

08/19/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Castillejo Deputy

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

6 Attorneys for Petitioners - Plaintiffs

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 FRANKLIN ARMORY, INC. and
CALIFORNIA RIFLE & PISTOL
12 ASSOCIATION, INCORPORATED

13 Petitioners-Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF JUSTICE,
16 XAVIER BECERRA, both his personal
capacity and official capacity as Attorney
17 General for the State of California, and DOES
1-10,
18

19 Respondents-Defendants.

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

Electronically Received 08/19/2020 03:03 PM

1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE & PISTOL ASSOCIATION,
2 INCORPORATED petition this court for declaratory relief, injunctive relief and a writ of mandate
3 relating to CALIFORNIA DEPARTMENT OF JUSTICE, XAVIER BECERRA and DOES 1-10
4 (collectively “DEFENDANTS”) implementation of unlawful technological barriers preventing the
5 lawful transfer of firearms and failure and/or refusal to timely perform the duties relating to the sale,
6 loan, transfer, purchase and processing of firearms that are neither “handguns,” nor “shotguns,” nor
7 “rifles,” including the FRANKLIN ARMORY, 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 Minden, Nevada. FAI specializes in manufacturing firearms for civilian
12 sporting and recreation, military and law enforcement applications.

13 2. Pertinent here, FAI manufactures a series of firearms which are neither “rifles,” nor “pistols,” 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, 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. CRPA brings this action on behalf of itself and its tens of thousands of
3 supporters in California, including FAI, who have been, are being, and will in the future be subjected to
4 DEFENDANTS' refusal and/or delay in removing the technological barrier designed, implemented and
5 maintained by DEFENDANTS that prohibits the lawful sale, loan, transfer and purchase of certain
6 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'. Code § 15000.) The DOJ is composed of the Office of the
11 Attorney General and those other divisions, bureaus, branches, sections or other units as the Attorney
12 General may create within the department pursuant to Section 15002.5. (Gov. Code § 15001.) The
13 Bureau of Firearms ("BOF") was created by the Attorney General within the Division of Law
14 Enforcement for the purposes of designing, implementing and enforcing California's firearm laws, rules,
15 regulations and support systems. The DOJ is responsible for the design, development, maintenance and
16 enforcement of the Dealer Record of Sale Dealer Entry System, the system by which licensed California
17 firearm dealers submit purchaser and firearm information to the California Department of Justice for
18 processing in 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 both his personal capacity
26 and his official capacity.

27 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and
28 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.

1 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through
2 10 is responsible in some capacity or manner for the adoption or enforcement of the unlawful
3 regulations as alleged in this Complaint and Petition. PLAINTIFFS pray for leave to amend this
4 Complaint and Petition to show the true names, capacities and/or liabilities of DOE Defendants 1
5 through 10 if and when they are determined.

6 **JURISDICTION AND VENUE**

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

11 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
12 sections 393, subdivision (b), and 394, subdivision (a). Also, venue properly lies within this Court
13 because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc., §
14 401.)

15 **AUTHENTICITY OF EXHIBITS**

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

19 **GENERAL ALLEGATIONS**

20 [THE DEFENDANTS’ GENERAL DUTIES]

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

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

28 15. The Attorney General’s proper performance of his or her duties ensures that the state’s firearms

1 laws are administered fairly, enforced vigorously and understood uniformly throughout California.

2 16. The Attorney General is required to provide oversight, enforcement, education and regulation of
3 many facets of California's firearms laws. And, the Attorney General performs these legislative duties
4 through their Law Enforcement Division's BOF.

5 17. The BOF's mission statement reiterates their obligation to educate and promote legitimate
6 firearm sales and education, and is as follows:

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

14 (Emphasis added.)

15 18. The practical application of the BOF's mission requires the BOF and its staff to be on the
16 forefront of leadership, innovation and collaboration.

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

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

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

28 ///

[CALIFORNIA'S RELEVANT DEFINITIONS]

22. In regulating the technological aspects of particular firearms, the State of California has provided specific definitions. For example, the State of California defines the term “firearm” in multiple ways, generally including “a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.)

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

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

b. “*Handgun*” means any *pistol, revolver, or firearm capable of being concealed upon the person*; and, nothing shall prevent a device defined as a “handgun” from also being found to be a *short-barreled rifle*¹ or a *short-barreled shotgun*². (Pen. Code, § 16640.) The terms “*firearm capable of being concealed upon the person,*” “*pistol,*” and “*revolver*” apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These terms also include any device that

¹ “*Short-barreled rifle*” means any of the following: (a) A rifle having a barrel or barrels of less than 16 inches in length;

(b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily 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 Code, § 17170.)

² “*Short-barreled shotgun*” means any of the following: (a) A firearm that is designed or redesigned to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length; (b) A firearm that has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that 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,

1 has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16
2 inches in length. (Pen. Code, § 16530. See also Pen. Code, §§ 17010, 17080.)

3 24. Below these two classifications (long gun and handgun) are a myriad of statutorily defined
4 subtypes, the most common of which are deemed rifles³ and shotguns⁴ under the long gun classification.

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

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

10 [UNDEFINED “FIREARM” SUBTYPES]

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

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

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

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

20
21 can be readily assembled if those parts are in the possession or under the control of the same person.
22 (Pen. Code, § 17180.)

23 ³ 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,
27 and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
28 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. Code, § 17090.)

⁴ As used in Penal Code sections 16530, 16640, 16870, and 17180, sections 17720 to 17730,
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
of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles
(ball shot) or a single projectile for each pull of the trigger. (Pen. Code, § 17190.)

1 [CALIFORNIA DEALERS' CENTRAL ROLE]

2 31. Significantly, the State of California has reserved the entire field of licensing and registration of
3 firearms to itself. (Pen. Code, § 53071.)

4 32. With limited exception, nearly all firearm transfers within California must be processed through
5 a dealer licensed by the United States, California, and the local authorities to engage in the retail sale of
6 firearms. (Pen. Code, §§ 26700, 27545.)

7 33. And, the State of California mandated that upon presentation of identification by a firearm
8 purchaser, a licensed California firearms dealer *shall* transmit the information to the Department of
9 Justice. (Pen. Code, § 28215, subd. (d).)

10 34. As such, the State of California has made licensed firearms dealers state agents in connection
11 with the gathering and dispensing of information on the purchase of firearms. (*United States v.*
12 *Tallmadge* (9th Cir. 1987) 829 F.2d 767.)

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

16 36. The State did authorize the DOJ to indiscriminately stop or inhibit sales. Rather, the State has
17 only granted the DOJ the authority to stop sales for certain specified reasons. For example, the DOJ is
18 permitted to stop the sale if a purchaser is deemed a prohibited person. (See e.g. Pen. Code, §28220.).

