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Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
8/20/2024 6:21 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By V. Sino-Cruz, Deputy Clerk

7 Attorneys for Petitioner - Plaintiff  
8

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.  
17

Case No.: 20STCP01747

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

**DECLARATION OF TIFFANY D.  
CHEVRONT IN SUPPORT OF  
PLAINTIFF’S MOTION TO STRIKE  
COSTS OR, ALTERNATIVELY, STAY  
ENFORCEMENT OF JUDGMENT  
PENDING APPEAL**

Hearing Date: September 25, 2024

Hearing Time: 8:30 AM

Department: 32

Judge: Hon. Daniel S. Murphy

Reservation ID: 315248532217

Action Filed: May 27, 2020

1 **DECLARATION OF TIFFANY D. CHEUVRONT**

2 I, Tiffany D. Cheuvront, declare as follows:

3 1. I am an attorney licensed to practice law in the State of California and am counsel of  
4 record for Plaintiff Franklin Armory, Inc. in this action. I have personal knowledge of the facts set forth  
5 herein and, if called as a witness, could and would testify competently thereto.

6 2. On or about July 18, 2024, Defendants email-served Plaintiffs with a copy of its  
7 Memorandum of Costs, claiming total costs of \$12,137.59. In the ordinary course of business, the served  
8 document would have been downloaded by my paralegal, Laura Palmerin, and filed in IMANAGE, an  
9 electronic document filing program. On or about August 20, 2024, I reviewed and retrieved the  
10 document from IMANAGE. Attached hereto as **Exhibit A** is a true and correct copy of Defendants’  
11 Memorandum of Costs.

12 3. On or about July 22, 2024, I sent an email to Mr. Kenneth Lake and Mr. Andrew Adams,  
13 counsel of record for Defendants, proposing that the parties stipulate to stay the litigation of costs and  
14 fees in this matter until after the appeal, when the “prevailing party” will finally be decided. I  
15 immediately received an “out of office” response from Mr. Lake, stating that he would be unavailable  
16 until August 5, 2024—just one day before Plaintiffs’ motion to strike or tax costs would be due.

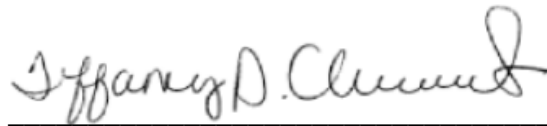
17 4. Hearing nothing from Mr. Adams in response to my July 22 email, I called him on July  
18 24, 2024, to discuss whether Defendants would agree to stipulate to stay the litigation of costs and fees  
19 until after the appeal. He informed me that Defendants would not agree to such a stipulation but offered  
20 to extend the deadline on Plaintiffs’ motion to strike or tax costs.

21 5. A few hours later, I followed up with an email to Mr. Adams and Mr. Lake,  
22 memorializing my understanding that, during the call, Mr. Adams declined Plaintiffs’ request to stay  
23 costs-and-fees litigation pending appeal, but offered to extend the Plaintiffs’ deadline by two weeks.  
24 Later that night, Mr. Adams responded to my email, confirming that Defendants would not agree to stay  
25 costs-and-fees litigation, but explained that he had only agreed to stipulate to extend by a few days. We  
26 ultimately agreed to stipulate to extend the deadline by two weeks up to and including August 20, 2024.  
27 Attached hereto as **Exhibit B** is a true and correct copy of my email correspondence with Mr. Adams.

28 6. On or about June 26, 2024, Plaintiffs filed and served Plaintiffs’ Separate Statement of

1 Undisputed Material Facts in Opposition to Defendants’ Motion for Summary Judgment. In the ordinary  
2 course of business, the served document would have been downloaded by my paralegal, Laura Palmerin,  
3 and filed in IMANAGE, an electronic document filing program. On or about August 20, 2024, I  
4 reviewed and retrieved the document from IMANAGE. Attached hereto as **Exhibit C** is a true and  
5 correct copy of Plaintiffs’ Separate Statement of Undisputed Material Facts in Opposition to  
6 Defendants’ Motion for Summary Judgment.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
8 true and correct. Executed on August 20, 2024, at North Point, Florida.

9 

10 \_\_\_\_\_  
11 Tiffany D. Chevront  
12 Declarant  
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# **EXHIBIT A**

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: 144313 NAME: Kenneth G. Lake, Deputy Attorney General FIRM NAME: Office of the Attorney General STREET ADDRESS: 300 S. Spring Street CITY: Los Angeles STATE: CA ZIP CODE: 90013 TELEPHONE NO.: 213-269-6525 FAX NO.: 916-731-2120 E-MAIL ADDRESS: Kenneth.Lake@doj.ca.gov ATTORNEY FOR (name): Defendants	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF: Franklin Armory, Inc., et al. DEFENDANT: California Department of Justice, et al.	
<b>MEMORANDUM OF COSTS (SUMMARY)</b>	CASE NUMBER: 20STCP01747

	<b>TOTALS</b>
<b>The following costs are requested:</b>	
1. Filing and motion fees	\$
2. Jury fees	\$
3. Jury food and lodging	\$
4. Deposition costs	\$ 9,752.59
5. Service of process	\$
6. Attachment expenses	\$
7. Surety bond premiums	\$
8. Witness fees	\$
9. Court-ordered transcripts	\$
10. Attorney fees <i>(enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)</i>	\$
11. Court reporter fees as established by statute	\$ 2,385.00
12. Models, enlargements, and photocopies of exhibits	\$
13. Interpreter fees	\$
14. Fees for electronic filing or service	\$
15. Fees for hosting electronic documents	\$
16. Other	\$
<b>TOTAL COSTS</b>	<b>\$ 12,137.59</b>

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: 7-18-24

Kenneth Lake  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF DECLARANT)

(Proof of service on reverse)

SHORT TITLE Franklin Armory, Inc., et al. v. California Department of Justice, et al.	CASE NUMBER: 20STCP01747
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**PROOF OF  MAILING  PERSONAL DELIVERY**

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is (*specify*):
  
3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
  - a.  **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope AND
      - (a)  **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
      - (b)  **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
  
      - (c) Date of mailing: \_\_\_\_\_
      - (d) Place of mailing (*city and state*):
  - b.  **Personal delivery.** I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
  
    - (3) Date delivered:
    - (4) Time delivered:

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

SHORT TITLE Franklin Armory, Inc., et al. v. California Department of Justice, et al.	CASE NUMBER: 20STCP01747
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**MEMORANDUM OF COSTS (WORKSHEET)**

