

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

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

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

16
17 Plaintiffs,

18 v.

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

22 Defendants.
23

Case No. 20STCP01747

**DECLARATION OF KENNETH G.
LAKE IN SUPPORT OF MOTION BY
DEFENDANTS FOR SUMMARY
JUDGMENT; OR IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION OF ISSUES**

**Date: July 10, 2024
Time: 8:30 a.m.
Dept.: 32**

Honorable Daniel S. Murphy

RES ID: 554862513719

24 I, Kenneth G. Lake, declare:

- 25 1. I am an attorney at law duly authorized to practice in the State of California. I am a
26 Deputy Attorney General assigned to handle this matter on behalf of defendants.
27 2. True and correct copies of the relevant portions of the deposition of Jay Jacobson, taken
28 on November 14, 2023, are attached hereto as Exhibit A.

EXHIBIT A

1 Q And do you have any military background?

2 A No, sir.

3 Q No reserve or anything like that?

4 A All I did was raise a Marine.

5 Q Sorry?

6 A I raised a Marine. I got his picture on the
7 wall. But that's about it.

8 Q "Raced" like in motorcycles?

9 A No. Raised a child. I'm a parent of a Marine.
10 That's it.

11 Q You know, sometimes we get -- it's harder to hear
12 people's enunciation with the video, but we'll -- I
13 apologize if I misunderstand some of the words. And also,
14 while I'm talking about that, obviously we're going to get
15 into -- as I'll get into right now -- your background
16 related to firearms.

17 Obviously, I'm not an expert. So it's very
18 possible that I may bungle the use of terminologies
19 relative to firearms as we go through today. So feel free
20 to correct me if I'm saying something or describing it in
21 the wrong way. That's kind of part of the process that
22 we're going to go through.

23 So if you could, could you just briefly describe
24 your work history that gets us to -- obviously, we'll get
25 to -- you're currently the owner of Franklin Armory;

1 correct?

2 A One of the owners. I'm not the majority
3 shareholder. My wife is, Jason's a shareholder, I'm a
4 shareholder and we have two other partners.

5 Q Okay. So just briefly describe your work history
6 pre-Franklin Armory.

7 A So out of my -- when I got out of college, I
8 ended up doing contracting work. Basically, my wife had a
9 business of doing office cubicles throughout the bay area
10 and I helped her run that company up until about 2006.
11 Then about that time we sold off the company. And quite
12 honestly, I was tired of working with felons in the
13 contracting world. There were plenty.

14 So I ended up working on a ranch, taking a
15 two-year sabbatical while I thought what the next plan
16 would be. And we owned a building in Morgan Hill that
17 went vacant, and then I ended up realizing that we could
18 construct a business manufacturing firearms for
19 Californians and so that's what led to Franklin Armory.

20 Q And so you first (inaudible)?

21 THE COURT REPORTER: I'm sorry. I didn't catch
22 that.

23 BY MR. LAKE:

24 ~~The question was did he first establish Franklin~~
25 Armory in Morgan Hill? And that's just a town that used

1 So you're familiar with those terms; right?

2 A I am familiar with the terms, but I'm not a
3 California dealer and never have been.

4 Q But do you have experience working with -- or
5 processing or interacting with the DES in any way? Or
6 what's your kind of background with that?

7 A No, sir. I was never a dealer.

8 Q But do you have knowledge about how the DES
9 works?

10 A Any knowledge that I do have is from online
11 sources or what third parties may have told me.

12 Q Okay. Now, when we talk about long guns, in
13 California that's what -- a gun with a barrel over 16
14 inches? What are we talking about here?

15 A I would -- yes. Over 16 inches.

16 Q Okay. And then what type of long guns does --

17 A Let me rephrase that. So a pistol -- or I should
18 say a frame or a receiver doesn't have a barrel. But it
19 could be a firearm receiver that would typically have a
20 barrel over 16 inches.

21 So that question, the way it was asked, generally
22 you would put a barrel on it that's over 16 inches or in
23 the case of a shotgun over 18 inches, but a receiver by
24 itself doesn't have a barrel.

25 Q But you anticipated my next question. I'm

1 Q Let me just -- would this be the same
2 conversation that was discussed in your responses to form
3 interrogatories? Those were just served in September of
4 this year. Let me -- I don't know if you reviewed those
5 lately, but let me just kind of -- so this is at page 35,
6 lines 14 to 22. It's asking about witnesses.

7 Imagine verbal reports of Bureau of Firearms,
8 Agent Blake Graham, via telephone. It says you, Mr. Jay
9 Jacobson, president of Franklin Armory, verbal report made
10 to Agent Blake Graham on or about October 22, 2019. Is
11 that about right?

12 A Yes, sir.

13 Q We're talking about the same conversation?

14 A Yes, sir.

15 Q And that was about a 15- to 30-minute phone
16 conversation. Who called who?

17 A I don't recall off the top of my head.

18 Q And what brought that about? Did this have
19 something to do with the Title 1?

20 A Yes. And the computer system.

21 Q And then October 22, I believe what I've seen
22 in the records is that the Title 1 was introduced on
23 October 15, 2019. Is that about right?

24 ~~A Can I look for the documents?~~

25 Q Well, is that the approximate --

1 A Yes.

2 Q Okay. If we need the exact date on something,
3 you know, we'll try to go into that. But if we don't,
4 then I think -- so we're talking right around the time
5 this conversation took place, right around the time when
6 the Title 1 Centerfire firearm was being introduced?

7 A Yes, sir.

8 Q Okay. When you said -- just the term
9 "introduced" means that's when you were beginning to
10 market it for potential sale? Is that accurate?

11 A Yes.

12 Q And then who first brought up the Mossberg
13 Cruiser in your conversation? You or him?

14 A I don't recall. I know we talked about it but I
15 don't recall, sir.

16 Q Okay. So in that conversation, Mr. Graham
17 advised you that Mossberg Cruisers had been processed in
18 the online system, the DES, as shotguns, even though it
19 does not have a stock; is that right?

20 A Yes, sir.

21 Q And did he tell you that that had been done for a
22 number of years?

23 A Yes, sir. Now, maybe not specifically in those
24 words, but that that was the historic tradition of how
25 they transfer that firearm in California.

1 name because I can't recall for sure.

2 Q Okay. Did you just use the term "downwind"?

3 A Down Range.

4 Q Down Range. I'm sorry.

5 What does that mean?

6 A It's the name of a firearms dealership in Chico.

7 Q Oh. That's the name? Okay. Sorry. Gotcha. So

8 basically this was brought to your attention via E-mail

9 from your staff, from your team?

10 A My staff spoke to me directly in person.

11 However, I don't recall how they were notified of the

12 problem.

13 Q Okay.

14 A They may have been receiving a call from a
15 dealer, saying "Hey, how do I transfer this firearm now
16 that I have it?" And they were unable to figure out a way
17 to do it on -- through the computer system. And that's
18 what necessitated the call to Mr. Graham.

19 Q Gotcha. Okay. So let's shift back if we could
20 to the conversation with Mr. Graham. So he basically told
21 you that even though the Mossberg Cruiser, because it did
22 not have a stock, was not, under the statutory definition
23 of a shotgun, they had previously processed it as a
24 shotgun anyway; right?

25 A Yes, sir.

1 Q And he told you that they had done that for a
2 long time?

3 A Yes, sir.

4 Q And did he tell you that there was no requirement
5 for the Bureau's process firearms in the online system to
6 select or require selection of a firearm in the system
7 consistent with the definition by statute?

8 A No, sir.

9 Q And were you -- how did you come to the
10 interpretation that a stockless firearm such as the
11 Mossberg Cruiser should not be processed in the online
12 system because it did not meet the statutory definition?

13 A As I said in earlier testimony, sir, the State
14 had created a computer system with a false trichotomy.
15 That's just logic.

16 Q Okay. But per your understanding of the statutes
17 -- so I'm assuming at some point you garnered
18 an understanding of the statutory definition of rifle and
19 shotgun?

20 MS. BARVIR: I'd like to state an objection to the
21 extent that this calls for attorney-client privileged
22 communications.

23 MR. LAKE: Yeah. I don't want that.

24 ~~BY MR. LAKE:~~

25 Q At some point, you have an understanding this is

1 to him for his review or the Department's review, and I
2 believe that's in the documentation that you have.

3 Q Did Mr. Graham mention in your conversation as an
4 additional example that lower receivers or barreled
5 receivers, although stockless, had historically been
6 processed in the online system as rifles?

7 A I do not recall.

8 Q Have you learned that from any conversation or
9 any source with anyone, other than your attorneys, of
10 course?

11 A I have anecdotal understanding that people have
12 transferred barreled receivers as rifles even though they
13 were not rifles because they didn't have a stock.

14 Q Right.

15 A Yes.

16 Q And did you learn that -- did any dealer ever
17 tell you that?

18 A I -- I'm not sure if it was a dealer or if I read
19 about it online somewhere, where somebody had mentioned
20 that that's how they transferred them.

21 Q When you say "that's how they transferred them,"
22 that would be the dealers that you talked with?

23 A Correct.

24 ~~Q And those were California dealers?~~

25 A Correct.

1 Q And?

2 A And, you know, the State has a wide body of
3 evidence of how those firearms were transferred, because
4 all that data is at the firearms dealership. Obviously
5 they weren't prosecuting anybody for that.

6 Q Is it fair to say that based on the information
7 you had, is that lower receivers, barreled receivers and
8 pistol grip shotguns had been processed in the online
9 system for years as either rifles or shotguns?

10 MS. BARVIR: Objection. This is a compound question.
11 Talking about three different types of firearms. It's
12 also confusing, vague and ambiguous as including rifles,
13 shotguns, stocks like that.

14 BY MR. LAKE:

15 Q Go ahead if you can.

16 A It was my understanding that even though it
17 wasn't correct statutorily, that that's what they were
18 doing.

19 Q For years?

20 A For years, since the DES was put in use, which
21 I'm not sure what that year was, whether -- I'm not sure
22 if it was 2014 or 2018. Somewhere around there. I'm not
23 sure.

24 ~~Q This was conveyed to you by California dealers,~~
25 right?

1 A Yes.

2 Q How many dealers, if you can estimate, told you
3 this?

4 A I'm not sure, off the top of my head.

5 Q Is it more than five?

6 A Yeah. I would say five, somewhere in there. But
7 in talking about Blake Graham, that was also the status
8 quo of what the defendant was doing, but I don't remember
9 if it was in that conversation specifically or at a
10 subsequent conversation.

11 Q I may have asked this already, but just in the
12 context of do you have an understanding or an estimate as
13 to how many California dealers you or your company dealt
14 with?

15 A I do not have that handy. I will say this, that
16 we have distributors that we ship to that send to an even
17 wider group of dealers, but I don't have an exact count
18 for you.

19 Q I'm assuming there were some dealers that
20 probably dealt in larger volume than others. Is that
21 fair?

22 A Correct.

23 Q So you probably, most likely would have dealt
24 with them more often than some of the smaller dealers?

25 A Correct.

1 Q What are some of the other high-volume dealers
2 that come to mind that you dealt with?

3 A I mentioned Chico, Down Range. There's Coyote
4 Point Armory. There are other dealers -- honestly, the
5 State would have that information, because every time I
6 ship a gun to California, they actually know who we're
7 shipping it to and the volume of long guns versus handguns
8 that we're shipping.

9 Q Okay. I get that. I'm just kind of asking you
10 your understanding -- are there any other high volumes
11 that comes to mind? I've got Turner's Outdoorsman, Down
12 Range, Coyote Point.

13 A Basically once you get beyond Turner's,
14 everything else is smaller dealerships, for the most part.

15 Q Where is Coyote Point located?

16 A I think they have -- I think they started off in
17 Coyote Point by South San Francisco, but I don't know if
18 they have two locations. I'd have to look it up. I think
19 they might have a different locations other than actual
20 Coyote Point. I'd have to look it up, though.

21 Q And then just kind of as we've now gone through
22 this list of some of these high-volume folks, probably
23 perhaps dealt with more frequently, does that bring to
24 ~~mind, refresh your recollection in any way that it was~~
25 talking with any of these dealers where it was conveyed to

1 you that it was more or less the status quo that firearms,
2 stockless firearms -- again, whether it's stockless
3 shotgun or a stockless rifle -- would be processed as a
4 rifle or a shotgun in the online system even though it
5 wasn't fitting the statutory definition?

6 A Well, really, since Blake Graham had already told
7 me that this was the status quo, it was not an issue I was
8 trying to sleuth out.

9 Q Okay. So the dealers you had contact with, they
10 also understood that it was the status quo that stockless
11 firearms would be processed in that manner; right?

12 MS. BARVIR: Objection. Calls for speculation.

13 BY MR. LAKE:

14 Q If you know.

15 A I know that we received correspondence and
16 communication here that dealers were very concerned about
17 just putting something in the comments without an official
18 response from the State of California that that would be
19 how they should process this.

20 Q But you're talking about the Title 1 right now;
21 right?

22 A Yes, sir.

23 Q So I'm talking about before the Title 1 was
24 introduced.

25 A I understand.

1 documents that, if you want to refer to it, that was in
2 the group was called Sac Action FAC, which refers to the
3 First Amended Complaint.

4 And let me just -- before I kind of get into this
5 subject, is everybody okay in terms of needing a break or
6 anything?

7 MS. BARVIR: I'm sorry. I need to use the restroom
8 again. If you would rather do lunch now, that's fine, or
9 just five or ten minutes.

10 MR. LAKE: Since we're near the lunch hour, do you
11 want to take a half hour? Why don't we just come back at
12 1:00? That's 45 minutes.

13 THE VIDEOGRAPHER: Off the record at 12:15 p.m.

14 (Luncheon recess.)

15 THE VIDEOGRAPHER: Back on the record at
16 1:01 p.m.

17 BY MR. LAKE:

18 Q Okay. So as I indicated before the break, I was
19 going to go into the Sacramento County Superior Court
20 action, which was forwarded to you.

21 Mr. Jacobson, do you have -- I'm going to do some
22 referring to that. If you don't mind pulling that
23 document up?

~~24 A Give me one second.~~

25 Q While Mr. Jacobson is pulling that up, I'm

1 referring to the Verified First Amended Complaint
2 Petition for declaratory relief in the case of
3 "Franklin Armory versus State of California, et al.,"
4 Case No. 2018-00246584, filed on June 26, 2019.

5 And Mr. Jacobson, have you seen this document
6 before?

7 A I would assume so.

8 Q And so this is -- you authorized filing of this
9 action; correct?

10 A I believe so.

11 Q And is it your recollection that it was filed on
12 or around -- well, the First Amended Complaint was filed
13 on or around June 26, 2019; right?

14 A That's what the date stamp says.

15 Q And then the original Complaint was filed on
16 December 14, 2018. Is that consistent with your
17 recollection?

18 A I don't have the specific date but it sounds
19 about right.

20 Q Okay. And then the first cover page indicates
21 that you -- well, one of the plaintiffs in the action was
22 Sacramento Black Rifle. We talked about that briefly in
23 the morning session.

