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**United States District Court  
Central District of California**

ENDIR BRISENO, et al.,  
Plaintiffs,  
v.  
ROBERT A. BONTA, et al.,  
Defendants.

Case No 2:21-cv-09018-ODW (PDx)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS’  
MOTION TO DISMISS OR STAY  
[23]**

**I. INTRODUCTION**

On November 17, 2021, Plaintiffs Endir Briseno, Neil Opdahl-Lopez, and Rodney Wilson initiated this action individually and as a putative class against California Attorney General Robert A. Bonta and the California Department of Justice (“DOJ”) for violations of Plaintiffs’ constitutional rights arising from Plaintiffs’ thwarted efforts to obtain certain Title 1 firearms. (Compl., ECF No. 1.) Defendants move to dismiss Plaintiffs’ Complaint or stay the action. (Mot. Dismiss or Stay (“Motion” or “Mot.”), ECF No. 23.) Defendants assert the Court should dismiss the Complaint for failure to state a claim and lack of Article III standing, and alternatively assert the Court should stay the case under the *Pullman* abstention doctrine and the *Colorado River* doctrine. (*Id.* at 1.) For the reasons discussed below, the Court

1 **GRANTS** the Motion **IN PART** and **DENIES** the Motion **IN PART**, and stays the  
2 case pursuant to the *Pullman* abstention doctrine.<sup>1</sup>

3 **II. FACTUAL BACKGROUND**

4 As alleged in the operative Complaint, this action arises from the California  
5 DOJ maintaining and enforcing a practice, or “non-statutory rule,” that prevented  
6 California residents from buying lawful firearms. (First Amended Complaint  
7 (“FAC”) ¶ 30, ECF No. 21.) On or before August 6, 2020, Briseno and other class  
8 members paid a deposit and contracted with nonparty Franklin Armory to purchase  
9 Title 1 firearms.<sup>2</sup> (*Id.* ¶ 55.) Pursuant to California law, Franklin Armory cannot sell  
10 firearms directly to consumers. (*See id.* ¶ 73.) Instead, a separate dealer who is  
11 licensed by the federal government, the State of California, and local authorities must  
12 first register the gun to the DOJ’s Record of Sale Entry System (“DES”) using an  
13 online form. (*Id.*) The gravamen of Plaintiffs’ Complaint is that the DOJ prevented  
14 Plaintiffs from purchasing and taking possession of Title 1 firearms by making it  
15 impossible for dealers to register Title 1 firearms on DES. (*Id.* ¶¶ 96–133.)

16 California law divides guns into two types: “handguns” and “long guns,” (*id.*  
17 ¶ 46), and further subdivides long guns into two subtypes: “rifles” and “shotguns,”  
18 (*Id.* ¶ 50). Title 1 firearms are long guns with an undefined subtype and are neither  
19 rifles nor shotguns. (*Id.* ¶¶ 54–64). To register a gun on DES, dealers must indicate  
20 both the type and sub-type of gun being registered by making selections from  
21 drop-down menus on the DES’s online form. Dealers registering long guns on DES  
22 encountered a dropdown menu for the long gun’s sub-type that included only three  
23 options: “rifle,” “rifle/shotgun,” and “shotgun.” (*Id.* ¶¶ 98–99.) As Title 1 firearms  
24 fit into none of those categories, this prevented dealers from accurately completing the  
25 form and submitting it to the DOJ. (*Id.* ¶ 101.) Plaintiffs allege that, as a result, class  
26 members could not complete the purchase and transfer of their Title 1 firearms.

27 \_\_\_\_\_  
28 <sup>1</sup> Having carefully considered the papers filed in connection with the Motion, the Court deemed the  
matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

<sup>2</sup> Title 1 firearms are semiautomatic AR-15 type firearms. (*Id.* ¶ 55.)

1 Franklin informed the DOJ of this deficiency in 2012, but, as alleged, the DOJ  
 2 intentionally did nothing to fix the deficiency. (*Id.* ¶¶ 113–18.) Several years later, on  
 3 November 20, 2019, Franklin filed a government tort claim against the DOJ, and in  
 4 response, the DOJ promised to fix the deficiencies in DES. (*Id.* ¶ 120.) However, the  
 5 DOJ delayed making changes—again, intentionally, according to the allegations. (*Id.*  
 6 ¶¶ 121–22.)

