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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 FRANKLIN ARMORY, INC. and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED

11 Petitioners-Plaintiffs,

12 v.

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

16 Respondents-Defendants.

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable
James C. Chalfant; Department 85]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO
FILE SECOND AMENDED VERIFIED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; PETITION FOR
WRIT OF MANDATE AND/OR
PROHIBITION OR OTHER
APPROPRIATE RELIEF**

Hearing Date: March 25, 2021
Hearing Time: 9:30 a.m.
Department: 85

Action filed: May 27, 2020

1 **INTRODUCTION**

2 Plaintiffs timely seek leave to file a Second Amended Verified Complaint pursuant to
3 California Code of Civil Procedure section 473(a)(1). “Clean” and “redlined” versions of the
4 proposed amended pleading identified as Exhibits 1 and 2, respectively, are attached to the
5 Declaration of Anna M. Barvir (hereafter Barvir Decl.) filed simultaneously herewith. No trial date
6 has been set in the matter, and no prejudice will result from the proposed amendment, which is
7 primarily intended to correct potential deficiencies with the parties’ verifications and to clarify facts
8 already pleaded. Because granting the requested leave will not cause prejudice to any party, and
9 denial of the Motion will unfairly prejudice Plaintiffs, the Motion should be granted.

10 **STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY**

11 Petitioner Franklin Armory, Inc., is a manufacturer of a series of firearms which are neither
12 “rifles,” nor “pistols,” nor “shotguns” under California law and which are designated with the model
13 name “Title 1” by Franklin Armory. (FAC ¶ 2.) Franklin Armory has taken thousands of deposits on
14 said firearms from California customers. (FAC ¶¶ 76, 106, 131-132, 148.) But Franklin Armory learned
15 that it was and is currently blocked from transferring Title 1 firearms to their customers due to the
16 design of the Dealer Record of Sale Entry System (DES), which is maintained and controlled entirely by
17 Respondents. (FAC ¶ 60.) Petitioner California Rifle and Pistol Association Incorporated (CRPA) is an
18 association whose members have reserved and placed deposits on Title 1 firearms to lawfully purchase
19 them (FAC ¶¶ 76, 106, 131, 173, 181), but who were (and continue to be) blocked from completing and
20 submitting their applications for the lawful purchase and transfer of Title 1 firearms, as well as other
21 firearms, due to the design of the DES. (FAC ¶ 60.)

22 Petitioners sued in this Court on May 27, 2020, alleging several causes of action, including a
23 petition for writ of mandate directing Respondents to correct the technological defect of the DES that
24 bars the transfer of otherwise lawful firearms, including Title 1 firearms. (Compl. ¶¶ 123-129.) On
25 August 19, 2020, Petitioners filed a First Amended Complaint, adding four claims—some related to the
26 adoption of Senate Bill 118, which implemented changes to state law affecting Petitioners’ claims, after
27 Petitioners filed the original complaint. (FAC ¶¶ 163-202.) For now, however, the parties are actively
28 litigating only the First, Second, and Eighth Causes of Action. The Court stayed the remaining claims.

1 (Oct. 15, 2020 Tr. Setting Conf. Order.)

2 Respondents filed a demurrer on the three related grounds that (1) Petitioners’ claims are moot in
3 light of the passage of SB 118, (2) Petitioners failed to alleged sufficient facts to establish standing, and
4 (3) Petitioners’ claims are not ripe for review because they “have failed to allege any actual controversy
5 regarding the DES.” (Demurrer, pp. 6-9.) Many of Respondents’ arguments, it seems, are based on a
6 fundamental misunderstanding of the facts alleged in the operative complaint. (Barvir Decl. ¶ 7.) For
7 instance, Respondents’ demurrer repeatedly claims that Franklin Armory failed to allege that it
8 manufactures any “undefined firearm subtype”¹ that remains lawful to transfer in California after the
9 adoption of SB 118. (*Ibid.*) But Petitioners maintain that the First Amended Complaint is clear that
10 Franklin Armory manufacturers a “series” of firearms under the “Title 1” moniker and that, even after
11 the “assault weapons” law was expanded, some Title 1 firearms remain lawful to possess, sell, transfer,
12 purchase loan, or otherwise be distributed in California . . .” (*Ibid.*; see FAC ¶¶ 2-3.) Even so,
13 Respondents have asked for more clarity on this point, to the extent it is possible. (Barvir Decl. ¶¶ 8-9.)

