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

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

11 Petitioners-Plaintiffs,

12 v.

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

16 Respondents-Defendants.

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable
James C. Chalfant; Department 85]

**DECLARATION OF ANNA M. BARVIR
IN SUPPORT OF PLAINTIFFS' MOTION
FOR LEAVE TO FILE SECOND
AMENDED VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF; PETITION FOR WRIT OF
MANDATE AND/OR PROHIBITION OR
OTHER APPROPRIATE RELIEF**

Hearing Date: March 25, 2021
Hearing Time: 9:30 a.m.
Department: 85

Action filed: May 27, 2020

1 **DECLARATION OF ANNA M. BARVIR**

2 I, Anna M. Barvir, declare as follows:

3 1. I am an attorney licensed to practice law in the state of California. I am an Associate
4 Attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I
5 have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and
6 would testify competently thereto.

7 2. Plaintiffs-Petitioners Franklin Armory, Inc., and California Rifle and Pistol Association,
8 Incorporated (CRPA) (collectively, "Petitioners") seek leave, in good faith to file Second Amended
9 Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate and/or
10 Prohibition or Other Appropriate Relief (hereafter, "Second Amended Complaint").

11 3. The proposed Second Amended Complaint is largely the same as Petitioners' First
12 Amended Complaint, except that it: (1) updates the language in the verification of Jay Jacobson
13 executed on behalf of Franklin Armory; (2) adds the verification of Patrick Morris executed on behalf of
14 CRPA that was inadvertently left off the First Amended Complaint; and (3) clarifies a few limited
15 factual allegations regarding Petitioners' standing to bring this action. The proposed Second Amended
16 Complaint also includes a handful of edits to correct typographical errors and provide minor clarifying
17 language not changing the substance of the allegations of the First Amended Complaint. A proposed
18 "clean" version of Petitioners' proposed Second Amended Complaint is attached hereto as **Exhibit 1**. A
19 "redlined" version of Petitioners' proposed Second Amended Complaint is also attached hereto as
20 **Exhibit 2**.

21 4. The proposed amendments revising the verification of Jay Jacobson on behalf of
22 Petitioner Franklin Armory and adding the verification of Patrick Morris on behalf of Petitioner CRPA,
23 seek to cure a potential technical defect in the First Amended Complaint and would not alter any causes
24 of action or claims. The verification amendments are necessary to strictly comply with the writ petition
25 requirements of California Code of Civil Procedure sections 446 and 1086 and to prevent any claim that
26 the writ petition is defective, or that writ relief should be denied simply due to this innocent omission.

27 5. On or about December 21, 2020, Respondents served several sets of written discovery,
28 including requests for admission, requests for production of documents, and form interrogatories, on

1 Petitioners Franklin Armory and CRPA. One of the requests, served on Petitioner CRPA, asked CRPA
2 to admit the organization did not verify the first amended complaint. Upon reviewing that request for
3 admission and preparing to respond to it on or about December 30, 2020, I reviewed the First Amended
4 Complaint and discovered, for the first time, that some unintentional oversight led to there being no
5 verification on file for Petitioner CRPA. The oversight was surprising to me, because CRPA had been
6 actively involved with bringing this lawsuit from its inception and I could think of no reason the
7 verification would be missing. The discovery spurred me to immediately review the language of the
8 verification executed on behalf of Petitioner Franklin Armory. It was then that I realized it could be read
9 to mean—though it was never Petitioner’s intention—that the entire verification was being made on
10 “information and belief” instead of on personal knowledge. It was then that I realized that the unclear
11 language might be interpreted in a way that does not strictly adhere to the writ petition requirements of
12 California Code of Civil Procedure sections 446 and 1086.

13 6. The remaining proposed amendments simply provide clarity and more information about
14 the types of Title 1 firearms Franklin Armory manufactures, as well as information approximating the
15 number of orders Franklin Armory has received from licensed California dealers and California
16 residents, including members of CRPA. The amendments are being proposed in response to concerns
17 that the First Amended Complaint did not allege (or at least was not clear) that Franklin Armory
18 manufactures Title 1 firearms that remain legal to transfer in California after the passage of Senate Bill
19 118, which expanded the definition of “assault weapon” to include some Franklin Armory Title 1
20 firearms. To the extent the Court agrees with Respondents’ concerns on this score, the proposed
21 amendments are necessary to solidify Petitioners’ standing to bring the petition for writ relief and the
22 request for injunctive relief.

23 7. Respondents filed a demurrer on the three related grounds that (1) Petitioners’ claims are
24 moot in light of the passage of SB 118, (2) Petitioners failed to alleged sufficient facts to establish
25 standing, and (3) Petitioners’ claims are not ripe for review because they “have failed to allege any
26 actual controversy regarding the DES.” (Demurrer, pp. 6-9.) Many of Respondents’ arguments, it seems,
27 are based on a fundamental misunderstanding of the facts alleged in the operative complaint. For
28 instance, Respondents’ demurrer repeatedly claims that Franklin Armory failed to allege that it

1 manufactures any “undefined firearm subtype” that remains lawful to transfer in California after the
2 adoption of SB 118. But Petitioners maintain that the First Amended Complaint is clear that Franklin
3 Armory manufactures a “series” of firearms under the “Title 1” moniker and that, even after the
4 “assault weapons” law was expanded, some Title 1 firearms remain lawful to possess, sell, transfer,
5 purchase loan, or otherwise be distributed in California . . .”

6 8. On or about January 8, 2021, after reviewing and preparing to respond to Respondents’
7 demurrer and preparing Respondents’ discovery requests, counsel for Petitioners, Anna M. Barvir,
8 conferred with counsel for Respondents, Benjamin Barnouw, to discuss several concerns, including the
9 potential verification defect and the clarity required of Petitioners’ allegations about what firearms
10 Franklin Armory manufactures. It was the first time I had directly spoken to Mr. Barnouw about these
11 concerns, having only taken over responsibility for the case in late-December 2020.

12 9. We specifically discussed the possibility of amendment to add and update verifications
13 and to further allege what, if any, firearms Franklin Armory manufactures that are not “assault weapons”
14 under SB 118. I offered and agreed that it might be prudent to file a second amended complaint, making
15 the discussed changes. But, because Plaintiffs already filed a first amended pleading without leave of
16 court, I informed Mr. Barnouw that Petitioners’ would need to file a motion for leave to amend.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed in Stanton, California on January 12, 2021.

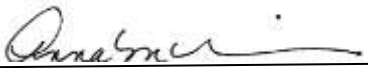
20 
21 _____
22 Anna M. Barvir
23 Declarant
24
25
26
27
28

EXHIBIT 1

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Jason A. Davis – SBN 224250
2 Anna M. Barvir – SBN 268728
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7 Attorneys for Petitioners - Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

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

13 Petitioners-Plaintiffs,)
14)

15 v.)

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

19 Respondents-Defendants.)
20)
21)
22)
23)
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25)
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28)

Case No.: 20STCP01747

**VERIFIED SECOND AMENDED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; PETITION FOR
WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER
APPROPRIATE RELIEF**

UNLIMITED JURISDICTION

1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE & 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 lawful
5 transfer of firearms and failure and/or refusal to timely perform the duties relating to the sale, loan,
6 transfer, purchase and processing of firearms that are neither “handguns,” nor “shotguns,” nor “rifles,”
7 including the FRANKLIN ARMORY, INC. firearms designated with the model name “Title I .”

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 I” by FAI, and
15 which come in various calibers such as 5.56 NATO (a centerfire caliber) and .17 WSM (a rimfire caliber)

16 3. The FAI Title I firearms, as designed and sold by FAI, are lawful to possess, sell, transfer,
17 purchase, loan, or otherwise be distributed within California through licensed California firearm dealers
18 to persons who are not otherwise prohibited from possessing firearms, though recent changes in the law
19 have limited the market for the 5.56 NATO variant of the FAI Title 1.

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

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

1 6. In this suit, CRPA represents the interests of its many citizen and taxpayer members and members
2 of CRPA who reside in California and who wish to and have attempted to sell, purchase, acquire, transfer
3 and possess lawful firearms, including the Title 1, but are prohibited from doing so by the technological
4 limitations implemented by DEFENDANTS. CRPA brings this action on behalf of itself and its tens of
5 thousands of supporters in California, including FAI, who have been, are being, and will in the future be
6 subjected to DEFENDANTS' refusal and/or delay in removing the technological barrier designed,
7 implemented and maintained by DEFENDANTS that prohibits the lawful sale, loan, transfer and
8 purchase of certain lawful firearms, including but not limited to the FAI Title 1.

9 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully constituted
10 executive agency charged with implementing, enforcing and administering the State of California's
11 firearm laws and systems for processing firearm transfers and loans. The DOJ is under the direction and
12 control of the Attorney General. (Gov'. Code § 15000.) The DOJ is composed of the Office of the
13 Attorney General and those other divisions, bureaus, branches, sections or other units as the Attorney
14 General may create within the department pursuant to Section 15002.5. (Gov. Code § 1500 l.) The
15 Bureau of Firearms ("BOF") was created by the Attorney General within the Division of Law
16 Enforcement for the purposes of designing, implementing and enforcing California's firearm laws, rules,
17 regulations and support systems. The DOJ is responsible for the design, development, maintenance and
18 enforcement of the Dealer Record of Sale Dealer Entry System, the system by which licensed California
19 firearm dealers submit purchaser and firearm information to the California Department of Justice for
20 processing in accordance with California's firearm transfer laws and regulations.

