

1 C.D. Michel – SBN 144258
Jason A. Davis – SBN 224250
2 Anna M. Barvir – SBN 268728
Konstadinos T. Moros – SBN 306610
3 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd, Suite 200
4 Long Beach, CA 90802
Telephone: (562) 216-4444
5 Facsimile: (562) 216-4445
Email: CMichel@michellawyers.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/26/2024 11:58 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Bolden, Deputy Clerk

6 Attorneys for Petitioner - Plaintiff
7

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

10 FRANKLIN ARMORY, INC., et al.,
11
12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,
15 et al.,
16 Respondents-Defendants.

Case No.: 20STCP01747

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

**DECLARATION OF JASON A. DAVIS IN
SUPPORT OF PLAINTIFF’S
OPPOSITION TO DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION**

Hearing Date: July 10, 2024
Hearing Time: 8:30 a.m.
Department: 32
Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020
FPC Date: August 8, 2024
Trial Date: August 20, 2024

1 **DECLARATION OF JASON A. DAVIS**

2 I, Jason A. Davis, hereby declare as follows:

3 1. I am an attorney licensed to practice before all courts in the state of California. I am
4 counsel of record for Franklin Armory, Inc. (“FAI”), in the above-entitled matter. I make this
5 declaration in support of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment, or in the
6 Alternative, for Summary Adjudication. I have personal knowledge of the facts set forth herein, and if
7 called as a witness, I could and would competently testify hereto.

8 2. On or about October 24, 2019, I sent a letter addressed to then-Attorney General Xavier
9 Becerra Re: FRANKLIN ARMORY, INC. – DES “GUN TYPE” DROP DOWN LIST – DOJ’S
10 DEFACTO BAN OF NON-RIFLE / NON-SHOTGUN LONG GUNS. In the ordinary course of
11 business, I saved a copy of this letter to my firm’s filing system. On or about September 20, 2023, a
12 copy of the letter was produced in response to the Defendants’ requests for the production of documents.
13 A true and correct copy of “Letter from Jason A. Davis, Counsel for Franklin Armory, Inc., to Xavier
14 Becerra, Attorney General of the State of California (Oct. 24, 2019)” is attached hereto as **Exhibit 4**.

15 3. From November 15, 2019, through November 26, 2019, I exchanged a series of emails
16 re: Title, Trusts, and UAE with Mr. Robert Wilson and Ms. P. Patty Li from the California Department of
17 Justice, Bureau of Firearms. On or about September 20, 2023, a copy of these emails was produced in
18 response to the Defendants’ requests for the production of documents. A true and correct copy of
19 “Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li,
20 California Department of Justice (Nov. 15, 2019-Nov. 26, 2019)” is attached hereto as **Exhibit 5**.

21 4. On or about March 30, 2020, I sent an email re: Franklin Armory, et al. v. California
22 Department of Justice, et al.: to then-Attorney General Xavier Becerra, as well as Mr. Luis Lopez and
23 Mr. Robert Wilson, both of the California Department of Justice. On or about September 20, 2023, a
24 copy of these emails was produced in response to the Defendants’ requests for the production of
25 documents. A true and correct copy of “Email from Jason A. Davis, Counsel for Franklin Armory, Inc.,
26 to Luis Lopez, Robert Wilson, and Xavier Becerra, California Department of Justice (Mar. 30, 2020)” is
27 attached hereto as **Exhibit 6**.

28 5. On or about January 8, 2021, I received a letter from Ms. P. Patty Li, Deputy Attorney

1 General, California Department of Justice. In the ordinary course of business, I saved a copy of this
2 letter to my firm’s filing system. On or about September 20, 2023, a copy of the letter was produced in
3 response to the Defendants’ requests for the production of documents. A true and correct copy of “Letter
4 from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel
5 for Franklin Armory, Inc. (Jan. 8, 2020)” is attached hereto as **Exhibit 7**.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct. Executed on June 26, 2024, at Murrieta, California.

