

Case No. 23-55431

In the United States Court of Appeals
for the Ninth Circuit

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.

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

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

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Attorneys for Plaintiffs-Appellants

August 11, 2023

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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
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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
17 CROSSROADS OF THE WEST; et al.,

18 Plaintiffs,

19 v.

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

22 Defendants.

CASE NO.: 21-cv-01718-AJB-KSC

**PLAINTIFFS’ NOTICE OF
APPEAL AND REPRESENTATION
STATEMENT**

1 NOTICE IS HEREBY GIVEN that Plaintiffs B&L Productions, Inc., Barry
2 Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis,
3 Lawrence Michael Walsh, Captain Jon’s Lockers, LLC, L.A.X. Firing Range, Inc.,
4 California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club,
5 Inc., and Second Amendment Foundation, hereby appeal to the United States Court
6 of Appeals for the Ninth Circuit from the Judgement entered in this action April 11,
7 2023 (ECF No. 53).

8 Plaintiffs’ Representation Statement is attached to this Notice as required by
9 Ninth Circuit Rule 3-2(b).

10 Dated: May 9, 2023

/s/ Anna M. Barvir

Anna M. Barvir
MICHEL & ASSOCIATES, P.C.
Email: abarvir@michellawyers.com

14 Dated: May 9, 2023

/s/ Donald Kilmer

Donald Kilmer
LAW OFFICES OF DONALD KILMER, APC
Email: don@dklawoffice.com

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REPRESENTATION STATEMENT

The undersigned represents Plaintiffs-Appellants, B&L Productions, Inc., Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain Jon’s Lockers, LLC, L.A.X. Firing Range, Inc., California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club, Inc., and Second Amendment Foundation, and no other party. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and e-mail, where appropriate.

PARTIES	COUNSEL OF RECORD
Plaintiffs-Appellants B&L Productions, Inc.; Barry Bardack; Ronald J. Diaz; Sr., John 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.	C.D. Michel – SBN 144258 Email: cmichel@michellawyers.com Anna M. Barvir – SBN 268728 Email: abarvir@michellawyers.com MICHEL & ASSOCIATES, P.C. 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802 Telephone: (562) 216-4444 Facsimile: (562) 216-4445 Counsel is registered for Electronic Filing in the Ninth Circuit
Plaintiff-Appellant Second Amendment Foundation	Donald Kilmer – SBN 179986 Email: don@dklawoffice.com Law Offices of Donald Kilmer, APC 14085 Silver Ridge Road Caldwell, Idaho 83607 Telephone: (408) 264-8489 Counsel is registered for Electronic Filing in the Ninth Circuit
Defendants-Appellees Gavin Newsom, in his official capacity as Governor of the State of California; Rob Bonta, in his official capacity as Attorney	Charles J. Sarosy Deputy Attorney General Email: charles.sarosy@doj.ca.gov 300 South Spring Street, Suite 1702

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General of the State of California; Karen Ross, in her official capacity as Secretary of California Department of Food & Agriculture; and 22 nd District Agricultural Association	Los Angeles, CA 90013-1230 Telephone: (213) 269-6356 Facsimile: (916) 731-2119
Defendant-Appellee Summer Stephan, Attorney of San Diego County	Timothy M. White Senior Deputy Email: timothy.white@sdcounty.ca.gov Office of County Counsel County of San Diego 1600 Pacific Highway, Room 355 San Diego, CA 92101-2469 Telephone: (619) 531-4865

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 APPEAL AND REPRESENTATION STATEMENT. 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: May 9, 2023

/s/ Anna M. Barvir
 Anna M. Barvir

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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. Newsom, et al.*
Case No.: 21-cv-01718-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 APPEAL AND REPRESENTATION
STATEMENT**

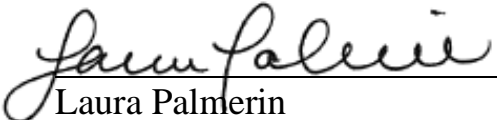
on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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@sdcountry.ca.gov
Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469
*Attorneys for Defendant Summer Stephan, Attorney of
San Diego County*

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

Executed May 9, 2023.



Laura Palmerin

1 C.D. Michel-SBN 144258
Anna M. Barvir-SBN 268728
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11 Telephone: (408) 264-8489
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12 Attorney for Plaintiff Second Amendment Foundation

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16 B&L PRODUCTIONS, INC., d/b/a
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18 Plaintiffs,

19 v.

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

22 Defendants.

CASE NO.: 21-cv-01718-AJB-KSC

**NOTICE OF INTENT NOT TO
FILE SECOND AMENDED
COMPLAINT**

1 TO THE HONORABLE COURT, ALL PARTIES, AND ALL ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that pursuant to this Court’s Amended Order
4 Granting Defendants’ Motion to Dismiss (with leave to amend), issued March 14,
5 2023 (ECF No. 51), Plaintiffs B & L Productions, Inc., Barry Bardack, Ronald J.
6 Diaz, Sr., John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh,
7 Captain Jon’s Lockers, LLC, L.A.X. Firing Range, Inc., California Rifle & Pistol
8 Association, Incorporated, South Bay Rod and Gun Club, Inc., and Second
9 Amendment Foundation hereby notify the Court and all parties that they do not
10 intend to file a Second Amended Complaint to amend their claims. Plaintiffs find it
11 impossible to comply with the Court’s conditions for leave to amend and at the same
12 time comply with Fed. R. Civ. Pro. 11.

13 Nothing about Plaintiffs’ decision to stand on their pleadings, however,
14 should be interpreted as acquiescence in the Court’s dismissal of any of their claims,
15 including the dismissal of Plaintiffs’ claims against Defendants. *See McCalden v.*
16 *Cal. Library Ass’n*, 919 F.2d 538, 547 (9th Cir. 1990) (“[A]ppellant is not required
17 to amend in order to preserve his right to appeal. When one is granted leave to
18 amend a pleading, she may elect to stand on her pleading and appeal if the other
19 requirements for a final, appealable judgment are satisfied.”).

20 Dated: March 24, 2023 /s/ Anna M. Barvir
21 Anna M. Barvir
22 MICHEL & ASSOCIATES, P.C.
23 Email: abarvir@michellawyers.com

24 Dated: March 24, 2023 /s/ Donald Kilmer
25 Donald Kilmer
26 LAW OFFICES OF DONALD KILMER, APC
27 Email: don@dklawoffice.com

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Dated: March 24, 2023

/s/ Anna M. Barvir
Anna M. Barvir

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Case No.: 21-cv-01718-AJB-KSC

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NOTICE OF INTENT NOT TO FILE SECOND AMENDED COMPLAINT

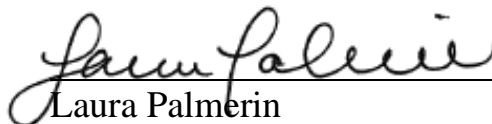
on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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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 March 24, 2023.



Laura Palmerin

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16 B&L PRODUCTIONS, INC., d/b/a
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18 Plaintiffs,

19 v.

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

22 Defendants.

CASE NO: 21CV1718 AJB KSC

**PLAINTIFFS’ NOTICE OF
SECOND ORDER FOR
SUPPLEMENTAL BRIEFING IN
SIMILAR CASE**

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

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

12 Currently pending, in that case, is the Plaintiffs’ Motion for Preliminary
13 Injunction. At the request of the defendants, the Honorable John W. Holcomb
14 ordered the parties to submit simultaneous supplemental briefing on the plaintiffs’
15 Second Amendment claim. Order for Supplemental Briefing Re: Plaintiffs’ Motion
16 for Preliminary Injunction, *B&L Prods.*, No. 22-cv-1518 (C.D. Cal. Jan. 6, 2023)
17 (ECF No. 25). A copy of that Order was filed in this case on January 17, 2023.

18 Pursuant to court order, the parties filed simultaneous briefs in the Orange
19 County matter on January 27, 2023. State Defendants’ Supplemental Brief in
20 Opposition to Motion for Preliminary Injunction, *B&L Prods.*, No. 22-cv-1518
21 (C.D. Cal. Jan. 27, 2023) (ECF No. 26); Plaintiffs’ Court-Ordered Supplemental
22 Brief in Support of Plaintiffs’ Motion for Preliminary Injunction, *B&L Prods.*, No.
23 22-cv-1518 (C.D. Cal. Jan. 27, 2023) (ECF No. 27).

24 On February 1, 2023, Judge Holcomb issued a second order for additional
25 supplemental briefing—this time requiring the state defendants to file an initial
26 brief, then for plaintiffs to file a response, and finally for defendants to file a reply.
27 Order for Additional Supplemental Briefing Re: Plaintiffs’ Motion for Preliminary
28

1 Injunction, *B&L Prods.*, No. 22-cv-1518 (C.D. Cal. Jan. 6, 2023) (ECF No. 28). A
2 true and correct copy of the Central District’s order is attached as Exhibit 1.

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Dated: February 24, 2023

MICHEL & ASSOCIATES, P.C.

/s/ Anna M. Barvir
Anna M. Barvir
Email: abarvir@michellawyers.com
*Counsel for Plaintiffs B&L Productions, Inc.,
Barry Bardack, Ronald J. Diaz, Sr., John
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.*

Dated: February 24, 2023

LAW OFFICES OF DONALD KILMER,
APC

/s/ Donald Kilmer
Donald Kilmer
Email: don@dklawoffice.com
*Counsel for Plaintiff Second Amendment
Foundation*

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 SECOND 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: February 24, 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 February 1, 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

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

Proceedings: ORDER FOR ADDITIONAL 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.; 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

The Court previously directed the parties to file supplemental briefs concerning Plaintiffs' Second Amendment claim and to inform the Court whether SB 264 and SB 915 were "consistent with this Nation's historical tradition of firearm regulation." *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022). The Court is underwhelmed by the parties' submissions. Plaintiffs object to the Court's order for simultaneous briefing on the issue; Plaintiffs contend that they should have been allowed to respond to Defendants'

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

arguments concerning SB 264 and SB 915’s consistency with historical traditions of firearm regulation.² Plaintiffs also request leave to file a supplemental reply to respond to the Defendants’ newly filed materials, should the Court not be inclined to grant Plaintiffs’ motion for a preliminary injunction.³

Conversely, Defendants unpersuasively devote over a third of their brief arguing that SB 264 and SB 915 did not regulate any protected conduct under the Second Amendment.⁴ The Court did not seek supplemental briefing to permit Defendants to mount a rearguard defense of the Ninth Circuit’s pre-*Bruen* legal authorities.⁵ Instead, the Court intended to provide Defendants with an opportunity to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *See Bruen*, 142 S. Ct. at 2130. Furthermore, as directed by the *Bruen* Court, “[i]n our adversarial system of adjudication, we follow the principle of party presentation.’ Courts are thus entitled to decide a case based on the historical record compiled by the parties.” *Id.* at 2130 n.6 (citation omitted).

Defendants request additional time to supplement the record if the Court is not satisfied by prior briefing—which it is not—and they maintain that additional briefing is “required to answer the difficult historical questions posed by *Bruen*.”⁶ The Court is particularly interested in “a deeper canvass of historical state and municipal laws and additional primary-source research to further understand and contextualize the Nation’s traditions of firearms regulation.”⁷ Accordingly, the Court **DIRECTS** the parties to file additional supplemental briefing on those topics.

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

² Pls.’ Court-Ordered Suppl. Brief in Supp. of Pls.’ Mot. for Prelim. Inj. [ECF No. 27] 2:1-13.

³ *Id.* at 15:9-11.

⁴ State Defs.’ Suppl. Brief in Opp’n to Mot. for Prelim. Inj. (“Defendants’ Brief”) [ECF No. 26] 1:1-7:10.

⁵ *See Teixeira v. Cty. of Alameda*, 873 F.3d 670 (9th Cir. 2017).

⁶ Defendants’ Brief 15 n.5.

⁷ *Id.*

1. Defendants are **DIRECTED** to file a supplemental brief, not to exceed 25 pages, no later than February 24, 2023, providing an analysis of the issues discussed above.
2. Plaintiffs are **DIRECTED** to file a supplemental brief, not to exceed 25 pages, no later than March 10, 2023, responding to Defendants' supplemental brief regarding the issues discussed above.
3. Defendants are **DIRECTED** to file a reply brief, not to exceed 10 pages, no later than March 24, 2023, replying to Plaintiffs' supplemental brief regarding the issues discussed above.
4. The hearing on the Motion is **CONTINUED** to Thursday, April 6, 2023, at 10:00 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.

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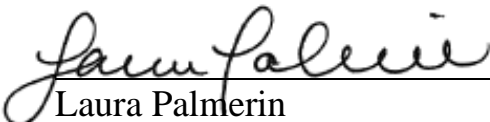
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*Attorneys for Defendants Summer Stephan, Attorney of
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4 & Event Center. First Amended Complaint, *B&L Prods. v. Newsom*, No. 22.-cv-
5 1518 (C.D. Cal. Nov. 14, 2022) (ECF No. 19). It also challenges 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
27 /s/ Donald Kilmer
28 Donald Kilmer
Email: don@dklawoffice.com
Counsel for Plaintiff Second Amendment
Foundation

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.

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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. 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**

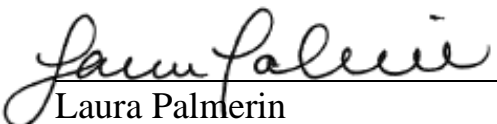
on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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

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.
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8 Association, Incorporated, and South Bay Rod and Gun Club, Inc.

9 Donald Kilmer-SBN 179986
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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,
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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.: 21-cv-01718-AJB-KSC
**NOTICE OF ERRATA RE: FIRST
AMENDED COMPLAINT**

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Plaintiffs B&L Productions, Inc., Barry
3 Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis,
4 Lawrence Michael Walsh, Captain Jon’s Lockers, LLC, L.A.X. Firing Range, Inc.,
5 California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club,
6 Inc., and Second Amendment Foundation inadvertently omitted a redlined version of
7 the amended complaint showing how the pleading differed from the previously
8 dismissed pleading when filing their First Amended Complaint on August 31, 2022,
9 as should have been included pursuant to Civil Rule 15.1 c.

10 The redlined version of the amended complaint is attached as **Exhibit A**.

11 Dated: September 8, 2022 s/ Anna M. Barvir
12 Anna M. Barvir
13 MICHEL & ASSOCIATES, P.C.
14 Email: abarvir@michellawyers.com

15 Dated: September 8, 2022 s/ Donald Kilmer
16 Donald Kilmer
17 LAW OFFICES OF DONALD KILMER, APC
18 Email: don@dklawoffice.com

19
20 **ATTESTATION OF E-FILED SIGNATURES**

21 I, Anna M. Barvir, am the ECF User whose ID and password are being used
22 to file this **NOTICE OF ERRATA RE: FIRST AMENDED COMPLAINT**. In
23 compliance with Southern District of California Electronic Case Filing
24 Administrative Policies and Procedures Section 2(f)(4), I attest that Plaintiff Second
25 Amendment Foundation’s counsel, Donald Kilmer, has concurred in this filing.

26
27 Dated: September 8, 2022 s/ Anna M. Barvir
28 Anna M. Barvir

EXHIBIT A

1 C.D. Michel-SBN 144258
2 Anna M. Barvir-SBN 268728
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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
8 Jon’s Lockers, LLC, L.A.X. Firing Range, Inc., California Rifle & Pistol
9 Association, Incorporated, and South Bay Rod and Gun Club, Inc.

8 Donald Kilmer-SBN 179986
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12 Telephone: (408) 264-8489
13 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

15 B&L PRODUCTIONS, INC., d/b/a
16 CROSSROADS OF THE WEST;
17 BARRY BARDACK; RONALD J.
18 DIAZ, SR.; JOHN DUPREE;
19 CHRISTOPHER IRICK; ROBERT
20 SOLIS; LAWRENCE MICHAEL
21 WALSH; CAPTAIN JON’S
22 LOCKERS, LLC; L.A.X. FIRING
23 RANGE, INC., d/b/a LAX AMMO;
24 CALIFORNIA RIFLE & PISTOL
25 ASSOCIATION, INCORPORATED;
26 SOUTH BAY ROD AND GUN
27 CLUB, INC.; and SECOND
28 AMENDMENT FOUNDATION,

Plaintiffs,

v.

25 GAVIN NEWSOM, in his official
26 capacity as Governor of the State of
27 California and in his personal capacity;
28 **ROBERTROB** BONTA, in his official
capacity as Attorney General of the
State of California and in his personal
capacity; KAREN ROSS, in her

**CASE NO: Case No.: 21-cv-01718-AJB-
KSC**

**FIRST AMENDED COMPLAINT FOR
MONETARY, DECLARATORY &
INJUNCTIVE RELIEF; DEMAND
FOR JURY TRIAL**

**(1) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH - POLITICAL];**

**(2) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-MIXED POLITICAL/
COMMERCIAL];**

**(3) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-COMMERCIAL];**

**(4) VIOLATION OF 42 U.S.C. § 1983
[PRIOR RESTRAINT ON SPEECH];**

**(5) VIOLATION OF 42 U.S.C. § 1983
[RIGHT TO ASSEMBLY];**

**(6) VIOLATION OF 42 U.S.C. § 1983
[RIGHT TO KEEP & BEAR ARMS];**

FIRST AMENDED COMPLAINT
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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official capacity as Secretary of California Department of Food & Agriculture and in his personal capacity; ~~SUMMER, STEPHAN SUMMER~~, in his official capacity as District Attorney ~~of San Diego County~~; ~~THOMAS MONTGOMERY~~, in his official capacity as ~~County Counsel~~ of San Diego County; 22nd DISTRICT AGRICULTURAL ASSOCIATION; DOES 1-50;

Defendants.

(7) VIOLATION OF 42 U.S.C. § 1983 [EQUAL PROTECTION];

(78) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;

(89) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;

(910) INTENTIONAL INTERFERENCE WITH CONTRACT.

DEMAND FOR JURY TRIAL

NOTICE OF UNCONSTITUTIONALITY OF STATE STATUTE

NOTICE OF RELATED CASE

INTRODUCTION

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1. Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE WEST has operated popular, safe, heavily regulated, legal, and family-friendly gun shows as a business in California for over 30 years, including at the Del Mar Fairgrounds.

2. Crossroads produces gun shows at the Fairgrounds where like-minded individuals gather to engage in commerce related to, and necessary for, the lawful and regulated exercise of Second Amendment rights for themselves, their exhibitors, their patrons, their customers, and the ~~general~~ public. This safe and regulated marketplace promotes public safety, even for people who do not attend gun shows because it will tend to reduce the unregulated transfer of firearms within San Diego County. Furthermore, by providing a convenient forum for Californians to exercise their right to acquire firearms locally, gun shows at the Fairgrounds will have the tendency to discourage the sale and importation of firearms from other states with less strict gun laws than California.

3. Plaintiffs Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain Jon’s Lockers, LLC, L.A.X Firing Range, d/b/a LAX Ammo, California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club, Inc., and Second Amendment Foundation, Inc., attend and participate in the Crossroads gun show to engage in First Amendment activities that are both necessary and essential to the open, robust, and lawful exercise of their Second Amendment rights.

4. At the gun show, Plaintiffs associate with like-minded people, participate in public discussions, attend informational forums, distribute and collect information, make offers for sale, make offers to buy, and engage in legal and political discussions related to the Second Amendment, which are all forms of speech protected by the First Amendment. Discussions include, but are not limited to, firearms and ammunition, firearm technology, firearm safety, and firearm law

1 and politics. Participants also exchange information about where to hunt and where
2 to practice shooting, where and from whom to receive training, gunsmithing, gun
3 repair, gun art, and many other topics that arise from the right to acquire, own,
4 possess, enjoy, and celebrate arms as a quintessentially American artifact with
5 constitutional significance.

6 5. Defendants are government actors who, through the adoption and
7 enforcement of Assembly Bill 893, codified at California Food & Agricultural Code
8 section 4158,¹ which prohibits the sale of firearms and ammunition at the
9 Fairgrounds with the intention and effect of shuttering gun show events altogether,
10 have engaged in and will continue to engage in action that violates Plaintiffs’
11 constitutional rights to free speech, assembly, and equal protection. Their actions
12 also constitute prior restraint.

13 6. What’s more, the conduct of Defendants Newsom, Bonta, Ross, and the
14 22nd District Agricultural Association also constitutes intentional and/or negligent
15 interference with the prospective economic advantage of Plaintiffs Crossroads,
16 Walsh, LAX Ammo, CRPA, and SAF, as well as intentional interference with
17 Plaintiff Crossroads’ contracts.

18 7. This action seeks declaratory and injunctive relief against Defendants
19 for violating the United States Constitution. It also seeks damages for lost profits,
20 lost opportunities, and diminished marketing value, and reimbursement for
21 reasonable attorney’s fees, costs, and other expenses in bringing this action.

22 **JURISDICTION AND VENUE**

23 8. The Court has original jurisdiction of this civil action under 28 U.S.C. §
24 1331 because the action arises under the Constitution and laws of the United States,
25 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. §
26 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation,

27
28 ¹ Plaintiffs refer to the challenged law, California Food & Agricultural Code
section 4158, as AB 893 throughout this complaint.

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under color of the laws, statutes, ordinances, regulations, customs, and usages of the State of California and political subdivisions thereof, of rights, privileges, or immunities secured by the United States Constitution and by Acts of Congress.

9. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys’ fees is authorized by 42 U.S.C. § 1988.

10. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367 because those claims share common operative facts with Plaintiffs’ federal law claims over which this Court has original jurisdiction. Adjudication of Plaintiffs’ state law claims together with Plaintiffs’ federal law claims furthers the interest of judicial economy.

~~10.11.~~ Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the 22nd District Agricultural Association is ~~located~~ in San Diego County and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district. Further, the state of California maintains an office for service of process in San Diego County at 600 West Broadway, Suite 1800, San Diego, California 92101.

PARTIES

[Plaintiffs]

~~11.12.~~ Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE WEST, is a for-profit event promoter operating in several western states. Crossroads ~~is in the business of promoting~~ promotes and ~~organizing~~ organizes trade shows throughout the state of California and other western states, including their long-running gun show events held at the Del Mar Fairgrounds (“the Fairgrounds”) operated under the d/b/a Crossroads of the West (“Crossroads”). Crossroads currently is the largest vendor of gun show events in California and at the Del Mar Fairgrounds. The gun shows occupy thousands of square feet of the Fairgrounds. Typically, thousands of people attend the gun show on each of the weekends they are held. They have successfully

1 produced and operated multiple safe, legal, and family-friendly gun show events in
2 California and at the Fairgrounds every year for over 30 years.

