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9 *only*

Exempt from filing fees pursuant to
Government Code section 6103

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13 CENTRAL DISTRICT
14

15
16 **FRANKLIN ARMORY, INC. AND**
CALIFORNIA RIFLE & PISTOL
17 **ASSOCIATION, INCORPORATED,**

18 Petitioners-Plaintiffs,

19 v.

20
21 **CALIFORNIA DEPARTMENT OF**
JUSTICE, XAVIER BECERRA, IN HIS
22 **OFFICIAL CAPACITY AS ATTORNEY GENERAL**
FOR THE STATE OF CALIFORNIA, AND DOES
23 **1-10,**

24 Respondents-Defendants

Case No. 20STCP01747

**NOTICE OF MOTION AND MOTION
TO DISMISS THE FIRST, SECOND AND
EIGHTH CAUSES OF ACTION IN THE
SECOND AMENDED COMPLAINT AND
PETITION; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[DECLARATIONS OF CHERYLE
MASSARO-FLOREZ AND MARICELA
LEYVA AND REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF THE
MOTION TO DISMISS FILED
SEPARATELY]**

Date: January 27, 2022
Time: 9:30 a.m.
Dept: 85

Honorable James C. Chalfant

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 27, 2022, at 9:30 a.m., in Department 85 of the
3 above-entitled Court, located at 111 North Hill Street, Los Angeles, California, 90012, defendants
4 and respondents State of California, acting by and through the California Department of Justice,
5 Former Attorney General Xavier Becerra in his personal capacity only and Attorney General Rob
6 Bonta in his official capacity only will move the Court for an Order dismissing the First, Second
7 and Eighth causes of action to the Second Amended Complaint and Petition.

8 Said motion will be made, pursuant to the Court's inherent authority to dismiss
9 nonjusticiable claims and to control litigation before it, on the ground that Defendant/Respondent
10 California Department of Justice (DOJ) has modified the electronic system the DOJ utilizes to
11 process applications for firearm transactions to remove the alleged "technological barrier" to the
12 firearm transactions at issue in this case, which renders moot the writ of mandate, declaratory
13 relief and injunctive relief Plaintiffs/Petitioners Franklin Armory, Inc. and the California Rifle &
14 Pistol Association, Incorporated seek in their First, Second and Eighth causes of action.

15 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
16 the Declarations of Cheryle Massaro-Florez and Maricela Leyva filed concurrently, the Request
17 for Judicial Notice filed concurrently, on the pleadings and records on file herein, and on such
18 other matters as may be presented at the hearing.

19 Dated: November 29, 2021

Respectfully Submitted,

20 ROB BONTA
21 Attorney General of California

Benjamin Barnouw

22 BENJAMIN BARNOUW
23 Supervising Deputy Attorney General
24 KENNETH G. LAKE
25 Deputy Attorney General

*Attorneys for Defendants and Respondents
State of California, acting by and through
the California Department of Justice,
Former Attorney General Xavier Becerra
in his personal capacity only and Attorney
General Rob Bonta in his official capacity
only*

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1 **INTRODUCTION**

2 Plaintiffs/Petitioners Franklin Armory, Inc. (Franklin Armory) and the California Rifle &
3 Pistol Association, Incorporated (Association)¹ seek a writ of mandate and declaratory and
4 injunctive relief based on allegations that they have been unable to engage in transactions
5 involving “firearms with an undefined subtype,” also sometimes referred to as “other” firearms,
6 because there is an alleged “technological barrier” to processing transactions for such firearms in
7 the electronic system the DOJ utilizes to process applications for firearm transactions. These
8 claims are moot because the DOJ has modified the electronic system to remove the alleged
9 “technological barrier.” In fact, the DOJ made the specific modification suggested in Petitioners’
10 Second Amended Complaint and Petition, which is to add an “Other” option for “gun type.” The
11 modification was deployed on October 1, 2021.

12 Based on discussions between the parties’ counsel, it appears that Petitioners contend their
13 claims are not moot because they are concerned the DOJ will issue notices or bulletins that
14 improperly restrict the use of the “Other” option. Petitioners’ concerns are groundless. Petitioners
15 raised concerns with respect to a bulletin posted by the DOJ on September 27, 2021, which they
16 interpreted as exempting firearms at issue in this lawsuit from the use of the “Other” option.
17 When DOJ was alerted to the situation, it promptly issued another bulletin that superseded the
18 first one and used modified language to avoid any misinterpretation. This second bulletin was
19 posted on September 30, 2021, before the “Other” option was deployed. Petitioners’ concerns
20 about bulletins or notices issued by the DOJ are also irrelevant because such activity is not the
21 subject of their petition for writ of mandate or related claims for declaratory and injunctive relief.
22 The configuration of the DES is the subject of these claims.