24 Do you have an understanding as to why Sacramento
25 Black Rifle was a plaintiff in that action?

1 A Because they were probably -- I would only be
2 speculating as to why that would be, but they're -- as a
3 dealer, they would be very much like the manufacturer,
4 wanting to know what is lawful and what isn't.

5 Q Did you ever have any discussions with anyone
6 from Sacramento Black Rifle about this lawsuit?

7 A I did not directly talk to them, no.

8 Q Okay. And then in the Defendant list, you -- you
9 also sued former Attorney General Becerra; right? Do you
10 see that?

11 A Yes.

12 Q Do you know why you sued him in this case?

13 A I believe because he was the man in charge. As
14 far as, you know, who to put on there, that is the type of
15 thing that I would heavily depend upon Counsel to put the
16 right person in that capacity in there.

17 Q Okay. So when you say "he's the man in charge,"
18 being he's the Attorney General in the State of
19 California, at least at that point in time, he was?

20 A Yes, sir.

21 Q And is that also the same reason why you're suing
22 former Attorney General Becerra in this action that we're
23 here for?

24 ~~A I would believe so.~~

25 Q Meaning he's the man in charge; he's the head of

1 the DOJ, as Attorney General?

2 A He was, yes.

3 Q But he's responsible to address the
4 allegations -- or was responsible to address the
5 allegations in this action?

6 A That is my understanding. Again, I depend upon
7 Counsel to provide the right name in the box.

8 Q And then Martin Horan, H-O-R-A-N, who's also
9 listed as Defendant, as Acting Chief of the Department of
10 Justice, Bureau of Firearms -- is that your understanding
11 as around that time, that Martin Horan was sued in this
12 Action because he was the Acting Chief of the Bureau?

13 A That's my understanding, yes.

14 Q And is it the same reason that you sued him in
15 that case, because he's the man in charge of the Bureau,
16 even in an acting capacity?

17 A Yes.

18 Q Have you ever had any conversations with
19 Mr. Horan?

20 A No, but I believe that Mr. Graham would
21 communicate directly with him.

22 Q What is that understanding based on?

23 A Conversations with Mr. Graham.

24 ~~Q And I think you had alluded to this, but just to~~
25 clarify a bit, in the conversations with Mr. Graham, he

1 MS. BARVIR: Okay.

2 THE WITNESS: Certainly, we would never want to do
3 anything to put our customers in jeopardy.

4 BY MR. LAKE:

5 Q In this particular case, based on the allegations
6 of 73 and 74, it says right here -- 74, paragraph 74 --
7 "This approach shields some manufacturers, dealers and
8 individuals" -- skipping a few words -- "for fear of
9 prosecution."

10 Those are the words in your Complaint -- "fear of
11 prosecution" -- if it turned out that it was an assault
12 weapon; right?

13 That's the reason you brought this suit; correct?

14 A Correct. It says --

15 MS. BARVIR: Objection. The document speaks for
16 itself.

17 MR. LAKE: Madam Court Reporter, he answered "right."
18 Did you get that?

19 THE COURT REPORTER: I got "correct."

20 THE WITNESS: So we wanted to ensure that our
21 customers would not be in jeopardy of any prosecution for
22 selling what we believed was a lawful product.

23 BY MR. LAKE:

~~24 Q So the answer to the previous question was~~
25 "Correct"?

1 I'm just repeating because we were talking over
2 each other.

3 A I understand. Yes. We were trying to ensure
4 that our customers would not be criminally prosecuted or
5 in any other way prosecuted for selling this product. And
6 unfortunately, the government was not forthcoming. So we
7 were looking for declaratory relief.

8 Q Now, when we talk about fear of prosecution from
9 dealers, manufacturers, did you, at or around the time of
10 the filing of this Sacramento Action, did you have any
11 conversations with dealers about this fear of prosecution
12 due to the uncertainty of whether or not it was an assault
13 weapon?

14 A Discussion with other dealers -- I don't recall a
15 bunch of other discussions. I recall that basically we
16 thought this was lawful, and we weren't getting
17 responsiveness out of the governing body that's supposed
18 to regulate the industry and so we were forced to go this
19 route.

20 Q Did you talk with any dealers about the
21 uncertainty of the prosecution relative to the Title 1
22 around the time of this lawsuit?

23 A I don't know that there would be a need to
24 ~~because I think most dealers would be concerned on their~~
25 own without evidence that it was lawful. The

1 marketability of any given product is that it's presumed
2 that DOJ is going to do what they can to prevent the sale
3 unless they know it's lawful.

4 Q So did any dealer tell you that in terms of
5 processing Title 1, at that point in time, that they did
6 not want to go out on a limb for fear of prosecution?

7 A No, sir, because the reality of that was at the
8 time that this was filed, I was completely unaware the DES
9 had a false trichotomy.

10 Q Well, that dovetails into my next question
11 in this -- in the Sacramento Action, in any of the
12 complaints -- and the First Amended Complaint was the
13 final, most recent complaint -- there's no mention of any
14 issue with the DES, the online system; correct?

15 A I don't believe there is.

16 Q And I think you just answered that because at
17 that point in time, you didn't have any concern about it?

18 A I was unaware. Again, I'm not a dealer in the
19 State of California.

20 Q And then it appears that the Sacramento action
21 was voluntarily dismissed on October 3, 2019.

22 Does that sound about right in terms of the time
23 when the suit was dismissed?

24 ~~A I don't recall. What was the date again?~~

25 Q October 3, 2019.

1 A I don't recall the specific date, but that would
2 make sense because we received statements from the
3 Department of Justice that were definitive enough for us
4 to feel that we were on solid ground to move forward, so
5 we did.

6 Q So from the time that you filed the Sacramento
7 lawsuit up until it was dismissed in October, 2019, did
8 any dealers or anyone else express to you the concern
9 about the Title 1 as problems in processing it in the
10 online system, the DES?

11 A So you're saying prior to what date?

12 Q Well, the action was dismissed in October 2019.
13 It was filed in 2018. Do you recall in the context of the
14 Sacramento Action, during the time it was pending, did
15 anybody ever express to you or mention to you concern
16 about -- that this Title 1 couldn't be processed in the
17 DES because it wasn't a rifle?

18 A At that time, no. We found out about it later
19 that month.

20 Q Had you had any conversations with any dealers
21 about the Title 1 at that point?

22 A I don't recall.

23 Q Now, you said that there were statements -- well,
24 let me ask you this -- just procedural -- do you have a
25 recollection that the State and the Attorney General

1 I believe she was kind of more like a bi-level person that
2 just kind of got all the facts together and took them
3 upstream, but I could be could be totally wrong.

4 Q Okay. And just briefly -- and you may have
5 already mentioned this, but just it appears throughout
6 many of the documents. When you say -- you're talking
7 about the Title 1, and you discuss -- this is the
8 paragraph at the bottom of that first page -- it says "If
9 the firearm is not intended to be fired from the shoulder
10 since it is equipped with a padded buffer too for cheek
11 welding."

12 So just to talk about the Title 1 design -- it
13 had a padded buffer too instead of a stock; right?

14 A Yes, sir.

15 Q And what does the term "cheek welding" mean?

16 A Meaning that the padded buffer too would be
17 placed underneath the cheekbone in a firing position.

18 Q So you're suggesting in this E-mail to
19 Ms. McGovern that because it has a padded buffer to it
20 instead of a stock, it's not intended to be fired from the
21 shoulder and thus is not a rifle?

22 A Correct.

23 Q But it's still long?

~~24 A With a 16-inch barrel, yes.~~

25 Q Now, if I could just shift gears back to when you

1 So if you could, so at some point Franklin
2 Armory, including yourself, put it out online,
3 communicated -- whether through various means -- that
4 Franklin Armory was taking five dollar deposits for the
5 Title 1 firearm; correct?

6 A Yes, sir.

7 Q Okay. And this was to be done online only;
8 right?

9 A Yes, sir. Well, no. We had distributors and
10 dealers that might send an E-mail in or a call in and
11 order.

12 Q Okay. And so the deposits were to be five
13 dollars; right?

14 A Yes, sir.

15 Q And the five-dollar deposit was refundable;
16 right?

17 A And is to this day.

18 Q So the answer is "Yes"?

19 A Yes.

20 Q Just to clarify, because you know, again, lawyers
21 have to be more formal -- you could say "Yes, and it is to
22 this day," but I got to get the "Yes" on the record.

23 A I understand.

24 Q So when you say so "It's refundable any time,
25 even to this day," that means whoever put a deposit down,

1 they actually had no obligation to purchase the firearm;
2 correct?

3 A The intent of placing the order was to
4 demonstrate the desire to purchase the firearm, even
5 though the government was standing in the way.

6 Q Okay. But by placing a deposit, they actually
7 had no legal obligation to complete the purchase; correct?

8 MS. BARVIR: Objection. Calls for a legal conclusion.
9 Also, confusing and unclear as to "legal obligation."

10 BY MR. LAKE:

11 Q Go ahead.

12 A Well, I'd prefer not to speculate on what those
13 consumers wish to do, except for I assume that they would
14 plan to go through with the purchase.

15 Q But they aren't required to complete the purchase
16 though; correct?

17 A There's no law governing that, correct.

18 Q And so in terms of so in person -- let's just
19 talk about the online folks. They would go in and they
20 would find it online -- I just kind of want to go through
21 the process and the paperwork that they would go through.

22 So basically the person would get online -- and I
23 guess there's a typical online thing, where they indicate
24 ~~that they want to place a deposit?~~

25 Would they have to put it in -- how would the

1 we do. They're -- yeah. I mean, there were some people
2 that purchased a full firearm and gave the full amount. I
3 believe we refunded a lot of those folks. A lot of them
4 wanted to have it turned down to the deposit level and
5 have that sort of thing.

6 Q So is it fair to say that for each deposit put
7 down, there would be a sales order and an invoice on this
8 type of form generated for each deposit? Is that fair?

9 A Yeah. Under two different systems, yes.

10 Q And then going through the deposit process, there
11 does not appear to be any sales price of the full purchase
12 of the firearm indicated; is that right?

13 A Correct.

14 Q So when whoever was going through the online
15 deposit, it would not pop up on the screen, while they're
16 putting down the deposit, how much the firearm was gonna
17 cost, if they actually purchased it. Fair?

18 A That would have been on the website, sir.

19 Q That wasn't my question. My question was as
20 someone is putting down a deposit and they're going
21 through the deposit process, it did not appear on the
22 screen while they're going through and completing the
23 deposit as to how much the firearm was going to cost them;
24 correct?

25 A I would say no, sir, because when they went to

1 our website, it said this is what we're trying to sell;
2 this is how much it is. And in the meantime, here's a
3 deposit. And if we could sell you this whole thing right
4 now, we would, but because we can't because of the
5 government blocking it, we went ahead and created a
6 deposit scenario.

7 When they click on the deposit, certainly, it
8 would say, in this case \$5.47. The system from the
9 website is not smart enough to know that the whole thing
10 is costing more than that to purchase the complete firearm
11 and just has the sales or the five dollars, plus tax as a
12 deposit.

13 Q When they go to complete the transaction for the
14 deposit, there's no indication on that documentation of
15 the purchase price of the firearm; correct?

16 A I don't know what they were looking at when they
17 placed that order, so I can't confirm. But I assume it
18 looked somewhat similar to what we have in this invoice
19 document from the website.

20 Q And that's referring to Exhibit A or B or both?

21 A What's the number on it? 26909?

22 Q Yeah. That's B.

23 A So Exhibit A, that is the internal document when
24 we processed it into our system.

25 Q Okay. So either one of those documents, it's

1 generated, whether it's A, that's generated in your
2 system, or it's B, that gets sent to the depositor. It
3 would not indicate the purchase price of the firearm;
4 correct?

5 A Some of them did because they purchased the whole
6 thing up front. But if they put a deposit, it didn't have
7 the deposit price on this documentation. But they knew it
8 because it was on the website when they placed the order.

9 Q Well, you're assuming that they knew it.

10 A If they looked it up.

11 Q But as far as any documentation of the
12 transaction, it just shows five dollars for the deposit;
13 right?

14 A For the deposit, yes, but most people know what
15 they're depositing on when they make a deposit.

16 Q Okay. And so --

17 A And you know, to add to that, all of our press
18 releases at the time had the amount for the firearm there
19 as well. I think it was 944.99, if I remember, off the
20 top of my head.

21 Q Bear with me a second. So if you could pull
22 up -- so in the grouping that I sent to you all -- I'm not
23 going to mark this as an exhibit. This is the -- I'm
24 referring to -- it's at produced 9-20-2023, 606 -- so
25 it's a 16-page document.

1 purchase for that amount.

2 Q And does that go for all the dealers who would be
3 on this complete list?

4 A Yeah.

5 Q So nobody -- no money ever exchanged hands?

6 A Correct. There was an intention to purchase for
7 that amount.

8 Q But when we're talking about the five dollar
9 deposits, those folks were actually charged the five
10 dollars?

11 A Right.

12 Q All right. So -- is it fair to say then the
13 entirety of the time frame within which deposits were
14 placed for the Title 1's started on October 16, 2019, and
15 the last transaction for a Title 1 was on August 6, 2020?

16 A Pretty close. On the August 6, 2020, I'm not
17 sure if those were orders placed overnight, that were then
18 downloaded that day. I'm not sure what time the governor
19 signed that law, but I believe it took effect immediately.
20 And as soon as we did, we did not accept any additional
21 orders.

22 So again, the only question is on August 6, did
23 we download it that day because they placed the order
24 prior to the signature and that sort of thing? Because
25 there is a delay between once they placed the order on the

1 website to when we entered it into our system.

2 Q Okay.

3 A But yes. I'm being particular, particular here.

4 Q Okay. So does this -- so obviously, as you've
5 indicated, some of the previous discovery responses, part
6 of the damages you're claiming in this action are lost
7 profits or sales that you didn't complete; right?

8 A Correct.

9 Q Does this document, which again, we're not
10 talking about the entire document in front of us but the
11 472-page document that was produced to us -- does this
12 list include all of the -- the entirety of all, whether
13 purchases or deposits -- everything on this list comprises
14 the totality of damages for lost profits or lost sales you
15 claim in this Action?

16 A No. No. What it demonstrates is that we had
17 these orders that were going to ship. Now, the amount is
18 not what that shippable amount was going to be but the
19 order is what it was going to be. So you know, first
20 order -- it says "Web sales" -- there was one for five
21 dollars. Well, we intended to send one gun for 944.99,
22 not five dollars.

23 Q I take that back. I didn't phrase that very
24 ~~well. This encompasses the number of firearms that you~~
25 claim sales were deprived of in this case?

1 configuration.

2 Q Was the -- when did the -- was the Title 1
3 rimfire -- was that ever actually manufactured or was it
4 just a prototype?

