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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF LOS ANGELES

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

Case No. 20STCP01747

12 Petitioners-Plaintiffs,

**PLAINTIFFS AND PETITIONERS’  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
RESPONDENTS’ DEMURRER**

13 v.

Date: June 3, 2021  
Time: 9:30 a.m.  
Dept.: 85  
Judge: Hon. James C. Chalfant

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

16 Respondents-Defendants.  
17

Action Filed: May 27, 2020  
Trial Date: Not set

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1 **INTRODUCTION**

2 Despite the clarity of this case as pleaded in the Second Amended Complaint & Petition for Writ  
3 of Mandate (SAC), the Respondents Department of Justice and Attorney General Becerra (collectively,  
4 DOJ) attack this suit via demurrer—again—on grounds it should have brought during its first bite at the  
5 apple or that it already did bring. First, the DOJ claims it has no ministerial duty to update the DES.  
6 Second, it argues that the configuration of the DES is not a “regulation” subject to the Administrative  
7 Procedure Act (APA) because the DES is an electronic web-based system, not a rule, order, or standard.  
8 Both defenses were equally available to the DOJ when it brought its demurrer to the First Amended  
9 Complaint, but the DOJ chose not to then pursue them. The balance of the DOJ’s motion is essentially a  
10 rehashing of the same justiciability arguments on which Petitioners ostensibly prevailed when the Court  
11 sustained the first demurrer with leave to amend. Thus, the demurrer seems less like a good faith attempt  
12 to narrow the issues for this Court and more like a stalling tactic, which, incidentally, is the sort of  
13 conduct that led Petitioners to sue in the first place. The DOJ’s demurrer should be overruled in its  
14 entirety. But if the Court sustains any part of it, Petitioners request leave to amend.

15 **STATEMENT OF FACTS**

16 **I. CALIFORNIA’S SCHEME FOR THE TRANSFER AND REGISTRATION OF FIREARMS THROUGH THE  
17 DEALER RECORD OF SALE ENTRY SYSTEM**

18 California has reserved the entire field of licensing and registration of firearms to itself. (SAC ¶  
19 34, citing Pen. Code, § 53071.) Under state law, “every dealer shall keep a register or record of electronic  
20 or telephonic transfer in which shall be entered” certain information relating to the transfer of firearms.  
21 (SAC ¶ 43.1, quoting Pen. Code, § 28100.) “For all firearms,” this record, called the Dealer Record of  
22 Sale (DROS), must the include the “type of firearm.” (SAC ¶ 44.14, quoting Pen Code, § 28160.)

23 Under section 28205, a DROS must be submitted to the DOJ electronically, “except as permitted  
24 by the [DOJ].” (SAC ¶ 52.) State law also mandates that “[t]he [DOJ] shall prescribe the *form* of the  
25 register and the record of electronic transfer pursuant to Section 28105.” (SAC ¶ 43.2, quoting Pen. Code,  
26 § 28155, italics added.) The method established by the DOJ for submitting purchaser information  
27 required by section 28160, subdivision (a), is known as the DROS Entry System (DES). (SAC ¶ 53.) The  
28 DES is a web-based application designed, developed, and maintained by the DOJ and used by firearm  
dealers to transmit to the DOJ the information required for each firearm transfer. (SAC ¶ 54.)

1 As designed, the DES can facilitate the transfer of certain firearms, including “handguns” (also  
2 called “pistols” or “revolvers”), “rifles,” and “shotguns.” Many firearms, however, do not qualify as  
3 “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns” as those terms are defined by statute. (SAC ¶¶  
4 22-26.) These include Franklin Armory’s Title 1 series of firearms, including both rimfire and centerfire  
5 variants, all buntline revolvers with a barrel length of 16 or more inches, butterfly grip firearms, and  
6 barreled action firearms without stocks. (SAC ¶¶ 27-32.) But the DES menu for selecting a firearm  
7 subtype has no way to capture these undefined firearm subtypes.<sup>1</sup> (SAC ¶¶ 58.) As such, dealers cannot  
8 accurately submit the required information for these firearms through the DES. (SAC ¶ 59.) Thus, they  
9 cannot process and accept applications from purchasers of undefined firearm subtypes. (SAC ¶¶ 58-59,  
10 62.) What’s more, the DOJ has refused to offer another way to transmit the required information, even  
11 though section 28205, subdivision (c), authorizes it to do so. (SAC ¶ 60.) By design then, the DOJ has  
12 instituted a technological barrier that functions to prohibit the transfer of all firearms that are “long guns”  
13 but are not “rifles,” “shotguns,” or “rifle/shotgun combinations” through a licensed retailer. (SAC ¶ 63.)

14 The DOJ has long known about this deficiency but has refused requests to correct it. (SAC ¶ 67.)  
15 Franklin Armory informed the DOJ of the defect and the resulting inability to transfer Title 1s in October  
16 2019. (SAC ¶¶ 68-69, Ex. C.) It has been more than a year and a half since Petitioners so notified the  
17 DOJ, yet the agency has refused to modify the DES even though it has proven it can quickly make the  
18 change. (SAC ¶ 70.) Nor has the DOJ offered alternate means to submit the information. (SAC ¶ 70.)

## 19 **II. PROCEDURAL HISTORY**

20 Franklin Armory, a manufacturer of a series of firearms that are neither “rifles,” nor “pistols,” nor  
21 “shotguns” and which are designated with the model name “Title 1,” learned that it cannot transfer its  
22 Title 1 firearms because of the design of the DES, which is maintained and controlled by the DOJ. (SAC  
23 ¶¶ 2, 57-63.) California Rifle and Pistol Association (CRPA) is an association whose members wish to  
24 purchase or transfer undefined firearms subtypes, including Title 1 firearms, buntlines, butterfly grip  
25 firearms, and barreled action firearms without stocks, but are blocked from completing and submitting  
26 their applications for the lawful transfer of said firearms because of the DOJ’s policy barring such  
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28 <sup>1</sup> Firearms that are not “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns” (or “frames” or  
“receivers” for such firearms) are called “undefined firearm subtypes” throughout this brief.

1 transfers, which is carried out through the defective design of the DES. (SAC ¶ 6.)

2 Petitioners sued, alleging several causes of action, including a petition for writ of mandate  
3 directing the DOJ to correct the technological defect of the DES that bars the transfer of otherwise lawful  
4 undefined firearm subtypes, including Title 1 firearms, or authorize other ways to transmit the required  
5 information pursuant to its authority under section 28205. (Compl. ¶¶ 123-129.) In August 2020,  
6 Petitioners filed a First Amended Complaint (FAC), adding four claims—some related to changes in state  
7 law affecting their claims. (FAC ¶¶ 163-202.) The Court stayed all but the First, Second, and Eighth  
8 Causes of Action. (Oct. 15, 2020 Tr. Setting Conf. Order.)

