

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 II OF XX
Pages 120-215**

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

C.D. Michel – SBN 144258
Jason A. Davis – SBN 224250
Anna M. Barvir – SBN 268728
Konstadinos T. Moros – SBN 306610
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11 **FILED**
12 Superior Court of California
13 County of Los Angeles

14 02/17/2021

15 Sherri R. Carter, Executive Officer / Clerk of Court
16 By: J. De Luna Deputy

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF LOS ANGELES**

19 FRANKLIN ARMORY, INC. and) Case No.: 20STCP01747
20 CALIFORNIA RIFLE & PISTOL)
21 ASSOCIATION, INCORPORATED)
22 Petitioners-Plaintiffs,)
23 v.)
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1 FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE & PISTOL ASSOCIATION,
2 INCORPORATED petition this court for declaratory relief, injunctive relief and a writ of mandate
3 relating to CALIFORNIA DEPARTMENT OF JUSTICE, XAVIER BECERRA and DOES 1-10
4 (collectively “DEFENDANTS”) implementation of unlawful technological barriers preventing the lawful
5 transfer of firearms and failure and/or refusal to timely perform the duties relating to the sale, loan,
6 transfer, purchase and processing of firearms that are neither “handguns,” nor “shotguns,” nor “rifles,”
7 including the FRANKLIN ARMORY, INC. firearms designated with the model name “Title I.”

PARTIES

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

13 2. Pertinent here, FAI manufactures a series of firearms which are neither "rifles," nor
14 "pistols," nor "shotguns" under California law and which are designated with the model name "Title I"
15 by FAI, and which come in various calibers such as 5.56 NATO (a centerfire caliber) and .17 WSM (a
16 rimfire caliber).

17 3. The FAI Title I series of firearms, as designed and sold by FAI, are lawful to possess, sell,
18 transfer, purchase, loan, or otherwise be distributed within California through licensed California firearm
19 dealers to persons who are not otherwise prohibited from possessing firearms, though recent changes in
20 the law have limited the market for the 5.56 NATO centerfire variant of the FAI Title 1.

21 4. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”), is a nonprofit,
22 membership and donor-supported organization qualified as tax-exempt under 26 U.S.C. § 501 (c)(4) with
23 its headquarters in the City of Fullerton, in Orange County, California. Founded in 1875, CRPA seeks to
24 defend the civil rights of all law-abiding individuals, including the fundamental right to acquire and
25 possess lawful firearms like the FAI Title 1 series of firearms and other firearms that are not considered
26 “rifles,” “pistols,” or “shotguns,” as those terms are defined by California law, including but not limited
27 to buntline revolvers, butterfly grip firearms, and stockless barreled action firearms.

28 | / / /

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

5 6. In this suit, CRPA represents the interests of its hundreds of citizen and taxpayer members
6 and members of CRPA who reside in California and who wish to and have attempted to sell, purchase,
7 acquire, transfer and possess lawful firearms, including but not limited to the FAI Title 1 series of
8 firearms, buntline revolvers, butterfly grip firearms, and stockless barreled action firearms, but are
9 prohibited from doing so by the technological limitations implemented by DEFENDANTS. CRPA brings
10 this action on behalf of itself and its tens of thousands of supporters in California, including FAI, who
11 have been, are being, and will in the future be subjected to DEFENDANTS' refusal and/or delay in
12 removing the technological barrier designed, implemented and maintained by DEFENDANTS that
13 prohibits the lawful sale, loan, transfer and purchase of certain lawful firearms, including but not limited
14 to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and stockless barreled
15 action firearms.

16 7. Defendant CALIFORNIA DEPARTMENT OF JUSTICE ("DOJ") is a lawfully
17 constituted executive agency charged with implementing, enforcing and administering the State of
18 California's firearm laws and systems for processing firearm transfers and loans. The DOJ is under the
19 direction and control of the Attorney General. (Gov'. Code § 15000.) The DOJ is composed of the Office
20 of the Attorney General and those other divisions, bureaus, branches, sections or other units as the
21 Attorney General may create within the department pursuant to Section 15002.5. (Gov. Code § 15001.)
22 The Bureau of Firearms ("BOF") was created by the Attorney General within the Division of Law
23 Enforcement for the purposes of designing, implementing and enforcing California's firearm laws, rules,
24 regulations and support systems. The DOJ is responsible for the design, development, maintenance and
25 enforcement of the Dealer Record of Sale Dealer Entry System, the system by which licensed California
26 firearm dealers submit purchaser and firearm information to the California Department of Justice for
27 processing in accordance with California's firearm transfer laws and regulations.

28 ///

1 8. Defendant XAVIER BECERRA (“BECERRA”) is the Attorney General of California. He
2 is the chief law enforcement officer of California. Defendant Becerra is charged by article V, section 13
3 of the California Constitution with the duty to see that the laws of California are uniformly and
4 adequately enforced. BECERRA also has direct supervision over every district attorney and sheriff in all
5 matters pertaining to the duties of their respective officers. Defendant BECERRA’s duties also include
6 informing the public, local prosecutors and law enforcement regarding the meaning of the laws of
7 California, including restrictions on the transfer of firearms at issue herein. He is sued in both his
8 personal capacity and his official capacity.

9 9. Plaintiffs CRPA and FAI (collectively, "PLAINTIFFS") do not know the true names and
10 capacities of Defendants DOE 1 through 10, inclusive, who are therefore sued by such fictitious names.
11 PLAINTIFFS allege on information and belief that each person or entity designated as DOE 1 through 10
12 is responsible in some capacity or manner for the adoption or enforcement of the unlawful regulations as
13 alleged in this Complaint and Petition. PLAINTIFFS pray for leave to amend this Complaint and Petition
14 to show the true names, capacities and/or liabilities of DOE Defendants 1 through 10 if and when they
15 are determined.

JURISDICTION AND VENUE

17 10. This Court has jurisdiction under article I, section 3 and article VI, section 10 of the
18 California Constitution, and Code of Civil Procedure sections 525, 526, 1060, 1 085 and 1087. This
19 Court also has jurisdiction because PLAINTIFFS lack a “plain, speedy, and adequate remedy, in the
20 ordinary course of law.” (Code Civ. Proc., § 1086.)

21 11. Venue is proper in this Court under Government Code section 6258 and Code of Civil
22 Procedure sections 393, subdivision (b), and 394, subdivision (a). Also, venue properly lies within this
23 Court because the Attorney General maintains an office in the County of Los Angeles. (Code Civ. Proc.,
24 § 401.)

AUTHENTICITY OF EXHIBITS

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

GENERAL ALLEGATIONS

[THE DEFENDANTS' GENERAL DUTIES]

3 13. The California Constitution vests the office of the Attorney General, currently held by
4 BECERRA, with enormous powers over the lives of the citizens of the state. "Subject to the powers and
5 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the
6 duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced."
7 (Cal. Const., art. V, § 13.)

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

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

13 16. The Attorney General is required to provide oversight, enforcement, education and
14 regulation of many facets of California's firearms laws. And the Attorney General performs these
15 legislative duties through their Law Enforcement Division's BOF.

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

25 | (Emphasis added.)

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

28 | //

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

4 20. In general, the laws governing control of firearms are expansive and are found within Part
5 6 of the Penal Code, beginning at section 16000 and ending at section 34370.

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

[CALIFORNIA'S RELEVANT DEFINITIONS]

14 22. In regulating the technological aspects of particular firearms, the State of California has
15 provided specific definitions. For example, the State of California defines the term “firearm” in multiple
16 ways, generally including “a device, designed to be used as a weapon, from which is expelled through a
17 barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.)

18 23. The State of California further divides the term "firearm" into two types for transfer
19 regulation: long guns and handguns.

20 a. *Long guns* are those firearms that do not qualify as handguns. For the purposes of Penal
21 Code section 26860, “long gun” means any firearm that is not a handgun *or a machinegun*. (Pen. Code,
22 § 16865.)

23 b. “Handgun” means any *pistol, revolver, or firearm capable of being concealed upon the*
24 *person; and, nothing shall prevent a device defined as a “handgun” from also being found to be a short-*
25 *barreled rifle¹ or a short-barreled shotgun².* (Pen. Code, § 16640.) The terms “*firearm capable of being*

²⁷ ²⁸ ¹ “*Short-barreled rifle*” means any of the following: (a) A rifle having a barrel or barrels of less than 16 inches in length;

(b) A rifle with an overall length of less than 26 inches; (c) Any weapon made from a rifle (whether

1 *concealed upon the person,” “pistol,” and “revolver”* apply to and include any device designed to be
2 used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of
3 combustion, and that has a barrel less than 16 inches in length. These terms also include any device that
4 has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16
5 inches in length. (Pen. Code, § 16530. See also Pen. Code, §§ 17010, 17080.)

6 24. Below these two classifications (long gun and handgun) are a myriad of statutorily
7 defined subtypes, the most common of which are deemed rifles³ and shotguns⁴ under the long gun
8 classification.

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

12 by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than
13 26 inches or a barrel or barrels of less than 16 inches in length; (d) Any device that may be readily
14 restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c),
15 inclusive; and (e) Any part, or combination of parts, designed and intended to convert a device into a
16 device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device
17 defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession
18 or under the control of the same person. (Pen. Code, § 17170.)

19 ² “*Short-barreled shotgun*” means any of the following: (a) A firearm that is designed or redesigned
20 to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length; (b) A firearm that
21 has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun
22 shell; (c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that
23 weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18
24 inches in length; (d) Any device that may be readily restored to fire a fixed shotgun shell which, when so
25 restored, is a device defined in subdivisions (a) to (c), inclusive; and (e) Any part, or combination of
parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c),
inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive,
can be readily assembled if those parts are in the possession or under the control of the same person.
(Pen. Code, § 17180.)

26 ³ As used in Penal Code sections 16530, 16640, 16650, 16660, 16870, and 17170, sections 17720 to
27 17730, inclusive, section 17740, subdivision (t) of section 27555, Article 2 (commencing with section
28 30300) of Chapter 1 of Division 10 of Title 4, and Article 1 (commencing with section 33210) of Chapter
8 of Division 10 of Title 4, “*rifle*” means a weapon designed or redesigned, made or remade, and
intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy
of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single
pull of the trigger. (Pen. Code, § 17090.)

26 ⁴ As used in Penal Code sections 16530, 16640, 16870, and 17180, sections 17720 to 17730,
27 inclusive, section 17740, section 30215, and Article 1 (commencing with section 33210) of Chapter 8 of
28 Division 10 of Title 4, “*shotgun*” means a weapon designed or redesigned, made or remade, and
intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy
of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles
(ball shot) or a single projectile for each pull of the trigger. (Pen. Code, § 17190.)

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

[FIREARMS WITH AN UNDEFINED SUBTYPE]

5 27. The FAI Title 1 series of firearms are “firearms with an undefined subtype,” as its overall
6 design renders the device to be a “firearm,” but not a “handgun,” nor a “rifle,” nor a “shotgun,” as those
7 terms are defined by California law.

8 28. As “firearms,” FAI Title 1 firearms and other “firearms with an undefined subtype” are
9 subject to California “firearm” transfer laws.

10 29. “Firearms with an undefined subtype” have been manufactured for decades and have
11 been known to the DOJ for at least the last ten years.

12 30. For instance, the Browning 1919 A4 firearms began production in approximately 1936
13 and would be deemed “firearms with an undefined subtype.” On March 28, 2000, DOJ issued a letter to
14 Mr. Tim Bero, President of TNW, Inc., about a conversation that they had relating to the Browning .30
15 Cal. M-1919 A4 and A6, as well as the Browning .50 Cal. M2 semiautomatic rifles configured with a
16 pistol grip or butterfly grip and clarifying that said firearms would not constitute “assault weapons”
17 under California law at that time. (See Letter from Randy Rossi, Firearms Division Director, California
18 Department of Justice, to Tim Bero, President, TNW, Inc. (Mar. 28, 2000) attached hereto as **Exhibit**
19 **A.**)

20 31. Similarly, on November 3, 2004, the Director of the Firearms Division of the DOJ issued
21 a letter stating that a U.S. Ordinance Semi-60 configured with a butterfly grip, which would constitute a
22 “firearm with an undefined subtype,” was not an “assault weapon” under California law at that time.
23 (See Correspondence between Jason Davis, Trutanich Michel, LLP, and Randy Rossi, Firearms Division
24 Director, California Department of Justice (Nov. 3, 2004) attached hereto as Exhibit B.)

32. One of the most common types of firearms in the United States are barreled action firearms. Barreled action firearms are sold with and without stocks to allow the end user to configure the firearm as desired. Barreled action firearms sold or configured without a stock are “firearms with an undefined subtype.” Such firearms are currently sold nationwide. A simple search of one online retailer,

1 Brownells.com, for “barreled receivers” returns dozens of barreled action firearms currently available
2 for sale that would constitute “firearms with an undefined subtype” (and not bare receivers) that cannot
3 lawfully be transferred through DES as it is currently configured.

4 33. Finally, the FAI Title I was originally designed in 2012, at which time the BOF was
5 notified of the design and features and of FAI's intent to manufacture, produce, sell and distribute the
6 firearm within the State of California.

[CALIFORNIA DEALERS' CENTRAL ROLE]

8 34. Significantly, the State of California has reserved the entire field of licensing and
9 registration of firearms to itself. (Pen. Code, § 53071.)

10 35. With limited exception, nearly all firearm transfers within California must be processed
11 through a dealer licensed by the United States, California, and the local authorities to engage in the retail
12 sale of firearms. (Pen. Code, §§ 26700, 27545.)

13 36. And the State of California mandated that upon presentation of identification by a firearm
14 purchaser, a licensed California firearms dealer *shall* transmit the information to the Department of
15 Justice. (Pen. Code, § 28215, subd. (d).)

16 37. As such, the State of California has made licensed firearms dealers state agents in
17 connection with the gathering and dispensing of information on the purchase of firearms. (*United States*
18 *v. Tallmadge* (9th Cir. 1987) 829 F.2d 767.)

19 38. The State of California also mandated that the DOJ *shall* examine specified records to
20 determine whether the applicant is prohibited from owning or possessing firearms once it receives the
21 information from the dealer. (Pen. Code, § 28220.)

22 39. The State did not authorize the DOJ to indiscriminately stop or inhibit sales. Rather, the
23 State has only granted the DOJ the authority to stop sales for certain specified reasons. For example, the
24 DOJ is permitted to stop the sale if a purchaser is deemed a prohibited person. (See e.g., Pen. Code, §
25 28220.).

26 40. The State did not authorize the DOJ to indiscriminately delay sales. Rather, the State only
27 granted the DOJ the authority to delay sales for specified reasons. For example, the DOJ is permitted to
28 delay if its records indicate that the purchaser may be prohibited. additional research is needed to make a

final determination. (See e.g., Pen. Code, §28220(d) & (f)(1)(A) [authorizing a 30-day delay under specified circumstances but permitting the release of the firearm by the Dealer if the DOJ cannot determine the purchaser to be ineligible to possess firearms within the 30-day period]) The DOJ may also delay a sale if the DROS application contains any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased.

7 41. Thus, while the DOJ is the gatekeeper of firearm transactions within the State, its ability
8 to delay or deny lawful sale and transfer of firearms is exceedingly limited to expressly prohibited
9 activities.

