

Case No. 23-55431

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In the United States Court of Appeals  
for the Ninth Circuit

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B & L PRODUCTIONS, INC., et al.,  
*Plaintiffs-Appellants,*

v.

GAVIN NEWSOM,  
in his official capacity as Governor of the State of California and in his personal  
capacity, et al.,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Southern District of California  
Case No. 3:21-cv-01718-AJB-DDL

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME I OF IV**

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August 11, 2023

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

B & L PRODUCTIONS, INC., dba  
CROSSROADS OF THE WEST, et al.,  
Plaintiffs,  
  
v.  
  
GAVIN NEWSOM, in his official  
capacity as Governor of the State of  
California and his personal capacity, et al.,  
Defendants.

Case No.: 21cv1718 AJB DDL

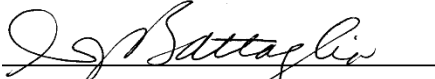
**JUDGMENT**

On March 14, 2023, the Court dismissed Plaintiffs’ First Amended Complaint for Section 1983 violations. The Court granted plaintiffs leave until March 24, 2023 to file an amended Complaint. (Doc. No. 51.) On March 24, 2023, Plaintiffs filed a Notice of Intent not to file a Second Amended Complaint. (Doc. No. 52.)

Accordingly, all claims in plaintiffs’ First Amended Complaint are hereby DISMISSED as to all defendants.

IT IS SO ORDERED.

Dated: April 11, 2023

  
Hon. Anthony J. Battaglia  
United States District Judge

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UNITED STATES DISTRICT COURT  
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B&L PRODUCTIONS, INC., d/b/a  
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GAVIN NEWSOM, in his official  
capacity as Governor of the State of  
California and in his personal capacity, et  
al.,  
Defendants.

Case No.: 21-cv-01718-AJB-DDL  
  
**AMENDED ORDER GRANTING  
DEFENDANTS’ MOTION TO  
DISMISS PLAINTIFFS’ FIRST  
AMENDED COMPLAINT**  
  
**(Doc. Nos. 42)**

Presently pending before the Court is a motion to dismiss, filed by Defendants Governor Gavin Newsom, Attorney General Rob Bonta, Secretary Karen Ross, and the 22nd District Agricultural Association (collectively, “State Defendants”). (Doc. No. 42.) Defendant Summer Stephan joins in the motion to dismiss and in the reply brief in support of motion to dismiss. (Doc. Nos. 43, 46.) The motion is fully briefed, (Doc. Nos. 44, 45), and the matter is suitable for determination on the papers. For the reasons stated herein, the Court **GRANTS** the motion to dismiss Plaintiffs’ Complaint.

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1 **I. BACKGROUND<sup>1</sup>**

2 Plaintiff B&L Productions, Inc., d/b/a Crossroads of the West, operates gun show  
3 events in California, including at the Del Mar Fairgrounds (the “Fairgrounds”). (First  
4 Amended Complaint (“FAC”), Doc. No. 36, ¶ 1.) Plaintiffs California Rifle & Pistol  
5 Association, Inc.; South Bay Rod and Gun Club, Inc.; Second Amendment Foundation,  
6 Inc.; Barry Bardack; Ronald J. Diaz, Sr.; John Dupree; Christopher Irick; Lawrence  
7 Michael Walsh; Robert Solis; Captain Jon’s Lockers, LLC; and L.A.X. Firing Range, d/b/a  
8 LAX Ammo (collectively, “Plaintiffs”), attend and participate in the Crossroads gun show  
9 at the Fairgrounds. (*Id.* ¶ 3.) Individuals attending and participating in these gun shows  
10 engage in First Amendment activities, (*id.* ¶ 3), and exchange information about gun-  
11 related activities (*id.* ¶ 4).

12 The Fairgrounds is owned by the State of California and managed by the board of  
13 directors of Defendant 22nd District Agricultural Association (the “District”). (*Id.* ¶ 27.)  
14 The Fairgrounds “is used by many different public groups and is a major event venue for  
15 large gatherings of people to engage in expressive activities, including concerts, festivals,  
16 and industry shows.” (*Id.* ¶ 85.)

17 Defendant Gavin Newsom is the Governor of the State of California and is “vested  
18 with ‘the supreme executive power’ of the state and ‘shall see that the law is faithfully  
19 executed.’” (*Id.* ¶ 24 (citing Cal. Const. art. 5, § 1).) According to the FAC, Newsom urged  
20 the District to ban gun shows at the Fairgrounds in a letter dated April 23, 2018, citing his  
21 concern that “[p]ermitting the sale of firearms and ammunition on state-owned property  
22 only perpetuates America’s gun culture.” (*Id.* ¶ 106.) Thereafter, Newsom signed  
23 Assembly Bill 893 (“AB 893”) into law on October 11, 2019. (*Id.* ¶ 140.)

24 Defendant Karen Ross is the Secretary of the California Department of Food &  
25 Agriculture, the entity responsible for policy oversight of the Fairgrounds. (*Id.* ¶ 28.)

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27  
28 <sup>1</sup> The following allegations are taken from the Plaintiffs’ Complaint and are construed as true for the limited purpose of ruling on this motion. *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247 (9th Cir. 2013).

1 According to the FAC, she oversees the operation of the District and authorizes the other  
2 Defendants to “issue policy recommendations for district boards, including  
3 recommendations about bans on gun show events at state-owned fairground.” (*Id.*)

4 Defendant Robert Bonta is the Attorney General of the State of California and “has  
5 the duty to ‘see that the laws of the State are uniformly and adequately enforced.’” (*Id.* ¶ 25  
6 (citing Cal. Const. art. 5, § 1).) Bonta has “direct supervision over every district attorney”  
7 within California and “shall assist any district attorney in the discharge” of duties when  
8 “required by the public interest or directed by the Governor . . . .” (*Id.*)

9 County Defendant Summer Stephan is “responsible for enforcing the law within the  
10 County of San Diego.” (*Id.* ¶ 26.) According to the FAC, Stephan is “charged with  
11 prosecuting any violation of the California Food & Agricultural Code, including section  
12 4158 (i.e., AB 893) within the county of San Diego.” (*Id.*)

13 AB 893, which added Section 4158 to the California Food & Agriculture Code, bars  
14 “any officer, employee, operator, lessee, or licensee of the [District]” from “contract[ing]  
15 for, authoriz[ing], or allow[ing] the sale of any firearm or ammunition on the property or  
16 in the buildings that comprise the Del Mar Fairgrounds . . . .” (*Id.* ¶ 120.) Violation of the  
17 law is a misdemeanor. (*Id.*)

## 18 **II. LEGAL STANDARD**

19 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings  
20 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state  
21 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.  
22 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of cognizable  
23 legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental*  
24 *Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).  
25 However, a complaint survives a motion to dismiss if it contains “enough facts to state a  
26 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
27 (2007).

28 Notwithstanding this deference, the reviewing court need not accept legal

1 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for the  
2 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.” *Associated*  
3 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526  
4 (1983). On the other hand, “[w]hen there are well-pleaded factual allegations, a court  
5 should assume their veracity and then determine whether they plausibly give rise to an  
6 entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the  
7 complaint, accepting all factual allegations as true, and drawing all reasonable inferences  
8 in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

9 **III. REQUEST FOR JUDICIAL NOTICE**

10 Federal Rule of Evidence 201 states a court may “judicially notice a fact that is not  
11 subject to reasonable dispute because it: (1) is generally known within the trial court’s  
12 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose  
13 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

14 State Defendants request judicial notice of multiple exhibits which include letters  
15 from the California Department of General Services’ Government Claims Program. (Doc.  
16 No. 42-2 at 1–3.) Because the Court does not rely on these documents in deciding this  
17 motion, Defendants’ request for judicial notice is **DENIED AS MOOT**.

