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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

B & L PRODUCTIONS, INC., d/b/a  
CROSSROADS OF THE WEST, et al.,

Plaintiffs,

v.

22nd DISTRICT AGRICULTURAL  
ASSOCIATION, et al.,

Defendants.

CASE NO.: 3:19-cv-00134-CAB-NLS

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR LEAVE  
TO FILE SUPPLEMENTAL  
COMPLAINT**

Date: May 1, 2020

Judge: Hon. Cathy Ann Bencivengo

PER CHAMBERS RULES, NO ORAL  
ARGUMENT UNLESS SEPARATELY  
ORDERED BY THE COURT.

Action Filed: January 21, 2019

1 **I. INTRODUCTION**

2 The operative complaint in this matter asserts constitutional claims against  
3 California’s 22nd Agricultural District and seeks to enjoin the District’s moratorium  
4 on gun shows (“the Moratorium”) at the Del Mar Fairgrounds (“the Venue”). Since  
5 Plaintiffs filed the complaint, Assembly Bill 893, which expressly prohibits the sale  
6 of firearms and ammunition at the Venue beginning January 1, 2021, has become  
7 law. AB 893’s prohibition is merely the District’s Moratorium repackaged. The  
8 legislative record suggests that its purpose is to skirt this Court’s preliminary  
9 injunction ruling and anticipated permanent injunction. Whether by design or  
10 coincidence, AB 893 causes Plaintiffs the same constitutional injuries as the  
11 Moratorium, just in a more cosmetically subtle way. As a result, Plaintiffs now seek  
12 leave to file supplemental pleadings to address that new law and to include the  
13 appropriate state and local actors responsible for the law’s enforcement.

14 **II. STATEMENT OF FACTS**

15 **A. Case Background**

16 Plaintiffs filed their original complaint on January 21, 2019, asserting seven  
17 causes of action. Six for violations under 42 U.S.C. §1983 of the rights to: (1) free  
18 speech (political); (2) free speech (mixed political/commercial); (3) free speech  
19 (commercial); (4) free speech (prior restraint); (5) assembly and association; and (6)  
20 equal protection. One for a violation under 42 U.S.C. §1985 for conspiracy to violate  
21 civil rights.

22 Following a joint motion between the parties on February 12, 2019, to extend  
23 Defendants’ time to reply, Defendants filed a Motion to Dismiss the Complaint on  
24 March 27, 2019. Defendants argued that Plaintiffs failed to state a claim in any of  
25 their seven causes of action. Defs.’ Mot. Dismiss at 11, 21. Defendants also argued  
26 that Plaintiffs’ claims failed at least as against Defendants Shewmaker and Valdez  
27 based on absolute legislative immunity, and against Defendant Ross based on  
28 sovereign immunity. On April 17, 2019, Plaintiffs filed their Opposition to

1 Defendants Motion to Dismiss and simultaneously filed a Motion for Summary  
2 Judgment. Pls.’ Mem. Supp. Oppn. Mot. Dismiss & Supp. Mot. for Summ. J. at 1.

3       Following a hearing on June 17, 2019, this Court denied in part and granted in  
4 part Defendants’ Motion to Dismiss. Specifically, the Court dismissed all claims  
5 against Defendants Shewmaker, Valdez, and Ross, accepting their immunity  
6 defenses. Order Re Mot. Dismiss, Mot. Summ. J., Setting Disc. Sched. (“Order Re  
7 Mot. Dismiss”), ECF. No. 23, at 9. But the Court did not dismiss Plaintiffs’ claims  
8 against the District. *Id.* at 7. The Court also denied Plaintiffs’ Motion for Summary  
9 Judgment without prejudice, but sua sponte issued a preliminary injunction, enjoining  
10 enforcement of the moratorium and ordering the District to “make available the next  
11 available date for a gun show and allow [Plaintiff] B&L to reserve dates for gun  
12 show events (and to hold such events) at the Fairgrounds as the District would any  
13 other show promoters who have previously held events at the Fairgrounds.” *Id.* at 2.

14       Since that order, the parties have engaged in significant settlement efforts,  
15 including a mediation session and regular telephonic and written communications. *Jt.*  
16 *Mot. Recon. Ct. Order Den. Req. Extension, 2, ECF No. 38.* While the parties were  
17 engaged in those efforts, however, Plaintiffs were made aware of a change to state  
18 law that would likely ban gun shows at the Venue once more. Plaintiffs now seek  
19 leave to file the supplemental complaint that is the subject of this motion.

