

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

6 Attorneys for Petitioners - Plaintiffs
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

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

13 Petitioners-Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF JUSTICE,
16 ROBERT A. BONTA, in his official capacity
as Attorney General for the State of California,
17 and DOES 1-10,

18 Respondents-Defendants.
19

Case No.: 20STCP01747

**DECLARATION OF ANNA M. BARVIR IN
SUPPORT OF PLAINTIFFS AND
PETITIONERS’ OPPOSITION TO
RESPONDENTS’ MOTION TO DISMISS
THE FIRST, SECOND, AND EIGHTH
CAUSES OF ACTION IN THE SECOND
AMENDED COMPLAINT**

Date: January 27, 2022
Time: 9:30 a.m.
Dept.: 85
Judge: Hon. James C. Chalfant

[Filed concurrently with Opposition to
Defendants’ Motion to Dismiss the First, Second,
And Eighth Causes of Action in the Second
Amended Complaint]

Action Filed: May 27, 2020

1 the benefit of these details, Petitioners could not agree to voluntarily dismiss their claims and that,
2 because the changes had not yet taken effect, the claims were not yet moot in any event. The
3 parties thus agreed to meet and confer about the possibility of dismissal again once concrete details
4 about the DES modifications and the deployment of the “Other” option were available.

5 4. On September 27, 2021, the DOJ issued bulletin through the DES entitled
6 “IMPORTANT NOTICE Regarding the Sale of ‘Other’ Firearms.” The bulletin notified firearms
7 dealers / DES users, among other things, that effective October 1, 2021, they would have the
8 option to select “Other” from the list of automatically populated “long gun” “gun types.” The
9 bulletin went on to define what constitutes an “Other” type firearm and to describe the
10 circumstances under which a DES user could legally use the “Other” option when transferring
11 “Other” firearms—as well as the circumstances under which they could not. Defendants submitted
12 a true and correct copy of the September 27, 2021 Bulletin as Exhibit A to the Declaration of
13 Maricela Leyva filed in support of this motion.

14 5. Upon receipt of the September 27 bulletin, it was immediately clear to Petitioners’
15 attorneys that the anticipated changes to the DES did not have the effect of mootng the First,
16 Second, and Eighth Causes of Action. This was because, in our opinion, the bulletin as drafted did
17 not authorize firearms dealers / DES users to select the “Other” option in the DES for many, if not
18 all, of the firearms still at issue. Indeed, the DOJ expressly proscribed the use of the “Other” option
19 unless the dealer confirmed, “[p]rior to the sale, loan, or transfer of an ‘Other’ type firearm,” that
20 the firearm has *both* (1) “a fixed magazine of ten rounds or fewer,” *and* (2) “an overall length of 30
21 inches or more.” (Leyva Decl., Ex. A at p. 1.) But many “Other” type firearms—defined in the
22 bulletin as any “firearm that does not meet the definition of a rifle (Pen. Code § 17090), shotgun
23 (Pen. Code § 17190), or pistol (Pen. Code § 16350)” —are perfectly legal to transfer, own, and
24 possess in California even though they do not have a fixed magazine of ten rounds or fewer or an
25 overall length of 30 inches or more, including many firearms at issue in the unstayed claims.

26 6. When counsel for the parties met and conferred again on September 28, 2021, I
27 notified counsel for the DOJ that, as drafted, the bulletin advised firearms dealers that the very
28 “Other” firearms at issue in this lawsuit “may not be sold, loaned or transferred in the DES.” I thus

1 told counsel for the DOJ that we did not believe the First, Second, and Eighth Causes of Action
2 were moot and declined to enter a stipulation with DOJ to voluntarily dismiss those claims.

3 7. Two days later, on September 29, 2021, the DOJ issued another bulletin entitled
4 “IMPORTANT NOTICE Regarding the Sale of ‘Other’ Firearms” in an apparent attempt to
5 correct the issues with the first. My office did not receive a copy of the second bulletin until on or
6 about October 1, 2021. Defendants submitted a true and correct copy of the September 29, 2021
7 Bulletin as Exhibit B to the Declaration of Maricela Leyva filed in support of this motion.

8 8. At some point in late Fall 2021, though the exact date is not known to me, the DOJ
9 issued a third bulletin again entitled, “IMPORTANT NOTICE Regarding the Sale of ‘Other’
10 Firearms.” During her deposition, Ms. Leyva confirmed that this document superseded both prior
11 bulletins, even though the document itself says it only supersedes the September 27 bulletin.
12 Through this third bulletin, the DOJ corrected additional errors, but those changes are not directly
13 relevant here. A true and correct copy of the October Bulletin is included as **Exhibit 2**.

14 9. I did not hear from the DOJ about the DES modifications, the “Other” option, or the
15 potential mootness of the First, Second, and Eighth Causes of Action until about October 29, 2021,
16 when Deputy Attorney General Kenneth G. Lake, counsel of record for the DOJ, emailed me to
17 request a meet-and-confer about DOJ’s anticipated motion to dismiss.

18 10. In response to that request, I met again with counsel for the DOJ on or about
19 November 3, 2021, to discuss the update to the DES and the DOJ’s potential motion to dismiss.
20 During that conference, I repeatedly assured counsel that Petitioners would agree to voluntarily
21 dismiss the First, Second, and Eighth Causes of Action as moot if the DOJ could provide some
22 form of assurance that it would not reinstate its policy of blocking the transfer of lawful undefined
23 firearm subtypes, whether through additional changes to the DES (removing the “Other” option
24 from the dropdown menu, for example) or by issuing new bulletins proscribing the use of the
25 option for certain firearm transfers. To that end, I suggested that the parties could enter a stipulated
26 judgment, a consent decree, or a settlement agreement. The DOJ rejected the first two options,
27 agreeing only to consider a settlement agreement. So, in order to begin good faith negotiations for
28 settlement, I offered to draft proposed language for the DOJ’s consideration. And at Mr. Lake’s

1 request, I agreed to provide some authorities supporting our position that the unstayed claims, even
2 if they are moot, may still be decided by the court if the dispute involves issues of public interest
3 likely to recur.

4 11. So, in an attempt to negotiate settlement “so the parties may avoid the need to
5 litigate another demurrer” (or motion to dismiss, as it were), I drafted a proposed settlement
6 agreement and sent it via email to Ms. Diamond, Mr. Lake, and Supervising Deputy Attorney
7 General Ben Barnouw, all counsel of record for the DOJ, on November 9, 2021. The email also
8 cited caselaw showing that courts may hear otherwise moot cases if they present issues of public
9 interest that likely to recur. A true and correct copy of my November 9, 2021 email to attorneys
10 Diamond, Lake, and Barnouw is attached as **Exhibit 3**. And a true and correct copy of my
11 November 9, 2021 proposed draft settlement agreement is attached as **Exhibit 4**.