9 Following the filing of the FAC, the DOJ demurred to three of the unstayed claims. In a decision  
10 sustaining the demurrer, the Court ruled that Petitioners could not succeed on their claims—at least as  
11 related the transfer of *centerfire* Title 1 firearms for which deposits had been made. (Decision on Dem.  
12 (Dem. Dec.), Jan. 28, 2021, p. 9.) The Court held that, because the deadline by which to take possession  
13 of such firearms to register them as “assault weapons” passed in September 2020, the Court lacks  
14 authority to direct the DOJ to facilitate the transfer of such firearms, rendering the case both moot and  
15 unripe, and leaving Petitioners without standing to pursue their claims. (*Id.* at pp. 5-8.) Satisfied,  
16 however, that Petitioners could allege that Franklin Armory manufactures rimfire Title 1s that are not  
17 “assault weapons” and that CRPA represents the interests of members who wish to purchase undefined  
18 firearm subtypes, the Court granted Petitioners leave to amend. (Hrg. Tr., Jan. 28, 2021, p. 8:21.)

19 Petitioners timely filed a SAC, alleging that countless firearms, including the rimfire Title 1,  
20 buntlines, butterfly grip firearms, and barreled action firearms without a stock, remain legal but cannot be  
21 transferred due to the DOJ’s policy of barring the transfer of undefined firearm subtypes. (SAC ¶¶ 27-32,  
22 57-63.) And in line with its representations at the demurrer hearing (Hrg. Tr., pp. 10:13-14:13),  
23 Petitioners clarified that the Court should issue a writ directing DOJ to stop blocking the transfer of  
24 centerfire Title 1 firearms for which deposits had been made for two reasons.<sup>2</sup> First, because those who  
25 had placed a deposit on a centerfire Title 1 would have taken legal possession of their firearms before  
26 September 2020 *but for* the DOJ’s own illicit conduct. (SAC ¶ 123.a.) And second, because DOJ’s  
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28 <sup>2</sup> Petitioners kept this claim in the SAC to avoid waiving any right to appeal the Court’s ruling. But they concede that the Court has already ruled on the issue in its order sustaining the first demurrer (CMC



1 conduct violated the due process rights of Petitioners, as well as their customers, members, and  
2 supporters. (SAC ¶ 123.b.) The SAC also clarifies the basis of the declaratory relief claims, as well as its  
3 APA claim. (SAC ¶¶ 115-120, 185-197.) In response to the SAC, the DOJ brought yet another demurrer.

## 4 ARGUMENT

### 5 I. LEGAL STANDARD

6 A civil complaint is merely intended to frame and limit the issues and apprise the defendant of the  
7 basis on which the plaintiff seeks recovery. (See *Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4; *Perkins v.*  
8 *Super. Ct. (Gen. Tel. Directory Co.)* (1981) 117 Cal.App.3d 1, 6.) Thus, “[a]ll that is necessary against a  
9 general demurrer is that, upon a consideration of all the facts stated, it appears that the plaintiff is entitled  
10 to any relief at the hands of the court against the defendant.” (*Hilltop Props., Inc. v. State* (1965) 233  
11 Cal.App.2d 349, 354.) A pleading is adequate if it contains enough facts to apprise the defendant of the  
12 factual basis for the plaintiff’s claim. (*McKell v. Wash. Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-  
13 1470.) What’s more, on demurrer, courts read the allegations liberally and in context. (*Taylor v. City of*  
14 *L.A. Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.) And if there is more than one  
15 reasonable interpretation, courts are to draw any “inferences favorable to the plaintiff.” (*Perez v. Golden*  
16 *Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

### 17 II. THE COURT SHOULD OVERRULE THE DOJ’S DEMURRER TO THE SECOND CAUSE OF ACTION 18 FOR WRIT OF MANDATE

#### 19 A. Petitioners Have Standing to Pursue a Writ of Mandate

20 Standing in California courts is less rigid than in the federal forum. Unlike federal Article III  
21 standing, standing in California is not a jurisdictional prerequisite. Indeed, “our state Constitution has no  
22 case or controversy requirement imposing an independent jurisdictional limitation on our standing  
23 doctrine.” (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248 (*Weatherford*)). Despite  
24 this more prudential standard, familiar notions of standing requirements do apply. To seek writ relief, a  
25 party must be “beneficially interested” in the subject of the action. (Code Civ. Proc, § 1086.) That is, they  
26 must have “some special interest to be served or some particular right to be preserved or protected over  
27 and above the interest held in common with the public at large.” (*Assoc. Builders & Contractors, Inc. v.*  
28 *S.F. Airports Commn.* (1999) 21 Cal.4th 352, 361-362.) Stated simply, if a party pleads a non-

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Hrg. Tr., Feb. 25, 2021, at pp. 6:12-7:11), so the parties have agreed not to relitigate the issue.

1 hypothetical injury traced to a defendant’s conduct, “beneficial interest” writ standing is satisfied. (See  
2 *Teal v. Super. Ct.* (2014) 60 Cal.4th 595, 599.)

3 Courts do not, however, hold litigants to strict compliance with the requirement of “beneficial  
4 right” standing where “the question is one of public right and the object of the mandamus is to procure  
5 the enforcement of a public duty.” (Weatherford, *supra*, 2 Cal.5th at pp. 1247-1248, internal quotation  
6 omitted.) “This exception . . . protects citizens’ opportunity to ‘ensure that no governmental body impairs  
7 or defeats the purpose of legislation establishing a public right.’” (*Ibid.*, quoting *Green v. Obledo* (1981)  
8 29 Cal.3d 126, 144 (*Green*).

9 To defeat the DOJ’s second demurrer, Petitioners have met the minimal pleading requirements  
10 necessary to establish standing to pursue writ relief. Indeed, as explained below, the SAC alleges enough  
11 facts to establish both “beneficial right” and “public interest” standing. (See *Cty. of Santa Clara v. Super.*  
12 *Ct. (Naymark)* 171 Cal.App.4th 119, 126 [“[I]f the pleadings contain ‘sufficient particularity and  
13 precision to acquaint the defendants with then nature, source and extent of [the] cause of action’ the  
14 general demurrer should be overruled. [Citation omitted.]”].) The Court should overrule the DOJ’s  
15 second demurrer on this ground.

### 16 1. Petitioners Clearly Allege a Beneficial Right

17 Petitioners sufficiently allege facts showing that Petitioners, their customers, and members have  
18 suffered or will suffer an injury due to the alleged limitations of the DES. (See e.g., SAC ¶¶ 1-6, 22-33,  
19 51-63, 79, 98-102, 124.) They allege that Franklin Armory manufactures a rimfire variant of its Title 1  
20 firearm chambered in .17 WSM that it cannot transfer in California because of the DOJ’s alleged  
21 misconduct. (SAC ¶¶ 2, 62.) They also allege that CRPA represents the interests of its members

22 who wish to and have attempted to sell, purchase, acquire, transfer and possess lawful  
23 firearms, including but not limited to the FAI Title 1 series of firearms, buntline revolvers,  
24 butterfly grip firearms, and stockless barreled action firearms, but are prohibited from  
doing so by the technological limitations implemented by [the DOJ].

