

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 IV OF XX  
Pages 355-477**

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

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10 *only*

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

16 **FRANKLIN ARMORY, INC. AND**  
17 **CALIFORNIA RIFLE & PISTOL**  
18 **ASSOCIATION, INCORPORATED,**  
19 Petitioners-Plaintiffs,  
v.  
20 **CALIFORNIA DEPARTMENT OF**  
21 **JUSTICE, XAVIER BECERRA, IN HIS**  
22 **OFFICIAL CAPACITY AS ATTORNEY GENERAL**  
23 **FOR THE STATE OF CALIFORNIA, AND DOES**  
24 **1-10,**  
25 Respondents-Defendants.

Case No. 20STCP01747

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO DISMISS  
THE FIRST, SECOND AND EIGHTH  
CAUSES OF ACTION IN THE SECOND  
AMENDED COMPLAINT AND  
PETITION**

**[NOTICE OF MOTION AND MOTION  
AND MEMORANDUM OF POINTS AND  
AUTHORITIES; AND DECLARATIONS  
OF CHERYLE MASSARO AND  
MARICELA LEYVA IN SUPPORT OF  
THE MOTION TO DISMISS FILED  
SEPARATELY]**

Date: January 27, 2022  
Time: 9:30 a.m.  
Dept: 85

Honorable James C. Chalfant

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE** that defendants and respondents State of California, acting by  
3 and through the California Department of Justice, Former Attorney General Xavier Becerra in his  
4 personal capacity only and Attorney General Rob Bonta in his official capacity only, in support of  
5 their Motion to Dismiss the First, Second and Eighth Causes of Action in the Second Amended  
6 Complaint and Petition, request the Court take judicial notice of the following attached records.  
7 The Court is empowered to take judicial notice of these records pursuant to Evidence Code  
8 section 452, subdivision (d). The records attached are as follows:

9           (1) Decision on Demurrer, filed January 28, 2021, in *Franklin Armory, Inc., et al. v. California*  
10           *Department of Justice, et al.*, Los Angeles County Superior Court case no.  
11           20STCP01747;

12           (2) Plaintiffs and Petitioners' Memorandum of Points and Authorities in Opposition to  
13 Respondents' Demurrer, filed May 20, 2021, in *Franklin Armory, Inc., et al. v. California*  
14           *Department of Justice, et al.*, Los Angeles County Superior Court case no. 20STCP01747; and

15           (3) Joint Stipulation and Order Continuing Trial Setting Conference and Discovery Cut-Off,  
16 filed November 23, 2021, in *Franklin Armory, Inc., et al. v. California Department of Justice, et*  
17 *al.*, Los Angeles County Superior Court case no. 20STCP01747.

18           Dated: November 29, 2021

Respectfully Submitted,  
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Attorney General of California

*Benjamin Barnouw*

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*the California Department of Justice,*  
*Former Attorney General Xavier Becerra*  
*in his personal capacity only and Attorney*  
*General Rob Bonta in his official capacity*  
*only*

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## **Exhibit 1**

Decision on Demurrer, filed January 28, 2021

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

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

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

**A. Statement of the Case**

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

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

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

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

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

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

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

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

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

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

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

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

## **B. Applicable Law**

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

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

45 Cal.App.4th 1353, 1364.

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

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

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

### **C. Governing Law**

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

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

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

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

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

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

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

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

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

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

#### **D. Analysis**

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

##### **1. Mootness**

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

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

Petitioners do not dispute that FAI's centerfire Title 1 firearms are now restricted and concede that its claims as for those Title 1 firearms are moot now that they are classified as assault weapons. Opp. at 11-12. Petitioners assert that SB 118 did not restrict all Title 1 firearms, such as rimfire Title 1 firearms or those centerfire Title 1 firearms configured without any of the enumerated features necessary for a firearm to be considered an assault weapon under state law. Opp. at 11. The FAC alleges that FAI manufactures a "series" of firearms designated under the Title 1 model, including a rimfire version that is not affected by SB 188, which was limited to centerfire weapons. FAC ¶2. Opp. at 8. Petitioners argue that the FAC's claims are not moot because they can still sell or transfer these unaffected Title 1 firearms but for the problems with the DES. Opp. at 12.<sup>3</sup>

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

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

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

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

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

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

## **2. Standing**

### **a. Beneficial Interest**

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

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

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

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

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

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

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

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

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

#### **b. Public Interest Standing**

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

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

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

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

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

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

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

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

### **c. Injunctive Relief Standing**

Respondents assert that Petitioners fail to allege facts showing an actual or impending injury as required to establish standing for injunctive relief. Dem. at 18.<sup>5</sup> Petitioners do not allege any facts showing that FAI or any Association member has suffered or will suffer any injury due to the alleged limitations of the DES because they have not alleged that FAI manufactures any undefined type firearm other than the Title 1 or that any Association member was unable to purchase such firearm due to DES. Dem. at 18; Reply at 8.<sup>6</sup>

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

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

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

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

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

### **3. Declaratory Relief**

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

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

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

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

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

### **4. Conclusion**

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

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## **Exhibit 2**

laintiffs and defendants Memorandum of Points and Authorities in  
Opposition to Motion for Demurrer, filed May 20, 2021

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15  
16 FOR THE COUNTY OF LOS ANGELES

17 10 FRANKLIN ARMORY, INC. and  
18 CALIFORNIA RIFLE & PISTOL  
19 ASSOCIATION, INCORPORATED

20  
21 Petitioners-Plaintiffs,

22 v.

23  
24 CALIFORNIA DEPARTMENT OF JUSTICE,  
25 XAVIER BECERRA, in his official capacity  
26 as Attorney General for the State of California,  
27 and DOES 1-10,

28 Respondents-Defendants.

Case No. 20STCP01747

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

Date: June 3, 2021  
Time: 9:30 a.m.  
Dept.: 85  
Judge: Hon. James C. Chalfant

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

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## INTRODUCTION

2       Despite the clarity of this case as pleaded in the Second Amended Complaint & Petition for Writ  
3 of Mandate (SAC), the Respondents Department of Justice and Attorney General Becerra (collectively,  
4 DOJ) attack this suit via demurrer—again—on grounds it should have brought during its first bite at the  
5 apple or that it already did bring. First, the DOJ claims it has no ministerial duty to update the DES.  
6 Second, it argues that the configuration of the DES is not a “regulation” subject to the Administrative  
7 Procedure Act (APA) because the DES is an electronic web-based system, not a rule, order, or standard.  
8 Both defenses were equally available to the DOJ when it brought its demurrer to the First Amended  
9 Complaint, but the DOJ chose not to then pursue them. The balance of the DOJ’s motion is essentially a  
10 rehashing of the same justiciability arguments on which Petitioners ostensibly prevailed when the Court  
11 sustained the first demurrer with leave to amend. Thus, the demurrer seems less like a good faith attempt  
12 to narrow the issues for this Court and more like a stalling tactic, which, incidentally, is the sort of  
13 conduct that led Petitioners to sue in the first place. The DOJ’s demurrer should be overruled in its  
14 entirety. But if the Court sustains any part of it, Petitioners request leave to amend.

## **STATEMENT OF FACTS**

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

17 California has reserved the entire field of licensing and registration of firearms to itself. (SAC ¶  
18 34, citing Pen. Code, § 53071.) Under state law, “every dealer shall keep a register or record of electronic  
19 or telephonic transfer in which shall be entered” certain information relating to the transfer of firearms.  
20 (SAC ¶ 43.1, quoting Pen. Code, § 28100.) “For all firearms,” this record, called the Dealer Record of  
21 Sale (DROS), must the include the “type of firearm.” (SAC ¶ 44.14, quoting Pen Code, § 28160.)

Under section 28205, a DROS must be submitted to the DOJ electronically, “except as permitted by the [DOJ].” (SAC ¶ 52.) State law also mandates that “[t]he [DOJ] shall prescribe the *form* of the register and the record of electronic transfer pursuant to Section 28105.” (SAC ¶ 43.2, quoting Pen. Code § 28155, *italics added*.) The method established by the DOJ for submitting purchaser information required by section 28160, subdivision (a), is known as the DROS Entry System (DES). (SAC ¶ 53.) The DES is a web-based application designed, developed, and maintained by the DOJ and used by firearm dealers to transmit to the DOJ the information required for each firearm transfer. (SAC ¶ 54.)

1        As designed, the DES can facilitate the transfer of certain firearms, including “handguns” (also  
2        called “pistols” or “revolvers”), “rifles,” and “shotguns.” Many firearms, however, do not qualify as  
3        “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns” as those terms are defined by statute. (SAC ¶¶  
4        22-26.) These include Franklin Armory’s Title 1 series of firearms, including both rimfire and centerfire  
5        variants, all buntline revolvers with a barrel length of 16 or more inches, butterfly grip firearms, and  
6        barreled action firearms without stocks. (SAC ¶¶ 27-32.) But the DES menu for selecting a firearm  
7        subtype has no way to capture these undefined firearm subtypes.<sup>1</sup> (SAC ¶¶ 58.) As such, dealers cannot  
8        accurately submit the required information for these firearms through the DES. (SAC ¶ 59.) Thus, they  
9        cannot process and accept applications from purchasers of undefined firearm subtypes. (SAC ¶¶ 58-59,  
10        62.) What’s more, the DOJ has refused to offer another way to transmit the required information, even  
11        though section 28205, subdivision (c), authorizes it to do so. (SAC ¶ 60.) By design then, the DOJ has  
12        instituted a technological barrier that functions to prohibit the transfer of all firearms that are “long guns”  
13        but are not “rifles,” “shotguns,” or “rifle/shotgun combinations” through a licensed retailer. (SAC ¶ 63.)

14        The DOJ has long known about this deficiency but has refused requests to correct it. (SAC ¶ 67.)  
15        Franklin Armory informed the DOJ of the defect and the resulting inability to transfer Title 1s in October  
16        2019. (SAC ¶¶ 68-69, Ex. C.) It has been more than a year and a half since Petitioners so notified the  
17        DOJ, yet the agency has refused to modify the DES even though it has proven it can quickly make the  
18        change. (SAC ¶ 70.) Nor has the DOJ offered alternate means to submit the information. (SAC ¶ 70.)

19 **II. PROCEDURAL HISTORY**

20        Franklin Armory, a manufacturer of a series of firearms that are neither “rifles,” nor “pistols,” nor  
21        “shotguns” and which are designated with the model name “Title 1,” learned that it cannot transfer its  
22        Title 1 firearms because of the design of the DES, which is maintained and controlled by the DOJ. (SAC  
23        ¶¶ 2, 57-63.) California Rifle and Pistol Association (CRPA) is an association whose members wish to  
24        purchase or transfer undefined firearms subtypes, including Title 1 firearms, buntlines, butterfly grip  
25        firearms, and barreled action firearms without stocks, but are blocked from completing and submitting  
26        their applications for the lawful transfer of said firearms because of the DOJ’s policy barring such

27  
28        <sup>1</sup> Firearms that are not “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns” (or “frames” or  
“receivers” for such firearms) are called “undefined firearm subtypes” throughout this brief.

1 transfers, which is carried out through the defective design of the DES. (SAC ¶ 6.)

2 Petitioners sued, alleging several causes of action, including a petition for writ of mandate  
3 directing the DOJ to correct the technological defect of the DES that bars the transfer of otherwise lawful  
4 undefined firearm subtypes, including Title 1 firearms, or authorize other ways to transmit the required  
5 information pursuant to its authority under section 28205. (Compl. ¶¶ 123-129.) In August 2020,  
6 Petitioners filed a First Amended Complaint (FAC), adding four claims—some related to changes in state  
7 law affecting their claims. (FAC ¶¶ 163-202.) The Court stayed all but the First, Second, and Eighth  
8 Causes of Action. (Oct. 15, 2020 Tr. Setting Conf. Order.)

9 Following the filing of the FAC, the DOJ demurred to three of the unstayed claims. In a decision  
10 sustaining the demurrer, the Court ruled that Petitioners could not succeed on their claims—at least as  
11 related the transfer of *centerfire* Title 1 firearms for which deposits had been made. (Decision on Dem.  
12 (Dem. Dec.), Jan. 28, 2021, p. 9.) The Court held that, because the deadline by which to take possession  
13 of such firearms to register them as “assault weapons” passed in September 2020, the Court lacks  
14 authority to direct the DOJ to facilitate the transfer of such firearms, rendering the case both moot and  
15 unripe, and leaving Petitioners without standing to pursue their claims. (*Id.* at pp. 5-8.) Satisfied,  
16 however, that Petitioners could allege that Franklin Armory manufactures rimfire Title 1s that are not  
17 “assault weapons” and that CRPA represents the interests of members who wish to purchase undefined  
18 firearm subtypes, the Court granted Petitioners leave to amend. (Hrg. Tr., Jan. 28, 2021, p. 8:21.)

19 Petitioners timely filed a SAC, alleging that countless firearms, including the rimfire Title 1,  
20 buntlines, butterfly grip firearms, and barreled action firearms without a stock, remain legal but cannot be  
21 transferred due to the DOJ’s policy of barring the transfer of undefined firearm subtypes. (SAC ¶¶ 27-32,  
22 57-63.) And in line with its representations at the demurrer hearing (Hrg. Tr., pp. 10:13-14:13),  
23 Petitioners clarified that the Court should issue a writ directing DOJ to stop blocking the transfer of  
24 centerfire Title 1 firearms for which deposits had been made for two reasons.<sup>2</sup> First, because those who  
25 had placed a deposit on a centerfire Title 1 would have taken legal possession of their firearms before  
26 September 2020 *but for* the DOJ’s own illicit conduct. (SAC ¶ 123.a.) And second, because DOJ’s

28 \_\_\_\_\_  
2 Petitioners kept this claim in the SAC to avoid waiving any right to appeal the Court’s ruling. But  
they concede that the Court has already ruled on the issue in its order sustaining the first demurrer (CMC

1 conduct violated the due process rights of Petitioners, as well as their customers, members, and  
2 supporters. (SAC ¶ 123.b.) The SAC also clarifies the basis of the declaratory relief claims, as well as its  
3 APA claim. (SAC ¶¶ 115-120, 185-197.) In response to the SAC, the DOJ brought yet another demurrer.

4 **ARGUMENT**

5 **I. LEGAL STANDARD**

6 A civil complaint is merely intended to frame and limit the issues and apprise the defendant of the  
7 basis on which the plaintiff seeks recovery. (See *Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4; *Perkins v.*  
8 *Super. Ct. (Gen. Tel. Directory Co.)* (1981) 117 Cal.App.3d 1, 6.) Thus, “[a]ll that is necessary against a  
9 general demurrer is that, upon a consideration of all the facts stated, it appears that the plaintiff is entitled  
10 to any relief at the hands of the court against the defendant.” (*Hilltop Props., Inc. v. State* (1965) 233  
11 Cal.App.2d 349, 354.) A pleading is adequate if it contains enough facts to apprise the defendant of the  
12 factual basis for the plaintiff’s claim. (*McKell v. Wash. Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-  
13 1470.) What’s more, on demurrer, courts read the allegations liberally and in context. (*Taylor v. City of*  
14 *L.A. Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.) And if there is more than one  
15 reasonable interpretation, courts are to draw any “inferences favorable to the plaintiff.” (*Perez v. Golden*  
16 *Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

17 **II. THE COURT SHOULD OVERRULE THE DOJ’S DEMURRER TO THE SECOND CAUSE OF ACTION  
FOR WRIT OF MANDATE**

18 **A. Petitioners Have Standing to Pursue a Writ of Mandate**

19 Standing in California courts is less rigid than in the federal forum. Unlike federal Article III  
20 standing, standing in California is not a jurisdictional prerequisite. Indeed, “our state Constitution has no  
21 case or controversy requirement imposing an independent jurisdictional limitation on our standing  
22 doctrine.” (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248 (*Weatherford*.)) Despite  
23 this more prudential standard, familiar notions of standing requirements do apply. To seek writ relief, a  
24 party must be “beneficially interested” in the subject of the action. (Code Civ. Proc, § 1086.) That is, they  
25 must have “some special interest to be served or some particular right to be preserved or protected over  
26 and above the interest held in common with the public at large.” (*Assoc. Builders & Contractors, Inc. v.*  
27 *S.F. Airports Commn.* (1999) 21 Cal.4th 352, 361-362.) Stated simply, if a party pleads a non-

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28 Hrg. Tr., Feb. 25, 2021, at pp. 6:12-7:11), so the parties have agreed not to relitigate the issue.

1 hypothetical injury traced to a defendant's conduct, "beneficial interest" writ standing is satisfied. (See  
2 *Teal v. Super. Ct.* (2014) 60 Cal.4th 595, 599.)

3 Courts do not, however, hold litigants to strict compliance with the requirement of "beneficial  
4 right" standing where "the question is one of public right and the object of the mandamus is to procure  
5 the enforcement of a public duty." (Weatherford, *supra*, 2 Cal.5th at pp. 1247-1248, internal quotation  
6 omitted.) "This exception . . . protects citizens' opportunity to 'ensure that no governmental body impairs  
7 or defeats the purpose of legislation establishing a public right.'" (*Ibid.*, quoting *Green v. Obledo* (1981)  
8 29 Cal.3d 126, 144 (*Green*)).

9 To defeat the DOJ's second demurrer, Petitioners have met the minimal pleading requirements  
10 necessary to establish standing to pursue writ relief. Indeed, as explained below, the SAC alleges enough  
11 facts to establish both "beneficial right" and "public interest" standing. (See *Cty. of Santa Clara v. Super.*  
12 *Ct. (Naymark)* 171 Cal.App.4th 119, 126 "[I]f the pleadings contain 'sufficient particularity and  
13 precision to acquaint the defendants with then nature, source and extent of [the] cause of action' the  
14 general demurrer should be overruled. [Citation omitted.]".) The Court should overrule the DOJ's  
15 second demurrer on this ground.

16 **1. Petitioners Clearly Allege a Beneficial Right**

17 Petitioners sufficiently allege facts showing that Petitioners, their customers, and members have  
18 suffered or will suffer an injury due to the alleged limitations of the DES. (See e.g., SAC ¶¶ 1-6, 22-33,  
19 51-63, 79, 98-102, 124.) They allege that Franklin Armory manufactures a rimfire variant of its Title 1  
20 firearm chambered in .17 WSM that it cannot transfer in California because of the DOJ's alleged  
21 misconduct. (SAC ¶¶ 2, 62.) They also allege that CRPA represents the interests of its members

22 who wish to and have attempted to sell, purchase, acquire, transfer and possess lawful  
23 firearms, including but not limited to the FAI Title 1 series of firearms, buntline revolvers,  
24 butterfly grip firearms, and stockless barreled action firearms, but are prohibited from  
25 doing so by the technological limitations implemented by [the DOJ].  
26 (SAC ¶ 6.) Denial of those firearms has caused Petitioners, their customers, and members to be denied  
27 their right to transfer and acquire lawful firearms and will cause Franklin Armory great financial injury  
28 because of lost sales. (SAC ¶ 79.) These allegations are enough to demonstrate "a non-hypothetical injury  
traced to a defendant's conduct." (See *ibid.*) Still, the DOJ calls Petitioners' standing into question,

1 raising a series of dubious claims about the specificity of the SAC.

2 First, the DOJ quibbles over Petitioners' perceived failure to "allege any specific component of  
3 the Title 1 rimfire model which establishes why it is not a handgun, rifle, or shotgun." (Dem., p. 12.) The  
4 argument borders on the frivolous. The SAC expressly alleges that Title 1 firearms, *which include the .17*  
5 *WSM rimfire variant*, are " 'firearms with an undefined subtype,' as its overall design renders the device  
6 to be a 'firearm,' but not a 'handgun,' nor a 'rifle,' nor a 'shotgun,' as those terms are defined by  
7 California law." (SAC ¶¶ 2, 27.) Under the liberal pleading standard applicable at this stage, Petitioners  
8 need not allege the very specific features of the firearm that make it so. The DOJ is clearly on notice of  
9 Petitioners' claims. Indeed, as the SAC alleges, the DOJ has known the specific characteristics of the  
10 Title 1 series of firearms since at least 2012. (SAC ¶¶ 33, 68.)<sup>3</sup> What's more, Petitioners would not have  
11 incurred the great expense of suing the government if the firearms at issue were not undefined firearm  
12 subtypes. So, to the extent *more* is needed, Petitioners can surely amend to allege it. Indeed, they would  
13 amend to state that:

14 (1) All Title 1 series firearms, including both centerfire and rimfire variants, are not **rifles**  
15 because they are not "a weapon designed or redesigned, made or remade, and intended  
16 to be fired from the shoulder." (Pen. Code, § 17090.) They are designed, intended, and  
made to fire away from the shoulder, and they are not equipped with a stock from  
which to fire the firearm from the shoulder.