8
9 
10 _____
11 Jason A. Davis
12 Declarant
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 4



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 24, 2019

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

Via E-Mail and U.S. Mail

**Re: FRANKLIN ARMORY, INC. – DES “GUN TYPE” DROP DOWN LIST
- DOJ’S DEFACTO BAN OF NON-RIFLE / NON-SHOTGUN LONG GUNS**

Dear Attorney General Becerra,

I write on behalf of Franklin Armory, Inc. (“Franklin Armory[®]”) regarding their inability to process the transfer of firearms within the State of California due to design limitations of the California Department of Justice Dealer Record of Sale Entry System (“DES”).

As is detailed below, the limitations of the DES prevent the lawful acquisition, transfer, and/or sale of firearms that fall outside the bounds of pistol, rifle, and/or shotgun – a category of firearms that have a long history of use within the state. Such technological restrictions are preventing my client from selling, transferring, and/or delivering their lawful products, such as their recently announced Title 1[™] firearm and firearms configured with their CSW[®] California Compliance Kit as well as violate their First, Second, and Fourteenth Amendments to the United States Constitution, and California State law, causing damages to Franklin Armory[®].

PROCEDURAL HISTORY

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

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

October 24, 2019

Page 2

(2) The **make** of firearm.

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

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

(9) **Serial** number, if applicable.

(10) **Other number**, if more than one serial number is stamped on the firearm.

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

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

(13) **Caliber**.

(14) **Type of firearm**.

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

(16) **Barrel length**.

(17) **Color** of the firearm.

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

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

Dealer Long Gun Sale

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

To submit a Dealer Long Gun Sale transaction:

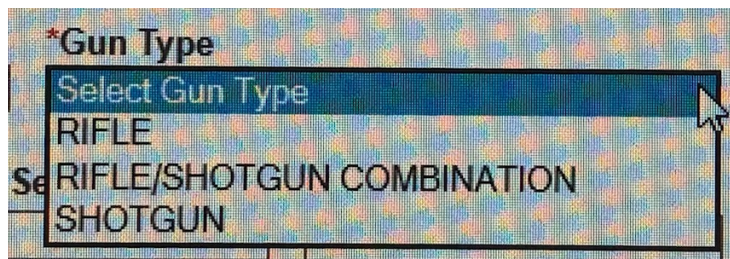
- 1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.
- 2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).
- 4) Enter the Transaction and Firearm Information as follows:

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

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

October 24, 2019

Page 3



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

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

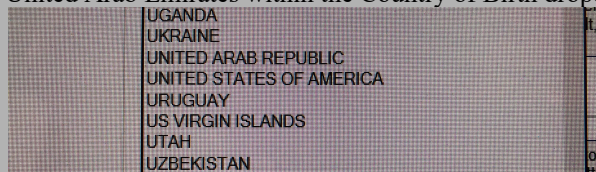
This defect, however, has severely impacted my client’s business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm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

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

As a result, Franklin Armory® President Jay Jacobson has been in contact and requested that the DES be corrected immediately to prevent the loss of sales and to preserve the reputation of Franklin Armory® within the industry and among its consumers. He has been advised that the Department of Justice is working on correcting the issue but was also informed that no timeline for the correction of the defect has been established. As such, this letter serves to both reiterate the importance of correcting the defect in the DES expediently, and to express and preserve legal and financial the impact that the defect has on Franklin Armory®.

ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES

It is important to note that the “gun type” omission is not the only defect relating to errors and omissions in the DES’s dropdown list. At the time of this writing, the DES’s technical limitations prevent any person born in the United Arab Emirates from purchasing firearms, even if they are United States Citizens who are not otherwise prohibited from possessing firearms. This defect and violation of rights based upon ethnicity occurs due to a similar failure to include the United Arab Emirates within the Country of Birth dropdown list in the DES:



This glaring omission has and will continue to violate the rights of those citizens until this defect is corrected.

October 24, 2019

Page 4

CONSTITUTIONAL VIOLATIONS

DUE PROCESS

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States forbids the several States from depriving any person of life, liberty, or property without due process of law. Under color of state law, the Department of Justice is subjecting Franklin Armory[®], its dealers, and its citizens to a deprivation of liberty and property without due process of law.

The defect within the DES essentially bans the sale, acquisition, transfer, delivery, and possession of lawful product in violation of the Due Process Clause doctrine. The ban forbids expression without giving fair notice of what is forbidden; as such, it is an unconstitutional deprivation of liberty and property without due process of law. This *de facto* ban violates the Due Process Clause doctrine regarding overbreadth. (See, e.g., *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).) It also forbids a substantial amount of constitutionally protected speech; as such, it is an unconstitutional deprivation of liberty and property without due process of law. And, this ban violates the Due Process Clause doctrine regarding deprivations of property. (See, e.g., *Matthews v. Eldridge*, 424 U.S. 319 (1976).)

