

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 VI OF XX**  
**Pages 728-1106**

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

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

*Counsel for Plaintiffs-Appellants*

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
3 KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
4 Deputy Attorneys General  
300 South Spring Street  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6525  
6 Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and  
through the California Department  
8 of Justice and Former Attorney General Xavier  
Becerra*

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

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

17 Plaintiffs,

18 v.

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

22 Defendants.

Case No. 20STCP01747

**NOTICE OF MOTION AND MOTION  
BY DEFENDANTS FOR SUMMARY  
JUDGMENT; OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF ISSUES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES, SEPARATE  
STATEMENTS AND DECLARATIONS  
OF ALLISON MENDOZA AND  
KENNETH G. LAKE IN SUPPORT OF  
THEREOF**

**Date: July 10, 2024**

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

**Dept.: 32**

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

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

27 **PLEASE TAKE NOTICE** that on July 10, 2024, at 8:30 a.m. or as soon thereafter as

1 counsel may be heard in Department 32 of the above-entitled court, located at 111 North Hill  
2 Street, Los Angeles, California, defendants will move this court for an order granting summary  
3 judgment in their favor. Said motion will be made, pursuant to Code of Civil Procedure section  
4 437c, on the ground there is no genuine issue as to any material fact and defendants are entitled to  
5 judgment, as a matter of law.

6 Alternatively, if for any reason summary judgment cannot be had, defendants move for an  
7 order summarily adjudicating the following issues:

8 ISSUE NO. 1: Defendants are entitled to summary judgment as to the third alleged cause of  
9 action for tortious interference with contractual relations.

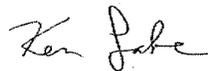
10 ISSUE NO. 2: Defendants are entitled to summary judgment as to the fourth alleged cause of  
11 action for tortious interference with prospective economic advantage.

12 ISSUE NO. 3: Defendants are entitled to summary judgment as to the fifth alleged cause of  
13 action for negligent interference with prospective economic advantage.

14 This motion is based on this notice, the memorandum of points and authorities,  
15 separate statements and the declarations of Allison Mendoza and Kenneth G. Lake,  
16 submitted herewith; on the pleadings and records on file herein, and on such other matters  
17 as may be presented at the hearing.

18 Dated: April 26, 2024

Respectfully submitted,  
ROB BONTA  
Attorney General of California  
DONNA M. DEAN  
Supervising Deputy Attorney General

21  
22 

23 \_\_\_\_\_  
KENNETH G. LAKE  
Deputy Attorney General  
Attorneys for State of California, acting by  
24 and through the California Department of  
25 Justice and Former Attorney General  
Xavier Becerra

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **NOTICE OF MOTION AND MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES, SEPARATE STATEMENTS AND DECLARATIONS OF ALLISON MENDOZA AND KENNETH G. LAKE IN SUPPORT OF THEREOF** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez

\_\_\_\_\_  
Declarant

/s/ Sandra Dominguez

\_\_\_\_\_  
Signature



## Make a Reservation

FRANKLIN ARMORY, INC., et al. vs CALIFORNIA DEPARTMENT OF JUSTICE, et al.

Case Number: 20STCP01747 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus

Date Filed: 2020-05-27 Location: Stanley Mosk Courthouse - Department 32

### Reservation

Case Name:

FRANKLIN ARMORY, INC., et al. vs CALIFORNIA DEPARTMENT OF JUSTICE, et al.

Case Number:

20STCP01747

Type:

Motion for Summary Judgment

Status:

RESERVED

Filing Party:

Xavier Becerra (Defendant)

Location:

Stanley Mosk Courthouse - Department 32

Date/Time:

07/10/2024 8:30 AM

Number of Motions:

1

Reservation ID:

554862513719

Confirmation Code:

CR-YCLX425DWGOZDCPDZ

### Fees

Description	Fee	Qty	Amount
Motion for Summary Judgment *** Fees Exempted by Gov Code 6103.1 ***	0.00	1	0.00
<b>TOTAL</b>			<b>\$0.00</b>

### Payment

Amount:

\$0.00

Type:

GOVT\_EXEMPT

Account Number:

n/a

Authorization:

n/a

Payment Date:

1969-12-31

Print Receipt

Reserve Another Hearing

[Help](#)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RÓB BONTA  
Attorney General of California  
DONNA M. DEAN  
Supervising Deputy Attorneys General  
KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
Deputy Attorneys General  
300 South Spring Street  
Los Angeles, CA 90013  
Telephone: (213) 269-6525  
Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
*Attorneys for State of California, acting by and  
through the California Department  
of Justice and Former Attorney General Xavier  
Becerra*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

**FRANKLIN ARMORY, INC. AND  
CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED,**  
  
Plaintiffs,  
  
v.  
  
**CALIFORNIA DEPARTMENT OF  
JUSTICE, XAVIER BECERRA, IN HIS  
OFFICIAL CAPACITY AS ATTORNEY  
GENERAL FOR THE STATE OF  
CALIFORNIA, AND DOES 1-10,**  
  
Defendants.

Case No. 20STCP01747

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION BY DEFENDANTS FOR  
SUMMARY JUDGMENT; OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF ISSUES**

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

Honorable Daniel S. Murphy

RES ID: 554862513719

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**Page**

I - INTRODUCTION ..... 7

II -FACTS ..... 9

    Modification of the DES ..... 12

III - ARGUMENT ..... 15

    A. SUMMARY JUDGMENT SHOULD BE GRANTED ..... 15

    B. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO ALL THREE OF THE INTERFERENCE WITH CONTRACT AND PROSPECTIVE ECONOMIC ADVANTAGE CLAIMS..... 16

        1. Summary Judgment Should be Granted as to the Third Cause of Action for Interference with Contractual Relations ..... 18

        2. Summary Judgment Should be Granted as to the Fourth and Fifth Causes of Action for Tortious and Negligent Interference with Prospective Economic Advantage..... 19

        3. The Penal Code Statutes Cited by Plaintiff Fail to Satisfy the Requirements to Establish a Mandatory Duty upon the Department, or its employees including Former Attorney General Becerra, to Have Modified the DES to Add an “Other” Option Before the Title 1 was Banned. .... 22

            a) The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the First Requirement to Establish a Mandatory Duty ..... 23

            b) The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the Second Requirement that a Statute be Designed to Protect Against the Particular Kind of Injury the Plaintiff Suffered ..... 27

        4. The Discretionary Immunity Under Government Code Section 820.2 Also Precludes Liability Against Defendants ..... 28

IV - CONCLUSION ..... 32

**TABLE OF AUTHORITIES**

**Page**

**CASES**

1		
2		
3	<i>Aguilar v. Atlantic Richfield Co.</i>	
4	(2001) 25 Cal.4th 826 .....	15
5	<i>Bauer v. Becerra</i>	
6	(9th Cir. 2017) 858 F.3d 1216 .....	5, 28
7	<i>Bonds v. State of California ex. rel. Cal. Highway Patrol</i>	
8	(1982) 138 Cal.App.3d 314 .....	30
9	<i>Caldwell v. Montoya</i> (1995) 10 Cal.4th 972	
10	(1995) 10 Cal.4th 972 .....	29
11	<i>Centinela Hospital v. City of Inglewood</i>	
12	(1991) 225 Cal.App.3d 1586 .....	17
13	<i>Chodosh v. Commission on Judicial Performance</i>	
14	(2022) 81 Cal.App.5th 248 .....	27
15	<i>Christina C. v. County of Orange</i>	
16	(2013) 220 Cal.App.4th 1371 .....	16
17	<i>City of Los Angeles v. Superior Court</i>	
18	(2021) 62 Cal.App.5th 129 .....	16, 17
19	<i>Continental Casualty Co. v. Superior Court</i>	
20	(2001) 92 Cal.App.4th 430 .....	15
21	<i>County of Los Angeles v. Superior Court (Faten)</i>	
22	(2012) 209 Cal.App.4th 543 .....	23
23	<i>County of Los Angeles v. Superior Court (Terrell R.)</i>	
24	(2002) 102 Cal.App.4th 627 .....	16
25	<i>Curcini v. County of Alameda</i>	
26	(2008) 164 Cal.App.4th 629 .....	29
27	<i>Della Penna v. Toyota Motor Sales</i>	
28	(1995) 11 Cal.4th 376 .....	17, 20
	<i>DiCampli-Mintz v. County of Santa Clara</i>	
	(2012) 55 Cal.4th 983 .....	16
	<i>Fleming v. Oliphant Financial, LLC</i>	
	(2023) 88 Cal.App.5th 13 .....	18
	<i>Gabrielle A. v. County of Orange</i>	
	(2017) 10 Cal.App.5th 1268 .....	28
	<i>Gregory v. Cott</i>	
	(2014) 59 Cal.4th 996 .....	17

1	<i>Guzman v. County of Monterey</i>	
	(2009) 46 Cal.4th 887 .....	16, 23
2		
3	<i>Hacala v. Bird Rides, Inc.</i>	
	(2023) 90 Cal.App.5th 292 .....	30
4	<i>Haggis v. City of Los Angeles</i>	
	(2000) 22 Cal.4th 490 .....	23, 27
5		
6	<i>Hodges v. Cedars-Sinai Medical Center</i>	
	(2023) 91 Cal.App.5th 894 .....	15
7	<i>Hoff v. Vacaville Unified</i>	
	(1998) 19 Cal.4th 925 .....	17
8		
9	<i>In re Firearm Cases</i>	
	(2005) 126 Cal.App.4th 959 .....	22
10	<i>Ixchel Pharma, LLC v. Biogen, Inc.</i>	
	(2020) 9 Cal.5th 1130 .....	18, 20
11		
12	<i>Knight Enterprises v. RPF Oil Co.</i>	
	(Mich. Ct. App. 2013) 299 Mich.App. 275 .....	19
13	<i>Korea Supply Co. v. Lockheed Martin Corp.</i>	
	(2003) 29 Cal.4th 1134 .....	20
14		
15	<i>Leon v. County of Riverside</i>	
	(2023) 14 Cal.5th 910 .....	28
16	<i>Lopez v. Sony Electronics, Inc.</i>	
	(2018) 5 Cal.5th 627 .....	14
17		
18	<i>Lopez v. Southern Cal. Rapid Transit Dist.</i>	
	(1985) 40 Cal.3d 780 .....	24, 29
19	<i>Lundeen Coatings Corp. v. Department of Water &amp; Power</i>	
	(1991) 232 Cal.App.3d 816 .....	29
20		
21	<i>Mallett v. Superior Court</i>	
	(1992) 6 Cal.App.4th 1853 .....	11
22	<i>Manistee Town Ctr. v. City of Glendale</i> (9th Cir. 2000) 227 F.3d 1090	
	(9th Cir. 2000) 227 F.3d 1090 .....	8
23		
24	<i>Nanko Shipping v. Alcoa Inc.</i>	
	(D. D.C. 2015) 107 F. Supp. 3rd 174 .....	19
25	<i>People v. Alexander</i>	
	(2023) 91 Cal.App.5th 469 .....	17, 28
26		
27	<i>People v. Heitzman</i> (1994) 9 Cal.4th 189	
	(1994) 9 Cal.4th 189 .....	17
28		

1	<i>Pebple v. Correa</i>	
	(2012) 54 Cal.4th 331 .....	28
2		
3	<i>Posey v. State of California</i>	
	(1986) 180 Cal.App.3d 836.....	30
4	<i>Premier Medical Management Systems. v. California Ins. Guarantee</i>	
	(2006) 136 Cal.App.4th 464 .....	8
5		
6	<i>Roseville Community Hosp. v. State of California</i>	
	(1977) 74 Cal.App.3d 583 .....	30, 31
7	<i>Roy Allan Slurry Seal. v. American Asphalt South (2017) 2 Cal.5th 505</i>	
	(2017) 2 Cal.5th 505 .....	20, 21, 22
8		
9	<i>Shamsian v. Department of Conservation</i>	
	(2006) 136 Cal.App.4th 621 .....	23
10	<i>Sosa v. DIRECTV</i>	
	(9th Cir. 2006) 437 F.3d 923.....	8
11		
12	<i>State of California ex rel. Dept. of Rehab. v. Superior Court</i>	
	(1982) 137 Cal.App.3d 282.....	27
13	<i>Susman v. City of Los Angeles</i>	
	(1969) 269 Cal.App.2d 803.....	17
14		
15	<i>Taylor v. Buff</i>	
	(1985) 172 Cal.App.3d 384.....	12
16	<i>Thompson v. County of Alameda</i>	
	(1980) 27 Cal.3d 741 .....	29
17		
18	<i>Trinkle v. California State Lottery</i>	
	(1999) 71 Cal.App.4th 1198 .....	27
19	<i>Walker v. County of Los Angeles</i>	
	(1987) 192 Cal.App.3d 1393.....	16, 17
20		
21	<i>Youst v. Longo</i>	
	(1987) 43 Cal.3d 64 .....	18
22	<i>Zelig v. County of Los Angeles</i>	
	(2002) 27 Cal.4th 1112 .....	17
23		
	<b>STATUTES</b>	
24		
	Code Civ. Proc. § 437c .....	15, 16
25		
	Gov. Code § 810 .....	16
26		
	Gov. Code § 815 .....	16
27		
	Gov. Code § 815.2 .....	16
28		

1	Gov. Code § 815.6 .....	22, 23, 27
2	Gov. Code § 820.2 .....	28, 30, 32
3	Gov. Code § 820.8 .....	17, 18
4	Penal Code § 26815 .....	11
5	Penal Code § 27540 .....	11
6	Penal Code § 28105 .....	11
7	Penal Code § 28155 .....	22, 26
8	Penal Code § 28160 .....	25
9	Penal Code § 28205 .....	22-25, 32
10	Penal Code § 28210 .....	11
11	Penal Code § 28215 .....	11, 22, 26
12	Penal Code § 28220 .....	11, 22, 26
13	Penal Code § 28245 .....	25, 32
14	Penal Code § 28255 .....	11
15	Penal Code § 30515 .....	8
16	<b>REGULATIONS</b>	
17	Cal. Code Regs., tit. 11, § 4200 .....	11
18	Cal. Code Regs., tit. 11, § 4210 .....	11
19	28 C.F.R. § 25.10 .....	11
20	<b>Secondary Authorities</b>	
21	Rostron, <i>Style, Substance, and the Right to Keep and Bear Assault Weapons</i> (2018) 40 Campbell L. Rev. 301 .....	25
22	2 <i>Lawrence's Anderson on the Uniform Commercial Code</i>	
23	(3d. ed., Dec. 2022 update) .....	18
24	1 Williston on Contracts (4th ed.) .....	18
25		
26		
27		
28		

I

INTRODUCTION

This action is premised on the allegation raised in an October 24, 2019, letter sent by plaintiff's counsel to former Attorney General Becerra, asserting that a defect in the Department of Justice (Department) online system for processing transfers of firearms rendered dealers unable to transfer its new Title 1 firearm to its customers. (Second Amended Complaint (SAC), ¶ 69, Ex. C.) Plaintiff alleges that this letter triggered a mandatory duty under various Penal Code statutes on the part of defendants to modify the online system to correct the alleged defect and that the failure to do so in a timely manner deprived plaintiff of profits from lost sales of the Title 1. (SAC, ¶¶ 58-59, 105, 145, 157.)

Jay Jacobson, the President and owner of Franklin Armory, testified that the Title 1 was designed with a 16 inch barrel and a padded buffer tube instead of a stock. Without a stock, it would not be intended to be fired from the shoulder and thus not a rifle under the statutory definition of "rifle." (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, Ex. A to Lake Dec.) "Rifle" means a weapon "intended to be fired from the shoulder." (Pen. Code, § 17090.) The Title 1 was a long gun. "Long gun" means any firearm that is not a handgun or a machinegun. (SAC, ¶¶ 23-24, Pen. Code, § 16865.)

Blake Graham, a Special Agent Supervisor in the Bureau of Firearms (Bureau)<sup>1</sup> with expertise in firearms identification, testified that the Title 1 was an AR-15 style firearm with a rifle barrel length without a traditional stock and thus did not fall under the traditional "rifle" category. (Graham Dep. pp. 8:24-9:10, 11:10-18, 13:3-7, 22:18-23:25, 34:15-35:4, 38:12-40:16, 78:13-20, Ex. B to Lake Dec.)

With the Title 1 not technically a "rifle" under the statutory definition, it would not be considered an assault weapon as defined by the version of Penal Code Section 30515 in effect up until August 6, 2020, because that definition applied only to "rifles." (Pen. Code, § 30515 (a)(1)-(3).) On August 6, 2020, the legislature passed SB 118 which included amending the Penal Code

<sup>1</sup> The Bureau is part of Department's Division of Law Enforcement (DLE). (Mendoza Dec., ¶ 1.)

1 Section 30515 definition of an assault weapon to add a “centerfire firearm that is not a rifle,  
2 pistol, or shotgun” that includes components in three categories. (Pen. Code, § 30515 (a)(9)-  
3 (11).) With this change in definition, the Title 1 was rendered a banned assault weapon on  
4 August 6, 2020. (SAC, ¶ 112.)<sup>2</sup>

5 The online system for the submission of information concerning the sale and transfer of  
6 firearms is known as the Dealer Record of Sale Entry System (DES) (Cal. Code Regs., tit. 11, §  
7 4200; citing Pen. Code, § 28205.) Penal Code section 28205 states in pertinent part that, “. . .  
8 except as permitted by the department, electronic transfer shall be the exclusive means by which  
9 information is transmitted to the department.” (Pen. Code, § 28205, subd. (c).) The DES is a  
10 web-based application used by California firearms dealers to submit firearm background checks  
11 to the Department to determine if an individual is eligible to purchase, loan, or transfer a  
12 handgun, long gun, and ammunition. (Mendoza Dec., ¶ 3.) A primary purpose of a background  
13 check is “to notify the dealer if a prospective firearm purchaser is prohibited from possessing a  
14 gun under federal law or under certain provisions of California law relating to prior convictions  
15 and mental illness.” (*Bauer v. Becerra* (9th Cir. 2017) 858 F.3d 1216, 1219.)

16 The alleged defect in the DES was that the gun type drop-down menu for long guns that a  
17 dealer would select from while processing a transfer included only options for rifle, shotgun, or  
18 rifle/shotgun combination. Since the Title 1 was not technically a “rifle” under the statutory  
19 definition, plaintiff alleges that a dealer could not process a Title 1 for transfer unless the DES  
20 was modified to add an “other” option to this drop-down menu. (SAC, ¶¶ 58, 69, Ex C.) The  
21 SAC does not identify any statute or other authority that requires that a firearm being processed  
22 for transfer in the DES fit the statutory definition of “rifle” in order to be processed as such. As  
23 discussed further below, Mr. Jacobson admits that he understood that for years prior to the

24 \_\_\_\_\_  
25 <sup>2</sup> The SAC contains allegations that infer wrongdoing by defendants in supporting the passage of  
26 SB 118. (SAC, ¶¶ 109-112.) However, to the extent plaintiff premises any cause of action on a  
27 Department employee, including former Attorney General Becerra, advocating for firearms  
28 legislation, including SB 118, said cause of action is barred under the *Noerr-Pennington* doctrine.  
The *Noerr-Pennington* immunity applies to “virtually any tort, including unfair competition and  
interference with contract.” (*Premier Medical Management Systems, Inc. v. California Ins.  
Guarantee Assn.* (2006) 136 Cal.App.4th 464, 478; *Sosa v. DIRECTV* (9th Cir. 2006) 437 F.3d  
923, 942; *Manistee Town Ctr. v. City of Glendale* (9th Cir. 2000) 227 F.3d 1090, 1092.)

1 introduction of the Title 1, stockless firearms were processed in the DES as rifles or shotguns  
2 respectively even though they did not meet the statutory definition. (e.g. dealers would process a  
3 stockless rifle as a rifle in the DES.) The version of the DES “Gun Type” drop-down menu that  
4 had three options (rifle, rifle/shotgun combination, or shotgun) had been in place had been in  
5 place since at least 2015. (Mendoza Dec., ¶ 6.)

6 There are three remaining causes of action: tortious interference with contractual relations  
7 (3rd), tortious interference with prospective economic advantage (4th) and negligent interference  
8 with prospective economic advantage. (5th) As a result of the court granting defendants’ motion  
9 for judgment on the pleadings as to the sixth, seventh and ninth causes of action on September 6,  
10 2023, Attorney General Bonta is no longer a defendant and plaintiff California Rifle and Pistol  
11 Association is no longer a plaintiff in this action. (9/6/23 hearing transcript, Ex. E to Lake Dec.,  
12 p. 27:19-30:1.) Thus, the three remaining claims are asserted by the remaining plaintiff, Franklin  
13 Armory, against the remaining defendants, the State of California acting by and through the  
14 Department and former Attorney General Becerra.<sup>3</sup>

15 As discussed further below, defendants are entitled to summary judgment on numerous  
16 grounds. First, there is no direct liability against the Department for the three interference claims  
17 and uncontrovertible evidence shows that multiple elements of each claim cannot be established  
18 against any Department employee including former Attorney General Becerra. Second, the Penal  
19 Code statutes cited by plaintiff fail to establish a mandatory duty on the Department, or its  
20 employees, to have modified the DES to add an “other” option to the drop-down menu prior to  
21 August 6, 2020, but rather conferred discretionary authority as to the operation of the DES.  
22 Finally, the discretionary immunity under Government Code section 820.2 bars the remaining  
23 claims.

## 24 II

### 25 FACTS

26 Prior to plaintiff’s counsel sending the letter alleging a defect in the DES in October,  
27 2019, Franklin Armory filed another action regarding the Title 1 in Sacramento Superior Court.

28 <sup>3</sup> Plaintiff is not claiming any damages relative to the Title 1 rimfire caliber model. (Jacobson  
Dep. p. 135:10-136:1.)

1 (*Franklin Armory v. State of California et al.*, Sacramento Superior Case No. 2018-00246584-  
2 CU-MC (Sacramento Action).) Mr. Jacobson authorized the filing of the Sacramento action  
3 suing former Attorney General Becerra because he was the man in charge as head of the  
4 Department which is the same reason he is suing him in this action. (Jacobson Dep. pp. 85:25-  
5 86:19, 87:8-88:7.) In the Sacramento action, Franklin Armory requested a declaration of rights  
6 that the Title 1 was not an assault weapon because it was not a “rifle.” However, the stated  
7 reason that the Title 1 could not be transferred was uncertainty over whether it was an illegal  
8 assault weapon which created a fear of prosecution for selling a Title 1 if it were deemed to be an  
9 assault weapon. (Sacramento Action, FAC, Ex. G to Lake Dec., ¶¶ 66, 73-74, 77-78, 85, 95, 97-  
10 98; Jacobson Dep. p. 94:5-95:7.) After the court sustained a demurrer with leave to amend on  
11 September 23, 2019, plaintiff dismissed the action on October 3, 2019. (Sacramento Action,  
12 Order 9/23/19-Ex. H and Dismissal-Ex. I to Lake Dec.)

13 Mr. Jacobson admits that there was no mention of any issue with the DES in the  
14 Sacramento action and that he was unaware of any issue with the DES during that time.  
15 (Jacobson Dep. p. 96:10-19.) During the time the Sacramento action was pending, no one ever  
16 expressed concern that the Title 1 could not be processed in the DES because it was not a “rifle.”  
17 (Jacobson Dep. p. 97:6-19.)

18 Furthermore, Mr. Jacobson understood that for years since the DES was put in use,  
19 stockless firearms such as lower receivers, barreled receivers and pistol grip shotguns were  
20 processed in the DES as rifles or shotguns respectively even though they did not meet the  
21 statutory definition. (Jacobson Dep. p. 57:6-58:10, 56:8-25.) For example, he was aware of what  
22 he called the “historic tradition” of processing Mossberg Cruisers, a stockless shotgun, in the  
23 DES as shotguns for a number of years. (Jacobson Dep. p. 40:16-25, 50:19-51:1.)

24 Mr. Graham referenced examples of stockless firearms that were not rifles or shotguns  
25 under the statutory definition that had been processed in the DES prior to the adding of the  
26 “other” option in 2021, including lower receivers which were processed in the DES as rifles.  
27 Browning pistol grip shotguns, which are stockless, were processed in the DES as shotguns.  
28

1 (Graham Dep. pp. 19:10-20:19, 74:20-77:2, 104:15-25.) Mr. Jacobson testified that Mr. Graham  
2 told him that this practice was the status quo. (Jacobson Dep. p. 60:21-61:8.)

3 The regular process for a California resident to purchase a Franklin Armory firearm would  
4 first require the person to purchase the firearm paying the full price. (Jacobson Dep. p. 154:24-  
5 155:15.) Franklin Armory would then obtain an online verification number from the Department  
6 which would be provided to the California licensed dealer when shipping the firearm to them.  
7 (Jacobson Dep. p. 155:16-156:7; SAC, ¶¶ 1, 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd.  
8 (a)(1).)

9 The purchaser then would go into the dealer and provide background information for the  
10 background check that would then be transmitted to the Department. (Jacobson Dep. p. 156:8-  
11 18.) A dealer transmitting to the Department agrees that “all of the information I submit to the  
12 Department through the DES shall be true, accurate, and complete to the best of my knowledge.”  
13 (Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).) The Department then reviews the information  
14 provided and advises the dealer if there exists grounds for denying the transfer of the firearm to  
15 the purchaser. (Pen. Code, §§ 28215, 28210, 28220.) If these requirements have been satisfied  
16 and the Department has not indicated grounds for denying the transfer, the dealer may deliver the  
17 firearm to the purchaser. (Pen. Code, §§ 26815, 27540, 28255.)

18 The SAC indicates that “a person found ineligible to receive a firearm may appeal the  
19 decision” citing 28 C.F.R. section 25.10 which authorizes an individual to bring an action against  
20 the state or political subdivision responsible for denying the transfer for an order directing that the  
21 firearm transfer be approved. (28 C.F.R. § 25.10, subd. (f).) (SAC, ¶ 49.) If the dealer cannot  
22 legally deliver the firearm to the purchaser, the dealer typically returns the firearm to the seller.  
23 (Pen. Code, § 28050, subd. (d).) The purchaser would get a refund minus a restocking fee.  
24 (Jacobson Dep. p. 61:11-15.)

25 Plaintiff does not allege that anyone ever actually purchased a Title 1 firearm and  
26 attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer.  
27 Rather, plaintiff alleges that individuals “placed deposits” for the Title 1 firearm. (SAC, ¶ 113.)  
28

1 After introducing the Title 1 in October, 2019, Franklin Armory put it out that it was  
2 taking \$5.00 deposits online for the Title 1. The \$5.00 deposit was refundable and there was no  
3 requirement for any person placing a deposit to complete a purchase. (Jacobson Dep. p. 116:1-  
4 117:17.) When a person was going through the online deposit process, the purchase price of the  
5 Title 1 firearm did not appear on the screen or in an invoice or sales order. (Jacobson Dep. p.  
6 122:6-123:12.) The price of the Title 1 was \$944.99. (Jacobson Dep. p. 124:11-20.) Mr.  
7 Jacobson solicited submission of the deposits for the Title 1 without the intent of actually  
8 shipping them at that point in time. (Jacobson Dep. p. 147:17-23.) Deposits were placed from  
9 October 16, 2019, to approximately August 6, 2020. (Jacobson Dep. p. 130:12-131:1.)

10 When asked why he did not go through the regular sales process for a Title 1 by having a  
11 dealer submit a Title 1 for transfer, Mr. Jacobson testified “that’s not an avenue that I’m allowed  
12 to take from a standpoint of the dealers themselves have to make that decision.” (Jacobson Dep.  
13 p. 174:15-175:12.)

#### 14 **Modification of the DES**

15 The issue regarding the Title 1 was first brought to the attention of Bureau Director  
16 Allison Mendoza in the latter part of 2019. (Mendoza Dec., ¶¶ 6-7.) Prior to becoming Director  
17 in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March,  
18 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the  
19 Assistant Bureau Chief/Director, she was responsible for managing all activities under the  
20 Bureau’s Regulatory Branch including management and oversight of the DES. (Mendoza Dec.,  
21 ¶¶ 1-3.)

22 Director Mendoza states that, at any given time, there are numerous pending requests for  
23 enhancements to be made to the DES. Such requests can arise from, among other things, new or  
24 amended statutes, new or amended regulations, court decisions, and technological advancements,  
25 to name a few. In her role as Assistant Bureau Chief/Director, she was involved in the decision  
26 making process relating to DES enhancement requests. The decision-making process as to  
27 whether to move forward with a DES enhancement often involve the Bureau, the Application  
28 Development Bureau (ADB), the Department’s attorneys, and occasionally higher levels within

1 the Department, such as the DLE, California Justice Information Services Division (CJIS), and  
2 the Directorate Division. This process as to a proposed enhancement can include deciding  
3 whether to move forward with the enhancement as well as the parameters of the enhancement and  
4 timeline for completion and deployment. This process requires the relevant parties within the  
5 Department to engage in a balancing of multiple factors and a weighing of competing priorities  
6 among the multiple proposed enhancement requests pending at any given time including  
7 enhancements mandated by statutes, regulations, or court orders, allocation of available resources  
8 for a particular enhancement (such as the required number of personnel it will take to complete  
9 the project), the available budget for such an enhancement, and the time it will take to complete  
10 said enhancement. Director Mendoza notes that considerations of public safety are very  
11 important and any proposed enhancement must be evaluated in terms of the certainty that it will  
12 not compromise the Department's ability and responsibility to ensure public safety. (Mendoza  
13 Dec., ¶¶ 4-5.)

14 In the latter part of 2019, the Bureau initiated a review to evaluate the resources required  
15 for a potential DES enhancement to add an "other" option in the "Gun Type" drop-down menu in  
16 the "Dealer Long Gun Sale" transaction type. This review required the leadership of the Bureau,  
17 in collaboration with ADB and the Department's attorneys, to engage in a balancing of multiple  
18 factors and a weighing of competing priorities among the multiple proposed DES enhancement  
19 requests pending at that time. The Department also evaluated and weighed the allocation of  
20 available resources to such an enhancement, such as the number of personnel required, budgeting  
21 of the enhancement, and the time it would take to complete said enhancement. The onset of the  
22 COVID-19 pandemic in March 2020 presented additional difficulties in being able to staff such a  
23 DES enhancement. (Mendoza Dec., ¶ 8.)

24 ADB undertook a review of what would be required to add the "other" option to the "Gun  
25 Type" drop-down menu. At some point, ADB reported back that it would take many months to  
26 implement this enhancement, and would require well over a dozen personnel, many of whom  
27 would have to be diverted from other projects. Implementing this DES enhancement would  
28

1 have required changes to many other applications and databases in addition to the DES.

2 (Mendoza Dec., ¶ 9.)

3 For these reasons, ADB additionally explored the possibility of doing a DES enhancement  
4 that was reduced in-scope, temporary, and applicable to only the Title 1 firearm. Under this  
5 proposal, a permanent enhancement would be implemented at a later date. ADB estimated such  
6 an enhancement would take a few months. ADB also advised that this proposal would present  
7 operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the  
8 DES until a permanent enhancement was implemented. Such operational difficulties would have  
9 raised significant public safety concerns. These factors, including the public safety concerns,  
10 were discussed within the Department, which ultimately decided to not immediately proceed with  
11 the temporary DES enhancement. (Mendoza Dec., ¶ 10.)

12 After SB 118 was signed into law on August 6, 2020, which rendered the Title 1 firearm a  
13 prohibited assault weapon, the Department decided, after weighing competing priorities among  
14 the multiple proposed DES enhancements pending at that time in the middle of the COVID-19  
15 pandemic, to implement at a later date the DES enhancement to add an “other” option in the “Gun  
16 Type” drop-down menu. This enhancement was completed on October 1, 2021. (Mendoza Dec.,  
17 ¶ 11.)

18 Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the  
19 Bureaus’ firearms software developments unit, oversaw the enhancement project to add the  
20 “other” option in the DES. (Massaro-Florez Dep.1(12/28/21), p. 18:12-21,19:2-12, 30:19-  
21 31:10.) The work on this enhancement project took from July 1, 2021, to October 1, 2021.  
22 (Massaro-Florez Dep.1 p. 68:25-69:10.) Her entire staff of at least 12 people worked on this  
23 project along with staff from the firearms application support unit and the Bureau. (Massaro-  
24 Florez Dep.1 p.36:18-37:25.) The project was done in four phases including analysis, build,  
25 system integration and testing. (Massaro-Florez Dep.1 p. 94:6-24.) Ms. Massaro-Florez testified  
26 that this project was complicated because it required not only modifications in the DES but  
27 several other applications and databases. (Massaro-Florez Dep.1 p. 57:14-60:11, 61:13-62:5,  
28 91:3-92:21.) Christina Rosa-Robinson, an Information Technology Specialist I who works with

1 the Bureau supporting its firearms applications and was involved in all stages of the enhancement  
2 project, referred to this enhancement as a big undertaking. (Rosa-Robinson Dep. pp. 11:14-12:5,  
3 13:9-14, 18:10-19:5, 25:23-26:9, 52:13-23, Ex. E to Lake Dec.)

### 4 III

#### 5 ARGUMENT

##### 6 A. SUMMARY JUDGMENT SHOULD BE GRANTED

7 "The motion for summary judgment shall be granted if all the papers submitted show that  
8 there is no triable issue as to any material fact and that the moving party is entitled to judgment as  
9 a matter of law." (Civ. Proc. § 437c (c)). "Our Supreme Court has made clear that the purpose of  
10 the 1992 and 1993 amendments to the summary judgment statute was to liberalize the granting of  
11 summary judgment motions." (*Hodges v. Cedars-Sinai Medical Center* (2023) 91 Cal.App.5th  
12 894, 903 (citation omitted).) Summary judgment is no longer called a "disfavored" remedy and is  
13 now seen as "a particularly suitable means to test the sufficiency of the plaintiff's or defendant's  
14 case." (*Id.* (citation omitted).) Summary judgment motions serve the purpose to "expedite  
15 litigation and eliminate needless trials." (*Continental Casualty Co. v. Superior Court* (2001) 92  
16 Cal.App.4th 430, 438.)

17 Thus, summary judgment law no longer requires "a defendant moving for summary  
18 judgment to conclusively negate an element of the plaintiff's cause of action. In this particular  
19 too, it now accords with federal law. All that the defendant need do is to 'show that one or more  
20 elements of the cause of action . . . cannot be established' by the plaintiff." (*Aguilar v. Atlantic*  
21 *Richfield Co.* (2001) 25 Cal.4th 826, 854 (citations omitted)).

22 Each party's burden of proof on a defendant's motion for summary judgment is set forth at  
23 Code of Civil Procedure 437c, subdivision (p)(2), which states:

24 "A defendant or cross-defendant has met his or her burden of showing that a cause of  
25 action has no merit if that party has shown that one or more elements of the cause  
26 of action, even if not separately pleaded, cannot be established, or that there is a  
27 complete defense to that cause of action. Once the defendant or cross-defendant  
28 has met that burden, the burden shifts to the plaintiff or cross-complainant to show  
that a triable issue of one or more material facts exists as to that cause of action or  
a defense thereto. The plaintiff or cross-complainant may not rely upon the mere  
allegations or denials of its pleadings to show that a triable issue of material fact

1 exists but, instead, shall set forth the specific facts showing that a triable issue of  
2 material fact exists as to that cause of action or a defense thereto.”

3 (Civ. Proc. § 437c (p)(2).)

4 In order for an issue to be material, it must “relate to a claim or defense in issue which  
5 could make a difference in the outcome.” (*Mallett v. Superior Court* (1992) 6 Cal.App.4th 1853,  
6 1863-1864.) “Only material factual disputes bear any relevance: No amount of factual conflict  
7 upon other aspects of the case will preclude summary judgment.” (*Christina C. v. County of*  
8 *Orange* (2013) 220 Cal.App.4th 1371, 1379.)

9 **B. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO ALL**  
10 **THREE OF THE INTERFERENCE WITH CONTRACT AND PROSPECTIVE**  
11 **ECONOMIC ADVANTAGE CLAIMS**

12 Government Code section 815 declares that, “except as otherwise provided by statute,  
13 public entities are not liable for a tortious injury, whether such injury arises out of an act or  
14 omission of the public entity or a public employee or any other person.” (Gov. Code §815, subd.  
15 (a)). The California Supreme Court has repeatedly and clearly held that, “under the Government  
16 Claims Act (Govt. Code, §810 et seq.), there is no common law tort liability for public entities in  
17 California; instead, such liability must be based on statute.” (*Guzman v. County of Monterey*  
18 (2009) 46 Cal.4th 887, 897.)

19 The intent of the Government Claims Act is “not to expand the rights of plaintiffs against  
20 government entities. Rather, the intent of the act is to confine potential governmental liability to  
21 rigidly delineated circumstances.” (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th  
22 983, 991.) “Thus, in the absence of some constitutional requirement, public entities may be liable  
23 only if a statute declares them to be liable.” (*County of Los Angeles v. Superior Court (Terrell R.)*  
24 (2002) 102 Cal.App.4th 627, 637.) The applicable enactment must be alleged in specific terms.  
25 (*Id.* at p. 638.) Every fact material to the existence of its statutory liability “must be pleaded with  
26 particularity.” (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129-138.)

27 Under Government Code section 815.2, public entities may be liable for acts of their  
28 employees but are not liable if the employee’s act or omission would not give rise to a cause of  
action against that employee or if the employee is immune from liability. (*Walker v. County of*

1 *Los Angeles* (1987) 192 Cal.App.3d 1393, 1397.) “A public employee is not liable for an injury  
2 caused by the act or omission of another person.” (Gov. Code, § 820.8.) Liability under section  
3 815.2 depends on whether a public employee breached a duty owed to plaintiff. (*Hoff v.*  
4 *Vacaville Unified* (1998) 19 Cal.4th 925, 933.) “The non-action of one who has no legal duty to  
5 act is nothing.” (*People v. Heitzman* (1994) 9 Cal.4th 189, 198.) “Absence of duty bars recovery  
6 for intentional torts as well as for negligence.” (*Gregory v. Cott* (2014) 59 Cal.4th 996, 1011-  
7 1012.) “As a rule, one has no duty to come to the aid of another. A person who has not created a  
8 peril is not liable in tort merely for failure to take affirmative action to assist or protect another  
9 unless there is some relationship between them which gives rise to a duty to act.” (*Zelig v.*  
10 *County of Los Angeles* (2002) 27 Cal.4th 1112, 1128-1129.) “A ‘special relationship’ exists if and  
11 only if an injured person demonstrates the public officer assumed a duty toward him greater than  
12 the duty owed to another member of the public.” (*Walker, supra*, 192 Cal.App.3d at p. 1398.)

13 A duty to act on the part of a public employee “should be sufficiently alleged so as to  
14 make that duty clear and unequivocal. This is a simple, ordinary rule of fairness.” (*Susman v.*  
15 *City of Los Angeles* (1969) 269 Cal.App.2d 803, 809.) Furthermore, “since all California  
16 governmental tort liability flows from the California Government Claims Act, the plaintiff must  
17 plead facts sufficient to show his or her cause of action lies outside the breadth of any applicable  
18 statutory immunity.” (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 148.)

19 Here, since there is no common law tort liability for public entities, the SAC fails to state  
20 a cause of action against the Department because interference with contract and prospective  
21 economic advantage claims are common law torts. (*Della Penna v. Toyota Motor Sales* (1995)  
22 11 Cal.4th 376, 381[“interference torts” which includes interference with contract and  
23 interference with prospective economic relations are based on common law].)<sup>4</sup>

24 While no cause of action can be stated directly against the Department, the allegations  
25 indicate that plaintiff is attempting to predicate liability based on the failure of Department  
26 employees, including former Attorney General Becerra, to modify the DES to add an “other”

27 \_\_\_\_\_  
28 <sup>4</sup> A summary judgment motion “necessarily includes a test of the sufficiency of the complaint.”  
(*Centinela Hospital v. City of Inglewood* (1991) 225 Cal.App.3d 1586, 1595.)

1 option after the Title 1 was introduced in October, 2019, and before the Title 1 was banned by the  
2 passage of SB 118. However, as discussed below, defendants have shown that elements of the  
3 interference claims cannot be established. In addition, the applicable Penal Code statutes did not  
4 impose a mandatory duty to modify the DES but rather conferred discretionary authority for  
5 Department employees, including former Attorney General Becerra, to determine if and/or when  
6 the DES should have been modified to add an “other” option. Furthermore, the discretionary  
7 immunity under Government Code section 820.2 bars the interference claims.

8 **1. Summary Judgment Should be Granted as to the Third Cause of Action for**  
9 **Interference with Contractual Relations**

10 “Tortious interference with contractual relations requires “(1) the existence of a valid  
11 contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3)  
12 the defendant's intentional acts designed to induce a breach or disruption of the contractual  
13 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting  
14 damage.” (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1141.)

15 A tortious disruption of an *existing* contract is required. (*Della Penna v. Toyota Motor*  
16 *Sales, U.S.A.* (1995) 11 Cal.4th 376, 392 (emphasis in original).) The existence of a contract  
17 requires parties capable of contracting; their consent; a lawful object; and a sufficient cause or  
18 consideration. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 21.) In  
19 determining whether a contract was formed, California law “places emphasis on the party's intent  
20 to be bound to the contract.” (*Id.* at p. 22.) The parties must “have a present intention to be  
21 bound by their agreement . . .” (1 Williston on Contracts (4th ed.) § 3:7; see also § 3.2-parties  
22 must “manifest objectively an intent to be bound by the agreement.”)

23 “The fact that the buyer makes a deposit on goods to be manufactured does not establish  
24 that the parties made a contract for that purpose.” (2 *Lawrence's Anderson on the Uniform*  
25 *Commercial Code* (3d ed.) § 2-204:137-Conduct establishing contract-Conduct held not  
26 sufficient to establish existence of contract.)

27 Here, no valid contract existed. Plaintiff admits that the \$5 deposits were refundable and  
28 that there was no obligation for any person making a deposit to actually purchase the Title 1.

1 Plaintiff also admits there was no intent to ship any Title 1 firearm at that time and a person  
2 would have to complete the full purchase before plaintiff would ship it. Clearly, there was no  
3 present intention by the parties to be bound to a purchase of the Title 1. Also, defendants could  
4 not have had knowledge of contracts that did not exist.

5 Furthermore, it is undisputed that the setup of the DES to include the gun type drop-down  
6 menu with rifle, rifle/shotgun and shotgun occurred before the introduction of the Title 1 in  
7 October, 2019. Thus, it is logically impossible for the inclusion of this drop-down menu in the  
8 DES to have been an intentional act designed to interfere with sales of a firearm that did not exist  
9 yet.

10 In addition, defendants' inaction in not modifying the DES to add an "other" option before  
11 the August 6, 2020, ban of the Title 1 cannot properly be construed as an intentional act designed  
12 to induce a breach or disruption. Such an assertion is inconsistent with a logical reading of the  
13 phrase "intentional act designed to induce." In *Nanko Shipping v. Alcoa Inc.*, (D. D.C. 2015) 107  
14 F. Supp. 3d 174, the court held that no claim for tortious interference with contract or  
15 prospective business advantage could be stated when plaintiff's tortious interference claim rested  
16 "on alleged inaction." (*Id.* at p. 182-183; reversed on other grounds in *Nanko Shipping, USA v.*  
17 *Alcoa, Inc.* (D.C. Cir. 2017) 850 F.3d 461, 467; see also *Knight Enterprises v. RPF Oil Co.* (Mich.  
18 Ct. App. 2013) 299 Mich.App. 275, 280 [Commission of an affirmative act required to prevail on  
19 a claim for tortious interference under Michigan law].)

20 Even if inaction could be construed as an intentional act designed to induce a breach, there  
21 must be a statutory basis establishing a mandatory duty to modify the DES. As discussed further  
22 below, the Penal Code statutes relied upon by plaintiff do not establish such a duty.

23 Finally, there is no basis for an actual breach or disruption of any contractual relationship  
24 because the deposits were not contracts.

25 **2. Summary Judgment Should be Granted as to the Fourth and Fifth Causes of Action**  
26 **for Tortious and Negligent Interference with Prospective Economic Advantage**

27 "Intentional interference with prospective economic advantage has five elements: (1) the  
28 existence, between the plaintiff and some third party, of an economic relationship that contains

1 the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the  
2 relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual  
3 disruption of the relationship; and (5) economic harm proximately caused by the defendant's  
4 action.” (*Roy Allan Shurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)<sup>5</sup>

5 “A cause of action for tortious interference has been found lacking when either the  
6 economic relationship with a third party is too attenuated or the probability of economic benefit  
7 too speculative.” (*Id.* at p. 515.) It must be “reasonably *probable* that the lost economic  
8 advantage would have been realized but for the defendant's interference.” (*Youst v. Longo* (1987)  
9 43 Cal.3d 64, 71 (emphasis in original).)

10 “The tort's requirements presuppose the relationship existed *at the time* of the defendant's  
11 allegedly tortious acts lest liability be imposed for actually and intentionally disrupting a  
12 relationship which has yet to arise.” (*Roy Allan Shurry Seal, supra*, 2 Cal.5th at p. 518 (emphasis  
13 in original).) “The defendant must have engaged in intentionally wrongful acts designed to  
14 disrupt the plaintiff's relationship.” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29  
15 Cal.4th 1134, 1164.)

16 In addition, a plaintiff must prove “that the defendant not only knowingly interfered with  
17 the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other  
18 than the fact of interference itself.” (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11  
19 Cal.4th 376, 393.) “An act is independently wrongful if it is unlawful, that is, if it is proscribed  
20 by some constitutional, statutory, regulatory, common law, or other determinable legal standard.”  
21 (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1142.) “The purpose of the  
22 independent wrongfulness requirement in economic interference torts is to balance between  
23 providing a remedy for predatory economic behavior and keeping legitimate business competition  
24 outside litigative bounds.” (*Id.* at p. 1146.) “Only defendants who have engaged in an unlawful  
25 ~~act can be held liable for this tort.” (*Korea Supply, supra*, 29 Cal.4th at p. 1164.)~~

26 <sup>5</sup> Negligent interference with prospective economic advantage requires essentially the same  
27 elements as intentional interference except that the plaintiff must show that the defendant owed  
28 the plaintiff a duty of care. (*Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th 1179, 1187.)

1           The above discussion demonstrating there is no basis for an interference with contract  
2 cause of action applies as well with regard to the interference with prospective economic  
3 advantage claims. First, there was no probability of future economic benefit based on the  
4 refundable, non-obligatory \$5.00 deposits. In addition, there must have been an intentionally  
5 wrongful act designed to disrupt a relationship with a probability of future economic benefit  
6 existing at the time of the alleged act. Again, the setup of the DES to include the gun type menu  
7 preceded the introduction of the Title 1 in October, 2019. Also, inaction cannot constitute an  
8 intentionally wrongful act designed to disrupt.

9           The additional requirement of an independently wrongful act cannot be established  
10 because there was no act on the part of defendants that could be construed as “unlawful” under  
11 the applicable Penal Code statutes.

12           Furthermore, irrespective of plaintiff’s failure to establish elements of the interference  
13 claims, these torts have traditionally protected the expectancies involved in “ordinary commercial  
14 dealings.” (*Roy Allan Shurry Seal v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 515.)  
15 Defendants submit that the *Roy Allan Shurry Seal* holding supports a finding that all of the  
16 interference causes of action in this case should be precluded, as a matter of law, under the  
17 circumstances presented.

18           *Roy Allan Shurry Seal* involved an interference with prospective economic advantage  
19 claim in the context of the bidding process for a public works contract. (*Id.* at p. 509-510.)  
20 The *Roy Allan Shurry Seal* court noted that “the public works bidding process differs from the  
21 types of commercial transactions that traditionally have formed the basis for tort liability.” (*Id.* at  
22 p. 519-520.) The court noted that, “we must consider whether expanding tort liability in the area  
23 of public works contracts would ultimately create social benefits exceeding those created by  
24 existing remedies for such conduct, and outweighing any costs and burdens it would impose.” (*Id.*  
25 at p. 520.) The *Roy Allan Shurry Seal* court noted that “courts must act prudently when fashioning  
26 damages remedies in an area of law governed by an extensive statutory scheme.” (*Id.*)

27           The *Roy Allan Shurry Seal* court rejected expanding tort liability to cover wrongful  
28 interference torts in the public contracts bid process context because it would provide little

1 additional benefit in light of the extensive statutory scheme. (*Id.* at p. 521.)

2 Here, the firearms industry is “highly regulated.” (*In re Firearm Cases* (2005) 126  
3 Cal.App.4th 959, 985-986.) Defendants submit that expanding tort liability to cover wrongful  
4 interference torts in the firearms regulation context would provide little additional benefit in light  
5 of the extensive statutory scheme. The second reason for the *Roy Allan Shurry Seal* court’s  
6 holding was that “the competitive bidding laws were enacted for the benefit of the public, not for  
7 the benefit or enrichment of bidders.” (*Roy Allan Shurry Seal, supra*, 2 Cal.5th at p. 521.)  
8 Similarly, here, firearms laws were enacted to promote public safety for the benefit of the public,  
9 not for the benefit or enrichment of firearms manufacturers.

10 Based on the above discussion, defendants are entitled to summary judgment because they  
11 have shown that elements of each of the three interference claims cannot be established.  
12 Nevertheless, even if the requirement that a defendant must have engaged in an intentionally  
13 wrongful act could be construed as including a failure to act or inaction, there must be a statutory  
14 basis establishing a duty to act. The SAC alleges Penal Code sections 28155, 28205, 28215 and  
15 28220 as providing a basis for a mandatory duty. (SAC, ¶¶ 105, 145, 157.) However, as  
16 discussed below, these statutes fail to impose a mandatory duty upon defendants to have modified  
17 the DES to add an “other” option before the Title 1 was banned.

18 **3. The Penal Code Statutes Cited by Plaintiff Fail to Satisfy the Requirements to**  
19 **Establish a Mandatory Duty upon the Department, or its employees including**  
20 **Former Attorney General Becerra, to Have Modified the DES to Add an “Other”**  
21 **Option Before the Title 1 was Banned**

22 A potential statutory basis for liability against a public entity is evaluated under the three  
23 elements set forth in Government Code section 815.6 which states:

24 “Where a public entity is under a mandatory duty imposed by an enactment that is  
25 designed to protect against the risk of a particular kind of injury, the public entity  
26 is liable for an injury of that kind proximately caused by its failure to discharge the  
27 duty unless the public entity establishes that it exercised reasonable diligence to  
28 discharge the duty.”

(Govt. Code § 815.6.)

29 “A private cause of action lies against a public entity only if the underlying enactment sets  
30 forth the elements of liability set out in section 815.6.” *Guzman, supra*, 46 Cal.4th at p. 897.)

1 The requirements of section 815.6 must be satisfied in order to create a private right of action for  
2 damages. (*Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 632.) Whether  
3 an enactment creates a mandatory duty is a question of law. (*Haggis v. City of Los Angeles*  
4 (2000) 22 Cal.4th 490, 499.)

5  
6 **a) The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the First Requirement  
7 to Establish a Mandatory Duty**

8 “First and foremost, application of section 815.6 requires that the enactment at issue be  
9 *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it  
10 must *require*, rather than merely authorize or permit, that a particular action be taken or not taken.  
11 It is not enough, moreover, that the public entity or officer have been under an obligation to  
12 perform a function if the function itself involves the exercise of discretion.” (*Haggis v. City of*  
13 *Los Angeles* (2000) 22 Cal.4th 490, 498 (emphasis in original).) “If a statute does not require that  
14 a ‘particular action’ be taken, section 815.6 does not create the right to sue a public entity.”  
15 (*Shamsian, supra*, 136 Cal.App.4th at p. 632.)

16 “Courts have construed this first prong rather strictly, finding a mandatory duty only if the  
17 enactment affirmatively imposes the duty and provides implementing guidelines.” (*Guzman,*  
18 *supra*, 46 Cal.4th at p. 898.) “The mandatory nature of the duty must be phrased in explicit and  
19 forceful language.” (*Id.* at p. 910.) A mandatory duty cannot be implied. (*Id.* at p. 911.)

20 “In addition, it is not enough that the public entity or officer have been under an obligation  
21 to perform a function if the function itself involves the exercise of discretion. Therefore, an  
22 enactment’s use of mandatory language such as “shall” is not dispositive. An enactment creates a  
23 mandatory duty only where the commanded act does not lend itself to a normative or qualitative  
24 debate over whether it was adequately fulfilled.” (*County of Los Angeles v. Superior Court*  
25 (*Faten*) (2012) 209 Cal.App.4th 543, 546.)

26 Here, the Penal Code section dealing with the DES is section 28205, which states in  
27 pertinent part, *except as permitted by the department*, electronic transfer shall be the exclusive  
28

1 means by which information is transmitted to the department.” (Pen. Code, § 28205, subd.  
2 (c)(emphasis added).)<sup>6</sup>

3 In interpreting statutory provisions, a court’s “fundamental task is to determine the  
4 Legislature’s intent and give effect to the law’s purpose.” (*Lopez v. Sony Electronics, Inc.* (2018)  
5 5 Cal.5th 627, 633-634.) In this regard, the *Lopez* court stated:

6 “We begin by examining the statute’s words because they generally provide the  
7 most reliable indicator of legislative intent. If the statutory language is clear and  
8 unambiguous our inquiry ends. In that case, the plain meaning of the statute is  
controlling, and resort to extrinsic sources to determine the Legislature’s intent is  
unnecessary.”

9 (*Id.* at p. 634.)

10 Here, the plain meaning of the language in section 28205 clearly does not establish a  
11 mandatory duty to have modified the DES to add an “other” option before August 6, 2020. First,  
12 as required by *Haggis* and *Shamsian*, it does not require that a particular action be taken as to how  
13 to setup the DES. For example, it does not specify a particular action with regard to entry of  
14 information as to gun type, nor does it address provision of additional information such as rifle,  
15 rifle/shotgun or shotgun or whether inclusion of such information would need to match the  
16 statutory definition of each category. The plain meaning of the language “except as permitted by  
17 the department” is that the Department has discretion to permit transmission by non-electronic  
18 means (with the exception of a telephonic transfer) although it has not done so. In this regard, use  
19 of the word “shall” is not dispositive when read together with the “except as permitted by the  
20 department” language. Nevertheless, it is undisputed that the Department has required use of the  
21 DES for processing firearms transfers.

22 Second, as required by *Guzman*, section 28205 does not provide “implementing  
23 guidelines” or phrase the nature of a duty in “explicit and forceful language.” As the above  
24 discussion illustrates, a logical reading of this general language is that implementation of setting  
25 up the DES is left to the discretion of the department. ~~The only way to glean a duty to modify the~~

26 <sup>6</sup> The complete text of subdivision (c) states: “On or after January 1, 2003, except as permitted  
27 by the department, electronic transfer shall be the exclusive means by which information is  
28 transmitted to the department. Telephonic transfer shall not be permitted for information  
regarding sales of any firearms.” (Pen. Code, § 28205, subd. (c))

1 DES to add an “other” option would be to imply one. However, *Guzman* makes clear that a  
2 mandatory duty cannot be implied. Furthermore, to the extent there was a duty to setup and  
3 operate the DES, it is undisputed that defendants did so.

4 In addition, the allegations of the SAC show that plaintiff agrees that section 28205,  
5 subdivision (c), confers discretionary authority upon defendants. Plaintiff alleges that the  
6 inability to process a Title 1 in the DES “could also be alleviated if the Department authorizes any  
7 of a multitude of alternative means pursuant to the authority granted it by Penal Code section  
8 28205, subdivision (c) . . .” (SAC ¶ 66.) In addition, plaintiff indicates that defendants would  
9 have authority to do away with the rifle, rifle/shotgun, shotgun drop-down menu altogether  
10 stating: “Significantly, while the “type” of firearm (e.g., “long gun” or “handgun”)<sup>7</sup> is required,  
11 the “subtype” [i.e. rifle, rifle/shotgun, shotgun] of a firearm is not mandated by Penal Code  
12 section 28160, subdivision (a), or any other provision within Penal Code sections 28200 through  
13 28255.” (SAC, ¶ 45.) Plaintiff’s allegation that defendants should have exercised their discretion  
14 to provide an alternative or modify the DES sooner illustrates that section 28205 does lend itself  
15 to a normative or qualitative debate over the setup and operation of the DES which precludes a  
16 finding of a mandatory duty.

17 More significantly, Penal Code section 28245 explicitly states that defendants’ acts or  
18 omissions pursuant to section 28205 as it pertains to long guns shall be deemed to be  
19 discretionary under the Government Claims Act. Penal Code section 28245 states:

20 “Whenever the department of Justice acts pursuant to this article as it pertains to  
21 firearms other than handguns, the department’s acts or omissions shall be deemed  
22 to be discretionary within the meaning of the Government Claims Act pursuant to  
Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.”

23 (Pen. Code, §-28245.)

24 First, both sections 28205 and 28245 are part of the same article. (Article 3. Submission  
25 of Fees and Firearm Purchaser Information to the Department of Justice.) Second, the plain  
26 meaning of the language “as it pertains to firearms other than handguns” is that section 28245

27 <sup>7</sup> See also Rostron, *Style, Substance, and the Right to Keep and Bear Assault Weapons* (2018) 40  
28 Campbell L. Rev. 301, 304 [discussing types of firearms as handguns and long guns.]

1 applies to long guns. Third, section 28245 applies to acts or omissions making clear that it  
2 applies to the alleged failure to modify the DES. Fourth, the specific reference to the  
3 Government Claims Act makes clear that it applies to the monetary damages claims herein as  
4 opposed to claims outside the Government Claims Act such as for mandamus or declaratory relief.  
5 Thus, section 28245 conclusively removes any doubt that acts or omissions pursuant to section  
6 28205 were discretionary and did not establish a duty to modify the DES.

7 Plaintiff also asserts Penal Code section 28155 as a basis for establishing a mandatory  
8 duty. Section 28155 simply states: “The Department of Justice shall prescribe the form of the  
9 register and the record of electronic transfer pursuant to Section 28105.” The plain meaning of  
10 the language in Section 28155 clearly does not establish a mandatory duty to have modified the  
11 DES to add an “other” option before August 6, 2020.

12 First as required by *Haggis* and *Shamsian*, it does not require or specify that a particular  
13 action be taken with regard to what the form should contain. Second, as required by *Guzman*, the  
14 general, one sentence language of Section 28155 does not provide “implementing guidelines” or  
15 phrase the nature of the duty in “explicit and forceful language.” Thus, the logical reading of this  
16 language is that the contents of the form was to be left up to the discretion of the Department.  
17 Use of the word “shall” in section 28155 does not change this conclusion because it merely refers  
18 to the general language for the Department to prepare the form for use in the DES. Any  
19 discussion about whether the form should have contained different or additional information  
20 requires a normative or qualitative debate over whether such information was adequate, which  
21 precludes a finding of a mandatory duty. A duty to provide different or additional information in  
22 the DES based on the general language of section 28155 cannot be implied.

