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' OPENING BRIEF

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

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SUPERIOR COURT CASE NUMBER: 20STCP01747

APPELLANT/ PETITIONER: Franklin Armory, Inc. and California Rifle & Pistol Association, Inc.

RESPONDENT/ REAL PARTY IN INTEREST: California Department of Justice, et al.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name*): Franklin Armory, Inc.

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

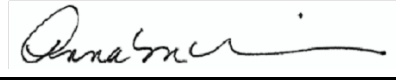
Full name of interested entity or person	Nature of interest *(Explain):*
(1) Franklin Armory Holdings, Inc.	100% ownership/sole shareholder
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: May 21, 2025

Anna M. Barvir
(TYPE OR PRINT NAME)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1. This form is being submitted on behalf of the following party *(name*): California Rifle & Pistol Association, Inc.

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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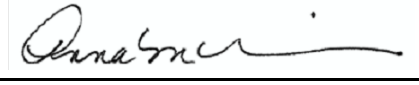
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INTRODUCTION

What is to be done when public servants misuse their authority over a mandatory reporting system to suspend the rights of tens of thousands of Californians? Plaintiffs-Appellants Franklin Armory, Inc. ("FAI") and the California Rifle & Pistol Association, Incorporated ("CRPA") challenge a calculated and unlawful effort by Defendant-Respondent California Department of Justice ("DOJ"), under the control of Respondent Xavier Becerra, the former Attorney General, to block the sale and transfer of otherwise legal firearms. Firearms dealers were unable to transmit the statutorily required information for certain legal long guns through the DOJ's "Dealer Record of Sale Entry System" ("DES")—the only method authorized by law to report and process firearm transfers. This design flaw was no accident. And it had sweeping consequences: it created an invisible, de facto ban on otherwise lawful firearms that did not neatly fit the DOJ's predefined boxes—including FAI's Title 1® line of firearms.

The result? Tens of thousands of Californians who placed earnest money deposits to buy centerfire Title 1® firearms were unable to legally complete their purchases—not because those firearms were illegal, but because Respondents refused to fix the DES so that dealers could report the transactions as required by law. For nearly two years, Respondents knowingly maintained this defect. Repeated requests from FAI and others to fix the issue went ignored. Even after Respondents admitted the problem and began developing a fix, they abruptly halted the software update. Then, only after Respondents successfully lobbied for the passage of

Senate Bill 118 ("SB 118")—a law that reclassified centerfire variants of the Title 1® as an "assault weapon," effective immediately—did they finally allow the DES to process the affected transfers. By then, of course, it was too late.

This was no administrative mishap. It was a slow-motion regulatory ambush, executed with deliberate indifference to the rights of thousands of California residents and in flagrant violation of the law. Respondents' conduct violated ministerial duties under the Penal Code, denied Appellants (and their customers and members) due process, and trampled the Second Amendment rights of thousands who sought to acquire legal firearms. Yet the trial court, at various stages, ruled that Appellants had no remedy, concluding that their claims were either moot or barred by one or more statutory immunities. These rulings were wrong as a matter of law.

First, the trial court erred by granting summary judgment on Appellants' tort claims. The Attorney General is not immune under Government Code section 820.2 for his refusal to correct or work around a known DES defect that blocked lawful firearm transfers. California law imposes a clear, ministerial duty to maintain a system capable of processing transfers for *all* lawful firearms—not just those that fit within arbitrary drop-down menus. That duty exists independent of how the DOJ chooses to design the DES. As two judges of the trial court first recognized, Respondents' conduct was not a discretionary policy choice, it was an abdication of a mandatory legal obligation. The trial court's

later reversal improperly insulated Becerra from liability for a decision he had no discretion to make.

Second, the court erred by sustaining Respondents' pleadings challenges and dismissing core constitutional claims—including violations of substantive and procedural due process—on the false premise that the adoption of SB 118 rendered the case moot. But Appellants never asked the trial court to roll back the new law. They asked the court to prevent Respondents from using their own prior misconduct to escape liability and deny relief. Had Respondents not unlawfully blocked transfers using the DES, thousands of customers would have lawfully taken possession of their Title 1® firearms *before* SB 118 went into effect. The fact that Respondents intentionally delayed the fix until after the passage of that legislation only amplifies the constitutional harm. Government agencies do not get to create impossible compliance hurdles and then invoke their own obstinacy as a shield against accountability.

Finally, though the trial court dismissed Appellants' due process claims without addressing the merits, Appellants sufficiently pled that Respondents deprived them of fundamental liberty interests—including the right to acquire, sell, and possess lawful firearms, and to engage in lawful commerce—without any notice or opportunity to be heard. Respondents' conduct not only violated constitutional guarantees of due process but also violated the procedural rulemaking requirements of the Administrative Procedure Act. When the government implements a policy that forecloses the exercise of fundamental rights, it must do so

transparently, lawfully, and with public input. Respondents did none of these things.

This case is not a mere administrative dispute. It is a constitutional reckoning. Respondents' refusal to correct a known defect in a mandatory regulatory reporting system—while exploiting that very defect to bar lawful transactions until it could bring about a change in the law—violates bedrock principles of due process. The trial court's decision effectively invites state officials to circumvent statutory and constitutional requirements through inaction and technical manipulation. This Court should reject that dangerous precedent.

Appellants respectfully request that this Court reverse the trial court's judgment and remand for further proceedings on the merits.

STATEMENT OF THE ISSUES

1. Does discretionary immunity shield the Attorney General from liability for deliberately refusing to fix a known defect in the state's firearm reporting system—when that refusal unlawfully blocked the transfer of legal firearms and violated a clear statutory duty?

2a. Did the trial court err in sustaining pleadings challenges to Appellants' constitutional and statutory claims as moot when Respondents' own misconduct made compliance with SB 118 impossible for thousands of pre-purchase customers?

2b. If the adoption of SB 118 did not render Appellants' Fourteenth Amendment claims moot, did Appellants plead

sufficient facts to state viable due process claims and overcome a motion for judgment on the pleadings?

STATEMENT OF APPEALABILITY

This appeal is from the final judgment of the Superior Court of California, County of Los Angeles, entered after the trial court granted summary judgment for Respondent California Department of Justice and former Attorney General Xavier Becerra (collectively, "Respondents"). (A.A.XIX 2135-2141 [order granting summary judgment]; A.A.XIX 2147 [notice of entry of judgment].) It is expressly authorized by Code of Civil Procedure section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

Under California law, "firearm" is broadly defined as any "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." (A.A.VI 992-993; Pen. Code, § 16520.) The law further divides firearms into two categories: long guns and handguns. A "long gun" is any firearm that is not a handgun. (A.A.VI 993; Pen. Code, § 168654.) Within the "long gun" category, California law recognizes certain statutorily defined subtypes, such as "rifle" and "shotgun." (A.A.VI 993; Pen. Code, § 17090 [defining "rifle"]; Pen. Code, § 17191 [defining "shotgun"].)

Appellant FAI is a federally licensed firearms manufacturer incorporated in Nevada. (A.A.VI 0992.) FAI manufactures a series of firearms designated with the model name Title l®. (A.A.VI 0992.) Under California law, the Title 1® qualifies as a "long gun" (A.A.VI 0993; Pen. Code, § 16865), but it does not fall within any of the

recognized firearm subtypes. (A.A.VI 0993; Pen. Code, §§ 16865, 16640, 16530, 17090, 17191.)