19 37. The State did not authorize the DOJ to indiscriminately delay sales. Rather, the State only
20 granted the DOJ the authority to delay sales for specified reasons. For example, the DOJ is permitted to
21 delay if its records indicate that the purchaser may be prohibited, additional research is needed to make a
22 final determination. (See e.g. Pen. Code, §28220(f)(1)(A) – authorizing a 30-day delay under specified
23 circumstances but permitting the release of the firearm by the Dealer if the DOJ cannot determine the
24 purchaser to be ineligible to possess firearms within the 30-day period.)

25 38. Thus, while the DOJ is the gatekeeper of firearm transactions within the State, its ability to delay
26 or deny lawful sale and transfer of firearms is exceedingly limited to expressly prohibited activities.

27 [CALIFORNIA'S FIREARM TRANSFER SCHEME OVERVIEW]

28 39. As part of the firearm transfer process, each purchaser of a firearm must meet certain standards

1 and provide certain documentation in order to purchase a firearm (and the licensed California dealer
2 must receive, verify, retain and/or transmit the related information to the DOJ,) including but not limited
3 to:

- 4 • Valid photo identification to establish age (Pen. Code, §§ 16400, 26845, 27510);
- 5 • Complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ATF Form 4473;
- 6 • Complete the California Dealer's Record of Sale (DROS) form;
- 7 • Pass a comprehensive background check performed by the State of California (Pen. Code, §
8 29820), which reviews records in the following databases:
 - 9 ○ Criminal History System (ACHS);
 - 10 ○ California Restraining and Protective Order System (CARPOS);
 - 11 ○ California Department of Motor Vehicles (DMV);
 - 12 ○ California Mental Health Firearm Prohibition System (MHFPS);
 - 13 ○ California Wanted Persons System (WPS);
 - 14 ○ Federal Bureau of Investigation (FBI) National Instant Criminal Background Check
15 System (NICS);
 - 16 ○ FBI Interstate Identification Index (III);
 - 17 ○ FBI National Crime Information Center (NCIC); and
 - 18 ○ Immigration Customs & Enforcement (ICE);
- 19 • Pay a background check fee;
- 20 • Pay a Firearm Safety & Enforcement fee;
- 21 • Pay a Firearm Safety Device fee;
- 22 • Wait a ten-day waiting period⁵ (Pen. Code §§ 26950-26970);
- 23 • Obtain a Firearm Safety Device (FSD) (Pen. Code, § 23635);
- 24 • Possess a Firearm Safety Certificate (FSC)⁶ (Pen. Code § 31700).

27 ⁵ That is, ten 24-hour periods must pass once the DROS is submitted before the purchaser can acquire
28 their firearm (Pen. Code, § 26815), though certain people or transfers are exempt from the waiting
period requirement (e.g., peace officers and special weapon permit holders)

1 [CALIFORNIA’S FIREARM REGISTRY – INFORMATION AND FORM REQUIREMENTS]

2 40. Certain aspects of licensing and registration has been delegated to the DOJ and/or the Attorney
3 General. This includes the licensing of the California retailers engaged in the sale of firearms, as well
4 as the recordkeeping, background checks and fees related to the sale, lease, loan or transfer of firearms.
5 For example:

- 6 a. “As required by the Department of Justice, every dealer shall keep a register or record of
7 electronic or telephonic transfer in which shall be entered” certain information relating to
8 the transfer of firearms. (Pen. Code, § 28100.)
- 9 b. “The Department of Justice shall prescribe the *form* of the register and the record of
10 electronic transfer pursuant to Section 28105.” (Pen. Code § 28155.)
- 11 c. The Attorney General shall keep and properly file a complete record of Dealers’ Records
12 of Sale of firearms. (Pen. Code, § 11106, subd. (a)(1)(D).)
- 13 d. The Attorney General shall permanently keep and properly file and maintain *all*
14 information reported to the DOJ pursuant to any law as to *firearms* and maintain a
15 registry thereof. (Pen. Code, § 11106, subd. (b)(1)(A).) Specific information that must
16 be included within the registry includes the “manufacturer’s name if stamped on the
17 firearm, model name or number if stamped on the firearm, and, if applicable, the serial
18 number, other number (if more than one serial number is stamped on the firearm),
19 caliber, type of firearm, if the firearm is new or used, barrel length, and color of the
20 firearm, or, if the firearm is not a handgun and does not have a serial number or any
21 identification number or mark assigned to it, that shall be noted.” (Pen. Code, § 11106,
22 subd. (b)(1)(D).)

23 41. The State of California mandated that, for all firearms, the register or the record of electronic
24 transfer shall contain the certain information via Penal Code section 28160, subdivision (a),
25 specifically:
26

27
28 ⁶ Firearm purchasers must take an exam on firearm safety from an instructor and obtain a minimum
75% passing score to receive a certificate (Pen. Code § 31615), though certain people are exempt from

- 1 (1) The date and time of sale;
- 2 (2) The make of firearm;
- 3 (3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of
- 4 Section 16585, and the agency name;
- 5 (4) Any applicable waiting period exemption information;
- 6 (5) California Firearms Dealer number issued pursuant to Article 1 (commencing with
- 7 Section 26700) of Chapter 2;
- 8 (6) For transactions occurring on or after January 1, 2003, the purchaser's handgun safety
- 9 certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter
- 10 4 of Division 10 of this title, or pursuant to former Article 8 (commencing with Section
- 11 12800) of Chapter 6 of Title 2 of Part 4, as that article read at any time from when it became
- 12 operative on January 1, 2003, to when it was repealed by the Deadly Weapons Recodification
- 13 Act of 2010;
- 14 (7) Manufacturer's name, if stamped on the firearm;
- 15 (8) Model name or number, if stamped on the firearm;
- 16 (9) Serial number, if applicable;
- 17 (10) Other number, if more than one serial number is stamped on the firearm;
- 18 (11) Any identification number or mark assigned to the firearm pursuant to Section 23910;
- 19 (12) If the firearm is not a handgun and does not have a serial number, identification number,
- 20 or mark assigned to it, a notation as to that fact;
- 21 (13) Caliber;
- 22 **(14) Type of firearm; (multiple emphasis added)**
- 23 (15) If the firearm is new or used;
- 24 (16) Barrel length;
- 25 (17) Color of the firearm;
- 26 (18) Full name of purchaser;

27
28 the FSC requirement (e.g., peace officers, military, California Concealed Carry License holders).