23 The other two sections relied upon by plaintiff, Penal Code sections 28215 and 28220,  
24 clearly do not impose any duty relative to the setup and operation of the DES. Penal Code section  
25 28215 merely describes what the dealer and applicant are supposed to do in submitting an  
26 application for approval of a firearm transaction. For example, the dealer must require the  
27 purchaser to sign the record of transfer and the dealer signs as a witness to the signature and  
28 identification of the purchaser. (Pen. Code, § 28215, subd. (a).)

1 Penal Code section 28220 sets out procedures to follow upon submission of firearm  
2 purchaser information to the Department including examination of records pertaining to a  
3 purchaser and submission of information to a dealer relating to whether the purchaser is  
4 prohibited from receiving a firearm. There is no language mandating how to setup or modify the  
5 DES at all.

6 Finally, the general and conclusory allegation that the Attorney General, being charged with  
7 the duty to see that laws are uniformly and adequately enforced under the California constitution  
8 does not establish any specific duty to modify the DES. In *State of California ex rel. Dept. of*  
9 *Rehabilitation v. Superior Court*, (1982) 137 Cal.App.3d 282, the court rejected the assertion of  
10 language from the California Constitution stating “it shall be the duty of the Attorney General to  
11 see that the laws of the State are uniformly and adequately enforced . . . .” as imposing a  
12 mandatory duty to enforce specific laws in a particular way. (*Id.* at 286-287.) Following *State of*  
13 *California ex rel. Dept. of Rehab.*, the court in *Chodosh v. Commission on Judicial Performance*,  
14 (2022) 81 Cal.App.5th 248, found that article V, section 13, of the California Constitution did not  
15 impose a mandatory duty upon former Attorney General Becerra but rather it “imposes upon the  
16 Attorney General a discretionary duty to enforce the law.” (*Id.* at 269.)

17 **b) The Penal Code Statutes Cited by Plaintiffs Fail to Satisfy the Second**  
18 **Requirement that a Statute be Designed to Protect Against the Particular Kind of**  
19 **Injury the Plaintiff Suffered**

20 “Second, but equally important, section 815.6 requires the mandatory duty be designed to  
21 protect against the particular kind of injury the plaintiff suffered. The plaintiff must show the  
22 injury is one of the consequences which the enacting body sought to prevent through imposing  
23 the alleged mandatory duty. Our inquiry in this regard goes to the legislative purpose of imposing  
24 the duty. That the enactment confers some benefit on the class to which plaintiff belongs is not  
25 enough; if the benefit is incidental to the enactment’s protective purpose, the enactment cannot  
26 serve as a predicate for liability under section 815.6.” (*Haggis, supra*, at p. 499.)

27 “Where the harm was not one of the evils sought to be prevented by the statute, there can  
28 be no governmental liability.” (*Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198,

1 1203 [Enactments were designed to protect the public from misleading or deceptive advertising  
2 promoting lottery games, not to safeguard the profits of gaming operators].)

3 - Here, even if a duty to add an “other” option to the DES prior to August 6, 2020, existed  
4 which it did not, said duty is not designed to protect against the particular kind of injury the  
5 plaintiff suffered, that is lost sales of the Title 1 before it was rendered illegal on August 6, 2020.  
6 The clear purpose of the DES is to conduct background checks of potential purchasers of  
7 firearms. Requiring an applicant to undergo a background check is “designed to ensure only that  
8 those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens.” (*People v.*  
9 *Alexander* (2023) 91 Cal.App.5th 469, 479.) As noted by the *Bauer* court, “we have recognized  
10 that public safety is advanced by keeping guns out of the hands of people who are most likely to  
11 misuse them for these reasons.” (*Bauer, supra*, 858 F.3d at p. 1223; see also *People v. Correa*  
12 (2012) 54 Cal.4th 331, 342 [Purpose of denying firearms to felons, who are considered more  
13 likely to commit crimes with them, is to protect the public].)

14 **4. The Discretionary Immunity Under Government Code Section 820.2 Also Precludes**  
15 **Liability Against Defendants**

16 The “most significant” of the Government Claims Act's immunity provisions confers a  
17 general immunity for discretionary acts taken within the scope of authority. This immunity was  
18 long recognized at common law and preserved in Government Code section 820.2. (*Leon v.*  
19 *County of Riverside* (2023) 14 Cal.5th 910, 928.) Government Code section 820.2 states:  
20 “Except as otherwise provided by statute, a public employee is not liable for an injury resulting  
21 from his act or omission where the act or omission was the result of the exercise of the discretion  
22 vested in him, *whether or not such discretion be abused.*” (Gov. Code § 820.2 (emphasis  
23 added).) “Immunity applies even to lousy decisions in which the worker abuses his or her  
24 discretion, including decisions based on woefully inadequate information.” (*Gabrielle A. v.*  
25 *County of Orange* (2017) 10 Cal App.5th 1268, 1285 [Immunity provided by sections 815.2 and  
26 820.2 is broad, and includes immunity for social workers’ removal and placement decisions].)  
27 If an employee is immune, the employing entity has no liability under Government Code section  
28 815.2. (*Id.* at p. 1287.)

1 Claims for interference with contract or prospective economic advantage are subject to the  
2 immunity provided by section 820.2. (*Lundeen Coatings Corp. v. Department of Water & Power*  
3 (1991) 232 Cal.App.3d 816, 834, fn. 11.)

4 One does not qualify for discretionary immunity “solely on grounds that the affected  
5 employee’s *general course of duties* is discretionary.” (*Caldwell v. Montoya* (1995) 10 Cal.4th  
6 972, 983 (emphasis in original).) A showing that “the specific conduct giving rise to the suit  
7 involved an *actual* exercise of discretion, i.e., a conscious balancing of risks and advantages” is  
8 required. (*Id.* (emphasis in original).) However, this showing “does not require a *strictly careful,*  
9 *thorough, formal, or correct* evaluation.” (*Id.* (emphasis in original).)

10 The *Caldwell* court provided examples of lower-level or “ministerial” decisions that do not  
11 qualify for the immunity such as “a bus driver’s decision not to intervene in one passenger’s  
12 violent assault against another.” (*Id.* at 981; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40  
13 Cal.3d 780, 793-795.) The *Caldwell* court cited *Thompson v. County of Alameda*, (1980) 27  
14 Cal.3d 741, as an example of when the discretionary act statute does immunize officials and  
15 agencies. (*Caldwell, supra*, 10 Cal.4th at p. 982.) In *Thompson*, the court affirmed the sustaining  
16 of a demurrer finding that the County’s decision to release a violent juvenile offender into his  
17 mother’s custody, who later attacked the plaintiff, was immunized under section 820.2.  
18 (*Thompson, supra*, 27 Cal.3d at p. 747-749.)

19 A review of other cases that have applied the discretionary immunity statute to bar liability  
20 show that the process of deciding whether or not to undertake a project to modify the DES and  
21 the timing thereof clearly falls under the discretionary immunity. In *Curcini v. County of*  
22 *Alameda*, (2008) 164 Cal.App. 4th 629, the court affirmed the sustaining of a demurrer without  
23 leave to amend finding that alleged fraud in the awarding of a public contract was barred under  
24 Government Code section 820.2. “Because the award of a public contract involves the exercise  
25 of discretion, the government employees and entities involved are immune from liability.” (*Id.* at  
26 p. 648.) The immunity applied despite allegations that the defendants intended to “rig” the bid  
27 because to allow a cause of action based upon such allegations “would eviscerate the immunity  
28

1 provided by Government Code section 820.2 for the public employees' exercise of discretion.”

2 (*Id.* at pp. 648-649.)

3 In *Hacala v. Bird Rides, Inc.*, (2023) 90 Cal.App.5th 292, the court affirmed the sustaining  
4 of a demurrer on behalf of the City of Los Angeles under Government Code Section 820.2. (*Id.*  
5 at p. 300, 306.) *Hacala* was based on an incident wherein one of the plaintiffs tripped on a  
6 vendor’s electric scooter left on a City sidewalk. (*Id.* at p. 300.) Relying on *Posey v. State of*  
7 *California*, (1986) 180 Cal.App.3d 836, and *Bonds v. State of California ex. rel. Cal. Highway*  
8 *Patrol*, (1982) 138 Cal.App.3d 314, the court concluded that the City was immune from liability  
9 because its employees had discretion but were not under a mandatory duty to remove improperly  
10 parked scooters. (*Id.* at p. 306.)

11 In *Posey*, CHP officers drove past a vehicle parked on a street shoulder but failed to stop,  
12 inspect or remove it. The plaintiff later collided with this vehicle. (*Posey, supra*, 180 Cal.App.3d  
13 at p. 841.) The *Posey* court affirmed the sustaining of a demurrer finding the immunity of  
14 Government Code section 820.2 “fully applicable” because the inspection and removal of  
15 vehicles under the applicable statute is a discretionary act. (*Id.* at p. 852.) The *Bonds* court  
16 similarly held that a decision whether to remove a stranded vehicle is an immunized discretionary  
17 action. (*Bonds, supra*, 138 Cal.App.3d at p. 322.)

18 In *Roseville Community Hosp. v. State of California*, (1977) 74 Cal.App.3d 583, the court  
19 affirmed the sustaining of a demurrer based on the discretionary immunity statute. (*Id.* at p. 585,  
20 590.) *Roseville Community Hosp.* was premised on the failure of the State and the Attorney  
21 General to take action to stop a health care service provider, who later was adjudicated as  
22 bankrupt, from operating. (*Id.* at p. 586.). In finding that Government Code section 820.2  
23 immunity precluded liability, the *Roseville Community Hosp.* court stated:

24 “Law enforcement and regulatory activity entail continual choices among  
25 priorities. A decision to devote available facilities and personnel to selected areas  
26 and to abstain from active pursuit of others is a policy or planning decision at a  
relatively high internal level.”

27 (*Id.* at p. 590.)

28

1 Similarly, here, the Department's operation of the DES is clearly law enforcement and  
2 regulatory activity. One of the primary purposes of the DES is to conduct firearms background  
3 checks. Furthermore, as discussed above, the declaration of Director Mendoza indicates that in  
4 the latter part of 2019, the Bureau initiated a review to evaluate the resources that would be  
5 required to for a potential enhancement of the DES to add an "other" option in the drop-down  
6 menu which required the leadership of the Bureau, in collaboration with the Application  
7 Development Bureau (ADB) and the Department's attorneys, to engage in the balancing of  
8 multiple factors and weighing of competing priorities among the multiple proposed DES  
9 enhancement requests pending at that time.

10 The Department evaluated and weighed the allocation of available resources for such an  
11 enhancement including the number of personnel required, budgeting of the enhancement and the  
12 time it would take to complete it which was complicated by the onset of the pandemic in March,  
13 2020. The review indicated that the enhancement would take many months to implement  
14 requiring changes to many other applications and databases and would involve well over a dozen  
15 personnel many of whom would have had to have been diverted from other projects. For these  
16 reasons, the department explored the possibility of an alternative temporary enhancement  
17 applicable to the Title 1 only with a permanent enhancement to be implemented at a later date.  
18 However, the ADB determined that this proposal would present operational difficulties in  
19 properly recording the sales and transfers of the Title 1 in the DES which raised significant public  
20 safety concerns. Taking these factors into account, the Department decided not to proceed with  
21 the temporary enhancement. After SB 118 was enacted on August 6, 2020, rendering the Title 1  
22 a prohibited assault weapon, the Department weighed competing priorities among the multiple  
23 proposed DES enhancements pending at the time in the middle of the pandemic and decided to  
24 implement the permanent enhancement to add the "other" option at a later date which occurred on  
25 October 1, 2021.

26 These factors clearly show that the Department engaged in a decision making process  
27 considering multiple factors that were reviewed and considered at a high level within the  
28 Department. As was the situation in *Roseville Community Hospital*, the Bureau was required to

1 make choices among priorities taking into consideration available facilities and personnel relative  
2 to the DES. Clearly, the Department has demonstrated that a conscious balancing of risks and  
3 advantages took place. While it is expected that plaintiff will take issue with the Department's  
4 decision-making process and assert that its decisions as to the timing of the DES modification  
5 were incorrect, *Caldwell* does not require a strictly careful, thorough, formal, or correct  
6 evaluation.

7 In addition, as discussed above, the Penal Code statutes pertaining to the operation of the  
8 DES confer discretionary authority on the Department. This conclusion is further bolstered by  
9 Penal Code section 28245 which makes clear that any of defendants' acts or omissions relative to  
10 the DES statute, Penal Code section 28205, as it pertains to long guns, are discretionary under the  
11 Government Claims Act. It is undisputed that the gun type drop-down menu at issue in this case  
12 relates to long guns only. For these reasons, Government Code section 820.2 precludes liability  
13 and provides an additional basis for granting summary judgment.

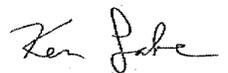
14 IV

15 CONCLUSION

16 For the reasons set forth above, defendants respectfully request that the court grant the  
17 motion for summary judgment in its entirety. There are no genuine issues of material fact and  
18 they are entitled to judgment, as a matter of law.

19 Dated: April 26, 2024

Respectfully submitted,  
ROB BONTA  
Attorney General of California

21 

22  
23 KENNETH G. LAKE  
24 Deputy Attorney General  
25 *Attorneys for State of California, acting by*  
26 *and through the California Department of*  
27 *Justice and Former Attorney General*  
28 *Xavier Becerra*

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
3 KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
4 Deputy Attorneys General  
300 South Spring Street  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6525  
6 Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and  
through the California Department  
8 of Justice and Former Attorney General Xavier  
Becerra*

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

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

17 Plaintiffs,

18 v.

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

22 Defendants.

Case No. 20STCP01747

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION BY  
DEFENDANTS FOR SUMMARY  
JUDGMENT**

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

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

26 Defendants submit the following undisputed material facts with references to supporting  
27 evidence pursuant to Code of Civil Procedure section 437c, subdivision (b). By reason of these

1 facts, defendants have carried their burden of proof. These materials facts with supporting  
 2 evidence demonstrate the absence of a genuine issue of material fact and that plaintiff cannot  
 3 prevail in this action. Defendants are entitled to judgment as a matter of law.

4  
 5 **DEFENDANTS' UNDISPUTED**  
 6 **MATERIAL FACTS AND SUPPORTING**  
 7 **EVIDENCE:**

**PLAINTIFF'S RESPONSE AND**  
**SUPPORTING EVIDENCE:**

8 **Third Cause of Action:**  
**Tortious interference with contractual**  
**relations**

9 1. The Second Amended Complaint (SAC)  
 10 alleges that on October 24, 2019, plaintiff sent  
 11 a letter to former Attorney General Becerra,  
 12 asserting that a defect in the Department of  
 13 Justice (Department) online system for  
 14 processing transfers of firearms rendered  
 15 dealers unable to transfer its recently  
 16 announced Title 1 firearm to its customers.  
 17  
 18 (SAC, ¶ 69, Ex. C.)

1.   
 2.

15 2. Jay Jacobson, President and an owner of  
 16 Franklin Armory, testified that the Title 1 was  
 17 designed with a 16 inch barrel and a padded  
 18 buffer tube instead of a stock and without a  
 19 stock, it would not be intended to be fired  
 20 from the shoulder and thus not a rifle.  
 21  
 22 (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-  
 23 24, Ex. A to Lake Dec.)

2.   
 3.

20 3. The Title 1 was a long gun. "Long gun"  
 21 means any firearm that is not a handgun or a  
 22 machinegun.  
 23  
 24 (SAC, ¶¶ 23-24, Pen. Code, § 16865.)

3.   
 4.

24 4. On August 6, 2020, the legislature passed  
 25 SB 118 which included amending the Penal  
 26 Code Section 3051 definition of an assault  
 27 weapon to add a "centerfire firearm that is not  
 28 a rifle, pistol, or shotgun" that includes  
 components in three categories. (Pen. Code, §  
 30515 (a)(9)-(11).) With this change in

4.   
 5.

1 2 3	<p>definition, the Title 1 was rendered a banned assault weapon.</p> <p>(SAC, ¶ 112, Mendoza Dec. ¶ 11.)</p>	
4 5 6 7 8 9 10	<p>5. The online system for the submission of information concerning the sale and transfer of firearms is known as the Dealer Record of Sale Entry System (DES) The DES is a web-based application used by California firearms dealers to submit firearm background checks to the Department to determine if an individual is eligible to purchase, loan, or transfer a handgun, long gun, and ammunition.</p> <p>(Cal. Code Regs., tit. 11, § 4200; citing Pen. Code, § 28205, Mendoza Dec., ¶ 3.)</p>	5.
11 12 13 14 15 16	<p>6. The alleged defect in the DES was that the gun type drop-down menu for long guns that a dealer would select from while processing a transfer included only options for rifle, shotgun, or rifle/shotgun combination. Plaintiff alleges that since the Title 1 was not a "rifle" under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an "other" option to this drop-down menu.</p> <p>(SAC, ¶¶ 58, 69, Ex C</p>	6.
17 18 19 20	<p>7. The SAC does not identify any statute or other authority that requires that a firearm being processed for transfer in the DES fit the statutory definition of "rifle" in order to be processed as such.</p> <p>(SAC.)</p>	7.
21 22 23 24 25 26 27 28	<p>8. Mr. Jacobson testified that there was no mention of any issue with the DES in the Sacramento action filed by Franklin Armory against the State and former Attorney General Becerra regarding the Title 1 and that he was unaware of any issue with the DES during that time. He testified that during the time the Sacramento action was pending, no one ever expressed concern that the Title 1 could not be processed in the DES because it was not a rifle.</p> <p>(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>	8.

<p>1 2 3 4 5 6</p>	<p>9. Mr. Jacobson testified as to his understanding that stockless firearms were processed in the DES as rifles or shotguns respectively even though they did not meet the statutory definition for rifle or shotgun.</p> <p>(Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8.)</p>	<p>9.</p>
<p>7 8 9 10 11 12 13 14 15 16</p>	<p>10. Mr. Jacobson testified that the process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. The purchaser then would go into the dealer and provide background information for the background check that would then be transmitted to the Department.</p> <p>(Jacobson Dep. p. 154:24-156:18; see also SAC, ¶¶ 1, 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1.), Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).)</p>	<p>10.</p>
<p>17 18 19 20</p>	<p>11. Plaintiff does not allege that anyone ever purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Plaintiff alleges that individuals “placed deposits” for the Title 1 firearm.</p> <p>(SAC, ¶ 113.)</p>	<p>11.</p>
<p>21 22 23 24 25 26 27 28</p>	<p>12. Mr. Jacobson testified that the online deposits were for \$5.00 and that the \$5.00 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title 1 without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately</p>	<p>12.</p>

1	August 6, 2020.	
2	(Jacobson Dep. p. 116:1-117:17, 122:6-	
3	123:12, 124:11-20, 147:17-23, 130:12-131:1.)	
4	13. The issue regarding the Title 1 was first	13.
5	brought to the attention of Bureau Director	
6	Allison Mendoza in the latter part of 2019.	
7	Prior to becoming Director in March, 2023,	
8	Director Mendoza served as Assistant Bureau	
9	Chief from 2015 until March, 2023. (At some	
10	point, the title of this position changed to	
11	Assistant Bureau Director.) As the Assistant	
12	Bureau Chief/Director, she was responsible	
13	for managing all activities under the Bureau's	
14	Regulatory Branch including management and	
15	oversight of the DES. It is Director	
16	Mendoza's understanding that the three	
17	options in the "Gun Type" drop-down menu in	
18	the DES "Dealer Long Gun Sale" transaction	
19	type (rifle, rifle/shotgun combination, or	
20	shotgun) had remained the same since she	
21	became Assistant Bureau Chief in 2015.	
22	(Mendoza Dec., ¶¶ 1-3, 6-7.)	
23	14. Director Mendoza states that at some point	24.
24	after the latter part of 2019, the Bureau	
25	initiated a review to evaluate the resources	
26	required for a potential DES enhancement to	
27	add an "other" option in the "Gun Type" drop-	
28	down menu in the "Dealer Long Gun Sale"	
29	transaction type. This review required the	
30	leadership of the Bureau, in collaboration with	
31	the Department's Application Development	
32	Bureau (ADB) and the Department's	
33	attorneys, to engage in a balancing of multiple	
34	factors and a weighing of competing priorities	
35	among the multiple proposed DES	
36	enhancement requests pending at that time.	
37	The Department also evaluated and weighed	
38	the allocation of available resources to such an	
39	enhancement, such as the number of personnel	
40	required, budgeting of the enhancement, and	
41	the time it would take to complete said	
42	enhancement. The onset of the COVID-19	
43	pandemic in March 2020 presented additional	
44	difficulties in being able to staff such a DES	
45	enhancement.	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(Mendoza Dec., ¶¶ 4-5, 8.)	
15. ADB undertook a review of what would be required to add the “other” option and reported back that it would take many months to implement this enhancement, and would require well over a dozen personnel, many of whom would have to be diverted from other projects. Implementing this DES enhancement would have required changes to many other applications and databases in addition to the DES.	25.
(Mendoza Dec., ¶¶ 5, 9.)	
16. ADB additionally explored the possibility of doing a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a permanent enhancement would be implemented at a later date. ADB estimated such an enhancement would take a few months. ADB also advised that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement.	
(Mendoza Dec., ¶¶ 5, 10.)	
17. Director Mendoza states that, after SB 118 was signed into law August 6, 2020, which rendered the Title 1 firearm a prohibited assault weapon, the Department decided, after weighing competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the COVID-19 pandemic, to implement at a later date the DES enhancement that added an “other” option in the “Gun Type” drop-down menu. This enhancement was completed on	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

October 1, 2021.  (Mendoza Dec., ¶ 11.)	
18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus' firearms software developments unit, oversaw the enhancement project to add the "other" option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases.  (Massaro-Florez Dep.1(12/28/21), Ex. to Lake Dec., pp. 18:12-21,19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21,94:6-24.)	
<b>Fourth Cause of Action: Tortious interference with prospective economic advantage</b>	
19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	26.
<b>Fifth Cause of Action: Negligent interference with prospective economic advantage</b>	
20. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	26.
	7

1 Dated: April 26, 2024

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

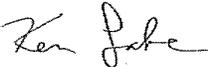
25

26

27

28

Respectfully submitted,  
ROB BONTA  
Attorney General of California  
DONNA M. DEAN  
Supervising Deputy Attorney General



---

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

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: Franklin Armory, Inc. v. California Department of Justice

No.: 20STCP01747

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez

Declarant

/s/ Sandra Dominguez

Signature

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
3 KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
4 Deputy Attorneys General  
300 South Spring Street  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6525  
6 Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and  
through the California Department  
8 of Justice and Former Attorney General Xavier  
Becerra*  
9

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

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

16  
17 Plaintiffs,

18 v.

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

22 Defendants.  
23  
24  
25

Case No. 20STCP01747

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION BY  
DEFENDANTS FOR SUMMARY  
ADJUDICATION**

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

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

26 Defendants submit the following undisputed material facts with references to supporting  
27 evidence pursuant to Code of Civil Procedure section 437c, subdivision (b). By reason of these

1 facts, defendants have carried their burden of proof. These materials facts with supporting  
 2 evidence demonstrate the absence of a genuine issue of material fact and that plaintiff cannot  
 3 prevail in this action. Defendants are entitled to judgment as a matter of law.

4 ISSUE NO. 1- DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS  
 5 TO THE THIRD ALLEGED CAUSE OF ACTION FOR TORTIOUS  
 6 INTERFERENCE WITH CONTRACTUAL RELATIONS

<u>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:</u>	<u>PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE:</u>
<p>10 1. The Second Amended Complaint (SAC)            11 alleges that on October 24, 2019, plaintiff sent            12 a letter to former Attorney General Becerra,            13 asserting that a defect in the Department of            14 Justice (Department) online system for            15 processing transfers of firearms rendered            16 dealers unable to transfer its recently            17 announced Title 1 firearm to its customers.            18            19 (SAC, ¶ 69, Ex. C.)</p>	<p>1. </p>
<p>16 2. Jay Jacobson, President and an owner of            17 Franklin Armory, testified that the Title 1 was            18 designed with a 16 inch barrel and a padded            19 buffer tube instead of a stock and without a            20 stock, it would not be intended to be fired            21 from the shoulder and thus not a rifle.            22            23 (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-            24 24, Ex. A to Lake Dec.)</p>	<p>2. </p>
<p>21 3. The Title 1 was a long gun. "Long gun"            22 means any firearm that is not a handgun or a            23 machinegun.            24            25 (SAC, ¶¶ 23-24, Pen. Code, § 16865.)</p>	<p>3. </p>
<p>26 4. On August 6, 2020, the legislature passed            27 SB 118 which included amending the Penal            28 Code Section 30515 definition of an assault            weapon to add a "centerfire firearm that is not            a rifle, pistol, or shotgun" that includes</p>	<p>4. </p>

1	components in three categories. (Pen. Code, §	
2	30515 (a)(9)-(11).) With this change in	
3	definition, the Title 1 was rendered a banned	
4	assault weapon.	
5	(SAC, ¶ 112, Mendoza Dec. ¶ 11.)	
6	5. The online system for the submission of	5.
7	information concerning the sale and transfer	
8	of firearms is known as the Dealer Record of	
9	Sale Entry System (DES) The DES is a web-	
10	based application used by California firearms	
11	dealers to submit firearm background checks	
12	to the Department to determine if an	
13	individual is eligible to purchase, loan, or	
14	transfer a handgun, long gun, and ammunition.	
15	(Cal. Code Regs., tit. 11, § 4200; citing Pen.	
16	Code, § 28205, Mendoza Dec., ¶ 3.)	
17	6. The alleged defect in the DES was that the	6.
18	gun type drop-down menu for long guns that a	
19	dealer would select from while processing a	
20	transfer included only options for rifle,	
21	shotgun, or rifle/shotgun combination.	
22	Plaintiff alleges that since the Title 1 was not a	
23	"rifle" under the statutory definition, a dealer	
24	could not process a Title 1 for transfer unless	
25	the DES was modified to add an "other"	
26	option to this drop-down menu.	
27	(SAC, ¶¶ 58, 69, Ex C	
28	7. The SAC does not identify any statute or	7.
	other authority that requires that a firearm	
	being processed for transfer in the DES fit the	
	statutory definition of "rifle" in order to be	
	processed as such.	
	(SAC.)	
	8. Mr. Jacobson testified that there was no	8.
	mention of any issue with the DES in the	
	Sacramento action filed by Franklin Armory	
	against the State and former Attorney General	
	Becerra regarding the Title 1 and that he was	
	unaware of any issue with the DES during that	
	time. He testified that during the time the	
	Sacramento action was pending, no one ever	
	expressed concern that the Title 1 could not be	
	processed in the DES because it was not a	
	rifle.	

1 (Jacobson Dep. pp. 85:25-86:19, 87:8-88:7,  
2 94:5-95:7, 96:10-19, 97:6-19.)

3  
4  
5 9. Mr. Jacobson testified as to his  
6 understanding that stockless firearms were  
7 processed in the DES as rifles or shotguns  
8 respectively even though they did not meet the  
9 statutory definition for rifle or shotgun.

10 (Jacobson Dep. pp. 40:16-25, 50:19-51:1,  
11 57:6-58:10, 56:8-25, 60:21-61:8.)

12 10. Mr. Jacobson testified that the process for  
13 a California resident to purchase a Franklin  
14 Armory firearm would first require the person  
15 to purchase the firearm paying the full price.  
16 Franklin Armory would then obtain an online  
17 verification number from the Department  
18 which would be provided to the California  
19 licensed dealer when shipping the firearm to  
20 them. The purchaser then would go into the  
21 dealer and provide background information  
22 for the background check that would then be  
23 transmitted to the Department.

24 (Jacobson Dep. p. 154:24-156:18; see also  
25 SAC, ¶¶ 1, 3, 35; Pen. Code, §§ 28050, subd.  
26 (b), 27555, subd. (a)(1).), Cal. Code Reg., tit.  
27 11, § 4210, subd. (a)(6).)

28 11. Plaintiff does not allege that anyone ever  
purchased a Title 1 firearm and attempted to  
process a transfer of the Title 1 in the DES  
through a licensed firearms dealer. Plaintiff  
alleges that individuals “placed deposits” for  
the Title 1 firearm.

(SAC, ¶ 113.)

12. Mr. Jacobson testified that the online  
deposits were for \$5.00 and that the \$5.00  
deposit was refundable and there was no  
requirement for any person placing a deposit  
to complete a purchase. When a person was  
going through the online deposit process, the

<p>1 2 3 4 5 6 7</p>	<p>purchase price of the Title 1 firearm did not appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title 1 without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately August 6, 2020.</p> <p>(Jacobson Dep. p. 116:1-117:17, 122:6-123:12, 124:11-20, 147:17-23, 130:12-131:1.)</p>	
<p>8 9 10 11 12 13 14 15 16 17 18</p>	<p>13. The issue regarding the Title 1 was first brought to the attention of Bureau Director Allison Mendoza in the latter part of 2019. Prior to becoming Director in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March, 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau's Regulatory Branch including management and oversight of the DES. It is Director Mendoza's understanding that the three options in the "Gun Type" drop-down menu in the DES "Dealer Long Gun Sale" transaction type (rifle, rifle/shotgun combination, or shotgun) had remained the same since she became Assistant Bureau Chief in 2015.</p> <p>(Mendoza Dec., ¶¶ 1-3, 6-7.)</p>	<p>13.</p>
<p>19 20 21 22 23 24 25 26 27 28</p>	<p>14. Director Mendoza states that at some point after the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an "other" option in the "Gun Type" drop-down menu in the "Dealer Long Gun Sale" transaction type. This review required the leadership of the Bureau, in collaboration with the Department's Application Development Bureau (ADB) and the Department's attorneys, to engage in a balancing of multiple factors and weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time. The Department also evaluated and weighed the allocation of available resources to such an</p>	<p>24.</p>

<p>1 2 3 4 5 6</p>	<p>enhancement, such as the number of personnel required, budgeting of the enhancement, and the time it would take to complete said enhancement. The onset of the COVID-19 pandemic in March 2020 presented additional difficulties in being able to staff such a DES enhancement.</p> <p>(Mendoza Dec., ¶¶ 4-5, 8.)</p>	
<p>7 8 9 10 11 12 13</p>	<p>15. ADB undertook a review of what would be required to add the “other” option and reported back that it would take many months to implement this enhancement, and would require well over a dozen personnel, many of whom would have to be diverted from other projects. Implementing this DES enhancement would have required changes to many other applications and databases in addition to the DES.</p> <p>(Mendoza Dec., ¶¶ 5, 9.)</p>	<p>25.</p>
<p>14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>16. ADB additionally explored the possibility of doing a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a permanent enhancement would be implemented at a later date. ADB estimated such an enhancement would take a few months. ADB also advised that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement.</p> <p>(Mendoza Dec., ¶¶ 5, 10.)</p>	
<p>26 27 28</p>	<p>17. Director Mendoza states that, after SB 118 was signed into law August 6, 2020, which rendered the Title 1 firearm a prohibited assault weapon, the Department decided, after</p>	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

weighing competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the COVID-19 pandemic, to implement at a later date the DES enhancement that added an “other” option in the “Gun Type” drop-down menu. This enhancement was completed on October 1, 2021.

(Mendoza Dec., ¶ 11.)

18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus’ firearms software developments unit, oversaw the enhancement project to add the “other” option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases.

(Massaro-Florez Dep.1(12/28/21), Ex. to Lake Dec., pp. 18:12-21,19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21,94:6-24.)

ISSUE NO. 2 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
AS TO THE FOURTH ALLEGED CAUSE OF ACTION FOR TORTIOUS  
INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18

26.



**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY ADJUDICATION** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ROB BONTA  
Attorney General of California  
DONNA M. DEAN  
Supervising Deputy Attorneys General  
KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
Deputy Attorneys General  
300 South Spring Street  
Los Angeles, CA 90013  
Telephone: (213) 269-6525  
Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
*Attorneys for State of California, acting by and  
through the California Department  
of Justice and Former Attorney General Xavier  
Becerra in his personal capacity only*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Plaintiffs,

v.

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

Defendants.

Case No. 20STCP01747

**DECLARATION OF ALLISON  
MENDOZA IN SUPPORT OF MOTION  
BY DEFENDANTS FOR SUMMARY  
JUDGMENT; OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF ISSUES**

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

Honorable Daniel S. Murphy

RES ID: 554862513719

Allison Mendoza, declare:

1. I am the Director of the Bureau of Firearms (Bureau) in the California Department of Justice's (Department) Division of Law Enforcement (DLE). I have served in this capacity since

1 March 2023. As the Director of the Bureau, I provide administrative direction, policy guidance,  
2 and control of enforcement and regulatory programs and projects. I act as a liaison with the  
3 firearms industry and members of law enforcement, and have appeared before California  
4 legislative committees concerning bills affecting the Bureau's operations. I have served in the  
5 Department since 1994 and the Bureau since 2009.

6 2. Prior to becoming the Director of the Bureau, I served as Assistant Bureau Chief from  
7 2015 until March 2023. At some point, the title of this position changed to Assistant Bureau  
8 Director. As the Assistant Bureau Chief/Director, I was responsible for managing all activities  
9 under the Regulatory Branch, including approximately 30 highly visible and sensitive state-  
10 mandated programs, and directing the work of technical, professional, and supervisory staff. I  
11 also served as the Department's Federal Bureau of Investigation (FBI) National Instant Criminal  
12 Background Check System (NICS) Point of Contact (POC).

13 3. In my role as Assistant Bureau Chief/Director, I had responsibility for management and  
14 oversight of the Dealer Record of Sale (DROS) Entry System ("DES"). The DES is a web-based  
15 application used by California firearms dealers to submit firearm background checks to the  
16 Department to determine if an individual is eligible to purchase, loan, or transfer a handgun, long  
17 gun, and ammunition, and subsequently receive background eligibility check determinations.

18 4. The Application Development Bureau (ADB) within the Department's California Justice  
19 Information Services Division (CJIS) supports the Department's information technology  
20 infrastructure. ADB is responsible for designing, implementing, and maintaining DLE's  
21 applications, which includes the DES. In my experience, at any given time, there are numerous  
22 pending requests for enhancements to be made to the DES. Such requests can arise from, among  
23 other things, new or amended statutes, new or amended regulations, court decisions, and  
24 technological advancements, to name a few.

25 ~~5. In my role as Assistant Bureau Chief/Director, I may be involved in the discussions~~  
26 relating to DES enhancement requests. Such discussions, and the decision-making process as to  
27 whether to move forward with a DES enhancement, are often collaborative and often involve the  
28 Bureau, ADB, the Department's attorneys, and occasionally higher levels within the Department,

1 such as DLE, CJIS, and the Directorate Division. These discussions and the decision making  
2 process—which can include whether to move forward with the enhancement, the parameters of  
3 the enhancement, the timeline for completion and deployment of the enhancement—require the  
4 relevant parties within the Department to engage in a balancing of multiple factors and a  
5 weighing of competing priorities among multiple information technology projects pending at any  
6 given time. These discussions and the decision making process involve weighing enhancements  
7 mandated by statutes, regulations, or court orders; allocation of available resources for a  
8 particular enhancement (such as the required number of personnel it will take to complete the  
9 project); the available budget for such an enhancement; and the time it will take to complete said  
10 enhancement. In addition, considerations of public safety are very important. Thus, any  
11 proposed DES enhancement must be evaluated in terms of the certainty that it will not  
12 compromise the Department’s ability to meet its mandated obligations and its responsibility to  
13 ensure public safety.

14         6. The issue regarding the Franklin Armory Title 1 firearm was first brought to my  
15 attention in the latter part of 2019. My understanding is that Franklin Armory was asserting that,  
16 within the DES “Dealer Long Gun Sale” transaction type, this new Title 1 firearm did not fit any  
17 of the three options in the “Gun Type” drop-down menu, which were rifle, rifle/shotgun  
18 combination, or shotgun. It is my understanding that the three options in the “Gun Type” drop-  
19 down menu in the DES “Dealer Long Gun Sale” transaction type had remained the same since at  
20 least 2014, before I became Assistant Bureau Chief in 2015.

21         7. Franklin Armory asserted these three options in the “Gun Type” drop-down menu for  
22 the “Dealer Long Gun Sale” transaction type precluded dealers from processing a transfer of the  
23 Title I firearm in the DES. It was my understanding that Franklin Armory asserted that the  
24 addition of an “other” to the “Gun Type” drop-down menu in the DES “Dealer Long Gun Sale”  
25 ~~transaction type was necessary~~

26         8. At some point after the latter part of 2019, the Bureau initiated a review to evaluate the  
27 resources required for a potential DES enhancement to add an “other” option in the “Gun Type”  
28 drop-down menu in the “Dealer Long Gun Sale” transaction type. This review required the

1 leadership of the Bureau, in collaboration with ADB and the Department's attorneys, to engage in  
2 a balancing of multiple factors and a weighing of competing priorities among the multiple  
3 proposed DES enhancement requests pending at that time. We also evaluated and weighed the  
4 allocation of available resources to such an enhancement, such as the number of personnel  
5 required, budgeting of the enhancement, and the time it would take to complete said  
6 enhancement. The onset of the COVID-19 pandemic in March 2020 presented additional  
7 difficulties in being able to staff such a DES enhancement.

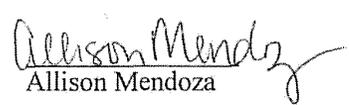
8 9. ADB, within CJIS, undertook a review of what would be required to add the "other"  
9 option to the "Gun Type" drop-down menu in the DES "Dealer Long Gun Sale" transaction type.  
10 At some point, ADB reported back that it would take many months to implement this  
11 enhancement, and would require well over a dozen personnel, many of whom would have to be  
12 diverted from other projects. Implementing this DES enhancement would have required changes  
13 to many other applications and databases in addition to the DES.

14 10. ADB additionally explored the possibility of doing a DES enhancement that was  
15 reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a  
16 permanent enhancement would be implemented at a later date. ADB estimated such an  
17 enhancement would take a few months. ADB also advised that this proposal would present  
18 operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the  
19 DES until a permanent enhancement was implemented. Such operational difficulties would have  
20 raised significant public safety concerns. These factors, including the public safety concerns,  
21 were discussed within the Department, which ultimately decided to not immediately proceed with  
22 the temporary DES enhancement.

23 11. SB 118 was signed into law by the Governor on August 6, 2020, which rendered the  
24 Title 1 firearm a prohibited assault weapon under Penal Code section 30515. The Department  
25 ~~thereafter decided after weighing competing priorities among the multiple information~~  
26 technology projects pending at that time in the middle of the COVID-19 pandemic, to implement  
27 at a later date the DES enhancement that added an "other" option in the "Gun Type" drop-down  
28

1 menu in the "Dealer Long Gun Sale" transaction type. This enhancement was completed on  
2 October 1, 2021.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct. Executed on April 25 2024.

5  
6   
7 Allison Mendoza  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **DECLARATION OF ALLISON MENDOZA IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature

1 ROB BONTA  
Attorney General of California  
2 DONNA M. DEAN  
Supervising Deputy Attorneys General  
3 KENNETH G. LAKE (STATE BAR 144313)  
ANDREW F. ADAMS (STATE BAR 275109)  
4 Deputy Attorneys General  
300 South Spring Street  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6525  
6 Facsimile: (916) 731-2120  
E-mail: Kenneth.Lake@doj.ca.gov  
7 *Attorneys for State of California, acting by and  
through the California Department  
8 of Justice and Former Attorney General Xavier  
Becerra in his personal capacity only*  
9

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

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

16  
17 Plaintiffs,

18 v.

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

22 Defendants.  
23

Case No. 20STCP01747

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

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

**Honorable Daniel S. Murphy**

**RES ID: 554862513719**

24 I, Kenneth G. Lake, declare:

- 25 1. I am an attorney at law duly authorized to practice in the State of California. I am a  
26 Deputy Attorney General assigned to handle this matter on behalf of defendants.  
27 2. True and correct copies of the relevant portions of the deposition of Jay Jacobson, taken  
28 on November 14, 2023, are attached hereto as Exhibit A.

1           3. True and correct copies of the relevant portions of the deposition of Blake Graham,  
2 taken on March 26, 2024, are attached hereto as Exhibit B.

3           4. True and correct copies of the relevant portions of the deposition of Cheryle Massaro-  
4 Flores, taken on December 28, 2021, are attached hereto as Exhibit C.

5           5. True and correct copies of the relevant portions of the deposition of Cheryle Massaro-  
6 Flores, taken on September 8, 2023, are attached hereto as Exhibit D.

7           6. True and correct copies of the relevant portions of the deposition of Cristina Rosa-  
8 Robinson, taken on November 27, 2023, are attached hereto as Exhibit E.

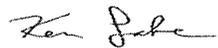
9           7. True and correct copies of the relevant portions of the September 6, 2023, hearing on  
10 defendants' motion for judgment on the pleadings are attached hereto as Exhibit F.

11           8. A true and correct copy of the First Amended Complaint in *Franklin Armory v. State of*  
12 *California et al.*, Sacramento Superior Case No. 2018-00246584-CU-MC, is attached hereto as  
13 Exhibit G.

14           9. A true and correct copy of the September 23, 2019, order in *Franklin Armory v. State of*  
15 *California et al.*, Sacramento Superior Case No. 2018-00246584-CU-MC, is attached hereto as  
16 Exhibit H.

17           10. A true and correct copy of the dismissal in *Franklin Armory v. State of California et*  
18 *al.*, Sacramento Superior Case No. 2018-00246584-CU-MC, is attached hereto as Exhibit I.

19           I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct. Executed on April 26, 2024.

21  
22 

23 \_\_\_\_\_  
24 Kenneth G. Lake

# EXHIBIT A



1 Q And do you have any military background?

2 A No, sir.

3 Q No reserve or anything like that?

4 A All I did was raise a Marine.

5 Q Sorry?

6 A I raised a Marine. I got his picture on the  
7 wall. But that's about it.

8 Q "Raced" like in motorcycles?

9 A No. Raised a child. I'm a parent of a Marine.  
10 That's it.

11 Q You know, sometimes we get -- it's harder to hear  
12 people's enunciation with the video, but we'll -- I  
13 apologize if I misunderstand some of the words. And also,  
14 while I'm talking about that, obviously we're going to get  
15 into -- as I'll get into right now -- your background  
16 related to firearms.

17 Obviously, I'm not an expert. So it's very  
18 possible that I may bungle the use of terminologies  
19 relative to firearms as we go through today. So feel free  
20 to correct me if I'm saying something or describing it in  
21 the wrong way. That's kind of part of the process that  
22 we're going to go through.

23 So if you could, could you just briefly describe  
24 your work history that gets us to -- obviously, we'll get  
25 to -- you're currently the owner of Franklin Armory;

1 correct?

2 A One of the owners. I'm not the majority  
3 shareholder. My wife is, Jason's a shareholder, I'm a  
4 shareholder and we have two other partners.

5 Q Okay. So just briefly describe your work history  
6 pre-Franklin Armory.

7 A So out of my -- when I got out of college, I  
8 ended up doing contracting work. Basically, my wife had a  
9 business of doing office cubicles throughout the bay area  
10 and I helped her run that company up until about 2006.  
11 Then about that time we sold off the company. And quite  
12 honestly, I was tired of working with felons in the  
13 contracting world. There were plenty.

14 So I ended up working on a ranch, taking a  
15 two-year sabbatical while I thought what the next plan  
16 would be. And we owned a building in Morgan Hill that  
17 went vacant, and then I ended up realizing that we could  
18 construct a business manufacturing firearms for  
19 Californians and so that's what led to Franklin Armory.

20 Q And so you first (inaudible)?

21 THE COURT REPORTER: I'm sorry. I didn't catch  
22 that.

23 BY MR. LAKE:

24 ~~The question was did he first establish Franklin~~  
25 Armory in Morgan Hill? And that's just a town that used

1           So you're familiar with those terms; right?

2           A     I am familiar with the terms, but I'm not a  
3 California dealer and never have been.

4           Q     But do you have experience working with -- or  
5 processing or interacting with the DES in any way? Or  
6 what's your kind of background with that?

7           A     No, sir. I was never a dealer.

8           Q     But do you have knowledge about how the DES  
9 works?

10          A     Any knowledge that I do have is from online  
11 sources or what third parties may have told me.

12          Q     Okay. Now, when we talk about long guns, in  
13 California that's what -- a gun with a barrel over 16  
14 inches? What are we talking about here?

15          A     I would -- yes. Over 16 inches.

16          Q     Okay. And then what type of long guns does --

17          A     Let me rephrase that. So a pistol -- or I should  
18 say a frame or a receiver doesn't have a barrel. But it  
19 could be a firearm receiver that would typically have a  
20 barrel over 16 inches.

21                 So that question, the way it was asked, generally  
22 you would put a barrel on it that's over 16 inches or in  
23 the case of a shotgun over 18 inches, but a receiver by  
24 itself doesn't have a barrel.

25          Q     But you anticipated my next question. I'm

1 Q Let me just -- would this be the same  
2 conversation that was discussed in your responses to form  
3 interrogatories? Those were just served in September of  
4 this year. Let me -- I don't know if you reviewed those  
5 lately, but let me just kind of -- so this is at page 35,  
6 lines 14 to 22. It's asking about witnesses.

7 Imagine verbal reports of Bureau of Firearms,  
8 Agent Blake Graham, via telephone. It says you, Mr. Jay  
9 Jacobson, president of Franklin Armory, verbal report made  
10 to Agent Blake Graham on or about October 22, 2019. Is  
11 that about right?

12 A Yes, sir.

13 Q We're talking about the same conversation?

14 A Yes, sir.

15 Q And that was about a 15- to 30-minute phone  
16 conversation. Who called who?

17 A I don't recall off the top of my head.

18 Q And what brought that about? Did this have  
19 something to do with the Title 1?

20 A Yes. And the computer system.

21 Q And then October 22, I believe what I've seen  
22 in the records is that the Title 1 was introduced on  
23 October 15, 2019. Is that about right?

24 ~~A Can I look for the documents?~~

25 Q Well, is that the approximate --

1 A Yes.

2 Q Okay. If we need the exact date on something,  
3 you know, we'll try to go into that. But if we don't,  
4 then I think -- so we're talking right around the time  
5 this conversation took place, right around the time when  
6 the Title 1 Centerfire firearm was being introduced?

7 A Yes, sir.

8 Q Okay. When you said -- just the term  
9 "introduced" means that's when you were beginning to  
10 market it for potential sale? Is that accurate?

11 A Yes.

12 Q And then who first brought up the Mossberg  
13 Cruiser in your conversation? You or him?

14 A I don't recall. I know we talked about it but I  
15 don't recall, sir.

16 Q Okay. So in that conversation, Mr. Graham  
17 advised you that Mossberg Cruisers had been processed in  
18 the online system, the DES, as shotguns, even though it  
19 does not have a stock; is that right?

20 A Yes, sir.

21 Q And did he tell you that that had been done for a  
22 number of years?

23 A Yes, sir. Now, maybe not specifically in those  
24 words, but that that was the historic tradition of how  
25 they transfer that firearm in California.

1 name because I can't recall for sure.

2 Q Okay. Did you just use the term "downwind"?

3 A Down Range.

4 Q Down Range. I'm sorry.

5 What does that mean?

6 A It's the name of a firearms dealership in Chico.

7 Q Oh. That's the name? Okay. Sorry. Gotcha. So  
8 basically this was brought to your attention via E-mail  
9 from your staff, from your team?

10 A My staff spoke to me directly in person.  
11 However, I don't recall how they were notified of the  
12 problem.

13 Q Okay.

14 A They may have been receiving a call from a  
15 dealer, saying "Hey, how do I transfer this firearm now  
16 that I have it?" And they were unable to figure out a way  
17 to do it on -- through the computer system. And that's  
18 what necessitated the call to Mr. Graham.

19 Q Gotcha. Okay. So let's shift back if we could  
20 to the conversation with Mr. Graham. So he basically told  
21 you that even though the Mossberg Cruiser, because it did  
22 not have a stock, was not, under the statutory definition  
23 of a shotgun, they had previously processed it as a  
24 ~~shotgun anyway; right?~~

25 A Yes, sir.

1 Q And he told you that they had done that for a  
2 long time?

3 A Yes, sir.

4 Q And did he tell you that there was no requirement  
5 for the Bureau's process firearms in the online system to  
6 select or require selection of a firearm in the system  
7 consistent with the definition by statute?

8 A No, sir.

9 Q And were you -- how did you come to the  
10 interpretation that a stockless firearm such as the  
11 Mossberg Cruiser should not be processed in the online  
12 system because it did not meet the statutory definition?

13 A As I said in earlier testimony, sir, the State  
14 had created a computer system with a false trichotomy.  
15 That's just logic.

16 Q Okay. But per your understanding of the statutes  
17 -- so I'm assuming at some point you garnered  
18 an understanding of the statutory definition of rifle and  
19 shotgun?

20 MS. BARVIR: I'd like to state an objection to the  
21 extent that this calls for attorney-client privileged  
22 communications.

23 MR. LAKE: Yeah. I don't want that.

24 BY MR. LAKE:

25 Q At some point, you have an understanding this is

1 to him for his review or the Department's review, and I  
2 believe that's in the documentation that you have.

3 Q Did Mr. Graham mention in your conversation as an  
4 additional example that lower receivers or barreled  
5 receivers, although stockless, had historically been  
6 processed in the online system as rifles?

7 A I do not recall.

8 Q Have you learned that from any conversation or  
9 any source with anyone, other than your attorneys, of  
10 course?

11 A I have anecdotal understanding that people have  
12 transferred barreled receivers as rifles even though they  
13 were not rifles because they didn't have a stock.

14 Q Right.

15 A Yes.

16 Q And did you learn that -- did any dealer ever  
17 tell you that?

18 A I -- I'm not sure if it was a dealer or if I read  
19 about it online somewhere, where somebody had mentioned  
20 that that's how they transferred them.

21 Q When you say "that's how they transferred them,"  
22 that would be the dealers that you talked with?

23 A Correct.

24 Q And those were California dealers?

25 A Correct.

1 Q And?

2 A And, you know, the State has a wide body of  
3 evidence of how those firearms were transferred, because  
4 all that data is at the firearms dealership. Obviously  
5 they weren't prosecuting anybody for that.

6 Q Is it fair to say that based on the information  
7 you had, is that lower receivers, barreled receivers and  
8 pistol grip shotguns had been processed in the online  
9 system for years as either rifles or shotguns?

10 MS. BARVIR: Objection. This is a compound question.  
11 Talking about three different types of firearms. It's  
12 also confusing, vague and ambiguous as including rifles,  
13 shotguns, stocks like that.

14 BY MR. LAKE:

15 Q Go ahead if you can.

16 A It was my understanding that even though it  
17 wasn't correct statutorily, that that's what they were  
18 doing.

19 Q For years?

20 A For years, since the DES was put in use, which  
21 I'm not sure what that year was, whether -- I'm not sure  
22 if it was 2014 or 2018. Somewhere around there. I'm not  
23 sure.

24 Q ~~This was conveyed to you by California dealers,~~  
25 right?

1 A Yes.

2 Q How many dealers, if you can estimate, told you  
3 this?

4 A I'm not sure, off the top of my head.

5 Q Is it more than five?

6 A Yeah. I would say five, somewhere in there. But  
7 in talking about Blake Graham, that was also the status  
8 quo of what the defendant was doing, but I don't remember  
9 if it was in that conversation specifically or at a  
10 subsequent conversation.

11 Q I may have asked this already, but just in the  
12 context of do you have an understanding or an estimate as  
13 to how many California dealers you or your company dealt  
14 with?

15 A I do not have that handy. I will say this, that  
16 we have distributors that we ship to that send to an even  
17 wider group of dealers, but I don't have an exact count  
18 for you.

19 Q I'm assuming there were some dealers that  
20 probably dealt in larger volume than others. Is that  
21 fair?

22 A Correct.

23 Q So you probably, most likely would have dealt  
24 with them more often than some of the smaller dealers?

25 A Correct.

1 Q What are some of the other high-volume dealers  
2 that come to mind that you dealt with?

3 A I mentioned Chico, Down Range. There's Coyote  
4 Point Armory. There are other dealers -- honestly, the  
5 State would have that information, because every time I  
6 ship a gun to California, they actually know who we're  
7 shipping it to and the volume of long guns versus handguns  
8 that we're shipping.

9 Q Okay. I get that. I'm just kind of asking you  
10 your understanding -- are there any other high volumes  
11 that comes to mind? I've got Turner's Outdoorsman, Down  
12 Range, Coyote Point.

13 A Basically once you get beyond Turner's,  
14 everything else is smaller dealerships, for the most part.

15 Q Where is Coyote Point located?

16 A I think they have -- I think they started off in  
17 Coyote Point by South San Francisco, but I don't know if  
18 they have two locations. I'd have to look it up. I think  
19 they might have a different locations other than actual  
20 Coyote Point. I'd have to look it up, though.

21 Q And then just kind of as we've now gone through  
22 this list of some of these high-volume folks, probably  
23 perhaps dealt with more frequently, does that bring to  
24 ~~mind, refresh your recollection in any way that it was~~  
25 talking with any of these dealers where it was conveyed to

1 you that it was more or less the status quo that firearms,  
2 stockless firearms -- again, whether it's stockless  
3 shotgun or a stockless rifle -- would be processed as a  
4 rifle or a shotgun in the online system even though it  
5 wasn't fitting the statutory definition?

6 A Well, really, since Blake Graham had already told  
7 me that this was the status quo, it was not an issue I was  
8 trying to sleuth out.

9 Q Okay. So the dealers you had contact with, they  
10 also understood that it was the status quo that stockless  
11 firearms would be processed in that manner; right?

12 MS. BARVIR: Objection. Calls for speculation.

13 BY MR. LAKE:

14 Q If you know.

15 A I know that we received correspondence and  
16 communication here that dealers were very concerned about  
17 just putting something in the comments without an official  
18 response from the State of California that that would be  
19 how they should process this.

20 Q But you're talking about the Title 1 right now;  
21 right?

22 A Yes, sir.

23 Q So I'm talking about before the Title 1 was  
24 introduced.

25 A I understand.

1 documents that, if you want to refer to it, that was in  
2 the group was called Sac Action FAC, which refers to the  
3 First Amended Complaint.

4 And let me just -- before I kind of get into this  
5 subject, is everybody okay in terms of needing a break or  
6 anything?

7 MS. BARVIR: I'm sorry. I need to use the restroom  
8 again. If you would rather do lunch now, that's fine, or  
9 just five or ten minutes.

10 MR. LAKE: Since we're near the lunch hour, do you  
11 want to take a half hour? Why don't we just come back at  
12 1:00? That's 45 minutes.

13 THE VIDEOGRAPHER: Off the record at 12:15 p.m.

14 (Luncheon recess.)

15 THE VIDEOGRAPHER: Back on the record at  
16 1:01 p.m.

17 BY MR. LAKE:

18 Q Okay. So as I indicated before the break, I was  
19 going to go into the Sacramento County Superior Court  
20 action, which was forwarded to you.

21 Mr. Jacobson, do you have -- I'm going to do some  
22 referring to that. If you don't mind pulling that  
23 document up?

~~24 A Give me one second.~~

25 Q While Mr. Jacobson is pulling that up, I'm

1 referring to the Verified First Amended Complaint  
2 Petition for declaratory relief in the case of  
3 "Franklin Armory versus State of California, et al.,"  
4 Case No. 2018-00246584, filed on June 26, 2019.

5 And Mr. Jacobson, have you seen this document  
6 before?

7 A I would assume so.

8 Q And so this is -- you authorized filing of this  
9 action; correct?

10 A I believe so.

11 Q And is it your recollection that it was filed on  
12 or around -- well, the First Amended Complaint was filed  
13 on or around June 26, 2019; right?

14 A That's what the date stamp says.

15 Q And then the original Complaint was filed on  
16 December 14, 2018. Is that consistent with your  
17 recollection?

18 A I don't have the specific date but it sounds  
19 about right.

20 Q Okay. And then the first cover page indicates  
21 that you -- well, one of the plaintiffs in the action was  
22 Sacramento Black Rifle. We talked about that briefly in  
23 the morning session.

24 Do you have an understanding as to why Sacramento  
25 Black Rifle was a plaintiff in that action?

1           A     Because they were probably -- I would only be  
2     speculating as to why that would be, but they're -- as a  
3     dealer, they would be very much like the manufacturer,  
4     wanting to know what is lawful and what isn't.

5           Q     Did you ever have any discussions with anyone  
6     from Sacramento Black Rifle about this lawsuit?

7           A     I did not directly talk to them, no.

8           Q     Okay. And then in the Defendant list, you -- you  
9     also sued former Attorney General Becerra; right? Do you  
10    see that?

11          A     Yes.

12          Q     Do you know why you sued him in this case?

13          A     I believe because he was the man in charge. As  
14    far as, you know, who to put on there, that is the type of  
15    thing that I would heavily depend upon Counsel to put the  
16    right person in that capacity in there.

17          Q     Okay. So when you say "he's the man in charge,"  
18    being he's the Attorney General in the State of  
19    California, at least at that point in time, he was?

20          A     Yes, sir.

21          Q     And is that also the same reason why you're suing  
22    former Attorney General Becerra in this action that we're  
23    here for?

~~24          A     I would believe so.~~

25          Q     Meaning he's the man in charge; he's the head of

1 the DOJ, as Attorney General?

2 A He was, yes.

3 Q But he's responsible to address the  
4 allegations -- or was responsible to address the  
5 allegations in this action?

6 A That is my understanding. Again, I depend upon  
7 Counsel to provide the right name in the box.

8 Q And then Martin Horan, H-O-R-A-N, who's also  
9 listed as Defendant, as Acting Chief of the Department of  
10 Justice, Bureau of Firearms -- is that your understanding  
11 as around that time, that Martin Horan was sued in this  
12 Action because he was the Acting Chief of the Bureau?

13 A That's my understanding, yes.

14 Q And is it the same reason that you sued him in  
15 that case, because he's the man in charge of the Bureau,  
16 even in an acting capacity?

17 A Yes.

18 Q Have you ever had any conversations with  
19 Mr. Horan?

20 A No, but I believe that Mr. Graham would  
21 communicate directly with him.

22 Q What is that understanding based on?

23 A Conversations with Mr. Graham.

24 ~~Q And I think you had alluded to this, but just to~~  
25 clarify a bit, in the conversations with Mr. Graham, he

1 MS. BARVIR: Okay.

2 THE WITNESS: Certainly, we would never want to do  
3 anything to put our customers in jeopardy.

4 BY MR. LAKE:

5 Q In this particular case, based on the allegations  
6 of 73 and 74, it says right here -- 74, paragraph 74 --  
7 "This approach shields some manufacturers, dealers and  
8 individuals" -- skipping a few words -- "for fear of  
9 prosecution."

