IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SECOND APPELLATE DISTRICT

FRANKLIN ARMORY, INC., and CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, Plaintiffs and Appellants, v. CALIFORNIA DEPARTMENT OF JUSTICE, XAVIER BECERRA, in his Official Capacity as Attorney General for the State of California, and DOES 1-10, Defendants and Respondents.	Case No. B340913

APPELLANTS' REPLY BRIEF

Superior Court of California, County of Los Angeles
Case No. 20STCP01747
Honorable Daniel S. Murphy, Judge

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INTRODUCTION

This case is not about policy discretion. It is about a public agency's refusal to perform a clear statutory duty. Respondents are required by law to maintain a system capable of processing *all lawful firearm transfers*. Instead, they knowingly operated that system in a way that blocked the sale of Franklin Armory Incorporated's (FAI) then-lawful Title 1® firearms. They did so not because they lacked the resources or the means to fix the problem, but because they chose to delay a nearly completed fix until they had coaxed the Legislature to retroactively ban those firearms through Senate Bill 118 (SB 118). The law should not tolerate such government misconduct.

Respondents spend pages describing the supposed complexities of DES programming, invoking discretion and Government Code section 820.2 to suggest that any decision they made about the DES is immune. That framing distorts both the record and the statutory scheme. The Penal Code does not grant Respondents the discretion to decide *whether* to maintain an operational transfer system; it commands that they *shall* maintain one. Discretion exists only as to the *form* of implementation, not as to the functionality of the system itself.

By treating statutory compliance as optional and discretion as boundless, Respondents ask this Court to bless an expansion of agency power that would allow state officials to ignore clear legislative mandates so long as they claim to have "weighed competing priorities." Discretionary immunity does not shield an agency's refusal to perform a ministerial duty, and it does not

protect the deliberate obstruction of lawful commerce until legislation makes that obstruction permanent.

The trial court's decision disregards the mandatory language of the Penal Code and invites agencies to evade legislative command through inaction. If affirmed, the ruling would give the DOJ unchecked authority to suspend lawful commerce in firearms simply by refusing to maintain the systems the law requires it to operate. The judgment should be reversed.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON FAI'S TORT CLAIMS

The trial court erred in holding that discretionary immunity bars FAI's tort claims and that the claims fail as a matter of law. Respondents' (mis)conduct was not a protected policy choice but a refusal to perform a clear statutory duty. The Penal Code requires Respondents to maintain a system capable of processing *all lawful firearm transfers*. Yet DOJ officials knowingly operated that system in a way that blocked transfers of then-lawful Title 1® firearms, despite acknowledging that a fix was underway. By categorically blocking transfers of then-lawful Title 1® firearms, Respondents did not exercise discretion, they refused to act where the law required performance.

Respondents' alternative argument—that Appellants would be unable to prove every element of their interference torts—fares no better. At a minimum, the record establishes triable issues on every element of interference: FAI's existing and prospective contractual and economic relationships, Respondents' intentional

obstruction of those relationships, and the resulting economic harm. Regulation of firearm commerce does not authorize state officials to disable lawful transactions or insulate them from liability when they do so.

In short, this case does not test the boundaries of discretion but of accountability. The law required Respondents to maintain a functioning transfer system. They chose not to. Neither statutory immunity nor the summary judgment record supports excusing that failure. The trial court's decision on summary judgment should be reversed.

A. Discretionary Immunity Does Not Shield Respondents' Refusal to Perform Their Mandatory Duty to Maintain a Functional DES

Respondents devote much of their brief to arguing that they had no mandatory duty to fix a known DES defect that blocked lawful firearm transfers and that Government Code section 820.2 immunizes their inaction. (R.B., pp. 32-56.) Their theory is sweeping: They claim that decisions about whether and when to update the DES are discretionary judgments about resource allocation, arguing that immunity applies even to "lousy decisions" or abuses of discretion. (R.B., p. 49.) Respondents' theory fails from the start. The law does not give them discretion to operate the DES in a way that blocks lawful firearm transactions. On the contrary, the Penal Code imposes a mandatory duty to maintain a system that serves as the exclusive means of processing *all* lawful firearm transfers.

Ultimately, Respondents' argument rests on two strawmen. First, they argue at length that the DOJ cannot be liable under

common law or Government Code sections 815 or 815.6. (R.B., pp. 31-35.) The argument is wrong. The DOJ was under a "mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury," and the DOJ's refusal to discharge that duty was *not* an exercise of "reasonable diligence." (Govt. Code, § 805.6.) But the argument is ultimately irrelevant. FAI set aside its common-law tort claims against the DOJ in the trial court, and it did not revive those claims on appeal. Appellants pursue their tort causes of action against the former Attorney General and Doe individuals in their personal capacities. (A.A.VI 968.)

Second, Respondents devote another dozen pages to dismantling a claim that Appellants have never made—that DOJ officials had a statutory duty to add an "Other" option to the DES for long-gun subtypes before SB 118 took effect. (R.B., pp. 35-49.) But Appellants never argued that Respondents were required to implement any particular fix, or to do so within any particular timeframe. The real issue is simpler. DOJ officials had a mandatory duty to maintain the DES so that dealers could process *all* lawful firearm transfers. They knowingly refused to perform that duty, allowing the DES to block transfers of then-lawful Title 1® firearms until the Legislature acted to ban them.

Respondents' tactic is not harmless. By first mischaracterizing FAI's position as an attempt to impose public entity liability on the DOJ, Respondents frame the case as though

all tort liability is foreclosed outright. (See R.B., p. 43.)[1] Then they pivot to the second false premise that Appellants demand a specific fix, obscuring the real dispute over whether individual officials may be held liable for deliberately refusing to perform a mandatory statutory duty. That question cannot be answered by refuting claims Appellants never made.