- 1 (19) Purchaser's complete date of birth;
- 2 (20) Purchaser's local address;
- 3 (21) If current address is temporary, complete permanent address of purchaser;
- 4 (22) Identification of purchaser;
- 5 (23) Purchaser's place of birth (state or country);
- 6 (24) Purchaser's complete telephone number;
- 7 (25) Purchaser's occupation;
- 8 (26) Purchaser's gender;
- 9 (27) Purchaser's physical description;
- 10 (28) All legal names and aliases ever used by the purchaser;
- 11 (29) Yes or no answer to questions that prohibit purchase, including, but not limited to,
- 12 conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an
- 13 offense described in Chapter 3 (commencing with Section 29900) of Division 9 of this title,
- 14 the purchaser's status as a person described in Section 8100 of the Welfare and Institutions
- 15 Code, whether the purchaser is a person who has been adjudicated by a court to be a danger
- 16 to others or found not guilty by reason of insanity, and whether the purchaser is a person who
- 17 has been found incompetent to stand trial or placed under conservatorship by a court pursuant
- 18 to Section 8103 of the Welfare and Institutions Code;
- 19 (30) Signature of purchaser;
- 20 (31) Signature of salesperson, as a witness to the purchaser's signature;
- 21 (32) Salesperson's certificate of eligibility number, if the salesperson has obtained a
- 22 certificate of eligibility;
- 23 (33) Name and complete address of the dealer or firm selling the firearm as shown on the
- 24 dealer's license;
- 25 (34) The establishment number, if assigned;
- 26 (35) The dealer's complete business telephone number;
- 27 (36) Any information required by Chapter 5 (commencing with Section 28050);
- 28 (37) Any information required to determine whether subdivision (f) of Section 27540 applies;

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

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

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

8 43. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title 1.

9 [POINT OF CONTACT STATE UNDER FEDERAL LAW]

10 44. A Federal law known as the Brady Handgun Violence Act of 1993 (“the Brady Act”)
11 requires FFLs to request background checks on individuals attempting to purchase a firearm.
12 The permanent provisions of the Brady Act which went into effect on November 30, 1998,
13 requires the United States Attorney General to establish the NICS for FFLs to contact to obtain
14 immediate information on. Whether the transfer of a firearm to as respective buyer would
15 violate state of federal law.

16 45. FFLs must contact the NICS to conduct NICS check through an established POC within
17 their respective state or the FBI NICS Section. In order that all citizens and dealers, regardless
18 of their state of residence, receive at a minimum, the level of service mandated by the Brady
19 Act, the FBI in conjunction with the Bureau of Alcohol, Tobacco and Firearms (“ATF”), and
20 the U.S. Department of Justice has developed the *National Instant Criminal Background Check*
21 *System Point of Sale Guidelines*. These federal guidelines are designed to ensure that all
22 potential purchasers receive a consistent level of service.

23 46. The California DOJ acts as the single POC for all firearm transfers within California pursuant to
24 a memorandum of understanding with the FBI. As of January 1, 2003, licensed firearm dealers in
25 California are required to submit all background checks to DOJ electronically via the Dealer Record of
26 Sale Entry System (“DES”). As such, nearly all of California NICS checks coming from FFLs are run
27 through the DES. And, pursuant to both the memorandum of understanding and 28 C.F.R. Part 25.10, a
28 person found ineligible to receive a firearm may appeal the decision.

1 47. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title 1,
2 ensuring that not all potential purchasers receive a consistent level of service, and preventing any
3 method of appeal by the potential purchasers.

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

5 48. The State of California mandated that the DOJ *shall* determine the *method* by which a dealer
6 *submits* the firearm purchaser *information* to the DOJ. (Pen. Code, § 28205, subd. (a).)

7 49. The State of California mandated that electronic transfer of the required information be the sole
8 means of transmission but permitted the DOJ to make exceptions. (Pen. Code, § 28205, subd. (c).)

9 50. The method established by the DOJ pursuant to Penal Code section 28205(c) for the submission
10 of purchaser information required by Penal Code section 28160, subdivision (a), is DES.

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

13 52. As agents of State for record keeping purposes, licensed California firearm dealers are required
14 to submit only information that is “true, accurate, and complete.” (Cal. Code Regs., tit. 11, § 4210,
15 subd. (b)(1)(6).)

16 53. The DOJ has failed to comply with their mandate, making it impossible for California Dealer’s
17 acting as agents of the DOJ to submit true, accurate, and complete information, thereby barring the sale
18 of the FAI Title 1.

19 [NATURE OF DISPUTE]

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

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

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

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

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

11 58. Under California Code of Regulations, title 11, § 4210, subdivision (b)(1)(6), firearm dealers are
12 prohibited from entering inaccurate information within the system.

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

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

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

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

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

28 64. DEFENDANTS have known of the deficiencies of the DES and intended them from inception,

1 and since the introduction of the FAI Title 1, they have been requested to correct said defect, and have
2 refused to do so, thereby barring the sale of the FAI Title 1.

3 [DOJ AND THE FAI TITLE 1]

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

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

8 67. Since then, the DOJ has neither corrected the DES, nor has it implemented alternative procedures
9 to facilitate the lawful transfer of the Title 1.

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

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

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

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

24 72. Now, months have passed since the DOJ responded, and neither the DES nor the alternative
25 procedures have been updated, modified, or implemented to permit the lawful transfer of the FAI Title
26 1 or other undefined "firearm" subtypes that are "long guns."

27 73. On information and belief, DEFENDANTS have designed and developed alternative procedures,
28 processes and/or updates that would cure the deficiencies of the DES specific to the issue at hand but

1 have refused and/or intentionally delayed implementation of said alternatives to date.

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

5 75. On information and belief, DEFENDANTS are continuing with the deficiencies intentionally,
6 delaying the necessary changes to the DES system that would permit the lawful transfer of lawful
7 firearms such as the Title 1 to lawful purchasers. DEFENDANTS are doing so with malice, in targeted
8 retaliation for challenging DEFENDANTS in past and current actions, and intent to cause harm against
9 FAI.

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

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

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

23 79. Accordingly, an active controversy has arisen and now exists between the DEFENDANTS and
24 PLAINTIFFS concerning their respective rights, duties and responsibilities.

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

27 81. The DOJ has a duty to facilitate the lawful transfer of firearms and collect certain information
28 from the dealers in the process via a method of submission designated by the DOJ. They do not,

1 however, have the authority to mandate alternative information or prevent the lawful transfer of a class
2 of firearms not otherwise prohibited under California law by technological limitations of their designs,
3 either intentional or otherwise.

4 [UNDERGROUND REGULATIONS]

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

10 83. The APA provides a detailed statutory scheme for public notice and comment on regulations
11 proposed by state agencies. (Gov. Code, § 11340, et seq.)

12 84. Mandatory procedures include providing adequate notice to the public of proposed regulations
13 and an opportunity for public comment. (Gov. Code, §§ 11346.2, 11346.4, 11346.5, 11346.8.)