10 Those are the words in your Complaint -- "fear of  
11 prosecution" -- if it turned out that it was an assault  
12 weapon; right?

13 That's the reason you brought this suit; correct?

14 A Correct. It says --

15 MS. BARVIR: Objection. The document speaks for  
16 itself.

17 MR. LAKE: Madam Court Reporter, he answered "right."  
18 Did you get that?

19 THE COURT REPORTER: I got "correct."

20 THE WITNESS: So we wanted to ensure that our  
21 customers would not be in jeopardy of any prosecution for  
22 selling what we believed was a lawful product.

23 BY MR. LAKE:

~~24 Q So the answer to the previous question was~~

25 "Correct"?

1 I'm just repeating because we were talking over  
2 each other.

3 A I understand. Yes. We were trying to ensure  
4 that our customers would not be criminally prosecuted or  
5 in any other way prosecuted for selling this product. And  
6 unfortunately, the government was not forthcoming. So we  
7 were looking for declaratory relief.

8 Q Now, when we talk about fear of prosecution from  
9 dealers, manufacturers, did you, at or around the time of  
10 the filing of this Sacramento Action, did you have any  
11 conversations with dealers about this fear of prosecution  
12 due to the uncertainty of whether or not it was an assault  
13 weapon?

14 A Discussion with other dealers -- I don't recall a  
15 bunch of other discussions. I recall that basically we  
16 thought this was lawful, and we weren't getting  
17 responsiveness out of the governing body that's supposed  
18 to regulate the industry and so we were forced to go this  
19 route.

20 Q Did you talk with any dealers about the  
21 uncertainty of the prosecution relative to the Title 1  
22 around the time of this lawsuit?

23 A I don't know that there would be a need to  
24 because ~~I think most dealers would be concerned on their~~  
25 own without evidence that it was lawful. The

1 marketability of any given product is that it's presumed  
2 that DOJ is going to do what they can to prevent the sale  
3 unless they know it's lawful.

4 Q So did any dealer tell you that in terms of  
5 processing Title 1, at that point in time, that they did  
6 not want to go out on a limb for fear of prosecution?

7 A No, sir, because the reality of that was at the  
8 time that this was filed, I was completely unaware the DES  
9 had a false trichotomy.

10 Q Well, that dovetails into my next question  
11 in this -- in the Sacramento Action, in any of the  
12 complaints -- and the First Amended Complaint was the  
13 final, most recent complaint -- there's no mention of any  
14 issue with the DES, the online system; correct?

15 A I don't believe there is.

16 Q And I think you just answered that because at  
17 that point in time, you didn't have any concern about it?

18 A I was unaware. Again, I'm not a dealer in the  
19 State of California.

20 Q And then it appears that the Sacramento action  
21 was voluntarily dismissed on October 3, 2019.

22 Does that sound about right in terms of the time  
23 when the suit was dismissed?

24 ~~A I don't recall. What was the date again?~~

25 Q October 3, 2019.

1           A       I don't recall the specific date, but that would  
2 make sense because we received statements from the  
3 Department of Justice that were definitive enough for us  
4 to feel that we were on solid ground to move forward, so  
5 we did.

6           Q       So from the time that you filed the Sacramento  
7 lawsuit up until it was dismissed in October, 2019, did  
8 any dealers or anyone else express to you the concern  
9 about the Title 1 as problems in processing it in the  
10 online system, the DES?

11          A       So you're saying prior to what date?

12          Q       Well, the action was dismissed in October 2019.  
13 It was filed in 2018. Do you recall in the context of the  
14 Sacramento Action, during the time it was pending, did  
15 anybody ever express to you or mention to you concern  
16 about -- that this Title 1 couldn't be processed in the  
17 DES because it wasn't a rifle?

18          A       At that time, no. We found out about it later  
19 that month.

20          Q       Had you had any conversations with any dealers  
21 about the Title 1 at that point?

22          A       I don't recall.

23          Q       Now, you said that there were statements -- well,  
24 let me ask you this -- just procedural -- do you have a  
25 recollection that the State and the Attorney General

1 I believe she was kind of more like a bi-level person that  
2 just kind of got all the facts together and took them  
3 upstream, but I could be could be totally wrong.

4 Q Okay. And just briefly -- and you may have  
5 already mentioned this, but just it appears throughout  
6 many of the documents. When you say -- you're talking  
7 about the Title 1, and you discuss -- this is the  
8 paragraph at the bottom of that first page -- it says "If  
9 the firearm is not intended to be fired from the shoulder  
10 since it is equipped with a padded buffer too for cheek  
11 welding."

12 So just to talk about the Title 1 design -- it  
13 had a padded buffer too instead of a stock; right?

14 A Yes, sir.

15 Q And what does the term "cheek welding" mean?

16 A Meaning that the padded buffer too would be  
17 placed underneath the cheekbone in a firing position.

18 Q So you're suggesting in this E-mail to  
19 Ms. McGovern that because it has a padded buffer to it  
20 instead of a stock, it's not intended to be fired from the  
21 shoulder and thus is not a rifle?

22 A Correct.

23 Q But it's still long?

~~24 A With a 16-inch barrel, yes.~~

25 Q Now, if I could just shift gears back to when you

1           So if you could, so at some point Franklin  
2 Armory, including yourself, put it out online,  
3 communicated -- whether through various means -- that  
4 Franklin Armory was taking five dollar deposits for the  
5 Title 1 firearm; correct?

6           A     Yes, sir.

7           Q     Okay. And this was to be done online only;  
8 right?

9           A     Yes, sir. Well, no. We had distributors and  
10 dealers that might send an E-mail in or a call in and  
11 order.

12          Q     Okay. And so the deposits were to be five  
13 dollars; right?

14          A     Yes, sir.

15          Q     And the five-dollar deposit was refundable;  
16 right?

17          A     And is to this day.

18          Q     So the answer is "Yes"?

19          A     Yes.

20          Q     Just to clarify, because you know, again, lawyers  
21 have to be more formal -- you could say "Yes, and it is to  
22 this day," but I got to get the "Yes" on the record.

23          A     I understand.

24          Q     So when you say so "It's refundable any time,  
25 even to this day," that means whoever put a deposit down,

1 they actually had no obligation to purchase the firearm;  
2 correct?

3 A The intent of placing the order was to  
4 demonstrate the desire to purchase the firearm, even  
5 though the government was standing in the way.

6 Q Okay. But by placing a deposit, they actually  
7 had no legal obligation to complete the purchase; correct?

8 MS. BARVIR: Objection. Calls for a legal conclusion.  
9 Also, confusing and unclear as to "legal obligation."

10 BY MR. LAKE:

11 Q Go ahead.

12 A Well, I'd prefer not to speculate on what those  
13 consumers wish to do, except for I assume that they would  
14 plan to go through with the purchase.

15 Q But they aren't required to complete the purchase  
16 though; correct?

17 A There's no law governing that, correct.

18 Q And so in terms of so in person -- let's just  
19 talk about the online folks. They would go in and they  
20 would find it online -- I just kind of want to go through  
21 the process and the paperwork that they would go through.

22 So basically the person would get online -- and I  
23 guess there's a typical online thing, where they indicate  
24 ~~that they want to place a deposit? --~~

25 Would they have to put it in -- how would the

1 we do. They're -- yeah. I mean, there were some people  
2 that purchased a full firearm and gave the full amount. I  
3 believe we refunded a lot of those folks. A lot of them  
4 wanted to have it turned down to the deposit level and  
5 have that sort of thing.

6 Q So is it fair to say that for each deposit put  
7 down, there would be a sales order and an invoice on this  
8 type of form generated for each deposit? Is that fair?

9 A Yeah. Under two different systems, yes.

10 Q And then going through the deposit process, there  
11 does not appear to be any sales price of the full purchase  
12 of the firearm indicated; is that right?

13 A Correct.

14 Q So when whoever was going through the online  
15 deposit, it would not pop up on the screen, while they're  
16 putting down the deposit, how much the firearm was gonna  
17 cost, if they actually purchased it. Fair?

18 A That would have been on the website, sir.

19 Q That wasn't my question. My question was as  
20 someone is putting down a deposit and they're going  
21 through the deposit process, it did not appear on the  
22 screen while they're going through and completing the  
23 deposit as to how much the firearm was going to cost them;  
24 correct?

25 A I would say no, sir, because when they went to

1 our website, it said this is what we're trying to sell;  
2 this is how much it is. And in the meantime, here's a  
3 deposit. And if we could sell you this whole thing right  
4 now, we would, but because we can't because of the  
5 government blocking it, we went ahead and created a  
6 deposit scenario.

7 When they click on the deposit, certainly, it  
8 would say, in this case \$5.47. The system from the  
9 website is not smart enough to know that the whole thing  
10 is costing more than that to purchase the complete firearm  
11 and just has the sales or the five dollars, plus tax as a  
12 deposit.

13 Q When they go to complete the transaction for the  
14 deposit, there's no indication on that documentation of  
15 the purchase price of the firearm; correct?

16 A I don't know what they were looking at when they  
17 placed that order, so I can't confirm. But I assume it  
18 looked somewhat similar to what we have in this invoice  
19 document from the website.

20 Q And that's referring to Exhibit A or B or both?

21 A What's the number on it? 26909?

22 Q Yeah. That's B.

23 A So Exhibit A, that is the internal document when  
24 we processed it into our system.

25 Q Okay. So either one of those documents, it's

1 generated, whether it's A, that's generated in your  
2 system, or it's B, that gets sent to the depositor. It  
3 would not indicate the purchase price of the firearm;  
4 correct?

5 A Some of them did because they purchased the whole  
6 thing up front. But if they put a deposit, it didn't have  
7 the deposit price on this documentation. But they knew it  
8 because it was on the website when they placed the order.

9 Q Well, you're assuming that they knew it.

10 A If they looked it up.

11 Q But as far as any documentation of the  
12 transaction, it just shows five dollars for the deposit;  
13 right?

14 A For the deposit, yes, but most people know what  
15 they're depositing on when they make a deposit.

16 Q Okay. And so --

17 A And you know, to add to that, all of our press  
18 releases at the time had the amount for the firearm there  
19 as well. I think it was 944.99, if I remember, off the  
20 top of my head.

21 Q Bear with me a second. So if you could pull  
22 up -- so in the grouping that I sent to you all -- I'm not  
23 going to mark this as an exhibit. This is the -- I'm

24 ~~referring to --~~ it's at produced ~~9-20-2023, 606~~ -- ~~SD~~  
25 it's a 16-page document.

1 purchase for that amount.

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

4 A Yeah.

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

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

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

11 A Right.

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

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

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

1 website to when we entered it into our system.

2 Q Okay.

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

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

8 A Correct.

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

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

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

1 configuration.

2 Q Was the -- when did the -- was the Title 1  
3 rimfire -- was that ever actually manufactured or was it  
4 just a prototype?

5 A It was manufactured.

6 Q How many were manufactured?

7 A Like I said, one or two.

8 Q But they were never shipped?

9 A One or two were.

10 Q Do you recall, as you sit here today, when the  
11 Title 1 rimfire was first designed?

12 A I don't recall the specific date.

13 MS. BARVIR: I'm going to step in for some  
14 clarification. I made an objection. I don't object  
15 lightly on relevance grounds. But Title 1 rimfire and all  
16 the rimfire stuff, those claims have been settled. We are  
17 done with that.

18 I don't think there's any claims for damages on  
19 rimfire. So I just want to make sure we're going in the  
20 right direction here and we're all on the same page as  
21 what's being claimed currently.

22 BY MR. LAKE:

23 Q So Mr. Jacobson, is that correct you're not  
~~24 claiming any damages related to the rimfire firearm in~~  
25 this case?

1 A I don't believe so.

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

3 Ms. Barvir, thank you for clarification.

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

7 BY MR. LAKE:

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

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

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

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

23 A Joann Ignatich and Karin Jacobson.

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

1 A Wasn't it August 6?

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

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

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

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

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

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

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

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

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

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

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

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

21          A       It could have been done better. Agreed.

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

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

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

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

8 A Yes, sir?

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

12 A Yes.

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

15 A Yes.

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

19 A Yes.

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

~~24 A That would be part of it, yes.~~

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

1 process to get that online verification?

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

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

7 A Yes, sir.

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

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

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

18 A I would believe so.

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

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

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

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

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

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

15 A If it was in unused condition, yes.

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

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

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

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

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

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

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

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

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

1 testing the situation in that manner?

2 MS. BARVIR: Objection. Calls for legal conclusions.  
3 This is speculation as confusing with regard to why  
4 "Rifle" was assumed to be the most close option.

5 BY MR. LAKE:

6 Q Did you contemplate taking that avenue?

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

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

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

18 THE WITNESS: Do I continue?

19 MS. BARVIR: You may.

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

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

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

# EXHIBIT B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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, )  
XAVIER BECERRA, in his official )  
capacity as Attorney General for )  
the State of California, and DOES )  
1-10, )  
 )  
Respondents-Defendants. )

REMOTE DEPOSITION OF  
BLAKE GRAHAM  
Sacramento, California  
Tuesday, March 26, 2024

Stenographically Reported by:  
Jillian Kirchner, RMR, CRR  
CSR No. 14557  
LitiCourt Job No. 206294

1 firearm. That's my understanding of why we're here  
2 today to talk about that item -- that firearm.

3 BY MR. BRADY:

4 Q. You've worked at the California Department of  
5 Justice, correct?

6 A. Yes.

7 Q. Do you still work there?

8 A. No.

9 THE WITNESS: How do we switch back to -- so I  
10 can see Sean's face?

11 MR. LAKE: Hold on. Bear with us.

12 THE WITNESS: Okay. There we go. Sorry about  
13 that.

14 MR. BRADY: No problem.

15 BY MR. BRADY:

16 Q. And how long did you work for -- can we refer  
17 to the California Department of Justice as the "DOJ,"  
18 for the court reporter and us?

19 A. That would be great.

20 Q. Okay. So if I say "DOJ," you understand that  
21 I'm referring to the California Department of Justice,  
22 right?

23 A. I would understand that. Correct.

24 Q. How long did you work for the DOJ, like, the  
25 number of years?

1 A. Approximately 23.

2 Q. Beginning what year?

3 A. 1999.

4 Q. And until what year?

5 A. December 30th of 2022.

6 Q. And what positions did you hold at the DOJ?

7 A. Initially, I was a special agent. And then a  
8 number of years later, I promoted to special agent  
9 supervisor, special agent in charge, and then assistant  
10 director at the Bureau of Firearms.

11 Q. DOJ is made up of divisions, correct?

12 A. Correct.

13 Q. And there's a Division of Law Enforcement; is  
14 that right?

15 A. Yes.

16 Q. What is the name of the position that is the  
17 head of that division?

18 A. There's a chief of the Division of Law  
19 Enforcement.

20 Q. And does the chief have a supervisor or  
21 somebody who he or she reports to?

22 A. Yes.

23 Q. And who would that be?

24 A. It would probably be, by title, over the years,  
25 the chief deputy attorney general, which has been held

1 the Division of Law Enforcement. I might actually say  
2 "DLE" at some point, David Lincoln Edward, so if I slip  
3 and use the "DLE" acronym, it's the Division of Law  
4 Enforcement. That's what that's for.

5 Q. Understood. Thank you.

6 A. Yep.

7 Q. Were all the positions that you held in your  
8 career at DOJ within the BOF?

9 A. No.

10 Q. What position was not within the BOF?

11 A. When I was first hired in November of '99, I  
12 was slated to work in the Bureau of Narcotic  
13 Enforcement. And that was in a bureau that no longer  
14 exists. Around 2002, I was transferred over to the  
15 Bureau of Firearms.

16 Q. And were you in the BOF ever since 2002 until  
17 the end of your career in 2022?

18 A. Yes.

19 Q. Can you please describe your duties as a  
20 special agent at the DOJ?

21 A. Criminal investigations, surveillance, arrests,  
22 writing search warrants. I'm trying to think what else.  
23 Those are just the general duties.

24 Q. And because you're a special agent, or you were  
25 a special agent within the BOF, the Bureau of Firearms,

1 Q. Between what years? Do you recall?

2 A. It should be 2010 through 2019.

3 Q. So, then, you became the special agent  
4 supervisor in charge in 2019?

5 A. Yeah, there were multiple special agents in  
6 charge within the Bureau of Firearms. I became one of  
7 them. And I was based in Sacramento.

8 Q. And what were your -- go ahead. I'm sorry.

9 A. I said, "I was based in Sacramento," but there  
10 were others in other geographic areas.

11 Q. Got it. Can you please describe your duties as  
12 a special agent supervisor in charge?

13 A. Sure. This is more of a managerial role where  
14 you have additional staff. Multiple teams report to  
15 you. And you may be involved in more personnel matters.  
16 You're, you know, potentially concerned about budgetary  
17 concerns, whereas the supervisors are not as much  
18 involved in that. You're pretty much no longer in the  
19 field as a special agent in charge. You're wearing a  
20 suit, coming into the office five days a week. More of  
21 an office job. It's a drastic change from a supervisor  
22 role.

23 Q. Did you have a direct supervisor in your  
24 position as a special agent supervisor in charge?

25 A. I had, probably, a few supervisors. Basically,

1 Q. Yes.

2 A. -- or what do you mean?

3 Q. Yes.

4 A. Yes. I would say the more traditional shotguns  
5 that are semiautomatic or pump action. A little less  
6 so, as far as break tops. We wouldn't, you know, shoot  
7 those for a duty reason, but we would occasionally  
8 encounter them and perhaps seize them during a criminal  
9 investigation, something like that.

10 Q. Are you familiar with any firearms that would  
11 not fall within the category of "handgun" or "rifle" or  
12 "shotgun"?

13 MR. LAKE: Just object to the extent it calls  
14 for a legal conclusion.

15 Go ahead.

16 A. I would say probably -- probably, like, a lower  
17 receiver is kind of in a gray area in my mind about what  
18 is it? It's a firearm, but it may not fall into those  
19 three categories that you just suggested there.

20 BY MR. BRADY:

21 Q. And a lower receiver is not a completed  
22 firearm; is that correct?

23 A. Yeah. Not in my mind. It's just something  
24 that meets the definition of a "firearm" that ultimately  
25 can be built into at least a couple of different types

1 of firearms.

2 Q. But a lower receiver cannot be discharged at --  
3 alone, correct? It needs additional parts added?

4 A. That's the way I would categorize that type of  
5 firearm.

6 Q. Are you familiar with any completed firearms,  
7 functioning firearms, that do not -- that would not be  
8 considered a handgun or a rifle or a shotgun?

9 MR. LAKE: Again, object to the extent it calls  
10 for a legal conclusion.

11 Go ahead.

12 A. Perhaps a Browning 1919 that is, like, tripod  
13 mounted, belt fed, something like that, that doesn't  
14 have a stock on it probably fits in there. Perhaps a --  
15 probably, like, a pistol grip shotgun. That would be  
16 another weapon that's sort of in a gray area in terms of  
17 traditional categories. Let me think. There's probably  
18 one or two others, but those are the ones that pop up  
19 right away.

20 BY MR. BRADY:

21 Q. Are you familiar with the National Firearms  
22 Act?

23 A. More or less, yes. It's not a thing I've  
24 studied recently, but I'm aware of it.

25 Q. Are you aware of a type of arm in the National

1 Q. So it's -- am I correct in understanding that  
2 ATF will make determinations about whether a particular  
3 firearm meets a particular definition under the law?

4 A. They did at some point. I don't know if they  
5 still do.

6 Q. I think -- let me step back and clarify that  
7 any of the questions I'm asking you are about your time  
8 while you were working at DOJ. If I'm going to ask you  
9 a question about the present, I will clarify that. So  
10 let's just operate under the assumption that everything  
11 I'm asking you is about -- is during your career. And  
12 if I need to get more specific than that, I will  
13 obviously get more specific than that.

14 Does that make sense?

15 A. It does make sense, and I'll try to answer with  
16 that in mind.

17 Q. Thank you.

18 So does DOJ ever make determinations about  
19 particular firearms and whether they meet a particular  
20 definition under California law?

21 MR. LAKE: I'll just object. It's vague as to  
22 the term "ever."

23 But go ahead, if you can.

24 A. Yeah. I can say that I was asked to make  
25 assault weapon identification opinions on criminal

1 cases. And I did that, I don't know, 15 or more times  
2 throughout the course of my career. I don't remember my  
3 exact number, but it's probably more than 15 times.

4 BY MR. BRADY:

5 Q. And why were you asked to do that?

6 A. Because of my position within the bureau. I  
7 was one of the more experienced people here in terms of  
8 firearms identification.

9 Q. So you have -- would it be fair to say you have  
10 specialized knowledge about weapons identification?

11 A. At least amongst the DOJ BOF staff, I did, at  
12 the time.

13 Q. Have you ever been designated as an expert on  
14 assault weapon identification?

15 A. Yes.

16 Q. Can you explain how many times?

17 A. I think I just said about 15 or more, roughly,  
18 yeah.

19 Q. Okay. And who designated you as an expert in  
20 those instances?

21 A. The judge that was running the trial,  
22 essentially, during those cases.

23 Q. So you would consider yourself well versed in  
24 the Assault Weapon Control Act?

25 A. Yes.

1 MR. LAKE: You didn't have the word "sale" in  
2 that description. It was close, but --

3 BY MR. BRADY:

4 Q. Dealer record of sale entry system?

5 A. Yeah. So the -- the DROS document, the dealer  
6 record of sale document, is sort of created inside DES,  
7 dealer entry system. I'm not sure if those are getting  
8 kind of --

9 Q. So it's called the "dealer entry system"?

10 A. That's what I understand it to be.

11 Q. Okay. Can you describe what the -- and you  
12 referred to the dealer entry system as "DES," correct?

13 A. That's the way I've always heard it talked  
14 about.

15 Q. Okay. Can you describe what DES is?

16 A. Okay. So first off, I'm not an IT person, so I  
17 will do my best.

18 So DES is a system by which the California  
19 firearms dealers can transmit data to the bureau for  
20 background check purposes, payment of the background  
21 check. I'm trying to think what else would be -- there  
22 may be some other things. But, again, this is not my  
23 area of expertise. This is more of a program side.

24 The bureau is sort of split into two. There's  
25 an enforcement side, that I was a part of, and then

1 there's the program side of the bureau that has, I don't  
2 know, a couple hundred employees. And they handle most  
3 of the background check analysis, all that type of  
4 stuff. And they're more IT heavy than the agents are.

5 Q. You did enforcement of laws as to licensed  
6 firearm dealers, correct, in your career at DOJ?

7 A. Yeah. We would investigate the dealers  
8 occasionally, when there was an issue.

9 Q. And is it your understanding that firearm  
10 dealers -- licensed firearm dealers -- "FFLs," as they  
11 call them -- are required to use the DES in making  
12 firearm transactions?

13 MR. LAKE: I'm just going to object. It's  
14 vague as to time. It's also overbroad and vague as to  
15 the subject matter.

16 Go ahead, if you can.

17 A. Since I've been at the department, there's been  
18 various changes to DES. But it -- towards the latter  
19 half of my career, my understanding, DES has been the  
20 one system that they're supposed to use. I know  
21 probably earlier in my career, there may have still been  
22 paper forms that were being generated that the gun  
23 stores mailed in, et cetera. So just know that there  
24 was sort of an evolution of the process while I was  
25 here.

1 BY MR. BRADY:

2 Q. And so you were discussing with Mr. Jacobson  
3 what? Whether his product could be included on the  
4 California roster of handguns?

5 A. Yeah. Some of it was about the -- and this is  
6 going way back, but some of it dealt with if his product  
7 was a single shot. Some of the discussions, I think,  
8 had to deal with a specific magazine that he had  
9 developed that would probably -- and way -- a way the  
10 magazine was -- call it "retained" inside the magazine  
11 well. So we had, I think, some discussions over that.

12 Q. Have you heard of the Franklin Armory Title 1  
13 firearm?

14 A. Yes.

15 Q. Can you explain what your understanding of that  
16 firearm is?

17 A. Sure. My understanding is that -- and again,  
18 I've not seen one, that I know of, in person. But my  
19 understanding is that it's an AR-15-style firearm, but  
20 it does not have a traditional stock attached to it.  
21 More of like a pistol buffer tube but a rifle barrel  
22 length. So maybe, like, a -- I'll call it a "hybrid,"  
23 if you will.

24 Q. Could you explain what you mean by "hybrid"?

25 MR. LAKE: Mr. Brady, if I could just inject.

1 Just a clarification. At Mr. Jacobson's depositions, he  
2 indicated, as well as Ms. Barvir, that there's no claims  
3 for damages being made related to what was later on  
4 developed as the Title 1 rimfire version. So just --  
5 can we clarify, just for our purposes, we're only  
6 talking about now, the Title 1 centerfire?

7 MR. BRADY: Yes.

8 MR. LAKE: Okay. Thank you.

9 BY MR. BRADY:

10 Q. So anytime I'm referring to the "Franklin  
11 Armory Title 1 firearm," I am referring to the  
12 centerfire version of that firearm. Is that -- does  
13 that make sense?

14 A. Sure.

15 Q. Okay. So you said it's more of a hybrid. Can  
16 you explain what you mean by "hybrid"? Hybrid of what?

17 A. Sure. So the AR-15 -- earlier, I spoke about a  
18 lower receiver having the potential to being built into  
19 a few different types of firearms. Traditionally, you  
20 can build those into rifles. You can build them into  
21 pistols. Now, the legality of both of those is that  
22 question, depending on how the build goes. There are --  
23 the legal way in which to do that over the years has  
24 changed. So I would say that the -- I've never seen an  
25 AR-15 lower being built into a shotgun. So I'm going to

1 kind of exclude that from any future conversation unless  
2 I specifically call that up. But I'm going to say that  
3 a -- the hybrid that I'm-speaking of now, in terms of a  
4 Title 1 centerfire would be somewhere in between a rifle  
5 and a pistol. Again, I've not seen one because I've not  
6 hold -- held one, necessarily. But it -- because it  
7 lacks a stock -- or visually lacks a stock -- it's got a  
8 pistol buffer, or what looks like a pistol buffer on  
9 there, and you're not going to be able to move -- I  
10 guess, your -- your body is going to have to adapt to  
11 that depending on if you're going to try to  
12 traditionally shoulder the weapon. You may -- it may  
13 be -- it may take an adjustment on how to -- how to fire  
14 that if you're used to shooting either a rifle or a  
15 pistol. Your body's going to have to kind of figure how  
16 to use used to that weapon.

17 Q. So based on your understanding of the  
18 definition -- California's definition of "handgun" at  
19 the time that you were working at DOJ, would the Title 1  
20 meet California's definition of "handgun"?

21 MR. LAKE: Object to the extent it calls for a  
22 legal conclusion.

23 Go ahead.

24 A. As I recall, handgun -- handguns had,  
25 traditionally, barrels that are less than 16 inches.

1 Q. So I believe you said earlier, that you are  
2 familiar with the drop-down list of firearm types in  
3 DES; is that correct?

4 A. Yeah. More or less, I'm familiar with  
5 available drop-downs over the years.

6 Q. And do you agree that at the time this letter  
7 was written on October 24, 2019, if you look at page 3  
8 of Exhibit 26, at the very top, there's an image. It  
9 says "Gun Type."

10 Do you see that?

11 A. I do see it.

12 Q. Do you agree that at the time of this letter,  
13 October 24th, 2019, that the DES drop-down list for gun  
14 types did not include an option for long guns that were  
15 neither rifles nor shotguns?

16 A. That seems correct to me.

17 Q. Is that your recollection, your independent  
18 recollection?

19 A. Yes.

20 Q. Were you made aware that there was no option  
21 for a non-rifle, non-shotgun, or non-combination long  
22 gun on DES at that time?

23 MR. LAKE: Well, I'm going to interpose an  
24 objection. It's overbroad. Vague. Vague as to time.  
25 And assumes facts not in evidence about usage of the DES

1 historically.

2 Go ahead, if you can.

3 A. Mr. Brady, are you asking me if I suddenly  
4 became aware of the lack of a fourth or fifth option  
5 before or around October 24th, 2019, because of this  
6 letter?

7 BY MR. BRADY:

8 Q. Correct.

9 A. Okay. I feel like -- I don't remember what the  
10 issue was, but I feel like I had some knowledge about, I  
11 don't know, gun types, like lower receivers, which I  
12 spoke of earlier. I think, at some point, they were  
13 DROS'd -- D-R-O-S, apostrophe, D, for the court  
14 reporter. I think those all went into the system as  
15 rifles up to a certain point. And then now, maybe they  
16 go in as a separate type of transaction. I don't  
17 remember if that was ultimately cleaned up in some way.  
18 But I know that there was an issue with lowers. And I  
19 don't know if it's tied to, like, a cleanup associated  
20 with an ultimate change that was done or what. But it  
21 could have been around this time.

22 Q. Okay. On page 3 of Exhibit 26, the second  
23 sentence, which appears like a second paragraph, it says  
24 "This defect could have been prevented by including  
25 within the list the various types of other long guns, or

1 simply including a single catch-all within the list such  
2 as 'Other'."

3 Do you agree with that statement?

4 MR. LAKE: I'm going to object because the term  
5 "defect" is argumentative. It stands for itself in the  
6 document.

7 But go ahead, if you can.

8 A. Let me back up just so I can read the bottom of  
9 page 2. So the DES -- I understand the context here.

10 BY MR. BRADY:

11 Q. Let me step back --

12 A. Okay.

13 Q. -- and make it clear, because I think it's out  
14 of context when I -- so the sentence before that says  
15 "This list fails to include options for the many long  
16 guns that are neither rifles nor shotguns."

17 Do you agree with that statement?

18 MR. LAKE: I'm going to object to that. Asked  
19 and answered. And, again, vague and overbroad as to  
20 time. He already just answered about that prior to the  
21 statutory change.

22 A. Yes. I would say my lower receiver commentary  
23 that I provided sort of ties into what you just said as  
24 far as your question. Probably, the Browning 1919  
25 pistol grip -- what, up to that point, had been sold as

1 pistol grip shotguns, probably could be -- could fall  
2 into what's an "other" now.

3 BY MR. BRADY:

4 Q: Do you agree with the statement in the letter  
5 that the inclusion of a category "other" would have  
6 allowed DES to process long guns that are neither rifles  
7 nor shotguns?

8 MR. LAKE: Well, I'm going to object now. It's  
9 asked and answered twice. He just said that they were  
10 processed, essentially, picking "rifle" for lowers, or  
11 for a pistol grip shotgun, they'd pick "shotgun." I  
12 mean, they'd pick the closer one -- closest one that  
13 applied. So I think he's already answered that  
14 question.

15 BY MR. BRADY:

16 Q. Mr. Graham, is your understanding that a dealer  
17 submits information on DES under penalty of perjury?

18 MR. LAKE: Well, I'm going to object. That  
19 calls for a legal conclusion. It's also a misstatement.  
20 It's not the -- that's not the law.

21 BY MR. BRADY:

22 Q. Is it -- is it your understanding that it is a  
23 crime for a dealer to provide incorrect information --  
24 or I'm sorry, it can be a criminal act for a dealer to  
25 provide incorrect information on a DES?

1 MR. LAKE: Object that it's a -- calls for a  
2 legal conclusion and speculation.

3 Go ahead, if you can.

4 THE WITNESS: Sure.

5 A. So on the DROS form, there's a particular penal  
6 code called out about omissions or misstatements,  
7 something along those lines. I don't remember what the  
8 code section is. It's in the 2000 series. And it  
9 applies to purchasers and/or dealers. I don't remember  
10 the code, though. It's -- it might be 26950, but I  
11 could be wrong. Or 262- -- I don't know. It's been too  
12 long.

13 Q. With the qualification that you said, you would  
14 need to see the Title 1 in person and hold it in order  
15 to make a final determination, I believe you testified  
16 previously, that you believe, without having seen it,  
17 that the Title 1 is not a rifle, correct?

18 A. Again, I haven't handled one. But I think,  
19 because it lacks a stock, it's not going to fall under  
20 the traditional rifle category.

21 MR. LAKE: And just to clarify, your question  
22 is whether it's a rifle under the statutory definition?

23 MR. BRADY: Correct.

24 MR. LAKE: Okay.

25

1           A.    Well, it could be the deputy attorney general,  
2    Rob Wilson.  It could be other members of the Bureau of  
3    Firearms that are technically, you know, the author, the  
4    ones that create the document and send it into the  
5    system.  I have no idea how to do that.  So I certainly  
6    wouldn't have pushed the actual document into the  
7    system.  I would have no clue how to do that.  So it  
8    probably was a group effort.

9           Q.    Do you recall ever being involved in the  
10   drafting of a bulletin concerning the sale of firearms  
11   that do not meet the statutory definition of a "rifle,"  
12   "shotgun," or "pistol"?

13          A.    It sounds like another way of saying "other."  
14   So --

15          Q.    Correct.  What is your -- well, let me ask you  
16   this:  What is your understanding of the term "other"?

17          A.    Well, to me, it's a group of weapons that  
18   don't -- that are out there in, call it, the  
19   "population" of guns, but they're not maybe cleanly  
20   falling into one of the more traditional three  
21   categories of "rifle," "pistol," "shotgun," you know, so  
22   you -- I think I brought them up before.  It could be a  
23   lower receiver.  It could be something like a Title 1.  
24   It could be pistol grip shotgun or some other -- you  
25   know, a Browning 1919 belt-fed or something like that.

# EXHIBIT C

**In The Matter Of:**

*Franklin Armory, Inc. v.  
California Department of Justice, et al.*

---

*Cheryle Massaro-Florez  
December 28, 2021*

---

*Sisters-In-Law, Inc.  
Certified Court Reporters and Videographers  
SistersInLawCourtReporters@gmail.com  
17141 Pleasant Circle  
Huntington Beach, CA 92649*

Original File 1133T.txt  
Min-U-Script® with Word Index

Cheryle Massaro-Florez - December 28, 2021

10:13 1 BY MR. DAVIS:

2 Q Anyone other than counsel. Correct, anyone  
3 else other than counsel.

4 A Yes.

10:13 5 Q Who else other than counsel?

6 A My -- my director of the application  
7 development bureau.

8 Q And who's that?

9 A Rodney Smith.

10:13 10 Q What did you discuss with him?

11 A The declaration and agreeing to be a  
12 representative for the Department of Justice on this  
13 case.

14 Q Did they ask you to be a representative for  
10:13 15 the Department of Justice in this case?

16 A Yes.

17 Q What specifically did they ask you to  
18 represent?

19 A Represent --

10:14 20 MR. BARNOUW: I'm going to object because  
21 this is getting into areas where there's going to be  
22 attorney-client communications that are being passed  
23 through from the attorneys to the witness.

24 So I don't know -- I don't know how you're  
10:14 25 going to take out what's attorney-client and what's

Cheryle Massaro-Florez - December 28, 2021

10:14 1 not until I talk with her about what her answer is  
2 going to be. Do you want to take a moment to do that,  
3 or do you want to move on?

4 MR. DAVIS: If you want, we can hold that off  
10:14 5 towards the break and then come back to it after the  
6 break. I'll just highlight it and then we'll come  
7 back.

8 MR. BARNOUW: Okay.

9 MR. DAVIS: Great.

10:14 10 BY MR. DAVIS:

11 Q So we're here today because Franklin Armory  
12 and the California Rifle & Pistol Association claim  
13 that the DOJ prevented the lawful transfer of certain  
14 types of firearms, and you provided a declaration in  
10:15 15 support of the DOJ.

16 And what we're trying to do is to make the  
17 story of what happened as clear as possible and to  
18 ascertain some details about your involvement. So the  
19 aim of the questions I'll ask and the spirit in which  
10:15 20 I'm asking them -- so that's the aim of the questions  
21 that I'm going to be asking.

22 Does that make sense?

23 A Yes.

24 Q Do you have any more questions before we go  
10:15 25 forward?

Cheryle Massaro-Florez - December 28, 2021

10:15 1 A No.

2 MR. BARNOUW: I'd like to make a statement --  
3 sorry, Jason.

4 Again, the scope of the deposition today is  
10:15 5 limited. We're here in response to the request for  
6 discovery to support an opposition to our motion to  
7 dismiss. That's what the declaration was for and as  
8 well as the deposition today. So it's limited to  
9 that, to what's relevant to the motion to dismiss?

10:15 10 MR. DAVIS: That is correct.

11 BY MR. DAVIS:

12 Q So how long have you worked for the DOJ?

13 A Since 1999.

14 Q So 21, 22 years?

10:16 15 A Yes, 22 years.

16 Q What is your current job title?

17 A Information Technology Supervisor II.

18 Q And what do you do under that title?

19 A I -- I support the firearms software  
10:16 20 development unit and I have 12 staff that I mentor and  
21 provide assignments to.

22 Q That was the firearm software development  
23 unit?

24 A Yes.

10:16 25 Q And how many total are in that unit?

Cheryle Massaro-Florez - December 28, 2021

10:17 1 A Twelve.

2 Q So you are the top in that unit?

3 A Yes.

4 Q Okay. And what does that unit do?

10:17 5 A We support, maintain and develop the firearms  
6 applications for the State of California.

7 Q Is that the DES? And we'll talk about that  
8 later, but is that what you're referring to?

9 A Yes, that's an application.

10:17 10 Q So that's one of many things that fall within  
11 your supervisory purview?

12 A Yes.

13 Q Have you ever had any roles within the  
14 Department of Justice --

10:17 15 A Yes.

16 Q -- over those years?

17 A Yes.

18 Q What other roles have you had?

19 A Going downwards --

10:17 20 Q Yes.

21 A Okay. An Information Technology  
22 Specialist I, a senior information systems analyst, an  
23 associate information systems analyst. There's a  
24 pattern. I was a staff services analyst and executive  
10:18 25 secretary.

Cheryle Massaro-Florez - December 28, 2021

10:29 1 Q Those are the jobs we talked about  
2 previously?

3 A Yes.

4 Q And I'm assuming those are the same things  
10:29 5 that you did for the division of law enforcement?

6 A Yes.

7 Q For both bureaus?

8 A No.

9 Q What did you do for the Bureau of Forensic  
10:29 10 Service?

11 A I was a student assistant and was -- worked  
12 in latent prints.

13 Q Okay. What did you do under the Bureau of  
14 Firearms?

10:29 15 A I was there for quite a while, so it went  
16 from time sheets to becoming the director or now chief  
17 secretary to supporting the firearms applications on  
18 the client side to becoming the subject matter expert  
19 on the applications.

10:30 20 Q Okay. And you are the subject matter expert  
21 on the applications currently?

22 A Yes.

23 Q Jumping back to your current employment --  
24 never mind. Strike that.

10:30 25 Your declaration states that you are

Cheryle Massaro-Florez - December 28, 2021

10:30 1 currently employed with the firearms software  
2 development unit.

3 That's still correct, correct?

4 A Yes.

10:30 5 Q What is the firearm software development  
6 unit?

7 A It's a unit within the Application  
8 Development Bureau that its focus is to maintain  
9 support and develop firearms applications. We are the  
10:31 10 main support for the Bureau of Firearms.

11 Q Okay. What does that mean?

12 A That --

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

14 BY MR. DAVIS:

10:31 15 Q When you say you support them, in what ways  
16 do you support them?

17 A We -- we develop and produce products of what  
18 they request for legally required to be developed with  
19 software applications.

10:31 20 Q Okay. How long have you been within the  
21 firearms software unit, development unit?

22 A Seven years.

23 Q In your declaration, you state that you  
24 oversaw a project that was overtaken by the firearm  
10:31 25 software development unit to modify the dealer record

Cheryle Massaro-Florez - December 28, 2021

10:32 1 of sale entry system and various other databases.

2 Is that correct?

3 A Yes.

4 Q What, if any, were your -- strike that.

10:32 5 What does it mean when it says you oversaw  
6 the project?

7 A I was the project lead and oversaw to make  
8 sure tasks were completed within the time frame in  
9 which they were required to be completed.

10:32 10 Q What were the specific tasks that needed to  
11 be completed for this project?

12 A Analysis, development, testing.

13 Q What did you analyze?

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

10:33 15 BY MR. DAVIS:

16 Q You stated that you analyzed something as a  
17 part of this project, correct?

18 A I oversaw the analysis.

19 Q Okay. What specifically was the analysis  
10:33 20 analyzing that you oversaw?

21 A The development of the application, what  
22 needed to be changed, and the impact to other  
23 applications for making that change.

24 Q And what was the specific change that you  
10:33 25 were overseeing?

Cheryle Massaro-Florez - December 28, 2021

10:33 1 A Changing the -- well, we call it DES, but the  
2 DROS entry record -- entry system, enhancing it to  
3 include a new firearms type of gun type, other.

4 Q And that's the only change that was made to  
10:34 5 the DES as part of this project?

6 A Yes.

7 Q What, if any, were your responsibilities with  
8 regard to designing this change in the DES?

9 A I oversaw the design and led meetings for  
10:34 10 design meetings.

11 Q What, if any, are your responsibilities with  
12 regard to maintaining the DES generally outside of the  
13 project?

14 A Production support and any service requests  
10:34 15 or enhancement requests.

16 Q What are production reports?

17 A Production support is when the Bureau of  
18 Firearms contacts us either requesting stats or a  
19 question on how the application is functioning.

10:35 20 Q And what were the other things that you do  
21 besides production support?

22 A Service requests, enhancement requests.

23 Those are --

24 Q What's a service request?

10:35 25 A Those will be requests to make changes to the

Cheryle Massaro-Florez - December 28, 2021

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 CFGI.

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.

Cheryle Massaro-Florez - December 28, 2021

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  
10:40 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

Cheryle Massaro-Florez - December 28, 2021

10:42 1 the work effort and come up with certain dates we  
2 could potentially get this change out.

3 BY MR. DAVIS:

4 Q What's that person's name?

10:43 5 A Debbie Morisawa.

6 Q How do you spell that last name?

7 A M-o-r -- when you put me on the spot --

8 M-o-r-i-s-a-w-a.

9 Q And you say copartner. What unit is she  
10:43 10 within?

11 A She's in the firearms application support  
12 unit.

13 Q You said she was assigned that before you  
14 were assigned yours, or was it a simultaneous  
10:43 15 assignment?

16 A We were assigned it together.

17 Sorry. That's my dog. He just opened the  
18 door. Okay.

19 Q How many persons worked on this project?

10:44 20 A I need a moment. Jeez, I won't be able to  
21 give you a full number. My entire staff worked on it.  
22 That's at least 12, and a few of Debbie's staff worked  
23 on it as well. And then there's the Bureau of  
24 Firearms, which I can't count.

10:44 25 Q Next question was, can you state the names

Cheryle Massaro-Florez - December 28, 2021

11:19 1 of claim like that. Where have you seen -- what would  
2 lead you to believe we would make a claim like that?

3 MR. DAVIS: Conversations with you and  
4 conversations with Anna about her conversations with  
11:19 5 you, that you have denied the fact that you could not  
6 proceed with the DES. I don't --

7 If you're not denying that --

8 MR. BARNOUW: If you're referencing discovery  
9 responses -- I don't understand what you're saying,  
11:20 10 and I don't --

11 MR. DAVIS: I'm trying to get an  
12 understanding --

13 MR. BARNOUW: I've never been aware of a  
14 distinction between -- I've never been aware of anyone  
11:20 15 making a distinction between information that is --  
16 that is provided to the DOJ when the dealer submits  
17 versus when the dealer just does something and you're  
18 saying that dealer doesn't click "submit" and abandons  
19 the transaction or something?

11:20 20 MR. DAVIS: Yes, is that information that's  
21 been abandoned before submitting it to the DOJ, has  
22 that information been transferred to the DOJ prior  
23 to --

24 MR. BARNOUW: No one has -- I've never made  
11:20 25 an issue of that. No one has made an issue of that,

Cheryle Massaro-Florez - December 28, 2021

11:20 1 to my knowledge. If it's something that has been  
2 misinterpreted, we can discuss it. But this doesn't  
3 seem to be what Ms. Massaro-Florez is here about, so  
4 if it's other discovery responses that you're  
11:21 5 concerned about, we can talk about that. But this is  
6 not part of this deposition. So I'll object to it and  
7 instruct her not to answer.

8 BY MR. DAVIS:

9 Q Can a dealer submit their form anytime via  
11:21 10 the DES, or must the form be complete before  
11 submission?

12 A It must be complete.

13 Q How does the system prevent incomplete forms  
14 from being submitted?

11:21 15 A We have system messages prompting the user  
16 what fields are missing.

17 Q Okay. So again, if a required field is not  
18 accurately completed, the dealer has no method of  
19 submitting the information to the DES or through the  
11:22 20 DES, correct?

21 MR. BARNOUW: Can you read that question  
22 back, please?

23 BY MR. DAVIS:

24 Q So if a required field cannot be accurately  
11:22 25 completed, the dealer has no method of submitting the

Cheryle Massaro-Florez - December 28, 2021

11:22 1 information to the DES database via the DES, correct?

2 MR. BARNOUW: I'm going to object. That's  
3 vague, especially as to "accurately completed."

4 MR. DAVIS: Complete, period.

11:22 5 MR. BARNOUW: Well, ask your question again.  
6 But again, this is going beyond the scope of what  
7 she's here for. This feels like you're following up  
8 on general discovery that you have, and we actually  
9 provided you responses. And this can all be worked  
10 out with -- outside of this deposition.

11 MR. DAVIS: I'll move on.

12 MR. BARNOUW: Okay.

13 BY MR. DAVIS:

14 Q In paragraph 7, you stated that not only the  
11:23 15 coding of the DES itself, but also the coding of  
16 several applications and databases involved  
17 modifications.

18 And we went through those previously, so I'm  
19 going to ask you specifically what changes were made.

11:23 20 But first was the DES, correct?

21 A Yes.

22 Q And what specifically was modified?

23 A The firearm submission flow and the  
24 acquisition flow.

11:23 25 Q What does that mean?

Cheryle Massaro-Florez - December 28, 2021

11:23 1 A The acquisition flow is pawn, consignment and  
2 buy. We needed to add a new gun type of "other." And  
3 then the firearm submission is the DROS form. We  
4 needed to add a new gun type of "other."

11:23 5 Q So the same concept just for two different  
6 forms?

7 A Yes.

8 Q Okay. How was this modified specifically?  
9 Is it a complicated process, or is it the adding of a  
11:24 10 field to the drop-down list?

11 A It's complicated, because there's validations  
12 within the application on knowing how it should behave  
13 based on what gun type you select.

14 Q What does that mean?

11:24 15 A It means that if you select a specific gun  
16 type, we are expecting either a certain barrel length  
17 to be entered. We will validate if you're able to  
18 purchase more than one of those gun types  
19 simultaneously. Those type of --

11:24 20 Q Are those changes within the DES or changes  
21 within the other databases that need to be made or  
22 other applications?

23 A Changes in DES and in other applications.

24 Q Okay. Right now I'm just referring to what  
11:25 25 specific changes within the DES. We'll get to the

Cheryle Massaro-Florez - December 28, 2021

11:25 1 other one. What specific changes within the DES  
2 needed to be made?

3 A What I stated, the acquisition flow and the  
4 DROS submission flow.

11:25 5 Q And tell me about the acquisition flow.

6 A Buy, consignment and pawn needed an option to  
7 be able to select gun type of "other."

8 Q And the other options that needed to be  
9 changed?

11:25 10 A Was the DROS submission flow.

11 Q What needed to be changed within the DROS  
12 submission flow?

13 A We needed to -- well, with both, we needed to  
14 change the validations, we had age validations, we  
11:25 15 have gun type validations, and then also we did need  
16 to add another gun type of "other" to a drop-down.

17 Q So the age validation, what does that do?

18 A We validate based on your age, what type of  
19 gun you can purchase and if you have an exception.

11:26 20 Q And then what was the other validation that  
21 you said needed to be corrected?

22 A Hold on. Let me remember. - I talked about  
23 age and I talked about -- oh, multiple gun purchases.  
24 That's another validation.

11:26 25 Q Now, these validations, they already existed,

Cheryle Massaro-Florez - December 28, 2021

11:26 1 correct?

2 A Yes.

3 Q So you didn't have to rewrite the whole  
4 validation, correct?

11:26 5 A Correct.

6 Q You just had to tie it into the change of gun  
7 type, the new gun type, correct?

8 A Yes.

9 Q What specifically needed to be done to tie  
10 those in?

11 A We had to rewrite code.

12 Q How much code?

13 MR. BARNOUW: I'm going to object. It's  
14 vague, and also getting into areas where I'm concerned  
15 about confidential information related to the DOJ's  
16 operation of these systems.

17 BY MR. DAVIS:

18 Q How long would it take to rewrite that code?  
19 How long did it take to rewrite that code?

11:27 20 A Yes. We gave -- which is a document you  
21 receive -- we gave development time I believe three  
22 weeks.

23 Q Okay. That's development time to actually,  
24 you know, do it, not the actual time spent on it,  
11:27 25 correct?

Cheryle Massaro-Florez - December 28, 2021

11:27 1 So, for example, if I tell somebody I need  
2 something within two weeks, it may take them ten  
3 minutes to do it, but they have two weeks to get it  
4 back to me.

11:28 5 So is that development time the time to get  
6 everything done, or is that the actual time estimated  
7 to do the work?

8 A It was the estimated time to do the work.

9 Q So it takes two weeks of time. When you say  
11:28 10 two weeks, it took two weeks of time of someone  
11 sitting down and recoding to complete that task?

12 A Yes.

13 Q Tell me about the consolidated firearms  
14 gateway. What changes needed -- needed to be made on  
11:28 15 that?

16 A That's our database that is -- houses our  
17 other firearms applications. So that database needed  
18 to be enhanced to accept the gun type "other" as a gun  
19 type within our database tables.

11:28 20 Q And was there anything else other than adding  
21 the "other" to it that needed to be updated?

22 A Not for the database, no.

23 Q The gateway?

24 A Oh, the gateway. I apologize. I'm sorry.  
11:29 25 The gateway, yes. It's the -- that's our communicator

Cheryle Massaro-Florez - December 28, 2021

11:29 1 between the DES and the internal DROS system and the  
2 AFS system. So there was coding changes that needed  
3 to be done as well.

4 Q What coding changes needed to be done?

11:29 5 A Validation check.

6 Q How many?

7 A Oh, I'm sorry. Did you ask me a question?

8 Q Yes, I'm sorry. How many validation checks?

9 A I don't know.

11:29 10 Q Do you know which ones were checked or  
11 changed?

12 A No.

13 Q Do you know how long it took?

14 A No.

11:30 15 Q Do you know who actually made the changes?

16 A Yes.

17 Q Who?

18 MR. BARNOUW: I'm going to object that we're  
19 concerned about having an individual employee's name  
11:30 20 publicized, so I'm going to instruct her not to  
21 answer. I don't understand how this is -- how this is  
22 relevant.

23 MR. DAVIS: I'm trying to understand --

24 MR. BARNOUW: Well, I mean, what is your  
11:30 25 contention about the project and how having completed

Cheryle Massaro-Florez - December 28, 2021

11:34 1 A Not long. A couple days.

2 Q Do you know when that process was started and  
3 when it ended?

4 A Not without that document in front of me, no.

11:35 5 Q We'll get to it shortly. Okay.

6 What's the electronic person information  
7 update form?

8 A It's another application citizens can submit  
9 if they want to update their personal information on a  
11:35 10 gun record we have in AFS.

11 Q And what changes were made to that?

12 A We had to add the gun type of "other" and add  
13 some validations.

14 Q What validations?

11:35 15 A I don't know.

16 Q Were there a lot of validations? Some? Do  
17 you have an estimate of how many?

18 A No.

19 Q Would they be the same ones that were made to  
11:36 20 the DES?

21 A Yes. It's so that the end user can submit  
22 the form and provide them educational information if  
23 they didn't enter something correctly for them to  
24 correct it. Those type of validations.

11:36 25 Q You have to provide some additional

Cheryle Massaro-Florez - December 28, 2021

11:36 1 educational information for the personal information  
2 update form?

3 A Yes.

4 Q What kind of educational information did you  
11:36 5 provide?

6 A Requiring if you select a gun type of  
7 "other," that there are other certain mandatory fields  
8 that were still required.

9 Q Like what?

11:36 10 A Such as category, barrel length,  
11 measurements, color.

12 Q Those are the same things that are applicable  
13 to any firearm, though, correct?

14 A Yes.

11:36 15 Q So there was no -- you didn't have to add any  
16 new fields to the database, correct?

17 A Correct.

18 Q Okay. The California firearms application  
19 reporting system, also known CFARS, was referenced in  
11:37 20 your declaration as one of the systems that needed to  
21 be changed.

22 What was changed on that?

23 A The CFARS is the application that houses the  
24 law enforcement gun release and that personal  
11:37 25 information update form.

Cheryle Massaro-Florez - December 28, 2021

11:37 1 Q So what did you have to change with regard to  
2 that? If you changed the forms themselves, what did  
3 CFARS have to change?

4 A Well, those forms are part of the CFARS  
11:37 5 application. We had to change the application code  
6 for those forms.

7 Q So when you refer to the applications above  
8 that we previously discussed, those fall within the  
9 changes that needed to be made to CFARS?

11:37 10 A Yes.

11 Q Any other changes to CFARS other than what  
12 we've already discussed?

13 A No.

14 Q As part of this project, was time spent on  
11:38 15 the changes tracked?

16 MR. BARNOUW: I'm sorry. Could you repeat  
17 that?

18 BY MR. DAVIS:

19 Q As part of this project, was time spent on  
11:38 20 the changes tracked?

21 MR. BARNOUW: I'm sorry. I don't understand.

22 BY MR. DAVIS:

23 Q By way of example, certain projects will tell  
24 you it takes this many hours to complete.

11:38 25 Do you know how many hours -- or were the

Cheryle Massaro-Florez - December 28, 2021

11:38 1 hours to complete this project tracked?

2 A Okay. Let me try to answer.

3 MR. BARNOUW: You can answer.

4 THE WITNESS: We didn't track it by hour. We  
11:39 5 tracked it by days.

6 BY MR. DAVIS:

7 Q By days. Okay. And do you know how many  
8 days were spent on this project?

9 A Not the exact number. We had a time frame  
11:39 10 from July 1st to October 1st.

11 Q That's the general time to complete?

12 A Yes.

13 Q Do you know how many were actually spent on  
14 this specific project?

11:39 15 A No, not off the top of my head.

16 Q And during that period, I'm assuming -- and  
17 you can correct me if -- tell me if this is correct.  
18 All the other people within the unit had other jobs  
19 and other tasks that they were doing. They weren't  
11:39 20 putting 100 percent of their time and effort on this  
21 one change, correct?

22 A Yes, correct.

23 Q Do you have -- can you estimate how much time  
24 was spent by your unit on this through that period?  
11:40 25 Like 20 percent of the time during that period was

Cheryle Massaro-Florez - December 28, 2021

12:19 1 assault weapon related and the other 80 percent was  
2 related to general firearms or whatever numbers you  
3 can accurately state or estimate?

4 MR. BARNOUW: Can you read the question back?  
12:20 5 I'm sorry. Can you read the question back?

6 (Record read.)

7 MR. BARNOUW: I think I'm going to object. I  
8 think it's a vague question. I'm not sure what --

9 MR. DAVIS: Let me try to rephrase it.  
12:21 10 BY MR. DAVIS:

11 Q What I'm trying to find out or ask in this  
12 question is, a lot of changes needed to be done as a  
13 result of the addition of others. Some of those  
14 changes applied solely to assault weapon databases and  
15 applications, and some of them applied to the general  
16 firearm applications and databases.

17 Time-wise, a certain amount of time was spent  
18 on one database and application for assault weapons,  
19 and then a certain amount of time was spent on the  
12:21 20 general firearms.

21 Could you estimate percentage-wise what went  
22 with what?

23 A It's a hard answer because a lot of it had to  
24 be done together, so...

12:22 25 Q I'm referring to the project as a whole, not

Cheryle Massaro-Florez - December 28, 2021

12:22 1 just the items that are identified in this document.

2 A Right. Project as a whole?

3 Q Yes.

4 A It took -- it did take more time to -- for  
12:22 5 the assault weapon registration form because it didn't  
6 exist. DES existed.

7 Q Do you have an estimate as far as percentages  
8 can go?

9 MR. BARNOUW: I'm sorry. You're basing it on  
12:22 10 time spent?

11 MR. DAVIS: Time spent, correct.

12 MR. BARNOUW: On the overall project or by  
13 developers or what?

14 MR. DAVIS: Overall project.

12:22 15 MR. BARNOUW: I'm going to object. It's a  
16 vague question.

17 You can answer if you can estimate.

18 THE WITNESS: Well, it was work done in  
19 parallel. So the time started beginning of July for  
12:23 20 both and ended in October at the same time.

21 BY MR. DAVIS:

22 Q Can you answer the question?

23 A I'm not sure if I -- what my answer would be  
24 is correct, so no.

12:23 25 Q Okay. Turn to the next page, which I don't

Cheryle Massaro-Florez - December 28, 2021

12:23 1 know if I've updated it on yours, but let me do that.

2 A We can see it, yes.

3 Q Okay. Good. The first red bullet point  
4 refers to the DES, CFARS, DROS apps, AWR internal  
12:23 5 regression.

6 What is this referring to?

7 A Yes. Anytime we make a significant change to  
8 an application, the whole entire application needs to  
9 be retested. And so we call it regression testing.

12:24 10 Q And what's involved in that testing?

11 A Every functional flow of that application has  
12 to be retested, positive and negative.

13 Q What does positive and negative mean in that  
14 context?

12:24 15 A Meaning all validations that should allow a  
16 process to flow needs to flow, and any validation  
17 that's supposed to stop a flow needs to stop a flow.

18 Q Okay. What does the next bullet point refer  
19 to?

12:24 20 A That's functional system integration testing  
21 and regression testing. That was a task for a  
22 different team.

23 Q So that was assigned to your sister team?

24 A That is -- that was another -- that was for  
12:24 25 a -- specifically for the assault weapon, the other

Cheryle Massaro-Florez - December 28, 2021

12:25 1 assault weapon registration form that you can access  
2 online. It's a different unit within our bureau.

3 Q Was that still related to the other aspect,  
4 the other project?

12:25 5 A Yes, for other assault weapon.

6 Q Other assault weapon. Okay.

7 A Yes.

8 Q The first blue line, what is that referring  
9 to?

12:25 10 A So it's another phase change. This is user  
11 acceptance testing. This is when the Bureau of  
12 Firearms tests the system and agrees that we -- we  
13 implemented the necessary -- based on the  
14 requirements, the necessary changes and that the  
15 system works and flows as expected. It's a final  
16 sign-off.

17 Q Okay. And UAT bugs and fixes, what is that  
18 referring to?

19 A During user acceptance testing, if they find  
12:25 20 any defects in the code that we had missed by testing,  
21 we have a time to fix those bugs and retest.

