

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SECOND APPELLATE DISTRICT

FRANKLIN ARMORY, INC., and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,

Plaintiffs and Appellants,

v.

CALIFORNIA DEPARTMENT OF
JUSTICE, XAVIER BECERRA, in his
Official Capacity as Attorney General
for the State of California, and DOES 1-
10,

Defendants and Respondents.

Case No. B340913

**APPELLANTS' APPENDIX
VOLUME I OF XX
Pages 1-119**

Superior Court of California, County of Los Angeles
Case No. 20STCP01747
Honorable Daniel S. Murphy, Judge

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CHRONOLOGICAL INDEX

Date	Document	Page
Volume I		
05/27/2020	Verified Complaint for Declaratory and Injunctive Relief; Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief	18
10/30/2020	Notice of Defendants' Demurrer to First Amended Complaint and Petition	52
10/30/2020	Memorandum of Points and Authorities in Support of Demurrer to First Amended Complaint and Petition	57
01/12/2021	Plaintiffs' Memorandum of Points and Authorities in Opposition to Demurrer to First Amended Complaint	78
01/19/2021	Reply in Support of Defendants' Demurrer to First Amended Complaint	99
01/28/2021	Decision on Defendants' Demurrer to First Amended Complaint	110
Volume II		
02/17/2021	Second Amended Complaint	121
Volume III		
03/23/2021	Notice of Defendants' Demurrer to Second Amended Complaint	217
03/23/2021	Memorandum of Points and Authorities in Support of Defendants' Demurrer to Second Amended Complaint	222
05/20/2021	Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Demurrer to Second	243

Date	Document	Page
	Amended Complaint	
05/26/2021	Defendants' Reply to Opposition to Demurrer to Second Amended Complaint	272
06/03/2021	Decision on Defendants' Demurrer to Second Amended Complaint	283
06/23/2021	Answer to the First, Second, and Eighth Causes of Action in the Second Amended Complaint	292
10/26/2021	Decision on Demurrer to and Motion to Strike Answer to Second Amended Complaint	305
11/29/2021	Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	311
11/29/2021	Declaration of Cheryle Massaro-Florez in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	332
11/29/2021	Declaration of Maricela Leyva in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	339

Volume IV

11/29/2021	Request for Judicial Notice in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	356
01/13/2022	Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	409

Date	Document	Page
01/13/2022	Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	428

Volume V

01/20/2022	Reply in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	479
01/27/2022	Decision on Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	491
01/26/2023	Answer to the Second Amended Complaint as to the Third through Seventh and Ninth Causes of Action	502
08/14/2023	Notice of Defendants' Motion for Judgment on the Pleadings	514
08/14/2023	Memorandum of Points and Authorities in Support of Defendants' Motion for Judgment on the Pleadings	518
08/14/2023	Request for Judicial Notice in Support of Defendants' Motion for Judgment on the Pleadings	553
08/23/2023	Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	638
08/23/2023	Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	670
08/23/2023	Declaration of Jason A. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	686

Date	Document	Page
08/29/2023	Reply to Opposition to Defendants' Motion for Judgment on the Pleadings	708
09/07/2023	Ruling on Defendants' Motion for Judgment on the Pleadings	719

Volume VI

04/26/2024	Notice of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	729
04/26/2024	Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	733
04/26/2024	Separate Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Judgment	766
04/26/2024	Separate Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Adjudication	775
04/26/2024	Declaration of Allison Mendoza in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	784
04/26/2024	Declaration of Kenneth G. Lake in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	790
06/26/2024	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	958
06/26/2024	Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	984

Date	Document	Page
06/26/2024	Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Adjudication	1006
06/26/2024	Plaintiffs' Objections to Defendants' Evidence in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1028
06/26/2024	Declaration of Jason A. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1034
06/26/2024	Declaration of Jay Jacobson in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1077
06/26/2024	Declaration of Neil Opdahl-Lopez in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1102

Volume VII

06/26/2024	[Part 1 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1108
------------	--	------

Volume VIII

06/26/2024	[Part 2 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1134
------------	--	------

Date	Document	Page
Volume IX		
06/26/2024	[Part 3 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1158
Volume X		
06/27/2024	[Part 1 of 2] Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication; Exhibits 11-14	1281
Volume XI		
06/27/2024	[Part 2 of 2] Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication; Exhibits 11-14	1431
Volume XII		
06/27/2024	[Part 1 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1465
Volume XIII		
06/27/2024	[Part 2 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1531

Date	Document	Page
Volume XIV		
06/27/2024	[Part 3 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1576
Volume XV		
06/27/2024	[Part 4 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1601
Volume XVI		
06/27/2024	[Part 1 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1638
Volume XVII		
06/27/2024	[Part 2 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1715
Volume XVIII		
06/27/2024	[Part 3 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1785

Date	Document	Page
Volume XIX		
06/27/2024	Exhibit 19 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1938
06/27/2024	Declaration of Laura Palmerin re: Technical Difficulties with Filing Declaration of Anna M. Barvir	2032
07/05/2024	Defendants' Reply to Opposition to Motion for Summary Judgment, or in the alternative, Summary Adjudication	2036
07/05/2024	Reply Request for Judicial Notice in Support of Motion for Summary Judgment, or in the alternative, Summary Adjudication	2048
07/05/2024	Reply Declaration of Kenneth G. Lake in Support of Motion for Summary Judgment, or in the alternative, Summary Adjudication	2079
07/05/2024	Reply to Plaintiffs' Separate Statement of Undisputed Material Facts and Additional Facts in Opposition to Motion for Summary Judgment	2089
07/05/2024	Reply to Plaintiffs' Separate Statement of Undisputed Material Facts and Additional Facts in Opposition to Motion for Summary Adjudication	2112
07/11/2024	Ruling on Motion for Summary Judgment, or in the alternative, Summary Adjudication	2135
07/12/2024	Judgment	2143
07/12/2024	Notice of Entry of Judgment	2147
07/16/2024	Plaintiffs' Objection to Defendants' Proposed	2149

Date	Document	Page
	Judgment	

Volume XX

09/09/2024	Notice of Appeal	2156
09/20/2024	Appellant's Notice Designating Record on Appeal	2158
---	Register of Actions	2167

ALPHABETICAL INDEX

Volume	Date	Document	Page
III	06/23/2021	Answer to the First, Second, and Eighth Causes of Action in the Second Amended Complaint	292
V	01/26/2023	Answer to the Second Amended Complaint as to the Third through Seventh and Ninth Causes of Action	502
XX	09/20/2024	Appellant's Notice Designating Record on Appeal	2158
I	01/28/2021	Decision on Defendants' Demurrer to First Amended Complaint	110
III	06/03/2021	Decision on Defendants' Demurrer to Second Amended Complaint	283
V	01/27/2022	Decision on Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	491
III	10/26/2021	Decision on Demurrer to and Motion to Strike Answer to Second Amended Complaint	305
VI	04/26/2024	Declaration of Allison Mendoza in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	784
X	06/27/2024	[Part 1 of 2] Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication; Exhibits 11-14	1281

Volume	Date	Document	Page
XI	06/27/2024	[Part 2 of 2] Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication; Exhibits 11-14	1431
IV	01/13/2022	Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	428
V	08/23/2023	Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	670
III	11/29/2021	Declaration of Cheryle Massaro-Florez in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	332
V	08/23/2023	Declaration of Jason A. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	686
VI	06/26/2024	Declaration of Jason A. Davis in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1034
VI	06/26/2024	Declaration of Jay Jacobson in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1077

Volume	Date	Document	Page
VI	04/26/2024	Declaration of Kenneth G. Lake in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	790
XIX	06/27/2024	Declaration of Laura Palmerin re: Technical Difficulties with Filing Declaration of Anna M. Barvir	2032
III	11/29/2021	Declaration of Maricela Leyva in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	339
VI	06/26/2024	Declaration of Neil Opdahl-Lopez in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1102
III	11/29/2021	Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	311
III	05/26/2021	Defendants' Reply to Opposition to Demurrer to Second Amended Complaint	272
XIX	07/05/2024	Defendants' Reply to Opposition to Motion for Summary Judgment, or in the alternative, Summary Adjudication	2036
XII	06/27/2024	[Part 1 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1465
XIII	06/27/2024	[Part 2 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs'	1531

Volume	Date	Document	Page
		Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	
XIV	06/27/2024	[Part 3 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1576
XV	06/27/2024	[Part 4 of 4] Exhibit 15 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1601
XVI	06/27/2024	[Part 1 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1638
XVII	06/27/2024	[Part 2 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1715
XVIII	06/27/2024	[Part 3 of 3] Exhibits 16-18 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1785
XIX	06/27/2024	Exhibit 19 to Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the	1938

Volume	Date	Document	Page
		alternative, Summary Adjudication	
XIX	07/12/2024	Judgment	2143
III	03/23/2021	Memorandum of Points and Authorities in Support of Defendants' Demurrer to Second Amended Complaint	222
V	08/14/2023	Memorandum of Points and Authorities in Support of Defendants' Motion for Judgment on the Pleadings	518
VI	04/26/2024	Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	733
I	10/30/2020	Memorandum of Points and Authorities in Support of Demurrer to First Amended Complaint and Petition	57
XX	09/09/2024	Notice of Appeal	2156
I	10/30/2020	Notice of Defendants' Demurrer to First Amended Complaint and Petition	52
III	03/23/2021	Notice of Defendants' Demurrer to Second Amended Complaint	217
V	08/14/2023	Notice of Defendants' Motion for Judgment on the Pleadings	514
VI	04/26/2024	Notice of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	729
XIX	07/12/2024	Notice of Entry of Judgment	2147
I	01/12/2021	Plaintiffs' Memorandum of Points and Authorities in Opposition to Demurrer to First Amended Complaint	78

Volume	Date	Document	Page
III	05/20/2021	Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Demurrer to Second Amended Complaint	243
IV	01/13/2022	Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	409
XIX	07/16/2024	Plaintiffs' Objection to Defendants' Proposed Judgment	2149
VI	06/26/2024	Plaintiffs' Objections to Defendants' Evidence in Support of Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1028
V	08/23/2023	Plaintiffs' Opposition to Defendants' Motion for Judgment on the Pleadings	638
VI	06/26/2024	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	958
XX	---	Register of Actions	2167
XIX	07/05/2024	Reply Declaration of Kenneth G. Lake in Support of Motion for Summary Judgment, or in the alternative, Summary Adjudication	2079
I	01/19/2021	Reply in Support of Defendants' Demurrer to First Amended Complaint	99
V	01/20/2022	Reply in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	479

Volume	Date	Document	Page
XIX	07/05/2024	Reply Request for Judicial Notice in Support of Motion for Summary Judgment, or in the alternative, Summary Adjudication	2048
V	08/29/2023	Reply to Opposition to Defendants' Motion for Judgment on the Pleadings	708
XIX	07/05/2024	Reply to Plaintiffs' Separate Statement of Undisputed Material Facts and Additional Facts in Opposition to Motion for Summary Judgment	2089
XIX	07/05/2024	Reply to Plaintiffs' Separate Statement of Undisputed Material Facts and Additional Facts in Opposition to Motion for Summary Adjudication	2112
V	08/14/2023	Request for Judicial Notice in Support of Defendants' Motion for Judgment on the Pleadings	553
IV	11/29/2021	Request for Judicial Notice in Support of Defendants' Motion to Dismiss First, Second, and Eighth Causes of Action in the Second Amended Complaint	356
VII	06/26/2024	[Part 1 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1108
VIII	06/26/2024	[Part 2 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	1134
IX	06/26/2024	[Part 3 of 3] Request for Judicial Notice in Support of Plaintiffs' Opposition to	1158

Volume	Date	Document	Page
		Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication	
V	09/07/2023	Ruling on Defendants' Motion for Judgment on the Pleadings	719
XIX	07/11/2024	Ruling on Motion for Summary Judgment, or in the alternative, Summary Adjudication	2135
II	02/17/2021	Second Amended Complaint	121
VI	06/26/2024	Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment	984
VI	06/26/2024	Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Adjudication	1006
VI	04/26/2024	Separate Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Judgment	766
VI	04/26/2024	Separate Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Adjudication	775
I	05/27/2020	Verified Complaint for Declaratory and Injunctive Relief; Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief	18

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: James Chalfant

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7

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

10
11 FRANKLIN ARMORY, INC. and) Case No.: **20STCP01747**
12 CALIFORNIA RIFLE & PISTOL)
12 ASSOCIATION, INCORPORATED) **VERIFIED COMPLAINT FOR**
13 Petitioners-Plaintiffs,) **DECLARATORY AND INJUNCTIVE**
14 v.) **RELIEF; PETITION FOR WRIT OF**
14) **MANDATE AND/OR PROHIBITION OR**
15) **OTHER APPROPRIATE RELIEF**
15 CALIFORNIA DEPARTMENT OF JUSTICE,)
16 XAVIER BECERRA, in his official capacity) **UNLIMITED JURISDICTION**
16 as Attorney General for the State of California,)
17 and DOES 1-10,)
18 Respondents-Defendants.)
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1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE AND PISTOL ASSOCIATION petition
2 this court for declaratory relief, injunctive relief and a writ of mandate relating to CALIFORNIA
3 DEPARTMENT OF JUSTICE, XAVIER BECERRA and DOES 1-10 (collectively “DEFENDANTS”)
4 implementation of unlawful technological barriers preventing the lawful transfer of firearms and failure
5 and/or refusal to timely perform the duties relating to the sale, loan, transfer, purchase and processing of
6 firearms that are neither “handguns,” “shotguns,” nor “rifles,” including the FRANKLIN ARMORY,
7 INC. firearms designated with the model name “Title 1.”

PARTIES

9 1. Plaintiff FRANKLIN ARMORY, INC. (“FAI”) is a federally licensed firearms manufacturer
10 incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a
11 manufacturing facility in Morgan Hill, California. FAI specializes in manufacturing firearms for
12 civilian sporting and recreation, military and law enforcement applications.

13 2. Pertinent here, FAI manufactures a series of firearms which are neither “rifles,” “pistol,” nor
14 “shotguns” under California law and which are designated with the model name “Title 1” by FAI.

15 3. The FAI Title 1 firearms, as designed and sold by FAI, are lawful to possess, sell, transfer,
16 purchase, loan, or otherwise be distributed within California through licensed California firearm dealers
17 to persons who are not otherwise prohibited from possessing firearms.

18 4. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”), is a nonprofit,
19 membership and donor-supported organization qualified as tax-exempt under 26 U.S.C. § 501(c)(4) with
20 its headquarters in the City of Fullerton, in Orange County, California. Founded in 1875, CRPA seeks to
21 defend the civil rights of all law-abiding individuals, including the fundamental right to acquire and
22 possess FAI Title 1 firearms.

23 5. CRPA regularly provides guidance to California gun owners regarding their legal rights and
24 responsibilities. In addition, CRPA is dedicated to promoting the shooting sports and providing
25 education, training and organized competition for adult and junior shooters. CRPA members include law
26 enforcement officers, prosecutors, professionals, firearm experts and the public.

27 6. In this suit, the CRPA represents the interests of its many citizen and taxpayer members and
28 members of CRPA who reside in California and who wish to sell, purchase, acquire, transfer and possess

1 lawful firearms, including the Title 1, but are prohibited from doing so by the technological limitations
2 implemented by DEFENDANTS. The CRPA brings this action on behalf of itself and its tens of
3 thousands of supporters in California, including FAI, who have been, are being, and will in the future be
4 subjected to DEFENDANTS' refusal and/or delay in removing the technological barrier designed,
5 implemented and maintained by DEFENDANTS that prohibits the lawful sale, loan, transfer and
6 purchase of certain lawful firearms, including but not limited to the FAI Title 1.

7 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully constituted
8 executive agency charged with implementing, enforcing and administering the State of California's
9 firearm laws and systems for processing firearm transfers and loans. The DOJ is under the direction and
10 control of the Attorney General. (Gov't C. §15000.) The DOJ is composed of the Office of the Attorney
11 General and those other divisions, bureaus, branches, sections or other units as the Attorney General
12 may create within the department pursuant to Section 15002.5. (Gov't C. § 15001.) The Bureau of
13 Firearms ("BOF") was created by the Attorney General within the Division of Law Enforcement for the
14 purposes of designing, implementing and enforcing California's firearm laws, rules, regulations and
15 support systems. The DOJ is responsible for the design, development, maintenance and enforcement of
16 the Dealer Record of Sale Dealer Entry System, the system by which licensed California firearm dealers
17 submit purchaser and firearm information to the California Department of Justice for processing in
18 accordance with California's firearm transfer laws and regulations.

19 8. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of California. He is the
20 chief law enforcement officer of California. Defendant Becerra is charged by Article V, Section 13 of the
21 California Constitution with the duty to see that the laws of California are uniformly and adequately
22 enforced. BECERRA also has direct supervision over every district attorney and sheriff in all matters
23 pertaining to the duties of their respective officers. Defendant BECERRA's duties also include informing
24 the public, local prosecutors and law enforcement regarding the meaning of the laws of California,
25 including restrictions on the transfer of firearms at issue herein. He is sued in his official capacity.

26 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and
27 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.
28 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through

1 10 is responsible in some capacity or manner for the adoption or enforcement of the unlawful
2 regulations as alleged in this Complaint and Petition. Plaintiffs pray for leave to amend this Complaint
3 and Petition to show the true names, capacities and/or liabilities of DOE Defendants 1 through 10 if and
4 when they are determined.

5 **JURISDICTION AND VENUE**

6 10. This Court has jurisdiction under Article I, section 3 and Article VI section 10 of the California
7 Constitution, and Code of Civil Procedure sections 525, 526, 1060, 1085 and 1087. This Court also has
8 jurisdiction because Plaintiffs/Petitioners lack a “plain, speedy, and adequate remedy, in the ordinary
9 course of law.” (Code Civ. Proc. § 1086.)

10 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure
11 sections 393 subdivision (b) and 394 subdivision (a). Also, venue properly lies within this Court
12 because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc. §401.)

13 **AUTHENTICITY OF EXHIBITS**

14 12. All exhibits accompanying this Complaint and Petition are true and correct copies of the original
15 documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint
16 and Petition.

17 **GENERAL ALLEGATIONS**

18 [THE DEFENDANTS’ GENERAL DUTIES]

19 13. The California Constitution vests the office of the Attorney General, currently held by
20 BECERRA, with enormous powers over the lives of the citizens of the state. “Subject to the powers and
21 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the
22 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced.”
23 (Cal. Const. art. V, §13.)

24 14. In addition to being the “chief law officer” and the state’s chief attorney, the Attorney General is
25 also the head of the Department of Justice. (Gov. C. §12510.)

26 15. The Attorney General’s proper performance of his or her duties ensures that the state’s firearms
27 laws are administered fairly, enforced vigorously and understood uniformly throughout California.

28 16. The Attorney General is required to provide oversight, enforcement, education and regulation of

1 many facets of California's firearms laws. And, the Attorney General performs these legislative duties
2 through their Law Enforcement Division's Bureau of Firearms ("BOF").

3 17. The BOF's mission statement reiterates their obligation to educate and promote legitimate
4 firearm sales and education, and is as follows:

5 **The Bureau of Firearms serves the people of California through**
6 **education, regulation, and enforcement actions regarding the**
7 **manufacture, sales, ownership, safety training, and transfer of**
8 **firearms.** Bureau of Firearms staff are leaders in providing firearms
9 expertise and information to law enforcement, legislators, **and the general**
10 **public in a comprehensive program to promote legitimate and**
11 **responsible firearms possession and use by California residents.**

12 (emphasis added)

13 18. The practical application of the BOF's mission requires the BOF and its staff to be on the
14 forefront of leadership, innovation and collaboration.

15 19. Over the years, the State of California's legislature has used its law-making authority to make
16 California's firearms laws the most comprehensive, complex and restrictive in the nation, with over 800
17 state statutes regulating firearms and firearms transactions within the state.

18 20. In general, the laws governing control of firearms are expansive and are found within Part 6 of
19 the Penal Code, beginning at section 16000 and ending at section 34370.

20 21. As part of its legislative firearm regulation scheme, the State of California regulates firearms in a
21 wide variety of approaches. Some laws focus on the transfer of firearms (e.g., registering firearms and
22 prohibiting certain prohibited persons from possessing firearms), some laws focus on the use of firearms
23 (e.g., regulating the carrying of firearms in public places), some laws focus on the location (e.g.,
24 prohibiting firearms within school zones) and some focus on the technological aspects of particular
25 firearms (e.g., regulating firearms based upon their function, design and physical characteristics.)

26 [CALIFORNIA'S RELEVANT DEFINITIONS]

27 22. In regulating the technological aspects of particular firearms, the State of California has provided
28 specific definitions. For example, the State of California defines the term "firearm" in multiple ways,

1 generally including “a device, designed to be used as a weapon, from which is expelled through a barrel,
2 a projectile by the force of an explosion or other form of combustion.” (Pen. C. §16520.)

3 23. The State of California further divides the term “firearm” into two types for transfer regulation:
4 long guns and handguns.

5 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal Code
6 section 26860, “long gun” means any firearm that is not a handgun *or a machinegun*. (Pen. C. §16865.)

7 b. “*Handgun*” means any *pistol, revolver, or firearm capable of being concealed upon the person*;
8 and, nothing shall prevent a device defined as a “handgun” from also being found to be a *short-barreled*
9 *rifle*¹ or a *short-barreled shotgun*². (Pen. Code §16640.) The terms “*firearm capable of being*
10 *concealed upon the person*,” “*pistol*,” and “*revolver*” apply to and include any device designed to be
11 used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of
12 combustion, and that has a barrel less than 16 inches in length. These terms also include any device that
13 has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16
14 inches in length. (Pen. C. §16530. *See also* Pen. C. §§17010 and 17080.)

15 24. Below these two classifications (long gun and handgun) are a myriad of statutorily defined
16
17

18 ¹ “*Short-barreled rifle*” means any of the following: (a) A rifle having a barrel or barrels of less than
19 16 inches in length;

20 (b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether
21 by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than
22 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily
23 restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c),
24 inclusive; and (e) Any part, or combination of parts, designed and intended to convert a device into a
25 device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device
26 defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession
27 or under the control of the same person. (Pen. C. § 17170.)

28 ² “*Short-barreled shotgun*” means any of the following: (a) A firearm that is designed or redesigned
29 to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length; (b) A firearm that
30 has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun
31 shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that
32 weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18
33 inches in length; (d) Any device that may be readily restored to fire a fixed shotgun shell which, when so
34 restored, is a device defined in subdivisions (a) to (c), inclusive; and (e) Any part, or combination of
35 parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c),
36 inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive,
37 can be readily assembled if those parts are in the possession or under the control of the same person.

1 subtypes, the most common of which are deemed rifles³ and shotguns⁴ under the long gun classification.

2 25. The State of California uses these types and subtypes for the purposes of regulating firearms in
3 distinct ways based upon their design and technology.

4 26. While a device may be considered a “firearm” under California law, it may also fall outside of
5 the statutorily defined subcategories due to the design and features of the firearm. In other words, a
6 “firearm” can be neither a “handgun,” “rifle,” nor “shotgun.”

7 [UNDEFINED “FIREARM” SUBTYPES]

8 27. The FAI Title 1 is a firearm with an undefined subtype, as its overall design renders the device to
9 be a “firearm,” but not a “rifle,” “handgun,” nor “shotgun.”

10 28. As “firearms,” the FAI Title 1 and other firearms with undefined “firearm” subtypes” are subject
11 to California “firearm” transfer laws.

12 29. Firearms with undefined “firearm” subtypes have been manufactured for decades and have been
13 known to the DOJ for at least the last ten years.

14 30. The FAI Title 1 was originally designed in 2012, at which time the BOF was notified of the
15 design and features and of FAI’s intent to manufacture, produce, sell and distribute the firearm within
16 the State of California.

17 [CALIFORNIA DEALERS’ CENTRAL ROLE]

18 31. Significantly, the State of California has reserved the entire field of licensing and registration of
19 firearms to itself. (Pen. C. §53071.)

20 32. With limited exception, nearly all firearm transfers within California must be processed through
21

22
23 ³ As used in Penal Code Sections 16530, 16640, 16650, 16660, 16870, and 17170, Sections 17720 to
24 17730, inclusive, Section 17740, subdivision (f) of Section 27555, Article 2 (commencing with Section
25 30300) of Chapter 1 of Division 10 of Title 4, and Article 1 (commencing with Section 33210) of
26 Chapter 8 of Division 10 of Title 4, “rifle” means a weapon designed or redesigned, made or remade,
and intended to be fired from the shoulder and designed or redesigned and made or remade to use the
energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each
single pull of the trigger. (Pen. C. §17090.)

27 ⁴ As used in Penal Code Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730,
28 inclusive, Section 17740, Section 30215, and Article 1 (commencing with Section 33210) of Chapter 8
of Division 10 of Title 4, “shotgun” means a weapon designed or redesigned, made or remade, and
intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy

1 a dealer licensed by the United States, California, and the local authorities to engage in the retail sale of
2 firearms. (Pen. C. §§26700 and 27545.)

3 33. And, the State of California mandated that upon presentation of identification by a firearm
4 purchaser, a licensed California firearms dealer *shall* transmit the information to the Department of
5 Justice. (Pen. C. 28215(d).)

6 34. As such, the State of California has made licensed firearms dealers state agents in connection
7 with the gathering and dispensing of information on the purchase of firearms.

8 35. The State of California also manded that the DOJ *shall* examine specified records to determine
9 whether the applicant is prohibited from owning or possessing firearms once it receives the information
10 from the dealer. (Pen. C. §28220.)

