

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 XIX OF XX  
Pages 1937-2154**

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

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

FRANKLIN ARMORY, INC., et al.,

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
et al.,

Respondents-Defendants.

Case No.: 20STCP01747

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

**EXHIBIT 19 TO DECLARATION OF  
ANNA M. BARVIR IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

Department: 32

Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020

FPC Date: August 8, 2024

Trial Date: August 20, 2024

# **EXHIBIT 19**

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.	)	
	)	

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DEPOSITION VIA VIDEOCONFERENCE OF  
MARICELA LEYVA

Wednesday, December 29, 2021

Stenographically Reported by:  
Vicki Resch, RPR, CSR 6645

**SistersInLawCourtReporters@gmail.com**  
**(714)840-4042**



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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.	)	
<hr/>	)	

DEPOSITION OF MARICELA LEYVA, TAKEN VIA  
VIDEOCONFERENCE, on behalf of the  
Petitioners-Plaintiffs, at 10:09 a.m., Wednesday,  
December 29, 2021, before Vicki Resch, Certified  
Shorthand Reporter No. 6645 in the State of  
California.

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(All Appearances Via Videoconference)

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Also Present:

TRAVIS SIMMONS  
VIDEO OPERATOR

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I N D E X

WITNESS: Maricela Leyva

EXAMINATION	PAGE
By Ms. Barvir	6

E X H I B I T S

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Exhibit 5	Notice of Deposition	15
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QUESTIONS INSTRUCTED NOT TO ANSWER

Page	Line
45	10
53	15

10:57 1 questions that come in.

2 THE WITNESS: As an SSMI, the type of  
3 questions that I would -- that I typically get are  
4 regarding a type of transaction to use to transfer a  
10:58 5 firearm. So if, for example, the family member is  
6 deceased, how would next of kin acquire the firearm,  
7 how would they submit it.

8 BY MS. BARVIR:

9 Q Okay. Let's shift our focus, I think, more  
10:58 10 specifically about the operation of the DES as regards  
11 the processing of transactions involving long guns.  
12 And you briefly discuss this process in paragraph 4 of  
13 your declaration that's also on page 2.

14 Do you see that, paragraph 4?

10:58 15 A Yes.

16 Q Okay. Can you please explain for me in your  
17 own words what happens when a DES user is processing  
18 the sale, loan or transfer of a long gun in the DES.  
19 You -- kind of briefly walk through the steps of what  
10:59 20 happens there.

21 A You're asking what happens when they select a  
22 long gun transaction?

23 Q Yes. They get to -- so the DES -- what, is  
24 it -- it's a -- it's a website, soft system; yes?

10:59 25 A An application system.

10:59 1 Q Application system. And a DES user has --  
2 that has access to the DES, what they're pulling of a  
3 Web-based application?

4 A Correct.

10:59 5 Q Application. Like a form, not -- not a --  
6 right? Like a form, right?

7 A Correct.

8 Q And on this form, they go through a number of  
9 questions -- answering questions about the -- the  
10:59 10 purchaser, the type of firearm that's being  
11 transferred, correct?

12 A Correct.

13 Q And at one point, they -- the DES user might  
14 select long gun transactions from the -- in the form?

11:00 15 A They would select that as a type of  
16 transaction, type of form.

17 Q So if they select long gun as the type of  
18 transaction, then they would also have to what, answer  
19 a question about whether it's a receiver only?

11:00 20 A That is one of the questions in the form.

21 Q Okay. And if they answer no, what -- what  
22 happens if they answer this is a long gun transaction  
23 and they have selected "no" for receiver only?

24 What then happens?

11:00 25 A They have to continue filling out the firearm

11:00 1 information.

2 Q What exactly -- what exactly is the next  
3 piece of firearm information that they have to answer  
4 in the DES when processing a long gun transaction  
11:00 5 where it's not a receiver only?

6 A I do not know the exact next field.

7 Q Is there a field, then, that populates about  
8 types of long gun transactions that would include --  
9 well, yes, I've seen your declaration on page 4,  
11:01 10 lines 16 to 17. The user was required to select one  
11 of three options available in the gun type field.

12 Is that -- is that what -- what would be the  
13 gun type field?

14 A Yes, those are.

11:01 15 Q And before October 1st, 2021 -- that's the  
16 date of the deployment for the DES modification that  
17 we'll be talking about later today -- the list that  
18 would populate when the user selected long gun  
19 transactions and then selected "no" for receiver only  
11:02 20 included three options, rifle, shotgun and  
21 rifle-shotgun combination; is that correct?

22 A Correct.

23 Q Correct. Could a DES user opt not to select  
24 one of those three options and still complete the  
11:02 25 form?

11:02 1 A I believe --

2 MR. BARNOUW: Object as vague. I'm sorry.  
3 You're assuming that someone has gotten to that point  
4 where they've selected long gun, said "no" for  
11:02 5 receiver only, that sort of. Is that -- and I'll say  
6 is that right?

7 MS. BARVIR: Thank you. Yes.

8 BY MS. BARVIR:

9 Q To be more clear, so if a DES user has gone  
11:03 10 through the form and has selected long gun  
11 transactions, then selected "no" for receiver only,  
12 could -- again, this is before October 1st, 2021 --  
13 could that DES user opt not to select one of the three  
14 options, the rifle, shotgun or rifle-shotgun  
11:03 15 combination?

16 THE WITNESS: If I'm not mistaken, I believe  
17 that is a required field.

18 BY MS. BARVIR:

19 Q A required field would mean that they would  
11:03 20 have to select one of the options before they could  
21 submit the form as complete?

22 A Correct.

23 Q Okay. Are you aware that there are long guns  
24 that are lawful to own and possess that do not meet  
11:03 25 California definitions of rifle or shotgun and then

11:04 1 necessarily rifle-shotgun combination?

2 MR. BARNOUW: I'm going to object. It calls  
3 for a legal conclusion. Calls for speculation. It's  
4 vague. Also, it's going beyond the scope of the  
11:04 5 discovery here.

6 So we can read the question back and you can  
7 answer to the extent you can, but I'll interpose those  
8 objections.

9 And yeah, again, I'm going to emphasize the  
11:04 10 objection that this has gone beyond the scope of  
11 discovery at this point.

12 Can you read the question back? And then  
13 I'll ask that my objections be, you know, recognized  
14 again.

11:04 15 (The record was read as follows:

16 "Q Okay. Are you aware that there are  
17 long guns that are lawful to own and  
18 possess that do not meet California  
19 definitions of rifle or shotgun and then  
11:04 20 necessarily rifle-shotgun combination?")

21 THE WITNESS: It is my understanding that now  
22 there is.

23 BY MS. BARVIR:

24 Q Right. But before -- well, let me try to  
11:05 25 rephrase the question.



11:05 1           So we were talking about the options for  
2       rifle, shotgun, rifle-shotgun combination, right?  
3       That was what existed before October 1st, 2021 in the  
4       DES.

11:06 5           But are you aware that there are long guns  
6       that are lawful to own and possess that would not --  
7       not be considered rifle or shotguns or rifle-shotgun  
8       combinations in California?

9           MR. BARNOUW: Again, I'm going to object on  
11:06 10       the same grounds. Calls for a legal conclusion. It's  
11       vague. Goes beyond the scope of the deposition. I'll  
12       allow her to answer, but with those objections.

13           THE WITNESS: If you're asking if I was aware  
14       prior to October 1st, 2021, I was not aware.

11:06 15       BY MS. BARVIR:

16           Q       That -- you were not aware that there are  
17       long guns that are lawful to own and possess in  
18       California that don't meet the definitions of rifle or  
19       shotgun or rifle-shotgun combination?

11:07 20           A       Correct.

21           MR. BARNOUW: I'm going to object. It kind  
22       of misstates -- you're talking -- the question before  
23       was about California law. I think you're -- you  
24       intended that, but it's a long question.

11:07 25           But your question was about whether they fit

11:07 1 the definitions under California law, and there's no  
2 definition of rifle, slash, shotgun under California  
3 law. It's a little bit confusing. So I'm just going  
4 to object that it misstates her testimony and kind of  
11:07 5 changes the question a little bit.

6 MS. BARVIR: I'm not --  
7 (Simultaneous speakers.)

8 BY MS. BARVIR:

9 Q I'm not trying to figure out, Ms. Leyva,  
11:07 10 whether or not you -- what you knew about the DES and  
11 the drop-downs like before October 1st.

12 What I'm trying to get to understand is if  
13 you knew that -- you know, are you aware that there  
14 are guns, long guns that are lawful to own and possess  
11:08 15 that do not constitute rifles or shotguns as those  
16 terms are defined by California law, and then  
17 necessarily rifle-shotgun combinations which would  
18 rely on the same definition?

19 MR. BARNOUW: I'm going to object that,  
11:08 20 again, it calls for a legal conclusion. It's also --  
21 I'm not sure what the proper objection is, but you're  
22 making a legal jump -- a logical jump that rifle,  
23 slash, shotgun combination has to be -- you know, fit  
24 the definitions of rifle or shotgun or some kind of  
11:08 25 combination, which I don't know if that's been

11:08 1 established. So -- and it it's beyond the scope of  
2 her testimony today.

3 She can answer if she can -- if she has an  
4 answer. Maybe we can -- I'm sorry.

11:08 5 Can we read the question back one more time,  
6 the last question?

7 (The record was read as follows:

8 "Q I'm not trying to figure out,  
9 Ms. Leyva, whether or not you -- what you  
11:07 10 knew about the DES and the drop-downs like  
11 before October 1st.

12 "What I'm trying to get to understand  
13 is if you knew that -- you know, are you  
14 aware that there are guns, long guns that  
11:07 15 are lawful to own and possess that do not  
16 constitute rifles or shotguns as those  
17 terms are defined by California law, and  
18 then necessarily rifle-shotgun combinations  
19 which would rely on the same definition?"

11:09 20 THE WITNESS: I was not aware.

21 MS. BARVIR: Thank you.

22 BY MS. BARVIR:

23 Q Ms. Leyva, do you know what rifle-shotgun  
24 combination meant -- means in the context of the DES?

11:09 25 MR. BARNOUW: I'm going to object. Calls for

11:09 1 speculation. And --

2 You can answer if you have an answer.

3 THE WITNESS: Can you please repeat the  
4 question?

11:10 5 BY MS. BARVIR:

6 Q Do you know what the term "rifle-shotgun  
7 combination" means in the context of the DES?

8 A No.

9 Q Thank you.

11:10 10 Do you know, before October 1st, 2021, how a  
11 DES user would go about inputting the required gun  
12 type information for long guns that are not rifles,  
13 not shotguns and not rifle-shotgun combinations?

14 MR. BARNOUW: I'm going to object. This has  
11:11 15 gone beyond the scope of a deposition. I'm going to  
16 instruct her not to answer.

17 We have a limited scope of discovery here.  
18 And yesterday -- let me finish. Yesterday's  
19 deposition and today's seem like they're really just  
11:11 20 fishing expeditions, and so I'm going to instruct her  
21 not to answer. Beyond the scope.

22 MS. BARVIR: Mr. Barnouw, I need to establish  
23 what -- how the DES operated before the October 1st  
24 notice of important notice was issued and how it --  
11:11 25 how that changed and how -- if it will continue to

11:11 1 change.

2 I need to know this for the -- for the  
3 specific reason of opposing the department's motion to  
4 dismiss here. I can't answer -- I cannot determine  
11:11 5 what -- what -- how the DES operated before or after  
6 the changes if she doesn't answer these questions.

7 I'm not trying to get to every little bit,  
8 but this is important to know how the DES operates now  
9 and how it operated before to see how it changed so  
11:12 10 that I can determine whether or not it's likely to  
11 recur, the issues that we are dealing with here.

12 So I really -- I would ask that you  
13 reconsider your instruction that she not answer these  
14 questions.

11:12 15 MR. BARNOUW: First of all, we brought it up  
16 in discovery in response to requests for admissions  
17 about the DES and the different drop-down menus --  
18 menu -- the different options in the drop-down menu  
19 that were available.

11:12 20 And secondly, you know, the reason for  
21 Ms. Leyva giving a declaration in support of the  
22 motion to dismiss and being put forth here at her  
23 deposition today is because of claims that -- about  
24 the bulletins that were issued, posted on the DES  
11:12 25 September 27, September 30 of this year and -- and

11:12 1 the -- the -- as I understood it, the claim that  
2 the -- from plaintiffs that the bulletins were  
3 limiting improperly the -- the types of firearms that  
4 could be processed as others.

11:13 5 So I don't -- I don't understand how -- how  
6 what happened before from Ms. Leyva's perspective is  
7 relevant to that. I'm going to instruct her not to  
8 answer.

9 MS. BARVIR: Again, I'm just trying to set  
11:13 10 the table for what the new notices mean, how they  
11 changed anything.

12 If she's not going to answer, okay, we're  
13 going to have a problem, I think, getting to  
14 understand what those -- those important notices did.  
11:13 15 And I may have to end the deposition and seek -- go  
16 into court.

17 Are you really willing to do that?

18 MR. BARNOUW: Go ahead and ask questions  
19 about the bulletins and we can see where we are at  
11:13 20 that point.

21 MS. BARVIR: I can't ask -- I can't set  
22 the -- I cannot set the -- I can't establish facts  
23 here without asking her questions about what existed  
24 before the bulletin. I'm trying to understand what  
11:14 25 the bulletin did. We will be trying to understand

11:14 1 what the bulletin did and how -- if it can be changed  
2 or not. And that's -- all of this is important to  
3 that.

4 So again, I'm going to ask --

11:14 5 MR. BARNOUW: I disagree. Yeah, I'm  
6 instructing her not to answer the question. We --  
7 we're -- give me some leeway as far as the scope of  
8 this deposition, but it's gone beyond what is  
9 appropriate at this point in this case, and so I'm  
11:14 10 going to instruct her not to answer.

11 If your clients insist on pursuing this  
12 petition for writ of mandate and injunctive relief and  
13 declaratory relief and not recognizing that the issue  
14 is moot, the discovery is limited.

11:15 15 BY MS. BARVIR:

16 Q In what ways did the process of transactions  
17 involving firearms that are not considered rifles,  
18 shotguns or rifle-shotgun combinations change on  
19 October 1st, 2021 when the DES -- changes to the  
11:15 20 DES -- I'm sorry.

21 In what ways did the process of transactions  
22 involving firearms that are not considered rifles,  
23 shotguns or rifle-shotgun combinations change on  
24 October 1st, 2021 when the DOJ's changes to the DES  
11:15 25 were deployed?

11:15 1 A There was an additional option in the gun  
2 type field that included "other."

3 Q So now when a DES user selects long gun  
4 transactions and selects "no" for receiver only, four  
11:16 5 options will populate. And that's rifle, shotgun,  
6 rifle-shotgun combination and other; is that correct?

7 A Correct.

8 Q And what types of firearms -- never mind.  
9 Strike that.

11:16 10 In your declaration, you reference a couple  
11 of bulletins or important notices.

12 Does the Bureau of Firearms regularly draft  
13 and issue bulletins or important notices like the ones  
14 you identified in your declaration?

11:16 15 MR. BARNOUW: I'm going to object. It's a  
16 vague question, but you can answer.

17 THE WITNESS: Yes, we often draft bulletins.  
18 BY MS. BARVIR:

19 Q About how often does the Bureau of Firearms  
11:16 20 draft and issue bulletins or important notices like  
21 the ones you identified in your declaration?

22 MR. BARNOUW: I'm going to object as vague.

23 You can still answer. Also vague as to time.

24 BY MS. BARVIR:

11:17 25 Q Let me see if I can help you out. Is it more



11:17 1     than once a month?   Would you say there's one  
2     important notice issued a month?

3           A     I would say there's a few a year.

4           Q     A few a year.   Okay.   So over the course of  
11:17 5     the year, maybe between three and five, generally  
6     speaking?

7                   MR. BARNOUW:   I'm going to object.   Vague as  
8     to time period covered.   It's also speculation, but  
9     you can answer.

11:18 10           THE WITNESS:   I -- I don't feel like I can  
11     give an exact or an approximate estimate.

12     BY MS. BARVIR:

13           Q     That's okay.   Thank you.

14                   Generally speaking, what function do these  
11:18 15     bulletins -- excuse me.

16                   Is it okay if I throughout call them  
17     important notices?   Is that okay with you?   Important  
18     notices?   We'll use that phrase.   Is that all right?

19           A     To refer to bulletins, yes.

11:18 20           Q     Okay.   Generally speaking, what function do  
21     these important notices serve for the Bureau of  
22     Firearms?

23           A     It would be advising dealers of new -- new  
24     laws, new functions in the DROS entry system,  
11:19 25     providing them with guidance and resources.

11:50 1 talked about?

2 A Average could be seven to ten days.

3 Q But it could be -- it could be quicker if --  
4 if it was a shorter or needed to be, or it could be  
11:50 5 longer; is that correct?

6 A Correct.

7 Q So average about seven to ten days. Okay.  
8 Have you ever been involved in the decision  
9 or in making the decision to issue an important  
11:51 10 notice?

11 MR. BARNOUW: I'm going to object. It's  
12 vague.

13 You can answer.

14 THE WITNESS: I wouldn't make the decision.  
11:51 15 BY MS. BARVIR:

16 Q You don't make the final decision, but would  
17 it -- would it be fair to say that you have discussed  
18 with decision-makers that you've been involved in  
19 coming up with the need, you know, to issue an  
11:51 20 important notice?

21 A Yes.

22 Q Okay. But you've never made the final  
23 decision that an important notice needed to be issued?

24 A No.

11:52 25 Q Okay. Who -- who -- who makes the final

11:52 1 determination that an important notice needs to be  
2 issued?

3 A My understanding is that it would be either  
4 the director or assistant director.

11:52 5 Q The director or assistant director of the  
6 Bureau of Firearms?

7 A Correct.

8 Q Thank you.

9 Who is currently the director of the Bureau  
11:52 10 of Firearms?

11 A Luis Lopez.

12 Q Thank you. Who is -- was that Luis or  
13 Louise?

14 A Luis, L-u-i-s.

11:52 15 Q Thank you.

16 And who is currently the assistant director  
17 of the Bureau of Firearms?

18 A There -- the assistant director that we  
19 report to would be Allison Mendoza.

11:53 20 Q Okay. So there are multiple assistant  
21 directors at the Bureau of Firearms?

22 A Correct.

23 Q But the one that is related to your position  
24 with the DES is Allison Mendoza?

11:53 25 A Correct.

11:53 1 Q Thank you.

2 Okay. Let's look back at your declaration.

3 Do you still -- can you still see it?

4 A Yes.

11:53 5 Q Okay. On page 2, paragraph 5, you state,  
6 quote: In my capacity as the SSMI over the customer  
7 service support center, I was involved in the drafting  
8 of a bulletin to be posted on the DES to notify  
9 firearms dealers of the addition of the "other" option  
11:53 10 in the gun type field. The bulletin was entitled  
11 "Important notice regarding other firearms" and was  
12 posted on the DES website on or about September 27,  
13 2021.

14 Do you see that?

11:54 15 A Yes.

16 Q Thank you.

17 Can we -- just to prevent any  
18 misunderstanding and keep it easy, can we agree that  
19 we'll call this bulletin that you're describing in  
11:54 20 paragraph 5 the September 27 notice?

21 A Yes.

22 Q Okay. Good. I think we've already discussed  
23 about what you meant when you said you were involved  
24 in the drafting of the September 27 notice. But we  
11:54 25 can -- we can talk more about that if -- if you don't

11:54 1 understand my questions in relation to what you told  
2 me your involvement was. Okay? So I'm going to move  
3 on for right now.  
4 Did you directly draft, write any part of the  
11:54 5 September 27 notice?  
6 MR. BARNOUW: I'm going to object as it's  
7 vague.  
8 But you can answer. I'm sorry.  
9 THE WITNESS: I don't recall.  
11:55 10 BY MS. BARVIR:  
11 Q You don't recall. Okay.  
12 Do you recall whether you were involved in  
13 the revision -- in making revisions to the draft  
14 September 27 notice?  
11:55 15 MR. BARNOUW: I'm sorry. I'll object. Vague  
16 as to time whether this is before it was issued or  
17 we're talking about revising it to a subsequent  
18 bulletin.  
19 MS. BARVIR: Thank you, Mr. Barnouw.  
11:55 20 BY MS. BARVIR:  
21 Q More specifically, before the September 27  
22 notice was posted to the DES, were you involved in  
23 making revisions to the September 27 notice?  
24 A I don't recall exact revisions.  
11:56 25 Q But -- but you did make revisions?

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11:56 1 A It is possible, yes.

2 Q It is possible, yes. Okay.

3 But then -- but then the September 27 notice  
4 came to your desk to prepare for the routing process?

11:56 5 A Correct.

6 Q And the routing process for the September 27  
7 notice included about how many managers or  
8 higher-level employees at the Bureau of Firearms  
9 looking at improving the document?

11:56 10 A About five.

11 Q Which is the normal average number of people  
12 that are looking at important notices before they're  
13 finalized?

14 A Correct.

11:56 15 Q Okay. And then after about five higher-level  
16 employees at the Department of Justice Bureau of  
17 Firearms reviewed the 27 notice, it came back to your  
18 desk for approval before release?

19 A No.

11:57 20 Q No. Where did it go after the five managers  
21 took a look at that document and approved the  
22 September notice to be released?

23 A Once I route it, it comes back to me to  
24 release. Not for final approval, but to release.

11:57 25 Q Right. Yeah, so that was my question, that

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11:57 1 it was -- that it came back to your desk after the  
2 five or so managers reviewed it, it came back to your  
3 desk for release?

4 A Correct.

11:57 5 Q Correct. Did you personally post the  
6 September 27 notice on the DES website?

7 A I don't recall.

8 Q You don't recall. So you do not recall if it  
9 wasn't you who did it?

11:57 10 A Correct.

11 Q Did you consult with anyone outside the  
12 Bureau of Firearms when drafting the September 27  
13 notice before it was posted to the DES website?

14 A I'm sorry. Can you repeat that?

11:58 15 Q Of course. Did you consult with anyone  
16 outside the Bureau of Firearms at the Department of  
17 Justice when drafting the September 27 notice before  
18 it was posted on the DES website?

19 A No.

11:58 20 Q Okay. Thank you.

21 Do you know if anyone you worked with on the  
22 drafting preparation of the September 27 notice  
23 consulted with anyone outside the Bureau of Firearms  
24 before the September 27 notice was posted on the DES  
11:58 25 website?

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11:58 1 A I do not know.

2 Q You do not know. Okay. Thank you.

3 All right. I see in paragraph 5 of your  
4 declaration -- I'm looking at lines 26 and 27 of  
11:59 5 page 2 -- it says that this important notice regarding  
6 other firearms was posted on the DES website on or  
7 about September 27, 2021; is that correct?

8 A Correct.

9 Q Okay. Do you know when Bureau of Firearms  
11:59 10 employees began drafting the September 27 notice?

11 A I don't recall.

12 Q You don't recall.

13 Do you -- excuse me. Do you know when the  
14 final draft of the September 27 notice was approved  
11:59 15 for release?

16 A I don't know the exact --

17 Q Okay.

18 A -- date or time.

19 Q Do you know the date that you approved the  
11:59 20 September 27 notice for release via the department --  
21 the DES website?

22 MR. BARNOUW: I'm going to object as to the  
23 use -- you said "approved." I think we've had some  
24 clarifications about Ms. Leyva's approval, so I guess  
12:00 25 I'd ask -- I'll object that it misstates testimony and



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12:00 1 it's vague.

2 MS. BARVIR: Let me restate.

3 BY MS. BARVIR:

4 Q Do you recall the date you released the  
12:00 5 September 27 notice for posting on the DES website?

6 A You asked if I recall the date that the  
7 bulletin was released?

8 Q No. Do you know the date that you -- so I  
9 guess that it came back down from the five managers in  
12:00 10 the routing process, down to your desk for release via  
11 the DES website.

12 A If I know that date?

13 Q Correct.

14 A I don't know the date.

12:00 15 Q Okay. Thank you.

16 Can you estimate for me how long -- about how  
17 long it took to prepare the September 27 notice?

18 A It had to be at least a few days.

19 Q A few days. Okay.

12:01 20 Would you say more than five days?

21 A If I were to estimate, it would be the normal  
22 seven to ten days.

23 Q Oh, yes. Thank you. All right. I'm going  
24 to move on.

12:01 25 We're -- I'm going to introduce another

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12:01 1 document. Let me -- all right. This document is  
2 going to being marked as Exhibit 7. Give it a second  
3 to appear.

4 (Exhibit 7 was marked for identification  
12:01 5 and is attached hereto.)

6 BY MS. BARVIR:

7 Q Is it coming up on your screen, Ms. Leyva?  
8 It should be titled "Defendant-Respondent Department  
9 of Justice's Response for Production, Set Two."

12:02 10 A Yes.

11 Q Wonderful. Thank you.

12 Okay. On page -- let me see here -- on  
13 page 8 -- no, on page 9 -- scroll on down to page 9.  
14 There's a document called "Verification."

12:02 15 Do you see that, Ms. Leyva?

16 A Yes.

17 Q Wonderful. Can you please identify the name  
18 of the person at DOJ who signed this document  
19 verifying the responses to DOJ provided to our request  
12:02 20 for production of documents?

21 A Maricela Leyva.

22 Q And that's you, correct?

23 A Yes.

24 Q And is that your signature at the bottom of  
12:02 25 the page?

12:02 1 A Yes.