With limited exceptions, all firearm transfers in California must be conducted through a licensed dealer (commonly referred to as an "FFL"). (A.A.VI 0993; Pen. Code, §§ 26700, 27545, 2824, subd. (d).) When a customer purchases a firearm, the dealer is required to transmit specific information to the DOJ using an electronic reporting system. (A.A.VI 0993-0994; Pen. Code, §§ 26700, 27545, 28100, 28155, 2824, subd. (d).) Respondents are *required* to prescribe the format for this record under Penal Code section 28105, and they *must* maintain a permanent registry of this information. (A.A.VI 0994; Pen. Code, § 11106, subds. (b)(1)(A), (b)(1)(D).)) Among other things, the registry *must* include the manufacturer's name, model, serial number (if any), caliber, firearm *type*, barrel length, and other identifying details. (A.A.VI 0994; Pen. Code, § 11106, subds. (b)(1)(A), (b)(1)(D).))

The law mandates that, *for all firearms*, the record of electronic transfer *must* specify the "type"—e.g., "handgun" or "long gun." (A.A.VI 0994; Penal Code § 28160, subd. (a).) DOJ controls the method by which dealers submit this information and, by law, the electronic method designated by DOJ is the exclusive means of submission unless an alternative is expressly authorized. (A.A.VI 0994; Penal Code § 28205, subd. (a), (c).) That system is the "Dealer Record of Sale Entry System" ("DES")—a web-based application developed and maintained by DOJ. (A.A.VI 0994-0995; Penal Code §§ 28205, subd. (c), 28155.) Dealers are prohibited from

entering inaccurate information into DES. (A.A.VI 0995; Cal. Code Regs., title 11, § 4210, subd. (b)(l)(6).)

When an FFL makes a DES entry, the system requires a designation of "gun type" (i.e., "long gun" or "handgun"). If "long gun" is selected, the system populates a second drop-down menu for firearm subtypes. (A.A.VI 0995-0996.) Before October 1, 2021, this menu contained only three options for "long guns": "rifle," "shotgun," or "rifle/shotgun combination." (A.A.VI 0995-0996.) There was no "Other" option, and the system would not allow the user to proceed without selecting one of the listed subtypes. (A.A.VI 0995-0996.) By contrast, other DES fields—like "Color," "Purchaser Place of Birth," and "Seller Place of Birth"—did include a catch-all "Other" option. (A.A.VI 0995-0996.)

As a result, the DES prevented dealers from submitting required transfer information for long guns that lacked one of the programmed subtypes, including the Title 1®. (A.A.VI 0995-0996.) Because the DES was the only authorized means of transmission, and DOJ declined to authorize an alternative method, transfers of Title 1® firearms were effectively blocked. (A.A.VI 0996-0997; Pen. Code, §§ 28215, subd. (c), 28160, subd. (a), 28200-28255.) Although DOJ had, in other contexts, authorized dealers to use the DES "Comment" field to process transfers of firearms with an undefined subtype, it refused to clarify whether that method could be used for the Title 1®—despite FAI's repeated requests for guidance.

(A.A.VI 0996.)[1] Consequently, FFLs informed FAI that they could not process Title 1® transfers. (A.A.VI 0997-0998.)

On October 24, 2019, FAI's counsel notified then-Attorney General Becerra that the DES's design flaw made it impossible to process Title 1® transfers. (A.A.VI 0998.) The letter explained that FAI had announced the release of the Title 1® on October 15, 2019, and was receiving strong demand—but could not fulfill the thousands of orders due to the DES defect. (A.A.VI 0998.) Because FAI knew it could not complete the transfers, it accepted refundable deposits from interested customers and orders for purchase from firearm dealers. (A.A.VI 0998-0999.) FAI collected nearly 35,000 deposits from customers, including FFLs, ranging from $5 to the full purchase price of $944.99. (A.A.VI 0999.) At all relevant times, FAI was committed to fulfilling those orders—and remains committed today—but has been unable to do so because of the DES defect and the subsequent legislative reclassification of the Title 1®. (A.A.VI 0999.)

In January 2020, Deputy Attorney General P. Patty Li responded to FAI's October 2019 letter, informing FAI that the

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[1] While state law mandates that the firearm "type" (e.g., "long gun") be included in the register or record of electronic transfer, no law mandates that a firearm "subtype" (e.g., rifle, shotgun, rifle/shotgun combination) be included. (A.A.VI 0997; Pen. Code, §§ 28160, subd. (a), 28200-28255.) DOJ could have thus removed the barrier within the DES that prevented FFLs from processing Title 1® transfers by enhancing the DES to allow the user to proceed without selecting a firearm subtype. (A.A.VI 0997; Pen. Code, §§ 28160, subd. (a), 28200-28255.) It could have authorized an "alternative means" for submitting the required information, including instructing FFLs to proceed by selecting existing options in DES and identifying the firearm as "Other" in one of DES's "Comment" fields. DOJ chose none of these options. (A.A.VI 0997; Pen. Code, § 28205, subd. (c).)

DOJ was working to fix the DES deficiency. (A.A.VI 0999-1000.) Notably, DOJ had successfully modified the DES to fix a similar deficiency—namely, the omission of the United Arab Emirates from a list of countries in the dropdown for place of birth—in under a month. (A.A.VI 0999.) FAI thus reasonably believed that the DOJ would promptly resolve the issue.

Cheryl Massaro-Florez, a DOJ Informational Technology Supervisor, later testified that she oversaw two distinct DES "enhancement" projects to add an "Other" option for long gun subtypes. (A.A.VI 1000.) She confirmed that the first enhancement was completed up to beta testing, but just before going live, it was terminated for reasons unknown to her. (A.A.VI 1000.) Appellants have since discovered, in documents improperly withheld from discovery, that work began on a fix for the DES as early as January 2020. (Appellants' Req. Jud. Notice ("RJN"), Ex. B.)

Then, in May 2020, DOJ submitted a Budget Change Proposal to the Department of Finance, requesting funding and legislation to "regulate assault weapons that are currently not defined as a rifle, pistol, or shotgun." (A.A.VI 1000.) DOJ described this as a move to "fix current loopholes in statute that allow manufacturers to make weapons that circumvent the intention of assault weapon laws." (A.A.VI 1000.) The proposal included draft language that would later be adopted as part of Senate Bill 118 ("SB 118"). (A.A.VI 1001.)

SB 118 amended the definition of "assault weapon" to include, for the first time, any "centerfire firearm that is not a rifle, pistol, or shotgun." (A.A.VI 1001; Pen. Code, § 30515, subd. (a)(9)-

(11).) This change reclassified the centerfire Title 1® as an "assault weapon." (A.A.VI 1001; Pen. Code, § 30515, subd. (a)(9)-(11).) The Legislature adopted the bill on August 4, 2020, and it was signed into law two days later. (A.A.VI 1001.) And because it was adopted as a "budget trailer bill," the change in law took effect immediately, without the two-thirds vote of the Legislature constitutionally required to adopt "policy bills" as "urgency legislation." (A.A.VI 1001; Cal. Const., art. IV, § 8, subd. (b).) DOJ official Allison Mendoza confirmed that she could not recall any other firearm legislation passed this way. (A.A.VI 1001.)