Properly framed, the inquiry rests on two interrelated questions: (1) whether Respondents had a mandatory duty to maintain a system capable of accepting and processing *all statutorily required information for all lawful firearm transfers*; and (2) whether section 820.2 immunizes their refusal to perform that duty. The answer to both is clear. The Penal Code leaves no doubt that Respondents must keep the DES functional for *all* lawful transfers; discretion exists only as to the form of implementation. Section 820.2 does not shield Respondents' refusal to discharge that obligation. It protects basic policy judgments, not ministerial failures to implement a legislative mandate. The trial court erred in holding that discretionary

[1] Quoting the decision on appeal, Respondents argue that, because FAI does not assert tort liability against the DOJ, they "effectively concede[] the DOJ is not liable." (R.B., p. 43.) Respondents continue, "[l]egally 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 [DOJ] employees." But even if opting not to pursue claims against the DOJ establishes that the DOJ is not liable "as a matter of law," it does not establish that neither the DOJ nor its employees were under a mandatory duty to act. That is because section 815.6 liability rests on *more* than a finding of a mandatory duty; all other elements must be met. Further, section 815.6 contains protection for public *entities* that it does not grant to public *employees*. A public employee, unlike the agency they work for, "is liable for injury caused by [their] act or omission to the same extent as a private person." (Govt. Code, § 820.)

immunity barred FAI's tort claims; the summary judgment decision should be reversed.

1. The Penal Code creates a mandatory duty to maintain a DES that processes all lawful firearm transfers.

California law unambiguously requires the DOJ to maintain a system for transmitting and processing the information required for transfers of *all* legal firearms. (See Pen. Code, §§ 28155, 28160, 28205, 28215, 28220. See also A.A. III 0289-0290; A.A.V 0724-0725.) By design, the Legislature left DOJ officials no discretion to configure the DES in a way that blocks otherwise lawful firearm transactions. Respondents' claim that DES operations are purely discretionary cannot be squared with this structure. Indeed, maintaining the system in a manner that rejects a class of lawful firearms is not a mere policy choice about software design. It is a violation of the statutory mandate to process all lawful transfers.

For every firearm transaction, the Penal Code requires dealers to transmit certain details, including the type of firearm, to the DOJ. (Pen. Code, §§ 28155, 28160.) Upon receipt of that information, the DOJ must examine its records and immediately notify the dealer whether the purchaser is prohibited. (Pen. Code, § 28220.) And the DES is statutorily designated as the "exclusive means" to transmit this information unless the DOJ designates another means, which it has not done. (Pen. Code, § 28205. See also R.B., p. 36 [conceding that "it is undisputed that the [DOJ] has required use of the DES for processing firearms transfers"].) Read together, these provisions create an integrated, mandatory scheme: The dealer must use the DES, the DOJ must accept and

process the information, and the DES must therefore be capable of processing every lawful firearm transaction. If the system cannot process a particular lawful firearm, the statutory loop collapses. Dealers cannot comply with section 28160. The DOJ cannot fulfill its duties under section 28220. And lawful commerce in firearms halts—just as it did here.

Respondents argue that neither the DOJ nor its employees owed a duty to FAI to correct the DES defect, relying on the general rule that one "who has not created a peril" has no duty to come to another's aid absent a "special relationship." (R.B., pp. 32-33, citing *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1128-1129.) That principle has no application here for two reasons. First, DOJ officials did not merely fail to protect FAI from harm caused by others. They *created* the very peril that caused FAI's injury. By knowingly allowing the DES to categorically block transfers of then-lawful Title 1® firearms, DOJ officials interfered with FAI's ability to complete lawful transactions. Having created the risk of harm to FAI, Respondents were obligated to correct the defect they created. Second, Respondents' statutory and regulatory relationship with firearm dealers gives rise to a "special relationship" that goes beyond any duty owed to the public at large. Respondents have *exclusive control* over the DES and the infrastructure necessary to process lawful firearm transfers. Dealers cannot lawfully complete a transfer without Respondents' participation and approval, giving Respondents direct control over the dealers' ability to conduct business. This combination of dependence and control establishes precisely the kind of "special

relationship" that gives rise to a duty to avoid causing foreseeable harm.

Respondents further resist the conclusion that they had a mandatory duty to act, pointing to section 28245, which describes the DOJ's acts or omission regarding the DES as "discretionary." (R.B., p. 36-37.) To begin with, section 28245 applies only when the DOJ acts pursuant to Article 3, which concerns the submission of fees and firearm purchaser information. (Pen. Code, § 28245 ["Whenever the [DOJ] 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,…"], italics added.) Sections 28155 and 28160, however, are part of Article 2. Section 28245 has no relevance here.

But even if it did, statutes must be harmonized, not read in isolation. (See *People v. Jenkins* (1995) 10 Cal.4th 234, 246.) Section 28245 cannot be construed to nullify the statutory duties set forth in sections 28155, 28160, 28205, 28215, and 28220. At most, section 28245 confirms what Appellants have always acknowledged—that Respondents have discretion over matters of *form and implementation*. It does not authorize Respondents to operate the DES in a manner that makes compliance with the rest of the Penal Code impossible. Under Respondents' reading, they could shut down the DES altogether and claim immunity from all liability. Courts rightly reject statutory interpretations that reach such absurd results. (See *In re Michele D.* (2002) 29 Cal.4th 600, 606 ["[I]t is settled that the language of a statute should not be

given a literal meaning if doing so would result in absurd consequences that the Legislature did not intend"].)

