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Exempt from filing fees pursuant to Government  
Code section 6103

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*California, acting by and through the California*  
8 *Department of Justice, Former Attorney General*  
*Xavier Becerra in his personal capacity only and*  
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10 *only*

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

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

18 Petitioners-Plaintiffs,

19 v.

20 **CALIFORNIA DEPARTMENT OF**  
21 **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

**REQUEST FOR JUDICIAL NOTICE IN**  
**SUPPORT OF MOTION TO DISMISS**  
**THE FIRST, SECOND AND EIGHTH**  
**CAUSES OF ACTION IN THE SECOND**  
**AMENDED COMPLAINT AND**  
**PETITION**

**[NOTICE OF MOTION AND MOTION**  
**AND MEMORANDUM OF POINTS AND**  
**AUTHORITIES; AND DECLARATIONS**  
**OF CHERYLE MASSARO AND**  
**MARICELA LEYVA 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 defendants and respondents State of California, acting by  
3 and through the California Department of Justice, Former Attorney General Xavier Becerra in his  
4 personal capacity only and Attorney General Rob Bonta in his official capacity only, in support of  
5 their Motion to Dismiss the First, Second and Eighth Causes of Action in the Second Amended  
6 Complaint and Petition, request the Court take judicial notice of the following attached records.  
7 The Court is empowered to take judicial notice of these records pursuant to Evidence Code  
8 section 452, subdivision (d). The records attached are as follows:

9 (1) Decision on Demurrer, filed January 28, 2021, in *Franklin Armory, Inc., et al. v.*  
10 *California Department of Justice, et al.*, Los Angeles County Superior Court case no.  
11 20STCP01747;

12 (2) Plaintiffs and Petitioners' Memorandum of Points and Authorities in Opposition to  
13 Respondents' Demurrer, filed May 20, 2021, in *Franklin Armory, Inc., et al. v. California*  
14 *Department of Justice, et al.*, Los Angeles County Superior Court case no. 20STCP01747; and

15 (3) Joint Stipulation and Order Continuing Trial Setting Conference and Discovery Cut-Off,  
16 filed November 23, 2021, in *Franklin Armory, Inc., et al. v. California Department of Justice, et*  
17 *al.*, Los Angeles County Superior Court case no. 20STCP01747.

18 Dated: November 29, 2021

Respectfully Submitted,  
ROB BONTA  
Attorney General of California

20 *Benjamin Barnouw*

21 BENJAMIN BARNOUW  
22 Supervising Deputy Attorney General  
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25 *Attorneys for Defendants and Respondents*  
26 *State of California, acting by and through*  
27 *the California Department of Justice,*  
28 *Former Attorney General Xavier Becerra*  
*in his personal capacity only and Attorney*  
*General Rob Bonta in his official capacity*  
*only*

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**Exhibit 1**

Decision on Demurrer, filed January 28, 2021

**FILED**  
Superior Court of California  
County of Los Angeles

**JAN 28 2021**

Sherri R. Carter, Executive Officer/Clerk of Court  
By: J. De Luna, Deputy

Franklin Armory, Inc. v. California Department of Justice, et al., 20STCP01747

~~Tentative~~ decision on demurrer: Sustained

Respondents California Department of Justice (“DOJ”) and Xavier Becerra, in his capacity as Attorney General, demur to portions of the First Amended Complaint (“FAC”) filed by Petitioners Franklin Armory, Inc., (“FAI”) and the California Rifle & Pistol Association, Inc. (“Association”).

The court has read and considered the moving papers, opposition,<sup>1</sup> and reply,<sup>2</sup> and renders the following tentative decision.

**A. Statement of the Case**

Petitioners commenced this action on May 27, 2020. The operative pleading is the FAC filed on August 19, 2020, alleging causes of action for: (1) declaratory relief; (2) traditional mandamus; (3) tortious interference with contractual relations; (4) tortious interference with prospective economic advantage; (5) negligent interference with a prospective economic advantage; (6) deprivation of liberty without procedural due process of law; (7) deprivation of substantive due process of law; and (8) violation of public policy. The verified FAC alleges in pertinent part as follows.

As of January 1, 2003, licensed firearm dealers in California are required to submit all background checks to DOJ electronically via the Dealer Record of Sale Entry System (“DES”). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

The DES can facilitate the transfer of certain types of firearms: “handguns” (“pistols” or “revolvers”), “rifles,” and “shotguns.” This information is entered into the DES during the application process by the user selecting the appropriate type/subtype of firearm within a predetermined drop-down list. Many firearms, however, do not qualify as handguns, pistols, revolvers, rifles, or shotguns, or even “frames” or “receivers” for said firearms. The DES drop-down list for firearm type/subtype has no provision for “other” firearms such as “undefined firearm subtypes.”

Because dealers cannot accurately submit the required information through the DES for “long guns” that are undefined firearm subtypes, they are prohibited from processing and accepting applications from purchasers of said firearms. Respondents have designed the DES with this technological barrier that functions to prohibit the transfer through a licensed firearms dealer of all firearms that are long guns but not rifles, shotguns, or rifle/shotgun combinations.

