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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 Petitioners-Plaintiffs,

12 v.

13 CALIFORNIA DEPARTMENT OF JUSTICE,
14 et al.,

15 Respondents-Defendants.
16

Case No.: 20STCP01747

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

**DECLARATION OF JAY JACOBSON 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 JAY JACOBSON**

2 I, Jay Jacobson, hereby declare as follows:

3 1. I make this declaration in support of Plaintiff’s Opposition to Defendants’ Motion for
4 Summary Judgment, or in the Alternative, for Summary Adjudication. I have personal knowledge of the
5 facts set forth herein and if called as a witness, I could and would competently testify hereto.

6 2. I am the President of Franklin Armory, Inc. (“FAI), a federally licensed firearms
7 manufacturer incorporated under the laws of Nevada with its principal place of business in Minden,
8 Nevada. FAI also has a manufacturing facility in Minden, Nevada.

9 3. FAI manufactures a series of firearms that are designated by FAI with the model name
10 Title 1®. FAI’s Title 1® series of firearms are semiautomatic AR-15-type firearms configured with a
11 threaded barrel, a flash suppressor, and a pistol grip. Instead of a stock, they feature a pistol-length
12 buffer tube. They are not designed or intended to be fired from the shoulder. They are chambered in
13 various calibers, including 5.56 NATO (a centerfire caliber) and .17 WSM (a rimfire caliber). Title 1®
14 firearms include a standard push-button magazine release, and they ship with a ten-round detachable
15 magazine. The overall design (summarized above) of FAI’s Title 1® series of firearms renders the
16 devices to be a “firearm,” but not “rifles,” “shotguns,” or “handguns,” as those terms are defined by
17 California law. In short, the FAI Title 1® lacks a statutorily defined subtype.

18 4. In the fall of 2019, we began to hear from licensed California firearms dealers (“FFLs”)
19 that they would not be able to process the transfer of FAI’s Title 1 model firearm through the DES
20 because they could not accurately submit the required information for long guns that are neither rifles
21 nor shotguns nor rifle/shotguns through the DES.

22 5. On or around October 8, 2019, I contacted the California Department of Justice, Bureau
23 of Firearms, via telephone and spoke with “Operator 211.” I followed that call with an email to the
24 California Department of Justice, Bureau of Firearms, through its contact email address
25 firearms.bureau@doj.ca.gov. In that email, I explained that because the DES did not have an option for
26 entering the information of long guns that are neither rifles nor shotguns nor rifle/shotguns, DES users
27 could complete the transfer of lawful long guns that are neither rifles nor shotguns nor rifle/shotguns
28 through the DES. I consequently posed three questions:

- 1 • “How would a dealer fill out the DES Long Gun Transfer if they were transferring
- 2 any of the above firearms [i.e., examples of long guns that are neither rifles nor
- 3 shotguns nor rifle/shotguns]?”
- 4 • Would it be possible for the state to add “Other” to the options under the question
- 5 ‘Gun Type?’ If so, how long might it take to add the option?”
- 6 • “In the meantime, should a dealer select “Rifle/Shotgun” under ‘Gun Type’ and then
- 7 properly describe the product under Section q Comment?”

8 A true and correct copy of my October 2019 emails to firearms.bureau@doj.ca.gov is attached hereto as

9 **Exhibit 8.**

10 6. On or around October 15, 2019, FAI publicly announced the availability of its centerfire
11 Title 1® model firearm, and it quickly garnered substantial interest from the public. FAI soon began to
12 offer Title 1® firearms for sale and began to take refundable deposits from customers toward the
13 purchase of Title 1® firearms.

14 7. Having received no response to my October 8, 2019, email, I again contacted the Bureau
15 of Firearms via telephone on or about October 16, 2019. Again, I spoke with “Operator 211.” That call
16 ultimately left me wondering if the DOJ had any intention to take quick action to fix the DES issue I
17 raised. So, I followed up with another email to firearms.bureau@doj.ca.gov. In that email, I notified the
18 Bureau that the DOJ’s failure to address the DES defect was actively preventing the lawful commerce of
19 FAI’s lawful Title 1® model firearms. Hearing nothing, I again followed up via email to
20 firearms.bureau@doj.ca.gov on or about October 21, 2019. I received no response.