In short, the statutory scheme leaves Respondents no discretion to configure the DES so that it categorically blocks lawful transfers. Respondents' contrary position is irreconcilable with the text and structure of the statutory scheme. What's more, this case is unique because it deals with commerce in firearms, which implicates constitutionally protected rights. (*District of Columbia v. Heller* (2008) 554 U.S. 570, 635; *McDonald v. City of Chicago* (2010) 561 U.S. 742, 780; *Teixeira v. Cty. of Alameda* (9th Cir. 2017) 873 F.3d 670, 677-678 [en banc] [recognizing that "the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much" without the ability to acquire arms'"].) When interpreting statutes in this context, courts must be especially cautious not to adopt constructions that allow agencies to invoke "discretion" to obstruct commerce in constitutionally protected goods. Yet Respondents' reading of section 28245 would allow exactly that, effectively empowering the DOJ to ban the sale of any class of firearms simply by configuring the DES to reject them. That interpretation is not simply wrong; it is constitutionally dangerous.

Rather than respond to FAI's argument, Respondents attempt to dismantle an argument Appellants have never made. They insist the code does not require the DOJ "to modify DES to add an 'Other' option after the Title 1 was introduced in October 2019, and before SB 118 banned it." (R.B., p. 33.) But Respondents' extended discussion of "discretion" over how to configure the DES

misses the point. Appellants never argued that Respondents were required to adopt a particular fix or to implement that fix within a particular timeframe. Appellants' position has always been that Respondents have a mandatory duty to maintain the DES so it can process all lawful transfers, including Title 1® transfers, while leaving the form of the record to Respondents' discretion. (A.O.B., pp. 25-28; R.B., pp. 37-38 [discussing allegations and arguments in the SAC, summary judgment briefing, and Opening Brief].)

This distinction matters. Respondents certainly have some discretion over the implementation of the DES, including how to transmit information about Title 1® firearms' type. But discretion over *form* does not confer discretion to disable *function*. The statutory mandate is clear: The DOJ "shall" accept and process all statutorily required information for *all* lawful firearm transfers. (Pen. Code, §§ 28155, 28160, 28215, 28220.) Respondents devote pages to showing that they had options for doing so, but those pages merely prove Appellants' point: Respondents had discretion among fixes, but they had no discretion to do nothing.

Several cases confirm this principle. Indeed, California courts have long recognized the distinction between discretion as to *means* and discretion as to *ends*. In their Opening Brief, Appellants cited *Ham v. County of Los Angeles* (1920) 46 Cal.App.148 (*Ham*), for this general rule: "To the extent that [the] performance [of some duty] is unqualifiedly required, it is not discretionary, even though the manner of its performance may be discretionary." (A.O.B., pp. 26-27, discussing *Ham*, *supra*, 46

Cal.App. at p. 162.)[2] *Redwood Coast Watersheds Alliance v. State Board of Forestry and Fire Prot.* (1999) 70 Cal.App.4th 962, applied the same logic, holding that where an agency "has a mandatory or ministerial duty to adopt … regulations," it "does not have a choice *whether* to adopt such regulations" even though it retains discretion over their *content*. (*Id.* at p. 970, quoting *Ham*, *supra*, 46 Cal.App. at p. 162 [italics added].)

The California Supreme Court's decision in *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780 (*Lopez*), illustrates the point even more vividly. There, the transit district argued it was entitled to discretionary immunity for failing to protect passengers from assaults, since bus drivers had discretion over how to respond to such incidents. (*Id.* at p. 793.) The Court disagreed. Although bus drivers must exercise judgment in the *manner* of intervention, the district had a mandatory statutory duty to take reasonable steps to protect passenger safety. (*Id.* at pp. 793-794.) The agency could not invoke "discretion" as an excuse for doing nothing.

Likewise, here, Respondents may have had discretion in *how* to configure the DES to process then-lawful Title 1® transfers, but they had no discretion to withhold a completed (or nearly

[2] Respondents are correct that the *Ham* court ultimately found no public agency liability on the facts. (R.B., p. 48.) But this is only because the Pridham Act, on which plaintiffs' claims relied, created an express statutory safe harbor. Officials were not liable for failing to repair roadways absent actual notice *and a failure to repair within a "reasonable time."* (*Ham*, *supra*, 46 Cal.App. at p. 164.) The Penal Code contains no such safe harbor for the DOJ. On the contrary, it repeatedly commands that dealers "shall" transmit the records to the DOJ, the DOJ "shall" process them, and the DES is the "exclusive means" to do so. (Pen. Code, §§ 28155, 28160, 28205, 28215, 28220.)

completed) fix indefinitely and operate DES in a way that categorically blocked those lawful transactions.

2. Section 820.2 immunity does not apply to Respondents' mandatory, ministerial duty to maintain an operational DES.

Relatedly, Respondents invoke section 820.2 and a string of inapposite cases to claim that DOJ officials were merely exercising discretionary judgment in managing "competing priorities" when they refused to implement a nearly completed fix to the DES that would have allowed lawful Title 1® firearm transfers. But this framing evades the dispositive point: Where a public agency is under a statutory duty to act, it has no discretion to refuse to do so. Section 820.2 does not apply to an unlawful abdication of mandatory duties. The trial court erred in granting summary judgment on this basis.

In tort claims against public officials, "'the *rule* is liability, immunity is the *exception*.'" (*Lopez v. S. Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 792-793, quoting *Ramos v. County of Madera* (1971) 4 Cal.3d 685, 692, italics added.) "Whether or not a public employee is immune from liability under section 820.2 depends in many cases upon whether the act in question was 'discretionary' or 'ministerial,' respectively. (*McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 260.) Having established, as the trial court twice held (A.A.III 289-290; A.A.V 724-725), that Respondents' duty to maintain an operable DES that processes all lawful firearm transfers is ministerial and mandatory, it is clear that Respondents' reliance on Government Code section 820.2 is misplaced.

