

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 32

20STCP01747

September 7, 2023

FRANKLIN ARMORY, INC., et al. vs CALIFORNIA

11:00 AM

DEPARTMENT OF JUSTICE, et al.

Judge: Honorable Daniel S. Murphy

CSR: None

Judicial Assistant: S. Luqueno

ERM: None

Courtroom Assistant: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 09/06/2023 for Hearing on Motion for Judgment on the Pleadings, now rules as follows:

BACKGROUND

This action was initially filed on May 27, 2020. The case was initially assigned to Judge James Chalfant in Department 85. The operative Second Amended Complaint (SAC) was filed on February 17, 2021. The SAC is filed by Plaintiffs Franklin Armory, Inc. (FAI) and California Rifle & Pistol Association (CPRA) against Defendants California Department of Justice (DOJ) and Xavier Becerra (Becerra).

FAI is a federally-licensed firearms manufacturer that manufactures a series of firearms which are neither “rifles,” “pistols,” nor “shotguns” as defined by California law. (SAC ¶ 2.) FAI designates these firearms as “Title I” firearms. (Ibid.) Licensed firearm dealers in California are required to submit all background checks to DOJ through the Dealer Record of Sale Entry System (DES). (Id., ¶ 49.) The online DES submission form requires the user to input several pieces of information, among which is the type of firearm being exchanged. (Id., ¶ 58.) The DES form only allows the user to select “long gun” or “handgun,” and within the “long gun” category, the only options are “rifle,” “rifle/shotgun,” or “shotgun.” (Ibid.) However, FAI’s Title I firearms are neither rifles, pistols, nor shotguns. (Id., ¶ 2.) The dropdown menu does not provide a catchall option for “other” types of firearms. (Id., ¶ 58.) Plaintiffs allege that this prevents firearms dealers from submitting the required information for the transfer of certain types of firearms and thereby acts as a technological barrier to the lawful sale of firearms. (Id., ¶¶ 6, 58.) This has resulted in lost profits from the sale of Title I guns. (Id., ¶¶ 138, 147, 150, 159, 161.) CPRA is a nonprofit organization of members who wish to purchase firearms with undefined subtypes, such as Title Is, but could not because of the restrictions in the DES system. (Id., ¶ 6.)

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Defendants allegedly carried out this scheme to delay the lawful transfer of Title I firearms until the Legislature could pass a law that made Title I firearms illegal. (SAC ¶ 109.) Indeed, SB 118 was passed on August 6, 2020, designating the Title I centerfire firearm as a banned “assault weapon.” (Id., ¶ 112.) SB 118 allows individuals already in possession of a banned assault weapon prior to September 1, 2020 to keep the firearm, under the condition that the firearm is properly registered. (Id., ¶ 113.) However, Defendants’ actions prevented those who placed deposits prior to September 1, 2020 from ever acquiring Title I centerfire firearms, thus allegedly depriving those individuals of their due process, Second Amendment, and property rights. (Id. at ¶¶ 113-114.)

The SAC asserts the following causes of action: (1) declaratory and injunctive relief; (2) petition for writ of mandate; (3) tortious interference with contractual relations; (4) tortious interference with prospective economic advantage; (5) negligent interference with prospective economic advantage; (6) violation of procedural due process; (7) violation of substantive due process; (8) declaratory and injunctive relief; and (9) violation of public policy.

The DES system was overhauled in October 2021, resulting in the addition of a “other” category. Accordingly, on January 27, 2022, Judge Chalfant granted Defendants’ motion to dismiss the first, second, and eighth causes of action. Judge Chalfant subsequently ordered the case transferred to Department 1 for reassignment, whereafter the case was assigned to this department.

On August 14, 2023, Defendants filed the instant motion for judgment on the pleadings against the remaining claims in the SAC. Plaintiffs filed their opposition on August 23, 2023. Defendants filed their reply on August 29, 2023.

LEGAL STANDARD

A motion for judgment on the pleadings may be made on the same grounds as those supporting a general demurrer, i.e., that the pleading fails to state facts sufficient to constitute a legally cognizable claim or defense. (*Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650.) A motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed. (*Cloud v. Northrop Grumman Corp.* (1999) 67 Cal.App.4th 995, 999.) Judgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution. (*Schabarum v. Calif. Legislature* (1998) 60 Cal.App.4th 1205, 1216.)

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DISCUSSION

I. Standing

“As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator.” (Holmes v. Cal. Nat. Guard (2001) 90 Cal.App.4th 297, 314-315.) “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.” (Ibid.)

Defendants argue that Plaintiffs do not have standing because there are no allegations that anyone actually attempted to go through the process required for registering the transfer of a Title I firearm, nor any allegation that such an application was denied. Defendants contend that “[o]ne who is required to take out a license will not be heard to complain, in advance of application, that there is danger of refusal. He should apply and see what happens.” (Robins v. County of L.A. (1966) 248 Cal.App.2d 1, 12.)

