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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANKLIN ARMORY, INC. and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED Petitioners-Plaintiffs, v. CALIFORNIA DEPARTMENT OF JUSTICE, XAVIER BECERRA, in his official capacity as Attorney General for the State of California, and DOES 1-10, Respondents-Defendants.	Case No. 20STCP01747 **PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' DEMURREER** Date: January 26, 2021 Time: 1:30 p.m. Dept.: 85 Judge: Hon. James C. Chalfant Action Filed: May 27, 2020 Trial Date: Not set

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INTRODUCTION

This lawsuit deals with allegations that Respondents the California Department of Justice and Attorney General Xavier Becerra purposefully acted to prevent the lawful transfer of thousands of legal firearms, refusing to correct known technological defects with the system they themselves are legally bound to design, update, and maintain—defects that effectively banned the lawful transfer of thousands of firearms. The suit also includes allegations that Respondents' delays were intentional, given how they fixed a separate (yet essentially) identical problem in the same software program within weeks of notification; notification given simultaneously with that of the problem at the core of this suit.

Despite the clarity of this narrative as pleaded in Petitioners' First Amended Complaint, Respondents attack this suit on what are essentially justiciability grounds—mootness, lack of standing, and ripeness—through a demurrer replete with gross mischaracterizations of the pleadings. None of this is availing. Respondents' conduct caused Petitioners an actual, concrete injury. Indeed, because of Respondents' unlawful behavior, Petitioners lost the chance to obtain legal property before the legislature, at Respondents' urging, banned it. What's more, Respondents' actions *continue* to prohibit Petitioners from acquiring property not prohibited under any currently applicable statute. Under either of these theories, Petitioners have alleged the sort of live, actual, non-conjectural, and particularized injury that make this controversy fully justiciable. Petitioners thus satisfy all applicable pleading standards.

And although Petitioners need not seek shelter under a plea to the liberality of pleadings standards and the ability to cure defects through amendment, that liberal standard only magnifies the sufficiency of the First Amended Complaint. Respondents' demurrer should be overruled. But if the Court sustains any part of it, Petitioners request leave to amend.

STATEMENT OF FACTS

I. CALIFORNIA'S SCHEME FOR THE TRANSFER AND REGISTRATION OF FIREARMS THROUGH THE DEALER RECORD OF SALE ENTRY SYSTEM (DES)

California has reserved the entire field of licensing and registration of firearms to itself. (Pen. Code, § 53071.)[1] With limited exception, nearly all firearm transfers in California must be processed through a dealer licensed by federal, state, and local authorities to engage in the retail sale of firearms.

(§§ 26700, 27545.) Under state law, "every dealer shall keep a register or record of electronic or telephonic transfer in which shall be entered" certain information relating to the transfer of firearms. (§ 28100.) And "*for all firearms*," this register or record of electronic transfer *shall* contain certain information, *including the* "*type of firearm*." (§§ 28100, subd. (a), 28160, subd. (a).) This register is commonly referred to as the Dealer Record of Sale (DROS). And the State has mandated that upon presentation of identification by a firearm purchaser, a licensed California firearms dealer shall transmit the information to the Department of Justice (DOJ). (§ 28215, subd. (d).)

Under section 28205, subdivision (c), the DROS must be submitted to the DOJ electronically, "except as permitted by the [DOJ]." And state law mandates that "[t]he [DOJ] shall prescribe the form of the register and the record of electronic transfer pursuant to Section 28105." (§ 28155.) The method established by the DOJ under section 28205, subdivision (c), for the submission of purchaser information required by section 28160, subdivision (a), is known as the DROS Entry System (DES). (Verified First Am. Compl. & Petit. for Writ of Mand. (FAC) ¶ 50.) The DES is a web-based application designed, developed, and maintained by the DOJ and used by firearm dealers to report the required information. (FAC ¶¶ 50-51.)

