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Becerra in his personal capacity only and Attorney
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 **FRANKLIN ARMORY, INC., ET AL.,**
16
Plaintiffs-Petitioners,
17
v.
18
19 **CALIFORNIA DEPARTMENT OF**
JUSTICE ET AL.,
20
Respondents-Defendants.
21
22
23

Case No. 20STCP01747
**REQUEST FOR JUDICIAL NOTICE 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

24
25 Pursuant to California Evidence Code sections 452 (c)-(d) and 453, defendants
26 request that the court take judicial notice of the following documents filed in the action *Franklin*
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Armory v. State of California et al., Sacramento Superior Case No. 2018-00246584-CU-MC:

A. Original Complaint, 12/14/18. A true and correct copy is attached hereto as exhibit A.

B. Order, 6/12/19. A true and correct copy is attached hereto as exhibit B.

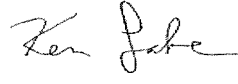
C. First Amended Complaint, 6/26/19. A true and correct copy is attached hereto as exhibit C.

D. Order 9/23/19. A true and correct copy is attached hereto as exhibit D.

E. Dismissal, 10/3/19. A true and correct copy is attached hereto as exhibit E.

Dated: August 14, 2023

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



KENNETH G. LAKE
Deputy Attorney General
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and through the California Department of
Justice, Former Attorney General Xavier
Becerra in his personal capacity only and
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EXHIBIT A

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6 Jason Davis (SBN 224250)
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8 Attorneys for Plaintiffs,
9 FRANKLIN ARMORY, INC. & BRECO FIREARMS, INC.
10 SACRAMENTO BLACK RIFLE, INC.

FILED
Superior Court Of California,
Sacramento
12/14/2018
iroino2
By _____, Deputy
Case Number:
34-2018-00246584

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SACRAMENTO

13 FRANKLIN ARMORY, INC. a Nevada
14 Corporation, and SACRAMENTO BLACK
15 RIFLE, INC. a California Corporation,

16 Plaintiffs,

17 vs.

18 STATE OF CALIFORNIA; XAVIER
19 BECERRA, in his official capacity as Attorney
20 General of California; MARTIN HORAN, JR.,
21 in his official capacity as Acting Chief of the
22 Department of Justice Bureau of Firearms and
23 DOES 1-25,

24 Defendants.

Case No.:

VERIFIED COMPLAINT FOR
DECLARATORY RELIEF

BY FAX

1 FRANKLIN ARMORY, INC. and SACRAMENTO BLACK RIFLE, INC. (collectively
2 "PLAINTIFFS") petition this court for declaratory relief relating to DEFENDANTS STATE OF
3 CALIFORNIA, XAVIER BECERRA, MARTIN HORAN, JR. and DOES 1-25 (collectively
4 "DEFENDANTS") and the applicability of the Roberti-Roos Assault Weapon Control Act ("AWCA") to
5 the "Title 1" firearm manufactured by FRANKLIN ARMORY, INC. and the duties of the
6 DEFENDANTS to classify firearms in accordance with the AWCA.

7 PLAINTIFFS aver as follows:

8 PARTIES

9 1. Plaintiff FRANKLIN ARMORY, INC. ("FAI") is a federally licensed firearms manufacturer
10 incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a
11 manufacturing facility in Morgan Hill, California. FAI specializes in manufacturing AR-style firearms
12 for sporting, military, and law enforcement applications.

13 2. Plaintiff SACRAMENTO BLACK RIFLE, INC. ("SBR") is a California corporation that
14 operates a firearms dealership in Rocklin, California. SBR is a licensed firearms dealership listed in the
15 DOJ's Centralized List of Firearms Dealers and/or Manufacturers.

16 3. Defendant STATE OF CALIFORNIA ("STATE") is a sovereign state admitted to the United
17 States under section 3, Article IV of the United States Constitution.

18 4. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of the State of
19 California and is sued herein in his official capacity. The Attorney General is the chief law enforcement
20 officer of the STATE, and it is his duty to ensure that STATE's laws are uniformly and adequately
21 enforced. The Attorney General is the head of the California Department of Justice ("DOJ"). The DOJ
22 and its Bureau of Firearms ("BOF") regulate and enforce state law related to the sales, ownership, and
23 transfer of firearms, including the clarifying the meaning of the Assault Weapons Control Act through
24 the regulatory process. The BOF also regulate and administer the licensing and permitting of firearms
25 dealers within the State of California. The Attorney General maintains an office in Sacramento,
26 California.

27 5. Defendant MARTIN HORAN, JR. ("HORAN") is the Chief of the DOJ Bureau of Firearms
28 ("BOF"). Upon information and belief, Mr. Horan reports to Attorney General Becerra, and is

1 responsible for overseeing the administration of BOF, including the application of the AWCA and
2 administration of the licensing and permitting of firearms dealers within the State of California. He is
3 sued herein in his official capacity.

4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction under Article I, section 3 and Article VI section 10 of the California
6 Constitution, and Code of Civil Procedure sections 525, 526, 1060, and 1085.

7 7. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
8 sections 393(b) and 394(a). Also, venue properly lies within this Court because the Attorney General
9 maintains an office in the County of Sacramento. (Code Civ. Proc. §401.)

10 **AUTHENTICITY OF EXHIBITS**

11 8. All exhibits accompanying this Complaint and Petition are true and correct copies of the original
12 documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint
13 and Petition.

14 **GENERAL ALLEGATIONS**

15 [THE DEFENDANTS' GENERAL DUTIES]

16 9. The California Constitution vests the office of the Attorney General, currently held by
17 BECERRA, with enormous powers over the lives of the citizens of the state. "Subject to the powers and
18 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the
19 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced."
20 (Cal. Const. art. V, §13.)

21 10. In addition to being the "chief law officer" and the state's chief attorney, the Attorney General is
22 also the head of the Department of Justice. (Gov. C. §12510.)

23 11. The Attorney General's proper performance of his or her duties ensure the state's firearms laws
24 are administered fairly, enforced vigorously, and understood uniformly throughout California.

25 12. The Attorney General is required to provide oversight, enforcement, education, and regulation of
26 many facets of California's firearms laws. And, the Attorney General performs these legislative duties
27 through their Bureau of Firearms ("BOF").

28 13. The BOF has claimed to be one of the most technologically advanced, service oriented, and

1 highly visible bureaus within the DOJ.

2 14. The BOF is charged with enforcing firearms laws dating back to the early 1900s, with the oldest
3 and most notable responsibility of conducting background checks for gun purchasers commonly known
4 as the Dealer Record of Sales (DRoS) process and regulating the conduct of licensees through
5 inspections and enforcement actions.

6 15. The BOF (known as the Division of Firearms until 2007) was established in 1999 following the
7 passage of several new firearms laws which were focused on regulating "assault weapons" and "unsafe
8 handguns."

9 16. Currently, the BOF is responsible for administering thirty-two different statewide legislatively
10 mandated programs involving firearm laws administration, education, enforcement, dangerous weapons,
11 firearms-related employment, and identifying and disarming persons prohibited from possessing
12 firearms (refer to Legislatively Mandated Programs Attachment).

13 17. These programs greatly impact local, state, and federal criminal justice agencies, the public, the
14 firearms industry nationwide (e.g., firearms dealers, manufacturers, distributors, wholesalers, firearm
15 safety device manufacturers, etc.), and statewide superior courts and mental health facilities.

16 18. The BOF plays a critical role in the oversight and regulation of firearms and the enforcement of
17 the laws regulating firearms within in California.

18 19. The BOF's mission statement is as follows:

19 The Bureau of Firearms serves the people of California through education,
20 regulation, and enforcement actions regarding the manufacture, sales,
21 ownership, safety training, and transfer of firearms. Bureau of Firearms
22 staff are leaders in providing firearms expertise and information to law
23 enforcement, legislators, and the general public in a comprehensive
24 program to promote legitimate and responsible firearms possession and
25 use by California residents.

26 20. The practical application of the BOF's mission requires balancing the service needs of its
27 stakeholders which include the local, state and federal law enforcement community; firearms
28 manufacturers; importers; dealers; victim advocate groups; gun owners; and non-gun owners. It also

1 requires the Bureau and its staff to be on the forefront of leadership, innovation, and collaboration.

2 21. The BOF claims its enforcement staff conducts training for members of the public, law
3 enforcement, the firearms industry, and members of the judiciary.

4 22. BOF agents are required to maintain a high level of firearms expertise and are often called upon
5 to testify as expert witnesses in court cases involving both criminal and administrative actions. Bureau
6 enforcement staff conduct on-site inspections of all California licensed firearm dealers, gun shows,
7 manufacturer and retail premises to ensure compliance with California and federal firearm laws.

8 23. On average, the BOF reviews and analyzes over twenty separate firearms-related bills each year
9 resulting in approximately thirty percent being chaptered into law, which requires the BOF's
10 implementation efforts (refer to Chaptered Firearms Related Legislation Attachment). Further,
11 legislators, stakeholders, federal authorities, firearm industry representatives, criminal justice
12 representatives, and the public, routinely review, question, and audit the Department's efforts/activities
13 regarding the administration and enforcement of the State's firearms laws.

14 24. The BOF has repeatedly acknowledged that these same entities rely on the BOF to provide
15 guidance regarding the proper application and administration of both state and federal firearms laws.

16 25. When it comes to firearms issues, the Legislature has a well-established track record of
17 approving spending authority requests (special and general fund) for the Bureau to have sufficient
18 funding to carry out its intent with respect to proper administration and enforcement of both new and
19 existing state firearms laws.

20 26. Those seeking instruction relating to California's firearm laws account for over 6.1 million hits
21 to the Bureau's web page annually. This makes the BOF's webpage one of the most visited links on the
22 Attorney General's web site.

23 27. Additionally, the BOF averages approximately 5,000 public contacts each month in the form of
24 telephone calls, emails, and written correspondence.

25 28. The BOF extends law enforcement and program services to all 58 counties through two regional
26 offices, four field offices, two program offices, and one headquarters office. These critical functions and
27 services are carried out through the following program areas, a couple of which are described as follows:

28 a. The Firearms Licensing and Permits Section is responsible for the administration and

1 regulation of several statutorily mandated programs that issue licenses, permits,
2 certifications, and registrations for the possession, use and ownership of firearms and
3 dangerous weapons. Additionally, this section is responsible for administering the state's
4 handgun and firearms safety device testing and certification programs.

- 5 b. The Training, Information and Compliance Section (TICS) is responsible for training,
6 inspecting, and regulating the more than 1,867 firearms dealers and twenty-six handgun
7 manufacturers licensed to operate in California. The section also trains law enforcement
8 agencies, court prosecutors, and approximately 225 public and private mental health
9 facilities statewide regarding reporting and other firearms related responsibilities.
10 Additionally, TICS serves as the Bureau's public inquiry center, responding to an average
11 of more than 250 daily public inquiries while maintaining one of the Department's most
12 frequently visited public websites and administering the state's Handgun Certification
13 Programs.

14 [REGULATION BY CLASSIFICATION]

15 29. Over the years, the STATE has used its law-making authority to make California's firearms laws
16 the most comprehensive, complex, and restrictive in the nation with over 800 state statutes regulating
17 firearms and firearms transactions within the STATE.

18 30. In General, the laws governing control of firearms are expansive and are found within Part 6 of
19 the Penal Code, beginning at section 16000 and ending at section 34370.

20 31. As part of its legislative scheme, the STATE regulates firearms in a wide variety of approaches.
21 Some laws focus on the purchaser (e.g. prohibiting certain persons from possessing firearms), some laws
22 focus on the use of firearms (e.g. regulating the carrying of firearms in public places), some laws focus
23 on the location (e.g. prohibiting firearms within school zones), and some focus on the technological
24 aspects of particular firearms (e.g. regulating firearms based upon their function, design, and physical
25 characteristics.)

26 32. In regulating the technological aspects of particular firearms, the STATE has developed
27 particular classification for firearms, and subclassifications. For example, the STATE defines the term
28 "firearm" in multiple ways, generally including "a device, designed to be used as a weapon, from which

1 is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” But,
2 the definition sometimes includes the “frame or receiver” of the device, and sometimes includes an
3 “unfinished weapon that can be readily converted into the function condition of the frame or receiver” –
4 depending on the circumstances at issue – depending on the law being applied. (Pen. C. §16520.)

5 33. The STATE further divides the term “firearm” into two even more specific subclasses for more
6 particular regulation: long guns and handguns.

7 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code
8 section 26860, Long gun means any firearm that is not a handgun or a machinegun. (Pen. C. §16865.)

9 i. It is important to note that not all long guns are rifles or shotguns, some are
10 firearms that qualify as neither rifle, nor shotgun, nor handgun.

11 b. *Handgun* means any *pistol, revolver, or firearm capable of being concealed upon the person;*
12 and, nothing shall prevent a device defined as a “handgun” from also being found to be a *short-barreled*
13 *rifle*¹ or a *short-barreled shotgun*². (Pen. Code §16640). The terms “*firearm capable of being concealed*
14 *upon the person,*” “*pistol,*” and “*revolver*” apply to and include any device designed to be used as a
15 weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion,
16 and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel
17 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in

18 _____
19 ¹ “*Short-barreled rifle*” means any of the following: (a) A rifle having a barrel or barrels of less than 16 inches in length.
20 (b) A rifle with an overall length of less than 26 inches. (c) Any weapon made from a rifle (whether by alteration,
21 modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of
22 less than 16 inches in length. (d) Any device that may be readily restored to fire a fixed cartridge which, when so restored,
23 is a device defined in subdivisions (a) to (c), inclusive. (e) Any part, or combination of parts, designed and intended to
24 convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device
25 defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession or under the
26 control of the same person. (Pen. C. § 17170.)

