

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
3 KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
4 Deputy Attorneys General  
300 South Spring Street  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6525  
6 Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and  
through the California Department  
8 of Justice, Former Attorney General Xavier  
Becerra in his personal capacity only and Attorney  
9 General Rob Bonta in his official capacity only*

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

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

17  
18 Plaintiffs,

19 v.

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

23 Defendants.  
24  
25  
26  
27  
28

Case No. 20STCP01747

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION BY DEFENDANTS FOR  
JUDGMENT ON THE PLEADINGS**

**Date: September 6, 2023  
Time: 8:30 a.m.  
Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 742759559028**

TABLE OF CONTENTS

	Page
1	
2	
3	I - INTRODUCTION..... 9
4	II -FACTS ..... 10
5	1.    Procedural History/Chronology of Events ..... 10
6	2.    Remaining Claims..... 12
7	3.    The Process for the Sale and Transfer of Firearms ..... 14
8	III - SUMMARY OF ARGUMENT ..... 16
9	IV - ARGUMENT ..... 18
10	A.    GRANTING A MOTION FOR JUDGMENT ON THE PLEADINGS
11	WITHOUT LEAVE TO AMEND IS APPROPRIATE WHERE THERE
12	CAN BE NO LIABILITY AS A MATTER OF LAW ..... 18
13	B.    JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED
14	BECAUSE PLAINTIFFS FAIL TO ALLEGE ANY ATTEMPT TO
15	APPLY FOR TRANSFER OF A FIREARM AND THUS DO NOT HAVE
16	STANDING ..... 18
17	C.    JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED AS TO
18	THE THIRD, FOURTH AND FIFTH CAUSES OF ACTION FOR
19	INTERFERENCE WITH CONTRACT AND PROSPECTIVE
20	ECONOMIC ADVANTAGE ..... 20
21	1.    Franklin Armory Has Not and Cannot State a Cause of Action as to
22	the Third, Fourth and Fifth Causes of Action for Interference with
23	Contract and Prospective Economic Advantage Against Former
24	Attorney General Becerra. .... 20
25	a) Judgment on the Pleadings Should be Granted as to the Third Cause
26	of Action for Interference with Contractual Relations..... 21
27	b) Judgment on the Pleadings Should be Granted as to the Fourth and
28	Fifth Causes of Action for Tortious and Negligent Interference with
	Prospective Economic Advantage..... 22
	2.    The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the
	Requirements to Establish a Mandatory Duty ..... 23
	3.    The Discretionary Immunity Under Government Code Section
	820.2 Also Precludes Liability Against Defendants ..... 27
	D.    JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED
	WITHOUT LEAVE TO AMEND AS TO THE NINTH CAUSE OF
	ACTION FOR VIOLATION OF PUBLIC POLICY [TAXPAYER
	CLAIM UNDER CCP § 526A] ..... 29
	E.    JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED
	WITHOUT LEAVE TO AMEND AS TO THE SECTION 1983 CAUSES
	OF ACTION FOR VIOLATION OF PROCEDURAL (SIXTH) AND
	SUBSTANTIVE (SEVENTH) DUE PROCESS ..... 31
	V - CONCLUSION..... 34

**TABLE OF AUTHORITIES**

		<b>Page</b>
1		
2	<b>CASES</b>	
3	<i>Becerra v. County of Santa Cruz</i>	
4	(1998) 68 Cal.App.4th 1450 .....	28
5	<i>Bezot v. United States</i>	
6	(E.D. La. 2017) 276 F.Supp.3d 576 .....	19
7	<i>Blank v. Kirwan</i>	
8	(1985) 39 Cal.3d 311 .....	22
9	<i>Bradford v. State of California</i>	
10	(1974) 36 Cal.App.3d 16.....	20, 21
11	<i>Caldwell v. Montoya (1995) 10 Cal.4th 972</i>	
12	(1995) 10 Cal.4th 972 .....	27, 28
13	<i>Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan</i>	
14	(2007) 150 Cal.App.4th 1487 .....	32
15	<i>Capp v. County of San Diego</i>	
16	(9th Cir. 2019) 940 F.3d 1046.....	33
17	<i>Cerletti v. Newsom</i>	
18	(2021) 71 Cal.App.5th 760 .....	30
19	<i>Chodosh v. Commission on Judicial Performance</i>	
20	(2022) 81 Cal.App.5th 248 .....	27
21	<i>City of Los Angeles v. Superior Court</i>	
22	(2021) 62 Cal.App.5th 129 .....	20
23	<i>Colome v. State Athletic Commission (1996) 47 Cal.App.4th 1444</i>	
24	(1996) 47 Cal.App.4th 1444 .....	29
25	<i>Cooper v. Bettinger</i>	
26	(2015) 242 Cal.App.4th 77 .....	32
27	<i>Coshov v. City of Escondido</i>	
28	(2005) 132 Cal.App.4th 687 .....	30
	<i>County of Los Angeles v. Superior Court (Faten)</i>	
	(2012) 209 Cal.App.4th 543 .....	24
	<i>County of Los Angeles v. Superior Court (Terrell R.)</i>	
	(2002) 102 Cal.App.4th 627 .....	20, 23
	<i>County of Sacramento v. Lewis</i>	
	(1998) 523 U.S. 833 .....	34
	<i>Curcini v. County of Alameda</i>	
	(2008) 164 Cal.App.4th 629 .....	28

1	<i>Daily Journal v. County of Los Angeles</i>	
	(2009) 172 Cal.App.4th 1550 .....	30
2		
3	<i>Della Penna v. Toyota Motor Sales</i>	
	(1995) 11 Cal.4th 376 .....	20, 21
4	<i>Dept. of Homeland Security v. Regents</i>	
	(2020) 140 S.Ct. 1891 .....	33
5		
6	<i>de Villers v. County of San Diego</i>	
	(2007) 156 Cal.App.4th 238 .....	26
7	<i>Fleishman v. Sup. Court</i>	
	(2002) 102 Cal.App.4th 350 .....	18
8		
9	<i>Franceschi v. Yee</i>	
	(9th Cir. 2018) 887 F.3d 927.....	33
10	<i>Garrett v. Governing Board of Oakland Unified School District</i>	
	(N.D. Cal. 2022) 583 F.Supp.3d 1267 .....	32
11		
12	<i>Goodman v. Kennedy</i>	
	(1976) 18 Cal.3d 335 .....	18
13	<i>Gregory v. Cott</i>	
	(2014) 59 Cal.4th 996 .....	21
14		
15	<i>Grosz v. California Dept. of Tax &amp; Fee Administration</i>	
	(2023) 87 Cal.App.5th 428 .....	30
16	<i>Guzman v. County of Monterey</i>	
	(2009) 46 Cal.4th 887 .....	20, 24, 25
17		
18	<i>Haggis v. City of Los Angeles</i>	
	(2000) 22 Cal.4th 490 .....	24, 25
19	<i>Highland Farms Dairy v. Agnew</i>	
	(1938) 300 U.S. 608 .....	19
20		
21	<i>Hoff v. Vacaville Unified</i>	
	(1998) 19 Cal.4th 925 .....	21
22	<i>Hogen v. Valley Hosp.</i>	
	(1983)147 Cal.App.3d 119.....	18
23		
24	<i>In re Tobacco Cases II</i>	
	(2015) 240 Cal.App.4th 779 .....	31
25	<i>Ixchel Pharma, LLC v. Biogen, Inc.</i>	
	(2020) 9 Cal.5th 1130 .....	21, 23
26		
27	<i>Jones v. Wide World of Car</i>	
	(S.D.N.Y. 1993) 820 F.Supp. 132.....	21
28		

1	<i>Katona v. County of Los Angeles</i>	
2	(1985) 172 Cal.App.3d 53.....	26
3	<i>KCSFV I, LLC v. Florin County Water Dist.</i>	
4	(2021) 64 Cal.App.5th 1015 .....	19
5	<i>Kemmerer v. County of Fresno</i>	
6	(1988) 200 Cal.App.3d 1426.....	27
7	<i>Los Angeles County Bar Ass'n v. Eu</i>	
8	(9th Cir. 1992) 979 F.2d 697.....	32
9	<i>Lyons v. Santa Barbara County Sheriff's Office</i>	
10	(2014) 231 Cal.App.4th 1499 .....	30
11	<i>MacDonald v. State of California</i>	
12	(1991) 230 Cal.App.3d 319.....	29
13	<i>Madsen v. Boise State University</i>	
14	(9th Cir. 1992) 976 F.2d 1219.....	19
15	<i>Manistee Town Ctr. v. City of Glendale</i> (9th Cir. 2000) 227 F.3d 1090	
16	(9th Cir. 2000) 227 F.3d 1090.....	27
17	<i>Monterey Coastkeeper v. Central Coast Regional Water Quality Control Board</i>	
18	(2022) 76 Cal.App.5th 1 .....	31
19	<i>Olson v. Manhattan Beach Unified</i>	
20	(2017) 17 Cal.App.5th 1052 .....	19
21	<i>People v. Heitzman</i> (1994) 9 Cal.4th 189	
22	(1994) 9 Cal.4th 189 .....	21
23	<i>People v. Correa</i>	
24	(2012) 54 Cal.4th 331 .....	25, 26
25	<i>Posey v. State of California</i>	
26	(1986) 180 Cal.App.3d 836.....	28
27	<i>Premier Medical Management Systems. v. California Ins. Guarantee</i>	
28	(2006) 136 Cal.App.4th 464 .....	27
29	<i>Prime Healthcare Services, Inc. v. Harris</i>	
30	(S.D. Cal. 2016) 216 F.Supp.3d 1096.....	33
31	<i>Ramirez v. USAA Casualty Ins. Co.</i>	
32	(1991) 234 Cal.App.3d 391.....	18
33	<i>Regents of the University of California v. Dept. of Homeland Security</i>	
34	(9th Cir. 2018) 908 F.3d 476.....	33
35	<i>Reynolds v. City of Calistoga</i> (2014) 223 Cal.App.4th 865	
36	(2014) 223 Cal.App.4th 865 .....	31

