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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

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

15 Plaintiffs,

16 v.

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

20 Defendants.

Case No. 20STCP01747

**DEFENDANTS' REPLY TO
OPPOSITION TO MOTION TO
COMPEL PRODUCTION OF
UNREDACTED DOCUMENTS
PURSUANT TO NOTICES OF
DEPOSITION**

Date: July 12, 2024

Time: 8:30 a.m.

Dept.: 32

Honorable Daniel S. Murphy

RES ID: 707657803918

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II
ARGUMENT

A. THE MOTION IS TIMELY

The Motion to Compel unredacted copies of what was produced is timely and properly brought to challenge the Person Most Qualified’s (PMQ) failures to provide the requested documents. The exact argument Plaintiff makes in Section I on procedure and timeliness was the one rejected by the court in *Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 997–998. In *Carter*, a request for production was answered with only objections, and the demanding party did not then move to compel the production. (*Id.* at p. 996.) This was followed by a deposition notice with requests to produced those same documents, and only then did the demanding party move to compel production – and this was entirely appropriate. (*Id.* at p. 997.) The separate requests here (like in *Carter*) have separate statutory authority underlying them, and so utilizing one first does not foreclose the other later. (*Ibid.*)

Defendants here could have moved to compel responses after the first set of production made under Code of Civil Procedure section 2031.010, subdivision (b), but not doing so after 45 days only “waives any right to compel a further response to the demand.” (Code Civ. Proc., § 2031.310, subd. (c).) Compelling production on that demand is different than requesting those same documents to be produced at a deposition. *Carter* confirms what common sense directs – that two separate discovery processes have separate recourses for failure to comply, which are to be evaluated and utilized separately. Defendants requested the documents in a request for production as well as requesting the documents be produced in a deposition. A motion to compel on the deposition after the request for production is the recommended way to proceed when the contested documents are complex or voluminous. (Rutter Group, Cal. Prac. Guide Civ. Pro. Before Trial (2024 edition) Ch. 8E-5, Subpoena Not Necessary for Party or “Party-Affiliated” Witnesses.) The requests were proper when made for the later depositions, and the Motion seeking compel those is timely and presents the properly-developed discovery dispute for the Court.

1 **C. A BALANCING TEST CALLS FOR COMPELLING PRODUCTION**

2 The Opposition does not counter the fundamental truism that a contract interference case
3 requires identifying the parties to the contract. It does not explain why depositors that would still
4 have to submit to and pass a background check somehow have a right not reveal a small subset of
5 the information that would be provided in the check. Nor does it explain why any such concerns
6 are not already addressed by the Protective Order in place. But it does ask this Court to conduct a
7 balancing test referenced on page 10, and such a balancing test requires compelling the
8 production of the information.

9 **a. Title I purchasers know they have to share identifying information with the**
10 **permitting agency**

11 Depositors have not shown a privacy interest, because if they were who plaintiff alleges
12 they are, then they would have to produce that same information to the defendant. Purchasers of
13 firearms are required by law to provide detailed personal information to Federal Firearms
14 Licensee (FFL) who can then transfer the firearm to them. None of the depositors who might later
15 become purchasers could complete the transaction without providing that information. The
16 number of purchasers of the Title I firearm, who could also refuse to provide their name and
17 contact into to the State of California is a null set because you cannot complete a purchase of the
18 weapon without the FFL confirming you are eligible.

19 The Opposition argues that the customers/depositors’ privacy rights “weigh heavily
20 against disclosure,” but does not addresses the fundamental failing in that argument: that all these
21 depositors will be required to provide this information to defendant in order to pass the necessary
22 background check before the FFL can give them the weapon. A California resident who wants to
23 buy a Title I from Franklin Armory must pass a government background check before receiving
24 the Title I. (Opp. p. 12, l. 9.) The background check requires far more information than the name
25 and contact info requested here. So the privacy interests of the depositors is not made clear to the
26 Court.

