

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

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

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

17 Plaintiffs,

18 v.

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

22 Defendants.

Case No. 20STCP01747

**REPLY TO PLAINTIFF'S SEPARATE
STATEMENT OF UNDISPUTED
MATERIAL FACTS AND ADDITIONAL
FACTS IN OPPOSITION TO MOTION
BY DEFENDANTS FOR SUMMARY
JUDGMENT**

Date: July 10, 2024

Time: 8:30 a.m.

Dept.: 32

Honorable Daniel S. Murphy

RES ID: 554862513719

26 Defendants submit this reply to plaintiff's statement of undisputed facts in opposition to the
27 motion for summary judgment:

<p>1 <u>DEFENDANTS' UNDISPUTED</u> <p>2 <u>MATERIAL FACTS AND SUPPORTING</u> <p>3 <u>EVIDENCE:</u></p> </p></p>	<p><u>REPLY TO PLAINTIFF'S RESPONSE</u> <p><u>AND SUPPORTING EVIDENCE:</u></p> </p>
<p>3 Third Cause of Action: <p>4 Tortious interference with contractual <p>5 relations</p> </p></p>	
<p>5 1. The Second Amended Complaint (SAC) <p>6 alleges that on October 24, 2019, plaintiff sent <p>7 a letter to former Attorney General Becerra, <p>8 asserting that a defect in the Department of <p>9 Justice (Department) online system for <p>10 processing transfers of firearms rendered <p>dealers unable to transfer its recently <p>announced Title 1 firearm to its customers. <p>(SAC, ¶ 69, Ex. C.)</p> </p></p></p></p></p></p></p></p>	<p>1. Plaintiff does not dispute.</p>
<p>11 2. Jay Jacobson, President and an owner of <p>12 Franklin Armory, testified that the Title 1 was <p>13 designed with a 16 inch barrel and a padded <p>14 buffer tube instead of a stock and without a <p>stock, it would not be intended to be fired <p>from the shoulder and thus not a rifle. <p>(Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4- <p>24, Ex. A to Lake Dec.)</p> </p></p></p></p></p></p></p>	<p>2. Plaintiff does not dispute.</p>
<p>16 3. The Title 1 was a long gun. “Long gun” <p>17 means any firearm that is not a handgun or a <p>18 machinegun. <p>19 (SAC, ¶¶ 23-24, Pen. Code, § 16865.)</p> </p></p></p>	<p>3. This fact is effectively undisputed.</p>
<p>21 4. On August 6, 2020, the legislature passed <p>22 SB 118 which included amending the Penal <p>23 Code Section 30515 definition of an assault <p>24 weapon to add a “centerfire firearm that is not <p>25 a rifle, pistol, or shotgun” that includes <p>components in three categories. (Pen. Code, § <p>30515 (a)(9)-(11).) With this change in <p>definition, the Title 1 was rendered a banned <p>assault weapon. <p>(SAC, ¶ 112, Mendoza Dec. ¶ 11.)</p> </p></p></p></p></p></p></p></p></p>	<p>4. This fact is effectively undisputed. The <p>added commentary as to the word “banned” <p>does nothing to controvert this fact.</p> </p></p>
<p>27 5. The online system for the submission of <p>28 information concerning the sale and transfer <p>of firearms is known as the Dealer Record of</p> </p></p>	<p>5. Plaintiff does not dispute.</p> <p>2</p>

1 2 3 4 5 6	<p>Sale Entry System (DES) The DES is a web-based application used by California firearms dealers to submit firearm background checks to the Department to determine if an individual is eligible to purchase, loan, or transfer a handgun, long gun, and ammunition.</p> <p>(Cal. Code Regs., tit. 11, § 4200; citing Pen. Code, § 28205, Mendoza Dec., ¶ 3.)</p>	
7 8 9 10 11 12	<p>6. The alleged defect in the DES was that the gun type drop-down menu for long guns that a dealer would select from while processing a transfer included only options for rifle, shotgun, or rifle/shotgun combination. Plaintiff alleges that since the Title 1 was not a “rifle” under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an “other” option to this drop-down menu.</p> <p>(SAC, ¶¶ 58, 69, Ex C</p>	<p>6. This fact is effectively undisputed. The added commentary does nothing to controvert this allegation in the SAC.</p>
13 14 15 16	<p>7. The SAC does not identify any statute or other authority that requires that a firearm being processed for transfer in the DES fit the statutory definition of “rifle” in order to be processed as such.</p> <p>(SAC.)</p>	<p>7. This fact is effectively undisputed. Reference to regulation regarding submitting accurate information does nothing to controvert fact that no such statute or other authority is alleged.</p>
17 18 19 20 21 22 23 24	<p>8. Mr. Jacobson testified that there was no mention of any issue with the DES in the Sacramento action filed by Franklin Armory against the State and former Attorney General Becerra regarding the Title 1 and that he was unaware of any issue with the DES during that time. He testified that during the time the Sacramento action was pending, no one ever expressed concern that the Title 1 could not be processed in the DES because it was not a rifle.</p> <p>(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>	<p>8. This fact is effectively undisputed. Plaintiff’s response does not controvert but rather supports this fact.</p>

