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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
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14 **FRANKLIN ARMORY, INC. AND**
15 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INCORPORATED,

16
17 Plaintiffs,

18 v.

19 **CALIFORNIA DEPARTMENT OF**
20 **JUSTICE, XAVIER BECERRA, IN HIS**
21 **OFFICIAL CAPACITY AS ATTORNEY**
GENERAL FOR THE STATE OF
CALIFORNIA, AND DOES 1-10,

22 Defendants.
23

Case No. 20STCP01747

**OPPOSITION TO PLAINTIFF'S
MOTION TO STRIKE COSTS OR,
ALTERNATIVELY, STAY
ENFORCEMENT OF JUDGMENT
PENDING APPEAL**

Date: September 25, 2024

Time: 8:30 a.m.

Dept.: 32

Honorable Daniel S. Murphy

24 In moving to tax costs, plaintiff does not dispute the type or amount of defendants' statutory
25 costs in their memorandum of costs. Rather, plaintiff asserts that defendants are not prevailing
26 parties despite prevailing on all remaining causes of action based on the granting of summary
27 judgment. "By statute, a defendant against whom a plaintiff recovers no relief is a 'prevailing
28 party.' A trial court has no discretion to deny prevailing party status to such a defendant."

1 (*Huerta v. Kava Holdings, Inc.* (2018) 29 Cal.App.5th 74, 79 (citation omitted).) “A trial court
2 also has no discretion to deny the prevailing party its ordinary costs; they are to be awarded ‘as a
3 matter of right,’ unless a statute expressly dictates otherwise. (§ 1032, subd. (b).) Section 1033.5
4 lists the ordinary costs that must be awarded to a prevailing party.” (*Id.*) For this reason, the
5 motion should be denied.

6 Nevertheless, plaintiff asserts that it is a prevailing party because it is entitled to recover
7 attorneys’ fees under a “catalyst” theory based on the assertion that this lawsuit prompted
8 defendants to modify the DES irrespective of the fact that defendants’ motions resulted in
9 dismissal of all claims. However, plaintiff has not brought a motion for attorneys’ fees. In this
10 regard, plaintiff incorrectly asserts that the entering of judgment in favor of defendants somehow
11 precluded its ability to make such a motion. A request for Code of Civil Procedure section 1021.5
12 attorneys’ fees is ancillary to the underlying action and may be made for the first time after the
13 judgment becomes final. (*United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231
14 Cal.App.3d 1576, 1584; see also *Citizens Against Rent Control v. City of Berkeley* (1986) 181
15 Cal.App.3d 213, 226-227.)¹

16 Even if plaintiff were to file a motion for attorney fees, it would be totally and completely
17 without merit. Plaintiff neglects to mention in its motion that seeking attorneys’ fees under a
18 catalyst theory falls under Code of Civil Procedure section 1021.5 which sets forth numerous
19 requirements that are not addressed by plaintiff. (*California Public Records Research, Inc. v.*
20 *County of Yolo* (2016) 4 Cal.App.5th 150, 192 (trial court does not have discretion to award
21 attorneys’ fees unless the statutory criteria have been met as a matter of law).)

22 To obtain fees under section 1021.5, “the moving party must establish: “(1) he or she is a
23 ‘successful party’; (2) the action has resulted in the enforcement of an important right affecting
24 the public interest; (3) the action has conferred a significant benefit on the public or a large class
25 of persons; and (4) an attorney fees award is appropriate in light of the necessity and financial
26

27 ¹ Plaintiff also incorrectly asserts that judgment was prematurely entered citing the 14 day rule
28 under California Rule of Court 3.1590. This rule applies to bench trials, not summary judgment
motions. (See e.g. *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 982.)

1 burden of private enforcement.” (*Canyon Crest Conservancy v. County of Los Angeles* (2020) 46
2 Cal.App.5th 398, 408.)

3 The catalyst theory relates to the “successful party” element only. (*City of San Clemente v.*
4 *Department of Transportation* (2023) 92 Cal.App.5th 1131, 1148-1149.) Plaintiff’s claim of
5 being a catalyst by repeating the incorrect assertion that defendants had a mandatory duty to
6 modify the DES is completely undermined by the court’s ruling granting summary judgment
7 finding that the operation of the DES, including the implementation of changes, is discretionary.
8 (Order 7/11/24, p. 4.) Therefore, plaintiff is not a “successful” party under section 1021.5.

9 In addition, the other required elements under section 1021.5 clearly cannot be established.
10 For example, plaintiff could not establish in a motion for fees that this action conferred a
11 significant benefit on the public or a large class of persons. In analyzing this requirement, the
12 court must “determine the significance of the benefit, as well as the size of the class receiving
13 benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which
14 have resulted in a particular case.” (*Canyon Crest Conservancy, supra*, 46 Cal.App.5th at p.
15 412.)