11 [CALIFORNIA'S FIREARM TRANSFER SCHEME OVERVIEW]

12 36. As part of the firearm transfer process, each purchaser of a firearm must meet certain standards
13 and provide certain documentation in order to purchase a firearm (and the licensed California dealer
14 must receive, verify, retain and/or transmit the related information to the DOJ,) including but not limited
15 to:

- 16 • Valid photo identification to establish age (Pen. C. §§ 16400, 26845, and 27510);
- 17 • Complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ATF Form 4473;
- 18 • Complete the California Dealer's Record of Sale (DROS) form;
- 19 • Pass a comprehensive background check performed by the State of California (Pen. C. §
20 29820), which reviews records in the following databases:
 - 21 ○ Criminal History System (ACHS);
 - 22 ○ California Restraining and Protective Order System (CARPOS);
 - 23 ○ California Department of Motor Vehicles (DMV);
 - 24 ○ California Mental Health Firearm Prohibition System (MHFPS);
 - 25 ○ California Wanted Persons System (WPS);
 - 26 ○ Federal Bureau of Investigation (FBI) National Instant Criminal Background Check

27
28 of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles

System (NICS);

- FBI Interstate Identification Index (III);
- FBI National Crime Information Center (NCIC); and
- Immigration Customs & Enforcement (ICE);
- Pay a background check fee;
- Pay a Firearm Safety & Enforcement fee;
- Pay a Firearm Safety Device fee;
- Wait a 10 day waiting period: 10 24-hour periods must pass once the DROS is submitted before the purchaser can acquire their firearm. (Pen. C. § 26815.) Certain people/transfers are exempt from the waiting period (peace officers, special weapon permit holders). (Pen. C. §§ 26950-26970.)
- Obtain a Firearm Safety Device: All firearms must be sold with a Firearms Safety Device (FSD). (Pen. C. § 23635.)
- Possess a Firearm Safety Certificate (FSC): Firearm purchasers must take an exam on handgun safety from an instructor and obtain a minimum 75% passing score to receive a certificate. (Pen. C. § 31615.) Certain people are exempt from the FSC requirement (peace officers, military, California Concealed Carry License holders). (Pen. C. § 31700.)

[CALIFORNIA'S FIREARM REGISTRY – INFORMATION AND FORM REQUIREMENTS]

37. Certain aspects of licensing and registration has been delegated to the DOJ and/or the Attorney General. This includes the licensing of the California retailers engaged in the sale of firearms, as well as the recordkeeping, background checks and fees related to the sale, lease, loan or transfer of firearms. For example:

- a. "As required by the Department of Justice, every dealer shall keep a register or record of electronic or telephonic transfer in which shall be entered" certain information relating to the transfer of firearms. (Pen. C. §28100.)
- b. "The Department of Justice shall prescribe the *form* of the register and the record of

(ball shot) or a single projectile for each pull of the trigger. (Pen. C. §17190.)

electronic transfer pursuant to Section 28105.” (Pen. C. §28155.)

2 38. The State of California mandated that the register or the record of electronic transfer contain the
3 certain information via Penal Code section 28160(a), specifically:

- (1) The date and time of sale;
- (2) The make of firearm;
- (3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of Section 16585, and the agency name;
- (4) Any applicable waiting period exemption information;
- (5) California Firearms Dealer number issued pursuant to Article 1 (commencing with Section 26700) of Chapter 2;
- (6) For transactions occurring on or after January 1, 2003, the purchaser's handgun safety certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter 4 of Division 10 of this title, or pursuant to former Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, as that article read at any time from when it became operative on January 1, 2003, to when it was repealed by the Deadly Weapons Recodification Act of 2010;
- (7) Manufacturer's name if stamped on the firearm;
- (8) Model name or number, if stamped on the firearm;
- (9) Serial number, if applicable;
- (10) Other number, if more than one serial number is stamped on the firearm;
- (11) Any identification number or mark assigned to the firearm pursuant to Section 23910;
- (12) If the firearm is not a handgun and does not have a serial number, identification number, or mark assigned to it, a notation as to that fact;
- (13) Caliber;
- (14) Type of firearm; (multiple emphasis added.)**
- (15) If the firearm is new or used;
- (16) Barrel length;
- (17) Color of the firearm;

- (18) Full name of purchaser;
- (19) Purchaser's complete date of birth;
- (20) Purchaser's local address;
- (21) If current address is temporary, complete permanent address of purchaser;
- (22) Identification of purchaser;
- (23) Purchaser's place of birth (state or country);
- (24) Purchaser's complete telephone number;
- (25) Purchaser's occupation;
- (26) Purchaser's gender;
- (27) Purchaser's physical description;
- (28) All legal names and aliases ever used by the purchaser;
- (29) Yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an offense described in Chapter 3 (commencing with Section 29900) of Division 9 of this title, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, and whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code;
- (30) Signature of purchaser;
- (31) Signature of salesperson, as a witness to the purchaser's signature;
- (32) Salesperson's certificate of eligibility number, if the salesperson has obtained a certificate of eligibility;
- (33) Name and complete address of the dealer or firm selling the firearm as shown on the dealer's license;
- (34) The establishment number, if assigned;
- (35) The dealer's complete business telephone number;
- (36) Any information required by Chapter 5 (commencing with Section 28050);

- (37) Any information required to determine whether subdivision (f) of Section 27540 applies;
- (38) A statement of the penalties for signing a fictitious name or address, knowingly furnishing any incorrect information, or knowingly omitting any information required to be provided for the register; and
- (39) A statement informing the purchaser of certain information.

39. Significantly, while the “type” of firearm (e.g. “long gun” or “handgun”) is required, the “subtype” of a firearm is not mandated by Penal Code section 28160(a) or any other provision within Penal Code sections 28200 through 28255.

[CALIFORNIA'S FIREARM REGISTRY – METHOD OF ELECTRONIC TRANSMISSION]

40. The State of California mandated that the DOJ *shall* determine the *method* by which a dealer submits the firearm purchaser *information* to the DOJ. (Pen. C. §28205(a).)

41. The State of California mandated that electronic transfer of the required information be the sole means of transmission but permitted the DOJ to make exceptions. (Pen. C. §28205(c).)

42. The method established by the DOJ pursuant to Penal Code section 28205(c) for the submission of purchaser information required by Penal Code section 28160(a) is the DROS Entry System (DES).

43. The DES is a web-based application designed, developed and maintained by the DOJ and used by firearm dealers to report the required information.

44. Licensed California firearm dealers are required to submit only information that is “true, accurate, and complete.” (11 CCR §4210(b)(1)(6).)

[NATURE OF DISPUTE]

45. As part of the design, implementation, maintenance and enforcement of the DES, the DEFENDANTS mandated the submission of information relating to the subsets of firearm types.

46. Specifically, by design, when the DES user is inputting the designated information into the DES, they must input information related to the gun type (“long gun” or “handgun”). Upon selecting “long gun,” the DES system is designed to and functions to self-populate a subset of fields, and requires one of three options to be designated before the dealer may proceed with the completion of the form and submission of the required information to the DOJ. Those three options are: “rifle,” “rifle/shotgun,” “shotgun.” Unlike the subset of fields that self-populate for “Color,” “Purchaser Place of Birth,” and

1 Seller Place of Birth”, each of which which contains the catchall “other” options, the “long guns”
2 subset of fields does not contain the “other” option. Thus, the DES system prevents licensed firearm
3 dealers from proceeding with the sale, transfer, loan or submission of information to the DOJ for
4 certain firearms, including the FAI Title 1.

5 47. The actual and practical effect of this design is that licensed California firearm dealers cannot
6 accurately submit the necessary information to the DOJ for processing because of the limited choices of
7 subtypes in the DES, thereby barring the sale, transfer, acquisition, loan or other processing of firearms
8 of undefined subtypes, including the FAI Title 1.

9 48. Without an alternative procedure for submission of the purchaser and firearm information
10 established by DOJ pursuant to Penal Code section 28205(c), the DES is the only method of submitting
11 the necessary information to permit the lawful transfer of the undefined “firearm” subtypes.

12 49. Dealers are prohibited by 11 CCR §4210(b)(1)(6) from entering inaccurate information within
13 the system.

14 50. Because dealers cannot accurately submit the required information through the DES for “long
15 guns” that are undefined “firearm” subtypes, they are prohibited from processing and/accepting
16 applications from purchasers of said firearms. (Pen. C. §28215(c).)

17 51. As part of the design, implementation, maintenance and enforcement of the DES by the
18 DEFENDANTS, the DEFENDANTS have instituted a technological barrier that functions and serves
19 as a ban on the transfer of all undefined “firearm” subtypes that are “long guns” that are neither “rifles”
20 nor “shotguns” nor “rifle/shotgun combinations” through a licensed California firearms dealer.

21 52. This technological barrier could be alleviated if the DES provided the “other” option for “long
22 guns,” as it did with “Color,” “Purchaser Place of Birth,” and Seller Place of Birth.”

23 53. This technological barrier could also be alleviated by permitting the user to proceed without
24 completing the subtype categories.

25 54. This technological barrier could also be alleviated if the DOJ authorizes any of a multitude of
26 alternative means pursuant to the authority granted them by Penal Code section 28205(c), including but
27 not limited to, instructions to DES users to proceed by selecting preauthorized designated options and
28 identifying the firearm as an “other” in one of the “comment” fields within the DES.

1 55. DEFENDANTS have known of the deficiencies of the DES and intended them from inception.

2 [DOJ AND THE FAI TITLE 1]

3 56. DEFENDANTS and FAI have been in communications regarding the design and features of the
4 FAI Title 1 since approximately 2012.

5 57. On or about October 24, 2019, FAI informed the DOJ of the defects in the DES and the inability
6 of FAI to transmit the Title 1 firearms to their customers because of the DES. (See **Exhibit A**.)

7 58. Since then, the DOJ has neither corrected the DES, nor have they implemented alternative
8 procedures to facilitate the lawful transfer of the Title 1.

9 59. The DOJ has also had more than an adequate and reasonable amount of time to implement
10 alternative procedures pursuant to Penal Code section 28205(c).

11 60. The DOJ has had more than an adequate and reasonable amount of time to make the corrections
12 necessary to permit the system to process firearms including, but not limited to, the FAI Title 1.

13 61. For example, the DOJ was able to modify the DES to address a similar deficiency reported
14 concurrently by FAI's counsel in the same letter dated October 24, 2019. Specifically, a defect in the
15 DES that omitted the United Arab Emirates from the list of countries available in a DES dropdown list
16 for the counties of birth was confirmed as corrected by the DOJ on November 26, 2019. And, on or
17 about April 4, 2020, the DOJ modified the DES to prohibit the delivery of firearms statewide by dealers
18 after the 10-Day Waiting Period pursuant to Penal Code section 26815, in favor of a departmentally
19 imposed delay of up to 30 days.

20 62. Still, DEFENDANTS have refused to make the necessary changes to the DES until a Tort Claim
21 Act claim was first submitted to them on by FAI November 20, 2019. And, even then, by January,
22 DEFENDANTS claimed that it would take months before such a correction could be made.

23 63. Now, months have passed since the DOJ responded, and neither the DES nor the alternative
24 procedures have been updated, modified, nor implemented to permit the lawful transfer of the FAI Title
25 1 or other undefined "firearm" subtypes that are "long guns."

26 64. On information and belief, DEFENDANTS have designed and developed alternative procedures,
27 processes and/or updates that would cure the deficiencies of the DES specific to the issue at hand but
28 have refused and/or intentionally delayed implementation of said alternatives to date.

1 65. On information and belief, DEFENDANTS designed, implemented, maintained and enforced the
2 DES to intentionally prevent the transfer of “long guns” that are neither “rifles” nor “shotguns” nor
3 combinations thereof.

4 66. On information and belief, DEFENDANTS are continuing with the deficiencies intentionally,
5 delaying the necessary changes to the DES system that would permit the lawful transfer of lawful
6 firearms such as the Title 1 to lawful purchasers. DEFENDANTS are doing so with malice and intent to
7 cause harm against FAI.

8 67. As a result, FAI has been unable to transfer their Title 1 firearms reserved by licensed California
9 firearm dealers and California residents, who are members of the CRPA, and who seek to lawfully sell,
10 transfer, purchase, acquire and/or possess the FAI Title 1 firearms. This inability for dealers to submit
11 the true, accurate and complete information through the DES for certain firearms, such as the Title 1,
12 has damaged FAI by preventing them from effectuating the sale of the reserved product as well as non-
13 reserved product in an amount to be determined at trial, and it has denied the rights of California
14 citizens who are not prohibited from acquiring firearms from acquiring the Title 1.

15 68. DEFENDANTS could, if they desired, rectify this matter immediately, but they have chosen to
16 perpetuate the ban on the sale of certain lawful firearms via institutionalized technological barricades.

17 69. Neither DEFENDANTS’ design, development, maintenance and enforcement of the DES in a
18 manner that functions as a barrier to the lawful transfer of certain lawful firearms, nor DEFENDANTS’
19 requirement for information not expressly authorized by Penal Code sections 28200 through 28255, as
20 it pertains to firearms other than handguns, are discretionary acts.

21 70. Accordingly, an active controversy has arisen and now exists between the DEFENDANTS and
22 PLAINTIFFS concerning their respective rights, duties and responsibilities.

23 71. The controversy is definite and concrete, and touches on the legal relations of the parties, as well
24 as many thousands of people not before this Court whom DEFENDANTS are legally bound to serve.

25 72. The DOJ has a duty to facilitate the lawful transfer of firearms and collect certain information
26 from the dealers in the process via a method of submission designated by the DOJ. They do not,
27 however, have the authority to mandate alternative information or prevent the lawful transfer of a class
28 of firearms not otherwise prohibited under California law by technological limitations of their designs,

1 either intentional or otherwise.

2 [UNDERGROUND REGULATIONS]

3 73. PLAINTIFFS also bring this action pursuant to the California Administrative Procedure's Act
4 (Gov. Code §11340 et seq.)("APA") to challenge the validity of and to enjoin enforcement of policies
5 and procedures that prohibit the transfer of lawful firearms to lawful purchasers, including but not
6 limited to, designing, developing, implementing, modifying and administering protocols, systems and
7 databases that impede and/or prevent transfers from proceeding.

8 74. The APA provides a detailed statutory scheme for public notice and comment on regulations
9 proposed by state agencies. (Gov't C. § 11340, *et seq.*)

10 75. Mandatory procedures include providing adequate notice to the public of proposed regulations
11 and an opportunity for public comment. (Gov't. C. §§ 11346.2, 11346.4, 11346.5, 11346.8.)

12 76. The agency must provide reports of detailed reasons for a proposed regulation, the alternatives
13 considered and the effect the proposed regulation is projected to have on individuals. (Gov. C §§
14 11346.2, 11346.9.)

15 77. The APA specifically prohibits any state agency from making use of a rule that is a "regulation"
16 as defined in Government Code section 11342.600, that should have, but has not been adopted pursuant
17 to the detailed procedures set forth in the APA. (Gov't C. § 11340.5 (a).)

18 78. If a rule constitutes a "regulation," and there is no express statutory exemption excusing the
19 agency from complying with the APA, any regulation enacted without compliance with the APA is an
20 invalid "underground regulation" and cannot be enforced. (*Tidewater Marin Western, Inc. v. Bradshaw*
21 (1996) 14 Cal.4th 557, 576; *see also* Gov't C. § 11346.)

22 79. There is a narrow exception to the stringent requirements of the APA for "emergency"
23 regulations if an "emergency situation clearly poses such an immediate, serious harm that delaying
24 action to allow public comment would be inconsistent with the public interest." (Gov't C.
25 11346.1(a)(3).)

26 80. The purpose of the APA's comprehensive scheme is to ensure that "those persons or entities
27 whom a regulation will affect have a voice in its creation," (*Armistead v. State Personnel Board* (1978)
28 22 Cal.3d 198, 204-205), to allow the public to inform the agency about possible unintended

1 consequences of a proposed regulation, and to protect against “bureaucratic tyranny.” (*Cal. Advocates*
2 *for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508.)

3 81. The challenged rules at issue, including but not limited to the prohibition of certain lawful
4 firearms from being transferred because of DEFENDANTS technological barriers, implement, interpret
5 and make specific requirements for compliance with statutory law enforced by DEFENDANTS. They
6 include policy decisions by DEFENDANTS that are subject to the open government and deliberative
7 process requirements under the APA. But the challenged rules do not comply with the rulemaking
8 provisions of the APA. They were adopted without prior public notice or opportunity for oral or
9 written public comment. (See Gov't C. §§ 11346.2, 11346.4, 11346.5, 11346.8.)

10 82. The APA does allow for adoption of regulations without any advance public notice and the
11 opportunity for comment only in emergency circumstances where “the emergency situation clearly
12 poses such an immediate, serious harm that delaying action to allow public comment would be
13 inconsistent with the public interest.” (Gov’t C. § 11346.1, subds. (a)-(b).) No “emergency” exists that
14 would justify bypassing the formal process for the adoption of the challenged rules here. And no other
15 section of the California Code exempts the adoption of rules concerning the prohibition of the transfer of
16 lawful firearms to lawful purchasers.

17 83. Accordingly, PLAINTIFFS seek declaratory and injunctive relief to invalidate and enjoin
18 DEFENDANTS' enforcement of the challenged rules as unlawful underground regulations.

19 84. PLAINTIFFS also seek to enjoin the enforcement of rules concerning the prohibition of the
20 transfer of lawful firearms to lawful purchasers.

**FIRST CAUSE OF ACTON:
DECLARATORY AND INJUNCTIVE RELIEF
(AGAINST ALL DEFENDANTS)**

23 || 85. Paragraphs 1-84 are realleged and incorporated by reference.

24 86. The technological rules prohibiting the transfer of lawful firearms to lawful purchasers,
25 including but not limited to the rules as related to the DES, as it is currently designed, implemented,
26 maintained and/or enforced by DEFENDANTS, prohibit the sale of certain firearms that are not “rifles,”
27 nor “shotguns,” nor “rifles/shotguns,” nor “handguns” under California law and apply to all firearm
28 purchase applicants. They are rules of general applicability.

1 87. The rules were created by DOJ for the purpose of submitting specific information to the DOJ for
2 and for processing registrations and background checks via the DES, a system administered by the DOJ
3 pursuant to the Penal Code. The rules are, thus, “regulations” under the APA.

4 88. There is no express exemption from the APA in the California Code regarding the promulgation
5 of regulations prohibiting the transfer of lawful firearms to lawful purchasers, including but not limited
6 to the rules pertaining to the current design, implementation, maintenance and/or enforcement of the
7 DES by DEFENDANTS; there was no emergency sufficient to justify bypassing the APA. These
8 regulations are, thus, subject to the procedural requirements set forth in the APA.

9 89. By implementing, administering and enforcing the rules prohibiting the transfer of lawful
10 firearms to lawful purchasers, including but not limited to the rules as applied within the DES, as it is
11 currently designed, implemented, maintained, and/or enforced by DEFENDANTS, without providing
12 formal notice or opportunity for public comment, DEFENDANTS have violated and continue to violate
13 the APA.

14 90. An actual controversy exists. PLAINTIFFS contend that DEFENDANTS are violating the APA
15 and that DEFENDANTS intend to continue to do so. PLAINTIFFS allege on information and belief that
16 DEFENDANTS and each of them contend the regulation is in full compliance with the requirements of
17 the APA or was not subject to them.

18 91. A judicial declaration of the legality of DEFENDANTS’ conduct, and whether the regulations
19 prohibiting the transfer of lawful firearms to lawful purchasers, including but not limited to the rules
20 contained within the DES, as it is currently designed, implemented, maintained, and/or enforced by
21 DEFENDANTS, constitute an invalid underground regulation in violation of the APA, is necessary and
22 appropriate at this time.

23 92. PLAINTIFFS, their supporters and members, as stakeholders, have been specifically harmed
24 because DEFENDANTS’ unlawful conduct has denied them their statutory right to be heard and to
25 provide input regarding regulations governing a program that significantly affects them.

26 93. Further, harm from this underground regulation lies in the subversion of the democratic values
27 the APA was intended to serve. The notice, comment and review procedures of the APA were enacted to
28 secure the public benefits of openness, accessibility and accountability in the formulation of rules that

1 implement legislative enactments. Irreparable harm to these important public benefits occurs whenever a
2 state agency unlawfully adopts a regulation and each time the agency acts pursuant to its underground
3 regulation.

4 94. The public in general and PLAINTIFFS specifically have an interest in preventing
5 DEFENDANTS from enforcing the underground regulations prohibiting the transfer of lawful firearms
6 to lawful purchasers, including but not limited to the DES, as it is currently designed, implemented,
7 maintained, and/or enforced by DEFENDANTS, as it undermines the democratic values the APA was
8 designed to serve and prevents PLAINTIFFS from engaging in constitutionally protected conduct.

9 95. Further, in order to resolve the controversy, FAI requests that, pursuant to Code of Civil
10 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter
11 and, in particular, as follows:

- 12 a. There exists a category of firearm that is neither a “rifle,” nor “shotgun,” nor “handgun”
13 under California law.
- 14 b. The DES, as it is currently designed, implemented, maintained and/or enforced by
15 DEFENDANTS prohibits the sale of certain firearms that are neither “rifles,” nor
16 “shotguns,” nor “handguns” under California law.
- 17 c. DEFENDANTS’ actions in designing, implementing, maintaining and enforcing the
18 DES, in its current form, constitute a barrier and prevent FAI, licensed dealers and the
19 general public from acquiring, possessing, transferring and selling certain lawful
20 firearms, including Title 1, within the State of California.
- 21 d. The DES’s technological restrictions prohibiting the transfer of certain lawful firearms,
22 including the Title 1, violate the DOJ’s duties, including those found within Penal Code
23 sections 28155, 28205, 28215, and 28220.
- 24 e. The DES, as it is currently designed, implemented, maintained and/or enforced, is not in
25 compliance with the mandate imposed by Penal Code sections 28155, 28205, 28215, and
26 28220.
- 27 f. DEFENDANTS have intentionally instituted the technological barriers designed for and
28 implemented within DES, which is maintained and enforced by the DEFENDANTS.

1 g. DEFENDANTS have intentionally delayed in removing the technological barriers
2 designed for and implemented within DES, which is maintained and enforced by the
3 DEFENDANTS.

4 h. DEFENDANTS, who occupy the field of processing the lawful transfer of firearms,
5 including the registration and licensing, and as the regulatory body charged with
6 implementing, administering and enforcing the laws relating to the lawful transfer of
7 firearms within the state, have a clear, present and ministerial duty to ensure that the
8 systems developed by the DOJ to facilitate the submission of information do not act as
9 barriers to the submission of the required information necessary for the sale, loan and/or
10 transfer of lawful firearms.

11 96. Declaratory relief is warranted in this case because: (1) an actual controversy has arisen and now
12 exists between PLAINTIFFS and DEFENDANTS over the validity of the rules, including those that
13 apply to the DES system, as currently designed, implemented, maintained and enforced, and (2) there is
14 no adequate remedy in the ordinary course of law.

15 97. Additionally, DEFENDANTS' design, implementation, maintenance and enforcement of the
16 DES system, in conjunction with the general firearm transfer laws within the State of California and the
17 resultant injuries to PLAINTIFFS, are and will be of a continuing nature for which PLAINTIFFS will
18 have no adequate remedy at law.

19 98. Accordingly, PLAINTIFFS seek an injunction pursuant to Code of Civil Procedure sections 525
20 and 526. Unless DEFENDANTS, their agents, employees, representatives and all those acting in
21 concert with them are enjoined from enforcing administrative and/or technological barriers that prevent
22 the sale of lawful firearms, including but not limited to the FAI Title 1, PLAINTIFFS will continue to
23 suffer great and irreparable harm.

SECOND CAUSE OF ACTION:
PETITION FOR WRIT OF MANDATE
(AGAINST ALL DEFENDANTS)

26 99. Paragraphs 1-98 are realleged and incorporated by reference.

27 100. DEFENDANTS have a clear, present and ministerial duty to design, implement, maintain or
28 enforce the provisions of Penal Code sections in such a manner that does not preclude or bar the sale,

1 transfer, loan or other processing of entire classes of lawful firearms by technological or administrative
2 barriers.

3 101. PLAINTIFFS are beneficially interested in this matter, as they and/or their members are
4 damaged by the loss of profits, sales, possession and/or acquisition of firearms because of
5 DEFENDANTS' design, implementation, maintenance and enforcement of the DES system pursuant to
6 Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the lawful sale,
7 transfer and loan of an entire class of lawful firearms, including the FAI Title 1.

8 102. DEFENDANTS design, implementation, maintenance and enforcement of the DES system
9 pursuant to Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the
10 lawful sale, transfer and loan of an entire class of lawful firearms, including the FAI Title 1 are and will
11 be of a continuing nature for which PLAINTIFFS have no plain, speedy or adequate remedy at law, and
12 which have and will continue to result in irreparable harm.

13 103. PLAINTIFFS present important questions of statutory interpretation, as well as questions of
14 public interest which further warrant prompt disposition of this matter.

15 104. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
16 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce
17 updates to the DES system such that it does not proscribe the lawful sale, transfer and loan of an entire
18 class of lawful firearms, including the FAI Title 1 and such that it comports with Penal Code sections
19 28155, 28205, 28215 and 28220.

20 **THIRD CAUSE OF ACTION:**
21 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
(AGAINST ALL DEFENDANTS)

22 105. Paragraphs 1-104 are realleged and incorporated by reference.

23 106. FAI claims that DEFENDANTS intentionally interfered with the contracts between FAI and its
24 customers who have reserved orders and deposited moneys for the FAI Title 1, but who cannot receive
25 their lawful firearms because of the barricades placed upon such transfers via technological defects of
26 the DES and administrative delays correcting the same.

27 107. FAI currently has hundreds of contracts to sell the FAI Title 1 within California.

28 108. DEFENDANTS knew of FAI's contracts.

1 109. To date, DEFENDANTS' conduct prevented performance of the contracts.

2 110. To date, DEFENDANTS made performance more expensive or difficult.

3 111. DEFENDANTS intended to disrupt the performance of these contracts or knew that disruption
4 of performance was certain or substantially certain to occur by their delay and/or continued refusal to
5 correct the defects in their DES system or permit alternative means of transfers.

