

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

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

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through the California Department of Justice,
Former Attorney General Xavier Becerra and
Attorney General Rob Bonta*

Appellants do not contest the fact that Respondents timely objected to the subject discovery requests but now are improperly attempting to litigate a motion to compel in the Court of Appeal that was never filed in the trial court. Appellants assertion that they had no notice of potential documents they assert as presenting an issue at this juncture is disingenuous.

First, in Cheryle Massaro-Flores' second deposition, taken on September 8, 2023, she referenced indicating in her December 28, 2021, deposition the potential temporary enhancement that did not go forward. In the September 8 deposition she indicated that the temporary enhancement had reached the point of quality assurance testing and that such an enhancement would normally be included in the JIRA system but she did not recall if that occurred. (Massaro-Flores Dep., 9/8/23, pp. 38:6-39:18, 65:13-67:8; Ex. I to Reply Dec. of Lake.) Respondents objected to the documents requested relative to this deposition. (*Id.* at p. 48:8-20.)

Second, on November 27, 2023, Christina Rosa-Robinson testified in deposition that a project to add an "other" option could take a year and a half and that she recalled starting to do analysis and requirements gathering in the beginning of February, 2020. (Rosa-Robinson Dep., pp. 38:8-40:12; Ex. J to Reply Dec. of Lake.)

Third, on January 11, 2024, Maricela Leyva testified in deposition that there had been a draft bulletin prepared sometime in early 2020 regarding an enhancement to the DES to add an "other" option. (Leyva Dep., 1/22/24. pp. 49:2-18; Ex. K to Reply Dec. of Lake.) Respondents objected to the document requests relative to this deposition. (*Id.* at p. 15:6-22.) Appellants' counsel then stated: "So then at this point, I'm

going to need to suspend this deposition subject to defendants turning over the documents that we requested and continuing your deposition at a later date or if we need to seek appropriate relief from the court before we do.” (Id. at p. 50:4-8.)

The above discussion makes clear that Respondents timely objected to the production of potential documents that might relate to the temporary enhancement that did not go forward and that Appellants’ counsel were clearly aware of this and specifically noted that a motion to compel would be necessary if the documents were not produced. However, Appellants’ counsel never followed up or filed a motion to compel.¹

In addition, Appellants are improperly attempting to expand upon the request for judicial notice of the existence of the DROS spreadsheet generated on February 12, 2025. Respondents did not oppose the request for judicial notice because it would defy logic to deny the existence of the document. The motion to strike is not directed to striking this document but the argument in Appellants’ brief improperly alleging discovery misconduct despite their failure to challenge the objections to the discovery requests in the trial court. Appellants exacerbate this failure by improperly asserting a speculative interpretation of the contents of the DROS document which is not a proper use of judicial notice. (*Malek Media Group v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 826-827.)²

¹ A privilege log was not necessary. (Code Civ. Proc., § 2031.240, (c)(1).) The subject requests were objected to on numerous well taken grounds other than privilege or work product.

² A court may take judicial notice of the date of a document. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 950.)

Furthermore, Appellants' opposition attempts to reargue their alternative request to take evidence . However, the alternative motion to take evidence was not granted and Respondents' motion to strike makes clear that, even if the court were to consider a new motion to take evidence, it should be denied.

Dated: July 8, 2025

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Senior Assistant Attorney General
CATHERINE WOODBRIDGE
DONNA M. DEAN
Supervising Deputy Attorneys General

/S/

KENNETH G. LAKE
Deputy Attorney General
Attorneys for Defendants/Respondents the State of California, acting by and through the California Department of Justice, Former Attorney General Xavier Becerra and Attorney General Rob Bonta

* * * * *

REPLY DECLARATION OF KENNETH G. LAKE IN SUPPORT OF MOTION TO STRIKE PORTIONS OF APPELLANTS' BRIEF

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. True and correct copies of the relevant portions of the deposition of Cheryle Massaro-Flores, taken on 9/8/23, are attached hereto as Exhibit I.

3. True and correct copies of the relevant portions of the deposition of Christina Rosa-Robinson, taken on 11/27/23, are attached hereto as Exhibit J.

4. True and correct copies of the relevant portions of the deposition of Maricela Leyva, taken on 1/11/24, are attached hereto as Exhibit K.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 8, 2025.

/S/

KENNETH G. LAKE

EXHIBIT I

In The Matter Of:
Franklin Armory, Inc., et al. v.
California Department of Justice, et al.