DOJ did not complete the DES enhancement until October 1, 2021, after SB 118 was adopted and took effect. (A.A.VI 1002.)[2] Only then could dealers select "Other" as a long gun subtype and proceed with transfers for firearms like the Title 1®. (A.A.VI 1002.) But by that time, the window to lawfully possess or register the reclassified Title 1® had long since closed. (A.A.VI 1002.)

FAI was thus legally barred from completing the transfers of its centerfire Title 1® firearms both *before and after* SB 118: first, by the DES defect that Respondents refused to timely correct, and later, by the statute DOJ helped engineer. (A.A.VI 1002; Pen. Code, § 30515, subd. (a)(9)-(11).) The company thus suffered millions of dollars in lost revenue. (A.A.VI 1002-1003.) Meanwhile, CRPA's thousands of members who had sought to purchase centerfire Title 1® firearms and other undefined subtypes were

[2] According to Massaro-Florez, this second project to enhance the DES to add an "Other" option for long gun subtypes took about three months to complete. (A.A.VI 1000.)

denied that opportunity in violation of their constitutional rights. (A.A.II 123, 128-129.)[3]

STATEMENT OF THE CASE

Because Respondents' conduct violated their statutory duties and effectively denied Appellants of their due process, property, and Second Amendment rights, Appellants sued for equitable relief and damages. (A.A.I 0034-0043.) They alleged several causes of action, including a petition for writ of mandate directing the DOJ to correct the defect of the DES that bars the transfer of otherwise lawful "firearms with undefined subtypes," including Title 1® firearms, or authorize other ways to transmit the required information. (A.A.I 0034-0041.) In August 2020, Appellants amended their complaint, adding four claims. (A.A.XX 2174.) The trial court stayed all but the First, Second, and Eighth Causes of Action. (A.A.III 0284.)

Respondents demurred to the three unstayed claims. Sustaining the demurrer, the court ruled that Appellants could not succeed on their unstayed claims, at least as related to the transfer of centerfire Title 1® firearms. (A.A.I 0118.) The court reasoned that because the deadline to take possession of such firearms to register them as "assault weapons" passed in September 2020, the court lacked authority to direct the DOJ to facilitate the transfer of such firearms through writ relief, rendering the case both moot and unripe, and leaving Appellants without standing to pursue their claims. (A.A.I 0114-0117.) Satisfied, however, that

[3] CRPA thus has associational standing under *Hunt v. Washington State Apple Advertising Comm'n* (1977) 432 U.S. 333, 343.

Appellants could allege that FAI manufactures a rimfire Title 1® that is not an "assault weapon" and that CRPA represents members who wish to purchase other "firearms with undefined subtypes," the court granted leave to amend. (Rptr.'s Tr., pp. 7:2-10:26.)

Appellants filed a timely Second Amended Complaint, alleging that countless firearms remain legal but cannot be transferred due to Respondents' policy of barring the transfer of "firearms with undefined subtypes." (A.A.II 0128-0129, 0136-0137.) And in line with its representations at the demurrer hearing (Rptr.'s Tr., pp. 12:17-16:11]), Appellants clarified that the Court should issue a writ directing DOJ to stop blocking the transfer of centerfire Title 1® firearms for which deposits had been made before August 6, 2020, for two reasons. (A.A.II 0147-0149.) First, because those who had placed a deposit on a centerfire Title 1® would have taken legal possession of their firearms before September 2020 but for Respondents' illicit conduct. (A.A.II 0148.) Second, because Respondents' conduct violated the due process rights of Appellants and their customers, members, and supporters. (A.A.II 0149.)

In response to the Second Amended Complaint, Respondents demurred again to the First, Second, and Eighth Causes of Action. (A.A.III 0217.) The Court overruled the second demurrer and ordered Respondents to answer. (A.A.III 0291.) Respondents answered, but only as to the then-unstayed causes of action. (A.A.III 0292.) The answer contained fifty-three affirmative defenses, most of which were boilerplate (AA.III. 0295-302), so

Appellants responded with a demurrer and motion to strike, which the Court mostly sustained (A.A.III 0305-0310).

By then, however, DOJ had finally modified the DES to add an "Other" option that went "live" on October 1, 2021. (A.A.V 0494-0497.) Due to that change, Respondents moved to dismiss the First, Second, and Eighth Causes of Action as moot. (A.A.III 0311-0352.) Appellants opposed the DOJ's motion, arguing that the court should exercise its discretion to hear the claims because the case involved issues of broad public interest that were likely to recur based on Respondents' conduct throughout the course of the dispute. (A.A.IV 0418-0426.) But, on January 27, 2022, Judge Chalfant dismissed the three claims and transferred the remaining claims to Judge Daniel S. Murphy. (A.A.V 0501.) According to Judge Chalfant, because the DES now had an "Other" option in the "Gun Type" field, Appellants had obtained the relief they sought, and there was no reason to believe that the same controversy would be likely to recur. (A.A.V 0501.) The fact that the fix was made only after the passage of SB 118 and after Respondents had filed two demurrers to the Appellants' complaints was, according to the lower court, irrelevant to mootness at this stage. (A.A.V 0501.)

On August 14, 2023, seeking to dispose of all the remaining claims, Respondents filed a motion for judgment on the pleadings. (A.A.V 0514.) The court ultimately granted Respondents' motion as to the sixth, seventh, and ninth causes of action, leaving the claims for tortious interference with contractual relations, tortious interference with prospective economic advantage, and negligent

interference with prospective economic advantage remaining. (A.A.V 0726.) The court dismissed Respondents' due process claims because, as it explained, the relief requested would violate SB 118, and Appellants were limited to a damages remedy. (A.A.V 0725.) The court also dismissed FAI's taxpayer claim as moot because, as the DES had now been "enhanced" to add an "Other" option, Respondents were no longer using tax dollars to implement a discriminatory reporting system. (A.A.V 0726.) The third, fourth, and fifth causes of action survived, in part, because Respondents had a mandatory duty to maintain the DES such that legal firearms could be transferred. (A.A.V 0724-0725.)

On April 26, 2024, after the parties engaged in substantial discovery, Respondents moved for summary judgment (A.A.VI 0729), and on July 11, 2024, the court granted the motion, disposing of the remaining causes of action (A.A.XIX 2141). In a largely unexplained reversal of its earlier ruling that Respondents had a mandatory duty to maintain the DES such that legal firearms could be transferred, the court ruled that the operation of the DES was a discretionary exercise under Government Code sections 815.6 and 820.2, immunizing Respondents DOJ and Becerra, respectively. (A.A.XIX 2139-2140.)

The court entered final judgment on July 12, 2024, over Appellants' objections that Respondents' proposed judgment did not accurately reflect the trial court's summary judgment order, among other things (A.A.XIX 2149-2152). Appellants appealed on September 9, 2024. (A.A.XX 2156.)