25 (SAC ¶ 6.) Denial of those firearms has caused Petitioners, their customers, and members to be denied  
26 their right to transfer and acquire lawful firearms and will cause Franklin Armory great financial injury  
27 because of lost sales. (SAC ¶ 79.) These allegations are enough to demonstrate “a non-hypothetical injury  
28 traced to a defendant’s conduct.” (See *ibid.*) Still, the DOJ calls Petitioners’ standing into question,

1 raising a series of dubious claims about the specificity of the SAC.

2 First, the DOJ quibbles over Petitioners' perceived failure to "allege any specific component of  
3 the Title 1 rimfire model which establishes why it is not a handgun, rifle, or shotgun." (Dem., p. 12.) The  
4 argument borders on the frivolous. The SAC expressly alleges that Title 1 firearms, *which include the .17*  
5 *WSM rimfire variant*, are " 'firearms with an undefined subtype,' as its overall design renders the device  
6 to be a 'firearm,' but not a 'handgun,' nor a 'rifle,' nor a 'shotgun,' as those terms are defined by  
7 California law." (SAC ¶¶ 2, 27.) Under the liberal pleading standard applicable at this stage, Petitioners  
8 need not allege the very specific features of the firearm that make it so. The DOJ is clearly on notice of  
9 Petitioners' claims. Indeed, as the SAC alleges, the DOJ has known the specific characteristics of the  
10 Title 1 series of firearms since at least 2012. (SAC ¶¶ 33, 68.)<sup>3</sup> What's more, Petitioners would not have  
11 incurred the great expense of suing the government if the firearms at issue were not undefined firearm  
12 subtypes. So, to the extent *more* is needed, Petitioners can surely amend to allege it. Indeed, they would  
13 amend to state that:

14 (1) All Title 1 series firearms, including both centerfire and rimfire variants, are not **rifles**  
15 because they are not "a weapon designed or redesigned, made or remade, and intended  
16 to be fired from the shoulder." (Pen. Code, § 17090.) They are designed, intended, and  
made to fire away from the shoulder, and they are not equipped with a stock from  
which to fire the firearm from the shoulder.

17 (2) All Title 1 firearms, including both centerfire and rimfire variants, are not **shotguns**  
18 because they are not "designed or redesigned, made or remade, and intended to be fired  
19 from the shoulder and designed or redesigned and made or remade to use the energy of  
the explosive in a fixed shotgun shell." (Pen. Code, § 17190.) They are designed,  
intended, and made to fire single projectile cartridge-based ammunition.

20 (3) All Title 1 firearms, including both centerfire and rimfire variant, are not **handguns**  
21 because they all are designed, intended, and made to have a barrel of 16 inches in  
length. (Pen. Code, §§ 16640, 16530; 11 CCR section 5471(y).)

22 Second, as to buntline revolvers, butterfly grip firearms, and barreled action firearms without  
23 stocks, the DOJ claims that "Petitioners disregarded the Court's order that, '[they] must plead specific  
24 models to show standing, by adding to the SAC three categories or types of firearms, not specific  
25 models." (Dem., p. 12.) The DOJ mischaracterizes the SAC. At paragraph 30, the SAC identifies the  
26 Browning 1919 A4 firearms, including the Browning .30 Cal. M-1919 A4 (SAC ¶ 30 & Ex. A) and the  
27

28 <sup>3</sup> The rimfire Title 1 has all the same characteristics that make the centerfire Title 1 a firearm with an  
undefined subtype, but the DOJ did not object in its first demurrer to any perceived failure to allege

1 Browning .50 Cal. M2 semiautomatic rifles configured with a pistol grip or butterfly grip (SAC ¶ 31 &  
2 Ex. B). Paragraph 31 identifies the U.S. Ordinance Semi-60 configured with a butterfly grip. Paragraph  
3 32 alleges that “barreled action firearms sold or configured without a stock are ‘firearms with an  
4 undefined subtype,’ and that “[s]uch firearms are currently sold nationwide.” “A simple search of one  
5 online retailer...for ‘barreled receivers’ returns dozens of barreled action firearms currently available for  
6 sale that would constitute ‘firearms with an undefined subtype’ (and not bare receivers) that cannot  
7 lawfully be transferred through DES as it is currently configured.” (SAC ¶ 32.)<sup>4</sup> What’s more, as  
8 Petitioners represented at the hearing on the DOJ’s first demurrer, Franklin Armory’s responses to  
9 discovery identify by make and model dozens of examples of buntlines, butterfly grip firearms, and  
10 barreled action firearms without stocks that are undefined firearm subtypes that cannot be transferred  
11 through DES. (Ex. A, pp. 12-15.) A complaint is meant to put the opposing party on “fair notice” of the  
12 pleaded claim. (See *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1238-1239.) The DOJ has been adequately  
13 apprised of Petitioners’ claims to prepare a defense; its demurrer on this ground should not be sustained.

14 Third, the DOJ claims—again—that “Petitioners do not have standing because the SAC does not  
15 allege that anyone actually attempted to purchase, sell or transfer a Title 1 rimfire model or any firearm in  
16 the Buntline revolver, butterfly grip or barreled action categories.” (Dem., p. 13.) But, as the DOJ  
17 concedes, the SAC expressly alleges that:

18 Ryan Fellows, a member of [CRPA], “seeks to acquire” a Title 1 rimfire model but is  
19 unable to do so because of defendants’ conduct. (SAC at ¶ 99.) The SAC alleges that  
20 Beverly Epidendio, also [a CRPA] member, “seeks to acquire” a buntline revolver but is  
21 prohibited from doing so because of defendants’ conduct. (SAC at ¶ 100.) The SAC  
22 alleges that Coyote Point Armory, a licensed firearms dealer, “seeks to sell” a buntline  
23 revolver and other lawful firearms including but not limited to the Title 1 rimfire model  
24 but is prohibited from doing so due to defendants’ conduct. (SAC at ¶ 101.)

25 (Dem., p. 13.) These are but mere examples of the concrete interests that Petitioners and their *thousands*  
26 of customers and members have in this action. Petitioners need allege no more at this stage.

27 But to the extent that the DOJ is *again* claiming that Petitioners’ petition must identify specific  
28 individuals that have taken more affirmative steps toward the purchase of the subject firearms, like  
29 submitting an *improper* application for the transfer of an undefined firearm subtype through the DES, it is

specific characteristics that make centerfire Title 1s undefined firearm subtypes.

<sup>4</sup> If necessary, Petitioners could easily amend to list those dozens of firearms by name in the

1 simply wrong. “The law does not require useless acts from litigants as prerequisites to seeking relief from  
2 the courts.” (*Van Gammeren v. City of Fresno* (1942) 51 Cal.App.2d 235, 240; see also *Doster v. Cty. of*  
3 *San Diego* (1988) 203 Cal.App.3d 257, 262 [the law does not require “futile acts”].) Here, “[b]ecause  
4 dealers cannot accurately submit the required information through the DES for ‘long guns’ that are  
5 undefined ‘firearm’ subtypes, they are prohibited from processing and accepting applications from  
6 purchasers of said firearms.” (FAC ¶ 59, citing Penal Code, § 28215, subd. (b).) “The background check  
7 begins with the *completion* and *submission* of an application form that the gun dealer electronically  
8 *submits* to the California DOJ.” (*Silvester v. Harris* (9th Cir. 2016) 843 F.3d 816, 825, italics added.)  
9 Thus, the very first step in “attempting to purchase” a firearm is to apply with the dealer, which is futile  
10 given that “under California Code of Regulations, title 11, § 4210, subdivision (b)(2)(6), firearm dealers  
11 are prohibited from entering inaccurate information within the [DES].” (FAC ¶¶ 52-58, emphasis  
12 added.) Any attempt to complete an application would thus be futile, an idle gesture, or violate state law.