20       **B. Recent Change to the Law**

21       On October 11, 2019, after the original pleading this case was filed, the  
22 Governor signed Assembly Bill No. 893 (“AB 893”) into law. The bill provides, in  
23 relevant part, that beginning January 1, 2021:

24       [A]n officer, employee, operator, lessee, or licensee of the 22nd  
25 District Agricultural Association, as defined in Section 3873, shall not  
26 contract for, authorize, or allow the sale of any firearm or ammunition  
27 on the property or in the buildings that comprise the Del Mar  
28 Fairgrounds in the County of San Diego, the City of Del Mar, the City  
of San Diego, or any successor or additional property owned, leased, or  
otherwise occupied or operated by the district.

1 Req. Jud. Ntc., Ex. 1; Cal. Pen. Code § 4158 (a), (d). In sum, AB 893 prohibits the  
2 District “from contracting for, or allowing the sale of firearms and ammunitions at  
3 the” Venue. Req. Jud. Ntc., Ex. 2.

4 The legislative history of AB 893 repeatedly references Plaintiffs, this matter,  
5 and this Court’s order of preliminary injunction prohibiting the District from  
6 enforcing the Moratorium. *Id.*; *id.*, Ex. 4 at 3, 6. It cites the efforts of then-Lieutenant  
7 Governor Gavin Newsom to pressure “the Fair Board to end gun shows and put an  
8 end to valuing the sale of firearms above the value of lives.” *Id.*, Ex. 3. And it  
9 expressly acknowledges that the bill was meant to provide legal cover to the District  
10 for its gun show moratorium, *id.*, Ex. 4 at 3, and would “effectively terminate the  
11 possibility for future gun shows at the [Venue],” *id.*, Ex. 4 at 6.

### 12 **III. ARGUMENT**

13 Federal Rules of Civil Procedure, rule 15(d) provides, in relevant part: “On  
14 motion and reasonable notice, the court may, on just terms, permit a party to serve a  
15 supplemental pleading setting out any transaction, occurrence, or event that happened  
16 after the date of the pleading to be supplemented.” Under rule 15, a complaint may be  
17 supplemented to introduce claims not previously alleged if they are based on facts  
18 that were not in existence when the original complaint was filed. *Cabrera v. City of*  
19 *Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998). And, of course, the  
20 supplemental material “should have some relation to the claim set forth in the  
21 original pleading.” *Keith v. Volpe*, 858 F. 2d 467, 474 (9th Cir. 1988) (quoting 3 J.  
22 Moore, *Moore’s Federal Practice* ¶ 15.16[3] (1985)).

23 “Rule 15(d) is intended to give the court broad discretion in allowing a  
24 supplemental pleading.” Fed. R. Civ. P. 15, Notes of Advisory Committee on  
25 Rules—1963 Amendment. While the Court may deny supplemental pleadings, it  
26 should liberally allow them absent a *clear showing of prejudice* to the opposing party.  
27 *Keith v. Volpe*, 858 F.2d 467, 475 (9th Cir. 1988). Indeed, allowing supplementation  
28 is favored because it furthers the purpose of rule 15(d), which “is to promote as

1 complete an adjudication of the dispute between the parties as is possible.” *LaSalvia*  
 2 *v. United Dairymen of Ariz.*, 804 F.2d 1113, 1119 (9th Cir. 1986) (quoting C.A.  
 3 Wright & A.R. Miller, Federal Practice and Procedure § 1504, at 536 (1971)); *see*  
 4 *also McColm v. S.F. Hous. Auth.*, 2008 WL 5054203, at \*1 (N.D. Cal. Nov. 24,  
 5 2008).

6 Here, Plaintiffs seek leave to file a supplemental complaint addressing events  
 7 occurring after the filing of their original claims. Specifically, Plaintiffs seek to allege  
 8 new facts and raise new claims challenging the adoption and enforcement of AB 893,  
 9 which is part of a larger scheme to end gun shows at the Venue—a scheme that  
 10 includes the District’s Moratorium already challenged here. What’s more, AB 893  
 11 inflicts the same constitutional injuries on Plaintiffs as the District’s Moratorium. To  
 12 obtain full relief from AB 893, Plaintiffs require an injunction against both the state  
 13 and local actors responsible for enforcing AB 893, as well as the District. Because the  
 14 District cannot show that it will be unduly prejudiced by Plaintiffs addressing their  
 15 disputes with AB 893 in this matter, this Court should grant Plaintiffs leave to  
 16 supplement their complaint to do so.

