

NOV 10 2021

*Superior Court of California*  
*County of Los Angeles*

*Department 32*

Sherri R. Carter, Executive Officer/Clerk  
By Shantal Luqueño Deputy  
Shantal Luqueño

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

POLYMER80, INC., et al.,

Defendants.

Case No.: 21STCV06257

Hearing Date: November 10, 2021

**TENTATIVE** ORDER RE:

DEFENDANTS' MOTION FOR JUDICIAL  
ABSTENTION AND DISMISSAL, OR IN  
THE ALTERNATIVE, FOR A STAY

**BACKGROUND**

On February 17, 2021, the People of the State of California ("Plaintiff") filed an action for violation of the Unfair Competition Law ("UCL") and public nuisance against Polymer80, Inc., David Borges, and Loran Kelley (collectively "Defendants"). The complaint arises from Defendants' production and sale of "ghost gun" kits.

Plaintiff alleges that Defendants' conduct violates the Federal Gun Control Act ("GCA") and Child Safety Lock Act ("CSLA"), as well as the California Unsafe Handgun Act ("CUHA") and Assembly of Firearms Law ("AFL"). (Compl. ¶¶ 39-61.) These violations form the basis for Plaintiff's UCL claim, which alleges that Defendants' violation of the foregoing federal and state laws constitutes an unlawful business practice. (*Id.*, ¶¶ 86-90.) Plaintiff's public nuisance claim alleges that Defendants "created a public nuisance by marketing, selling and distributing ghost gun kits to California residents without serial numbers, without background checks, and without appropriate safety features. Defendants' actions have created a significant threat to the public right of health and safety in public spaces." (*Id.*, ¶ 99.)

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1 Defendants have filed a motion for judicial abstention, or alternatively, for a stay on the  
2 grounds that the federal definition of “firearm” is unsettled and that the Court should not  
3 encroach onto legislative and administrative determinations.

#### 4 LEGAL STANDARD

5 The doctrine of equitable abstention “allows a court to abstain from adjudicating a suit  
6 that seeks equitable remedies if ‘granting the requested relief would require a trial court to  
7 assume the functions of an administrative agency, or to interfere with the functions of an  
8 administrative agency.’” (*Shuts v. Covenant Holdco LLC* (2012) 208 Cal.App.4th 609, 616  
9 [quoting *Alvarado v. Selma Convalescent Hospital* (2007) 153 Cal.App.4th 1292, 1298].)  
10 “Abstention may be appropriate if ‘the lawsuit involves determining complex economic policy,  
11 which is best handled by the Legislature or an administrative agency,’ or if ‘granting injunctive  
12 relief would be unnecessarily burdensome for the trial court to monitor and enforce given the  
13 availability of more effective means of redress.’” (*Ibid.*) “[C]ourts are hesitant to intervene in the  
14 absence of any legislative or regulatory guidance when a plaintiff essentially is asking the court  
15 to make an economic or policy judgment.” (*Id.* at p. 621.) “However, a court should not abstain  
16 from deciding a case when the Legislature ‘already has made the relevant policy determinations  
17 . . .’” (*Ibid.* [quoting *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471,  
18 501].)

#### 19 DISCUSSION

##### 20 **a. The Proposed Rule Change**

21 Defendants’ motion is premised on their claim that to proceed on this action would  
22 require the Court to encroach on the federal interpretation of “firearm.” Specifically, Defendants  
23 point out that the federal Bureau of Alcohol, Tobacco, and Firearms (“ATF”) is proposing a rule  
24 change to expand the definition of “frame or receiver” under the GCA. (Mtn. 10:10-18.)  
25 Defendants contend that due to the unsettled definition of “firearm” under federal law, it would

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1 be inappropriate for this Court to engage in a “forward looking” determination of whether  
2 Defendants have violated federal gun laws. (Mtn. 15:9-16:13.) As an alternative to abstention,  
3 Defendants request the Court to at least stay this action pending the ATF rule change.

