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

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

19 19-cv-0134-CAB-AHG

**DEFENDANT 22ND DISTRICT
 AGRICULTURAL
 ASSOCIATION'S OPPOSITION
 TO MOTION FOR LEAVE TO
 FILE SUPPLEMENTAL
 COMPLAINT**

Date: May 1, 2020
 Judge: The Honorable Cathy Ann
 Bencivengo
 Action Filed: January 21, 2019

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INTRODUCTION

Defendant 22nd District Agricultural Association submits this response to Plaintiffs’ Motion for Leave to File Supplemental Complaint and supporting papers (“Motion,” ECF Nos. 40, 40-1, 40-2, 40-3, 40-4).¹ Through that Motion, Plaintiffs seek to add new causes of action (which also name new defendants) concerning a California law enacted in the fall of 2019, Assembly Bill 893 (“AB 893”).

As set forth below, the District opposes the Motion to the extent it (1) assumes that the District took any action to support or otherwise played a role in the passage of AB 893; or (2) would prevent the District from entering into a settlement agreement resolving all claims in the original complaint filed in this action (ECF No. 1) or the portions of the supplemental complaint that correspond to those claims, namely, Causes of Action 1 through 7 of the supplemental complaint.

BACKGROUND

The District is a state institution that oversees the operations of the San Diego County Fairgrounds (“Fairgrounds”). Cal. Food & Ag. Code § 3951(a), (b); *id.* § 3873. In September 2018, the District’s Board of Directors adopted a policy that the District would temporarily refrain from entering into contracts to hold gun shows at the Fairgrounds (“September 2018 Policy”).

As the parties have informed the Court, subsequent to the Court’s denial of the District’s motion to dismiss and entry of a preliminary injunction in June 2019, the parties have engaged in extensive settlement discussions with respect to the claims relating to the September 2018 Policy asserted in the original complaint in this action (ECF No. 1), including a mediation session and regular telephone conferences and written communications. *See* ECF No. 38. Since this Motion was filed on March 27, 2020, the Parties have achieved an agreement in principle and

¹ This opposition is filed on behalf of the sole remaining defendant, the District, and not on behalf of any other proposed defendant named in the proposed supplemental complaint.

1 are currently taking all steps necessary to finalize and execute a settlement
2 agreement resolving all claims set forth in the original complaint (ECF No. 1).

3 **ARGUMENT**

4 **I. THE DISTRICT PLAYED NO ROLE IN THE PASSAGE OF AB 893, AND TO**
5 **THE EXTENT THE MOTION IS PREMISED ON SUCH AN ASSUMPTION, IT**
6 **SHOULD BE DENIED.**

7 In seeking leave to file the supplemental complaint, Plaintiffs contend that the
8 September 2018 Policy and AB 893 are “part of the same unconstitutional scheme
9 to end gun shows” at the Fairgrounds. Mem. of Ps. & As ISO Motion (ECF No.
10 40-1), at 5. But neither the original complaint nor the proposed supplemental
11 complaint contain any factual allegations that the District took steps to support AB
12 893. The materials for which Plaintiffs have requested judicial notice in support of
13 their Motion (ECF No. 40-4) also contain nothing indicating that the District made
14 any attempt to help secure passage of AB 893. Insofar as granting the Motion
15 would require the Court to find that the District played a role in the passage of AB
16 893, the Court should deny the Motion.²

17 **II. IF THE SUPPLEMENTAL COMPLAINT WOULD PREJUDICE THE DISTRICT**
18 **BY PREVENTING IT FROM RESOLVING ALL CLAIMS ASSERTED AGAINST**
19 **IT IN THE ORIGINAL COMPLAINT, THE MOTION SHOULD BE DENIED.**

20 The District also opposes the Motion to the extent that the supplemental
21 complaint would prejudice the District by preventing it from resolving, through a
22 settlement agreement, all claims corresponding to those originally asserted against
23 the District in the original complaint. “[A] showing of prejudice to the defendant”
24 cautions against a liberal construction of Rule 15(d). *Keith v. Volpe*, 858 F.2d 467,
25 475 (9th Cir. 1988). Similarly, when considering a request to file an amended
26 pleading, “the trial court [is] required to take into account any prejudice that the
27 [opposing party] would ... suffer[] as a result.” *Zenith Radio Corp. v. Hazeltine*

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² This opposition to the Motion is not a response to the supplemental
complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. If Plaintiffs
are granted leave to file the proposed supplemental complaint, the District does not
waive any defense or objection available under Rule 12 by filing this opposition.

