

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 of Justice
8 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
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 REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF MOTION BY
DEFENDANTS FOR SUMMARY
JUDGMENT; OR IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION OF ISSUES**

Date: July 10, 2024

Time: 8:30 a.m.

Dept.: 32

Honorable Daniel S. Murphy

RES ID: 554862513719

26 Pursuant to California Evidence Code sections 452 (c)-(d) and 453, Defendants

1 request that the court take judicial notice of the following documents:

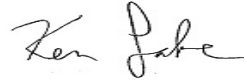
2 J Order, 6/12/19 filed in the action *Franklin Armory v. State of California et al.*, Sacramento
3 Superior Case No. 2018-00246584-CU-MC. A true and correct copy is attached hereto as
4 exhibit J.

5 K Docket as of 6/28/24 in the action *Briseno v. Bonta, et al.*, USDC, Central Dist. Case No.
6 2:21-cv-09018-ODW (PDx). A true and correct copy is attached hereto as exhibit K.

7 L Order 8/12/22 in the action *Briseno v. Bonta, et al.*, USDC, Central Dist. Case No. 2:21-cv-
8 09018-ODW (PDx). A true and correct copy is attached hereto as exhibit L.

9 Dated: July 5, 2024

Respectfully submitted,
ROB BONTA
Attorney General of California

11
12 

13 _____
KENNETH G. LAKE
14 Deputy Attorney General
15 *Attorneys for State of California, acting by*
16 *and through the California Department of*
17 *Justice and Former Attorney General*
18 *Xavier Becerra*

EXHIBIT J

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 06/12/2019

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: G. Toda

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: N. Alvi, R. Mays

CASE NO: **34-2018-00246584-CU-MC-GDS** CASE INIT.DATE: 12/14/2018

CASE TITLE: **Franklin Armory Inc vs. State of California**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

APPEARANCES

Nature of Proceeding: Hearing on Demurrer

TENTATIVE RULING

The demurrer of defendants State of California ("State"), Xavier Becerra ("Becerra") and Martin Horan, Jr. ("Horan"), Acting Chief of the California Department of Justice's ("DOJ") Bureau of Firearms ("BOF") (collectively "Defendants") to the complaint is ruled on as follows.

Factual Background

This action was commenced by plaintiffs Franklin Armory, Inc. ("FAI"), a firearms manufacturer, and Sacramento Black Rifle, Inc. ("SBR"), a firearms dealership. They allege that on two occasions in July 2017 FAI sent an email to the DOJ "inquiring about the classification of their [*sic*] initial Title 1 design," with "Title 1" being described as a firearm designed, developed, and manufactured by FAI which the latter desires to distribute and sell in California. (Compl., ¶¶67-70.) The complaint states that "DEFENDANTS did not respond" to either email and that even with a variety of communications with the BOF over the next year, "no classification was ever provided." However, plaintiffs admit that in response to an October 2018 letter "requesting clarification as to whether the Title 1 would be classified as an 'assault weapon'...", "DEFENDANTS did respond on November 16, 2018, stating '...we are working on your request for an opinion and hope to get something to you soon...' but as of the filing of the complaint less than a month later on 12/14/2018, "no classification has been provided." (Compl., ¶74.)

Plaintiffs now contend they "cannot proceed without knowing how to classify the Title 1" but "DEFENDANTS have refused to provide any response as to the classification of the Title 1." (Compl., ¶¶78-79.) More specifically, they assert "an active controversy has arisen and now exists between DEFENDANTS and PLAINTIFFS concerning their respective rights, duties and responsibilities. ..." (Compl., ¶80.) The complaint concludes with the following:

84. In order to resolve the controversy, the PLAINTIFFS request that, pursuant to Code of Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter and, in particular, this court declare that the [Roberti-Roos Assault Weapon Control Act ("AWCA")] does

DATE: 06/12/2019

MINUTE ORDER

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Calendar No.

not apply to the Title 1 firearm manufactured by FAI because it is neither a rifle, shotgun, nor handgun.

85. In order to resolve the controversy, the PLAINTIFFS further request that, pursuant to Code of Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter and, in particular, this court declare that it is the duty of the DEFENDANTS as the regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA to determine classification of firearms submitted to them for determining which laws would apply to the submission.

Moving Papers. Defendants demur to the complaint pursuant to Code of Civil Procedure §430.10(d), (e) and (f) on multiple grounds including that the complaint is fatally uncertain, plaintiffs lack legal standing to prosecute this action, the subject dispute is not ripe for adjudication and fails to state facts to constitute a valid cause of action against the State, which is an improper and unnecessary party.

Opposition. Plaintiffs oppose, arguing the "demurrer should be summarily rejected because it is premised not only on a plain misapplication of law, but also on a fundamental misapprehension of the duties of Defendants and the claims asserted in the Complaint." According to the opposition, "This case involves the right of the People of the State of California to acquire and possess firearms protected by the Second Amendment to the United States Constitution" and "with respect to...'assault weapons,' California has delegated a specific duty to educate, regulate and classify upon the respective agency and bureau that defendants...Becerra and...Horan administer and oversee...[b]ut...Defendants are failing to administer these laws as mandated by California." Plaintiffs contend that as a result of this failure and "everchanging [*sic*] web of conflicting interpretations of which firearms are deemed 'assault weapons'," retailers and manufacturers of firearms now "risk of de-licensure, civil penalties, and/or criminal prosecution" and thus, "Plaintiffs are seeking declaratory relief as to which particular laws apply to the...Title 1 firearm." While "Defendants claim...they have no duty to render an advisory opinion," the opposition insists "[their] duty is manifest as alleged in the Complaint, through the following laws [including the California Constitution, Art. V, §13; Penal Code §§30505, 31115 and 30520]" but "Defendants have failed to fulfill these duties..."

The opposition adds that the demurrer "misrepresent[s] Plaintiff's initial request to Defendants[, which] was not seeking an 'advisory' opinion based upon a 'picture and general description of the firearm'...but rather, Plaintiff was seeking a classification...based upon...submitting the actual firearm to them physically" and now, plaintiffs request "the court issue a finding of classification" relating to whether the Title 1 is or is not an assault weapon. With respect to their standing to sue, plaintiffs maintain that the complaint demonstrates in Paragraphs 5, 57-58 and 60-69 "concrete and credible threats of injury" because "[p]resumed in all these allegations is the loss of capital investment and revenue to [FAI] and...SBR...as a result of Defendants['] defects in administration."

As to Defendants' claim that the State is an unnecessary and improper party, the opposition asserts that Defendants' position "ignores the fact that the other two [d]efendants are the officers charged with implementing California's firearm laws, and are, according to *Serrano [v. Priest]*, the proper plaintiffs [*sic*]," as well as the fact that the complaint here does not advance a constitutional challenge to any statute or other enactment. In short, plaintiffs contend that since this action involves the State's firearm laws, the State is a proper party.