4 Plaintiff counters that its lawsuit addresses only Defendants’ sale of ghost gun kits, not  
5 independent frames or receivers, which are the parts at issue in the ATF proposed rule change.  
6 (Opp. 7:3-10.) The proposed rule change seeks to “provide new regulatory definitions of ‘firearm  
7 frame or receiver’ and ‘frame or receiver’ . . .”, to amend “definitions of ‘firearm’ and  
8 ‘gunsmith’ . . .”, and to “provide definitions of terms such as ‘complete weapon,’ ‘complete  
9 muffler or silencer device,’ ‘privately made firearm,’ and ‘readily’ for purposes of clarity . . . .”  
10 (Labat Decl., Ex. 1, p. 27720.) With regards to ghost guns, the proposed rule change seeks to  
11 “clarify the definition of ‘firearm’ and to provide a more comprehensive definition of ‘frame or  
12 receiver’” to account for technological advancements. (*Id.* at p. 27725.) However, the proposal  
13 also recognizes that weapon parts kits are already considered “firearms” under the GCA because  
14 they are designed to or may readily be converted to expel a projectile. (*Id.* at p. 27726 [citing 18  
15 U.S.C. 921(a)(3)].) Although the proposal seeks to add a sentence at the end of the definition of  
16 “firearm” to make this more clear, it recognizes that weapon kits are already legally considered  
17 firearms based on existing case law. (*Ibid.*)

18 Thus, Plaintiff’s argument is well taken. To allow the parties to litigate over whether  
19 Defendants’ conduct violates federal gun laws and therefore violates the UCL would not  
20 encroach upon the federal definition of “firearm.” It would merely apply the existing definition.  
21 Defendants cite no authority holding that a state court cannot reference federal laws in  
22 adjudicating state law claims. In fact, an unlawful business practice under the UCL covers  
23 violations of federal as well as state law. (*Saunders v. Superior Court* (1994) 27 Cal.App.4th  
24 832, 838-39.)

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1 Moreover, Plaintiff's claims only involve the federal definition of "firearm" to the extent  
2 that Defendants' alleged violations of the GCA and CSLA are also violations of the UCL.  
3 (Compl. ¶ 67.) But Plaintiff's UCL claim is also based on Defendants' violation of California  
4 law. (*Ibid.*) The public nuisance claim does not deal with the definition of "firearm" at all, as no  
5 violation of statute is necessary to create a public nuisance. (*Id.*, ¶ 99 ["Defendants' actions have  
6 created a significant threat to the public right of health and safety in public spaces"]; ¶ 100 ["the  
7 seriousness of the harm to the public from Defendants' sale of unserialized ghost gun kits and  
8 components outweighs the social utility of their actions"].)

9 **b. The Court's Ability to Enforce an Injunction**

10 Defendants next argue that ATF is better equipped to decide compliance with federal gun  
11 laws and that ATF enforcement would be more effective. (Mtn. 22:9-28:6.) However, ATF  
12 cannot enforce California's Business and Professions Code, nor can it enjoin a public nuisance  
13 arising under California law. The Court is undoubtedly better equipped than a federal agency at  
14 enforcing California state laws. The relief requested by Plaintiff does not require the Court to  
15 assume or interfere with the functions of an administrative agency. (*Shuts, supra*, 208  
16 Cal.App.4th at p. 616.) Nor does it require the Court to make policy judgments. (*Id.* at p. 621.)

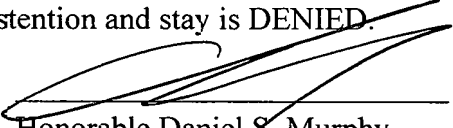
17 **c. Defendants' Alternative Request for a Stay**

18 For the same reasons, a stay pursuant to the primary jurisdiction doctrine is unnecessary.  
19 There is no issue raised in this action that is pending before an administrative agency. (*Wise v.*  
20 *Pac. Gas & Elec. Co.* (1999) 77 Cal.App.4th 287, 295-96.) As discussed above, the proposed  
21 ATF rule change is not pertinent to this action.

22 **CONCLUSION**

23 Based on the foregoing, Defendants' motion for abstention and stay is DENIED.

24 DATED: November 10, 2021

25   
Honorable Daniel S. Murphy  
Judge, Los Angeles Superior Court

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