[CALIFORNIA'S FIREARM TRANSFER SCHEME OVERVIEW]

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

- Valid photo identification to establish age (Pen. Code, §§ 16400, 26845, 27510);
 - Complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ATF Form 4473;
 - Complete the California Dealer's Record of Sale (OROS) form;
 - Pass a comprehensive background check performed by the State of California (Pen. Code, § 29820), which reviews records in the following databases:
 - Criminal History System (ACHS);
 - California Restraining and Protective Order System (CARPOS);
 - California Department of Motor Vehicles (OMV);
 - California Mental Health Firearm Prohibition System (MHFPS);
 - California Wanted Persons System (WPS);
 - Federal Bureau of Investigation (FBI) National Instant Criminal Background Check System (NICS);
 - FBI Interstate Identification Index (III);
 - FBI National Crime Information Center (NCIC); and

- Immigration Customs & Enforcement (ICE);
 - Pay a background check fee;
 - Pay a Firearm Safety & Enforcement fee;
 - Pay a Firearm Safety Device fee;
 - Wait a ten-day waiting period⁵ (Pen. Code §§ 26950-26970);
 - Obtain a Firearm Safety Device (FSD) (Pen. Code, § 23635);
 - Possess a Firearm Safety Certificate (FSC)⁶ (Pen. Code § 31700).

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

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

- 13 1. As required by the Department of Justice, every dealer shall keep a register or record of
14 electronic or telephonic transfer in which shall be entered" certain information relating to the
15 transfer of firearms. (Pen. Code, § 28100.)

16 2. "The Department of Justice shall prescribe the *form* of the register and the record of
17 electronic transfer pursuant to Section 28105." (Pen. Code§ 28155.)

18 3. The Attorney General shall keep and properly file a complete record of Dealers' Records of
19 Sale of firearms. (Pen. Code, § 11106, subd. (a)(1)(D).)

20 4. The Attorney General shall permanently keep and properly file and maintain *all* information
21 reported to the DOJ pursuant to any law as to *firearms* and maintain a registry thereof. (Pen.
22 Code, § 11106, subd. (b)(1)(A).) Specific information that must be included within the
23 registry includes the "manufacturer's name if stamped on the firearm, model name or number
24 if stamped on the firearm, and, if applicable, the serial number, other number (if more than

27 ⁵ That is, ten 24-hour periods must pass once the OROS is submitted before the purchaser can
28 acquire their firearm (Pen. Code,§ 26815), though certain people or transfers are exempt from the
waiting period requirement (e.g., peace officers and special weapon permit holders)

1 one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or
2 used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not
3 have a serial number or any identification number or mark assigned to it, that shall be noted.”
4 (Pen. Code, § 11106, subd. (b)(1)(D).)

5 44. The State of California mandated that, *for all firearms*, the register or the record of
6 electronic transfer *shall* contain the certain information via Penal Code section 28160, subdivision (a),
7 specifically:

- 8 (1) The date and time of sale;
- 9 (2) The make of firearm;
- 10 (3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of Section
11 16585, and the agency name;
- 12 (4) Any applicable waiting period exemption information;
- 13 (5) California Firearms Dealer number issued pursuant to Article 1 (commencing with Section
14 26700) of Chapter 2;
- 15 (6) For transactions occurring on or after January 1, 2003, the purchaser’s handgun safety
16 certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter 4 of
17 Division 10 of this title, or pursuant to former Article 8 (commencing with Section 12800) of
18 Chapter 6 of Title 2 of Part 4, as that article read at any time from when it became operative on
19 January 1, 2003, to when it was repealed by the Deadly Weapons Recodification Act of 2010;
- 20 (7) Manufacturer’s name, if stamped on the firearm;
- 21 (8) Model name or number, if stamped on the firearm;
- 22 (9) Serial number, if applicable;
- 23 (10) Other number, if more than one serial number is stamped on the firearm;
- 24 (11) Any identification number or mark assigned to the firearm pursuant to Section 23910;

25
26
27 ⁶ Firearm purchasers must take an exam on firearm safety from an instructor and obtain a minimum
28 75% passing score to receive a certificate (Pen. Code, § 31615), though certain people are exempt from
the FSC requirement (e.g., peace officers, military, California Concealed Carry License holders).

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

(13) Caliber;

(14) Type of firearm; (multiple emphasis added)

(15) If the firearm is new or used;

(16) Barrel length;

(17) Color of the firearm;

(18) Full name of purchaser;

(19) Purchaser's complete date of birth;

(20) Purchaser's local address;

(21) If current address is temporary, complete permanent address of purchaser;

(22) Identification of purchaser;

(23) Purchaser's place of birth (state or country);

(24) Purchaser's complete telephone number;

(25) Purchaser's occupation;

(26) Purchaser's gender;

(27) Purchaser's physical description;

(28) All legal names and aliases ever used by the purchaser;

(29) Yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an offense described in Chapter 3 (commencing with Section 29900) of Division 9 of this title, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, and whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code;

(30) Signature of purchaser;

(31) Signature of salesperson, as a witness to the purchaser's signature;

1 (32) Salesperson's certificate of eligibility number, if the salesperson has obtained a certificate of
2 eligibility;

3 (33) Name and complete address of the dealer or firm selling the firearm as shown on the
4 dealer's license;

5 (34) The establishment number, if assigned;

6 (35) The dealer's complete business telephone number;

7 (36) Any information required by Chapter 5 (commencing with Section 28050);

8 (37) Any information required to determine whether subdivision (f) of Section 27540 applies;

9 (38) A statement of the penalties for signing a fictitious name or address, knowingly furnishing
10 any incorrect information, or knowingly omitting any information required to be provided for the
11 register; and

12 (39) A statement informing the purchaser of certain information.

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

16 46. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title
17 1 series of firearms and other firearms, including buntline revolvers, butterfly grip firearms, and barreled
18 action firearms.

[POINT OF CONTACT STATE UNDER FEDERAL LAW]

47. A Federal law known as the Brady Handgun Violence Act of 1993 (“the Brady Act”) requires FFLs to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act which went into effect on November 30, 1998, requires the United States Attorney General to establish the NICS for FFLs to contact to obtain immediate information on whether the transfer of a firearm to as respective buyer would violate state or federal law.

25 48. FFLs must contact the NICS to conduct NICS check through an established Point of
26 Contact (POC) within their respective state or the FBI NICS Section. In order that all citizens and
27 dealers, regardless of their state of residence, receive at a minimum, the level of service mandated by the
28 Brady Act, the FBI in conjunction with the Bureau of Alcohol, Tobacco and Firearms (“ATF”), and the

1 U.S. Department of Justice has developed the *National Instant Criminal Background Check System*
2 *Point of Sale Guidelines*. These federal guidelines are designed to ensure that all potential purchasers
3 receive a consistent level of service.

4 49. The California DOJ acts as the single POC for all firearm transfers within California
5 pursuant to a memorandum of understanding with the FBI. As of January 1, 2003, licensed firearm
6 dealers in California are required to submit all background checks to DOJ electronically via the Dealer
7 Record of Sale Entry System (“DES”). As such, nearly all of California NICS checks coming from FFLs
8 are run through the DES. And, pursuant to both the memorandum of understanding and 28 C.F.R. Part
9 25.10, a person found ineligible to receive a firearm may appeal the decision.

10 50. The DOJ has failed to comply with this mandate, thereby barring the sale of the FAI Title
11 1, ensuring that not all potential purchasers receive a consistent level of service, and preventing any
12 method of appeal by the potential purchasers.

13 [CALIFORNIA’S FIREARM REGISTRY - METHOD OF ELECTRONIC TRANSMISSION]

14 51. The State of California mandated that the DOJ *shall* determine the *method* by which a
15 dealer *submits* the firearm purchaser *information* to the DOJ. (Pen. Code, § 28205, subd. (a).)

16 52. The State of California mandated that electronic transfer of the required information be
17 the sole means of transmission but permitted the DOJ to make exceptions. (Pen. Code, § 28205, subd.
18 (c).)

19 53. The method established by the DOJ pursuant to Penal Code section 28205(c) for the
20 submission of purchaser information required by Penal Code section 28160, subdivision (a), is DES.

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

23 55. As agents of State for record keeping purposes, licensed California firearm dealers are
24 required to submit only information that is “true, accurate, and complete.” (Cal. Code Regs., tit. 11, §
25 4210, subd. (b)(1)(6).)

26 56. The DOJ has failed to comply with their mandate, making it impossible for firearm
27 purchasers and California Dealers acting as agents of the DOJ to submit true, accurate, and complete
28 information, thereby barring the sale of the FAI Title I.

[NATURE OF DISPUTE]

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

4 58. Specifically, by design, when the DES user is inputting the designated information into
5 the DES, they must input information related to the gun type (“long gun” or “handgun”) from a pre-
6 populated dropdown list. Upon selecting “long gun,” the DES is designed to and functions to self-
7 populate a subset of fields, and it requires one of three options to be designated before the dealer may
8 proceed with the completion of the form and submission of the required information to the DOJ. Those
9 three options are: “rifle,” “rifle/shotgun,” “shotgun.” Unlike the subset of fields that self-populate for
10 “Color,” “Purchaser Place of Birth,” and Seller Place of Birth”, each of which contains the catchall
11 “other” options, the “long guns” subset of fields does not contain the “other” option. Thus, the DES
12 prevents licensed firearm dealers from proceeding with the sale, transfer, loan or submission of
13 information to the DOJ for certain firearms, including but not limited to the FAI Title I series of
14 firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms.

15 59. The actual and practical effect of this design is that licensed California firearm dealers
16 cannot accurately submit the necessary information to the DOJ for processing because of the limited
17 choices of subtypes in the DES, thereby barring the sale, transfer, acquisition, loan or other processing
18 of “firearms with an undefined subtype,” including but not limited to the FAI Title 1 series of firearms,
19 buntline revolvers, butterfly grip firearms, and barreled action firearms.

60. Without an alternative procedure for submission of the purchaser and firearm information
established by DOJ pursuant to Penal Code section 28205, subd. (c), the DES is the only method of
submitting the necessary information to permit the lawful transfer of the “firearms with an undefined
subtype.”

24 61. Under California Code of Regulations, title 11, § 4210, subdivision (b)(1)(6), firearm
25 dealers are prohibited from entering inaccurate information within the system.

26 62. Because dealers cannot accurately submit the required information through the DES for
27 “long guns” that “firearms with an undefined subtype,” they are prohibited from processing and
28 accepting applications from purchasers of said firearms. (Pen. Code, § 28215, subd. (c).)

1 63. As part of the design, implementation, maintenance and enforcement of the DES by the
2 DEFENDANTS, the DEFENDANTS have instituted a technological barrier that functions and serves as
3 a ban on the transfer of all “firearms with an undefined subtype” that are “long guns” that are neither
4 “rifles” nor “shotguns” nor “rifle/shotgun combinations” through a licensed California firearms dealer.

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

7 65. This technological barrier could also be alleviated by permitting the user to proceed
8 without completing the subtype categories.

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

14 67. DEFENDANTS have known of the deficiencies of the DES and intended them from
15 inception, and since the introduction of the FAI Title 1, they have been requested to correct said defect,
16 and have refused to do so, thereby barring the sale of the FAI Title 1.

[DOJ AND THE FAI TITLE 1]

18 68. DEFENDANTS and FAI have been in communications regarding the design and features
19 of the FAI Title I since approximately 2012.

20 69. On or about October 24, 2019, FAI informed the DOJ of the defects in the DES and the
21 inability of FAI to transmit the Title I firearms to their customers because of those defects to the DES.
22 (See Letter from Jason Davis, The Davis Law Firm, to Xavier Becerra, California Attorney General, Re:
23 Franklin Armory, Inc. DES “Gun Type” Drop Down List (Oct. 24, 2019), attached hereto as **Exhibit C**.)

24 70. Since then, the DOJ has neither corrected the DES, nor has it implemented alternative
25 procedures to facilitate the lawful transfer of “firearms with an undefined subtype,” including but not
26 limited to the FAI Title I series of firearms, buntline revolvers, butterfly grip firearms, and barreled
27 action firearms.

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1 71. The DOJ has also had more than an adequate and reasonable amount of time to
2 implement alternative procedures pursuant to Penal Code section 28205, subdivision (c).

3 72. The DOJ has had more than an adequate and reasonable amount of time to make the
4 corrections necessary to permit the system to process “firearms with an undefined subtype,” including,
5 but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and
6 barreled action firearms.

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

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

17 75. Now, months have passed since the DOJ responded, and neither the DES nor the
18 alternative procedures have been updated, modified, or implemented to permit the lawful transfer of FAI
19 Title 1 series of firearms or other “firearms with undefined subtypes.”

20 76. On information and belief, DEFENDANTS designed and developed alternative
21 procedures, processes and/or updates that would have cured the deficiencies of the DES specific to the
22 issue at hand but have refused and/or intentionally delayed implementation of said alternatives to date.

23 77. On information and belief, DEFENDANTS designed, implemented, maintained and
24 enforced the DES to intentionally prevent the transfer of “long guns” that are neither “rifles” nor
25 “shotguns” nor combinations thereof.

26 78. On information and belief, DEFENDANTS are continuing with the deficiencies
27 intentionally, delaying the necessary changes to the DES that would permit the lawful transfer of lawful
28 firearms such as the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and

1 barreled action firearms to lawful purchasers. On information and belief, DEFENDANTS are doing so
2 with malice, in targeted retaliation against FAI for challenging DEFENDANTS in past and current
3 actions and with intent to cause FAI harm.

4 79. As a result, FAI has been unable to transfer approximately 35,000 FAI Title 1 series
5 firearms reserved via earnest money deposits made by licensed California firearm dealers and California
6 residents, including members of CRPA, who seek to lawfully sell, transfer, purchase, acquire and/or
7 possess the FAI Title 1 firearms. This inability for purchasers and dealers to submit the true, accurate
8 and complete information through the DES for certain firearms, including but not limited to the FAI
9 Title 1 series of firearms, has damaged FAI in an amount of at least \$33,000,000 by preventing FAI
10 from effectuating the sale of the reserved product as well as non-reserved product in a final amount to be
11 determined at trial, and it has denied the rights of California citizens who are not prohibited from
12 acquiring or even completing an application to acquire firearms from acquiring the FAI Title 1 series of
13 firearms.

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

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

21 82. Accordingly, an active controversy has arisen and now exists between the
22 DEFENDANTS and PLAINTIFFS concerning their respective rights, duties and responsibilities. The
23 controversy is definite and concrete, and touches on the legal relations of the parties, as well as many
24 thousands of people not before this Court whom DEFENDANTS are legally bound to serve.