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

1 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and
2 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.
3 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through 10
4 is responsible in some capacity or manner for the adoption or enforcement of the unlawful regulations as
5 alleged in this Complaint and Petition. PLAINTIFFS pray for leave to amend this Complaint and Petition
6 to show the true names, capacities and/or liabilities of DOE Defendants 1 through 10 if and when they
7 are determined.

8 **JURISDICTION AND VENUE**

9 10. This Court has jurisdiction under article I, section 3 and article VI, section 10 of the California
10 Constitution, and Code of Civil Procedure sections 525, 526, 1060, 1 085 and 1087. This Court also has
11 jurisdiction because PLAINTIFFS lack a "plain, speedy, and adequate remedy, in the ordinary course of
12 law." (Code Civ. Proc., § 1086.)

13 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
14 sections 393, subdivision (b), and 394, subdivision (a). Also, venue properly lies within this Court
15 because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc., §
16 401.)

17 **AUTHENTICITY OF EXHIBITS**

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

21 **GENERAL ALLEGATIONS**

22 [THE DEFENDANTS' GENERAL DUTIES]

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

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

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

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

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

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

17 (Emphasis added.)

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

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

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

25 21. As part of its legislative firearm regulation scheme, the State of California regulates firearms in a
26 wide variety of approaches. Some laws focus on the transfer of firearms (e.g., registering firearms and
27 prohibiting certain prohibited persons from possessing firearms), some laws focus on the use of firearms
28 (e.g., regulating the carrying of firearms in public places), some laws focus on the location (e.g.,

1 prohibiting firearms within school zones) and some focus on the technological aspects of particular
2 firearms (e.g., regulating firearms based upon their function , design and physical characteristics).

3 [CALIFORNIA’S RELEVANT DEFINITIONS]

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

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

10 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code
11 section 26860, “long gun” means any firearm that is not a handgun *or a machinegun*. (Pen. Code, §
12 10 16865.)

13 b. "*Handgun*" means any *pistol, revolver, or firearm capable of being concealed upon the person;*
14 and, nothing shall prevent a device defined as a "handgun" from also being found to be a *short-barreled*
15 *rifle*¹ or a *short-barreled shotgun*². (Pen. Code, § 16640.) The terms "*firearm capable of being*
16

17 ¹ "*Short-barreled rifle*" means any of the following: (a) A rifle having a barrel or barrels of less than
18 16 inches in length;

19 (b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether
20 by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than
21 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily
22 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.)

23 ² "*Short-barreled shotgun*" means any of the following: (a) A firearm that is designed or redesigned
24 to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length; (b) A firearm that
25 has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun
26 shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that
27 weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18
28 inches in length; (d) Any device that may be readily restored to fire a fixed shotgun shell which, when so
restored, is a device defined in subdivisions (a) to (c), inclusive; and (e) Any part, or combination of
parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c),
inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive,
can be readily assembled if those parts are in the possession or under the control of the same person.
(Pen. Code, § 17180.)

1 *concealed upon the person," "pistol," and "revolver" apply to and include any device designed to be*
2 *used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of*
3 *combustion, and that has a barrel less than 16 inches in length. These terms also include any device that*
4 *has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16*
5 *2 inches in length. (Pen. Code, § 16530. See also Pen. Code, §§ 17010, 17080.)*

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

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

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

13 [UNDEFINED “FIREARM” SUBTYPES]

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

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

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

22 ³ As used in Penal Code sections 16530, 16640, 16650, 16660, 16870, and 17170, sections 17720 to
23 17730, inclusive, section 17740, subdivision (t) of section 27555, Article 2 (commencing with section
24 30300) of Chapter 1 of Division 10 of Title 4, and Article 1 (commencing with section 33210) of
25 Chapter 8 of Division 10 of Title 4, “*rifle*” means a weapon designed or redesigned, made or remade,
and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each
single pull of the trigger. (Pen. Code § 17090.)

26 ⁴ As used in Penal Code sections 16530, 16640, 16870, and 17180, sections 17720 to 17730,
27 inclusive, section 17740, section 30215, and Article 1 (commencing with section 33210) of Chapter 8 of
28 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 30. The FAI Title I was originally designed in 2012, at which time the BOF was notified of the
2 design and features and of FA I's intent to manufacture, produce, sell and distribute the firearm within
3 the State of California.

4 [CALIFORNIA DEALERS' CENTRAL ROLE]

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

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

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

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

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

19 36. The State did not authorize the DOJ to indiscriminately stop or inhibit sales. Rather, the State has
20 only granted the DOJ the authority to stop sales for certain specified reasons. For example, the DOJ is
21 permitted to stop the sale if a purchaser is deemed a prohibited person. (See e.g. Pen. Code, §28220.).

22 37. The State did not authorize the DOJ to indiscriminately delay sales. Rather, the State only
23 granted the DOJ the authority to delay sales for specified reasons. For example, the DOJ is permitted to
24 delay if its records indicate that the purchaser may be prohibited, additional research is needed to make a
25 final determination. (See e.g. Pen. Code, §28220(d) & (f)(1)(A) or if the DROS application contains
26 any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the
27 purchaser or the handgun or other firearm to be purchased - authorizing a 30-day delay under specified
28

1 circumstances but permitting the release of the firearm by the Dealer if the DOJ cannot determine the
2 purchaser to be ineligible to possess firearms within the 30-day period.)

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

5 [CALIFORNIA'S FIREARM TRANSFER SCHEME OVERVIEW]

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

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

- 1 • Wait a ten-day waiting period⁵ (Pen. Code §§ 26950-26970);
- 2 • Obtain a Firearm Safety Device (FSD) (Pen. Code, § 23635);
- 3 • Possess a Firearm Safety Certificate (FSC)⁶ (Pen. Code § 31700).

4 [CALIFORNIA'S FIREARM REGISTRY-INFORMATION AND FORM REQUIREMENTS]

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

- 9 a. As required by the Department of Justice, every dealer shall keep a register or record of
10 electronic or telephonic transfer in which shall be entered" certain information relating to the
11 transfer of firearms. (Pen. Code, § 28100.)
- 12 b. "The Department of Justice shall prescribe the *form* of the register and the record of
13 electronic transfer pursuant to Section 28105." (Pen. Code§ 28155.)
- 14 c. The Attorney General shall keep and properly file a complete record of Dealers' Records of
15 Sale of firearms. (Pen. Code, § 11106, subd. (a)(1)(D).)
- 16 d. The Attorney General shall permanently keep and properly file and maintain *all* information
17 reported to the DOJ pursuant to any law as to *firearms* and maintain a registry thereof. (Pen.
18 Code, § 11106, subd. (b)(1)(A).) Specific information that must be included within the
19 registry includes the "manufacturer's name if stamped on the firearm, model name or number
20 if stamped on the firearm, and, if applicable, the serial number, other number (if more than
21 one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or
22 used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not
23

24
25 ⁵ That is, ten 24-hour periods must pass once the OROS is submitted before the purchaser can
26 acquire 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)

27 ⁶ Firearm purchasers must take an exam on firearm safety from an instructor and obtain a minimum
28 75% passing score to receive a certificate (Pen. Code § 31615), though certain people are exempt from
the FSC requirement (e.g., peace officers, military, California Concealed Carry License holders).

1 have a serial number or any identification number or mark assigned to it, that shall be noted.”

2 (Pen. Code, § 11106, subd. (b)(1)(D).)

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

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

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

1 (36) Any information required by Chapter 5 (commencing with Section 28050);

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

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

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

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

10 43. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title 1
11 variants and other firearms.

12 [POINT OF CONTACT STATE UNDER FEDERAL LAW]

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

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

25 46. The California DOJ acts as the single POC for all firearm transfers within California pursuant to
26 a memorandum of understanding with the FBI. As of January 1, 2003, licensed firearm dealers in
27 California are required to submit all background checks to DOJ electronically via the Dealer Record of
28 Sale Entry System (“DES”). As such, nearly all of California NICS checks coming from FFLs are run

1 through the DES. And, pursuant to both the memorandum of understanding and 28 C.F.R. Part 25.10, a
2 person found ineligible to receive a firearm may appeal the decision.

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

6 [CALIFORNIA'S FIREARM REGISTRY - METHOD OF ELECTRONIC TRANSMISSION]

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

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

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

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

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

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

21 [NATURE OF DISPUTE]

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

24 55. Specifically, by design, when the DES user is inputting the designated information into the DES,
25 they must input information related to the gun type (“long gun” or “handgun”) from a prepopulated
26 dropdown list. Upon selecting “long gun,” the DES system is designed to and functions to self-populate
27 a subset of fields, and it requires one of three options to be designated before the dealer may proceed
28 with the completion of the form and submission of the required information to the DOJ. Those three

1 options are: “rifle,” “rifle/shotgun,” “shotgun.” Unlike the subset of fields that self-populate for “Color,”
2 “Purchaser Place of Birth,” and Seller Place of Birth”, each of which contains the catchall “other”
3 options, the “long guns” subset of fields does not contain the “other” option. Thus, the DES system
4 prevents licensed firearm dealers from proceeding with the sale, transfer, loan or submission of
5 information to the DOJ for certain firearms, including the FAI Title I.