As designed, the DES can facilitate the transfer of certain types of firearms: "handguns" (also called "pistols" or "revolvers"), "rifles," and "shotguns." This information is entered into the DES during the application process by the user selecting the appropriate type/subtype of firearm within a predetermined drop-down list. Many firearms, however, do not qualify as "handguns," "pistols," "revolvers," "rifles," or "shotguns' or even "frames" or "receivers" for said firearms. (FAC ¶¶ 24-26.)[2] And the DES drop-down list for firearm type/subtype has no provision for "other" firearms such as "undefined firearm subtypes." (FAC ¶¶ 55.) Because dealers cannot accurately submit the required information through the DES for "long guns" that are undefined firearm subtypes, they are prohibited from processing and accepting applications from purchasers of said firearms. (FAC ¶ 59.) By design then, Petitioners allege, Respondents have instituted within the DES this technological barrier that functions and serves to prohibit the transfer of all firearms that are "long guns" but are neither "rifles"

[1] All further statutory references are to the Penal Code unless otherwise indicated.
[2] Such firearms are referred to as "undefined firearm subtypes" throughout this brief.

nor "shotguns" nor "rifle/shotgun combinations" through a licensed firearms dealer. (FAC ¶ 60.)

Respondents have long known about the deficiencies of the DES but have refused requests to correct it. (FAC ¶ 64.) Indeed, Franklin Armory has been in communication with Respondents about the design and features of Title 1 firearms since 2012, and Franklin Armory informed Respondent DOJ of the defects with the DES and the inability to transfer Title 1 firearms because of it as early as *October 24, 2019*. (FAC ¶¶ 65-66.) It has been over a year since Franklin Armory so notified the DOJ, yet the agency has thus far refused to modify the DES even though it has proven it can quickly make the requested change. (FAC ¶ 69.) For example, the DOJ was able to modify the DES to address a similar deficiency regarding the drop-down list for transferee's nation of origin—a deficiency Franklin Armory reported at the same time it raised the issue of undefined firearm subtypes—within weeks. (FAC ¶ 70.)

II. SENATE BILL 118 AND THE EXPANSION OF THE "ASSAULT WEAPON" BAN

The motivation behind Respondents' delay, Petitioners' allege, was to buy time to work with the legislature to develop, propose, pass, and effect legislation designating Title 1 style firearms as "assault weapons" and restricting their sale. (FAC ¶ 102.) This nefarious scheme proved successful on August 6, 2020, with the passage of Senate Bill 118 (SB 118), which expanded the statutory definition of "assault weapon" to include any "semiautomatic *centerfire* firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one" of a list of enumerated characteristics, like a forward pistol grip or thumbhole stock. (Sen. Bill 118 (2019-2020 Reg. Sess.) § 38.) The effect of the bill, as relevant here, was to restrict the transfer of centerfire versions of Franklin Armory's Title 1 firearms as "assault weapons," customers despite the existing orders that long predated SB 118. (FAC ¶¶ 105, 173.) But even after the adoption of SB 118, not all Franklin Armory Title 1 firearms have been reclassified as "assault weapons." Indeed, Franklin Armory alleges that it manufacturers a "series" of firearms designated under the "Title 1" model name, (FAC ¶ 2), including a "rimfire" version that is not affected by SB 118's changes, which were limited to "centerfire" firearms. (Penal Code, § 30515, subd. (a)(9).) These unaffected Title 1 firearms are still legal to transfer but remain blocked by Respondents' refusal to correct the DES.

III. PROCEDURAL HISTORY

Petitioner Franklin Armory, Inc., is a manufacturer of a series of firearms which are neither

"rifles," nor "pistols," nor "shotguns" under California law and which are designated with the model name "Title 1" by Franklin Armory. (FAC ¶ 2.) Franklin Armory has taken thousands of deposits on said firearms from California customers. (FAC ¶¶ 76, 106, 131-132, 148.) Franklin Armory, however, learned that it was and is currently blocked from transferring Title 1 firearms to their customers due to the design of the DES, which is maintained and controlled entirely by Respondents. (FAC ¶ 60.) Petitioner California Rifle and Pistol Association Incorporated (CRPA) is an association whose members have reserved and placed deposits on Title 1 firearms to lawfully purchase them (FAC ¶¶ 76, 106, 131, 173, 181), but who were (and continue to be) blocked from completing and submitting their applications for the lawful purchase and transfer of Title 1 firearms, as well as other firearms, due to the design of the DES. (FAC ¶ 60.)

Petitioners sued in this Court on May 27, 2020, alleging several causes of action, including a petition for writ of mandate directing Respondents to correct the technological defect of the DES that bars the transfer of otherwise lawful undefined firearm subtypes, including Title 1 firearms. (Compl. ¶¶ 123-129.) On August 19, 2020, Petitioners filed a First Amended Complaint, adding four claims—some related to the recent changes in state law affecting Petitioners' claims. (FAC ¶¶ 163-202.) For now, Petitioners proceed only on their First, Second, and Eighth Causes of Action. The Court stayed the remaining claims. (Oct. 15, 2020 Tr. Setting Conf. Order.)

