

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 XVII OF XX
Pages 1714-1783**

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

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1 While you're pulling it up, I'm going to describe
2 it just briefly. Do you have it up there?

3 A There's a couple of them from that date. Give me
4 one second.

5 Q It's 16 pages. So --

6 A Okay.

7 MS. BARVIR: The numbers to be selected, 060 -- 0606
8 to 1161? Is that the document?

9 MR. LAKE: So yeah. Thank you for that question, to
10 clarify.

11 BY MR. LAKE:

12 Q So the general description describes the grouping
13 as you all produced them to us. But they're just selected
14 documents from within that group. As we go through them,
15 you'll see that we have the Bates numbers. So the first
16 three documents of that I want to ask a question about is
17 Bates stamped 0606, 0607 and 1077.

18 And just to tell you kind of what I've done is
19 I've just put the first -- just for the record, it appears
20 to be Franklin Armory, open sales orders by item. And --
21 just to clarify, I won't attach the whole kit and caboodle
22 because I'm assuming -- I guess this would be something
23 for an accountant to go through in detail. But I just
24 want to ask you some questions, at least of your
25 understanding, to some extent.

1 So what I have done is I have the first two pages
2 of that complete document and the last page, which is
3 enumerated page 472. And this would appear to be a
4 summary of all the deposits of the Title 1 that were
5 placed.

6 A Is that a question?

7 Q Yeah.

8 A Okay. So just so we're on the same page, it says
9 "Open sales order by item." Our system, we have a report
10 that pulls open sales orders by items, and then I can
11 filter it by the item itself and so that's what was done
12 here, just so -- if that adds some clarity. So the
13 400-and-something pages were all the orders for Title 1.
14 And -- what was the question?

15 Q Did Title 1 have a particular designation in your
16 system?

17 A Originally, yes. It was a SKU Number 1269.

18 Q Got you.

19 A And then we got tired of having to scroll through
20 thousands of orders that were in the middle of our sales
21 order list. So I decided to put the word "Title 1" in
22 front of the SKU number, so that it would drop down to the
23 bottom of the page and my staff wouldn't have to skim
24 through all those orders to get to the ones that were
25 likely to be fulfilled.

1 first few entries on page 1, which is 0606. It looks like
2 about the first eight, nine, ten entries are dealer sale.
3 Is that fair? Correct?

4 A Well, the third one, the fifth one, etc.

5 Q Oh, yeah. I'm sorry. My oversight. Then we're
6 looking at, for example, the biggest one. It looks like
7 Call to Arms ordered ten.

8 A Yes, sir.

9 Q So just to clarify then, so these are dealers and
10 the transaction went down that way because you have a
11 history of dealing with them. I'm assuming this was not
12 done online or --

13 A That is not done online. Well, they may have
14 sent an E-mail in or they may have called us to place that
15 order.

16 Q And then these folks all have accounts with you?

17 A If they didn't have current accounts -- like it
18 says "Angel's Armory, IA." At the time that the order was
19 placed, it may have been active, but I believe "IA" means
20 "Inactive."

21 Q Okay. Now, in terms of -- well --

22 A Let me say one more thing, just so we're clear on
23 this. The data has been in there for a long time and it
24 -- you know, an account like Angel's Armory there, it
25 might have been current, and then it's inactive now, but

1 what you have is the current manifestation inside our
2 accounting system that was on whatever date it was done --
3 looks like September 11 of the year.

4 Q And I'm assuming that for the dealers that you
5 had relationships with, that you had terms that define the
6 relationship when they make and purchase firearms?

7 A Some of them had terms. Others were due upon
8 receipt or prepaid before we ship.

9 Q Okay. Let me ask you this about those dealers
10 who purchased Title 1's that are on this list, this
11 472-page list. We talked about how the deposits were
12 refundable. Would the purchases of the Title 1's also be
13 fully refundable?

14 A So looking on page 1, C.S. Tactical, Inc.,
15 appears to be the first dealer that ordered five units.
16 They did not have to present any deposit or anything of
17 that nature to place that order.

18 Q Well, did they ever get charged that amount, that
19 indicates \$3,762.80?

20 A They did not get charged that amount because the
21 government stepped in the way.

22 Q Okay. So this is just -- all right. This was
23 just more of an accounting entry and they weren't actually
24 charged and they never paid this amount; fair?

25 A Yeah. They ordered the product with intent to

1 purchase for that amount.

2 Q And does that go for all the dealers who would be
3 on this complete list?

4 A Yeah.

5 Q So nobody -- no money ever exchanged hands?

6 A Correct. There was an intention to purchase for
7 that amount.

8 Q But when we're talking about the five dollar
9 deposits, those folks were actually charged the five
10 dollars?

11 A Right.

12 Q All right. So -- is it fair to say then the
13 entirety of the time frame within which deposits were
14 placed for the Title 1's started on October 16, 2019, and
15 the last transaction for a Title 1 was on August 6, 2020?

16 A Pretty close. On the August 6, 2020, I'm not
17 sure if those were orders placed overnight, that were then
18 downloaded that day. I'm not sure what time the governor
19 signed that law, but I believe it took effect immediately.
20 And as soon as we did, we did not accept any additional
21 orders.

22 So again, the only question is on August 6, did
23 we download it that day because they placed the order
24 prior to the signature and that sort of thing? Because
25 there is a delay between once they placed the order on the

1 website to when we entered it into our system.

2 Q Okay.

3 A But yes. I'm being particular, particular here.

4 Q Okay. So does this -- so obviously, as you've
5 indicated, some of the previous discovery responses, part
6 of the damages you're claiming in this action are lost
7 profits or sales that you didn't complete; right?

8 A Correct.

9 Q Does this document, which again, we're not
10 talking about the entire document in front of us but the
11 472-page document that was produced to us -- does this
12 list include all of the -- the entirety of all, whether
13 purchases or deposits -- everything on this list comprises
14 the totality of damages for lost profits or lost sales you
15 claim in this Action?

16 A No. No. What it demonstrates is that we had
17 these orders that were going to ship. Now, the amount is
18 not what that shippable amount was going to be but the
19 order is what it was going to be. So you know, first
20 order -- it says "Web sales" -- there was one for five
21 dollars. Well, we intended to send one gun for 944.99,
22 not five dollars.

23 Q I take that back. I didn't phrase that very
24 well. This encompasses the number of firearms that you
25 claim sales were deprived of in this case?

1 A Yes, sir.

2 Q Just to be clear, we're not talking about any
3 other firearm sales or deposits or any other firearms at
4 issue, other than what's on this list?

5 A Correct.

6 Q Shifting back to the documents that were produced
7 to us on September 27 and October 9 -- that's, again, a
8 representative sample as I've indicated is Exhibit A for
9 the sales order, Exhibit B for the invoice, and we're
10 talking a lot of pages. And again, I'm assuming these
11 were all copies that correspond to what went on the list
12 that we just discussed.

13 So one quick clarification is going through all
14 of the actual documents produced on September 27, which is
15 close to like 20,000 pages, it was a pretty good amount.
16 And those produced on October 9 -- so running a search of
17 all those documents, it does not appear to be any Title 1
18 rimfire on there.

19 A No. There was one.

20 Q Well, just to clarify, that -- I'm looking at
21 page -- and again, using the pagination that was the Bates
22 stamping from your Counsel, 2630. There is a rimfire
23 referenced, but it's an F-17, just (inaudible).

24 THE COURT REPORTER: Just what?

25 MR. LAKE: F-17. Piston driven billet, B-I-L-L-E-T.

1 BY MR. LAKE:

2 Q So that's not a Title 1, is it?

3 A Can you give me a page number then?

4 Q I don't know if I can pull that one up. Bear
5 with me a second. This was the production of -- this
6 would have been the production of September 27, the last
7 grouping.

8 Again, these are the way they were produced to
9 us. So it would be in the package numbered 24436-26908.
10 I'm hoping that you have -- do you have those packages in
11 front of you there on your computer?