7 On September 1, 2020, the State of California passed the Roberti-Roos Assault  
 8 Weapons Act (“SB 118”), which made AR-15 type firearms illegal in the State of  
 9 California. (*Id.* ¶¶ 5, 129.) After SB 118 came into effect, the DOJ fixed the problem  
 10 with the dropdown menu for long gun sub-types. (*Id.*) But because of SB 118,  
 11 Plaintiffs could no longer complete the process of registering and taking possession of  
 12 their firearms. Plaintiffs assert that the DOJ’s practice of intentionally delaying  
 13 correcting the problem in the DES violated their Second Amendment right to bear  
 14 arms and their Fourteenth Amendment substantive and procedural due process rights.

### 15 III. PROCEDURAL BACKGROUND

16 On May 27, 2020, Franklin Armory filed a complaint in the Superior Court of  
 17 California, County of Los Angeles. (Decl. Robert L. Meyerhoff (“Meyerhoff Decl.”)  
 18 Ex. 1 (“*Franklin Armory* Docket”), ECF No. 25.)<sup>3</sup> On February 17, 2021, Franklin  
 19 Armory filed the operative second amended complaint. (Meyerhoff Decl. Ex. 4  
 20 (“State Second Am. Compl.” or “State SAC”) 43, ECF No. 26.) In the State SAC,  
 21 Franklin Armory alleges what Plaintiffs allege in the present case: that the DOJ, by  
 22 maintaining an incomplete dropdown menu on DES, made it impossible for dealers to  
 23 register Title 1 firearms, thereby creating a “non-statutory ban” prohibiting Franklin  
 24

25 <sup>3</sup> The Court **GRANTS** judicial notice of the docket and court filings in *Franklin Armory*. See *Lee v.*  
 26 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (authorizing judicial notice of “matters of  
 27 public record,” including court filings); Fed R. Evid. 201. However, when a court takes judicial  
 28 notice of documents filed in another court, “it may do so not for the truth of the facts recited  
 therein,” but simply for the fact that the documents exist and were filed, “which is not subject to  
 reasonable dispute.” *S.B. by & through Kristina B. v. Cal. Dep’t of Educ.*, 327 F. Supp. 3d 1218,  
 1229 n.1 (E.D. Cal. 2018)).

1 Armory from selling Title 1 firearms in California. (See State SAC ¶¶ 68–84, 98,  
2 166.) Furthermore, in support of its contention that Title 1 gun ownership is an  
3 entitlement, Franklin Armory alleges in its case that over fifty California statutes  
4 restrict the DOJ’s discretion to impede the transfer of Title 1 firearms. (*Id.* ¶¶ 38–41,  
5 45–46, 81, 118(e), 166, 189.) It further alleges that the DOJ does not have discretion  
6 to “design, develop[], maint[ain], and enforce[] . . . the DES in a manner that  
7 functions as a barrier to the lawful transfer of certain lawful firearms.” (*Id.* ¶ 81.) In  
8 short, Franklin Armory alleges that California law requires the DOJ to provide class  
9 members with a way of registering their Title 1 firearms in a reasonably timely  
10 manner and that the DOJ has no discretion in carrying out this requirement.

11 Franklin Armory seeks injunctions against the DOJ to prevent it (1) from  
12 “enforcing administrative and/or technological barriers that prevent or otherwise  
13 inhibit the sale, loan and/or transfer of lawful ‘firearms with an undefined subtype,’”  
14 (State SAC, Prayer ¶¶ 7–8,), and (2) “from enforcing the provisions of SB 118 . . . in  
15 such a way that would prohibit the acquisition, possession and registration of  
16 centerfire variants of the FAI Title 1 for which earnest money deposits were made on  
17 or before August 6, 2020,” (*id.* ¶ 10.) It further seeks a writ of mandate ordering  
18 Defendants “to design, implement, maintain and enforce updates to the DES such that  
19 it does not proscribe the lawful sale, transfer and loan of an entire class of lawful  
20 ‘firearms with an undefined firearm subtype.’” (*Id.* ¶ 9.) On January 27, 2022, the  
21 court in *Franklin Armory* dismissed the Armory’s claims for injunctive relief.  
22 (Meyerhoff Decl. Ex. 7 (“Decision Granting Mot. Dismiss”).)