25
26
27
28

<p>1 9. Mr. Jacobson testified as to his 2 understanding that stockless firearms were 3 processed in the DES as rifles or shotguns 4 respectively even though they did not meet the 5 statutory definition for rifle or shotgun. 6 (Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8.)</p>	<p>9. This fact is effectively undisputed. The response's first paragraph actually confirms the fact and the second paragraph does nothing to controvert the fact.</p>
<p>7 10. Mr. Jacobson testified that the process for 8 a California resident to purchase a Franklin 9 Armory firearm would first require the person 10 to purchase the firearm paying the full price. 11 Franklin Armory would then obtain an online 12 verification number from the Department 13 which would be provided to the California 14 licensed dealer when shipping the firearm to 15 them. The purchaser then would go into the 16 dealer and provide background information 17 for the background check that would then be 18 transmitted to the Department. 19 (Jacobson Dep. p. 154:24-156:18; see also 20 SAC, ¶¶ 1, 3, 35; Pen. Code, §§ 28050, subd. 21 (b), 27555, subd. (a)(1).), Cal. Code Reg., tit. 22 11, § 4210, subd. (a)(6).)</p>	<p>10. This fact is effectively undisputed.</p>
<p>17 11. Plaintiff does not allege that anyone ever 18 purchased a Title 1 firearm and attempted to 19 process a transfer of the Title 1 in the DES 20 through a licensed firearms dealer. Plaintiff 21 alleges that individuals "placed deposits" for 22 the Title 1 firearm. 23 (SAC, ¶ 113.)</p>	<p>11. Plaintiff does not dispute.</p>
<p>21 12. Mr. Jacobson testified that the online 22 deposits were for \$5.00 and that the \$5.00 23 deposit was refundable and there was no 24 requirement for any person placing a deposit 25 to complete a purchase. When a person was 26 going through the online deposit process, the 27 purchase price of the Title 1 firearm did not 28 appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title 1 without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately</p>	<p>12. This fact is effectively undisputed and the added comments do nothing to controvert the cited testimony.</p> <p>Plaintiff improperly adds to this fact by referencing dealer deposits at full price but as discussed below in reply to plaintiff's additional facts, Mr. Jacobson testified that, as to dealer deposits, they were never charged anything, no money ever exchanged hands and these were more of accounting entries. (Jacobson Dep. p. 129:9-130:7, Ex A1 to Reply Dec. of Lake)</p> <p>4</p>

<p>1 August 6, 2020.</p> <p>2 (Jacobson Dep. p. 116:1-117:17, 122:6-</p> <p>3 123:12, 124:11-20, 147:17-23, 130:12-131:1.)</p>	
<p>4 13. The issue regarding the Title I was first</p> <p>5 brought to the attention of Bureau Director</p> <p>6 Allison Mendoza in the latter part of 2019.</p> <p>7 Prior to becoming Director in March, 2023,</p> <p>8 Director Mendoza served as Assistant Bureau</p> <p>9 Chief from 2015 until March, 2023. (At some</p> <p>10 point, the title of this position changed to</p> <p>11 Assistant Bureau Director.) As the Assistant</p> <p>12 Bureau Chief/Director, she was responsible</p> <p>13 for managing all activities under the Bureau’s</p> <p>14 Regulatory Branch including management and</p> <p>oversight of the DES. It is Director</p> <p>Mendoza’s understanding that the three</p> <p>options in the “Gun Type” drop-down menu in</p> <p>the DES “Dealer Long Gun Sale” transaction</p> <p>type (rifle, rifle/shotgun combination, or</p> <p>shotgun) had remained the same since she</p> <p>became Assistant Bureau Chief in 2015.</p> <p>(Mendoza Dec., ¶¶ 1-3, 6-7.)</p>	<p>13. Plaintiff does not dispute.</p>
<p>15 14. Director Mendoza states that at some point</p> <p>16 after the latter part of 2019, the Bureau</p> <p>17 initiated a review to evaluate the resources</p> <p>18 required for a potential DES enhancement to</p> <p>19 add an “other” option in the “Gun Type” drop-</p> <p>20 down menu in the “Dealer Long Gun Sale”</p> <p>21 transaction type. This review required the</p> <p>22 leadership of the Bureau, in collaboration with</p> <p>23 the Department’s Application Development</p> <p>24 Bureau (ADB) and the Department’s</p> <p>25 attorneys, to engage in a balancing of multiple</p> <p>26 factors and a weighing of competing priorities</p> <p>27 among the multiple proposed DES</p> <p>28 enhancement requests pending at that time.</p> <p>The Department also evaluated and weighed</p> <p>the allocation of available resources to such an</p> <p>enhancement, such as the number of personnel</p> <p>required, budgeting of the enhancement, and</p> <p>the time it would take to complete said</p> <p>enhancement. The onset of the COVID-19</p> <p>pandemic in March 2020 presented additional</p> <p>difficulties in being able to staff such a DES</p> <p>enhancement.</p>	<p>14. This fact is effectively undisputed. The</p> <p>reference to other testimony does nothing to</p> <p>controvert this fact.</p>

1	(Mendoza Dec., ¶¶ 4-5, 8.)	
2 3 4 5 6 7 8 9 10	<p>15. ADB undertook a review of what would be required to add the “other” option and reported back that it would take many months to implement this enhancement, and would require well over a dozen personnel, many of whom would have to be diverted from other projects. Implementing this DES enhancement would have required changes to many other applications and databases in addition to the DES.</p> <p>(Mendoza Dec., ¶¶ 5, 9.)</p>	<p>15. This fact is effectively undisputed. The reference to other testimony does nothing to controvert this fact.</p> <p>Reference to the Li letter, sent before the start of the pandemic, and the testimony of Ms. Massaro-Florez, that technical staff were working on a possible modification to the DES to add the “other” option in 2020 supports this fact in that it is consistent with Director Mendoza’s statements that the top level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>
11 12 13 14 15 16 17 18 19 20 21 22	<p>16. ADB additionally explored the possibility of doing a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a permanent enhancement would be implemented at a later date. ADB estimated such an enhancement would take a few months. ADB also advised that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement.</p> <p>(Mendoza Dec., ¶¶ 5, 10.)</p>	<p>16. This fact is effectively undisputed. The reference to other testimony does nothing to controvert this fact.</p> <p>Reference to the Li letter, sent before the start of the pandemic, and the testimony of Ms. Massaro-Florez, that technical staff were working on a possible modification to the DES to add the “other” option in 2020 supports this fact in that it is consistent with Director Mendoza’s statements that the top level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>
23 24 25 26 27 28	<p>17. Director Mendoza states that, after SB 118 was signed into law August 6, 2020, which rendered the Title 1 firearm a prohibited assault weapon, the Department decided, after weighing competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the COVID-19 pandemic, to implement at a later date the DES enhancement that added an</p>	<p>17. This fact is effectively undisputed. The reference to other testimony does nothing to controvert this fact.</p> <p>Reference to the Li letter, sent before the start of the pandemic, and the testimony of Ms. Massaro-Florez, that technical staff were working on a possible modification to the DES to add the “other” option in 2020 supports this fact in that it is consistent with Director Mendoza’s statements that the top</p>