**1. Filing and motion fees**

	<u>Paper filed</u>		<u>Filing fee</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____
e.	_____	\$	_____
f.	_____	\$	_____

g.  Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$

**2. Jury fees**

	<u>Date</u>		<u>Fee &amp; mileage</u>
a.	_____	\$	_____
b.	_____	\$	_____
c.	_____	\$	_____
d.	_____	\$	_____

e.  Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$

**3. Juror food:** \$ \_\_\_\_\_ **and lodging:** \$ \_\_\_\_\_

TOTAL 3. \$

**4. Deposition costs**

	<u>Name of deponent</u>		<u>Taking</u>		<u>Transcribing</u>		<u>Travel</u>		<u>Videotaping</u>		<u>Subtotals</u>
a.	<u>Jay Jacobson</u>	\$	<u>11/14/2023</u>	\$	<u>2,244.65</u>	\$	_____	\$	<u>945.00</u>	\$	<u>3190.65</u>
b.	<u>Alisson Mendoza</u>	\$	<u>6/7/2024</u>	\$	<u>1,597.59</u>	\$	_____	\$	_____	\$	<u>1597.59</u>
c.	<u>Cheryle Massaro-Florez</u>	\$	<u>12/28/2021</u>	\$	<u>578.00</u>	\$	_____	\$	<u>367.00</u>	\$	<u>945.00</u>
d.	<u>Maricela Leyva - Vol. 1</u>	\$	<u>1/11/2024</u>	\$	<u>299.45</u>	\$	_____	\$	_____	\$	<u>299.45</u>

e.  Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$  9752.59

(Continued on reverse)

SHORT TITLE Franklin Armory, Inc., et al. v. California Department of Justice, et al.	CASE NUMBER: 20STCP01747
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5. Service of process

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	_____	\$ _____	\$ _____	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____
d.	<input type="checkbox"/> Information about additional costs for service of process is contained in Attachment 5d.				

TOTAL 5. \$

6. Attachment expenses (specify):

6. \$

7. Surety bond premiums (itemize bonds and amounts):

7. \$

8. a. Ordinary witness fees

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>	<u>Total</u>
(1)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:	\$ <input type="text"/>
(2)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:	\$ <input type="text"/>
(3)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:	\$ <input type="text"/>
(4)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:	\$ <input type="text"/>
(5)	_____	days at _____ \$/day	_____ miles at _____ ¢/mile:	\$ <input type="text"/>

(6)  Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$

(Continued on next page)



SHORT TITLE Franklin Armory, Inc., et al. v. California Department of Justice, et al.	CASE NUMBER: 20STCP01747
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8. b. **Expert fees** (per Code of Civil Procedure section 998)

Name of witness	Fee	
(1) _____	_____ hours at \$ _____ /hr	\$ _____
(2) _____	_____ hours at \$ _____ /hr	\$ _____
(3) _____	_____ hours at \$ _____ /hr	\$ _____
(4) _____	_____ hours at \$ _____ /hr	\$ _____
(5) <input type="checkbox"/> Information about additional expert fees is contained in Attachment 8b(5).		

SUBTOTAL 8b. \$ \_\_\_\_\_

c. **Court-ordered expert fees**

Name of witness	Fee	
(1) _____	_____ hours at \$ _____ /hr	\$ _____
(2) _____	_____ hours at \$ _____ /hr	\$ _____
(3) <input type="checkbox"/> Information about additional court-ordered expert fees is contained in Attachment 8c(3).		

SUBTOTAL 8c. \$ \_\_\_\_\_

TOTAL (8a, 8b, & 8c) 8. \$ \_\_\_\_\_

9. **Court-ordered transcripts** (specify):

9. \$ \_\_\_\_\_

10. **Attorney fees** (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required):

10. \$ \_\_\_\_\_

11. **Models, enlargements, and photocopies of exhibits** (specify):

11. \$ \_\_\_\_\_

12. **Court reporter fees** (as established by statute)

a. (Name of reporter): Kennedy Court Reporter (7/10/24) Fees: \$ 1110

b. (Name of reporter): Kennedy Court Reporter (9/6/23) Fees: \$ 1275

TOTAL 12. \$ 2,385.00

c.  Information about additional court-reporter fees is contained in Attachment 12c.

13. **Interpreter fees**

a. Fees of a certified or registered interpreter for the deposition of a party or witness

(Name of interpreter): \_\_\_\_\_ Fees: \$ \_\_\_\_\_

(Name of interpreter): \_\_\_\_\_ Fees: \$ \_\_\_\_\_

b. Fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project or a pro bono attorney

(Name of interpreter): \_\_\_\_\_ Fees: \$ \_\_\_\_\_

(Name of interpreter): \_\_\_\_\_ Fees: \$ \_\_\_\_\_

TOTAL 13. \$ \_\_\_\_\_

c.  Information about additional court-reporter fees is contained in Attachment 13c.

14. **Fees for electronic filing or service of documents through an electronic filing service provider** (enter here if required or ordered by the court):

14. \$ \_\_\_\_\_

15. **Fees for hosting electronic documents through an electronic filing service provider** (enter here if required or ordered by the court):

15. \$ \_\_\_\_\_

16. **Other** (specify): \_\_\_\_\_

16. \$ \_\_\_\_\_

**TOTAL COSTS** \$ 12,137.59

(Additional information may be supplied on the reverse)

Attachment 4e

<b>Name of Deponent</b>	<b>Taking</b>	<b>Transcribing</b>	<b>Travel</b>	<b>Videotaping</b>	<b>Subtotal</b>
e. Naren Mikkileni	11/28/2023	\$195.00			\$195.00
f. Sedar Askin	1/24/2024	\$185.00			\$185.00
g. Brent Orrick	1/10/2024	\$346.85			\$346.85
h. Jennifer Kim	1/3/2024	\$362.00			\$362.00
i. Christina Rosa-Robinson	11/27/2023	\$220.50			\$220.50
j. Aaron Edwards	2/13/2024	\$602.45			\$602.45
k. Gilbert Mac	2/28/2024	\$340.70			\$340.70
l. Karin Jacobson	6/18/2024	\$1,337.40			\$1,337.40
m. Mazzaro-Florez	10/26/2021	\$130.00			\$130.00

TOTAL \$3,719.90

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**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 19, 2024, I served the documents named below on the parties in this action as follows:

**MEMORANDUM OF COSTS (SUMMARY)**

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](mailto:abarvir@michellawyers.com)  
[CMichel@michellawyers.com](mailto:CMichel@michellawyers.com)  
[Jason@calgunlawyers.com](mailto:Jason@calgunlawyers.com)  
[lpalmerin@michellawyers.com](mailto: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 19, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

*Sandra Dominguez*  
Signature

# **EXHIBIT B**

**From:** [Andrew Adams](#)  
**To:** [Tiffany Cheuvront](#); [Laura Palmerin](#); [Kenneth Lake](#); [Anna M. Barvir](#)  
**Cc:** [jason](#); [Konstadinos T. Moros](#)  
**Subject:** RE: Joint Stipulation- Franklin Armory Matter  
**Date:** Thursday, July 25, 2024 9:39:07 AM  
**Attachments:** [image001.png](#)  
[Signature page.pdf](#)

---

Tiffany,

I'm signing and attaching the stipulation continuing the motion to tax costs deadline 2 weeks.