Cheryle Massaro-Florez
September 8, 2023

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Huntington Beach, CA 92649

Original File 3019 CHERYLE MASSARO-FLOREZ.txt
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Cheryle Massaro-Florez - September 8, 2023

1 MR. ADAMS: No.

2 THE WITNESS: I believe I misunderstood a
3 question, then. I believe I answered yes, I've heard
4 about delay. I was not in a discussion about delay.

5 BY MR. DAVIS:

6 Q Okay. That makes it clear for me. I
7 appreciate that.

8 In a previous deposition, you indicated that
9 there's a prior enhancement to add the term "other" to
10 the DES other than the one that was actually
11 implemented, correct? Let me rephrase it.

12 A Yeah.

13 Q How many enhancements in total were there to
14 add the term "other" to the drop-down list?

15 A Making the change is considered one
16 enhancement.

17 Q Was there any canceled enhancements prior to
18 the one that actually implemented the term "other" to
19 the drop-down list?

20 A Yes.

21 Q How many?

22 A Just one.

23 Q When did that one start?

24 A I don't remember.

25 Q When did it end?

Cheryle Massaro-Florez - September 8, 2023

1 A I don't remember.

2 Q Would it be documented?

3 A I don't know.

4 Q Typically, aren't enhancements started and
5 entered through the Jira process?

6 A Yes.

7 Q Would that one have been entered in the Jira
8 system process?

9 A It should have been, yes.

10 Q But you don't know if it was?

11 A No. This is too many years back for me. I'm
12 sorry.

13 Q Why was that one terminated?

14 A I don't know.

15 Q Do you know who terminated it?

16 A Right. I know because this is a discussion
17 we also had. I was not involved. I believe it was
18 the Bureau of Firearms.

19 Q That wasn't the question. We did have it.
20 It was cut short because of the confidentiality issues
21 that we discussed a second ago.

22 MR. DAVIS: And I think it was towards the
23 end if you want to look at the previous transcript,
24 Andrew.

25 ///

Cheryle Massaro-Florez - September 8, 2023

1 as a person most qualified. I wanted to go over some
2 of the production requests.

3 So can you see it, first of all?

4 A Yes, I can see it.

5 MR. DAVIS: So that notice included a request
6 for the production of documents. And last night,
7 defendants served objections to these requests. For
8 the sake of brevity, I'm willing to incorporate those
9 objections by reference going forward.

10 Does that work for you, Mr. Adams?

11 MR. ADAMS: You'll incorporate the objections
12 going forward?

13 MR. DAVIS: Yes, so you don't have to keep
14 objecting.

15 MR. ADAMS: Yeah, that would be great.

16 MR. DAVIS: Thank you.

17 BY MR. DAVIS:

18 Q Did you bring any documents at all with you
19 today?

20 A No, I did not.

21 Q Can you scroll down to the section where it
22 says "Responses to Requests for Production," which is
23 page 3?

24 A Okay. I'm on page 3.

25 Q So with regard to Request for Production

Cheryle Massaro-Florez - September 8, 2023

1 to have requested the termination of the prior
2 enhancement?

3 A Yes.

4 Q Do you know when that occurred?

5 A No.

6 Q Is there typically someone who would be the
7 point of contact for terminating enhancements?

8 A So to terminate that would have to go to my
9 upper management.

10 Q And who would that have been at that time?

11 A It would be the same manager,
12 Naren Mikkilineni.

13 Q Do you know how far that prior enhancement
14 progressed in development?

15 A Up to the beginning of beta testing.

16 Q And what does that mean?

17 A I was using your words from the last
18 deposition. I call it quality assurance testing, and
19 you said, "Is that like beta testing?"

20 Q So quality assurance to make sure everything
21 functions?

22 A Yes.

23 Q So it had been pretty much implemented to the
24 point of testing, then the next step would be
25 implementation going live?

Cheryle Massaro-Florez - September 8, 2023

1 A Yes. It's a long testing process, but yes.

2 Q How long is the testing process?

3 A There's functional testing, which is just at
4 the application level, and then there is
5 interrelationship testing where you have to test like
6 the waterfall effect, how it impacts other
7 applications.

8 Then we have to have the Bureau of Firearms
9 verify and test it that we implemented the
10 functionality in which they requested. So that all --
11 that usually takes between -- usually between six to
12 eight weeks.

