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County of Los Angeles
8/20/2024 6:21 PM
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By V. Sino-Cruz, Deputy Clerk

7 Attorneys for Petitioner - Plaintiff
8

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

11 FRANKLIN ARMORY, INC., et al.,

12 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF JUSTICE,
15 et al.,

16 Respondents-Defendants.
17
18

Case No.: 20STCP01747

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

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION TO STRIKE COSTS OR,
ALTERNATIVELY, STAY
ENFORCEMENT OF JUDGMENT
PENDING APPEAL; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Hearing Date: September 25, 2024

Hearing Time: 8:30 AM

Department: 32

Judge: Hon. Daniel S. Murphy

Reservation ID: 315248532217

Action Filed: May 27, 2020

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

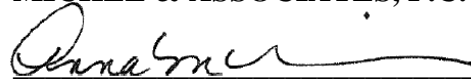
2 PLEASE TAKE NOTICE that on September 25, 2024 at 8:30 AM, in Department 32 of the
3 Superior Court of California, County of Los Angeles, located at 111 North Hill Street, in Los Angeles,
4 California, 90012, Plaintiff Franklin Armory, Inc., will and hereby does move this Court for an order
5 striking Defendants’ Memorandum of Costs dated July 19, 2024, or alternatively, to stay enforcement of
6 the judgment pending appeal. While Plaintiffs’ counsel asked Defendants’ counsel to stipulate to
7 delaying litigation of costs until after Plaintiff’s appeal was decided and a “prevailing party” could be
8 determined, Defendants refused to do so, necessitating this motion.

9 This motion is based on 3.1700(b) of the California Rules of Court. Under Rule 3.1700(b)(2),
10 because Plaintiff challenges the entirety of the States’s costs memorandum, there is no need to list out
11 each item objected to. As to the alternative relief of staying enforcement pending appeal, this motion is
12 based on California Code of Civil Procedure section 917.1, subdivision (d).

13 The motion is supported by this notice of motion and motion, the attached memorandum of
14 points and authorities, the concurrently filed declaration of Tiffany D. Chevront, the pleadings on file
15 in this matter, and any argument raised at the hearing on this motion.

16 Date: August 20, 2024

MICHEL & ASSOCIATES, P.C.



Anna M. Barvir

Attorneys for Petitioner-Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The State is not entitled to its costs. It is not the prevailing party for purposes of a cost award in
4 this matter because the DES issue that sparked this litigation was only resolved because of Plaintiffs’
5 lawsuit. A pre-litigation demand letter from Plaintiffs’ counsel, a tort claim, and even the filing of the
6 complaint did not bring about the needed fix. But once Plaintiffs defeated the State’s *second* demurrer
7 and it was clear they would prevail on their claims for equitable relief, the DES issue was resolved only
8 a short time later. That *legal* victory was the reason the desired “Other” option was added to the DES.
9 Had it not happened, Defendants would have had no catalyst to make the change, and they would have
10 continued being obstinate. This Court should strike Defendants’ cost memorandum in its entirety. If this
11 Court is not inclined to make such a determination at this time, it should stay the enforcement of the
12 judgment awarding costs until Plaintiffs’ appeal is decided. Plaintiffs would be satisfied with either
13 option so that they are not shackled with an over \$12,000 bill while they may still prevail on appeal.

14 **II. BACKGROUND**

15 As this Court very recently reviewed and decided Defendants’ motion for summary judgment,
16 Plaintiffs will not burden it with an extensive discussion of the background about this case. Relevant to
17 this motion, Plaintiffs were served with Defendants’ proposed judgment on July 11, 2024, and thus had
18 until July 22, 2024, to submit objections to that proposed judgment under Rule 3.1590, subdivision (j),
19 of the California Rules of Court. Still, the Court entered the judgment as proposed by the State on July
20 12, 2024, before Plaintiffs could object. (Judgment (July 12, 2024).) To preserve their objections and
21 perfect the record, however, Plaintiffs submitted their objections on July 16, 2024. (Pls.’ Obj. to Defs.’
22 Proposed Judgment (July 16, 2024).) Plaintiffs stated the following objections to the State’s proposed
23 judgment:

24 (1) Plaintiffs objected to an order ““that plaintiff take nothing as against defendants’ to the
25 extent that adoption of Defendants’ Proposed Judgment as drafted would foreclose Plaintiffs’
26 ability to request or recover attorneys’ fees.” (*Id.*, p. 1.)