18 **IV. DISCUSSION**

19 **A. Individual Capacity Claims as to Governor Newsom, Attorney General**  
20 **Bonta, and Secretary Ross**

21 State officials can be sued when acting in their individual capacities. *Hafer v. Melo*,  
22 502 U.S. 21, 23 (1991). The distinction is “more than a mere pleading device.” *Id.* at 27  
23 (citing *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 72 (1989)). State officials are  
24 liable for “acts” taken under color of state law, but the Eleventh Amendment “prohibits  
25 damage actions against the ‘official’s office’—actions that are in reality suits against the  
26 state itself, rather than its individual officials.” *Stivers v. Pierce*, 71 F.3d 732, 749 (9th Cir.  
27 1995).

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1 Plaintiffs sue Newsom, Bonta, and Ross in their individual capacities and allege  
2 State Defendants (1) engaged in intentional and negligent interference with Plaintiffs’  
3 prospective economic advantage, and (2) engaged in intentional interference with  
4 Plaintiffs’ ability to contract. (FAC ¶¶ 253–80.) However, Plaintiffs have again failed to  
5 allege facts that relate to individual capacity—that is, Plaintiffs treat individual capacity as  
6 a “mere pleading device.” Plaintiffs allege the acts of State Defendants disrupted Plaintiffs’  
7 economic relationships but do not provide facts to show how these acts were committed  
8 outside of Defendants’ official capacities. The heart of Plaintiffs’ claims is the passage of  
9 AB 893—an act done only in State Defendants’ official capacities pursuant to state law.  
10 As such, the Court **DISMISSES** Plaintiffs’ claims for damages against Newsom, Bonta,  
11 and Ross in their individual capacities **WITHOUT LEAVE TO AMEND**.

#### 12 **B. First Amendment Claims**

13 “The First Amendment, applicable to the States through the Fourteenth Amendment,  
14 prohibits laws that abridge the freedom of speech.” *Nat’l Inst. of Fam. & Life Advocs. v.*  
15 *Becerra*, 138 S. Ct. 2361, 2371 (2018). Under the First Amendment, “a government,  
16 including a municipal government vested with state authority, ‘has no power to restrict  
17 expression because of its message, its ideas, its subject matter, or its content.’” *Reed v.*  
18 *Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting *Police Dep’t of Chi. v. Mosley*, 408  
19 U.S. 92, 95 (1972)); *see also Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a  
20 bedrock principle underlying the First Amendment, it is that the government may not  
21 prohibit the expression of an idea simply because society finds the idea itself offensive or  
22 disagreeable.”). “Content-based regulations ‘target speech based on its communicative  
23 content.’” *Nat’l Inst. of Fam. & Life Advocs.*, 138 S. Ct. at 2371 (quoting *Reed*, 576 U.S.  
24 at 163).

25 Plaintiffs contend AB 893 violates the First Amendment as an impermissible  
26 content-based restriction of speech and is an effort to indirectly ban gun shows altogether.  
27 (FAC ¶¶ 188, 192.) Additionally, Plaintiffs assert AB 893 is a restriction of commercial  
28 speech. (*Id.* ¶ 205.)

1 Defendants contend AB 893 does not violate the First Amendment because its “plain  
2 language and legislative findings show that it prohibits only non-speech conduct—the sale  
3 of firearms and ammunition.” (Doc. No. 42 at 8.) Defendants also highlight that AB 893  
4 does not prohibit “offers for sale.” (*Id.*) Rather, they claim AB 893 merely prohibits the  
5 sale of guns, and the sale of guns is not “speech” within the meaning of the First  
6 Amendment. (*Id.*) The Court agrees.

7 As held by the Ninth Circuit, “the act of exchanging money for a gun is not ‘speech’  
8 within the meaning of the First Amendment.” *Nordyke v. Santa Clara Cnty.* (“*Nordyke*  
9 *1997*”), 110 F.3d 707, 710 (9th Cir. 1997). Here, AB 893 covers no more than the simple  
10 exchange of money for a gun or ammunition, solely prohibiting “the sale of firearms and  
11 ammunition at the Del Mar Fairgrounds . . . .” (FAC ¶ 154.) In their FAC, Plaintiffs  
12 continue to fail to cite any authority for their proposition that barring sales infringes speech.  
13 *See Nordyke v. King* (“*Nordyke 2003*”), 319 F.3d 1185, 1191 (9th Cir. 2003). Rather,  
14 Plaintiffs merely assert, once again, that banning the commercial sale of firearms and  
15 ammunition at the Fairgrounds “intentionally and effectively” bans gun shows altogether  
16 and “sweeps up all forms of speech and expressive conduct” at a public venue. (FAC  
17 ¶¶ 191–92.) Plaintiffs fail to point the Court to any facts that show how AB 893  
18 “intentionally and effectively” leads to the banning of gun shows altogether. “[M]ere  
19 conclusory statements[] do not suffice” for a pleading. *Ashcroft*, 556 U.S. at 678.

20 Regarding Plaintiffs’ claim that AB 893 restricts commercial speech, “[the sale of  
21 guns] itself is not commercial speech and a ban on [sales] at most interferes with sales that  
22 are not commercial speech, . . . the [Defendants’] prohibition on [the sale of guns] does not  
23 infringe [Plaintiffs’] right to free commercial speech.” *Nordyke 2003*, 319 F.3d at 1191.  
24 Moreover, AB 893 does not prohibit *offers* for sale. *See Nordyke 1997*, 110 F.3d at 710  
25 (the act of exchanging money is not “speech” within the meaning of the First Amendment  
26 while an offer to sell firearms is speech). At most, AB 893 restricts the exchanging of  
27 money for guns or ammunition. It is well established that the exchanging of money “for a  
28 gun is not ‘speech’ within the meaning of the First Amendment.” *Id.*



1 As such, the Court **GRANTS** Defendants’ motion to dismiss Plaintiffs’ First  
2 Amendment claims **WITHOUT LEAVE TO AMEND**.

3 **C. Second Amendment Claim**

4 Plaintiffs, for the first time, raise a Second Amendment claim in their FAC. Let it be  
5 clear that when this Court grants a motion to dismiss with leave to amend, Plaintiffs are  
6 strictly limited to curing deficiencies where leave is granted. (*See* Doc. No. 35 at 16.) Leave  
7 to amend was granted for the following: (1) individual capacity claims as to Governor  
8 Newsom, Attorney General Bonta, and Secretary Ross; (2) the First Amendment claims;  
9 (3) the Equal Protection claim; and (4) the state law claims. (*Id.* at 11–15.) Plaintiffs  
10 violated Federal Rule of Civil Procedure 15 in asserting a new, independent claim in their  
11 FAC. Nevertheless, the Court will consider the Second Amendment claim in the spirit of  
12 judicial economy. However, Plaintiffs are put on notice that any future procedural  
13 violations may result in disciplinary sanctions.

14 Turning to the merits, Plaintiffs assert Defendants “cannot satisfy their burden to  
15 justify their ban on the sale of firearms and ammunition at the Fairgrounds under the  
16 history-and-tradition-based test applied in *Heller* and recently confirmed in *Bruen*.” (FAC  
17 ¶ 57.) Specifically, Plaintiffs argue Defendants “cannot cite a relevant historical law  
18 forbidding commercial speech relating to firearms sales” and rely on questionable  
19 authority. (Doc. No. 44 at 19.)