Analysis

At the outset, the Court will sustain the demurrer as to the State because the complaint fails to plead facts which state a valid cause of action against this defendant. Of particular note, the complaint does not allege that the State itself, as distinguished from the two individuals named as defendants, engaged in any conduct relevant to the dispute at issue or has otherwise refused to comply with a mandatory duty. Moreover, the relief specifically requested in the concluding paragraphs is a declaration that "the

regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA" (i.e., the Attorney General heading the DOJ and the individual heading the BOF) have a duty "to determine classification of firearms submitted to them for determining which laws would apply to the submission." As such, the complaint fails to plead any cause of action as against the State, making the latter an improper defendant regardless of whether plaintiffs are challenging the constitutionality of any statute. Notably, the opposition does not identify any other basis on which the Court could conclude that the State is properly named as a defendant in this declaratory relief action.

The demurrer must also be sustained to the extent plaintiffs request in Paragraph 84 that this Court declare the AWCA does not apply to the Title 1 manufactured by FAI. The complaint not only is completely silent as to this Court's authority to make such a classification but actually goes to great lengths in an attempt to demonstrate that one or both of the individual defendant have under various enactments the duty to make such a classification. While plaintiffs might have a right to challenge via a judicial proceeding the classification which Becerra and/or Horan may ultimately render, the complaint sets forth no facts or law when authorize a trial court to make such a classification even if the DOJ and/or BOF fail or refuse to do so. Consequently, inasmuch as the complaint seeks this Court to determine that the AWCA does not apply to FIA's Title 1, it does not set forth a justiciable controversy which may be resolved via this declaratory relief action.

The Court also finds that the facts currently pled in the complaint fail to establish a controversy which is "ripe" for adjudication. As noted above, the complaint specifically asserts in Paragraphs 68-71 that plaintiff FAI sent two emails to DOJ "inquiring about the classification of their [sic] initial Title 1 design" and no response was received but plaintiffs admit that a response was received in mid- November 2018, stating '...we are working on your request for an opinion and hope to get something to you soon...' However, plaintiffs filed this action less than a month later on 12/14/2018, claiming that "no classification has been provided." (Compl., ¶74.) While the complaint does allege in Paragraph 79 that "DEFENDANTS have refused to provide any response as to the classification of the Title 1," the Court finds no facts pled in the complaint which actually support this conclusion and moreover, plaintiffs' conclusory assertion is directly contrary to the judicial admission that Defendants responded by indicating they were working on the request and hope to provide it soon. Thus, the conclusory allegation that Defendants are refusing to provide a response need not be accepted as true for purposes of this demurrer.

Furthermore, the various laws cited in the complaint including various provisions of the California Constitution and the Penal Code do not affirmatively demonstrate that Defendants have a mandatory duty to respond to plaintiffs' inquiry about whether the Title 1 may or may not fall within the purview of the AWCA. Indeed, many of the legal provisions referenced in the complaint are, for all intents and purposes, of no legal consequence relative to the declaratory relief claim by plaintiffs including Article V of the California Constitution which merely provides that the Attorney General shall be the chief law officer of the State and shall see that the State's laws are uniformly and adequately enforced; Penal Code §30505 which is claimed to reflect the Legislature's intent to place restrictions on assault weapons and to establish a registration and permit procedure for their sale and possession but not to restrict the use of weapons primarily designed and intended for hunting, target practice, legitimate sports or recreational activities; Penal Code §31115 which is alleged to establish that the DOJ "shall conduct a public education and notification program regarding the registration of assault weapons and the definition of such weapons; Penal Code §30520(a) which the complaint maintains requires the Attorney General to "prepare a description for identification purposes, including a picture or diagram, of each assault weapon...and any firearm declared to be an assault weapon..." as well as to "distribute the description to all law enforcement agencies responsible for enforcement of this chapter," with those law enforcement agencies making the description available to all agency personnel; and Penal Code §30520(c) which is alleged to mandate the Attorney General to "adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter." None of these laws

explicitly or implicitly requires the DOJ and/or BOF to respond to plaintiffs' inquiry about whether the Title 1 would be considered an assault weapon within the meaning of the AWCA, nor does the complaint identify any legal basis for a manufacturer or dealer of firearms to "enforce" any of the duties allegedly arising from the foregoing provisions, given that Penal Code §30520(a) states the Attorney General's description of assault weapons is to be distribute only to law enforcement agencies.

Finally, the Court rejects the opposition's suggestion that plaintiffs have established their legal standing to prosecute this action by virtue of the complaint's alleged description of "concrete and credible threats of injury" found in Paragraphs 5, 57-58 and 60-69. Paragraph merely asserts that defendant Horan is "responsible for overseeing the administration of BOF, including the application of the AWCA...;" Paragraphs 57-58 merely describe how the BOF has defined the terms "Pistol" and "rifle;" Paragraphs 60-61 allege that BOF has not updated its "Assault Weapon Identification Guide;" Paragraphs 62-63 suggest that the DOJ has "historically refused to review firearms for classification purposes" unless there is a pending criminal investigation or prosecution, deferring firearm classification to the counties and municipalities; Paragraphs 64-65 then claim that because dealers and manufacturers "are left to speculate as to whether...any particular firearm" will be deemed an assault weapon, they are "subject...to varied and...conflicting local interpretations, for criminal prosecution, civil action, seizure, forfeiture, and/or license revocation," "chill[ing] some manufactures [sic], dealers, and individuals from even engaging in lawful sales of firearms and firearm acquisitions;" Paragraphs 66-67 merely contend that Defendants' classification of firearms "is indispensable to the declared objects and purposes of the [AWCA]," which also "provides a...remedy for objecting to any firearm believed to be improperly classified as an 'assault weapon'" and that "FAI designed, developed, and manufactured a firearm entitled the 'Title 1;" and Paragraphs 68-69 then assert that the DOJ did not respond to FAI's initial email in July 2017. None of these allegations affirmatively establish that either plaintiff is presently subject to any "concrete and credible threats of injury" as a result of Defendants' failure to respond to plaintiffs' inquiries about a classification of the Title 1. This is effectively confirmed by the opposition's argument that "[p]resumed in all these allegations is the loss of capital investment and revenue to [FAI] and...SBR...as a result of Defendants['] defects in administration" but the reality is that the complaint does not actually allege any "loss of capital investment and revenue" suffered by either plaintiff. Therefore, the demurrer based on plaintiffs' lack of legal standing is sustained as well.

In light of the foregoing, the Court need not address any of the parties' other arguments.

Conclusion

For the reasons explained above, Defendants' demurrer to plaintiffs' complaint for declaratory relief is hereby SUSTAINED.