23 Plaintiffs in the present federal action make similar claims and seek similar  
24 relief. Plaintiffs allege that the DOJ “failed to comply with the[] mandates” of  
25 California state law by “effectively barring the sale of centerfire variants of Franklin  
26 Armory’s Title 1 series of firearms.” (FAC ¶ 87.) Plaintiffs contend that California’s  
27 gun regulation scheme created an entitlement to—that is, a property interest in—the  
28 transferal and registration of lawful firearms, including Title 1 firearms. (*See id.*

1 ¶¶ 158–59.) To support this contention, Plaintiffs allege that California statutes limit  
2 the DOJ’s discretion to “delay or deny the lawful sale and transfer of firearms” to  
3 situations where “expressly prohibited activities” have taken place. (*Id.* ¶ 88.)  
4 Plaintiffs contend that the DOJ deprived them of this property interest and violated  
5 their substantive and procedural due process rights under the Fourteenth Amendment  
6 by blocking Title 1 firearms transfers. (*Id.* ¶¶ 159, 171.)

7 Plaintiffs now assert three causes of action, for violations of (1) their Second  
8 Amendment right to keep and bear arms, (*id.* ¶¶ 143–54); (2) their substantive due  
9 process rights under the Fourteenth Amendment, (*id.* ¶¶ 155–67); and (3) their  
10 procedural due process rights under the Fourteenth Amendment, (*id.* ¶¶ 168–79).  
11 Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 that Defendants’  
12 conduct deprived Plaintiffs of these constitutional rights. (Compl., Prayer ¶¶ 1–3.)  
13 Further, Plaintiffs ask the Court to: (1) restrain Defendants from effectively banning  
14 registration of “firearms with undefined subtypes”; (2) allow Plaintiffs to submit  
15 firearms purchaser information through DES and to take possession of the Title 1  
16 firearms for which they made deposits; and (3) restrain Defendants from enforcing  
17 provisions related to SB 118 until Plaintiffs have a reasonable period to submit  
18 purchaser information through DES. (*Id.* ¶ 4.) Plaintiffs seek nominal damages,  
19 along with attorneys’ fees and costs pursuant to 42 U.S.C. § 1988. (*Id.* ¶¶ 5–7.)

20 In the present case, Defendants now move to dismiss or stay the case, and the  
21 Motion is fully briefed. (Opp’n, ECF No. 27; Reply, ECF No. 28.) Defendants argue  
22 that *Pullman* abstention is necessary to allow California state courts to reach a final  
23 judgment in *Franklin Armory*. (Mot. at 19–21.) For the reasons that follow, the Court  
24 agrees and imposes a stay based on the *Pullman* abstention doctrine, without reaching  
25 Defendants’ other bases for dismissing or staying the matter.

#### 26 IV. LEGAL STANDARD

27 “*Pullman* abstention ‘is an extraordinary and narrow exception to the duty of a  
28 district court to adjudicate a controversy.’” *Courthouse News Serv. v. Planet,*

1 750 F.3d 776, 783 (9th Cir. 2014) (quoting *Wolfson v. Brammer*, 616 F.3d 1045, 1066  
2 (9th Cir. 2010)). The purpose of *Pullman* abstention is not “for the benefit of either of  
3 the parties but rather for ‘the rightful independence of the state governments and for  
4 the smooth working of the federal judiciary.’” *San Remo Hotel v. City & County of*  
5 *San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998) (quoting *R.R. Comm’n of Tex. v.*  
6 *Pullman Co.*, 312 U.S. 496, 501 (1941)). *Pullman* abstention is appropriate when the  
7 following three conditions are satisfied:

8 (1) the case touches on a sensitive area of social policy upon which the  
9 federal courts ought not enter unless no alternative to its adjudication is  
10 open, (2) constitutional adjudication plainly can be avoided if a definite  
11 ruling on the state issue would terminate the controversy, and (3) [the  
12 proper resolution of] the possible determinative issue of state law is  
uncertain.