<sup>1</sup> Petitioners failed to lodge a courtesy copy of their opposition brief in violation of the Presiding Judge’s General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

<sup>2</sup> Respondents failed to lodge a courtesy copy of their reply brief in violation of the Presiding Judge’s General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

01/29/2021

Respondents have long known about the DES' deficiencies and have refused requests to correct it. Since 2012, FAI has communicated with Respondents about the design and features of its Title 1 firearms that do not fall under the existing DES categories and informed Respondent DOJ of the DES's defects as early as October 24, 2019.

DOJ has refused to modify the DES despite the fact that it has proven it can quickly make the requested change. It previously addressed a similar deficiency regarding the drop-down list for transferee's nation of origin—a deficiency FAI reported at the same time it raised the issue of undefined firearm subtypes—within weeks.

Respondents' motivation in delaying was to buy time to work with the Legislature to develop legislation designating FAI Title 1 style firearms as "assault weapons" and restricting their sale. The scheme proved successful because on August 6, 2020 the Legislature passed Senate Bill 118 ("SB 118"), which expanded the statutory definition of "assault weapon" to include any "semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one" of a list of enumerated characteristics, like a forward pistol grip or thumbhole stock. The effect of SB 118 was to restrict FAI's transfer of centerfire versions of FAI Title 1 firearms to customers despite existing orders that long predated SB 118. Even after the adoption of SB 118, not all FAI's Title 1 firearms have been reclassified as assault weapons.

The first cause of action seeks a judicial declaration about the legality of Respondents' conduct regarding the DES and undefined firearm subtypes and an injunction to prevent Respondents from enforcing administrative and/or technological barriers that prevent the sale of lawful firearms, including but not limited to FAI Title 1, and from enforcing the Roberti-Roos Assault Weapons Act in a manner that prohibits those who could have lawfully acquired and registered their FAI Title 1 style firearm but for Respondents' technological barriers.

The second cause of action is for a writ of mandate directing Respondents to design, maintain, and enforce updates to the DES such that it does not proscribe the lawful sale, transfer, and loan of a class of lawful firearms, including FAI's Title 1 firearms. It also asks the court to direct Respondents to design, implement, maintain, and enforce updates to their assault weapons registration process to permit the registration of FAI Title 1 style firearms by those whose orders were placed on or before August 6, 2020, or such time as deemed appropriate by the court.

The eighth cause of action is for declaratory and injunctive relief for Respondents' violation of the Administrative Procedure Act ("APA"). Petitioners seek a declaration that Respondents' de facto ban on the transfer of undefined firearm subtypes, including Title 1 firearms, constitutes an underground regulation in violation of the APA and an injunction preventing enforcement of the underground regulation.

### **B. Applicable Law**

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempeles, (1950) 36 Cal.2d 257. The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP § 430.40; Skrbina v. Fleming Companies, (1996)

45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain (“uncertain” includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP §411.35 or (i) by §411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff’s ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.31(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.31(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.31(a)(3).

### **C. Governing Law**

Under the Penal Code, there are three basic types of firearms: (1) handguns, also referred to as pistols and revolvers; (b) rifles; and (c) shotguns.

A handgun generally has a barrel length less than 16 inches and can be concealed on a person, and is synonymous with the terms pistol, revolver, and firearm capable of being concealed upon the person. Penal Code §§ 16530(a), 16640(a).

A rifle is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in

a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. Penal Code §17090.

A shotgun is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. Penal Code §17190. The term “long gun” generally refers to rifles and shotguns. *See, e.g.*, Penal Code, §16865.

In California, individuals generally must purchase firearms through a licensed dealer. Penal Code §26500(a). Individuals must also have a licensed dealer process transfers of firearms, including private sales, gifts, and loans. Penal Code §§ 27545, 28050.

When an individual goes to a gun dealer to initiate a purchase or other transaction involving a firearm, the dealer is required to obtain information and create a record of the transaction. Penal Code §28100(a). This record is referred to as a Dealer Record of Sale (“DROS”). Various information about the firearm must be included on the DROS, including the make of firearm, manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, caliber, and type of firearm. Penal Code §28160(a). The DROS must also include information regarding the purchaser, including their name, date of birth, local and permanent addresses, place of birth, occupation, gender, physical description, all legal names and aliases ever used, and a “yes or no” answer whether they are in any of the categories of persons prohibited from purchasing a firearm. *Ibid.*

The dealer must transmit the DROS to DOJ and is required to wait at least ten days before completing the purchase and delivering the firearm to the purchaser, assuming the result of a background check has been received by then. Penal Code §§ 26815(a), (b), 27540(a).

The DROS must be submitted to DOJ electronically, except as DOJ otherwise permits. Penal Code §28205(c). DOJ shall prescribe the form of the register and the record of electronic transfer pursuant to Penal Code section 28105. Penal Code §28155. The DES is the method established by DOJ for the submission of purchaser information required by Penal Code section 28160(a). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

Any semi-automatic centerfire firearm that is not a rifle, pistol, or shotgun that has one or more specified characteristics is classified as an assault weapon. Penal Code §30515(a)(9)-(11). Individuals are restricted from possessing any firearm classified as an assault weapon unless they possessed the firearm prior to its classification as an assault weapon or are exempt as a member of law enforcement, military forces, or other specified entities. Penal Code §§ 30605, 30620, 30625, 30645.