1	<i>Robins v. County of Los Angeles</i>	
2	(1966) 248 Cal.App.2d 1 .....	18, 19
3	<i>Roy Allan Slurry Seal. v. American Asphalt South (2017) 2 Cal.5th 505</i>	
4	(2017) 2 Cal.5th 505 .....	22
5	<i>Schmitt v. LaRose</i>	
6	(6th Cir. 2019) 933 F.3d 628.....	32, 33
7	<i>Shamsian v. Department of Conservation</i>	
8	(2006) 136 Cal.App.4th 621 .....	24
9	<i>Sofranek v. Merced County</i>	
10	(2007) 146 Cal. App. 4th 1238 .....	18
11	<i>Sosa v. DIRECTV</i>	
12	(9th Cir. 2006) 437 F.3d 923.....	27
13	<i>State of California ex rel. Dept. of Rehab. v. Superior Court</i>	
14	(1982) 137 Cal.App.3d 282.....	27
15	<i>Summers v. City of Cathedral City</i>	
16	(1990) 225 Cal.App.3d 1047.....	28
17	<i>Taylor v. Buff</i>	
18	(1985)172 Cal.App.3d 384.....	28
19	<i>Thompson v. County of Alameda</i>	
20	(1980) 27 Cal.3d 741 .....	28
21	<i>Trinkle v. California State Lottery</i>	
22	(1999) 71 Cal.App.4th 1198 .....	25, 26
23	<i>Vazquez v. County of Kern</i>	
24	(9th Cir. 2020) 949 F.3d 1153.....	34
25	<i>Vierria v. California Highway Patrol</i>	
26	(E.D. Cal. 2009) 644 F.Supp.2d 1219.....	32
27	<b>STATUTES</b>	
28	Code Civ. Proc. § 438 .....	18
	Code Civ. Proc. § 526a .....	13, 17, 29, 31
	Gov. Code § 810 .....	20
	Gov. Code § 815 .....	20
	Gov. Code § 815.2 .....	21
	Gov. Code § 815.6 .....	23, 24
	Gov. Code § 818.4 .....	28, 29

1	Gov. Code § 820 .....	20
2	Gov. Code § 820.2 .....	17, 27
3	Gov. Code § 820.8 .....	21
4	Gov. Code § 821.2 .....	28, 29
5	Penal Code § 16865 .....	10
6	Penal Code § 17090 .....	9
7	Penal Code § 26815 .....	16
8	Penal Code § 27540 .....	16
9	Penal Code § 27555 .....	15
10	Penal Code § 28050 .....	15, 16
11	Penal Code § 28105 .....	14, 15
12	Penal Code § 28155 .....	14, 17, 23, 25, 26
13	Penal Code § 28160 .....	15
14	Penal Code § 28205 .....	14, 17, 23, 25
15	Penal Code § 28210 .....	15
16	Penal Code § 28215 .....	15, 17, 23, 25, 26
17	Penal Code § 28220 .....	15, 17, 23, 25, 26
18	Penal Code § 28245 .....	14, 25
19	Penal Code § 28255 .....	16
20	Penal Code § 30515 .....	9, 11
21	Penal Code § 30685 .....	31
22	42 U.S.C. § 1983 .....	12, 13, 31
23	<b>REGULATIONS</b>	
24	Cal. Code Regs., tit. 11, § 4200 .....	14
25	Cal. Code Regs., tit. 11, § 4210 .....	15
26	28 C.F.R. § 25.10 .....	16, 33
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Secondary Authorities**

Bartley & Williams, *What Is an Assault Weapon? Definitions, Attributes, and Implications Regarding Legislation* (2022) 57 Gonz. L. Rev. 515.....9

Rostron, *Style, Substance, and the Right to Keep and Bear Assault Weapons* (2018) 40 Campbell L. Rev. 301 .....15

2 Lawrence's *Anderson on the Uniform Commercial Code* (3d. ed., Dec. 2022 update) .....21



I

INTRODUCTION

1  
2  
3 The impetus for the filing of this action is centered around Franklin Armory’s Title 1  
4 centerfire firearm which was introduced in October, 2019. (Second Amended Complaint (SAC),  
5 ¶ 69, Ex. C, p.1, par. 2.) Centerfire refers to the ammunition cartridges used in a firearm which  
6 can be either rimfire or centerfire. The difference is where the firing mechanism hits and starts  
7 the ignition of the cartridge propellant. (Bartley & Williams, *What Is an Assault Weapon?*  
8 *Definitions, Attributes, and Implications Regarding Legislation* (2022) 57 Gonz. L. Rev. 515,  
9 523.) Rimfire cartridges are generally lower in power and viewed as less reliable and are not  
10 typically included in assault weapons bans. (*Id.* at 530.)

11 The Title 1 centerfire firearm was essentially a rifle with assault weapon components  
12 except that it was designed with a “padded buffer tube” instead of a stock. Since it did not have a  
13 stock it was not “intended to be fired from the shoulder.” (See First Amended Complaint (FAC)  
14 in *Franklin Armory v. State of California et al.*, Sacramento Superior Case No. 2018-00246584-  
15 CU-MC (Sacramento Action), ¶¶ 77-78, Ex. 1, at pp. 1-2, , Ex. C to Req. for Jud. Notice.)

16 According to Franklin Armory, by designing the Title 1 without a stock so that it was not  
17 “intended to be fired from the shoulder”, it would not technically be considered a “rifle” under the  
18 Penal Code section 17090 definition.<sup>1</sup> With the Title 1 centerfire design not technically a “rifle”  
19 under the statutory definition, it would follow that it would not be considered a banned assault  
20 weapon as defined by the version of Penal Code Section 30515 in effect up until August 6, 2020,  
21 because that definition applied only to “rifles.” (Pen. Code, § 30515 (a)(1)-(3).)

22 This action is premised on the allegation that, since the Title 1 centerfire firearm was not  
23 technically a “rifle” as defined by statute, the Department of Justice (DOJ)<sup>2</sup> online system for

24 <sup>1</sup> Under Penal Code section 17090, “‘rifle’ means a weapon designed or redesigned, made or  
25 remade, and intended to be fired from the shoulder and designed or redesigned and made or  
26 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.” (Pen. Code, § 17090.)

27 <sup>2</sup> The State of California, acting by and through the California Department of Justice, which  
28 includes the Bureau of Firearms, is referred to herein as the DOJ.

1 submission of information concerning the sale and transfer of firearms precluded the processing  
2 of this firearm because the system’s drop-down menu for long guns included only options for  
3 rifle, shotgun, or rifle/shotgun combination.<sup>3</sup> Plaintiffs do not identify any statute or other  
4 authority that requires that a firearm being processed for transfer in the online system fit the  
5 statutory definition of “rifle” in order to be processed as such in the system.

6 Plaintiffs allege there was a mandatory duty to modify this online system to add an  
7 “other” option to the drop-down menu to accommodate the Title 1 and that the DOJ failed to do  
8 so in a timely manner thus depriving Franklin Armory of profits from lost sales. (SAC, ¶¶ 2, 58-  
9 59, 105, 145, 157.) Plaintiffs do not allege that anyone ever actually purchased a Title 1 firearm  
10 and attempted to process a transfer of the Title 1 in the online system through a licensed firearms  
11 dealer which is required in California. Rather, plaintiffs allege that individuals “placed deposits”  
12 with Franklin Armory for the Title 1 firearm. (SAC, ¶ 113.)

## 13 II

### 14 FACTS

#### 15 1. Procedural History/Chronology of Events

16 Prior to the filing of this action, Franklin Armory filed another action concerning the Title  
17 1 firearm in Sacramento Superior Court on December 14, 2018, against the DOJ and former  
18 Attorney General Becerra. (Original Complaint, Sacramento Action, Ex. A to Req. for Jud.  
19 Notice.) On June 12, 2019, the Sacramento court sustained a demurrer to the original complaint  
20 with leave to amend followed by the filing of an amended complaint on June 26, 2019.  
21 (Sacramento Action, Ex. B (order) and C (FAC) to Req. for Jud. Notice.)