Section 820.2 protects genuine policy decisions; it does not license public officials to disregard legislative mandates by characterizing their inaction as a "policy choice." (*Johnson v. State of California* (1968) 69 Cal.2d 782, 793-794 (*Johnson*).) Indeed, "not all acts requiring a public employee to choose among alternatives entail the use of 'discretion' within the meaning of section 820.2." (*Barner v. Leeds* (2000) 24 Cal.4th 676, 684-685.) Immunity covers only high-level policy choices, not the routine implementation of established policy. (*Id.* at p. 685; *Johnson*, *supra*, 69 Cal.2d at p. 793-794.)[3] Here, the Legislature made the basic policy decision that the DOJ must create and maintain a system that processes all lawful firearm transfers. Respondents were not free to disregard that legislative mandate. While they may enjoy immunity for their decisions as to the *form* of the DES fix, they enjoy no immunity for their decision not to fix it at all.

In the end, Respondents claim that they undertook a "conscious balancing of risks and advantages," relying on *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 983, to argue that immunity attaches even if they did not engage in a "'*strictly careful, thorough, formal, or correct evaluation*.'" (R.B., p. 50, italics original). But *Caldwell* is not on point. That case concerned a school board's decision to terminate a superintendent—a *quintessential* policy-level decision that is "peculiarly sensitive and subjective." (10 Cal.4th at p. 983.) The Court described the choice as a matter

[3] See also *Lopez*, *supra*, 40 Cal.3d at p. 794 [recognizing that a "bus driver's decision concerning the *form* of protective action to take" is the sort of "ministerial, 'operational' action taken to implement the Legislature's basic policy decision" that is not immunized by section 820.2].

"expressly entrusted to a coordinate branch of government' at its highest level." (*Id.* at p. 982.) By contrast, Respondents were not weighing political goals or formulating new policy. The Legislature had already made the relevant policy choice—that all lawful firearm transactions must be processed through a functional DES. Respondents were legally bound to implement that framework. Choosing to withhold a completed (or near-completed) fix—not because of time or resources, but to deliberately stall lawful transfers of FAI's Title 1® firearms until they could be banned—is not policymaking. And section 820.2 does not immunize it.

None of Respondents' other examples of cases where discretionary immunity attached involved a mandatory duty to act. (R.B., pp. 50-52 [collecting cases].) Those cases are inapt. Like *Caldwell*, *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, involved a classic discretionary decision—the release of a violent juvenile offender to his parent's custody—where the government enjoys broad latitude to choose among lawful options. *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 648, concerned the highly discretionary act of awarding public contracts. *Hacala v. Bird Rides, Inc.* (2023) 90 Cal.App.5th 301, 306, *Posey v. State* (1986) 180 Cal.App.3d 836, 848-850, and *Bonds v. State* (1982) 138 Cal.App.3d 314, 321, all involved decisions not to remove a road hazard under enactments expressly imposing "discretionary enforcement authority," not a mandatory duty to act. And, in *Roseville Community Hosp. v. State* (1977) 74 Cal.App.3d 583, 589-590, the court recognized that the law did not *require* the Attorney General to investigate or take any action at all against

unregistered health plans. In short, none of these cases supports immunity where, as here, a public agency was statutorily required to act and refused.

Still, Respondents rely heavily on Director Mendoza's claims that DOJ officials considered various options to fix the DES defect and "engage[d] in the balancing of multiple factors and weighing of competing priorities." (R.B., pp. 52-54.) FAI does not challenge Respondents' internal deliberations or the quality of their judgment. That is beside the point. Even a "careful" or "deliberate" decision to violate a mandatory legal obligation is not immune. The issue here is not whether Respondents engaged in a decision-making process or whether their decisions were reasonable, but whether the decision they reached—to do nothing for nearly two years while the DES blocked lawful transfers of FAI's Title 1®—was legally authorized in the first place. It was not.

To the extent Appellants' Opening Brief discusses the disputed facts about Respondents' "decision-making process," it was not to argue that their "decisions as to the timing of the DES modification were incorrect." (R.B., p. 55.) It was simply to rebut Respondents' post hoc justification that the delay resulted from "competing priorities." As Appellants' summary judgment opposition explained, and internal documents and testimony confirmed, Respondents had developed a fix, knew it was needed, and affirmatively chose not to deploy it. (A.A.VI 0990-0991, citing A.A.VI 1057-1058; A.A.VI 1000, citing A.A.VI 856-857, 860-861, 864-865, 868-873, 8760877, 880-881, 883; A.A.VI 1001-1002 [citing evidence]; A.A.X 1311, 1318-1319, 1354-1358, A.A.XVII 1768,

1770-1773, 1778-1780. See also Appellants' Req. Jud. Notice ("RJN"), Ex. B.) That evidentiary showing raised, at a minimum, a triable issue of fact as to whether the delay was the product of legitimate policy discretion or a deliberate effort to suppress a lawful product. That question was not properly resolved on summary judgment. And even if it were, no amount of internal deliberation can convert a refusal to discharge a mandatory duty into a protected policy choice.

B. Respondents' Alternative Grounds for Affirmance Fail

Respondents' alternative grounds for affirmance—that FAI cannot establish the elements of contractual or economic interference—collapse under the record. FAI had enforceable contracts and valid economic relationships with thousands of customers. Respondents intentionally and wrongfully obstructed those relationships, causing substantial economic damage. And public policy, especially in the context of constitutionally protected commerce, demands a remedy.

As to each of the interference torts, Respondents failed to carry their burden on summary judgment. They did not prove that there is no material fact in dispute or that they were entitled to judgment as a matter of law. Their "no contract" theory ignores that customer deposits created enforceable commitments. Their "speculative injury" claim disregards concrete evidence of deposits, refunds, and lost sales. And their insistence that no independently wrongful act occurred cannot be squared with DOJ officials' deliberate obstruction of lawful (constitutionally protected)

commerce. This Court should reject Respondents' request for affirmance on these alternative grounds.