2 Q Wonderful. Thank you.

3 Let's scroll down a little more and we see

4 some attachments to that document. They're labeled --

12:03 5 at the bottom they're Bates-stamped with the number --

6 with the page numbers DOJ0001 through DOJ0008.

7 Do you see that? Do you see those documents?

8 A I see additional documents. I do not see the

9 00 stamps that you're referring to. I see documents

12:03 10 after.

11 Q At the very bottom of each page after your

12 verification. Let me see.

13 A Okay. I see it now.

14 Q Okay. Good. So DOJ0001 through DOJ0008.

12:04 15 You may not be aware but these documents were produced

16 to our office from the Department of Justice after we

17 requested a number of documents, so I just want to ask

18 a few questions about them.

19 Have you seen these documents before today?

12:04 20 A Yes, I have.

21 Q Okay. DOJ0001 through DOJ0008 appear to be

22 two different versions of what is entitled "Important

23 Notice Regarding the Sale of Other Firearms"; is that

24 correct?

12:04 25 A Correct.

12:04 1 Q Correct. Thank you.  
2 What is an important notice in the specific  
3 context of these two documents?  
4 MR. BARNOUW: I'm going to object as vague.  
12:05 5 BY MS. BARVIR:  
6 Q Let me see if I can -- I'm sorry. Go ahead.  
7 A It's just a notification.  
8 Q A notification. What function were these  
9 documents serving?  
12:05 10 A These were regarding the changes to the DROS  
11 entry system.  
12 Q The ones we were discussing earlier with the  
13 addition of "other" in the gun type menu?  
14 A Correct.  
12:05 15 Q Okay. Thank you. Let's look at pages 001  
16 through 0004.  
17 Do these pages constitute the September 27  
18 notice described in your declaration in paragraph 5?  
19 A It appears so, yes.  
12:05 20 Q Thank you.  
21 Do you know the primary purpose of the  
22 September 27 notice that we're seeing on pages 0001  
23 through 0004?  
24 MR. BARNOUW: I'm going to object as vague,  
12:06 25 and also asked and answered.

12:06 1 You can answer if you can.

2 THE WITNESS: It was just a notification,  
3 again, regarding the change to the DROS entry system.

4 BY MS. BARVIR:

12:06 5 Q Were there any other purposes that were  
6 intended to be served by the issuance of the  
7 September 27 notice?

8 A There was a primary purpose.

9 Q Primary purpose. Was there a secondary  
12:06 10 purpose?

11 A Just --

12 MR. BARNOUW: Object as vague.

13 THE WITNESS: With the -- the purpose was to  
14 advise of the change. And it was just listing PCs  
12:06 15 that were referenced or that were related to the  
16 changes.

17 BY MS. BARVIR:

18 Q By "PCs" you mean penal code sections?

19 A Yes.

12:07 20 Q Thank you.

21 Okay. Do you see on the top, I'd say,  
22 one-third of this document, the September 27 notice,  
23 there's a section entitled "What is considered an  
24 'other' firearm"?

12:07 25 Do you see that?

12:07 1 A Yes.

2 Q Could you please read that section aloud  
3 stopping at the section entitled "What is considered  
4 an 'other' assault weapon"?

12:07 5 A You want me to read the section under "What  
6 is considered an 'other' firearm"?

7 Q Yes, ma'am.

8 A And stopping where?

9 Q Right at the end of that section before you  
12:07 10 get to "What is considered an 'other' assault weapon."

11 A Okay. An "other" type firearm is a firearm  
12 that does not meet the definition of a rifle, Penal  
13 Code 17090; shotgun, Penal Code 17190; or pistol,  
14 Penal Code 16350. An "other" can also be considered  
12:08 15 an assault weapon.

16 Note, prior to the sale, loan or transfer of  
17 an "other" type firearm you must confirm, one, that it  
18 has a fixed magazine that accepts ten rounds or fewer;  
19 two, that it has an overall length of 30 inches or  
12:08 20 more. If the "other" does not meet the criteria above  
21 or is considered an "other" assault weapon pursuant to  
22 Penal Code 30900, the "other" may not be sold, loaned  
23 or transferred in the DES.

24 Q Thank you.

12:08 25 Did you personally draft any of this language

12:08 1 that you just read in the section "What is considered  
2 an 'other' firearm" on the September 27 notice?

3 A I was involved in the drafting.

4 Q What do you mean by you were involved in the  
12:09 5 drafting of that section?

6 A Gathering the information.

7 Q Gathering the information, like the penal  
8 code sections and the -- the different statements that  
9 are made in that section?

12:09 10 A Correct.

11 Q But not specifically putting pen to paper or  
12 fingers to keyboard to write that out?

13 A I was not the one specifically typing the  
14 bulletin, no.

12:09 15 Q Okay. Excuse me. And did you suggest or  
16 make any revisions to this language that you just read  
17 in the section "What is considered an 'other' firearm"  
18 in the September 27 notice?

19 A I do not recall.

12:09 20 MR. BARNOUW: And I'm going to object. Vague  
21 as to time.

22 MS. BARVIR: We're speaking all about before  
23 the -- the September 27 notice was posted to the DES.  
24 Thank you, Mr. Barnouw.

25 ///

12:10 1 BY MS. BARVIR:

2 Q But again, I understand that you don't recall  
3 if you were involved in making revisions. So thank  
4 you.

12:10 5 Let's look a little bit at the content. So  
6 the first paragraph clarifies that an "other" type  
7 firearm is any firearm that does not meet the  
8 definition of a rifle, shotgun or pistol. And we're  
9 citing some penal code sections; is that correct?

12:10 10 A Correct.

11 Q Okay. And it clarifies also that an "other"  
12 type firearm might also be considered an assault  
13 weapon under California law; is that correct?

14 A Correct.

12:10 15 Q And according to this section of the  
16 September 27 notice, what two things must a DES user  
17 first confirm before selling, loaning or transferring  
18 an "other" firearm through the DES?

19 MR. BARNOUW: I'm going to object. The  
12:10 20 document speaks for itself.

21 You can answer.

22 THE WITNESS: Based on the bulletin, it  
23 appears that it is asking to confirm the two points.

24 BY MS. BARVIR:

12:11 25 Q The two points -- oh, sorry.



12:11 1 A -- regarding the magazine and overall length.

2 Q Thank you.

3 So that to be clear, that the firearm to be

4 transferred has a fixed magazine that accepts ten

12:11 5 rounds or fewer and has an overall length of 30 inches

6 or more; is that correct?

7 MR. BARNOUW: Again, I'm going to object that

8 the document speaks for itself.

9 You can answer.

12:11 10 THE WITNESS: It appears that way, yes.

11 BY MS. BARVIR:

12 Q Okay. Are you aware of any firearms that

13 would not meet these two criteria but are legal to

14 transfer and possess in California?

12:12 15 MR. BARNOUW: I'm going to object. Calls for

16 speculation. Calls for a legal conclusion.

17 You can answer if you can.

18 THE WITNESS: I don't have an answer. I

19 don't know.

12:12 20 BY MS. BARVIR:

21 Q Okay. Thank you. Excuse me.

22 Let me ask you, would you agree that the use

23 of the conjunction "or" in a sentence connects two or

24 more separate possibilities or alternatives?

12:13 25 A It is possible.

12:13 1 Q It is possible. For instance, like, if I go  
2 to the grocery store and I'm going to buy vanilla,  
3 chocolate or rocky road ice cream, that's connecting a  
4 list of separate alternative things?

12:13 5 MR. BARNOUW: I'm going to object. This is  
6 vague and kind of harassing. I don't -- I don't  
7 understand the point of this, this line of  
8 questioning.

9 MS. BARVIR: We'll get there.

12:13 10 BY MS. BARVIR:

11 Q Can you please answer the question?

12 A I don't know that I'm understanding the  
13 question.

14 Q Okay. I'm trying to help -- I'm trying to  
12:13 15 get an understanding of what you think the definition  
16 of the conjunction "or" is.

17 So as an example -- by way of example, say  
18 I'm going to the grocery store to buy ice cream. I  
19 might pick up vanilla, chocolate or rocky road.

12:14 20 Am I listing three separate alternatives?

21 A It is possible.

22 Q It is possible. Are vanilla, chocolate and  
23 rocky road ice cream all the same?

24 A No.

12:14 25 Q Right. So they're separate things. They're

12:14 1 alternative possibilities for the type of ice cream I  
2 might buy?

3 A Correct.

4 Q And the use of "or" indicates to you in that  
12:14 5 sentence that I was naming three separate alternatives  
6 for the type of ice cream I might buy?

7 A Yes.

8 Q Okay. Thank you.

9 All right. Immediately after describing the  
12:14 10 two things that a DES user must confirm before  
11 selling, transferring or loaning of an "other" type  
12 firearm, the September 27 notice says: If the "other"  
13 does not meet the criteria above or is considered an  
14 "other" assault weapon pursuant to Penal Codes 30900,  
12:15 15 the "other" may not be sold, loaned or transferred in  
16 the DES.

17 Do you see that?

18 A Yes.

19 Q And the direction that the "other" may not be  
12:15 20 sold, loaned or transferred is bold and underlined.  
21 It's even in bright red; is that correct?

22 A Correct.

23 Q I take this to mean that the drafters of the  
24 notice thought it was important for DES users to know  
12:15 25 that firearms that did not meet the criteria or were

13:42 1 Q What if the firearm did not include one of  
2 the two criteria but was a rimfire firearm, for  
3 example, would that be an assault weapon?

4 MR. BARNOUW: I'm going to object. Calls for  
13:42 5 a legal conclusion. Kind of vague.

6 THE WITNESS: Again, not being an expert on  
7 firearms, my understanding would be if it was rimfire,  
8 it would be fine.

9 (Reporter clarification.)

13:43 10 BY MS. BARVIR:

11 Q Thank you.

12 Let's see. We're looking at, again,  
13 paragraph 8, and looking around line 4 of page 4.

14 You declare that the September 27 notice  
13:43 15 inadvertently admitted the fact that the bureau on  
16 transferring other firearms didn't meet the two listed  
17 criteria only -- excuse me -- that didn't meet the two  
18 listed criteria only applied to semiautomatic center  
19 firearms.

13:43 20 Can you explain how that mistake could have  
21 been made?

22 MR. BARNOUW: I'm going to object. It's  
23 argumentative.

24 THE WITNESS: I can't pinpoint how a mistake  
13:43 25 was made. It was a mistake.

13:43 1 BY MS. BARVIR:

2 Q Mistakes happen, right.

3 Okay. I'm going to look at paragraph 9, just  
4 a little further down on that same page.

13:44 5 In paragraph 9 you state -- I'm sorry. You  
6 state that the omission from the September 27  
7 notice -- we're talking about the omission of the fact  
8 that the limitations only apply to semiautomatic  
9 centerfire firearms -- was brought to the Bureau of  
13:44 10 Firearms' attention.

11 Do you see that? It's line 6 -- 7,  
12 paragraph 9?

13 A Yes.

14 Q Okay. Do you know who brought that omission  
13:44 15 to the Bureau of Firearms' attention?

16 A I do not know.

17 Q Do you know when they brought that omission  
18 to the Bureau of Firearms' attention?

19 A I do not know.

13:44 20 Q Were you made aware that counsel for  
21 plaintiffs in this matter raised concern that, as  
22 written, the September 27 notice directed DES users  
23 that otherwise lawful firearms were considered -- that  
24 were considered other firearms, that may not be sold,  
13:45 25 loaned or transferred?

13:45 1 A I don't remember.

2 Q Okay. What happens after the centerfire  
3 omission was brought to the Bureau of Firearms'  
4 attention?

13:45 5 A Again, I don't know who it was brought to, so  
6 I don't know what happened when it was brought to the  
7 bureau.

8 Q Okay. Thank you. I think more broadly I'm  
9 asking, what happened in response to the concerns that  
13:45 10 were raised about the omission of the centerfire  
11 limitation?

12 A There was a revision to the bulletin?

13 Q Right, a revision to the bulletin. And --  
14 and that was the revised bulletin that was issued on  
13:45 15 September 30, 2021; is that correct?

16 A Correct.

17 Q Okay. And that revised bulletin issued on  
18 September 30, 2021, it purported to supersede the  
19 September 27th notice; is that correct?

13:46 20 A Correct.

21 Q What does "supersede" mean in this context?

22 A Overwrites.

23 Q Overwrites. Does that mean the September 27  
24 notice is no longer good guidance to the DES users,  
13:46 25 firearms retailers?

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13:46 1 A You -- should refer to the one on the 30th.

2 Q Okay. Thank you.

3 Was the September 27 notice removed from the  
4 DES website, or is it still posted?

13:46 5 A Yes.

6 Q It's still posted?

7 A Yes.

8 Q Is there a reason that it's still posted if  
9 the September 30 supersedes the September 27 notice?

13:46 10 A That just has been practice.

11 Q So that's just kind of the normal -- when the  
12 Bureau of Firearms issues an important notice, it's  
13 the normal practice that you just keep them up,  
14 correct?

13:47 15 But users recognize that those are superseded  
16 by the notation that would be on the subsequent  
17 important notice like we have here in the September 30  
18 one, correct?

19 A Correct.

13:47 20 Q Let's -- let's agree, can we, that for ease  
21 of reference and to prevent any misunderstandings, I'm  
22 going to call the September 30 important notice "the  
23 September 30 notice."

24 Is that good?

13:47 25 A Yes.

13:47 1 Q All right. You don't say so in your  
2 declaration, but were you involved in the drafting of  
3 the September 30 notice?

4 A Again, can you define "drafting"?

13:48 5 Q I'd say any point -- any part of the same  
6 process that we discussed before about -- for the  
7 September 27 notice.

8 At any point, were you writing portions of  
9 the September 30 notice or making -- suggesting  
13:48 10 revisions involved in meetings to determine what it  
11 was going to say?

12 I think we also talked about preparing it for  
13 the routing process and then being the person whose  
14 desk it hits before it's released.

13:48 15 A I'm sorry. I -- your microphone, I don't  
16 know what happened.

17 Q All right. Let me try again. Sorry. Can  
18 you hear me okay?

19 A Yes.

13:48 20 Q All right. So any part of the process, I  
21 think, that we discussed with regard to the  
22 September 27 notice, were you involved in the direct  
23 writing of the notice, suggesting or making revisions,  
24 preparing for the routing process that we discussed or  
13:49 25 being the one whose desk it landed on last before it



14:01 1 Q Right. The September 30 notice no longer  
2 includes an express directive that they confirm that  
3 those two criteria exist that were listed expressly in  
4 the September 27 notice, correct?

14:01 5 A They were not expressly noted.

6 Q In the September 30 notice?

7 A Correct.

8 Q Thank you.

9 What according to the September 30 notice  
14:01 10 must the DES user now confirm before it sells, loans  
11 or transfers a firearm in the DES?

12 A That it's not an assault weapon.

13 Q Thank you.

14 And for the first time has expressly stated  
14:01 15 that the DES user need only confirm this information  
16 when it's -- excuse me -- when the firearm to be  
17 transferred is a centerfire, other firearm, correct?

18 A Correct.

19 MR. BARNOUW: I'm going to object. It  
14:02 20 misstates the documents and the documents speak for  
21 themselves.

22 BY MS. BARVIR:

23 Q And finally, the September 30 notice seems to  
24 have removed any reference to the fact that if an  
14:02 25 "other" firearm does not meet certain criteria, it

14:02 1 may, quote, not be sold, loaned or transferred in the  
2 DES.

3 That appeared in the September 27 notice,  
4 correct?

14:02 5 A Give me one second.

6 Q Take your time.

7 A That is correct.

8 Q Thank you.

9 Do you know why that language was removed in  
14:03 10 the revision to the September 30 notice from the  
11 September 27 notice?

12 A I do not know.

13 Q Okay. Thank you.

14 MS. BARVIR: All right. I'm going to do one  
14:03 15 final exhibit. Let me mark that as Exhibit 8.

16 (Exhibit 8 was marked for identification  
17 and is attached hereto.)

18 BY MS. BARVIR:

19 Q Exhibit 8 should now be visible on your  
14:04 20 screen.

21 Can you see it, Ms. Leyva?

22 A It is. Regarding the sale of other firearms  
23 bulletin.

24 Q Yes, that's what we're looking at.

14:04 25 Have you seen this document before today?

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14:04 1 A Yes.

2 Q Wonderful.

3 Can you describe for me what this document  
4 is?

14:04 5 A It's a notice to firearms dealers regarding  
6 the sale of other firearms.

7 Q Okay. So another important notice regarding  
8 the sale of other firearms. I'd like to call this the  
9 "November notice." Okay?

14:05 10 A Okay.

11 Q Can you tell me when this document was posted  
12 on the DES website?

13 A I don't have the exact date, but that was  
14 noted on my declaration.

14:05 15 Q I don't think we talked about -- you talked  
16 about this particular document on your declaration.

17 A I don't -- I don't recall the exact date.

18 Q That's fine. So it may or may not have been  
19 November, but I'm going to call it the "November  
14:05 20 notice." Okay?

21 A Okay.

22 Q Do you know what the purpose of this document  
23 was?

24 A This one was another revision. Give me one  
14:05 25 moment. This one was regarding the age restriction.

14:06 1 Q And you're talking about a subheading on --  
2 what are we looking at -- page 2 of this document, a  
3 subsection about age restriction, that portion was  
4 revised for this notice?

14:06 5 A Yes.

6 Q Any other portions of the November notice  
7 were revisions from the previous two notices?

8 A Not that I'm aware.

9 Q Okay. Do you know what the impetus for  
14:06 10 drafting and posting the November notice was, what  
11 caused the Bureau of Firearms to create this November  
12 notice?

13 A I do not know.

14 Q Okay. Was there some lack of clarity or --  
14:07 15 or something about the age restriction that was  
16 discussed in previous notices that needed to be  
17 clarified here in the November notice? Is that --

18 MR. BARNOUW: I'll -- I'm sorry. I just want  
19 to get in before the answer comes out.

14:07 20 I just want to object as asked and answered.  
21 Calls for speculation.

22 THE WITNESS: I --

23 MR. BARNOUW: Can we have the question read  
24 back?

14:07 25 (The record was read as follows:

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14:07 1 "Q Okay. Was there some lack of clarity  
2 or -- or something about the age  
3 restriction that was discussed in previous  
4 notices that needed to be clarified here in  
14:07 5 the November notice?")  
6 THE WITNESS: Again, I don't know the reason  
7 for the revision, so I don't know the reason why it  
8 was revised.  
9 MS. BARVIR: Okay. Thank you.  
14:08 10 BY MS. BARVIR:  
11 Q At the top of the page -- I'm sorry -- the  
12 top of the document, the very first page, "Important  
13 Notice Regarding the Sale of Firearms" is the title.  
14 This document also purports to supersede the  
14:08 15 September 27 document -- notice; is that correct?  
16 A Yes.  
17 Q It doesn't say that it supersedes the  
18 September 30 notice, but does it?  
19 A Yes.  
14:08 20 Q Okay. Thank you.  
21 But -- and so all three, September 27,  
22 September 30 and the November notice, all three  
23 notices are still available in the DES website?  
24 A Correct.  
14:09 25 Q Okay. Thank you.

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14:09 1 Just a few final questions. A little  
2 overview of important notices that I might not have  
3 gotten to before, did the Bureau of Firearms ever post  
4 an important notice advising dealers of how to process  
14:09 5 other firearms before the September 27 notice?

6 Was there any other notice before the  
7 September 27 notice?

8 A I believe there -- there was.

9 Q Posted to the DES?

14:09 10 A I believe there is guidance on how to submit  
11 specific transactions.

12 Q But specifically about -- excuse me --  
13 processing the transfer of other firearms that we've  
14 been discussing throughout the September 27 through  
14:10 15 November notices, that specific issue, were there any  
16 other important notices posted to the DES website  
17 about that issue?

18 A Regarding specifically the "other" firearm?

19 Q Yes.

14:10 20 A Prior to September you said?

21 Q Before September 27, yeah.

22 A Not that I'm aware.

23 Q Okay. To the best of your knowledge, was  
24 there ever a discussion of releasing an important  
14:10 25 notice, helping out dealers to understand how to

1  
2 I, VICKI RENEE RESCH, RPR, CSR No. 6645,  
3 certify: that the foregoing proceedings were taken  
4 before me at the time and place herein set forth; at  
5 which time the witness was duly sworn; and that the  
6 transcript is a true record of the testimony so given.  
7

8 Witness review, correction and signature was  
9 (X) by Code. (X) requested.  
10 ( ) waived. ( ) not requested.  
11 ( ) not handled by the deposition officer due to  
12 party stipulation.  
13

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

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

21 Dated this 6th day of January, 2022.  
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24 VICKI RESCH  
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ERRATA SHEET

DEPOSITION OF: Maricela Leyva  
DATE OF DEPOSITION: December 29, 2021

PAGE#	LINE#	CORRECTION
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Page 6	line 23	- zip code should be 95820.
Page 33	line 6	- "centers" should be "center"
Page 35,	line 20	- "staff sources analysts" should
be		"staff services analysts"
Page 70,	line 8	- "There was a primary purpose"
should be		"that was the primary purpose"

I, the undersigned, declare under penalty of perjury that I have read the above-referenced deposition transcript and have made any corrections, additions, or deletions that I was desirous of making and that the transcript contains my true and correct testimony.

EXECUTED this 7th day  
of February, 2022.

at Sacramento, CA  
(city) (state)  
Maricela Leyva  
Maricela Leyva



1 C.D. Michel – SBN 144258  
2 Anna M. Barvir – SBN 268728  
3 Jason A. Davis – SBN 224250  
4 Konstadinos T. Moros – SBN 306610  
5 MICHEL & ASSOCIATES, P.C.  
6 180 E. Ocean Blvd, Suite 200  
7 Long Beach, CA 90802  
8 Telephone: (562) 216-4444  
9 Facsimile: (562) 216-4445  
10 Email: CMichel@michellawyers.com

11 Attorneys for Petitioners - Plaintiffs

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

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

Petitioners-Plaintiffs,

v.

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.

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable  
James C. Chalfant; Department 85]

**NOTICE OF DEPOSITION OF  
MARICELA LEYVA AND REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Action filed: May 27, 2020

DEPOSING PARTY: Plaintiffs Franklin Armory, Inc. and California Rifle & Pistol Association,  
Incorporated

DEPONENT: Maricela Leyva

DATE & TIME: December 29, 2021 at 10:00 a.m.

LOCATION: Remote via Zoom videoconference

**EXHIBIT**  
**005**

1 PLEASE TAKE NOTICE that Petitioners-Plaintiffs will take the deposition of Defendant  
2 California Department of Justice employee, Maricela Leyva. The deposition will be taken by remote  
3 means pursuant to Code of Civil Procedure section 2025.310 and, pursuant to the agreement of the  
4 parties, it will commence at **10:00 a.m. on December 29, 2021**. Such deposition will be taken before an  
5 officer authorized to administer oaths in the State of California, and will continue from day to day  
6 thereafter, excluding Saturdays, Sundays, and holidays until completed, or until seven hours of  
7 deposition has occurred.

8 YOU ARE FURTHER NOTIFIED THAT the deposing party intends to cause the proceedings to  
9 be recorded stenographically. The deposing party reserves the right to record the deponent's testimony  
10 by audiotape, videotape, or by real-time transcription, or any combination thereof, pursuant to California  
11 Code of Civil Procedure section 2025.220(a)(5), and to use such recorded testimony at the trial of this  
12 matter, or any other proceeding or hearing herein.

### 13 DEFINITIONS

14 The following definitions apply to the request for production of documents included herein:

- 15 1. **YOU** and **YOUR** refers to yourself and anyone acting on YOUR behalf.
- 16 2. **COMMUNICATION** refers to any oral, written, or physical utterance, notation,  
17 expression, gesture, or statement of any nature whatsoever, by and to whomsoever made, including, but  
18 not limited to any correspondence, conversation, dialogue, discussion, interview, consultation,  
19 agreement, or other understanding between or among two or more persons.
- 20 3. **DECLARATION** refers to the declaration executed by Ms. Maricela Leyva on or about  
21 November 24, 2021, and filed in *Franklin Armory, Inc., et al., v. California Department of Justice, et*  
22 *al.*, Case No. 208STCP01747.
- 23 4. **DES** refers to the Dealer Record of Sale Entry System, the public-facing web application  
24 used by firearms dealers to transmit information to the Department of Justice, Bureau of Firearms, to  
25 perform background checks on firearms transactions.
- 26 5. **DOCUMENT** refers to any refers to any written, printed, typed, photostatic,  
27 photographed recorded or otherwise reproduced communication or record of every kind and description,  
28 whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combinations

1 thereof, whether prepared by hand or electronic, magnetic, photographic, mechanic or other means,  
2 including audio or video recordings of communications, occurrences, or events. This definition includes,  
3 but is not limited to any of the following: advertisements, agendas, agreements, analyses, appraisals,  
4 articles, billings and invoices, blueprints, books, brochures, bulletins, calendars or calendar entries,  
5 charts and tables, computer-stored (whether stored on a desktop computer, laptop computer, table, smart  
6 phone, backup storage, or other electronic system) and computer-readable data, computer programs,  
7 computer printouts, contracts, correspondence, diaries, emails, facsimiles, files, film, forms, forecasts,  
8 journals, ledgers, letters, maps, memorandums, microfilm, microfiche, minutes, newsletters,  
9 newspapers, notes, notices, orders, pamphlets, photographs, pictures, plans, receipts, recordings, records,  
10 reports, schedules, spreadsheets, statements, studies, summaries, tabulations, tapes, telegrams, telexes,  
11 text messages, transcripts, and all other sources or formats from which data, information, or  
12 communications can be obtained. This definition shall also include any draft, preliminary version, or  
13 revisions of the foregoing, and all copies of a document shall be produced to the extent that the copies  
14 differ from the document production due to notations, additions, insertions, deletions, comments,  
15 attachments, enclosures, or markings of any kind.