22 In the Sacramento action, Franklin Armory also asserted that the Title 1 firearm was not a  
23 “rifle” but alleged that the reason the Title 1 could not be processed/transferred was uncertainty  
24 over whether this firearm was an illegal assault weapon creating a fear and risk of prosecution if  
25 the Title 1 were deemed to be an assault weapon. Franklin Armory requested a declaration of

26 <sup>3</sup> “Long gun” means any firearm that is not a handgun or a machinegun. (Pen. Code, § 16865.)  
27 The Title 1 is clearly a long gun and not a shotgun or rifle/shotgun combination. (See e.g. SAC  
28 ¶¶ 23-24.)

1 rights from the court that the Title 1 firearm was not an assault weapon because it was not a  
2 “rifle.” (Sacramento Action, FAC, Ex. C, ¶¶ 66, 73-74, 77-78, 85, 95, 97-98.) On September 23,  
3 2019, the court sustained a demurrer to the FAC holding that Franklin Armory had not  
4 sufficiently alleged there was a credible threat that the assault weapons ban would be invoked  
5 against it. (Sacramento Action, Order 9/23/19, Ex. D, pp. 2-3.) The court allowed leave to  
6 amend. However, rather than amend, Franklin Armory dismissed the action on October 3, 2019.  
7 (Sacramento Action, Ex. E to Req. for Jud. Notice.)

8 Plaintiffs filed the original complaint in this action on May 27, 2020, but did not serve it.  
9 On August 19, 2020, plaintiffs filed the first amended complaint (FAC).

10 On August 6, 2020, the legislature passed SB 118 which included amending the Penal  
11 Code Section 30515 definition of an assault weapon to add a “centerfire firearm that is not a rifle,  
12 pistol, or shotgun” that includes components in three categories. ((Pen. Code, § 30515 (a)(9)-  
13 (11).) With this change in definition, the Title 1 centerfire firearm was rendered a banned assault  
14 weapon. (FAC, ¶ 105.)

15 On October 15, 2020, this court ordered a stay as to all causes of action except for the  
16 first, second and eighth causes of action which sought mandamus, declaratory and injunctive  
17 relief respectively. Handling of these three causes of action was assigned to Judge Chalfant.

18 Defendants subsequently demurred to the FAC which was sustained on January 28, 2021.  
19 Judge Chalfant sustained the demurrer as to all three causes of action before him at that time on  
20 the ground that those claims were moot because the Title 1 centerfire firearm was now classified  
21 as a banned assault weapon. (Order 1/28/21, pp. 4-9.)

22 In addition, the court rejected plaintiffs’ assertion that they were entitled to an order  
23 allowing the transfer of Title 1 firearms for which deposits were initiated before the August 6,  
24 2020, passage of SB 118, holding that, while SB 118 allows individuals possessing a Title 1 prior  
25 to September 1, 2020, to keep the firearm, this does not apply to the Title 1 because, “an order  
26 permitting completion of the transfer of an assault weapon to a buyer who made a deposit before  
27 August 6, 2020 would violate SB 118.” (Order 1/28/21, last par. p. 5, top of p. 6.) In this regard,  
28 the court noted that, “petitioners [plaintiffs] may have standing to seek damages for the

1 noncompletion of such sales, but they cannot rely on this fact for mandamus and declaratory  
2 relief standing to compel DOJ to take action.” (Order 1/28/21, p. 9, third to last full ¶.)  
3 “Petitioners are relegated to a damages remedy only for such claims.” (Order 1/28/21, p. 7,  
4 second full ¶.)

5 The court, noting that the FAC failed to allege with any specificity any other Franklin  
6 Armory firearm that was not an assault weapon that it contends could not be processed  
7 /transferred, allowed leave to amend to add such a firearm. (Order 1/28/21, p. 9.) On February  
8 17, 2021, plaintiffs filed the second amended complaint (SAC). The SAC added for the first time  
9 reference to a new rimfire version of the Title 1 firearm. (Compare FAC, ¶ 2 to SAC, ¶ 2.)  
10 The August 6, 2020, amendment to the definition of an assault weapon did not include a rimfire  
11 firearm.

12 Defendants demurred to the SAC on grounds similar to the initial demurrer which was  
13 overruled on June 3, 2021. At that hearing, Judge Chalfant, noting that Rob Bonta was the  
14 current Attorney General, substituted him in as a defendant in his official capacity only in place  
15 of former Attorney General Becerra. Former Attorney General Becerra was initially sued in his  
16 official and personal capacities but is now sued only in his personal capacity.

17 On October 1, 2021, DOJ completed an overhaul of the online system which included the  
18 addition of an “other” option to the rifle, shotgun and rifle/shotgun combination options in that  
19 drop-down menu. Based on this modification, defendants filed a motion to dismiss the first,  
20 second and eighth causes of action for mandamus, declaratory and injunctive relief which was  
21 granted on January 27, 2022. In this order, the court noted that plaintiffs do not dispute that the  
22 modification of the online system addressed and removed the alleged problem and that there is no  
23 reason to believe that this modification will be reversed. Judge Chalfant ordered the case  
24 transferred to Department 1 for assignment of the remaining claims. (Order, 1/27/22, pp. 9, 11.)

## 25 **2. Remaining Claims**

26 There are six remaining causes of action including four State law causes and two brought  
27 under 42 U.S.C. § 1983:  
28

1           **State Law**

- 2           3rd:   Tortious Interference with Contractual Relations  
              (SAC, ¶¶ 129-138.)
- 3           4th:   Tortious Interference with Prospective Economic Advantage  
              (SAC, ¶¶ 139-150.)
- 4           5th:   Negligent Interference with Prospective Economic Advantage  
              (SAC, ¶¶ 151-161.)
- 5           9th:   Violation of Public Policy [taxpayer claim under Civ. Proc. § 526a]  
              (SAC, ¶¶ 198-204.)

6           **§1983**

- 7           6th:   42 U.S.C. § 1983- Violation of Procedural Due Process  
              (SAC, ¶¶ 162-172.)
- 8           7th:   42 U.S.C. § 1983- Violation of Substantive Due Process  
              (SAC, ¶¶ 173-184.)

9

10           Over the course of meet and confer communications relative to this motion,  
11           the parties agreed on clarifications as to particular claims and relief sought by plaintiffs:

12           1. The headings for the third, fourth and fifth causes of action do not specify which  
13           plaintiff is asserting these claims and indicates they are asserted against all defendants. (SAC, p.  
14           29:20-22, 30:15-17, 31:26-28.) Plaintiffs have clarified that only plaintiff Franklin Armory is  
15           seeking monetary damages under the third, fourth and fifth causes of action as against former  
16           Attorney General Becerra only. Plaintiff California Rifle & Pistol Association (Association) is  
17           not asserting a claim for monetary damages in this action and seeks only equitable relief under the  
18           sixth, seventh and ninth causes of action. (Decl. of Lake, ¶¶ 4-5.)

19           The SAC contains no allegation as to any specific act or personal involvement on the part  
20           of former Attorney General Becerra relative to this action. Rather, the SAC includes only a  
21           general and conclusory allegation that, as Attorney General, he is the chief law enforcement  
22           officer of California who is charged with the duty to see that the laws of California are uniformly  
23           and adequately enforced under article V, section 13, of the California Constitution. (SAC, ¶¶ 8,  
24           13-16.)

25           2. Franklin Armory and the Association seek only equitable relief under the ninth cause  
26           of action entitled violation of public policy [taxpayer claim under Civ. Proc. § 526a]. (Decl. of  
27           Lake, ¶¶ 4, 7.)

28

1           3. The headings for the sixth and seventh causes of action indicate they are asserted  
2 against all defendants. (SAC, p. 33:5-7, 35:8-10.) Plaintiffs have clarified that Franklin Armory  
3 and the Association seek only equitable relief, not damages, against Attorney General Bonta in  
4 his official capacity only. Plaintiffs do not assert a claim for monetary damages against him.  
5 Former Attorney General Becerra and the DOJ are not defendants as to these claims.

6           Plaintiffs contend that there remains an issue as to the availability of declaratory relief  
7 relative to SB 118 for individuals who placed deposits for a Title 1 centerfire firearm prior to the  
8 effective date of SB 118 as to their right to obtain a Title 1 centerfire firearm at this juncture.  
9 (Decl. of Lake, ¶¶ 4, 6.)

### 10 **3. The Process for the Sale and Transfer of Firearms**

11           The online system for the submission of information concerning the sale and transfer of  
12 firearms is known as the Dealer Record of Sale Entry System (DES) (Cal. Code Regs., tit. 11, §  
13 4200; citing Pen. Code, § 28205.) Penal Code section 28205 states in pertinent:

14                   “On or after January 1, 2003, *except as permitted by the department*, electronic  
15 transfer shall be the exclusive means by which information is transmitted to the  
16 department. Telephonic transfer shall not be permitted for information regarding  
sales of any firearms.”

17 (Pen. Code, § 28205, subd. (c)(emphasis added).)

18           Under Penal Code section 28245, whenever the DOJ acts pursuant to this statute and other  
19 statutes relative to the sale and transfer of firearms (other than handguns), “the department's acts  
20 or omissions *shall be deemed to be discretionary* within the meaning of the Government Claims  
21 Act . . .” (Pen. Code, § 28245 (emphasis added).) Plaintiffs concede that the discretionary  
22 language of Penal Code section 28205, subdivision (c), permits “the DOJ to make exceptions” or  
23 allow alternatives. (SAC, ¶¶ 52, 66.)