12 12. Having heard nothing from the DOJ in response to my proposed settlement
13 language, on November 16, 2021, I reached out to Mr. Barnouw via email to confirm that he
14 received the draft and discuss whether his clients would be amenable to the terms proposed or
15 something similar. In response, Mr. Barnouw requested, and I agreed, to schedule a telephone
16 conference. During that telephone conference, held on or about November 18, 2021, I discussed
17 with Mr. Barnouw various outstanding matters, including the proposed settlement, the DOJ’s
18 anticipated motion to dismiss, and pending discovery matters. While Mr. Barnouw asked for some
19 clarification about some of the proposed terms, the DOJ regrettably never substantively responded
20 to the proposed settlement agreement. Instead, it proceeded with this motion.

21 13. On December 28, 2021, Petitioners deposed Ms. Cheryle Massaro-Florez, who is an
22 employee of the DOJ with the job title of Supervisor II and executed a declaration in support of the
23 DOJ’s motion to dismiss. The parties did not receive the draft transcript of that deposition until
24 January 6, 2022, so Ms. Massaro-Florez has until February 5, 2022, to make any edits to the draft.
25 And the final, certified transcript will not be available until after that date. As such, a true and
26 correct copy of relevant excerpts from the draft transcript of the December 28, 2022 deposition of
27 Ms. Massaro-Florez is attached as **Exhibit 5**. Once the final transcript is available, Petitioners will
28 provide the same to the Court.

1 14. Attached to the notice of the deposition of Ms. Massaro-Florez, I requested several
2 categories of documents. Ms. Massaro-Florez and the DOJ produced those documents at the
3 deposition on December 28, 2021. True and correct copies of all documents produced in response
4 are attached as **Exhibit 6**.

5 15. On December 29, 2021, Petitioners deposed Ms. Maricela Leyva, who is an
6 employee of the DOJ with the job title of Staff Services Manager I and executed a declaration in
7 support of the DOJ's motion to dismiss. The parties did not receive the draft transcript of that
8 deposition until January 6, 2022, so Ms. Leyva has until February 5, 2022, to make any edits to the
9 draft. And the final, certified transcript will not be available until after that date. As such, a true
10 and correct copy of relevant excerpts from the draft transcript of the December 29, 2022 deposition
11 of Ms. Leyva is attached as **Exhibit 7**. Once the final transcript is available, Petitioners will
12 provide the same to the Court.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed on January 13, 2022, at Temescal Valley, California.

16
17 

18 Anna M. Barvir
19 Declarant
20
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EXHIBIT 1

From: [Alexis Diamond](#)
To: [Anna M. Barvir](#)
Cc: [Ben Barnouw](#); [Kenneth Lake](#)
Subject: RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]
Date: Friday, September 17, 2021 8:51:38 AM
Attachments: [image001.png](#)

Hi Anna,

That's fine, we can agree to an extension on the responses as well as your production of documents pending the outcome of our call next Tuesday.

Thanks,

Alexis Diamond
Deputy Attorney General
Office of the Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Phone (213) 269-6229
Alexis.Diamond@doj.ca.gov

From: Anna M. Barvir <ABarvir@michellawyers.com>
Sent: Thursday, September 16, 2021 5:14 PM
To: Alexis Diamond <Alexis.Diamond@doj.ca.gov>
Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>
Subject: RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]

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Thanks for your response, Alexis. I will confirm a time for the call with Jason and let you know what works between 2:30 and 5 on Tuesday.

Re: discovery, I assume you are referring to the Form Interrogatories, currently due on Tuesday. I am not certain that we agree all relevant aspects are mooted yet, especially considering that the changes have not yet been implemented. Perhaps we could agree to a an extension on the responses pending the outcome of our call on Tuesday. At that point, we can discuss whether the discovery is totally moot. Let me know if that makes sense to you.

Regards,
Anna

Anna M. Barvir
Partner

Direct: (562) 216-4453
Main: (562) 216-4444
Fax: (562) 216-4445
Email:



ABarvir@michellawyers.com
Web:
www.michellawyers.com
180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

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From: Alexis Diamond <Alexis.Diamond@doj.ca.gov>
Sent: Thursday, September 16, 2021 4:57 PM
To: Anna M. Barvir <ABarvir@michellawyers.com>
Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>
Subject: RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]

Hi Anna,

We are available next Tuesday between 2:30 – 5:00 p.m. to discuss.

At this point, our understanding is that discovery is now moot, please confirm.

Best,

Alexis Diamond
Deputy Attorney General
Office of the Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Phone (213) 269-6229
Alexis.Diamond@doj.ca.gov

From: Anna M. Barvir <ABarvir@michellawyers.com>
Sent: Thursday, September 16, 2021 3:46 PM
To: Alexis Diamond <Alexis.Diamond@doj.ca.gov>
Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>
Subject: RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]


EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Good afternoon, Alexis,

Thanks for letting me know that the DOJ is working to modify the DES to add the “other” option to the “gun type” dropdown menu. While it is unfortunate that the parties have had to engage in litigation to initiate that change, we are glad to hear the option will soon exist. However, as your

email alluded, the anticipated change raises a lot of affecting the ongoing lawsuit. I have not yet had the chance to speak with my co-counsel about this, and I will likely not be able to do so before tomorrow. As such, can we postpone our call until Tuesday? I should be available all day, except for 10-11am.

Kind Regards,

<p>Anna M. Barvir Partner</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Alexis Diamond <Alexis.Diamond@doj.ca.gov>
Sent: Wednesday, September 15, 2021 11:10 AM
To: Anna M. Barvir <ABarvir@michellawyers.com>
Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>
Subject: Franklin Armory, Inc. et al. v. Department of Justice et al.

Hi Anna,

We wanted to let you know that the Department of Justice has been working on a modification of the DES to add an "Other" option to the "gun type" menu, and we expect the modification will be deployed well before the upcoming Trial Setting Conference. Given this, the Petition for Writ of Mandate and related causes of action are now moot. We would like to work with you on a stipulation to dismiss these causes of action, so the parties can proceed with the damages causes of action. We are available to speak with you about this on Thursday afternoon at 2:30 or later or any time on Friday. Let us know what time works for you.

