

FILED
Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

Franklin Armory, Inc. v. California Department of Justice, et al., 20STCP01747

~~Tentative~~ decision on demurrer: Sustained

Respondents California Department of Justice (“DOJ”) and Xavier Becerra, in his capacity as Attorney General, demur to portions of the First Amended Complaint (“FAC”) filed by Petitioners Franklin Armory, Inc., (“FAI”) and the California Rifle & Pistol Association, Inc. (“Association”).

The court has read and considered the moving papers, opposition,¹ and reply,² and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this action on May 27, 2020. The operative pleading is the FAC filed on August 19, 2020, alleging causes of action for: (1) declaratory relief; (2) traditional mandamus; (3) tortious interference with contractual relations; (4) tortious interference with prospective economic advantage; (5) negligent interference with a prospective economic advantage; (6) deprivation of liberty without procedural due process of law; (7) deprivation of substantive due process of law; and (8) violation of public policy. The verified FAC alleges in pertinent part as follows.

As of January 1, 2003, licensed firearm dealers in California are required to submit all background checks to DOJ electronically via the Dealer Record of Sale Entry System (“DES”). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

The DES can facilitate the transfer of certain types of firearms: “handguns” (“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. The DES drop-down list for firearm type/subtype has no provision for “other” firearms such as “undefined firearm subtypes.”

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. Respondents have designed the DES with this technological barrier that functions to prohibit the transfer through a licensed firearms dealer of all firearms that are long guns but not rifles, shotguns, or rifle/shotgun combinations.

¹ Petitioners failed to lodge a courtesy copy of their opposition brief in violation of the Presiding Judge’s General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

² Respondents failed to lodge a courtesy copy of their reply brief in violation of the Presiding Judge’s General Order Re: Mandatory Electronic Filing. Their counsel is admonished to provide courtesy copies in all future filings.

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Respondents have long known about the DES' deficiencies and have refused requests to correct it. Since 2012, FAI has communicated with Respondents about the design and features of its Title 1 firearms that do not fall under the existing DES categories and informed Respondent DOJ of the DES's defects as early as October 24, 2019.

DOJ has refused to modify the DES despite the fact that it has proven it can quickly make the requested change. It previously addressed a similar deficiency regarding the drop-down list for transferee's nation of origin—a deficiency FAI reported at the same time it raised the issue of undefined firearm subtypes—within weeks.

Respondents' motivation in delaying was to buy time to work with the Legislature to develop legislation designating FAI Title 1 style firearms as "assault weapons" and restricting their sale. The scheme proved successful because on August 6, 2020 the Legislature passed 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. The effect of SB 118 was to restrict FAI's transfer of centerfire versions of FAI Title 1 firearms to customers despite existing orders that long predated SB 118. Even after the adoption of SB 118, not all FAI's Title 1 firearms have been reclassified as assault weapons.

The first cause of action seeks a judicial declaration about the legality of Respondents' conduct regarding the DES and undefined firearm subtypes and an injunction to prevent Respondents from enforcing administrative and/or technological barriers that prevent the sale of lawful firearms, including but not limited to FAI Title 1, and from enforcing the Roberti-Roos Assault Weapons Act in a manner that prohibits those who could have lawfully acquired and registered their FAI Title 1 style firearm but for Respondents' technological barriers.

The second cause of action is for a writ of mandate directing Respondents to design, maintain, and enforce updates to the DES such that it does not proscribe the lawful sale, transfer, and loan of a class of lawful firearms, including FAI's Title 1 firearms. It also asks the court to direct Respondents to design, implement, maintain, and enforce updates to their assault weapons registration process to permit the registration of FAI Title 1 style firearms by those whose orders were placed on or before August 6, 2020, or such time as deemed appropriate by the court.

The eighth cause of action is for declaratory and injunctive relief for 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 and an injunction preventing enforcement of the underground regulation.

B. Applicable Law

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempeles, (1950) 36 Cal.2d 257. The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP § 430.40; Skrbina v. Fleming Companies, (1996)

45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain (“uncertain” includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP §411.35 or (i) by §411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff’s ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.31(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.31(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.31(a)(3).

C. Governing Law

Under the Penal Code, there are three basic types of firearms: (1) handguns, also referred to as pistols and revolvers; (b) rifles; and (c) shotguns.

A handgun generally has a barrel length less than 16 inches and can be concealed on a person, and is synonymous with the terms pistol, revolver, and firearm capable of being concealed upon the person. Penal Code §§ 16530(a), 16640(a).