16 **REQUEST FOR PRODUCTION OF DOCUMENTS**

17 **REQUEST FOR PRODUCTION NO. 1:**

18 Please provide the bulletin entitled “Important Notice Regarding ‘Other’ Firearms” that was  
19 posted on the DES website on or about September 27, 2021 and referenced in YOUR DECLARATION.

20 **REQUEST FOR PRODUCTION NO. 2:**

21 Please provide all COMMUNICATIONS referencing, regarding, or relating to the bulletin  
22 entitled “Important Notice Regarding ‘Other’ Firearms” that was posted on the DES website on or about  
23 September 27, 2021 and referenced in YOUR DECLARATION.

24 **REQUEST FOR PRODUCTION NO. 3:**

25 Please provide the revised bulletin entitled “IMPORTANT NOTICE Regarding the Sale of  
26 ‘Other’ Firearms” that was posted on the DES website on or about September 30, 2021 and referenced  
27 in YOUR DECLARATION.

28 ///

1 **REQUEST FOR PRODUCTION NO. 4:**

2 Please provide all COMMUNICATIONS referencing, regarding, or relating to the bulletin  
3 entitled "IMPORTANT NOTICE Regarding the Sale of 'Other' Firearms" that was posted on the DES  
4 website on or about September 30, 2021 and referenced in YOUR DECLARATION.

5 **REQUEST FOR PRODUCTION NO. 5:**


6 Please provide the bulletin entitled "IMPORTANT NOTICE regarding the Sale of 'Other'  
7 Firearms" that was posted on the DES website on or about October 1, 2021.

8 **REQUEST FOR PRODUCTION NO. 6:**

9 Please provide all COMMUNICATIONS referencing, regarding, or relating to the bulletin  
10 entitled "IMPORTANT NOTICE regarding the Sale of 'Other' Firearms" that was posted on the DES  
11 website on or about October 1, 2021.

12  
13 Date: December 16, 2021

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

14 

15 Anna M. Barvir

16 Attorneys for Petitioners-Plaintiffs  
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**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 December 16, 2021, I served the foregoing document(s) described as

**NOTICE OF DEPOSITION OF MARICELA LEYVA AND  
REQUEST FOR PRODUCTION OF DOCUMENTS**

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  
Email: [Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)

Kenneth G. Lake  
Deputy Attorney General  
Email: [Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)

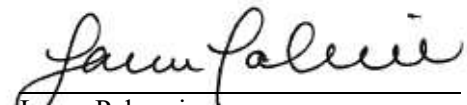
California Department of Justice  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013

*Attorney for Respondents-Defendants*

X (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 December 16, 2021, at Long Beach, California.

  
\_\_\_\_\_  
Laura Palmerin

1 ROB BONTA  
Attorney General of California  
2 BENJAMIN BARNOUW  
Supervising Deputy Attorney General  
3 State Bar no. 168581  
KENNETH G. LAKE  
4 Deputy Attorney General  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6506  
6 Fax: (916) 731-2120  
E-mail: Ben.Barnouw@doj.ca.gov  
7 *Attorneys for Defendants and Respondents*  
*California Department of Justice,*  
8 *Attorney General Rob Bonta, and former*  
*Attorney General Xavier Becerra*

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES  
12 CENTRAL DISTRICT  
13

14 **FRANKLIN ARMORY, INC., ET AL.,**  
15 Plaintiffs and Petitioners,  
16 v.  
17 **CALIFORNIA DEPARTMENT OF**  
18 **JUSTICE ET AL.,,**  
19 Defendants and  
20 Respondents.  
21

Case No. 20STCP01747

**DECLARATION OF MARICELA  
LEYVA IN SUPPORT OF MOTION TO  
DISMISS THE FIRST, SECOND AND  
EIGHTH CAUSES OF ACTION IN THE  
SECOND AMENDED COMPLAINT AND  
PETITION**

Date: January 27, 2022  
Time: 9:30 a.m.  
Dept: 85  
Judge: Hon. James C. Chalfant  
Trial Date: Not set  
Action Filed: May 27, 2020

22  
23  
24 I, Maricela Leyva, do hereby declare as follows:

25 1. I have been employed with the State of California, Department of Justice,  
26 Bureau of Firearms (BOF) Customer Support Center as a Staff Services Manager I  
27 (SSMI) since June 2018. I began working for the BOF in 2012 as a Program  
28 Technician II. I later promoted to Staff Services Analyst, then to Ass

1 Governmental Program Analyst, then to SSMI over Assault Weapon Registration,  
2 and now as a SSMI over the Customer Support Center.

3 2. As an SSMI over the Customer Support Center, it is my responsibility to  
4 manage the daily functions of the Center, which include monitoring calls and  
5 correspondence received by the BOF from firearms dealers, Firearm Safety  
6 Certificate instructors, law enforcement agencies, manufacturers and the public  
7 regarding firearms laws and regulations.

8 3. The Dealer Record of Sale Entry System, often referred to as the "DES," is  
9 a public-facing web application which firearms dealers use to transmit information  
10 to the BOF to perform background checks on firearms transactions. As a SSMI over  
11 the Customer Support Center, I am familiar with the DES and often deal with  
12 questions posed by firearms dealers regarding the DES.

13 4. The DES was modified, with a deployment date of October 1, 2021, to  
14 include an "other" option in the "gun type" field. Prior to October 1, 2021, when a  
15 DES user selected "Long Gun Transactions" and selected "No" for "Receiver  
16 Only," then the user was required to select one of three options available in the  
17 "gun type" field, and those three options were "RIFLE," "SHOTGUN" and  
18 "RIFLE/SHOTGUN COMBINATION." Beginning on October 1, 2021, when a  
19 DES user selects "Long Gun Transactions" and selects "No" for "Receiver Only,"  
20 then the user must select one of four options available in the "gun type" field, and  
21 those four options are "RIFLE," "SHOTGUN" and "RIFLE/SHOTGUN  
22 COMBINATION" and "OTHER."

23 5. In my capacity as the SSMI over the Customer Support Center, I was  
24 involved in the drafting of a Bulletin to be posted on the DES to notify firearms  
25 dealers of the addition of the "other" option in the "gun type" field. The Bulletin  
26 was entitled, "Important Notice Regarding 'Other' Firearms," and was posted on  
27 the DES website on or about September 27, 2021. A true and correct copy of this  
28 Bulletin is attached hereto as Exhibit "A".

1       6. The primary purpose of this Bulletin was to notify firearms dealers about  
2 the modification of the DES and to instruct them how to utilize the “other” option.

3       7. Another purpose of the Bulletin was to remind firearms dealers that some  
4 firearms that could otherwise be considered to fall into the “other” category fit  
5 within the definition of an “assault weapon” set forth in Penal Code section 30515,  
6 subdivision (a), paragraphs (9), (10), and (11). Transactions involving firearms that  
7 are classified as “assault weapons” under this and other sections of the Penal Code  
8 cannot legally be processed through the DES. Although transactions for firearms  
9 that fit the definition of an “assault weapon” under Penal Code section 30515,  
10 subdivision (a), paragraphs (9), (10), and (11), cannot be legally processed through  
11 the DES, if an individual possessed such a firearm prior to September 1, 2020, and  
12 they satisfied the eligibility criteria set forth in Penal Code section 30950, they  
13 could keep the firearm if they registered it with the Department of Justice before  
14 January 1, 2022. The Bulletin notified firearms dealers that this registration process  
15 would take place between 9:00 a.m. PST on October 1, 2021, through 11:59 p.m.  
16 PST on December 31, 2021. The Bulletin referenced Penal Code section 30900 to  
17 inform dealers that there was a separate registration process for “other” assault  
18 weapons, so that they would not mistakenly attempt to register an “assault weapon”  
19 through the DES.


20       8. To achieve the purpose of reminding firearms dealers that some firearms  
21 that could otherwise be considered to fall into the “other” category fit within the  
22 definition of an “assault weapon” set forth in Penal Code section 30515,  
23 subdivision (a), paragraphs (9), (10), and (11), the Bulletin quoted those paragraphs  
24 in full. All three paragraphs apply to a “semiautomatic centerfire firearm that is not  
25 a rifle, pistol, or shotgun,” that has specified features. The feature in paragraph (10)  
26 is that the firearm “has a fixed magazine with the capacity to accept more than 10  
27 rounds.” The feature in paragraph (11) is that the firearm “has an overall length of  
28 less than 30 inches.” To highlight these two paragraphs, the Bulletin included the



1 following note: "Note: Prior to the sale, loan, or transfer of an 'Other' type firearm  
2 you must confirm: 1. That it has a fixed magazine that accepts 10 rounds or fewer.  
3 2. That it has an overall length of 30 inches or more." Unfortunately, this language  
4 was imprecise because it inadvertently failed to specify that these limitations only  
5 apply to "semiautomatic centerfire firearms."

6 9. When this omission was brought to BOF's attention, BOF issued a revised  
7 Bulletin on September 30, 2021. A true and correct copy of the revised Bulletin,  
8 posted on September 30, 2021, is attached hereto as Exhibit "B". The Bulletin was  
9 titled "IMPORTANT NOTICE Regarding the Sale of 'Other' Firearms," and  
10 specified that it superseded the original Bulletin posted on September 27, 2021.  
11 This revised Bulletin corrected the imprecision of the original Bulletin by clarifying  
12 that an "other" firearm could fit the definition of an assault weapon under Penal  
13 Code section 30515, subdivision (a), paragraphs (9), (10), and (11), only if it was  
14 "centerfire" firearm. Specifically, in place of the imprecise note from the original  
15 Bulletin, the revised Bulletin included the following: "Note: Prior to the sale, loan,  
16 or transfer of a centerfire 'Other' type firearm, you must confirm the 'Other' does  
17 not meet the criteria of an 'Other' Assault Weapon pursuant to Penal Code 30515."  
18 As with the first Bulletin, the revised Bulletin posted on September 30, 2021, also  
19 quoted Penal Code section 30515, subdivision (a), paragraphs (9), (10), and (11).  
20 The intent of the revised Bulletin was the same as the intent of the original Bulletin.

21 I declare, under penalty of perjury, that the foregoing is true and correct, and  
22 that this declaration is executed on November 24, 2021, at Sacramento, California.

23  
24   
25 Maricela Leyva  
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## **Exhibit A**

### **Notice Regarding the Sale of "Other" Firearms**

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

The purpose of this notice is to provide information on firearms categorized as firearm type "Other" and to advise California Firearm Dealers (CFD's) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an "Other" type firearm. The gun type option, "Other" will be available within the DES at 5:00 am Friday, October 1, 2021.

**WHAT IS CONSIDERED AN “OTHER” FIREARM**

An "Other" type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) An "Other" can also be considered an assault weapon.

Note: Prior to the sale, loan, or transfer of an "Other" type firearm you must confirm:

1. That it has a fixed magazine that accepts 10 rounds or fewer.
2. That it has an overall length of 30 inches or more.

If the "Other" does not meet the criteria above or is considered an "Other" Assault Weapon pursuant to Penal Code 30900, **the “Other” may not be sold, loaned or transferred** in the DES.

**WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON**

Pursuant to Penal Code section 30900, subdivision (c), paragraph (1), effective September 1, 2020, an "Other" assault weapon is defined in Penal Code section 30515, subdivision (a), paragraphs (9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
  - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
  - B. A thumbhole stock.
  - C. A folding or telescoping stock.
  - D. A grenade launcher or flare launcher.
  - E. A flash suppressor.
  - F. A forward pistol grip.
  - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  - H. A second handgrip.
  - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
  - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, "fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9), (10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

**The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.**

**RESTRICTIONS THAT DO NOT APPLY TO THE SALE OF NON-ASSAULT WEAPON  
“OTHER” FIREARMS**

**30-DAY RESTRICTION**

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period. This restriction does **NOT** apply to “Other” type firearms.

**AGE RESTRICTION**

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age. This restriction does **NOT** apply to a fully assembled “Other” type firearm.

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

**SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED**

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



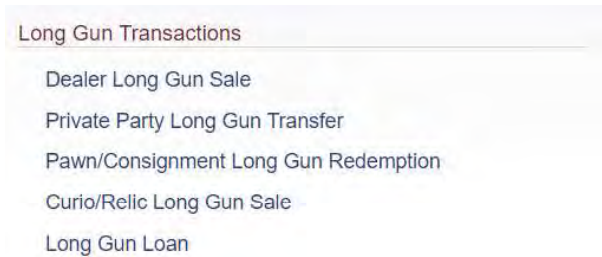
**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES**

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

**STEP 1**

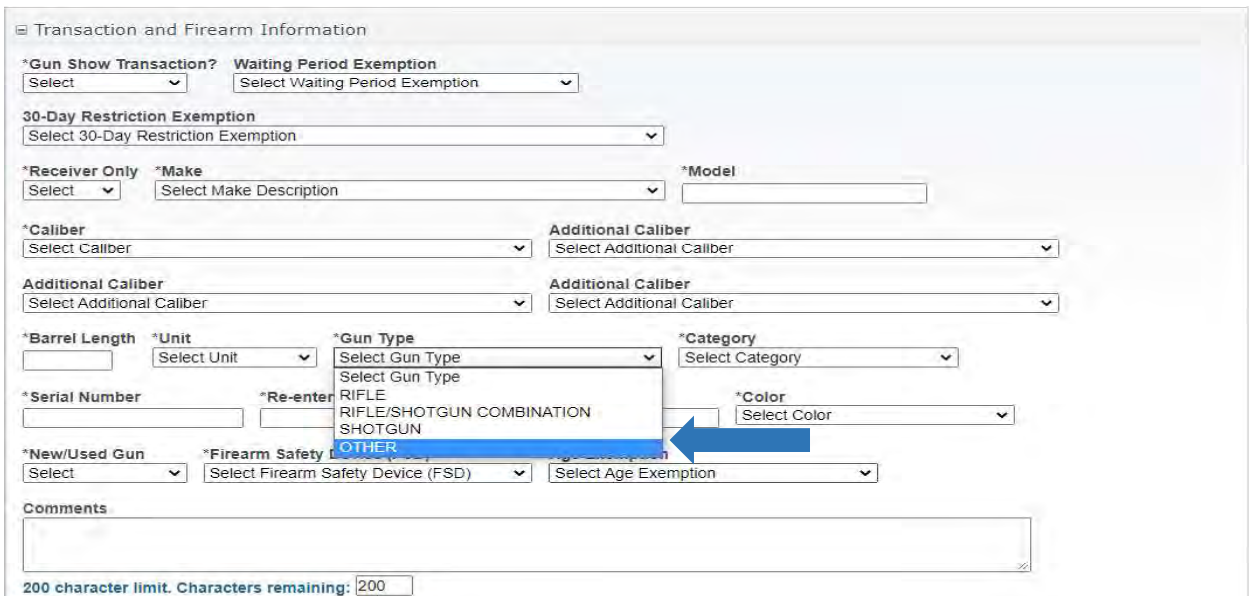
Select the **Long Gun Transactions** type related to the sale you are conducting.



A screenshot of a web application menu titled "Long Gun Transactions". The menu is open, showing a list of transaction types: "Dealer Long Gun Sale", "Private Party Long Gun Transfer", "Pawn/Consignment Long Gun Redemption", "Curio/Relic Long Gun Sale", and "Long Gun Loan". The "Long Gun Loan" option is highlighted with a blue background.

**STEP 2**

Under the Transaction and Firearm Information, **Gun Type** drop down, select “Other”.



A screenshot of the "Transaction and Firearm Information" form in the DES system. The form contains several fields for firearm details. The "\*Gun Type" dropdown menu is open, showing options: "Select Gun Type", "RIFLE", "RIFLE/SHOTGUN COMBINATION", "SHOTGUN", and "OTHER". A blue arrow points to the "OTHER" option. Other fields include "\*Gun Show Transaction?", "Waiting Period Exemption", "30-Day Restriction Exemption", "\*Receiver Only", "\*Make", "\*Model", "\*Caliber", "Additional Caliber", "\*Barrel Length", "\*Unit", "\*Serial Number", "\*Re-enter", "\*Category", "\*Color", "\*New/Used Gun", "\*Firearm Safety Device (FSD)", and "Select Age Exemption". A "Comments" text area is at the bottom with a character limit of 200.

**STEP 3**

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.

State of California  
Department of Justice  
Office of the Attorney General  
SKIP TO CONTENT

AG HOME PAGE VERSION 2.0.0.8 HELP CONTACT US LOGOFF  
\* Indicates Required Field User: JAMES HEWITT | January 27, 2020

**Firearms Shipment Verification Request**

\*Shipment Recipient CL Number  [\[View CL Number information\]](#)  
You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.

\*Number of weapons to be shipped  
Handguns  Long Guns

\*Shipment Invoice Number

**WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?**

Additional information can be found within the [“Other” Assault Weapons](#) Frequently Asked Questions on the Bureau of Firearms website at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at [bofdes@doj.ca.gov](mailto:bofdes@doj.ca.gov) Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

## **Exhibit B**

### **Notice**

**Regarding the Sale of "Other" Firearms  
(Supersedes Des Bullietin Exhibit A)**

**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**(THIS BULLETIN SUPERSEDES DES BULLETIN TITLED “Important Notice Regarding ‘Other’ Firearms” – Posted on 09/27/2021 at 9:50 AM.)**

The purpose of this notice is to provide information on firearms categorized as firearm type “Other” and to advise California Firearm Dealers (CFD’s) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an “Other” type firearm. The gun type option, “Other” will be available within the DES at 5:00 am Friday, October 1, 2021.

**WHAT IS CONSIDERED AN “OTHER” FIREARM**

An “Other” type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), “Buntline” type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).

Note: Prior to the sale, loan, or transfer of a centerfire “Other” type firearm, you must confirm the “Other” does not meet the criteria of an “Other” Assault Weapon pursuant to Penal Code 30515.

**WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON**

Effective September 1, 2020, an “Other” assault weapon is defined in Penal Code section 30515(a)(9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
  - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
  - B. A thumbhole stock.
  - C. A folding or telescoping stock.
  - D. A grenade launcher or flare launcher.
  - E. A flash suppressor.
  - F. A forward pistol grip.
  - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  - H. A second handgrip.
  - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.
  - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, “fixed magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

See related Other Assault Weapon Regulations: <https://oag.ca.gov/firearms/regs/oaw>.

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9),



IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

(10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

**The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.**

**RESTRICTIONS REGARDING THE SALE OF NON-ASSAULT WEAPON “OTHER” FIREARMS**

**30-DAY RESTRICTION**

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period.” This restriction does **NOT** apply to “Other” type firearms.

**AGE RESTRICTION**

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age.” This restriction applies to a fully assembled “Other” firearm unless the purchaser is exempt under 27510, subdivision (b).

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

**SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED**

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



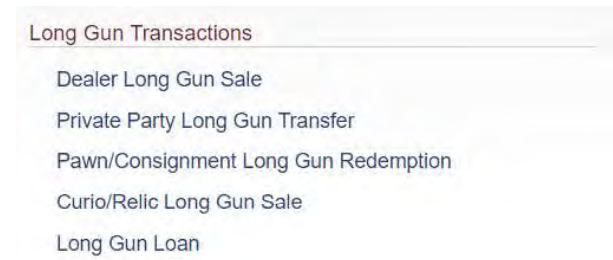
**HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES**

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**STEP 1**

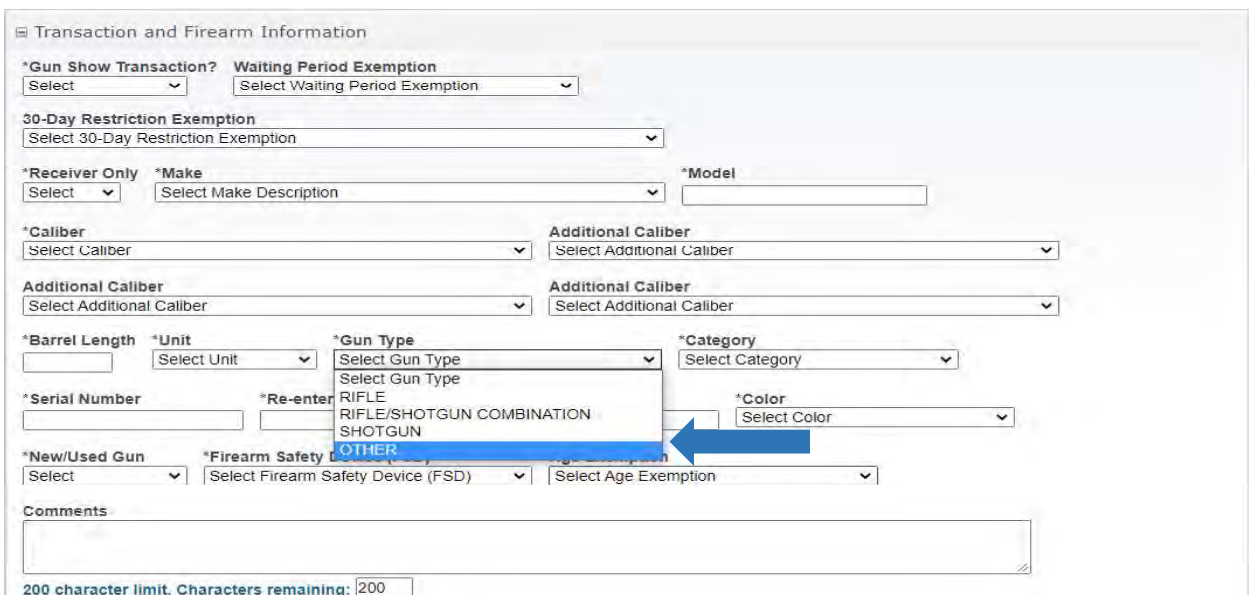
Select the **Long Gun Transactions** type related to the sale you are conducting.



A screenshot of a web application menu titled "Long Gun Transactions". It contains five options: "Dealer Long Gun Sale", "Private Party Long Gun Transfer", "Pawn/Consignment Long Gun Redemption", "Curio/Relic Long Gun Sale", and "Long Gun Loan".

**STEP 2**

Under the Transaction and Firearm Information, **Gun Type** drop down, select **“Other”**.



A screenshot of a web form titled "Transaction and Firearm Information". The form contains several fields and dropdown menus. A blue arrow points to the "Gun Type" dropdown menu, which is open and shows the following options: "RIFLE", "RIFLE/SHOTGUN COMBINATION", "SHOTGUN", and "OTHER". The "OTHER" option is highlighted in blue.

**STEP 3**

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.



A screenshot of a web form titled "Firearms Shipment Verification Request". The form is from the State of California, Department of Justice, Office of the Attorney General. It contains several fields and dropdown menus. A red box highlights the "Number of weapons to be shipped" section, which has two sub-sections: "Handguns" and "Long Guns". The "Long Guns" field is highlighted with a red box and a red arrow points to it.

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

**WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?**

Additional information can be found on the Bureau of Firearms website within the [“Other” Assault Weapon Registration](https://oag.ca.gov/firearms/oawr-notice) web page at <https://oag.ca.gov/firearms/oawr-notice> or within the [“Other” Assault Weapons](https://oag.ca.gov/firearms/regagunfaqs) Frequently Asked Questions web page at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at [bofdes@doj.ca.gov](mailto:bofdes@doj.ca.gov) Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

**DECLARATION OF SERVICE BY E-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 November 16, 2021, I served the attached **DECLARATION OF MARICELA LEYVA IN SUPPORT OF MOTION TO DISMISS THE FIRST, SECOND AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT AND PETITION** by transmitting a true copy via electronic mail, addressed as follows:

Anna M. Barvir  
Jason A. Davis  
Konstadinos T. Moros  
MICHEL & ASSOCIATES, P.C.  
[abarvir@michellawyers.com](mailto:abarvir@michellawyers.com)  
[Jason@calgunlawyers.com](mailto:Jason@calgunlawyers.com)  
[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)  
[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)

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 November 16, 2021, at Los Angeles, California.

\_\_\_\_\_  
Jasmine Zarate  
Declarant

\_\_\_\_\_  
/s/ Jasmine Zarate  
Signature

1 ROB BONTA  
Attorney General of California  
2 BENJAMIN BARNOUW  
Supervising Deputy Attorney General  
3 State Bar No. 168581  
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6 Fax: (916) 731-2120  
E-mail: Ben.Barnouw@doj.ca.gov  
7 *Attorneys for Defendants and Respondents*  
California Department of Justice,  
8 *Attorney General Rob Bonta and former*  
*Attorney General Xavier Becerra*

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES  
12  
13

14 **FRANKLIN ARMORY, INC., ET AL.**

15 Plaintiffs and Petitioners,

16 v.