23 In sum, the DOJ has modified the DES so that there is no longer any alleged “technological
24 barrier” to the processing of transactions involving the firearms at issue in this lawsuit, and thus
25 Petitioners’ claims for a writ of mandate and declaratory and injunctive relief are moot and should
26 be dismissed.

27
28 ¹ Franklin Armory and the Association will be collectively referred to as “Petitioners.”

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. HISTORY OF PETITIONERS’ LAWSUIT**

3 Petitioners’ original Complaint and Petition (Complaint) focused on a Franklin Armory
4 firearm designated as the “Title 1,” which did not fit within any of the statutory firearm type
5 definitions of “pistol”/”handgun,” “rifle” or “shotgun.” (Complaint at p. 2, ¶2.) Although Franklin
6 Armory now alleges there are two Title 1 variants, one of which is a “centerfire” firearm and the
7 other of which is a “rimfire” firearm (Second Amended Complaint and Petition (SAC) at p. 2,
8 ¶2), the original Complaint only concerned the “centerfire” model. The centerfire Title 1 was
9 subsequently classified as an “assault weapon” under Penal Code section 30515. Section 30515
10 was amended, effective September 1, 2020, to include in the definition of “assault weapon” any
11 “semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun” that has one or more
12 specified characteristics. (Pen. Code, §30515, subds. (a)(9),(10),(11).) As a result, Franklin
13 Armory’s centerfire Title 1 was banned and could not legally be processed through the DES.²

14 After this occurred, Petitioners filed a First Amended Complaint and Petition (FAC), in
15 which they acknowledged that the centerfire Title 1 was a banned “assault weapon.” (FAC at p.
16 21, ¶105.) Nonetheless, they continued to assert a writ petition and related claims based on the
17 “Title 1,” as well as on other, unidentified firearms. (See, e.g., FAC at p. 25, ¶125.) The DOJ filed
18 a demurrer, which was sustained by the Court. The Court held that Petitioners’ claims based on
19 the Title 1 were moot because it was classified as an assault weapon and could not legally be
20 processed through the DES, and any order permitting the transfer of a Title 1 would violate
21 California law. (Decision on Demurrer, filed January 28, 2021,³ at pp. 5-6.) In opposing the
22 demurrer, Franklin Armory claimed that its allegations concerning the “Title 1” concerned two
23 versions of the Title 1, the banned “centerfire” version and a “rimfire” version that was not

24 _____
25 ² Any individual who obtained, prior to September 1, 2020, a firearm that is defined as an
26 assault weapon under Penal Code section 30515, subdivisions (a)(9), (10) and (11), is allowed to
27 keep the firearm if they meet certain eligibility requirements, but they must register the firearm
28 with the DOJ by January 1, 2022. (Pen. Code, §30685.) To register, an individual must submit an
application to the DOJ pursuant to a process to be established by the DOJ in a regulation. (Pen.
Code, §30900, subd. (c).)

³ The Court’s Decision is attached to the Request for Judicial Notice filed in support of
this motion.

1 banned because it did not fit the definition of an assault weapon. The Court rejected that
2 argument. (*Id.* at p. 5.) The Court held that Petitioners had failed to allege standing to pursue
3 claims based on other, unidentified firearms. (*Id.* at p. 7.)

4 **II. PETITIONERS' SECOND AMENDED COMPLAINT AND PETITION**

5 Petitioners filed their Second Amended Complaint and Petition on February 17, 2021. They
6 allege the existence of a different Franklin Armory firearm also designated with the model name
7 "Title 1," which they describe as a ".17 WSM (a rimfire caliber)." (SAC at p. 2, ¶2.) They allege
8 this rimfire Title 1 firearm does not fit within any of the statutory firearm type definitions
9 "pistol"/"handgun," "rifle" or "shotgun." (SAC at p. 2, ¶2.) Petitioners also identified three other
10 categories of firearms - buntline revolvers, butterfly grip firearms, and barreled action firearms -
11 they allege do not fit within any of the statutory firearm type definitions "pistol"/"handgun,"
12 "rifle" or "shotgun." (SAC at p. 2, ¶4.)

13 The Second Amended Complaint and Petition asserts nine causes of action. This Motion to
14 Dismiss addresses the First, Second and Eighth causes of action; all the other causes of action
15 have been stayed. The Second cause of action seeks a writ of mandate, and the First and Eighth
16 causes of action seek declaratory and injunctive relief.

