

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' REQUEST FOR JUDICIAL NOTICE, OR
ALTERNATIVELY, MOTION TO TAKE EVIDENCE
[California Rules of Court, rules 8.252(a), 8.252(c)]**

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
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Counsel for Plaintiffs-Appellants

To the Honorable Judges of the Court of Appeal of the State of California for the Second Appellate District, and to All Parties and their Attorneys of Record:

Under California Rules of Court 8.152, subsection (a) and Evidence Code section 452, subdivisions (c) and (h), Appellants Franklin Armory, Inc., and California Rifle & Pistol Association, Incorporated (“Appellants”) request that this Court take judicial notice of the existence of the documents listed below and attached as Exhibits A and B to the accompanying declaration of Jason A. Davis (“Davis Decl.”).

Alternatively, Appellants request that this Court exercise its discretion under California Rules of Court, rule 8.252(c), and Code of Civil Procedure section 909 to accept and review these documents as additional evidence on appeal without a hearing.

1. **Exhibit A:** Response to Public Records Act Request, DOJ No. 2024-01755, dated April 15, 2025, from the California Department of Justice, Bureau of Firearms.
2. **Exhibit B:** Dealer Record of Sale Entry System (DES) JIRA Log, dated April 15, 2025, covering entries from October 1, 2019, to December 31, 2020.

These documents, obtained through a Public Records Act request in April 2025, after judgment in the underlying action, are relevant to this appeal. Appellants contend that Respondents withheld these documents during discovery, preventing

Appellants from identifying potential witnesses and conducting discovery on matters critical to the case.

Date: May 21, 2025

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

Anna M. Barvir

Attorneys for Plaintiffs-Appellants

MEMORANDUM OF POINTS AND AUTHORITIES

I. JUDICIAL NOTICE OF THE DEPARTMENT OF JUSTICE RECORDS IS PROPER

A. Principles of Judicial Notice

“Judicial notice is the recognition and acceptance by the court, for use ... by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green* (2001) 91 Cal.App.4th 875, 882 (citations and quotations omitted)). “This includes any orders, findings of facts and conclusions of law, and judgments within court records.” (*Ibid.*) “The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is *not reasonably subject to dispute.*” (*Ibid.*; Cal. Evid. Code, § 452, subd. (h)).

The court may take judicial notice of “facts ... that are not reasonably subject to dispute.” (Cal. Evid. Code § 452, subd. (h).) Official acts and records of public agencies are also subject to notice. (Evid. Code, § 452, subd. (c).) Judicial notice of such facts is mandatory upon request where the opposing party is permitted to raise objections and the court has enough information about the facts to decide that they come within a category subject to proper judicial notice. (Cal. Evid. Code § 453, subd. (b).) A reviewing court may judicially notice facts in the same manner as a trial court. (Cal. Evid. Code § 459, subd. (a).)

B. The Court Should Take Judicial Notice of the Public Records of the Department of Justice

The Court should judicially notice the documents attached to the Declaration of Jason A. Davis as Exhibits A and B. Exhibit

A is the California Department of Justice’s response to a Public Records Act request (DOJ No. 2024-01755), and Exhibit B is a Dealer Record of Sale Entry System (DES) JIRA Log, covering records from October 1, 2019, to December 31, 2020. Exhibit B was attached to and provided as part of the DOJ’s response marked Exhibit A. (Davis Decl., ¶6.) These documents are official records and acts of the California Department of Justice, Bureau of Firearms, generated in response to a formal Public Records Act request. (Evid. Code, § 452, subd. (c); *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750 [noticing official state agency records].)

Alternatively, the existence of these documents is not reasonably subject to dispute, as their authenticity can be verified through the Department of Justice’s records, a source of indisputable accuracy. (Evid. Code, § 452, subd. (h); *Lockley, supra*, 91 Cal.App.4th at p. 882.) Presumably, the State is not going to dispute the authenticity of public records that it produced itself. Further, Appellants seek notice only of the documents’ *existence*, not the truth of their contents, as the withholding of these documents during discovery prevented Appellants from pursuing relevant discovery. (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [judicial notice of a document’s existence does not extend to its contents].) The documents’ relevance to the appeal is clear, as their absence during discovery may have impacted the trial court’s findings.

