

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>March 16, 2018, 9:00 a.m.</b>	<b>DEPT. NO</b>	<b>28</b>
<b>JUDGE</b>	<b>HON. RICHARD K. SUEYOSHI</b>	<b>CLERK</b>	<b>E. GONZALEZ</b>
<b>DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,</b>  <b>Plaintiffs and Petitioners,</b>  <b>v.</b>  <b>XAVIER BECERRA, in His Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,</b>  <b>Defendants and Respondents.</b>		<b>Case No.: 34-2013-80001667</b>	
<b>Nature of Proceedings:</b>		<b>PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF – REMAINING CAUSES OF ACTION</b>	

This matter is set for a hearing on the merits with regard to the remaining causes of action, scheduled for March 16, 2018 at 9:00 a.m. in Department 28.

In Plaintiffs’ opening trial brief they state as follows: “Recently, Plaintiffs identified two arguments that they seek to have considered but that were not expressly pleaded in the operative complaint. The first argument is that SB 819 violates the separation of powers doctrine because it is effectively an impermissible delegation of the Legislature’s authority to tax. The second argument is that Penal Code section 28225 created an illegal tax even before SB 819 became law.” (Plaintiffs’ Opening Trial Brief at 26:6-10.) Plaintiffs request that the Court “exercise its discretion and consider the...two arguments as if they had been pleaded in the operative complaint.” (*Id.* at 26:26-28.)

In their opposition, Defendants argue that the Court should deny Plaintiffs’ “belated request to amend the pleadings ‘according to proof.’” (Defendants’ Opposition Brief at 32:14-15.) Defendants argue that inexcusable delay prevents Plaintiffs from making their proposed new claims and that allowing the arguments would subvert the bifurcated nature of this proceeding. (*Id.* at 32:21-27.) Defendants state that if the Court is inclined to consider Plaintiffs’ new claims at this late date, Defendants request that the Court direct Plaintiffs to file

an appropriate motion for leave to file another amended pleading, or at least allow supplemental briefing on the merits of the claims. (*Id.* at 33:16-19.)

The Court finds that Plaintiffs' two new claims or "new arguments," as termed by Plaintiffs, are not properly before the Court for ruling on the merits. It is undisputed that Plaintiffs have not filed any motion for leave to amend seeking to add the subject two claims. While it is true that a motion for leave to amend to conform to proof may be made at any time during trial as long as judgment has not yet been entered and the amendment would not prejudice another party (*Union Bank v. Wendland* (1976) 54 Cal.App.3d 393, 400), the Court finds that Plaintiffs, in this instance, are required to make a *motion* for leave to amend, allowing Defendants the opportunity to oppose and the Court the opportunity to rule on the merits of such a motion. While Plaintiffs cite to authority discussing the trial court's discretion to allow pleadings to be amended, Plaintiffs provide no authority that such relief may be obtained without any motion at all and without providing any notice to the adverse party as referenced in Civil Procedure Code section 473(a)(1). The Court finds it procedurally improper for Plaintiffs to embed their request to amend according to proof inside of their trial brief.

To the extent that Plaintiffs continue to seek leave to amend their pleading according to proof, they are ordered to file a properly noticed motion pursuant to Civil Procedure Code section 473(a)(1). The Court grants Defendants' request that Plaintiffs be required to file such motion. Given that the substantive issues addressed in Plaintiffs' briefing are not fully and properly before the Court, the Court hereby **VACATES** the merits hearing of March 16, 2018 for the petition for writ of mandate and complaint for declaratory and injunctive relief.

Plaintiffs are directed to contact the Court clerk to obtain a hearing date for their motion for leave to amend.