13 *Porter v. Jones*, 319 F.3d 483, 492 (9th Cir. 2003) (quoting *Confederated Salish v.*  
14 *Simonich*, 29 F.3d 1398, 1407 (9th Cir. 1994)). “[T]he absence of any one of these  
15 three factors is sufficient to prevent the application of *Pullman* abstention.” *Id.*

16 Either a plaintiff or a defendant may raise *Pullman* abstention, *San Remo Hotel*,  
17 145 F.3d at 1105, and the court “may sua sponte consider *Pullman* abstention at any  
18 time,” *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 802 (9th Cir.  
19 2001). When a party moves for *Pullman* abstention, that party bears “the burden of  
20 meeting each prong.” *See, e.g., Rooke v. City of Scotts Valley*, 664 F. Supp. 1342,  
21 1343 (N.D. Cal. 1987); *cf. Clinton v. Jones*, 520 U.S. 681, 707 (1997) (“The  
22 proponent of a stay bears the burden of establishing its need.”). When a district court  
23 stays a case pursuant to *Pullman* abstention, it should maintain jurisdiction over the  
24 case rather than dismiss it. *Courtney v. Goltz*, 736 F.3d 1152, 1164 (9th Cir. 2013).

## 25 V. DISCUSSION

26 Plaintiffs allege that the DOJ’s intentional delay in correcting the drop-down  
27 menu problem in the DES deprived them of a property right and correspondingly  
28 violated their substantive and procedural due process rights under the Fourteenth

1 Amendment. The Court begins with a discussion of property rights principles under  
2 the Due Process Clause before proceeding to the *Pullman* abstention analysis.

3 **A. Property Rights Principles under the Due Process Clause**

4 “A threshold requirement to a substantive or procedural due process claim is the  
5 plaintiff’s showing of a liberty or property interest protected by the Constitution.”  
6 *Wedges/Ledges of Cal., Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994) (citing  
7 *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 569 (1972)). “[P]roperty  
8 interests that due process protects extend beyond tangible property and include  
9 anything to which a plaintiff has a ‘legitimate claim of entitlement.’” *Nozzi v. Hous.*  
10 *Auth. of L.A.*, 806 F.3d 1178, 1191 (9th Cir. 2015) (quoting *Roth*, 408 U.S. at 576–  
11 77). Entitlements and other property interests are “created and . . . defined by existing  
12 rules or understandings” that “secure certain benefits,” “support claims of entitlement  
13 to those benefits, and “stem from an independent source such as state law.” *Roth*,  
14 408 U.S. at 577.

15 Yet, “[n]ot every procedural requirement ordained by state law . . . creates a  
16 substantive property interest entitled to constitutional protection.” *Shanks v. Dressel*,  
17 540 F.3d 1082, 1091 (9th Cir. 2008). For a benefit conferred by state law to be a  
18 property interest, the recipient must have “more than a unilateral expectation of it.”  
19 *Roth*, 408 U.S. at 564. Thus, “a benefit is not a protected entitlement if government  
20 officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzalez*,  
21 545 U.S. 748, 756 (2005).

22 In analyzing what constitutes an entitlement, courts “begin[] . . . with a  
23 determination of what it is that state law provides.” *Id.* at 757. Courts look to  
24 whether the state law “impose[s] particularized standards” that “significantly  
25 constrain” the government’s discretion. *Shanks*, 540 F.3d at 1091 (quoting *Fidelity*  
26 *Fin. Corp. v. Fed. Home Loan Bank of S.F.*, 792 F.2d 1432, 1436 (9th Cir. 1986)). In  
27 determining whether a benefit is an entitlement, federal courts should maintain a  
28

1 “presumption of deference” to state courts’ interpretation of state law. *Phillips v.*  
2 *Wash. Legal Found.*, 524 U.S. 156, 167 (1998).