22 Q Would those defects and bugs be identified in  
23 the Jira logs?

24 A Yes.

12:26 25 Q Did it change the page on yours? If not, I

Cheryle Massaro-Florez - December 28, 2021

12:26 1 can do it right now.

2 A No.

3 MR. BARNOUW: I'm able to change the page on  
4 my own.

12:26 5 MR. DAVIS: I can change it for you or you  
6 can change them on your own. Which would you prefer?

7 MR. BARNOUW: I think we should be able to  
8 change it on our own.

9 MR. DAVIS: I gotcha.

12:26 10 MR. BARNOUW: Let's try to make sure we're  
11 all, quote, on the same page.

12 MR. DAVIS: Literally.

13 THE WITNESS: Okay.

14 BY MR. DAVIS:

12:26 15 Q The next page is, "Other gun assumptions."  
16 It says: All requirements except the changes detailed  
17 in the gun type "other" MVP requirements, disclosure  
18 updated 02/10/21 xlsx, in red, will stay the same.

19 What is that referring to?

12:27 20 A It's an attachment document I believe you  
21 received as well that discloses a high-level work  
22 effort of what needs to be changed so we could do this  
23 estimate.

24 Q What does the next line refer to?

12:27 25 A The analyst and developer resources needed,

Cheryle Massaro-Florez - December 28, 2021

12:27 1 that one?

2 Q Correct.

3 A It is identifying a risk that the resources  
4 needed to perform this -- this project is also  
12:27 5 assigned to other legislated and mandated projects.

6 Q Then it says the timeline for development,  
7 total, two and a half to three months, correct?

8 A Yes.

9 Q Okay. And then underneath that, it says,  
12:27 10 "Phase," and there's a column of phases.

11 Could you identify what each of those phases  
12 is referring to?

13 A Yes. The first phase was analysis, and it  
14 was coding analysis because we have a new framework,  
12:28 15 so the analysis time to take to implement the changes  
16 to the new framework.

17 And then the build is the next phase, is the  
18 actual coding, the database changes identifying jobs  
19 for application processes that need to be changed.

12:28 20 And then the system integration and  
21 regression testing, so we need to test everything  
22 again. And the system integration means that we want  
23 to make sure that it goes from point A to point B, so  
24 from DES all the way up to AFS.

12:28 25 Q And the duration, it breaks down each of the

# EXHIBIT D

**In The Matter Of:**

*Franklin Armory, Inc., et al. v.  
California Department of Justice, et al.*

---

*Cheryle Massaro-Florez  
September 8, 2023*

---

*Sisters-In-Law, Inc.  
Certified Court Reporters and Videographers  
SistersInLawCourtReporters@gmail.com  
17141 Pleasant Circle  
Huntington Beach, CA 92649*

Original File 3019 CHERYLE MASSARO-FLOREZ.txt  
Min-U-Script® with Word Index

Cheryle Massaro-Florez - September 8, 2023

1 purposes of this field is?

2 A Yes.

3 Q What is it?

4 A A weapon that does not constitute a handgun  
5 or a long gun or a rifle or shotgun or a shotgun  
6 combo.

7 Q Or pistol, correct?

8 A Yes.

9 Q When was the "others" field added to the DES?

10 MR. ADAMS: Objection. Asked and answered at  
11 the previous deposition, but if you recall the answer,  
12 you can offer it, Ms. Massaro.

13 THE WITNESS: Yes. October 2021.

14 BY MR. DAVIS:

15 Q October 2021. Thank you.

16 Is that when it was also made available for  
17 users, the dealers who actually enter the information?

18 A Yes.

19 Q Prior to that, there was no "others" field  
20 within the long gun drop-down list for firearms that  
21 were others, correct?

22 A Correct.

23 Q Are you the person most qualified regarding  
24 the procedures or process for altering, changing or  
25 modifying fields within the DES?

Cheryle Massaro-Florez - September 8, 2023

1 A Yes.

2 Q This next question is a yes or no, but let me  
3 finish it before you answer.

4 The question is, using the addition of the  
5 term "other" to the drop-down list as an example, is  
6 there a process or procedure for the implementation of  
7 such a change to the DES?

8 For example, if someone requests a change,  
9 who has the authority to request a change and who must  
10 it be made to?

11 Actually, that was two questions. Who -- you  
12 understand what I'm saying, making a change to the  
13 DES, correct?

14 A Yes.

15 Q Okay. Who has the authority to request  
16 enhancements?

17 A The Bureau of Firearms.

18 Q Anybody from the Bureau of Firearms?

19 A Management.

20 Q Management. Are they the only ones who can  
21 make that request?

22 A No. Others can request it, but we don't --  
23 we don't -- we require management's approval before we  
24 look into it.

25 Q What about the attorney general? If he makes

# EXHIBIT E

**In The Matter Of:**

*Franklin Armory, Inc., et al. v.  
California DOJ, et al.*

---

*Christina Rosa-Robinson  
November 27, 2023*

---

*Sisters-In-Law, Inc.  
Certified Court Reporters and Videographers  
SistersInLawCourtReporters@gmail.com  
17141 Pleasant Circle  
Huntington Beach, CA 92649*

Original File 3029 Christina Rosa-Robinson.txt  
Min-U-Script® with Word Index

Christina Rosa-Robinson - November 27, 2023

1 estimate or your best recollection, but I'm not  
2 entitled to have you guess or speculate.

3 So the classic example attorneys like to  
4 give, if I were to ask you to estimate the length of  
5 the table you are sitting at, you could probably give  
6 me an estimate of that. But if I asked you to  
7 estimate the length of the table I am sitting at, you  
8 can't even see it, so you'd just be guessing, right?  
9 So do you understand the difference between guesses  
10 and estimates?

11 A Yes.

12 Q Okay. All right. And the last few of these  
13 questions, it's not to get personal, we just have to  
14 make sure you're capable of answering today to the  
15 best of your ability.

16 Are you feeling sick today?

17 A No.

18 Q Do you otherwise feel fine physically?

19 A I mean, I'm a little chilly, but other than,  
20 I'm fine.

21 Q Did you take any medication today?

22 A No.

23 Q Have you had any alcohol today?

24 A No.

25 Q Is there anything at all preventing you from

Christina Rosa-Robinson - November 27, 2023

1 giving accurate testimony today?

2 A No, there's not.

3 Q Okay. Finally, if you need a break, please  
4 let know, and we'll discuss taking a break. If I've  
5 already asked a question, though, please finish your  
6 answer and then ask for a break. I do plan to call  
7 for breaks every hour, but anytime you need a break,  
8 just let me know. I think we can wrap up in  
9 definitely under two, maybe within one.

10 Okay. That's all we have for the  
11 admonitions. Let's move now to some of the more  
12 substantive questions.

13 So you're here today for information you may  
14 know pertinent to the case of Franklin Armory,  
15 Incorporated versus California Department of Justice.

16 What is your understanding of what the case  
17 is about?

18 A Honestly, not much. I really -- I think it  
19 has something to do with monetary value, but I really  
20 don't know.

21 Q Okay. In preparing your declaration -- I'm  
22 sorry. In prepping for this deposition, I meant to  
23 say, did you discuss this case with anyone else  
24 besides Mr. Adams?

25 A No.

**Christina Rosa-Robinson - November 27, 2023**

1 Q Did you review any documents in preparation  
2 for today's deposition?

3 A Other than the one that you sent a few  
4 moments ago, that's the only one that I reviewed.  
5 That's it.

6 MR. MOROS: Okay. And I should probably  
7 clarify for the record, prior to the deposition, I did  
8 send Ms. Rosa-Robinson and Mr. Adams a copy of the  
9 only exhibit I anticipate bringing into this  
10 deposition, so they do have a copy of that. And once  
11 we get to that, I'll address that again. I just want  
12 to make that clear.

13 BY MR. MOROS:

14 Q So do you work for the Department of Justice  
15 currently?

16 A I do.

17 Q Okay. What is your role within the  
18 Department of Justice?

19 A I'm -- my official classification,  
20 information technology specialist one. Just to make  
21 sure that I get the organizational chart correct, I'm  
22 in the applications development bureau under the  
23 managed application services section.

24 Q Okay. And how long have you worked for the  
25 Department of Justice?

**Christina Rosa-Robinson - November 27, 2023**

1           A     I was hired June 1st, 2017. So six, seven  
2 years.

3           Q     And during your time with the Department of  
4 Justice, have you always had the IT specialist role?

5           A     Yes.

6           Q     So this is the only role you've had with the  
7 department your entire career?

8           A     Yes. I mean -- there was a  
9 reclassification -- I'm not sure if that's really  
10 pertinent. A few years ago there was a  
11 reclassification in the State, so I was hired as a  
12 staff information systems analyst. There was a  
13 reclassification and now it's the information  
14 technology specialist. So it's all the same.

15                     But yes, to answer your question, this has  
16 been my role.

17           Q     So despite the title change, your job duties  
18 did not change.

19                     Is that fair to say?

20           A     Correct. Yes.

21           Q     And can you describe what you do in an  
22 average day at DOJ? What does an IT specialist do?

23           A     Average day. So we usually have, you know,  
24 legislative mandates that we have to work on because  
25 there's legislative deadlines. So we're working on

**Christina Rosa-Robinson - November 27, 2023**

1 various projects, whether that is documentation,  
2 gathering requirements, system testing, organizing  
3 user acceptance testing, you know, attending meetings,  
4 and then also supporting the State's firearm  
5 applications. So if there's any production issues or,  
6 you know, running any reports that the Bureau of  
7 Firearms might need, that's very high level of what I  
8 do, yeah.

9 Q Understood. So do you exclusively work with  
10 the Bureau of Firearms, or is that just part of your  
11 job?

12 A Exclusively, yeah. I support the Bureau of  
13 Firearms' firearms application. So yeah, it's their  
14 main customer/client. Yeah.

15 Q And when you say -- sorry. When you say  
16 customer/client, isn't your customer just DOJ? Or how  
17 does that work? Who else would be --

18 A Well, you're right. There really isn't  
19 anybody else. We receive our directive from the  
20 Bureau of Firearms.

21 Q Understood. So what kind of software systems  
22 do you work on? Is that not the right -- let me  
23 restate that.

24 Would you describe your work as working on  
25 software systems, or is there another term that you

Christina Rosa-Robinson - November 27, 2023

1 Q Was there anyone else who, even if they  
2 didn't have the title of supervisor, that you would  
3 report to in 2021, that you would take instruction  
4 from, that you would get assignments from, that sort  
5 of thing?

6 A Well, I would frequently write -- I might get  
7 assignments from Debbie's manager, which was Sardar.  
8 I might get instruction from him, but my direct  
9 supervisor was Debbie.

10 Q Okay. And I think we already know the answer  
11 based on your prior testimony here, but have you done  
12 any work in your career on the DES?

13 A Yes. Minimally, but yes, I have.

14 Q Oh, you've only done minimal work on the DES?

15 A I guess, maybe define work. I don't know,  
16 right? Like, have I done any system testing to help  
17 out testing DES, yes, right? But that is not my  
18 application that I've primarily been assigned to.

19 Q What is your primary application assignment?

20 A CFARS.

21 Q Okay. So to the best of your knowledge, what  
22 is the DES?

23 A DES, DROS entry system. So the way I would  
24 explain it, right, to my friends or somebody is just  
25 it's the entry system that firearms dealers or

**Christina Rosa-Robinson - November 27, 2023**

1 ammunition dealers use in order to make a purchase for  
2 somebody, right, to submit a background check because  
3 they want to buy a type of firearm or ammunition.  
4 And, you know, if it gets approved, then the sale  
5 would take place within the DES application.

6 Q Understood. And so the purpose of the DES is  
7 essentially to facilitate California's background  
8 check system through the dealers?

9 A Yes.

10 Q And who established the DES?

11 A I don't know.

12 Q That's okay.

13 A That's before my time.

14 Q Like I said at the beginning, it's fine to  
15 say you don't know if you don't know the answer.

16 A Yeah, I don't know. It's before my time.

17 Q Who oversees the DES? And I know, obviously,  
18 the answer is DOJ, but who within DOJ or what bureau  
19 oversees the DES?

20 A It would be the Bureau of Firearms.

21 Q Earlier you testified that you've only done  
22 minimal work on the DES. How much work would you  
23 say -- and I am asking for an estimate here. What  
24 percent of your job has been on the DES? So a rough  
25 estimate.

Christina Rosa-Robinson - November 27, 2023

1 A Are you -- like in my entire career here at  
2 DOJ?

3 Q Yes.

4 A Maybe 20 percent.

5 Q Okay. And how much work would you say you  
6 did on the DES during 2020 and 2021 specifically?

7 A 2020 and 2021. That was probably the bulk of  
8 my work with DES, so I guess a safe guess would be  
9 maybe 15 percent.

10 Q And why was there much more work on DES in  
11 2020 and 2021 that you needed to be pulled into it  
12 more when you're normally CFARS?

13 A Well, there was the -- we had a high-priority  
14 project that we had to do, which was the "other" gun.  
15 And so because we had such a short deadline -- time  
16 frame, I should say, to implement the "other" gun,  
17 firearm type into DES, we had to, you know -- pretty  
18 much the supervisor had to pull resources, you know,  
19 other analysts and developers and focus on  
20 implementing the "other" gun into DES because it's not  
21 just implementing into DES. There's like three or  
22 four other subsequent applications, right, that -- you  
23 know, DES is the entry. You know, it's the front  
24 application, but, you know, that's the intake. And  
25 then there's other applications that it has to -- that

Christina Rosa-Robinson - November 27, 2023

1 it has to correspond to that it has to be recorded.

2 And so it was a big undertaking. We had a  
3 short amount of time, so there was a lot of resources  
4 that had to be pulled from other application so that  
5 we can implement on time.

6 Q Understood. Okay. Did you ever do work on  
7 the DES that involved adding a country to the place of  
8 birth drop-down menu?

9 A Do any work? Can you rephrase the question?

10 Q I can represent to you that I think it was  
11 either in 2020 or 2021, but the United Arab Emirates  
12 was missing from the drop-down menu on place of birth  
13 for the purchaser and that was corrected to be added.

14 A Okay.

15 Q I'll represent that to you.

16 Were you involved in that work at all?

17 A I honestly don't recall. Yeah, I don't  
18 recall.

19 Q Okay. That's fair. That's fair. So this is  
20 kind of a 10,000-foot-view question as someone who,  
21 again, does not -- I'm just a dumb lawyer. I don't  
22 understand software and applications. But why does  
23 adding something like another country or in the work  
24 that you confirmed you worked on, the "other" option,  
25 why is that a difficult task? Because from a layman's

Christina Rosa-Robinson - November 27, 2023

1           So the previous question was fine. I'm not  
2 going to object to that, but just so you're aware of  
3 what I'm thinking.

4           MR. MOROS: I don't anticipate any questions  
5 today about how the DOJ enforces the law. I don't  
6 believe Ms. Rosa-Robinson -- no offense -- is actually  
7 the person anyways.

8 BY MR. MOROS:

9           Q     So let me represent to you my understanding  
10 based on a prior deposition that you probably aren't  
11 privy to was that the general stages I was asking  
12 about are what we learned were analysis, business  
13 requirements, development and testing.

14           Is that -- does that sound familiar to you?

15           A     Yes.

16           Q     Okay. And could you describe generally what  
17 happens in each of those steps? Again, I don't need  
18 you to take me down to the code, but just generally,  
19 yeah.

20           A     Okay. So analysis. Analysis usually  
21 takes -- well, all of it, we work with, you know,  
22 closest with the Bureau of Firearms. So analysis,  
23 right? The Bureau of Firearms has to review, you  
24 know, the legislation, whatever it is and figure out  
25 what has to be implemented. Then they inform us. And

Christina Rosa-Robinson - November 27, 2023

1 then we do analysis on our side of, okay, this is how  
2 we think it could -- basically, doing planning and,  
3 you know, high-level workload development of, okay,  
4 because they gave us the scope, we have to try and  
5 come up with how we're going to implement it. And  
6 then we present this to the Bureau of Firearms. They  
7 say, yes, this will work, we'll be able to, you know,  
8 meet the mandates that they have to. And then we  
9 gather requirements.

10 So that's the requirements of, okay, how is a  
11 person -- you know, how -- basically, tell us how this  
12 is supposed to work. So how are the applications  
13 supposed to intake whatever -- whatever changes? Does  
14 it have a cost to it? Do we have reporting to it?  
15 How is it supposed to look, you know, in the AFS, the  
16 state repository. Just the requirements are just the  
17 nitty-gritty part of that testing.

18 So we do our own functional -- we call it  
19 functional testing, right? That's where we try to  
20 make sure that all the requirements have been met that  
21 were given -- that were approved by the Bureau of  
22 Firearms. Then we do regression testing to make sure  
23 that the changes that we made didn't essentially break  
24 the system, whatever validations were currently in  
25 place or rules or -- like I said, we didn't break the

**Christina Rosa-Robinson - November 27, 2023**

1 system. And then we do user acceptance testing.  
2 That's when we bring in Bureau of Firearms. They have  
3 selected testers. And basically, it's the people who  
4 would be using the applications on their day-to-day  
5 when they're -- part of their day-to-day process, and  
6 we show them these are the changes.

7 They essentially -- they do their testing.  
8 It takes about a week or so. And they say, okay, this  
9 is perfect. This is what we want to roll to  
10 production with. And then we deploy to production.

11 Q Thank you for explaining all that. And you  
12 hopefully made it easy enough for me to understand as  
13 well.

14 So when you said it starts off with,  
15 basically, a legislative mandate -- I don't mean to  
16 misconstrue your testimony, but is that what the  
17 assignment comes from?

18 A Sometimes, right? Sometimes it comes from  
19 mandates. Honestly, all I know is that we get -- you  
20 know, I get -- we get our directive from my  
21 supervisor. My supervisor gets it from the Bureau of  
22 Firearms, so -- yeah.

23 Q So of the steps you listed there, analysis,  
24 business requirements, development and testing, which  
25 are you most involved in in your day-to-day work?

Christina Rosa-Robinson - November 27, 2023

1 A Analysis, requirements gathering, testing,  
2 minimal development. So yeah. So I'm part of all of  
3 the stages.

4 Q Understood. And you say minimal development.  
5 Who handles the development work?

6 A So we're split up into -- we have developers.  
7 The developer unit, and then the systems analysis,  
8 which is my side. So the development would be by the  
9 development unit.

10 So my -- so when the developers -- so my part  
11 with the development would be, you know, if the  
12 developers have any questions or would have to do, you  
13 know, some review of the requirements for their  
14 understanding so they know what they're doing.

15 MR. MOROS: One second. Let's take five  
16 minutes. Sorry about that. Let's go off the record  
17 here.

18 (Recess.)

19 MR. MOROS: Back on the record.

20 BY MR. MOROS:

21 Q I apologize, Ms. Rosa-Robinson. We had a  
22 technical difficulty on my end, and I couldn't hear  
23 you speaking. If you could go ahead and repeat your  
24 answer to the prior question.

25 A Please repeat the question.

Christina Rosa-Robinson - November 27, 2023

1           A     Normally, once we implement something, we  
2 would go back and, you know, add a comment and we  
3 would close out -- right, close out the Jira. But  
4 honestly, sometimes that just doesn't happen. But if  
5 someone were to really need to know, like, okay, was  
6 this Jira actually implemented, we would, of course,  
7 have to, you know, pull it up, take a look, do a  
8 little -- do a little bit of reading and we would have  
9 to then maybe go within our release notes to recall  
10 when it specifically was deployed to production.

11           Q     Okay. And it next says -- there's a category  
12 for issue links, and then it says "Cloners and link"  
13 in bold.

14                     What are issue links?

15           A     Issue links are when we -- we usually use  
16 that function in a Jira ticketing system when we're  
17 trying to link Jiras so it's easier for us to find  
18 rather than having to search, right? We know that  
19 they're related, so we link them together.

20                     Cloned is a function that we use. So, like,  
21 we found a Jira, we need to clone it, maybe change  
22 some of the description or whatnot. But, you know,  
23 rather than reinventing the wheel, that's when you  
24 would clone a Jira. So that's what issue links are.  
25 I believe there are other categories, too, but it's

Christina Rosa-Robinson - November 27, 2023

1 mostly when you want to link Jiras together.

2 Q It looks like all of these are marked closed  
3 except for one of them which is "Is linked to  
4 CFAR-927." And that's "AWR registration enhancement."

5 Is that by mistake, or is there some reason  
6 that one is still open, to your knowledge?

7 A To my knowledge, I don't know. It's probably  
8 an oversight, but I really don't know.

9 Q All right. Okay. So even though before we  
10 talked about how Jeffrey Liu was marked as the  
11 assignee, I now see a series of people were tasked  
12 with what appear to be subtasks.

13 You appear to have been assigned a number of  
14 these.

15 A Mm-hmm.

16 Q So when it says "closed" there under status  
17 next to your name as the assignee, does that mean the  
18 work was completed?

19 A Yes.

20 Q And I see a number of subtasks here. Who  
21 assigned these to you?

22 A Well, typically, because I'm the primary  
23 systems analyst, we're the last people that would be  
24 the assignee because we have to ensure that it was  
25 completed.

Christina Rosa-Robinson - November 27, 2023

1           So that's why -- so during, you know, the  
2 process, I guess you can say, the life cycle of when,  
3 you know, a Jira's opened, it gets assigned to various  
4 people because -- you know, from development and  
5 testing. And in this case, right, I'm the assignee  
6 because I had to make sure that the work was done  
7 because I probably tested it.

8           Q     Okay.

9           A     Yeah.

10          Q     So you're kind of at the end of the process  
11 there when you get involved?

12          A     Yeah.

13          Q     Okay. So throughout these pages, you're  
14 listed not exclusively but your name pops up a lot in  
15 these tasks.

16          A     Um-hmm.

17          Q     How much time would you estimate you  
18 personally spent on this?

19          A     On this parent Jira you mean? Or like all of  
20 these subtasks?

21          Q     All of the subtasks combined. So your work  
22 on this Jira, how much time would you estimate you  
23 spent on this?

24          A     An estimate, maybe four months, five months.

25          Q     Four months?

# EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

DEPARTMENT 32

HONORABLE DANIEL S. MURPHY

FRANKLIN ARMORY, INC. AND )  
CALIFORNIA RIFLE & PISTOL )  
ASSOCIATION, INCORPORATED, )  
 )  
PLAINTIFFS, )  
 )  
VS. )  
 )  
CALIFORNIA DEPARTMENT OF )  
JUSTICE, XAVIER BECERRA, IN HIS )  
OFFICIAL CAPACITY AS ATTORNEY )  
GENERAL FOR THE STATE OF )  
CALIFORNIA, AND DOES 1-10, )  
 )  
DEFENDANTS. )  
 )

CASE NO. 20STCP01747

CORRECTED CERTIFIED  
COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, SEPTEMBER 6, 2023

APPEARANCES:

FOR THE MICHEL & ASSOCIATES, P.C.  
PLAINTIFFS: BY: ANNA M. BARVIR  
180 E. OCEAN BLVD., SUITE 200  
LONG BEACH, CA 90802  
ABARVIR@MICHELLAWYERS.COM

FOR THE DEPARTMENT OF JUSTICE  
DEFENDANTS: BY: KEN LAKE  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013  
213-269-6525  
KENNETH.LAKE@DOJ.CA.GOV

REPORTED BY: ASHLEY SANCHEZ, CSR NO. 14346

1 THE COURT: I WASN'T -- EITHER YOU OR PLAINTIFF  
2 CAN ANSWER. I WASN'T REALLY CLEAR. THE PEOPLE WHO PUT  
3 THE DEPOSIT DOWN, HAVE THEY CLEARED THE BACKGROUND  
4 CHECK AND EVERYTHING ALREADY?

5 MR. LAKE: NO.

6 THE COURT: I MEAN, HAS THERE BE A DOJ  
7 BACKGROUND CHECK OR ANYTHING DONE YET?

8 MR. LAKE: NOT AT ALL.

9 THE COURT: SO IT'S STILL A POSSIBILITY THAT  
10 THEY MAY NOT BE ENTITLED TO POSSESS ANY FIREARM?

11 MR. LAKE: EXACTLY. THERE'S A WHOLE PROCESS.  
12 FIRST YOU HAVE TO BUY THE FIREARM. THEN THEY GET  
13 ONLINE AND THERE'S A FORM THAT THEY FILL OUT. DOJ  
14 ISSUES -- BASICALLY, CONFIRMS AND NOW THEY SENT IT TO  
15 THE DEALER. AND THE DEALER AND THE BUYERS COME IN AND  
16 THEY SUBMIT THEIR INFORMATION. THEN IT GOES INTO THE  
17 ONLINE SYSTEM. YEAH, THERE'S A WHOLE BUNCH OF  
18 PROCESSES.

19 AND, IF I COULD, I JUST WANTED TO CLARIFY ONE  
20 THING. IF THE COURT -- ASSUMING THE COURT STICKS WITH  
21 THE TENTATIVE ON THE 1983, 7TH AND 8TH CAUSES AND THE  
22 9TH CAUSE -- IF COUNSEL COULD CONFIRM THAT MY  
23 UNDERSTANDING IS CORRECT. JUST TO CLARIFY THAT THE  
24 RESULT OF THOSE WOULD BE THAT ATTORNEY GENERAL BONTA IS  
25 DISMISSED FROM THIS ACTION BECAUSE HE'S ONLY NAMED IN  
26 THOSE THREE. AND THAT THE ASSOCIATION WOULD NO LONGER  
27 BE OF PLAINTIFF BECAUSE THEY'RE ONLY ASSERTING CLAIMS  
28 UNDER THOSE THREE CAUSES.

1 THE COURT: COUNSEL, DID YOU HEAR THAT FOR  
2 PLAINTIFF? DO YOU AGREE?

3 MS. BARVIR: I'M SORRY. COULD HE -- HE WAS  
4 SAYING THAT ATTORNEY GENERAL BONTA WOULD BE DISMISSED  
5 FROM THE REMAINDER OF THE CLAIM?

6 MR. LAKE: YES. AND THEN THE ASSOCIATION ALSO  
7 WOULD NO LONGER BE OF PLAINTIFF BECAUSE THEY'RE ONLY --  
8 AGAIN AS CLARIFIED IN OUR MEET AND CONFER -- IS THAT  
9 THEY'RE ONLY ASSERTING CLAIMS UNDER THE 7TH, 8TH, AND  
10 9TH CAUSES OF ACTION FOR EQUITABLE RELIEF.

11 MS. BARVIR: OH, YOU'RE SAYING IF THE COURT  
12 UPHOLDS THE TENTATIVE ON THE 1983 CAUSE OF ACTIONS THEN  
13 THE CRPA PLAINTIFF AND AS WELL AS THE ATTORNEY GENERAL  
14 BONTA WOULD NO LONGER BE A PARTY? IF WE HOLD THAT PART  
15 OF THE TENTATIVE?

16 MR. LAKE: YES.

17 MS. BARVIR: YES, THAT WOULD BE CORRECT. BUT,  
18 AGAIN, IT WOULD BE --

19 THE COURT: SO WHICH CAUSE --

20 (SIMULTANEOUS CROSSTALK)

21 MS. BARVIR: -- UPHELD BECAUSE -- YOU KNOW,  
22 BECAUSE WE DID SEEK FAIRLY EXPLICITLY IN THE AMENDED  
23 COMPLAINT TH ENJOINMENT OF SB 118.

24 THE COURT: OKAY. SO WHICH CAUSE OF ACTION IS  
25 BECERRA SUPPOSEDLY PERSONALLY LIABLE? I THOUGHT I SAW  
26 EVERYTHING SAYING "ALL DEFENDANTS."

27 (SIMULTANEOUS CROSSTALK)

28 MR. LAKE: YEAH -- GO AHEAD.

1 MS. BARVIR: YEAH. THE PERSONAL LIABILITY  
2 CLAIMS ARE ONLY CLAIMED, I BELIEVE, THAT'S 3, 4, AND 5  
3 WHICH ARE POTENTIAL INTERFERENCE WITH CONTACT AND THE  
4 INTENTIONAL AND NEGLIGENT INTERFERENCE WITH ECONOMIC  
5 ADVANTAGE CLAIM.

6 THE COURT: SO OTHER THAN BECERRA, IS THE  
7 STATE OF CALIFORNIA THEN ANOTHER DEFENDANT OR IS  
8 BECERRA GOING DEFENDANT IN THOSE CASES -- IN THOSE  
9 CAUSE OF ACTIONS?

10 MS. BARVIR: THE STATE OF CALIFORNIA IS NOT A  
11 DEFENDANT. CALIFORNIA DEPARTMENT OF JUSTICE AND  
12 BECERRA AND BONTA ARE DEFENDANTS.

13 THE COURT: OKAY. SO IF I FIND THAT -- I'D  
14 PROBABLY GIVE LEAVE TO AMEND IF I FIND IN FAVOR OF  
15 BECERRA IN HIS INDIVIDUAL CAPACITY. BUT DOJ WOULD  
16 STILL BE IN THE CASE, CORRECT, ON THOSE CAUSES OF  
17 ACTIONS?

18 MS. BARVIR: ON THE --

19 THE COURT: ON 3, 4, AND 5.

20 MS. BARVIR: I DON'T THINK SO. I THINK WE  
21 DISCUSSED THROUGHOUT THE COURSE OF -- THE COURSE OF  
22 THIS CASE THAT OFFICIAL CAPACITY AND THE DEPARTMENT OF  
23 JUSTICE ITSELF WOULDN'T BE LIABLE FOR THE -- FOR --

24 THE COURT: SO THE ONLY -- SO THE ONLY  
25 DEFENDANT THEN THAT YOU'RE SEEKING DAMAGES AGAINST IN  
26 3, 4, AND 5 IS BECERRA?

27 MS. BARVIR: NO. IT ACTUALLY IS -- I THINK --  
28 IT WAS DEFENDANT DOJ AND IN PERSONAL CAPACITY FOR

1 DEFENDANT BECERRA.

2 THE COURT: OKAY. SO DOJ WOULD STILL BE --

3 MS. BARVIR: NOT BONTA IN HIS OFFICIAL  
4 CAPACITY, YEAH.

5 THE COURT: SO IF I REMOVE BECERRA,  
6 PLAINTIFF'S POSITION DOJ WOULD STILL BE IN 3, 4, AND 5.  
7 IS THAT YOUR UNDERSTANDING ALSO?

8 MR. LAKE: THAT WASN'T OUR UNDERSTANDING IN  
9 OUR DISCUSSIONS. BUT JUST TO CLARIFY A COUPLE THINGS  
10 ON THAT REAL QUICKLY. WE'VE APPEARED AS THE STATE OF  
11 CALIFORNIA ACTING BY AND THROUGH THE DOJ. THERE ARE  
12 CASES THAT KIND OF MUDDLE THE WATERS A LITTLE BIT.

13 THE COURT: YEAH, YOU'RE ALL INTERTWINED.

14 MR. LAKE: YES.

15 THE COURT: THE SHERIFF IS STILL THE COUNTY OF  
16 LA.

17 MR. LAKE: YEAH. BUT WHEN WE TALK ABOUT THE  
18 3RD, 4TH, AND 5TH CAUSE OF ACTIONS THERE IS A  
19 DISTINCTION WHICH WE DISCUSSED IN OUR MOVING PAPERS.  
20 IS THAT THE STATE OF CALIFORNIA CAN ONLY BE STATUTORY  
21 LIABILITY AGAINST THEM. SO THE 3RD, 4TH, AND 5TH  
22 CAUSES OF ACTIONS ARE COMMON LAW CAUSES, THEY'RE NOT  
23 STATUTORY. SO THERE CAN BE NO DIRECT LIABILITY AGAINST  
24 THE STATE, DOJ. BUT THEY COULD BE --

25 THE COURT: BUT MANDATORY DUTY COULD BE  
26 LIABILITY.

27 MR. LAKE: MANDATORY DUTY, THEY COULD. WHICH,  
28 FRANKLY --

# EXHIBIT G

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE DAVIS LAW FIRM  
42690 Rio Nedo, Suite F  
Temecula, California 92590  
T: 866-545-GUNS  
F: 888-624-GUNS  
Jason Davis (SBN 224250)  
Jason@CalgunLawyers.com

Attorneys for Plaintiffs,  
**FRANKLIN ARMORY, INC. &  
SACRAMENTO BLACK RIFLE, INC.**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**BY FAX**

FRANKLIN ARMORY, INC. a Nevada  
Corporation, and SACRAMENTO BLACK  
RIFLE, INC. a California Corporation,

Plaintiffs,

vs.

STATE OF CALIFORNIA; XAVIER  
BECERRA, in his official capacity as Attorney  
General of California; MARTIN HORAN, JR.,  
in his official capacity as Acting Chief of the  
Department of Justice Bureau of Firearms and  
DOES 1-25,

Defendants.

Case No.: 2018-00246584-CU-MC  
**VERIFIED FIRST AMENDED  
COMPLAINT AND PETITION FOR  
DECLARATORY RELIEF**

**FILED/ENDORSED**  
JUN 26 2019  
By:           K. Spichka            
Deputy Clerk

1 FRANKLIN ARMORY, INC., and SACRAMENTO BLACK RIFLE, INC. (collectively  
2 "PLAINIFFS") petition this court for declaratory relief relating to DEFENDANTS STATE OF  
3 CALIFORNIA, XAVIER BECERRA, MARTIN HORAN, JR. and DOES 1-25 (collectively  
4 "DEFENDANTS") and the applicability of the Roberti-Roos Assault Weapon Control Act ("AWCA") to  
5 the "Title 1" firearm manufactured by FRANKLIN ARMORY, INC. and the duties of the  
6 DEFENDANTS to issue regulations that may be necessary and proper to carry out the purposes of the  
7 AWCA, including classifications of firearms in accordance with the AWCA.

8 PLAINTIFFS aver as follows:

9 **PARTIES**

10 1. Plaintiff FRANKLIN ARMORY, INC. ("FAI") is a federally licensed firearms manufacturer  
11 incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a  
12 manufacturing facility in Morgan Hill, California. FAI specializes in manufacturing AR-style firearms  
13 for civilian sporting, military, and law enforcement applications. FAI intends to engage in a course of  
14 conduct affected with a constitutional interest, and that there is a credible threat that the challenged  
15 provision will be invoked against the plaintiff.

16 2. Plaintiff SACRAMENTO BLACK RIFLE, INC. ("SBR") is a California corporation that  
17 operates a firearms dealership in Rocklin, California. SBR is a licensed firearms dealership listed in the  
18 DOJ's Centralized List of Firearms Dealers and/or Manufacturers. SBR intends to engage in a course of  
19 conduct affected with a constitutional interest and that there is a credible threat that the challenged  
20 provision will be invoked against the plaintiff.

21 3. Defendant STATE OF CALIFORNIA ("STATE") is a sovereign state admitted to the United  
22 States under section 3, Article IV of the United States Constitution. The State of California has  
23 statutorily elected to occupy the whole field of regulation of the registration or licensing of  
24 commercially manufactured firearms as encompassed by the California Penal Code.

25 4. Defendant XAVIER BECERRA ("BECERRA") is the Attorney General of the State of  
26 California and is sued herein in his official capacity. The Attorney General is the chief law enforcement  
27 officer of the STATE, and it is his duty to ensure that STATE's laws are uniformly and adequately  
28 enforced. Though the State occupies the whole field of regulation of the registration or licensing of

1 commercially manufactured firearms, it has delegated certain duties to the Attorney General. The  
2 Attorney General is the head of the California Department of Justice ("DOJ"). The DOJ and its Bureau  
3 of Firearms ("BOF") regulate and enforce state law related to the sales, ownership, and transfer of  
4 firearms, including the clarifying the meaning of the Assault Weapons Control Act through the  
5 regulatory process. The BOF also regulate and administer the licensing and permitting of firearms  
6 dealers within the State of California. The Attorney General maintains an office in Sacramento,  
7 California.

8 5. Defendant MARTIN HORAN, JR. ("HORAN") is the Chief of the DOJ Bureau of Firearms  
9 ("BOF"). Upon information and belief, Mr. Horan reports to Attorney General Becerra, and is  
10 responsible for overseeing the administration of BOF, including the application of the AWCA and  
11 administration of the licensing and permitting of firearms dealers within the State of California. He is  
12 sued herein in his official capacity.

13 **JURISDICTION AND VENUE**

14 6. This Court has jurisdiction under Article I, section 3 and Article VI section 10 of the California  
15 Constitution, and Code of Civil Procedure sections 525, 526, 1060, and 1085.

16 7. Venue is proper in this Court under Government Code section 6258 and Code of Civil Procedure  
17 sections 393(b) and 394(a). Also, venue properly lies within this Court because the Attorney General  
18 maintains an office in the County of Sacramento. (Code Civ. Proc. §401.)

19 **AUTHENTICITY OF EXHIBITS**

20 8. All exhibits accompanying this Complaint and Petition are true and correct copies of the original  
21 documents. The exhibits are incorporated herein by reference as though fully set forth in this Complaint  
22 and Petition.

23 **GENERAL ALLEGATIONS**

24 **[THE DEFENDANTS' GENERAL DUTIES]**

25 9. ~~The California Constitution vests the office of the Attorney General, currently held by~~  
26 ~~BECERRA, with enormous powers over the lives of the citizens of the state. "Subject to the powers and~~  
27 ~~duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the~~  
28 ~~duty of the Attorney General to see that the laws of the state are uniformly and adequately enforced."~~

1 (Cal. Const. art. V, §13.)

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

4 11. The Attorney General’s proper performance of his or her duties ensure the state’s firearms laws  
5 are administered fairly, enforced vigorously, and understood uniformly throughout California.

6 12. The Attorney General is required to provide oversight, enforcement, education, and regulation of  
7 many facets of California’s firearms laws. And, the Attorney General performs these legislative duties  
8 through their Bureau of Firearms (“BOF”).

9 13. The BOF has claimed to be one of the most technologically advanced, service oriented, and  
10 highly visible bureaus within the DOJ.

11 14. The BOF is charged with enforcing firearms laws dating back to the early 1900s, with the oldest  
12 and most notable responsibility of conducting background checks for gun purchasers commonly known  
13 as the Dealer Record of Sales (DROS) process and regulating the conduct of licensees through  
14 inspections and enforcement actions.

15 15. The BOF (known as the Division of Firearms until 2007) was established in 1999 following the  
16 passage of several new firearms laws which were focused on regulating “assault weapons” and “unsafe  
17 handguns.”

18 16. Currently, the BOF is responsible for administering thirty-two different statewide legislatively  
19 mandated programs involving firearm laws administration, education, enforcement, dangerous weapons,  
20 firearms-related employment, and identifying and disarming persons prohibited from possessing  
21 firearms (refer to Legislatively Mandated Programs Attachment).

22 17. These programs greatly impact local, state, and federal criminal justice agencies, the public, the  
23 firearms industry nationwide (e.g., firearms dealers, manufacturers, distributors, wholesalers, firearm  
24 safety device manufacturers, etc.), and statewide superior courts and mental health facilities.

25 ~~18. The BOF plays a critical role in the oversight and regulation of firearms and the enforcement of~~  
26 the laws regulating firearms within in California.

27 19. The BOF’s mission statement admits their obligation to educate and promote legitimate firearm  
28 sales and education, and is as follows:

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

8           20. The practical application of the BOF's mission requires balancing the service needs of its  
9 stakeholders which include the local, state and federal law enforcement community; firearms  
10 manufacturers; importers; dealers; victim advocate groups; gun owners; and non-gun owners. It also  
11 requires the Bureau and its staff to be on the forefront of leadership, innovation, and collaboration.

12           21. The BOF claims its enforcement staff conducts training for members of the public, law  
13 enforcement, the firearms industry, and members of the judiciary.

14           22. BOF agents are required to maintain a high level of firearms expertise and are often called upon  
15 to testify as expert witnesses in court cases involving both criminal and administrative actions. Bureau  
16 enforcement staff conduct on-site inspections of all California licensed firearm dealers, gun shows,  
17 manufacturer and retail premises to ensure compliance with California and federal firearm laws.

18           23. On average, the BOF claims that it "reviews and analyzes over twenty separate firearms-related  
19 bills each year resulting in approximately thirty percent being chaptered into law, which requires the  
20 BOF's implementation efforts (refer to Chaptered Firearms Related Legislation Attachment). Further,  
21 legislators, stakeholders, federal authorities, firearm industry representatives, criminal justice  
22 representatives, and the public, routinely review, question, and audit the Department's efforts/activities  
23 regarding the administration and enforcement of the State's firearms laws."

24           24. The BOF has repeatedly acknowledged that these same entities rely on the BOF to provide  
25 guidance regarding the proper application and administration of both state and Federal firearms laws.

26           25. When it comes to firearms issues, the Legislature has a well-established track record of  
27 approving spending authority requests (special and general fund) for the Bureau to have sufficient  
28 funding to carry out its intent with respect to proper administration and enforcement of both new and

1 existing state firearms laws.

2 26. Those seeking instruction relating to California's firearm laws account for over 6.1 million hits  
3 to the Bureau's web page annually. This makes the BOF's webpage one of the most visited links on the  
4 Attorney General's web site.

5 27. Additionally, the BOF averages approximately 5,000 public contacts each month in the form of  
6 telephone calls, emails, and written correspondence.

7 28. The BOF extends law enforcement and program services to all 58 counties through two regional  
8 offices, four field offices, two program offices, and one headquarters office. These critical functions and  
9 services are carried out through the following program areas, a couple of which are described as follows:

10 a. The Firearms Licensing and Permits Section is responsible for the administration and  
11 regulation of several statutorily mandated programs that issue licenses, permits,  
12 certifications, and registrations for the possession, use and ownership of firearms and  
13 dangerous weapons. Additionally, this section is responsible for administering the state's  
14 handgun and firearms safety device testing and certification programs.

15 b. The Training, Information and Compliance Section (TICS) is responsible for training,  
16 inspecting, and regulating the more than 1,867 firearms dealers and twenty-six handgun  
17 manufacturers licensed to operate in California. The section also trains law enforcement  
18 agencies, court prosecutors, and approximately 225 public and private mental health  
19 facilities statewide regarding reporting and other firearms related responsibilities.  
20 Additionally, TICS serves as the Bureau's public inquiry center, responding to an average  
21 of more than 250 daily public inquiries while maintaining one of the Department's most  
22 frequently visited public websites and administering the state's Handgun Certification  
23 Programs.

24 [REGULATION BY CLASSIFICATION]

25 ~~29. Over the years, the STATE has used its law-making authority to make California's firearms laws~~  
26 ~~the most comprehensive, complex, and restrictive in the nation with over 800 state statutes regulating~~  
27 ~~firearms and firearms transactions within the STATE.~~

28 30. In General, the laws governing control of firearms are expansive and are found within Part 6 of

1 the Penal Code, beginning at section 16000 and ending at section 34370.

2 31. As part of its legislative scheme, the STATE regulates firearms in a wide variety of approaches.  
3 Some laws focus on the purchaser (e.g. prohibiting certain persons from possessing firearms), some laws  
4 focus on the use of firearms (e.g. regulating the carrying of firearms in public places), some laws focus  
5 on the location (e.g. prohibiting firearms within school zones), and some focus on the technological  
6 aspects of particular firearms (e.g. regulating firearms based upon their function, design, and physical  
7 characteristics.)

8 32. In regulating the technological aspects of particular firearms, the STATE has developed  
9 particular classification for firearms, and subclassifications. For example, the STATE defines the term  
10 "firearm" in multiple ways, generally including "a device, designed to be used as a weapon, from which  
11 is expelled through a barrel, a projectile by the force of an explosion or other form of combustion." But,  
12 the definition sometimes includes the "frame or receiver" of the device, and sometimes includes an  
13 "unfinished weapon that can be readily converted into the function condition of the frame or receiver" –  
14 depending on the circumstances at issue – depending on the law being applied. (Pen. C. §16520.)

15 33. The STATE further divides the term "firearm" into two even more specific subclasses for more  
16 particular regulation: long guns and handguns.

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

19 i. It is important to note that not all long guns are rifles or shotguns, some are  
20 firearms that qualify as neither rifle, nor shotgun, nor handgun.

21 b. *Handgun* means any *pistol, revolver, or firearm capable of being concealed upon the person;*  
22 and, nothing shall prevent a device defined as a "handgun" from also being found to be a *short-barreled*  
23 *rifle*<sup>1</sup> or a *short-barreled shotgun*<sup>2</sup>. (Pen. Code §16640). The terms "*firearm capable of being concealed*"  
24

25  
26 <sup>1</sup> "*Short-barreled rifle*" means any of the following: (a) A rifle having a barrel or barrels of less than 16 inches in length.  
27 (b) A rifle with an overall length of less than 26 inches. (c) Any weapon made from a rifle (whether by alteration,  
28 is a device defined in subdivisions (a) to (c), inclusive. (e) Any part, or combination of parts, designed and intended to  
convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device

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

6 34. Below these two classifications (long gun and handgun) are a myriad of statutorily defined  
7 subclassifications, the most common of which are deemed rifles<sup>3</sup> and shotguns<sup>4</sup> – which can be deemed  
8 either long guns or handguns if they are also classified short-barrel rifles or short-barrel shotguns.

9 35. The STATE uses these classifications and subclassifications for the purposes of regulating  
10 firearms in distinct ways based upon their design and technology.

11 [ASSAULT WEAPON LAWS - HISTORY]

12 36. The STATE has further provided for more particular regulation of some of these subclasses, by  
13 defining further sub-classifications based upon their function and/or features. For example, some  
14 firearms that function as semi-automatic pistols, rifles, and shotguns are classified and regulated as

15  
16 defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession or under the  
17 control of the same person. (Pen. C. § 17170.)

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

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

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

1 "assault weapons."

2 37. "Assault weapons" are, perhaps, the most complicated of all firearm restrictions passed by the  
3 California legislature. Not only do ordinary citizens find it difficult – if not impossible – to determine  
4 whether a semiautomatic firearm should be considered an "assault weapon," ordinary law enforcement  
5 officers in the field have similar difficulty.

6 38. In the United States, the term "assault weapon" was rarely used before gun control political  
7 efforts emerged in the late 1980s.

8 39. In 1989, California became the first U.S. state to identify and outlaw "assault weapons." The  
9 California "assault weapon" scheme, dubbed the Roberti-Roos "Assault Weapon Control Act"  
10 ("AWCA") consisted broadly of four parts:

- 11 a. A list of so-called "assault weapons" designated by the California legislature, which the  
12 California Department of Justice calls Category 1 type "assault weapons."
- 13 b. A mechanism for the California Department of Justice to add other firearms to the list  
14 (through regulatory action) that the California Department of Justice calls "Category 2  
15 type "assault weapons,"
- 16 c. A registration system and permit system.
- 17 d. Penal provisions.

18 40. Possession of an unregistered "assault weapon" became a wobbler, a crime punishable as  
19 either a misdemeanor or felony – generally at the discretion of the prosecuting district attorney. Even if  
20 the firearm was lawfully purchased and possessed prior to the registration deadline, failure to register the  
21 firearm that the individual already owned rendered their continued possession unlawful. Because many  
22 individuals believed that they registered their firearm when they originally purchased it, the Legislature  
23 provided some leeway by making it a solely misdemeanor under certain circumstances, which have long  
24 since expired. (See Penal Code §30605(b).) The legislatively identified Category 1 "assault weapons"  
25 were required to be registered on or before March 31, 1992.

26 41. Even though at this time, "assault weapons" were expressly listed by make and model, the  
27 legislature desired clarity, mandating that the Attorney General publish a guide identifying "assault  
28 weapons." (Sen. Bill No. 2444 (1989-1990 Reg. Sess.)

1 42. The author of the legislation that requires the Attorney General to produce the Assault Weapon  
2 Identification Guide stated.

3 I am writing to request your signature on SB 2444 which would enable  
4 law enforcement personnel in the field the means to be able to recognize  
5 what actually is or is not an "assault weapon," as defined under state law.  
6 . . . Unfortunately, a great many law enforcement officers who deal directly  
7 with the public are not experts in specific firearms identification. . . .  
8 There are numerous makes and models of civilian military-looking semi-  
9 automatic firearms which are not listed by California as "assault weapons"  
10 but which are very similar in external appearance. This situation sets the  
11 stage for honest law-enforcement mistakes resulting in unjustified  
12 confiscations of non-assault weapon firearms. Such mistakes, although  
13 innocently made, could easily result in unnecessary, time-consuming, and  
14 costly legal actions both for law enforcement and for the lawful firearms  
15 owners affected.

16 (Sen. Don Rogers, letter to Governor Deukmejian re: Sen. Bill No. 2444 (1989-1990 Reg. Sess.) Aug.  
17 23, 1990.)

18 43. From 1989 to 1999, the "assault weapon" listing remained mostly static, with the only firearms  
19 listed being those identified as "Category 1" "assault weapons" by the Legislature. (See Penal Code  
20 section 30510 and 11 C.C.R. section 5495.) However, with many of the companies producing the same  
21 firearms under a different name, the Legislature and the Department of Justice decided to expand the list  
22 of "assault weapons."

23 44. The Department of Justice expanded the definition by adding dozens of firearms makes and  
24 models to the list of "assault weapons" via regulatory action, in 11 C.C.R. §5499. This list is the  
25 Category 2 list of "assault weapons." Category 2 "assault weapons" were required to be registered with  
26 the Department of Justice on or before January 23, 2001.

27 45. Simultaneously, the legislature took a third approach to defining "assault weapons" – defining  
28 them in terms of generic characteristics, for example, a "semiautomatic, centerfire rifle that has the

1 capacity to accept a detachable magazine' and also has a 'pistol grip that protrudes conspicuously  
2 beneath the action of the weapon." These feature defined Category 3 type "assault weapons" were  
3 required to be registered with the Department of Justice by December 31, 2001.

4 46. This Category 3 type "assault weapon" definition stood unaltered for 15 years.

5 47. Pursuant to Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch. 48)  
6 effective January 1, 2017, the definition of "assault weapon" based upon generic characteristics was  
7 revised in 2016, expanding the definition to include a broader range of rifles and pistols.<sup>5</sup>

8 48. Throughout the creation and expansion of the definition of "assault weapon," it has always been  
9 maintained that "It is not, however, the intent of the Legislature by this chapter to place restrictions on  
10 the use of those weapons which are primarily designed and intended for hunting, target practice, or other  
11 legitimate sports or recreational activities." (Pen. C §30505, subidv. (a).)

12 [ASSAULT WEAPONS CLASSIFICATIONS - TODAY]

13 49. Today, "assault weapons" are defined both statutorily in the AWCA and further defined via  
14 regulation. They are classified into three sub-categories.

15 a. Category 1: These are the specific semiautomatic firearms that are grouped by rifles,  
16 shotguns, and pistols of certain make and models and listed as "assault weapons" by the  
17 legislature. (Pen. C. §30510(a) through (c) and 11 C.C.R. §5499.) A semiautomatic  
18 rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed within Penal Code  
19 section 30510 cannot be deemed a Category 1 type "assault weapon."

20 b. Category 2: These are the specific semiautomatic firearms that are grouped by rifles,  
21 shotguns, and pistols of certain make and models and listed as "assault weapons" by the  
22 DOJ via regulatory action. (Pen. C. §§30510(f), 30520(b), and 11 C.C.R. §5495.) A  
23 semiautomatic rifle, semiautomatic shotgun, or semiautomatic pistol that is not listed  
24 within Penal Code section 30510 cannot be deemed a Category 2-type "assault weapon."

25 ~~c. Category 3: These are the semiautomatic firearms that are grouped by rifles, shotguns,~~  
26 ~~and pistols and which possess certain features and/or characteristics. Firearms that are~~

27  
28

1 not configured as semiautomatic rifles, semiautomatic shotguns, semiautomatic pistols  
2 with the corresponding characteristics identified in Penal Code section 30515 cannot be  
3 deemed Category 3 type "assault weapons."

4 50. By definition, and regardless of Category, all "assault weapons" must be semi-automatic.

5 51. By definition, and regardless of Category, all "assault weapons" must be either a rifle, pistol, or  
6 shotgun.

7 52. "Assault weapons" are not banned, *per se*. Rather, they are more heavily regulated than other  
8 firearms. For example, only specific people may possess an "assault weapon" (e.g. a registered owner  
9 or permit holder) and only those licensed dealers with an "assault weapons" permit may sell "assault  
10 weapons" to a specified subset of individuals.

11 53. Classification of a firearm as an "assault weapon" can make the difference between a lawful  
12 transaction and/or possession, and a violation of the AWCA.

13 [SPECIFIC DUTY TO EDUCATE, REGULATE, AND CLASSIFY ASSAULT WEAPONS]

14 54. The State of California reserved the entire field of firearm regulation and licensing, to the  
15 exclusion of others:

16 It is the intention of the Legislature to occupy the whole field of regulation  
17 of the registration or licensing of commercially manufactured firearms as  
18 encompassed by the provisions of the Penal Code, and such provisions  
19 shall be exclusive of all local regulations, relating to registration or  
20 licensing of commercially manufactured firearms, by any political  
21 subdivision as defined in Section 1721 of the Labor Code.

22 55. The California Legislature did not define all the technological terms used to classify a firearm as  
23 an "assault weapon." For example, the statutorily defined terms "rifle" and "shotgun" are not expressly  
24 applicable to the "assault weapon" statutes—despite the fact that they compose two of the three sub-  
25 classes of firearms that are regulated as "assault weapons."

26 56. Rather, the Legislature made it the duty of the Attorney General to educate and notify the public  
27

28 <sup>5</sup> The BOF contends that, though not expressly amended by the legislature, the definition of "assault

1 about the definition applicable to a firearm's classification as an "assault weapons," as well as identify  
2 and describe "assault weapons" for law enforcement purposes and promulgate the rules and regulations  
3 that *may be* necessary or proper to carry out the purposes and intent of this chapter.

4 a. The Department of Justice shall conduct a public education and notification program  
5 regarding the registration of assault weapons and the definition of the weapons set forth  
6 in Section 30515 and former Section 12276.1, as it read at any time from when it was  
7 added by Section 7 of Chapter 129 of the Statutes of 1999 to when it was repealed by the  
8 Deadly Weapons Recodification Act of 2010. (Pen. C. §31115(a).)

9 b. The Attorney General shall prepare a description for identification purposes, including a  
10 picture or diagram, of each assault weapon listed in Section 30510, and any firearm  
11 declared to be an assault weapon pursuant to former Section 12276.5, as it read in Section  
12 3 of Chapter 19 of the Statutes of 1989, Section 1 of Chapter 874 of the Statutes of 1990,  
13 or Section 3 of Chapter 954 of the Statutes of 1991, and shall distribute the description to  
14 all law enforcement agencies responsible for enforcement of this chapter. Those law  
15 enforcement agencies shall make the description available to all agency personnel. (Pen.  
16 C. § 30520(a).)

17 c. The Attorney General shall adopt those rules and regulations that may be necessary or  
18 proper to carry out the purposes and intent of this chapter. (Pen. C. § 30520(c).)

19 57. In order to determine whether a firearm is an assault weapon under the AWCA, an ordinary  
20 citizen, as well as licensed firearm dealers and manufacturers, will have to rely heavily on the markings  
21 listed in the DOJ produced Assault Weapon Identification Guide. (*Harrott v. County of Kings* (2001) 25  
22 Cal. 4th 1138.)

23 58. Even after consulting the Department of Justice produced Assault Weapon Identification Guide,  
24 the ordinary citizen, including licensed-firearm dealers and manufacturers, may still not be able to  
25 ~~determine whether the firearm is considered an "assault weapon."~~ (~~*Harrott v. County of Kings* (2001)~~  
26 25 Cal. 4th 1138.)

27  
28 weapon" as it relates to "shotguns" were impliedly expanded as well.

1 59. To some extent, the DOJ, by and through the BOF, issued regulations defining 44 terms used in  
2 the definition of "assault weapon."

3 60. But, the regulations issued by the DOJ are not sufficient to provide classification in many  
4 instances.

5 61. Even the BOF's own agents and experts have testified the "assault weapon" classification is  
6 "hypertechnical."

7 62. The complications of classifying "assault weapons" was made worse when the DOJ limited the  
8 APA-exempt regulations so that the 44 new definitions used to define "assault weapons" applied only to  
9 the registration process, by removing the provision applying the definitions to other portions of the Penal  
10 Code – including the licensing and criminal provisions. And, even where defined, not all terms  
11 necessary and/or proper to classify firearms under the AWCA were defined.

12 63. In fact, BOF finds "assault weapon" classification so complicated that they have placed  
13 restrictions and limits upon their own agents as to who may testify about "assault weapon"  
14 classifications.

15 64. Additional regulations may be, and/or are necessary and proper to carry out the intent of the  
16 AWCA, which is to permit the regulated sale of "assault weapons" via registration and licensing, while  
17 simultaneously not affecting firearms primarily designed and intended for hunting, target practice, or  
18 other legitimate sports or recreational activities.

19 65. For example, the BOF defined the term "Pistol" as any device designed to be used as a weapon,  
20 from which a projectile is expelled by the force of any explosion, or other form of combustion, and that  
21 has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer  
22 tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle  
23 stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the  
24 receiver. (11 CCR §5471(y).) While similar, this definition differs slightly from also-applicable  
25 definition found within Penal Code section 16530.

26 66. And, the term "rifle" is defined as a weapon designed or redesigned, made or remade, and  
27 intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy  
28 of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single

1 pull of the trigger. (11 CCR §5471(ee).)

2 67. But the term “shotgun” is not defined in the regulations at all, leaving consumers, industry  
3 members, and law enforcement to speculate as to meaning.

4 68. Additionally, as of June 2019, the BOF still has not updated their “Assault Weapons  
5 Identification Guide,” and continues to disseminate the now out-of-date guide, despite the changes  
6 imposed by the passage of Assembly Bill 1135 (Stats. 2016, ch. 40) and Senate Bill 880 (Stats. 2016, ch.  
7 48) in 2016 and their subsequent regulation. The guide currently being promulgated via their website is  
8 listed as “Assault Weapons Identification Guide - Currently Under Revision,” with an embedded note  
9 stating:

10 Please note: This Assault Weapon Identification Guide was last updated in 2001, and does not  
11 contain the most up-to-date assault weapon identification information.

12 The Assault Weapon Identification Guide is currently under revision. A 2017 version will be  
13 released in the near future.

14 69. These defects in administration by DEFENDANTS serve to complicate an already  
15 hypertechnical area of law.

16 **[NATURE OF DISPUTE]**

17 70. The State of California has reserved the entire field of licensing and registration of firearms to  
18 themselves, except where certain aspects of licensing and registration has been delegated to the  
19 Department of Justice and/or the Attorney General.

20 71. Since approximately 2008, the Department of Justice and the Attorney General have historically  
21 refused to review firearms for classification purposes, unless the classification is in relation to a criminal  
22 investigation or prosecution – at which point the DEFENDANTS will sometimes provide assistance in  
23 determining whether a firearm is classified as an “assault weapon” or whether the firearm is not  
24 classified as an “assault weapon.”