17 (2) All Title 1 firearms, including both centerfire and rimfire variants, are not **shotguns**  
18 because they are not "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." (Pen. Code, § 17190.) They are designed,  
intended, and made to fire single projectile cartridge-based ammunition.

20 (3) All Title 1 firearms, including both centerfire and rimfire variant, are not **handguns**  
21 because they all are designed, intended, and made to have a barrel of 16 inches in  
length. (Pen. Code, §§ 16640, 16530; 11 CCR section 5471(y).)

22 Second, as to buntline revolvers, butterfly grip firearms, and barreled action firearms without  
23 stocks, the DOJ claims that "Petitioners disregarded the Court's order that, '[they] must plead specific  
24 models to show standing, by adding to the SAC three categories or types of firearms, not specific  
25 models.' (Dem., p. 12.) The DOJ mischaracterizes the SAC. At paragraph 30, the SAC identifies the  
26 Browning 1919 A4 firearms, including the Browning .30 Cal. M-1919 A4 (SAC ¶ 30 & Ex. A) and the

28 <sup>3</sup> The rimfire Title 1 has all the same characteristics that make the centerfire Title 1 a firearm with an  
undefined subtype, but the DOJ did not object in its first demurrer to any perceived failure to allege

1 Browning .50 Cal. M2 semiautomatic rifles configured with a pistol grip or butterfly grip (SAC ¶ 31 &  
2 Ex. B). Paragraph 31 identifies the U.S. Ordinance Semi-60 configured with a butterfly grip. Paragraph  
3 32 alleges that “barreled action firearms sold or configured without a stock are ‘firearms with an  
4 undefined subtype,’ and that “[s]uch firearms are currently sold nationwide.” “A simple search of one  
5 online retailer...for ‘barreled receivers’ returns dozens of barreled action firearms currently available for  
6 sale that would constitute ‘firearms with an undefined subtype’ (and not bare receivers) that cannot  
7 lawfully be transferred through DES as it is currently configured.” (SAC ¶ 32.)<sup>4</sup> What’s more, as  
8 Petitioners represented at the hearing on the DOJ’s first demurrer, Franklin Armory’s responses to  
9 discovery identify by make and model dozens of examples of buntlines, butterfly grip firearms, and  
10 barreled action firearms without stocks that are undefined firearm subtypes that cannot be transferred  
11 through DES. (Ex. A, pp. 12-15.) A complaint is meant to put the opposing party on “fair notice” of the  
12 pleaded claim. (See *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1238-1239.) The DOJ has been adequately  
13 apprised of Petitioners’ claims to prepare a defense; its demurrer on this ground should not be sustained.

14 Third, the DOJ claims—again—that “Petitioners do not have standing because the SAC does not  
15 allege that anyone actually attempted to purchase, sell or transfer a Title 1 rimfire model or any firearm in  
16 the Buntline revolver, butterfly grip or barreled action categories.” (Dem., p. 13.) But, as the DOJ  
17 concedes, the SAC expressly alleges that:

18 Ryan Fellows, a member of [CRPA], “seeks to acquire” a Title 1 rimfire model but is  
19 unable to do so because of defendants’ conduct. (SAC at ¶ 99.) The SAC alleges that  
20 Beverly Epidendio, also [a CRPA] member, “seeks to acquire” a buntline revolver but is  
21 prohibited from doing so because of defendants’ conduct. (SAC at ¶ 100.) The SAC  
alleges that Coyote Point Armory, a licensed firearms dealer, “seeks to sell” a buntline  
revolver and other lawful firearms including but not limited to the Title 1 rimfire model  
but is prohibited from doing so due to defendants’ conduct. (SAC at ¶ 101.)  
(Dem., p. 13.) These are but mere examples of the concrete interests that Petitioners and their *thousands*  
of customers and members have in this action. Petitioners need allege no more at this stage.

22 But to the extent that the DOJ is *again* claiming that Petitioners’ petition must identify specific  
23 individuals that have taken more affirmative steps toward the purchase of the subject firearms, like  
24 submitting an *improper* application for the transfer of an undefined firearm subtype through the DES, it is  
25

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26 specific characteristics that make centerfire Title 1s undefined firearm subtypes.  
27

<sup>4</sup> If necessary, Petitioners could easily amend to list those dozens of firearms by name in the

1 simply wrong. “The law does not require useless acts from litigants as prerequisites to seeking relief from  
2 the courts.” (*Van Gammeren v. City of Fresno* (1942) 51 Cal.App.2d 235, 240; see also *Doster v. Cty. of*  
3 *San Diego* (1988) 203 Cal.App.3d 257, 262 [the law does not require “futile acts”].) Here, “[b]ecause  
4 dealers cannot accurately submit the required information through the DES for ‘long guns’ that are  
5 undefined ‘firearm’ subtypes, they are prohibited from processing and accepting applications from  
6 purchasers of said firearms.” (FAC ¶ 59, citing Penal Code, § 28215, subd. (b).) “The background check  
7 begins with the *completion* and *submission* of an application form that the gun dealer electronically  
8 submits to the California DOJ.” (*Silvester v. Harris* (9th Cir. 2016) 843 F.3d 816, 825, *italics added*.)  
9 Thus, the very first step in “attempting to purchase” a firearm is to apply with the dealer, which is futile  
10 given that “under California Code of Regulations, title 11, § 4210, subdivision (b)(2)(6), **firearm dealers**  
11 **are prohibited from entering inaccurate information within the [DES]**.” (FAC ¶¶ 52-58, emphasis  
12 added.) Any attempt to complete an application would thus be futile, an idle gesture, or violate state law.

13 Notably, the DOJ does *not* argue that the transfer of firearms that are neither “handguns,” nor  
14 “long guns,” nor “shotguns” *can* be facilitated through the DES despite Petitioners’ claims. Instead, it  
15 suggests that if a retailer submits a false DROS in violation of state law, it *might not* reject the record and  
16 halt the transfer. (Dem., pp. 11-13.) The argument is illogical. Petitioners need not rely on the willingness  
17 of third parties to violate the law and risk civil or criminal penalty, including the loss of their licenses, to  
18 have standing. It is enough that firearm retailers, including Coyote Point Armory (SAC ¶¶ 98, 101) and  
19 others (SAC Ex. C at p. 3), will not transfer these firearms because they cannot submit an accurate DROS  
20 because of the technological limitations of DES.

21 **2. Petitioners Also Have Public Interest Standing**

22 Independent of their standing as a beneficially interested party, Petitioners also have standing  
23 because this case deals with an important question of a public right. When, as here, the question is one of  
24 public right and the object of the mandamus is to procure the enforcement of a public duty, the petitioner  
25 need not show that he has any legal or special interest in the result, since it is enough that the Petitioner is  
26 interested as a citizen in having the laws executed and that duty enforced. (*Save the Plastic Bag Coal. v.*  
27 *City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, citing *Bd. of Soc. Welfare v. County of L.A.* (1945)

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28 complaint, but under the pleading standard applicable at this stage Petitioners hardly think it is.

1 27 Cal.2d 98, 100-101.) “The exception promotes the policy of guaranteeing citizens the opportunity to  
2 ensure that no governmental body impairs or defeats the purpose of legislation establishing a public  
3 right.” (*Green, supra*, 29 Cal.3d 126, 144.)

4 Here, the public has an expressly protected right to purchase firearms that are not illegal. Through  
5 its failure to design and maintain the DES to facilitate the lawful submission of information regarding the  
6 transfer of undefined firearm subtypes, the DOJ impaired Petitioners (and all members of the public)  
7 from exercising this right, effectively banning undefined firearm subtypes. (SAC ¶¶ 51-63.) This was  
8 done without authority or public notice. (SAC ¶¶ 44-46, 93). When the government acts, as it has here, in  
9 flagrant disregard of its constitutional and statutory duties, public interest standing exists. (*People for*  
10 *Ethical Operat. of Prosecs. v. Spitzer* (2020) 53 Cal.App.5th 391, 410 (*People for Ethical Operation*)).

11 For instance, in *People for Ethical Operation*, plaintiffs sought writ relief to prohibit the operation  
12 of an alleged unlawful confidential informant program. (53 Cal.App.5th at p. 396.) The court held that  
13 plaintiffs had standing because the petition described a surveillance program in blatant disregard of the  
14 government’s constitutional duties and limitations. (*Id.* at p. 410-411.) The rights the program allegedly  
15 violated—the rights to due process and assistance of counsel—“are public rights that every citizen has an  
16 interest in upholding.” (*Id.* at p. 410.) Here, through its inaction, the DOJ denied both Petitioners and the  
17 broader public their rights under the Due Process Clause and the Second Amendment, as well as rights in  
18 property they could otherwise lawfully acquire. (SAC ¶ 114.) These are constitutional rights every citizen  
19 has an interest in and which the government must uphold. The existence of “public interest” standing  
20 could hardly be clearer.

21 In sustaining the DOJ’s first demurrer, the Court expressed concern that Petitioners were not  
22 pursuing this action in the public interest, but to pursue Franklin Armory’s personal financial interest in  
23 its Title 1 firearms. (Dem. Dec., p. 8.) But the Court’s concern was rooted in the misconception that no  
24 firearm except the Franklin Armory’s centerfire Title 1 was affected by the alleged DES defect. (*Ibid.*  
25 “[T]his matter concerns only a narrow category of undefined type firearms, of which the Title 1 is the  
26 only firearm actually identified in the FAC.”).) And, after SB 118, that firearm could no longer be  
27 transferred, mooting Petitioners’ claims anyway. Regardless of the vital public rights and government  
28 duties at issue, the Court (not unreasonably) seemed reluctant to confer standing if no other firearm was

1 affected. (*Ibid.*) But the Court did not know that countless other firearms cannot be transferred due to the  
2 DES defect. The SAC clarifies that fact. (SAC ¶¶ 27-32.) Petitioners have public interest standing.

3 **B. Petitioners' Claim Is Ripe for Adjudication**

4 The DOJ raises no independent argument that this case is not ripe except for those arguments  
5 supporting its claim that Petitioners lack standing. So, to borrow the DOJ's words, "the above discussion  
6 regarding standing also shows that the issues alleged in the SAC" *are* ripe for adjudication. (Dem., p.  
7 15.) That discussion, *supra* Part II.A.1-2, is incorporated here.

8 **C. DOJ Has a Clear Ministerial Duty to Maintain the DES in a Manner that Does Not  
9 Block the Transfer of Legal Firearms**

10 "A ministerial act is an act that a public officer is required to perform in a prescribed manner in  
11 obedience to the mandate of legal authority and without regard to his own judgment or opinion  
12 concerning such act's propriety or impropriety, when a given state of facts exists. Discretion, on the  
13 other hand, is the power conferred on public functionaries to act officially according to the dictates of  
14 their own judgment." (*Cty. of L.A. v. City of L.A.* (2013) 214 Cal.App.4th 643, 653-654.) Here, state law  
15 creates a ministerial duty that the DOJ maintain the DES so that *all* legal firearms may be transferred  
16 through the system. (Pen. Code, §§ 28155, 28205, 28215, 28220.) While the *form* of the record is  
17 created by the DOJ (§ 28155), the code does not convey to the DOJ any discretion to prohibit the lawful  
18 sale of firearms to law-abiding Californians. If it did, the DOJ would have the unfettered power to block  
19 the sale of any legal firearm it chooses—or all firearms for that matter—by sabotaging the DES and  
20 claiming it is within its discretion to do so.

21 But the Penal Code commands that "for **all** firearms, the register or record of electronic transfer  
22 **shall** include **all** of the following information . . ." (Pen. Code, § 28160, subd. (a), bold added.) The code  
23 then lists several items that the record of electronic transfer "shall" include, including the "[t]ype of  
24 firearm." (Pen. Code, § 28160, subd. (a)(14).) By refusing to correct the DES to facilitate the transfer of  
25 undefined firearm subtypes, including rimfire Title 1 firearms, buntline revolvers, butterfly grip firearms,  
26 and barreled action firearms without stocks, the DOJ violates its duty to create a system that allows  
27 firearm retailers to include, for *all* firearms, all the statutorily required information. And, in the past, the  
28 DOJ seems to have understood its mandatory duty to facilitate the electronic submission of DROS

1 information to DOJ through DES. Indeed, in a letter to the Office of Administrative Law in November  
2 2013, the DOJ admitted that “[t]he legal sale of firearms in California is only available via DES” and that  
3 DOJ would assume the duty of maintaining the DES on January 1, 2014. (SAC, ¶ 83, Ex. D, p. 1.)

4 The DOJ’s second demurrer raises, for the first time, an argument that Petitioners are not entitled  
5 to a writ of mandate because the DOJ has discretion over the DES. (Dem., pp. 16-17.) The DOJ attempts  
6 to transform language in the Penal Code (which confers some discretion over the *form* of the DES) into a  
7 blank check that allows it to block sales of any firearm it desires by simply not including the required  
8 fields in the DES. The argument is based on the principal that mandamus will not issue if the duty is  
9 mixed with discretionary power. (*Id.*, p. 16.) While that general principle is correct, it usually requires the  
10 exercise of “*significant* discretion”: A “duty is discretionary if the [entity] must exercise *significant*  
11 discretion to perform the duty. We examine the entire statutory scheme to determine whether the [entity]  
12 must exercise *significant* discretion to perform a duty.” (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229,  
13 233, italics added.) The DOJ has not shown—that state law gives it “*significant* discretion” over the  
14 substance of the DES. Instead, the DOJ gives just two examples of its discretionary power over its *form*.

15 **First**, the DOJ points to statutory language allowing the DOJ to authorize other means of transfer  
16 (Dem., p. 16): “On or after January 1, 2003, *except as permitted by the [DOJ]*, electronic transfer shall be  
17 the exclusive means by which information is transmitted to the [DOJ]. Telephonic transfer shall not be  
18 permitted for information regarding sales of any firearms.” (Pen. Code, § 28205, subd. (c).) In context,  
19 that language plainly does not grant the DOJ any authority to effectively block otherwise legal firearm  
20 transactions. It merely allows the DOJ to provide alternative means for transmitting the required  
21 information. Discretion only as to the *method* of transmission of information is the extent of the authority  
22 granted to the DOJ by section 28205, subdivision (c), which the DOJ implicitly admits in its brief. (Dem.,  
23 pp. 16-17 [“This statute does not specify how the DES should be set up or operated. *Instead, it provides*  
24 *the DOJ with discretion to utilize the DES or another method.*”].) This cannot be considered significant  
25 discretion to block the transmission of statutorily required information altogether.

26 Nor does *State of California ex rel. Dept. of Rehabilitation* (1982) 137 Cal.App.3d 282 support  
27 the DOJ’s position as it insists it does. (Dem., p. 16.) While subsequent language in that case did modify  
28 the Attorney General’s duty to see that the laws of the State are adequately enforced, that language,

1 which the DOJ left out of its brief, states: “Whenever in the opinion of the Attorney General any law of  
2 the State is not being adequately enforced in any county...” (Cal Const, art. V § 13.) That language led  
3 the court to hold that the duty was discretionary because it hinged on the Attorney General’s subjective  
4 opinion. (*State of Cal.*, *supra*, 137 Cal.App.3d at p. 287.) Section 28205 does not confer such broad  
5 discretion; it merely allows the DOJ to sometimes make exceptions to the rule that electronic transfer is  
6 the only way the required information is transmitted. So, while the DOJ might offer variances to how the  
7 information is transmitted, *it must always provide some way to transmit it.*

8 **Second**, the DOJ looks to section 28155, which allows the DOJ to prescribe the form of the  
9 register and record of electronic transfer. (Dem., p. 17.) While the law does “confer[] discretionary  
10 authority upon the DOJ to prescribe the *format* of the DES,” (*id.*, italics added), the DOJ lacks authority  
11 to block the transmission of statutorily required information by refusing to correct the known DES defect  
12 or to provide alternative means for its transmission. The conveyance of some discretionary authority in  
13 the method of executing a mandatory duty does not give blanket power to ignore that duty altogether.  
14 Indeed, “[i]t would be difficult to conceive of any official act, no matter how directly ministerial, that did  
15 not admit of some discretion in the manner of its performance, even if it involved only the driving of a  
16 nail...To the extent that its performance is unqualifiedly required, it is not discretionary, even though the  
17 manner of its performance may be discretionary.” (*Ham v. Cty. of L.A.* (1920) 46 Cal.App. 148, 162.)

18 In *Ham v. County of Los Angeles*, a case about a duty to repair streets and highways, the court  
19 held there was a duty for street superintendents and road supervisors to complete their ministerial duty to  
20 repair roads when on notice that repairs were needed. (46 Cal.App. at p. 162.) That example is very  
21 useful here. While the public servants in *Ham* may have had significant discretion in the manner of  
22 repairing the streets, what they could not do was refuse to repair a street they knew needed repair. In the  
23 same way, the DOJ cannot block the required submission of information about the transfer of any legal  
24 firearm even though it can decide on the form the DES takes. The DOJ’s position would rewrite *Ham* to  
25 say there was no duty for the road supervisors to repair a particular street so long as they have discretion  
26 to decide on the *methods* of street repair. Such an absurdity cannot be correct.

27 **Third**, the DOJ cites *AIDS Healthcare Foundation* to argue that mandamus can only compel a  
28 public agency to exercise its discretion in some manner, but not any particular manner. (Dem., pp. 17-

1 18.) But Petitioners do not ask this Court to direct the manner in which DOJ collects the required firearm  
2 transfer information. The DOJ can use its limited discretion to put the DES into any form it chooses, so  
3 long as it meets section 28160's mandate that "for *all* firearms" the record of electronic transfer "shall  
4 include," among other things, "the type of firearm." (Pen. Code, § 28160, subd. (a)(14), italics added.) To  
5 refer to *Ham* again, the DOJ is free to choose how it wants to fix this "road," but it must fix it.

6 Even if the Court were to find that the DOJ had significant discretion over the DES beyond just  
7 its form, the DOJ should still be compelled to facilitate the sale of legal undefined firearm subtypes.  
8 "Where only one choice can be a reasonable exercise of discretion, a court may compel an official to  
9 make that choice." (*Cal. Correct. Supervs. Org. v. Dept. of Corr.* (2002) 96 Cal.App.4th 824, 827.) There  
10 is a single reasonable choice here. And that is the one that facilitates the transfer of required information  
11 to the DOJ, as mandated by the Penal Code, so that legal firearm sales can be lawfully completed. If the  
12 DOJ's interpretation of the Penal Code were correct, it could block any firearm transaction it chooses by  
13 deleting options for "disfavored" types of firearms from the DES, and then not providing for any other  
14 means to transmit the statutorily required information. Such an interpretation is patently unreasonable.

15 **III. THE COURT SHOULD OVERRULE THE DOJ'S DEMURRER TO THE FIRST AND EIGHTH CAUSES  
16 OF ACTION BECAUSE STATE LAW CREATES CAUSES OF ACTION FOR DECLARATORY RELIEF  
AND, RELATEDLY, INJUNCTIVE RELIEF**

17 The DOJ argues that the First and Eighth causes of action seeking declaratory and injunctive  
18 relief are barred as a matter of law. Although sensible on its face, the DOJ's argument that such claims  
19 fail because they are "remedies" and not genuine causes of action is unavailing. The First and Eighth  
20 claims are brought under Code of Civil Procedure section 1060 and the APA, respectively, and both  
21 statutes create private causes of action for declaratory and, relatedly, injunctive relief.

22 First, section 1060 plainly authorizes "an original action" "for a declaration of his or her rights  
23 and duties. . . ." and states that a party "may ask for a declaration of rights or duties, either alone or with  
24 other relief." And litigants routinely plead various causes of action arising out of the same factual  
25 allegations; that is as non-objectionable a proposition of legal practice as there is. To be certain, the "fact  
26 the same issue...is also raised in other causes of action does not in itself bar declaratory relief...of that  
27 cause of action." (*S. Cal. Edison Co. v. Super. Ct.* (1995) 37 Cal. App. 4th 839, 847.)

28 Similarly, there is simply too much published authority involving declaratory and injunctive relief

1 challenges in the APA context to countenance that such actions are defective as a matter of law and are  
2 improper ab initio. (See, e.g., *POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681; *Slocum v.*  
3 *State Bd. of Equaliz.* (2005) 134 Cal.App.4th 969; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 497;  
4 *Faunce v. Denton* (1985) 167 Cal.App.3d 191, 193; *State of Cal. v. Super. Ct.* (1971) 16 Cal.App.3d 87.)

5 The DOJ’s reliance on *Coachella Valley Unified School District v. State of California* (2009) 176  
6 Cal.App.4th 93 is misplaced. There, the court did not dismiss the declaratory relief claim because it was  
7 void as a matter of law. It did so because it found that its resolution of the related writ against plaintiffs  
8 necessarily precluded the declaratory relief claim. (*Id.* at p. 126.) The court also noted that “on this issue,  
9 the complaint did not state separate causes of action; rather it asked for different forms of relief.” (*Id.* at  
10 p. 125.) But here, Petitioners have clearly stated separate causes of action. This authority is a non-  
11 sequitur that does not support the DOJ’s argument. The Court should overrule the DOJ’s demurrer.