1 *Research, Inc.*, 401 U.S. 321, 330–31 (1971). *See also AEP Energy Servs. Gas*
2 *Holding Co. v. Bank of Am., N.A.*, 626 F.3d 699, 725 (2d Cir. 2010) (“the prejudice
3 to the opposing party . . . [i]s among the most important reasons to deny leave to
4 amend” (internal quotation marks omitted)); *Djourabchi v. Self*, 240 F.R.D. 5, 13
5 (D.D.C. 2006) (“possibility of prejudice” is “most important factor” to consider).

6 “Prejudice may arise when the proposed complaint ‘adds new parties or at
7 least entails more than an alternate claim or a change in the allegations of a
8 complaint.’” *Thorp v. D.C.*, 325 F.R.D. 510, 513–14 (D.D.C. 2018) (quoting *LSSi*
9 *Data Corp. v. Time Warner Cable, Inc.*, 2012 WL 933078, at *2 (S.D.N.Y. Mar.
10 20, 2012) (internal citations omitted)). This is because such a supplemental
11 complaint could delay a defendant’s ability to resolve existing claims, or increase
12 the costs of resolving existing claims. *See Sai v. Transportation Sec. Admin.*, 155
13 F.Supp.3d 1, 7 (D.D.C. 2016) (denying motion to file supplemental complaint
14 adding new claims raising “entirely new matters”); *Van Hollen v. Federal Election*
15 *Comm’n*, 291 F.R.D. 11, 13 (D.D.C. 2013) (denying leave to file supplemental
16 answer raising cross-claims that “would alter and expand the nature and scope of
17 the litigation and would prejudice the other parties by unnecessarily delaying
18 resolution of the action and increasing the cost of the litigation”).

19 The District is not aware of anything in the proposed supplemental complaint
20 that would prevent the District from entering into a settlement agreement to resolve
21 the claims that correspond to those asserted against it in the original complaint. *See*
22 *ECF No. 1; Proposed Suppl. Compl. (ECF No. 40-2), Causes of Action 1 – 7.* If,
23 however, the supplemental complaint would prevent or interfere with settlement of
24 those claims, the District’s ability to resolve those claims without the continued
25 expense of litigation would greatly suffer. Under such circumstances, the
26 supplemental complaint would severely prejudice the District, and leave to file the
27 supplemental complaint should be denied.

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If the Court determines that the District would suffer prejudice from the supplemental complaint because the supplemental complaint would somehow prevent the District from resolving Causes of Action 1 through 7 without further litigation, Plaintiffs will not suffer any prejudice from being required to file their challenge to AB 893 in a separate action. Plaintiffs are “free to recast the arguments of [their] supplemental complaint as a complaint in a new, perhaps related, action before this court.” *Thorp*, 325 F.R.D. at 514 (internal quotation marks and citation omitted). Even if “the only practical effect of denying leave to supplement is that [the plaintiff] will incur an additional filing fee” because the new case will be assigned to the same judge as a related case, “the desire to avoid filing fees is no justification for maintaining a single case as an ongoing forum for raising a perpetual series of . . . disputes with” a government entity. *Sai*, 155 F. Supp. 3d at 8. Thus, if the Court determines that the filing of the supplemental complaint will prejudice the District, the Court can and should deny the Motion without fear that Plaintiffs will suffer prejudice from having to file their challenge to AB 893 in a separate lawsuit.

CONCLUSION

For the foregoing reasons and under the circumstances described above, the Court should deny the Motion for Leave to File Supplemental Complaint.

1 Dated: April 17, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case Name: **B&L Productions, Inc., et al v. 22nd District Agricultural Association, et al.** No. **19-cv-0134-CAB-AHG**

I hereby certify that on April 17, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT 22ND DISTRICT AGRICULTURAL ASSOCIATION'S OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 17, 2020, at San Francisco, California.

Susan Chiang
Declarant

/s/ Susan Chiang
Signature