing the DES, in its current form, constitute a barrier and prevent FAI, licensed  
27 dealers and the general public from acquiring, possessing, transferring and selling certain  
28 lawful firearms, including Title 1, within the State of California.



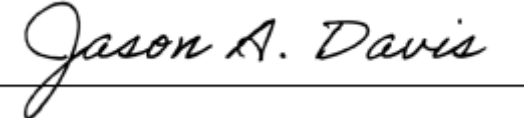
- 1           4.       A Declaration that the DES's technological restrictions prohibiting the transfer of certain  
2           lawful firearms, including the Title 1, violate the DOJ's duties pursuant to Penal Code  
3           sections 28155, 28205, 28215 and 28220 and constitute an underground regulation.
- 4           5.       A Declaration that the DES, as it is currently designed, implemented, maintained and/or  
5           enforced is not in compliance with the mandate imposed by Penal Code sections 28155,  
6           28205, 28215 and 28220.
- 7           6.       A Declaration that DEFENDANTS have intentionally instituted the technological barriers  
8           designed, implemented and maintained within the DES.
- 9           7.       A Declaration that DEFENDANTS have intentionally delayed in removing the  
10          technological barriers designed, implemented and maintained within the DES.
- 11          8.       A Declaration that DEFENDANTS, who occupy the field of processing the lawful  
12          transfer of firearms, including the registration and licensing, and as the regulatory body  
13          charged with implementing, administering and enforcing the laws relating to the lawful  
14          transfer of firearms within the state, have a clear, present and ministerial duty to ensure  
15          that the systems developed by the DOJ to facilitate the submission of information do not  
16          act as barriers to the submission of the required information necessary for the sale, loan  
17          and/or transfer of lawful firearms.
- 18          9.       Issuance of a Preliminary Injunction immediately enjoining DEFENDANTS, their  
19          agents, employees, representatives and all those acting in concert with them from  
20          enforcing administrative and/or technological barriers that prevent or otherwise inhibit  
21          the sale, loan and/or transfer of lawful firearms, including but not limited to the FAI Title  
22          1.
- 23          10.       Issuance of a Permanent Injunction enjoining DEFENDANTS, their agents, employees,  
24          representatives and all those acting in concert with them from enforcing administrative  
25          and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of  
26          lawful firearms, including but not limited to the FAI Title 1.
- 27          11.       Issuance of a Writ of Mandate ordering DEFENDANTS to design, implement, maintain  
28          and enforce updates to the DES system such that it does not proscribe the lawful sale,

1 transfer and loan of an entire class of lawful firearms, including the FAI Title 1 and such  
2 that it comports with Penal Code sections 28155, 28205, 28215 and 28220.

- 3 12. Award for damages according to proof;
- 4 13. Award for punitive damages;
- 5 14. That PLAINTIFFS be awarded their costs and attorneys' fees incurred in this matter;
- 6 15. That the Court enter judgment; accordingly, and
- 7 16. Such other and further relief as the Court deems just and proper.

8 Date: April 9, 2020

Respectfully submitted,

9  
10 

11 JASON A. DAVIS  
12 Attorneys for Petitioners-Plaintiffs

1 **VERIFICATION**

2 I am the president of FRANKLIN ARMORY, INC, a Plaintiff in the above-named action, and I  
3 am authorized to make this verification on their behalves.

4 I have read this VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
5 RELIEF; PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER  
6 APPROPRIATE RELIEF in the matter of *Franklin Armory, Inc. et al. v. California Department of*  
7 *Justice, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I allege  
8 that the matters stated herein are true.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
10 true and correct.

11  
12  
13 DATED: 4/9/2020

  
\_\_\_\_\_  
JAY JACOBSON

# Exhibit A



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Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691  
Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590  
Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

October 24, 2019

Xavier Becerra  
Attorney General  
Attorney General's Office  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

**Via E-Mail and U.S. Mail**

**Re: FRANKLIN ARMORY, INC. – DES “GUN TYPE” DROP DOWN LIST  
- DOJ’S DEFACTO BAN OF NON-RIFLE / NON-SHOTGUN LONG GUNS**

Dear Attorney General Becerra,

I write on behalf of Franklin Armory, Inc. (“Franklin Armory<sup>®</sup>”) regarding their inability to process the transfer of firearms within the State of California due to design limitations of the California Department of Justice Dealer Record of Sale Entry System (“DES”).