The First Cause of Action seeks a judicial declaration about, among other things, the legality of Respondents' conduct regarding the DES and undefined firearm subtypes. (FAC ¶¶ 114, 118, subds. (a)-(h).) It seeks to enjoin Respondents "from enforcing administrative and/or technological barriers that prevent the sale of lawful firearms, *including but not limited to* the [Franklin Armory] Title 1." (FAC ¶ 121.) And "from enforcing the Roberti-Roos Assault Weapons Act in a manner that prohibits those who, but for [Respondents] technological barriers . . . could have lawfully acquired and registered their [Franklin Armory] Title 1 style firearm in accordance with" the new legislation. (FAC ¶ 122.)[3]

Petitioners' second claim is for a writ of mandate directing Respondents to design, maintain, and

[3] To be clear, Petitioners do not ask this Court to order the transfer of Title 1 firearms if such transfer would be unlawful. That is, this request for relief is limited to those persons who made deposits before California enacted SB 118 and who were prevented from effectuating said transfer due to Respondents' unclean hands, as described in the First Amended Complaint.

enforce updates to the DES such that it does not proscribe the lawful sale, transfer, and loan of a class of lawful firearms, including Title 1 firearms, and such that it comports with sections 28155, 28205, 28215, and 28220. (FAC ¶ 114.) It also asks the Court to direct Respondents to "design, implement, maintain, and enforce updates [to] their 'assault weapons' registration process such that it permits the registration of the [Franklin Armory] Title 1 style firearms by those whose orders were placed on or before August 6, 2020 or at such time as deemed appropriate by the Court." (FAC ¶ 129.)[4]

Petitioners' eighth claim is for declaratory and injunctive relief as it relates to Respondents' violation of the Administrative Procedure Act (APA). Petitioners seek a declaration that Respondents' de facto ban on the transfer of undefined firearm subtypes, including Title 1 firearms, constitutes an underground regulation in violation of the APA, as well as injunctive relief preventing the enforcement of said underground regulation. (FAC ¶ 195.)

ARGUMENT

I. LEGAL STANDARD

A civil complaint is merely intended to frame and limit the issues and apprise the defendant of the basis upon which the plaintiff seeks recovery. (See *Fuentes v. Tucker* (1947) 31 Cal.2d 1, 4; *Perkins v. Super. Ct. (Gen. Tel. Directory Co.)* (1981) 117 Cal.App.3d 1, 6.) "A demurrer tests the pleading alone, and not the evidence or the facts alleged." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.) Thus, "[a]ll that is necessary against a general demurrer is that, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to *any* relief at the hands of the court against the defendant." (*Hilltop Props., Inc. v. State* (1965) 233 Cal.App.2d 349, 354.) A pleading is adequate if it contains enough facts to apprise the defendant of the factual basis for the plaintiff's claim. (*McKell v. Wash. Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-1470.)

What's more, when considering demurrers, courts read the allegations liberally and in context. (*Taylor v. City of L.A. Dept. of Water and Power* (2006) 144 Cal.App.4th 1216, 1228.) A court must

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[4] The parties disagree over whether Petitioners are pursuing those portions of their First and Second Causes of Action dealing with the Title 1 firearms the state recently reclassified as "assault weapons." (See Demurrer, p. 13, fn. 6.) Petitioners have no recollection of waiving their right to litigate the entirety of their first and second claims at this stage, and nothing in the Court's minute order from the October 15, 2020 trial setting conference limits the writ of mandate in such a way. (Oct. 15, 2020 Tr. Setting Conf. Order.)

treat the demurrer as admitting all material facts properly pleaded in the complaint. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) And if there is more than one reasonable interpretation, courts are to draw any "inferences favorable to the plaintiff, not the defendant." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

II. PETITIONERS' CLAIMS ARE NOT MOOT

Respondents demur on the basis that this matter is moot. (Dem., pp. 14-16.) In support of their claim, Respondents explain that moot cases are "[t]hose in which an actual controversy did exist but, by the passage of time or a change in the circumstances, ceased to exist." (*Id.*, p. 16, citing *Wilson & Wilson v. City Council of Redwood* (2011) 191 Cal.App.4th 1559, 1573 (hereafter *Wilson & Wilson*).) Here, Respondents argue, Petitioners' claims are moot because the "legislature amended the [Roberti Roos Assault Weapon] Act, and specifically Penal Code section 30515, to include [within] the definition of 'assault weapon': any 'semiautomatic *centerfire* firearm that is not a rifle, pistol, or shotgun, *that has one or more specified characteristics*." **(***Id.*, p. 15, citing § 30515, subd. (a)(9)-(11), italics added.)