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON FAI'S TORT CLAIMS

A. Standard of Review

On appeal, this Court reviews the trial court's grant of summary judgment de novo, "viewing the evidence in the light most favorable to the plaintiff as the losing party and resolving any evidentiary doubts or ambiguities in her favor." (*Bailey v. S.F. Dist. Atty's Off.* (2024) 16 Cal.5th 611, 620, citing *Elk Hills Power, LLC v. Bd. of Equalization* (2013) 57 Cal.4th 593, 606).) The Court must examine the record to determine whether a triable issue of material fact exists and whether the moving party was entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

B. The Individual Respondents Are Not Entitled to Discretionary Immunity

Government Code section 820.2 provides immunity to public employees for *discretionary acts* taken *within the scope of their authority*. Below, Respondents repeatedly claimed immunity under various provisions—including section 820.2—for their refusal to fix the DES. (A.A.III 0236-0239; A.A.V 0544-0546; A.A.VI 0760-0764.) Two judges of the trial court rejected those arguments, each holding that Respondents have a mandatory, ministerial duty to maintain the DES to ensure that lawful firearm transfers may be processed and completed. (A.A. III 0289-0290; A.A.V 0724-0725.)

On summary judgment, however, the court reversed course and held that Respondents were merely exercising their discretion over the DES and were therefore immune from liability. (A.A.XIX 2139-2141.) The trial court's holding was in error. In their summary judgment motion, Respondents provided no legal justification for disregarding their *mandatory duty* once they learned that their system was blocking the lawful transfer of certain firearms, including the centerfire Title 1®. The court's analysis of those claims suggests, wrongly, that factual nuances could displace the legal question of whether Respondents had a mandatory duty to act—and that Respondents' entitlement to immunity turns on whether they engaged in some discretionary acts in carrying out that duty.

1. Respondents have a mandatory duty to maintain a DES that processes *all* lawful firearm transfers.

As the trial court twice held, state law imposes a *mandatory* duty on Respondents to maintain a system for transmitting the statutorily required information for transfers of *all* legal firearms—even new and emerging types. (Pen. Code, §§ 28155, 28160, 28205, 28215, 28220; see also A.A. III 0289-0290; A.A.V 0724-0725.) Indeed, Penal Code section 28160 commands that "*for **all** firearms*, the register or record of electronic transfer *shall* include *all* of the following information…," including the "[t]ype of firearm." (Pen. Code, § 28160, subd. (a)(14), bold & italics added).[4]

[4] In the past, Respondents apparently understood their mandatory duty to facilitate the electronic submission of DROS information to the DOJ through DES. In a letter to the Office of Administrative Law in November 2013, Respondents admitted that "[t]he legal sale of firearms in California is only available via

Despite this clear statutory requirement, Respondents refused to implement any means—either within the DES or some alternative method—that would allow transmission of this information for certain lawful firearms, including the then-legal centerfire Title 1®. That refusal was not a discretionary act entitled to immunity—it was a dereliction of a mandatory duty.

Concededly, Penal Code section 28155 does grant DOJ discretion to prescribe the *format* of the register and record of electronic transfer. But that discretion as to "form" is narrowly drawn. It does not authorize Respondents to adopt a form that fails to capture the required information for *all* lawful firearms, effectively obstructing the lawful transfer of legal firearms. Moreover, the existence of discretion in the method of executing a mandatory duty does not nullify the obligation to perform that duty altogether. As the Court of Appeal explained in *Ham v. Cnty. of Los Angeles* ("*Ham*") (1920) 46 Cal.App. 148, 162: "To the extent that [the] performance [of some duty] is unqualifiedly required, it is not discretionary, even though the manner of its performance may be discretionary."

In *Ham*, the court held that street superintendents and road supervisors had a mandatory, ministerial duty to repair roads once on notice that repairs were needed. (46 Cal.App. at p. 162.) While the public servants in *Ham* may have had significant discretion in

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DES" and that the DOJ would assume the duty of maintaining the DES on January 1, 2014. (A.A.II 0139-0140, quoting A.A.II 0178 [letter from then-Attorney General Kamala Harris' office, acknowledging that if the DES is not operational, firearms dealers cannot transfer firearms and "would be at risk of having to close their businesses"].)

the *manner* of repairing the streets, what they could not do was refuse to repair a street they knew needed repair. In the same way, Respondents cannot refuse, *for years*, to correct a known DES defect that blocks the transmission of statutorily required information or provide alternative means for its transmission,[5] simply because they retain discretion over the system's form.

As the trial court itself acknowledged, "discretionary immunity does not apply to all acts that involve discretion in the literal sense." (A.A.XIX 2139.) Indeed, "[i]t would be difficult to conceive of any official act, no matter how directly ministerial, that did not admit of some discretion in the manner of its performance,..." (*Ham*, *supra*, 46 Cal.App. at p. 163.) A public duty is discretionary only when the official must exercise "significant discretion" to perform it. (*Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 233, italics added). Respondents never established that they possess "significant discretion" over the *substance* of the DES, only the form it takes. Their limited discretion to dictate the form of the DES is not a blank check to block sales of any firearm the DOJ desires—or all firearms for that matter—by simply refusing to include all the required fields in the DES and claiming it is within

[5] Section 28205, subdivision (c), authorizes Respondents to provide alternative means (except for telephonic transfer) for transmitting the statutorily required information. Discretion only as to the *method* of transmission of information is the extent of the authority granted to Respondents by section 28205, allowing Respondents to make exceptions to the general rule favoring electronic transfer. It does not confer significant discretion to block the transmission of the statutorily required information altogether. So, while Respondents might offer variances to how the information is transmitted, *they must always provide some way to transmit it*.

their discretion to do so. Indeed, discretion over form cannot serve as a shield when it is used to frustrate a clear statutory duty.

Ultimately, Respondents can use their limited discretion to structure the DES however they see fit, so long as it complies with section 28160, which mandates that "*for all firearms*," the record of electronic transfer must include, among other things, the "type of firearm." (Pen. Code, § 28160, subd. (a)(14), italics added.) To draw again from *Ham*, Respondents are free to choose how they want to repair this "road," *but repair it they must*.

By refusing to correct the DES (or approve an alternative method) to facilitate the transfer of the centerfire Title 1® until it could be reclassified as an "assault weapon," Respondents violated their mandatory duty to create a system that allows firearm retailers to transmit all the statutorily required information for "*all* firearms." Any limited discretion they hold in performing that mandatory duty cannot shield them from liability under Government Code section 820.2

2. The trial court's reversal on summary judgment was in error because the existence of a mandatory duty is a question of law, not fact.

On demurrer and again on a motion for judgment on the pleadings, the trial court understood the issue, twice holding that Respondents have a mandatory duty to maintain the DES in a manner that allows lawful transfers of *all* legal firearms to be processed and completed. Yet on summary judgment, the trial court abruptly reversed course, A.A.XIX 2139-2140, holding that Respondents enjoy such broad discretion over the DES that they

could effectively block the lawful transfer of certain firearms *for years* without liability. That holding was plain error.

