No. B340913

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION SEVEN

FRANKLIN ARMORY, INC., et al.,
Plaintiffs and Appellants,
v.
CALIFORNIA DEPARTMENT OF JUSTICE, et al.,
Defendants and Respondents.

Los Angeles County Superior Court, Case No. 20STCP01747

The Honorable Daniel S. Murphy, Judge

RESPONDENTS' BRIEF

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RULE 8.208 CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Respondents know of no entity or person that must be listed under California Rule of Court 8.208, subdivision (d)(1) or (2).

Dated: July 31, 2025

/S/
Kenneth G. Lake
Deputy Attorney General

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I

INTRODUCTION

Appellant Franklin Armory appeals from the July 11, 2024, order granting summary judgment in favor of Respondents State of California, acting by and through the State of California Department of Justice (Department) and former Attorney General Xavier Becerra as to the three remaining causes of action at the time the motion was filed: Tortious interference with contractual relations (3rd), tortious interference with prospective economic advantage (4th) and negligent interference with prospective economic advantage (5th). (Order Granting Summary Judgment, 7-11-24, (SJ Order); 19 AA 2135-2142.)

The trial court correctly granted summary judgment in finding that there was no mandatory duty to have modified the Department's online system for processing transfers of firearms in the Dealer Record of Sale Entry System (DES) to add an "other" option to the long gun drop-down menu prior to August 6, 2020, when the Title 1 was rendered an illegal assault weapon by the passage of Senate Bill (SB) 118. The trial court also correctly granted summary judgment on the ground that the discretionary immunity under Government Code section 820.2 precluded liability.

Franklin Armory and the California Rifle & Pistol Association (Association) also appeal the January 27, 2022, order granting the motion to dismiss the first cause of action for declaratory and injunctive relief and the second cause of action for writ of mandate (Dismissal Order, 1-27-22; 5 AA 491-501) as

well as the September 7, 2023, order granting judgment on the pleadings without leave to amend as to the causes of action for violations of procedural due process (6th), substantive due process (7th) and public policy [taxpayer action] (9th). (JOP Order; 9-7-23; 5 AA 719-726.)[1] The trial court correctly granted these motions on the ground of mootness. Due to the court granting these motions, Attorney General Bonta and the Association were no longer parties to this action as they were not parties to the interference claims. (9/6/23 hearing transcript, pp. 27:19-30:1, 6 AA 908-911.)

II

ISSUES PRESENTED

1. Whether the trial court correctly granted summary judgment based on: (1) its finding that there was no mandatory duty to have modified the online system for processing transfers of firearms in the DES to add an "other" option to the long gun drop-down menu prior to August 6, 2020, when the Title 1 was rendered an illegal assault weapon by the passage of SB 118 and (2) its finding that discretionary immunity under Government Code section 820.2 precluded liability.

2. Assuming arguendo that the trial court's stated grounds for granting summary judgment were not correct, whether the alternate ground that Respondents have shown that one or more elements of the interference causes of action cannot be

[1] The trial court also dismissed the eighth cause of action for declaratory and injunctive relief. (Dismissal Order; 5 AA 501) However, Appellants do not contest this dismissal. (App. Brf., p. 34, heading II.)

established provide an additional basis for affirming the granting of summary judgment.

3. Whether the trial court correctly granted the motion to dismiss the first cause of action for declaratory and injunctive relief and the second cause of action for writ of mandate and the motion for judgment on the pleadings without leave to amend as to the causes of action for violations of procedural due process (6th), substantive due process (7th) and public policy [taxpayer action] (9th).

III

SUMMARY OF ARGUMENT

The trial court correctly granted summary judgment. First, there is no statutory basis for liability against the Department for the three interference claims. In addition, the Penal Code statutes cited by Appellants did not impose a mandatory duty on the Department, or its employees including former Attorney General Becerra, to modify the DES to add an "other" option to the long gun drop-down menu prior to August 6, 2020, when the Title 1 was rendered an illegal assault weapon by the passage of SB 118. Rather, they conferred discretionary authority as to the operation and modification of the DES.

In this regard, the trial court correctly concluded that the operation of the DES, including implementation of changes, is discretionary. The subject Penal Code sections do not "require that a particular action be taken" as to modification of the DES and they do not provide "implementing guidelines" or phrase the

nature of a duty in "explicit and forceful language." A duty to modify the DES cannot be implied. Penal Code section 28245 conclusively removes any doubt in this regard as it explicitly states that acts or omissions pursuant to section 28205 as they pertain to long guns shall be deemed to be discretionary under the Government Claims Act.

In addition, Franklin Armory acknowledges that the Department has authority to implement a variety of alternative means to allow for processing of firearms. As correctly noted by the trial court, this "confirms that the Department has discretion over changes in DES."

Furthermore, the Penal Code sections at issue did not satisfy the requirement to be designed to protect against the risk of the particular kind of injury alleged herein because said sections were designed to protect public safety, not to preserve the financial interests of firearms dealers.

Second, the discretionary immunity under Government Code section 820.2 also bars the three interference claims. The Department, including its employees, exercised discretion by initiating a review to evaluate the resources required for a potential DES enhancement to add an "other" option which involved a balancing of multiple factors and weighing of competing priorities by the leadership of the Bureau of Firearms (Bureau) [2] among multiple proposed DES enhancements pending

[2] The Bureau is part of the Department's Division of Law Enforcement (DLE). (Mendoza Dec., ¶ 1, 6 AA 784-785.)

at that time. This included evaluating and weighing the allocation of available resources such as the number of personnel required, budgeting of the enhancement, and the time it would take to complete it which was complicated by the onset of the pandemic in March, 2020.

Since the review indicated that the enhancement would take many months to implement requiring changes to many other applications and databases involving well over a dozen personnel many of whom would have had to be diverted from other projects, the Department explored the possibility of an alternative temporary enhancement applicable to the Title 1 only with a permanent enhancement to be implemented at a later date. However, the Department determined that this proposal would present operational difficulties which raised significant public safety concerns and therefore, based on a balancing of multiple factors and weighing of competing priorities, the Department, including the leadership of the Bureau, decided not to proceed with it.

After the Title 1 was rendered a prohibited assault weapon by SB 118, the Department weighed competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the pandemic and decided to implement the permanent enhancement to add the "other" option at a later date which occurred on October 1, 2021.

As correctly noted by the trial court, Franklin Armory did not dispute that this process involved considerations of competing interests, resource allocation and budget constraints.

In addition, assuming arguendo that the trial court's stated grounds for granting summary judgment were not correct, the alternate ground that one or more elements of the interference causes of action cannot be established provides an additional basis for affirming the granting of summary judgment.

Finally, the trial court correctly determined that multiple claims were moot first in dismissing the causes of action for declaratory and injunctive relief (1st) and for writ of mandate (2nd) then in granting judgment on the pleadings without leave to amend as to the causes of action for violations of procedural due process (6th), substantive due process (7th) and public policy [taxpayer action] (9th). The trial court also correctly rejected Appellants' assertion of a present right to obtain an order enjoining enforcement of SB 118 so that individuals who made a $5 deposit relative to a Title 1 before August 6, 2020, can obtain possession of one now.

IV

STATEMENT OF THE CASE

This action is premised on the allegation raised in an October 24, 2019, letter sent by Franklin Armory's counsel to former Attorney General Becerra, alleging there was a defect in the DES which rendered dealers unable to transfer its new Title 1 firearm to its customers. (SAC, ¶ 69, 2 AA 137.) Franklin

Armory alleges that this letter triggered a mandatory duty under various Penal Code statutes on the part of Respondents to modify the DES to correct this alleged defect and that the failure to do so in a timely manner deprived Franklin Armory of profits from lost sales of the Title 1. (SAC, ¶¶ 58-59, 105, 145, 157, 2 AA 136, 143, 151-152.)

Jay Jacobson, the President and owner of Franklin Armory, testified that the Title 1 was designed with a 16-inch barrel and a padded buffer tube instead of a stock. Without a stock, it would not be intended to be fired from the shoulder and thus not a rifle under the statutory definition of "rifle." (Jacobson Dep. p. 9:23-10:4, 21:12-15, 103:4-24, 6 AA 794-796, 814.) "Rifle" means a weapon "intended to be fired from the shoulder." (Pen. Code, § 17090.) The Title 1 was a long gun. "Long gun" means any firearm that is not a handgun or a machinegun. (SAC, ¶¶ 23-24, 2 AA 126-127, Pen. Code, § 16865.)

Blake Graham, a Special Agent Supervisor in the Bureau with expertise in firearms identification, testified that the Title 1 was an AR-15 style firearm with a rifle barrel length but without a traditional stock. (Graham Dep. pp. 8:24-9:10, 11:10-18, 13:3-7, 22:18-23:25, 34:15-35:4, 38:12-40:16, 78:13-20, 6 AA 833-836, 839-845, 850.)