27 ² “*short-barreled shotgun*” means any of the following: (a) A firearm that is designed or redesigned to fire a fixed shotgun
28 shell and has a barrel or barrels of less than 18 inches in length. (b) A firearm that has an overall length of less than 26
inches and that is designed or redesigned to fire a fixed shotgun shell. (c) Any weapon made from a shotgun (whether by
alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or
barrels of less than 18 inches in length. (d) Any device that may be readily restored to fire a fixed shotgun shell which, when
so restored, is a device defined in subdivisions (a) to (c), inclusive. (e) Any part, or combination of parts, designed and
intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from
which a device defined in subdivisions (a) to (c), inclusive, can be readily assembled if those parts are in the possession or
under the control of the same person.

1 length. (Pen. C. §16530. *See also* Pen. C. §§17010 and 17080).

2 34. Below these two classifications (long gun and handgun) are a myriad of statutorily defined
3 subclassifications, the most common of which are deemed rifles³ and shotguns⁴ – which can be deemed
4 *either* long guns or handguns if they are also classified short-barrel rifles or short-barrel shotguns.

5 35. The STATE uses these classifications and subclassifications for the purposes of regulating
6 firearms in distinct ways based upon their design and technology.

7 [ASSAULT WEAPON LAWS - HISTORY]

8 36. The STATE has further provided for more particular regulation of some of these subclasses, by
9 defining further sub-classifications based upon their function and/or features. For example, some
10 firearms that function as semi-automatic pistols, rifles, and shotguns are regulated as “assault weapons.”

11 37. “Assault weapons” are, perhaps, the most complicated of all firearm restrictions passed by the
12 California legislature. Not only do ordinary citizens find it difficult – if not impossible – to determine
13 whether a semiautomatic firearm should be considered an “assault weapon,” ordinary law enforcement
14 officers in the field have similar difficulty.

15 38. In the United States, the term “assault weapon” was rarely used before gun control political
16 efforts emerged in the late 1980s.

17 39. In 1989, California became the first U.S. state to identify and outlaw “assault weapons.” The
18 California “assault weapon” scheme, dubbed the Roberti-Roos “Assault Weapon Control Act”
19 (“AWCA”) consisted broadly of four parts:

- 20 a. A list of so-called “assault weapons” designated by the California legislature, which the
21 California Department of Justice calls Category 1 type “assault weapons.”

22
23
24 ³ As used in Sections 16530, 16640, 16650, 16660, 16870, and 17170, Sections 17720 to 17730, inclusive, Section 17740,
25 subdivision (f) of Section 27555, Article 2 (commencing with Section 30300) of Chapter 1 of Division 10 of Title 4, and Article
26 1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, “rifle” means a weapon designed or redesigned,
made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the
trigger. (Pen. C. §17090.)

27 ⁴ As used in Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730, inclusive, Section 17740, Section 30215,
28 and Article 1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, “shotgun” means a weapon designed
or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or

- b. A mechanism for the California Department of Justice to add other firearms to the list (through regulatory action) that the California Department of Justice calls "Category 2 type "assault weapons,"
- c. A registration system and permit system.
- d. Penal provisions.

40. Possession of an unregistered an "assault weapon" became a wobbler, a crime punishable as either a misdemeanor or felony – generally at the discretion of the prosecuting district attorney. Even if the firearm was lawfully purchased and possessed prior to the registration deadline, failure to register the firearm that the individual already owned rendered their continued possession unlawful. Because many individuals believed that they registered their firearm when they originally purchased it, the Legislature provided some leeway by making it a solely misdemeanor under certain circumstances, which have long since expired. (See Penal Code §30605(b).) The legislatively identified Category 1 "assault weapons" were required to be registered on or before March 31, 1992.

41. Even though at this time, "assault weapons" were expressly listed by make and model, the legislature desired clarity, mandating that the Attorney General publish a guide identifying "assault weapons." (Sen. Bill No. 2444 (1989-1990 Reg. Sess.)

42. The author of the legislation that requires the Attorney General to produce the Assault Weapon Identification Guide stated.

I am writing to request your signature on SB 2444 which would enable law enforcement personnel in the field the means to be able to recognize what actually is or is not an "assault weapon," as defined under state law. .

.. Unfortunately, a great many law enforcement officers who deal directly with the public are not experts in specific firearms identification. . . .

There are numerous makes and models of civilian military-looking semi-automatic firearms which are not listed by California as "assault weapons" but which are very similar in external appearance. This situation sets the

remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of

1 stage for honest law-enforcement mistakes resulting in unjustified
2 confiscations of non-assault weapon firearms. Such mistakes, although
3 innocently made, could easily result in unnecessary, time-consuming, and
4 costly legal actions both for law enforcement and for the lawful firearms
5 owners affected.

6 (Sen. Don Rogers, letter to Governor Deukmejian re: Sen. Bill No. 2444 (1989-1990 Reg. Sess.) Aug.
7 23, 1990.)

8 43. From 1989 to 1999, the “assault weapon” listing remained mostly static, with the only firearms
9 listed being those identified as “Category 1” “assault weapons” by the Legislature. (See Penal Code
10 section 30510 and 11 C.C.R. section 5495.) However, with many of the companies producing the same
11 firearms under a different name, the Legislature and the Department of Justice decided to expand the list
12 of “assault weapons.”

13 44. The Department of Justice expanded the definition by adding dozens of firearms makes and
14 models to the list of “assault weapons” via regulatory action, in 11 C.C.R. §5499. This list is the
15 Category 2 list of “assault weapons.” Category 2 “assault weapons” were required to be registered with
16 the Department of Justice on or before January 23, 2001.

17 45. Simultaneously, the legislature took a third approach to defining “assault weapons” – defining
18 them in terms of generic characteristics, for example, a “semiautomatic, centerfire rifle that has the
19 capacity to accept a detachable magazine' and also has a 'pistol grip that protrudes conspicuously
20 beneath the action of the weapon.” These feature defined Category 3 type “assault weapons” were
21 required to be registered with the Department of Justice by December 31, 2001.

22 46. This Category 3 type “assault weapon” definition stood unaltered for 15 years.

23 47. Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch. 48)
24 effective January 1, 2017, the definition of “assault weapon” based upon generic characteristics was
25 revised in 2016, expanding the definition to include a broader range of rifles and pistols.⁵

26
27 projectiles (ball shot) or a single projectile for each pull of the trigger. (Pen. C. §17190.)

28 ⁵The BOF contends that, though not expressly amended by the legislature, the definition of “assault
weapon” as it relates to “shotguns” were impliedly expanded as well.

1 48. Throughout the creation and expansion of the definition of “assault weapon,” it has always been
2 maintained that “It is not, however, the intent of the Legislature by this chapter to place restrictions on
3 the use of those weapons which are primarily designed and intended for hunting, target practice, or other
4 legitimate sports or recreational activities.” (Pen. C §30505, subidv. (a).)

5 [ASSAULT WEAPONS CLASSIFICATIONS - TODAY]

6 49. Today, “assault weapons” are defined both statutorily in the AWCA and further defined via
7 regulation. They are classified into three sub-categories.

- 8 a. Category 1: These are the specific semiautomatic firearms that are grouped by rifles,
9 shotguns, and pistols of certain make and models and listed as “assault weapons” by the
10 legislature. (Pen. C. §30510(a) through (c) and 11 C.C.R. §5499.) A semiautomatic
11 rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed within Penal Code
12 section 30510 cannot be deemed a Category 1 type “assault weapon.”
- 13 b. Category 2: These are the specific semiautomatic firearms that are grouped by rifles,
14 shotguns, and pistols of certain make and models and listed as “assault weapons” by the
15 DOJ via regulatory action. (Pen. C. §§30510(f), 30520(b), and 11 C.C.R. §5495.) A
16 semiautomatic rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed
17 within Penal Code section 30510 cannot be deemed a Category 2 type “assault weapon.”
- 18 c. Category 3: These are the semiautomatic firearms that are grouped by rifles, shotguns,
19 and pistols and which possess certain features and/or characteristics. Firearms that are
20 not configured as semiautomatic rifles, semiautomatic shotguns, semiautomatic pistols
21 with the corresponding characteristics identified in Penal Code section 30515 cannot be
22 deemed Category 3 type “assault weapons.”

23 50. By definition, and regardless of Category, all “assault weapons” must be semi-automatic.

24 51. By definition, and regardless of Category, all “assault weapons” must be either a rifle, pistol, or
25 shotgun.

26 52. “Assault weapons” are not banned, *per se*. Rather, they are more heavily regulated than other
27 firearms. For example, only specific people may possess an “assault weapon” (e.g. a registered owner
28 or permit holder) and only those licensed dealers with an “assault weapons” permit may sell “assault

1 weapons” to a specified subset of individuals.

2 53. Classification of a firearm as an “assault weapon” can make the difference between a lawful
3 transaction and/or possession, and a violation of the AWCA.

4 [SPECIFIC DUTY TO EDUCATE, REGULATE, AND CLASSIFY ASSAULT WEAPONS]

5 54. The California Legislature did not define all the technological terms used to classify a firearm as
6 an “assault weapon.” For example, the statutorily defined terms “rifle” and “shotgun” are not expressly
7 applicable to the “assault weapon” statutes – despite the fact that they compose two of the three sub-
8 classes of firearms that are regulated as “assault weapons.”

9 55. Rather, the Legislature made it the duty of the Attorney General to educate and notify the public
10 about the definition applicable to a firearm’s classification as an “assault weapons,” as well as identify
11 and describe “assault weapons” for law enforcement purposes and promulgate the rules and regulations
12 that *may be* necessary or proper to carry out the purposes and intent of this chapter.

- 13 a. The Department of Justice *shall* conduct a *public education and notification program*
14 regarding the registration of assault weapons and *the definition of the weapons* set forth
15 in Section 30515 and former Section 12276.1, as it read at any time from when it was
16 added by Section 7 of Chapter 129 of the Statutes of 1999 to when it was repealed by the
17 Deadly Weapons Recodification Act of 2010. (Pen. C. §31115(a).)
- 18 b. The Attorney General *shall* prepare a description for identification purposes, including a
19 picture or diagram, of each assault weapon listed in Section 30510, and any firearm
20 declared to be an assault weapon pursuant to former Section 12276.5, as it read in Section
21 3 of Chapter 19 of the Statutes of 1989, Section 1 of Chapter 874 of the Statutes of 1990,
22 or Section 3 of Chapter 954 of the Statutes of 1991, and shall distribute the description to
23 all law enforcement agencies responsible for enforcement of this chapter. Those law
24 enforcement agencies shall make the description available to all agency personnel. (Pen.
25 C. § 30520(a).)
- 26 c. The Attorney General *shall* adopt those rules and regulations that may be necessary or
27 proper to carry out the purposes and intent of this chapter. (Pen. C. § 30520(c).)

28 56. To some extent, the DOJ, by and through the BOF, issued regulations defining 44 terms used in

1 the definition of “assault weapon,” but not all terms necessary to classify firearms under the AWCA
2 were defined.

3 57. For example, the BOF defined the term “Pistol” as any device designed to be used as a weapon,
4 from which a projectile is expelled by the force of any explosion, or other form of combustion, and that
5 has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer
6 tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle
7 stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the
8 receiver. (11 CCR §5471(y).) While similar, this definition differs slightly from also applicable
9 definition found within Penal Code section 16530.

10 58. And, the term “rifle” is defined as a weapon designed or redesigned, made or remade, and
11 intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy
12 of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single
13 pull of the trigger. (11 CCR §5471(ee).)

14 59. But the term “shotgun” is not defined in the regulations at all, leaving consumers, industry
15 members, and law enforcement to speculate as to meaning.

16 60. Additionally, as of December 2018, the BOF still has not updated their “Assault Weapons
17 Identification Guide,” and continues to disseminate the now out-of-date guide, despite the changes
18 imposed by the passage of Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch.
19 48) in 2016 and their subsequent regulation. The guide currently being promulgated via their website is
20 listed as “Assault Weapons Identification Guide - Currently Under Revision,” with an embedded note
21 stating:

22 Please note: This Assault Weapon Identification Guide was last updated in 2001, and does not
23 contain the most up-to-date assault weapon identification information.

24 The Assault Weapon Identification Guide is currently under revision. A 2017 version will be
25 released in the near future.

26 61. These defects in administration serve to complicate an already hypertechnical area of law.

27 **[NATURE OF DISPUTE]**

28 62. Since approximately 2008, the Department of Justice and the Attorney General have historically

1 refused to review firearms for classification purposes, unless the classification is in relation to a criminal
2 investigation or prosecution – at which point the DEFENDANTS will provide assistance in determining
3 whether a firearm is classified as an “assault weapon” or whether the firearm is not classified as an
4 “assault weapon.”

5 63. Instead, DEFENDANTS have historically permitted and deferred to California’s 58 counties and
6 482 municipalities to determine whether a particular firearm is classified as “assault weapons.”

7 64. Dealers, including SBR, and manufacturers, including FAI, are left to speculate as to whether the
8 DEFENDANTS, or their local city and/or county will deem any particular firearm an “assault weapon”
9 and subject them to varied and, often ill-informed and conflicting local interpretations, for criminal
10 prosecution, civil action, seizure, forfeiture, and/or license revocation.

11 65. This approach has chilled some manufactures, dealers, and individuals from even engaging in
12 lawful sales of firearms and firearm acquisitions for fear of prosecution by the agency charged with the
13 duty to not only enforce these laws, but to educate on these laws.

14 66. Classification of firearms by the DEFENDANTS is indispensable to the declared objects and
15 purposes of the Roberti-Roos Assault Weapons Act. It permits those seeking to lawfully engage in
16 firearms commerce and/or who lawfully seek to exercise their rights to possess and sell firearms the
17 ability to do so knowing which laws apply to their firearms. It also provides a civil, as opposed to a
18 criminal, remedy for objecting to any firearm believed to be improperly classified as an “assault
19 weapon.”

20 67. To that end, FAI designed, developed, and manufactured a firearm entitled the “Title 1” with the
21 intent on distributing and selling said firearm within California.

22 68. On or about July 5, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent an e-mail to
23 their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1 design.