In its tentative ruling, the court attempted to justify its reversal, observing that summary judgment differs from a pleadings-stage challenge and that the benefit of evidence justifies the court's reassessment of the immunity issue. (Tent. Order Granting Mot. Summ. J., p.4, fn. 1, quoting *Oakland Raiders v. Natl. Football League* (2005) 131 Cal.App.4th 621.)[6] That general principle is sound. Courts may, and often must, revisit earlier rulings when the factual record develops. But the question here—whether state law imposes a mandatory duty to maintain a functional DES for all lawful firearm transfers—is purely legal. It is not a fact-based inquiry that would be altered by evidence of DOJ's competing priorities. On the contrary, the Penal Code *unambiguously* requires that the DES record the information necessary to process *all* firearm transfers. (See Pen. Code, §§ 28155, 28160, 28205, 28215, 28220; see also A.A. III 0289-0290; A.A.V 0724-0725.) So, correcting a system defect that blocks lawful firearm transfers is "unqualifiedly required." (See *Ham*, *supra*, 46 Cal.App. at p. 162.) And no amount of fact-finding can alter that legal mandate. The trial court's about-face was thus improper.

Even assuming the trial court was right to revisit the issue, the record does not support its conclusion. Respondents offered

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[6] The court's final order, while not changed in any other substantive way, did not include this footnote or any other attempt to explain the court's decision to disregard its earlier holdings. (A.A. XIX 2139-2141.) But, because this Court may affirm on any supported grounds, Appellants explain here why the trial court was wrong to do so.

only the vague excuses of Allison Mendoza, Director of the DOJ Bureau of Firearms ("BOF"), for their inaction, citing apparent "public safety concerns," "competing priorities among the multiple proposed DES enhancement requests pending at that time" and the "allocation of available resources to such an enhancement." (A.A.XIX 2140) [citing only the Mendoza testimony]; see also A.A.VI 0763-0764, 0786 [Respondents' summary judgment motion]; A.A.VI 0990 [Mendoza declaration].) Meanwhile, FAI introduced testimony from mid-level DOJ employees and other evidence contradicting those claims.[7] At a minimum, FAI's opposition raised a material dispute of fact that the court improperly ignored.

For instance, the record shows that, in January 2020, Respondents were actively working on, not merely exploring the possibility of, a DES "enhancement" to add the "Other" option to the dropdown list for "long gun" subtypes. (A.A.VI 0990-0991,

[7] The trial court faulted FAI for failing to rebut Mendoza's claims "that implementing a 'other' option to DES required many months, diversion of over a dozen employees from other projects, and changes to other applications and databases beyond DES." (A.A.XIX 2140.) But as FAI learned just weeks before this brief was due, Respondents had withheld evidence that could have provided that very rebuttal. (Davis Decl. Supp. Req. Jud. Notice, ¶¶ 4-6, 12-13.) That evidence, requested but not produced in discovery, appears to confirm that the "Other" enhancement had been initiated (and may have been completed) as early as January 2020 and identified the DOJ employee responsible for the work. (*Id.* at ¶¶ 7-11 & Ex. B.) Without the opportunity to question the employee who made the DES changes or to conduct discovery about the contents of the withheld documents, Appellants' ability to challenge the narrative Mendoza created was stymied. Respondents cannot withhold evidence and then benefit from a lack of factual rebuttal.

citing A.A.VI 1057-1058; A.A.X 1311, 1318-1319; A.A.XVII 1768.)[8] They had virtually completed that fix, but just before the enhancement went live, Respondents terminated it. (A.A.VI 1000, citing A.A.VI 0856-0857, 0860-0861, 0864-0865, 0868-0873, 0876-0877, 0880-0881, 0883; A.A.X 1354-1358, A.A.XVII 1770-1773, 1778-1780, 1785-1789.) Then they delayed the final implementation of the fix until after the expedited passage of SB 118—a bill that DOJ itself proposed. (A.A.VI 1001-1002 [citing evidence].)

Worse yet, Respondents apparently did so because they perceived that FAI was exploiting a "loophole" in the law and creating a "public safety risk" because the centerfire Title 1® was essentially, but not yet legally, an "assault weapon." (A.A.XII 1498-1501, 1514-1516 [deposition testimony of Jennifer Kim, State Assembly Budget Committee Principal Consultant]; A.A.XIII 1548-1552 [emails between staffers from the Department of Finance, Senate, and Assembly]; A.A.XV 1625-1626 [email from Kim to legislative staffers about SB 118 assault weapon trailer bill language].) In other words, Respondents admitted that the delay

[8] Citing A.A.X 1311, 1318-1319 [Mendoza's testimony, recalling no details about the agency's review of competing priorities, allocation of resources, or public safety concerns], A.A.## 1768-1769 [Massaro-Florez's testimony, confirming that the "Other" enhancement's priority was "highly critical"], and A.A.VI 1057-1058 [January 2020 letter from DOJ attorney P. Patty Li confirming that the agency was "*currently implementing the modifications* necessary to enable DES to process sales of the Title 1"]; see also A.A.VI 1000, citing A.A.VI 0856-0857, 0860-0861, 0864-0865, 0868-0873, 0876-0877, 0880-0881, 0883; A.A.X 1354-1358, A.A.XVII 1770-1773, 1778-1780, 1785-1789 [Massaro-Florez's testimony that she oversaw two separate projects to add the "Other" option].)

was because of objections to the *type of legal firearm* to be transferred and not concerns about the *form of the transmission* of information about that transfer.

Far from a resource-driven delay, Respondents terminated a near-complete DES enhancement to add the "Other" option—as confirmed by DOJ Informational Technology Supervisor Massaro-Florez (A.A.VI 1000)—and deliberately targeted FAI's Title 1® firearms to block their sales until SB 118's passage—as shown by both internal DOJ emails and communications with the Department of Finance and legislative staff members (A.A.III 0210; A.AA.A.XII 1498-1501, 1514-1516; A.A.XIII 1548-1552; A.A.XV 1625-1626). This bad faith—not competing obligations or a lack of resources—drove Respondents' inaction (A.A.II 0137, 0139), falling outside discretionary immunity under *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 794.

Finally, the trial court's reliance on *Caldwell v. Montoya* ("*Caldwell*") (1995) 10 Cal.4th 972, 981, is misplaced, as Respondents' refusal to fix the DES was not a "basic policy decision" but a ministerial failure to implement Penal Code section 28160's mandate to record *all* firearm transfers. (A.A.II 0134-0135.) As *Barner v. Leeds* (2000) 24 Cal.4th 676, 685, clarifies, "there is no basis for immunizing lower-level, or 'ministerial,' decisions that merely implement a basic policy already formulated." (citing *Caldwell*, *supra*, 10 Cal.4th at p. 981). Respondents' inaction violated a clear statutory duty, not a discretionary choice.

Counter to the lower court's mischaracterization, this case was never about holding Respondents liable for failing to "make a *certain change* within a certain timeframe" (A.A.XIX 2140, quoting *Caldwell*, *supra*, 10 Cal.4th at p. 981, italics added). FAI's claim has always been that Respondents had a legal duty to remove a barrier to lawful firearm transfers, no matter how they *did it*. Even Respondents essentially conceded in their summary judgment papers that no system change was needed: for other firearms, DOJ had previously authorized dealers to select an alternate subtype where the appropriate one was missing. (A.A.VI 0996.) FAI proposed this solution before pursuing litigation, but Respondents offered no response. (A.A.VI 0996 [citing evidence].) Confirming that this option was available to dealers of Title 1® firearms—at least while Respondents worked to add the "Other" option—would have required minimal effort and no physical changes to the DES, undermining Mendoza's complaints about "competing priorities" and "the allocation of available resources."