#### **D. Analysis**

Respondents demur to the FAC’s first, second, and eighth causes of action on the grounds that (1) they are moot for FAI’s Title 1 firearms and (2) Petitioners lack standing to pursue their claims for other undefined-type firearms. Respondents have complied with the meet and confer requirements of CCP section 430.31(a). Barnouw Decl., ¶2.

#### **1. Mootness**

Respondents assert that Petitioners’ claims regarding sales and transfers of FAI’s Title 1



firearms are moot because SB 118 amended Penal Code section 30515 to include within the definition of assault weapon any semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun that has one or more specified characteristics, and this definition includes FAI's Title 1 firearm. Dem. at 15. Petitioners' claim is based on the allegation that the DES system is preventing them from selling or transferring FAI Title 1 firearms because they did not belong to any of the available categories in DES. Dem. at 16. After the passage of SB 118, these firearms are now classified as assault weapons and are illegal for the public to purchase. Therefore, Petitioners' claims are moot. Dem. at 16.

Petitioners do not dispute that FAI's centerfire Title 1 firearms are now restricted and concede that its claims as for those Title 1 firearms are moot now that they are classified as assault weapons. Opp. at 11-12. Petitioners assert that SB 118 did not restrict all Title 1 firearms, such as rimfire Title 1 firearms or those centerfire Title 1 firearms configured without any of the enumerated features necessary for a firearm to be considered an assault weapon under state law. Opp. at 11. The FAC alleges that FAI manufactures a "series" of firearms designated under the Title 1 model, including a rimfire version that is not affected by SB 188, which was limited to centerfire weapons. FAC ¶2. Opp. at 8. Petitioners argue that the FAC's claims are not moot because they can still sell or transfer these unaffected Title 1 firearms but for the problems with the DES. Opp. at 12.<sup>3</sup>

Petitioners' argument is unavailing. As Respondents correctly note (Reply at 5), the FAC does not allege that FAI manufactures a rimfire Title 1 firearm or a centerfire Title 1 firearm not meeting the definition of an assault weapon. Reply at 5. The FAC also does not support a position that FAI's Title 1 firearm includes such weapons. Indeed, the FAC expressly states that the FAI Title 1 firearm is an assault weapon. FAC ¶105. While the FAC also alleges that FAI manufactures a "series of firearms" designated by FAI as "Title 1" and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms (FAC ¶¶ 2-3), these allegations both contradict the more specific allegation in FAC paragraph 105 and make no mention of any specific FAI models of undefined firearms that would not qualify as an assault weapon. Dem. at 8; Reply at 5.

Petitioners also argue that their claims for relief are not limited to the DES problem for FAI Title 1 firearms as they seek to enjoin DOJ's enforcement of rules that serve as administrative and/or technological barriers that prevent the sale of lawful firearms. FAC ¶121 (seeking injunction "including but not limited to the FAI Title 1"). Petitioners further argue that DOJ has a continuing duty to fix the DES and the assault weapons registration process to allow the transfer of assault weapons initiated before the August 6, 2020 passage of SB 118. FAC ¶122. Opp. at 12.

This argument also is untenable. While the FAC seeks mandamus to compel DOJ to design and implement updates to the DES that would permit the transfer of FAI Title 1 firearms by those whose orders were placed on or before August 6, 2020 (FAC ¶129), Respondents correctly note that, while SB 118 allows individuals possessing a Title 1 prior to September 1, 2020 to keep the firearm on condition that it be registered, that limited right does not affect transfers of FAI Title 1 firearms. An order permitting completion of the transfer of an assault weapon to a buyer who

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<sup>3</sup> Petitioners also argue that DOJ deliberately delayed modifying the DES to stall for time while the Legislature developed and passed SB 118. FAC ¶102. Opp. at 8. This allegation of intentional misconduct mostly is relevant to the FAC's damages claims.

made a deposit before August 6, 2020 would violate SB 118.

In any event, the FAC does not allege that FAI has any Title 1 firearm transfers remaining to be processed through the DES. Reply at 4-5. To the extent that Petitioners are asserting that it has pending transfers to law enforcement personnel and permittees who would be allowed to possess assault weapons, such transfers are not required to be processed through the DES. Penal Code §§ 28400, 28100. Reply at 5. The FAC's three causes of action are moot.

## **2. Standing**

### **a. Beneficial Interest**

Respondents argue that Petitioners do not have standing to pursue mandamus because they fail to allege a beneficial right for undefined type firearms other than FAI's Title 1. Dem. at 17; Reply at 6.

Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff. Mendoza v. JPMorgan Chase Bank, N.A., (“Mendoza”) (2016) 6 Cal.App.5th 802, 810. As a general rule, a party must be “beneficially interested” to seek a writ of mandate. Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist., (2015) 235 Cal.App.4th 957, 962 (citing CCP §1086). Likewise, to seek declaratory relief, a party must be an “interested person.” CCP §1060. An “interested person” means the same thing as a “beneficially interested” person in mandamus cases. Asimow, et al., Administrative Law (2018), Ch. 14, §14:6. “Beneficially interested” has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. SJJC Aviation Services, LLC v. City of San Jose, (“SJJC”) (2017) 12 Cal.App.5th 1043, 1053. The beneficial interest must be direct and substantial. Ibid. A petition has no beneficial interest if she will gain no direct benefit from the writ's issuance and suffer no direct detriment if it is denied. Ibid.

Respondents contend that Petitioners cannot demonstrate they have a beneficial interest because the FAC does not allege that FAI manufactures any undefined-type firearm other than the Title 1. Dem. at 16-17; Reply at 6. Nor is there any allegation that a specific undefined-type firearm exists, or that any member of the Association has attempted to purchase such a firearm but was unable to do so because of the DES. Id. Absent such allegations, mandamus and declaratory relief are not available. Id.

Petitioners assert that the FAC pleads sufficient facts to show they are beneficially interested in the matter because it alleges that FAI manufactures a “series of firearms” designated by FAI as “Title 1” and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms. FAC ¶¶ 2-3. Petitioners argue that there is no legal authority that they must plead specific models of undefined firearms manufactured by FAI that would not qualify as an assault weapon. Opp. at 15.

The short answer is that Petitioners must plead specific models to show standing. This is particularly true since the general allegations of FAC paragraphs 2 and 3 contradict paragraph 105. While Petitioners are correct that there is a minimal pleadings requirement for a demurrer (City of Santa Clara v. Superior Court, (2009) 171 Cal.App.4th 119, 126), standing cannot be supported by conjectural or hypothetical harm. Associated Builders and Contractors, Inc. v. San Francisco Airports Com., (1999) 21 Cal.4th 352, 362; Mendoza, supra, 6 Cal.App.5th at 810. Because the

FAC fails to sufficiently allege that FAI manufactures or attempted to sell legal firearms other than the Title 1 that it is unable to register through DES, they have not shown that they will gain any benefit or detriment from the issuance or denial of a writ of mandamus or declaratory relief.

Petitioners also note that they seek to enjoin the enforcement of rules that serve as administrative and/or technological barriers that prevent the sale of lawful firearms, including but not limited to the FAI Title 1 (FAC ¶121), and seek to compel DOJ to meet its duty to fix the DES and the assault weapons registration process to permit transfers initiated before August 6, 2020. FAC ¶122. The FAC alleges that Association's members not only wish to purchase, but took affirmative steps to reserve undefined firearm subtypes, including Title 1 firearms. FAC ¶¶ 6, 76. Opp. at 15.

As discussed *ante*, the completion of a sale of Title 1's initiated before August 6, 2020 would be unlawful under SB 118. Petitioners may have standing to seek damages for the non-completion of such sales, but they cannot rely on this fact for mandamus and declaratory relief standing to compel DOJ to take action. Nor does the FAC allege a specific context from which such transactions would be evaluated by gun dealers and DOJ. *See* Reply at 17.<sup>4</sup>

Other than the transfer of Title 1's which Petitioners acknowledge is moot, the FAC does not allege sufficient facts to demonstrate that Petitioners have a beneficial interest in the mandamus and declaratory relief claims to compel DOJ to fix the DES process.

#### **b. Public Interest Standing**

Petitioners argue that they also have public interest standing because the matter deals with an important question of a public right. Opp. at 16.

Where a plaintiff cannot satisfy the "over and above" test for private interest standing, California cases have still treated a plaintiff as beneficially interested for purposes of mandamus standing if the plaintiff satisfies the criteria for public interest standing. Asimow, et al., *Administrative Law* (2018), Ch. 14, §14:5. Public interest standing may be conferred "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty." *Save the Plastic Bag Coalition v. City of Manhattan Beach*, (2011) 52 Cal.4th 155, 166. This type of standing "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Green v. Obledo*, (1981) 29 Cal.3d 126, 144. In determining whether public interest standing applies, the court considers (1) whether "the public duty is sharp and the public need weighty" (SJJC, *supra*, 12 Cal.App.5th at 1058), (2) whether the policy supporting public interest standing is outweighed by competing considerations of a more urgent nature (*Reynolds v. City of Calistoga*, (2014) 223 Cal.App.4th 865, 873), and (3) whether the claim of public interest standing is driven by personal objectives rather than broader public concerns (SJJC, *supra*, 12 Cal.App.5th at 1057).

Petitioners assert that the matter deals with the expressly protected right of the public to

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<sup>4</sup> Respondents note that CCP section 1086 requires that a mandamus claim be based on a verified petition and that FAI verified the FAC but Association did not. Therefore, Association does not have mandamus standing. Dem. at 17. Petitioners claim this oversight was innocent and have filed a motion to correct it. Opp. at 15, n. 7. The oversight could be a basis for leave to amend. *See* Opp. at 20.

purchase firearms that are not otherwise illegal. Opp. at 17. By designing and maintaining DES in a way that prevents the lawful submission of applications for the transfer of undefined firearm subtypes, Respondents impaired Petitioners and all members of the public from exercising this right without legal authority and without public notice. Opp. at 17. Petitioners also claim they have public interest standing based on their allegations that Respondents violated the APA because the DES process is an underground regulation. FAC ¶¶80-93. Opp. at 17-18.