13 Notably, the DOJ does *not* argue that the transfer of firearms that are neither “handguns,” nor  
14 “long guns,” nor “shotguns” *can* be facilitated through the DES despite Petitioners’ claims. Instead, it  
15 suggests that if a retailer submits a false DROS in violation of state law, it *might not* reject the record and  
16 halt the transfer. (Dem., pp. 11-13.) The argument is illogical. Petitioners need not rely on the willingness  
17 of third parties to violate the law and risk civil or criminal penalty, including the loss of their licenses, to  
18 have standing. It is enough that firearm retailers, including Coyote Point Armory (SAC ¶¶ 98, 101) and  
19 others (SAC Ex. C at p. 3), will not transfer these firearms because they cannot submit an accurate DROS  
20 because of the technological limitations of DES.

## 21 2. Petitioners Also Have Public Interest Standing

22 Independent of their standing as a beneficially interested party, Petitioners also have standing  
23 because this case deals with an important question of a public right. When, as here, the question is one of  
24 public right and the object of the mandamus is to procure the enforcement of a public duty, the petitioner  
25 need not show that he has any legal or special interest in the result, since it is enough that the Petitioner is  
26 interested as a citizen in having the laws executed and that duty enforced. (*Save the Plastic Bag Coal. v.*  
27 *City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, citing *Bd. of Soc. Welfare v. County of L.A.* (1945)

28 \_\_\_\_\_  
complaint, but under the pleading standard applicable at this stage Petitioners hardly think it is.

1 27 Cal.2d 98, 100-101.) “The exception promotes the policy of guaranteeing citizens the opportunity to  
2 ensure that no governmental body impairs or defeats the purpose of legislation establishing a public  
3 right.” (*Green, supra*, 29 Cal.3d 126, 144.)

4 Here, the public has an expressly protected right to purchase firearms that are not illegal. Through  
5 its failure to design and maintain the DES to facilitate the lawful submission of information regarding the  
6 transfer of undefined firearm subtypes, the DOJ impaired Petitioners (and all members of the public)  
7 from exercising this right, effectively banning undefined firearm subtypes. (SAC ¶¶ 51-63.) This was  
8 done without authority or public notice. (SAC ¶¶ 44-46, 93). When the government acts, as it has here, in  
9 flagrant disregard of its constitutional and statutory duties, public interest standing exists. (*People for*  
10 *Ethical Operat. of Proseccs. v. Spitzer* (2020) 53 Cal.App.5th 391, 410 (*People for Ethical Operation*).

11 For instance, in *People for Ethical Operation*, plaintiffs sought writ relief to prohibit the operation  
12 of an alleged unlawful confidential informant program. (53 Cal.App.5th at p. 396.) The court held that  
13 plaintiffs had standing because the petition described a surveillance program in blatant disregard of the  
14 government’s constitutional duties and limitations. (*Id.* at p. 410-411.) The rights the program allegedly  
15 violated—the rights to due process and assistance of counsel—“are public rights that every citizen has an  
16 interest in upholding.” (*Id.* at p. 410.) Here, through its inaction, the DOJ denied both Petitioners and the  
17 broader public their rights under the Due Process Clause and the Second Amendment, as well as rights in  
18 property they could otherwise lawfully acquire. (SAC ¶ 114.) These are constitutional rights every citizen  
19 has an interest in and which the government must uphold. The existence of “public interest” standing  
20 could hardly be clearer.

21 In sustaining the DOJ’s first demurrer, the Court expressed concern that Petitioners were not  
22 pursuing this action in the public interest, but to pursue Franklin Armory’s personal financial interest in  
23 its Title 1 firearms. (Dem. Dec., p. 8.) But the Court’s concern was rooted in the misconception that no  
24 firearm except the Franklin Armory’s centerfire Title 1 was affected by the alleged DES defect. (*Ibid.*  
25 [“[T]his matter concerns only a narrow category of undefined type firearms, of which the Title 1 is the  
26 only firearm actually identified in the FAC.”].) And, after SB 118, that firearm could no longer be  
27 transferred, mooting Petitioners’ claims anyway. Regardless of the vital public rights and government  
28 duties at issue, the Court (not unreasonably) seemed reluctant to confer standing if no other firearm was

1 affected. (*Ibid.*) But the Court did not know that countless other firearms cannot be transferred due to the  
2 DES defect. The SAC clarifies that fact. (SAC ¶¶ 27-32.) Petitioners have public interest standing.

3 **B. Petitioners’ Claim Is Ripe for Adjudication**

4 The DOJ raises no independent argument that this case is not ripe except for those arguments  
5 supporting its claim that Petitioners lack standing. So, to borrow the DOJ’s words, “the above discussion  
6 regarding standing also shows that the issues alleged in the SAC” *are* ripe for adjudication. (Dem., p.  
7 15.) That discussion, *supra* Part II.A.1-2, is incorporated here.

8 **C. DOJ Has a Clear Ministerial Duty to Maintain the DES in a Manner that Does Not**  
9 **Block the Transfer of Legal Firearms**

10 “A ministerial act is an act that a public officer is required to perform in a prescribed manner in  
11 obedience to the mandate of legal authority and without regard to his own judgment or opinion  
12 concerning such act’s propriety or impropriety, when a given state of facts exists. Discretion, on the  
13 other hand, is the power conferred on public functionaries to act officially according to the dictates of  
14 their own judgment.” (*Cty. of L.A. v. City of L.A.* (2013) 214 Cal.App.4th 643, 653-654.) Here, state law  
15 creates a ministerial duty that the DOJ maintain the DES so that *all* legal firearms may be transferred  
16 through the system. (Pen. Code, §§ 28155, 28205, 28215, 28220.) While the *form* of the record is  
17 created by the DOJ (§ 28155), the code does not convey to the DOJ any discretion to prohibit the lawful  
18 sale of firearms to law-abiding Californians. If it did, the DOJ would have the unfettered power to block  
19 the sale of any legal firearm it chooses—or all firearms for that matter—by sabotaging the DES and  
20 claiming it is within its discretion to do so.

21 But the Penal Code commands that “for **all** firearms, the register or record of electronic transfer  
22 **shall** include **all** of the following information . . .” (Pen. Code, § 28160, subd. (a), bold added.) The code  
23 then lists several items that the record of electronic transfer “shall” include, including the “[t]ype of  
24 firearm.” (Pen. Code, § 28160, subd. (a)(14).) By refusing to correct the DES to facilitate the transfer of  
25 undefined firearm subtypes, including rimfire Title 1 firearms, buntline revolvers, butterfly grip firearms,  
26 and barreled action firearms without stocks, the DOJ violates its duty to create a system that allows  
27 firearm retailers to include, for *all* firearms, all the statutorily required information. And, in the past, the  
28 DOJ seems to have understood its mandatory duty to facilitate the electronic submission of DROS

1 information to DOJ through DES. Indeed, in a letter to the Office of Administrative Law in November  
2 2013, the DOJ admitted that “[t]he legal sale of firearms in California is only available via DES” and that  
3 DOJ would assume the duty of maintaining the DES on January 1, 2014. (SAC, ¶ 83, Ex. D, p. 1.)