But even if Respondents had shown that their failure to promptly act was due to competing responsibilities and limited resources, that is no defense. Discretionary immunity under Government Code section 820.2 does not shield public employees who act beyond the scope of their authority. And Respondents have *no* discretion to prevent the transmission of the required information for any legal firearm and, by extension, obstruct its lawful transfer. Evidence of competing obligations doesn't change that. Certainly, the law does not allow government officials to ignore their mandatory duties simply because, in their discretion,

other obligations take priority or they lack the resources to comply right away. If it did, mandatory duties would cease to be mandatory because competing priorities will always exist.

II. THE TRIAL COURT ERRED IN SUSTAINING RESPONDENTS' PLEADINGS CHALLENGES TO APPELLANTS' FIRST, SECOND, SIXTH, SEVENTH, AND NINTH CAUSES OF ACTION REGARDING THE CENTERFIRE TITLE 1®

A. Standard of Review

On appeal, this Court reviews the superior court's decision on demurrer and its judgment on the pleadings de novo, independently reviewing the complaint and the law to determine "whether the complaint alleges facts sufficient to state a cause of action." (*Regents of Univ. of Cal. v. Super. Ct.* (2013) 220 Cal.App.4th 549, 558; *Wise v. Pac. Gas & Elec. Co.* (2005) 132 Cal.App.4th 725, 738, *as modified* (Sept. 19, 2005) ["Appellate courts review judgments on the pleadings de novo."].) The Court should "find error if the plaintiff has stated a cause of action under any possible legal theory." (*Walgreen Co. v. City & Cnty. of San Francisco* (2010) 185 Cal.App.4th 424, 433.)

B. Senate Bill 118 Did Not Eradicate the Trial Court's Authority to Grant Equitable Relief Regarding Pre-adoption Purchases of the Centerfire Title 1®

The trial court dismissed Appellants' First, Second, Sixth, Seventh, and Eighth claims as moot in two phases. First, it sustained Respondents' demurrers to the first, second, and eighth claims (as they related to the centerfire Title 1®), reasoning that the passage of SB 118 stripped the court of any authority to direct Respondents to facilitate the transfer of such firearms through

writ relief. (A.A.I 0114-0118.) Second, it granted Respondents' motion for judgment on the pleadings on Appellants' federal due process claims (the sixth and seventh claims) as moot for largely the same reason. (A.A.V 725.) In effect, Respondents' illegal scheme worked: by stalling the DES fix, they ran out the clock, allowing the Legislature to SB 118 and giving themselves unchecked power to permanently thwart tens of thousands of pending firearm transfers. But SB 118's passage did not strip the judiciary of its authority to grant (limited) equitable relief here, where the government's own misconduct rendered compliance with the law impossible.

While declaratory relief is unavailable to correct purely past wrongs (*Canova v. Tr. of Imperial Irrigation Dist. Emp. Pension Plan* (2007) 150 Cal.App.4th 1487, 1497), plaintiffs suffering from ongoing harms are entitled to declaratory relief. But "[f]irst, the plaintiff must complain of an *ongoing harm*. Second, the harm must be redressable or capable of being rectified by the outcome the plaintiff seeks." (*In re D.P.* (2023) 14 Cal.5th 266, 276, italics added.) Both conditions are easily met here.

First, Appellants indisputably suffer ongoing harm. They (and their customers and members) were illegally and unconstitutionally blocked from completing lawful transfers for months, and now—due solely to Respondents' intentional delay—they remain barred from doing so as long as SB 118 operates to prevent the transfer (and subsequent registration) of centerfire Title 1s®. (A.A.II 0156.)

Second, that harm can be redressed by the relief Appellants seek—that is, narrowly enjoining enforcement of SB 118 to the extent that it blocks the transfer and registration of Title 1® firearms for which deposits were made before August 6, 2020. (A.A.II 0146.) In short, Appellants seek nothing more than to restore the legal status quo that would have existed *but for* Respondents' own misconduct. (A.A.I 0146-0149) [requesting injunction and writ relief barring Respondents "from enforcing the ... Assault Weapons Act in a manner that prohibits the acquisition and registration of those centerfire FAI Title l® firearms for [which] earnest money deposits were made on or before August 6, 2020, and but for [Respondents'] technological barriers …, would have been lawfully acquired and registered in accordance with SB 118"].)

This is not a novel remedy. In *Sharp v. Becerra* (E.D. Cal. Mar. 29, 2021) No. 18-cv-02317, Attorney General Becerra himself entered into a stipulated injunction and consent decree, after the DOJ's CFARS website malfunctioned, preventing the lawful registration of "assault weapons" before the statutory deadline. A.A.V 0666.) The remedy in *Sharp* included reopening the registration window—precisely because DOJ's own failings had made timely compliance impossible. Here, the same logic applies. Respondents' failure to timely fix the DES should not insulate them from judicial accountability when it created the very conditions that made compliance with SB 118 impossible.

The DES update in October 2021 came too late, as SB 118 had already banned Title 1® transfers, leaving thousands of

depositors unable to complete their lawful purchases (A.A.II 0144.) Appellants seek equitable relief to allow registration of firearms for which deposits were made before August 6, 2020, restoring the status quo as it would have existed but for Respondents' misconduct. (A.A.II 0146-0147.) As in *Sharp*, such relief remains viable. And Respondents' agreement in *Sharp* to reopen a registration window estops them from claiming that the equitable relief Appellants seek violates SB 118. (See *New Hampshire v. Maine* (2001) 532 U.S. 742, 750.)

The trial court tried to distinguish *Sharp*, observing that the injunction in that case applied only to individuals already in possession of their firearms, while Appellants here seek to complete transfers to purchasers not yet in possession, albeit ones who had placed deposits, and then re-open registration. (A.A.V 0725.) ["Plaintiffs request the entirely different remedy of allowing individuals to newly obtain a banned assault weapon. As Judge Chalfant held, this is patently illegal."]) But it's a distinction without a difference. Both groups were harmed by DOJ-created obstacles that prevented compliance with the law. In both cases, the requested relief is limited to a defined group of people who made good-faith efforts to comply but were thwarted by the DOJ's own willful technological failures.

The trial court's deeper concern was purportedly that the granting of relief "would violate SB 118." (A.A.V 0725) ["'An order permitting completion of the transfer of an assault weapon to a buyer who made a deposit before August 6, 2020, would violate SB 118.'"], quoting (A.A.I 0114-0115.) But *Sharp* similarly involved

relief that violated the "assault weapon" law—i.e., an order authorizing Californians to own and possess unregistered "assault weapons" and extending the statutory deadline to register those guns. Still, the federal court—and Attorney General Becerra himself—recognized that equitable relief was warranted to prevent injustice and the continued violation of constitutional rights. Nothing in SB 118 bars a court from fashioning such limited relief where the law's enforcement would otherwise compound the effects of governmental misconduct.