6 112. FAI and its customers have been harmed through the loss of sales and inability to transfer and/or
7 receive the FAI Title 1 as obligated.

8 113. DEFENDANTS' conduct was not only a substantial factor in causing FAI and their customers
9 harm, but it was also the sole factor.

10 114. FAI seeks damages in an amount to be determined at trial, including the amounts that FAI
11 would have received under the contracts, extra costs that FAI has incurred because of the breach or
12 interference with the contracts, lost profits that FAI would have made if the contracts had been
13 performed and punitive damages.

14 **FOURTH CAUSE OF ACTION:**
15 **TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
(AGAINST ALL DEFENDANTS)

16 115. Paragraphs 1-114 are realleged and incorporated by reference.

17 116. DEFENDANTS intentionally interfered with an economic relationship between FAI and FAI's
18 customers and prospective customers that probably would have resulted in an economic benefit to FAI.

19 117. FAI and FAI's California customers and prospective customers were in an economic
20 relationship that probably would have resulted in an economic benefit to FAI.

21 118. DEFENDANTS knew of the relationships that FAI had with its customers and prospective
22 customers, including California dealers and consumers.

23 119. DEFENDANTS knew of the high volume of interest in the FAI Title 1 within California, and
24 the high volume of preorders by FAI's California customers, and the amount of monies at issue.

25 120. DEFENDANTS knew that refusing to correct and/or delaying the corrections and updates to the
26 DES necessary to facilitate the lawful transfer of the FAI Title 1, and other undefined "subtype"
27 firearms, would prevent and/or delay the sale of said firearms.

28 121. By refusing to correct the defects in the DES and/or implementing alternative means to facilitate

1 the lawful transfer of the lawful firearms, including the FAI Title 1, DEFENDANTS intended to disrupt
2 the relationships or knew that disruption of the relationships between FAI and its customers and/or
3 prospective customers was certain or substantially certain to occur. DEFENDANTS intentionally
4 interfered with such opportunities in violation of its duties to design, develop, maintain and administer a
5 system for accepting and transmitting the necessary information for the lawful transfer of lawful
6 firearms, including those duties found within Penal Code sections 28155, 28205, 28215, and 28220.

7 122. Those relationships were disrupted.

8 123. FAI was harmed.

9 124. DEFENDANTS' conduct was not only a substantial factor in causing FAI's harm, but it was
10 also the sole cause of such harm.

11 125. DEFENDANTS committed these tortious acts with deliberate and actual malice, ill-will and
12 oppression in conscious disregard of FAI's legal rights.

13 126. FAI seek damages in an amount to be determined at trial, including the amounts that FAI would
14 have received under the contract, extra costs that FAI has incurred because of the breach or interference
15 with the contracts, lost profits that FAI would have made if the contracts had been performed and
16 punitive damages.

17 **FIFTH CAUSE OF ACTION:**
18 **NEGLIGENT INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE**
(AGAINST ALL DEFENDANTS)

19 127. Paragraphs 1-126 are realleged and incorporated by reference.

20 128. FAI claims that DEFENDANTS acted with negligence and/or gross negligence, recklessness,
21 malice and/or deceit and interfered with a relationship between FAI and FAI's California customers and
22 prospective customers, including licensed California retailers and consumers, that probably would have
23 resulted in an economic benefit to FAI.

24 129. FAI and customers and prospective customers, including licensed California retailers and
25 consumers, were in an economic relationship that probably would have resulted in a future economic
26 benefit to FAI.

27 130. DEFENDANTS knew or should have known of these relationships.

28 131. DEFENDANTS knew or should have known that these relationships would be disrupted if they

1 failed to act with reasonable care.

2 132. DEFENDANTS failed to act with reasonable care.

3 133. DEFENDANTS engaged in wrongful conduct by delaying and/or refusing to correct the defects
4 in the DES and/or implementing alternative means to facilitate the lawful transfer of the lawful firearms,
5 including the FAI Title 1. DEFENDANTS intended to disrupt the relationships or knew that disruption
6 of the relationships between FAI and its customers and/or prospective customers was certain or
7 substantially certain to occur. DEFENDANTS intentionally interfered with such opportunities in
8 violation of its duties to design, develop, maintain and administer a system for accepting and
9 transmitting the necessary information for the lawful transfer of lawful firearms, including those duties
10 found within Penal Code sections 28155, 28205, 28215 and 28220.

11 134. Those relationships were disrupted.

12 135. FAI was harmed.

13 136. That DEFENDANTS' wrongful conduct was a substantial factor in causing FAI's harm.

14 137. FAI seeks damages in an amount to be determined at trial, including the amounts that FAI
15 would have received under the contracts, extra costs that FAI has incurred because of the breach or
16 interference with the contracts, lost profits that FAI would have made if the contracts had been
17 performed and punitive damages.

18 **PRAYER**

19 WHEREFORE, PLAINTIFFS pray as follows:

- 20 1. A Declaration that there exists a category of firearm that is neither a "rifle," nor
21 "shotgun," nor "handgun" under California law.
- 22 2. A Declaration that the DES, as it is currently designed, implemented, maintained and/or
23 enforced by DEFENDANTS, prohibits the sale of certain firearms that are neither a
24 "rifle," nor "shotgun," nor "handgun" under California law.
- 25 3. A Declaration that DEFENDANTS' actions in designing, implementing, maintaining and
26 enforcing the DES, in its current form, constitute a barrier and prevent FAI, licensed
27 dealers and the general public from acquiring, possessing, transferring and selling certain
28 lawful firearms, including Title 1, within the State of California.

1 4. A Declaration that the DES's technological restrictions prohibiting the transfer of certain
2 lawful firearms, including the Title 1, violate the DOJ's duties pursuant to Penal Code
3 sections 28155, 28205, 28215 and 28220 and constitute an underground regulation.

4 5. A Declaration that the DES, as it is currently designed, implemented, maintained and/or
5 enforced is not in compliance with the mandate imposed by Penal Code sections 28155,
6 28205, 28215 and 28220.

7 6. A Declaration that DEFENDANTS have intentionally instituted the technological barriers
8 designed, implemented and maintained within the DES.

9 7. A Declaration that DEFENDANTS have intentionally delayed in removing the
10 technological barriers designed, implemented and maintained within the DES.

11 8. A Declaration that DEFENDANTS, who occupy the field of processing the lawful
12 transfer of firearms, including the registration and licensing, and as the regulatory body
13 charged with implementing, administering and enforcing the laws relating to the lawful
14 transfer of firearms within the state, have a clear, present and ministerial duty to ensure
15 that the systems developed by the DOJ to facilitate the submission of information do not
16 act as barriers to the submission of the required information necessary for the sale, loan
17 and/or transfer of lawful firearms.

18 9. Issuance of a Preliminary Injunction immediately enjoining DEFENDANTS, their
19 agents, employees, representatives and all those acting in concert with them from
20 enforcing administrative and/or technological barriers that prevent or otherwise inhibit
21 the sale, loan and/or transfer of lawful firearms, including but not limited to the FAI Title
22 1.

23 10. Issuance of a Permanent Injunction enjoining DEFENDANTS, their agents, employees,
24 representatives and all those acting in concert with them from enforcing administrative
25 and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of
26 lawful firearms, including but not limited to the FAI Title 1.

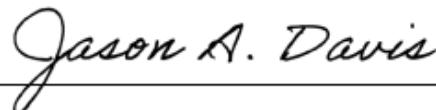
27 11. Issuance of a Writ of Mandate ordering DEFENDANTS to design, implement, maintain
28 and enforce updates to the DES system such that it does not proscribe the lawful sale,

1 transfer and loan of an entire class of lawful firearms, including the FAI Title 1 and such
2 that it comports with Penal Code sections 28155, 28205, 28215 and 28220.

3 12. Award for damages according to proof;
4 13. Award for punitive damages;
5 14. That PLAINTIFFS be awarded their costs and attorneys' fees incurred in this matter;
6 15. That the Court enter judgment; accordingly, and
7 16. Such other and further relief as the Court deems just and proper.

8 Date: April 9, 2020

9 Respectfully submitted,

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12 JASON A. DAVIS
13 Attorneys for Petitioners-Plaintiffs

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VERIFICATION

I am the president of FRANKLIN ARMORY, INC, a Plaintiff in the above-named action, and I
am authorized to make this verification on their behalves.

4 I have read this VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
5 RELIEF; PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER
6 APPROPRIATE RELIEF in the matter of *Franklin Armory, Inc. et al. v. California Department of*
7 *Justice, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I allege
8 that the matters stated herein are true.

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

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DATED: 4/9/2020


JAY JACOBSON

Exhibit A



Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691

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October 24, 2019

Xavier Becerra
Attorney General
Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Via E-Mail and U.S. Mail

Re: FRANKLIN ARMORY, INC. – DES “GUN TYPE” DROP DOWN LIST
- DOJ’S DEFACTO BAN OF NON-RIFLE / NON-SHOTGUN LONG GUNS

Dear Attorney General Becerra,

I write on behalf of Franklin Armory, Inc. (“Franklin Armory®”) regarding their inability to process the transfer of firearms within the State of California due to design limitations of the California Department of Justice Dealer Record of Sale Entry System (“DES”).

As is detailed below, the limitations of the DES prevent the lawful acquisition, transfer, and/or sale of firearms that fall outside the bounds of pistol, rifle, and/or shotgun – a category of firearms that have a long history of use within the state. Such technological restrictions are preventing my client from selling, transferring, and/or delivering their lawful products, such as their recently announced Title 1™ firearm and firearms configured with their CSW® California Compliance Kit as well as violate their First, Second, and Fourteenth Amendments to the United States Constitution, and California State law, causing damages to Franklin Armory®.

PROCEDURAL HISTORY

California Penal Code section 26500 prohibits any person from selling a firearm within the State of California unless the person is licensed by the State to sell firearms, some exceptions apply. Penal Code section 26535 exempts transfers between manufacturers of firearms, such as Franklin Armory® and licensed California firearms dealers. Thus, California residents seeking to acquire firearms must do so through licensed California firearms dealers.

In part, the requirement that all firearm generally be processed through a licensed California firearms dealer is designed to mandate that the licensed dealers gather information necessary to perform background checks on the applicants and information relating to the firearm for firearm registration purposes. Regarding the latter, Penal Code section 28160 mandates that “for all firearms, the register or record of transfer shall include all of the following [information relating to the firearm]:”

October 24, 2019

Page 2

(2) The **make** of firearm.

(7) **Manufacturer's name** if stamped on the firearm.

(8) **Model** name or number, if stamped on the firearm.

(9) **Serial** number, if applicable.

(10) **Other number**, if more than one serial number is stamped on the firearm.

(11) **Any identification number or mark assigned** to the firearm pursuant to Section 23910.

(12) If the firearm is not a handgun and does not have a serial number, identification number, or mark assigned to it, a notation as to that fact.

(13) **Caliber**.

(14) **Type of firearm**.

(15) If the firearm is **new or used**.

(16) **Barrel length**.

(17) **Color** of the firearm.

Penal Code section 28155 mandates that the Department of Justice prescribe the form of the register and the record of electronic transfer pursuant to Section 28105. And, Penal Code section 28105 mandates that “the Department of Justice shall develop the standards for all appropriate electronic equipment and telephone numbers to effect the transfer of information to the department.”

In response, the Department of Justice created the DES. In designing and developing the DES, however, the Department of Justice elected to implement a closed system that utilizes drop down lists instead of open field for certain data entries. As described in the DES User's Guide, the process for entering the sale of a long gun is, in part, as follows:

Dealer Long Gun Sale

Select the **Dealer Long Gun Sale** transaction type when a Long Gun is being purchased from a dealer.

To submit a Dealer Long Gun Sale transaction:

1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.

2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.

3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).

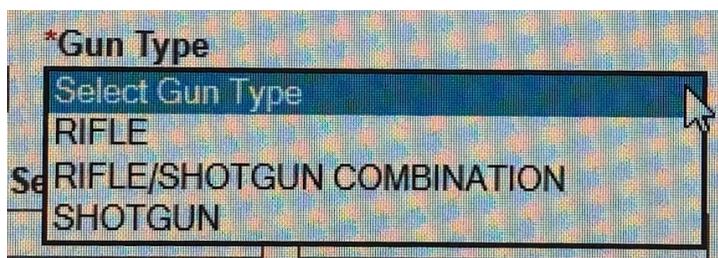
4) Enter the Transaction and Firearm Information as follows:

j. **Gun Type** – Select the type of long gun from the Gun Type drop down list.

Though the DES User's Guide is void of any information relating to the available Gun Types listed in the dropdown list, at the time of this writing the list consisted of the following options:

October 24, 2019

Page 3



Unfortunately, this list is incomplete and fails to include options for the many long guns that are neither "Rifles" nor "Shotguns."

This defect could have been prevented by including within the list the various types of other long guns, or simply including a single catch-all within the list such as "Other."

This defect, however, has severely impacted my client's business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm dealers that they would not be able to transfer the firearms due to technological limitations of the DES.

As a result, Franklin Armory® is unable to fulfill its orders, which continue to accrue daily. Franklin Armory® anticipates that even the delay of a few months in the correction of the system will result in the loss of approximately \$2,000,000 in profits, if not more.

As a result, Franklin Armory® President Jay Jacobson has been in contact and requested that the DES be corrected immediately to prevent the loss of sales and to preserve the reputation of Franklin Armory® within the industry and among its consumers. He has been advised that the Department of Justice is working on correcting the issue but was also informed that no timeline for the correction of the defect has been established. As such, this letter serves to both reiterate the importance of correcting the defect in the DES expediently, and to express and preserve legal and financial the impact that the defect has on Franklin Armory®.

ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES

It is important to note that the "gun type" omission is not the only defect relating to errors and omissions in the DES's dropdown list. At the time of this writing, the DES's technical limitations prevent any person born in the United Arab Emirates from purchasing firearms, even if they are United States Citizens who are not otherwise prohibited from possessing firearms. This defect and violation of rights based upon ethnicity occurs due to a similar failure to include the United Arab Emirates within the Country of Birth dropdown list in the DES:

UGANDA
UKRAINE
UNITED ARAB REPUBLIC
UNITED STATES OF AMERICA
URUGUAY
US VIRGIN ISLANDS
UTAH
UZBEKISTAN

This glaring omission has and will continue to violate the rights of those citizens until this defect is corrected.

October 24, 2019

Page 4

CONSTITUTIONAL VIOLATIONS

DUE PROCESS

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States forbids the several States from depriving any person of life, liberty, or property without due process of law. Under color of state law, the Department of Justice is subjecting Franklin Armory®, its dealers, and its citizens to a deprivation of liberty and property without due process of law.

The defect within the DES essentially bans the sale, acquisition, transfer, delivery, and possession of lawful product in violation of the Due Process Clause doctrine. The ban forbids expression without giving fair notice of what is forbidden; as such, it is an unconstitutional deprivation of liberty and property without due process of law. This *defacto* ban violates the Due Process Clause doctrine regarding overbreadth. (See, e.g., *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).) It also forbids a substantial amount of constitutionally protected speech; as such, it is an unconstitutional deprivation of liberty and property without due process of law. And, this ban violates the Due Process Clause doctrine regarding deprivations of property. (See, e.g., *Matthews v. Eldridge*, 424 U.S. 319 (1976).)

Finally, the ban deprives the local licensed firearms dealers of the complete and lawful use of their license issued by the Department of Justice and does so without supplying adequate pre-deprivation notice and an opportunity to be heard; as such, it is an unconstitutional deprivation of property without due process of law. In each of these respects, the *defacto* ban constitutes an unconstitutional abridgement of Due Process Clause rights both facially and as applied to these circumstances.

SECOND AMENDMENT VIOLATION

Possession of lawful firearms in California is not a mere privilege. Fortunately, the Second Amendment protects a person's right to keep and bear firearms. The Second Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "As interpreted in recent years by the Supreme Court, the Second Amendment protects 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Teixeira v. Cty. Of Alameda*, 873 F.3d 670, 676– 77 (9th Cir. 2017), cert. denied sub nom. *Teixeira v. Alameda Cty.*, 138 S. Ct. 1988 (2018) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). At the core of the Second Amendment is a citizen's right to have in his and her home for self-defense common firearms. Heller, 554 U.S. at 629. "[O]ur central holding in Heller [is] that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

As evidenced by California's own crime statistics, the need to protect one's self and family from criminals in one's home has not abated no matter how hard they try. Law enforcement cannot protect everyone. "A police force in a free state cannot provide everyone with bodyguards. Indeed, while some think guns cause violent crime, others think that wide-spread possession of guns on balance reduces violent crime. None of these policy arguments on either side affects what the Second Amendment says, that our Constitution protects 'the right of the people to keep and bear Arms.'"

October 24, 2019

Page 5

Silveira v. Lockyer, 328 F.3d 567, 588 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing *en banc*). However, California citizens, like United States citizens everywhere, enjoy the right to defend themselves with a firearm, if they so choose.

Not because of any statute, regulation, rule, or law, but merely as a result of improper design, the DES prohibits the California citizens from enjoying the right to defend themselves with a lawful firearm of their choice.

TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE

Under California law, intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1164–1165.).

As referenced above, Franklin Armory® has announced the sale of their Title 1 product and has begun taking orders on the Title 1. The Department of Justice has been notified of these orders and the inability of Franklin Armory®, and/or any licensed California firearms dealer to process these orders due to defects in the implementation of the DES, and a breach of duty by the Department of Justice pursuant to Penal Code sections 28105 and 28155. In refusing or delaying any corrections to the DES to permit the sale of lawful firearms, the DES is intentionally engaging in wrongful acts designed to disrupt current and future business of Franklin Armory®.

DEMAND

Franklin Armory® has, always, sought to cooperate and work with the California Department of Justice. It was not, and is not, my client's desire to make caselaw. On the contrary, the extraordinary effort taken by Franklin Armory® demonstrates their desire to partner *with* law enforcement to limit liabilities on all sides, including the end-user. When, however, the Department of Justice exceeded its authority and implemented a defacto ban on the sale of lawful firearms via technological limitations of the State mandated, designed, implemented and maintained DES, it substantially interfered with the rights and business relationship of Franklin Armory® and its customers. As a result, it is reasonable to anticipate the need for litigation to ensure my client is made whole.

Due to the delete and destruction policies of the California Department of Justice, Bureau of Firearms, we are hereby informing you that the Department of Justice has a duty to preserve evidence and prevent the spoliation of any information that may be relevant to this matter, including but not limited to, any and all correspondence, writings, emails, logs, telephone records, texts, or other of communication or writings, as that term is defined in Evidence Code section 250, related to or referring to the DES "gun type" fields, changes to the DES, long guns that are neither rifles nor shotguns, Franklin Armory, Inc., Jay Jacobson, Jason Davis, or Title 1. "[A] litigant is under a duty to preserve evidence which it knows or reasonably should know is relevant to the action." (*In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006)). The duty attaches "from the moment that litigation is reasonably anticipated." (*Apple Inc. v. Samsung Electronics Co.*,

October 24, 2019

Page 6

Ltd., 881 F. Supp. 2d 1132, 1136 (N.D. Cal. 2012).) “Once a party reasonably anticipates litigation, it must suspend its routine [evidence] retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant [evidence].” (*Zubulake v. UBS Warburg*, 220 FRD 212, 218 (S.D.N.Y. 2003).) Where a party has violated its duty to preserve evidence and engaged in spoliation, federal courts have the inherent power to impose sanctions. (*See Sherman v. Rinchem Co., Inc.*, 687 F.3d 996, 1006 (8th Cir. 2012) (citations omitted)). Sanctions may include monetary sanctions, an adverse inference jury instruction, striking claims or defenses, exclusion of evidence, and default or dismissal.

As such, and in order to mitigate past and future damages that have or could further result from action or inaction, Franklin Armory® now demands as follows:

1. That the Department of Justice immediately correct the defect in the DES by permitting the sale of long guns that are neither shotguns nor rifles, such as the Title 1.
2. That the Department of Justice pay any and all damages that are incurred due to the refusal and/or delay in the correction of defects in the DES.

If you have any questions or concerns, do not hesitate to contact me at the number above.

Sincerely,
THE DAVIS LAW FIRM

s/ *Jason Davis*

JASON DAVIS

cc: Robert Wilson

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11 *Attorneys for Defendants and Respondents*
12 *California Department of Justice and*
13 *Attorney General Xavier Becerra*

Exempt from filing fees pursuant to
Government Code section 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12
13 FRANKLIN ARMORY, INC. AND
14 CALIFORNIA RIFLE & PISTOL
15 ASSOCIATION, INCORPORATED,
16 Petitioners-Plaintiffs,

17 v.

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

21 Respondents-Defendants.

22 Case No. 20STCP01747

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28 **NOTICE OF HEARING ON DEMURRER
TO FIRST AMENDED COMPLAINT
AND PETITION AND DEMURRER TO
FIRST AMENDED COMPLAINT AND
PETITION BY DEFENDANTS AND
RESPONDENTS CALIFORNIA
DEPARTMENT OF JUSTICE AND
ATTORNEY GENERAL XAVIER
BECERRA [FIRST, SECOND AND
EIGHT CAUSES OF ACTION];
DECLARATION OF BENJAMIN
BARNOUW REGARDING MEET AND
CONFER PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 430.41**

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1 TO ALL PARTIES:

2 PLEASE TAKE NOTICE that on January 26, 2021, at 1:30 p.m., in Department 85 of the
3 above-entitled Court, located at 111 North Hill Street, Los Angeles, California, 90012, defendants
4 and respondents California Department of Justice and Attorney General Xavier Becerra will
5 move the Court for an Order sustaining their Demurrer to the First Amended Complaint and
6 Petition of Franklin Armory, Inc. and California Rifle and Pistol Association, and specifically the
7 First, Second and Eighth causes of action for declaratory relief, injunctive relief and writ of
8 mandate set forth in the First Amended Complaint and Petition, on the grounds that the claims of
9 Franklin Armory, Inc. and California Rifle and Pistol Association for declaratory relief, injunctive
10 relief and writ of mandate are moot and/or not ripe for judicial review, and that Franklin Armory,
11 Inc. and California Rifle and Pistol Association lack legal standing to pursue such claims.

12 This Demurrer is based on the pleadings and records on file herein, this Notice of Hearing
13 on Demurrer to First Amended Complaint and Petition and Demurrer to First Amended
14 Complaint and Petition, the Memorandum of Points and Authorities filed concurrently but
15 separately, and upon such argument as may be made at the time of the hearing upon the
16 Demurrer. Attached hereto is a Declaration submitted pursuant to Code of Civil Procedure
17 section 430.41, subdivision (a)(3), demonstrating that the parties met and conferred regarding this
18 Demurrer in conformance with Code of Civil Procedure section 430.41, subdivision (a)(2).

19 DEMURRER TO FIRST AMENDED COMPLAINT AND PETITION

20 Defendants California Department of Justice and Attorney General Xavier Becerra hereby
21 demur to the First Amended Complaint and Petition on file herein, on the following grounds:

22 The First Cause of Action is moot and/or not ripe for judicial review, and plaintiffs and
23 petitioners Franklin Armory, Inc. and California Rifle and Pistol Association lack legal standing
24 to pursue their claims. (Code Civ. Proc., §§430.10, subd. (e), 525, 526, 1060.)

25 The Second Cause of Action is moot and/or not ripe for judicial review, and plaintiffs and
26 petitioners Franklin Armory, Inc. and California Rifle and Pistol Association lack legal standing
27 to pursue their claims. (Code Civ. Proc., §§430.10, subd. (e), 1085, 1086.)

28 The Eighth Cause of Action is moot, and plaintiffs and petitioners Franklin Armory, Inc.

1 and California Rifle and Pistol Association lack legal standing to pursue their claims. (Code Civ.
2 Proc., §§430.10, subd. (e), 525, 526, 1060.)

3 WHEREFORE, defendants and respondents California Department of Justice and Attorney
4 General Xavier Becerra move the Court for an order sustaining their Demurrer to the First
5 Amended Complaint and Petition.

6 Dated: October 30, 2020

Respectfully Submitted,

7
8 XAVIER BECERRA
9 Attorney General of California
MARK T. CUMBA
Supervising Deputy Attorney General



10
11 BENJAMIN BARNOW
12 Supervising Deputy Attorney General
13 *Attorneys for Defendants and Respondents*
14 *California Department of Justice and*
15 *Attorney General Xavier Becerra*

DECLARATION OF BENJAMIN BARNOUW

I, Benjamin Barnouw, do hereby declare as follows:

1. I am a Supervising Deputy Attorney General at the California Attorney General's Office. I am admitted to practice in the courts of the State of California. I represent the California Department of Justice and Attorney General Xavier Becerra in this matter. I make this declaration of my own personal knowledge, am competent to testify to the facts stated herein, and would so testify if called.

2. On October 16 and 21, 2020, I spoke by telephone with Jason Davis, counsel for plaintiffs and petitioners Franklin Armory, Inc. and the California Rifle and Pistol Association, regarding the intention of the California Department of Justice and Attorney General Xavier Becerra to file a Demurrer to Franklin Armory, Inc.’s and the California Rifle and Pistol Association’s claims for writ of mandate, injunctive relief and declaratory relief, including those claims set forth in the First, Second and Eighth causes of action in the First Amended Complaint and Petition. The parties did not reach an agreement resolving the objections raised in the Demurrer.

I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration is executed on October 30, 2020, at Los Angeles, California.

Ben Barnouw

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DECLARATION OF SERVICE BY U.S. MAIL

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

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **October 30, 2020**, I served the attached **NOTICE OF HEARING ON DEMURRER TO FIRST AMENDED COMPLAINT AND PETITION AND DEMURRER TO FIRST AMENDED COMPLAINT AND PETITION BY DEFENDANTS AND RESPONDENTS CALIFORNIA DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL XAVIER BECERRA [FIRST, SECOND AND EIGHTH CAUSES OF ACTION]; DECLARATION OF BENJAMIN BARNOUW REGARDING MEET AND CONFER PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 430.41** by placing a true copy thereof enclosed in a sealed envelope in the *internal mail collection system* at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

C.D. MICHEL
Jason A. Davis
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd, Suite 200
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **October 30, 2020**, at Los Angeles, California.