3 12.13. Plaintiff BARRY BARDACK is a resident of El Cajon, California, and
4 he is a part-time flight instructor. He regularly attends the gun shows at the
5 Fairgrounds where he purchases ammunition for his target shooting hobby and
6 volunteers at the CRPA booth to talk to others about their rights, the importance of
7 membership in the CRPA, and the Second Amendment. -The ban on sales of
8 firearms and ammunition at the Fairgrounds burdens his right to engage in otherwise
9 lawful commercial speech in a public forum and restricts his ability to purchase
10 ammunition for lawful purposes—this is especially true for Plaintiff Bardack
11 because the nearest vendor that could serve his particular ammunition needs is some
12 two hours from his home. And because the ban is intended to make gun shows less
13 profitable and effectively shutter them, it also restricts his right to engage in the
14 unique types of political, educational, and commercial speech that takes place at the
15 gun show.

16 13.14. Plaintiff RONALD J. DIAZ, SR., is a resident of Alpine, California,
17 and he is a retired federal contractor. He regularly attends gun shows at the
18 Fairgrounds to purchase ammunition reloading supplies. Plaintiff Diaz also attends
19 the Crossroads gun show events at the Del Mar Fairgrounds to engage in expressive
20 activities with like-minded people, including discussions related to firearms,
21 ammunition, and firearm accessories, the shooting sports, politics, and the Second
22 Amendment. The ban on sales of firearms and ammunition at the Fairgrounds,
23 which is intended to make gun shows less profitable and effectively shutter them,
24 burdens his right to engage in otherwise lawful commercial and educational speech
25 in a public forum with vendors that offer him the expertise and variety of reloading
26 supplies available at Crossroads gun shows. It also restricts his right to engage in the
27 unique types of political, educational, and commercial speech that takes place at the
28 gun show.

1 14.15. Plaintiff JOHN DUPREE is a resident of Alpine, California, and he
2 works for the federal government. He regularly attends the Crossroads gun shows at
3 the Fairgrounds. He is a competitive shooter and has the need to purchase bulk
4 ammunition in order to compete. Plaintiff Dupree also attends the Crossroads gun
5 show events at the Del Mar Fairgrounds to engage in expressive activities with like-
6 minded people, including discussions related to firearms, ammunition, and firearm
7 accessories, the shooting sports, politics, and the Second Amendment. The ban on
8 sales of firearms and ammunition at the Fairgrounds burdens his right to engage in
9 otherwise lawful commercial speech in a public forum and restricts his ability to
10 purchase ammunition for lawful purposes—this is especially true for Plaintiff
11 Dupree because the nearest vendor that could serve his particular ammunition needs
12 is several hours from his home. And because the ban is intended to make gun shows
13 less profitable and effectively shutter them, it also restricts his right to engage in the
14 unique types of political, educational, and commercial speech that takes place at the
15 gun show.

16 ~~15.16.~~ Plaintiff CHRISTOPHER PAUL IRICK is a resident of Carlsbad,
17 California, and he regularly attends the Crossroads guns shows at the Fairgrounds.
18 He is self-employed and enjoys going to the shows for good prices on firearms and
19 accessories, as well as the ~~variety of varied~~ merchandise available at the events.
20 Plaintiff Irick also attends the Crossroads gun show events at the Fairgrounds to
21 engage in expressive activities with like-minded people who hunt and support the
22 Second Amendment, while learning about new and innovative products available to
23 firearms owners and sportsmen. The ban on sales of firearms and ammunition at the
24 Fairgrounds burdens his right to engage in otherwise lawful commercial speech in a
25 public forum and restricts his ability to purchase firearms and ammunition for lawful
26 purposes. And because the ban is intended to make gun shows less profitable and
27 effectively shutter them, it also restricts his right to engage in the unique types of
28 political, educational, and commercial speech that takes place at the gun show.

1 16.17. Plaintiff ROBERT SOLIS is a resident of Oxnard, California, and he is
 2 a regular vendor at the Crossroads gun shows at the Fairgrounds. At the Crossroads
 3 gun show, he sells firearms-related accessories and, though not in the business of
 4 selling firearms, he ~~occasionally~~sometimes engages in the lawful private sale of
 5 firearms and ammunition at the show. Plaintiff Solis also attends gun show events at
 6 the Del Mar Fairgrounds to engage in expressive activities with like-minded people,
 7 including discussions related to firearms, ammunition, and firearm accessories, the
 8 shooting sports, politics, and the Second Amendment. The ban on sales of firearms
 9 and ammunition at the Fairgrounds directly burdens Plaintiff Solis’ right to engage
 10 in otherwise lawful commercial speech in a public forum and to access firearms and
 11 ammunition for lawful purposes. And because the ban on sales of firearms and
 12 ammunition at the Fairgrounds is intended to make gun shows less profitable and
 13 effectively shutter them, it restricts his right to engage in otherwise lawful
 14 commercial speech related to the sales of firearms accessories and his ability to
 15 engage in the unique types of political, educational, and commercial speech that
 16 takes place at the gun show.

17 17.18. Plaintiff LAWRENCE MICHAEL WALSH is a resident of Grass
 18 Valley, California, and is the owner of Miwall Corporation, d/b/a Wholesale
 19 Ammunition. Miwall is one of the major gun ammunition distributors on the west
 20 coast and has been in business for decades. He is a regular vendor at the Crossroads
 21 gun shows at the Fairgrounds. Plaintiff Walsh’s business currently does not have a
 22 physical store, and it only sells its product at gun shows across the state and online.
 23 Wholesale Ammunition also supplies ammunition to many of the law enforcement
 24 agencies and officers in the state, some of which purchase their ammunition from
 25 him at the gun shows because of the amount available, the cost, and the variety they
 26 can find. Plaintiff Walsh enjoys ~~being able to talk~~talking with other Second Amendment
 27 supporters with like interests and views. If the gun shows at the Fairgrounds, or any
 28 of the other state venues, were to be shut down, it would be devastating to Plaintiff

1 Walsh’s business. The ban on sales of firearms and ammunition at the Fairgrounds
2 directly burdens Plaintiff Walsh’s right to engage in otherwise lawful commercial
3 speech in a public forum and to access firearms and ammunition for lawful
4 purposes. And because the ban on sales of firearms and ammunition at the
5 Fairgrounds is intended to make gun shows less profitable and effectively shutter
6 them, it restricts his right to engage in the unique types of political, educational, and
7 commercial speech that takes place at the gun show.

8 18.19. Plaintiff CAPTAIN JON’S GREEN CAN LOCKERS, LLC, is a
9 limited liability corporation incorporated under the laws of California, with
10 headquarters in Alpine, California. It is wholly owned and operated by Jon J.
11 Winslow, a Retired Fire Captain, who invented and, through the Captain Jon’s
12 business, sells a device that safely and effectively locks the widely popular green
13 metal surplus ammunition cans to prevent unauthorized access to their contents.
14 Captain Jon’s has no physical store but has been a regular vendor at the Crossroads
15 gun shows at the Fairgrounds since 2015. The Fairgrounds is only 45 minutes from
16 Captain Jon’s headquarters, and the next nearest gun show event is at least two
17 hours away. Captain Jon’s thus depends on the Del Mar gun show for a significant
18 portion of its annual revenues. Indeed, Captain Jon’s has built a loyal following of
19 repeat buyers at the Del Mar show, which make up approximately about 50% of the
20 business’ sales at the gun show. What’s more, Mr. Winslow, Captain Jon’s only
21 employee, also attends gun show events at the Fairgrounds to engage in expressive
22 activities with like-minded people, including discussions related to firearms,
23 ammunition, and firearm accessories, the shooting sports, politics, and the Second
24 Amendment. Because the ban on sales of firearms and ammunition at the
25 Fairgrounds is intended to make gun shows less profitable and effectively shutter
26 them, it restricts the lawful commercial speech that Captain Jon’s and its sole owner,
27 operator, and employee, Mr. Winslow, engage in at the gun show. It also restricts
28 Mr. Winslow’s ability to engage in the unique types of political, educational, and

1 commercial speech that takes place at the gun show.

2 19:20. Plaintiff L.A.X. FIRING RANGE, INC., d/b/a LAX AMMO LLC, is a
3 limited liability corporation incorporated under the laws of California, with
4 headquarters in Inglewood, California. LAX Ammo is a regular vendor at the
5 Crossroads gun shows at the Fairgrounds. At the Crossroads gun show, LAX Ammo
6 sells “high quality reloads and factory new ammunition in various calibers for rifles,
7 handguns, and shotguns at affordable prices.” The ban on sales of firearms and
8 ammunition at the Fairgrounds directly burdens the right of LAX Ammo, its owners,
9 and employees, to engage in otherwise lawful commercial speech in a public forum
10 and to access firearms and ammunition for lawful purposes. And because the ban on
11 sales of firearms and ammunition at the Fairgrounds is intended to make gun shows
12 less profitable and effectively shutter them, it restricts the right of LAX Ammo, its
13 owners, and employees, to engage in the unique types of political, educational, and
14 commercial speech that takes place at the gun show.

15 20:21. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,
16 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated
17 under the laws of California, with headquarters in Fullerton, California. Among its
18 other activities, CRPA works to preserve and expand constitutional and statutory
19 rights of gun ownership, including the right to self-defense and the right to keep and
20 bear arms. CRPA accomplishes this through its educational offerings, publications,
21 member engagement events, and legislative advocacy and initiatives. CRPA is also a
22 regular vendor at the Crossroads gun shows at the Fairgrounds, where it engages the
23 public in discussions about the organization and its purposes, the shooting sports,
24 firearms, and firearm safety, and the Second Amendment and other political issues.
25 It also attends gun shows at the Fairgrounds to sell organization memberships,
26 advertise its events, distribute its publications, and sell its merchandise, some of
27 which includes expressly pro-gun messaging. CRPA has also hosted political rallies,
28 educational seminars, and range safety officer training at gun shows throughout the

1 state, including those at the Fairgrounds. What’s more, CRPA has tens of thousands
2 of members and supporters, many of whom (including Plaintiffs Bardack, Diaz,
3 Dupree, Irick, Solis, and Winslow) attend the Crossroads gun shows at the
4 Fairgrounds to engage in expressive activities with like-minded people, including
5 discussions related to firearms, ammunition, and firearm accessories, the shooting
6 sports, politics, and the Second Amendment. Because the ban on sales of firearms
7 and ammunition at the Fairgrounds is intended to make gun shows less profitable
8 and effectively shutter them, it restricts the rights of CRPA, its employees,
9 volunteers, members, and supporters, to engage in the unique types of political,
10 educational, and commercial speech that takes place at the gun show. Through this
11 lawsuit, CRPA represents not only its own interests as a gun show vendor, but also
12 the interests of its members as gun show attendees and supporters of the right to
13 keep and bear arms for lawful purposes.

14 21-22. Plaintiff SOUTH BAY ROD AND GUN CLUB, INC. (“South Bay”) is
15 a private nonprofit corporation incorporated under the laws of California, with
16 headquarters in San Diego County, California. It was formed in 1955 with a mission
17 to operate a properly managed nonprofit shooting club that is efficiently designed,
18 contracted, and safely operated with diligently maintained shooting ranges, support
19 structures, and facilities so that all authorized members and guests may use the
20 facility with pride, confidence, and satisfaction. South Bay ~~endeavors~~seeks to
21 promote and encourage the safe handling and use of firearms. South Bay is a regular
22 vendor at the Crossroads gun shows at the Fairgrounds, where it engages the public
23 in discussions about the organization and its purposes, the shooting sports, and
24 firearms and firearm safety. What’s more, South Bay has some 4,000 members,
25 many of whom reside in San Diego County and attend the Crossroads gun shows at
26 the Fairgrounds to engage in expressive activities with like-minded people,
27 including discussions related to firearms, ammunition, and firearm accessories, the
28 shooting sports, politics, and the Second Amendment. Because the ban on sales of

1 firearms and ammunition at the Fairgrounds is intended to make gun shows less
2 profitable and effectively shutter them, it restricts the rights of South Bay, its
3 employees, volunteers, and members, to engage in the unique types of political,
4 educational, and commercial speech that takes place at the gun show. Through this
5 lawsuit, South Bay represents not only its own interests as a gun show vendor, but
6 also the interests of its members as gun show attendees and supporters of the right to
7 keep and bear arms for lawful purposes.

8 22-23. Plaintiff SECOND AMENDMENT FOUNDATION, INC. (“SAF”) is a
9 ~~non-profit~~nonprofit membership organization. It is incorporated under the laws of
10 the state of Washington and was founded in 1974. SAF has over 650,000 members
11 and supporters nationwide, include thousands of members in California. -The
12 purposes of SAF include education, research, publishing, and litigation. It is critical
13 to the success of SAF that its promotional material, publications, and messages
14 about the “right to keep and bear arms” reach demographic groups ~~that are~~ saturated
15 with gun owners, gun buyers, and people of the “gun culture.”- Gun Shows like the
16 one threatened by the Defendants’ actions interfere with this effort. SAF is dedicated
17 to promoting a better understanding about our constitutional heritage to privately
18 own and possess firearms through educational and legal action programs designed to
19 better inform the public about gun control issues. SAF has been a pioneer in
20 innovative defense of the right to keep and bear arms, through its publications and
21 public education programs like the Gun Rights Policy Conference. Those
22 publications and other SAF materials and information are offered at gun show
23 events. Second Amendment Foundation also expends significant sums of money
24 sponsoring public interest litigation to defend its own interests to disseminate
25 information to like-minded individuals, in and individualized setting, but SAF also
26 seeks to defend the interests of its member in lawsuits like this present effort.

27 **[Defendants]**

28 23-24. Defendant GAVIN NEWSOM is the Governor of the ~~State~~State of

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California. As Governor, he is the chief executive officer or the state of California, vested with “the supreme executive power” of the state and ~~“shall obligated to~~ “see that the law is faithfully executed.” Cal. Const. art. 5, § 1. ~~The injunctive and declaratory relief portions of this suit are brought against Defendant~~ As for California’s District Agricultural Associations, Governor Newsom oversees the operation and management of each district, and he wields the statutory power to appoint and remove district board members. Cal. in his official capacity. Claims Food & Agric. Code §§ 3959-3960. Governor Newsom has exerted that significant authority to direct district decision-making about the operation of gun shows at the Fairgrounds, as well as other state-owned fairgrounds. State-law claims for damages are brought against Defendant Newsom in his personal capacity. Cf. Hafer v. Melo, 502 U.S. 21, 31 (1991) (holding that state officers are not “immune from personal liability under § 1983 solely by virtue of the ‘official’ nature of their acts”).

24-25. Defendant ~~ROBERT~~ROB BONTA is the Attorney General of the ~~State~~state of California. He is the “chief law officer” of the state and has the duty to ‘see that the laws of the State are uniformly and adequately enforced.’ Cal. Const. art. 5, § 1. Additionally, Defendant Bonta has “direct supervision over every district attorney” within the State. *Id.* If, at any point a district attorney of the ~~State~~state fails to enforce adequately “any law of the State,” Defendant Bonta must “prosecute any violations of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the ~~State~~state of California, “shall assist any district attorney in the discharge” of duties when “required by the public interest or directed by the Governor. . . .” *Id.* The injunctive and declaratory relief portions of this suit are brought against Defendant Bonta in his official capacity. ~~Claims~~State-law claims for damages are brought against Defendant Bonta in his personal capacity. Cf. Hafer, 502 U.S. at 31 (holding that state officers are not “immune from personal liability under § 1983 solely by virtue of the ‘official’ nature of their acts”).

25-26. Defendant SUMMER STEPHAN-~~SUMMER~~ is the District

FIRST AMENDED COMPLAINT
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Attorney responsible for enforcing the law within the county of San Diego. Under
2 the California Government Code, the district attorney must prosecute “all actions for
3 the recovery” of fines and penalties. Cal. Gov’t Code § 26521. More specifically,
4 District Attorney Stephan is charged with prosecuting any violation of the California
5 Food & Agricultural Code, including section 4158 (i.e., AB 893) within the county
6 of San Diego. Cal. Food & Agric. § 8. The injunctive and declaratory relief portions
7 of this suit are brought against District Attorney ~~Summer~~Stephan in his official
8 capacity.

9 ~~26.—Defendant THOMAS MONTGOMERY is the County Counsel~~
10 ~~responsible for enforcing the law within the County of San Diego. In that capacity,~~
11 ~~he must “discharge all the duties vested in the district attorney.” Cal. Gov’t Code §~~
12 ~~26529. The injunctive and declaratory relief portions of this suit are brought against~~
13 ~~County Counsel Montgomery in his official capacity.~~

14 27. Defendant 22nd DISTRICT AGRICULTURAL ASSOCIATION
15 (“District”) is a Governor-appointed Board of Directors that manages the state-
16 owned Del Mar Fairgrounds public venue. The District is governed by a nine-
17 member board, each member serving a four-year term. The District Board of
18 Directors appoints a CEO charged with the daily operations of the facilities but
19 ~~maintains control over~~controls activities not delegated to the CEO, including
20 contracting with those seeking to host events, including gun shows, at the
21 Fairgrounds. ~~It is responsible for ensuring~~It ensures that all state laws governing gun
22 shows at the Fairgrounds, including AB 893, are faithfully enforced. ~~In 2018,~~
23 ~~Defendant District adopted a moratorium on contracting with third parties to host~~
24 ~~gun show events at the Fairgrounds. That moratorium was enjoined by order of the~~
25 ~~court and later permanently repealed through settlement of a related lawsuit, B&L~~
26 ~~Productions, Inc., et al. v. 22nd District Agricultural Association, Case No. 3:19-cv-~~
27 ~~134-CAB.~~

28 28. Defendant KAREN ROSS is the Secretary of the California Department

1 of Food & Agriculture—the entity responsible for the policy oversight of the
 2 network of California fair venues, which includes the Del Mar Fairgrounds. Through
 3 the Department, ~~Defendant Secretary~~ Ross issues guidance for governance and
 4 contracting to all agricultural districts throughout California, including Defendant
 5 District), and requires reporting from the districts on operational issues. The
 6 Department maintains an office of legal counsel ~~for any actions brought against~~
 7 ~~Agricultural Association Districts in the state. The injunctive and declaratory relief~~
 8 ~~portions of this suit are brought against Defendant Ross in her official capacity.~~
 9 ~~Claims for damages are brought against Defendant Ross in her personal~~
 10 ~~capacity.~~ that issues policy recommendations for district boards, including
 11 recommendations about bans on gun show events at state-owned fairgrounds. The
 12 Department of Food & Agriculture also develops positions on legislative activity
 13 affecting the 54 districts, reserving to itself the sole authority to dictate legislative
 14 policy positions affecting the operations of the districts. Through the Department,
 15 Secretary Ross has exerted that significant authority to silence any opposition the
 16 districts might have to attempts to ban gun shows from the properties they manage.
 17 State-law claims for damages are brought against Defendant Ross in her personal
 18 capacity. Cf. Hafer, 502 U.S. at 31 (holding that state officers are not “immune from
 19 personal liability under § 1983 solely by virtue of the ‘official’ nature of their acts”).

20 29. The true names and capacities of Defendants named as DOES 1
 21 through 50, inclusive, are individual, corporate, associate or otherwise, and are
 22 unknown to Plaintiffs. They are, however, believed to be responsible in some way
 23 for Plaintiffs’ loss and damages. Each Doe Defendant is, and at all times mentioned
 24 here was, a partner, agent, principal, co-conspirator, or are otherwise vicariously or
 25 directly responsible for the acts or omissions of the other defendants or themselves.
 26 They are each sued individually and are joined as party defendants. Plaintiffs thus
 27 sue each Doe Defendant under rules 15 and 21 of the Federal Rules of Civil
 28 Procedure. Plaintiffs are informed and believed that the Doe Defendants are all

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California residents. Plaintiffs will amend this complaint to show such true names and capacities of Doe Defendants when they have been ~~ascertained~~determined.

FACTUAL ALLEGATIONS

[The First Amendment Rights to Free Speech, Association & Assembly]

30. The First Amendment provides, in part, that “Congress shall make no law . . . abridging the freedom of speech,” U.S. Const. amend. I. It is incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.

31. Political and ideological speech—including speech about “politics, nationalism, religion, or other matters of opinion”—has long been considered the core of the First Amendment. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

32. Public property made available for lease by community groups to engage in expressive activity must thus be available without regard to the viewpoint sought to be expressed *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984). Such venues cannot be opened to some and closed to others, suppressing protected expression, absent a compelling government interest. *Id.* at 571.

33. The First Amendment does not tolerate the suppression of speech based on what some may label an unpopular viewpoint of the speaker. *John J. Hurley and S. Boston Allied War Vets. Council v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995). Indeed, “above all else, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Mosley*, 408 U.S. at 95 (emphasis added); see also *Ashcroft*, 535 U.S. at 573.

34. A content-based restriction that implicates political or ideological speech must generally survive “strict scrutiny,” where the government must show that the law is narrowly tailored to achieve a compelling government interest. See *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

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35. Even purely commercial speech—speech that “does no more than propose a commercial transaction” or relates solely to the economic interests of the speaker and audience—receives First Amendment protection if it is not misleading and concerns a lawful activity. *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm’n*, 447 U.S. 557 (1980). “An offer to sell firearms or ammunition is speech that ‘does no more than propose a commercial transaction.’ Such an offer is, therefore, commercial speech within the meaning of the First Amendment.” *Nordyke v. Santa Clara*, 110 F.3d 707, 710 (9th Cir. 1997).

36. Government restrictions on commercial speech are constitutional *only* if they directly advance a substantial government interest and are not broader than necessary to serve that interest. *Cent. Hudson*, 447 U.S. 557; *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (holding that tobacco marketing restrictions must be the narrowest means of achieving an asserted state interest); *Tracy Rifle & Pistol LLC v. Harris*, 339 F. Supp. 3d 1007, 1018 (E.D. Cal. 2018) (holding that a California law prohibiting the display of a handgun or a placard advertising the sale of a handgun in a manner that is visible from the outside of a gun dealer’s premises is unconstitutional).²

37. The First Amendment protects not only the right of free speech, but also “the right of the people peaceably to assemble.” U.S. Const., amend. I. The right to assemble often merges with the right to free expression. For “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.” *NAACP v. Patterson*, 357 U.S. 449,

² Though this is currently the controlling test for so-called “commercial speech,” modern case law is trending toward extending *full* First Amendment protection to all speech, including “commercial speech.” *See Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (moving toward providing commercial speech the same level of heightened protection long accorded to political speech); *see also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 523 (1996) (Thomas, J., concurring in part and concurring in judgment) (“I do not see a philosophical or historical basis for asserting that ‘commercial’ speech is of ‘lower value’ than ‘noncommercial’ speech. Indeed, some historical materials suggest to the contrary.”).

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462 (1958). “Governmental action which may have the effect of curtailing the freedom to associate is subject to the *closest* scrutiny.” *Id.* at 461-62.

[The Second Amendment Right to Keep & Bear Arms]

38. The Second Amendment to the United States Constitution declares that “the right of the people to keep and bear arms shall not be infringed.” U.S. Const amend. II.