12 A Is that part of what you sent to Anna this
13 morning?

14 MS. BARVIR: No.

15 THE WITNESS: I mean, I have it somewhere because I
16 gathered it and sent it off.

17 BY MR. LAKE:

18 Q Let me ask this way -- obviously we can go back
19 and so -- it's your recollection that in all of the
20 firearms that are indicated on the list, there was only a
21 rimfire mentioned -- a rimfire was mentioned one time. Is
22 that fair?

23 A Once or twice.

24 Q Okay. As you sit here today, do you have an
25 understanding as to whether reference to the rimfire in

1 A I don't believe so.

2 MR. LAKE: Okay. Sounds good to me.

3 Ms. Barvir, thank you for clarification.

4 MS. BARVIR: I was sitting here trying to think where
5 we were going with this. So I'm glad we can be on the
6 same page.

7 BY MR. LAKE:

8 Q Just real quickly, let's go back to the 16-page
9 document that we've gone through, finished with the --
10 just real quickly. So the fourth page of that document is
11 something called "Inventory Item Quick Report," and it's
12 three pages.

13 A One second. I closed them out when you were
14 done. So you're starting with page 4?

15 Q Yeah. Looks like it's a three-page document.
16 I'm just curious -- can you describe what that is, what
17 pertinence it has, if anything?

18 While you're taking a look at that, let me ask
19 you this -- if there's one or two people at Franklin
20 Armory that are probably the persons with the most
21 expertise about these kind of accounting type documents,
22 who would that be?

23 A Joann Ignatich and Karin Jacobson.

24 So these are credit memos. That's what I'm
25 looking at. Okay.

1 Q Are those refunds?

2 A Those are refunds.

3 Q And looks like this document was generated as of
4 September 11, 2023. So this would be -- as of that date,
5 that would basically include all refunds that have been
6 issued?

7 A Yes. Yes.

8 Q All right. And then let's go down to 7 -- I was
9 curious about page 7, 8, 9 and 10, and it's referring to
10 looks like 1268, Title 1; third page is 1270, Title 1.
11 That's that. And then I also found other documents that I
12 also sent to you. Well, let's talk about the ones that
13 you have in front of you there.

14 What's -- first off, the 1268, 1270 -- is that
15 referring to the Title 1?

16 A So funny story -- it was originally 1268, but
17 there was something else that was 1268 by the time we got
18 back from that show. So it got bumped to 1269. And then
19 since then, as you may have noticed on the open items
20 report, we've changed our nomenclature on all items
21 because we're running out of four digit items, if that
22 made sense.

23 Q Sure, I guess. I guess what I want -- what I'm
24 curious about is what the purpose of the documents -- if I
25 had to guess -- I'm looking at page 2 and page 4. Is this

1 an attempt or is this some document purporting to
2 calculate what Franklin Armory's profit might be from the
3 sale of one of these firearms? Am I close?

4 A Yes, sir, you are. It is basically we do a cost
5 analysis and then run it through our schedule of pricing
6 for different dealers, levels of dealers, distributors.

7 By the way, this is confidential; right? So this
8 is not being distributed?

9 Q Yeah. There's a protective order placed for all
10 the documents produced back and forth.

11 A Including when I talk about it with the court
12 reporter?

13 Q Yeah. That's correct. Just to be clear, if at
14 some point it comes to it where there's a need for an
15 expert accountant type person to review it, then that's
16 permitted under the protective order, but in terms of
17 anybody outside, it's limited in terms of litigation.

18 A All right. Thank you.

19 Q So how did you calculate this -- I guess looking
20 at this document, based on this document, are you
21 asserting a particular projected profit per weapon that
22 could have been sold? Is that fair?

23 A It's a cost analysis of what it cost to
24 manufacture the firearm. And then it goes through various
25 margin levels, depending on whether retail dealer or

1 distributor sale.

2 Q Okay. So there's two different figures --
3 there's one set of figures for the 1268 and one for the
4 1270, which is -- is one or the other accurate?

5 A So the one that says 1268, which eventually
6 became 1269, based off of what I was done mentioning
7 earlier, and it was rounded up from 937 to 944.99 for the
8 MSRP.

9 Q So explain to me how you calculate -- you
10 calculated, it appears, cost of production, it looks like
11 a percentage off for the dealer profit and then at some
12 point there's, I guess -- is there something that tells
13 what the net profit, claimed profit, for Franklin Armory
14 would be for the Title 1?

15 A Well, that would be dependent upon which level of
16 sale I was at because the distributor sale is less margin.

17 Q "Distributor sale," meaning less profit?

18 A Yes.

19 Q So what are you going to claim per this document
20 is the net profit for Franklin Armory? What was the
21 calculation for distributor sale?

22 A Well, you see in the line there it says "Gross
23 profit"?

24 Q Yeah. You know, I took an accounting class in
25 college and I didn't like it and I wasn't good at it.

1 A I understand.

2 Q When you say "Gross profit," is that -- what does
3 that mean?

4 A That means the profit from the sale, minus --
5 well, just basically profit of the sale.

6 Q So there's no net profit. I hear "Gross." That
7 sounds to me like there's other things still in there --

8 A Roof, desk communications -- those all cost
9 money.

10 Q So when the dust clears, in the final
11 calculation, what would be -- taking out all costs, all
12 distributors, this, that and the other thing -- what would
13 be the actual profit for -- at least you would be claiming
14 for one of these Title 1's?

15 A Well, gross profit, I would be saying 131.57,
16 plus the differential between 944.99 and distributor.

17 Q Which is what?

18 A Um --

19 Q Well, we don't have to do math. So you're saying
20 it's higher than the claimed amount for lost sale of the
21 Title 1 more than 131.57?

22 A Yes, because most of the sales were to be retail
23 sales.

24 Q Oh, well, I was going to ask you about that
25 next -- distributor sale and then retail sale.

1 So isn't the claimed profit less for distributor
2 sale than for retail sale?

3 A Yes.

4 Q So just focusing on distributor sale first, is
5 the claimed profit for lost sales of the Title 1 131.57?

6 A Yes.

7 Q Gotcha. So what's the claimed lost profit per
8 lost sale of a Title 1 for a retail sale?

9 A At about almost \$300.

10 Q And how do you get that figure?

11 A Subtract 944 -- excuse me. Subtract 657.83 from
12 944.99, which is the -- retail sale.

13 Q THE COURT REPORTER: I'm sorry. I
14 didn't hear that.

15 BY MR. LAKE:

16 Q That's the claimed profit for loss of a retail
17 sale of the Title 1; right?

18 A Plus 131.57. Wait. Okay. If you take -- you
19 see where it says "Total cost"?

20 Q Yeah.

21 A Okay. So it says "526.27." If you subtract --
22 the easiest way to explain it is this -- if you subtract
23 that number from 944.99, then that is the profit we lost
24 because of the State's interference.

25 O But I thought you said there's one amount of

1 claimed profit for distributor sale and one amount of
2 claimed profit for retail sale?

3 A You were asking about retail there.

4 Q Yeah. But then you said -- so it's 944.99 minus
5 657.83, whatever that is?

6 A Plus 131.57.

7 Q So you lose me there. I thought that was the
8 profit you're claiming for a distributor sale.

9 A Let me try this again. So you have -- you have
10 your cost of goods sold. In this case, with excise tax
11 and so forth, we're at 526.26. Whatever price you sell it
12 at above, that amount would be the profit. So if it's
13 sold at 944.99, that would be a little bit more than \$400.

14 Q Okay.

15 A Does that make sense?

16 Q Not really. But I guess that's for an accountant
17 type to evaluate, not me. But no. I'm sure it will make
18 sense to them if we have to go there. So let's move on.

19 THE COURT REPORTER: When it's convenient, I need
20 a break.

21 MR. LAKE: Okay. Let's go ahead and take five
22 minutes. Is that good?

23 THE VIDEOGRAPHER: Off the record at 2:37 p.m.

24 (Recess taken.)

25 THE VIDEOGRAPHER: Back on the record at

1 2:50 p.m.

2 THE WITNESS: May I proceed?

3 MR. LAKE: Sure.

4 THE WITNESS: So I -- you asked about the sales
5 orders that we had and those were the totality of sales
6 orders that we did have, but I should point out that the
7 potential for additional "quotation" sales that, once the
8 first person received that firearm, that there would have
9 been many more, exponentially many more, if we were
10 allowed to proceed with transferring those firearms.