As Respondents argue, this matter concerns only a narrow category of undefined type firearms, of which the Title 1 is the only firearm actually identified in the FAC. Reply at 8. As discussed *ante*, the FAC's allegations implying the existence of other undefined type firearms, and attempts to purchase them, are inadequate. Moreover, even if such undefined firearms are manufactured by FAI, there apparently are only a limited number of such firearms. DOJ's public duty to rectify the DES to allow their transfer is not sharp, nor is the public need weighty.

The case cited by Petitioners (Opp. at 17), People for Ethical Operation of Prosecutors v. Spitzer, ("PEOP") (2020) 53 Cal.App.5th 391, 410, is plainly distinguishable as it concerned law enforcement's duty to conduct lawful surveillance. Plaintiffs alleged that defendants permitted confidential informants to threaten to kill criminal defendants if they did not confess to a crime, an allegation involving outrageous constitutional violations and the systematic violation of constitutional rights of due process and assistance of counsel a duty. *Id.* at 410. Obviously, the public has a strong interest is deterring such constitutional violations and the duty is sharp. Petitioners' claim also appears more to be driven by personal objectives rather than broader public concerns, a basis on which the PEOP court noted public interest standing can be denied. *Id.* at 408 (citation omitted).

Petitioners have not demonstrated that they have public interest standing for their mandamus claim.

### **c. Injunctive Relief Standing**

Respondents assert that Petitioners fail to allege facts showing an actual or impending injury as required to establish standing for injunctive relief. Dem. at 18.<sup>5</sup> Petitioners do not allege any facts showing that FAI or any Association member has suffered or will suffer any injury due to the alleged limitations of the DES because they have not alleged that FAI manufactures any undefined type firearm other than the Title 1 or that any Association member was unable to purchase such firearm due to DES. Dem. at 18; Reply at 8.<sup>6</sup>

A person who invokes the judicial process lacks standing if he, or those whom he properly represents, does not have a real interest in the ultimate adjudication because he has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented. Schmier v. Supreme Court, (2000) 78 Cal.App.4th 703, 707. Injunctions cannot be predicated on the proponent's fear of something that may happen in the future. Connerly v. Schwarzenegger, (2007) 146 Cal.App.4th 739, 750.

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<sup>5</sup> The proper means of contesting injunctive relief at the pleading stage would be a motion to strike, not a demurrer. Petitioners do not object that Respondents have used the wrong vehicle.

<sup>6</sup> For the first time in reply, Respondents argue that an injunction would be prohibited by CCP section 526(b)(4) and (b)(6). The court has not considered this argument. *See Regency Outdoor Advertising v. Carolina Lances, Inc.*, (1995) 31 Cal.App.4th 1323, 1333.

Again, Petitioners rely on the FAC's allegations concerning FAI's manufacture of lawful Title 1 firearms, Association's members' desire to purchase those firearms and complete the purchase of Title 1 assault weapon firearms, which they contend has cost FAI \$33 million in lost sales. Opp. at 18. As discussed *ante*, the FAC's allegations may support damages claims, but they are insufficient to support mandamus and declaratory relief. The same is true for the injunctive relief remedy.

Petitioners have not properly alleged actual or impending injury as required to establish standing for an injunctive relief remedy.

### **3. Declaratory Relief**

Respondents contend that Petitioners' claim for declaratory relief is not ripe because they fail to allege an actual controversy. Dem. at 18-19; Reply at 7.

A claim for declaratory relief is only proper where there is an actual controversy relating to the legal rights and duties of the respective parties. CCP §1060. This standard also applies to the extent Petitioners seek declaratory relief under the APA. Govt. Code §11350(a). Declaratory relief regarding a violation of the APA is proper only if there is an actual controversy under CCP section 1060. California Department of Consumer Affairs v. Superior Court, (2016) 245 Cal.App.4th 256, 262. Courts apply a two-part test for ripeness that considers (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. Pacific Legal Foundation v. Cal. Coastal Com., (1982) 33 Cal.3d 158, 170.

The parties reiterate their arguments discussed *ante* regarding the adequacy of the FAC's allegations for declaratory relief. Dem. at 19; Opp. at 19.

As discussed *ante*, the FAC's allegations about FAI's manufacture of undefined-type firearms are insufficient to show that there is an actual controversy. FAI's Title 1 is now classified as an assault weapon and the issue is moot as to those firearms. Contrary to Petitioners' claims, the FAC fails to allege with any specificity that other FAI undefined type firearms that are not assault weapons have been unduly restricted by the DES or that such restrictions have or are actively preventing any Association member from purchasing such a weapon. Petitioners argument that they should be allowed to complete transfers of assault weapons pending on August 6, 2020 because of DOJ's unlawful conduct is barred by SB 118; Petitioners are relegated to a damages remedy only for such claims. Opp. at 20.