As this is the first challenge to the complaint, leave to amend is granted. Plaintiffs may file and serve an amended complaint no later than 6/26/2019. **Although not required by Court rule or statute, plaintiffs are directed to present a copy of this order when the amended complaint is presented for filing.**

Defendants to respond within 30 days if the amended complaint is personally served, 35 days if served by mail.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

EXHIBIT K

2:21cv9018, Endir Briseno Et Al V. Robet A. Bonta Et Al

US District Court Docket
United States District Court, California Central
(Western Division - Los Angeles)

This case was retrieved on **06/28/2024**

Header

Case Number: 2:21cv9018
Date Filed: 11/17/2021
Assigned To: Judge Otis D. Wright, II
Referred To: Magistrate Judge Patricia Donahue
Nature of Suit: Other Civil Rights (440)
Cause: Civil Rights Act
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: Open
Statute: 42:1983
Jury Demand: Plaintiff
Demand Amount: \$0
NOS Description: Other Civil Rights

Participants

Litigants

Endir Briseno
individually and on behalf of all others similarly situated |
Plaintiff

Neil Opdahl-Lopez
individually and on behalf of all others similarly situated |
Plaintiff

Attorneys

Anna M Barvir
LEAD ATTORNEY; ATTORNEY TO BE NOTICED
Michel and Associates PC
180 East Ocean Boulevard Suite 200
Long Beach, CA 90802
USA
562-216-4444 Fax: 562-216-4445
Email: Abarvir@michellawyers.Com

Carl Dawson Michel
ATTORNEY TO BE NOTICED
Michel and Associates PC
180 East Ocean Boulevard Suite 200
Long Beach, CA 90802
USA
562-216-4444 Fax: 562-216-4445
Email: Cmichel@michellawyers.Com

Konstadinos T. Moros
ATTORNEY TO BE NOTICED
Michel and Associates P.C.
180 East Ocean Boulevard Suite 200
Long Beach, CA 90802
USA
562-216-4444 Fax: 562-216-4445
Email: Kmoros@michellawyers.Com

Carl Dawson Michel
ATTORNEY TO BE NOTICED
Michel and Associates PC

Litigants

Rodney Wilson
 individually and on behalf of all others similarly situated |
Plaintiff

Robert A. Bonta
 in his official capacity as Attorney General for the State of
 California |
Defendant

Luis Lopez

Attorneys

180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Cmichel@michellawyers.Com

Konstadinos T. Moros
 ATTORNEY TO BE NOTICED
 Michel and Associates P.C.
 180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Kmoros@michellawyers.Com

Anna M Barvir
 ATTORNEY TO BE NOTICED
 Michel and Associates PC
 180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Abarvir@michellawyers.Com

Carl Dawson Michel
 ATTORNEY TO BE NOTICED
 Michel and Associates PC
 180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Cmichel@michellawyers.Com

Konstadinos T. Moros
 ATTORNEY TO BE NOTICED
 Michel and Associates P.C.
 180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Kmoros@michellawyers.Com

Anna M Barvir
 ATTORNEY TO BE NOTICED
 Michel and Associates PC
 180 East Ocean Boulevard Suite 200
 Long Beach, CA 90802
 USA
 562-216-4444 Fax: 562-216-4445
 Email:Abarvir@michellawyers.Com

Robert Leslie Meyerhoff
 ATTORNEY TO BE NOTICED
 CAAG - Office of Attorney General
 California Department Of Justice 300 South Spring Street
 Suite 1702
 San Francisco, CA 94111
 USA
 213-269-6177 Fax: 916-731-2144
 Email:Robert.Meyerhoff@doj.Ca.Gov
 Robert Leslie Meyerhoff

Litigants

in his official capacity as Acting Chief of the California
Department of Justice Bureau of Firearms |
Defendant

California Department of Justice
Defendant

Does
1-10 |
Defendant

Attorneys

ATTORNEY TO BE NOTICED
CAAG - Office of Attorney General
California Department Of Justice 300 South Spring Street
Suite 1702
San Francisco, CA 94111
USA
213-269-6177 Fax: 916-731-2144
Email:Robert.Meyerhoff@doj.Ca.Gov

Robert Leslie Meyerhoff
ATTORNEY TO BE NOTICED
CAAG - Office of Attorney General
California Department Of Justice 300 South Spring Street
Suite 1702
San Francisco, CA 94111
USA
213-269-6177 Fax: 916-731-2144
Email:Robert.Meyerhoff@doj.Ca.Gov

Charles Joseph Sarosy
ATTORNEY TO BE NOTICED
Office of the Attorney General
300 South Spring Street Suite 1702
Los Angeles, CA 90013
USA
213-269-6356 Fax: 916-731-2122
Email:Charles.Sarosy@doj.Ca.Gov

Proceedings

#	Date	Proceeding Text	Source
1	11/17/2021	COMPLAINT Receipt No: ACACDC-32342523 - Fee: \$402, filed by Plaintiffs Endir Briseno, Rodney Wilson, Neil Opdahl-Lopez. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Attorney Anna M Barvir added to party Endir Briseno(pty:pla), Attorney Anna M Barvir added to party Neil Opdahl-Lopez(pty:pla), Attorney Anna M Barvir added to party Rodney Wilson(pty:pla))(Barvir, Anna) (Entered: 11/17/2021)	
2	11/17/2021	CIVIL COVER SHEET filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 11/17/2021)	
3	11/17/2021	NOTICE of Interested Parties filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson, identifying Franklin Armory, Inc.. (Barvir, Anna) (Entered: 11/17/2021)	
4	11/17/2021	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), 1 filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 11/17/2021)	
5	11/17/2021	NOTICE of Pendency of Other Action filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 11/17/2021)	
6	11/18/2021	NOTICE OF ASSIGNMENT to District Judge Otis D. Wright, II and Magistrate Judge Patricia Donahue. (et) (Entered: 11/18/2021)	
7	11/18/2021	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (et) (Entered: 11/18/2021)	

2:21cv9018, Endir Briseno Et Al V. Robet A. Bonta Et Al

#	Date	Proceeding Text	Source
8	11/18/2021	Notice to Counsel Re Consent to Proceed Before a United States Magistrate Judge. (et) (Entered: 11/18/2021)	
9	11/18/2021	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 as to Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (et) (Entered: 11/18/2021)	
10	11/19/2021	MINUTE ORDER IN CHAMBERS by Judge Otis D Wright, II: This action has been assigned to the calendar of Judge Otis D. Wright II. The Court's Electronic Document Submission System (EDSS) allows people without lawyers who have pending cases in the United States District Court for the Central District of California to submit documents electronically to the Clerk's Office The parties may consent to proceed before a Magistrate Judge appearing on the voluntary consent list. PLEASE refer to Local Rule 79-5 for the submission of CIVIL ONLY SEALED DOCUMENTS. CRIMINAL SEALED DOCUMENTS will remain the same. Please refer to Court's Website and Judge's procedures for information as applicable. (lc) (Entered: 11/19/2021)	
11	12/06/2021	PROOF OF SERVICE Executed by Plaintiff Endir Briseno, Rodney Wilson, Neil Opdahl-Lopez, upon Defendant Robert A. Bonta served on 12/2/2021, answer due 12/23/2021. Service of the Summons and Complaint were executed upon John M. Adams, person authorized to receive service in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Barvir, Anna) (Entered: 12/06/2021)	
12	12/06/2021	PROOF OF SERVICE Executed by Plaintiff Endir Briseno, Rodney Wilson, Neil Opdahl-Lopez, upon Defendant Luis Lopez served on 12/2/2021, answer due 12/23/2021. Service of the Summons and Complaint were executed upon John M. Adams, person authorized to receive service in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Barvir, Anna) (Entered: 12/06/2021)	
13	12/06/2021	PROOF OF SERVICE Executed by Plaintiff Endir Briseno, Rodney Wilson, Neil Opdahl-Lopez, upon Defendant California Department of Justice served on 12/2/2021, answer due 12/23/2021. Service of the Summons and Complaint were executed upon John M. Adams, person authorized to receive service in compliance with Federal Rules of Civil Procedure by personal service.Original Summons NOT returned. (Barvir, Anna) (Entered: 12/06/2021)	
14	12/14/2021	STIPULATION Extending Time to Answer the complaint as to California Department of Justice answer now due 1/24/2022; Robert A. Bonta answer now due 1/24/2022; Luis Lopez answer now due 1/24/2022, re Service of Summons and Complaint Returned Executed (21 days), 13 , Service of Summons and Complaint Returned Executed (21 days), 11 , Service of Summons and Complaint Returned Executed (21 days), 12 , Complaint (Attorney Civil Case Opening), 1 filed by Defendant California Department of Justice.(Attorney Charles Joseph Sarosy added to party California Department of Justice(pty:dft))(Sarosy, Charles) (Entered: 12/14/2021)	
15	01/24/2022	Notice of Appearance or Withdrawal of Counsel: for attorney Robert Leslie Meyerhoff counsel for Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. Adding Robert L. Meyerhoff as counsel of record for Robert A. Bonta, Luis Lopez and California Department of Justice for the reason indicated in the G-123 Notice. Filed by Defendant Robert A Bonta, in his official capacity as Attorney General of the State of California, et. al.. (Attorney Robert Leslie Meyerhoff added to party Robert A. Bonta(pty:dft), Attorney Robert Leslie Meyerhoff added to party California Department of Justice(pty:dft), Attorney Robert Leslie	