Best,

Alexis Diamond
Deputy Attorney General
Office of the Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Phone (213) 269-6229
Alexis.Diamond@doj.ca.gov

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EXHIBIT 2

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

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

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

WHAT IS CONSIDERED AN “OTHER” FIREARM

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

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

WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON

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

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

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

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

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

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

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

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

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

30-DAY RESTRICTION

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

AGE RESTRICTION

Under federal law, a shotgun or rifle is the only firearm a licensed importer, licensed manufacturer, licensed dealer, or licensed collector may sell or deliver to a person the licensee knows, or has reasonable cause to believe, is less than twenty-one years of age.

Given the broad scope of this federal restriction (applicable to all persons under the age of twenty-one without exception), it is therefore also unlawful under federal law to sell or deliver any California “other” firearm, including frames and receivers, to a person the licensee knows, or has reasonable cause to believe, is less than twenty-one years of age. This federal age restriction applies regardless if the person would otherwise qualify for exemption under California Penal Code section 27510, subdivision (b). (18 USC 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b).)

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

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



HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES

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

IMPORTANT NOTICE
Regarding the Sale of "Other" Firearms

STEP 1

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

Long Gun Transactions

Dealer Long Gun Sale

Private Party Long Gun Transfer

Pawn/Consignment Long Gun Redemption

Curio/Relic Long Gun Sale

Long Gun Loan

STEP 2

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

Transaction and Firearm Information

*Gun Show Transaction?

30-Day Restriction Exemption

*Receiver Only *Make *Model

*Caliber Additional Caliber

Additional Caliber Additional Caliber

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

*Category

*Serial Number *Re-enter

*Color

*New/Used Gun *Firearm Safety *Select Age Exemption

Comments

200 character limit. Characters remaining: 200

STEP 3

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

CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM

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

State of California
Department of Justice



Office of the Attorney General
[SKIP TO CONTENT](#)

AG HOME PAGE VERSION 3.0.0.3 HELP CONTACT US LOGOFF
* Indicates Required Field User: JAMES HEWITT | January 27, 2020

Firearms Shipment Verification Request

*Shipment Recipient CL Number [View CL Number information](#)

You must obtain the five (5) digit CL number from the intended recipient of the firearm's shipment.

*Number of weapons to be shipped
Handguns Long Guns

*Shipment Invoice Number

IMPORTANT NOTICE
Regarding the Sale of “Other” Firearms

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

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

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

EXHIBIT 3

From: [Anna M. Barvir](#)
To: [Kenneth Lake](#); [Ben Barnouw](#); [Alexis Diamond](#)
Cc: [jason](#); [Konstadinos T. Moros](#); [Laura Palmerin](#); [FRANKLINARMORYINC_2417 Franklin Armory Inc v Cal DOJ Title 1 Other E Mail](#)
Subject: RE: Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss [MA-Interwoven.FID84998]
Date: Tuesday, November 09, 2021 4:34:24 PM
Attachments: [image001.png](#)
[2175386_2021-11-09 Settlement Agreement MAPC DRAFT.DOC](#)


Good evening, Counsel,

I am writing to follow up on our recent telephonic meet-and-confer, during which your office agreed to consider proposed settlement language detailing the sort of assurances my clients would need in order to agree to dismiss their First, Second, and Eighth Causes of Action. To better facilitate negotiations, especially in light of several fast approaching case deadlines, I am providing draft language for a partial settlement agreement for your review. The specific language we are proposing re: the assurances from your clients can be found at Clause 2 on page 3. Please take a moment to review and consider with your clients whether we will be able to come to some agreement on these issues so the parties may avoid the need to litigate another demurrer.

At Ken's request, I am providing a few citations to precedent for our position that, the change to the DES notwithstanding, the court may still rule on the First, Second, and Eighth Causes of Action. In short, it is well settled that "[t]he general rule regarding mootness ... is tempered by the court's discretionary authority to decide moot issues. When an action involves a matter of continuing public interest that is likely to recur, a court may exercise an inherent discretion to resolve that issue, even if an event occurring during the pendency of the appeal normally would render the matter moot." (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 867.) This exception has been applied to both declaratory relief actions (*ibid.*) and petitions for writ of mandamus (*Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 529-530, citing *Californians for Alts. to Toxics v. Dept. of Pesticide Reg.* (2006) 136 Cal.App.4th 1049, 1069). Hopefully these cases will serve as a good starting point for you as you consider whether settlement of these claims will be possible.

Thank you in advance for your consideration.

Regards,
Anna

<p>Anna M. Barvir Partner</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Anna M. Barvir

Sent: Monday, November 01, 2021 12:44 PM

To: Kenneth Lake <Kenneth.Lake@doj.ca.gov>; Laura Palmerin <lpalmerin@michellawyers.com>; Konstadinos T. Moros <kmoros@michellawyers.com>; jason <jason@calgunlawyers.com>


Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Alexis Diamond <Alexis.Diamond@doj.ca.gov>

Subject: RE: Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss

Good afternoon, Ken. Thank you for reaching out to schedule a meet and confer regarding the update to the DES and the State's potential motion to dismiss. I am, unfortunately, unable to meet today, but should have some availability tomorrow after 11 am or Wednesday before 4 pm. Please let me know what works best for you.

Regards,

Anna

<p>Anna M. Barvir Partner</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Kenneth Lake <Kenneth.Lake@doj.ca.gov>

Sent: Friday, October 29, 2021 10:22 AM

To: Laura Palmerin <lpalmerin@michellawyers.com>; Anna M. Barvir <ABarvir@michellawyers.com>; Konstadinos T. Moros <kmoros@michellawyers.com>; jason <jason@calgunlawyers.com>

Cc: Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Alexis Diamond <Alexis.Diamond@doj.ca.gov>

Subject: Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss

Following-up on Judge Chalfant's indication that we file a motion to dismiss based on the modification of the DES and meet and confer relative thereto, could you let us know if you have time to meet and confer on Monday or, if not, a time later in the week that works for you. Thank you for your assistance and cooperation in this matter.

Kenneth G. Lake
Deputy Attorney General
State of California Department of Justice
(213)269-6525
Kenneth.Lake@doj.ca.gov

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EXHIBIT 4

DRAFT SETTLEMENT AGREEMENT

PARTIAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Partial Settlement Agreement and Release of Claims (“Agreement”) is made and entered into between Franklin Armory, Inc., and California Rifle & Pistol Association (collectively, “Plaintiffs”) on the one hand, and California Department of Justice and Attorney General Robert Bonta (collectively, “the Department”) on the other hand. The parties to this agreement may hereafter be referred to collectively as “the Parties.” The Agreement is effective as of the last date executed below (the “Effective Date”) and is based on the following recitals:

RECITALS

WHEREAS, state law mandates that the California Department of Justice collect and use Dealer’s Record of Sale (“DROS”) information to conduct firearms eligibility background checks on prospective firearm purchasers and to record information relating to the firearm being purchased. This information is used to establish and maintain a record of every firearm transaction in California’s Automated Firearms System (“AFS”) for subsequent use by law enforcement in the event a firearm becomes the subject of criminal or civil investigations.