12 **IV. THE COURT SHOULD OVERRULE THE DOJ’S DEMURRER TO THE EIGHTH CAUSE OF ACTION  
13 BECAUSE THE DOJ’S POLICY OF BLOCKING THE TRANSFER OF LEGAL FIREARMS IS AN  
14 UNDERGROUND REGULATION IN VIOLATION OF THE APA**

15 “An underground regulation is a regulation that a court may determine to be invalid because it  
16 was not adopted in substantial compliance with the procedures of the Administrative Procedure Act.”  
17 (*Modesto City Schools v. Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) Under the  
18 APA, a regulation is “every rule, regulation, order, or standard of general application or the amendment,  
19 supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to  
20 implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.”  
21 (Gov. Code, § 11342.600.) Petitioners allege that the DOJ maintains an internal rule or standard of  
22 general application prohibiting the sale of undefined firearm subtypes in California, as evidenced by its  
23 refusal to fix the known DES defect to allow for the sale of such firearms. (SAC ¶¶ 85, 186-188.) That  
24 the DOJ maintains the alleged policy is reaffirmed by the fact that the DOJ refused to fix the known  
25 defect, stalling until it successfully persuaded the legislature to ban centerfire Title 1 firearms. (SAC ¶  
26 97.) The DOJ’s conduct illegally blocked the transfer of around 35,000 Title 1 firearms (SAC ¶ 79),  
27 leaving no doubt that the DOJ’s action (or inaction) was part of a standard of general application.

28 Ultimately, the DOJ’s unilateral decision to block tens of thousands of legal firearm sales is  
exactly the type of action the APA protects against. “A major aim of the APA was to provide a procedure

1 whereby people to be affected may be heard on the merits of proposed rules.” (*Armistead v. State Pers.*  
2 *Bd.* (1978) 22 Cal.3d 198, 204.) The DOJ did not bother to give the thousands of people who wanted to  
3 purchase Title 1 firearms or other undefined firearms subtypes a chance to be heard. Instead, it refused  
4 (and *still* refuses) to fix the DES to facilitate transfer of these legal firearms and offers no alternative  
5 method to submit the statutorily required information as it is authorized to do.

6 In their second demurrer, the DOJ argues for the first time that the configuration of the DES  
7 cannot be a “regulation” because the DES is an electronic web-based system, not a rule, order, or  
8 standard. (Dem., p. 20.) That might have been a strong point if Petitioners alleged that the configuration  
9 of DES itself constituted an underground regulation, but they did not. Instead, the SAC challenges the  
10 validity of policies “that prohibit[s] the transfer of lawful firearms to lawful purchasers.” (SAC ¶ 85.)  
11 While this includes “designing, developing, implementing, or modifying” (SAC ¶ 85) the DES in a way  
12 that prevents transfers from proceeding, the SAC is clear that what is at issue is not the DES itself, but  
13 the DOJ’s underground regulation barring the sale of undefined firearm subtypes. (SAC ¶ 93 [“The  
14 challenged rules at issue, ***including but not limited to the prohibition of certain lawful firearms from***  
15 ***being transferred*** because of DEFENDANTS’ technological barriers...”].) That internal rule, Petitioners  
16 believe, is why the DOJ refuses to correct the alleged DES defect.<sup>5</sup>

17 But even if Petitioners objected to the DES directly, this case squares with Government Code  
18 section 11340.9, which clarifies that while the APA does not apply to all forms used by an agency, when  
19 a form is necessary to implement the law under which the form is issued, as the DES is, it must be  
20 adopted under the requirements of the APA. (Gov. Code, § 11340.9, subd. (c).)

## 21 CONCLUSION

22 For these reasons, the DOJ’s demurrer should be overruled in its entirety. But if the Court sustains  
23 any part of it, Petitioners again request leave to amend.

24 Date: May 20, 2021

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

  
Anna M. Barvir

25  
26 Attorneys for Petitioners-Plaintiffs

27  
28 <sup>5</sup> The DOJ cannot hide behind the fact that Petitioners have not identified some kind of internal  
written rule as the basis of its claim. If such were required to state a claim under the APA’s ban on  
underground regulations, public agencies could simply evade liability by refusing to put its agency-wide  
customs and policies into writing. Such a loophole would make the APA all but obsolete.

# **EXHIBIT A**

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7

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

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

12 Petitioners-Plaintiffs,

13 v.

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

16 Respondents-Defendants.

17 Case No.: 20STCP01747

18 **PLAINTIFF FRANKLIN ARMORY,  
INC.’S RESPONSE TO DEFENDANT  
CALIFORNIA DEPARTMENT OF  
JUSTICE’S FORM  
INTERROGATORIES-GENERAL, SET  
ONE**

19 Action filed: May 27, 2020

20 PROPOUNDING PARTY: Defendant-Respondent California Department of Justice

21 RESPONDING PARTY: Plaintiff-Petitioner Franklin Armory, Inc.

22 SET NUMBER: One

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1 theories, analyses of written data, attorney notes and impressions, recorded statements taken by counsel,  
2 any work done by investigators or agents. The discovery in this lawsuit is still in the nascent stages and  
3 many “facts” that are believed to be true at this time might be revealed to be incorrect later. These  
4 “facts” are thus, at this point, largely assumptions and beliefs on the part of the attorney and, therefore,  
5 are part of the attorney work product. The attorney for Responding Party is not required to review their  
6 thinking processes for opposing counsel. And, to the extent that it seeks information about potential  
7 expert witnesses, Responding Party has not yet decided on which, if any, experts may be called at the  
8 time of trial. Any experts utilized by party to date are for purposes of consultation and case preparation  
9 only. (*Sheets v. Super. Ct.* (1967) 257 Cal.App.2d 1; *Sanders v. Super. Ct.* (1973) 34 Cal.App.3d 270.)

10                   **Subject to and without waiving the foregoing objections, Responding Party responds:**

11                   Respondents, as the state entity in charge of overseeing and enforcing California’s firearm laws,  
12 including registrations and inspections, are no doubt familiar with the following list of firearms that have  
13 been manufactured for well over 100 years. By way of example:

14                   Invented in 1861, the Gatling gun is a “firearm with an undefined subtype.”

15                   Buntline Revolvers with barrels of 16 inches or more in length, such as the Colt Buntline Special  
16 Single Action Army Revolver, would constitute “firearms with an undefined subtype” and have been  
17 manufactured since the mid-1800s as well. Uberti, USA offers the Buntline Target, a revolver with a 16”  
18 barrel that would constitute a “firearm with an undefined subtype” under California law.

19                   Certain configurations of mounted firearms have been manufactured for years and would  
20 constitute a “firearm with an undefined subtype. For example, the Browning 1919A4 firearms began  
21 production in approximately 1936 and would be deemed “firearms with an undefined firearm subtype.”  
22 And defendants are fully aware of such firearms. On March 28, 2000, the California Department of  
23 Justice issued a letter to Mr. Tim Bero, President of TNW, Inc., about a conversation that they had  
24 relating to the Browning .30 Cal. M-1919 A4 and A6, as well as the Browning .50 Cal. M2 semi-  
25 automatic rifles configured with a pistol grip or butterfly grip, and clarifying that said firearms would  
26 not constitute “assault weapons” under California law at that time. And, again on November 3, 2004, the  
27 Director of the Firearms Division of the California Department of Justice issued a letter stating that a  
28 U.S. Ordinance Semi-60 configured with a butterfly grip, which would constitute “firearm with an

1 undefined subtype," was not an "assault weapon" under California law at that time.

2 One of the most common types of firearms in the United States are barreled action firearms.  
3 Barreled action firearms are sold with and without stocks to allow the ultimate end user to purchase a  
4 stock that best suits their needs. Barreled action firearms sold or configured without their stock would be  
5 deemed "firearms with an undefined subtype." Such firearms are currently sold nationwide. A simple  
6 search of one online retailer, Brownells.com, for "barreled receivers" reveals the following list of  
7 barreled action firearms available for sale at the time of this response that would constitute "firearms  
8 with an undefined subtype" (and not bare receivers) that cannot lawfully be transferred under the DES as  
9 it is currently configured:

10       • *Remington:*

11           ■ REMINGTON 700 S/A MAGNUM ACTION  
12           ■ REMINGTON 700 SPS TACTICAL 20" HEAVY BARRELED ACTION .308 WIN

13       • *Howa:*

14           ■ 1500 6.5 CREEDMOOR 24" THREADED HEAVY BARRELED ACTION  
15           ■ 1500 6.5 GRENDEL 20" THREADED HEAVY BARRELED MINI ACTION  
16           ■ 1500 300BLK 16.25" HEAVY THREADED BARREL MINI ACTION  
17           ■ 1500 BARRELED ACTION STANDARD BARREL BLUE .30-06 #2  
18           ■ 1500 BARRELED ACTION LIGHTWEIGHT BLUE 6.5 CREEDMOOR #1  
19           ■ M1500 BARRELED ACTION 300 PRC THREADED  
20           ■ 24" 6mm CREEDMOOR BARRELED ACTION  
21           ■ 1500 BARRELED ACTION HEAVY 26" BRL BLUE .308 WIN #6 THREADED  
22           ■ 1500 308 WIN 20" THREADED HEAVY BARRELED ACTION  
23           ■ 1500 6.5 CREEDMOOR 22" SPORTER BARRELED ACTION  
24           ■ 1500 6.5 GRENDEL 22" SPORTER BARRELED MINI ACTION  
25           ■ 1500 BARRELED ACTION SEMI HEAVY BARREL .300 WIN MAG THREAD  
26           1/2-28  
27           ■ 1500 22" NON-THREADED BARRELED ACTION 6MM CREEDMOOR  
28           ■ 1500 BARRELED ACTION MINI ACTION STANDARD BLUE 22"

- 1       ■ 1500 BARRELED ACTION LW CERAKOTE GRAY .243 WIN #1
- 2       ■ 1500 308 WIN 24" THREADED HEAVY BARRELED ACTION
- 3       ■ 1500 30-06 22" SPORTER BARRELED ACTION CERAKOTE
- 4       ■ 1500 BARRELED ACTION STANDARD BARREL BLUE .270 WIN #2
- 5       ■ 1500 BARRELED ACTION STANDARD BARREL BLUE 22-250 REM #2
- 6       ■ 1500 308 WIN 22" SPORTER BARRELED ACTION
- 7       ■ 1500 22-250 THREADED HEAVY BARRELED ACTION
- 8       ■ 1500 7.62X39 20" THREADED HEAVY BARRELED MINI ACTION
- 9       ■ 1500 BARRELED ACTION MAG BLUE .300 WIN MAG #2
- 10      ■ 1500 BARRELED ACTION STD CERAKOTE GRAY .308 WIN #2
- 11      ■ 1500 BARRELED ACTION LW CERAKOTE GRAY .223 REM #1
- 12      ■ 1500 BARRELED ACTION STD CERAKOTE GRAY .243 WIN #2
- 13      ■ 1500 BARRELED ACTION LIGHTWEIGHT BLUE .308 WIN #1
- 14      ■ 1500 BARRELED ACTION STANDARD BARREL BLUE .243 WIN #2
- 15      ● *Bergara:*
  - 16       ■ B14R 22LR BARRELED ACTION 18" STEEL THREADED
  - 17       ■ PREMIER SERIES 300 PRC BARRELED ACTIONS
  - 18       ■ PREMIER SERIES 6.5MM CREEDMOOR BARRELED ACTIONS
  - 19       ■ B14R 22LR BARRELED ACTION 18" CARBON FIBER THREADED
  - 20       ■ PREMIER SERIES BARRLED ACTIONS 7MM REM MAG THREADED
  - 21       ■ PREMIER SERIES BARRELED ACTIONS 6.5 PRC THREADED
  - 22       ■ PREMIER SERIES 308 WINCHESTER BARRELED ACTIONS
  - 23       ■ PREMIER SERIES BARRELED ACTION .270 NO TRIGGER THREADED
  - 24       ■ PREMIER SERIES 300 WINCHESTER MAGNUM BARRELED ACTIONS
  - 25       ■ PREMIER SERIES BARRELED ACTION 30-06 THREADED
  - 26       ■ PREMIER SERIES BARRELED ACTION .223 NO TRIGGER THREADED
  - 27       ■ PREMIER SERIES BARRELED ACTION .280 ACKLEY IMP THREADED
  - 28       ■ PREMIER SERIERS BARRELED ACTION 22-250 THREADED

1           ■ PREMIER SERIES 6MM CREEDMOOR BARRELED ACTIONS

2       • *Area 419:*

3           ■ DEFIANCE TENACITY BARRELED ACTIONS

4       • *Blackheart:*

5           ■ AK-47 BARRELED RECEIVER 7.62X39 FIXED STOCK

6           ■ AK-47 BARRELED RECEIVER 7.62X39 UNDERFOLDER

7       • *Brownells:*

8           ■ BRN-22 BARRELED RECEIVER FOR RUGER™ 10/22™

9           Other examples include firearms that are chambered for shot shells, including but not limited to  
10 the O.F. Mossberg & Sons, Inc. model Cruiser chambered in 12 gauge with an 18" barrel, which does  
11 not satisfy the definition handgun, rifle, nor shotgun under California law.

12           These are merely examples of what are likely thousands of variants of "firearms with an  
13 undefined subtype" that that are currently on the market today and cannot be lawfully transferred  
14 through the DES as it currently exists.

15           (c)    In addition to Propounding Party, the following are persons known to have knowledge of  
16 these facts:

17           Franklin Armory, Inc.,  
18           c/o Jay Jacobson  
19           2246 Park Place Suite B  
          Minden, NV 89423  
          Phone: 775-783-4313

20           Jason A. Davis  
21           Michel & Associates, P.C.  
22           180 E. Ocean Blvd, Suite 200  
          Long Beach, CA 90802  
          Phone: 562-216-4444.

23           C.D. Michel  
24           Michel & Associates, P.C.  
25           180 E. Ocean Blvd, Suite 200  
          Long Beach, CA 90802  
          Phone: 562-216-4444

26           Tim Bero  
27           President of TNW, Inc.  
          Address and telephone number unknown

28           Randy Rossi

1                   Former Director of Firearms Division  
2                   California Department of Justice  
3                   Address and telephone number unknown

4                   Tim Rieger  
5                   Former Counsel of Firearms Division  
6                   California Department of Justice  
7                   Address and telephone number unknown

8                   (d)    On March 28, 2000, the California Department of Justice issued a letter to Mr. Tim Bero,  
9                   President of TNW, Inc., about a conversation that they had relating to the Browning .30 Cal. M-1919 A4  
10                  and A6, as well as the Browning .50 Cal. M2 semi-automatic rifles configured with a pistol grip or  
11                  butterfly grip, and clarifying that said firearms would not constitute “assault weapons” under California  
12                  law at that time. And, again on November 3, 2004, the Director of the Firearms Division of the  
13                  California Department of Justice issued a letter stating that a U.S. Ordinance Semi-60 configured with a  
14                  butterfly grip, which would constitute “firearm with an undefined subtype,” was not an “assault  
15                  weapon” under California law at that time. (Counsel for Responding Party, Michel & Associates, 180 E.  
16                  Ocean Blvd., Suite 200, Long Beach, CA 90802, Phone: 562-216-4444).

17                  Hog, The Illustrated Encyclopedia of Firearms (1978)

18                  Smith, Small Arms of the World (1973)

19                  [https://en.wikipedia.org/wiki/Colt\\_Buntline](https://en.wikipedia.org/wiki/Colt_Buntline)

20                  <https://www.foxbusiness.com/features/rare-colт-buntline-a-special-inheritance>

21                  <https://www.guns.com/news/2013/02/27/the-buntline-special-the-colт-shooters-holy-or-false-grail>

22                  [https://military.wikia.org/wiki/Colt\\_Buntline](https://military.wikia.org/wiki/Colt_Buntline)

23                  <https://www.brownells.com/search/index.htm?k=barreled+receivers&ksubmit=y>

24                  <https://www.uberti-usa.com/1873-revolver-carbine-and-buntline>

25                  (a)    **Request for Admission No. 4**

26                  (b)    Objection.

27                  1.    Responding Party has not yet completed the investigation of the facts and discovery  
28                  relating to this case. It is anticipated that further factual investigation, legal research, factual and legal

## VERIFICATION

I, Jay Jacobson, declare as follows:

I am the President of Franklin Armory, Inc., and I am authorized to make this verification for and on its behalf.

5 I declare that I have read the foregoing PLAINTIFF FRANKLIN ARMORY, INC.'S  
6 RESPONSE TO DEFENDANT CALIFORNIA DEPARTMENT OF JUSTICE'S FORM  
7 INTERROGATORIES-GENERAL, SET ONE, in the matter of *Franklin Armory, Inc., et al. v.*  
8 *California Department of Justice, et al.*, and I know its contents. I declare that the information stated  
9 therein is either true of my own knowledge or is based on information and belief, and as to those  
10 matters, I believe them to be true.

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

13 Executed on January 20, 2021, at Douglas County, Nevada.

  
\_\_\_\_\_  
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 May 20, 2021, I served the foregoing document(s) described as

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

on the interested parties in this action by placing

[ ] the original

[X] a true and correct copy

thereof by the following means, addressed as follows:

Kenneth G. Lake

Deputy Attorney General

Email: kenneth.lake@doj.ca.gov

## Benjamin Barnouw

Supervising Deputy Attorney General

Email: [ben.barnouw@doj.ca.gov](mailto:ben.barnouw@doj.ca.gov)

California Department of Justice

300 South Spring Street, Suite 1702

1000 Main Street, Suite 1000  
Los Angeles, CA 90013

*Attorney for Respondents-Defendants*

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

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

Executed on May 20, 2021, at Long Beach, California.

Laura Palmerin



Electronically Received 11/22/2021 10:37 AM

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

11 Attorneys for Petitioners - Plaintiffs

**FILED**  
Superior Court of California  
County of Los Angeles

11/23/2021

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

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

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

13 Petitioners-Plaintiffs,

14 v.

15 CALIFORNIA DEPARTMENT OF JUSTICE,  
16 ROB BONTA, in his official capacity as  
17 Attorney General for the State of California,  
18 and DOES 1-10,

Respondents-Defendants.

Case No.: 20STCP01747

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

**JOINT STIPULATION AND [PROPOSED]  
ORDER CONTINUING TRIAL SETTING  
CONFERENCE AND DISCOVERY CUT-  
OFF**

Dept: 85  
Judge: Hon. James C. Chalfant  
Action Filed: May 27, 2020  
Trial Date: Not Yet Set

1 **TO THE CLERK OF THIS COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 This Stipulation, entered into by and between Plaintiffs-Respondents Franklin Armory, Inc., and  
3 California Rifle & Pistol Association, Incorporated (“Plaintiffs”) and Defendants-Respondents  
4 California Department of Justice (“DOJ”) and Attorney General Rob Bonta by and through their  
5 respective counsel, is made with reference to the following facts and recitals:

6 WHEREAS, on February 17, 2021, pursuant to this Court’s January 28, 2021 order granting  
7 Defendants DOJ’s and former Attorney General Xavier Becerra’s first demurrer to the First Amended  
8 Complaint with leave to amend, Plaintiffs filed the Second Amended Complaint in the above-entitled  
9 action;

10 WHEREAS, Defendants DOJ and former Attorney General Xavier Becerra filed a second  
11 demurrer to the Second Amended Complaint on March 23, 2021, with a hearing set for June 3, 2021;

12 WHEREAS, on June 3, 2021, this Court overruled the demurrer to the Second Amended  
13 Complaint, ordering Defendants DOJ and former Attorney General Xavier Becerra to file an answer on  
14 or before June 23, 2021;

15 WHEREAS, at the Case Management Conference on June 3, 2021, this Court set a trial setting  
16 conference and discovery cut-off deadline for November 30, 2021;

17 WHEREAS, on June 23, 2021, Defendants DOJ and former Attorney General Xavier Becerra  
18 filed their Answer to the First, Second, and Eighth Causes of Action in the Second Amended Complaint;

19 WHEREAS, on July 6, 2021, Plaintiffs filed a declaration for automatic extension of the deadline  
20 to file a demurrer or motion to strike;

21 WHEREAS, on August 4, 2021, Plaintiffs filed a demurrer to and motion to strike Defendant’s  
22 answer, with a hearing set for October 14, 2021;

23 WHEREAS, on October 12, 2021, this Court continued the hearing on Plaintiffs’ demurrer and  
24 motion to strike to October 26, 2021;

25 WHEREAS, on October 26, 2021, this Court denied Plaintiffs’ motion to strike as moot, but  
26 sustained Plaintiffs’ demurrer as to Defendants’ affirmative defenses, giving Defendants until November  
27 10, 2021, to file an amended answer, and this Court ordered that Attorney General Rob Bonta is  
28 substituted into this action in his capacity as Attorney General in place of Former Attorney General

1 Xavier Becerra;

2 WHEREAS, the attorney primarily responsible for preparing Defendants' amended answer went  
3 on medical leave on November 15, 2021, and requested that Plaintiffs agree to a one-week extension for  
4 Defendants to file their amended answer;

5 WHEREAS, pursuant to the Parties' agreement, Defendants filed their amended answer to the  
6 Second Amended Complaint, on November 16, 2021.

