

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 7

**FRANKLIN ARMORY, INC.,**

Plaintiff and Appellant,

v.

**CALIFORNIA DEPARTMENT OF  
JUSTICE et al.,**

Defendants and Respondents.

Case No. B340913

Appeal from Los Angeles County Superior Court, Case No. 20STCP01747  
The Honorable Daniel S. Murphy, Presiding

**MOTION TO STRIKE PORTIONS OF APPELLANTS' BRIEF RELATING TO  
APPELLANTS' ALLEGATION THAT DEFENDANTS IMPROPERLY  
WITHHELD DOCUMENTS FROM DISCOVERY AND ARGUMENT RELATIVE  
THERETO; DECLARATION OF KENNETH G. LAKE IN SUPPORT THEREOF**

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Defendants/Respondents hereby move to strike portions of Appellants' opening brief relating to Appellants' allegation that Defendants improperly withheld documents from discovery and argument relative thereto because these portions of Appellants' brief are based on argument of Appellants' counsel drawn from discovery requests and responses as well as a "JIRA Log" that were not in the record before the trial court. (Davis Decl. re Req. for Jud. Notice, dated 5/21/25, ¶¶ 6-11.) In addition, as discussed further below, Appellants argument is legally incorrect, as a matter of law, because the State of California, acting by and through the California Department of Justice (DOJ) timely objected to the two subject requests for production and Appellants never filed a motion to compel challenging the objections. (Lake Decl., ¶¶ 2-6.)

Defendants/Respondents move to strike the following portions of Appellants' brief:

-Pg. 18, second par., last sentence:

"Appellants have since discovered, in documents improperly withheld from discovery, that work began on a fix for the DES as early as January 2020."

-Pg. 30, first par., second to last sentence phrase:

"and other evidence contradicting those claims.<sup>7</sup>"

-Pg. 30, footnote 7, starting with the second sentence:

"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.”

“When a brief or part of a brief fails to comply with the Rules of Court (e.g., lacks citation to the record or refers to matters outside the record), the opposing party can file a motion to strike the brief in whole or in part . . .” (Eisenberg et al., *Cal. Prac. Guide: Civ. App. & Writs* (Rutter Group 2025) § 5:194; citing Cal. Rules of Court, rule 8.204(e)(2), *C.J.A. Corp. v. Trans-Action Financial Corp.* (2001) 86 Cal.App.4th 664, 673 [“granting motion to strike ‘several passages’ in brief that referred to evidence not in record.”]) “No time limit is prescribed by the Rules of Court for filing a motion to strike a defective brief.” (*Id.* at § 5:195.)

“Appellate review is limited to the record that was before the trial court.” (*Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55, 86; citing *C.J.A. Corp., supra*, 86 Cal.App.4th at p. 673.) See also *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 [“Likewise disregarded are statements in briefs based on matter improperly included in the record on appeal.”].)

Appellants’ allegation of improper discovery responses is based on two requests for production propounded to the DOJ. DOJ timely objected to these requests on numerous grounds in its initial responses. It repeated and restated these objections in amended responses served pursuant to a meet and confer with Appellants’ counsel as well as in responses to a supplemental request for production. Appellants never filed a motion to compel challenging the objections. None of these discovery requests or responses were in the record before the trial court. (Lake Dec. ¶¶ 2-6.)

In addition, Appellants argument is legally incorrect, as a matter of law, because the DOJ timely objected to the two subject requests for

production and Appellants never filed a motion to compel challenging the objections.

In *Sexton v. Superior Court*, (1997) 58 Cal.App.4th 1403, the court concluded that “the time within which to make a motion to compel production of documents is mandatory and jurisdictional just as it is for motions to compel further answers to interrogatories.” (*Id.* at p. 1409-1410.) “Failure to timely move to compel within the specified period constitutes a waiver of any right to compel a further response.” (*Id.* at p. 1410.) Absent a timely motion challenging those objections and an order compelling discovery, a defendant has no obligation to produce the documents. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1434.) Thus, the entire premise of Appellants’ assertion of wrongful withholding of documents is incorrect, as a matter of law.

In addition, the “JIRA Log” referenced in the Davis declaration indicates that it was generated on February 12, 2025, long after proceedings in the trial court ended. (Davis Dec., ¶ 10, Ex. B, p. 1.) Thus, this document clearly was not in the record before the trial court. Furthermore, Appellants’ assertion that this document was wrongfully withheld in response to the subject requests for production makes no sense because it did not exist at the time of the responses. Also, counsel’s argument as to the contents of the document completely lacks foundation and is based on hearsay. The court took judicial notice of the existence of the document, not its contents.

Furthermore, it should be noted that Appellants' argument essentially misstates the trial court record in that Bureau of Firearms Director Allison Mendoza clearly indicated in her declaration in support of the motion for summary judgment 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" which included exploring "the possibility of doing a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm." (Mendoza Dec., ¶¶ 8,10, Appen. Vol. VI, pp. 786-787.) Director Mendoza further stated that she was advised by the Bureau's technical staff that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES. She stated that such operational difficulties would have raised significant public safety concerns within the DOJ which ultimately decided to not immediately proceed with the temporary DES enhancement. (Mendoza Dec., ¶ 10, Appen. Vol. VI, p. 787.)