5 A It was manufactured.

6 Q How many were manufactured?

7 A Like I said, one or two.

8 Q But they were never shipped?

9 A One or two were.

10 Q Do you recall, as you sit here today, when the
11 Title 1 rimfire was first designed?

12 A I don't recall the specific date.

13 MS. BARVIR: I'm going to step in for some
14 clarification. I made an objection. I don't object
15 lightly on relevance grounds. But Title 1 rimfire and all
16 the rimfire stuff, those claims have been settled. We are
17 done with that.

18 I don't think there's any claims for damages on
19 rimfire. So I just want to make sure we're going in the
20 right direction here and we're all on the same page as
21 what's being claimed currently.

22 BY MR. LAKE:

23 Q So Mr. Jacobson, is that correct you're not
24 ~~claiming any damages related to the rimfire firearm in~~
25 this case?

1 A I don't believe so.

2 MR. LAKE: Okay. Sounds good to me.

3 Ms. Barvir, thank you for clarification.

4 MS. BARVIR: I was sitting here trying to think where
5 we were going with this. So I'm glad we can be on the
6 same page.

7 BY MR. LAKE:

8 Q Just real quickly, let's go back to the 16-page
9 document that we've gone through, finished with the --
10 just real quickly. So the fourth page of that document is
11 something called "Inventory Item Quick Report," and it's
12 three pages.

13 A One second. I closed them out when you were
14 done. So you're starting with page 4?

15 Q Yeah. Looks like it's a three-page document.
16 I'm just curious -- can you describe what that is, what
17 pertinence it has, if anything?

18 While you're taking a look at that, let me ask
19 you this -- if there's one or two people at Franklin
20 Armory that are probably the persons with the most
21 expertise about these kind of accounting type documents,
22 who would that be?

23 A Joann Ignatich and Karin Jacobson.

24 ~~So these are credit memos. That's what I'm~~
25 looking at. Okay.

1 A Wasn't it August 6?

2 Q Yeah. That would be the exact date, sure, that,
3 you know, you wanted folks to put these deposits down to
4 provide a basis to sue for damages?

5 A Actually, it was to prove -- to demonstrate that
6 they wanted the product when it was still lawful to
7 transfer it. But unfortunately, the government was
8 precluding them from receiving that; so if we didn't do
9 something like this, we couldn't prove their desire to
10 purchase it. That's the whole idea of why we did this.

11 But as you look at the date on this E-mail, which
12 is July 21 of 2021, almost a year after the point where
13 they could have received it, I would have to think that
14 that had to play some part into the response. If those
15 very same dealers could have received those firearms and
16 made a buck off of it, don't you think they would have?

17 Q When they talked about no intention of receiving,
18 isn't it fair to say that -- you've already testified that
19 you basically put it out that you were soliciting folks to
20 submit deposits for these Title 1's without the intent of
21 actually shipping them at that point in time; correct?

22 A We were unable to ship them at that point in
23 time. That is correct.

~~24 Q~~ Who -- do you know offhand who designed the Title
25 1?

1 A Essentially the -- I would assume that to mean
2 the process of the transaction for DES.

3 Q To modify the DES? Is that what you're talking
4 about?

5 A To allow the consumer to go through DES to
6 purchase the firearm.

7 Q But what kind of paperwork are we talking about?
8 Let me ask this way -- did you have an understanding that
9 the Bureau, under the law that guided the DES and the
10 online system, that the Bureau would have some discretion
11 to still allow processing of the transfer of a firearm on
12 paper?

13 A No, I did not. And it would have been nice if
14 they had said that because if that was the process they
15 preferred, they would have been happy to have done that.
16 I think this was written up by probably Brandon in
17 marketing, and I didn't think to change the term
18 "paperwork" and that should have been "computer system."

19 Q Okay. So it is a misstatement, whether -- maybe
20 just a misnomer -- it's not --

21 A It could have been done better. Agreed.

22 Q I mean, I don't want to blame Brandon. All
23 right. Shift gears a little bit if we could.

24 ~~Kind of, we talked a little bit about the~~
25 aside from the whole Title 1 transaction process, I'd kind

1 of like to run through just how a regular sales process
2 would work for the sale of a firearm from Franklin to an
3 individual located in California.

4 And I know you already kind of mentioned this a
5 little bit; so -- of course, you mentioned all these
6 transactions have to go through a California licensed
7 firearms dealer; right?

8 A Yes, sir?

9 Q And then to initiate the process, does -- the
10 purchaser first has to purchase the firearm from Franklin;
11 right?

12 A Yes.

13 Q So they'd have to pay the full price for the
14 firearm?

15 A Yes.

16 Q And then after completing the purchase, Franklin
17 Armory would deliver the firearm to the selected
18 California dealer; right?

19 A Yes.

20 Q And then prior to the delivery, Franklin would
21 then be required to obtain a verification number from the
22 damage to DOJ, via the internet, for the intended
23 delivery; right?

~~24 A That would be part of it, yes.~~

25 Q And it sounds like, again, that's a fairly simple

1 process to get that online verification?

2 A It slows thing down but it is part of working in
3 California.

4 Q Okay. And then what do you do with that
5 verification number? You provide that to the dealer with
6 the shipped firearm?

7 A Yes, sir.

8 Q And then once the California dealer receives the
9 firearm, then the purchaser has to show up physically at
10 the dealer to provide information to input into the online
11 system; is that right?

12 A I am not a dealer in the state of California but
13 I would assume so.

14 Q I mean, do they have to provide things like
15 driver's license, date of birth, and I guess there's a
16 series of questions -- for example, if they've had a
17 conviction, other things like that; right?

18 A I would believe so.

19 Q And then the dealer is going to transmit the
20 information to the DOJ, and you mentioned something about
21 penalty of perjury. And again, this is your
22 understanding. I know we'll get the legal objections from
23 Ms. Barvir before and after, but it would appear under
24 ~~California Code of Regulations Title 11, Section 4210,~~
25 Subdivision (a)6, this relates to how a dealer -- what a

1 seller -- sorry -- would that purchaser still be on the
2 hook for the cost of the purchase or would you refund
3 their money?

4 A We don't run into that situation, sir.

5 Q So does Franklin have a policy in regards to that
6 if that were to occur?

7 A There is a restocking fee if somebody bought
8 something online and it was in unused condition and
9 they sent it back, there would be a restocking fee of
10 15 percent.

11 Q Again, I don't want you to speculate. But if a
12 person is ineligible and had the dealer send it back to
13 you, they'd get their money back, minus the restocking
14 fee; is that right?

15 A If it was in unused condition, yes.

16 Q If you could -- I'm just going to shift gears
17 to the video portion of the proceeding here, if you
18 don't mind. And for some reason I'm just going to ask the
19 questions and I may not even have to resort to the video.
20 But the -- so the first video was -- so there's three
21 videos that were sent to you, hopefully. One was produced
22 by your attorney. That's the one on the list at 4334.

23 I know the little sharing component of the Zoom
24 ~~is not very good.~~ So let me just try to ask the questions
25 that kind of come up in the video. So this is at the

1 in the Second Amended Complaint. If a person is found
2 ineligible to receive a firearm, that person, the
3 purchaser, can't they appeal that decision, that
4 determination?

5 A That would be a great question for Anna or Jason,
6 but I'm not an expert in California law as it pertains to
7 transfers like that.

8 Q Okay. Now, when you discussed with the dealers
9 about the Title 1 and doing the deposits, did you tell
10 them not to try to process any transfer in the DES -- this
11 was just -- people were just putting deposits down. You
12 weren't going to ship the weapon; right? I mean, this was
13 just a --

14 A Not until we had a process to deliver it.

15 Q Okay. Let me ask you this -- couldn't you have
16 gone through the sale process with one or more individuals
17 or dealers and gotten the online -- online certification,
18 sent it to the dealer and have them process it, as many of
19 the dealers had told you historically they selected the
20 closest option -- meaning in this case, the closest option
21 would have been rifle -- and then just do it on your own
22 and then the DOJ would either process it or they wouldn't?

23 I mean, they'd either reject it or they wouldn't?

24 ~~Didn't you -- you felt that it was a legal~~
25 weapon; so what was to stop you and the dealer from

1 testing the situation in that manner?

2 MS. BARVIR: Objection. Calls for legal conclusions.
3 This is speculation as confusing with regard to why
4 "Rifle" was assumed to be the most close option.

5 BY MR. LAKE:

6 Q Did you contemplate taking that avenue?

7 A That's not an avenue that I'm allowed to take
8 from the standpoint of the dealers themselves have to make
9 that decision. And if they're intimidated by your
10 Department, they're going to hold off so that they can
11 maintain their livelihood. Would you risk your life or
12 livelihood that way?

13 Q But didn't you testify earlier that you didn't
14 communicate with any dealers about they had a problem with
15 the processing via the DES at all?

16 MS. BARVIR: Objection. That mischaracterizes the
17 testimony.

18 THE WITNESS: Do I continue?

19 MS. BARVIR: You may.

20 THE WITNESS: You're talking relating the -- or
21 equating the Mossberg Cruiser with Title 1? Is that how
22 you're posturing the question?

23 BY MR. LAKE: Well, no. I'm talking about with respect to
24 ~~the Title 1.~~

25 I think you testified you didn't have any particular

EXHIBIT B

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

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

FRANKLIN ARMORY, INC., and)
CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
)
Petitioners-Plaintiffs,)

vs.)

Case No.
20STCP01747

CALIFORNIA DEPARTMENT OF JUSTICE,)
XAVIER BECERRA, in his official)
capacity as Attorney General for)
the State of California, and DOES)
1-10,)
)
Respondents-Defendants.)

REMOTE DEPOSITION OF

BLAKE GRAHAM

Sacramento, California

Tuesday, March 26, 2024

Stenographically Reported by:
Jillian Kirchner, RMR, CRR
CSR No. 14557
LitiCourt Job No. 206294

1 firearm. That's my understanding of why we're here
2 today to talk about that item -- that firearm.

3 BY MR. BRADY:

4 Q. You've worked at the California Department of
5 Justice, correct?

6 A. Yes.

7 Q. Do you still work there?

8 A. No.

9 THE WITNESS: How do we switch back to -- so I
10 can see Sean's face?

11 MR. LAKE: Hold on. Bear with us.

12 THE WITNESS: Okay. There we go. Sorry about
13 that.

14 MR. BRADY: No problem.

15 BY MR. BRADY:

16 Q. And how long did you work for -- can we refer
17 to the California Department of Justice as the "DOJ,"
18 for the court reporter and us?

19 A. That would be great.

20 Q. Okay. So if I say "DOJ," you understand that
21 I'm referring to the California Department of Justice,
22 right?

23 A. I would understand that. Correct.

24 Q. How long did you work for the DOJ, like, the
25 number of years?

1 A. Approximately 23.

2 Q. Beginning what year?

3 A. 1999.

4 Q. And until what year?

5 A. December 30th of 2022.

6 Q. And what positions did you hold at the DOJ?

7 A. Initially, I was a special agent. And then a
8 number of years later, I promoted to special agent
9 supervisor, special agent in charge, and then assistant
10 director at the Bureau of Firearms.

11 Q. DOJ is made up of divisions, correct?

12 A. Correct.

13 Q. And there's a Division of Law Enforcement; is
14 that right?

15 A. Yes.

16 Q. What is the name of the position that is the
17 head of that division?

18 A. There's a chief of the Division of Law
19 Enforcement.

20 Q. And does the chief have a supervisor or
21 somebody who he or she reports to?

22 A. Yes.

23 Q. And who would that be?

24 A. It would probably be, by title, over the years,
25 the chief deputy attorney general, which has been held

1 the Division of Law Enforcement. I might actually say
2 "DLE" at some point, David Lincoln Edward, so if I slip
3 and use the "DLE" acronym, it's the Division of Law
4 Enforcement. That's what that's for.

5 Q. Understood. Thank you.

6 A. Yep.

7 Q. Were all the positions that you held in your
8 career at DOJ within the BOF?

9 A. No.

10 Q. What position was not within the BOF?

11 A. When I was first hired in November of '99, I
12 was slated to work in the Bureau of Narcotic
13 Enforcement. And that was in a bureau that no longer
14 exists. Around 2002, I was transferred over to the
15 Bureau of Firearms.

16 Q. And were you in the BOF ever since 2002 until
17 the end of your career in 2022?

18 A. Yes.

19 Q. Can you please describe your duties as a
20 special agent at the DOJ?

21 A. Criminal investigations, surveillance, arrests,
22 writing search warrants. I'm trying to think what else.
23 Those are just the general duties.

24 Q. And because you're a special agent, or you were
25 a special agent within the BOF, the Bureau of Firearms,

1 Q. Between what years? Do you recall?

2 A. It should be 2010 through 2019.

3 Q. So, then, you became the special agent
4 supervisor in charge in 2019?

5 A. Yeah, there were multiple special agents in
6 charge within the Bureau of Firearms. I became one of
7 them. And I was based in Sacramento.

8 Q. And what were your -- go ahead. I'm sorry.

9 A. I said, "I was based in Sacramento," but there
10 were others in other geographic areas.

11 Q. Got it. Can you please describe your duties as
12 a special agent supervisor in charge?

13 A. Sure. This is more of a managerial role where
14 you have additional staff. Multiple teams report to
15 you. And you may be involved in more personnel matters.
16 You're, you know, potentially concerned about budgetary
17 concerns, whereas the supervisors are not as much
18 involved in that. You're pretty much no longer in the
19 field as a special agent in charge. You're wearing a
20 suit, coming into the office five days a week. More of
21 an office job. It's a drastic change from a supervisor
22 role.

23 Q. Did you have a direct supervisor in your
24 position as a special agent supervisor in charge?

25 A. I had, probably, a few supervisors. Basically,

1 Q. Yes.

2 A. -- or what do you mean?

3 Q. Yes.

4 A. Yes. I would say the more traditional shotguns
5 that are semiautomatic or pump action. A little less
6 so, as far as break tops. We wouldn't, you know, shoot
7 those for a duty reason, but we would occasionally
8 encounter them and perhaps seize them during a criminal
9 investigation, something like that.

10 Q. Are you familiar with any firearms that would
11 not fall within the category of "handgun" or "rifle" or
12 "shotgun"?

13 MR. LAKE: Just object to the extent it calls
14 for a legal conclusion.

15 Go ahead.

16 A. I would say probably -- probably, like, a lower
17 receiver is kind of in a gray area in my mind about what
18 is it? It's a firearm, but it may not fall into those
19 three categories that you just suggested there.

20 BY MR. BRADY:

21 Q. And a lower receiver is not a completed
22 firearm; is that correct?

23 A. Yeah. Not in my mind. It's just something
24 that meets the definition of a "firearm" that ultimately
25 can be built into at least a couple of different types

1 of firearms.

2 Q. But a lower receiver cannot be discharged at --
3 alone, correct? It needs additional parts added?

4 A. That's the way I would categorize that type of
5 firearm.

6 Q. Are you familiar with any completed firearms,
7 functioning firearms, that do not -- that would not be
8 considered a handgun or a rifle or a shotgun?