24           The legislature delegated the task of prescribing the form of the dealer record of sale to  
25 the DOJ under Penal Code section 28155. (Pen. Code § 28155 [“The Department of Justice shall  
26 prescribe the form of the register and the record of electronic transfer pursuant to Section  
27 28105”].) (SAC, ¶43, p. 11:16-17.) Under Penal Code section 28105, the legislature also  
28 delegated the task of developing the standards for all appropriate electronic equipment to effect

1 the electronic transfer of information to the department to the DOJ. (Pen. Code, § 28105, subd.  
2 (b).)

3 The online system has been in place since at least 2003. (SAC, ¶ 49.) Plaintiffs note that  
4 firearms which do not technically fit under the statutory definition for that type of firearm, what  
5 they refer to as firearms with an undefined subtype, have been manufactured for decades. (SAC,  
6 ¶¶ 29-30, 32.)

7 While plaintiffs premise this action on an alleged duty to modify the online system to add  
8 an “other” option to the rifle, shotgun, rifle/shotgun combination options in that drop-down menu,  
9 they concede that there is no statutory requirement for the DOJ to include this drop-down menu at  
10 all under Penal Code section 28160, subdivision (a). (SAC, ¶ 45; noting that only indicating  
11 “type” of firearm (“long gun” or “handgun”) is required.)<sup>4</sup>

12 For an out-of-state seller such as Franklin Armory, the sale and transfer of a firearm is done  
13 through a licensed California firearms dealer selected by the seller or purchaser. (SAC, ¶¶ 1, 3,  
14 35.) To initiate the process to obtain a firearm, a purchaser must first purchase the firearm from  
15 the seller. After completing the purchase, the seller delivers the firearm to the selected California  
16 dealer who retains possession of that firearm. (Pen. Code, § 28050, subd. (b).) Prior to delivery,  
17 the seller is required to obtain a verification number from the DOJ via the internet for the  
18 intended delivery. (Pen. Code, § 27555, subd. (a)(1).)

19 Once the California dealer receives the firearm, the purchaser presents his or her  
20 identification to the dealer, along with the required information, which the dealer then transmits  
21 to the DOJ. (SAC, ¶¶ 36-38.) A dealer transmitting to the DOJ agrees that “all of the information  
22 I submit to the Department through the DES shall be true, accurate, and complete to the best of  
23 my knowledge.” (Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).) DOJ then reviews the  
24 information provided and advises the dealer if there exists grounds for denying the transfer of the  
25 firearm to the purchaser. (Pen. Code, §§ 28215, 28210, 28220.) If these requirements have been

26 <sup>4</sup> See also Rostron, *Style, Substance, and the Right to Keep and Bear Assault Weapons* (2018) 40  
27 Campbell L. Rev. 301, 304 [discussing types of firearms as handguns and long guns.]

1 satisfied and the DOJ has not indicated grounds for denying the transfer, the dealer may deliver  
2 the firearm to the purchaser. (Pen. Code, §§ 26815, 27540, 28255.)

3 Finally, plaintiffs state that “a person found ineligible to receive a firearm may appeal the  
4 decision” citing 28 C.F.R. section 25.10 which authorizes an individual to bring an action against  
5 the state or political subdivision responsible for denying the transfer for an order directing that the  
6 firearm transfer be approved. (28 C.F.R. § 25.10, subd. (f).) (SAC, ¶ 49.) If the dealer cannot  
7 legally deliver the firearm to the purchaser, the dealer typically returns the firearm to the seller.  
8 (Pen. Code, § 28050, subd. (d).)

9 The SAC does not allege that anyone undertook any of these steps to actually attempt to  
10 purchase and transfer a Title 1 firearm or that any specific purchase or transfer of any firearm that  
11 a dealer attempted to process in the online system was rejected by the DOJ.

### 12 III

#### 13 SUMMARY OF ARGUMENT

14 The motion for judgment on the pleading should be granted without leave to amend on  
15 numerous grounds. First, plaintiffs fail to allege that anyone undertook any of the required steps  
16 for transfer of a firearm such as purchase of a firearm, delivery of the firearm to a licensed  
17 California dealer or submission of required information to the DOJ. There is no allegation that  
18 any firearm that a dealer attempted to process in the online system was rejected by the DOJ.  
19 Therefore, plaintiffs do not have standing.

20 Second, with regard to the third, fourth and fifth causes of action for interference with  
21 contract and prospective economic advantage, these are common law causes of action not based  
22 on statute and thus cannot be asserted against the DOJ. Franklin Armory fails to state a cause of  
23 action against former Attorney General Becerra for interference with contractual relations  
24 because the SAC fails to allege the existence of a contract. Alleging placement of a deposit is  
25 insufficient. In addition, Franklin Armory fails to allege any specific act on the part of former  
26 Attorney General Becerra at all, let alone an act that was designed to induce a breach of contract.  
27 The general and conclusory allegation that former Attorney General Becerra, as attorney general,  
28



1 had a duty to enforce the laws of the State under the California Constitution provides no basis for  
2 liability against him.

3 Third, Franklin Armory also fails to state an interference with prospective economic  
4 advantage cause of action against former Attorney General Becerra. Plaintiffs have not and  
5 cannot allege the existence of an established economic relationship because placement of a  
6 deposit is insufficient. Also, Franklin Armory has not alleged any act on the part of former  
7 Attorney General Becerra constituting interference with any economic relationship. In addition,  
8 Franklin Armory fails to allege that any act by former Attorney General Becerra was  
9 independently wrongful apart from any alleged interference.

10 It appears from the allegations of the SAC, that what Franklin Armory is attempting to  
11 allege with respect to the third, fourth and fifth causes of action is mandatory duty liability based  
12 on Penal Code sections 28155, 28205, 28215 and 28220. However, these statutes clearly fail to  
13 establish mandatory duty liability pursuant to the requirements of Government Code section  
14 815.6.

15 Fourth, even assuming arguendo that any of the interference causes of action could be  
16 stated against former Attorney General Becerra, he is entitled to immunity pursuant to the  
17 discretionary immunity of Government Code section 820.2.

18 Fifth, with regard to the ninth cause of action, which is pled as a taxpayer action under  
19 Code of Civil Procedure section 526a, the SAC fails to state a cause of action because the premise  
20 of said cause of action is not a restraint on the expenditure of funds but a request by plaintiffs for  
21 an additional expenditure of funds to modify the online system. Nevertheless, even if a cause of  
22 action could have been stated, such a claim was rendered moot when the online system was  
23 modified on October 1, 2021.

24 Finally, judgment on the pleadings should be granted without leave to amend as to the  
25 section 1983 causes of action for violation of procedural and substantive due process because, as  
26 ruled on by Judge Chalfant on January 28, 2021, such claims are moot. Even if said claims are  
27 not moot, the SAC fails to state a cause of action for a violation of procedural or substantive due  
28 process.

1 IV

2 ARGUMENT

3 **A. GRANTING A MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT**  
4 **LEAVE TO AMEND IS APPROPRIATE WHERE THERE CAN BE NO**  
5 **LIABILITY AS A MATTER OF LAW**

6 Code of Civil Procedure section 438 states that a defendant may bring a motion for  
7 judgment on the pleadings on the ground that the complaint does not state facts sufficient to  
8 constitute a cause of action against that defendant. (Code Civ. Proc. § 438, subd. (c)(1)(B).) A  
9 motion for judgment on the pleadings performs the same function as a general demurrer, and  
10 hence attacks only defects disclosed on the face of the pleadings or by matters that can be  
11 judicially noticed.” (*Fleishman v. Sup. Court* (2002) 102 Cal.App.4th 350, 354.)

12 “In determining the sufficiency of a complaint against demurrer the court considers not  
13 only the contents of the complaint but also matters of which judicial notice may be taken.  
14 Accordingly, a complaint otherwise good on its face is subject to demurrer when facts judicially  
15 noticed render it defective.” (*Hogen v. Valley Hosp* (1983)147 Cal.App.3d 119, 126.) “Facts  
16 appearing in exhibits attached to the complaint are also accepted as true and given precedence  
17 over inconsistent allegations in the complaint.” (*Sofranek v. Merced County* (2007) 146 Cal.  
18 App. 4th 1238, 1241, fn.1).

19 “A general demurrer admits the truth of all material facts alleged in the complaint. If there  
20 is a reasonable possibility the defect can be cured the plaintiffs should be given leave to amend.  
21 If there can be no liability as a matter of law the pleader should be given no leave to amend.”  
22 (*Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391, 397 (citations omitted)  
23 (emphasis added).) The burden is on a plaintiff to show in what manner he can amend the  
24 complaint and how that amendment will change the legal effect of the pleading. (*Goodman v.*  
25 *Kennedy* (1976) 18 Cal.3d 335, 349.)

