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8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11
 12 B & L PRODUCTIONS, INC., d/b/a
 CROSSROADS OF THE WEST, et al.,
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 Plaintiffs,
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 v.
 15
 16 22nd DISTRICT AGRICULTURAL
 ASSOCIATION, et al.,
 17
 Defendants.
 18

19-cv-0134-CAB-NLS

**DECLARATION OF P. PATTY LI
 IN SUPPORT OF DEFENDANTS'
 APPLICATION PURSUANT TO
 FED. R. CIV. P. 56(d)**

Date: June 17, 2019
 Time: 2:30 p.m.
 Courtroom: 4C
 Judge: The Honorable Cathy Ann
 Bencivengo
 Action Filed: January 21, 2019

1 I, P. Patty Li, declare as follows:

2 1. I am a Deputy Attorney General in the California Attorney General’s
3 Office. I am a counsel of record for Defendants 22nd District Agricultural
4 Association (the “District”); Steve Shewmaker, President of 22nd District
5 Agricultural Association, in his official and individual capacity; Richard Valdez,
6 Vice President of 22nd District Agricultural Association, in his official and
7 individual capacity; and Karen Ross, Secretary of California Department of Food &
8 Agriculture, in her official capacity (collectively, “Defendants”), in the above-
9 captioned matter. I have personal knowledge of each fact stated in this declaration,
10 and if called as a witness I could and would testify competently to them under oath.

11 2. Plaintiffs’ complaint in this matter was filed on January 21, 2019. ECF
12 No. 1. Defendants’ motion to dismiss the complaint was filed on March 27, 2019,
13 ECF No. 12, and is set for a hearing on June 17, 2019, ECF No. 17.

14 3. Plaintiffs’ opposition to the motion to dismiss is also styled as a brief in
15 support of Plaintiffs’ motion for summary judgment. ECF No. 14.

16 4. In its Supplemental Briefing Schedule, the Court advised the parties that
17 it “is inclined to adopt Plaintiffs’ proposal to treat Defendants’ motion and
18 Plaintiffs’ opposition as cross-motions for summary judgment,” and directed
19 Defendants to “file a brief opposing summary judgment in favor of Plaintiffs”
20 fourteen days later. ECF No. 18, at 2. The Court specified that the brief “may
21 include a declaration pursuant to Federal Rule of Civil Procedure 56(d) identifying
22 what essential facts Defendants are unable to present[.]” *Id.*

23 5. When a motion to dismiss is converted into a summary judgment motion,
24 “all parties must be given a reasonable opportunity to present all the material that is
25 pertinent to the motion.” Fed. R. Civ. P. 12(d).

26 6. With respect to opposing a motion for summary judgment, two weeks is
27 not sufficient time for Defendants to assemble and prepare all relevant evidence
28 that is in the public record or in Defendants’ possession. Such evidence includes

1 declarations offering testimony by Defendants and their agents or employees, as
2 well as documentary evidence reflecting numerous public comments and
3 investigatory efforts carried out over many months. Testimony by or documents
4 from third parties who communicated with Defendants or their agents or employees
5 would also be relevant to Defendants’ adoption of the Contracting Policy, but such
6 evidence is not in Defendants’ possession.

7 7. The parties have not yet conferred as required by Federal Rule of Civil
8 Procedure 26(f), and are thus not yet permitted to “seek discovery from any
9 source.” Fed. R. Civ. P. 26(d). Because discovery has yet to begin, Defendants are
10 unable to “present facts essential to justify [their] opposition” to Plaintiffs’
11 summary judgment motion. Fed. R. Civ. P. 56(d).

12 8. Defendants have filed concurrently herewith an Opposition to Summary
13 Judgment Motion and Application Pursuant to Fed. R. Civ. P. 56(d).

14 9. If the Court does not grant Defendants’ motion to dismiss or deny
15 Plaintiffs’ summary judgment motion, Defendants seek discovery of the following
16 facts, in order to “present facts essential to justify [their] opposition” to Plaintiffs’
17 summary judgment motion (Fed. R. Civ. P. 56(d)):

18 a. Whether activity that takes place at gun shows consists of
19 commercial speech that is “inextricably intertwined” with fully protected
20 (what Plaintiffs refer to as “political”) speech; the topics of discussion at
21 gun shows; the feasibility of engaging in those discussions separate and
22 apart from the commercial sale of guns. These facts are in Plaintiffs’
23 possession, not Defendants’.

24 b. Whether the Contracting Policy targets “gun culture”; whether the
25 Contracting Policy was enacted based on the viewpoint of expressive
26 activities that take place at gun shows; what that viewpoint consists of;
27 whether the Contracting Policy actually targets that viewpoint; the effect
28 of the Contracting Policy, including whether pausing gun shows to study

1 public safety issues actually hurts members of “gun culture.” Discovery
2 regarding these facts requires discovery from Plaintiffs, as well as
3 discovery involving other sources, such as academic studies or experts.

4 c. The quantity and location of bulk ammunition vendors or firearms
5 vendors with comparable expertise and variety available at the
6 Crossroads gun shows; the amount of business a vendor does at a typical
7 gun show held at the Fairgrounds versus gun shows at other venues;
8 whether Defendants have a monopoly on venues of the size and type of
9 the Fairgrounds in the area. Discovery regarding these facts requires
10 discovery from Plaintiffs, as well as discovery involving other sources,
11 such as academic studies or experts.

12 d. The comparative dangers of firearms or gun shows, versus the
13 dangers of pools, spas, and alcohol; evidence as to the dangers of
14 firearms or gun shows; the reasonableness of studying public safety
15 issues relating to gun shows. Discovery regarding these facts requires
16 discovery from Plaintiffs, as well as discovery involving other sources,
17 such as academic studies or experts.

