

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Danny Villanueva vs Xavier Becerra		
LAW AND MOTION MINUTE ORDER		Case Number: 17CECG03093

Hearing Date: **March 9, 2018** Hearing Type: **Demurrer/ Motion - Preliminary Injunction/ From Chambers**
Department: **501** Judge/Temp. Judge: **Snauffer, Mark**
Court Clerk: **Whipple, Layla** Reporter/Tape: **N/R**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☒ Taken out from under advisement.

☐ Demurrer ☐ overruled ☐ sustained with ___ days to ☐ answer ☐ amend

☒ Tentative ruling becomes the order of the court. No further order is necessary.

☒ Pursuant to CRC 391(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

☒ Service by the clerk will constitute notice of the order.

☒ See attached copy of the Tentative Ruling.

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:
☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:
☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.
☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.
☐ Levying Officer, County of ___, notified. ☐ Writ to issue
☐ Notice to be filed within 15 days. ☐ Restitution of Premises
☐ Other: ___

(29)

Tentative Ruling

Re: **Villanueva, et al. v. Becerra, et al.**
Superior Court Case No. 17CECG03093

Hearing Date: March 1, 2018 (Dept. 501)

Motion: Defendants' demurrer; Plaintiffs' motion for preliminary injunction

Tentative Ruling:

To sustain Defendants' demurrer, with leave to amend. Plaintiffs are granted 30 days' leave, running from service by the clerk of the minute order, to file an amended pleading. New allegations in the amended complaint are to be set in **boldface** type.

To find the motion for preliminary injunction moot.

Explanation:

The Administrative Procedure Act ("APA") was enacted to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations promulgated by administrative agencies. (Gov. Code § 11346.) One of the purposes of the APA is to provide a procedure for those who will be impacted by a regulation to have a voice in its creation, and to ensure notice of a law's requirements so impacted parties can conform their conduct accordingly. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568–569.) The APA applies to all generally applicable administrative interpretations of a statute, unless there is an express exception. (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 335; see Gov. Code §§ 11340, et seq.)

Mandamus is the traditional remedy to compel a public agency to exercise its discretion under a proper interpretation of the applicable law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442; see Code Civ. Proc. § 1085; *Palmer v. Fox* (1953) 118 Cal.App.2d 453, 457 [mandamus will not lie to control discretion exercised by public agency, but will lie to correct abuse of discretion].) "It is settled that an action for declaratory relief is not appropriate to review an administrative decision." (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249.) Where a complaint seeks declaratory relief of an administrative decision, a demurrer thereto is properly sustained on that ground alone. (*Tejon Real Estate v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 155.)

In the case at bench, Defendants demur, in part, on the ground that Plaintiffs are challenging Defendants' administrative decision to use the "file & print" process to adopt regulations intended to enforce recent amendments to the Assault Weapons Control Act, therefore an action for declaratory relief and preliminary injunction is improper. Defendants argue that Plaintiffs are challenging an administrative decision,

i.e., Defendants' interpretation of the extent of the Legislature's exemption from the APA (see Pen. Code §30900(b)(5)), and that accordingly, Plaintiffs must seek writ relief.

It appears that Defendants' determination that the challenged regulations are APA-exempt, and therefore appropriate for the "file & print" process, was an administrative decision. As administrative decisions are to be challenged by seeking writ relief, Defendants' demurrer to the complaint is sustained on this ground, with leave to amend.

In light of the ruling on Defendants' demurrer, Plaintiffs' motion for preliminary injunction is moot.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued by: MMZ on 2/28/18
(Judge's initials) (Date)

<p align="center">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Danny Villanueva vs Xavier Becerra</p>	
<p align="center">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 17CECG03093</p>

I certify that I am not a party to this cause and that a true copy of the:

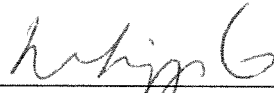
[Minute Order/ Tentative Ruling]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **03/12/2018**

Clerk, by _____,



, Deputy

L. Whipple

✓
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☐ Clerk's Certificate of Mailing Additional Address Page Attached

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County of Fresno
1130 "O" Street
Fresno, California 93724-0002

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