A rifle is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in

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a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. Penal Code §17090.

A shotgun is a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. Penal Code §17190. The term “long gun” generally refers to rifles and shotguns. *See, e.g.*, Penal Code, §16865.

In California, individuals generally must purchase firearms through a licensed dealer. Penal Code §26500(a). Individuals must also have a licensed dealer process transfers of firearms, including private sales, gifts, and loans. Penal Code §§ 27545, 28050.

When an individual goes to a gun dealer to initiate a purchase or other transaction involving a firearm, the dealer is required to obtain information and create a record of the transaction. Penal Code §28100(a). This record is referred to as a Dealer Record of Sale (“DROS”). Various information about the firearm must be included on the DROS, including the make of firearm, manufacturer’s name if stamped on the firearm, model name or number if stamped on the firearm, caliber, and type of firearm. Penal Code §28160(a). The DROS must also include information regarding the purchaser, including their name, date of birth, local and permanent addresses, place of birth, occupation, gender, physical description, all legal names and aliases ever used, and a “yes or no” answer whether they are in any of the categories of persons prohibited from purchasing a firearm. *Ibid.*

The dealer must transmit the DROS to DOJ and is required to wait at least ten days before completing the purchase and delivering the firearm to the purchaser, assuming the result of a background check has been received by then. Penal Code §§ 26815(a), (b), 27540(a).

The DROS must be submitted to DOJ electronically, except as DOJ otherwise permits. Penal Code §28205(c). DOJ shall prescribe the form of the register and the record of electronic transfer pursuant to Penal Code section 28105. Penal Code §28155. The DES is the method established by DOJ for the submission of purchaser information required by Penal Code section 28160(a). The DES is a web-based application designed, developed, and maintained by DOJ and used by firearm dealers to report the required information.

Any semi-automatic centerfire firearm that is not a rifle, pistol, or shotgun that has one or more specified characteristics is classified as an assault weapon. Penal Code §30515(a)(9)-(11). Individuals are restricted from possessing any firearm classified as an assault weapon unless they possessed the firearm prior to its classification as an assault weapon or are exempt as a member of law enforcement, military forces, or other specified entities. Penal Code §§ 30605, 30620, 30625, 30645.

D. Analysis

Respondents demur to the FAC’s first, second, and eighth causes of action on the grounds that (1) they are moot for FAI’s Title 1 firearms and (2) Petitioners lack standing to pursue their claims for other undefined-type firearms. Respondents have complied with the meet and confer requirements of CCP section 430.31(a). Barnouw Decl., ¶2.

1. Mootness

Respondents assert that Petitioners’ claims regarding sales and transfers of FAI’s Title 1

firearms are moot because SB 118 amended 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, and this definition includes FAI's Title 1 firearm. Dem. at 15. Petitioners' claim is based on the allegation that the DES system is preventing them from selling or transferring FAI Title 1 firearms because they did not belong to any of the available categories in DES. Dem. at 16. After the passage of SB 118, these firearms are now classified as assault weapons and are illegal for the public to purchase. Therefore, Petitioners' claims are moot. Dem. at 16.

Petitioners do not dispute that FAI's centerfire Title 1 firearms are now restricted and concede that its claims as for those Title 1 firearms are moot now that they are classified as assault weapons. Opp. at 11-12. Petitioners assert that SB 118 did not restrict all Title 1 firearms, such as rimfire Title 1 firearms or those centerfire Title 1 firearms configured without any of the enumerated features necessary for a firearm to be considered an assault weapon under state law. Opp. at 11. The FAC alleges that FAI manufactures a "series" of firearms designated under the Title 1 model, including a rimfire version that is not affected by SB 188, which was limited to centerfire weapons. FAC ¶2. Opp. at 8. Petitioners argue that the FAC's claims are not moot because they can still sell or transfer these unaffected Title 1 firearms but for the problems with the DES. Opp. at 12.³

Petitioners' argument is unavailing. As Respondents correctly note (Reply at 5), the FAC does not allege that FAI manufactures a rimfire Title 1 firearm or a centerfire Title 1 firearm not meeting the definition of an assault weapon. Reply at 5. The FAC also does not support a position that FAI's Title 1 firearm includes such weapons. Indeed, the FAC expressly states that the FAI Title 1 firearm is an assault weapon. FAC ¶105. While the FAC also alleges that FAI manufactures a "series of firearms" designated by FAI as "Title 1" and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms (FAC ¶¶ 2-3), these allegations both contradict the more specific allegation in FAC paragraph 105 and make no mention of any specific FAI models of undefined firearms that would not qualify as an assault weapon. Dem. at 8; Reply at 5.