WHEREAS, the Dealer’s Record of Sale Entry System (“DES”) was conceived and implemented in 1996 by the California Department of Justice Bureau of Firearms in response to a legislative mandate, resulting from Senate Bill 671, effective April 1, 1997, to reduce the waiting period for a firearm purchase in California from 15 days to 10 days.

WHEREAS, the DES was initially operated by Verizon Business Services, but beginning in 2014, the California Department of Justice Bureau of Firearms assumed all then-existing responsibilities relating to the DES, including technical support customer service, to meet the needs of the customers.

WHEREAS, DES staff is required to meet the business needs of consumers by responding to and processing DROS-related billing and submissions issues originating from the state’s firearm dealers seven days a week from 7:00 a.m. to 11:00 p.m., including state holidays.

WHEREAS, on March 20, 2020, Plaintiffs filed a Verified Complaint and Petition for Writ of Mandate and/or Prohibition against the Department in the Superior Court for the County of Los Angeles. That case is entitled *Franklin Armory, Inc., et al. v. California Department of Justice, et al.*, Case No. 20STCP01747 (“the Action”).

WHEREAS, in the Action, Plaintiffs allege that the Department had unlawfully barred the transfer of lawful firearms that are neither “rifles,” nor “shotguns,” nor “handguns” (as those terms are defined by statute) through known technological and/or administrative defects of the DES and the failure to timely correct those defects and/or provide an alternative procedure for the submission of Dealer’s Record of Sale information for such firearms. Thus, in their First Cause of Action, Plaintiffs seek a declaration of the Parties’ various rights and responsibilities, as well as an injunction enjoining the Department from enforcing any administrative or technological barrier that prevents or inhibits the transfer of lawful firearms. And, in their Second Cause of Action, Plaintiffs seek a writ of mandate ordering the Department to design, implement, maintain, and enforce updates to the DES such that it does not proscribe the lawful sale, transfer and loan of lawful firearms that are neither “rifles,” nor “shotguns,” nor

DRAFT SETTLEMENT AGREEMENT

“handguns” (“firearms with undefined subtypes”).

WHEREAS, after Plaintiffs initiated the Action, the state legislature passed Senate Bill 118 (“SB 118”), which, among other things, classified Franklin Armory’s centerfire Title 1 firearm as an “assault weapon,” requiring all such firearms—if possessed by September 1, 2020—to be registered by January 1, 2022. In light of this change to state law, Plaintiffs filed a First Amended Complaint and Petition for Writ of Mandate on August 19, 2020, raising four additional claims, including the Eighth Cause of Action which alleges that the Department’s conduct constitutes a non-statutory ban on firearms with undefined subtypes, and the Department has thus adopted and promulgated an underground regulation in violation the Administrative Procedure Act.

WHEREAS, the court subsequently bifurcated the Action, staying Plaintiffs’ Third, Fourth, Fifth, Sixth, Seventh, and Ninth Causes of Action pending the resolution of Plaintiffs’ First, Second, and Eighth Causes of Action.

WHEREAS, by order dated January 28, 2021, the court sustained the Department’s demurrer to the First, Second, and Eighth Causes of Action, giving Plaintiffs leave to amend. The court held, however, that SB 118 had mooted Plaintiffs’ First, Second, and Eighth Causes of Action as to Franklin Armory’s centerfire Title 1, narrowing the scope of the unstayed claims to other firearms that are neither “rifles,” nor “shotguns,” nor “handguns” but remain lawful to transfer and possess in California.

WHEREAS, on February 17, 2021, Plaintiffs filed the Second Amended Complaint and Petition for Writ of Mandate.

WHEREAS, on September 27, 2021, Defendant Department of Justice notified licensed firearms retailers that, beginning on October 1, 2021 at 5:00 a.m., the DES would include the option to select “Other” from the dropdown list for types of “long guns” when processing the transfer of certain lawful firearms that are neither “rifles,” nor “shotguns,” nor “handguns.” The notice also defined what is considered an “other” type firearm.

WHEREAS, on October 1, 2021, Defendant Department of Justice issued an updated bulletin, “superced[ing] DES Bulletin Titled “Important Notice Regarding ‘Other’ Firearms” – Posted on 09/27/2021 at 9:5 AM.” The October 1, 2021 bulletin defines an “Other” type firearm as “a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), ‘Buntline’ type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).”

WHEREAS, considering the Department’s addition of the option to select “Other” from the dropdown list for types of “long guns” within the DES, together with the Department’s October 1, 2021 bulletin, the Parties have negotiated in good faith through counsel to partially resolve this matter on the terms set forth below with the court retaining jurisdiction to enforce the settlement if necessary.

WHEREAS, Plaintiffs have asserted other claims and causes of action against the

DRAFT SETTLEMENT AGREEMENT

Department in the Second Amendment Complaint and Petition for Writ of Mandate not described below. The Parties do not desire or intend to compromise or release these other claims and causes of action as part of this Agreement, including any claims for recovery of attorney's fees and costs of suit (if such exist) incurred in litigating these causes of action. The Parties instead anticipate that the Action will continue to be litigated as to these other claims and causes of action.

NOW, THEREFORE, in consideration of the mutual promises and releases set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

AGREEMENT

1. No Admission of Liability. The Parties mutually acknowledge and agree that the settlement, the delivery of this Agreement, and the consideration provided for in this Agreement shall not be interpreted or construed as an admission of liability. This Agreement represents the settlement of disputed claims, and the Parties expressly deny all liability to one another. However, as this agreement is a public record, the language and terms of the Agreement may not be excluded from evidence in any state or federal proceeding, except under applicable rules of civil procedure or evidence.

2. Consideration. In exchange for the dismissal of the claims and causes of action described herein, the California Department of Justice and Attorney General Robert Bonta agree that they will not adopt any policy, procedure, or regulation, or issue any guidance, notice, or memorandum that would have the effect of preventing the lawful transfer of firearms that are legal to transfer and possess in California at the time of the transfer. Nor will the California Department of Justice or Attorney General Robert Bonta, or each of their predecessors-in-interest, successors-in-interest, agents, contractors, directors, employees, or managers modify or update the DES, or any other software or program they may use to facilitate the submission of DROS information in the future, in such a way as to have the effect of preventing the lawful transfer of any firearm legal to transfer and possess in California. The California Department of Justice and Attorney General Robert Bonta acknowledge that they have no authority to prevent lawful transfers of legal firearms, except as provided by law. Nothing in this Agreement shall be construed to revoke the Department's authority to evaluate, consider, propose, adopt, and implement changes to its policies, procedures, and regulations, including the maintenance of the DES, as long as those changes are consistent with state and federal law.