7 **Status of Discovery, Settlement & Further Motions Practice**

8 WHEREAS, on August 12, 2021, Defendants served Plaintiff Franklin Armory with requests for  
9 production of documents and Plaintiff CRPA with special interrogatories, with responses due on or  
10 before September 14, 2021;

11 WHEREAS, on August 18, 2021, Plaintiffs served Defendants with form interrogatories about  
12 the affirmative defenses pled in Defendants' initial answer, with responses due on or before September  
13 17, 2021;

14 WHEREAS, on September 14, 2021, Plaintiffs served their responses and objections to  
15 Defendants' August 12, 2021 written discovery, but requested a brief extension to serve additional  
16 documents responsive to Defendants' requests for production due to technical difficulties accessing  
17 Plaintiff Franklin Armory's email system;

18 WHEREAS, the next day, counsel for Defendants informed counsel for Plaintiffs via email that  
19 Defendant Department of Justice was working to update the Dealer's Record of Sale Entry System  
20 ("DES") to include the option to select "Other" as a "subtype" when processing the transfer of "long  
21 guns" that are neither "rifles," nor "shotguns," nor "rifle/shotguns" through the DES;

22 WHEREAS, counsel for the Parties met and conferred on or about September 21, 2021, to  
23 discuss when the option would be added to the DES and to what extent, if any, the change to the DES  
24 mooted Plaintiffs' unstayed claims (i.e., the First, Second, and Eighth Causes of Action for equitable  
25 relief). The Parties also discussed the status of then-pending written discovery relevant to the unstayed  
26 claims;

27 WHEREAS, during the September 21, 2021, meet-and-confer, the Parties were unable to agree  
28 that Plaintiffs' unstayed claims were immediately mooted by the Defendants' anticipated change to the

1 DES, but agreed to continue the meet-and-confer process while the Parties continued to consider the  
2 impact of the anticipated change on Plaintiffs' unstayed claims. The Parties also agreed to a brief  
3 extension to respond to then-pending written discovery;

4 WHEREAS, on September 28, 2021, counsel for the Parties met and conferred again after  
5 Defendant Department of Justice had released its September 27, 2021 notice and guidance to licensed  
6 firearms dealers in California, informing them that, effective at 5:00 a.m. on October 1, 2021, the DES  
7 would include the option to select "Other" as a "subtype" when processing the transfer of "long guns"  
8 that are neither "rifles," nor "shotguns," nor "rifle/shotguns" through the DES;

9 WHEREAS, during the September 28, 2021 meet-and-confer, the Parties were again unable to  
10 agree that Plaintiffs' unstayed claims were mooted by the Defendants' anticipated change to the DES  
11 because Plaintiffs interpreted the September 27, 2021 guidance to firearm dealers to exempt many  
12 lawful firearms at issue in this lawsuit from the use of the "Other" option for long gun subtypes in the  
13 DES;

14 WHEREAS, on October 1, 2021, Defendants issued guidance to licensed firearms dealers  
15 regarding use of the "Other" option for long gun subtypes in the DES, which guidance superseded the  
16 guidance issued on September 27, 2021;

17 WHEREAS, on October 5, 2021, Defendant DOJ served its Response to Form Interrogatories  
18 propounded by plaintiff-petitioner Franklin Armory, Inc.;

19 WHEREAS, on October 22, 2021, Plaintiffs served on Defendant DOJ two amended notices to  
20 take the depositions of persons most knowledgeable on November 23, 2021. The notices included  
21 related requests for production of documents. On November 15, 2021, Defendant DOJ served objections  
22 to the noticed depositions on several grounds, including mootness in light of Defendants' change to the  
23 DES described herein;

24 WHEREAS, at the October 26, 2021 hearing on Plaintiffs' demurrer to and motion to strike  
25 Defendants' answer, the Parties and this Court briefly discussed Defendants' change to the DES and  
26 potential mootness of the unstayed claims. The Court encouraged the Parties to meet and confer if  
27 Defendants intended to file a motion to dismiss on mootness grounds;

28 WHEREAS, on or about November 3, 2021, the Parties met and conferred about Defendants'

1 anticipated motion to dismiss Plaintiffs' unstayed claims as moot in light of Defendants' change to the  
2 DES described herein;

3 WHEREAS, at the Parties' November 3, 2021 meet-and-confer, the Parties were again unable to  
4 agree that Defendants' change to the DES mooted Plaintiffs' unstayed claims, but the Parties agreed to  
5 continue good faith meet-and-confer efforts and to engage in settlement negotiations regarding  
6 Plaintiffs' unstayed claims;

7 WHEREAS, since the November 3, 2021 meet-and-confer, the Parties have been negotiating in  
8 good faith over possible terms for a partial settlement of Plaintiffs' claims to include the dismissal of the  
9 unstayed claims, but have not yet come to an agreement;

10 WHEREAS, the counsel for the Parties met and conferred on November 18, 2021, to discuss the  
11 potential for settlement and Defendants' intention to file a motion to dismiss before the Trial Setting  
12 Conference currently set for November 30, 2021.

13 **Good Cause for a Continuance**

14 WHEREAS, the Parties agree there is good cause for a 90-day continuance of the November 30,  
15 2021 Trial Setting Conference and associated discovery cut-off deadline;

16 WHEREAS, the Parties bring this stipulation and request for a continuance for the reasons of  
17 good cause stated herein and not for any improper purpose;

18 WHEREAS, the Parties agree that a continuance of the trial setting conference and discovery  
19 cut-off deadline will allow the parties to continue to participate in meaningful settlement discussions  
20 without the expense and cost of continued trial preparation;

21 WHEREAS, Defendants have informed Plaintiffs that they will file a motion to dismiss  
22 Plaintiffs' unstayed claims before November 30, 2021 and have reserved a hearing date of January 27,  
23 2022, and the Parties agree that the outcome of that motion largely informs the relevance and/or  
24 mootness of pending discovery, including the two depositions currently scheduled for November 23,  
25 2021;

26 WHEREAS, Plaintiffs have not yet received Defendants' motion to dismiss on mootness  
27 grounds but, based on the Parties' meet-and-confer efforts to date, Plaintiffs strongly believe they will  
28 require written discovery and/or deposition testimony to fully and fairly respond to Defendants' motion

1 to dismiss;

2 WHEREAS, the Parties agree that the continuance requested herein will not prejudice either  
3 party but will instead serve the purposes of conserving the Parties' and this Court's resources.

4 IT IS THEREFORE STIPULATED by and between Plaintiffs and Defendants by and through  
5 their attorneys of record, and the Parties respectfully request the Court issue an order that:

6 1. The trial setting conference in this matter is continued for 90 days to February 28, 2022,  
7 or as soon thereafter as the Court's schedule permits.

8 2. The discovery cut-off deadline in this matter is also continued for 90 days to February 28,  
9 2022, or until such time as this court deems appropriate.

10 Date: November 19, 2021

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



11  
12 Anna M. Barvir  
13 Attorneys for Petitioners-Plaintiffs

14 Date: November 19, 2021

15 ROB BONTA  
16 Attorney General of California  
17 BENJAMIN BARNOUW  
18 Supervising Deputy Attorney General  
19 KENNETH G. LAKE  
20 Deputy Attorney General

  
21 Benjamin Barnouw  
22 Supervising Deputy Attorney General  
23 Attorneys for Respondents-Defendants

**[PROPOSED] ORDER**

Pursuant to the stipulation by and between Plaintiffs-Respondents Franklin Armory, Inc., and California Rifle & Pistol Association, Incorporated (“Plaintiffs”) and Defendants-Respondents California Department of Justice and Attorney General Rob Bonta (“Defendants”) by and through their respective counsel, by and through their representative and attorneys of record, and good cause appearing therefor:

1. The trial setting conference in this matter is continued for 90 days from November 30, 2022, to February 28, 2022. ~~THE TRIAL IS SET FOR MARCH 1, 2022.~~

2. The discovery cut-off deadline in this matter is also continued for 90 days from November 30, 2022, to ~~February 28, 2021~~. ~~Tat & G FEG~~

IT IS SO ORDERED.

Dated: 11/23/2021

James C. Chalfant / Judge

The Honorable James C. Chalfant

## 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 November 19, 2021, I served the foregoing document(s) described as

**JOINT STIPULATION AND [PROPOSED] ORDER CONTINUING TRIAL SETTING  
CONFERENCE AND DISCOVERY CUT-OFF**

on the interested parties in this action by placing

[ ] the original

[X] a true and correct copy

thereof by the following means, addressed as follows:

Benjamin Barnouw  
Supervising Deputy Attorney General

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

Kenneth G. Lake

## Deputy Attorney General

Email: Kenneth.Lake@doj.ca.gov

California Department of Justice

California Department of Justice  
300 South Spring Street, Suite 1702

500 South Spring Street,  
Los Angeles, CA 90013

Los Angeles, CA 90015  
*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.

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

Executed on November 19, 2021, at Long Beach, California.

a. *farm foliage*

Laura Palmerin

**DECLARATION OF SERVICE BY E-MAIL**

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

I declare:

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

On November 29, 2021, I served the attached **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS THE FIRST, SECOND AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT AND PETITION** by transmitting a true copy via electronic mail, addressed as follows:

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 29, 2021, at Los Angeles, California.

Jasmine Zarate

Declarant

/s/ Jasmine Zarate

Signature

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

### Attorneys for Petitioners - Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

### Petitioners-Plaintiffs,

V<sub>3</sub>

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

## Respondents-Defendants.

Case No. 20STCP01747

**PLAINTIFFS AND PETITIONERS'  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
RESPONDENTS' MOTION TO DISMISS  
THE FIRST, SECOND, AND EIGHTH  
CAUSES OF ACTION IN THE SECOND  
AMENDED COMPLAINT**

Date: January 27, 2022

Date: January 2  
Time: 9:30 a.m.

Dept.: 85

Judge: Hon. James C. Chalfant

[Filed concurrently with the Declaration of  
Anna M. Barvir in Support]

Action Filed: May 27, 2020

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9	Pen. Code, § 28205 .....	6, 7
10	Pen. Code, § 30900 .....	9
11	Welf. & Inst. Code, § 13000 .....	12
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## INTRODUCTION

Having dragged its feet by refusing to fix the issues with the DROS Entry System (DES) that Petitioners identified over two years ago, the DOJ finally added an “Other” option to the DES in October 2021. Now, the DOJ seeks to use its belated action to have Petitioners’ First, Second, and Eighth Causes of Action dismissed as moot. Petitioners do not inherently disagree with the dismissal of those claims. They just asked for some reasonable assurance that the DOJ would not reinstate a policy of blocking the lawful transfer of legal firearms if they agreed to voluntarily dismiss their claims. To that end, Petitioners proposed, among other things, entering a settlement agreement that would prevent such an outcome. The DOJ agreed to consider settlement language to that effect, but then never responded in substance to the terms Petitioners proposed—even though Petitioners sought only a commitment that the DOJ would not resume a policy of blocking the transfer of firearms legal to transfer and possess in California at the time of the transfer. Instead, the DOJ moved to dismiss the claims as moot.

13        While Petitioners concede that mootness is typically a bar to justiciability, the Court has inherent  
14 authority to hear moot claims if the dispute involves an issue of broad public interest likely to recur or is  
15 likely to recur between the same parties. Both apply here. The DOJ’s voluntary cessation of its policy  
16 blocking the lawful transfer of lawful firearms, as well as its refusal to provide any sort of assurance that  
17 it will not reinstate such a policy after these claims are dismissed, suggest strongly that the dispute is  
18 reasonably likely to recur. And the Petitioners’ claims directly implicate the broad public interest in  
19 vindicating fundamental, constitutional rights, and their interest in ensuring that the state’s unelected  
20 regulatory bodies do not exceed their delegated authority through illegal underground regulations. But  
21 even if such critical issues of public interest were not involved, Petitioners would immediately file suit  
22 again if the DOJ resumed the conduct challenged here, making it very likely that, if these issues recur, the  
23 dispute would be between the same parties.

24 Petitioners remain willing to negotiate a settlement addressing Petitioners' serious concerns about  
25 the DOJ's commitment not to resume the allegedly unlawful policy challenged in this lawsuit. Should  
26 such a settlement be reached before the hearing, Petitioners would drop their opposition to the DOJ's  
27 motion to dismiss the First, Second, and Eighth Causes of Action. But failing that, the Court should deny  
28 the motion.

## **STATEMENT OF FACTS**

2 California has reserved the entire field of licensing and registration of firearms to itself. (Second  
3 Am. Compl. (“SAC”), ¶ 34, citing Pen. Code, § 53071.) Under state law, “every dealer shall keep a  
4 register or record of electronic or telephonic transfer in which shall be entered” certain information  
5 relating to the transfer of firearms. (SAC, ¶ 43.1, quoting Pen. Code, § 28100.) “For all firearms,” this  
6 record, called the Dealer Record of Sale (DROS), must include the “type of firearm.” (SAC, ¶ 44.14,  
7 quoting Pen Code, § 28160.) Under section 28205, a DROS must be submitted to the DOJ electronically,  
8 “except as permitted by the [DOJ].” (SAC, ¶ 52.) State law also mandates that “[t]he [DOJ] shall  
9 prescribe the *form* of the register and the record of electronic transfer pursuant to Section 28105.” (SAC,  
10 ¶ 43.2, quoting Pen. Code, § 28155, *italics added*.) The method established by the DOJ for submitting  
11 purchaser information required by section 28160, subdivision (a), is known as the DROS Entry System  
12 (DES). (SAC, ¶ 53.) The DES is a web-based application designed, developed, and maintained by the  
13 DOJ and used by firearm dealers to transmit to the DOJ the information required for each firearm  
14 transfer. (SAC, ¶ 54; Decl. of Maricela Leyva Supp. Resps.’ Mot. to Dismiss (“Leyva Decl.”), ¶ 3.)

15 As designed, the DES facilitates the transfer of certain firearms, including “handguns” (also  
16 called “pistols” or “revolvers”) and “long guns” (including “rifles,” “shotguns,” and “rifle/shotgun  
17 combinations.” Many firearms, however, do not qualify as “handguns,” “pistols,” “revolvers,” “rifles,” or  
18 “shotguns,” as those terms are defined by statute, or as “rifle/shotgun combinations.” (SAC, ¶¶ 22-26.)<sup>1</sup>  
19 But, before October 1, 2021, the DES dropdown menu for “subtype” that populates when one selects  
20 “long gun” as the “gun type” included no option for these undefined firearm subtypes. (SAC, ¶ 58.)  
21 Dealers could thus not accurately submit the required information for these firearms through the DES.  
22 (SAC, ¶ 59.) Consequently, they could not process and accept applications from purchasers of undefined  
23 firearm subtypes. (SAC, ¶¶ 58-59, 62.) What’s more, the DOJ refused to offer any alternative means for  
24 transmitting the required information, even though section 28205, subdivision (c), authorizes it to do so.  
25 (SAC, ¶ 60.) Through these administrative and technological barriers then, the DOJ instituted and  
26 maintained a policy prohibiting the transfer of otherwise lawful firearms that are “long guns” but are not

<sup>1</sup> Firearms that are not “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns” (or “frames” or

1       “rifles,” “shotguns,” or “rifle/shotgun combinations” through a licensed retailer. (SAC, ¶ 63.)

2           Franklin Armory, Inc., manufactures a series of firearms that are neither “handguns,” nor “rifles,”  
3 nor “shotguns,” and which are designated with the model name “Title 1.” It could not, however transfer  
4 its Title 1 firearms because of DOJ’s policy blocking the lawful transfer of undefined firearm subtypes.  
5 (SAC, ¶¶ 2, 57-63.) California Rifle and Pistol Association, Incorporated (CRPA) is a nonprofit  
6 organization whose members wish to purchase or transfer undefined firearm subtypes, including Title 1  
7 firearms, buntlines, butterfly grip firearms, and barreled action firearms without stocks, but could not  
8 complete or submit their applications for the lawful transfer of said firearms because of the DOJ’s alleged  
9 policy barring such transfers. (SAC, ¶¶ 6, 79, 99-102.)

10           The DOJ has long known about this deficiency but, for years, refused requests to correct it.  
11 (SAC, ¶ 67.) Indeed, Franklin Armory informed the DOJ in writing of the defect and the resulting  
12 inability to transfer Title 1 firearms in October 2019. (SAC, ¶¶ 68-69 & Ex. C.) Franklin Armory  
13 followed that letter with a detailed government tort claim. (SAC, ¶ 74.) The tort claim was rejected, and  
14 the DOJ made no public efforts to correct the alleged deficiencies of the DES or authorize other ways to  
15 effectuate the transfers. (SAC, ¶¶ 75-76.) Instead, the DOJ sponsored a bill making the centerfire Title 1  
16 an “assault weapon.” (SAC, ¶¶ 108-114.) Petitioners thus sued, alleging several causes of action,  
17 including a petition for writ of mandate directing the DOJ to correct the administrative and technological  
18 defects that bar the lawful transfer of undefined firearm subtypes or authorize other ways to transmit the  
19 required information pursuant to its authority under section 28205. (Compl., ¶¶ 123-129.) Petitioners  
20 soon filed a First Amended Complaint, adding four claims—some related to changes in state law  
21 affecting their claims. (First Am. Compl., ¶¶ 163-202.) The Court stayed all but the First, Second, and  
22 Eighth Causes of Action. (Tr. Setting Conf. Order, Oct. 15, 2020.)

23           The DOJ then demurred to the unstayed claims. In a decision sustaining the demurrer, the Court  
24 ruled that Petitioners could not succeed on their claims—at least as related to the transfer of *centerfire* Title  
25 1 firearms for which deposits had been made. (Decision on Dem., Jan. 28, 2021, p. 9.) The Court held  
26 that, because the deadline by which to take possession of such firearms to register them as “assault

27  
28 “receivers” for such firearms) are called “undefined firearm subtypes” throughout this brief.

1 weapons" passed in September 2020, the Court lacks authority to direct the DOJ to facilitate the transfer  
2 of such firearms, rendering the case both moot and unripe, and leaving Petitioners without standing to  
3 pursue their claims. (*Id.* at pp. 5-8.) Satisfied, however, that Petitioners could allege that Franklin Armory  
4 manufactures rimfire Title 1 firearms that are not "assault weapons" and that CRPA represents the  
5 interests of members who wish to purchase lawful undefined firearm subtypes, the Court granted  
6 Petitioners leave to amend. (Hrg. Tr., Jan. 28, 2021, p. 8:21.)

7 Petitioners thus filed a Second Amended Complaint (SAC) alleging that countless firearms,  
8 including the rimfire Title 1, buntlines over 16 inches, butterfly grip firearms, and barreled action  
9 firearms without a stock, remain legal but cannot be transferred under the DOJ's policy of barring the  
10 transfer of undefined firearm subtypes. (SAC, ¶¶ 27-32, 57-63.) The SAC also clarified the basis of  
11 Petitioners' declaratory relief claims, as well as their APA claim. (SAC, ¶¶ 115-120, 185-197.) The DOJ  
12 brought yet another demurrer, which the Court overruled.