16 Allegations of the Second Amended Complaint (SAC) indicate that plaintiff California
17 Rifle & Pistol Association was included in this action to “defend the civil rights of all law-abiding
18 individuals, including the fundamental right to acquire and possess lawful firearms like the FAI
19 Title 1.”² The ostensible purpose of these allegations may be to assert that this action could
20 benefit the public or a large class of persons. (SAC, ¶ 4.) However, the SAC alleges only two
21 individual Association members who wanted to acquire “other” firearms. (SAC, ¶¶ 98-100.)
22 One of these individuals, Ryan Fellows, is a Partner and Senior Engineer for Franklin Armory
23 who is involved in designing its firearms. (Jacobson Dep. p. 81:4-23, Ex. A to Lake Dec.) In
24 addition, Secretary of State records for the Association show that plaintiff’s lead counsel, C.D.
25 Michel, is the Chief Executive Officer of the Association. This demonstrates self-interest on the
26 part of Franklin Armory in bringing this action and makes clear that it was not brought to benefit

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28 ² All remaining claims asserted by the Association were dismissed based on defendants’ motion
for judgment on the pleadings per the court’s September 7, 2023, order.

1 the public. Also, naming two Association members, one of whom is a Franklin Armory
2 employee, does nothing to establish a significant benefit to a large class of persons.

3 In addition, the necessity and financial burden of private enforcement requirement cannot
4 be established in this case. “The financial burden of private enforcement requirement means that
5 an award of attorney fees under section 1021.5 of the Code of Civil Procedure is only appropriate
6 when the cost of the claimant's legal victory transcends his or her personal interest-i.e., when the
7 necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his or her
8 individual stake in the matter.” (*Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302,
9 1329.) The *Davis* court noted:

10 “Section 1021.5 was not designed as a method for rewarding litigants motivated by
11 their own pecuniary interests who only coincidentally protect the public interest.
12 Private attorney general fees are not intended to provide insurance for litigants and
13 counsel who misjudge the value of their case, and vigorously pursue the litigation
14 in the expectation of recovering substantial damages, and then find that the jury's
15 actual verdict is not commensurate with their expenditure of time and resources.
16 The relevant issue is the estimated value of the case at the time the vital litigation
17 decisions were being made.”

18 (*Id.* at p. 1329-1330, (citations omitted) [fees claim rejected because plaintiff seeking over \$10
19 million in damages for wrongful discharge plus hundreds of thousands for improper wage
20 deductions provided sufficient motivation to pursue the case].)

21 Here, plaintiff claimed monetary damages for lost profits in an amount “of at least
22 \$33,000,000.” (SAC, ¶¶ 79, 147, 159.) This figure makes clear that plaintiff was motivated by
23 its own pecuniary interest in bringing this action and plaintiff’s counsel vigorously pursued this
24 litigation in the expectation of recovering substantial damages. As noted by the *Davis* court,
25 private attorney general fees are not intended for this purpose. The fact that plaintiff’s counsel
26 did not estimate the value of the case as zero at the time the vital litigation decisions were being
27 made is not relevant.

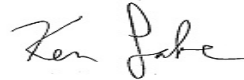
28 For these reasons, even if plaintiff were to have brought a motion for attorneys’ fees under
section 1021.5, the inability of plaintiff to establish the statutory requirements would require
denial of the motion. It follows that plaintiff’s raising of this issue in the context of a motion to

1 tax costs to assert that defendants are not the prevailing party should be rejected. For this
2 additional reason, the motion to tax should be denied.

3 Finally, the alternative request for a stay of enforcement of the cost judgment pending
4 appeal can summarily be dispensed with because the perfecting of an appeal “automatically stays
5 proceedings in the trial court upon the judgment or order appealed from, or upon the matters
6 embraced therein or affected thereby, including enforcement of the judgment or order.” (*Hedwall*
7 *v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 580, fn. 11, citing Civ. Proc. § 916, subd. (a).) A
8 defense cost judgment under Code of Civil Procedure sections 1032 and 1033.5 is subject to the
9 automatic stay. (*Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 801.)

10 Dated: September 12, 2024

Respectfully submitted,
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DONNA M. DEAN
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16 and through the California Department
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1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 RE: *Franklin Armory, Inc., v. California Department of Justice.*
3 Case No. 20STCP01747

4 I declare: I am employed in the City of Los Angeles, County of Los Angeles, State
5 of California. I am over the age of 18 years and not a party to the within action. My business
6 address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On September
7 12, 2024, I served the documents named below on the parties in this action as follows:

8 **OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE COSTS OR,**
9 **ALTERNATIVELY, STAY ENFORCEMENT OF JUDGMENT PENDING APPEAL**

10 C.D. Michel
11 Anna M. Barvir
12 Jason A. Davis
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14 180 E. Ocean Blvd., Suite 200
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17 CMichel@michellawyers.com
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19 lpalmerin@michellawyers.com
20 *Attorneys for Plaintiffs-Petitioners*

21 (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in
22 the United States mail at Los Angeles, California. I am readily familiar with the practice of
23 the Office of the Attorney General for collection and processing of correspondence for
24 mailing, said practice being that in the ordinary course of business, mail is deposited in the
25 United States Postal Service the same day as it is placed for collection.

26 (BY OVERNIGHT DELIVERY) I placed a true copy thereof enclosed in a sealed envelope,
27 in the internal mail system of the Office of the Attorney General, for overnight delivery with
28 the GOLDEN STATE OVERNIGHT courier service.

(BY FACSIMILE) I caused to be transmitted the documents(s) described herein via fax
number.

(BY ELECTRONIC MAIL) I caused to be transmitted the documents(s) described herein
via electronic mail to the email address(es) listed above.

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

(FEDERAL) I declare under penalty of perjury under the laws of the State of California and
the United States of America that the above is true and correct.

Executed on September 12, 2024, at Los Angeles, California.

27 Sandra Dominguez
28 Declarant

Sandra Dominguez
Signature