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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANKLIN ARMORY, INC., et al.,

Petitioners-Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF JUSTICE, et al.,

Respondents-Defendants.

Case No.: 20STCP01747

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

PLAINTIFF'S NOTICE OF RULING ON PLAINTIFF'S MOTION TO TAX COSTS

Action Filed: May 27, 2020

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 24, 2024 the Court issued a tentative ruling on Plaintiff Franklin Armory, Inc.'s Motion to Tax Costs. Counsel for Plaintiff, Anna M. Barvir, and counsel for Defendants, Kenneth Lake, agreed to submit on the tentative ruling and informed the Court. As such, the tentative ruling was adopted as the final ruling on the Motion to Tax Costs. Attached as **Exhibit A** is a true and correct copy of the Court's tentative ruling.

Plaintiff was ordered to give notice.

Date: September 26, 2024

MICHEL & ASSOCIATES, P.C.

Anna M. Barvir
Attorneys for Petitioner-Plaintiff

EXHIBIT A

Case Number: 20STCP01747 **Hearing Date:** September 25, 2024 **Dept:** 32

FRANKLIN ARMORY, INC., et al., Plaintiffs, v. CALIFORNIA DEPARTMENT OF JUSTICE, et al., Defendants.	Case No.: 20STCP01747 Hearing Date: September 25, 2024 **[TENTATIVE] ORDER RE:** PLAINTIFF'S MOTION TO TAX COSTS

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.)

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 inference 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 September 7, 2023, this Court granted Defendants' motion for judgment on the pleadings as to the sixth, seventh, and ninth causes of action. On July 11, 2024, the Court granted Defendants' motion for summary judgment as to the remaining causes of action. Judgment was entered on July 12, 2024, wherein Plaintiff was to take nothing against Defendants, and Defendants were awarded costs under Code of Civil Procedure sections 1032 and 1033.5.

On July 24, 2024, Defendants filed a memorandum of costs totaling $12,137.59.

On August 20, 2024, FAI filed the instant motion to tax costs. Defendants filed their opposition on September 12, 2024. FAI filed its reply on September 18, 2024.

LEGAL STANDARD

"Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032(b).) "[U]nless the context clearly requires otherwise . . . '[p]revailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (*Id.*, § 1032(a)(4).)

One context providing otherwise is where "the lawsuit was the catalyst motivating the defendants to modify their behavior or the plaintiff achieved the primary relief sought." (*Donald v. Cafe Royale, Inc.* (1990) 218 Cal.App.3d 168, 185.) "[T]he catalyst theory pertains to whether a party prevailed in a manner outside the specific definitions in Code of Civil Procedure section 1032, subdivision (a)(4)." (*Mundy v. Neal* (2010) 186 Cal.App.4th 256, 260.) Thus, "a plaintiff need not obtain a judgment in its favor to be a 'successful party.'" (H*ogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358, 1365.)

To prevail under the catalyst theory, "a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense . . .; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608.)

However, a lawsuit is not a catalyst for government action if it "merely caus[es] the acceleration of the issuance of government regulations or remedial measures, when the process of issuing those regulations or undertaking those measures was ongoing at the time the litigation was filed." (*Tipton-Whittingham, supra,* 34 Cal.4th at p. 609.) "When a government agency is given discretion as to the timing of performing some action, the fact that a lawsuit may accelerate that performance does not by itself establish eligibility for" recovery under the catalyst theory. (*Ibid.*) "[W]hen a government agency is clearly given discretion to choose among a number of courses of action, the fact that it chooses to exercise its discretion in a manner favorable to a plaintiff in a lawsuit filed against it does not mean that its actions were required by law." (*Ibid.*)

DISCUSSION

I. Prevailing Party

Defendants are the prevailing parties under the traditional definitions set forth in Code of Civil Procedure section 1032(a)(4). Namely, judgment was entered in Defendants' favor whereby FAI was to take nothing from Defendants. However, the catalyst theory presents an exception to the general rule, whereby a plaintiff may be considered the prevailing party outside the statutory definitions. (*Mundy, supra,* 186 Cal.App.4th at p. 260.)