39. The Second Amendment protects a fundamental, individual right that applies against both the federal government and the states. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

40. The Supreme Court recently confirmed that Second Amendment questions are to be analyzed in light of “text, history, and tradition.” “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, -- U.S. --, 142 S. Ct. 2111, 2126 (2022) (citing *Heller*, 554 U.S. at 634).

41. The Second Amendment protects the right to possess and use arms that are “typically possessed by law-abiding citizens for lawful purposes.” *See, e.g., Heller*, 554 U.S. at 624-25; *see also Caetano v. Massachusetts*, 577 U.S. 411, 136 S. Ct. 1027, 1027-28 (2016). That protection “extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Heller*, 544 U.S. at 582. It also includes the ammunition necessary to use firearms for their core lawful purposes. *See Jackson v. City & Cnty. of San Francisco*, 746 F.3d at 967-68 (recognizing that “without bullets, the right to bear arms would be meaningless”).

42. Finally, the Second Amendment protects the corresponding right to obtain protected firearms and ammunition. *See id.* at 967 (“[T]he right to possess

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firearms for protection implies a corresponding right’ to obtain the bullets necessary to use them.”); see also *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (holding that the right to possess firearms implies a corresponding right to access to firing ranges to train to be proficient with such firearms)

[The Fourteenth Amendment Right to Equal Protection Under the Law]

43. The Fourteenth Amendment to the United States Constitution, enforceable under 42 U.S.C. § 1983, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

44. Singling out speakers because of the content of their speech also violates their fundamental rights under the Equal Protection Clause. U.S. Const. amend. XIV.

45. If unequal treatment occurs in the context of exercising a fundamental right, or the government is motivated by animus toward a disfavored group, courts apply heightened scrutiny. See *Loving v. Virginia*, 388 U.S. 1, 11 (1967); see also *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517 U.S. 620 (1996). Indeed, “[b]ecause the right to engage in political expression is fundamental to our constitutional system, statutory classifications impinging upon that right must be narrowly tailored to serve a compelling governmental interest.” *Austin v. Mich. Chamber of Com.*, 494 U.S. 652, 666 (1990), *rev’d on other grounds*, *Citzs. United v. Fed. Elec. Comm’n*, 558 U.S. 310, 130 S. Ct. 876 (2010).

46. The Fourteenth Amendment case law extending equal protection beyond the immutable characteristics of race, color, religion, and national origin, has also subsumed exercising fundamental rights, including, but not limited to, the First Amendment. The Fourteenth Amendment’s Equal Protection umbrella thus necessarily includes exercising rights to buy and sell Second Amendment artifacts (in accordance with state and local laws regulating such sales) at any public facility owned, operated, or managed by or on behalf of any state or subdivision thereof.

[Regulation of Gun Show Events in California]

1 30.47. The state of California has the most rigorous regulatory regime for
2 commerce in firearms and ammunition in the United States. That regulatory regime
3 applies to the operation of gun show events throughout California. The laws related
4 to the acquisition and sale of firearms is ~~arguably~~perhaps stricter at a gun show, than
5 at brick-and-mortar stores or internet sales.

6 31.48. Only state approved, licensed gun show “producers” may operate gun
7 shows in California. All gun show producers, including Plaintiff Crossroads, must
8 have an individual (the “promoter”) who holds a valid “Certificate of Eligibility”
9 issued by the California Department of Justice.

10 32.49. Gun show producers must also, among other things:

- 11 a. Certify that they are familiar with all California laws
12 ~~regarding~~about gun shows, Cal. Penal Code § 27200;
- 13 b. Possess a minimum of \$1,000,000 liability insurance, *id.*;
- 14 c. Provide an annual list of shows or events to be held to the
15 California Department of Justice, *id.*; and
- 16 d. Notify the California Department of Justice no later than 30 days
17 ~~prior to~~before the gun show or event of any changes to the above,
18 *id.*
- 19 e. Make available to law enforcement a complete and accurate list
20 of all vendors that will participate in the show to sell, lease, or
21 transfer firearms. Cal. Penal Code § 27205.

22 33.50. Gun show promoters must submit an annual event and security plan and
23 schedule to the California Department of Justice and any local law enforcement
24 agency. The plan must include:

- 25 a. Type of show or event;
- 26 b. Estimated number of vendors offering for sale or display
27 firearms;
- 28 c. Estimated number of attendees;

- 1 d. Number of entrances and exits at the event;
- 2 e. Location, dates, and times of the event;
- 3 f. Contact person and telephone number for both promoter and
- 4 facility;
- 5 g. Number of sworn peace officers employed by the producer or
- 6 facility who will be present at the event;
- 7 h. Number of non-sworn security personnel employed by the
- 8 producer or the facility who will be present at the event; and
- 9 i. Promoters must inform all prospective vendors of all California
- 10 laws ~~regarding~~ about gun shows.

11 Cal. Penal Code §§ 27210, 27215.

12 ~~34.51.~~ Promoters must also provide a list of all prospective vendors and
13 designated firearm transfer agents who are licensed firearm dealers to the California
14 Department of Justice no later than seven days ~~prior to~~ before the event ~~for the~~
15 ~~purpose of determining to~~ determine whether the vendor possess a valid license and
16 are thus eligible to participate in the event. Cal. Penal Code § 27220.

17 ~~35.52.~~ If a vendor is not approved by the California Department of Justice or
18 fails to comply with all applicable California laws, they cannot participate. Cal.
19 Penal Code § 27220.

20 ~~36.53.~~ If a promoter fails to inform all prospective vendors of California’s
21 state laws or fails to submit a list of all prospective vendors to the California
22 Department of Justice, the event cannot ~~commence~~ begin. Cal. Penal Code § 27230.

23 ~~37.54.~~ A promoter must have written contracts with each vendor selling
24 firearms at the event. Cal. Penal Code § 27235.

25 ~~38.55.~~ Promoters must post signs in a readily visible location at each public
26 entrance to the event that includes all of ~~the following~~ these notices:

- 27 ~~•~~ ■ “This gun show follows all federal, state, and local firearms and
- 28 weapons laws, without exception.”

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- 39.56 “Any firearm carried onto the premises by any member of the public will be checked, cleared of any ammunition, and secured in a manner that prevents it from being operated, and an identification tag or sticker will be attached to the firearm before the person is allowed admittance to the show.”
- 40.57 “No member of the public under the age of 18 years shall be admitted to the show unless accompanied by a parent, grandparent, or legal guardian.”
- 41.58 “All firearm transfers between private parties at the show shall be conducted through a licensed dealer in accordance with applicable state and federal laws.”
- 42.59 “Persons possessing firearms in this facility must have in their immediate possession government-issued photo identification and display it upon the request to any security officer or any peace officer, as defined in Section 830.”

Cal. Penal Code § 27240(a).

39.56. Producers must also post signs in a readily visible location at each entrance to the parking lot stating: “The transfer of firearms on the parking lot of this facility is a crime.” Cal. Penal Code § 27240(b).

40.57. A willful failure of a producer to comply with any of California’s applicable laws is a misdemeanor punishable with a fine of up to \$2,000 dollars and would render the producer ineligible for a gun show producer license for up to one year, which could cost a producer hundreds of thousands of dollars in lost revenue for a willful infraction. Cal. Penal Code § 272459(c).

41.58. Except in ~~very limited~~ narrow exceptions applicable only to law enforcement, actual firearm transfers are already prohibited from taking place at any

1 gun show in California.³ The firearm sale can be started through an on-site licensed
2 “transfer dealer,” but it cannot be completed on site. Instead, purchasers must pick
3 up their purchase at a licensed firearm retailer at a different licensed location--but
4 only after a 10-day waiting period and background check. There is no “Gun Show
5 Loophole” at gun shows operated in accordance with California Law.

6 42.59. The Gun Show Act of 2000, California Penal Code sections 27200-
7 27245, places even more restrictions on the operation of a gun show in California by
8 requiring that:

- 9 a. Vendors not display, possess, or offer for sale any firearms,
10 knives, or weapons for which possession or sale is prohibited;
- 11 b. Vendors acknowledge that they ~~are responsible for knowing and~~
12 ~~complying~~must know and comply with all applicable federal,
13 state, and local laws dealing with the possession and transfer of
14 firearms;
- 15 c. Vendors will not engage in activities that incite or encourage hate
16 crimes;
- 17 d. Vendors will process all transfers of firearms through licensed
18 firearms dealers as required by state law;
- 19 e. Vendors will verify that all firearms in their possession will be
20 unloaded and that the firearms will be secured in a manner that
21 prevents them from being operated except for brief periods, when
22 the mechanical condition of the firearm is being demonstrated to
23

24 ³ Cal. Penal Code § 27310 (requiring all firearm transfers at gun shows to
25 comply with state and federal law); *id.* § 26805 (prohibiting the sale and transfer of a
26 firearm by a licensed dealer at any location other than the dealer’s premises as listed
27 on their license but allowing dealer to prepare documents at a gun show in
28 preparation for completion of the sale at the dealer’s premises); *id.* § 27545
(requiring all firearm transactions to be processed through a licensed dealer when
neither party is a licensed firearm dealer).

- 1 prospective buyer;
- 2 f. Vendors provide all required information under Penal Code §
- 3 27320;
- 4 g. Vendors will not display or possess black powder or offer it for
- 5 sale;
- 6 h. Ammunition ~~only~~ be displayed only in closed original factory
- 7 boxes or other closed containers, with the only exception for
- 8 showing the ammunition to a prospective buyer. ~~On July 1, 2019,~~
- 9 ~~additional state law restrictions on the sale of ammunition will~~
- 10 ~~become effective and gun shows must comply;~~
- 11 i. No member of the public under 18 years old may enter a gun
- 12 show unless accompanied by a parent or legal guardian;
- 13 j. No person other than security personnel or law enforcement
- 14 possess both a firearm and ammunition for that firearm at the
- 15 same time, ~~with the exception of~~ except for vendors who are
- 16 selling both.

17 43.60. Plaintiff Crossroads diligently operates all of its gun shows in
 18 accordance with state law, and it takes immediate remedial measures if irregularities
 19 are discovered.

20 44.61. Vendors at Crossroads gun shows, like Plaintiffs Walsh and LAX
 21 Ammo, are some of the same licensed vendors that have brick and mortar stores in
 22 the community or operate legally over the internet and are registered with the state
 23 as lawful businesses.

24 45.62. Vendors at Crossroads gun shows sell legal products and enjoy ~~being~~
 25 ~~able to attend~~ attending gun shows so they can better interact with customers in a
 26 more meaningful and intimate way.

27 46.63. Even with all of the state and federal regulations that promoters and
 28 vendors must abide, through the adoption and enforcement of AB 893, Defendants

1 now seek to ~~wholly~~ prohibit constitutionally protected, highly regulated, and
2 otherwise perfectly legal activity.

3 **[The Gun Show Cultural Experience]**

4 47.64. Gun shows are a modern bazaar—a convention of like-minded
5 individuals who meet in this unique public forum that has been set aside by state and
6 local governments for all manner of commerce. This convention-like setting is of
7 incalculable benefit to the gun-buying consumer and promotes public safety.

8 48.65. Gun shows, in general, and the Del Mar show, in particular, are a
9 celebration of America’s “gun culture” that is a natural and essential outgrowth of
10 the constitutional rights that flow from the Second Amendment to the United States
11 Constitution.

12 49.66. Gun shows, in general, and the Del Mar show, in particular, are a First
13 Amendment forum where literature and information are shared, speakers provide
14 valuable lectures, classes are conducted, political forums are held where gun rights
15 discussions take place, and candidates for political office can meet to discuss
16 political issues, the government, and the constitution with constituents who are part
17 of the California gun culture.

18 50.67. Gun shows just happen to include the exchange of products and ideas,
19 knowledge, services, education, entertainment, and recreation related to the lawful
20 uses of firearms. Those lawful uses include (but are not limited to):

- 21 a. Firearm safety training
- 22 b. Self-defense
- 23 c. Defense of others
- 24 d. Defense of community
- 25 e. Defense of state
- 26 f. Defense of nation
- 27 g. Hunting
- 28 h. Target shooting

- 1 i. Gunsmithing
- 2 j. Admiration of guns as art
- 3 k. Appreciation of guns as technological artifacts
- 4 l. Study of guns as historical objects.

5 ~~51.68.~~ Gun shows, in general, and the Del Mar show, in particular, are cultural
 6 marketplaces for those members of the “gun culture” who attend to celebrate their
 7 constitutional rights and to pass their beliefs in patriotism and the rights of the
 8 individual on to the next generation. It is a place where parents take their children
 9 and grandparents take their grandchildren to share with them, among other things, a
 10 love of ~~historie~~historical firearms, stories of American war heroes, and their love of
 11 hunting.

12 ~~52.69.~~ Gun shows, in general, and the Del Mar show, in particular, are places
 13 where parents can learn to protect their families and their homes, and how to stay in
 14 compliance with California’s ever-changing gun laws.

15 ~~53.70.~~ Gun shows, in general, and the Del Mar show, in particular, are places
 16 where people can discuss the positions of political candidates and whether those
 17 values line up with their own beliefs in protecting the Second Amendment.

18 ~~54.71.~~ Gun shows, in general, and the Del Mar show, in particular, are held
 19 and promoted, and considerable investment is made, precisely to promote and
 20 “normalize” the “gun culture” and the constitutional principles that gun show
 21 participants hold dear.

22 ~~55.72.~~ This forum is ~~vitaly important~~vital especially in California where
 23 government actors at all levels of government (federal, state, and local) are openly
 24 hostile to the cultural values of the Second Amendment and where supporters of
 25 those cultural values are not considered “mainstream.”

26 ~~56.73.~~ Participating in “gun culture” is an important reason people attend
 27 Crossroads gun shows as vendors, exhibitors, customers, and guests (even if
 28 particular vendors or attendees are not in the firearm business or in the market to

1 buy a gun at a particular event).

2 57.74. While less than 40% of vendors at Crossroads’ events offer firearms or
3 ammunition for sale (the remaining vendors offer accessories, collectibles, home
4 goods, lifestyle products, food, and other refreshments), the principle draw of gun
5 shows is the availability of firearms and ammunition for sale.

6 58.75. Indeed, many people attend gun shows to learn about the technology
7 and use of various firearms and ammunition when they are considering whether to
8 buy or sell a firearm (or ammunition) and to exchange knowledge with experienced
9 dealers and firearm enthusiasts that they cannot get anywhere else. *Teixeira v.*
10 *County of Alameda*, No. 13-17132 (9th Cir. 2017).⁴

11 59.76. Without the ability to buy and sell firearms and ammunition at gun
12 shows at the Fairgrounds, the events will no longer be able to draw many of its
13 vendors and attendees, making the events unprofitable and economically infeasible.

14 60.77. Defendants wish to end this celebration of “gun culture” and Second
15 Amendment rights because they do not understand the culture or the people. To that
16 end, Defendants have attempted, first through an unconstitutional moratorium on
17 gun show events, *see B&L Prods. v. 22nd Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226
18 (S.D. Cal. 2019), and then through AB 893’s ban on sales of firearms and
19 ammunition at the Fairgrounds, to permanently deprive Plaintiffs of their right to
20 engage in constitutionally protected conduct at the Fairgrounds.

21 **[The Del Mar Fairgrounds Venue]**

22 61.78. The Fairgrounds is owned by the state of California and managed by
23 the Board of Directors of Defendant District, which must regularly report its
24 activities to the California Department of Food & Agriculture. *See* Table of

26 ⁴~~The *Teixeira* court did not answer whether the Second Amendment includes~~
27 ~~a right to purchase a firearm. Plaintiffs allege, in good faith, that the right to keep~~
28 ~~and bear arms necessarily includes the rights to purchase and sell them. Indeed,~~
~~those rights are paramount to the exercise of the Second Amendment.~~

1 Fairground Information (Dec. 31. 2010) (attached as Exhibit 1-).

2 ~~62.79.~~ Among other things, Defendant District is charged with maintaining the
3 Fairgrounds and ensuring that is used for public purposes.

4 ~~63.80.~~ Defendant Ross, as the Secretary of the California Department of Food
5 & Agriculture, oversees the operation of the various agricultural districts in the state,
6 including Defendant District.

7 ~~64.81.~~ The California Department of Food & Agriculture, under Secretary
8 Ross, provides policies and guidance for ~~the operation of~~ operating all agricultural
9 districts in the state, including the use of facilities as directed by Department policy.

10 ~~65.82.~~ The California Department of Food & Agriculture maintains a *C DFA*
11 *Contracts Manual for Agricultural Districts* (“Manual”). Section 6.25 of the Manual
12 states that “[w]hether or not a fair rents out their facilities for gun shows is a policy
13 decision to be made by the fair board and their community.”

14 ~~66.83. Due to~~ Because of its large size and unique urban location, the
15 Fairgrounds is a unique, publicly owned venue. There is no other public or private
16 venue of similar size in the area. Effectively, the government has a monopoly on
17 venues of this size and type in the area.

18 ~~67.84.~~ The Fairgrounds is a state-owned property maintained and opened for
19 use by the public. By virtue of being opened by the state for use by the public, it is a
20 “public forum,” from which the government may not generally exclude expressive
21 activity. *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 569 (9th Cir. 1984)
22 (quoting *Perry Educ. Ass’n v. Perry* ~~Local~~ Loc. *Educators’ Assn*, 460 U.S. 37, 45-46
23 (1983)).

24 ~~68.85.~~ The Fairgrounds is used by many different public groups and is a major
25 event venue for large gatherings of people to engage in expressive activities,
26 including concerts, festivals, and industry shows.

27 ~~69.86.~~ The Fairgrounds actively promotes the use of the property by the public
28 through contracting for available space at the Fairgrounds.

1 held preferred dates for Plaintiff Crossroads, a long-time contractor, until the
2 contracts can fully be executed.

3 76.93. Defendant District’s “hold” system essentially operates as a right of
4 first refusal to the benefit of returning contractors. For example, if another contractor
5 wanted the same preferred dates as Plaintiff Crossroads, Defendant District would
6 not allow another vendor to come in and take those dates from Plaintiff Crossroads
7 even though there is no official contract in place yet.

8 77.94. The “hold” system also provides Defendant District with the security of
9 knowing its venue is booked with experienced and knowledgeable repeat contractors
10 that have a demonstrated record of running safe and profitable events at the
11 Fairgrounds.

12 78.95. The “hold” system also permits the promoter to spend advertising
13 dollars to promote its events, but when governments announce plans to ban gun
14 shows at particular venues, vendors, and patrons rationally make plans to attend gun
15 show events at other venues or seek other states to conduct their commerce.

16 79.96. Defendant District also considers the “hold” dates and shows during
17 budget discussions which are typically held in the year before the contracts are
18 commenced.

19 80.97. Upon information and belief, Plaintiffs allege that the “hold” system is
20 widely used by similar state fair board venues and is standard industry practice.

21 81.98. Plaintiff Crossroads, after doing business in this customary manner for
22 more than 30 years, had no reason to doubt that Defendant District would continue
23 to honor such relationship with Plaintiff Crossroads.

24 **[Previous Ban on Gun Shows at the Fairgrounds & Resulting Litigation]**

25 82.99. Despite the long history that Plaintiff Crossroads has had with the
26 Fairgrounds in operating safe and legal events, the political environment has become
27 hostile toward gun show events and (more generally) toward the “gun culture” in
28 recent years.

1 83.100. Indeed, gun-show-banning activists are at work throughout the
2 state and the country to ban *all* gun shows *everywhere*, not because they are
3 “dangerous for the community,” but because they do not subscribe to the same
4 values as gun show promoters, vendors, and participants.

5 84.101. These activists rely on unfounded fears about the security of gun
6 show events, false claims that gun shows are inherently dangerous because they
7 normalize the “gun culture,” and stereotypes about the people that attend gun shows.
8 *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (striking an
9 ordinance requiring a special permit for a group home for the intellectually disabled
10 and citing direct evidence of negative attitudes toward persons with disabilities
11 expressed by community members and recorded in the legislative history).

12 85.102. In 2017, gun-show-banning activists using the same tactics
13 described above began pressuring Defendant District to prohibit gun show events at
14 the Fairgrounds.

15 86.103. In response, Defendant District began a series of meetings and
16 public comment periods to determine whether it would continue to contract with
17 Plaintiff Crossroads or other promoters for the use of the Fairgrounds for gun show
18 events.

19 87.104. Defendant District also engaged in communications with other
20 government agencies and with Crossroads to determine whether gun shows at the
21 Fairgrounds were operated in full compliance with state and federal law, and if the
22 events pose any real danger to the community.

23 88.105. Defendant District also appointed a non-public, ad hoc
24 committee of two members of the District to investigate the gun show operation at
25 the Fairgrounds and report ~~back~~ to the District with recommendations for the
26 continued use of the Fairgrounds for gun show events.

27 89.106. On April 23, 2018, Defendant Newsom sent a letter to the
28 District urging the District to ban gun shows at the Fairgrounds, citing his concerns

1 that “[p]ermitting the sale of firearms and ammunition on state-owned property only
2 perpetuates America’s gun culture.” Letter from Governor Gavin Newsom to Board
3 Members of 22nd District Agricultural Association (April 23, 2018) (attached as
4 Exhibit 2-).

5 ~~90.107.~~ On September 10, 2018, Assembly member Todd Gloria (D) sent
6 a letter to the District, stating his “firm belief that the State of California should in
7 no way help to facilitate the sale of firearms.” He also ~~expressed his support~~
8 ~~for~~praised the District’s “willingness to consider options for limiting or eliminating
9 these gun shows” and vowed to “act by way of legislation should the 22nd DAA
10 Board be unable to take meaningful action.” Letter from Assembly Member Todd
11 Gloria to Board Members of 22nd District Agricultural Association (Sept. 10, 2018)
12 (attached as Exhibit 3-).

13 ~~91.108.~~ At a public hearing ~~on September 11, 2018~~, the ad hoc
14 “Contracts Committee” recommended that the District “not consider any contracts
15 with the producers of gun shows beyond December 31st 2018 until ~~such time as~~ the
16 District has put into place a more thorough policy ~~regarding~~related to the conduct of
17 gun shows ~~that:~~.

- 18 a. ~~Considers the feasibility of conducting gun shows for only~~
- 19 ~~educational and safety training purposes and bans the possession~~
- 20 ~~of guns and ammunition on state property~~
- 21 b. ~~Aligns gun show contract language with recent changes to state~~
- 22 ~~and federal law~~
- 23 c. ~~Details an enhanced security plan for the conduct of future shows~~
- 24 d. ~~Proposes a safety plan~~
- 25 e. ~~Considers the age appropriateness of the event~~
- 26 f. ~~Grants rights for the DAA to perform an audit to ensure full~~
- 27 ~~compliance with California Penal Code Sections 171b and~~
- 28 ~~12071.1 and 1207.4.”~~

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92.109. In testimony before the District at the September 11, 2018, hearing, Patrick Kerins, who was then the Public Safety Director for the District, reported on the laws that apply to gun shows in California, as well as Plaintiff Crossroads history of events at the Fairgrounds.