24 69. DEFENDANTS did not respond. (Attached hereto as **Exhibit 1.**)

25 70. On or about July 11, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent a follow-up e-
26 mail to their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1
27 design. (Attached hereto as **Exhibit 2.**)

28 71. DEFENDANTS did not respond.

1 72. In fact, FAI communicated with the BOF from time-to-time over a period of more than a year
2 about the Title 1, and no classification was ever provided.

3 73. On or about October 23, 2018, FAI submitted a letter through counsel to the DEFENDANTS
4 requesting clarification as to whether the Title 1 would be classified as an "assault weapon" or whether
5 the Title 1 would be deemed an "assault weapon." (Attached hereto as **Exhibit 3**.)

6 74. DEFENDANTS did respond on November 16, 2018, stating "Just letting you know we are
7 working on your request for an opinion and hope to get something to you soon. If not next week,
8 because of the Thanksgiving holiday, soon after that." As of today, no classification has been provided.

9 75. SBR has informed FAI that they desire to purchase and sell the Title 1 through their respective
10 dealerships within California and will do so upon the firearm being classified so that they know which
11 laws apply to the Title1 transactions.

12 76. FAI and SBR believe and contend that the Title 1 does not constitute an "assault weapon"
13 because, though it is a firearm under California law, it is classified as a long gun, but is not classified a
14 rifle, shotgun, or handgun.

15 77. DEFENDANTS, however, are actively enforcing STATE's "assault weapon" laws against
16 licensees, as well as the general public.

17 78. As such, FAI and SBR, cannot proceed without knowing how to classify the Title 1.

18 79. DEFENDANTS have refused to provide any response as to the classification of the Title 1.

19 80. Accordingly, an active controversy has arisen and now exists between DEFENDANTS and
20 PLAINTIFFS concerning their respective rights, duties and responsibilities. The controversy is definite
21 and concrete, and touches on the legal relations of the parties, as well as many thousands of people not
22 before this Court whom the DEFENDANTS are legally bound to serve.

23 81. DEFENDANTS have a duty to provide clarity and certainty with regard to a firearm's
24 classification to ensure that the laws a uniformly enforced and interpreted.

25 82. PLAINTIFFS do not seek a determination as to whether the Title 1 is "legal" or "illegal." On the
26 contrary, PLAINTIFFS merely seek a declaratory relief relating to the firearm's classification, e.g. that
27 the Title 1 firearm manufactured by FAI is not classified as an "assault weapon," and therefore not
28 subject to the distinct set of laws and restrictions that apply to "assault weapons" pursuant to the

1 AWCA.

2 83. The PLAINTIFFS desire a declaration of their rights and duties with respect to the conflict
3 between the DEFENDANTS and PLAINTIFFS regarding the application of the Roberti-Roos Assault
4 Weapon Control Act to particular firearms, including the Title 1. Such a declaration is necessary and
5 appropriate at this time under the circumstances in order that the PLAINTIFFS, as licensees under the
6 direct authority of the DEFENDANTS, may ascertain their rights and duties.

7 **DECLARATION SOUGHT**

8 84. In order to resolve the controversy, the PLAINTIFFS request that, pursuant to Code of Civil
9 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter
10 and, in particular, this court declare that the AWCA does not apply to the Title 1 firearm manufactured
11 by FAI because it is neither a rifle, shotgun, nor handgun.

12 85. In order to resolve the controversy, the PLAINTIFFS further request that, pursuant to Code of
13 Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this
14 matter and, in particular, this court declare that it is the duty of the DEFENDANTS as the regulatory
15 bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA to
16 determine classification of firearms submitted to them for determining which laws would apply to the
17 submission.

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VERIFICATION

I am the president of FRANKLIN ARMORY, INC. a Plaintiff in the above-named action, and I am authorized to make this verification on their behalves.

I have read this VERIFIED COMPLAINT FOR DECLARATORY RELIEF in the matter of *Franklin Armory, Inc. et al. v. State of California, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 12/12/12


JAY JACOBSON

EXHIBIT 1

Date: Wed, 5 Jul 2017 20:01:58 -0700
From: Jay Jacobson <jacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"...**"Rifle"** means a weapon designed or redesigned, made or remade, and *intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

"...**"Pistol"** means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and *that has a barrel less than 16 inches in length.*"

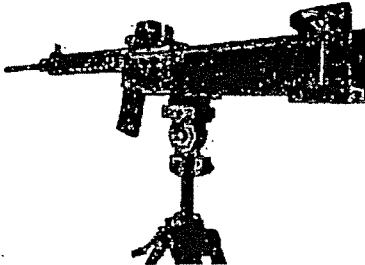
We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above but have a barrel length longer than 16 inches, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek welding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a

"long gun" but not a "rifle?")


We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--
Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

 jacobson.vcf
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Jay Jacobson <jacobson@franklinarmory.com>
To: Jason Davis <jason@calgunlawyers.com>

Thu, Dec 6, 2018 at 12:08 PM

----- Forwarded Message -----
Subject: Re: Title 1 Long gun
Date: Tue, 11 Jul 2017 12:42:05 -0700
From: Jay Jacobson <jacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms. McGovern.

Did my previous email make it through? Does the department have a position on this configuration?

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

On 7/5/2017 8:01 PM, Jay Jacobson wrote:

Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"..."Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

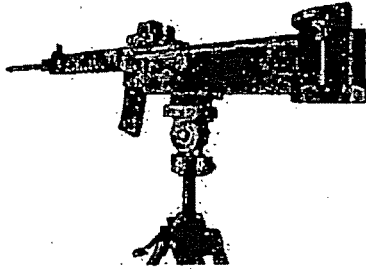
"..."Pistol" means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

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We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--
Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313


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EXHIBIT 2

Date: Tue, 11 Jul 2017 12:42:05 -0700
From: Jay Jacobson <jacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms. McGovern.

Did my previous email make it through? Does the department have a position on this configuration?

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7568 775-783-4313

On 7/5/2017 8:01 PM, Jay Jacobson wrote:

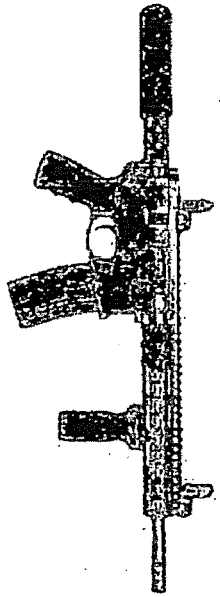
Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"... "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

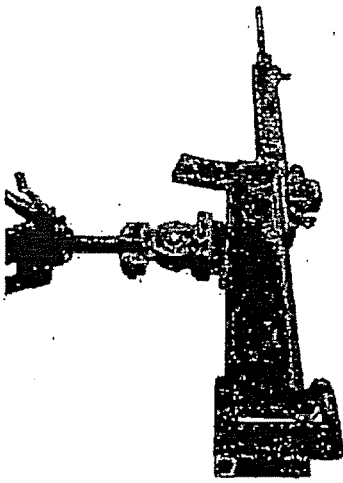
"... "Pistol" means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

We would like to produce a firearm for California similar to our XO-26 but with a 16+ inch barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5 inch barrel:



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We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

Jacobson.vcf
TK

EXHIBIT 3



Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691
Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590
Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

October 31, 2018

Xavier Becerra
Attorney General
Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Martin J. Horan Jr.
Chief
Bureau of Firearms
California Department of Justice
P.O. Box 820200
Sacramento, CA 94203-0200

Via U.S. Mail & E-Mail: Xavier.Becerra@doj.ca.gov & MartinJr.Horan@doj.ca.gov &
Robert.Wilson@doj.ca.gov

Re: **DETERMINATIONS AS TO THE APPLICABILITY OF AGENCY RULES,
ORDERS, STATUTES, OR FINAL ADMINISTRATIVE DECISIONS TO
THE FRANKLIN ARMORY, INC. PROTOTYPE NAME – TITLE 1**

Dear Attorney General Xavier Becerra and Chief Martin J. Horan, Jr.,

I write on behalf of Franklin Armory, Inc. regarding their desire to have their newly designed firearm, currently bearing the prototype name – "Title 1", examined and reviewed by the California Department of Justice – Bureau of Firearms to ensure that it complies with California's voluminous firearm laws before they begin selling and distributing the firearm within the State of California.

We are requesting Department of Justice, through the Bureau of Firearms, provide a determination as to the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction. Specifically, Franklin Armory, Inc. would like to present their newly designed prototype [depicted below] to the Department of Justice – Bureau of Firearms to determine whether the firearm complies with the California Assault Weapons Act. We believe it does.

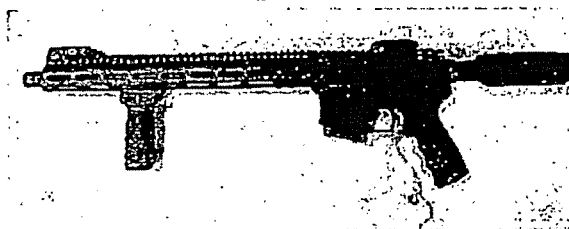


Figure 1: Prototype Name - Title 1

As I am sure you know, California's firearm laws are complex and rife with nuances.

October 31, 2018
Page 2

And, Part 6 of the Penal Code, which consists of sections 16000-34370, mandates that it is the Department of Justice and the Attorney General duty administer, apply, and enforce the vast majority of these laws, many of which mandate that the Department of Justice issue regulations for proper administration.

The equal and fair administration of these laws is not only a statutory duty, but a Constitutional one. Article V, section 13 of the California Constitution authorizes and requires the Attorney General to exercise "direct supervision over every district attorney . . . in all matters pertaining to the duties of their . . . office." *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 356. See *Gov't Code* §12550; See *Weiner v. San Diego County* (2000) 210 F.3d 1025 (California district attorney is a state officer when deciding whether to prosecute an individual.)

Fortunately, Government Code section 11465.20 expressly provides the Bureau with the authority to issue declaratory relief decisions, stating:

A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

Title 1 of California Code of Regulations section 1262 provides more, stating:

(a) **Appropriate Subjects for Declaratory Decisions.** An application for a Declaratory Decision may be filed to determine the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction.

(b) **Other Remedies Do Not Preclude Declaratory Decisions.** The existence of another adequate remedy at law does not preclude an Agency from granting an application for a Declaratory Decision when the Agency determines issuing a Declaratory Decision is appropriate.

It is our hope that this administration will provide an open, honest, and ethical forum for California consumers and industry members to eliminate confusion as to the application and scope of California's firearm laws and permit them to lawfully engage in the shooting sports and industry without fear criminal prosecution, civil fines, and/regulatory discipline. Due to the historical delay and/or lack of response to requests, if we do not receive a response within 14 days of the date above, we will have no choice but to file an action for declaratory relief with the courts.

If you have any questions or concerns, do not hesitate to contact me at the number above.

Sincerely,

THE DAVIS LAW FIRM
Sl. Jason Davis
JASON DAVIS

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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

EXHIBIT B

not apply to the Title 1 firearm manufactured by FAI because it is neither a rifle, shotgun, nor handgun.

85. In order to resolve the controversy, the PLAINTIFFS further request that, pursuant to Code of Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter and, in particular, this court declare that it is the duty of the DEFENDANTS as the regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA to determine classification of firearms submitted to them for determining which laws would apply to the submission.

Moving Papers. Defendants demur to the complaint pursuant to Code of Civil Procedure §430.10(d), (e) and (f) on multiple grounds including that the complaint is fatally uncertain, plaintiffs lack legal standing to prosecute this action, the subject dispute is not ripe for adjudication and fails to state facts to constitute a valid cause of action against the State, which is an improper and unnecessary party.

Opposition. Plaintiffs oppose, arguing the "demurrer should be summarily rejected because it is premised not only on a plain misapplication of law, but also on a fundamental misapprehension of the duties of Defendants and the claims asserted in the Complaint." According to the opposition, "This case involves the right of the People of the State of California to acquire and possess firearms protected by the Second Amendment to the United States Constitution" and "with respect to...'assault weapons,' California has delegated a specific duty to educate, regulate and classify upon the respective agency and bureau that defendants...Becerra and...Horan administer and oversee...[b]ut...Defendants are failing to administer these laws as mandated by California." Plaintiffs contend that as a result of this failure and "everchanging [*sic*] web of conflicting interpretations of which firearms are deemed 'assault weapons'," retailers and manufacturers of firearms now "risk of de-licensure, civil penalties, and/or criminal prosecution" and thus, "Plaintiffs are seeking declaratory relief as to which particular laws apply to the...Title 1 firearm." While "Defendants claim...they have no duty to render an advisory opinion," the opposition insists "[their] duty is manifest as alleged in the Complaint, through the following laws [including the California Constitution, Art. V, §13; Penal Code §§30505, 31115 and 30520]" but "Defendants have failed to fulfill these duties..."

The opposition adds that the demurrer "misrepresent[s] Plaintiff's initial request to Defendants[, which] was not seeking an 'advisory' opinion based upon a 'picture and general description of the firearm'...but rather, Plaintiff was seeking a classification...based upon...submitting the actual firearm to them physically" and now, plaintiffs request "the court issue a finding of classification" relating to whether the Title 1 is or is not an assault weapon. With respect to their standing to sue, plaintiffs maintain that the complaint demonstrates in Paragraphs 5, 57-58 and 60-69 "concrete and credible threats of injury" because "[p]resumed in all these allegations is the loss of capital investment and revenue to [FAI] and...SBR...as a result of Defendants['] defects in administration."

As to Defendants' claim that the State is an unnecessary and improper party, the opposition asserts that Defendants' position "ignores the fact that the other two [d]efendants are the officers charged with implementing California's firearm laws, and are, according to *Serrano [v. Priest]*, the proper plaintiffs [*sic*]," as well as the fact that the complaint here does not advance a constitutional challenge to any statute or other enactment. In short, plaintiffs contend that since this action involves the State's firearm laws, the State is a proper party.