11 BY MR. LAKE:

12 Q Why do you say that?

13 A Because that's a common thing that occurs in
14 sales scenarios such as this, where -- I mean, we've sold
15 quite a few products nationally that have done very well,
16 whether reformation or the binary firing system where the
17 sales expanded exponentially once they got out on the
18 market.

19 Q Are you saying that because once the Title 1 were
20 to get out on the market, it would be word of mouth --

21 A Yes, sir.

22 Q -- entering further sales?

23 A Yes, sir.

24 Q And could word of mouth also have the opposite
25 effect?

1 A If we made a crappy product. But we don't do
2 that, sir.

3 Q Well, whether it's crappy or not, they wouldn't
4 like it for whatever reason. Who knows? But I guess the
5 question is isn't that kind of speculative about whether
6 word of mouth would positively affect sales?

7 A When you have a novel product in a constrained
8 market, it can create exponential sales in that regard.
9 That's how we got started. Keep in mind when we started
10 making products for California specifically, we started
11 out small and we grew from there. So we've seen this over
12 and over again.

13 Q But again, if nobody ever received a firearm, you
14 can't say really whether word of mouth would spread or
15 not, could you?

16 A Well, yeah, I agree with you. The government
17 kept us from being able to enjoy that opportunity.

18 Q Okay. If you could go to the documents that we
19 provided and pull up what's called "Produced 8-17-23
20 select." It's an 11-page document. We've covered some of
21 it. So if you could skip to the fifth page, which on the
22 Bates numbering is 0225.

23 A I hate to be dense, but I was trying to find
24 Anna's E-mail before I could find which one -- what am I
25 looking for?

1 Q The grouping that was sent to you this morning.
2 It says "Produced 8-17-23 select."

3 A Okay.

4 Q It's eleven documents. If you could scroll to
5 the fifth document, which is -- Bates Number 0225, it
6 appears to be an E-mail string to "Info," which I'm
7 assuming is Info@franklinarmory, dated July 21, 2021. Do
8 you have that pulled up there?

9 A Yes, sir.

10 Q Okay. Have you ever seen this E-mail before?

11 A I have not.

12 Q Okay. And again, as you sit here today, you
13 couldn't say for sure who would have opened this
14 communicating as "Info" on that day?

15 A I don't know specifically, no. And I did check
16 with them. It was Daniel Farley, the gentleman in charge
17 of customer service, but he has two subordinates over time
18 that it could have been not the current one but the prior
19 one.

20 Q And then it says "From," and it's been redacted.
21 Do you know who that was?

22 A I have no idea. Like I said, I hadn't seen this
23 before.

24 Q And so just -- this person who's been redacted
25 states -- you can read there; it's just one sentence. So

1 he's responding to the E-mail from Franklin Armory,
2 Info@Franklin Armory." It says -- E-mailed promptly, the
3 response was mentioning it's not able to ship the Title 1
4 firearms.

5 And then the response, presumably, is from a
6 dealer. It says "Oh, that's why. I remember now. My
7 boss placed that order without the intention of receiving.
8 So you had ground to sue them for damages." See that?

9 A I do.

10 Q Okay. So it appears that this person is
11 communicating that they had a discussion with their boss,
12 who -- indicating that there was no intention of them
13 actually receiving the Title 1, and that this was being
14 done to provide a ground to sue for damages.

15 Did you have any discussion with any dealers
16 about the placing of these deposits or purchases as a
17 means to set up the grounds to sue for damages without any
18 intention of actually shipping or receiving the firearms?

19 A Oh. It was always my intention to be able to
20 transfer the firearm. I do not recall any discussions
21 with any dealers that were phrased like this.

22 Q Okay. Specifically, like that but in terms
23 of -- do you recall having any discussions with dealers --
24 and this is at a time where, again, it was put out in the
25 fall, October 2019, up through July of 2020 --

1 A Wasn't it August 6?

2 Q Yeah. That would be the exact date, sure, that,
3 you know, you wanted folks to put these deposits down to
4 provide a basis to sue for damages?

5 A Actually, it was to prove -- to demonstrate that
6 they wanted the product when it was still lawful to
7 transfer it. But unfortunately, the government was
8 precluding them from receiving that; so if we didn't do
9 something like this, we couldn't prove their desire to
10 purchase it. That's the whole idea of why we did this.

11 But as you look at the date on this E-mail, which
12 is July 21 of 2021, almost a year after the point where
13 they could have received it, I would have to think that
14 that had to play some part into the response. If those
15 very same dealers could have received those firearms and
16 made a buck off of it, don't you think they would have?

17 Q When they talked about no intention of receiving,
18 isn't it fair to say that -- you've already testified that
19 you basically put it out that you were soliciting folks to
20 submit deposits for these Title 1's without the intent of
21 actually shipping them at that point in time; correct?

22 A We were unable to ship them at that point in
23 time. That is correct.

24 Q Who -- do you know offhand who designed the Title
25 1?

1 A So I was the driving force behind that.

2 Q And then -- I think you indicated that you didn't
3 have any engineering, design background? Is that
4 something where you would have an idea and then go to your
5 engineering team and they would kind of do the specs on it
6 or how did that work?

7 A There are some things that have been developed
8 that way in our history; but in a case like this, it's
9 just a matter of assembling parts into a certain
10 configuration and that's what we did.

11 Q And in the case of the Title 1, once you decided
12 what configuration you want, would you have your team,
13 your folks at Franklin Armory, build a prototype first or
14 would you just put it into production?

15 A Yes. We did build a prototype.

16 Q And historically, when you come up with a new
17 weapon or firearm, would there be other indications where
18 you would send it to, say, to the California Bureau of
19 Firearms to have them review the specifications on the
20 firearm?

21 A Yes.

22 Q Did it ever come up with respect to Title 1, to
23 do that for that firearm?

24 A No, because the State of California only has a
25 review process for pistols that are put on the roster, law

1 guns of any persuasion are not put on any kind of roster.

2 Q Does the Bureau have discretion to -- what if you
3 just contacted them and said "I'd like to send you the
4 firearm"? Is that something where they would say "yes" or
5 "no" to or is that just no way?

6 A I don't know what they would do. That's kind of
7 up to them.

8 Q I mean have you ever had a situation where
9 someone from the Bureau was asked to see -- you asked them
10 a question about a particular model or particular kind of
11 firearm that's new and then they say, "Well, could you
12 send us one for us to review or take a look at it?" Has
13 that ever come up?

14 A Mr. Lake, your perception of this is very
15 reasonable. I wish you worked at the Bureau of Firearms.

16 Q Well, okay, but can you just answer the question?
17 Did that ever come up besides the Title 1's --

18 A They did not respond. May I remind you that we
19 had a DEC relief act because they were nonresponsive.

20 Q But you still haven't answered the question
21 though. Before the Title 1, had that type of situation
22 ever come up, where someone from the Bureau said, "Hey,
23 send me that firearm. I want to take a look at it"?

24 A Not to my knowledge. We would be happy to do
25 that. We've done that with the Bureau of Alcohol, Tobacco

1 and Firearms, but unfortunately, the State, instead of
2 being a good referee, has become an adversary.

3 Q How many Title 1 centerfires were actually built?

4 A It was less than 100. I do recall seeing a
5 pallet or two that were ready to ship and then suddenly
6 could not ship because there's no way to transfer them on
7 the consumer side.

8 Q How many Title 1 rimfire firearms were actually
9 built?

10 A One or two.

11 Q Was that just as a prototype example kind of
12 thing or something else?

13 A We shipped one or two of them.

14 Q Do you remember approximately when they were
15 shipped?

16 A I want to say it was 2021.

17 Q Are you sure those were Title 1 rimfire or --

18 A Yes.

19 Q Going back to the Title 1 centerfire -- you could
20 have sold those to other states in the country; correct?

21 A Yes, sir.

22 Q Did any purchasers from outside -- other than
23 California -- express interest in that firearm?

24 A Yes, sir.

25 Q Did you ever sell any?

1 A Yes, sir.

2 Q How many?

3 A I don't recall the exact number.

4 Q Are we talking a lot or a handful or --

5 A Perhaps a little more than a handful. But they
6 were sold.

7 Q Is it fair to say that the reason there might
8 have been a handful sold to other states is because
9 there's not really demand for a restricted firearm like
10 that when folks can buy a full-on AR?