1. FAI had valid economic relationships with thousands of buyers.

Respondents contend that no valid contract existed because FAI's pre-order deposits were refundable, the customers were not obligated to complete their purchase, and shipment of the firearms was contingent on completion of the full sale. (R.B., pp. 56-57.) This caricature of the record fails legally and factually.

First, California law recognizes that valid contracts may exist even if performance is contingent or subject to cancellation. The touchstone is not whether cancellation was possible, but whether the parties intended to enter a binding agreement supported by consideration. (See, e.g., *Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349 [option contract enforceable so long as "essential terms" exist]; See also 1 Williston on Contracts (4th ed.) § 3:7 [parties must "have a present intention to be bound by their agreement"].)

Here, roughly 35,000 customers paid earnest money deposits to secure the right to purchase a Title 1® firearm, ranging from $5 to the full purchase price of $944.99. (A.A.VI 999, citing A.A.VI 1080, 1103-1104.) That deposit was legal consideration. FAI, in turn, promised to fulfill those orders once the DOJ removed the unlawful barrier to doing so. (A.A.VI 1021, citing A.A. VI 1080, A.A.XVI 1704-1705, 17710-1711, A.A.XVII 1720.)[4] That

[4] Far from admitting FAI never intended to ship Title 1® firearms, FAI President Jay Jacobson declared that "FAI was committed at the time it accepted deposits from customers to fulfill

enforceable obligation was not illusory merely because customers could later elect to cancel. On the contrary, courts have long held that a money deposit can bind the seller, even if the buyer may withdraw later. (See, e.g., *Jones v. Wide World of Cars, Inc.* (S.D.N.Y. 1993) 820 F.Supp. 132, 136 ["[I]t is the recipient accepting a down payment, not a buyer parting with the money, who may be bound."]; *CareandWear II, Inc. v. Nexcha L.L.C.* (S.D.N.Y. 2022) 581 F.Supp.3d 553, 557 ["[P]urchase orders are sufficient … to confirm the existence of a contract between the parties."].) As the California Supreme Court explained in *Steiner v. Thexton* (2010) 48 Cal.4th 411:

> [W]hen an offer for a unilateral contract is made (as in the case of an option) "'and *part of the consideration requested in the offer is given or tendered by the offeree in response thereto,* the offeror is bound by a contract, the duty of immediate performance of which is conditional on the full consideration being given or tendered within the time stated in the offer.'"

(*Id.* at pp. 423-424, quoting *Drennan v. Star Paving Co.* (1958) 51 Cal.2d 409, 414.) That is precisely what occurred here. Customers tendered deposits, and FAI was bound to honor those orders once the transfers became legally possible.

Respondents claim that FAI "admit[ed] there was no intent to ship any Title 1 firearm and a person would have to complete the full purchase before [FAI] would ship it." (R.B., p. 57.) That assertion is unsupported by the record and defies common sense. FAI brought the Title 1® to market to sell and ship it to California

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all orders for which people paid deposits. FAI remains committed to fulfilling those orders to this day." (A.A.VI 1080.)

customers. Indeed, the company accepted deposits and stood ready to complete deliveries—the only obstacle was Respondents' deliberate refusal to maintain a fully functional DES. To suggest that a manufacturer would invest in designing and marketing a new firearm specifically for the California market and accept thousands of deposits for the purchase of those guns without ever intending to ship them is, frankly, not a serious argument.

Finally, even if Respondents were correct that the contracts were somehow insufficient to support a claim for interference with *contractual* relations, FAI also pled interference with *prospective economic advantage*. (A.A.II 150-153.) That tort requires only "an economic relationship that contains the probability of future economic benefit." (*Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.* (2017) 2 Cal.5th 505, 512 (*Roy Allan*).) At the very least, FAI had protectable economic relationships with thousands of prospective buyers who had manifested their intent to buy a Title 1® and put down money to do so. As the trial court itself found, "placing a deposit is an overt act towards making a purchase and sufficiently creates a probability that [FAI] will profit from a sale." (A.A.V 724.) That is enough to establish that FAI "had existing economic relationships with its customers" to sustain an interference claim. (A.A.V 724.) Respondents' attempt to trivialize those relationships ignores reality.

In short, Respondents' "no contract" theory is both legally wrong and factually baseless. The deposits created enforceable commitments and, at a minimum, actual prospective relationships.

2. Respondents intentionally interfered with FAI's contractual and economic relationships.

Respondents next claim that no "intentional act" occurred because the DES drop-down menu predated Title 1® and Respondents' failure to take any action to correct the DES defect That is wrong twice over. (R.B., pp. 57-58.)

First, Respondents argue "that 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." (R.B., p. 57, citing *Nanko Shipping v. Alcoa Inc.* (D.C. Cir. 2015) 107 F.Supp.3rd 174, 182-183 (*Nanko Shipping*), reversed on other grounds in *Nanko Shipping, USA v. Alcoa, Inc*. (D.C. Cir. 2017)850 F.3d 461, 467.) But here, the interference occurred when FAI sought to conduct business, not when the DES was first coded. By October 2019, FAI had launched the Title 1®, and Respondents knew of its existence. (A.A.VI 1019-1020 [citing evidence].) FAI had also expressly notified Respondents that the DES, as configured, could not process the transfer of these legal firearms. (A.A.V 1020, citing A.A.VI 1035, 1037-1043.) At that point, Respondents made an affirmative decision to refuse to modify the DES and thereby to block the lawful transfer of FAI's Title 1s®. As the trial court held:

> [Respondents] were under a Penal Code mandate to provide a reporting system for 'all firearms,' ... [I]mplementing a reporting system that excludes a particular type of firearm that was legal to sell at the time, and required to be reported, *constitutes an intentional act designed to prevent the sale of*

> *those firearms, and thereby interferes with the alleged sale contracts.*

(A.A.V 723, italics added.) The trial court's findings were correct.