93.110. During his comments at the September 11, 2018, hearing, Mr. Kerins referenced a memorandum that he prepared for the District’s Board of Directors in. In that memorandum, he reported that:

As Chief of Security for the 22nd DAA, I routinely inspect the gun show and on a regular basis communicate with the San Diego Sheriff’s Department re: compliance with all the applicable laws and regulations and the Security Plan required by the California Department of Justice Firearms Division. I recently spoke to Detective Jaime Rodriguez of the Sheriff’s North Coastal Station who supervises the four Deputies assigned to the gun show security detail and Detective Stacey Smith who is assigned to the Sheriff’s Licensing Division. Both Detectives said the Crossroads of the West Gun Show is in complete compliance with all the local, State and Federal laws that govern gun shows and that there have not been any violations of law. Both Detectives had high praise for the show promoters and the 22 DAA staff.

Memorandum of Patrick Kerins, Public Safety Director, 22nd District Agricultural Association, to Board of Directors, 22nd District Agricultural Association, at 17 (2016), (attached as Exhibit 14).

94.111. Mr. Kerins’ 2016 memorandum continued:

In my considered opinion, as Chief of Security for the 22 DAA for the last 17 years, the CROSSROADS OF THE WEST GUN SHOWS (5 per year) are in compliance with all the local, state and federal regulatory statutes and have operated without any violations of those laws Under the laws of the State of California you must comply with all the laws of purchasing, selling and/or transferring of firearms at a gun show as you would at licensed gun dealer’s store Due to the strict California gun show regulations there are no so called loop holes that you so often hear about in the media.

Ex. 14 at 17.

95.112. Ultimately, the lengthy process of meetings, public comment, and communications with stakeholders resulted in no finding that

1 allowing the (already heavily regulated) gun show events to continue at the
2 Fairgrounds posed a definite or unique risk to public safety.

3 96.113. Indeed, Defendant District presented *no* evidence of any safety
4 concerns within the community that could be linked to the over-30-year-old gun
5 show at the Fairgrounds.

6 97.114. To the contrary, banning highly regulated gun shows in
7 California communities, like Del Mar, serves to distort the gun market, potentially
8 pushing California gun buyers into less restrictive gun-buying environments.⁵

9 98.115. ~~Nonetheless~~ Even so, relying on contrived possibilities of
10 unknown dangers and unfounded claims that prohibiting gun shows might prevent
11 suicide and violent crime because the “gun culture” would be censored,⁶ Defendant
12 District voted to impose a one-year moratorium (for the year 2019) on gun show
13 events at the Fairgrounds while they study potential safety concerns.

14 99.116. Plaintiffs Crossroads, Bardack, Diaz, Dupree, Irick, Walsh,
15 CRPA, South Bay, SAF, and others sued Defendants District, Ross, and others in

16 _____
17 ⁵ Joyce Lupiani, *Nevada Gun Shows Tied to California Gun Violence*, KTNV
18 (2017), [https://www.ktnv.com/news/crime/study-nevada-gun-shows-tied-to-](https://www.ktnv.com/news/crime/study-nevada-gun-shows-tied-to-california-gun-violence)
19 [california-gun-violence](https://www.ktnv.com/news/crime/study-nevada-gun-shows-tied-to-california-gun-violence) (last visited Jan. 21, 2019); Brett Israel, *Study: Gun Deaths,*
20 *Injuries in California Spike Following Nevada Gun Shows*, Berkeley News (2017),
21 [https://news.berkeley.edu/2017/10/23/embargoed-until-1023-2pm-pdt-study-gun-](https://news.berkeley.edu/2017/10/23/embargoed-until-1023-2pm-pdt-study-gun-deaths-injuries-in-california-spike-following-nevada-gun-shows/)
22 [deaths-injuries-in-california-spike-following-nevada-gun-shows/](https://news.berkeley.edu/2017/10/23/embargoed-until-1023-2pm-pdt-study-gun-deaths-injuries-in-california-spike-following-nevada-gun-shows/) (last visited Jan.
23 21, 2019). *But see* Mariel Alper, Ph.D., & Lauren Glaze, Bureau of Justice Statistics,
24 *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*
25 (2019), available at <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf> (last visited
26 Jan. 21, 2019); Garen J. Wintemute, et al., *Gun Shows and Gun Violence: Fatally*
27 *Flawed Study Yields Misleading Results*, 100 Am. J. Pub. Health 1856-60 (2010),
28 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2936974/> (last visited
Jan. 21, 2019).

⁶ *But see* Alvaro Castillo-Caniglia, Ph.D., et al., *California’s Comprehensive*
Background Check and Misdemeanor Violence Prohibition Policies and Firearm
Mortality, *Annals of Epidemiology* (Oct. 11, 2018) (noting that, in California
communities with the most stringent gun restrictions, there has been a marked
increase in both property and violent crime).

1 federal court under to prevent enforcement of the moratorium, alleging violations of
2 various constitutional rights, including the rights to free speech, assembly, and equal
3 protection. *See B&L Prods. v. 22nd Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226 (S.D.
4 Cal. 2019) (“*B&L I*”) (attached as Exhibit 4-).

5 ~~100.117.~~ 100.117. Denying Defendant District’s motion to dismiss and granting
6 plaintiffs a preliminary injunction—*sua sponte*—on the ground that plaintiffs were
7 exceedingly likely to succeed on the merits of their constitutional claims, the court
8 in *B&L I* temporarily enjoined the enforcement of the District’s gun show
9 moratorium and ordered the District to contract with Crossroads as it would any
10 other similar event promoter at the Fairgrounds. Ex. 4.

11 ~~101.118.~~ 101.118. ~~Shortly thereafter~~ Soon after, the *B&L I* plaintiffs negotiated a
12 settlement with the District, represented by attorneys for the California Department
13 of Justice, permanently terminating the 2019 gun show moratorium, reinstating
14 Crossroads’ right to promote gun show events at the Fairgrounds, and permanently
15 barring the District from unilaterally halting B&L’s gun show events at the
16 Fairgrounds. *See Parties’ Joint Notice of Settlement and Motion for Dismissal, B&L*
17 *Prods. v. 22nd Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226 (S.D. Cal. 2020) (attached
18 as Exhibit 5-).

19 **[California’s Assembly Bill 893 (Gloria)]**

20 ~~102.119.~~ 102.119. Making good on his threat, and fully aware of the court’s
21 decision in *B&L I*, Assembly member Gloria introduced Assembly Bill 893 (“AB
22 893”) on or about February 20, 2019. Assem. Bill 893, 2019-2020 Reg. Sess. (Cal.
23 2019) (attached as Exhibit 6-).

24 ~~103.120.~~ 103.120. AB 893, which added ~~Section~~ Section 4158 to the California Food
25 & Agricultural Code, bars any “officer, employee, operator, lessee, or licensee of the
26 [District]” from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any
27 firearm or ammunition on the property or in the buildings that comprise the Del Mar
28 Fairgrounds....” Violation of the law is a misdemeanor. Ex. 6-Id.; see also Cal. Food

& Agric. § 9.

~~104.121.~~ AB 893 does not bar the possession of firearms or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds. Ex. 6.

~~105.122.~~ The text of AB 893 expressly identifies the ongoing presence at the Fairgrounds of “marketplaces popularly known as ‘gun shows,’ at which firearms and ammunition and other items are sold to the public approximately five times a year.” ~~Ex. 6~~*Id.*

~~106.123.~~ AB 893 also clearly recognizes that “[p]romoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the West, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.” ~~Ex. 6~~*Id.*

~~107.124.~~ AB 893 failed to identify, however, any real public safety or security concern specifically related to the existence of gun show events at the Fairgrounds.

~~108.125.~~ To be sure, AB 893 claims, without support, that “[g]un shows bring grave danger to a community” and that “dangerous incidents” have taken place at guns shows at the Fairgrounds, including “an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.” *Id.* But AB 893 makes no effort to show that these incidents are any more likely to occur at gun shows in California, which are regulated at least as heavily as retailers operating out of brick-and-mortar stores.

~~109.126.~~ AB 893 also claims that “between the years 2013 and 2017, the San Diego County Sheriff recorded 14 crimes” at gun shows at the Fairgrounds. ~~Ex. 6~~*Id.* But even if the Legislature had proof of these crimes, AB 893 makes no attempt to compare this to the number of crimes recorded at other similarly sized events at

1 the Fairgrounds during that period. Nor does it distinguish between the type of
2 crimes this bill purports to target (e.g., illegal firearm transfers, straw purchases,
3 sales of illegal firearms or accessories) and run-of-the-mill crimes ~~that are~~ likely to
4 occur whenever thousands of people descend on one venue for a trade show or fair
5 (e.g., petty thefts, parking or traffic violations, public drunkenness, and simple
6 assault).

7 ~~110.~~127. Instead, AB 893’s legislative history reveals only general
8 concerns about gun violence occurring all over the country and legislators’ beliefs
9 that the state should not profit from sales of firearms and ammunition. *See* Matthew
10 Fleming, Assem. Comm. Pub. Safety, Bill Analysis Re: AB 819 (Gloria), 2019-2020
11 Reg. Sess., at 3 (Cal. 2019) (attached as Exhibit 7).

12 ~~111.~~128. Indeed, AB 893 opens with a list of tragedies, including the
13 horrific mass murders that took place at Columbine High School, Sandy Hook
14 Elementary School, and Marjory Stoneman Douglas High School—none of which
15 were carried out with firearms traced to gun show events at the Fairgrounds. Ex. 6.

16 ~~112.~~129. What’s more, a March 26, 2019, analysis of AB 893 presented to
17 the Assembly Committee on Public Safety quoted claims by Assembly member
18 Gloria, the bill’s sponsor, that “[t]here is an ever apparent link between the gun
19 violence we see virtually every week and the number of guns in our communities.”
20 These statements, however, made no attempt to link gun violence to gun shows,
21 generally, or to gun shows at the Fairgrounds, specifically. Ex. 7 at 2.

22 ~~113.~~130. The Public Safety Committee’s March 26, 2019, analysis also
23 quoted Gloria as lamenting that “the State of California should not be profiting or
24 benefitting from the sale of firearms.” He continued, “[f]undamentally, I believe it is
25 wrong for the state of California to profit or to benefit from the sale of firearms and
26 ammunition.” Ex. 7 at 2.

27 ~~114.~~131. Assembly member Lorena Gonzalez, who co-sponsored AB 893,
28 expressed a similar sentiment, arguing that “[t]he: “The State of California shouldn’t be in

1 the business of using our public land to join with the firearms industry to profit off
2 the sale of guns and ammo.” Chris Jennewein, *Assembly Passes Todd Gloria’s Bill*
3 *to Thwart Gun Shows at Del Mar Fairgrounds*, timesofsandiego.com (April 25,
4 2019), [https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/)
5 [glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/) (last visited Sept. 29,
6 2021).

7 132. The Public Safety Committee’s March 26, 2019, analysis also cited a
8 decade-old report from the Violence Prevention Research Program at the UC Davis
9 School of Medicine, identifying gun shows as a source of illegally trafficked
10 firearms. Ex. 7 at 3.

11 ~~115.~~133. But neither the VPRP report nor AB 893’s legislative history
12 links any illegally trafficked firearm or gun used in crime to gun shows at the
13 Fairgrounds (or even to gun shows in California). See Garen Wintemute, MD, *Inside*
14 *Gun Shows: What Goes on When Everybody Thinks Nobody’s Watching*, ch. 1
15 (2009), (attached as Exhibit 8.). This is unsurprising because, as the study states,
16 “[m]uch of the concern about gun shows as a source of crime guns focuses on
17 private party gun sales, since no background checks are conducted and no records
18 are kept.” Ex. 8*Id.* at 32. But such concerns are simply irrelevant in California where
19 private party transfers—even those ~~initiated~~started at gun shows—must be processed
20 by a licensed firearm dealer and are subject to background checks and registration
21 under state law.

22 ~~116.~~134. The VPRP report cited by the Public Safety Committee’s
23 analysis of AB 893 also ~~attempts~~tries to implicate licensed firearm retailers operating
24 at gun shows as sources of crime guns in America, claiming that “30% of dealers
25 with gun show sales, but 22% of all dealers, had previously had a crime gun traced
26 to them.” But it expressly recognizes that “in California, where both gun shows
27 themselves and gun commerce generally are regulated, sales at gun shows are not a
28 risk factor among licensed retailers for disproportionate sales of crime guns.” Ex.

1 *Id.* at 33 (emphasis added).

2 135. The Public Safety Committee’s March 26, 2019, analysis also cited a
3 report from the Government Accountability Office, claiming that a GAO report
4 “regarding gun trafficking to Mexico confirmed that many traffickers buy guns at
5 gun shows.” Ex. 7 at 3.

6 ~~117.~~136. But again, neither the BATFE report nor AB 893’s legislative
7 history links any illegally trafficked firearm to gun shows at the Fairgrounds (or
8 even to gun shows in California). See U.S. Gov’t Accountability Off., GAO-16-223,
9 *Firearms Trafficking: U.S. Efforts to Combat Firearms Trafficking to Mexico Have*
10 *Improved, but Some Collaboration Challenges Remain* (2016) (attached as Exhibit
11 9). To be sure, the GAO report identifies U.S. Southwest border states, including
12 Texas (41%), California (19%), and Arizona (15%), as the largest sources of
13 firearms illegally trafficked into Mexico from the United States. ~~Ex. 9.~~*Id.* at 14. But it
14 does not trace these illegally trafficked guns to licensed dealers, generally, or to
15 those operating at gun shows, specifically. Rather, it says only that “there were
16 about 10,134 licensed dealers and pawnbrokers in the four Southwest border states,
17 many of them along the border,” and that “these licensed dealers and pawnbrokers
18 can operate in locations such as gun shops, pawn shops, their own homes, or gun
19 shows.” *Id.*

20 ~~118.~~137. The Public Safety Committee’s March 26, 2019 analysis did
21 concede that “less than one percent of inmates incarcerated in state prisons for gun
22 crimes acquired their firearms at a gun show”—though it transparently tries to
23 diminish that fact by citing only a website of the National Rifle Association as the
24 source of the statistic, instead of the U.S. Department of Justice, Bureau of Justice
25 Statistics reports from which the NRA drew it. Ex. 7 at 2-3 (citing NRA-ILA,
26 *Background Checks|NICS*, [https://www.nraila.org/get-the-facts/background-checks-](https://www.nraila.org/get-the-facts/background-checks-nics)
27 [nics](https://www.nraila.org/get-the-facts/background-checks-nics) (last visited Sept. 29, 2021)); *but see* Caroline Wolf Harlow, Ph.D., Bureau of
28 Justice Statistics, *Firearm Use by Offenders* (Nov. 2001) (attached as Exhibit 10).

1 119.138. While the Public Safety Committee’s March 26, 2019, analysis
 2 also concedes that “violent criminals do not appear to regularly purchase their guns
 3 directly from gun shows,” the analysis immediately shifts to “criticism” (from the
 4 partisan Center for American Progress) that gun shows are somehow “the critical
 5 moment in the chain of custody for many guns, the point at which they move from
 6 the somewhat-regulated legal market to the shadowy, no-questions-asked illegal
 7 market.” Ex. 7 at 3 (citing Arkadi Gerney, Center for American Progress, *The Gun*
 8 *Debate 1 Year After Newtown: Assessing Six Key Claims About Gun Background*
 9 *Checks* (Dec. 2013), available at [https://www.americanprogress.org/issues/guns-](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/)
 10 [crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/) (last visited
 11 Sept. 29, 2021)). Neither the Center for American Progress editorial nor AB 893’s
 12 bill analysis show how, in California where sales at gun shows are regulated *at least*
 13 as heavily as sales at brick-and-mortar retailers, guns originating at gun shows are
 14 any more likely to enter the “shadowy, no-questions-asked illegal market” than
 15 those sold at gun stores.

16 120.139. Councilman Dwight Worden from the city of Del Mar, which
 17 was “at the helm of city-level efforts to oppose the shows,” spoke in strong support
 18 of AB 893. He made clear that hostility toward the pro-gun speech ~~that occurs~~ at gun
 19 shows has long driven the movement to put an end to the events: “Councilman
 20 Dwight Worden said Del Mar’s City Council is ‘unanimously on the same page with
 21 this [AB 893] and very much behind the effort to discontinue the sale of guns and
 22 ammo’ at the Fairgrounds. ‘For decades in Del Mar, we felt that the *promotion and*
 23 *glorification of guns at the gun show are not consistent with our community*
 24 *values.*’ ” Lexy Brodt, *Boerner Horvath, Gloria Introduce Bill to Ban Gun Shows at*
 25 *Fairgrounds*, Coast News Group (Feb. 28, 2019), [https://thecoastnews.com/boerner-](https://thecoastnews.com/boerner-horvath-gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/)
 26 [horvath-gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/](https://thecoastnews.com/boerner-horvath-gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/) (last visited Sept.
 27 29, 2019) (emphasis added).

28 121.140. On October 11, 2019, Governor Newsom signed AB 893 into

1 law.

2 122.141. Defendant Newsom, who is ultimately responsible for enforcing
3 the ~~enforcement of the law~~ AB 893, has long harbored animus towards gun show
4 promotion.

5 123.142. Indeed, Defendant Newsom has supported the closure of gun
6 shows at other state venues and specifically wrote to Defendant District in 2018 in
7 support of its unconstitutional gun show moratorium. He wrote: “[p]ermitting the
8 sale of firearms and ammunition on state owned property only perpetuates
9 America’s gun culture at a time when 73 percent of Californians support gun reform
10 measures.”

11 143. [The Impact of] And just “weeks after he cast the lone no-vote on the
12 [District’s 2018] gun show [moratorium], Russ Penniman, a retired rear admiral, lost
13 his spot. [Governor] Newsom replaced Penniman but kept two other board members
14 alone.”

15 **[AB 893 on the Directly Bans Speech Necessary to Sales of Firearm &**
16 **Ammunition]**

17 144. By banning the “sale of any firearm or ammunition on the property or
18 in the buildings that comprise the Del Mar Fairgrounds,” AB 893 acts as a direct ban
19 on speech. While the mere “act of exchanging of money for” firearms or
20 ammunition may not itself constitute speech, see Nordyke, 110 F.3d at 710, any real-
21 world “sale” necessarily involves speech.

22 145. On information and belief, Plaintiffs allege that AB 893’s ban on
23 “sales” of firearm and ammunition at the Fairgrounds includes the speech or
24 expressive conduct necessary to initiate or engage in the sale of firearms or
25 ammunition, including offering such products for sale, even if the act of transferring
26 ownership and possession does not take place onsite. Recall, AB 893
27 notwithstanding, state law already bars actual firearm transfers from taking place at
28 any gun show in California. See supra ¶ 58 & n. 3.

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146. Speech that is necessary for any sale includes but is not limited to: communication of intent to sell or buy; offers to sell or buy; discussion of price, availability, and condition of the goods; discussion of any conditions on the sale; and acceptance of the terms of a sale.

147. Speech that generally accompanies any sale of firearms or ammunition includes, but is not limited to, conversations relating to the suitability of the firearm or ammunition for an intended use (e.g., suitability for self-defense or sport shooting, caliber, weight, size, fit).

148. State law also requires that certain speech take place during sales of firearms, including safety instruction, a safe loading and unloading demonstration, inquiries to ensure the sale is not a straw purchase, background check communications (e.g., age, criminal record status, and immigration status), and discussions related to possession of firearm safes or locking devices and locked-storage requirements.

149. At gun shows, specifically, firearm sales from the event attendee to a vendor require discussions about whether the firearm is stolen, whether the firearm is legal for sale in California, and establishing proof of ownership.

150. And for San Jose residents who may be legally purchasing a firearm at a gun show at the Fairgrounds, a firearm sale requires showing proof of insurance and payment of annual fee.

[AB 893 Indirectly (But Intentionally) Bans Gun Shows at the Fairgrounds]

151. The sale of firearms and ammunition is an essential function of gun shows, and it is one of the main reasons people attend these events; if gun shows are not economically viable because they have been stripped of an essential function, they will cease to exist.

152. AB 893 thus has the same practical effect as the District’s unconstitutional gun show moratorium—that is, by permanently banning the

1 commercial sale of firearms and ammunition at the Fairgrounds, it has the effect of
2 banning gun shows at the Fairgrounds and all the educational, ideological, and
3 commercial speech that takes place at such events.

4 126.153. The Legislature was well-aware when it passed AB 893 that a
5 “gunless” gun show ~~would not~~ without the sale of firearms and ammunition cannot survive
6 financially. Indeed, the intended purpose of AB 893 was to end gun shows at the
7 Fairgrounds.

8 127.154. Indeed, the March 26, 2019, Public Safety Committee’s ~~March 26,~~
9 ~~2019~~ analysis of AB 893 expressly admitted that:

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food 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.

14 Ex. 7 at 4.

15 128.155. Similarly, the April 1, 2019₂ Assembly Appropriations
16 Committee’s April 1, 2019₂ analysis of AB 893 acknowledged:

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food 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. On three prior occasions, former Governors Brown and Schwarzenegger vetoed similar legislation to ban gun shows at the Cow Palace in San Francisco.

22 See Kimberly Horiuchi, Assem. Comm. Approps., Bill Analysis Re: AB 819
23 (Gloria), 2019-2020 Reg. Sess., at 1-2 (Cal. 2019) (attached as Exhibit 11-).

24 129.156. Reporting that AB 893 “would effectively shut down gun shows
25 like Crossroads of the West at the fairgrounds,” the Times of San Diego quoted
26 Gloria as saying that “[t]he communities around the Del Mar Fairgrounds have been
27 clear: they do not want these gun shows taking place on this state-owned land.”
28 Chris Jennewein, *Assembly Passes Todd Gloria’s Bill to Thwart Gun Shows at Del*

1 *Mar Fairgrounds*, timesofsandiego.com (April 25, 2019),
2 [https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/)
3 [to-thwart-gun-shows-at-del-mar-fairgrounds/](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/) (last visited Sept. 29, 2021).

4 ~~130.157.~~ And further evidencing the Legislature’s intended effect of AB
5 893, Senator Dave Min recently wrote to the Board of the 32nd District Agricultural
6 Association in Orange County, warning the Board Members not to ~~stand in the way~~
7 ~~of~~ **hinder** his bill that would ban sales of firearms, **ammunition, and** firearm precursor
8 parts, ~~and ammunition~~ at the Orange County Fairgrounds in Costa Mesa. In that letter, he
9 addressed members’ concerns that their venue was being unfairly and exclusively
10 targeted, responding that AB 893 was a similar action banning gun shows at a single
11 fairground:

12 Furthermore, the substantive merits of any such communication to
13 the Governor are dubious. While Item 6A expresses a concern that
14 SB 264 “exclusively targets the 32nd DAA,” such action to **ban**
15 **gun shows** at a single fairground site has recent precedent. In
16 2019, Gov. Newsom signed Assembly Bill 893 (Gloria) into law,
ending the sale of firearms and ammunition at the Del Mar
Fairgrounds, operated by the 22nd District Agricultural
Association.