11 A No, sir. The bigger concern is perhaps the
12 places like New York and New Jersey, where we have
13 created, in my opinion, unlawful interference with the
14 PLCAA, and we really don't want to get tied into a
15 litigation issue across the country, where it's a lot more
16 difficult in my opinion to be fighting over there; whereas
17 California, we understand a little bit better and we're
18 closer to it of course as well.

19 Q Well, if you know, those handful of Title 1
20 centerfire firearms that were ordered from states other
21 than California, do you know what state they came from?

22 A I think I recall Minnesota and Louisiana, off the
23 top of my head.

24 Q Scroll down on the same document -- 11-page
25 document we're looking at, I just have one question.

1 0386, which --

2 A By the way, I was just looking at the next line
3 down on that E-mail. It said something about 200 AR's. I
4 bet that was removed from the order list and otherwise
5 would have been 200 more. So anyhow, going on. What
6 page?

7 Q It is of the 11-page document, it's page 9.
8 And does it -- appears to be kind of something of a press
9 release, I guess, about Franklin Armory. Do you see
10 what I'm talking about? The Bates number is 0386. It
11 started -- it's dated July 29, 2020. Starts out saying
12 "Mass action lawsuit against the California Department of
13 Justice." Do you see that there?

14 A Yes.

15 Q Is that kind of a press release type thing that
16 you all put out or --

17 A It is formatted weird because of some kind of
18 E-mail --

19 Q Yeah.

20 A -- modification or interpretation, but I think
21 originally, before it got converted into this E-mail, yes,
22 it looks to be.

23 Q I had a question just about into the first, if
24 you will, paragraph, it looks like -- certainly got goofed
25 up in the E-mail translation. This was produced to us by

1 your attorney. But the question about -- the sentence at
2 the end of the paragraph says "Franklin
3 Armory" (inaudible).

4 THE COURT REPORTER: I'm sorry. Can you please
5 speak up a little, Mr. Lake?

6 MR. LAKE: Sorry. Is that better?

7 THE COURT REPORTER: Yeah.

8 BY MR. LAKE:

9 Q "Their priority to deliver on these pre-orders to
10 their customers but we can't because California DOJ is
11 unlawfully refusing to process the requisite paperwork."

12 What does that mean? Do you know? Is that a
13 misnomer about paperwork or -- refusing to process -- what
14 paperwork does that refer to?

15 A I'm not seeing -- I'm listening to you, but I'm
16 not seeing that on here.

17 What paragraph is that?

18 Q It's the first full paragraph. It's right
19 above -- so the second paragraph begins "In response to
20 this action."

21 A Yes.

22 Q Right above that.

23 A Okay.

24 Q What does "refused to process the requisite
25 paperwork" mean, if you know?

1 A Essentially the -- I would assume that to mean
2 the process of the transaction for DES.

3 Q To modify the DES? Is that what you're talking
4 about?

5 A To allow the consumer to go through DES to
6 purchase the firearm.

7 Q But what kind of paperwork are we talking about?
8 Let me ask this way -- did you have an understanding that
9 the Bureau, under the law that guided the DES and the
10 online system, that the Bureau would have some discretion
11 to still allow processing of the transfer of a firearm on
12 paper?

13 A No, I did not. And it would have been nice if
14 they had said that because if that was the process they
15 preferred, they would have been happy to have done that.
16 I think this was written up by probably Brandon in
17 marketing, and I didn't think to change the term
18 "paperwork" and that should have been "computer system."

19 Q Okay. So it is a misstatement, whether -- maybe
20 just a misnomer -- it's not --

21 A It could have been done better. Agreed.

22 Q I mean, I don't want to blame Brandon. All
23 right. Shift gears a little bit if we could.

24 Kind of, we talked a little bit about the --
25 aside from the whole Title 1 transaction process, I'd kind

1 of like to run through just how a regular sales process
2 would work for the sale of a firearm from Franklin to an
3 individual located in California.

4 And I know you already kind of mentioned this a
5 little bit; so -- of course, you mentioned all these
6 transactions have to go through a California licensed
7 firearms dealer; right?

8 A Yes, sir?

9 Q And then to initiate the process, does -- the
10 purchaser first has to purchase the firearm from Franklin;
11 right?

12 A Yes.

13 Q So they'd have to pay the full price for the
14 firearm?

15 A Yes.

16 Q And then after completing the purchase, Franklin
17 Armory would deliver the firearm to the selected
18 California dealer; right?

19 A Yes.

20 Q And then prior to the delivery, Franklin would
21 then be required to obtain a verification number from the
22 damage to DOJ, via the internet, for the intended
23 delivery; right?

24 A That would be part of it, yes.

25 Q And it sounds like, again, that's a fairly simple

1 process to get that online verification?

2 A It slows thing down but it is part of working in
3 California.

4 Q Okay. And then what do you do with that
5 verification number? You provide that to the dealer with
6 the shipped firearm?

7 A Yes, sir.

8 Q And then once the California dealer receives the
9 firearm, then the purchaser has to show up physically at
10 the dealer to provide information to input into the online
11 system; is that right?

12 A I am not a dealer in the state of California but
13 I would assume so.

14 Q I mean, do they have to provide things like
15 driver's license, date of birth, and I guess there's a
16 series of questions -- for example, if they've had a
17 conviction, other things like that; right?

18 A I would believe so.

19 Q And then the dealer is going to transmit the
20 information to the DOJ, and you mentioned something about
21 penalty of perjury. And again, this is your
22 understanding. I know we'll get the legal objections from
23 Ms. Barvir before and after, but it would appear under
24 California Code of Regulations Title 11, Section 4210,
25 Subdivision (a) 6, this relates to how a dealer -- what a

1 dealer actually signs to be on the DES. And it states all
2 the information I submit to the department through the DES
3 shall be true accurate and complete to the best of my
4 knowledge.

5 Do you have an understanding that that's actually
6 the attestation that a dealer does when they submit info
7 to the Bureau?

8 MS. BARVIR: Objection. Calls for speculation. Go
9 ahead.

10 THE WITNESS: That sounds reasonable, that they would
11 -- well, forget reasonable. Strike that.

12 That sounds like something that they would have
13 on there, yes.

14 BY MR. LAKE:

15 Q Okay. So in other words, they don't submit
16 the information under penalty of perjury -- is that
17 correct? -- through your understanding.

18 MS. BARVIR: Objection. That misstates the testimony.

19 THE WITNESS: I thought that they do.

20 BY MR. LAKE:

21 Q That's why I'm asking you again. If you don't
22 know, you don't know. But again, under the regulation,
23 they state "I submit to the Department through the DES
24 shall be true, accurate and complete to the best of my
25 knowledge." There's no mention of penalty of perjury.

1 A Okay.

2 Q Because you said a number of times they can't do
3 it because they'd be submitting under penalty of perjury
4 but that's not correct. The actual regulation, they don't
5 do it under penalty of perjury. Do you have an
6 understanding one way or another about that?

7 MS. BARVIR: Objection. This is all legal conclusion.

8 MR. LAKE: That's why I said, "Do you have an
9 understanding one way or other about it?"

10 MS. BARVIR: Whether it's his understanding, this is
11 all a legal conclusion. That's an objection.

12 THE WITNESS: I was under the belief that it was under
13 the penalty of perjury, but I darn sure understand that
14 past is prologue, that the dealer will be held accountable
15 one way or another if DOJ doesn't like what they put down
16 on the form.

17 BY MR. LAKE:

18 Q Okay.

19 A Besides, isn't it the State's obligation to
20 provide a clear and concise form to adequately describe
21 the lawful products being sold?