3. Dismissal of Claims. Within ten (10) calendar days of the Effective Date, Franklin Armory, Inc. and California Rifle and Pistol Association will file with the court in the Action a Request for Dismissal of the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate

4. Releases. Except for claims to enforce the terms of this Agreement, and in consideration of the mutual promises set forth in this Agreement, the Parties agree to the following Releases:

DRAFT SETTLEMENT AGREEMENT

(a) Release by the Plaintiffs. Subject to the terms of this Agreement, and in exchange for the consideration set forth above and the releases herein, Franklin Armory, Inc. and California Rifle and Pistol Association hereby release and discharge the California Department of Justice and Attorney General Robert Bonta, and each of their predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs, administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents, and each of their respective successors and assigns, from liability for any damages or other relief sought in the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate in the Action. Nothing in this Agreement is intended to or shall be construed to waive or release any claims, causes of action, damages, or relief sought in the Action, or which may otherwise exist, other than the liability damages and equitable relief expressly released herein. Nor is the Agreement intended to, and it shall not be construed to waive or release Plaintiffs' right to appeal the decision of the Superior Court of Los Angeles County sustaining Defendants' demurrer to Plaintiffs' First, Second, and Eighth Claims as those claims relate to Franklin Armory's centerfire version of the Title 1 model firearm.

(b) Release by the Department. Subject to the terms of this Agreement, and in exchange for the consideration set forth above and the releases herein, the California Department of Justice and Attorney General Robert Bonta, hereby release and discharge Franklin Armory, Inc. and California Rifle and Pistol Association and each of their predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs, administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents, and each of their respective successors and assigns, from liability for any damages or other relief sought in the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate in the Action. Nothing in this Agreement is intended to or shall be construed to waive or release any claims, causes of action, damages, or relief sought in the Action, or which may otherwise exist, other than the liability damages and equitable relief expressly released herein.

9. Miscellaneous Provisions.

a. This is the entire Agreement of the parties relating to the subject matter herein. Any prior understandings, representations, and statements, oral, written, or implied, concerning this matter are superseded by this Agreement.

b. The terms and provisions of this Agreement shall be construed, interpreted, and governed by the laws of the state of California. Any action to enforce this Agreement will be, to the extent practicable, brought before the judge and the court currently presiding over the Action, pursuant to Code of Civil Procedure section 664.6. The Parties thus hereby request that the court and judge in the Action retain jurisdiction to enforce this Agreement. To the extent such enforcement cannot practically be brought

DRAFT SETTLEMENT AGREEMENT

in front of the judge currently presiding over the Action, such action to enforce will be brought in the Superior Court for the County of Los Angeles.

c. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, in whole or in part, the remainder shall remain in effect and the stricken provision shall be replaced, to the extent possible, with an enforceable provision as similar in tenor as legally possible.

d. This Agreement can only be amended in a writing signed by all of the Parties hereto, or by the successors to such Parties.

e. This Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, legal successors and assigns of the Parties hereto.

f. This Agreement may be signed in counterparts and delivered by email or facsimile to the other Parties, each of which signed Agreement shall be deemed an original instrument and together shall constitute the entire Agreement.

g. Each party shall bear their own costs with respect to the drafting of this Agreement.

h. In any action or proceeding arising from or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of suit.

i. This Agreement is the result of negotiations between the Parties. Any ambiguity shall not be construed against either side on the basis of such side having drafted, prepared, or reviewed the language of any provision.

j. The Parties acknowledge they read and understood this Agreement, in its entirety, and voluntarily enter this Agreement of their own free will, without duress or undue influence by any non-party or party to this Agreement.

k. The Parties, and each of them, acknowledge, represent, and warrant that they were represented by independent legal counsel of their choosing throughout all negotiations preceding and occurring in connection with the negotiation and execution of this Agreement.

DRAFT SETTLEMENT AGREEMENT

Accepted and Agreed:

Dated: _____, 2021

Dated: _____, 2021

Franklin Armory, Inc.
By: Jay Jacobson
Its: President

California Department of Justice
By:
Its:

Dated: _____, 2021

Dated: _____, 2021

California Rifle and Pistol Association
By:
Its:

Attorney General Robert Bonta

EXHIBIT 5

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

FRANKLIN ARMORY, INC., and)
CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
)
Petitioners-Plaintiffs,)
)
vs.) Case No. 20STCP01747
)
CALIFORNIA DEPARTMENT OF)
JUSTICE, ROBERT A. BONTA,)
in his official capacity as)
Attorney General for the)
State of California, and)
DOES 1-10,)
)
Respondents-Defendants.)
_____)

DEPOSITION VIA VIDEOCONFERENCE OF
CHERYLE MASSARO-FLOREZ
Tuesday, December 28, 2021

Stenographically Reported by:
Vicki Resch, RPR, CSR 6645

Cheryle Massaro-Florez - December 28, 2021

10:36 1 reference in your declaration given a specific name, a
2 title?

3 A Of the application?

4 Q The project as a whole.

10:36 5 A Oh, just gun type, other.

6 Q Gun type, other.

7 In paragraph 2 you state that the project
8 also included various DOJ applications and databases,
9 correct?

10:37 10 A Yes.

11 Q Can you clarify what you mean by applications
12 versus databases?

13 A Yes. So applications link up to databases,
14 and some of our databases have multiple applications
10:37 15 that are tied to them.

16 Q And the DES would qualify as an application?

17 A Application and a database.

18 Q And a database. Okay.

19 What applications were included in this
10:37 20 specific project?

21 A Besides the dealer record of sale of entry
22 system, there was -- although another one called
23 dealer record of sale, we call it DRoS. The automated
24 firearms system, we call it AFS. The arms and
10:38 25 prohibited person system. We call it APPS, A-P-P-S.

Cheryle Massaro-Florez - December 28, 2021

10:38 1 We also included one called the California Firearms
2 Application Reporting System. We call it CFARS. And
3 we have a middleware that can be considered an
4 application, which is the California Information
10:38 5 Gateway. We call it CFGI.

6 Q And what databases did this project include?

7 A The DES database, one called Consolidated
8 Firearms Information System database, and the
9 California Justice Information System database.