Finally, the ban deprives the local licensed firearms dealers of the complete and lawful use of their license issued by the Department of Justice and does so without supplying adequate pre-deprivation notice and an opportunity to be heard; as such, it is an unconstitutional deprivation of property without due process of law. In each of these respects, the *de facto* ban constitutes an unconstitutional abridgement of Due Process Clause rights both facially and as applied to these circumstances.

SECOND AMENDMENT VIOLATION

Possession of lawful firearms in California is not a mere privilege. Fortunately, the Second Amendment protects a person's right to keep and bear firearms. The Second Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "As interpreted in recent years by the Supreme Court, the Second Amendment protects 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Teixeira v. Cty. Of Alameda*, 873 F.3d 670, 676– 77 (9th Cir. 2017), cert. denied sub nom. *Teixeira v. Alameda Cty.*, 138 S. Ct. 1988 (2018) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). At the core of the Second Amendment is a citizen's right to have in his and her home for self-defense common firearms. *Heller*, 554 U.S. at 629. "[O]ur central holding in *Heller* [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

As evidenced by California's own crime statistics, the need to protect one's self and family from criminals in one's home has not abated no matter how hard they try. Law enforcement cannot protect everyone. "A police force in a free state cannot provide everyone with bodyguards. Indeed, while some think guns cause violent crime, others think that wide-spread possession of guns on balance reduces violent crime. None of these policy arguments on either side affects what the Second Amendment says, that our Constitution protects 'the right of the people to keep and bear Arms.'"

October 24, 2019

Page 5

Silveira v. Lockyer, 328 F.3d 567, 588 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing *en banc*). However, California citizens, like United States citizens everywhere, enjoy the right to defend themselves with a firearm, if they so choose.

Not because of any statute, regulation, rule, or law, but merely as a result of improper design, the DES prohibits the California citizens from enjoying the right to defend themselves with a lawful firearm of their choice.

TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE

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

As referenced above, Franklin Armory[®] has announced the sale of their Title 1 product and has begun taking orders on the Title 1. The Department of Justice has been notified of these orders and the inability of Franklin Armory[®], and/or any licensed California firearms dealer to process these orders due to defects in the implementation of the DES, and a breach of duty by the Department of Justice pursuant to Penal Code sections 28105 and 28155. In refusing or delaying any corrections to the DES to permit the sale of lawful firearms, the DES is intentionally engaging in wrongful acts designed to disrupt current and future business of Franklin Armory[®].

DEMAND

Franklin Armory[®] has, always, sought to cooperate and work with the California Department of Justice. It was not, and is not, my client's desire to make caselaw. On the contrary, the extraordinary effort taken by Franklin Armory[®] demonstrates their desire to partner *with* law enforcement to limit liabilities on all sides, including the end-user. When, however, the Department of Justice exceeded its authority and implemented a defacto ban on the sale of lawful firearms via technological limitations of the State mandated, designed, implemented and maintained DES, it substantially interfered with the rights and business relationship of Franklin Armory[®] and its customers. As a result, it is reasonable to anticipate the need for litigation to ensure my client is made whole.

Due to the delete and destruction policies of the California Department of Justice, Bureau of Firearms, we are hereby informing you that the Department of Justice has a duty to preserve evidence and prevent the spoliation of any information that may be relevant to this matter, including but not limited to, any and all correspondence, writings, emails, logs, telephone records, texts, or other of communication or writings, as that term is defined in Evidence Code section 250, related to or referring to the DES "gun type" fields, changes to the DES, long guns that are neither rifles nor shotguns, Franklin Armory, Inc., Jay Jacobson, Jason Davis, or Title 1. "[A] litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." (*In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)). The duty attaches "from the moment that litigation is reasonably anticipated." (*Apple Inc. v. Samsung Electronics Co.*,

October 24, 2019

Page 6

Ltd., 881 F. Supp. 2d 1132, 1136 (N.D. Cal. 2012).) “Once a party reasonably anticipates litigation, it must suspend its routine [evidence] retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant [evidence].” (*Zubulake v. UBS Warburg*, 220 FRD 212, 218 (S.D.N.Y. 2003).) Where a party has violated its duty to preserve evidence and engaged in spoliation, federal courts have the inherent power to impose sanctions. (*See Sherman v. Rinchem Co., Inc.*, 687 F.3d 996, 1006 (8th Cir. 2012) (citations omitted)). Sanctions may include monetary sanctions, an adverse inference jury instruction, striking claims or defenses, exclusion of evidence, and default or dismissal.