Analysis

At the outset, the Court will sustain the demurrer as to the State because the complaint fails to plead facts which state a valid cause of action against this defendant. Of particular note, the complaint does not allege that the State itself, as distinguished from the two individuals named as defendants, engaged in any conduct relevant to the dispute at issue or has otherwise refused to comply with a mandatory duty. Moreover, the relief specifically requested in the concluding paragraphs is a declaration that "the

regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA" (*i.e.*, the Attorney General heading the DOJ and the individual heading the BOF) have a duty "to determine classification of firearms submitted to them for determining which laws would apply to the submission." As such, the complaint fails to plead any cause of action as against the State, making the latter an improper defendant regardless of whether plaintiffs are challenging the constitutionality of any statute. Notably, the opposition does not identify any other basis on which the Court could conclude that the State is properly named as a defendant in this declaratory relief action.

The demurrer must also be sustained to the extent plaintiffs request in Paragraph 84 that this Court declare the AWCA does not apply to the Title 1 manufactured by FAI. The complaint not only is completely silent as to this Court's authority to make such a classification but actually goes to great lengths in an attempt to demonstrate that one or both of the individual defendant have under various enactments the duty to make such a classification. While plaintiffs might have a right to challenge via a judicial proceeding the classification which Becerra and/or Horan may ultimately render, the complaint sets forth no facts or law when authorize a trial court to make such a classification even if the DOJ and/or BOF fail or refuse to do so. Consequently, inasmuch as the complaint seeks this Court to determine that the AWCA does not apply to FIA's Title 1, it does not set forth a justiciable controversy which may be resolved via this declaratory relief action.

The Court also finds that the facts currently pled in the complaint fail to establish a controversy which is "ripe" for adjudication. As noted above, the complaint specifically asserts in Paragraphs 68-71 that plaintiff FAI sent two emails to DOJ "inquiring about the classification of their [*sic*] initial Title 1 design" and no response was received but plaintiffs admit that a response was received in mid- November 2018, stating '...we are working on your request for an opinion and hope to get something to you soon...' However, plaintiffs filed this action less than a month later on 12/14/2018, claiming that "no classification has been provided." (Compl., ¶74.) While the complaint does allege in Paragraph 79 that "DEFENDANTS have refused to provide any response as to the classification of the Title 1," the Court finds no facts pled in the complaint which actually support this conclusion and moreover, plaintiffs' conclusory assertion is directly contrary to the judicial admission that Defendants responded by indicating they were working on the request and hope to provide it soon. Thus, the conclusory allegation that Defendants are refusing to provide a response need not be accepted as true for purposes of this demurrer.

Furthermore, the various laws cited in the complaint including various provisions of the California Constitution and the Penal Code do not affirmatively demonstrate that Defendants have a mandatory duty to respond to plaintiffs' inquiry about whether the Title 1 may or may not fall within the purview of the AWCA. Indeed, many of the legal provisions referenced in the complaint are, for all intents and purposes, of no legal consequence relative to the declaratory relief claim by plaintiffs including Article V of the California Constitution which merely provides that the Attorney General shall be the chief law officer of the State and shall see that the State's laws are uniformly and adequately enforced; Penal Code §30505 which is claimed to reflect the Legislature's intent to place restrictions on assault weapons and to establish a registration and permit procedure for their sale and possession but not to restrict the use of weapons primarily designed and intended for hunting, target practice, legitimate sports or recreational activities; Penal Code §31115 which is alleged to establish that the DOJ "shall conduct a public education and notification program regarding the registration of assault weapons and the definition of such weapons; Penal Code §30520(a) which the complaint maintains requires the Attorney General to "prepare a description for identification purposes, including a picture or diagram, of each assault weapon...and any firearm declared to be an assault weapon..." as well as to "distribute the description to all law enforcement agencies responsible for enforcement of this chapter," with those law enforcement agencies making the description available to all agency personnel; and Penal Code §30520(c) which is alleged to mandate the Attorney General to "adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter." None of these laws

explicitly or implicitly requires the DOJ and/or BOF to respond to plaintiffs' inquiry about whether the Title 1 would be considered an assault weapon within the meaning of the AWCA, nor does the complaint identify any legal basis for a manufacturer or dealer of firearms to "enforce" any of the duties allegedly arising from the foregoing provisions, given that Penal Code §30520(a) states the Attorney General's description of assault weapons is to be distribute only to law enforcement agencies.

Finally, the Court rejects the opposition's suggestion that plaintiffs have established their legal standing to prosecute this action by virtue of the complaint's alleged description of "concrete and credible threats of injury" found in Paragraphs 5, 57-58 and 60-69. Paragraph merely asserts that defendant Horan is "responsible for overseeing the administration of BOF, including the application of the AWCA...;" Paragraphs 57-58 merely describe how the BOF has defined the terms "Pistol" and "rifle;" Paragraphs 60-61 allege that BOF has not updated its "Assault Weapon Identification Guide;" Paragraphs 62-63 suggest that the DOJ has "historically refused to review firearms for classification purposes" unless there is a pending criminal investigation or prosecution, deferring firearm classification to the counties and municipalities; Paragraphs 64-65 then claim that because dealers and manufacturers "are left to speculate as to whether...any particular firearm" will be deemed an assault weapon, they are "subject...to varied and...conflicting local interpretations, for criminal prosecution, civil action, seizure, forfeiture, and/or license revocation," "chill[ing] some manufactures [sic], dealers, and individuals from even engaging in lawful sales of firearms and firearm acquisitions;" Paragraphs 66-67 merely contend that Defendants' classification of firearms "is indispensable to the declared objects and purposes of the [AWCA]," which also "provides a...remedy for objecting to any firearm believed to be improperly classified as an 'assault weapon'" and that "FAI designed, developed, and manufactured a firearm entitled the 'Title 1;'" and Paragraphs 68-69 then assert that the DOJ did not respond to FAI's initial email in July 2017. None of these allegations affirmatively establish that either plaintiff is presently subject to any "concrete and credible threats of injury" as a result of Defendants' failure to respond to plaintiffs' inquiries about a classification of the Title 1. This is effectively confirmed by the opposition's argument that "[p]resumed in all these allegations is the loss of capital investment and revenue to [FAI] and...SBR...as a result of Defendants['] defects in administration" but the reality is that the complaint does not actually allege any "loss of capital investment and revenue" suffered by either plaintiff. Therefore, the demurrer based on plaintiffs' lack of legal standing is sustained as well.

In light of the foregoing, the Court need not address any of the parties' other arguments.

Conclusion

For the reasons explained above, Defendants' demurrer to plaintiffs' complaint for declaratory relief is hereby SUSTAINED.

As this is the first challenge to the complaint, leave to amend is granted. Plaintiffs may file and serve an amended complaint no later than 6/26/2019. **Although not required by Court rule or statute, plaintiffs are directed to present a copy of this order when the amended complaint is presented for filing.**

Defendants to respond within 30 days if the amended complaint is personally served, 35 days if served by mail.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

EXHIBIT C

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Attorneys for Plaintiffs,
**FRANKLIN ARMORY, INC. &
SACRAMENTO BLACK RIFLE, INC.**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

BY FAX

FRANKLIN ARMORY, INC. a Nevada Corporation, and SACRAMENTO BLACK RIFLE, INC. a California Corporation,

Plaintiffs,

vs.

STATE OF CALIFORNIA; XAVIER BECERRA, in his official capacity as Attorney General of California; MARTIN HORAN, JR., in his official capacity as Acting Chief of the Department of Justice Bureau of Firearms and DOES 1-25,

Defendants.

) Case No.: 2018-00246584-CU-MC
)
) **VERIFIED FIRST AMENDED**
) **COMPLAINT AND PETITION FOR**
) **DECLARATORY RELIEF**

FILED/ENDORSED
JUN 26 2019
By: K. Spichka
 Deputy Clerk

1 FRANKLIN ARMORY, INC., and SACRAMENTO BLACK RIFLE, INC. (collectively
2 "PLAINIFFS") petition this court for declaratory relief relating to DEFENDANTS STATE OF
3 CALIFORNIA, XAVIER BECERRA, MARTIN HORAN, JR. and DOES 1-25 (collectively
4 "DEFENDANTS") and the applicability of the Roberti-Roos Assault Weapon Control Act ("AWCA") to
5 the "Title 1" firearm manufactured by FRANKLIN ARMORY, INC. and the duties of the
6 DEFENDANTS to issue regulations that may be necessary and proper to carry out the purposes of the
7 AWCA, including classifications of firearms in accordance with the AWCA.

8 PLAINTIFFS aver as follows:

9 **PARTIES**

10 1. Plaintiff FRANKLIN ARMORY, INC. ("FAI") is a federally licensed firearms manufacturer
11 incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a
12 manufacturing facility in Morgan Hill, California. FAI specializes in manufacturing AR-style firearms
13 for civilian sporting, military, and law enforcement applications. FAI intends to engage in a course of
14 conduct affected with a constitutional interest, and that there is a credible threat that the challenged
15 provision will be invoked against the plaintiff.

16 2. Plaintiff SACRAMENTO BLACK RIFLE, INC. ("SBR") is a California corporation that
17 operates a firearms dealership in Rocklin, California. SBR is a licensed firearms dealership listed in the
18 DOJ's Centralized List of Firearms Dealers and/or Manufacturers. SBR intends to engage in a course of
19 conduct affected with a constitutional interest and that there is a credible threat that the challenged
20 provision will be invoked against the plaintiff.

21 3. Defendant STATE OF CALIFORNIA ("STATE") is a sovereign state admitted to the United
22 States under section 3, Article IV of the United States Constitution. The State of California has
23 statutorily elected to occupy the whole field of regulation of the registration or licensing of
24 commercially manufactured firearms as encompassed by the California Penal Code.

25 4. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of the State of
26 California and is sued herein in his official capacity. The Attorney General is the chief law enforcement
27 officer of the STATE, and it is his duty to ensure that STATE's laws are uniformly and adequately
28 enforced. Though the State occupies the whole field of regulation of the registration or licensing of

1 commercially manufactured firearms, it has delegated certain duties to the Attorney General. The
2 Attorney General is the head of the California Department of Justice (“DOJ”). The DOJ and its Bureau
3 of Firearms (“BOF”) regulate and enforce state law related to the sales, ownership, and transfer of
4 firearms, including the clarifying the meaning of the Assault Weapons Control Act through the
5 regulatory process. The BOF also regulate and administer the licensing and permitting of firearms
6 dealers within the State of California. The Attorney General maintains an office in Sacramento,
7 California.

8 5. Defendant MARTIN HORAN, JR. (“HORAN”) is the Chief of the DOJ Bureau of Firearms
9 (“BOF”). Upon information and belief, Mr. Horan reports to Attorney General Becerra, and is
10 responsible for overseeing the administration of BOF, including the application of the AWCA and
11 administration of the licensing and permitting of firearms dealers within the State of California. He is
12 sued herein in his official capacity.

13 JURISDICTION AND VENUE

14 6. This Court has jurisdiction under Article I, section 3 and Article VI section 10 of the California
15 Constitution, and Code of Civil Procedure sections 525, 526, 1060, and 1085.

16 7. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
17 sections 393(b) and 394(a). Also, venue properly lies within this Court because the Attorney General
18 maintains an office in the County of Sacramento. (Code Civ. Proc. §401.)

19 AUTHENTICITY OF EXHIBITS

20 8. All exhibits accompanying this Complaint and Petition are true and correct copies of the original
21 documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint
22 and Petition.

23 GENERAL ALLEGATIONS

24 [THE DEFENDANTS’ GENERAL DUTIES]

25 9. The California Constitution vests the office of the Attorney General, currently held by
26 BECERRA, with enormous powers over the lives of the citizens of the state. “Subject to the powers and
27 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the
28 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced.”

1 (Cal. Const. art. V, §13.)

2 10. In addition to being the “chief law officer” and the state’s chief attorney, the Attorney General is
3 also the head of the Department of Justice. (Gov. C. §12510.)

4 11. The Attorney General’s proper performance of his or her duties ensure the state’s firearms laws
5 are administered fairly, enforced vigorously, and understood uniformly throughout California.

6 12. The Attorney General is required to provide oversight, enforcement, education, and regulation of
7 many facets of California’s firearms laws. And, the Attorney General performs these legislative duties
8 through their Bureau of Firearms (“BOF”).

9 13. The BOF has claimed to be one of the most technologically advanced, service oriented, and
10 highly visible bureaus within the DOJ.

11 14. The BOF is charged with enforcing firearms laws dating back to the early 1900s, with the oldest
12 and most notable responsibility of conducting background checks for gun purchasers commonly known
13 as the Dealer Record of Sales (DROS) process and regulating the conduct of licensees through
14 inspections and enforcement actions.

15 15. The BOF (known as the Division of Firearms until 2007) was established in 1999 following the
16 passage of several new firearms laws which were focused on regulating “assault weapons” and “unsafe
17 handguns.”

18 16. Currently, the BOF is responsible for administering thirty-two different statewide legislatively
19 mandated programs involving firearm laws administration, education, enforcement, dangerous weapons,
20 firearms-related employment, and identifying and disarming persons prohibited from possessing
21 firearms (refer to Legislatively Mandated Programs Attachment).

22 17. These programs greatly impact local, state, and federal criminal justice agencies, the public, the
23 firearms industry nationwide (e.g., firearms dealers, manufacturers, distributors, wholesalers, firearm
24 safety device manufacturers, etc.), and statewide superior courts and mental health facilities.

25 18. The BOF plays a critical role in the oversight and regulation of firearms and the enforcement of
26 the laws regulating firearms within in California.

27 19. The BOF’s mission statement admits their obligation to educate and promote legitimate firearm
28 sales and education, and is as follows:

1 **The Bureau of Firearms serves the people of California through**
2 **education, regulation, and enforcement actions regarding the**
3 **manufacture, sales, ownership, safety training, and transfer of**
4 **firearms. Bureau of Firearms staff are leaders in providing firearms**
5 **expertise and information to law enforcement, legislators, and the general**
6 **public in a comprehensive program to promote legitimate and**
7 **responsible firearms possession and use by California residents.**

8 20. The practical application of the BOF's mission requires balancing the service needs of its
9 stakeholders which include the local, state and federal law enforcement community; firearms
10 manufacturers; importers; dealers; victim advocate groups; gun owners; and non-gun owners. It also
11 requires the Bureau and its staff to be on the forefront of leadership, innovation, and collaboration.

