

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

**OPPOSITION TO APPELLANTS' MOTION TO AUGMENT
RECORD ON APPEAL WITH REPORTER'S TRANSCRIPT**

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Document received by the CA 2nd District Court of Appeal.

The motion to augment should be denied because comments made at a trial setting conference are not evidence or an order that is proper for consideration by this Court. Furthermore, such comments are not relevant to the pertinent issue which is whether Appellants properly stood on the first, second and eighth causes of action sustained with leave by the trial court based on the demurrer to the first amended complaint. (1 AA 118.)

County of Santa Clara v. Atlantic Richfield Co. (2006) 137 Cal.App.4th 292, relied upon by Appellants, makes clear that they did not properly stand on those causes of action. “The rule that a choice to amend waives any error can reasonably be applied only on a *cause-of-action-by-cause-of-action basis*.” (*Id.* at p. 312 (emphasis in original); see also *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 498 quoting *County of Santa Clara*.)

“If a plaintiff chooses not to amend one cause of action but files an amended complaint containing the remaining causes of action or amended versions of the remaining causes of action, no waiver occurs and the plaintiff may challenge the intermediate ruling on the demurrer on an appeal from a subsequent judgment. It is only where the plaintiff amends *the cause of action* to which the demurrer was sustained that any error is waived.” (*Id.* (emphasis in original); quoting *County of Santa Clara, supra*, 137 Cal.App.4th at p. 312.)

Here, Appellants filed amended versions of the first, second and eighth causes of action in the Second Amended Complaint. (2 AA 145-149, 157-159.) Thus, Appellants amended the causes of action to which the

1 **DECLARATION OF SERVICE BY ELECTRONIC MAIL**

2 RE: *Franklin Armory, Inc., v. California Department of Justice, et al.*
3 Case No. B340913

4 I declare: I am employed in the City of Los Angeles, County of Los Angeles, State
5 of California. I am over the age of 18 years and not a party to the within action. My
6 business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On
7 October 21, 2025, I served the documents named below on the parties in this action as follows:

8 **OPPOSITION TO APPELLANTS' MOTION TO AUGMENT RECORD ON APPEAL
9 WITH REPORTER'S TRANSCRIPT**

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

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

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

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

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

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

Executed on October 21, 2025, at Los Angeles, California.

Sandra Dominguez
Declarant

/s/ Sandra Dominguez
Signature

Document received by the CA 2nd District Court of Appeal.