17 All of these causes of action are premised on Petitioners' allegation that firearms that do not
18 fit within any of the statutory definitions of recognized firearm types – "pistol"/"handgun," "rifle"
19 and "shotgun" -- cannot be sold or otherwise transferred in California because of a "technological
20 barrier" in the Dealer Record of Sale Entry System ("DES") which is utilized by dealers and the
21 DOJ to process applications for firearm transactions. (SAC at p. 16, ¶58.) Petitioners allege as
22 follows:

23 58. Specifically, by design, when the DES user is inputting the designated
24 information into the DES, they must input information related to the gun type ("long
25 gun" or "handgun") from a pre-populated dropdown list. Upon selecting "long gun,"
26 the DES is designed to and functions to self-populate a subset of fields, and it requires
27 one of three options to be designated before the dealer may proceed with the
28 completion of the form and submission of the required information to the DOJ. Those
three options are: "rifle," "rifle/shotgun," "shotgun." Unlike the subset of fields that
self-populate for "Color," "Purchaser Place of Birth," and Seller Place of Birth", each
of which contains the catchall "other" options, the "long guns" subset of fields does
not contain the "other" option. Thus, the DES prevents licensed firearm dealers from
proceeding with the sale, transfer, loan or submission of information to the DOJ for

1 certain firearms, including but not limited to the FAI [Franklin Armory] Title I series
2 of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms.

3 59. The actual and practical effect of this design is that licensed California firearm
4 dealers cannot accurately submit the necessary information to the DOJ for processing
5 because of the limited choices of subtypes in the DES, thereby barring the sale,
6 transfer, acquisition, loan or other processing of “firearms with an undefined
7 subtype,” including but not limited to the FAI Title 1 series of firearms, buntline
8 revolvers, butterfly grip firearms, and barreled action firearms.

9 (SAC at p. 16, ¶¶58-59.) Petitioners refer to the configuration of the DES as a “technological
10 barrier,” alleging that “[a]s part of the design, implementation, maintenance and enforcement of
11 the DES by the DEFENDANTS, the DEFENDANTS have instituted a technological barrier that
12 functions and serves as a ban on the transfer of all ‘firearms with an undefined subtype’ that are
13 ‘long guns’ that are neither ‘rifles’ nor ‘shotguns’ nor ‘rifle/shotgun combinations’ through a
14 licensed California firearms dealer.” (SAC at p. 17, ¶63.)

15 In their Petition for Writ of Mandate (Second cause of action), Petitioners seek an order
16 “commanding DEFENDANTS to design, implement, maintain and enforce updates to the DES
17 such that it does not proscribe the lawful sale, transfer and loan of an entire class of lawful
18 firearms, including but not limited to rimfire variants of the FAI Title 1 series of firearms,
19 buntline revolvers, butterfly grip firearms, and barreled action firearms, and such that it comports
20 with Penal Code sections 28155, 28205, 28215 and 28220.”⁴ (SAC at p. 29, ¶127.)

21 In the First cause of action titled “Declaratory and Injunctive Relief,” Petitioners seek
22 various declarations regarding the DES and the alleged “technological barrier,” including the
23 following:

- 24 • The DES, as it is currently 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 ⁴ Petitioners also seek writ relief requiring the DOJ to process sales of the centerfire Title
28 1 to any individual who placed a “deposit” on the firearm on or before August 6, 2020. (SAC at
pp. 27-28, ¶¶123, 128.) However, the Court has already ruled that Petitioners’ writ petition
related to the centerfire Title 1 is moot, and that an order permitting transfers of that firearm
would contravene California law. (Decision on Demurrer, filed January 28, 2021, at pp. 5-6.)
Petitioners concede that the Court has already ruled against them on this claim and have
explained that they “kept this claim in the SAC to avoid waiving any right to appeal the Court’s
ruling.” (Opposition to Demurrer to Second Amended Complaint at p. 8, fn. 2 [a copy of the
Opposition is attached to the Request for Judicial Notice].)

- 1 • DEFENDANTS’ actions in designing, implementing, maintaining and enforcing the
2 DES, in its current form, constitute a barrier and prevent FAI, licensed dealers and
3 the general public from acquiring, possessing, transferring and selling certain lawful
4 firearms, including but not limited to the FAI Title 1 series of firearms, buntline
5 revolvers, butterfly grip firearms, and barreled action receivers, within the State of
6 California.
- 7 • The DES’s technological restrictions prohibiting the transfer of certain lawful
8 firearms, including but not limited to the FAI Title 1 series of firearms, buntline
9 revolvers, butterfly grip firearms, and barreled action receivers, violate the DOJ’s
10 duties, including those found within Penal Code sections 28155, 28205, 28215, and
11 28220.