25 83. The DOJ has a duty to facilitate the lawful transfer of firearms and to collect certain
26 information from firearms dealers by a method of submission designated by the DOJ—a duty the DOJ
27 has itself acknowledged. (See Letter from Melan Noble, DOJ Regulations Coordinator, to Office of
28 Administrative Law Re: Request by the Department of Justice for Early Implementation for Notice File

1 No. Z-201300725-01 (DROS Entry System) (Nov. 8, 2013) attached hereto as **Exhibit D** [stating that
2 “DOJ is authorized to establish the process by which licensed firearms dealers submit electronic
3 DROS … information to DOJ,” that “[t]he legal sale of firearms in California is only possible via DES,”
4 that “[i]f the new DES is not operational on January 1, 2014, over 1900 California firearms dealers
5 would be at risk of having to close their businesses and lay-off thousands of employees, and that
6 “[b]eginning January 1, 2014, DOJ will assume the duties … as part of the DES”] See also DROS Entry
7 System Rulemaking File, Section G Final Statement of Reasons, Public Comments and Department of
8 Justice Responses No. 21 (p. 19 of 24), attached hereto as **Exhibit E** [stating that Penal Code section
9 26815, subdivision (a) states that “no firearm shall be delivered . . . within 10 days of the submission to
10 the [DOJ] of any fee required pursuant to Section 28225” and that “there is no completed sale until the
11 required fees are transmitted by the dealer to the [DOJ].”)

12 84. The DOJ does not, however, have the authority to mandate alternative information or
13 prevent the lawful transfer of a class of firearms not otherwise prohibited under California law by
14 technological limitations of their designs, either intentional or otherwise.

[UNDERGROUND REGULATIONS]

16 85. PLAINTIFFS also bring this action pursuant to the California Administrative Procedure
17 Act (Gov. Code, § 11340, et seq.) (“APA”) to challenge the validity of and to enjoin enforcement of
18 policies and procedures that prohibit the transfer of lawful firearms to lawful purchasers, including but
19 not limited to, designing, developing, implementing, modifying and administering protocols, systems
20 and databases that impede and/or prevent transfers from proceeding.

21 86. The APA provides a detailed statutory scheme for public notice and comment on
22 regulations proposed by state agencies. (Gov. Code, § 11340, et seq.)

23 87. Mandatory procedures include providing adequate notice to the public of proposed
24 regulations and an opportunity for public comment. (Gov. Code, §§ 11346.2, 11346.4, 11346.5,
25 11346.8.)

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

1 89. The APA specifically prohibits any state agency from making use of a rule that is a
2 “regulation” as defined in Government Code section 11342.600, that should have, but has not been
3 adopted pursuant to the detailed procedures set forth in the APA. (Gov. Code§ 11340.5, subd. (a).)

4 90. If a rule constitutes a “regulation,” and there is no express statutory exemption excusing
5 the agency from complying with the APA, any regulation enacted without compliance with the APA is
6 an invalid “underground regulation” and cannot be enforced. (*Tidewater Marin Western, Inc. v.*
7 *Bradshaw* (1996) 14 Cal.4th 557, 576. See also Gov. Code, § 11346.)

8 91. There is a narrow exception to the stringent requirements of the APA for “emergency”
9 regulations if an “emergency situation clearly poses such an immediate, serious harm that delaying
10 action to allow public comment would be inconsistent with the public interest.” (Gov. Code, 11346.1,
11 subd. (a)(3).)

12 92. The purpose of the APA’s comprehensive scheme is to ensure that “those persons or
13 entities whom a regulation will affect have a voice in its creation,” (*Armistead v. State Personnel Board*
14 (1978) Cal.3d 198, 204-205), to allow the public to inform the agency about possible unintended
15 consequences of a proposed regulation, and to protect against “bureaucratic tyranny.” (*Cal. Advocates*
16 *for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 507-508.)

17 93. The challenged rules at issue, including but not limited to the prohibition of certain
18 lawful firearms from being transferred because of DEFENDANTS’ technological barriers, implement,
19 interpret and make specific requirements for compliance with statutory law enforced by
20 DEFENDANTS. They include policy decisions by DEFENDANTS that are subject to the open
21 government and deliberative process requirements under the APA. But the challenged rules do not
22 comply with the rulemaking provisions of the APA. They were adopted without prior public notice or
23 opportunity for oral or written public comment. (See Gov. Code, §§ 11346.2, 11346.4, 11346.5,
24 11346.8.)

25 94. The APA does allow for adoption of regulations without any advance public notice and
26 the opportunity for comment only in emergency circumstances where “the emergency situation clearly
27 poses such an immediate, serious harm that delaying action to allow public comment would be
28 inconsistent with the public interest.” (Gov .Code, § 11346.1, subds. (a)-(b).) No “emergency” exists

1 that would justify bypassing the formal process for the adoption of the challenged rules here. And no
2 other section of the California Code exempts the adoption of rules concerning the prohibition of the
3 transfer of lawful firearms to lawful purchasers.

4 95. Accordingly, PLAINTIFFS seek declaratory and injunctive relief to invalidate and enjoin
5 DEFENDANTS' enforcement of the challenged rules as unlawful underground regulations.

6 96. PLAINTIFFS also seek to enjoin the enforcement of rules concerning the prohibition of
7 the transfer of lawful firearms to lawful purchasers.

8 [UNLAWFUL BAN ON FIREARMS]

9 97. On information and belief, DEFENDANTS acted in concert to prevent the sale of
10 centerfire variants of the FAI Title 1 series of firearms indefinitely. Specifically, DEFENDANTS
11 conspired and did delay and defer any action that would otherwise permit the formal sale, transfer, and
12 delivery of the FAI Title 1 style firearms until legislation designed and intended to ban the sale, transfer,
13 and delivery of the Title 1 would be implemented and effective.

14 98. On information and belief, DEFENDANTS' actions in implementing a non-statutory ban
15 on otherwise lawful "firearms with an undefined subtype" were done with malice and intended to cause
16 harm to PLAINTIFFS and their members and customers, such as Ryan Fellows, Beverly Epidendio, and
17 Coyote Point Armory, through the deprivation of property, loss of profits, and damage to FAI's
18 reputation.

19 99. Ryan Fellows is a California resident and a CRPA member who placed a deposit on a
20 5.56 NATO centerfire FAI Title 1 firearm and is unable to process the transfer of the firearm due to the
21 DEFENDANTS' conduct described herein as well as the subsequent passage of SB118. Mr. Fellows
22 also seeks to acquire a .17 WSM rimfire variant of the FAI Title 1 but is unable to acquire that firearm
23 because of DEFENDANTS' conduct described herein.

24 100. Beverly Epidendio is a California resident and a CRPA member who seeks to acquire a
25 buntline revolver but is prohibited from doing so due to DEFENDANTS' conduct described herein.

26 101. Coyote Point Armory is a California licensed firearms dealer who seeks to sell a buntline
27 revolver but is prohibited from doing so due to the DEFENDANTS' conduct described herein. Coyote
28

1 Point Armory also seeks to sell other lawful firearms, including but not limited to rimfire variants of the
2 FAI Title 1 but is prohibited from doing so due to DEFENDANTS' conduct described herein.

3 102. CRPA has many other members, many of whom do not wish their names to be identified
4 publicly, seek to acquire and/or sell lawful "firearms with an undefined subtype," including but not
5 limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled
6 action firearms, but cannot lawfully do so due to DEFENDANTS' conduct described herein.

7 [CRIMINAL CONDUCT]

8 103. When an act or omission is declared by a statute to be a public offense and no penalty for
9 the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. (Pen. Code,
10 § 19.4.)

11 [LIABILITY STATUTES]

12 104. A public entity is liable for injury proximately caused by an act or omission of an
13 employee of the public entity within the scope of his employment if the act or omission would, apart
14 from this section, have given rise to a cause of action against that employee or his personal
15 representative. (Govt. Code, § 815.2.)

16 105. Where a public entity is under a mandatory duty imposed by an enactment that is
17 designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury
18 of that kind proximately caused by its failure to discharge the duty unless the public entity establishes
19 that it exercised reasonable diligence to discharge the duty. (Govt. Code, § 815.6.)

20 106. In general, a public employee is liable for injury caused by his act or omission to the
21 same extent as a private person. (Gov. Code, § 820.)

22 107. The acts prohibiting the sale of otherwise lawful "firearms with an undefined subtype,"
23 including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms,
24 and barreled action receivers, described herein are non-discretionary acts.

25 [REDESIGNATION AS "ASSAULT WEAPON"]

26 108. At all times relevant, the FAI Title I series of firearms was not prohibited from being
27 transferred, sold, or possessed within California.

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1 109. On information and belief, the acts described above were performed by DEFENDANTS
2 with the intent to delay and prohibit the sales and lawful transfer of the FAI Title 1 series of firearms to
3 FAI's customers within California until such time as legislation was developed, proposed, and passed
4 designating the centerfire variant of the FAI Title 1 series of firearms as an "assault weapons" under the
5 Roberti-Roos Assault Weapons Control Act. (See Email from Jennifer Kim, Principal Consultant,
6 Assembly Budget Committee, to Jason Sisney Re: Assault Weapon TBL—Add'l Info FYI (June 24,
7 2020) attached hereto as **Exhibit F.**)

8 110. On information and belief, Assembly Bill 88 was the result of DEFENDANTS' first
9 attempt to redesignate the FAI TITLE 1 series of firearms as "assault weapons".

10 111. On information and belief, DEFENDANTS' scheme to deny PLAINTIFFS their rights
11 was unsuccessful at first with the failure of Assembly Bill 88 to pass.

12 112. On information and belief, DEFENDANTS' scheme was ultimately successful with the
13 passage of Senate Bill 118 ("SB 118"), which passed and became law on August 6, 2020—immediately
14 designating centerfire variants of the FAI Title 1 series of firearms as a "assault weapons" under the
15 Roberti-Roos Assault Weapons Control Act—thereby immediately prohibiting the transfer of the FAI
16 Title 1 in 5.56 NATO to their customers, though the FAI Title 1 in .17 WSM remained unaffected by
17 this legislation.

18 113. On information and belief, while SB 118 permits those in possession of firearms deemed
19 "assault weapons" under the newly implemented definition to register and keep their firearms if they
20 possessed the firearms prior to September 1, 2020, the DEFENDANTS' plan, scheme, actions and
21 inaction in prohibiting the transfer of the FAI Title 1 prohibited those who placed deposits on the FAI
22 Title 1 series firearms from lawfully acquiring and possessing their firearms prior to the September 1,
23 2020 deadline.

24 114. As such, DEFENDANTS actions and inaction described herein effectively denied
25 PLAINTIFFS of their right to Due Process, their Second Amendment rights, and their property rights,
26 *inter alia.*

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

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

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

8 117. Additionally, DEFENDANTS' design, implementation, maintenance and enforcement of
9 the DES, in conjunction with the general firearm transfer laws within the State of California and the
10 resultant injuries to PLAINTIFFS, are and will be of a continuing nature for which PLAINTIFFS will
11 have no adequate remedy at law.

12 118. In order to resolve the controversy, PLAINTIFFS request that, pursuant to Code of Civil
13 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter
14 and, in particular, as follows:

15 a. There exists a category of firearm that is neither a “rifle,” nor “shotgun,” nor “handgun”
16 under California law.

17 b. The DES, as it is currently designed, implemented, maintained and/or enforced by
18 DEFENDANTS prohibits the sale of certain firearms that are neither “rifles,” nor
19 “shotguns,” nor “handguns” under California law.

20 c. DEFENDANTS' actions in designing, implementing, maintaining and enforcing the
21 DES, in its current form, constitute a barrier and prevent FAI, licensed dealers and the
22 general public from acquiring, possessing, transferring and selling certain lawful
23 firearms, including but not limited to the FAI Title 1 series of firearms, bunline
24 revolvers, butterfly grip firearms, and barreled action receivers, within the State of
25 California.

26 d. The DES's technological restrictions prohibiting the transfer of certain lawful firearms,
27 including but not limited to the FAI Title 1 series of firearms, buntline revolvers,

1 butterfly grip firearms, and barreled action receivers, violate the DOJ's duties, including
2 those found within Penal Code sections 28155, 28205, 28215, and 28220.

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

6 f. DEFENDANTS have intentionally instituted the technological barriers designed for and
7 implemented within DES, which is maintained and enforced by the DEFENDANTS.

8 g. DEFENDANTS have intentionally delayed in removing the technological barriers
9 designed for and implemented within DES, which is maintained and enforced by the
10 DEFENDANTS.

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

18 119. Accordingly, PLAINTIFFS seek an injunction pursuant to Code of Civil Procedure
19 sections 525 and 526 enjoining DEFENDANTS, their agents, employees, representatives and all those
20 acting in concert with them from enforcing administrative and/or technological barriers that prevent the sale
21 of lawful "firearms with an undefined subtype," including but not limited to rimfire variants of the FAI
22 Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms.

23 120. Additionally, PLAINTIFFS seek an injunction pursuant to Code of Civil Procedure
24 sections 525 and 526 enjoining DEFENDANTS, their agents, employees, representatives and all those
25 acting in concert with them from enforcing the Roberti-Roos Assault Weapons Control Act in a manner
26 that prohibits the acquisition and registration of those centerfire FAI Title 1 firearms for earnest money
27 deposits were made on or before August 6, 2020, and but for DEFENDANTS' technological barriers
28 complained of herein, would have been lawfully acquired and registered in accordance with SB 118.

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

3 121. Paragraphs 1-120 are realleged and incorporated by reference.

4 122. DEFENDANTS have a clear, present and ministerial duty to design, implement, and
5 maintain the DES and to enforce the relevant provisions of Penal Code in such a manner that does not
6 preclude or bar the sale, transfer, loan or other processing of entire classes of lawful firearms, including
7 but not limited to rimfire variants of the FAI Title 1 series of firearms, by technological or
8 administrative barriers.

9 123. As to those firearms, including centerfire variants of the FAI Title 1 series of firearms,
10 that were recently classified as “assault weapons” under SB 118, DEFENDANTS continue to have a
11 clear, present and ministerial duty to design, implement, and maintain the DES and to enforce the
12 relevant provisions of the Penal Code in such a manner that does not preclude or bar the sale, transfer,
13 loan or other processing of 5.56 NATO centerfire FAI Title1 firearms for which deposits were made on
14 or before August 6, 2020, for two reasons:

15 a. First, at all times before the adoption and enforcement of SB 118, DEFENDANTS
16 clearly had a ministerial duty to design, implement, and maintain the DES and to enforce
17 the relevant provisions of the Penal Code in such a manner that would not preclude or bar
18 the sale, transfer, loan or other processing of lawful 5.56 NATO centerfire FAI Title 1 by
19 technological or administrative barriers. And, but for DEFENDANTS' knowing,
20 unlawful and unseemly refusal to correct the DES while it worked with lawmakers to
21 specifically re-classify centerfire Title 1 firearms as "assault weapons," running out the
22 clock on those who began the process of lawfully transferring centerfire FAI Title 1
23 firearms before SB 118 took effect, FAI would have transferred centerfire Title 1
24 firearms to thousands of law-abiding Californians, including hundreds of members of
25 CRPA. Because of DEFENDANTS' unclean hands, PLAINTIFFS allege that
26 DEFENDANTS' ministerial duty (as regards those centerfire Title 1 firearms for which
27 deposits was made on or before August 6, 2020) must continue beyond September 1,

2020, notwithstanding those provisions of SB 118 that would otherwise limit the transfer and registration of such firearms.

b. Second, DEFENDANTS have a clear, present and ministerial duty not to enforce the provisions of SB 118 that limit the acquisition, transfer, and registration of centerfire FAI Title 1 firearms against those law-abiding Californians, including hundreds of members of CRPA, who placed a deposit for the purchase of one or more centerfire FAI Title 1 firearms on or before August 6, 2020, in such a way as to prevent the acquisition, transfer, and registration of centerfire FAI Title 1 firearms that would have been acquired and registered in accordance with SB 118, but for DEFENDANTS' conduct complained of herein, because, as alleged further in paragraphs 162 through 184 below and incorporated fully here, doing so violates the procedural and substantive due process rights of FAI and all those who attempted to lawfully purchase one or more centerfire FAI Title 1 firearms on or before August 6, 2020. Because of DEFENDANTS' unconstitutional conduct, PLAINTIFFS allege that DEFENDANTS' ministerial duty (as regards those centerfire Title 1 firearms for which deposits was made on or before August 6, 2020) must continue beyond September 1, 2020, notwithstanding those provisions of SB 118 that would otherwise limit the transfer and registration of such firearms.