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

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

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

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

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

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

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

26 63. This technological barrier could also be alleviated if the DOJ authorizes any of a multitude of
27 alternative means pursuant to the authority granted it by Penal Code section 28205, subdivision (c),
28

1 including but not limited to, instructions to DES users to proceed by selecting preauthorized designated
2 options and identifying the firearm as an “other” in one of the “comment” fields within the DES.

3 64. DEFENDANTS have known of the deficiencies of the DES and intended them from inception,
4 and since the introduction of the FAI Title 1, they have been requested to correct said defect, and have
5 refused to do so, thereby barring the sale of the FAI Title 1.

6 [DOJ AND THE FAI TITLE 1]

7 65. DEFENDANTS and FAI have been in communications regarding the design and features of the
8 FAI Title I since approximately 2012.

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

11 67. Since then, the DOJ has neither corrected the DES, nor has it implemented alternative procedures
12 to facilitate the lawful transfer of the Title I.

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

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

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

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

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

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

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

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

15 76. As a result, FAI has been unable to transfer approximately 35,000 Title 1 firearms reserved via
16 monetary deposits made by licensed California firearm dealers and California residents, including
17 members of CRPA, who seek to lawfully sell, transfer, purchase, acquire and/or possess the FAI Title 1
18 firearms. This inability for purchasers and dealers to submit the true, accurate and complete information
19 through the DES for certain firearms, such as the Title 1, has damaged FAI in an amount of at least
20 \$33,000,000 by preventing them from effectuating the sale of the reserved product as well as non-
21 reserved product in a final amount to be determined at trial, and it has denied the rights of California
22 citizens who are not prohibited from acquiring or even completing an application to acquire firearms
23 from acquiring the Title 1.

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

26 78. Neither DEFENDANTS’ design, development, maintenance and enforcement of the DES in a
27 manner that functions as a barrier to the lawful transfer of certain lawful firearms, nor DEFENDANTS’
28

1 requirement for information not expressly authorized by Penal Code sections 28200 through 28255, as it
2 pertains to firearms other than handguns, are discretionary acts.

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

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

7 81. The DOJ has a duty to facilitate the lawful transfer of firearms and collect certain information
8 from the dealers in the process via a method of submission designated by the DOJ. They do not,
9 however, have the authority to mandate alternative information or prevent the lawful transfer of a class
10 of firearms not otherwise prohibited under California law by technological limitations of their designs,
11 either intentional or otherwise.

12 [UNDERGROUND REGULATIONS]

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

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

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

22 85. The agency must provide reports of detailed reasons for a proposed regulation, the alternatives
23 considered and the effect the proposed regulation is projected to have on individuals. (Gov. C §§
24 11346.2, 11346.9.)

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

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

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

9 89. The purpose of the APA’s comprehensive scheme is to ensure that “those persons or entities
10 whom a regulation will affect have a voice in its creation,” (*Armistead v. State Personnel Board* (1978)
11 Cal.3d 198, 204-205), to allow the public to inform the agency about possible unintended consequences
12 of a proposed regulation, and to protect against “bureaucratic tyranny.” (*Cal. Advocates for Nursing*
13 *Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508.)

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

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

28

1 92. Accordingly, PLAINTIFFS seek declaratory and injunctive relief to invalidate and enjoin
2 DEFENDANTS' enforcement of the challenged rules as unlawful underground regulations.

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

5 [UNLAWFUL BAN ON FIREARMS]

6 94. On information and belief, DEFENDANTS acted in concert to prevent the sale of FAI Title 1
7 style firearms indefinitely. Specifically, DEFENDANTS conspired and did delay and defer any action
8 that would otherwise permit the formal sale, transfer, and delivery of the FAI Title 1 style firearms until
9 legislation designed and intended to ban the sale, transfer, and delivery of the Title 1 would be
10 implemented and effective.

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

15 [CRIMINAL CONDUCT]

16 96. When an act or omission is declared by a statute to be a public offense and no penalty for the
17 offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. (Pen. Code, §
18 19.4.)

19 [LIABILITY STATUTES]

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

24 98. Where a public entity is under a mandatory duty imposed by an enactment that is designed to
25 protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind
26 proximately caused by its failure to discharge the duty unless the public entity establishes that it
27 exercised reasonable diligence to discharge the duty. (Govt. Code, § 815.6.)
28

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

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

4 [REDESIGNATION AS “ASSAULT WEAPON”]

5 101. At all times relevant, the FAI Title I was not prohibited from being transferred, sold, or
6 possessed within California.

7 102. On information and belief, the acts described above were performed by DEFENDANTS with
8 the intent to delay and prohibit the sales and lawful transfer of the FAI Title I style firearms to FAI’s
9 customers within California until such time as legislation was developed, proposed, and passed
10 designating the FAI Title 1 style firearms as an “assault weapons” under the Roberti-Roos Assault
11 Weapon Act.

12 103. On information and belief, Assembly Bill 88 was the result of DEFENDANTS’ first attempt to
13 redesignate the FAI TITLE 1 style firearms as “assault weapons”.

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

16 105. On information and belief, DEFENDANTS’ scheme was ultimately successful with the passage
17 of Senate Bill 118, which passed and became law on August 6, 2020 - immediately designating the FAI
18 Title 1 an “assault weapon” under the Robert-Roos Assault Weapon Act - thereby immediately
19 prohibiting the transfer of the FAI Title 1 in 5.56 NATO to their customers, though the FAI Title 1 in
20 .17 WSM remained unaffected by this legislation.

21 106. On information and belief, while Senate Bill 118 permits those in possession of firearms
22 deemed “assault weapons” under the newly implemented definition to register and keep their firearms if
23 they possessed the firearms prior to September 1, 2020, the DEFENDANTS’ plan, scheme, actions and
24 inaction in prohibiting the transfer of the FAI Title 1 prohibited those who placed deposits on the FAI
25 Title 1 series firearms from lawfully acquiring and possessing their firearms prior to the September 1,
26 2020 deadline.

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

4 **FIRST CAUSE OF ACTION:**
5 **DECLARATORY AND INJUNCTIVE RELIEF**
6 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

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

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

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

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

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

- 23 a. There exists a category of firearm that is neither a “rifle,” nor “shotgun,” nor “handgun”
24 under California law.
- 25 b. The DES, as it is currently designed, implemented, maintained and/or enforced by
26 DEFENDANTS prohibits the sale of certain firearms that are neither “rifles,” nor
27 “shotguns,” nor “handguns” under California law.
- 28

- 1 c. DEFENDANTS' actions in designing, implementing, maintaining and enforcing the
2 DES, in its current form , constitute a barrier and prevent FAI, licensed dealers and the
3 general public from acquiring, possessing, transferring and selling certain lawful
4 firearms, including Title 1, within the State of California.
- 5 d. The DES's technological restrictions prohibiting the transfer of certain lawful firearms,
6 including the Title 1, violate the DOJ's duties, including those found within Penal Code
7 sections 28155, 28205, 28215, and 28220.
- 8 e. The DES, as it is currently designed, implemented, maintained and/or enforced, is not in
9 compliance with the mandate imposed by Penal Code sections 28155, 28205, 28215, and
10 28220.
- 11 f. DEFENDANTS have intentionally instituted the technological barriers designed for and
12 implemented within DES, which is maintained and enforced by the DEFENDANTS.
- 13 g. DEFENDANTS have intentionally delayed in removing the technological barriers
14 designed for and implemented within DES, which is maintained and enforced by the
15 DEFENDANTS.
- 16 h. DEFENDANTS, who occupy the field of processing the lawful transfer of firearms,
17 including the registration and licensing, and as the regulatory body charged with
18 implementing, administering and enforcing the laws relating to the lawful transfer of
19 firearms within the state, have a clear, present and ministerial duty to ensure that the
20 systems developed by the DOJ to facilitate the submission of information do not act as
21 barriers to the submission of the required information necessary for the sale, loan and/or
22 transfer of lawful firearms.

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

27 120. Additionally, DEFENDANTS' design, implementation, maintenance and enforcement of the
28 DES system, in conjunction with the general firearm transfer laws within the State of California and the

1 resultant injuries to PLAINTIFFS, are and will be of a continuing nature for which PLAINTIFFS will
2 have no adequate remedy at law.

3 121. Accordingly, PLAINTIFFS seek an injunction pursuant to Code of Civil Procedure sections
4 525 and 526. Unless DEFENDANTS, their agents, employees, representatives and all those acting in
5 concert with them are enjoined from enforcing administrative and/or technological barriers that prevent
6 the sale of lawful firearms, including but not limited to the FAI Title 1, PLAINTIFFS will continue to
7 suffer great and irreparable harm.