However, “[t]he law does not require a party to participate in futile acts.” (Doster v. County of San Diego (1988) 203 Cal.App.3d 257, 262.) The SAC alleges that firearms dealers are required by law to verify that all information submitted is true and accurate. (SAC ¶ 55.) The issue with the DES form was that it contained no catchall “other” option for undefined firearm subtypes. Therefore, firearms dealers could not accurately submit information through DES for Type I firearms. To submit a DES application for the transfer of a Type I firearm by selecting one of the predefined “long gun” categories would have been inaccurate and therefore illegal. Defendants argue that “plaintiffs cannot positively state what DOJ would have done if someone had submitted a Title 1 firearm for transfer and a rejection could be challenged by a court action for an order directing approval of a transfer.” (Mtn. 20:1-4.) Defendants contend that reporting a Title I firearm under the “rifle” category would arguably have been lawful because it is close enough. However, Defendants do not get to define the facts. Plaintiffs have alleged that their guns do not fit the definition of “rifle” and that reporting a Title I under any of the old categories would have been inaccurate.

For pleading purposes, it is sufficiently certain that DOJ would have denied a transfer based on

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inaccurate information, especially given the allegation that DOJ's very intent was to exclude Title I firearms from being lawfully reported until the passage of SB 118. It may also be reasonably inferred that a reviewing court would not have mandated DOJ to approve a transfer based on inaccurate information. Therefore, Plaintiffs have sufficiently established that submitting an application under the old DES would have been futile.

Additionally, in rejecting the same standing argument from an earlier demurrer, Judge Chalfant found that the SAC alleged at least two individuals and a dealer who sought to acquire or transfer Title I firearms but were prevented from doing so by Defendants' actions. (See June 3, 2021 Order re Demurrer, p. 6, citing SAC ¶¶ 99-101.) Judge Chalfant found these allegations sufficient to establish standing notwithstanding the lack of allegations that a dealer actually attempted to process a transfer through DES. Judge Chalfant held that "Petitioners are not required to allege evidentiary details to achieve standing." (Ibid.) "This is an evidentiary matter for trial." (Id. at p. 6, fn. 4.) The Court agrees. Plaintiffs have alleged sufficient facts for pleading purposes.

II. Interference with Contract

The elements of intentional interference with contractual relations are: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (Pacific Gas & Electric Co. v. Bear Stearns & Co. (1990) 50 Cal.3d 1118, 1126.)

Defendants argue that the SAC does not allege the existence of a contract. Defendants contend that it is insufficient to allege that customers placed deposits for Title I firearms because a deposit is not a contract. However, the SAC alleges that "DEFENDANTS intentionally interfered with contracts between FAI and its customers" and that "FAI currently has tens of thousands of contracts to sell FAI Title I firearms within California." (SAC ¶¶ 130-131.) For pleading purposes, this is sufficient to establish that FAI had contracts with its customers. The evidentiary facts proving the existence of such contracts should be left for discovery.

Defendants also argue that there is no intentional act designed to disrupt a contractual relationship because the claims are based on Defendants' inaction in not modifying the DES system. However, the SAC essentially alleges that Defendants implemented an electronic reporting system that discriminated against Title I firearms. The addition of a "other" category, or some other alternative, would have remedied the issue, but Defendants refused to reform DES

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and instead continued to exclude Title I firearms for “arbitrary reasons.” (See June 3, 2021 Order re Demurrer, p. 8.)

Defendants allegedly knew that FAI had contracts with customers for the purchase of firearms but prevented performance of these contracts by refusing to modify the DES so that accurate information on Title I firearms could be submitted. (SAC ¶ 135.) As discussed further below, Defendants were under a Penal Code mandate to provide a reporting system for “all firearms,” including Title I firearms. Implementing a reporting system that excludes a particular type of firearm that was legal to sell at the time, and required to be reported, constitutes an intentional act designed to prevent the sale of those firearms, and thereby interferes with the alleged sale contracts.

And while Defendants complain that FAI has not cited any binding authority for the proposition that inaction can serve as the basis for an interference claim, Defendants themselves cite no binding authority for the proposition that inaction cannot form the basis for such a claim. Furthermore, the SAC does not merely allege that DOJ sat idly by while certain consumers were unable to purchase Title I firearms. Instead, the SAC alleges that DOJ intentionally excluded Title I firearms from DES to delay their transfer until the Legislature could pass SB 118. For pleading purposes, this sufficiently constitutes an intentional act. Therefore, the SAC sufficiently alleges interference with contract.

III. Interference with Prospective Economic Advantage

The elements of a claim for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) To maintain a claim for intentional interference with prospective economic advantage, a plaintiff must demonstrate that the defendant engaged in an independently wrongful act. (*Id.* at p. 1158.) “[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” (*Id.* at p. 1159.) The elements for negligent interference are the same, except the Defendant acts without due care. (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1078.)

Defendants argue that there is no existing economic relationship. However, Defendants simply

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conclude without authority that “the placing of deposits does not create an existing economic relationship with a probability of future economic benefit.” (Mtn. 23:6-7.) To the contrary, placing a deposit is an overt act towards making a purchase and sufficiently creates a probability that FAI will profit from a sale. Additionally, as discussed above, Plaintiffs have alleged that FAI had contracts with customers for the purchase of Title I firearms. Therefore, it may be reasonably inferred that FAI had existing economic relationships with its customers.