3 **B. Pullman Abstention**

4 Defendants argue that the Court should abstain from hearing this case because  
5 (1) this case involves a sensitive area of state law; (2) the state law questions  
6 presented in *Franklin Armory* have the potential to moot, or at least alter, the federal  
7 constitutional questions alleged here; and (3) a possibly determinative area of state  
8 law is uncertain. (Mot. 19–21.) The Court finds that Defendants meet their burden on  
9 all these points and exercises its discretion to apply *Pullman* abstention and stay the  
10 case.

11 *I. Sensitive Area of Social Policy*

12 The first consideration is whether the complaint touches a sensitive area of  
13 social policy upon which the federal courts unless no alternative to its adjudication is  
14 open. *Smelt v. County of Orange*, 447 F.3d 673, 679 (9th Cir. 2006). Defendants  
15 argue that, because this case hinges on interpretations of state gun regulations, it  
16 involves a sensitive area of social policy. (Mot. 19.)

17 The Court agrees. Plaintiffs’ core allegation is that the DOJ undermined  
18 California’s statutory scheme for firearm regulation by operating an additional  
19 clandestine regulatory regime with the intent to ban Title 1 firearms. (FAC ¶ 4.) It is  
20 virtually axiomatic that gun regulation is a sensitive area of social policy, and this  
21 observation rings especially true in this case, where Plaintiffs are asking the Court to  
22 find that a state manipulated its own regulatory scheme for gun purchases in order to  
23 commit intentional constitutional violations.

24 Moreover, to resolve Plaintiffs’ claims, the Court would be required to  
25 determine the extent to which the DOJ has discretionary powers to act outside of the  
26 explicit textual provisions of California statutes, (*see* FAC ¶¶ 39–42), which in turn  
27 would require the court to interpret significant portions of California’s regulatory  
28 scheme for firearms. This task would be difficult because, as Plaintiffs themselves



1 indicate, California has “the most comprehensive, complex, and restrictive [firearms  
2 laws] in the nation, with over 800 state statutes regulating firearms and firearms  
3 transactions within the state.” (FAC ¶ 43; *see also* Opp’n 17 (“Second Amendment  
4 litigation challenging firearms policy often does require courts to weigh sensitive  
5 issues with broader social policy consequences.”).) The complexity of the regulatory  
6 scheme itself supports a finding that the problem is “best left to state resolution.”<sup>4</sup>  
7 *Bank of Am. Nat’l Tr. & Sav. v. Summerland Cnty. Water Dist.*, 767 F.2d 544, 546  
8 (9th Cir. 1985.)

9 California’s ban on Title 1 firearms is part of its attempt to balance the many  
10 competing interests that arise in the context of firearm regulation, and this Court ought  
11 not intrude upon that attempt unless it must. Indeed, if Plaintiffs are successful, the  
12 outcome of this case would provide certain Californians with a way to obtain firearms  
13 that the people of California, through its legislature, have recently declared illegal.  
14 (FAC ¶ 5.) This case undoubtedly “touches a sensitive area of social policy,” and this  
15 Court “ought not” to adjudicate it if there is an alternative. *Smelt*, 447 F.3d at 679.  
16 And there is an alternative: wait for the California courts to complete their  
17 adjudication of *Franklin Armory*. For these reasons, this case meets the first *Pullman*  
18 abstention requirement.

## 19 2. *Avoidance of Constitutional Adjudication*

20 The second *Pullman* element is whether constitutional adjudication plainly can  
21 be avoided if a definitive ruling on the state issue would terminate the controversy.  
22 *Smelt*, 447 F.3d at 679. With respect to this requirement, “[t]he assumption which  
23 justifies abstention is that a federal court’s erroneous determination of a state law  
24 issue may result in premature or unnecessary constitutional adjudication, and

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25 <sup>4</sup> Additionally, *Pullman* abstention is especially appropriate where a federal court is asked to resolve  
26 state-law questions in a way that may invalidate a state statute or regulation. *Fireman’s Fund Ins.*  
27 *Co. v. Garamendi*, 790 F. Supp. 938, 960 (N.D. Cal. 1992); *see Bank of Am.*, 767 F.2d at 547. Here,  
28 although Plaintiffs do not seek to invalidate SB 118 altogether, they do ask the Court to enjoin the  
enforcement of SB 118 against Plaintiffs and require California to process Plaintiffs’ gun  
applications despite SB 118 having been duly enacted. (*See* FAC, Prayer ¶ 4(a)–(c).)

