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7  
8 *Attorneys for Defendants and Respondents State of*  
*California, acting by and through the California*  
*Department of Justice, Former Attorney General*  
*Xavier Becerra in his personal capacity only and*  
*Attorney General Rob Bonta in his official capacity*  
9  
10 *only*

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

14  
15 **FRANKLIN ARMORY, INC. AND**  
**CALIFORNIA RIFLE & PISTOL**  
16 **ASSOCIATION, INCORPORATED,**

17 Petitioners-Plaintiffs,

18 v.

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

23 Respondents-Defendants.  
24

Case No. 20STCP01747

**ANSWER TO THE SECOND AMENDED**  
**COMPLAINT AS TO THE THIRD**  
**THROUGH SEVENTH AND NINTH**  
**CAUSES OF ACTION**

25 Defendants State of California, acting by and through the California Department of Justice,  
26 Former Attorney General Xavier Becerra in his personal capacity only and Attorney General Rob  
27 Bonta in his official capacity only hereby submit this answer in response to the remaining causes  
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1 of action to the second amended complaint which includes the third through seventh and ninth  
2 causes of action as follows:

3 Because the second amended complaint is couched in conclusory terms, Defendants cannot  
4 fully anticipate all affirmative defenses that may apply in this case. In addition, information  
5 disclosed during discovery and investigation may indicate additional defenses that apply in this  
6 case. Accordingly, Defendants reserve the right to supplement, alter or amend this answer to add  
7 additional defenses.

8 1. Defendants are without sufficient knowledge or information to form a belief as to the  
9 allegations of paragraphs 1-6 and therefore deny them.

10 2. Paragraphs 7-8 appears to contain legal statements and argument only. To the extent  
11 paragraphs 7-8 can be construed as containing factual allegations requiring a response,  
12 Defendants deny them. Defendants deny that Xavier Becerra is the Attorney General of  
13 California.

14 3. Defendants are without sufficient knowledge or information to form a belief as to the  
15 allegations of paragraphs 9-12 and therefore deny them.

16 4. Paragraphs 13-26 appear to contain legal statements and argument only. To the extent  
17 paragraphs 13-26 can be construed as containing factual allegations requiring a response,  
18 Defendants deny them. Defendants deny that Xavier Becerra is the California Attorney General.

19 5. Defendants are without sufficient knowledge or information to form a belief as to the  
20 allegations of paragraphs 27-33 and therefore deny them.

21 6. Paragraphs 34-45 appear to contain legal statements and argument only. To the extent  
22 paragraphs 34-45 can be construed as containing factual allegations requiring a response,  
23 Defendants deny them.

24 7. Defendants deny the allegations of paragraph 46.

25 8. Paragraphs 47-49 appear to contain legal statements and argument only. To the extent  
26 paragraphs 47-49 can be construed as containing factual allegations requiring a response,  
27 Defendants deny them.

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1           9. Paragraphs 50-57 appear to contain legal statements, conclusions and argument. To the  
2 extent the legal statements, conclusions and argument in paragraphs 50-57 can be construed as  
3 containing factual allegations requiring a response, Defendants deny them. As to factual  
4 allegations contained in paragraphs 50-57, Defendants deny them.

5           10. Paragraph 58 appears to contain legal statements, conclusions and argument. To the  
6 extent the legal statements, conclusions and argument in paragraphs 58 can be construed as  
7 containing factual allegations requiring a response, Defendants deny them. As to factual  
8 allegations contained in paragraph 58, Defendants admit that when a DES user selects “Long Gun  
9 Transactions” and selects “No” for “Receiver Only,” then the user must select one of the options  
10 available in the “gun type” field; Defendants deny that there is no “other” option in this field.  
11 Defendants deny any and all other allegations in paragraph 58.

12           11. Paragraphs 59-78 appear to contain legal statements, conclusions and argument. To the  
13 extent the legal statements, conclusions and argument in paragraphs 50-78 can be construed as  
14 containing factual allegations requiring a response, Defendants deny them. As to factual  
15 allegations contained in paragraphs 59-78, Defendants deny them.

16           12. Defendants are without sufficient knowledge or information to form a belief as to the  
17 allegations of paragraphs 79 and therefore deny them.