With the Title 1 not technically a "rifle" under the statutory definition, it would not be considered an assault weapon as defined under the version of Penal Code Section 30515 in effect up until August 6, 2020, because that definition applied only to

"rifles." (Former Pen. Code, § 30515, subd. (a)(1)-(3).) On August 6, 2020, the Governor signed SB 118 which included amending the Penal Code section 30515 definition of an assault weapon to add a "centerfire firearm that is not a rifle, pistol, or shotgun." (Pen. Code, § 30515, subd. (a)(9)-(11).) With this change in definition, the Title 1 was rendered a banned assault weapon on August 6, 2020. (SAC, ¶ 112, 2 AA 144.)[3]

The DES was established pursuant to Penal Code section 28205. (See Cal. Code Regs., tit. 11, § 4200; citing Pen. Code, § 28205.) Penal Code section 28205 states in pertinent part that, ". . . except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department." (Pen. Code, § 28205, subd. (c).) The DES is a web-based application used by California firearms dealers to submit firearm background checks to the Department to determine if an individual is eligible to purchase, loan, or

[3] Franklin Armory infers wrongdoing by Department employees' support for the passage of SB 118. However, no wrongdoing or liability can be premised on a Department employee advocating for firearms legislation, including SB 118, under the *Noerr-Pennington* doctrine. *Noerr-Pennington* immunity applies to "virtually any tort, including unfair competition and interference with contract." (*Premier Medical Management Systems v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 478; *Manistee Town Ctr. v. City of Glendale* (9th Cir. 2000) 227 F.3d 1090, 1092.) "The doctrine immunizes petitions directed at any branch of government, including the executive, legislative, judicial and administrative agencies." (*Id.*) "*Noerr-Pennington* applies to conduct by both private and government actors." (*Committee to Protect our Agricultural Water v. Occidental Oil and Gas* (E.D. Cal. 2017) 235 F.Supp.3d 1132, 1155.) In addition, neither a public entity nor a public employee is liable for an injury caused by the adoption of an enactment. (Gov. Code, §§ 818.2, 821.)

transfer a handgun, long gun, and ammunition. (Mendoza Dec., ¶ 3, 6 AA 785.) A primary purpose of a background check is to notify the dealer if a prospective firearm purchaser is prohibited by law from possessing a gun. (*Bauer v. Becerra* (9th Cir. 2017) 858 F.3d 1216, 1219.)

The alleged defect in the DES was that the gun type drop-down menu for long guns that a dealer would select from while processing a transfer included only options for rifle, shotgun, or rifle/shotgun combination. Since the Title 1 was not technically a "rifle" under the statutory definition, Franklin Armory contends that a dealer could not process a Title 1 for transfer unless the DES was modified to add an "other" option to this drop-down menu. (SAC, ¶¶ 58, 69, 2 AA 136-137.) Appellants have not identified any statute or other authority that requires that a firearm being processed for transfer in the DES fit the statutory definition of "rifle" in order to be processed as such. The version of the DES long gun drop-down menu that had three options (rifle, rifle/shotgun combination, or shotgun) had been in place since at least 2015. (Mendoza Dec., ¶ 6, 6 AA 786.)

Before Franklin Armory's counsel sent the letter alleging a defect in the DES in October 2019, Franklin Armory filed another action in Sacramento Superior Court also alleging that the Title 1 was not a "rifle" but seeking clarification from the court as to whether it was an illegal assault weapon due to an alleged fear of prosecution for selling it. (*Franklin Armory v. State of California et al.*, Sacramento Superior Case No. 2018-00246584, FAC,

6/26/19, ¶¶ 66, 73-74, 77-78, 85, 95, 97-98, 5 AA 593, 606-610; Jacobson Dep. pp. 85:25-86:19, 87:8-88:7, 94:5-95:7, 6 AA 806-811.) After the court sustained a demurrer with leave to amend, Franklin Armory dismissed the action on October 3, 2019. (5 AA 631, 634.)

Mr. Jacobson admits there was no mention of any issue with the DES in the Sacramento action and that he was unaware of any issue with the DES during that time in terms of processing a Title 1 in the DES. (Jacobson Dep. p. 96:10-19, 97:6-19, 6 AA 812-813.) Mr. Jacobson understood that for years since the DES was put in use, stockless firearms such as lower receivers, barreled receivers and pistol grip shotguns were processed in the DES as rifles or shotguns respectively even though they did not meet the statutory definition. (Jacobson Dep. pp. 40:16-25, 50:19-51:1, 57:6-58:10, 56:8-25, 6 AA 800-803.) Mr. Jacobson testified that Mr. Graham told him that this practice was the status quo. (Jacobson Dep. pp. 60:21-61:8, 6 AA 804-805.)

The regular process for a California resident to purchase a Franklin Armory firearm would first require the person to purchase the firearm paying the full price. (Jacobson Dep. p. 154:24-155:15, 6 AA 825-826.) Franklin Armory would then obtain an online verification number from the Department which would be provided to the California licensed dealer when shipping the firearm to them. (Jacobson Dep. p. 155:16-156:7, 6 AA 826-827; SAC, ¶¶ 1, 3, 35, 2 AA 122, 129; Pen. Code, §§ 28050, subd. (b), 27555, subd. (a)(1).).)

The purchaser then would go to the dealer and provide information for the background check that would then be transmitted to the Department. (Jacobson Dep. p. 156:8-18, 6 AA 827.) In transmitting this information to the Department, a dealer agrees that "all of the information I submit to the Department through the DES shall be true, accurate, and complete to the best of my knowledge." (Cal. Code Reg., tit. 11, § 4210, subd. (a)(6).) The Department then reviews the information provided and advises the dealer if grounds exist for denying the transfer of the firearm to the purchaser. (Pen. Code, §§ 28215, 28210, 28220.) If these requirements have been satisfied and the Department has not indicated grounds for denying the transfer, the dealer may deliver the firearm to the purchaser. (Pen. Code, §§ 26815, 27540, 28255.)

If a person is found ineligible to receive a firearm, they may appeal the decision and bring an action for an order directing approval of the transfer. (28 C.F.R., § 25.10, subd. (f); SAC, ¶ 49, 2 AA 135.) If a person is found ineligible to receive a firearm, the dealer typically returns the firearm to the seller, and the purchaser would get a refund minus a restocking fee. (Pen. Code, § 28050, subd. (d); Jacobson Dep. p. 161:11-15, 6 AA 828.)

Franklin Armory does not assert that anyone ever actually purchased a Title 1 firearm and attempted to process a transfer of the Title 1 in the DES through a licensed firearms dealer. Rather, Franklin Armory alleges that individuals "placed deposits" for the Title l firearm. (SAC, ¶ 113, 2 AA 144.)

After introducing the Title 1 in October 2019, Franklin Armory communicated online that it was taking $5 online deposits for the Title 1. The $5 deposit was refundable and there was no requirement for any person placing a deposit to complete a purchase. (Jacobson Dep. p. 116:1-117:17, 6 AA 815-816.) When a person was going through the online deposit process, the purchase price of the Title 1 firearm did not appear on the screen, invoice or sales order. (Jacobson Dep. p. 122:6-123:12, 124:11-20, 6 AA 817-819.) Mr. Jacobson solicited submission of the deposits for the Title 1 without the intent of actually shipping them. (Jacobson Dep. p. 147:17-23, 6 AA 824.)

When asked why he did not go through the regular sales process for a Title 1 by having a dealer submit a Title 1 for transfer, Mr. Jacobson testified "that's not an avenue that I'm allowed to take from a standpoint of the dealers themselves have to make that decision." (Jacobson Dep. pp. 174:15-175:12, 6 AA 829-830.)

1. <u>Modification of the DES</u>

The issue regarding the Title 1 was first brought to the attention of then Assistant Bureau Chief Allison Mendoza in the latter part of 2019. (Mendoza Dec., ¶¶ 6-7, 6 AA 786.) She became Director of the Bureau in March 2023, and served as Assistant Bureau Chief from 2015 until March 2023. (At some point, the title of this position changed to Assistant Bureau Director.) As the Assistant Bureau Chief/Director, she was responsible for managing all activities under the Bureau's

Regulatory Branch including management and oversight of the DES. (Mendoza Dec., ¶¶ 1-3, 6 AA 784-685.)

In her declaration in support of the summary judgment motion[4], Director Mendoza states that, at any given time, there are numerous pending requests for enhancements to be made to the DES. Such requests can arise from, among other things, new or amended statutes, new or amended regulations, court decisions, and technological advancements, to name a few. In her role as Assistant Bureau Chief/Director, she was involved in the decision-making process relating to DES enhancement requests. The decision-making process as to whether to move forward with a DES enhancement often involves the Bureau, the Department's Application Development Bureau (ADB), the Department's attorneys, and occasionally higher levels within the Department, such as the DLE, the California Justice Information Services Division (CJIS), and the Directorate Division. This process as to a proposed enhancement can include deciding whether to move forward with the enhancement as well as the parameters of the enhancement and timeline for completion and deployment. This process requires the relevant parties within the Department to engage in a balancing of multiple factors and a weighing of competing priorities among the multiple proposed enhancement requests pending at any given time. These considerations include enhancements mandated by statutes, regulations, or

[4] Franklin Armory deposed Director Mendoza after the filing of the summary judgment motion.

court orders, allocation of available resources for a particular enhancement (such as the required number of personnel it will take to complete the project), the available budget for such an enhancement, and the time it will take to complete said enhancement. Director Mendoza notes that considerations of public safety are very important and any proposed enhancement must be evaluated in terms of the certainty that it will not compromise the Department's ability and responsibility to ensure public safety. (Mendoza Dec., ¶¶ 4-5, 6 AA 785-786.)