12 (SAC at pp. 25-26, ¶118.) In the First cause of action, Petitioners also seek an injunction
13 “enjoining DEFENDANTS, their agents, employees, representatives and all those acting in
14 concert with [sic] from enforcing administrative and/or technological barriers that prevent the sale
15 of lawful ‘firearms with an undefined subtype,’ including but not limited to rimfire variants of the
16 FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action
17 firearms.” (SAC at p. 26, ¶119.)⁵

18 In the Eighth cause of action, titled “For Declaratory and Injunctive Relief - Validity of
19 Non-Statutory Ban on Lawful Product Via Technological Barriers,” Petitioners allege that the
20 DOJ has created or enforced a “rule of general applicability” that prohibits the sale of “firearms
21 with an undefined subtype,” and that because this “rule” was not promulgated in accordance with
22 the Administrative Procedure Act, it constitutes an illegal “underground regulation.” (SAC at pp.

23 _____
24 ⁵ Petitioners also request an injunction requiring the DOJ to process sales of the centerfire
25 Title 1 to any individual who placed a “deposit” on the firearm on or before August 6, 2020.
26 (SAC at p. 26, ¶120.) However, the Court has already ruled that Petitioners’ claim for injunctive
27 relief related to the centerfire Title 1 is moot, and that an order permitting transfers of that firearm
28 would contravene California law. (Decision on Demurrer, filed January 28, 2021, at pp. 5-6.)
Petitioners have conceded that the Court has already ruled against them on this claim and have
represented that they “kept this claim in the SAC to avoid waiving any right to appeal the Court’s
ruling.” (Opposition to Demurrer to Second Amended Complaint at p. 8, fn. 2.)

1 37-38, ¶¶186-190.) Petitioners allege that “[t]he rule was created by DOJ for the purpose of
2 submitting specific information to the DOJ and for processing registrations and background
3 checks via the DES, a system administered by the DOJ pursuant to the Penal Code.” (SAC at p.
4 38, ¶188.) Petitioners seek a declaration that the DOJ has instituted an illegal “underground
5 regulation.” (SAC at p. 38, ¶192.) Petitioners also possibly seek an injunction in this cause of
6 action, although they do not specify what conduct they seek to enjoin. (SAC at p. 38, ¶194.)

7 **III. THE DEPARTMENT OF JUSTICE HAS MODIFIED THE DES**

8 The DOJ has modified the DES by adding an “Other” option under the “gun type” menu.
9 (Decl. of Cheryl Massaro-Florez at ¶6; Decl. of Maricela Leyva at ¶4; see Joint Stipulation and
10 Order, filed Nov. 23, 2021,⁶ at p. 4, line 24 – p. 5, line 6 [acknowledging modification of DES].)
11 This is precisely the modification that Petitioners have alleged would satisfy their claims for writ,
12 declaratory and injunctive relief. (See SAC at p. 17, ¶64 [“This technological barrier could be
13 alleviated if the DES provided the ‘other’ option for ‘long guns’”]; p. 16, ¶58 [“Unlike the subset
14 of fields that self-populate for ‘Color,’ ‘Purchaser Place of Birth,’ and [‘]Seller Place of Birth’,
15 each of which contains the catchall ‘other’ options, the ‘long guns’ subset of fields does not
16 contain the ‘other’ option”].)

17 The modification was deployed on October 1, 2021. (Decl. of Cheryl Massaro-Florez at ¶6;
18 Decl. of Maricela Leyva at ¶4.) Prior to the deployment, the DOJ posted announcements on the
19 DES to notify firearms dealers about the modification. (Decl. of Maricela Leyva at ¶¶5, 9 and
20 Exhibits “A” and “B.”)

21 The project to modify the DES involved more than simply adding an option on a drop-
22 down menu in the DES. To account for the fact that firearms can now be categorized as “other,”
23 additional modifications were made to the DES. (Decl. of Cheryl Massaro-Florez at ¶8.) In
24 addition, modifications were required for several internal DOJ applications and databases,
25 including the Consolidated Firearms Information System, the DROS application, a middleware
26 program known as the Consolidated Firearms Interface Gateway, the Automated Firearms

27 _____
28 ⁶ The Joint Stipulation and Order, filed November 23, 2021, is attached to the Request for
Judicial Notice filed in support of this motion.

1 System, and the Armed and Prohibited Persons System. (Decl. of Cheryl Massaro-Florez at ¶¶9-
2 13, 17.) Modifications were also required for a website known as the California Firearms
3 Application Reporting System. (Decl. of Cheryl Massaro-Florez at ¶¶14-16.)