21 8. On or about October 22, 2019, I spoke with Mr. Blake Graham from the California
22 Department of Justice, Bureau of Firearms, to discuss the concerns I had and had heard from licensed
23 firearms dealers regarding the DES limitation that was preventing the lawful transfer of FAI’s Title 1®
24 model firearm. We discussed the issue at length. I was informed by Blake Graham that Mossberg
25 Cruisers had been processed through the DES as shotguns, even though Mossberg Cruisers do not have
26 a stock. Mr. Graham did not confirm whether the DOJ would allow DES users to use the same process
27 when processing the transfer of FAI’s Title 1® model firearm.

28 9. That said, based on anecdotal information that I have heard from some dealers, I

1 understand that *some* lower receivers, barreled receivers, and pistol grip shotguns have been processed
2 through the DES as either rifles or shotguns. This was limited, however, to only certain firearms using a
3 specific method involving the use of the “Comment” section within the DES. Though I asked if DES
4 users could take advantage of that same process when processing the transfer of FAI’s Title 1 model
5 firearm (see Ex. 8 “In the meantime, should a dealer select “Rifle/Shotgun” under ‘Gun Type’ and then
6 properly describe the product under Section q Comment?”), I received no response.

7 10. When FAI customers placed orders to purchase centerfire FAI Title 1® model firearms,
8 the advertised full purchase price was \$944.99. But because FAI knew that the DES defect prevented
9 transfers of the Title 1®, FAI offered customers the opportunity to submit a refundable deposit toward
10 the purchase of a Title 1® to be completed once the DES defect was corrected. Payment of the deposit
11 essentially saved a “spot in line” for the deposit payor. FAI ultimately collected about 35,000 deposits
12 for the sale of centerfire FAI Title 1® firearms. Deposit amounts were between \$5 dollars and the full
13 purchase price. A true and correct copy of a page from FAI’s website advertising the “Title 1® Deposit”
14 is attached hereto as **Exhibit 10**. This document was retrieved from the Internet Archival website, The
15 Wayback Machine, on or about June 25, 2024.

16 11. FAI could not, however, lawfully transfer the FAI Title 1® model firearm to its deposit-
17 paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd.
18 (a)(9)-(11)) because the DES enhancement adding “Other” to the “long gun” subtype dropdown list was
19 not made before SB 118 took effect and because the DOJ had made no alternative available for the
20 submission of the required data for long guns that are neither rifles nor shotguns nor rifle/shotguns.

21 12. FAI suffered economic damage in the form of millions of dollars in lost profits because
22 we could not lawfully complete the sale of and transfer the FAI Title 1® model firearm to its thousands
23 of deposit-paying customers before the enactment and enforcement of SB 118.

24 13. Assuming, however, that FAI’s centerfire Title 1® model firearm could ever be lawfully
25 transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all
26 orders for which people paid deposits. FAI remains committed to fulfilling those orders to this day.

27 14. To date, a very small minority of the thousands of individuals who made a deposit have
28 asked for a refund.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on June 26, 2024, at 12:16 PM, MENDEN, NV.
3

4 
5 Jay Jacobson
6 Declarant
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EXHIBIT 8

Jay Jacobson

From: Jay Jacobson <jacobson@franklinarmory.com>
Sent: Monday, October 21, 2019 12:37 PM
To: firearms.bureau@doj.ca.gov
Cc: Jason Davis
Subject: Re: Attention Operator 211
Attachments: image034.png; image032.jpg; image009.jpg; image026.jpg; image017.png; image003.jpg; image002.png; image037.jpg; image027.png; image007.jpg; image033.jpg; image005.jpg; image011.png; image016.jpg; image013.png; image019.png; image035.png; image036.jpg; image025.jpg; image051.jpg; image015.jpg

Good afternoon Operator 211.

I have yet to hear back from the department. I will be on the road this week, so please call my cell phone. 408.592.9188. I'd really like to resolve this issue amicably. However, I have attached a complaint we are filing against the State of New Jersey tomorrow. We have the resources to move forward when recalcitrant agencies refuse to follow the law.

All I ask is for the department follow the law with integrity and fidelity. Since there is no law against the sale of our product, the DES system will require an additional long gun descriptor. Our product is NOT a rifle, shotgun, or pistol.