17 **A. Plaintiffs’ Challenge to AB 893 Relates to the Claims Set Forth in**  
 18 **the Original Pleading Because AB 893’s Ban on Firearm and**  
 19 **Ammunition Sales Is Part of the Same Unconstitutional Scheme to**  
**End Gun Shows at the Venue**

20 Plaintiffs originally sued the District, bringing several claims that its  
 21 moratorium on gun shows at the Venue violates the First Amendment and Equal  
 22 Protection Clause. Compl. ¶¶ 108-178. Finding that Plaintiffs met the requirements  
 23 for a preliminary injunction on those claims, this Court preliminarily enjoined the  
 24 District from enforcing the Moratorium and ordered the District to allow Plaintiff  
 25 Crossroads to reserve dates for gun shows (and to hold those events) in 2019. Order  
 26 re Mot. Dismiss at 2. In so doing, the Court found that Plaintiffs were likely to  
 27 succeed on their First Amendment claims, reasoning that the “speech alleged to occur  
 28 at gun shows includes pure speech that warrants full First Amendment protection”

1 and “[b]ecause the Moratorium regulates speech based on its content, it is subject to  
2 strict scrutiny,” which the District likely could not meet. *Id.* at 17, 21-24. The Court  
3 also found Plaintiffs likely to succeed on their equal protection claim because the  
4 District “offers no evidence that gun shows pose a greater safety risk to the public  
5 than any other shows at the Fairgrounds,” as is its burden. *Id.* at 25.

6 Since this Court issued the preliminary injunction, however, the State passed  
7 AB 893, effectively (and likely intentionally) circumventing the injunction and  
8 halting gun shows at the Venue once again. Indeed AB 893’s legislative history  
9 confirms that this was, in fact, the bill’s very purpose. *See, e.g.*, Req. Jud. Ntc., Ex. 2  
10 (expressly citing this litigation, as well as the Court’s preliminary injunction barring  
11 enforcement of the Moratorium and ordering the District to work with Crossroads to  
12 reserve and hold gun shows in 2019); *id.*, Ex. 4 at 3 (explaining that AB 893 is  
13 “needed” in order to “provide additional legal protection to the fair board [i.e., the  
14 District] for” adopting the Moratorium in 2018); *id.*, Ex. 4 at 6 (expressly recognizing  
15 that AB 893 would effectively prohibit gun shows at the Venue).

16 The State’s adoption of AB 893 means that Plaintiffs can no longer sell any  
17 firearm or ammunition at the Venue. Cal. Food Agric. Code § 4158(a). While events  
18 for viewing and discussing guns could theoretically continue at the Venue, the ability  
19 to purchase firearms and ammunition is undeniably a major--if not the primary--draw  
20 for attendees of traditional gun shows. And the sale of firearms and ammunition is  
21 why a significant percentage of the vendors at Crossroads’ gun shows at the Venue  
22 participate. *See* Redmon Decl. Supp. Pls.’ Opp’n Mot. Dismiss & Supp. Pls.’ Mot.  
23 Summ. J., ECF No. 14-14; Olcott Decl. Supp. Pls.’ Opp’n Mot. Dismiss & Supp.  
24 Pls.’ Mot. Summ. J., ¶¶ 7, 11, ECF No. 14-18. Admission and vendor fees thus make  
25 up a significant portion of Crossroads’ budget for producing gun shows, and without  
26 that critical financial support, gun shows at the Venue will not be viable. This was  
27 not lost on the Legislature when it adopted AB 893. In fact, the Senate Public Safety  
28 Committee report acknowledges that ending gun shows at the Venue was indeed a

1 feature of the bill:

2           This bill would add a section to the Food and Agricultural  
3 Code that prohibits the sale of firearms and ammunitions at the Del  
4 Mar Fairgrounds. By default, a violation of any provision of the Food  
5 and Agricultural code is a misdemeanor, unless otherwise specified.  
Therefore, this bill would effectively terminate the possibility for  
future gun shows at the Del Mar Fairgrounds.

6 Req. Jud. Ntc., Ex. 4 at 6. At best, AB 893 is simply part of the same unconstitutional  
7 scheme to banish gun shows from the Venue that the Moratorium was part of. At  
8 worst, it was an intentional effort by the State to circumvent this Court’s preliminary  
9 injunction order ending the enforcement of the District’s Moratorium, making  
10 supplementation (as opposed to a separate action) uniquely appropriate. *See Griffin v.*  
11 *Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 226 (1964). But either way,  
12 Plaintiffs’ proposed supplemental material is sufficiently related to the claims raised  
13 in the original pleading to justify leave to supplement.

14           What’s more, AB 893 raises the same constitutional issues the Moratorium  
15 raises. For, just like the Moratorium, AB 893 practically eliminates Plaintiffs’  
16 protected political speech and expressive conduct—conduct this Court has already  
17 recognized takes place at gun shows. Order re Mot. Dismiss at 17. The Legislature’s  
18 findings in passing AB 893 expressly and repeatedly mention Plaintiffs’ gun shows at  
19 the Venue, Pls.’ Req. Jud. Ntc., Ex. 3, demonstrating that AB 893’s purpose is to  
20 deliberately target Plaintiffs’ gun shows and, consequently, the speech that takes  
21 place at those events. By specifically targeting Plaintiffs’ gun shows in this way, AB  
22 893 has the same purpose and practical effect as the District’s Moratorium and is  
23 subject to strict scrutiny. That is so even though the new law purports to restrict only  
24 commerce. After all, gun shows are partially commercial events, but this Court  
25 nevertheless found the District’s Moratorium also affected protected speech and  
26 expressive conduct. Order re Mot. Dismiss at 17, 19. The same applies here.