Whitney A. Sims
Declarant

/s/ Whitney A. Sims
Signature

1 XAVIER BECERRA
2 Attorney General of California
3 MARK T. CUMBA
4 BENJAMIN BARNOUW (STATE BAR No. 168581)
5 Supervising Deputy Attorneys General
6 300 South Spring Street, Suite 1702
7 Los Angeles, CA 90013
8 Telephone: (213) 269-6506
9 Fax: (916) 731-2120
10 E-mail: Ben.Barnouw@doj.ca.gov
11 *Attorneys for Defendants and Respondents*
12 *California Department of Justice and*
13 *Attorney General Xavier Becerra*

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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20 COUNTY OF LOS ANGELES

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28 **FRANKLIN ARMORY, INC. AND**
1 CALIFORNIA RIFLE & PISTOL
2 ASSOCIATION, INCORPORATED,

3 Petitioners-Plaintiffs,

4 v.

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10 **CALIFORNIA DEPARTMENT OF**
11 **JUSTICE, XAVIER BECERRA, IN HIS**
12 **OFFICIAL CAPACITY AS ATTORNEY GENERAL**
13 **FOR THE STATE OF CALIFORNIA, AND DOES**
14 **1-10,**

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18 Respondents-Defendants.

19 Case No. 20STCP01747

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28 **MEMORANDUM OF POINTS AND**
1 **AUTHORITIES IN SUPPORT OF**
2 **DEMURRER BY DEFENDANTS AND**
3 **RESPONDENTS CALIFORNIA**
4 **DEPARTMENT OF JUSTICE AND**
5 **ATTORNEY GENERAL XAVIER**
6 **BECERRA TO THE FIRST AMENDED**
7 **COMPLAINT AND PETITION [FIRST,**
8 **SECOND AND EIGHTH CAUSES OF**
9 **ACTION]**

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18 **[NOTICE OF HEARING ON**
19 **DEMURRER TO FIRST AMENDED**
20 **COMPLAINT AND PETITION AND**
21 **DEMURRER TO FIRST AMENDED**
22 **COMPLAINT AND PETITION;**
23 **DECLARATION OF BENJAMIN**
24 **BARNOUW REGARDING MEET AND**
25 **CONFER PURSUANT TO CODE OF**
26 **CIVIL PROCEDURE SECTION 430.41**
27 **FILED SEPARATELY]**

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1 TABLE OF CONTENTS

	Page
2 MEMORANDUM OF POINTS AND AUTHORITIES	3 6
4 I. INTRODUCTION.....	4 6
5 II. SUMMARY OF FACTS	5 8
6 III. STATEMENT OF FACTS	6 9
7 A. STATUTORY CATEGORIES OF FIREARMS	7 9
8 B. STATUTORY RESTRICTIONS ON OWNERSHIP AND POSSESSION OF	
9 FIREARMS	8 9
10 C. PURCHASES AND OTHER TRANSACTIONS INVOLVING FIREARMS	
11 MUST BE HANDLED BY A LICENSED DEALER; DEALERS ARE	
12 REQUIRED TO CREATE A DEALER RECORD OF SALE REGARDING	
13 EACH TRANSACTION	9 10
14 D. THE DEPARTMENT OF JUSTICE'S ROLE IN FIREARM TRANSACTIONS	10 11
15 E. INFORMATION CONTAINED IN THE DEALER RECORD OF SALE IS	
16 MAINTAINED IN DATABASES OPERATED BY THE DEPARTMENT OF	
17 JUSTICE FOR LAW ENFORCEMENT PURPOSES	11 12
18 F. PETITIONERS' ALLEGED "TECHNOLOGICAL BARRIER" TO SALES OF	
19 THE TITLE 1	12 13
20 G. THE TITLE 1 IS DECLARED TO BE AN ASSAULT WEAPON	13 14
21 IV. PLAINTIFFS' CAUSES OF ACTION.....	14 15
22 V. ARGUMENT	15 16
23 A. A DEMURRER TESTS THE LEGAL SUFFICIENCY OF A COMPLAINT	16 17
24 B. PETITIONERS' CLAIMS REGARDING SALES OF THE TITLE 1 ARE MOOT	17 18
25 C. PETITIONERS LACK STANDING TO PURSUE RELIEF BASED ON THE	
26 ALLEGED EXISTENCE OF OTHER, UNNAMED UNDEFINED-TYPE	
27 FIREARMS	18 19
28 1. PETITIONERS FAIL TO ALLEGE A BENEFICIAL RIGHT AS	
29 REQUIRED TO ESTABLISH STANDING TO PURSUE A WRIT OF	
30 MANDATE	19 20
31 2. PETITIONERS FAIL TO ALLEGE FACTS SHOWING AN ACTUAL	
32 OR IMPENDING INJURY AS REQUIRED TO ESTABLISHED	
33 STANDING TO SEEK INJUNCTIVE RELIEF	20 21
34 3. PETITIONERS FAIL TO ALLEGE AN ACTUAL CONTROVERSY AS	
35 REQUIRED FOR DECLARATORY RELIEF	21 22
36 CONCLUSION.....	22 23

TABLE OF AUTHORITIES

2			<u>Page</u>
3	CASES		
4	<i>Associated Builders and Contractors, Inc. v. San Francisco Airports Com.</i>		
5	(1999) 21 Cal.4th 352	17	
6	<i>Blank v. Kirwan</i>		
7	(1985) 39 Cal.3d 311	15	
8	<i>California Assn. for Health Services at Home v. State Dept. of Health Services</i>		
9	(2007) 148 Cal.App.4th 696	17	
10	<i>California Department of Consumer Affairs v. Superior Court</i>		
11	(2016) 245 Cal.App.4th 256	19	
12	<i>California Water & Telephone Co. v. County of Los Angeles</i> (1967) 253		
13	Cal.App.2d 16	18	
14	<i>City of Los Angeles v. County of Los Angeles</i>		
15	(1983) 147 Cal.App.3d 952	17	
16	<i>Connerly v. Schwarzenegger</i>		
17	(2007) 146 Cal.App.4th 739	18, 19	
18	<i>Daily Journal Corp. v. County of Los Angeles</i>		
19	(2009) 172 Cal.App.4th 1550	16	
20	<i>Environmental Defense Project of Sierra County v. County of Sierra</i>		
21	(2008) 158 Cal.App.4th 877	19	
22	<i>Mendoza v. JPMorgan Chase Bank, N.A.</i>		
23	(2016) 6 Cal.App.5th 802	16	
24	<i>Pacific Legal Foundation v. Cal. Coastal Com.</i>		
25	(1982) 33 Cal.3d 158	19	
26	<i>Schmier v. Supreme Court</i>		
27	(2000) 78 Cal.App.4th 703	18	
28	<i>Stonehouse Homes v. City of Sierra Madre</i>		
29	(2008) 167 Cal.App.4th 531	20	
30	<i>Wilson & Wilson v. City Council of Redwood City</i>		
31	(2011) 191 Cal.App.4th 1559	16	

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
3	STATUTES
4	Code Civ. Proc.
5	§ 430.10.....14-15
6	§ 430.30.....15
7	§ 526.....13
8	§ 589.....14
9	§ 1060.....18
10	§ 1086.....17
11	Gov. Code
12	§ 11350.....18-19
13	Pen. Code
14	§ 11106.....12
15	§ 16520.....9
16	§ 16530.....9
17	§ 16640.....9
18	§ 16865.....9
19	§ 17090.....9, 15
20	§ 17190.....9, 15
21	§ 26500.....10
22	§ 26815.....11
23	§ 27510.....10
24	§ 27535.....11
25	§ 27540.....11
26	§ 27545.....10
27	§ 28050.....10
28	§ 28100.....10
29	§ 28105.....11
30	§ 28155.....11
31	§ 28160.....10
32	§ 28205.....11
33	§ 28220.....12-13
34	§ 29800.....10
35	§ 29815.....10
36	§ 29825.....10
37	§ 30510.....15
38	§ 30515.....15
39	§ 30600.....15
40	§ 30605.....15
41	§ 30685.....13
42	§ 30900.....13

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
2	2
3	Welf. & Inst. Code
4	§ 8103.....10
5	Cal. Code Regs., tit. 11,
6	§ 5460.....15
7	§ 5471.....15
8	
9	
10	
11	
12	
13	
14	
15	
16	
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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants and respondents State of California, acting by and through the California Department of Justice, (DOJ) and Attorney General Xavier Becerra (AG Becerra) submit this memorandum of points and authorities in support of their Demurrer to the First, Second and Eighth causes of action set forth in the First Amended Complaint and Petition (First Amended Complaint) filed by plaintiffs and petitioners, Franklin Armory, Inc. (Franklin Armory) and California Rifle & Pistol Association (the Association).

1. INTRODUCTION

Franklin Armory and the Association seek a writ of mandate, injunctive relief, and declaratory relief regarding their claim they have been unable to engage in transactions involving Franklin Armory’s “Title 1” firearm because of a “technological barrier” in the electronic system the DOJ utilizes to process applications for firearm transactions. Petitioners’ claims are moot because, in August of 2020, the Title 1 was declared an “assault weapon” subject to the Roberti-Roos Assault Weapons Control Act of 1989 (the Act). Petitioners do not allege that they are unable to engage in lawful transactions involving the Title 1 now that it is declared an assault weapon. Petitioners may argue they can seek relief regarding other firearms that are subject to the same alleged technological barrier, but they do not allege that Franklin Armory manufactures, or that any Association member has attempted to purchase, any such firearm. In fact, they do not identify any specific model or manufacturer of such a firearm. Thus, Petitioners lack standing.

The electronic system at issue is the DROS Entry System (DES), which the DOJ utilizes to process information submitted by individuals who seek to purchase or engage in other transactions involving firearms. This brief will refer to an individual who seeks to buy or otherwise obtain a firearm as a “purchaser.” Through the DES, a purchaser submits both personal information, which the DOJ utilizes to conduct a background check to determine whether the purchaser is ineligible to obtain the firearm, such as due to a felony conviction, and also information about the firearm, which the DOJ collects for various law enforcement purposes.

Petitioners allege that the DES is only capable of processing information regarding “handguns” (also referred to as “pistols” or “revolvers”), “rifles” and “shotguns.” They allege that

1 Franklin Armory's Title 1 firearm does not fit within any of these categories. In the original
2 Complaint, filed on May 27, 2020, Petitioners alleged that the Title 1 was legal to purchase in
3 California but that Franklin Armory was unable to sell the firearm, and members of the
4 Association were unable to purchase it, due to the configuration of the DES. Petitioners sought a
5 writ of mandate and injunctive relief to compel the DOJ to modify the DES to accept information
6 regarding "undefined-type" firearms, namely, firearms that did not fit within any of the categories
7 - "handgun"/"pistol," "rifle" or "shotgun." In addition, Franklin Armory asserted causes of action
8 for damages to recover lost profits resulting from its inability to sell the Title 1.

9 On August 6, 2020, the Governor signed into law Senate Bill 118, which amended the Act
10 so that the Title 1 is currently categorized as an "assault weapon" regulated by the Act. As a result
11 of being declared an "assault weapon" subject to the Act, the Title 1 cannot be purchased or
12 transferred in California, subject to limited exceptions set forth in the Act.

13 Petitioners filed their First Amended Complaint after Senate Bill 118 was enacted. In the
14 First Amended Complaint, Petitioners acknowledge the categorization of the Title 1 as an "assault
15 weapon" subject to the Act. Despite this acknowledgement, Petitioners continue to seek a writ of
16 mandate and injunctive relief to require the DOJ to modify the DES to allow for transactions of
17 undefined-type firearms. However, they fail to allege how the DES currently precludes any lawful
18 purchases or transactions involving the Title 1, after the enactment of Senate Bill 118. To the
19 contrary, Petitioners allege that Senate Bill 118 "ban[s] the sale, transfer, and delivery of the Title
20 1." (First Amended Complaint (FAC) at ¶94.) While Petitioners allege that other undefined-type
21 firearms exist, they fail to identify any specific model. Further, Petitioners do not allege that
22 Franklin Armory manufactures any such firearm (other than the Title 1). Nor do they allege that
23 any Association member attempted to purchase an undefined-type firearm but was unable to do
24 so because of a technological barrier in the DES.

25 In sum, Petitioners' claims regarding the Title 1 are moot, and their cursory allegations
26 regarding the existence of other, unidentified, firearms that cannot be processed through the DES
27 do not show how either Franklin Armory or Association members are affected by the
28 configuration of the DES, and thus Petitioners fail to allege facts to support standing.

1 **II. SUMMARY OF FACTS**

2 In California, firearm purchases and other types of firearm transactions, including private
3 sales, gifts and loans, must be handled by a licensed gun dealer. When a purchaser goes to a gun
4 dealer to initiate a firearm transaction, the dealer is required to obtain information and create a
5 “record” of the transaction, which is known as a Dealer Record of Sale or “DROS.” Generally,
6 the DROS includes information regarding the purchaser and the firearm itself.

7 The dealer is required to submit the DROS to the DOJ. To facilitate this process, the DOJ
8 uses an electronic system known as the DROS Entry System or “DES.” One purpose of
9 submitting the DROS is to provide the DOJ with information to perform an eligibility check to
10 determine whether the purchaser is prohibited from obtaining the firearm. The DOJ also
11 maintains the information regarding the firearm in databases that are used for various law
12 enforcement purposes, such as investigating crimes involving firearms.

13 In the Penal Code, firearms are generally defined as “handguns” (also known as “pistols” or
14 “revolvers”), “rifles” and “shotguns.” “Rifles” and “shotguns” are sometimes referred to as “long
15 guns.” The DES utilizes these categories. Petitioners allege that the DES is configured so that it
16 cannot process information for a firearm that is not a “handgun”/“pistol”/“revolver,” a “rifle” or a
17 “shotgun.” Petitioners allege that the Title 1 fits within none of these categories, and as a result
18 dealers are unable to process transactions involving the Title 1 through the DES.

19 Petitioners filed this action on May 27, 2020, seeking a writ of mandate and injunctive
20 relief to require the DOJ to modify the DES, or develop an alternate process that would allow
21 processing of transactions involving the Title 1 and other undefined-type firearms. However, on
22 August 6, 2020, the legislature enacted amendments to the Act which resulted in the Title 1 being
23 declared an “assault weapon.” The Act allows only limited types of transactions involving assault
24 weapons. Under the amendments, any individual who has obtained a Title 1 prior to September 1,
25 2020, is allowed to keep the firearm, but they must register it with the DOJ by January 1, 2022.

26 After the Act was amended, Petitioners filed the First Amended Compliant wherein they
27 maintain the same claims for writ of mandate, and injunctive and declaratory relief. However,
28 they do not allege how the DES is currently precluding transactions involving the Title 1. Nor do

1 they allege that Franklin Armory manufactures any other undefined-type firearm. Petitioners
2 allege that other undefined-type firearms exist, but they do not identify any specific undefined-
3 type firearms, nor do they allege that any member of the Association has attempted to purchase an
4 undefined-type firearm. The First Amended Complaint is verified by Franklin Armory, but not by
5 the Association or any Association member.

6 **III. STATEMENT OF FACTS**

7 **A. Statutory Categories of Firearms**

8 Under the Penal Code, there are three basic types of “firearms”¹: “handguns,” which are
9 also referred to as “pistols” and “revolvers;” “rifles;” and “shotguns.”

10 A “handgun” is generally a firearm that has a barrel length less than 16 inches and can be
11 concealed on a person, and is synonymous with the terms “pistol,” “revolver” and “firearm
12 capable of being concealed upon the person.” (Pen. Code, §§16530, subd. (a), 16640, subd. (a).)
13 Penal Code section 17090 defines “rifle” for purposes of specific code sections as “a weapon
14 designed or redesigned, made or remade, and intended to be fired from the shoulder and designed
15 or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire
16 only a single projectile through a rifled bore for each single pull of the trigger.” Penal Code
17 section 17190 defines “shotgun” for purposes of specific code sections as “a weapon designed or
18 redesigned, made or remade, and intended to be fired from the shoulder and designed or
19 redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire
20 through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull
21 of the trigger.”² The term “long gun” is generally used to refer to rifles and shotguns. (See, e.g.,
22 Pen. Code, §16865.)

23 **B. Statutory Restrictions on Ownership and Possession of Firearms**

24 California law prohibits various categories of people from purchasing or possessing a
25 firearm. Examples of prohibited persons include any individual who has been convicted of, or has

26 ¹ Penal Code section 16520 defines “firearm” as “a device, designed to be used as a
27 weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other
form of combustion.”

28 ² A “handgun” can also be “a short-barreled rifle or a short-barreled shotgun.” (Pen. Code,
§16530, subd. (b).)

1 an outstanding warrant for, a felony or a crime specified in Penal Code section 23515 (Pen. Code,
2 §29800), any probationer whose terms of probation prohibit the possession of a firearm (Pen.
3 Code, §29815), any individual who is prohibited from possessing a firearm pursuant to a
4 temporary restraining order, injunction or protective order issued by a court in California or
5 elsewhere (Pen. Code, §29825), and any individual who has been adjudicated by a court under
6 various statutory schemes to have a mental disorder and present a danger to themselves or others
7 (Welf. & Inst. Code, §8103).

8 An individual must be at least 21 years old to purchase or otherwise obtain a firearm from a
9 dealer. (Pen. Code, §27510, subd. (a).) There are exceptions listed in Penal Code section 27510,
10 subdivision (b), for individuals at least 18 years old who seek to purchase or obtain a “firearm
11 that is not a handgun or semiautomatic centerfire rifle.”

12 **C. Purchases and Other Transactions Involving Firearms Must Be Handled
13 by a Licensed Dealer; Dealers are Required to Create a Dealer Record of
14 Sale Regarding Each Transaction**

15 In California, individuals generally must purchase firearms through a licensed dealer. (Pen.
16 Code, §26500, subd. (a).) In addition, individuals must also have a licensed dealer process
17 transfers of firearms, including private sales, gifts and loans. (Pen. Code, §§27545, 28050.)

18 When an individual goes to a gun dealer to initiate a purchase or other transaction involving
19 a firearm, the dealer is required to obtain information and create a “record” of the transaction.
20 (Pen. Code, §28100, subd. (a).) This record is referred to as a Dealer Record of Sale or “DROS.”
21 Various information about the firearm is required to be included on the DROS, such as “[t]he
22 make of firearm,” “Manufacturer’s name if stamped on the firearm,” “Model name or number, if
23 stamped on the firearm,” “Caliber,” and “Type of firearm.” (Pen. Code, §28160, subd. (a).) The
24 DROS must also include information regarding the “purchaser”³ such as their name, date of birth,
25 local and permanent addresses, place of birth, occupation, gender, physical description, all legal
names and aliases ever used, and a yes or no answer whether they are in any of the categories of
26 persons prohibited from purchasing a firearm. (*Ibid.*) The dealer must transmit the DROS to the

27 ³As used in this brief, “purchase” includes a purchase, loan or other transfer, and
28 “purchaser” includes a purchaser or transferee of a firearm or the person being loaned a firearm.
(See Pen. Code, §28100, subds. (a),(b) [same definitions].)

1 DOJ and then is required to wait at least ten days before completing the purchase and delivering
2 the firearm to the purchaser, assuming the result of the background check has been received by
3 then. (Pen. Code, §§26815, subds. (a),(b), 27540, subd. (a).)

4 Pursuant to Penal Code section 28205, subdivision (c), the DROS must be submitted to the
5 DOJ electronically, “except as permitted by the [DOJ].”⁴ (Pen. Code, §28205, subd. (c).) Penal
6 Code section 28155 provides that “[t]he [DOJ] shall prescribe the form of the register and the
7 record of electronic transfer pursuant to Section 28105.” As Petitioners allege, “[t]he method
8 established by the DOJ pursuant to Penal Code section 28205(c) for the submission of purchaser
9 information required by Penal Code section 28160, subdivision (a), is DES. [¶] The DES is a
10 web-based application designed, developed and maintained by the DOJ and used by firearm
11 dealers to report the required information.” (FAC at ¶¶50-51.)

12 **D. The Department of Justice’s Role In Firearm Transactions**

13 The DOJ’s role once it receives a DROS is set forth in Penal Code section 28220.

14 First, when the DOJ receives a DROS, it “shall examine its records, as well as those records
15 that it is authorized to request from the State Department of State Hospitals pursuant to Section
16 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person
17 described in subdivision (a) of Section 27535, or is prohibited by state or federal law from
18 possessing, receiving, owning, or purchasing a firearm.”⁵ (Pen. Code, § 28220, subd. (a).) The
19 statute does not require any action by the DOJ if it fails to find any reason why the purchaser
20 cannot obtain the firearm; in this situation, the dealer is allowed to transfer the firearm to the
21 purchaser after the ten-day waiting period required by Penal Code sections 26815 and 27540. On
22 the other hand, “[i]f the [DOJ] determines that the purchaser is prohibited by state or federal law
23 from possessing, receiving, owning, or purchasing a firearm or is a person described in
24 subdivision (a) of Section 27535, it shall immediately notify the dealer” and the local law
25 enforcement agency of its determination. (Pen. Code, §28220, subd. (c).)

26 ⁴ In the past, DROS information could be submitted by mail or telephone, but since
27 January 1, 2003, only electronic submission is allowed, “except as permitted by the [DOJ].” (Pen.
Code, §28205, subd. (c).) The DROS cannot be submitted telephonically. (Pen. Code, §28205.)

28 ⁵ Penal Code section 27535, subdivision (a), prohibits individuals from submitting more
than one application to purchase a “handgun” during any 30-day period.

1 If the records reviewed by the DOJ indicate the purchaser *might* be prohibited from
2 purchasing the firearm, the DOJ is required to notify the dealer to delay the transfer beyond the
3 ten-day waiting period. The DOJ then has up to 30 days to investigate and it must inform the
4 dealer if it determines whether the purchaser is prohibited, or is not prohibited, from possessing
5 the firearm. (Pen. Code, § 28220, subd. (f)(3)(A),(B).) If the DOJ cannot definitively determine
6 whether or not the purchaser is prohibited from possessing a firearm, the DOJ notifies the dealer
7 of this fact “and the dealer may then immediately transfer the firearm to the purchaser[.]” (Pen.
8 Code, § 28220, subd. (f)(4).)

9 **E. Information Contained in the Dealer Record of Sale is Maintained in
10 Databases Operated by the Department of Justice for Law Enforcement
11 Purposes**

12 The DOJ is also required to maintain information it receives from each DROS in databases
13 that are used for law enforcement purposes, including “to assist in the investigation of crime, . . .
14 the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property.” (Pen.
15 Code, §11106, subd. (a)(1).)

16 **F. Petitioners’ Alleged “Technological Barrier” to Sales of the Title 1**

17 Petitioners allege that Franklin Armory “manufactures a series of firearms which are neither
18 ‘rifles,’ nor ‘pistols,’ nor ‘shotguns’ under California law and which are designated with the
19 model name ‘Title 1’ by FAI.” (FAC at ¶2.) They also allege that, through the DES, the DOJ has
20 “instituted a technological barrier” that does not allow gun dealers to process the Title 1 and other
“undefined-type” firearms. (FAC at ¶60.) Petitioners explain this technological barrier as follows:

21 [B]y design, when the DES user is inputting the designated information into the DES,
22 they must input information related to the gun type (‘long gun’ or ‘handgun’). Upon
23 selecting ‘long gun,’ the DES system is designed to and functions to self-populate a
24 subset of fields, and it requires one of three options to be designated before the dealer
25 may proceed with the completion of the form and submission of the required
information to the DOJ. Those three options are: ‘rifle,’ ‘rifle/shotgun,’ ‘shotgun.’
Unlike the subset of fields that self-populate for ‘Color,’ ‘Purchaser Place of Birth,’
and [‘Seller Place of Birth’], each of which contains the catchall ‘other’ options, the
‘long guns’ subset of fields does not contain the ‘other’ option.”

26 (FAC at ¶55.)

27 Further, Petitioners allege that the DOJ could allow for transactions involving undefined-
28 type firearms to be processed by making technological changes to the DES, or by providing

1 instructions to dealers to identify the firearm as another type of firearm and enter specific notes
2 into text fields in the DES. (FAC at ¶¶61-63.)

3 **G. The Title 1 Is Declared to Be an Assault Weapon**

4 Petitioners filed this action on May 27, 2020. Subsequently, on August 6, 2020, the Act was
5 amended to include in the definition of “assault weapon” any “semiautomatic centerfire firearm
6 that is not a rifle, pistol, or shotgun” that has one or more specified characteristics. (Pen. Code,
7 §30515, subds. (a)(9),(10),(11).) Under these amendments, the Title 1 became an “assault
8 weapon” subject to the Act. (FAC at ¶105.)

9 Under this legislation, any individual who has obtained, prior to September 1, 2020, a
10 firearm that is defined as an assault weapon under Penal Code section 30515, subdivisions (a)(9),
11 (10) and (11), is allowed to keep the firearm, but they must register it with the DOJ by January 1,
12 2022. (Pen. Code, §30685.) To register, an individual must submit an application to the DOJ
13 pursuant to a process to be established by the DOJ in a regulation. (Pen. Code, §30900, subd. (c).)