26 **B. JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED BECAUSE**  
27 **PLAINTIFFS FAIL TO ALLEGE ANY ATTEMPT TO APPLY FOR TRANSFER**  
28 **OF A FIREARM AND THUS DO NOT HAVE STANDING**

“One who is required to take out a license will not be heard to complain, in advance of  
application, that there is danger of refusal. He should apply and see what happens.” (*Robins v.*

1 *County of Los Angeles* (1966) 248 Cal.App.2d 1, 12; quoting *Highland Farms Dairy v. Agnew*  
2 (1938) 300 U.S. 608, 616-617. Accordingly, it is well established that a party “lacks standing to  
3 challenge a rule or policy to which he has not submitted himself by actually applying for the  
4 desired benefit.” (*Madsen v. Boise State University* (9th Cir. 1992) 976 F.2d 1219, 1220 [citing  
5 some of “a long line of cases”]; see also *Bezot v. United States* (E.D. La. 2017) 276 F.Supp.3d  
6 576, 598 [held that plaintiff lacked standing based on failure to apply for a firearms permit].)

7 Here, plaintiffs merely allege that deposits were placed relative to the Title 1 firearm. They  
8 do not allege any of the acts required to occur before submission of information to the DOJ  
9 requesting transfer of such a firearm. As discussed above, in the case of a transaction involving  
10 an out-of-state seller such as Franklin Armory, once a purchase is completed, the seller would  
11 obtain a verification number via the internet from the DOJ and then deliver the firearm to the  
12 selected California firearms dealer. Once the dealer receives the firearm, the purchaser presents  
13 his or her identification along with the required information which the dealer then transmits to the  
14 DOJ. DOJ would then review the information provided and advise the dealer if there exists  
15 grounds to deny the transfer of the firearm to the purchaser. Thus, plaintiffs do not allege that any  
16 purchaser went through the steps necessary to submit information to the DOJ to make a  
17 determination as to whether a Title 1 firearm could be transferred.

18 Furthermore, if a requested firearms transfer were denied, the purchaser would have the  
19 right to bring an action against the DOJ for an order directing that the transfer be approved.  
20 Plaintiffs have not and cannot allege that any of these things occurred. Therefore, plaintiffs have  
21 no standing to bring this action.

22 In addition, any assertion that actually going through the transfer process would have been  
23 futile fails. Futility is an exception to exhaustion of administrative remedies, not an exception to  
24 applying for a firearms license. (*Olson v. Manhattan Beach Unified School Dist.* (2017) 17  
25 Cal.App.5th 1052, 1063.) Moreover, “the futility exception is very narrow and does not apply  
26 unless the person invoking it can positively state that the agency declared what its decision will  
27 be in a particular proceeding.” (*KCSFV I, LLC v. Florin County Water Dist.* (2021) 64  
28 Cal.App.5th 1015, 1036.) Here, the futility exception does not apply because DOJ does not have

1 an exhaustion of remedies requirement for the denial of a firearms transfer. Further, plaintiffs  
2 cannot positively state what DOJ would have done if someone had submitted a Title 1  
3 firearm for transfer and a rejection could be challenged by a court action for an order directing  
4 approval of a transfer.

5 **C. JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED AS TO THE**  
6 **THIRD, FOURTH AND FIFTH CAUSES OF ACTION FOR INTERFERENCE**  
7 **WITH CONTRACT AND PROSPECTIVE ECONOMIC ADVANTAGE**

8 Government Code section 815 declares that, “except as otherwise provided by statute,  
9 public entities are not liable for a tortious injury, whether such injury arises out of an act or  
10 omission of the public entity or a public employee or any other person.” (Gov. Code §815, subd.  
11 (a)). The California Supreme Court has repeatedly and clearly held that, “under the Government  
12 Claims Act (Govt. Code, §810 et seq.), there is no common law tort liability for public entities in  
13 California; instead, such liability must be based on statute.” (*Guzman v. County of Monterey*  
14 (2009) 46 Cal.4th 887, 897.) “Thus, in the absence of some constitutional requirement, public  
15 entities may be liable only if a statute declares them to be liable.” (*County of Los Angeles v.*  
16 *Superior Court (Terrell R.)* (2002) 102 Cal.App.4th 627, 637.) The applicable enactment must be  
17 alleged in specific terms. (*Id.* at p. 638.) Every fact material to the existence of its statutory  
18 liability “must be pleaded with particularity.” (*City of Los Angeles v. Superior Court* (2021) 62  
19 Cal.App.5th 129, 138.)

20 Interference with contract and prospective economic advantage claims are  
21 common law torts. (*Della Penna v. Toyota Motor Sales* (1995) 11 Cal.4th 376, 381[“interference  
22 torts” which includes interference with contract and interference with prospective economic  
23 relations are based on common law].) Thus, there can be no direct liability against the DOJ, as a  
24 matter of law, for interference with contractual relations and “tortious” and negligent interference  
25 with prospective economic advantage because said causes of action are not based on statute.

26 **1. Franklin Armory Has Not and Cannot State a Cause of Action as to the Third, Fourth**  
27 **and Fifth Causes of Action for Interference with Contract and Prospective Economic**  
28 **Advantage Against Former Attorney General Becerra**

The Government Claims Act differentiates between entity liability (Govt. Code §815 et  
seq.) and employee liability (Gov. Code, § 820 et seq.). (*Bradford v. State of California* (1974) 36

1 Cal.App.3d 16, 19.) “Section 815.2(a) then provides for one particular kind of entity liability,  
2 namely, liability for acts or omissions of employees if their acts or omissions create a cause of  
3 action against such employees.” (*Id.*) Government Code section 815.2, subdivision (a), is based  
4 on the doctrine of respondeat superior. (*Hoff v. Vacaville Unified* (1998) 19 Cal.4th 925, 932.)

5 For employee liability to occur there must be a duty and breach thereof. (*Id.* at p. 933.)  
6 “The non-action of one who has no legal duty to act is nothing.” (*People v. Heitzman* (1994) 9  
7 Cal.4th 189, 198.) “Absence of duty bars recovery for intentional torts as well as for negligence.”  
8 (*Gregory v. Cott* (2014) 59 Cal.4th 996, 1011-1012.)

9 Under the Government Claims Act, a public employee is not vicariously liable for the  
10 conduct of others. Government Code section 820.8 states in pertinent part that, “a public  
11 employee is not liable for an injury caused by the act or omission of another person.” (Gov.  
12 Code, § 820.8.) If an employee is not liable or is immune, there is no respondeat superior liability  
13 on the part of the public entity. (Gov. Code § 815.2, subd. (b).)

14 **a) Judgment on the Pleadings Should be Granted as to the Third Cause of Action for**  
15 **Interference with Contractual Relations**

16 “Tortious interference with contractual relations requires “(1) the existence of a valid  
17 contract between the plaintiff and a third party; (2) the defendant’s knowledge of that contract; (3)  
18 the defendant’s intentional acts designed to induce a breach or disruption of the contractual  
19 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting  
20 damage.” (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1141.) A tortious  
21 disruption of an *existing* contract is required. (*Della Penna v. Toyota Motor Sales, U.S.A.* (1995)  
22 11 Cal.4th 376, 392 (emphasis in original).)

23 First, Franklin Armory’s mere allegation of deposits placed for the Title 1 firearm fails to  
24 allege an existing contract. “The fact that the buyer makes a deposit on goods to be manufactured  
25 does not establish that the parties made a contract for that purpose.” (2 *Lawrence’s Anderson on*  
26 *the Uniform Commercial Code* (3d. ed., Dec. 2022 update) § 2-204:137-Conduct establishing  
27 contract-Conduct held not sufficient to establish existence of contract; citing *Jones v. Wide World*  
28 *of Cars, Inc.* (S.D.N.Y. 1993) 820 F.Supp. 132, 137 [Down payment on a product not specially

1 made for the buyer insufficient to establish a binding purchase and sales contract.]

2 Second, Franklin Armory has not and cannot allege an intentional act designed to induce a  
3 breach or disruption of a contractual relationship because this action is based on DOJ's inaction in  
4 not modifying the online system that had been in place for years long before former Attorney  
5 General Becerra became Attorney General. In fact, plaintiffs have not alleged any act on the part  
6 of former Attorney General Becerra relative to this action. Plaintiffs reference only a generalized  
7 duty to enforce California law under the California Constitution.

8 Third, plaintiffs have not and cannot allege an actual breach or disruption of any  
9 contractual relationship because the alleged deposits were not contracts.

10 **b) Judgment on the Pleadings Should be Granted as to the Fourth and Fifth Causes of**  
11 **Action for Tortious and Negligent Interference with Prospective Economic Advantage**

12 As a preliminary matter, it is questionable whether a cause of action for interference with  
13 prospective economic advantage can be asserted under the circumstances presented in this case.  
14 "The tort has traditionally protected the expectancies involved in ordinary commercial dealings-  
15 not the 'expectancies,' whatever they may be, involved in the governmental licensing process."  
16 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 330.) Nevertheless, Franklin Armory has clearly failed  
17 to allege the requisite elements to state a cause of action against former Attorney General  
18 Becerra.