20 The *Bruen* Court set forth a test which requires courts to assess whether “modern  
21 firearms regulations are consistent with the Second Amendment’s text and historical  
22 understanding.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2131 (2022).  
23 The present standard as pronounced in *Bruen* is, as follows: “When the Second  
24 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively  
25 protects that conduct. The government must then justify its regulation by demonstrating  
26 that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129–  
27 30. While the Court did not provide an “exhaustive survey of the features that render  
28 regulations relevantly similar under the Second Amendment,” there are at least “two

1 metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-  
2 defense.” *Id.* at 2132–33. Applying that analysis here, the Court must first determine  
3 whether the limited prohibition of the sale of firearms and ammunition at a gun show is  
4 covered by the plain text of the Second Amendment. Assuming it is, *Bruen* demands there  
5 must be a historical analogue—a tradition of similar firearm regulation—that supports the  
6 practice.

7 The Court in *Bruen* acknowledged the legitimacy of gun regulations as recognized  
8 in *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) and in *McDonald v. Chicago*,  
9 561 U.S. 742, 786 (2010). In his majority opinion in *Bruen*, Justice Thomas confirmed the  
10 Constitution permits state licensing regimes to require gun licensing and background  
11 checks as long as the requirements do not have the effect of preventing law-abiding citizens  
12 from exercising their Second Amendment rights. *Bruen*, 142 S. Ct. at 2138 n.9. In his  
13 concurring opinion, Justice Kavanaugh, joined by the Chief Justice, affirmed that, under  
14 *Heller*, “the Second Amendment allows a ‘variety’ of gun regulations,” including such  
15 “presumptively lawful regulatory measures” as “requir[ing] a [gun] license applicant to  
16 undergo fingerprinting, a background check, a mental health records check, and training in  
17 firearms handling and in laws regarding the use of force, among other possible  
18 requirements.” *Id.* at 2162. Thus, so long as the regulation of the right to keep and bear  
19 arms does not amount to a prohibition of that right, it is read that the regulation is  
20 permissible.

21 “As with purchasing ammunition and maintaining proficiency in firearms use, the  
22 core Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean  
23 much’ without the ability to acquire arms.” *Teixeira v. Cnty. of Alameda*, 873 F.3d 670,  
24 677 (9th Cir. 2017) (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011));  
25 *see Ill. Ass’n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill.  
26 2014) (“[T]he right to keep and bear arms for self-defense under the Second Amendment .  
27 . . must also include the right to acquire a firearm, although that acquisition right is far from  
28 absolute . . . .”). However, in *Heller*, the Supreme Court included “laws imposing

1 conditions and qualifications on the commercial sale of arms” in a list of “presumptively  
2 lawful regulatory measures” consistent with the Second Amendment. 554 U.S. at 626–27;  
3 *see Teixeira*, 873 F.3d at 683 (“Nothing in the text of the Amendment, as interpreted  
4 authoritatively in *Heller*, suggests the Second Amendment confers an independent right to  
5 sell or trade weapons.”). The Court does not find this holding to be overruled by *Bruen*.

6 Here, Plaintiffs correctly reference the history and tradition test confirmed in *Bruen*  
7 but do not provide the necessary allegations to support a Second Amendment claim under  
8 this new framework. Rather, Plaintiffs make the conclusory statement they “have a right,  
9 under the Second Amendment, to buy and sell firearms and the ammunition necessary for  
10 the effective operation of those firearms.” (FAC ¶ 240.) To survive a Rule 12(b)(6) motion  
11 to dismiss, a plaintiff must allege in the complaint “enough facts to state a claim to relief  
12 that is plausible on its face.” *Twombly*, 550 U.S. at 570. Plaintiffs have failed to state a  
13 claim that AB 893 impedes Plaintiffs from acquiring or purchasing firearms or ammunition  
14 altogether, amounting to a prohibition of that right. Indeed, Defendants correctly state that  
15 Plaintiffs “have not plausibly alleged that AB 893 impedes them from purchasing a firearm  
16 or ammunition at a place other than a gun show at the Fairgrounds.” (Doc. No. 42-1 at 25.)

17 As such, Plaintiffs’ Second Amendment claim is **DISMISSED WITH LEAVE TO**  
18 **AMEND.**

19 **D. Equal Protection Claim**

20 Plaintiffs further raise equal protection claims on the theory that Defendants treat  
21 them differently than similarly situated persons. Plaintiffs contend that Defendants’  
22 “refusal to allow Plaintiffs equal use of the [Fairgrounds] . . . violates Plaintiffs’ right to  
23 equal protection . . . because it is based on a ‘bare desire to harm a politically unpopular  
24 group.’” (FAC ¶ 251.) Plaintiffs assert their equal protection claim is based on the State’s  
25 “viewpoint-discriminatory and animus-based restriction of Plaintiffs’ protected speech that  
26 serves no compelling governmental interest.” (*Id.* ¶ 248.) Thus, Plaintiffs equal protection  
27 claim is predicated on their First Amendment claims.

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1 A piece of legislation is presumed valid under the Equal Protection Clause “if the  
2 classification drawn by the statute is rationally related to a legitimate state interest.” *City*  
3 *of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). “[A] court may strike down  
4 [a] statute under the Equal Protection Clause if the statute serves no legitimate  
5 governmental purpose and if impermissible animus toward an unpopular group prompted  
6 the statute’s enactment.” *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1200 (9th  
7 Cir. 2018) (citing *Mtn. Water Co. v. Mont. Dep’t of Pub. Serv. Regul.*, 919 F.2d 593, 598  
8 (9th Cir. 1990)).

9 Plaintiffs fail to allege any facts showing that impermissible animus and viewpoint  
10 discrimination prompted the enactment of AB 893. Rather, Plaintiffs again make a  
11 conclusory statement that AB 893 is “based on a ‘bare desire to harm a politically  
12 unpopular group.’” Absent facts to show Defendants’ impermissible animus, the Court will  
13 not accept any of Plaintiffs’ conclusory statements.

14 Plaintiffs’ equal protection claims also fall with the First Amendment claims. *OSU*  
15 *Student All. v. Ray*, 699 F.3d 1053, 1067 (9th Cir. 2012). Plaintiffs do not allege  
16 membership in a protected class or contend that Defendants’ conduct burdened any  
17 fundamental right other than their right to free speech. Therefore, Defendants’ differential  
18 treatment of Plaintiffs draws strict scrutiny (as opposed to rational basis review) under the  
19 Equal Protection Clause only if it impinges Plaintiffs’ First Amendment rights. *See ACLU*  
20 *of Nev. v. City of Las Vegas*, 466 F.3d 784, 797–98 (9th Cir. 2006); *Monterey Cnty.*  
21 *Democratic Cent. Comm. v. U.S. Postal Serv.*, 812 F.2d 1194, 1200 (9th Cir. 1987) (noting  
22 with regard to “equal protection claims relating to expressive conduct,” that “[o]nly when  
23 rights of access associated with a public forum are improperly limited may we conclude  
24 that a fundamental right is impinged”).