4 **IV. ARGUMENT**

5 **A. The Court Has the Power to Dismiss Claims for Writ, Declaratory and** 6 **Injunctive Relief That Are Moot**

7 “California courts will decide only justiciable controversies.” (*Wilson & Wilson v. City*
8 *Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) One component of justiciability is
9 mootness. (*Ibid.*) Moot cases are “[t]hose in which an actual controversy did exist but, by the
10 passage of time or a change in circumstances, ceased to exist.” (*Ibid.* [quoting 3 Witkin, Cal.
11 Procedure (5th ed. 2008) Actions, § 21, pp. 85, 86].) “When events render a case moot, the court,
12 whether trial or appellate, should generally dismiss it.” (*Wilson & Wilson, supra*, 191 Cal.App.4th
13 at p. 1575.) “[A] trial court may, under certain circumstances, invoke its limited, inherent
14 discretionary power to dismiss claims with prejudice.” (*Lyons v. Wickhorst* (1986) 42 Cal.3d 911,
15 915.) A “nonjusticiable controversy” has been recognized as a ground for such a dismissal. (*Id.* at
16 p. 915, fn. 4.) “It is also well established that, independent of any statutory authority, courts have
17 fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to
18 control litigation before them.” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.)

19 “If the evidence, including facts arising after the writ petition is filed, ‘demonstrates the
20 [respondent’s] “willingness to perform without coercion, the writ [of mandate] may be denied as
21 unnecessary; and if [the respondent] shows actual compliance, the proceeding will be dismissed
22 as moot.” [Citation.] No purpose would be served in directing the [respondent] to do what has
23 already been done.’” (*TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 147-
24 148 [quoting *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 742]; see *County of San*
25 *Diego v. State of California* (2008) 164 Cal.App.4th 580, 595-596 [writ was improperly granted
26 where the petitioners would obtain the same relief under a statute enacted after the writ petition
27 was filed]; *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 417 [county’s resolution adopted
28 during the case which increased level of dental care it would provide to indigent residents showed

1 good faith willingness to perform and made issuance of writ inappropriate]; *California Teachers*
2 *Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860, 873–874 [holding trial court erred in issuing a
3 writ because “the issue of whether the county was required to adopt a budget, as a matter of law,
4 had become moot because it had already complied with the duty imposed on it by law”].)

5 The rule also applies to claims for declaratory relief. (See *Giraldo v. Department of*
6 *Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 257 [affirming dismissal of
7 plaintiff’s claims for declaratory and injunctive relief regarding prison conditions as moot after
8 the plaintiff’s release from prison]; *City of Los Angeles v. County of Los Angeles* (1983) 147
9 Cal.App.3d 952, 959 [dismissing appeal from a judgment of declaratory and injunctive relief
10 where the issues were rendered moot by the passage of Proposition 13].) In addition, declaratory
11 relief is proper only where there is an “actual controversy relating to the legal rights and duties of
12 the respective parties” (Code Civ. Proc., §1060), and where a respondent’s actions or other
13 circumstances render claims for declaratory relief moot, there is no “actual controversy” under
14 section 1060. Furthermore, Code of Civil Procedure section 1061 grants courts the express power
15 to “refuse to exercise the power granted by this chapter [including section 1060] in any case
16 where its declaration or determination is not necessary or proper at the time under all the
17 circumstances.”

18 Claims for injunctive relief can also be dismissed as moot. (See *Giraldo, supra*, 168
19 Cal.App.4th at p. 257 [affirming dismissal of plaintiff’s claims for declaratory and injunctive
20 relief regarding prison conditions as moot after the plaintiff’s release from prison]; *City of Los*
21 *Angeles, supra*, 147 Cal.App.3d at p. 959 [dismissing appeal from a judgment of declaratory and
22 injunctive relief where the issues were rendered moot by the passage of Proposition 13].)

23 **B. Petitioners’ Petition for Writ of Mandate Is Moot**

24 In their Petition for Writ of Mandate (Second cause of action), Petitioners seek an order
25 “commanding DEFENDANTS to design, implement, maintain and enforce updates to the DES
26 such that it does not proscribe the lawful sale, transfer and loan of an entire class of lawful
27 firearms, including but not limited to rimfire variants of the FAI Title 1 series of firearms,
28 buntline revolvers, butterfly grip firearms, and barreled action firearms, and such that it comports

1 with Penal Code sections 28155, 28205, 28215 and 28220.” (SAC at p. 29, ¶127.) Petitioners
2 allege that all of these firearms do not fit within any of the statutory firearm type definitions
3 “pistol”/”handgun,” “rifle” or “shotgun.” (SAC at p. 2, ¶¶2, 4.) The only aspect of the DES that
4 allegedly hinders transactions involving these firearms is that, for transactions involving a “long
5 gun,” the DES offers only three options in the “gun type” field, namely, “rifle,” “rifle/shotgun,”
6 and “shotgun.” (SAC at p. 16, ¶58.)