The legislation, however, did not expressly restrict all undefined firearm subtypes—it did not even restrict the sale of all Title 1 firearms for that matter. Instead, as cited by Respondents themselves, the legislation focused on firearms with specified characteristics. For example, the legislative changes to section 30515 restricted, but did not completely prohibit,[5] the transfer of certain *centerfire* firearms, including Title 1 firearms in centerfire calibers. (§§ 30515, subd. (a)(9)-(11), 30650.) It did *not* classify *rimfire* firearms, including Title 1 firearms in such calibers, as "assault weapons" or restrict their transfer. (*Ibid.*) Nor did it restrict the sale of centerfire Title 1 firearms configured without any of the enumerated features necessary for a firearm to be considered an "assault weapon" under state law. (*Ibid.*) Because a case only becomes moot when a court ruling can have *no* practical effect or cannot provide the parties with effective relief, (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503), the limited "change of circumstances" that SB 118 represents is simply not enough to justify sustaining Respondents' demurrer on mootness grounds here.

To be sure, *some* Title 1 firearms are now "assault weapons" under state law, likely mooting

[5] Transfers of "assault weapons" to certain law enforcement and permittees is still allowed under the regulatory scheme. (See Penal Code, §§ 30650, 30675.)

Petitioners' claims as regards those firearms.[6] But as Respondents seemingly admit, before the adoption of SB 118, an actual controversy regarding the DES and undefined firearm subtypes, including Title 1 firearms, *did* exist. (See Dem., *Id.*, p. 16 [arguing that a moot case is one "in which *an actual controversy did exist* but, by the passage of time or a change in the circumstances, ceased to exist"], citing *Wilson & Wilson*, *supra*, 191 Cal.App.4th at p. 1573, italics added.) So, as to any undefined firearm subtype not reclassified as an "assault weapon" by SB 118, Petitioners' claims are not mooted by the passage of the law. This includes certain Title 1 series firearms.

Nonetheless, Respondents try to expand the effect of SB 118 on this action, claiming that after the passage of SB 118, "it is no longer the case that Petitioners' claims regarding the Title 1 are premised on the allegation that it is lawful for the public to purchase the Title 1." (Dem., p. 16.) This is patently false. In fact, Petitioners allege that Franklin Armory manufactures a "*series*" of firearms with the model name "Title 1." (FAC ¶ 2.) And Petitioners allege, even after amendment, that "Title 1 firearms, as designed and sold by [Franklin Armory], *are lawful to possess, sell, transfer, purchase loan, or otherwise be distributed in California* . . .." (FAC ¶ 3, italics added.) Respondents seek to capitalize on Petitioners' allegation that the expanded definition restricted the sale, transfer, and possession of *some* Title 1 firearms that fall within the recently expanded definition of "assault weapon" to claim that *all other* Title 1 firearms within the "series" are also unlawful, contrary to the express allegations of the First Amended Complaint.

Further, Petitioners' claims for relief are not constrained to the DES's limitations as they apply to the transfer of just Title 1 firearms after the passage of SB 118. To the contrary, as Petitioners expressly make clear in the operative complaint, they bring this action to enjoin the enforcement of rules that serve as "administrative and/or technological barriers that prevent the sale of lawful firearms, *including but not limited to* the [Franklin Armory] Title 1." (FAC ¶ 121, italics added.) And they seek to enjoin Respondents "from enforcing the . . . Assault Weapons Act in a manner that prohibits those who, but for

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[6] This narrow concession is limited to future attempts to transfer Title 1 firearms classified as "assault weapons" under SB 118 as long as the law remains in effect and is not declared invalid. It does not relate to those transfers that would have lawfully been completed before September 1, 2020, but for Respondents unlawful conduct. Nor does it relate to any future attempt to transfer Title 1 firearms if Petitioners are successful in their now-stayed claims for declaratory and injunctive relief. (FAC ¶¶ 173-174, 181-182, 191, 201.)