In the latter part of 2019, the Bureau initiated a review to evaluate the resources required for a potential DES enhancement to add an "other" option in the gun type drop-down menu in the "Dealer Long Gun Sale" transaction type. This review required the leadership of the Bureau, in collaboration with ADB and the Department's attorneys, to engage in a balancing of multiple factors and a weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time. The Department also evaluated and weighed the allocation of available resources to such an enhancement, such as the number of personnel required, budgeting of the enhancement, and the time it would take to complete said enhancement. The onset of the COVID-19 pandemic in March 2020 presented additional difficulties in being able to staff such a DES enhancement. (Mendoza Dec., ¶ 8, 6 AA 786-787.)

ADB undertook a review of what would be required to add the "other" option to the long gun type drop-down menu. ADB

reported back that it would take many months to implement this enhancement, and would require well over a dozen personnel, many of whom would have to be diverted from other projects. Implementing this DES enhancement would have required changes to many other applications and databases in addition to the DES. (Mendoza Dec., ¶ 9, 6 AA 787.)

For these reasons, ADB additionally explored the possibility of a DES enhancement that was reduced in scope, temporary, and applicable to only the Title 1 firearm. Under this proposal, a permanent enhancement would be implemented at a later date. ADB estimated such an enhancement would take a few months. ADB also advised that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 firearm in the DES until a permanent enhancement was implemented. Such operational difficulties would have raised significant public safety concerns. These factors, including the public safety concerns, were discussed within the Department, which ultimately decided to not immediately proceed with the temporary DES enhancement. (Mendoza Dec., ¶ 10, 6 AA 787.)

After SB 118 was signed into law on August 6, 2020, rendering the Title 1 a prohibited assault weapon, the Department decided, after weighing competing priorities among the multiple proposed DES enhancements pending at that time in the middle of the COVID-19 pandemic, to implement at a later date the DES enhancement to add an "other" option in the long

gun type drop-down menu. This enhancement was completed on October 1, 2021. (Mendoza Dec., ¶ 11, 6 AA 787-788.)

Cheryle Massaro-Florez, an Information Technology Supervisor II who works in the Bureaus' firearms software developments unit, oversaw the enhancement project to add the "other" option in the DES. (Massaro-Florez Dep.1 (12/28/21), pp. 18:12-21,19:2-12, 30:19-31:10, 6 AA 856-857, 860-861.) The work on this enhancement project took from July 1, 2021, to October 1, 2021. (*Id.* at pp. 68:25-69:10, 6 AA 876-877.) Her entire staff of at least 12 people worked on this project along with staff from the firearms application support unit and the Bureau. (*Id.* at pp. 36:18-37:25, 6 AA 864-865.) The project was done in four phases including analysis, build, system integration and testing. (*Id.* at p. 94:6-24, 6 AA 883.) Ms. Massaro-Florez testified that this project was complicated because it required not only modifications in the DES but several other applications and databases. (*Id.* at pp. 57:14-60:11, 61:13-62:5, 91:3-92:21, 6 AA 868-873, 880-881.) Christina Rosa-Robinson, an Information Technology Specialist who was involved in all stages of the enhancement project referred to it as a big undertaking. (Rosa-Robinson Dep. pp. 11:14-12:5, 13:9-14, 18:10-19:5, 25:23-26:9, 52:13-23, 6 AA 894, 897-898, 901-902, 905.)

2. <u>Order Granting Summary Judgment</u>

At the time of the motion for summary judgment, there were three remaining claims asserted by Franklin Armory against only the Department and former Attorney General

Becerra. In its July 11, 2024, ruling granting summary judgment, the trial court evaluated whether the Penal Code sections relied upon by Franklin Armory (Pen. Code, §§ 28155, 28205, 28215, 28220) established a mandatory duty to have modified the DES to add an "other" option and concluded that the operation of the DES, "including the implementation of changes, is discretionary. . ." (SJ Order, p. 4, 2nd ¶; 19 AA 2138.) The court noted that:

> "To the extent DOJ was required to implement an electronic reporting system, it did so by implementing the DES, which has existed since 2003. How DOJ implements the reporting system, including what changes to make in response to the emergence of a new firearm type, is left in its discretion as the Penal Code provisions do not mandate any 'particular action' in such a situation."

(*Id.* (citations omitted).)

The court also noted that Franklin Armory acknowledged that Penal Code section 28205 grants the Department authority to implement a variety of alternative means to allow for processing of Title 1 firearms "which confirms that DOJ has discretion over changes in DES." (*Id.*)

The trial court further held that the Penal Code sections at issue did not satisfy the requirement to be designed to protect against the risk of the particular kind of injury alleged herein because said sections "were designed to protect public safety, not to preserve the financial interests of firearms dealers." (SJ Order, p. 4, 3rd ¶; 19 AA 2138 (citation omitted).)

The trial court noted that Franklin Armory "does not assert liability against DOJ for the three remaining causes of action"

and therefore it "effectively concedes that DOJ is not liable. Therefore, DOJ is not liable as a matter of law." (SJ Order, p. 4, last sentence-p. 5, 1st ¶; 19 AA 2138; citing Opp. to SJ, 11:2-7, 6 AA 968.)

The trial court then proceeded to analyze discretionary immunity under Government Code section 820.2 concluding that "section 820.2 precludes liability for the challenged conduct as a matter of law." (SJ Order, p. 6, last ¶; 19 AA 2140.) In reaching this conclusion the court held that:

> "The evidence shows that Defendants exercised discretion by initiating a review to evaluate the resources required for a potential DES enhancement to add a 'other' option." (Mendoza Decl. ¶8. [6 AA 786-787]) This involved a balancing of multiple factors and a weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time." (Ibid.) Defendants also evaluated and weighed the allocation of available resources to such an enhancement, such as the number of personnel required, budgeting of the enhancement, and the time it would take to complete said enhancement. (Ibid.)
>
> As a temporary alternative, Defendants considered the potential of doing some sort of free-form field for dealers to type in something specific related to the Franklin Armory Title 1. (Mendoza Depo., p. 141:1-12. [10 AA 1314]) However, allowing dealers to type in anything would have made it very difficult for us to be able to track those firearms and identify those firearms in the systems. (Id. at 145:17-21.) Defendants ultimately decided not to implement this particular change due to the anticipated operational difficulties and public safety concerns. (Mendoza Decl. ¶ 10 [6 AA 787].)
>
> Defendants ultimately decided to add a 'other' option to the DES application after SB 118 was passed, upon weighing competing priorities among the multiple information technology projects pending at that time in the middle of the COVID-19 pandemic. (Mendoza Decl. ¶ 11 [6 AA 787-788].)"

(SJ Order, p. 5, last ¶ - p. 6, ¶¶ 1-2; 19 AA 2139-2140.)

The court concluded that, "these facts show that changing the DES is a policy-level decision requiring the exercise of discretion, rather than a ministerial implementation of an existing directive." (*Id.* at p. 6, ¶ 3; 19 AA 2140.) The court noted that Franklin Armory did "not dispute that the process involves considerations of competing interests, resource allocation, budget constraints, and the like." (*Id.*)

V

DISCUSSION

A. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT

1. Standard of Review

"This court reviews de novo the trial court's decision to grant summary judgment and is not bound by the trial court's stated reasons or rationales." (*Kwok v. Transnation Title Ins.* (2009) 170 Cal.App.4th 1562, 1567.) "We accept as true the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences that can be drawn from them. However, to defeat the motion for summary judgment, the plaintiff must show 'specific facts,' and cannot rely upon the allegations of the pleadings." (*Lowery v. Kindred Healthcare* (2020) 49 Cal.App.5th 119, 123.) A reviewing court accepts as undisputed fact those portions of the moving party's evidence that are uncontradicted by the opposing party. (*Hersant v. California Department of Social Services,* (1998) 57 Cal.App.4th 997, 1001.)

Summary judgment motions serve the purpose to "expedite litigation and eliminate needless trials." (*Continental Casualty v. Superior Court* (2001) 92 Cal.App.4th 430, 438.) "Summary judgment is now seen as a particularly suitable means to test the sufficiency of the plaintiff's or defendant's case." (*Perry v. Bakewell* (2017) 2 Cal.5th 536, 542.)

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) The summary judgment law does not require "a defendant moving for summary judgment to conclusively negate an element of the plaintiff's cause of action. In this particular too, it now accords with federal law. All that the defendant need do is show that one or more elements of the cause of action cannot be established by the plaintiff." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 854 (citations omitted).) A defendant may also meet its burden by showing that "there is a complete defense to the cause of action." (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 997.)

Once the defendant has made such a showing, the burden shifts to the plaintiff to set forth the specific facts showing that a triable issue of material fact exists. (*Id.*) Thus, to avoid summary judgment, "plaintiffs must produce admissible evidence raising a triable issue of fact." (*DiCola v. White Bros.* (2008) 158 Cal.App.4th 666, 683.) A party cannot avoid summary judgment

based on mere speculation and conjecture. (*Jones v. P.S. Development* (2008) 166 Cal.App.4th 707, 718.)

In order for an issue to be material, it must "relate to a claim or defense in issue which could make a difference in the outcome." (*Mallett v. Superior Court* (1992) 6 Cal.App.4th 1853, 1863-1864.) "Only material factual disputes bear any relevance. No amount of factual conflict upon other aspects of the case will preclude summary judgment." (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1379.)

2. The Penal Code Statutes Cited by Franklin Armory Did Not Establish a Mandatory Duty upon the Department, or its employees, to Modify the DES to Add an "Other" Option Before the Title 1 was Banned

Government Code section 815 declares that, "except as otherwise provided by statute, public entities are not liable for a tortious injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code § 815, subd. (a)). The California Supreme Court has repeatedly and clearly held that, "under the Government Claims Act (Govt. Code, § 810 et seq.), there is no common law tort liability for public entities in California; instead, such liability must be based on statute." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.)