14 85. The agency must provide reports of detailed reasons for a proposed regulation, the alternatives
15 considered and the effect the proposed regulation is projected to have on individuals. (Gov. C §§
16 11346.2, 11346.9.)

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

20 87. If a rule constitutes a “regulation,” and there is no express statutory exemption excusing the
21 agency from complying with the APA, any regulation enacted without compliance with the APA is an
22 invalid “underground regulation” and cannot be enforced. (*Tidewater Marin Western, Inc. v. Bradshaw*
23 (1996) 14 Cal.4th 557, 576. See also Gov. Code, § 11346.)

24 88. There is a narrow exception to the stringent requirements of the APA for “emergency”
25 regulations if an “emergency situation clearly poses such an immediate, serious harm that delaying
26 action to allow public comment would be inconsistent with the public interest.” (Gov. Code, 11346.1,
27 subd. (a)(3).)

28 89. The purpose of the APA’s comprehensive scheme is to ensure that “those persons or entities

1 whom a regulation will affect have a voice in its creation,” (*Armistead v. State Personnel Board* (1978)
2 22 Cal.3d 198, 204-205), to allow the public to inform the agency about possible unintended
3 consequences of a proposed regulation, and to protect against “bureaucratic tyranny.” (*Cal. Advocates*
4 *for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508.)

5 90. The challenged rules at issue, including but not limited to the prohibition of certain lawful
6 firearms from being transferred because of DEFENDANTS’ technological barriers, implement,
7 interpret and make specific requirements for compliance with statutory law enforced by
8 DEFENDANTS. They include policy decisions by DEFENDANTS that are subject to the open
9 government and deliberative process requirements under the APA. But the challenged rules do not
10 comply with the rulemaking provisions of the APA. They were adopted without prior public notice or
11 opportunity for oral or written public comment. (See Gov.Code, §§ 11346.2, 11346.4, 11346.5,
12 11346.8.)

13 91. The APA does allow for adoption of regulations without any advance public notice and the
14 opportunity for comment only in emergency circumstances where “the emergency situation clearly
15 poses such an immediate, serious harm that delaying action to allow public comment would be
16 inconsistent with the public interest.” (Gov.Code, § 11346.1, subds. (a)-(b).) No “emergency” exists
17 that would justify bypassing the formal process for the adoption of the challenged rules here. And no
18 other section of the California Code exempts the adoption of rules concerning the prohibition of the
19 transfer of lawful firearms to lawful purchasers.

20 92. Accordingly, PLAINTIFFS seek declaratory and injunctive relief to invalidate and enjoin
21 DEFENDANTS’ enforcement of the challenged rules as unlawful underground regulations.

22 93. PLAINTIFFS also seek to enjoin the enforcement of rules concerning the prohibition of the
23 transfer of lawful firearms to lawful purchasers.

24 [UNLAWFUL BAN ON FIREARMS]

25 94. On information and belief, DEFENDANTS acted in concert to prevent the sale of FAI Title 1
26 style firearms indefinitely. Specifically, DEFENDANTS conspired and did delay and defer any action
27 that would otherwise permit the formal sale, transfer, and delivery of the FAI Title 1 style firearms until
28 legislation designed and intended to ban the sale, transfer, and delivery of the Title 1 would be

1 implemented and effective.

2 95. On information and belief, DEFENDANTS' actions in implementing a non-statutory ban on the
3 FAI Title 1 were done with malice and intended to cause FAI and its customers, including those
4 members of CRPA, harm through the deprivation of property, loss of profits, and damage to FAI's
5 reputation.

6 [CRIMINAL CONDUCT]

7 96. When an act or omission is declared by a statute to be a public offense and no penalty for the
8 offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. (Pen. Code, §
9 19.4.)

10 [LIABILITY STATUTES]

11 97. A public entity is liable for injury proximately caused by an act or omission of an employee of
12 the public entity within the scope of his employment if the act or omission would, apart from this
13 section, have given rise to a cause of action against that employee or his personal representative. (Govt.
14 Code, § 815.2.)

15 98. Where a public entity is under a mandatory duty imposed by an enactment that is designed to
16 protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind
17 proximately caused by its failure to discharge the duty unless the public entity establishes that it
18 exercised reasonable diligence to discharge the duty. (Govt. Code, § 815.6.)

19 99. In general, a public employee is liable for injury caused by his act or omission to the same extent
20 as a private person. (Gov. Code, § 820.)

21 100. The acts prohibiting the sale of the FAI Title 1 described herein are non-discretionary acts.

22 [REDESIGNATION AS "ASSAULT WEAPON"]

23 101. At all times relevant, the FAI Title 1 was not prohibited from being transferred, sold, or
24 possessed within California.

25 102. On information and belief, the acts described above were performed by DEFENDANTS with
26 the intent to delay and prohibit the sales and lawful transfer of the FAI Title 1 style firearms to FAI's
27 customers within California until such time as legislation was developed, proposed, and passed
28 designating the FAI Title 1 style firearms as an "assault weapons" under the Roberti-Roos Assault

1 Weapon Act.

2 103. On information and belief, Assembly Bill 88 was the result of DEFENDANTS' first attempt to
3 redesignate the FAI TITLE 1 style firearms as "assault weapons".

4 104. On information and belief, DEFENDANTS' scheme to deny PLAINTIFFS their rights was
5 unsuccessful at first with the failure of Assembly Bill 88 to pass.

6 105. On information and belief, DEFENDANTS' scheme was ultimately successful with the passage
7 of Senate Bill 118, which passed and became law on August 6, 2020 – immediately designating the FAI
8 Title 1 an "assault weapon" under the Roberti-Roos Assault Weapon Act – thereby immediately
9 prohibiting the transfer of the FAI Title 1 to their customers.

10 106. On information and belief, while Senate Bill 118 permits those in possession of firearms
11 deemed "assault weapons" under the newly implemented definition to register and keep their firearms if
12 they possessed the firearms prior to September 1, 2020, the DEFENDANTS' plan, scheme, actions and
13 inaction in prohibiting the transfer of the FAI Title 1 prohibited those who placed deposits on the FAI
14 Title 1 series firearms from lawfully acquiring and possessing their firearms prior to the September 1,
15 2020 deadline.

16 107. As such, DEFENDANTS actions and inaction described herein effectively denied PLAINTIFFS
17 of their right to Due Process, their Second Amendment rights, and their property rights, *inter alia*.

18 **FIRST CAUSE OF ACTION:**
19 **DECLARATORY AND INJUNCTIVE RELIEF**
20 **(AGAINST ALL DEFENDANTS)**

21 108. Paragraphs 1-107 are realleged and incorporated by reference.