4 The DOJ’s second demurrer raises, for the first time, an argument that Petitioners are not entitled  
5 to a writ of mandate because the DOJ has discretion over the DES. (Dem., pp. 16-17.) The DOJ attempts  
6 to transform language in the Penal Code (which confers some discretion over the *form* of the DES) into a  
7 blank check that allows it to block sales of any firearm it desires by simply not including the required  
8 fields in the DES. The argument is based on the principal that mandamus will not issue if the duty is  
9 mixed with discretionary power. (*Id.*, p. 16.) While that general principle is correct, it usually requires the  
10 exercise of “*significant* discretion”: A “duty is discretionary if the [entity] must exercise *significant*  
11 discretion to perform the duty. We examine the entire statutory scheme to determine whether the [entity]  
12 must exercise *significant* discretion to perform a duty.” (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229,  
13 233, italics added.) The DOJ has not shown—that state law gives it “significant discretion” over the  
14 substance of the DES. Instead, the DOJ gives just two examples of its discretionary power over its *form*.

15 **First**, the DOJ points to statutory language allowing the DOJ to authorize other means of transfer  
16 (Dem., p. 16): “On or after January 1, 2003, *except as permitted by the [DOJ]*, electronic transfer shall be  
17 the exclusive means by which information is transmitted to the [DOJ]. Telephonic transfer shall not be  
18 permitted for information regarding sales of any firearms.” (Pen. Code, § 28205, subd. (c).) In context,  
19 that language plainly does not grant the DOJ any authority to effectively block otherwise legal firearm  
20 transactions. It merely allows the DOJ to provide alternative means for transmitting the required  
21 information. Discretion only as to the *method* of transmission of information is the extent of the authority  
22 granted to the DOJ by section 28205, subdivision (c), which the DOJ implicitly admits in its brief. (Dem.,  
23 pp. 16-17 [“This statute does not specify how the DES should be set up or operated. *Instead, it provides*  
24 *the DOJ with discretion to utilize the DES or another method.*”].) This cannot be considered significant  
25 discretion to block the transmission of statutorily required information altogether.

26 Nor does *State of California ex rel. Dept. of Rehabilitation* (1982) 137 Cal.App.3d 282 support  
27 the DOJ’s position as it insists it does. (Dem., p. 16.) While subsequent language in that case did modify  
28 the Attorney General’s duty to see that the laws of the State are adequately enforced, that language,



1 which the DOJ left out of its brief, states: “Whenever in the opinion of the Attorney General any law of  
2 the State is not being adequately enforced in any county...” (Cal Const, art. V § 13.) That language led  
3 the court to hold that the duty was discretionary because it hinged on the Attorney General’s subjective  
4 opinion. (*State of Cal., supra*, 137 Cal.App.3d at p. 287.) Section 28205 does not confer such broad  
5 discretion; it merely allows the DOJ to sometimes make exceptions to the rule that electronic transfer is  
6 the only way the required information is transmitted. So, while the DOJ might offer variances to how the  
7 information is transmitted, *it must always provide some way to transmit it.*

8       **Second**, the DOJ looks to section 28155, which allows the DOJ to prescribe the form of the  
9 register and record of electronic transfer. (Dem., p. 17.) While the law does “confer[] discretionary  
10 authority upon the DOJ to prescribe the *format* of the DES,” (*id.*, italics added), the DOJ lacks authority  
11 to block the transmission of statutorily required information by refusing to correct the known DES defect  
12 or to provide alternative means for its transmission. The conveyance of some discretionary authority in  
13 the method of executing a mandatory duty does not give blanket power to ignore that duty altogether.  
14 Indeed, “[i]t would be difficult to conceive of any official act, no matter how directly ministerial, that did  
15 not admit of some discretion in the manner of its performance, even if it involved only the driving of a  
16 nail...To the extent that its performance is unqualifiedly required, it is not discretionary, even though the  
17 manner of its performance may be discretionary.” (*Ham v. Cty. of L.A.* (1920) 46 Cal.App. 148, 162.)

18       In *Ham v. County of Los Angeles*, a case about a duty to repair streets and highways, the court  
19 held there was a duty for street superintendents and road supervisors to complete their ministerial duty to  
20 repair roads when on notice that repairs were needed. (46 Cal.App. at p. 162.) That example is very  
21 useful here. While the public servants in *Ham* may have had significant discretion in the manner of  
22 repairing the streets, what they could not do was refuse to repair a street they knew needed repair. In the  
23 same way, the DOJ cannot block the required submission of information about the transfer of any legal  
24 firearm even though it can decide on the form the DES takes. The DOJ’s position would rewrite *Ham* to  
25 say there was no duty for the road supervisors to repair a particular street so long as they have discretion  
26 to decide on the *methods* of street repair. Such an absurdity cannot be correct.

27       **Third**, the DOJ cites *AIDS Healthcare Foundation* to argue that mandamus can only compel a  
28 public agency to exercise its discretion in some manner, but not any particular manner. (Dem., pp. 17-

1 18.) But Petitioners do not ask this Court to direct the manner in which DOJ collects the required firearm  
2 transfer information. The DOJ can use its limited discretion to put the DES into any form it chooses, so  
3 long as it meets section 28160's mandate that "for *all* firearms" the record of electronic transfer "shall  
4 include," among other things, "the type of firearm." (Pen. Code, § 28160, subd. (a)(14), italics added.) To  
5 refer to *Ham* again, the DOJ is free to choose how it wants to fix this "road," but it must fix it.

6 Even if the Court were to find that the DOJ had significant discretion over the DES beyond just  
7 its form, the DOJ should still be compelled to facilitate the sale of legal undefined firearm subtypes.  
8 "Where only one choice can be a reasonable exercise of discretion, a court may compel an official to  
9 make that choice." (*Cal. Correct. Supervs. Org. v. Dept. of Corr.* (2002) 96 Cal.App.4th 824, 827.) There  
10 is a single reasonable choice here. And that is the one that facilitates the transfer of required information  
11 to the DOJ, as mandated by the Penal Code, so that legal firearm sales can be lawfully completed. If the  
12 DOJ's interpretation of the Penal Code were correct, it could block any firearm transaction it chooses by  
13 deleting options for "disfavored" types of firearms from the DES, and then not providing for any other  
14 means to transmit the statutorily required information. Such an interpretation is patently unreasonable.