Thus, Director Mendoza's declaration is entirely consistent with the deposition testimony of Cheryl Massaro-Florez, cited in Appellants' brief, as to the timing of the potential temporary modification to the DES that did not go forward and the subsequent permanent modification. (App. Brf, pp. 18-19.) Plaintiff also deposed Director Mendoza after the filing of the summary judgment motion. (Appen., Vol. X, pp. 1285-1322.) In addition, Appellants deposed additional DOJ officials involved in the DES modification including Maricela Leyva and Christina Rosa-Robinson. (See e.g. Appen., Vol. XI, pp. 1432-1450, Vol. VI, 890-905.)

For the reasons set forth above, Defendants/Respondents respectfully request that the court grant the motion to strike the portions of Appellants' opening brief as specified above.

Dated: June 18, 2025

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/S/

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\* \* \* \* \*

**DECLARATION OF KENNETH G. LAKE IN SUPPORT OF MOTION TO STRIKE PORTIONS OF APPELLANTS' BRIEF RELATING TO APPELLANTS' ALLEGATION THAT DEFENDANTS IMPROPERLY WITHHELD DOCUMENTS FROM DISCOVERY AND ARGUMENT RELATIVE THERETO**

I, Kenneth G. Lake, declare:

1. I am an attorney at law duly authorized to practice in the State of California. I am a Deputy Attorney General assigned to handle this matter on behalf of Defendants/Respondents.
2. Appellants' allegation that documents were improperly withheld during discovery is based on Requests for Production Nos. 35 and 36 that were part of Set Three of a Request for Production propounded to the DOJ. Request for Production No. 35 states, "PRODUCE all DOCUMENTS that

RELATE TO any entry into the JIRA database regarding UNDEFINED FIREARM SUBTYPES dated or prepared on or after January 1, 2019.” Request No. 35 corresponds to paragraph 8 of the Declaration of Jason Davis in support of appellants’ request for judicial notice. Request for Production No. 36 states, “PRODUCE all DOCUMENTS that RELATE TO any and all entries into the JIRA database for DES field modifications (e .g., JIRA Numbers DES-934 and DES-958) dated or prepared on or after January 1, 2014, including but not limited to time logs, time estimates, or time billed.” Request No. 36 corresponds to paragraph 7 of the Declaration of Davis.

3. DOJ timely objected to both requests on numerous grounds including that said requests were vague, ambiguous, overbroad, overburdensome, not full and complete in and of itself, not reasonably particularized, sought documents not relevant nor reasonably calculated to lead to the discovery of admissible evidence as well as attorney-client, work product and/or official information privileges. DOJ also objected that Request No. 35 improperly repeated Request No. 10 and Request No. 36 improperly repeated Request No. 17 both from a set one request for production. Based on and reserving these objections, DOJ responded that it was producing all documents previously produced including 26 pages of JIRA documents and referred to the depositions of Cheryle Massaro-Florez and Maricela Leyva.

4. After engaging in a meet and confer regarding the responses to the third set of requests for production, DOJ served amended responses to the third set which included essentially the same responses and objections

to Requests Nos. 35 and 36 except DOJ added a case citation relative to the improper repeating of previous requests from set one.

5. In addition, DOJ timely responded to a supplemental request for production of documents setting forth the same responses to Request Nos. 35 and 36 including the same objections. DOJ added an update to both responses stating in part that, reserving said objections, see all depositions taken in this action, all documents produced in this action by both sides and documents produced in response to Public Records Act requests pertaining to the Title 1 as well as documents filed by defendants relative to their motion for judgment on the pleadings and motion for summary judgment including exhibits thereto. Said documents are incorporated by reference herein.

6. Appellants never filed a motion to compel over the course of the litigation in the trial court including relative to the responses to Requests Nos. 35 and 36. None of these discovery requests or responses were in the record before the trial court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 18, 2025.

\_\_\_\_\_  
/S/  
KENNETH G. LAKE

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

RE: ***Franklin Armory, Inc., v. California Department of Justice.***  
**Case No. B340913**

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On June 18, 2025, I served the documents named below on the parties in this action as follows:

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APPELLANTS' ALLEGATION THAT DEFENDANTS IMPROPERLY WITHHELD  
DOCUMENTS FROM DISCOVERY AND ARGUMENT RELATIVE THERETO;  
DECLARATION OF KENNETH G. LAKE IN SUPPORT THEREOF**

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(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of the Office of the Attorney General for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General, for overnight delivery with the GOLDEN STATE OVERNIGHT courier service.

(BY FAXSIMILE) I caused to be transmitted the documents(s) described herein via fax number. 2nd

(BY ELECTRONIC MAIL) I caused to be transmitted the documents(s) described herein via electronic mail to the email address(es) listed above.

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

(FEDERAL) I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on June 18, 2025, at Los Angeles, California.

Sandra Dominguez  
Declarant

/s/ Sandra Dominguez  
Signature