[Respondents'] technological barriers . . . could have lawfully acquired and registered their [Franklin Armory] Title 1 style firearm in accordance with" the new legislation. (FAC ¶ 122.) That is, even as regards those Title 1 firearms that *were* recently reclassified as "assault weapons," the matter is still not moot. For Petitioners claim that, *because of Respondents' unlawful conduct*, Respondents have a continuing duty to fix the DES and "assault weapons" registration processes to allow those transfers that were initiated before August 6, 2020, to be completed lawfully.

In short, the passage of SB 118 did not strip this lawsuit of all its usefulness. The Court can still grant effective relief, so the matter is not moot. Respondents' demurrer should be overruled.

III. PETITIONERS HAVE STANDING TO PURSUE RELIEF

Standing in California courts is less rigid than in the federal forum. Unlike federal Article III standing, standing in California is not a jurisdictional prerequisite. Indeed, "our state Constitution has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248 (hereafter *Weatherford*).) California also departs from the strict separation of powers considerations that rigid application of standing doctrine in federal courts exists to serve. (See *Spokeo, Inc. v. Robins* (2016) 136 S.Ct. 1540 1547 [explaining that "standing" in the federal forum serves to prevent usurpation of power from the elected branches of government]; see also *People v. Bunn* (2002) 27 Cal.4th 1 [37 P.3d 380, 388] [In California, "it is well understood that the branches share common boundaries and no sharp line between their operations exist."].)

Despite this more prudentially oriented standard, familiar notions of standing requirements do apply. "To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.' [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.' [Citation.]" (*City of Palm Springs v. Luna Crest Inc.* (2016) 245 Cal.App.4th 879, 883, quoting *Cty. of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 814, italics omitted.) Where a party pleads a non-hypothetical injury traced to a defendant's conduct, "beneficial interest" writ standing is satisfied. (See *Teal v. Super. Ct. (People)* (2014) 60 Cal.4th 595,

599.) Additionally, where a party can show "injury as to himself," standing for injunctive relief is also established. (See *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748.)

For purposes of defeating Respondents' demurrer, Petitioners have surely met the minimal pleading requirements necessary to establish standing for both their petition for writ of mandate and their request for injunctive relief. Indeed, whether Petitioners are trying to satisfy the nuanced standing requirements for writ relief or the more straightforward requirements of injunctive relief, Petitioners allege clear injuries wrought by Respondents' actions. That satisfies standing under any standard.

A. Petitioners Allege Sufficient Facts to Establish Standing for a Writ of Mandate

For purposes of seeking writ relief, a party must be "beneficially interested" in the subject of the action to prove standing. (Code Civ. Proc, § 1086.) That is, they must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Assoc. Builders & Contractors, Inc. v. S.F. Airports Commn.* (1999) 21 Cal.4th 352, 361-362, quoting *Carsten v. Psych. Examining Commn.* (1980) 27 Cal.3d 793, 796.) Courts do not, however, hold litigants to strict compliance with the requirement of "beneficial right" standing where "the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty." (*Weatherford, supra*, 2 Cal.5th at pp. 1247-1248, internal quotation omitted.) "This exception . . . protects citizens' opportunity to 'ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.'" (*Ibid.*, quoting *Green v. Obledo* (1981) 29 Cal.3d 126, 144 (hereafter *Green*).)

As explained below, for purposes of defeating Respondents' demurrer, Petitioners' First Amended Complaint alleges enough facts to establish both "beneficial right" standing and "public interest" standing. (See *Cty. of Santa Clara v. Super. Ct. (Naymark)* 171 Cal.App.4th 119, 126 ["[I]f the pleadings contain 'sufficient particularity and precision to acquaint the defendants with then nature, source and extent of [the] cause of action' the general demurrer should be overruled. [Citation omitted.]"].) The Court should overrule Respondents' demurrer on this ground.

1. Petitioners Have Standing Because They Sufficiently Allege a Beneficial Right in the Subject of the Petition

Respondents allege that Petitioners do not have standing because Petitioners failed to allege a

beneficial right. (Dem., p. 6.) To support their claim, Respondents falsely claim that Petitioners "do not allege that Franklin Armory manufactures . . . any such firearm." (*Ibid.*) To the contrary, Petitioners expressly allege that Franklin Armory manufactures such firearms. (FAC ¶ 2 ["FAI manufactures a *series* of firearms which are neither 'rifles,' nor 'pistols,' nor 'shotguns' under California law and which are designated with the model name 'Title 1' by FAI."], italics added; *id.* at ¶ 3 ["The FAI Title 1 firearms, as designed and sold by FAI, *are lawful* to possess, sell, transfer, purchase loan, or otherwise be distributed in California . . .."], italics added.)