The intent of the Government Claims Act is "not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances." (*DiCampli-Mintz v. County of*

Santa Clara (2012) 55 Cal.4th 983, 991.) "Thus, in the absence of some constitutional requirement, public entities may be liable only if a statute declares them to be liable." (*County of Los Angeles v. Superior Court (Terrell R.)* (2002) 102 Cal.App.4th 627, 637.) The applicable enactment must be alleged in specific terms. (*Id.* at p. 638.) Every fact material to the existence of its statutory liability "must be pleaded with particularity." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 138.)

Under Government Code section 815.2, public entities may be liable for acts of their employees but are not liable if the employee's act or omission would not give rise to a cause of action against that employee or if the employee is immune from liability. (*Walker v. County of Los Angeles* (1987) 192 Cal.App.3d 1393, 1397.) "A public employee is not liable for an injury caused by the act or omission of another person." (Gov. Code, § 820.8.)

Liability under section 815.2 depends on whether a public employee breached a duty owed to plaintiff. (*Hoff v. Vacaville Unified* (1998) 19 Cal.4th 925, 933.) "The non-action of one who has no legal duty to act is nothing." (*People v. Heitzman* (1994) 9 Cal.4th 189, 198.) "Absence of duty bars recovery for intentional torts as well as for negligence." (*Gregory v. Cott* (2014) 59 Cal.4th 996, 1011-1012.)

> "As a rule, one has no duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act."

(*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1128-1129.) "A 'special relationship' exists if and only if an injured person demonstrates the public officer assumed a duty toward him greater than the duty owed to another member of the public." (*Walker*, *supra*, 192 Cal.App.3d at p. 1398.)

Here, since there is no common law tort liability for public entities, the SAC fails to state a cause of action against the Department because interference with contract and prospective economic advantage claims are common law torts. (*Della Penna v. Toyota Motor Sales* (1995) 11 Cal.4th 376, 381["interference torts" which includes interference with contract and interference with prospective economic relations are based on common law].)[5]

Franklin Armory attempts to predicate liability based on the failure of the Department and its employees, including former Attorney General Becerra, to modify the DES to add an "other" option after the Title 1 was introduced in October, 2019, and before the Title 1 was banned by the passage of SB 118. However, the Penal Code sections relied upon by Franklin Armory (Pen. Code, §§ 28155, 28205, 28215, 28220) did not impose a duty to modify the DES but rather conferred discretionary authority for Department employees to determine if and/or when the DES should have been modified to add an "other" option.

[5] A summary judgment motion "necessarily includes a test of the sufficiency of the complaint." (*Centinela Hospital v. City of Inglewood* (1991) 225 Cal.App.3d 1586, 1595.)

A potential statutory basis for liability against a public entity is evaluated under the elements set forth in Government Code section 815.6. "A private cause of action lies against a public entity only if the underlying enactment sets forth the elements of liability set out in section 815.6." (*Guzman, supra,* 46 Cal.4th at p. 897.) The requirements of section 815.6 must be satisfied in order to create a private right of action for damages. (*Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 632.) Whether an enactment creates a mandatory duty is a question of law. (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499.)

> "First and foremost, application of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion."

(*Id.* at p. 498 (emphasis in original).) "Therefore, an enactment's use of mandatory language such as "shall" is not dispositive. An enactment creates a mandatory duty only where the commanded act does not lend itself to a normative or qualitative debate over whether it was adequately fulfilled." (*County of Los Angeles v. Superior Court (Faten)* (2012) 209 Cal.App.4th 543, 546.)

"If a statute does not require that a 'particular action' be taken, section 815.6 does not create the right to sue a public entity." (*Shamsian, supra,* 136 Cal.App.4th at p. 632.)

"Courts have construed this first prong rather strictly, finding a mandatory duty only if the enactment affirmatively imposes the duty and provides implementing guidelines." (*Guzman*, *supra*, 46 Cal.4th at p. 898.) "The mandatory nature of the duty must be phrased in explicit and forceful language." (*Id.* at p. 910.) A mandatory duty cannot be implied. (*Id.* at p. 911.)

Here, the Penal Code section dealing with the DES is section 28205, which states in pertinent part, "*except as permitted by the department*, electronic transfer shall be the exclusive means by which information is transmitted to the department." (Pen. Code, § 28205, subd. (c) (emphasis added).)[6]

In interpreting statutory provisions, a court's "fundamental task is to determine the Legislature's intent and give effect to the law's purpose." (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 633-634.) "If the statutory language is clear and unambiguous our inquiry ends. In that case, the plain meaning of the statute is controlling, and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Id.* at p. 634.)

Here, the plain meaning of the language in section 28205 does not establish a mandatory duty to have modified the DES to add an "other" option. First, as required by *Haggis* and *Shamsian*, it does not require that a particular action be taken as

[6] The complete text of subdivision (c) states: "On or after January 1, 2003, except as permitted by the department, electronic transfer shall be the exclusive means by which information is transmitted to the department. Telephonic transfer shall not be permitted for information regarding sales of any firearms." (Pen. Code, § 28205, subd. (c).)

to how to set up the DES. For example, it does not specify a particular action with regard to entry of information as to gun type, nor does it address provision of additional information such as rifle, rifle/shotgun or shotgun or whether inclusion of such information would need to match the statutory definition of each category. The plain meaning of the language "except as permitted by the department" is that the Department has discretion to permit transmission by non-electronic means (with the exception of a telephonic transfer) although it has not done so. In this regard, use of the word "shall" is not dispositive when read together with the "except as permitted by the department" language. Nevertheless, it is undisputed that the Department has required use of the DES for processing firearms transfers.

Second, as required by *Guzman*, section 28205 does not provide "implementing guidelines" or phrase the nature of a duty in "explicit and forceful language." As the above discussion illustrates, a logical reading of this general language is that implementation of setting up the DES is left to the discretion of the Department. The only way to glean a duty to modify the DES to add an "other" option would be to imply one. However, *Guzman* makes clear that a mandatory duty cannot be implied. Furthermore, to the extent there was a duty to set up and operate the DES, it is undisputed that the Department did so.

Penal Code section 28245 conclusively removes any doubt that acts or omissions pursuant to section 28205 were discretionary and did not establish a duty to modify the DES.

Section 28245 explicitly states that acts or omissions pursuant to section 28205 as it pertains to long guns shall be deemed to be discretionary under the Government Claims Act:

> "Whenever the Department of Justice acts pursuant to this article as it pertains to firearms other than handguns, the department's acts or omissions shall be deemed to be discretionary within the meaning of the Government Claims Act . . ."

(Pen. Code, § 28245.)

First, both sections 28205 and 28245 are part of the same article. (Article 3. Submission of Fees and Firearm Purchaser Information to the Department of Justice.) Second, the plain meaning of the language "as it pertains to firearms other than handguns" is that section 28245 applies to long guns. Third, section 28245 applies to acts or omissions making clear that it applies to the alleged failure to modify the DES. Fourth, the specific reference to the Government Claims Act makes clear that it applies to the monetary damages claims herein as opposed to claims outside the Government Claims Act such as for mandamus or declaratory relief.

In addition, the allegations of the SAC show that Franklin Armory agrees that section 28205, subdivision (c), confers discretionary authority, asserting that the alleged inability to process a Title 1 in the DES "could also be alleviated if the Department authorizes any of a multitude of alternative means pursuant to the authority granted it by Penal Code section 28205, subdivision (c) . . ." (SAC ¶ 66, 2 AA 137.) Franklin Armory's brief again confirms this discretionary authority to authorize

"alternative means for submitting the required information." (App. Brf., p. 17, fn 1, last two sentences.)

Franklin Armory further illustrates the discretionary authority to operate and maintain the DES by stating that the Department could do away with the rifle, rifle/shotgun, shotgun drop-down menu altogether stating:

> "Significantly, while the "type" of firearm (e.g., "long gun" or "handgun") is required, the "subtype" [i.e. rifle, rifle/shotgun, shotgun] of a firearm is not mandated by Penal Code section 28160, subdivision (a), or any other provision within Penal Code sections 28200 through 28255."

(SAC, ¶ 45, 2 AA 134.)

Franklin Armory's opposition to the summary judgment motion and its brief herein again confirm this discretionary authority to remove what it refers to as the "subtype" dropdown menu altogether. (App. Brf., p. 17, fn 1, first two sentences, Opp to SJ, p. 8:11-18, 6 AA 965.)

With regard to the inclusion of the gun type in the DES, Franklin Armory conceded in opposition to the summary judgment motion and again in its brief that the DES did include the gun type stating that when a dealer "makes a DES entry, the system requires a designation of "gun type" (i.e. "long gun" or "handgun"). After selecting "long gun," the DES then populates the long gun (or "subtype") menu which, prior to October 1, 2021, contained the three options for rifle, shotgun or rifle/shotgun combination. (App. Brf., p. 16, 1st ¶, Opp. to SJ, p. 7:19-23.)

Franklin Armory also asserts Penal Code section 28155 as a basis for establishing a mandatory duty. Section 28155 simply

states: "The Department of Justice shall prescribe the form of the register and the record of electronic transfer pursuant to Section 28105." The plain meaning of the language in Section 28155 clearly does not establish a mandatory duty to have modified the DES to add an "other" option before August 6, 2020.