Still, Respondents claim that their inaction cannot be considered an intentional act of interference. (R.B., p. 58.) But the only authority Respondents cite is a federal district case from Washington, D.C. (R.B., pp. 57-58, citing *Nanko Shipping*, *supra*, 107 F. Supp.3d at pp. 182-183.) FAI knows of no California authority holding that a deliberate refusal to act cannot qualify as an "intentional act" for purposes of an intentional interference with contract claim. And some jurisdictions have expressly held that it can be. (See, e.g., *Gym Door Repairs, Inc. v. Young Equip. Sales, Inc.* (S.D.N.Y. 2016) 206 F.Supp.3d 869, 910, ["A tortious interference with prospective economic advantage 'claim begins to run when the defendant performs the action (***or inaction***) that constitutes the alleged interference.'"], bold and italics added.)

Regardless, FAI does "not merely allege that DOJ sat idly by while certain consumers were unable to purchase Title 1 firearms." (A.A.V 723.) Instead, they argue that Respondents "intentionally excluded Title 1 firearms from DES to delay their transfer until the Legislature could pass SB 118." (A.A.V 723.) As the trial court held, this "sufficiently constitutes an intentional act." (A.A.V 723.) What's more, FAI established facts tending to prove that is exactly what Respondents did. The record shows that Respondents were working on a DES enhancement that would have allowed Title 1s® to be transferred in early 2020. (A.A.V 1012 [citing evidence]; A.A.V 1021-1022 [citing evidence].) The DOJ had virtually completed that fix. (A.A.V. 1022 [citing evidence]. See also RJN,

Ex. B.) Yet rather than implement that fix, which only took months to complete, the DOJ stalled it until SB 118 could pass. (A.A.V 1022-1024 [citing evidence].) The undisputed timeline, combined with the unorthodox process by which SB 118 was proposed and adopted (see A.A.V 1022-1024 [citing evidence]), establishes that Respondents intentionally delayed the fix until SB 118 could take effect, preventing centerfire Title 1® transfers from ever being completed. Respondents may dispute that conclusion. But, at a minimum, that means there is a dispute over whether Respondents deliberately delayed fixing the DES to block lawful transfers of FAI legal firearms, making summary judgment improper.

Finally, without citing any authority, Respondents argue that "there must be a statutory basis establishing a mandatory duty to modify DES" for FAI to establish an intentional act. (R.B., p. 58.) While it is unclear if that is an accurate statement of the law, it does not matter because a mandatory duty existed. (See Part A, *supra*.)

3. Respondents' conduct was "independently wrongful"

To maintain a claim for interference with prospective economic advantage, FAI must demonstrate that Respondents engaged in an independently wrongful act. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158 (*Korea Supply*).) "[A]n 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." (*Id.* at p. 1159.) The trial court already correctly held that Respondents'

failure to provide a method by which Title 1® firearms could be legally transferred met that test. (A.A.V 724.)

Respondents insist, however, that FAI cannot prove this element because no statute expressly required them to modify the DES. (R.B., pp. 59-60.) The argument misses the point. Interference liability does not turn on the existence of a mandatory duty. It turns on whether Respondents engaged in conduct that is unlawful by some measure other than the interference itself. (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1142).

Here, they did just that. By deliberately blocking transfers of a firearm the Legislature had not yet banned, Respondents exceeded their statutory authority, deprived FAI and its customers of due process, and interfered with lawful firearms commerce. Agencies cannot impose de facto bans the Legislature did not enact. That is "independently wrongful" conduct.

4. Respondents' reliance on *Roy Allan* is misplaced; public policy favors liability for interference with ordinary commercial dealings.

Finally, Respondents invoke *Roy Allan*, claiming that courts should hesitate to expand interference liability in regulated industries. (R.B., pp. 60-61.) The argument must fail. In *Roy Allan*, the California Supreme Court declined to extend interference liability into the uniquely specialized field of public works bidding. (2 Cal.5th at pp. 520-521.) It did so because an extensive statutory scheme already governs remedies and bidders have no expectation of contract because "public entities retain[] broad discretion to reject all bids." (*Id.* at p. 510.) As a result, public works bidders

cannot establish that they have "an 'economic relationship' containing the 'probability of future economic benefit'" between the bidder and the public entity. (*Id.* at p. 516-517.)

FAI's claims are fundamentally different. They arise from "ordinary commercial dealings" between willing buyers and sellers. That the firearms industry is closely regulated does not insulate Respondents from liability for wrongfully obstructing otherwise lawful transactions. Regulation is designed to protect the public, not to give agencies a license to sabotage private contracts. Recognizing liability here does not "expand" tort law. It applies existing principles to prevent regulators from weaponizing their authority against lawful businesses.

Tellingly, *Roy Allan* itself distinguishes public works bids from a case involving companies' "bids to the Republic of Korea to provide military" arms. (2 Cal.5th at p. 513, citing *Korea Supply*, *supra*, 29 Cal.4th 1134.) It reasoned that "[s]ignificantly,... there is no indication that the bidding process ... was constrained in a manner similar to the statutory rules that govern California public works contracts." (*Ibid.*) Specifically, it explained that the arms dealer had a relationship with an expectation of economic advantage that was interfered with. (*Ibid.*) This distinction eviscerates Respondents' reliance on *Roy Allan*. Indeed, if international sales of military arms are not exempt from interference torts, then surely domestic civilian firearm sales are not. Regulation involved with the former is certainly more "extensive" than with the latter.

What's more, the case for liability is perhaps far stronger here than in *Roy Allan*. Public works bidding implicates only economic interest, while firearm commerce implicates constitutionally protected rights. The Second Amendment guarantees the right of individuals to acquire arms, and the Fourteenth Amendment prohibits arbitrary governmental obstruction of lawful commerce in such arms. If interference liability was off the table in *Roy Allan* because bidders lacked protectable expectations, the opposite is true here. FAI and its customers had protectable expectations reinforced by constitutional guarantees. To withhold a remedy in this context would not merely leave FAI without redress for lost business, it would leave buyers and sellers without a meaningful avenue to vindicate interference with their constitutionally protected interests. Public policy does not tolerate such a result.