17 **CALIFORNIA DEPARTMENT OF**  
18 **JUSTICE, ET AL.,**

19 Defendants and Respondents.  
20  
21

Case No. 20STCP01747

**DEFENDANT-RESPONDENT  
DEPARTMENT OF JUSTICE'S  
RESPONSE TO REQUEST FOR  
PRODUCTION, SET TWO,  
PROPOUNDED BY PLAINTIFF –  
PETITIONER FRANKLIN ARMORY,  
INC.**

Action Filed: May 27, 2020

22 PROPOUNDING PARTY: Plaintiff-Petitioner Franklin Armory, Inc.

23 RESPONDING PARTY: Defendant-Respondent California Department of Justice

24 SET NO.: Two  
25  
26  
27  
28

1 Defendant-Respondent California Department of Justice (Defendant) responds to the  
2 Request for Production, Set Two, propounded by Plaintiff-Petitioner Franklin Armory, Inc. as  
3 follows:

#### 4 PRELIMINARY STATEMENT

5 Defendant has not yet fully completed the investigation of the facts relating to this case  
6 and has not yet fully completed discovery in this action. All of the responses contained herein are  
7 based solely upon information and documents which are presently available to, and specifically  
8 known by, Defendant and disclose only those contentions which presently occur to Defendant. It  
9 is anticipated that further discovery, independent investigation, legal research and analysis will  
10 supply additional facts and lead to additions, changes, and variations from the answers herein.  
11 The following responses are given without prejudice to the right to produce evidence or witnesses  
12 which Defendant may later discover. Defendant accordingly reserves the right to change any and  
13 all responses herein as additional facts are ascertained, witnesses identified and legal research is  
14 completed. The responses contained herein are made in good faith in an attempt to supply as  
15 much factual information and as much specification of legal contention as is presently known and  
16 should in no way prejudice Defendant in relation to further discovery and proceedings.

#### 18 GENERAL OBJECTIONS

19 Each and every request for documents and things is answered subject to the limitations  
20 and objections set forth in the specific responses and to the general limitations and objections set  
21 forth below.

22 1. Defendant objects to each request to the extent it could be interpreted as calling for the  
23 production of privileged or protected documents, if any exist. To the extent that any requests  
24 purport to call for production of privileged documents generated by or at the request of  
25 Defendant's counsel specifically in connection with the defense of this litigation, or in  
26 anticipation of this litigation, Defendant has no obligation to identify the privileged documents  
27 and will not do so.

28 2. No response to any portion of these production demands shall be deemed to be a waiver of any

1 objection not set forth which could be made to any portion of these production demands  
2 concerning the relevancy of a document or the information set forth in a document, or of any  
3 other matter involving admissibility of such information or document at the trial of this action.

4 3. Production of documents in any or all categories of these production demands shall not be  
5 deemed a waiver of any right of Defendant to object to further production of such documents.

6 4. This response, and the production of documents hereunder, are based upon information  
7 presently known to Defendant. Further investigation or discovery may reveal additional  
8 documents not produced herein and presently unavailable. Accordingly, this response is provided  
9 without prejudice to the rights of Defendant to present additional documents later obtained as a  
10 result of such investigation or discovery.

11 5. Defendant objects to each request to the extent that the response is more properly sought from  
12 parties or persons other than Defendant and is obtainable from some other source that is more  
13 convenient, less burdensome and less expensive.

## 14 15 **RESPONSES TO REQUESTS FOR PRODUCTION**

### 16 **REQUEST FOR PRODUCTION NO. 20:**

17 Produce a copy of the bulletin YOU released to firearm dealers on or before October 1,  
18 2021 titled "IMPORTANT NOTICE Regarding the Sale of "Other" Firearms."

### 19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

20 Defendant will produce any non-privileged documents in its possession, custody or  
21 control located after a diligent search and reasonable inquiry that are responsive to this request.  
22 Responsive to this request are attached pages stamped DOJ0005-DOJ0008.

### 23 24 **REQUEST FOR PRODUCTION NO. 11:**

25 Produce a copy of the bulletin YOU released to firearm dealers on or before September  
26 27, 2021 titled "Important Notice Regarding 'Other' Firearms" that was superseded by the  
27 October 1, 2021 bulletin described in Request for Production No. 20.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

2 Defendant will produce any non-privileged documents in its possession, custody or  
3 control located after a diligent search and reasonable inquiry that are responsive to this request.  
4 Responsive to this request are attached pages stamped DOJ0001-DOJ0004.  
5

6 **REQUEST FOR PRODUCTION NO. 22:**

7 Produce all DOCUMENTS that constitute prior versions or drafts of the bulletin YOU  
8 released to firearm dealers on or before October 1, 2021 titled "IMPORTANT NOTICE  
9 Regarding the Sale of "Other" Firearms."

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

11 Defendant objects to this request on the ground it is overbroad, and unduly burdensome  
12 and harassing. Defendant further objects to this request on the ground it seeks documents which  
13 are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence,  
14 exceeds the limited discovery allowed by the Court regarding the current claims, and seeks  
15 documents subject to privileges, including the official information privilege, the attorney-client  
16 privilege, and the attorney-work product privilege. (Evid. Code, § 1040 [official information];  
17 Evid. Code § 954 [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].)  
18 Defendant further objects to this request as the mandamus cause of action and related claims are  
19 moot. As of October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other"  
20 option in the "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed  
21 that this modification to the DES on October 1, 2021, removes any and all barriers in processing  
22 "Other" type firearms.  
23

24 **REQUEST FOR PRODUCTION NO. 23:**

25 Produce all DOCUMENTS that constitute prior versions or drafts of the bulletin YOU  
26 released to firearm dealers on or before September 27, 2021 titled "Important Notice Regarding  
27 'Other' Firearms" that was superseded by the October 1, 2021 bulletin described in Request for  
28 Production No. 20.



1     **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

2             Defendant objects to this request on the ground it is overbroad, and unduly burdensome  
3     and harassing. Defendant further objects to this request on the ground it seeks documents which  
4     are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence,  
5     exceeds the limited discovery allowed by the Court regarding the current claims, and seeks  
6     documents subject to privileges, including the official information privilege, the attorney-client  
7     privilege, and the attorney-work product privilege. (Evid. Code, § 1040 [official information];  
8     Evid. Code § 954 [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].)  
9     Defendant further objects to this request as the mandamus cause of action and related claims are  
10    moot. As of October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other"  
11   option in the "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed  
12   that this modification to the DES on October 1, 2021, removes any and all barriers in processing  
13   "Other" type firearms.

14  
15    **REQUEST FOR PRODUCTION NO. 24:**

16             Produce all non-privileged COMMUNICATIONS relating the drafting of the bulletin YOU  
17    released to firearm dealers on or before October 1, 2021 titled "IMPORTANT NOTICE  
18    Regarding the Sale of "Other" Firearms."

19    **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

20             Defendant objects to this request on the ground it is overbroad, and unduly burdensome  
21    and harassing, and fails to describe the documents sought with reasonable particularity.  
22    Defendant further objects to this request on the ground it seeks documents which are neither  
23    relevant nor reasonably calculated to lead to the discovery of admissible evidence, exceeds the  
24    limited discovery allowed by the Court regarding the current claims, and seeks documents subject  
25    to privileges, including the official information privilege, the attorney-client privilege, and the  
26    attorney-work product privilege. (Evid. Code, § 1040 [official information]; Evid. Code § 954  
27    [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].) Defendant further  
28    objects to this request as the mandamus cause of action and related claims are moot. As of

October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other" option in the "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed that this modification to the DES on October 1, 2021, removes any and all barriers in processing "Other" type firearms.

**REQUEST FOR PRODUCTION NO. 25:**

Produce all COMMUNICATIONS relating to drafting the bulletin YOU released to firearm dealers on or before September 27, 2021 titled "Important Notice Regarding 'Other' Firearms" that was superseded by the October 1, 2021 bulletin described in Request for Production No. 20.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Defendant objects to this request on the ground it is overbroad, and unduly burdensome and harassing, and fails to describe the documents sought with reasonable particularity. Defendant further objects to this request on the ground it seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, exceeds the limited discovery allowed by the Court regarding the current claims, and seeks documents subject to privileges, including the official information privilege, the attorney-client privilege, and the attorney-work product privilege. (Evid. Code, § 1040 [official information]; Evid. Code § 954 [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].) Defendant further objects to this request as the mandamus cause of action and related claims are moot. As of October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other" option in the "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed that this modification to the DES on October 1, 2021, removes any and all barriers in processing "Other" type firearms.

**REQUEST FOR PRODUCTION NO. 26:**

Produce all COMMUNICATIONS relating to revising the bulletin YOU released to firearm dealers on or before October 1, 2021 titled "IMPORTANT NOTICE Regarding the Sale

of "Other" Firearms."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Defendant objects to this request on the ground it is overbroad, and unduly burdensome and harassing, and fails to describe the documents sought with reasonable particularity. Defendant further objects to this request on the ground it seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, exceeds the limited discovery allowed by the Court regarding the current claims, and seeks documents subject to privileges, including the official information privilege, the attorney-client privilege, and the attorney-work product privilege. (Evid. Code, § 1040 [official information]; Evid. Code § 954 [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].) Defendant further objects to this request as the mandamus cause of action and related claims are moot. As of October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other" option in the "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed that this modification to the DES on October 1, 2021, removes any and all barriers in processing "Other" type firearms.

**REQUEST FOR PRODUCTION NO. 27:**

Produce all COMMUNICATIONS relating to the bulletin YOU released to firearm dealers on or before September 27, 2021 titled "Important Notice Regarding 'Other' Firearms" that was superseded by the October 1, 2021 bulletin described in Request for Production No. 20.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Defendant objects to this request on the ground it is overbroad, and unduly burdensome and harassing, and fails to describe the documents sought with reasonable particularity. Defendant further objects to this request on the ground it seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, exceeds the limited discovery allowed by the Court regarding the current claims, and seeks documents subject to privileges, including the official information privilege, the attorney-client privilege, and the attorney-work product privilege. (Evid. Code, § 1040 [official information]; Evid. Code § 954

1 [attorney-client]; Code Civ. Proc., § 2018.030 [attorney work-product].) Defendant further  
2 objects to this request as the mandamus cause of action and related claims are moot. As of  
3 October 1, 2021, the Dealer Record of Sale Entry System (DES) includes an "Other" option in the  
4 "gun type" dropdown menu. On November 3, 2021, Plaintiffs' counsel confirmed that this  
5 modification to the DES on October 1, 2021, removes any and all barriers in processing "Other"  
6 type firearms.

7  
8 Dated: November 29, 2021

Respectfully Submitted,

9 ROB BONTA  
10 Attorney General of California

11 *Benjamin Barnouw*

12  
13 BENJAMIN BARNOUW  
14 Supervising Deputy Attorney General  
15 KENNETH G. LAKE  
16 Deputy Attorney General  
17 *Attorneys for Defendants-Respondents*  
18 *California Department of Justice, Attorney*  
19 *General Rob Bonta, and former Attorney*  
20 *General Xavier Becerra*

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VERIFICATION

I, Maricela Leyva, am a Staff Services Manager I at the Department of Justice, Bureau of Firearms, and as such I am authorized to verify the foregoing discovery response on behalf of defendant California Department of Justice. I know the contents of the foregoing Response to Request for Production (Set 2) propounded by Plaintiff-Petitioner Franklin Armory, Inc. in the lawsuit titled Franklin Armory, Inc., et al. v. California Department of Justice, et al. (Los Angeles County Superior Court Case no. 20STCP01747) and I believe the responses to be true and correct based on documents and information made available to me.

I declare under penalty of perjury pursuant to the laws of the State of California that the above is true and correct and that this verification is executed on November 24, 2021, at Sacramento, California.

Maricela Leyva

LA2020601064

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

The purpose of this notice is to provide information on firearms categorized as firearm type "Other" and to advise California Firearm Dealers (CFD's) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an "Other" type firearm. The gun type option, "Other" will be available within the DES at 5:00 am Friday, October 1, 2021.

**WHAT IS CONSIDERED AN “OTHER” FIREARM**

An "Other" type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) An "Other" can also be considered an assault weapon.

Note: Prior to the sale, loan, or transfer of an "Other" type firearm you must confirm:

1. That it has a fixed magazine that accepts 10 rounds or fewer.
2. That it has an overall length of 30 inches or more.

If the "Other" does not meet the criteria above or is considered an "Other" Assault Weapon pursuant to Penal Code 30900, **the “Other” may not be sold, loaned or transferred** in the DES.

**WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON**

Pursuant to Penal Code section 30900, subdivision (c), paragraph (1), effective September 1, 2020, an "Other" assault weapon is defined in Penal Code section 30515, subdivision (a), paragraphs (9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
  - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
  - B. A thumbhole stock.
  - C. A folding or telescoping stock.
  - D. A grenade launcher or flare launcher.
  - E. A flash suppressor.
  - F. A forward pistol grip.
  - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  - H. A second handgrip.
  - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
  - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, "fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9), (10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

**The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.**

**RESTRICTIONS THAT DO NOT APPLY TO THE SALE OF NON-ASSAULT WEAPON  
“OTHER” FIREARMS**

**30-DAY RESTRICTION**

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period. This restriction does **NOT** apply to “Other” type firearms.

**AGE RESTRICTION**

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age. This restriction does **NOT** apply to a fully assembled “Other” type firearm.

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

**SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED**

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



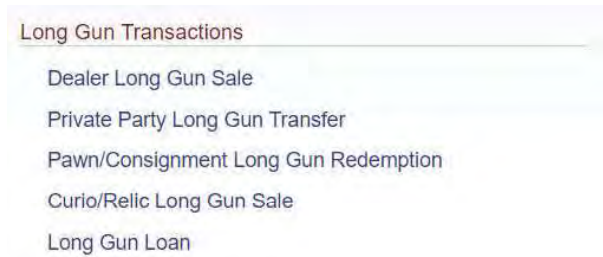
**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES**

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

**STEP 1**

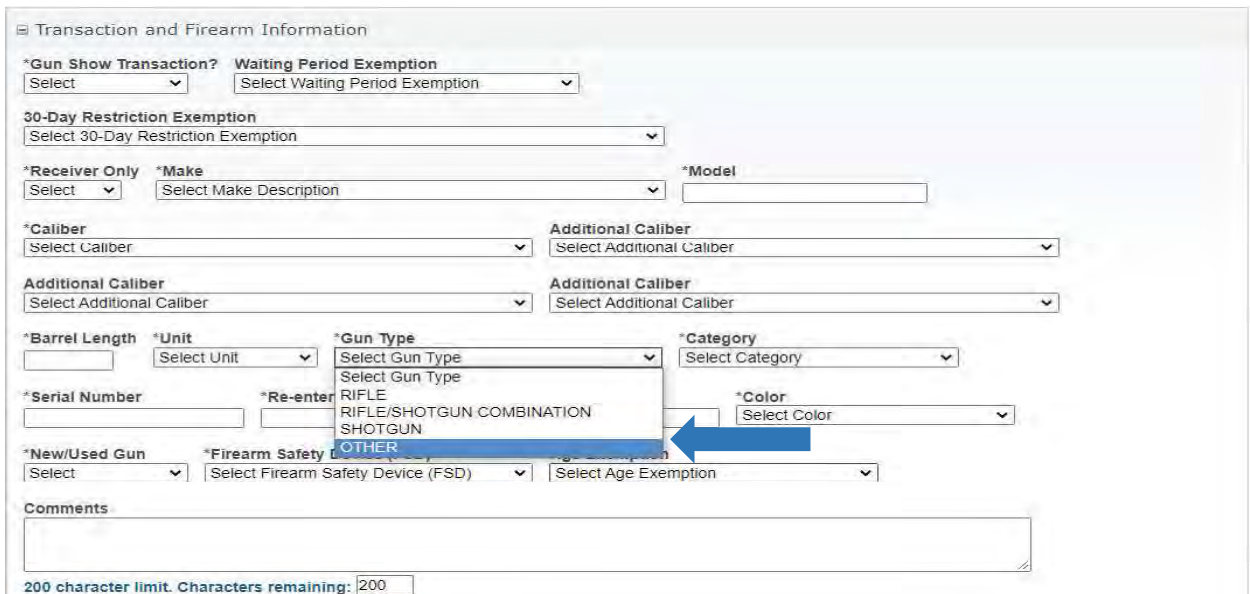
Select the **Long Gun Transactions** type related to the sale you are conducting.



A screenshot of a dropdown menu titled "Long Gun Transactions". The menu is open, showing several options: "Dealer Long Gun Sale", "Private Party Long Gun Transfer", "Pawn/Consignment Long Gun Redemption", "Curio/Relic Long Gun Sale", and "Long Gun Loan".

**STEP 2**

Under the Transaction and Firearm Information, **Gun Type** drop down, select “Other”.



A screenshot of the "Transaction and Firearm Information" form. The form contains various fields for firearm details. The "Gun Type" dropdown menu is open, showing options: "Select Gun Type", "RIFLE", "RIFLE/SHOTGUN COMBINATION", "SHOTGUN", and "OTHER". A blue arrow points to the "OTHER" option. Other fields include "Gun Show Transaction?", "Waiting Period Exemption", "30-Day Restriction Exemption", "Receiver Only", "Make", "Model", "Caliber", "Additional Caliber", "Barrel Length", "Unit", "Serial Number", "Re-enter", "Color", "New/Used Gun", "Firearm Safety Device (FSD)", and "Age Exemption". A "Comments" field is at the bottom with a 200 character limit.

**STEP 3**

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.



IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.

State of California  
Department of Justice  
Office of the Attorney General

AG HOME PAGE VERSION 2.0.0.9 HELP CONTACT US LOGOFF  
\* Indicates Required Field User: JAMES HEWITT | January 27, 2020

**Firearms Shipment Verification Request**

\*Shipment Recipient CL Number  [View CL Number information](#)  
You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.

\*Number of weapons to be shipped  
Handguns  Long Guns

\*Shipment Invoice Number

**WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?**

Additional information can be found within the [“Other” Assault Weapons](#) Frequently Asked Questions on the Bureau of Firearms website at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at [bofdes@doj.ca.gov](mailto:bofdes@doj.ca.gov) Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**(THIS BULLETIN SUPERSEDES DES BULLETIN TITLED “Important Notice Regarding ‘Other’ Firearms” – Posted on 09/27/2021 at 9:50 AM.)**

The purpose of this notice is to provide information on firearms categorized as firearm type “Other” and to advise California Firearm Dealers (CFD’s) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an “Other” type firearm. The gun type option, “Other” will be available within the DES at 5:00 am Friday, October 1, 2021.

**WHAT IS CONSIDERED AN “OTHER” FIREARM**

An “Other” type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), “Buntline” type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).

Note: Prior to the sale, loan, or transfer of a centerfire “Other” type firearm, you must confirm the “Other” does not meet the criteria of an “Other” Assault Weapon pursuant to Penal Code 30515.

**WHAT IS CONSIDERED AN “OTHER” ASSAULT WEAPON**

Effective September 1, 2020, an “Other” assault weapon is defined in Penal Code section 30515(a)(9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
  - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
  - B. A thumbhole stock.
  - C. A folding or telescoping stock.
  - D. A grenade launcher or flare launcher.
  - E. A flash suppressor.
  - F. A forward pistol grip.
  - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  - H. A second handgrip.
  - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.
  - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, “fixed magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

See related Other Assault Weapon Regulations: <https://oag.ca.gov/firearms/regs/oaw>.

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9),

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

(10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022.**

**The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.**

**RESTRICTIONS REGARDING THE SALE OF NON-ASSAULT WEAPON “OTHER” FIREARMS**

**30-DAY RESTRICTION**

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period.” This restriction does **NOT** apply to “Other” type firearms.

**AGE RESTRICTION**

Penal Code section 27510, subdivision (a), provides “A person licensed under sections 26700 to 26915, inclusive, shall not sell, supply, deliver, or give possession or control of a firearm to any person who is under 21 years of age.” This restriction applies to a fully assembled “Other” firearm unless the purchaser is exempt under 27510, subdivision (b).

Under federal law, an “Other” frame or receiver may not be sold, loaned or transferred to an individual less than 21 years of age. [18 U.S.C. 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b)]

**SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED**

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



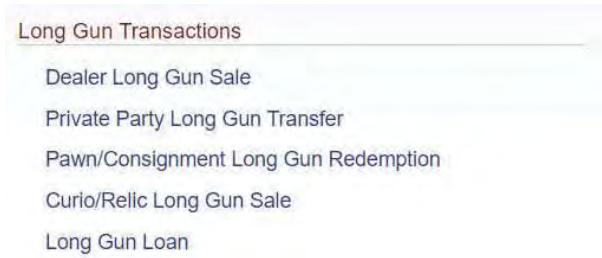
**HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES**

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.

**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**STEP 1**

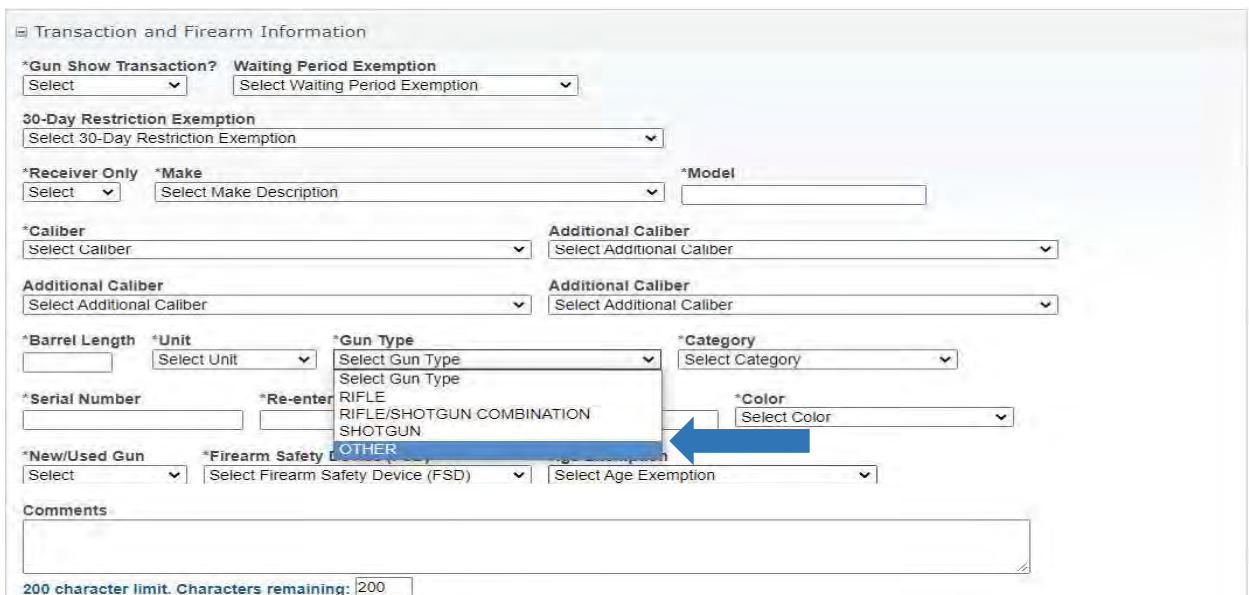
Select the **Long Gun Transactions** type related to the sale you are conducting.



A screenshot of a web application menu titled "Long Gun Transactions". The menu is displayed in a light blue box with a dark blue header. Below the header, there are five options listed in a light blue box with a dark blue border: "Dealer Long Gun Sale", "Private Party Long Gun Transfer", "Pawn/Consignment Long Gun Redemption", "Curio/Relic Long Gun Sale", and "Long Gun Loan".

**STEP 2**

Under the Transaction and Firearm Information, **Gun Type** drop down, select **“Other”**.



A screenshot of a web application form titled "Transaction and Firearm Information". The form is divided into several sections. The "Gun Show Transaction?" section has a dropdown menu set to "Waiting Period Exemption". The "30-Day Restriction Exemption" section has a dropdown menu set to "Select 30-Day Restriction Exemption". The "Receiver Only" section has a dropdown menu set to "Select". The "Make" section has a dropdown menu set to "Select Make Description". The "Model" section has a text input field. The "Caliber" section has a dropdown menu set to "Select Caliber". The "Additional Caliber" section has a dropdown menu set to "Select Additional Caliber". The "Barrel Length" section has a text input field. The "Unit" section has a dropdown menu set to "Select Unit". The "Gun Type" section has a dropdown menu with options: "Select Gun Type", "RIFLE", "RIFLE/SHOTGUN COMBINATION", "SHOTGUN", and "OTHER". A blue arrow points to the "OTHER" option. The "Category" section has a dropdown menu set to "Select Category". The "Serial Number" section has a text input field. The "Re-enter" section has a text input field. The "Color" section has a dropdown menu set to "Select Color". The "New/Used Gun" section has a dropdown menu set to "Select". The "Firearm Safety" section has a dropdown menu set to "Select Firearm Safety Device (FSD)". The "Age Exemption" section has a dropdown menu set to "Select Age Exemption". The "Comments" section has a text area. At the bottom, there is a character limit indicator: "200 character limit. Characters remaining: 200".

**STEP 3**

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.



A screenshot of a web application form titled "Firearms Shipment Verification Request". The form is part of the "State of California Department of Justice" and "Office of the Attorney General". It includes a header with "AG HOME PAGE", "VERSION 2.0.0.3", "HELP", "CONTACT US", "LOGOFF", and "User: JAMES HEWITT | January 27, 2020". The form has a red asterisk indicating required fields. The "Shipment Recipient CL Number" field has a dropdown menu set to "View CL Number information". The "Number of weapons to be shipped" section has two dropdown menus: "Handguns" and "Long Guns". A red arrow points to the "Long Guns" dropdown menu. The "Shipment Invoice Number" field has a text input field. At the bottom, there are three buttons: "Submit", "Clear", and "Main Menu".