10:38 10 Q And in paragraph 2, you state that the
11 modifications were deployed on October 21st, 2021; is
12 that correct?

13 A No.

14 Q When were they deployed?

10:39 15 A October 1st, 2021.

16 Q October 1st?

17 A Yes.

18 Q Thank you. What does the term "deployed"
19 mean in that context?

10:39 20 A It means that it was implemented and
21 available to the public to access.

22 Q When was the first time you heard about this
23 project?

24 A We were moving forward with this starting in
10:39 25 July.

Cheryle Massaro-Florez - December 28, 2021

10:39 1 Q July of?

2 A 2021.

3 Q And that's the first time you ever heard
4 about this, the other firearm issue?

10:40 5 A No, that was the first time I was assigned
6 the task to implement it.

7 Q When was the first time you heard about the
8 issue, the "other" firearm --

9 MR. BARNOUW: I'm going to object. This has
10:40 10 gone beyond the scope of discovery here. We're here
11 to talk about the project that the -- to implement, to
12 deploy the "other" option and your contention that it
13 somehow does not render this case moot, so I'm going
14 to instruct her not to answer that question.

10:40 15 MR. DAVIS: I think it's applicable in this
16 situation because I'd like to know how much time
17 transpired from the project being started to --
18 between that period and the time that she actually
19 heard about it being discussed, how much downtime
10:40 20 there was before any movement was actually moving
21 forward on it.

22 (Simultaneous speakers.)

23 MR. BARNOUW: We can go back and look at her
24 answer to the question. I think she said July.

25 ///

Cheryle Massaro-Florez - December 28, 2021

10:41 1 BY MR. DAVIS:

2 Q July was when -- July 1st, 2021 is when it
3 started, correct, Ms. Massaro-Florez?

4 A Yes.

10:41 5 Q Who -- were you assigned this project by
6 someone?

7 A Yes.

8 Q Who?

9 A My Information Technology Manager III.

10:41 10 Q What's that person's name?

11 A I can't pronounce his last name very well.
12 His first name is Naren. Let me pull it up for you
13 and spell it for you. My apologies. It is --

14 MR. DAVIS: That's N-o-r-i-n?

10:42 15 THE WITNESS: It's N-a-r-e-n. The last name
16 is Mikkilineni. It's M-i-k-k-i-l-i-n-e-n-i.

17 BY MR. DAVIS:

18 Q Was there anyone else assigned to this
19 project before you?

10:42 20 MR. BARNOUW: I'm going to object. It's
21 vague.

22 Go ahead.

23 THE WITNESS: Yes. My -- my copartner. We
24 are sister units. We were both tasked to -- and
10:42 25 there's a document that was sent to you -- to discuss

EXHIBIT 6

From: [Christina RosaRobinson](#)
To: [REDACTED]
Subject: AWR & Other Gun Timeline - version 0.1
Date: Monday, August 9, 2021 8:26:22 AM

Good Morning All,

Below is the proposed timeline as discussed during the last AWR & Other Gun status meeting.

Please let me know if corrections or edits are needed. As changes in the timeline arise, I will send an updated version.

Thank you

V 0.1

[REDACTED]

AWR Other & Other Gun Changes Timeline – Live: Friday, October 1st

- Complete AWR Other Gun Registration Web Form – ADB/Web Team – Due: Friday, 8/13
- CFARS AWR Other Gun Development & Other Gun Struts > Spring Conversion – ADB/FFAS – Due: Monday, 8/30
- AWR (Internal) Other Gun Development – ADB/FFAS – Due: Monday, 8/30
- CFIS Batch AWR Other Gun Development – ADB/FFAS – Due: Monday, 8/30
- AWR Other Gun Registration (Web Form, CFARS, AWR Internal, APPS, AFS) Functional Testing & SIT – ADB/FFAS? / BOF Testers - Start: Tuesday, 9/1 Due: Friday 9/14
- Other Gun Functional Testing (DES, CFARS, CFG, DROS, APPS, JES) & SIT (DES, CFARS, CFG, DROS, APPS & AFS) – ADB/FFAS?/ BOF Testers – Start: Tuesday, 9/1 Due: Tuesday, 9/14

- DES, CFARS, DROS, APPS, AWR Internal Regression – BOF Testers - Start: Tuesday, 9/1
Due Tuesday, 9/14
- Functional, SIT & Regression Fixes – ADB/Web Team & ADB/FFAS – Due: Tuesday, 9/14
- User Acceptance Testing – BOF Testers – Start: Thursday, 9/16 Due: Friday, 9/24
- UAT Bug Fixes – ADB/Web Team & ADB/FFAS – Due: Friday, 9/24

Christina Rosa-Robinson
ADB/IASB/Firearms & Forensic Applications Section
California Department of Justice
916-210-5314

OTHER GUN ASSUMPTIONS

- 1) All requirements except the changes detailed in “Gun Type “other” MVP-Requirements-Disclosure updated 02 10 21.xlsx” (in red) will stay the same. No new requirements from BOF will be given for this effort.
- 2) The analyst and developer resources needed to support CFARS/DES for Other Guns are also assigned to AB 1872/ AB 2165, SB 746/ AB 539 [REDACTED].

TIMELINE FOR DEVELOPMENT: Total – 2.5 to 3 months

Phase	Duration	Scope	Resources
Analysis	2 Weeks	<ul style="list-style-type: none"> • Spring Code Changes • Jobs • Database changes • Views and Reports defined in Disclosure 	<ul style="list-style-type: none"> • CFARS – [REDACTED] • DES – [REDACTED] • CFGI – [REDACTED] • D1.9 - Reports designated by BOF as those used to report statistics to external entities will be evaluated first for impact from the “Other” Gun Type enhancement only. – [REDACTED]
Build	3 weeks	<ul style="list-style-type: none"> • Jobs • Database changes • Views and Reports defined in Disclosure 	<ul style="list-style-type: none"> • CFARS – [REDACTED] • DES – [REDACTED] • CFGI – [REDACTED] • D1.9 - Reports designated by BOF as those used to report statistics for “Other” Gun Type enhancement only. – [REDACTED]
SIT/Regression	3 weeks	<ul style="list-style-type: none"> • Jobs • Database changes • Views and Reports defined in Disclosure 	<ul style="list-style-type: none"> • CFARS – [REDACTED] • ETO if we do it with Spring migration) • DES – [REDACTED] • Integration / round trip testing – [REDACTED] • Reports – [REDACTED]
UAT	2 weeks		<ul style="list-style-type: none"> • CFARS – BOF • DES- BOF • Reports – BOF

1) **October 1, 2021 Deploy:** [REDACTED]