25 As explained above, the FAC fails to allege that Defendants infringed Plaintiffs’  
26 right to free speech by the passage of AB 893. Therefore, the Complaint also fails to state  
27 equal protection claims for differential treatment that is entrenched upon a fundamental  
28 right. *See OSU Student All.*, 699 F.3d at 1067. Thus, the Court **GRANTS** Defendants’

1 motion to dismiss Plaintiffs’ sixth claim under the Fourteenth Amendment’s Equal  
 2 Protection Clause **WITHOUT LEAVE TO AMEND.**

3 **D. The Court Lacks Jurisdiction Over the State Law Claims Against**  
 4 **Defendants Newsom, Bonta, Ross, and the District**

5 “The district courts of the United States . . . are ‘courts of limited jurisdiction. They  
 6 possess only that power authorized by Constitution and statute.’” *Exxon Mobil Corp. v.*  
 7 *Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). “In order to provide a federal forum for  
 8 plaintiffs who seek to vindicate federal rights, Congress has conferred on the district courts  
 9 original jurisdiction in federal-question cases—civil actions that arise under the  
 10 Constitution, laws, or treaties of the United States.” *Id.* “Although the district courts may  
 11 not exercise jurisdiction absent a statutory basis, it is well established—in certain classes  
 12 of cases—that, once a court has original jurisdiction over some claims in the action, it may  
 13 exercise supplemental jurisdiction over additional claims that are part of the same case or  
 14 controversy.” *Id.* Such jurisdiction arises under 28 U.S.C. § 1367(a).

15 The Supreme Court has characterized § 1367(a) as providing district courts “a broad  
 16 grant of supplemental jurisdiction over other claims within the same case or controversy,  
 17 as long as the action is one in which the district courts would have original jurisdiction.”  
 18 *Exxon Mobil Corp.*, 545 U.S. at 558. The Ninth Circuit has explained that the term  
 19 “[o]riginal jurisdiction’ in subsection (a) refers to jurisdiction established by looking for  
 20 any claim in the complaint over which there is subject matter jurisdiction.” *Gibson v.*  
 21 *Chrysler Corp.*, 261 F.3d 927, 940 (9th Cir. 2001), *holding modified by Exxon Mobil Corp.*,  
 22 545 U.S. 546.

23 Plaintiffs assert this Court has supplemental jurisdiction over their state law claims  
 24 “because those claims share common operative facts with Plaintiffs’ federal law claims.”  
 25 (FAC ¶ 10.) As detailed above, the Court dismisses all federal law claims against both State  
 26 and County Defendants. The remaining claims against Defendants rest on only California  
 27 state law. (*Id.* ¶¶ 253–61 (intentional interference with prospective economic advantage);  
 28 ¶¶ 262–71 (negligent interference with prospective economic advantage); ¶¶ 272–80


(intentional interference with contract.) Plaintiffs also lack diversity jurisdiction because Plaintiffs and State Defendants and County Defendants are all California residents. (*Id.* ¶¶ 24–28.) Thus, the Court lacks any basis to assert subject matter jurisdiction over Plaintiffs’ action as it pertains to all Defendants. Absent such basis, the Court may not exercise supplemental jurisdiction over the state law claims against all Defendants. *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 664 (9th Cir. 2002). Accordingly, the Court **DISMISSES** all remaining state law claims against all Defendants **WITH LEAVE TO AMEND**. *Wade v. Reg’l Credit Ass’n*, 87 F.3d 1098, 1101 (9th Cir. 1996) (“Where a district court dismisses a federal claim, leaving only state claims for resolution, it should decline jurisdiction over the state claims and dismiss them without prejudice.”).

**V. CONCLUSION**

For the reasons set forth above, the Court **GRANTS** Defendants’ motion to dismiss. (Doc. No. 42.) Should Plaintiffs choose to do so, where leave is granted, they must file an amended complaint curing the deficiencies noted herein no later than March 24, 2023. Defendants must file a responsive pleading no later than April 7, 2023.

**IT IS SO ORDERED.**

Dated: March 13, 2023

  
Hon. Anthony J. Battaglia  
United States District Judge

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

B&L PRODUCTIONS, INC., d/b/a  
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GAVIN NEWSOM, in his official capacity  
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Case No.: 21-cv-01718-AJB-KSC

**ORDER GRANTING DEFENDANTS’  
MOTIONS TO DISMISS PLAINTIFFS’  
COMPLAINT**

**(Doc. Nos. 17, 20)**

Presently pending before the Court are motions to dismiss, filed by Defendants Governor Gavin Newsom, Attorney General Rob Bonta, Secretary Karen Ross, and the 22nd District Agricultural Association (collectively, “State Defendants”), (Doc. No. 17), and Defendants District Attorney of San Diego County, Summer Stephan, and County Counsel of San Diego County, Lonnie Eldridge<sup>1</sup> (collectively, “County Defendants”), (Doc. No. 20). The motions are fully briefed, (Doc. Nos. 28, 29, 30, & 33), and the matter is suitable for determination on the papers. For the reasons stated herein, the Court **GRANTS** the motions to dismiss Plaintiffs’ Complaint.

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<sup>1</sup> County Counsel Lonnie Eldridge was substituted as a defendant in place of former County Counsel Thomas Montgomery. (See Doc. No. 10.)

1 **I. BACKGROUND<sup>2</sup>**

2 Plaintiff B&L Productions, Inc., d/b/a Crossroads of the West, operates gun show  
3 events in California, including at the Del Mar Fairgrounds (the “Fairgrounds”).  
4 (Complaint (“Compl.”), Doc. No. 1, ¶¶ 1, 11.) Plaintiffs California Rifle & Pistol  
5 Association, Inc.; South Bay Rod and Gun Club, Inc.; Second Amendment Foundation,  
6 Inc.; Barry Bardack; Ronald J. Diaz, Sr.; John Dupree; Christopher Irick; Lawrence  
7 Michael Walsh; Robert Solis; Captain Jon’s Lockers, LLC; and L.A.X. Firing Range,  
8 d/b/a LAX Ammo, attend and participate in the Crossroads gun show at the Fairgrounds.  
9 (*Id.* ¶ 3.)

10 According to the Complaint, individuals attending and participating in these gun  
11 shows engage in First Amendment activities (*id.* ¶ 3), and these gun shows “just happen  
12 to include the exchange of products and ideas, knowledge, services, education,  
13 entertainment, and recreation related to the lawful use of firearms[,]” (*id.* ¶ 50).

14 The Fairgrounds is owned by the State of California and managed by the board of  
15 directors of Defendant 22nd District Agricultural Association (the “District”). (*Id.* ¶¶ 27,  
16 61.) The Fairgrounds “is used by many different public groups and is a major event venue  
17 for large gatherings of people to engage in expressive activities, including concerts,  
18 festivals, and industry shows.” (*Id.* ¶ 68.)

19 Defendant Gavin Newsom is the Governor of the State of California and is “vested  
20 with ‘the supreme executive power’ of the state and ‘shall see that the law is faithfully  
21 executed.’” (*Id.* ¶ 23 (citing Cal. Const. art. 5, § 1).) According to the Complaint,  
22 Newsom urged the District to ban gun shows at the Fairgrounds in a letter dated April 23,  
23 2018, citing his concerns that “[p]ermitting the sale of firearms and ammunition on state-  
24 owned property only perpetuates America’s gun culture.” (*Id.* ¶ 89 (alterations in  
25

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28 <sup>2</sup> The following allegations are taken from the Plaintiffs’ Complaint and are construed as true for the limited purpose of ruling on this motion. *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247 (9th Cir. 2013).



1 original.) Thereafter, Newsom signed Assembly Bill 893 (“AB 893”) into law on  
2 October 11, 2019. (*Id.* ¶ 121.)