22 109. The technological rules prohibiting the transfer of lawful firearms to lawful purchasers,
23 including but not limited to the rules as related to the DES, as it is currently designed, implemented,
24 maintained and/or enforced by DEFENDANTS, prohibit the sale of certain firearms that are neither
25 "rifles," nor "shotguns," nor "rifles/shotguns," nor "handguns" under California law and apply to all
firearm purchase applicants. They are rules of general applicability.

26 110. The rules were created by DOJ for the purpose of submitting specific information to the DOJ
27 and for processing registrations and background checks via the DES, a system administered by the DOJ
28 pursuant to the Penal Code. The rules are, thus, "regulations" under the APA.

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

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

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

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

20 115. PLAINTIFFS, their supporters and members, as stakeholders, have been specifically harmed
21 because DEFENDANTS' unlawful conduct has denied them their statutory right to be heard and to
22 provide input regarding regulations governing a program that significantly affects them.

23 116. Further, harm from this underground regulation lies in the subversion of the democratic values
24 the APA was intended to serve. The notice, comment and review procedures of the APA were enacted to
25 secure the public benefits of openness, accessibility and accountability in the formulation of rules that
26 implement legislative enactments. Irreparable harm to these important public benefits occurs whenever a
27 state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground
28 regulation.

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

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

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

1 h. DEFENDANTS, who occupy the field of processing the lawful transfer of firearms,
2 including the registration and licensing, and as the regulatory body charged with
3 implementing, administering and enforcing the laws relating to the lawful transfer of
4 firearms within the state, have a clear, present and ministerial duty to ensure that the
5 systems developed by the DOJ to facilitate the submission of information do not act as
6 barriers to the submission of the required information necessary for the sale, loan and/or
7 transfer of lawful firearms.

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

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

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

21 122. Additionally, unless DEFENDANTS, their agents, employees, representatives, and all those
22 acting in concert with them are enjoined from enforcing the Roberti-Roos Assault Weapons Act in a
23 manner that prohibits those who, but for DEFENDANTS' technological barriers to lawful the
24 acquisition, could have lawfully acquired and registered their FAI Title 1 style in accordance with Senate
25 Bill 118, PLAINTIFFS will continue to suffer great and irreparable harm.

26 **SECOND CAUSE OF ACTION:**
27 **PETITION FOR WRIT OF MANDATE**
28 **(AGAINST ALL DEFENDANTS)**

123. Paragraphs 1-122 are realleged and incorporated by reference.

1 124. DEFENDANTS have a clear, present and ministerial duty to design, implement, maintain or
2 enforce the provisions of Penal Code sections in such a manner that does not preclude or bar the sale,
3 transfer, loan or other processing of entire classes of lawful firearms by technological or administrative
4 barriers.

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

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

15 127. PLAINTIFFS present important questions of statutory interpretation, as well as questions of
16 public interest which further warrant prompt disposition of this matter.

17 128. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
18 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce
19 updates to the DES system such that it does not proscribe the lawful sale, transfer and loan of an entire
20 class of lawful firearms, including the FAI Title 1 and such that it comports with Penal Code sections
21 28155, 28205, 28215 and 28220.

22 129. Additionally, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
23 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain, and enforce
24 updates their "assault weapons" registration process such that it permits the registration of the FAI Title
25 1 style firearms by those whose orders were placed on or before August 6, 2020 or at such time as
26 deemed appropriate by the Court.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION:**
2 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
3 **(AGAINST ALL DEFENDANTS)**

4 130. Paragraphs 1-129 are realleged and incorporated by reference.

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

9 132. FAI currently has tens of thousands of contracts to sell the FAI Title 1 within California.

10 133. DEFENDANTS knew of FAI's contracts.

11 134. To date, DEFENDANTS' conduct prevented performance of the contracts.

12 135. To date, DEFENDANTS made performance more expensive or difficult.

13 136. DEFENDANTS intended to disrupt the performance of these contracts or knew that disruption
14 of performance was certain or substantially certain to occur by their delay and/or continued refusal to
15 correct the defects in the DES or permit alternative means of transfers.

16 137. FAI and its customers have been harmed through the loss of sales and inability to transfer and/or
17 receive the FAI Title 1 as obligated.

18 138. DEFENDANTS' conduct was not only a substantial factor in causing FAI and their customers
19 harm, but it was also the sole factor.

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

24 **FOURTH CAUSE OF ACTION:**
25 **TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
26 **(AGAINST ALL DEFENDANTS)**

27 140. Paragraphs 1-139 are realleged and incorporated by reference.

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

142. FAI and FAI's California customers and prospective customers were in an economic

1 relationship that probably would have resulted in an economic benefit to FAI.

2 143. DEFENDANTS knew of the relationships that FAI had with its customers and prospective
3 customers, including California dealers and consumers.

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

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

9 146. By refusing to correct the defects in the DES and/or implementing alternative means to facilitate
10 the lawful transfer of the lawful firearms, including the FAI Title 1, DEFENDANTS intended to disrupt
11 the relationships or knew that disruption of the relationships between FAI and its customers and/or
12 prospective customers was certain or substantially certain to occur. DEFENDANTS intentionally
13 interfered with such opportunities in violation of its duties to design, develop, maintain and administer a
14 system for accepting and transmitting the necessary information for the lawful transfer of lawful
15 firearms, including those duties found within Penal Code sections 28155, 28205, 28215, and 28220.

16 147. The economic relationships between FAI and its customers and prospective customers were
17 disrupted.

18 148. FAI was harmed, *inter alia*, in that they lost tens-of-thousands of reserved sales for the FAI Title
19 1 in an amount approximating \$33,000,000.00, lost *profits* in an amount to be proven at trial, but
20 approximating \$5,000,000.00, and incurred reputational due to the inability to fulfill customer orders
21 due to DEFENDANTS' actions.

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

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

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

1 punitive damages.

2 **FIFTH CAUSE OF ACTION:**
3 **NEGLIGENT INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
4 **(AGAINST ALL DEFENDANTS)**

5 152. Paragraphs 1-151 are realleged and incorporated by reference.

6 153. FAI claims that DEFENDANTS acted with negligence and/or gross negligence, recklessness,
7 malice and/or deceit and interfered with a relationship between FAI and FAI's California customers and
8 prospective customers, including licensed California retailers and consumers, that probably would have
9 resulted in an economic benefit to FAI.

10 154. FAI and customers and prospective customers, including licensed California retailers and
11 consumers, were in an economic relationship that probably would have resulted in a future economic
12 benefit to FAI.

13 155. DEFENDANTS knew or should have known of the relationships between FAI and its customers
14 and prospective customers.

15 156. DEFENDANTS knew or should have known that these relationships would be disrupted if they
16 failed to act with reasonable care.

17 157. DEFENDANTS failed to act with reasonable care.