Task Name	% Complete	Duration	Start	Finish
Other Gun Impact	0%	50 days	Mon 7/19/21	Mon 9/27/21
Analysis	0%	2 wks	Mon 7/19/21	Fri 7/30/21
Build	0%	3 wks	Mon 8/2/21	Fri 8/20/21
SIT Regression	0%	3 wks	Mon 8/23/21	Mon 9/13/21
UAT	0%	2 wks	Tue 9/14/21	Mon 9/27/21

- [REDACTED]
- [REDACTED]
- AB 1872/ AB 2165 Build (CFARS/DES) – Scheduled for May to September 2021
- AB 1872 / AB 2165 Testing (CFARS/DES) – Scheduled for September to November 2021
- SB 746 / SB 539 Build (CFARS/DES) – Scheduled for May to September 2021
- SB 746 / SB 539 Testing (CFARS/DES) – Scheduled for September to November 2021
- [REDACTED]
- [REDACTED]

2) **January 1, 2022 Deploy:** [REDACTED]

Task Name	% Complete	Duration	Start	Finish
Other Gun Impact	0%	50 days	Fri 10/15/21	Thu 12/30/21
Analysis	0%	2 wks	Fri 10/15/21	Thu 10/28/21
Build	0%	3 wks	Fri 10/29/21	Mon 11/22/21
SIT Regression	0%	3 wks	Tue 11/23/21	Wed 12/15/21
UAT	0%	2 wks	Thu 12/16/21	Thu 12/30/21

- AB 1872 Testing (CFARS/DES) – Scheduled for September to November 2021
- SB 746 Testing (CFARS/DES) – Scheduled for September to November 2021
- [REDACTED]
- [REDACTED]

3) **April 1, 2022 Deploy:** [REDACTED]

Task Name	% Complete	Duration	Start	Finish
Other Gun Impact 4/1/2022 Deploy	0%	50 days	Tue 1/18/22	Tue 3/29/22

Analysis	0%	2 wks	Tue 1/18/22	Mon 1/31/22
Build	0%	3 wks	Tue 2/1/22	Tue 2/22/22
SIT Regression	0%	3 wks	Wed 2/23/22	Tue 3/15/22
UAT	0%	2 wks	Wed 3/16/22	Tue 3/29/22

4) July 1, 2022 Deploy: [REDACTED]

Task Name	% Complete	Duration	Start	Finish
Other Gun Impact 4/1/2022 Deploy	0%	50 days	Mon 4/18/22	Mon 6/27/22
Analysis	0%	2 wks	Mon 4/18/22	Fri 4/29/22
Build	0%	3 wks	Mon 5/2/22	Fri 5/20/22
SIT Regression	0%	3 wks	Mon 5/23/22	Mon 6/13/22
UAT	0%	2 wks	Tue 6/14/22	Mon 6/27/22

MINIMUM VIABLE PRODUCT (MVP)

- MVP1.0 Enhance DES **Spring migrated code** to allow a sale of Firearm Type 'Other'
- MVP1.1 Enhance DES **Spring migrated code** to allow Acquisition of Firearm Type 'Other' . This includes Buy, Consignment, Pawn
- MVP1.2 Enhance CFARS **Spring Migrated code** to allow a User to submit an AFS Personal Information Update application to append current information to a firearm type defined as 'Other'
- MVP1.3 Enhance CFARS **Spring migrated code** to allow a User to submit a Law Enforcement Gun Release (LEGR) application for an Firearm Type 'Other'

REQUIREMENT

- R1.0 DES must be able to process a DROS transaction for Long Gun with the Firearm Type of 'Other'
- R1.1 A Long Gun DROS with the Gun Type of 'Other' will trigger BFEC Process
- R1.2 DROS transactions of Long Gun with the Firearm Type of 'Other' must be recorded in AFS
- R1.3 CFARS AFS Personal Information Update form shall allow a user to append current information for Firearm Type 'Other'
- R1.4 CFARS Law Enforcement Gun Release Application (LEGR) form shall allow a user to submit for Firearm Type 'Other'
- R1.5 CFARS Firearm Type 'Other' will model gun type 'Rifle' category and receiver
- R1.6 DROS shall process Firearm Type 'Other' as a Long gun
- R1.7 Category and Barrel validations for Firearm Type 'Other' will follow 'Long gun' Firearm Type validations within DES
- R1.8 Category and Barrel validations for Firearm Type 'Other' will follow 'Rifle' Firearm Type validations within CFARS

IMPACT

- D1.0 Any DROS Reports that use AFS XREF or handgun/long gun logic will count "other" gun as longgun
- D1.1 Purpose code for 'other' gun: **Purpose codes have been modified since the original other gun project and will need to be revisited.**
 - 2 - long gun purchase
 - 3 - frame only purchase
 - 14 - gun permit (for any CRIS records which include LEGR that we're including in this enhancement)
 - 10 - longgun pawn redemption
 - 11 - frame only pawn redemption
- D1.2 "Other" gun type will skip the 1 in 30 day check for background checks because it will be considered a long gun - **will need to know the impact to SB 61**
- D1.3 AFS XREF will indicate long gun for 'other' gun and will be treated like longgun within DROS
- D1.4 Stolen gun match used during BFEC will not match due to different Firearm Type value
- D1.5 AFS assault weapon check logic will be impacted; currently matches by Make, Model, Type, if Firearm Type 'Other' is used will not be caught by AFS assault weapon check
- D1.6 APPS gun match logic for associated and disassociating firearms records from DROS, AWR, AFS will not match due to different firearm type value
- D1.7 AFS duplicate/match/hookup gun match logic will not match due to different Firearm Type value
- D1.8 DES Firearm Type 'Other' will model gun type 'Rifle'
- D1.9 Reports designated by BOF as ones used to report statistics to external entities will be evaluated first for impact from the "Other" Gun Type enhancement only.
- D1.10 The "Other Gun Type will be considered a Long Gun - Rifle for processing purposes

SIGNATURE

DATE

EXHIBIT 7

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

FRANKLIN ARMORY, INC., and)
CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
)
Petitioners-Plaintiffs,)
)
vs.) Case No. 20STCP01747
)
CALIFORNIA DEPARTMENT OF)
JUSTICE, ROBERT A. BONTA,)
in his official capacity as)
Attorney General for the)
State of California, and)
DOES 1-10,)
)
Respondents-Defendants.)
_____)

DEPOSITION VIA VIDEOCONFERENCE OF

MARICELA LEYVA

Wednesday, December 29, 2021

Stenographically Reported by:
Vicki Resch, RPR, CSR 6645

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11:49 1 notices are posted. And if I'm understanding
2 correctly, usually on the DES website where they're
3 posted. And usually the intended recipients are
4 firearm retailers who are the users of the DES; is
11:49 5 that correct?