14 **IV. PLAINTIFFS’ CAUSES OF ACTION**

15 At this time, Petitioners are proceeding only on their First, Second and Eighth causes of
16 action.⁶ The first cause of action is for injunctive and declaratory relief. Petitioners seek a
17 declaration that the current condition of the DES works as an underground regulation prohibiting
18 transactions involving undefined-type firearms, and that this underground regulation violates the
19 Administrative Procedure Act. (FAC at ¶¶109-117.) They also seek a declaration establishing that
20 “[t]here exists a category of firearm that is neither a ‘rifle,’ nor ‘shotgun,’ nor ‘handgun’ under
21 California law,” that the DES does not allow transactions involving this category of firearm, that
22 as a result the DOJ violated duties “including those found within Penal Code sections 28155,
23 28205, 28215, and 28220,” that the DOJ has a “present and ministerial duty to ensure that the
24 systems developed by the DOJ to facilitate the submission of information do not act as barriers to
25 the submission of the required information necessary for the sale, loan and/or transfer of lawful

26 _____
27 ⁶ The First and Second causes of action include requests for an injunction effectively
28 prohibiting the DOJ from enforcing the Act as to the Title 1. (FAC at ¶¶122, 129.) However,
Petitioners are not pursuing such relief at this time. Furthermore, such an injunction would violate
Code of Civil Procedure section 526, subdivisions (b)(4) and (6).

1 firearms,” and that the DOJ has “intentionally instituted the technological barriers” and has
2 “intentionally delayed in removing the technological barriers.” (FAC at ¶118.) In this cause of
3 action, Petitioners also seek an injunction prohibiting the DOJ “from enforcing administrative
4 and/or technological barriers that prevent the sale of lawful firearms, including but not limited to
5 the FAI Title 1.” (FAC at ¶121.)

6 Petitioners’ second cause of action is for writ of mandate directing the DOJ “to design,
7 implement, maintain and enforce updates to the DES system such that it does not proscribe the
8 lawful sale, transfer and loan of an entire class of lawful firearms, including the FAI Title 1 and
9 such that it comports with Penal Code sections 28155, 28205, 28215 and 28220.” (FAC at ¶128.)

10 Petitioners’ eighth cause of action is for declaratory and injunctive relief. This cause of
11 action appears to duplicate the First cause of action. Petitioners allege that the configuration of
12 the DES is a regulation that was not promulgated in compliance with the Administrative
13 Procedure Act, and is therefore invalid. (FAC at ¶¶186-195.) Petitioners seek injunctive relief, but
14 it is unclear what specific injunctive terms they seek. (See FAC at ¶192.)

15 **V. ARGUMENT**

16 Petitioners’ claims based on the Title 1 are moot. Petitioners alleged that the Title 1 is a
17 lawful firearm but, because of the DES, Franklin Armory cannot sell it and the Association
18 members cannot purchase it. However, the Title 1 is now an “assault weapon” under the Act.
19 Petitioners do not allege that they could, but for the configuration of the DES, engage in
20 transactions involving the Title 1.

21 Furthermore, Petitioners lack standing to pursue claims based on undefined-type firearms
22 other than the Title 1. Franklin Armory does not allege that it manufactures any other undefined-
23 type firearm. There are no allegations that any Association member has attempted to purchase any
24 undefined-type firearm and been unable to do so because of the configuration of the DES.
25 Moreover, neither the Association nor any member has verified the First Amended Complaint.

26 **A. A Demurrer Tests the Legal Sufficiency of a Complaint**

27 A demurrer tests the legal sufficiency of a complaint by raising questions of law regarding
28 the complaint’s form or content. (Code Civ. Proc., §589, subd. (a).) A demurrer should be granted

1 where the complaint “does not state facts sufficient to constitute a cause of action.” (Code Civ.
2 Proc., § 430.10, subd. (e).) The court treats a demurrer as admitting properly pleaded material
3 facts, but does not assume the truth of contentions, deductions, or conclusions of fact or law.
4 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Nor does the court assume the truth of allegations
5 contradicted by matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a)). A
6 demurrer should also be granted if the complaint is “uncertain.” (Code Civ. Proc., §430.10, subd.
7 (f)). A complaint is “uncertain” when its allegations are “ambiguous” or “unintelligible.” (*Ibid.*)

8 **B. Petitioners’ Claims regarding Sales of the Title 1 Are Moot**

9 In their original Complaint, Petitioners alleged that the Title 1 could lawfully be sold in
10 California. (Complaint at ¶3.) At the time Petitioners filed the Complaint in May of 2020, “assault
11 weapons” were defined in the Act as specified “rifles,” “pistols” and “shotguns”⁷ (Pen. Code,
12 §30510) or “rifles,” “pistols” and “shotguns” with one or more specified characteristics (*id.*,
13 §30515, subds. (a)(1)-(8).) As Petitioners alleged, Title 1 model firearms “are neither ‘rifles,’
14 ‘pistol,’ nor ‘shotguns’ under California law.” (Complaint at ¶3.) Assuming this is true, Title 1
15 firearms were not “assault weapons” under the Act at the time Petitioners filed this action.

16 However, since that time, the legislature amended the Act, and specifically Penal Code
17 section 30515, to include in the definition of “assault weapon” any “semiautomatic centerfire
18 firearm that is not a rifle, pistol, or shotgun” that has one or more specified characteristics. (Pen.
19 Code, §30515, subds. (a)(9)-(11).) Petitioners acknowledge that, under these amendments, the
20 Title 1 became an “assault weapon” subject to the Act on August 6, 2020. (FAC at ¶105.)

21 Under the Act, “assault weapons” can only be manufactured and sold as permitted by the
22 Act. (Pen. Code, §§30600, 30605.) Petitioners do not allege that, since August 6, 2020, the
23 configuration of DES has prevented them from engaging in any transfers of the Title 1.
24 Furthermore, while the legislation allows individuals who obtained a Title 1 prior to September 1,
25 2020, to keep the firearm, on the condition that they register it, Petitioners allege that Franklin

26 ⁷ The definitions of “rifle” and “shotgun” provided in Penal Code sections 17090 and
27 17190 apply to specified sections of the Penal Code, which do not include sections 30510 or
30515. The definition of “rifle” to be used for the identification of assault weapons as set forth in
28 section 30515 is found in the California Code of Regulations. (Cal. Code Regs., tit. 11, §§5460,
5471, subd. (ee).) This definition is consistent with the definition in Penal Code section 17090.

1 Armory was not able to sell any Title 1 firearms before the September 1 deadline. (FAC at ¶106.)
2 “California courts will decide only justiciable controversies.” (*Wilson & Wilson v. City*
3 *Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) One component of justiciability is
4 mootness. (*Ibid.*) Moot cases are “[t]hose in which an actual controversy did exist but, by the
5 passage of time or a change in circumstances, ceased to exist.”” (*Ibid.* [quoting 3 Witkin, Cal.
6 Procedure (5th ed. 2008) Actions, § 21, pp. 85, 86].) “When events render a case moot, the court,
7 whether trial or appellate, should generally dismiss it.” (*Wilson & Wilson, supra*, 191 Cal.App.4th
8 at p. 1575.) This rule applies to claims for declaratory relief (*id.* at p. 1582), claims for injunctive
9 relief (*City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 959) and
10 petitions for writ of mandate (*Daily Journal Corp. v. County of Los Angeles* (2009) 172
11 Cal.App.4th 1550, 1557).

12 Petitioners’ claims regarding the Title 1 were premised on their allegation it was lawful for
13 the public to purchase the Title 1. As a result of the amendments to the Act, that is no longer the
14 case. Furthermore, Petitioners do not allege that the DES is preventing them from engaging in
15 lawful transactions involving the Title 1. Therefore, their claims regarding the Title 1 are moot.

16

17 **C. Petitioners Lack Standing to Pursue Relief Based on the Alleged Existence
of Other, Unnamed Undefined-Type Firearms**

18 Petitioners may argue that they have standing to seek writ, injunctive and declaratory relief
19 in this case based on their allegation that other undefined-type firearms exist. (See, e.g., FAC at
20 ¶56 [referring to “firearms of undefined subtypes, including the FAI Title 1”].) Any such
21 argument fails, however, because Petitioners do not identify any specific firearm, other than the
22 Title 1, that is an “undefined-type” firearm. They do not allege that Franklin Armory
23 manufactures any undefined-type firearm other than the Title 1. Nor do they allege that any
24 member of the Association has tried to purchase any such firearm but was unable to do so
25 because of the DES. As a result, neither Franklin Armory nor the Association has alleged
26 sufficient facts to establish standing to pursue a writ of mandate, other injunctive relief or
27 declaratory relief. “Standing is a threshold issue necessary to maintain a cause of action, and the
28 burden to allege and establish standing lies with the plaintiff.” (*Mendoza v. JPMorgan Chase*

1 *Bank, N.A.* (2016) 6 Cal.App.5th 802, 810 [citations omitted].)

2

3 **1. Petitioners Fail to Allege a Beneficial Right as Required to Establish**
Standing to Pursue a Writ of Mandate

4 “There are two essential requirements to the issuance of a traditional writ of mandate: (1) a
5 clear, present and usually ministerial duty on the part of respondent, and (2) a clear, present and
6 beneficial right on the part of the petitioner to the performance of that duty.” (*California Assn. for*
7 *Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.) To
8 satisfy the second element, a party must have a “special interest over and above the interest of the
9 public at large.”⁸ (*Id.* at p. 706.) This standard “is equivalent to the federal ‘injury in fact’ test,
10 which requires a party to prove by a preponderance of the evidence that it has suffered ‘an
11 invasion of a legally protected interest that is “(a) concrete and particularized, and (b) actual or
12 imminent, not conjectural or hypothetical.”’” (*Associated Builders and Contractors, Inc. v. San*
13 *Francisco Airports Com.* (1999) 21 Cal.4th 352, 362 [citation omitted].)

14 In this matter, neither Franklin Armory nor the Association has alleged facts to satisfy this
15 standing requirement. Franklin Armory does not allege that it manufactures any firearm, other
16 than the Title 1, that is an “undefined-type” firearm. Nor is there any allegation in the First
17 Amended Complaint that, other than the Title 1, a specific undefined-type firearm exists, or that
18 any member of the Association has attempted to purchase such a firearm but was unable to do so
19 because of the DES. Without allegations identifying a specific undefined-type weapon that a
20 member of the Association has attempted to purchase, the Association’s claim is entirely
21 “conjectural” and “hypothetical.” (*Id.* at p. 362.)

22 Furthermore, the First Amended Complaint was not verified by the Association or any
23 member of the Association. Pursuant to Code of Civil Procedure section 1086, a writ of mandate
24 can only be issued based on a “verified petition of the party beneficially interested.” Thus,
25 standing cannot be established in this matter based on alleged injuries to Association members.

26

27 ⁸ “To establish associational standing, plaintiffs must demonstrate that their members
28 would have standing to sue in their own right.” (*California Assn. for Health Services at Home,*
 supra, 148 Cal.App.4th at p. 707.)

2. Petitioners Fail to Allege Facts Showing an Actual or Impending Injury As Required to Established Standing to Seek Injunctive Relief

Petitioners seek injunctive relief under Code of Civil Procedure sections 525 and 526. (FAC at ¶121.) “To obtain an injunction, a party must show injury *as to himself.*” (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748 [italics in original].) “A person who invokes the judicial process lacks standing if he, or those whom he properly represents, ‘does not have a real interest in the ultimate adjudication because [he] has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented.’” (*Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703, 707 [brackets in original; quoting *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22–23].) Furthermore, “injunctions cannot be predicated on the proponent’s fear of something that may happen in the future.” (*Connerly, supra*, 146 Cal.App.4th at p. 750.)

In *Schmier*, the plaintiff sought an injunction to require the Courts of Appeal to publish all opinions. The court held that the plaintiff lacked standing because “the complaint does not identify any specific injury appellant or those he purports to represent have suffered or will suffer due to the nonpublication or depublication of an appellate opinion. Absent such an allegation, appellant lacks standing in this action.” (*Schmier, supra*, 78 Cal.App.4th at p. 708.)

Again, Petitioners do not allege any facts showing that Franklin Armory or any Association member has suffered or will suffer any injury due to the alleged limitations of the DES. They do not allege that Franklin Armory manufactures any “undefined-type” firearm (other than the Title 1). Nor do they allege that any Association member attempted to purchase an undefined-type firearm but was unable to do so because of the DES. In fact, other than the Title 1, no specific undefined-type firearm is identified in the First Amended Complaint. Therefore, neither Franklin Armory nor the Association has alleged facts to establish standing.

3. Petitioners Fail to Allege an Actual Controversy as Required for Declaratory Relief

Petitioners seek declaratory relief regarding the DES. Declaratory relief is proper only where there is an “actual controversy relating to the legal rights and duties of the respective parties[.]” (Code Civ. Proc., §1060.) This general standard applies to the extent Petitioners seek

1 declaratory relief under the Administrative Procedure Act, because declaratory relief can only be
2 obtained under the Administrative Procedure Act “in accordance with the Code of Civil
3 Procedure.” (Gov. Code, §11350, subd. (a).) As a result, declaratory relief regarding an alleged
4 violation of the Administrative Procedure Act is proper only if there is an “actual controversy”
5 under Civil Procedure section 1060. (*California Department of Consumer Affairs v. Superior*
6 *Court* (2016) 245 Cal.App.4th 256, 262.) In *California Department of Consumer Affairs*, the
7 court concluded that the plaintiffs’ claims for declaratory relief regarding alleged underground
8 regulations relating to the department’s certification of dispute resolution programs operated by
9 car manufacturers under California’s “lemon law” were properly dismissed because the plaintiffs
10 had failed to allege “a current dispute with an automobile manufacturer arising under California’s
11 lemon law” or “any ongoing unresolved car repair issues.” (*Id.* at p. 263.)

12 In this case, Petitioners have failed to allege any actual controversy regarding the DES.
13 Their claims regarding Franklin Armory’s Title 1 firearm are moot. They do not allege the
14 existence of any specific undefined-type firearm (other than the Title 1), that Franklin Armory
15 manufactures any such firearm (other than the Title 1), or that any Association member attempted
16 to purchase such a firearm but was unable to do so because of the DES.

17 Petitioners may argue that an Association member may in the future seek to purchase an
18 undefined-type firearm. However, such a claim, involving an unknown firearm and a hypothetical
19 transaction, does not present a ripe controversy. “The ‘actual controversy’ language in Code of
20 Civil Procedure section 1060 encompasses a probable future controversy relating to the legal
21 rights and duties of the parties. For a probable future controversy to constitute an ‘actual
22 controversy,’ however, the probable future controversy must be ripe.” (*Environmental Defense*
23 *Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885 [citations
24 omitted].) Ripeness is a “basic prerequisite to judicial review of administrative acts” that
25 “prevents courts from issuing purely advisory opinions” and recognizes that “judicial
26 decisionmaking is best conducted in the context of an actual set of facts so that the issues will be
27 framed with sufficient definiteness to enable the court to make a decree finally disposing of the
28 controversy.” (*Pacific Legal Foundation v. Cal. Coastal Com.* (1982) 33 Cal.3d 158, 169, 170.)

1 Courts apply a two-part test for ripeness that considers (1) “the fitness of the issues for judicial
2 decision,” and (2) “the hardship to the parties of withholding court consideration.” (*Id.* at p. 170
3 [internal quotation marks and citation omitted].) Under the first prong, “courts will decline to
4 adjudicate a dispute if the abstract posture of [the] proceeding makes it difficult to evaluate . . .
5 the issues, if the court is asked to speculate on the resolution of hypothetical situations, or if the
6 case presents a contrived inquiry.” (*Stonehouse Homes v. City of Sierra Madre* (2008) 167
7 Cal.App.4th 531, 540 [internal quotation marks and citations omitted].) The second prong
8 requires “an imminent and significant hardship inherent in further delay” of judicial review. (*Id.*
9 at p. 542 [quotation marks and citation omitted].)

10 Here, without knowing the circumstances of a hypothetical future transaction, including
11 what specific firearm is involved, it is speculation to assume how a gun dealer might interpret the
12 category of the firearm, what efforts the gun dealer might make to request an alternative process
13 from the DOJ, and what the DOJ’s position might be. Furthermore, there is no “significant
14 hardship inherent in further delay” of judicial review. When, and if, an Association member
15 attempts to purchase an undefined-type firearm but is unable to do so because of the DES, then a
16 ripe controversy might exist.

17 In sum, Petitioners fail to allege an actual controversy that is proper for declaratory relief.

18 CONCLUSION

19 For the foregoing reasons, the DOJ and AG Becerra request the Court dismiss Petitioners’
20 First, Second and Eighth causes of action as moot and because Petitioners lack standing.

21 Dated: October 30, 2020

Respectfully Submitted,

22 XAVIER BECERRA
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DECLARATION OF SERVICE BY U.S. MAIL

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

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **October 30, 2020**, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER BY DEFENDANTS AND RESPONDENTS CALIFORNIA DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL XAVIER BECERRA TO THE FIRST AMENDED COMPLAINT AND PETITION [FIRST, SECOND AND EIGHTH CAUSES OF ACTION]** by placing a true copy thereof enclosed in a sealed envelope in the *internal mail collection system* at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **October 30, 2020**, at Los Angeles, California.

Whitney A. Sims

Declarant

/s/ Whitney A. Sims

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7

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

10 FRANKLIN ARMORY, INC. and
11 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED

12 Petitioners-Plaintiffs,

13 | v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,
15 XAVIER BECERRA, in his official capacity
as Attorney General for the State of California,
and DOES 1-10.

10 Respondents-Defendants.

Case No. 20STCP01747

**PLAINTIFFS AND PETITIONERS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
RESPONDENTS' DEMURREER**

Date: January 26, 2021
Time: 1:30 p.m.
Dept.: 85
Judge: Hon. James C. Chalfant

Action Filed: May 27, 2020
Trial Date: Not set

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1 TABLE OF CONTENTS

	Page
3 Table of Contents	2
4 Table of Authorities	3
5 Introduction.....	6
6 Statement of Facts.....	6
7 I. California's Scheme for the Transfer and Registration of Firearms Through the Dealer Record 8 of Sale Entry System (DES)	6
9 II. Senate Bill 118 and the Expansion of the "Assault Weapon" Ban.....	8
10 III. Procedural History	8
11 Argument	10
12 I. Legal Standard	10
13 II. Petitioners' Claims Are Not Moot	11
14 III. Petitioners Have Standing to Pursue Relief.....	13
15 A. Petitioners Allege Sufficient Facts to Establish Standing for a Writ of Mandate	14
16 1. Petitioners Have Standing Because They Sufficiently Allege a Beneficial 17 Right in the Subject of the Petition	14
18 2. Alternatively, Petitioners Have Public Interest Standing Because this Case Deals with Important Questions of Public Rights.....	16
19 B. Petitioners Allege Sufficient Facts Showing an Actual or Impending Injury to Establish Standing for Injunctive Relief	18
20 IV. Petitioners' Claims Are Ripe for Adjudication.....	18
21 V. Request for Leave to Amend	20
22 Conclusion	20

1 TABLE OF AUTHORITIES

		2 Page(s)
3	Cases	
4	<i>Assoc. Builders & Contractors, Inc. v. S.F. Airports Commn.</i> (1999) 21 Cal.4th 352	14
5	<i>Bd. of Soc. Welfare v. County of L.A.</i> (1945) 27 Cal.2d 98	16
6	<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311	20
7	<i>Carsten v. Psych. Examining Commn.</i> (1980) 27 Cal.3d 793	14
8	<i>City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i> (1998) 68 Cal.App.4th 445	10
9	<i>City of Palm Springs v. Luna Crest Inc.</i> (2016) 245 Cal.App.4th 879	13
10	<i>Connerly v. Schwarzenegger</i> (2007) 146 Cal.App.4th 739	14
11	<i>Cty. of San Diego v. San Diego NORML</i> (2008) 165 Cal.App.4th 798	13
12	<i>Cty. of Santa Clara v. Super. Ct. (Naymark)</i> 171 Cal.App.4th 119	14, 15
13	<i>Doster v. Cty. of San Diego</i> (1988) 203 Cal.App.3d 257	16
14	<i>Fuentes v. Tucker</i> (1947) 31 Cal.2d 1	10
15	<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	14, 17
16	<i>Hilltop Props., Inc. v. State</i> (1965) 233 Cal.App.2d 349	10
17	<i>King v. Moritmer</i> (1948) 83 Cal.App.2d 153	20
18	<i>Klopstock v. Super. Ct.</i> (1941) 17 Cal.2d 13	20
19	<i>McKell v. Wash. Mut., Inc.</i> (2006) 142 Cal.App.4th 1457	10
20	<i>Nestle v. City of Santa Monica</i> (1972) 6 Cal.3d 920	20

1	<i>Pac. Legal Found. v. Cal. Coastal Commn.</i> (1982) 33 Cal.3d 158	19, 20
3	<i>People for Ethical Operation of Prosecutors v. Spitzer</i> (2020) 53 Cal.App.5th 391	17
4	<i>People v. Bunn</i> (2002) 27 Cal.4th 1	13
6	<i>Perez v. Golden Empire Transit Dist.</i> (2012) 209 Cal.App.4th 1228	11
7	<i>Perkins v. Super. Ct. (Gen. Tel. Directory Co.)</i> (1981) 117 Cal.App.3d 1	10
9	<i>Save the Plastic Bag Coal. v. City of Manhattan Beach</i> (2011) 52 Cal.4th 155	16
10	<i>Schmier v. Supreme Ct.</i> (2000) 78 Cal.App.4th 703	18
12	<i>Serrano v. Priest</i> (1971) 5 Cal.3d 584	11
13	<i>Silvester v. Harris</i> (9th Cir. 2016) 843 F. 3d 816	16
15	<i>Simi Corp. v. Garamendi</i> (2003) 109 Cal.App.4th 1496	11
16	<i>Spokeo, Inc. v. Robins</i> (2016) 136 S.Ct. 1540	13
18	<i>Taylor v. City of L.A. Dept. of Water and Power</i> (2006) 144 Cal.App.4th 1216	10
19	<i>Teal v. Super. Ct. (People)</i> (2014) 60 Cal.4th 595	13
21	<i>Tidewater Marine W., Inc. v. Bradshaw</i> (1996) 14 Cal.4th 557	18
22	<i>Van Gammeren v. City of Fresno</i> (1942) 51 Cal.App.2d 235	16
24	<i>Weatherford v. City of San Rafael</i> (2017) 2 Cal.5th 1241	13, 14
25	<i>Wilson & Wilson v. City Council of Redwood</i> (2011) 191 Cal.App.4th 1559	11, 12, 19
27	Statutes	
28	Code Civ. Proc., § 473	20

1	Code Civ. Proc., § 576	20
2	Code Civ. Proc., § 1086	14
3	Pen. Code, § 26700	7
4	Pen. Code, § 27545	7
5	Pen. Code, § 28100	7
6	Pen. Code, § 28155	7, 10
7	Pen. Code, § 28160	7
8	Pen. Code, § 28205	7, 10
9	Pen. Code, § 28215	7, 10, 16
10	Pen. Code, § 28220	10, 19
11	Pen. Code, § 30515	8, 11
12	Pen. Code, § 30650	11
13	Pen. Code, § 30675	11
14	Pen. Code, § 30900	20
15	Pen. Code, § 53071	6
16	Sen. Bill 118 (2019-2020 Reg. Sess.) § 38	8, 9, 11, 12
17	Regulations	
18	Cal. Code Regs., tit. 11, § 4210	16
19	Other Authorities	
20	Office of Administrative Law, Answers to Frequently Asked Questions (2021) < https://oal.ca.gov/faq/#What%20is%20the%20Administrative%20Procedure%20Act >	
21	(as of January 11, 2021)	17
22		
23		
24		
25		
26		
27		
28		

INTRODUCTION

2 This lawsuit deals with allegations that Respondents the California Department of Justice and
3 Attorney General Xavier Becerra purposefully acted to prevent the lawful transfer of thousands of legal
4 firearms, refusing to correct known technological defects with the system they themselves are legally
5 bound to design, update, and maintain—defects that effectively banned the lawful transfer of thousands
6 of firearms. The suit also includes allegations that Respondents' delays were intentional, given how they
7 fixed a separate (yet essentially) identical problem in the same software program within weeks of
8 notification; notification given simultaneously with that of the problem at the core of this suit.

9 Despite the clarity of this narrative as pleaded in Petitioners’ First Amended Complaint,
10 Respondents attack this suit on what are essentially justiciability grounds—mootness, lack of standing,
11 and ripeness—through a demurrer replete with gross mischaracterizations of the pleadings. None of this
12 is availing. Respondents’ conduct caused Petitioners an actual, concrete injury. Indeed, because of
13 Respondents’ unlawful behavior, Petitioners lost the chance to obtain legal property before the
14 legislature, at Respondents’ urging, banned it. What’s more, Respondents’ actions *continue* to prohibit
15 Petitioners from acquiring property not prohibited under any currently applicable statute. Under either of
16 these theories, Petitioners have alleged the sort of live, actual, non-conjectural, and particularized injury
17 that make this controversy fully justiciable. Petitioners thus satisfy all applicable pleading standards.

18 And although Petitioners need not seek shelter under a plea to the liberality of pleadings
19 standards and the ability to cure defects through amendment, that liberal standard only magnifies the
20 sufficiency of the First Amended Complaint. Respondents' demurrer should be overruled. But if the
21 Court sustains any part of it, Petitioners request leave to amend.

STATEMENT OF FACTS

I. CALIFORNIA'S SCHEME FOR THE TRANSFER AND REGISTRATION OF FIREARMS THROUGH THE DEALER RECORD OF SALE ENTRY SYSTEM (DES)

25 California has reserved the entire field of licensing and registration of firearms to itself. (Pen.
26 Code, § 53071.)¹ With limited exception, nearly all firearm transfers in California must be processed
27 through a dealer licensed by federal, state, and local authorities to engage in the retail sale of firearms.

1 (§§ 26700, 27545.) Under state law, “every dealer shall keep a register or record of electronic or
2 telephonic transfer in which shall be entered” certain information relating to the transfer of firearms. (§
3 28100.) And “*for all firearms*,” this register or record of electronic transfer *shall* contain certain
4 information, *including the “type of firearm.”* (§§ 28100, subd. (a), 28160, subd. (a).) This register is
5 commonly referred to as the Dealer Record of Sale (DROS). And the State has mandated that upon
6 presentation of identification by a firearm purchaser, a licensed California firearms dealer shall transmit
7 the information to the Department of Justice (DOJ). (§ 28215, subd. (d).)