12 21. The BOF claims its enforcement staff conducts training for members of the public, law
13 enforcement, the firearms industry, and members of the judiciary.

14 22. BOF agents are required to maintain a high level of firearms expertise and are often called upon
15 to testify as expert witnesses in court cases involving both criminal and administrative actions. Bureau
16 enforcement staff conduct on-site inspections of all California licensed firearm dealers, gun shows,
17 manufacturer and retail premises to ensure compliance with California and federal firearm laws.

18 23. On average, the BOF claims that it "reviews and analyzes over twenty separate firearms-related
19 bills each year resulting in approximately thirty percent being chaptered into law, which requires the
20 BOF's implementation efforts (refer to Chaptered Firearms Related Legislation Attachment). Further,
21 legislators, stakeholders, federal authorities, firearm industry representatives, criminal justice
22 representatives, and the public, routinely review, question, and audit the Department's efforts/activities
23 regarding the administration and enforcement of the State's firearms laws."

24 24. The BOF has repeatedly acknowledged that these same entities rely on the BOF to provide
25 guidance regarding the proper application and administration of both state and federal firearms laws.

26 25. When it comes to firearms issues, the Legislature has a well-established track record of
27 approving spending authority requests (special and general fund) for the Bureau to have sufficient
28 funding to carry out its intent with respect to proper administration and enforcement of both new and

1 existing state firearms laws.

2 26. Those seeking instruction relating to California's firearm laws account for over 6.1 million hits
3 to the Bureau's web page annually. This makes the BOF's webpage one of the most visited links on the
4 Attorney General's web site.

5 27. Additionally, the BOF averages approximately 5,000 public contacts each month in the form of
6 telephone calls, emails, and written correspondence.

7 28. The BOF extends law enforcement and program services to all 58 counties through two regional
8 offices, four field offices, two program offices, and one headquarters office. These critical functions and
9 services are carried out through the following program areas, a couple of which are described as follows:

10 a. The Firearms Licensing and Permits Section is responsible for the administration and
11 regulation of several statutorily mandated programs that issue licenses, permits,
12 certifications, and registrations for the possession, use and ownership of firearms and
13 dangerous weapons. Additionally, this section is responsible for administering the state's
14 handgun and firearms safety device testing and certification programs.

15 b. The Training, Information and Compliance Section (TICS) is responsible for training,
16 inspecting, and regulating the more than 1,867 firearms dealers and twenty-six handgun
17 manufacturers licensed to operate in California. The section also trains law enforcement
18 agencies, court prosecutors, and approximately 225 public and private mental health
19 facilities statewide regarding reporting and other firearms related responsibilities.
20 Additionally, TICS serves as the Bureau's public inquiry center, responding to an average
21 of more than 250 daily public inquiries while maintaining one of the Department's most
22 frequently visited public websites and administering the state's Handgun Certification
23 Programs.

24 [REGULATION BY CLASSIFICATION]

25 29. Over the years, the STATE has used its law-making authority to make California's firearms laws
26 the most comprehensive, complex, and restrictive in the nation with over 800 state statutes regulating
27 firearms and firearms transactions within the STATE.

28 30. In General, the laws governing control of firearms are expansive and are found within Part 6 of

1 the Penal Code, beginning at section 16000 and ending at section 34370.

2 31. As part of its legislative scheme, the STATE regulates firearms in a wide variety of approaches.
3 Some laws focus on the purchaser (e.g. prohibiting certain persons from possessing firearms), some laws
4 focus on the use of firearms (e.g. regulating the carrying of firearms in public places), some laws focus
5 on the location (e.g. prohibiting firearms within school zones), and some focus on the technological
6 aspects of particular firearms (e.g. regulating firearms based upon their function, design, and physical
7 characteristics.)

8 32. In regulating the technological aspects of particular firearms, the STATE has developed
9 particular classification for firearms, and subclassifications. For example, the STATE defines the term
10 "firearm" in multiple ways, generally including "a device, designed to be used as a weapon, from which
11 is expelled through a barrel, a projectile by the force of an explosion or other form of combustion." But,
12 the definition sometimes includes the "frame or receiver" of the device, and sometimes includes an
13 "unfinished weapon that can be readily converted into the function condition of the frame or receiver" –
14 depending on the circumstances at issue – depending on the law being applied. (Pen. C. §16520.)

15 33. The STATE further divides the term "firearm" into two even more specific subclasses for more
16 particular regulation: long guns and handguns.

17 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code
18 section 26860, Long gun means any firearm that is not a handgun or a machinegun. (Pen. C. §16865.)

19 i. It is important to note that not all long guns are rifles or shotguns, some are
20 firearms that qualify as neither rifle, nor shotgun, nor handgun.

21 b. *Handgun* means any *pistol, revolver, or firearm capable of being concealed upon the person;*
22 and, nothing shall prevent a device defined as a "handgun" from also being found to be a *short-barreled*
23 *rifle*¹ or a *short-barreled shotgun*². (Pen. Code §16640). The terms "*firearm capable of being concealed*"
24

25 _____
26 ¹ "*Short-barreled rifle*" means any of the following: (a) A rifle having a barrel or barrels of less than 16 inches in length.
27 (b) A rifle with an overall length of less than 26 inches. (c) Any weapon made from a rifle (whether by alteration,
28 is a device defined in subdivisions (a) to (c), inclusive. (e) Any part, or combination of parts, designed and intended to
convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device

1 upon the person,” “pistol,” and “revolver” apply to and include any device designed to be used as a
2 weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion,
3 and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel
4 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in
5 length. (Pen. C. §16530. See also Pen. C. §§17010 and 17080).

6 34. Below these two classifications (long gun and handgun) are a myriad of statutorily defined
7 subclassifications, the most common of which are deemed rifles³ and shotguns⁴ – which can be deemed
8 either long guns or handguns if they are also classified short-barrel rifles or short-barrel shotguns.

9 35. The STATE uses these classifications and subclassifications for the purposes of regulating
10 firearms in distinct ways based upon their design and technology.

11 [ASSAULT WEAPON LAWS - HISTORY]

12 36. The STATE has further provided for more particular regulation of some of these subclasses, by
13 defining further sub-classifications based upon their function and/or features. For example, some
14 firearms that function as semi-automatic pistols, rifles, and shotguns are classified and regulated as

15
16 defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession or under the
17 control of the same person. (Pen. C. § 17170.)

18 ² “short-barreled shotgun” means any of the following: (a) A firearm that is designed or redesigned to fire a fixed shotgun
19 shell and has a barrel or barrels of less than 18 inches in length. (b) A firearm that has an overall length of less than 26
20 inches and that is designed or redesigned to fire a fixed shotgun shell. (c) Any weapon made from a shotgun (whether by
21 alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or
22 barrels of less than 18 inches in length. (d) Any device that may be readily restored to fire a fixed shotgun shell which, when
23 so restored, is a device defined in subdivisions (a) to (c), inclusive. (e) Any part, or combination of parts, designed and
24 intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from
25 which a device defined in subdivisions (a) to (c), inclusive, can be readily assembled if those parts are in the possession or
26 under the control of the same person.

27 ³ As used in Sections 16530, 16640, 16650, 16660, 16870, and 17170, Sections 17720 to 17730, inclusive, Section 17740,
28 subdivision (f) of Section 27555, Article 2 (commencing with Section 30300) of Chapter 1 of Division 10 of Title 4, and Article
1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, “rifle” means a weapon designed or redesigned,
made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the
trigger. (Pen. C. §17090.)

⁴ As used in Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730, inclusive, Section 17740, Section 30215,
and Article 1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, “shotgun” means a weapon designed
or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or
remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of
projectiles (ball shot) or a single projectile for each pull of the trigger. (Pen. C. §17190.)

1 "assault weapons."

2 37. "Assault weapons" are, perhaps, the most complicated of all firearm restrictions passed by the
3 California legislature. Not only do ordinary citizens find it difficult – if not impossible – to determine
4 whether a semiautomatic firearm should be considered an "assault weapon," ordinary law enforcement
5 officers in the field have similar difficulty.

6 38. In the United States, the term "assault weapon" was rarely used before gun control political
7 efforts emerged in the late 1980s.

8 39. In 1989, California became the first U.S. state to identify and outlaw "assault weapons." The
9 California "assault weapon" scheme, dubbed the Roberti-Roos "Assault Weapon Control Act"
10 ("AWCA") consisted broadly of four parts:

- 11 a. A list of so-called "assault weapons" designated by the California legislature, which the
12 California Department of Justice calls Category 1 type "assault weapons."
- 13 b. A mechanism for the California Department of Justice to add other firearms to the list
14 (through regulatory action) that the California Department of Justice calls "Category 2
15 type "assault weapons,"
- 16 c. A registration system and permit system.
- 17 d. Penal provisions.

18 40. Possession of an unregistered "assault weapon" became a wobbler, a crime punishable as
19 either a misdemeanor or felony – generally at the discretion of the prosecuting district attorney. Even if
20 the firearm was lawfully purchased and possessed prior to the registration deadline, failure to register the
21 firearm that the individual already owned rendered their continued possession unlawful. Because many
22 individuals believed that they registered their firearm when they originally purchased it, the Legislature
23 provided some leeway by making it a solely misdemeanor under certain circumstances, which have long
24 since expired. (See Penal Code §30605(b).) The legislatively identified Category 1 "assault weapons"
25 were required to be registered on or before March 31, 1992.

26 41. Even though at this time, "assault weapons" were expressly listed by make and model, the
27 legislature desired clarity, mandating that the Attorney General publish a guide identifying "assault
28 weapons." (Sen. Bill No. 2444 (1989-1990 Reg. Sess.)

1 42. The author of the legislation that requires the Attorney General to produce the Assault Weapon
2 Identification Guide stated.

3 I am writing to request your signature on SB 2444 which would enable
4 law enforcement personnel in the field the means to be able to recognize
5 what actually is or is not an "assault weapon," as defined under state law. .
6 . . Unfortunately, a great many law enforcement officers who deal directly
7 with the public are not experts in specific firearms identification. . . .
8 There are numerous makes and models of civilian military-looking semi-
9 automatic firearms which are not listed by California as "assault weapons"
10 but which are very similar in external appearance. This situation sets the
11 stage for honest law-enforcement mistakes resulting in unjustified
12 confiscations of non-assault weapon firearms. Such mistakes, although
13 innocently made, could easily result in unnecessary, time-consuming, and
14 costly legal actions both for law enforcement and for the lawful firearms
15 owners affected.

16 (Sen. Don Rogers, letter to Governor Deukmejian re: Sen. Bill No. 2444 (1989-1990 Reg. Sess.) Aug.
17 23, 1990.)

18 43. From 1989 to 1999, the "assault weapon" listing remained mostly static, with the only firearms
19 listed being those identified as "Category 1" "assault weapons" by the Legislature. (See Penal Code
20 section 30510 and 11 C.C.R. section 5495.) However, with many of the companies producing the same
21 firearms under a different name, the Legislature and the Department of Justice decided to expand the list
22 of "assault weapons."

23 44. The Department of Justice expanded the definition by adding dozens of firearms makes and
24 models to the list of "assault weapons" via regulatory action, in 11 C.C.R. §5499. This list is the
25 Category 2 list of "assault weapons." Category 2 "assault weapons" were required to be registered with
26 the Department of Justice on or before January 23, 2001.

27 45. Simultaneously, the legislature took a third approach to defining "assault weapons" – defining
28 them in terms of generic characteristics, for example, a "semiautomatic, centerfire rifle that has the

1 capacity to accept a detachable magazine' and also has a 'pistol grip that protrudes conspicuously
2 beneath the action of the weapon." These feature defined Category 3 type "assault weapons" were
3 required to be registered with the Department of Justice by December 31, 2001.

4 46. This Category 3 type "assault weapon" definition stood unaltered for 15 years.

5 47. Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch. 48)
6 effective January 1, 2017, the definition of "assault weapon" based upon generic characteristics was
7 revised in 2016, expanding the definition to include a broader range of rifles and pistols.⁵

8 48. Throughout the creation and expansion of the definition of "assault weapon," it has always been
9 maintained that "It is not, however, the intent of the Legislature by this chapter to place restrictions on
10 the use of those weapons which are primarily designed and intended for hunting, target practice, or other
11 legitimate sports or recreational activities." (Pen. C §30505, subidv. (a).)

12 [ASSAULT WEAPONS CLASSIFICATIONS - TODAY]

13 49. Today, "assault weapons" are defined both statutorily in the AWCA and further defined via
14 regulation. They are classified into three sub-categories.

- 15 a. Category 1: These are the specific semiautomatic firearms that are grouped by rifles,
16 shotguns, and pistols of certain make and models and listed as "assault weapons" by the
17 legislature. (Pen. C. §30510(a) through (c) and 11 C.C.R. §5499.) A semiautomatic
18 rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed within Penal Code
19 section 30510 cannot be deemed a Category 1 type "assault weapon."
- 20 b. Category 2: These are the specific semiautomatic firearms that are grouped by rifles,
21 shotguns, and pistols of certain make and models and listed as "assault weapons" by the
22 DOJ via regulatory action. (Pen. C. §§30510(f), 30520(b), and 11 C.C.R. §5495.) A
23 semiautomatic rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed
24 within Penal Code section 30510 cannot be deemed a Category 2 type "assault weapon."
- 25 c. Category 3: These are the semiautomatic firearms that are grouped by rifles, shotguns,
26 and pistols and which possess certain features and/or characteristics. Firearms that are
27
28

1 not configured as semiautomatic rifles, semiautomatic shotguns, semiautomatic pistols
2 with the corresponding characteristics identified in Penal Code section 30515 cannot be
3 deemed Category 3 type “assault weapons.”