13 Q Basically, about the same time that the
14 second project that was implemented took?

15 A No. That one took about four months.

16 Q Was that because of the assault weapons
17 portion of it?

18 MR. ADAMS: Objection. This is getting
19 really specific into that -- that one instance that we
20 already did cover.

21 So I'm not going to instruct you not to
22 answer, but we'll start doing that soon.

23 THE WITNESS: No problem. That was a
24 separate project in its own timeline.

25 ///

Cheryle Massaro-Florez - September 8, 2023

1 BY MR. DAVIS:

2 Q In order to get to the point of quality
3 assurance testing, a project normally has tickets in
4 the Jira system, correct?

5 A Yes.

6 Q And do you recall the number for the
7 enhancement -- the prior enhancement, the Jira number?

8 A No.

9 MR. DAVIS: I don't think I have any other
10 questions.

11 MR. ADAMS: Okay. I don't have any
12 questions. Code?

13 MR. DAVIS: Yes. I think that's what we'll
14 do.

15 MR. ADAMS: I want a rush.

16 (Proceedings concluded at 11:30 a.m.)

17 * * *

18

19

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EXHIBIT J

In The Matter Of:
Franklin Armory, Inc., et al. v.
California DOJ, et al.

Christina Rosa-Robinson
November 27, 2023

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1 that was like a three-arrow four-year project.

2 Q Understood. Would you agree that the
3 ammunition background check system implementation is a
4 much larger project than adding an "other" option to
5 the drop-down menu?

6 A Yeah, it definitely was a bigger project,
7 yeah.

8 Q And, again, this is me betraying my lack of
9 technical knowledge here, but -- how do I phrase this?
10 Of a project of comparable scope to adding an "other"
11 option, so a project of about that level of work, is a
12 year and a half a normal time frame to get something
13 done?

14 A It absolutely can be. Yeah. I mean, it
15 absolutely can be, yeah.

16 Q And why does it -- it's hard to ask questions
17 involving details, but why would you say it takes that
18 long, a year and a half to go from meeting to
19 implementation?

20 A Well, there is a lot of testing that has to
21 be involved, right? Before that, there is -- we have
22 to do requirements gathering. And that in itself does
23 take time. That takes several weeks, a few months
24 even, right? So it's not only that, I mean, because
25 we are kind of a small unit, a small-ish section,

1 right? We're never just working on one mandate or one
2 project at a time.

3 So there's always, you know, resource
4 allocation that -- you know, that come into play as
5 well. If we happen to get other -- you know, other
6 showstoppers or other, you know, critical tickets that
7 might have to come, we have to address those, too.

8 So just like taking that into account and
9 then, you know, usually taking about two or three
10 months of requirements gathering just for that, and
11 then there's development and testing. I mean, that --
12 a year and a half is definitely -- could be typical
13 for adding something like "other" gun into -- into the
14 DES.

15 Q Okay. And just not to beat the dead horse
16 here, but you said it could be typical. Is it typical
17 or isn't it?

18 A I don't know. I don't know.

19 Q All right. So you had this meeting at some
20 time in early 2020, you estimate?

21 A Yeah.

22 Q When was the next time the "other" option
23 came up that you can recall after that meeting?

24 A I'm sorry. Can you say --

25 Q Sure. Sure. So you had that meeting in

1 early 2020 at some point?

2 A Okay.

3 Q In the first two months of 2020 after that
4 meeting where you discuss the "other" option, when did
5 you next work on this project?

6 A Well, I do remember that when we had that
7 meeting, right, that it was going to be coming up.
8 That's when we had to start doing analysis. And we
9 did some requirements gathering with the Bureau of
10 Firearms, and so I would imagine -- I think we began
11 working on it in the beginning of February of 2020,
12 yeah.

13 Q And what -- if you recall, what urgency
14 classification did the project -- I don't know if the
15 whole project has an urgency classification or if it's
16 individual tasks. Why don't we ask that first.

17 Did the adding the "other" option have its
18 own designation like showstopper, high or critical, or
19 is that system reserved for tasks within a project?

20 A I don't recall if it had a showstopper, you
21 know, priority to it. I just remember that it was
22 something that we had to basically, you know, devote
23 all of our attention to. I don't recall, right, if
24 there was a Jira or what the Jira's classification
25 was. I just remember that we had a very limited, you

EXHIBIT K

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3
4 FRANKLIN ARMORY, INC. and
5 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,

6 Petitioners-Plaintiffs,

7 vs.