While Appellants believe the contents—such as JIRA Log entries (Ex. B, DES-1577, DES-1580, DES-1585) regarding DES modifications for an “Other” gun type—are reliable, Appellants do

not ask the Court to accept their truth, acknowledging that courts may decline to notice facts within public records. (*Herrera v. Deutsche Bank Nat. Trust Co.* (2011) 196 Cal.App.4th 1366, 1375, mod. June 28, 2011.) Notice of the documents’ existence meets Evidence Code section 452, subdivisions (c) and (h), and is mandatory under section 453, as Appellants provide sufficient information and Respondents may object. (Evid. Code, § 453, subd. (b).)

II. ALTERNATIVELY, THIS COURT SHOULD EXERCISE ITS DISCRETION TO TAKE EVIDENCE ON APPEAL BECAUSE RESPONDENTS WITHHELD EVIDENCE THAT SHOULD HAVE BEEN PRODUCED IN DISCOVERY

Appellants alternatively request that the Court, pursuant to California Rules of Court, rule 8.252(c), and Code of Civil Procedure section 909, admit the documents as additional evidence on appeal. Section 909 authorizes appellate courts to “take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal” in the interests of justice. (Code Civ. Proc., § 909.) This provision is liberally construed to resolve appeals efficiently, except where a new trial is required. (*Ibid.*)

Respondents’ failure to produce these documents during discovery constitutes exceptional circumstances warranting the Court’s discretion to take evidence. (See *Adams v. Bank of America* (2020) 51 Cal.App.5th 666, 674 [exceptional circumstances permit noticing material not presented below].) In discovery, Appellants expressly requested all JIRA entries related to the DES modifications—indeed the contents and precise timing of those modifications were the very crux of this case—but Respondents withheld the documents now attached as Exhibit B. (Davis Decl.,

¶¶7-8, 14.) Other JIRA logs were produced but not Exhibit B. (Davis Decl., ¶¶ 10-11.) Appellants only received Exhibit B in *April 2025* via a Public Records Act request that was made in July 2024. (Davis Decl., ¶¶ 3-4.)

Withholding this highly probative evidence prevented Appellants from identifying percipient witnesses, such as additional DOJ personnel directly responsible for the DES enhancement and prevented them from conducting discovery critical to challenging Respondents' representations about the timing of DES changes. (Davis Decl., ¶¶ 12-13.) The documents show that work on the DES enhancement started in January 2020 (Davis Decl., Ex. B), much earlier than the State has maintained.

Section 909 is not limited to judicially noticeable evidence, allowing consideration of these documents regardless of their contents' status under Evidence Code section 452. (*Angelheart v. City of Burbank* (1991) 232 Cal.App.3d 460, 478 (dis. opn. of Johnson, J.)) Admitting the documents serves justice by addressing Respondents' discovery misconduct and ensuring a complete record.

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III. CONCLUSION

For these reasons, the Court should grant Plaintiffs-Appellants' motion to judicially notice the material attached to the Declaration of Jason A. Davis. Alternatively, this Court should exercise its discretion to take evidence on appeal and accept and review these documents without a hearing.

Date: 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.

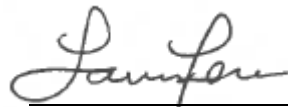
On May 21, 2025, I served a copy of the foregoing document described as **APPELLANTS' REQUEST FOR JUDICIAL NOTICE, OR ALTERNATIVELY, MOTION TO TAKE EVIDENCE [California Rules of Court, rules 8.252(a), 8.252(c)]**, on the following parties, as follows:

Kenneth G. Lake
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Office of the Attorney General
300 South Spring Street
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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