1 **b. Defendants’ interest in the information**

2 On the other side of the ledger, defendants are asked to compensate the plaintiff for
3 contracts that were allegedly interfered with, but defendants are kept from understanding even
4 who the parties to the contract are. On page 12, Plaintiffs allege that there is no reason to actually
5 confirm that these depositors might actually go through with the next steps to complete a sale.
6 Plaintiff argues there are “thousands” of these depositors, but their claimed number is not relevant
7 as to whether or not Defendant is entitled to confirm they are actual people. Defendant has to find
8 out what the depositors believe about the deposit, and what they intended with it. The sheer
9 claimed number of those depositors does nothing to alter or lessen the importance of confirming
10 who these depositors were and what their intention was.

11 The argument on pages 12-13 that alleges Defendants should be happy to just take
12 Plaintiff’s word for the number and character of the depositors because of the looming trial date is
13 belied by the history of this discovery dispute. The document requests were first responded to in
14 September 2023, and Defendant could have filed a motion to compel until February 2024. Only
15 when the same set of objections were made by David Gockel on April 22, 2024 and then again
16 with Karin Jacobson on June 18, 2024 was the need for the Motion to Compel laid bare, and after
17 meet and confer efforts were fruitless the Motion was filed. The Opposition tries to counter with
18 half-hearted offers to identify retailers or to “. . . notify its customers to identify others willing to
19 be known at this stage (Barvir Decl., ¶ 12, Ex. 5).” Defendants need to be able to contact a
20 statistically-significant total of depositors, not just receive comments from volunteers that raise
21 their hands. Defendants cannot understand or defend against the contract interference claims
22 without the foundational information about those deposits.

23 Given the fact that these depositors, were they ever to make it to the next stage and
24 become potential customers, would necessarily have to share their name and address (amongst
25 other information) with the Defendants anyway, plaintiff’s offer to act as middleman and
26 approach certain customers is worthless. (Opp. 13:15-17.) Defendants need the requested
27 identifying information, otherwise they cannot fully understand the nature of the contracts that the

1 remaining causes of action allege they interfered with. This result is exactly the situation where a
2 complaining party is having their cake and eating it too addressed in the Motion and in the next
3 section. Tortious interference with a contract cannot be evaluated when one end of the contract is
4 purposefully kept secret.

5 **c. Privacy rights of a supposed contracting party do not outweigh the rights of a**
6 **party blamed for interfering with that contract**

7 The Opposition mischaracterizes that the Motion argued Plaintiff “waived” the depositor’s
8 customer information. But the argument is not one of waiver of any privacy of that information, it
9 is that when a party seeks to recover damages for interfering with a contract, at a minimum they
10 have to define the who/what/where/why of the contract. A party that seeks to recover on a
11 contract that they refuse to define, “has insisted on having his cake and eating it too. That he
12 cannot do.” (*Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 175, citing *Fremont Indemnity Co. v.*
13 *Superior Court* (1982) 137 Cal.App.3d 554, 557.) Plaintiffs are demanding payment for contracts
14 they say were interfered with, but they refuse to provide the information they have on those same
15 contracts. If plaintiff has the burden to prove that deposits are supposedly contracts, then they
16 cannot hide behind the fact that their supposed contracts were with third parties.

17 A party that records the oral conversation that supposedly gave rise to the contract at issue
18 has to produce the audio recording of that conversation. (*Hartbrodt, supra*, 42 Cal.App.4th at p.
19 175.) Similarly, an arsonist seeking to recover on a fire insurance policy has to be deposed by the
20 insurance company he wants to pay on that policy. (*Fremont, supra*, 137 Cal.App.3d at p. 560.)
21 Or a party alleging malpractice for tax preparation errors has to produce the tax records as
22 “plaintiff cannot interdict legitimate defenses thereto by asserting a privilege as to the very
23 matters she has placed at issue in the litigation.” (*Wilson v. Superior Court* (1976) 63 Cal.App.3d
24 825, 831.) The same way, a party claiming medical damages cannot then keep an independent
25 medical exam report from being revealed under a physician-patient privilege. (*City & County of*
26 *San Francisco v. Superior Court In and For City and County of San Francisco* (1951) 37 Cal.2d
27 227, 231.)