3 Defendant Karen Ross is the Secretary of the California Department of Food &  
4 Agriculture, the entity responsible for policy oversight of the Fairgrounds. (*Id.* ¶ 28.)  
5 According to the Complaint, she oversees the operation of the District and authorizes the  
6 other Defendants to “interpret, implement, and enforce state laws and policies as regards  
7 the Fairgrounds . . . .” (*Id.* ¶¶ 161, 174, 187.)

8 Defendant Robert Bonta is the Attorney General of the State of California and “has  
9 the duty to ‘see that the laws of the State are uniformly and adequately enforced.’” (*Id.*  
10 ¶ 24 (citing Cal. Const. art. 5, § 1).) Bonta has “direct supervision over every district  
11 attorney” within California and “shall assist any district attorney in the discharge” of  
12 duties when “required by the public interest or directed by the Governor . . . .” (*Id.*)

13 County Defendants Summer Stephan and Lonnie Eldridge are “responsible for  
14 enforcing the law within the County of San Diego.” (*Id.* ¶¶ 25, 26.) According to the  
15 Complaint, Summers and Eldridge “are the state and local actors responsible for ensuring  
16 that AB 893 is enforced and thus have the authority to prosecute violations of AB 893.”  
17 (*Id.* ¶¶ 160, 173, 186.)

18 AB 893, which added Section 4158 to the California Food & Agriculture Code,  
19 bars “any officer, employee, operator, lessee, or licensee of the [District]” from  
20 “contract[ing] for, authoriz[ing], or allow[ing] the sale of any firearm or ammunition on  
21 the property or in the buildings that comprise the Del Mar Fairgrounds . . . .” (*Id.* ¶ 103.)  
22 Violation of the law is a misdemeanor. (*Id.*)

## 23 **II. LEGAL STANDARD**

24 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings  
25 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to  
26 state a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th  
27 Cir. 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of  
28 cognizable legal theory or (2) insufficient facts under a cognizable legal claim.”

1 *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996)  
2 (citation omitted). However, a complaint survives a motion to dismiss if it contains  
3 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*  
4 *Twombly*, 550 U.S. 544, 570 (2007).

5 Notwithstanding this deference, the reviewing court need not accept legal  
6 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for  
7 the court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.”  
8 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S.  
9 519, 526 (1983). On the other hand, “[w]hen there are well-pleaded factual allegations, a  
10 court should assume their veracity and then determine whether they plausibly give rise to  
11 an entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of  
12 the complaint, accepting all factual allegations as true, and drawing all reasonable  
13 inferences in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th  
14 Cir. 2002).

15 **III. REQUESTS FOR JUDICIAL NOTICE**

16 Federal Rule of Evidence 201 states a court may “judicially notice a fact that is not  
17 subject to reasonable dispute because it: (1) is generally known within the trial court’s  
18 territorial jurisdiction; or (2) can be accurately and readily determined from sources  
19 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

20 State Defendants request judicial notice of several documents, including an order  
21 by the Southern District of California and several letters from the California Department  
22 of General Services’ Government Claims. (Doc. No. 17-2 at 2–3.) Plaintiffs also request  
23 judicial notice of several exhibits, including reports by governmental departments or  
24 agencies, newspaper articles, and legislative official records. (Doc. No. 28-1 at 2–3.)  
25 Because the Court does not rely on these documents in deciding this motion, Defendants’  
26 and Plaintiffs’ requests for judicial notice are **DENIED AS MOOT**.

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1 **IV. DISCUSSION**

2 **A. Absolute Legislative Immunity as to Governor Newsom**

3 State Defendants first argue the § 1983 claims against Newsom must be dismissed  
4 because he has absolute legislative immunity. (Doc. No. 17-1 at 17–18.) Plaintiffs are  
5 suing Newsom in his official capacity for the injunctive and declaratory relief portions of  
6 this suit, and in his personal capacity for claims for damages.<sup>3</sup> (Compl. ¶ 23.)

7 Under the doctrine of legislative immunity, state legislators are entitled to absolute  
8 immunity from civil damages for their performance of lawmaking functions. *See Tenney*  
9 *v. Brandhove*, 341 U.S. 367, 376–77, 379 (1951) (finding state legislators were absolutely  
10 immune from damages when acting within the “sphere of legitimate legislative activity”);  
11 *see also Jones v. Allison*, 9 F.4th 1136, 1139–40 (9th Cir. 2021). Legislative immunity,  
12 however, is not limited to officials who are members of legislative bodies. *See*  
13 *Cleavinger v. Saxner*, 474 U.S. 193, 201 (1985) (“Absolute immunity flows not from  
14 rank or title or ‘location within the Government,’ but from the nature of the  
15 responsibilities of the individual official.” (citation omitted) (quoting *Butz v. Economou*,  
16 438 U.S. 478, 511 (1978))). “[O]fficials outside the legislative branch are entitled to  
17 legislative immunity when they perform legislative functions . . . .” *Bogan v. Scott-*  
18 *Harris*, 523 U.S. 44, 55 (1998). Thus, the Supreme Court has held that legislative  
19 immunity does not depend on the actor so much as the functional nature of the act itself.  
20 *See id.* at 54–55, (“Absolute legislative immunity attaches to all actions taken ‘in the  
21 sphere of legitimate legislative activity.’” (quoting *Tenney*, 341 U.S. at 376)).

22 Here, State Defendants claim a governor is entitled to absolute legislative  
23 immunity for the act of signing a bill into law. (Doc. No. 17-1 at 16–17.) Plaintiffs sue  
24 Newsom in his official capacity because “he is vested with ‘the supreme executive  
25 power’ of the state and ‘shall see that the law is faithfully executed.’” (Compl. ¶ 23.)

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27 <sup>3</sup> Plaintiffs raise punitive damages for the first time in their Response in Opposition to Defendants’  
28 motions to dismiss. (Doc. No. 28 at 30.) However, because this prayer for relief is raised for the first  
time on reply, the Court declines to consider it.

1 This generalized enforcement power, however, is insufficient to establish the  
2 requisite connection between Newsom and Plaintiffs’ alleged injury. *See Young v.*  
3 *Hawaii*, 548 F. Supp. 2d 1151, 1164 (D. Haw. 2008) (suit challenging laws prohibiting  
4 the carrying or use of firearms in certain circumstances failed to establish “required  
5 nexus” between the governor and plaintiff’s injury where complaint relied solely on  
6 governor’s “general oversight of State laws”). A governor is entitled to absolute  
7 immunity for the act of signing a bill into law. *See Torres-Rivera v. Calderon-Serra*, 412  
8 F.3d 205, 213 (1st Cir. 2005) (“[A] governor who signs into law or vetoes legislation  
9 passed by the legislature is also entitled to absolute immunity for that act.”); *Women’s*  
10 *Emergency Network v. Bush*, 323 F.3d 937, 950 (11th Cir. 2003) (“Under the doctrine of  
11 absolute legislative immunity, a governor cannot be sued for signing a bill into law.”)  
12 (citing *Supreme Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731–34  
13 (1980)).

14 Moreover, Newsom is entitled to immunity under the Eleventh Amendment. The  
15 Eleventh Amendment poses a general bar against federal lawsuits brought against a state.  
16 *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003). And, while it does not bar actions for  
17 prospective declaratory or injunctive relief against state officers in their official capacities  
18 for their alleged violations of federal law, *Ex parte Young*, 209 U.S. 123, 155–56 (1908),  
19 the individual state official sued “must have some connection with the enforcement of the  
20 act,” *id.* at 157, and that connection “must be fairly direct; a generalized duty to enforce  
21 state law or general supervisory power over the persons responsible for enforcing the  
22 challenged provision will not subject an official to suit,” *L.A. Cnty. Bar Ass’n v. Eu*, 979  
23 F.2d 697, 704 (9th Cir. 1992). Newsom, sued in his official capacity, has no alleged  
24 factual connection to the enforcement of AB 893, other than a general duty to enforce  
25 California law as the governor. *Ass’n des Eleveurs de Canards et d’Oies du Quebec v.*  
26 *Harris*, 729 F.3d 937, 943 (9th Cir. 2013) (Governor entitled to Eleventh Amendment  
27 immunity where his only connection to challenged California statute was a general duty  
28 to enforce California law).