15 **III. THE COURT SHOULD OVERRULE THE DOJ'S DEMURRER TO THE FIRST AND EIGHTH CAUSES**  
16 **OF ACTION BECAUSE STATE LAW CREATES CAUSES OF ACTION FOR DECLARATORY RELIEF**  
17 **AND, RELATEDLY, INJUNCTIVE RELIEF**

18 The DOJ argues that the First and Eighth causes of action seeking declaratory and injunctive  
19 relief are barred as a matter of law. Although sensible on its face, the DOJ's argument that such claims  
20 fail because they are "remedies" and not genuine causes of action is unavailing. The First and Eighth  
21 claims are brought under Code of Civil Procedure section 1060 and the APA, respectively, and both  
22 statutes create private causes of action for declaratory and, relatedly, injunctive relief.

23 First, section 1060 plainly authorizes "an original action" "for a declaration of his or her rights  
24 and duties. . . ." and states that a party "may ask for a declaration of rights or duties, either alone or with  
25 other relief." And litigants routinely plead various causes of action arising out of the same factual  
26 allegations; that is as non-objectionable a proposition of legal practice as there is. To be certain, the "fact  
27 the same issue...is also raised in other causes of action does not in itself bar declaratory relief...of that  
28 cause of action." (*S. Cal. Edison Co. v. Super. Ct.* (1995) 37 Cal. App. 4th 839, 847.)

Similarly, there is simply too much published authority involving declaratory and injunctive relief

1 challenges in the APA context to countenance that such actions are defective as a matter of law and are  
2 improper ab initio. (See, e.g., *POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681; *Slocum v.*  
3 *State Bd. of Equaliz.* (2005) 134 Cal.App.4th 969; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 497;  
4 *Faunce v. Denton* (1985) 167 Cal.App.3d 191, 193; *State of Cal. v. Super. Ct.* (1971) 16 Cal.App.3d 87.)

5 The DOJ's reliance on *Coachella Valley Unified School District v. State of California* (2009) 176  
6 Cal.App.4th 93 is misplaced. There, the court did not dismiss the declaratory relief claim because it was  
7 void as a matter of law. It did so because it found that its resolution of the related writ against plaintiffs  
8 necessarily precluded the declaratory relief claim. (*Id.* at p. 126.) The court also noted that "on this issue,  
9 the complaint did not state separate causes of action; rather it asked for different forms of relief." (*Id.* at  
10 p. 125.) But here, Petitioners have clearly stated separate causes of action. This authority is a non-  
11 sequitur that does not support the DOJ's argument. The Court should overrule the DOJ's demurrer.

12 **IV. THE COURT SHOULD OVERRULE THE DOJ'S DEMURRER TO THE EIGHTH CAUSE OF ACTION**  
13 **BECAUSE THE DOJ'S POLICY OF BLOCKING THE TRANSFER OF LEGAL FIREARMS IS AN**  
14 **UNDERGROUND REGULATION IN VIOLATION OF THE APA**

15 "An underground regulation is a regulation that a court may determine to be invalid because it  
16 was not adopted in substantial compliance with the procedures of the Administrative Procedure Act."  
17 (*Modesto City Schools v. Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) Under the  
18 APA, a regulation is "every rule, regulation, order, or standard of general application or the amendment,  
19 supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to  
20 implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."  
21 (Gov. Code, § 11342.600.) Petitioners allege that the DOJ maintains an internal rule or standard of  
22 general application prohibiting the sale of undefined firearm subtypes in California, as evidenced by its  
23 refusal to fix the known DES defect to allow for the sale of such firearms. (SAC ¶¶ 85, 186-188.) That  
24 the DOJ maintains the alleged policy is reaffirmed by the fact that the DOJ refused to fix the known  
25 defect, stalling until it successfully persuaded the legislature to ban centerfire Title 1 firearms. (SAC ¶  
26 97.) The DOJ's conduct illegally blocked the transfer of around 35,000 Title 1 firearms (SAC ¶ 79),  
27 leaving no doubt that the DOJ's action (or inaction) was part of a standard of general application.

28 Ultimately, the DOJ's unilateral decision to block tens of thousands of legal firearm sales is  
exactly the type of action the APA protects against. "A major aim of the APA was to provide a procedure

1 whereby people to be affected may be heard on the merits of proposed rules.” (*Armistead v. State Pers.*  
2 *Bd.* (1978) 22 Cal.3d 198, 204.) The DOJ did not bother to give the thousands of people who wanted to  
3 purchase Title 1 firearms or other undefined firearms subtypes a chance to be heard. Instead, it refused  
4 (and *still* refuses) to fix the DES to facilitate transfer of these legal firearms and offers no alternative  
5 method to submit the statutorily required information as it is authorized to do.

6 In their second demurrer, the DOJ argues for the first time that the configuration of the DES  
7 cannot be a “regulation” because the DES is an electronic web-based system, not a rule, order, or  
8 standard. (Dem., p. 20.) That might have been a strong point if Petitioners alleged that the configuration  
9 of DES itself constituted an underground regulation, but they did not. Instead, the SAC challenges the  
10 validity of policies “that prohibit[s] the transfer of lawful firearms to lawful purchasers.” (SAC ¶ 85.)  
11 While this includes “designing, developing, implementing, or modifying” (SAC ¶ 85) the DES in a way  
12 that prevents transfers from proceeding, the SAC is clear that what is at issue is not the DES itself, but  
13 the DOJ’s underground regulation barring the sale of undefined firearm subtypes. (SAC ¶ 93 [“The  
14 challenged rules at issue, *including but not limited to the prohibition of certain lawful firearms from*  
15 *being transferred* because of DEFENDANTS’ technological barriers...”].) That internal rule, Petitioners  
16 believe, is why the DOJ refuses to correct the alleged DES defect.<sup>5</sup>

17 But even if Petitioners objected to the DES directly, this case squares with Government Code  
18 section 11340.9, which clarifies that while the APA does not apply to all forms used by an agency, when  
19 a form is necessary to implement the law under which the form is issued, as the DES is, it must be  
20 adopted under the requirements of the APA. (Gov. Code, § 11340.9, subd. (c).)

## 21 CONCLUSION

22 For these reasons, the DOJ’s demurrer should be overruled in its entirety. But if the Court sustains  
23 any part of it, Petitioners again request leave to amend.

24 Date: May 20, 2021

**MICHEL & ASSOCIATES, P.C.**

  
\_\_\_\_\_  
25 Anna M. Barvir  
26 Attorneys for Petitioners-Plaintiffs

27 <sup>5</sup> The DOJ cannot hide behind the fact that Petitioners have not identified some kind of internal  
28 *written* rule as the basis of its claim. If such were required to state a claim under the APA’s ban on  
underground regulations, public agencies could simply evade liability by refusing to put its agency-wide  
customs and policies into writing. Such a loophole would make the APA all but obsolete.

# **EXHIBIT A**

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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  
11 ASSOCIATION, INCORPORATED

12 Petitioners-Plaintiffs,

13 v.