22 Q Let me ask you this -- if now, after the DOJ
23 reviews all the information submitted and determines that
24 there's no grounds for denying the transfer, the dealer
25 may then deliver the firearm to the purchaser; right? Per

1 your knowledge?

2 A I believe so.

3 Q And if the DOJ says there's a problem and
4 therefore the dealer cannot really deliver the firearm to
5 the purchaser, then the dealer returns it to you,
6 Franklin, the seller?

7 A I haven't encountered that scenario.

8 Q In your experience, no purchaser has ever been
9 found to be ineligible to receive the firearm they
10 purchased?

11 A As far as the purchaser, I am not aware of any,
12 off the top of my head, but as far as -- I'm trying to
13 remember if we shipped -- we had orders obviously for
14 Title 1's. And I want to say I think we shipped some of
15 them, but they came back because we had no way to transfer
16 them on the website.

17 Q But just to clarify, my questions right now don't
18 relate to the Title 1. I'm just talking about firearm
19 transactions in general, where Franklin Armory is the
20 seller.

21 So do you have an understanding if it's
22 determined by DOJ that the individual purchaser is not
23 eligible to receive that firearm, that the dealer would
24 return it to Franklin; correct?

25 MS. BARVIR: Objection. This calls for speculation.

1 BY MR. LAKE:

2 Q Well, it's based on your experience as a --

3 A I haven't had that occurrence.

4 Q Do you have an understanding if they were
5 ineligible to receive it, that's what would happen?

6 A We have not encountered that experience where
7 consumers were not allowed to purchase a lawful product
8 outside of Title 1 and the computer system issues. If
9 somebody was a prohibited person, they usually don't buy
10 guns at gun stores.

11 Q Right. But I mean, that's interesting. But I
12 mean, in terms of purchases in general, a purchaser could
13 initiate the whole process through your online system and
14 make the purchase that way, not through a dealer, and then
15 we go through the process you just discussed. But in your
16 experience, even with the online purchases, you've not
17 encountered a situation where a purchaser was not eligible
18 to receive a firearm?

19 A I do not recall any circumstance such as that and
20 it's very possible that the dealer may have helped him
21 resell the firearm if they were unsuccessful in obtaining
22 permission to own the firearm.

23 Q That kind of leads to my next question. If there
24 were a situation where the purchaser was ineligible to
25 receive a firearm and it had to be returned to you, the

1 seller -- sorry -- would that purchaser still be on the
2 hook for the cost of the purchase or would you refund
3 their money?

4 A We don't run into that situation, sir.

5 Q So does Franklin have a policy in regards to that
6 if that were to occur?

7 A There is a restocking fee if somebody bought
8 something online and it was in unused condition and
9 they sent it back, there would be a restocking fee of
10 15 percent.

11 Q Again, I don't want you to speculate. But if a
12 person is ineligible and had the dealer send it back to
13 you, they'd get their money back, minus the restocking
14 fee; is that right?

15 A If it was in unused condition, yes.

16 Q If you could -- I'm just going to shift gears
17 to the video portion of the proceeding here, if you
18 don't mind. And for some reason I'm just going to ask the
19 questions and I may not even have to resort to the video.
20 But the -- so the first video was -- so there's three
21 videos that were sent to you, hopefully. One was produced
22 by your attorney. That's the one on the list at 4334.

23 I know the little sharing component of the Zoom
24 is not very good. So let me just try to ask the questions
25 that kind of come up in the video. So this is at the

1 A Yes.

2 Q Not allow what?

3 A To just put the -- the comment, use the "Comment"
4 section.

5 Q But I thought you had testified earlier that you
6 kind of got a non-response from Graham when you mentioned
7 that.

8 A Right. So I guess what I meant by that in the
9 video is that it would be -- it was not allowed as in
10 overtly condoned. But he never said "You can't do it."
11 He just didn't respond.

12 Well, in the absence of a response, what else is
13 one to believe?

14 Q But he never told you you can't do it. He just
15 let it hang, didn't respond?

16 A And neither did the operator that I communicated
17 with on the DOJ customer service page.

18 Q Okay. Did they say something like we'll have to
19 get back to you on this, or --

20 A I don't recall if they said that or they didn't
21 respond at all, but I went back to them several times and
22 I believe all of that's in the record. If you want to
23 pull it up, I'll be happy to talk to it.

24 Q Let me ask you this -- if we just go back to kind
25 of the firearm transfer process, if -- this was mentioned

1 in the Second Amended Complaint. If a person is found
2 ineligible to receive a firearm, that person, the
3 purchaser, can't they appeal that decision, that
4 determination?

5 A That would be a great question for Anna or Jason,
6 but I'm not an expert in California law as it pertains to
7 transfers like that.

8 Q Okay. Now, when you discussed with the dealers
9 about the Title 1 and doing the deposits, did you tell
10 them not to try to process any transfer in the DES -- this
11 was just -- people were just putting deposits down. You
12 weren't going to ship the weapon; right? I mean, this was
13 just a --

14 A Not until we had a process to deliver it.

15 Q Okay. Let me ask you this -- couldn't you have
16 gone through the sale process with one or more individuals
17 or dealers and gotten the online -- online certification,
18 sent it to the dealer and have them process it, as many of
19 the dealers had told you historically they selected the
20 closest option -- meaning in this case, the closest option
21 would have been rifle -- and then just do it on your own
22 and then the DOJ would either process it or they wouldn't?

23 I mean, they'd either reject it or they wouldn't?

24 Didn't you -- you felt that it was a legal
25 weapon; so what was to stop you and the dealer from

1 testing the situation in that manner?

2 MS. BARVIR: Objection. Calls for legal conclusions.

3 This is speculation as confusing with regard to why

4 "Rifle" was assumed to be the most close option.

5 BY MR. LAKE:

6 Q Did you contemplate taking that avenue?

7 A That's not an avenue that I'm allowed to take
8 from the standpoint of the dealers themselves have to make
9 that decision. And if they're intimidated by your
10 Department, they're going to hold off so that they can
11 maintain their livelihood. Would you risk your life or
12 livelihood that way?

13 Q But didn't you testify earlier that you didn't
14 communicate with any dealers about they had a problem with
15 the processing via the DES at all?

16 MS. BARVIR: Objection. That mischaracterizes the
17 testimony.

18 THE WITNESS: Do I continue?

19 MS. BARVIR: You may.

20 THE WITNESS: You're talking relating the -- or
21 equating the Mossberg Cruiser with Title 1? Is that how
22 you're posturing the question?

23 BY MR. LAKE: Well, no. I'm talking about with respect to
24 the Title 1.

25 I think you testified you didn't have any particular

1 conversations with any of the dealers about whether or not
2 they could process it or try to submit it in the DES, did
3 you?

4 A The fact remained -- I was being told by managers
5 that they -- my managers that work here -- that when they
6 talked to dealers, that they were having -- the dealers
7 were having concerns because there was no appropriate box
8 to check, so to speak, and DOJ was not willing to allow
9 the "Comment" box to be used.

10 And I did talk to Dave Gockel about this during
11 one of the breaks and he mentioned that he was actually at
12 one of the dealerships, talking to them, and the dealer
13 goes "Here, look on here. Where do we put it?"

14 And he's going to try to remember which
15 dealership he was talking about at the time. But the
16 dealer made the comment that there's no appropriate box
17 and that they felt constrained to put something in and I
18 thought it was under the penalty of perjury. It may be
19 other pains not disclosed, like losing a license, because,
20 you know, DOJ didn't like the way it was processed. It's
21 just --

22 Q Is Mr. Gockel -- oh, sorry.

23 A Yeah. Go ahead.

24 Q Is Mr. Gockel the only person from Franklin that
25 told you that he had discussed it with any of the dealers?

1 A There were other folks as well.

2 Q And wasn't the concern from the dealers that they
3 were concerned about it being considered an assault weapon
4 and they could be prosecuted?

5 A I believe the concern was that if they checked
6 "rifle," then by their then defining it inappropriately as
7 a rifle might put that firearm in jeopardy. And so they
8 felt that that was a bad idea.

9 Q Because it could be determined to be an assault
10 weapon?

11 A Well, we felt we were on pretty solid ground that
12 it wasn't an assault weapon based on communication made by
13 the Department of Justice to Jason Davis.