1 Plaintiffs imply this legislative immunity may be abrogated if the enactment of the  
2 legislation was motivated by impermissible intent. (Compl. ¶¶ 89, 123.) However, that  
3 argument was expressly rejected by the Supreme Court in *Bogan*, which extended  
4 absolute legislative immunity from suit under § 1983 to local legislators for their  
5 legislative activities. *Bogan*, 523 U.S. at 54; *see Torres-Rivera*, 412 F.3d at 213.  
6 Moreover, Newsom’s ability as the Governor of California to appoint members to the  
7 board of the District has no bearing on the matter. As such, the § 1983 claims against  
8 Newsom are **DISMISSED WITH PREJUDICE**.

9 **B. Sovereign Immunity as to Governor Newsom and Secretary Ross**

10 State Defendants next assert all claims against Newsom and Ross should be  
11 dismissed because they have sovereign immunity under the Eleventh Amendment to the  
12 Constitution. (Doc. No. 17-1 at 18.)

13 The Eleventh Amendment states “[t]he Judicial power of the United States shall  
14 not be construed to extend to any suit in law or equity, commenced or prosecuted against  
15 one of the United States by Citizens of another State, or by Citizens or Subjects of any  
16 Foreign State.” It “enacts a sovereign immunity from suit.” *Idaho v. Coeur d’Alene Tribe*  
17 *of Idaho*, 521 U.S. 261, 267 (1997). The Supreme Court has “extended a State’s  
18 protection from suit to suits brought by the State’s own citizens . . . [and] suits invoking  
19 the federal-question jurisdiction of Article III courts may also be barred by the  
20 Amendment.” *Id.* at 268. Thus, “Eleventh Amendment immunity represents a real  
21 limitation on a federal court’s federal-question jurisdiction.” *Id.* at 270. Sovereign  
22 immunity is an affirmative defense, and therefore, “[l]ike any other such defense, . . .  
23 must be proved by the party that asserts it and would benefit from its acceptance.” *ITSI*  
24 *T.V. Prods., Inc. v. Agric. Ass’ns*, 3 F.3d 1289, 1291 (9th Cir. 1993).

25 “Naming state officials as defendants rather than the state itself will not avoid the  
26 eleventh amendment when the state is the real party in interest. The state is the real party  
27 in interest when the judgment would tap the state’s treasury or restrain or compel  
28 government action.” *Almond Hill Sch. v. U.S. Dep’t of Agric.*, 768 F.2d 1030, 1033 (9th

1 Cir. 1985). Under the exception created by *Ex parte Young*, however, “individuals who,  
2 as officers of the state, are clothed with some duty in regard to the enforcement of the  
3 laws of the state, and who threaten and are about to commence proceedings, either of a  
4 civil or criminal nature, to enforce against parties affected an unconstitutional act,  
5 violating the Federal Constitution, may be enjoined by a Federal court of equity from  
6 such action.” *Ex parte Young*, 209 U.S. at 155–56. Pursuant to this exception, “the  
7 eleventh amendment does not bar an injunctive action against a state official that is based  
8 on a theory that the officer acted unconstitutionally.” *Almond Hill Sch.*, 768 F.2d at 1034.  
9 This exception does not allow suit against officers of the state simply “to enjoin the  
10 enforcement of an act alleged to be unconstitutional” unless the officer has “some  
11 connection with the enforcement of the act.” *Ex parte Young*, 209 U.S. at 157. Otherwise,  
12 the suit “is merely making [the officer] a party as a representative of the state, and  
13 thereby attempting to make the state a party.” *Id.*

14 Newsom and Ross do not have a connection with the enforcement of the AB 893.  
15 As to Newsom, Plaintiffs merely allege that Newsom must “see the law is faithfully  
16 executed,” (Compl. ¶ 23), and that he is “ultimately responsible for enforcement of the  
17 law, (*id.* ¶ 122). However, Newsom lacks the “direct authority and practical ability to  
18 enforce the challenged statute” as required by *Ex parte Young*. *Nat’l Audubon Soc’y, Inc.*  
19 *v. Davis*, 307 F.3d 835, 846–47 (9th Cir. 2002); *Ass’n des Eleveurs de Canards*, 729 F.3d  
20 at 943.

21 Similarly, the only allegations about Ross in the Complaint are that she is  
22 “responsible for the policy oversight of the . . . Del Mar Fairgrounds[,]” (Compl. ¶ 28),  
23 and “interpret[s], implement[s], and enforce[s] state laws and policies as regards the  
24 Fairgrounds, including AB 893[,]” (*id.* ¶ 161). Indeed, Ross’ alleged wrongdoing  
25 amounts to supervision over the District, who is alleged to be “responsible for ensuring  
26 that all state laws governing gun shows at the Fairgrounds, including AB 893, are  
27 faithfully enforced.” (*See id.* ¶ 27.) This “general supervisory power over the persons  
28 responsible for enforcing” AB 893 does not subject Ross to suit. *Eu*, 979 F.2d at 704.

1 Thus, barred by sovereign immunity, Plaintiffs’ § 1983 and supplemental state law claims  
2 against Newsom and Ross in their official capacities are **DISMISSED WITH**  
3 **PREJUDICE**.

4 **C. Qualified Immunity as to Governor Newsom, Attorney General Bonta,**  
5 **and Secretary Ross**

6 Next, the motion to dismiss argues that Newsom, Ross, and Bonta are entitled to  
7 qualified immunity as to Plaintiffs’ federal claims. “Qualified immunity shields  
8 government actors from civil liability under 42 U.S.C. § 1983 if ‘their conduct does not  
9 violate clearly established statutory or constitutional rights of which a reasonable person  
10 would have known.’” *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1066 (9th Cir.  
11 2016) (en banc) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). It “protects  
12 ‘all but the plainly incompetent or those who knowingly violate the law,’” *Mueller v.*  
13 *Auker*, 576 F.3d 979, 992 (9th Cir. 2009) (quoting *Malley v. Briggs*, 475 U.S. 335, 341  
14 (1986)), and it assumes that government actors “do not knowingly violate the law,”  
15 *Gasho v. United States*, 39 F.3d 1420, 1438 (9th Cir. 1994). Because “[i]t is ‘an *immunity*  
16 *from suit* rather than a mere defense to liability . . . it is effectively lost if a case is  
17 erroneously permitted to go to trial.’” *Mueller*, 576 F.3d at 992 (quoting *Mitchell v.*  
18 *Forsyth*, 472 U.S. 511, 526 (1985)). To that end, the Supreme Court has “repeatedly . . .  
19 stressed the importance of resolving immunity questions at the earliest possible stage in  
20 litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

21 To determine whether Newsom, Ross, and Bonta are immune from suit, the Court  
22 must “evaluate two independent questions: (1) whether [their] conduct violated a  
23 constitutional right, and (2) whether that right was clearly established at the time of the  
24 incident.” *Castro*, 833 F.3d at 1066. “[A] right is clearly established when the ‘contours  
25 of the right [are] sufficiently clear that a reasonable official would understand that what  
26 he is doing violates that right.’” *Id.* at 1067 (quoting *Serrano v. Francis*, 345 F.3d 1071,  
27 1077 (9th Cir. 2003)). “This inquiry must be undertaken in light of the specific context of  
28 the case, not as a broad general proposition.” *Mueller*, 576 F.3d at 994 (internal quotation

1 marks and citation omitted). “[T]he clearly established law must be ‘particularized’ to the  
2 facts of the case.” *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (citing *Anderson v.*  
3 *Creighton*, 483 U.S. 635, 640 (1987)). “The standard is an objective one that leaves  
4 ‘ample room for mistaken judgments.’” *Mueller*, 576 F.3d at 992 (quoting *Malley*, 475  
5 U.S. at 343).