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

16 Respondents-Defendants.  
17

Case No.: 20STCP01747

**PLAINTIFF FRANKLIN ARMORY,  
INC.'S RESPONSE TO DEFENDANT  
CALIFORNIA DEPARTMENT OF  
JUSTICE'S FORM  
INTERROGATORIES-GENERAL, SET  
ONE**

Action filed: May 27, 2020

18  
19  
20 PROPOUNDING PARTY: Defendant-Respondent California Department of Justice

21 RESPONDING PARTY: Plaintiff-Petitioner Franklin Armory, Inc.

22 SET NUMBER: One  
23  
24  
25  
26  
27  
28

1 theories, analyses of written data, attorney notes and impressions, recorded statements taken by counsel,  
2 any work done by investigators or agents. The discovery in this lawsuit is still in the nascent stages and  
3 many “facts” that are believed to be true at this time might be revealed to be incorrect later. These  
4 “facts” are thus, at this point, largely assumptions and beliefs on the part of the attorney and, therefore,  
5 are part of the attorney work product. The attorney for Responding Party is not required to review their  
6 thinking processes for opposing counsel. And, to the extent that it seeks information about potential  
7 expert witnesses, Responding Party has not yet decided on which, if any, experts may be called at the  
8 time of trial. Any experts utilized by party to date are for purposes of consultation and case preparation  
9 only. (*Sheets v. Super. Ct.* (1967) 257 Cal.App.2d 1; *Sanders v. Super. Ct.* (1973) 34 Cal.App.3d 270.)

10 **Subject to and without waiving the foregoing objections, Responding Party responds:**

11 Respondents, as the state entity in charge of overseeing and enforcing California’s firearm laws,  
12 including registrations and inspections, are no doubt familiar with the following list of firearms that have  
13 been manufactured for well over 100 years. By way of example:

14 Invented in 1861, the Gatling gun is a “firearm with an undefined subtype.”

15 Buntline Revolvers with barrels of 16 inches or more in length, such as the Colt Buntline Special  
16 Single Action Army Revolver, would constitute “firearms with an undefined subtype” and have been  
17 manufactured since the mid-1800s as well. Uberti, USA offers the Buntline Target, a revolver with a 16”  
18 barrel that would constitute a “firearm with an undefined subtype” under California law.

19 Certain configurations of mounted firearms have been manufactured for years and would  
20 constitute a “firearm with an undefined subtype. For example, the Browning 1919A4 firearms began  
21 production in approximately 1936 and would be deemed “firearms with an undefined firearm subtype.”  
22 And defendants are fully aware of such firearms. On March 28, 2000, the California Department of  
23 Justice issued a letter to Mr. Tim Bero, President of TNW, Inc., about a conversation that they had  
24 relating to the Browning .30 Cal. M-1919 A4 and A6, as well as the Browning .50 Cal. M2 semi-  
25 automatic rifles configured with a pistol grip or butterfly grip, and clarifying that said firearms would  
26 not constitute “assault weapons” under California law at that time. And, again on November 3, 2004, the  
27 Director of the Firearms Division of the California Department of Justice issued a letter stating that a  
28 U.S. Ordinance Semi-60 configured with a butterfly grip, which would constitute “firearm with an

1 undefined subtype,” was not an “assault weapon” under California law at that time.

2 One of the most common types of firearms in the United States are barreled action firearms.  
3 Barreled action firearms are sold with and without stocks to allow the ultimate end user to purchase a  
4 stock that best suits their needs. Barreled action firearms sold or configured without their stock would be  
5 deemed “firearms with an undefined subtype.” Such firearms are currently sold nationwide. A simple  
6 search of one online retailer, Brownells.com, for “barreled receivers” reveals the following list of  
7 barreled action firearms available for sale at the time of this response that would constitute “firearms  
8 with an undefined subtype” (and not bare receivers) that cannot lawfully be transferred under the DES as  
9 it is currently configured:

10 • *Remington:*

- 11 ▪ REMINGTON 700 S/A MAGNUM ACTION
- 12 ▪ REMINGTON 700 SPS TACTICAL 20" HEAVY BARRELED ACTION .308 WIN

13 • *Howa:*

- 14 ▪ 1500 6.5 CREEDMOOR 24" THREADED HEAVY BARRELED ACTION
- 15 ▪ 1500 6.5 GRENDDEL 20" THREADED HEAVY BARRELED MINI ACTION
- 16 ▪ 1500 300BLK 16.25" HEAVY THREADED BARREL MINI ACTION
- 17 ▪ 1500 BARRELED ACTION STANDARD BARREL BLUE .30-06 #2
- 18 ▪ 1500 BARRELED ACTION LIGHTWEIGHT BLUE 6.5 CREEDMOOR #1
- 19 ▪ M1500 BARRELED ACTION 300 PRC THREADED
- 20 ▪ 24" 6mm CREEDMOOR BARRELED ACTION
- 21 ▪ 1500 BARRELED ACTION HEAVY 26" BRL BLUE .308 WIN #6 THREADED
- 22 ▪ 1500 308 WIN 20" THREADED HEAVY BARRELED ACTION
- 23 ▪ 1500 6.5 CREEDMOOR 22" SPORTER BARRELED ACTION
- 24 ▪ 1500 6.5 GRENDDEL 22" SPORTER BARRELED MINI ACTION
- 25 ▪ 1500 BARRELED ACTION SEMI HEAVY BARREL .300 WIN MAG THREAD
- 26 1/2-28
- 27 ▪ 1500 22" NON-THREADED BARRELED ACTION 6MM CREEDMOOR
- 28 ▪ 1500 BARRELED ACTION MINI ACTION STANDARD BLUE 22"



- 1           ▪ 1500 BARRELED ACTION LW CERAKOTE GRAY .243 WIN #1
- 2           ▪ 1500 308 WIN 24" THREADED HEAVY BARRELED ACTION
- 3           ▪ 1500 30-06 22" SPORTER BARRELED ACTION CERAKOTE
- 4           ▪ 1500 BARRELED ACTION STANDARD BARREL BLUE .270 WIN #2
- 5           ▪ 1500 BARRELED ACTION STANDARD BARREL BLUE 22-250 REM #2
- 6           ▪ 1500 308 WIN 22" SPORTER BARRELED ACTION
- 7           ▪ 1500 22-250 THREADED HEAVY BARRELED ACTION
- 8           ▪ 1500 7.62X39 20" THREADED HEAVY BARRELED MINI ACTION
- 9           ▪ 1500 BARRELED ACTION MAG BLUE .300 WIN MAG #2
- 10          ▪ 1500 BARRELED ACTION STD CERAKOTE GRAY .308 WIN #2
- 11          ▪ 1500 BARRELED ACTION LW CERAKOTE GRAY .223 REM #1
- 12          ▪ 1500 BARRELED ACTION STD CERAKOTE GRAY .243 WIN #2
- 13          ▪ 1500 BARRELED ACTION LIGHTWEIGHT BLUE .308 WIN #1
- 14          ▪ 1500 BARRELED ACTION STANDARD BARREL BLUE .243 WIN #2
- 15          • *Bergara:*
- 16            ▪ B14R 22LR BARRELED ACTION 18" STEEL THREADED
- 17            ▪ PREMIER SERIES 300 PRC BARRELED ACTIONS
- 18            ▪ PREMIER SERIES 6.5MM CREEDMOOR BARRELED ACTIONS
- 19            ▪ B14R 22LR BARRELED ACTION 18" CARBON FIBER THREADED
- 20            ▪ PREMIER SERIES BARRLED ACTIONS 7MM REM MAG THREADED
- 21            ▪ PREMIER SERIES BARRELED ACTIONS 6.5 PRC THREADED
- 22            ▪ PREMIER SERIES 308 WINCHESTER BARRELED ACTIONS
- 23            ▪ PREMIER SERIES BARRELED ACTION .270 NO TRIGGER THREADED
- 24            ▪ PREMIER SERIES 300 WINCHESTER MAGNUM BARRELED ACTIONS
- 25            ▪ PREMIER SERIES BARRELED ACTION 30-06 THREADED
- 26            ▪ PREMIER SERIES BARRELED ACTION .223 NO TRIGGER THREADED
- 27            ▪ PREMIER SERIES BARRELED ACTION .280 ACKLEY IMP THREADED
- 28            ▪ PREMIER SERIERS BARRELED ACTION 22-250 THREADED

