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 8 Karen Ross, and 22nd District Agricultural  
 Association*

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 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
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 14 **B&L PRODUCTIONS, INC., d/b/a**  
 15 **CROSSROADS OF THE WEST, et**  
 16 **al.,**

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM, in his official**  
 20 **capacity as Governor of the State of**  
 21 **California and in his personal**  
 22 **capacity, et al.,**

23 Defendants.  
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3:21-cv-01718 AJB-DDL

**NOTICE OF STATE  
 DEFENDANTS' MOTION AND  
 MOTION TO DISMISS THE FIRST  
 AMENDED COMPLAINT**

Date: February 23, 2023  
 Time: 2:00 p.m.  
 Courtroom: 4A  
 Judge: The Honorable Anthony J.  
 Battaglia  
 Trial Date: None  
 Action Filed: 10/4/2021

1                                   **NOTICE OF MOTION AND MOTION TO DISMISS**

2           PLEASE TAKE NOTICE THAT on February 23, 2023 at 2:00 p.m., or as  
3 soon thereafter as the matter may be heard before the Honorable Anthony J.  
4 Battaglia in Courtroom 4A of the Edward J. Schwartz U.S. Courthouse, located at  
5 221 West Broadway, San Diego, California 92101, the Court will hear the motion  
6 filed by Defendants Governor Gavin Newsom, Attorney General Rob Bonta,  
7 Secretary of California Department of Food & Agriculture Karen Ross, and the  
8 22nd District Agricultural Association (collectively, “State Defendants”), to dismiss  
9 the First Amended Complaint for Monetary, Declaratory & Injunctive Relief (ECF  
10 No. 36).

11           State Defendants move to dismiss under Federal Rules of Civil Procedure  
12 12(b)(1), and 12(b)(6) on the grounds that:

13           1.    The First Amendment free speech claims (First through Third Claims) all  
14 fail to state a claim upon which relief can be granted because California Assembly  
15 Bill 893 (“AB 893”) does not regulate speech or expressive conduct, as this Court  
16 has previously held (ECF No. 35 at 12-13). AB 893 passes multiple levels of  
17 scrutiny, regardless of the analytical test that is applied. Since AB 893 does not  
18 regulate speech, it is subject to and satisfies rational basis review. Alternatively,  
19 AB 893: applies to a limited public forum—a type of a nonpublic forum—and is  
20 viewpoint neutral and reasonable; and AB 893 satisfies the intermediate scrutiny  
21 tests applicable for commercial speech restrictions and for content-neutral  
22 restrictions;

23           2.    The First Amendment prior restraint claim (Fourth Claim) fails to state a  
24 claim upon which relief can be granted because AB 893 does not grant a  
25 government entity with unbridled discretion;

26           3.    The First Amendment associational claim (Fifth Claim) fails to state a  
27 claim upon which relief can be granted because Plaintiffs do not plausibly allege  
28 that they are engaged in protected expressive association;

1           4.    The Second Amendment claim (Sixth Claim) fails to state a claim upon  
2 which relief can be granted because the new claim exceeds the scope of leave  
3 granted by this Court when it dismissed the Complaint.  Alternatively, the Second  
4 Amendment’s plain text does not confer an independent right to sell firearms and  
5 Plaintiffs insufficiently allege that AB 893 meaningfully restricts their access to  
6 firearms and ammunition;

7           5.    The Equal Protection Clause claim (Seventh Claim) fails to state a claim  
8 upon which relief can be granted because the claim is not substantively different  
9 from the one this Court previously dismissed (ECF No. 35 at 13-14).  Alternatively,  
10 the claim is duplicative of the First Amendment claims; Plaintiffs do not plausibly  
11 allege a “class of one” claim; and AB 893 passes rational basis review; and

12           9.    This Court need not exercise its supplemental jurisdiction over the state-  
13 law tort claims (Eighth through Tenth Claims) pursuant to 28 U.S.C. § 1367.  
14 Alternatively, the state-law tort claims all fail to state a claim upon which relief can  
15 be granted because they are barred by state statutory immunities, as previously  
16 conceded by Plaintiffs, and the Eleventh Amendment.  Additionally, there is no  
17 alleged statutory basis that authorizes the tort claims and the claims are time-barred  
18 since they were not timely presented in accordance with the California Government  
19 Claims Act.

20           This motion is based on this filing, the concurrently filed memorandum of  
21 points and authorities and request for judicial notice, the papers and pleadings on  
22 file in this action, and upon such matters as may be presented to the Court at the  
23 time of the hearing.

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1 Dated: October 31, 2022

Respectfully submitted,

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Attorney General of California

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ANTHONY R. HAKL  
Supervising Deputy Attorney General

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*/s/Charles J. Sarosy*

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