<p>1 “other” option in the “Gun Type” drop-down 2 menu. This enhancement was completed on 3 October 1, 2021. (Mendoza Dec., ¶ 11.)</p>	<p>level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>
<p>4 18. Cheryle Massaro-Florez, an Information 5 Technology Supervisor II who works in the 6 Bureau’s firearms software developments unit, 7 oversaw the enhancement project to add the 8 “other” option in the DES testified that the 9 project took approximately three months 10 ending on October 1, 2021. Her entire staff of 11 at least 12 people worked on this project along 12 with staff from the firearms application 13 support unit and the Bureau. The project was 14 done in four phases including analysis, build, 15 system integration and testing. The project 16 required not only modifications in the DES 17 but several other applications and databases. 18 (Massaro-Florez Dep.1(12/28/21), Ex. to 19 Lake Dec., pp. 18:12-21,19:2-12, 30:19- 20 31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 21 68:25-69:10, 91:3-92:21,94:6-24.)</p>	<p>18. This fact is effectively undisputed as plaintiff’s reference to other testimony does nothing to controvert this fact but rather further supports it.</p>
<p>15 Fourth Cause of Action: 16 Tortious interference with prospective economic advantage</p>	
<p>17 19. Defendants hereby incorporate by 18 reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>19. Defendants hereby incorporate by reference as though fully set forth hereat their reply to facts nos. 1-18</p>
<p>19 Fifth Cause of Action: 20 Negligent interference with prospective economic advantage</p>	
<p>21 20. Defendants hereby incorporate by 22 reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>20. Defendants hereby incorporate by reference as though fully set forth hereat their reply to facts nos. 1-18</p>

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

PLAINTIFF'S ADDITIONAL FACTS AND SUPPORTING EVIDENCE	REPLY TO PLAINTIFF'S FACTS AND SUPPORTING EVIDENCE
Third Cause of Action: Tortious Interference with Contractual Relations	
<p>21. Plaintiff Franklin Armory, Inc. ("FAI") is a federally licensed firearms manufacturer incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a manufacturing facility in Minden, Nevada.</p> <p>(Verified SAC, ¶ 1; Jacobson Decl., ¶ 1.)</p>	<p>21. Defendants do not dispute but not a material fact and does not affect defendants' entitlement to summary judgment.</p>
<p>22. FAI manufactures a series of firearms that are designated by FAI with the model name "Title 1."</p> <p>(Verified SAC, ¶ 2; Jacobson Decl., ¶ 2.)</p>	<p>22. Not a material fact and confusing in that plaintiff is not claiming any damages relative to the Title 1 rimfire caliber model. (Jacobson Dep. p. 135:10-136:1.)</p>
<p>23. Under California law, the term "firearm" is defined in several ways, generally including "a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion."</p> <p>(Pen. Code, § 16520; Verified SAC ¶ 22.)</p>	<p>23. This is a legal statement as to a statutory law, not a fact.</p>
<p>24. The State of California further divides the term "firearm" into two types for transfer regulation: long guns and handguns. Long guns are those firearms that do not qualify as handguns. For purposes of Penal Code section 26860, "long gun" means any firearm that is not a handgun or a machinegun.</p> <p>(Pen. Code, § 16865.)</p>	<p>24. This is a legal statement as to a statutory law, not a fact but which supports defendants' entitlement to summary judgment.</p>
<p>25. The FAI Title 1 model firearm is, under California's statutory definition, a "long gun."</p> <p>(Verified SAC, ¶¶ 23-24; Pen. Code, § 16865.)</p>	<p>25. This is similar to defendants' fact 3 which supports defendants' entitlement to summary judgment.</p>

1	26. Under the firearm classification “long gun,” there are statutorily defined firearm subtypes, including but not limited to “rifles” and “shotguns.”	26. This is a legal statement/argument construing statutes, not a fact.
2		
3		
4	(Pen. Code, § 17090 [defining “rifle”]; Pen. Code, § 17191 [defining “shotgun”].)	
5		
6	27. The FAI Title 1 is a firearm lacking a statutorily defined subtype, as its overall design renders the device a “firearm,” but not a “handgun,” “rifle,” or “shotgun.”	27. This is a legal statement/argument construing statutes, not a fact.
7		
8	(Pen. Code, §§ 16865, 16640, 16530, 17090, 17191; Verified SAC, ¶ 27; Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Jacobson Decl., ¶ 2.)	
9		
10		
11	28. With limited exception, nearly all firearm transfers within California must be processed through a dealer licensed by the United States, California, and the local authorities to engage in the retail sale of firearms. Upon presentation of identification by a firearm purchaser, a licensed California firearms dealer <i>shall</i> transmit the information to the Department of Justice	28. This is an incomplete legal statement as to statutory laws, not a fact but which supports defendants’ entitlement to summary judgment.
12		
13		
14		
15	(Pen. Code, §§ 26700, 27545, 2824, subd. (d).)	
16		
17	29. Under California law, every licensed firearms dealer shall keep a register or record of electronic or telephonic transfer in which shall	29. This is a legal statement as to statutory laws, not a fact but which supports defendants’ entitlement to summary judgment.
18		
19		
20	be entered certain information relating to the transfer of firearms. And “[t]he Department of Justice shall prescribe the <i>form</i> of the register and the record of electronic transfer pursuant to Section 28105.”	
21		
22		
23	(Pen. Code, §§ 28100, 28155.)	
24		