19 "Intentional interference with prospective economic advantage has five elements: (1) the  
20 existence, between the plaintiff and some third party, of an economic relationship that contains  
21 the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the  
22 relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual  
23 disruption of the relationship; and (5) economic harm proximately caused by the defendant's  
24 action." (*Roy Allan Shurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)

25 In addition, plaintiffs "must plead and prove as part of its case-in-chief that the defendant  
26 not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was  
27 wrongful by some legal measure other than the fact of interference itself." (*Della Penna v.*  
28 *Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.) "An act is independently wrongful

1 if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common  
2 law, or other determinable legal standard.” (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th  
3 1130, 1142.)

4 As with the interference with contract cause of action, plaintiffs have also failed to allege  
5 the required elements for the two interference with prospective economic advantage causes of  
6 action. Alleging the placing of deposits does not create an existing economic relationship with a  
7 probability of future economic benefit. Nor have plaintiffs alleged an act by former Attorney  
8 General Becerra that was designed to disrupt any relationship. Furthermore, plaintiffs have not  
9 and cannot allege any act of interference that was independently wrongful.

10 The above discussion makes clear that Frankling Armory has failed to state causes of  
11 action for interference with contract or prospective economic advantage. It appears that Franklin  
12 Armory may be attempting to allege mandatory duty liability under Government Code section  
13 815.6 based on Penal Code sections 28155, 28205, 28215 and 28220. (SAC, ¶¶ 105, 145, 157.)  
14 However, as discussed below, these statutes clearly fail to impose a mandatory duty upon former  
15 Attorney General Becerra, or the DOJ, to modify the online system to add an “other” option to the  
16 rifle, shotgun, rifle/shotgun combination options in that drop-down menu.

## 17 **2. The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the Requirements to Establish** 18 **a Mandatory Duty**

19 “Government Code section 815.6 contains a three-pronged test for determining whether  
20 liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not  
21 discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury  
22 suffered by the party asserting section 815.6 as a basis for liability; and (3) breach of the  
23 mandatory duty must be a proximate cause of the injury suffered.”<sup>5</sup> (*County of Los Angeles v.*  
24 *Superior Court (Terrell R.)*, *supra*, 102 Cal.App.4th at p. 638-639.) “Whether a particular statute

25 \_\_\_\_\_  
26 <sup>5</sup> Section 815.6 states: “Where a public entity is under a mandatory duty imposed by an enactment  
27 that is designed to protect against the risk of a particular kind of injury, the public entity is liable  
28 for an injury of that kind proximately caused by its failure to discharge the duty unless the public  
entity establishes that it exercised reasonable diligence to discharge the duty.”

1 is intended to impose a mandatory duty, rather than a mere obligation to perform a discretionary  
2 function, is a question of statutory interpretation for the courts.” (*Shamsian v. Department of*  
3 *Conservation* (2006) 136 Cal.App.4th 621, 632.)

4 “First and foremost, application of section 815.6 requires that the enactment at issue be  
5 *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it  
6 must *require*, rather than merely authorize or permit, that a particular action be taken or not taken.  
7 It is not enough, moreover, that the public entity or officer have been under an obligation to  
8 perform a function if the function itself involves the exercise of discretion.” (*Haggis v. City of*  
9 *Los Angeles* (2000) 22 Cal.4th 490, 498 [emphasis in original; citations omitted].)

10 “Courts have construed this first prong rather strictly, finding a mandatory duty only if the  
11 enactment affirmatively imposes the duty and provides implementing guidelines.” (*Guzman,*  
12 *supra*, 46 Cal.4th at p. 898.) “If a statute does not require that a ‘particular action’ be taken,  
13 section 815.6 does not create the right to sue a public entity.” (*Shamsian, supra*, 136 Cal.App.4th  
14 at p. 632.). A statement of legislative intent may not give rise to a mandatory duty. (*Id.* at p.  
15 633.)

16 “In addition, it is not enough that the public entity or officer have been under an obligation  
17 to perform a function if the function itself involves the exercise of discretion. Therefore, an  
18 enactment's use of mandatory language such as “shall” is not dispositive. An enactment creates a  
19 mandatory duty only where the commanded act does not lend itself to a normative or qualitative  
20 debate over whether it was adequately fulfilled.” (*County of Los Angeles v. Superior Court*  
21 *(Faten)* (2012) 209 Cal.App.4th 543, 546.) The mandatory nature of the duty must be phrased in  
22 explicit and forceful language. (*Guzman, supra*, 46 Cal.4th at p. 910.) A mandatory duty cannot  
23 be implied. (*Id.* at p. 911.)

24 “Second, but equally important, section 815.6 requires the mandatory duty be designed to  
25 protect against the particular kind of injury the plaintiff suffered. The plaintiff must show the  
26 injury is one of the consequences which the enacting body sought to prevent through imposing  
27 the alleged mandatory duty. Our inquiry in this regard goes to the legislative purpose of imposing  
28 the duty. That the enactment confers some benefit on the class to which plaintiff belongs is not



1 enough; if the benefit is incidental to the enactment's protective purpose, the enactment cannot  
2 serve as a predicate for liability under section 815.6.” (*Haggis, supra*, at p. 499.)

3 “Where the harm was not one of the evils sought to be prevented by the statute, there can  
4 be no governmental liability.” (*Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198,  
5 1203.) In *Trinkle*, the court found there was no mandatory duty based on this second requirement  
6 because, even if the statutes at issue contained “mandatory directives to CSL to comply with the  
7 false advertising statutes, these enactments are manifestly designed to *protect the public*, i.e.,  
8 patrons of the lottery, from misleading or deceptive advertising in the promotion of lottery games.  
9 The statute's purpose is clearly not to safeguard the profits of gaming operators such as Trinkle  
10 who compete with CSL.” (*Id.* (emphasis in original); see also *People v. Correa* (2012) 54 Cal.4th  
11 331, 342 [purpose of the prohibition on felons possessing firearms is to protect the public].)

12 The third element is that the breach of the duty must have been “a proximate cause of the  
13 plaintiff's injury.” (*Guzman, supra*, 46 Cal.4th at p. 898.)

14 Here, the Penal Code sections cited by Franklin Armory - 28155, 28205, 28215 and 28220  
15 - fail to satisfy the first prong that an enactment impose a mandatory duty. First, the legislature  
16 made clear when it adopted Penal Code section 28245 that these statutes cannot establish a  
17 mandatory duty. “Whenever the Department of Justice acts pursuant to this article as it pertains  
18 to firearms other than handguns, the department's acts or omissions *shall be deemed to be*  
19 *discretionary* within the meaning of the Government Claims Act . . . .” (Pen. Code, § 28245  
20 (emphasis added).)

21 A review of each of the cited sections shows that no mandatory duty liability can be  
22 derived from these statutes. None of them direct or require that a particular action be taken or not  
23 taken. As discussed above, Penal Code section 28205, subdivision (c), which states that  
24 electronic transfer shall be the exclusive means by which information is transmitted to the DOJ,  
25 *except as permitted by the DOJ* clearly confers broad discretion on the DOJ in how it sets up and  
26 operates the online system. There is no statute that specifies how the DOJ is to set-up and operate  
27 the online system. In this regard, plaintiffs concede that the discretionary language in this section  
28 permits DOJ to make exceptions or allow alternatives. (SAC, ¶¶ 52, 66.)

1 DOJ's discretionary authority is further demonstrated by Penal Code section 28155 which  
2 states that, "the Department of Justice shall prescribe the form of the register and the record of  
3 electronic transfer. This section clearly delegates discretionary authority to DOJ to prescribe the  
4 format of the register and record of electronic transfer. This section does not specify how DOJ is  
5 to do so. (See *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 260 [an enactment  
6 does not impose a mandatory duty where there can be "normative or qualitative debate over  
7 whether it was adequately fulfilled"].)

8 Penal Code sections 28215 and 28220 clearly do not contain provisions imposing any duty  
9 relative to the set-up and operation of the online system. Penal Code section 28215 merely  
10 describes what the dealer and applicant are supposed to do in submitting an application for  
11 approval of a firearm transaction. For example, the dealer must require the purchaser to sign the  
12 record of transfer and the dealer signs as a witness to the signature and identification of the  
13 purchaser. (Pen. Code, § 28215, subd. (a).)

14 Penal Code section 28220 sets out procedures to follow upon submission of firearm  
15 purchaser information to the DOJ including examination of records pertaining to a purchaser and  
16 submission of information to a dealer relating to whether the purchaser is prohibited from  
17 receiving a firearm. There is no language mandating how to set-up or modify the online system  
18 at all.

19 These statutes also fail to satisfy the second prong because the legislative purpose of these  
20 statutes is not to protect the rights of a firearms manufacturer to sell its products. As held in  
21 *Trinkle* and *People v. Correa*, this alleged harm is not one of the evils sought to be prevented by  
22 these statutes. Rather, the purpose of these statutes is to protect the public from potential danger  
23 related to gun violence. Thus, there can be no governmental liability. (See also *Katona v. County*  
24 *of Los Angeles* (1985) 172 Cal.App.3d 53, 58 ["the thrust of the deadly weapon control scheme is  
25 to prevent harm to third persons"].)