6 Here, the Court need not resolve whether Newsom, Ross, and Bonta violated  
7 Plaintiffs’ constitutional rights, because even assuming they did, those rights were not  
8 clearly established. Plaintiffs’ constitutional rights “would be ‘clearly established’ if  
9 ‘controlling authority or a robust consensus of cases of persuasive authority’ had  
10 previously held that” it is a violation of the First Amendment right to free speech or  
11 Fourteenth Amendment right to equal protection to enforce a rule banning the sale of  
12 guns or ammunition from a public fairground. *Hines v. Youseff*, 914 F.3d 1218, 1229–30  
13 (9th Cir. 2019) (quoting *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018)).  
14 Plaintiffs point to no such precedent, and the Court has not located any on its own. The  
15 absence of such authority means the rights in question here were not clearly established  
16 when Newsom, Ross, and Bonta took actions related to AB 893. Accordingly, they are  
17 entitled to qualified immunity from Plaintiffs’ claims for monetary damages.

18 **D. Individual Capacity Claims as to Governor Newsom, Attorney General**  
19 **Bonta, and Secretary Ross**

20 Next, state officials can be sued when acting in their individual capacities. *Hafer v.*  
21 *Melo*, 502 U.S. 21, 23 (1991). The distinction is “more than a mere pleading device.” *Id.*  
22 at 27 (citing *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 72 (1989)). State  
23 officials are liable for “acts” taken under color of state law, but the Eleventh Amendment  
24 “prohibits damage actions against the ‘official’s office’—actions that are in reality suits  
25 against the state itself, rather than its individual officials.” *Stivers v. Pierce*, 71 F.3d 732,  
26 749 (9th Cir. 1995).

27 Plaintiffs sue Newsom, Bonta, and Ross in their individual capacities, but they  
28 have alleged no facts that relate to individual capacity—that is, they have treated



1 individual capacity as a “mere pleading device.” The heart of Plaintiffs’ claims is the  
2 passage of AB 893, but this was done only in State Defendants’ official capacities  
3 pursuant to state law. As such, the Court **DISMISSES WITH LEAVE TO AMEND**  
4 Plaintiffs’ claims for damages against Newsom, Bonta, and Ross in their individual  
5 capacities.

#### 6 **E. County Counsel Eldridge**

7 Plaintiffs further allege in their Complaint that County Counsel is the local actor  
8 “responsible for ensuring that AB 893 is enforced and thus ha[s] the authority to  
9 prosecute violations of AB 893.” (Compl. ¶¶ 160, 173, 186.) Specifically, Plaintiffs  
10 contend AB 893 requires Defendant District Attorney Stephan to prosecute violations of  
11 AB 893, and that this statutory mandate to prosecute extends to Eldridge because he must  
12 “discharge all the duties vested in the district attorney.” (*Id.* ¶ 26.) County Defendants  
13 assert in their motion to dismiss that Eldridge is not authorized or charged by California  
14 law with enforcing AB 893 or prosecuting violations of that statute. (Doc. No. 20-1 at 4.)  
15 Plaintiffs do not address or oppose County Defendants’ arguments for County Counsel  
16 Eldridge. (*See* Doc. No. 28; *see also* Doc. No. 33 at 3.)

17 By failing to respond to the arguments raised by County Defendants on these  
18 claims, Plaintiffs failed to oppose the motion to dismiss these claims. Where a party fails  
19 to address arguments against a claim raised in a motion to dismiss, the claims are  
20 abandoned and dismissal is appropriate. *See, e.g., Silva v. U.S. Bancorp*, No. 5:10-cv-  
21 1854, 2011 WL 7096576, at \*3 (C.D. Cal. Oct. 6, 2011) (“[T]he Court finds that Plaintiff  
22 concedes his . . . claim should be dismissed by failing to address Defendants’ arguments  
23 in his Opposition.”) (citations omitted); *Qureshi v. Countrywide Home Loans, Inc.*, No.  
24 09-4198, 2010 WL 841669, at \*9 & n.2 (N.D. Cal. Mar. 10, 2010) (citing *Jenkins v. Cnty.*  
25 *of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005)) (dismissing claims as abandoned  
26 where the plaintiff did not oppose dismissal); *In re TFT-LCD (Flat Pan el) Antitrust*  
27 *Litig.*, 586 F. Supp. 2d 1109, 1131 (N.D. Cal. 2008) (dismissing a claim without leave to  
28 amend where the plaintiff did not address the defendant’s arguments); *see also Walsh v.*

1 *Nev. Dep’t of Human Res.*, 471 F.3d 1033, 1037 (9th Cir.2006) (where opposition to  
2 motion to dismiss failed to address arguments in motion to dismiss, the plaintiff failed to  
3 demonstrate a continuing interest in pursuing a claim for relief and it was “effectively  
4 abandoned” and could not be raised on appeal).

5 As such, the Court **DISMISSES** claims one through six as to Defendant Eldridge  
6 **WITHOUT PREJUDICE.**

7 However, the Court reminds Plaintiffs that because they failed to oppose County  
8 Defendants’ arguments, despite having a clear opportunity to do so, Plaintiffs cannot  
9 simply re-allege the same claims in an amended complaint. Any amended complaint must  
10 address the arguments which County Defendants raised and which Plaintiffs have  
11 apparently conceded. Plaintiffs will not be permitted to raise arguments in defense of an  
12 amended complaint which Plaintiffs could have, but failed to, properly raise in defense of  
13 the original complaint.

14 **F. First Amendment Claims**

15 “The First Amendment, applicable to the States through the Fourteenth  
16 Amendment, prohibits laws that abridge the freedom of speech.” *Nat’l Inst. of Fam. &*  
17 *Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018). Under the First Amendment, “a  
18 government, including a municipal government vested with state authority, ‘has no power  
19 to restrict expression because of its message, its ideas, its subject matter, or its content.’”  
20 *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting *Police Dep’t of Chi. v.*  
21 *Mosley*, 408 U.S. 92, 95 (1972)); *see also Texas v. Johnson*, 491 U.S. 397, 414 (1989)  
22 (“If there is a bedrock principle underlying the First Amendment, it is that the  
23 government may not prohibit the expression of an idea simply because society finds the  
24 idea itself offensive or disagreeable.”). “Content-based regulations ‘target speech based  
25 on its communicative content.’” *Nat’l Inst. of Fam. & Life Advoc.*, 138 S. Ct. at 2371  
26 (quoting *Reed*, 576 U.S. at 163).

27 Defendants contend AB 893 is not properly subject to First Amendment analysis  
28 because it does not abridge anyone’s freedom of speech or expressive conduct. (Doc. No.

1 17-1 at 20–24.) Rather, they claim, AB 893 merely prohibits the sale of guns, and the sale  
2 of guns is not “speech” within the meaning of the First Amendment. The Court agrees.