7 This claim is now moot because, as is established in the declarations submitted in support
8 of this motion, the DES now has an “Other” option for the “gun type” field. (Decl. of Cheryl
9 Massaro-Florez at ¶6; Decl. of Maricela Leyva at ¶4; see Joint Stipulation and Order, filed Nov.
10 23, 2021, at p. 4, line 24 – p. 5, line 6 [acknowledging modification of DES].) Notably,
11 Petitioners have referred to configuration of the DES as a “technological barrier” (SAC at p. 17,
12 ¶63), and alleged that the modification to the DES which the DOJ has now deployed would
13 alleviate this technological barrier: “This technological barrier could be alleviated if the DES
14 provided the ‘other’ option for ‘long guns.’” (SAC at p. 17, ¶64.) Petitioners do not allege any
15 other aspect of the DES that hinders the processing of transactions for these firearms.

16 Petitioners apparently argue their claims are not moot because the DOJ could in the future
17 issue notices or bulletins that improperly restrict the use of the “Other” option. Petitioners
18 specifically raised concerns with a bulletin issued by the DOJ on September 27, 2021, which they
19 interpreted as exempting some of the firearms at issue in this matter from being processed under
20 the “Other” option. (See Joint Stipulation and Order, filed Nov. 23, 2021, at p. 4, line 9.)
21 Petitioners’ argument is baseless. The bulletin issued on September 27, 2021, and the bulletin
22 issued on September 30, 2021, which superseded the first bulletin, are both attached to the
23 Declaration of Maricela Leyva submitted in support of this motion. The DOJ acknowledges that
24 the bulletin posted on September 27, 2021, was imprecise. (Decl. of Maricela Leyva, at ¶8.)
25 Specifically, the bulletin was intended to remind firearms dealers that some firearms that could
26 otherwise be considered to fall into the “Other” category fit within the definition of an “assault
27 weapon” set forth in Penal Code section 30515, subdivision (a), paragraphs (9), (10), and (11).
28 (*Id.* at ¶8 and Exh. “A.”) Thus, the Bulletin quoted those paragraphs in full. (*Id.* at ¶8 and Exh.

1 “A.”) All three paragraphs apply to a “semiautomatic centerfire firearm that is not a rifle, pistol,
2 or shotgun,” that has specified features; the feature in paragraph (10) is that the firearm “has a
3 fixed magazine with the capacity to accept more than 10 rounds”; and the feature in paragraph
4 (11) is that the firearm “has an overall length of less than 30 inches.” (Pen. Code, § 30515, subs.
5 (a)(9)-(11).) To highlight these two paragraphs, the Bulletin included the following note: “Note:
6 Prior to the sale, loan, or transfer of an ‘Other’ type firearm you must confirm: 1. That it has a
7 fixed magazine that accepts 10 rounds or fewer. 2. That it has an overall length of 30 inches or
8 more.” (Decl. of Maricela Leyva, at ¶8 and Exh. “A.”) However, the note was imprecise because
9 it inadvertently failed to specify that the limitations only apply to “semiautomatic centerfire
10 firearms.” (*Id.* at ¶8 and Exh. “A.”) The bulletin did quote the text of Penal Code section 30515,
11 subdivisions (a)(9)-(11), which state that the restrictions only apply to “semiautomatic centerfire
12 firearms” (*Id.* at ¶8 and Exh. “A.”), thus a firearms dealer reading the bulletin would understand
13 that the restrictions only applied to “semiautomatic centerfire firearms.” In any event, when the
14 DOJ was alerted that the first bulletin was imprecise, it promptly issued a bulletin that superseded
15 the first bulletin and removed the imprecise language. (*Id.* at ¶9 and Exh. “B.”) The second
16 bulletin was posted on September 30, 2021, before the “Other” option was deployed. In sum,
17 when the DOJ was notified of an alternative and unintended interpretation of the bulletin, it
18 promptly issued a superseding bulletin that clarified the issue. This does not show that the DOJ
19 will in the future issue notices or bulletins that improperly limit the use of the “Other” option.

20 Moreover, Petitioners’ complaints about notices or bulletins issued by the DOJ are beyond
21 the scope of their petition for writ of mandate. Petitioners’ writ petition is premised on the theory
22 that Penal Code sections 28155, 28205, 28215 and 28220 establish a mandatory, ministerial duty
23 on the DOJ with respect to the configuration and capability of the DES. Those statutes do not
24 address any duties with respect to notices or bulletins issued by the DOJ.

25 In conclusion, the writ petition in this case addresses the configuration of the DES and the
26 DOJ has addressed the alleged problem with the DES. Accordingly, the writ petition is moot.

27 **C. Petitioners’ Claims for Declaratory Relief Are Moot**

28 In their First cause of action, Petitioners seek the following declaratory relief:

1 (a) “There exists a category of firearm that is neither a ‘rifle,’ nor ‘shotgun,’ nor ‘handgun’
2 under California law.”