18 124. PLAINTIFFS are beneficially interested in this matter, as they and/or their members are
19 damaged by the loss of profits, sales, possession and/or acquisition of firearms, including but not limited
20 to the FAI Title 1 series of firearms, because of DEFENDANTS' design, implementation, maintenance
21 and enforcement of the DES pursuant to Penal Code sections 28155, 28205, 28215, and 28220 in such a
22 manner as to proscribe the lawful sale, transfer and loan of an entire class of lawful firearms, including
23 but not limited to the FAI Title 1 series of firearms.

24 125. DEFENDANTS' design, implementation, maintenance and enforcement of the DES
25 pursuant to Penal Code sections 28155, 28205, 28215, and 28220 in such a manner as to proscribe the
26 lawful sale, transfer and loan of an entire class of lawful firearms, including but not limited to the FAI
27 Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms are and

1 will be of a continuing nature for which PLAINTIFFS have no plain, speedy or adequate remedy at law,
2 and which have and will continue to result in irreparable harm.

3 126. PLAINTIFFS present important questions of statutory and constitutional interpretation,
4 as well as questions of public interest, which warrant prompt disposition of this matter.

5 127. Accordingly, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
6 sections 1085 and 1807, commanding DEFENDANTS to design, implement, maintain and enforce
7 updates to the DES such that it does not proscribe the lawful sale, transfer and loan of an entire class of
8 lawful firearms, including but not limited to rimfire variants of the FAI Title 1 series of firearms,
9 buntline revolvers, butterfly grip firearms, and barreled action firearms, and such that it comports with
10 Penal Code sections 28155, 28205, 28215 and 28220.

11 128. Additionally, PLAINTIFFS seek a writ of mandate, pursuant to Code of Civil Procedure
12 sections 1085 and 1807, commanding DEFENDANTS not to enforce the Roberti-Roos Assault
13 Weapons Control Act in a manner that prohibits the acquisition and registration of those centerfire FAI
14 Title 1 firearms for which earnest money deposits were made on or before August 6, 2020 and, but for
15 DEFENDANTS' conduct complained of herein, would have been lawfully acquired and registered in
16 accordance with SB 118. This includes a writ of mandate ordering DEFENDANTS to design,
17 implement, or update their systems as necessary to permit the acquisition and registration of centerfire
18 variants of the FAI Title 1 firearm for which earnest money deposits were made or before August 6,
19 2020, or by such time as deemed appropriate by the Court.

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

23 129. Paragraphs 1-128 are realleged and incorporated by reference.

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

27 131. FAI currently has tens of thousands of contracts to sell FAI Title 1 firearms within
28 California.

1 132. On information and belief, DEFENDANTS knew of FAI's contracts.

2 133. To date, DEFENDANTS' conduct prevented performance of the contracts.

3 134. To date, DEFENDANTS made performance more expensive or difficult.

4 135. On information and belief, DEFENDANTS intended to disrupt the performance of these

5 contracts or knew that disruption of performance was certain or substantially certain to occur by their

6 delay and/or continued refusal to correct the defects in the DES or permit alternative means of transfers.

7 136. FAI and its customers have been harmed through the loss of sales and inability to transfer

8 and/or receive the FAI Title 1 as obligated.

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

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

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

17 || 139. Paragraphs 1-138 are realleged and incorporated by reference.

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

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

23 142. On information and belief, DEFENDANTS knew of the relationships that FAI had with
24 its customers and prospective customers, including California dealers and consumers.

143. On information and belief, DEFENDANTS knew of the high volume of interest in the
FAI Title I within California, and the high volume of preorders by FAI's California customers, and the
amount of monies at issue.

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1 144. On and information and belief, DEFENDANTS knew that refusing to correct and/or
2 delaying the corrections and updates to the DES necessary to facilitate the lawful transfer of the FAI
3 Title I , and other "firearms with an undefined subtype," would prevent and/or delay the sale of said
4 firearms.

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

12 146. The economic relationships between FAI and its customers and prospective customers
13 were disrupted.

14 147. FAI was harmed, *inter alia*, in that they lost tens-of-thousands of reserved sales for the
15 FAI Title 1 in an amount approximating \$33,000,000.00, lost *profits* in an amount to be proven at trial,
16 but approximating \$5,000,000.00, and incurred reputational due to the inability to fulfill customer orders
17 due to DEFENDANTS' actions.

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

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

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

FIFTH CAUSE OF ACTON:
NEGLIGENT INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE
(AGAINST ALL DEFENDANTS)

28 || 151. Paragraphs 1- 150 are realleged and incorporated by reference.

1 152. FAI claims that DEFENDANTS acted with negligence and/or gross negligence,
2 recklessness, malice and/or deceit and interfered with a relationship between FAI and FAI's California
3 customers and prospective customers, including licensed California retailers and consumers, that
4 probably would have resulted in an economic benefit to FAI.

5 153. FAI and customers and prospective customers, including licensed California retailers and
6 consumers, were in an economic relationship that probably would have resulted in a future economic
7 benefit to FAI.

8 154. DEFENDANTS knew or should have known of the relationships between FAI and its
9 customers and prospective customers.

10 155. DEFENDANTS knew or should have known that these relationships would be disrupted
11 if they failed to act with reasonable care.

12 156. DEFENDANTS failed to act with reasonable care.

13 157. DEFENDANTS engaged in wrongful conduct by delaying and/or refusing to correct the
14 defects in the DES and/or implementing alternative means to facilitate the lawful transfer of the lawful
15 firearms, including the FAI Title 1. DEFENDANTS intended to disrupt the relationships or knew that
16 disruption of the relationships between FAI and its customers and/or prospective customers was certain
17 or substantially certain to occur. DEFENDANTS intentionally interfered with such opportunities in
18 violation of its duties to design, develop, maintain and administer a system for accepting and
19 transmitting the necessary information for the lawful transfer of lawful firearms, including those duties
20 found within Penal Code sections 11106, 28155, 28205, 28215 and 28220.

21 158. The relationships between FAI and its customers and prospective customers were
22 disrupted.

23 159. FAI was harmed, *inter alia*, in that they lost tens-of-thousands of reserved sales for the
24 FAI Title 1 in the amount approximating \$33,000,000.00, lost *profits* in an amount to be proven at trial,
25 but approximating \$5,000,000.00, and incurred reputational due to the inability to fulfill customer
26 orders due to DEFENDANTS' actions.

27 160. DEFENDANTS' wrongful conduct was a substantial factor in causing FAI's harm.

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

SIXTH CAUSE OF ACTION

42 U.S.C. § 1983- Violation of Due Process

Deprivation of Liberty Without Procedural Due Process of Law (By All PLAINTIFFS against All DEFENDANTS)

8 || 162. Paragraphs 1-161 are realleged and incorporated by reference.

9 163. The Due Process Clause of the Fourteenth Amendment provides that no state shall
10 "deprive any person of life, liberty, or property, without due process of law." (U.S. Const., amend
11 XIV.)166. Due process requires that the state afford an individual an opportunity to be heard at a
12 meaningful time and in a meaningful manner prior to taking action which materially infringes that
13 person's liberty or property interests. *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Armstrong v. Manzo*,
14 380 U.S. 545 (1964); *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950).

15 164. PLAINTIFFS, as well as their members and customers, have a liberty interest in the right
16 to acquire, sell, deliver, transfer, and possess lawful firearms, including but not limited to FAI's Title 1
17 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms, and in the
18 right to contract freely, without unlawful and/or unauthorized impairment by the State, in lawful
19 commerce. (U.S. Const., art. I, §10; Cal. Const., art. I, § 9.) DEFENDANTS deprived PLAINTIFFS of
20 these rights and liberties without due process of law, in violation of the Fourteenth Amendment to the
21 U.S. Constitution by both implementing and maintaining a non-statutory ban via technological barriers
22 prohibiting the application for, sale, transfer, delivery of lawful "firearms with undefined subtypes,"
23 including but not limited to FAI's Title 1 series of firearms, buntline revolvers, butterfly grip firearms,
24 and barreled action firearms.

25 165. DEFENDANTS have no authority under either the California Constitution or any law
26 adopted by the legislature, including California's Dangerous Weapons laws, to unilaterally suspend the
27 constitutional rights of Californians or to suspend California statutes regarding the obligation to

1 facilitate the transfer of lawful firearms, including but not limited to FAI's Title 1 series of firearms,
2 buntline revolvers, butterfly grip firearms, and barreled action firearms.

3 166. DEFENDANTS have no authority to promulgate, maintain, and enforce a non-statutory
4 rule prohibiting the transfer of lawful firearms, including but not limited to FAI's Title 1 series of
5 firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms, that was not adopted in
6 compliance with the mandatory procedural requirements of California's APA. (*Modesto City Schools v.*
7 *Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) Indeed, California makes it clear that
8 “[n]o state agency shall issue ... any guideline... unless the guideline . . . has been adopted as a
9 regulation filed with the Secretary of State...” (Gov. Code, § 11340.5, subd. (a).)

10 167. Specifically, as regards centerfire variants of the FAI Title 1 series of firearms,
11 DEFENDANTS had no authority to unilaterally prohibit the sale, transfer, delivery, or possession of
12 these firearms that are neither pistols, nor rifles, nor shotguns before the effective date of SB 118.

13 168. As such, PLAINTIFFS and the public lacked any meaningful opportunity to seek redress
14 of injuries caused by DEFENDANTS' actions or by which they may seek to effectuate the transfer of
15 the said firearms.

16 169. PLAINTIFFS have no remedy at law and will suffer serious and irreparable harm to their
17 constitutional rights unless DEFENDANTS are enjoined from implementing and enforcing the non-
18 statutory ban on the delivery, sale, transfer, and possession of lawful “firearms with an undefined
19 subtype,” including those that would have been lawfully sold, delivered, transferred and possessed
20 before the effective date of SB 118.

21 170. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief
22 and temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing
23 the non-statutory ban of lawful “firearms with an undefined subtype,” and mandating that
24 DEFENDANTS permit the lawful transfer and registration of those centerfire FAI Title 1 firearms for
25 which earnest money deposits were made on or before August 6, 2020.

26 171. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief
27 and temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing
28 the provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration

1 of centerfire FAI Title 1 firearms for which earnest money deposits were made on or before August 6,
2 2020, regardless of whether they were possessed on or before September 1, 2020, as required by SB
3 118, compliance with which, for PLAINTIFFS, their members, and customers, was thwarted and made
4 impossible by DEFENDANTS' actions described herein.

5 172. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate
6 their rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42
7 U.S.C. § 1988.

8 **SEVENTH CAUSE OF ACTION**
9 **42 U.S.C. § 1983 - Violation of Due Process**
10 **Deprivation of Substantive Due Process of Law**
(By All PLAINTIFFS against All DEFENDANTS)

11 173. Paragraphs 1-172 are realleged and incorporated by reference.

12 174. The Due Process Clause of the Fourteenth Amendment provides that no state shall
13 "deprive any person of life, liberty, or property, without due process of law." (U.S. Const., amend XIV.)
14 The government may only deprive individuals of these interests when doing so furthers a "legitimate
15 governmental objective." *Lingle v. Chevron USA*, 544 U.S. 528, 542 (2005).

16 175. PLAINTIFFS, as well as their customers and members, have a liberty interest in the right
17 to acquire, sell, deliver, transfer, and possess lawful firearms, including but not limited to the FAI Title 1
18 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms, and in the
19 right to contract freely, without unlawful and/or unauthorized impairment by the State, in lawful
20 commerce. (U.S. Const., art. I, §10; Cal. Const., art. I, § 9.)

21 176. DEFENDANTS deprived PLAINTIFFS of these rights and liberties without due process
22 of law, in violation of the Fourteenth Amendment to the U.S. Constitution by both implementing and
23 maintaining a non-statutory ban via technological barriers prohibiting the application for, sale, transfer,
24 delivery of lawful "firearms with undefined subtypes," including but not limited to the FAI Title 1 series
25 of firearms, buntline revolvers, butterfly grip firearms, and barreled action firearms.

26 177. DEFENDANTS have no authority under either the California Constitution or any law
27 adopted by the California Legislature, including California's Dangerous Weapons laws, to unilaterally
28 suspend the constitutional rights of Californians or to suspend California statutes regarding the

1 obligation to facilitate the transfer of lawful “firearms with and undefined subtype,” including but not
2 limited to FAI’s Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action
3 firearms. Further, DEFENDANTS had no authority to prohibit or otherwise disrupt the sale, transfer,
4 delivery, or possession of centerfire variants of the Title 1 series of firearms before the effective date of
5 SB 118.

6 178. DEFENDANTS have no “legitimate interest” in promulgating and enforcing a rule
7 barring the transfer of lawful firearms to lawful persons—a rule that suspends the constitutional rights of
8 FAI and all Californians, including members of CRPA, and that DEFENDANTS had no authority to
9 adopt in the first place.

10 179. PLAINTIFFS have suffered and will continue to suffer serious and irreparable harm to
11 their constitutional rights unless DEFENDANTS are enjoined from implementing and enforcing the
12 non-statutory ban on the delivery, sale, transfer, and possession of those firearms which could have been
13 (and would have been but for DEFENDANTS’ unconstitutional conduct) lawfully sold, delivered,
14 transferred and possessed prior to the passage of SB 118.

15 180. PLAINTIFFS contend that there are countless “firearms with an undefined subtype” that
16 are lawful to sell, transfer, deliver, and possess within California and that, due to DEFENDANTS’
17 conduct complained of herein, PLAINTIFFS, as well as their members and customers are unable to
18 complete the purchase of such firearms. PLAINTIFFS allege on information and belief that
19 DEFENDANTS deny these allegations. An actual controversy exists.

20 181. As regards centerfire variants of the FAI Title 1 series of firearms, an actual controversy
21 exists because: (1) at all times before the signing of SB 118, the centerfire Title 1 was lawful to sell,
22 transfer, deliver, and possess within California, (2) FAI was legally entitled to transfer centerfire Title 1
23 firearms to the thousands of Californians, including CRPA members, who had paid earnest money
24 deposits to purchase them, and (3) PLAINTIFFS, as well as their members and customers, could not
25 complete the purchase of said firearms due to DEFENDANTS’ conduct complained of herein.
26 PLAINTIFFS allege on information and belief that DEFENDANTS deny these allegations.