9 MR. LAKE: Again, object to the extent it calls
10 for a legal conclusion.

11 Go ahead.

12 A. Perhaps a Browning 1919 that is, like, tripod
13 mounted, belt fed, something like that, that doesn't
14 have a stock on it probably fits in there. Perhaps a --
15 probably, like, a pistol grip shotgun. That would be
16 another weapon that's sort of in a gray area in terms of
17 traditional categories. Let me think. There's probably
18 one or two others, but those are the ones that pop up
19 right away.

20 BY MR. BRADY:

21 Q. Are you familiar with the National Firearms
22 Act?

23 A. More or less, yes. It's not a thing I've
24 studied recently, but I'm aware of it.

25 Q. Are you aware of a type of arm in the National

1 Q. So it's -- am I correct in understanding that
2 ATF will make determinations about whether a particular
3 firearm meets a particular definition under the law?

4 A. They did at some point. I don't know if they
5 still do.

6 Q. I think -- let me step back and clarify that
7 any of the questions I'm asking you are about your time
8 while you were working at DOJ. If I'm going to ask you
9 a question about the present, I will clarify that. So
10 let's just operate under the assumption that everything
11 I'm asking you is about -- is during your career. And
12 if I need to get more specific than that, I will
13 obviously get more specific than that.

14 Does that make sense?

15 A. It does make sense, and I'll try to answer with
16 that in mind.

17 Q. Thank you.

18 So does DOJ ever make determinations about
19 particular firearms and whether they meet a particular
20 definition under California law?

21 MR. LAKE: I'll just object. It's vague as to
22 the term "ever."

23 But go ahead, if you can.

24 A. Yeah. I can say that I was asked to make
25 assault weapon identification opinions on criminal

1 cases. And I did that, I don't know, 15 or more times
2 throughout the course of my career. I don't remember my
3 exact number, but it's probably more than 15 times.

4 BY MR. BRADY:

5 Q. And why were you asked to do that?

6 A. Because of my position within the bureau. I
7 was one of the more experienced people here in terms of
8 firearms identification.

9 Q. So you have -- would it be fair to say you have
10 specialized knowledge about weapons identification?

11 A. At least amongst the DOJ BOF staff, I did, at
12 the time.

13 Q. Have you ever been designated as an expert on
14 assault weapon identification?

15 A. Yes.

16 Q. Can you explain how many times?

17 A. I think I just said about 15 or more, roughly,
18 yeah.

19 Q. Okay. And who designated you as an expert in
20 those instances?

21 A. The judge that was running the trial,
22 essentially, during those cases.

23 Q. So you would consider yourself well versed in
24 the Assault Weapon Control Act?

25 A. Yes.

1 MR. LAKE: You didn't have the word "sale" in
2 that description. It was close, but --

3 BY MR. BRADY:-

4 Q. Dealer record of sale entry system?

5 A. Yeah. So the -- the DROS document, the dealer
6 record of sale document, is sort of created inside DES,
7 dealer entry system. I'm not sure if those are getting
8 kind of --

9 Q. So it's called the "dealer entry system"?

10 A. That's what I understand it to be.

11 Q. Okay. Can you describe what the -- and you
12 referred to the dealer entry system as "DES," correct?

13 A. That's the way I've always heard it talked
14 about.

15 Q. Okay. Can you describe what DES is?

16 A. Okay. So first off, I'm not an IT person, so I
17 will do my best.

18 So DES is a system by which the California
19 firearms dealers can transmit data to the bureau for
20 background check purposes, payment of the background
21 check. I'm trying to think what else would be -- there
22 may be some other things. But, again, this is not my
23 area of expertise. This is more of a program side.

24 The bureau is sort of split into two. There's
25 an enforcement side, that I was a part of, and then

1 there's the program side of the bureau that has, I don't
2 know, a couple hundred employees. And they handle most
3 of the background check analysis, all that type of
4 stuff. And they're more IT heavy than the agents are.

5 Q. You did enforcement of laws as to licensed
6 firearm dealers, correct, in your career at DOJ?

7 A. Yeah. We would investigate the dealers
8 occasionally, when there was an issue.

9 Q. And is it your understanding that firearm
10 dealers -- licensed firearm dealers -- "FFLs," as they
11 call them -- are required to use the DES in making
12 firearm transactions?

13 MR. LAKE: I'm just going to object. It's
14 vague as to time. It's also overbroad and vague as to
15 the subject matter.

16 Go ahead, if you can.

17 A. Since I've been at the department, there's been
18 various changes to DES. But it -- towards the latter
19 half of my career, my understanding, DES has been the
20 one system that they're supposed to use. I know
21 probably earlier in my career, there may have still been
22 paper forms that were being generated that the gun
23 stores mailed in, et cetera. So just know that there
24 was sort of an evolution of the process while I was
25 here.

1 BY MR. BRADY:

2 Q. And so you were discussing with Mr. Jacobson
3 what? Whether his product could be included on the
4 California roster of handguns?

5 A. Yeah. Some of it was about the -- and this is
6 going way back, but some of it dealt with if his product
7 was a single shot. Some of the discussions, I think,
8 had to deal with a specific magazine that he had
9 developed that would probably -- and way -- a way the
10 magazine was -- call it "retained" inside the magazine
11 well. So we had, I think, some discussions over that.

12 Q. Have you heard of the Franklin Armory Title 1
13 firearm?

14 A. Yes.

15 Q. Can you explain what your understanding of that
16 firearm is?

17 A. Sure. My understanding is that -- and again,
18 I've not seen one, that I know of, in person. But my
19 understanding is that it's an AR-15-style firearm, but
20 it does not have a traditional stock attached to it.
21 More of like a pistol buffer tube but a rifle barrel
22 length. So maybe, like, a -- I'll call it a "hybrid,"
23 if you will.

24 Q. Could you explain what you mean by "hybrid"?

25 MR. LAKE: Mr. Brady, if I could just inject.

1 Just a clarification. At Mr. Jacobson's depositions, he
2 indicated, as well as Ms. Barvir, that there's no claims
3 for damages being made related to what was later on
4 developed as the Title 1 rimfire version. So just --
5 can we clarify, just for our purposes, we're only
6 talking about now, the Title 1 centerfire?

7 MR. BRADY: Yes.

8 MR. LAKE: Okay. Thank you.

9 BY MR. BRADY:

10 Q. So anytime I'm referring to the "Franklin
11 Armory Title 1 firearm," I am referring to the
12 centerfire version of that firearm. Is that -- does
13 that make sense?

14 A. Sure.

15 Q. Okay. So you said it's more of a hybrid. Can
16 you explain what you mean by "hybrid"? Hybrid of what?

17 A. Sure. So the AR-15 -- earlier, I spoke about a
18 lower receiver having the potential to being built into
19 a few different types of firearms. Traditionally, you
20 can build those into rifles. You can build them into
21 pistols. Now, the legality of both of those is that
22 question, depending on how the build goes. There are --
23 the legal way in which to do that over the years has
24 changed. So I would say that the -- I've never seen an
25 AR-15 lower being built into a shotgun. So I'm going to

1 kind of exclude that from any future conversation unless
2 I specifically call that up. But I'm going to say that
3 a -- the hybrid that I'm-speaking of now, in terms of a
4 Title 1 centerfire would be somewhere in between a rifle
5 and a pistol. Again, I've not seen one because I've not
6 hold -- held one, necessarily. But it -- because it
7 lacks a stock -- or visually lacks a stock -- it's got a
8 pistol buffer, or what looks like a pistol buffer on
9 there, and you're not going to be able to move -- I
10 guess, your -- your body is going to have to adapt to
11 that depending on if you're going to try to
12 traditionally shoulder the weapon. You may -- it may
13 be -- it may take an adjustment on how to -- how to fire
14 that if you're used to shooting either a rifle or a
15 pistol. Your body's going to have to kind of figure how
16 to use used to that weapon.

17 Q. So based on your understanding of the
18 definition -- California's definition of "handgun" at
19 the time that you were working at DOJ, would the Title 1
20 meet California's definition of "handgun"?

21 MR. LAKE: Object to the extent it calls for a
22 legal conclusion.

23 Go ahead.

24 A. As I recall, handgun -- handguns had,
25 traditionally, barrels that are less than 16 inches.

1 Q. So I believe you said earlier, that you are
2 familiar with the drop-down list of firearm types in
3 DES; is that correct?

4 A. Yeah. More or less, I'm familiar with
5 available drop-downs over the years.

6 Q. And do you agree that at the time this letter
7 was written on October 24, 2019, if you look at page 3
8 of Exhibit 26, at the very top, there's an image. It
9 says "Gun Type."

10 Do you see that?

11 A. I do see it.

12 Q. Do you agree that at the time of this letter,
13 October 24th, 2019, that the DES drop-down list for gun
14 types did not include an option for long guns that were
15 neither rifles nor shotguns?

16 A. That seems correct to me.

17 Q. Is that your recollection, your independent
18 recollection?

19 A. Yes.

20 Q. Were you made aware that there was no option
21 for a non-rifle, non-shotgun, or non-combination long
22 gun on DES at that time?

23 MR. LAKE: Well, I'm going to interpose an
24 objection. It's overbroad. Vague. Vague as to time.
25 And assumes facts not in evidence about usage of the DES

1 historically.

2 Go ahead, if you can.

3 A. Mr. Brady, are you asking me if I suddenly
4 became aware of the lack of a fourth or fifth option
5 before or around October 24th, 2019, because of this
6 letter?

7 BY MR. BRADY:

8 Q. Correct.

9 A. Okay. I feel like -- I don't remember what the
10 issue was, but I feel like I had some knowledge about, I
11 don't know, gun types, like lower receivers, which I
12 spoke of earlier. I think, at some point, they were
13 DROS'd -- D-R-O-S, apostrophe, D, for the court
14 reporter. I think those all went into the system as
15 rifles up to a certain point. And then now, maybe they
16 go in as a separate type of transaction. I don't
17 remember if that was ultimately cleaned up in some way.
18 But I know that there was an issue with lowers. And I
19 don't know if it's tied to, like, a cleanup associated
20 with an ultimate change that was done or what. But it
21 could have been around this time.

22 Q. Okay. On page 3 of Exhibit 26, the second
23 sentence, which appears like a second paragraph, it says
24 "This defect could have been prevented by including
25 within the list the various types of other long guns, or

1 simply including a single catch-all within the list such
2 as 'Other'."

3 Do you agree with that statement?

4 MR. LAKE: I'm going to object because the term
5 "defect" is argumentative. It stands for itself in the
6 document.

7 But go ahead, if you can.

8 A. Let me back up just so I can read the bottom of
9 page 2. So the DES -- I understand the context here.

10 BY MR. BRADY:

11 Q. Let me step back --

12 A. Okay.

13 Q. -- and make it clear, because I think it's out
14 of context when I -- so the sentence before that says
15 "This list fails to include options for the many long
16 guns that are neither rifles nor shotguns."

17 Do you agree with that statement?

18 MR. LAKE: I'm going to object to that. Asked
19 and answered. And, again, vague and overbroad as to
20 time. He already just answered about that prior to the
21 statutory change.

22 A. Yes. I would say my lower receiver commentary
23 that I provided sort of ties into what you just said as
24 far as your question. Probably, the Browning 1919
25 pistol grip -- what, up to that point, had been sold as

1 pistol grip shotguns, probably could be -- could fall
2 into what's an "other" now.

3 BY MR. BRADY:

4 Q: Do you agree with the statement in the letter
5 that the inclusion of a category "other" would have
6 allowed DES to process long guns that are neither rifles
7 nor shotguns?

8 MR. LAKE: Well, I'm going to object now. It's
9 asked and answered twice. He just said that they were
10 processed, essentially, picking "rifle" for lowers, or
11 for a pistol grip shotgun, they'd pick "shotgun." I
12 mean, they'd pick the closer one -- closest one that
13 applied. So I think he's already answered that
14 question.

15 BY MR. BRADY:

16 Q. Mr. Graham, is your understanding that a dealer
17 submits information on DES under penalty of perjury?

18 MR. LAKE: Well, I'm going to object. That
19 calls for a legal conclusion. It's also a misstatement.
20 It's not the -- that's not the law.

21 BY MR. BRADY:

22 Q. Is it -- is it your understanding that it is a
23 crime for a dealer to provide incorrect information --
24 or I'm sorry, it can be a criminal act for a dealer to
25 provide incorrect information on a DES?

1 MR. LAKE: Object that it's a -- calls for a
2 legal conclusion and speculation.

3 Go ahead, if you can.

4 THE WITNESS: Sure.

5 A. So on the DROS form, there's a particular penal
6 code called out about omissions or misstatements,
7 something along those lines. I don't remember what the
8 code section is. It's in the 2000 series. And it
9 applies to purchasers and/or dealers. I don't remember
10 the code, though. It's -- it might be 26950, but I
11 could be wrong. Or 262- -- I don't know. It's been too
12 long.

13 Q. With the qualification that you said, you would
14 need to see the Title 1 in person and hold it in order
15 to make a final determination, I believe you testified
16 previously, that you believe, without having seen it,
17 that the Title 1 is not a rifle, correct?

18 A. Again, I haven't handled one. But I think,
19 because it lacks a stock, it's not going to fall under
20 the traditional rifle category.

21 MR. LAKE: And just to clarify, your question
22 is whether it's a rifle under the statutory definition?

23 MR. BRADY: Correct.

24 MR. LAKE: Okay.

25

1 A. Well, it could be the deputy attorney general,
2 Rob Wilson. It could be other members of the Bureau of
3 Firearms that are technically, you know, the author, the
4 ones that create the document and send it into the
5 system. I have no idea how to do that. So I certainly
6 wouldn't have pushed the actual document into the
7 system. I would have no clue how to do that. So it
8 probably was a group effort.

9 Q. Do you recall ever being involved in the
10 drafting of a bulletin concerning the sale of firearms
11 that do not meet the statutory definition of a "rifle,"
12 "shotgun," or "pistol"?

13 A. It sounds like another way of saying "other."
14 So --

15 Q. Correct. What is your -- well, let me ask you
16 this: What is your understanding of the term "other"?

17 A. Well, to me, it's a group of weapons that
18 don't -- that are out there in, call it, the
19 "population" of guns, but they're not maybe cleanly
20 falling into one of the more traditional three
21 categories of "rifle," "pistol," "shotgun," you know, so
22 you -- I think I brought them up before. It could be a
23 lower receiver. It could be something like a Title 1.
24 It could be pistol grip shotgun or some other -- you
25 know, a Browning 1919 belt-fed or something like that.

EXHIBIT C

In The Matter Of:

*Franklin Armory, Inc. v.
California Department of Justice, et al.*

*Cheryle Massaro-Florez
December 28, 2021*

*Sisters-In-Law, Inc.
Certified Court Reporters and Videographers
SistersInLawCourtReporters@gmail.com
17141 Pleasant Circle
Huntington Beach, CA 92649*

Original File 1133T.txt

Min-U-Script® with Word Index

Cheryle Massaro-Florez - December 28, 2021

10:13 1 BY MR. DAVIS:

2 Q Anyone other than counsel. Correct, anyone
3 else other than counsel.

4 A Yes.

10:13 5 Q Who else other than counsel?