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

**WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?**

Additional information can be found on the Bureau of Firearms website within the [“Other” Assault Weapon Registration](https://oag.ca.gov/firearms/oawr-notice) web page at <https://oag.ca.gov/firearms/oawr-notice> or within the [“Other” Assault Weapons](https://oag.ca.gov/firearms/regagunfaqs) Frequently Asked Questions web page at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at [bofdes@doj.ca.gov](mailto:bofdes@doj.ca.gov) Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

**DECLARATION OF SERVICE BY E-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 November 29, 2021, I served the attached **DEFENDANT-RESPONDENT DEPARTMENT OF JUSTICE'S RESPONSE TO REQUEST FOR PRODUCTION, SET TWO, PROPOUNDED BY PLAINTIFF –PETITIONER FRANKLIN ARMORY, INC** by transmitting a true copy via electronic mail, addressed as follows:

Anna M. Barvir  
Jason A. Davis  
Konstadinos T. Moros  
MICHEL & ASSOCIATES, P.C.  
[abarvir@michellawyers.com](mailto:abarvir@michellawyers.com)  
[Jason@calgunlawyers.com](mailto:Jason@calgunlawyers.com)  
[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)  
[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)

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 November 29, 2021, at Los Angeles, California.

\_\_\_\_\_  
Jasmine Zarate  
Declarant

\_\_\_\_\_  
/s/ Jasmine Zarate  
Signature

LA2020601064



**IMPORTANT NOTICE**  
**Regarding the Sale of "Other" Firearms**

**(THIS BULLETIN SUPERSEDES DES BULLETIN TITLED "Important Notice Regarding 'Other' Firearms" – Posted on 09/27/2021 at 9:50 AM.)**

The purpose of this notice is to provide information on firearms categorized as firearm type "Other" and to advise California Firearm Dealers (CFD's) how to submit a Dealer Record of Sale (DROS) transaction in the DROS Entry System (DES) for an "Other" type firearm. The gun type option, "Other" will be available within the DES at 5:00 am Friday, October 1, 2021.

**WHAT IS CONSIDERED AN "OTHER" FIREARM**

An "Other" type firearm is a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), "Buntline" type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).

Note: Prior to the sale, loan, or transfer of a centerfire "Other" type firearm, you must confirm the "Other" does not meet the criteria of an "Other" Assault Weapon pursuant to Penal Code 30515.

**WHAT IS CONSIDERED AN "OTHER" ASSAULT WEAPON**

Effective September 1, 2020, an "Other" assault weapon is defined in Penal Code section 30515(a)(9), (10), or (11), as:

9. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:
  - A. A pistol grip that protrudes conspicuously beneath the action of the weapon.
  - B. A thumbhole stock.
  - C. A folding or telescoping stock.
  - D. A grenade launcher or flare launcher.
  - E. A flash suppressor.
  - F. A forward pistol grip.
  - G. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
  - H. A second handgrip.
  - I. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
  - J. The capacity to accept a detachable magazine at some location outside of the pistol grip.
10. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has a fixed magazine with the capacity to accept more than 10 rounds.
11. A semiautomatic centerfire firearm that is not a rifle, pistol, or shotgun, that has an overall length of less than 30 inches.

For purposes of this section, "fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

See related Other Assault Weapon Regulations: <https://oag.ca.gov/firearms/regs/oaw>.

Penal Code section 30900, as amended, requires any person who, prior to September 1, 2020, lawfully possessed an assault weapon as defined by Penal Code Section 30515 subdivision (a) paragraphs (9),

**EXHIBIT**  
**008**

**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

(10), and (11), and is eligible to register an assault weapon as set forth in Penal Code Section 30900, subdivision (c), to submit an application to the DOJ to register the firearm **before January 1, 2022**.

**The “Other” Assault Weapon Registration will take place between 9:00 a.m. PST on October 1, 2021 through 11:59 p.m. PST on December 31, 2021.**

**RESTRICTIONS REGARDING THE SALE OF NON-ASSAULT WEAPON “OTHER” FIREARMS**

**30-DAY RESTRICTION**

Penal Code section 27535, subdivision (a), provides in pertinent part that “A person shall not make an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period.” This restriction does **NOT** apply to “Other” type firearms.

**AGE RESTRICTION**

Under federal law, a shotgun or rifle is the only firearm a licensed importer, licensed manufacturer, licensed dealer, or licensed collector may sell or deliver to a person the licensee knows, or has reasonable cause to believe, is less than twenty-one years of age.

Given the broad scope of this federal restriction (applicable to all persons under the age of twenty-one without exception), it is therefore also unlawful under federal law to sell or deliver any California “other” firearm, including frames and receivers, to a person the licensee knows, or has reasonable cause to believe, is less than twenty-one years of age. This federal age restriction applies regardless if the person would otherwise qualify for exemption under California Penal Code section 27510, subdivision (b). (18 USC 921(a)(5) and (7) and 922(b)(1); 27 CFR 478.11 and 478.99(b).)

**SALE OR TRANSFER OF SELF-MANUFACTURED “OTHER” FIREARMS PROHIBITED**

The sale or transfer of ownership of a firearm manufactured or assembled pursuant to Penal Code section 29180, subdivision (d)(1) is prohibited. This includes “Other” type firearms. The serial number on this particular firearm contains the abbreviation “FMBUS” (Firearm Manufactured by Unlicensed Subject) and additional numbers and letters.



**HOW TO SUBMIT AN “OTHER” FIREARM IN THE DES**

The DROS Entry System (DES) **Gun Type** field, for long gun transactions only, has been enhanced with an “Other” firearm option. Below are instructions on how to submit an “Other” type firearm.



**IMPORTANT NOTICE**  
**Regarding the Sale of “Other” Firearms**

**STEP 1**

Select the **Long Gun Transactions** type related to the sale you are conducting.

Long Gun Transactions

Dealer Long Gun Sale

Private Party Long Gun Transfer

Pawn/Consignment Long Gun Redemption

Curio/Relic Long Gun Sale

Long Gun Loan

**STEP 2**

Under the Transaction and Firearm Information, **Gun Type** drop down, select “Other”.

Transaction and Firearm Information

\*Gun Show Transaction?  Waiting Period Exemption

30-Day Restriction Exemption

\*Receiver Only  \*Make  \*Model

\*Caliber  Additional Caliber

Additional Caliber  Additional Caliber

\*Barrel Length  \*Unit  \*Gun Type   
Select Gun Type  
RIFLE  
RIFLE/SHOTGUN COMBINATION  
SHOTGUN  
OTHER

\*Serial Number  \*Re-enter  \*Color

\*New/Used Gun  \*Firearm Safety  \*Age Exemption

Comments

200 character limit. Characters remaining: 200

**STEP 3**

Follow the steps identified in the DES Firearms and Ammunition Dealer User Guide titled, “Previewing, Printing, and Submitting/Delivering Firearm DROS Transaction” to complete and submit the transaction.

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

When completing the firearms shipment verification request, an “Other” type firearm should be documented as a “long gun” in the number of weapons to be shipped field.

State of California  
Department of Justice



Office of the  
Attorney General

[SKIP TO CONTENT](#)

AG HOME PAGE [VIEW THIS PAGE](#) [HELP](#) [CONTACT US](#) [LOGOFF](#)  
User: JAMES HEWITT | January 27, 2020

**Firearms Shipment Verification Request**

\*Shipment Recipient CL Number   
You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.

\*Number of weapons to be shipped  
Handguns  Long Guns

\*Shipment Invoice Number

IMPORTANT NOTICE  
**Regarding the Sale of “Other” Firearms**

**WHERE CAN I FIND ADDITIONAL INFORMATION ABOUT “OTHER” ASSAULT WEAPONS?**

Additional information can be found on the Bureau of Firearms website within the [“Other” Assault Weapon Registration](https://oag.ca.gov/firearms/oawr-notice) web page at <https://oag.ca.gov/firearms/oawr-notice> or within the [“Other” Assault Weapons](https://oag.ca.gov/firearms/regagunfaqs) Frequently Asked Questions web page at <https://oag.ca.gov/firearms/regagunfaqs>.

If you have any questions, please contact the Bureau of Firearms, Customer Support Center at (855) 365-3767 or via e-mail at [bofdes@doj.ca.gov](mailto:bofdes@doj.ca.gov) Monday through Saturday 8:00 am to 9:00 pm and Sunday 8:00 am to 4:30 pm. You may also seek guidance with interpretation of this law from your legal counsel.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

6 On June 27, 2024, I served the foregoing document(s) described as

7 **EXHIBIT 19 TO DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFF'S**  
8 **OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE**  
9 **ALTERNATIVE, FOR SUMMARY ADJUDICATION**

10 on the interested parties in this action by placing

11 [ ] the original

[X] a true and correct copy

thereof by the following means, addressed as follows:

12 Kenneth G. Lake

13 Deputy Attorney General

14 Email: [Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)

Andrew Adams

15 Email: [Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)

California Department of Justice

16 300 South Spring Street, Suite 1702

Los Angeles, CA 90013

17 *Attorney for Respondents-Defendants*

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

20  
21 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
true and correct.

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

23 

24  
25 Laura Palmerin

26  
27  
28  
PROOF OF SERVICE

C.D. Michel – SBN 144258  
Jason A. Davis – SBN 224250  
Anna M. Barvir – SBN 268728  
Konstadinos T. Moros – SBN 306610  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd, Suite 200  
Long Beach, CA 90802  
Telephone: (562) 216-4444  
Facsimile: (562) 216-4445  
Email: CMichel@michellawyers.com

Attorneys for Petitioner - Plaintiff

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/27/2024 4:27 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By M. Gonzalez, Deputy Clerk

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

FRANKLIN ARMORY, INC., et al.,

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
et al.,

Respondents-Defendants.

Case No.: 20STCP01747

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

**DECLARATION OF LAURA PALMERIN  
RE: TECHNICAL DIFFICULTIES WITH  
FILING DECLARATION OF ANNA M.  
BARVIR IN SUPPORT OF OPPOSITION  
TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION**

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

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1. I am a paralegal at Michel & Associates, P.C., the law firm representing Plaintiff Franklin Armory, Inc., in the above-entitled matter. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify hereto.
2. On Wednesday, June 26, 2024, I attempted to file the Declaration of Anna M. Barvir in Support of Opposition to Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication, along with the Opposition and other supporting documents through One Legal.
3. I uploaded the Opposition, two Separate Statements, Objections to Evidence, Request for Judicial Notice, and the Declarations of Jason A. Davis, Jay Jacobson, and Neil Opdahl-Lopez, without issue. The last document I attempted to upload to One Legal for filing was the Declaration of Anna M. Barvir. Ms. Barvir's declaration would not upload, and I received the following error message: "Document upload failed. First, refresh your browser and try uploading again. If the problem persists, please use an incognito window to retry."
4. I refreshed my browser and tried it again. This did not work. I then opened an incognito window and tried again. That also did not work. I then logged out of One Legal, cleared my Google Chrome browser history, and tried again without success. I then tried, unsuccessfully, to file using Microsoft Edge.
5. I checked One Legal's max file size limit, which is listed as 120 MB per document and no limit per transaction for Los Angeles Superior Court civil filings. All of the documents, including the Declaration of Anna M. Barvir, were well under the 120 MB size limit.
6. I re-ran the Optical Character Recognition function on Adobe, removed all hyperlinks, confirmed that the document title included no special characters, and confirmed that the declaration's attached exhibits had been bookmarked per the Court's e-filing rules. I tried filing one last time without success.
7. I then filed the opposition and all other supporting documents, except for the Declaration of Anna M. Barvir, at 11:58 PM on Wednesday, June 26, 2024.
8. I also emailed the Declaration of Anna M. Barvir to Mr. Kenneth Lake and Mr. Andrew

1 Adams, counsel for Defendants California Department of Justice and Rob Bonta, at 12:07 AM on  
2 Thursday, June 27, 2024.

3 9. I emailed One Legal's support center explaining the issue, and they replied on Thursday,  
4 June 27, 2024, at 7:59 AM. They suggested that the file may have live data, such as an editable field or a  
5 live signature, and advised me to "flatten the document by doing a Print to PDF." On Thursday morning,  
6 I "printed" the declaration and exhibits to PDF and once again ran the Optical Character Recognition  
7 function to prepare for filing via One Legal.

8 10. The resulting document was 329 MB in size. I reduced the PDF size using Adobe's  
9 function and it resulted in a 275 MB sized document, over the 120 MB size limit.

10 11. I then proceeded to separate the document into four smaller size files. The first file is the  
11 Declaration with exhibits 11-14, the second file has exhibit 15, the third file has exhibits 16-18, and the  
12 last file has exhibit 19. Since the last three files are only exhibits and the document file type "exhibit" is  
13 not available on One Legal, I called One Legal support for advice on how to file the exhibits.

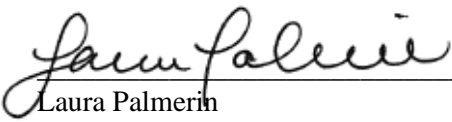
14 12. One Legal support suggested that I chose a different file type with a name extension field  
15 and add the corresponding exhibit numbers in the name extension field. One Legal support also  
16 suggested that I include a note to the Clerk explaining the situation.

17 13. I attempted to file using One Legal and I received the same original error message from  
18 above: "Document upload failed. First, refresh your browser and try uploading again. If the problem  
19 persists, please use an incognito window to retry."

20 14. I decided to use a different e-filing service provider.

21 15. I successfully submitted the documents for filing and e-served using Signal Attorney  
22 Service on June 27, 2024 at 4:16 PM.

23  
24 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
25 true and correct. Executed on June 27, 2024, at Riverside, California.

26  
27   
28 Laura Palmerin  
Declarant

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

6 On June 27, 2024, I served the foregoing document(s) described as

7 **DECLARATION OF LAURA PALMERIN RE: TECHNICAL DIFFICULTIES WITH FILING**  
8 **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF OPPOSITION TO DEFENDANTS'**  
9 **MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY**  
**ADJUDICATION**


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

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

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

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

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

24   
25 \_\_\_\_\_  
26 Laura Palmerin  
27  
28

PROOF OF SERVICE

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
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8 *through the California Department*  
*of Justice and Former Attorney General Xavier*  
9 *Becerra*

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

16  
17 Plaintiffs,

18 v.

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

23  
24 Defendants.  
25  
26  
27  
28

Case No. 20STCP01747

**REPLY TO OPPOSITION TO MOTION  
BY DEFENDANTS FOR SUMMARY  
JUDGMENT; OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF ISSUES**

**Date: July 10, 2024**  
**Time: 8:30 a.m.**  
**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**



1 Defendants have carried their burden on summary judgment to show that one or more  
2 elements of the three remaining causes of action cannot be established by the plaintiff  
3 and that there is a complete defense pursuant to the discretionary immunity under Government  
4 Code section 820.2. Department of Justice (Department) employees are entitled to discretionary  
5 immunity because the statutes at issue confer discretion and did not impose a mandatory duty to  
6 modify the DES to add the “other” option to the long gun drop-down menu in accordance with  
7 the letter sent by plaintiff’s counsel in October, 2019, before the Title 1 was rendered a banned  
8 assault weapon on August 6, 2020.

9 To satisfy its burden to show that a triable issue of material fact exists, plaintiff may not  
10 rely upon the mere allegations of its pleadings but instead must produce specific facts showing a  
11 material controversy as to the elements defendant claims cannot be established or as to the  
12 defense defendant is asserting. (Civ. Proc. § 437c (p)(2), *Weil & Brown*, Cal. Prac. Guide Civ.  
13 Pro. Before Trial (TRG 2024) §10:253.) Plaintiff seeks to avoid this burden by repeatedly  
14 referencing the prior demurrer and judgment on the pleadings rulings incorrectly asserting that  
15 these matters have been resolved relative to this motion. However, summary judgment motions  
16 “are law and motion proceedings entirely distinct from an attack on a pleading by demurrer.”  
17 (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 634, fn. 10.)

18 For example, plaintiff incorrectly argues that the court has already determined that there  
19 was a mandatory duty to modify the DES but these rulings were based on plaintiff’s allegations  
20 that are accepted as true on a demurrer. Also, plaintiff misstates Judge Chalfant’s ruling,  
21 asserting that he ruled that there was a mandatory duty to modify the DES. He did not. In fact, in  
22 his June 3, 2021, order he noted that “respondents argue that these statutes do not include any  
23 mandatory requirement that the Department operate the DES in any particular manner. They  
24 instead provide the Department with discretion to utilize the DES or another method” and stated:  
25 “This is true . . .” (Order, 6/3/21, p. 7, last two paragraphs.) The court went on to note that “the  
26 DOJ has discretion in how it implements the electronic transfer system, but the discretion has  
27 limits” in that, based on *AIDS Healthcare Foundation v. Los Angeles County Dept. of Health*,  
28 (2011) 197 Cal.App.4th 693, the Department could not arbitrarily fail to act. Judge Chalfant

1 decided that the second amended complaint sufficiently pled that the Department’s failure to act  
2 was arbitrary. (Order, 6/3/21, p. 8, first three paragraphs.) The *AIDS Healthcare Foundation*  
3 court dealt with a mandamus claim noting that mandamus will lie to command an exercise of  
4 discretion to take some action where there is an abuse of discretion. (*Id.* at p. 704.) In this  
5 context, “a decision is an abuse of discretion only if it is ‘arbitrary, capricious, entirely lacking in  
6 evidentiary support, unlawful, or procedurally unfair.’” (*Alejo v. Torlakson* (2013) 212  
7 Cal.App.4th 768, 780.)

8 This mandamus standard does not apply in determining whether a duty to act or liability  
9 exists relative to a damages claim under the Government Claims Act. An example of this is the  
10 discretionary immunity under section 820.2 which applies to an act or omission of a Department  
11 employee whether or not the discretion be abused.

12 The opposition concedes that the Department cannot be held directly liable for the three  
13 remaining causes of action but incorrectly asserts that this disposes of the mandatory duty issue  
14 because Government Code section 815.6 applies to entity liability only. However, as discussed in  
15 the moving papers, in a case alleging a public employee’s failure to take action, there must be a  
16 legal basis establishing a duty relative to plaintiff to act. A public employee has no duty to take  
17 affirmative action to assist another unless there is some relationship between them which gives  
18 rise to a duty to act. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1128-1129.) “This  
19 rule derives from the common law's distinction between misfeasance and nonfeasance, and its  
20 reluctance to impose liability for the latter.” (*Id.* at p. 1129.)

21 In addition, the Second District Court of Appeal has analyzed whether a statute or  
22 enactment establishes a mandatory duty or confers discretionary authority on public employees  
23 applying a Government Code section 815.6 mandatory duty analysis pursuant to *Haggis v. City of*  
24 *Los Angeles*, (2000) 22 Cal.4th 490. (*Hacala v. Bird Rides*, (2023) 90 Cal.App.5th 292, 305-306  
25 (enactment at issue did not impose a mandatory duty but rather granted discretionary enforcement  
26 authority resulting in City employees entitlement to discretionary immunity).) As discussed  
27 further below, there is no legal basis establishing a mandatory duty on the part of any Department  
28 employee to have modified the DES. Before addressing the duty issue, defendants address the

1 failure of plaintiff to establish the required elements for the interference claims.

2 **1. One or more Elements of the Three Interference Claims Cannot be Established**

3 The opposition misstates that the only support for Defendants’ assertion that the \$5 non-  
4 obligatory, refundable deposits are not valid contracts is *Lawrence’s Anderson on the Uniform*  
5 *Commercial Code* which notes that making a deposit on goods does not establish that the parties  
6 made a contract. (*Id.* at § 2-204:137.) The opposition fails to address the additional clear  
7 authority in the moving papers that in determining whether a contract was formed, California law  
8 “places emphasis on the party’s intent to be bound to the contract.” (*Fleming v. Oliphant*  
9 *Financial, LLC* (2023) 88 Cal.App.5th 13, 22.) Nor does plaintiff attempt to address the *Williston*  
10 *on Contracts* authority that the parties must “have a present intention to be bound by their  
11 agreement . . .” (1 *Williston on Contracts* (4th ed.) § 3:7.) *Williston* section 3.2 also makes clear  
12 that:

13 “The test for enforceability of an agreement is: (1) whether *both or all parties*,  
14 with the capacity to contract, *manifest objectively an intent to be bound by the*  
15 *agreement*; (2) whether the essential terms of the agreement are sufficiently  
definite to be enforced; (3) whether there is consideration; and (4) whether the  
subject matter of the agreement and its performance are lawful.”

16 (1 *Williston on Contracts* (4th ed.) § 3:2 (emphasis added).)

17 In other words, “whenever one of the parties to an agreement can terminate without  
18 consequence, an enforceable contract does not exist. It is clear that parties may not agree that one  
19 or both may walk away from all obligations without rendering the contract unenforceable.” (*Woll*  
20 *v. U.S.* (Fed. Cl. 1999) 45 Fed.Cl. 475, 478; *affirmed Woll v. U.S.* (Fed. Cir. 2000) 251 F.3d 171.)  
21 “Whether a contract is certain enough to be enforced is a question of law for the court.” (*Patel v.*  
22 *Liebermensch* (2008) 45 Cal.4th 344, 348, fn. 1.)

23 Here, it is undisputed that the deposits did not establish an obligation to be bound to a  
24 purchase of a Title 1.<sup>1</sup> These undisputed facts make clear that there was not a present intention to  
25 be bound by an agreement to purchase a Title 1 and thus no contract.

26 \_\_\_\_\_  
27 <sup>1</sup> The opposition references that there were some dealer deposits that were full price but Franklin  
28 owner Jay Jacobson testified that, as to dealer deposits, they were never charged anything, no  
money ever exchanged hands and these were more of accounting entries. (Jacobson Dep. p.  
129:9-130:7, Ex A1 to Reply Dec. of Lake)

1 Plaintiff's citation to *Jones v. Wide World of Cars*, (S.D.N.Y. 1993) 820 F.Supp. 132,  
2 actually provides further support for a finding of no contract in that the *Jones* court held that  
3 a consumer down payment on a product not specially made for the buyer, standing alone,  
4 could not be construed as an enforceable contract because the deposit was refundable if the  
5 transaction was called off. (*Id.* at p. 137-138 (Plaintiff recovered \$50,000 deposit for vehicle).)

6 In addition, plaintiff makes the irrelevant assertion that there is continued interest in the  
7 Title 1 by misstating the record in *Briseno v. Bonta, et al.*, USDC, Central Dist. Case No. 2:21-  
8 cv-09018-ODW (PDx), that there are thousands of members of a class action that have joined the  
9 litigation who made Title 1 deposits. (Opp. p. 13:4-7, Plf. fact 64.) In fact, the *Briseno* court  
10 docket shows there are three plaintiffs and that no motion for class certification has been made  
11 and thus there are no class members who have joined the litigation. (Ex. K to Reply Req. for Jud.  
12 Notice.) (See e.g. *A. B. v. Hawaii State Department of Education* (9th Cir. 2022) 30 F.4th 828,  
13 834-835 (discussing motion requirements to obtain an order for class certification).)

14 Furthermore, the court in *Briseno* ordered a stay of that action on August 12, 2022, pending  
15 the outcome of this action. (Order 8/12/22, Ex. L to Reply Req. for Jud. Notice, p. 12:13-19,  
16 11:5-9 [noting that plaintiff cannot appeal the previous dismissal of its claims until the Superior  
17 Court reaches final judgment on the damages claims].) Also, the plaintiffs in *Briseno* seek a court  
18 declaration, under the Second and Fourteenth Amendments allowing them to register and take  
19 possession of a Title 1. (Order 8/12/22, Ex. L, p. 5:7-18.) However, the section 1983 claims in  
20 this case were dismissed based on the ruling that there is no right to obtain a Title 1 and plaintiff  
21 is relegated to a damages claim in this action. (Order 9/7/23, p. 9:3-10:2.) Thus, the claims in  
22 *Briseno* have no bearing or relevance to the three remaining interference claims in this case.

23 With regard to the failure of the other required elements of the interference claims, plaintiff  
24 again improperly refers to the demurrer ruling which was based on plaintiff's allegations of  
25 implementation of a reporting system that excluded the Title 1. However, defendants have  
26 submitted undisputed evidence that the aspect of the DES system at issue, that is, the long gun  
27 drop-down menu with three options for rifle, shotgun and rifle/shotgun combination, had been in  
28 place since at least 2015, long before plaintiff introduced the Title 1 in October, 2019. Thus, the

1 act of setting up the DES drop-down menu without the “other” option could not logically have  
2 been an intentional act designed to interfere with the sales of a gun that would not be offered for  
3 sale until years later. Nor can non-compliance with an attorney demand letter from a gun  
4 manufacturer demanding a change in the DES to accommodate a new firearm logically be  
5 construed as converting an act that occurred years prior into a present intentional act of  
6 interference.

7       There is no California case ruling on a plaintiff asserting such a claim. The cases cited in  
8 the moving papers finding that interference claims resting on alleged inaction or the lack of an  
9 affirmative act fail as a matter of law are not binding authority. (*Nanko Shipping v. Alcoa Inc.*,  
10 (D. D.C. 2015) 107 F. Supp. 3rd 174, 182-183; *Knight Enterprises v. RPF Oil Co.* (Mich. Ct.  
11 App. 2013) 299 Mich.App. 275, 280.) But they are consistent with common sense and logic.