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

11 Respondents-Defendants.

)
) Case No.
) 20STCP01747

12
13
14
15 REMOTE DEPOSITION OF

16 MARICELA LEYVA

17 PMK FOR THE CALIFORNIA DEPARTMENT OF JUSTICE

18 VOLUME I

19 Sacramento, California

20 Thursday, January 11, 2024

21
22
23
24 Reported by: Linda Jones
CSR No. 9054
25 LitiCourt Job No. 206152

Document received by the CA 2nd District Court of Appeal.

1 A Yes.

2 Q Aside from it being on your screen, does it look
3 different than what you saw before?

4 A No.

5 Q Let's turn to Page 4.

6 Do you see a list of items titled "Request For
7 Production Of Documents"?

8 A Yes.

9 Q All right. Did you bring any of the documents
10 you were requested to bring with you today?

11 MR. ADAMS: Anna, for these responses I sent over an
12 objection two days ago.

13 MS. BARVIR-BOONE: Yes, they were received. Thank
14 you.

15 MR. ADAMS: Any of the objections obviously she's
16 not going to speak about the documents.

17 BY MS. BARVIR-BOONE:

18 Q So the objections notwithstanding, you're not
19 producing any documents today?

20 MR. ADAMS: You can go ahead and answer that,
21 Ms. Leyva.

22 THE WITNESS: No.

23 BY MS. BARVIR-BOONE:

24 Q Thank you.

25 What is your understanding of why you're here

1 BY MS. BARVIR-BOONE:

2 Q Ms. Leyva, let me figure out where I was. I
3 just have a few more questions for you. I think I had
4 last asked you about manufacturer. Okay.

5 Do you recall whether an important notice
6 regarding the sale of "Other" firearms was drafted
7 sometime in early 2020 informing California FFLs that
8 the -- or the DES gun type field for long gun
9 transactions only has been enhanced to accept an "Other"
10 firearm?

11 A There was a bulletin drafted. I don't know the
12 specific date.

13 Q If I were to tell you that there were two
14 different important notices regarding the sale of "Other"
15 firearms, one about specifically about the Franklin
16 Armory Title 1 centerfire and one about "Other" firearms
17 more generally, would that be your recollection?

18 A I don't recall.

19 Q You don't recall. Okay.

20 Let's take one last look at Exhibit 27. I think
21 we already confirmed this that we didn't -- you didn't
22 produce those documents at least in response to this but
23 may have sent over responsive documents for your last
24 deposition. So I won't ask you that.

25 I think that is currently all I have for you.

1 Andrew, do you have anything you would like to
2 add?

3 MR. ADAMS: No questions.

4 MS. BARVIR-BOONE: So then at this point, I'm going
5 to need to suspend this deposition subject to defendants
6 turning over the documents that we requested and
7 continuing your deposition at a later date or if we need
8 to seek appropriate relief from the court before we do.
9 So I may have some questions for you in the future.

10 Okay?

11 THE WITNESS: Okay.

12 MS. BARVIR-BOONE: So I will be in touch with
13 opposing counsel if that should happen and we'll get you
14 a new date. Okay?

15 THE WITNESS: Okay.

16 MS. BARVIR-BOONE: Ms. Jones, I'm going to need to
17 request an expedited copy of today's transcript. My
18 secretary will be in touch with you about that.

19 Is that okay?

20 THE REPORTER: Yes.

21 MS. BARVIR-BOONE: Anything else we need to cover
22 before we finish off?

23 THE REPORTER: Mr. Adams, would you like to order a
24 copy of the transcript?

25 MR. ADAMS: I do. I don't need it expedited but I

DECLARATION OF SERVICE BY ELECTRONIC MAIL

RE: ***Franklin Armory, Inc., v. California Department of Justice, et al.***
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 July 8, 2025, I served the documents named below on the parties in this action as follows:

**REPLY TO OPPOSITION TO MOTION TO STRIKE PORTIONS OF APPELLANTS'
BRIEF RELATING TO APPELLANTS' ALLEGATION THAT DEFENDANTS
IMPROPERLY WITHHELD DOCUMENTS FROM DISCOVERY AND ARGUMENT
RELATIVE THERETO; REPLY 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.

(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 July 8, 2025, at Los Angeles, California.

Sandra Dominguez
Declarant

/s/ Sandra Dominguez
Signature