6 A My -- my director of the application
7 development bureau.

8 Q And who's that?

9 A Rodney Smith.

10:13 10 Q What did you discuss with him?

11 A The declaration and agreeing to be a
12 representative for the Department of Justice on this
13 case.

14 Q Did they ask you to be a representative for
10:13 15 the Department of Justice in this case?

16 A Yes.

17 Q What specifically did they ask you to
18 represent?

19 A Represent --

10:14 20 MR. BARNOUW: I'm going to object because
21 this is getting into areas where there's going to be
22 attorney-client communications that are being passed
23 through from the attorneys to the witness.

24 So I don't know -- I don't know how you're
10:14 25 going to take out what's attorney-client and what's

Cheryle Massaro-Florez - December 28, 2021

10:14 1 not until I talk with her about what her answer is
2 going to be. Do you want to take a moment to do that,
3 or do you want to move on?

4 MR. DAVIS: If you want, we can hold that off
10:14 5 towards the break and then come back to it after the
6 break. I'll just highlight it and then we'll come
7 back.

8 MR. BARNOUW: Okay.

9 MR. DAVIS: Great.

10:14 10 BY MR. DAVIS:

11 Q So we're here today because Franklin Armory
12 and the California Rifle & Pistol Association claim
13 that the DOJ prevented the lawful transfer of certain
14 types of firearms, and you provided a declaration in
10:15 15 support of the DOJ.

16 And what we're trying to do is to make the
17 story of what happened as clear as possible and to
18 ascertain some details about your involvement. So the
19 aim of the questions I'll ask and the spirit in which
10:15 20 I'm asking them -- so that's the aim of the questions
21 that I'm going to be asking.

22 Does that make sense?

23 A Yes.

24 Q Do you have any more questions before we go
10:15 25 forward?

Cheryle Massaro-Florez - December 28, 2021

10:15 1 A No.

2 MR. BARNOUW: I'd like to make a statement --
3 sorry, Jason.

4 Again, the scope of the deposition today is
10:15 5 limited. We're here in response to the request for
6 discovery to support an opposition to our motion to
7 dismiss. That's what the declaration was for and as
8 well as the deposition today. So it's limited to
9 that, to what's relevant to the motion to dismiss?

10:15 10 MR. DAVIS: That is correct.

11 BY MR. DAVIS:

12 Q So how long have you worked for the DOJ?

13 A Since 1999.

14 Q So 21, 22 years?

10:16 15 A Yes, 22 years.

16 Q What is your current job title?

17 A Information Technology Supervisor II.

18 Q And what do you do under that title?

19 A I -- I support the firearms software
10:16 20 development unit and I have 12 staff that I mentor and
21 provide assignments to.

22 Q That was the firearm software development
23 unit?

24 A Yes.

10:16 25 Q And how many total are in that unit?

Cheryle Massaro-Florez - December 28, 2021

10:17 1 A Twelve.

2 Q So you are the top in that unit?

3 A Yes.

4 Q Okay. And what does that unit do?

10:17 5 A We support, maintain and develop the firearms
6 applications for the State of California.

7 Q Is that the DES? And we'll talk about that
8 later, but is that what you're referring to?

9 A Yes, that's an application.

10:17 10 Q So that's one of many things that fall within
11 your supervisory purview?

12 A Yes.

13 Q Have you ever had any roles within the
14 Department of Justice --

10:17 15 A Yes.

16 Q -- over those years?

17 A Yes.

18 Q What other roles have you had?

19 A Going downwards --

10:17 20 Q Yes.

21 A Okay. An Information Technology
22 Specialist I, a senior information systems analyst, an
23 associate information systems analyst. There's a
24 pattern. I was a staff services analyst and executive
10:18 25 secretary.

Cheryle Massaro-Florez - December 28, 2021

10:29 1 Q Those are the jobs we talked about
2 previously?

3 A Yes.

4 Q And I'm assuming those are the same things
10:29 5 that you did for the division of law enforcement?

6 A Yes.

7 Q For both bureaus?

8 A No.

9 Q What did you do for the Bureau of Forensic
10:29 10 Service?

11 A I was a student assistant and was -- worked
12 in latent prints.

13 Q Okay. What did you do under the Bureau of
14 Firearms?

10:29 15 A I was there for quite a while, so it went
16 from time sheets to becoming the director or now chief
17 secretary to supporting the firearms applications on
18 the client side to becoming the subject matter expert
19 on the applications.

10:30 20 Q Okay. And you are the subject matter expert
21 on the applications currently?

22 A Yes.

23 Q Jumping back to your current employment --
24 never mind. Strike that.

10:30 25 Your declaration states that you are

Cheryle Massaro-Florez - December 28, 2021

10:30 1 currently employed with the firearms software
2 development unit.

3 That's still correct, correct?

4 A Yes.

10:30 5 Q What is the firearm software development
6 unit?

7 A It's a unit within the Application
8 Development Bureau that its focus is to maintain
9 support and develop firearms applications. We are the
10:31 10 main support for the Bureau of Firearms.

11 Q Okay. What does that mean?

12 A That --

13 MR. BARNOUW: I'm going to object as vague.

14 BY MR. DAVIS:

10:31 15 Q When you say you support them, in what ways
16 do you support them?

17 A We -- we develop and produce products of what
18 they request for legally required to be developed with
19 software applications.

10:31 20 Q Okay. How long have you been within the
21 firearms software unit, development unit?

22 A Seven years.

23 Q In your declaration, you state that you
24 oversaw a project that was overtaken by the firearm
10:31 25 software development unit to modify the dealer record

Cheryle Massaro-Florez - December 28, 2021

10:32 1 of sale entry system and various other databases.

2 Is that correct?

3 A Yes.

4 Q What, if any, were your -- strike that.

10:32 5 What does it mean when it says you oversaw
6 the project?

7 A I was the project lead and oversaw to make
8 sure tasks were completed within the time frame in
9 which they were required to be completed.

10:32 10 Q What were the specific tasks that needed to
11 be completed for this project?

12 A Analysis, development, testing.

13 Q What did you analyze?

14 MR. BARNOUW: I'm going to object as vague.

10:33 15 BY MR. DAVIS:

16 Q You stated that you analyzed something as a
17 part of this project, correct?

18 A I oversaw the analysis.

19 Q Okay. What specifically was the analysis
10:33 20 analyzing that you oversaw?

21 A The development of the application, what
22 needed to be changed, and the impact to other
23 applications for making that change.

24 Q And what was the specific change that you
10:33 25 were overseeing?

Cheryle Massaro-Florez - December 28, 2021

10:33 1 A Changing the -- well, we call it DES, but the
2 DROS entry record -- entry system, enhancing it to
3 include a new firearms type of gun type, other.

4 Q And that's the only change that was made to
10:34 5 the DES as part of this project?

6 A Yes.

7 Q What, if any, were your responsibilities with
8 regard to designing this change in the DES?

9 A I oversaw the design and led meetings for
10:34 10 design meetings.

11 Q What, if any, are your responsibilities with
12 regard to maintaining the DES generally outside of the
13 project?

14 A Production support and any service requests
10:34 15 or enhancement requests.

16 Q What are production reports?

17 A Production support is when the Bureau of
18 Firearms contacts us either requesting stats or a
19 question on how the application is functioning.

10:35 20 Q And what were the other things that you do
21 besides production support?

22 A Service requests, enhancement requests.

23 Those are --

24 Q What's a service request?

10:35 25 A Those will be requests to make changes to the

Cheryle Massaro-Florez - December 28, 2021

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

6 Q And what databases did this project include?

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

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

13 A No.

14 Q When were they deployed?

10:39 15 A October 1st, 2021.

16 Q October 1st?

17 A Yes.

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

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

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

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

Cheryle Massaro-Florez - December 28, 2021

10:39 1 Q July of?

2 A 2021.

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

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

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

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

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

22 (Simultaneous speakers.)

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

25 ///

Cheryle Massaro-Florez - December 28, 2021

10:41 1 BY MR. DAVIS:

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

4 A Yes.

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

7 A Yes.

8 Q Who?

9 A My Information Technology Manager III.

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

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

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

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

17 BY MR. DAVIS:

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

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

22 Go ahead.

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

Cheryle Massaro-Florez - December 28, 2021

10:42 1 the work effort and come up with certain dates we
2 could potentially get this change out.

3 BY MR. DAVIS:

4 Q What's that person's name?

10:43 5 A Debbie Morisawa.

6 Q How do you spell that last name?

7 A M-o-r -- when you put me on the spot --
8 M-o-r-i-s-a-w-a.

9 Q And you say copartner. What unit is she
10:43 10 within?

11 A She's in the firearms application support
12 unit.

13 Q You said she was assigned that before you
14 were assigned yours, or was it a simultaneous
10:43 15 assignment?

16 A We were assigned it together.

17 Sorry. That's my dog. He just opened the
18 door. Okay.

19 Q How many persons worked on this project?

10:44 20 A I need a moment. Jeez, I won't be able to
21 give you a full number. My entire staff worked on it.
22 That's at least 12, and a few of Debbie's staff worked
23 on it as well. And then there's the Bureau of
24 Firearms, which I can't count.

10:44 25 Q Next question was, can you state the names

Cheryle Massaro-Florez - December 28, 2021

11:19 1 of claim like that. Where have you seen -- what would
2 lead you to believe we would make a claim like that?

3 MR. DAVIS: Conversations with you and
4 conversations with Anna about her conversations with
11:19 5 you, that you have denied the fact that you could not
6 proceed with the DES. I don't --

7 If you're not denying that --

8 MR. BARNOUW: If you're referencing discovery
9 responses -- I don't understand what you're saying,
11:20 10 and I don't --

11 MR. DAVIS: I'm trying to get an
12 understanding --

13 MR. BARNOUW: I've never been aware of a
14 distinction between -- I've never been aware of anyone
11:20 15 making a distinction between information that is --
16 that is provided to the DOJ when the dealer submits
17 versus when the dealer just does something and you're
18 saying that dealer doesn't click "submit" and abandons
19 the transaction or something?

11:20 20 MR. DAVIS: Yes, is that information that's
21 been abandoned before submitting it to the DOJ, has
22 that information been transferred to the DOJ prior
23 to --

24 MR. BARNOUW: No one has -- I've never made
11:20 25 an issue of that. No one has made an issue of that,

Cheryle Massaro-Florez - December 28, 2021

11:20 1 to my knowledge. If it's something that has been
2 misinterpreted, we can discuss it. But this doesn't
3 seem to be what Ms. Massaro-Florez is here about, so
4 if it's other discovery responses that you're
11:21 5 concerned about, we can talk about that. But this is
6 not part of this deposition. So I'll object to it and
7 instruct her not to answer.

8 BY MR. DAVIS:

9 Q Can a dealer submit their form anytime via
11:21 10 the DES, or must the form be complete before
11 submission?

12 A It must be complete.

13 Q How does the system prevent incomplete forms
14 from being submitted?

11:21 15 A We have system messages prompting the user
16 what fields are missing.

17 Q Okay. So again, if a required field is not
18 accurately completed, the dealer has no method of
19 submitting the information to the DES or through the
11:22 20 DES, correct?

21 MR. BARNOUW: Can you read that question
22 back, please?

23 BY MR. DAVIS:

24 Q So if a required field cannot be accurately
11:22 25 completed, the dealer has no method of submitting the

Cheryle Massaro-Florez - December 28, 2021

11:22 1 information to the DES database via the DES, correct?

2 MR. BARNOUW: I'm going to object. That's
3 vague, especially as to "accurately completed."

4 MR. DAVIS: Complete, period.

11:22 5 MR. BARNOUW: Well, ask your question again.
6 But again, this is going beyond the scope of what
7 she's here for. This feels like you're following up
8 on general discovery that you have, and we actually
9 provided you responses. And this can all be worked
10 out with -- outside of this deposition.

11 MR. DAVIS: I'll move on.

12 MR. BARNOUW: Okay.

13 BY MR. DAVIS:

14 Q In paragraph 7, you stated that not only the
11:23 15 coding of the DES itself, but also the coding of
16 several applications and databases involved
17 modifications.

18 And we went through those previously, so I'm
19 going to ask you specifically what changes were made.

11:23 20 But first was the DES, correct?

21 A Yes.

22 Q And what specifically was modified?

23 A The firearm submission flow and the
24 acquisition flow.

11:23 25 Q What does that mean?

Cheryle Massaro-Florez - December 28, 2021

11:23 1 A The acquisition flow is pawn, consignment and
2 buy. We needed to add a new gun type of "other." And
3 then the firearm submission is the DROS form. We
4 needed to add a new gun type of "other."

11:23 5 Q So the same concept just for two different
6 forms?

7 A Yes.

8 Q Okay. How was this modified specifically?
9 Is it a complicated process, or is it the adding of a
11:24 10 field to the drop-down list?

11 A It's complicated, because there's validations
12 within the application on knowing how it should behave
13 based on what gun type you select.

14 Q What does that mean?

11:24 15 A It means that if you select a specific gun
16 type, we are expecting either a certain barrel length
17 to be entered. We will validate if you're able to
18 purchase more than one of those gun types
19 simultaneously. Those type of --

11:24 20 Q Are those changes within the DES or changes
21 within the other databases that need to be made or
22 other applications?

23 A Changes in DES and in other applications.

24 Q Okay. Right now I'm just referring to what
11:25 25 specific changes within the DES. We'll get to the

Cheryle Massaro-Florez - December 28, 2021

11:25 1 other one. What specific changes within the DES
2 needed to be made?

3 A What I stated, the acquisition flow and the
4 DROS submission flow.

11:25 5 Q And tell me about the acquisition flow.

6 A Buy, consignment and pawn needed an option to
7 be able to select gun type of "other."

8 Q And the other options that needed to be
9 changed?

11:25 10 A Was the DROS submission flow.

11 Q What needed to be changed within the DROS
12 submission flow?

13 A We needed to -- well, with both, we needed to
14 change the validations, we had age validations, we
11:25 15 have gun type validations, and then also we did need
16 to add another gun type of "other" to a drop-down.

17 Q So the age validation, what does that do?

18 A We validate based on your age, what type of
19 gun you can purchase and if you have an exception.

11:26 20 Q And then what was the other validation that
21 you said needed to be corrected?

22 A Hold on. Let me remember. I talked about
23 age and I talked about -- oh, multiple gun purchases.
24 That's another validation.

11:26 25 Q Now, these validations, they already existed,

Cheryle Massaro-Florez - December 28, 2021

11:26 1 correct?

2 A Yes.

3 Q So you didn't have to rewrite the whole
4 validation, correct?

11:26 5 A Correct.