3 (b) “The DES, as it is currently designed, implemented, maintained and/or enforced by
4 DEFENDANTS, prohibits the sale of certain firearms that are neither ‘rifles,’ nor
5 ‘shotguns,’ nor ‘handguns’ under California law.”

6 (c) “DEFENDANTS’ actions in designing, implementing, maintaining and enforcing the
7 DES, in its current form, constitute a barrier and prevent FAI, licensed dealers and the
8 general public from acquiring, possessing, transferring and selling certain lawful firearms,
9 including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly
10 grip firearms, and barreled action receivers, within the State of California.”

11 (d) “The DES’s technological restrictions prohibiting the transfer of certain lawful firearms,
12 including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly
13 grip firearms, and barreled action receivers, violate the DOJ’s duties, including those found
14 within Penal Code sections 28155, 28205, 28215, and 28220.”

15 (e) “The DES, as it is currently designed, implemented, maintained and/or enforced, is not
16 in compliance with the mandate imposed by Penal Code sections 28155, 28205, 28215, and
17 28220.”

18 (f) “DEFENDANTS have intentionally instituted the technological barriers designed for
19 and implemented within DES, which is maintained and enforced by the DEFENDANTS.”

20 (g) “DEFENDANTS have intentionally delayed in removing the technological barriers
21 designed for and implemented within DES, which is maintained and enforced by the
22 DEFENDANTS.”

23 (h) “DEFENDANTS . . . have a clear, present and ministerial duty to ensure that the
24 systems developed by the DOJ to facilitate the submission of information do not act as
25 barriers to the submission of the required information necessary for the sale, loan and/or
26 transfer of lawful firearms.”

27 (SAC at pp. 25-26, ¶118.) In addition, in their Eighth cause of action, Petitioners seek a
28 declaration as follows: “A judicial declaration of the legality of DEFENDANTS’ conduct, and

1 whether the regulation barring application for, sale of, delivery of, and possession of lawful
2 ‘firearms with an undefined subtype,’ including but not limited to the FAI Title 1 series of
3 firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms, constitutes an
4 invalid underground regulation in violation of the APA is necessary and appropriate at this time.”
5 (SAC at p. 38, ¶192.)

6 All of the requests for declaratory relief are moot because, as is established in the
7 declarations attached to this motion, the DES now has an “Other” option for the “gun type” field.
8 (Decl. of Cheryl Massaro-Florez at ¶6; Decl. of Maricela Leyva at ¶4.) All of the declaratory
9 relief Petitioners seek is premised on their outdated allegations that for transactions involving a
10 “long gun,” the DES offers only three options in the “gun type” field, namely, “rifle,” “shotgun”
11 and “rifle/shotgun” (SAC at p. 16, ¶58), which hinders transactions for the firearms at issue in
12 this case because those firearms do not fit within any of the statutory firearm type definitions
13 “pistol”/“handgun,” “rifle” or “shotgun” (SAC at p. 2, ¶¶2, 4). The purported “rule” which
14 allegedly constitutes an invalid underground regulation is the configuration of the DES, which
15 allegedly “prohibit[s] the sale of certain firearms that are neither ‘pistols,’ nor ‘rifles,’ nor
16 ‘shotguns,’ under California law.” (SAC at p. 37, ¶186; see SAC at p. 38, ¶188 [“The rule was
17 created by DOJ for the purpose of submitting specific information to the DOJ and for processing
18 registrations and background checks via the DES, a system administered by the DOJ pursuant to
19 the Penal Code.”].)

20 Petitioners’ declaratory relief claims are moot because the alleged “technological barrier”
21 which their case is based upon no longer exists. (See SAC at p. 17, ¶64 [“This technological
22 barrier could be alleviated if the DES provided the ‘other’ option for ‘long guns’”].) Petitioners
23 do not allege any other aspect of the DES creates a barrier to processing transactions for the
24 firearms at issue in this lawsuit. Thus, there is no “actual controversy” which can properly be the
25 subject of declaratory relief. (Code Civ. Proc., § 1060; see *Alliance for California Business v.*
26 *State Air Resources Bd.* (2018) 23 Cal.App.5th 1050, 1068 [“A declaratory relief action requires
27 an actual controversy relating to the legal rights and duties of the respective parties”].)