1 unwarranted interference with state programs and statutes.” *C-Y Dev. Co. v. City of*  
2 *Redlands*, 703 F.2d 375, 378 (9th Cir. 1983) (quoting *Pue v. Sillas*, 632 F.d 74, 79  
3 (9th Cir. 1980)).

4 Despite the exacting language in *Smelt*, federal courts, including those in the  
5 Ninth Circuit, have invoked *Pullman* abstention where resolution of the state law  
6 question “has the potential of at least altering the nature of the federal constitutional  
7 questions.” *C-Y*, 703 F.2d at 378. The court need not “be absolutely certain” that a  
8 state court decision will “obviate the need for considering the federal constitutional  
9 issues.” *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 409 (9th Cir.  
10 1996). Instead, “it is sufficient if the state law issues might ‘narrow’ the federal  
11 constitutional questions.” *Id.* (quoting *Pearl Inv. Co. v. City & County of San*  
12 *Francisco*, 774 F.2d 1460, 1464 (9th Cir. 1985)); see *Sullivan Equity Partners, LLC v.*  
13 *City of Los Angeles*, No. 2:16-cv-07148-CAS (AGRx), 2017 WL 1364578 at \*6 (C.D.  
14 Cal. Apr. 12, 2017) (noting this prong is often met “where a favorable decision on a  
15 state law claim would provide plaintiff with some or all of the relief he seeks”).

16 Defendants argue that *Franklin Armory* may eliminate the need for this Court to  
17 rule on constitutional issues because the relief sought in the *Franklin Armory* is  
18 identical to the relief sought in this one. (Mot. 20–21.) The Court agrees.

19 Franklin Armory is the manufacturer of Plaintiffs’ Title 1 firearms. (*Id.* ¶ 22.)  
20 Moreover, Franklin Armory and Plaintiffs seek three identical injunctions in their  
21 respective cases, (*compare* State SAC, Prayer ¶¶ 7–9, *with* FAC, Prayer ¶ 4(a)–(c)),  
22 and, as discussed, the basic allegations and contentions in the two cases are the same.  
23 Thus, if the Armory succeeds in *Franklin Armory*, Plaintiffs in this case will obtain  
24 their requested relief—that is, they will get their firearms—thereby mooted the  
25 controversy and eliminating the need for this Court to adjudicate Plaintiffs’ federal  
26 constitutional claims. See *Sinclair*, 96 F.3d at 409 (finding the second *Pullman*  
27 element satisfied where state court provision of just compensation for a taking under  
28 state law “might” obviate need to address federal taking claim). It is also possible that

1 Franklin Armory will lose its case due to California courts finding no actionable  
2 property right. That finding would apply here and would also dispose of this matter.  
3 Thus, there are multiple ways California courts might resolve *Franklin Armory* that  
4 would “alter[]” a key contested state-law issue. *C-Y*, 703 F.2d at 378.

5 Plaintiffs argue that, because the state court has dismissed Franklin Armory’s  
6 claims for injunctive relief, the ruling in *Franklin Armory* will not terminate this  
7 action. (Opp’n 19.) This argument is unavailing. As Defendants correctly point out,  
8 Franklin Armory cannot appeal the dismissal of claims one, two, and eight until the  
9 Superior Court reaches final judgment on the damages claims. (Mot. 22 n. 5;  
10 Reply 10); *see* Cal. Civ. Proc. Code § 904.1 (setting forth “one final judgment rule”  
11 under which, generally speaking, a party may appeal only after a final judgment).  
12 Thus, it remains uncertain how California courts will ultimately resolve Franklin  
13 Armory’s claims one, two, and eight. Due to this uncertainty, the Superior Court’s  
14 dismissal of claims in *Franklin Armory* does not prevent the Court from invoking  
15 *Pullman* abstention. *See Smelt*, 447 F.3d at 681 (affirming a *Pullman* stay of a federal  
16 case challenging the constitutionality of a ban on gay marriage even after a California  
17 Superior Court had made an initial adverse ruling in a related state action).