Petitioners' claim for declaratory relief fails to allege an actual controversy.

### **4. Conclusion**

Respondents' demurrer to the FAC is sustained as to the first, second, and eighth causes of action. Petitioners seek leave to amend, but they refer only to a pending motion in doing so. Opp. at 20. The court is not required to refer to the court file in deciding whether to grant leave to amend and the motion for leave to amend is ordered off calendar. The court will discuss with Petitioners' counsel whether they can make a good faith proffer that would justify leave to amend.

## **Exhibit 2**

Plainiffs and Defendants Memorandum of Opinions and Authorities in  
Opposition to Respondent's Demurrer, filed May 20, 2021

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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

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

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

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  
27

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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 manufacturers 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  
27

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  
17 made to fire away from the shoulder, and they are not equipped with a stock from  
18 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  
20 the explosive in a fixed shotgun shell." (Pen. Code, § 17190.) They are designed,  
21 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  
22 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**  
**AND, RELATEDLY, INJUNCTIVE RELIEF**

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

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

28 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**

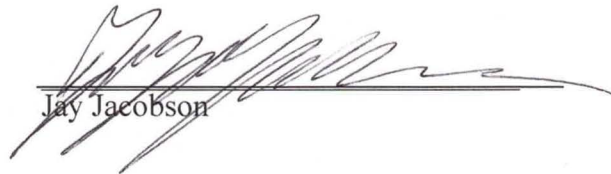
2 I, Jay Jacobson, declare as follows:

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  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

### **Exhibit 3**

Join i ula ion and rder on inuin rial e in onference and  
Disco ery u ff, filed o em er 2 , 2021

Electronically Received 11/22/2021 10:37 AM

Electronically Received 11/22/2021 10:37 AM

1 C.D. Michel – SBN 144258  
2 Anna M. Barvir – SBN 268728  
3 Jason A. Davis – SBN 224250  
4 Konstadinos T. Moros – SBN 306610  
5 MICHEL & ASSOCIATES, P.C.  
6 180 E. Ocean Blvd, Suite 200  
7 Long Beach, CA 90802  
8 Telephone: (562) 216-4444  
9 Facsimile: (562) 216-4445  
10 Email: CMichel@michellawyers.com

11 Attorneys for Petitioners - Plaintiffs

**FILED**  
Superior Court of California  
County of Los Angeles  
11/23/2021

Sherri R. Carter, Executive Officer / Clerk of Court  
By:                     J. De Luna                     Deputy

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

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

15 Petitioners-Plaintiffs,

16 v.

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

21 Respondents-Defendants.

Case No.: 20STCP01747

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

**JOINT STIPULATION AND [PROPOSED]  
ORDER CONTINUING TRIAL SETTING  
CONFERENCE AND DISCOVERY CUT-  
OFF**

Dept: 85  
Judge: Hon. James C. Chalfant  
Action Filed: May 27, 2020  
Trial Date: Not Yet Set

1 **TO THE CLERK OF THIS COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 This Stipulation, entered into by and between Plaintiffs-Respondents Franklin Armory, Inc., and  
3 California Rifle & Pistol Association, Incorporated (“Plaintiffs”) and Defendants-Respondents  
4 California Department of Justice (“DOJ”) and Attorney General Rob Bonta by and through their  
5 respective counsel, is made with reference to the following facts and recitals:

6 WHEREAS, on February 17, 2021, pursuant to this Court’s January 28, 2021 order granting  
7 Defendants DOJ’s and former Attorney General Xavier Becerra’s first demurrer to the First Amended  
8 Complaint with leave to amend, Plaintiffs filed the Second Amended Complaint in the above-entitled  
9 action;

10 WHEREAS, Defendants DOJ and former Attorney General Xavier Becerra filed a second  
11 demurrer to the Second Amended Complaint on March 23, 2021, with a hearing set for June 3, 2021;

12 WHEREAS, on June 3, 2021, this Court overruled the demurrer to the Second Amended  
13 Complaint, ordering Defendants DOJ and former Attorney General Xavier Becerra to file an answer on  
14 or before June 23, 2021;

15 WHEREAS, at the Case Management Conference on June 3, 2021, this Court set a trial setting  
16 conference and discovery cut-off deadline for November 30, 2021;

17 WHEREAS, on June 23, 2021, Defendants DOJ and former Attorney General Xavier Becerra  
18 their Answer to the First, Second, and Eighth Causes of Action in the Second Amended Complaint;

19 WHEREAS, on July 6, 2021, Plaintiffs filed a declaration for automatic extension of the deadline  
20 to file a demurrer or motion to strike;

21 WHEREAS, on August 4, 2021, Plaintiffs filed a demurrer to and motion to strike Defendant’s  
22 answer, with a hearing set for October 14, 2021;

23 WHEREAS, on October 12, 2021, this Court continued the hearing on Plaintiffs’ demurrer and  
24 motion to strike to October 26, 2021;