6 Q You just had to tie it into the change of gun
7 type, the new gun type, correct?

8 A Yes.

9 Q What specifically needed to be done to tie
11:26 10 those in?

11 A We had to rewrite code.

12 Q How much code?

13 MR. BARNOUW: I'm going to object. It's
14 vague, and also getting into areas where I'm concerned
11:27 15 about confidential information related to the DOJ's
16 operation of these systems.

17 BY MR. DAVIS:

18 Q How long would it take to rewrite that code?
19 How long did it take to rewrite that code?

11:27 20 A Yes. We gave -- which is a document you
21 receive -- we gave development time I believe three
22 weeks.

23 Q Okay. That's development time to actually,
24 you know, do it, not the actual time spent on it,
11:27 25 correct?

Cheryle Massaro-Florez - December 28, 2021

11:27 1 So, for example, if I tell somebody I need
2 something within two weeks, it may take them ten
3 minutes to do it, but they have two weeks to get it
4 back to me.

11:28 5 So is that development time the time to get
6 everything done, or is that the actual time estimated
7 to do the work?

8 A It was the estimated time to do the work.

9 Q So it takes two weeks of time. When you say
11:28 10 two weeks, it took two weeks of time of someone
11 sitting down and recoding to complete that task?

12 A Yes.

13 Q Tell me about the consolidated firearms
14 gateway. What changes needed -- needed to be made on
11:28 15 that?

16 A That's our database that is -- houses our
17 other firearms applications. So that database needed
18 to be enhanced to accept the gun type "other" as a gun
19 type within our database tables.

11:28 20 Q And was there anything else other than adding
21 the "other" to it that needed to be updated?

22 A Not for the database, no.

23 Q The gateway?

24 A Oh, the gateway. I apologize. I'm sorry.

11:29 25 The gateway, yes. It's the -- that's our communicator

Cheryle Massaro-Florez - December 28, 2021

11:29 1 between the DES and the internal DROS system and the
2 AFS system. So there was coding changes that needed
3 to be done as well.

4 Q What coding changes needed to be done?

11:29 5 A Validation check.

6 Q How many?

7 A Oh, I'm sorry. Did you ask me a question?

8 Q Yes, I'm sorry. How many validation checks?

9 A I don't know.

11:29 10 Q Do you know which ones were checked or
11 changed?

12 A No.

13 Q Do you know how long it took?

14 A No.

11:30 15 Q Do you know who actually made the changes?

16 A Yes.

17 Q Who?

18 MR. BARNOUW: I'm going to object that we're
19 concerned about having an individual employee's name
11:30 20 publicized, so I'm going to instruct her not to
21 answer. I don't understand how this is -- how this is
22 relevant.

23 MR. DAVIS: I'm trying to understand --

24 MR. BARNOUW: Well, I mean, what is your
11:30 25 contention about the project and how having completed

Cheryle Massaro-Florez - December 28, 2021

11:34 1 A Not long. A couple days.

2 Q Do you know when that process was started and
3 when it ended?

4 A Not without that document in front of me, no.

11:35 5 Q We'll get to it shortly. Okay.

6 What's the electronic person information
7 update form?

8 A It's another application citizens can submit
9 if they want to update their personal information on a
10 gun record we have in AFS.

11 Q And what changes were made to that?

12 A We had to add the gun type of "other" and add
13 some validations.

14 Q What validations?

11:35 15 A I don't know.

16 Q Were there a lot of validations? Some? Do
17 you have an estimate of how many?

18 A No.

19 Q Would they be the same ones that were made to
11:36 20 the DES?

21 A Yes. It's so that the end user can submit
22 the form and provide them educational information if
23 they didn't enter something correctly for them to
24 correct it. Those type of validations.

11:36 25 Q You have to provide some additional

Cheryle Massaro-Florez - December 28, 2021

11:36 1 educational information for the personal information
2 update form?

3 A Yes.

4 Q What kind of educational information did you
11:36 5 provide?

6 A Requiring if you select a gun type of
7 "other," that there are other certain mandatory fields
8 that were still required.

9 Q Like what?

11:36 10 A Such as category, barrel length,
11 measurements, color.

12 Q Those are the same things that are applicable
13 to any firearm, though, correct?

14 A Yes.

11:36 15 Q So there was no -- you didn't have to add any
16 new fields to the database, correct?

17 A Correct.

18 Q Okay. The California firearms application
19 reporting system, also known CFARS, was referenced in
11:37 20 your declaration as one of the systems that needed to
21 be changed.

22 What was changed on that?

23 A The CFARS is the application that houses the
24 law enforcement gun release and that personal
11:37 25 information update form.

Cheryle Massaro-Florez - December 28, 2021

11:37 1 Q So what did you have to change with regard to
2 that? If you changed the forms themselves, what did
3 CFARS have to change?

4 A Well, those forms are part of the CFARS
11:37 5 application. We had to change the application code
6 for those forms.

7 Q So when you refer to the applications above
8 that we previously discussed, those fall within the
9 changes that needed to be made to CFARS?

11:37 10 A Yes.

11 Q Any other changes to CFARS other than what
12 we've already discussed?

13 A No.

14 Q As part of this project, was time spent on
11:38 15 the changes tracked?

16 MR. BARNOUW: I'm sorry. Could you repeat
17 that?

18 BY MR. DAVIS:

19 Q As part of this project, was time spent on
11:38 20 the changes tracked?

21 MR. BARNOUW: I'm sorry. I don't understand.

22 BY MR. DAVIS:

23 Q By way of example, certain projects will tell
24 you it takes this many hours to complete.

11:38 25 Do you know how many hours -- or were the

Cheryle Massaro-Florez - December 28, 2021

11:38 1 hours to complete this project tracked?

2 A Okay. Let me try to answer.

3 MR. BARNOUW: You can answer.

4 THE WITNESS: We didn't track it by hour. We
11:39 5 tracked it by days.

6 BY MR. DAVIS:

7 Q By days. Okay. And do you know how many
8 days were spent on this project?

9 A Not the exact number. We had a time frame
11:39 10 from July 1st to October 1st.

11 Q That's the general time to complete?

12 A Yes.

13 Q Do you know how many were actually spent on
14 this specific project?

11:39 15 A No, not off the top of my head.

16 Q And during that period, I'm assuming -- and
17 you can correct me if -- tell me if this is correct.
18 All the other people within the unit had other jobs
19 and other tasks that they were doing. They weren't
11:39 20 putting 100 percent of their time and effort on this
21 one change, correct?

22 A Yes, correct.

23 Q Do you have -- can you estimate how much time
24 was spent by your unit on this through that period?
11:40 25 Like 20 percent of the time during that period was

Cheryle Massaro-Florez - December 28, 2021

12:19 1 assault weapon related and the other 80 percent was
2 related to general firearms or whatever numbers you
3 can accurately state or estimate?

4 MR. BARNOUW: Can you read the question back?
12:20 5 I'm sorry. Can you read the question back?

6 (Record read.)

7 MR. BARNOUW: I think I'm going to object. I
8 think it's a vague question. I'm not sure what --

9 MR. DAVIS: Let me try to rephrase it.

12:21 10 BY MR. DAVIS:

11 Q What I'm trying to find out or ask in this
12 question is, a lot of changes needed to be done as a
13 result of the addition of others. Some of those
14 changes applied solely to assault weapon databases and
12:21 15 applications, and some of them applied to the general
16 firearm applications and databases.

17 Time-wise, a certain amount of time was spent
18 on one database and application for assault weapons,
19 and then a certain amount of time was spent on the
12:21 20 general firearms.

21 Could you estimate percentage-wise what went
22 with what?

23 A It's a hard answer because a lot of it had to
24 be done together, so...

12:22 25 Q I'm referring to the project as a whole, not

Cheryle Massaro-Florez - December 28, 2021

12:22 1 just the items that are identified in this document.

2 A Right. Project as a whole?

3 Q Yes.

4 A It took -- it did take more time to -- for
12:22 5 the assault weapon registration form because it didn't
6 exist. DES existed.

7 Q Do you have an estimate as far as percentages
8 can go?

9 MR. BARNOUW: I'm sorry. You're basing it on
12:22 10 time spent?

11 MR. DAVIS: Time spent, correct.

12 MR. BARNOUW: On the overall project or by
13 developers or what?

14 MR. DAVIS: Overall project.

12:22 15 MR. BARNOUW: I'm going to object. It's a
16 vague question.

17 You can answer if you can estimate.

18 THE WITNESS: Well, it was work done in
19 parallel. So the time started beginning of July for
12:23 20 both and ended in October at the same time.

21 BY MR. DAVIS:

22 Q Can you answer the question?

23 A I'm not sure if I -- what my answer would be
24 is correct, so no.

12:23 25 Q Okay. Turn to the next page, which I don't

Cheryle Massaro-Florez - December 28, 2021

12:23 1 know if I've updated it on yours, but let me do that.

2 A We can see it, yes.

3 Q Okay. Good. The first red bullet point
4 refers to the DES, CFARS, DROS apps, AWR internal
12:23 5 regression.

6 What is this referring to?

7 A Yes. Anytime we make a significant change to
8 an application, the whole entire application needs to
9 be retested. And so we call it regression testing.

12:24 10 Q And what's involved in that testing?

11 A Every functional flow of that application has
12 to be retested, positive and negative.

13 Q What does positive and negative mean in that
14 context?

12:24 15 A Meaning all validations that should allow a
16 process to flow needs to flow, and any validation
17 that's supposed to stop a flow needs to stop a flow.

18 Q Okay. What does the next bullet point refer
19 to?

12:24 20 A That's functional system integration testing
21 and regression testing. That was a task for a
22 different team.

23 Q So that was assigned to your sister team?

24 A That is -- that was another -- that was for
12:24 25 a -- specifically for the assault weapon, the other

Cheryle Massaro-Florez - December 28, 2021

12:25 1 assault weapon registration form that you can access
2 online. It's a different unit within our bureau.

3 Q Was that still related to the other aspect,
4 the other project?

12:25 5 A Yes, for other assault weapon.

6 Q Other assault weapon. Okay.

7 A Yes.

8 Q The first blue line, what is that referring
9 to?

12:25 10 A So it's another phase change. This is user
11 acceptance testing. This is when the Bureau of
12 Firearms tests the system and agrees that we -- we
13 implemented the necessary -- based on the
14 requirements, the necessary changes and that the
12:25 15 system works and flows as expected. It's a final
16 sign-off.

17 Q Okay. And UAT bugs and fixes, what is that
18 referring to?

19 A During user acceptance testing, if they find
12:25 20 any defects in the code that we had missed by testing,
21 we have a time to fix those bugs and retest.

22 Q Would those defects and bugs be identified in
23 the Jira logs?

24 A Yes.

12:26 25 Q Did it change the page on yours? If not, I

Cheryle Massaro-Florez - December 28, 2021

12:26 1 can do it right now.

2 A No.

3 MR. BARNOUW: I'm able to change the page on
4 my own.

12:26 5 MR. DAVIS: I can change it for you or you
6 can change them on your own. Which would you prefer?

7 MR. BARNOUW: I think we should be able to
8 change it on our own.

9 MR. DAVIS: I gotcha.

12:26 10 MR. BARNOUW: Let's try to make sure we're
11 all, quote, on the same page.

12 MR. DAVIS: Literally.

13 THE WITNESS: Okay.

14 BY MR. DAVIS:

12:26 15 Q The next page is, "Other gun assumptions."
16 It says: All requirements except the changes detailed
17 in the gun type "other" MVP requirements, disclosure
18 updated 02/10/21 xlsx, in red, will stay the same.

19 What is that referring to?

12:27 20 A It's an attachment document I believe you
21 received as well that discloses a high-level work
22 effort of what needs to be changed so we could do this
23 estimate.

24 Q What does the next line refer to?

12:27 25 A The analyst and developer resources needed,

Cheryle Massaro-Florez - December 28, 2021

12:27 1 that one?

2 Q Correct.

3 A It is identifying a risk that the resources
4 needed to perform this -- this project is also
12:27 5 assigned to other legislated and mandated projects.

6 Q Then it says the timeline for development,
7 total, two and a half to three months, correct?

8 A Yes.

9 Q Okay. And then underneath that, it says,
12:27 10 "Phase," and there's a column of phases.

11 Could you identify what each of those phases
12 is referring to?

13 A Yes. The first phase was analysis, and it
14 was coding analysis because we have a new framework,
12:28 15 so the analysis time to take to implement the changes
16 to the new framework.

17 And then the build is the next phase, is the
18 actual coding, the database changes identifying jobs
19 for application processes that need to be changed.

12:28 20 And then the system integration and
21 regression testing, so we need to test everything
22 again. And the system integration means that we want
23 to make sure that it goes from point A to point B, so
24 from DES all the way up to AFS.

12:28 25 Q And the duration, it breaks down each of the

EXHIBIT D

In The Matter Of:

*Franklin Armory, Inc., et al. v.
California Department of Justice, et al.*

*Cheryle Massaro-Florez
September 8, 2023*

*Sisters-In-Law, Inc.
Certified Court Reporters and Videographers
SistersInLawCourtReporters@gmail.com
17141 Pleasant Circle
Huntington Beach, CA 92649*

Original File 3019 CHERYLE MASSARO-FLOREZ.txt

Min-U-Script® with Word Index

Cheryle Massaro-Florez - September 8, 2023

1 purposes of this field is?

2 A Yes.

3 Q What is it?

4 A A weapon that does not constitute a handgun
5 or a long gun or a rifle or shotgun or a shotgun
6 combo.

7 Q Or pistol, correct?

8 A Yes.

9 Q When was the "others" field added to the DES?

10 MR. ADAMS: Objection. Asked and answered at
11 the previous deposition, but if you recall the answer,
12 you can offer it, Ms. Massaro.

13 THE WITNESS: Yes. October 2021.

14 BY MR. DAVIS:

15 Q October 2021. Thank you.

16 Is that when it was also made available for
17 users, the dealers who actually enter the information?

18 A Yes.

19 Q Prior to that, there was no "others" field
20 within the long gun drop-down list for firearms that
21 were others, correct?

22 A Correct.

23 Q Are you the person most qualified regarding
24 the procedures or process for altering, changing or
25 modifying fields within the DES?

Cheryle Massaro-Florez - September 8, 2023

1 A Yes.

2 Q This next question is a yes or no, but let me
3 finish it before you answer.

4 The question is, using the addition of the
5 term "other" to the drop-down list as an example, is
6 there a process or procedure for the implementation of
7 such a change to the DES?

8 For example, if someone requests a change,
9 who has the authority to request a change and who must
10 it be made to?

11 Actually, that was two questions. Who -- you
12 understand what I'm saying, making a change to the
13 DES, correct?

14 A Yes.

15 Q Okay. Who has the authority to request
16 enhancements?

17 A The Bureau of Firearms.

18 Q Anybody from the Bureau of Firearms?

19 A Management.

20 Q Management. Are they the only ones who can
21 make that request?

22 A No. Others can request it, but we don't --
23 we don't -- we require management's approval before we
24 look into it.