2:21cv9018, Endir Briseno Et Al V. Robet A. Bonta Et Al

#	Date	Proceeding Text	Source
		Meyerhoff added to party Luis Lopez(pty:dft))(Meyerhoff, Robert) (Entered: 01/24/2022)	
16	01/24/2022	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendant Robert A. Bonta, California Department of Justice, Luis Lopez. (Attachments: # 1 Proposed Order [PROPOSED] ORDER GRANTING DEFENDANTS ROBERT A. BONTA, LUIS LOPEZ, AND CALIFORNIA DEPARTMENT OF JUSTICES MOTION TO DISMISS, ABSTAIN FROM HEARING, AND/OR STAY PLAINTIFFS COMPLAINT) (Meyerhoff, Robert) (Entered: 01/24/2022)	
17	01/24/2022	REQUEST FOR JUDICIAL NOTICE re NOTICE OF MOTION AND MOTION to Dismiss Case 16 filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 01/24/2022)	
18	01/24/2022	DECLARATION of Robert L. Meyerhoff in support NOTICE OF MOTION AND MOTION to Dismiss Case 16 filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 01/24/2022)	
19	01/24/2022	EXHIBIT 6 to NOTICE OF MOTION AND MOTION to Dismiss Case 16 filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 01/24/2022)	
20	01/25/2022	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Exhibit to Motion 19 by defendants. The following error(s) was/were found: Title page is missing. Every separately filed document must have its Formal title page. MISSING LR-11-3.8 required filer, attorney, court and case etc information In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (lc) (Entered: 01/25/2022)	
21	02/04/2022	AMENDED COMPLAINT All Defendants amending Complaint (Attorney Civil Case Opening), 1 , filed by Plaintiffs Endir Briseno, Rodney Wilson, Neil Opdahl-Lopez (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Barvir, Anna) (Entered: 02/04/2022)	
22	02/07/2022	MINUTES (IN CHAMBERS) by Judge Otis D. Wright, II: Order DENYING AS MOOT AND WITHOUT PREJUDICE Motion to Dismiss, Abstain, or Stay 16 .Plaintiffs filed a First Amended Complaint on February 4, 2022eleven days after Defendants filed their Motion. Rule 15(a)(1) allows Plaintiffs to file an amended complaint once as a matter of course within twenty-one days of service with a Rule 12(b) motion. To the extent the Motion is a motion to abstain or a motion to stay, the Motion is likewise denied as moot. The interest of orderly administration ofjustice is best served by also denying these aspects of the Motion as moot and directing Defendants to re-file their Motion containing all updates necessitated by the filing of the First Amended Complaint. (lc) (Entered: 02/07/2022)	
23	02/18/2022	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. Motion set for hearing on 4/11/2022 at 01:30 PM before Judge Otis D. Wright II. (Attachments: # 1 Proposed Order GRANTING DEFENDANTS ROBERT A. BONTA, LUIS LOPEZ, AND CALIFORNIA DEPARTMENT OF JUSTICES MOTION TO DISMISS, ABSTAIN FROM HEARING, AND/OR STAY PLAINTIFFS COMPLAINT) (Meyerhoff, Robert) (Entered: 02/18/2022)	

2:21cv9018, Endir Briseno Et Al V. Robet A. Bonta Et Al

#	Date	Proceeding Text	Source
24	02/18/2022	REQUEST FOR JUDICIAL NOTICE re NOTICE OF MOTION AND MOTION to Dismiss Case 23 filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 02/18/2022)	
25	02/18/2022	DECLARATION of Robert L. Meyerhoff in support of NOTICE OF MOTION AND MOTION to Dismiss Case 23 and Exhibits 1-3 attached thereto filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 02/18/2022)	
26	02/18/2022	DECLARATION of Robert L. Meyerhoff In support of NOTICE OF MOTION AND MOTION to Dismiss Case 23 and Exhibits 4-7 attached thereto filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 02/18/2022)	
27	03/21/2022	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION to Dismiss Case 23 filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Attachments: # 1 Declaration of Anna M. Barvir)(Barvir, Anna) (Entered: 03/21/2022)	
28	03/28/2022	REPLY in Support of NOTICE OF MOTION AND MOTION to Dismiss Case 23 filed by Defendants Robert A. Bonta, California Department of Justice, Luis Lopez. (Meyerhoff, Robert) (Entered: 03/28/2022)	
29	04/05/2022	The hearing on the MOTION TO DISMISS 23 , scheduled for April 11, 2022 at 1:30 P.M., is hereby VACATED and taken off calendar. No appearances are necessary. The matter stands submitted, and will be decided upon without oral argument. An order will issue.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sce) TEXT ONLY ENTRY (Entered: 04/05/2022)	
30	08/12/2022	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS OR STAY 23 by Judge Otis D. Wright, II: The Court abstains pursuant to Pullman and STAYS this case for all purposes. Defendants Motion is otherwise denied or mooted. Starting on December 1, 2022, and by the first of the month every three (3) months thereafter, the parties shall file a Joint Status Report informing the Court of the status of the Franklin Armory case. Furthermore, the parties shall file a Joint Status Report no later than ten (10) days following any final judgment by the trial or appellate courts in Franklin Armory. Failure to timely file these reports may result in dismissal of the case for failure to comply with court orders. (lc) (Entered: 08/12/2022)	
31	12/01/2022	STATUS REPORT re: Franklin Armory v. California Department of Justice filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 12/01/2022)	
32	03/01/2023	STATUS REPORT re: Franklin Armory v. California Department of Justice filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 03/01/2023)	
33	06/01/2023	STATUS REPORT re: Franklin Armory v. California Department of Justice filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 06/01/2023)	
34	08/31/2023	STATUS REPORT filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 08/31/2023)	
35	12/01/2023	STATUS REPORT Fifth Joint Status Report filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 12/01/2023)	
36	02/29/2024	STATUS REPORT Sixth Joint Status Report filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 02/29/2024)	

2:21cv9018, Endir Briseno Et Al V. Robet A. Bonta Et Al

#	Date	Proceeding Text	Source
37	05/31/2024	STATUS REPORT filed by Plaintiffs Endir Briseno, Neil Opdahl-Lopez, Rodney Wilson. (Barvir, Anna) (Entered: 05/31/2024)	

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EXHIBIT L

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**United States District Court
Central District of California**

ENDIR BRISENO, et al.,
Plaintiffs,
v.
ROBERT A. BONTA, et al.,
Defendants.

