

1 C.D. Michel-SBN 144258
Anna M. Barvir-SBN 268728
2 Tiffany D. Chevront-SBN 317144
Alexander A. Frank-SBN 311718
3 MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
4 Long Beach, CA 90802
Telephone: (562) 216-4444
5 Fax: (562) 216-4445
Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs B&L Productions, Inc., Barry Bardack, Ronald J. Diaz, Sr.,
7 John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain
Jon’s Lockers, LLC, L.A.X. Firing Range, Inc., California Rifle & Pistol
8 Association, Incorporated, and South Bay Rod and Gun Club, Inc.

9 Donald Kilmer-SBN 179986
Law Offices of Donald Kilmer, APC
10 14085 Silver Ridge Road
Caldwell, Idaho 83607
11 Telephone: (408) 264-8489
Email: Don@DKLawOffice.com

12 Attorney for Plaintiff Second Amendment Foundation

13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

16 B&L PRODUCTIONS, INC., d/b/a
CROSSROADS OF THE WEST, et al.,
17
18 Plaintiffs,
19
20 v.
21 GAVIN NEWSOM, in his official
capacity as Governor of the State of
California and in his personal capacity, et
al.,
22 Defendants.

CASE NO: 21CV1718 AJB KSC
**PLAINTIFFS’ NOTICE OF ORDER
FOR SUPPLEMENTAL BRIEFING
IN SIMILAR CASE**

23
24 This Court currently has under submission Defendants’ Motion to Dismiss the
25 First Amended Complaint and has issued an order that the matter is suitable for
26 determination without oral argument. ECF No. 47. The operative complaint at issue
27 in Defendants’ motion includes a claim that Defendants’ conduct violates the
28 Second Amendment. ECF No. 36.

1 A case with virtually identical facts is currently pending in the United States
2 District Court for the Central District of California. Like this case, the lawsuit in the
3 Central District challenges a state-law ban on gun shows at the Orange County Fair
4 & Event Center. First Amended Complaint, *B&L Prods. v. Newsom*, No. 22.-cv-
5 1518 (C.D. Cal. Nov. 14, 2022) (ECF No. 19). It also challenges the statewide ban
6 on gun shows on all state-owned property. *Id.*

7 Currently pending, in that case, is the Plaintiffs’ Motion for Preliminary
8 Injunction. At the request of the defendants, the Honorable John W. Holcomb
9 recently ordered the parties to submit supplemental briefing on the plaintiffs’
10 Second Amendment claim by January 27, 2023. Order for Supplemental Briefing
11 Regarding Plaintiffs’ Motion for Preliminary Injunction 2-3, *B&L Prods.*, No. 22.-
12 cv-1518 (C.D. Cal. Jan. 6, 2023) (ECF No. 25). The purpose of the court-ordered
13 briefing is to afford the parties an opportunity to present and analyze the historical
14 record necessary under the analytical framework for Second Amendment claims laid
15 out in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). *Id.* A
16 true and correct copy of the Central District’s order is attached as Exhibit 1.

17 Dated: January 17, 2023 MICHEL & ASSOCIATES, P.C.
18
19 /s/ Anna M. Barvir
20 Anna M. Barvir
21 Email: abarvir@michellawyers.com
22 Counsel for Plaintiffs B&L Productions, Inc.,
23 Barry Bardack, Ronald J. Diaz, Sr., John
24 Dupree, Christopher Irick, Robert Solis,
Lawrence Michael Walsh, Captain Jon’s
Lockers, LLC, L.A.X. Firing Range, Inc.,
California Rifle & Pistol Association,
Incorporated, and South Bay Rod and Gun
Club, Inc.

25 Dated: January 17, 2023 LAW OFFICES OF DONALD KILMER,
APC
26 /s/ Donald Kilmer
27 Donald Kilmer
28 Email: don@dklawoffice.com
Counsel for Plaintiff Second Amendment
Foundation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION OF E-FILED SIGNATURES

I, Anna M. Barvir, am the ECF User whose ID and password are being used to file this PLAINTIFFS’ NOTICE OF ORDER FOR SUPPLEMENTAL BRIEFING IN SIMILAR CASE. In compliance with Southern District of California Electronic Case Filing Administrative Policies and Procedures Section 2(f)(4), I attest that all signatories have concurred in this filing.