17 Letter from Senator Dave Min to Board Members of 32nd District Agricultural
18 Association (~~on or about Sept. 13, 2021~~) (attached as Exhibit 12) (emphases added).

19 ~~131.158.~~ ~~Nonetheless~~ **Even so**, Plaintiff Crossroads has repeatedly reached out
20 to Defendant District to request dates for events at the Fairground in 2021.

21 ~~132.159.~~ Plaintiff Crossroads has been unable to secure dates and enter
22 into new contracts for events at the Fairgrounds in 2021 ~~or 2022~~ due to the
23 Defendants’ intentional act of adopting and enforcing AB 893.

24 ~~133.160.~~ Indeed, in compliance with AB 893, Defendant District cannot
25 and will not enter into contracts for gun shows at the Fairgrounds if firearms and
26 ammunition will be sold.

27 ~~134.161.~~ Even though Plaintiff Crossroads has offered to attempt to hold
28 events without sales of firearms or ammunition to preserve its longstanding

1 relationship with the District, mitigate damages, and continue planning and
2 promoting its family-friendly events until its claims can be heard, Defendant District
3 ~~has~~ dragged its feet and ~~has not~~ never provided dates for events in 2021 or 2022.

4 ~~135.162.~~ 135.162. As a result of Defendant District’s stalling, ~~most of~~ Plaintiff
5 Crossroads’ requested dates in 2021 have ~~either~~ all passed ~~or have become unavailable.~~

6 ~~136.163.~~ 136.163. Because of the time and resources needed to plan and implement
7 its gun show events, Plaintiff Crossroads must plan its shows about one year in
8 advance, but Defendant District has not allowed Plaintiff Crossroads to secure dates
9 in 2022 either.

10 ~~137.164.~~ 137.164. What’s more, Defendant District seems to have stripped Plaintiff
11 Crossroads of its effective right of first refusal under the District’s “hold” system
12 described above. Indeed, it has not only failed to give Crossroads first choice of its
13 dates for the coming year, but it has also prohibited Crossroads from securing dates
14 for gun show events at the Fairgrounds since 2020.

15 ~~138.165.~~ 138.165. Because California prohibits the building of similar venues
16 within their districts as a way ~~of preventing to prevent~~ competition for available space,
17 there are no venues in the area that offer comparable space and parking needed for
18 gun show events. Plaintiff Crossroads has thus been unable to find a suitable
19 alternate location to the Fairgrounds.

20 ~~139.166.~~ 139.166. Defendants’ adoption and enforcement of AB 893, which has the
21 intended and practical effect of banning gun shows at the Fairgrounds, has and will
22 continue to cause Plaintiff Crossroads significant economic damages, including loss
23 of event revenue, breakdown of relationships and agreements with long-time event
24 vendors and companies used as suppliers for gun show events, relinquishment of
25 future show dates, and loss of business reputation and goodwill that has been built
26 by Plaintiff Crossroads for more than 30 years.

27 ~~140.167.~~ 140.167. Plaintiff Crossroads has already lost all revenue for gun show
28 events at the Fairgrounds in 2021 because the Fair Board will not finalize event

1 dates, citing AB 893 as the reason. If shows do not return to the Fairgrounds in
2 2022, Plaintiff Crossroads will lose all revenue for gun show events at the
3 Fairgrounds in 2022 as well.

4 ~~141.168.~~ 141.168. Even if Plaintiff Crossroads could secure dates, plan, promote,
5 and host gun shows in the ~~remainder~~ remaining months of ~~2021 and in~~ 2022, AB 893 ~~stands~~
6 ~~in the way of~~ interferes with Crossroads generating the profits ~~the~~ its events typically
7 generate because the ban on firearm and ammunition sales will significantly impact
8 paid event attendance and the types and numbers of paid vendors who will do
9 business with Crossroads at the Del Mar gun show.

10 ~~142.169.~~ 142.169. Plaintiff Crossroads has and will continue to suffer loss of
11 business goodwill resulting from Defendants’ adoption and enforcement of AB 893
12 under the (unsupported) pretense that gun shows, generally, and Crossroads’ shows,
13 in particular, threaten public safety. The message this sends to other venues,
14 attendees, and vendors that do business with Crossroads will no doubt affect
15 Crossroads for years.

16 ~~143.170.~~ 143.170. Defendants’ adoption and enforcement of AB 893, which has the
17 intended and practical effect of banning gun shows at the Fairgrounds, also causes
18 economic damage to the organizational plaintiffs, CRPA, SAF, and South Bay,
19 which use their vendor spaces, in part, to sell organization memberships, advertise
20 their educational courses, request donations, and sell organization merchandise, like
21 hats and stickers.

22 ~~144.171.~~ 144.171. Defendants’ adoption and enforcement of AB 893, which has the
23 intended and practical effect of banning gun shows at the Fairgrounds, also causes
24 economic damage to the vendor plaintiffs, Solis, Walsh, Captain Jon’s, and LAX
25 Ammo, who uses their vendor spaces, in part, to sell firearms, ammunition, and/or
26 related accessories.

27 ~~145.172.~~ 145.172. Defendants’ adoption and enforcement of AB 893, which has the
28 intended and practical effect of banning gun shows at the Fairgrounds, prohibits

1 Plaintiffs and all those similarly situate from making ~~sue~~USE of a state-owned “public
2 assembly facility” to host gun show events, a lawful business activity, in violation of
3 Plaintiffs’ rights to engage in free speech and peaceful assembly, and their right to
4 equal protection under the law.

5 ~~146.173.~~ 146.173. ~~Specifically,~~ Defendants’ conduct complained of here strips
6 Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, and Walsh, as well as the
7 organizational plaintiffs, CRPA, SAF, and South Bay, of a vital opportunity to
8 assemble and engage in pure speech about, among other things, the rights and
9 responsibilities of gun owners, the Second Amendment, patriotism, and political
10 activism with like-minded individuals.

11 ~~147.174.~~ 147.174. Defendants’ conduct complained of here also strips Plaintiff
12 Crossroads of the right to promote gun show events, acting as a “clearinghouse” for
13 both political speech and commercial speech.

14 ~~148.175.~~ 148.175. Defendants’ conduct complained of here also strips Plaintiffs
15 Solis, Walsh, Captain Jon’s, and LAX Ammo of a vital opportunity to assemble and
16 engage in lawful commercial speech, including the offer and acceptance of sales of
17 firearms, ammunition, and related accessories.

18 ~~149.176.~~ 149.176. Furthermore, even if the Court grants injunctive relief, Plaintiff
19 Crossroads will have incurred damages in having to devote extraordinary advertising
20 dollars to inform the public that gun shows will continue to be held and have not
21 been banned at the Fairgrounds.

22 ~~150.177.~~ 150.177. The economic and non-economic harms and injuries to Plaintiffs
23 are of a continuing nature; they continue to compound everyday AB 893 remains the
24 law.

25 **[Government Tort Claim]**

26 ~~151.178.~~ 151.178. On August 2, 2021, Plaintiffs Crossroads, Walsh, LAX Ammo,
27 CRPA, and SAF notified Defendants Newsom, Bonta, Ross, and District of their
28 claims for intentional and/or negligent interference with prospective advantage by

1 filing a timely Government Tort Claim pursuant to under California’s Tort Claims
2 Act. B&L Productions, Inc., et al., Government Tort Claim (filed Aug. 2, 2021)
3 (attached as Exhibit 13-).

4 ~~152.179.~~ Defendants Newsom, Bonta, Ross, and District neither accepted
5 nor rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the
6 claim was rejected by operation of law.

7 ~~153.180.~~ On August 2, 2021, Plaintiff Crossroads of its claim for
8 intentional interference with contract by filing a timely Government Tort Claim
9 pursuant to under California’s Tort Claims Act. Ex. 7.

10 ~~154.181.~~ Defendants Newsom, Bonta, Ross, and District neither accepted
11 nor rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the
12 claim was rejected by operation of law.

13 **FIRST CAUSE OF ACTION**
14 **Violation of Right to Free Speech Under U.S. Const., amend. I**
15 **42 U.S.C. § 1983**
(By Plaintiffs CRPA, South Bay, SAF, and All Individuals Against ~~All~~ Defendants
16 Bonta, Stephan, and District)

17 ~~155.182.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~154~~181
18 of this Complaint as though fully set forth herein in their entirety.

19 ~~156.—The First Amendment provides that “Congress shall make no law . . .~~
20 ~~abridging the freedom of speech. . . .”~~

21 ~~157.1. The First Amendment’s Freedom of Speech Clause is incorporated and~~
22 ~~made applicable to the states and their political subdivisions by the Fourteenth~~
23 ~~Amendment to the United States Constitution and by 42 U.S.C. § 1983.~~

24 ~~158.1. The First Amendment does not tolerate the suppression of speech based~~
25 ~~on the viewpoint of the speaker. Public property made available for lease by~~
26 ~~community groups to engage in expressive activity must thus be available without~~
27 ~~regard to the viewpoint sought to be expressed. *Cinevision*, 745 F.2d 560. Such~~
28 ~~venues cannot be opened to some and closed to others, suppressing protected~~
~~expression, absent a compelling government interest. *Id.* at 571.~~

1 ~~159.183.~~ 183. The state of California owns the Fairgrounds, a public venue. It
2 is rented to the public, including community-based organizations and businesses, for
3 its use and enjoyment, including for concerts, festivals, and industry shows.

4 ~~160.— Defendants Newsom, Becerra, Summers, and Montgomery are the state
5 and local actors responsible for ensuring that AB 893 is enforced and thus have the
6 authority to prosecute violations of AB 893.~~

7 ~~161.— Defendants Ross and District interpret, implement, and enforce state
8 laws and policies as regards the Fairgrounds, including AB 893.~~

9 ~~162.184.~~ 184. Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack,
10 Diaz, Dupree, Irick, Solis, and Walsh have attended ~~in the past~~ and wish to again
11 attend Crossroads ~~of the West Gun Show~~ gun shows at the Fairgrounds so they may
12 exchange ideas, information, and knowledge, as well discuss political issues and the
13 importance of protecting and defending the Second Amendment.

14 ~~163.185.~~ 185. Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack,
15 Diaz, Dupree, Irick, Solis, and Walsh have a right under the First Amendment to use
16 the Fairgrounds for their expressive activity on the same basis as other members of
17 the public without regard to the viewpoints they seek to express.

18 ~~186. Defendants’ enforcement~~ Defendants Bonta and Stephan, acting under
19 color of state law, are the government actors responsible for enforcing and
20 prosecuting violations of AB 893, which ~~prohibits the sale of firearms and
21 ammunition at~~ deprives Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack,
22 Diaz, Dupree, Irick, Solis, and Walsh of free speech rights secured by the First
23 Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

24 ~~187. Defendant District interprets, implements, and enforces state laws and
25 policies as regards the Fairgrounds with the purpose and intention (or at least the
26 effect) of ending gun show events at, including AB 893, which deprives Plaintiffs of
27 free speech rights secured by the First Amendment of the United States Constitution
28 in violation of 42 U.S.C. § 1983.~~

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164.188. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of ending gun show events at the Fairgrounds, is an impermissible content-based restriction of speech. Fairgrounds, is an impermissible content-based restriction of speech. Such enforcement constitutes a direct violation of the First Amendment. free speech rights of Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack, Diaz, Dupree, Irick, Solis, and Walsh.

189. There is no compelling (or even legitimate) governmental interest to support the ban on the commercial sales of all Similarly, by expressly banning the sale of firearms and ammunition at the Fairgrounds, effectively shuttering AB 893 strips gun shows of an essential function and one of the main reasons people attend these events, limiting the number and types of vendors at the gun shows and the number of individuals in attendance. Thus, AB 893 has a chilling effect on the First Amendment.

165.190. Defendants have no compelling (or even legitimate) interest in banning the otherwise lawful (and constitutionally protected) sale of lawful firearms and ammunition at the Fairgrounds, or in banning gun show events at the Fairgrounds and destroying a vital outlet for the and the unique expression and exchange of ideas related to promoting and preserving the “gun culture” in California and elsewhere. that takes place at those events. Any purported interest in “public safety” is betrayed by the fact that AB 893 does not ban the possession of firearms or ammunition on Fairgrounds property and state law already governs sales at gun shows at least as strictly as it governs sales at “brick-and-mortar” stores.

191. Further, AB 893 is neither narrowly tailored to nor the least restrictive means of achieving the state’s dubious interests. Indeed, by intentionally and effectively banning gun shows at the Fairgrounds, it sweeps up all forms of speech and expressive conduct that occurs at such events and impermissibly banishes that speech from a public venue.

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192. Similarly, AB 893 is unconstitutionally overbroad because, in an effort to restrict the commercial sale of firearms and ammunition, the law intentionally and effectively bans gun shows events altogether, seriously and deliberately burdening a vast amount of speech that does not constitute such a communication and is fully protected by the First Amendment.

~~166.193.~~ 193. As a direct and proximate result of Defendants’ conduct, Plaintiffs ~~CRPA, South Bay, SAF and Individuals Bardack, Diaz, Dupree, Iriek, Solis, and Walsh~~ Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, and SAF have suffered irreparable harm, including the violation of their constitutional right to ~~freedom of expression~~ free speech, entitling them to declaratory and injunctive relief. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

SECOND CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983
(By Plaintiff Crossroads Against ~~All~~ Defendants Bonta, Stephan, and District)

~~167.194.~~ 194. Plaintiffs incorporate by reference paragraphs 1 through ~~166~~193 of this Complaint as though fully set forth herein in their entirety.

195. The state of California owns the Fairgrounds, a public venue. It is rented to the public, including community-based organizations and businesses, for its use and enjoyment, including for concerts, festivals, and industry shows.

196. Plaintiff Crossroads seeks to engage in protected speech at the Fairgrounds, a noted “public assembly facility,” through the promotion and production of events for lawful expressive activity, including events that bring together like-minded individuals to engage in pure political and educational speech, as well as commercial speech of vendor and individual participants to communicate offer and acceptance for the sale of legal goods and services.

~~168.—The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech. . . .”~~

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~~169. The First Amendment’s Freedom of Speech Clause is incorporated and made applicable to the states and their political subdivisions by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.~~

~~170. The First Amendment does not tolerate the suppression of speech based on the viewpoint of the speaker. Public property made available for lease by community groups to engage in expressive activity must thus be available without regard to the viewpoint sought to be expressed. *Cinevision*, 745 F.2d 560. Such venues cannot be opened to some and closed to others, suppressing protected expression, absent a compelling government interest. *Id.* at 571.~~

~~171.197.~~ Event promoters, though they generally promote events for profit, “still enjoy the protections of the First Amendment.” *Id.* at 567. For “[t]he role of a promoter in ensuring access to the public is at least as critical as the role of a bookseller or theater owner and . . . is in a far better position than a concert goer or individual performers to vindicate First Amendment rights and ensure public access.” *Id.* at 568. The conduct they engage in is protected expression.

~~172.1. The state of California owns the Fairgrounds, a public venue. It is rented to the public, including community-based organizations and businesses, for its use and enjoyment, including for concerts, festivals, and industry shows.~~

~~173. Defendants Newsom, Becerra, Summers, and Montgomery are the state and local actors responsible for ensuring that AB 893 is enforced and thus have the authority to prosecute violations of AB 893.~~

~~174. Defendants Ross and District interpret, implement, and enforce state laws and policies as regards the Fairgrounds, including AB 893.~~

~~175.1. Plaintiff Crossroads seeks to engage in protected speech at the Fairgrounds, a noted “public assembly facility,” through the promotion and production of events for lawful expressive activity, including events that bring together like-minded individuals to engage in pure political and educational speech, as well as commercial speech of vendor and individual participants to communicate~~

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~~offer and acceptance for the sale of legal goods and services.~~

176.198. Plaintiff Crossroads has a right under the First Amendment to use the Fairgrounds for its expressive activity on the same basis as other members of the public without regard to the content or viewpoint it seeks to express and promote.

199. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of ending gun show events at the Fairgrounds, is an impermissible content-based restriction of speech. Defendants Bonta and Stephan, acting under color of state law, are the government actors responsible for enforcing and prosecuting violations of AB 893, which deprives Plaintiff Crossroads of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

200. Defendant District interprets, implements, and enforces state laws and policies as regards the Fairgrounds, including AB 893, which deprives Plaintiff Crossroads of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

177.201. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of ending gun show events at the Fairgrounds, is an impermissible content-based restriction of speech. Such enforcement constitutes a direct violation of the First Amendment free speech rights of Plaintiff Crossroads.

202. There is no compelling (or even legitimate) governmental interest to support the ban on the commercial sales of all firearms and ammunition at the Fairgrounds, effectively shuttering gun shows of an essential function and one of the main reasons people attend these events, limiting the number and types of vendors at the gun shows and the number of individuals in attendance. Thus, AB 893 has a chilling effect on the First Amendment.

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203. Defendants have no compelling (or even legitimate) interest in banning the otherwise lawful (and constitutionally protected) sale of lawful firearms, ammunition, and firearm precursor parts at the Fairgrounds, or in banning gun show events at the Fairgrounds and destroying a vital outlet for the and the unique expression and exchange of ideas related to promoting and preserving the “gun culture” in California and elsewhere. that takes place at those events. Any purported interest in “public safety” is betrayed by the fact that AB 893 does not ban the possession of firearms or ammunition on Fairgrounds property and state law already governs sales at gun shows at least as strictly as it governs sales at “brick-and-mortar” stores.

204. Further, AB 893 is neither narrowly tailored to nor the least restrictive means of achieving the state’s dubious interests. Indeed, by intentionally and effectively banning gun shows at the Fairgrounds, it sweeps up all forms of speech and expressive conduct that occurs at such events and banishes from a public venue.

178.205. Similarly, AB 893 is unconstitutionally overbroad because, in an effort to restrict the commercial sale of firearms, ammunition, and firearm precursor parts, the law effectively and intentionally bans gun shows events altogether, seriously and deliberately burdening a vast amount of speech that does not constitute such a communication and is fully protected by the First Amendment.

179.206. As a direct and proximate result of Defendants’ conduct, Plaintiff Crossroads has suffered and will continue to suffer irreparable harm, including the violation of its constitutional right to freedom of expression free speech, entitling Plaintiff Crossroads to declaratory and injunctive relief. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

THIRD CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983

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~~THIRD CAUSE OF ACTION
Violation of Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983~~

(By Plaintiffs Solis, Walsh, Captain Jon’s, ~~and LAX Ammo, and CRPA~~ Against ~~All~~
Defendants Bonta, Stephan, and District)

~~180.207.~~ Plaintiffs incorporate by reference paragraphs 1 through ~~179206~~
of this Complaint as though fully set forth herein in their entirety.

~~208. The state of California owns the Fairgrounds, a public venue. It is
rented to the public, including community-based organizations and businesses, for
its use and enjoyment, including for concerts, festivals, and industry shows.~~

~~181. The First Amendment provides that “Congress shall make no law . . .
abridging the freedom of speech. . . .”~~

~~182. The First Amendment’s Freedom of Speech Clause is incorporated and
made applicable to the states and their political subdivisions by the Fourteenth
Amendment to the United States Constitution and by 42 U.S.C. § 1983.~~

~~183. The First Amendment does not tolerate the suppression of speech based
on the viewpoint of the speaker. Public property made available for lease by
community groups to engage in expressive activity must thus be available without
regard to the viewpoint sought to be expressed. *Cinevision*, 745 F.2d 560. Such
venues cannot be opened to some and closed to others, suppressing protected
expression, absent a compelling government interest. *Id.* at 571.~~

~~184. AB 893 violates the commercial free speech rights of the Plaintiffs,
both on its face and as applied. This violation is especially egregious given the well-
established law of this Circuit with regard to the commercial speech rights at gun
shows that are protected by the First Amendment. *Nordyke v. Santa Clara Cty.*, 110
F.3d 707 (9th Cir. 1997).~~

~~185.1. The state of California owns the Fairgrounds, a public venue. It is
rented to the public, including community-based organizations and businesses, for
its use and enjoyment, including for concerts, festivals, and industry shows.~~

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~~186. Defendants Newsom, Becerra, Summers, and Montgomery are the state and local actors responsible for ensuring that AB 893 is adequately enforced and thus have the authority to prosecute violations of AB 893.~~

~~187. Defendants Ross and District interprets, implements, and enforces state laws and policies as regards the Fairgrounds, including AB 893.~~

188.209. Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of CRPA, have attended ~~in the past~~ and wish to again attend Crossroads gun shows at the Fairgrounds to engage in lawful commercial speech with individual attendees.

189.210. Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of CRPA, have a right under the First Amendment to use the Fairgrounds for expressive activity on the same basis as other members of the public without regard to the viewpoints they seek to express and promote.

211. Defendants Bonta and Stephan, acting under color of state law, are the government actors responsible for enforcing and prosecuting violations of AB 893, which deprives Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of CRPA, of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

212. Defendant District interprets, implements, and enforces state laws and policies as regards the Fairgrounds, including AB 893, which deprives Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of CRPA, of free speech rights secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

190.213. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of ending gun show events at the Fairgrounds, is an impermissible content-based restriction of speech. Such enforcement constitutes a direct violation of the First Amendment commercial speech rights of the Plaintiffs.

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214. Further, by directly barring the rights of vendors, like Plaintiffs Solis, Walsh, and LAX Ammo, to sell firearms and ammunition (*which necessarily involves commercial speech*), AB 893 defies existing case law in the Ninth Circuit protecting the commercial speech associated with firearm sales on public property. *See Nordyke v. Santa Clara Cty.*, 110 F.3d 707 (9th Cir. 1997). ~~There is no governmental interest—let alone holding that a ban on the sale of firearms on county-owned land was overbroad as abridging commercial speech associated with the sale of lawful products).~~

215. Finally, by expressly banning the sale of firearms and ammunition at the Fairgrounds, AB 893 strips gun shows of an essential function and one of the main reasons people attend these events, limiting the number and types of vendors at the gun shows and the number of individuals in attendance. Thus, AB 893 has a chilling effect on the First Amendment.