Case No 2:21-cv-09018-ODW (PDx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION TO DISMISS OR STAY
[23]**

I. INTRODUCTION

On November 17, 2021, Plaintiffs Endir Briseno, Neil Opdahl-Lopez, and Rodney Wilson initiated this action individually and as a putative class against California Attorney General Robert A. Bonta and the California Department of Justice (“DOJ”) for violations of Plaintiffs’ constitutional rights arising from Plaintiffs’ thwarted efforts to obtain certain Title 1 firearms. (Compl., ECF No. 1.) Defendants move to dismiss Plaintiffs’ Complaint or stay the action. (Mot. Dismiss or Stay (“Motion” or “Mot.”), ECF No. 23.) Defendants assert the Court should dismiss the Complaint for failure to state a claim and lack of Article III standing, and alternatively assert the Court should stay the case under the *Pullman* abstention doctrine and the *Colorado River* doctrine. (*Id.* at 1.) For the reasons discussed below, the Court

1 **GRANTS** the Motion **IN PART** and **DENIES** the Motion **IN PART**, and stays the
2 case pursuant to the *Pullman* abstention doctrine.¹

3 **II. FACTUAL BACKGROUND**

4 As alleged in the operative Complaint, this action arises from the California
5 DOJ maintaining and enforcing a practice, or “non-statutory rule,” that prevented
6 California residents from buying lawful firearms. (First Amended Complaint
7 (“FAC”) ¶ 30, ECF No. 21.) On or before August 6, 2020, Briseno and other class
8 members paid a deposit and contracted with nonparty Franklin Armory to purchase
9 Title 1 firearms.² (*Id.* ¶ 55.) Pursuant to California law, Franklin Armory cannot sell
10 firearms directly to consumers. (*See id.* ¶ 73.) Instead, a separate dealer who is
11 licensed by the federal government, the State of California, and local authorities must
12 first register the gun to the DOJ’s Record of Sale Entry System (“DES”) using an
13 online form. (*Id.*) The gravamen of Plaintiffs’ Complaint is that the DOJ prevented
14 Plaintiffs from purchasing and taking possession of Title 1 firearms by making it
15 impossible for dealers to register Title 1 firearms on DES. (*Id.* ¶¶ 96–133.)

16 California law divides guns into two types: “handguns” and “long guns,” (*id.*
17 ¶ 46), and further subdivides long guns into two subtypes: “rifles” and “shotguns,”
18 (*Id.* ¶ 50). Title 1 firearms are long guns with an undefined subtype and are neither
19 rifles nor shotguns. (*Id.* ¶¶ 54–64). To register a gun on DES, dealers must indicate
20 both the type and sub-type of gun being registered by making selections from
21 drop-down menus on the DES’s online form. Dealers registering long guns on DES
22 encountered a dropdown menu for the long gun’s sub-type that included only three
23 options: “rifle,” “rifle/shotgun,” and “shotgun.” (*Id.* ¶¶ 98–99.) As Title 1 firearms
24 fit into none of those categories, this prevented dealers from accurately completing the
25 form and submitting it to the DOJ. (*Id.* ¶ 101.) Plaintiffs allege that, as a result, class
26 members could not complete the purchase and transfer of their Title 1 firearms.

27
28 ¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

² Title 1 firearms are semiautomatic AR-15 type firearms. (*Id.* ¶ 55.)

1 Franklin informed the DOJ of this deficiency in 2012, but, as alleged, the DOJ
 2 intentionally did nothing to fix the deficiency. (*Id.* ¶¶ 113–18.) Several years later, on
 3 November 20, 2019, Franklin filed a government tort claim against the DOJ, and in
 4 response, the DOJ promised to fix the deficiencies in DES. (*Id.* ¶ 120.) However, the
 5 DOJ delayed making changes—again, intentionally, according to the allegations. (*Id.*
 6 ¶¶ 121–22.)

7 On September 1, 2020, the State of California passed the Roberti-Roos Assault
 8 Weapons Act (“SB 118”), which made AR-15 type firearms illegal in the State of
 9 California. (*Id.* ¶¶ 5, 129.) After SB 118 came into effect, the DOJ fixed the problem
 10 with the dropdown menu for long gun sub-types. (*Id.*) But because of SB 118,
 11 Plaintiffs could no longer complete the process of registering and taking possession of
 12 their firearms. Plaintiffs assert that the DOJ’s practice of intentionally delaying
 13 correcting the problem in the DES violated their Second Amendment right to bear
 14 arms and their Fourteenth Amendment substantive and procedural due process rights.

15 III. PROCEDURAL BACKGROUND

16 On May 27, 2020, Franklin Armory filed a complaint in the Superior Court of
 17 California, County of Los Angeles. (Decl. Robert L. Meyerhoff (“Meyerhoff Decl.”)
 18 Ex. 1 (“*Franklin Armory* Docket”), ECF No. 25.)³ On February 17, 2021, Franklin
 19 Armory filed the operative second amended complaint. (Meyerhoff Decl. Ex. 4
 20 (“State Second Am. Compl.” or “State SAC”) 43, ECF No. 26.) In the State SAC,
 21 Franklin Armory alleges what Plaintiffs allege in the present case: that the DOJ, by
 22 maintaining an incomplete dropdown menu on DES, made it impossible for dealers to
 23 register Title 1 firearms, thereby creating a “non-statutory ban” prohibiting Franklin
 24

25 ³ The Court **GRANTS** judicial notice of the docket and court filings in *Franklin Armory*. See *Lee v.*
 26 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (authorizing judicial notice of “matters of
 27 public record,” including court filings); Fed R. Evid. 201. However, when a court takes judicial
 28 notice of documents filed in another court, “it may do so not for the truth of the facts recited
 therein,” but simply for the fact that the documents exist and were filed, “which is not subject to
 reasonable dispute.” *S.B. by & through Kristina B. v. Cal. Dep’t of Educ.*, 327 F. Supp. 3d 1218,
 1229 n.1 (E.D. Cal. 2018)).

1 Armory from selling Title 1 firearms in California. (See State SAC ¶¶ 68–84, 98,
2 166.) Furthermore, in support of its contention that Title 1 gun ownership is an
3 entitlement, Franklin Armory alleges in its case that over fifty California statutes
4 restrict the DOJ’s discretion to impede the transfer of Title 1 firearms. (*Id.* ¶¶ 38–41,
5 45–46, 81, 118(e), 166, 189.) It further alleges that the DOJ does not have discretion
6 to “design, develop[], maint[ain], and enforce[] . . . the DES in a manner that
7 functions as a barrier to the lawful transfer of certain lawful firearms.” (*Id.* ¶ 81.) In
8 short, Franklin Armory alleges that California law requires the DOJ to provide class
9 members with a way of registering their Title 1 firearms in a reasonably timely
10 manner and that the DOJ has no discretion in carrying out this requirement.