II. APPELLANTS DID NOT WAIVE THEIR RIGHT TO APPEAL THE TRIAL COURT'S WRONGFUL DISMISSAL OF THEIR EQUITABLE RELIEF AND MANDAMUS CLAIMS REGARDING THE CENTERFIRE TITLE 1®

Respondents contend that "[t]he first and second causes of action were dismissed per the court's January 27, 2022, order granting respondents' motion to dismiss," and that "Appellants incorrectly reference the trial court's order sustaining the demurrer to the first amended complaint (FAC) with leave to amend." (R.B., p. 62, citing A.A.I 110-118, A.A.V 491-501.) Once again, Respondents attempt to reframe the issues Appellants are pursuing (and not pursuing) on appeal to knock down arguments they wish Appellants were making.

Respondents argue that by filing the Second Amended Complaint (SAC), Appellants waived their right to challenge the trial court's order sustaining the first demurrer as to Appellants' claims regarding the centerfire Title 1®. (R.B., p. 62, citing *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966 fn.2.) That is wrong. Code of Civil Procedure section 906 expressly allows review of "any intermediate ruling … which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party" if the intermediate order was not appealable. While amendment *generally* waives any error in sustaining a demurrer, that rule does not apply when a plaintiff has "clearly elected to stand on [their] complaint with respect to [a demurred] cause of action." (*Cnty. of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 312.) In such cases, the plaintiff preserves the issue for appellate review even if other claims are amended. (*Ibid.* See also citing *Bank of Am. v. Super. Ct.* (1942) 20 Cal.2d 697, 703.)

This is exactly what happened here. Appellants amended only to add allegations about rimfire Title 1s® and other firearms with undefined subtypes. They deliberately retained the *centerfire* Title 1® portions of the first and second claims to preserve appellate review. (A.A.II 145-149; A.A.III 250-251. See also Mot. Augment Record with Feb. 25, 2021 Rptr's Tr.) Respondents themselves objected that it was improper to keep those claims in the SAC, arguing that the trial court had already disposed of them in the first demurrer. (Feb. 25, 2021 Rptr's Tr., pp. 5:21-6:5.) The trial court rejected the argument, recognizing that Appellants

needed to include the centerfire claims "to be able to appeal [the trial court's] previous ruling." (*Id.*, p. 7:4-11.) Both parties, understanding that the claims remained simply to preserve the record for appeal, "agreed not to relitigate the issue" below. (A.A.III 250-251.) And Respondents never again moved against those portions of the complaint. In short, Appellants stood on their complaint as to the centerfire Title 1® claims, preserving the issues for appeal.

Respondents' contrary argument, if accepted, would produce an absurd result. It would mean that Appellants' centerfire claims were never dismissed—or were dismissed without any reasoning at all. Even assuming the 2022 dismissal somehow encompassed the centerfire claims, this Court may affirm on grounds, as long as they are supported by the record. (See *D'Amico v. Bd. of Med. Examiners* (1974) 11 Cal.3d 1, 19.) Here, the only reasoning that could support dismissal of the centerfire Title 1® theories appears in the 2021 demurrer ruling. The later 2022 dismissal relied on mootness resulting from the DES enhancement adding the "Other" option—an issue that concerned only the rimfire Title 1® and other firearms with undefined subtypes that remained lawful after SB 118. The centerfire Title 1® claims were different. Simply adding "Other" to the dropdown could not provide relief from Respondents' past misconduct once the Legislature designated centerfire Title 1® firearms as "assault weapons." Appellants required equitable relief restoring the status quo ante, allowing FAI to complete the lawful transfers that were pending when

SB 118 took effect (and would have been completed but for Respondents' unlawful conduct). (A.A.II 145-149, 160-163.)

The January 2021 demurrer order squarely addressed (and rejected) FAI's theory that Respondents had a mandatory duty to maintain a DES capable of processing centerfire Title 1®s and that SB 118's passage did not eliminate the court's ability to fashion a remedy. (A.A.I 114-115.)[5] So even if this Court determines that the January 2022 dismissal encompassed the centerfire claims, it must nonetheless review and decide the correctness of the 2021 demurrer ruling—the only decision that ever provided a reasoning for dismissing them. And because Respondents do not even try to defend that ruling on the merits, they have waived any argument to affirm it.

III. THE TRIAL COURT ERRED IN DISMISSING APPELLANTS' FOURTEENTH AMENDMENT DUE PROCESS CLAIMS; SB 118 DID NOT ELIMINATE THE COURT'S POWER TO GRANT EQUITABLE RELIEF

Respondents finally argue that SB 118 rendered Appellants' due process claims moot because, once enacted, the statute banned centerfire Title 1® firearms outright. (R.B., pp. 65-67.) But this argument is both factually and legally flawed. It disregards the equitable nature of Appellants' requested relief, misstates the scope of the due process claims, and ignores well-settled law preserving courts' authority to remedy government misconduct even where later legislation complicates the picture.

[5] Notably, the trial court relied on the reasoning of the January 2021 demurrer order when granting, in part, Respondents' motion for judgment on the pleadings and rejecting Appellants' due process and taxpayer claims. (A.A.V 725.)

Appellants' claims are not moot. SB 118 may have changed the prospective legality of Title 1® sales, but it did not strip the courts of their power to address unlawful conduct that occurred before the statute's adoption. Respondents' argument that SB 118 rendered relief "illegal" fails for a simple reason: The DOJ cannot manufacture impossibility by its own misconduct and then invoke that impossibility as a defense. The record shows that DOJ officials deliberately withheld a completed fix to the DES until SB 118 took effect, ensuring that lawful transfers of centerfire Title 1® firearms would become impossible. Equity does not reward such gamesmanship.