Respondents also falsely claim that Franklin Armory does not allege that it manufactures any firearm, *other than the Title 1*, that is an "undefined-type" firearm." (Dem., p.17.) But Respondents cite no authority that Respondents must list *more than one*, let alone every firearm type or subtype, that falls within their prohibition to have standing. More importantly, Respondents cite no authority that Petitioners must do so to meet the minimal pleadings requirement applicable at this stage. (See *Cty. of Santa Clara*, *supra*, 171 Cal.App.4th at p. 126.) Even so, Franklin Armory alleged *both* that it manufactures a "series" of firearms under the Title 1 model name *and* that said firearms "*are lawful to possess, sell, transfer, purchase, loan, or otherwise be distributed* within California . . .." (FAC ¶¶ 2-3.)

Respondents continue their false claims by stating that Petitioners "do not allege that any [CRPA] member has attempted to purchase, any such firearm." (Dem., p. 17.) Again, Petitioners expressly allege that CRPA members not only wish to purchase, but took affirmative steps to reserve, undefined firearm subtypes, including Title 1 firearms. (FAC ¶ 6 ["CRPA represents the interests of its many citizens and taxpayer members and *members of CRPA* who reside in California and who wish to sell, *purchase*, acquire, transfer and possess lawful firearms, including the Title 1, *but are prohibited from doing so* by the technological limitations implemented by [Respondents.]"], italics added; *id.* ¶ 76 ["FAI has been unable to transfer their Title 1 firearms *reserved* by licensed California firearm dealers and California residents, *who are members of CRPA*, and who seek to lawfully sell, transfer, purchase, acquire and/or possess the FAI Title 1 Firearms."], italics added.) They need allege no more under the liberal pleading standards of this Court to demonstrate their standing at this stage.[7]

[7] Respondents further claim that CRPA cannot establish standing because the organization failed to verify the First Amended Complaint. (Demurrer, p. 17.) To the extent that all parties to a

If Respondents are claiming that CRPA must allege additional affirmative steps toward the purchase of the subject firearms, like submitting an improper application for the transfer of an undefined firearm subtype through the DES, they are simply wrong. Indeed, "[t]he law does not require useless acts from litigants as prerequisites to seeking relief from the courts." (*Van Gammeren v. City of Fresno* (1942) 51 Cal.App.2d 235, 240; see also *Doster v. Cty. of San Diego* (1988) 203 Cal.App.3d 257, 262 ["The law does not require a party to participate in futile acts."].) Here, "[b]ecause dealers cannot accurately submit the required information through the DES for 'long guns' that are undefined 'firearm' subtypes, they are prohibited from processing and accepting applications from purchasers of said firearms." (FAC 59, citing Penal Code, § 28215, subd. (b).) "The background check *begins* with the *completion* and *submission* of an application form that the gun dealer electronically *submits* to the California DOJ." (*Silvester v. Harris* (9th Cir. 2016) 843 F. 3d 816, 825, italics added.) Thus, the very first step in "attempting to purchase" a firearm is to make an application with the dealer, which is futile given that "under California Code of Regulations, title 11, § 4210, subdivision (b)(2)(6), firearm dealers are prohibited from entering inaccurate information within the [DES] system." (See FAC ¶¶ 52-58.) Any attempt to complete an application would thus be futile, an idle gesture, or violate section 28215. None of these are required of CRPA's members to establish standing.

2. Alternatively, Petitioners Have Public Interest Standing Because this Case Deals with Important Questions of Public Rights

Independent of their standing as a beneficially interested party, Respondents also have standing because this case deals with an important question of a public right. Where, as here, the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the Petitioner need not show that he has any legal or special interest in the result, since it is enough that the Petitioner is interested as a citizen in having the laws executed and the duty in question enforced. (*Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, citing *Bd. of Soc. Welfare v. County of L.A.* (1945) 27 Cal.2d 98, 100-101.) "The exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of

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petition for writ of mandate must individually verify the petition, the error was an innocent and unprejudicial oversight that Petitioners have filed a motion to correct. (See Pls.' Mot. Leave to File

legislation establishing a public right. (*Green, supra*, 29 Cal.3d 126, 144.)