<p>1 30. California law requires the Attorney General to permanently keep and properly file and maintain <i>all</i> information reported to the DOJ pursuant to any law as to <i>firearms</i> and maintain a registry thereof.</p> <p>2</p> <p>3</p> <p>4 Information that must be included in the registry includes the “manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, <i>type of firearm</i>, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.”</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 (Pen. Code, § 11106, subds. (b)(1)(A), (b)(1)(D).)</p>	<p>30. This is a legal statement as to a statutory law, not a fact but which supports defendants’ entitlement to summary judgment. This statement includes reference to matters that are not relevant to the issues presented in this case.</p>
<p>12 31. California law mandates that, for <i>all</i> firearms, the register or the record of electronic transfer <i>shall</i> contain certain information, including but not limited to the type of firearm.</p> <p>13</p> <p>14</p> <p>15 (Penal Code § 28160, subd. (a).)</p>	<p>31. This is an incomplete legal statement as to a statutory law, not a fact but which supports defendants’ entitlement to summary judgment. The opposition concedes that the DES contained the type of firearm.</p>
<p>16 32. California law mandates that the DOJ <i>shall</i> determine the <i>method</i> by which a dealer <i>submits</i> the firearm purchaser <i>information</i> to the DOJ.</p> <p>17</p> <p>18 (Pen. Code, § 28205, subd. (a).)</p>	<p>32. This is an incomplete legal statement as to a statutory law, not a fact but which supports defendants’ entitlement to summary judgment in that Penal Code section 28205 supports the granting of summary judgment.</p>
<p>19 33. California law mandates that electronic transfer of the required information be the sole means of transmission, though the DOJ is authorized to make limited exceptions.</p> <p>20</p> <p>21</p> <p>22 (Pen. Code, § 28205, subd. (c).)</p>	<p>33. This is an incomplete and inaccurate legal statement as to a statutory law, not a fact. However, Penal Code section 28205 supports the granting of summary judgment.</p>
<p>23 34. The method established by the DOJ under Penal Code section 28205, subdivision (c), for the submission of purchaser information</p> <p>24</p> <p>25</p>	<p>34. This is an incomplete statement as to statutory laws but which supports the granting of summary judgment. This is similar to defendants’ fact 5 which supports defendants’ entitlement to summary judgment.</p>

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

<p>required by Penal Code section 28160, subdivision (a), is known as the Dealers Record of Sale Entry System or the DES.</p> <p>(Pen. Code, § 28205, subd. (c).); (Pen. Code, § 28155); Verified SAC ¶ 54.</p>	
<p>35. The DES is a web-based application designed, developed and maintained by the DOJ and used by firearm dealers to report the required information.</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (Jun 7, 2024)], p. 24:16-25; Barvir Decl., Ex. 13 [Graham Dep. (Mar. 26, 2024)], p. 34:16-23; 35:17-36:6; Barvir Decl., Ex. 14 [Leyva Dep. 2 (Jan. 11, 2024)], p. 20:19-21:3; Barvir Decl., Ex. 17 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], p. 33:11-18.)</p>	<p>35. This is similar to defendants' fact 5 which supports defendants' entitlement to summary judgment.</p>
<p>36. By law, firearm dealers are prohibited from entering inaccurate information within the DES.</p> <p>(Cal. Code Regs., title 11, § 4210, subd. (b)(1)(6).)</p>	<p>36. This is an ambiguous legal statement as to a regulation, not a fact but which supports defendants' entitlement to summary judgment.</p>

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

37. By design, when the DES user is entering the designated information into the DES, they must enter information related to the gun type (i.e., “long gun” or “handgun”). Upon selecting “long gun,” the DES is designed to and functions to populate a subset of fields. Before October 1, 2021, if a DES user selected “long gun,” the DES populated a list of just three options: “rifle,” “rifle/shotgun,” “shotgun.” Before the DES user was permitted to proceed with the completion of the form and submission of the required information to the DOJ, the DES required the user select one of those three options. Unlike the subset of fields within the DES that populate for “Color,” “Purchaser Place of Birth,” and Seller Place of Birth,” each of which contains a catch-all option for “Other,” before October 1, 2021, the subset of fields that populated when the DES user selected “long gun” as the “gun type,” did not include the option to select “Other.” Thus, the DES system prevented licensed firearm dealers from proceeding with the submission of information to the DOJ for the sale, transfer, or loan for certain firearms, including the FAI Title I model firearm.

37. The cited evidence does not establish these facts. Plaintiff does not dispute defendants fact no. 11 that noone ever attempted to process a transfer of the Title 1 in the DES. In addition, the asserted facts are not material as to defendants’ entitlement to summary judgment.

(Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], pp. 2-3; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)

<p>1 38. Without an alternative procedure for 2 submission of the purchaser and firearm 3 information established by DOJ pursuant to 4 Penal Code section 28205, subdivision (c), the 5 DES is the only method of submitting the 6 necessary information to permit the lawful 7 transfer of the undefined “firearm” subtypes.</p> <p>8 The DOJ has authorized DES users to process 9 certain firearms without a defined firearm 10 subtype through the DES using the 11 “Comment” section within the DES. The DOJ 12 remained silent as to its position on whether 13 the FAI Title 1 model firearms could be sold 14 in California and how, in spite of Plaintiff’s 15 repeated requests for guidance.</p> <p>16 (Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 17 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6- 18 58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 19 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 20 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 21 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11 22 [Mendoza Dep. (June 7, 2024), p. 141:1-25; 23 Mendoza Decl., ¶10.)</p>	<p>38. This statement contains legal argument. To the extent it contains asserted facts, they are not material nor are they established by the cited evidence. For example, as discussed in the moving and reply papers, Department employees did not have a duty to respond to inquiries from plaintiff and thus cannot provide a basis for liability against them.</p>
<p>14 39. Before October 1, 2021, dealers could not 15 accurately submit the required information 16 through the DES for “long guns” without 17 statutorily defined “firearm” subtypes, so they 18 were effectively barred from accepting and 19 processing applications from purchasers of 20 such firearms, including FAI’s Title 1 model 21 firearm.</p> <p>22 (Pen. Code, § 28215, subd. (c); Davis Decl., 23 Ex. 4 [J. Davis Letter to Attorney General X. 24 Becerra (Oct. 24, 2019)]; Davis Decl., Ex. 6 25 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)]; Jacobson Decl., ¶¶ 4-5, 11 & Ex. 8; Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2023), pp. 74:12-25; 80:12-81:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 118:2-11; 150:3-7; 159:11-16; .)</p>	<p>39. This statement contains legal argument. To the extent it contains asserted facts, they are not material nor are they established by the cited evidence. For example, plaintiff does not dispute defendants fact no. 11 that noone ever attempted to process a transfer of the Title 1 in the DES. In addition, the asserted facts are not material as to defendants’ entitlement to summary judgment.</p>
<p>24 Dep. (Nov. 14, 2023), pp. 118:2-11; 150:3-7; 25 159:11-16; .)</p>	

<p>1 40. While state law mandates that the “type” of 2 firearm (e.g., “long gun” or “handgun”) must 3 be included in the register or the record of 4 electronic transfer, no state statute mandates 5 that the firearm “subtype” (e.g., rifle, shotgun, 6 rifle/shotgun combination) be included. So the 7 DOJ could have chosen to remove the 8 technological barrier within the DES that 9 prevented licensed firearm dealers from 10 processing the transfer of FAI’s Title 1 model 11 firearms by enhancing the DES to allow the 12 user to proceed without selecting a firearm 13 subtype. 14 15 (Pen. Code, §§ 28160, subd. (a), 28200- 16 28255.)</p>	<p>40. This is a legal statement as to statutory laws, not a fact but which supports defendants’ entitlement to summary judgment. This argument agrees that the Department had discretionary authority to add to and remove from the DES and that no statute mandated any particular modification.</p>
<p>10 41. DOJ could have chosen to remove the 11 technological barrier within the DES that 12 prevented licensed firearm dealers from 13 processing the transfer of FAI’s Title 1 model 14 firearms by authorizing an “alternative 15 means” of submitting the required information 16 pursuant to the authority granted to the DOJ 17 under Penal Code section 28205, subd. (c), 18 including but not limited to instructing DES 19 users to proceed by selecting preauthorized 20 designated options and identifying the firearm 21 as an “other” in one of the “comment” fields 22 within the DES. The DOJ opted not to pursue 23 that “fix.” 24 25 (Pen. Code, § 28205, subd. (c); Lake Decl., 26 Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 27 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 28 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), p. 141:1-25; Mendoza Decl., ¶10.]</p>	<p>41. This is a legal statement as to statutory laws, not a fact but which supports defendants’ entitlement to summary judgment. This argument agrees that the Department had discretionary authority to add to and remove from the DES and that no statute mandated any particular modification.</p>
<p>22 42. FAI was notified by licensed California 23 firearms dealers (“FFLs”) that they would not 24 be able to process the transfer of FAI’s Title 1 25 model firearm through the DES because they 26 could not accurately submit the required 27 information for “long guns” without 28 statutorily defined subtypes.” (Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Barvir Decl., Ex. 16 [J. Jacobson Dep.</p>	<p>42. This is not a material fact. It should be noted that the cited testimony indicates that a concern raised dealers was fear of prosecution which was the basis of the Sacramento action. (Jacobson Dep. , p. 177:2-8, 94:5-95:7, 97:6-19.)</p>