28 Even if Petitioners argue that there is an “actual controversy” about the DES as it was

1 *previously* configured, the Court should exercise its discretion to refuse to issue a declaration
2 because, based on Petitioners’ own allegations, the “firearms with an undefined subtype” which
3 are at issue in this case can now be processed through the DES. A declaration relating to a past
4 configuration of the DES would be improper because “ ‘[d]eclaratory relief operates
5 prospectively to declare future rights, rather than to redress past wrongs. [Citation.] A declaratory
6 judgment ‘ “serves to set controversies at rest before they lead to repudiation of obligations,
7 invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of
8 preventive justice, to declare rights rather than execute them.” [Citations.]’” (*County of San*
9 *Diego, supra*, 164 Cal.App.4th at pp. 607-608 [citations omitted]; see Code Civ. Proc., § 1061
10 [granting courts the authority to “refuse to exercise the power granted by this chapter [including
11 section 1060] in any case where its declaration or determination is not necessary or proper at the
12 time under all the circumstances”].)

13 Finally, the Court should reject any argument Petitioners make that their claims are not
14 moot because the DOJ could in the future issue notices or bulletins that improperly restrict the use
15 of the “Other” option. Petitioners’ contention that a September 27, 2021, bulletin posted by the
16 DOJ was an attempt to improperly restrict the use of the “Other” option is groundless. (Decl. of
17 Maricela Leyva, at ¶¶8-9, and Exhs. “A” and “B.”) Furthermore, Petitioners’ Second Amended
18 Complaint and Petition does not include any allegations regarding notices or bulletins issued by
19 the DOJ, and thus any relief involving notices or bulletins would be beyond the scope of
20 Petitioners’ current claims.

21 **D. Petitioners’ Request for Injunctive Relief Is Moot**

22 In the First cause of action, Petitioners also seek an injunction “enjoining DEFENDANTS,
23 their agents, employees, representatives and all those acting in concert with [sic] from enforcing
24 administrative and/or technological barriers that prevent the sale of lawful ‘firearms with an
25 undefined subtype,’ including but not limited to rimfire variants of the FAI Title 1 series of
26 firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms.” (SAC at p. 26,
27 ¶119.) In their Eighth cause of action, Petitioners allege “DEFENDANTS’ unlawful conduct has
28 caused, and unless enjoined by this Court, will continue to cause irreparable injury to

1 PLAINTIFFS, as well as their members and customers.” (SAC at p. 38, ¶194.) It is unclear
2 whether this is a request for an injunction and, if so, what the terms of the requested injunction
3 would be.

4 Petitioners’ request for injunctive relief is premised on their allegations that for transactions
5 involving a “long gun,” the DES offers only three options in the “gun type” field, namely, “rifle,”
6 “shotgun” and “rifle/shotgun” (SAC at p. 16, ¶58), which hinders transactions for “firearms with
7 an undefined subtype” because those firearms do not fit within any of the statutory firearm type
8 definitions “pistol/”handgun,” “rifle” or “shotgun” (SAC at p. 2, ¶¶2, 4).

9 Therefore, Petitioners’ request for injunctive relief is moot because, as is established in the
10 declarations submitted in support of this motion, the DES now has an “Other” option for the “gun
11 type” field. (Decl. of Cheryl Massaro-Florez at ¶6; Decl. of Maricela Leyva at ¶4; see Joint
12 Stipulation and Order, filed Nov. 23, 2021, at p. 4, line 24 – p. 5, line 6 [acknowledging
13 modification of DES].) Notably, Petitioners allege that the addition of an “Other” option would
14 alleviate the “technological barrier” which is the focus of this case: “This technological barrier
15 could be alleviated if the DES provided the ‘other’ option for ‘long guns.’” (SAC at p. 17, ¶64.)
16 Petitioners do not allege any other aspect of the DES that hinders the processing of transactions
17 for “firearms with an undefined subtype.”

18 Finally, the Court should reject any argument Petitioners make that their claims are not
19 moot because the DOJ will in the future issue notices or bulletins that improperly restrict the use
20 of the “Other” option. Petitioners’ contention that a September 27, 2021, bulletin posted by the
21 DOJ was an attempt to improperly restrict the use of the “Other” option is groundless. (Decl. of
22 Maricela Leyva, at ¶¶8-9, and Exhs. “A” and “B.”) Furthermore, DOJ’s issuance of notices or
23 bulletins are beyond the scope of Petitioners’ current claims.

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CONCLUSION

The DOJ has modified the DES to address the alleged “technological barrier” upon which Petitioners’ claims are premised. In fact, the DES has been modified in precisely the manner which Petitioners allege would alleviate the “technological barrier.” Accordingly, Petitioners’ claims for writ, declaratory and injunctive relief are moot and should be dismissed by this Court.

Dated: November 29, 2021

Respectfully Submitted,
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only*

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 29, 2021, I served the attached **NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST, SECOND AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT AND PETITION; MEMORANDUM OF POINTS AND AUTHORITIES** by transmitting a true copy via electronic mail, addressed as follows:

Anna M. Barvir
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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 29, 2021, at Los Angeles, California.

Jasmine Zarate

Declarant

/s/ Jasmine Zarate

Signature