27 (2) Plaintiffs objected to an order “that Defendants recover costs in any amount” because
28 “Defendants cited no statutory right to recover costs” and “that Defendants are not entitled to any

1 such recovery in this action, in part, because they are not the ‘prevailing party’ for purposes of
2 claiming prejudgment costs.” (*Id.*, p. 2-3.)

3 (3) Plaintiffs last objected “that the proposed judgment does not clearly dispose of the
4 entire case.” (*Id.*, p. 3.)

5 On July 18, 2024, Defendants email-served Plaintiffs with a copy of its memorandum of costs,
6 claiming total costs of \$12,137.59. (See Declaration of Tiffany D. Chevront in Support of Plaintiffs’
7 Motion to Strike Costs (“Chevront Decl.”), ¶ 2 & Ex. A.) Plaintiffs asked Defendants’ counsel to
8 stipulate to stay post-litigation of costs and fees until after their appeal had been decided to preserve the
9 resources of both the Court and the parties, but the State would not agree to stipulate to that. (Chevront
10 Decl., ¶ 3-5 & Ex. B.) The Parties ultimately agreed to extend Plaintiffs’ time to file this motion for two
11 weeks, up to and including August 20, 2024. (Chevront Decl., ¶ 5; see also Order (July 29, 2024).)

12 **III. ARGUMENT**

13 Only the “prevailing party” can be awarded its costs as a matter of right. (*Bldg. Maintenance*
14 *Serv. Co. v. AIL Sys., Inc.* (1997) 55 Cal.App.4th 1014, 1025, citing Cal. Civ. Proc. Code, § 1032, subd.
15 (b).) A prevailing party includes “the party with a net monetary recovery, a defendant in whose favor a
16 dismissal is entered, *a defendant where neither plaintiff nor defendant obtains any relief*, and a
17 *defendant as against those plaintiffs who do not recover any relief against that defendant.*” (Cal. Civ.
18 Proc. Code, § 1032, subd. (b), italics added.) Moreover, a plaintiff may be the prevailing party when the
19 lawsuit was the “catalyst” motivating the defendant to modify its behavior. (*Molski v. Arciero Wine*
20 *Group* (2008) 164 Cal.App.4th 786, 790.) Under the catalyst theory, the defining characteristic of a
21 “successful party” “is the impact of the [party’s] action, not the manner of its resolution.” (*Graham v.*
22 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 566.) When a litigant has successfully changed the
23 condition that it sought to correct through litigation, it is the prevailing party under catalyst if: (1) the
24 lawsuit substantially contributed to the defendant providing the relief sought; (2) the lawsuit was
25 necessary and meritorious; and (3) the plaintiff reasonably tried to settle the matter short of litigation.
26 (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608; see also *Graham, supra*, 34
27 Cal.4th at pp. 567-577.) Plaintiffs satisfy all three prongs of that test.

28 While the Court ultimately entered judgment in the State’s favor, Plaintiffs are still a prevailing

1 party because this lawsuit prompted the State to implement the very update to the DES that Plaintiffs
2 requested both before they sued and throughout this litigation (Compl., ¶¶ 64, 66, 74; Prayer for Relief),
3 allowing the transfers of long guns with undefined subtypes to be processed through the DES as required
4 by law, thereby resolving the issue Plaintiffs complained of and mooted their equitable claims (Dec. on
5 Mot. to Dismiss (Jan. 27, 2022), pp. 9-11). To succeed on their catalyst argument, Plaintiffs need not
6 have been the only reason for the State’s apparent change of heart. Instead, they need only show that this
7 lawsuit was a contributing factor. (*Hogar Dulce Hogar v. Cmty. Devel. Com. of City of Escondido*
8 (2007) 157 Cal.App.4th 1358, 1365 (hereafter *Hogar*.) “Put another way, courts check to see whether
9 the lawsuit initiated by the plaintiff was ‘demonstrably influential’ in overturning, remedying, or
10 prompting a change in the state of affairs challenged by the lawsuit.” (*Karuk Tribe of N. Cal. v. Cal.*
11 *Reg. Water Quality Control Bd.* (2010) 183 Cal.App.4th 330, 363.) In weighing whether a plaintiff’s
12 actions were “demonstrably influential,” the chronology of events “raise[s] an inference that the
13 litigation was the catalyst for the relief.” (*Hogar, supra*, 157 Cal.App.4th at p. 1366.)