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

13 **SECOND CAUSE OF ACTION:**
14 **PETITION FOR WRIT OF MANDATE**
15 **(AGAINST ALL DEFENDANTS)**

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

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

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

26 126. DEFENDANTS' design, implementation, maintenance and enforcement of the DES system
27 pursuant to Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the
28 lawful sale, transfer and loan of an entire class of lawful firearms, including the FAT Title 1, are and will

1 be of a continuing nature for which PLAINTIFFS have no plain, speedy or adequate remedy at law, and
2 which have and will continue to result in irreparable harm.

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

5 128. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
6 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce
7 updates to the DES system such that it does not proscribe the lawful sale, transfer and loan of an entire
8 class of lawful firearms, including the FAI Title 1 and such that it comports with Penal Code sections
9 28155, 28205, 28215 and 28220.

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

15 **THIRD CAUSE OF ACTION:**
16 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
17 **(AGAINST ALL DEFENDANTS)**

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

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

23 132. FAI currently has tens of thousands of contracts to sell the FAI Title I within California.

24 133. DEFENDANTS knew of FAI’s contracts.

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

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

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

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

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

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

9 **FOURTH CAUSE OF ACTION:**
10 **TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
11 **(AGAINST ALL DEFENDANTS)**

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

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

15 142. FAI and FAI's California customers and prospective customers were in an economic
16 relationship that probably would have resulted in an economic benefit to FAI.

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

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

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

24 146. By refusing to correct the defects in the DES and/or implementing alternative means to
25 facilitate the lawful transfer of the lawful firearms, including the FAI Title 1, DEFENDANTS intended
26 to disrupt the relationships or knew that disruption of the relationships between FAI and its customers
27 and/or prospective customers was certain or substantially certain to occur. DEFENDANTS intentionally
28 interfered with such opportunities in violation of its duties to design, develop, maintain and administer a

1 system for accepting and transmitting the necessary information for the lawful transfer of lawful
2 firearms, including those duties found within Penal Code sections 28155, 28205, 28215, and 28220.

3 147. The economic relationships between FAI and its customers and prospective customers were
4 disrupted.

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

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

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

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

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

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

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

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

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

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

3 157. DEFENDANTS failed to act with reasonable care.

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

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

23 **42 U.S.C. § 1983- Violation of Due Process**

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

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

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

27 164. An actual controversy has arisen now and exists between PLAINTIFFS and DEFENDANTS
28 relative to their respective rights and duties described herein, in that PLAINTIFFS contend that at all
times prior to the signing of Senate Bill 118, the FAI Title 1 style firearm was lawful to sell, transfer,

1 deliver, and possess within California and FAI was entitled to and lawfully could have transferred all
2 Title I series firearms on deposit to its customers, FAI's customers, including those that are members of
3 CRPA, were entitled to apply for, purchase, receive, and possess the FAI Title 1 series firearms which
4 they had placed earnest money deposits on. PLAINTIFFS could not complete the purchase of said
5 firearms due to DEFENDANTS' actions in thwarting, delaying, and otherwise implementing a
6 nonstatutory ban on the FAI Title I series firearms until such time as the California legislature
7 implemented statutory restrictions on said products.

8 165. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any
9 person of life, liberty, or property, without due process of law." (U.S. Const., amend XIV.)
10 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
11 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
12 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I, §
13 9.)

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

20 167. California makes it clear that "No state agency shall issue ... any guideline... unless the
21 guideline . . . has been adopted as a regulation filed with the Secretary of State..." (Gov. Code, §
22 11340.5, subd. (a).)

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

26 169. In California, a regulation that has not been adopted in compliance with the Administrative
27 Procedures Act is deemed an Underground Regulation and is invalid. (See *Modesto City Schools v.*
28 *Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) California is one of the few states that

1 require rulemaking procedure for the adoption of guidance documents. (California Practice Guide:
2 Administrative Law 25:45, by Rutter Group.)

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

6 171. As such, PLAINTIFFS and the public lacked any mean meaningful opportunity to seek redress
7 of injuries caused by DEFENDANTS' actions or by which they may seek to effectuate the transfer of
8 the said firearms.

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

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

17 174. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
18 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
19 provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration of
20 said firearms not possessed prior to September 1, 2020 - compliance with which, for PLAINTIFFS, was
21 thwarted and made impossible by DEFENDANTS' actions described herein.

22 175. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
23 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42 U.S.C.
24 § 1988.

25 **SEVENTH CAUSE OF ACTION**
26 **42 U.S.C. § 1983 - Violation of Due Process**
27 **Deprivation of Substantive Due Process of Law**
28 **(By All PLAINTIFFS against All DEFENDANTS)**

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

1 177. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any
2 person of life, liberty, or property, without due process of law.” (U.S. Const., amend XIV.)
3 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
4 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
5 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I,
6 § 9.)

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

13 179. 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.

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

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

24 182. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
25 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
26 provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration of
27 said firearms not possessed prior to September 1, 2020 - compliance with which, for PLAINTIFFS, was
28 thwarted and made impossible by DEFENDANTS’ actions described herein.

1 183. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
2 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42 U.S.C.
3 § 1988.

4 **EIGHTH CAUSE OF ACTION**
5 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
6 **Validity of Non-Statutory Ban on Lawful Product Via Technological Barriers**
7 **(By All PLAINTIFFS Against All DEFENDANTS)**

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

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

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

15 187. There is no express exemption from the APA in the California Code regarding the promulgation
16 of regulations to non-statutory bans on certain classes of firearms, there was no emergency sufficient to
17 justify bypassing the APA, and the regulation is not a mere restatement of statutory law. It is thus
18 subject to the procedural requirements set forth in the APA.

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

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

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

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

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

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

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

15 195. The public in general and PLAINTIFFS specifically have an interest in preventing
16 DEFENDANTS from enforcing the underground regulation barring application for, sale of, delivery of,
17 and possession of the FAI Title 1 style firearms.

18 **NINTH CAUSE OF ACTION**
19 **Violation of Public Policy**
20 **(By All PLAINTIFFS Against All DEFENDANTS)**

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

22 197. As described herein, it is DEFENDANTS' duty to design, develop, maintain and administer a
23 system for accepting and transmitting the necessary information for the lawful transfer of lawful
24 firearms, including those duties found within Penal Code sections 11106, 28155, 28205, 28215 and
25 28220. These duties are essential to the lawful function and implementation of the State of California's
26 firearm transfer scheme and protocols. DEFENDANTS have failed to and refuse to comply with these
27 duties. Instead, DEFENDANTS have spent time and resources utilizing their system in a scheme to
28 implement non-statutory bans on the FAI Title 1 style firearm.

198. Tax dollars have been, and are being spent, by the DEFENDANTS and at the direction of

1 DEFENDANTS on implementing and maintaining said ban.

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

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

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

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

16 **PRAYER**

17 WHEREFORE, PLAINTIFFS pray as follows:

- 18 1. A declaration that there exists a category of firearm that is neither a "rifle," nor
19 "shotgun," nor "handgun" under California law.
- 20 2. A declaration that the DES, as designed, implemented, maintained and/or enforced by
21 DEFENDANTS, prohibits the sale of certain firearms that are neither "rifles," nor
22 "shotguns," nor "handguns" under California law.
- 23 3. A declaration that DEFENDANTS' actions in designing, implementing, maintaining and
24 enforcing the DES, in its current form, constitute a barrier and prevent FAJ, licensed
25 dealers and the general public from acquiring, possessing, transferring and selling certain
26 lawful firearms, including Title 1, within the State of California.
- 27 4. A declaration that the DES's technological restrictions prohibiting the lawful transfer of
28 certain lawful firearms, including the Title 1, violate the Due Process Clauses of the

1 United States Constitution and the California Constitution, as well as DOJ's duties
2 pursuant to Penal Code sections 11106, 28155, 28205, 28215 and 28220 and constitute an
3 underground regulation.

4 5. A declaration that the DES, as designed, implemented, maintained and/or enforced is not
5 in compliance with the mandate imposed by Penal Code sections 11106, 28155, 28205,
6 28215 and 28220.

7 6. A declaration that DEFENDANTS have intentionally instituted and/or maintained the
8 technological barriers designed, implemented and maintained within the DES.

9 7. A declaration that DEFENDANTS have intentionally delayed in removing the
10 technological barriers designed, implemented and maintained within the DES.

11 8. A declaration that DEFENDANTS, who occupy the field of processing the lawful
12 transfer of firearms, including the registration and licensing, and as the regulatory body
13 charged with implementing, administering and enforcing the laws relating to the lawful
14 transfer of firearms within the state, have a clear, present and ministerial duty to ensure
15 that the systems developed by the DOJ to facilitate the submission of information do not
16 act as barriers to the submission of the required information necessary for the sale, loan
17 and/or transfer of lawful firearms.

18 9. A preliminary injunction immediately enjoining DEFENDANTS, their agents,
19 employees, representatives and all those acting in concert with them from enforcing
20 administrative and/or technological barriers that prevent or otherwise inhibit the sale,
21 loan and/or transfer of lawful firearms, including but not limited to the FAI Title 1. This
22 includes a preliminary injunction against any barriers preventing the registration of the
23 FAI Title 1 style firearms as "assault weapons" on the basis that they were not possessed
24 prior to September 1, 2020.