Failure to respond will result in litigation very similar to the complaint against New Jersey. Wouldn't it be best to avoid embarrassment by simply complying with the law you have sworn to uphold?

On Thu, Oct 17, 2019, 1:56 PM Jay Jacobson <jacobson@franklinarmory.com> wrote:

Good afternoon Operator 211.

Thank you again for your time on the phone yesterday. Unfortunately I am left wondering if the department is going to take immediate action to fix the website that is now preventing the lawful commerce of our products. At this point, I have given the department over a week to develop an action plan, and the best we have heard is that "they are working on it."

My goal with this correspondence is to stave off litigation that will surely cost the state a lot of money given that the merits of the case would seem to be in our favor. If we were to hear that the problem with the DES dropdown menu was going to be fixed by the end of the week, then I would be satisfied.

If you would be so kind to have the manager in charge of this issue give me a call today, I would certainly appreciate it. My cell phone is 408-592-9188.

Take care,

--



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.

From: Jay Jacobson <jjacobson@franklinarmory.com>

Sent: Monday, October 14, 2019 2:03 PM

To: 'firearms.bureau@doj.ca.gov' <firearms.bureau@doj.ca.gov>

Cc: Jason Davis <jdavis@franklinarmory.com>

Subject: RE: Attention Operator 211

Hello 211.

Have you made any progress on the DES issue that is precluding the sale of various firearms discussed below? Please note that I have indicated four different firearm examples that are not directly related to Franklin Armory that are obliged to be transferred under DES because there is not a state law that precludes the sale of the firearms.

Besides the four examples below, Franklin Armory has two related firearms that fall into this category: Title 1™ and CSW™. Since we believe that both of these firearms are legal to sell within the state, we believe that the state is unrighteously denying our product the right to sell within the state. It is imperative that the DES be changed to allow for a drop down menu allowing “other” under dealer long gun sale.

We have waited 6 days already. Please let us know when we should expect a response.

Sincerley,

--



Jay Jacobson

President

Phone: 775.783.4313

Email: jjacobson@franklinarmory.com

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From: Jay Jacobson <jjacobson@franklinarmory.com>
Sent: Friday, October 11, 2019 4:51 PM
To: 'firearms.bureau@doj.ca.gov' <firearms.bureau@doj.ca.gov>
Subject: RE: Attention Operator 211

Good afternoon Operator 211.

It has been a few days since I sent in the below correspondence. Can you please confirm that you have received it and whether or not the department intends to change the drop down menu?

Respectfully,

--



Jay Jacobson

President

Phone: 775.783.4313

Email: jjacobson@franklinarmory.com
2246 Park Pl Ste B Minden, NV 89423, USA



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From: Jay Jacobson <jjacobson@franklinarmory.com>
Sent: Tuesday, October 8, 2019 1:29 PM
To: 'firearms.bureau@doj.ca.gov' <firearms.bureau@doj.ca.gov>
Subject: Attention Operator 211

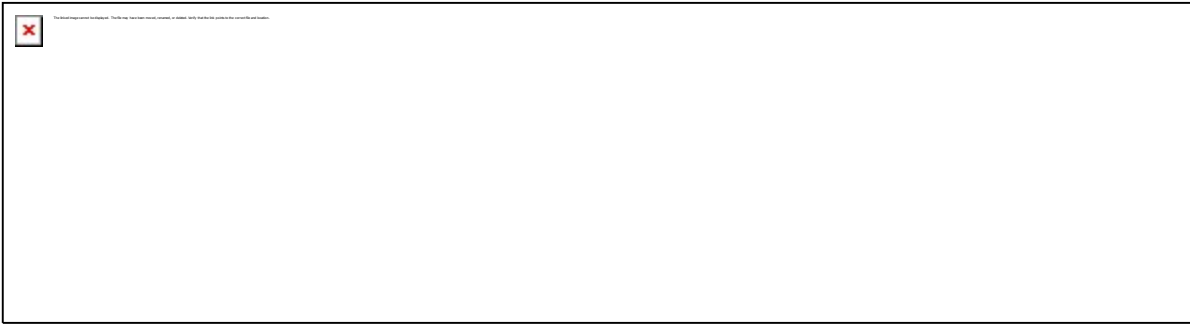
Good afternoon Operator 211.