14 Q But did you tell any of the dealers that, that
15 you felt, "Hey, we're good to go; this is not an assault
16 weapon"?

17 A I believe I may have mentioned in one of the
18 videos, at one time or another, that we had gone through
19 the DEC relief act and that we had retrieved that
20 admission through that process. But that's not going to
21 help a dealer when they're left sitting there, going,
22 well, if I check "rifle," they may call this subsequently
23 an assault rifle because there is a classification for
24 assault rifles at the time. I think we're in a Catch-22,
25 and the government knew it and didn't care to do anything

1 about it.

2 Q So that was the stated issue was, well, it could
3 be an inappropriate submission because it could be
4 determined to be an assault weapon?

5 A Only by self-selecting "rifle" on a firearm that,
6 even though it's not a rifle, if they self-selected a
7 rifle and they're calling it a rifle, then the government
8 could then more easily come in and twist words around,
9 like some attorneys do, and call it an assault rifle.

10 Q So even though you were confident at that point
11 in time that it was not an assault weapon, dealers were
12 still expressing concern that it could be considered an
13 assault weapon; is that fair?

14 A If they placed -- if they didn't have the option
15 for "Other," my understanding was there was concern that
16 it would be construed as an assault weapon if they put
17 down "rifle."

18 Q All right. So later on -- let me just ask you
19 the question. This is kind of getting towards the end of
20 Mr. May's interview -- that you had mentioned the Ned
21 Buntline. There was a little bit of discussion. And it's
22 kind of a novelty type firearm, isn't it?

23 A Guns are guns, sir. If you've got a use for it,
24 enjoy.

25 Q But then in the context of that conversation, you

1 said there's a single-action exemption that somebody could
2 use. Does that ring a bell about processing a firearm in
3 the system?

4 A For Ned Buntline, yes.

5 Q What did you mean by "single-action exemption"?
6 Is that a term of art or what's that?

7 A No. I think that's a term in the statute but,
8 you know, as I sit thinking about it now, I have to wonder
9 if that exemption would apply, because I think it's only
10 for single-action pistols and under State law that would
11 mean 16 inches and under and, of course, if this has a
12 barrel over 16 inches, maybe that wouldn't even apply.

13 Q How would you apply for a single-action
14 exemption? This is my ignorance of the process.

15 MS. BARVIR: Objection. This is a legal conclusion --

16 MR. LAKE: About my ignorance?

17 MS. BARVIR: The question calls for speculation.

18 MR. LAKE: Okay.

19 BY MR. LAKE:

20 Q So do you know or do you have any understanding
21 of what would be involved in seeking a single-action
22 exemption?

23 A What I do know from the statutes is that a
24 single-action exemption is something that if the barrel
25 length is over a certain amount and the overall length is

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF VENTURA)
4

5 I, Lisa V. Berryhill, CSR No. 7926, in and for the
6 State of California, do hereby certify:

7 That the foregoing deposition was taken down by me in
8 shorthand at the time and place therein named, and
9 thereafter reduced to typewriting under my direction, and
10 the same is a true, correct and complete transcript of
11 said proceedings;

12 I further certify that I am not interested in the
13 event of the action.

14 Witness my hand this 1st day of December, 2023.
15
16
17



18 LISA V. BERRYHILL, CSR NO. 7926
19
20
21
22
23
24
25

STATE OF ~~CALIFORNIA~~ NEVADA

COUNTY OF DOUGLAS

I am the witness in the foregoing deposition.
I have read the deposition. Having made changes and corrections as I desire, I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

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

Executed on 11:49 AM 12/8/2023
at 2246 PARK PLACE, STE 3 MINDEN, NV (Address)



JAY L. JACOBSON

1 ERRATA SHEET
2 FOR THE DEPOSITION OF
3 JAY L. JACOBSON

4 CASE NAME: FRANKLIN ARMORY, ET AL. V. CA DEPT OF JUSTICE, ET AL.
5 CASE NUMBER: 20STCP01747
6 DEPO DATE: November 14, 2023

5	PAGE	LINE	ORIGINAL	CORRECTION
6	8	14	DANO ELLIOT	DAN O'KELLY
7	19	22	MACMEL	MAGPUL
8	22	48	AAR	AR
9	54	20	SHOT GUN-RIFLE	RIFLE
10	55	14	ABOARD	BARREL
11	80	3	BRENDAN	BRANDON
12	103	1	BE-LEVEL	ENTRY-LEVEL
13	103	10	7 TOO	TUBE
14	103	13	1	
15	103	16	1	
16	114	5	BONITAS	BENITEZ
17	143	7	"QUOTATION"	CONTAGION
18	148	25	LAW	LONG
19	149	29	NEED TO CHANGE: CARLOS DID BUY DFMS.	
20				
21				
22				
23				
24				
25				

CONFIDENTIAL

JAY L. JACOBSON

EXH A

45285AGO



FRANKLIN[®]
ARMORY

2246 PARK PLACE STE B
MINDEN NV 89423
OFFICE (775) 783-4313
FAX (775) 783-4315

Sales Order

Date	S.O. No.
6/1/2020	SO45424

Name / Address

Ship To

Terms	Ship Date	State	Rep	PO#	Taken by
PREPAID	6/1/2020		JLJ		

Item	Description	Ordered	Rate	Invoiced	Amount
TITLE 1 00-10...	TITLE 1™ LONG GUN "OTHER" 16" BARREL 5.56 NATO NOTE: NOT A PISTOL OR A RIFLE UPC: 818725012280	1	5.00	0	5.00
SHIPPING	Method: Free Shipping		0.00	0	0.00

Thank you for your business.

Subtotal \$5.00

Sales Tax () \$0.00

Total \$5.00

DEF-FA_4436

1759

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JAY L. JACOBSON

EXH B

45285AGO



Franklin Armory® invoice for order #36709

2246 Park Place Suite B
Minden, NV 89423
United States of America

LUKE 22:36 "But now if you have a purse, take it, and also a bag; and if you do not have a word, sell your cloak and buy one "

Order	#36709	Order Date	Nov 7th 2019
Payment Method:	USAePay (\$5.47)	Shipping Method:	Free Shipping

Order Items

Qty	Code/SKU	Product Name	Price	Total
1	1269	Title 1™ Deposit	\$5.00 USD	\$5.00 USD
			Subtotal:	\$5.00 USD
			Shipping:	\$0.00 USD
			Tax:	\$0.47 USD
			Grand total:	\$5.47 USD

DEF-FA_26909

1760

EXHIBIT 17

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

FRANKLIN ARMORY, INC., and)
CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
Petitioners-Plaintiffs,)
vs.) Case No. 20STCP01747
CALIFORNIA DEPARTMENT OF)
JUSTICE, ROBERT A. BONTA,)
in his official capacity as)
Attorney General for the)
State of California, and)
DOES 1-10,)
Respondents-Defendants.)

DEPOSITION VIA VIDEOCONFERENCE OF
CHERYLE MASSARO-FLOREZ
FRIDAY, SEPTEMBER 8, 2023

Stenographically Reported by:
Vicki Resch, RPR, CSR 6645

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

4 FRANKLIN ARMORY, INC., and)
5 CALIFORNIA RIFLE & PISTOL)
ASSOCIATION, INCORPORATED,)
Petitioners-Plaintiffs,)
vs.) Case No. 20STCP01747
CALIFORNIA DEPARTMENT OF)
JUSTICE, ROBERT A. BONTA,)
in his official capacity as)
Attorney General for the)
State of California, and)
DOES 1-10,)
Respondents-Defendants.)

)

14 DEPOSITION OF CHERYLE MASSARO-FLOREZ, TAKEN VIA
15 VIDEOCONFERENCE, on behalf of the
16 Petitioners-Plaintiffs, at 9:30 a.m., Friday,
17 September 8, 2023, before Vicki Resch, Certified
18 Shorthand Reporter No. 6645 in the State of
19 California.