18 158. DEFENDANTS engaged in wrongful conduct by delaying and/or refusing to correct the defects
19 in the DES and/or implementing alternative means to facilitate the lawful transfer of the lawful firearms,
20 including the FAI Title 1. DEFENDANTS intended to disrupt the relationships or knew that disruption
21 of the relationships between FAI and its customers and/or prospective customers was certain or
22 substantially certain to occur. DEFENDANTS intentionally interfered with such opportunities in
23 violation of its duties to design, develop, maintain and administer a system for accepting and
24 transmitting the necessary information for the lawful transfer of lawful firearms, including those duties
25 found within Penal Code sections 11106, 28155, 28205, 28215 and 28220.

26 159. The relationships between FAI and its customers and prospective customers were disrupted.

27 160. FAI was harmed, *inter alia*, in that they lost tens-of-thousands of reserved sales for the FAI Title
28 1 in the amount approximating \$33,000,000.00, lost *profits* in an amount to be proven at trial, but
approximating \$5,000,000.00, and incurred reputational due to the inability to fulfill customer orders

1 due to DEFENDANTS' actions.

2 161. DEFENDANTS' wrongful conduct was a substantial factor in causing FAI's harm.

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

7 **SIXTH CAUSE OF ACTION**

8 **42 U.S.C. § 1983 – Violation of Due Process**

9 **Deprivation of Liberty Without Procedural Due Process of Law**

10 **(By All PLAINTIFFS against All DEFENDANTS)**

11 163. Paragraphs 1-162 are realleged and incorporated by reference.

12 164. An actual controversy has arisen now and exists between PLAINTIFFS and DEFENDANTS
13 relative to their respective rights and duties described herein, in that PLAINTIFFS contend that at all
14 times prior to the signing of Senate Bill 118, the FAI Title 1 style firearm was lawful to sell, transfer,
15 deliver, and possess within California and FAI was entitled to and lawfully could have transferred all
16 Title 1 series firearms on deposit to its customers, FAI's customers, including those that are members of
17 CRPA, were entitled to apply for, purchase, receive, and possess the FAI Title 1 series firearms which
18 they had placed earnest money deposits on. PLAINTIFFS could not complete the purchase of said
19 firearms due to DEFENDANTS' actions in thwarting, delaying, and otherwise implementing a non-
20 statutory ban on the FAI Title 1 series firearms until such time as the California legislature implemented
21 statutory restrictions on said products.

22 165. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any
23 person of life, liberty, or property, without due process of law." (U.S. Const., amend XIV.)

24 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
25 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
26 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I, §
27 9.)

28 166. DEFENDANTS deprived PLAINTIFFS of these rights and liberties without due process of law,
in violation of the Fourteenth Amendment to the U.S. Constitution by both implementing and

1 maintaining a non-statutory ban via technological barriers prohibiting the application for, sale, transfer,
2 delivery of the FAI Title 1 series firearm. DEFENDANTS have no authority under either the California
3 Constitution or any law adopted by the legislature to deprive PLAINTIFFS as described herein – indeed,
4 rights are themselves protected by the California Constitution, U.S. Constitution, and fundamental law;

5 167. California makes it clear that “No state agency shall issue . . . any guideline . . . unless the
6 guideline . . . has been adopted as a regulation filed with the Secretary of State . . .” (Gov. Code, §
7 11340.5, subd. (a).)

8 168. Nowhere in the California Dangerous Weapons laws does it give DEFENDANTS the authority
9 to suspend the constitutional rights of Californians or to suspend California statutes regarding the
10 obligation to facilitate the transfer of firearms.

11 169. In California, a regulation that has not been adopted in compliance with the Administrative
12 Procedures Act is deemed an Underground Regulation and is invalid. (See *Modesto City Schools v.*
13 *Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) California is one of the few states that
14 require rulemaking procedure for the adoption of guidance documents. (California Practice Guide:
15 Administrative Law 25:45, by Rutter Group.)

16 170. DEFENDANTS provide no standard by which they unilaterally prohibited the sale, transfer,
17 delivery, or possession of firearms that are neither pistols, nor rifles, nor shotguns prior to the effective
18 date of Senate Bill 118.

19 171. As such, PLAINTIFFS and the public lacked any mean meaningful opportunity to seek redress
20 of injuries caused by DEFENDANTS’ actions or by which they may seek to effectuate the transfer of
21 the said firearms.

22 172. PLAINTIFFS have no remedy at law and will suffer serious and irreparable harm to their
23 constitutional rights unless DEFENDANTS are enjoined from implementing and enforcing the non-
24 statutory ban on the delivery, sale, transfer, and possession of those firearms which could have been
25 lawfully sold, delivered, transferred and possessed prior to the passage of Senate Bill 118.

26 173. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
27 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
28 non-statutory ban of the FAI Title 1 series firearms, and the fulfilment the orders for which deposits

1 were timely made prior to the passage of Senate Bill 118.

2 174. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
3 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
4 provisions of SB118, as it applies a prohibition against the sale, transfer, delivery, and registration of
5 said firearms not possessed prior to September 1, 2020 – compliance with which, for PLAINTIFFS, was
6 thwarted and made impossible by DEFENDANTS’ actions described herein.

7 175. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
8 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys’ fees under 42 U.S.C.
9 § 1988.

10 **SEVENTH CAUSE OF ACTION**
11 **42 U.S.C. § 1983 – Violation of Due Process**
12 **Deprivation of Substantive Due Process of Law**
13 **(By All PLAINTIFFS against All DEFENDANTS)**

14 176. Paragraphs 1-176 are realleged and incorporated by reference.

15 177. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any
16 person of life, liberty, or property, without due process of law.” (U.S. Const., amend XIV.)

17 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
18 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
19 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I,
20 § 9.)

21 178. DEFENDANTS deprived PLAINTIFFS of these rights and liberties without due process of law,
22 in violation of the Fourteenth Amendment to the U.S. Constitution by both implementing and
23 maintaining a non-statutory ban via technological barriers prohibiting the application for, sale, transfer,
24 delivery of the FAI Title 1 series firearm. DEFENDANTS have no authority under either the California
25 Constitution or any law adopted by the legislature to deprive PLAINTIFFS as described herein – indeed,
26 rights are themselves protected by the California Constitution, U.S. Constitution, and fundamental law.

27 179. As applied to those who lawfully could have acquired their FAI Title 1 style firearms lawfully
28 but for DEFENDANTS actions and inactions described herein, the Roberti-Roos Assault Weapon Act, as
amended by Senate Bill 118, is an unconstitutional deprivation of Due Process.

1 180. PLAINTIFFS have no adequate remedy at law and will suffer serious and irreparable harm to
2 their constitutional rights unless DEFENDANTS are enjoined from implementing and enforcing the
3 non-statutory ban on the delivery, sale, transfer, and possession of those firearms which could have been
4 lawfully sold, delivered, transferred and possessed prior to the passage of Senate Bill 118.