As is detailed below, the limitations of the DES prevent the lawful acquisition, transfer, and/or sale of firearms that fall outside the bounds of pistol, rifle, and/or shotgun – a category of firearms that have a long history of use within the state. Such technological restrictions are preventing my client from selling, transferring, and/or delivering their lawful products, such as their recently announced Title 1<sup>™</sup> firearm and firearms configured with their CSW<sup>®</sup> California Compliance Kit as well as violate their First, Second, and Fourteenth Amendments to the United States Constitution, and California State law, causing damages to Franklin Armory<sup>®</sup>.

### **PROCEDURAL HISTORY**

California Penal Code section 26500 prohibits any person from selling a firearm within the State of California unless the person is licensed by the State to sell firearms, some exceptions apply. Penal Code section 26535 exempts transfers between manufacturers of firearms, such as Franklin Armory<sup>®</sup> and licensed California firearms dealers. Thus, California residents seeking to acquire firearms must do so through licensed California firearms dealers.

In part, the requirement that all firearm generally be processed through a licensed California firearms dealer is designed to mandate that the licensed dealers gather information necessary to perform background checks on the applicants and information relating to the firearm for firearm registration purposes. Regarding the latter, Penal Code section 28160 mandates that “for all firearms, the register or record of transfer shall include all of the following [information relating to the firearm]:”

October 24, 2019

Page 2

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(2) The **make** of firearm.

\*\*\*

(7) **Manufacturer's name** if stamped on the firearm.

(8) **Model** name or number, if stamped on the firearm.

(9) **Serial** number, if applicable.

(10) **Other number**, if more than one serial number is stamped on the firearm.

(11) **Any identification number or mark assigned** to the firearm pursuant to Section 23910.

(12) If the firearm is not a handgun and does not have a serial number, identification number, or mark assigned to it, a notation as to that fact.

(13) **Caliber**.

(14) **Type of firearm**.

(15) If the firearm is **new or used**.

(16) **Barrel length**.

(17) **Color** of the firearm.

Penal Code section 28155 mandates that the Department of Justice prescribe the form of the register and the record of electronic transfer pursuant to Section 28105. And, Penal Code section 28105 mandates that "the Department of Justice shall develop the standards for all appropriate electronic equipment and telephone numbers to effect the transfer of information to the department."

In response, the Department of Justice created the DES. In designing and developing the DES, however, the Department of Justice elected to implement a closed system that utilizes drop down lists instead of open field for certain data entries. As described in the DES User's Guide, the process for entering the sale of a long gun is, in part, as follows:

#### **Dealer Long Gun Sale**

Select the **Dealer Long Gun Sale** transaction type when a Long Gun is being purchased from a dealer.

#### **To submit a Dealer Long Gun Sale transaction:**

- 1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.
- 2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).
- 4) Enter the Transaction and Firearm Information as follows:

\*\*\*

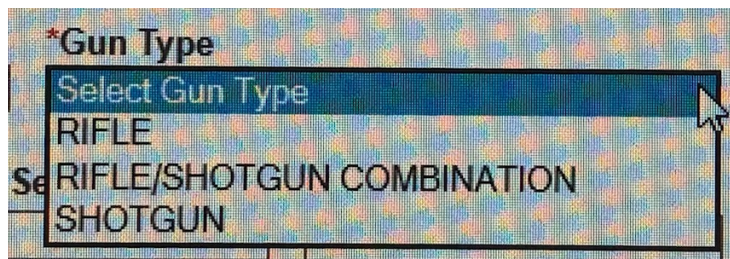
j. **Gun Type** – Select the type of long gun from the Gun Type drop down list.

\*\*\*

Though the DES User's Guide is void of any information relating to the available Gun Types listed in the dropdown list, at the time of this writing the list consisted of the following options:

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Unfortunately, this list is incomplete and fails to include options for the many long guns that are neither “Rifles” nor “Shotguns.”