18 For these reasons, this case meets the second *Pullman* abstention requirement.

### 19 3. *Uncertain, Determinative Issue of State Law*

20 The third *Pullman* element is satisfied when the state court’s resolution of a  
21 determinative issue of state law is uncertain. *Pearl*, 774 F.2d at 1465 (stating *Pullman*  
22 abstention appropriate when federal court “cannot predict with any confidence how  
23 the state’s highest court would decide an issue of state law”). “Resolution of an issue  
24 of state law might be uncertain because the particular statute is ambiguous . . . or  
25 because the question is novel and of sufficient importance that it ought to be addressed  
26 first by a state court.” *Id.*

27 Here, Defendants argue that it is uncertain whether California state courts will  
28 find that Plaintiffs have a property interest in acquiring their Title 1 firearms.

1 (Mot. 21; Reply 10.) The Court agrees and finds the lack of certainty around this key  
2 and novel issue supports *Pullman* abstention. The Court is aware of no case law that  
3 indicates or suggests that California’s highest court will (or will not) find that  
4 Plaintiffs’ right to obtain Title 1 firearms is an entitlement. Plaintiffs claim such an  
5 entitlement, but they provide no supporting case law to show that California  
6 recognizes an entitlement of that kind. (See FAC ¶¶ 171–72.) Defendants, for their  
7 part, contend that Plaintiffs possessed only a “unilateral expectation” in acquiring and  
8 possessing Title 1 firearms, but Defendants likewise provide no California case law to  
9 support their position. (See Mot. 15.) Thus, this Court would be left without any  
10 guidance from California courts in determining whether Plaintiffs have a property  
11 interest in acquiring their Title 1 firearms. For these reasons, this case meets the third  
12 *Pullman* abstention requirement.

13 In summary, *Pullman* abstention is appropriate because gun regulation is a  
14 sensitive area of social policy and this case in particular invites the federal courts to  
15 intervene in a state’s execution of its own regulations; the result of *Franklin Armory*  
16 might allow the Court to avoid deciding constitutional questions; and the Court cannot  
17 predict whether California courts will determine that Plaintiffs’ right to obtain Title 1  
18 firearms constitutes a property interest. The Court therefore stays the case pending the  
19 final outcome in *Franklin Armory*. See *Caldara v. City of Boulder*, 955 F.3d 1175,  
20 1183 (10th Cir. 2020) (affirming *Pullman* abstention on a Second Amendment  
21 challenge to a local ordinance that prohibited assault weapons and raised the minimum  
22 age to possess firearms); see also *W. Va. Citizens Def. League, Inc. v. City of*  
23 *Martinsburg*, 483 F. App’x 838, 840 (4th Cir. 2012) (affirming *Pullman* abstention on  
24 a Second Amendment challenge to a ban of firearms in city-owned buildings); cf.  
25 *Doyle v. City of Medford*, 565 F.3d 536, 544 (9th Cir. 2009) (certifying a question to  
26 the Oregon State Supreme Court to determine whether a state statute generated an  
27 entitlement to post-retirement healthcare coverage for former city employees).

28

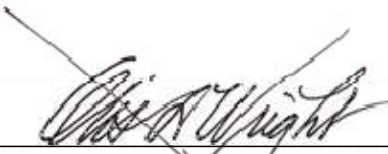
1 **VI. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS IN PART and DENIES**  
3 **IN PART** Defendants’ Motion. (ECF No. 23.) The Court abstains pursuant to  
4 *Pullman* and **STAYS** this case for all purposes. Defendants’ Motion is otherwise  
5 denied or mooted.

6 Starting on **December 1, 2022**, and by the first of the month every  
7 three (3) months thereafter, the parties shall file a Joint Status Report informing the  
8 Court of the status of the *Franklin Armory* case. Furthermore, the parties shall file a  
9 Joint Status Report no later than ten (10) days following any final judgment by the  
10 trial or appellate courts in *Franklin Armory*. Failure to timely file these reports may  
11 result in dismissal of the case for failure to comply with court orders.

12  
13 **IT IS SO ORDERED.**

14  
15 August 12, 2022

16  
17   
18 **OTIS D. WRIGHT, II**  
19 **UNITED STATES DISTRICT JUDGE**