First as required by *Haggis* and *Shamsian*, it does not require or specify that a particular action be taken with regard to what the form should contain. Second, as required by *Guzman*, the general, one sentence language of Section 28155 does not provide "implementing guidelines" or phrase the nature of the duty in "explicit and forceful language." Thus, the logical reading of this language is that the contents of the form were to be left to the discretion of the Department. Use of the word "shall" in section 28155 does not change this conclusion because it merely indicates that it is the Department, as opposed to the legislature or another agency, who is authorized to determine the setup and format for entry of information in the DES. The lack of any specificity as to how this is to be done makes clear that it is left to the Department's discretion to decide the format and information to be included in the DES.

Third, it is undisputed that the register and record of electronic transfer was contained within the DES and that the authority to set up and operate the DES in this manner falls under section 28205. In fact, as discussed above, Franklin Armory concedes that the DES contained the required information as to firearm type and that the Department had

discretion as to the register or the record of electronic transfer information to be included in the DES.

Thus, Franklin Armory concedes that the firearm type (e.g. "long gun") was included in the DES and that there was no requirement to include the drop-down menu with options for rifle, shotgun, or rifle/shot gun combination in the long gun menu at all. As a result, Franklin Armory effectively agrees that the inclusion of this drop-down menu going back to at least 2015 was discretionary and that the Department had discretion to remove it altogether.

Any discussion about whether the form should have contained different or additional information requires a normative or qualitative debate over whether such information was adequate, which precludes a finding of a mandatory duty. A duty to provide different or additional information in the DES based on the general language of section 28155 cannot be implied.

Franklin Armory's allegation that Respondents should have exercised their discretion to provide an alternative or modify the DES sooner illustrates that section 28205 does lend itself to a normative or qualitative debate over the set up and operation of the DES which precludes a finding of a mandatory duty.

The other two sections relied upon by Franklin Armory, Penal Code sections 28215 and 28220, are not discussed in Franklin Armory's brief and clearly do not impose any duty

relative to the set up and operation of the DES. Penal Code section 28215 merely describes what the dealer and applicant are supposed to do in submitting an application for approval of a firearm transaction (e.g. the dealer requires the purchaser to sign the record of transfer.) (Pen. Code, § 28215, subd. (a).) Penal Code section 28220 sets out procedures to follow upon submission of firearm purchaser information to the Department including examination of records pertaining to a purchaser and submission of information to a dealer relating to whether the purchaser is prohibited from receiving a firearm. There is no language mandating how to set up or modify the DES at all.

A second, but equally important requirement for establishing a mandatory duty is that the duty be designed to protect against the particular kind of injury the plaintiff suffered. (*Haggis, supra,* 22 Cal.4th at p. 499.) In this regard:

> "The plaintiff must show the injury is one of the consequences which the enacting body sought to prevent through imposing the alleged mandatory duty. Our inquiry in this regard goes to the legislative purpose of imposing the duty. That the enactment confers some benefit on the class to which plaintiff belongs is not enough; if the benefit is incidental to the enactment's protective purpose, the enactment cannot serve as a predicate for liability under section 815.6."

(*Id.*)

"Where the harm was not one of the evils sought to be prevented by the statute, there can be no governmental liability." (*Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198, 1203 [Enactments were designed to protect the public from

misleading or deceptive advertising promoting lottery games, not to safeguard the profits of gaming operators].)

Here, even if a duty to add an "other" option to the DES prior to August 6, 2020, existed, which it did not, said duty is not designed to protect against the particular kind of injury the plaintiff suffered, that is lost sales of the Title 1 before it was rendered illegal on August 6, 2020. The clear purpose of the DES is to conduct background checks of potential purchasers of firearms. Requiring an applicant to undergo a background check is "designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." (*People v. Alexander* (2023) 91 Cal.App.5th 469, 479.) As noted by the *Bauer* court, "we have recognized that public safety is advanced by keeping guns out of the hands of people who are most likely to misuse them for these reasons." (*Bauer, supra,* 858 F.3d at p. 1223; see also *People v. Correa* (2012) 54 Cal.4th 331, 342 [purpose of denying firearms to felons, who are considered more likely to commit crimes with them, is to protect the public].)

As discussed above, the trial court correctly concluded that the operation of the DES, including the implementation of changes, is discretionary. The trial court also correctly held that the Penal Code sections at issue did not satisfy the requirement that they be designed to protect against the risk of a particular kind of injury sought to be prevented by the enacting body. The injury alleged in this case is financial loss due to the inability to sell Title 1 firearms, whereas the relevant Penal Code provisions

were designed to protect public safety, not to preserve the financial interests of firearms dealers.

Franklin Armory conceded in its opposition to the summary judgment motion that it did not assert liability against the Department for the three remaining causes of action. Based on this concession, the trial court held that it "effectively concedes that DOJ is not liable. Therefore, DOJ is not liable as a matter of law."

Franklin Armory's brief confirms this concession addressing only the individual Department employees' entitlement to discretionary immunity. (App. Brf., p. 24, heading B.) However, Franklin Armory asserts that the same Penal Code statutes that the trial court determined did not establish a mandatory duty to modify the DES, did so with respect to Department employees.

Legally and logically, the same analysis of the same statutes also precludes, as a matter of law, a finding of a mandatory duty to modify the DES on the part of Department employees. First, "a public entity can only act through its employees." (*Yee v. Superior Court* (2019) 31 Cal.App.5th 26, 32, 40.) In this regard, the Second District Court of Appeal in *Hacala v. Bird Rides*, (2023) 90 Cal.App.5th 292, analyzed whether a statute or enactment establishes a mandatory duty or confers discretionary authority on public employees applying a Government Code section 815.6 mandatory duty analysis pursuant to *Haggis*. (*Id.* at pp. 305-306 [enactment at issue did not impose mandatory duty but rather granted discretionary enforcement authority

resulting in city employees entitlement to discretionary immunity].)

Similarly, in *California Highway Patrol v. Superior Court,* (2008) 162 Cal.App.4th 1144, the court applied a Government Code section 815.6 mandatory duty analysis to evaluate potential liability of both the California Highway Patrol (CHP) and the two named CHP officers determining that the enactment at issue "merely confers discretionary authority." (*Id.* at p. 1155 [CHP and its officers entitled to summary judgment].)

Second, as discussed above, a public employee has no duty to take affirmative action to assist another unless there is some relationship between them which gives rise to a duty to act. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1128-1129.) "This rule derives from the common law's distinction between misfeasance and nonfeasance, and its reluctance to impose liability for the latter." (*Id.* at p. 1129.)

Thus, in a case such as this alleging a public employee's failure to take action, there must be a legal basis establishing a duty on the part of a Department employee to have taken the action to modify the DES before the Title 1 was banned. Clearly, the writing of a letter by Franklin Armory's counsel demanding such a change cannot, as a matter of law, provide a basis for such a duty. Thus, there must be some statutory basis specifically imposing such a duty. Therefore, the mandatory duty discussion above also applies to an analysis of the potential duty of an employee, as was done in *Hacala* and *California Highway Patrol*.

The lack of a duty by the Department's employees provides an additional basis for affirming the granting of summary judgment. The trial court did not specifically determine that its finding of no duty under the subject Penal Code statutes provided a separate basis for summary judgment in favor of Department employees but rather proceeded to the discretionary immunity analysis. The California Supreme Court in *Caldwell v. Montoya*, (1995) 10 Cal.4th 972, noted "the general principle that the application of governmental immunity statutes should not be considered until it has been determined that the agency or official sued owes a 'duty' which would otherwise be actionable in tort" but that a court may depart from this doctrine for "expediency and judicial economy." (*Id.* at p. 978, fn. 3.) Nevertheless, summary judgment can be affirmed on any ground addressed in the trial court, even if not one of the trial court's stated grounds. (*Angelotti v. The Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1402.)

Franklin Armory seeks to avoid the clear determination that there was no mandatory duty to modify the DES by repeatedly referencing the prior demurrer and judgment on the pleadings rulings incorrectly asserting that these matters had been resolved relative to the summary judgment motion. However, summary judgment motions "are law and motion proceedings entirely distinct from an attack on a pleading by demurrer." (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 634, fn. 10.) The Second District Court of

Appeal in *O'Shea v. General Telephone*, (1987) 193 Cal.App.3d 1040, rejected the "appellant's repetitive assertion that the trial court was somehow bound by previous rulings on demurrers" in affirming the granting of summary judgment. (*Id.* at p. 1049; citing *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 877 [affirming judgment on the pleadings granted following the overruling of a demurrer on the same grounds].)

In addition, Franklin Armory incorrectly argues that the trial court had already determined there was a mandatory duty to modify the DES because these rulings were based on its allegations that are accepted as true on demurrers and motions for judgment on the pleadings. In this regard, Franklin Armory misstates Judge Chalfant's ruling, asserting that he ruled there was a mandatory duty to modify the DES. He did not. In fact, in his June 3, 2021, order he noted that "respondents argue that these statutes do not include any mandatory requirement that the Department operate the DES in any particular manner. They instead provide the Department with discretion to utilize the DES or another method" and stated: "This is true . . ." (Dem. Order, 6/3/21, p. 7, last two paragraphs; 3 AA 289.)