13 Just a few weeks later, the DOJ allegedly began a 50-day process of correcting the DES to include  
14 the option to select "Other" from the dropdown menu that populates when one selects "long gun" as the  
15 gun type. (Barvir Decl. Supp. Petrs.' Oppn. to Mot. to Dismiss ("Barvir Decl."), Ex. 5 at pp. 31-32, Ex. 6  
16 at p. 38.) The DOJ did not, however, inform Petitioners that it had begun these efforts until September  
17 15, 2021, when DOJ attorneys informed Petitioners' counsel by email that the DOJ had "been working  
18 on a modification of the DES to add an 'Other' option to the 'gun type' menu." (*Id.*, ¶ 2 & Ex. 1 at p. 10.)  
19 The email did not otherwise specify what the change to the DES would look like or when it would be  
20 made public. (*Ibid.*) Even so, the DOJ declared that the First, Second, and Eighth Causes of Action were  
21 moot, and requested a conference to discuss dismissal of those claims. (*Ibid.*) The parties thus met on  
22 September 21, to discuss the effect of the anticipated DES change on this lawsuit. (*Id.*, ¶ 3.) During the  
23 call, Petitioners understandably hesitated to dismiss their claims because the DOJ's attorneys did not, at  
24 that time, have any further details about the DES modification (*Ibid.*) So the parties agreed to meet again  
25 to explore the possibility of dismissal once more was known. (*Ibid.*)

26 On September 27, 2021, the DOJ issued a bulletin notifying DES users that, beginning on  
27 October 1, 2021, they could select "Other" from among the "long gun" subtypes listed in the DES.  
28 (Leyva Decl., ¶¶ 5-6 & Ex. A at p. 1.) Under the heading "What Is Considered an 'Other' Firearm," the

1 bulletin defined “[a]n ‘Other’ type firearm [as] a firearm that does not meet the definition of a rifle (Pen.  
2 Code § 17090), shotgun (Pen. Code § 17190), or pistol (Pen. Code § 16350).” (*Id.*, Ex. A at p. 1.) The  
3 bulletin then advised dealers that “[p]rior to the sale, loan, or transfer of an ‘Other’ type firearm [they]  
4 *must* confirm” two things: (1) that the “Other” firearm “has a fixed magazine of ten rounds or fewer”; and  
5 (2) that it “has an overall length of 30 inches or more.” (*Ibid.*, italics added.) It also warned dealers that  
6 “[i]f the ‘Other’ does not meet the criteria above or is considered an ‘Other’ Assault Weapon pursuant to  
7 Penal Code 30900,<sup>2</sup> **“the ‘Other’ may not be sold, loaned or transferred** in the DES.” (*Ibid.*, double  
8 emphasis original.) But there are countless “Other” firearms that are lawful to transfer and possess in  
9 California even though they do not meet both criteria and are not “‘Other’ Assault Weapons” under  
10 section 30900. (Barvir Decl., ¶ 5.) This includes many firearms identified in the operative complaint  
11 (e.g., rimfire Title 1 firearms, buntline revolvers, and barreled actions without a stock). (*Ibid.*; see SAC,  
12 ¶¶ 6, 79, 99-102.)

13 When counsel for the parties met on September 28th, Petitioners expressed their concerns that, as  
14 drafted, the bulletin advised firearms dealers that the very “Other” firearms at issue in this lawsuit “may  
15 not be sold, loaned or transferred in the DES.” (Levya Decl., Ex. A at p. 1, double emphasis original;  
16 Barvir Decl., ¶¶ 5-6.) Petitioners thus reasoned that the claims were not moot and declined the DOJ’s  
17 request to voluntarily dismiss those claims. (Barvir Decl., ¶ 6.) The DOJ responded by issuing another  
18 bulletin—expressly superseding the September 27 bulletin—just two days later. (Levya Decl., ¶ 9 & Ex.  
19 B; Barvir Decl., ¶ 7.) The second bulletin replaced the guidance about “What Is Considered an ‘Other’  
20 Firearm” with the following:

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

25 (Leyva Decl., Ex. B at p. 1.) The September 30 bulletin did not instruct firearm dealers that they must  
26 confirm that the “Other” firearm has a fixed magazine of 10 rounds or fewer and that it is longer than 30  
27

28 <sup>2</sup> The bulletin later defines an “Other” assault weapon in a separate section entitled “What Is

1 inches total. (*Ibid.*) And gone was the warning that firearms that do meet those criteria cannot be  
2 transferred in the DES. (*Ibid.*) Instead, it simply said: “Note: Prior to the sale, loan, or transfer of a  
3 centerfire “Other” type firearm, you must confirm the “Other” does not meet the criteria of an “Other”  
4 Assault Weapon pursuant to Penal Code 30515.” (*Ibid.*) When the “Other” option became available, this  
5 was the DOJ guidance in place. The DOJ would, however, later issue a third bulletin about the sale of  
6 “Other” firearms, superseding the first two bulletins. (Barvir Decl., ¶ 8 & Ex. 2.)<sup>3</sup>

7 On October 29, 2021, counsel for the DOJ requested a meet-and-confer to discuss the DOJ’s  
8 anticipated motion to dismiss, reaching out to discuss the potential mootness of Petitioners’ claims for  
9 the first time since the September 30 bulletin was issued. (Barvir Decl., ¶ 9 & Ex. 3 at p. 19.) During  
10 that conference, Petitioners repeatedly offered to dismiss the First, Second, and Eighth claims if the DOJ  
11 offered some assurance that it would not resume blocking lawful transfers of undefined firearm  
12 subtypes. (*Id.*, ¶ 10.) To that end, Petitioners proposed that the parties agree to a stipulated judgment,  
13 consent decree, or settlement. (*Ibid.*) The DOJ rejected the first two out of hand but agreed to consider  
14 proposed settlement language. (*Ibid.*) Petitioners thus sent a proposed agreement to the DOJ for review.  
15 (*Id.*, ¶¶ 10-11.) And at the DOJ’s request, they provided caselaw explaining that when a dispute  
16 involving an issue of public interest is likely to recur, courts may exercise their inherent discretion to  
17 hear claims that might otherwise be moot. (*Ibid.*) Counsel for the DOJ asked for clarification on some of  
18 the proposed terms, but neither rejected Petitioners’ proposal nor offered any alternative language. (*Id.*, ¶  
19 12.) Instead, the DOJ filed this motion to dismiss. (*Ibid.*)

## ARGUMENT

21   **I. THE COURT SHOULD EXERCISE ITS DISCRETION TO HEAR THE FIRST, SECOND, AND EIGHTH**  
22   **CAUSES OF ACTION BECAUSE THEY INVOLVE A DISPUTE OVER ISSUES OF BROAD PUBLIC**  
23   **INTEREST THAT ARE LIKELY TO RECUR**

23 The DOJ contends that the Court should exercise its inherent authority to dismiss Petitioners' 24 First, Second, and Eighth Causes of Action as moot because it voluntarily updated the DES to include an 25 "Other" option allowing firearms dealers to process transactions for undefined firearm subtypes. (Mot., 26 pp. 12-19.) But even if the matter has been mooted by the modification to the DES, that is not the end of

28 | Considered an ‘Other’ Assault Weapon.” (Leyva Decl., Ex. A at p. 1.)

1 the inquiry. To the contrary, California courts may consider an otherwise moot claim “[i]f an action [1]  
2 involves a matter of continuing public interest and [2] the issue is likely to recur, a court may exercise an  
3 inherent discretion to resolve that issue, even though an event occurring during its pendency would  
4 normally render the matter moot.” (*Liberty Mut. Ins. Co. v. Fales* (1973) 8 Cal.3d 712, 715-716 (*Liberty*  
5 *Mut.*)).) This rule applies to both declaratory relief actions (*ibid.*) and petitions for writ of mandamus  
6 (*Roger v. Cnty. of Riverside* (2020) 44 Cal.App.5th 510, 529-530). This case easily meets this standard.

7       **A.     The Dispute Involves Issues of Broad Public Interest**

8       While the caselaw about what constitutes a matter of public interest in this context provides no  
9 hard-and-fast rules, other areas of the law provide some helpful guidance. For instance, in the context of  
10 California’s private attorney general statute (Code Civ. Proc., § 1021.5), court have long held that  
11 “[l]itigation which enforces constitutional rights *necessarily affects the public interest* and confers a  
12 significant benefit upon the general public.” (*City of Fresno v. Press Commcns., Inc.* (1994) 31  
13 Cal.App.4th 32, 44, italics added.)<sup>4</sup> But of course, whether an issue is one of public interest is not  
14 limited to constitutional questions. Courts have found a broad public interest to exist when the dispute  
15 involves a claim of declaratory relief regarding the challenged acts of government officials if a decision  
16 will affect the official’s successors and similarly situated officials. (*Cnty. of Madera v. Gendron*, 59 Cal.  
17 2d 798, 804 (1963) [holding that a dispute over whether the county could withhold a D.A.’s salary for  
18 failure to conform with a law barring private practice was not moot even though the D.A. lost reelection  
19 because “the instant question affects the defendant’s successors in office as well as the district attorneys  
20 of other counties”].) And they have likewise found a broad public interest in cases touching upon the  
21 rights and interests of a large population of people not party to the case. (See, e.g., *Eye Dog Found. v.*  
22 *State Bd. of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 542 (*Eye Dog*) [observing that the case  
23 involved not only the interests of the parties, but also the interests of the state’s blind population].)

24       There can be no doubt that the relevant claims involve matters of broad public interest. Indeed, it

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<sup>3</sup> This bulletin made further changes to the guidance not relevant here. (Barvir Decl., ¶ 8.)

27       <sup>4</sup> Similarly, under the federal preliminary injunction standard, which requires a showing that  
28 temporary relief is in the public interest, courts have long recognized that “*all citizens* have a stake in  
upholding the Constitution” and have “concerns [that] are implicated when a constitutional right has been  
violated.” (*Preminger v. Principi* (9th Cir. 2005) 422 F.3d 815, 826, italics added.)

1 directly implicates the public's fundamental interest in protecting and vindicating the constitutional right  
2 the right to acquire and possess lawful firearms. (See, e.g., SAC, ¶¶ 116-122, 124-127, 186-187.) It also  
3 involves the public interest in ensuring that the state's regulatory bodies do not exceed their delegated  
4 authority through underground regulations in violation of the Administrative Procedure Act. (See, e.g.,  
5 SAC, ¶¶ 186-197.) This case also seeks a declaration about the legality of conduct by the Attorney  
6 General and the DOJ that will not only direct the conduct of those currently serving, but of their  
7 successors in office. (See *Cnty. of Madera v. Gendron, supra*, 59 Cal. 2d at p. 804.) And this dispute  
8 concerns the interests of both the named parties, as well the thousands of firearm purchasers, dealers,  
9 and manufacturers seeking to transfer firearms in California. (See *Eye Dog, supra*, 67 Cal.2d at p. 542.)  
10 What's more, the case arguably even involves *the state's* interest in ensuring that its statutorily created  
11 systems for registering and tracking lawful firearm sales are operating correctly. (Cf., *Eye Dog, supra*,  
12 67 Cal.2d at p. 542 [holding that "by the enactment of legislation favoring the blind (Welf. & Inst. Code,  
13 § 13000 et seq; Pen. Code, §§ 643a, 643.5), the Legislature has impliedly made their welfare a matter of  
14 continued public interest".]) That interest, in turn, affects the important interest in public safety and  
15 making sure that, as the law requires, firearm transactions are properly documented.

16                   **B. The Dispute Involves Issues That Are Likely to Recur**

17                   The next step of the inquiry asks whether "the issue is likely to recur." (*Liberty Mut., supra*, 8  
18 Cal.3d at pp. 715-716.) What constitutes a likelihood of recurrence is a fact-specific inquiry that might  
19 consider any number of circumstances, including whether the cessation of the challenged conduct was  
20 voluntary, whether there is some assurance that the conduct will not be resumed, and whether the party  
21 that changed its behavior has adopted a position that it was not required to. (See, e.g., *Marin Cnty. Bd. of  
22 Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929 (*Marin Cnty. Bd. of Realtors*); *Cnty. of Los Angeles  
23 v. Davis* (1979) 440 U.S. 625, 631; *Cook v. Craig* (1976) 55 Cal.App.3d 773, 780 (*Cook*).) So even  
24 though the DOJ modified the DES to facilitate the lawful transfer of undefined firearm subtypes (for  
25 now), the dispute is reasonably likely to recur because the DOJ voluntarily ended the illegal policy  
26 blocking the lawful transfer of such firearms, it has several readily available tools to reinstate the policy  
27 on its own volition, and it refuses to agree *not* to do so.

28                   Recall, the DOJ voluntarily began the process of adding the "Other" option to the DES in July

1 2021 (Barvir Decl., Ex. 6 at p. 38)—over a year since this case was first filed and nearly two years since  
2 Franklin Armory notified the DOJ of its concerns in writing (SAC, ¶¶ 68-69 & Ex. C). Moreover, the  
3 DOJ has repeatedly refused to acknowledge that it lacks authority to block the lawful transfer of  
4 otherwise legal firearms. It even argued in its latest demurrer that the Penal Code does not impose any  
5 duty to modify the DES to allow for the transfer of undefined subtype firearms. (DOJ’s Mem. Supp.  
6 Demurrer to 2d Am. Compl. & Petit., pp. 16-17.) Without an order from this Court, the DOJ could just  
7 as easily reinstate the administrative and technological barriers that Petitioners challenge here. And the  
8 DOJ has several options for doing just that. For instance, it could simply modify the DES again,  
9 removing the “Other” option altogether. Indeed, deploying the changes to the DES took only a couple of  
10 months at most (Barvir Decl., Ex. 5 at pp. 31-32, Ex. 6 at p. 38), and it is very plausible that undoing  
11 such changes would be even quicker.

12 Alternatively, the DOJ could issue a fourth (or fifth or sixth) bulletin that operates to block the  
13 transfer of undefined firearm subtypes (or any lawful firearm, for that matter) through the DES. There  
14 appears to be nothing preventing the DOJ—aside from its own judgment—from issuing a bulletin telling  
15 firearm dealers that they cannot use the “Other” option at all despite its availability. Or it could redefine  
16 (*yet again*) what constitutes an “Other” firearm that may be transferred in the DES, warning dealers not  
17 to use the option for any firearm that fails to meet the new criteria. Given how quickly the DOJ can  
18 deploy these bulletins, such a concern is hardly far-fetched. Indeed, it only took two days for the DOJ to  
19 issue a second bulletin redefining what it considers an “Other” firearm that can be legally transferred in  
20 the DES.<sup>5</sup> But even if the September 30 bulletin were drafted and released unusually fast, a DOJ  
21 employee verified that drafting and issuing bulletins of this nature takes just 7-10 days on average.

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24 <sup>5</sup> The DOJ suggests it only intended the second bulletin to clarify, but not change, what constitutes an  
25 “Other” firearm that may be transferred in the DES because it merely specified that only centerfire  
26 firearms can be “Other” assault weapons that cannot be. (Levya Decl., ¶¶ 7-9; Mot., pp. 14-15.) The DOJ  
27 is, however, less than forthcoming about the extent of the changes it made. (See *supra*, pp. 7-10  
28 [discussing the various changes in detail].) But even if it had merely slipped in a reference to “centerfire”  
firearms, that addition alone changes the class of “Other” firearms that cannot be legally transferred in  
the DES from including both assault weapons *and* legal firearms that are not assault weapons, to  
including only assault weapons. (See Levya Decl., ¶¶ 8-9.) Regardless of the drafters’ intent, the meaning  
of the second bulletin differed dramatically from the first. So even if the second bulletin merely corrected  
an inadvertent omission that only incidentally changed the meaning of “Other” as the DOJ claims (*id.*, ¶¶

1 (Barvir Decl., Ex. 7 at p. 44.) She also testified that “[i]f it’s deemed necessary, [the DOJ Bureau of  
2 Firearms] can *always* release bulletins.” (*Id.*, Ex. 7 at p. 47.) The record thus shows just how easily the  
3 DOJ could again restrict the lawful transfer of undefined firearm subtypes. Petitioners should not have  
4 their claims mooted, only for the DOJ to turn around and re-erect the administrative and technological  
5 barriers to the lawful transfer of undefined firearm subtypes.

6 To be sure, that a dispute *can* recur does not necessarily mean it is “likely” to. But this Court  
7 need not definitively decide that the DOJ will reinstate the policy challenged here because the DOJ has  
8 provided no assurances that it will not. That fact tips sharply in favor of finding a reasonable likelihood  
9 of recurrence. Our Supreme Court confirmed as much when it held, in *Marin County Board of Realtors*,  
10 that the voluntary end of an allegedly unlawful practice, with “*no assurance that the [actor] will not*  
11 *[resume] it in the future*,” “ ‘does not remove the pending charges of illegality from the sphere of  
12 judicial power or relieve the court of the duty of determining the validity of such charges *where by the*  
13 *mere volition of a party the challenged practices may be resumed*.’ ” (16 Cal.3d at p. 929, italics added,  
14 quoting *United States v. Ins. Bd. of Cleveland* (N.D. Ohio 1956) 144 F.Supp. 684, 691; see also *Cnty. of*  
15 *Los Angeles v. Davis*, *supra*, 440 U.S. at p. 631 [holding that “voluntariness of the cessation is relevant  
16 to the issue of the likelihood of recurrence, *i.e.*, *the likelihood is increased if the cessation of conduct*  
17 *was merely a voluntary choice by the defendant and the defendant remains free to change its position at*  
18 *will*,” italics added].)

19 The DOJ’s motion does not address whether the dispute is likely to recur, even though the DOJ  
20 knew the Petitioners would make this very argument. Indeed, at the DOJ’s request, Petitioners provided  
21 counsel with caselaw supporting their position before the DOJ filed this motion. (Barvir Decl., ¶¶ 10-11,  
22 Ex. 3.) Rather than address those authorities, the DOJ pretends that Petitioners’ only concern was with  
23 the issuance of another bulletin superseding the September 27 bulletin. (Mot., at p. 14:16-21, and  
24 discussed further *infra*.) But Petitioners’ principal concern here is not simply with the DOJ’s serial  
25 issuance of bulletins affecting the use of the “Other” option to process the transfer of undefined firearm  
26 subtypes in the DES—though that is certainly relevant as discussed above. Rather, like the Court in  
27

28 7-9), it is of no consequence. The DOJ has shown that, at a moment’s notice, it can issue new guidance

1     *Marin County Board of Realtors*, Petitioners object to the DOJ’s refusal to give any reasonable  
2 assurance that, having *voluntarily* ended the allegedly unlawful practice, it will not simply reverse  
3 course once again and resume blocking the lawful transfer of undefined firearm subtypes. If they had  
4 offered such assurance, Petitioners would likely have no misgiving about voluntarily dismissing their  
5 claims as moot. Indeed, Petitioners requested assurances from the DOJ and expressly agreed to dismiss  
6 the First, Second, and Eighth claims had they received it.

7           In trying to avoid the time and expense of litigating this motion, Petitioners met and conferred  
8 with the DOJ in early November and proposed three ways to resolve the First, Second, and Eighth  
9 Causes of Action short of further motions practice. Petitioners proposed that the parties enter a stipulated  
10 judgment, a consent decree, or a settlement agreement—any one of which would provide some  
11 assurance that the DOJ it would not simply reinstate the challenged policy. (Barvir Decl., ¶ 10.) Counsel  
12 for the DOJ agreed to consider only settlement, so Petitioners drafted and sent a proposed agreement for  
13 their consideration. (*Id.*, ¶¶ 10-11.) As consideration for voluntarily dismissing their claims, Petitioners’  
14 sought only an agreement that DOJ would not resume a policy of blocking the transfer of firearms  
15 transfer and possess in California at the time of the transfer. (Barvir Decl., Ex. 4 at p. 24.) What’s more,  
16 the proposal expressly stipulated that the agreement did not “revoke the [DOJ’s] authority to evaluate,  
17 consider, propose, adopt, and implement changes to its policies, procedures, and regulations, including  
18 the maintenance of the DES, as long as those changes are consistent with state and federal law.” (*Ibid.*)  
19 Nor did Petitioners request the payment of damages, fees, or costs as a condition of settlement. In short,  
20 Petitioners asked the DOJ to agree to a settlement that simply requires it to follow the law going  
21 forward.<sup>6</sup> Yet the DOJ did not even attempt to negotiate over what terms they might be amenable to.  
22 (*Id.*, ¶ 12.) That the DOJ has refused to offer any assurance that it will not reinstate the allegedly  
23 unlawful policy that it voluntarily ended, via settlement or otherwise, is sufficient for this Court to  
24

25 \_\_\_\_\_  
26 changing what it considers an “Other” firearm that can be legally transferred in the DES.

27           <sup>6</sup> The State may protest that these negotiations are confidential. But the Evidence Code only forbids  
28 the admissibility of settlement communications to prove liability. (Evid. Code, § 1152, subd. (a); see also  
*Fletcher v. W. Natl. Life Ins. Co.* (1970) 10 Cal.App.3d 376, 396 [“Plaintiff, however, did not offer the  
letter to prove liability under the policy but, rather, as a part of his proof of the instrumentality of the tort.  
Section 1152, therefore, did not preclude its admission”].) The proposed settlement language and related

1 exercise its discretion to decide Petitioners' claims even if they are moot. But there is more.

