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By A. Lopez, Deputy Clerk

6 Attorneys for Petitioner - Plaintiff
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 FRANKLIN ARMORY, INC., et al.,

11 Petitioners-Plaintiffs,

12 v.

13 CALIFORNIA DEPARTMENT OF JUSTICE,
14 et al.,

15 Respondents-Defendants.
16

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable
Daniel S. Murphy; Department 32]

**PLAINTIFF’S OBJECTIONS TO
DEFENDANTS’ PROPOSED JUDGMENT**

Action Filed: May 27, 2020

1 In accordance with Rule 3.1590 (j)¹ of the California Rules of Court, Petitioners-Plaintiffs
2 Franklin Armory, Inc. and the California Rifle & Pistol Association, Inc. hereby submit their objections
3 to Defendants' Proposed Judgment.

4 **Objection No.1**

5 Plaintiffs object to an order, adjudication, or decree “that plaintiff take nothing as against
6 defendants” ([Proposed] Judgment, p. 2, lines 2-3) to the extent that adoption of Defendants' Proposed
7 Judgment as drafted would foreclose Plaintiffs' ability to request or recover attorneys' fees, even though
8 they contend that they are entitled to an attorneys' fees under the catalyst theory. (*See Tipton-*
9 *Whittingham v. City of Los Angeles* (2004) 34 Cal. 4th 604, 608 [“California law continues to recognize
10 the catalyst theory and does not require “a judicially recognized change in the legal relationship between
11 the parties” as a prerequisite for obtaining attorney fees under Code of Civil Procedure section
12 1021.5.”]). No fee motion has yet been before the Court and the Court has issued no order that Plaintiffs
13 shall take “nothing” as against Defendants.

14 Plaintiffs thus respectfully request that the Court strike the proposed language “that plaintiff take
15 nothing as against defendants.” They further request that any adopted judgment include the following or
16 similar language making clear that Plaintiffs are not barred from seeking attorneys' fees:

17 Notwithstanding entry of this Judgment of Dismissal, this court's jurisdiction to
18 determine whether Plaintiffs are entitled to recover attorneys' fees and in what amount
19 shall be retained. Entitlement to and the appropriate amount of attorneys' fees will be
20 determined on noticed motion to be submitted to the Court in accordance with the
California Rules of Court.

21 **Objection No. 2**

22 Plaintiffs further object to an order, adjudication, or decree that Defendants recover costs in any
23 amount. ([Proposed] Judgment, p. 2, lines 3-4.) The Court's order granting Defendants' motion for
24 summary judgment does not grant costs to Defendants and Defendants have provided no documentation

25
26 ¹ Subsection (j) reads “Any party may, within 10 days after service of the proposed judgment,
27 serve and file objections thereto.” Plaintiff was served with the State's proposed judgment on July 11,
28 2024, and thus had until Monday, July 22 to submit objections. Nonetheless, this Court entered
judgement on July 12, 2024, which Plaintiff received in the mail on July 16. Plaintiff now submits these
objections for the sake of the record on appeal.

1 detailing the amount of costs they would be entitled to. In order to obtain a costs award, the prevailing
2 party must serve and file a memorandum of costs. (Cal. Rules of Court, rule 3.1700, subd. (a).)
3 Moreover, the “costs bill” generally must be filed together with a proposed judgment of dismissal or
4 after securing entry of judgment pursuant to the California Rules of Court. (*Boonyarit v. Payless*
5 *Shoesource, Inc.* (2006) 145 Cal.App.4th 1188, 1192-1193, quoting *Sanabria v. Embrey* (2001) 92
6 Cal.App.4th 422, 426, fn. 2 “[B]ecause there must be a dismissal or judgment entered as a predicate to a
7 costs award, ‘[a]pparently, the memorandum of costs must be filed together with a proposed judgment of
8 dismissal’”) Defendants’ failure to do that here makes any award of costs untimely and improper.

9 What’s more, Defendants have cited no statutory right to recover costs. It is Plaintiffs’ position
10 that Defendants are not entitled to any such recovery in this action, in part, because they are not the
11 “prevailing party” for purposes of claiming prejudgment costs. As alluded to in the first objection,
12 Plaintiffs have at least partially prevailed in this case, given this lawsuit forced Defendants to modify the
13 Dealers Record of Sale Entry System as Plaintiffs demanded. The issue of Defendants’ entitlement to
14 costs and in what amount should thus be decided only after Defendants have duly filed and noticed a
15 memorandum of costs, providing Plaintiffs the opportunity to strike and tax at least those costs related to
16 their claims that were mooted by Defendants’ actions in response to this lawsuit.

17 Plaintiffs hereby request the Court strike the following language from Defendants’ Proposed
18 Judgment: “Defendants shall recover from plaintiff costs of suit, pursuant to Code of Civil Procedure
19 sections 1032 and 1033.5.”

20 **Objection No. 3**

21 Finally, Plaintiffs object that the proposed judgment does not clearly dispose of the entire case.
22 It references only this Court’s summary judgment ruling which dealt with only the remaining causes of
23 action after several others were dismissed through previous motions. “Ordinarily, there can be only one
24 final judgment in an action and that judgment must dispose of all the causes of action pending between
25 the parties.” (*H.D. Arnaiz, Ltd. v. Cnty. of San Joaquin* (2002) 96 Cal. App. 4th 1357, 1366.) Any
26 judgment this Court adopts should clearly dispose of the entire case so that the case is not remanded on
27 technical grounds for a more complete judgment.

1 **Conclusion**

2 For the foregoing reasons, Plaintiffs object to Defendants’ Proposed Judgment of Dismissal and
3 respectfully ask this Court to strike the objectionable material and insert language preserving Plaintiffs’
4 right to seek attorneys’ fees under the catalyst theory. Alternatively, pursuant to rule 3.1590, subdivision
5 (k), of the California Rules of Court, Plaintiffs request a hearing regarding Defendants’ Proposed
6 Judgment and Plaintiffs’ objections thereto.

7
8 Date: July 16, 2024

MICHEL & ASSOCIATES, P.C.

9 *s/ Anna M. Barvir*
10 _____
11 Anna M. Barvir
12 Attorneys for Petitioner-Plaintiff
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

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

7 On July 16, 2024, I served the foregoing document(s) described as

8 **PLAINTIFF’S OBJECTIONS TO DEFENDANTS’ PROPOSED JUDGMENT**

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

13 Kenneth G. Lake
14 Deputy Attorney General
15 Email: Kenneth.Lake@doj.ca.gov
16 Andrew Adams
17 Email: Andrew.Adams@doj.ca.gov
18 California Department of Justice
19 300 South Spring Street, Suite 1702
20 Los Angeles, CA 90013
21 *Attorney for Respondents-Defendants*

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

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct.

26 Executed on July 16, 2024, at Long Beach, California.

27 

28

Laura Palmerin