25 WHEREAS, on October 26, 2021, this Court denied Plaintiffs’ motion to strike as moot, but  
26 sustained Plaintiffs’ demurrer as to Defendants’ affirmative defenses, giving Defendants until November  
27 10, 2021, to file an amended answer, and this Court ordered that Attorney General Rob Bonta is  
28 substituted into this action in his capacity as Attorney General in place of Former Attorney General

1 Xavier Becerra;

2 WHEREAS, the attorney primarily responsible for preparing Defendants’ amended answer went  
3 on medical leave on November 15, 2021, and requested that Plaintiffs agree to a one-week extension for  
4 Defendants to file their amended answer;

5 WHEREAS, pursuant to the Parties’ agreement, Defendants filed their amended answer to the  
6 Second Amended Complaint, on November 16, 2021.

7 **Status of Discovery, Settlement & Further Motions Practice**

8 WHEREAS, on August 12, 2021, Defendants served Plaintiff Franklin Armory with requests for  
9 production of documents and Plaintiff CRPA with special interrogatories, with responses due on or  
10 before September 14, 2021;

11 WHEREAS, on August 18, 2021, Plaintiffs served Defendants with form interrogatories about  
12 the affirmative defenses pled in Defendants’ initial answer, with responses due on or before September  
13 17, 2021;

14 WHEREAS, on September 14, 2021, Plaintiffs served their responses and objections to  
15 Defendants’ August 12, 2021 written discovery, but requested a brief extension to serve additional  
16 documents responsive to Defendants’ requests for production due to technical difficulties accessing  
17 Plaintiff Franklin Armory’s email system;

18 WHEREAS, the next day, counsel for Defendants informed counsel for Plaintiffs via email that  
19 Defendant Department of Justice was working to update the Dealer’s Record of Sale Entry System  
20 (“DES”) to include the option to select “Other” as a “subtype” when processing the transfer of “long  
21 guns” that are neither “rifles,” nor “shotguns,” nor “rifle/shotguns” through the DES;

22 WHEREAS, counsel for the Parties met and conferred on or about September 21, 2021, to  
23 discuss when the option would be added to the DES and to what extent, if any, the change to the DES  
24 mooted Plaintiffs’ unstayed claims (i.e., the First, Second, and Eighth Causes of Action for equitable  
25 relief). The Parties also discussed the status of then-pending written discovery relevant to the unstayed  
26 claims;

27 WHEREAS, during the September 21, 2021, meet-and-confer, the Parties were unable to agree  
28 that Plaintiffs’ unstayed claims were immediately mooted by the Defendants’ anticipated change to the

1 DES, but agreed to continue the meet-and-confer process while the Parties continued to consider the  
2 impact of the anticipated change on Plaintiffs' unstayed claims. The Parties also agreed to a brief  
3 extension to respond to then-pending written discovery;

4 WHEREAS, on September 28, 2021, counsel for the Parties met and conferred again after  
5 Defendant Department of Justice had released its September 27, 2021 notice and guidance to licensed  
6 firearms dealers in California, informing them that, effective at 5:00 a.m. on October 1, 2021, the DES  
7 would include the option to select "Other" as a "subtype" when processing the transfer of "long guns"  
8 that are neither "rifles," nor "shotguns," nor "rifle/shotguns" through the DES;

9 WHEREAS, during the September 28, 2021 meet-and-confer, the Parties were again unable to  
10 agree that Plaintiffs' unstayed claims were mooted by the Defendants' anticipated change to the DES  
11 because Plaintiffs interpreted the September 27, 2021 guidance to firearm dealers to exempt many  
12 lawful firearms at issue in this lawsuit from the use of the "Other" option for long gun subtypes in the  
13 DES;

14 WHEREAS, on October 1, 2021, Defendants issued guidance to licensed firearms dealers  
15 regarding use of the "Other" option for long gun subtypes in the DES, which guidance superseded the  
16 guidance issued on September 27, 2021;

17 WHEREAS, on October 5, 2021, Defendant DOJ served its Response to Form Interrogatories  
18 propounded by plaintiff-petitioner Franklin Armory, Inc.;

19 WHEREAS, on October 22, 2021, Plaintiffs served on Defendant DOJ two amended notices to  
20 take the depositions of persons most knowledgeable on November 23, 2021. The notices included  
21 related requests for production of documents. On November 15, 2021, Defendant DOJ served objections  
22 to the noticed depositions on several grounds, including mootness in light of Defendants' change to the  
23 DES described herein;

24 WHEREAS, at the October 26, 2021 hearing on Plaintiffs' demurrer to and motion to strike  
25 Defendants' answer, the Parties and this Court briefly discussed Defendants' change to the DES and  
26 potential mootness of the unstayed claims. The Court encouraged the Parties to meet and confer if  
27 Defendants intended to file a motion to dismiss on mootness grounds;

28 WHEREAS, on or about November 3, 2021, the Parties met and conferred about Defendants'



1 anticipated motion to dismiss Plaintiffs' unstayed claims as moot in light of Defendants' change to the  
2 DES described herein;