2       Despite its voluntary change to the DES to facilitate the transfer of the firearms at issue, the DOJ  
3 has steadfastly maintained throughout this litigation that it is under no duty to do so. Nor has the DOJ  
4 ever conceded it was wrong to block the transfer of lawful firearms in the first place. Quite the opposite,  
5 actually. The DOJ filed two demurrers arguing otherwise, and only began work to fix the DES in mid-  
6 July 2021, *well after Petitioners sued*. (Barvir Decl., Ex. 5 at pp. 31-32; *id.*, Ex. 6 at p. 38.) This too is  
7 evidence of that the dispute is likely to recur. (See *Cook v. Craig* (1976) 55 Cal.App.3d 773, 780 [“As to  
8 future revisions of the procedures, it is apparent that defendant’s unilateral decision to disclose . . . is  
9 also unilaterally rescindable. Given the position of defendant that it has no legal obligation to disclose  
10 these procedures, and its voluntary disclosure only after litigation was commenced, we cannot say that  
11 the dispute will not recur.”]; see also *E. Bay Mun. Util. Dist. v. Cal. Dept. of Forestry & Fire Prot.*  
12 (1996) 43 Cal.App.4th 1113, 1132 [agreeing with *Cook* that where an agency takes a stance that it was  
13 not obligated to comply, despite its decision to voluntarily do so, a court may “reasonably conclude that  
14 the issue was likely to recur”].)

15       In other words, the DOJ’s position conflicts with the idea that it regrets the conduct challenged  
16 here and commits not to engage in it again. It is thus reasonably likely the DOJ will resume that conduct,  
17 and so these issues are not moot. But even if they are, the Court may still exercise its discretion to decide  
18 Petitioners’ claims because this dispute involves issues of broad public interest that are likely to recur.

19 **II. THE COURT MAY ALSO EXERCISE ITS DISCRETION TO HEAR THE FIRST, SECOND, AND EIGHTH  
20 CAUSES OF ACTION BECAUSE THEY INVOLVE A DISPUTE LIKELY TO RECUR BETWEEN THE  
21 SAME PARTIES**

22       Petitioners believe this case involves issues of tremendous public importance. But even if this  
23 Court disagrees, it may still hear this case because it involves a dispute likely to recur *between the same*  
24 *parties*. Indeed, the requirement that the matter be of public interest evaporates when there may be a  
25 recurrence of the controversy between the same parties. (*Cucamongans United for Reasonable Expansion*  
26 *v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480, citing *Grier v. Alameda-Contra*  
27 *Costa Transit Dist.* (1976) 55 Cal.App.3d 325, 330.) Here, there is no doubt of that. As discussed above,

28 emails are not presented here to establish liability. Instead, they are being submitted to show that the DOJ

1 there is a reasonable likelihood that this dispute will recur, despite the DOJ's voluntary cessation of the  
2 allegedly unlawful policy. (See *supra*, pp. 12-16.) If the DOJ resumes unlawfully blocking the transfer of  
3 undefined firearm subtypes, Petitioners will not hesitate to bring another lawsuit against the DOJ and  
4 Attorney General challenging that action.

5 That these issues are likely to recur between Petitioners and the DOJ is apparent from the DOJ's  
6 conduct here, including its motion to dismiss. Even though the DOJ refused to enter a settlement  
7 agreement giving Petitioners confidence that the DOJ would not resume blocking the transfer of  
8 undefined firearm subtypes, it could have at least stated clearly in its brief that it would not.<sup>7</sup> Instead, the  
9 DOJ spends its brief pedantically limiting the scope of Petitioners' complaint in unreasonable ways. For  
10 instance, it argues that "the Court should reject any argument Petitioners make that their claims are not  
11 moot because the DOJ could in the future issue notices or bulletins" because the "Second Amended  
12 Complaint and Petition does not include any allegations regarding notices or bulletins issued by the DOJ,  
13 and thus any relief involving notices or bulletins would be beyond the scope of Petitioners' claims."  
14 (Mot., at p. 18:13-20.) This is a misleading point that tries to defeat the SAC on a technicality.

15 In the first place, it is unsurprising that the SAC does not expressly mention the DOJ's abuse of  
16 bulletins to advance its policy of blocking the lawful transfer of undefined firearm subtypes. For the DOJ  
17 had issued no bulletin relevant to this action until September 27, 2021, months after the operative  
18 complaint was filed. Even so, the SAC expressly seeks a declaration that the DES "as designed,  
19 implemented, maintained *and/or enforced*" (SAC, at Prayer for Relief, ¶ 6.), is not in compliance with the  
20 relevant laws. Bulletins about the use of the "Other" option are tools for enforcing the DES by the DOJ,  
21 as they instruct firearms dealers on the lawful use of the system. Similarly, the complaint seeks equitable  
22 relief enjoining the DOJ from enforcing "administrative and/or technological barriers that prevent or  
23 otherwise inhibit the sale" of the firearms at issue. (SAC, at Prayer for Relief, ¶¶ 7-8.) The bulletins are  
24 exactly such an administrative barrier, if abused by the DOJ.

25  
26

---

27 rebuffed Petitioners' request for some assurance that it would not reinstate the challenged policy.

28 <sup>7</sup> This Court should not take seriously any Eleventh-Hour attempts by the DOJ to make such  
assurances in its reply briefing. Not only would raising such arguments on reply be a classic example of  
"sandbagging" (*Cal. Sportfishing Prot. All. v. Pac. States Indus., Inc.* (N.D. Cal. Sept. 22, 2015) No. 15-

1        Whether the DOJ blocks the transfer of undefined firearm subtypes through a DES technicality, or  
2 a bulletin directing dealers to use the “Other” option to process the transfer of undefined firearm  
3 subtypes, or any other method, the effect is the same. And Petitioners seek to enjoin the DOJ “from  
4 enforcing administrative and/or technological barriers that prevent or otherwise inhibit the sale, loan  
5 and/or transfer of lawful ‘firearms with an undefined subtype.’ ” (*Ibid.*) That request is in no way limited  
6 to just the technical functionality of the DES. No matter how much the DOJ may wish this case was  
7 solely about the DES, and tries to gaslight Petitioners to that effect, the Petitioners have always been  
8 clear that what they seek to end is the DOJ’s illegal policy of blocking the transfer of lawful firearms.  
9 That the DOJ is so concerned with limiting the Petitioners’ complaint to the DES to the exclusion of any  
10 other method the DOJ might use to block the sale of the lawful firearms at issue is strong indication that  
11 these issues are likely to recur between the same parties. This Court can thus continue to hear the First,  
12 Second, and Eighth Causes of Action.

## CONCLUSION

14 For these reasons, the Court should exercise its inherent discretion to decide claims that might  
15 otherwise be moot and deny the DOJ's motion to dismiss.

17 | Date: January 13, 2022

## MICHEL & ASSOCIATES, P.C.

Anna M. Barvir  
Attorneys for Petitioners-Plaintiffs

28 cv-01482, 2015 WL 5569073, at \*2), any such assurance would carry no legal weight and would be as if no assurance had been made at all.

## PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

On January 13, 2022, I served the foregoing document(s) described as

**PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS THE FIRST, SECOND,  
AND EIGHTH CAUSES OF ACTION IN THE SECOND AMENDED COMPLAINT**

on the interested parties in this action by placing

[X] the original

[ ] a true and correct copy

thereof by the following means, addressed as follows:

Benjamin Barnouw  
Supervising Deputy Attorney General

Email: [ben.barnouw@doj.ca.gov](mailto:ben.barnouw@doj.ca.gov)

Kenneth G. Lake

## Deputy Attorney General

Email: kenneth.lake@dc

10 South Spring Street, Suite 1702  
Los Angeles, CA 90013

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

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

Executed on January 13, 2022, at Long Beach, California.

Laura Palmerin

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

Attorneys for Petitioners - Plaintiffs

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

11 FRANKLIN ARMORY, INC., and  
12 CALIFORNIA RIFLE & PISTOL  
13 ASSOCIATION, INCORPORATED,  
14 Petitioners-Plaintiffs,  
15 v.  
16 CALIFORNIA DEPARTMENT OF JUSTICE,  
17 ROBERT A. BONTA, in his official capacity  
as Attorney General for the State of California,  
and DOES 1-10,  
18 Respondents-Defendants.

| Case No.: 20STCP01747

**DECLARATION OF ANNA M. BARVIR IN  
SUPPORT OF PLAINTIFFS AND  
PETITIONERS' OPPOSITION TO  
RESPONDENTS' MOTION TO DISMISS  
THE FIRST, SECOND, AND EIGHTH  
CAUSES OF ACTION IN THE SECOND  
AMENDED COMPLAINT**

Date: January 27, 2022  
Time: 9:30 a.m.  
Dept.: 85  
Judge: Hon. James C. Chalfant

[Filed concurrently with Opposition to Defendants' Motion to Dismiss the First, Second, And Eighth Causes of Action in the Second Amended Complaint]

Action Filed: May 27, 2020

## DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, hereby declare as follows:

3       1. I am an attorney licensed to practice before all courts in the state of California. The  
4 law firm where I am employed, Michel and Associates, P.C., is counsel of record for Plaintiffs-  
5 Petitioners Franklin Armory, Inc., and California Rifle & Pistol Association, Incorporated  
6 (collectively, “Petitioners”), in the above-entitled matter. I make this declaration in support of  
7 Petitioners’ Memorandum of Points & Authorities in Opposition to Respondents’ Motion to  
8 Dismiss the First, Second, and Eighth Causes of Action to the Second Amended Complaint. I have  
9 personal knowledge of the facts set forth herein and if called as a witness, I could and would  
10 competently testify hereto.

11 2. On September 15, 2021, Deputy Attorney General Alexis Diamond, then counsel of  
12 record for Respondents Department of Justice and the California Attorney General (collectively,  
13 “the DOJ”), emailed me to inform me that “the DOJ had been working on a modification of the  
14 [DROS Entry System (“DES”)] to add an ‘Other’ option to the ‘gun type’ menu” for “long guns.”  
15 That email provided no further details about what the anticipated DES modification would look  
16 like or when it would be available for use by DES users, except to say that they “expect[ed] the  
17 modification [would] be deployed well before the upcoming Trial Setting Conference” then set for  
18 November 30, 2021. Ms. Diamond then declared that “the Petition for Writ of Mandate and related  
19 causes of action are now moot,” and requested that we meet and confer to prepare a “stipulation to  
20 dismiss these causes of action” and “proceed to the damages causes of action.” A true and correct  
21 copy of the email chain between counsel for the parties that began with the September 15, 2021  
22 email from Ms. Diamond is attached as **Exhibit 1**.

23       3.     On September 21, 2021, I met via videoconference with counsel for the DOJ to  
24 discuss the anticipated changes to the DES, their effect on the unstayed claims, and whether  
25 voluntary dismissal was then appropriate. These discussions were, unfortunately, limited because  
26 neither Petitioners nor our office had received any formal notice about the changes, nor would  
27 opposing counsel tell me any specifics about what the anticipated DES modification would look  
28 like or when it would be available for use by DES users. I thus expressed my concern, that without

1 the benefit of these details, Petitioners could not agree to voluntarily dismiss their claims and that,  
2 because the changes had not yet taken effect, the claims were not yet moot in any event. The  
3 parties thus agreed to meet and confer about the possibility of dismissal again once concrete details  
4 about the DES modifications and the deployment of the “Other” option were available.

5       4. On September 27, 2021, the DOJ issued bulletin through the DES entitled  
6 “IMPORTANT NOTICE Regarding the Sale of ‘Other’ Firearms.” The bulletin notified firearms  
7 dealers / DES users, among other things, that effective October 1, 2021, they would have the  
8 option to select “Other” from the list of automatically populated “long gun” “gun types.” The  
9 bulletin went on to define what constitutes an “Other” type firearm and to describe the  
10 circumstances under which a DES user could legally use the “Other” option when transferring  
11 “Other” firearms—as well as the circumstances under which they could not. Defendants submitted  
12 a true and correct copy of the September 27, 2021 Bulletin as Exhibit A to the Declaration of  
13 Maricela Leyva filed in support of this motion.

14       5. Upon receipt of the September 27 bulletin, it was immediately clear to Petitioners’  
15 attorneys that the anticipated changes to the DES did not have the effect of mooting the First,  
16 Second, and Eighth Causes of Action. This was because, in our opinion, the bulletin as drafted did  
17 not authorize firearms dealers / DES users to select the “Other” option in the DES for many, if not  
18 all, of the firearms still at issue. Indeed, the DOJ expressly proscribed the use of the “Other” option  
19 unless the dealer confirmed, “[p]rior to the sale, loan, or transfer of an ‘Other’ type firearm,” that  
20 the firearm has *both* (1) “a fixed magazine of ten rounds or fewer,” and (2) “an overall length of 30  
21 inches or more.” (Leyva Decl., Ex. A at p. 1.) But many “Other” type firearms—defined in the  
22 bulletin as any “firearm that does not meet the definition of a rifle (Pen. Code § 17090), shotgun  
23 (Pen. Code § 17190), or pistol (Pen. Code § 16350)” —are perfectly legal to transfer, own, and  
24 possess in California even though they do not have a fixed magazine of ten rounds or fewer or an  
25 overall length of 30 inches or more, including many firearms at issue in the unstayed claims.

26       6. When counsel for the parties met and conferred again on September 28, 2021, I  
27 notified counsel for the DOJ that, as drafted, the bulletin advised firearms dealers that the very  
28 “Other” firearms at issue in this lawsuit “may not be sold, loaned or transferred in the DES.” I thus

1 told counsel for the DOJ that we did not believe the First, Second, and Eighth Causes of Action  
2 were moot and declined to enter a stipulation with DOJ to voluntarily dismiss those claims.

3       7. Two days later, on September 29, 2021, the DOJ issued another bulletin entitled  
4 “IMPORTANT NOTICE Regarding the Sale of ‘Other’ Firearms” in an apparent attempt to  
5 correct the issues with the first. My office did not receive a copy of the second bulletin until on or  
6 about October 1, 2021. Defendants submitted a true and correct copy of the September 29, 2021  
7 Bulletin as Exhibit B to the Declaration of Maricela Leyva filed in support of this motion.

8       8. At some point in late Fall 2021, though the exact date is not known to me, the DOJ  
9 issued a third bulletin again entitled, “IMPORTANT NOTICE Regarding the Sale of ‘Other’  
10 Firearms.” During her deposition, Ms. Leyva confirmed that this document superseded both prior  
11 bulletins, even though the document itself says it only supersedes the September 27 bulletin.  
12 Through this third bulletin, the DOJ corrected additional errors, but those changes are not directly  
13 relevant here. A true and correct copy of the October Bulletin is included as **Exhibit 2**.

14       9. I did not hear from the DOJ about the DES modifications, the “Other” option, or the  
15 potential mootness of the First, Second, and Eighth Causes of Action until about October 29, 2021,  
16 when Deputy Attorney General Kenneth G. Lake, counsel of record for the DOJ, emailed me to  
17 request a meet-and-confer about DOJ’s anticipated motion to dismiss.

18       10. In response to that request, I met again with counsel for the DOJ on or about  
19 November 3, 2021, to discuss the update to the DES and the DOJ’s potential motion to dismiss.  
20 During that conference, I repeatedly assured counsel that Petitioners would agree to voluntarily  
21 dismiss the First, Second, and Eighth Causes of Action as moot if the DOJ could provide some  
22 form of assurance that it would not reinstate its policy of blocking the transfer of lawful undefined  
23 firearm subtypes, whether through additional changes to the DES (removing the “Other” option  
24 from the dropdown menu, for example) or by issuing new bulletins proscribing the use of the  
25 option for certain firearm transfers. To that end, I suggested that the parties could enter a stipulated  
26 judgment, a consent decree, or a settlement agreement. The DOJ rejected the first two options,  
27 agreeing only to consider a settlement agreement. So, in order to begin good faith negotiations for  
settlement, I offered to draft proposed language for the DOJ’s consideration. And at Mr. Lake’s

1 request, I agreed to provide some authorities supporting our position that the unstayed claims, even  
2 if they are moot, may still be decided by the court if the dispute involves issues of public interest  
3 likely to recur.

4       11. So, in an attempt to negotiate settlement “so the parties may avoid the need to  
5 litigate another demurrer” (or motion to dismiss, as it were), I drafted a proposed settlement  
6 agreement and sent it via email to Ms. Diamond, Mr. Lake, and Supervising Deputy Attorney  
7 General Ben Barnouw, all counsel of record for the DOJ, on November 9, 2021. The email also  
8 cited caselaw showing that courts may hear otherwise moot cases if they present issues of public  
9 interest that likely to recur. A true and correct copy of my November 9, 2021 email to attorneys  
10 Diamond, Lake, and Barnouw is attached as **Exhibit 3**. And a true and correct copy of my  
11 November 9, 2021 proposed draft settlement agreement is attached as **Exhibit 4**.

12       12. Having heard nothing from the DOJ in response to my proposed settlement  
13 language, on November 16, 2021, I reached out to Mr. Barnouw via email to confirm that he  
14 received the draft and discuss whether his clients would be amenable to the terms proposed or  
15 something similar. In response, Mr. Barnouw requested, and I agreed, to schedule a telephone  
16 conference. During that telephone conference, held on or about November 18, 2021, I discussed  
17 with Mr. Barnouw various outstanding matters, including the proposed settlement, the DOJ’s  
18 anticipated motion to dismiss, and pending discovery matters. While Mr. Barnouw asked for some  
19 clarification about some of the proposed terms, the DOJ regrettably never substantively responded  
20 to the proposed settlement agreement. Instead, it proceeded with this motion.

21       13. On December 28, 2021, Petitioners deposed Ms. Cheryle Massaro-Florez, who is an  
22 employee of the DOJ with the job title of Supervisor II and executed a declaration in support of the  
23 DOJ’s motion to dismiss. The parties did not receive the draft transcript of that deposition until  
24 January 6, 2022, so Ms. Massaro-Florez has until February 5, 2022, to make any edits to the draft.  
25 And the final, certified transcript will not be available until after that date. As such, a true and  
26 correct copy of relevant excerpts from the draft transcript of the December 28, 2022 deposition of  
27 Ms. Massaro-Florez is attached as **Exhibit 5**. Once the final transcript is available, Petitioners will  
28 provide the same to the Court.

1       14. Attached to the notice of the deposition of Ms. Massaro-Florez, I requested several  
2 categories of documents. Ms. Massaro-Florez and the DOJ produced those documents at the  
3 deposition on December 28, 2021. True and correct copies of all documents produced in response  
4 are attached as **Exhibit 6**.

5       15. On December 29, 2021, Petitioners deposed Ms. Maricela Leyva, who is an  
6 employee of the DOJ with the job title of Staff Services Manager I and executed a declaration in  
7 support of the DOJ’s motion to dismiss. The parties did not receive the draft transcript of that  
8 deposition until January 6, 2022, so Ms. Leyva has until February 5, 2022, to make any edits to the  
9 draft. And the final, certified transcript will not be available until after that date. As such, a true  
10 and correct copy of relevant excerpts from the draft transcript of the December 29, 2022 deposition  
11 of Ms. Leyva is attached as **Exhibit 7**. Once the final transcript is available, Petitioners will  
12 provide the same to the Court.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct. Executed on January 13, 2022, at Temescal Valley, California.

  
Anna M. Barvir  
Declarant

# EXHIBIT 1

**From:** [Alexis Diamond](#)  
**To:** [Anna M. Barvir](#)  
**Cc:** [Ben Barnouw](#); [Kenneth Lake](#)  
**Subject:** RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]  
**Date:** Friday, September 17, 2021 8:51:38 AM  
**Attachments:** [image001.png](#)

---

Hi Anna,

That's fine, we can agree to an extension on the responses as well as your production of documents pending the outcome of our call next Tuesday.

Thanks,

Alexis Diamond  
Deputy Attorney General  
Office of the Attorney General  
Department of Justice  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Phone (213) 269-6229  
[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)

---

**From:** Anna M. Barvir <ABarvir@michellawyers.com>  
**Sent:** Thursday, September 16, 2021 5:14 PM  
**To:** Alexis Diamond <Alexis.Diamond@doj.ca.gov>  
**Cc:** Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Kenneth Lake <Kenneth.Lake@doj.ca.gov>  
**Subject:** RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]

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

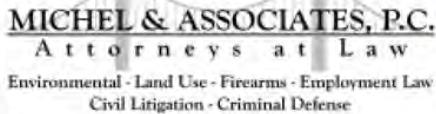
Thanks for your response, Alexis. I will confirm a time for the call with Jason and let you know what works between 2:30 and 5 on Tuesday.

Re: discovery, I assume you are referring to the Form Interrogatories, currently due on Tuesday. I am not certain that we agree all relevant aspects are mooted yet, especially considering that the changes have not yet been implemented. Perhaps we could agree to a an extension on the responses pending the outcome of our call on Tuesday. At that point, we can discuss whether the discovery is totally moot. Let me know if that makes sense to you.

Regards,  
Anna

**Anna M. Barvir**  
Partner

Direct: (562) 216-4453  
Main: (562) 216-4444  
Fax: (562) 216-4445  
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**From:** Alexis Diamond <[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)>  
**Sent:** Thursday, September 16, 2021 4:57 PM  
**To:** Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>  
**Cc:** Ben Barnouw <[Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>  
**Subject:** RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]

Hi Anna,

We are available next Tuesday between 2:30 – 5:00 p.m. to discuss.