<p>1 (Nov. 14, 2023)], pp. 175:7-12; 176:4-21; 2 177:2-8.)</p>	
<p>3 43. The DOJ was aware that licensed firearm 4 dealers (“FFLs”) had expressed concerns 5 about attempting to transfer FAI’s Title 1 6 model firearm “due to liability issues.” 7 8 (Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 29:2-21, 31:15- 33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 & Exs. 2 & 4 [Email from Jennifer Kim to Jason Sisney (June 24, 2020); see also Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3.)</p>	<p>This is not a material fact.</p>
<p>9 44. On or about October 24, 2019, counsel for 10 FAI sent a letter to then-Attorney General 11 Xavier Becerra, formally notifying him and 12 the DOJ of the defect in the DES and the 13 inability of FAI to transmit its Title I model 14 firearms to their customers because of that 15 defect. 16 17 (Davis Decl., Ex. 4 [Letter from Jason A. 18 Davis to Xavier Becerra (Oct. 24, 2019)]; 19 Verified SAC ¶ 66 & Ex. A.)</p>	<p>44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.</p>
<p>15 45. On or about October 24, 2019, counsel for 16 FAI sent a letter to then-Attorney General 17 Xavier Becerra, formally notifying him and 18 the DOJ that FAI had publicly announced the 19 release of the Title 1 on or about October 15, 20 2019, generating a “substantial amount of 21 interest.” Counsel also informed Mr. Becerra 22 that FAI was taking orders for the Title 1 23 model firearm daily, but FAI was unable to 24 fulfill those orders due to the DES 25 technological defect. 26 27 (Davis Decl., Ex. 4 [Letter from Jason A. 28 Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Verified SAC, Ex. A.)</p>	<p>45. This appears to repeat no. 44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.</p>
<p>23 46. When FAI’s customers were placing orders to 24 purchase FAI Title 1 model firearms, the 25 advertised full purchase price was \$944.99. 26 But because FAI knew that the DES defect 27 prevented transfers of the Title 1, FAI offered 28 customers the opportunity to submit a refundable deposit toward the purchase of a Title 1 to be completed once the DES defect was corrected. Payment of the deposit 15</p>	<p>46. This statement contains legal argument. To the extent it contains asserted facts such as referencing deposits, this supports granting of summary judgment. Also, the cited evidence indicates that plaintiff asserted to the Department that the alleged DES defect prevented transfers but stating this means the Department knew that because</p>

<p>1 essentially saved a “spot in line” for the 2 deposit payors.</p> <p>3 (Jacobson Decl, ¶ 10, Ex. 9; Barvir Decl., 4 Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 5 2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson 6 Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17- 7 20; 131:16-22.)</p>	<p>plaintiff asserted that is argument.</p>
<p>6 47. FAI ultimately collected nearly 35,000 7 deposits from its thousands of customers, 8 including licensed firearms dealers, for the 9 purchase of Title 1 model firearms. Those 10 deposits ranged in amount from \$5 to the full 11 purchase price of the Title 1 model firearm.</p> <p>12 (Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez 13 Decl.)</p>	<p>47. This fact is not relevant or material.</p> <p>It should be noted that Mr. Jacobson testified that, as to dealer deposits, they were never charged anything, no money ever exchanged hands and these were more of accounting entries. (Jacobson Dep. p. 129:9-130:7, Ex A1 to Reply Dec. of Lake)</p>
<p>11 48. Assuming the centerfire Title 1 model firearm 12 could ever be lawfully transferred in 13 California, FAI was committed at the time it 14 accepted deposits from customers to fulfill all 15 orders for which people paid deposits. And 16 FAI remains committed to fulfilling those 17 orders to this day.</p> <p>18 (Jacobson Decl., ¶ 11 & Ex. 10; Barvir Decl., 19 Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 20 116:1-14; 124:17-20; 131:16-22.)</p>	<p>48. This fact is not relevant or material.</p>
<p>17 49. The DOJ was able to modify the DES to 18 correct a similar deficiency reported 19 concurrently by FAI’s counsel in the same 20 letter dated October 24, 2019, within about a 21 month. Namely, the DES omitted the “United 22 Arab Emirates” from the list of countries 23 available within the DES dropdown list for 24 the countries for place of birth was confirmed 25 to have been corrected by the DOJ by 26 November 26, 2019.</p> <p>27 (Davis Decl., Ex. 4 [Letter from Jason A. 28 Davis to Xavier Becerra (Oct. 24, 2019)]; Ex. 5 [Emails between Jason A. Davis and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)].)</p>	<p>49. Not material or relevant. Also, plaintiff Does not dispute that the modification to the DES in 2021 to add the other option took a number of months requiring multiple personnel and required changes to multiple databases and systems. The comparison to a different type of change to the DES involving adding the United Arab Emirates as a purchaser country of birth is not relevant. Ms. Massaro-Flores testified that this change did not require changes to other databases or systems and did not require validations. (Massaro-Flores Dep., 9/8/23, p. 58:2-23, 59:5-60:16, Ex. D1, Reply Lake Dec.)</p>
<p>26 50. On January 8, 2020, in response to FAI’s 27 October 24, 2019, letter, Attorney General 28 Becerra, through Deputy Attorney General P. Patty Li, wrote to counsel for FAI, confirming receipt of FAI’s letter and informing FAI that DOJ was working to fix the DES deficiency</p>	<p>50. Defendants do not dispute that the Li letter was sent. This statement contains legal argument as to with plaintiff’s characterization of the Li letter which is not a fact and with which Defendants disagree.</p>