25 Q What about the attorney general? If he makes

EXHIBIT E

In The Matter Of:

*Franklin Armory, Inc., et al. v.
California DOJ, et al.*

*Christina Rosa-Robinson
November 27, 2023*

*Sisters-In-Law, Inc.
Certified Court Reporters and Videographers
SistersInLawCourtReporters@gmail.com
17141 Pleasant Circle
Huntington Beach, CA 92649*

Christina Rosa-Robinson - November 27, 2023

1 estimate or your best recollection, but I'm not
2 entitled to have you guess or speculate.

3 So the classic example attorneys like to
4 give, if I were to ask you to estimate the length of
5 the table you are sitting at, you could probably give
6 me an estimate of that. But if I asked you to
7 estimate the length of the table I am sitting at, you
8 can't even see it, so you'd just be guessing, right?
9 So do you understand the difference between guesses
10 and estimates?

11 A Yes.

12 Q Okay. All right. And the last few of these
13 questions, it's not to get personal, we just have to
14 make sure you're capable of answering today to the
15 best of your ability.

16 Are you feeling sick today?

17 A No.

18 Q Do you otherwise feel fine physically?

19 A I mean, I'm a little chilly, but other than,
20 I'm fine.

21 Q Did you take any medication today?

22 A No.

23 Q Have you had any alcohol today?

24 A No.

25 Q Is there anything at all preventing you from

Christina Rosa-Robinson - November 27, 2023

1 giving accurate testimony today?

2 A No, there's not.

3 Q Okay. Finally, if you need a break, please
4 let know, and we'll discuss taking a break. If I've
5 already asked a question, though, please finish your
6 answer and then ask for a break. I do plan to call
7 for breaks every hour, but anytime you need a break,
8 just let me know. I think we can wrap up in
9 definitely under two, maybe within one.

10 Okay. That's all we have for the
11 admonitions. Let's move now to some of the more
12 substantive questions.

13 So you're here today for information you may
14 know pertinent to the case of Franklin Armory,
15 Incorporated versus California Department of Justice.

16 What is your understanding of what the case
17 is about?

18 A Honestly, not much. I really -- I think it
19 has something to do with monetary value, but I really
20 don't know.

21 Q Okay. In preparing your declaration -- I'm
22 sorry. In prepping for this deposition, I meant to
23 say, did you discuss this case with anyone else
24 besides Mr. Adams?

25 A No.

Christina Rosa-Robinson - November 27, 2023

1 Q Did you review any documents in preparation
2 for today's deposition?

3 A Other than the one that you sent a few
4 moments ago, that's the only one that I reviewed.
5 That's it.

6 MR. MOROS: Okay. And I should probably
7 clarify for the record, prior to the deposition, I did
8 send Ms. Rosa-Robinson and Mr. Adams a copy of the
9 only exhibit I anticipate bringing into this
10 deposition, so they do have a copy of that. And once
11 we get to that, I'll address that again. I just want
12 to make that clear.

13 BY MR. MOROS:

14 Q So do you work for the Department of Justice
15 currently?

16 A I do.

17 Q Okay. What is your role within the
18 Department of Justice?

19 A I'm -- my official classification,
20 information technology specialist one. Just to make
21 sure that I get the organizational chart correct, I'm
22 in the applications development bureau under the
23 managed application services section.

24 Q Okay. And how long have you worked for the
25 Department of Justice?

Christina Rosa-Robinson - November 27, 2023

1 A I was hired June 1st, 2017. So six, seven
2 years.

3 Q And during your time with the Department of
4 Justice, have you always had the IT specialist role?

5 A Yes.

6 Q So this is the only role you've had with the
7 department your entire career?

8 A Yes. I mean -- there was a
9 reclassification -- I'm not sure if that's really
10 pertinent. A few years ago there was a
11 reclassification in the State, so I was hired as a
12 staff information systems analyst. There was a
13 reclassification and now it's the information
14 technology specialist. So it's all the same.

15 But yes, to answer your question, this has
16 been my role.

17 Q So despite the title change, your job duties
18 did not change.

19 Is that fair to say?

20 A Correct. Yes.

21 Q And can you describe what you do in an
22 average day at DOJ? What does an IT specialist do?

23 A Average day. So we usually have, you know,
24 legislative mandates that we have to work on because
25 there's legislative deadlines. So we're working on

1 various projects, whether that is documentation,
2 gathering requirements, system testing, organizing
3 user acceptance testing, you know, attending meetings,
4 and then also supporting the State's firearm
5 applications. So if there's any production issues or,
6 you know, running any reports that the Bureau of
7 Firearms might need, that's very high level of what I
8 do, yeah.

9 Q Understood. So do you exclusively work with
10 the Bureau of Firearms, or is that just part of your
11 job?

12 A Exclusively, yeah. I support the Bureau of
13 Firearms' firearms application. So yeah, it's their
14 main customer/client. Yeah.

15 Q And when you say -- sorry. When you say
16 customer/client, isn't your customer just DOJ? Or how
17 does that work? Who else would be --

18 A Well, you're right. There really isn't
19 anybody else. We receive our directive from the
20 Bureau of Firearms.

21 Q Understood. So what kind of software systems
22 do you work on? Is that not the right -- let me
23 restate that.

24 Would you describe your work as working on
25 software systems, or is there another term that you

Christina Rosa-Robinson - November 27, 2023

1 Q Was there anyone else who, even if they
2 didn't have the title of supervisor, that you would
3 report to in 2021, that you would take instruction
4 from, that you would get assignments from, that sort
5 of thing?

6 A Well, I would frequently write -- I might get
7 assignments from Debbie's manager, which was Sardar.
8 I might get instruction from him, but my direct
9 supervisor was Debbie.

10 Q Okay. And I think we already know the answer
11 based on your prior testimony here, but have you done
12 any work in your career on the DES?

13 A Yes. Minimally, but yes, I have.

14 Q Oh, you've only done minimal work on the DES?

15 A I guess, maybe define work. I don't know,
16 right? Like, have I done any system testing to help
17 out testing DES, yes, right? But that is not my
18 application that I've primarily been assigned to.

19 Q What is your primary application assignment?

20 A CFARS.

21 Q Okay. So to the best of your knowledge, what
22 is the DES?

23 A DES, DROS entry system. So the way I would
24 explain it, right, to my friends or somebody is just
25 it's the entry system that firearms dealers or

Christina Rosa-Robinson - November 27, 2023

1 ammunition dealers use in order to make a purchase for
2 somebody, right, to submit a background check because
3 they want to buy a type of firearm or ammunition.
4 And, you know, if it gets approved, then the sale
5 would take place within the DES application.

6 Q Understood. And so the purpose of the DES is
7 essentially to facilitate California's background
8 check system through the dealers?

9 A Yes.

10 Q And who established the DES?

11 A I don't know.

12 Q That's okay.

13 A That's before my time.

14 Q Like I said at the beginning, it's fine to
15 say you don't know if you don't know the answer.

16 A Yeah, I don't know. It's before my time.

17 Q Who oversees the DES? And I know, obviously,
18 the answer is DOJ, but who within DOJ or what bureau
19 oversees the DES?

20 A It would be the Bureau of Firearms.

21 Q Earlier you testified that you've only done
22 minimal work on the DES. How much work would you
23 say ---and I am asking for an estimate here. What
24 percent of your job has been on the DES? So a rough
25 estimate.

Christina Rosa-Robinson - November 27, 2023

1 A Are you -- like in my entire career here at
2 DOJ?

3 Q Yes.

4 A Maybe 20 percent.

5 Q Okay. And how much work would you say you
6 did on the DES during 2020 and 2021 specifically?

7 A 2020 and 2021. That was probably the bulk of
8 my work with DES, so I guess a safe guess would be
9 maybe 15 percent.

10 Q And why was there much more work on DES in
11 2020 and 2021 that you needed to be pulled into it
12 more when you're normally CFARS?

13 A Well, there was the -- we had a high-priority
14 project that we had to do, which was the "other" gun.
15 And so because we had such a short deadline -- time
16 frame, I should say, to implement the "other" gun,
17 firearm type into DES, we had to, you know -- pretty
18 much the supervisor had to pull resources, you know,
19 other analysts and developers and focus on
20 implementing the "other" gun into DES because it's not
21 just implementing into DES. There's like three or
22 four other subsequent applications, right, that -- you
23 know, DES is the entry. You know, it's the front
24 application, but, you know, that's the intake. And
25 then there's other applications that it has to -- that

Christina Rosa-Robinson - November 27, 2023

1 it has to correspond to that it has to be recorded.

2 And so it was a big undertaking. We had a
3 short amount of time, so there was a lot of resources
4 that had to be pulled from other application so that
5 we can implement on time.

6 Q Understood. Okay. Did you ever do work on
7 the DES that involved adding a country to the place of
8 birth drop-down menu?

9 A Do any work? Can you rephrase the question?

10 Q I can represent to you that I think it was
11 either in 2020 or 2021, but the United Arab Emirates
12 was missing from the drop-down menu on place of birth
13 for the purchaser and that was corrected to be added.

14 A Okay.

15 Q I'll represent that to you.

16 Were you involved in that work at all?

17 A I honestly don't recall. Yeah, I don't
18 recall.

19 Q Okay. That's fair. That's fair. So this is
20 kind of a 10,000-foot-view question as someone who,
21 again, does not -- I'm just a dumb lawyer. I don't
22 understand software and applications. But why does
23 adding something like another country or in the work
24 that you confirmed you worked on, the "other" option,
25 why is that a difficult task? Because from a layman's

Christina Rosa-Robinson - November 27, 2023

1 So the previous question was fine. I'm not
2 going to object to that, but just so you're aware of
3 what I'm thinking.

4 MR. MOROS: I don't anticipate any questions
5 today about how the DOJ enforces the law. I don't
6 believe Ms. Rosa-Robinson -- no offense -- is actually
7 the person anyways.

8 BY MR. MOROS:

9 Q So let me represent to you my understanding
10 based on a prior deposition that you probably aren't
11 privy to was that the general stages I was asking
12 about are what we learned were analysis, business
13 requirements, development and testing.

14 Is that -- does that sound familiar to you?

15 A Yes.

16 Q Okay. And could you describe generally what
17 happens in each of those steps? Again, I don't need
18 you to take me down to the code, but just generally,
19 yeah.

20 A Okay. So analysis. Analysis usually
21 takes -- well, all of it, we work with, you know,
22 closest with the Bureau of Firearms. So analysis,
23 right? The Bureau of Firearms has to review, you
24 know, the legislation, whatever it is and figure out
25 what has to be implemented. Then they inform us. And

Christina Rosa-Robinson - November 27, 2023

1 then we do analysis on our side of, okay, this is how
2 we think it could -- basically, doing planning and,
3 you know, high-level workload development of, okay, --
4 because they gave us the scope, we have to try and
5 come up with how we're going to implement it. And
6 then we present this to the Bureau of Firearms. They
7 say, yes, this will work, we'll be able to, you know,
8 meet the mandates that they have to. And then we
9 gather requirements.

10 So that's the requirements of, okay, how is a
11 person -- you know, how -- basically, tell us how this
12 is supposed to work. So how are the applications
13 supposed to intake whatever -- whatever changes? Does
14 it have a cost to it? Do we have reporting to it?
15 How is it supposed to look, you know, in the AFS, the
16 state repository. Just the requirements are just the
17 nitty-gritty part of that testing.

18 So we do our own functional -- we call it
19 functional testing, right? That's where we try to
20 make sure that all the requirements have been met that
21 were given -- that were approved by the Bureau of
22 Firearms. Then we do regression testing to make sure
23 that the changes that we made didn't essentially break
24 the system, whatever validations were currently in
25 place or rules or -- like I said, we didn't break the

Christina Rosa-Robinson - November 27, 2023

1 system. And then we do user acceptance testing.
2 That's when we bring in Bureau of Firearms. They have
3 selected testers. And basically, it's the people who
4 would be using the applications on their day-to-day
5 when they're -- part of their day-to-day process, and
6 we show them these are the changes.

7 They essentially -- they do their testing.
8 It takes about a week or so. And they say, okay, this
9 is perfect. This is what we want to roll to
10 production with. And then we deploy to production.

11 Q Thank you for explaining all that. And you
12 hopefully made it easy enough for me to understand as
13 well.

14 So when you said it starts off with,
15 basically, a legislative mandate -- I don't mean to
16 misconstrue your testimony, but is that what the
17 assignment comes from?

18 A Sometimes, right? Sometimes it comes from
19 mandates. Honestly, all I know is that we get -- you
20 know, I get -- we get our directive from my
21 supervisor. My supervisor gets it from the Bureau of
22 Firearms, so -- yeah.

23 Q So of the steps you listed there, analysis,
24 business requirements, development and testing, which
25 are you most involved in in your day-to-day work?

Christina Rosa-Robinson - November 27, 2023

1 A Analysis, requirements gathering, testing,
2 minimal development. So yeah. So I'm part of all of
3 the stages. --

4 Q Understood. And you say minimal development.
5 Who handles the development work?

6 A So we're split up into -- we have developers.
7 The developer unit, and then the systems analysis,
8 which is my side. So the development would be by the
9 development unit.

10 So my -- so when the developers -- so my part
11 with the development would be, you know, if the
12 developers have any questions or would have to do, you
13 know, some review of the requirements for their
14 understanding so they know what they're doing.

15 MR. MOROS: One second. Let's take five
16 minutes. Sorry about that. Let's go off the record
17 here.

18 (Recess.)

19 MR. MOROS: Back on the record.

20 BY MR. MOROS:

21 Q I apologize, Ms. Rosa-Robinson. We had a
22 technical difficulty on my end, and I couldn't hear
23 you speaking. If you could go ahead and repeat your
24 answer to the prior question.

25 A Please repeat the question.

1 A Normally, once we implement something, we
2 would go back and, you know, add a comment and we
3 would close out -- right, close out the Jira. But --
4 honestly, sometimes that just doesn't happen. But if
5 someone were to really need to know, like, okay, was
6 this Jira actually implemented, we would, of course,
7 have to, you know, pull it up, take a look, do a
8 little -- do a little bit of reading and we would have
9 to then maybe go within our release notes to recall
10 when it specifically was deployed to production.

11 Q Okay. And it next says -- there's a category
12 for issue links, and then it says "Cloners and link"
13 in bold.

14 What are issue links?

15 A Issue links are when we -- we usually use
16 that function in a Jira ticketing system when we're
17 trying to link Jiras so it's easier for us to find
18 rather than having to search, right? We know that
19 they're related, so we link them together.

20 Cloned is a function that we use. So, like,
21 we found a Jira, we need to clone it, maybe change
22 some of the description or whatnot. But, you know,
23 rather than reinventing the wheel, that's when you
24 would clone a Jira. So that's what issue links are.
25 I believe there are other categories, too, but it's

Christina Rosa-Robinson - November 27, 2023

1 mostly when you want to link Jiras together.