25 ~~72. Instead, as it relates to the general public and licensees, including PLAINTIFFS,~~  
26 DEFENDANTS have shirked their duties and historically permitted and deferred to California’s 58  
27 counties and 482 municipalities to determine whether a particular firearm is classified as “assault  
28 weapons” - thereby permitting a patchwork of differing opinions relating to the definition of “assault

1 weapon.”

2 73. Dealers, including SBR, and manufacturers, including FAI, are left to speculate as to whether the  
3 DEFENDANTS, their county, or local municipality will deem any particular firearm an “assault  
4 weapon” and subject them to varied and, often ill-informed and conflicting local interpretations, for  
5 criminal prosecution, civil action, seizure, forfeiture, and/or license revocation.

6 74. This approach has chilled some manufactures, dealers, and individuals from even engaging in  
7 lawful sales of firearms and firearm acquisitions for fear of prosecution by the agency charged with the  
8 duty to not only enforce these laws, but to educate on these laws.

9 75. Classification of firearms by the DEFENDANTS is indispensable to the declared objects and  
10 purposes of the Roberti-Roos Assault Weapons Act. It permits those seeking to lawfully engage in  
11 firearms commerce and/or who lawfully seek to exercise their rights to possess and sell firearms the  
12 ability to do so knowing which laws apply to their firearms. It also provides a civil, as opposed to a  
13 criminal, remedy for objecting to any firearm believed to be improperly classified as an “assault  
14 weapon.”

15 76. To that end, FAI designed, developed, and manufactured a firearm entitled the “Title 1” with the  
16 intent on distributing and selling said firearm within California.

17 77. On or about July 5, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent an e-mail to  
18 their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1 design.

19 78. DEFENDANTS did not respond. (Attached hereto as **Exhibit 1**.)

20 79. On or about July 11, 2017, Jay Jacobson, President of Franklin Armory, Inc., sent a follow-up e-  
21 mail to their DOJ Contact, Leslie McGovern, inquiring about the classification of their initial Title 1  
22 design. (Attached hereto as **Exhibit 2**.)

23 80. DEFENDANTS did not respond.

24 81. In fact, FAI communicated with the BOF from time-to-time over a period of more than a year  
25 about the Title 1, and no classification was ever provided.

26 82. On or about October 23, 2018, FAI submitted a letter through counsel to the DEFENDANTS  
27 requesting clarification as to whether the Title 1 would be classified as an “assault weapon” or whether  
28 the Title 1 would be deemed an “assault weapon.” (Attached hereto as **Exhibit 3**.)

1 83. DEFENDANTS did not respond.

2 84. SBR has informed FAI that they desire to purchase and sell the Title 1 through their respective  
3 dealerships within California and will do so upon the firearm being classified so that they know which  
4 laws apply to the Title 1 transactions.

5 85. FAI and SBR believe and contend that the Title 1 does not constitute an "assault weapon"  
6 because, though it is a firearm under California law, it is classified as a long gun, but is not classified a  
7 rifle, shotgun, or handgun.

8 86. DEFENDANTS, however, are actively enforcing STATE's "assault weapon" laws against  
9 licensees, as well as the general public.

10 87. DEFENDANTS have not declared any intent to abandon the enforcement of the AWCA.

11 88. As such, FAI and SBR, cannot proceed without knowing how to classify the Title 1.

12 89. It has been nearly 2 years after the initial inquiry to the Bureau of Firearms, and though the  
13 DEFENDANTS have said a response is forthcoming, they have delayed their responses and/or refused  
14 to provide any substantive response as to the classification of the Title 1.

15 90. DEFENDANTS have no intention of classifying the Title 1 unless and until the Title 1 is the  
16 subject of a criminal investigation.

17 91. DEFENDANTS' near two-year delay constitutes denial by delay and has caused PLAINTIFFS  
18 substantial injury in the form of lost sales and lost profits and diminished market share due to their  
19 refusal to classify the Title 1 and identify the state mandated registration and licensing scheme through  
20 which Title 1 must be legally processed.

21 92. DEFENDANTS' have a pattern and practice of informing licensees, the general public, and even  
22 law enforcement that they intend to provide clarity, guidance and/or a substantive response, only to  
23 never provide a response that would be necessary and proper to carry out the intended purpose of the  
24 AWCA.

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

1 94. DEFENDANTS have a duty to provide clarity and certainty with regard to a firearm's  
2 classification to ensure that the laws are uniformly enforced and interpreted.

3 95. PLAINTIFFS do not seek a determination as to whether the Title 1 is "legal" or "illegal." On the  
4 contrary, PLAINTIFFS merely seek a declaratory relief relating to the firearm's classification, e.g. that  
5 the Title 1 firearm manufactured by FAI is not classified as an "assault weapon," and therefore not  
6 subject to the distinct set of laws and restrictions that apply to "assault weapons" pursuant to the  
7 AWCA.

8 96. The PLAINTIFFS desire a declaration of their rights and duties with respect to the conflict  
9 between the DEFENDANTS and PLAINTIFFS regarding the application of the Roberti-Roos Assault  
10 Weapon Control Act to particular firearms, including the Title 1. Such a declaration is necessary and  
11 appropriate at this time under the circumstances in order that the PLAINTIFFS, as licensees under the  
12 direct authority of the DEFENDANTS, may ascertain their rights and duties.

13 **FIRST CAUSE OF ACTION:**

14 **DECLARATORY AND INJUNCTIVE RELIEF**

15 **(AGAINST ALL DEFENDANTS)**

16 97. In order to resolve the controversy, the PLAINTIFFS request that, pursuant to Code of Civil  
17 Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter  
18 and, in particular, this court declare that the AWCA does not apply to the Title 1 firearm manufactured  
19 by FAI because it is neither a rifle, shotgun, nor handgun.

20 98. PLAINTIFFS should not be forced to choose between risking criminal prosecution or economic  
21 sanctions and exercising their constitutional rights.

22 99. In order to resolve the controversy, the PLAINTIFFS further request that, pursuant to Code of  
23 Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this  
24 matter and, in particular, this court declare that it is the duty of the DEFENDANTS, including the  
25 ~~STATE which is occupying the field of regulating commercially manufactured firearms through~~  
26 registration and licensing, and the regulatory bodies charged with administering, enforcing, defining,  
27 educating, and publicizing the AWCA to issue those regulations necessary and proper to carry out the  
28 purposes and intent of the AWCA, including classifying firearms submitted to them for determining the

1 appropriate registration and licensing processes that would apply to the product at issue.

2 100. Unless DEFENDANTS are mandated to issue regulations that may be necessary and proper to  
3 promote the purposes of the AWCA, including but not limited to regulations that provide for the  
4 submission and classification of firearms to determine whether said firearms are “assault weapons,”  
5 PLAINTIFFS will continue to suffer great and irreparable harm.

6 **SECOND CAUSE OF ACTION:**

7 **EQUAL PROTECTION**

8 **(AGAINST ALL DEFENDANTS)**

9 101. Paragraphs 1-100 are realleged and incorporated by reference.

10 102. The Fourteenth Amendment to the United States Constitution provides that no state shall “deny  
11 to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend XIV § 1.

12 103. The government bears the burden of justifying restrictions on the exercise of fundamental rights  
13 by a particular class or classes of individuals.

14 104. All law-abiding, competent adults are similarly situated in that they are equally entitled to  
15 exercise of the constitutional right to keep and bear arms, including firearms.

16 105. The DEFENDANTS, which occupy the entire field of licensing and registration of firearms, and  
17 which have specified duties and obligations to ensure that regulations that are necessary and proper to  
18 effectuate the provisions of the AWCA are enforced, have created a classification of persons, including  
19 PLAINTIFFS, who are treated unequally. Said actions by the DEFENDANTS include the  
20 classification of firearms for law enforcement and law enforcement agencies, but not for the general  
21 public to which the licensing and registration requirements apply. Such application creates a shell  
22 game in which the public, including PLAINTIFFS, must speculate as to which licensing and  
23 registration scheme applies to the firearms that they acquire, manufacture, possess and/or sell, subject  
24 to criminal prosecution.

25 106. DEFENDANTS cannot justify providing clarity, context, and scope of the AWCA solely to law  
26 enforcement and governmental entities, but not to the general public – especially in such a  
27 “hypertechnical” area of law that subjects the public to felony prosecution, fines, and forfeiture of  
28 property and licenses; nor can they justify the lack of regulations necessary and proper to either negate

1 the need for a classification system or implement such a classification. Such application of the laws  
2 unequally deprives PLAINTIFFS of their own rights, including the right to engage in the sale of  
3 constitutionally protected property. Therefore, DEFENDANTS are depriving PLAINTIFFS and  
4 similarly situated individuals of their right to equal protection under the law as guaranteed by the  
5 Fourteenth Amendment.

6 **PRAYER**

7 WHEREFORE, PLAINTIFFS pray as follows:

- 8 1. A declaration that it is necessary and/or proper for manufacturers licensed by the State of  
9 California to be able to determine whether the firearm they are manufacturing, acquiring,  
10 or selling is classified as an "assault weapon" in order to determine the necessary and  
11 proper licensing and registration process for transferring said firearm and/or limiting the  
12 transfer of said firearms to persons entitled to possess "assault weapons."
- 13 2. A declaration that it is necessary and/or proper for dealers licensed by the State of  
14 California to be able to determine whether the firearm they are acquiring or selling is  
15 classified as an "assault weapon" in order to determine the necessary and proper licensing  
16 and registration process for transferring said firearm and/or limiting the transfer of said  
17 firearms to persons entitled to possess "assault weapons."
- 18 3. A declaration that it is necessary and/or proper for the public to be able to determine  
19 whether the firearm they possess or wish to sell or acquire is classified as an "assault  
20 weapon" in order to determine the necessary and proper licensing and registration process  
21 for transferring said firearm and/or limiting the transfer of said firearms to persons  
22 entitled to possess "assault weapons."
- 23 4. A declaration that DEFENDANTS have failed to adopt those regulations that may be  
24 necessary or proper to carry out the purposes and intent of the Assault Weapons Control  
25 Act, as required by the Assault Weapons Control Act.
- 26 5. A declaration that power to classify a commercially manufactured firearm for registration  
27 or licensing is exclusively left to the State of California and its designees.
- 28 6. A declaration that the DEFENDANTS have a duty to administer the Roberti-Roos

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Assault Weapon Control Act with uniformity and clarity, such that those subject to the laws and regulations can determine whether the restrictions within the Roberti-Roos Assault Weapon Control Act apply, which includes guidance on the classification of firearms submitted to DEFENDANTS for classification purposes.

- 7. For a writ of mandate, writ of prohibition, or such other alternative writ as the Court deems appropriate, directing the DEFENDANTS to issue those rules and regulations that may be necessary or proper to carry out the intent and purpose of the AWCA.
- 8. That PLAINTIFFS be awarded their costs and attorneys' fees incurred in this matter;
- 5. That the Court enter judgment accordingly; and
- 6. For such other and further relief as the Court deems just and proper.

Date: June 25, 2019,

Respectfully submitted,

By: Jason Davis  
Jason Davis  
The Davis Law Firm  
Attorneys for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

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

I have read this VERIFIED COMPLAINT FOR DECLARATORY RELIEF in the matter of *Franklin Armory, Inc. et al. v. State of California, et al.* and am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true.

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

DATED: 6/25/19

  
JAY JACOBSON

**EXHIBIT 1**

Date: Wed, 5 Jul 2017 20:01:58 -0700  
From: Jay Jacobson <jacobson@franklinarmory.com>  
Organization: Franklin Armory  
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"..."Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

"..."Pistol" means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above but have a barrel length longer than 16 inches, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek welding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a

"long gun" but not a "rifle?")

We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--  
Jay Jacobson  
President  
Franklin Armory  
Morgan Hill, CA & Minden, NV  
Office Phone: 408-779-7560 775-783-4313

---

 jjacobson.vcf  
1K

---

Jay Jacobson <jjacobson@franklinarmory.com>  
To: Jason Davis <jason@catgunlawyers.com>

Thu, Dec 6, 2018 at 12:08 PM

----- Forwarded Message -----  
Subject: Re: Title 1 Long gun  
Date: Tue, 11 Jul 2017 12:42:05 -0700  
From: Jay Jacobson <jjacobson@franklinarmory.com>  
Organization: Franklin Armory  
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms.McGovern.

Did my previous email make it through? Does the department have a position on this configuration?

Jay Jacobson  
President  
Franklin Armory  
Morgan Hill, CA & Minden, NV  
Office Phone: 408-779-7560 775-783-4313

On 7/5/2017 8:01 PM, Jay Jacobson wrote:

Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"...**"Rifle"** means a weapon designed or redesigned, made or remade, and *intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

"...**"Pistol"** means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, *and that has a barrel less than 16 inches in length.*"

We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above **but have a barrel length longer than 16 inches**, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek welding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a "long gun" but not a "rifle?")

We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--

Jay Jacobson  
President  
Franklin Armory  
Morgan Hill, CA & Minden, NV  
Office Phone: 408-779-7560/775-783-4313

---

 jacobson.vcf  
1K

**EXHIBIT 2**

Date: Tue, 11 Jul 2017 12:42:05 -0700  
From: Jay Jacobson <jacobson@franklinarmory.com>  
Organization: Franklin Armory  
To: Leslie McGovern <Leslie.McGovern@doj.ca.gov>

Hi Ms. McGovern.

Did my previous email make it through? Does the department have a position on this configuration?

Jay Jacobson  
President  
Franklin Armory  
Morgan Hill, CA / Minden, NV  
Office Phone: 408-779-7560 775-783-4313

On 7/5/2017 8:01 PM, Jay Jacobson wrote:

Good Evening Ms. McGovern.

We recently read through the proposed AW regulations and found the following definitions:

"...**"Rifle"** means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger."

"...**"Pistol"** means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length."

We would like to produce a firearm for California similar to our XO-26 but with a 16+" barrel. Below is a picture of our XO-26-S chambered in 450 Bushmaster and equipped with a 10 round magazine and an 11.5" barrel:



Since this proposed firearm would be exactly like above but have a barrel length longer than 16 inches, we believe that it would not violate the Assault Weapons Act. Can you help me to find out if the department concurs? The first question would be to confirm that it would not be subject to the "Drop Safety Requirement for Handguns" testing protocol reserved for pistols since the barrel is over 16 inches. Secondly, if the firearm is not "intended to be fired from the shoulder" since it is equipped with a padded buffer tube for "cheek welding," then would this type of configuration be defined as not-a-rifle under the current law? (Perhaps defined as a "long gun" but not a "rifle?")

We have another example of a similar non-stocked long gun that has been on the California market for a long time. It is called the CSW, and here is an image of that equipped with a 20" barrel, spade grip, and a 10/30 magazine:



In short, it is our objective to steer clear of violating the Assault Weapons Control Act while trying to make an honest living. Since you have been the contact person for the SE-SSP pistols that were approved by the department, I hope you don't mind being the first point of contact on this issue. Since our business activity is regulated by the state, we certainly hope that the department can provide some guidance in this matter.

Respectfully,

--  
Jay Jacobson  
President  
Franklin Armory  
Morgan Hill, CA & Minden, NV  
Office Phone: 408-779-7560 775-783-4313

---

jacobson.vcf  
1K

**EXHIBIT 3**



Orange County Office: 27201 Puerta Real, Suite 300, Mission Viejo, California 92691  
Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590  
Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

October 31, 2018

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

Martin J. Horan Jr.  
Chief  
Bureau of Firearms  
California Department of Justice  
P.O. Box 820200  
Sacramento, CA 94203-0200

Via U.S. Mail & E-Mail: [Xavier.Becerra@doj.ca.gov](mailto:Xavier.Becerra@doj.ca.gov) & [MartinJr.Horan@doj.ca.gov](mailto:MartinJr.Horan@doj.ca.gov) & [Robert.Wilson@doj.ca.gov](mailto:Robert.Wilson@doj.ca.gov)

Re: **DETERMINATIONS AS TO THE APPLICABILITY OF AGENCY RULES, ORDERS, STATUTES, OR FINAL ADMINISTRATIVE DECISIONS TO THE FRANKLIN ARMORY, INC. PROTOTYPE NAME – TITLE 1**

Dear Attorney General Xavier Becerra and Chief Martin J. Horan, Jr.,

I write on behalf of Franklin Armory, Inc. regarding their desire to have their newly designed firearm, currently bearing the prototype name – "Title.1", examined and reviewed by the California Department of Justice – Bureau of Firearms to ensure that it complies with California's voluminous firearm laws before they begin selling and distributing the firearm within the State of California.

We are requesting Department of Justice, through the Bureau of Firearms, provide a determination as to the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction. Specifically, Franklin Armory, Inc. would like to present their newly designed prototype [depicted below] to the Department of Justice – Bureau of Firearms to determine whether the firearm complies with the California Assault Weapons Act. We believe it does.

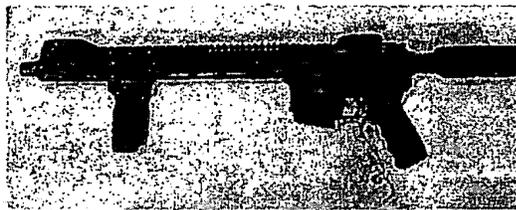


Figure 1: Prototype Name - Title 1

As I am sure you know, California's firearm laws are complex and rife with nuances.

October 31, 2018

Page 2

And, Part 6 of the Penal Code, which consists of sections 16000-34370, mandates that it is the Department of Justice and the Attorney General duty administer, apply, and enforce the vast majority of these laws, many of which mandate that the Department of Justice issue regulations for proper administration.

The equal and fair administration of these laws is not only a statutory duty, but a Constitutional one. Article V, section 13 of the California Constitution authorizes and requires the Attorney General to exercise "direct supervision over every district attorney . . . in all matters pertaining to the duties of their . . . office." *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 356. See *Gov't Code* §12550; See *Weiner v. San Diego County* (2000) 210 F.3d 1025 (California district attorney is a state officer when deciding whether to prosecute an individual.)

Fortunately, Government Code section 11465.20 expressly provides the Bureau with the authority to issue declaratory relief decisions, stating:

A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

Title 1 of California Code of Regulations section 1262 provides more, stating:

(a) **Appropriate Subjects for Declaratory Decisions.** An application for a Declaratory Decision may be filed to determine the applicability of Agency rules, orders, statutes, or final administrative decisions to a matter within the Agency's primary jurisdiction.

(b) **Other Remedies Do Not Preclude Declaratory Decisions.** The existence of another adequate remedy at law does not preclude an Agency from granting an application for a Declaratory Decision when the Agency determines issuing a Declaratory Decision is appropriate.

It is our hope that this administration will provide an open, honest, and ethical forum for California consumers and industry members to eliminate confusion as to the application and scope of California's firearm laws and permit them to lawfully engage in the shooting sports and industry without fear criminal prosecution, civil fines, and/regulatory discipline. Due to the historical delay and/or lack of response to requests, if we do not receive a response within 14 days of the date above, we will have no choice but to file an action for declaratory relief with the courts.

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

Sincerely,

THE DAVIS LAW FIRM  
*S/ Jason Davis*  
JASON DAVIS

RECEIVED  
IN DROP BOX

2010 JUN 26 PM 12:01

GOVERNMENT OF ILLINOIS  
COUNTY OF SANGAMON

# EXHIBIT H



¶¶76-79.)

Plaintiffs allege that "DEFENDANTS did not respond" to either email and that even with a variety of communications with the BOF over the next year, "no classification was ever provided." (FAC, ¶ 81.) FAI last sent a letter to Defendants on 10/23/2018 requesting whether the Title I would be classified as an "assault weapon" or whether the Title 1 would be deemed as "assault weapon." (FAC, ¶ 82.) Plaintiffs allege that "DEFENDANTS did not respond." (FAC, ¶ 83.) They allege that though Defendants have said a response is forthcoming, they have delayed their response by nearly two years, and that delay constitutes a "denial by delay." (FAC, ¶ 89.)

The FAC asserts causes of action for: (1) Declaratory and Injunctive Relief, and (2) Equal Protection.

In its Declaratory Relief cause of action, Plaintiffs asks the Court to declare "that it is the duty of the DEFENDANTS, including the STATE wholly occupying the field of regulating commercially manufactured firearms through registration and licensing, and the regulatory bodies charged with administering, enforcing, defining, educating, and publicizing the AWCA to issue those regulations necessary and proper to carry out the purposes and intent of the AWCA, including classifying firearms submitted to them for determining appropriate registration and licensing processes that would apply to the product at issue." (FAC, ¶ 99.)

In their prayer for relief, Plaintiffs request:

1. A declaration that it is necessary and/or proper for manufacturers licensed by the State of California to be able to determine whether the firearm they are manufacturing, acquiring, or selling is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
2. A declaration that it is necessary and/or proper for dealers licensed by the State of California to be able to determine whether the firearm they are acquiring or selling is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
3. A declaration that it is necessary and/or proper for the public to be able to determine whether the firearm they possess or wish to sell or acquire is classified as an "assault weapon" in order to determine the necessary and proper licensing and registration process for transferring said firearm and/or limiting the transfer of said firearms to persons entitled to possess "assault weapons."
4. A declaration that DEFENDANTS have failed to adopt those regulations that may be necessary or proper to carry out the purposes and intent of the Assault Weapons Control Act, as required by the Assault Weapons Control Act.
5. A declaration that power to classify a commercially manufactured firearm for registration or licensing is exclusively left to the State of California and its designees.
6. A declaration that the DEFENDANTS have a duty to administer the Roberti-Roos Assault Weapon Control Act with uniformity and clarity, such that those subject to laws and regulations can determine whether the restrictions within the Roberti-Roos Assault Weapon Control Act apply, which includes guidance on the classification of firearms submitted to DEFENDANTS for classification purposes.
7. For a writ of mandate, writ of prohibition, or such other alterative writ as the Court deems appropriate, directing the DEFENDANTS to issue those rules and regulations that may be necessary or proper to carry out the intent and purpose of the AWCA.

Defendants demur to both cause of action on the grounds that: (1) they are not ripe for judicial review, (2) Plaintiffs lack legal standing, (3) the State is not a proper party, (4) failure to state sufficient facts, and (5) this case is not appropriate for declaratory relief.

### **Standing**

The demurrer for lack of standing is SUSTAINED with leave to amend.

Plaintiffs conclusorily allege that "there is a credible threat that the challenged provision will be invoked against [them]." (FAC, ¶¶ 1-2 (emphasis added).) They further allege that Defendants' approach has "chilled some manufacturers, dealers, and individuals from even engaging in lawful sale of firearms and firearm acquisitions for fear of prosecution by the agency charge with the duty to not only enforce these laws, but to educate on these laws." (FAC, ¶ 74.)

Plaintiffs' allegations are an apparent attempt to satisfy the test outlined in *Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, which they cite in their opposition. *Prigmore* does not support their position. In *Prigmore*, the ACLU and two individual members challenged portions of a policy which the City adopted that limited leafleting to certain areas, and prohibited leafleting in certain situations. The trial court granted plaintiffs' request for a preliminary injunction enjoining the enforcement of the portions of the policy. The defendants appealed, in part, on the ground that the plaintiffs lacked standing to challenge the provisions because the provisions were neither enforced against them nor was there a credible threat of enforcement. The Third District Court of Appeal rejected the defendants' arguments. The court first recognized that:

"[A] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement. (*Babbitt v. Farm Workers* (1979) 442 U.S. 289, 298 [60 L.Ed.2d 895, 906, 99 S. Ct. 2301] (*Babbitt*))." "It is sufficient for standing purposes that the plaintiff intends to engage in 'a course of conduct' arguably affected with a constitutional interest' and that there is a credible threat that the challenged provision will be invoked against the plaintiff. [Citation.] By contrast, 'persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs.' [Citation.]" (*LSO, Ltd. v. Stroh* (9th Cir. 2000) 205 F.3d 1146, 1154-1155.) Under California law, it is sufficient that the objecting party show actual or threatened injury from the enactment of a statute or regulatory measure. (*B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 948 [39 Cal. Rptr. 2d 484].)

(*Id.* at 1349 (emphasis added).) *Prigmore* is inapposite since the plaintiffs therein were expressly challenging a policy that the defendants had enacted. Here, while Plaintiffs allege that "there is a credible threat that the challenged provision will be invoked against [them]" (FAC, ¶¶ 1-2), Plaintiffs fail to identify any provision in the Roberti-Roos Assault Weapon Control Act ("AWCA") that they are challenging. Nor do they challenge the AWCA. Instead, Plaintiffs allege that Defendants have failed their mandatory duty to issue regulations.

The Court is not persuaded that Plaintiffs have standing to pursue this action. The demurrer is SUSTAINED with leave to amend.

Having sustained the demurrer on this ground, the Court need not address Defendants' argument regarding ripeness.

### **Equal Protection**

With respect to this cause of action, Plaintiffs allege that "[t]he DEFENDANTS, which occupy the entire field of licensing and registration of firearms, and which have specified duties and obligations to ensure that regulations that are necessary and proper to effectuate the provisions of the AWCA are enforced, have created a classification of persons, including PLAINTIFFS, who are treated unequally. Said actions by the DEFENDANTS include the classification of firearms for law enforcement and law enforcement agencies, but not for the general public to which the licensing and registration requirements apply. Such

application creates a shell game in which the public, including PLAINTIFFS, must speculate as to which licensing and registration scheme applies to the firearms that they acquire, manufacture, possess and/or sell, subject to criminal prosecution." (FAC, ¶ 105.)

Defendants demur on the ground that when there is no suspect classification, such as race, such as race, sex, or religion, and purely economic interests are involved, the government may impose any distinction which bears some rational relationship to a legitimate public purpose, and that Plaintiffs are not similarly situated to law enforcement. (*Cal. Rifle & Pistol Assn. v. City of West Hollywood* (1998) 66 Cal.App.4th 1302, 1327; see *Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1273.)

Plaintiffs concede that "peace officers acting under the color of law protect the public interest and are not similarly stated to private citizens" (Opposition 5: 23-26), but insists that the "AWCA has been held to violate the Equal Protections clause as applied to police officers on two occasion due to the overbroad exemptions and benefits provided to the officers in their civilian lives. Such is the situation here." (Opposition, 5:25-6:1.)

Plaintiffs rely on two cases to support their argument. In the first case, *Silveira v. Lockyer* (2002) 312 F.3d 1052, the Ninth District Court of Appeals dealt, in part, with whether the AWCA's exception that permits retired peace officers to possess assault weapons they acquire from their department at the time of their retirement violated the Equal Protection Clause. The plaintiffs were non-active or retired California peace officers. The court reviewed the purposes of the AWCA and noted that "there is little doubt that any exception to the AWCA unrelated to effective law enforcement is directly contrary to the act's basic purpose of eliminating the availability of high-powered, military-style weapons and thereby protecting the people of California from the scourge of gun violence." (*Id.* at 1089 (emphasis added).) Applying the rational basis test, the court held that "we can discern no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons. Rather, the retired officers' exception arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others, including plaintiffs." (*Id.*)

The second case is a 2010 Attorney General Edmund Brown opinion, in which he opined that "a peace officer who purchases and registers an assault weapon in order to use the weapon for law enforcement purposes is not permitted to continue to possess the assault weapon after retirement." (93 Ops. Cal. Atty. Gen. 130.)

These cases are inapposite to the issues presented here. Plaintiffs allege that Defendants "have historically refused to review firearms for classification purposes, unless the classification is in relation to a criminal investigation or prosecution." (FAC, ¶ 71.) Penal Code §30520(a) requires the Attorney General to "prepare a description for identification purposes, including a picture or diagram, of each assault weapon...and any firearm declared to be an assault weapon..." as well as to "distribute the description to all law enforcement agencies responsible for enforcement of this chapter," with those law enforcement agencies making the description available to all agency personnel." Accordingly, this classification relates to effective law enforcement. Retired police officers, on the other hand, are no longer in law enforcement.

The demurrer is SUSTAINED with leave to amend.

#### **State of California As a Defendant**

Defendants demur that the State is not a proper party because "[t]here is a 'general and long-standing rule' . . . that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (*Temple*

v. *State* (2018) 24 Cal.App.5th 730, 736, quoting *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 [internal quotation marks omitted]; see also *State v. Superior Court* (1974) 12 Cal.3d 237, 255.)" (Demurrer, 14:10-17.) Defendants maintain that the FAC does not allege the state itself engaged in any conduct relevant to the dispute at issue or otherwise refused to comply with a mandatory duty. According to Defendants, "[c]iting to Penal Code section 53071, Plaintiffs assert that the state is culpable because it occupies the whole field of regulation for registration and licensing for commercially manufactured firearms through the AWCA. (FAC, ¶¶ 54, 70, 86.) But that is beside the point. Section 53071 addresses preemption, not a mandatory duty." (Demurrer, 14:19-20.)

The demurrer is **OVERRULED**. As Plaintiffs correctly note, the general rule applies when the action for declaratory and injunctive relief challenged the constitutionality of state statutes. Here, Plaintiffs are not challenging the constitutionality of the AWCA, and their prayer does not seek any remedy relating to the constitutionality of the AWCA. Moreover, although Defendants claim that Plaintiffs cite to Penal Code section 53071 in certain paragraphs of the FAC, no such citations are in the FAC. Further, Penal Code section 53071 does not exist. The Court is unpersuaded that the State is not a proper party.

#### **Horan/Orick**

Martin Horan, Jr. was initially named in the complaint as the Director of BOF. Orick is now the Acting Chief and requests that he be substituted in Horan's place. (CCP §368.5) Plaintiffs also explain that they will substitute Orick as the Acting Director. Plaintiff is granted leave to amend the complaint to substitute Orick.

The demurrer that Plaintiffs fail to plead sufficient facts about Orick/Horan beyond his duties is **OVERRULED**. At this stage of the proceedings, the paragraphs identified in Plaintiffs' opposition, page 10:1-11 are sufficient.

The Court grants leave to amend since it is not yet convinced that Plaintiffs will be unable to cure the defects in the complaint.

Where leave to amend is granted, Plaintiffs may file and serve a second amended complaint ("SAC") by no later than October 3, 2019, Response to be filed and served within 30 days thereafter, 35 days if the SAC is served by mail. (Although not required by any statute or rule of court, Plaintiffs are requested to attach a copy of the instant minute order to the SAC to facilitate the filing of the pleading.)

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

#### **COURT RULING**

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

# EXHIBIT I

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 224250  
 NAME: Jason Davis  
 FIRM NAME: The Davis Law Firm  
 STREET ADDRESS: 42690 Rio Nedo, Suite F  
 CITY: Temecula STATE: CA ZIP CODE: 92590  
 TELEPHONE NO.: 949-310-0817 FAX NO.: 949-288-6894  
 E-MAIL ADDRESS: jason@calgunlawyers.com  
 ATTORNEY FOR (Name): Franklin Armory, Inc., et al.

FOR COURT USE ONLY  
**FILED/ENDORSED**  
**OCT - 3 2019**  
 By: K. Cadena  
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento  
 STREET ADDRESS: 813 6th Street, Sacramento, CA 95814  
 MAILING ADDRESS: 813 6th Street, Sacramento, CA 95814  
 CITY AND ZIP CODE: Sacramento 95814  
 BRANCH NAME: Hall of Justice

Plaintiff/Petitioner: Franklin Armory, Inc., et al.  
 Defendant/Respondent: State of California, et al.

**REQUEST FOR DISMISSAL** CASE NUMBER: 34-2018-00246584

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.  
 This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:  
 a. (1)  With prejudice (2)  Without prejudice  
 b. (1)  Complaint (2)  Petition  
 (3)  Cross-complaint filed by (name):  
 (4)  Cross-complaint filed by (name):  
 (5)  Entire action of all parties and all causes of action  
 (6)  Other (specify):\*

on (date):  
 on (date):

BY FAX

2. (Complete in all cases except family law cases.)  
 The court  did  did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: 10-02-2019  
 Jason Davis  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

Jason Davis  
 (SIGNATURE)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

(SIGNATURE)  
 Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross Complainant

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

4.  Dismissal entered as requested on (date): **OCT - 3 2019**  
 5.  Dismissal entered on (date): as to only (name):  
 6.  Dismissal not entered as requested for the following reasons (specify):

7. a.  Attorney or party without attorney notified on (date):  
 b.  Attorney or party without attorney not notified. Filing party failed to provide  
 a copy to be conformed  means to return conformed copy

Date: **OCT - 3 2019** Clerk, by K. Cadena Deputy

Plaintiff/Petitioner: Franklin Armory, Inc., et al. Defendant/Respondent: State of California, et al.	CASE NUMBER: 34-2018-00246584
--	----------------------------------

**COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS**

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

**Declaration Concerning Waived Court Fees**

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
  - a.  not recovering anything of value by this action.
  - b.  recovering less than \$10,000 in value by this action.
  - c.  recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3.  All court fees and court costs that were waived in this action have been paid to the court *(check one)*:      Yes      No

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

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

  
 \_\_\_\_\_  
 (SIGNATURE)

RECEIVED  
CIVIL DROP BOX

2019 OCT -3 PM 3:14

CLASSIC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Franklin Armory, Inc. v. California Department of Justice**

No.: **20STCP01747**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 26, 2024, I caused the attached **DECLARATION OF KENNETH G. LAKE IN SUPPORT OF MOTION BY DEFENDANTS FOR SUMMARY JUDGMENT; OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES** to be personally served by **ACE ATTORNEY SERVICE** by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:

C.D. Michel  
Anna M. Barvir  
Jason A. Davis  
MICHEL & ASSOCIATES, P.C.  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802  
*Attorneys for Plaintiffs-Petitioners*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 26, 2024, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature

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

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.

Case No.: 20STCP01747

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

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION**

Hearing Date: July 10, 2024  
Hearing Time: 8:30 a.m.  
Department: 32  
Judge: Hon. Daniel S. Murphy

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

1 **TABLE OF CONTENTS**

**Page**

2 Table of Contents ..... 2

3 Table of Authorities ..... 3

4 Introduction ..... 6

5 Statement of Facts ..... 6

6 Argument ..... 10

7 I. Legal Standard ..... 10

8 II. FAI Asserts Its Remaining Claims Against Individuals in Their Personal Capacity, Not DOJ,  
9 Rendering Sections of Defendants’ Motion Irrelevant ..... 11

10 III. Defendants are Not Entitled to Summary Judgment on Any of FAI’s Three Remaining Causes  
11 of Action ..... 12

12 A. FAI Is Prepared to Prove Each Element of Its Intentional Interference with Contract  
13 Claim; At a Minimum, Material Triable Facts Are in Dispute ..... 12

14 1. FAI had *thousands* of valid contracts with third parties for the sale of centerfire  
15 Title 1 firearms ..... 12

16 2. Defendants knew of the existence of FAI’s contracts with third parties for the  
17 purchase of Title 1s ..... 13

18 3. Defendants intentionally induced a disruption of FAI’s contractual relationships  
19 with its prospective Title 1 purchasers ..... 13

20 4. Defendants’ intentional conduct resulted in the disruption of FAI’s contractual  
21 relationships with its prospective Title 1 purchasers ..... 17

22 5. FAI suffered economic damage as a result of the DOJ’s induced disruption of  
23 its Title 1 contracts ..... 18

24 B. FAI Is Prepared to Prove Each Element of Its Intentional Interference with Prospective  
25 Economic Advantage Claim ..... 19

26 C. FAI Is Prepared to Prove Each Element of Its Negligent Interference with Prospective  
27 Economic Advantage Claim ..... 20

28 IV. Defendants Are Not Entitled to Immunity Under Section 820.2 ..... 23

Conclusion ..... 24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Bigbee v. Pac. Tel. & Tel. Co.*  
(1983) 34 Cal.3d 49 ..... 22

*C. Itoh & Co. (Am.) Inc. v. Jordan Intern. Co.*  
(7th Cir. 1977) 552 F.2d 1228 ..... 13

*Cabral v. Ralphs Grocery Co.*  
(2011) 51 Cal.4th 764 ..... 21

*CareandWear II, Inc. v. Nexcha L.L.C.*  
(S.D.N.Y. 2022) 581 F.Supp.3d 553 ..... 12

*Corestar Intern. Pte. Ltd. v. LPB Commcns., Inc.*  
(D.N.J. 2007) 513 F.Supp.2d 107 ..... 12

*Edgerly v. City of Oakland*  
(2012) 211 Cal.App.4th 1191 ..... 21

*Gym Door Repairs, Inc. v. Young Equip. Sales, Inc.*  
(S.D.N.Y. 2016) 206 F.Supp.3d 869 ..... 14

*Hacala v. Bird Rides, Inc.*  
(2023) 90 Cal.App.5th 292 ..... 23

*Jones v. Wide World of Cars, Inc.*  
(S.D.N.Y. 1993) 820 F.Supp. 132 ..... 12

*Korea Supply Co. v. Lockheed Martin Corp.*  
(2003) 29 Cal.4th 1134 ..... 19, 23

*Lange v. TIG Ins. Co.*  
(1998) 68 Cal.App.4th 1179 ..... 21

*Nanko Shipping v. Alcoa Inc.*  
(D.D.C. 2015) 107 F. Supp.3d 174 ..... 14

*Pac. Gas & Elec. Co. v. Bear Stearns & Co.*  
(1990) 50 Cal.3d 1118 ..... 12

*Regents of Univ. of Cal. v. Super. Ct. (“Rosen”)*  
(2018) 29 Cal.App.5th 890 ..... 21

1	<i>Rodriguez v. Brown</i>	
2	(E.D. Cal. Nov. 1, 2016, No. 15-cv-01754) 2016 WL 6494705.....	11
3	<i>Roseville Cmty. Hosp. v. State of Cal.</i>	
4	(1977) 74 Cal.App.3d 583 .....	23
5	<i>Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.</i>	
6	(2017) 2 Cal.5th 505.....	22, 23
7	<i>Shead v. Vong</i>	
8	(E.D. Cal. Sept. 8, 2009, No. 09-cv-00006) 2009 WL 2905886 .....	11
9	<i>Shin v. Ahn</i>	
10	(2007) 42 Cal.4th 482.....	10
11	<i>T.H. v. Novartis Pharm. Corp.</i>	
12	(2017) 4 Cal.5th 145.....	21
13	<i>Venhaus v. Shultz</i>	
14	(2007) 155 Cal.App.4th 1072.....	20
15	<i>W.V. v. Whittier Union High Sch. Dist.</i>	
16	(C.D. Cal., Oct. 20, 2016, No. 16-cv-6495) 2016 WL 11520809 .....	11
17	<i>Yanowitz v. L’Oreal USA, Inc.</i>	
18	(2005) 36 Cal.4th 1028.....	10
19	<b>Statutes</b>	
20	11 C.C.R. § 5495.....	15
21	11 C.C.R. § 5499.....	15
22	Assemb. B. 1135, 2015-2016 Reg. Sess. (Cal. 2016).....	15
23	Cal. Penal Code, § 28155.....	16, 24
24	Cal. Penal Code, § 30600.....	14
25	Cal. Penal Code, § 30510.....	15
26	Cal. Penal Code, § 30515.....	15
27	Code Civ. Proc., § 437c .....	10
28	Gov. Code, § 811.2.....	11
	Gov. Code, § 815.6 .....	11

1	Sen. B. 263 (1991-1992 Reg. Sess.) (Cal. 1991) .....	15
2	Sen. B. 880, 2015-2016 Reg. Sess. (Cal. 2016).....	15
3	<b>Other Authorities</b>	
4	5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 661 .....	21
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **INTRODUCTION**

2 Defendants ask for a summary judgment in their favor on FAI’s three remaining causes of action  
3 based on three arguments, all of which this Court should reject; indeed, it has already rejected most, if  
4 not all of those arguments—in some cases twice—in denying Defendants’ second demurrer and motion  
5 for judgment on the pleadings. Defendants offer no reason why the Court should reverse course now on  
6 the legal questions of whether FAI has stated valid causes of action or whether Defendants enjoy  
7 immunity here. FAI has, and Defendants do not. The only question remaining is whether Defendants  
8 have proven that undisputed material facts confirm that Plaintiff cannot satisfy the elements of its three  
9 remaining causes of action. They have not. Defendants’ motion should be denied.

10 **STATEMENT OF FACTS**

11 Plaintiff Franklin Armory, Inc. (“FAI”) is a federally licensed firearms manufacturer  
12 incorporated under the laws of Nevada. (Pl.’s SUMF No. 21.) FAI manufactures a series of firearms that  
13 FAI has designated with the model name “Title 1.” (Pl.’s SUMF No. 22.)

14 Under California law, “firearm” is defined in several ways, generally including “a device,  
15 designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an  
16 explosion or other form of combustion.” (Pl.’s SUMF No. 23.) California further divides “firearm” into  
17 two types for transfer regulation: long guns and handguns. “Long guns” are firearms that do not qualify  
18 as handguns. As is relevant here, “long gun” means any firearm that is not a handgun or a machinegun.  
19 (Pl.’s SUMF No. 24.) Under the “long gun” classification, there are statutorily defined firearm subtypes,  
20 including but not limited to “rifles” and “shotguns.” (Pl.’s SUMF No. 26.) FAI’s Title 1 model firearm  
21 is, under California’s statutory definition, a “long gun.” (Pl.’s SUMF No. 25.) It does not, however, fall  
22 within any of the defined firearm subtypes. (Pl.’s SUMF No. 27.)

23 With limited exception, all firearm transfers in California must be processed through a dealer  
24 licensed by the federal, state, and local authorities (an “FFL”) to engage in the retail sale of firearms.  
25 (Pl.’s SUMF No. 28.) When firearm purchasers present the required identification to purchase a firearm,  
26 the law requires the FFL to transmit the information to the California Department of Justice (“DOJ”).  
27 (Pl.’s SUMF No. 28.) Every FFL must keep a register or record of electronic or telephonic firearms  
28 transfers, in which must be entered certain information relating to a firearm transfer. (Pl.’s SUMF No.

1 29.) “The [DOJ] shall prescribe the form of the register and the record of electronic transfer pursuant to  
2 Section 28105.” (Pl.’s SUMF No. 29.) The Attorney General must permanently keep and properly file  
3 and maintain all information reported to the DOJ pursuant to any law as to firearms and maintain a  
4 registry thereof. (Pl.’s SUMF No. 30.) Information that must be included in the registry includes the  
5 “manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, and,  
6 if applicable, the serial number, other numbers (if more than one serial number is stamped on the  
7 firearm), caliber, *type of firearm*, if the firearm is new or used, barrel length, and color of the firearm, or,  
8 if the firearm is not a handgun and does not have a serial number or any identification number or mark  
9 assigned to it, that shall be noted.” (Pl.’s SUMF No. 30.)

10 California law mandates that, for all firearms, the register or the record of electronic transfer  
11 *shall* contain certain information, including the firearm’s type. (Pl.’s SUMF No. 31.) It also mandates  
12 that DOJ *shall* determine the method by which FFLs submit firearm purchaser information to DOJ and  
13 that electronic transfer of the required information be the sole means of transmission, though DOJ is  
14 authorized to make limited exceptions. (Pl.’s SUMF Nos. 32-33.) The method DOJ has established for  
15 submitting required purchaser information is known as the “Dealers Record of Sale Entry System” or  
16 “DES.” (Pl.’s SUMF No. 34.) The DES is a web-based application designed, developed, and maintained  
17 by DOJ and used by FFLs to report the required information for firearm purchases to DOJ. (Pl.’s SUMF  
18 No. 35.) The law prohibits FFLs from entering inaccurate information into DES. (Pl.’s SUMF No. 36.)

19 By design, when FFLs make a DES entry, they must enter information related to the gun type  
20 (i.e., “long gun” or “handgun”). (Pl.’s SUMF No. 37.) Upon selecting “long gun,” the DES is designed  
21 to and functions to populate a subset of fields. (Pl.’s SUMF No. 37.) Before October 1, 2021, if a DES  
22 user selected “long gun,” the DES populated a list of just three options: “rifle,” “rifle/shotgun,”  
23 “shotgun.” (Pl.’s SUMF No. 37.) And before the user was permitted to proceed, the DES required the  
24 user select one of those three options. (Pl.’s SUMF No. 37.) Unlike the subset of fields within the DES  
25 that populate for “Color,” “Purchaser Place of Birth,” and Seller Place of Birth,” each of which contains  
26 a catch-all option for “Other,” before October 1, 2021, the subset of fields that populated when a DES  
27 user selected “long gun” as the “gun type,” did not include “Other” as an option. (Pl.’s SUMF No. 37.)

28 Thus, the DES system prevented FFLs from proceeding with the submission of information to

1 DOJ for the sale, transfer, or loan of certain firearms, including the Title I. (Pl.’s SUMF No. 37.) Unless  
2 DOJ authorizes an alternative procedure for submission of the purchaser and firearm information, the  
3 DES is the only method of submitting the necessary information to permit the lawful transfer of the  
4 undefined “firearm” subtypes. (Pl.’s SUMF No. 38.) The DOJ has authorized DES users to process  
5 certain firearms lacking a defined subtype through the DES using DES’s “Comment” section. But the  
6 DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in  
7 California and how, in spite of Plaintiff’s *repeated* requests for guidance. (Pl.’s SUMF No. 38.)

8 In short, before October 1, 2021, FFLs had no way to accurately submit the required information  
9 through the DES for “long guns” without statutorily defined “firearm” subtypes, so they were effectively  
10 barred from accepting and processing applications from purchasers of such firearms, including FAI’s  
11 Title 1. (Pl.’s SUMF No. 39.) While state law mandates that the firearm “type” (e.g., “long gun”) be  
12 included in the register or record of electronic transfer, no law mandates a firearm “subtype” (e.g., rifle,  
13 shotgun, rifle/shotgun combination) be included. (Pl.’s SUMF No. 40.) DOJ could have thus chosen to  
14 remove the technological barrier within the DES that prevented FFLs from processing the transfer of  
15 Title 1s by enhancing the DES to allow the user to proceed without selecting a firearm subtype. (Pl.’s  
16 SUMF No. 40.) It could have authorized an “alternative means” for submitting the required information,  
17 including instructing FFLs to proceed by selecting existing options in DES and identifying the firearm  
18 as “Other” in one of DES’s “comment” fields. DOJ opted not to do so. (Pl.’s SUMF No. 41.)

19 In light of all this, FFLs notified FAI that they could not process the transfer of Title 1s through  
20 the DES. (Pl.’s SUMF No. 42.) The DOJ was aware of these concerns (Pl.’s SUMF No. 43) but took no  
21 speedy action. On October 24, 2019, FAI’s counsel sent a letter to then-Attorney General Xavier  
22 Becerra, notifying him and the DOJ that the DES precluded Title 1s from being processed for sale to  
23 their customers. (Pl.’s SUMF No. 44.) That letter also explained that FAI had publicly announced the  
24 release of the Title 1 on October 15, 2019, generating a substantial amount of interest and that FAI was  
25 receiving orders daily but was unable to fulfill them due to the DES defect. (Pl.’s SUMF No. 45.)

26 When FAI’s customers were placing orders to purchase the Title 1, the advertised price was  
27 \$944.99. (Pl.’s SUMF No. 46.) But, because FAI knew that the DES defect prevented the Title 1’s  
28 transfer, FAI accepted refundable deposits toward purchase, to be completed once the DES defect was

1 corrected. (Pl.’s SUMF No. 46.) FAI collected nearly 35,000 deposits from its customers, including  
2 FFLs, for the purchase of Title 1s. (Pl.’s SUMF No. 47.) Those deposits ranged in amount from \$5 to the  
3 full purchase price. (Pl.’s SUMF No. 47.) At the time FAI accepted those deposits, it was committed to  
4 fulfilling all orders for which people paid deposits. (Pl.’s SUMF No. 48.) And FAI remains committed  
5 to fulfilling those orders. (Pl.’s SUMF No. 48.) It has not done so, however, because of the DES issue  
6 and the subsequent legislation classifying Title 1s as “assault weapons.” (Pl.’s SUMF No. 48.)

7 On January 8, 2020, in response to FAI’s counsel’s October 24, 2019 letter, Deputy Attorney  
8 General P. Patty Li confirmed receipt of FAI’s letter and informed FAI that the DOJ was working to fix  
9 the DES deficiency the letter described. (Pl.’s SUMF No. 50.) DOJ was able to modify the DES within a  
10 month to fix a deficiency similar to the one that precluded the Title 1’s transfer; namely, the DES  
11 omitted the “United Arab Emirates” from the list of countries available in the DES dropdown list of  
12 countries for place of birth. (Pl.’s SUMF No. 49.) FAI thus reasonably believed that the DOJ was  
13 working to fix the defect that was blocking the lawful transfer of its Title 1 firearms.

14 Notably, Cheryl Massaro-Florez, a Bureau of Firearms Informational Technology Supervisor  
15 testified that she oversaw two separate projects to make “enhancements” to the DES to add an “Other”  
16 option to the dropdown list for “long gun” firearm subtypes. (Pl.’s RSUMF No. 18; Pl.’s SUMF No. 51.)  
17 She testified that the first enhancement was completed up to beta testing, but just before going live, it  
18 was terminated for a reason unknown to her. (Pl.’s RSUMF No. 18; Pl.’s SUMF No. 51.)

19 On May 20, 2020, just months after Deputy Attorney General Li confirmed that the DOJ was  
20 working on a fix to the DES, the DOJ submitted a Budget Change Proposal (prepared by then-Bureau of  
21 Firearms Assistant Director Allison Mendoza) to the Department of Finance, requesting “\$128,000  
22 Dealers’ Record of Sale Special Account in 2020-21, \$862,000 in 2021-22, and \$14,000 annually  
23 thereafter to regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun.” (Pl.’s  
24 SUMF No. 52.) The proposal was “intend[ed] to fix current loopholes in statute that allow[ed]  
25 manufacturers to make weapons that circumvent the intention of assault weapon laws.” (Pl.’s SUMF No.  
26 52.) As part of the Budget Change Proposal, DOJ also requested “[budget] trailer bill language  
27 necessary to implement this proposal.” Attached to the proposal was proposed language that would  
28 ultimately be adopted via Senate Bill 118 (“SB 118”). (Pl.’s SUMF No. 53.)

1 SB 118 amended the definition of “assault weapon” to include, for the first time, a “centerfire  
2 firearm that is not a rifle, pistol, or shotgun,” which amendment made the Title 1 an “assault weapon.”  
3 (Pl.’s SUMF No. 55.) The law was adopted by the Legislature on August 4, 2020, and it was approved  
4 by the Governor on August 6, 2020. (Pl.’s SUMF No. 54.) And because it was adopted as a “budget  
5 trailer bill,” the change in law took effect immediately upon the Governor’s signature, without the 2/3  
6 vote of the Legislature constitutionally required to adopt “policy bills” as “urgency legislation” and  
7 without the need to make a special finding of urgency. (Pl.’s SUMF No. 56.) Allison Mendoza, the  
8 current Director of the California Department of Justice, Bureau Firearms, testified that she could not  
9 think of another piece of firearm-related legislation that was adopted via the “budget trailer bill” process  
10 and that it was not a common practice. (Pl.’s SUMF No. 57.)

11 It was not until October 1, 2021, that DOJ completed the “enhancement” to the DES adding the  
12 option to select “Other” from the dropdown list for “long gun” subtypes, finally allowing DES users to  
13 process the transfer of firearms without a defined subtype, like the Title 1. (Pl.’s SUMF No. 59.)<sup>1</sup> But  
14 the enhancement came too late to allow for the lawful transfer of FAI’s Title 1s, which had been deemed  
15 “assault weapons” by SB 118 and could not be lawfully registered with DOJ unless they were possessed  
16 on or before September 1, 2020. (Pl.’s SUMF No. 60.) FAI could thus not lawfully transfer Title 1s to its  
17 deposit-paying customers before the enactment and enforcement of SB 118 because DES did not allow  
18 it and could not do so after because the AWCA would not allow it. (Pl.’s SUMF No. 60.) As a result,  
19 FAI suffered economic damage in the form of millions of dollars in lost profits. (Pl.’s SUMF No. 61.)

## 20 ARGUMENT

### 21 I. LEGAL STANDARD

22 Summary judgment is appropriate only if the moving party can show there is no triable issue of  
23 material fact and it is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) On  
24 summary judgment, courts view the evidence in the light most favorable to the nonmoving party,  
25 resolving any evidentiary doubts in their favor. (*Shin v. Ahn* (2007) 42 Cal.4th 482, 499; *Yanowitz v.*  
26 *L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)  
27  
28

1 **II. FAI ASSERTS ITS REMAINING CLAIMS AGAINST INDIVIDUALS IN THEIR PERSONAL CAPACITY,**  
2 **NOT DOJ, RENDERING SECTIONS OF DEFENDANTS’ MOTION IRRELEVANT**

3 Defendants continue to argue that DOJ cannot be liable here. But, as has been made clear, FAI  
4 does not assert liability against DOJ for the three remaining causes of action. It brings them against  
5 individuals in their personal capacity. (SAC ¶ 8.) As a result, Defendants’ arguments that DOJ has no  
6 liability because FAI asserts common law torts (Mot., pp. 16-17) and because FAI cannot satisfy the  
7 mandates of Government Code section 815.6 (Mot., pp. 22-28), are irrelevant.

8 To the extent that Defendants claim that section 815.6 controls Plaintiff’s claims against  
9 individuals in their personal capacities, they are mistaken. Section 815.6 imposes a three-pronged test  
10 for determining liability of a “*public entity*,” not individuals in their personal capacity, as is sought here.  
11 (Gov. Code, § 815.6, italics added.) The definition of “public entity” does not include individuals sued in  
12 their personal capacity, but rather only entities. (Gov. Code, § 811.2.) No authority that Plaintiff is aware  
13 of suggests that section 815.6 applies to public officials or employees sued in their personal capacity,  
14 and Defendants cite to none. On the contrary, the only precedent construing section 815.6 in this context  
15 comes from federal district courts, all of which have unanimously concluded that section 815.6 does not  
16 apply to defendants sued in their personal capacities. (*See Shead v. Vong* (E.D. Cal. Sept. 8, 2009, No.  
17 09-cv-00006) 2009 WL 2905886, at \*6 [holding that “§ 815.6 applies solely to governmental entities”];  
18 *Rodriguez v. Brown* (E.D. Cal. Nov. 1, 2016, No. 15-cv-01754) 2016 WL 6494705, at \*4 [“Defendant is  
19 certainly correct that he is not a public entity in his personal capacity.”]; *W.V. v. Whittier Union High*  
20 *Sch. Dist.* (C.D. Cal., Oct. 20, 2016, No. 16-cv-6495 2016) WL 11520809, at \*4, n. 4 [section 815.6  
21 does not apply to “public entity liability due to its employee’s statutory violation.”].) Section 815.6  
22 simply has no application to Plaintiff’s remaining causes of action. Defendants’ argument otherwise  
23 already failed in their motion for judgment on the pleadings. (Defs.’ Mot. J. Pldgs., pp. 23-25.)  
24  
25  
26

---

27 <sup>1</sup> According to Ms. Massaro-Florez’s testimony, this second project to enhance the DES to add  
28 an “Other” option for long gun subtypes took about three months to complete. (Pl.’s SUMF No. 51.)

1 **III. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON ANY OF FAI'S THREE**  
2 **REMAINING CAUSES OF ACTION**

3 **A. FAI Is Prepared to Prove Each Element of Its Intentional Interference with**  
4 **Contract Claim; At a Minimum, Material Triable Facts Are in Dispute**

5 The elements of intentional interference with contractual relations are: “(1) a valid contract  
6 between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s  
7 intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual  
8 breach or disruption of the contractual relationship; and (5) resulting damage.” (*Pac. Gas & Elec. Co. v.*  
9 *Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126; see also CACI No. 2201.) As to each element,  
10 Defendants have failed to prove that there is no material fact in dispute and that they are entitled to  
11 judgment as a matter of law.

12 **1. FAI had *thousands* of valid contracts with third parties for the sale of**  
13 **centerfire Title 1 firearms.**

14 At a minimum, there is a dispute over whether FAI had valid existing contracts with thousands  
15 of its customers. It is undisputed that FAI collected deposits from around 35,000 individuals. (Pl.’s  
16 SUMF No. 47.) The deposits saved a spot in line for prospective purchasers. (Pl.’s SUMF No. 46.) By  
17 accepting those deposits, FAI contractually bound itself to each depositor to provide a Title 1. As they  
18 did in their motion for judgment on the pleadings, Defendants argue that those refundable deposits alone  
19 do not constitute valid contracts. (Mot., pp. 18-19.) Their only support is a treatise on the Uniform  
20 Commercial Code. In their earlier motion, Defendants cited that same treatise, but also included a  
21 reference to *Jones v. Wide World of Cars, Inc.* (S.D.N.Y. 1993) 820 F.Supp. 132. (Defs.’ Mot. J. Pldgs.,  
22 p. 21.) Defendants curiously omit *Jones* here. Closer examination of that decision makes clear why  
23 Defendants chose to keep it from the Court this time around. *Jones* holds that while a money deposit  
24 may not bind the buyer, it certainly *can* bind the seller. (820 F.Supp. at p. 136 [“[C]ases under the statute  
25 of frauds itself suggest that it is the recipient accepting a down payment, not a buyer parting with the  
26 money, who may be bound.”]; see also *CareandWear II, Inc. v. Nexcha L.L.C.* (S.D.N.Y. 2022) 581  
27 F.Supp.3d 553, 557 [“[P]urchase orders are sufficient both to remove the bar of the Statute of Frauds  
28 and to confirm the existence of a contract between the parties.”]; *Corestar Intern. Pte. Ltd. v. LPB*  
*Commcs., Inc.* (D.N.J. 2007) 513 F.Supp.2d 107, 117 [same].)

1 Customers who paid earnest money toward the purchase of a centerfire Title 1 firearm thus  
2 entered into a contract with FAI, under which at least FAI was bound, even if the buyers could later  
3 cancel the sale. Assuming those firearms could ever be lawfully sold in California, FAI committed to  
4 fulfill those orders. (Pl.'s RSUMF No. 12; Pl.'s SUMF No. 48.) Moreover, the fact that thousands of  
5 individuals who made deposits are members of an ongoing class action lawsuit seeking to obtain a Title  
6 1, and only a handful of the thousands of individuals who made a deposit have asked for a refund, even  
7 years later, demonstrates the continued interest in purchasing Title 1 firearms. (Pl.'s SUMF No. 64.)  
8 Subsequent behavior by parties can support existence of a contract, and in this case, that thousands have  
9 joined litigation to obtain a Title 1 and the overwhelming majority of deposit payers have not asked for a  
10 refund shows they intend to go through with the contract. (*C. Itoh & Co. (Am.) Inc. v. Jordan Intern. Co.*  
11 (7th Cir. 1977) 552 F.2d 1228, 1236.) But for Defendants' refusal to correct the DES, depositors would  
12 move forward with their purchase. At a minimum, this material fact is in dispute.