18           13. Defendants deny the allegations of paragraph 80-84.

19           14. Paragraphs 85-92 appear to contain legal statements and argument only. To the extent  
20 paragraphs 85-92 can be construed as containing factual allegations requiring a response,  
21 Defendants deny them.

22           15. Defendants deny the allegations of paragraph 93-98.

23           16. Defendants are without sufficient knowledge or information to form a belief as to the  
24 allegations of paragraphs 99-102 and therefore deny them.

25           17. Paragraphs 103-106 appear to contain legal statements and argument only. To the  
26 extent paragraphs 103-106 can be construed as containing factual allegations requiring a  
27 response, Defendants deny them.

28           18. Defendants deny the allegations of paragraph 107-114.

1           19. Paragraph 115 contains a legal statement incorporating by reference all previous  
2 allegations. To the extent paragraphs 115 can be construed as containing factual allegations  
3 requiring a response, Defendants deny them and incorporate by reference all previous responses  
4 to the allegations in the second amended complaint.

5           20. Defendants deny the allegations of paragraphs 116-120.

6           21. Paragraph 121 contains a legal statement incorporating by reference all previous  
7 allegations. To the extent paragraphs 121 can be construed as containing factual allegations  
8 requiring a response, Defendants deny them and incorporate by reference all previous responses  
9 to the allegations in the second amended complaint.

10          22. Defendants deny the allegations of paragraph 122-128.

11          23. Paragraph 129 contains a legal statement incorporating by reference all previous  
12 allegations. To the extent paragraphs 129 can be construed as containing factual allegations  
13 requiring a response, Defendants deny them and incorporate by reference all previous responses  
14 to the allegations in the second amended complaint.

15          24. Defendants deny the allegations of paragraph 130.

16          25. Defendants are without sufficient knowledge or information to form a belief as to the  
17 allegations of paragraphs 131 and therefore deny them.

18          26. Defendants deny the allegations of paragraphs 132-138.

19          27. Paragraph 139 contains a legal statement incorporating by reference all previous  
20 allegations. To the extent paragraphs 139 can be construed as containing factual allegations  
21 requiring a response, Defendants deny them and incorporate by reference all previous responses  
22 to the allegations in the second amended complaint.

23          29. Defendants deny the allegations of paragraph 140.

24          30. Defendants are without sufficient knowledge or information to form a belief as to the  
25 allegations of paragraphs 141 and therefore deny them.

26          31. Defendants deny the allegations of paragraphs 142-150.

27          32. Paragraph 151 contains a legal statement incorporating by reference all previous  
28 allegations. To the extent paragraphs 151 can be construed as containing factual allegations

1 requiring a response, Defendants deny them and incorporate by reference all previous responses  
2 to the allegations in the second amended complaint.

3 33. Defendants deny the allegations of paragraph 152.

4 34. Defendants are without sufficient knowledge or information to form a belief as to the  
5 allegations of paragraphs 153 and therefore deny them.

6 35. Defendants deny the allegations of paragraphs 154-161.

7 36. Paragraph 162 contains a legal statement incorporating by reference all previous  
8 allegations. To the extent paragraphs 162 can be construed as containing factual allegations  
9 requiring a response, Defendants deny them and incorporate by reference all previous responses  
10 to the allegations in the second amended complaint.

11 37. Paragraph 163 appears to contain legal statements and argument only. To the extent  
12 paragraph 163 can be construed as containing factual allegations requiring a response, Defendants  
13 deny them.

14 38. Defendants deny the allegations of paragraphs 164-172.

15 39. Paragraph 173 contains a legal statement incorporating by reference all previous  
16 allegations. To the extent paragraphs 173 can be construed as containing factual allegations  
17 requiring a response, Defendants deny them and incorporate by reference all previous responses  
18 to the allegations in the second amended complaint.

19 40. Paragraphs 174-175 appear to contain legal statements and argument only. To the  
20 extent paragraphs 174-175 can be construed as containing factual allegations requiring a  
21 response, Defendants deny them.

22 41. Defendants deny the allegations of paragraphs 176-184.