Indeed, it is untenable to suggest that the Attorney General may suspend the "assault weapon" law to fix his own failures in federal court, but that California courts are powerless to do the same. That would invert the role of the judiciary and invite state officials to evade constitutional and statutory obligations with impunity. The courts do not lack the power to address such wrongdoing—to the contrary, they are duty-bound to do so.

In short, Appellants' First, Second, Sixth, Seventh, and Ninth Causes of Action were not rendered moot by the passage of SB 118. They are rooted in Respondents' unlawful obstruction of tens of thousands of otherwise lawful and timely transfers—harm that remains ongoing and redressable. Equitable relief remains available and essential.

C. Appellants Sufficiently Pled Viable Fourteenth Amendment Due Process Claims

Though the trial court never addressed the merits of Appellants' due process claims, because this Court can affirm the trial court's judgment on any grounds supported by the record,

Appellants are compelled to discuss the viability of Appellants' claims under both substantive and procedural due process.[9]

First, Appellants plausibly alleged a violation of their substantive due process rights by detailing how Respondents interfered with constitutionally protected liberty interests without legitimate justification. And second, they set forth a viable procedural due process claim, alleging that Respondents deprived them of their rights without notice or an opportunity to be heard, and in violation of statutory rulemaking procedures. Because these claims never progressed beyond the pleadings, if this Court holds that the trial court retained the authority to grant equitable relief after the adoption of SB 118, it should reverse the dismissal of Appellants' due process claims.

1. Appellants sufficiently alleged that Respondents violated their right to substantive due process.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." (U.S. Const., amend XIV.) The government may only deprive individuals of these interests

[9] Appellants do not here discuss the merits of their First, Second, and Ninth Causes of Action—for declaratory relief, writ of mandamus, and violation of the Administrative Procedure Act, respectively—because the trial court correctly overruled Respondents' second demurrer to those claims, holding that Appellants had alleged sufficient facts to support each claim. (A.A.III 0287-0291.) And the court only fully dismissed the claims as moot after the DOJ (belatedly) unveiled the "Other" DES enhancement; it never reconsidered its earlier holding that that Appellants had otherwise pled a viable claim. (A.A.V 0726.) So, if this Court overturns the court's mootness determination, it should remand and allow the parties to fully litigate these claims.

when doing so furthers a "legitimate governmental objective." (*Lingle v. Chevron USA* (2005) 544 U.S. 528, 542.)

Appellants—as well as their customers and members—have a liberty interest in the right to acquire, sell, deliver, transfer, and possess lawful firearms, including FAI's Title 1® series of firearms. (U.S. Const., amend. II; see *Duncan v. Bonta* (9th Cir. 2025) 133 F.4th 852, 880 ["A person wishing to buy *any* lawful firearm (or other weapon) is free to do so."].) They also enjoy the right to engage in lawful commercial transactions free from unlawful government interference. (U.S. Const., art. I, §10; Cal. Const., art. I, § 9.) The operative complaint alleges that Respondents violated these rights by maintaining a non-statutory ban on "firearms with undefined subtypes," including FAI's centerfire Title 1®, which it implemented through technological barriers that blocked the transmission of statutorily required information about the transfer of such firearms.

Neither the DOJ nor the Attorney General has any authority under the California Constitution or any statute, including California's Dangerous Weapons laws, to unilaterally suspend constitutional rights or nullify state laws about Respondents' mandatory obligation to facilitate the transfer of *all* lawful firearms. Further, Respondents had no authority to prohibit or otherwise disrupt the sale, transfer, delivery, or possession of centerfire Title 1® firearms before the effective date of SB 118. Indeed, at all times before the signing of SB 118, (1) centerfire Title 1® firearms were legal to sell, transfer, deliver, and possess in California, and (2) FAI was lawfully entitled to complete sales of

such firearms to the thousands of Californians who had made earnest money deposits. Respondents, on the other hand, had no legitimate interest in barring these lawful transactions or suspending the constitutional rights of FAI, CRPA, and all Californians.

Below, Respondents argued that substantive due process is not implicated because the right to contract is not a protected liberty interest. (A.A.V 0550.) But this misunderstands Appellants' claim, which is not predicated solely on the right to contract. Appellants alleged that Respondents' actions deprived them of their Second Amendment right to acquire and transfer lawful firearms, a right that is necessarily intertwined with the right to contract in lawful commerce. (A.A.II 0155.) "[T]he Constitution protects much more than the bare right to keep and bear any outdated firearm for self-defense." (*Boland v. Bonta* (C.D. Cal. Mar. 20, 2023) 622 F.Supp.3d 1077, 1085.) Indeed, it necessarily extends to those rights essential to the meaningful exercise of the right to keep and bear arms, including the corresponding right to acquire them. (See *Jackson v. City & Cnty. of San Francisco* (9th Cir. 2014)746 F.3d 684, 704, *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 598 U.S. 1 [holding that the right to keep arms implies a right to obtain ammunition because "without bullets, the right to bear arms would be meaningless"].)[10] Respondents' DES defect nullified

[10] See also A.A.V 665 (citing *Ezell v. City of Chicago* (7th Cir. 2011) 651 F.3d 684, 704 [recognizing that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective").)

this fundamental right for thousands of Californians, violating substantive due process under the Supreme Court's decision in *Bruen*. And by impeding Appellants' ability to contract freely and to engage in lawful commerce involving protected firearms, Respondents infringed *both* the Second Amendment and the right to contract—liberty interests protected by substantive due process.

Respondents also argued that its conduct does not "shock the conscience," and so it cannot be liable under Appellants' substantive due process claim. (A.A.V 0550.) To be sure, in substantive due process cases premised on abusive executive action, the plaintiff must show that the complained of government action "'shocks the conscience,' or interferes with rights 'implicit in the concept of ordered liberty.'" (*United States v. Salerno* ("*Salerno*") (1987) 481 U.S. 739, 746, quoting *Rochin v. California* (1952) 342 U.S. 165, 172.) And "liability for negligently inflicted harm is categorically beneath th[is] threshold." (*Ibid.*) But "conduct *intended to injure* in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." (*Ibid.*)

This is not to say that culpability falling somewhere between these two extremes does not also "shock the conscience." (*Salerno*, *supra*, 481 U.S. at p. 746.) The Supreme Court has, at least once, recognized "that such conduct is egregious enough to state a substantive due process claim." (*Ibid.* [holding that "deliberate indifference" satisfies the fault requirement for substantive due process claims based on the medical needs of pretrial detainee]; see also *Castro v. City of Los Angeles*, (9th Cir. 2016) 833 F.3d 1060,

1067-1068 [holding that substantive due process requires a showing of "deliberate indifference"]; *Sharp v. Becerra* ("*Sharp*") (E.D. Cal. 2019) 393 F. Supp. 3d 991, 997-98 [same].)