Petitioners also argue that their claims for relief are not limited to the DES problem for FAI Title 1 firearms as they seek to enjoin DOJ's enforcement of rules that serve as administrative and/or technological barriers that prevent the sale of lawful firearms. FAC ¶121 (seeking injunction "including but not limited to the FAI Title 1"). Petitioners further argue that DOJ has a continuing duty to fix the DES and the assault weapons registration process to allow the transfer of assault weapons initiated before the August 6, 2020 passage of SB 118. FAC ¶122. Opp. at 12.

This argument also is untenable. While the FAC seeks mandamus to compel DOJ to design and implement updates to the DES that would permit the transfer of FAI Title 1 firearms by those whose orders were placed on or before August 6, 2020 (FAC ¶129), Respondents correctly note that, while SB 118 allows individuals possessing a Title 1 prior to September 1, 2020 to keep the firearm on condition that it be registered, that limited right does not affect transfers of FAI Title 1 firearms. An order permitting completion of the transfer of an assault weapon to a buyer who

³ Petitioners also argue that DOJ deliberately delayed modifying the DES to stall for time while the Legislature developed and passed SB 118. FAC ¶102. Opp. at 8. This allegation of intentional misconduct mostly is relevant to the FAC's damages claims.

made a deposit before August 6, 2020 would violate SB 118.

In any event, the FAC does not allege that FAI has any Title 1 firearm transfers remaining to be processed through the DES. Reply at 4-5. To the extent that Petitioners are asserting that it has pending transfers to law enforcement personnel and permittees who would be allowed to possess assault weapons, such transfers are not required to be processed through the DES. Penal Code §§ 28400, 28100. Reply at 5. The FAC's three causes of action are moot.

2. Standing

a. Beneficial Interest

Respondents argue that Petitioners do not have standing to pursue mandamus because they fail to allege a beneficial right for undefined type firearms other than FAI's Title 1. Dem. at 17; Reply at 6.

Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff. Mendoza v. JPMorgan Chase Bank, N.A., (“Mendoza”) (2016) 6 Cal.App.5th 802, 810. As a general rule, a party must be “beneficially interested” to seek a writ of mandate. Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist., (2015) 235 Cal.App.4th 957, 962 (citing CCP §1086). Likewise, to seek declaratory relief, a party must be an “interested person.” CCP §1060. An “interested person” means the same thing as a “beneficially interested” person in mandamus cases. Asimow, et al., Administrative Law (2018), Ch. 14, §14:6. “Beneficially interested” has been generally interpreted to mean that one may obtain the writ only if the person has 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. SJJC Aviation Services, LLC v. City of San Jose, (“SJJC”) (2017) 12 Cal.App.5th 1043, 1053. The beneficial interest must be direct and substantial. Ibid. A petition has no beneficial interest if she will gain no direct benefit from the writ's issuance and suffer no direct detriment if it is denied. Ibid.

Respondents contend that Petitioners cannot demonstrate they have a beneficial interest because the FAC does not allege that FAI manufactures any undefined-type firearm other than the Title 1. Dem. at 16-17; Reply at 6. Nor is there any allegation that a specific undefined-type firearm exists, or that any member of the Association has attempted to purchase such a firearm but was unable to do so because of the DES. Id. Absent such allegations, mandamus and declaratory relief are not available. Id.

Petitioners assert that the FAC pleads sufficient facts to show they are beneficially interested in the matter because it alleges that FAI manufactures a “series of firearms” designated by FAI as “Title 1” and that these Title 1 firearms are lawful to sell, transfer, purchase, or otherwise be distributed to persons not otherwise prohibited from possessing firearms. FAC ¶¶ 2-3. Petitioners argue that there is no legal authority that they must plead specific models of undefined firearms manufactured by FAI that would not qualify as an assault weapon. Opp. at 15.