12       *Gym Door Repairs, Inc. v. Young Equip. Sales, Inc.* (SDNY 2016) 206 F.Supp.3d 869, cited  
13 by plaintiff is inapposite. The *Gym Door Repairs* court did not determine or even address  
14 whether inaction could satisfy the requirement of an intentional act designed to induce a breach or  
15 disrupt a relationship. The *Gym Door Repairs* court merely rejected an interference with business  
16 relationships claim on statute of limitations grounds noting that the limitations period would run  
17 from the time of the alleged action or inaction. (*Id.* at p. 910.)

18       With regard to the intentional and negligent interference with prospective economic  
19 advantage claims, the above discussion also applies, demonstrating there is no basis for either of  
20 these causes of action. As discussed in the moving papers, it must be “reasonably *probable* that  
21 the loss economic advantage would have been realized...” (*Youst v. Longo* (1987) 43 Cal.3d 64,  
22 71 (emphasis in original).) It is undisputed that no depositor had any obligation whatsoever to  
23 complete a purchase of a Title 1. Thus, it cannot be construed as probable that there was a lost  
24 economic advantage. The assertion in the opposition that many depositors have not gone through  
25 the trouble of getting their \$5 deposit back is not relevant and beside the point. Since there was  
26 no obligation to complete a sale, it is speculative, not probable, that an economic benefit would  
27 have been realized. It is also speculative to assume that a depositor would have been eligible to  
28 purchase the firearm by passing the required background check.

1 In addition, as discussed above, there was no knowledge or intentionally wrongful act  
2 designed to disrupt. Furthermore, plaintiff fails to show that there was an independently wrongful  
3 act of interference. This additional requirement also applies to a negligent interference claim.  
4 (*Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th 1179, 1185.) For an action to be independently  
5 wrongful it must be “unlawful, that is, if it is prescribed by some constitutional, statutory,  
6 regulatory, common law, or other determinable legal standard.” (*Ixchel Pharma v. Biogen* (2020)  
7 9 Cal.5th 1130, 1142.) “Only defendants who have engaged in an unlawful act can be held liable  
8 for this tort.” (*Korea Supply v. Lockheed Martin* (2003) 29 Cal.4th 1134, 1164.)

9 With regard to former Attorney General Becerra, plaintiff has not presented any evidence  
10 of any unlawful act by him or of any involvement relative to the modification to the DES. As to  
11 any other Department employee, none of whom has been identified, plaintiff has failed to identify  
12 legal authority showing that anyone engaged in an unlawful act. Not taking action in response  
13 to the letter of plaintiff’s counsel in October, 2019, requesting modification of the DES in the  
14 time frame demanded by plaintiff, cannot properly be construed as an unlawful act under this  
15 standard.

16 Plaintiff also infers wrongdoing by the lack of response to the inquiry from Mr. Jacobson  
17 as to whether a dealer could process a Title 1 for transfer in the DES by selecting one of the drop-  
18 down menu options available and then adding a description of the Title 1 such as “other” in the  
19 DES comment section.<sup>2</sup> However, plaintiff cites no authority that would have imposed such a  
20 duty on any Department employee. Such an assertion of a duty to respond to plaintiff was  
21 rejected by the court in the Sacramento action wherein it noted that the Department did not have a  
22 duty to respond to plaintiff’s inquiry about whether the Title 1 was an assault weapon. (Order,  
23 6/12/19, Sacramento Action, p. 3-4, Ex. J to Reply Req. for Jud. Notice.) Thus, not responding to  
24 this inquiry cannot be construed as an unlawful act.

25  
26  
27  
28 <sup>2</sup> Plaintiff does not to explain why a dealer could not have done this on their own or why an  
advisory opinion from the Bureau in this regard would be required.

1 Furthermore, since the statutory authority relative to the DES confers discretion on  
2 Department employees as to the whether and when to modify the DES, not acting to modify the  
3 DES before the Title 1 was banned cannot be construed as an unlawful act.

4 In addition, the opposition infers wrongdoing by Department employee's support for the  
5 passage of SB 118 as a trailer bill. However, no wrongdoing or liability can be premised on a  
6 Department employee advocating for firearms legislation, including SB 118, under the *Noerr-*  
7 *Pennington* doctrine. The *Noerr-Pennington* immunity applies to "virtually any tort, including  
8 unfair competition and interference with contract." (*Premier Medical Management Systems, Inc.*  
9 *v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 478; *Manistee Town Ctr. v. City*  
10 *of Glendale* (9th Cir. 2000) 227 F.3d 1090, 1092.) "The doctrine immunizes petitions directed at  
11 any branch of government, including the executive, legislative, judicial and administrative  
12 agencies." (*Id.*) "*Noerr-Pennington* applies to conduct by both private and government actors."  
13 (*Committee to Protect our Agricultural Water v. Occidental Oil and Gas Corporation* (E.D. Cal.  
14 2017) 235 F.Supp.3d 1132, 1155.) In addition, neither a public entity nor a public employee is  
15 liable for an injury caused by the adoption of an enactment. (Gov. Code, §§ 818.2, 821.) Thus,  
16 no unlawful or wrongful act by a Department employee can be derived from supporting SB 118.

17 The negligent interference claim also carries the additional requirement that plaintiff must  
18 show that the defendant owed the plaintiff a duty of care. (*Lange, supra*, 68 Cal.App.4th at p.  
19 1187.) As discussed further below, no Department employee owed plaintiff a duty of care.

20 **2. There Is No Legal Basis Establishing a Mandatory Duty on the Part of Any**  
21 **Department Employee to Have Modified the DES**

22 Even assuming *arguendo* that inaction could be construed as an intentional act of  
23 interference, there must be a legal basis establishing a duty on the part of a Department employee  
24 to have taken the action to modify the DES before the Title 1 was banned. Clearly, the writing of  
25 a letter by plaintiff's counsel demanding such a change cannot, as a matter of law, provide a basis  
26 for such a duty. Thus, there must be some statutory basis specifically imposing such a duty.  
27 Therefore, the mandatory duty discussion in the moving papers also applies to an analysis of the  
28 potential duty of an employee, as was done in *Hacala*.

1 As discussed in the moving papers, the statute dealing with the setup and operation of the  
2 DES, Penal Code section 28205, clearly confers discretionary authority which is specifically  
3 confirmed by the plain language of Penal Code section 28245 which states that acts or omissions  
4 as it pertains to long guns under the DES statute are deemed to be discretionary within the  
5 meaning of the Government Claims Act.

6 The opposition attempts to avoid the application of section 28245 by asserting that it  
7 applies only to the Department's conduct, not its employees. But the statutes relied upon by  
8 plaintiff as establishing a duty to have modified the DES also are directed only to the  
9 "Department", not employees. Thus, following this logic, these statutes cannot apply as a basis  
10 for establishing a duty as to any Department employee to have modified the DES and the analysis  
11 ends there. There is no duty and thus no liability.

12 If, on the other hand, the Penal code statutes asserted as a basis for establishing a duty can  
13 be construed as applying to Department employees, then it must follow that the terms of section  
14 28245 must also apply to employees. In this regard, "a public entity can only act through its  
15 employees." (*Yee v. Superior Court* (2019) 31 Cal.App. 5th 26, 32, 40.)

16 Although Penal Code section 28155 is not part of the same article as section 28245, this  
17 does not alter the clear conclusion that section 28155 does not establish a basis for a mandatory  
18 duty to modify the DES on a Department employee for a number of reasons. First, the form of  
19 the register and record of electronic transfer is contained within the DES and the authority to set-  
20 up, operate and modify the DES falls under section 28205. Second, the one sentence general  
21 language of section 28155, by its own terms, does not establish a duty to have modified the DES.  
22 Use of the word "shall" in this sentence merely indicates that it is the Department, as opposed to  
23 the legislature or another agency, who is authorized to create the DROS in the DES. The lack of  
24 any specificity as to how this is to be done makes clear that it is left to the Department's  
25 discretion to decide the format and information to be included in the DES. Any discussion about  
26 whether the form in the DES should have contained different or additional information requires a  
27 normative qualitative debate over whether such information was adequate, which precludes a  
28



1 finding of a mandatory duty. A duty to provide different or additional information in the DES  
2 based on the general language of Section 28155 cannot be implied.

3 Third, it is undisputed that the DES did contain the register and record of electronic  
4 transfer. In fact, the opposition concedes that the DES contained the required information as to  
5 firearm type and that the Department had discretion as to the register or the record of electronic  
6 transfer information to be included in the DES. (Opp., p. 8:11-18.) In this regard, the opposition  
7 notes that the statute mandates the firearm type (e.g. “long gun”) which was included in the DES,  
8 but there was no requirement to include the drop-down menu with options for rifle, shotgun, or  
9 rifle/shot gun combination in the long gun menu at all. Thus, plaintiff effectively agrees that the  
10 inclusion of this drop-down menu going back to at least 2015 was discretionary and that the  
11 Department had discretion to remove it altogether. The opposition provides a second example of  
12 the Department’s discretion with regard to the register or record of electronic transfer in the DES  
13 noting that the Department could have authorized an alternative by instructing a dealer to proceed  
14 by selecting one of the existing options in the DES and then adding “other” in the DES comment  
15 field.

16 Clearly, reading sections 28205, 28155 and 28245 together, the Department had  
17 discretionary authority with respect to making modifications to the DES and thus, as a matter of  
18 law, there was no mandatory duty imposed on any Department employee to have modified the  
19 DES in the manner requested by plaintiff in the time frame requested.<sup>3</sup>

### 20 **3. The Discretionary Immunity Under Government Code Section 820.2 Precludes** 21 **Liability Against Defendants**

22 Once again, plaintiff incorrectly asserts that the overruling of a demurrer by Judge Chalfant  
23 established a mandatory duty. As discussed above, the applicable standard on a summary  
24 judgment motion is completely different from a demurrer or motion for judgment on the  
25 pleadings. Judge Chalfant’s ruling provides a contrast to evaluating section 820.2 discretionary  
26 immunity in that he noted that the statutes at issue did confer discretion but mandamus relief

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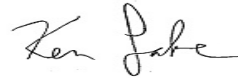
27 <sup>3</sup> The opposition does not contest that Penal Code sections 28215 and 28220 do not provide a  
28 basis for a mandatory duty.

1 could be available for an abuse of discretion by arbitrarily failing to act. In clear contrast, a  
2 monetary damage claim under the Government Claims Act is completely different. Government  
3 Code section 820.2 specifically immunizes public employees for *acts or omissions whether or not*  
4 *such discretion be abused.*

5 In addition, the above discussion makes clear that the Penal code sections relative to the  
6 operation of the DES confer discretionary authority upon Department employees. The  
7 Declaration of Bureau Director Alisson Mendoza, as well as her deposition testimony, sets forth  
8 in detail that the decision by the Bureau as to the timing of the modification of the DES to add the  
9 “other” option in 2021 was the result of the exercise of discretion in that the highest level officials  
10 at the Bureau engaged in a decision making process considering multiple factors requiring them  
11 to make choices among competing priorities during the Covid pandemic. In this regard, the letter  
12 of Department attorney Patty Li, sent before the start of the pandemic, and the testimony of  
13 Cheryle Massaro-Florez that technical staff were working on a possible modification to the DES  
14 to add the “other” option in 2020 is consistent with Director Mendoza’s statements that the top  
15 level officials at the Bureau in 2020 undertook a review of both a permanent and temporary  
16 enhancement which included having technical staff review what would be required for either  
17 modification. (Mendoza Dec. ¶¶ 8-11.) This process does not require a *strictly careful, thorough,*  
18 *formal, or correct* evaluation because this immunity was designed to protect against claims of  
19 carelessness, malice, bad judgment or abuse of discretion. (*Caldwell v. Montoya* (1995) 10  
20 Cal.4th 972, 983-984.) Plaintiff of course asserts that the evaluation by defendants as to the  
21 timing of the DES modification was incorrect, but it has not and cannot controvert the fact that  
22 this decision making process occurred thus entitling defendants to immunity under section 820.2.

23 Dated: July 5, 2024

Respectfully submitted,

24 

25  
26 KENNETH G. LAKE  
27 Deputy Attorney General  
28 *Attorneys for Defendants*

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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

16  
17 Plaintiffs,

18 v.

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

22 Defendants.  
23  
24

Case No. 20STCP01747

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

**Date: July 10, 2024**  
**Time: 8:30 a.m.**  
**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

25  
26 Pursuant to California Evidence Code sections 452 (c)-(d) and 453, Defendants  
27  
28

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

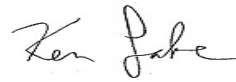
2 J Order, 6/12/19 filed in the action *Franklin Armory v. State of California et al.*, Sacramento  
3 Superior Case No. 2018-00246584-CU-MC. A true and correct copy is attached hereto as  
4 exhibit J.

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

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

9 Dated: July 5, 2024

Respectfully submitted,  
ROB BONTA  
Attorney General of California

11 

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

## EXHIBIT J

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

**MINUTE ORDER**

DATE: 06/12/2019

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: G. Toda

REPORTER/ERM:

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

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

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

CASE CATEGORY: Civil - Unlimited

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

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**APPEARANCES**

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**Nature of Proceeding:** Hearing on Demurrer

**TENTATIVE RULING**

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

Factual Background

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

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

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

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DATE: 06/12/2019

MINUTE ORDER

DEPT: 54

Page 1  
Calendar No.

**2051**

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

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

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

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

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

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

### Analysis

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



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

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

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

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

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

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

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

### Conclusion

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

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

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

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

### **COURT RULING**

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



## EXHIBIT K

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

US District Court Docket

United States District Court, California Central

(Western Division - Los Angeles)

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

### Header

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

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

### Participants

---

#### Litigants

---

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

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

#### Attorneys

---

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Kenneth Lake

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

**Litigants**

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

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

Luis Lopez

**Attorneys**

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 Robert Leslie Meyerhoff

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

**Litigants**

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**Defendant**

California Department of Justice  
**Defendant**

Does  
1-10 |  
**Defendant**

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**Proceedings**

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

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

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



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

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

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

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

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

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## EXHIBIT L

United States District Court  
Central District of California

ENDIR BRISENO, et al.,

Plaintiffs,

v.

ROBERT A. BONTA, et al.,

Defendants.

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

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

**I. INTRODUCTION**

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

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

## 3 II. FACTUAL BACKGROUND

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

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

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

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

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

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

### III. PROCEDURAL BACKGROUND

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

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

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

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

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



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

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

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

#### IV. LEGAL STANDARD

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

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

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

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

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

## 25 V. DISCUSSION

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

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

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

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

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

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

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

3 **B. *Pullman* Abstention**

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

11 *I. Sensitive Area of Social Policy*

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

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

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

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

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

## 19 2. *Avoidance of Constitutional Adjudication*

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

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

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

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

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

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

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

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

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

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

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

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



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

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



1 **VI. CONCLUSION**

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

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

12  
13 **IT IS SO ORDERED.**

14  
15 August 12, 2022

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18 **OTIS D. WRIGHT, II**  
19 **UNITED STATES DISTRICT JUDGE**  
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*of Justice and Former Attorney General Xavier*  
9 *Becerra in his personal capacity only*

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

16  
17 Plaintiffs,

18 v.

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

23 Defendants.

Case No. 20STCP01747

**REPLY DECLARATION OF KENNETH  
G. LAKE IN SUPPORT OF MOTION BY  
DEFENDANTS FOR SUMMARY  
JUDGMENT; OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF ISSUES**

**Date: July 10, 2024**

**Time: 8:30 a.m.**

**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

24 I, Kenneth G. Lake, declare:

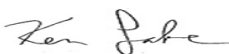
25 1. I am an attorney at law duly authorized to practice in the State of California. I am a  
26 Deputy Attorney General assigned to handle this matter on behalf of defendants.

27 2. True and correct copies of the relevant portions of the deposition of Jay Jacobson, taken  
28 on November 14, 2023, pgs. 129-130 are attached hereto as Exhibit A1.

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3. True and correct copies of the relevant portions of the deposition of Cheryle Massaro-Flores, taken on September 8, 2023, pgs. 58-60 are attached hereto as Exhibit D1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 5, 2024.



\_\_\_\_\_  
Kenneth G. Lake

## EXHIBIT A1

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

EXHIBIT D1



1 BY MR. DAVIS:

2 Q The DES was modified previously to update the  
3 country of birth field to include the United Arab  
4 Emirates, correct?

5 A Yes.

6 Q What steps were taken in the DES to add the  
7 AEU to the drop-down list?

8 A So first we had to verify that is a valid  
9 country of origin with the -- we use the NCIC,  
10 National Criminal Information Center, the FBI, make  
11 sure that it's clear, that it's valid. Then we have  
12 to add it to multiple lookup tables. And then  
13 specifically for DES, we would have to clear static  
14 cache for it to be seen.

15 Q Did that change cause or require any other  
16 databases or systems to be updated?

17 A No.

18 Q So that was one specific change. You didn't  
19 have to interrelate that to other databases like you  
20 did with adding "other" to the drop-down list?

21 A So let me correct my answer. It's a lookup  
22 table used by multiple applications. So static cache  
23 had to be cleared in other applications as well.

24 Q Do you know what other applications those had  
25 to be cleared in as well?

1           A     Any -- any of the internal applications. So  
2 assault weapon registration, armed private person  
3 system. Any application that requires personal  
4 identifiers to add place of birth.

5           Q     So removing the assault weapons portions of  
6 the change, the enhancement for the drop-down list for  
7 "others," would the enhancement -- the changes  
8 necessary to add the AEU be similar to those that were  
9 necessary to add "other" to the drop-down list?  
10 Again, excluding the assault weapon portion of it.

11          A     No.

12          Q     What was different?

13          A     The lookup table already exists. The systems  
14 are all built to -- to handle that lookup table, and  
15 it doesn't have validations behind them. It --

16          Q     When you say -- go ahead.

17          A     It displays just a label on the output. So  
18 however you spelled it.

19          Q     When you say validations, those don't apply  
20 to the AEU change, but they do apply to the drop-down  
21 list for adding "others" to the long gun change,  
22 correct?

23          A     Yes.

24          Q     And what does that mean, validations?

25          A     So allowing the system to -- to -- let me

1 see. Validation is the rules built within the  
2 application, whether it can accept or not accept a  
3 certain combination of things and type "other" did not  
4 exist, so it was not in our coding language to  
5 recognize it.

6 Q AEU didn't exist, but it didn't have to  
7 connect with "other" input to say that this is  
8 something that can or cannot proceed.

9 Is that what you're saying?

10 A Right. So the DES's coding logic already  
11 recognized that lookup table. So adding anything to  
12 that lookup table wouldn't be -- it wouldn't be a  
13 validation issue.

14 Q Do you know how much time it took to make  
15 that change for the AEU correction?

16 A A couple hours maybe.

17 Q Couple hours. So something that was probably  
18 done in one day?

19 A Yes.

20 MR. DAVIS: I need a break for five minutes.  
21 I just want to make sure there's nothing else I need  
22 to add before we're done.

23 MR. ADAMS: That works. Let's go off the  
24 record.

25 MR. DAVIS: Thank you.

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9 *Becerra*

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
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14 **FRANKLIN ARMORY, INC. AND**  
15 **CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INCORPORATED,**

16  
17 Plaintiffs,

18 v.

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

23  
24  
25 Defendants.

Case No. 20STCP01747

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

**Date: July 10, 2024**  
**Time: 8:30 a.m.**  
**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

26 Defendants submit this reply to plaintiff's statement of undisputed facts in opposition to the  
27 motion for summary judgment:  
28

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

1	Sale Entry System (DES) The DES is a web-	
2	based application used by California firearms	
3	dealers to submit firearm background checks	
4	to the Department to determine if an	
5	individual is eligible to purchase, loan, or	
6	transfer a handgun, long gun, and ammunition.	
7	(Cal. Code Regs., tit. 11, § 4200; citing Pen.	
8	Code, § 28205, Mendoza Dec., ¶ 3.)	
9	6. The alleged defect in the DES was that the	6. This fact is effectively undisputed. The
10	gun type drop-down menu for long guns that a	added commentary does nothing to controvert
11	dealer would select from while processing a	this allegation in the SAC.
12	transfer included only options for rifle,	
13	shotgun, or rifle/shotgun combination.	
14	Plaintiff alleges that since the Title 1 was not a	
15	“rifle” under the statutory definition, a dealer	
16	could not process a Title 1 for transfer unless	
17	the DES was modified to add an “other”	
18	option to this drop-down menu.	
19	(SAC, ¶¶ 58, 69, Ex C	
20	7. The SAC does not identify any statute or	7. This fact is effectively undisputed.
21	other authority that requires that a firearm	Reference to regulation regarding submitting
22	being processed for transfer in the DES fit the	accurate information does nothing to
23	statutory definition of “rifle” in order to be	controvert fact that no such statute or other
24	processed as such.	authority is alleged.
25	(SAC.)	
26	8. Mr. Jacobson testified that there was no	8. This fact is effectively undisputed.
27	mention of any issue with the DES in the	Plaintiff’s response does not controvert but
28	Sacramento action filed by Franklin Armory	rather supports this fact.
29	against the State and former Attorney General	
30	Becerra regarding the Title 1 and that he was	
31	unaware of any issue with the DES during that	
32	time. He testified that during the time the	
33	Sacramento action was pending, no one ever	
34	expressed concern that the Title 1 could not be	
35	processed in the DES because it was not a	
36	rifle.	
37	(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7,	
38	94:5-95:7, 96:10-19, 97:6-19.)	

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



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

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

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

**PLAINTIFF'S ADDITIONAL FACTS  
AND SUPPORTING EVIDENCE**

**REPLY TO PLAINTIFF'S FACTS  
AND SUPPORTING EVIDENCE**

**Third Cause of Action: Tortious Interference with Contractual Relations**

21. Plaintiff Franklin Armory, Inc. ("FAI") is a federally licensed firearms manufacturer incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a manufacturing facility in Minden, Nevada.

(Verified SAC, ¶ 1; Jacobson Decl., ¶ 1.)

21. Defendants do not dispute but not a material fact and does not affect defendants' entitlement to summary judgment.

22. FAI manufactures a series of firearms that are designated by FAI with the model name "Title 1."

(Verified SAC, ¶ 2; Jacobson Decl., ¶ 2.)

22. Not a material fact and confusing in that plaintiff is not claiming any damages relative to the Title 1 rimfire caliber model. (Jacobson Dep. p. 135:10-136:1.)

23. Under California law, the term "firearm" is defined in several ways, generally including "a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion."

(Pen. Code, § 16520; Verified SAC ¶ 22.)

23. This is a legal statement as to a statutory law, not a fact.

24. The State of California further divides the term "firearm" into two types for transfer regulation: long guns and handguns. Long guns are those firearms that do not qualify as handguns. For purposes of Penal Code section 26860, "long gun" means any firearm that is not a handgun or a machinegun.

(Pen. Code, § 16865.)

24. This is a legal statement as to a statutory law, not a fact but which supports defendants' entitlement to summary judgment.

25. The FAI Title 1 model firearm is, under California's statutory definition, a "long gun."

(Verified SAC, ¶¶ 23-24; Pen. Code, § 16865.)

