

FILED

Jul 15, 2025

EVA McCLINTOCK, Clerk

Jaenna Dela Vega

Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FRANKLIN ARMORY, INC.,

B340913

Plaintiff and Appellant,

(Los Angeles County
Super. Ct. No. 20STCP01747)

v.

CALIFORNIA DEPARTMENT OF
JUSTICE et al.,

O R D E R

Defendants and Respondents.

Respondent the State of California (the State) moves to strike three portions from the opening brief of appellant Franklin Armory, Inc.¹ Appellant filed an opposition, and the State filed a

¹ These statements include: (1) on page 18: “Appellants have since discovered, in documents improperly withheld from discovery, that work began on a fix for the DES [Dealer Record of Sale Entry System] as early as January 2020;” (2) on page 30: “and other evidence contradicting those claims;” and (3) on page 30, footnote 7: “But as [Franklin Armory, Inc.] learned just weeks before this brief was due, Respondents had withheld evidence that could have provided that very rebuttal. (Davis Decl. Supp. Req. Jud. Notice, ¶¶ 4-6, 12-13.) That evidence, requested but not produced in discovery, appears to confirm that the ‘Other’ enhancement had been initiated (and may have been

reply. The State contends “these portions of Appellants’ brief are based on argument of Appellants’ counsel drawn from discovery requests and responses as well as a ‘JIRA Log’ that were not in the record before the trial court.” By contrast, appellant argues “[t]he challenged sections refer to evidence this Court has already judicially noticed—without opposition—based on official state records obtained through a Public Records Act request. Those records were responsive to Appellants’ formal discovery requests in the court below and should have been produced long ago.”

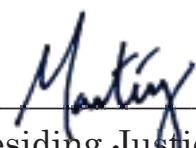
California Rules of Court, rule 8.204(a)(1)(C), states an appellate brief must “[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.” An appellate court “may decline to consider passages of a brief that do not comply with this rule. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 195 (*Ragland*); accord, *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 990.) While “an appellate court will consider only matters which were part of the record at the time the judgment was entered” (*Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813; accord, *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3), courts generally only “disregard factual statements in the appellate briefing for which the record reference is to a document for which

completed) as early as January 2020 and identified the DOJ employee responsible for the work. (*Id.* at ¶¶ 7-11 & Ex. B.) Without the opportunity to question the employee who made the DES changes or to conduct discovery about the contents of the withheld documents, Appellants’ ability to challenge the narrative Mendoza created was stymied. Respondents cannot withhold evidence and then benefit from a lack of factual rebuttal.”

judicial notice has been denied.” (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 359, fn. 10.)

Whether the judicially noticed material supports the appellant’s claim that the State withheld certain documents during discovery is argument and not a factual assertion. In such instances, courts have declined to strike the offending language. (See *Ragland, supra*, 209 Cal.App.4th at p.195 [declining to strike portions of appellate brief because “we consider those three passages to be argument rather than factual assertions”].) Nevertheless, “[a]lthough we deny [the] motion to strike, for purposes of our review, we [may] disregard[] any portion of . . . briefing that refers to or relies on matters not properly before this court.” (*Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1141, fn. 4; see Cal. Rules of Court, rule 8.204(e)(2)(C) [court may disregard the noncompliance].) Good cause appearing therefor,

IT IS HEREBY ORDERED that the motion to strike is denied.



Presiding Justice