23 42. Paragraph 185 contains a legal statement incorporating by reference all previous  
24 allegations. To the extent paragraphs 185 can be construed as containing factual allegations  
25 requiring a response, Defendants deny them and incorporate by reference all previous responses  
26 to the allegations in the second amended complaint.

27 43. Defendants deny the allegations of paragraphs 186-197.  
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1 44. Paragraph 198 contains a legal statement incorporating by reference all previous  
2 allegations. To the extent paragraphs 198 can be construed as containing factual allegations  
3 requiring a response, Defendants deny them and incorporate by reference all previous responses  
4 to the allegations in the second amended complaint.

5 45. Defendants deny the allegations of paragraphs 199-204.

6 **AS SEPARATE AND AFFIRMATIVE DEFENSES**, defendants allege as follows:

7 **AFFIRMATIVE DEFENSE NO. 1**

8 The second amended complaint, and each and every cause of action contained therein, fail  
9 to allege facts sufficient to constitute a cause of action against Defendants. Plaintiffs lack  
10 standing to pursue these claims. There is no proper statutory basis for claims against any  
11 defendant for damages. The Department of Justice (DOJ) was not subject to any mandatory duty  
12 with respect to operation of the Dealer Record of Sale (DROS) Entry System (DES) and no  
13 individual DOJ employee owed any legal duty to Plaintiffs.

14 **AFFIRMATIVE DEFENSE NO. 2**

15 The second amended complaint, and each and every cause of action stated therein, fail to  
16 allege facts sufficient to entitle Plaintiffs to the relief requested therein. Plaintiffs lack standing to  
17 pursue these claims. There is no proper statutory basis for claims against any defendant for  
18 damages. The Department of Justice (DOJ) was not subject to any mandatory duty with respect  
19 to operation of the Dealer Record of Sale (DROS) Entry System and no individual DOJ employee  
20 owed any legal duty to Plaintiffs/Petitioners.

21 **AFFIRMATIVE DEFENSE NO. 3**

22 The second amended complaint and each and every cause of action stated therein are barred  
23 by the applicable statute of limitations. Franklin Armory, Inc.'s Government Claim no. 20000261  
24 was rejected on March 19, 2020, so the statute of limitations to file suit on any claims asserted in  
25 the Government Claim was six months after the rejection pursuant to Government Code section  
26 945.6. The statute of limitations on any other claim for damages asserted in the Second Amended  
27 Complaint is two years from the accrual of the cause of action.

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1 **AFFIRMATIVE DEFENSE NO. 4**

2 The second amended complaint, and each and every cause of action contained therein, is  
3 barred, in whole or in part, because Petitioners lack standing. Petitioners lack a “beneficial  
4 interest” to support standing. Petitioners did not attempt to undertake any transaction involving  
5 any firearm that is neither a “handgun,” “rifle” or “shotgun” under California law.

6 **AFFIRMATIVE DEFENSE NO. 5**

7 To the extent applicable, the second amended complaint, and each cause of action therein,  
8 are barred by the doctrine of res judicata regarding matters established in prior lawsuits, including  
9 but not limited to Franklin Armory, Inc., et al. v. State of California, et al., Sacramento County  
10 Superior Court Case No. 34-2018-00246584.

11 **AFFIRMATIVE DEFENSE NO. 6**

12 To the extent applicable, the second amended complaint, and each cause of action therein,  
13 are barred by the doctrine of collateral estoppel regarding matters established in prior lawsuits,  
14 including but not limited to Franklin Armory, Inc., et al. v. State of California, et al., Sacramento  
15 County Superior Court Case No. 34-2018-00246584.

16 **AFFIRMATIVE DEFENSE NO. 7**

17 To the extent applicable, the second amended complaint, and each cause of action therein,  
18 are barred by the doctrines of mootness and lack of ripeness. The DES has been modified so that  
19 when a DES user selects “Long Gun Transactions” and selects “No” for “Receiver Only,” then  
20 the user must select one of four options available in the “gun type” field, and that those four  
21 options are “RIFLE,” “SHOTGUN,” “RIFLE/SHOTGUN COMBINATION,” and “OTHER.”