13  
14 **2. Defendants knew of the existence of FAI's contracts with third parties for the purchase of Title 1s.**

15 It cannot reasonably be argued that Defendants did not know of FAI's contracts because FAI  
16 expressly notified Defendants about them in writing as early as October 2019. (Defs.' SUMF No. 1; Pl.'s  
17 SUMF No. 49; see also Jacobson Decl., ¶¶ 5, 7-8 & Ex. 8.) Still, Defendants claim that they could not  
18 have known about these contracts because the DES system that prevented the sale of Title 1 firearms  
19 predated the Title 1's existence. (Mot., p. 19.) But Plaintiff does not seek damages just because DES  
20 failed to accommodate the transfer of the Title 1 upon its introduction. Rather, FAI seeks damages for  
21 Defendants' intentional acts preventing the DES from accommodating transfer of the Title 1 *after* they  
22 learned of the Title 1 and were notified that customers were lining up to purchase it. (SAC ¶¶ 112, 120,  
23 123, 179.)

24  
25 **3. Defendants intentionally induced a disruption of FAI's contractual relationships with its prospective Title 1 purchasers.**

26 FAI is prepared to prove that Defendants intentionally stalled any fix to the DES that would have  
27 facilitated the Title 1's lawful transfer before it became an unlawful "assault weapon." Defendants argue  
28 that "it is logically impossible" that DES's inability to process Title 1 firearms was "intentional"

1 because DES’s deficiency predated the firearm’s existence. (Mot., p. 19.) But as this Court already held:

2 [Because] Defendants were under a Penal Code mandate to provide a  
3 reporting system for ‘all firearms,’ including Title I firearms[],...  
4 [I]mplementing a reporting system that excludes a particular type of  
5 firearm that was legal to sell at the time, and required to be reported,  
constitutes an intentional act designed to prevent the sale of those  
firearms, and thereby interferes with the alleged sale contracts.

6 (Ruling on Defs.’ Mot. J. Pldgs., p. 5 (Sept. 7, 2023).) Still, Defendants claim that inaction cannot be an  
7 intentional act. (Mot., p. 19.) But the only authority Defendants cite is a federal district case from  
8 Washington, D.C. (*Ibid.* [citing *Nanko Shipping v. Alcoa Inc.* (D.D.C. 2015) 107 F. Supp.3d 174].)  
9 Plaintiffs are aware of no California authority holding that an intentional failure to act cannot qualify as  
10 an “intentional act” for purposes of an intentional interference with contract claim. *And some*  
11 *jurisdictions have expressly held that it can be.* (See, e.g., *Gym Door Repairs, Inc. v. Young Equip.*  
12 *Sales, Inc.* (S.D.N.Y. 2016) 206 F.Supp.3d 869, 910, [“A tortious interference with prospective  
13 economic advantage ‘claim begins to run when the defendant performs the action (*or inaction*) that  
14 constitutes the alleged interference.”], italics added.)

15 Regardless, FAI does “not merely allege that DOJ sat idly by while certain consumers were  
16 unable to purchase Title I firearms. Instead, the SAC alleges that DOJ intentionally excluded Title I  
17 firearms from DES to delay their transfer until the Legislature could pass SB 118.” (Ruling on Defs.’  
18 Mot. J. Pldgs., p. 5.) As this Court has already held, this “sufficiently constitutes an intentional act.”  
19 (*Ibid.*) And FAI has established facts tending to prove that is exactly what Defendants did. Indeed, the  
20 evidence shows that DOJ was working on a DES fix that would have allowed the Title 1 to be  
21 transferred in early 2020. (Pl.’s RSUMF No. 15; Pl.’s SUMF No. 50.) DOJ had virtually completed that  
22 fix. (Pl.’s SUMF No. 51.) Yet, rather than implement that fix, which only took months to complete (Pl.’s  
23 SUMF No. 51), Defendants stalled it until SB 118 could pass on an expedited basis and immediately  
24 prevent FAI from selling any Title 1s to the public. (Pl.’s SUMF Nos. 53-58.) A bill that the DOJ itself  
25 proposed. (Pl.’s SUMF No. 53.)

26 The timing of SB 118 alone is sufficient circumstantial evidence to establish that Defendants  
27 acted intentionally to preclude Title 1 transfers. The Assault Weapon Control Act (“AWCA”) was first  
28 adopted in 1989. (Cal. Penal Code, § 30600 (formerly §12280, subd. (a).) It has since been amended at

1 least five times to tweak the definition of what constitutes an “assault weapon.” (See § 30510 (formerly  
2 § 12276) [listing “assault weapons” by make and model]; Sen. B. 263 (1991-1992 Reg. Sess.) (Cal.  
3 1991) [expanding make/model list of]; 11 C.C.R. §§ 5495, 5499 (further expanding the list); § 30515,  
4 subd. (a)(1-3) (formerly § 12276.1, subd. (a)(1)-(3) [identifying “assault weapons” by features]; § 30515  
5 (added by Assemb. B. 1135, 2015-2016 Reg. Sess. (Cal. 2016)); Sen. B. 880, 2015-2016 Reg. Sess.  
6 (Cal. 2016)) [defining “assault weapon” as any semiautomatic, centerfire rifle that does not have a  
7 “fixed magazine,” if it has at least one of the features enumerated in section 30515, subdivision (a)].)

8        Yet, only the amendment that made the Title 1 an “assault weapon” was adopted on an expedited  
9 basis within months. And, because it was adopted as a “budget trailer bill,” the change in law took effect  
10 immediately—without the 2/3 vote of the Legislature required to adopt “policy bills” as “urgency  
11 legislation.” (Pl.s’ SUMF No. 56.) Odder still, the DOJ requested that the Budget Office introduce the  
12 bill on May 14, 2020, just months after the DOJ wrote to counsel for FAI, confirming receipt of FAI’s  
13 October 24, 2019, letter and informing FAI that the DOJ was working to fix the DES deficiency the  
14 letter described. (Pl.’s SUMF No. 50, 52-53.)

15        The timeline is even more suspect considering the unconventional process employed by the DOJ,  
16 working with the Legislature, to reclassify the Title 1 as an “assault weapon.” Earlier amendments to the  
17 AWCA were not made via a “budget trailer bill”; they were adopted in the normal course as “policy  
18 bills.” But SB 118, the bill that made the Title 1 an “assault weapon,” raced through the Legislature  
19 (with limited public debate) as a “budget trailer bill,” becoming law and taking immediate effect mere  
20 months after it was dreamed up and presented by the DOJ. (Pl.’s SUMF Nos. 52-54, 56-57.) FAI knows  
21 of no other firearm legislation that was passed using the “budget trailer bill” process. Director Mendoza  
22 testified that she could not think of one, and she admitted that it was not a common practice. (Pl.’s  
23 SUMF No. 7.) Yet, it was the DOJ that submitted the proposal to the Department of Finance  
24 “request[ing] trailer bill language” to amend the definition of “assault weapon.” (Pl.’s SUMF Nos. 52-  
25 53.) Notably, in that proposal, the DOJ explained that it needed the bill in order to “fix current loopholes  
26 in statute that allow[ed] manufacturers to make weapons that circumvent the intention of assault weapon  
27 laws.” (Pl.’s SUMF No. 52.) The requested “fix” (that would ultimately become SB 118) classified the  
28 Title 1 as an “assault weapon” for the first time. (Pl.s’ SUMF No. 53)

1 That the State identified these so-called “loopholes” just as the Title 1 was coming on the market  
2 is no coincidence. To believe that, one would have to accept that DOJ personnel just happened to  
3 discover these “loopholes” some 30 years after the AWCA’s initial adoption—and within months of FAI  
4 informing them it was trying to sell the Title 1 in California but deficiencies in the DES were hindering  
5 its lawful transfer. (See Pl.’s SUMF Nos. 44-45, 50, 52-53.) That is, of course, nonsense. SB 118 was  
6 clearly designed to target the Title 1 and prevent its sale. Department of Finance staffers’  
7 communications about the bill expressly identified both FAI and the Title 1, but they identified no other  
8 manufacturer or firearm by name. (Pl.’s SUMF No. 58.) That it happened to sweep up other obscure  
9 firearms does not change the fact that FAI’s Title 1 was SB 118’s target.

10 The undisputed timeline combined with the unorthodox process by which SB 118 was adopted  
11 establishes that Defendants intentionally delayed the DES fix that would have facilitated the legal  
12 transfer of Title 1 firearms until SB 118 could take effect, preventing such transfers from ever being  
13 completed. Defendants may dispute that conclusion. But that means that, at a minimum, there is a  
14 dispute over whether they deliberately delayed fixing the DES to allow the processing of legal Title 1s, a  
15 quintessential material fact, making summary judgment improper.

16 Without citing any authority, Defendants also argue that “there must be a statutory basis  
17 establishing a mandatory duty to modify DES” for FAI to establish an intentional act by Defendants to  
18 prevail on this cause of action. (Mot., p. 19.) While it is unclear if that is an accurate statement of the  
19 law, it does not matter because it is clear that a mandatory duty existed. FAI has already (twice) briefed  
20 this issue. (Pls.’ Oppn. to 2d Dem., pp. 19-26 (May 20, 2021); Pls.’ Oppn. to Mot. J. Pldgs., pp. 15-18  
21 (Aug. 3, 2023.) And this Court has both times rejected Defendants’ arguments:

22 Defendants argue that the Penal Code statutes Plaintiffs rely on do not  
23 impose a mandatory duty to reform DES in any particular way and instead  
24 grant discretion in how to implement an electronic reporting system.  
25 However, as Judge Chalfant held, *discretion over the manner of*  
26 *implementing an electronic reporting system does not mean the*  
27 *discretion to refuse to implement a reporting system entirely for certain*  
28 *firearms.* (June 3, 2021 Order re Demurrer, pp. 7-8.) Penal Code section  
28155 provides that DOJ “shall prescribe the form of the register and the  
record of electronic transfer.” Defendants allegedly failed to do this by  
refusing to provide any method for the reporting of Title I firearms.

(Ruling on Defs.’ Mot. J. Pldgs., p. 6 (Sept. 7, 2023).) Indeed, “[i]f the DOJ has a ministerial duty to

1 implement some electronic transfer system, then it is no large jump to conclude that it cannot arbitrarily  
2 discriminate in the system it must implement.” (*Id.* at p. 7.) By necessary extension, neither can public  
3 employees of regulatory bodies like the DOJ intentionally discriminate against those they regulate.

4 FAI was not asking the DOJ to move Heaven and Earth to facilitate the transfer of its lawful  
5 product. It was merely asking the DOJ to comply with its ministerial duty by removing a technological  
6 barrier that the DOJ itself had created. That it could not do so before undertaking the heavy lifting of  
7 proposing and advocating for legislation is all this Court needs to know about what really happened or,  
8 at least, shows a disputed material fact as to whether Defendants acted intentionally.

9  
10 **4. Defendants’ intentional conduct resulted in the disruption of FAI’s  
contractual relationships with its prospective Title 1 purchasers.**

11 Because Defendants intentionally stalled the DES update to process transfers of the Title 1—  
12 *after they knew of DES’s inability to allow its transfer*—FAI could not fulfill the contracts with its  
13 customers. Defendants never expressly dispute FAI’s contention that licensed dealers could not lawfully  
14 process the transfer of centerfire Title 1s through DES. Instead, they disingenuously suggest that FAI  
15 cannot claim that Defendants would have prohibited its transfer because FAI never attempted to process  
16 a centerfire Title 1 through the DES. (Mot., p. 11.) Seemingly to that point, Defendants mention that  
17 FAI knew that FFLs had been successfully making DES entries for stockless long-guns that fire shotgun  
18 shells as “shotguns” for years even though such firearms are not *technically* “shotguns” under California  
19 law. (*Id.* at p. 10.) Defendants suggest that FFLs could have likewise processed FAI’s Title 1 through a  
20 category of firearm that existed within DES at the time—even though the Title 1 was not *technically* any  
21 of those firearms under California law. (*Ibid.*) In other words, they claim that no fix to DES was needed  
22 to process the Title 1. That argument fails.

23 It is telling that Defendants do not indicate what category of arm within the DES menu FFLs  
24 could have selected when processing a transfer of a Title 1. And Defendants fail to explain how a  
25 “historic tradition” in place “for a number of years” of FFLs successfully processing a long-existing  
26 firearm type (stockless long-guns chambered for shotgun shells) is relevant to processing a completely  
27 new and unique product, like the Title 1. That is because it is not. Indeed, the fact that FFLs may have  
28 processed such firearms for years but expressed concerns about how to lawfully process the Title 1 cuts

1 against Defendants’ argument that just trying to do so was a reasonable option for FFLs.<sup>2</sup>

2 In any event, neither FAI nor FFLs can be expected to assume that the DOJ would accept the  
3 practice of transferring a Title 1 as something that it is legally not, just because the DOJ has allowed  
4 others to do so in a different context—particularly when the potential consequences are so severe. As  
5 Defendants concede, FFLs must submit DES entries as being “true, accurate, and complete” under  
6 penalty of perjury. (Mot., p. 11; Pl.’s SUMF No. 36.) FFLs, therefore, not only would be gambling with  
7 their licenses (and their livelihood) *but their freedom*. It is unclear whether the DOJ had, at some point  
8 in the past, expressly clarified to FFLs that it would allow the practice of selling such firearms as  
9 “shotguns.” But Defendants admit that “Blake Graham, a Special Agent Supervisor in the Bureau of  
10 Firearms” who has “expertise in firearms identification” (Mot, p. 7), informed FAI’s president that  
11 stockless long-guns chambered for shotgun shells were allowed to be processed through DES as  
12 “shotguns.” (*Id.* at pp. 10-11.)

13 Here, on the other hand, the DOJ remained silent as to its position on whether *and how* the  
14 Title 1 could be sold in California—despite FAI’s *repeated* requests for guidance. (Pl.’s RSUMF No. 9;  
15 Pl.’s SUMF No. 38.) Perhaps even worse than Defendants’ silence was their practical admission that the  
16 DES defect needed to be cured and that the DOJ was, in fact, doing so, but gave no instructions for how  
17 to process the transfers in the meantime (e.g., using the comments box to clarify the gun type). (Pl.’s  
18 SUMF No. 50; see also Davis Decl., Ex. 7 [Letter from P. Patty Li, Deputy Attorney General, California  
19 Department of Justice, to Jason A. Davis, Counsel for Franklin Armory, Inc. (Jan. 8, 2020)].)

20  
21 **5. FAI suffered economic damage as a result of the DOJ’s induced disruption of  
its Title 1 contracts.**

22 Finally, FAI suffered economic damage in the form of millions of dollars in lost profits because  
23 it could not lawfully complete the sale of and transfer the FAI Title 1 model firearm to its deposit-paying  
24 customers before the enactment and enforcement of SB 118. (Pl.’s SUMF No. 62.) Indeed, FAI had  
25 accepted tens of thousands of deposits, from both individual consumers and FFLs, toward purchase of a  
26 Title 1. (Pl.’s SUMF No. 47.) FAI’s customers, by and large, intended to follow through with those  
27

28 <sup>2</sup> Also, Defendants’ claim that “receivers” have long been sold as something other than what they

1 purchases. And, assuming the centerfire Title 1 model firearm could ever be lawfully transferred in  
2 California, FAI was committed at the time it accepted deposits from customers to fulfill all orders for  
3 which people paid deposits. (Pl.’s SUMF No. 48.) FAI initially brought this suit to obtain an order  
4 allowing it to fulfill those orders. (Verified SAC, p. 42:9-43:17.) And it remains steadfast in its  
5 commitment to do so to this day. (Pl.’s SUMF No. 48.)

6 **B. FAI Is Prepared to Prove Each Element of Its Intentional Interference with**  
7 **Prospective Economic Advantage Claim**

8 The elements of a claim for intentional interference with prospective economic advantage are:  
9 “(1) an economic relationship between the plaintiff and some third party, with the probability of future  
10 economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts  
11 on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship;  
12 and (5) economic harm to the plaintiff proximately caused by the acts of the defendant”. (*Korea Supply*  
13 *Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) To maintain such a claim, a plaintiff must  
14 demonstrate that the defendant engaged in an independently wrongful act. (*Id.* at p. 1158.) “[A]n act is  
15 independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory,  
16 regulatory, common law, or other determinable legal standard.” (*Id.* at p. 1159.) Defendants have failed  
17 to show that FAI cannot satisfy each element.

18 First, there existed an economic relationship between FAI and thousands of consumers, with the  
19 probability of future economic benefit to FAI. As explained above, FAI received thousands of money  
20 deposits for the Title 1. (See *supra*, Part II.A.1.) Even assuming those deposits did not constitute  
21 contracts, as this Court has already found, “placing a deposit is an overt act towards making a purchase  
22 and sufficiently creates a probability that FAI will profit from a sale” and thus “it may be reasonably  
23 inferred that FAI had existing economic relationships with its customers.” (Ruling on Defs.’ Mot. J.  
24 Pldgs., p. 6.) Nevertheless, Defendants reassert their argument that such deposits do not create an  
25 economic relationship without citing any authority, despite this Court’s previous rejection of it on that  
26 basis. (Mot., p. 18.) This Court should continue to reject that argument.

27 Second, as explained above, Defendants were aware of FAI’s relationship with its customers  
28 are, (Mot., p. 10), is not accurate. There is a dropdown menu option for long-gun “receivers” in DES.

1 who sought to acquire a Title 1. (See supra, Part II.A.2.)

2 Third, as explained above, Defendants intentionally acted to disrupt that relationship and  
3 committed independently wrongful acts in doing so, as this Court has already acknowledged and which  
4 FAI has provided evidence to further support. (See supra, Part II.A.3.)

5 Fourth, actual disruption occurred between FAI and its customers. Indeed, as a result of  
6 Defendants' intentional refusal to fix the DES in a timely manner, as described above, FAI could not  
7 lawfully transfer a Title 1 firearm to its customers through the DES before it became illegal to do so, as  
8 a result of SB 118. (See supra, Part II.A.4.)

9 Finally, as explained above, FAI suffered economic harm from Defendants' actions. (See supra,  
10 Part II.A.5.) But for Defendants intentionally precluding a fix to the DES that would have allowed the  
11 transfer of the lawful Title 1 firearm, FAI would have likely completed the lawful sale of many  
12 thousands of Title 1 firearms.

13 **C. FAI Is Prepared to Prove Each Element of Its Negligent Interference with**  
14 **Prospective Economic Advantage Claim**

15 The elements of negligent interference with prospective economic advantage are essentially the  
16 same as for intentional interference, except that the plaintiff must establish that the defendant "was  
17 aware or should have been aware that if [defendant] did not act with due care its actions would interfere  
18 with th[e] relationship [that defendant knew existed between plaintiff and a third party] and cause  
19 plaintiff to lose in whole or in part the probable future economic benefit or advantage of the  
20 relationship" and "the defendant was negligent [which] negligence caused damage to plaintiff in that the  
21 relationship was actually interfered with or disrupted and plaintiff lost in whole or in part the economic  
22 benefits or advantage reasonably expected from the relationship." (*Venhaus v. Shultz* (2007) 155  
23 Cal.App.4th 1072, 1078; see also CACI No. 2204.) Defendants have failed to show that FAI cannot  
24 satisfy each element.

25 Even assuming a lone footnote may be sufficient to put this cause of action at issue, (Mot., p. 20,  
26 fn. 5), Defendants' specific footnote is insufficient. While it accurately notes that a plaintiff must show  
27 that the defendant owed the plaintiff a duty of care, Defendants' footnote fails to make any argument as  
28 to why FAI cannot establish that Defendants owed it a duty of care, let alone any argument as to why

1 Defendants did not breach that duty or that their failure to act with reasonable care caused Plaintiffs’  
2 harm. (Mot., p. 20, fn. 5.) Thus, if this Court finds that an economic relationship existed between FAI  
3 and its customers, that Defendants knew about that relationship, and that such relationship was disrupted  
4 by Defendants’ conduct, thereby causing FAI harm, then this Court cannot grant Defendants’ motion on  
5 this cause of action because they have not even attempted to show that FAI cannot establish the  
6 elements of duty and breach.

7 Even if this Court believes it can rule on this claim despite Defendants’ lack of argument,  
8 Defendants’ motion still must fail. FAI can clearly meet the remaining elements, or at least those  
9 elements are the subject of material facts in dispute. First, as explained above, this Court has already  
10 ruled that FAI sufficiently alleged an independent wrongful act that establishes the existence of a duty  
11 that was violated: the failure of the State to provide a method by which Title 1 firearms can be legally  
12 transferred. (Ruling on Defs.’ Mot. J. Pldgs., p. 5.) That is critical to the negligent interference claim  
13 because a defendant’s conduct is blameworthy—and thus violates a duty of care—if it was  
14 independently wrongful apart from the interference itself. (*Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th  
15 1179, 1187, citing 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 661, at p. 755.)

16 Second, the reasonableness of Defendants’ failure to fix the DES to allow for transfers of Title 1  
17 firearms for over two years is not something that can be disposed of on a motion for summary judgment.  
18 It is well established that “[r]easonableness is generally a question of fact to be resolved by a jury.”  
19 (*Edgerly v. City of Oakland* (2012) 211 Cal.App.4th 1191, 1206, *as modified* (Dec. 13, 2012).) And in  
20 the negligence context, “[f]oreseeability of harm and breach of the standard of care are ordinarily  
21 questions of fact for the jury’s determination.” (*Regents of Univ. of Cal. v. Super. Ct.* (“*Rosen*”) (2018)  
22 29 Cal.App.5th 890, 912.) The only way such questions can be resolved on a motion for summary  
23 judgment is if, under the undisputed facts there is no room for a reasonable difference of opinion and  
24 “no reasonable jury could find the defendant failed to act with reasonable prudence under the  
25 circumstances.” (*T.H. v. Novartis Pharm. Corp.* (2017) 4 Cal.5th 145, 188 [citing *Cabral v. Ralphs*  
26 *Grocery Co.* (2011) 51 Cal.4th 764, 773].) That is certainly not the case here. On the contrary, all  
27 indications are that Defendants acted to intentionally sabotage the DES fix or, at least, acted with utter  
28 disregard to fix it in a timely manner, for the reasons described above.



1 Tellingly, the *Roy Allan Slurry Seal* Court distinguished public work contract bids from a case  
2 involving companies’ “bids to the Republic of Korea to provide military equipment.” (2 Cal.5th at p.  
3 513, citing *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134.) It reasoned that  
4 “[s]ignificantly, . . . there is no indication that the bidding process . . . was constrained in a manner  
5 similar to the statutory rules that govern California public works contracts.” (*Ibid.*) Specifically, it  
6 explained that the plaintiff there had a relationship with an expectation of economic advantage that was  
7 interfered with. (*Ibid.*) This distinction eviscerates Defendants’ claimed effect of *Roy Allan Slurry Seal*.  
8 Indeed, if international sales of military arms are not exempt from interference torts, then surely  
9 domestic civilian firearm sales are not. Regulation involved with the former is certainly more  
10 “extensive” than with the latter. Yet, the *Roy Allan Slurry Seal* Court did not focus on the *extent* of the  
11 regulation, but rather the *nature* of the regulation, i.e., whether the regulation was incompatible with the  
12 elements of interference torts.

13 In any event, in seeking to have DES altered, FAI was not trying to circumvent the regulatory  
14 protections that California has put in place on firearm sales. To the contrary, it wanted Defendants to  
15 perform their mandatory duty to process its products through the regulatory process. So, the public  
16 policy concerns that the Court discussed in *Roy Allan Slurry Seal*, are simply not present here. For these  
17 reasons, *Roy Allan Slurry Seal* is not an impediment to FAI’s causes of action.

18 **IV. DEFENDANTS ARE NOT ENTITLED TO IMMUNITY UNDER SECTION 820.2**

19 As a last resort, Defendants regurgitate the argument that they enjoy discretionary immunity  
20 under section 820.2 for their refusal to fix the DES, which argument has already been rejected *twice* in  
21 this case, first by Judge Chalfant and then by this Court. (on Defs.’ Mot. J. Pldgs., pp. 6-7; see also  
22 Order re Demurrer, pp. 7-8 (June 3, 2021).) Defendants have provided this Court with no reason to  
23 change its mind.

24 None of the new cases that Defendants cite change the analysis, as none involve mandatory  
25 duties, as is the case here. By Defendants’ own admission, in *Hacala v. Bird Rides, Inc.* (2023) 90  
26 Cal.App.5th 292, “the City was immune from liability because its employees had discretion but were not  
27 under a mandatory duty to remove improperly parked scooters.” (Mot., p. 30.) The State also cites  
28 *Roseville Community Hosp. v. State of California* (1977) 74 Cal.App.3d 583, but the State fails to

1 mention *Roseville* is clear that the plaintiff there failed because he could identify no mandatory duty:  
2 “The hospital charges the state with liability but fails to identify any mandatory duty breached by its  
3 agent, the Attorney General. The Knox-Mills provisions imposed upon the Attorney General only one  
4 positive duty it directed him to maintain a registry of health care service plans. The hospital’s pleading  
5 alleges no breach of that duty.” (*Id.* at pp. 587-588.)

6 Defendants then launch into excuse-making for why they could not prioritize the DES fix. (Mot.,  
7 pp. 31-32.) Were there no mandatory duty under Penal Code section 28155, they may have a point. But,  
8 because there *is* a mandatory duty, their arguments fail. Otherwise, the government could always shirk  
9 its mandatory duties by pointing to competing priorities, which will always exist.

10 Finally, recycling yet another argument from their motion for judgment on the pleadings,  
11 Defendants claim that Penal Code section 28245’s apparent carveout for long guns establishes that any  
12 actions it took were discretionary. (Mot., p. 32.) But as FAI also noted in opposition to that motion,  
13 section 28245 speaks only to the DOJ’s conduct, not the Attorney General’s or its employees. Plaintiffs  
14 have confirmed they are not pursuing damages against the DOJ as to the Third, Fourth, or Fifth Causes  
15 of Action. More importantly, section 28245 limits its application to “[w]henver the Department of  
16 Justice acts pursuant to **this article**....” Penal Code section 28155, which is the basis for the mandatory  
17 duty at issue here, is not in the same article as section 28245. It is in the *prior* article, Article 2, called  
18 “Form of the Register or the Record of Electronic Transfer (§ 28150 to § 28190).” Thus, Penal Code  
19 section 28245 has no relevance here, even if it did apply to individual Defendants.

20 While factual development is one thing, FAI should not have to defeat the same *legal* arguments  
21 over and over. If Defendants disagree with prior rulings, that is what appeals are for. There is no reason  
22 for this Court to revisit decided legal questions.

### 23 CONCLUSION

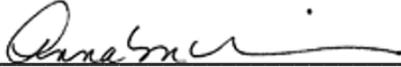
24 At bottom, as this Court has already acknowledged, FAI has sufficiently pled its three remaining  
25 causes of action as a matter of law; thus, the only remaining question is whether the undisputed material  
26 facts support its claims. As demonstrated above, at minimum, the facts are in dispute as to whether  
27 Defendants intentionally or unreasonably delayed the DES fix to allow Title 1 transfers. For those  
28 reasons and the ones explained above, this Court should deny the State’s motion for summary judgment

1 and its alternative motion for summary adjudication, allowing this case to proceed to trial.

2

3 Date: June 26, 2024

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



Anna M. Barvir

Attorneys for Petitioner-Plaintiff

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.



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

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

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.  
17  
18  
19  
20  
21

Case No.: 20STCP01747

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

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Hearing Date: July 10, 2024  
Hearing Time: 8:30 a.m.  
Department: 32  
Judge: Hon. Daniel S. Murphy

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

1 In accordance with California Rule of Court 3.1350 and California Code of Civil Procedure  
 2 section 437c, Petitioner-Plaintiff Franklin Armory, Inc., submits the following Response to Defendants’  
 3 Separate Statement of Undisputed Material Facts in support of their Motion for Summary Judgment.

<b>Moving Party’s Undisputed Material Facts and Alleged Supporting Evidence</b>	<b>Opposing Party’s Response and Supporting Evidence</b>
<b>Third Cause of Action: Tortious Interference with Contractual Relations</b>	
7 1. The Second Amended Complaint (SAC) 8 alleges that on October 24, 2019, plaintiff sent a 9 letter to former Attorney General Becerra, 10 asserting that a defect in the Department of 11 Justice (Department) online system for processing 12 transfers of firearms rendered dealers unable to 13 transfer its recently announced Title 1 firearm to 14 its customers. 15 (SAC, ¶ 69, Ex. C.)	1. Undisputed.
13 2. Jay Jacobson, President and an owner of 14 Franklin Armory, testified that the Title 1 was 15 designed with a 16 inch barrel and a padded 16 buffer tube instead of a stock and without a stock, 17 it would not be intended to be fired from the 18 shoulder and thus not a rifle. 19 (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, 20 Ex. A to Lake Dec.)	2. Undisputed.
18 3. The Title 1 was a long gun. “Long gun” means 19 any firearm that is not a handgun or a machine 20 gun. 21 (SAC, ¶¶ 23-24, Pen. Code, § 16865.)	3. Disputed as to accuracy insofar that the Franklin Armory, Inc. (“FAI”) model Title 1 “is” a long gun, not “was” a long gun. Otherwise, undisputed.
21 4. On August 6, 2020, the legislature passed SB 22 118 which included amending the Penal Code 23 Section 30515 definition of an assault weapon to 24 add a “centerfire firearm that is not a rifle, pistol, 25 or shotgun” that includes components in three 26 categories. (Pen. Code, § 30515 (a)(9)-(11).) 27 With this change in definition, the Title 1 was 28 rendered a banned assault weapon. (SAC, ¶ 112, Mendoza Dec. i-1 11.)	4. Undisputed that on August 6, 2020, the legislature passed Senate Bill 118, which included amending the Penal Code section 30515 definition of an assault weapon to add a “centerfire firearm that is not a rifle, pistol, or shotgun” that includes components in three categories. Otherwise, disputed.  With the change in definition pursuant to Penal Code section 30515, the FAI Title 1 model firearm was classified as an “assault weapon” under California law, the sale and transfer of such are regulated in the same manner as other “assault weapons” under a more restrictive regulatory scheme but not

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<p>“banned.”</p> <p>(Pen. Code, § 30515 (a)(9)-(11); Req. Jud. Ntc., Ex. 1 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020)], pp. 60-64, Ex. 3 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020) Bill History.]</p>
<p>5. The online system for the submission of information concerning the sale and transfer of firearms is known as the Dealer Record of Sale Entry System (DES) The DES is a web-based application used by California firearms dealers to submit firearm background checks to the Department to determine if an individual is eligible to purchase, loan, or transfer a handgun, long gun, and ammunition.</p> <p>(Cal. Code Regs., tit. 11, § 4200; citing Pen. Code, § 28205, Mendoza Dec., ¶ 3.)</p>	<p>5. Undisputed.</p>
<p>6. The alleged defect in the DES was that the gun type drop-down menu for long guns that a dealer would select from while processing a transfer included only options for rifle, shotgun, or rifle/shotgun combination. Plaintiff alleges that since the Title 1 was not a “rifle” under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an “other” option to this drop-down menu.</p> <p>(SAC, ¶¶ 58 69, Ex C)j. jacobo</p>	<p>6. Disputed.</p> <p>The alleged defect within the DES is that its design failed to permit the transfer of the FAI model Title 1 firearm. This design flaw was made apparent because the gun-type drop-down menu for long guns from which a dealer would select while processing a transfer was limited to include only options for rifle, shotgun, or rifle/shotgun combination, and not other types of firearms such as the FAI model Title 1 firearm.</p> <p>Plaintiff does not allege that since the Title 1 was not a “rifle” under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an “other” option to this drop-down menu. Modifying the DES to add an “other” option was but one way the Defendants could correct the issue to allow the DES to facilitate the transfer of the FAI model Title 1.</p> <p>(SAC, ¶¶ 58 69, Ex C; Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], p. 3.)</p>
<p>7. The SAC does not identify any statute or other authority that requires that a firearm being processed for transfer in the DES fit the statutory definition of “rifle” in order to be processed as such.</p>	<p>7. Disputed.</p> <p>Under California Code of Regulations, title 11, § 4210, subdivision (b)(1)(6), firearm dealers are prohibited from entering inaccurate information within the system. Because dealers cannot accurately submit the</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>(SAC.)</p>	<p>required information through the DES for “long guns” that “firearms with an undefined subtype,” they are prohibited from processing and accepting applications from purchasers of said firearms. (Pen. Code, § 28215, subd. (c).)</p> <p>(SAC at ¶¶ 61-62.)</p>
<p>8. Mr. Jacobson testified that there was no mention of any issue with the DES in the Sacramento action filed by Franklin Armory against the State and former Attorney General Becerra regarding the Title 1 and that he was unaware of any issue with the DES during that time. He testified that during the time the Sacramento action was pending, no one ever expressed concern that the Title 1 could not be processed in the DES because it was not a rifle.</p> <p>(Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>	<p>8. Disputed.</p> <p>Jay Jacobson testified that he “did not believe there is” any mention of any issue with the DES in any of the complaints for the Sacramento action, which sought only declaratory relief establishing that the Title 1 was not an “assault weapon” under California law, as it was unknown to Jay Jacobson until a month after the Sacramento matter was dismissed.</p> <p>(Lake Decl, Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>
<p>9. Mr. Jacobson testified as to his understanding that stockless firearms were processed in the DES as rifles or shotguns respectively even though they did not meet the statutory definition for rifle or shotgun.</p> <p>(Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8.)</p>	<p>9. Disputed.</p> <p>Jay Jacobson testified that he was informed by Blake Graham that Mossberg Cruisers had been processed through the DES as shotguns, even though Mossberg Cruisers do not have a stock. He further testified that it would be fair to say, based on anecdotal information he had received from some dealers, that some lower receivers, barreled receivers, and pistol grip shotguns had been processed through the DES as either rifles or shotguns.</p> <p>This was limited, however, to only certain firearms using a specific method involving the use of the “Comment” section within the DES. The DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in California and how, in spite of Plaintiff’s <i>repeated</i> requests for guidance.</p> <p>(Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Jacobson Decl., ¶¶ 8-9 &amp; Ex. 8 [Emails between Jay Jacobson and firearms.bureau@doj.ca.gov (Oct. 8, 2019 – Oct. 21, 2019)]; Davis Decl., Ex. 4 [Letter</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<p>from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; David Decl., Ex. 5 [Emails between Jason A. Davis and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 6 [Email from Jason A. Davis, Counsel for Franklin Armory, Inc., to Luis Lopez, Robert Wilson, and Xavier Becerra, California Department of Justice (March 30, 2020)]; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 141:1-25; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], p. 176:4-21; Mendoza Decl., ¶10.)</p>
<p>10. Mr. Jacobson testified that the process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. The purchaser then would go into the dealer and provide background information for the background check that would then be transmitted to the Department.</p> <p>(Jacobson Dep. p. 154:24-156:18; see also SAC, ¶¶ 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1), Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).)</p>	<p>10. Undisputed as to FAI products that are ordered online. Otherwise, disputed.</p> <p>If purchased in-store, no law requires the purchases to be paid in full before beginning the background check; the balance may be paid upon pickup following the 10-day waiting period mandated by Penal Code § 26815.</p>
<p>11. Plaintiff does not allege that anyone ever purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Plaintiff alleges that individuals “placed deposits” for the Title 1 firearm.</p> <p>(SAC, ¶ 113.)</p>	<p>11. Undisputed.</p>
<p>12. Mr. Jacobson testified that the online deposits were for \$5.00 and that the \$5.00 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title I without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately August 6, 2020.</p> <p>(Jacobson Dep. p. 116: 1-117: 17, 122:6- 123: 12,</p>	<p>12. Undisputed that Jay Jacobson testified that FAI did accept refundable \$5.00 deposits online. Otherwise, disputed.</p> <p>Deposit amounts for the FAI Title 1 model firearm were between \$5 dollars and the full purchase price.</p> <p>(Jacobson Decl., ¶ 10 &amp; Ex.10.)</p> <p>When asked whether the full purchase price appeared on the screen, Mr. Jacobson confirmed that the full purchase price <i>did</i> appear on the screen when a customer went to FAI’s website to make a deposit for the</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>124:11-20, 147:17-23, 130:12-131:1.)</p>	<p>purchase of a FAI Title 1 model firearm.</p> <p>Mr. Jacobson testified only that, “off the top of his head,” he believed the full purchase price of the FAI Title 1 model firearm was \$944.99.</p> <p>Mr. Jacobson testified that the list of deposits “demonstrates . . . that we had these orders that we were going to ship.” But he testified that they were then “unable to ship” the Title 1 firearms for which deposits were placed due to the DOJ’s refusal to correct the DES defect that prohibited the processing of transfers for the FAI Title 1 model firearm.</p> <p>(Barvir Decl., Ex. 16 [Jacobson Dep. (Nov. 14, 2023), p. 116: 1-117: 17, 122:6- 123: 12, 124:11-20, 147:17-23, 130:12-131:1; see also Jacobson Decl., ¶¶ 10-11 &amp; Ex. 10)</p> <p>Objection was entered to this line of questioning as it called for a legal conclusion.</p> <p>(Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), p. 117:6-9.)</p>
<p>13. The issue regarding the Title 1 was first brought to the attention of Bureau Director Allison Mendoza in the latter part of 2019. Prior to becoming Director in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March, 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau’s Regulatory ranch including management and oversight of the DES. It is Director Mendoza’s understanding that the three options in the “Gun Type” drop-down menu in the DES “Dealer Long Gun Sale” transaction type (rifle, rifle/shotgun combination, or shotgun) had remained the same since she became Assistant Bureau Chief in 2015.</p> <p>(Mendoza Dec., ¶¶ 1-3, 6-7.)</p>	<p>13. Undisputed.</p>
<p>14. Director Mendoza states that at some point after the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an “other” option in the “Gun Type” dropdown menu in the “Dealer Long Gun Sale” transaction type. This review required the leadership of the Bureau, in collaboration with the Department’s Application</p>	<p>14. Undisputed that Director Mendoza gave this testimony, otherwise disputed.</p> <p>Director Mendoza testified at her deposition that she didn’t recall a decision that the change would not be made in 2020, and that she was not familiar with what specific level of priority was given to the project to add an</p>

<p>1 Development Bureau (ADB) and the 2 Department’s attorneys, to engage in a balancing 3 of multiple factors and a weighing of competing 4 priorities among the multiple proposed DES 5 enhancement requests pending at that time. The 6 Department also evaluated and weighed the 7 allocation of available resources to such an 8 enhancement, such as the number of personnel 9 required, budgeting of the enhancement, and the 10 time it would take to complete said enhancement. 11 The onset of the COVID-19 pandemic in March 12 2020 presented additional difficulties in being 13 able to staff such a DES enhancement. 14 15 (Mendoza Dec., ¶¶ 4-5, 8.)</p>	<p>“other” option to the dropdown menu.  (Barvir Decl., Ex. 11 [Medoza Dep. (June 7, 2024)], pp. 107:2-108:21; 109:9-13.)</p>
<p>15. ADB undertook a review of what would be 16 required to add the “other” option and reported 17 back that it would take many months to 18 implement this enhancement, and would require 19 well over a dozen personnel, many of whom 20 would have to be diverted from other projects. 21 Implementing this DES enhancement would have 22 required changes to many other applications and 23 databases in addition to the DES. 24 25 (Mendoza Dec., ¶¶ 5, 9.)</p>	<p>15. Undisputed that Director Mendoza gave this 16 testimony, otherwise disputed. At her 17 deposition, Director Mendoza could recall no 18 details about this supposed ADB review, 19 including simple distinctions such as whether 20 it was in writing or verbal.  Cheryle-Massaró-Florez testified that the 21 priority given to the project was “highly 22 critical.”  Finally, in a letter dated January 8, 2020, sent 23 to Plaintiffs’ counsel Jason Davis, the 24 Department of Justice informed Plaintiffs that 25 it is “currently implementing the 26 modifications necessary to enable DES to 27 process sales of the new Title 1 firearm.  (Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 138:4-22); Barvir Decl., Ex. 17 [Massaró-Florez Dep. 2 (Sept. 8, 2023)], pp. 36:2-13; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>16. ADB additionally explored the possibility of 21 doing a DES enhancement that was reduced in 22 scope, temporary, and applicable to only the Title 23 1 firearm. Under this proposal, a permanent 24 enhancement would be implemented at a later 25 date. ADB estimated such an enhancement would 26 take a few months. ADB also advised that this 27 proposal would present operational difficulties in 28 properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not</p>	<p>16. Undisputed that Director Mendoza gave this testimony, otherwise disputed. At her deposition, Director Mendoza could recall no details about this supposed ADB review, including simple distinctions such as whether it was in writing or verbal. The same applied to her recollection of any supposed public safety concerns.  In a letter dated January 8, 2020 sent to Plaintiffs’ counsel Jason Davis, the Department of Justice informed Plaintiffs that it is “currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm. While</p>

<p>1 immediately proceed with the temporary DES enhancement.</p> <p>2 (Mendoza Dec., ¶¶ 5, 10.)</p>	<p>she mentioned competing priorities as well, she also said the work would be done in “several months.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 138:4-22; 145:15-146:1.); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>6 17. Director Mendoza states that, after SB 118 was signed into law on August 6, 2020, which rendered the Title 1 Firearm a prohibited assault 7 weapon, the Department decided, after weighing 8 competing priorities among the multiple proposed 9 DES enhancements pending at that time in the 10 middle of the COVID-19 pandemic, to implement 11 at a later date the DES enhancement that added an 12 “other” option in the “Gun Type” drop-down 13 menu. This enhancement was completed on 14 October 1, 2021.</p> <p>(Mendoza Dec., ¶ 11)</p>	<p>17. Undisputed that Director Mendoza gave this testimony, otherwise disputed. At her deposition, Director Mendoza blamed “resource needs”, “funding”, and “COVID” for why the “other” option was not added in 2020, before SB 118 was enacted.</p> <p>In a letter dated January 8, 2020, sent to Plaintiffs’ counsel Jason Davis, the Department of Justice informed Plaintiffs that it is “currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm.</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 107:2-10); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>15 18. Cheryle Massaro-Florez, an Information 16 Technology Supervisor II who works in the 17 Bureau’s firearms software developments unit, 18 oversaw the enhancement project to add the 19 “other” option in the DES testified that the 20 project took approximately three months ending 21 on October 1, 2021. Her entire staff of at least 12 22 people worked on this project along with staff 23 from the firearms application support unit and the 24 Bureau. The project was done in four phases 25 including analysis, build, system integration and 26 testing. The project required not only 27 modifications in the DES but several other 28 applications and databases.</p> <p>(Massaro-Florez Dep. 1 (12/28/21), Ex. to Lake Dec., pp. 18:12-21, 19:2-12, 30:19- 31:10, 36:18- 37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24.)</p>	<p>18. Disputed.</p> <p>Cheryle Massaro-Florez testified that she is an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit. She also testified that, within her unit, she oversaw two separate projects to make “enhancements” to the DES to add the “other” option to dropdown list.</p> <p>She testified that the <i>first</i> enhancement was completed up to the point of beta testing and going live, but this initial enhancement was terminated for a reason unknown to her before going live. She testified that <i>second</i> enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro- Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13- 40:19, 41:18-19, 64:24-66:15; see also Barvir Decl., Ex. 14 [Levva Dep. 2 (Jan. 11, 2024)],</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	pp. 27:1-13, 28:17-31:13.)
<b>Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage</b>	
19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	19. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff's Response and Supporting Evidence re: Defendants' Material Facts Nos. 1-18.
<b>Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage</b>	
20. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	20. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff's Response and Supporting Evidence re: Defendants' Material Facts Nos. 1-18.

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiff Franklin Armory, Inc., submits the following Additional Undisputed Material Facts in Support of their Opposition to Defendants' Motion for Summary Judgment.

<b>Opposing Party Additional Undisputed Material Facts and Supporting Evidence</b>	<b>Moving Party's Response and Supporting Evidence</b>
--	--

**Third Cause of Action: Tortious Interference with Contractual Relations**

21. Plaintiff Franklin Armory, Inc. ("FAI") is a federally licensed firearms manufacturer incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a manufacturing facility in Minden, Nevada.  (Verified SAC, ¶ 1; Jacobson Decl., ¶ 1.)	
22. FAI manufactures a series of firearms that are designated by FAI with the model name "Title 1."  (Verified SAC, ¶ 2; Jacobson Decl., ¶ 2.)	
23. Under California law, the term "firearm" is defined in several ways, generally including "a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion."	

1	(Pen. Code, § 16520; Verified SAC ¶ 22.)	
2	24. The State of California further divides the	
3	term “firearm” into two types for transfer	
4	regulation: long guns and handguns. Long	
5	guns are those firearms that do not qualify as	
6	handguns. For purposes of Penal Code section	
7	26860, “ long gun” means any firearm that is	
8	not a handgun or a machinegun.	
9	(Pen. Code, § 16865.)	
10	25. The FAI Title 1 model firearm is, under	
11	California’s statutory definition, a “long gun.”	
12	(Verified SAC, ¶¶ 23-24; Pen. Code, §	
13	16865.)	
14	26. Under the firearm classification “long gun,”	
15	there are statutorily defined firearm subtypes,	
16	including but not limited to “rifles” and	
17	“shotguns.”	
18	(Pen. Code, § 17090 [defining “rifle”]; Pen.	
19	Code, § 17191 [defining “shotgun”].)	
20	27. The FAI Title 1 is a firearm lacking a	
21	statutorily defined subtype, as its overall	
22	design renders the device a “firearm,” but not	
23	a “handgun,” “rifle,” or “shotgun.”	
24	(Pen. Code, §§ 16865, 16640, 16530, 17090,	
25	17191; Verified SAC, ¶ 27; Davis Decl., Ex. 4	
26	[Letter from Jason A. Davis to Xavier Becerra	
27	(Oct. 24, 2019)], p. 3; Jacobson Decl., ¶ 2.)	
28	28. With limited exception, nearly all firearm	
29	transfers within California must be processed	
30	through a dealer licensed by the United States,	
31	California, and the local authorities to engage	
32	in the retail sale of firearms. Upon	
33	presentation of identification by a firearm	
34	purchaser, a licensed California firearms	
35	dealer <i>shall</i> transmit the information to the	
36	Department of Justice	
37	(Pen. Code, §§ 26700, 27545, 2824, subd.	
38	(d).)	
39	29. Under California law, every licensed firearms	
40	dealer shall keep a register or record of	
41	electronic or telephonic transfer in which shall	

1	be entered certain information relating to the transfer of firearms. And “[t]he Department of	
2	Justice shall prescribe the <i>form</i> of the register	
3	and the record of electronic transfer pursuant	
4	to Section 28105.”	
5	(Pen. Code, §§ 28100, 28155.)	
6	30. California law requires the Attorney General	
7	to permanently keep and properly file and	
8	maintain <i>all</i> information reported to the DOJ	
9	pursuant to any law as to <i>firearms</i> and	
10	maintain a registry thereof.	
11	Information that must be included in the	
12	registry includes the “manufacturer’s name if	
13	stamped on the firearm, model name or	
14	number if stamped on the firearm, and, if	
15	applicable, the serial number, other number (if	
16	more than one serial number is stamped on the	
17	firearm), caliber, <i>type of firearm</i> , if the	
18	firearm is new or used, barrel length, and	
19	color of the firearm, or, if the firearm is not a	
20	handgun and does not have a serial number or	
21	any identification number or mark assigned to	
22	it, that shall be noted.”	
23	(Pen. Code, § 11106, subds. (b)(1)(A),	
24	(b)(1)(D).)	
25	31. California law mandates that, for <i>all</i> firearms,	
26	the register or the record of electronic transfer	
27	<b>shall</b> contain certain information, including	
28	but not limited to the type of firearm.	
29	(Penal Code § 28160, subd. (a).)	
30	32. California law mandates that the DOJ <i>shall</i>	
31	determine the <i>method</i> by which a dealer	
32	<i>submits</i> the firearm purchaser <i>information</i> to	
33	the DOJ.	
34	(Pen. Code, § 28205, subd. (a).)	
35	33. California law mandates that electronic	
36	transfer of the required information be the	
37	sole means of transmission, though the DOJ is	
38	authorized to make limited exceptions.	
39	(Pen. Code, § 28205, subd. (c).)	
40	34. The method established by the DOJ under	
41	Penal Code section 28205, subdivision (c), for	
42	the submission of purchaser information	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>required by Penal Code section 28160, subdivision (a), is known as the Dealers Record of Sale Entry System or the DES.</p> <p>(Pen. Code, § 28205, subd. (c).); (Pen. Code, § 28155); Verified SAC ¶ 54.</p>	
<p>35. The DES is a web-based application designed, developed and maintained by the DOJ and used by firearm dealers to report the required information.</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (Jun 7, 2024)], p. 24:16-25; Barvir Decl., Ex. 13 [Graham Dep. (Mar. 26, 2024)], p. 34:16-23; 35:17-36:6; Barvir Decl., Ex. 14 [Leyva Dep. 2 (Jan. 11, 2024)], p. 20:19-21:3; Barvir Decl., Ex. 17 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], p. 33:11-18.)</p>	
<p>36. By law, firearm dealers are prohibited from entering inaccurate information within the DES.</p> <p>(Cal. Code Regs., title 11, § 4210, subd. (b)(1)(6).)</p>	
<p>37. By design, when the DES user is entering the designated information into the DES, they must enter information related to the gun type (i.e., “long gun” or “handgun”). Upon selecting “long gun,” the DES is designed to and functions to populate a subset of fields. Before October 1, 2021, if a DES user selected “long gun,” the DES populated a list of just three options: “rifle,” “rifle/shotgun,” “shotgun.” Before the DES user was permitted to proceed with the completion of the form and submission of the required information to the DOJ, the DES required the user select one of those three options. Unlike the subset of fields within the DES that populate for “Color,” “Purchaser Place of Birth,” and Seller Place of Birth,” each of which contains a catch-all option for “Other,” before October 1, 2021, the subset of fields that populated when the DES user selected “long gun” as the “gun type,” did not include the option to select “Other.” Thus, the DES system prevented licensed firearm dealers from proceeding with the submission of information to the DOJ for the sale, transfer, or loan for certain firearms, including the FAI Title I model firearm.</p>	

1	(Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], pp. 2-3; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)	
2		
3		
4		
5		
6	38. Without an alternative procedure for submission of the purchaser and firearm information established by DOJ pursuant to Penal Code section 28205, subdivision (c), the DES is the only method of submitting the necessary information to permit the lawful transfer of the undefined “firearm” subtypes.	
7		
8		
9		
10	The DOJ has authorized DES users to process certain firearms without a defined firearm subtype through the DES using the “Comment” section within the DES. The DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in California and how, in spite of Plaintiff’s repeated requests for guidance.	
11		
12		
13		
14	(Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), p. 141:1-25; Mendoza Decl., ¶10.)	
15		
16		
17		
18		
19	39. Before October 1, 2021, dealers could not accurately submit the required information through the DES for “long guns” without statutorily defined “firearm” subtypes, so they were effectively barred from accepting and processing applications from purchasers of such firearms, including FAI’s Title 1 model firearm.	
20		
21		
22		
23	(Pen. Code, § 28215, subd. (c); Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)]; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)]; Jacobson Decl., ¶¶ 4-5, 11 & Ex. 8; Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2023), pp. 74:12-25; 80:12-81:8; Barvir Decl., Ex. 16 [J. Jacobson	
24		
25		
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>Dep. (Nov. 14, 2023), pp. 118:2-11; 150:3-7; 159:11-16; .)</p>	
<p>40. While state law mandates that the “type” of firearm (e.g., “long gun” or “handgun”) must be included in the register or the record of electronic transfer, no state statute mandates that the firearm “subtype” (e.g., rifle, shotgun, rifle/shotgun combination) be included. So the DOJ could have chosen to remove the technological barrier within the DES that prevented licensed firearm dealers from processing the transfer of FAI’s Title 1 model firearms by enhancing the DES to allow the user to proceed without selecting a firearm subtype.</p> <p>(Pen. Code, §§ 28160, subd. (a), 28200-28255.)</p>	
<p>41. DOJ could have chosen to remove the technological barrier within the DES that prevented licensed firearm dealers from processing the transfer of FAI’s Title 1 model firearms by authorizing an “alternative means” of submitting the required information pursuant to the authority granted to the DOJ under Penal Code section 28205, subd. (c), including but not limited to instructing DES users to proceed by selecting preauthorized designated options and identifying the firearm as an “other” in one of the “comment” fields within the DES. The DOJ opted not to pursue that “fix.”</p> <p>(Pen. Code, § 28205, subd. (c); Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), p. 141:1-25; Mendoza Decl., ¶10.]</p>	
<p>42. FAI was notified by licensed California firearms dealers (“FFLs”) that they would not be able to process the transfer of FAI’s Title 1 model firearm through the DES because they could not accurately submit the required information for “long guns” without statutorily defined subtypes.”</p> <p>(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Barvir Decl., Ex. 16 [J. Jacobson Dep.</p>	

1	(Nov. 14, 2023)], pp. 175:7-12; 176:4-21; 177:2-8.)	
2		
3	43. The DOJ was aware that licensed firearm	
4	dealers (“FFLs”) had expressed concerns	
5	about attempting to transfer FAI’s Title 1	
6	model firearm “due to liability issues.”	
7	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3,	
8	2024)], pp. 20:17-22:12, 29:2-21, 31:15-33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 & Exs. 2 & 4 [Email from Jennifer Kim to Jason Sisney (June 24, 2020); see also Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3.)	
9	44. On or about October 24, 2019, counsel for	
10	FAI sent a letter to then-Attorney General	
11	Xavier Becerra, formally notifying him and	
12	the DOJ of the defect in the DES and the	
13	inability of FAI to transmit its Title I model	
14	firearms to their customers because of that	
15	defect.	
16	(Davis Decl., Ex. 4 [Letter from Jason A.	
17	Davis to Xavier Becerra (Oct. 24, 2019)];	
18	Verified SAC ¶ 66 & Ex. A.)	
19	45. On or about October 24, 2019, counsel for	
20	FAI sent a letter to then-Attorney General	
21	Xavier Becerra, formally notifying him and	
22	the DOJ that FAI had publicly announced the	
23	release of the Title 1 on or about October 15,	
24	2019, generating a “substantial amount of	
25	interest.” Counsel also informed Mr. Becerra	
26	that FAI was taking orders for the Title 1	
27	model firearm daily, but FAI was unable to	
28	fulfill those orders due to the DES	
	technological defect.	
	(Davis Decl., Ex. 4 [Letter from Jason A.	
	Davis to Xavier Becerra (Oct. 24, 2019)], p. 3;	
	Verified SAC, Ex. A.)	
	46. When FAI’s customers were placing orders to	
	purchase FAI Title 1 model firearms, the	
	advertised full purchase price was \$944.99.	
	But because FAI knew that the DES defect	
	prevented transfers of the Title 1, FAI offered	
	customers the opportunity to submit a	
	refundable deposit toward the purchase of a	
	Title 1 to be completed once the DES defect	
	was corrected. Payment of the deposit	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>essentially saved a “spot in line” for the deposit payors.</p> <p>(Jacobson Decl., ¶ 10, Ex. 9; Barvir Decl., Barvir Decl., Ex. 12 [Gockel Dep. (April 22, 2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17-20; 131:16-22.]</p>	
<p>47. FAI ultimately collected nearly 35,000 deposits from its thousands of customers, including licensed firearms dealers, for the purchase of Title 1 model firearms. Those deposits ranged in amount from \$5 to the full purchase price of the Title 1 model firearm.</p> <p>(Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez Decl.)</p>	
<p>48. Assuming the centerfire Title 1 model firearm could ever be lawfully transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all orders for which people paid deposits. And FAI remains committed to fulfilling those orders to this day.</p> <p>(Jacobson Decl., ¶ 11 &amp; Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 116:1-14; 124:17-20; 131:16-22.)</p>	
<p>49. The DOJ was able to modify the DES to correct a similar deficiency reported concurrently by FAI’s counsel in the same letter dated October 24, 2019, within about a month. Namely, the DES omitted the “United Arab Emirates” from the list of countries available within the DES dropdown list for the countries for place of birth was confirmed to have been corrected by the DOJ by November 26, 2019.</p> <p>(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Ex. 5 [Emails between Jason A. Davis and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)].)</p>	
<p>50. On January 8, 2020, in response to FAI’s October 24, 2019, letter, Attorney General Becerra, through Deputy Attorney General P. Patty Li, wrote to counsel for FAI, confirming receipt of FAI’s letter and informing FAI that DOJ was working to fix the DES deficiency</p>	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>the letter described.</p> <p>(Davis Decl., Ex. 7 [Letter from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel for Franklin Armory, Inc. (Jan. 8, 2020)].)</p>	
<p>51. Cheryle Massaro-Florez, an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit, testified that she oversaw two separate projects to make “enhancements” to the DES to add an “Other” option to the dropdown list for “long gun” firearm subtypes. She testified that the first enhancement was completed up to beta testing, but just before going live, that first enhancement was terminated for a reason unknown to her. She testified that the second enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-40:19, 41:18-19, 64:24-66:15 &amp; Ex. 9; see also Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], Ex. 45.)</p>	
<p>52. Just months after Deputy Attorney General Li confirmed that the DOJ was working on a fix to the DES, on May 14, 2020, the DOJ submitted Budget Change Proposal (prepared by then BOF Assistant Director Allison Mendoza) to the Department of Finance, requesting “\$128,000 Dealers’ Record of Sale Special Account in 2020-21, \$862,000 in 2021-22, and \$14,000 annually thereafter to regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun.” The proposal was “intend[ed] to fix current loopholes in statute that allow[ed] manufacturers to make weapons that circumvent the intention of assault weapon laws.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020)], Ex. 42 [May 14, 2020 Budget Change Proposal].)</p>	

<p>1 53. As part of the Budget Change Proposal, the  2 DOJ also requested “[budget] trailer bill  3 language necessary to implement this  4 proposal.” Attached to the proposal, as  5 Attachment 1, was “Proposed Trailer Bill  6 Language: Other Firearm Registration.” That  7 proposed language would ultimately be  8 adopted via Senate Bill 118 (“SB 118”).</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  2024), Ex. 42 [May 14, 2020 Budget Change  Proposal]; Barvir Decl., Ex. 15 [J. Kim Dep.  (Jan. 3, 2024)], pp. 20:17-22:12, 25:17-28:6,  29:2-21, 35:22-39:11, 49:2-50:15, 69:19-  71:18 &amp; Exs. 2 &amp; 4; Req. Jud. Ntc., Ex. 1 [SB  118], Ex. 2 [AB 88].)</p>	
<p>9 54. SB 118 was adopted by Legislature on August  10 4, 2020, and it was approved by the Governor  11 on August 6, 2020.</p> <p>(Req. Jud. Ntc., Ex. 3.)</p>	
<p>12 55. SB 118 amended the Penal Code section  13 30515 definition of an “assault weapon” to  14 include, for the first time, a “centerfire firearm  15 that is not a rifle, pistol, or shotgun” that  16 includes components in three categories.</p> <p>(Pen. Code, § 30515, subd. (a)(9)-(11); Req.  Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)</p>	
<p>17 56. Because SB 118 was adopted as a “budget  18 trailer bill,” the change in law took effect  19 immediately upon signature by the Governor  20 without the 2/3 vote of the Legislature  21 required to adopt “policy bills” as “urgency  22 legislation” and without the need to make a  23 special finding of urgency.</p> <p>(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan 3,  2024)], p. 50:14-58:9, 75:23-77:2; Cal.  Const., art. IV, § 8, subd. (b).)</p>	
<p>24 57. Allison Mendoza, the current Director of the  25 California Department of Justice, Bureau  26 Firearms, testified that she could not think of  27 another piece of firearm-related legislation  28 that was adopted via the “budget trailer bill”  process and that it was not a common  practice.</p> <p>(Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].);  Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  2020), pp. 43:10-13.]</p>	

<p>1 58. SB 118 was designed to target the FAI Title 1 2 model firearm and prevent its sale. 3 Department of Finance staffers’ 4 communications about the bill expressly 5 identified both FAI and the Title 1, and they 6 identified no other manufacturer or firearm by 7 name.</p> <p>(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 58:10-60:25, 62:25-10, 66:25- 68:24, 71:9-72:20, 75:1-77:25 &amp; Exs. 2 &amp; 4; Req. Jud. Ntc., Ex. 1 [SB 118].)</p>	
<p>8 59. It was not until October 1, 2021, that the DOJ 9 finally completed the “enhancement” to the 10 DES adding the option to select “Other” from 11 the dropdown list for “long gun” subtypes, 12 finally allowing DES users to process the 13 transfer of firearms without a defined subtype.</p> <p>Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9- 17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 &amp; Exs. 3, 6, 7, and 8.)</p>	
<p>16 60. The enhancement to the DES came too late to 17 allow for the lawful transfer of centerfire FAI 18 Title 1 model firearms, which had been 19 designated as “assault weapons” effective 20 August 6, 2020, and could not be lawfully registered with the DOJ unless they were possessed on or before September 1, 2020.</p> <p>(Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515, subd. (a)(9)-(11).)</p>	
<p>21 61. FAI could not lawfully transfer the FAI Title 22 1 model firearm to its deposit-paying 23 customers before the enactment and 24 enforcement of SB 118 (Penal Code section 25 30515, subd. (a)(9)-(11)) because the DES 26 enhancement adding “Other” to the “long 27 gun” subtype dropdown list was not made 28 until October 1, 2021.</p> <p>(Jacobson Decl., ¶ 11; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47.</p>	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & Exs. 3, 6, 7, and 8.)	
62. FAI suffered economic damage in the form of millions of dollars in lost profits because it could not lawfully complete the sale of and transfer the FAI Title 1 model firearm to its thousands of deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11).  (Jacobson Decl., ¶¶ 10-12, Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 138:19-142:14.)	
63. To date, a very small minority of the thousands of individuals who made a deposit have asked for a refund.  (Jacobson Decl., ¶ 14.)	
64. There is currently a class action lawsuit pending in federal district court, brought on behalf of the thousands of person who made earnest-money deposits for the purchase of one or more FAI Title 1 model firearms, against Attorney General Rob Bonta, Luis Lopez, and the California Department of Justice. The plaintiffs seek equitable relief, including injunctive relief ordering [d]efendants to allow ... the members of the [c]lass to submit the statutorily required firearm purchaser information through DES for, complete the transfer of, take possession of, and register pursuant to Penal Code section 30900(c) those Title 1 firearms for which they made earnest money deposits before August 6, 2020, notwithstanding the fact that these firearms were not possessed by ... the [c]lass members before September 1, 2020.”  (First Amended Complaint at 7, 40, <i>Briseno v. Bonta</i> , C.D. Cal. Case No. 21-cv-09018 (Feb. 4, 2022); Opdahl-Lopez Decl., ¶¶ 3-8.)	
<b>Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage</b>	
65. Plaintiff hereby incorporates by reference Plaintiff’s Undisputed Material Facts Nos. 21-64.	