As such, and in order to mitigate past and future damages that have or could further result from action or inaction, Franklin Armory[®] now demands as follows:

1. That the Department of Justice immediately correct the defect in the DES by permitting the sale of long guns that are neither shotguns nor rifles, such as the Title 1.
2. That the Department of Justice pay any and all damages that are incurred due to the refusal and/or delay in the correction of defects in the DES.

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

cc: Robert Wilson

EXHIBIT 5

Title 1, Trusts, and UAE

From Jason Davis <jason@calgunlawyers.com>
To Robert Wilson <Robert.Wilson@doj.ca.gov>
Date Friday, November 15th, 2019 at 10:23 AM

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

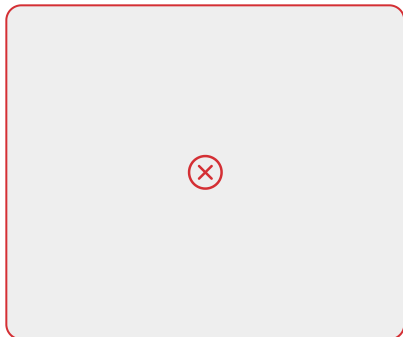
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101
Local Tel: (949) 436-GUNS [4867]
Fax: (888) 624-GUNS [4867]
Cell: (949) 310-0817
Website: www.CalGunLawyers.com

ORANGE COUNTY OFFICES
27201 Puerta Real, Suite 300
Mission Viejo, California 92691

TEMECULA OFFICES
42690 Rio Nedo, Suite F
Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system. Thank you for your cooperation.

Re: Title 1, Trusts, and UAE

From Robert Wilson <Robert.Wilson@doj.ca.gov>

To Jason Davis<jason@calgunlawyers.com>

Date Saturday, November 16th, 2019 at 12:47 PM

It's my understanding that we are Working on both. I'll try to get a better idea early next week. Rob

Sent from my iPhone

On Nov 15, 2019, at 10:23 AM, Jason Davis <jason@calgunlawyers.com> wrote:

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

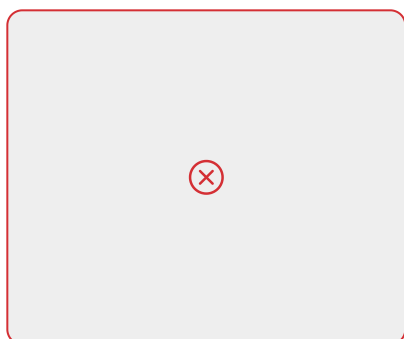
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101
Local Tel: (949) 436-GUNS [4867]
Fax: (888) 624-GUNS [4867]
Cell: (949) 310-0817
Website: www.CalGunLawyers.com

ORANGE COUNTY OFFICES
27201 Puerta Real, Suite 300
Mission Viejo, California 92691

TEMECULA OFFICES
42690 Rio Nedo, Suite F
Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-

DEF-FA 4231

mail and then delete this message from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

RE: Title 1, Trusts, and UAE

From Patty Li <Patty.Li@doj.ca.gov>

To Jason Davis<jason@calgunlawyers.com>

Date Tuesday, November 26th, 2019 at 4:18 PM

Mr. Davis,

Rob Wilson forwarded me the correspondence below. I wanted to let you know that the UAE has been added to the DES drop-down list for country of birth. DOJ is considering the other issues raised in your letter dated October 24, 2019.