22 **AFFIRMATIVE DEFENSE NO. 8**

23 The second amended complaint is barred by the doctrine of unclean hands, as well as other  
24 applicable equitable doctrines. Plaintiff Franklin Armory, Inc. designed its Title 1 centerfire and  
25 rimfire firearms to not fit within the statutory definitions of “handgun,” “rifle” or “shotgun” so as  
26 to avoid having the firearm classified as an “assault weapon” under California law.

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1 **AFFIRMATIVE DEFENSE NO. 9**

2 To the extent applicable, the second amended complaint and each cause of action therein  
3 are barred by the failure to precede the action with a claim as required by various Government  
4 Code sections, including but not limited to 945.4, 911.2, 905.2, 950.2, and 810 et seq. This  
5 defense applies to the extent Plaintiff Franklin Armory, Inc. asserts any claims not included in its  
6 Government Claim number 20000261. Plaintiff California Rifle & Pistol Association has not  
7 filed a Government Claim.

8 **AFFIRMATIVE DEFENSE NO. 10**

9 Plaintiffs are not entitled to damages because there is no clear, present, and ministerial duty  
10 on the part of Defendants, Plaintiffs do not have a clear, present and beneficial right to the  
11 performance of that duty, defendants have discretion that cannot be directed by the courts. Penal  
12 Code sections 28155, 28160, 28205, 28215, and 28220 do not establish a mandatory, ministerial  
13 duty to modify the DES.

14 **AFFIRMATIVE DEFENSE NO. 11**

15 Defendant is immune from liability for any injury or damages, if any there were, resulting  
16 from the adoption of or the failure to adopt an enactment or from the failure to enforce law.  
17 (Gov. Code, §§ 815.2, 818.2 and 821.)

18 **AFFIRMATIVE DEFENSE NO. 12**

19 The second amended complaint does not state a cause of action for tortious interference  
20 with contract or a tortious or negligent interference with prospective business advantage. Even if  
21 any such cause of action could be stated, defendants are not liable as no alleged acts of defendants  
22 were an independent wrongful act, that is, proscribed by some constitutional, statutory,  
23 regulatory, common law, or other determinable legal standard. (See e.g. *Ixchel Pharma v. Biogen*  
24 (2020) 9 Cal.5th 1130, 1141-1142.) In addition, Defendants are not liable as any and all alleged  
25 acts of defendants were justified under the law. (See e.g. *Herron v. State Farm Mut. Ins. Co.*  
26 (1961) 56 Cal.2d 202, 205, *Environmental Planning & Information Council v. Superior Court*  
27 (1984) 36 Cal.3d 188, 193-94 [Whether an intentional interference by a third party is justifiable  
28 depends upon a balancing of the importance, social and private, of the objective advanced by the



1 interference against the importance of the interest interfered with, considering all circumstances  
2 including the nature of the actor’s conduct and the relationship between the parties].)

3 **AFFIRMATIVE DEFENSE NO. 13**

4 Plaintiffs’ claim for damages is barred to the extent that Plaintiffs had a duty to mitigate,  
5 but failed to mitigate, their damages, if any there were. Plaintiff Franklin Armory, Inc. could  
6 have mitigated any losses from lost sales of Title 1 firearms.

7 **AFFIRMATIVE DEFENSE NO. 14**

8 The second amended complaint and each cause of action alleged therein for declaratory  
9 relief are barred because there is no present and actual controversy between the parties. Plaintiffs  
10 never attempted to process a transaction for any firearm alleged in the second amended complaint  
11 prior to modification of the DES. The DES has been modified so that when a DES user selects  
12 “Long Gun Transactions” and selects “No” for “Receiver Only,” then the user must select one of  
13 four options available in the “gun type” field, and that those four options are “RIFLE,”  
14 “SHOTGUN,” “RIFLE/SHOTGUN COMBINATION,” and “OTHER.”

15 **AFFIRMATIVE DEFENSE NO. 15**

16 Defendant is not liable for any injury or damages, if any there were, resulting from failure  
17 to discharge any mandatory duties as reasonable diligence was exercised to discharge any duty  
18 there may have been. (Gov. Code, § 815.6.) The DES has been modified so that, when a DES  
19 user selects “Long Gun Transactions” and selects “No” for “Receiver Only,” then the user must  
20 select one of four options available in the “gun type” field, and that those four options are  
21 “RIFLE,” “SHOTGUN,” “RIFLE/SHOTGUN COMBINATION,” and “OTHER.”