8 Under section 28205, subdivision (c), the DROS must be submitted to the DOJ electronically,
9 “except as permitted by the [DOJ].” And state law mandates that “[t]he [DOJ] shall prescribe the form
10 of the register and the record of electronic transfer pursuant to Section 28105.” (§ 28155.) The method
11 established by the DOJ under section 28205, subdivision (c), for the submission of purchaser
12 information required by section 28160, subdivision (a), is known as the DROS Entry System (DES).
13 (Verified First Am. Compl. & Petit. for Writ of Mand. (FAC ¶ 50.) The DES is a web-based application
14 designed, developed, and maintained by the DOJ and used by firearm dealers to report the required
15 information. (FAC ¶¶ 50-51.)

16 As designed, the DES can facilitate the transfer of certain types of firearms: “handguns” (also
17 called “pistols” or “revolvers”), “rifles,” and “shotguns.” This information is entered into the DES
18 during the application process by the user selecting the appropriate type/subtype of firearm within a
19 predetermined drop-down list. Many firearms, however, do not qualify as “handguns,” “pistols,”
20 “revolvers,” “rifles,” or “shotguns” or even “frames” or “receivers” for said firearms. (FAC ¶¶ 24-26.)²
21 And the DES drop-down list for firearm type/subtype has no provision for “other” firearms such as
22 “undefined firearm subtypes.” (FAC ¶¶ 55.) Because dealers cannot accurately submit the required
23 information through the DES for “long guns” that are undefined firearm subtypes, they are prohibited
24 from processing and accepting applications from purchasers of said firearms. (FAC ¶ 59.) By design
25 then, Petitioners allege, Respondents have instituted within the DES this technological barrier that
26 functions and serves to prohibit the transfer of all firearms that are “long guns” but are neither “rifles”
27

28 ¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Such firearms are referred to as “undefined firearm subtypes” throughout this brief.

1 nor “shotguns” nor “rifle/shotgun combinations” through a licensed firearms dealer. (FAC ¶ 60.)

2 Respondents have long known about the deficiencies of the DES but have refused requests to
3 correct it. (FAC ¶ 64.) Indeed, Franklin Armory has been in communication with Respondents about the
4 design and features of Title 1 firearms since 2012, and Franklin Armory informed Respondent DOJ of
5 the defects with the DES and the inability to transfer Title 1 firearms because of it as early as *October*
6 *24, 2019.* (FAC ¶¶ 65-66.) It has been over a year since Franklin Armory so notified the DOJ, yet the
7 agency has thus far refused to modify the DES even though it has proven it can quickly make the
8 requested change. (FAC ¶ 69.) For example, the DOJ was able to modify the DES to address a similar
9 deficiency regarding the drop-down list for transferee’s nation of origin—a deficiency Franklin Armory
10 reported at the same time it raised the issue of undefined firearm subtypes—within weeks. (FAC ¶ 70.)

11 **II. SENATE BILL 118 AND THE EXPANSION OF THE “ASSAULT WEAPON” BAN**

12 The motivation behind Respondents’ delay, Petitioners’ allege, was to buy time to work with the
13 legislature to develop, propose, pass, and effect legislation designating Title 1 style firearms as “assault
14 weapons” and restricting their sale. (FAC ¶ 102.) This nefarious scheme proved successful on August 6,
15 2020, with the passage of Senate Bill 118 (SB 118), which expanded the statutory definition of “assault
16 weapon” to include any “semiautomatic *centerfire* firearm that is not a rifle, pistol, or shotgun, that does
17 not have a fixed magazine, but that has any one” of a list of enumerated characteristics, like a forward
18 pistol grip or thumbhole stock. (Sen. Bill 118 (2019-2020 Reg. Sess.) § 38.) The effect of the bill, as
19 relevant here, was to restrict the transfer of centerfire versions of Franklin Armory’s Title 1 firearms as
20 “assault weapons,” customers despite the existing orders that long predated SB 118. (FAC ¶¶ 105, 173.)
21 But even after the adoption of SB 118, not all Franklin Armory Title 1 firearms have been reclassified as
22 “assault weapons.” Indeed, Franklin Armory alleges that it manufacturers a “series” of firearms
23 designated under the “Title 1” model name, (FAC ¶ 2), including a “rimfire” version that is not affected
24 by SB 118’s changes, which were limited to “centerfire” firearms. (Penal Code, § 30515, subd. (a)(9).)
25 These unaffected Title 1 firearms are still legal to transfer but remain blocked by Respondents’ refusal to
26 correct the DES.

27 **III. PROCEDURAL HISTORY**

28 Petitioner Franklin Armory, Inc., is a manufacturer of a series of firearms which are neither

1 “rifles,” nor “pistols,” nor “shotguns” under California law and which are designated with the model
2 name “Title 1” by Franklin Armory. (FAC ¶ 2.) Franklin Armory has taken thousands of deposits on
3 said firearms from California customers. (FAC ¶¶ 76, 106, 131-132, 148.) Franklin Armory, however,
4 learned that it was and is currently blocked from transferring Title 1 firearms to their customers due to
5 the design of the DES, which is maintained and controlled entirely by Respondents. (FAC ¶ 60.)
6 Petitioner California Rifle and Pistol Association Incorporated (CRPA) is an association whose
7 members have reserved and placed deposits on Title 1 firearms to lawfully purchase them (FAC ¶¶ 76,
8 106, 131, 173, 181), but who were (and continue to be) blocked from completing and submitting their
9 applications for the lawful purchase and transfer of Title 1 firearms, as well as other firearms, due to the
10 design of the DES. (FAC ¶ 60.)

11 Petitioners sued in this Court on May 27, 2020, alleging several causes of action, including a
12 petition for writ of mandate directing Respondents to correct the technological defect of the DES that
13 bars the transfer of otherwise lawful undefined firearm subtypes, including Title 1 firearms. (Compl. ¶¶
14 123-129.) On August 19, 2020, Petitioners filed a First Amended Complaint, adding four claims—some
15 related to the recent changes in state law affecting Petitioners’ claims. (FAC ¶¶ 163-202.) For now,
16 Petitioners proceed only on their First, Second, and Eighth Causes of Action. The Court stayed the
17 remaining claims. (Oct. 15, 2020 Tr. Setting Conf. Order.)

18 The First Cause of Action seeks a judicial declaration about, among other things, the legality of
19 Respondents’ conduct regarding the DES and undefined firearm subtypes. (FAC ¶¶ 114, 118, subds. (a)-
20 (h).) It seeks to enjoin Respondents “from enforcing administrative and/or technological barriers that
21 prevent the sale of lawful firearms, *including but not limited to* the [Franklin Armory] Title 1.” (FAC ¶
22 121.) And “from enforcing the Roberti-Roos Assault Weapons Act in a manner that prohibits those who,
23 but for [Respondents] technological barriers . . . could have lawfully acquired and registered their
24 [Franklin Armory] Title 1 style firearm in accordance with” the new legislation. (FAC ¶ 122.)³

25 Petitioners’ second claim is for a writ of mandate directing Respondents to design, maintain, and

26

27 ³ To be clear, Petitioners do not ask this Court to order the transfer of Title 1 firearms if such
28 transfer would be unlawful. That is, this request for relief is limited to those persons who made deposits
 before California enacted SB 118 and who were prevented from effectuating said transfer due to
 Respondents’ unclean hands, as described in the First Amended Complaint.

1 enforce updates to the DES such that it does not proscribe the lawful sale, transfer, and loan of a class of
2 lawful firearms, including Title 1 firearms, and such that it comports with sections 28155, 28205, 28215,
3 and 28220. (FAC ¶ 114.) It also asks the Court to direct Respondents to “design, implement, maintain,
4 and enforce updates [to] their ‘assault weapons’ registration process such that it permits the registration
5 of the [Franklin Armory] Title 1 style firearms by those whose orders were placed on or before August
6 6, 2020 or at such time as deemed appropriate by the Court.” (FAC ¶ 129.)⁴

7 Petitioners’ eighth claim is for declaratory and injunctive relief as it relates to Respondents’
8 violation of the Administrative Procedure Act (APA). Petitioners seek a declaration that Respondents’
9 de facto ban on the transfer of undefined firearm subtypes, including Title 1 firearms, constitutes an
10 underground regulation in violation of the APA, as well as injunctive relief preventing the enforcement
11 of said underground regulation. (FAC ¶ 195.)

12 **ARGUMENT**

13 **I. LEGAL STANDARD**

14 A civil complaint is merely intended to frame and limit the issues and apprise the defendant of
15 the basis upon which the plaintiff seeks recovery. (See *Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4; *Perkins*
16 *v. Super. Ct. (Gen. Tel. Directory Co.)* (1981) 117 Cal.App.3d 1, 6.) “A demurrer tests the pleading
17 alone, and not the evidence or the facts alleged.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner &*
18 *Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.) Thus, “[a]ll that is necessary against a general demurrer is
19 that, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to *any* relief at the
20 hands of the court against the defendant.” (*Hilltop Props., Inc. v. State* (1965) 233 Cal.App.2d 349,
21 354.) A pleading is adequate if it contains enough facts to apprise the defendant of the factual basis for
22 the plaintiff’s claim. (*McKell v. Wash. Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-1470.)

23 What’s more, when considering demurrs, courts read the allegations liberally and in context.
24 (*Taylor v. City of L.A. Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.) A court must

26 ⁴ The parties disagree over whether Petitioners are pursuing those portions of their First and
27 Second Causes of Action dealing with the Title 1 firearms the state recently reclassified as “assault
28 weapons.” (See Demurrer, p. 13, fn. 6.) Petitioners have no recollection of waiving their right to litigate
the entirety of their first and second claims at this stage, and nothing in the Court’s minute order from
the October 15, 2020 trial setting conference limits the writ of mandate in such a way. (Oct. 15, 2020 Tr.
Setting Conf. Order.)

1 treat the demurrer as admitting all material facts properly pleaded in the complaint. (*Serrano v. Priest*
2 (1971) 5 Cal.3d 584, 591.) And if there is more than one reasonable interpretation, courts are to draw
3 any “inferences favorable to the plaintiff, not the defendant.” (*Perez v. Golden Empire Transit Dist.*
4 (2012) 209 Cal.App.4th 1228, 1238.)

5 **II. PETITIONERS’ CLAIMS ARE NOT MOOT**

6 Respondents demur on the basis that this matter is moot. (Dem., pp. 14-16.) In support of their
7 claim, Respondents explain that moot cases are “[t]hose in which an actual controversy did exist but, by
8 the passage of time or a change in the circumstances, ceased to exist.” (*Id.*, p. 16, citing *Wilson &*
9 *Wilson v. City Council of Redwood* (2011) 191 Cal.App.4th 1559, 1573 (hereafter *Wilson & Wilson*)).
10 Here, Respondents argue, Petitioners’ claims are moot because the “legislature amended the [Roberti
11 Roos Assault Weapon] Act, and specifically Penal Code section 30515, to include [within] the definition
12 of ‘assault weapon’: any ‘semiautomatic *centerfire* firearm that is not a rifle, pistol, or shotgun, *that has*
13 *one or more specified characteristics.*’” (*Id.*, p. 15, citing § 30515, subd. (a)(9)-(11), italics added.)

14 The legislation, however, did not expressly restrict all undefined firearm subtypes—it did not
15 even restrict the sale of all Title 1 firearms for that matter. Instead, as cited by Respondents themselves,
16 the legislation focused on firearms with specified characteristics. For example, the legislative changes to
17 section 30515 restricted, but did not completely prohibit,⁵ the transfer of certain *centerfire* firearms,
18 including Title 1 firearms in centerfire calibers. (§§ 30515, subd. (a)(9)-(11), 30650.) It did *not* classify
19 *rimfire* firearms, including Title 1 firearms in such calibers, as “assault weapons” or restrict their
20 transfer. (*Ibid.*) Nor did it restrict the sale of centerfire Title 1 firearms configured without any of the
21 enumerated features necessary for a firearm to be considered an “assault weapon” under state law.
22 (*Ibid.*) Because a case only becomes moot when a court ruling can have *no* practical effect or cannot
23 provide the parties with effective relief, (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503),
24 the limited “change of circumstances” that SB 118 represents is simply not enough to justify sustaining
25 Respondents’ demurrer on mootness grounds here.

26 To be sure, *some* Title 1 firearms are now “assault weapons” under state law, likely mooting

27
28 ⁵ Transfers of “assault weapons” to certain law enforcement and permittees is still allowed under
the regulatory scheme. (See Penal Code, §§ 30650, 30675.)

1 Petitioners' claims as regards those firearms.⁶ But as Respondents seemingly admit, before the adoption
2 of SB 118, an actual controversy regarding the DES and undefined firearm subtypes, including Title 1
3 firearms, *did* exist. (See Dem., *Id.*, p. 16 [arguing that a moot case is one "in which *an actual*
4 *controversy did exist* but, by the passage of time or a change in the circumstances, ceased to exist"],
5 citing *Wilson & Wilson, supra*, 191 Cal.App.4th at p. 1573, italics added.) So, as to any undefined
6 firearm subtype not reclassified as an "assault weapon" by SB 118, Petitioners' claims are not mooted
7 by the passage of the law. This includes certain Title 1 series firearms.

8 Nonetheless, Respondents try to expand the effect of SB 118 on this action, claiming that after
9 the passage of SB 118, "it is no longer the case that Petitioners' claims regarding the Title 1 are
10 premised on the allegation that it is lawful for the public to purchase the Title 1." (Dem., p. 16.) This is
11 patently false. In fact, Petitioners allege that Franklin Armory manufactures a "*series*" of firearms with
12 the model name "Title 1." (FAC ¶ 2.) And Petitioners allege, even after amendment, that "Title 1
13 firearms, as designed and sold by [Franklin Armory], *are lawful to possess, sell, transfer, purchase loan,*
14 *or otherwise be distributed in California . . .*" (FAC ¶ 3, italics added.) Respondents seek to capitalize
15 on Petitioners' allegation that the expanded definition restricted the sale, transfer, and possession of
16 *some* Title 1 firearms that fall within the recently expanded definition of "assault weapon" to claim that
17 *all other* Title 1 firearms within the "*series*" are also unlawful, contrary to the express allegations of the
18 First Amended Complaint.

19 Further, Petitioners' claims for relief are not constrained to the DES's limitations as they apply to
20 the transfer of just Title 1 firearms after the passage of SB 118. To the contrary, as Petitioners expressly
21 make clear in the operative complaint, they bring this action to enjoin the enforcement of rules that serve
22 as "administrative and/or technological barriers that prevent the sale of lawful firearms, *including but*
23 *not limited to* the [Franklin Armory] Title 1." (FAC ¶ 121, italics added.) And they seek to enjoin
24 Respondents "from enforcing the . . . Assault Weapons Act in a manner that prohibits those who, but for

25
26 ⁶ This narrow concession is limited to future attempts to transfer Title 1 firearms classified as
27 "assault weapons" under SB 118 as long as the law remains in effect and is not declared invalid. It does
28 not relate to those transfers that would have lawfully been completed before September 1, 2020, but for
Respondents unlawful conduct. Nor does it relate to any future attempt to transfer Title 1 firearms if
Petitioners are successful in their now-stayed claims for declaratory and injunctive relief. (FAC ¶¶ 173-
174, 181-182, 191, 201.)

1 [Respondents'] technological barriers . . . could have lawfully acquired and registered their [Franklin
2 Armory] Title 1 style firearm in accordance with" the new legislation. (FAC ¶ 122.) That is, even as
3 regards those Title 1 firearms that *were* recently reclassified as "assault weapons," the matter is still not
4 moot. For Petitioners claim that, *because of Respondents' unlawful conduct*, Respondents have a
5 continuing duty to fix the DES and "assault weapons" registration processes to allow those transfers that
6 were initiated before August 6, 2020, to be completed lawfully.

7 In short, the passage of SB 118 did not strip this lawsuit of all its usefulness. The Court can still
8 grant effective relief, so the matter is not moot. Respondents' demurrer should be overruled.

9 **III. PETITIONERS HAVE STANDING TO PURSUE RELIEF**

10 Standing in California courts is less rigid than in the federal forum. Unlike federal Article III
11 standing, standing in California is not a jurisdictional prerequisite. Indeed, "our state Constitution has no
12 case or controversy requirement imposing an independent jurisdictional limitation on our standing
13 doctrine." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248 (hereafter
14 *Weatherford*.) California also departs from the strict separation of powers considerations that rigid
15 application of standing doctrine in federal courts exists to serve. (See *Spokeo, Inc. v. Robins* (2016) 136
16 S.Ct. 1540 1547 [explaining that "standing" in the federal forum serves to prevent usurpation of power
17 from the elected branches of government]; see also *People v. Bunn* (2002) 27 Cal.4th 1 [37 P.3d 380,
18 388] [In California, "it is well understood that the branches share common boundaries and no sharp line
19 between their operations exist."].)

20 Despite this more prudentially oriented standard, familiar notions of standing requirements do
21 apply. "To have standing, a party must be beneficially interested in the controversy; that is, he or she
22 must have 'some special interest to be served or some particular right to be preserved or protected over
23 and above the interest held in common with the public at large.' [Citation.] The party must be able to
24 demonstrate that he or she has some such beneficial interest that is concrete and actual, and not
25 conjectural or hypothetical.' [Citation.]" (*City of Palm Springs v. Luna Crest Inc.* (2016) 245
26 Cal.App.4th 879, 883, quoting *Cty. of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798,
27 814, italics omitted.) Where a party pleads a non-hypothetical injury traced to a defendant's conduct,
28 "beneficial interest" writ standing is satisfied. (See *Teal v. Super. Ct. (People)* (2014) 60 Cal.4th 595,

1 599.) Additionally, where a party can show “injury as to himself,” standing for injunctive relief is also
2 established. (See *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748.)

3 For purposes of defeating Respondents’ demurrer, Petitioners have surely met the minimal
4 pleading requirements necessary to establish standing for both their petition for writ of mandate and
5 their request for injunctive relief. Indeed, whether Petitioners are trying to satisfy the nuanced standing
6 requirements for writ relief or the more straightforward requirements of injunctive relief, Petitioners
7 allege clear injuries wrought by Respondents’ actions. That satisfies standing under any standard.

8 **A. Petitioners Allege Sufficient Facts to Establish Standing for a Writ of Mandate**

9 For purposes of seeking writ relief, a party must be “beneficially interested” in the subject of the
10 action to prove standing. (Code Civ. Proc, § 1086.) That is, they must have “some special interest to be
11 served or some particular right to be preserved or protected over and above the interest held in common
12 with the public at large.” (*Assoc. Builders & Contractors, Inc. v. S.F. Airports Commn.* (1999) 21
13 Cal.4th 352, 361-362, quoting *Carsten v. Psych. Examining Commn.* (1980) 27 Cal.3d 793, 796.) Courts
14 do not, however, hold litigants to strict compliance with the requirement of “beneficial right” standing
15 where “the question is one of public right and the object of the mandamus is to procure the enforcement
16 of a public duty.” (*Weatherford, supra*, 2 Cal.5th at pp. 1247-1248, internal quotation omitted.) “This
17 exception . . . protects citizens’ opportunity to ‘ensure that no governmental body impairs or defeats the
18 purpose of legislation establishing a public right.’” (*Ibid.*, quoting *Green v. Obledo* (1981) 29 Cal.3d
19 126, 144 (hereafter *Green*).)

20 As explained below, for purposes of defeating Respondents’ demurrer, Petitioners’ First
21 Amended Complaint alleges enough facts to establish both “beneficial right” standing and “public
22 interest” standing. (See *Cty. of Santa Clara v. Super. Ct. (Naymark)* 171 Cal.App.4th 119, 126 [“[I]f the
23 pleadings contain ‘sufficient particularity and precision to acquaint the defendants with then nature,
24 source and extent of [the] cause of action’ the general demurrer should be overruled. [Citation
25 omitted.]”].) The Court should overrule Respondents’ demurrer on this ground.

26 **1. Petitioners Have Standing Because They Sufficiently Allege a
27 Beneficial Right in the Subject of the Petition**

28 Respondents allege that Petitioners do not have standing because Petitioners failed to allege a

1 beneficial right. (Dem., p. 6.) To support their claim, Respondents falsely claim that Petitioners “do not
2 allege that Franklin Armory manufactures . . . any such firearm.” (*Ibid.*) To the contrary, Petitioners
3 expressly allege that Franklin Armory manufactures such firearms. (FAC ¶ 2 [“FAI manufactures a
4 *series* of firearms which are neither ‘rifles,’ nor ‘pistols,’ nor ‘shotguns’ under California law and which
5 are designated with the model name ‘Title 1’ by FAI.”], italics added; *id.* at ¶ 3 [“The FAI Title 1
6 firearms, as designed and sold by FAI, *are lawful* to possess, sell, transfer, purchase loan, or otherwise
7 be distributed in California . . .”], italics added.)

8 Respondents also falsely claim that Franklin Armory does not allege that it manufactures any
9 firearm, *other than the Title 1*, that is an “undefined-type” firearm.” (Dem., p.17.) But Respondents cite
10 no authority that Respondents must list *more than one*, let alone every firearm type or subtype, that falls
11 within their prohibition to have standing. More importantly, Respondents cite no authority that
12 Petitioners must do so to meet the minimal pleadings requirement applicable at this stage. (See *Cty. of*
13 *Santa Clara, supra*, 171 Cal.App.4th at p. 126.) Even so, Franklin Armory alleged *both* that it
14 manufactures a “series” of firearms under the Title 1 model name *and* that said firearms “*are lawful to*
15 *possess, sell, transfer, purchase, loan, or otherwise be distributed* within California . . .” (FAC ¶¶ 2-3.)

16 Respondents continue their false claims by stating that Petitioners “do not allege that any
17 [CRPA] member has attempted to purchase, any such firearm.” (Dem., p. 17.) Again, Petitioners
18 expressly allege that CRPA members not only wish to purchase, but took affirmative steps to reserve,
19 undefined firearm subtypes, including Title 1 firearms. (FAC ¶ 6 [“CRPA represents the interests of its
20 many citizens and taxpayer members and *members of CRPA* who reside in California and who wish to
21 sell, *purchase*, acquire, transfer and possess lawful firearms, including the Title 1, *but are prohibited*
22 *from doing so* by the technological limitations implemented by [Respondents.]”], italics added; *id.* ¶ 76
23 [“FAI has been unable to transfer their Title 1 firearms *reserved* by licensed California firearm dealers
24 and California residents, *who are members of CRPA*, and who seek to lawfully sell, transfer, purchase,
25 acquire and/or possess the FAI Title 1 Firearms.”], italics added.) They need allege no more under the
26 liberal pleading standards of this Court to demonstrate their standing at this stage.⁷

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⁷ Respondents further claim that CRPA cannot establish standing because the organization failed to verify the First Amended Complaint. (Demurrer, p. 17.) To the extent that all parties to a

If Respondents are claiming that CRPA must allege additional affirmative steps toward the purchase of the subject firearms, like submitting an improper application for the transfer of an undefined firearm subtype through the DES, they are simply wrong. Indeed, “[t]he law does not require useless acts from litigants as prerequisites to seeking relief from the courts.” (*Van Gammeren v. City of Fresno* (1942) 51 Cal.App.2d 235, 240; see also *Doster v. Cty. of San Diego* (1988) 203 Cal.App.3d 257, 262 [“The law does not require a party to participate in futile acts.”].) Here, “[b]ecause dealers cannot accurately submit the required information through the DES for ‘long guns’ that are undefined ‘firearm’ subtypes, they are prohibited from processing and accepting applications from purchasers of said firearms.” (FAC 59, citing Penal Code, § 28215, subd. (b).) “The background check *begins* with the *completion and submission* of an application form that the gun dealer electronically *submits* to the California DOJ.” (*Silvester v. Harris* (9th Cir. 2016) 843 F. 3d 816, 825, *italics added*.) Thus, the very first step in “attempting to purchase” a firearm is to make an application with the dealer, which is futile given that “under California Code of Regulations, title 11, § 4210, subdivision (b)(2)(6), firearm dealers are prohibited from entering inaccurate information within the [DES] system.” (See FAC ¶¶ 52-58.) Any attempt to complete an application would thus be futile, an idle gesture, or violate section 28215. None of these are required of CRPA’s members to establish standing.

2. Alternatively, Petitioners Have Public Interest Standing Because this Case Deals with Important Questions of Public Rights

19 Independent of their standing as a beneficially interested party, Respondents also have standing
20 because this case deals with an important question of a public right. Where, as here, the question is one
21 of public right and the object of the mandamus is to procure the enforcement of a public duty, the
22 Petitioner need not show that he has any legal or special interest in the result, since it is enough that the
23 Petitioner is interested as a citizen in having the laws executed and the duty in question enforced. (*Save*
24 *the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, citing *Bd. of Soc. Welfare*
25 *v. County of L.A.* (1945) 27 Cal.2d 98, 100-101.) “The exception promotes the policy of guaranteeing
26 citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of

28 petition for writ of mandate must individually verify the petition, the error was an innocent and
unprejudicial oversight that Petitioners have filed a motion to correct. (See Pls.' Mot. Leave to File

1 legislation establishing a public right. (*Green, supra*, 29 Cal.3d 126, 144.)

2 First, the public has an expressly protected right to purchase firearms that are not otherwise
3 illegal. Through its failure to design and maintain the DES in a way that would allow for the lawful
4 submission of applications for the transfer of undefined firearm subtypes through the DES, Respondents
5 impaired Petitioners and all members of the public from exercising this right, effectively banning Title 1
6 firearms and any other undefined firearm subtype. (FAC ¶ 94.) This was done without legal authority
7 and without public notice. (FAC ¶¶ 42, 84). When the government acts, as it has here, in flagrant
8 disregard of its constitutional duties and limitations, there is no doubt that petitioners have public
9 interest standing. (*People for Ethical Operation of Prosecutors v. Spitzer* (2020) 53 Cal.App.5th 391,
10 410 (hereafter *People for Ethical Operation*.)