25 10. A permanent injunction enjoining DEFENDANTS, their agents, employees,
26 representatives and all those acting in concert with them from enforcing administrative
27 and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of
28 lawful firearms, including but not limited to the FAI Title 1. This includes a preliminary

1 injunction against any barriers preventing the transfer of the FAI Title 1 style firearms as
2 “assault weapons” on the basis that they were not possessed prior to September 1, 2020.

- 3 11. A writ of mandate ordering DEFENDANTS to design, implement, maintain and enforce
4 updates to the database systems such that it does not proscribe the lawful sale, transfer
5 and loan of an entire class of lawful firearms, including the FAI Title 1 and such that it
6 comports with Penal Code sections 11106, 28155, 28205, 28215 and 28220. This
7 includes a writ of mandate ordering DEFENDANTS to process and register all Title 1
8 style firearms as “assault weapons” irrespective of whether they were possessed on or
9 before September 1, 2020.
- 10 12. An order temporarily, preliminarily, and permanently enjoining and prohibiting
11 DEFENDANTS and all others placed on notice against enforcing the provisions limiting
12 the possession and registration of FAI Title 1 style firearms if not possessed prior to
13 September 1, 2020.
- 14 13. An order temporarily, preliminarily, and permanently enjoining and prohibiting
15 DEFENDANTS and all others placed on notice against to restrain and prevent the illegal
16 expenditure of, waste of, or injury to, the estate, funds, or other property of California.
- 17 14. An award for damages according to proof;
- 18 15. An award for punitive damages;
- 19 16. An award of PLAINTIFFS reasonable attorneys’ fees and costs incurred in this matter;
- 20 17. That the Court enter judgment accordingly; and
- 21 18. Such other and further relief as the Court deems just and proper.

22
23 Date: January 12, 2021

Respectfully submitted,

Jason A. Davis

24
25 _____
JASON A. DAVIS
Attorneys for Petitioners-Plaintiffs

1 VERIFICATION

2 I, Jay Jacobson, declare as follows:

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

5 I declare that I have read the foregoing VERIFIED SECOND AMENDED COMPLAINT FOR
6 DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR
7 PROHIBITION OR OTHER APPROPRIATE RELIEF, in the matter of *Franklin Armory, Inc., et al. v.*
8 *California Department of Justice, et al.* and know the contents thereof. I declare that the information
9 stated therein is either true of my own knowledge or is based on information and belief, and as to those
10 matters, I believe them to be true.

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

13
14 DATED: January 8, 2021


JAY JACOBSON

1 **VERIFICATION**

2 I, Patrick Morris, declare as follows:

3 I am the Operations Director of California Rifle & Pistol Association, Incorporated, a Plaintiff in
4 the above-named action and am authorized to execute this verification on its behalf.

5 I declare that I have read the foregoing SECOND AMENDED VERIFIED COMPLAINT FOR
6 DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE
7 AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF and know the contents thereof. I
8 declare that the information stated therein is either true of my own knowledge or is based on information
9 and belief, and as to those matters, I believe them to be true.

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

12
13 Dated: 1/11/21

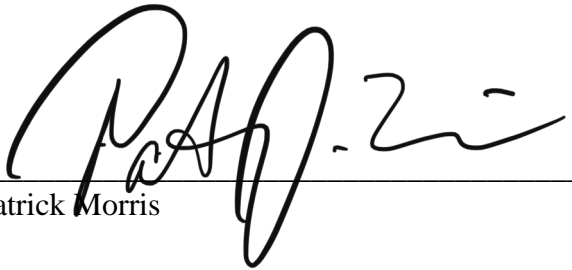
14 
Patrick Morris

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:

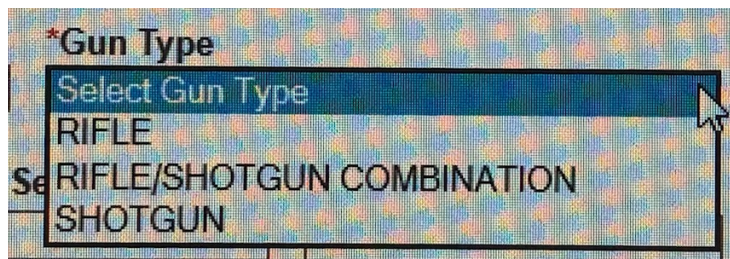
- 1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.
- 2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).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

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

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

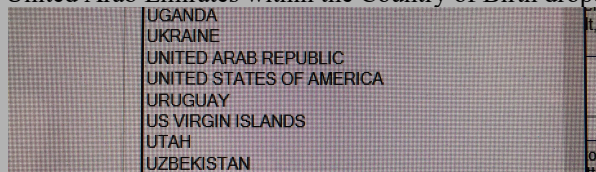
This defect, however, has severely impacted my client’s business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm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

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

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

ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES

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



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

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CONSTITUTIONAL VIOLATIONS

DUE PROCESS

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

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

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

SECOND AMENDMENT VIOLATION

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

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

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

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

TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE

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

As referenced above, Franklin Armory[®] 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.*,

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

As such, and in order to mitigate past and future damages that have or could further result from action or inaction, Franklin Armory[®] 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

EXHIBIT 2

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10 Attorneys for Petitioners - Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

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

16 Petitioners-Plaintiffs,

17 v.

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

22 Respondents-Defendants.

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

) **UNLIMITED JURISDICTION**

1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE & 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 lawful
5 transfer of firearms and failure and/or refusal to timely perform the duties relating to the sale, loan,
6 transfer, purchase and processing of firearms that are neither “handguns,” nor “shotguns,” nor “rifles,”
7 including the FRANKLIN ARMORY, INC. firearms designated with the model name “Title I .”

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. F-AI 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 I” by FAI, and
15 which come in various calibers such as 5.56 NATO (a centerfire caliber) and .17 WSM (a rimfire
16 caliber).

17 3. The FAI Title I firearms, as designed and sold by FAI, are lawful to possess, sell, transfer,
18 purchase, loan, or otherwise be distributed within California through licensed California firearm dealers
19 to persons who are not otherwise prohibited from possessing firearms, though recent changes in the law
20 have limited the market for the 5.56 NATO variant of the FAI Title 1.

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

26 5. CRPA regularly provides guidance to California gun owners regarding their legal rights and
27 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and providing
28

1 education, training and organized competition for adult and junior shooters. CRPA members include law
2 enforcement officers, prosecutors, professionals, firearm experts and the public.

3 6. In this suit, CRPA represents the interests of its many citizen and taxpayer members and members
4 of CRPA who reside in California and who wish to and have attempted to sell, purchase, acquire, transfer
5 and possess lawful firearms, including the Title 1, but are prohibited from doing so by the technological
6 limitations implemented by DEFENDANTS. CRPA brings this action on behalf of itself and its tens of
7 thousands of supporters in California, including FAI, who have been, are being, and will in the future be
8 subjected to DEFENDANTS' refusal and/or delay in removing the technological barrier designed,
9 implemented and maintained by DEFENDANTS that prohibits the lawful sale, loan, transfer and
10 purchase of certain lawful firearms, including but not limited to the FAI Title 1.

11 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully constituted
12 executive agency charged with implementing, enforcing and administering the State of California's
13 firearm laws and systems for processing firearm transfers and loans. The DOJ is under the direction and
14 control of the Attorney General. (Gov'. Code § 15000.) The DOJ is composed of the Office of the
15 Attorney General and those other divisions, bureaus, branches, sections or other units as the Attorney
16 General may create within the department pursuant to Section 15002.5. (Gov. Code § 1500 l.) The
17 Bureau of Firearms ("BOF") was created by the Attorney General within the Division of Law
18 Enforcement for the purposes of designing, implementing and enforcing California's firearm laws, rules,
19 regulations and support systems. The DOJ is responsible for the design, development, maintenance and
20 enforcement of the Dealer Record of Sale Dealer Entry System, the system by which licensed California
21 firearm dealers submit purchaser and firearm information to the California Department of Justice for
22 processing in accordance with California's firearm transfer laws and regulations.

23 8. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of California. He is the
24 chief law enforcement officer of California. Defendant Becerra is charged by article V, section 13 of the
25 California Constitution with the duty to see that the laws of California are uniformly and adequately
26 enforced. BECERRA also has direct supervision over every district attorney and sheriff in all matters
27 pertaining to the duties of their respective officers. Defendant BECERRA's duties also include informing
28

1 the public, local prosecutors and law enforcement regarding the meaning of the laws of California,
2 including restrictions on the transfer of firearms at issue herein. He is sued in both his personal capacity
3 and his official capacity.

4 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and
5 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.
6 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through 10
7 is responsible in some capacity or manner for the adoption or enforcement of the unlawful regulations as
8 alleged in this Complaint and Petition. PLAINTIFFS pray for leave to amend this Complaint and Petition
9 to show the true names, capacities and/or liabilities of DOE Defendants 1 through 10 if and when they
10 are determined.

11 **JURISDICTION AND VENUE**

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

16 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
17 sections 393, subdivision (b), and 394, subdivision (a). Also, venue properly lies within this Court
18 because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc., §
19 401.)