22 **AFFIRMATIVE DEFENSE NO. 16**

23 The complaint and each cause of action therein are barred by the statute of limitations of  
24 Code of Civil Procedure section 342 [relating to claims against public entities] and Government  
25 Code sections 945.4 and 945.6. Franklin Armory, Inc.’s Government Claim no. 20000261 was  
26 rejected on March 19, 2020, so the statute of limitations to file suit on any claims asserted in the  
27 Government Claim was six months after the rejection pursuant to Government Code section  
28

1 945.6. The statute of limitations on any other claim asserted in the Second Amended Complaint  
2 under Federal law is two years from the accrual of the cause of action

3 **AFFIRMATIVE DEFENSE NO. 17**

4 There is no liability for any injury or damages, if any there were, resulting from an exercise  
5 of discretion vested in a public employee, whether or not such discretion be abused. (Gov. Code,  
6 §§ 815.2, 820.2.) Any decision made with respect to how and when the DES should be modified  
7 is a discretionary decision within the meaning of Government Code section 820.2. In operating  
8 the DES, the DOJ executes various statutes that provide it with discretion.

9 **AFFIRMATIVE DEFENSE NO. 18**

10 There is no liability in that the acts alleged in the complaint, if done at all, were done in the  
11 execution and enforcement of the law while exercising due care. (Gov. Code, §§ 815.2, 820.4.)  
12 In operating the DES, the DOJ executes various statutes that provide it with discretion.

13 **AFFIRMATIVE DEFENSE NO. 19**

14 Individual State of California official/employee defendants, including former Attorney  
15 General Becerra and Attorney General Rob Bonta, are entitled to absolute and/or qualified  
16 immunity. No official or employee of the DOJ violated any clearly established constitutional  
17 right.

18 **AFFIRMATIVE DEFENSE NO. 20**

19 Defendant is not vicariously liable for any act or omission of any other person, by way of  
20 respondeat superior or otherwise. (Gov. Code, §§ 815.2, 820.8.)

21 **AFFIRMATIVE DEFENSE NO. 21**

22 Defendant is not liable for any injury or damages, if any there were, resulting from  
23 decisions with respect to licenses, permits, approvals, orders and other authorizations. (Gov.  
24 Code, §§ 818.4 and 821.2.) DOJ's operation of the DES is subject to Government Code sections  
25 818.4 and 821.2.

26 WHEREFORE, defendants pray that:

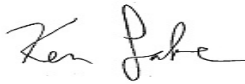
- 27 1. Judgment be rendered in their favor; and
- 28 2. Plaintiffs take nothing by the second amended complaint; and

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- 3. Defendants be awarded costs of suit incurred herein; and
- 4. Defendants be awarded such other and further relief as the court may deem necessary and proper.

Dated: January 26, 2023

Respectfully Submitted,  
ROB BONTA  
Attorney General of California  
DONNA M. DEAN  
Supervising Deputy Attorneys General



KENNETH G. LAKE  
Deputy Attorney General  
*Attorneys for Defendants and Respondents  
State of California, acting by and through  
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**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

RE: *Franklin Armory, Inc., v. California Department of Justice.*  
Case No. 20STCP01747

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On January 26, 2023, I served the documents named below on the parties in this action as follows:

**ANSWER TO THE SECOND AMENDED COMPLAINT AS TO THE THIRD THROUGH SEVENTH AND NINTH CAUSES OF ACTION**

C.D. Michel  
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*Attorneys for Plaintiffs-Petitioners*

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of the Office of the Attorney General for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery with the GOLDEN STATE OVERNIGHT courier service.

(BY FACSIMILE) I caused to be transmitted the documents(s) described herein via fax number.

(BY ELECTRONIC MAIL) I caused to be transmitted the documents(s) described herein via electronic mail to the email address(es) listed above.

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

(FEDERAL) I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on January 26, 2023, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature