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

FRANKLIN ARMORY, INC., et al.,  
Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
et al.,  
Respondents-Defendants.

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable  
Daniel S. Murphy; Department 32]

**DECLARATION OF JASON A. DAVIS IN  
SUPPORT OF PLAINTIFFS’  
OPPOSITION TO DEFENDANTS’  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Hearing Date: September 6, 2023  
Hearing Time: 8:30 a.m.  
Department: 32  
Judge: Hon. Daniel S. Murphy

Action filed: May 27, 2020



# **EXHIBIT 3**



January 8, 2020

**VIA E-MAIL AND U.S. MAIL**

Jason Davis  
Michel & Associates, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
[JDavis@michellawyers.com](mailto:JDavis@michellawyers.com)

Jason Davis  
The Davis Law Firm  
42690 Rio Nedo, Suite F  
Temecula, CA 92590  
[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)

Dear Mr. Davis,

I write in response to your letter dated October 24, 2019, and received by the Department of Justice on November 11, 2019, regarding Franklin Armory's new product, the "Title 1" firearm, and the electronic system used by firearms dealers to process the sale of firearms, the DROS ("Dealer Record of Sale") Entry System ("DES"), which is maintained by the Department.

The Department is currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm. These modifications will affect more than a dozen of the Department's other firearms-related systems. Staff will need to program, develop, and regression test the modifications, as well as conduct user acceptance testing, for all of these systems. We estimate that this will take several hundred work hours. However, there are many ongoing maintenance and operations activities currently impacting all of the Department's firearms-related systems. The technical team supporting these systems is fully occupied with these activities, as well as with implementing changes required by legislation enacted over the past several years. Given the heavy existing workload of the Department's technical staff and the extensive nature of the modifications, it is possible that these modifications will take several months to complete.<sup>1</sup>

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<sup>1</sup> The Department is aware of a similar situation involving Franklin Armory's "Reformation" firearm. By letter dated December 19, 2019, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") stated that "existing federal firearm regulations do

January 8, 2020

Page 2

On a related matter, by letter to the Department dated November 20, 2019, you enclosed a document entitled, "Government Tort Claim," regarding the Title 1 firearm and DES. However, by letter dated December 4, 2019, the Department returned the document to you, explaining that "[i]f you would like to file a Government Claim for money or damages against the State of California, you must file a claim with the Department of General Services – Government Claims Program. You can find information on their website: [www.dgs.ca.gov/ORIM/Services](http://www.dgs.ca.gov/ORIM/Services). This office is not the appropriate department to receive this document."<sup>2</sup> This is because the Government Tort Claims Act requires that all claims for damages against the State be submitted to the Department of General Services' Government Claims Program, along with a \$25 filing fee. (See Gov. Code, §§ 905.2, 915.)

Sincerely,



P. PATTY LI  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

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not provide a mechanism to process or approve [transfer] requests" for the Reformation firearm, and that "ATF is currently developing the procedures and forms to address this new type of firearm." That letter is attached hereto as Exhibit A.

<sup>2</sup> The Department's December 4, 2019 correspondence was sent to the address listed at the top of the "Government Tort Claim" document, which was 280 E. Ocean Blvd., Suite 200, in Long Beach, California. However, it appears that the correct address for Michel & Associates, P.C., is 180 E. Ocean Boulevard, Suite 200, in Long Beach, California. The December 4, 2019 correspondence is attached hereto as Exhibit B.

# Exhibit A



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Enforcement, Programs & Services*

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Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

December 19, 2019

## Open Letter regarding the Franklin Armory Reformation Firearm

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received questions from industry members and the general public regarding a new type of firearm produced by the Franklin Armory®. This firearm, known as the “Reformation”, utilizes a barrel that is produced with straight lands and grooves. This design contrasts with conventional rifling, in which the barrel’s lands and grooves are spiral or twisted, and are designed to impart a spin onto the projectile.

The ATF Firearms and Ammunition Technology Division (FATD) has examined the Reformation firearm for purposes of classification under the applicable provisions of the Gun Control Act (GCA) and the National Firearms Act (NFA). During this examination, FATD determined that the straight lands and grooves incorporated into the barrel design of the Reformation do not impart a spin onto a projectile when fired through the barrel. Consequently, the Reformation is not a “rifle” as that term is defined in the GCA and NFA.<sup>1</sup> Moreover, because the Reformation is not chambered for shotgun shells, it is not a shotgun as defined in the NFA.<sup>2</sup> Given these determinations, the Reformation is classified as a shotgun that is subject only to the provisions of the GCA (*i.e.*, it is not a weapon subject to the provisions of the NFA).<sup>3</sup>

Under the provisions of the GCA, if a Reformation firearm is equipped with a barrel that is less than 18-inches in overall length, that firearm is classified to be a short-barreled shotgun (SBS).<sup>4</sup> When a Reformation is configured as a GCA/SBS, specific provisions of the GCA apply to the transfer of that firearm from a Federal Firearms Licensee (FFL) to a non-licensee, and to the transport of that firearm by a non-licensee in interstate or foreign commerce. These provisions are:

- 1) 18 U.S.C. § 922(a)(4) requires that an individual wishing to transport an SBS in interstate or foreign commerce obtain approval by the Attorney General to transport the firearm.

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<sup>1</sup> See 18 U.S.C. 921(a)(7) and 26 U.S.C. 5845(c).

<sup>2</sup> See 26 U.S.C. 5845(d).

<sup>3</sup> See 18 U.S.C. 921(a)(5).

<sup>4</sup> See 18 U.S.C. 921(a)(6).

Open Letter regarding the Franklin Armory Reformation Firearm

- 2) 18 U.S.C. § 922(b)(4) requires authorization from the Attorney General consistent with public safety and necessity prior to the sale or delivery of an SBS to an individual by an FFL.

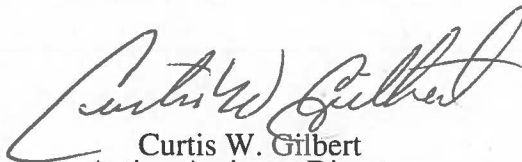
The Attorney General has delegated the authority for approval of requests pursuant to these sections to ATF.

The Franklin Armory Reformation is the first firearm produced and sold by an FFL that ATF has classified as a GCS/SBS. Because GCA/SBS firearms have not previously been available in the marketplace, existing federal firearm regulations do not provide a mechanism to process or approve requests from FFLs for approval to transfer a GCA/SBS to a non-licensee pursuant to section 922 (b)(4) or requests from non-licensees to transport a GCA/SBS pursuant to section 922(a)(4).

ATF is currently developing the procedures and forms to address this new type of firearm. Once promulgated, these new procedures and forms will provide the mechanism necessary for FFL holders and owners of GCA/SBS firearms to request the statutorily required approvals. Until such time, you should be aware of the following:

- 1) An FFL may lawfully sell/transfer a GCA/SBS, such as the Reformation, to the holder of an appropriate FFL (a GCA/SBS cannot be transferred to the holder of a type 06 or type 03 FFL).
- 2) No mechanism currently exists for ATF to authorize a request from an FFL to transfer a GCA/SBS, such as the Reformation, to a non-licensee. Therefore, until ATF is able to promulgate a procedure for processing and approving such requests, an FFL may not lawfully transfer a Reformation configured as a GCA/SBS to a non-licensee.
- 3) No mechanism currently exists for an unlicensed individual who possesses a GCA/SBS, such as the Reformation, to submit a request and receive approval to transport the GCA/SBS across state lines. Therefore, until ATF is able to promulgate a procedure for processing and approving such requests, the possessor or owner of a GCA/SBS, such as the Reformation, may not lawfully transport the firearm across state lines.

Any questions pertaining to this Open Letter may be sent to the Firearms Industry Programs Branch at [FIPB@atf.gov](mailto:FIPB@atf.gov) or (202) 648-7190.

  
Curtis W. Gilbert  
Acting Assistant Director  
Enforcement, Programs and Services



# Exhibit B

**XAVIER BECERRA**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 210-7559  
Facsimile:  
E-Mail: [Lindsey.Goodwin@doj.ca.gov](mailto:Lindsey.Goodwin@doj.ca.gov)

December 4, 2019

Jason Davis  
Michel & Associates, P.C.  
280 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802

RE: Tort Claim Act Compliance Notice  
Franklin Armory, Inc. vs. The California Department of Justice, Xavier Becerra, Brent E. Orick

Dear Mr. Davis:

Our office is in receipt of your correspondence dated November 20, 2019, enclosing the above-referenced notice. As a courtesy, the enclosed document is being returned to you.

If you would like to file a Government Claim for money or damages against the State of California, you must file a claim with the Department of General Services – Government Claims Program. You can find information on their website: [www.dgs.ca.gov/ORIM/Services](http://www.dgs.ca.gov/ORIM/Services)

This office is not the appropriate department to receive this document.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lindsey Goodwin".

LINDSEY GOODWIN  
Staff Services Analyst

For XAVIER BECERRA  
Attorney General

/lg  
Enclosures

SENIOR PARTNER  
C. D. Michel\*

MANAGING PARTNER  
Joshua Robert Dale

SPECIAL COUNSEL  
Anna M. Barvir  
Sean A. Brady  
Matthew D. Cubeiro  
W. Lee Smith

ASSOCIATES  
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Los Angeles, CA

\* Also admitted in Texas and the  
District of Columbia



OF COUNSEL  
Jason A. Davis  
Joseph Di Monda  
Scott M. Franklin  
Clint B. Monfort  
Michael W. Price  
Tamara M. Rider  
Los Angeles, CA

writer's direct contact:  
949-310-0817  
JDavis@michellawyers.com

November 20, 2019

**VIA U.S. Mail**

9404 5036 9930 0170 6388 04

XAVIER BECERA  
ATTORNEY GENERAL  
PO BOX 944255  
SACRAMENTO, CA 94244-2550


**Re: TORT CLAIM ACT COMPLIANCE NOTICE**

Dear Attorney General Becerra,

Enclosed with this letter is a Tort Claim Act Notice that is being submitted on behalf of Franklin Armory, Inc., which has been denied the ability to sell their lawful firearms due to defects in the design, implementation, and maintenance of the Dealer Record of Sale Entry System, which prohibits the sale of my clients firearms due to design errors. We have been informed that the Department of Justice is "working" on the issue, but as each day goes by without correction, my client is losing lawful sales and is suffering reputational damage due to their inability to transfer the firearms in a timely manner. We request that you immediately correct these defects to prevent my client from suffering further damages.

Please let me know if you have any questions or concerns regarding this matter.

Sincerely,  
**Michel & Associates, P.C.**



Jason Davis

1 MICHEL & ASSOCIATES, P.C.  
280 E. Ocean Blvd.  
2 Suite 200  
3 Long Beach, CA 90802  
4 T: 866-545-GUNS  
5 Jason Davis (SBN 224250)  
6 JDavis@MichellLawyers.com

7 Attorneys for Claimant,  
8 FRANKLIN ARMORY, INC.

9  
10 **CALIFORNIA DEPARTMENT OF JUSTICE**  
11 **COUNTY OF SACRAMENTO**

12 FRANKLIN ARMORY, INC. )

13 Claimant, )

14 vs. )

15 THE CALIFORNIA DEPARTMENT OF )  
16 JUSTICE, XAVIER BECERRA, BRENT E. )  
17 ORICK, )

18 Respondents. )  
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**GOVERNMENT TORT CLAIM**

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**I.**

**INTRODUCTION**

The 1963 California Tort Claims Act established uniform procedures for claims against public entities and public employees. The California Tort Claims Act establishes certain conditions prior to the filing of a lawsuit against a public entity. Specifically, the California Government Code provides that “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon.” Gov. Code §945.4. The Government Code requires that the claimant sets forth:

- (1) the names and addresses of the claimant and the person to whom notices are to be sent;
- (2) a statement of the date, place, and other circumstances of the occurrence or transaction;
- (3) A description of the indebtedness, obligation, injury, damage, or loss incurred as far as they are known when the claim is presented;
- (4) The name of the public employee who caused the injury, if known; and
- (5) the amount claimed, if less than \$10,000, on the date the claim is presented, or if more than \$10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case.

The purpose of this claim is to present sufficient detail “to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit.” *Blair v. Superior Court*, (1990) 218 Cal.App.3d 221, 225; *City of San Jose v. Superior Court*, (1974) 12 Cal.3d 447, 456; *Turner v. State of California*, (1991) 232 Cal.App.3d 883.

**II.**

**FORM AND SUBSTANCE**

**1. Names and Addresses of Claimant and Person to Be Sent Notices**

The addresses of the claimant and of the person to whom notices are to be sent are particularly important. A statement of the address of claimant’s counsel substantially complies with the requirement

1 that claimant's address must be given. *Cameron v. City of Gilroy*, (1951) 104 Cal.App.2d 76. The  
2 following claimant's address for informational purposes and counsel's address as the one to which  
3 notices are to be sent, which are as follows;

4 CLAIMANT: Franklin Armory, Inc., 2246 Park Place, Suite B, Minden, Nv 89423

5 PERSON TO BE SENT NOTICES: Jason Davis, Michel & Associates, P.C., 180 E. Ocean  
6 Blvd., Ste 200, Long Beach, CA 90802. Telephone: 866-545-4867. Cell: 949-310-0817.

7 **2. Description of Claim; Factual Content; Preserving Theories of Recovery**

8 The required "general description" of the injury and the statement of "date, place, and other  
9 circumstances of the occurrence" need not be in evidentiary detail. However, sufficient data should be  
10 included "for investigation and consideration of the claim." *Dillard v. County of Kern*, (1943) 23 Cal.2d  
11 271, 278.

12 Under prior law, an indefinite identification of the date of injury as "on or about and during"  
13 specified months has been held sufficient. *Knight v. City of Los Angeles*, (1945) 26 Cal.2d 764 ; *Kahrs v.*  
14 *County of Los Angeles*, (1938) 28 Cal.App.2d 46, (" on and after October 17, 1934 " held insufficient to  
15 include event occurring on February 6, 1935). The date of the occurrence is usually obvious. However,  
16 when the claimant asserts that the claim is timely under the late discovery doctrine, it may be necessary  
17 to state both the date of the injury and the date of discovery. See *Martinez v. County of Los Angeles*,  
18 (1978) 78 Cal.App.3d 242.

19 The claim should be drafted with sufficient factual breadth and character to support the legal  
20 theory on which the plaintiff subsequently plans to sue if the claim is rejected. See *Stearns v. County of*  
21 *Los Angeles*, (1969) 275 Cal.App.2d 134, 138 n. 3. If the plaintiff is relying on more than one legal  
22 theory of recovery, each cause of action in a complaint must be reflected in a timely claim. *Fall River*  
23 *Joint Unified School Dist. v. Superior Court*, (1988) 206 Cal.App.3d 431, 434. The modern line of cases  
24 holds that a variance between the facts stated in the claim and those alleged in the complaint is not fatal  
25 where the " apparent differences between the complaint and the claim were merely the result of  
26 plaintiff's addition of factual details or additional causes of action " and does not constitute a " complete  
27 shift in allegations." The test under this line of cases is whether the omitted facts are sufficiently related  
28 to those alleged in the claim to allow the public entity to investigate. For example, in *Stevenson v. San*

1 *Francisco Housing Authority*, (1994) 24 Cal.App.4th 269, a tenant's claim against the housing authority  
2 for premises liability and breach of contract supported a later complaint for negligent failure to disclose  
3 latent defects, as well as negligence and breach of statutory duty to inspect the building for safety before  
4 an earthquake. In *Ocean Services Corp. v. Ventura Port. Dist.*, (1996) 15 Cal.App.4th 1762, the Court  
5 held that a claim alleging breach of a commercial lease supported a complaint for a breach of the  
6 covenant of good faith and fair dealing. Similarly, in *Brownell v. Los Angeles Unified School District*,  
7 (1992) 4 Cal.App.4th 787, the Court held that a claim (alleging that assault on a student arose from the  
8 district's failure to provide adequate security in a known risk area) supported a complaint alleging the  
9 district's negligent and careless failure to properly supervise, guard, maintain, inspect and manage the  
10 school premises.

11 Here, the facts are as follows:

12 California Penal Code section 26500 prohibits any person from selling a firearm within the State  
13 of California unless the person is licensed by the State to sell firearms, some exceptions apply. Penal  
14 Code section 26535 exempts transfers between manufacturers of firearms, such as Franklin Armory, Inc.  
15 and licensed California firearms dealers. Thus, California residents seeking to acquire firearms must do  
16 so through licensed California firearms dealers.

17 In part, the requirement that all firearm generally be processed through a licensed California  
18 firearms dealer is designed to mandate that the licensed dealers gather information necessary to perform  
19 background checks on the applicants and information relating to the firearm for firearm registration  
20 purposes. Regarding the latter, Penal Code section 28160 mandates that "for all firearms, the register or  
21 record of transfer shall include all of the following [information relating to the firearm]:"

22 \*\*\*

23 (2) The make of firearm.

24 \*\*\*

25 (7) Manufacturer's name if stamped on the firearm.

26 (8) Model name or number, if stamped on the firearm.

27 (9) Serial number, if applicable.

28 (10) Other number, if more than one serial number is stamped on the

1 firearm.

2 (11) Any identification number or mark assigned to the firearm pursuant to  
3 Section 23910.

4 (12) If the firearm is not a handgun and does not have a serial number,  
5 identification number, or mark assigned to it, a notation as to that fact.

6 (13) Caliber.

7 (14) Type of firearm.

8 (15) If the firearm is new or used.

9 (16) Barrel length.

10 (17) Color of the firearm.

11 Penal Code section 28155 mandates that the Department of Justice prescribe the form of the  
12 register and the record of electronic transfer pursuant to Section 28105. And, Penal Code section 28105  
13 mandates that “the Department of Justice shall develop the standards for all appropriate electronic  
14 equipment and telephone numbers to effect the transfer of information to the department.”

15 In response, the Department of Justice created the DES. In designing and developing the DES,  
16 however, the Department of Justice elected to implement a closed system that utilizes drop down lists  
17 instead of open field for certain data entries. As described in the DES User’s Guide, the process for  
18 entering the sale of a long gun is, in part, as follows:

19 **Dealer Long Gun Sale**

20 Select the *Dealer Long Gun Sale* transaction type when a *Long Gun* is  
21 being purchased from a dealer.

22 To submit a *Dealer Long Gun Sale* transaction:

23 1) From the *Main Menu* page, select the *Submit DROS* link. The *Select*  
24 *Transaction Type* page will display.

25 2) Select the *Dealer Long Gun Sale* link. The *Submit Dealer Long Gun*  
26 *Sale* form will display.

27 3) Enter the *Purchaser Information* (see *Entering Purchaser and Seller*  
28 *Information* above).



1 4) Enter the *Transaction and Firearm Information* as follows:

2 \*\*\*

3 j. *Gun Type* – Select the type of long gun from the *Gun Type* drop down  
4 list.

5 \*\*\*

6 Though the DES User's Guide is void of any information relating to the available Gun Types  
7 listed in the dropdown list, at the time of this writing the list consisted of the following options:

8 RIFLE

9 RIFLE/SHOTGUN COMBINATION

10 SHOTGUN

11 Unfortunately, this list is incomplete and fails to include options for the many long guns that are  
12 neither "Rifles" nor "Shotguns."

13 This defect could have been prevented by including within the list the various types of other long  
14 guns, or simply including a single catch-all within the list such as "Other."

15 This defect, however, has severely impacted my client's business and reputation. On or about  
16 October 15, 2019, Franklin Armory, Inc. announced their new product, Title 1™, which generated a  
17 substantial amount of interest. Soon after the announcement, Franklin Armory, Inc. was notified by  
18 licensed California firearm dealers that they would not be able to transfer the firearms due to  
19 technological limitations of the DES.

20 As a result, Franklin Armory, Inc. is unable to fulfill its orders, which continue to accrue daily.  
21 Franklin Armory, Inc. anticipates that even the delay of a few months in the correction of the system will  
22 result in the loss of approximately \$2,000,000 in profits, if not more.

23 As a result, Franklin Armory, Inc. President Jay Jacobson has been in contact with the  
24 Department of Justice, Bureau of Firearms and requested that the DES be corrected immediately to  
25 prevent the loss of sales and to preserve the reputation of Franklin Armory, Inc. within the industry and  
26 among its consumers. He has been advised that the Department of Justice – Bureau of Firearms is  
27 working on correcting the issue but was also informed that no timeline for the correction of the defect  
28 has been established. As such, Franklin Armory, Inc. submitted a letter which served to both reiterate

1 the importance of correcting the defect in the DES expediently, and to express and document the legal  
2 and financial the impact that the defect has on Franklin Armory, Inc.

### 3 *CONSTITUTIONAL VIOLATIONS*

#### 4 *DUE PROCESS*

5 The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States  
6 forbids the several States from depriving any person of life, liberty, or property without due process of  
7 law. Under color of state law, the Department of Justice is subjecting Franklin Armory, Inc., it's dealers,  
8 and its citizens to a deprivation of liberty and property without due process of law.

9 The defect within the DES essentially bans the sale, acquisition, transfer, delivery, possession,  
10 display of, and expression utilizing a lawful product in violation of the Due Process Clause doctrine.  
11 (*See, e.g., Coates v. City of Cincinnati*, 402 U.S. 611 (1971) and *Matthews v. Eldridge*, 424 U.S. 319  
12 (1976).) The ban deprives Franklin Armory, Inc. and local licensed firearms dealers of the complete and  
13 lawful use of their federal and state licenses issued by the United States Bureau of Alcohol, Tobacco,  
14 and Firearms and the Department of Justice and does so unilaterally, without supplying adequate pre-  
15 deprivation notice, an opportunity to be heard, or appeal; as such, it is an unconstitutional deprivation of  
16 property without due process of law. In each of these respects, the defacto ban constitutes an  
17 unconstitutional abridgement of Due Process Clause rights both facially and as applied to these  
18 circumstances.

#### 19 *SECOND AMENDMENT VIOLATION*

20 The sale, transfer, delivery, possession, and use of lawful firearms in California are not a mere  
21 privileges. The Second Amendment protects a person's right to keep and bear firearms. The Second  
22 Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right  
23 of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "As interpreted in  
24 recent years by the Supreme Court, the Second Amendment protects 'the right of law-abiding,  
25 responsible citizens to use arms in defense of hearth and home.'" *Teixeira v. Cty. Of Alameda*, 873 F.3d  
26 670, 676– 77 (9th Cir. 2017), cert. denied sub nom. *Teixeira v. Alameda Cty.*, 138 S. Ct. 1988 (2018)  
27 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). At the core of the Second  
28 Amendment is a citizen's right to have in his and her home for self-defense common firearms. *Heller*,

1 554 U.S. at 629. “[O]ur central holding in *Heller* [is] that the Second Amendment protects a personal  
2 right to keep and bear arms for lawful purposes, most notably for self-defense within the home.”  
3 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

4 As evidenced by California’s own crime statistics, the need to protect one’s self and family from  
5 criminals in one’s home has not abated no matter how hard they try. Law enforcement cannot protect  
6 everyone. “A police force in a free state cannot provide everyone with bodyguards. Indeed, while some  
7 think guns cause violent crime, others think that wide-spread possession of guns on balance reduces  
8 violent crime. None of these policy arguments on either side affects what the Second Amendment says,  
9 that our Constitution protects ‘the right of the people to keep and bear Arms.’” *Silveira v. Lockyer*, 328  
10 F.3d 567, 588 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing *en banc*). However,  
11 California citizens, like United States citizens everywhere, enjoy the right to defend themselves with a  
12 firearm, if they so choose.

13 Yet, not because of any statute, regulation, rule, or law, but merely as a result of improper design,  
14 implementation, maintenance, operation, and oversight the DES prohibits the California citizens from  
15 enjoying the right to defend themselves with a lawful firearm of their choice, and prevents Franklin  
16 Armory, Inc. from lawfully delivering and/or transferring lawful firearms to their customers.

17 *TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE*

18 Under California law, intentional interference with prospective economic advantage has five  
19 elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that  
20 contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the  
21 relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of  
22 the relationship; and (5) economic harm proximately caused by the defendant's action. (*Korea Supply*  
23 *Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1164–1165.).

24 As referenced above, Franklin Armory, Inc. has announced the sale of their Title 1 product and  
25 has begun taking orders on the Title 1 as well as the CSW line of products. The Department of Justice  
26 has been notified of these orders and the inability of Franklin Armory, Inc., and/or any licensed  
27 California firearms dealer to process and/or deliver these orders due to defects in the implementation of  
28 the DES - a breach of duty by the Department of Justice pursuant to Penal Code sections 28105 and

1 28155. In refusing to correct and/or delaying any corrections to the DES to permit the delivery, sale,  
2 and/or transfer of lawful firearms, the Department of Justice is intentionally engaging in wrongful acts  
3 designed to disrupt current and future business of Franklin Armory, Inc.

4 Franklin Armory, Inc. has, always, sought to cooperate and work with the California Department  
5 of Justice. When, however, the Department of Justice exceeded its authority and implemented a defacto  
6 ban on the sale of lawful firearms via technological limitations of the State mandated, designed,  
7 implemented and maintained DES, it substantially interfered with the rights and business relationship of  
8 Franklin Armory, Inc. and its customers. As a result, it is reasonable to anticipate the need for litigation  
9 to ensure my client is made whole.

10 **3. Inclusion of All Claimants**

11 The claimant should exercise due care to ensure that the claim clearly includes the claims of all  
12 persons entitled to seek recovery from defendant. As a general rule, every claimant must present a claim  
13 even when another party has timely presented a claim that provided the public entity with full  
14 knowledge of the basis of the alleged liability. As such, at this time, this claim is being submitted on  
15 behalf of Franklin Armory, Inc.

16 Other claimants include licensed California firearm retailers and individual consumers denied the  
17 sale, receipt, delivery, transfer, and/or possession to the Title 1 and/or CSW products line due to defects  
18 in the DES.

19 **4. Public Employee Causing Injury or Damage**

20 The name of the public employee or employees who caused the injury or damages, if known,  
21 should be included in the claim. Govt. C §910(e). This information is particularly relevant to the  
22 legislative purpose of facilitating investigation and possible settlement. Absent waiver of the defect, the  
23 failure to supply the name, if it is shown that the claimant knew it, may constitute fatal noncompliance.  
24 As such, the Public Employees causing the injury and/or damage include:

25 *Xavier Becerra, Attorney General*

26 *Brent E. Orick, Acting Director of The Bureau of Firearms*

27 **5. When Either Dollar Amount of Court's Jurisdiction Must Be Specified**

28 The claim must specify the amount claimed together with the basis of computation of the amount

1 if the total claim is under \$10,000 “ as of the date of presentation of the claim, including the estimated  
2 amount of any prospective injury, damage, loss, insofar as it may be known at the time of the  
3 presentation of the claim.” If the amount exceeds \$10,000, the amount sought is not to be specified in  
4 the claim, but the claim must indicate whether it would be a limited civil case.

5 In this matter, the claim exceeds \$10,000 and the case would not be a limited civil case. It is  
6 anticipated that the claim will likely exceed \$2,000,000 as a result of any delays or refusal to correct the  
7 defects in the DES in a timely manner.

8 **III.**

9 **CONCLUSION**

10 As a result of defects in the design, implementation, and maintenance of the DES, the  
11 Department of Justice – Bureau of Firearms, now under the supervision, guidance, and control of  
12 California Attorney General Xavier Becerra and Acting Director of the Bureau of Firearms Brent E.  
13 Orick have damaged Franklin Armory, Inc. as set forth above, and are therefore liable to Claimant.

14  
15 s/ Jason Davis

16 \_\_\_\_\_  
17 Jason Davis, Attorney  
18 On Behalf of Claimant  
19 Franklin Armory, Inc.  
20  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

7 On August 23, 2023, I served the foregoing document(s) described as

8 **DECLARATION OF JASON A. DAVIS IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO  
9 DEFENDANTS’ MOTION FOR JUDGMENT ON THE PLEADINGS**

10 on the interested parties in this action by placing  
11 [ ] the original  
12 [X] a true and correct copy  
13 thereof by the following means, addressed as follows:

14 Kenneth G. Lake  
15 Deputy Attorney General  
16 Email: [Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)  
17 Andrew Adams  
18 Email: [Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)  
19 California Department of Justice  
20 300 South Spring Street, Suite 1702  
21 Los Angeles, CA 90013  
22 *Attorney for Respondents-Defendants*

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

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

27 Executed on August 23, 2023, at Long Beach, California.

28 

Laura Palmerin