14 On December 21, 2020, Respondents served several sets of written discovery, including
15 requests for admission, requests for production of documents, and form interrogatories, on Petitioners
16 Franklin Armory and CRPA. (Barvir Decl. ¶ 5.) One of the requests, served on Petitioner CRPA,
17 asked CRPA to admit the organization did not verify the first amended complaint. (*Ibid.*)

18 On January 8, 2021, after reviewing and preparing to respond to Respondents’ demurrer and
19 preparing Respondents’ discovery requests, counsel for Petitioners, Anna M. Barvir, conferred with
20 counsel for Respondents, Benjamin Barnouw, to discuss several concerns, including the potential
21 verification defect and the clarity required of Petitioners’ allegations about what firearms Franklin
22 Armory manufactures. (Barvir Decl. ¶ 8.)² Ms. Barvir agreed it might be prudent to file a second
23 amended complaint, making the discussed changes. (*Id.* ¶ 9.) But, because Petitioners had already

25 ¹ “Undefined firearm subtype” refers, as it does, in Petitioners’ Opposition to Respondents’
26 Demurrer, to firearms, that do not qualify as “handguns,” “pistols,” “revolvers,” “rifles,” or “shotguns”
27 or even “frames” or “receivers” for said firearms under California law.

28 ² Ms. Barvir had only recently entered an appearance in this matter, taking over responsibility for
the case in late-December 2020. (Ntc. of Appearance of Anna M. Barvir, Dec. 30, 2020; Barvir Decl. ¶ 8.)

1 filed a first amended pleading without leave of court, Plaintiffs thus bring this Motion for Leave to
2 File a Verified Second Amended Complaint for Declaratory and Injunctive Relief and Petition for
3 Writ of Mandate and/or Prohibition or Other Appropriate Relief.³

4 ARGUMENT

5 I. LEGAL STANDARD

6 “The court may, in furtherance of justice, and on any terms as may be proper, allow a party to
7 amend any pleading[.]” (Code Civ. Proc., § 473(a); see also *id.* § 576 [“Any judge, *at any time before*
8 *or after commencement of trial*, in the furtherance of justice, and upon such terms as may be proper,
9 may allow the amendment of any pleading.”], italics added.) “This statutory provision giving the
10 courts the power to permit amendments in furtherance of justice has received a very liberal
11 interpretation by the courts of this state.” (*Klopstock v. Super. Ct.* (1941) 17 Cal.2d 13, 19; see also
12 *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939.) Indeed, if the granting of a timely motion
13 for leave to amend “will not prejudice the opposing party, it is error to refuse permission to amend,
14 and where the refusal also results in a party being deprived of the right to assert a meritorious cause
15 of action[;] it is not only error but an abuse of discretion.” (*Morgan v. Super. Ct.* (1959) 172
16 Cal.App.2d 527, 530 (hereafter *Morgan*) [finding that the trial court abused its discretion when it
17 denied a motion for leave amend that was filed before a trial date had been set].)

18 In some instances, leave may be denied if there was an unreasonable delay in seeking leave,
19 and where, as a result of that delay, granting leave would prejudice the defendant. (See *A.N. v. Cnty.*
20 *of Los Angeles* (2009) 171 Cal.App.4th 1058, 1068.) But even unreasonable delay does not justify
21 denial when leave is sought well before trial and the proposed amendment “relate[s] to the same
22 general set of facts” previously pleaded. (See *Kittredge Sports Co. v. Super. Ct.* (1989) 213
23 Cal.App.3d 1045, 1048 (hereafter *Kittredge*), citation omitted.) “[I]t is a rare case in which a court
24
25

26 ³ Petitioners also asked for leave to amend to correct any deficiencies the Court might identify in
27 ruling on Respondents’ demurrer. (Petr.’ Oppn. Dem., pp. 17-18.) If the Court grants that request,
28 Petitioners understand that this motion will no longer be necessary, but file this out of an abundance of
caution.