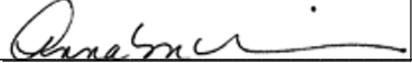
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage**

66. Plaintiff hereby incorporates by Plaintiff's Undisputed Material Facts Nos. 21-64.

Date: June 26, 2024

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



Anna M. Barvir  
Attorneys for Petitioners-Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.



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

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

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.

Case No.: 20STCP01747

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

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY  
ADJUDICATION**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

Department: 32

Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020

FPC Date: August 8, 2024

Trial Date: August 20, 2024

1 In accordance with California Rule of Court 3.1350 and California Code of Civil Procedure  
 2 section 437c, Petitioner-Plaintiff Franklin Armory, Inc., submits the following Response to Defendants'  
 3 Separate Statement of Undisputed Material Facts in support of their Motion for Summary Adjudication.

4 ISSUE NO. 1 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
 5 AS TO THE THIRD ALLEGED CAUSE OF ACTION FOR TORTIOUS  
 6 INTERFERENCE WITH CONTRACTUAL RELATIONS

7 <b>Moving Party's Undisputed Material Facts and Alleged Supporting Evidence</b>	8 <b>Opposing Party's Response and Supporting Evidence</b>
9 1. The Second Amended Complaint (SAC) 10 alleges that on October 24, 2019, plaintiff sent a 11 letter to former Attorney General Becerra, 12 asserting that a defect in the Department of 13 Justice (Department) online system for processing transfers of firearms rendered dealers unable to transfer its recently announced Title 1 firearm to its customers. (SAC, ¶ 69, Ex. C.)	1. Undisputed.
14 2. Jay Jacobson, President and an owner of 15 Franklin Armory, testified that the Title 1 was 16 designed with a 16 inch barrel and a padded 17 buffer tube instead of a stock and without a stock, it would not be intended to be fired from the shoulder and thus not a rifle. (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, 18 Ex. A to Lake Dec.)	2. Undisputed.
19 3. The Title 1 was a long gun. "Long gun" means 20 any firearm that is not a handgun or a machine gun. (SAC, ¶¶ 23-24, Pen. Code, § 16865.)	3. Disputed as to accuracy insofar that the Franklin Armory, Inc. ("FAI") model Title 1 "is" a long gun, not "was" a long gun. Otherwise, undisputed.
22 4. On August 6, 2020, the legislature passed SB 23 118 which included amending the Penal Code 24 Section 30515 definition of an assault weapon to add a "centerfire firearm that is not a rifle, pistol, 25 or shotgun" that includes components in three categories. (Pen. Code, § 30515 (a)(9)-(11).) 26 With this change in definition, the Title 1 was rendered a banned assault weapon. (SAC, ¶ 112, Mendoza Dec. i-1 11.)	4. Undisputed that on August 6, 2020, the legislature passed Senate Bill 118, which included amending the Penal Code section 30515 definition of an assault weapon to add a "centerfire firearm that is not a rifle, pistol, or 27 shotgun" that includes components in three categories. Otherwise, disputed. 28 With the change in definition pursuant to Penal Code section 30515, the FAI Title 1 model firearm was classified as an "assault weapon" under California law, the sale and transfer of such are regulated in the same manner as other "assault

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>weapons” under a more restrictive regulatory scheme but not “banned.”</p> <p>(Pen. Code, § 30515 (a)(9)-(11); Req. Jud. Ntc., Ex. 1 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020)], pp. 60-64, Ex. 3 [Sen. B. 118, 2019-2020 Reg. Sess. (Cal. 2020) Bill History.]</p>
<p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>5. Undisputed.</p>
<p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>6. Disputed.</p> <p>The alleged defect within the DES is that its design failed to permit the transfer of the FAI model Title 1 firearm. This design flaw was made apparent because the gun-type drop-down menu for long guns from which a dealer would select while processing a transfer was limited to include only options for rifle, shotgun, or rifle/shotgun combination, and not other types of firearms such as the FAI model Title 1 firearm.</p> <p>Plaintiff does not allege that since the Title 1 was not a “rifle” under the statutory definition, a dealer could not process a Title 1 for transfer unless the DES was modified to add an “other” option to this drop-down menu.</p> <p>(SAC, ¶¶ 58 69, Ex C)j. jacobo</p> <p>(SAC, ¶¶ 58 69, Ex C; Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], p. 3.)</p>
<p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>7. Disputed.</p> <p>Under California Code of Regulations, title 11, § 4210, subdivision (b)(1)(6), firearm dealers are prohibited from entering inaccurate information within the system. Because dealers cannot accurately submit the required information through the DES for “long guns” that “firearms</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>with an undefined subtype,” they are prohibited from processing and accepting applications from purchasers of said firearms. (Pen. Code, § 28215, subd. (c).)</p> <p>(SAC at ¶¶ 61-62.)</p>
<p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>8. Disputed.</p> <p>Jay Jacobson testified that he “did not believe there is” any mention of any issue with the DES in any of the complaints for the Sacramento action, which sought only declaratory relief establishing that the Title 1 was not an “assault weapon” under California law, as it was unknown to Jay Jacobson until a month after the Sacramento matter was dismissed.</p> <p>(Lake Decl, Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 96:10-19, 97:6-19.)</p>
<p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>9. Disputed.</p> <p>Jay Jacobson testified that he was informed by Blake Graham that Mossberg Cruisers had been processed through the DES as shotguns, even though Mossberg Cruisers do not have a stock. He further testified that it would be fair to say, based on anecdotal information he had received from some dealers, that some lower receivers, barreled receivers, and pistol grip shotguns had been processed through the DES as either rifles or shotguns.</p> <p>This was limited, however, to only certain firearms using a specific method involving the use of the “Comment” section within the DES. The DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in California and how, in spite of Plaintiff’s <i>repeated</i> requests for guidance.</p> <p>(Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Jacobson Decl., ¶¶ 8-9 &amp; Ex. 8 [Emails between Jay Jacobson and firearms.bureau@doj.ca.gov (Oct. 8, 2019 – Oct. 21, 2019)]; Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; David Decl., Ex. 5 [Emails between Jason A. Davis and Robert Wilson &amp; P. Patty Li (Nov. 15,</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>2019-Nov. 26, 2019)]; Davis Decl., Ex. 6 [Email from Jason A. Davis, Counsel for Franklin Armory, Inc., to Luis Lopez, Robert Wilson, and Xavier Becerra, California Department of Justice (March 30, 2020)]; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 141:1-25; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], p. 176:4-21; Mendoza Decl., ¶10.)</p>
<p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>10. Mr. Jacobson testified that the process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. The purchaser then would go into the dealer and provide background information for the background check that would then be transmitted to the Department.</p> <p>(Jacobson Dep. p. 154:24-156:18; see also SAC, ¶¶ 3, 35; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1.), Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).)</p>	<p>10. Undisputed as to FAI products that are ordered online. Otherwise, disputed.</p> <p>If purchased in-store, no law requires the purchases to be paid in full before beginning the background check; the balance may be paid upon pickup following the 10-day waiting period mandated by Penal Code § 26815.</p>
<p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>11. Plaintiff does not allege that anyone ever purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Plaintiff alleges that individuals “placed deposits” for the Title 1 firearm.</p> <p>(SAC, ¶ 113.)</p>	<p>11. Undisputed.</p>
<p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>12. Mr. Jacobson testified that the online deposits were for \$5.00 and that the \$5.00 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not appear on the screen. The price of the Title 1 was \$944.99. Mr. Jacobson testified that plaintiff solicited submission of the deposits for the Title I without the intent of actually shipping them at that point in time. Plaintiff stopped taking deposits on approximately August 6, 2020.</p> <p>(Jacobson Dep. p. 116: 1-117: 17, 122:6- 123: 12, 124:11-20, 147:17-23, 130:12-131:1.)</p>	<p>12. Undisputed that Jay Jacobson testified that FAI did accept refundable \$5.00 deposits online. Otherwise, disputed.</p> <p>Deposit amounts for the FAI Title 1 model firearm were between \$5 dollars and the full purchase price.</p> <p>(Jacobson Decl., ¶ 10 &amp; Ex.10.)</p> <p>When asked whether the full purchase price appeared on the screen, Mr. Jacobson confirmed that the full purchase price <i>did</i> appear on the screen when a customer went to FAI’s website to make a deposit for the purchase of a FAI Title 1 model firearm.</p> <p>Mr. Jacobson testified only that, “off the top of his head,” he believed the full purchase price of</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<p>the FAI Title 1 model firearm was \$944.99.</p> <p>Mr. Jacobson testified that the list of deposits “demonstrates . . . that we had these orders that we were going to ship.” But he testified that they were then “unable to ship” the Title 1 firearms for which deposits were placed due to the DOJ’s refusal to correct the DES defect that prohibited the processing of transfers for the FAI Title 1 model firearm.</p> <p>(Barvir Decl., Ex. 16 [Jacobson Dep. (Nov. 14, 2023), p. 116: 1-117: 17, 122:6- 123: 12, 124:11-20, 147:17-23, 130:12-131:1; see also Jacobson Decl., ¶¶ 10-11 &amp; Ex. 10)</p> <p>Objection was entered to this line of questioning as it called for a legal conclusion.</p> <p>(Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), p. 117:6-9.)</p>
<p>13. The issue regarding the Title 1 was first brought to the attention of Bureau Director Allison Mendoza in the latter part of 2019. Prior to becoming Director in March, 2023, Director Mendoza served as Assistant Bureau Chief from 2015 until March, 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau’s Regulatory ranch including management and oversight of the DES. It is Director Mendoza’s understanding that the three options in the “Gun Type” drop-down menu in the DES “Dealer Long Gun Sale” transaction type (rifle, rifle/shotgun combination, or shotgun) had remained the same since she became Assistant Bureau Chief in 2015.</p> <p>(Mendoza Dec., ¶¶ 1-3, 6-7.)</p>	<p>13. Undisputed.</p>
<p>14. Director Mendoza states that at some point after the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an “other” option in the “Gun Type” dropdown menu in the “Dealer Long Gun Sale” transaction type. This review required the leadership of the Bureau, in collaboration with the Department’s Application Development Bureau (ADB) and the Department’s attorneys, to engage in a balancing of multiple factors and a weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time. The</p>	<p>14. Undisputed that Director Mendoza gave this testimony, otherwise disputed.</p> <p>Director Mendoza testified at her deposition that she didn’t recall a decision that the change would not be made in 2020, and that she was not familiar with what specific level of priority was given to the project to add an “other” option to the dropdown menu.</p> <p>(Barvir Decl., Ex. 11 [Medoza Dep. (June 7, 2024)], pp. 107:2-108:21; 109:9-13.)</p>

<p>1 Department also evaluated and weighed the 2 allocation of available resources to such an 3 enhancement, such as the number of personnel 4 required, budgeting of the enhancement, and the 5 time it would take to complete said enhancement. 6 The onset of the COVID-19 pandemic in March 7 2020 presented additional difficulties in being 8 able to staff such a DES enhancement. 9 10 (Mendoza Dec., ¶¶ 4-5, 8.)</p>	
<p>11 15. ADB undertook a review of what would be 12 required to add the “other” option and reported 13 back that it would take many months to 14 implement this enhancement, and would require 15 well over a dozen personnel, many of whom 16 would have to be diverted from other projects. 17 Implementing this DES enhancement would have 18 required changes to many other applications and 19 databases in addition to the DES. 20 21 (Mendoza Dec., ¶¶ 5, 9.)</p>	<p>15. Undisputed that Director Mendoza gave this 16 testimony, otherwise disputed. At her deposition, 17 Director Mendoza could recall no details about 18 this supposed ADB review, including simple 19 distinctions such as whether it was in writing or 20 verbal. 21 22 Cheryle-Massaro-Florez testified that the priority 23 given to the project was “highly critical.” 24 25 Finally, in a letter dated January 8, 2020, sent to 26 Plaintiffs’ counsel Jason Davis, the Department of 27 Justice informed Plaintiffs that it is “currently 28 implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm.  (Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 138:4-22); Barvir Decl., Ex. 17 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 36:2-13; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>18 16. ADB additionally explored the possibility of 19 doing a DES enhancement that was reduced in 20 scope, temporary, and applicable to only the Title 21 1 firearm. Under this proposal, a permanent 22 enhancement would be implemented at a later 23 date. ADB estimated such an enhancement would 24 take a few months. ADB also advised that this 25 proposal would present operational difficulties in 26 properly recording the sales and transfers of the 27 Title 1 firearm in the DES until a permanent 28 enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement.  (Mendoza Dec., ¶¶ 5, 10.)</p>	<p>16. Undisputed that Director Mendoza gave this testimony, otherwise disputed. At her deposition, Director Mendoza could recall no details about this supposed ADB review, including simple distinctions such as whether it was in writing or verbal. The same applied to her recollection of any supposed public safety concerns.  In a letter dated January 8, 2020 sent to Plaintiffs’ counsel Jason Davis, the Department of Justice informed Plaintiffs that it is “currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm. While she mentioned competing priorities as well, she also said the work would be done in “several months.”  (Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 138:4-22; 145:15-146:1.); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A.</p>

1	Davis (Jan. 8, 2020)].)
<p>2 17. Director Mendoza states that, after SB 118 3 was signed into law on August 6, 2020, which 4 rendered the Title 1 Firearm a prohibited assault 5 weapon, the Department decided, after weighing 6 competing priorities among the multiple proposed 7 DES enhancements pending at that time in the 8 middle of the COVID-19 pandemic, to implement 9 at a later date the DES enhancement that added an 10 “other” option in the “Gun Type” drop-down 11 menu. This enhancement was completed on 12 October 1, 2021. 13 14 (Mendoza Dec., ¶ 11)</p>	<p>17. Undisputed that Director Mendoza gave this testimony, otherwise disputed. At her deposition, Director Mendoza blamed “resource needs”, “funding”, and “COVID” for why the “other” option was not added in 2020, before SB 118 was enacted.</p> <p>In a letter dated January 8, 2020, sent to Plaintiffs’ counsel Jason Davis, the Department of Justice informed Plaintiffs that it is “currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm.</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], p. 107:2-10); Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>
<p>18. Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus’ firearms software developments unit, oversaw the enhancement project to add the “other” option in the DES testified that the project took approximately three months ending on October 1, 2021. Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. The project was done in four phases including analysis, build, system integration and testing. The project required not only modifications in the DES but several other applications and databases.</p> <p>(Massaro-Florez Dep. 1 (12/28/21), Ex. to Lake Dec., pp. 18:12-21, 19:2-12, 30:19- 31:10, 36:18- 37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24.)</p>	<p>18. Disputed.</p> <p>Cheryle Massaro-Florez testified that she is an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit. She also testified that, within her unit, she oversaw two separate projects to make “enhancements” to the DES to add the “other” option to dropdown list.</p> <p>She testified that the <i>first</i> enhancement was completed up to the point of beta testing and going live, but this initial enhancement was terminated for a reason unknown to her before going live. She testified that <i>second</i> enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25- 69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl, Ex. 18 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-40:19, 41:18-19, 64:24-66:15; see also Barvir Decl., Ex. 14 [Leyva Dep. 2 (Jan. 11, 2024)], pp. 27:1-13, 28:17-31:13.)</p>

26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ISSUE NO. 2 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
AS TO THE FOURTH ALLEGED CAUSE OF ACTION FOR TORTIOUS  
INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

19. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	19. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff’s Response and Supporting Evidence re: Defendants’ Material Facts Nos. 1-18.
---	---

ISSUE NO. 3 - DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT  
AS TO THE FIFTH ALLEGED CAUSE OF ACTION FOR NEGLIGENT  
INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

20. Defendants hereby incorporate by reference as though fully set forth hereat undisputed material facts nos. 1-18	20. Plaintiff hereby incorporates by reference as though fully set forth Plaintiff’s Response and Supporting Evidence re: Defendants’ Material Facts Nos. 1-18.
---	---

Under Code of Civil Procedure section 437c, subdivision (b), and California Rules of Court, rule 3.1350, Plaintiff Franklin Armory, Inc., submits the following Additional Undisputed Material Facts in Support of their Opposition to Defendants’ Motion for Summary Adjudication.

<b>Opposing Party Additional Undisputed Material Facts and Supporting Evidence</b>	<b>Moving Party’s Response and Supporting Evidence</b>
--	--

**Third Cause of Action: Tortious Interference with Contractual Relations**

21. Plaintiff Franklin Armory, Inc. (“FAI”) is a federally licensed firearms manufacturer incorporated under the laws of Nevada with its principal place of business in Minden, Nevada and a manufacturing facility in Minden, Nevada.  (Verified SAC, ¶ 1; Jacobson Decl., ¶ 1.)	
22. FAI manufactures a series of firearms that are designated by FAI with the model name “Title 1.”  (Verified SAC, ¶ 2; Jacobson Decl., ¶ 2.)	
23. Under California law, the term “firearm” is defined in several ways, generally including	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>“a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”</p> <p>(Pen. Code, § 16520; Verified SAC ¶ 22.)</p>	
<p>24. The State of California further divides the term “firearm” into two types for transfer regulation: long guns and handguns. Long guns are those firearms that do not qualify as handguns. For purposes of Penal Code section 26860, “long gun” means any firearm that is not a handgun or a machinegun.</p> <p>(Pen. Code, § 16865.)</p>	
<p>25. The FAI Title 1 model firearm is, under California’s statutory definition, a “long gun.”</p> <p>(Verified SAC, ¶¶ 23-24; Pen. Code, § 16865.)</p>	
<p>26. Under the firearm classification “long gun,” there are statutorily defined firearm subtypes, including but not limited to “rifles” and “shotguns.”</p> <p>(Pen. Code, § 17090 [defining “rifle”]; Pen. Code, § 17191 [defining “shotgun”].)</p>	
<p>27. The FAI Title 1 is a firearm lacking a statutorily defined subtype, as its overall design renders the device a “firearm,” but not a “handgun,” “rifle,” or “shotgun.”</p> <p>(Pen. Code, §§ 16865, 16640, 16530, 17090, 17191; Verified SAC, ¶ 27; Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Jacobson Decl., ¶ 2.)</p>	
<p>28. With limited exception, nearly all firearm transfers within California must be processed through a dealer licensed by the United States, California, and the local authorities to engage in the retail sale of firearms. Upon presentation of identification by a firearm purchaser, a licensed California firearms dealer <i>shall</i> transmit the information to the Department of Justice</p>	

1	(Pen. Code, §§ 26700, 27545, 2824, subd. (d).)	
2		
3	29. Under California law, every licensed firearms dealer shall keep a register or record of electronic or telephonic transfer in which shall be entered certain information relating to the transfer of firearms. And “[t]he Department of Justice shall prescribe the <i>form</i> of the register and the record of electronic transfer pursuant to Section 28105.”	
4		
5		
6		
7	(Pen. Code, §§ 28100, 28155.)	
8	30. California law requires the Attorney General to permanently keep and properly file and maintain <i>all</i> information reported to the DOJ pursuant to any law as to <i>firearms</i> and maintain a registry thereof.	
9		
10		
11	Information that must be included in the registry includes the “manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, <i>type of firearm</i> , if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.”	
12		
13		
14		
15		
16		
17		
18	(Pen. Code, § 11106, subs. (b)(1)(A), (b)(1)(D).)	
19	31. California law mandates that, for <i>all</i> firearms, the register or the record of electronic transfer <i>shall</i> contain certain information, including but not limited to the type of firearm.	
20		
21		
22	(Penal Code § 28160, subd. (a).)	
23	32. California law mandates that the DOJ <i>shall</i> determine the <i>method</i> by which a dealer <i>submits</i> the firearm purchaser <i>information</i> to the DOJ.	
24		
25	(Pen. Code, § 28205, subd. (a).)	
26	33. California law mandates that electronic transfer of the required information be the sole means of transmission, though the DOJ is authorized to make limited exceptions.	
27		
28		

1	(Pen. Code, § 28205, subd. (c).)	
2	34. The method established by the DOJ under	
3	Penal Code section 28205, subdivision (c), for	
4	the submission of purchaser information	
5	required by Penal Code section 28160,	
6	subdivision (a), is known as the Dealers	
	Record of Sale Entry System or the DES.	
	(Pen. Code, § 28205, subd. (c).); (Pen. Code,	
	§ 28155); Verified SAC ¶ 54.	
7	35. The DES is a web-based application designed,	
8	developed and maintained by the DOJ and	
9	used by firearm dealers to report the required	
	information.	
	(Barvir Decl., Ex. 11 [Mendoza Dep. (Jun 7,	
10	2024)], p. 24:16-25; Barvir Decl., Ex. 13	
11	[Graham Dep. (Mar. 26, 2024)], p. 34:16-23;	
12	35:17-36:6; Barvir Decl., Ex. 14 [Leyva Dep.	
13	2 (Jan. 11, 2024)], p. 20:19-21:3; Barvir	
	Decl., Ex. 17 [Massaro-Florez Dep. 1 (Dec.	
	28, 2021)], p. 33:11-18.)	
14	36. By law, firearm dealers are prohibited from	
15	entering inaccurate information within the	
16	DES.	
	(Cal. Code Regs., title 11, § 4210, subd.	
	(b)(1)(6).)	
17	37. By design, when the DES user is entering the	
18	designated information into the DES, they	
19	must enter information related to the gun type	
20	(i.e., “long gun” or “handgun”). Upon	
21	selecting “long gun,” the DES is designed to	
22	and functions to populate a subset of fields.	
23	Before October 1, 2021, if a DES user	
24	selected “long gun,” the DES populated a list	
25	of just three options: “rifle,” “rifle/shotgun,”	
26	“shotgun.” Before the DES user was	
27	permitted to proceed with the completion of	
28	the form and submission of the required	
	information to the DOJ, the DES required the	
	user select one of those three options. Unlike	
	the subset of fields within the DES that	
	populate for “Color,” “Purchaser Place of	
	Birth,” and Seller Place of Birth,” each of	
	which contains a catch-all option for “Other,”	
	before October 1, 2021, the subset of fields	
	that populated when the DES user selected	
	“long gun” as the “gun type,” did not include	
	the option to select “Other.” Thus, the DES	
	system prevented licensed firearm dealers	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>from proceeding with the submission of information to the DOJ for the sale, transfer, or loan for certain firearms, including the FAI Title I model firearm.</p> <p>(Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)], pp. 2-3; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)]; Davis Decl., Ex. 7 [Letter from P. Patty Li to Jason A. Davis (Jan. 8, 2020)].)</p>	
<p>38. Without an alternative procedure for submission of the purchaser and firearm information established by DOJ pursuant to Penal Code section 28205, subdivision (c), the DES is the only method of submitting the necessary information to permit the lawful transfer of the undefined “firearm” subtypes.</p> <p>The DOJ has authorized DES users to process certain firearms without a defined firearm subtype through the DES using the “Comment” section within the DES. The DOJ remained silent as to its position on whether the FAI Title 1 model firearms could be sold in California and how, in spite of Plaintiff’s repeated requests for guidance.</p> <p>(Lake Decl., Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8; Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), p. 141:1-25; Mendoza Decl., ¶10.]</p>	
<p>39. Before October 1, 2021, dealers could not accurately submit the required information through the DES for “long guns” without statutorily defined “firearm” subtypes, so they were effectively barred from accepting and processing applications from purchasers of such firearms, including FAI’s Title 1 model firearm.</p> <p>(Pen. Code, § 28215, subd. (c); Davis Decl., Ex. 4 [J. Davis Letter to Attorney General X. Becerra (Oct. 24, 2019)]; Davis Decl., Ex. 6 [Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson &amp; P. Patty Li (Nov. 15, 2019-Nov. 26, 2019)];</p>	

<p>1 Davis Decl., Ex. 7 [Letter from P. Patty Li to  2 Jason A. Davis (Jan. 8, 2020)]; Jacobson  3 Decl., ¶¶ 4-5, 11 &amp; Ex. 8; Barvir Decl., Ex. 12  4 [Gockel Dep. (April 22, 2023), pp. 74:12-25;  80:12-81:8; Barvir Decl., Ex. 16 [J. Jacobson  5 Dep. (Nov. 14, 2023), pp. 118:2-11; 150:3-7;  6 159:11-16; .)</p>	
<p>5 40. While state law mandates that the “type” of  6 firearm (e.g., “long gun” or “handgun”) must  7 be included in the register or the record of  8 electronic transfer, no state statute mandates  9 that the firearm “subtype” (e.g., rifle, shotgun,  10 rifle/shotgun combination) be included. So the  11 DOJ could have chosen to remove the  12 technological barrier within the DES that  13 prevented licensed firearm dealers from  14 processing the transfer of FAI’s Title 1 model  15 firearms by enhancing the DES to allow the  16 user to proceed without selecting a firearm  17 subtype.  18  19 (Pen. Code, §§ 28160, subd. (a), 28200-  20 28255.)</p>	
<p>14 41. DOJ could have chosen to remove the  15 technological barrier within the DES that  16 prevented licensed firearm dealers from  17 processing the transfer of FAI’s Title 1 model  18 firearms by authorizing an “alternative  19 means” of submitting the required information  20 pursuant to the authority granted to the DOJ  21 under Penal Code section 28205, subd. (c),  22 including but not limited to instructing DES  23 users to proceed by selecting preauthorized  24 designated options and identifying the firearm  25 as an “other” in one of the “comment” fields  26 within the DES. The DOJ opted not to pursue  27 that “fix.”  28  29 (Pen. Code, § 28205, subd. (c); Lake Decl.,  30 Ex. A [J. Jacobson Dep. (Nov. 14, 2023)], pp.  31 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25,  32 60:21-61:8; Barvir Decl., Ex. 16 [J. Jacobson  33 Dep. (Nov. 14, 2023), pp. 40:16-25, 45:8-25  34 50:19-51:1, 57:6-58:10, 56:8-25, 60:21-61:8;  35 Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,  36 2024), p. 141:1-25; Mendoza Decl., ¶10.)</p>	
<p>26 42. FAI was notified by licensed California  27 firearms dealers (“FFLs”) that they would not  28 be able to process the transfer of FAI’s Title 1  29 model firearm through the DES because they  30 could not accurately submit the required  31 information for “long guns” without</p>	

1	statutorily defined subtypes.”	
2	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 175:7-12; 176:4-21; 177:2-8.)	
3		
4		
5	43. The DOJ was aware that licensed firearm dealers (“FFLs”) had expressed concerns about attempting to transfer FAI’s Title 1 model firearm “due to liability issues.”	
6		
7	(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 29:2-21, 31:15-33:11, 42:20-43:18, 47:16-48:11, 49:2-50:15 & Exs. 2 & 4 [Email from Jennifer Kim to Jason Sisney (June 24, 2020); see also Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3.)	
8		
9		
10		
11		
12	44. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ of the defect in the DES and the inability of FAI to transmit its Title I model firearms to their customers because of that defect.	
13		
14		
15		
16	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)]; Verified SAC ¶ 66 & Ex. A.)	
17		
18	45. On or about October 24, 2019, counsel for FAI sent a letter to then-Attorney General Xavier Becerra, formally notifying him and the DOJ that FAI had publicly announced the release of the Title 1 on or about October 15, 2019, generating a “substantial amount of interest.” Counsel also informed Mr. Becerra that FAI was taking orders for the Title 1 model firearm daily, but FAI was unable to fulfill those orders due to the DES technological defect.	
19		
20		
21		
22		
23		
24	(Davis Decl., Ex. 4 [Letter from Jason A. Davis to Xavier Becerra (Oct. 24, 2019)], p. 3; Verified SAC, Ex. A.)	
25		
26	46. When FAI’s customers were placing orders to purchase FAI Title 1 model firearms, the advertised full purchase price was \$944.99. But because FAI knew that the DES defect prevented transfers of the Title 1, FAI offered	
27		
28		

1	customers the opportunity to submit a	
2	refundable deposit toward the purchase of a	
3	Title 1 to be completed once the DES defect	
4	was corrected. Payment of the deposit	
5	essentially saved a “spot in line” for the	
6	deposit payors.	
7	(Jacobson Decl, ¶ 10, Ex. 9; Barvir Decl.,	
8	Barvir Decl., Ex. 12 [Gockel Dep. (April 22,	
9	2024)], pp. 48:19-49:7; Ex. 16 [J. Jacobson	
10	Dep. (Nov. 14, 2023), pp. 116:1-14; 124:17-	
11	20; 131:16-22.)	
12		
13	47. FAI ultimately collected nearly 35,000	
14	deposits from its thousands of customers,	
15	including licensed firearms dealers, for the	
16	purchase of Title 1 model firearms. Those	
17	deposits ranged in amount from \$5 to the full	
18	purchase price of the Title 1 model firearm.	
19	(Jacobson Decl., ¶ 10; see, e.g., Opdahl-Lopez	
20	Decl.)	
21		
22	48. Assuming the centerfire Title 1 model firearm	
23	could ever be lawfully transferred in	
24	California, FAI was committed at the time it	
25	accepted deposits from customers to fulfill all	
26	orders for which people paid deposits. And	
27	FAI remains committed to fulfilling those	
28	orders to this day.	
29	(Jacobson Decl., ¶ 11 & Ex. 10; Barvir Decl.,	
30	Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp.	
31	116:1-14; 124:17-20; 131:16-22.)	
32		
33	49. The DOJ was able to modify the DES to	
34	correct a similar deficiency reported	
35	concurrently by FAI’s counsel in the same	
36	letter dated October 24, 2019, within about a	
37	month. Namely, the DES omitted the “United	
38	Arab Emirates” from the list of countries	
39	available within the DES dropdown list for	
40	the countries for place of birth was confirmed	
41	to have been corrected by the DOJ by	
42	November 26, 2019.	
43	(Davis Decl., Ex. 4 [Letter from Jason A.	
44	Davis to Xavier Becerra (Oct. 24, 2019)]; Ex.	
45	5 [Emails between Jason A. Davis and Robert	
46	Wilson & P. Patty Li (Nov. 15, 2019-Nov. 26,	
47	2019)].)	
48		
49	50. On January 8, 2020, in response to FAI’s	
50	October 24, 2019, letter, Attorney General	

<p>1 2 3 4 5 6</p>	<p>Becerra, through Deputy Attorney General P. Patty Li, wrote to counsel for FAI, confirming receipt of FAI’s letter and informing FAI that DOJ was working to fix the DES deficiency the letter described.</p> <p>(Davis Decl., Ex. 7 [Letter from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel for Franklin Armory, Inc. (Jan. 8, 2020)].)</p>	
<p>7 8 9 10 11 12 13 14 15 16 17 18 19</p>	<p>51. Cheryle Massaro-Florez, an Informational Technology Supervisor who works in the Bureau of Firearms’ firearm software development unit, testified that she oversaw two separate projects to make “enhancements” to the DES to add an “Other” option to the dropdown list for “long gun” firearm subtypes. She testified that the first enhancement was completed up to beta testing, but just before going live, that first enhancement was terminated for a reason unknown to her. She testified that the second enhancement took about three months to complete, ending on October 1, 2021.</p> <p>(Lake Decl., Ex. C [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 18:12-21, 19:2-12, 30:19-31:10, 36:18-37:25, 57:14-60:11, 61:13-62:5, 68:25-69:10, 91:3-92:21, 94:6-24, 103:5-106:6; Barvir Decl., Ex. 18 [Massaro-Florez Dep. 2 (Sept. 8, 2023)], pp. 38:13-40:19, 41:18-19, 64:24-66:15 &amp; Ex. 9; see also Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], Ex. 45.)</p>	
<p>20 21 22 23 24 25 26 27 28</p>	<p>52. Just months after Deputy Attorney General Li confirmed that the DOJ was working on a fix to the DES, on May 14, 2020, the DOJ submitted Budget Change Proposal (prepared by then BOF Assistant Director Allison Mendoza) to the Department of Finance, requesting “\$128,000 Dealers’ Record of Sale Special Account in 2020-21, \$862,000 in 2021-22, and \$14,000 annually thereafter to regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun.” The proposal was “intend[ed] to fix current loopholes in statute that allow[ed] manufacturers to make weapons that circumvent the intention of assault weapon laws.”</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7,</p>	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>2020), Ex. 42 [May 14, 2020 Budget Change Proposal].)</p>	
<p>53. As part of the Budget Change Proposal, the DOJ also requested “[budget] trailer bill language necessary to implement this proposal.” Attached to the proposal, as Attachment 1, was “Proposed Trailer Bill Language: Other Firearm Registration.” That proposed language would ultimately be adopted via Senate Bill 118 (“SB 118”).</p> <p>(Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024), Ex. 42 [May 14, 2020 Budget Change Proposal]; Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 20:17-22:12, 25:17-28:6, 29:2-21, 35:22-39:11, 49:2-50:15, 69:19-71:18 &amp; Exs. 2 &amp; 4; Req. Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)</p>	
<p>54. SB 118 was adopted by Legislature on August 4, 2020, and it was approved by the Governor on August 6, 2020.</p> <p>(Req. Jud. Ntc., Ex. 3.)</p>	
<p>55. SB 118 amended the Penal Code section 30515 definition of an “assault weapon” to include, for the first time, a “centerfire firearm that is not a rifle, pistol, or shotgun” that includes components in three categories.</p> <p>(Pen. Code, § 30515, subd. (a)(9)-(11); Req. Jud. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].)</p>	
<p>56. Because SB 118 was adopted as a “budget trailer bill,” the change in law took effect immediately upon signature by the Governor without the 2/3 vote of the Legislature required to adopt “policy bills” as “urgency legislation” and without the need to make a special finding of urgency.</p> <p>(Barvir Decl., Ex. 15 [J. Kim Dep. (Jan 3, 2024)], p. 50:14-58:9, 75:23-77:2; Cal. Const., art. IV, § 8, subd. (b).)</p>	
<p>57. Allison Mendoza, the current Director of the California Department of Justice, Bureau Firearms, testified that she could not think of another piece of firearm-related legislation that was adopted via the “budget trailer bill” process and that it was not a common practice.</p>	

1	(Req. J. Ntc., Ex. 1 [SB 118], Ex. 2 [AB 88].); Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2020), pp. 43:10-13.)	
2		
3	58. SB 118 was designed to target the FAI Title 1 model firearm and prevent its sale. Department of Finance staffers’ communications about the bill expressly 4 identified both FAI and the Title 1, and they 5 identified no other manufacturer or firearm by 6 name.  (Barvir Decl., Ex. 15 [J. Kim Dep. (Jan. 3, 2024)], pp. 58:10-60:25, 62:25-10, 66:25- 8 68:24, 71:9-72:20, 75:1-77:25 & Exs. 2 & 4; Req. Jud. Ntc., Ex. 1 [SB 118].)	
7		
8		
9		
10	59. It was not until October 1, 2021, that the DOJ finally completed the “enhancement” to the DES adding the option to select “Other” from 11 the dropdown list for “long gun” subtypes, 12 finally allowing DES users to process the transfer of firearms without a defined subtype.  Barvir Decl., Ex. 11 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11; Barvir Decl., Ex. 18 14 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva 15 Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9- 17, 45:10-25, 46-47, 48:16-25, 61:5-62, 16 67:4-73, 74:1, 95:8-25, 108:3-25, 109 & Exs. 3, 6, 7, and 8.)	
17		
18	60. The enhancement to the DES came too late to allow for the lawful transfer of centerfire FAI Title 1 model firearms, which had been 19 designated as “assault weapons” effective August 6, 2020, and could not be lawfully 20 registered with the DOJ unless they were possessed on or before September 1, 2020.  (Req. Jud. Ntc., Exs. 1, 3; Pen. Code, § 30515, 22 subd. (a)(9)-(11).)	
23		
24	61. FAI could not lawfully transfer the FAI Title 1 model firearm to its deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 25 30515, subd. (a)(9)-(11)) because the DES enhancement adding “Other” to the “long 26 gun” subtype dropdown list was not made until October 1, 2021.  (Jacobson Decl., ¶ 11; Barvir Decl., Ex. 11 28 [Mendoza Dep. (June 7, 2024)], pp. 128:7-11;	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>Barvir Decl., Ex. 18 [Massaro-Florez Dep. 1 (Dec. 28, 2021)], pp. 34:10-17; 42:7-8; Barvir Decl., Ex. 19 [Leyva Dep. 1 (Dec. 29, 2021)], pp. 39:15-22, 40:9-17, 45:10-25, 46-47, 48:16-25, 61:5-62, 67:4-73, 74:1, 95:8-25, 108:3-25, 109 &amp; Exs. 3, 6, 7, and 8.)</p>	
<p>62. FAI suffered economic damage in the form of millions of dollars in lost profits because it could not lawfully complete the sale of and transfer the FAI Title 1 model firearm to its thousands of deposit-paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd. (a)(9)-(11).  (Jacobson Decl., ¶¶ 10-12, Ex. 10; Barvir Decl., Ex. 16 [J. Jacobson Dep. (Nov. 14, 2023)], pp. 138:19-142:14.)</p>	
<p>63. To date, a very small minority of the thousands of individuals who made a deposit have asked for a refund.  (Jacobson Decl., ¶ 14.)</p>	
<p>64. There is currently a class action lawsuit pending in federal district court, brought on behalf of the thousands of person who made earnest-money deposits for the purchase of one or more FAI Title 1 model firearms, against Attorney General Rob Bonta, Luis Lopez, and the California Department of Justice. The plaintiffs seek equitable relief, including injunctive relief ordering [d]efendants to allow ... the members of the [c]lass to submit the statutorily required firearm purchaser information through DES for, complete the transfer of, take possession of, and register pursuant to Penal Code section 30900(c) those Title 1 firearms for which they made earnest money deposits before August 6, 2020, notwithstanding the fact that these firearms were not possessed by ... the [c]lass members before September 1, 2020.”  (First Amended Complaint at 7, 40, <i>Briseno v. Bonta</i>, C.D. Cal. Case No. 21-cv-09018 (Feb. 4, 2022); Opdahl-Lopez Decl., ¶¶ 3-8.)</p>	
<p><b>Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage</b></p>	
<p>65. Plaintiff hereby incorporates by reference Plaintiff’s Undisputed Material Facts Nos. 21-64.</p>	

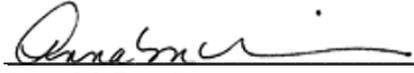
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Fifth Cause of Action: Negligent Interference with Prospective Economic Advantage**

66. Plaintiff hereby incorporates by Plaintiff's Undisputed Material Facts Nos. 21-64.

Date: June 26, 2024

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



Anna M. Barvir  
Attorneys for Petitioners-Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY ADJUDICATION**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.



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

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

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

6 Attorneys for Petitioner - Plaintiff  
7

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

10 FRANKLIN ARMORY, INC., et al.,

Case No.: 20STCP01747

11 Petitioners-Plaintiffs,

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

12 v.

13 CALIFORNIA DEPARTMENT OF  
14 JUSTICE, et al.,

**PLAINTIFF’S OBJECTIONS TO  
DEFENDANTS’ EVIDENCE IN SUPPORT  
OF DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION**

15 Respondents-Defendants.  
16

Hearing Date: July 10, 2024  
Hearing Time: 8:30 a.m.  
Department: 32  
Judge: Hon. Daniel S. Murphy

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

17  
18  
19  
20  
21  
22  
23 **TO THIS HONORABLE COURT, TO DEFENDANT, AND ITS ATTORNEYS OF**  
24 **RECORD:** Pursuant to California Rules of Court, rule 3.1354, Plaintiff Franklin Armory, Inc.,  
25 objects to Defendants’ evidence in support of their Motion for Summary Judgment, or in the  
26 Alternative, for Summary Adjudication.

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>Obj. No.</b>	<b>Material Objected to:</b>	<b>Grounds for Objection:</b>	<b>Ruling on the Objection:</b>
1.	<p>Ex. "A," deposition of Jay Jacobson at 39:16-19:</p> <p>"Mr. Graham advised you that Mossberg Cruisers had been processed in the online system, the DES, as shotguns, even though it does not have a stock; is that right?"</p>	<p><b>Hearsay (Evid. Code § 1200):</b> This statement is hearsay as it is an out-of-court statement offered for the truth of the matter asserted. No applicable exception to the hearsay rule has been demonstrated.</p>	<p>Sustained: _____ Overruled: _____</p>
2.	<p>Ex. "A," deposition of Jay Jacobson at 57:16-18:</p> <p>"It was my understanding that even though it wasn't correct statutorily, that that's what they were doing."</p>	<p><b>Speculation (Evid. Code § 702(a)):</b> The statement constitutes speculation about the practices of others without a proper foundation of personal knowledge.</p> <p><b>Compound Question (California Rules of Court, Rule 3.1354):</b> The question leading to this statement is compound, making it unclear and confusing as it addresses multiple types of firearms and concepts without clear delineation.</p> <p><b>Vague and Ambiguous (Evid. Code § 352):</b> The question leading to this statement is vague and ambiguous as it includes references to different types of firearms without clear delineation.</p>	<p>Sustained: _____ Overruled: _____</p>
3.	<p>Ex. "A," deposition of Jay Jacobson at 61:9-11:</p> <p>"So the dealers you had contact with, they also understood that it was the status quo that stockless firearms would be processed in that manner; right?"</p>	<p><b>Calls for Speculation (Evid. Code § 702(a)):</b> The question calls for speculation as it asks the witness to speculate on the understanding and knowledge of third parties (the dealers).</p>	<p>Sustained: _____ Overruled: _____</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4.	<p>Ex. "A," deposition of Jay Jacobson at 117:8-9:</p> <p>"That's the reason you brought this suit; correct?"</p>	<p><b>Calls for Legal Conclusions (Evid. Code § 310):</b> The question calls for a legal conclusion, as it requires the witness to interpret and apply legal principles regarding contractual obligations.</p>	<p>Sustained: _____ Overruled: _____</p>
5.	<p>Ex. "A," deposition of Jay Jacobson at 21:12-15:</p> <p>"Q. Okay. Now, when we talk about long guns, in California that's what -- a gun with a barrel over 16 inches? What are we talking about here?</p> <p>A. I would -- yes. Over 16 inches."</p>	<p><b>Calls for Legal Conclusions (Evid. Code § 310):</b> The question and the answer call for a legal conclusion, as they require the witness to interpret and apply legal definitions under California law.</p> <p><b>Calls for Expert Testimony (Evid. Code § 720):</b> The question and the answer call for expert testimony regarding the definition of a "long gun" under California law, which the witness may not be qualified to provide without being designated as an expert.</p>	<p>Sustained: _____ Overruled: _____</p>
6.	<p>Ex. "A," deposition of Jay Jacobson at 103:4-24:</p>	<p><b>Calls for Legal Conclusions (Evid. Code § 310):</b> The question and the answer call for a legal conclusion, as they require the witness to interpret and apply legal definitions under California law.</p> <p><b>Calls for Expert Testimony (Evid. Code § 720):</b> The question and the answer call for expert testimony regarding the definition of a "long gun," "rifle," and "title 1" under California law, which the witness may not be qualified to provide without being designated as an expert.</p>	<p>Sustained: _____ Overruled: _____</p>
7.	<p>Ex. "A," deposition of Jay Jacobson at 97:12-19:</p>	<p><b>Hearsay (Evid. Code § 1200):</b> The question and the answer</p>	<p>Sustained: _____ Overruled: _____</p>

1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11	8.	Ex. "A," deposition of Jay Jacobson at 50:19-51:3:	<b>Hearsay (Evid. Code § 1200):</b>
12		"Q. Gotcha. Okay. So let's shift back if we could to the conversation with Mr. Graham. So he basically told you that even though the Mossberg Cruiser, because it did not have a stock, was not, under the statutory definition of a shotgun, they had previously processed it as a shotgun anyhow; right?"	The question and answer involve hearsay, as they refer to out-of-court statements made by others, offered for the truth of the matter asserted.
13		A. Yes, sir.	
14		Q. And he told you that they had done that for a long time?	
15		A. Yes, sir."	
16			
17			
18			
19			
20			
21			
22			
23	9.	Ex. "A," deposition of Jay Jacobson at 60:21-61:8:	<b>Hearsay (Evid. Code § 1200):</b>
24		"Q. And then just kind of as we've now gone through this list of some of these high-volume folks, probably perhaps dealt with more frequently, does that bring to mind, refresh your recollection in any way that it	The question and answer involve hearsay, as they refer to out-of-court statements made by others, offered for the truth of the matter asserted.
25			
26			
27			
28			

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<p>was talking with any of these dealers where it was conveyed to you that it was more or less the status quo that firearms, stockless firearms -- again, whether it's stockless shotgun or a stockless rifle -- would be processed as a rifle or a shotgun in the online system even though it wasn't fitting the statutory definition?</p> <p>A. Well, really, since Blake Graham had already told me that this was the status quo, it was not an issue I was trying to sleuth out."</p>		
10.	<p>Ex. "B," deposition of Blake Graham at 78:13-20.</p> <p>"Q. With the qualification that you said, you would need to see the Title 1 in person and hold it in order to make a final determination, I believe you testified previously, that you believe, without having seen it, that the Title 1 is not a rifle, correct?</p> <p>A. Again, I haven't handled one. But I think, because it lacks a stock, it's not going to fall under the -traditional rifle category."</p>	<p><b>Calls for Legal Conclusions (Evid. Code § 310):</b></p> <p>The question and the answer call for a legal conclusion, as they require the witness to interpret and apply legal definitions regarding what constitutes a "rifle" under the law.</p>	<p>Sustained: _____ Overruled: _____</p>

Dated: \_\_\_\_\_

By: HONORABLE DANIEL S. MURPHY  
Judge of the Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as:

**PLAINTIFF’S OBJECTIONS TO DEFENDANTS’ EVIDENCE IN SUPPORT OF  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE,  
FOR SUMMARY ADJUDICATION**

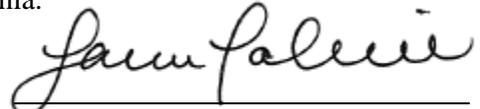
on the interested parties in this action by placing  
 the original  
 a copy  
thereof by the following means, addressed as follows:

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.

  
\_\_\_\_\_

Laura Palmerin

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

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,  
15 et al.,

16 Respondents-Defendants.  
17

Case No.: 20STCP01747

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

**DECLARATION OF JASON A. DAVIS IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, FOR  
SUMMARY ADJUDICATION**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

Department: 32

Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020

FPC Date: August 8, 2024

Trial Date: August 20, 2024

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF JASON A. DAVIS**

I, Jason A. Davis, hereby declare as follows:

1. I am an attorney licensed to practice before all courts in the state of California. I am counsel of record for Franklin Armory, Inc. (“FAI”), in the above-entitled matter. I make this declaration in support of Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment, or in the Alternative, for Summary Adjudication. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify hereto.

2. On or about October 24, 2019, I sent a letter addressed to then-Attorney General Xavier Becerra Re: FRANKLIN ARMORY, INC. – DES “GUN TYPE” DROP DOWN LIST – DOJ’S DEFACTO BAN OF NON-RIFLE / NON-SHOTGUN LONG GUNS. In the ordinary course of business, I saved a copy of this letter to my firm’s filing system. On or about September 20, 2023, a copy of the letter was produced in response to the Defendants’ requests for the production of documents. A true and correct copy of “Letter from Jason A. Davis, Counsel for Franklin Armory, Inc., to Xavier Becerra, Attorney General of the State of California (Oct. 24, 2019)” is attached hereto as **Exhibit 4**.

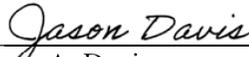
3. From November 15, 2019, through November 26, 2019, I exchanged a series of emails re: Title, Trusts, and UAE with Mr. Robert Wilson and Ms. P. Patty Li from the California Department of Justice, Bureau of Firearms. On or about September 20, 2023, a copy of these emails was produced in response to the Defendants’ requests for the production of documents. A true and correct copy of “Emails between Jason A. Davis, Counsel for Franklin Armory, Inc., and Robert Wilson & P. Patty Li, California Department of Justice (Nov. 15, 2019-Nov. 26, 2019)” is attached hereto as **Exhibit 5**.

4. On or about March 30, 2020, I sent an email re: Franklin Armory, et al. v. California Department of Justice, et al.: to then-Attorney General Xavier Becerra, as well as Mr. Luis Lopez and Mr. Robert Wilson, both of the California Department of Justice. On or about September 20, 2023, a copy of these emails was produced in response to the Defendants’ requests for the production of documents. A true and correct copy of “Email from Jason A. Davis, Counsel for Franklin Armory, Inc., to Luis Lopez, Robert Wilson, and Xavier Becerra, California Department of Justice (Mar. 30, 2020)” is attached hereto as **Exhibit 6**.

5. On or about January 8, 2021, I received a letter from Ms. P. Patty Li, Deputy Attorney

1 General, California Department of Justice. In the ordinary course of business, I saved a copy of this  
2 letter to my firm's filing system. On or about September 20, 2023, a copy of the letter was produced in  
3 response to the Defendants' requests for the production of documents. A true and correct copy of "Letter  
4 from P. Patty Li, Deputy Attorney General, California Department of Justice, to Jason A. Davis, Counsel  
5 for Franklin Armory, Inc. (Jan. 8, 2020)" is attached hereto as **Exhibit 7**.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
7 true and correct. Executed on June 26, 2024, at Murrieta, California.

8  
9 

10 Jason A. Davis

11 Declarant

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 4**



---

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

Temecula Office: 42690 Rio Nedo, Suite F, Temecula, California 92590

Tel: 866-545-4867 / Fax: 888-624-4867 / CalGunLawyers.com

October 24, 2019

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

**Via E-Mail and U.S. Mail**

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

Dear Attorney General Becerra,

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

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

**PROCEDURAL HISTORY**

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

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

October 24, 2019  
Page 2

- \*\*\*
- (2) The **make** of firearm.
- \*\*\*
- (7) **Manufacturer's name** if stamped on the firearm.  
(8) **Model** name or number, if stamped on the firearm.  
(9) **Serial** number, if applicable.  
(10) **Other number**, if more than one serial number is stamped on the firearm.  
(11) **Any identification number or mark assigned** to the firearm pursuant to Section 23910.  
(12) If the firearm is not a handgun and does not have a serial number, identification number, or mark assigned to it, a notation as to that fact.  
(13) **Caliber**.  
(14) **Type of firearm**.  
(15) If the firearm is **new or used**.  
(16) **Barrel length**.  
(17) **Color** of the firearm.

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

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

**Dealer Long Gun Sale**

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

**To submit a Dealer Long Gun Sale transaction:**

- 1) From the *Main Menu* page, select the **Submit DROS** link. The *Select Transaction Type* page will display.
- 2) Select the **Dealer Long Gun Sale** link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the Purchaser Information (see Entering Purchaser and Seller Information above).
- 4) Enter the Transaction and Firearm Information as follows:

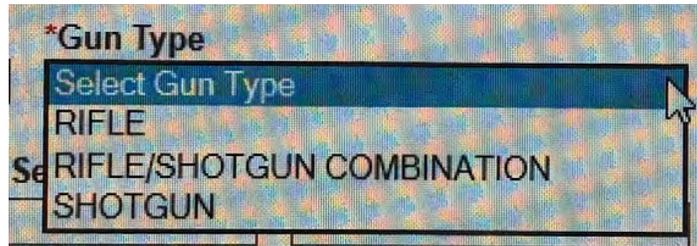
\*\*\*

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

\*\*\*

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

October 24, 2019  
Page 3



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

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

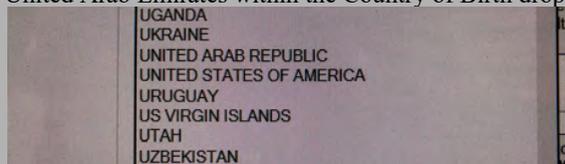
This defect, however, has severely impacted my client’s business and reputation. On or about October 15, 2019, Franklin Armory® announced their new product, Title 1™, which generated a substantial amount of interest. Soon after the announcement, Franklin Armory® was notified by licensed California firearm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

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

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

**ADDITIONAL ETHNICITY BASED OMISSION DEFECTS IN THE DES**

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



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

October 24, 2019  
Page 4

## CONSTITUTIONAL VIOLATIONS

### *DUE PROCESS*

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

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

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

### *SECOND AMENDMENT VIOLATION*

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

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

October 24, 2019  
Page 5

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

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

#### *TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE*

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

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

#### **DEMAND**

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

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

October 24, 2019

Page 6

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

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

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

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

Sincerely,  
**THE DAVIS LAW FIRM**

s/ *Jason Davis*

JASON DAVIS

cc: Robert Wilson

# **EXHIBIT 5**

## Title 1, Trusts, and UAE

---

From Jason Davis <jason@calgunlawyers.com>  
To Robert Wilson <Robert.Wilson@doj.ca.gov>  
Date Friday, November 15th, 2019 at 10:23 AM

---

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

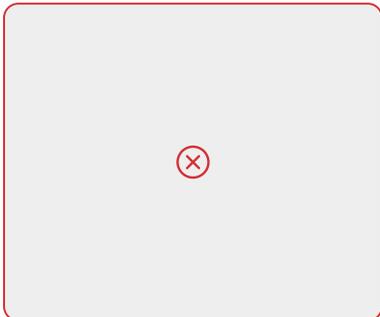
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101  
Local Tel: (949) 436-GUNS [4867]  
Fax: (888) 624-GUNS [4867]  
Cell: (949) 310-0817  
Website: [www.CalGunLawyers.com](http://www.CalGunLawyers.com)

ORANGE COUNTY OFFICES  
27201 Puerta Real, Suite 300  
Mission Viejo, California 92691

TEMECULA OFFICES  
42690 Rio Nedo, Suite F  
Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system. Thank you for your cooperation.

## Re: Title 1, Trusts, and UAE

From Robert Wilson <[Robert.Wilson@doj.ca.gov](mailto:Robert.Wilson@doj.ca.gov)>

To Jason Davis <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>

Date Saturday, November 16th, 2019 at 12:47 PM

It's my understanding that we are Working on both. I'll try to get a better idea early next week. Rob

Sent from my iPhone

On Nov 15, 2019, at 10:23 AM, Jason Davis <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)> wrote:

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

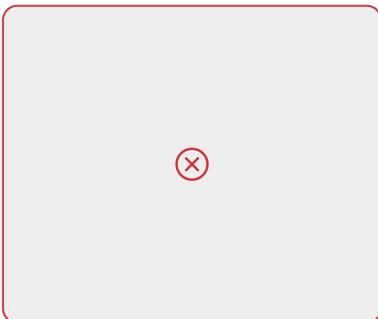
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101  
Local Tel: (949) 436-GUNS [4867]  
Fax: (888) 624-GUNS [4867]  
Cell: (949) 310-0817  
Website: [www.CalGunLawyers.com](http://www.CalGunLawyers.com)

ORANGE COUNTY OFFICES  
27201 Puerta Real, Suite 300  
Mission Viejo, California 92691

TEMECULA OFFICES  
42690 Rio Nedo, Suite F  
Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-

mail and then delete this message from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

## RE: Title 1, Trusts, and UAE

---

From Patty Li <Patty.Li@doj.ca.gov>  
To Jason Davis <jason@calgunlawyers.com>  
Date Tuesday, November 26th, 2019 at 4:18 PM

---

Mr. Davis,

Rob Wilson forwarded me the correspondence below. I wanted to let you know that the UAE has been added to the DES drop-down list for country of birth. DOJ is considering the other issues raised in your letter dated October 24, 2019.