Thank you for taking my call today. How would a dealer transfer a firearm that is a long gun but is neither a rifle, nor a shotgun?

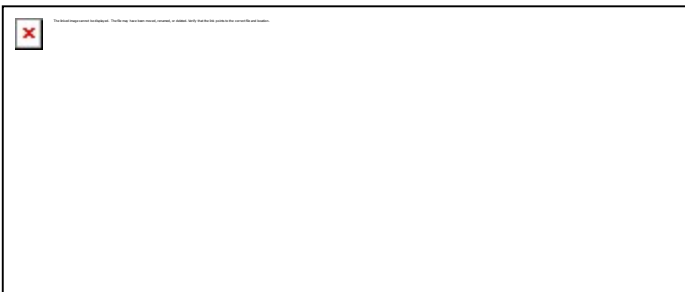
I looked on the following DES PDF https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/dros_entry_guide.pdf and found on page 52, that there is a process for a "Dealer Long Gun Sale." When a dealer fills in the entry, they eventually get down to section "j. Gun Type." At this point the dealer has three options: "Rifle," "Rifle/Shotgun," or "Shotgun." Unfortunately this list becomes a false trichotomy.

In the world of firearms (even in California) there are firearms that are not defined as a rifle, a shotgun, or combination rifle/shotgun. Examples may include the following:

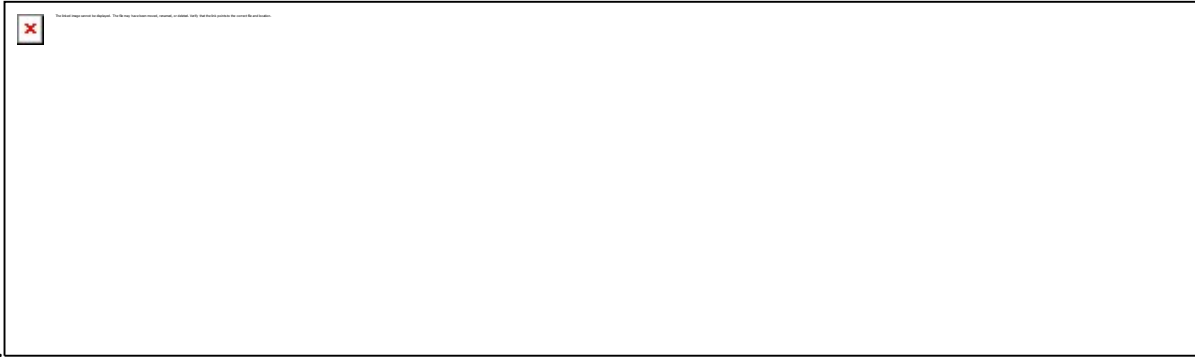
- Mossberg Cruiser: It is chambered in 12 gauge, and has a barrel over 18" long. However, it does not have a stock. It is a long gun that is not technically a shotgun or rifle.



- 1919A4 (semiautomatic of course:) This is a firearm that chambers a metallic cartridge, has a rifled bore, but it lacks a stock. Consequently it is also a long gun that is not a rifle.

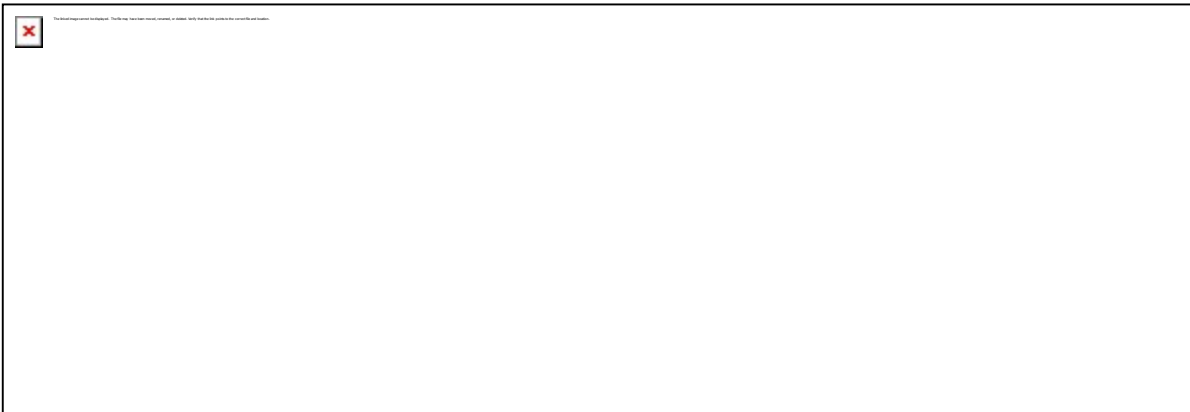


- Uberti 1873 Buntline Colt Revolver with 18-Inch Barrel: Note that the barrel is over 16 inches and therefore is not a pistol. Again, it lacks a



stock.