Dated: January 17, 2023

/s/ Anna M. Barvir
Anna M. Barvir

EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—
GENERAL

Case No. 8:22-cv-01518-JWH-JDE Date January 6, 2023

Title *B & L Productions, Inc., et al. v. Gavin Newsom, et al.*

Present: The Honorable JOHN W. HOLCOMB, UNITED STATES DISTRICT JUDGE

Clarissa Lara
Deputy Clerk

Not Reported
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Present

Attorney(s) Present for Defendant(s):
None Present

**Proceedings: ORDER FOR SUPPLEMENTAL BRIEFING REGARDING
PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION [ECF No. 21] (IN CHAMBERS)**

Presently before this Court is the motion of Plaintiffs B&L Productions, Inc., d/b/a Crossroads of the West; Gerald Clark; Eric Johnson; Chad Littrell; Jan Steven Merson; California Rifle & Pistol Association, Incorporated; Asian Pacific American Gun Owners Association; Second Amendment Law Center, Inc.; and Second Amendment Foundation for a preliminary injunction against Defendants Gavin Newsom, Rob Bonta, Karen Ross, Todd Spitzer, and 32nd District Agricultural Association.¹ In view of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), this Court requires supplemental briefing regarding Plaintiffs' seventh claim for relief, for violations of the Second Amendment.²

In the Motion and the Opposition, both sides largely rely upon *Teixeira v. Cnty. of Alameda*, 873 F.3d 670 (9th Cir. 2017) (en banc), and other pre-*Bruen* Ninth Circuit cases that discuss the Second Amendment's protection of the right

¹ See Pls.' Mot. for Prelim. Injunction (the "Motion") [ECF No. 21].

² First Am. Compl. [ECF No. 19] 59:1-60:10.

to acquire arms.³ Pre-*Bruen*, the Ninth Circuit held that courts must “apply a two-step inquiry to examine [Second Amendment] claim[s]. We first ask ‘whether the challenged law burdens conduct protected by the Second Amendment,’ and, if so, we then determine the ‘appropriate level of scrutiny.’” *Teixeira*, 873 F.3d at 682 (citing *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013)). It appears that that line of reasoning was explicitly overruled by *Bruen*, which held:

Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment’s text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.

Bruen, 142 S. Ct. at 2127.

Although both Plaintiffs and Defendants discuss the textual and historical analysis performed by the *Teixeira* court, it appears that *Teixeira* is distinguishable on the facts because it involved a single business partnership seeking a permit from Alameda County to open a gun store in an unincorporated portion of the county. *Teixeira*, 735 F.3d at 673-74. In *Teixeira*, there were 10 other licensed gun shops in the county, including one that was “600 feet away from the proposed site of *Teixeira*’s planned store.” *Id.* at 679. In contrast, in this case Plaintiffs seek to enjoin two laws banning the sale of firearms at gun shows held on public property, both across Orange County and state-wide.⁴ Furthermore, in dismissing the plaintiff’s complaint on a motion to dismiss, the Ninth Circuit in *Teixeira* explicitly stated that “[w]e need not define the precise scope of any such acquisition right under the Second Amendment to resolve this case.” *Id.* at 678. Accordingly, this Court tentatively concludes that it cannot rely on *Teixeira* for the proposition that banning the sale of firearms at gun shows does not somehow burden the Second Amendment and that it must turn to *Bruen*’s textual and historical analysis of the laws in question.

³ Motion 22:28-23:9; Defs.’ Opp’n to the Motion (the “Opposition”) 21:15-24:12.

⁴ Motion 4:19-5:2.

In their Opposition, Defendants request that if this Court does not concur with Defendants' analysis of *Teixeira* and its application post-*Bruen*, then they should be allowed "an opportunity to compile the relevant historical record to supplement the historical evidence examined in *Teixeira*."⁵ Defendants' request comports with *Bruen*'s instruction that, in our adversarial system, courts are "entitled to decide a case based on the historical record compiled by the parties." *Bruen*, 142 S. Ct. at 2130 n.6. In view of the novel issues presented by the laws in question, as well as *Bruen*'s instruction that when regulations burden Second Amendment rights "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation," this Court directs the parties to provide supplemental briefing on Plaintiffs' Second Amendment claim. *See id.* at 2126.

For the foregoing reasons, the Court hereby **ORDERS** as follows:

1. The parties are **DIRECTED** to file simultaneous supplemental briefs, not to exceed 25 pages,⁶ no later than January 27, 2023, providing an analysis of the issues discussed above.

2. The hearing on the Motion is **CONTINUED** to February 10, 2023, at 9:00 a.m. in Courtroom 9D of the Ronald Reagan Federal Building and U.S. Courthouse, 411 W. 4th Street, Santa Ana, California.

IT IS SO ORDERED.

⁵ Opposition 24 n.12.

⁶ The Court sets a capacious page limit, but it also hastens to remind the parties that brevity is a virtue.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Case Name: *B & L Productions, Inc., et al. v. Newsom, et al.*
Case No.: 21CV1718 AJB KSC

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' NOTICE OF ORDER FOR
SUPPLEMENTAL BRIEFING IN SIMILAR CASE**

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

Charles J. Sarosy, Deputy Attorney General
charles.sarosy@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
*Attorneys for Defendants Governor Gavin Newsom,
Attorney General Rob Bonta, Secretary Karen Ross, and
22nd District Agricultural Association*

Timothy M. White, Senior Deputy
timothy.white@sdcounty.ca.gov
Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
*Attorneys for Defendants Summer Stephan, Attorney of
San Diego County and Lonnie Eldridge, County Counsel
of San Diego County*

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

Executed January 17, 2023.



Laura Palmerin