27 182. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief
28 and temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing

1 the non-statutory ban of lawful “firearms with an undefined subtype,” and mandating that
2 DEFENDANTS permit the lawful transfer and registration of those centerfire FAI Title 1 firearms for
3 which earnest money deposits were made on or before August 6, 2020.

4 183. Pursuant to 42 U.S.C. §§ 1983 and 1988, PLAINTIFFS are entitled to declaratory relief
5 and temporary, preliminary, and permanent injunctive relief restraining DEFENDANTS from enforcing
6 the provisions of SB 118, as it applies a prohibition against the sale, transfer, delivery, and registration
7 of centerfire Title 1 firearms for which earnest money deposits were made on or before August 6, 2020,
8 regardless of whether they were possessed on or before September 1, 2020, as required by SB 118,
9 compliance with which, for PLAINTIFFS, their members, and customers, was thwarted and made
10 impossible by DEFENDANTS’ actions described herein.

11 184. PLAINTIFFS found it necessary to engage the services of private counsel to vindicate
12 their rights under the law. PLAINTIFFS are therefore entitled to an award of attorneys' fees under 42
13 U.S.C. § 1988.

14

EIGHTH CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF
Validity of Non-Statutory Ban on Lawful Product Via Technological Barriers
(By All PLAINTIFFS Against All DEFENDANTS)

17 185. Paragraphs 1-184 are realleged and incorporated by reference.

18 186. The technological and administrative barriers prohibiting the transfer of lawful firearms
19 to lawful purchasers, including but not limited to DEFENDANTS’ conduct as related to the DES, as it is
20 currently designed, implemented, maintained and/or enforced by DEFENDANTS, prohibit the sale of
21 certain firearms that are neither “pistols,” nor “rifles,” nor “shotguns,” under California law and apply to
22 all firearm purchase applicants. It is a rule of general applicability.

23 187. The rule constituting a non-statutory ban on the application for, sale of, delivery of, and
24 possession of lawful “firearms with an undefined subtype,” including but not limited to the FAI Title 1
25 series of firearms, buntline revolvers, butterfly grip firearms and barreled action firearms barred
26 PLAINTIFFS, as well as their customers and members, from applying for, selling, delivering, acquiring
27 and possessing the product.

1 188. The rule was created by DOJ for the purpose of submitting specific information to the
2 DOJ and for processing registrations and background checks via the DES, a system administered by the
3 DOJ pursuant to the Penal Code. It was created, implemented, maintained and/or not corrected by the
4 DEFENDANTS for the purpose of preventing the lawful sale of products through the DES. It is thus a
5 “regulation” under the APA.

6 189. There is no express exemption from the APA in the California Code regarding the
7 promulgation of regulations to non-statutory bans on certain classes of firearms, there was no emergency
8 sufficient to justify bypassing the APA, and the regulation is not a mere restatement of statutory law. It
9 is thus subject to the procedural requirements set forth in the APA.

10 190. By implementing, administering, and enforcing the regulation that prohibited the
11 application for, sale, delivery of, acquisition and possession of lawful “firearms with an undefined
12 subtype,” including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip
13 firearms, and barreled action firearms, DEFENDANTS have violated and continue to violate the APA.

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

18 192. A judicial declaration of the legality of DEFENDANTS’ conduct, and whether the
19 regulation barring application for, sale of, delivery of, and possession of lawful “firearms with an
20 undefined subtype,” including but not limited to the FAI Title 1 series of firearms, buntline revolvers,
21 butterfly grip firearms, and barreled action firearms, constitutes an invalid underground regulation in
22 violation of the APA is necessary and appropriate at this time.

23 193. As applied to those who lawfully could have acquired their centerfire FAI Title 1 firearms
24 lawfully but for DEFENDANTS’ actions and inactions described herein, the Roberti-Roos Assault
25 Weapons Control Act, as amended by SB 118, is an unconstitutional deprivation of PLAINTIFFS’
26 constitutional rights to due process.

27 194. DEFENDANTS’ unlawful conduct has caused, and unless enjoined by this Court, will
28 continue to cause irreparable injury to PLAINTIFFS, as well as their members and customers.

1 195. PLAINTIFFS, as well as their members and customers, have been specifically harmed
2 because DEFENDANTS' unlawful conduct has denied their statutory right to be heard and to provide
3 input regarding regulations governing the lawful sale of firearms.

4 196. Further, harm from this underground regulation lies in the subversion of the democratic
5 values the APA was intended to serve. The notice, comment, and review procedures of the APA were
6 enacted to secure the public benefit of openness, accessibility, and accountability in the formulation of
7 rules that implement legislative enactments. Irreparable harm to these important public benefits occurs
8 whenever a state agency unlawfully adopts a regulation and each time the agency acts pursuant to its
9 underground regulation.

10 197. The public in general and PLAINTIFFS specifically have an interest in preventing
11 DEFENDANTS from enforcing the underground regulation barring application for, sale of, delivery of,
12 and possession of an entire class of lawful “firearms with an undefined subtype,” including but not
13 limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled
14 action firearms.

NINTH CAUSE OF ACTION
Violation of Public Policy
(By All PLAINTIFFS Against All DEFENDANTS)

17 ||| 198. Paragraphs 1-197 are realleged and incorporated by reference.

18 199. As described herein, it is DEFENDANTS' duty to design, develop, maintain and
19 administer a system for accepting and transmitting the necessary information for the lawful transfer of
20 lawful firearms, including those duties found within Penal Code sections 11106, 28155, 28205, 28215
21 and 28220. These duties are essential to the lawful function and implementation of the State of
22 California's firearm transfer scheme and protocols. DEFENDANTS have failed to and refuse to comply
23 with these duties. Instead, DEFENDANTS have spent time and resources utilizing their system in a
24 scheme to implement non-statutory bans on lawful "firearms with an undefined subtype," including but
25 not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled
26 action firearms.

27 200. Tax dollars have been, and are being spent, by the DEFENDANTS and at the direction of
28 DEFENDANTS on implementing and maintaining said ban.

1 201. DEFENDANTS have utilized employees of the DOJ in carrying out, implementing, and
2 maintaining the non-statutory ban on lawful “firearms with an undefined subtype,” including but not
3 limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled
4 action firearms.

5 202. DEFENDANTS' actions have also cost the state tens of thousands in tax revenue lost
6 based upon their actions.

7 203. The expenditure of taxpayer funds for the installation and maintenance of the DES that is
8 noncompliant with California laws relating to the sale and transfer of firearms is an illegal expenditure
9 of, waste of, or injury to the estate, funds, or other property of the State of California. Thus,
10 PLAINTIFFS bring this action under Code of Civil Procedure section 626a to obtain a judgment to
11 restrain and prevent the illegal expenditure of, waste of, or injury to, the estate, funds, or other property
12 of California.

13 204. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS will
14 further spend tax dollars on the installment and maintenance of the non-compliant DES within the
15 Jurisdiction of California. Absent relief from this Court, DEFENDANTS will continue to engage in
16 conduct in contravention to the State's firearm laws.

PRAYER

18 WHEREFORE, PLAINTIFFS pray as follows:

21 a. There exists a category of firearm that is neither a “rifle,” nor “shotgun,” nor
22 “handgun” under California law.

23 b. The DES, as it is currently designed, implemented, maintained and/or enforced by
24 DEFENDANTS prohibits the sale of certain firearms that are neither “rifles,” nor
25 “shotguns,” nor “handguns” under California law.

26 c. DEFENDANTS' actions in designing, implementing, maintaining and enforcing
27 the DES, in its current form , constitute a barrier and prevent FAI, licensed
28 dealers and the general public from acquiring, possessing, transferring and selling

certain lawful firearms, including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action receivers, within the State of California.

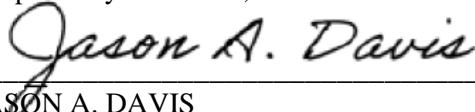
- d. The DES's technological restrictions prohibiting the transfer of certain lawful firearms, including but not limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action receivers, violate the DOJ's duties, including those found within Penal Code sections 28155, 28205, 28215, and 28220.
 - e. The DES, as it is currently designed, implemented, maintained and/or enforced, is not in compliance with the mandate imposed by Penal Code sections 28155, 28205, 28215, and 28220.
 - f. DEFENDANTS have intentionally instituted the technological barriers designed for and implemented within DES, which is maintained and enforced by the DEFENDANTS.
 - g. DEFENDANTS have intentionally delayed in removing the technological barriers designed for and implemented within DES, which is maintained and enforced by the DEFENDANTS.
 - h. DEFENDANTS, who occupy the field of processing the lawful transfer of firearms, including the registration and licensing, and as the regulatory body charged with implementing, administering and enforcing the laws relating to the lawful transfer of firearms within the state, have a clear, present and ministerial duty to ensure that the systems developed by the DOJ to facilitate the submission of information do not act as barriers to the submission of the required information necessary for the sale, loan and/or transfer of lawful firearms.

- 1 4. A declaration that DEFENDANTS' conduct complained of herein violates California's
 - 2 Administrative Procedure Act (Gov. Code, § 11340, et seq.).
 - 3 5. A declaration that DEFENDANTS' conduct complained of herein violates
 - 4 DEFENDANTS' duties pursuant to Penal Code sections 11106, 28155, 28205, 28215
 - 5 and 28220.
 - 6 6. A declaration that the DES, as designed, implemented, maintained and/or enforced is not
 - 7 in compliance with the mandate imposed by Penal Code sections 11106, 28155, 28205,
 - 8 28215 and 28220.
 - 9 7. A preliminary injunction immediately enjoining DEFENDANTS, their agents,
 - 10 employees, representatives and all those acting in concert with them from enforcing
 - 11 administrative and/or technological barriers that prevent or otherwise inhibit the sale,
 - 12 loan and/or transfer of lawful "firearms with an undefined subtype," including but not
 - 13 limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms,
 - 14 and barreled action firearms. This includes a preliminary injunction against any barriers
 - 15 preventing the lawful transfer and registration of the centerfire variant of the FAI Title 1
 - 16 series of firearms for which earnest money deposits were made on or before August 6,
 - 17 2020, on the basis that they are now "assault weapons" and were not possessed prior to
 - 18 September 1, 2020.
 - 19 8. A permanent injunction enjoining DEFENDANTS, their agents, employees,
 - 20 representatives and all those acting in concert with them from enforcing administrative
 - 21 and/or technological barriers that prevent or otherwise inhibit the sale and/or transfer of
 - 22 lawful "firearms with an undefined subtype," including but not limited to the FAI Title 1
 - 23 series of firearms, buntline revolvers, butterfly grip firearms, and barreled action
 - 24 firearms. This includes a permanent injunction against any barriers preventing the lawful
 - 25 transfer and registration of the centerfire variant of the FAI Title 1 series of firearms for
 - 26 which earnest money deposits were made on or before August 6, 2020, on the basis that
 - 27 they are now "assault weapons" and were not possessed prior to September 1, 2020.

- 1 9. A writ of mandate ordering DEFENDANTS to design, implement, maintain and enforce
2 updates to the DES such that it does not proscribe the lawful sale, transfer and loan of an
3 entire class of lawful “firearms with an undefined firearm subtype,” including but not
4 limited to the FAI Title 1 series of firearms, buntline revolvers, butterfly grip firearms,
5 and barreled action firearms, and such that it comports with Penal Code sections 11106,
6 28155, 28205, 28215 and 28220. This includes a writ of mandate ordering
7 DEFENDANTS to process the lawful transfer and registration of all centerfire variants of
8 the FAI Title 1 series of firearms for which earnest money deposits were made on or
9 before August 6, 2020 and which, but for DEFENDANTS’ conduct, would have been
10 lawfully acquired and possessed on or before September 1, 2020.
- 11 10. An order temporarily, preliminarily, and permanently enjoining and prohibiting
12 DEFENDANTS and all others placed on notice from enforcing the provisions of SB 118
13 that would otherwise limit the lawful acquisition, possession and registration of centerfire
14 variants of the FAI Title 1 series of firearms if not possessed on or before September 1,
15 2020, in 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 or
17 before August 6, 2020.
- 18 11.
- 19 12. An award for damages according to proof;
- 20 13. An award for punitive damages;
- 21 14. An award of PLAINTIFFS reasonable attorneys’ fees and costs incurred in this matter;
- 22 15. That the Court enter judgment accordingly; and
- 23 16. Such other and further relief as the Court deems just and proper.

24 Date: February 17 , 2021

Respectfully submitted,



JASON A. DAVIS

26 Attorneys for Petitioners-Plaintiffs

EXHIBIT A



EXHIBIT B”

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-5275

March 28, 2000

Tim Bero, President
TNW, Inc.
P.O. Box 311
Vernonia, OR 97064
Via Facsimile: (503) 429-3505

Dear Mr. Bero:

As we discussed in today's telephone conversation, the Browning .30 Cal. M-1919 A4 and A6 along with the Browning .50 Cal. M2 semi-automatic rifles as configured with a pistol or butterfly grip located well behind the action are not assault weapons. Penal Code section 12276.1(a)(1)(A), classifies a semi-automatic centerfire rifle with detachable magazine and "a pistol grip that protrudes conspicuously beneath the action of the weapon" as an assault weapon in that these models have grips located well behind the action of the weapon, they do not meet the pistol grip characteristic under the law.

In response to your question concerning linked ammunition, California Penal Code section 12020(c)(25) states that "large capacity magazine means any ammunition feeding device with a capacity to accept more than ten rounds. . ." This office considers linked ammunition to be an ammunition feeding device. When more than ten rounds are linked together, we would consider such a configuration to meet the large capacity magazine definition under the law. As to the selling of the links, you may sell links to California residents who may assemble the linked ammunition in a configuration of no more than ten rounds. Also, as we discussed, for those individuals who purchased linked ammunition in excess of ten rounds prior to January 1, 2000, these individuals may continue to possess that linked ammunition since possession is not addressed under this new law. However, under Penal Code section 12020(a)(2), an individual who manufactures, causes to be manufactured, imports into this state, keeps for sale, offers for sale, exposes for sale, gives or lends any large capacity magazine would be in violation of law. As such, individuals who link more than ten rounds, import, sell, etc. ammunition in a linked or belted fashion would be in violation of the law after January 1, 2000.

Thank you for your responsiveness in providing us with the tools necessary to make the above-mentioned determinations. If you have any questions, please do not hesitate to call me at (916) 263-6275.

SOMESTRIV.

RANDA ROSSI, Director
Firearm Division

For BILL LOCKYER
Attorney General

EXHIBIT B

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 263-6275
Facsimile: (916) 263-0676

November 3, 2004

Jason Davis
Trutanich • Michel, LLP
Attorneys at Law
407 North Harbor Boulevard
San Pedro, CA 90731-3356

RE: US Ordinance semi 60

Dear Mr. Davis:

I am writing in response to your inquiry of July 8, 2004, concerning the US Ordinance semi 60 firearm. We agree that the US Ordinance semi 60 as described, configured, and pictured, is not an assault weapon under the California Penal Code.

Thank you for your interest in this matter.