This defect could have been prevented by including within the list the various types of other long guns, or simply including a single catch-all within the list such as “Other.”

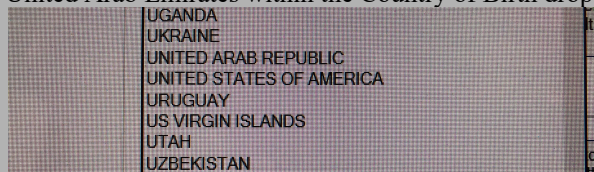
This defect, however, has severely impacted my client’s business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm dealers that they would not be able to transfer the firearms due to technological limitations of the DES.

As a result, Franklin Armory® is unable to fulfill its orders, which continue to accrue daily. Franklin Armory® anticipates that even the delay of a few months in the correction of the system will result in the loss of approximately \$2,000,000 in profits, if not more.

As a result, Franklin Armory® President Jay Jacobson has been in contact and requested that the DES be corrected immediately to prevent the loss of sales and to preserve the reputation of Franklin Armory® within the industry and among its consumers. He has been advised that the Department of Justice is working on correcting the issue but was also informed that no timeline for the correction of the defect has been established. As such, this letter serves to both reiterate the importance of correcting the defect in the DES expediently, and to express and preserve legal and financial the impact that the defect has on Franklin Armory®.

**ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES**

It is important to note that the “gun type” omission is not the only defect relating to errors and omissions in the DES’s dropdown list. At the time of this writing, the DES’s technical limitations prevent any person born in the United Arab Emirates from purchasing firearms, even if they are United States Citizens who are not otherwise prohibited from possessing firearms. This defect and violation of rights based upon ethnicity occurs due to a similar failure to include the United Arab Emirates within the Country of Birth dropdown list in the DES:



This glaring omission has and will continue to violate the rights of those citizens until this defect is corrected.

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## CONSTITUTIONAL VIOLATIONS

### *DUE PROCESS*

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States forbids the several States from depriving any person of life, liberty, or property without due process of law. Under color of state law, the Department of Justice is subjecting Franklin Armory<sup>®</sup>, its dealers, and its citizens to a deprivation of liberty and property without due process of law.

The defect within the DES essentially bans the sale, acquisition, transfer, delivery, and possession of lawful product in violation of the Due Process Clause doctrine. The ban forbids expression without giving fair notice of what is forbidden; as such, it is an unconstitutional deprivation of liberty and property without due process of law. This *de facto* ban violates the Due Process Clause doctrine regarding overbreadth. (See, e.g., *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).) It also forbids a substantial amount of constitutionally protected speech; as such, it is an unconstitutional deprivation of liberty and property without due process of law. And, this ban violates the Due Process Clause doctrine regarding deprivations of property. (See, e.g., *Matthews v. Eldridge*, 424 U.S. 319 (1976).)

Finally, the ban deprives the local licensed firearms dealers of the complete and lawful use of their license issued by the Department of Justice and does so without supplying adequate pre-deprivation notice and an opportunity to be heard; as such, it is an unconstitutional deprivation of property without due process of law. In each of these respects, the *de facto* ban constitutes an unconstitutional abridgement of Due Process Clause rights both facially and as applied to these circumstances.

### *SECOND AMENDMENT VIOLATION*

Possession of lawful firearms in California is not a mere privilege. Fortunately, the Second Amendment protects a person's right to keep and bear firearms. The Second Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "As interpreted in recent years by the Supreme Court, the Second Amendment protects 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Teixeira v. Cty. Of Alameda*, 873 F.3d 670, 676–77 (9th Cir. 2017), cert. denied sub nom. *Teixeira v. Alameda Cty.*, 138 S. Ct. 1988 (2018) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). At the core of the Second Amendment is a citizen's right to have in his and her home for self-defense common firearms. *Heller*, 554 U.S. at 629. "[O]ur central holding in *Heller* [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

As evidenced by California's own crime statistics, the need to protect one's self and family from criminals in one's home has not abated no matter how hard they try. Law enforcement cannot protect everyone. "A police force in a free state cannot provide everyone with bodyguards. Indeed, while some think guns cause violent crime, others think that wide-spread possession of guns on balance reduces violent crime. None of these policy arguments on either side affects what the Second Amendment says, that our Constitution protects 'the right of the people to keep and bear Arms.'"