Regards,

Patty

P. Patty Li

Deputy Attorney General

California Department of Justice

Office of the Attorney General

455 Golden Gate Ave., Suite 11000

San Francisco, CA 94102

ph: (415) 510-3817

fax: (415) 703-1234

---

**From:** Robert Wilson <[Robert.Wilson@doj.ca.gov](mailto:Robert.Wilson@doj.ca.gov)>

**Sent:** Saturday, November 16, 2019 12:47 PM

**To:** Jason Davis <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)>

**Subject:** Re: Title 1, Trusts, and UAE

It's my understanding that we are Working on both. I'll try to get a better idea early next week. Rob

Sent from my iPhone

On Nov 15, 2019, at 10:23 AM, Jason Davis <[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)> wrote:

Robert,

I am checking in to see if there has been any movement on correcting the defects in the DES that prevent transfers of the Franklin Armory Title 1 due to the lack of options on the drop-down list for long guns.

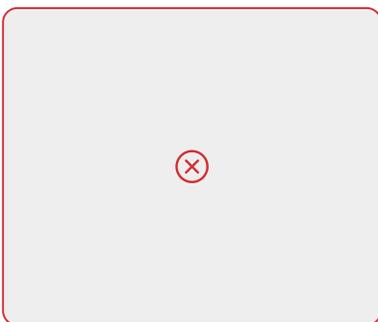
Also, has there been any movement to correct the defects in the DES that prevent transfers to Trusts and/or persons born in the UAE?

If not, is there an ETA on these corrections?

Let me know if you have any questions or concerns.

Thanks,

Jason A. Davis



Toll Free: (866)545-GUNS [4867] Ext. 101  
Local Tel: (949) 436-GUNS [4867]

Fax: (888) 624-GUNS [4867]  
Cell: (949) 310-0817  
Website: [www.CalGunLawyers.com](http://www.CalGunLawyers.com)

ORANGE COUNTY OFFICES  
27201 Puerta Real, Suite 300  
Mission Viejo, California 92691

TEMECULA OFFICES  
42690 Rio Nedo, Suite F

Temecula, California 92590

This e-mail is confidential and is legally privileged. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system. Thank you for your cooperation.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

# **EXHIBIT 6**

1 messages

jdavis &lt;jdavis@franklinarmory.com&gt;

**Fwd: Franklin Armory, et al. v. California Department of Justice, et al.**

Jay Jacobson &lt;jjacobson@franklinarmory.com&gt;

Thu, Sep 14 2023 18:35:21

To: jdavis &lt;jdavis@franklinarmory.com&gt;

JIC.

**Jay Jacobson**  
Presidentphone: 775.783.4313  
email: [jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)  
2246 Park Pl Ste B Minden, NV 89423, USA

In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited. This e-mail may also be confidential and may be legally protected by the Attorney-Client Privilege and Attorney Work Product Privilege. If you have received it in error, please notify us immediately by reply e-mail and then delete this message from your system.

----- Forwarded message -----

From: Jason A. Davis &lt;jdavis@michellawyers.com&gt;

Date: 2020-03-30 18:20

Subject: Franklin Armory, et al. v. California Department of Justice, et al.

To: Luis.Lopez@doj.ca.gov, Robert Wilson &lt;Robert.Wilson@doj.ca.gov&gt;, xavier.becerra@doj.ca.gov

Cc: jjacobson@franklinarmory.com, C.D. Michel &lt;cmichel@michellawyers.com&gt;

All,

I have made multiple attempts to contact Mr. Wilson and Director Lopez regarding the deficiencies of the DES and the barrier that it presents in transferring lawful firearms such as the Franklin Armory, Inc. Title I. Much time has passed since the DOJ was placed on notice of this type of firearm, as well as the defects in the DES, and the DES's barrier still exists. We were recently informed that any correction would take months to implement. (It should be noted that similar updates in the DES have been performed since our last submission regarding the Title 1 and the historical timetables on similar updates/changes in the DES go against the timetables presented in the last letter response.)

I had hoped to discuss his matter with Mr. Wilson and Director Lopez one last time with the desire to avoid litigation to obtain the necessary changes in the DES or alternative interim methods. But, I received no response. Moreover, we are well aware of the current circumstances and are willing to participate in candid conversations as to actual timetables for such changes considering these uncertain times.

As it stands, my client has already lost over \$1 million in sales due to the DES's design. Moreover, members of the California Rifle and Pistol Association are being denied the ability to acquire lawful firearms as a result of the DOJ implemented barriers. As such, and without any further response from the Department of Justice, we will be filing suit this Friday. Attached is the draft Complaint. It will be revised before filing to include, among other possible revisions, a

claim for damages lost as a result of the design, implementation, maintenance, and enforcement of the DES by the Department of Justice, which has and continues to bar Franklin Armory from being able to fulfill its current reservations as well as those orders that continue to pour in during this period.

Again, it is our hope to resolve this matter before then. Please let me know if you have any questions or concerns.

**Jason Davis**

Of Counsel



Direct: (949) 310-0817

Main: (562) 216-4444

Fax: (562) 216-4445

Email: [JDavis@Michellawyers.com](mailto:JDavis@Michellawyers.com)

Web: [www.michellawyers.com](http://www.michellawyers.com)

180 E. Ocean Blvd.

Suite 200

Long Beach, CA 90802

---

1 attachments

[Reviewed TITLE 1 LAWSUIT - DES.pdf](#) 435 KB

[REDACTED]

[REDACTED]

---

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

immediately by reply e-mail and then [REDACTED]

----- Forwarded message -----

From Ja on A Davi jdavi@michellawyer.com  
 Date: 2020-03-30 18:20  
 Subject: Franklin Armory, et al. v. California Department of Justice, et al.  
 To: Luis.Lopez@doj.ca.gov, Robert Wilson <Robert.Wilson@doj.ca.gov>, xavier.becerra@doj.ca.gov  
 Cc: jjacobson@franklinarmory.com, C.D. Michel <cmichel@michellawyers.com>

All,

I have made multiple attempts to contact Mr. Wilson and Director Lopez regarding the deficiencies of the DES and the barrier that it presents in transferring lawful firearms such as the Franklin Armory, Inc. Title I. Much time has passed since the DOJ was placed on notice of this type of firearm, as well as the defects in the DES, and the DES's barrier still exists. We were recently informed that any correction would take months to implement (It should be noted that similar updates in the DES have been performed since our last submission regarding the Title 1 and the historical timetables on similar updates/changes in the DES go against the timetables presented in the last letter response.)

I had hoped to discuss his matter with Mr. Wilson and Director Lopez one last time with the desire to avoid litigation to obtain the necessary changes in the DES or alternative interim methods. But, I received no response. Moreover, we are well aware of the current circumstances and are willing to participate in candid conversations as to actual timetables for such changes considering these uncertain times.

As it stands, my client has already lost over \$1 million in sales due to the DES's design. Moreover, members of the California Rifle and Pistol Association are being denied the ability to acquire lawful firearms as a result of the DOJ implemented barriers. As such, and without any further response from the Department of Justice, we will be filing suit this Friday. Attached is the draft Complaint. It will be revised before filing to include, among other possible revisions, a

https://[REDACTED]

9/15/23, 1:14 PM

Fwd: Franklin Armory, et al. v. California Department of Justice, et al.

claim for damages lost as a result of the design, implementation, maintenance, and enforcement of the DES by the Department of Justice, which has and continues to bar Franklin Armory from being able to fulfill its current reservations as well as those orders that continue to pour in during this period.

Again, it is our hope to resolve this matter before then Please let me know if you have any questions or concerns.

**Jason Davis**

Of Counsel



Environmental - Land Use - Firearms - Employment Law  
Civil Litigation - Criminal Defense

Direct: (949) 310-0817

Main: (562) 216-4444

Fax: (562) 216 4445

Email: [JDavis@Michellawyers.com](mailto:JDavis@Michellawyers.com)

Web: [www.michellawyers.com](http://www.michellawyers.com)

180 E. Ocean Blvd.

Suite 200

Long Beach, CA 90802

---

1 attachments

[Reviewed TITLE 1 LAWSUIT - DES.pdf](#) 435 KB

# **EXHIBIT 7**



**XAVIER BECERRA**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400  
Telephone: (415) 510-3817  
Facsimile: (415) 703-1234  
E-Mail: [Patty.Li@doj.ca.gov](mailto:Patty.Li@doj.ca.gov)

January 8, 2020

**VIA E-MAIL AND U.S. MAIL**

Jason Davis  
Michel & Associates, P.C.  
180 East Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
[JDavis@michellawyers.com](mailto:JDavis@michellawyers.com)

Jason Davis  
The Davis Law Firm  
42690 Rio Nedo, Suite F  
Temecula, CA 92590  
[jason@calgunlawyers.com](mailto:jason@calgunlawyers.com)

Dear Mr. Davis,

I write in response to your letter dated October 24, 2019, and received by the Department of Justice on November 11, 2019, regarding Franklin Armory's new product, the "Title 1" firearm, and the electronic system used by firearms dealers to process the sale of firearms, the DROS ("Dealer Record of Sale") Entry System ("DES"), which is maintained by the Department.

The Department is currently implementing the modifications necessary to enable DES to process sales of the new Title 1 firearm. These modifications will affect more than a dozen of the Department's other firearms-related systems. Staff will need to program, develop, and regression test the modifications, as well as conduct user acceptance testing, for all of these systems. We estimate that this will take several hundred work hours. However, there are many ongoing maintenance and operations activities currently impacting all of the Department's firearms-related systems. The technical team supporting these systems is fully occupied with these activities, as well as with implementing changes required by legislation enacted over the past several years. Given the heavy existing workload of the Department's technical staff and the extensive nature of the modifications, it is possible that these modifications will take several months to complete.<sup>1</sup>

---

<sup>1</sup> The Department is aware of a similar situation involving Franklin Armory's "Reformation" firearm. By letter dated December 19, 2019, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") stated that "existing federal firearm regulations do

January 8, 2020  
Page 2

On a related matter, by letter to the Department dated November 20, 2019, you enclosed a document entitled, "Government Tort Claim," regarding the Title 1 firearm and DES. However, by letter dated December 4, 2019, the Department returned the document to you, explaining that "[i]f you would like to file a Government Claim for money or damages against the State of California, you must file a claim with the Department of General Services – Government Claims Program. You can find information on their website: [www.dgs.ca.gov/ORIM/Services](http://www.dgs.ca.gov/ORIM/Services). This office is not the appropriate department to receive this document."<sup>2</sup> This is because the Government Tort Claims Act requires that all claims for damages against the State be submitted to the Department of General Services' Government Claims Program, along with a \$25 filing fee. (See Gov. Code, §§ 905.2, 915.)

Sincerely,



P. PATTY LI  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

---

not provide a mechanism to process or approve [transfer] requests" for the Reformation firearm, and that "ATF is currently developing the procedures and forms to address this new type of firearm." That letter is attached hereto as Exhibit A.

<sup>2</sup> The Department's December 4, 2019 correspondence was sent to the address listed at the top of the "Government Tort Claim" document, which was 280 E. Ocean Blvd., Suite 200, in Long Beach, California. However, it appears that the correct address for Michel & Associates, P.C., is 180 E. Ocean Boulevard, Suite 200, in Long Beach, California. The December 4, 2019 correspondence is attached hereto as Exhibit B.

# Exhibit A



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Enforcement, Programs & Services*

---

Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

December 19, 2019

## Open Letter regarding the Franklin Armory Reformation Firearm

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received questions from industry members and the general public regarding a new type of firearm produced by the Franklin Armory®. This firearm, known as the “Reformation”, utilizes a barrel that is produced with straight lands and grooves. This design contrasts with conventional rifling, in which the barrel’s lands and grooves are spiral or twisted, and are designed to impart a spin onto the projectile.

The ATF Firearms and Ammunition Technology Division (FATD) has examined the Reformation firearm for purposes of classification under the applicable provisions of the Gun Control Act (GCA) and the National Firearms Act (NFA). During this examination, FATD determined that the straight lands and grooves incorporated into the barrel design of the Reformation do not impart a spin onto a projectile when fired through the barrel. Consequently, the Reformation is not a “rifle” as that term is defined in the GCA and NFA.<sup>1</sup> Moreover, because the Reformation is not chambered for shotgun shells, it is not a shotgun as defined in the NFA.<sup>2</sup> Given these determinations, the Reformation is classified as a shotgun that is subject only to the provisions of the GCA (*i.e.*, it is not a weapon subject to the provisions of the NFA).<sup>3</sup>

Under the provisions of the GCA, if a Reformation firearm is equipped with a barrel that is less than 18-inches in overall length, that firearm is classified to be a short-barreled shotgun (SBS).<sup>4</sup> When a Reformation is configured as a GCA/SBS, specific provisions of the GCA apply to the transfer of that firearm from a Federal Firearms Licensee (FFL) to a non-licensee, and to the transport of that firearm by a non-licensee in interstate or foreign commerce. These provisions are:

- 1) 18 U.S.C. § 922(a)(4) requires that an individual wishing to transport an SBS in interstate or foreign commerce obtain approval by the Attorney General to transport the firearm.

---

<sup>1</sup> See 18 U.S.C. 921(a)(7) and 26 U.S.C. 5845(c).

<sup>2</sup> See 26 U.S.C. 5845(d).

<sup>3</sup> See 18 U.S.C. 921(a)(5).

<sup>4</sup> See 18 U.S.C. 921(a)(6).

Open Letter regarding the Franklin Armory Reformation Firearm

- 2) 18 U.S.C. § 922(b)(4) requires authorization from the Attorney General consistent with public safety and necessity prior to the sale or delivery of an SBS to an individual by an FFL.

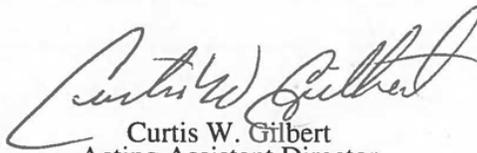
The Attorney General has delegated the authority for approval of requests pursuant to these sections to ATF.

The Franklin Armory Reformation is the first firearm produced and sold by an FFL that ATF has classified as a GCS/SBS. Because GCA/SBS firearms have not previously been available in the marketplace, existing federal firearm regulations do not provide a mechanism to process or approve requests from FFLs for approval to transfer a GCA/SBS to a non-licensee pursuant to section 922 (b)(4) or requests from non-licensees to transport a GCA/SBS pursuant to section 922(a)(4).

ATF is currently developing the procedures and forms to address this new type of firearm. Once promulgated, these new procedures and forms will provide the mechanism necessary for FFL holders and owners of GCA/SBS firearms to request the statutorily required approvals. Until such time, you should be aware of the following:

- 1) An FFL may lawfully sell/transfer a GCA/SBS, such as the Reformation, to the holder of an appropriate FFL (a GCA/SBS cannot be transferred to the holder of a type 06 or type 03 FFL).
- 2) No mechanism currently exists for ATF to authorize a request from an FFL to transfer a GCA/SBS, such as the Reformation, to a non-licensee. Therefore, until ATF is able to promulgate a procedure for processing and approving such requests, an FFL may not lawfully transfer a Reformation configured as a GCA/SBS to a non-licensee.
- 3) No mechanism currently exists for an unlicensed individual who possesses a GCA/SBS, such as the Reformation, to submit a request and receive approval to transport the GCA/SBS across state lines. Therefore, until ATF is able to promulgate a procedure for processing and approving such requests, the possessor or owner of a GCA/SBS, such as the Reformation, may not lawfully transport the firearm across state lines.

Any questions pertaining to this Open Letter may be sent to the Firearms Industry Programs Branch at [FIPB@atf.gov](mailto:FIPB@atf.gov) or (202) 648-7190.



Curtis W. Gilbert  
Acting Assistant Director  
Enforcement, Programs and Services

# Exhibit B

**XAVIER BECERRA**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 210-7559

Facsimile:  
E-Mail: [Lindsey.Goodwin@doj.ca.gov](mailto:Lindsey.Goodwin@doj.ca.gov)

December 4, 2019

Jason Davis  
Michel & Associates, P.C.  
280 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802

RE: Tort Claim Act Compliance Notice  
Franklin Armory, Inc. vs. The California Department of Justice, Xavier Becerra, Brent E. Orick

Dear Mr. Davis:

Our office is in receipt of your correspondence dated November 20, 2019, enclosing the above-referenced notice. As a courtesy, the enclosed document is being returned to you.

If you would like to file a Government Claim for money or damages against the State of California, you must file a claim with the Department of General Services – Government Claims Program. You can find information on their website: [www.dgs.ca.gov/ORIM/Services](http://www.dgs.ca.gov/ORIM/Services)

This office is not the appropriate department to receive this document.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lindsey Goodwin".

LINDSEY GOODWIN  
Staff Services Analyst

For XAVIER BECERRA  
Attorney General

/lg  
Enclosures

SENIOR PARTNER  
C. D. Michel\*

MANAGING PARTNER  
Joshua Robert Dale

SPECIAL COUNSEL  
Anna M. Barvir  
Sean A. Brady  
Matthew D. Cubeiro  
W. Lee Smith

ASSOCIATES  
Tiffany D. Cheuvront  
Alexander A. Frank  
Konstadinos T. Moras  
Los Angeles, CA

\* Also admitted in Texas and the  
District of Columbia

**MICHEL & ASSOCIATES, P.C.**  
Attorneys at Law

OF COUNSEL  
Jason A. Davis  
Joseph Di Monda  
Scott M. Franklin  
Clint B. Monfort  
Michael W. Price  
Tamara M. Rider  
Los Angeles, CA

writer's direct contact:  
949-310-0817  
JDavis@michellawyers.com

November 20, 2019

**VIA U.S. Mail**

9404 5036 9930 0170 6388 04

XAVIER BECERA  
ATTORNEY GENERAL  
PO BOX 944255  
SACRAMENTO, CA 94244-2550

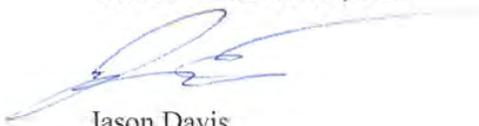
**Re: TORT CLAIM ACT COMPLIANCE NOTICE**

Dear Attorney General Becerra,

Enclosed with this letter is a Tort Claim Act Notice that is being submitted on behalf of Franklin Armory, Inc., which has been denied the ability to sell their lawful firearms due to defects in the design, implementation, and maintenance of the Dealer Record of Sale Entry System, which prohibits the sale of my clients firearms due to design errors. We have been informed that the Department of Justice is "working" on the issue, but as each day goes by without correction, my client is losing lawful sales and is suffering reputational damage due to their inability to transfer the firearms in a timely manner. We request that you immediately correct these defects to prevent my client from suffering further damages.

Please let me know if you have any questions or concerns regarding this matter.

Sincerely,  
**Michel & Associates, P.C.**

  
Jason Davis

1 MICHEL & ASSOCIATES, P.C.  
2 280 E. Ocean Blvd.  
3 Suite 200  
4 Long Beach, CA 90802  
5 T: 866-545-GUNS  
6 Jason Davis (SBN 224250)  
7 JDavis@MichellLawyers.com

8 Attorneys for Claimant,  
9 FRANKLIN ARMORY, INC.

10 **CALIFORNIA DEPARTMENT OF JUSTICE**  
11 **COUNTY OF SACRAMENTO**

12 FRANKLIN ARMORY, INC. ) **GOVERNMENT TORT CLAIM**  
13 Claimant, )  
14 vs. )  
15 THE CALIFORNIA DEPARTMENT OF )  
16 JUSTICE, XAVIER BECERRA, BRENT E. )  
17 ORICK, )  
18 Respondents. )  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I.**

**INTRODUCTION**

The 1963 California Tort Claims Act established uniform procedures for claims against public entities and public employees. The California Tort Claims Act establishes certain conditions prior to the filing of a lawsuit against a public entity. Specifically, the California Government Code provides that “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon.” Gov. Code §945.4. The Government Code requires that the claimant sets forth:

- (1) the names and addresses of the claimant and the person to whom notices are to be sent;
- (2) a statement of the date, place, and other circumstances of the occurrence or transaction;
- (3) A description of the indebtedness, obligation, injury, damage, or loss incurred as far as they are known when the claim is presented;
- (4) The name of the public employee who caused the injury, if known; and
- (5) the amount claimed, if less than \$10,000, on the date the claim is presented, or if more than \$10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case.

The purpose of this claim is to present sufficient detail “to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit.” *Blair v. Superior Court*, (1990) 218 Cal.App.3d 221, 225; *City of San Jose v. Superior Court*, (1974) 12 Cal.3d 447, 456; *Turner v. State of California*, (1991) 232 Cal.App.3d 883.

**II.**

**FORM AND SUBSTANCE**

**1. Names and Addresses of Claimant and Person to Be Sent Notices**

The addresses of the claimant and of the person to whom notices are to be sent are particularly important. A statement of the address of claimant’s counsel substantially complies with the requirement

1 that claimant's address must be given. *Cameron v. City of Gilroy*, (1951) 104 Cal.App.2d 76. The  
2 following claimant's address for informational purposes and counsel's address as the one to which  
3 notices are to be sent, which are as follows;

4 CLAIMANT: Franklin Armory, Inc., 2246 Park Place, Suite B, Minden, Nv 89423

5 PERSON TO BE SENT NOTICES: Jason Davis, Michel & Associates, P.C., 180 E. Ocean  
6 Blvd., Ste 200, Long Beach, CA 90802. Telephone: 866-545-4867. Cell: 949-310-0817.

7 **2. Description of Claim; Factual Content; Preserving Theories of Recovery**

8 The required "general description" of the injury and the statement of "date, place, and other  
9 circumstances of the occurrence" need not be in evidentiary detail. However, sufficient data should be  
10 included "for investigation and consideration of the claim." *Dillard v. County of Kern*, (1943) 23 Cal.2d  
11 271, 278.

12 Under prior law, an indefinite identification of the date of injury as "on or about and during"  
13 specified months has been held sufficient. *Knight v. City of Los Angeles*, (1945) 26 Cal.2d 764 ; *Kahrs v.*  
14 *County of Los Angeles*, (1938) 28 Cal.App.2d 46, (" on and after October 17, 1934 " held insufficient to  
15 include event occurring on February 6, 1935). The date of the occurrence is usually obvious. However,  
16 when the claimant asserts that the claim is timely under the late discovery doctrine, it may be necessary  
17 to state both the date of the injury and the date of discovery. See *Martinez v. County of Los Angeles*,  
18 (1978) 78 Cal.App.3d 242.

19 The claim should be drafted with sufficient factual breadth and character to support the legal  
20 theory on which the plaintiff subsequently plans to sue if the claim is rejected. See *Stearns v. County of*  
21 *Los Angeles*, (1969) 275 Cal.App.2d 134, 138 n. 3. If the plaintiff is relying on more than one legal  
22 theory of recovery, each cause of action in a complaint must be reflected in a timely claim. *Fall River*  
23 *Joint Unified School Dist. v. Superior Court*, (1988) 206 Cal.App.3d 431, 434. The modern line of cases  
24 holds that a variance between the facts stated in the claim and those alleged in the complaint is not fatal  
25 where the " apparent differences between the complaint and the claim were merely the result of  
26 plaintiff's addition of factual details or additional causes of action " and does not constitute a " complete  
27 shift in allegations." The test under this line of cases is whether the omitted facts are sufficiently related  
28 to those alleged in the claim to allow the public entity to investigate. For example, in *Stevenson v. San*

1 *Francisco Housing Authority*, (1994) 24 Cal.App.4th 269, a tenant's claim against the housing authority  
2 for premises liability and breach of contract supported a later complaint for negligent failure to disclose  
3 latent defects, as well as negligence and breach of statutory duty to inspect the building for safety before  
4 an earthquake. In *Ocean Services Corp. v. Ventura Port. Dist.*, (1996) 15 Cal.App.4th 1762, the Court  
5 held that a claim alleging breach of a commercial lease supported a complaint for a breach of the  
6 covenant of good faith and fair dealing. Similarly, in *Brownell v. Los Angeles Unified School District*,  
7 (1992) 4 Cal.App.4th 787, the Court held that a claim (alleging that assault on a student arose from the  
8 district's failure to provide adequate security in a known risk area) supported a complaint alleging the  
9 district's negligent and careless failure to properly supervise, guard, maintain, inspect and manage the  
10 school premises.

11 Here, the facts are as follows:

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

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

22 \*\*\*

23 (2) The make of firearm.

24 \*\*\*

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

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

27 (9) Serial number, if applicable.

28 (10) Other number, if more than one serial number is stamped on the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

firearm.

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

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

(13) Caliber.

(14) Type of firearm.

(15) If the firearm is new or used.

(16) Barrel length.

(17) Color of the firearm.

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

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

**Dealer Long Gun Sale**

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

To submit a *Dealer Long Gun Sale* transaction:

- 1) From the *Main Menu* page, select the *Submit DROS* link. The *Select Transaction Type* page will display.
- 2) Select the *Dealer Long Gun Sale* link. The *Submit Dealer Long Gun Sale* form will display.
- 3) Enter the *Purchaser Information* (see *Entering Purchaser and Seller Information* above).

1 4) Enter the *Transaction and Firearm Information* as follows:

2 \*\*\*

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

5 \*\*\*

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

8 RIFLE

9 RIFLE/SHOTGUN COMBINATION

10 SHOTGUN

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

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

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

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

23 As a result, Franklin Armory, Inc. President Jay Jacobson has been in contact with the  
24 Department of Justice, Bureau of Firearms and requested that the DES be corrected immediately to  
25 prevent the loss of sales and to preserve the reputation of Franklin Armory, Inc. within the industry and  
26 among its consumers. He has been advised that the Department of Justice – Bureau of Firearms is  
27 working on correcting the issue but was also informed that no timeline for the correction of the defect  
28 has been established. As such, Franklin Armory, Inc. submitted a letter which served to both reiterate

1 the importance of correcting the defect in the DES expediently, and to express and document the legal  
2 and financial the impact that the defect has on Franklin Armory, Inc.

### 3 *CONSTITUTIONAL VIOLATIONS*

#### 4 *DUE PROCESS*

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

9 The defect within the DES essentially bans the sale, acquisition, transfer, delivery, possession,  
10 display of, and expression utilizing a lawful product in violation of the Due Process Clause doctrine.  
11 (*See, e.g., Coates v. City of Cincinnati*, 402 U.S. 611 (1971) and *Matthews v. Eldridge*, 424 U.S. 319  
12 (1976).) The ban deprives Franklin Armory, Inc. and local licensed firearms dealers of the complete and  
13 lawful use of their federal and state licenses issued by the United States Bureau of Alcohol, Tobacco,  
14 and Firearms and the Department of Justice and does so unilaterally, without supplying adequate pre-  
15 deprivation notice, an opportunity to be heard, or appeal; as such, it is an unconstitutional deprivation of  
16 property without due process of law. In each of these respects, the defacto ban constitutes an  
17 unconstitutional abridgement of Due Process Clause rights both facially and as applied to these  
18 circumstances.

#### 19 *SECOND AMENDMENT VIOLATION*

20 The sale, transfer, delivery, possession, and use of lawful firearms in California are not a mere  
21 privileges. The Second Amendment protects a person's right to keep and bear firearms. The Second  
22 Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right  
23 of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "As interpreted in  
24 recent years by the Supreme Court, the Second Amendment protects 'the right of law-abiding,  
25 responsible citizens to use arms in defense of hearth and home.'" *Teixeira v. Cty. Of Alameda*, 873 F.3d  
26 670, 676– 77 (9th Cir. 2017), cert. denied sub nom. *Teixeira v. Alameda Cty.*, 138 S. Ct. 1988 (2018)  
27 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). At the core of the Second  
28 Amendment is a citizen's right to have in his and her home for self-defense common firearms. *Heller*,

1 554 U.S. at 629. “[O]ur central holding in *Heller* [is] that the Second Amendment protects a personal  
2 right to keep and bear arms for lawful purposes, most notably for self-defense within the home.”

3 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

4 As evidenced by California’s own crime statistics, the need to protect one’s self and family from  
5 criminals in one’s home has not abated no matter how hard they try. Law enforcement cannot protect  
6 everyone. “A police force in a free state cannot provide everyone with bodyguards. Indeed, while some  
7 think guns cause violent crime, others think that wide-spread possession of guns on balance reduces  
8 violent crime. None of these policy arguments on either side affects what the Second Amendment says,  
9 that our Constitution protects ‘the right of the people to keep and bear Arms.’” *Silveira v. Lockyer*, 328  
10 F.3d 567, 588 (9th Cir. 2003) (Kleinfeld, J., dissenting from denial of rehearing *en banc*). However,  
11 California citizens, like United States citizens everywhere, enjoy the right to defend themselves with a  
12 firearm, if they so choose.

13 Yet, not because of any statute, regulation, rule, or law, but merely as a result of improper design,  
14 implementation, maintenance, operation, and oversight the DES prohibits the California citizens from  
15 enjoying the right to defend themselves with a lawful firearm of their choice, and prevents Franklin  
16 Armory, Inc. from lawfully delivering and/or transferring lawful firearms to their customers.

17 *TORTIOUS INTERFERENCE WITH A PROSPECTIVE ECONOMIC ADVANTAGE*

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

24 As referenced above, Franklin Armory, Inc. has announced the sale of their Title 1 product and  
25 has begun taking orders on the Title 1 as well as the CSW line of products. The Department of Justice  
26 has been notified of these orders and the inability of Franklin Armory, Inc., and/or any licensed  
27 California firearms dealer to process and/or deliver these orders due to defects in the implementation of  
28 the DES - a breach of duty by the Department of Justice pursuant to Penal Code sections 28105 and

1 28155. In refusing to correct and/or delaying any corrections to the DES to permit the delivery, sale,  
2 and/or transfer of lawful firearms, the Department of Justice is intentionally engaging in wrongful acts  
3 designed to disrupt current and future business of Franklin Armory, Inc.

4 Franklin Armory, Inc. has, always, sought to cooperate and work with the California Department  
5 of Justice. When, however, the Department of Justice exceeded its authority and implemented a defacto  
6 ban on the sale of lawful firearms via technological limitations of the State mandated, designed,  
7 implemented and maintained DES, it substantially interfered with the rights and business relationship of  
8 Franklin Armory, Inc. and its customers. As a result, it is reasonable to anticipate the need for litigation  
9 to ensure my client is made whole.

10 **3. Inclusion of All Claimants**

11 The claimant should exercise due care to ensure that the claim clearly includes the claims of all  
12 persons entitled to seek recovery from defendant. As a general rule, every claimant must present a claim  
13 even when another party has timely presented a claim that provided the public entity with full  
14 knowledge of the basis of the alleged liability. As such, at this time, this claim is being submitted on  
15 behalf of Franklin Armory, Inc.

16 Other claimants include licensed California firearm retailers and individual consumers denied the  
17 sale, receipt, delivery, transfer, and/or possession to the Title 1 and/or CSW products line due to defects  
18 in the DES.

19 **4. Public Employee Causing Injury or Damage**

20 The name of the public employee or employees who caused the injury or damages, if known,  
21 should be included in the claim. Govt. C §910(e). This information is particularly relevant to the  
22 legislative purpose of facilitating investigation and possible settlement. Absent waiver of the defect, the  
23 failure to supply the name, if it is shown that the claimant knew it, may constitute fatal noncompliance.  
24 As such, the Public Employees causing the injury and/or damage include:

25 *Xavier Becerra, Attorney General*

26 *Brent E. Orick, Acting Director of The Bureau of Firearms*

27 **5. When Either Dollar Amount of Court's Jurisdiction Must Be Specified**

28 The claim must specify the amount claimed together with the basis of computation of the amount

1 if the total claim is under \$10,000 “ as of the date of presentation of the claim, including the estimated  
2 amount of any prospective injury, damage, loss, insofar as it may be known at the time of the  
3 presentation of the claim.” If the amount exceeds \$10,000, the amount sought is not to be specified in  
4 the claim, but the claim must indicate whether it would be a limited civil case.

5 In this matter, the claim exceeds \$10,000 and the case would not be a limited civil case. It is  
6 anticipated that the claim will likely exceed \$2,000,000 as a result of any delays or refusal to correct the  
7 defects in the DES in a timely manner.

8 **III.**

9 **CONCLUSION**

10 As a result of defects in the design, implementation, and maintenance of the DES, the  
11 Department of Justice – Bureau of Firearms, now under the supervision, guidance, and control of  
12 California Attorney General Xavier Becerra and Acting Director of the Bureau of Firearms Brent E.  
13 Orick have damaged Franklin Armory, Inc. as set forth above, and are therefore liable to Claimant.

14  
15 s/ Jason Davis

16 \_\_\_\_\_  
17 Jason Davis, Attorney  
18 On Behalf of Claimant  
19 Franklin Armory, Inc.  
20  
21  
22  
23  
24  
25  
26  
27  
28

**XAVIER BECERRA**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



BUREAU OF FIREARMS  
P.O. BOX 160487  
SACRAMENTO, CA 95816-0487  
Public: (916) 227-4010  
Facsimile: (916) 227-4070

December 14, 2018

Jason Davis  
The Davis Law Firm  
42690 Rio Nedo, Suite F  
Temecula, CA 92590

Re: Franklin Armory, Inc. Prototype Name - Title 1

Dear Mr. Davis:

This letter responds to your October 31, 2018 request, on behalf of Franklin Armory, Inc., that the Department of Justice (Department) “examine and review Franklin Armory’s newly designed firearm, currently bearing the prototype name – ‘Title 1’ to ensure that it complies with California’s voluminous firearm laws before it begins selling and distributing the firearm within the State of California.” You suggest that California Government Code section 11465.20 compels the Department to issue this guidance.

The Administrative Procedure Act empowers agencies to conduct an adjudicative proceeding under the declaratory decision procedure set forth in Government Code section 11465.10 et seq. However, whether to issue a declaratory decision in response to an application lies within the agency’s discretion. In this case, discretion requires that the Department decline to render a decision due to pending litigation on related issues and the possibility of the decision being viewed as an underground regulation. (Gov. Code, § 11465.20, subd. (b).) Moreover, even if the Department were not constrained as mentioned, it could not evaluate the firearm by a document and photograph.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin J. Horan IV".

MARTIN J. HORAN IV  
Director  
Bureau of Firearms

For XAVIER BECERRA  
Attorney General

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**DECLARATION OF JASON A. DAVIS IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.



Laura Palmerin

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

6 Attorneys for Petitioner - Plaintiff  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

FRANKLIN ARMORY, INC., et al.,

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
et al.,

Respondents-Defendants.

Case No.: 20STCP01747

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

**DECLARATION OF JAY JACOBSON IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, FOR  
SUMMARY ADJUDICATION**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

Department: 32

Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020

FPC Date: August 8, 2024

Trial Date: August 20, 2024



- 1 • “How would a dealer fill out the DES Long Gun Transfer if they were transferring
- 2 any of the above firearms [i.e., examples of long guns that are neither rifles nor
- 3 shotguns nor rifle/shotguns]?”
- 4 • Would it be possible for the state to add “Other” to the options under the question
- 5 ‘Gun Type?’ If so, how long might it take to add the option?”
- 6 • “In the meantime, should a dealer select “Rifle/Shotgun” under ‘Gun Type’ and then
- 7 properly describe the product under Section q Comment?”

8 A true and correct copy of my October 2019 emails to [firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov) is attached hereto as

9 **Exhibit 8.**

10 6. On or around October 15, 2019, FAI publicly announced the availability of its centerfire  
11 Title 1® model firearm, and it quickly garnered substantial interest from the public. FAI soon began to  
12 offer Title 1® firearms for sale and began to take refundable deposits from customers toward the  
13 purchase of Title 1® firearms.

14 7. Having received no response to my October 8, 2019, email, I again contacted the Bureau  
15 of Firearms via telephone on or about October 16, 2019. Again, I spoke with “Operator 211.” That call  
16 ultimately left me wondering if the DOJ had any intention to take quick action to fix the DES issue I  
17 raised. So, I followed up with another email to [firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov). In that email, I notified the  
18 Bureau that the DOJ’s failure to address the DES defect was actively preventing the lawful commerce of  
19 FAI’s lawful Title 1® model firearms. Hearing nothing, I again followed up via email to  
20 [firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov) on or about October 21, 2019. I received no response.

21 8. On or about October 22, 2019, I spoke with Mr. Blake Graham from the California  
22 Department of Justice, Bureau of Firearms, to discuss the concerns I had and had heard from licensed  
23 firearms dealers regarding the DES limitation that was preventing the lawful transfer of FAI’s Title 1®  
24 model firearm. We discussed the issue at length. I was informed by Blake Graham that Mossberg  
25 Cruisers had been processed through the DES as shotguns, even though Mossberg Cruisers do not have  
26 a stock. Mr. Graham did not confirm whether the DOJ would allow DES users to use the same process  
27 when processing the transfer of FAI’s Title 1® model firearm.

28 9. That said, based on anecdotal information that I have heard from some dealers, I

1 understand that *some* lower receivers, barreled receivers, and pistol grip shotguns have been processed  
2 through the DES as either rifles or shotguns. This was limited, however, to only certain firearms using a  
3 specific method involving the use of the “Comment” section within the DES. Though I asked if DES  
4 users could take advantage of that same process when processing the transfer of FAI’s Title 1 model  
5 firearm (see Ex. 8 “In the meantime, should a dealer select “Rifle/Shotgun” under ‘Gun Type’ and then  
6 properly describe the product under Section q Comment?”), I received no response.

7       10. When FAI customers placed orders to purchase centerfire FAI Title 1® model firearms,  
8 the advertised full purchase price was \$944.99. But because FAI knew that the DES defect prevented  
9 transfers of the Title 1®, FAI offered customers the opportunity to submit a refundable deposit toward  
10 the purchase of a Title 1® to be completed once the DES defect was corrected. Payment of the deposit  
11 essentially saved a “spot in line” for the deposit payor. FAI ultimately collected about 35,000 deposits  
12 for the sale of centerfire FAI Title 1® firearms. Deposit amounts were between \$5 dollars and the full  
13 purchase price. A true and correct copy of a page from FAI’s website advertising the “Title 1® Deposit”  
14 is attached hereto as **Exhibit 10**. This document was retrieved from the Internet Archival website, The  
15 Wayback Machine, on or about June 25, 2024.

16       11. FAI could not, however, lawfully transfer the FAI Title 1® model firearm to its deposit-  
17 paying customers before the enactment and enforcement of SB 118 (Penal Code section 30515, subd.  
18 (a)(9)-(11)) because the DES enhancement adding “Other” to the “long gun” subtype dropdown list was  
19 not made before SB 118 took effect and because the DOJ had made no alternative available for the  
20 submission of the required data for long guns that are neither rifles nor shotguns nor rifle/shotguns.

21       12. FAI suffered economic damage in the form of millions of dollars in lost profits because  
22 we could not lawfully complete the sale of and transfer the FAI Title 1® model firearm to its thousands  
23 of deposit-paying customers before the enactment and enforcement of SB 118.

24       13. Assuming, however, that FAI’s centerfire Title 1® model firearm could ever be lawfully  
25 transferred in California, FAI was committed at the time it accepted deposits from customers to fulfill all  
26 orders for which people paid deposits. FAI remains committed to fulfilling those orders to this day.

27       14. To date, a very small minority of the thousands of individuals who made a deposit have  
28 asked for a refund.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 26, 2024, at 12:16 PM, MENDEN, NV.

  
Jay Jacobson  
Declarant

# **EXHIBIT 8**

## Jay Jacobson

---

**From:** Jay Jacobson <jjacobson@franklinarmory.com>  
**Sent:** Monday, October 21, 2019 12:37 PM  
**To:** firearms.bureau@doj.ca.gov  
**Cc:** Jason Davis  
**Subject:** Re: Attention Operator 211  
**Attachments:** image034.png; image032.jpg; image009.jpg; image026.jpg; image017.png; image003.jpg; image002.png; image037.jpg; image027.png; image007.jpg; image033.jpg; image005.jpg; image011.png; image016.jpg; image013.png; image019.png; image035.png; image036.jpg; image025.jpg; image051.jpg; image015.jpg

Good afternoon Operator 211.

I have yet to hear back from the department. I will be on the road this week, so please call my cell phone. 408.592.9188. I'd really like to resolve this issue amicably. However, I have attached a complaint we are filing against the State of New Jersey tomorrow. We have the resources to move forward when recalcitrant agencies refuse to follow the law.

All I ask is for the department follow the law with integrity and fidelity. Since there is no law against the sale of our product, the DES system will require an additional long gun descriptor. Our product is NOT a rifle, shotgun, or pistol.

Failure to respond will result in litigation very similar to the complaint against New Jersey. Wouldn't it be best to avoid embarrassment by simply complying with the law you have sworn to uphold?

On Thu, Oct 17, 2019, 1:56 PM Jay Jacobson <[jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)> wrote:

Good afternoon Operator 211.

Thank you again for your time on the phone yesterday. Unfortunately I am left wondering if the department is going to take immediate action to fix the website that is now preventing the lawful commerce of our products. At this point, I have given the department over a week to develop an action plan, and the best we have heard is that "they are working on it."

My goal with this correspondence is to stave off litigation that will surely cost the state a lot of money given that the merits of the case would seem to be in our favor. If we were to hear that the problem with the DES dropdown menu was going to be fixed by the end of the week, then I would be satisfied.

If you would be so kind to have the manager in charge of this issue give me a call today, I would certainly appreciate it. My cell phone is 408-592-9188.

Take care,

--



**Jay Jacobson**

President

Phone: 775.783.4313

Email: [jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)

2246 Park Pl Ste B Minden, NV 89423, USA



---

In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited.

---

**From:** Jay Jacobson <[jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)>  
**Sent:** Monday, October 14, 2019 2:03 PM  
**To:** 'firearms.bureau@doj.ca.gov' <[firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov)>  
**Cc:** Jason Davis <[jdavis@franklinarmory.com](mailto:jdavis@franklinarmory.com)>  
**Subject:** RE: Attention Operator 211

Hello 211.

Have you made any progress on the DES issue that is precluding the sale of various firearms discussed below? Please note that I have indicated four different firearm examples that are not directly related to Franklin Armory that are obliged to be transferred under DES because there is not a state law that precludes the sale of the firearms.

Besides the four examples below, Franklin Armory has two related firearms that fall into this category: Title 1™ and CSW™. Since we believe that both of these firearms are legal to sell within the state, we believe that the state is unrighteously denying our product the right to sell within the state. It is imperative that the DES be changed to allow for a drop down menu allowing “other” under dealer long gun sale.

We have waited 6 days already. Please let us know when we should expect a response.

Sincerley,

--



**Jay Jacobson**

President

Phone: 775.783.4313

Email: [jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)

2246 Park Pl Ste B Minden, NV 89423, USA



In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited.

---

**From:** Jay Jacobson <[jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)>  
**Sent:** Friday, October 11, 2019 4:51 PM  
**To:** 'firearms.bureau@doj.ca.gov' <[firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov)>  
**Subject:** RE: Attention Operator 211

Good afternoon Operator 211.

It has been a few days since I sent in the below correspondence. Can you please confirm that you have received it and whether or not the department intends to change the drop down menu?

Respectfully,

--



**Jay Jacobson**

President

Phone: 775.783.4313

Email: [jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)  
2246 Park Pl Ste B Minden, NV 89423, USA



---

In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited.

---

**From:** Jay Jacobson <[jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)>  
**Sent:** Tuesday, October 8, 2019 1:29 PM  
**To:** 'firearms.bureau@doj.ca.gov' <[firearms.bureau@doj.ca.gov](mailto:firearms.bureau@doj.ca.gov)>  
**Subject:** Attention Operator 211

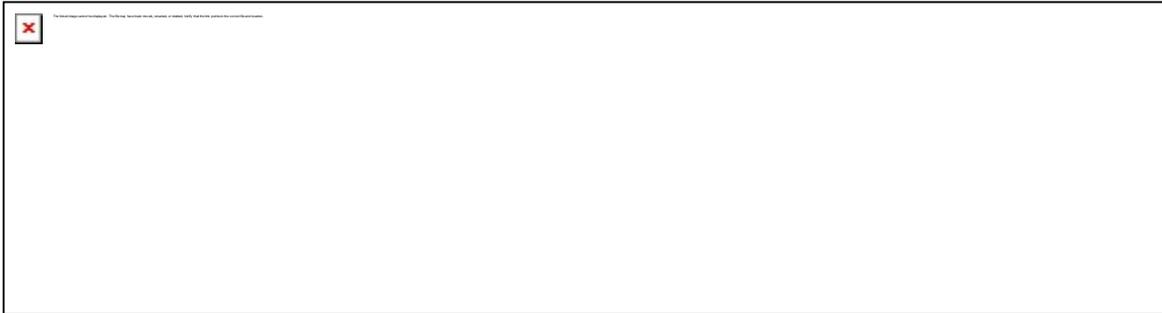
Good afternoon Operator 211.

Thank you for taking my call today. How would a dealer transfer a firearm that is a long gun but is neither a rifle, nor a shotgun?

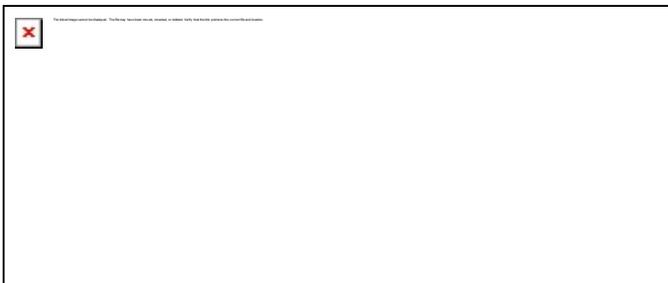
I looked on the following DES PDF [https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/dros\\_entry\\_guide.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/dros_entry_guide.pdf) and found on page 52, that there is a process for a "Dealer Long Gun Sale." When a dealer fills in the entry, they eventually get down to section "j. Gun Type." At this point the dealer has three options: "Rifle," "Rifle/Shotgun," or "Shotgun." Unfortunately this list becomes a false trichotomy.

In the world of firearms (even in California) there are firearms that are not defined as a rifle, a shotgun, or combination rifle/shotgun. Examples may include the following:

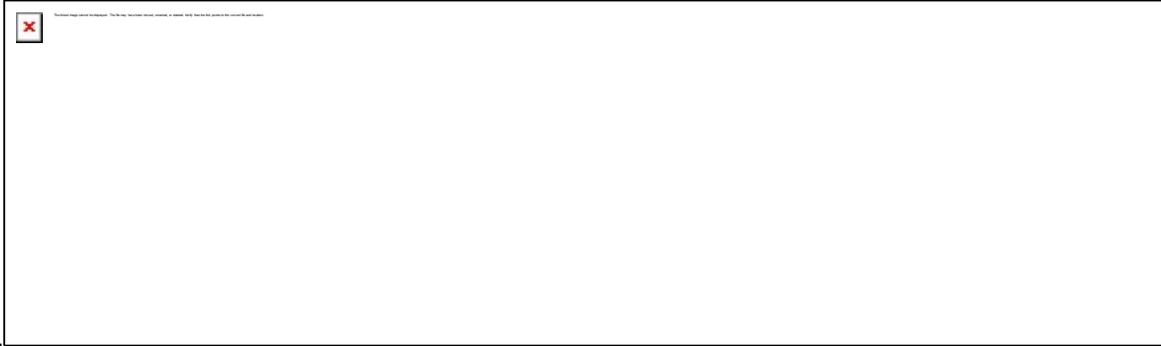
- Mossberg Cruiser: It is chambered in 12 gauge, and has a barrel over 18" long. However, it does not have a stock. It is a long gun that is not technically a shotgun or rifle.



- 1919A4 (semiautomatic of course:) This is a firearm that chambers a metallic cartridge, has a rifled bore, but it lacks a stock. Consequently it is also a long gun that is not a rifle.

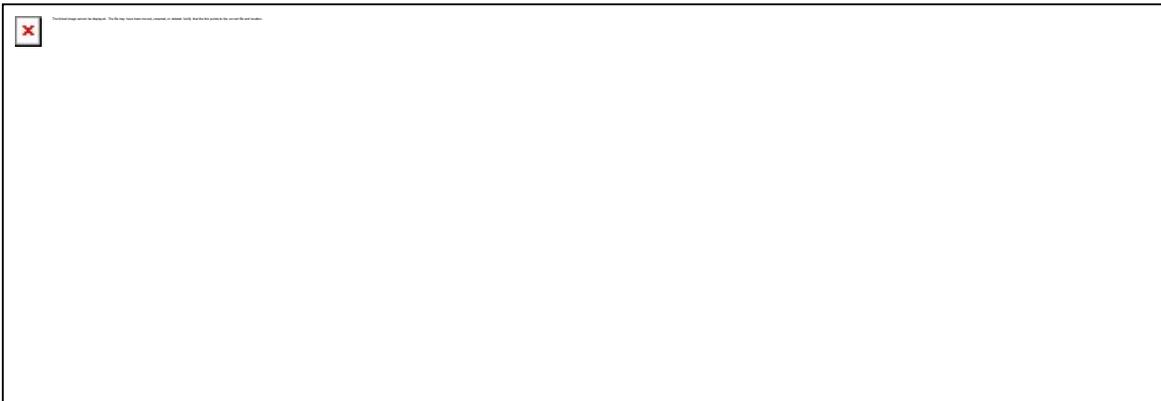


- Uberti 1873 Buntline Colt Revolver with 18-Inch Barrel: Note that the barrel is over 16 inches and therefore is not a pistol. Again, it lacks a



stock.

- Barreled Action: A barreled action is not a “receiver only” because it has a barrel, caliber, etc. However, it is neither a rifle or a shotgun because it is not fitted to a stock.



As these diverse examples demonstrate, there is a need to add an additional option on the dropdown menu for “other.” Without an “other” option, a consumer cannot accurately select the appropriate Gun Type when filling out the documentation. Consequently, I ask the following questions:

- How would a dealer fill out the DES Long Gun Transfer if they were transferring any of the above firearms?
- Would it be possible for the state to add “Other” to the options under the question “Gun Type?”
  - If so, how long might it take to add the option?
- In the mean time, should a dealer select “Rifle/Shotgun” under “Gun Type” and then properly describe the product under section “q. Comments?”

In full disclosure, I will note that Franklin Armory does have a product called "Title 1" that is ready to be sold in California. I intend to buy and transfer one to myself. The department counsel is well aware of the resolved litigation on the matter. **Even so, I am not asking whether or not the department believes that the Title 1 is legal or not.** (If it was illegal, I believe the department counsel would have said so in the most recent demurrer on the subject.) Instead, I am simply asking for the department would transfer firearms that are long guns that are neither a rifle or a shotgun.

Respectfully

--



**Jay Jacobson**

President

Phone: 775.783.4313

Email: [jjacobson@franklinarmory.com](mailto:jjacobson@franklinarmory.com)

2246 Park Pl Ste B Minden, NV 89423, USA



---

In the event, this document(s) contains technical data within the definition of the International Traffic in Arms Regulations or Export Administration Regulations, it is subject to the export control laws of the U.S. Government. Transfer of this data by any means to a foreign person, whether in the United States or abroad, without an export license or other approval from the U.S. Department of State or U.S. Department of Commerce is prohibited.

# **EXHIBIT 9**

**UNINTENTIONALLY SKIPPED**

# **EXHIBIT 10**



The wayback machine - <https://web.archive.org/web/20201202161914/https://franklinarmory.com/amp/title-1-deposit/>

## Title 1® Deposit

\$5.00

**SKU:** 1269-BLK

**Availability:** This Product is no Longer Available

**Full Price:** \$944.99

**Magazine Release:** Standard Push Button

**Muzzle Device:** A2 Flash Suppressor







---

Description

---

**Deposit for the Title 1™**

IMPORTANT NOTICE

Please be aware that the California Department of Justice has not updated their "DES" website, and Title 1® cannot currently transfer to the consumer. Franklin Armory®, Inc. is pursuing corrective efforts with the California Department of Justice to alleviate what we believe are unlawful barriers to the delivery of lawful firearms. Additionally, the state legislature is currently considering a bill that could prohibit the sale, possession, and/or delivery of this firearm. Though the bill has not been enacted into law at this time, all Californians should be aware of the potential changes in the law before making any deposits. As part of our commitment to our customers, all Title 1® deposits will remain fully refundable and refunds of the deposits will be provided to all customers who are not able to have their firearms.

Franklin Armory® Title 1® was created for our friends behind enemy lines where the modern sporting rifle is neutered beyond comprehension. While fixed magazine and featureless platforms will continue to have their place, Title 1® provides a FULL FEATURE option to the consumer in restrictive jurisdictions. It has a standard magazine release and while it ships with a ten round magazine, civilians can use legally acquired 30 round



- Standard Push button magazine release.
- Can be used with 30 round magazine if acquired legally.
- Can be used with any flash hider or compensator on the market
- Very Stable with three points of contact including a padded cheek weld.
- 100% American Made!

<b>Barrel Length + Type</b>	16" Barrel
<b>Handguard/Upper</b>	15" FST™ M-Lok
<b>Sights</b>	Optic Ready
<b>Twist</b>	1:7"
<b>Charging Handle</b>	Standard
<b>Bolt Carrier</b>	Salt Bath Nitride
<b>Lower</b>	FAI™
<b>Trigger</b>	Custom Tuned Trigger

<b>Magazine</b>	10 Round Magpul
-----------------	-----------------



---

<b>Color</b>	Black
<b>Buffer Tube</b>	Pistol
<b>Grip</b>	Magpul SL
<b>Calibers</b>	5.56 NATO

---

Share

---

---

Information

Quick Links

Company

Sitemap

Categories

Firearms

Triggers

Parts

Specials

Brands

View All

Info

*2246 Park Place Suite B*

*Minden, NV 89423*



---

*and if you don't have a sword, sell your cloak and buy one".*

**Call us at 7757834313**

© Franklin Armory®

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**DECLARATION OF JAY JACOBSON IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, California.



Laura Palmerin

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

6 Attorneys for Petitioner - Plaintiff

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
6/26/2024 11:58 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By S. Bolden, Deputy Clerk

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

FRANKLIN ARMORY, INC., et al.,

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE,  
et al.,

Respondents-Defendants.

Case No.: 20STCP01747

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

**DECLARATION OF NEIL OPDAHL-  
LOPEZ IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE, FOR  
SUMMARY ADJUDICATION**

Hearing Date: July 10, 2024

Hearing Time: 8:30 a.m.

Department: 32

Judge: Hon. Daniel S. Murphy

Action Filed: May 27, 2020

FPC Date: August 8, 2024

Trial Date: August 20, 2024

1 **DECLARATION OF NEIL OPDAHL-LOPEZ**

2 I, Neil Opdahl-Lopez, hereby declare as follows:

3 1. I make this declaration in support of Plaintiff’s Opposition to Defendants’ Motion for  
4 Summary Judgment, or in the Alternative, for Summary Adjudication. I have personal knowledge of the  
5 facts set forth herein and if called as a witness, I could and would competently testify hereto.

6 2. I am a law-abiding citizen residing in the City of Glendora, in the county of Los Angeles,  
7 California. I am not prohibited from owning or possessing firearms or ammunition under state or federal law.

8 3. On or about June 23, 2020, I paid a deposit and entered into a contract with Franklin Armory, Inc.  
9 (“FAI”) for the purchase of one FAI Title 1 model firearm, a long gun chambered in 5.56 NATO, a centerfire  
10 cartridge.

11 4. At the time I paid my deposit, it was my understanding that the FAI Title 1 model firearm  
12 was lawful to own, possess, and transfer, and I made my deposit, I intended to complete the purchase of  
13 my FAI Title 1 model firearm.

14 5. I was, however, unable to receive my lawful FAI Title 1 model firearm when I placed my  
15 deposit because, as I understood at the time, an issue with the California Department of Justice’s “DES”  
16 website was blocking the lawful transfer of the Title 1. I also believed that FAI was committed to  
17 pursuing corrective efforts with the California Department of Justice to alleviate the DES barrier to the  
18 delivery of Title 1 firearms and that I would, someday, be able to complete the purchase of and take  
19 lawful possession of my FAI Title 1 model firearm.

20 6. With the adoption of Senate Bill 118 in August 2020, however, the centerfire FAI Title 1  
21 model firearm became an “assault weapon” under California law. Because I was not in possession of the  
22 Title 1 firearm for which I made a deposit before September 1, 2020, I was unable to take lawful  
23 possession of it in time to register it under the registration window provided by SB 118. And I can no  
24 longer take the steps required to register and lawfully possess the centerfire Title 1 firearm for which I  
25 made a deposit.

26 7. If the California Department of Justice had corrected the DES to facilitate the lawful  
27 transfer of centerfire FAI Title 1 model firearms before SB 118 designated them “assault weapons,” I  
28 would have completed the purchase of and take lawful possession of the FAI Title 1 model firearm for

1 which I paid a deposit.

2 8. I am a named plaintiff in the case of *Briseno v. Bonta*, Case No. 21-cv-09018, a proposed class  
3 action lawsuit pending in the federal district court for the Central District of California. In that case, I am seeking,  
4 among other things, injunctive relief ordering the California Department of Justice, the Attorney General, and the  
5 Chief of the California Department of Justice Bureau of Firearms to allow me to submit the statutorily required  
6 firearm purchaser information through DES for, complete the transfer of, take possession of, and register pursuant  
7 to Penal Code section 30900(c) the centerfire Title 1 firearm for which I made earnest money deposits before  
8 August 6, 2020, notwithstanding the fact that I could not possess that firearm before September 1, 2020. If such  
9 relief is granted in that case, I intend to complete the purchase of and take lawful possession of the FAI Title 1  
10 model firearm for which I paid a deposit.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct. Executed on June 26, 2024, at 1401 PST, in Glendora, CA.

13  
14   
15 \_\_\_\_\_  
16 Neil Opdahl-Lopez  
17 Declarant  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 June 26, 2024, I served the foregoing document(s) described as

**DECLARATION OF NEIL OPDAHL-LOPEZ IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION**

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

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. 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 June 26, 2024, at Long Beach, 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.

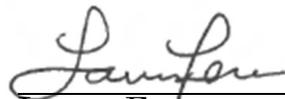
On May 21, 2025, I served a copy of the foregoing document described as: **APPELLANTS' APPENDIX, VOLUME VI OF XX, Pages 728-1106**, on the following parties, as follows:

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