20 **AUTHENTICITY OF EXHIBITS**

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

24 **GENERAL ALLEGATIONS**

25 [THE DEFENDANTS' GENERAL DUTIES]

26 13. The California Constitution vests the office of the Attorney General, currently held by
27 BECERRA, with enormous powers over the lives of the citizens of the state. "Subject to the powers and
28

1 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the
2 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced.”

3 (Cal. Const., art. V, § 13-.)

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

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

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

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

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

20 (Emphasis added.)

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

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

26 20. In general, the laws governing control of firearms are expansive and are found within Part 6 of
27 the Penal Code, beginning at section 16000 and ending at section 343-70.

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

7 ~~21.##~~

8 [CALIFORNIA'S RELEVANT DEFINITIONS]

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

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

15 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code
16 section 26860, "long gun" means any firearm that is not a handgun or a *machinegun*. (Pen. Code, §
17 10 16865.)

18 b. "*Handgun*" means any *pistol, revolver, or firearm capable of being concealed upon the person;*
19 and, nothing shall prevent a device defined as a "handgun" from also being found to be a *short-barreled*
20 *rifle*¹ or a *short-barreled shotgun*². (Pen. Code, § 16640.) The terms "*firearm capable of being*

21
22 ¹ "*Short-barreled rifle*" means any of the following: (a) A rifle having a barrel or barrels of less than
23 16 inches in length;

24 (b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether
25 by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than
26 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily
27 restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c),
28 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

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1 *concealed upon the person," "pistol," and "revolver" apply to and include any device designed to be*
2 *used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of*
3 *combustion, and that has a barrel less than 16 inches in length. These terms also include any device that*
4 *has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16*
5 *2 inches in length. (Pen. Code, § 16530. See also Pen. Code, §§ 17010, 17080.)*

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

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

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

13 [UNDEFINED “FIREARM” SUBTYPES]

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

17 has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun
18 shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that
19 weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18
20 inches in length; (d) Any device that may be readily restored to fire a fixed shotgun shell which, when so
21 restored, is a device defined in subdivisions (a) to (c), inclusive; and (e) Any part, or combination of
22 parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c),
inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive,
can be readily assembled if those parts are in the possession or under the control of the same person.
(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 (t) 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
Chapter 8 of Division 10 of Title 4, “*rifle*” means a weapon designed or redesigned, made or remade,
and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each
single pull of the trigger. (Pen. Code, § 17090.)

26 ⁴ As used in Penal Code sections 16530, 16640, 16870, and 17180, sections 17720 to 17730,
27 inclusive, section 17740, section 30215, and Article 1 (commencing with section 33210) of Chapter 8 of
28 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

- 7 -

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

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

5 30. The FAI Title I was originally designed in 2012, at which time the BOF was notified of the
6 design and features and of FA I’s intent to manufacture, produce, sell and distribute the firearm within
7 the State of California.

8 [CALIFORNIA DEALERS’ CENTRAL ROLE]

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

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

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

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

20 35. The State of California also mandated that the DOJ *shall* examine specified records to determine
21 whether the applicant is prohibited from owning or possessing firearms once it receives the information
22 from the deal-er. (~~Pen-Pen~~ Code, § 28220.)

23 36. The State did not authorize the DOJ to indiscriminately stop or inhibit sales. Rather, the State has
24 only granted the DOJ the authority to stop sales for certain specified reasons. For example, the DOJ is
25 permitted to stop the sale if a purchaser is deemed a prohibited person. (See e.g. Pen. Code, §28220.).
26
27

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

1 37. The State did not authorize the DOJ to indiscriminately delay sales. Rather, the State only
2 granted the DOJ the authority to delay sales for specified reasons. For example, the DOJ is permitted to
3 delay if its records indicate that the purchaser may be prohibited, additional research is needed to make a
4 final determination. (See e.g. Pen. Code, §28220(d) & (f)(1)(A) or if the DROS application contains
5 any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the
6 purchaser or the handgun or other firearm to be purchased – authorizing a 30-day delay under specified
7 circumstances but permitting the release of the firearm by the Dealer if the DOJ cannot determine the
8 purchaser to be ineligible to possess firearms within the 30-day period.)

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

11 [CALIFORNIA’S FIREARM TRANSFER SCHEME OVERVIEW]

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

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

- 1 ○ FBI Interstate Identification Index (III);
- 2 ○ FBI National Crime Information Center (NCIC); and
- 3 ○ Immigration Customs & Enforcement (ICE);
- 4 • Pay a background check fee;
- 5 • Pay a Firearm Safety & Enforcement fee;
- 6 • Pay a Firearm Safety Device fee;
- 7 • Wait a ten-day waiting period⁵ (Pen. Code §§ 26950-26970);
- 8 • Obtain a Firearm Safety Device (FSD) (Pen. Code, § 23635);
- 9 • Possess a Firearm Safety Certificate (FSC)⁶ (Pen. Code § 31700).

10 [CALIFORNIA'S FIREARM REGISTRY-INFORMATION AND FORM REQUIREMENTS]

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

- 15 a. As required by the Department of Justice, every dealer shall keep a register or record of
16 electronic or telephonic transfer in which shall be entered" certain information relating to the
17 transfer of firearms. (Pen. Code, § 28100.)
- 18 b. "The Department of Justice shall prescribe the *form* of the register and the record of
19 electronic transfer pursuant to Section 28105." (Pen. Code§ 28155.)
- 20 c. The Attorney General shall keep and properly file a complete record of Dealers' Records of
21 Sale of firearms. (Pen. Code, § 11106, subd. (a)(I)(D).)

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

27 ⁶ Firearm purchasers must take an exam on firearm safety from an instructor and obtain a minimum
28 75% passing score to receive a certificate (Pen. Code, § 31615), though certain people are exempt from
the FSC requirement (e.g., peace officers, military, California Concealed Carry License holders).

1 d. The Attorney General shall permanently keep and properly file and maintain *all* information
2 reported to the DOJ pursuant to any law as to *firearms* and maintain a registry thereof. (Pen.
3 Code, § 11106, subd. (b)-(1)-(A).) Specific information that must be included within the
4 registry includes the “manufacturer’s name if stamped on the firearm, model name or number
5 if stamped on the firearm, and, if applicable, the serial number, other number (if more than
6 one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or
7 used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not
8 have a serial number or any identification number or mark assigned to it, that shall be noted.”
9 (Pen. Code, § 11106, subd. (b)(1)(D).)

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

- 13 (1) The date and time of sale;
- 14 (2) The make of firearm;
- 15 (3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of Section
16 16585, and the agency name;
- 17 (4) Any applicable waiting period exemption information;
- 18 (5) California Firearms Dealer number issued pursuant to Article 1 (commencing with Section
19 26700) of Chapter 2;
- 20 (6) For transactions occurring on or after January 1, 2003, the purchaser’s handgun safety
21 certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter 4 of
22 Division 10 of this title, or pursuant to former Article 8 (commencing with Section 12800) of
23 Chapter 6 of Title 2 of Part 4, as that article read at any time from when it became operative on
24 January 1 , 2003, to when it was repealed by the Deadly Weapons Recodification Act of 2010;
- 25 (7) Manufacturer’s name, if stamped on the firearm;
- 26 (8) Model name or number, if stamped on the firearm;
- 27
- 28

- 1 (9) Serial number, if applicable;
- 2 (10) Other number, if more than one serial number is stamped on the firearm;
- 3 (11) Any identification number or mark assigned to the firearm pursuant to Section 23910;
- 4 (12) If the firearm is not a handgun and does not have a serial number, identification number, or
- 5 mark assigned to it, a notation as to that fact;
- 6 (13) Caliber;
- 7 **(14) Type of firearm; (multiple emphasis added)**
- 8 (15) If the firearm is new or used;
- 9 (16) Barrel length;
- 10 (17) Color of the firearm;
- 11 (18) Full name of purchaser;
- 12 (19) Purchaser's complete date of birth;
- 13 (20) Purchaser's local address;
- 14 (21) If current address is temporary, complete permanent address of purchaser;
- 15 (22) Identification of purchaser;
- 16 (23) Purchaser's place of birth (state or country);
- 17 (24) Purchaser's complete telephone number;
- 18 (25) Purchaser's occupation;
- 19 (26) Purchaser's gender;
- 20 (27) Purchaser's physical description;
- 21 (28) All legal names and aliases ever used by the purchaser;
- 22 (29) Yes or no answer to questions that prohibit purchase, including, but not limited to,
- 23 conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an offense
- 24 described in Chapter 3 (commencing with Section 29900) of Division 9 of this title, the
- 25 purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code,
- 26 whether the purchaser is a person who has been adjudicated by a court to be a danger to others or
- 27 found not guilty by reason of insanity, and whether the purchaser is a person who has been found
- 28

1 incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of
2 the Welfare and Institutions Code;

3 (30) Signature of purchaser;

4 (31) Signature of salesperson, as a witness to the purchaser's signature;

5 (32) Salesperson's certificate of eligibility number, if the salesperson has obtained a certificate of
6 eligibility;

7 (33) Name and complete address of the dealer or firm selling the firearm as shown on the
8 dealer's license;

9 (34) The establishment number, if assigned;

10 (35) The dealer's complete business telephone number;

11 (36) Any information required by Chapter 5 (commencing with Section 28050);

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

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

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

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

20 43. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title 1
21 variants and other firearms.