11 Franklin Armory seeks injunctions against the DOJ to prevent it (1) from
12 “enforcing administrative and/or technological barriers that prevent or otherwise
13 inhibit the sale, loan and/or transfer of lawful ‘firearms with an undefined subtype,’”
14 (State SAC, Prayer ¶¶ 7–8,), and (2) “from enforcing the provisions of SB 118 . . . in
15 such a way that would prohibit the acquisition, possession and registration of
16 centerfire variants of the FAI Title 1 for which earnest money deposits were made on
17 or before August 6, 2020,” (*id.* ¶ 10.) It further seeks a writ of mandate ordering
18 Defendants “to design, implement, maintain and enforce updates to the DES such that
19 it does not proscribe the lawful sale, transfer and loan of an entire class of lawful
20 ‘firearms with an undefined firearm subtype.’” (*Id.* ¶ 9.) On January 27, 2022, the
21 court in *Franklin Armory* dismissed the Armory’s claims for injunctive relief.
22 (Meyerhoff Decl. Ex. 7 (“Decision Granting Mot. Dismiss”).)

23 Plaintiffs in the present federal action make similar claims and seek similar
24 relief. Plaintiffs allege that the DOJ “failed to comply with the[] mandates” of
25 California state law by “effectively barring the sale of centerfire variants of Franklin
26 Armory’s Title 1 series of firearms.” (FAC ¶ 87.) Plaintiffs contend that California’s
27 gun regulation scheme created an entitlement to—that is, a property interest in—the
28 transferal and registration of lawful firearms, including Title 1 firearms. (*See id.*

1 ¶¶ 158–59.) To support this contention, Plaintiffs allege that California statutes limit
2 the DOJ’s discretion to “delay or deny the lawful sale and transfer of firearms” to
3 situations where “expressly prohibited activities” have taken place. (*Id.* ¶ 88.)
4 Plaintiffs contend that the DOJ deprived them of this property interest and violated
5 their substantive and procedural due process rights under the Fourteenth Amendment
6 by blocking Title 1 firearms transfers. (*Id.* ¶¶ 159, 171.)

7 Plaintiffs now assert three causes of action, for violations of (1) their Second
8 Amendment right to keep and bear arms, (*id.* ¶¶ 143–54); (2) their substantive due
9 process rights under the Fourteenth Amendment, (*id.* ¶¶ 155–67); and (3) their
10 procedural due process rights under the Fourteenth Amendment, (*id.* ¶¶ 168–79).
11 Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 that Defendants’
12 conduct deprived Plaintiffs of these constitutional rights. (Compl., Prayer ¶¶ 1–3.)
13 Further, Plaintiffs ask the Court to: (1) restrain Defendants from effectively banning
14 registration of “firearms with undefined subtypes”; (2) allow Plaintiffs to submit
15 firearms purchaser information through DES and to take possession of the Title 1
16 firearms for which they made deposits; and (3) restrain Defendants from enforcing
17 provisions related to SB 118 until Plaintiffs have a reasonable period to submit
18 purchaser information through DES. (*Id.* ¶ 4.) Plaintiffs seek nominal damages,
19 along with attorneys’ fees and costs pursuant to 42 U.S.C. § 1988. (*Id.* ¶¶ 5–7.)

20 In the present case, Defendants now move to dismiss or stay the case, and the
21 Motion is fully briefed. (Opp’n, ECF No. 27; Reply, ECF No. 28.) Defendants argue
22 that *Pullman* abstention is necessary to allow California state courts to reach a final
23 judgment in *Franklin Armory*. (Mot. at 19–21.) For the reasons that follow, the Court
24 agrees and imposes a stay based on the *Pullman* abstention doctrine, without reaching
25 Defendants’ other bases for dismissing or staying the matter.

26 IV. LEGAL STANDARD

27 “*Pullman* abstention ‘is an extraordinary and narrow exception to the duty of a
28 district court to adjudicate a controversy.’” *Courthouse News Serv. v. Planet,*

1 750 F.3d 776, 783 (9th Cir. 2014) (quoting *Wolfson v. Brammer*, 616 F.3d 1045, 1066
2 (9th Cir. 2010)). The purpose of *Pullman* abstention is not “for the benefit of either of
3 the parties but rather for ‘the rightful independence of the state governments and for
4 the smooth working of the federal judiciary.’” *San Remo Hotel v. City & County of*
5 *San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998) (quoting *R.R. Comm’n of Tex. v.*
6 *Pullman Co.*, 312 U.S. 496, 501 (1941)). *Pullman* abstention is appropriate when the
7 following three conditions are satisfied:

8 (1) the case touches on a sensitive area of social policy upon which the
9 federal courts ought not enter unless no alternative to its adjudication is
10 open, (2) constitutional adjudication plainly can be avoided if a definite
11 ruling on the state issue would terminate the controversy, and (3) [the
12 proper resolution of] the possible determinative issue of state law is
uncertain.

13 *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003) (quoting *Confederated Salish v.*
14 *Simonich*, 29 F.3d 1398, 1407 (9th Cir. 1994)). “[T]he absence of any one of these
15 three factors is sufficient to prevent the application of *Pullman* abstention.” *Id.*

16 Either a plaintiff or a defendant may raise *Pullman* abstention, *San Remo Hotel*,
17 145 F.3d at 1105, and the court “may sua sponte consider *Pullman* abstention at any
18 time,” *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 802 (9th Cir.
19 2001). When a party moves for *Pullman* abstention, that party bears “the burden of
20 meeting each prong.” *See, e.g., Rooke v. City of Scotts Valley*, 664 F. Supp. 1342,
21 1343 (N.D. Cal. 1987); *cf. Clinton v. Jones*, 520 U.S. 681, 707 (1997) (“The
22 proponent of a stay bears the burden of establishing its need.”). When a district court
23 stays a case pursuant to *Pullman* abstention, it should maintain jurisdiction over the
24 case rather than dismiss it. *Courtney v. Goltz*, 736 F.3d 1152, 1164 (9th Cir. 2013).

25 V. DISCUSSION

26 Plaintiffs allege that the DOJ’s intentional delay in correcting the drop-down
27 menu problem in the DES deprived them of a property right and correspondingly
28 violated their substantive and procedural due process rights under the Fourteenth

1 Amendment. The Court begins with a discussion of property rights principles under
2 the Due Process Clause before proceeding to the *Pullman* abstention analysis.

3 **A. Property Rights Principles under the Due Process Clause**

4 “A threshold requirement to a substantive or procedural due process claim is the
5 plaintiff’s showing of a liberty or property interest protected by the Constitution.”
6 *Wedges/Ledges of Cal., Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994) (citing
7 *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 569 (1972)). “[P]roperty
8 interests that due process protects extend beyond tangible property and include
9 anything to which a plaintiff has a ‘legitimate claim of entitlement.’” *Nozzi v. Hous.*
10 *Auth. of L.A.*, 806 F.3d 1178, 1191 (9th Cir. 2015) (quoting *Roth*, 408 U.S. at 576–
11 77). Entitlements and other property interests are “created and . . . defined by existing
12 rules or understandings” that “secure certain benefits,” “support claims of entitlement
13 to those benefits, and “stem from an independent source such as state law.” *Roth*,
14 408 U.S. at 577.