1 will be justified in refusing a party leave to amend his pleadings so that he may properly present his
2 case.” (*Morgan, supra*, 172 Cal.App.2d at p. 530, citations & internal quotation marks omitted.)

3 **II. THE COURT SHOULD GRANT PETITIONERS’ REQUEST FOR LEAVE TO AMEND BECAUSE**
4 **AMENDMENT SERVES THE INTERESTS OF JUSTICE AND BECAUSE DEFENDANTS WILL NOT**
5 **BE PREJUDICED IF THE MOTION IS GRANTED**

6 Petitioners seek in good faith to amend the Verified Second Amended Complaint to (1) clarify
7 the language in the verification of Jay Jacobson executed on behalf of Franklin Armory; (2) add the
8 verification of Patrick Morris executed on behalf of CRPA that was inadvertently left of the First
9 Amended Complaint; and (3) clarify a few factual allegations regarding Petitioners’ standing to bring
10 this action. (Barvir Decl. ¶ 3.) Given the longstanding presumption favoring leave to amend absent
11 any showing of meaningful prejudice, and because the proposed amendments are in furtherance of
12 justice, the Court should grant Petitioners’ request for leave to amend.

13 First, granting Petitioners’ request for leave to amend furthers the interests of justice.
14 Petitioners primarily seek to amend so they may provide executed verifications that more clearly
15 demonstrate that the allegations made in and against Respondents are personally known to be true,
16 except as to those matters which are alleged on information and belief, which Petitioners believe to
17 be true. (See Ex. 2, pp. 40-41; see also Barvir Decl. ¶ 4.) Upon receiving and reviewing Respondents’
18 requests for admission, Ms. Barvir was first alerted that some unintentional oversight resulted in there
19 being no verification included for Petitioner CRPA. (Barvir Decl. ¶ 5.) And upon reviewing the
20 language of the verification executed on behalf of Petitioner Franklin Armory, she realized that the
21 unclear language used in that verification might be interpreted in a way that does not strictly adhere
22 to the writ petition requirements of California Code of Civil Procedure sections 446 and 1086. (*Ibid.*)
23 Failure to allow Petitioners to correct the perceived deficiencies upon this timely request would result
24 in their “being deprived of the right to assert a meritorious cause of action,” which is “not only error
25 but an abuse of discretion.” (*Morgan, supra*, 172 Cal.App.2d at p. 530.)

26 Similarly, the limited factual allegations that Petitioners seek to clarify have been identified
27 by Respondents’ counsel as necessary to prove Petitioners’ standing to bring this action. (Barvir
28 Decl. ¶¶ 7-9.) While Petitioners contend that the First Amended Complaint sufficiently alleges their
standing, (*id.* ¶ 7; Oppn. to Dem., pp. 11-16), they do not object to providing clarification of those

1 matters as requested by Respondents. Especially if the Court, in ruling on Respondents’ Demurrer,
2 finds that the First Amended Complaint requires more—for failure to grant leave to allege these facts
3 might deprive Petitioners of their right to pursue this action because, of course, standing is a
4 necessary prerequisite of any action.

5 It is thus the interests of justice for this Court to grant Petitioners’ request for leave to amend.

6 **B. Granting Leave to Amend Will Not Prejudice Respondents**

7 Leave to amend should be granted because doing so not unduly prejudice Respondents. To the
8 contrary, if this motion is granted, Respondents will be in effectively the same position as if the
9 proposed Second Amended Complaint had been filed on the date the First Amended Complaint was
10 filed. Indeed, Petitioners seek only to clarify language in their required verifications, include the
11 CRPA verification which was inadvertently off the earlier pleadings even though CRPA was actively
12 involved in bringing this suit from the very beginning, and clarify the facts on which Petitioners base
13 their standing. (Barvir Decl. ¶ 5-6.) Petitioners seek no substantive changes to the relief sought, the
14 general facts alleged, or even the causes of action raised in either the original Complaint or the First
15 Amended Complaint. (See Ex. 2, pp. 2-3, 9, 13-15, 22, 27, 38.) Because the amendments pertain to
16 the same course of conduct originally pled in earlier complaints, and because there is no trial date set
17 in this matter, no prejudice can arise from the motion being granted.