27           Even assuming gun shows were able to continue without the sale of firearms or  
28 ammunition or that AB 893 did not restrict Plaintiffs’ political speech or expressive

1 conduct, AB 893 is at minimum a ban on Plaintiffs' commercial speech, just like the  
 2 Moratorium. This Court has not yet analyzed Plaintiffs' commercial speech  
 3 challenges to the Moratorium because it found the higher standard of review for  
 4 political speech applied. But the analysis would be the substantially the same. *See*  
 5 *generally Nordyke v. Santa Clara Cty.*, 110 F.3d 707 (9th Cir. 1997).

6 \* \* \* \*

7 In sum, AB 893 is the State's blatant effort to create a loophole to this Court's  
 8 preliminary injunction order, under the guise of regulating commerce. Even if that  
 9 were not the case, AB 893 has that effect, making it a natural fit for inclusion in this  
 10 matter. This case is already about a challenge to a gun show ban at the Venue. Rather  
 11 than file an additional lawsuit to address injuries that are at least substantially similar  
 12 to those claims already at issue, Plaintiffs request leave to supplement their complaint  
 13 to include their challenges to AB 893. Because Plaintiffs' AB 893 challenge is  
 14 directly related to the issues raised in the original complaint, and did not exist when it  
 15 was filed, the Court should grant Plaintiffs' motion.

16 **B. The District Is a Necessary (But Not Sufficient) Defendant in**  
 17 **Plaintiffs' AB 893 Challenge**

18 Unlike the Moratorium, which was the District's policy, AB 893 creates a  
 19 criminal statute in California's Food and Agricultural Code. Cal. Food & Agric. Code  
 20 § 4158(3). As such, Plaintiffs will need injunctive relief against all state and local  
 21 actors responsible for enforcing the law. That means Plaintiffs must sue California's  
 22 Attorney General, the San Diego District Attorney, Del Mar County Counsel, in their  
 23 official capacities.

24 But an injunction against these state and local actors alone would not apply to  
 25 the District because, as this Court has found, it is not a state actor. Injunctive relief  
 26 against the District, however, is necessary for Plaintiffs to obtain effective relief from  
 27 AB 893 not only because the District manages the Venue, Req. Jud. Ntc., Ex. 1 at 1,  
 28 but also because the statute sought to be enjoined expressly names the District as an



1 enforcement mechanism of the restriction on firearm and ammunition sales at the  
2 Venue, *see* Cal. Pen. Code § 4158(a) (“an officer, employee, operator, lessee, or  
3 licensee of the 22nd District Agricultural Association, as defined in Section 3873,  
4 shall not contract for, authorize, or allow the sale of any firearm or ammunition on  
5 the property or in the buildings that comprise the [Venue].”). Plaintiffs will thus need  
6 to include the state and local actors responsible for enforcement and prosecution of  
7 the law, as well as the District as separate defendants in their challenge to AB 893.

8 **C. No Party Will Be Unduly Prejudiced**

9 Neither the District nor the individual state and local actors will be prejudiced  
10 by the filing of Plaintiffs’ supplemental complaint. As explained above, all are  
11 indispensable parties to Plaintiffs’ AB 893 challenge. The District will thus either  
12 continue to be a defendant in this matter or become a defendant in a new matter.  
13 Plaintiffs perceive no burden to the District in either scenario. To the contrary,  
14 bringing all of Plaintiffs’ gun show ban claims in a single action conserves the  
15 resources of all parties and the Court.

16 **CONCLUSION**

17 Because Plaintiffs seek to introduce new allegations of fact materializing  
18 subsequent to the filing of the original complaint, and because no prejudice will  
19 result, the Court should grant Plaintiffs’ Motion for Leave to File Supplemental  
20 Complaint.

21  
22 Dated: March 27, 2020

**MICHEL & ASSOCIATES, P.C.**

23 *s/ Anna M. Barvir*

24 Anna M. Barvir

25 Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *B & L Productions, Inc., et al. v. 22nd District Agricultural Association, et al.*

Case No.: 3:19-cv-00134 CAB (NLS)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL COMPLAINT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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*Attorneys for Defendants*

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 27, 2020.

*s/ Laura Palmerin*  
\_\_\_\_\_  
Laura Palmerin