15 Yet, “[n]ot every procedural requirement ordained by state law . . . creates a
16 substantive property interest entitled to constitutional protection.” *Shanks v. Dressel*,
17 540 F.3d 1082, 1091 (9th Cir. 2008). For a benefit conferred by state law to be a
18 property interest, the recipient must have “more than a unilateral expectation of it.”
19 *Roth*, 408 U.S. at 564. Thus, “a benefit is not a protected entitlement if government
20 officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzalez*,
21 545 U.S. 748, 756 (2005).

22 In analyzing what constitutes an entitlement, courts “begin[] . . . with a
23 determination of what it is that state law provides.” *Id.* at 757. Courts look to
24 whether the state law “impose[s] particularized standards” that “significantly
25 constrain” the government’s discretion. *Shanks*, 540 F.3d at 1091 (quoting *Fidelity*
26 *Fin. Corp. v. Fed. Home Loan Bank of S.F.*, 792 F.2d 1432, 1436 (9th Cir. 1986)). In
27 determining whether a benefit is an entitlement, federal courts should maintain a
28

1 “presumption of deference” to state courts’ interpretation of state law. *Phillips v.*
2 *Wash. Legal Found.*, 524 U.S. 156, 167 (1998).

3 **B. Pullman Abstention**

4 Defendants argue that the Court should abstain from hearing this case because
5 (1) this case involves a sensitive area of state law; (2) the state law questions
6 presented in *Franklin Armory* have the potential to moot, or at least alter, the federal
7 constitutional questions alleged here; and (3) a possibly determinative area of state
8 law is uncertain. (Mot. 19–21.) The Court finds that Defendants meet their burden on
9 all these points and exercises its discretion to apply *Pullman* abstention and stay the
10 case.

11 *1. Sensitive Area of Social Policy*

12 The first consideration is whether the complaint touches a sensitive area of
13 social policy upon which the federal courts unless no alternative to its adjudication is
14 open. *Smelt v. County of Orange*, 447 F.3d 673, 679 (9th Cir. 2006). Defendants
15 argue that, because this case hinges on interpretations of state gun regulations, it
16 involves a sensitive area of social policy. (Mot. 19.)

17 The Court agrees. Plaintiffs’ core allegation is that the DOJ undermined
18 California’s statutory scheme for firearm regulation by operating an additional
19 clandestine regulatory regime with the intent to ban Title 1 firearms. (FAC ¶ 4.) It is
20 virtually axiomatic that gun regulation is a sensitive area of social policy, and this
21 observation rings especially true in this case, where Plaintiffs are asking the Court to
22 find that a state manipulated its own regulatory scheme for gun purchases in order to
23 commit intentional constitutional violations.

24 Moreover, to resolve Plaintiffs’ claims, the Court would be required to
25 determine the extent to which the DOJ has discretionary powers to act outside of the
26 explicit textual provisions of California statutes, (*see* FAC ¶¶ 39–42), which in turn
27 would require the court to interpret significant portions of California’s regulatory
28 scheme for firearms. This task would be difficult because, as Plaintiffs themselves

1 indicate, California has “the most comprehensive, complex, and restrictive [firearms
2 laws] in the nation, with over 800 state statutes regulating firearms and firearms
3 transactions within the state.” (FAC ¶ 43; *see also* Opp’n 17 (“Second Amendment
4 litigation challenging firearms policy often does require courts to weigh sensitive
5 issues with broader social policy consequences.”).) The complexity of the regulatory
6 scheme itself supports a finding that the problem is “best left to state resolution.”⁴
7 *Bank of Am. Nat’l Tr. & Sav. v. Summerland Cnty. Water Dist.*, 767 F.2d 544, 546
8 (9th Cir. 1985.)

9 California’s ban on Title 1 firearms is part of its attempt to balance the many
10 competing interests that arise in the context of firearm regulation, and this Court ought
11 not intrude upon that attempt unless it must. Indeed, if Plaintiffs are successful, the
12 outcome of this case would provide certain Californians with a way to obtain firearms
13 that the people of California, through its legislature, have recently declared illegal.
14 (FAC ¶ 5.) This case undoubtedly “touches a sensitive area of social policy,” and this
15 Court “ought not” to adjudicate it if there is an alternative. *Smelt*, 447 F.3d at 679.
16 And there is an alternative: wait for the California courts to complete their
17 adjudication of *Franklin Armory*. For these reasons, this case meets the first *Pullman*
18 abstention requirement.

19 2. *Avoidance of Constitutional Adjudication*

20 The second *Pullman* element is whether constitutional adjudication plainly can
21 be avoided if a definitive ruling on the state issue would terminate the controversy.
22 *Smelt*, 447 F.3d at 679. With respect to this requirement, “[t]he assumption which
23 justifies abstention is that a federal court’s erroneous determination of a state law
24 issue may result in premature or unnecessary constitutional adjudication, and

25 ⁴ Additionally, *Pullman* abstention is especially appropriate where a federal court is asked to resolve
26 state-law questions in a way that may invalidate a state statute or regulation. *Fireman’s Fund Ins.*
27 *Co. v. Garamendi*, 790 F. Supp. 938, 960 (N.D. Cal. 1992); *see Bank of Am.*, 767 F.2d at 547. Here,
28 although Plaintiffs do not seek to invalidate SB 118 altogether, they do ask the Court to enjoin the
enforcement of SB 118 against Plaintiffs and require California to process Plaintiffs’ gun
applications despite SB 118 having been duly enacted. (*See* FAC, Prayer ¶ 4(a)–(c).)

1 unwarranted interference with state programs and statutes.” *C-Y Dev. Co. v. City of*
2 *Redlands*, 703 F.2d 375, 378 (9th Cir. 1983) (quoting *Pue v. Sillas*, 632 F.d 74, 79
3 (9th Cir. 1980)).

4 Despite the exacting language in *Smelt*, federal courts, including those in the
5 Ninth Circuit, have invoked *Pullman* abstention where resolution of the state law
6 question “has the potential of at least altering the nature of the federal constitutional
7 questions.” *C-Y*, 703 F.2d at 378. The court need not “be absolutely certain” that a
8 state court decision will “obviate the need for considering the federal constitutional
9 issues.” *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir.
10 1996). Instead, “it is sufficient if the state law issues might ‘narrow’ the federal
11 constitutional questions.” *Id.* (quoting *Pearl Inv. Co. v. City & County of San*
12 *Francisco*, 774 F.2d 1460, 1464 (9th Cir. 1985)); see *Sullivan Equity Partners, LLC v.*
13 *City of Los Angeles*, No. 2:16-cv-07148-CAS (AGRx), 2017 WL 1364578 at *6 (C.D.
14 Cal. Apr. 12, 2017) (noting this prong is often met “where a favorable decision on a
15 state law claim would provide plaintiff with some or all of the relief he seeks”).