11 For instance, in *People for Ethical Operation*, plaintiffs were residents of Orange County who
12 sought injunctive relief to prohibit the operation of an alleged unlawful confidential informant program.
13 (*People for Ethical Operation, supra*, 53 Cal.App.5th at p. 396.) The court concluded that plaintiffs had
14 standing to pursue a writ of mandate because the operative complaint described a surveillance program
15 in flagrant disregard of the government's constitutional duties and limitations. (*Id.* at p. 410-411.) The
16 rights the program allegedly violated—the constitutional rights to due process and the assistance of
17 counsel—“are public rights that every citizen has an interest in upholding.” (*Id.* at p. 410.) Here, through
18 their unlawful inaction, Respondents denied both Petitioners and the broader public their rights under
19 the Due Process Clause and the Second Amendment, as well as rights to acquire lawful property. (FAC
20 ¶ 107.) These are fundamental, constitutional rights that every citizen has an interest in and the
21 government is constrained to uphold. The existence of “public interest” standing is thus clear.

22 What's more, Petitioners also allege that Respondents violated the public's statutory rights under
23 the APA by ignoring the essential rulemaking procedures the law sets forth. (FAC ¶ 90.) It is undeniable
24 that the APA protects a most-important public right, for it was “designed to provide the public with a
25 meaningful opportunity to participate in the adoption of state regulations . . .” (Office of Administrative
26 Law, Answers to Frequently Asked Questions (2021) <<https://oal.ca.gov/faq/#What%20is%20the%20Administrative%20Procedure%20Act>> (as of January 11, 2021).) Indeed, it was enacted to secure the

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2d Am. Compl.) They repeat that request for leave to amend below. (See Part V, *infra*.)

1 public benefits of openness, accessibility, and accountability in the formulation of rules that implement
2 legislative enactments. (*Tidewater Marine W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 569.) In short,
3 the APA safeguards our nation’s democratic values and protects “against bureaucratic tyranny.” (*Ibid.*)
4 Questions of compliance with the APA thus unquestionably implicate important public rights conferring
5 public interest standing on Petitioners here.

6 **B. Petitioners Allege Sufficient Facts Showing an Actual or Impending Injury to
7 Establish Standing for Injunctive Relief**

8 Respondents allege that Petitioners do not have standing to sue for injunctive relief because they
9 do not allege any facts showing an actual or impending injury. (Dem., p. 6, citing *Schmier v. Supreme*
10 *Ct.* (2000) 78 Cal.App.4th 703, 707.) To support their claim, Respondents once again make the three bald
11 assertions that Petitioners fail to allege facts showing: (1) that Franklin Armory or any CRPA member
12 has suffered or will suffer an injury; (2) that Franklin Armory manufactures an undefined firearm
13 subtype (other than the Title 1); and (3) that any CRPA member tried to purchase an undefined firearm
14 subtype but was unable to do so because of the DES. (Dem., pp. 8-9, 18.) As explained in section III.A
15 above, Respondents’ claims are incorrect.

16 Again, Petitioner alleges facts demonstrating that both Franklin Armory and members of CRPA
17 have suffered or will suffer an injury due to the alleged limitations of the DES, including allegations that
18 Franklin Armory manufactures lawful Title 1 firearms and that CRPA members wish to purchase said
19 firearms, have reserved said firearms, have made deposits for those firearms, and have been denied said
20 firearms due to Respondents’ conduct. Denial of those firearms has caused said members to be denied
21 their right to acquire lawful firearms and caused Franklin Armory about \$33,000,000 in damages due to
22 lost sales. (See FAC ¶¶ 2-3, 6, 43, 76, 106, 131, 139, 148, 151, 160, 162, 164, 173, 181.) Petitioners are
23 not obligated to allege that Franklin Armory manufactures any “undefined-type” firearms (other than the
24 Title 1). Nevertheless, Petitioners’ allegations that Franklin Armory manufactures a series of firearms
25 that are prohibited by Respondents, among others, are enough to demonstrate injury. (See *ibid.*)

26 Respondents’ claim otherwise is baseless. Petitioners have properly alleged actual or impending
27 injury as required to establish standing for injunctive relief.

28 **IV. PETITIONERS’ CLAIMS ARE RIPE FOR ADJUDICATION**

A controversy is “ripe” when it is “definite and concrete, touching on the legal relations of

1 parties having adverse legal interests” and presents “a real and substantial controversy admitting of
2 specific relief through a decree of a conclusive character, as distinguished from an opinion advising
3 what the law would be upon hypothetical facts.” (*Pac. Legal Found. v. Cal. Coastal Commn.* (1982) 33
4 Cal.3d 158, 170 (hereafter *Pac. Legal*.) Courts apply a two-prong test for ripeness that considers: (1)
5 “the fitness of the issues for judicial decision,” and (2) “the hardship to the parties of withholding court
6 consideration.” (*Ibid.*, internal quotation marks and citation omitted; accord *Wilson & Wilson, supra*,
7 191 Cal.App.4th at p.1582.) It is clear from the complaint, in the context of statutory law, that both
8 ripeness inquiries weigh in Petitioners’ favor.

9 Respondents nevertheless demur on the grounds that Petitioners’ claims are not ripe, arguing that
10 “Petitioners have failed to allege any actual controversy regarding the DES.” (Dem., p. 19.) And they
11 repeat their mantra that Petitioners’ “do not allege the existence of any specific undefined-type firearm
12 (other than the Title 1), that Franklin Armory manufactures any such firearm (other than the Title 1), or
13 that any [CRPA] member attempted to purchase such a firearm but was unable to do so because of the
14 DES.” (*Ibid.*) As explained repeatedly above, none of Respondents’ claims are correct.

15 First, Petitioners’ claims are fit for judicial decision and focused on Respondents’ refusal to
16 comply with their mandatory duties. Respondents rely on their baseless argument that *all* Title 1
17 firearms are “assault weapons,” and therefore prohibited. But, as Petitioners allege in the operative
18 complaint, this is not the case. (FAC ¶¶ 2-3.) Petitioners are currently and actively being barred from:
19 (1) acquiring or transferring Title 1 firearms that are not “assault weapons” under the newly amended
20 law because the Respondents have denied and will continue to deny the sale of lawful firearms,
21 *including the Title 1*, until mandated to do so, and (2) completing the transfer of Title 1 firearms now
22 classified as “assault weapons” under SB 118 that would have been lawfully transferred before
23 September 1, 2020, but for Respondents’ unlawful conduct. (FAC ¶¶ 75, 88, 91, 94, 102, 194.)
24 Moreover, and not insignificantly, California has mandated that the longest delay on the delivery of a
25 firearm resulting from *incomplete or inaccurate information* on DROS be 30 days from the submission
26 of the information. (See Pen. Code, § 28220.) Respondents should not be permitted to sidestep this
27 mandate by preventing the submission of the information altogether. Thus, this is not a matter of
28 speculation, but obligation and duty as the gatekeepers to a fundamental right.

Second, there is “an imminent and significant hardship inherent in further delay” of judicial review. (*Pac. Legal, supra*, 33 Cal.3d at p. 170.) For Petitioners and their customers and members are being denied their rights to acquire lawful property due to Respondents’ unclean hands and will continue to be denied said rights unless and until Respondents are ordered otherwise. And as regards those who lawfully attempted to purchase a Title 1 firearm that is now deemed an “assault weapon” before the effective date of SB 118, but were unable to take possession of the firearm due to Respondents’ unlawful conduct, further delay will prevent the lawful registration of the same, as they must register said firearms by January 1, 2022, under section 30900, subdivision (c)(1).

9 For these reasons, Petitioners' claims are ripe for adjudication and the Court should overrule
10 Respondents' demurrer.

11 | V. REQUEST FOR LEAVE TO AMEND

12 To the extent that Respondents are successful in their demurrer, Petitioners expressly request
13 leave to amend. For the reasons described in Plaintiffs-Petitioners' Motion for Leave to File Second
14 Amended Complaint, the Court should exercise its broad discretion under Code of Civil Procedure
15 sections 473 and 576 to allow them to amend their petition in the furtherance of justice. "This statutory
16 provision giving the courts the power to permit amendments in furtherance of justice has received a very
17 liberal interpretation by the courts of this state." (*Klopstock v. Super. Ct.* (1941) 17 Cal.2d 13, 19; see
18 also *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939.) Indeed, a court must provide leave to
19 amend a complaint so long as "there is a reasonable possibility that the defect can be cured by
20 amendment." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Failure to allow such amendment is an
21 abuse of discretion. (*Ibid.*, see also *King v. Moritmer* (1948) 83 Cal.App.2d 153, 158 [“Unless it shows
22 on the face that it is incapable of amendment denial of leave to amend constitutes abuse of discretion.”].)

CONCLUSION

24 For these reasons, Respondents' Demurrer should be overruled in its entirety. But if the Court
25 sustains any part of it, Petitioners request leave to amend.

26 | Date: January 12, 2021

MICHEL & ASSOCIATES, P.C.

Anna Barvir
Attorneys for Petitioners-Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On January 12, 2021, I served the foregoing document(s) described as

**PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO RESPONDENTS' DEMURREER**

on the interested parties in this action by placing

[] the original

[X] a true and correct copy

thereof by the following means, addressed as follows:

Benjamin Barnouw
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Ben.Barnouw@doj.ca.gov
Attorney for Respondents-Defendant

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

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

Executed on January 12, 2021, at Long Beach, California.

Jam Palesii

Laura Palmerin

1 XAVIER BECERRA
2 Attorney General of California
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Attorney General Xavier Becerra

Exempt from filing fees pursuant to
Government Code section 6103

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

13 **FRANKLIN ARMORY, INC. AND**
14 **CALIFORNIA RIFLE & PISTOL**
15 **ASSOCIATION, INCORPORATED,**
16 Petitioners-Plaintiffs,
17 v.
18 **CALIFORNIA DEPARTMENT OF**
19 **JUSTICE, XAVIER BECERRA, IN HIS**
20 **OFFICIAL CAPACITY AS ATTORNEY GENERAL**
21 **FOR THE STATE OF CALIFORNIA, AND DOES**
22 **1-10,**
23 Respondents-Defendants.

Case No. 20STCP01747

REPLY BRIEF IN SUPPORT OF
DEMURRER BY DEFENDANTS-
RESPONDENTS CALIFORNIA
DEPARTMENT OF JUSTICE AND
XAVIER BECERRA TO FIRST
AMENDED COMPLAINT AND
PETITION

Date: January 26, 2021
Time: 1:30 p.m.
Dept: 85
Judge: Hon. James C. Chalfant
Trial Date: Not set
Action Filed: May 27, 2020

Reservation made with Department 85

REPLY BRIEF

Defendants and respondents State of California, acting by and through the California Department of Justice, (DOJ) and Attorney General Xavier Becerra (AG Becerra) submit this Reply Brief in support of their Demurrer to the First, Second and Eighth causes of action set forth in the First Amended Complaint and Petition (First Amended Complaint) filed by plaintiffs and petitioners, Franklin Armory, Inc. (Franklin Armory) and California Rifle & Pistol Association (the Association).

1. INTRODUCTION

Petitioners' petition for writ of mandate and related claims were premised on allegations they were unable to engage in transactions involving Franklin Armory's "Title 1" firearm because of a "technological barrier" in the electronic system the DOJ utilizes to process applications for firearms, which is known as the Dealer Record of Sale Entry System (DES). However, after Petitioners filed this action, the Title 1 became an assault weapon under amendments to the Roberti-Roos Assault Weapons Control Act of 1989 (Act), significantly restricting lawful transactions involving the firearm. In their First Amended Complaint, which was filed after the Title 1 was declared an assault weapon, Petitioners do not allege that they are unable to engage in lawful transactions involving the Title 1. Therefore, Petitioners' claims for a writ of mandate and related relief regarding the Title 1 are moot.

In their Opposition, Petitioners do not identify any lawful transfers of the Title 1 that they are unable to engage in due to the alleged technological barrier in the DES or any other cause. This is fatal to their claims with respect to the Title 1.

Petitioners contend in their Opposition that “Title 1,” as that term is used in the First Amended Complaint, includes two models, a “centerfire” version that is now an assault weapon and a “rimfire” version that is not an assault weapon. This is simply not true. In fact, the “Title 1” referenced in the First Amended Complaint is limited to the “centerfire” model that is now an assault weapon under the Act. This is clear because Petitioners allege that “the FAI Title 1” is now an assault weapon: “the passage of Senate Bill 118, which passed and became law on August 6, 2020 - immediately designating the FAI Title I an ‘assault weapon’ under the Roberti-

1 Roos Assault Weapon Act- thereby immediately prohibiting the transfer of the FAI Title 1 to their
2 customers.”¹ (First Amended Complaint at ¶105.) Petitioners disingenuously rely on their
3 allegation that “[t]he FAI Title 1 firearms, as designed and sold by FAI, are lawful to possess,
4 sell, transfer, purchase, loan, or otherwise be distributed within California through licensed
5 California firearm dealers to persons who are not otherwise prohibited from possessing firearms.”
6 (First Amended Complaint at ¶3.) This allegation is a remnant from the original Complaint and it
7 is contradicted by Petitioners’ acknowledgment that the “the FAI Title 1” is now an assault
8 weapon; an assault weapon is not available to all “persons who are not otherwise prohibited from
9 possessing firearms.”

10 In the First Amended Complaint, Petitioners allege that the Title 1 is one in a category of
11 “undefined subtype” firearms. In their Opposition, they contend that the Association has standing
12 to pursue a writ of mandate and related relief because its members are unable to engage in
13 transactions involving other “undefined subtype” firearms due to the alleged “technological
14 barrier” in the DES. However, the First Amended Complaint does not identify a single
15 “undefined subtype” firearm, except for the Title 1, nor does it allege that any Association
16 member attempted to purchase an undefined-type firearm but was unable to do so. Petitioners
17 assert that there are allegations that Association members “took affirmative steps to reserve”
18 undefined-type firearms, but those allegations refer to the Title 1. Petitioners also argue that it
19 would be futile for Association members to attempt to purchase an undefined-type firearm.
20 However, they fail to respond to Respondents’ argument, presented in the Demurrer, that without
21 knowing the circumstances of a hypothetical future transaction, including what specific firearm is
22 involved, it is speculation to assume how a gun dealer might interpret the category of the firearm,
23 what efforts the gun dealer might make to request an alternative process from the DOJ, and what
24 the DOJ’s position might be. In sum, the Association lacks standing to pursue claims regarding
25 “undefined subtype” firearms other than the Title 1, and its claims regarding the Title 1 are moot.

26 Petitioners concede that neither the Association nor any Association member verified the
27 First Amended Complaint, but they offer no authority that the Association can nonetheless

28 ¹ “FAI” refers to Franklin Armory, Inc. in the First Amended Complaint.

1 proceed with the petition for writ of mandate.

2 Petitioners argue that they should be granted “public interest standing,” but such standing is
3 not justified by the allegations here, which do not identify a single specific “undefined subtype”
4 firearm that any Association member is unable to purchase because of the alleged technological
5 barrier in the DES, and do not show that any Association member has actually attempted to
6 purchase such a firearm. Again, Petitioners’ claims regarding the Title 1 are moot.

7 Finally, Petitioners claim that, as part of the current proceedings, they seek injunctive relief
8 requiring the DOJ to allow transfers of the “centerfire” Title 1 to individuals who placed deposits
9 on the firearm before it became an assault weapon under the Act. It has been Respondents’
10 understanding that Petitioners were not seeking such relief at this time. Furthermore, even
11 assuming such a claim would be considered by this Court at this time, such injunctive relief is not
12 permitted because it would directly contravene the Act. The Act provides that the centerfire Title
13 1 is an assault weapon, and the only exemption set forth in the Act that would allow a person not
14 otherwise entitled to obtain an assault weapon to possess one now applies to “a person who has
15 possessed the assault weapon prior to September 1, 2020[.]” (Pen. Code, §30685.) Thus, allowing
16 transfers of the Title 1 to individuals simply because they placed a deposit for the firearm would
17 violate the Act.

18 In sum, given that the Title 1 at issue in the First Amended Complaint is now an assault
19 weapon, Petitioners’ claims concerning the Title 1 are moot. In addition, Petitioners lack standing
20 to pursue claims concerning other, unidentified firearms they do not allege they have attempted to
21 purchase. Finally, Respondents disagree that Petitioners are currently pursuing injunctive relief to
22 allow transfers of the “centerfire” Title 1, and such injunctive relief would be improper because
23 the Act prohibits such transfers. Therefore, Respondents request the Court grant their Demurrer.

24 **II. ARGUMENT**

25 **A. Petitioners Do Not Allege that Any Transfers of the Title 1 Need to be
26 Processed Through the DES**

27 Petitioners do not identify any transfers of the Title 1² that need to be processed through the

28 ² For purposes of this brief, “Title 1” without reference to “centerfire” or “rimfire” refers
to the centerfire Title 1.

1 DES now that the Title 1 is an assault weapon under the Act. Petitioners point out in a footnote
2 that “[t]ransfers of ‘assault weapons’ to certain law enforcement and permittees is still allowed
3 under the regulatory scheme. (See Penal Code, §§ 30650, 30675.)” (Opposition at p. 11, fn. 5.)
4 However, they do not contend that such transfers need to be processed through the DES. Notably,
5 pursuant to Penal Code section 28400, the requirement of Penal Code section 28100 that a dealer
6 must submit information regarding any firearm transfer to the DOJ does not apply to transfers to
7 law enforcement personnel who are allowed to obtain assault weapons.

8 As a result, Petitioners’ petition for writ of mandate and related claims regarding the Title 1
9 are moot.

10 **B. The First Amended Complaint Does Not Concern a “Rimfire” Title 1**

11 Petitioners contend that their First Amended Complaint concerned a “centerfire” version of
12 the Title 1, which is now an assault weapon, and also a “rimfire” version of the Title 1 that is not
13 an assault weapon.³ This is a mischaracterization of the First Amended Complaint. In fact, in
14 paragraph 105 of the First Amended Complaint, Petitioners flatly allege that “the FAI Title 1” is
15 now an assault weapon under the Act: “Senate Bill 118, which passed and became law on August
16 6, 2020 - immediately designating the FAI Title 1 an ‘assault weapon’ under the Roberti-Roos
17 Assault Weapon Act - thereby immediately prohibiting the transfer of the FAI Title 1 to their
18 customers.” There is no mention in this paragraph or anywhere else in the First Amended
19 Complaint of any Title 1 “rimfire” model.

20 Petitioners also argue that the amendments to the Act did not “restrict the sale of centerfire
21 Title 1 firearms configured without any of the enumerated features necessary for a firearm to be
22 considered an ‘assault weapon’ under state law.” (Opposition at p. 11, lines 20-21.) However,
23 nowhere in the First Amended Complaint do Petitioners allege that there is a Title 1 centerfire
24 model that lacks the features necessary for the firearm to fit within the definition of an assault
25 weapon. To the contrary, they allege very simply that “the FAI Title 1” is an assault weapon.
26 (First Amended Complaint at ¶105.)

27

³ Under the recent amendments to the Act, “assault weapon” now includes any
28 “semiautomatic **centerfire** firearm that is not a rifle, pistol, or shotgun” and has specified
features. (Pen. Code, §30515, subds. (a)(9),(10),(11) [bold emphasis added].)

1 Petitioners rely on an allegation that “[t]he FAI Title 1 firearms, as designed and sold by
2 FAI, are lawful to possess, sell, transfer, purchase, loan, or otherwise be distributed within
3 California through licensed California firearm dealers to persons who are not otherwise
4 prohibited from possessing firearms.” (First Amended Complaint at ¶3.) This allegation is a
5 remnant from the original Complaint and it is contradicted by Petitioners’ acknowledgment that
6 the “the FAI Title 1” is now an assault weapon. As an assault weapon, the firearm is not available
7 to all “persons who are not otherwise prohibited from possessing firearms.”

8 **C. The Association Lacks Standing**

9 Neither the Association nor any member has verified the First Amended Complaint.
10 Pursuant to Code of Civil Procedure section 1086, a writ of mandate can only be issued based on
11 a “verified petition of the party beneficially interested.” The Association offers no argument as to
12 how it can proceed without satisfying this requirement. If Petitioners seek to establish a beneficial
13 interest based on the claim of a member of the Association, they must provide a verification by
14 the member or the Association.

15 Furthermore, Petitioners fail to allege facts showing the Association or any of its members
16 could have standing to pursue a writ of mandate, injunctive relief or declaratory relief. “Standing
17 is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish
18 standing lies with the plaintiff.” (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th
19 802, 810 [citations omitted].)

20 Other than the Title 1, which is now an assault weapon, the First Amended Complaint does
21 not identify a single other “undefined subtype” firearm that any Association member is
22 supposedly unable to purchase because of the alleged technological barrier in the DES.
23 Furthermore, there are no allegations that any Association member has actually attempted to
24 purchase an “undefined type” firearm; instead, the First Amended Complaint carefully alleges
25 that Association members “wish” to engage in transactions of such firearms but are “prohibited”
26 from doing so.⁴ (First Amended Complaint at ¶6.) Thus, the First Amended Complaint alleges a

27 ⁴ Petitioners argue in their Opposition that they “expressly allege that CRPA members not
28 only wish to purchase, but took affirmative steps to reserve, undefined firearm subtypes,

1 harm that is only “conjectural” and “hypothetical,” and thus it fails to establish a beneficial
2 interest that can support standing to seek a writ of mandate. (*Associated Builders and*
3 *Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362; *Mendoza, supra*, 6
4 Cal.App.5th at p. 810.) It also fails to allege facts showing that any Association member has
5 actually suffered an injury or is about to, as is required for an injunction. (*Schmier v. Supreme*
6 *Court* (2000) 78 Cal.App.4th 703, 707.) Finally, it does not allege facts showing there is a ripe
7 controversy to support declaratory relief. “[C]ourts will decline to adjudicate a dispute if the
8 abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues, if the court is
9 asked to speculate on the resolution of hypothetical situations, or if the case presents a contrived
10 inquiry.” (*Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 [internal
11 quotation marks and citations omitted].)

12 Petitioners argue it would be futile for Association members to actually try to purchase an
13 “undefined subtype” firearm. However, they fail to address the argument, set forth in the
14 Demurrer, that without knowing the circumstances of a hypothetical future transaction, including
15 what specific firearm is involved, it is speculation to assume how a gun dealer might interpret the
16 category of the firearm, what efforts the gun dealer might make to request an alternative process
17 from the DOJ, and what the DOJ’s position might be.

18 In sum, the Association has failed to meet its burden of pleading facts to establish standing
19 regarding “undefined subtype” firearms other than the Title 1.

20 **D. Petitioners’ Claim of Public Interest Standing Fails**

21 Petitioners argue that they have standing to pursue writ relief regarding the DES under an
22 exception to the traditional “beneficial interest” test where “the question is one of public right and
23 the object of the mandamus is to procure the enforcement of a public duty.” (*Weatherford v. City*
24 *of San Rafael* (2017) 2 Cal.5th 1241, 1248 [quoting *Save the Plastic Bag Coalition v. City of*
25 *Manhattan Beach* (2011) 52 Cal.4th 155, 166].) “This “public right/public duty” exception to the
26 requirement of beneficial interest for a writ of mandate ‘promotes the policy of guaranteeing

27 _____
28 including Title 1 firearms.” (Opposition at p. 15, lines 17-19.) However, the paragraphs they cite,
6 and 76, only refer to Association members placing a deposit on a Title 1.

1 citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of
2 legislation establishing a public right.’ [Citations] We refer to this variety of standing as ‘public
3 interest standing.’ [Citation]” (*Save the Plastic Bag Coalition, supra*, 52 Cal.4th at p. 166.)

4 “No party, individual or corporate, may proceed with a mandamus petition as a matter of
5 right under the public interest exception.” (*Save the Plastic Bag Coalition, supra*, 52 Cal.4th at p.
6 170, fn. 5.) This Court should not recognize public interest standing here. This case concerns a
7 very narrow category of firearm, the “undefined subtype” firearm, which is a firearm that does
8 not fit within the statutory definitions of “handgun”/“pistol,” “rifle,” or “shotgun.” The only
9 “undefined subtype” firearm that is actually identified in the First Amended Complaint is
10 Franklin Armory’s Title 1, which is now an assault weapon under the Act. The First Amended
11 Complaint offers only cursory allegations that unidentified Association members wish to
12 purchase other firearms in this category, but does not identify any such firearms or allege that any
13 Association member has actually attempted to purchase such a firearm. In sum, the allegations of
14 the First Amended Complaint do not demonstrate any issue that rises to the level of public
15 interest.

16 Finally, Petitioners argue that they should be granted public interest standing because they
17 allege a violation of the Administrative Procedure Act. This argument fails because Petitioners’
18 petition for writ of mandate does not seek any relief based on the Administrative Procedure Act.
19 To the contrary, in their petition for writ of mandate Petitioners seek to enforce Penal Code
20 sections 28155, 28205, 28215 and 28220. (First Amended Complaint at ¶128.) Furthermore,
21 Petitioners lack standing to pursue claims under the Administrative Procedure Act.

22 **E. Petitioners’ Claim for Injunctive Relief to Prohibit the Department of
23 Justice from Enforcing the Roberti-Roos Assault Weapons Act Is Not A
24 Part of the Current Proceedings and Seeks Improper Relief**

25 Petitioners contend that “they seek to enjoin Respondents ‘from enforcing the . . . Assault
26 Weapons Act in a manner that prohibits those who, but for [Respondents’] technological barriers .
27 . . could have lawfully acquired and registered their [Franklin Armory] Title 1 style firearm in
28 accordance with’ the new legislation.” (Opposition at p. 12, line 23 – p. 13 line 2 [brackets in
original].) However, it is Respondents’ understanding that Petitioners’ counsel had declined to

1 pursue this claim for injunctive relief at this time.