Sincerely,

RANDY ROSSI, Director
Firearms Division

For BILL LOCKYER
Attorney General

OF COUNSEL
 SUZANNE TRACY-MEIR
 JOHN F. MACHTINGER
 ROBERT MOEST
 LOS ANGELES, CA

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July 8, 2004

Tim Rieger
 California Department of Justice
 Firearms Division
 P.O. Box 160487
 Sacramento, CA 95816
 Via Fax (916) 263-0676 and U.S. Mail

Re: DOJ Position on US Ordinance semi 60

Dear Mr. Rieger:

We write on behalf of our clients; the California Association of Firearm Retailers (CAFR), the National Rifle Association (NRA), and the California Rifle and Pistol Association (CRPA).

We request confirmation that the following firearm, as configured, is not an "assault weapon" under California law:

The US Ordinance semi 60 (see picture attached as Exhibit A) in a "D" configuration (with a spade grip and no pistol grip) (see closeup of grip attached as Exhibit B).

The California Department of Justice has previously opined that the Browning .50 caliber M2 with a butterfly grip located well behind the action is not an assault weapon. (See letter dated May 28, 2000, attached as Exhibit C.) The .50 caliber M2 is similar in many respects to the US Ordinance semi 60. (See exhibit D for an illustration of the Browning .50 caliber M2's grip.)

We believe that the US Ordinance semi 60 is not an "assault weapon" under California law. The US ordinance semi 60 is not listed as a Category 1 or Category 2 "assault weapon." Nor does the firearm meet the Category 3 "assault weapon" definition laid out in Penal Code section 12276.1. Like the Browning .50 caliber M2, the US Ordinance semi 60 has a grip located well behind the action. Further, the US Ordinance semi 60 does not have a thumbhole stock, a folding or telescoping stock, a grenade launcher or flare launcher, a flash suppressor, or a forward pistol grip. Moreover, the US Ordinance semi 60 does not have a fixed magazine and is much larger in length than 30 inches.

We would like to advise our client on this matter. Clarifying this matter will avoid unnecessary prosecutions.

I look forward to hearing from you and welcome any questions you might have.

Sincerely,
TRUTANICH • MICHEL, LLP

Jason Davis

EXHIBIT C



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October 24, 2019

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

Via E-Mail and U.S. Mail

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

Dear Attorney General Becerra,

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

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

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

(13) **Caliber**.

(14) **Type of firearm**.

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

(16) **Barrel length**.

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

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

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

Dealer Long Gun Sale

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

To submit a Dealer Long Gun Sale transaction:

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

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

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

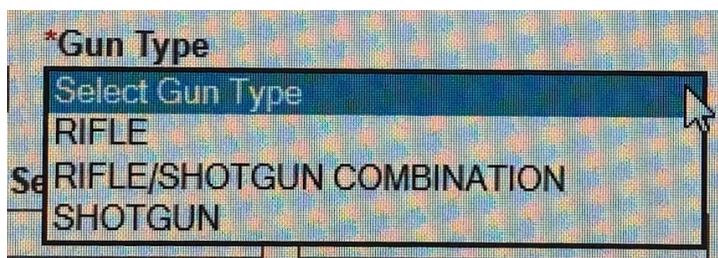
4) Enter the Transaction and Firearm Information as follows:

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

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

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

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

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

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

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

ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES

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

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

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

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CONSTITUTIONAL VIOLATIONS

DUE PROCESS

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

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

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

SECOND AMENDMENT VIOLATION

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

As evidenced by California's own crime statistics, the need to protect one's self and family from criminals in one's home has not abated no matter how hard they try. Law enforcement cannot protect everyone. "A police force in a free state cannot provide everyone with bodyguards. Indeed, while some think guns cause violent crime, others think that wide-spread possession of guns on balance reduces violent crime. None of these policy arguments on either side affects what the Second Amendment says, that our Constitution protects 'the right of the people to keep and bear Arms.'" 0174

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

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

TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE

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

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

DEMAND

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

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

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

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

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

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

Sincerely,
THE DAVIS LAW FIRM

s/ *Jason Davis*

JASON DAVIS

cc: Robert Wilson

EXHIBIT D

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 8, 2013

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

RE: Request by the Department of Justice for Early Implementation for Notice File
No. Z-2013-0725-01 (DROS Entry System)

To Whom It May Concern:

Pursuant to Government Code section 11343.4, subdivision (b)(3), the Department of Justice (DOJ) requests an early effective date of January 1, 2014 for the proposed regulations regarding the DROS Entry System (DES).

DOJ is authorized to establish the process by which licensed firearms dealers submit electronic DROS (Dealer's Record of Sale) information to DOJ. (Pen. Code, §§ 28105, 28155, 28205 & 28225.) Currently, DOJ has contracted with Verizon Business Services to facilitate the electronic transfer of DROS information to DOJ. However, the current contract with Verizon expires on December 31, 2013. Beginning January 1, 2014, DOJ will assume the duties previously performed by Verizon as part of DES. Because the new DES has been in development, there are no regulations in place that specify firearms dealerships' operational and billing/payment requirements relative to DES.

The legal sale of firearms in California is only possible via DES. At 10:59 p.m. on December 31, 2013, the Verizon supported DES will go off-line. If the new DES is not operational on January 1, 2014, over 1900 California firearms dealers would be at risk of having to close their businesses and lay-off thousands of employees.

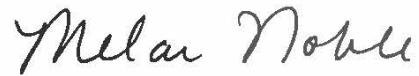
Throughout November and December, DOJ will make operational details of the new DES system available to all licensed California firearms dealers. An early effective date of January 1, 2014 for the proposed regulations will not have any adverse impact on affected businesses. On the contrary, an effective date of January 1, 2014 is critical to the continued success of firearms dealers throughout the state.

November 8, 2013

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If you have any questions or concerns, please do not hesitate to contact me or the chief of the Bureau of Firearms, Steve Lindley at (916) 227-4001.

Sincerely,



MELAN NOBLE
DOJ Regulations Coordinator

For KAMALA D. HARRIS
Attorney General

EXHIBIT E

**DROS
ENTRY
SYSTEM**

RULEMAKING FILE

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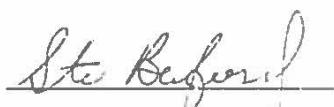
<u>SECTION</u>	<u>SECTION NAME</u>
A	Notice of Proposed Rulemaking
B	Text of Regulations Originally Noticed to the Public
C	Initial Statement of Reasons
D	Public Hearing Recording
E	Comments Submitted During 45-Day Comment Period
F	Updated Informative Digest
G	Final Statement of Reasons
H	Statement of Mailing Notice
I	Economic and Fiscal Impact Statement (Form 399)

CERTIFICATION

The foregoing table of contents constitutes the Department of Justice's rulemaking file for the subject regulations. The rulemaking file as submitted is complete. The rulemaking record for the subject regulations was closed on November 8, 2013. The rulemaking file was reopened to update certain documents, and was reclosed on December 26, 2013.

I declare under penalty of perjury under the laws of this state that the foregoing is true and correct. Executed at Sacramento, California, on December 26, 2013.

Signed:



STEVE BUFORD
Assistant Chief, Bureau of Firearms

PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

,#	Summarized Comment	DOJ Response
PROPOSED Cal. Code Regs., tit. 11, §4210, subd. (a)(1)		
1.	<p>The proposed regulation unlawfully immunizes the department from “any and all theories of liability, ... including loss of revenue or profits, even if aware of the possibility thereof.”</p> <p>The agency lacks authority for this provision entirely. Nothing within the Penal Code or any other code grants the department the authority to alter, amend, enlarge, or restrict its statutory and constitutional liability to consumers and dealers through a mandatory regulatory release of liability.</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and protects both the department and the user from litigation involving its use, particularly when any damages are not caused by any malfeasance or misuse on the part of the department or the user.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the standard non-liability provision.</p>

#	Summarized Comment	DOJ Response
2.	<p>The proposed provision is inconsistent, as it is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349 subd. (d).)</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>Pursuant to the Eleventh Amendment of the United States Constitution and subsequent case law, DOJ is not waiving any immunity by agreeing to administer DES. Thus, the authority for this provision is taken from long-standing constitutional law, and DOJ is making clear it is not waiving any immunity that is available to the state. In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and protects both the department and the user from litigation involving its use, particularly when any damages are not caused by any malfeasance or misuse on the part of the department or the user.</p> <p>Further, Penal Code section 28225, subdivision (a) authorizes the Department to require the dealer to charge each purchaser the DROS fee. Subdivision (d) authorizes the Department to establish both a system and method for the collection of DROS fees. To this extent, the Department has adopted a process where temporary credit is extended to dealers based on the dealers signed acceptance of DES terms and conditions which include standard limited liability waiver language imposed by many public financial institutions and or banks who extend credit to the public and/or private businesses. There exists no statutory provision in current law that requires government entities to administer a lesser standard of liability for government entities extending credit to the public or private sector businesses. Lastly, this provision is intended to prevent inappropriate access and use of the DROS, Firearms Safety, and Firearms Safety Enforcement Fees to the purposes established by the state Legislature under Penal Code sections 28225, 28230, 23690, 28300.</p> <p>Furthermore, when developing the DES, the department consulted with</p>

#	Summarized Comment	DOJ Response
3.	<p>The proposed provision is inconsistent, as it is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349 subd. (d).) Specifically, this mandatory waiver conflicts with the California legislative decision to hold certain agencies and individuals accountable for their actions through the California Tort Claims Act (Division 3.6 of the Government Code, Gov. Code, §§ 810 <i>et seq.</i>) that governs filing claims against a government entity. The Act does provide that the liability is subject “to any immunity of the public entity provided by statute.” Here, no such statute exists that provides immunity for the department for its unlawful acts (of which there are many). This proposed regulation directly conflicts with the Tort Claims Act by providing an end-run release of liability through the regulatory process.</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>The Government Claims Act should be read narrowly, “a public entity is not liable for injuries except as provided by statute (section 815).” (<i>Brown v. Poway Unified School Dist.</i> (1993) 4 Cal.4th 820, 829.) Section 815 of the Government Code provides, “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.” In the implementation of the DES system, there are no specific arguments that injury will result. “The intent of the [Tort Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances; immunity is waived only if the various requirements of the act are satisfied.” (<i>Brown</i>, 4 Cal.4th at p.829 [internal citations omitted].) The commentator has not pointed to any specific statute or requirement that would be violated with the usage of the DES and the proposed regulations at issue.</p>
4.	<p>The proposed regulation would conflict with existing law by acting as a self-imposed waiver of liability for constitutional challenges to the department’s actions (including second amendment, due process, equal protection, unlawful search and seizure, and takings violations, among others).</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>This waiver applies only to the use of the DES system, and thus the department is unable to conceive of a situation where litigation would involve a constitutional challenge such as those noted by the commenter. Similarly, the commenter did not provide any specific scenario in which those types of legal issues would arise with respect to the usage of the DES.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the standard non-liability provision.</p>

#	Summarized Comment	DOJ Response
5.	<p>The proposed regulation conflicts with federal statutory law by acting as a release from any federal statutory violations such as to 42 U.S.C. §1983, which provides:</p> <p>“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>In general, “a State is not a ‘person’ within the meaning of section 1983.” (<i>Will v. Michigan Dep’t State Police</i> (1989) 491 U.S. 58, 65; see also <i>Lapides v. Bd of Regents of the University System of Georgia</i> (2002) 535 U.S. 613, 617 [noting that a State is not a ‘person’ against whom a section 1983 claim for money damages might be asserted].) The commentator has not specified a certain scenario whereby the proposed DES regulations would implicate a section 1983 claim against the state. Nor has the commentator made clear what kind of “conflict” the DES regulations pose with respect to section 1983 claims.</p>

#	Summarized Comment	DOJ Response
6.	<p>Given the federal and state provisions mandating liability for public entities, the mandatory release provision directly conflicts with existing laws.</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability provision found in many agreements between a service provider and user. Furthermore, it provides the same protections to the user as the department.</p> <p>The Government Claims Act should be read narrowly, “a public entity is not liable for injuries except as provided by statute (section 815).” (<i>Brown v. Poway Unified School Dist.</i> (1993) 4 Cal.4th 820, 829.) Section 815 of the Government Code provides, “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.” In the implementation of the DES system, there are no specific arguments that injury will result. “The intent of the [Tort Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances; immunity is waived only if the various requirements of the act are satisfied.” (<i>Brown</i>, 4 Cal.4th at p.829 [internal citations omitted].) The commentator has not pointed to any specific statute or requirement that would be violated with the usage of the DES and the proposed regulations at issue.</p> <p>And “a State is not a ‘person’ within the meaning of section 1983.” (<i>Will v. Michigan Dep’t State Police</i> (1989) 491 U.S. 58, 65; see also <i>Lapides v. Bd of Regents of the University System of Georgia</i> (2002) 535 U.S. 613, 617 [noting that a State is not a ‘person’ against whom a section 1983 claim for money damages might be asserted].) The commentator has not specified a certain scenario whereby the proposed DES regulations would implicate a section 1983 claim against the state. Nor has the commentator made clear what kind of “conflict” the DES regulations pose with respect to section 1983 claims.</p>

#	Summarized Comment	DOJ Response
7.	<p>The proposed provision is not necessary. The rulemaking proceeding does not demonstrate by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific taking into account the totality of the record. On the contrary, the Initial Statement of Reasons is void of any facts, studies, or expert opinion supporting the necessity of this provision.</p>	<p>The department disagrees with the comment. The proposed regulation is a standard non-liability statement that is necessary to protect the department against unreasonable liability claims as DES is incapable of causing damage to user equipment or software.</p> <p>In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and protects both the department and the user from litigation involving its use, particularly when any damages are not caused by any malfeasance or misuse on the part of the department or the user.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the standard non-liability provision.</p>

#	Summarized Comment	DOJ Response
PROPOSED Cal. Code Regs., tit. 11, §4210, subd. (a)(3)		
8.	<p>The department lacks authority for this provision which states: “[n]otwithstanding such notification, [the department] shall not be liable for transaction charges fraudulently incurred on the account of this dealership. It is the dealership’s responsibility to pay these transactions.”</p> <p>While the department is authorized to enact regulations relating to fees incurred by dealerships, it has no authority to require dealerships to pay fees “fraudulently” incurred upon their account regardless of the individual dealership’s culpability in such “fraudulent” charges.</p>	<p>The department disagrees with the comment. Prior to being granted access to DES, all users associated with a particular dealership must be reviewed and authorized by the Certificate of Eligibility (COE) holder of the dealership within the DES application. Subsequently, it is the responsibility of the dealership’s COE holder to protect the confidentiality of the individual passwords selected by each user to access DES. A DROS transaction charge can be assessed to a particular dealership <u>only</u> after a DROS is submitted by a user who accessed DES with his or her confirmed password.</p> <p>In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and ensures that the DROS fee is paid when such a transaction is initiated by the dealer. The department is unable to determine at the time a DROS transaction is initiated whether it is fraudulent, and thus begins work immediately on that transaction pursuant to Penal Code section 28220, subdivision (a). It follows that the department (and the DROS fee payers) should not be required to bear the cost of fraudulent DROS transactions.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the provision regarding their liability for fraudulent transactions. Dealers understood that they would have legal recourse to recoup their monetary and other damages from the person who perpetrated the fraud.</p>