25. This is similar to defendants' fact 3 which supports defendants' entitlement to summary judgment.

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

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

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

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<p>37. By design, when the DES user is entering the designated information into the DES, they must enter information related to the gun type (i.e., “long gun” or “handgun”). Upon selecting “long gun,” the DES is designed to and functions to populate a subset of fields. Before October 1, 2021, if a DES user selected “long gun,” the DES populated a list of just three options: “rifle,” “rifle/shotgun,” “shotgun.” Before the DES user was permitted to proceed with the completion of the form and submission of the required information to the DOJ, the DES required the user select one of those three options. Unlike the subset of fields within the DES that populate for “Color,” “Purchaser Place of Birth,” and Seller Place of Birth,” each of which contains a catch-all option for “Other,” before October 1, 2021, the subset of fields that populated when the DES user selected “long gun” as the “gun type,” did not include the option to select “Other.” Thus, the DES system prevented licensed firearm dealers from proceeding with the submission of information to the DOJ for the sale, transfer, or loan for certain firearms, including the FAI Title I model firearm.</p>	<p>37. The cited evidence does not establish these facts. Plaintiff does not dispute defendants fact no. 11 that noone ever attempted to process a transfer of the Title 1 in the DES. In addition, the asserted facts are not material as to defendants’ entitlement to summary judgment.</p>	
<p>(Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], pp. 2-3; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>		



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

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

1	(Nov. 14, 2023)], pp. 175:7-12; 176:4-21; 177:2-8.)		
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3	43. The DOJ was aware that licensed firearm dealers (“FFLs”) had expressed concerns about attempting to transfer FAI’s Title 1 model firearm “due to liability issues.”	This is not a material fact.	
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5	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 29:2-21, 31:15-33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 & Exs. 2 & 4 [Email from Jennifer Kim to Jason Sisney (June 24, 2020); see also Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3.)		
9	44. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ of the defect in the DES and the inability of FAI to transmit its Title I model firearms to their customers because of that defect.	44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.	
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11	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Verified SAC ¶ 66 & Ex. A.)		
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13	45. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ that FAI had publicly announced the release of the Title 1 on or about October 15, 2019, generating a “substantial amount of interest.” Counsel also informed Mr. Becerra that FAI was taking orders for the Title 1 model firearm daily, but FAI was unable to fulfill those orders due to the DES technological defect.	45. This appears to repeat no. 44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.	
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15	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Verified SAC, Ex. A.)		
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17	46. When FAI’s customers were placing orders to purchase FAI Title 1 model firearms, the advertised full purchase price was \$944.99. But because FAI knew that the DES defect prevented transfers of the Title 1, FAI offered customers the opportunity to submit a refundable deposit toward the purchase of a Title 1 to be completed once the DES defect was corrected. Payment of the deposit	46. This statement contains legal argument. To the extent it contains asserted facts such as referencing deposits, this supports granting of summary judgment.	
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1	essentially saved a “spot in line” for the deposit payors.	plaintiff asserted that is argument.	
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3	(Jacobson Decl, ¶ 10, Ex. 9; Barvir Decl., Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17-20; 131:16-22.)		
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6	47. FAI ultimately collected nearly 35,000 deposits from its thousands of customers, including licensed firearms dealers, for the purchase of Title 1 model firearms. Those deposits ranged in amount from \$5 to the full purchase price of the Title 1 model firearm.	47. This fact is not relevant or material.	
7		It should be noted that Mr. Jacobson testified that, as to dealer deposits, they were never charged anything, no money ever exchanged hands and these were more of accounting entries. (Jacobson Dep. p. 129:9-130:7, Ex A1 to Reply Dec. of Lake)	
8	(Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez Decl.)		
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11	48. Assuming the centerfire Title 1 model firearm could ever be lawfully transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all orders for which people paid deposits. And FAI remains committed to fulfilling those orders to this day.	48. This fact is not relevant or material.	
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15	(Jacobson Decl., ¶ 11 & Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 116:1-14; 124:17-20; 131:16-22.)		
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17	49. The DOJ was able to modify the DES to correct a similar deficiency reported concurrently by FAI’s counsel in the same letter dated October 24, 2019, within about a month. Namely, the DES omitted the “United Arab Emirates” from the list of countries available within the DES dropdown list for the countries for place of birth was confirmed to have been corrected by the DOJ by November 26, 2019.	49. Not material or relevant. Also, plaintiff Does not dispute that the modification to the DES in 2021 to add the other option took a number of months requiring multiple personnel and required changes to multiple databases and systems. The comparison to a different type of change to the DES involving adding the United Arab Emirates as a purchaser country of birth is not relevant. Ms. Massaro-Flores testified that this change did not require changes to other databases or systems and did not require validations. (Massaro-Flores Dep., 9/8/23, p. 58:2-23, 59:5-60:16, Ex. D1, Reply Lake Dec.)	
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22	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Ex. 5 [Emails between Jason A. Davis and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)].)		
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26	50. On January 8, 2020, in response to FAI’s October 24, 2019, letter, Attorney General Becerra, through Deputy Attorney General P. Patty Li, wrote to counsel for FAI, confirming receipt of FAI’s letter and informing FAI that DOJ was working to fix the DES deficiency.	50. Defendants do not dispute that the Li letter was sent. This statement contains legal argument as to with plaintiff’s characterization of the Li letter which is not a fact and with which Defendants disagree.	
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<p>the letter described.</p> <p>(Davis Decl., Ex. 7 [Letter from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel for Franklin Armory, Inc. (Jan. 8, 2020)].)</p>		
<p>51. Cheryle Massaro-Florez, an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit, testified that she oversaw two separate projects to make “enhancements” to the DES to add an “Other” option to the dropdown list for “long gun” firearm subtypes. She testified that the first enhancement was completed up to beta testing, but just before going live, that first enhancement was terminated for a reason unknown to her. She testified that the second enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-40:19, 41:18-19, 64:24-66:15 &amp; Ex. 9; see also Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], Ex. 45.)</p>	<p>51. This testimony is not material but supports defendants’ entitlement to summary judgment.</p> <p>Reference to the testimony of Ms. Massaro-Florez, that technical staff were working on a possible modification to the DES to add the “other” option in 2020 supports entitlement to summary judgment in that it is consistent with Director Mendoza’s statements that the top level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>	
<p>52. Just months after Deputy Attorney General Li confirmed that the DOJ was working on a fix to the DES, on May 14, 2020, the DOJ submitted Budget Change Proposal (prepared by then BOF Assistant Director Allison Mendoza) to the Department of Finance, requesting “\$128,000 Dealers’ Record of Sale Special Account in 2020-21, \$862,000 in 2021-22, and \$14,000 annually thereafter to regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun.” The proposal was “intend[ed] to fix current loopholes in statute that allow[ed] manufacturers to make weapons that circumvent the intention of assault weapon laws.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020), Ex. 42 [May 14, 2020 Budget Change Proposal].)</p>	<p>52. The Budget Change Proposal is not relevant or material. Defendants disagree with plaintiff’s characterization of the Li letter.</p>	

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

1	57. Allison Mendoza, the current Director of the California Department of Justice, Bureau Firearms, testified that she could not think of another piece of firearm-related legislation that was adopted via the “budget trailer bill” process and that it was not a common practice.	57. Not material or relevant.	
2	(Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].);		
3	Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020), pp. 43:10-13.)		
4			
5	58. SB 118 was designed to target the FAI Title 1 model firearm and prevent its sale.	58. Not material or relevant.	
6	Department of Finance staffers’ communications about the bill expressly identified both FAI and the Title 1, and they identified no other manufacturer or firearm by name.		
7	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 58:10-60:25, 62:25-10, 66:25-68:24, 71:9-72:20, 75:1-77:25 & Exs. 2 & 4; Req. Jud. Ntc., Ex. 1 [SB 118].)		
8			
9	59. It was not until October 1, 2021, that the DOJ finally completed the “enhancement” to the DES adding the option to select “Other” from the dropdown list for “long gun” subtypes, finally allowing DES users to process the transfer of firearms without a defined subtype.	59. Defendants do not dispute that the modification to the DES was completed on 10/1/21. The finally allowing commentary is legal argument not a fact and not supported by the cited evidence.	
10	Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & Exs. 3, 6, 7, and 8.)		
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12			
13	60. The enhancement to the DES came too late to allow for the lawful transfer of centerfire FAI Title 1 model firearms, which had been designated as “assault weapons” effective August 6, 2020, and could not be lawfully registered with the DOJ unless they were possessed on or before September 1, 2020.	60. This is legal argument, not a fact.	
14	(Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515, subd. (a)(9)-(11).)		
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<p>61. FAI could not lawfully transfer the FAI Title 1 model firearm to its deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11)) because the DES enhancement adding “Other” to the “long gun” subtype dropdown list was not made until October 1, 2021.</p> <p>(Jacobson Decl., ¶ 11; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 &amp; Exs. 3, 6, 7, and 8.)</p>	<p>61. This is legal argument, not a fact.</p> <p>The legal argument is not supported by the cited evidence.</p>	
<p>62. FAI suffered economic damage in the form of millions of dollars in lost profits because it could not lawfully complete the sale of and transfer the FAI Title 1 model firearm to its thousands of deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11). (Jacobson Decl., ¶¶ 10-12, Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 138:19-142:14.)</p>	<p>62. Not material or relevant.</p>	
<p>63. To date, a very small minority of the thousands of individuals who made a deposit have asked for a refund.</p> <p>(Jacobson Decl., ¶ 14.)</p>	<p>63. Not material or relevant.</p>	



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

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

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

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

Dated: July 5, 2024

Respectfully submitted,  
ROB BONTA  
Attorney General of California

\S\Kenneth G. Lake

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

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

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Email: [abarvir@michellawyers.com](mailto:abarvir@michellawyers.com)  
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[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)

*Attorneys for Plaintiffs-Petitioners*

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

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

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

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

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

Sandra Domínguez  
Signature

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
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7 *Attorneys for State of California, acting by and*  
8 *through the California Department*  
*of Justice and Former Attorney General Xavier*  
9 *Becerra*

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

16  
17 Plaintiffs,

18 v.

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

23  
24  
25 Defendants.

Case No. 20STCP01747

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

**Date: July 10, 2024**  
**Time: 8:30 a.m.**  
**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

26 Defendants submit this reply to plaintiff's statement of undisputed facts in opposition to the  
27 motion for summary adjudication:  
28

ISSUE NO. 1 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS  
TO THE THIRD ALLEGED CAUSE OF ACTION FOR TORTIOUS  
INTERFERENCE WITH CONTRACTUAL RELATIONS

**DEFENDANTS' UNDISPUTED  
MATERIAL FACTS AND SUPPORTING  
EVIDENCE:**

**REPLY TO PLAINTIFF'S RESPONSE  
AND SUPPORTING EVIDENCE:**

1. The Second Amended Complaint (SAC) alleges that on October 24, 2019, plaintiff sent a letter to former Attorney General Becerra, asserting that a defect in the Department of Justice (Department) online system for processing transfers of firearms rendered dealers unable to transfer its recently announced Title 1 firearm to its customers.

(SAC, ¶ 69, Ex. C.)

1. Plaintiff does not dispute.

2. Jay Jacobson, President and an owner of Franklin Armory, testified that the Title 1 was designed with a 16 inch barrel and a padded buffer tube instead of a stock and without a stock, it would not be intended to be fired from the shoulder and thus not a rifle.

(Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, Ex. A to Lake Dec.)

2. Plaintiff does not dispute.

3. The Title 1 was a long gun. "Long gun" means any firearm that is not a handgun or a machinegun.

(SAC, ¶¶ 23-24, Pen. Code, § 16865.)

3. This fact is effectively undisputed.

4. On August 6, 2020, the legislature passed SB 118 which included amending the Penal Code Section 30515 definition of an assault weapon to add a "centerfire firearm that is not a rifle, pistol, or shotgun" that includes components in three categories. (Pen. Code, § 30515 (a)(9)-(11).) With this change in definition, the Title 1 was rendered a banned assault weapon.

4. This fact is effectively undisputed. The added commentary as to the word "banned" does nothing to controvert this fact.

1	(SAC, ¶ 112, Mendoza Dec. ¶ 11.)	
2	5. The online system for the submission of	5. Plaintiff does not dispute.
3	information concerning the sale and transfer	
4	of firearms is known as the Dealer Record of	
5	Sale Entry System (DES) The DES is a web-	
6	based application used by California firearms	
7	dealers to submit firearm background checks	
8	to the Department to determine if an	
9	individual is eligible to purchase, loan, or	
10	transfer a handgun, long gun, and ammunition.	
11	(Cal. Code Regs., tit. 11, § 4200; citing Pen.	
12	Code, § 28205, Mendoza Dec., ¶ 3.)	
13	6. The alleged defect in the DES was that the	6. This fact is effectively undisputed. The
14	gun type drop-down menu for long guns that a	added commentary does nothing to controvert
15	dealer would select from while processing a	this allegation in the SAC.
16	transfer included only options for rifle,	
17	shotgun, or rifle/shotgun combination.	
18	Plaintiff alleges that since the Title 1 was not a	
19	“rifle” under the statutory definition, a dealer	
20	could not process a Title 1 for transfer unless	
21	the DES was modified to add an “other”	
22	option to this drop-down menu.	
23	(SAC, ¶¶ 58, 69, Ex C	
24	7. The SAC does not identify any statute or	7. This fact is effectively undisputed.
25	other authority that requires that a firearm	Reference to regulation regarding submitting
26	being processed for transfer in the DES fit the	accurate information does nothing to
27	statutory definition of “rifle” in order to be	controvert fact that no such statute or other
28	processed as such.	authority is alleged.
	(SAC.)	
	8. Mr. Jacobson testified that there was no	8. This fact is effectively undisputed.
	mention of any issue with the DES in the	Plaintiff’s response does not controvert but
	Sacramento action filed by Franklin Armory	rather supports this fact.
	against the State and former Attorney General	
	Becerra regarding the Title 1 and that he was	
	unaware of any issue with the DES during that	
	time. He testified that during the time the	
	Sacramento action was pending, no one ever	
	expressed concern that the Title 1 could not be	
	processed in the DES because it was not a	
	rifle.	
	(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7,	
	94:5-95:7, 96:10-19, 97:6-19.)	

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

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



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

1 2 3	<p>“other” option in the “Gun Type” drop-down menu. This enhancement was completed on October 1, 2021.</p> <p>(Mendoza Dec., ¶ 11.)</p>	<p>level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>
4 5 6 7 8 9 10 11 12	<p>18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus’ firearms software developments unit, oversaw the enhancement project to add the “other” option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases.</p> <p>(Massaro-Florez Dep.1(12/28/21), Ex. to Lake Dec., pp. 18:12-21,19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21,94:6-24.)</p>	<p>18. This fact is effectively undisputed as plaintiff’s reference to other testimony does nothing to controvert this fact but rather further supports it.</p>
13 14 15 16 17 18 19	<p><b>ISSUE NO. 2 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THE FOURTH ALLEGED CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE</b></p>	
20 21	<p>19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>19. Defendants hereby incorporate by reference as though fully set forth hereat their reply to facts nos. 1-18</p>
22 23 24 25	<p><b>ISSUE NO. 3 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THE FIFTH ALLEGED CAUSE OF ACTION FOR NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE</b></p>	
26 27 28	<p>20. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18</p>	<p>20. Defendants hereby incorporate by reference as though fully set forth hereat their reply to facts nos. 1-18</p>

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**PLAINTIFF’S ADDITIONAL FACTS  
AND SUPPORTING EVIDENCE**

**REPLY TO PLAINTIFF’S FACTS  
AND SUPPORTING EVIDENCE**

**Third Cause of Action: Tortious Interference with Contractual Relations**

21. Plaintiff Franklin Armory, Inc. (“FAI”) is a federally licensed firearms manufacturer incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a manufacturing facility in Minden, Nevada.  
  
(Verified SAC, ¶ 1; Jacobson Decl., ¶ 1.)

21. Defendants do not dispute but not a material fact and does not affect defendants’ entitlement to summary judgment.

22. FAI manufactures a series of firearms that are designated by FAI with the model name “Title 1.”  
  
(Verified SAC, ¶ 2; Jacobson Decl., ¶ 2.)

22. Not a material fact and confusing in that plaintiff is not claiming any damages relative to the Title 1 rimfire caliber model. (Jacobson Dep. p. 135:10-136:1.)

23. Under California law, the term “firearm” is defined in several ways, generally including “a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”  
(Pen. Code, § 16520; Verified SAC ¶ 22.)

23. This is a legal statement as to a statutory law, not a fact.

24. The State of California further divides the term “firearm” into two types for transfer regulation: long guns and handguns. Long guns are those firearms that do not qualify as handguns. For purposes of Penal Code section 26860, “long gun” means any firearm that is not a handgun or a machinegun.  
  
(Pen. Code, § 16865.)

24. This is a legal statement as to a statutory law, not a fact but which supports defendants’ entitlement to summary judgment.

25. The FAI Title 1 model firearm is, under California’s statutory definition, a “long gun.”  
  
(Verified SAC, ¶¶ 23-24; Pen. Code, § 16865.)

25. This is similar to defendants’ fact 3 which supports defendants’ entitlement to summary judgment.

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

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

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

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<p>37. By design, when the DES user is entering the designated information into the DES, they must enter information related to the gun type (i.e., “long gun” or “handgun”). Upon selecting “long gun,” the DES is designed to and functions to populate a subset of fields. Before October 1, 2021, if a DES user selected “long gun,” the DES populated a list of just three options: “rifle,” “rifle/shotgun,” “shotgun.” Before the DES user was permitted to proceed with the completion of the form and submission of the required information to the DOJ, the DES required the user select one of those three options. Unlike the subset of fields within the DES that populate for “Color,” “Purchaser Place of Birth,” and Seller Place of Birth,” each of which contains a catch-all option for “Other,” before October 1, 2021, the subset of fields that populated when the DES user selected “long gun” as the “gun type,” did not include the option to select “Other.” Thus, the DES system prevented licensed firearm dealers from proceeding with the submission of information to the DOJ for the sale, transfer, or loan for certain firearms, including the FAI Title I model firearm.</p>	<p>37. The cited evidence does not establish these facts. Plaintiff does not dispute defendants fact no. 11 that no one ever attempted to process a transfer of the Title 1 in the DES. In addition, the asserted facts are not material as to defendants’ entitlement to summary judgment.</p>	
<p>(Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], pp. 2-3; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>		

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



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

1	(Nov. 14, 2023)], pp. 175:7-12; 176:4-21; 177:2-8.)		
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3	43. The DOJ was aware that licensed firearm dealers (“FFLs”) had expressed concerns about attempting to transfer FAI’s Title 1 model firearm “due to liability issues.”	This is not a material fact.	
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5	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 29:2-21, 31:15-33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 & Exs. 2 & 4 [Email from Jennifer Kim to Jason Sisney (June 24, 2020); see also Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3.)		
9	44. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ of the defect in the DES and the inability of FAI to transmit its Title I model firearms to their customers because of that defect.	44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.	
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11	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Verified SAC ¶ 66 & Ex. A.)		
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13	45. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ that FAI had publicly announced the release of the Title 1 on or about October 15, 2019, generating a “substantial amount of interest.” Counsel also informed Mr. Becerra that FAI was taking orders for the Title 1 model firearm daily, but FAI was unable to fulfill those orders due to the DES technological defect.	45. This appears to repeat no. 44. Defendants do not dispute that the letter was sent and received at the Department except there is nothing indicating that former Attorney General Becerra personally reviewed or was aware of this letter. This letter does nothing to controvert defendants’ entitlement to summary judgment.	
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15	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Verified SAC, Ex. A.)		
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17	46. When FAI’s customers were placing orders to purchase FAI Title 1 model firearms, the advertised full purchase price was \$944.99. But because FAI knew that the DES defect prevented transfers of the Title 1, FAI offered customers the opportunity to submit a refundable deposit toward the purchase of a Title 1 to be completed once the DES defect was corrected. Payment of the deposit 15	46. This statement contains legal argument. To the extent it contains asserted facts such as referencing deposits, this supports granting of summary judgment.	
18		Also, the cited evidence indicates that plaintiff asserted to the Department that the alleged DES defect prevented transfers but stating this means the Department knew that because	
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1	essentially saved a “spot in line” for the deposit payors.	plaintiff asserted that is argument.	
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3	(Jacobson Decl, ¶ 10, Ex. 9; Barvir Decl., Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17-20; 131:16-22.)		
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6	47. FAI ultimately collected nearly 35,000 deposits from its thousands of customers, including licensed firearms dealers, for the purchase of Title 1 model firearms. Those deposits ranged in amount from \$5 to the full purchase price of the Title 1 model firearm.	47. This fact is not relevant or material.	
7		It should be noted that Mr. Jacobson testified that, as to dealer deposits, they were never charged anything, no money ever exchanged hands and these were more of accounting entries. (Jacobson Dep. p. 129:9-130:7, Ex A1 to Reply Dec. of Lake)	
8	(Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez Decl.)		
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11	48. Assuming the centerfire Title 1 model firearm could ever be lawfully transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all orders for which people paid deposits. And FAI remains committed to fulfilling those orders to this day.	48. This fact is not relevant or material.	
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15	(Jacobson Decl., ¶ 11 & Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 116:1-14; 124:17-20; 131:16-22.)		
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17	49. The DOJ was able to modify the DES to correct a similar deficiency reported concurrently by FAI’s counsel in the same letter dated October 24, 2019, within about a month. Namely, the DES omitted the “United Arab Emirates” from the list of countries available within the DES dropdown list for the countries for place of birth was confirmed to have been corrected by the DOJ by November 26, 2019.	49. Not material or relevant. Also, plaintiff Does not dispute that the modification to the DES in 2021 to add the other option took a number of months requiring multiple personnel and required changes to multiple databases and systems. The comparison to a different type of change to the DES involving adding the United Arab Emirates as a purchaser country of birth is not relevant. Ms. Massaro-Flores testified that this change did not require changes to other databases or systems and did not require validations. (Massaro-Flores Dep., 9/8/23, p. 58:2-23, 59:5-60:16, Ex. D1, Reply Lake Dec.)	
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22	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Ex. 5 [Emails between Jason A. Davis and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)].)		
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26	50. On January 8, 2020, in response to FAI’s October 24, 2019, letter, Attorney General Becerra, through Deputy Attorney General P. Patty Li, wrote to counsel for FAI, confirming receipt of FAI’s letter and informing FAI that DOJ was working to fix the DES deficiency.	50. Defendants do not dispute that the Li letter was sent. This statement contains legal argument as to with plaintiff’s characterization of the Li letter which is not a fact and with which Defendants disagree.	
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<p>the letter described.</p> <p>(Davis Decl., Ex. 7 [Letter from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel for Franklin Armory, Inc. (Jan. 8, 2020)].)</p>		
<p>51. Cheryle Massaro-Florez, an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit, testified that she oversaw two separate projects to make “enhancements” to the DES to add an “Other” option to the dropdown list for “long gun” firearm subtypes. She testified that the first enhancement was completed up to beta testing, but just before going live, that first enhancement was terminated for a reason unknown to her. She testified that the second enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-40:19, 41:18-19, 64:24-66:15 &amp; Ex. 9; see also Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], Ex. 45.)</p>	<p>51. This testimony is not material but supports defendants’ entitlement to summary judgment.</p> <p>Reference to the testimony of Ms. Massaro-Florez, that technical staff were working on a possible modification to the DES to add the “other” option in 2020 supports entitlement to summary judgment in that it is consistent with Director Mendoza’s statements that the top level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11.)</p>	
<p>52. Just months after Deputy Attorney General Li confirmed that the DOJ was working on a fix to the DES, on May 14, 2020, the DOJ submitted Budget Change Proposal (prepared by then BOF Assistant Director Allison Mendoza) to the Department of Finance, requesting “\$128,000 Dealers’ Record of Sale Special Account in 2020-21, \$862,000 in 2021-22, and \$14,000 annually thereafter to regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun.” The proposal was “intend[ed] to fix current loopholes in statute that allow[ed] manufacturers to make weapons that circumvent the intention of assault weapon laws.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020), Ex. 42 [May 14, 2020 Budget Change Proposal].)</p>	<p>52. The Budget Change Proposal is not relevant or material. Defendants disagree with plaintiff’s characterization of the Li letter.</p>	

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

1	57. Allison Mendoza, the current Director of the California Department of Justice, Bureau Firearms, testified that she could not think of another piece of firearm-related legislation that was adopted via the “budget trailer bill” process and that it was not a common practice.	57. Not material or relevant.	
2	(Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].);		
3	Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020), pp. 43:10-13.)		
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5	58. SB 118 was designed to target the FAI Title 1 model firearm and prevent its sale.	58. Not material or relevant.	
6	Department of Finance staffers’		
7	communications about the bill expressly		
8	identified both FAI and the Title 1, and they		
9	identified no other manufacturer or firearm by		
10	name.		
11	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 58:10-60:25, 62:25-10, 66:25-68:24, 71:9-72:20, 75:1-77:25 & Exs. 2 & 4; Req. Jud. Ntc., Ex. 1 [SB 118].)		
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13	59. It was not until October 1, 2021, that the DOJ finally completed the “enhancement” to the DES adding the option to select “Other” from the dropdown list for “long gun” subtypes, finally allowing DES users to process the transfer of firearms without a defined subtype.	59. Defendants do not dispute that the modification to the DES was completed on 10/1/21. The finally allowing commentary is legal argument not a fact and not supported by the cited evidence.	
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17	Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & Exs. 3, 6, 7, and 8.)		
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21	60. The enhancement to the DES came too late to allow for the lawful transfer of centerfire FAI Title 1 model firearms, which had been designated as “assault weapons” effective August 6, 2020, and could not be lawfully registered with the DOJ unless they were possessed on or before September 1, 2020.	60. This is legal argument, not a fact.	
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25	(Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515, subd. (a)(9)-(11).)		
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<p>61. FAI could not lawfully transfer the FAI Title 1 model firearm to its deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11)) because the DES enhancement adding “Other” to the “long gun” subtype dropdown list was not made until October 1, 2021.</p> <p>(Jacobson Decl., ¶ 11; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 &amp; Exs. 3, 6, 7, and 8.)</p>	<p>61. This is legal argument, not a fact.</p> <p>The legal argument is not supported by the cited evidence.</p>	
<p>62. FAI suffered economic damage in the form of millions of dollars in lost profits because it could not lawfully complete the sale of and transfer the FAI Title 1 model firearm to its thousands of deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11). (Jacobson Decl., ¶¶ 10-12, Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 138:19-142:14.)</p>	<p>62. Not material or relevant.</p>	
<p>63. To date, a very small minority of the thousands of individuals who made a deposit have asked for a refund.</p> <p>(Jacobson Decl., ¶ 14.)</p>	<p>63. Not material or relevant.</p>	

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



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

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

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

Dated: July 5, 2024

Respectfully submitted,  
ROB BONTA  
Attorney General of California

\S\Kenneth G. Lake

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

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

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
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*Attorneys for Plaintiffs-Petitioners*

Sandra Domínguez  
Signature

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 32

**20STCP01747**

**FRANKLIN ARMORY, INC., et al. vs CALIFORNIA  
DEPARTMENT OF JUSTICE, et al.**

July 11, 2024

9:28 AM

Judge: Honorable Daniel S. Murphy  
Judicial Assistant: S. Luqueno  
Courtroom Assistant: None

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Ruling on Submitted Matter

The Court, having taken the matter under submission on 07/10/2024 for Hearing on Motion for Summary Judgment, now rules as follows:

**BACKGROUND**

This action was initially filed on May 27, 2020. The case was initially assigned to Judge James Chalfant in Department 85. The operative Second Amended Complaint (SAC) was filed on February 17, 2021. The SAC is filed by Plaintiffs Franklin Armory, Inc. (FAI) and California Rifle & Pistol Association (CPRA) against Defendants California Department of Justice (DOJ) and Xavier Becerra (Becerra).