FAI moves to strike Defendants' memorandum of costs on the grounds that Defendants are not the prevailing parties. FAI argues that it prevailed under the catalyst theory because Defendants added a "other" option to the DES after the lawsuit was filed. However, FAI fails to show that "the lawsuit had merit," as required to prevail under the catalyst theory. (See *Tipton-Whittingham, supra,* 34 Cal.4th at p. 608.) To the contrary, the Court found on summary judgment that Defendants were immune from liability under the Government Code.[1] In particular, the Court found that there was no mandatory duty to amend the DES and that operating the DES was a discretionary function. A lawsuit is not a catalyst for government action if "a government agency is given discretion as to the timing of performing some action" or "a government agency is clearly given discretion to choose among a number of courses of action." (*Id.* at p. 609.) This was precisely the case here. Under these circumstances, the fact that Defendants took an action favorable to FAI after the lawsuit was filed is not sufficient to trigger the catalyst theory. (*Ibid.*)

Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553 is distinguishable because in that case, the trial court had substantial evidence "to conclude that the lawsuit was in fact a substantial causal factor in DaimlerChrysler's change in policy." (*Id.* at p. 577.) Here, the record shows the opposite, *i.e.*, that Defendants had discretion in operating the DES and were not obligated to make a particular change within a particular timeframe. *Graham* involved a private actor defendant and does not detract from the holding in *Tipton-Whittingham* that a lawsuit cannot be the catalyst for a discretionary government action not mandated by law.

As FAI acknowledges, the catalyst theory addresses situations where a plaintiff's lawsuit is mooted because the defendant voluntarily changed its behavior in response to the lawsuit. In such situations, the plaintiff may be considered the prevailing party because it achieved its litigation objectives despite not obtaining a judgment in its favor. But that is not what occurred here. Instead, this case was litigated to conclusion, resulting in a dispositive motion involving adverse findings against FAI. That, in turn, led to a judgment for Defendants against FAI. On this record, FAI cannot establish that its claims had merit or that its lawsuit was a catalyst for Defendants' actions.

Because FAI fails to establish that its lawsuit had merit, and because the lawsuit did not compel Defendants to take any action mandated by law, the lawsuit cannot be considered the catalyst for Defendants' changes to the DES. Thus, FAI is not the prevailing party under the catalyst theory. Moreover, the judgment in this case already found Defendants to be the prevailing parties and awarded them costs. (See July 12, 2024 Judgment ["IT IS ORDERED, ADJUDGED AND DECREED that plaintiff take nothing as against defendants. Defendants shall recover from plaintiff costs of suit, pursuant to Code of Civil Procedure sections 1032 and 1033.5"].) FAI has appealed this judgment, but under the judgment currently on record, Defendants are the prevailing parties. Thus, there is no basis to strike Defendants' costs.

II. Stay

FAI alternatively requests a stay of the Court's judgment pending the appeal. However, the proceedings, including enforcement of the judgment, are automatically stayed upon the perfecting of an appeal. (Code Civ. Proc., § 916(a).) An undertaking is not required to stay a judgment solely for costs awarded under section 1021 *et seq*. (*Id.*, § 917.1(d).) Because the judgment is automatically stayed without the need for an undertaking, FAI's request for a stay is moot.

CONCLUSION

Plaintiff FAI's motion to tax costs is DENIED.

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[1] The fact that the complaint survived two demurrers is not dispositive, because a lawsuit may "lack[] merit, even if its pleadings would survive a demurrer." (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576.)

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On September 27, 2024, I served the foregoing document(s) described as **PLAINTIFF'S**

NOTICE OF RULING ON PLAINTIFF'S MOTION TO TAX COSTS

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

Kenneth G. Lake
Deputy Attorney General
Email: Kenneth.Lake@doj.ca.gov
Andrew Adams
Email: Andrew.Adams@doj.ca.gov
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorney for Respondents-Defendants

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

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

Executed on September 27, 2024, at Long Beach, California.

Claudia Nunez
Claudia Nunez