3 “[T]he act of exchanging money for a gun is not ‘speech’ within the meaning of  
4 the First Amendment.” *Nordyke v. Santa Clara Cnty.*, 110 F.3d 707, 710 (9th Cir. 1997).  
5 Here, AB 893 covers no more than the simple exchange of money for a gun or  
6 ammunition, solely prohibiting “the sale of any firearm or ammunition on the property or  
7 in the buildings that comprise the Del Mar Fairgrounds . . . .” (Doc. No. 1 at 113.) In their  
8 opposition, Plaintiffs cite no authority for their proposition that barring sales infringes  
9 speech. *See Nordyke v. King* (“*Nordyke 2003*”), 319 F.3d 1185, 1191 (9th Cir. 2003).  
10 Rather, Plaintiffs merely assert that “by permanently banning the commercial sale of  
11 firearms and ammunition at the Fairgrounds, it has the effect of banning gun shows at the  
12 Fairgrounds.” (Compl. ¶ 125; *see also* Doc. No. 28 at 28.) “As [the sale of guns] itself is  
13 not commercial speech and a ban on [sales] at most interferes with sales that are not  
14 commercial speech, . . . the [Defendants’] prohibition on [the sale of guns] does not  
15 infringe [Plaintiffs’] right to free commercial speech.” *Nordyke 2003*, 319 F.3d at 1191.

16 As such, Plaintiffs’ First Amendment claims are **DISMISSED WITH LEAVE**  
17 **TO AMEND.**

### 18 **G. Equal Protection Claim**

19 Plaintiffs further raise equal protection claims on the theory that Defendants treated  
20 them differently than similarly situated persons by preventing Plaintiffs from “equally  
21 participating in the use of the publicly owned venue by unconstitutionally eliminating  
22 Plaintiffs’ ability to freely conduct otherwise lawful business transactions and freely  
23 express their beliefs with like-minded people.” (Compl. ¶ 217.) Plaintiffs assert their  
24 equal protection claim is “based on the State’s denial of the exercise of [their First  
25 Amendment] rights in a public forum in a way that treats similarly situated persons  
26 differently.” (Doc. No. 28 at 12.)

27 The equal protection claims rise and fall with the First Amendment claims. *OSU*  
28 *Student All. v. Ray*, 699 F.3d 1053, 1067 (9th Cir. 2012). Plaintiffs do not allege

1 membership in a protected class or contend that Defendants’ conduct burdened any  
2 fundamental right other than their speech rights. Therefore, Defendants’ differential  
3 treatment of Plaintiffs will draw strict scrutiny (as opposed to rational basis review) under  
4 the Equal Protection Clause only if it impinged Plaintiffs’ First Amendment rights. *See*  
5 *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 797–98 (9th Cir. 2006); *Monterey*  
6 *Cnty. Democratic Cent. Comm. v. U.S. Postal Serv.*, 812 F.2d 1194, 1200 (9th Cir. 1987)  
7 (noting, with regard to “equal protection claims relating to expressive conduct,” that  
8 “[o]nly when rights of access associated with a public forum are improperly limited may  
9 we conclude that a fundamental right is impinged”).

10 As explained above, the Complaint fails to allege that Defendants infringed  
11 Plaintiffs’ speech rights by the passage of AB 893. Therefore, the Complaint also fails to  
12 state equal protection claims for differential treatment that trespassed upon a fundamental  
13 right. *See OSU Student All.*, 699 F.3d at 1067. Thus, Plaintiffs’ sixth claim under the  
14 Fourteenth Amendment’s Equal Protection Clause is **DISMISSED WITH LEAVE TO**  
15 **AMEND.**

16 **H. The Court Lacks Jurisdiction Over the State Law Claims Against**  
17 **Defendants Newsom, Bonta, Ross, and the District**

18 “The district courts of the United States . . . are ‘courts of limited jurisdiction. They  
19 possess only that power authorized by Constitution and statute.’” *Exxon Mobil Corp. v.*  
20 *Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). “In order to provide a federal forum for  
21 plaintiffs who seek to vindicate federal rights, Congress has conferred on the district  
22 courts original jurisdiction in federal-question cases—civil actions that arise under the  
23 Constitution, laws, or treaties of the United States.” *Id.* “Although the district courts may  
24 not exercise jurisdiction absent a statutory basis, it is well established—in certain classes  
25 of cases—that, once a court has original jurisdiction over some claims in the action, it  
26 may exercise supplemental jurisdiction over additional claims that are part of the same  
27 case or controversy.” *Id.* Such jurisdiction arises under Title 28 U.S.C. § 1367(a).

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1 The Supreme Court has characterized § 1367(a) as providing district courts “a  
2 broad grant of supplemental jurisdiction over other claims within the same case or  
3 controversy, as long as the action is one in which the district courts would have original  
4 jurisdiction.” *Exxon Mobil Corp.*, 545 U.S. at 558. The Ninth Circuit has explained that  
5 the term “[o]riginal jurisdiction’ in subsection (a) refers to jurisdiction established by  
6 looking for any claim in the complaint over which there is subject matter jurisdiction.”  
7 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 940 (9th Cir. 2001), *holding modified by Exxon*  
8 *Mobil Corp.*, 545 U.S. 546.

9 Here, Plaintiffs assert the Court maintains subject matter jurisdiction over this  
10 action because their federal law claims, brought under § 1983, raise a federal question.  
11 (Compl. ¶ 8.) Plaintiffs make no mention of supplemental jurisdiction over their state law  
12 claims. (*See generally id.*)

13 As detailed above, the Court dismissed all federal law claims against both State  
14 and County Defendants. The remaining claims against them rest on only California state  
15 law. (*Id.* ¶¶ 221–29 (intentional interference with prospective economic advantage);  
16 ¶¶ 230–39 (negligent interference with prospective economic advantage); ¶¶ 240–48  
17 (intentional interference with contract).) Both State Defendants and County Defendants  
18 are California residents. (*Id.* ¶ 10.) Thus, the Court lacks any basis to assert subject matter  
19 jurisdiction over Plaintiffs’ action as it pertains to them. Absent such basis, the Court may  
20 not exercise supplemental jurisdiction over the state law claims against them. *Scott v.*  
21 *Pasadena Unified Sch. Dist.*, 306 F.3d 646, 664 (9th Cir. 2002). Accordingly, the Court  
22 **DISMISSES** all remaining state law claims against State Defendants and County  
23 Defendants **WITHOUT PREJUDICE**. *Wade v. Reg’l Credit Ass’n*, 87 F.3d 1098, 1101  
24 (9th Cir. 1996) (“Where a district court dismisses a federal claim, leaving only state  
25 claims for resolution, it should decline jurisdiction over the state claims and dismiss them  
26 without prejudice.”).

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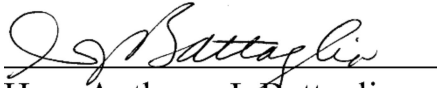
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1 **V. CONCLUSION**

2 For the reasons set forth above, the Court **GRANTS** the Defendants’ motions to  
3 dismiss **WITH LEAVE TO AMEND**. (Doc. Nos. 17, 20.) Should Plaintiffs choose to  
4 do so, where leave is granted, they must file an amended complaint curing the  
5 deficiencies noted herein by **August 31, 2022**.

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7 **IT IS SO ORDERED.**

8 Dated: August 18, 2022

  
9 Hon. Anthony J. Battaglia  
10 United States District Judge

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2023, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME I OF IV was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: August 11, 2023

s/ Anna M. Barvir

Anna M. Barvir