- oOo -

1 APPEARANCES OF COUNSEL

2 (All Appearances Via Videoconference)

3

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23

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1

I N D E X

2

WITNESS:

3

Cheryle Massaro-Florez

4

5

EXAMINATION

PAGE

6

By Mr. Davis

5

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9

10

E X H I B I T S

11

NUMBER

DESCRIPTION

PAGE

12

Exhibit 9

Discovery Responses

44

13

Exhibit 10

Amended Second Notice of
Deposition of Cheryle
Massaro-Florez

47

14

15

Exhibit 11

Defendant-Respondent Department
of Justice's Response to Request
for Production, Set Two

47

16

17

Exhibit 12

Fourth Amended Notice of
Deposition of Person Most
Knowledgeable

50

18

19

20

21

QUESTIONS INSTRUCTED NOT TO ANSWER

22

Page Line

23

57 8

24

25

Cheryle Massaro-Florez - September 8, 2023

1 order in place, I'm hoping that we'll be able to go
2 into it a little bit more.

3 MR. ADAMS: Well, those are two separate
4 issues. Let's just continue on and I'll jump in as
5 needed.

6 MR. DAVIS: Thanks.

7 THE WITNESS: To answer your question, I
8 don't remember.

9 BY MR. DAVIS:

10 Q You don't remember who was there?

11 A No.

12 Q To the best of your knowledge, was not
13 modifying the DES to permit the transfer of "other"
14 type firearms ever discussed by you or anyone within
15 the Department of Justice?

16 MR. ADAMS: Objection. Vague as to "not
17 modifying." Is there a way to rephrase that in a way
18 that's -- it's not a double negative, but it feels
19 like one. Can you rephrase that?

20 MR. DAVIS: Well, there's an alternative to
21 either modify or to leave it as is or delay it. Those
22 are the three questions I'm going to get into.

23 MR. ADAMS: Can you just do them one by one,
24 then?

25 MR. DAVIS: I just did the first one, which

Cheryle Massaro-Florez - September 8, 2023

1 was not modify it.

2 BY MR. DAVIS:

3 Q Was there a discussion on basically leaving
4 it as is?

5 MR. ADAMS: If you understand that question,
6 you can answer that.

7 MR. DAVIS: And I can repeat it if you'd
8 like.

9 THE WITNESS: No, there was no discussion.

10 BY MR. DAVIS:

11 Q To the best of your knowledge, was delaying
12 the modification of the DES so as not to permit the
13 transfer of "other" type firearms ever discussed by
14 you or anyone within the Department of Justice?

15 A Yes, we talk about delay quite often.
16 There's lots of priorities.

17 Q When you say you talk about delay, what does
18 that mean to you?

19 A For me, it's delay of when we start an
20 assignment.

21 Q Okay. And you said you talked about it
22 often?

23 A I'm sorry. In general, for a specific
24 project.

25 Q The specific project that ended up actually

1 being implemented?

2 A Right. So I believe in my last statement
3 with you, I was told when we would begin working on
4 the assignment. So I did not make any decisions on
5 when it was going to start.

6 Q Okay. I'm going to ask a couple questions
7 and I'll come back to it.

8 The first question is, who told you when you
9 were going to start it?

10 A My upper management.

11 Q Who within the upper management?

12 A Yes, I believe I stated his name before, too.
13 Naren Mikkilineni. Do you want me to spell that?

14 Q Yes, please.

15 A His full name is N-a-r-e-n. Last name,
16 M-i-k-k-i-l-i-n-e-n-i.

17 Q And when did he tell you -- when did you
18 speak with him about when to start the enhancement?

19 MR. ADAMS: Let me object to that. This
20 is -- she is correct. We talked about this before.
21 This is on page 36, the last -- you asked who assigned
22 it, when did they assign it. So I don't want to cover
23 that again. So I am going to instruct her not to
24 answer that specific question of who assigned it and
25 when.

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1 BY MR. DAVIS:

2 Q What priority was given when you first spoke
3 with your supervisor about this?

4 A My priority, it was highly critical.

5 Q Highly critical. Did that change over time?

6 A No.

7 Q It was always highly critical?

8 MR. ADAMS: Objection. Asked and answered.

9 You can answer if you understand it,

10 Ms. Massaro.

11 THE WITNESS: Because it was a very short
12 time frame, you can't change the priority to meet that
13 same deadline.

14 BY MR. DAVIS:

15 Q You mentioned earlier that you had
16 discussions about delaying it. What was discussed
17 during those discussions?

18 MR. ADAMS: Objection. Misstates former
19 testimony. And again, Jason, we are getting close to
20 that exact same assignment period and the specific DES
21 modification that was already covered. So just to
22 give you a warning, you're getting close to the edge
23 here.

24 MR. DAVIS: Are you instructing her not to
25 answer?

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1 MR. ADAMS: No.

2 THE WITNESS: I believe I misunderstood a
3 question, then. I believe I answered yes, I've heard
4 about delay. I was not in a discussion about delay.

5 BY MR. DAVIS:

6 Q Okay. That makes it clear for me. I
7 appreciate that.

8 In a previous deposition, you indicated that
9 there's a prior enhancement to add the term "other" to
10 the DES other than the one that was actually
11 implemented, correct? Let me rephrase it.

12 A Yeah.

13 Q How many enhancements in total were there to
14 add the term "other" to the drop-down list?

15 A Making the change is considered one
16 enhancement.

17 Q Was there any canceled enhancements prior to
18 the one that actually implemented the term "other" to
19 the drop-down list?

20 A Yes.

21 Q How many?

22 A Just one.

23 Q When did that one start?

24 A I don't remember.

25 Q When did it end?

1 A I don't remember.

2 Q Would it be documented?

3 A I don't know.

4 Q Typically, aren't enhancements started and
5 entered through the Jira process?

6 A Yes.

7 Q Would that one have been entered in the Jira
8 system process?

9 A It should have been, yes.

10 Q But you don't know if it was?

11 A No. This is too many years back for me. I'm
12 sorry.

13 Q Why was that one terminated?

14 A I don't know.

15 Q Do you know who terminated it?

16 A Right. I know because this is a discussion
17 we also had. I was not involved. I believe it was
18 the Bureau of Firearms.

19 Q That wasn't the question. We did have it.
20 It was cut short because of the confidentiality issues
21 that we discussed a second ago.

22 MR. DAVIS: And I think it was towards the
23 end if you want to look at the previous transcript,
24 Andrew.

25 ///

1 BY MR. DAVIS:

2 Q But the question was, do you know who stopped
3 it?

4 A No.

5 Q Was there a name for that prior enhancement
6 or a nickname?

7 A No. We just called it -- I think it was
8 "type other."

9 Q Was there a purpose of that prior
10 enhancement?

11 A Yes.

12 Q What was that purpose?

13 A We had a firearms type as "other."

14 Q Was there a stated need or reason for that
15 prior enhancement?

16 A Yes.

17 Q What was the stated need or reason?

18 A Well, it was a request that we need to add
19 that new firearms type to DES.

20 Q And you don't remember who submitted that
21 request?

22 MR. ADAMS: Objection. Asked and answered.

23 You can answer again, if you want,

24 Ms. Massaro.

25 THE WITNESS: The Bureau of Firearms.

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1 BY MR. DAVIS:

2 Q Do you know who?

3 MR. ADAMS: Same objection.

4 But you can answer --

5 THE WITNESS: All right. Okay. No, I don't
6 remember.

7 BY MR. DAVIS:

8 Q When did you first learn of that prior
9 enhancement?

10 A I don't know.

11 Can I correct that? I don't remember.

12 Q Do you have any documentation that might help
13 you with that?

14 A No.

15 Q Do you know of any emails or correspondence
16 addressing this prior enhancement?

17 A I don't remember.

18 Q Was that prior enhancement ever completed?

19 A No.

20 Q And you don't know why that prior enhancement
21 was never completed, correct?

22 A Correct.

23 Q Did anyone within the Department of Justice
24 request that this prior enhancement be terminated?

25 MR. ADAMS: Jason, we're still lingering on

1 this prior enhancement, which is the same thing in my
2 mind as the DES enhancement that was made. And, you
3 know, I don't want to be a stickler, but we covered
4 that.