#	Summarized Comment	DOJ Response
9.	<p>Penal Code section 28225 limits the fees charged in the context of this provision to actual purchasers. Any attempt to mandate that “fraudulent” charges not relating to firearm purchasers be borne by the dealership as a cost of doing business under the supervision of the department is inconsistent, as it is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349, subd. (d).)</p>	<p>The department disagrees with the comment. Prior to being granted access to DES, all users associated with a particular dealership must be reviewed and authorized by the Certificate of Eligibility (COE) holder of the dealership within the DES application. Subsequently, it is the responsibility of the dealership’s COE holder to protect the confidentiality of the individual passwords selected by each user to access DES. A DROS transaction charge can be assessed to a particular dealership <u>only</u> after a DROS is submitted by a user who accessed DES with his or her confirmed password.</p> <p>In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and ensures that the DROS fee is paid when such a transaction is initiated by the dealer. The department is unable to determine at the time a DROS transaction is initiated whether it is fraudulent, and thus begins work immediately on that transaction pursuant to Penal Code section 28220, subdivision (a). It follows that the department (and the DROS fee payers) should not be required to bear the cost of fraudulent DROS transactions.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the provision regarding their liability for fraudulent transactions. Dealers understood that they would have legal recourse to recoup their monetary and other damages from the person who perpetrated the fraud.</p> <p>Finally, the language of section 4210(a)(3) makes clear that the fraudulent transaction charges referenced in this section are limited to those “incurred on the account of this dealership” by an unauthorized user.</p>

#	Summarized Comment	DOJ Response
10.	<p>The proposed provision is not necessary. The rulemaking proceeding does not demonstrate by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific taking into account the totality of the record. On the contrary, the Initial Statement of Reasons is void of any facts, studies, or expert opinion supporting the necessity of this provision.</p>	<p>The department disagrees with the comment. The proposed regulation informs firearms dealers that it is their responsibility to protect the confidentiality of their passwords. The regulation is necessary to protect the department and California taxpayers from losing revenue due to dealer negligence or misconduct.</p> <p>In addition, the department has the implied authority to include such a provision in the DES regulations. (See <i>Mineral Associations Coalition v. State Mining and Geology Bd.</i> (2006) 138 Cal.App.4th 574.) Penal Code sections 28105 and 28155 require the department to develop an electronic system for the transfer of DROS information from the dealer to the department. It reasonably follows that the department was implicitly delegated the authority to adopt those rules and regulations necessary to ensure a system is created and implemented that works efficiently and ensures that the DROS fee is paid when such a transaction is initiated by the dealer. The department is unable to determine at the time a DROS transaction is initiated whether it is fraudulent, and thus begins work immediately on that transaction pursuant to Penal Code section 28220, subdivision (a). It follows that the department (and the DROS fee payers) should not be required to bear the cost of fraudulent DROS transactions.</p> <p>Furthermore, when developing the DES, the department consulted with several firearms dealers and none raised any objection as to the inclusion of the provision regarding their liability for fraudulent transactions. Dealers understood that they would have legal recourse to recoup their monetary and other damages from the person who perpetrated the fraud.</p>

#	Summarized Comment	DOJ Response
PROPOSED Cal. Code Regs., tit. 11, §4210, subd. (a)(4)		
11.	<p>Proposed section 4210, subdivision (a)(4), provides that a dealer will be charged an additional DROS submission fee of \$25 if the DROS user does not indicate that a firearm transaction does not include more than one firearm or, more likely to occur, a user submits a DROS and either forgets to include additional firearms and/or the purchaser chooses to add another firearm to the transaction. The proposed section does not allow for or contemplate inadvertent errors. Nor does it make clear whether the additional charge can, may, or will be transferred to the firearm purchaser.</p> <p>Per Penal Code section 28230, DOJ can only charge a (meaning one) fee to reimburse the department for its expenses. The proposed section effectively permits multiple charges for the exact same transaction, even if the reason for the additional firearm being omitted from the original DROS was a simple error.</p>	<p>The department disagrees with the comment. A single \$25 fee is charged for multiple firearms purchased at the same time because the transaction can be processed with a single record check of the purchaser.</p> <p>Under the DES, after a DROS has been submitted, the user selects whether to:</p> <ol style="list-style-type: none"> 1. Print the current DROS; 2. Submit an additional DROS for the same purchaser (name of purchaser is listed on the screen); or 3. Return to the main menu to enter a DROS for a different purchaser; or 4. Log off DES. <p>If the user selects option three or four, it is no longer possible to add additional firearms to the previous purchaser. The department acknowledges that on rare occasions, this limitation may result in a dealer incurring an additional DROS fee if he or she failed to identify a particular sale/transfer as having more than one firearm. However, this system limitation is unavoidable as the department designed DES for maximum efficiency and cost-effectiveness for all California firearm dealers and purchasers. It is the responsibility of the DES user to enter DROS transactions accurately. It is impossible for the department to protect against all possible errors that can be committed by dealers when using DES.</p> <p>Also, this entering process is no different than the method dealers are currently using to submit a DROS to the department via Verizon—the current system does not allow dealers to correct sales mistakes (such as the number of firearms in a particular transaction) once that transaction is submitted to the department.</p>

PROPOSED Cal. Code Regs., tit. 11, §4230, subd. (b)

#	Summarized Comment	DOJ Response
12.	<p>Proposed section 4230, subdivision (b), provides that an FFL may only deliver a firearm to a prospective purchaser if the DES transaction record reads "Approved." As purported authority for doing so, the department cites Penal Code sections 28105 and 28155, as well as <i>Mineral Associations Coal. v. State Mining & Geology Bd</i>, 138 Cal. App. 4th 574, 589, 41 Cal. Rptr. 3d 544, 554 (2006). The cited Penal Code sections merely concern the forms associated with, and grant the department authority to dictate the nature of those forms.</p>	<p>The department disagrees with the comment. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of "Approved," "Denied," or "Delayed" as appropriate. This process, authorized pursuant to Penal Code section 28155, provides a critical safeguard against a firearm being improperly released to a prohibited person.</p>
13.	<p>To the extent the department is relying on the following passage from the <i>Mineral</i> case as being analogous to this proposed regulation, it is mistaken:</p> <p>Because the Legislature has granted the Board express authority to determine the circumstances under which no financial assurances need be posted to ensure reclamation of mined lands, it logically follows that it also intended the Board to have the implied authority to issue regulations that pertain to the circumstances under which financial assurances already in place may be lifted upon the completion of reclamation.</p> <p>There is no comparison between the implied authority at issue in the <i>Mineral</i> case, and what the department asserts is its authority. Authority to regulate the nature of forms associated with a regulated transaction, has no relation to regulating the transaction itself. And, that is exactly what the department purports to do by requiring an "Approved" by the DES before a firearm can be released to the purchaser.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of "Approved," "Denied," or "Delayed" as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., "approval" provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p>

#	Summarized Comment	DOJ Response
14.	<p>Penal Code section 26815 lays out what criteria must be met before a firearm can be released, and an “Approved” by the DES is not among them. It only requires that the recipient of the firearm not be prohibited. Thus, proposed section 4230, subdivision (b) would expand the scope of the statutory regime for releasing firearms to purchasers, which is beyond the department’s authority.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of “Approved,” “Denied,” or “Delayed” as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., “approval” provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p>

#	Summarized Comment	DOJ Response
15.	<p>This proposed regulation states that “a firearm may be delivered to the purchaser/transferee only if the status of the DES transaction record is ‘approved.’ If the current status is ‘pending,’ ‘rejected,’ ‘delayed,’ or ‘denied,’ the firearm shall not be delivered.”</p> <p>The department has no legal authority for this provision. While the department is authorized to enact regulations relating to the Dealer Record of Sale electronic information capture and submission process, nothing within the Penal Code (or any other statute) grants the department the power to alter, amend, enlarge, or restrict the statutes relating to the waiting period and delivery process.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of “Approved,” “Denied,” or “Delayed” as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., “approval” provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p>

#	Summarized Comment	DOJ Response
16.	<p>California's Penal Code expressly mandates the licensed California firearm dealers' response to the notices provided to them by the department. A purchase is required to be denied upon notification by the department that the purchaser or transferee is prohibited from possessing firearms, because the dealer is prohibited from transferring the firearm. (Pen. Code, §§ 27540subd. (d) & 26815, subd. (d).) A purchase can be delayed if the purchaser information provided by the dealer is incomplete or incorrect or if the requisite fees are unpaid or insufficient. In such instance, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the background check period described in Sections 26815 and 27540. (Pen. Code, § 28220 subd. (e).)</p> <p>After the requisite background check period, the dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm in accordance with all other transfer requirements, unless the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, § 28050, subd. (c).) Nothing within the Penal Code or any other statute gives the department the power to change or alter the above referenced procedure.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of "Approved," "Denied," or "Delayed" as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., "approval" provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p>

#	Summarized Comment	DOJ Response
17.	<p>The proposed provision is inconsistent, as it is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349, subd. (d).) This provision is in direct response to litigation currently challenging the department's unlawful policies mirroring the proposed regulations.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of "Approved," "Denied," or "Delayed" as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., "approval" provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p> <p>Furthermore, while the department's actions with respect to the small number of people for whom the department is unable to determine whether they are prohibited from owning or possessing a firearm is currently the subject of active litigation, the department's actions in this regard have not been deemed unconstitutional or violative of state or federal law. In addition, that litigation is likely moot in light of the passage of Assembly Bill 500, which provides the necessary direction to the department as to the actions it should take with respect to these persons with undetermined status.</p>

#	Summarized Comment	DOJ Response
18.	<p>The proposed provision is inconsistent, as it is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349, subd. (d).) Specifically, the above-described laws mandate that the DOJ has a duty to determine whether a person is prohibited and to notify the dealership <i>if the person is prohibited</i> within 10 days. The proposed regulation conflicts with the relevant statutes by mandating that the department “approve” all transactions before the dealership can deliver the firearm – regardless of whether 10 days have passed without a denial from the department. This provision is in direct response to litigation currently challenging the department’s unlawful policies mirroring the proposed regulations.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of “Approved,” “Denied,” or “Delayed” as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., “approval” provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p> <p>Furthermore, while the department’s actions with respect to the small number of people for whom the department is unable to determine whether they are prohibited from owning or possessing a firearm is currently the subject of active litigation, the department’s actions in this regard have not been deemed unconstitutional or violative of state or federal law. In addition, that litigation is likely moot in light of the passage of Assembly Bill 500, which provides the necessary direction to the department as to the actions it should take with respect to these persons with undetermined status.</p>

#	Summarized Comment	DOJ Response
19.	<p>The proposed provision is not necessary. The rulemaking proceeding does not demonstrate by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. On the contrary, the Initial Statement of Reasons is void of any facts, studies, or expert opinion supporting the necessity of this provision.</p>	<p>The department disagrees with the comment. The proposed regulation neither expands nor amends in any manner, the criteria for determining whether a firearm can be released to the purchaser/transferee. Penal Code section 28220 requires the department to determine whether the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Upon making this determination, the department will identify the DROS in the DES and update the transaction record with a notation of "Approved," "Denied," or "Delayed" as appropriate.</p> <p>This process, authorized pursuant to Penal Code section 28155, will dramatically reduce the possibility of a dealer inadvertently releasing a firearm to a prohibited person due to dealer error. This critical safeguard not only improves public safety it also protects dealers from the civil or criminal liability that might result from the improper delivery of a firearm to a prohibited person.</p> <p>The department also notes that this feature (i.e., "approval" provided when the purchaser is not prohibited) was incorporated into DES after numerous firearms dealers suggested that it be added. The addition of this feature also received resounding support from various gun rights groups including the National Rifle Association, the California Rifle and Pistol Association, and the National Shooting Sports Federation as a layer of protection for dealerships from unlawful/mistaken acts committed by unscrupulous and/or otherwise unknowing employees.</p>

PROPOSED Cal. Code Regs., tit. 11, §4240, subd. (d)

#	Summarized Comment	DOJ Response
20.	<p>Under this regulation, a dealership will be unable to “deliver firearms for which a DROS was previously submitted.” This prevents a dealer from delivering firearms that have been properly processed through the DROS system and the DES and whose payments have been timely submitted – thereby denying customers and the dealership the right to transfer a firearm that was purchased by an otherwise-eligible customer on the basis that the dealership has not paid the DROS fees for <i>other firearm transfers</i>.</p> <p>The proposed provision is inconsistent, is not in harmony with, and is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code, §11349, subd. (d).) The proposed regulation would prohibit the transfer of firearms where the purchaser and dealer have paid the requisite fees and the firearm can otherwise lawfully be transferred.</p>	<p>The department disagrees with the comment. The regulation is authorized pursuant to Penal Code section 26815, subdivision (a) which states “no firearm shall be delivered... within 10 days of the submission to the department of any fee required pursuant to Section 28225.” Thus, there is no completed sale until the required fees are transmitted by the dealer to the department. In short, the required transfer of fees is not between the purchaser and the dealer, but rather is between the dealer and the department. If that transfer of fees is not completed, there has not been “properly processed” sale of a firearm.</p> <p>The regulation is necessary to protect the department and California taxpayers from losing revenue by denying a dealership access to DES when it fails to pay the required DROS fees.</p> <p>It is incumbent upon each purchaser to make sure he or she conducts business with a reputable dealer. This does not preclude an aggrieved purchaser from taking appropriate legal action against the offending dealer for its failure to deliver the purchased firearm or provide the required fees to the department.</p>

#	Summarized Comment	DOJ Response
21.	<p>Under this regulation, a dealership will be unable to “deliver firearms for which a DROS was previously submitted.” This prevents a dealer from delivering firearms that have been properly processed through the DES and whose payments have been timely submitted – thereby denying customers and the dealership the right to transfer a firearm that was purchased by an otherwise-eligible customer on the basis that the dealership has not paid the DROS fees for <i>other firearm transfers</i>.</p> <p>The proposed provision is in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. (Gov. Code §11349, subd. (d).) Specifically, Penal Code section 28220 permits the delay of <i>individual firearm</i> transactions if the fees have not been paid:</p> <p>If the department determines that ... any fee required pursuant to Section 28225 is not submitted by the dealer <i>in conjunction with submission of copies of the register</i>, the department may notify the dealer of that fact. Upon notification by the department, the dealer ... shall submit any fee required pursuant to Section 28225...and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery <i>until the conclusion of the waiting period</i> described in Sections 26815 and 27540.</p> <p>The proposed regulation would prohibit the transfer of firearms where the purchaser and dealer have paid the requisite fees and the firearm can otherwise lawfully be transferred.</p>	<p>The department disagrees with the comment. The regulation is authorized pursuant to Penal Code section 26815, subdivision (a) which states “no firearm shall be delivered... within 10 days of the submission to the department of any fee required pursuant to Section 28225.” Thus, there is no completed sale until the required fees are transmitted by the dealer to the department. In short, the required transfer of fees is not between the purchaser and the dealer, but rather is between the dealer and the department. If that transfer of fees is not completed, there has not been “properly processed” sale of a firearm. (Pen. Code, § 28220, subd. (a).)</p> <p>The regulation is necessary to protect the department and California taxpayers from losing revenue by denying a dealership access to DES when it fails to pay the required DROS fees.</p> <p>It is incumbent upon each purchaser to make sure he or she conducts business with a reputable dealer. This does not preclude an aggrieved purchaser from taking appropriate legal action against the offending dealer for its failure to deliver the purchased firearm or provide the required fees to the department.</p>