Regards,

Patty

P. Patty Li

Deputy Attorney General

California Department of Justice

Office of the Attorney General

455 Golden Gate Ave., Suite 11000

San Francisco, CA 94102

ph: (415) 510-3817

fax: (415) 703-1234

From: Robert Wilson <Robert.Wilson@doj.ca.gov>

Sent: Saturday, November 16, 2019 12:47 PM

To: Jason Davis <jason@calgunlawyers.com>

Subject: Re: Title 1, Trusts, and UAE

It's my understanding that we are Working on both. I'll try to get a better idea early next week. Rob

Sent from my iPhone

On Nov 15, 2019, at 10:23 AM, Jason Davis <jason@calgunlawyers.com> wrote:

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

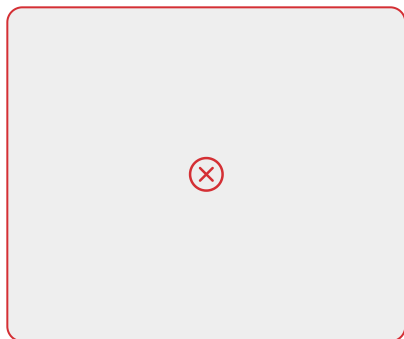
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101
Local Tel: (949) 436-GUNS [4867]

Fax: (888) 624-GUNS [4867]
Cell: (949) 310-0817
Website: www.CalGunLawyers.com

ORANGE COUNTY OFFICES
27201 Puerta Real, Suite 300
Mission Viejo, California 92691

TEMECULA OFFICES
42690 Rio Nedo, Suite F

Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EXHIBIT 6

1 messages

jdavis <jdavis@franklinarmory.com>

Fwd: Franklin Armory, et al. v. California Department of Justice, et al.

Jay Jacobson <jjacobson@franklinarmory.com>

Thu, Sep 14 2023 18:35:21

To: jdavis <jdavis@franklinarmory.com>

JIC.

**Jay Jacobson**
President

phone: 775.783.4313

email: jjacobson@franklinarmory.com

2246 Park Pl Ste B Minden, NV 89423, USA

In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited. This e-mail may also be confidential and may be legally protected by the Attorney-Client Privilege and Attorney Work Product Privilege. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system.

----- Forwarded message -----

From: Jason A. Davis <jdavis@michellawyers.com>

Date: 2020-03-30 18:20

Subject: Franklin Armory, et al. v. California Department of Justice, et al.

To: Luis.Lopez@doj.ca.gov, Robert Wilson <Robert.Wilson@doj.ca.gov>, xavier.becerra@doj.ca.gov

Cc: jjacobson@franklinarmory.com, C.D. Michel <cmichel@michellawyers.com>

All,

I have made multiple attempts to contact Mr. Wilson and Director Lopez regarding the deficiencies of the DES and the barrier that it presents in transferring lawful firearms such as the Franklin Armory, Inc. Title I. Much time has passed since the DOJ was placed on notice of this type of firearm, as well as the defects in the DES, and the DES's barrier still exists. We were recently informed that any correction would take months to implement. (It should be noted that similar updates in the DES have been performed since our last submission regarding the Title 1 and the historical timetables on similar updates/changes in the DES go against the timetables presented in the last letter response.)

I had hoped to discuss his matter with Mr. Wilson and Director Lopez one last time with the desire to avoid litigation to obtain the necessary changes in the DES or alternative interim methods. But, I received no response. Moreover, we are well aware of the current circumstances and are willing to participate in candid conversations as to actual timetables for such changes considering these uncertain times.

As it stands, my client has already lost over \$1 million in sales due to the DES's design. Moreover, members of the California Rifle and Pistol Association are being denied the ability to acquire lawful firearms as a result of the DOJ implemented barriers. As such, and without any further response from the Department of Justice, we will be filing suit this Friday. Attached is the draft Complaint. It will be revised before filing to include, among other possible revisions, a

DEF-FA 4274

claim for damages lost as a result of the design, implementation, maintenance, and enforcement of the DES by the Department of Justice, which has and continues to bar Franklin Armory from being able to fulfill its current reservations as well as those orders that continue to pour in during this period.

Again, it is our hope to resolve this matter before then. Please let me know if you have any questions or concerns.

Jason Davis

Of Counsel



Direct: (949) 310-0817

Main: (562) 216-4444

Fax: (562) 216-4445

Email: JDavis@Michellawyers.com

Web: www.michellawyers.com

180 E. Ocean Blvd.

Suite 200

Long Beach, CA 90802

1 attachments

[Reviewed TITLE 1 LAWSUIT - DES.pdf](#) 435 KB

[Redacted]



[Redacted]

[Redacted]

immediately by reply e-mail and then [Redacted].