In short, the "constitutional concept of conscience-shocking behavior" (*Cnty. of Sacramento v. Lewis* (1998) 523 U.S. 833, 849) does not require that the government go to the sort of disturbing extremes one might envision when thinking generally of "shocking" conduct. In appropriate cases, it can extend even to bureaucratic indifference that substantially interferes with fundamental rights. For example, the Eastern District of Pennsylvania has held that simple zoning measures can "rise to the level of shocking the conscience." (*Dev. Grp., LLC v. Franklin Twp. Bd. of Supers.* (E.D. Pa. Dec. 7, 2004) No. 03-2936, 2004 U.S. Dist. LEXIS 24681, at p. *49, citing *Eichenlaub v. Twp. of Ind.* (3d Cir. 2004) 385 F.3d 274, 285.) For when the *government* intentionally interferes with constitutionally protected conduct or acts with deliberate indifference to the constitutional rights of its citizens—the very rights that government actors swear to uphold and defend—it can hardly be characterized as anything but "conscience-shocking."

In *Sharp*, the Eastern District of California denied the DOJ's motion to dismiss a substantive due process claim under circumstances similar to, but arguably less egregious than, the conduct Appellants challenge here. (393 F.Supp.3d 991.) The *Sharp* plaintiffs were owners of firearms that had been designated as "assault weapons"; they had to register those firearms with the DOJ to remain in lawful possession of them. (*Id.* at p. 995.) The

DOJ launched an online system for registration, but it was plagued with glitches and often crashed. (*Ibid.*) As a result, the plaintiffs could not register their firearms before the window closed. (*Id.* at p. 996.) As the court observed, the case involved allegations of "governmental neglect that ran through an entire executive department charged with administering a statewide online program that ran the course of almost an entire year." (*Id.* at p. 998.) It thus held that the "plaintiffs ha[d] adequately pled deliberative indifference inasmuch as [the DOJ] arguably 'disregarded a known or obvious consequence' of the way they handled the registrations." (*Id.*, quoting *Bryan Cnty. v. Brown* (1997) 520 U.S. 397, 410.) Significant to this holding was the allegation that the DOJ was "not only fully aware of the system's problems but also failed to rectify them despite pleas from the public." (*Ibid.*)

This case is on all fours. Appellants alleged that Respondents interfered with their right to purchase legal firearms, a constitutionally protected activity. (A.A.II 0135-0137.) They also alleged that Respondents did so through a *known* defect in the DES that prevented Californians from applying to complete the lawful transfer of centerfire Title 1® firearms. (A.A.II 0137.) FAI notified the DOJ of the deficiency as early as October 2019—*nearly a year before the window for taking possession of centerfire Title 1® firearms closed*—and asked the DOJ to fix it. (A.A.II 0137.) While the DOJ first claimed it would fix the problem (A.A.VI 1021-1022), it would be *two years* before the DOJ unveiled an option within the

DES to facilitate the transfer of lawful "firearms with undefined subtypes."

At a minimum, the DOJ acted with "deliberate indifference," disregarding "a known or obvious consequence' of the way they handled the registrations." (*Sharp*, *supra*, 393 F.Supp.3d 991 at p. 995.) These facts, as pled, demonstrate a level of culpability sufficient to state a substantive due process claim.

2. Appellants sufficiently alleged that Respondents violated their right to procedural due process.

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

As discussed above, Appellants have a clear liberty interest in the right to transfer and possess lawful firearms (U.S. Const., amend. II), and the right to contract freely without unlawful impairment by the state, in lawful commerce (U.S. Const., art. I, §10; Cal. Const., art. I, § 9). Appellants alleged that Respondents deprived them of those rights without process by promulgating and maintaining what amounts to a non-statutory rule prohibiting the transfer of lawful "firearms with undefined subtypes," including the centerfire Title 1®, without providing an opportunity for the

public, including Appellants, to be heard before having their liberty interests in the acquisition, sale, transfer, and possession of such guns terminated. For Respondents were statutorily required to comply with the procedural rulemaking requirements of California's Administrative Procedure Act, including the public comment period, before enforcing its non-statutory ban on centerfire Title 1® firearms. (Gov. Code, §§ 11340, et seq.; *Modesto City Sch. v. Educ. Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381; see also Office of Administrative Law, State of California, *Administrative Procedure Act & OAL Regulations* <www.oal.ca.gov/publications/administrative_procedure_act/> ["The requirements set forth in the APA are designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations and to ensure that regulations are clear, necessary and legally valid."].)

In the court below, Respondents' only merits argument was that Appellants' procedural due process claims are barred when an adequate remedy exists under state law, and Appellants had availed themselves of mandamus earlier in this case. (A.A.V 0549.) True enough. But courts have long held that this general principle does not apply when the violation is caused by actions taken according to established state procedures. In such a case, post-deprivation remedies (like the writ of mandamus) fail to satisfy the basic requirements of procedural due process. (*Sorrels v. McKee* (9th Cir. 2002) 290 F.3d 965, 971, citing *Hudson v. Palmer* (1984) 468 U.S. 517, 532.) Particularly with the adoption of SB 118, this is a case where it was the "state system itself that destroys a

complainant's property interest, by operation of law." (*Logan v. Zimmerman Brush Co.* (1982) 455 U.S. 422, 436.) And Appellants alleged that, even before the adoption of SB 118, it was Respondents' non-statutory, but nonetheless official, procedure that caused Appellants' harm. (A.A.II 0141.) Post-deprivation remedies—to the extent they even exist—do not bar Appellants' procedural due process claim.

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In short, those who had placed a deposit on a centerfire Title 1® firearm would have taken legal possession of their firearms before September 2020 *but for Respondents' illicit conduct*. (A.A.II 0147-0148.) And because that misconduct violated substantive and procedural due process, Appellants are entitled to declaratory and injunctive relief restraining Respondents from enforcing SB 118—at least as it applies a prohibition against the sale, transfer, delivery, and registration of centerfire Title 1® firearms for which earnest money deposits were made on or before August 6, 2020. (42 U.S.C. §§ 1983, 1988.) That relief is warranted regardless of whether those firearms were physically possessed by September 1, 2020, because Respondents' abuse of authority made timely compliance with SB 118 impossible through its unlawful actions and unclean hands.

CONCLUSION

For these reasons, the Court should reverse the trial court's final judgment against FAI as to its tort claims (the Third, Fourth, and Fifth Causes of Action) against Attorney General Becerra and Doe Individuals. It should also reverse the pleadings-stage

decisions dismissing Appellants' First, Second, Sixth, Seventh, and Ninth Causes of Action and remand for further litigation of those claims.

Dated: May 21, 2025 **MICHEL & ASSOCIATES, P.C.**

s/Anna M. Barvir
Anna M. Barvir
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF WORD COUNT

Under Rule 8.204, subdivision (c)(1), of the California Rules of Court, I certify that the attached Appellants' Opening Brief is 1½-spaced, typed in a proportionally spaced, 13-point font, and the brief contains 9,687 words of text, including footnotes, as counted by the word-count feature of the word-processing program used to prepare the brief.

Dated: May 21, 2025 **MICHEL & ASSOCIATES, P.C.**

s/ Anna M. Barvir
Anna M. Barvir
Attorneys for Plaintiffs-Appellants

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' OPENING BRIEF**, on the following parties, as follows:

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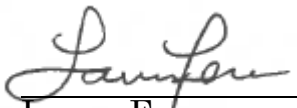
These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

Superior Court of California, County of Los Angeles
Stanley Mosk Courthouse
Judge Daniel S. Murphy
111 North Hill Street
Department 32
Los Angeles, CA 90012

This party was served by mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

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