The short answer is that Petitioners must plead specific models to show standing. This is particularly true since the general allegations of FAC paragraphs 2 and 3 contradict paragraph 105. While Petitioners are correct that there is a minimal pleadings requirement for a demurrer (City of Santa Clara v. Superior Court, (2009) 171 Cal.App.4th 119, 126), standing cannot be supported by conjectural or hypothetical harm. Associated Builders and Contractors, Inc. v. San Francisco Airports Com., (1999) 21 Cal.4th 352, 362; Mendoza, supra, 6 Cal.App.5th at 810. Because the

FAC fails to sufficiently allege that FAI manufactures or attempted to sell legal firearms other than the Title 1 that it is unable to register through DES, they have not shown that they will gain any benefit or detriment from the issuance or denial of a writ of mandamus or declaratory relief.

Petitioners also note that they seek 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 FAI Title 1 (FAC ¶121), and seek to compel DOJ to meet its duty to fix the DES and the assault weapons registration process to permit transfers initiated before August 6, 2020. FAC ¶122. The FAC alleges that Association's members not only wish to purchase, but took affirmative steps to reserve undefined firearm subtypes, including Title 1 firearms. FAC ¶¶ 6, 76. Opp. at 15.

As discussed *ante*, the completion of a sale of Title 1's initiated before August 6, 2020 would be unlawful under SB 118. Petitioners may have standing to seek damages for the non-completion of such sales, but they cannot rely on this fact for mandamus and declaratory relief standing to compel DOJ to take action. Nor does the FAC allege a specific context from which such transactions would be evaluated by gun dealers and DOJ. *See* Reply at 17.⁴

Other than the transfer of Title 1's which Petitioners acknowledge is moot, the FAC does not allege sufficient facts to demonstrate that Petitioners have a beneficial interest in the mandamus and declaratory relief claims to compel DOJ to fix the DES process.

b. Public Interest Standing

Petitioners argue that they also have public interest standing because the matter deals with an important question of a public right. Opp. at 16.

Where a plaintiff cannot satisfy the "over and above" test for private interest standing, California cases have still treated a plaintiff as beneficially interested for purposes of mandamus standing if the plaintiff satisfies the criteria for public interest standing. Asimow, et al., *Administrative Law* (2018), Ch. 14, §14:5. Public interest standing may be conferred "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty." *Save the Plastic Bag Coalition v. City of Manhattan Beach*, (2011) 52 Cal.4th 155, 166. This type of standing "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Green v. Obledo*, (1981) 29 Cal.3d 126, 144. In determining whether public interest standing applies, the court considers (1) whether "the public duty is sharp and the public need weighty" (SJJC, *supra*, 12 Cal.App.5th at 1058), (2) whether the policy supporting public interest standing is outweighed by competing considerations of a more urgent nature (*Reynolds v. City of Calistoga*, (2014) 223 Cal.App.4th 865, 873), and (3) whether the claim of public interest standing is driven by personal objectives rather than broader public concerns (SJJC, *supra*, 12 Cal.App.5th at 1057).

Petitioners assert that the matter deals with the expressly protected right of the public to

⁴ Respondents note that CCP section 1086 requires that a mandamus claim be based on a verified petition and that FAI verified the FAC but Association did not. Therefore, Association does not have mandamus standing. Dem. at 17. Petitioners claim this oversight was innocent and have filed a motion to correct it. Opp. at 15, n. 7. The oversight could be a basis for leave to amend. *See* Opp. at 20.

purchase firearms that are not otherwise illegal. Opp. at 17. By designing and maintaining DES in a way that prevents the lawful submission of applications for the transfer of undefined firearm subtypes, Respondents impaired Petitioners and all members of the public from exercising this right without legal authority and without public notice. Opp. at 17. Petitioners also claim they have public interest standing based on their allegations that Respondents violated the APA because the DES process is an underground regulation. FAC ¶¶80-93. Opp. at 17-18.

As Respondents argue, this matter concerns only a narrow category of undefined type firearms, of which the Title 1 is the only firearm actually identified in the FAC. Reply at 8. As discussed *ante*, the FAC's allegations implying the existence of other undefined type firearms, and attempts to purchase them, are inadequate. Moreover, even if such undefined firearms are manufactured by FAI, there apparently are only a limited number of such firearms. DOJ's public duty to rectify the DES to allow their transfer is not sharp, nor is the public need weighty.

