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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT

13
14 **FRANKLIN ARMORY, INC., ET AL.,**
15
16 Plaintiffs and Petitioners,
17
18 **CALIFORNIA DEPARTMENT OF**
JUSTICE ET AL.,,

19 v.

20 Defendants and
21 Respondents.

Case No. 20STCP01747

**DECLARATION OF MARICELA
LEYVA IN SUPPORT OF MOTION TO
DISMISS THE FIRST, SECOND AND
EIGHTH CAUSES OF ACTION IN THE
SECOND AMENDED COMPLAINT AND
PETITION**

Date: January 27, 2022
Time: 9:30 a.m.
Dept: 85
Judge: Hon. James C. Chalfant
Trial Date: Not set
Action Filed: May 27, 2020

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23
24 I, Maricela Leyva, do hereby declare as follows:

25 1. I have been employed with the State of California, Department of Justice,
26 Bureau of Firearms (BOF) Customer Support Center as a Staff Services Manager I
27 (SSMI) since June 2018. I began working for the BOF in 2012 as a Program
28 Technician II. I later promoted to Staff Services Analyst, then to Associate

1 Governmental Program Analyst, then to SSMI over Assault Weapon Registration,
2 and now as a SSMI over the Customer Support Center.

3 2. As an SSMI over the Customer Support Center, it is my responsibility to
4 manage the daily functions of the Center, which include monitoring calls and
5 correspondence received by the BOF from firearms dealers, Firearm Safety
6 Certificate instructors, law enforcement agencies, manufacturers and the public
7 regarding firearms laws and regulations.

8 3. The Dealer Record of Sale Entry System, often referred to as the “DES,” is
9 a public-facing web application which firearms dealers use to transmit information
10 to the BOF to perform background checks on firearms transactions. As a SSMI over
11 the Customer Support Center, I am familiar with the DES and often deal with
12 questions posed by firearms dealers regarding the DES.

13 4. The DES was modified, with a deployment date of October 1, 2021, to
14 include an “other” option in the “gun type” field. Prior to October 1, 2021, when a
15 DES user selected “Long Gun Transactions” and selected “No” for “Receiver
16 Only,” then the user was required to select one of three options available in the
17 “gun type” field, and those three options were “RIFLE,” “SHOTGUN” and
18 “RIFLE/SHOTGUN COMBINATION.” Beginning on October 1, 2021, when a
19 DES user selects “Long Gun Transactions” and selects “No” for “Receiver Only,”
20 then the user must select one of four options available in the “gun type” field, and
21 those four options are “RIFLE,” “SHOTGUN” and “RIFLE/SHOTGUN
22 COMBINATION” and “OTHER.”

23 5. In my capacity as the SSMI over the Customer Support Center, I was
24 involved in the drafting of a Bulletin to be posted on the DES to notify firearms
25 dealers of the addition of the “other” option in the “gun type” field. The Bulletin
26 was entitled, “Important Notice Regarding ‘Other’ Firearms,” and was posted on
27 the DES website on or about September 27, 2021. A true and correct copy of this
28 Bulletin is attached hereto as Exhibit “A”.

1 6. The primary purpose of this Bulletin was to notify firearms dealers about
2 the modification of the DES and to instruct them how to utilize the “other” option.

3 7. Another purpose of the Bulletin was to remind firearms dealers that some
4 firearms that could otherwise be considered to fall into the “other” category fit
5 within the definition of an “assault weapon” set forth in Penal Code section 30515,
6 subdivision (a), paragraphs (9), (10), and (11). Transactions involving firearms that
7 are classified as “assault weapons” under this and other sections of the Penal Code
8 cannot legally be processed through the DES. Although transactions for firearms
9 that fit the definition of an “assault weapon” under Penal Code section 30515,
10 subdivision (a), paragraphs (9), (10), and (11), cannot be legally processed through
11 the DES, if an individual possessed such a firearm prior to September 1, 2020, and
12 they satisfied the eligibility criteria set forth in Penal Code section 30950, they
13 could keep the firearm if they registered it with the Department of Justice before
14 January 1, 2022. The Bulletin notified firearms dealers that this registration process
15 would take place between 9:00 a.m. PST on October 1, 2021, through 11:59 p.m.
16 PST on December 31, 2021. The Bulletin referenced Penal Code section 30900 to
17 inform dealers that there was a separate registration process for “other” assault
18 weapons, so that they would not mistakenly attempt to register an “assault weapon”
19 through the DES.