26 The above discussion makes clear that these Penal Code statutes do not impose a duty to  
27 modify the online system upon former Attorney General Becerra. This leaves only the general  
28 and conclusory allegation that, as Attorney General, he is charged with the duty to see that the

1 laws of California are uniformly and adequately enforced under the California constitution.  
2 However, this general and conclusory allegation clearly fails to establish any duty upon him.  
3 In *State of California ex rel. Dept. of Rehabilitation v. Superior Court*, (1982) 137 Cal.App.3d  
4 282, the court rejected the assertion of language from the California Constitution stating “it shall  
5 be the duty of the Attorney General to see that the laws of the State are uniformly and adequately  
6 enforced . . . .” as imposing a mandatory duty to enforce specific laws in a particular way. (*Id.* at  
7 286-287.) Following *State of California ex rel. Dept. of Rehab.*, the court in *Chodosh v.*  
8 *Commission on Judicial Performance*, (2022) 81 Cal.App.5th 248, found that article V, section  
9 13 of the California Constitution did not impose a mandatory duty upon former Attorney General  
10 Becerra but rather it “imposes upon the Attorney General a discretionary duty to enforce the law.”  
11 (*Id.* at 269; quoting *State of California ex rel. Dept. of Rehab.*, *supra*, 137 Cal.App.3d at p. 287.)<sup>6</sup>

### 12 **3. The Discretionary Immunity Under Government Code Section 820.2 Also Precludes** 13 **Liability Against Defendants**

14 Government Code section 820.2 states: “Except as otherwise provided by statute, a public  
15 employee is not liable for an injury resulting from his act or omission where the act or omission  
16 was the result of the exercise of the discretion vested in him, whether or not such discretion be  
17 abused.” The immunity is absolute and applies “notwithstanding malice or other sinister motive.”  
18 (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 979). If an employee is immune under section  
19 820.2, so too is the DOJ. (*Kemmerer v. County of Fresno*, (1988) 200 Cal.App.3d 1426, 1435.)

20 The “discretionary act” immunity extends to “basic” governmental policy decisions  
21 entrusted to broad official judgment. (*Caldwell, supra*, 10 Cal.4th at p. 976.) “It is well settled  
22 that the more general immunity for discretionary acts also extends to fundamental decisions

23 <sup>6</sup> The SAC contains allegations that infer wrongdoing by defendants in supporting the passage of  
24 SB 118. (SAC, ¶¶ 109-112.) However, to the extent plaintiffs premise any cause of action on  
25 former Attorney General Becerra advocating for firearms legislation including SB 118, said cause  
26 of action is barred under the *Noerr-Pennington* doctrine. The *Noerr-Pennington* immunity  
27 applies to “virtually any tort, including unfair competition and interference with contract.”  
28 (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136  
Cal.App.4th 464, 478.) *Noerr-Pennington* also applies to section 1983 claims. (*Sosa v.*  
*DIRECTV* (9th Cir. 2006) 437 F.3d 923, 942; *Manistee Town Ctr. v. City of Glendale* (9th Cir.  
2000) 227 F.3d 1090, 1092.)

1 within the executive or administrative authority of the agency or official.” (*Id.* at p. 982, fn. 5;  
2 citing *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 747-748 [decision to release  
3 juvenile offender].)

4 “A decision involving the allocation of limited funds is a purely discretionary one.” (*Taylor*  
5 *v. Buff* (1985) 172 Cal.App.3d 384, 390.) This discretionary category of decision making  
6 “includes questions of budgetary and fiscal policy, personnel administration standards, allocation  
7 of available resources according to variable priorities of need, and choices between competing  
8 plans for accomplishing approved objectives.” (*Id.* [decision whether or not to allocate funds for  
9 an improved security system in a jail was discretionary].)

10 Discretionary immunity under section 820.2 has been applied to bar actions based on a  
11 CHP officer’s inspection and removal of a parked vehicle (*Posey v. State of California* (1986)  
12 180 Cal.App.3d 836, 852), a foster home placement decision as well as subsequent monitoring of  
13 said placement (*Becerra v. County of Santa Cruz*, (1998) 68 Cal.App.4th 1450, 1464, 1466), the  
14 decision whether to award a public contract (*Curcini v. County of Alameda* (2008) 164 Cal.App.  
15 4th 629, 648, and the decision to terminate an employee. (*Summers v. City of Cathedral City*  
16 (1990) 225 Cal.App.3d 1047, 1064-1065.)

17 The above discussion regarding the discretionary authority of the DOJ as to the operation of  
18 the online system makes clear that any act or omission of former Attorney General Becerra  
19 regarding whether to modify the online system or in what manner, or any extent a modification is  
20 to be undertaken, falls under the discretionary immunity.

21 Liability is also precluded under the licensing immunity of Government Code sections  
22 821.2 and 818.4. Section 821.2 states:

23 “A public employee is not liable for injury caused by his issuance, denial,  
24 suspension or revocation of, or by his failure or refusal to issue, deny, suspend or  
25 revoke, any permit, license, certificate, approval, order, or similar authorization  
where he is authorized by enactment to determine whether or not such  
authorization should be issued, denied, suspended or revoked.”

26 (Gov. Code § 821.2.)<sup>7</sup>

27 <sup>7</sup> Section 818.4 similarly precludes liability against the DOJ. (Gov. Code § 818.4.)  
28

1 “The immunity for State employees in licensure cases is absolute.” (*Colome v. State*  
2 *Athletic Commission* (1996) 47 Cal.App.4th 1444, 1456.) As noted by the court in *MacDonald v.*  
3 *State of California*, (1991) 230 Cal.App.3d 319, it is clear that “the predominant character of  
4 licensing is discretionary.” (*Id.* at p. 330.) If any purchaser or dealer had attempted to process a  
5 transfer in the online system, the decision whether to deny or allow said transfer would be  
6 covered under this immunity.

7 **D. JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED WITHOUT LEAVE**  
8 **TO AMEND AS TO THE NINTH CAUSE OF ACTION FOR VIOLATION OF**  
9 **PUBLIC POLICY [TAXPAYER CLAIM UNDER CIV. PROC. § 526A]**

10 The ninth cause of action, incorrectly labeled as a “violation of public policy” cause of  
11 action, is actually alleged as a taxpayer action under Code of Civil Procedure section 526a  
12 (incorrectly cited as 626a). Pled before the modification of the online system, plaintiffs sought to  
13 obtain a declaratory judgment restraining and preventing the illegal expenditure of taxpayer funds  
14 for the installation and maintenance of the online system in a manner that did not include an  
15 “other” option in the rifle, shotgun, rifle/shotgun combination drop-down menu. (SAC, ¶ 203.)  
16 Plaintiffs do not explain in these allegations how expenditures on the online system should be  
17 restrained and prevented when the underlying premise of this action is plaintiffs’ request for the  
18 DOJ to expend *additional* funds to modify the online system to add an “other” option. Thus,  
19 plaintiffs have not and cannot allege that the DOJ expending funds on the operation and  
20 maintenance of the online system was illegal. In fact, the allegations of the SAC concede that  
21 defendants were legally authorized and required to expend funds alleging that defendants had a  
22 “duty to design, develop, maintain and administer” the online system. (SAC, ¶ 199.)

23 In addition, this cause of action is based on an allegation that “defendants will continue to  
24 engage in conduct in contravention to the State’s firearm laws” by not expending funds to modify  
25 the online system to add an “other” option. (SAC, ¶ 204.) However, the modification of the  
26 online system that was implemented on October 1, 2021, clearly addressed and resolved this  
27 issue. As noted by Judge Chalfant in his January 27, 2022, order dismissing the first, second and  
28 eighth causes of action for writ of mandate and declaratory and injunctive relief, plaintiffs do not  
dispute that the modification of the online system addressed and removed the alleged problem

1 and that there is no reason to believe that this modification will be reversed. (Order, 1/27/22, pp.  
2 9, 11.)

3 The Second District Court of Appeal has held that a Code Civil Procedure section 526a  
4 action may be dismissed as moot. (*Cerletti v. Newsom* (2021) 71 Cal.App.5th 760, 763, 766-  
5 768.) The reasoning of Judge Chalfant applies equally to the taxpayer cause of action rendering  
6 said cause of action moot.

7 Even if this cause of action were not moot, the SAC fails to state a cause of action. “A  
8 taxpayer action does not lie where the challenged governmental conduct is legal.” (*Lyons v.*  
9 *Santa Barbara County Sheriff's Office* (2014) 231 Cal.App.4th 1499, 1503.) “To state a claim,  
10 the taxpayer must allege specific facts and reasons for the belief the expenditure of public funds  
11 sought to be enjoined is illegal. General allegations, innuendo, and legal conclusions are not  
12 sufficient.” (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 714.) As discussed  
13 above, plaintiffs do not allege that the expenditures were illegal and concede that the DOJ was  
14 responsible for developing and maintaining the system which, of course, would require  
15 expenditure of funds.

16 Furthermore, “taxpayer suits are authorized only if the government body has a duty to act  
17 and has refused to do so. If it has discretion and chooses not to act, the courts may not interfere  
18 with that decision.” (*Daily Journal v. County of Los Angeles* (2009) 172 Cal.App.4th 1550,  
19 1557-1558.) Furthermore, “the courts have stressed that *the statute should not be applied to*  
20 *principally 'political' issues or issues involving the exercise of the discretion of either the*  
21 *legislative or executive branches of government.*” (*Grosz v. California Dept. of Tax & Fee*  
22 *Administration* (2023) 87 Cal.App.5th 428, 439-440 (emphasis in original).)