Andrew

---

**From:** Tiffany Cheuvront <tcheuvront@michellawyers.com>  
**Sent:** Thursday, July 25, 2024 7:17 AM  
**To:** Andrew Adams <Andrew.Adams@doj.ca.gov>; Laura Palmerin <lpalmerin@michellawyers.com>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>; Anna M. Barvir <ABarvir@michellawyers.com>  
**Cc:** jason <jason@calgunlawyers.com>; Konstadinos T. Moros <kmoros@michellawyers.com>  
**Subject:** RE: Joint Stipulation- Franklin Armory Matter

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.


Andrew,

Thank you for your response late last night. On the phone call yesterday, I asked for postponement of litigating the fees and costs until after the appeal to prevent unnecessary motion practice until the appeal is resolved. You refused. I told you that with that refusal of postponement we may seek a 30-day extension due to our lead counsel, Anna Barvir, being out of the office next week. You stated at that time that a couple of weeks is all that you could agree to, and I told you I would bring that back to Anna, but that we may go in ex parte with a 30-day request. After speaking with Anna, she agreed that the two weeks would be all that is needed and created the draft stipulation which we sent over to your attention yesterday.

I am surprised that your office cannot now agree to two weeks for extension given the many accommodations that we have agreed to for your team throughout the proceedings of this matter. We have been more than gracious with the requests from your team which delayed the case for months. Not only are you refusing a reasonable request here, but you give no real explanation for not agreeing to the two-week extension. I am asking that your team reconsider this two-week stipulation so we can move forward without unnecessary ex parte actions that will waste our time and the court's time.

To clarify, if we do not hear back from your office by noon today, we will be forced to move ex parte for the two-week extension. If reconsideration is not an option for you, we will notify the court of the defendants' opposition to the extension.

Thank you,

<p><b>Tiffany Cheuvront</b> Managing Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4450 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:tcheuvront@michellawyers.com">tcheuvront@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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This email is confidential and legally privileged. If you received this email by mistake, you are on notice of its status. Please do not copy it, use it for any purposes, or disclose it to anyone. That could violate state and Federal privacy laws. Please notify us by reply email and then delete this message. Please get in touch with us at (562) 216-4444 if you need assistance.

---

**From:** Andrew Adams <[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)>

**Sent:** Wednesday, July 24, 2024 8:51 PM

**To:** Tiffany Cheuvront <[tcheuvront@michellawyers.com](mailto:tcheuvront@michellawyers.com)>; Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>

**Cc:** jason <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>; Konstadinos T. Moros <[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)>

**Subject:** RE: Joint Stipulation- Franklin Armory Matter

Hello Tiffany,

I cannot agree to a 2 week extension. Recall what I said on the phone call that we cannot agree to postpone all the fee/cost matters during the appeal, and in light of the various health and vacation issues, we would agree to push deadlines a day or two and try to be reasonable. But we cannot agree to 2 weeks.

Andrew

---

**From:** Tiffany Cheuvront <[tcheuvront@michellawyers.com](mailto:tcheuvront@michellawyers.com)>

**Sent:** Wednesday, July 24, 2024 3:11 PM

**To:** Andrew Adams <[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)>; Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>

**Cc:** jason <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>; Konstadinos T. Moros <[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)>

**Subject:** Joint Stipulation- Franklin Armory Matter

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.


Andrew,

Thank you for speaking with me on the phone today. I want to confirm from that discussion that your office will not agree to postpone the post-judgment issue of costs/fees until after the appeal has concluded. In our experience, this is highly unusual because both our offices will have to litigate issues that will not be fully resolved until after the appeal, potentially resulting in duplicative or

otherwise unnecessary motion practice. Please note that any additional fees we incur litigating these issues now will be included in any fee motion we may bring should we succeed on appeal.

We do, however, appreciate and thank you for your offer to extend the deadline for any motion to strike or tax costs for 2 weeks. We agree that should be a sufficient extension and have prepared the attached stipulation to extend the deadline to August 20, 2024. Please review and approve or propose any changes you might have. If you have any questions, please feel free to reach out to our office.

Thanks again for your willingness to work with us on this.

<p><b>Tiffany Cheuvront</b> Managing Attorney</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4450 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:tcheuvront@michellawyers.com">tcheuvront@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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This email is confidential and legally privileged. If you received this email by mistake, you are on notice of its status. Please do not copy it, use it for any purposes, or disclose it to anyone. That could violate state and Federal privacy laws. Please notify us by reply email and then delete this message. Please get in touch with us at (562) 216-4444 if you need assistance.

---

**From:** Andrew Adams <[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)>  
**Sent:** Tuesday, June 11, 2024 3:53 PM  
**To:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>  
**Cc:** jason <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>; Tiffany Cheuvront <[tcheuvront@michellawyers.com](mailto:tcheuvront@michellawyers.com)>; Konstadinos T. Moros <[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)>  
**Subject:** RE: Franklin Armory v. CA DOJ - Depo of Karin Jacobson

Hello all,  
Please schedule Karin for June 18 then at 10:00 a.m.

I'm also attaching the responses to Special Interrogatories Set 3. Let me know if there is anything we need to discuss.

Andrew

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**From:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>  
**Sent:** Tuesday, June 11, 2024 2:42 PM  
**To:** Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>  
**Cc:** Andrew Adams <[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)>; jason <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>; Tiffany Cheuvront <[tcheuvront@michellawyers.com](mailto:tcheuvront@michellawyers.com)>; Konstadinos T. Moros <[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)>  
**Subject:** RE: Franklin Armory v. CA DOJ - Depo of Karin Jacobson

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Karin Jacobson is available for a deposition on June 17 (only until 1:30 PM), June 18, and June 19.

Best regards,

<p><b>Laura Palmerin</b> Legal Secretary/Paralegal</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4473 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:lpalmerin@michellawyers.com">lpalmerin@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>  
**Sent:** Monday, June 10, 2024 2:04 PM  
**To:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>; Sean Brady <[sbrady@michellawyers.com](mailto:sbrady@michellawyers.com)>  
**Cc:** Andrew Adams <[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)>  
**Subject:** Franklin Armory v. CA DOJ - Depo of Karin Jacobson

We would like to get Karin Jacobson's deposition back on calendar. The notices for her individually and as PMQ are attached. Please provide some available dates. Thanks.