First, the public has an expressly protected right to purchase firearms that are not otherwise illegal. Through its failure to design and maintain the DES in a way that would allow for the lawful submission of applications for the transfer of undefined firearm subtypes through the DES, Respondents impaired Petitioners and all members of the public from exercising this right, effectively banning Title 1 firearms and any other undefined firearm subtype. (FAC ¶ 94.) This was done without legal authority and without public notice. (FAC ¶¶ 42, 84). When the government acts, as it has here, in flagrant disregard of its constitutional duties and limitations, there is no doubt that petitioners have public interest standing. (*People for Ethical Operation of Prosecutors v. Spitzer* (2020) 53 Cal.App.5th 391, 410 (hereafter *People for Ethical Operation*.)

For instance, in *People for Ethical Operation*, plaintiffs were residents of Orange County who sought injunctive relief to prohibit the operation of an alleged unlawful confidential informant program. (*People for Ethical Operation, supra*, 53 Cal.App.5th at p. 396.) The court concluded that plaintiffs had standing to pursue a writ of mandate because the operative complaint described a surveillance program in flagrant disregard of the government's constitutional duties and limitations. (*Id.* at p. 410-411.) The rights the program allegedly violated—the constitutional rights to due process and the assistance of counsel—"are public rights that every citizen has an interest in upholding." (*Id.* at p. 410.) Here, through their unlawful inaction, Respondents denied both Petitioners and the broader public their rights under the Due Process Clause and the Second Amendment, as well as rights to acquire lawful property. (FAC ¶ 107.) These are fundamental, constitutional rights that every citizen has an interest in and the government is constrained to uphold. The existence of "public interest" standing is thus clear.

What's more, Petitioners also allege that Respondents violated the public's statutory rights under the APA by ignoring the essential rulemaking procedures the law sets forth. (FAC ¶ 90.) It is undeniable that the APA protects a most-important public right, for it was "designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations . . .." (Office of Administrative Law, Answers to Frequently Asked Questions (2021) <https://oal.ca.gov/faq/#What%20is%20the%20Administrative% 20Procedure% 20Act> (as of January 11, 2021).) Indeed, it was enacted to secure the

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2d Am. Compl.) They repeat that request for leave to amend below. (See Part V, *infra*.)

public benefits of openness, accessibility, and accountability in the formulation of rules that implement legislative enactments. (*Tidewater Marine W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 569.) In short, the APA safeguards our nation's democratic values and protects "against bureaucratic tyranny." (*Ibid*.) Questions of compliance with the APA thus unquestionably implicate important public rights conferring public interest standing on Petitioners here.

B. Petitioners Allege Sufficient Facts Showing an Actual or Impending Injury to Establish Standing for Injunctive Relief

Respondents allege that Petitioners do not have standing to sue for injunctive relief because they do not allege any facts showing an actual or impending injury. (Dem., p. 6, citing *Schmier v. Supreme Ct.* (2000) 78 Cal.App.4th 703, 707.) To support their claim, Respondents once gain make the three bald assertions that Petitioners fail to allege facts showing: (1) that Franklin Armory or any CRPA member has suffered or will suffer an injury; (2) that Franklin Armory manufactures an undefined firearm subtype (other than the Title 1); and (3) that any CRPA member tried to purchase an undefined firearm subtype but was unable to do so because of the DES. (Dem., pp. 8-9, 18.) As explained in section III.A above, Respondents' claims are incorrect.

Again, Petitioner alleges facts demonstrating that both Franklin Armory and members of CRPA have suffered or will suffer an injury due to the alleged limitations of the DES, including allegations that Franklin Armory manufactures lawful Title 1 firearms and that CRPA members wish to purchase said firearms, have reserved said firearms, have made deposits for those firearms, and have been denied said firearms due to Respondents' conduct. Denial of those firearms has caused said members to be denied their right to acquire lawful firearms and caused Franklin Armory about $33,000,000 in damages due to lost sales. (See FAC ¶¶ 2-3, 6, 43, 76, 106, 131, 139, 148, 151, 160, 162, 164, 173, 181.) Petitioners are not obligated to allege that Franklin Armory manufactures any "undefined-type" firearms (other than the Title 1). Nevertheless, Petitioners' allegations that Franklin Armory manufacturers a series of firearms that are prohibited by Respondents, among others, are enough to demonstrate injury. (See *ibid*.)

Respondents' claim otherwise is baseless. Petitioners have properly alleged actual or impending injury as required to establish standing for injunctive relief.