4 50. By definition, and regardless of Category, all “assault weapons” must be semi-automatic.

5 51. By definition, and regardless of Category, all “assault weapons” must be either a rifle, pistol, or
6 shotgun.

7 52. “Assault weapons” are not banned, *per se*. Rather, they are more heavily regulated than other
8 firearms. For example, only specific people may possess an “assault weapon” (e.g. a registered owner
9 or permit holder) and only those licensed dealers with an “assault weapons” permit may sell “assault
10 weapons” to a specified subset of individuals.

11 53. Classification of a firearm as an “assault weapon” can make the difference between a lawful
12 transaction and/or possession, and a violation of the AWCA.

13 [SPECIFIC DUTY TO EDUCATE, REGULATE, AND CLASSIFY ASSAULT WEAPONS]

14 54. The State of California reserved the entire field of firearm regulation and licensing, to the
15 exclusion of others:

16 It is the intention of the Legislature to occupy the whole field of regulation
17 of the registration or licensing of commercially manufactured firearms as
18 encompassed by the provisions of the Penal Code, and such provisions
19 shall be exclusive of all local regulations, relating to registration or
20 licensing of commercially manufactured firearms, by any political
21 subdivision as defined in Section 1721 of the Labor Code.

22 55. The California Legislature did not define all the technological terms used to classify a firearm as
23 an “assault weapon.” For example, the statutorily defined terms “rifle” and “shotgun” are not expressly
24 applicable to the “assault weapon” statutes – despite the fact that they compose two of the three sub-
25 classes of firearms that are regulated as “assault weapons.”

26 56. Rather, the Legislature made it the duty of the Attorney General to educate and notify the public
27

28 ⁵ The BOF contends that, though not expressly amended by the legislature, the definition of “assault

1 about the definition applicable to a firearm's classification as an "assault weapons," as well as identify
2 and describe "assault weapons" for law enforcement purposes and promulgate the rules and regulations
3 that *may be* necessary or proper to carry out the purposes and intent of this chapter.

- 4 a. The Department of Justice shall conduct a public education and notification program
5 regarding the registration of assault weapons and the definition of the weapons set forth
6 in Section 30515 and former Section 12276.1, as it read at any time from when it was
7 added by Section 7 of Chapter 129 of the Statutes of 1999 to when it was repealed by the
8 Deadly Weapons Recodification Act of 2010. (Pen. C. §31115(a).)
- 9 b. The Attorney General shall prepare a description for identification purposes, including a
10 picture or diagram, of each assault weapon listed in Section 30510, and any firearm
11 declared to be an assault weapon pursuant to former Section 12276.5, as it read in Section
12 3 of Chapter 19 of the Statutes of 1989, Section 1 of Chapter 874 of the Statutes of 1990,
13 or Section 3 of Chapter 954 of the Statutes of 1991, and shall distribute the description to
14 all law enforcement agencies responsible for enforcement of this chapter. Those law
15 enforcement agencies shall make the description available to all agency personnel. (Pen.
16 C. § 30520(a).)
- 17 c. The Attorney General shall adopt those rules and regulations that may be necessary or
18 proper to carry out the purposes and intent of this chapter. (Pen. C. § 30520(c).)

19 57. In order to determine whether a firearm is an assault weapon under the AWCA, an ordinary
20 citizen, as well as licensed firearm dealers and manufacturers, will have to rely heavily on the markings
21 listed in the DOJ produced Assault Weapon Identification Guide. (*Harrott v. County of Kings* (2001) 25
22 Cal. 4th 1138.)

23 58. Even after consulting the Department of Justice produced Assault Weapon Identification Guide,
24 the ordinary citizen, including licensed firearm dealers and manufacturers, may still not be able to
25 determine whether the firearm is considered an "assault weapon." (*Harrott v. County of Kings* (2001)
26 25 Cal. 4th 1138.)

27
28 weapon" as it relates to "shotguns" were impliedly expanded as well.

1 59. To some extent, the DOJ, by and through the BOF, issued regulations defining 44 terms used in
2 the definition of “assault weapon.”

3 60. But, the regulations issued by the DOJ are not sufficient to provide classification in many
4 instances.

5 61. Even the BOF’s own agents and experts have testified the “assault weapon” classification is
6 “hypertechnical.”

7 62. The complications of classifying “assault weapons” was made worse when the DOJ limited the
8 APA-exempt regulations so that the 44 new definitions used to define “assault weapons” applied only to
9 the registration process, by removing the provision applying the definitions to other portions of the Penal
10 Code – including the licensing and criminal provisions. And, even where defined, not all terms
11 necessary and/or proper to classify firearms under the AWCA were defined.

12 63. In fact, BOF finds “assault weapon” classification so complicated that they have placed
13 restrictions and limits upon their own agents as to who may testify about “assault weapon”
14 classifications.

15 64. Additional regulations may be, and/or are necessary and proper to carry out the intent of the
16 AWCA, which is to permit the regulated sale of “assault weapons” via registration and licensing, while
17 simultaneously not affecting firearms primarily designed and intended for hunting, target practice, or
18 other legitimate sports or recreational activities.

19 65. For example, the BOF defined the term “Pistol” as any device designed to be used as a weapon,
20 from which a projectile is expelled by the force of any explosion, or other form of combustion, and that
21 has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer
22 tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle
23 stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the
24 receiver. (11 CCR §5471(y).) While similar, this definition differs slightly from also applicable
25 definition found within Penal Code section 16530.

26 66. And, the term “rifle” is defined as a weapon designed or redesigned, made or remade, and
27 intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy
28 of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single

1 pull of the trigger. (11 CCR §5471(ee).)

2 67. But the term “shotgun” is not defined in the regulations at all, leaving consumers, industry
3 members, and law enforcement to speculate as to meaning.

4 68. Additionally, as of June 2019, the BOF still has not updated their “Assault Weapons
5 Identification Guide,” and continues to disseminate the now out-of-date guide, despite the changes
6 imposed by the passage of Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch.
7 48) in 2016 and their subsequent regulation. The guide currently being promulgated via their website is
8 listed as “Assault Weapons Identification Guide - Currently Under Revision,” with an embedded note
9 stating:

10 Please note: This Assault Weapon Identification Guide was last updated in 2001, and does not
11 contain the most up-to-date assault weapon identification information.

12 The Assault Weapon Identification Guide is currently under revision. A 2017 version will be
13 released in the near future.

14 69. These defects in administration by DEFENDANTS serve to complicate an already
15 hypertechnical area of law.

16 **[NATURE OF DISPUTE]**

17 70. The State of California has reserved the entire field of licensing and registration of firearms to
18 themselves, except where certain aspects of licensing and registration has been delegated to the
19 Department of Justice and/or the Attorney General.

20 71. Since approximately 2008, the Department of Justice and the Attorney General have historically
21 refused to review firearms for classification purposes, unless the classification is in relation to a criminal
22 investigation or prosecution – at which point the DEFENDANTS will sometimes provide assistance in
23 determining whether a firearm is classified as an “assault weapon” or whether the firearm is not
24 classified as an “assault weapon.”

25 72. Instead, as it relates to the general public and licensees, including PLAINTIFFS,
26 DEFENDANTS have shirked their duties and historically permitted and deferred to California’s 58
27 counties and 482 municipalities to determine whether a particular firearm is classified as “assault
28 weapons” - thereby permitting a patchwork of differing opinions relating to the definition of “assault

1 weapon.”

2 73. Dealers, including SBR, and manufacturers, including FAI, are left to speculate as to whether the
3 DEFENDANTS, their county, or local municipality will deem any particular firearm an “assault
4 weapon” and subject them to varied and, often ill-informed and conflicting local interpretations, for
5 criminal prosecution, civil action, seizure, forfeiture, and/or license revocation.

6 74. This approach has chilled some manufactures, dealers, and individuals from even engaging in
7 lawful sales of firearms and firearm acquisitions for fear of prosecution by the agency charged with the
8 duty to not only enforce these laws, but to educate on these laws.

9 75. Classification of firearms by the DEFENDANTS is indispensable to the declared objects and
10 purposes of the Roberti-Roos Assault Weapons Act. It permits those seeking to lawfully engage in
11 firearms commerce and/or who lawfully seek to exercise their rights to possess and sell firearms the
12 ability to do so knowing which laws apply to their firearms. It also provides a civil, as opposed to a
13 criminal, remedy for objecting to any firearm believed to be improperly classified as an “assault
14 weapon.”

15 76. To that end, FAI designed, developed, and manufactured a firearm entitled the “Title 1” with the
16 intent on distributing and selling said firearm within California.

17 77. On or about July 5, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent an e-mail to
18 their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1 design.

19 78. DEFENDANTS did not respond. (Attached hereto as **Exhibit 1**.)

20 79. On or about July 11, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent a follow-up e-
21 mail to their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1
22 design. (Attached hereto as **Exhibit 2**.)

23 80. DEFENDANTS did not respond.

24 81. In fact, FAI communicated with the BOF from time-to-time over a period of more than a year
25 about the Title 1, and no classification was ever provided.

26 82. On or about October 23, 2018, FAI submitted a letter through counsel to the DEFENDANTS
27 requesting clarification as to whether the Title 1 would be classified as an “assault weapon” or whether
28 the Title 1 would be deemed an “assault weapon.” (Attached hereto as **Exhibit 3**.)

1 83. DEFENDANTS did not respond.

2 84. SBR has informed FAI that they desire to purchase and sell the Title 1 through their respective
3 dealerships within California and will do so upon the firearm being classified so that they know which
4 laws apply to the Title1 transactions.

5 85. FAI and SBR believe and contend that the Title 1 does not constitute an "assault weapon"
6 because, though it is a firearm under California law, it is classified as a long gun, but is not classified a
7 rifle, shotgun, or handgun.

8 86. DEFENDANTS, however, are actively enforcing STATE's "assault weapon" laws against
9 licensees, as well as the general public.

10 87. DEFENDANTS have not declared any intent to abandon the enforcement of the AWCA.

11 88. As such, FAI and SBR, cannot proceed without knowing how to classify the Title 1.

12 89. It has been nearly 2 years after the initial inquiry to the Bureau of Firearms, and though the
13 DEFENDANTS have said a response is forthcoming, they have delayed their responses and/or refused
14 to provide any substantive response as to the classification of the Title 1.

15 90. DEFENDANTS have no intention of classifying the Title 1 unless and until the Title 1 is the
16 subject of a criminal investigation.

17 91. DEFENDANTS' near two-year delay constitutes denial by delay and has caused PLAINTIFFS
18 substantial injury in the form of lost sales and lost profits and diminished market share due to their
19 refusal to classify the Title 1 and identify the state mandated registration and licensing scheme through
20 which Title 1 must be legally processed.

21 92. DEFENDANTS' have a pattern and practice of informing licensees, the general public, and even
22 law enforcement that they intend to provide clarity, guidance and/or a substantive response, only to
23 never provide a response that would be necessary and proper to carry out the intended purpose of the
24 AWCA.

25 93. Accordingly, an active controversy has arisen and now exists between DEFENDANTS and
26 PLAINTIFFS concerning their respective rights, duties and responsibilities. The controversy is definite
27 and concrete, and touches on the legal relations of the parties, as well as many thousands of people not
28 before this Court whom the DEFENDANTS are legally bound to serve.

1 94. DEFENDANTS have a duty to provide clarity and certainty with regard to a firearm's
2 classification to ensure that the laws are uniformly enforced and interpreted.

3 95. PLAINTIFFS do not seek a determination as to whether the Title 1 is "legal" or "illegal." On the
4 contrary, PLAINTIFFS merely seek a declaratory relief relating to the firearm's classification, e.g. that
5 the Title 1 firearm manufactured by FAI is not classified as an "assault weapon," and therefore not
6 subject to the distinct set of laws and restrictions that apply to "assault weapons" pursuant to the
7 AWCA.

8 96. The PLAINTIFFS desire a declaration of their rights and duties with respect to the conflict
9 between the DEFENDANTS and PLAINTIFFS regarding the application of the Roberti-Roos Assault
10 Weapon Control Act to particular firearms, including the Title 1. Such a declaration is necessary and
11 appropriate at this time under the circumstances in order that the PLAINTIFFS, as licensees under the
12 direct authority of the DEFENDANTS, may ascertain their rights and duties.

13 **FIRST CAUSE OF ACTION:**
14 **DECLARATORY AND INJUNCTIVE RELIEF**
15 **(AGAINST ALL DEFENDANTS)**

16 97. In order to resolve the controversy, the PLAINTIFFS request that, pursuant to Code of Civil
17 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter
18 and, in particular, this court declare that the AWCA does not apply to the Title 1 firearm manufactured
19 by FAI because it is neither a rifle, shotgun, nor handgun.

20 98. PLAINTIFFS should not be forced to choose between risking criminal prosecution or economic
21 sanctions and exercising their constitutional rights.

22 99. In order to resolve the controversy, the PLAINTIFFS further request that, pursuant to Code of
23 Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this
24 matter and, in particular, this court declare that it is the duty of the DEFENDANTS, including the
25 STATE wholly occupying the field of regulating commercially manufactured firearms through
26 registration and licensing, and the regulatory bodies charged with administering, enforcing, defining,
27 educating, and publicizing the AWCA to issue those regulations necessary and proper to carry out the
28 purposes and intent of the AWCA, including classifying firearms submitted to them for determining the

1 appropriate registration and licensing processes that would apply to the product at issue.

2 100. Unless DEFENDANTS are mandated to issue regulations that may be necessary and proper to
3 promote the purposes of the AWCA, including but not limited to regulations that provide for the
4 submission and classification of firearms to determine whether said firearms are “assault weapons,”
5 PLAINTIFFS will continue to suffer great and irreparable harm.

6 **SECOND CAUSE OF ACTION:**

7 **EQUAL PROTECTION**

8 **(AGAINST ALL DEFENDANTS)**

9 101. Paragraphs 1-100 are realleged and incorporated by reference.

10 102. The Fourteenth Amendment to the United States Constitution provides that no state shall “deny
11 to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend XIV § 1.