~~191.216.~~ 216. Defendants have no substantial ~~one—to support~~(or even legitimate) interest in banning the ~~ban on the commercial sales~~otherwise lawful (and constitutionally protected) sale of ~~all~~lawful firearms and ammunition at the Fairgrounds, ~~effectively shuttering or in banning~~ gun show events ~~at the Fairgrounds and destroying a vital outlet for the~~and the unique expression and exchange of ideas related to promoting and preserving the “gun culture” ~~in California and elsewhere.~~ This is especially true where ~~the~~that takes place at those events. Any purported interest in “public safety” is betrayed by the fact that AB 893 does not ban the possession of firearms or ammunition on Fairgrounds property and state maintains an interest in tax revenue from the lawful sale of firearms and ammunition at ~~locations other than gun shows~~law already governs sales at gun shows *at least as strictly as it governs sales at “brick-and-mortar” stores.*

217. Even if there were a substantial governmental interest in restricting gun shows and the commercial speech that occurs at such events, it would not be directly served by a ban on sales of firearms and ammunition (and the speech necessary to

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such sales) at the Fairgrounds.

192.218. Even if there were a substantial government interest in restricting gun shows and the commercial speech that occurs at such events, banning commercial speech about firearms and ammunition at the Fairgrounds altogether is more extensive than necessary to serve any such interest. See *Nordyke*, 110 F.3d 707 (holding that a ban on the sale of firearms on county-owned land was overbroad as abridging commercial speech associated with the sale of lawful products).

193.219. As a direct and proximate result of Defendants’ conduct, Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo will suffer, as well as business members of CRPA, have suffered irreparable harm, including the violation of their constitutional right to freedom of expression free speech, entitling them to declaratory and injunctive relief. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

**FOURTH CAUSE OF ACTION
Prior Restraint on Right to Free Speech Under U.S. Const., amend. I
42 U.S.C. § 1983
(By All Plaintiffs Against All Defendants Bonta, Stephan, and District)**

194.220. Plaintiffs incorporate by reference paragraphs 1 through 194219 of this Complaint as though fully set forth herein in their entirety.

~~195. The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech. . . .”~~

~~196. The First Amendment’s Freedom of Speech Clause is incorporated and made applicable to the states and their political subdivisions by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.~~

197.221. The First Amendment affords special protection against policies or orders that impose a previous or prior restraint on speech. “[P]rior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment Rights.” *Ass’n for L.A. Deputy Sheriffs*, 239 Cal. App. 4th at 811 (citing

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Neb. Press Ass’n, 427 U.S. at 559. A prior restraint is particularly egregious especially bad when it falls upon the communication of news, commentary, current events, political speech, and association. *N.Y. Times Co.*, 403 U.S. at 715.

198.222. Prior restraint also involves the “unbridled discretion doctrine” where a policy, or lack thereof, allows for a single person or body to act at their sole discretion, without regard for any constitutional rights possessed by the person upon which the action is taken, and where there is no remedy for challenging the discretion of the decision makers. *Lakewood, v. Plain Dealer Publ’g Co.*, 486 U.S. at 750, 757. (1988).

199.223. The Defendants Bonta, Stephan, and District are the state and local actors responsible for enforcing and prosecuting violations of AB 893, which is a content-based restriction of speech that will have a chilling effect on Plaintiffs’ First Amendment rights, thus acting as a de facto prior restraint on Plaintiffs’ rights.

200.224. Under AB 893, Defendant District has unfettered discretion to determine what constitutes a “sale” under the law and is thereby prohibited at the Fairgrounds.

201.225. Defendants’ policies and practices complained of here impose an unconstitutional prior restraint because they vest the District with unbridled discretion to permit or refuse protected expression by members of the public, including Plaintiffs.

202.226. Defendants’ policies and practices complained of here give unbridled discretion to local agricultural district boards and board members to decide what forms of expression members of the public may engage in on at the Fairgrounds and to ban any other expression at the whim of those boards and board members in violation of the First Amendment.

203.227. As a direct and proximate result of Defendants’ conduct, Plaintiffs have suffered and will continue to suffer irreparable harm, including the

1 violation of their constitutional right to freedom of expression, entitling them to
2 declaratory and injunctive relief and nominal damages.

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4 **FIFTH CAUSE OF ACTION**
5 **Violation of Right to Assembly and Association Under U.S. Const., amend. I**
6 **42 U.S.C. § 1983**

7 (By All Plaintiffs Against ~~All~~ Defendants Bonta, Stephan, and District)

8 204.228. Plaintiffs incorporate by reference paragraphs 1 through ~~204~~227
9 of this Complaint as though fully set forth herein in their entirety.

10 229. The state of California owns the Fairgrounds, a public venue. It is
11 rented to the public, including community-based organizations and businesses, for
12 its use and enjoyment, including for concerts, festivals, and industry shows.

13 ~~205. The First Amendment protects the rights to association and assembly.~~
14 ~~Indeed, “[e]ffective advocacy of both public and private points of view, particularly~~
15 ~~controversial ones, is undeniably enhanced by group association.” *NAACP*, 377 U.S.~~
16 ~~at 462.~~

17 206.230. Plaintiffs ~~are attempting~~have promoted or attended in the past
18 and wish to engage in their protected right to free assembly and association through
19 lawful activities that bring together like-minded individuals~~again~~ promote or attend
20 Crossroads gun shows at the Fairgrounds so they may assemble and associate with
21 one another to engage in lawful commerce, fellowship, and expressive activities,
22 including political and educational speech, and fellowship about the lawful
23 ownership, possession, and use of firearms and related products.

24 231. Plaintiffs have a right under the First Amendment to use the
25 Fairgrounds to assemble and associate on the same basis as other members of the
26 public without regard to the content or viewpoint it seeks to express and promote.

27 232. Defendants ~~violate~~Bonta and Stephan, acting under color of state law,
28 are the government actors responsible for enforcing and prosecuting violations of
AB 893, which deprives Plaintiffs of their rights of assembly and association
secured by the First Amendment of the United States Constitution in violation of 42

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U.S.C. § 1983.

233. Defendant District interprets, implements, and enforces state laws and policies in regard to the Fairgrounds, including AB 893, which deprives Plaintiffs of their rights of assembly and association secured by the First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

207.234. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of banning gun show events at the Fairgrounds, violates Plaintiffs’ rights to freedom of assembly and association by denying them the right to use the Fairgrounds, a “public assembly facility”, to assemble and engage in political and other types of expression—a right Defendants extend to other members of the public so long as they are not meeting for the purposes of holding to hold a gun show event.

208.—Defendants have no compelling (or even legitimate and substantial) governmental interest in prohibiting banning the otherwise lawful (and constitutionally protected) sale of lawful firearms and ammunition, effectively shuttering gun shows at at the Fairgrounds, or in banning gun show events and, by extension, the rights of Plaintiffs to assemble and associate and assemble at such events at the Fairgrounds.

209.—Defendants have expressly banned the sale of firearms and ammunition at the Fairgrounds, which Any purported interest in “public safety” is an essential function of gun show and one of the main reasons people attend these events. By eliminating the sale of firearms and ammunition, Defendants have stripped gun shows of an essential function, limiting the number and types of vendors at the gun shows and the number of individuals in attendance. Thus, having a chilling effect on the First Amendment.

210.235. Not only does betrayed by the fact that AB 893 eliminate Plaintiffs’ ability to engage in discussion with event attendees about the sale and

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~~purchase of firearms and ammunition, but it does also so unnecessarily because of California’s already extensive regulation of gun show events. For instance, California’s mandatory 10-day waiting period prevents any attendee from taking possession of firearms or ammunition on the premises of the Fairgrounds, requiring that they instead go to a different location property and state law already governs sales at gun shows at least 10 days later to take possession of any firearm purchased as strictly as it governs sales at the gun show. Before a gun show attendee would take possession of ammunition purchased on the premises, the attendee would have to rely on a vendor to retrieve the ammunition from stock, pass a background check conducted electronically by the California Department of Justice, pay a fee, and wait for the vendor to upload the purchaser’s personal information and details of the specific ammunition being transferred. What’s more, no person other than security personnel or law enforcement may possess both a firearm and ammunition for that firearm at the same time, with the exception of vendors who are selling both “brick-and-mortar” stores.~~

211-236. But even if Defendants had a “legitimate and substantial” interest in limiting a key aspect of gun show events, and thus barring Plaintiffs from freely assembling and associating at the Fairgrounds, they have imposed an unconstitutional and overly broad restriction on Plaintiffs’ rights ~~to assembly~~ by prohibiting the sale of firearms and ammunition at the Fairgrounds.

237. As a direct and proximate result of Defendants’ conduct, all Plaintiffs have suffered irreparable harm, including the violation of their constitutional right to free association and assembly, entitling them to declaratory and injunctive relief. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

SIXTH CAUSE OF ACTION
Violation of ~~the~~ Right to Equal Protection Keep & Bear Arms Under U.S. Const., amend. XVII
42 U.S.C. § 1983
(By ~~All~~ Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, Walsh, LAX Ammo, CRPA,
FIRST AMENDED COMPLAINT
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

South Bay, and SAF Against ~~All~~ Defendants Bonta, Stephan, and District)

212.238. Plaintiffs incorporate by reference paragraphs 1 through 212237 of this Complaint as if fully set forth herein in their entirety.

~~213.1. The Fourteenth Amendment to the United States Constitution, enforceable under 42 U.S.C. § 1983, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.~~

~~214. Generally, equal protection is based upon protected classes of person who are similarly situated; however, individuals who suffer irrational and intentional discrimination or animus can bring claims of equal protection where the government is subjecting only the Plaintiffs to differing and unique treatment compared to others who are similarly situated, *Engquist*, 553 U.S. 591, even if not based on group characteristics, *Village of Willowbrook*, 528 U.S. 562.~~

239. Disparate treatment Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, Walsh, LAX Ammo, and members and supporters of Plaintiffs CRPA, South Bay, and SAF, have sold or bought firearms or ammunition at gun show events at the Fairgrounds in the past and, but for the adoption and enforcement of AB 893, they would do so again.

240. Plaintiffs have a right, under the Second Amendment, to buy and sell firearms and the ammunition necessary for the effective operation of those firearms.

241. Defendants Bonta and Stephan, acting under the color of state law, when one is engaged in activities that are fundamental rights, is actionable are the government actors responsible for enforcing and prosecuting violations of AB 893, which deprives Plaintiffs of their right to access firearms and ammunition secured by the Second Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

242. Defendant District interprets, implements, and enforces state laws and policies in regard to the Fairgrounds, including AB 893, which deprives Plaintiffs of their right to access firearms and ammunition secured by the Second Amendment of

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the United States Constitution in violation of 42 U.S.C. § 1983.

243. Defendants’ enforcement of AB 893, which prohibits the sale of firearms and ammunition at the Fairgrounds with the purpose and intention (or at least the effect) of banning gun show events at the Fairgrounds, violates Plaintiffs’ Second Amendment right to buy and sell firearms and the ammunition necessary to the effective operation of those firearms.

244. Defendants cannot satisfy their burden to justify their ban on the sale of firearms and ammunition at the Fairgrounds under the history- and tradition-based test applied in *Heller* and recently confirmed in *Bruen*.

245. As a direct and proximate result of Defendants’ conduct, all Plaintiffs have suffered irreparable harm, including the violation of their constitutional right to buy and sell firearms and ammunition, entitling them to declaratory and injunctive relief. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

SEVENTH CAUSE OF ACTION
Violation of the Right to Equal Protection Clause of Under U.S. Const., amend. XIV
42 U.S.C. § 1983

(By All Plaintiffs Against Defendants Bonta, Stephan, and District)

246. Plaintiffs incorporate by reference paragraphs 1 through 245 of this Complaint as if fully set forth herein in their entirety.

247. Defendants, acting under color of state law, are enforcing AB 893, which deprives Plaintiffs of right to equal protection under the law secured by the Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

248. On its face and as applied, AB 893 is an unconstitutional abridgement of Plaintiffs’ right to equal protection under the law guaranteed by the Fourteenth Amendment. *Mosley*, 408 U.S. 92; *Carey*, 447 U.S. 455. because it is a viewpoint-discriminatory and animus-based restriction on Plaintiffs’ protected

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speech that serves no compelling governmental interest

216.249. Although Plaintiff Crossroads operates a legal and legitimate business and the Fairgrounds is suitable for the purposes of hosting a gun show at its public facility, as ~~demonstrated~~shown by over 30 years of unfringed use of the Fairgrounds, AB 893 prevents Plaintiffs from equally participating in the use of the publicly owned venue by unconstitutionally eliminating Plaintiffs’ ability to freely conduct otherwise lawful business transactions and freely express their beliefs with like-minded people.

217.250. Defendants’ refusal to permit Plaintiffs equal access to the Fairgrounds ~~for to host its promotion of gun shows~~show events and engage in the speech, assembly, and association that takes place at such events, does not further any compelling (or even legitimate) governmental interest.

218.251. Defendants’ refusal to allow Plaintiffs equal use of the public facility while continuing to allow contracts for the use of the facility with other similarly situated legal and legitimate businesses ~~is a violation of~~violates Plaintiffs’ right to equal protection under the law because it is based on a “bare desire to harm a politically unpopular group.” *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. at 528, 534. (1973)

219.252. As a direct and proximate result of Defendants’ conduct, Plaintiffs have suffered irreparable harm, including the violation of their constitutional right to equal protection under the law, entitling them to declaratory and injunctive relief and nominal damages. Without intervention by this Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

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~~SEVENTH CAUSE OF ACTION~~
EIGHTH CAUSE OF ACTION

Intentional Interference with Prospective Economic Advantage
(By Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF Against
Defendants Newsom, Bonta, Ross, and District)

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4 220.253. Plaintiffs incorporate by reference paragraphs 1 through ~~220~~252
5 of this Complaint as if fully set forth herein in their entirety.

6 221.254. For more than 30 years, Plaintiff Crossroads has maintained
7 contracts with Defendant District, under which Plaintiff Crossroads annually hosts
8 about five gun-show events at the Fairgrounds. An economic relationship has been
9 in effect between Plaintiff Crossroads and Defendant District to operate gun shows
10 on the state fairground property for over 30 years.

11 222.255. In turn, Plaintiff Crossroads maintains countless economic
12 relationships with for-profit and nonprofit vendors, including but not limited to,
13 Plaintiffs Walsh, LAX Ammo, CRPA, and SAF. These vendors pay for space at
14 Plaintiff Crossroads' Del Mar gun shows ~~in order~~ to sell merchandise (including
15 firearms and ammunition) and organization memberships, among other things.

16 223.256. Defendants Newsom, Bonta, Ross, and District had actual
17 knowledge of the existence of these relationships.

18 224.257. By adopting and enforcing AB 893, which bans the sale of
19 firearms and ammunition at the Fairgrounds and effectively bans gun shows at the
20 Fairgrounds, Defendants Newsom, Bonta, Ross, and District engaged in an
21 intentional act designed to disrupt these economic relationships.

22 225.258. The adoption and enforcement of AB 893 by Defendants
23 Newsom, Bonta, Ross, and District did, in fact, disrupt the known economic
24 relationships between Plaintiff Crossroads and Defendant ~~2nd DAA~~District and
25 between Plaintiff Crossroads and its vendors, including Plaintiffs Walsh, LAX
26 Ammo, CRPA, and SAF.

27 226.259. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF
28 have suffered actual damages as a result of the conduct of Defendants Newsom,

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Bonta, Ross, and District complained of herein.

227.260. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF notified Defendants Newsom, Bonta, Ross, and District of this claim by filing a Government Tort Claim pursuant to ~~under~~ California’s Tort Claims Act. Ex. 7.

228.261. Defendants Newsom, Bonta, Ross, and District neither accepted nor rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the claim was rejected by operation of law.

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NINTH CAUSE OF ACTION

~~**EIGHTH CAUSE OF ACTION**~~

Negligent Interference with Prospective Economic Advantage
(By Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF Against Defendants Newsom, Bonta, Ross, and District)

229.262. Plaintiffs incorporate by reference paragraphs 1 through ~~229~~261 of this Complaint as if fully set forth herein in their entirety.

230.263. For more than 30 years, Plaintiff Crossroads has maintained contracts with Defendant District, under which Plaintiff Crossroads annually hosts about five gun-show events at the Fairgrounds. An economic relationship has been in effect between Plaintiff Crossroads and Defendant District to operate gun shows on the state fairground property for over 30 years.

231.264. In turn, Plaintiff Crossroads maintains countless economic relationships with for-profit and nonprofit vendors, including, but not limited to, Plaintiffs Walsh, LAX Ammo, CRPA, and SAF. These vendors pay for space at Plaintiff Crossroads’ Del Mar gun shows ~~in order~~ to sell merchandise (including firearms and ammunition) and organization memberships, among other things.

232.265. Defendants Newsom, Bonta, Ross, and District had actual

1 knowledge of the existence of these relationships.

2 233-266. Defendants Newsom, Bonta, Ross, and District knew that, by
3 adopting and enforcing AB 893, which bans the sale of firearms and ammunition at
4 the Fairgrounds and effectively bans gun shows at the Fairgrounds, these economic
5 relationships would be disrupted if they did not act with reasonable care.

6 234-267. Defendants Newsom, Bonta, Ross, and District knew that, by
7 adopting and enforcing AB 893, which bans the sale of firearms and ammunition at
8 the Fairgrounds and effectively bans gun shows at the Fairgrounds, in fact failed to
9 act with reasonable care.

10 235-268. The adoption and enforcement of AB 893 by Defendants
11 Newsom, Bonta, Ross, and District did, in fact, disrupt the known economic
12 relationships between Plaintiff Crossroads and Defendant 2nd DAA and between
13 Plaintiff Crossroads and its vendors, including Plaintiffs Walsh, LAX Ammo,
14 CRPA, and SAF.

15 236-269. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF
16 have suffered actual damages as a result of the conduct of Defendants Newsom,
17 Bonta, Ross, and District complained of herein.

18 237-270. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF
19 notified Defendants Newsom, Bonta, Ross, and District of this claim by filing a
20 Government Tort Claim pursuant to under California’s Tort Claims Act. Ex. 7.

21 238-271. Defendants Newsom, Bonta, Ross, and District neither accepted
22 nor rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the
23 claim was rejected by operation of law.

24 **NINTHTENTH CAUSE OF ACTION**
Intentional Interference with Contract

25 (By Plaintiff Crossroads Against Defendants Newsom, Bonta, Ross, and District)

26 239-272. Plaintiffs incorporate by reference paragraphs 1 through 239-271
27 of this Complaint as if fully set forth herein in their entirety.

28 240-273. For more than 30 years, Plaintiff Crossroads has maintained

1 contracts with Defendant District, under which Plaintiff Crossroads annually hosts
2 about five gun-show events at the Fairgrounds. Thus, an economic relationship has
3 been in effect between Plaintiff Crossroads and the District to operate gun shows on
4 state fairground property for over 30 years.

5 241.274. For decades, Defendant District has given Plaintiff Crossroads an
6 effective right of first refusal to secure event dates for the coming year as a returning
7 contractor at the Fairgrounds under the District’s longstanding “hold” system.

8 242.275. Defendants Newsom, Bonta, Ross, and District had actual
9 knowledge of the existence of these relationships.

10 243.276. By adopting and enforcing AB 893, which bans the sale of
11 firearms and ammunition at the Fairgrounds and effectively bans gun shows at the
12 Fairgrounds, Defendants Newsom, Bonta, Ross, and District engaged in an
13 intentional act designed to disrupt these economic relationships.

14 244.277. The adoption and enforcement of AB 893 by Defendants
15 Newsom, Bonta, Ross, and District did, in fact, disrupt the known economic
16 relationships between Plaintiff Crossroads and Defendant 2nd DAA and between
17 Plaintiff Crossroads and its vendors, including Plaintiffs Walsh, LAX Ammo,
18 CRPA, and SAF.

19 245.278. Plaintiffs Crossroads has suffered actual damages as a result of
20 the conduct of Defendants Newsom, Bonta, Ross, and District complained of herein.

21 246.279. Plaintiff Crossroads notified Defendants Newsom, Bonta, Ross,
22 and District of this claim by filing a Government Tort Claim pursuant to under
23 California’s Tort Claims Act. Ex. 7,

24 247.280. Defendants Newsom, Bonta, Ross, and District neither accepted
25 nor rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the
26 claim was rejected by operation of law.

27 **PRAYER FOR RELIEF**

PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs pray for:

1. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the free speech rights of Plaintiffs CRPA, South Bay, SAF, and Individual Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, and Walsh under the First Amendment to the United States Constitution;

2. A declaration that AB 893 violates the free speech rights of Plaintiff Crossroads under the First Amendment to the United States Constitution;

3. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the free speech rights of Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo under the First Amendment to the United States Constitution;

4. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the free speech rights of all Plaintiffs under the First Amendment to the United States Constitution because it imposes a prior restraint on their speech;

5. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the rights of assembly and association of all Plaintiffs under the First Amendment to the United States Constitution;

6. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the rights of all Plaintiffs to keep and bear arms under the Second Amendment to the United States Constitution;

6.7. A declaration that AB 893, codified at California Food & Agricultural Code section 4158, violates the rights of all Plaintiffs to equal protection under the law per the Fourteenth Amendment to the United States Constitution;

7.8. AmA preliminary and permanent injunction prohibiting all Defendants or any of Bonta, Stephan, and District, their employees, agents, and successors in office, from enforcing AB 893, codified at California Food & Agricultural Code

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section 4158;

~~8.9.~~ 9. An order for damages, including punitive and nominal damages, according to proof;

~~9.10.~~ 10. An award of costs and expenses, including attorney’s fees, ~~pursuant to~~ under 42 U.S.C. § 1988 or other appropriate state or federal law; and

~~11.~~ 11.

~~12.~~ 12.

~~13.~~ 13.

~~14.~~ 14. Any such other relief the Court deems just and equitable.

Dated: ~~October 4, 2021~~ August 31, 2022

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

Anna M. Barvir

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

Dated: ~~October 4, 2021~~ August 31, 2022

LAW OFFICES OF DON KILMER

s/ Don Kilmer

Don Kilmer
Counsel for Plaintiff Second Amendment Foundation

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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. Newsom, et al.*
Case No.: 21-cv-01718-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:

NOTICE OF ERRATA RE: FIRST AMENDED 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.

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
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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 September 8, 2022.



Laura Palmerin

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7 John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain
8 Jon’s Lockers, LLC, L.A.X. Firing Range, Inc., California Rifle & Pistol
9 Association, Incorporated, and South Bay Rod and Gun Club, Inc.

8 Donald Kilmer-SBN 179986
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12 Attorney for Plaintiff Second Amendment Foundation

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

15 B&L PRODUCTIONS, INC., d/b/a
16 CROSSROADS OF THE WEST;
17 BARRY BARDACK; RONALD J.
18 DIAZ, SR.; JOHN DUPREE;
19 CHRISTOPHER IRICK; ROBERT
20 SOLIS; LAWRENCE MICHAEL
21 WALSH; CAPTAIN JON’S
22 LOCKERS, LLC; L.A.X. FIRING
23 RANGE, INC., d/b/a LAX AMMO;
24 CALIFORNIA RIFLE & PISTOL
25 ASSOCIATION, INCORPORATED;
26 SOUTH BAY ROD AND GUN
27 CLUB, INC.; and SECOND
28 AMENDMENT FOUNDATION,

Plaintiffs,

v.