IV. PETITIONERS' CLAIMS ARE RIPE FOR ADJUDICATION

A controversy is "ripe" when it is "definite and concrete, touching on the legal relations of

parties having adverse legal interests" and presents "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon hypothetical facts." (*Pac. Legal Found. v. Cal. Coastal Commn.* (1982) 33 Cal.3d 158, 170 (hereafter *Pac. Legal*).) Courts apply a two-prong test for ripeness that considers: (1) "the fitness of the issues for judicial decision," and (2) "the hardship to the parties of withholding court consideration." (*Ibid.*, internal quotation marks and citation omitted; accord *Wilson & Wilson*, *supra*, 191 Cal.App.4th at p.1582.) It is clear from the complaint, in the context of statutory law, that both ripeness inquiries weigh in Petitioners' favor.

Respondents nevertheless demur on the grounds that Petitioners' claims are not ripe, arguing that "Petitioners have failed to allege any actual controversy regarding the DES." (Dem., p. 19.) And they repeat their mantra that Petitioners' "do not allege the existence of any specific undefined-type firearm (other than the Title 1), that Franklin Armory manufactures any such firearm (other than the Title 1), or that any [CRPA] member attempted to purchase such a firearm but was unable to do so because of the DES." (*Ibid.*) As explained repeatedly above, none of Respondents' claims are correct.

First, Petitioners' claims are fit for judicial decision and focused on Respondents' refusal to comply with their mandatory duties. Respondents rely on their baseless argument that *all* Title 1 firearms are "assault weapons," and therefore prohibited. But, as Petitioners allege in the operative complaint, this is not the case. (FAC ¶¶ 2-3.) Petitioners are currently and actively being barred from: (1) acquiring or transferring Title 1 firearms that are not "assault weapons" under the newly amended law because the Respondents have denied and will continue to deny the sale of lawful firearms, *including the Title 1*, until mandated to do so, and (2) completing the transfer of Title 1 firearms now classified as "assault weapons" under SB 118 that would have been lawfully transferred before September 1, 2020, but for Respondents' unlawful conduct. (FAC ¶¶ 75, 88, 91, 94, 102, 194.) Moreover, and not insignificantly, California has mandated that the longest delay on the delivery of a firearm resulting from *incomplete or inaccurate information* on DROS be 30 days from the submission of the information. (See Pen. Code, § 28220.) Respondents should not be permitted to sidestep this mandate by preventing the submission of the information altogether. Thus, this is not a matter of speculation, but obligation and duty as the gatekeepers to a fundamental right.

Second, there is "an imminent and significant hardship inherent in further delay" of judicial review. (*Pac. Legal, supra*, 33 Cal.3d at p. 170.) For Petitioners and their customers and members are being denied their rights to acquire lawful property due to Respondents' unclean hands and will continue to be denied said rights unless and until Respondents are ordered otherwise. And as regards those who lawfully attempted to purchase a Title 1 firearm that is now deemed an "assault weapon" before the effective date of SB 118, but were unable to take possession of the firearm due to Respondents' unlawful conduct, further delay will prevent the lawful registration of the same, as they must register said firearms by January 1, 2022, under section 30900, subdivision (c)(1).

For these reasons, Petitioners' claims are ripe for adjudication and the Court should overrule Respondents' demurrer.

V. REQUEST FOR LEAVE TO AMEND

To the extent that Respondents are successful in their demurrer, Petitioners expressly request leave to amend. For the reasons described in Plaintiffs-Petitioners' Motion for Leave to File Second Amended Complaint, the Court should exercise its broad discretion under Code of Civil Procedure sections 473 and 576 to allow them to amend their petition in the furtherance of justice. "This statutory provision giving the courts the power to permit amendments in furtherance of justice has received a very liberal interpretation by the courts of this state." (*Klopstock v. Super. Ct.* (1941) 17 Cal.2d 13, 19; see also *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939.) Indeed, a court must provide leave to amend a complaint so long as "there is a reasonable possibility that the defect can be cured by amendment." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Failure to allow such amendment is an abuse of discretion. (*Ibid.*, see also *King v. Moritmer* (1948) 83 Cal.App.2d 153, 158 ["Unless it shows on the face that it is incapable of amendment denial of leave to amend constitutes abuse of discretion."].)

CONCLUSION

For these reasons, Respondents' Demurrer should be overruled in its entirety. But if the Court sustains any part of it, Petitioners request leave to amend.

Date: January 12, 2021

MICHEL & ASSOCIATES, P.C.

Anna Barvir
Attorneys for Petitioners-Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

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

PLAINTIFFS AND PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENTS' DEMURREER

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

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

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

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

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

Laura Palmerin