Defendants also argue that Plaintiffs have not alleged an independently wrongful act. However, Plaintiffs have alleged facts to establish that Becerra failed to abide by the Penal Code’s mandate that records of “all firearms” transfers must include information such as the type of firearm. (See Pen. Code, § 28160(a).) As discussed above, the DES did not have a method to accurately identify Title I firearms. Plaintiffs allege that Becerra intentionally refused to reform DES to allow for the accurate identification of Title I firearms. Therefore, Becerra allegedly violated the Penal Code mandate that all required information must be reflected in a firearm transfer. This constitutes an independently wrongful act.

Defendants argue that the Penal Code statutes Plaintiffs rely on do not impose a mandatory duty to reform DES in any particular way and instead grant discretion in how to implement an electronic reporting system. However, as Judge Chalfant held, discretion over the manner of implementing an electronic reporting system does not mean the discretion to refuse to implement a reporting system entirely for certain firearms. (June 3, 2021 Order re Demurrer, pp. 7-8.) Penal Code section 28155 provides that DOJ “shall prescribe the form of the register and the record of electronic transfer.” Defendants allegedly failed to do this by refusing to provide any method for the reporting of Title I firearms. “The SAC sufficiently pleads that the DOJ has excluded certain firearms from DES for arbitrary reasons,” which is “in derogation of the applicable legal standards.” (June 3, 2021 Order re Demurrer, p. 8.) Therefore, the SAC adequately pleads an independently wrongful act.

IV. Discretionary Immunity

“Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” (Gov. Code, § 820.2.) Defendants argue that their discretionary authority as to the operation of the online reporting system immunizes them from liability under Section 820.2. However, as discussed above, while Defendants had discretion over the specific manner of operating the reporting system, they could not refuse to implement a reporting system altogether for certain types of firearms. (See Pen.

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Code, § 21855 [DOJ “shall prescribe the form of the register and the record of electronic transfer”). Discretionary immunity does not apply because the SAC does not allege an exercise of discretion, but rather an outright refusal to abide by Penal Code mandates. (See June 3, 2021 Order re Demurrer, pp. 7-8.)

V. Due Process Claims

Plaintiffs seek equitable relief under their sixth and seventh causes of action for violation of procedural and substantive due process. Specifically, Plaintiffs seek injunctive relief restraining Defendants from enforcing SB 118 and requiring Defendants to permit the transfer of Title I firearms for which deposits were made prior to August 6, 2020. (SAC ¶ 182.)

However, as Judge Chalfant held, “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 made a deposit before August 6, 2020, would violate SB 118.” (January 28, 2021 Order re Demurrer, pp. 5-6.) “Petitioners are relegated to a damages remedy only for such claims.” (Id. at p. 9.)

Plaintiffs point out that DOJ has previously agreed to reopen registration for assault weapons when a different website broke down and prevented individuals from meeting the registration deadline. (See June 29, 2021 Plntf.’s RJN, Ex. A.) Plaintiffs contend that the defect with the DES form is similarly a website flaw that warrants reopening registration for individuals who missed the deadline imposed by SB 118. However, even in the case that Plaintiffs cite, the agreement only reopened the registration period “for individuals who possessed eligible firearms” prior to a certain date. (Id. at 2:23-24.) Under that consent decree, a qualifying individual must have “lawfully possessed each assault weapon to be registered.” (Id. at 3:1-2.)

SB 118 already allows individuals possessing a Title I firearm prior to September 1, 2020, to keep it if the firearm is properly registered. Plaintiffs request the entirely different remedy of allowing individuals to newly obtain a banned assault weapon. As Judge Chalfant held, this is patently illegal. To the extent certain individuals were deprived of their deposits, they have a legal remedy.

VI. Taxpayer Claim (Code Civ. Proc., § 526a)

Code of Civil Procedure section 526a authorizes “[a]n action to obtain a judgment, restraining

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and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency” Plaintiffs base this claim on the allegation that tax dollars are being spent on implementing a registration system that improperly bans certain firearms. (SAC ¶¶ 199-200.)

However, the DES was overhauled in October 2021 and now indisputably includes a proper method to report Title I firearms. Therefore, Defendants are no longer using tax dollars to implement a discriminatory reporting system. As Judge Chalfant held in granting Defendants’ motion to dismiss, “the mandamus claim is moot because the DOJ has updated the DES so that it does not proscribe the lawful sale, transfer, and loan of an entire class of lawful firearms The declaratory relief claims are moot both for the same reason and because the DOJ is no longer enforcing the purported underground regulation.” (January 27, 2022 Order re Mtn. to Dismiss, p. 9.) The same logic applies to the ninth cause of action. Plaintiffs submit to the mootness argument. (Opp. 31:4-7.)

CONCLUSION

Defendants’ motion for judgment on the pleadings is GRANTED without leave to amend as to the sixth, seventh, and ninth causes of action. The motion is DENIED in all other respects.

The order is signed and filed on this date.

Clerk to give notice. Certificate of Mailing is attached.