20 8. To achieve the purpose of reminding firearms dealers that some firearms
21 that could otherwise be considered to fall into the “other” category fit within the
22 definition of an “assault weapon” set forth in Penal Code section 30515,
23 subdivision (a), paragraphs (9), (10), and (11), the Bulletin quoted those paragraphs
24 in full. All three paragraphs apply to a “semiautomatic centerfire firearm that is not
25 a rifle, pistol, or shotgun,” that has specified features. The feature in paragraph (10)
26 is that the firearm “has a fixed magazine with the capacity to accept more than 10
27 rounds.” The feature in paragraph (11) is that the firearm “has an overall length of
28 less than 30 inches.” To highlight these two paragraphs, the Bulletin included the

1 following note: “Note: Prior to the sale, loan, or transfer of an ‘Other’ type firearm
2 you must confirm: 1. That it has a fixed magazine that accepts 10 rounds or fewer.
3 2. That it has an overall length of 30 inches or more.” Unfortunately, this language
4 was imprecise because it inadvertently failed to specify that these limitations only
5 apply to “semiautomatic centerfire firearms.”

6 9. When this omission was brought to BOF’s attention, BOF issued a revised
7 Bulletin on September 30, 2021. A true and correct copy of the revised Bulletin,
8 posted on September 30, 2021, is attached hereto as Exhibit “B”. The Bulletin was
9 titled “IMPORTANT NOTICE Regarding the Sale of ‘Other’ Firearms,” and
10 specified that it superseded the original Bulletin posted on September 27, 2021.
11 This revised Bulletin corrected the imprecision of the original Bulletin by clarifying
12 that an “other” firearm could fit the definition of an assault weapon under Penal
13 Code section 30515, subdivision (a), paragraphs (9), (10), and (11), only if it was
14 “centerfire” firearm. Specifically, in place of the imprecise note from the original
15 Bulletin, the revised Bulletin included the following: “Note: Prior to the sale, loan,
16 or transfer of a centerfire ‘Other’ type firearm, you must confirm the ‘Other’ does
17 not meet the criteria of an ‘Other’ Assault Weapon pursuant to Penal Code 30515.”
18 As with the first Bulletin, the revised Bulletin posted on September 30, 2021, also
19 quoted Penal Code section 30515, subdivision (a), paragraphs (9), (10), and (11).
20 The intent of the revised Bulletin was the same as the intent of the original Bulletin.

21 I declare, under penalty of perjury, that the foregoing is true and correct, and
22 that this declaration is executed on November 24, 2021, at Sacramento, California.

23
24 
25 Maricela Leyva
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Exhibit A

Notice

Regarding the Sale of "Other" Firearms

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

The purpose of this notice is to provide information on firearms categorized as firearm type "Other" and to advise California Firearm Dealers (CFD's) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an "Other" type firearm. The gun type option, "Other" will be available within the DES at 5:00 am Friday, October 1, 2021.

WHAT IS CONSIDERED AN “OTHER” FIREARM

An “Other” type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) An “Other” can also be considered an assault weapon.

Note: Prior to the sale, loan, or transfer of an “Other” type firearm you must confirm:

1. That it has a fixed magazine that accepts 10 rounds or fewer.
2. That it has an overall length of 30 inches or more.

If the “Other” does not meet the criteria above or is considered an “Other” Assault Weapon pursuant to Penal Code 30900, **the “Other” may not be sold, loaned or transferred** in the DES.

WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON

Pursuant to Penal Code section 30900, subdivision (c), paragraph (1), effective September 1, 2020, an “Other” assault weapon is defined in Penal Code section 30515, subdivision (a), paragraphs (9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
 - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - B. A thumbhole stock.
 - C. A folding or telescoping stock.
 - D. A grenade launcher or flare launcher.
 - E. A flash suppressor.
 - F. A forward pistol grip.
 - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - H. A second handgrip.
 - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.
 - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, “fixed magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9), (10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.

**RESTRICTIONS THAT DO NOT APPLY TO THE SALE OF NON-ASSAULT WEAPON
“OTHER” FIREARMS**

30-DAY RESTRICTION

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period. This restriction does **NOT** apply to “Other” type firearms.

AGE RESTRICTION

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age. This restriction does **NOT** apply to a fully assembled “Other” type firearm.