At this point, our understanding is that discovery is now moot, please confirm.

Best,

Alexis Diamond  
Deputy Attorney General  
Office of the Attorney General  
Department of Justice  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Phone (213) 269-6229  
[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)

---

**From:** Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>  
**Sent:** Thursday, September 16, 2021 3:46 PM  
**To:** Alexis Diamond <[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)>  
**Cc:** Ben Barnouw <[Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>  
**Subject:** RE: Franklin Armory, Inc. et al. v. Department of Justice et al. [MA-Interwoven.FID84998]

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

Good afternoon, Alexis,

Thanks for letting me know that the DOJ is working to modify the DES to add the “other” option to the “gun type” dropdown menu. While it is unfortunate that the parties have had to engage in litigation to initiate that change, we are glad to hear the option will soon exist. However, as your

email alluded, the anticipated change raises a lot of affecting the ongoing lawsuit. I have not yet had the chance to speak with my co-counsel about this, and I will likely not be able to do so before tomorrow. As such, can we postpone our call until Tuesday? I should be available all day, except for 10-11am.

Kind Regards,



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**From:** Alexis Diamond <[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)>  
**Sent:** Wednesday, September 15, 2021 11:10 AM  
**To:** Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>  
**Cc:** Ben Barnouw <[Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)>; Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>  
**Subject:** Franklin Armory, Inc. et al. v. Department of Justice et al.

Hi Anna,

We wanted to let you know that the Department of Justice has been working on a modification of the DES to add an "Other" option to the "gun type" menu, and we expect the modification will be deployed well before the upcoming Trial Setting Conference. Given this, the Petition for Writ of Mandate and related causes of action are now moot. We would like to work with you on a stipulation to dismiss these causes of action, so the parties can proceed with the damages causes of action. We are available to speak with you about this on Thursday afternoon at 2:30 or later or any time on Friday. Let us know what time works for you.

Best,

Alexis Diamond  
Deputy Attorney General  
Office of the Attorney General  
Department of Justice  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Phone (213) 269-6229  
[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)

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# **EXHIBIT 2**

**12**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**30-DAY RESTRICTION**

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

**AGE RESTRICTION**

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

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

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

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



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

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

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

**STEP 1**

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

Long Gun Transactions

Dealer Long Gun Sale

Private Party Long Gun Transfer

Pawn/Consignment Long Gun Redemption

Curio/Relic Long Gun Sale

Long Gun Loan

**STEP 2**

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

Transaction and Firearm Information

\*Gun Show Transaction? Waiting Period Exemption  
Select

30-Day Restriction Exemption  
Select 30-Day Restriction Exemption

\*Receiver Only \*Make  
Select  \*Model

\*Caliber  
Select Caliber  Additional Caliber

Additional Caliber  
Select Additional Caliber  Additional Caliber

\*Barrel Length \*Unit  
Select Unit  \*Gun Type  
Select Gun Type

\*Serial Number \*Re-enter  
Select  \*Category  
Select Category

\*New/Used Gun \*Firearm Safety  
Select  \*Color  
Select Color

Comments  
  
200 character limit. Characters remaining: 200

**STEP 3**

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

**CALIFORNIA FIREARMS LICENSEE CHECK SYSTEM**

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

State of California  
Department of Justice

AG HOME PAGE \* Indicates Required Field

SKIP TO CONTENT

Office of the  
Attorney General

HELP CONTACT US LOGOFF  
User: JAMES HEWITT | January 27, 2020

**Firearms Shipment Verification Request**

\*Shipment Recipient CL Number

1. You must obtain the five (5) digit CL number from the intended recipient of the firearms shipment.

\*Number of weapons to be shipped  
Handguns  Long Guns

\*Shipment Invoice Number

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

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

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

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

# EXHIBIT 3

17

0444

**From:** Anna M. Barvir  
**To:** Kenneth Lake; Ben Barnouw; Alexis Diamond  
**Cc:** jason; Konstadinos T. Moros; Laura Palmerin; FRANKLINARMORYINC\_2417 Franklin Armory Inc v Cal DOJ Title 1 Other E Mail  
**Subject:** RE: Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss [MA-Interwoven.FID84998]  
**Date:** Tuesday, November 09, 2021 4:34:24 PM  
**Attachments:** [image001.png](#)  
[2175386\\_2021-11-09 Settlement Agreement MAPC DRAFT.DOC](#)

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Good evening, Counsel,

I am writing to follow up on our recent telephonic meet-and-confer, during which your office agreed to consider proposed settlement language detailing the sort of assurances my clients would need in order to agree to dismiss their First, Second, and Eighth Causes of Action. To better facilitate negotiations, especially in light of several fast approaching case deadlines, I am providing draft language for a partial settlement agreement for your review. The specific language we are proposing re: the assurances from your clients can be found at Clause 2 on page 3. Please take a moment to review and consider with your clients whether we will be able to come to some agreement on these issues so the parties may avoid the need to litigate another demurrer.

At Ken's request, I am providing a few citations to precedent for our position that, the change to the DES notwithstanding, the court may still rule on the First, Second, and Eighth Causes of Action. In short, it is well settled that "[t]he general rule regarding mootness ... is tempered by the court's discretionary authority to decide moot issues. When an action involves a matter of continuing public interest that is likely to recur, a court may exercise an inherent discretion to resolve that issue, even if an event occurring during the pendency of the appeal normally would render the matter moot." (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 867.) This exception has been applied to both declaratory relief actions (*ibid.*) and petitions for writ of mandamus (*Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 529-530, citing *Californians for Alts. to Toxics v. Dept. of Pesticide Reg.* (2006) 136 Cal.App.4th 1049, 1069). Hopefully these cases will serve as a good starting point for you as you consider whether settlement of these claims will be possible.

Thank you in advance for your consideration.

Regards,

Anna

**Anna M. Barvir**

Partner

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

Attorneys at Law

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Civil Litigation - Criminal Defense

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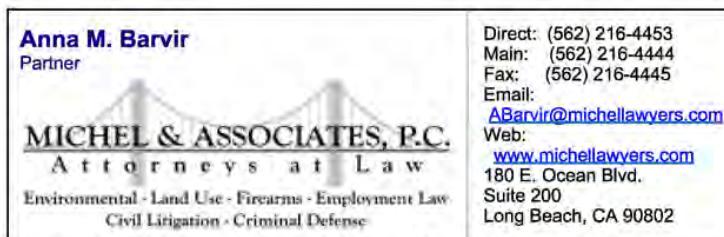
**From:** Anna M. Barvir

**Sent:** Monday, November 01, 2021 12:44 PM  
**To:** Kenneth Lake <Kenneth.Lake@doj.ca.gov>; Laura Palmerin <lpalmerin@michellawyers.com>; Konstadinos T. Moros <kmoros@michellawyers.com>; jason <jason@calgunlawyers.com>  
**Cc:** Ben Barnouw <Ben.Barnouw@doj.ca.gov>; Alexis Diamond <Alexis.Diamond@doj.ca.gov>  
**Subject:** RE: Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss

Good afternoon, Ken. Thank you for reaching out to schedule a meet and confer regarding the update to the DES and the State's potential motion to dismiss. I am, unfortunately, unable to meet today, but should have some availability tomorrow after 11 am or Wednesday before 4 pm. Please let me know what works best for you.

Regards,

Anna



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**From:** Kenneth Lake <[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)>  
**Sent:** Friday, October 29, 2021 10:22 AM  
**To:** Laura Palmerin <[lpalmerin@michellawyers.com](mailto:lpalmerin@michellawyers.com)>; Anna M. Barvir <[ABarvir@michellawyers.com](mailto:ABarvir@michellawyers.com)>; Konstadinos T. Moros <[kmoros@michellawyers.com](mailto:kmoros@michellawyers.com)>; jason <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>  
**Cc:** Ben Barnouw <[Ben.Barnouw@doj.ca.gov](mailto:Ben.Barnouw@doj.ca.gov)>; Alexis Diamond <[Alexis.Diamond@doj.ca.gov](mailto:Alexis.Diamond@doj.ca.gov)>  
**Subject:** Franklin Armory v. DOJ - Meet and Confer re Motion to Dismiss

Following-up on Judge Chalfant's indication that we file a motion to dismiss based on the modification of the DES and meet and confer relative thereto, could you let us know if you have time to meet and confer on Monday or, if not, a time later in the week that works for you. Thank you for your assistance and cooperation in this matter.

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

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# **EXHIBIT 4**

**21**

**0448**

## **DRAFT SETTLEMENT AGREEMENT**

### **PARTIAL SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Partial Settlement Agreement and Release of Claims (“Agreement”) is made and entered into between Franklin Armory, Inc., and California Rifle & Pistol Association (collectively, “Plaintiffs”) on the one hand, and California Department of Justice and Attorney General Robert Bonta (collectively, “the Department”) on the other hand. The parties to this agreement may hereafter be referred to collectively as “the Parties.” The Agreement is effective as of the last date executed below (the “Effective Date”) and is based on the following recitals:

#### **RECITALS**

WHEREAS, state law mandates that the California Department of Justice collect and use Dealer’s Record of Sale (“DROS”) information to conduct firearms eligibility background checks on perspective firearm purchasers and to record information relating to the firearm being purchased. This information is used to establish and maintain a record of every firearm transaction in California’s Automated Firearms System (“AFS”) for subsequent use by law enforcement in the event a firearm becomes the subject of criminal or civil investigations.

WHEREAS, the Dealer’s Record of Sale Entry System (“DES”) was conceived and implemented in 1996 by the California Department of Justice Bureau of Firearms in response to a legislative mandate, resulting from Senate Bill 671, effective April 1, 1997, to reduce the waiting period for a firearm purchase in California from 15 days to 10 days.

WHEREAS, the DES was initially operated by Verizon Business Services, but beginning in 2014, the California Department of Justice Bureau of Firearms assumed all then-existing responsibilities relating to the DES, including technical support customer service, to meet the needs of the customers.

WHEREAS, DES staff is required to meet the business needs of consumers by responding to and processing DROS-related billing and submissions issues originating from the state’s firearm dealers seven days a week from 7:00 a.m. to 11:00 p.m., including state holidays.

WHEREAS, on March 20, 2020, Plaintiffs filed a Verified Complaint and Petition for Writ of Mandate and/or Prohibition against the Department in the Superior Court for the County of Los Angeles. That case is entitled *Franklin Armory, Inc., et al. v. California Department of Justice, et al.*, Case No. 20STCP01747 (“the Action”).

WHEREAS, in the Action, Plaintiffs allege that the Department had unlawfully barred the transfer of lawful firearms that are neither “rifles,” nor “shotguns,” nor “handguns” (as those terms are defined by statute) through known technological and/or administrative defects of the DES and the failure to timely correct those defects and/or provide an alternative procedure for the submission of Dealer’s Record of Sale information for such firearms. Thus, in their First Cause of Action, Plaintiffs seek a declaration of the Parties’ various rights and responsibilities, as well as an injunction enjoining the Department from enforcing any administrative or technological barrier that prevents or inhibits the transfer of lawful firearms. And, in their Second Cause of Action, Plaintiffs seek a writ of mandate ordering the Department to design, implement, maintain, and enforce updates to the DES such that it does not proscribe the lawful sale, transfer and loan of lawful firearms that are neither “rifles,” nor “shotguns,” nor

## DRAFT SETTLEMENT AGREEMENT

“handguns” (“firearms with undefined subtypes”).

WHEREAS, after Plaintiffs initiated the Action, the state legislature passed Senate Bill 118 (“SB 118”), which, among other things, classified Franklin Armory’s centerfire Title 1 firearm as an “assault weapon,” requiring all such firearms—if possessed by September 1, 2020—to be registered by January 1, 2022. In light of this change to state law, Plaintiffs filed a First Amended Complaint and Petition for Writ of Mandate on August 19, 2020, raising four additional claims, including the Eighth Cause of Action which alleges that the Department’s conduct constitutes a non-statutory ban on firearms with undefined subtypes, and the Department has thus adopted and promulgated an underground regulation in violation the Administrative Procedure Act.

WHEREAS, the court subsequently bifurcated the Action, staying Plaintiffs’ Third, Fourth, Fifth, Sixth, Seventh, and Ninth Causes of Action pending the resolution of Plaintiffs’ First, Second, and Eighth Causes of Action.

WHEREAS, by order dated January 28, 2021, the court sustained the Department’s demurrer to the First, Second, and Eighth Causes of Action, giving Plaintiffs leave to amend. The court held, however, that SB 118 had mooted Plaintiffs’ First, Second, and Eighth Causes of Action as to Franklin Armory’s centerfire Title 1, narrowing the scope of the unstayed claims to other firearms that are neither “rifles,” nor “shotguns,” nor “handguns” but remain lawful to transfer and possess in California.

WHEREAS, on February 17, 2021, Plaintiffs filed the Second Amended Complaint and Petition for Writ of Mandate.

WHEREAS, on September 27, 2021, Defendant Department of Justice notified licensed firearms retailers that, beginning on October 1, 2021 at 5:00 a.m., the DES would include the option to select “Other” from the dropdown list for types of “long guns” when processing the transfer of certain lawful firearms that are neither “rifles,” nor “shotguns,” nor “handguns.” The notice also defined what is considered an “other” type firearm.

WHEREAS, on October 1, 2021, Defendant Department of Justice issued an updated bulletin, “superced[ing] DES Bulletin Titled “Important Notice Regarding ‘Other’ Firearms” – Posted on 09/27/2021 at 9:5 AM.” The October 1, 2021 bulletin defines an “Other” type firearm as “a firearm that does not meet the definition of a rifle (Pen. Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.) Firearms that might be eligible for DROS at this time would include serialized receivers, barreled actions (that lack a stock), ‘Buntline’ type firearms with revolving cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as Pistol Grip shotguns).”

WHEREAS, considering the Department’s addition of the option to select “Other” from the dropdown list for types of “long guns” within the DES, together with the Department’s October 1, 2021 bulletin, the Parties have negotiated in good faith through counsel to partially resolve this matter on the terms set forth below with the court retaining jurisdiction to enforce the settlement if necessary.

WHEREAS, Plaintiffs have asserted other claims and causes of action against the

## **DRAFT SETTLEMENT AGREEMENT**

Department in the Second Amendment Complaint and Petition for Writ of Mandate not described below. The Parties do not desire or intend to compromise or release these other claims and causes of action as part of this Agreement, including any claims for recovery of attorney's fees and costs of suit (if such exist) incurred in litigating these causes of action. The Parties instead anticipate that the Action will continue to be litigated as to these other claims and causes of action.

NOW, THEREFORE, in consideration of the mutual promises and releases set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

### **AGREEMENT**

1. No Admission of Liability. The Parties mutually acknowledge and agree that the settlement, the delivery of this Agreement, and the consideration provided for in this Agreement shall not be interpreted or construed as an admission of liability. This Agreement represents the settlement of disputed claims, and the Parties expressly deny all liability to one another. However, as this agreement is a public record, the language and terms of the Agreement may not be excluded from evidence in any state or federal proceeding, except under applicable rules of civil procedure or evidence.

2. Consideration. In exchange for the dismissal of the claims and causes of action described herein, the California Department of Justice and Attorney General Robert Bonta agree that they will not adopt any policy, procedure, or regulation, or issue any guidance, notice, or memorandum that would have the effect of preventing the lawful transfer of firearms that are legal to transfer and possess in California at the time of the transfer. Nor will the California Department of Justice or Attorney General Robert Bonta, or each of their predecessors-in-interest, successors-in-interest, agents, contractors, directors, employees, or managers modify or update the DES, or any other software or program they may use to facilitate the submission of DROS information in the future, in such a way as to have the effect of preventing the lawful transfer of any firearm legal to transfer and possess in California. The California Department of Justice and Attorney General Robert Bonta acknowledge that they have no authority to prevent lawful transfers of legal firearms, except as provided by law. Nothing in this Agreement shall be construed to revoke the Department's authority to evaluate, consider, propose, adopt, and implement changes to its policies, procedures, and regulations, including the maintenance of the DES, as long as those changes are consistent with state and federal law.

3. Dismissal of Claims. Within ten (10) calendar days of the Effective Date, Franklin Armory, Inc. and California Rifle and Pistol Association will file with the court in the Action a Request for Dismissal of the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate

4. Releases. Except for claims to enforce the terms of this Agreement, and in consideration of the mutual promises set forth in this Agreement, the Parties agree to the following Releases:

## **DRAFT SETTLEMENT AGREEMENT**

(a) Release by the Plaintiffs. Subject to the terms of this Agreement, and in exchange for the consideration set forth above and the releases herein, Franklin Armory, Inc. and California Rifle and Pistol Association hereby release and discharge the California Department of Justice and Attorney General Robert Bonta, and each of their predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs, administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents, and each of their respective successors and assigns, from liability for any damages or other relief sought in the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate in the Action. Nothing in this Agreement is intended to or shall be construed to waive or release any claims, causes of action, damages, or relief sought in the Action, or which may otherwise exist, other than the liability damages and equitable relief expressly released herein. Nor is the Agreement intended to, and it shall not be construed to waive or release Plaintiffs' right to appeal the decision of the Superior Court of Los Angeles County sustaining Defendants' demurrer to Plaintiffs' First, Second, and Eighth Claims as those claims relate to Franklin Armory's centerfire version of the Title 1 model firearm.

(b) Release by the Department. Subject to the terms of this Agreement, and in exchange for the consideration set forth above and the releases herein, the California Department of Justice and Attorney General Robert Bonta, hereby release and discharge Franklin Armory, Inc. and California Rifle and Pistol Association and each of their predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs, administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents, and each of their respective successors and assigns, from liability for any damages or other relief sought in the First, Second, and Eighth Causes of Action in the Second Amended Complaint and Petition for Writ of Mandate in the Action. Nothing in this Agreement is intended to or shall be construed to waive or release any claims, causes of action, damages, or relief sought in the Action, or which may otherwise exist, other than the liability damages and equitable relief expressly released herein.

### **9. Miscellaneous Provisions.**

a. This is the entire Agreement of the parties relating to the subject matter herein. Any prior understandings, representations, and statements, oral, written, or implied, concerning this matter are superseded by this Agreement.

b. The terms and provisions of this Agreement shall be construed, interpreted, and governed by the laws of the state of California. Any action to enforce this Agreement will be, to the extent practicable, brought before the judge and the court currently presiding over the Action, pursuant to Code of Civil Procedure section 664.6. The Parties thus hereby request that the court and judge in the Action retain jurisdiction to enforce this Agreement. To the extent such enforcement cannot practically be brought

## **DRAFT SETTLEMENT AGREEMENT**

in front of the judge currently presiding over the Action, such action to enforce will be brought in the Super Court for the County of Los Angeles.

c. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, in whole or in part, the remainder shall remain in effect and the stricken provision shall be replaced, to the extent possible, with an enforceable provision as similar in tenor as legally possible.

d. This Agreement can only be amended in a writing signed by all of the Parties hereto, or by the successors to such Parties.

e. This Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, legal successors and assigns of the Parties hereto.

f. This Agreement may be signed in counterparts and delivered by email or facsimile to the other Parties, each of which signed Agreement shall be deemed an original instrument and together shall constitute the entire Agreement.

g. Each party shall bear their own costs with respect to the drafting of this Agreement.

h. In any action or proceeding arising from or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of suit.

i. This Agreement is the result of negotiations between the Parties. Any ambiguity shall not be construed against either side on the basis of such side having drafted, prepared, or reviewed the language of any provision.

j. The Parties acknowledge they read and understood this Agreement, in its entirety, and voluntarily enter this Agreement of their own free will, without duress or undue influence by any non-party or party to this Agreement.

k. The Parties, and each of them, acknowledge, represent, and warrant that they were represented by independent legal counsel of their choosing throughout all negotiations preceding and occurring in connection with the negotiation and execution of this Agreement.

**DRAFT SETTLEMENT AGREEMENT**

**Accepted and Agreed:**

Dated: \_\_\_\_\_, 2021

Dated: \_\_\_\_\_, 2021

---

Franklin Armory, Inc.  
By: Jay Jacobson  
Its: President

---

California Department of Justice  
By:  
Its:

Dated: \_\_\_\_\_, 2021

Dated: \_\_\_\_\_, 2021

---

California Rifle and Pistol Association  
By:  
Its:

---

Attorney General Robert Bonta

# **EXHIBIT 5**

**28**

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

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

---

DEPOSITION VIA VIDEOCONFERENCE OF  
CHERYLE MASSARO-FLOREZ

Tuesday, December 28, 2021

Stenographically Reported by:  
Vicki Resch, RPR, CSR 6645

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

10:36 1 reference in your declaration given a specific name, a  
2 title?