Judge Chalfant went on to note that "the DOJ has discretion in how it implements the electronic transfer system" but, based on *AIDS Healthcare Foundation v. Los Angeles County Dept. of Health*, (2011) 197 Cal.App.4th 693, the Department could not arbitrarily fail to act. Judge Chalfant ruled that the SAC sufficiently alleged an arbitrary failure to act. (Dem. Order,

6/3/21, p. 8, first three paragraphs; 3 AA 290.)[7] *AIDS Healthcare Foundation* dealt with a mandamus claim noting that mandamus will lie to command an exercise of discretion to take some action where there is an abuse of discretion. (*Id.* at p. 704.) In this context, "a decision is an abuse of discretion only if it is 'arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.)

Appellants reliance on *Mooney v. Garcia* (2012) 207 Cal.App.4th 229, is misplaced as it is also a mandamus case. (*Id.* at p. 232-233*; citing AIDS Healthcare Foundation, supra.*) Nevertheless, Appellants clearly misstate *Mooney* stating, "a public duty is discretionary only when the official must exercise significant discretion to perform it" differing significantly from the opinion which states, "even if mandatory language appears in the statute creating a duty, the duty is discretionary if the entity must exercise significant discretion to perform the duty." (*Id.* at p. 233.) The *Mooney* court denied mandamus relief finding that the subject enactment provided discretion (*Id.* at p. 234) and that the failure to act was not an abuse of discretion (*Id.* at p. 235).

[7] Franklin Armory also misstates the trial court's judgment on the pleadings ruling. For example, the trial court order states, "discretionary immunity does not apply because *the SAC* does not allege an exercise of discretion, but rather an outright refusal to abide by Penal Code mandates." (5 AA 725, 1st ¶, (emphasis added).) Thus, the ruling was clearly based on the allegations of the SAC.

Franklin Armory fails to address the clear current case law setting forth the requirements for establishing a mandatory duty but rather cites to a dangerous condition case from 1920 decided under the Pridham Act of 1911. (*Ham v. Los Angeles County,* (1920) 46 Cal.App. 148, 160, 161.) The Pridham Act was superseded by the Public Liability Act of 1923 which was in turn superseded by the Tort (now Government) Claims Act in 1963. (Gov. Code, § 835, Legislative Committee Comments.)

There are two fundamental problems with Franklin Armory's reliance on *Ham*. First, *Ham* involved potential liability under the statutory provisions of the 1911 Pridham Act, not the Penal Code statutes at issue in this case. Second, even if the *Ham* analysis could apply to this case, it actually supports Respondents because the *Ham* court found that the discretionary powers and duties of the County supervisors "absolved them from liability" because "it was a matter of discretion with the supervisors, not only as to the method of repair which they might adopt, but as to when the repairs should be made, or whether made at all." (*Ham v. Los Angeles County* (1920) 46 Cal.App. 148, 165.) [8]

[8] In affirming the denial of an application for rehearing, the Supreme Court noted that the portion of the opinion which relates to the failure to provide a barrier or warning signal was dictum. (*Id.* at p. 167-168.)

3. The Trial Court Correctly Held that Discretionary Immunity Under Government Code Section 820.2 Precludes Liability

The "most significant" of the Government Claims Act's immunity provisions confers a general immunity for discretionary acts taken within the scope of authority. This immunity was long recognized at common law and preserved in Government Code section 820.2. (*Leon v. County of Riverside* (2023) 14 Cal.5th 910, 928.) Government Code section 820.2 states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, *whether or not such discretion be abused*." (Gov. Code § 820.2 (emphasis added).)

"Immunity applies even to lousy decisions in which the worker abuses his or her discretion, including decisions based on woefully inadequate information." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1285 [immunity provided by sections 815.2 and 820.2 is broad and includes immunity for social workers' removal and placement decisions].) If an employee is immune, the employing entity has no liability under Government Code section 815.2. (*Id.* at p. 1287.)

Claims for interference with contract or prospective economic advantage are subject to the immunity provided by section 820.2. (*Lundeen Coatings Corp. v. Department of Water & Power* (1991) 232 Cal.App.3d 816, 834, fn. 11.)

One does not qualify for discretionary immunity "solely on grounds that the affected employee's *general course of duties* is

discretionary." (*Caldwell, supra,* 10 Cal.4th at p. 983 (emphasis in original).) A showing that "the specific conduct giving rise to the suit involved an *actual* exercise of discretion, i.e., a conscious balancing of risks and advantages" is required. (*Id.* (emphasis in original).) However, this showing "does not require a *strictly careful, thorough, formal, or correct* evaluation." (*Id.* (emphasis in original).)

The *Caldwell* court provided examples of lower-level or "ministerial" decisions that do not qualify for the immunity such as "a bus driver's decision not to intervene in one passenger's violent assault against another." (*Id.* at 981; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 793-795.) The *Caldwell* court cited *Thompson v. County of Alameda*, (1980) 27 Cal.3d 741, as an example of when the discretionary act statute does immunize officials and agencies. (*Caldwell, supra,* 10 Cal.4th at p. 982.) In *Thompson*, the court affirmed the sustaining of a demurrer finding that the County's decision to release a violent juvenile offender into his mother's custody, who later attacked the plaintiff, was immunized under section 820.2. (*Thompson, supra,* 27 Cal.3d at p. 747-749.)

A review of other cases that have applied the discretionary immunity statute to bar liability show that the process of deciding whether or not to undertake a project to modify the DES, and the timing thereof, clearly falls under the discretionary immunity. In *Curcini v. County of Alameda*, (2008) 164 Cal.App. 4th 629, the court affirmed the sustaining of a demurrer without

leave to amend finding that alleged fraud in the awarding of a public contract was barred under Government Code section 820.2. "Because the award of a public contract involves the exercise of discretion, the government employees and entities involved are immune from liability." (*Id.* at p. 648.) The immunity applied despite allegations that the defendants intended to "rig" the bid because to allow a cause of action based upon such allegations "would eviscerate the immunity provided by Government Code section 820.2 for the public employees' exercise of discretion." (*Id.* at pp. 648-649.)

In *Hacala*, the court affirmed the sustaining of a demurrer on behalf of the City of Los Angeles under Government Code Section 820.2. (*Hacala, supra,* 90 Cal.App.5th at p. 300, 306.) *Hacala* was based on an incident wherein one of the plaintiffs tripped on a vendor's electric scooter left on a City sidewalk. (*Id.* at p. 300.) Relying on *Posey v. State of California*, (1986) 180 Cal.App.3d 836, and *Bonds v. State of California,* (1982) 138 Cal.App.3d 314, the court concluded that the City was immune from liability because its employees had discretion but were not under a mandatory duty to remove improperly parked scooters. (*Id*. at p. 306.)

In *Posey*, CHP officers drove past a vehicle parked on a street shoulder but failed to stop, inspect or remove it. The plaintiff later collided with this vehicle. (*Posey, supra,* 180 Cal.App.3d at p. 841.) The *Posey* court affirmed the sustaining of a demurrer finding the immunity of Government Code section

820.2 "fully applicable" because the inspection and removal of vehicles under the applicable statute is a discretionary act. (*Id.* at p. 852.) The *Bonds* court similarly held that a decision whether to remove a stranded vehicle is an immunized discretionary action. (*Bonds, supra,* 138 Cal.App.3d at p. 322.)

In *Roseville Community Hosp. v. State of California*, (1977) 74 Cal.App.3d 583, the court affirmed the sustaining of a demurrer based on the discretionary immunity statute. (*Id.* at pp. 585, 590.) *Roseville Community Hosp.* was premised on the failure of the State and the Attorney General to take action to stop a health care service provider, who later was adjudicated as bankrupt, from operating. (*Id.* at p. 586.). In finding that Government Code section 820.2 immunity precluded liability, the *Roseville Community Hosp.* court stated:

> "Law enforcement and regulatory activity entail continual choices among priorities. A decision to devote available facilities and personnel to selected areas and to abstain from active pursuit of others is a policy or planning decision at a relatively high internal level."

(*Id.* at p. 590.)

Similarly, here, the Department's operation of the DES is clearly law enforcement and regulatory activity. One of the primary purposes of the DES is to conduct firearms background checks. Furthermore, as discussed above, Director Mendoza indicates that in the latter part of 2019, the Bureau initiated a review to evaluate the resources that would be required for a potential enhancement of the DES to add an "other" option in the drop-down menu which required the leadership of the Bureau, in

collaboration with the ADB and Department attorneys, to engage in the balancing of multiple factors and weighing of competing priorities among the multiple proposed DES enhancement requests pending at that time. The Department evaluated and weighed the allocation of available resources for such an enhancement, including the number of personnel required, budgeting of the enhancement and the time it would take to complete it which was complicated by the onset of the pandemic in March, 2020. The review indicated that the enhancement would take many months to implement requiring changes to many other applications and databases and would involve well over a dozen personnel many of whom would have had to have been diverted from other projects. (Mendoza Dec. ¶¶ 8-9, 6 AA 786-787.)

For these reasons, the Department explored the possibility of an alternative temporary enhancement applicable to the Title 1 only with a permanent enhancement to be implemented at a later date. However, the ADB determined that this proposal would present operational difficulties in properly recording the sales and transfers of the Title 1 in the DES which raised significant public safety concerns. Taking these factors into account, the Department decided not to proceed with the temporary enhancement. (Mendoza Dec. ¶ 10, 6 AA 787.)

After SB 118 was enacted on August 6, 2020, rendering the Title 1 a prohibited assault weapon, the Department weighed competing priorities among the multiple proposed DES

enhancements pending at the time in the middle of the pandemic and decided to implement the permanent enhancement to add the "other" option at a later date which occurred on October 1, 2021. (Mendoza Dec. ¶¶ 11, 6 AA 787-788.)