18 e. Gun show operations and gun shows’ impact on public safety;
19 whether gun shows are largely incident-free or create a unique risk to
20 public safety; whether and to what extent public safety concerns are
21 justified in the context of gun shows; the extent to which a temporary
22 pause on holding gun shows pending the development of a public safety
23 policy would address those concerns; whether there is a legitimate basis
24 for temporarily pausing gun shows in order to study and formulate a
25 comprehensive public safety policy regarding future gun shows at the
26 Fairgrounds; whether there are sufficient public safety concerns to justify
27 the Contracting Policy; whether the Contracting Policy is appropriately
28 tailored to address those public safety concerns; evidence that is relevant

1 to the compelling governmental interest and narrow tailoring issues;
2 evidence substantiating the efficacy of the Contracting Policy in
3 promoting public safety, as well as evidence disproving the effectiveness
4 of purported less restrictive alternatives; public safety incidents at or in
5 close proximity to gun shows; public safety incidents arising from
6 transactions at gun shows; illegal firearms sales taking place at or in
7 close proximity to gun shows; gun show practices encouraging illegal
8 firearms modifications or illegal sales downstream from gun shows; the
9 effect of pausing or prohibiting gun shows on gun violence or public
10 safety; the impact on public safety from continuing to hold gun shows
11 pending the development of a public safety policy. Discovery regarding
12 these facts requires evidence in Plaintiffs' possession, as well as expert
13 reports and testimony.

14 f. The types of associational activities that have occurred at past gun
15 shows held at the Fairgrounds; the conditions for assembly with like-
16 minded people to engage in expressive activities by organizers, vendors,
17 and attendees of past gun shows; factual issues such as the fees or costs
18 associated with participation or attendance at gun shows; whether and to
19 what extent organizers, vendors, and attendees of past gun shows are
20 strangers to one another; the recreational versus expressive nature of the
21 activities at issue. These facts are in Plaintiffs' possession, not
22 Defendants'.

23 g. Whether Plaintiffs have been subjected to differential treatment as
24 compared to similarly situated persons or groups, as required for a "class-
25 of-one" claim; how to define similarly situated persons or groups; how
26 those persons or groups have been treated; whether the Contracting
27 Policy targets only members of the "gun culture" who attend Crossroads
28 gun shows; whether the Contracting Policy is infused with Defendants'

1 desire to harm “gun culture”; whether “gun culture” is a politically
2 unpopular group. Discovery regarding these facts requires discovery
3 from Plaintiffs, as well as discovery involving other sources, such as
4 academic studies or experts.

5 h. Statewide practices concerning subcommittees of public agency
6 boards; whether a two-person ad-hoc subcommittee is improper under
7 state law. These facts are in the possession of third-party public agency
8 boards, not in Defendants’.

9 i. Whether the District has exceeded the bounds of discretion allowed
10 by the California Department of Food and Agriculture; the discretion
11 exercised by district agricultural associations; whether and to what extent
12 district agricultural associations’ contracts for “hazardous activities” have
13 complied with section 3965.1 of the Food & Agriculture Code. These
14 facts are primarily in the possession of the other 51 district agricultural
15 associations in the State.

16 j. Whether and to what extent Plaintiffs have suffered any damages as
17 a result of the Contracting Policy. These facts are in Plaintiffs’
18 possession.

19 k. Whether Plaintiff Crossroads actually requested that any dates be
20 reserved; whether any dates were actually reserved; and what those dates
21 were. These facts might be in either Plaintiffs’ or Defendants’
22 possession, depending on whether a request was actually made.

23 10. The facts described above exist, because the factual matters Defendants
24 seek to explore are capable of being documented or described, qualitatively and/or
25 quantitatively.

26 11. Defendants would seek discovery of the facts set forth above through
27 various means, including document requests, interrogatories, and requests for
28 admission; depositions of all Plaintiffs or their corporate representatives; discovery

1 involving other sources, such as academic studies or experts; and third-party
2 subpoenas, as necessary.

3 12. The facts sought are essential to Defendants’ opposition to summary
4 judgment. With respect to the First Amendment free speech claims, those facts are
5 essential to determining and applying the appropriate level of First Amendment
6 scrutiny at the summary judgment stage, particularly with respect to supplementing
7 the legislative record supporting the adoption of the Contracting Policy. For the
8 First Amendment associational rights claim, those facts are essential to determining
9 whether protected association occurs at gun shows. Defense of the equal protection
10 claim on summary judgment requires discovery on whether the Contracting Policy
11 targets “gun culture.” With respect to legislative immunity, Section 1983 liability,
12 and the Section 1985 conspiracy claim, discovery regarding the alleged impropriety
13 of the Contracts Oversight Committee under state law—which Plaintiffs repeatedly
14 invoke—is essential to Defendants’ opposition on these matters. The facts
15 Defendants seek are also essential to Defendants’ opposition regarding sovereign
16 immunity, which, in Plaintiffs’ telling, turns on the discretion exercised by district
17 agricultural associations. Finally, the requested discovery is essential to any
18 opposition with respect to damages and the injunction Plaintiffs have asked the
19 Court to enter (requiring Defendants to permit gun shows in 2019), as those matters
20 turn on inherently factual issues that have yet to be explored.

21 13. I believe that the information outlined above will raise a genuine issue of
22 material fact. Therefore, the Court should either defer considering Plaintiffs’
23 motion for summary judgment, deny it, or allow time for Defendants to obtain
24 affidavits or declarations or to take discovery.

25 14. In the course of my representation of the District in this matter, I have
26 corresponded by email with employees of the District. I have observed that email
27 addresses for employees of the District end in “sdfair.com,” not “nosevents.com.”
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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on May 30, 2019, at San Francisco, California.

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