FAI is a federally-licensed firearms manufacturer that manufactures a series of firearms which are neither “rifles,” “pistols,” nor “shotguns” as defined by California law. (SAC ¶ 2.) FAI designates these firearms as “Title I” firearms. (Ibid.) Licensed firearm dealers in California are required to submit all background checks to DOJ through the Dealer Record of Sale Entry System (DES). (Id., ¶ 49.) The online DES submission form requires the user to input several pieces of information, among which is the type of firearm being exchanged. (Id., ¶ 58.) The DES form only allows the user to select “long gun” or “handgun,” and within the “long gun” category, the only options are “rifle,” “rifle/shotgun,” or “shotgun.” (Ibid.) However, FAI’s Title I firearms are neither rifles, pistols, nor shotguns. (Id., ¶ 2.) The dropdown menu does not provide a catchall option for “other” types of firearms. (Id., ¶ 58.) Plaintiffs allege that this prevents firearms dealers from submitting the required information for the transfer of certain types of firearms and thereby acts as a technological barrier to the lawful sale of firearms. (Id., ¶¶ 6, 58.) This has resulted in lost profits from the sale of Title I guns. (Id., ¶¶ 138, 147, 150, 159, 161.) CPRA is a nonprofit organization of members who wish to purchase firearms with undefined subtypes, such as Title Is, but could not because of the restrictions in the DES system. (Id., ¶ 6.)

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

## Civil Division

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Defendants allegedly carried out this scheme to delay the lawful transfer of Title I firearms until the Legislature could pass a law that made Title I firearms illegal. (SAC ¶ 109.) Indeed, SB 118 was passed on August 6, 2020, designating the Title I centerfire firearm as a banned “assault weapon.” (Id., ¶ 112.) SB 118 allows individuals already in possession of a banned assault weapon prior to September 1, 2020 to keep the firearm, under the condition that the firearm is properly registered. (Id., ¶ 113.) However, Defendants’ actions prevented those who placed deposits prior to September 1, 2020 from ever acquiring Title I centerfire firearms, thus allegedly depriving those individuals of their due process, Second Amendment, and property rights. (Id. at ¶¶ 113-114.)

The SAC asserts the following causes of action: (1) declaratory and injunctive relief; (2) petition for writ of mandate; (3) tortious inference with contractual relations; (4) tortious interference with prospective economic advantage; (5) negligent interference with prospective economic advantage; (6) violation of procedural due process; (7) violation of substantive due process; (8) declaratory and injunctive relief; and (9) violation of public policy.

The DES system was overhauled in October 2021, resulting in the addition of a “other” category. Accordingly, on January 27, 2022, Judge Chalfant granted Defendants’ motion to dismiss the first, second, and eighth causes of action. Judge Chalfant subsequently ordered the case transferred to Department 1 for reassignment, whereafter the case was assigned to this department. On September 7, 2023, this Court granted Defendants’ motion for judgment on the pleadings as to the sixth, seventh, and ninth causes of action.

On April 26, 2024, Defendants filed the instant motion for summary judgment or adjudication as to the remaining causes of action. FAI filed its opposition on June 26, 2024. Defendants filed their reply on July 5, 2024.

### LEGAL STANDARD

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.) Code of Civil Procedure section 437c, subdivision (c) “requires the trial judge to grant summary judgment if all the evidence submitted, and ‘all inferences reasonably deducible from the evidence’ and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to

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judgment as a matter of law.” (Adler v. Manor Healthcare Corp. (1992) 7 Cal.App.4th 1110, 1119.) “The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues; the function of the affidavits or declarations is to disclose whether there is any triable issue of fact within the issues delimited by the pleadings.” (Juge v. County of Sacramento (1993) 12 Cal.App.4th 59, 67, citing FPI Development, Inc. v. Nakashima (1991) 231 Cal. App. 3d 367, 381-382.)

As to each claim as framed by the complaint, the defendant moving for summary judgment must satisfy the initial burden of proof by presenting facts to negate an essential element, or to establish a defense. (Code Civ. Proc., § 437c, subd. (p)(2); Scalf v. D. B. Log Homes, Inc. (2005) 128 Cal.App.4th 1510, 1520.) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. To establish a triable issue of material fact, the party opposing the motion must produce substantial responsive evidence. (Sangster v. Paetkau (1998) 68 Cal.App.4th 151, 166.) Courts “liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.” (Dore v. Arnold Worldwide, Inc. (2006) 39 Cal.4th 384, 389.)

### EVIDENTIARY OBJECTIONS

FAI’s objections are not material to the Court’s disposition of the motion. (See Code Civ. Proc., § 437c(q).) Defendants did not file any objections.

### DISCUSSION

#### I. Governmental Immunity

“Except as otherwise provided by statute . . . [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” (Code Civ. Proc., § 815(a).) “[S]ection 815 abolishes common law tort liability for public entities.” (Miklosy v. Regents of University of California (2008) 44 Cal.4th 876, 899.) “In other words, direct tort liability of public entities must be based on a specific statute declaring them to be liable . . . .” (Eastburn v. Regional Fire Protection Authority (2003) 31 Cal.4th 1175, 1183.)

One such statute is Government Code section 815.6, which imposes liability on a public entity for injuries caused by a violation of a mandatory duty derived from another statute.

“[A]pplication of section 815.6 requires that the enactment at issue be obligatory, rather than

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merely discretionary or permissive, in its directions to the public entity.” (Haggis v. City of Los Angeles (2000) 22 Cal.4th 490, 498.) “If a statute does not require that a ‘particular action’ be taken, Government Code section 815.6 does not create the right to sue a public entity.” (Shamsian v. Department of Conservation (2006) 136 Cal.App.4th 621, 632.) “It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion.” (Id. at p. 633.)

Here, the cited Penal Code provisions do not require a particular action to be taken with regards to the DES system. (See Pen. Code, §§ 28155, 28205, 28215, 28220.) To the extent DOJ was required to implement an electronic reporting system (see Pen. Code, § 28205(c)), it did so by implementing the DES, which has existed since 2003 (see SAC ¶ 49). How DOJ implements the reporting system, including what changes to make in response to the emergence of a new firearm type, is left in its discretion as the Penal Code provisions do not mandate any “particular action” in such a situation. (See Shamsian, supra, 136 Cal.App.4th at p. 632.) The SAC identifies a few potential ways to alleviate the alleged defect in the DES, which confirms that DOJ has discretion over changes in DES. (See SAC ¶¶ 64-66.) FAI also acknowledges that Penal Code section 28205(c) grants DOJ “authority” to implement a variety of “alternative means” to allow for processing of Title I firearms. (Plntf.’s Additional Facts (AF) 41.) Furthermore, Penal Code section 28245 states that “[w]henver the Department of Justice acts pursuant to this article as it pertains to firearms other than handguns, the department’s acts or omissions shall be deemed to be discretionary within the meaning of the Government Claims Act.” In sum, the operation of DES, including the implementation of changes, is discretionary and therefore falls outside the mandatory duty exception under section 815.6.

Furthermore, section 815.6 does not apply unless the enactment at issue was “designed to protect against the risk of a particular kind of injury.” (Gov. Code, § 815.6.) “The plaintiff must show the injury is ‘one of the consequences which the [enacting body] sought to prevent through imposing the alleged mandatory duty.’” (Haggis, supra, 22 Cal.4th at p. 499, quoting Hoff v. Vacaville Unified School Dist. (1998) 19 Cal.4th 925, 939.) The injury alleged here is financial loss due to the inability to sell Title I firearms. (SAC ¶¶ 138, 147, 150, 159, 161.) However, the relevant Penal Code provisions were designed to protect public safety, not to preserve the financial interests of firearms dealers. (See People v. Alexander (2023) 91 Cal.App.5th 469, 479 [“requiring an applicant ‘to undergo a background check’ is ‘designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens’”].)

FAI does not directly address Defendants’ authorities or analysis on the application of sections 815 and 815.6. Instead, FAI characterizes these arguments as “irrelevant” because FAI “does not

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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assert liability against DOJ for the three remaining causes of action.” (Opp. 11:2-7.) FAI argues that it only seeks liability against Becerra, who is not covered under section 815 because that statute only protects public entities, not individuals. (See Gov. Code, §§ 811.2, 815.) FAI effectively concedes that DOJ is not liable. Therefore, DOJ is not liable as a matter of law.

### II. Discretionary Immunity

“Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” (Gov. Code, § 820.2.) Unlike section 815, section 820.2 expressly applies to individual employees. Section 820.2 “confers a general immunity for discretionary acts taken within the scope of authority.” (Leon v. County of Riverside (2023) 14 Cal.5th 910, 928.) The protection is broad and “applies even to ‘lousy’ decisions . . . no matter how horrible the outcome.” (Gabrielle A. v. County of Orange (2017) 10 Cal.App.5th 1268, 1285.)

However, discretionary immunity does not apply to all acts that involve discretion in the literal sense. “[A]lmost all acts involve some choice among alternatives, and the statutory immunity thus cannot depend upon a literal or semantic parsing of the word ‘discretion.’” (Caldwell v. Montoya (1995) 10 Cal.4th 972, 981.) “Immunity is reserved for those ‘basic policy decisions [which have] . . . been [expressly] committed to coordinate branches of government,’ and as to which judicial interference would thus be ‘unseemly.’” (Ibid., quoting Johnson v. State of California (1968) 69 Cal.2d 782, 793.) “[T]here is no basis for immunizing lower-level, or ‘ministerial,’ decisions that merely implement a basic policy already formulated.” (Ibid.) Furthermore, immunity “requires a showing that ‘the specific conduct giving rise to the suit’ involved an actual exercise of discretion, i.e., a ‘[conscious] balancing [of] risks and advantages.’” (Caldwell, supra, 10 Cal.4th at p. 983, quoting Johnson, supra, 69 Cal.2d at pp. 794, 795, fn. 8.) Once this showing is made, however, a government official is immunized even for “carelessness, malice, bad judgment, or abuse of discretion” because immunity “does not require a strictly careful, thorough, formal, or correct evaluation.” (Id. at pp. 983-84.)

The evidence shows that Defendants exercised discretion by “initiat[ing] a review to evaluate the resources required for a potential DES enhancement to add a ‘other’ option.” (Mendoza Decl. ¶ 8.) This involved “a balancing of multiple factors and a weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time.” (Ibid.) Defendants “also evaluated and weighed the allocation of available resources to such an enhancement, such as the number of personnel required, budgeting of the enhancement, and the time it would take to

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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complete said enhancement.” (Ibid.)

As a temporary alternative, Defendants considered the “potential of doing some sort of free-form field” for “dealers . . . to type in something specific related to the Franklin Armory Title 1.” (Barvir Decl., Ex. 11 (Mendoza Depo.) 141:1-12.) However, allowing dealers to “type in anything” would have made it “very difficult for us to be able to track those firearms and identify those firearms in the systems.” (Id. at 145:17-21.) Defendants ultimately decided not to implement this particular change due to the anticipated operational difficulties and public safety concerns. (Mendoza Decl. ¶ 10.)

Defendants ultimately decided to add a “other” option to the DES application after SB 118 was passed, upon “weighing competing priorities among the multiple information technology projects pending at that time in the middle of the COVID-19 pandemic.” (Mendoza Decl. ¶ 11.) This enhancement was completed in October 2021, simultaneously deploying with other assault weapon registration changes. (Ibid.; Barvir Decl., Ex. 11 (Mendoza Depo.) 128:7-11.)

These facts show that changing the DES is a policy-level decision requiring the exercise of discretion, rather than a ministerial implementation of an existing directive. FAI’s disputes against Director Mendoza’s testimony are not material disputes that negate Mendoza’s description of the process of implementing changes to DES. (See Plntf.’s Resp. to UF 14-17.) Ultimately, FAI does not dispute that the process involves considerations of competing interests, resource allocation, budget constraints, and the like. (See Mendoza Decl. ¶ 5.) FAI also presents no evidence to materially dispute the fact that implementing a “other” option to DES required many months, diversion of over a dozen employees from other projects, and changes to other applications and databases beyond DES. (Id., ¶ 9.)

Defendants may have made these assessments incorrectly, or even acted with malice, in relation to the Title I issue. For example, Plaintiff contends that changes should have been implemented much sooner, specifically before the passage of SB 118. (See Plntf.’s Resp. to UF 16-18; AF 49-53, 60.) However, the law is clear that section 820.2 immunizes “carelessness, malice, bad judgment, or abuse of discretion.” (Caldwell, supra, 10 Cal.4th at pp. 983-84.) “[G]overnment officials are not personally liable for their discretionary acts within the scope of their authority even though it is alleged that their conduct was malicious.” (Freney v. City of San Buenaventura (2013) 216 Cal.App.4th 1333, 1343.) For Defendants to be held civilly liable for not implementing a certain change within a certain timeframe would amount to “judicial interference” with the policymaking process. (See Caldwell, supra, 10 Cal.4th at p. 981.) Therefore, section 820.2 precludes liability for the challenged conduct as a matter of law.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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Judicial Assistant: S. Luqueno  
Courtroom Assistant: None

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ERM: None  
Deputy Sheriff: None

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**CONCLUSION**

Defendants' motion for summary judgment is GRANTED.

The order is signed and filed on this date.

Clerk to give notice. Certificate of Mailing is attached.

<p align="center"><b>SUPERIOR COURT OF CALIFORNIA</b>  <b>COUNTY OF LOS ANGELES</b></p>		<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS:  Stanley Mosk Courthouse  111 North Hill Street, Los Angeles, CA 90012</p>		<p align="center"><b>FILED</b>  Superior Court of California  County of Los Angeles  07/11/2024</p> <p>David W. Slayton, Executive Officer / Clerk of Court  By: <u>S. Luqueno</u> Deputy</p>
<p>PLAINTIFF/PETITIONER:  Franklin Armory, Inc. et al</p>		
<p>DEFENDANT/RESPONDENT:  Xavier Becerra, et al.</p>		
<p align="center"><b>CERTIFICATE OF MAILING</b></p>		<p>CASE NUMBER:  20STCP01747</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Ruling on Submitted Matter) of 07/11/2024 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Anna Marie Barvir  
Michel & Associates, PC  
180 E Ocean Blvd Ste 200  
Long Beach, CA 90802

Kenneth Gregory Lake  
State of CA/DOJ  
300 S Spring St  
Los Angeles, CA 90013

Dated: 07/11/2024

David W. Slayton, Executive Officer / Clerk of Court

By: S. Luqueno  
Deputy Clerk

**CERTIFICATE OF MAILING**

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
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E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and*  
8 *through the California Department of Justice*  
*and Former Attorney General Xavier*  
9 *Becerra*

**FILED**  
Superior Court of California  
County of Los Angeles  
07/12/2024  
David W. Slayton, Executive Officer / Clerk of Court  
By: S. Luqueno Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

16  
17 Plaintiffs,

18 v.

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

23 Defendants.  
24  
25

Case No. 20STCP01747

~~[PROPOSED]~~ JUDGMENT

26 This court, having on July 11, 2024, granted the motion by defendants State of California,  
27 acting by and through the California Department of Justice and Former Attorney General Xavier  
28

[PROPOSED] JUDGMENT

1   Becerra for Summary Judgment,

2           **IT IS ORDERED, ADJUDGED AND DECREED** that plaintiff take nothing as against  
3   defendants. Defendants shall recover from plaintiff costs of suit, pursuant to Code of Civil  
4   Procedure sections 1032 and 1033.5.

5  
6   Dated: 07/12/2024



A handwritten signature in black ink, appearing to read "Daniel S. Murphy".

**Daniel S. Murphy / Judge**

HONORABLE DANIEL S. MURPHY  
Judge of the Superior Court

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

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

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On July 11, 2024, I served the documents named below on the parties in this action as follows:

**[PROPOSED] JUDGMENT**

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
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Email: [abarvir@michellawyers.com](mailto:abarvir@michellawyers.com)  
[CMichel@michellawyers.com](mailto:CMichel@michellawyers.com)  
[Jason@calgunlawyers.com](mailto:Jason@calgunlawyers.com)  
[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)  
*Attorneys for Plaintiffs-Petitioners*

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

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

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

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

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

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

Executed on July 11, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

*Sandra Domínguez*  
Signature

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

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

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On July 16, 2024, I served the documents named below on the parties in this action as follows:

**JUDGMENT**

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

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

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

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

Executed on July 16, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

*Sandra Domínguez*  
Signature

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		<b>FILED</b> Superior Court of California County of Los Angeles <b>07/12/2024</b> David W. Slayton, Executive Officer / Clerk of Court By: <u>S. Luqueno</u> Deputy
PLAINTIFF(S): Franklin Armory, Inc. et al		
DEFENDANT(S): Xavier Becerra, et al.		
NOTICE OF ENTRY OF: <input checked="" type="checkbox"/> JUDGMENT <input type="checkbox"/> DISMISSAL <input type="checkbox"/> OTHER ORDER <input type="checkbox"/> AMENDED		CASE NUMBER: 20STCP01747

TO THE PARTIES AND TO THEIR ATTORNEYS OF RECORD, you are hereby given notice of entry of:

☒ Judgment in the above-entitled matter, entered on 7/12/2024.  
☐ Order of Dismissal in the above-entitled matter, filed on \_\_\_\_\_.  
☐ Order \_\_\_\_\_ filed on \_\_\_\_\_.

☐ Judgment debtor is a natural person, and as provided in Code Civ. Proc., §§ 683.110, 685.010:  
 \$ \_\_\_\_\_ of this judgment is on a claim related to medical expenses  
 \$ \_\_\_\_\_ of this judgment is on a claim related to personal debt

David W. Slayton, Executive Officer / Clerk of Court

Dated: 07/12/2024

By S. Luqueno  
Deputy Clerk

**NOTICE OF ENTRY OF JUDGMENT / DISMISSAL / ORDER**

<p align="center"><b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b></p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012</p>	<p align="center"><b>FILED</b> Superior Court of California County of Los Angeles <b>07/12/2024</b></p>
<p>PLAINTIFF/PETITIONER: Franklin Armory, Inc. et al</p>	<p>David W. Slayton, Executive Officer / Clerk of Court By: <u>S. Luqueno</u> Deputy</p>
<p>DEFENDANT/RESPONDENT: Xavier Becerra, et al.</p>	
<p align="center"><b>CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER: <b>20STCP01747</b></p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of Judgment / Dismissal / Other Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Benjamin Barnouw  
California Department of Justice - Office of the Attorney  
General  
300 S Spring St Ste 1702  
Los Angeles, CA 90013

Jason Andrew Davis  
Michel & Associates, P.C.  
180 East Ocean Blvd., Suite 200  
Long Beach, CA 90802

Kenneth Gregory Lake  
State of CA/DOJ  
300 S Spring St  
Los Angeles, CA 90013

10/18/2024 10:00 AM

Dated: 07/15/2024

David W. Slayton, Executive Officer / Clerk of Court

By: S. Luqueno  
Deputy Clerk

**CERTIFICATE OF MAILING**



1 C.D. Michel – SBN 144258  
Jason A. Davis – SBN 224250  
2 Anna M. Barvir – SBN 268728  
Konstadinos T. Moros – SBN 306610  
3 MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd, Suite 200  
4 Long Beach, CA 90802  
Telephone: (562) 216-4444  
5 Facsimile: (562) 216-4445  
Email: CMichel@michellawyers.com

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
7/16/2024 5:57 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By A. Lopez, Deputy Clerk

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.

Case No.: 20STCP01747

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

**PLAINTIFF'S OBJECTIONS TO  
DEFENDANTS' PROPOSED JUDGMENT**

Action Filed: May 27, 2020

1 In accordance with Rule 3.1590 (j)<sup>1</sup> of the California Rules of Court, Petitioners-Plaintiffs  
2 Franklin Armory, Inc. and the California Rifle & Pistol Association, Inc. hereby submit their objections  
3 to Defendants' Proposed Judgment.

4 **Objection No.1**

5 Plaintiffs object to an order, adjudication, or decree "that plaintiff take nothing as against  
6 defendants" ([Proposed] Judgment, p. 2, lines 2-3) to the extent that adoption of Defendants' Proposed  
7 Judgment as drafted would foreclose Plaintiffs' ability to request or recover attorneys' fees, even though  
8 they contend that they are entitled to an attorneys' fees under the catalyst theory. (*See Tipton-*  
9 *Whittingham v. City of Los Angeles* (2004) 34 Cal. 4th 604, 608 ["California law continues to recognize  
10 the catalyst theory and does not require "a judicially recognized change in the legal relationship between  
11 the parties" as a prerequisite for obtaining attorney fees under Code of Civil Procedure section  
12 1021.5."]). No fee motion has yet been before the Court and the Court has issued no order that Plaintiffs  
13 shall take "nothing" as against Defendants.

14 Plaintiffs thus respectfully request that the Court strike the proposed language "that plaintiff take  
15 nothing as against defendants." They further request that any adopted judgment include the following or  
16 similar language making clear that Plaintiffs are not barred from seeking attorneys' fees:

17 Notwithstanding entry of this Judgment of Dismissal, this court's jurisdiction to  
18 determine whether Plaintiffs are entitled to recover attorneys' fees and in what amount  
19 shall be retained. Entitlement to and the appropriate amount of attorneys' fees will be  
20 determined on noticed motion to be submitted to the Court in accordance with the  
California Rules of Court.

21 **Objection No. 2**

22 Plaintiffs further object to an order, adjudication, or decree that Defendants recover costs in any  
23 amount. ([Proposed] Judgment, p. 2, lines 3-4.) The Court's order granting Defendants' motion for  
24 summary judgment does not grant costs to Defendants and Defendants have provided no documentation

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25  
26 <sup>1</sup> Subsection (j) reads "Any party may, within 10 days after service of the proposed judgment,  
27 serve and file objections thereto." Plaintiff was served with the State's proposed judgment on July 11,  
28 2024, and thus had until Monday, July 22 to submit objections. Nonetheless, this Court entered  
judgement on July 12, 2024, which Plaintiff received in the mail on July 16. Plaintiff now submits these  
objections for the sake of the record on appeal.

1 detailing the amount of costs they would be entitled to. In order to obtain a costs award, the prevailing  
2 party must serve and file a memorandum of costs. (Cal. Rules of Court, rule 3.1700, subd. (a).)  
3 Moreover, the “costs bill” generally must be filed together with a proposed judgment of dismissal or  
4 after securing entry of judgment pursuant to the California Rules of Court. (*Boonyarit v. Payless*  
5 *Shoesource, Inc.* (2006) 145 Cal.App.4th 1188, 1192-1193, quoting *Sanabria v. Embrey* (2001) 92  
6 Cal.App.4th 422, 426, fn. 2 [“[B]ecause there must be a dismissal or judgment entered as a predicate to a  
7 costs award, ‘[a]pparently, the memorandum of costs must be filed together with a proposed judgment of  
8 dismissal’ . . .”].) Defendants’ failure to do that here makes any award of costs untimely and improper.

9 What’s more, Defendants have cited no statutory right to recover costs. It is Plaintiffs’ position  
10 that Defendants are not entitled to any such recovery in this action, in part, because they are not the  
11 “prevailing party” for purposes of claiming prejudgment costs. As alluded to in the first objection,  
12 Plaintiffs have at least partially prevailed in this case, given this lawsuit forced Defendants to modify the  
13 Dealers Record of Sale Entry System as Plaintiffs demanded. The issue of Defendants’ entitlement to  
14 costs and in what amount should thus be decided only after Defendants have duly filed and noticed a  
15 memorandum of costs, providing Plaintiffs the opportunity to strike and tax at least those costs related to  
16 their claims that were mooted by Defendants’ actions in response to this lawsuit.

17 Plaintiffs hereby request the Court strike the following language from Defendants’ Proposed  
18 Judgment: “Defendants shall recover from plaintiff costs of suit, pursuant to Code of Civil Procedure  
19 sections 1032 and 1033.5.”

### 20 **Objection No. 3**

21 Finally, Plaintiffs object that the proposed judgment does not clearly dispose of the entire case.  
22 It references only this Court’s summary judgment ruling which dealt with only the remaining causes of  
23 action after several others were dismissed through previous motions. “Ordinarily, there can be only one  
24 final judgment in an action and that judgment must dispose of all the causes of action pending between  
25 the parties.” (*H.D. Arnaiz, Ltd. v. Cnty. of San Joaquin* (2002) 96 Cal. App. 4th 1357, 1366.) Any  
26 judgment this Court adopts should clearly dispose of the entire case so that the case is not remanded on  
27 technical grounds for a more complete judgment.

1 **Conclusion**

2 For the foregoing reasons, Plaintiffs object to Defendants' Proposed Judgment of Dismissal and  
3 respectfully ask this Court to strike the objectionable material and insert language preserving Plaintiffs'  
4 right to seek attorneys' fees under the catalyst theory. Alternatively, pursuant to rule 3.1590, subdivision  
5 (k), of the California Rules of Court, Plaintiffs request a hearing regarding Defendants' Proposed  
6 Judgment and Plaintiffs' objections thereto.

7  
8 Date: July 16, 2024

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

9 s/ Anna M. Barvir

10 Anna M. Barvir

11 Attorneys for Petitioner-Plaintiff  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

7 On July 16, 2024, I served the foregoing document(s) described as

8 **PLAINTIFF'S OBJECTIONS TO DEFENDANTS' PROPOSED JUDGMENT**

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

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

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

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

26 Executed on July 16, 2024, at Long Beach, California.

27 

28 Laura Palmerin

## 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.

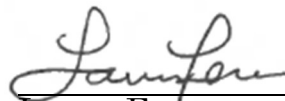
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME XIX OF XX, Pages 1937-2154**, on the following parties, as follows:

Kenneth G. Lake  
[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)  
Andrew F. Adams  
[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013

*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