Kenneth G. Lake  
Deputy Attorney General  
State of California Department of Justice  
213-269-6525, cell 818-458-9588  
[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)

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# **EXHIBIT C**

1 C.D. Michel – SBN 144258  
Jason A. Davis – SBN 224250  
2 Anna M. Barvir – SBN 268728  
Konstadinos T. Moros – SBN 306610  
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By S. Bolden, Deputy Clerk

6 Attorneys for Petitioner - Plaintiff  
7

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

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

13 v.

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

Case No.: 20STCP01747

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

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
OPPOSITION TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

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

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

1 In accordance with California Rule of Court 3.1350 and California Code of Civil Procedure  
 2 section 437c, Petitioner-Plaintiff Franklin Armory, Inc., submits the following Response to Defendants’  
 3 Separate Statement of Undisputed Material Facts in support of their Motion for Summary Judgment.

<b>Moving Party’s Undisputed Material Facts and Alleged Supporting Evidence</b>	<b>Opposing Party’s Response and Supporting Evidence</b>
<b>Third Cause of Action: Tortious Interference with Contractual Relations</b>	
7 1. The Second Amended Complaint (SAC) 8 alleges that on October 24, 2019, plaintiff sent a 9 letter to former Attorney General Becerra, 10 asserting that a defect in the Department of 11 Justice (Department) online system for processing 12 transfers of firearms rendered dealers unable to transfer its recently announced Title 1 firearm to its customers. (SAC, ¶ 69, Ex. C.)	1. Undisputed.
13 2. Jay Jacobson, President and an owner of 14 Franklin Armory, testified that the Title 1 was 15 designed with a 16 inch barrel and a padded buffer tube instead of a stock and without a stock, it would not be intended to be fired from the shoulder and thus not a rifle. (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, Ex. A to Lake Dec.)	2. Undisputed.
18 3. The Title 1 was a long gun. “Long gun” means 19 any firearm that is not a handgun or a machine gun. (SAC, ¶¶ 23-24, Pen. Code, § 16865.)	3. Disputed as to accuracy insofar that the Franklin Armory, Inc. (“FAI”) model Title 1 “is” a long gun, not “was” a long gun. Otherwise, undisputed.
21 4. On August 6, 2020, the legislature passed SB 22 118 which included amending the Penal Code 23 Section 30515 definition of an assault weapon to 24 add a “centerfire firearm that is not a rifle, pistol, or shotgun” that includes components in three categories. (Pen. Code, § 30515 (a)(9)-(11).) With this change in definition, the Title 1 was rendered a banned assault weapon. (SAC, ¶ 112, Mendoza Dec. i-1 11.)	4. Undisputed that on August 6, 2020, the legislature passed Senate Bill 118, which included amending the Penal Code section 30515 definition of an assault weapon to add a “centerfire firearm that is not a rifle, pistol, or shotgun” that includes components in three categories. Otherwise, disputed.  With the change in definition pursuant to Penal Code section 30515, the FAI Title 1 model firearm was classified as an “assault weapon” under California law, the sale and transfer of such are regulated in the same manner as other “assault weapons” under a more restrictive regulatory scheme but not

	<p>“banned.”</p> <p>(Pen. Code, § 30515 (a)(9)-(11); Req. Jud. Ntc., Ex. 1 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020)], pp. 60-64, Ex. 3 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020) Bill History.]</p>
<p>5. The online system for the submission of information concerning the sale and transfer of firearms is known as the Dealer Record of 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>	<p>5. Undisputed.</p>
<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)j. jacob</p>	<p>6. Disputed.</p> <p>The alleged defect within the DES is that its design failed to permit the transfer of the FAI model Title 1 firearm. This design flaw was made apparent because the gun-type drop-down menu for long guns from which a dealer would select while processing a transfer was limited to include only options for rifle, shotgun, or rifle/shotgun combination, and not other types of firearms such as the FAI model Title 1 firearm.</p> <p>Plaintiff does not allege 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. Modifying the DES to add an “other” option was but one way the Defendants could correct the issue to allow the DES to facilitate the transfer of the FAI model Title 1.</p> <p>(SAC, ¶¶ 58 69, Ex C; Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], p. 3.)</p>
<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>7. Disputed.</p> <p>Under California Code of Regulations, title 11, § 4210, subdivision (b)(1)(6), firearm dealers are prohibited from entering inaccurate information within the system. Because dealers cannot accurately submit the</p>

<p>1 (SAC.) 2 3 4</p>	<p>required information through the DES for “long guns” that “firearms with an undefined subtype,” they are prohibited from processing and accepting applications from purchasers of said firearms. (Pen. Code, § 28215, subd. (c).)  (SAC at ¶¶ 61-62.)</p>
<p>5 8. Mr. Jacobson testified that there was no 6 mention of any issue with the DES in the 7 Sacramento action filed by Franklin Armory 8 against the State and former Attorney General 9 Becerra regarding the Title 1 and that he was 10 unaware of any issue with the DES during that 11 time. He testified that during the time the 12 Sacramento action was pending, no one ever 13 Expressed concern that the Title 1 could not be 14 processed in the DES because It was not a rifle.  (Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5- 95:7, 96:10-19, 97:6-19.)</p>	<p>8. Disputed.  Jay Jacobson testified that he “did not believe there is” any mention of any issue with the DES in any of the complaints for the Sacramento action, which sought only declaratory relief establishing that the Title 1 was not an “assault weapon” under California law, as it was unknown to Jay Jacobson until a month after the Sacramento matter was dismissed.  (Lake Decl, Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>
<p>13 9. Mr. Jacobson testified as to his understanding 14 that stockless firearms were processed in the DES 15 as rifles or shotguns respectively even though 16 they did not meet the statutory definition for rifle 17 or shotgun.  (Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6- 58:10, 56:8-25, 60:21-61:8.)</p>	<p>9. Disputed.  Jay Jacobson testified that he was informed by Blake Graham that Mossberg Cruisers had been processed through the DES as shotguns, even though Mossberg Cruisers do not have a stock. He further testified that it would be fair to say, based on anecdotal information he had received from some dealers, that some lower receivers, barreled receivers, and pistol grip shotguns had been processed through the DES as either rifles or shotguns.  This was limited, however, to only certain firearms using a specific method involving the use of the “Comment” section within the DES. The DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in California and how, in spite of Plaintiff’s <i>repeated</i> requests for guidance.  (Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 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; Jacobson Decl., ¶¶ 8-9 &amp; Ex. 8 [Emails between Jay Jacobson and firearms.bureau@doj.ca.gov (Oct. 8, 2019 – Oct. 21, 2019)]; Davis Decl., Ex. 4 [Letter</p>