23 The discussion above regarding the discretionary authority of the DOJ relative to the  
24 online system makes clear that there is no basis, as a matter of law, for a taxpayer cause of action.

25 Finally, in order to maintain a section 526a cause of action, a plaintiff must allege the  
26 fundamental requirement of “taxpayer” status. (*Reynolds v. City of Calistoga* (2014) 223  
27 Cal.App.4th 865, 872-873 [plaintiff lacked standing under section 526a because he did not  
28

1 establish that he was a taxpayer in the City or in Napa County].) The SAC fails to allege the  
2 requisite taxpayer status.

3 **E. JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED WITHOUT LEAVE**  
4 **TO AMEND AS TO THE SECTION 1983 CAUSES OF ACTION FOR**  
5 **VIOLATION OF PROCEDURAL (SIXTH) AND SUBSTANTIVE (SEVENTH)**  
6 **DUE PROCESS**

7 As discussed above, plaintiffs seek only equitable relief under the section 1983 causes of  
8 action against Attorney General Bonta in his official capacity. Plaintiffs contend that there  
9 remains an issue as to the availability of declaratory relief relative to SB 118 for individuals who  
10 placed deposits for a Title 1 centerfire caliber prior to the effective date of SB 118 as to their right  
11 to obtain a Title 1 centerfire firearm at this juncture.

12 However, as correctly ruled on by Judge Chalfant in his January 28, 2021, order, while SB  
13 118 allows individuals *possessing* a Title 1 prior to September 1, 2020, to keep the firearm on  
14 condition that it be registered, that limited right does not apply to the Title 1 firearm because, “an  
15 order permitting completion of the transfer of an assault weapon to a buyer who made a deposit  
16 before August 6, 2020 would violate SB 118.”<sup>8</sup> (Order 1/28/21, last par. p. 5, top of p. 6.) In this  
17 regard, the court noted that plaintiffs may have standing to seek damages but they cannot rely on  
18 this fact for declaratory relief. They “are relegated to a damages remedy only for such claims.”  
(Order 1/28/21, p. 7, second full ¶, p. 9, third to last full ¶.)

19 “Declaratory relief operates prospectively, and not merely for the redress of past wrongs.”  
20 (*In re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 805.) In essence, declaratory relief operates  
21 to declare future rights, not to address past wrongs. (*Monterey Coastkeeper v. Central Coast*  
22 *Regional Water Quality Control Board* (2022) 76 Cal.App.5th 1, 13.) Similarly, “injunctive  
23 relief lies only to prevent threatened injury and has no application to wrongs that have been  
24 completed.” (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 90.)

25  
26 <sup>8</sup> The August 6, 2020, change in the definition of assault weapon that rendered the Title 1  
27 centerfire a banned assault weapon did not apply to a person who lawfully possessed such a  
28 weapon prior to September 1, 2020. (Penal Code, § 30685.)

1           “Where, as here, a party has a fully matured cause of action for money, the party must seek  
2 the remedy of damages, and not pursue a declaratory relief claim. Similarly, Plaintiffs are not  
3 entitled to injunctive relief or specific performance because they had an adequate remedy at law.  
4 (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th  
5 1487, 1497 (citations omitted).)

6           The rule under federal law is the same. “Declaratory relief against a state official may not  
7 be premised on a wholly past violation of federal law, because such relief would not serve the  
8 federal interest in assuring future compliance with federal law, and would be useful only as a  
9 basis for a damage award in a subsequent state proceeding.” (*Los Angeles County Bar Ass'n v. Eu*  
10 (9th Cir. 1992) 979 F.2d 697, 704.)

11           Judge Chalfant’s order also applies equally in precluding entitlement to a declaration of  
12 entitlement to possess a Title 1 centerfire firearm under the section 1983 claims. Assertion of  
13 such a declaration at this juncture is not prospective and merely seeks redress for the past alleged  
14 wrong of denying possession of a Title 1 centerfire firearm before September 1, 2020.

15           In addition, the SAC fails to state a claim for violation of procedural due process. “A  
16 procedural due process claim is not cognizable under Section 1983 when a state’s post-  
17 deprivation remedies are adequate to protect a victim’s procedural due process rights.” (*Vierria*  
18 *v. California Highway Patrol* (E.D. Cal. 2009) 644 F.Supp.2d 1219, 1242.) In *Garrett v.*  
19 *Governing Board of Oakland Unified School District*, (N.D. Cal. 2022) 583 F.Supp.3d 1267, the  
20 court, noting that “procedural due process claims under Section 1983 are generally barred when  
21 an adequate remedy exists under state law”, dismissed the plaintiffs procedural due process claim  
22 because they did not take “advantage of adequate and available state remedies by filing a writ of  
23 mandamus . . .” (*Id.* at p. 1279.) The Sixth Circuit Court of Appeals has also “found that state  
24 mandamus is a satisfactory post-deprivation remedy for the purposes of procedural due process.”  
25 (*Schmitt v. LaRose* (6th Cir. 2019) 933 F.3d 628, 642 [no due process violation occurred because  
26 plaintiff had state mandamus relief available to him]). Of course, plaintiffs availed themselves of  
27 the mandamus remedy in this case.  
28



1           Furthermore, as discussed above, plaintiffs own allegations state that “a person found  
2 ineligible to receive a firearm may appeal the decision” citing 28 C.F.R. section 25.10 which  
3 authorizes an individual to bring an action against the state or political subdivision responsible for  
4 denying the transfer for an order directing that the firearm transfer be approved. (28 C.F.R. §  
5 25.10, subd. (f).) (SAC, ¶ 49.)

6           Furthermore, the SAC fails to state a claim for violation of substantive due process. “To  
7 establish a substantive due process claim, a plaintiff must, as a threshold matter, show a  
8 government deprivation of life, liberty, or property.” (*Capp v. County of San Diego* (9th Cir.  
9 2019) 940 F.3d 1046, 1060.)

10           “The range of liberty interests that substantive due process protects is narrow and  
11 only those aspects of liberty that we as a society traditionally have protected as  
12 fundamental are included within the substantive protection of the Due Process  
13 Clause. Substantive due process has, therefore, been largely confined to protecting  
14 fundamental liberty interests, such as marriage, procreation, contraception, family  
15 relationships, child rearing, education and a person's bodily integrity, which are  
16 deeply rooted in this Nation's history and tradition.”

17 (*Franceschi v. Yee* (9th Cir. 2018) 887 F.3d 927, 937.)

18           Plaintiffs allege “the right to contract freely” as a basis for this cause of action. (SAC,  
19 ¶175.) However, liberty of contract is not an interest protected by substantive due process. The  
20 Supreme Court long ago repudiated an earlier line of cases “that upheld the liberty of contract as  
21 an interest protected by substantive due process.” (*Prime Healthcare Services, Inc. v. Harris*  
22 (S.D. Cal. 2016) 216 F.Supp.3d 1096, 1112 (citations omitted).)

23           Finally, “in order to state a substantive due process claim, plaintiffs must allege conduct  
24 that “shocks the conscience and offends the community’s sense of fair play and decency.”  
25 (*Regents of the University of California v. Dept. of Homeland Security* (9th Cir. 2018) 908 F.3d  
26 476, 518; *rev'd on other grounds, Dept. of Homeland Security v. Regents* (2020) 140 S.Ct. 1891.)

27           “Under the Fourteenth Amendment's substantive due process prong, we use the shocks the  
28 conscience test. The threshold question is whether the behavior of the governmental officer is so  
egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.”

(*Vazquez v. County of Kern* (9th Cir. 2020) 949 F.3d 1153, 1162; citing *County of Sacramento v.*

1 *Lewis* (1998) 523 U.S. 833, 846, 848.) Plaintiffs have not and cannot allege any act that shocks  
2 the conscience. The allegation that the DOJ did not modify the online system to add an “other”  
3 option to the rifle, shotgun and rifle/shotgun combination options in a drop-down menu cannot be  
4 construed as shocking the conscience, as a matter of law.

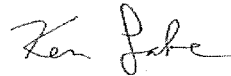
5 V

6 **CONCLUSION**

7 For the reasons set forth above, defendants respectfully request that the court grant the  
8 motion for judgement on the pleadings without leave to amend.

9 Dated: August 14, 2023

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

12 

14 \_\_\_\_\_  
KENNETH G. LAKE  
Deputy Attorney General  
*Attorneys for State of California, acting by  
and through the California Department of  
Justice, Former Attorney General Xavier  
Becerra in his personal capacity only and  
Attorney General Rob Bonta in his official  
capacity only*

**DECLARATION OF SERVICE BY MESSENGER**

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

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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On August 14, 2023, I caused the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANTS FOR JUDGMENT ON THE PLEADINGS** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

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 August 14, 2023, at Los Angeles, California.

\_\_\_\_\_  
Erica Kelly  
Declarant

\_\_\_\_\_  
/s/ Erica Kelly  
Signature