25 GAVIN NEWSOM, in his official
26 capacity as Governor of the State of
27 California and in his personal capacity;
28 ROB BONTA, in his official capacity
as Attorney General of the State of
California and in his personal capacity;
KAREN ROSS, in her official capacity
as Secretary of California Department

Case No.: 21-cv-01718-AJB-KSC

**FIRST AMENDED COMPLAINT FOR
MONETARY, DECLARATORY &
INJUNCTIVE RELIEF; DEMAND
FOR JURY TRIAL**

**(1) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH - POLITICAL];**

**(2) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-MIXED POLITICAL/
COMMERCIAL];**

**(3) VIOLATION OF 42 U.S.C. § 1983
[FREE SPEECH-COMMERCIAL];**

**(4) VIOLATION OF 42 U.S.C. § 1983
[PRIOR RESTRAINT ON SPEECH];**

**(5) VIOLATION OF 42 U.S.C. § 1983
[RIGHT TO ASSEMBLY];**

**(6) VIOLATION OF 42 U.S.C. § 1983
[RIGHT TO KEEP & BEAR ARMS];**

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of Food & Agriculture and in his personal capacity; SUMMER STEPHAN, in his official capacity as District Attorney of San Diego County; 22nd DISTRICT AGRICULTURAL ASSOCIATION; DOES 1-50;

Defendants.

(7) VIOLATION OF 42 U.S.C. § 1983 [EQUAL PROTECTION];

(8) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;

(9) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;

(10) INTENTIONAL INTERFERENCE WITH CONTRACT.

DEMAND FOR JURY TRIAL

NOTICE OF UNCONSTITUTIONALITY OF STATE STATUTE

NOTICE OF RELATED CASE

INTRODUCTION

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1. Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE WEST has operated popular, safe, heavily regulated, legal, and family-friendly gun shows as a business in California for over 30 years, including at the Del Mar Fairgrounds.

2. Crossroads produces gun shows at the Fairgrounds where like-minded individuals gather to engage in commerce related to, and necessary for, the lawful and regulated exercise of Second Amendment rights for themselves, their exhibitors, their patrons, their customers, and the public. This safe and regulated marketplace promotes public safety, even for people who do not attend gun shows because it will tend to reduce the unregulated transfer of firearms within San Diego County. Furthermore, by providing a convenient forum for Californians to exercise their right to acquire firearms locally, gun shows at the Fairgrounds will have the tendency to discourage the sale and importation of firearms from other states with less strict gun laws than California.

3. Plaintiffs Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Robert Solis, Lawrence Michael Walsh, Captain Jon’s Lockers, LLC, L.A.X Firing Range, d/b/a LAX Ammo, California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club, Inc., and Second Amendment Foundation, Inc., attend and participate in the Crossroads gun show to engage in First Amendment activities that are both necessary and essential to the open, robust, and lawful exercise of their Second Amendment rights.

4. At the gun show, Plaintiffs associate with like-minded people, participate in public discussions, attend informational forums, distribute and collect information, make offers for sale, make offers to buy, and engage in legal and political discussions related to the Second Amendment, which are all forms of speech protected by the First Amendment. Discussions include, but are not limited to, firearms and ammunition, firearm technology, firearm safety, and firearm law

1 and politics. Participants also exchange information about where to hunt and where
2 to practice shooting, where and from whom to receive training, gunsmithing, gun
3 repair, gun art, and many other topics that arise from the right to acquire, own,
4 possess, enjoy, and celebrate arms as a quintessentially American artifact with
5 constitutional significance.

6 5. Defendants are government actors who, through the adoption and
7 enforcement of Assembly Bill 893, codified at California Food & Agricultural Code
8 section 4158,¹ which prohibits the sale of firearms and ammunition at the
9 Fairgrounds with the intention and effect of shuttering gun show events altogether,
10 have engaged in and will continue to engage in action that violates Plaintiffs’
11 constitutional rights to free speech, assembly, and equal protection. Their actions
12 also constitute prior restraint.

13 6. What’s more, the conduct of Defendants Newsom, Bonta, Ross, and the
14 22nd District Agricultural Association also constitutes intentional and/or negligent
15 interference with the prospective economic advantage of Plaintiffs Crossroads,
16 Walsh, LAX Ammo, CRPA, and SAF, as well as intentional interference with
17 Plaintiff Crossroads’ contracts.

18 7. This action seeks declaratory and injunctive relief against Defendants
19 for violating the United States Constitution. It also seeks damages for lost profits,
20 lost opportunities, and diminished marketing value, and reimbursement for
21 reasonable attorney’s fees, costs, and other expenses in bringing this action.

22 **JURISDICTION AND VENUE**

23 8. The Court has original jurisdiction of this civil action under 28 U.S.C. §
24 1331 because the action arises under the Constitution and laws of the United States,
25 thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. §
26 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the deprivation,

27 _____
28 ¹ Plaintiffs refer to the challenged law, California Food & Agricultural Code
section 4158, as AB 893 throughout this complaint.

1 under color of the laws, statutes, ordinances, regulations, customs, and usages of the
2 State of California and political subdivisions thereof, of rights, privileges, or
3 immunities secured by the United States Constitution and by Acts of Congress.

4 9. Plaintiffs’ claims for declaratory and injunctive relief are authorized by
5 28 U.S.C. §§ 2201 and 2202, respectively, and their claim for attorneys’ fees is
6 authorized by 42 U.S.C. § 1988.

7 10. This Court has supplemental jurisdiction over Plaintiffs’ state law
8 claims pursuant to 28 U.S.C. § 1367 because those claims share common operative
9 facts with Plaintiffs’ federal law claims over which this Court has original
10 jurisdiction. Adjudication of Plaintiffs’ state law claims together with Plaintiffs’
11 federal law claims furthers the interest of judicial economy.

12 11. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the
13 22nd District Agricultural Association is in San Diego County and a substantial part
14 of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.
15 Further, the state of California maintains an office for service of process in San
16 Diego County at 600 West Broadway, Suite 1800, San Diego, California 92101.

17 **PARTIES**

18 **[Plaintiffs]**

19 12. Plaintiff B & L PRODUCTIONS, INC., d/b/a CROSSROADS OF THE
20 WEST, is a for-profit event promoter operating in several western states. Crossroads
21 promotes and organizes trade shows throughout the state of California and other
22 western states, including their long-running gun show events held at the Del Mar
23 Fairgrounds (“the Fairgrounds”) operated under the d/b/a Crossroads of the West
24 (“Crossroads”). Crossroads currently is the largest vendor of gun show events in
25 California and at the Del Mar Fairgrounds. The gun shows occupy thousands of
26 square feet of the Fairgrounds. Typically, thousands of people attend the gun show
27 on each of the weekends they are held. They have successfully produced and
28 operated multiple safe, legal, and family-friendly gun show events in California and

1 at the Fairgrounds every year for over 30 years.

2 13. Plaintiff BARRY BARDACK is a resident of El Cajon, California, and
3 he is a part-time flight instructor. He regularly attends the gun shows at the
4 Fairgrounds where he purchases ammunition for his target shooting hobby and
5 volunteers at the CRPA booth to talk to others about their rights, the importance of
6 membership in the CRPA, and the Second Amendment. The ban on sales of firearms
7 and ammunition at the Fairgrounds burdens his right to engage in otherwise lawful
8 commercial speech in a public forum and restricts his ability to purchase
9 ammunition for lawful purposes—this is especially true for Plaintiff Bardack
10 because the nearest vendor that could serve his particular ammunition needs is some
11 two hours from his home. And because the ban is intended to make gun shows less
12 profitable and effectively shutter them, it also restricts his right to engage in the
13 unique types of political, educational, and commercial speech that takes place at the
14 gun show.

15 14. Plaintiff RONALD J. DIAZ, SR., is a resident of Alpine, California,
16 and he is a retired federal contractor. He regularly attends gun shows at the
17 Fairgrounds to purchase ammunition reloading supplies. Plaintiff Diaz also attends
18 the Crossroads gun show events at the Del Mar Fairgrounds to engage in expressive
19 activities with like-minded people, including discussions related to firearms,
20 ammunition, and firearm accessories, the shooting sports, politics, and the Second
21 Amendment. The ban on sales of firearms and ammunition at the Fairgrounds,
22 which is intended to make gun shows less profitable and effectively shutter them,
23 burdens his right to engage in otherwise lawful commercial and educational speech
24 in a public forum with vendors that offer him the expertise and variety of reloading
25 supplies available at Crossroads gun shows. It also restricts his right to engage in the
26 unique types of political, educational, and commercial speech that takes place at the
27 gun show.

28 15. Plaintiff JOHN DUPREE is a resident of Alpine, California, and he

1 works for the federal government. He regularly attends the Crossroads gun shows at
2 the Fairgrounds. He is a competitive shooter and has the need to purchase bulk
3 ammunition in order to compete. Plaintiff Dupree also attends the Crossroads gun
4 show events at the Del Mar Fairgrounds to engage in expressive activities with like-
5 minded people, including discussions related to firearms, ammunition, and firearm
6 accessories, the shooting sports, politics, and the Second Amendment. The ban on
7 sales of firearms and ammunition at the Fairgrounds burdens his right to engage in
8 otherwise lawful commercial speech in a public forum and restricts his ability to
9 purchase ammunition for lawful purposes—this is especially true for Plaintiff
10 Dupree because the nearest vendor that could serve his particular ammunition needs
11 is several hours from his home. And because the ban is intended to make gun shows
12 less profitable and effectively shutter them, it also restricts his right to engage in the
13 unique types of political, educational, and commercial speech that takes place at the
14 gun show.

15 16. Plaintiff CHRISTOPHER PAUL IRICK is a resident of Carlsbad,
16 California, and he regularly attends the Crossroads guns shows at the Fairgrounds.
17 He is self-employed and enjoys going to the shows for good prices on firearms and
18 accessories, as well as the varied merchandise available at the events. Plaintiff Irick
19 also attends the Crossroads gun show events at the Fairgrounds to engage in
20 expressive activities with like-minded people who hunt and support the Second
21 Amendment, while learning about new and innovative products available to firearms
22 owners and sportsmen. The ban on sales of firearms and ammunition at the
23 Fairgrounds burdens his right to engage in otherwise lawful commercial speech in a
24 public forum and restricts his ability to purchase firearms and ammunition for lawful
25 purposes. And because the ban is intended to make gun shows less profitable and
26 effectively shutter them, it also restricts his right to engage in the unique types of
27 political, educational, and commercial speech that takes place at the gun show.

28 17. Plaintiff ROBERT SOLIS is a resident of Oxnard, California, and he is

1 a regular vendor at the Crossroads gun shows at the Fairgrounds. At the Crossroads
2 gun show, he sells firearms-related accessories and, though not in the business of
3 selling firearms, he sometimes engages in the lawful private sale of firearms and
4 ammunition at the show. Plaintiff Solis also attends gun show events at the Del Mar
5 Fairgrounds to engage in expressive activities with like-minded people, including
6 discussions related to firearms, ammunition, and firearm accessories, the shooting
7 sports, politics, and the Second Amendment. The ban on sales of firearms and
8 ammunition at the Fairgrounds directly burdens Plaintiff Solis' right to engage in
9 otherwise lawful commercial speech in a public forum and to access firearms and
10 ammunition for lawful purposes. And because the ban on sales of firearms and
11 ammunition at the Fairgrounds is intended to make gun shows less profitable and
12 effectively shutter them, it restricts his right to engage in otherwise lawful
13 commercial speech related to the sales of firearms accessories and his ability to
14 engage in the unique types of political, educational, and commercial speech that
15 takes place at the gun show.

16 18. Plaintiff LAWRENCE MICHAEL WALSH is a resident of Grass
17 Valley, California, and is the owner of Miwall Corporation, d/b/a Wholesale
18 Ammunition. Miwall is one of the major gun ammunition distributors on the west
19 coast and has been in business for decades. He is a regular vendor at the Crossroads
20 gun shows at the Fairgrounds. Plaintiff Walsh's business currently does not have a
21 physical store, and it only sells its product at gun shows across the state and online.
22 Wholesale Ammunition also supplies ammunition to many of the law enforcement
23 agencies and officers in the state, some of which purchase their ammunition from
24 him at the gun shows because of the amount available, the cost, and the variety they
25 can find. Plaintiff Walsh enjoys talking with other Second Amendment supporters
26 with like interests and views. If the gun shows at the Fairgrounds, or any of the other
27 state venues, were to be shut down, it would be devastating to Plaintiff Walsh's
28 business. The ban on sales of firearms and ammunition at the Fairgrounds directly

1 burdens Plaintiff Walsh’s right to engage in otherwise lawful commercial speech in
2 a public forum and to access firearms and ammunition for lawful purposes. And
3 because the ban on sales of firearms and ammunition at the Fairgrounds is intended
4 to make gun shows less profitable and effectively shutter them, it restricts his right
5 to engage in the unique types of political, educational, and commercial speech that
6 takes place at the gun show.

7 19. Plaintiff CAPTAIN JON’S GREEN CAN LOCKERS, LLC, is a
8 limited liability corporation incorporated under the laws of California, with
9 headquarters in Alpine, California. It is wholly owned and operated by Jon J.
10 Winslow, a Retired Fire Captain, who invented and, through the Captain Jon’s
11 business, sells a device that safely and effectively locks the widely popular green
12 metal surplus ammunition cans to prevent unauthorized access to their contents.
13 Captain Jon’s has no physical store but has been a regular vendor at the Crossroads
14 gun shows at the Fairgrounds since 2015. The Fairgrounds is only 45 minutes from
15 Captain Jon’s headquarters, and the next nearest gun show event is at least two
16 hours away. Captain Jon’s thus depends on the Del Mar gun show for a significant
17 portion of its annual revenues. Indeed, Captain Jon’s has built a loyal following of
18 repeat buyers at the Del Mar show, which make up about 50% of the business’ sales
19 at the gun show. What’s more, Mr. Winslow, Captain Jon’s only employee, also
20 attends gun show events at the Fairgrounds to engage in expressive activities with
21 like-minded people, including discussions related to firearms, ammunition, and
22 firearm accessories, the shooting sports, politics, and the Second Amendment.
23 Because the ban on sales of firearms and ammunition at the Fairgrounds is intended
24 to make gun shows less profitable and effectively shutter them, it restricts the lawful
25 commercial speech that Captain Jon’s and its sole owner, operator, and employee,
26 Mr. Winslow, engage in at the gun show. It also restricts Mr. Winslow’s ability to
27 engage in the unique types of political, educational, and commercial speech that
28 takes place at the gun show.

1 20. Plaintiff L.A.X. FIRING RANGE, INC., d/b/a LAX AMMO LLC, is a
2 limited liability corporation incorporated under the laws of California, with
3 headquarters in Inglewood, California. LAX Ammo is a regular vendor at the
4 Crossroads gun shows at the Fairgrounds. At the Crossroads gun show, LAX Ammo
5 sells “high quality reloads and factory new ammunition in various calibers for rifles,
6 handguns, and shotguns at affordable prices.” The ban on sales of firearms and
7 ammunition at the Fairgrounds directly burdens the right of LAX Ammo, its owners,
8 and employees, to engage in otherwise lawful commercial speech in a public forum
9 and to access firearms and ammunition for lawful purposes. And because the ban on
10 sales of firearms and ammunition at the Fairgrounds is intended to make gun shows
11 less profitable and effectively shutter them, it restricts the right of LAX Ammo, its
12 owners, and employees, to engage in the unique types of political, educational, and
13 commercial speech that takes place at the gun show.

14 21. Plaintiff CALIFORNIA RIFLE & PISTOL ASSOCIATION,
15 INCORPORATED (“CRPA”) is a nonprofit membership organization incorporated
16 under the laws of California, with headquarters in Fullerton, California. Among its
17 other activities, CRPA works to preserve and expand constitutional and statutory
18 rights of gun ownership, including the right to self-defense and the right to keep and
19 bear arms. CRPA accomplishes this through its educational offerings, publications,
20 member engagement events, and legislative advocacy and initiatives. CRPA is also a
21 regular vendor at the Crossroads gun shows at the Fairgrounds, where it engages the
22 public in discussions about the organization and its purposes, the shooting sports,
23 firearms, and firearm safety, and the Second Amendment and other political issues.
24 It also attends gun shows at the Fairgrounds to sell organization memberships,
25 advertise its events, distribute its publications, and sell its merchandise, some of
26 which includes expressly pro-gun messaging. CRPA has also hosted political rallies,
27 educational seminars, and range safety officer training at gun shows throughout the
28 state, including those at the Fairgrounds. What’s more, CRPA has tens of thousands

1 of members and supporters, many of whom (including Plaintiffs Bardack, Diaz,
2 Dupree, Irick, Solis, and Winslow) attend the Crossroads gun shows at the
3 Fairgrounds to engage in expressive activities with like-minded people, including
4 discussions related to firearms, ammunition, and firearm accessories, the shooting
5 sports, politics, and the Second Amendment. Because the ban on sales of firearms
6 and ammunition at the Fairgrounds is intended to make gun shows less profitable
7 and effectively shutter them, it restricts the rights of CRPA, its employees,
8 volunteers, members, and supporters, to engage in the unique types of political,
9 educational, and commercial speech that takes place at the gun show. Through this
10 lawsuit, CRPA represents not only its own interests as a gun show vendor, but also
11 the interests of its members as gun show attendees and supporters of the right to
12 keep and bear arms for lawful purposes.

13 22. Plaintiff SOUTH BAY ROD AND GUN CLUB, INC. (“South Bay”) is
14 a private nonprofit corporation incorporated under the laws of California, with
15 headquarters in San Diego County, California. It was formed in 1955 with a mission
16 to operate a properly managed nonprofit shooting club that is efficiently designed,
17 contracted, and safely operated with diligently maintained shooting ranges, support
18 structures, and facilities so that all authorized members and guests may use the
19 facility with pride, confidence, and satisfaction. South Bay seeks to promote and
20 encourage the safe handling and use of firearms. South Bay is a regular vendor at the
21 Crossroads gun shows at the Fairgrounds, where it engages the public in discussions
22 about the organization and its purposes, the shooting sports, and firearms and
23 firearm safety. What’s more, South Bay has some 4,000 members, many of whom
24 reside in San Diego County and attend the Crossroads gun shows at the Fairgrounds
25 to engage in expressive activities with like-minded people, including discussions
26 related to firearms, ammunition, and firearm accessories, the shooting sports,
27 politics, and the Second Amendment. Because the ban on sales of firearms and
28 ammunition at the Fairgrounds is intended to make gun shows less profitable and

1 effectively shutter them, it restricts the rights of South Bay, its employees,
2 volunteers, and members, to engage in the unique types of political, educational, and
3 commercial speech that takes place at the gun show. Through this lawsuit, South
4 Bay represents not only its own interests as a gun show vendor, but also the interests
5 of its members as gun show attendees and supporters of the right to keep and bear
6 arms for lawful purposes.

7 23. Plaintiff SECOND AMENDMENT FOUNDATION, INC. (“SAF”) is a
8 nonprofit membership organization. It is incorporated under the laws of the state of
9 Washington and was founded in 1974. SAF has over 650,000 members and
10 supporters nationwide, include thousands of members in California. The purposes of
11 SAF include education, research, publishing, and litigation. It is critical to the
12 success of SAF that its promotional material, publications, and messages about the
13 “right to keep and bear arms” reach demographic groups saturated with gun owners,
14 gun buyers, and people of the “gun culture.” Gun Shows like the one threatened by
15 the Defendants’ actions interfere with this effort. SAF is dedicated to promoting a
16 better understanding about our constitutional heritage to privately own and possess
17 firearms through educational and legal action programs designed to better inform the
18 public about gun control issues. SAF has been a pioneer in innovative defense of the
19 right to keep and bear arms, through its publications and public education programs
20 like the Gun Rights Policy Conference. Those publications and other SAF materials
21 and information are offered at gun show events. Second Amendment Foundation
22 also expends significant sums of money sponsoring public interest litigation to
23 defend its own interests to disseminate information to like-minded individuals, in
24 and individualized setting, but SAF also seeks to defend the interests of its member
25 in lawsuits like this present effort.

26 **[Defendants]**

27 24. Defendant GAVIN NEWSOM is the Governor of the state of
28 California. As Governor, he is the chief executive officer of the state of California,

1 vested with “the supreme executive power” of the state and obligated to “see that the
2 law is faithfully executed.” Cal. Const. art. 5, § 1. As for California’s District
3 Agricultural Associations, Governor Newsom oversees the operation and
4 management of each district, and he wields the statutory power to appoint and
5 remove district board members. Cal. Food & Agric. Code §§ 3959-3960. Governor
6 Newsom has exerted that significant authority to direct district decision-making
7 about the operation of gun shows at the Fairgrounds, as well as other state-owned
8 fairgrounds. State-law claims for damages are brought against Defendant Newsom
9 in his personal capacity. *Cf. Hafer v. Melo*, 502 U.S. 21, 31 (1991) (holding that
10 state officers are not “immune from personal liability under § 1983 solely by virtue
11 of the ‘official’ nature of their acts”).

12 25. Defendant ROB BONTA is the Attorney General of the state of
13 California. He is the “chief law officer” of the state and has the duty to ‘see that the
14 laws of the State are uniformly and adequately enforced.’ Cal. Const. art. 5, § 1.
15 Additionally, Defendant Bonta has “direct supervision over every district attorney”
16 within the State. *Id.* If, at any point a district attorney of the state fails to enforce
17 adequately “any law of the State,” Defendant Bonta must “prosecute any violations
18 of the law.” *Id.* Finally, Defendant Bonta, as Attorney General of the state of
19 California, “shall assist any district attorney in the discharge” of duties when
20 “required by the public interest or directed by the Governor. . . .” *Id.* The injunctive
21 and declaratory relief portions of this suit are brought against Defendant Bonta in his
22 official capacity. State-law claims for damages are brought against Defendant Bonta
23 in his personal capacity. *Cf. Hafer*, 502 U.S. at 31 (holding that state officers are not
24 “immune from personal liability under § 1983 solely by virtue of the ‘official’
25 nature of their acts”).

26 26. Defendant SUMMER STEPHAN is the District Attorney responsible
27 for enforcing the law within the county of San Diego. Under the California
28 Government Code, the district attorney must prosecute “all actions for the recovery”

1 of fines and penalties. Cal. Gov't Code § 26521. More specifically, District Attorney
2 Stephan is charged with prosecuting any violation of the California Food &
3 Agricultural Code, including section 4158 (i.e., AB 893) within the county of San
4 Diego. Cal. Food & Agric. § 8. The injunctive and declaratory relief portions of this
5 suit are brought against District Attorney Stephan in her official capacity.