In this regard, the letter of Department attorney Patty Li, sent before the start of the pandemic, and the testimony of Cheryl Massaro-Florez that technical staff were working on a possible modification to the DES to add the "other" option in 2020 are consistent with Director Mendoza's statements that the top level officials at the Bureau in 2020 undertook a review of both a permanent and temporary enhancement which included having technical staff review what would be required for either modification. (Mendoza Dec. ¶¶ 8-11, 6 AA 786-788.)[9]

These factors clearly show that the Department engaged in a decision-making process considering multiple factors that were

[9] Per the court's 7/15/25 order, it should disregard the portions of Appellants' brief wrongly alleging that Respondents improperly withheld documents from discovery because it is based on discovery requests and responses including objections that were not in the record before the trial court and thus not properly before this court. This includes p. 18, second par., last sentence, p. 30, first par., second to last sentence phrase "and other evidence contradicting those claims" and footnote 7, starting with the second sentence. Furthermore, this argument is legally improper because Respondents timely objected to the subject discovery requests and Appellants never challenged the well taken objections by filing a motion to compel. It is factually improper because Appellants took multiple depositions, including Ms. Massoro-Flores who oversaw the enhancement project and Director Mendoza, where the temporary enhancement that did not go forward was discussed at length. For sake of brevity, Respondents will not repeat the matters set forth in the motion to strike and reply papers and incorporate said papers herein by reference.

reviewed and considered at a high level within the Department. As was the situation in *Roseville Community Hospital*, the Department was required to make choices among competing priorities considering multiple factors taking into consideration available facilities and personnel relative to the DES. The onset of the COVID-19 pandemic added to the difficulty and complexity in this decision-making process. Clearly, the Department demonstrated that a conscious balancing of risks and advantages took place.

While Franklin Armory takes issue with the Department's decision-making process and asserts that its decisions as to the timing of the DES modification were incorrect, *Caldwell* does not require a *strictly careful, thorough, formal, or correct* evaluation because this immunity was designed to protect against claims of carelessness, malice, bad judgment or abuse of discretion. (*Caldwell, supra,* 10 Cal.4th at pp. 983-984.) Franklin Armory has not and cannot controvert the fact that this decision making process occurred. Thus, the trial court correctly found that Respondents are entitled to immunity under section 820.2.

4. As an Alternative Ground for Affirming Summary Judgment, the Department Demonstrated that Franklin Armory Could Not Establish One or More Elements of the Interference Causes of Action

Assuming arguendo that the trial court's stated grounds for granting summary judgment were not correct, the Department showed that one or more elements of the interference causes of action cannot be established which provides an additional basis for affirming the granting of summary judgment.

> "Tortious interference with contractual relations requires "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage."

(*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1141.)

A tortious disruption of an *existing* contract is required. (*Della Penna, supra,* 11 Cal.4th at p. 392 (emphasis in original).) The existence of a contract requires parties capable of contracting; their consent; a lawful object; and a sufficient cause or consideration. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 21.) In determining whether a contract was formed, California law "places emphasis on the party's intent to be bound to the contract." (*Id.* at p. 22.) The parties must "have a present intention to be bound by their agreement . ." (1 Williston on Contracts (4th ed.) § 3:7; see also § 3:2 [both parties must manifest objectively an intent to be bound by the agreement].)

In other words, "whenever one of the parties to an agreement can terminate without consequence, an enforceable contract does not exist. It is clear that parties may not agree that one or both may walk away from all obligations without rendering the contract unenforceable." (*Woll v. U.S.* (Fed. Cl. 1999) 45 Fed.Cl. 475, 478; *affirmed Woll v. U.S.* (Fed. Cir. 2000) 251 F.3d 171.) "The fact that the buyer makes a deposit on goods to be manufactured does not establish that the parties made a contract for that purpose." (2 *Lawrence's Anderson on the*

Uniform Commercial Code (3d. ed.) § 2-204:137.) "Whether a contract is certain enough to be enforced is a question of law for the court." (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 348, fn. 1.)

Here, no valid contract existed. Franklin Armory admits that the $5 deposits were refundable and that there was no obligation for any person making a deposit to actually purchase the Title 1. Franklin Armory also admits there was no intent to ship any Title 1 firearm and a person would have to complete the full purchase before Franklin Armory would ship it. Clearly, there was no present intention by the parties to be bound to purchase a Title 1.

Furthermore, it is undisputed that the set up of the DES to include the gun type drop-down menu with rifle, rifle/shotgun and shotgun, had been in place since at least 2015, long before Franklin Armory introduced the Title 1 in October, 2019. Thus, the act of setting up the DES drop-down menu without the "other" option could not logically have been an intentional act designed to interfere with the sales of a gun that would not be offered for sale until years later. Such an assertion is inconsistent with a logical reading of the phrase "intentional act designed to induce." (See, e.g., *Nanko Shipping v. Alcoa Inc.,* (D. D.C. 2015) 107 F. Supp. 3rd 174, 182-183, reversed on other grounds in *Nanko Shipping, USA v. Alcoa, Inc.* (D.C. Cir. 2017) 850 F.3d 461, 467 [the court held that no claim for tortious interference with contract or prospective business advantage

could be stated when plaintiff's tortious interference claim rested "on alleged inaction."].)

Nor can non-compliance with an attorney demand letter from a gun manufacturer demanding a change in the DES to accommodate a new firearm logically be construed as converting an act that occurred years prior into a present intentional act of interference.

Even if inaction could be construed as an intentional act designed to induce a breach, there must be a statutory basis establishing a mandatory duty to modify the DES. As discussed above, the Penal Code statutes relied upon by Franklin Armory do not establish such a duty.

The above discussion also applies in precluding liability as to the intentional and negligent interference with prospective economic advantage claims. "A cause of action for tortious interference has been found lacking when either the economic relationship with a third party is too attenuated or the probability of economic benefit too speculative." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 515.) It must be "reasonably *probable* that the lost economic advantage would have been realized but for the defendant's interference." (*Youst v. Longo* (1987) 43 Cal.3d 64, 71 (emphasis in original).)

"The tort's requirements presuppose the relationship existed *at the time* of the defendant's allegedly tortious acts lest liability be imposed for actually and intentionally disrupting a

relationship which has yet to arise." (*Roy Allan Slurry Seal, supra,* 2 Cal.5th at p. 518 (emphasis in original).) "The defendant must have engaged in intentionally wrongful acts designed to disrupt the plaintiff's relationship." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1164.)

Additionally, a plaintiff must prove that the defendant "engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (*Della Penna, supra,* 11 Cal.4th at p. 393.) "An act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1142.) "The purpose of the independent wrongfulness requirement in economic interference torts is to balance between providing a remedy for predatory economic behavior and keeping legitimate business competition outside litigative bounds." (*Id.* at p. 1146.) This additional requirement also applies to a negligent interference claim. (*Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th 1179, 1185.) "Only defendants who have engaged in an unlawful act can be held liable for this tort." (*Korea Supply, supra,* 29 Cal.4th at p. 1164.)

The additional requirement of an independently wrongful act cannot be established because there was no act on the part of Respondents that could be construed as "unlawful" under the applicable Penal Code statutes that conferred discretion. Not taking action in response to the letter of Franklin Armory 's

counsel in October 2019, requesting modification of the DES in the time frame demanded by Franklin Armory cannot properly be construed as an unlawful act under this standard. Furthermore, since the statutory authority relative to the DES confers discretion on Department employees as to whether and when to modify the DES, not acting to modify the DES before the Title 1 was banned cannot be construed as an unlawful act.

In addition, these torts have traditionally protected the expectancies involved in "ordinary commercial dealings." (*Roy Allan Slurry Seal, supra,* 2 Cal.5th at p. 515.) The *Roy Allan Slurry Seal* holding supports a finding that all of the interference causes of action in this case should be precluded, as a matter of law, under the circumstances presented. *Roy Allan Slurry Seal* involved an interference with prospective economic advantage claim in the context of the bidding process for a public works contract. (*Id.* at pp. 509-510.) The *Roy Allan Slurry Seal* court noted that "the public works bidding process differs from the types of commercial transactions that traditionally have formed the basis for tort liability." (*Id.* at p. 519-520.) The court wrote that, "we must consider whether expanding tort liability in the area of public works contracts would ultimately create social benefits exceeding those created by existing remedies for such conduct, and outweighing any costs and burdens it would impose." (*Id.* at p. 520.) The court further noted that "courts must act prudently when fashioning damages remedies in an area of law governed by an extensive statutory scheme." (*Id.*)

The court rejected expanding tort liability to cover wrongful interference torts in the public contracts bid process context because it would provide little additional benefit in light of the extensive statutory scheme. (*Id.* at p. 521.)

Here, the firearms industry is "highly regulated." (*In re Firearm Cases* (2005) 126 Cal.App.4th 959, 985-986.) Respondents submit that expanding tort liability to cover wrongful interference torts in the firearms regulation context would provide little additional benefit in light of the extensive statutory scheme. The second reason for the *Roy Allan Slurry Seal* court's holding was that "the competitive bidding laws were enacted for the benefit of the public, not for the benefit or enrichment of bidders." (*Roy Allan Slurry Seal, supra,* 2 Cal.5th at p. 521.) Similarly, here, firearms laws were enacted to promote public safety for the benefit of the public, not for the benefit or enrichment of firearms manufacturers.