16 Defendants argue that *Franklin Armory* may eliminate the need for this Court to
17 rule on constitutional issues because the relief sought in the *Franklin Armory* is
18 identical to the relief sought in this one. (Mot. 20–21.) The Court agrees.

19 Franklin Armory is the manufacturer of Plaintiffs’ Title 1 firearms. (*Id.* ¶ 22.)
20 Moreover, Franklin Armory and Plaintiffs seek three identical injunctions in their
21 respective cases, (*compare* State SAC, Prayer ¶¶ 7–9, *with* FAC, Prayer ¶ 4(a)–(c)),
22 and, as discussed, the basic allegations and contentions in the two cases are the same.
23 Thus, if the Armory succeeds in *Franklin Armory*, Plaintiffs in this case will obtain
24 their requested relief—that is, they will get their firearms—thereby mooting the
25 controversy and eliminating the need for this Court to adjudicate Plaintiffs’ federal
26 constitutional claims. See *Sinclair*, 96 F.3d at 409 (finding the second *Pullman*
27 element satisfied where state court provision of just compensation for a taking under
28 state law “might” obviate need to address federal taking claim). It is also possible that

1 Franklin Armory will lose its case due to California courts finding no actionable
2 property right. That finding would apply here and would also dispose of this matter.
3 Thus, there are multiple ways California courts might resolve *Franklin Armory* that
4 would “alter[]” a key contested state-law issue. *C-Y*, 703 F.2d at 378.

5 Plaintiffs argue that, because the state court has dismissed Franklin Armory’s
6 claims for injunctive relief, the ruling in *Franklin Armory* will not terminate this
7 action. (Opp’n 19.) This argument is unavailing. As Defendants correctly point out,
8 Franklin Armory cannot appeal the dismissal of claims one, two, and eight until the
9 Superior Court reaches final judgment on the damages claims. (Mot. 22 n. 5;
10 Reply 10); see Cal. Civ. Proc. Code § 904.1 (setting forth “one final judgment rule”
11 under which, generally speaking, a party may appeal only after a final judgment).
12 Thus, it remains uncertain how California courts will ultimately resolve Franklin
13 Armory’s claims one, two, and eight. Due to this uncertainty, the Superior Court’s
14 dismissal of claims in *Franklin Armory* does not prevent the Court from invoking
15 *Pullman* abstention. See *Smelt*, 447 F.3d at 681 (affirming a *Pullman* stay of a federal
16 case challenging the constitutionality of a ban on gay marriage even after a California
17 Superior Court had made an initial adverse ruling in a related state action).

18 For these reasons, this case meets the second *Pullman* abstention requirement.

19 3. *Uncertain, Determinative Issue of State Law*

20 The third *Pullman* element is satisfied when the state court’s resolution of a
21 determinative issue of state law is uncertain. *Pearl*, 774 F.2d at 1465 (stating *Pullman*
22 abstention appropriate when federal court “cannot predict with any confidence how
23 the state’s highest court would decide an issue of state law”). “Resolution of an issue
24 of state law might be uncertain because the particular statute is ambiguous . . . or
25 because the question is novel and of sufficient importance that it ought to be addressed
26 first by a state court.” *Id.*

27 Here, Defendants argue that it is uncertain whether California state courts will
28 find that Plaintiffs have a property interest in acquiring their Title 1 firearms.

1 (Mot. 21; Reply 10.) The Court agrees and finds the lack of certainty around this key
2 and novel issue supports *Pullman* abstention. The Court is aware of no case law that
3 indicates or suggests that California’s highest court will (or will not) find that
4 Plaintiffs’ right to obtain Title 1 firearms is an entitlement. Plaintiffs claim such an
5 entitlement, but they provide no supporting case law to show that California
6 recognizes an entitlement of that kind. (See FAC ¶¶ 171–72.) Defendants, for their
7 part, contend that Plaintiffs possessed only a “unilateral expectation” in acquiring and
8 possessing Title 1 firearms, but Defendants likewise provide no California case law to
9 support their position. (See Mot. 15.) Thus, this Court would be left without any
10 guidance from California courts in determining whether Plaintiffs have a property
11 interest in acquiring their Title 1 firearms. For these reasons, this case meets the third
12 *Pullman* abstention requirement.

13 In summary, *Pullman* abstention is appropriate because gun regulation is a
14 sensitive area of social policy and this case in particular invites the federal courts to
15 intervene in a state’s execution of its own regulations; the result of *Franklin Armory*
16 might allow the Court to avoid deciding constitutional questions; and the Court cannot
17 predict whether California courts will determine that Plaintiffs’ right to obtain Title 1
18 firearms constitutes a property interest. The Court therefore stays the case pending the
19 final outcome in *Franklin Armory*. See *Caldara v. City of Boulder*, 955 F.3d 1175,
20 1183 (10th Cir. 2020) (affirming *Pullman* abstention on a Second Amendment
21 challenge to a local ordinance that prohibited assault weapons and raised the minimum
22 age to possess firearms); see also *W. Va. Citizens Def. League, Inc. v. City of*
23 *Martinsburg*, 483 F. App’x 838, 840 (4th Cir. 2012) (affirming *Pullman* abstention on
24 a Second Amendment challenge to a ban of firearms in city-owned buildings); cf.
25 *Doyle v. City of Medford*, 565 F.3d 536, 544 (9th Cir. 2009) (certifying a question to
26 the Oregon State Supreme Court to determine whether a state statute generated an
27 entitlement to post-retirement healthcare coverage for former city employees).

28

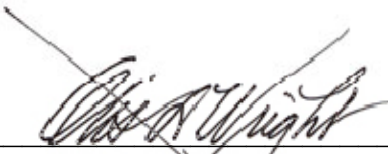
1 **VI. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS IN PART and DENIES**
3 **IN PART** Defendants’ Motion. (ECF No. 23.) The Court abstains pursuant to
4 *Pullman* and **STAYS** this case for all purposes. Defendants’ Motion is otherwise
5 denied or mooted.

6 Starting on **December 1, 2022**, and by the first of the month every
7 three (3) months thereafter, the parties shall file a Joint Status Report informing the
8 Court of the status of the *Franklin Armory* case. Furthermore, the parties shall file a
9 Joint Status Report no later than ten (10) days following any final judgment by the
10 trial or appellate courts in *Franklin Armory*. Failure to timely file these reports may
11 result in dismissal of the case for failure to comply with court orders.

12
13 **IT IS SO ORDERED.**

14
15 August 12, 2022

16
17 
18 **OTIS D. WRIGHT, II**
19 **UNITED STATES DISTRICT JUDGE**

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

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

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

8 **REPLY REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION BY
9 DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR
10 SUMMARY ADJUDICATION OF ISSUES**

11 C.D. Michel
12 Anna M. Barvir
13 Jason A. Davis
14 MICHEL & ASSOCIATES, P.C.
15 180 E. Ocean Blvd., Suite 200
16 Long Beach, CA 90802
17 Email: abarvir@michellawyers.com
18 CMichel@michellawyers.com
19 Jason@calgunlawyers.com
20 lpalmerin@michellawyers.com
21 *Attorneys for Plaintiffs-Petitioners*

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

27 (BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope,
28 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.

27 Sandra Dominguez
28 Declarant

Sandra Dominguez
Signature