12 103. The government bears the burden of justifying restrictions on the exercise of fundamental rights
13 by a particular class or classes of individuals.

14 104. All law-abiding, competent adults are similarly situated in that they are equally entitled to
15 exercise of the constitutional right to keep and bear arms, including firearms.

16 105. The DEFENDANTS, which occupy the entire field of licensing and registration of firearms, and
17 which have specified duties and obligations to ensure that regulations that are necessary and proper to
18 effectuate the provisions of the AWCA are enforced, have created a classification of persons, including
19 PLAINTIFFS, who are treated unequally. Said actions by the DEFENDANTS include the
20 classification of firearms for law enforcement and law enforcement agencies, but not for the general
21 public to which the licensing and registration requirements apply. Such application creates a shell
22 game in which the public, including PLAINTIFFS, must speculate as to which licensing and
23 registration scheme applies to the firearms that they acquire, manufacture, possess and/or sell, subject
24 to criminal prosecution.

25 106. DEFENDANTS cannot justify providing clarity, context, and scope of the AWCA solely to law
26 enforcement and governmental entities, but not to the general public – especially in such a
27 “hypertechnical” area of law that subjects the public to felony prosecution, fines, and forfeiture of
28 property and licenses; nor can they justify the lack of regulations necessary and proper to either negate

1 the need for a classification system or implement such a classification. Such application of the laws
2 unequally deprives PLAINTIFFS of their own rights, including the right to engage in the sale of
3 constitutionally protected property. Therefore, DEFENDANTS are depriving PLAINTIFFS and
4 similarly situated individuals of their right to equal protection under the law as guaranteed by the
5 Fourteenth Amendment.

6 **PRAYER**

7 WHEREFORE, PLAINTIFFS pray as follows:

- 8 1. A declaration that it is necessary and/or proper for manufacturers licensed by the State of
9 California to be able to determine whether the firearm they are manufacturing, acquiring,
10 or selling is classified as an "assault weapon" in order to determine the necessary and
11 proper licensing and registration process for transferring said firearm and/or limiting the
12 transfer of said firearms to persons entitled to possess "assault weapons."
- 13 2. A declaration that it is necessary and/or proper for dealers licensed by the State of
14 California to be able to determine whether the firearm they are acquiring or selling is
15 classified as an "assault weapon" in order to determine the necessary and proper licensing
16 and registration process for transferring said firearm and/or limiting the transfer of said
17 firearms to persons entitled to possess "assault weapons."
- 18 3. A declaration that it is necessary and/or proper for the public to be able to determine
19 whether the firearm they possess or wish to sell or acquire is classified as an "assault
20 weapon" in order to determine the necessary and proper licensing and registration process
21 for transferring said firearm and/or limiting the transfer of said firearms to persons
22 entitled to possess "assault weapons."
- 23 4. A declaration that DEFENDANTS have failed to adopt those regulations that may be
24 necessary or proper to carry out the purposes and intent of the Assault Weapons Control
25 Act, as required by the Assault Weapons Control Act.
- 26 5. A declaration that power to classify a commercially manufactured firearm for registration
27 or licensing is exclusively left to the State of California and its designees.
- 28 6. A declaration that the DEFENDANTS have a duty to administer the Roberti-Roos

1 Assault Weapon Control Act with uniformity and clarity, such that those subject to the
2 laws and regulations can determine whether the restrictions within the Roberti-Roos
3 Assault Weapon Control Act apply, which includes guidance on the classification of
4 firearms submitted to DEFENDANTS for classification purposes.

- 5 7. For a writ of mandate, writ of prohibition, or such other alternative writ as the Court
6 deems appropriate, directing the DEFENDANTS to issue those rules and regulations that
7 may be necessary or proper to carry out the intent and purpose of the AWCA.
8 8. That PLAINTIFFS be awarded their costs and attorneys' fees incurred in this matter;
9 5. That the Court enter judgment accordingly; and
10 6. For such other and further relief as the Court deems just and proper.

11 Date: June 25, 2019,

Respectfully submitted,

12
13 By: Jason Davis

14 Jason Davis
15 The Davis Law Firm
Attorneys for Plaintiffs

EXHIBIT 1

Date: Wed, 5 Jul 2017 20:01:58 -0700
From: Jay Jacobson <jacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@dof.ca.gov>

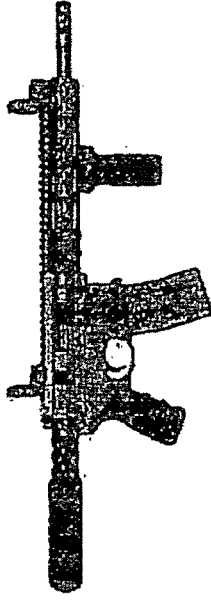
Good Evening Ms. McGovern,

We recently read through the proposed AW regulations and found the following definitions:

"... 'Rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

"... 'Pistol' means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

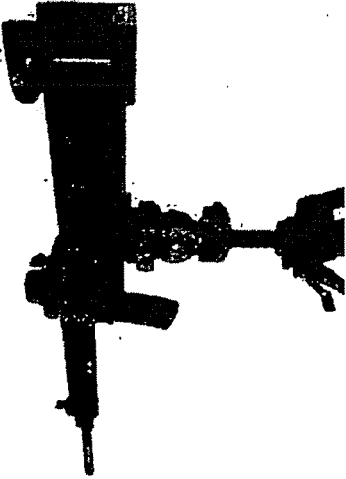
We would like to produce a firearm for California similar to our XC-26 but with a 16" barrel. Below is a picture of our XC-26-S chambered in .450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above but have a barrel length longer than 16 inches, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek-riding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a

"long gun" but not a "rifle?")

We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

 jjacobson.vcf
1K

Jay Jacobson <jjacobson@franklinarmory.com>
To: Jason Davis <Jason@calgunlawyers.com>

Thu, Dec 6, 2018 at 12:08 PM

----- Forwarded Message -----
Subject: Re: Title 1 Long gun
Date: Tue, 11 Jul 2017 12:42:05 -0700
From: Jay Jacobson <jjacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms. McGovern.

Did my previous email make it through? Does the department have a position on this configuration?

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

On 7/5/2017 8:01 PM, Jay Jacobson wrote:

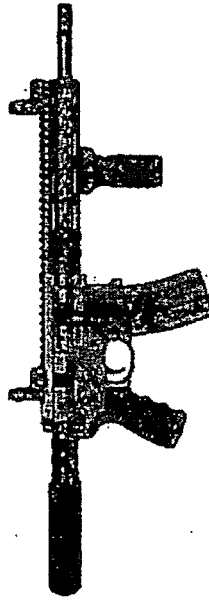
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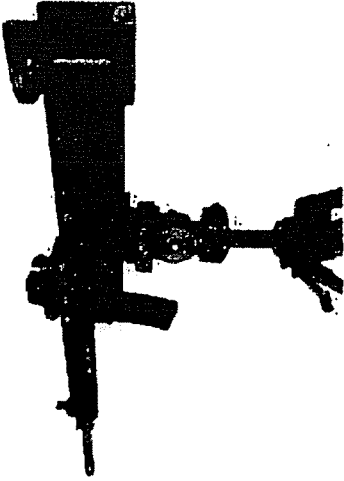
"... 'Pistol' means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above but have a barrel length longer than 16 inches, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek welding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a "long gun" but not a "rifle?")

We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--
Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560/775-783-4313

 jacobson.vcf
JK

EXHIBIT 2

Date: Tue, 11 Jul 2017 12:42:05 -0700
From: Jay Jacobson <jacobson@franklinarmory.com>
Organization: Franklin Armory
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms. McGovern.

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Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

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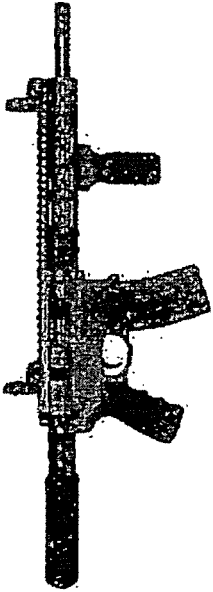
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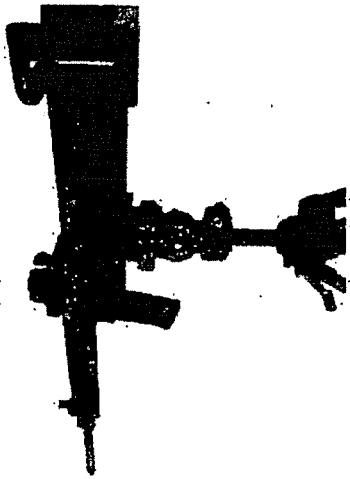
"... "Pistol" means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

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Respectfully,

Jay Jacobson
President
Franklin Armory
Morgan Hill, CA & Minden, NV
Office Phone: 408-779-7560 775-783-4313

jacobson.vcf
1K

EXHIBIT 3



Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691
Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590
Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

October 31, 2018

Xavier Becerra
Attorney General
Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Martin J. Horan Jr.
Chief
Bureau of Firearms
California Department of Justice
P.O. Box 820200
Sacramento, CA 94203-0200

Via U.S. Mail & E-Mail: Xavier.Becerra@doj.ca.gov & MartinJr.Horan@doj.ca.gov &
Robert.Wilson@doj.ca.gov

**Re: DETERMINATIONS AS TO THE APPLICABILITY OF AGENCY RULES,
ORDERS, STATUTES, OR FINAL ADMINISTRATIVE DECISIONS TO
THE FRANKLIN ARMORY, INC. PROTOTYPE NAME – TITLE 1**

Dear Attorney General Xavier Becerra and Chief Martin J. Horan, Jr.:

I write on behalf of Franklin Armory, Inc. regarding their desire to have their newly designed firearm, currently bearing the prototype name – "Title 1", examined and reviewed by the California Department of Justice – Bureau of Firearms to ensure that it complies with California's voluminous firearm laws before they begin selling and distributing the firearm within the State of California.

We are requesting Department of Justice, through the Bureau of Firearms, provide a determination as to the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction. Specifically, Franklin Armory, Inc. would like to present their newly designed prototype [depicted below] to the Department of Justice – Bureau of Firearms to determine whether the firearm complies with the California Assault Weapons Act. We believe it does.

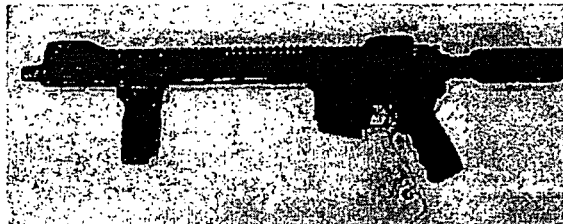


Figure 1: Prototype Name - Title 1

As I am sure you know, California's firearm laws are complex and rife with nuances.

THE DAVIS LAW FIRM
DOJ- BOF: ADMINISTRATIVE DECLARATORY RELIEF REQUEST

October 31, 2018
Page 2

And, Part 6 of the Penal Code, which consists of sections 16000-34370, mandates that it is the Department of Justice and the Attorney General duty administer, apply, and enforce the vast majority of these laws, many of which mandate that the Department of Justice issue regulations for proper administration.

The equal and fair administration of these laws is not only a statutory duty, but a Constitutional one. Article V, section 13 of the California Constitution authorizes and requires the Attorney General to exercise "direct supervision over every district attorney . . . in all matters pertaining to the duties of their . . . office." *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 356. See *Gov't Code* §12550; See *Weiner v. San Diego County* (2000) 210 F.3d 1025 (California district attorney is a state officer when deciding whether to prosecute an individual.)

Fortunately, Government Code section 11465.20 expressly provides the Bureau with the authority to issue declaratory relief decisions, stating:

A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

Title 1 of California Code of Regulations section 1262 provides more, stating:

(a) **Appropriate Subjects for Declaratory Decisions.** An application for a Declaratory Decision may be filed to determine the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction.

(b) **Other Remedies Do Not Preclude Declaratory Decisions.** The existence of another adequate remedy at law does not preclude an Agency from granting an application for a Declaratory Decision when the Agency determines issuing a Declaratory Decision is appropriate.

It is our hope that this administration will provide an open, honest, and ethical forum for California consumers and industry members to eliminate confusion as to the application and scope of California's firearm laws and permit them to lawfully engage in the shooting sports and industry without fear criminal prosecution, civil fines, and/regulatory discipline. Due to the historical delay and/or lack of response to requests, if we do not receive a response within 14 days of the date above, we will have no choice but to file an action for declaratory relief with the courts.

If you have any questions or concerns, do not hesitate to contact me at the number above.

Sincerely,

THE DAVIS LAW FIRM
S/ Jason Davis
JASON DAVIS

COMMITTEE ON INVESTIGATION
BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

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EXHIBIT D

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 09/23/2019

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: G. Toda

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: N. Alvi, R. Mays

CASE NO: 34-2018-00246584-CU-MC-GDS CASE INIT.DATE: 12/14/2018

CASE TITLE: **Franklin Armory Inc vs. State of California**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

APPEARANCES

Nature of Proceeding: Hearing on Demurrer to First Amended Complaint

TENTATIVE RULING

*** If oral argument is requested, the parties must at the time oral argument is requested notify the clerk and opposing counsel of the causes of action that will be addressed at the hearing. The parties are also reminded that pursuant to local court rules, only limited oral argument is permitted on law and motion matters. ***

Defendants State of California ("State"), Xavier Becerra ("Becerra") and Brent E. Orick Orick"), Acting Chief of the California Department of Justice's Bureau of Firearms ("BOF") (collectively "Defendants") to the first amended complaint ("FAC") is ruled on as follows.