<p>1 the letter described.</p> <p>2 (Davis Decl., Ex. 7 [Letter from P. Patty Li,</p> <p>3 Deputy Attorney General, California</p> <p>4 Department of Justice, to Jason A. Davis,</p> <p>Counsel for Franklin Armory, Inc. (Jan. 8,</p> <p>2020)].)</p>	
<p>5 51. Cheryle Massaro-Florez, an Informational</p> <p>6 Technology Supervisor who works in the</p> <p>7 Bureau of Firearms’ firearm software</p> <p>8 development unit, testified that she oversaw</p> <p>9 two separate projects to make</p> <p>10 “enhancements” to the DES to add an “Other”</p> <p>11 option to the dropdown list for “long gun”</p> <p>12 firearm subtypes. She testified that the first</p> <p>13 enhancement was completed up to beta</p> <p>14 testing, but just before going live, that first</p> <p>15 enhancement was terminated for a reason</p> <p>16 unknown to her. She testified that the second</p> <p>17 enhancement took about three months to</p> <p>complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1</p> <p>13 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12,</p> <p>14 30:19-31:10, 36:18-37:25, 57:14-60:11,</p> <p>15 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24,</p> <p>103:5-106:6; Barvir Decl, Ex. 18 [Massaro-</p> <p>16 Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-</p> <p>40:19, 41:18-19, 64:24-66:15 & Ex. 9; see</p> <p>also Barvir Decl., Ex. 11 [Mendoza Dep.</p> <p>(June 7, 2024)], Ex. 45.)</p>	<p>51. This testimony is not material but</p> <p>supports defendants’ entitlement to summary</p> <p>judgment.</p> <p>Reference to the testimony of Ms.</p> <p>Massaro-Florez, that technical staff were</p> <p>working on a possible modification to the</p> <p>DES to add the “other” option in 2020 supports</p> <p>entitlement to summary judgment in that it is</p> <p>consistent with Director Mendoza’s</p> <p>statements that the top level officials at the</p> <p>Bureau in 2020 undertook a review of both a</p> <p>permanent and temporary enhancement which</p> <p>included having technical staff review</p> <p>what would be required for either modification.</p> <p>(Mendoza Dec. ¶¶ 8-11.)</p>
<p>18 52. Just months after Deputy Attorney General Li</p> <p>19 confirmed that the DOJ was working on a fix</p> <p>20 to the DES, on May 14, 2020, the DOJ</p> <p>21 submitted Budget Change Proposal (prepared</p> <p>22 by then BOF Assistant Director Allison</p> <p>23 Mendoza) to the Department of Finance,</p> <p>24 requesting “\$128,000 Dealers’ Record of Sale</p> <p>25 Special Account in 2020-21, \$862,000 in</p> <p>2021-22, and \$14,000 annually thereafter to</p> <p>regulate assault weapons that are currently not</p> <p>defined as a rifle, pistol, or shotgun.” The</p> <p>proposal was “intend[ed] to fix current</p> <p>loopholes in statute that allow[ed]</p> <p>manufacturers to make weapons that</p> <p>circumvent the intention of assault weapon</p> <p>laws.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,</p> <p>2020), Ex. 42 [May 14, 2020 Budget Change</p> <p>Proposal].)</p>	<p>52. The Budget Change Proposal is not</p> <p>relevant or material. Defendants disagree</p> <p>with plaintiff’s characterization of the Li letter.</p>

<p>1 53. As part of the Budget Change Proposal, the 2 DOJ also requested “[budget] trailer bill 3 language necessary to implement this 4 proposal.” Attached to the proposal, as 5 Attachment 1, was “Proposed Trailer Bill 6 Language: Other Firearm Registration.” That 7 proposed language would ultimately be 8 adopted via Senate Bill 118 (“SB 118”).</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), Ex. 42 [May 14, 2020 Budget Change Proposal]; Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 25:17-28:6, 29:2-21, 35:22-39:11, 49:2-50:15, 69:19- 71:18 & Exs. 2 & 4; Req. Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)</p>	<p>53. Not material or relevant.</p>
<p>10 54. SB 118 was adopted by Legislature on August 11 4, 2020, and it was approved by the Governor 12 on August 6, 2020.</p> <p>(Req. Jud. Ntc., Ex. 3.)</p>	<p>54. This fact supports the granting of summary judgment</p>
<p>13 55. SB 118 amended the Penal Code section 14 30515 definition of an “assault weapon” to 15 include, for the first time, a “centerfire firearm 16 that is not a rifle, pistol, or shotgun” that 17 includes components in three categories.</p> <p>(Pen. Code, § 30515, subd. (a)(9)-(11); Req. Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)</p>	<p>55. This is a legal statement as to a statutory law, not a fact.</p>
<p>18 56. Because SB 118 was adopted as a “budget 19 trailer bill,” the change in law took effect 20 immediately upon signature by the Governor 21 without the 2/3 vote of the Legislature 22 required to adopt “policy bills” as “urgency 23 legislation” and without the need to make a 24 special finding of urgency.</p> <p>(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan 3, 2024)], p. 50:14-58:9, 75:23-77:2; Cal. Const., art. IV, § 8, subd. (b).)</p>	<p>56. Not material or relevant.</p>

<p>1 57. Allison Mendoza, the current Director of the 2 California Department of Justice, Bureau 3 Firearms, testified that she could not think of 4 another piece of firearm-related legislation 5 that was adopted via the “budget trailer bill” 6 process and that it was not a common 7 practice. 8 9 (Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].); 10 Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 11 2020), pp. 43:10-13.]</p>	<p>57. Not material or relevant.</p>
<p>7 58. SB 118 was designed to target the FAI Title 1 8 model firearm and prevent its sale. 9 Department of Finance staffers’ 10 communications about the bill expressly 11 identified both FAI and the Title 1, and they 12 identified no other manufacturer or firearm by 13 name. 14 15 (Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 16 2024)], pp. 58:10-60:25, 62:25-10, 66:25- 17 68:24, 71:9-72:20, 75:1-77:25 & Exs. 2 & 4; 18 Req. Jud. Ntc., Ex. 1 [SB 118].)</p>	<p>58. Not material or relevant.</p>
<p>13 59. It was not until October 1, 2021, that the DOJ 14 finally completed the “enhancement” to the 15 DES adding the option to select “Other” from 16 the dropdown list for “long gun” subtypes, 17 finally allowing DES users to process the 18 transfer of firearms without a defined subtype. 19 20 Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 21 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 22 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 23 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva 24 Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9- 25 17, 45:10-25, 46-47, 48:16-25, 61:5-62, 26 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & 27 Exs. 3, 6, 7, and 8.)</p>	<p>59. Defendants do not dispute that the modification to the DES was completed on 10/1/21. The finally allowing commentary is legal argument not a fact and not supported by the cited evidence.</p>
<p>21 60. The enhancement to the DES came too late to 22 allow for the lawful transfer of centerfire FAI 23 Title 1 model firearms, which had been 24 designated as “assault weapons” effective 25 August 6, 2020, and could not be lawfully 26 registered with the DOJ unless they were 27 possessed on or before September 1, 2020. 28 29 (Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515, 30 subd. (a)(9)-(11).)</p>	<p>60. This is legal argument, not a fact.</p>