B. THE TRIAL COURT CORRECTLY GRANTED THE MOTIONS TO DISMISS AND FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

Appellants seek reversal of the orders dismissing the first, second, sixth, seventh and ninth causes of action based on their assertion of a present right to obtain an order enjoining enforcement of SB 118 so that individuals who made a $5 deposit relative to a Title 1 before August 6, 2020, can obtain possession of one now. (App. Brf., p. 35, last ¶ - p. 36, 1st ¶.) This assertion by appellants improperly asks the court to ignore the express language of SB 118 which clearly allows only those persons who

lawfully possessed a firearm rendered illegal by SB 118 prior to September 1, 2020, to keep it. (See Pen. Code, § 30685.) As discussed further below, a court "may not ignore the express language of a statute." (*All Towing Services v. City of Orange* (2013) 220 Cal.App.4th 946, 956.)

1. The Trial Court Correctly Granted the Motion to Dismiss the Causes of Action for Declaratory and Injunctive Relief (1st) and for Writ Of Mandate (2nd)

The first and second causes of action were dismissed per the court's January 27, 2022, order granting respondents' motion to dismiss. ((Dismissal Order), 5 AA 491-501.) Appellants incorrectly reference the trial court's order sustaining the demurrer to the first amended complaint (FAC) with leave to amend. (App. Brf., p. 34, last ¶, p. 35, first line; citing to 1/28/21 order re demurrer to the FAC, 1 AA 110-118.) First, this order did not result in the termination of any cause of action. Second, the filing of the SAC superseded the FAC. "Under such circumstances an appellate court will not consider the allegations of a superseded complaint." (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 76; citing *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884 ["Such amended pleading supplants all prior complaints."].) By filing the SAC, appellants waived their right to appeal any error in the sustaining of the first demurrer. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966, fn. 2.)

The motion to dismiss was brought on the ground that the Department "modified the DES by adding an Other option under the Gun Type menu, rendering the claims moot." (Dismissal

Order, p. 8, last ¶, 5 AA 498.) "When events render a case moot, the court, whether trial or appellate, should generally dismiss it." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574.) Trial court rulings on mootness are reviewed de novo. (*Id.* at p. 1582.)

A case is moot when a court ruling can have no practical impact or provide the parties effectual relief. (*Downtown Palo Alto Comm. for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, 391.) A mandamus action is moot where the act sought to be compelled has already been performed. (*Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App. 3d 140, 149.) When a case is moot, dismissal of the action is the proper remedy, rather than engaging in a futile exercise of assessing the case on the merits. (*Coalition for Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 945.)

An exception to dismissal for mootness may apply if there is a controversy between the parties that is likely to reoccur. (*Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480.)

The court noted that appellants did "not dispute that the Other option removes the technological barriers alleged" but that they asserted the exception to mootness that the controversy is

likely to reoccur.[10] (Dismissal Order, p. 9, last line- p. 10, ¶¶ 1-2, 5 AA 499-500.) However, the court held that this exception did not apply concluding that, "there is no evidence that the DOJ will modify the DES or issue future bulletins that improperly limit the use of the Other option or that it has a motive to do." (Dismissal Order, p. 11, 2d ¶, 5 AA 501.) Thus, the court concluded that appellants did not show that the controversy was likely to reoccur. (*Id.* at 4th ¶.)

Appellants' brief does not address the merits of this dismissal order or take issue with the court's finding as to mootness. The opposition to the motion to dismiss did not assert entitlement to an order enjoining SB 118 so that individuals who made Title 1 deposits before August 6, 2020, could obtain possession of one. (Opp. Motion Dismiss; 4 AA 409-426.)

2. <u>The Trial Court Correctly Granted the Motion for Judgment on the Pleadings Without Leave to Amend as to the Causes of Action for Violations of Procedural Due Process (6th), Substantive Due Process (7th) and Public Policy [taxpayer action] (9th)</u>

The standard of review for a motion for judgment on the pleadings is the same as a demurrer treating the pleadings as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*DiPirro v. American Isuzu Motors, Inc.* (2004) 119 Cal.App.4th 966, 972.) The review

[10] Appellants' opposition to the dismissal motion stated: "Petitioners do not inherently disagree with the dismissal of those claims" but they sought some assurance that the controversy would not reoccur. (Opp. Motion Dismiss, p. 5:5-7; 4 AA 413.)

is de novo to determine whether the complaint "alleges facts sufficient to state a cause of action under any legal theory." (*Id.*) **"**Denial of leave to amend after granting a motion for judgment on the pleadings is reviewed for abuse of discretion." (*Environmental Health Advocates v. Sream* (2022) 83 Cal.App.5th 721, 729.)

On September 7, 2023, the trial court granted Respondents' motion for judgment on the pleadings without leave to amend as to the sixth, seventh and ninth causes of action. (JOP Order, 9/7/23, pp. 7-8, 5 AA 725-726.) In the sixth and seventh causes of action for violation of procedural and substantive due process, appellants sought injunctive relief restraining respondents from enforcing SB 118 requiring transfer of Title 1 firearms for which deposits were made prior to August 6, 2020. (JOP Order, p. 7, 2nd ¶, 5 AA 725.) The court held that:

> "SB 118 already allows individuals possessing a Title 1 firearm prior to September 1, 2020, to keep it if the firearm is properly registered. Plaintiffs request the entirely different remedy of allowing individuals to newly obtain a banned assault weapon. As Judge Chalfant held, this is patently illegal. To the extent certain individuals were deprived of their deposits, they have a legal remedy."

(*Id.*, last ¶.)

Thus, the express language of SB 118 clearly states that the change in definition of an assault weapon does not apply to the possession of an assault weapon by a person who lawfully

possessed it prior to September 1, 2020. (Pen. Code, § 30685.)[11] No one ever even purchased and applied for the transfer of a Title 1 let alone possess one. Rather, they just submitted $5 deposits. Appellants are essentially asking the court to ignore this clear language but a court "may not ignore the express language of a statute." (*All Towing Services v. City of Orange* (2013) 220 Cal.App.4th 946, 956.) Furthermore, "rules of equity cannot be intruded in matters that are plain and fully covered by positive statute. When the Legislature has addressed a specific situation, a court cannot wholly ignore the statutory mandate in favor of equitable considerations." (*Adoption of S.S.* (2021) 72 Cal.App. 5th 607, 627.)

Nevertheless, Appellants assert that a court can do so referring to a stipulated injunction and consent decree in a case involving delays in a Department online program for registering "bullet button" firearms. (*Sharp v. Becerra et al.*, U.S.D.C. Eastern District Case No. 2:18-cv-02317-MCE-AC, Stipulated Injunction and Consent Decree, p. 2:23-3:5, Ex. A to Appellants' Req. for Jud. Notice, 6/29/21; RA 7-8.) However, the stipulation in that case applied only to individuals who lawfully possessed a firearm at issue in that case before the applicable statutory deadline under Penal Code section 30900, subdivision (b)(1). (*Id.* at pp. 2:23-3:5.) Thus, an individual who did not possess a "bullet

[11] Additionally, the individual would have to be eligible to register the firearm and do so by January 1, 2022. (Pen. Code, § 30685.)

button" firearm before the deadline could not acquire one after the deadline. Therefore, the *Sharp* stipulation provides further support for the clear conclusion that if an individual did not possess a Title 1 firearm before the September 1, 2020, deadline, it would be illegal to acquire one after said deadline.

In granting judgment on the pleadings as to the ninth cause of action, the court noted that the same logic under which the court granted the motion to dismiss on the ground of mootness also applied to the ninth cause of action, noting that "the DES was overhauled in October, 2021, and now indisputably includes a proper method to report Title 1 firearms. Therefore, Defendants are no longer using tax dollars to implement a discriminatory reporting system." (JOP Order, p. 8, 2nd ¶, 5 AA 726.) The trial court noted that appellants submitted to the mootness argument. (*Id.* citing Opp. to JOP, p. 31:4-7, 5 AA 668.)

VI

CONCLUSION

For the reasons set forth above, the trial court properly granted summary judgment, the motions to dismiss and for judgment on the pleadings. Therefore, Respondents respectfully

request that the court affirm the trial court's rulings.

Dated: July 31, 2025

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VII

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Rule 8.204, subdivision (c)(1) of the California Rules of Court, this brief is prepared in a proportionately spaced Century Schoolbox typeface of 13 points on a computer using Word, and based upon the word count of that software, the brief contains 13,788 words, including footnotes but excluding the certificate of interested entities or persons, this certificate and the tables of contents and authorities.

Dated: July 31, 2025

/S/
Kenneth G. Lake
Deputy Attorney General

DECLARATION OF ELECTRONIC SERVICE AND BY U.S. MAIL

Case Name: **Franklin Armory, Inc. v. California Department of Justice**
Case No.: **B340913**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On July 31, 2025, I electronically served the attached **RESPONDENT'S BREIF** by transmitting a true copy via this Court's TrueFiling system on:

Anna Barvir
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180 East Ocean Blvd., Suite 200
Long Beach CA 90802-4079

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 31, 2025, at Los Angeles, California.

Lisa Martinez
Declarant

Signature

Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on July 31, 2025, a true copy thereof enclosed in a sealed envelope has been placed in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, addressed as follows:

Los Angeles Superior Court Judge
Honorable Daniel S. Murphy
111 North Hill Street
Dept. 32
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 31, 2025, at Los Angeles, California.

Jasmine Zarate	s/Jasmine Zarate
Declarant for U.S. Mail	Signature

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