Overview

This action was commenced by plaintiffs Franklin Armory, Inc. ("FAI"), a firearms manufacturer, and Sacramento Black Rifle, Inc. ("SBR"), a firearms dealership (collectively "Plaintiffs"). Defendants seek to sell and distribute a "Title 1" firearm, "whether or not is deemed an assault weapon", but that Defendants "have historically refused to review firearms for classification purposes, unless the classification is in relation to a criminal investigation or prosecution." (FAC, ¶ 71.) With respect to the general public and licensees, Plaintiffs allege that Defendants have "shirked their duties and historically permitted and deferred to California's 58 counties and 482 municipalities to determine whether a particular firearm is classified as 'assault weapons.'" (FAC, ¶ 72.) According to Plaintiffs, dealers and manufacturers are left to speculate as to whether "DEFENDANTS, their county, or local municipality will deem any particular firearm an 'assault weapon' and subject them to varied and, often ill-informed and conflicting local interpretations, criminal prosecution, civil action, seizure, forfeiture, and/or license revocation." (FAC, ¶ 73.)

They allege that on two occasions in July 2017 FAI sent an email to the BOF "inquiring about the classification of their initial Title 1 design," with "Title 1" being described as a firearm designed, developed, and manufactured by FAI which the latter desires to distribute and sell in California. (FAC,

DATE: 09/23/2019

MINUTE ORDER

Page 1

DEPT: 54

Calendar No.

¶¶76-79.)

Plaintiffs allege that "DEFENDANTS did not respond" to either email and that even with a variety of communications with the BOF over the next year, "no classification was ever provided." (FAC, ¶ 81.) FAI last sent a letter to Defendants on 10/23/2018 requesting whether the Title I would be classified as an "assault weapon" or whether the Title 1 would be deemed as "assault weapon." (FAC, ¶ 82.) Plaintiffs allege that "DEFENDANTS did not respond." (FAC, ¶ 83.) They allege that though Defendants have said a response is forthcoming, they have delayed their response by nearly two years, and that delay constitutes a "denial by delay." (FAC, ¶ 89.)

The FAC asserts causes of action for: (1) Declaratory and Injunctive Relief, and (2) Equal Protection.

In its Declaratory Relief cause of action, Plaintiffs asks the Court to declare "that it is the duty of the DEFENDANTS, including the STATE wholly occupying the field of regulating commercially manufactured firearms through registration and licensing, and the regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA to issue those regulations necessary and proper to carry out the purposes and intent of the AWCA, including classifying firearms submitted to them for determining appropriate registration and licensing processes that would apply to the product at issue." (FAC, ¶ 99.)

In their prayer for relief, Plaintiffs request:

1. A declaration that it is necessary and/or proper for manufacturers licensed by the State of California to be able to determine whether the firearm they are manufacturing, acquiring, or selling is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
2. A declaration that it is necessary and/or proper for dealers licensed by the State of California to be able to determine whether the firearm they are acquiring or selling is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
3. A declaration that it is necessary and/or proper for the public to be able to determine whether the firearm they possess or wish to sell or acquire is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
4. A declaration that DEFENDANTS have failed to adopt those regulations that may be necessary or proper to carry out the purposes and intent of the Assault Weapons Control Act, as required by the Assault Weapons Control Act.
5. A declaration that power to classify a commercially manufactured firearm for registration or licensing is exclusively left to the State of California and its designees.
6. A declaration that the DEFENDANTS have a duty to administer the Roberti-Roos Assault Weapon Control Act with uniformity and clarity, such that those subject to laws and regulations can determine whether the restrictions within the Roberti-Roos Assault Weapon Control Act apply, which includes guidance on the classification of firearms submitted to DEFENDANTS for classification purposes.
7. For a writ of mandate, writ of prohibition, or such other alterative writ as the Court deems appropriate, directing the DEFENDANTS to issue those rules and regulations that may be necessary or proper to carry out the intent and purpose of the AWCA.

Defendants demur to both cause of action on the grounds that: (1) they are not ripe for judicial review, (2) Plaintiffs lack legal standing, (3) the State is not a proper party, (4) failure to state sufficient facts, and (5) this case is not appropriate for declaratory relief.

Standing

The demurrer for lack of standing is SUSTAINED with leave to amend.

Plaintiffs conclusorily allege that "there is a credible threat that the challenged provision will be invoked against [them]." (FAC, ¶¶ 1-2 (emphasis added).) They further allege that Defendants' approach has "chilled some manufacturers, dealers, and individuals from even engaging in lawful sale of firearms and firearm acquisitions for fear of prosecution by the agency charge with the duty to not only enforce these laws, but to educate on these laws." (FAC, ¶ 74.)

Plaintiffs' allegations are an apparent attempt to satisfy the test outlined in *Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, which they cite in their opposition. *Prigmore* does not support their position. In *Prigmore*, the ACLU and two individual members challenged portions of a policy which the City adopted that limited leafleting to certain areas, and prohibited leafleting in certain situations. The trial court granted plaintiffs' request for a preliminary injunction enjoining the enforcement of the portions of the policy. The defendants appealed, in part, on the ground that the plaintiffs lacked standing to challenge the provisions because the provisions were neither enforced against them nor was there a credible threat of enforcement. The Third District Court of Appeal rejected the defendants' arguments. The court first recognized that:

"[A] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement. (*Babbitt v. Farm Workers* (1979) 442 U.S. 289, 298 [60 L.Ed.2d 895, 906, 99 S. Ct. 2301] (*Babbitt*.) "It is sufficient for standing purposes that the plaintiff intends to engage in 'a course of conduct' arguably affected with a constitutional interest' and that there is a credible threat that the challenged provision will be invoked against the plaintiff. [Citation.] By contrast, 'persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs.' [Citation.]" (*LSO, Ltd. v. Stroh* (9th Cir. 2000) 205 F.3d 1146, 1154-1155.) Under California law, it is sufficient that the objecting party show actual or threatened injury from the enactment of a statute or regulatory measure. (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 948 [39 Cal. Rptr. 2d 484].)

(*Id.* at 1349 (emphasis added).) *Prigmore* is inapposite since the plaintiffs therein were expressly challenging a policy that the defendants had enacted. Here, while Plaintiffs allege that "there is a credible threat that the challenged provision will be invoked against [them]" (FAC, ¶¶ 1-2), Plaintiffs fail to identify any provision in the Roberti-Roos Assault Weapon Control Act ("AWCA") that they are challenging. Nor do they challenge the AWCA. Instead, Plaintiffs allege that Defendants have failed their mandatory duty to issue regulations.

The Court is not persuaded that Plaintiffs have standing to pursue this action. The demurrer is SUSTAINED with leave to amend.

Having sustained the demurrer on this ground, the Court need not address Defendants' argument regarding ripeness.

Equal Protection

With respect to this cause of action, Plaintiffs allege that "[t]he DEFENDANTS, which occupy the entire field of licensing and registration of firearms, and which have specified duties and obligations to ensure that regulations that are necessary and proper to effectuate the provisions of the AWCA are enforced, have created a classification of persons, including PLAINTIFFS, who are treated unequally. Said actions by the DEFENDANTS include the classification of firearms for law enforcement and law enforcement agencies, but not for the general public to which the licensing and registration requirements apply. Such

application creates a shell game in which the public, including PLAINTIFFS, must speculate as to which licensing and registration scheme applies to the firearms that they acquire, manufacture, possess and/or sell, subject to criminal prosecution." (FAC, ¶ 105.)

Defendants demur on the ground that when there is no suspect classification, such as race, such as race, sex, or religion, and purely economic interests are involved, the government may impose any distinction which bears some rational relationship to a legitimate public purpose, and that Plaintiffs are not similarly situated to law enforcement. (*Cal. Rifle & Pistol Assn. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 1327; see *Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1273.)

Plaintiffs concede that "peace officers acting under the color of law protect the public interest and are not similarly stated to private citizens" (Opposition 5: 23-26), but insists that the "AWCA has been held to violate the Equal Protections clause as applied to police officers on two occasion due to the overbroad exemptions and benefits provided to the officers in their civilian lives. Such is the situation here." (Opposition, 5:25-6:1.)

Plaintiffs rely on two cases to support their argument. In the first case, *Silveira v. Lockyer* (2002) 312 F.3d 1052, the Ninth District Court of Appeals dealt, in part, with whether the AWCA's exception that permits retired peace officers to possess assault weapons they acquire from their department at the time of their retirement violated the Equal Protection Clause. The plaintiffs were non-active or retired California peace officers. The court reviewed the purposes of the AWCA and noted that "there is little doubt that any exception to the AWCA unrelated to effective law enforcement is directly contrary to the act's basic purpose of eliminating the availability of high-powered, military-style weapons and thereby protecting the people of California from the scourge of gun violence." (*Id.* at 1089 (emphasis added).) Applying the rational basis test, the court held that "we can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers' exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs." (*Id.*)

The second case is a 2010 Attorney General Edmund Brown opinion, in which he opined that "a peace officer who purchases and registers an assault weapon in order to use the weapon for law enforcement purposes is not permitted to continue to possess the assault weapon after retirement." (93 Ops. Cal. Atty. Gen. 130.)

These cases are inapposite to the issues presented here. Plaintiffs allege that Defendants "have historically refused to review firearms for classification purposes, unless the classification is in relation to a criminal investigation or prosecution." (FAC, ¶ 71.) Penal Code §30520(a) requires the Attorney General to "prepare a description for identification purposes, including a picture or diagram, of each assault weapon...and any firearm declared to be an assault weapon..." as well as to "distribute the description to all law enforcement agencies responsible for enforcement of this chapter," with those law enforcement agencies making the description available to all agency personnel." Accordingly, this classification relates to effective law enforcement. Retired police officers, on the other hand, are no longer in law enforcement.

The demurrer is SUSTAINED with leave to amend.

State of California As a Defendant

Defendants demur that the State is not a proper party because "[t]here is a 'general and long-standing rule' . . . that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (*Temple*

v. State (2018) 24 Cal.App.5th 730, 736, quoting *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 [internal quotation marks omitted]; see also *State v. Superior Court* (1974) 12 Cal.3d 237, 255.)" (Demurrer, 14:10-17.) Defendants maintain that the FAC does not allege the state itself engaged in any conduct relevant to the dispute at issue or otherwise refused to comply with a mandatory duty. According to Defendants, "[c]iting to Penal Code section 53071, Plaintiffs assert that the state is culpable because it occupies the whole field of regulation for registration and licensing for commercially manufactured firearms through the AWCA. (FAC, ¶¶ 54, 70, 86.) But that is beside the point. Section 53071 addresses preemption, not a mandatory duty." (Demurrer, 14:19-20.)

The demurrer is **OVERRULED**. As Plaintiffs correctly note, the general rule applies when the action for declaratory and injunctive relief challenged the constitutionality of state statutes. Here, Plaintiffs are not challenging the constitutionality of the AWCA, and their prayer does not seek any remedy relating to the constitutionality of the AWCA. Moreover, although Defendants claim that Plaintiffs cite to Penal Code section 53071 in certain paragraphs of the FAC, no such citations are in the FAC. Further, Penal Code section 53071 does not exist. The Court is unpersuaded that the State is not a proper party.

Horan/Orick

Martin Horan, Jr. was initially named in the complaint as the Director of BOF. Orick is now the Acting Chief and requests that he be substituted in Horan's place. (CCP §368.5) Plaintiffs also explain that they will substitute Orick as the Acting Director. Plaintiff is granted leave to amend the complaint to substitute Orick.

The demurrer that Plaintiffs fail to plead sufficient facts about Orick/Horan beyond his duties is **OVERRULED**. At this stage of the proceedings, the paragraphs identified in Plaintiffs' opposition, page 10:1-11 are sufficient.

The Court grants leave to amend since it is not yet convinced that Plaintiffs will be unable to cure the defects in the complaint.

Where leave to amend is granted, Plaintiffs may file and serve a second amended complaint ("SAC") by no later than October 3, 2019, Response to be filed and served within 30 days thereafter, 35 days if the SAC is served by mail. (Although not required by any statute or rule of court, Plaintiffs are requested to attach a copy of the instant minute order to the SAC to facilitate the filing of the pleading.)

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

EXHIBIT E

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 224250
 NAME: Jason Davis
 FIRM NAME: The Davis Law Firm
 STREET ADDRESS: 42690 Rio Nedo, Suite F
 CITY: Temecula STATE: CA ZIP CODE: 92590
 TELEPHONE NO.: 949-310-0817 FAX NO.: 949-288-6894
 E-MAIL ADDRESS: jason@calgunlawyers.com
 ATTORNEY FOR (Name): Franklin Armory, Inc., et al.

FOR COURT USE ONLY

FILED/ENDORSED
OCT - 3 2019
 By: K. Cadena
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento
 STREET ADDRESS: 813 6th Street, Sacramento, CA 95814
 MAILING ADDRESS: 813 6th Street, Sacramento, CA 95814
 CITY AND ZIP CODE: Sacramento 95814
 BRANCH NAME: Hall of Justice

Plaintiff/Petitioner: Franklin Armory, Inc., et al.
 Defendant/Respondent: State of California, et al.

REQUEST FOR DISMISSAL

CASE NUMBER:
 34-2018-00246584

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) With prejudice (2) Without prejudice

b. (1) Complaint (2) Petition

(3) Cross-complaint filed by (name):

on (date):

(4) Cross-complaint filed by (name):

on (date):

(5) Entire action of all parties and all causes of action

(6) Other (specify):*

BY FAX

2. (Complete in all cases except family law cases.)

The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: 10-02-2019

Jason Davis

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

Jason Davis
 (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

(To be completed by clerk)

4. Dismissal entered as requested on (date):

OCT - 3 2019

5. Dismissal entered on (date):

as to only (name):

6. Dismissal not entered as requested for the following reasons (specify):

7. a. Attorney or party without attorney notified on (date):

b. Attorney or party without attorney not notified. Filing party failed to provide

a copy to be conformed

means to return conformed copy

K Cadena
 Deputy

Date:

OCT - 3 2019

Clerk, by

Plaintiff/Petitioner: Franklin Armory, Inc., et al.
 Defendant/Respondent: State of California, et al.

CASE NUMBER:
 34-2018-00246584

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

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

Date:

 (TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)

 (SIGNATURE)

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CLSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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 **REQUEST FOR JUDICIAL NOTICE 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