5 MR. DAVIS: It's a different enhancement in
6 that one was started and then stopped and the other
7 one started and was completed.

8 MR. ADAMS: I understand. But the
9 specific -- whatever one that was canceled, the one
10 that went through, those were all discussed before.
11 And which --

12 MR. DAVIS: Well, they weren't, though,
13 because you kept asking me to clarify which
14 enhancement I was referring to, and I kept referring
15 to it as the one that was completed. So there's two
16 different enhancements.

17 MR. ADAMS: The point is that that second
18 one, if it was canceled -- whatever this prior
19 enhancement was, if it was canceled, it should have
20 been discussed at the last deposition.

21 MR. DAVIS: And we brought it up, but you
22 said there were some concerns by -- not you, but
23 whoever was the attorney said that there were some
24 issues with regard to confidentiality.

25 MR. ADAMS: I'm not seeing that. Can you

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1 point me to that?

2 MR. DAVIS: I'll find it real quick. Hold
3 on.

4 MR. ADAMS: I see that there's two objections
5 based on confidentiality that Ben Barnouw made. One
6 was as to the database and when information was
7 transferred from -- you know, in that DES system.

8 And then the second one is on code, in the
9 code that had to be rewritten, which, again, is not
10 Ms. Massaro's specialty. So I don't see those
11 objections based on confidentiality.

12 MR. DAVIS: I'll see if I can find it on our
13 next break and we can come back to that. Actually, I
14 only have three more questions about that anyways.

15 BY MR. DAVIS:

16 Q So to the best of your knowledge, regarding
17 any of the prior enhancements to add the term "other"
18 to the drop-down list, was Xavier Becerra present?

19 A No.

20 Q To the best of your knowledge regarding any
21 of these enhancements, the prior enhancements to add
22 the term "other" to the drop-down list, was -- sorry.

23 Was he made aware of the prior enhancements?

24 A I do not know.

25 Q And you're the person most qualified

1 MR. DAVIS: She said that the second
2 enhancement, the one that actually was finalized and
3 implemented was built off of the prior enhancement,
4 and that would be this one. We can clarify that on
5 the record with her if you'd like.

6 MR. ADAMS: Wasn't your questioning was that
7 you were asking about how that enhancement was
8 constructed and whether there was a template they had
9 used before, not necessarily about that specific
10 prior -- previous enhancement?

11 MR. DAVIS: I couldn't get into the previous
12 enhancement because it was objected to. And he says,
13 specifically, we'll answer any questions about the
14 current project, and that's what she's here for. He
15 was objecting to any questions regarding the prior
16 enhancement, which is why I was asking about it in
17 this deposition.

18 MR. ADAMS: Well, you were there; I wasn't,
19 but...

20 MR. DAVIS: Do you want to take a moment to
21 look it over?

22 MR. ADAMS: Well, no. When she's offered
23 here -- I mean, if you're asking for how do they
24 construct an enhancement generally -- like, do you
25 have to build each one from scratch? That makes sense

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1 to me. That's what she's --

2 MR. DAVIS: She's also a general witness.

3 I'm asking her -- because she was -- to the extent
4 that she was there, to the extent that she knows any
5 questions about this.

6 MR. ADAMS: It's all -- it's within it.

7 Might as well. Let's get it done. I don't want to
8 have to come back and do this again. But if we get
9 too close to anything that should have been covered
10 before that was not objected to -- yeah, all right.
11 Ask the question. Let me hear it, and then I'll jump
12 in if I need to.

13 MR. DAVIS: I've got to find where we were
14 at.

15 BY MR. DAVIS:

16 Q With regard to the prior enhancement, what
17 was the priority level?

18 MR. ADAMS: Objection. Let's agree on the
19 terms. So prior enhancement is the one that was
20 started but not completed?

21 MR. DAVIS: Correct.

22 MR. ADAMS: Okay. So go ahead. If you know
23 the answer, please offer it, Ms. Massaro.

24 THE WITNESS: I don't remember the priority,
25 like, the actual log priority, what was selected. Was

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1 it critical? Was it high? I don't remember.

2 BY MR. DAVIS:

3 Q Were instructions given with regard to the
4 start date for that prior enhancement?

5 A Yes, but I don't remember.

6 MR. DAVIS: I think where we got objected to
7 last time, if I recall, is when I asked was the prior
8 enhancement completed. And we'll go from there.

9 MR. ADAMS: She already answered that in this
10 one, right?

11 MR. DAVIS: I think so. I'm just -- we can
12 go back and have her review the record or have her
13 answer this one more time and move forward.

14 MR. ADAMS: If you want to answer again,
15 Ms. Massaro, please do.

16 THE WITNESS: No.

17 BY MR. DAVIS:

18 Q Why was the prior enhancement not completed?

19 A I do not know.

20 Q Do you know who does know?

21 A The Bureau of Firearms.

22 Q Who within the Bureau of Firearms?

23 A I don't recall the exact names.

24 Q So in order for this not to be completed,

25 someone within the Bureau of Firearms would have had

1 to have requested the termination of the prior
2 enhancement?

3 A Yes.

4 Q Do you know when that occurred?

5 A No.

6 Q Is there typically someone who would be the
7 point of contact for terminating enhancements?

8 A So to terminate that would have to go to my
9 upper management.

10 Q And who would that have been at that time?

11 A It would be the same manager,
12 Naren Mikkilineni.

13 Q Do you know how far that prior enhancement
14 progressed in development?

15 A Up to the beginning of beta testing.

16 Q And what does that mean?

17 A I was using your words from the last
18 deposition. I call it quality assurance testing, and
19 you said, "Is that like beta testing?"

20 Q So quality assurance to make sure everything
21 functions?

22 A Yes.

23 Q So it had been pretty much implemented to the
24 point of testing, then the next step would be
25 implementation going live?

1 A Yes. It's a long testing process, but yes.
2 Q How long is the testing process?
3 A There's functional testing, which is just at
4 the application level, and then there is
5 interrelationship testing where you have to test like
6 the waterfall effect, how it impacts other
7 applications.

8 Then we have to have the Bureau of Firearms
9 verify and test it that we implemented the
10 functionality in which they requested. So that all --
11 that usually takes between -- usually between six to
12 eight weeks.

13 Q Basically, about the same time that the
14 second project that was implemented took?

15 A No. That one took about four months.

16 Q Was that because of the assault weapons
17 portion of it?

18 MR. ADAMS: Objection. This is getting
19 really specific into that -- that one instance that we
20 already did cover.

21 So I'm not going to instruct you not to
22 answer, but we'll start doing that soon.

23 THE WITNESS: No problem. That was a
24 separate project in its own timeline.

25 ///

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1 BY MR. DAVIS:

2 Q In order to get to the point of quality
3 assurance testing, a project normally has tickets in
4 the Jira system, correct?

5 A Yes.

6 Q And do you recall the number for the
7 enhancement -- the prior enhancement, the Jira number?

8 A No.

9 MR. DAVIS: I don't think I have any other
10 questions.

11 MR. ADAMS: Okay. I don't have any
12 questions. Code?

13 MR. DAVIS: Yes. I think that's what we'll
14 do.

15 MR. ADAMS: I want a rush.

16 (Proceedings concluded at 11:30 a.m.)

17 * * *

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1 I, VICKI RENEE RESCH, RPR, CSR No. 6645,
2 certify: that the foregoing proceedings were taken
3 before me at the time and place herein set forth; at
4 which time the witness was duly sworn; and that the
5 transcript is a true record of the testimony so given.

6

7 Witness review, correction and signature was

8 (X) by Code. (X) requested.

9 () waived. () not requested.

10 () not handled by the deposition officer due to
11 party stipulation.

12

13 The dismantling, unsealing, or unbinding of the
14 original transcript will render the reporter's
15 certificate null and void.

16

17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties, nor of any of
19 the parties.

20

Dated this 13th day of September, 2023.

21

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Vicki Bosch

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24

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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.

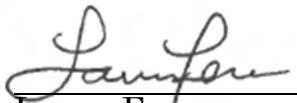
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME XVII OF XX, Pages 1714-1783**, on the following parties, as follows:

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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