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



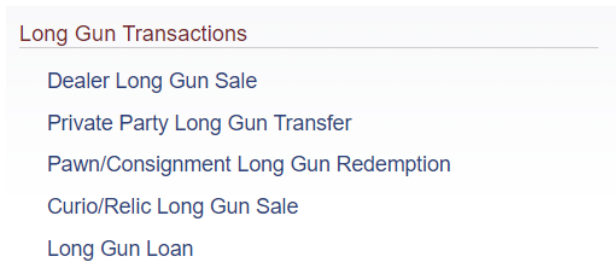
IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

STEP 1

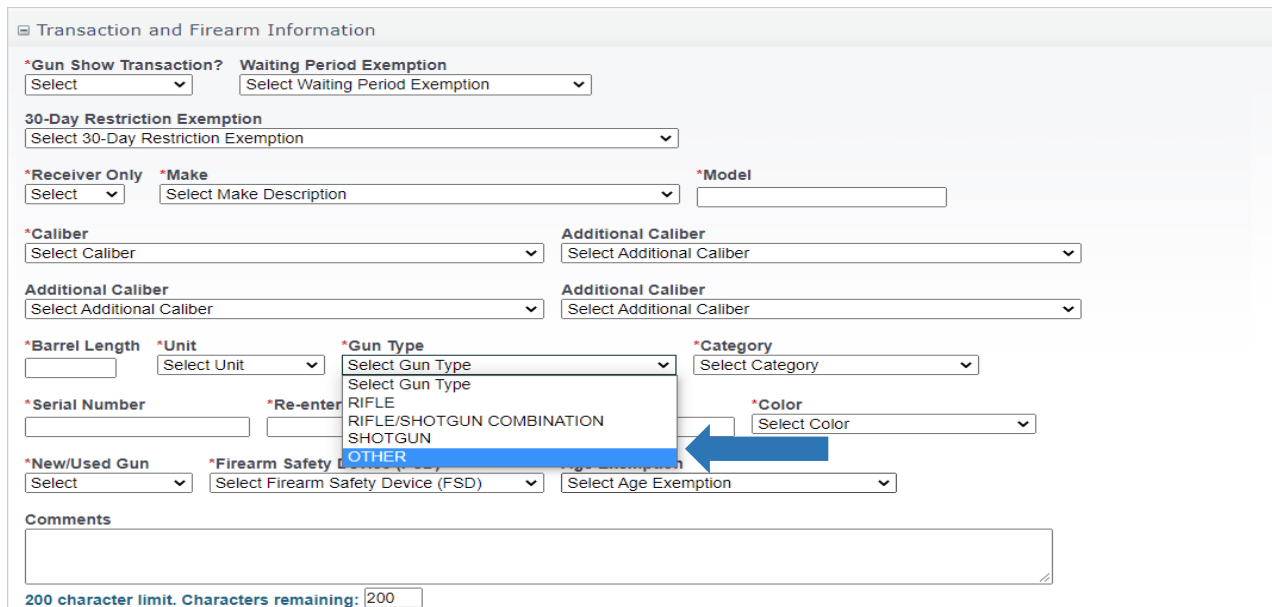
Select the **Long Gun Transactions** type related to the sale you are conducting.



A screenshot of a web application menu titled "Long Gun Transactions". The menu is open, showing a list of options: "Dealer Long Gun Sale", "Private Party Long Gun Transfer", "Pawn/Consignment Long Gun Redemption", "Curio/Relic Long Gun Sale", and "Long Gun Loan".

STEP 2

Under the Transaction and Firearm Information, **Gun Type** drop down, select “Other”.



A screenshot of the "Transaction and Firearm Information" form in the DES system. The form contains several fields and dropdown menus. The "Gun Type" dropdown menu is open, showing options: "RIFLE", "RIFLE/SHOTGUN COMBINATION", "SHOTGUN", and "OTHER". A blue arrow points to the "OTHER" option. Other fields include "Gun Show Transaction?", "Waiting Period Exemption", "30-Day Restriction Exemption", "Receiver Only", "Make", "Model", "Caliber", "Additional Caliber", "Barrel Length", "Unit", "Serial Number", "Re-enter", "Color", "New/Used Gun", "Firearm Safety", and "Age Exemption". A "Comments" field is at the bottom with a 200 character limit.

STEP 3

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.

The screenshot shows the 'Firearms Shipment Verification Request' form. At the top, it identifies the State of California, Department of Justice, and Office of the Attorney General. A navigation bar includes links for 'AG HOME PAGE', 'VERSION 2.0.0.9', 'HELP', 'CONTACT US', and 'LOGOFF'. The user is identified as 'JAMES HEWITT' on 'January 27, 2020'. The main title is 'Firearms Shipment Verification Request'. The form contains three main sections: 1. 'Shipment Recipient CL Number' with a text input field and a '[View CL Number information]' link. A note below states: 'You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.' 2. 'Number of weapons to be shipped' with two sub-inputs: 'Handguns' and 'Long Guns'. A red arrow points to the 'Long Guns' input field. 3. 'Shipment Invoice Number' with a text input field. At the bottom are 'Submit', 'Clear', and 'Main Menu' buttons.

WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?

Additional information can be found within the [“Other” Assault Weapons](#) Frequently Asked Questions on the Bureau of Firearms website at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at bofdes@doj.ca.gov Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

Exhibit B

Notice

Regarding the Sale of "Other" Firearms
(Supersedes Des Bullietin Exhibit A)

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

(THIS BULLETIN SUPERSEDES DES BULLETIN TITLED “Important Notice Regarding ‘Other’ Firearms” – Posted on 09/27/2021 at 9:50 AM.)

The purpose of this notice is to provide information on firearms categorized as firearm type “Other” and to advise California Firearm Dealers (CFD’s) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an “Other” type firearm. The gun type option, “Other” will be available within the DES at 5:00 am Friday, October 1, 2021.

WHAT IS CONSIDERED AN “OTHER” FIREARM

An “Other” type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), “Buntline” type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).

Note: Prior to the sale, loan, or transfer of a centerfire “Other” type firearm, you must confirm the “Other” does not meet the criteria of an “Other” Assault Weapon pursuant to Penal Code 30515.

WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON

Effective September 1, 2020, an “Other” assault weapon is defined in Penal Code section 30515(a)(9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
 - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - B. A thumbhole stock.
 - C. A folding or telescoping stock.
 - D. A grenade launcher or flare launcher.
 - E. A flash suppressor.
 - F. A forward pistol grip.
 - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - H. A second handgrip.
 - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.
 - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, “fixed magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

See related Other Assault Weapon Regulations: <https://oag.ca.gov/firearms/regs/oaw>.

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9),

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

(10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.

RESTRICTIONS REGARDING THE SALE OF NON-ASSAULT WEAPON “OTHER” FIREARMS

30-DAY RESTRICTION

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period.” This restriction does **NOT** apply to “Other” type firearms.

AGE RESTRICTION

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age.” This restriction applies to a fully assembled “Other” firearm unless the purchaser is exempt under 27510, subdivision (b).

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

IMPORTANT NOTICE Regarding the Sale of “Other” Firearms

STEP 1

Select the **Long Gun Transactions** type related to the sale you are conducting.

Long Gun Transactions

- Dealer Long Gun Sale
- Private Party Long Gun Transfer
- Pawn/Consignment Long Gun Redemption
- Curio/Relic Long Gun Sale
- Long Gun Loan

STEP 2

Under the Transaction and Firearm Information, **Gun Type** drop down, select **“Other”**.

Transaction and Firearm Information

*Gun Show Transaction? Waiting Period Exemption

30-Day Restriction Exemption

*Receiver Only *Make *Model

*Caliber Additional Caliber

Additional Caliber Additional Caliber

*Barrel Length *Unit *Gun Type
Select Gun Type
RIFLE
RIFLE/SHOTGUN COMBINATION
SHOTGUN
OTHER

*Serial Number *Re-enter *Color

*New/Used Gun *Firearm Safety Device (FSD) *Age Exemption

Comments

200 character limit. Characters remaining: 200

STEP 3

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.

State of California
Department of Justice

Office of the Attorney General

AG HOME PAGE VERSION 2.0.0.9 HELP CONTACT US LOGOFF

* Indicates Required Field User: JAMES HEWITT | January 27, 2020

Firearms Shipment Verification Request

*Shipment Recipient CL Number [\[View CL Number information\]](#)
You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.

*Number of weapons to be shipped
Handguns Long Guns

*Shipment Invoice Number

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?

Additional information can be found on the Bureau of Firearms website within the [“Other” Assault Weapon Registration](https://oag.ca.gov/firearms/oawr-notice) web page at <https://oag.ca.gov/firearms/oawr-notice> or within the [“Other” Assault Weapons](https://oag.ca.gov/firearms/regagunfaqs) Frequently Asked Questions web page at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at bofdes@doj.ca.gov Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

Case No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 16, 2021, I served the attached **DECLARATION OF MARICELA LEYVA IN SUPPORT OF MOTION TO DISMISS THE FIRST, SECOND AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT AND PETITION** by transmitting a true copy via electronic mail, addressed as follows:

Anna M. Barvir
Jason A. Davis
Konstadinos T. Moros
MICHEL & ASSOCIATES, P.C.
abarvir@michellawyers.com
Jason@calgunlawyers.com
kmoros@michellawyers.com
lpalmerin@michellawyers.com

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 16, 2021, at Los Angeles, California.

Jasmine Zarate

Declarant

/s/ Jasmine Zarate

Signature