3 A Of the application?

4 Q The project as a whole.

10:36 5 A Oh, just gun type, other.

6 Q Gun type, other.

7 In paragraph 2 you state that the project  
8 also included various DOJ applications and databases,  
9 correct?

10:37 10 A Yes.

11 Q Can you clarify what you mean by applications  
12 versus databases?

13 A Yes. So applications link up to databases,  
14 and some of our databases have multiple applications  
10:37 15 that are tied to them.

16 Q And the DES would qualify as an application?

17 A Application and a database.

18 Q And a database. Okay.

19 What applications were included in this  
10:37 20 specific project?

21 A Besides the dealer record of sale of entry  
22 system, there was -- although another one called  
23 dealer record of sale, we call it DROS. The automated  
24 firearms system, we call it AFS. The arms and  
10:38 25 prohibited person system. We call it APPS, A-P-P-S.

10:38 1 We also included one called the California Firearms  
2 Application Reporting System. We call it CFARS. And  
3 we have a middleware that can be considered an  
4 application, which is the California Information  
10:38 5 Gateway. We call it CFIG.

6 Q And what databases did this project include?

7 A The DES database, one called Consolidated  
8 Firearms Information System database, and the  
9 California Justice Information System database.

10:38 10 Q And in paragraph 2, you state that the  
11 modifications were deployed on October 21st, 2021; is  
12 that correct?

13 A No.

14 Q When were they deployed?

10:39 15 A October 1st, 2021.

16 Q October 1st?

17 A Yes.

18 Q Thank you. What does the term "deployed"  
19 mean in that context?

10:39 20 A It means that it was implemented and  
21 available to the public to access.

22 Q When was the first time you heard about this  
23 project?

24 A We were moving forward with this starting in  
10:39 25 July.

10:39 1 Q July of?

2 A 2021.

3 Q And that's the first time you ever heard  
4 about this, the other firearm issue?

10:40 5 A No, that was the first time I was assigned  
6 the task to implement it.

7 Q When was the first time you heard about the  
8 issue, the "other" firearm --

9 MR. BARNOUW: I'm going to object. This has  
10:40 10 gone beyond the scope of discovery here. We're here  
11 to talk about the project that the -- to implement, to  
12 deploy the "other" option and your contention that it  
13 somehow does not render this case moot, so I'm going  
14 to instruct her not to answer that question.

10:40 15 MR. DAVIS: I think it's applicable in this  
16 situation because I'd like to know how much time  
17 transpired from the project being started to --  
18 between that period and the time that she actually  
19 heard about it being discussed, how much downtime  
20 there was before any movement was actually moving  
21 forward on it.

22 (Simultaneous speakers.)

23 MR. BARNOUW: We can go back and look at her  
24 answer to the question. I think she said July.

25 ///

**Cheryle Massaro-Florez - December 28, 2021**

10:41 1 BY MR. DAVIS:

2 Q July was when -- July 1st, 2021 is when it  
3 started, correct, Ms. Massaro-Florez?

4 A Yes.

10:41 5 Q Who -- were you assigned this project by  
6 someone?

7 A Yes.

8 Q Who?

9 A My Information Technology Manager III.

10:41 10 Q What's that person's name?

11 A I can't pronounce his last name very well.  
12 His first name is Naren. Let me pull it up for you  
13 and spell it for you. My apologies. It is --

14 MR. DAVIS: That's N-o-r-i-n?

10:42 15 THE WITNESS: It's N-a-r-e-n. The last name  
16 is Mikkilineni. It's M-i-k-k-i-l-i-n-e-n-i.

17 BY MR. DAVIS:

18 Q Was there anyone else assigned to this  
19 project before you?

10:42 20 MR. BARNOUW: I'm going to object. It's  
21 vague.

22 Go ahead.

23 THE WITNESS: Yes. My -- my copartner. We  
24 are sister units. We were both tasked to -- and  
10:42 25 there's a document that was sent to you -- to discuss

# EXHIBIT 6

34

0461

**From:** [Christina RosaRobinson](#)  
**To:** [REDACTED]  
**Subject:** AWR & Other Gun Timeline - version 0.1  
**Date:** Monday, August 9, 2021 8:26:22 AM

Good Morning All,

Below is the proposed timeline as discussed during the last AWR & Other Gun status meeting.

Please let me know if corrections or edits are needed. As changes in the timeline arise, I will send an updated version.

Thank you

v 0.1

AWR Other & Other Gun Changes Timeline – Live: Friday, October 1st

- Complete AWR Other Gun Registration Web Form – ADB/Web Team – Due: Friday, 8/13
- CFARS AWR Other Gun Development & Other Gun Struts > Spring Conversion – ADB/FFAS – Due: Monday, 8/30
- AWR (Internal) Other Gun Development – ADB/FFAS – Due: Monday, 8/30
- CFIS Batch AWR Other Gun Development – ADB/FFAS – Due: Monday, 8/30
- AWR Other Gun Registration (Web Form, CFARS, AWR Internal, APPS, AFS) Functional Testing & SIT – ADB/FFAS? / BOF Testers - Start: Tuesday, 9/1 Due: Friday 9/14
- Other Gun Functional Testing (DES, CFARS, CFIG, DROS, APPS, JES) & SIT (DES, CFARS, CFIG, DROS, APPS & AFS) – ADB/FFAS?/ BOF Testers – Start: Tuesday, 9/1 Due: Tuesday, 9/14

- DES, CFARS, DROS, APPS, AWR Internal Regression – BOF Testers - Start: Tuesday, 9/1  
Due Tuesday, 9/14
- Functional, SIT & Regression Fixes – ADB/Web Team & ADB/FFAS – Due: Tuesday, 9/14
- User Acceptance Testing – BOF Testers – Start: Thursday, 9/16 Due: Friday, 9/24
- UAT Bug Fixes – ADB/Web Team & ADB/FFAS – Due: Friday, 9/24

Christina Rosa-Robinson  
ADB/IASB/Firearms & Forensic Applications Section  
California Department of Justice  
916-210-5314

## OTHER GUN ASSUMPTIONS

- 1) All requirements except the changes detailed in "Gun Type "other" MVP-Requirements-Disclosure updated 02 10 21.xlsx" (in red) will stay the same. No new requirements from BOF will be given for this effort.
- 2) The analyst and developer resources needed to support CFARS/DES for Other Guns are also assigned to AB 1872/ AB 2165, SB 746/ AB 539 [REDACTED].

## TIMELINE FOR DEVELOPMENT: Total – 2.5 to 3 months

Phase	Duration	Scope	Resources
Analysis	2 Weeks	<ul style="list-style-type: none"> <li>• Spring Code Changes</li> <li>• Jobs</li> <li>• Database changes</li> <li>• Views and Reports defined in Disclosure</li> </ul>	<ul style="list-style-type: none"> <li>• CFARS – [REDACTED]</li> <li>[REDACTED]</li> <li>• DES – [REDACTED]</li> <li>[REDACTED]</li> <li>• CFIG – [REDACTED]</li> <li>• D1.9 - Reports designated by BOF as those used to report statistics to external entities will be evaluated first for impact from the "Other" Gun Type enhancement only. – [REDACTED]</li> </ul>
Build	3 weeks	<ul style="list-style-type: none"> <li>• Jobs</li> <li>• Database changes</li> <li>• Views and Reports defined in Disclosure</li> </ul>	<ul style="list-style-type: none"> <li>• CFARS – [REDACTED]</li> <li>[REDACTED]</li> <li>• DES – [REDACTED]</li> <li>[REDACTED]</li> <li>• CFIG – [REDACTED]</li> <li>• D1.9 - Reports designated by BOF as those used to report statistics for "Other" Gun Type enhancement only. – [REDACTED]</li> </ul>
SIT/Regression	3 weeks	<ul style="list-style-type: none"> <li>• Jobs</li> <li>• Database changes</li> <li>• Views and Reports defined in Disclosure</li> </ul>	<ul style="list-style-type: none"> <li>• CFARS – [REDACTED]</li> <li>[REDACTED]</li> <li>• ETO if we do it with Spring migration)</li> <li>• DES – [REDACTED]</li> <li>• Integration / round trip testing – [REDACTED]</li> <li>[REDACTED]</li> <li>• Reports – [REDACTED]</li> </ul>
UAT	2 weeks		<ul style="list-style-type: none"> <li>• CFARS – BOF</li> <li>• DES- BOF</li> <li>• Reports – BOF</li> </ul>

1) October 1, 2021 Deploy: [REDACTED]

Task Name	% Complete	Duration	Start	Finish
<b>Other Gun Impact</b>	0%	50 days	Mon 7/19/21	Mon 9/27/21
Analysis	0%	2 wks	Mon 7/19/21	Fri 7/30/21
Build	0%	3 wks	Mon 8/2/21	Fri 8/20/21
SIT Regression	0%	3 wks	Mon 8/23/21	Mon 9/13/21
UAT	0%	2 wks	Tue 9/14/21	Mon 9/27/21

- [REDACTED]
- [REDACTED]
- AB 1872/ AB 2165 Build (CFARS/DES) – Scheduled for May to September 2021
- AB 1872 / AB 2165 Testing (CFARS/DES) – Scheduled for September to November 2021
- SB 746 / SB 539 Build (CFARS/DES) – Scheduled for May to September 2021
- SB 746 / SB 539 Testing (CFARS/DES) – Scheduled for September to November 2021
- [REDACTED]
- [REDACTED]

2) January 1, 2022 Deploy: [REDACTED]

Task Name	% Complete	Duration	Start	Finish
<b>Other Gun Impact</b>	0%	50 days	Fri 10/15/21	Thu 12/30/21
Analysis	0%	2 wks	Fri 10/15/21	Thu 10/28/21
Build	0%	3 wks	Fri 10/29/21	Mon 11/22/21
SIT Regression	0%	3 wks	Tue 11/23/21	Wed 12/15/21
UAT	0%	2 wks	Thu 12/16/21	Thu 12/30/21

- AB 1872 Testing (CFARS/DES) – Scheduled for September to November 2021
- SB 746 Testing (CFARS/DES) – Scheduled for September to November 2021
- [REDACTED]
- [REDACTED]

3) April 1, 2022 Deploy: [REDACTED]

Task Name	% Complete	Duration	Start	Finish
<b>Other Gun Impact 4/1/2022 Deploy</b>	0%	50 days	Tue 1/18/22	Tue 3/29/22

Analysis	0%	2 wks	Tue 1/18/22	Mon 1/31/22
Build	0%	3 wks	Tue 2/1/22	Tue 2/22/22
SIT Regression	0%	3 wks	Wed 2/23/22	Tue 3/15/22
UAT	0%	2 wks	Wed 3/16/22	Tue 3/29/22

4) July 1, 2022 Deploy: [REDACTED]

Task Name	% Complete	Duration	Start	Finish
<b>Other Gun Impact 4/1/2022 Deploy</b>	<b>0%</b>	<b>50 days</b>	<b>Mon 4/18/22</b>	<b>Mon 6/27/22</b>
Analysis	0%	2 wks	Mon 4/18/22	Fri 4/29/22
Build	0%	3 wks	Mon 5/2/22	Fri 5/20/22
SIT Regression	0%	3 wks	Mon 5/23/22	Mon 6/13/22
UAT	0%	2 wks	Tue 6/14/22	Mon 6/27/22

## MINIMUM VIABLE PRODUCT (MVP)

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- MVP1.0 Enhance DES [Spring migrated code](#) to allow a sale of Firearm Type 'Other'
- MVP1.1 Enhance DES [Spring migrated code](#) to allow Acquisition of Firearm Type 'Other'. This includes Buy, Consignment, Pawn
- MVP1.2 Enhance CFARS [Spring Migrated code](#) to allow a User to submit an AFS Personal Information Update application to append current information to a firearm type defined as 'Other'
- MVP1.3 Enhance CFARS [Spring migrated code](#) to allow a User to submit a Law Enforcement Gun Release (LEGR) application for an Firearm Type 'Other'

## REQUIREMENT

---

- R1.0 DES must be able to process a DROS transaction for Long Gun with the Firearm Type of 'Other'
- R1.1 A Long Gun DROS with the Gun Type of 'Other' will trigger BFEC Process
- R1.2 DROS transactions of Long Gun with the Firearm Type of 'Other' must be recorded in AFS
- R1.3 CFARS AFS Personal Information Update form shall allow a user to appended current information for Firearm Type 'Other'
- R1.4 CFARS Law Enforcement Gun Release Application (LEGR) form shall allow a user to submit for Firearm Type 'Other'
- R1.5 CFARS Firearm Type 'Other' will model gun type 'Rifle' category and receiver
- R1.6 DROS shall process Firearm Type 'Other' as a Long gun
- R1.7 Category and Barrel validations for Firearm Type 'Other' will follow 'Long gun' Firearm Type validations within DES
- R1.8 Category and Barrel validations for Firearm Type 'Other' will follow 'Rifle' Firearm Type validations within CFARS

## IMPACT

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- D1.0 Any DROS Reports that use AFS XREF or handgun/long gun logic will count "other" gun as longgun
- D1.1 Purpose code for 'other' gun: [Purpose codes have been modified since the original other gun project and will need to be revisited.](#)
  - 2 - long gun purchase
  - 3 - frame only purchase
  - 14 - gun permit (for any CRIS records which include LEGR that we're including in this enhancement)
  - 10 - longgun pawn redemption
  - 11 - frame only pawn redemption
- D1.2 "Other" gun type will skip the 1 in 30 day check for background checks because it will be considered a long gun - [will need to know the impact to SB 61](#)
- D1.3 AFS XREF will indicate long gun for 'other' gun and will be treated like longgun within DROS
- D1.4 Stolen gun match used during BFEC will not match due to different Firearm Type value
- D1.5 AFS assault weapon check logic will be impacted; currently matches by Make, Model, Type, if Firearm Type 'Other' is used will not be caught by AFS assault weapon check
- D1.6 APPS gun match logic for associated and disassociating firearms records from DROS, AWR, AFS will not match due to different firearm type value
- D1.7 AFS duplicate/match/hookup gun match logic will not match due to different Firearm Type value
- D1.8 DES Firearm Type 'Other' will model gun type 'Rifle'
- D1.9 Reports designated by BOF as ones used to report statistics to external entities will be evaluated first for impact from the "Other" Gun Type enhancement only.
- D1.10 The "Other Gun Type will be considered a Long Gun - Rifle for processing purposes

---

SIGNATURE

DATE

# EXHIBIT 7

41

0468

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

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

---

DEPOSITION VIA VIDEOCONFERENCE OF  
MARICELA LEYVA

Wednesday, December 29, 2021

Stenographically Reported by:  
Vicki Resch, RPR, CSR 6645

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

11:49 1 notices are posted. And if I'm understanding  
2 correctly, usually on the DES website where they're  
3 posted. And usually the intended recipients are  
4 firearm retailers who are the users of the DES; is  
11:49 5 that correct?

6 A Correct.

7 Q We were also talking about some Bureau of  
8 Firearms important notices might have other purposes  
9 and might need other intended recipients. And I'm not  
11:49 10 sure we quite got an understanding of when the  
11 intended recipients are not DES users, where important  
12 notices get posted.

13 Do you know the answer to that?

14 A I do not.

11:50 15 Q That's right. You had said because you deal  
16 with the DES, that those are the ones -- the ones that  
17 are relevant to you in your position are posted on the  
18 DES; is that correct?

19 A Correct.

11:50 20 Q Okay. Thank you. Thank you for clarifying.

21 Generally speaking, approximately how long  
22 does it take to draft and issue an important notice  
23 from the time it takes to conceive of the need for an  
24 important notice to the time that it is posted on the  
11:50 25 DES website, including all those steps we kind of just

11:50 1 talked about?

2 A Average could be seven to ten days.

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

6 A Correct.

7 Q So average about seven to ten days. Okay.

8 Have you ever been involved in the decision  
9 or in making the decision to issue an important  
11:51 10 notice?

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

13 You can answer.

14 THE WITNESS: I wouldn't make the decision.

11:51 15 BY MS. BARVIR:

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

21 A Yes.

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

24 A No.

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

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

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

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

7 A Correct.

8 Q Thank you.

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

11 A Luis Lopez.

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

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

11:52 15 Q Thank you.

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

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

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

22 A Correct.

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

11:53 25 A Correct.

14:12 1 time in the past, I don't know, let's say three years,  
2 was there -- or I guess, well, since you've been  
3 involved in your position as SSMI, that's 2018, right?

4 So at any time during your tenure as SSMI, do  
14:12 5 you know if there was a discussion or work done to  
6 create an important notice about transferring other  
7 firearms, firearms that aren't shotguns or rifles or  
8 shotgun-rifle combinations?

9 MR. BARNOUW: I'm going to object. It's  
14:13 10 vague as to time and -- so I will object. It's vague.

11 THE WITNESS: I don't know.

12 BY MS. BARVIR:

13 Q Do you know if the September 27 important  
14 notice was the first draft of a notice regarding this  
14:13 15 other issue, these firearms that are not -- not rifles  
16 or shotguns or rifle-shotgun combinations?

17 A This -- the September bulletin was drafted  
18 in -- in response to the changes to the DROS entry  
19 system. Those changes were made around that time.

14:14 20 Q And what time was that?

21 A Around the September time frame when the  
22 bulletin was released.

23 Q Okay. Thank you.

24 Do you know if there was any discussion since  
14:14 25 you've taken your position as SSMI in 2018 of

14:14 1 releasing an important notice that would advise  
2 dealers how to process these other type firearms,  
3 other firearms being not rifles, not shotguns, not  
4 rifle-shotgun combination in some alternative way  
14:14 5 outside the DES?

6 A I don't recall. I don't know.

7 Q Okay. Thank you.

8 If the Bureau of Firearms were to be made  
9 aware of some other inadvertent omission or lack of  
14:15 10 clarity in the November -- no, I'm sorry -- the  
11 November notice, could the Bureau of Firearms issue  
12 another important notice to address or clarify those  
13 issues?

14 MR. BARNOUW: I'm going to object. That's  
14:15 15 vague. Calls for speculation. It's really an  
16 incomplete hypothetical.

17 You can answer that question.

18 THE WITNESS: If it's deemed necessary, we  
19 can always release bulletins.

14:15 20 BY MS. BARVIR:

21 Q Always release bulletins. Okay.

22 So there's no -- nothing that would prevent  
23 the Bureau of Firearms from issuing a fourth important  
24 notice regarding the sale of other firearms?

14:15 25 MR. BARNOUW: I'm going to object again.

14:15 1 Calls for speculation. Incomplete hypothetical. Also  
2 calls for a legal conclusion.

3 You can answer if you can.

4 THE WITNESS: If it is deemed necessary.

14:16 5 BY MS. BARVIR:

6 Q If it's deemed necessary, the Bureau of  
7 Firearms can issue another important notice regarding  
8 the sale of other firearms?

9 A I mean, the function is in the DROS entry  
14:16 10 system. So yes, we could release a bulletin.

11 Q Okay. Thank you.

12 Is there anything that would prevent the  
13 Bureau of Firearms from issuing an important notice  
14 that supersedes the November notice and reverts back  
14:16 15 to the September 27 important notice that was posted  
16 on the DES website?

17 A I don't know that.

18 Q You don't know that. Okay.

19 Could the Bureau of Firearms issue an  
14:16 20 important notice superseding the November notice  
21 that -- that included the same language or similar  
22 language as the September 27 notice?

23 MR. BARNOUW: I'll object as vague.

24 THE WITNESS: Again, that would not be my  
14:17 25 decision. That would have to be -- come from

## PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

On January 13, 2022, I served the foregoing document(s) described as

**DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFFS AND  
PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS THE  
FIRST, SECOND, AND EIGHTH CAUSES OF ACTION IN THE SECOND  
AMENDED COMPLAINT**

on the interested parties in this action by placing

the original

[X] a true and correct copy

thereof by the following means, addressed as follows:

Benjamin Barnouw  
Supervising Deputy Attorney General  
Email: [ben.barnouw@doj.ca.gov](mailto:ben.barnouw@doj.ca.gov)  
Kenneth G. Lake  
Deputy Attorney General  
Email: [kenneth.lake@doj.ca.gov](mailto:kenneth.lake@doj.ca.gov)  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
*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.

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

Executed on January 13, 2022, at Long Beach, California.

ch, California.

---

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.

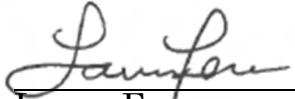
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME IV OF XX, Pages 355-477**, on the following parties, as follows:

Kenneth G. Lake  
[Kenneth.Lake@doj.ca.gov](mailto:Kenneth.Lake@doj.ca.gov)  
Andrew F. Adams  
[Andrew.Adams@doj.ca.gov](mailto:Andrew.Adams@doj.ca.gov)  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013

*Attorneys for Respondent*

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

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



---

Laura Fera  
Declarant