22 [POINT OF CONTACT STATE UNDER FEDERAL LAW]

23 44. A Federal law known as the Brady Handgun Violence Act of 1993 ("the Brady Act") requires
24 FFLs to request background checks on individuals attempting to purchase a firearm. The permanent
25 provisions of the Brady Act which went into effect on November 30, 1998, requires the United States
26 Attorney General to establish the NICS for FFLs to contact to obtain immediate information on w-
27 whether the transfer of a firearm to as respective buyer would violate state of federal law.

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

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

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

17 [CALIFORNIA’S FIREARM REGISTRY - METHOD OF ELECTRONIC TRANSMISSION]

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

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

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

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

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

4 53. The DOJ has failed to comply with their mandate, making it impossible for firearm purchasers
5 and California Dealer’s acting as agents of the DOJ to submit true, accurate, and complete information,
6 thereby barring the sale of the FAI Title I.

7 [NATURE OF DISPUTE]

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

10 55. Specifically, by design, when the DES user is inputting the designated information into the DES,
11 they must input information related to the gun type (“long gun” or “handgun”) from a prepopulated
12 dropdown list. Upon selecting “long gun,” the DES system is designed to and functions to self-populate
13 a subset of fields-, and it requires one of three options to be designated before the dealer may proceed
14 with the completion of the form and submission of the required information to the DOJ. Those three
15 options are: “rifle,” “rifle/shotgun,” “shotgun.” Unlike the subset of fields that self-populate for “Color,”
16 “Purchaser Place of Birth,” and Seller Place of Birth”, each of which contains the catchall “other”
17 options, the “long guns” subset of fields does not contain the “other” option. Thus, the DES system
18 prevents licensed firearm dealers from proceeding with the sale, transfer, loan or submission of
19 information to the DOJ for certain firearms, including the FAI Title I.

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

24 57. Without an alternative procedure for submission of the purchaser and firearm information
25 established by DOJ pursuant to Penal Code section 28205, subd. (c), the DES is the only method of
26 submitting the necessary information to permit the lawful transfer of the undefined “firearm” subtypes.
27
28

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

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

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

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

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

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

18 64. DEFENDANTS have known of the deficiencies of the DES and intended them from inception,
19 and since the introduction of the FAI Title 1, they have been requested to correct said defect, and have
20 refused to do so, thereby barring the sale of the FAI Title 1.

21 [DOJ AND THE FAI TITLE 1]

22 65. DEFENDANTS and FAI have been in communications regarding the design and features of the
23 FAI Title I since approximately 2012.

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

26 67. Since then, the DOJ has neither corrected the DES, nor has it implemented alternative procedures
27 to facilitate the lawful transfer of the Title I.

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

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

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

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

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

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

21 74. On information and belief, DEFENDANTS designed, implemented, maintained and enforced the
22 DES to intentionally prevent the transfer of "long guns" that are neither "rifles" nor "shotguns" nor
23 combinations thereof.

24 75. On information and belief, DEFENDANTS are continuing with the deficiencies intentionally,
25 delaying the necessary changes to the DES system that would permit the lawful transfer of lawful
26 firearms such as the Title 1 to lawful purchasers. DEFENDANTS are doing so with malice, in targeted
27

1 retaliation for challenging DEFENDANTS in past and current actions, and intent to cause harm against
2 FAI.

3 76. As a result, FAI has been unable to transfer ~~their~~approximately 35,000 Title 1 firearms reserved
4 via monetary deposits made by licensed California firearm dealers and California residents, including
5 members of CRPA, who are members of CRPA, and who seek to lawfully sell, transfer, purchase,
6 acquire and/or possess the FAI Title 1 firearms-. This inability for purchasers and dealers to submit the
7 true, accurate and complete information through the DES for certain firearms, such as the Title 1, has
8 damaged FAI in an amount of at least \$33,000,000 by preventing them from effectuating the sale of the
9 reserved product as well as non--reserved product in a final amount to be determined at trial, and it has
10 denied the rights of California citizens who are not prohibited from acquiring or even completing an
11 application to acquire firearms from acquiring the Title 1-.

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

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

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

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

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

27 [UNDERGROUND REGULATIONS]

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

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

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

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

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

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

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

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

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

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

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

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

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

21 [UNLAWFUL BAN ON FIREARMS]

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

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

5 [CRIMINAL CONDUCT]

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

9 [LIABILITY STATUTES]

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

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

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

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

21 [REDESIGNATION AS "ASSAULT WEAPON"]

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

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

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 Robert+Roos Assault Weapon Act- thereby immediately
9 prohibiting the transfer of the FAI Title 1 in 5.56 NATO to their customers, though the FAI Title 1 in
10 17 WSM remained unaffected by this legislation.

11 106. On information and belief, while Senate Bill 118 permits those in possession of firearms
12 deemed "assault weapons" under the newly implemented definition to register and keep their firearms if
13 they possessed the firearms prior to September 1, 2020, the DEFENDANTS' plan, scheme, actions and
14 inaction in prohibiting the transfer of the FAI Title 1 prohibited those who placed deposits on the FAI
15 Title 1 series firearms from lawfully acquiring and possessing their firearms prior to the September 1,
16 2020 deadline.

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

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

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

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

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

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

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

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

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

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

26 116. Further, harm from this underground regulation lies in the subversion of the democratic values
27 the APA was intended to serve. The notice, comment and review procedures of the APA were enacted to
28

1 secure the public benefits of openness, accessibility and accountability in the formulation of rules that
2 implement legislative enactments. Irreparable harm to these important public benefits occurs whenever a
3 state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground
4 regulation.

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

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

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

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

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

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

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

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

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6 **SECOND CAUSE OF ACTION:**
7 **PETITION FOR WRIT OF MANDATE**
8 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

128. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
26 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce
27 updates to the DES system such that it does not proscribe the lawful sale, transfer and loan of an entire
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1 class of lawful firearms, including the FAI Title 1 and such that it comports with Penal Code sections
2 28155, 28205, 28215 and 28220.

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

9 **THIRD CAUSE OF ACTION:**
10 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
11 **(AGAINST ALL DEFENDANTS)**

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

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

17 132. FAI currently has tens of thousands of contracts to sell the FAI Title I within California.

18 133. DEFENDANTS knew of FAI’s contracts.

19 134. To date, DEFENDANTS’ conduct prevented performance of the contracts.

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

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

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

26 138. DEFENDANTS’ conduct was not only a substantial factor in causing FAI and their customers
27 harm, but it was also the sole factor.
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1 139. FAI seeks damages in an amount to be determined at trial, including the amounts that FAI
2 would have received under the contracts, extra costs that FAI has incurred because of the breach or
3 interference with the contracts, lost profits that FAI would have made if the contracts had been
4 performed and punitive damages.

5 **FOURTH CAUSE OF ACTION:**
6 **TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
7 **(AGAINST ALL DEFENDANTS)**

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

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

11 142. FAI and FAI's California customers and prospective customers were in an economic
12 relationship that probably would have resulted in an economic benefit to FAI.

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

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

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

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

27 147. The economic relationships between FAI and its customers and prospective customers were
28 disrupted.

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

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

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

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

13 **FIFTH CAUSE OF ACTION:**
14 **NEGLIGENT INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
15 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

28 157. DEFENDANTS failed to act with reasonable care.

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

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

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

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

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

19 **SIXTH CAUSE OF ACTION**

20 **42 U.S.C. § 1983- Violation of Due Process**

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

22 **(By All PLAINTIFFS against All DEFENDANTS)}**

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

24 164. An actual controversy has arisen now and exists between PLAINTIFFS and DEFENDANTS
25 relative to their respective rights and duties described herein, in that PLAINTIFFS contend that at all
26 times prior to the signing of Senate Bill 118, the FAI Title 1 style firearm was lawful to sell, transfer,
27 deliver, and possess within California and FAI was entitled to and lawfully could have transferred all
28 Title I series firearms on deposit to its customers, FAI's customers, including those that are members of

1 CRPA, were entitled to apply for, purchase, receive, and possess the FAI Title 1 series firearms which
2 they had placed earnest money deposits on. PLAINTIFFS could not complete the purchase of said
3 firearms due to DEFENDANTS' actions in thwarting, delaying, and otherwise implementing a
4 nonstatutory ban on the FAI Title I series firearms until such time as the California legislature
5 implemented statutory restrictions on said products.

6 165. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any
7 person of life, liberty, or property, without due process of law." (U.S. Const., amend XIV.)
8 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
9 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
10 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I, §
11 9.)

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

18 167. California makes it clear that "No state agency shall issue ... any guideline... unless the
19 guideline . . . has been adopted as a regulation filed with the Secretary of State..." (Gov. Code, §
20 11340.5, subd. (a).)

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

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

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

6 171. As such, PLAINTIFFS and the public lacked any mean meaningful opportunity to seek redress
7 of injuries caused by DEFENDANTS' actions or by which they may seek to effectuate the transfer of
8 the said firearms.