	<p>from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; David Decl., Ex. 5 [Emails between Jason A. Davis and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 6 [Email from Jason A. Davis, Counsel for Franklin Armory, Inc., to Luis Lopez, Robert Wilson, and Xavier Becerra, California Department of Justice (March 30, 2020)]; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 141:1-25; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], p. 176:4-21; Mendoza Decl., ¶10.)</p>
<p>10. Mr. Jacobson testified that the process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. The purchaser then would go into the dealer and provide background information for the background check that would then be transmitted to the Department.</p> <p>(Jacobson Dep. p. 154:24-156:18; see also SAC, ¶¶ 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1.), Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).)</p>	<p>10. Undisputed as to FAI products that are ordered online. Otherwise, disputed.</p> <p>If purchased in-store, no law requires the purchases to be paid in full before beginning the background check; the balance may be paid upon pickup following the 10-day waiting period mandated by Penal Code § 26815.</p>
<p>11. Plaintiff does not allege that anyone ever purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Plaintiff alleges that individuals “placed deposits” for the Title 1 firearm.</p> <p>(SAC, ¶ 113.)</p>	<p>11. Undisputed.</p>
<p>12. Mr. Jacobson testified that the online deposits were for \$5.00 and that the \$5.00 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not 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 I without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately August 6, 2020.</p> <p>(Jacobson Dep. p. 116: 1-117: 17, 122:6- 123: 12,</p>	<p>12. Undisputed that Jay Jacobson testified that FAI did accept refundable \$5.00 deposits online. Otherwise, disputed.</p> <p>Deposit amounts for the FAI Title 1 model firearm were between \$5 dollars and the full purchase price.</p> <p>(Jacobson Decl., ¶ 10 &amp; Ex.10.)</p> <p>When asked whether the full purchase price appeared on the screen, Mr. Jacobson confirmed that the full purchase price <i>did</i> appear on the screen when a customer went to FAI’s website to make a deposit for the</p>

<p>124:11-20, 147:17-23, 130:12-131:1.)</p>	<p>purchase of a FAI Title 1 model firearm.</p> <p>Mr. Jacobson testified only that, “off the top of his head,” he believed the full purchase price of the FAI Title 1 model firearm was \$944.99.</p> <p>Mr. Jacobson testified that the list of deposits “demonstrates . . . that we had these orders that we were going to ship.” But he testified that they were then “unable to ship” the Title 1 firearms for which deposits were placed due to the DOJ’s refusal to correct the DES defect that prohibited the processing of transfers for the FAI Title 1 model firearm.</p> <p>(Barvir Decl., Ex. 16 [Jacobson Dep. (Nov. 14, 2023), p. 116: 1-117: 17, 122:6- 123: 12, 124:11-20, 147:17-23, 130:12-131:1; see also Jacobson Decl., ¶¶ 10-11 &amp; Ex. 10)</p> <p>Objection was entered to this line of questioning as it called for a legal conclusion.</p> <p>(Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), p. 117:6-9.)</p>
<p>13. The issue regarding the Title 1 was first brought to the attention of Bureau Director Allison Mendoza in the latter part of 2019. Prior to becoming Director in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March, 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau’s Regulatory ranch including management and oversight of the DES. It is Director Mendoza’s understanding that the three options in the “Gun Type” drop-down menu in the DES “Dealer Long Gun Sale” transaction type (rifle, rifle/shotgun combination, or shotgun) had remained the same since she became Assistant Bureau Chief in 2015.</p> <p>(Mendoza Dec., ¶¶ 1-3, 6-7.)</p>	<p>13. Undisputed.</p>
<p>14. Director Mendoza states that at some point after the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an “other” option in the “Gun Type” dropdown menu in the “Dealer Long Gun Sale” transaction type. This review required the leadership of the Bureau, in collaboration with the Department’s Application</p>	<p>14. Undisputed that Director Mendoza gave this testimony, otherwise disputed.</p> <p>Director Mendoza testified at her deposition that she didn’t recall a decision that the change would not be made in 2020, and that she was not familiar with what specific level of priority was given to the project to add an</p>



1 Development Bureau (ADB) and the  
2 Department’s attorneys, to engage in a balancing  
3 of multiple factors and a weighing of competing  
4 priorities among the multiple proposed DES  
5 enhancement requests pending at that time. The  
6 Department also evaluated and weighed the  
7 allocation of available resources to such an  
8 enhancement, such as the number of personnel  
9 required, budgeting of the enhancement, and the  
10 time it would take to complete said enhancement.  
11 The onset of the COVID-19 pandemic in March  
12 2020 presented additional difficulties in being  
13 able to staff such a DES enhancement.  
14 (Mendoza Dec., ¶¶ 4-5, 8.)

“other” option to the dropdown menu.  
(Barvir Decl., Ex. 11 [Medoza Dep. (June 7,  
2024)], pp. 107:2-108:21; 109:9-13.)

15 15. ADB undertook a review of what would be  
16 required to add the “other” option and reported  
17 back that it would take many months to  
18 implement this enhancement, and would require  
19 well over a dozen personnel, many of whom  
20 would have to be diverted from other projects.  
21 Implementing this DES enhancement would have  
22 required changes to many other applications and  
23 databases in addition to the DES.  
24 (Mendoza Dec., ¶¶ 5, 9.)

15 15. Undisputed that Director Mendoza gave this  
16 testimony, otherwise disputed. At her  
17 deposition, Director Mendoza could recall no  
18 details about this supposed ADB review,  
19 including simple distinctions such as whether  
20 it was in writing or verbal.  
  
Cheryle-Massaró-Florez testified that the  
priority given to the project was “highly  
critical.”  
  
Finally, in a letter dated January 8, 2020, sent  
to Plaintiffs’ counsel Jason Davis, the  
Department of Justice informed Plaintiffs that  
it is “currently implementing the  
modifications necessary to enable DES to  
process sales of the new Title 1 firearm.  
  
(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  
2024)], pp. 138:4-22); Barvir Decl., Ex. 17  
[Massaró-Florez Dep. 2 (Sept. 8, 2023)], pp.  
36:2-13; Davis Decl., Ex. 7 [Letter from P.  
Patty Li to Jason A. Davis (Jan. 8, 2020)].)

21 16. ADB additionally explored the possibility of  
22 doing a DES enhancement that was reduced in  
23 scope, temporary, and applicable to only the Title  
24 1 firearm. Under this proposal, a permanent  
25 enhancement would be implemented at a later  
26 date. ADB estimated such an enhancement would  
27 take a few months. ADB also advised that this  
28 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

16 16. Undisputed that Director Mendoza gave this  
17 testimony, otherwise disputed. At her  
18 deposition, Director Mendoza could recall no  
19 details about this supposed ADB review,  
20 including simple distinctions such as whether  
21 it was in writing or verbal. The same applied  
22 to her recollection of any supposed public  
23 safety concerns.  
  