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*Silveira v. Lockyer*, 328 F.3d 567, 588 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing *en banc*). However, California citizens, like United States citizens everywhere, enjoy the right to defend themselves with a firearm, if they so choose.

Not because of any statute, regulation, rule, or law, but merely as a result of improper design, the DES prohibits the California citizens from enjoying the right to defend themselves with a lawful firearm of their choice.

#### *TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE*

Under California law, intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1164–1165.).

As referenced above, Franklin Armory<sup>®</sup> has announced the sale of their Title 1 product and has begun taking orders on the Title 1. The Department of Justice has been notified of these orders and the inability of Franklin Armory<sup>®</sup>, and/or any licensed California firearms dealer to process these orders due to defects in the implementation of the DES, and a breach of duty by the Department of Justice pursuant to Penal Code sections 28105 and 28155. In refusing or delaying any corrections to the DES to permit the sale of lawful firearms, the DES is intentionally engaging in wrongful acts designed to disrupt current and future business of Franklin Armory<sup>®</sup>.

#### **DEMAND**

Franklin Armory<sup>®</sup> has, always, sought to cooperate and work with the California Department of Justice. It was not, and is not, my client's desire to make caselaw. On the contrary, the extraordinary effort taken by Franklin Armory<sup>®</sup> demonstrates their desire to partner *with* law enforcement to limit liabilities on all sides, including the end-user. When, however, the Department of Justice exceeded its authority and implemented a defacto ban on the sale of lawful firearms via technological limitations of the State mandated, designed, implemented and maintained DES, it substantially interfered with the rights and business relationship of Franklin Armory<sup>®</sup> and its customers. As a result, it is reasonable to anticipate the need for litigation to ensure my client is made whole.

Due to the delete and destruction policies of the California Department of Justice, Bureau of Firearms, we are hereby informing you that the Department of Justice has a duty to preserve evidence and prevent the spoliation of any information that may be relevant to this matter, including but not limited to, any and all correspondence, writings, emails, logs, telephone records, texts, or other of communication or writings, as that term is defined in Evidence Code section 250, related to or referring to the DES "gun type" fields, changes to the DES, long guns that are neither rifles nor shotguns, Franklin Armory, Inc., Jay Jacobson, Jason Davis, or Title 1. "[A] litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." (*In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)). The duty attaches "from the moment that litigation is reasonably anticipated." (*Apple Inc. v. Samsung Electronics Co.*,

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*Ltd.*, 881 F. Supp. 2d 1132, 1136 (N.D. Cal. 2012).) “Once a party reasonably anticipates litigation, it must suspend its routine [evidence] retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant [evidence].” (*Zubulake v. UBS Warburg*, 220 FRD 212, 218 (S.D.N.Y. 2003).) Where a party has violated its duty to preserve evidence and engaged in spoliation, federal courts have the inherent power to impose sanctions. (*See Sherman v. Rinchem Co., Inc.*, 687 F.3d 996, 1006 (8th Cir. 2012) (citations omitted)). Sanctions may include monetary sanctions, an adverse inference jury instruction, striking claims or defenses, exclusion of evidence, and default or dismissal.

As such, and in order to mitigate past and future damages that have or could further result from action or inaction, Franklin Armory<sup>®</sup> now demands as follows:

1. That the Department of Justice immediately correct the defect in the DES by permitting the sale of long guns that are neither shotguns nor rifles, such as the Title 1.
2. That the Department of Justice pay any and all damages that are incurred due to the refusal and/or delay in the correction of defects in the DES.

If you have any questions or concerns, do not hesitate to contact me at the number above.

Sincerely,  
**THE DAVIS LAW FIRM**

*s/ Jason Davis*

JASON DAVIS

cc: Robert Wilson