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

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

17 174. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
18 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
19 provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration of
20 said firearms not possessed prior to September 1, 2020 - compliance with which, for PLAINTIFFS, was
21 thwarted and made impossible by DEFENDANTS' actions described herein.

22 175. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
23 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42 U.S.C.
24 § 1988.

25 **SEVENTH CAUSE OF ACTION**
26 **42 U.S.C. § 1983 - Violation of Due Process**
27 **Deprivation of Substantive Due Process of Law**
28 **(By All PLAINTIFFS against All DEFENDANTS)**

- 32 -

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

2 177. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any
3 person of life, liberty, or property, without due process of law.” (U.S. Const., amend XIV.)
4 PLAINTIFFS have a liberty interest in the right to acquire, sell, deliver, transfer, and possess firearms,
5 including the FAI Title 1 style firearm, and in their right to contract freely, without unlawful and/or
6 unauthorized impairment by the State, in lawful commerce. (U.S. Const., art. I, §10; Cal. Const., art. I,
7 § 9.)

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

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

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

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

25 182. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief and
26 temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing the
27 provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration of
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1 said firearms not possessed prior to September 1, 2020 - compliance with which, for PLAINTIFFS, was
2 thwarted and made impossible by DEFENDANTS' actions described herein.

3 183. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate their
4 rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42 U.S.C.
5 § 1988.

6 **EIGHTH CAUSE OF ACTION**
7 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
8 **Validity of Non-Statutory Ban on Lawful Product Via Technological Barriers**
9 **(By All PLAINTIFFS Against All DEFENDANTS)**

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

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

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

16 187. There is no express exemption from the APA in the California Code regarding the promulgation
17 of regulations to non-statutory bans on certain classes of firearms, there was no emergency sufficient to
18 justify bypassing the APA, and the regulation is not a mere restatement of statutory law. It is thus
19 subject to the procedural requirements set forth in the APA.

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

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

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

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

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

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

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

18 195. The public in general and PLAINTIFFS specifically have an interest in preventing
19 DEFENDANTS from enforcing the underground regulation barring application for, sale of, delivery of,
20 and possession of the FAI Title 1 style firearms.

21 **NINTH CAUSE OF ACTION**
22 **Violation of Public Policy**
23 **(By All PLAINTIFFS Against All DEFENDANTS)**

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

25 197. As described herein, it is DEFENDANTS' duty to design, develop, maintain and administer a
26 system for accepting and transmitting the necessary information for the lawful transfer of lawful
27 firearms, including those duties found within Penal Code sections 11106, 28155, 28205, 28215 and
28 28220. These duties are essential to the lawful function and implementation of the State of California's

1 firearm transfer scheme and protocols. DEFENDANTS have failed to and refuse to comply with these
2 duties. Instead, DEFENDANTS have spent time and resources utilizing their system in a scheme to
3 implement non-statutory bans on the FAI Title 1 style firearm.

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

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

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

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

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

20 **PRAYER**

21 WHEREFORE, PLAINTIFFS pray as follows:

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

4 4. A declaration that the DES's technological restrictions prohibiting the lawful transfer of
5 certain lawful firearms, including the Title 1, violate the Due Process Clauses of the
6 United States Constitution and the California Constitution, as well as DOJ's duties
7 pursuant to Penal Code sections 11106, 28155, 28205, 28215 and 28220 and constitute an
8 underground regulation.

9 5. A declaration that the DES, as designed, implemented, maintained and/or enforced is not
10 in compliance with the mandate imposed by Penal Code sections 11106, 28155, 28205,
11 28215 and 28220.

12 6. A declaration that DEFENDANTS have intentionally instituted and/or maintained the
13 technological barriers designed, implemented and maintained within the DES.

14 7. A declaration that DEFENDANTS have intentionally delayed in removing the
15 technological barriers designed, implemented and maintained within the DES.

16 8. A declaration that DEFENDANTS, who occupy the field of processing the lawful
17 transfer of firearms, including the registration and licensing, and as the regulatory body
18 charged with implementing, administering and enforcing the laws relating to the lawful
19 transfer of firearms within the state, have a clear, present and ministerial duty to ensure
20 that the systems developed by the DOJ to facilitate the submission of information do not
21 act as barriers to the submission of the required information necessary for the sale, loan
22 and/or transfer of lawful firearms.

23 9. A preliminary injunction immediately enjoining DEFENDANTS, their agents,
24 employees, representatives and all those acting in concert with them from enforcing
25 administrative and/or technological barriers that prevent or otherwise inhibit the sale,
26 loan and/or transfer of lawful firearms, including but not limited to the FAI Title 1. This
27 includes a preliminary injunction against any barriers preventing the registration of the
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1 FAI Title 1 style firearms as “assault weapons” on the basis that they were not possessed
2 prior to September 1, 2020.

- 3 10. A permanent injunction enjoining DEFENDANTS, their agents, employees,
4 representatives and all those acting in concert with them from enforcing administrative
5 and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of
6 lawful firearms, including but not limited to the FAI Title 1. This includes a preliminary
7 injunction against any barriers preventing the transfer of the FAI Title 1 style firearms as
8 “assault weapons” on the basis that they were not possessed prior to September 1, 2020.
- 9 11. A writ of mandate ordering DEFENDANTS to design, implement, maintain and enforce
10 updates to the database systems such that it does not proscribe the lawful sale, transfer
11 and loan of an entire class of lawful firearms, including the FAI Title 1 and such that it
12 comports with Penal Code sections 11106, 28155, 28205, 28215 and 28220. This
13 includes ~~an~~ writ of mandate ordering DEFENDANTS to process and register all Title 1
14 style firearms as “assault weapons” irrespective of whether they were possessed on or
15 before September 1, 2020.
- 16 12. An order temporarily, preliminarily, and permanently enjoining and prohibiting
17 DEFENDANTS and all others placed on notice against enforcing the provisions limiting
18 the possession and registration of FAI Title 1 style firearms if not possessed prior to
19 September 1, 2020.
- 20 13. An order temporarily, preliminarily, and permanently enjoining and prohibiting
21 DEFENDANTS and all others placed on notice against to restrain and prevent the illegal
22 expenditure of, waste of, or injury to, the estate, funds, or other property of California.
- 23 14. An award for damages according to proof;
- 24 15. An award for punitive damages;
- 25 16. An award of PLAINTIFFS reasonable attorneys’ fees and costs incurred in this matter;
- 26 17. That the Court enter judgment accordingly; and
- 27 18. Such other and further relief as the Court deems just and proper.

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Date: ~~August 19, 2020~~ January 12, 2021 Respectfully submitted,

JASON A. DAVIS
Attorneys for Petitioners-Plaintiffs

1 **VERIFICATION**

2 I, Jay Jacobson, declare as follows:

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

5 I declare that I have read theis foregoing VERIFIED ~~FIRST~~SECOND AMENDED
6 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF
7 MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF, in the matter of *Franklin*
8 *Armory, Inc., et al. v. California Department of Justice, et al.* and know the contents thereof. I declare
9 that the information stated therein is either true of my own knowledge or is based on information and
10 belief, and as to those matters, I believe them to be true.~~am informed, and do believe, that the matters~~
11 ~~herein are true. On that ground, I allege that the matters stated herein are true.~~

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

14
15 DATED: ~~August 19, 2020~~January 12, 2021

16 _____
17 JAY JACOBSON
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1 VERIFICATION

2 I, Patrick Morris, declare as follows:

3 I am the Operations Director of CALIFORNIA RIFLE & PISTOL ASSOCIATION,
4 INCORPORATED, a Plaintiff in the above-named action and am authorized to execute this verification
5 on its behalf.

6 I declare that I have read the foregoing VERIFIED SECOND AMENDED COMPLAINT FOR
7 DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR
8 PROHIBITION OR OTHER APPROPRIATE RELIEF, in the matter of *Franklin Armory, Inc., et al. v.*
9 *California Department of Justice, et al.* and know the contents thereof. I declare that the information
10 stated therein is either true of my own knowledge or is based on information and belief, and as to those
11 matters, I believe them to be true.

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

14
15 DATED: January 12, 2021
16 Patrick Morris

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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.

7 On January 12, 2021, I served the foregoing document(s) described as

8 **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS' MOTION FOR
9 LEAVE TO FILE SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY
10 AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR
11 PROHIBITION OR OTHER APPROPRIATE RELIEF**

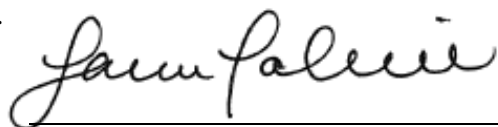
12 on the interested parties in this action by placing
13 [] the original
14 [X] a true and correct copy
15 thereof by the following means, addressed as follows:

16 Benjamin Barnouw
17 Deputy Attorney General
18 California Department of Justice
19 300 South Spring Street, Suite 1702
20 Los Angeles, CA 90013
21 Email: Ben.Barnouw@doj.ca.gov
22 *Attorney for Respondents-Defendants*

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

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

27 Executed on January 12, 2021, at Long Beach, California.

28 
Laura Palmerin