In a letter dated January 8, 2020 sent to  
Plaintiffs’ counsel Jason Davis, the  
Department of Justice informed Plaintiffs that  
it is “currently implementing the  
modifications necessary to enable DES to  
process sales of the new Title 1 firearm. While

<p>1 immediately proceed with the temporary DES 2 enhancement. 3 (Mendoza Dec., ¶¶ 5, 10.)</p>	<p>she mentioned competing priorities as well, she also said the work would be done in “several months.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 138:4-22; 145:15-146:1.); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>6 17. Director Mendoza states that, after SB 118 7 was signed into law on August 6, 2020, which 8 rendered the Title 1 Firearm a prohibited assault 9 weapon, the Department decided, after weighing 10 competing priorities among the multiple proposed 11 DES enhancements pending at that time in the 12 middle of the COVID-19 pandemic, to implement 13 at a later date the DES enhancement that added an 14 “other” option in the “Gun Type” drop-down 15 menu. This enhancement was completed on 16 October 1, 2021. 17 (Mendoza Dec., ¶ 11)</p>	<p>17. Undisputed that Director Mendoza gave this testimony, otherwise disputed. At her deposition, Director Mendoza blamed “resource needs”, “funding”, and “COVID” for why the “other” option was not added in 2020, before SB 118 was enacted.</p> <p>In a letter dated January 8, 2020, sent to Plaintiffs’ counsel Jason Davis, the Department of Justice informed Plaintiffs that it is “currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm.</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 107:2-10); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus’ firearms software developments unit, oversaw the enhancement project to add the “other” option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases.</p> <p>(Massaro-Florez Dep. 1 (12/28/21), Ex. to Lake Dec., pp. 18:12-21, 19:2-12, 30:19- 31:10, 36:18- 37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24.)</p>	<p>18. Disputed.</p> <p>Cheryle Massaro-Florez testified that she is an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit. She also testified that, within her unit, she oversaw two separate projects to make “enhancements” to the DES to add the “other” option to dropdown list.</p> <p>She testified that the <i>first</i> enhancement was completed up to the point of beta testing and going live, but this initial enhancement was terminated for a reason unknown to her before going live. She testified that <i>second</i> enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro- Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13- 40:19, 41:18-19, 64:24-66:15; see also Barvir Decl., Ex. 14 [Levva Dep. 2 (Jan. 11, 2024)].</p>

	pp. 27:1-13, 28:17-31:13.)
<p><b>Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage</b></p>	
<p>19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>19. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff’s Response and Supporting Evidence re: Defendants’ Material Facts Nos. 1-18.</p>
<p><b>Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage</b></p>	
<p>20. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>20. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff’s Response and Supporting Evidence re: Defendants’ Material Facts Nos. 1-18.</p>

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiff Franklin Armory, Inc., submits the following Additional Undisputed Material Facts in Support of their Opposition to Defendants’ Motion for Summary Judgment.

<p><b>Opposing Party Additional Undisputed Material Facts and Supporting Evidence</b></p>	<p><b>Moving Party’s Response and Supporting Evidence</b></p>
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<p><b>Third Cause of Action: Tortious Interference with Contractual Relations</b></p>	
<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>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>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>	

1	(Pen. Code, § 16520; Verified SAC ¶ 22.)	
2	24. The State of California further divides the	
3	term “firearm” into two types for transfer	
4	regulation: long guns and handguns. Long	
5	guns are those firearms that do not qualify as	
6	handguns. For purposes of Penal Code section	
7	26860, “ long gun” means any firearm that is	
8	not a handgun or a machinegun.	
9	(Pen. Code, § 16865.)	
10	25. The FAI Title 1 model firearm is, under	
11	California’s statutory definition, a “long gun.”	
12	(Verified SAC, ¶¶ 23-24; Pen. Code, §	
13	16865.)	
14	26. Under the firearm classification “long gun,”	
15	there are statutorily defined firearm subtypes,	
16	including but not limited to “rifles” and	
17	“shotguns.”	
18	(Pen. Code, § 17090 [defining “rifle”]; Pen.	
19	Code, § 17191 [defining “shotgun”].)	
20	27. The FAI Title 1 is a firearm lacking a	
21	statutorily defined subtype, as its overall	
22	design renders the device a “firearm,” but not	
23	a “handgun,” “rifle,” or “shotgun.”	
24	(Pen. Code, §§ 16865, 16640, 16530, 17090,	
25	17191; Verified SAC, ¶ 27; Davis Decl., Ex. 4	
26	[Letter from Jason A. Davis to Xavier Becerra	
27	(Oct. 24, 2019)], p. 3; Jacobson Decl., ¶ 2.)	
28	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	
	(Pen. Code, §§ 26700, 27545, 2824, subd.	
	(d).)	
	29. Under California law, every licensed firearms	
	dealer shall keep a register or record of	
	electronic or telephonic transfer in which shall	

<p>1 be entered certain information relating to the 2 transfer of firearms. And “[t]he Department of 3 Justice shall prescribe the <i>form</i> of the register 4 and the record of electronic transfer pursuant 5 to Section 28105.”</p> <p>(Pen. Code, §§ 28100, 28155.)</p>	
<p>6 30. California law requires the Attorney General 7 to permanently keep and properly file and 8 maintain <i>all</i> information reported to the DOJ 9 pursuant to any law as to <i>firearms</i> and 10 maintain a registry thereof.</p> <p>Information that must be included in the 11 registry includes the “manufacturer’s name if 12 stamped on the firearm, model name or 13 number if stamped on the firearm, and, if 14 applicable, the serial number, other number (if 15 more than one serial number is stamped on the 16 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>(Pen. Code, § 11106, subs. (b)(1)(A), (b)(1)(D).)</p>	
<p>17 31. California law mandates that, for <i>all</i> firearms, 18 the register or the record of electronic transfer 19 <i>shall</i> contain certain information, including but not limited to the type of firearm.</p> <p>(Penal Code § 28160, subd. (a).)</p>	
<p>20 32. California law mandates that the DOJ <i>shall</i> 21 determine the <i>method</i> by which a dealer 22 <i>submits</i> the firearm purchaser <i>information</i> to 23 the DOJ.</p> <p>(Pen. Code, § 28205, subd. (a).)</p>	
<p>24 33. California law mandates that electronic 25 transfer of the required information be the 26 sole means of transmission, though the DOJ is authorized to make limited exceptions.</p> <p>(Pen. Code, § 28205, subd. (c).)</p>	
<p>27 34. The method established by the DOJ under 28 Penal Code section 28205, subdivision (c), for the submission of purchaser information</p>	