6 A Correct.

7 Q We were also talking about some Bureau of
8 Firearms important notices might have other purposes
9 and might need other intended recipients. And I'm not
11:49 10 sure we quite got an understanding of when the
11 intended recipients are not DES users, where important
12 notices get posted.

13 Do you know the answer to that?

14 A I do not.

11:50 15 Q That's right. You had said because you deal
16 with the DES, that those are the ones -- the ones that
17 are relevant to you in your position are posted on the
18 DES; is that correct?

19 A Correct.

11:50 20 Q Okay. Thank you. Thank you for clarifying.
21 Generally speaking, approximately how long
22 does it take to draft and issue an important notice
23 from the time it takes to conceive of the need for an
24 important notice to the time that it is posted on the
11:50 25 DES website, including all those steps we kind of just

11:50 1 talked about?

2 A Average could be seven to ten days.

3 Q But it could be -- it could be quicker if --
4 if it was a shorter or needed to be, or it could be
11:50 5 longer; is that correct?

6 A Correct.

7 Q So average about seven to ten days. Okay.
8 Have you ever been involved in the decision
9 or in making the decision to issue an important
11:51 10 notice?

11 MR. BARNOUW: I'm going to object. It's
12 vague.

13 You can answer.

14 THE WITNESS: I wouldn't make the decision.
11:51 15 BY MS. BARVIR:

16 Q You don't make the final decision, but would
17 it -- would it be fair to say that you have discussed
18 with decision-makers that you've been involved in
19 coming up with the need, you know, to issue an
11:51 20 important notice?

21 A Yes.

22 Q Okay. But you've never made the final
23 decision that an important notice needed to be issued?

24 A No.

11:52 25 Q Okay. Who -- who -- who makes the final

11:52 1 determination that an important notice needs to be
2 issued?

3 A My understanding is that it would be either
4 the director or assistant director.

11:52 5 Q The director or assistant director of the
6 Bureau of Firearms?

7 A Correct.

8 Q Thank you.

9 Who is currently the director of the Bureau
11:52 10 of Firearms?

11 A Luis Lopez.

12 Q Thank you. Who is -- was that Luis or
13 Louise?

14 A Luis, L-u-i-s.

11:52 15 Q Thank you.

16 And who is currently the assistant director
17 of the Bureau of Firearms?

18 A There -- the assistant director that we
19 report to would be Allison Mendoza.

11:53 20 Q Okay. So there are multiple assistant
21 directors at the Bureau of Firearms?

22 A Correct.

23 Q But the one that is related to your position
24 with the DES is Allison Mendoza?

11:53 25 A Correct.

14:12 1 time in the past, I don't know, let's say three years,
2 was there -- or I guess, well, since you've been
3 involved in your position as SSMI, that's 2018, right?

4 So at any time during your tenure as SSMI, do
14:12 5 you know if there was a discussion or work done to
6 create an important notice about transferring other
7 firearms, firearms that aren't shotguns or rifles or
8 shotgun-rifle combinations?

9 MR. BARNOUW: I'm going to object. It's
14:13 10 vague as to time and -- so I will object. It's vague.

11 THE WITNESS: I don't know.

12 BY MS. BARVIR:

13 Q Do you know if the September 27 important
14 notice was the first draft of a notice regarding this
14:13 15 other issue, these firearms that are not -- not rifles
16 or shotguns or rifle-shotgun combinations?

17 A This -- the September bulletin was drafted
18 in -- in response to the changes to the DROS entry
19 system. Those changes were made around that time.

14:14 20 Q And what time was that?

21 A Around the September time frame when the
22 bulletin was released.

23 Q Okay. Thank you.

24 Do you know if there was any discussion since
14:14 25 you've taken your position as SSMI in 2018 of

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14:14 1 releasing an important notice that would advise
2 dealers how to process these other type firearms,
3 other firearms being not rifles, not shotguns, not
4 rifle-shotgun combination in some alternative way
14:14 5 outside the DES?

6 A I don't recall. I don't know.

7 Q Okay. Thank you.

8 If the Bureau of Firearms were to be made
9 aware of some other inadvertent omission or lack of
14:15 10 clarity in the November -- no, I'm sorry -- the
11 November notice, could the Bureau of Firearms issue
12 another important notice to address or clarify those
13 issues?

14 MR. BARNOUW: I'm going to object. That's
14:15 15 vague. Calls for speculation. It's really an
16 incomplete hypothetical.

17 You can answer that question.

18 THE WITNESS: If it's deemed necessary, we
19 can always release bulletins.

14:15 20 BY MS. BARVIR:

21 Q Always release bulletins. Okay.

22 So there's no -- nothing that would prevent
23 the Bureau of Firearms from issuing a fourth important
24 notice regarding the sale of other firearms?

14:15 25 MR. BARNOUW: I'm going to object again.

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14:15 1 Calls for speculation. Incomplete hypothetical. Also
2 calls for a legal conclusion.

3 You can answer if you can.

4 THE WITNESS: If it is deemed necessary.

14:16 5 BY MS. BARVIR:

6 Q If it's deemed necessary, the Bureau of
7 Firearms can issue another important notice regarding
8 the sale of other firearms?

9 A I mean, the function is in the DROS entry
14:16 10 system. So yes, we could release a bulletin.

11 Q Okay. Thank you.

12 Is there anything that would prevent the
13 Bureau of Firearms from issuing an important notice
14 that supersedes the November notice and reverts back
14:16 15 to the September 27 important notice that was posted
16 on the DES website?

17 A I don't know that.

18 Q You don't know that. Okay.

19 Could the Bureau of Firearms issue an
14:16 20 important notice superseding the November notice
21 that -- that included the same language or similar
22 language as the September 27 notice?

23 MR. BARNOUW: I'll object as vague.

24 THE WITNESS: Again, that would not be my
14:17 25 decision. That would have to be -- come from

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

On January 13, 2022, I served the foregoing document(s) described as

DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS AND PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS THE FIRST, SECOND, AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT

on the interested parties in this action by placing

the original

a true and correct copy

thereof by the following means, addressed as follows:

Benjamin Barnouw
Supervising Deputy Attorney General
Email: ben.barnouw@doj.ca.gov
Kenneth G. Lake
Deputy Attorney General
Email: kenneth.lake@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorney for Respondents-Defendants

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

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

Executed on January 13, 2022, at Long Beach, California.



Laura Palmerin