3 WHEREAS, at the Parties' November 3, 2021 meet-and-confer, the Parties were again unable to  
4 agree that Defendants' change to the DES mooted Plaintiffs' unstayed claims, but the Parties agreed to  
5 continue good faith meet-and-confer efforts and to engage in settlement negotiations regarding  
6 Plaintiffs' unstayed claims;

7 WHEREAS, since the November 3, 2021 meet-and-confer, the Parties have been negotiating in  
8 good faith over possible terms for a partial settlement of Plaintiffs' claims to include the dismissal of the  
9 unstayed claims, but have not yet come to an agreement;

10 WHEREAS, the counsel for the Parties met and conferred on November 18, 2021, to discuss the  
11 potential for settlement and Defendants' intention to file a motion to dismiss before the Trial Setting  
12 Conference currently set for November 30, 2021.

13 **Good Cause for a Continuance**

14 WHEREAS, the Parties agree there is good cause for a 90-day continuance of the November 30,  
15 2021 Trial Setting Conference and associated discovery cut-off deadline;

16 WHEREAS, the Parties bring this stipulation and request for a continuance for the reasons of  
17 good cause stated herein and not for any improper purpose;

18 WHEREAS, the Parties agree that a continuance of the trial setting conference and discovery  
19 cut-off deadline will allow the parties to continue to participate in meaningful settlement discussions  
20 without the expense and cost of continued trial preparation;

21 WHEREAS, Defendants have informed Plaintiffs that they will file a motion to dismiss  
22 Plaintiffs' unstayed claims before November 30, 2021 and have reserved a hearing date of January 27,  
23 2022, and the Parties agree that the outcome of that motion largely informs the relevance and/or  
24 mootness of pending discovery, including the two depositions currently scheduled for November 23,  
25 2021;

26 WHEREAS, Plaintiffs have not yet received Defendants' motion to dismiss on mootness  
27 grounds but, based on the Parties' meet-and-confer efforts to date, Plaintiffs strongly believe they will  
28 require written discovery and/or deposition testimony to fully and fairly respond to Defendants' motion

1 to dismiss;

2 WHEREAS, the Parties agree that the continuance requested herein will not prejudice either  
3 party but will instead serve the purposes of conserving the Parties' and this Court's resources.

4 IT IS THEREFORE STIPULATED by and between Plaintiffs and Defendants by and through  
5 their attorneys of record, and the Parties respectfully request the Court issue an order that:

6 1. The trial setting conference in this matter is continued for 90 days to February 28, 2022,  
7 or as soon thereafter as the Court's schedule permits.

8 2. The discovery cut-off deadline in this matter is also continued for 90 days to February 28,  
9 2022, or until such time as this court deems appropriate.

10 Date: November 19, 2021


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

11  
12 

13 Anna M. Barvir  
14 Attorneys for Petitioners-Plaintiffs

15 Date: November 19, 2021

16 ROB BONTA  
17 Attorney General of California  
18 BENJAMIN BARNOUW  
19 Supervising Deputy Attorney General  
20 KENNETH G. LAKE  
21 Deputy Attorney General

22   
23  
24 Benjamin Barnouw  
25 Supervising Deputy Attorney General  
26 Attorneys for Respondents-Defendants  
27  
28

1 **[PROPOSED] ORDER**

2 Pursuant to the stipulation by and between Plaintiffs-Respondents Franklin Armory, Inc., and  
3 California Rifle & Pistol Association, Incorporated (“Plaintiffs”) and Defendants-Respondents  
4 California Department of Justice and Attorney General Rob Bonta (“Defendants”) by and through their  
5 respective counsel, by and through their representative and attorneys of record, and good cause  
6 appearing therefor:

7 1. The trial setting conference in this matter is continued for 90 days from November 30,  
8 2022, to ~~February 28, 2022~~. T @&@FZGGF&@FKIA È È

9 2. The discovery cut-off deadline in this matter is also continued for 90 days from  
10 November 30, 2022, to ~~February 28, 2021~~. T @&@FZGGF

11  
12 IT IS SO ORDERED.

13  
14 Dated: 11/23/2021



*J. Chalfant*

James C. Chalfant / Judge

15 The Honorable James C. Chalfant

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 November 19, 2021, I served the foregoing document(s) described as

8 **JOINT STIPULATION AND [PROPOSED] ORDER CONTINUING TRIAL SETTING  
9 CONFERENCE AND DISCOVERY CUT-OFF**


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 Benjamin Barnouw  
15 Supervising Deputy Attorney General  
16 Email: [Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)  
17 Kenneth G. Lake  
18 Deputy Attorney General  
19 Email: [Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@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 through One Legal. 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 November 19, 2021, at Long Beach, California.

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

**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 **REQUEST FOR JUDICIAL NOTICE 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](mailto:abarvir@michellawyers.com)  
[Jason@calgunlawyers.com](mailto:Jason@calgunlawyers.com)  
[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)  
[lpalmerin@michellawyers.com](mailto: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 29, 2021, at Los Angeles, California.

Jasmine Zarate

Declarant

/s/ Jasmine Zarate

Signature