----- Forwarded message -----

From Ja on A Davi jdavi@michellawyer.com
Date: 2020-03-30 18:20
Subject: Franklin Armory, et al. v. California Department of Justice, et al.
To: Luis.Lopez@doj.ca.gov, Robert Wilson <Robert.Wilson@doj.ca.gov>, xavier.becerra@doj.ca.gov
Cc: jjacobson@franklinarmory.com, C.D. Michel <cmichel@michellawyers.com>

All,

I have made multiple attempts to contact Mr. Wilson and Director Lopez regarding the deficiencies of the DES and the barrier that it presents in transferring lawful firearms such as the Franklin Armory, Inc. Title I. Much time has passed since the DOJ was placed on notice of this type of firearm, as well as the defects in the DES, and the DES's barrier still exists. We were recently informed that any correction would take months to implement (It should be noted that similar updates in the DES have been performed since our last submission regarding the Title 1 and the historical timetables on similar updates/changes in the DES go against the timetables presented in the last letter response.)

I had hoped to discuss his matter with Mr Wilson and Director Lopez one last time with the desire to avoid litigation to obtain the necessary changes in the DES or alternative interim methods. But, I received no response. Moreover, we are well aware of the current circumstances and are willing to participate in candid conversations as to actual timetables for such changes considering these uncertain times.

As it stands, my client has already lost over \$1 million in sales due to the DES's design. Moreover, members of the California Rifle and Pistol Association are being denied the ability to acquire lawful firearms as a result of the DOJ implemented barriers. As such, and without any further response from the Department of Justice, we will be filing suit this Friday. Attached is the draft Complaint. It will be revised before filing to include, among other possible revisions, a

claim for damages lost as a result of the design, implementation, maintenance, and enforcement of the DES by the Department of Justice, which has and continues to bar Franklin Armory from being able to fulfill its current reservations as well as those orders that continue to pour in during this period.

Again, it is our hope to resolve this matter before then. Please let me know if you have any questions or concerns.

Jason Davis

Of Counsel



Direct: (949) 310-0817

Main: (562) 216-4444

Fax: (562) 216 4445

Email: JDavis@Michellawyers.com

Web: www.michellawyers.com

180 E. Ocean Blvd.

Suite 200

Long Beach, CA 90802

1 attachments

[Reviewed TITLE 1 LAWSUIT - DES.pdf](#) 435 KB

EXHIBIT 7

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3817
Facsimile: (415) 703-1234
E-Mail: Patty.Li@doj.ca.gov

January 8, 2020

VIA E-MAIL AND U.S. MAIL

Jason Davis
Michel & Associates, P.C.
180 East Ocean Boulevard, Suite 200
Long Beach, CA 90802
JDavis@michellawyers.com

Jason Davis
The Davis Law Firm
42690 Rio Nedo, Suite F
Temecula, CA 92590
jason@calgunlawyers.com

Dear Mr. Davis,

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

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

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

January 8, 2020

Page 2

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

Sincerely,



P. PATTY LI
Deputy Attorney General

For XAVIER BECERRA
Attorney General

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

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

DEF-FA_4255

Exhibit A



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Enforcement, Programs & Services

Washington, DC 20226

www.atf.gov

December 19, 2019

Open Letter regarding the Franklin Armory Reformation Firearm

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

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

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

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

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

² See 26 U.S.C. 5845(d).

³ See 18 U.S.C. 921(a)(5).

⁴ See 18 U.S.C. 921(a)(6).

Open Letter regarding the Franklin Armory Reformation Firearm

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

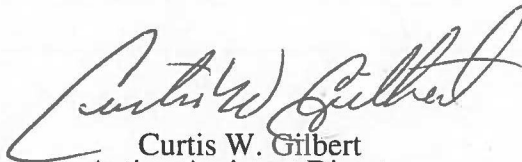
The Attorney General has delegated the authority for approval of requests pursuant to these sections to ATF.

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

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

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

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



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

Exhibit B

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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

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

December 4, 2019

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

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

Dear Mr. Davis:

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

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

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

Thank you.