The case cited by Petitioners (Opp. at 17), People for Ethical Operation of Prosecutors v. Spitzer, ("PEOP") (2020) 53 Cal.App.5th 391, 410, is plainly distinguishable as it concerned law enforcement's duty to conduct lawful surveillance. Plaintiffs alleged that defendants permitted confidential informants to threaten to kill criminal defendants if they did not confess to a crime, an allegation involving outrageous constitutional violations and the systematic violation of constitutional rights of due process and assistance of counsel a duty. *Id.* at 410. Obviously, the public has a strong interest in deterring such constitutional violations and the duty is sharp. Petitioners' claim also appears more to be driven by personal objectives rather than broader public concerns, a basis on which the PEOP court noted public interest standing can be denied. *Id.* at 408 (citation omitted).

Petitioners have not demonstrated that they have public interest standing for their mandamus claim.

c. Injunctive Relief Standing

Respondents assert that Petitioners fail to allege facts showing an actual or impending injury as required to establish standing for injunctive relief. Dem. at 18.⁵ Petitioners do not allege any facts showing that FAI or any Association member has suffered or will suffer any injury due to the alleged limitations of the DES because they have not alleged that FAI manufactures any undefined type firearm other than the Title 1 or that any Association member was unable to purchase such firearm due to DES. Dem. at 18; Reply at 8.⁶

A person who invokes the judicial process lacks standing if he, or those whom he properly represents, does not have a real interest in the ultimate adjudication because he has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented. Schmier v. Supreme Court, (2000) 78 Cal.App.4th 703, 707. Injunctions cannot be predicated on the proponent's fear of something that may happen in the future. Connerly v. Schwarzenegger, (2007) 146 Cal.App.4th 739, 750.

⁵ The proper means of contesting injunctive relief at the pleading stage would be a motion to strike, not a demurrer. Petitioners do not object that Respondents have used the wrong vehicle.

⁶ For the first time in reply, Respondents argue that an injunction would be prohibited by CCP section 526(b)(4) and (b)(6). The court has not considered this argument. *See Regency Outdoor Advertising v. Carolina Lances, Inc.*, (1995) 31 Cal.App.4th 1323, 1333.

Again, Petitioners rely on the FAC's allegations concerning FAI's manufacture of lawful Title 1 firearms, Association's members' desire to purchase those firearms and complete the purchase of Title 1 assault weapon firearms, which they contend has cost FAI \$33 million in lost sales. Opp. at 18. As discussed *ante*, the FAC's allegations may support damages claims, but they are insufficient to support mandamus and declaratory relief. The same is true for the injunctive relief remedy.

Petitioners have not properly alleged actual or impending injury as required to establish standing for an injunctive relief remedy.

3. Declaratory Relief

Respondents contend that Petitioners' claim for declaratory relief is not ripe because they fail to allege an actual controversy. Dem. at 18-19; Reply at 7.

A claim for declaratory relief is only proper where there is an actual controversy relating to the legal rights and duties of the respective parties. CCP §1060. This standard also applies to the extent Petitioners seek declaratory relief under the APA. Govt. Code §11350(a). Declaratory relief regarding a violation of the APA is proper only if there is an actual controversy under CCP section 1060. California Department of Consumer Affairs v. Superior Court, (2016) 245 Cal.App.4th 256, 262. Courts apply a two-part 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. Pacific Legal Foundation v. Cal. Coastal Com., (1982) 33 Cal.3d 158, 170.

The parties reiterate their arguments discussed *ante* regarding the adequacy of the FAC's allegations for declaratory relief. Dem. at 19; Opp. at 19.

As discussed *ante*, the FAC's allegations about FAI's manufacture of undefined-type firearms are insufficient to show that there is an actual controversy. FAI's Title 1 is now classified as an assault weapon and the issue is moot as to those firearms. Contrary to Petitioners' claims, the FAC fails to allege with any specificity that other FAI undefined type firearms that are not assault weapons have been unduly restricted by the DES or that such restrictions have or are actively preventing any Association member from purchasing such a weapon. Petitioners argument that they should be allowed to complete transfers of assault weapons pending on August 6, 2020 because of DOJ's unlawful conduct is barred by SB 118; Petitioners are relegated to a damages remedy only for such claims. Opp. at 20.

Petitioners' claim for declaratory relief fails to allege an actual controversy.

4. Conclusion

Respondents' demurrer to the FAC is sustained as to the first, second, and eighth causes of action. Petitioners seek leave to amend, but they refer only to a pending motion in doing so. Opp. at 20. The court is not required to refer to the court file in deciding whether to grant leave to amend and the motion for leave to amend is ordered off calendar. The court will discuss with Petitioners' counsel whether they can make a good faith proffer that would justify leave to amend.

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