- Barreled Action: A barreled action is not a “receiver only” because it has a barrel, caliber, etc. However, it is neither a rifle or a shotgun because it is not fitted to a stock.



As these diverse examples demonstrate, there is a need to add an additional option on the dropdown menu for “other.” Without an “other” option, a consumer cannot accurately select the appropriate Gun Type when filling out the documentation. Consequently, I ask the following questions:

- How would a dealer fill out the DES Long Gun Transfer if they were transferring any of the above firearms?
- Would it be possible for the state to add “Other” to the options under the question “Gun Type?”
 - If so, how long might it take to add the option?
- In the mean time, should a dealer select “Rifle/Shotgun” under “Gun Type” and then properly describe the product under section “q. Comments?”

In full disclosure, I will note that Franklin Armory does have a product called "Title 1" that is ready to be sold in California. I intend to buy and transfer one to myself. The department counsel is well aware of the resolved litigation on the matter. **Even so, I am not asking whether or not the department believes that the Title 1 is legal or not.** (If it was illegal, I believe the department counsel would have said so in the most recent demurrer on the subject.) Instead, I am simply asking for the department would transfer firearms that are long guns that are neither a rifle or a shotgun.

Respectfully

--



Jay Jacobson

President

Phone: 775.783.4313

Email: jjacobson@franklinarmory.com

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EXHIBIT 9

UNINTENTIONALLY SKIPPED

EXHIBIT 10



The wayback machine - <https://web.archive.org/web/20201202161914/https://franklinarmory.com/amp/title-1-deposit/>

Title 1® Deposit

\$5.00

SKU: 1269-BLK

Availability: This Product is no Longer Available

Full Price: \$944.99

Magazine Release: Standard Push Button

Muzzle Device: A2 Flash Suppressor







Description

Deposit for the Title 1™

IMPORTANT NOTICE

Please be aware that the California Department of Justice has not updated their "DES" website, and Title 1® cannot currently transfer to the consumer. Franklin Armory®, Inc. is pursuing corrective efforts with the California Department of Justice to alleviate what we believe are unlawful barriers to the delivery of lawful firearms. Additionally, the state legislature is currently considering a bill that could prohibit the sale, possession, and/or delivery of this firearm. Though the bill has not been enacted into law at this time, all Californians should be aware of the potential changes in the law before making any deposits. As part of our commitment to our customers, all Title 1® deposits will remain fully refundable and refunds of the deposits will be provided to all customers who are not able to have their firearms.

Franklin Armory® Title 1® was created for our friends behind enemy lines where the modern sporting rifle is neutered beyond comprehension. While fixed magazine and featureless platforms will continue to have their place, Title 1® provides a FULL FEATURE option to the consumer in restrictive jurisdictions. It has a standard magazine release and while it ships with a ten round magazine, civilians can use legally acquired 30 round



- Standard Push button magazine release.
- Can be used with 30 round magazine if acquired legally.
- Can be used with any flash hider or compensator on the market
- Very Stable with three points of contact including a padded cheek weld.
- 100% American Made!

Barrel Length + Type	16" Barrel
Handguard/Upper	15" FST™ M-Lok
Sights	Optic Ready
Twist	1:7"
Charging Handle	Standard
Bolt Carrier	Salt Bath Nitride
Lower	FAI™
Trigger	Custom Tuned Trigger

Magazine	10 Round Magpul
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Color	Black
Buffer Tube	Pistol
Grip	Magpul SL
Calibers	5.56 NATO

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Info

*2246 Park Place Suite B
Minden, NV 89423*



and if you don't have a sword, sell your cloak and buy one".

Call us at 7757834313

© Franklin Armory®

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 JAY JACOBSON 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