14 Here, the chronology of events is more than telling. Indeed, evidence introduced by Plaintiffs
15 and statements made by the State itself create a clear inference that this lawsuit was a motivating factor
16 guiding the State’s “choice” to enhance the DES and add the “Other” option. Recall Plaintiff FAI sent a
17 letter to Defendants Bonta and the DOJ on October 24, 2019, to notify Defendants that certain long guns
18 could not be properly processed through the DES due to limitations with its design. (Chevront Decl.,
19 Ex. C at p. 15 [Pls.’ SUMF Nos. 44-45 and supporting evidence].) No fix came after that letter. FAI also
20 sent countless emails and spoke on the phone with DOJ help desk employees to resolve the issue. (*Id.*,
21 Ex. C at p. 4 [Pls.’ RSUMF No. 9 and supporting evidence].) No fix came after those many
22 communications. Next, FAI filed a detailed government tort claim. (Verified SAC, ¶¶ 74-75.) The tort
23 claim was rejected, and Defendants made no public efforts to correct the alleged deficiencies of the DES
24 or authorize other ways to effectuate the transfers. (*Ibid.*) In January 2020, a DOJ attorney admittedly
25 confirmed receipt of FAI’s letter and claimed that Defendants were working to resolve the issue, but that
26 it might take a few months to do so. (Chevront Decl., Ex. C at p. 16 [Pls.’ SUMF No. 50 and
27 supporting evidence].) Again, no fix came after that letter. Instead, Defendant DOJ worked with the
28 Department of Finance to propose legislation to classify FAI’s centerfire Title 1® as an “assault

1 weapon” for the first time. (*Id.*, Ex. C at p. 17 [Pls.’ SUMF No. 52 and supporting evidence].)

2 Having heard nothing from Defendants about the promised fix since January 2020 and running
3 out of options, Plaintiffs sued on May 27, 2020, alleging several causes of action, including a petition
4 for writ of mandate directing the DOJ to correct the administrative and technological defects that bar the
5 lawful transfer of undefined subtypes or authorize other ways to transmit the required information
6 pursuant to its authority under section 28205. (Compl., ¶¶ 123-129.) Plaintiffs later filed a First
7 Amended Complaint, adding four claims—some related to changes in state law affecting their claims.
8 (First Am. Compl., ¶¶ 163-202.)

9 In response, Defendants never once mentioned that litigation could be avoided because the DOJ
10 was working on a fix. On the contrary, Defendants insisted they had no duty to address the issue at all
11 and fiercely litigated against Plaintiffs’ claims for more than a year. Indeed, they filed two demurrers—
12 never once suggesting that they had any intention to fix the DES. (See, e.g., Demurrer to First Am.
13 Compl., pp. 15-20 [arguing that Senate Bill 118 mooted Plaintiffs’ claims about the sale of centerfire
14 FAI Title 1® firearms and that Plaintiffs failed to identify any other “undefined-type” firearm];
15 Demurrer to Second Am. Compl., pp. 11, 15-18 [arguing that Defendants had no duty to modify the
16 DES because the law does not include a mandatory requirement that the DOJ operate the DES in a
17 particular manner].)

18 Even still, just weeks after this Court held that Defendants *do* have a mandatory duty to
19 implement an electronic transfer system for *all* firearms under Penal Code section 28160 (Decision on
20 Demurrer to Second Am. Compl., p. 7), Defendants began a 50-day process of implementing an
21 enhancement to the DES to include the option to select “Other” from the dropdown menu for long gun
22 subtypes. (Barvir Decl. Supp. Petrs.’ Oppn. to Mot. to Dismiss, Ex. 5 at pp. 31-32, Ex. 6 at p. 38.)
23 Defendants did not, however, inform Plaintiffs that they had begun these efforts until September 15,
24 2021, when Defendants’ attorneys notified Plaintiffs’ counsel that Defendants had “been working on a
25 modification to the DES to add an ‘Other’ option to the ‘gun type’ menu.” (*Id.*, ¶ 2 & Ex. 1 at p. 10.)
26 The email did not specify what the change to the DES would look like or when it would be made public.
27 (*Ibid.*) Even so, the DOJ declared that the First, Second, and Eighth Causes of Action were moot and
28 requested a conference to discuss the dismissal of those claims. (*Ibid.*) The parties met to discuss the