5 181. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
6 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
7 non-statutory ban of the FAI Title 1 series firearms, and the fulfilment the orders for which deposits
8 were timely made prior to the passage of Senate Bill 118.

9 182. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
10 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
11 provisions of SB118, as it applies a prohibition against the sale, transfer, delivery, and registration of
12 said firearms not possessed prior to September 1, 2020 – compliance with which, for PLAINTIFFS, was
13 thwarted and made impossible by DEFENDANTS’ actions described herein.

14 183. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
15 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys’ fees under 42 U.S.C.
16 §1988.

17 **EIGHTH CAUSE OF ACTION**
18 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
19 **Validity of Non-Statutory Ban on Lawful Product Via Technological Barriers**
20 **(By All PLAINTIFFS Against All DEFENDANTS)**

21 184. Paragraphs 1-183 are realleged and incorporated by reference.

22 185. The rule constituting a non-statutory ban on the application for, sale of, delivery of, and
23 possession of the FAI Title 1 style firearm barred PLAINTIFFS from applying for, selling, delivering,
24 and possessing the product.

25 186. This rule was created, implemented, maintained and/or not corrected by the DEFENDANTS for
26 the purpose of preventing the lawful sale of products through the DES, a program administered by the
27 Department pursuant to the Penal Code. It is thus a “regulation” under the APA.

28 187. There is no express exemption from the APA in the California Code regarding the promulgation
of regulations to non-statutory bans on certain classes of firearms, there was no emergency sufficient to

1 justify bypassing the APA, and the regulation is not a mere restatement of statutory law. It is thus
2 subject to the procedural requirements set forth in the APA.

3 188. By implementing, administering, and enforcing the regulation that prohibited the application
4 for, sale, delivery of, and possession of FAI Title 1 style firearms, DEFENDANTS have violated and
5 continue to violate the APA.

6 189. An actual controversy exists. PLAINTIFFS contend that DEFENDANTS violated the APA and
7 that DEFENDANTS intend to continue to do so. PLAINTIFFS allege on information and belief that the
8 DEFENDANTS and each of them contend that the regulation is in full compliance with the
9 requirements of the APA or was not subject to them.

10 190. A judicial declaration of the legality of DEFENDANTS' conduct, and whether the regulation
11 barring application for, sale of, delivery of, and possession of the FAI Title 1 style firearm constitutes an
12 invalid underground regulation in violation of the APA is necessary and appropriate at this time.

13 191. As applied to those who lawfully could have acquired their FAI Title 1 style firearms lawfully
14 but for DEFENDANTS actions and inactions described herein, the Roberti-Roos Assault Weapon Act, as
15 amended by Senate Bill 118, is an unconstitutional deprivation of Due Process.

16 192. DEFENDANTS' unlawful conduct has caused, and unless enjoined by this Court, will continue
17 to cause irreparable injury to PLAINTIFFS, their members and supporters.

18 193. PLAINTIFFS, their supporters, and their members, have been specifically harmed because
19 DEFENDANTS' unlawful conduct has denied their statutory right to be heard and to provide input
20 regarding regulations governing the lawful sale of firearms.

21 194. Further, harm from this underground regulation lies in the subversion of the democratic values
22 the APA was intended to serve. The notice, comment, and review procedures of the APA were enacted
23 to secure the public benefit of openness, accessibility, and accountability in the formulation of rules that
24 implement legislative enactments. Irreparable harm to these important public benefits occurs whenever
25 a state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground
26 regulation.

27 195. The public in general and PLAINTIFFS specifically have an interest in preventing
28 DEFENDANTS from enforcing the underground regulation barring application for, sale of, delivery of,

1 and possession of the FAI Title 1 style firearms.

2 **NINTH CAUSE OF ACTION**
3 **Violation of Public Policy**
4 **(By All PLAINTIFFS Against All DEFENDANTS)**

5 196. Paragraphs 1-195 are realleged and incorporated by reference.

6 197. As described herein, it is DEFENDANTS' duty to design, develop, maintain and administer a
7 system for accepting and transmitting the necessary information for the lawful transfer of lawful
8 firearms, including those duties found within Penal Code sections 11106, 28155, 28205, 28215 and
9 28220. These duties are essential to the lawful function and implementation of the State of California's
10 firearm transfer scheme and protocols. DEFENDANTS have failed to and refuse to comply with these
11 duties. Instead, DEFENDANTS have spent time and resources utilizing their system in a scheme to
12 implement non-statutory bans on the FAI Title 1 style firearm.

13 198. Tax dollars have been, and are being spent, by the DEFENDANTS and at the direction of
14 DEFENDANTS on implementing and maintaining said ban.

15 199. DEFENDANTS have utilized employees of the DOJ in carrying out, implementing, and
16 maintaining the non-statutory ban on the FAI Title 1 style firearm.

17 200. DEFENDANTS' actions have also cost the state tens of thousands in tax revenue lost based
18 upon their actions.

19 201. The expenditure of taxpayer funds for the installation and maintenance of the DES that is
20 noncompliant with California laws relating to the sale and transfer of firearms is an illegal expenditure
21 of, waste of, or injury to the estate, funds, or other property of the State of California. Thus,
22 PLAINTIFFS bring this action under Code of Civil Procedure section 626a to obtain a judgment to
23 restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other property
24 of California.

25 202. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS will further
26 spend tax dollars on the installment and maintenance of the non-compliant DES within the Jurisdiction
27 of California. Absent relief from this Court, DEFENDANTS will continue to engage in conduct in
28 contravention to the State's firearm laws.

1 PRAYER

2 WHEREFORE, PLAINTIFFS pray as follows:

- 3 1. A declaration that there exists a category of firearm that is neither a “rifle,” nor
4 “shotgun,” nor “handgun” under California law.
- 5 2. A declaration that the DES, as designed, implemented, maintained and/or enforced by
6 DEFENDANTS, prohibits the sale of certain firearms that are neither “rifles,” nor
7 “shotguns,” nor “handguns” under California law.
- 8 3. A declaration that DEFENDANTS’ actions in designing, implementing, maintaining and
9 enforcing the DES, in its current form, constitute a barrier and prevent FAI, licensed
10 dealers and the general public from acquiring, possessing, transferring and selling certain
11 lawful firearms, including Title 1, within the State of California.
- 12 4. A declaration that the DES’s technological restrictions prohibiting the lawful transfer of
13 certain lawful firearms, including the Title 1, violate the Due Process Clauses of the
14 United States Constitution and the California Constitution, as well as DOJ’s duties
15 pursuant to Penal Code sections 11106, 28155, 28205, 28215 and 28220 and constitute an
16 underground regulation.
- 17 5. A declaration that the DES, as designed, implemented, maintained and/or enforced is not
18 in compliance with the mandate imposed by Penal Code sections 11106, 28155, 28205,
19 28215 and 28220.
- 20 6. A declaration that DEFENDANTS have intentionally instituted and/or maintained the
21 technological barriers designed, implemented and maintained within the DES.
- 22 7. A declaration that DEFENDANTS have intentionally delayed in removing the
23 technological barriers designed, implemented and maintained within the DES.
- 24 8. A declaration that DEFENDANTS, who occupy the field of processing the lawful
25 transfer of firearms, including the registration and licensing, and as the regulatory body
26 charged with implementing, administering and enforcing the laws relating to the lawful
27 transfer of firearms within the state, have a clear, present and ministerial duty to ensure
28 that the systems developed by the DOJ to facilitate the submission of information do not

1 act as barriers to the submission of the required information necessary for the sale, loan
2 and/or transfer of lawful firearms.

