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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
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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.
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Case No. 20STCP01747

**SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION BY
DEFENDANTS FOR SUMMARY
JUDGMENT**

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

Honorable Daniel S. Murphy

RES ID: 554862513719

26 Defendants submit the following undisputed material facts with references to supporting
27 evidence pursuant to Code of Civil Procedure section 437c, subdivision (b). By reason of these
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1 facts, defendants have carried their burden of proof. These materials facts with supporting
 2 evidence demonstrate the absence of a genuine issue of material fact and that plaintiff cannot
 3 prevail in this action. Defendants are entitled to judgment as a matter of law.

<u>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:</u>	<u>PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE:</u>
<p>4 5 6 Third Cause of Action: 7 Tortious interference with contractual 8 relations</p>	
<p>9 1. The Second Amended Complaint (SAC) 10 alleges that on October 24, 2019, plaintiff sent 11 a letter to former Attorney General Becerra, 12 asserting that a defect in the Department of 13 Justice (Department) online system for 14 processing transfers of firearms rendered 15 dealers unable to transfer its recently 16 announced Title 1 firearm to its customers. 17 18 (SAC, ¶ 69, Ex. C.)</p>	<p>1. 1.</p>
<p>15 2. Jay Jacobson, President and an owner of 16 Franklin Armory, testified that the Title 1 was 17 designed with a 16 inch barrel and a padded 18 buffer tube instead of a stock and without a 19 stock, it would not be intended to be fired 20 from the shoulder and thus not a rifle. 21 22 (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4- 23 24, Ex. A to Lake Dec.)</p>	<p>2. 2.</p>
<p>20 3. The Title 1 was a long gun. "Long gun" 21 means any firearm that is not a handgun or a 22 machinegun. 23 24 (SAC, ¶¶ 23-24, Pen. Code, § 16865.)</p>	<p>3. 3.</p>
<p>24 4. On August 6, 2020, the legislature passed 25 SB 118 which included amending the Penal 26 Code Section 30515 definition of an assault 27 weapon to add a "centerfire firearm that is not 28 a rifle, pistol, or shotgun" that includes components in three categories. (Pen. Code, § 30515 (a)(9)-(11).) With this change in</p>	<p>4. 4.</p>

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definition, the Title 1 was rendered a banned assault weapon.

(SAC, ¶ 112, Mendoza Dec. ¶ 11.)

5. The online system for the submission of information concerning the sale and transfer of firearms is known as the Dealer Record of Sale Entry System (DES) The DES is a web-based application used by California firearms dealers to submit firearm background checks to the Department to determine if an individual is eligible to purchase, loan, or transfer a handgun, long gun, and ammunition.

(Cal. Code Regs., tit. 11, § 4200; citing Pen. Code, § 28205, Mendoza Dec., ¶ 3.)

6. The alleged defect in the DES was that the gun type drop-down menu for long guns that a dealer would select from while processing a transfer included only options for rifle, shotgun, or rifle/shotgun combination. Plaintiff alleges that since the Title 1 was not a “rifle” under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an “other” option to this drop-down menu.

(SAC, ¶¶ 58, 69, Ex C

7. The SAC does not identify any statute or other authority that requires that a firearm being processed for transfer in the DES fit the statutory definition of “rifle” in order to be processed as such.

(SAC.)

8. Mr. Jacobson testified that there was no mention of any issue with the DES in the Sacramento action filed by Franklin Armory against the State and former Attorney General Becerra regarding the Title 1 and that he was unaware of any issue with the DES during that time. He testified that during the time the Sacramento action was pending, no one ever expressed concern that the Title 1 could not be processed in the DES because it was not a rifle.

(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)

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9. Mr. Jacobson testified as to his understanding that stockless firearms were processed in the DES as rifles or shotguns respectively even though they did not meet the statutory definition for rifle or shotgun.

(Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8.)

9.

10. Mr. Jacobson testified that the process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. The purchaser then would go into the dealer and provide background information for the background check that would then be transmitted to the Department.

(Jacobson Dep. p. 154:24-156:18; see also SAC, ¶¶ 1, 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1.), Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).)

10.

11. Plaintiff does not allege that anyone ever purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Plaintiff alleges that individuals “placed deposits” for the Title 1 firearm.

(SAC, ¶ 113.)

11.

12. Mr. Jacobson testified that the online deposits were for \$5.00 and that the \$5.00 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title 1 without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately

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August 6, 2020.

(Jacobson Dep. p. 116:1-117:17, 122:6-123:12, 124:11-20, 147:17-23, 130:12-131:1.)

13. The issue regarding the Title 1 was first brought to the attention of Bureau Director Allison Mendoza in the latter part of 2019. Prior to becoming Director in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March, 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau's Regulatory Branch including management and oversight of the DES. It is Director Mendoza's understanding that the three options in the "Gun Type" drop-down menu in the DES "Dealer Long Gun Sale" transaction type (rifle, rifle/shotgun combination, or shotgun) had remained the same since she became Assistant Bureau Chief in 2015.

(Mendoza Dec., ¶¶ 1-3, 6-7.)

13.

14. Director Mendoza states that at some point after the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an "other" option in the "Gun Type" drop-down menu in the "Dealer Long Gun Sale" transaction type. This review required the leadership of the Bureau, in collaboration with the Department's Application Development Bureau (ADB) and the Department's attorneys, to engage in a balancing of multiple factors and a weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time. The Department also evaluated and weighed the allocation of available resources to such an enhancement, such as the number of personnel required, budgeting of the enhancement, and the time it would take to complete said enhancement. The onset of the COVID-19 pandemic in March 2020 presented additional difficulties in being able to staff such a DES enhancement.

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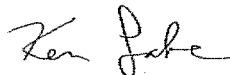
<p>(Mendoza Dec., ¶¶ 4-5, 8.)</p>	
<p>15. ADB undertook a review of what would be required to add the “other” option and reported back that it would take many months to implement this enhancement, and would require well over a dozen personnel, many of whom would have to be diverted from other projects. Implementing this DES enhancement would have required changes to many other applications and databases in addition to the DES.</p>	<p>25.</p>
<p>(Mendoza Dec., ¶¶ 5, 9.)</p> <p>16. ADB additionally explored the possibility of doing a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a permanent enhancement would be implemented at a later date. ADB estimated such an enhancement would take a few months. ADB also advised that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement.</p>	
<p>(Mendoza Dec., ¶¶ 5, 10.)</p> <p>17. Director Mendoza states that, after SB 118 was signed into law August 6, 2020, which rendered the Title 1 firearm a prohibited assault weapon, the Department decided, after weighing competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the COVID-19 pandemic, to implement at a later date the DES enhancement that added an “other” option in the “Gun Type” drop-down menu. This enhancement was completed on</p>	

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October 1, 2021.	
(Mendoza Dec., ¶ 11.)	
18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus' firearms software developments unit, oversaw the enhancement project to add the "other" option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases. (Massaro-Florez Dep.1(12/28/21), Ex. to Lake Dec., pp. 18:12-21,19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21,94:6-24.)	
Fourth Cause of Action: Tortious interference with prospective economic advantage	
19. Defendants herby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	26.
Fifth Cause of Action: Negligent interference with prospective economic advantage	
20. Defendants herby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	26.
7	

1 Dated: April 26, 2024

2 Respectfully submitted,
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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 **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT** 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
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Jason A. Davis
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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