2 Q It looks like all of these are marked closed
3 except for one of them which is "Is linked to
4 CFAR-927." And that's "AWR registration enhancement."

5 Is that by mistake, or is there some reason
6 that one is still open, to your knowledge?

7 A To my knowledge, I don't know. It's probably
8 an oversight, but I really don't know.

9 Q All right. Okay. So even though before we
10 talked about how Jeffrey Liu was marked as the
11 assignee, I now see a series of people were tasked
12 with what appear to be subtasks.

13 You appear to have been assigned a number of
14 these.

15 A Mm-hmm.

16 Q So when it says "closed" there under status
17 next to your name as the assignee, does that mean the
18 work was completed?

19 A Yes.

20 Q And I see a number of subtasks here. Who
21 assigned these to you?

22 A Well, typically, because I'm the primary
23 systems analyst, we're the last people that would be
24 the assignee because we have to ensure that it was
25 completed.

Christina Rosa-Robinson - November 27, 2023

1 So that's why -- so during, you know, the
2 process, I guess you can say, the life cycle of when,
3 you know, a Jira's opened, it gets assigned to various
4 people because -- you know, from development and
5 testing. And in this case, right, I'm the assignee
6 because I had to make sure that the work was done
7 because I probably tested it.

8 Q Okay.

9 A Yeah.

10 Q So you're kind of at the end of the process
11 there when you get involved?

12 A Yeah.

13 Q Okay. So throughout these pages, you're
14 listed not exclusively but your name pops up a lot in
15 these tasks.

16 A Um-hmm.

17 Q How much time would you estimate you
18 personally spent on this?

19 A On this parent Jira you mean? Or like all of
20 these subtasks?

21 Q All of the subtasks combined. So your work
22 on this Jira, how much time would you estimate you
23 spent on this?

24 A An estimate, maybe four months, five months.

25 Q Four months?

EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPARTMENT 32

HONORABLE DANIEL S. MURPHY

FRANKLIN ARMORY, INC. AND)
CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
)
PLAINTIFFS,)
)
VS.)
)
CALIFORNIA DEPARTMENT OF)
JUSTICE, XAVIER BECERRA, IN HIS)
OFFICIAL CAPACITY AS ATTORNEY)
GENERAL FOR THE STATE OF)
CALIFORNIA, AND DOES 1-10,)
)
DEFENDANTS.)
)

CASE NO. 20STCP01747

**CORRECTED CERTIFIED
COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, SEPTEMBER 6, 2023

APPEARANCES:

FOR THE MICHEL & ASSOCIATES, P.C.
PLAINTIFFS: BY: ANNA M. BARVIR
180 E. OCEAN BLVD., SUITE 200
LONG BEACH, CA 90802
ABARVIR@MICHELLAWYERS.COM

FOR THE DEPARTMENT OF JUSTICE
DEFENDANTS: BY: KEN LAKE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013
213-269-6525
KENNETH.LAKE@DOJ.CA.GOV

REPORTED BY: ASHLEY SANCHEZ, CSR NO. 14346

1 THE COURT: I WASN'T -- EITHER YOU OR PLAINTIFF
2 CAN ANSWER. I WASN'T REALLY CLEAR. THE PEOPLE WHO PUT
3 THE DEPOSIT DOWN, HAVE THEY CLEARED THE BACKGROUND
4 CHECK AND EVERYTHING ALREADY?

5 MR. LAKE: NO.

6 THE COURT: I MEAN, HAS THERE BE A DOJ
7 BACKGROUND CHECK OR ANYTHING DONE YET?

8 MR. LAKE: NOT AT ALL.

9 THE COURT: SO IT'S STILL A POSSIBILITY THAT
10 THEY MAY NOT BE ENTITLED TO POSSESS ANY FIREARM?

11 MR. LAKE: EXACTLY. THERE'S A WHOLE PROCESS.
12 FIRST YOU HAVE TO BUY THE FIREARM. THEN THEY GET
13 ONLINE AND THERE'S A FORM THAT THEY FILL OUT. DOJ
14 ISSUES -- BASICALLY, CONFIRMS AND NOW THEY SENT IT TO
15 THE DEALER. AND THE DEALER AND THE BUYERS COME IN AND
16 THEY SUBMIT THEIR INFORMATION. THEN IT GOES INTO THE
17 ONLINE SYSTEM. YEAH, THERE'S A WHOLE BUNCH OF
18 PROCESSES.

19 AND, IF I COULD, I JUST WANTED TO CLARIFY ONE
20 THING. IF THE COURT -- ASSUMING THE COURT STICKS WITH
21 THE TENTATIVE ON THE 1983, 7TH AND 8TH CAUSES AND THE
22 9TH CAUSE -- IF COUNSEL COULD CONFIRM THAT MY
23 UNDERSTANDING IS CORRECT. JUST TO CLARIFY THAT THE
24 RESULT OF THOSE WOULD BE THAT ATTORNEY GENERAL BONTA IS
25 DISMISSED FROM THIS ACTION BECAUSE HE'S ONLY NAMED IN
26 THOSE THREE. AND THAT THE ASSOCIATION WOULD NO LONGER
27 BE OF PLAINTIFF BECAUSE THEY'RE ONLY ASSERTING CLAIMS
28 UNDER THOSE THREE CAUSES.

1 THE COURT: COUNSEL, DID YOU HEAR THAT FOR
2 PLAINTIFF? DO YOU AGREE?

3 MS. BARVIR: I'M SORRY. COULD HE -- HE WAS
4 SAYING THAT ATTORNEY GENERAL BONTA WOULD BE DISMISSED
5 FROM THE REMAINDER OF THE CLAIM?

6 MR. LAKE: YES. AND THEN THE ASSOCIATION ALSO
7 WOULD NO LONGER BE OF PLAINTIFF BECAUSE THEY'RE ONLY --
8 AGAIN AS CLARIFIED IN OUR MEET AND CONFER -- IS THAT
9 THEY'RE ONLY ASSERTING CLAIMS UNDER THE 7TH, 8TH, AND
10 9TH CAUSES OF ACTION FOR EQUITABLE RELIEF.

11 MS. BARVIR: OH, YOU'RE SAYING IF THE COURT
12 UPHOLDS THE TENTATIVE ON THE 1983 CAUSE OF ACTIONS THEN
13 THE CRPA PLAINTIFF AND AS WELL AS THE ATTORNEY GENERAL
14 BONTA WOULD NO LONGER BE A PARTY? IF WE HOLD THAT PART
15 OF THE TENTATIVE?

16 MR. LAKE: YES.

17 MS. BARVIR: YES, THAT WOULD BE CORRECT. BUT,
18 AGAIN, IT WOULD BE --

19 THE COURT: SO WHICH CAUSE --

20 (SIMULTANEOUS CROSSTALK)

21 MS. BARVIR: -- UPHELD BECAUSE -- YOU KNOW,
22 BECAUSE WE DID SEEK FAIRLY EXPLICITLY IN THE AMENDED
23 COMPLAINT TH ENJOINMENT OF SB 118.

24 THE COURT: OKAY. SO WHICH CAUSE OF ACTION IS
25 BECERRA SUPPOSEDLY PERSONALLY LIABLE? I THOUGHT I SAW
26 EVERYTHING SAYING "ALL DEFENDANTS."

27 (SIMULTANEOUS CROSSTALK)

28 MR. LAKE: YEAH -- GO AHEAD.

1 MS. BARVIR: YEAH. THE PERSONAL LIABILITY
2 CLAIMS ARE ONLY CLAIMED, I BELIEVE, THAT'S 3, 4, AND 5
3 WHICH ARE POTENTIAL INTERFERENCE WITH CONTACT AND THE
4 INTENTIONAL AND NEGLIGENT INTERFERENCE WITH ECONOMIC
5 ADVANTAGE CLAIM.

6 THE COURT: SO OTHER THAN BECERRA, IS THE
7 STATE OF CALIFORNIA THEN ANOTHER DEFENDANT OR IS
8 BECERRA GOING DEFENDANT IN THOSE CASES -- IN THOSE
9 CAUSE OF ACTIONS?

10 MS. BARVIR: THE STATE OF CALIFORNIA IS NOT A
11 DEFENDANT. CALIFORNIA DEPARTMENT OF JUSTICE AND
12 BECERRA AND BONTA ARE DEFENDANTS.

13 THE COURT: OKAY. SO IF I FIND THAT -- I'D
14 PROBABLY GIVE LEAVE TO AMEND IF I FIND IN FAVOR OF
15 BECERRA IN HIS INDIVIDUAL CAPACITY. BUT DOJ WOULD
16 STILL BE IN THE CASE, CORRECT, ON THOSE CAUSES OF
17 ACTIONS?

18 MS. BARVIR: ON THE --

19 THE COURT: ON 3, 4, AND 5.

20 MS. BARVIR: I DON'T THINK SO. I THINK WE
21 DISCUSSED THROUGHOUT THE COURSE OF -- THE COURSE OF
22 THIS CASE THAT OFFICIAL CAPACITY AND THE DEPARTMENT OF
23 JUSTICE ITSELF WOULDN'T BE LIABLE FOR THE -- FOR --

24 THE COURT: SO THE ONLY -- SO THE ONLY
25 DEFENDANT THEN THAT YOU'RE SEEKING DAMAGES AGAINST IN
26 3, 4, AND 5 IS BECERRA?

27 MS. BARVIR: NO. IT ACTUALLY IS -- I THINK --
28 IT WAS DEFENDANT DOJ AND IN PERSONAL CAPACITY FOR

1 DEFENDANT BECERRA.

2 THE COURT: OKAY. SO DOJ WOULD STILL BE --

3 MS. BARVIR: NOT BONTA IN HIS OFFICIAL
4 CAPACITY, YEAH.

5 THE COURT: SO IF I REMOVE BECERRA,
6 PLAINTIFF'S POSITION DOJ WOULD STILL BE IN 3, 4, AND 5.
7 IS THAT YOUR UNDERSTANDING ALSO?

8 MR. LAKE: THAT WASN'T OUR UNDERSTANDING IN
9 OUR DISCUSSIONS. BUT JUST TO CLARIFY A COUPLE THINGS
10 ON THAT REAL QUICKLY. WE'VE APPEARED AS THE STATE OF
11 CALIFORNIA ACTING BY AND THROUGH THE DOJ. THERE ARE
12 CASES THAT KIND OF MUDDLE THE WATERS A LITTLE BIT.

13 THE COURT: YEAH, YOU'RE ALL INTERTWINED.

14 MR. LAKE: YES.

15 THE COURT: THE SHERIFF IS STILL THE COUNTY OF
16 LA.

17 MR. LAKE: YEAH. BUT WHEN WE TALK ABOUT THE
18 3RD, 4TH, AND 5TH CAUSE OF ACTIONS THERE IS A
19 DISTINCTION WHICH WE DISCUSSED IN OUR MOVING PAPERS.
20 IS THAT THE STATE OF CALIFORNIA CAN ONLY BE STATUTORY
21 LIABILITY AGAINST THEM. SO THE 3RD, 4TH, AND 5TH
22 CAUSES OF ACTIONS ARE COMMON LAW CAUSES, THEY'RE NOT
23 STATUTORY. SO THERE CAN BE NO DIRECT LIABILITY AGAINST
24 THE STATE, DOJ. BUT THEY COULD BE --

25 THE COURT: BUT MANDATORY DUTY COULD BE
26 LIABILITY.

27 MR. LAKE: MANDATORY DUTY, THEY COULD. WHICH,
28 FRANKLY --

EXHIBIT G

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

THE DAVIS LAW FIRM
42690 Rio Nedo, Suite F
Temecula, California 92590
T: 866-545-GUNS
F: 888-624-GUNS
Jason Davis (SBN 224250)
Jason@CalgunLawyers.com

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
control of the same person. (Pen. C. § 17170.)

17
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
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.

23 ³ As used in Sections 16530, 16640, 16650, 16660, 16870, and 17170, Sections 17720 to 17730, inclusive, Section 17740,
24 subdivision (f) of Section 27555, Article 2 (commencing with Section 30300) of Chapter 1 of Division 10 of Title 4, and Article
25 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.)

26 ⁴ As used in Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730, inclusive, Section 17740, Section 30215,
27 and Article 1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, "shotgun" means a weapon designed
28 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, subdv. (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~~

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 Title 1 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 which is 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
16
17
18
19
20
21
22
23
24
25
26
27
28

1 VERIFICATION

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

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

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

9
10 DATED: 6/25/19


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>

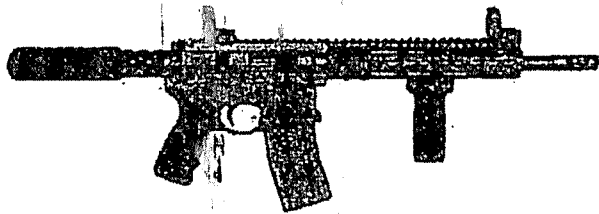
Good Evening Ms. McGovern.

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."

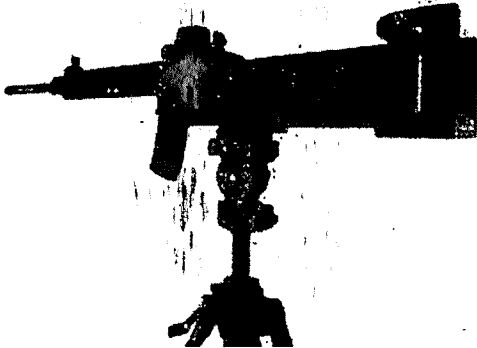
We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



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
1K

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."

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
1K

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: 408-779-7560 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."

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: 408-779-7568 775-783-4313

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.

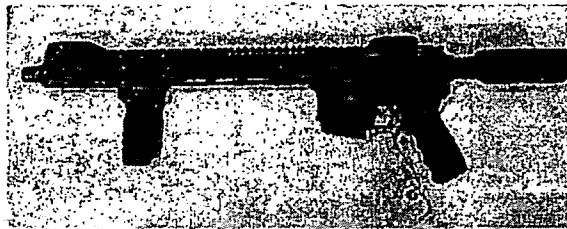


Figure 1: Prototype Name - Title 1

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
S. Jason Davis
JASON DAVIS

RECEIVED
IN DROP BOX

2010 JUN 26 PM 12:01

GOVERNMENT OF PENNSYLVANIA
SUPERIOR COURT OF JUDICIAL
COUNTY OF SHERMANTON

EXHIBIT H

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 I

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):
 - (4) Cross-complaint filed by (name):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

on (date):
 on (date):

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

Date: **OCT - 3 2019** Clerk, by K. Cadena Deputy

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)

RECEIVED
CIVIL DROP BOX

2019 OCT -3 PM 3:14

CLERK OF SUPERIOR COURT
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 April 26, 2024, I caused the attached **DECLARATION OF KENNETH G. LAKE IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** 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 April 26, 2024, at Los Angeles, California.

Sandra Dominguez

Declarant

/s/ Sandra Dominguez

Signature