Sincerely,

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

LINDSEY GOODWIN
Staff Services Analyst

For XAVIER BECERRA
Attorney General

/lg
Enclosures

DEF-FA_4260

SENIOR PARTNER
C. D. Michel*

MANAGING PARTNER
Joshua Robert Dale

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

ASSOCIATES
Tiffany D. Cheuvront
Alexander A. Frank
Konstadinos T. Moros
Los Angeles, CA

* Also admitted in Texas and the
District of Columbia



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

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

November 20, 2019

VIA U.S. Mail

9404 5036 9930 0170 6388 04

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

Re: TORT CLAIM ACT COMPLIANCE NOTICE

Dear Attorney General Becerra,

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

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

Sincerely,
Michel & Associates, P.C.

A handwritten signature in blue ink, appearing to read "Jason Davis", is written over a light blue horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Jason Davis

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

7 Attorneys for Claimant,
8 FRANKLIN ARMORY, INC.

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

12 FRANKLIN ARMORY, INC.)

GOVERNMENT TORT CLAIM

13 Claimant,

14 vs.

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

18 Respondents.
19
20
21
22
23
24
25
26
27
28

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

I.

INTRODUCTION

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

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

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

II.

FORM AND SUBSTANCE

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

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

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

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

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

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

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

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

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

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

11 Here, the facts are as follows:

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

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

22 ***

23 (2) The make of firearm.

24 ***

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

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

27 (9) Serial number, if applicable.

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

1 firearm.

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

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

6 (13) Caliber.

7 (14) Type of firearm.

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

9 (16) Barrel length.

10 (17) Color of the firearm.

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

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

19 **Dealer Long Gun Sale**

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

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

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

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

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

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

2 ***

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

5 ***

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

8 RIFLE

9 RIFLE/SHOTGUN COMBINATION

10 SHOTGUN

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

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

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

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

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

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

3 *CONSTITUTIONAL VIOLATIONS*

4 *DUE PROCESS*

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

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

19 *SECOND AMENDMENT VIOLATION*

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

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

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

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

17 *TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE*

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

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

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

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

10 **3. Inclusion of All Claimants**

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

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

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

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

25 *Xavier Becerra, Attorney General*

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

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

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

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

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

8 **III.**

9 **CONCLUSION**

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

14
15 s/ Jason Davis

16 Jason Davis, Attorney
17 On Behalf of Claimant
18 Franklin Armory, Inc.
19
20
21
22
23
24
25
26
27
28



BUREAU OF FIREARMS
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Public: (916) 227-4010
Facsimile: (916) 227-4070

December 14, 2018

Jason Davis
The Davis Law Firm
42690 Rio Nedo, Suite F
Temecula, CA 92590

Re: Franklin Armory, Inc. Prototype Name - Title 1

Dear Mr. Davis:

This letter responds to your October 31, 2018 request, on behalf of Franklin Armory, Inc., that the Department of Justice (Department) “examine and review Franklin Armory’s newly designed firearm, currently bearing the prototype name – ‘Title 1’ to ensure that it complies with California’s voluminous firearm laws before it begins selling and distributing the firearm within the State of California.” You suggest that California Government Code section 11465.20 compels the Department to issue this guidance.

The Administrative Procedure Act empowers agencies to conduct an adjudicative proceeding under the declaratory decision procedure set forth in Government Code section 11465.10 et seq. However, whether to issue a declaratory decision in response to an application lies within the agency’s discretion. In this case, discretion requires that the Department decline to render a decision due to pending litigation on related issues and the possibility of the decision being viewed as an underground regulation. (Gov. Code, § 11465.20, subd. (b).) Moreover, even if the Department were not constrained as mentioned, it could not evaluate the firearm by a document and photograph.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin J. Horan IV".

MARTIN J. HORAN IV
Director
Bureau of Firearms

For XAVIER BECERRA
Attorney General

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

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

7 On June 26, 2024, I served the foregoing document(s) described as

8 **DECLARATION OF JASON A. DAVIS IN SUPPORT OF PLAINTIFF’S OPPOSITION TO**
9 **DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR**
10 **SUMMARY ADJUDICATION**

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

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

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

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

28 Executed on June 26, 2024, at Long Beach, California.



Laura Palmerin