2 Furthermore, such an injunction would be prohibited by Code of Civil Procedure section
3 526, subdivisions (b)(4) and (b)(6). Subdivision (b)(4) prohibits injunctions that would “prevent
4 execution of a public statute by officers of the law for the public benefit.” Subdivision (a)(6)
5 prohibits injunctions “[t]o prevent the exercise of a public or private office, in a lawful manner,
6 by the person in possession.” These sections apply here because the injunction Petitioners seek
7 would require the DOJ to process transfers for an “assault weapon” in violation of the Act. The
8 Act provides that the centerfire Title 1 is an “assault weapon.” (Pen. Code, §30515, subds.
9 (a)(9),(10),(11); First Amended Complaint at ¶105.) Under the Act, only a very restricted set of
10 people, such as certain law enforcement officers, are permitted to obtain and possess assault
11 weapons. (Pen. Code, §§30600, 30605, 30625, 30630, 30650.) The only exemption set forth in
12 the Act that would allow a person who is not otherwise entitled to obtain an assault weapon to
13 possess a centerfire Title 1 firearm now applies to “a person who has possessed the assault
14 weapon prior to September 1, 2020[.]” (Pen. Code, §30685.) The injunction Petitioners seek
15 would require the DOJ to violate this express provision of the Act.

16 Petitioners state in their Opposition, “[t]o be clear, Petitioners do not ask this Court to order
17 the transfer of Title 1 firearms if such transfer would be unlawful. That is, this request for relief is
18 limited to those persons who made deposits before California enacted SB 118 and who were
19 prevented from effectuating said transfer due to Respondents’ unclean hands, as described in the
20 First Amended Complaint.” (Opposition at p. 9, fn. 3.) Petitioners fail to explain, however, how it
21 could be legal to transfer an assault weapon such as the centerfire Title 1 to an individual simply
22 because that individual made a deposit on the firearm. Again, unless the individual is generally
23 permitted to obtain an assault weapon (and thus would not need the benefit of the injunction
24 Petitioners seek), they could only be allowed to possess a centerfire Title 1 if they “possessed” the
25 firearm prior to September 1, 2020. (Pen. Code, §30685.)

26 ///

27 ///

28 ///

CONCLUSION

2 For the foregoing reasons, the California Department of Justice and Attorney General
3 Xavier Becerra request the Court grant this Demurrer and dismiss Petitioners' First, Second and
4 Eighth causes of action as moot and because Petitioners lack standing.

5 || Dated: January 19, 2021

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
BENJAMIN BARNOUW
Supervising Deputy Attorney General
ALEXIS DIAMOND
Deputy Attorney General

Ben Ra

BENJAMIN BARNOUW
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California Department of Justice and
Attorney General Xavier Becerra

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DECLARATION OF SERVICE BY ELECTRONIC MAIL

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

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On January 19, 2021, I served the attached **REPLY BRIEF IN SUPPORT OF DEMURRER BY DEFENDANTS-RESPONDENTS CALIFORNIA DEPARTMENT OF JUSTICE AND XAVIER BECERRA TO FIRST AMENDED COMPLAINT AND PETITION** by transmitting a true copy via electronic mail to the following addresses:

Anna M. Barvir
Jason A. Davis
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abarvir@michellawyers.com
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lpalmerin@michellawyers.com

Attorneys for Plaintiffs-Petitioners

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 19, 2021, at Burbank, California.

Erica Kelly
Declarant

Erica Kelly
Signature

7/25
FILED
Superior Court of California
County of Los Angeles
JAN 28 2021
Tentative decision on demurrer: Sustained
by: J. De Luna, Deputy
Sherri R. Carter, Executive Officer/Clerk of Court

Respondents California Department of Justice ("DOJ") and Xavier Becerra, in his capacity as Attorney General, demur to portions of the First Amended Complaint ("FAC") filed by Petitioners Franklin Armory, Inc., ("FAI") and the California Rifle & Pistol Association, Inc. ("Association").

The court has read and considered the moving papers, opposition,¹ and reply,² and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this action on May 27, 2020. The operative pleading is the FAC filed on August 19, 2020, alleging causes of action for: (1) declaratory relief; (2) traditional mandamus; (3) tortious interference with contractual relations; (4) tortious interference with prospective economic advantage; (5) negligent interference with a prospective economic advantage; (6) deprivation of liberty without procedural due process of law; (7) deprivation of substantive due process of law; and (8) violation of public policy. The verified FAC alleges in pertinent part as follows.

As of January 1, 2003, licensed firearm dealers in California are required to submit all background checks to DOJ electronically via the Dealer Record of Sale Entry System ("DES"). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

The DES can facilitate the transfer of certain types of firearms: "handguns" ("pistols" or "revolvers"), "rifles," and "shotguns." This information is entered into the DES during the application process by the user selecting the appropriate type/subtype of firearm within a predetermined drop-down list. Many firearms, however, do not qualify as handguns, pistols, revolvers, rifles, or shotguns, or even "frames" or "receivers" for said firearms. The DES drop-down list for firearm type/subtype has no provision for "other" firearms such as "undefined firearm subtypes."

Because dealers cannot accurately submit the required information through the DES for "long guns" that are undefined firearm subtypes, they are prohibited from processing and accepting applications from purchasers of said firearms. Respondents have designed the DES with this technological barrier that functions to prohibit the transfer through a licensed firearms dealer of all firearms that are long guns but not rifles, shotguns, or rifle/shotgun combinations.

¹ Petitioners failed to lodge a courtesy copy of their opposition brief in violation of the Presiding Judge's General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

² Respondents failed to lodge a courtesy copy of their reply brief in violation of the Presiding Judge's General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

Respondents have long known about the DES' deficiencies and have refused requests to correct it. Since 2012, FAI has communicated with Respondents about the design and features of its Title 1 firearms that do not fall under the existing DES categories and informed Respondent DOJ of the DES's defects as early as October 24, 2019.

DOJ has refused to modify the DES despite the fact that it has proven it can quickly make the requested change. It previously addressed a similar deficiency regarding the drop-down list for transferee's nation of origin—a deficiency FAI reported at the same time it raised the issue of undefined firearm subtypes—within weeks.

Respondents' motivation in delaying was to buy time to work with the Legislature to develop legislation designating FAI Title 1 style firearms as "assault weapons" and restricting their sale. The scheme proved successful because on August 6, 2020 the Legislature passed Senate Bill 118 ("SB 118"), which expanded the statutory definition of "assault weapon" to include any "semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one" of a list of enumerated characteristics, like a forward pistol grip or thumbhole stock. The effect of SB 118 was to restrict FAI's transfer of centerfire versions of FAI Title 1 firearms to customers despite existing orders that long predated SB 118. Even after the adoption of SB 118, not all FAI's Title 1 firearms have been reclassified as assault weapons.

The first cause of action seeks a judicial declaration about the legality of Respondents' conduct regarding the DES and undefined firearm subtypes and an injunction to prevent Respondents from enforcing administrative and/or technological barriers that prevent the sale of lawful firearms, including but not limited to FAI Title 1, and from enforcing the Roberti-Roos Assault Weapons Act in a manner that prohibits those who could have lawfully acquired and registered their FAI Title 1 style firearm but for Respondents' technological barriers.

The second cause of action is for a writ of mandate directing Respondents to design, maintain, and enforce updates to the DES such that it does not proscribe the lawful sale, transfer, and loan of a class of lawful firearms, including FAI's Title 1 firearms. It also asks the court to direct Respondents to design, implement, maintain, and enforce updates to their assault weapons registration process to permit the registration of FAI Title 1 style firearms by those whose orders were placed on or before August 6, 2020, or such time as deemed appropriate by the court.

The eighth cause of action is for declaratory and injunctive relief for Respondents' violation of the Administrative Procedure Act ("APA"). Petitioners seek a declaration that Respondents' de facto ban on the transfer of undefined firearm subtypes, including Title 1 firearms, constitutes an underground regulation in violation of the APA and an injunction preventing enforcement of the underground regulation.

B. Applicable Law

Demurrs are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); *Coyne v. Krempels*, (1950) 36 Cal.2d 257. The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP § 430.40; *Skrbina v. Fleming Companies*, (1996)

45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain ("uncertain" includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP §411.35 or (i) by §411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff's ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.31(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.31(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. *Id.* The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.31(a)(3).

C. Governing Law

Under the Penal Code, there are three basic types of firearms: (1) handguns, also referred to as pistols and revolvers; (b) rifles; and (c) shotguns.

A handgun generally has a barrel length less than 16 inches and can be concealed on a person, and is synonymous with the terms pistol, revolver, and firearm capable of being concealed upon the person. Penal Code §§ 16530(a), 16640(a).

A rifle is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in

a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. Penal Code §17090.

A shotgun is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. Penal Code §17190. The term “long gun” generally refers to rifles and shotguns. *See, e.g.*, Penal Code, §16865.

In California, individuals generally must purchase firearms through a licensed dealer. Penal Code §26500(a). Individuals must also have a licensed dealer process transfers of firearms, including private sales, gifts, and loans. Penal Code §§ 27545, 28050.

When an individual goes to a gun dealer to initiate a purchase or other transaction involving a firearm, the dealer is required to obtain information and create a record of the transaction. Penal Code §28100(a). This record is referred to as a Dealer Record of Sale (“DROS”). Various information about the firearm must be included on the DROS, including the make of firearm, manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, caliber, and type of firearm. Penal Code §28160(a). The DROS must also include information regarding the purchaser, including their name, date of birth, local and permanent addresses, place of birth, occupation, gender, physical description, all legal names and aliases ever used, and a “yes or no” answer whether they are in any of the categories of persons prohibited from purchasing a firearm. *Ibid.*

The dealer must transmit the DROS to DOJ and is required to wait at least ten days before completing the purchase and delivering the firearm to the purchaser, assuming the result of a background check has been received by then. Penal Code §§ 26815(a), (b), 27540(a).

The DROS must be submitted to DOJ electronically, except as DOJ otherwise permits. Penal Code §28205(c). DOJ shall prescribe the form of the register and the record of electronic transfer pursuant to Penal Code section 28105. Penal Code §28155. The DES is the method established by DOJ for the submission of purchaser information required by Penal Code section 28160(a). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

Any semi-automatic centerfire firearm that is not a rifle, pistol, or shotgun that has one or more specified characteristics is classified as an assault weapon. Penal Code §30515(a)(9)-(11). Individuals are restricted from possessing any firearm classified as an assault weapon unless they possessed the firearm prior to its classification as an assault weapon or are exempt as a member of law enforcement, military forces, or other specified entities. Penal Code §§ 30605, 30620, 30625, 30645.

D. Analysis

Respondents demur to the FAC’s first, second, and eighth causes of action on the grounds that (1) they are moot for FAI’s Title 1 firearms and (2) Petitioners lack standing to pursue their claims for other undefined-type firearms. Respondents have complied with the meet and confer requirements of CCP section 430.31(a). Barnouw Decl., ¶2.

1. Mootness

Respondents assert that Petitioners’ claims regarding sales and transfers of FAI’s Title 1

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129 / 2021

firearms are moot because SB 118 amended Penal Code section 30515 to include within the definition of assault weapon any semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun that has one or more specified characteristics, and this definition includes FAI's Title 1 firearm. Dem. at 15. Petitioners' claim is based on the allegation that the DES system is preventing them from selling or transferring FAI Title 1 firearms because they did not belong to any of the available categories in DES. Dem. at 16. After the passage of SB 118, these firearms are now classified as assault weapons and are illegal for the public to purchase. Therefore, Petitioners' claims are moot. Dem. at 16.

Petitioners do not dispute that FAI's centerfire Title 1 firearms are now restricted and concede that its claims as for those Title 1 firearms are moot now that they are classified as assault weapons. Opp. at 11-12. Petitioners assert that SB 118 did not restrict all Title 1 firearms, such as rimfire Title 1 firearms or those centerfire Title 1 firearms configured without any of the enumerated features necessary for a firearm to be considered an assault weapon under state law. Opp. at 11. The FAC alleges that FAI manufactures a "series" of firearms designated under the Title 1 model, including a rimfire version that is not affected by SB 188, which was limited to centerfire weapons. FAC ¶2. Opp. at 8. Petitioners argue that the FAC's claims are not moot because they can still sell or transfer these unaffected Title 1 firearms but for the problems with the DES. Opp. at 12.³

Petitioners' argument is unavailing. As Respondents correctly note (Reply at 5), the FAC does not allege that FAI manufactures a rimfire Title 1 firearm or a centerfire Title 1 firearm not meeting the definition of an assault weapon. Reply at 5. The FAC also does not support a position that FAI's Title 1 firearm includes such weapons. Indeed, the FAC expressly states that the FAI Title 1 firearm is an assault weapon. FAC ¶105. While the FAC also alleges that FAI manufactures a "series of firearms" designated by FAI as "Title 1" and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms (FAC ¶¶ 2-3), these allegations both contradict the more specific allegation in FAC paragraph 105 and make no mention of any specific FAI models of undefined firearms that would not qualify as an assault weapon. Dem. at 8; Reply at 5.

Petitioners also argue that their claims for relief are not limited to the DES problem for FAI Title 1 firearms as they seek to enjoin DOJ's enforcement of rules that serve as administrative and/or technological barriers that prevent the sale of lawful firearms. FAC ¶121 (seeking injunction "including but not limited to the FAI Title 1"). Petitioners further argue that DOJ has a continuing duty to fix the DES and the assault weapons registration process to allow the transfer of assault weapons initiated before the August 6, 2020 passage of SB 118. FAC ¶122. Opp. at 12.

This argument also is untenable. While the FAC seeks mandamus to compel DOJ to design and implement updates to the DES that would permit the transfer of FAI Title 1 firearms by those whose orders were placed on or before August 6, 2020 (FAC ¶129), Respondents correctly note that, while SB 118 allows individuals possessing a Title 1 prior to September 1, 2020 to keep the firearm on condition that it be registered, that limited right does not affect transfers of FAI Title 1 firearms. An order permitting completion of the transfer of an assault weapon to a buyer who

³ Petitioners also argue that DOJ deliberately delayed modifying the DES to stall for time while the Legislature developed and passed SB 118. FAC ¶102. Opp. at 8. This allegation of intentional misconduct mostly is relevant to the FAC's damages claims.

made a deposit before August 6, 2020 would violate SB 118.

In any event, the FAC does not allege that FAI has any Title 1 firearm transfers remaining to be processed through the DES. Reply at 4-5. To the extent that Petitioners are asserting that it has pending transfers to law enforcement personnel and permittees who would be allowed to possess assault weapons, such transfers are not required to be processed through the DES. Penal Code §§ 28400, 28100. Reply at 5. The FAC's three causes of action are moot.

2. Standing

a. Beneficial Interest

Respondents argue that Petitioners do not have standing to pursue mandamus because they fail to allege a beneficial right for undefined type firearms other than FAI's Title 1. Dem. at 17; Reply at 6.

Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff. Mendoza v. JPMorgan Chase Bank, N.A., ("Mendoza") (2016) 6 Cal.App.5th 802, 810. As a general rule, a party must be "beneficially interested" to seek a writ of mandate. Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist., (2015) 235 Cal.App.4th 957, 962 (citing CCP §1086). Likewise, to seek declaratory relief, a party must be an "interested person." CCP §1060. An "interested person" means the same thing as a "beneficially interested" person in mandamus cases. Asimow, et al., Administrative Law (2018), Ch. 14, §14:6. "Beneficially interested" has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. SJJC Aviation Services, LLC v. City of San Jose, ("SJJC") (2017) 12 Cal.App.5th 1043, 1053. The beneficial interest must be direct and substantial. Ibid. A petition has no beneficial interest if she will gain no direct benefit from the writ's issuance and suffer no direct detriment if it is denied. Ibid.

Respondents contend that Petitioners cannot demonstrate they have a beneficial interest because the FAC does not allege that FAI manufactures any undefined-type firearm other than the Title 1. Dem. at 16-17; Reply at 6. Nor is there any allegation that a specific undefined-type firearm exists, or that any member of the Association has attempted to purchase such a firearm but was unable to do so because of the DES. Id. Absent such allegations, mandamus and declaratory relief are not available. Id.

Petitioners assert that the FAC pleads sufficient facts to show they are beneficially interested in the matter because it alleges that FAI manufactures a "series of firearms" designated by FAI as "Title 1" and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms. FAC ¶¶ 2-3. Petitioners argue that there is no legal authority that they must plead specific models of undefined firearms manufactured by FAI that would not qualify as an assault weapon. Opp. at 15.

The short answer is that Petitioners must plead specific models to show standing. This is particularly true since the general allegations of FAC paragraphs 2 and 3 contradict paragraph 105. While Petitioners are correct that there is a minimal pleadings requirement for a demurrer (City of Santa Clara v. Superior Court, (2009) 171 Cal.App.4th 119, 126), standing cannot be supported by conjectural or hypothetical harm. Associated Builders and Contractors, Inc. v. San Francisco Airports Com., (1999) 21 Cal.4th 352, 362; Mendoza, supra, 6 Cal.App.5th at 810. Because the

FAC fails to sufficiently allege that FAI manufactures or attempted to sell legal firearms other than the Title 1 that it is unable to register through DES, they have not shown that they will gain any benefit or detriment from the issuance or denial of a writ of mandamus or declaratory relief.

Petitioners also note that they seek to enjoin the enforcement of rules that serve as administrative and/or technological barriers that prevent the sale of lawful firearms, including but not limited to the FAI Title 1 (FAC ¶121), and seek to compel DOJ to meet its duty to fix the DES and the assault weapons registration process to permit transfers initiated before August 6, 2020. FAC ¶122. The FAC alleges that Association's members not only wish to purchase, but took affirmative steps to reserve undefined firearm subtypes, including Title 1 firearms. FAC ¶¶ 6, 76. Opp. at 15.

As discussed *ante*, the completion of a sale of Title 1's initiated before August 6, 2020 would be unlawful under SB 118. Petitioners may have standing to seek damages for the non-completion of such sales, but they cannot rely on this fact for mandamus and declaratory relief standing to compel DOJ to take action. Nor does the FAC allege a specific context from which such transactions would be evaluated by gun dealers and DOJ. *See Reply at 17.*⁴

Other than the transfer of Title 1's which Petitioners acknowledge is moot, the FAC does not allege sufficient facts to demonstrate that Petitioners have a beneficial interest in the mandamus and declaratory relief claims to compel DOJ to fix the DES process.

b. Public Interest Standing

Petitioners argue that they also have public interest standing because the matter deals with an important question of a public right. Opp. at 16.

Where a plaintiff cannot satisfy the "over and above" test for private interest standing, California cases have still treated a plaintiff as beneficially interested for purposes of mandamus standing if the plaintiff satisfies the criteria for public interest standing. Asimow, et al., *Administrative Law* (2018), Ch. 14, §14:5. Public interest standing may be conferred "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty." *Save the Plastic Bag Coalition v. City of Manhattan Beach*, (2011) 52 Cal.4th 155, 166. This type of standing "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Green v. Oblledo*, (1981) 29 Cal.3d 126, 144. In determining whether public interest standing applies, the court considers (1) whether "the public duty is sharp and the public need weighty" (*SJJC, supra*, 12 Cal.App.5th at 1058), (2) whether the policy supporting public interest standing is outweighed by competing considerations of a more urgent nature (*Reynolds v. City of Calistoga*, (2014) 223 Cal.App.4th 865, 873), and (3) whether the claim of public interest standing is driven by personal objectives rather than broader public concerns (*SJJC, supra*, 12 Cal.App.5th at 1057).

Petitioners assert that the matter deals with the expressly protected right of the public to

⁴ Respondents note that CCP section 1086 requires that a mandamus claim be based on a verified petition and that FAI verified the FAC but Association did not. Therefore, Association does not have mandamus standing. Dem. at 17. Petitioners claim this oversight was innocent and have filed a motion to correct it. Opp. at 15, n. 7. The oversight could be a basis for leave to amend. *See Opp. at 20.*

purchase firearms that are not otherwise illegal. Opp. at 17. By designing and maintaining DES in a way that prevents the lawful submission of applications for the transfer of undefined firearm subtypes, Respondents impaired Petitioners and all members of the public from exercising this right without legal authority and without public notice. Opp. at 17. Petitioners also claim they have public interest standing based on their allegations that Respondents violated the APA because the DES process is an underground regulation. FAC ¶¶80-93. Opp. at 17-18.

As Respondents argue, this matter concerns only a narrow category of undefined type firearms, of which the Title 1 is the only firearm actually identified in the FAC. Reply at 8. As discussed *ante*, the FAC's allegations implying the existence of other undefined type firearms, and attempts to purchase them, are inadequate. Moreover, even if such undefined firearms are manufactured by FAI, there apparently are only a limited number of such firearms. DOJ's public duty to rectify the DES to allow their transfer is not sharp, nor is the public need weighty.

The case cited by Petitioners (Opp. at 17), People for Ethical Operation of Prosecutors v. Spitzer, ("PEOP") (2020) 53 Cal.App.5th 391, 410, is plainly distinguishable as it concerned law enforcement's duty to conduct lawful surveillance. Plaintiffs alleged that defendants permitted confidential informants to threaten to kill criminal defendants if they did not confess to a crime, an allegation involving outrageous constitutional violations and the systematic violation of constitutional rights of due process and assistance of counsel a duty. *Id.* at 410. Obviously, the public has a strong interest in deterring such constitutional violations and the duty is sharp. Petitioners' claim also appears more to be driven by personal objectives rather than broader public concerns, a basis on which the PEOP court noted public interest standing can be denied. *Id.* at 408 (citation omitted).

Petitioners have not demonstrated that they have public interest standing for their mandamus claim.

c. Injunctive Relief Standing

Respondents assert that Petitioners fail to allege facts showing an actual or impending injury as required to establish standing for injunctive relief. Dem. at 18.⁵ Petitioners do not allege any facts showing that FAI or any Association member has suffered or will suffer any injury due to the alleged limitations of the DES because they have not alleged that FAI manufactures any undefined type firearm other than the Title 1 or that any Association member was unable to purchase such firearm due to DES. Dem. at 18; Reply at 8.⁶

A person who invokes the judicial process lacks standing if he, or those whom he properly represents, does not have a real interest in the ultimate adjudication because he has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented. Schmier v. Supreme Court, (2000) 78 Cal.App.4th 703, 707. Injunctions cannot be predicated on the proponent's fear of something that may happen in the future. Connerly v. Schwarzenegger, (2007) 146 Cal.App.4th 739, 750.

⁵ The proper means of contesting injunctive relief at the pleading stage would be a motion to strike, not a demurrer. Petitioners do not object that Respondents have used the wrong vehicle.

⁶ For the first time in reply, Respondents argue that an injunction would be prohibited by CCP section 526(b)(4) and (b)(6). The court has not considered this argument. See Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333.

Again, Petitioners rely on the FAC's allegations concerning FAI's manufacture of lawful Title 1 firearms, Association's members' desire to purchase those firearms and complete the purchase of Title 1 assault weapon firearms, which they contend has cost FAI \$33 million in lost sales. Opp. at 18. As discussed *ante*, the FAC's allegations may support damages claims, but they are insufficient to support mandamus and declaratory relief. The same is true for the injunctive relief remedy.

Petitioners have not properly alleged actual or impending injury as required to establish standing for an injunctive relief remedy.

3. Declaratory Relief

Respondents contend that Petitioners' claim for declaratory relief is not ripe because they fail to allege an actual controversy. Dem. at 18-19; Reply at 7.

A claim for declaratory relief is only proper where there is an actual controversy relating to the legal rights and duties of the respective parties. CCP §1060. This standard also applies to the extent Petitioners seek declaratory relief under the APA. Govt. Code §11350(a). Declaratory relief regarding a violation of the APA is proper only if there is an actual controversy under CCP section 1060. California Department of Consumer Affairs v. Superior Court, (2016) 245 Cal.App.4th 256, 262. Courts apply a two-part test for ripeness that considers (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. Pacific Legal Foundation v. Cal. Coastal Com., (1982) 33 Cal.3d 158, 170.

The parties reiterate their arguments discussed *ante* regarding the adequacy of the FAC's allegations for declaratory relief. Dem. at 19; Opp. at 19.

As discussed *ante*, the FAC's allegations about FAI's manufacture of undefined-type firearms are insufficient to show that there is an actual controversy. FAI's Title 1 is now classified as an assault weapon and the issue is moot as to those firearms. Contrary to Petitioners' claims, the FAC fails to allege with any specificity that other FAI undefined type firearms that are not assault weapons have been unduly restricted by the DES or that such restrictions have or are actively preventing any Association member from purchasing such a weapon. Petitioners argument that they should be allowed to complete transfers of assault weapons pending on August 6, 2020 because of DOJ's unlawful conduct is barred by SB 118; Petitioners are relegated to a damages remedy only for such claims. Opp. at 20.

Petitioners' claim for declaratory relief fails to allege an actual controversy.

4. Conclusion

Respondents' demurrer to the FAC is sustained as to the first, second, and eighth causes of action. Petitioners seek leave to amend, but they refer only to a pending motion in doing so. Opp. at 20. The court is not required to refer to the court file in deciding whether to grant leave to amend and the motion for leave to amend is ordered off calendar. The court will discuss with Petitioners' counsel whether they can make a good faith proffer that would justify leave to amend.

PROOF OF SERVICE

Case Name: *Franklin Armory, Inc., et al. v. California Department of Justice, et al.*
Court of Appeal Case No. B340913
Superior Court Case No. 20STCP01747

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

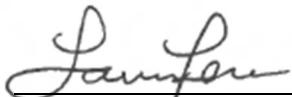
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME I OF XX, Pages 1-119**, on the following parties, as follows:

Kenneth G. Lake
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Attorneys for Respondent

These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 21, 2025, at Long Beach, California.



Laura Fera
Declarant