<p>1 61. FAI could not lawfully transfer the FAI Title 2 1 model firearm to its deposit-paying 3 customers before the enactment and 4 enforcement of SB 118 (Penal Code section 5 30515, subd. (a)(9)-(11)) because the DES 6 enhancement adding “Other” to the “long 7 gun” subtype dropdown list was not made 8 until October 1, 2021. 9 (Jacobson Decl., ¶ 11; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & Exs. 3, 6, 7, and 8.)</p>	<p>61. This is legal argument, not a fact. The legal argument is not supported by the cited evidence.</p>
<p>10 62. FAI suffered economic damage in the form of 11 millions of dollars in lost profits because it 12 could not lawfully complete the sale of and 13 transfer the FAI Title 1 model firearm to its 14 thousands of deposit-paying customers before 15 the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11)). (Jacobson Decl., ¶¶ 10-12, Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 138:19-142:14.)</p>	<p>62. Not material or relevant.</p>
<p>16 63. To date, a very small minority of the 17 thousands of individuals who made a deposit 18 have asked for a refund. (Jacobson Decl., ¶ 14.)</p>	<p>63. Not material or relevant.</p>

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

<p>64. There is currently a class action lawsuit pending in federal district court, brought on behalf of the thousands of person who made earnest-money deposits for the purchase of one or more FAI Title 1 model firearms, against Attorney General Rob Bonta, Luis Lopez, and the California Department of Justice. The plaintiffs seek equitable relief, including injunctive relief ordering [d]efendants to allow ... the members of the [c]lass to submit the statutorily required firearm purchaser information through DES for, complete the transfer of, take possession of, and register pursuant to Penal Code section 30900(c) those Title 1 firearms for which they made earnest money deposits before August 6, 2020, notwithstanding the fact that these firearms were not possessed by ... the [c]lass members before September 1, 2020.”</p> <p>(First Amended Complaint at 7, 40, <i>Briseno v. Bonta</i>, C.D. Cal. Case No. 21-cv-09018 (Feb. 4, 2022); Opdahl-Lopez Decl., ¶¶ 3-8.)</p>	<p>64. Not material or relevant.</p> <p>It should be noted that plaintiff misstates the record in <i>Briseno v. Bonta, et al.</i>, USDC, Central Dist. Case No. 2:21-cv-09018-ODW (PDx), that there are thousands of members of a class action that have joined the litigation who made Title 1 deposits. In fact, the <i>Briseno</i> court docket shows there are three plaintiffs and that no motion for class certification has been made and thus there are no class members who have joined the litigation. (Ex. K to Reply Req. for Jud. Notice.)</p> <p>Furthermore, the court in <i>Briseno</i> ordered a stay of that action on August 12, 2022, pending the outcome of this action. (Order 8/12/22, Ex. L to Reply Req. for Jud. Notice, p. 12:13-19, 11:5-9 [noting that plaintiff cannot appeal the previous dismissal of its claims until the Superior Court reaches final judgment on the damages claims].)</p> <p>Also, the plaintiffs in <i>Briseno</i> seek a court declaration, under the Second and Fourteenth Amendments allowing them to register and take possession of a Title 1. (Order 8/12/22, Ex. L, p. 5:7-18.)</p> <p>However, the section 1983 claims in this case were dismissed based on the ruling that there is no right to obtain a Title 1 and plaintiff is relegated to a damages claim in this action. (Order 9/7/23, p. 9:3-10:2.) Thus, the claims in <i>Briseno</i> have no bearing or relevance to the three remaining interference claims in this case.</p>
<p>Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage</p>	
<p>65. Plaintiff hereby incorporates by reference Plaintiff’s Undisputed Material Facts Nos. 21-64.</p>	<p>65. Defendants herby incorporate by reference as though fully set forth hereat their reply to plaintiff’s facts nos. 21-64.</p>

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

Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage

66. Plaintiff hereby incorporates by Plaintiff's Undisputed Material Facts Nos. 21-64.

66 . Defendants herby incorporate by reference as though fully set forth hereat their reply to plaintiff's facts nos. 21-64.

Dated: July 5, 2024

Respectfully submitted,
ROB BONTA
Attorney General of California

\S\Kenneth G. Lake

KENNETH G. LAKE
Deputy Attorney General
*Attorneys for State of California, acting by
and through the California Department of
Justice and Former Attorney General
Xavier Becerra*

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

DECLARATION OF SERVICE BY ELECTRONIC MAIL

RE: *Franklin Armory, Inc., v. California Department of Justice.*
Case No. 20STCP01747

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On July 5, 2024, I served the documents named below on the parties in this action as follows:

**REPLY TO PLAINTIFF’S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS AND
ADDITIONAL FACTS IN OPPOSITION TO MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT**

C.D. Michel
Anna M. Barvir
Jason A. Davis
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
Email: abarvir@michellawyers.com
CMichel@michellawyers.com
Jason@calgunlawyers.com
lpalmerin@michellawyers.com
Attorneys for Plaintiffs-Petitioners

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of the Office of the Attorney General for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery with the GOLDEN STATE OVERNIGHT courier service.

(BY FACSIMILE) I caused to be transmitted the documents(s) described herein via fax number.

(BY ELECTRONIC MAIL) I caused to be transmitted the documents(s) described herein via electronic mail to the email address(es) listed above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on July 5, 2024, at Los Angeles, California.

Sandra Dominguez
Declarant

Sandra Dominguez
Signature