- 3 9. A preliminary injunction immediately enjoining DEFENDANTS, their agents,
4 employees, representatives and all those acting in concert with them from enforcing
5 administrative and/or technological barriers that prevent or otherwise inhibit the sale,
6 loan and/or transfer of lawful firearms, including but not limited to the FAI Title 1. This
7 includes a preliminary injunction against any barriers preventing the registration of the
8 FAI Title 1 style firearms as “assault weapons” on the basis that they were not possessed
9 prior to September 1, 2020.
- 10 10. A permanent injunction enjoining DEFENDANTS, their agents, employees,
11 representatives and all those acting in concert with them from enforcing administrative
12 and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of
13 lawful firearms, including but not limited to the FAI Title 1. This includes a preliminary
14 injunction against any barriers preventing the transfer of the FAI Title 1 style firearms as
15 “assault weapons” on the basis that they were not possessed prior to September 1, 2020.
- 16 11. A writ of mandate ordering DEFENDANTS to design, implement, maintain and enforce
17 updates to the database systems such that it does not proscribe the lawful sale, transfer
18 and loan of an entire class of lawful firearms, including the FAI Title 1 and such that it
19 comports with Penal Code sections 11106, 28155, 28205, 28215 and 28220. This
20 includes an writ of mandate ordering DEFENDANTS to process and register all Title 1
21 style firearms as “assault weapons” irrespective of whether they were possessed on or
22 before September 1, 2020.
- 23 12. An order temporarily, preliminarily, and permanently enjoining and prohibiting
24 DEFENDANTS and all others placed on notice against enforcing the provisions limiting
25 the possession and registration of FAI Title 1 style firearms if not possessed prior to
26 September 1, 2020.
- 27 13. An order temporarily, preliminarily, and permanently enjoining and prohibiting
28 DEFENDANTS and all others placed on notice against to restrain and prevent the illegal

1 expenditure of, waste of, or injury to, the estate, funds, or other property of California.

2 14. An award for damages according to proof;

3 15. An award for punitive damages;

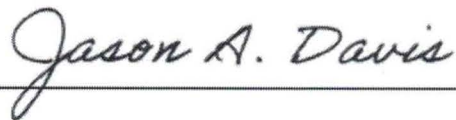
4 16. An award of PLAINTIFFS reasonable attorneys' fees and costs incurred in this matter;

5 17. That the Court enter judgment accordingly; and

6 18. Such other and further relief as the Court deems just and proper.

7 Date: August 19, 2020

8 Respectfully submitted,

9 A handwritten signature in cursive script that reads "Jason A. Davis". The signature is written in black ink and is positioned above a solid horizontal line.

10 JASON A. DAVIS

11 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 FIRST AMENDED COMPLAINT FOR DECLARATORY AND
5 INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR
6 OTHER APPROPRIATE RELIEF in the matter of *Franklin Armory, Inc. et al. v. California Department*
7 *of Justice, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I
8 allege 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: August 19, 2020

14 
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JAY JACOBSON

Exhibit A



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[®]”) 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[™] firearm and firearms configured with their CSW[®] 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[®].

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[®] 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

(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:

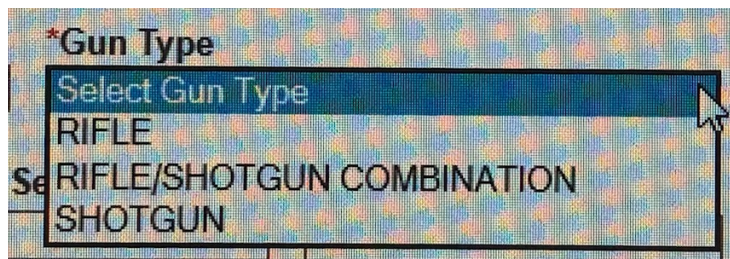
- 1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.
- 2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).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

October 24, 2019

Page 3



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.”

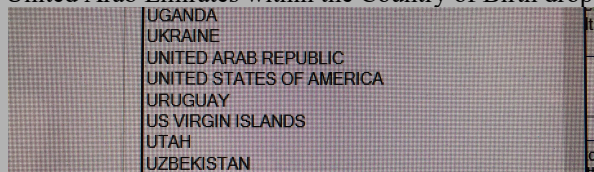
This defect, however, has severely impacted my client’s business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm 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.

October 24, 2019

Page 4

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[®], 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.'"

October 24, 2019

Page 5

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[®] 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[®], 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[®].

DEMAND

Franklin Armory[®] 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[®] 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[®] 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.*,

October 24, 2019

Page 6

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[®] 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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I
5 am over the age eighteen (18) years and am not a party to the within action. My business address is 180
6 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

6 On August 19, 2020, I served the foregoing document(s) described as

7 **VERIFIED FIRST AMENDED COMPLAINT FOR DECLARATORY AND**
8 **INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR**
9 **PROHIBITION OR OTHER APPROPRIATE RELIEF**

9 on the interested parties in this action by placing
10 [] the original
11 [X] a true and correct copy
thereof by the following means, addressed as follows:

12 Benjamin Barnouw
13 Deputy Attorney General
14 California Department of Justice
15 300 South Spring Street, Suite 1702
16 Los Angeles, CA 90013
17 Email: Ben.Barnouw@doj.ca.gov
18 *Attorney for Respondents-Defendants*

16 _____ (BY MAIL) As follows: I am “readily familiar” with the firm’s practice of collection and
17 processing correspondence for mailing. Under the practice it would be deposited with the U.S.
18 Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in
19 the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date is more than one day after date of deposit for mailing
an affidavit.

20 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
21 transmission through One Legal. Said transmission was reported and completed without error.

22 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on August 19, 2020, at Long Beach, California.

25 

26 _____
27 Laura Palmerin
28