1 effect of the anticipated DES change on this lawsuit. (*Id.*, ¶ 3.) But Plaintiffs hesitated to dismiss their
2 claims at that time because Defendants’ attorneys had no further details about the DES modification.
3 (*Ibid.*) The parties agreed to meet again to explore the possibility of dismissal once more was known.
4 (*Ibid.*)

5 On September 27, 2021, the DOJ issued a bulletin notifying DES users that, beginning on
6 October 1, 2021, they could select “Other” from among the long gun subtypes listed in the DES. (Leyva
7 Decl. Supp. Defs.’ Mot. to Dismiss, ¶¶ 5-6 & Ex. A at p. 1.) The bulletin defined “[a]n ‘Other’ type
8 firearm [as] a firearm that does not meet the definition of a rifle (Pen. Code § 17090), shotgun (Pen.
9 Code § 17190), or pistol (Pen. Code § 16350).” (*Id.*, Ex. A at p. 1.) And it advised dealers that before
10 “the sale, loan, or transfer of an ‘Other’ type firearm [they] *must* confirm” (1) that the “Other” firearm
11 “has a fixed magazine of ten rounds or fewer” and (2) that it “has an overall length of 30 inches or
12 more.” (*Ibid.*, italics added.) The bulletin also warned that “[i]f the ‘Other’ does not meet the criteria
13 above or is considered an ‘Other’ Assault Weapon pursuant to Penal Code 30900, **“the ‘Other’ may**
14 **not be sold, loaned or transferred** in the DES.” (*Ibid.*, double emphasis original.) But countless
15 “Other” firearms are lawful in California even though they do not meet both criteria, including many
16 firearms identified in the Second Amended Complaint, including rimfire Title 1® firearms, buntline
17 revolvers, and barreled actions without a stock. (*Ibid.*; see Verified SAC, ¶¶ 6, 79, 99-102.)

18 When counsel for the parties met again on September 28, 2021, Plaintiffs expressed concerns
19 that, as drafted, the DOJ’s bulletin advised firearms dealers that the very “Other” firearms at issue in this
20 lawsuit **“may not be sold, loaned or transferred** in the DES.” (Leyva Decl. Supp. Defs.’ Mot. to
21 Dismiss, Ex. A at p. 1, double emphasis original; Barvir Decl. Supp. Pls.’ Oppn. Mot. to Dismiss, ¶¶ 5-
22 6.) Plaintiffs thus insisted that their claims were not moot and declined Defendants’ request to
23 voluntarily dismiss them. (*Id.*, ¶ 6.) The DOJ responded by issuing another bulletin—superseding the
24 September 27 bulletin—just two days later. (Leyva Decl. Supp. Defs.’ Mot. to Dismiss, ¶ 9 & Ex. B;
25 Barvir Decl. Supp. Pls.’ Oppn. Mot. to Dismiss, ¶ 7.) The second bulletin replaced the guidance about
26 “What Is Considered an ‘Other’ Firearm” with the following:

27 An “Other” type firearm is a firearm that does not meet the definition of a rifle (Pen.
28 Code, § 17090), shotgun (Pen. Code, § 17190), or pistol (Pen. Code, § 16350.)
Firearms that might be eligible for DROS at this time would include serialized

1 receivers, barreled actions (that lack a stock), “Buntline” type firearms with revolving
2 cylinders, firearms that fire shotgun shells that also lack a stock (commonly known as
Pistol Grip shotguns).

3 (Leyva Decl. Supp. Defs.’ Mot. to Dismiss, Ex. B at p. 1.)

4 At long last, on October 1, 2021—well over a year after Plaintiffs sued and nearly two years
5 since FAI wrote to Defendants informing them of the issue—Defendants finally stopped blocking the
6 transfer of lawful long guns with undefined subtypes. (Cheuvront Decl., Ex. C at p. 7.) Any arguments
7 by the State that a fix was going to come regardless of this lawsuit are unserious. Again, for more than a
8 year, Defendants vigorously defended this lawsuit, denied any duty to fix the DES, and never once
9 argued that litigation was unnecessary or that Plaintiffs could not prevail for lack of controversy because
10 Defendants were working on a fix. Had Defendants had any concrete intention to fix the DES, surely
11 they would have made it known instead of repeatedly insisting they had no duty to do so. What’s more,
12 Defendants went so far as to deny that, except for FAI’s centerfire Title 1®, firearms with an “undefined
13 subtype” even existed. (Demurrer to First Am. Compl., p. 19.) It would not be believable for it to now
14 claim that it intended to fix the DES all along to add the “Other” option for guns it claimed did not exist.

15 Viewed as a whole, the chronology is clear. It creates, *at the very least*, an inference that it was
16 this lawsuit and likely the fact that it survived the State’s *two* demurrers—that forced Defendants to
17 finally fix the DES, the very relief the underlying litigation sought to achieve. This litigation was thus
18 the catalyst for the action from the State that Plaintiffs requested. (See *Tipton-Whittingham v. City of Los*
19 *Angeles* (2004) 34 Cal. 4th 604, 608 [“California law continues to recognize the catalyst theory....”].)
20 As such, Plaintiffs have obtained at least some of the relief they sought through this litigation, making
21 them at least a partial prevailing party, and so Defendants are not entitled to their costs. In fact, Plaintiffs
22 are entitled to theirs. At a minimum, this Court should order the parties to bear their own costs.

23 Alternatively, if this Court is not inclined to strike the State’s costs memorandum for the reasons
24 argued above, this Court should stay its judgment awarding costs until after Plaintiffs’ appeal is decided.
25 Normally, perfecting an appeal does not stay enforcement of a judgment unless an undertaking is given.
26 (Cal. Civ. Proc. Code § 917.1, subd. (a).) However, when only costs are awarded, as here, no
27 undertaking is needed and this Court may stay its judgment pending appeal. (*Quiles v. Parent* (2017) 10
28 Cal.App.5th 130, 140, citing Cal. Civ. Proc. Code § 917.1, subd. (d).) It is in the interests of judicial

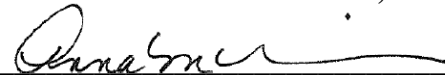
1 economy and the preservation of party resources to stay the determination of costs (and other post-
2 judgment litigation) until after the appeal is decided so that it need not be reversed if the Plaintiffs
3 prevail on appeal.

4 **IV. CONCLUSION**

5 For these reasons, the Court should grant Plaintiffs’ motion to strike Defendants’ memorandum
6 of costs in its entirety. In the alternative, the Court should stay enforcement of the judgment pending the
7 outcome of Plaintiffs’ imminent appeal.

8 Date: August 20, 2024

MICHEL & ASSOCIATES, P.C.



Anna M. Barvir
Attorneys for Petitioner-Plaintiff

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 August 20, 2024, I served the foregoing document(s) described as

8 **PLAINTIFF’S NOTICE OF MOTION AND MOTION TO STRIKE COSTS OR,
9 ALTERNATIVELY, STAY ENFORCEMENT OF JUDGMENT PENDING APPEAL;
10 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

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

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

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

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

28 Executed on August 20, 2024, at Long Beach, California.



Laura Palmerin



Make a Reservation

FRANKLIN ARMORY, INC., et al. vs CALIFORNIA DEPARTMENT OF JUSTICE, et al.

Case Number: 20STCP01747 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus

Date Filed: 2020-05-27 Location: Stanley Mosk Courthouse - Department 32

Reservation

Case Name: FRANKLIN ARMORY, INC., et al. vs CALIFORNIA DEPARTMENT OF JUSTICE, et al.		Case Number: 20STCP01747	
Type: Motion to Tax Costs		Status: RESERVED	
Filing Party: Franklin Armory, Inc. (Petitioner)		Location: Stanley Mosk Courthouse - Department 32	
Date/Time: 09/25/2024 8:30 AM		Number of Motions: 1	
Reservation ID: 315248532217		Confirmation Code: CR-HCZD6FQYNHQDVNNBP	

Fees

Description	Fee	Qty	Amount
Motion to Tax Costs	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

[Print Receipt](#)

[+ Reserve Another Hearing](#)