#	Summarized Comment	DOJ Response
22.	<p>The proposed provision is not necessary. The rulemaking proceeding does not demonstrate by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. On the contrary, the Initial Statement of Reasons is void of any facts, studies, or expert opinion supporting the necessity of this provision.</p>	<p>The department disagrees with the comment. The regulation is authorized pursuant to Penal Code section 26815, subdivision (a) which states “no firearm shall be delivered... within 10 days of the submission to the department of any fee required pursuant to Section 28225.” Thus, there is no completed sale until the required fees are transmitted by the dealer to the department. In short, the required transfer of fees is not between the purchaser and the dealer, but rather is between the dealer and the department. If that transfer of fees is not completed, there has not been “properly processed” sale of a firearm. (Pen. Code, § 28220, subd. (a).)</p> <p>The regulation is necessary to protect the department and California taxpayers from losing revenue by denying a dealership access to DES when it fails to pay the required DROS fees.</p> <p>It is incumbent upon each purchaser to make sure he or she conducts business with a reputable dealer. This does not preclude an aggrieved purchaser from taking appropriate legal action against the offending dealer for its failure to deliver the purchased firearm or provide the required fees to the department.</p>

#	Summarized Comment	DOJ Response
23.	<p>According to proposed section 4240, a firearm dealer will be billed each month for their DROS fees. If a dealer fails to pay the balance due within 30 days of the billing date the dealer's access to the DES will be suspended and while suspended, a dealer "will be unable to submit DROS and may not deliver firearms for which a DROS was previously submitted."</p> <p>The department has no authority to dictate the criteria for releasing a firearm to a purchaser. In addition to a few administrative duties concerning the form of the register, the department is only charged with determining whether a person is prohibited from firearm ownership or not, period.</p>	<p>The department disagrees with the comment. The regulation is authorized pursuant to Penal Code section 26815, subdivision (a) which states "no firearm shall be delivered... within 10 days of the submission to the department of any fee required pursuant to Section 28225." Thus, there is no completed sale until the required fees are transmitted by the dealer to the department. In short, the required transfer of fees is not between the purchaser and the dealer, but rather is between the dealer and the department. If that transfer of fees is not completed, there has not been "properly processed" sale of a firearm. (Pen. Code, § 28220, subd. (a).)</p> <p>The regulation is necessary to protect the department and California taxpayers from losing revenue by denying a dealership access to DES when it fails to pay the required DROS fees.</p> <p>It is incumbent upon each purchaser to make sure he or she conducts business with a reputable dealer. This does not preclude an aggrieved purchaser from taking appropriate legal action against the offending dealer for its failure to deliver the purchased firearm or provide the required fees to the department.</p>

#	Summarized Comment	DOJ Response
24.	<p>This rule means that a firearm purchaser who has paid for the firearm and the DROS fee will be denied the delivery of the firearm because the dealer from whom the firearm was purchased failed to transfer the money to the department; something the affected purchaser has no control over. And the absurdity continues. “All other firearms dealer activities, including status on the Centralized List of Firearms Dealers, are unaffected by a suspension for non-payment.” In other words, proposed section 4240, subdivision (d) allows a defaulting dealer to engage in other firearm related business (<i>i.e.</i>, purchasing firearms from venders, selling/transferring firearms to other dealers, etc.) while the firearm purchaser, who did nothing wrong, is denied the firearm they lawfully purchased.</p>	<p>The department disagrees with the comment. The regulation is authorized pursuant to Penal Code section 26815(a) which states “no firearm shall be delivered... within 10 days of the submission to the department of any fee required pursuant to Section 28225.”</p> <p>It is incumbent upon each purchaser to make sure he or she conducts business with a reputable dealer. This does not preclude an aggrieved purchaser from taking appropriate legal action against the offending dealer for its failure to deliver the purchased firearm or provide the required fees to the department.</p> <p>The department does not have authority to stop defaulting dealers from engaging in the other activities specified in the comment. Such activities are afforded to dealers under the authority of the dealer’s Federal Firearms License (FFL) which is administered by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.</p>
GENERAL/MISCELLANEOUS		
25.	<p>The savings expected by switching from the Verizon based system to DES will be used for the Armed Prohibited Persons System (“APPS”), rather than returned to the people who paid the money to fund the DROS system in the first place, the law-abiding California firearm owner. The allocation of DROS funds to APPS represents an inappropriate and illegal appropriation of fees to sponsor general law enforcement activities. The DROS Fee is for one purpose only, fund the DROS program.</p>	<p>The department disagrees with the comment. As amended by Senate Bill 819 (Leno, Chapter 743, Statutes of 2011), Penal Code section 28225, subdivision (b)(11) authorizes the use of DROS funds for costs associated with the department’s firearms-related regulatory and enforcement activities regarding the possession of firearms as well as the sale, purchase, loan, or transfer of firearms. The bill specifically states, “it is the intent of the Legislature in enacting this measure to allow the [department] to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System.”</p>

#	Summarized Comment	DOJ Response
26.	<p>The use of monies collected from the DROS Fee to fund general law enforcement activities is an illegal tax. The lawsuit filed by our office today, on behalf of clients not apart of this letter, provides more detail concerning this issue. <i>See</i> Complaint attached hereto. Moreover, the NRA has already sued the department for this in federal court. <i>See Bauer v. Harris.</i></p>	<p>The department disagrees with the comment. As amended by Senate Bill 819 (Leno, Chapter 743, Statutes of 2011), Penal Code section 28225, subdivision (b)(11) authorizes the use of DROS funds for costs associated with the department's firearms-related regulatory and enforcement activities regarding the <u>possession</u> of firearms as well as the sale, purchase, loan, or transfer of firearms.</p> <p>The department cannot comment on pending litigation. Absent any ruling from the courts invalidating Senate Bill 819 or delaying its implementation, it remains in effect and enforceable by the department.</p>
27.	<p>Our clients, who have for years consistently weighed in on proposed rulemaking efforts by the departments, received no notification of this one. Nor did the various licensed firearm dealers with whom our office has relationships. Therefore, "the party subject to regulation" who would know best about the impacts of the proposed regulations have been left out of the process. That is likely a violation of the APA's notification requirements. (Gov. Code, § 11346.4.)</p> <p>Therefore, the comment period for the proposed rulemaking discussed herein should at least be extended to a later date, until all stakeholders are given proper notice of the department's proposals.</p>	<p>The department disagrees with the comment. All dealers on the Centralized List of Firearms Dealers were notified via a posting on the current DROS Entry System on August 14, 2013.</p> <p>The Notice of Proposed Rulemaking was also published in the August 9, 2013 edition of the California Regulatory Notice Register. Finally, the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the proposed regulations have been posted on the department's website at http://oag.ca.gov/firearms since August 9, 2013.</p>
28.	<p>The stated purpose of the proposed regulations is the department's intent to assume the duties of facilitating the electronic transfer of Dealer's Record of Sale ("DROS") information. The proposed regulations, however, go far beyond the stated purpose and include unlawful attempts to require dealers to waive all liability against the department in order to sell firearms within CA, to require dealers to assume fraudulent charges regardless of the dealer's actual innocence and conduct, and to require dealers and consumers to wait for the approval of the department before physical transfer of the personal property can take place – despite the lack of any law requiring such authorization and current litigation on the same topic.</p>	<p>See responses to questions 1, 8, and 15</p>

#	Summarized Comment	DOJ Response
29.	The private security industry in California will be materially affected by the passage of administrative regulations that inhibit the ability of our employees to purchase a firearm via DROS. This is the a§uthorized process by which security companies, also known as Private Patrol Operators (PPOs) transfer firearms to their employees.	The department disagrees with the comment. Implementation of the DES does not change the way that private patrol operators currently purchase weapons; rather, it only changes the way in which the information about the purchase is transmitted to the department.
30.	Proposed section 4230, subdivision (b) would permit arbitrary holds, failure to deliver firearms, and notoriously incomplete records -- even so much as a name match without DOB match -- to prevent a licensed armed employee from working. This incurs substantial costs and inhibits the expansion of armed contracts, with further effect on taxpayers and job creation.	The department disagrees with the comment. The DES does not change, in any way, the process under which the department determines a purchaser's eligibility to own/possess a firearm and how that information is communicated to the dealer. The department also disagrees with the commenter's cost assessment and believes that this is the most-cost efficient way for the department to receive DROS information from the dealer.
31.	Proposed section 4230, subdivision (b) will increase costs of providing armed security services to public entities, as a PPO must in effect roll the dice with each new hire, incurring all the costs of hiring before sending someone to the firearms dealer to DROS a firearm, and then not knowing if that candidate will be accepted by the presently broken DROS process -- even though they are not a prohibited person.	The department disagrees with the comment. The DES makes no change to the process by which the private armed security industry purchases weapons for its employees. Rather, this only changes the way by which the DROS information is transmitted to the department by the dealer.
32.	Given the projected increase in firearm applications and the addition of long guns to the electronic registry, it is certain that the DES system will be overwhelmed much as it has in the last several years, leading to more and longer delays in processing background checks.	The department disagrees with the comment. The department believes that DES is well-equipped to handle the implementation of AB 809's long gun sale retention requirement.
33.	Directing funds to improving data recovery and adding personnel to handle the projected increase in firearm purchases and background checks would appear to be a far better utilization of any savings resulting from the transition to the internal DES.	The department disagrees with the comment. The department believes that DES is the most cost-effective way for it to receive DROS information from dealers and will allow the department to meet the statutorily mandated timeframes for processing DROS.

EXHIBIT F

From: Edwards, Aaron <Aaron.Edwards@dof.ca.gov>

Sent: Wednesday, June 24, 2020 7:34 PM

To: Stephenshaw, Joe <Joe.Stephenshaw@sen.ca.gov>

Subject: Re: assault weapon tbl--add'l info fyi

Of course. I appreciate senator Mitchell's set up.

Sent from my iPhone

On Jun 24, 2020, at 7:24 PM, Stephenshaw, Joe <Joe.Stephenshaw@sen.ca.gov>

wrote:

Thanks for clearing that up Aaron. Appreciate it!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Edwards, Aaron" <Aaron.Edwards@dof.ca.gov>
Date: 6/24/20 5:47 PM (GMT-08:00)
To: "Stephenshaw, Joe" <Joe.Stephenshaw@sen.ca.gov>
Subject: RE: assault weapon tbl--add'l info fyi

Thx Joe

From: Stephenshaw, Joe <Joe.Stephenshaw@sen.ca.gov>
Sent: Wednesday, June 24, 2020 5:44 PM
To: Edwards, Aaron <Aaron.Edwards@dof.ca.gov>
Subject: FW: assault weapon tbl--add'l info fyi

Sure you have, but just in case, this background from Jennifer seems helpful.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Kim, Jennifer" <Jennifer.Kim@asm.ca.gov>
Date: 6/24/20 5:26 PM (GMT-08:00)
To: "Stephenshaw, Joe" <Joe.Stephenshaw@sen.ca.gov>, "Woods, Christopher" <Christopher.Woods@sen.ca.gov>
Cc: "Francis, Christopher" <Christopher.Francis@sen.ca.gov>
Subject: Fwd: assault weapon tbl--add'l info fyi

FYI

Sent from my iPhone

Begin forwarded message:

From: "Kim, Jennifer" <Jennifer.Kim@asm.ca.gov>

Date: June 24, 2020 at 1:06:42 PM PDT
To: "Sisney, Jason" <Jason.Sisney@asm.ca.gov>
Cc: "Griffith, Christian" <Christian.Griffith@asm.ca.gov>
Subject: assault weapon tbl-add'l info fyi

Just some further background on the assault weapons/pifles TBL—you may already know this or it's too much info but in case it's useful:

Franklin Armory has constructed guns that don't qualify as a pistol, rifle, shotgun (the "legal" categories of guns that vendors use when they sell guns. The guns they've manufactured basically have all of the qualities of being an assault weapon—they wanted DOJ and CA to allow the selling of these assault type weapons by clarifying this allowance in statute because the gun vendors wouldn't sell them due to liability issues.

The language proposed is to update the definition of an assault weapon so that these guns cannot be sold in CA because they are essentially assault weapons. Franklin is trying to get around the technical statutory definition of the assault weapon ban by creating something that's modified, which would circumvent the legislative intent around the ban. They've been selling the parts, but they want to be able to sell the fully assembled modified gun. They are shorter, lighter, and more compact, making them more attractive to gun enthusiasts.

In the tbl, an exception was made for people who have bought parts in the interim sold by Franklin Armory and so if they fall within the exception outlined in the tbl, and they basically made their own assault weapons using parts, but they register and do all of that legally within the time frame outlined in the tbl, they are ok. This is the same approach that was taken with the initial assault weapon ban—that an exception/carve out was made for people with lawfully purchased assault weapons due to 2nd amendment concerns.

Originally, DOJ thought this policy might go through the policy bill process with Portantino as the author—but DOJ wanted to avoid a rapid large fire sale of these assault modification gun parts by people who see this update to the ban coming. Gov office agreed and I think it was the right call to do it via tbl. When the original assault weapon legislation took place, there was a significant increase in people going out and buying assault weapons to try to get it in legally before the ban. Based on that experience, the tbl route is what DOJ/GOV opted to take to reduce this likelihood.

<image001.jpg>

Jennifer Kim

Principal Consultant
Assembly Budget Committee
State Capitol | Room 6026
(916) 319 2099

VERIFICATION

I, Patrick Morris, declare as follows:

I am the Operations Director of CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, a Plaintiff in the above-named action and am authorized to execute this verification on its behalf.

6 I declare that I have read the foregoing VERIFIED SECOND AMENDED COMPLAINT FOR
7 DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR
8 PROHIBITION OR OTHER APPROPRIATE RELIEF, in the matter of *Franklin Armory, Inc., et al. v.*
9 *California Department of Justice, et al.* and know the contents thereof. I declare that the information
10 stated therein is either true of my own knowledge or is based on information and belief, and as to those
11 matters, I believe them to be true.

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

15 DATED: February 16, 2021

Patrick Morris

10 of 10

VERIFICATION

I, Jay Jacobson, declare as follows:

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

I declare that I have read the foregoing VERIFIED SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF, in the matter of *Franklin Armory, Inc., et al. v. California Department of Justice, et al.* and know the contents thereof. I declare that the information stated therein is either true of my own knowledge or is based on information and belief, and as to those matters, I believe them to be true.

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

DATED: February 17, 2021

Jay Jacobson

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 February 17, 2021, I served the foregoing document(s) described as

**VERIFIED SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF; PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER
APPROPRIATE RELIEF UNLIMITED JURISDICTION**

on the interested parties in this action by placing

[] the original

[X] a true and correct copy

10 thereof by the following means, addressed as follows:

11 Benjamin Barnouw
12 Deputy Attorney General
13 California Department of Justice
14 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Ben.Barnouw@doj.ca.gov
Attorney for Respondents-Defendants

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

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

19 | Executed on February 17, 2021 at Long Beach, California.

Jam Pallee

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.

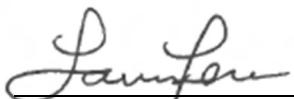
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME II OF XX, Pages 120-215**, on the following parties, as follows:

Kenneth G. Lake
Kenneth.Lake@doj.ca.gov
Andrew F. Adams
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