California law is explicit: "No one can take advantage of their own wrong." (Civ. Code, § 3517.) That maxim applies with special force to public officials. Indeed, California courts have recognized that, where there is "clear evidence of wrongdoing," a public entity can be estopped from asserting a legal or procedural bar that it created through its own misconduct. (See, e.g., *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493-494 [estoppel "may be applied against the government where justice and right require it"]; *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261-1262 [public entity may be estopped where denying relief would result in grave injustice].) In such cases, the court retains equitable jurisdiction to restore the status quo ante where government actors—through delay or manipulation—unlawfully interfere with vested rights. To hold otherwise would invite agencies to evade judicial review by obstructing compliance until

they can secure legislative absolution. The Constitution does not tolerate that outcome.

Respondents' reliance on cases like *All Towing Services v. City of Orange* (2013) 220 Cal.App.4th 946, and *Adoption of S.S.* (2021) 72 Cal.App.5th 607, is misplaced. Those decisions stand for the uncontroversial proposition that courts may not disregard clear statutory commands where the legislature has addressed a matter through valid lawmaking. But that principle presumes that the statute existed *before* the challenged conduct and reflects a legitimate exercise of legislative authority, not a retroactive attempt to sanitize an agency's unlawful action. Equity should not yield to statutes enacted precisely to shield prior violations of law.

Here, the Legislature's adoption of SB 118 merely changed the law going forward. It did not—and constitutionally could not—retroactively extinguish vested rights or immunize Respondents' past violations of the law. The record shows that Respondents deliberately shelved the completed DES fix, proposed a ban on centerfire Title 1s® via SB 118, and only added the "Other" option once SB 118 had taken effect, making it impossible for FAI and its customers to complete the once-lawful transfers before the clock ran out. (A.A.VI 0990-0991, 1000-1002 [citing evidence]; A.A.X 1311, 1318-1319, 1354-1358, A.A.XVII 1768, 1770-1773, 1778-1780. See also RJN, Ex. B.) Now they seek to invoke that very law to justify their unlawful pre-enactment obstruction. Equity exists to do justice in precisely this sort of scenario. Courts do not "ignore" statutes when they prevent the government from profiting from its own misconduct—they vindicate the rule of law.

Respondents themselves have recognized this principle in practice. In *Sharp v. Becerra*, E.D. Cal. Mar. 29, 2021) No. 18-cv-02317, the Attorney General agreed to a settlement allowing firearm owners to complete late registrations of assault weapons that had, by then, been rendered statutorily "illegal" due to the DOJ's own system failures. There, as here, the DOJ's misconduct prevented law-abiding citizens from exercising rights that existed under then-valid law. Rather than invoke statutory illegality, the Attorney General conceded that equity required reopening the registration system to restore the status quo ante.

Respondents try to distinguish *Sharp* by noting that the stipulation did not allow those who did not possess qualifying "bullet-button" firearms before the statutory deadline to newly acquire them afterward. (R.B., pp. 66-67.) Respondents miss the point. The individuals excluded in *Sharp* were those who, through their own inaction, did not possess the affected firearms before the deadline. By contrast, FAI's customers would have taken lawful possession of their centerfire Title 1® firearms *but for* Respondents' unlawful decision block the then-lawful lawful transfers. The impossibility here was not self-inflicted by FAI or their customers. It was created by the government itself.

What matters here is that the *Sharp* stipulation expressly authorized conduct—i.e., the late registration of banned weapons—that would have been unlawful under the Assault Weapons Control Act. The *Sharp* settlement confirms that the Respondents themselves understand that where the government's own conduct frustrates the exercise of lawful rights, courts retain

authority to grant relief even if the conduct technically falls within a later-enacted statutory prohibition. The same principle applies here. Where the government's deliberate obstruction prevented lawful transfers before SB 118 took effect, equity permits the court to fashion a remedy that allows those transfers to be completed.

In short, SB 118 did not absolve Respondents of responsibility for their pre-enactment misconduct. The courts retain equitable power to remedy completed violations and to ensure that government actors do not manipulate timing or procedure to defeat judicial review. The trial court's contrary ruling not only misapprehends the nature of equitable jurisdiction but, if allowed to stand, would set a dangerous precedent by allowing agencies to legislate away their own wrongdoing.

CONCLUSION

For these reasons, the Court should reverse the trial court's final judgment against FAI as to its tort claims against Attorney General Becerra and Doe Individuals. And it should reverse the pleadings-stage decisions dismissing Appellants' First, Second, Sixth, Seventh, and Ninth Causes of Action and remand for further litigation of those claims.

Dated: October 6, 2025 **MICHEL & ASSOCIATES, P.C.**

s/Anna M. Barvir
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CERTIFICATE OF WORD COUNT

Under Rule 8.204, subdivision (c)(1), of the California Rules of Court, I certify that the attached Appellants' Reply Brief is 1½-spaced, typed in a proportionally spaced, 13-point font, and the brief contains 8,154 words of text, including footnotes, as counted by the word-count feature of the word-processing program used to prepare the brief.

Dated: October 6, 2025 **MICHEL & ASSOCIATES, P.C.**

s/ Anna M. Barvir
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PROOF OF SERVICE

Case Name: *Franklin Armory, Inc., et al. v. California Department of Justice, et al.*
Court of Appeal Case No. B340913
Superior Court Case No. 20STCP01747

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

On October 6, 2025, I served a copy of the foregoing document described as **APPELLANTS' REPLY BRIEF**, on the following parties, as follows:

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These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

Superior Court of California, County of Los Angeles
Stanley Mosk Courthouse
Judge Daniel S. Murphy
111 North Hill Street
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This party was served by mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 6, 2025, at Long Beach, California.

Laura Fera
Declarant