1 Because this information involves third parties, the Court is asked to apply a balancing
2 test. If the information was plaintiff’s alone, there would be no dispute, it is only because these
3 depositors are not parties that the test must be applied, but the Opposition makes no argument
4 based in law on the depositor’s supposed privacy rights in their identity or their contact
5 information. As noted above, anyone that would purchase a firearm would have to reveal that and
6 much more in a background check. And courts have repeatedly found that discovery is the exact
7 process by which one party can identify the parties to a contract that is at issue in the matter.

8 In evaluating supposed violations of privacy, a court is to apply the factors identified in *Hill*
9 *v. National Collegiate Athletic Assn.* ((1994) 7 Cal.4th 1, 35-37.): “The party asserting a privacy
10 right must establish a legally protected privacy interest, an objectively reasonable expectation of
11 privacy in the given circumstances, and a threatened intrusion that is serious.” (*Williams v.*
12 *Superior Court* (2017) 3 Cal.5th 531, 552.) This applies to discovery disputes. (*County of Los*
13 *Angeles v. Superior Court* (2021) 65 Cal.App.5th 621, 629.) So, if Plaintiff wished to make the
14 argument that the identity and contact info for the depositors that Plaintiff alleges are frustrated
15 customers are private, then the Opposition has to actually do that.

16 There is no discussion of the privacy interest of these depositors. Plaintiff does not define
17 what the objectively reasonable expectation of privacy they are seeking to protect. They do not
18 justify why revealing this information under a Protective Order is a “serious” intrusion,
19 particularly so in light of the fact that this same information will be provided in the background
20 check. Plaintiff is further still deficient, because they do not explain why even if all the above was
21 present, and there was a privacy interest in to protect, why “notice and opportunity” to be heard
22 on that right would not satisfy it. (*Weingarten v. Superior Court* (2002) 102 Cal.App.4th 268,
23 278, where a ex-spouse was given the notice and opportunity to object to divulging joint tax
24 returns when the ex-spouse was being prosecuted for financial crimes.) None of that is in the
25 Opposition.

26 The Opposition does not establish a privacy right to depositors’ names and contact
27 information. Defendants are not, and have never asked for credit card information, a straw man

1 argument that appears twice in the Opposition. (Opp. p. 9, l. 10, p. 10, l. 9.) The Motion requests,
2 and the Opposition does not provide a basis to deny it, the requested unredacted information so
3 that Defendants are able to defend against the remaining tortious interference with contract
4 claims, and to understand what the alleged contract ever was. Plaintiffs appear to be using these
5 third party depositor claims to secret the details of the alleged contracts that were violated, and
6 that requires them to produce the information that underlies the remaining claims.

7
8 V

9 **CONCLUSION**

10 For the reasons set forth above, defendants respectfully request that the court grant the
11 motion to compel the production of unredacted copies of all documents produced by plaintiff in
12 this action.

13
14 Dated: July 5, 2024

15 Respectfully submitted,
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20 *Andrew Adams*

21

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25 *Justice and Former Attorney General*
26 *Xavier Becerra*

DECLARATION OF SERVICE BY E-MAIL

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 e-mail address is: Jasmine.Zarate@doj.ca.gov

On July 5, 2024, I served the attached **DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO COMPEL PRODUCTION OF UNREDACTED DOCUMENTS PURSUANT TO NOTICES OF DEPOSITION** by transmitting a true copy via electronic mail, addressed as follows:

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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 July 5, 2024, at Los Angeles, California.

Jasmine Zarate

Declarant

/s/ Jasmine Zarate

Signature