18 This is simply not the “eve of trial” scenario where the potential prejudice flowing from a
19 contemplated amendment justifies ignoring “the strong policy favoring the liberal allowance of
20 amendments.” (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 296-297 (hereafter *Mesler*)). The
21 type of unfair surprise or additional costs that can occur when leave is sought immediately before, or
22 during, trial just do not exist here. (See, e.g., *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th
23 471, 486-487 [“Where . . . counsel, the parties, the trial court, and the witnesses have blocked the
24 time, and the only way to avoid prejudice to the opposing party is to continue the trial date to allow
25 further discovery, refusal of leave to amend cannot be an abuse of discretion.”].) Again, the
26 amendments Petitioners propose are all related to the facts originally pleaded in this action, so no
27 prejudice will result by Petitioners having “delayed” their inclusion. (See *Kittredge, supra*, 213
28 Cal.App.3d at p. 1048.)

1 Admittedly, the proposed amendments might spur the parties to consider discovery requests
2 previously left off the table.⁴ With the limited discovery regarding Petitioners’ writ petition and APA
3 claims already ongoing and expected to be completed in time for the January 26th Trial Setting
4 Conference, (Oct. 15, 2020 Tr. Setting Conf. Min. Order), amendment could necessitate an extension
5 of standing discovery cutoffs. But again, courts apply a policy of great liberality in permitting
6 amendments to the complaint at any stage of the proceedings up to and including trial. (*Mesler*,
7 *supra*, 39 Cal.3d at pp. 296-297.) And because denying leave to amend could result in Petitioners
8 “being deprived of the right to assert a meritorious cause of action,” (*Morgan, supra*, 172 Cal.App.2d
9 at p. 530), any slight delay in completing this phase of discovery that amendment might cause should
10 not overcome that well-established presumption.

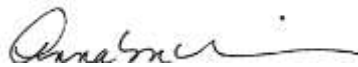
11 Because Respondents will not be able to articulate any form of prejudice upon which this
12 motion could be denied, the Court should grant it in the interests of justice.

13 **CONCLUSION**

14 For these reasons, Petitioners request that the Court grant their Motion for Leave to File a
15 Second Amended Complaint.

16
17 Date: January 12, 2021

MICHEL & ASSOCIATES, P.C.

18 

19 _____
Anna M. Barvir

20 Attorneys for Petitioners-Plaintiffs
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22
23
24

25 ⁴ Though this is not even certain. For, as Petitioners have long maintained, the First Amended
26 Complaint was already clear that Franklin Armory manufactures a “series” of firearms under the “Title
27 1” name and that at least some of those firearms remain lawful to transfer even after the passage of SB
28 118. (FAC ¶¶ 2-3.) Respondents could have thus served discovery about the types and numbers of Title
1 firearms Franklin Armory manufactures (i.e., the facts Petitioners’ proposed amendments largely seek
to clarify) even without the proposed amendments.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I
5 am over the age eighteen (18) years and am not a party to the within action. My business address is 180
6 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On January 12, 2021, I served the foregoing document(s) described as

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
9 MOTION FOR LEAVE TO FILE SECOND AMENDED VERIFIED COMPLAINT FOR
10 DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR WRIT OF MANDATE
11 AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

12 on the interested parties in this action by placing
13 [] the original
14 [X] a true and correct copy
15 thereof by the following means, addressed as follows:

16 Benjamin Barnouw
17 Deputy Attorney General
18 California Department of Justice
19 300 South Spring Street, Suite 1702
20 Los Angeles, CA 90013
21 Email: Ben.Barnouw@doj.ca.gov
22 *Attorney for Respondents-Defendants*

23 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
24 transmission through One Legal. Said transmission was reported and completed without error.

25 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on January 12, 2021, at Long Beach, California.



28

Laura Palmerin