<p>1 required by Penal Code section 28160, 2 subdivision (a), is known as the Dealers 3 Record of Sale Entry System or the DES. 4 (Pen. Code, § 28205, subd. (c).); (Pen. Code, § 28155); Verified SAC ¶ 54.</p>	
<p>5 35. The DES is a web-based application designed, 6 developed and maintained by the DOJ and 7 used by firearm dealers to report the required 8 information. 9 (Barvir Decl., Ex. 11 [Mendoza Dep. (Jun 7, 10 2024)], p. 24:16-25; Barvir Decl., Ex. 13 11 [Graham Dep. (Mar. 26, 2024)], p. 34:16-23; 12 35:17-36:6; Barvir Decl., Ex. 14 [Leyva Dep. 13 2 (Jan. 11, 2024)], p. 20:19-21:3; Barvir 14 Decl., Ex. 17 [Massaro-Florez Dep. 1 (Dec. 15 28, 2021)], p. 33:11-18.)</p>	
<p>16 36. By law, firearm dealers are prohibited from 17 entering inaccurate information within the 18 DES. 19 (Cal. Code Regs., title 11, § 4210, subd. 20 (b)(1)(6).)</p>	
<p>21 37. By design, when the DES user is entering the 22 designated information into the DES, they 23 must enter information related to the gun type 24 (i.e., “long gun” or “handgun”). Upon 25 selecting “long gun,” the DES is designed to 26 and functions to populate a subset of fields. 27 Before October 1, 2021, if a DES user 28 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.</p>	

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

6 38. Without an alternative procedure for  
7 submission of the purchaser and firearm  
8 information established by DOJ pursuant to  
9 Penal Code section 28205, subdivision (c), the  
10 DES is the only method of submitting the  
11 necessary information to permit the lawful  
12 transfer of the undefined “firearm” subtypes.  
13  
14 The DOJ has authorized DES users to process  
15 certain firearms without a defined firearm  
16 subtype through the DES using the  
17 “Comment” section within the DES. The DOJ  
18 remained silent as to its position on whether  
19 the FAI Title 1 model firearms could be sold  
20 in California and how, in spite of Plaintiff’s  
21 repeated requests for guidance.  
22  
23 (Lake Decl., Ex. A [J. Jacobson Dep. (Nov.  
24 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-  
25 58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex.  
26 16 [J. Jacobson Dep. (Nov. 14, 2023), pp.  
27 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10,  
28 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11  
[Mendoza Dep. (June 7, 2024), p. 141:1-25;  
Mendoza Decl., ¶10.]

19 39. Before October 1, 2021, dealers could not  
20 accurately submit the required information  
21 through the DES for “long guns” without  
22 statutorily defined “firearm” subtypes, so they  
23 were effectively barred from accepting and  
24 processing applications from purchasers of  
25 such firearms, including FAI’s Title 1 model  
26 firearm.  
27  
28 (Pen. Code, § 28215, subd. (c); Davis Decl.,  
Ex. 4 [J. Davis Letter to Attorney General X.  
Becerra (Oct. 24, 2019)]; 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)]; 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

<p>1 Dep. (Nov. 14, 2023), pp. 118:2-11; 150:3-7; 2 159:11-16; .)</p>	
<p>3 40. While state law mandates that the “type” of 4 firearm (e.g., “long gun” or “handgun”) must 5 be included in the register or the record of 6 electronic transfer, no state statute mandates 7 that the firearm “subtype” (e.g., rifle, shotgun, 8 rifle/shotgun combination) be included. So the 9 DOJ could have chosen to remove the 10 technological barrier within the DES that 11 prevented licensed firearm dealers from 12 processing the transfer of FAI’s Title 1 model 13 firearms by enhancing the DES to allow the 14 user to proceed without selecting a firearm 15 subtype. 16 17 (Pen. Code, §§ 28160, subd. (a), 28200- 18 28255.)</p>	
<p>11 41. DOJ could have chosen to remove the 12 technological barrier within the DES that 13 prevented licensed firearm dealers from 14 processing the transfer of FAI’s Title 1 model 15 firearms by authorizing an “alternative 16 means” of submitting the required information 17 pursuant to the authority granted to the DOJ 18 under Penal Code section 28205, subd. (c), 19 including but not limited to instructing DES 20 users to proceed by selecting preauthorized 21 designated options and identifying the firearm 22 as an “other” in one of the “comment” fields 23 within the DES. The DOJ opted not to pursue 24 that “fix.” 25 26 (Pen. Code, § 28205, subd. (c); Lake Decl., 27 Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 28 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 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>23 42. FAI was notified by licensed California 24 firearms dealers (“FFLs”) that they would not 25 be able to process the transfer of FAI’s Title 1 26 model firearm through the DES because they 27 could not accurately submit the required 28 information for “long guns” without 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>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, 9 2024)], pp. 20:17-22:12, 29:2-21, 31:15- 10 33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 11 &amp; Exs. 2 &amp; 4 [Email from Jennifer Kim to 12 Jason Sisney (June 24, 2020); see also Davis 13 Decl., Ex. 4 [Letter from Jason A. Davis to 14 Xavier Becerra (Oct. 24, 2019)], p. 3.)</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 &amp; Ex. A.)</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>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</p>	