- 1           ▪ PREMIER SERIES 6MM CREEDMOOR BARRELED ACTIONS
- 2           • *Area 419:*
- 3           ▪ DEFIANCE TENACITY BARRELED ACTIONS
- 4           • *Blackheart:*
- 5           ▪ AK-47 BARRELED RECEIVER 7.62X39 FIXED STOCK
- 6           ▪ AK-47 BARRELED RECEIVER 7.62X39 UNDERFOLDER
- 7           • *Brownells:*
- 8           ▪ BRN-22 BARRELED RECEIVER FOR RUGER™ 10/22™

9           Other examples include firearms that are chambered for shot shells, including but not limited to  
10 the O.F. Mossberg & Sons, Inc. model Cruiser chambered in 12 gauge with an 18” barrel, which does  
11 not satisfy the definition handgun, rifle, nor shotgun under California law.

12           These are merely examples of what are likely thousands of variants of “firearms with an  
13 undefined subtype” that that are currently on the market today and cannot be lawfully transferred  
14 through the DES as it currently exists.

15           (c)     In addition to Propounding Party, the following are persons known to have knowledge of  
16 these facts:

17           Franklin Armory, Inc.,  
18           c/o Jay Jacobson  
19           2246 Park Place Suite B  
20           Minden, NV 89423  
21           Phone: 775-783-4313

22           Jason A. Davis  
23           Michel & Associates, P.C.  
24           180 E. Ocean Blvd, Suite 200  
25           Long Beach, CA 90802  
26           Phone: 562-216-4444.

27           C.D. Michel  
28           Michel & Associates, P.C.  
            180 E. Ocean Blvd, Suite 200  
            Long Beach, CA 90802  
            Phone: 562-216-4444

            Tim Bero  
            President of TNW, Inc.  
            Address and telephone number unknown

            Randy Rossi

1 Former Director of Firearms Division  
2 California Department of Justice  
3 Address and telephone number unknown

3 Tim Rieger  
4 Former Counsel of Firearms Division  
5 California Department of Justice  
6 Address and telephone number unknown

6 (d) On March 28, 2000, the California Department of Justice issued a letter to Mr. Tim Bero,  
7 President of TNW, Inc., about a conversation that they had relating to the Browning .30 Cal. M-1919 A4  
8 and A6, as well as the Browning .50 Cal. M2 semi-automatic rifles configured with a pistol grip or  
9 butterfly grip, and clarifying that said firearms would not constitute “assault weapons” under California  
10 law at that time. And, again on November 3, 2004, the Director of the Firearms Division of the  
11 California Department of Justice issued a letter stating that a U.S. Ordinance Semi-60 configured with a  
12 butterfly grip, which would constitute “firearm with an undefined subtype,” was not an “assault  
13 weapon” under California law at that time. (Counsel for Responding Party, Michel & Associates, 180 E.  
14 Ocean Blvd., Suite 200, Long Beach, CA 90802, Phone: 562-216-4444).

15 Hog, The Illustrated Encyclopedia of Firearms (1978)

16 Smith, Small Arms of the World (1973)

17 [https://en.wikipedia.org/wiki/Colt\\_Buntline](https://en.wikipedia.org/wiki/Colt_Buntline)

18 <https://www.foxbusiness.com/features/rare-colt-buntline-a-special-inheritance>

19 [https://www.guns.com/news/2013/02/27/the-buntline-special-the-colt-shooters-holy-or-false-](https://www.guns.com/news/2013/02/27/the-buntline-special-the-colt-shooters-holy-or-false-grail)  
20 [grail](https://www.guns.com/news/2013/02/27/the-buntline-special-the-colt-shooters-holy-or-false-grail)

21 [https://military.wikia.org/wiki/Colt\\_Buntline](https://military.wikia.org/wiki/Colt_Buntline)

22 <https://www.brownells.com/search/index.htm?k=barreled+receivers&ksubmit=y>

23 <https://www.uberti-usa.com/1873-revolver-carbine-and-buntline>

24 <https://www.mossberg.com/product/590-cruiser-50697/>

25 (a) **Request for Admission No. 4**

26 (b) Objection.

27 1. Responding Party has not yet completed the investigation of the facts and discovery  
28 relating to this case. It is anticipated that further factual investigation, legal research, factual and legal

1 **VERIFICATION**

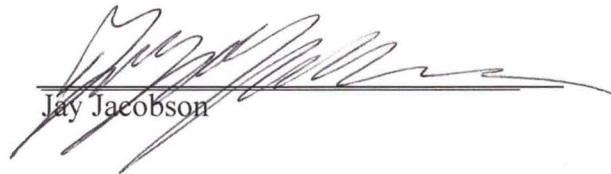
2 I, Jay Jacobson, declare as follows:

3 I am the President of Franklin Armory, Inc., and I am authorized to make this verification for and  
4 on its behalf.

5 I declare that I have read the foregoing PLAINTIFF FRANKLIN ARMORY, INC.'S  
6 RESPONSE TO DEFENDANT CALIFORNIA DEPARTMENT OF JUSTICE'S FORM  
7 INTERROGATORIES-GENERAL, SET ONE, in the matter of *Franklin Armory, Inc., et al. v.*  
8 *California Department of Justice, et al.*, and I know its contents. I declare that the information stated  
9 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 Executed on January 20, 2021, at Douglas County, Nevada.

14   
15 Jay Jacobson  
16  
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23  
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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 May 20, 2021, I served the foregoing document(s) described as

8 **PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN**  
9 **OPPOSITION TO RESPONDENTS' DEMURRER**

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

14 Kenneth G. Lake  
15 Deputy Attorney General  
16 Email: [kenneth.lake@doj.ca.gov](mailto:kenneth.lake@doj.ca.gov)  
17 Benjamin Barnouw  
18 Supervising Deputy Attorney General  
19 Email: [ben.barnouw@doj.ca.gov](mailto:ben.barnouw@doj.ca.gov)  
20 California Department of Justice  
21 300 South Spring Street, Suite 1702  
22 Los Angeles, CA 90013  
23 *Attorney for Respondents-Defendants*

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

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

28 Executed on May 20, 2021, at Long Beach, California.

  
\_\_\_\_\_  
Laura Palmerin