<p>essentially saved a “spot in line” for the deposit payors.</p> <p>(Jacobson Decl., ¶ 10, Ex. 9; Barvir Decl., Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17-20; 131:16-22.)</p>	
<p>47. FAI ultimately collected nearly 35,000 deposits from its thousands of customers, including licensed firearms dealers, for the purchase of Title 1 model firearms. Those deposits ranged in amount from \$5 to the full purchase price of the Title 1 model firearm.</p> <p>(Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez Decl.)</p>	
<p>48. Assuming the centerfire Title 1 model firearm could ever be lawfully transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all orders for which people paid deposits. And FAI remains committed to fulfilling those orders to this day.</p> <p>(Jacobson Decl., ¶ 11 &amp; Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 116:1-14; 124:17-20; 131:16-22.)</p>	
<p>49. The DOJ was able to modify the DES to correct a similar deficiency reported concurrently by FAI’s counsel in the same letter dated October 24, 2019, within about a month. Namely, the DES omitted the “United Arab Emirates” from the list of countries available within the DES dropdown list for the countries for place of birth was confirmed to have been corrected by the DOJ by November 26, 2019.</p> <p>(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Ex. 5 [Emails between Jason A. Davis and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)].)</p>	
<p>50. On January 8, 2020, in response to FAI’s October 24, 2019, letter, Attorney General 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>1 the letter described.</p> <p>2 (Davis Decl., Ex. 7 [Letter from P. Patty Li, 3 Deputy Attorney General, California 4 Department of Justice, to Jason A. Davis, 5 Counsel for Franklin Armory, Inc. (Jan. 8, 6 2020)].)</p>	
<p>5 51. Cheryle Massaro-Florez, an Informational 6 Technology Supervisor who works in the 7 Bureau of Firearms’ firearm software 8 development unit, testified that she oversaw 9 two separate projects to make 10 “enhancements” to the DES to add an “Other” 11 option to the dropdown list for “long gun” 12 firearm subtypes. She testified that the first 13 enhancement was completed up to beta 14 testing, but just before going live, that first 15 enhancement was terminated for a reason 16 unknown to her. She testified that the second 17 enhancement took about three months to 18 complete, ending on October 1, 2021.</p> <p>19 (Lake Decl., Ex. C [Massaro-Florez Dep. 1 20 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 21 30:19-31:10, 36:18-37:25, 57:14-60:11, 22 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 23 103:5-106:6; Barvir Decl, Ex. 18 [Massaro- 24 Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13- 25 40:19, 41:18-19, 64:24-66:15 &amp; Ex. 9; see 26 also Barvir Decl., Ex. 11 [Mendoza Dep. 27 (June 7, 2024)], Ex. 45.)</p>	
<p>18 52. Just months after Deputy Attorney General Li 19 confirmed that the DOJ was working on a fix 20 to the DES, on May 14, 2020, the DOJ 21 submitted Budget Change Proposal (prepared 22 by then BOF Assistant Director Allison 23 Mendoza) to the Department of Finance, 24 requesting “\$128,000 Dealers’ Record of Sale 25 Special Account in 2020-21, \$862,000 in 26 2021-22, and \$14,000 annually thereafter to 27 regulate assault weapons that are currently not 28 defined as a rifle, pistol, or shotgun.” The 29 proposal was “intend[ed] to fix current 30 loopholes in statute that allow[ed] 31 manufacturers to make weapons that 32 circumvent the intention of assault weapon 33 laws.”</p> <p>34 (Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 35 2020), Ex. 42 [May 14, 2020 Budget Change 36 Proposal].)</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”).

(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].)

9  
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.

(Req. Jud. Ntc., Ex. 3.)

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.

(Pen. Code, § 30515, subd. (a)(9)-(11); Req.  
Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)

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.

(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).)

25 57. Allison Mendoza, the current Director of the  
26 California Department of Justice, Bureau  
27 Firearms, testified that she could not think of  
28 another piece of firearm-related legislation  
that was adopted via the “budget trailer bill”  
process and that it was not a common  
practice.

(Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].);  
Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  
2020), pp. 43:10-13.)

1 58. SB 118 was designed to target the FAI Title 1  
2 model firearm and prevent its sale.  
3 Department of Finance staffers’  
4 communications about the bill expressly  
5 identified both FAI and the Title 1, and they  
6 identified no other manufacturer or firearm by  
7 name.  
  
(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3,  
2024)], pp. 58:10-60:25, 62:25-10, 66:25-  
68:24, 71:9-72:20, 75:1-77:25 & Exs. 2 & 4;  
Req. Jud. Ntc., Ex. 1 [SB 118].)

8 59. It was not until October 1, 2021, that the DOJ  
9 finally completed the “enhancement” to the  
10 DES adding the option to select “Other” from  
11 the dropdown list for “long gun” subtypes,  
12 finally allowing DES users to process the  
13 transfer of firearms without a defined subtype.  
  
14 Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  
15 2024)], pp. 128:7-11; Barvir Decl., Ex. 18  
16 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp.  
17 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva  
18 Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-  
19 17, 45:10-25, 46-47, 48:16-25, 61:5-62,  
20 67:4-73, 74:1, 95:8-25, 108:3-25, 109 &  
21 Exs. 3, 6, 7, and 8.)

22 60. The enhancement to the DES came too late to  
23 allow for the lawful transfer of centerfire FAI  
24 Title 1 model firearms, which had been  
25 designated as “assault weapons” effective  
26 August 6, 2020, and could not be lawfully  
27 registered with the DOJ unless they were  
28 possessed on or before September 1, 2020.  
  
(Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515,  
subd. (a)(9)-(11).)

29 61. FAI could not lawfully transfer the FAI Title  
30 1 model firearm to its deposit-paying  
31 customers before the enactment and  
32 enforcement of SB 118 (Penal Code section  
33 30515, subd. (a)(9)-(11)) because the DES  
34 enhancement adding “Other” to the “long  
35 gun” subtype dropdown list was not made  
36 until October 1, 2021.  
  
(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.

1 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25,  
2 108:3-25, 109 & Exs. 3, 6, 7, and 8.)

3 62. FAI suffered economic damage in the form of  
4 millions of dollars in lost profits because it  
5 could not lawfully complete the sale of and  
6 transfer the FAI Title 1 model firearm to its  
7 thousands of deposit-paying customers before  
8 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.)

9 63. To date, a very small minority of the  
10 thousands of individuals who made a deposit  
11 have asked for a refund.  
(Jacobson Decl., ¶ 14.)

12 64. There is currently a class action lawsuit  
13 pending in federal district court, brought on  
14 behalf of the thousands of person who made  
15 earnest-money deposits for the purchase of  
16 one or more FAI Title 1 model firearms,  
17 against Attorney General Rob Bonta, Luis  
18 Lopez, and the California Department of  
19 Justice. The plaintiffs seek equitable relief,  
20 including injunctive relief ordering  
21 [d]efendants to allow ... the members of the  
22 [c]lass to submit the statutorily required  
23 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.”  
(First Amended Complaint at 7, 40, *Briseno v.*  
*Bonta*, C.D. Cal. Case No. 21-cv-09018 (Feb.  
4, 2022); Opdahl-Lopez Decl., ¶¶ 3-8.)

24 **Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage**

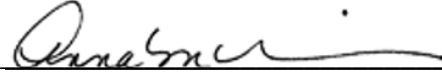
25 65. Plaintiff hereby incorporates by reference  
26 Plaintiff’s Undisputed Material Facts Nos. 21-  
27 64.

**Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage**

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

Date: June 26, 2024

**MICHEL & ASSOCIATES, P.C.**



Anna M. Barvir

Attorneys for Petitioners-Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

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

8 **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO  
9 DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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

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

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

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

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

28 

Laura Palmerin



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

7 On August 20, 2024, I served the foregoing document(s) described as

8 **DECLARATION OF TIFFANY D. CHEUVRONT IN SUPPORT OF PLAINTIFF’S MOTION  
9 TO STRIKE COSTS OR, ALTERNATIVELY, STAY ENFORCEMENT OF JUDGMENT  
10 PENDING APPEAL**

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

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

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

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

28 Executed on August 20, 2024, at Long Beach, California.



Laura Palmerin