6 27. Defendant 22nd DISTRICT AGRICULTURAL ASSOCIATION
7 (“District”) is a Governor-appointed Board of Directors that manages the state-
8 owned Del Mar Fairgrounds public venue. The District is governed by a nine-
9 member board, each member serving a four-year term. The District Board of
10 Directors appoints a CEO charged with the daily operations of the facilities but
11 controls activities not delegated to the CEO, including contracting with those
12 seeking to host events, including gun shows, at the Fairgrounds. It ensures that all
13 state laws governing gun shows at the Fairgrounds, including AB 893, are faithfully
14 enforced.

15 28. Defendant KAREN ROSS is the Secretary of the California Department
16 of Food & Agriculture—the entity responsible for the policy oversight of the
17 network of California fair venues, which includes the Del Mar Fairgrounds. Through
18 the Department, Secretary Ross issues guidance for governance and contracting to
19 all agricultural districts throughout California, including Defendant District, and
20 requires reporting from the districts on operational issues. The Department
21 maintains an office of legal counsel that issues policy recommendations for district
22 boards, including recommendations about bans on gun show events at state-owned
23 fairgrounds. The Department of Food & Agriculture also develops positions on
24 legislative activity affecting the 54 districts, reserving to itself the sole authority to
25 dictate legislative policy positions affecting the operations of the districts. Through
26 the Department, Secretary Ross has exerted that significant authority to silence any
27 opposition the districts might have to attempts to ban gun shows from the properties
28 they manage. State-law claims for damages are brought against Defendant Ross in

1 her personal capacity. *Cf. Hafer*, 502 U.S. at 31 (holding that state officers are not
2 “immune from personal liability under § 1983 solely by virtue of the ‘official’
3 nature of their acts”).

4 29. The true names and capacities of Defendants named as DOES 1
5 through 50, inclusive, are individual, corporate, associate or otherwise, and are
6 unknown to Plaintiffs. They are, however, believed to be responsible in some way
7 for Plaintiffs’ loss and damages. Each Doe Defendant is, and at all times mentioned
8 here was, a partner, agent, principal, co-conspirator, or are otherwise vicariously or
9 directly responsible for the acts or omissions of the other defendants or themselves.
10 They are each sued individually and are joined as party defendants. Plaintiffs thus
11 sue each Doe Defendant under rules 15 and 21 of the Federal Rules of Civil
12 Procedure. Plaintiffs are informed and believed that the Doe Defendants are all
13 California residents. Plaintiffs will amend this complaint to show such true names
14 and capacities of Doe Defendants when they have been determined.

15 **FACTUAL ALLEGATIONS**

16 **[The First Amendment Rights to Free Speech, Association & Assembly]**

17 30. The First Amendment provides, in part, that “Congress shall make no
18 law . . . abridging the freedom of speech,” U.S. Const. amend. I. It is incorporated
19 and made applicable to the states by the Fourteenth Amendment to the United States
20 Constitution and by 42 U.S.C. § 1983.

21 31. Political and ideological speech—including speech about “politics,
22 nationalism, religion, or other matters of opinion”—has long been considered the
23 core of the First Amendment. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624,
24 642 (1943).

25 32. Public property made available for lease by community groups to
26 engage in expressive activity must thus be available without regard to the viewpoint
27 sought to be expressed *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir.
28 1984). Such venues cannot be opened to some and closed to others, suppressing

1 protected expression, absent a compelling government interest. *Id.* at 571.

2 33. The First Amendment does not tolerate the suppression of speech based
3 on what some may label an unpopular viewpoint of the speaker. *John J. Hurley and*
4 *S. Boston Allied War Vets. Council v. Irish-Am. Gay, Lesbian & Bisexual Group of*
5 *Boston*, 515 U.S. 557 (1995). Indeed, “above all else, the First Amendment means
6 that the government has no power to restrict expression because of its message, its
7 ideas, its subject matter, or its content.” *Mosley*, 408 U.S. at 95 (emphasis added);
8 *see also Ashcroft*, 535 U.S. at 573.

9 34. A content-based restriction that implicates political or ideological
10 speech must generally survive “strict scrutiny,” where the government must show
11 that the law is narrowly tailored to achieve a compelling government interest. *See*
12 *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

13 35. Even purely commercial speech—speech that “does no more than
14 propose a commercial transaction” or relates solely to the economic interests of the
15 speaker and audience—receives First Amendment protection if it is not misleading
16 and concerns a lawful activity. *Cent. Hudson Gas & Elec. Corp. v. Public Serv.*
17 *Comm’n*, 447 U.S. 557 (1980). “An offer to sell firearms or ammunition is speech
18 that ‘does no more than propose a commercial transaction.’ Such an offer is,
19 therefore, commercial speech within the meaning of the First Amendment.” *Nordyke*
20 *v. Santa Clara*, 110 F.3d 707, 710 (9th Cir. 1997).

21 36. Government restrictions on commercial speech are constitutional *only*
22 if they directly advance a substantial government interest and are not broader than
23 necessary to serve that interest. *Cent. Hudson*, 447 U.S. 557; *see also Lorillard*
24 *Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (holding that tobacco marketing
25 restrictions must be the narrowest means of achieving an asserted state interest);
26 *Tracy Rifle & Pistol LLC v. Harris*, 339 F. Supp. 3d 1007, 1018 (E.D. Cal. 2018)
27 (holding that a California law prohibiting the display of a handgun or a placard
28 advertising the sale of a handgun in a manner that is visible from the outside of a

1 gun dealer’s premises is unconstitutional).²

2 37. The First Amendment protects not only the right of free speech, but
 3 also “the right of the people peaceably to assemble.” U.S. Const., amend. I. The
 4 right to assemble often merges with the right to free expression. For “[e]ffective
 5 advocacy of both public and private points of view, particularly controversial ones,
 6 is undeniably enhanced by group association.” *NAACP v. Patterson*, 357 U.S. 449,
 7 462 (1958). “Governmental action which may have the effect of curtailing the
 8 freedom to associate is subject to the *closest* scrutiny.” *Id.* at 461-62.

9 **[The Second Amendment Right to Keep & Bear Arms]**

10 38. The Second Amendment to the United States Constitution declares that
 11 “the right of the people to keep and bear arms shall not be infringed.” U.S. Const
 12 amend. II.

13 39. The Second Amendment protects a fundamental, individual right that
 14 applies against both the federal government and the states. *District of Columbia v.*
 15 *Heller*, 554 U.S. 570, 592 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750
 16 (2010).

17 40. The Supreme Court recently confirmed that Second Amendment
 18 questions are to be analyzed in light of “text, history, and tradition.” “When the
 19 Second Amendment’s plain text covers an individual’s conduct, the Constitution
 20 presumptively protects that conduct. The government must then justify its regulation
 21 by demonstrating that it is consistent with the Nation’s historical tradition of firearm
 22 regulation.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, -- U.S. --, 142 S. Ct. 2111,
 23

24 _____
 25 ² Though this is currently the controlling test for so-called “commercial speech,”
 26 modern case law is trending toward extending *full* First Amendment protection to all
 27 speech, including “commercial speech.” See *Sorrell v. IMS Health, Inc.*, 564 U.S.
 28 552 (moving toward providing commercial speech the same level of heightened
 protection long accorded to political speech); see also *44 Liquormart, Inc. v. Rhode
 Island*, 517 U.S. 484, 523 (1996) (Thomas, J., concurring in part and concurring in
 judgment) (“I do not see a philosophical or historical basis for asserting that
 ‘commercial’ speech is of ‘lower value’ than ‘noncommercial’ speech. Indeed, some
 historical materials suggest to the contrary.”).

1 2126 (2022) (citing *Heller*, 554 U.S. at 634).

2 41. The Second Amendment protects the right to possess and use arms that
3 are “typically possessed by law-abiding citizens for lawful purposes.” *See, e.g.,*
4 *Heller*, 554 U.S. at 624-25; *see also Caetano v. Massachusetts*, 577 U.S. 411, 136 S.
5 Ct. 1027, 1027-28 (2016). That protection “extends, prima facie, to all instruments
6 that constitute bearable arms, even those that were not in existence at the time of the
7 founding.” *Heller*, 544 U.S. at 582. It also includes the ammunition necessary to use
8 firearms for their core lawful purposes. *See Jackson v. City & Cnty. of San*
9 *Francisco*, 746 F.3d at 967-68 (recognizing that “without bullets, the right to bear
10 arms would be meaningless”).

11 42. Finally, the Second Amendment protects the corresponding right to
12 obtain protected firearms and ammunition. *See id.* at 967 (“[T]he right to possess
13 firearms for protection implies a corresponding right’ to obtain the bullets necessary
14 to use them.”); *see also Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)
15 (holding that the right to possess firearms implies a corresponding right to access to
16 firing ranges to train to be proficient with such firearms)

17 **[The Fourteenth Amendment Right to Equal Protection Under the Law]**

18 43. The Fourteenth Amendment to the United States Constitution,
19 enforceable under 42 U.S.C. § 1983, provides that no state shall deny to any person
20 within its jurisdiction the equal protection of the laws.

21 44. Singling out speakers because of the content of their speech also
22 violates their fundamental rights under the Equal Protection Clause. U.S. Const.
23 amend. XIV.

24 45. If unequal treatment occurs in the context of exercising a fundamental
25 right, or the government is motivated by animus toward a disfavored group, courts
26 apply heightened scrutiny. *See Loving v. Virginia*, 388 U.S. 1, 11 (1967); *see also*
27 *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517
28 U.S. 620 (1996). Indeed, “[b]ecause the right to engage in political expression is

1 fundamental to our constitutional system, statutory classifications impinging upon
2 that right must be narrowly tailored to serve a compelling governmental interest.”
3 *Austin v. Mich. Chamber of Com.*, 494 U.S. 652, 666 (1990), *rev’d on other*
4 *grounds, Citzs. United v. Fed. Elec. Comm’n*, 558 U.S. 310, 130 S. Ct. 876 (2010).

5 46. The Fourteenth Amendment case law extending equal protection
6 beyond the immutable characteristics of race, color, religion, and national origin, has
7 also subsumed exercising fundamental rights, including, but not limited to, the First
8 Amendment. The Fourteenth Amendment’s Equal Protection umbrella thus
9 necessarily includes exercising rights to buy and sell Second Amendment artifacts
10 (in accordance with state and local laws regulating such sales) at any public facility
11 owned, operated, or managed by or on behalf of any state or subdivision thereof.

12 **[Regulation of Gun Show Events in California]**

13 47. The state of California has the most rigorous regulatory regime for
14 commerce in firearms and ammunition in the United States. That regulatory regime
15 applies to the operation of gun show events throughout California. The laws related
16 to the acquisition and sale of firearms is perhaps stricter at a gun show, than at brick-
17 and-mortar stores or internet sales.

18 48. Only state approved, licensed gun show “producers” may operate gun
19 shows in California. All gun show producers, including Plaintiff Crossroads, must
20 have an individual (the “promoter”) who holds a valid “Certificate of Eligibility”
21 issued by the California Department of Justice.

- 22 49. Gun show producers must also, among other things:
- 23 a. Certify that they are familiar with all California laws about gun
24 shows, Cal. Penal Code § 27200;
 - 25 b. Possess a minimum of \$1,000,000 liability insurance, *id.*;
 - 26 c. Provide an annual list of shows or events to be held to the
27 California Department of Justice, *id.*; and
 - 28 d. Notify the California Department of Justice no later than 30 days

1 before the gun show or event of any changes to the above, *id.*
2 e. Make available to law enforcement a complete and accurate list
3 of all vendors that will participate in the show to sell, lease, or
4 transfer firearms. Cal. Penal Code § 27205.

5 50. Gun show promoters must submit an annual event and security plan and
6 schedule to the California Department of Justice and any local law enforcement
7 agency. The plan must include:

- 8 a. Type of show or event;
- 9 b. Estimated number of vendors offering for sale or display
10 firearms;
- 11 c. Estimated number of attendees;
- 12 d. Number of entrances and exits at the event;
- 13 e. Location, dates, and times of the event;
- 14 f. Contact person and telephone number for both promoter and
15 facility;
- 16 g. Number of sworn peace officers employed by the producer or
17 facility who will be present at the event;
- 18 h. Number of non-sworn security personnel employed by the
19 producer or the facility who will be present at the event; and
- 20 i. Promoters must inform all prospective vendors of all California
21 laws about gun shows.

22 Cal. Penal Code §§ 27210, 27215.

23 51. Promoters must also provide a list of all prospective vendors and
24 designated firearm transfer agents who are licensed firearm dealers to the California
25 Department of Justice no later than seven days before the event to determine
26 whether the vendor possess a valid license and are thus eligible to participate in the
27 event. Cal. Penal Code § 27220.

28 52. If a vendor is not approved by the California Department of Justice or

1 fails to comply with all applicable California laws, they cannot participate. Cal.
2 Penal Code § 27220.

3 53. If a promoter fails to inform all prospective vendors of California’s
4 state laws or fails to submit a list of all prospective vendors to the California
5 Department of Justice, the event cannot begin. Cal. Penal Code § 27230.

6 54. A promoter must have written contracts with each vendor selling
7 firearms at the event. Cal. Penal Code § 27235.

8 55. Promoters must post signs in a readily visible location at each public
9 entrance to the event that includes all of these notices:

- 10 ■ “This gun show follows all federal, state, and local firearms and
11 weapons laws, without exception.”
- 12 ■ “Any firearm carried onto the premises by any member of the public
13 will be checked, cleared of any ammunition, and secured in a manner
14 that prevents it from being operated, and an identification tag or sticker
15 will be attached to the firearm before the person is allowed admittance
16 to the show.”
- 17 ■ “No member of the public under the age of 18 years shall be admitted
18 to the show unless accompanied by a parent, grandparent, or legal
19 guardian.”
- 20 ■ “All firearm transfers between private parties at the show shall be
21 conducted through a licensed dealer in accordance with applicable state
22 and federal laws.”
- 23 ■ “Persons possessing firearms in this facility must have in their
24 immediate possession government-issued photo identification and
25 display it upon the request to any security officer or any peace officer,
26 as defined in Section 830.”

27 Cal. Penal Code § 27240(a).

28 56. Producers must also post signs in a readily visible location at each

1 entrance to the parking lot stating: “The transfer of firearms on the parking lot of
2 this facility is a crime.” Cal. Penal Code § 27240(b).

3 57. A willful failure of a producer to comply with any of California’s
4 applicable laws is a misdemeanor punishable with a fine of up to \$2,000 dollars and
5 would render the producer ineligible for a gun show producer license for up to one
6 year, which could cost a producer hundreds of thousands of dollars in lost revenue
7 for a willful infraction. Cal. Penal Code § 272459(c).

8 58. Except in narrow exceptions applicable only to law enforcement, actual
9 firearm transfers are already prohibited from taking place at any gun show in
10 California.³ The firearm sale can be started through an on-site licensed “transfer
11 dealer,” but it cannot be completed on site. Instead, purchasers must pick up their
12 purchase at a licensed firearm retailer at a different licensed location--but only after
13 a 10-day waiting period and background check. There is no “Gun Show Loophole”
14 at gun shows operated in accordance with California Law.

15 59. The Gun Show Act of 2000, California Penal Code sections 27200-
16 27245, places even more restrictions on the operation of a gun show in California by
17 requiring that:

- 18 a. Vendors not display, possess, or offer for sale any firearms,
- 19 knives, or weapons for which possession or sale is prohibited;
- 20 b. Vendors acknowledge that they must know and comply with all
- 21 applicable federal, state, and local laws dealing with the
- 22 possession and transfer of firearms;

23
24 ³ Cal. Penal Code § 27310 (requiring all firearm transfers at gun shows to
25 comply with state and federal law); *id.* § 26805 (prohibiting the sale and transfer of a
26 firearm by a licensed dealer at any location other than the dealer’s premises as listed
27 on their license but allowing dealer to prepare documents at a gun show in
28 preparation for completion of the sale at the dealer’s premises); *id.* § 27545
(requiring all firearm transactions to be processed through a licensed dealer when
neither party is a licensed firearm dealer).

- 1 c. Vendors will not engage in activities that incite or encourage hate
- 2 crimes;
- 3 d. Vendors will process all transfers of firearms through licensed
- 4 firearms dealers as required by state law;
- 5 e. Vendors will verify that all firearms in their possession will be
- 6 unloaded and that the firearms will be secured in a manner that
- 7 prevents them from being operated except for brief periods, when
- 8 the mechanical condition of the firearm is being demonstrated to
- 9 prospective buyer;
- 10 f. Vendors provide all required information under Penal Code §
- 11 27320;
- 12 g. Vendors will not display or possess black powder or offer it for
- 13 sale;
- 14 h. Ammunition be displayed only in closed original factory boxes
- 15 or other closed containers, with the only exception for showing
- 16 the ammunition to a prospective buyer;
- 17 i. No member of the public under 18 years old may enter a gun
- 18 show unless accompanied by a parent or legal guardian;
- 19 j. No person other than security personnel or law enforcement
- 20 possess both a firearm and ammunition for that firearm at the
- 21 same time, except for vendors who are selling both.

22 60. Plaintiff Crossroads diligently operates all of its gun shows in
 23 accordance with state law, and it takes immediate remedial measures if irregularities
 24 are discovered.

25 61. Vendors at Crossroads gun shows, like Plaintiffs Walsh and LAX
 26 Ammo, are some of the same licensed vendors that have brick and mortar stores in
 27 the community or operate legally over the internet and are registered with the state
 28 as lawful businesses.

- 1 d. Defense of community
- 2 e. Defense of state
- 3 f. Defense of nation
- 4 g. Hunting
- 5 h. Target shooting
- 6 i. Gunsmithing
- 7 j. Admiration of guns as art
- 8 k. Appreciation of guns as technological artifacts
- 9 l. Study of guns as historical objects.

10 68. Gun shows, in general, and the Del Mar show, in particular, are cultural
 11 marketplaces for those members of the “gun culture” who attend to celebrate their
 12 constitutional rights and to pass their beliefs in patriotism and the rights of the
 13 individual on to the next generation. It is a place where parents take their children
 14 and grandparents take their grandchildren to share with them, among other things, a
 15 love of historical firearms, stories of American war heroes, and their love of hunting.

16 69. Gun shows, in general, and the Del Mar show, in particular, are places
 17 where parents can learn to protect their families and their homes, and how to stay in
 18 compliance with California’s ever-changing gun laws.

19 70. Gun shows, in general, and the Del Mar show, in particular, are places
 20 where people can discuss the positions of political candidates and whether those
 21 values line up with their own beliefs in protecting the Second Amendment.

22 71. Gun shows, in general, and the Del Mar show, in particular, are held
 23 and promoted, and considerable investment is made, precisely to promote and
 24 “normalize” the “gun culture” and the constitutional principles that gun show
 25 participants hold dear.

26 72. This forum is vital especially in California where government actors at
 27 all levels of government (federal, state, and local) are openly hostile to the cultural
 28 values of the Second Amendment and where supporters of those cultural values are

1 not considered “mainstream.”

2 73. Participating in “gun culture” is an important reason people attend
3 Crossroads gun shows as vendors, exhibitors, customers, and guests (even if
4 particular vendors or attendees are not in the firearm business or in the market to
5 buy a gun at a particular event).

6 74. While less than 40% of vendors at Crossroads’ events offer firearms or
7 ammunition for sale (the remaining vendors offer accessories, collectibles, home
8 goods, lifestyle products, food, and other refreshments), the principle draw of gun
9 shows is the availability of firearms and ammunition for sale.

10 75. Indeed, many people attend gun shows to learn about the technology
11 and use of various firearms and ammunition when they are considering whether to
12 buy or sell a firearm (or ammunition) and to exchange knowledge with experienced
13 dealers and firearm enthusiasts that they cannot get anywhere else. *Teixeira v.*
14 *County of Alameda*, No. 13-17132 (9th Cir. 2017).

15 76. Without the ability to buy and sell firearms and ammunition at gun
16 shows at the Fairgrounds, the events will no longer be able to draw many of its
17 vendors and attendees, making the events unprofitable and economically infeasible.

18 77. Defendants wish to end this celebration of “gun culture” and Second
19 Amendment rights because they do not understand the culture or the people. To that
20 end, Defendants have attempted, first through an unconstitutional moratorium on
21 gun show events, *see B&L Prods. v. 22nd Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226
22 (S.D. Cal. 2019), and then through AB 893’s ban on sales of firearms and
23 ammunition at the Fairgrounds, to permanently deprive Plaintiffs of their right to
24 engage in constitutionally protected conduct at the Fairgrounds.

25 **[The Del Mar Fairgrounds Venue]**

26 78. The Fairgrounds is owned by the state of California and managed by
27 the Board of Directors of Defendant District, which must regularly report its
28 activities to the California Department of Food & Agriculture. *See* Table of

1 Fairground Information (Dec. 31. 2010) (attached as Exhibit 1).

2 79. Among other things, Defendant District is charged with maintaining the
3 Fairgrounds and ensuring that is used for public purposes.

4 80. Defendant Ross, as the Secretary of the California Department of Food
5 & Agriculture, oversees the operation of the various agricultural districts in the state,
6 including Defendant District.

7 81. The California Department of Food & Agriculture, under Secretary
8 Ross, provides policies and guidance for operating all agricultural districts in the
9 state, including the use of facilities as directed by Department policy.

10 82. The California Department of Food & Agriculture maintains a *C DFA*
11 *Contracts Manual for Agricultural Districts* (“Manual”). Section 6.25 of the Manual
12 states that “[w]hether or not a fair rents out their facilities for gun shows is a policy
13 decision to be made by the fair board and their community.”

14 83. Because of its large size and unique urban location, the Fairgrounds is a
15 unique, publicly owned venue. There is no other public or private venue of similar
16 size in the area. Effectively, the government has a monopoly on venues of this size
17 and type in the area.

18 84. The Fairgrounds is a state-owned property maintained and opened for
19 use by the public. By virtue of being opened by the state for use by the public, it is a
20 “public forum,” from which the government may not generally exclude expressive
21 activity. *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 569 (9th Cir. 1984)
22 (quoting *Perry Educ. Ass’n v. Perry Loc. Educators’ Assn*, 460 U.S. 37, 45-46
23 (1983)).

24 85. The Fairgrounds is used by many different public groups and is a major
25 event venue for large gatherings of people to engage in expressive activities,
26 including concerts, festivals, and industry shows.

27 86. The Fairgrounds actively promotes the use of the property by the public
28 through contracting for available space at the Fairgrounds.

1 87. Indeed, the Fairgrounds plays host not only to events, like the San
2 Diego County Fair, produced by Defendant District, but to “events and activities
3 produced by third-party promoters, which range from concerts and festivals, trade
4 shows and consumer expos, equestrian competitions and animal shows, sporting
5 events, fundraisers and personal celebrations.” Del Mar Fairgrounds, About Us,
6 <https://delmarfairgrounds.com/about-us/> (last visited Sept. 29, 2021).

7 88. The Fairgrounds’ 2008 Master Plan, which is still in use, states that
8 Defendant District’s mission is “[t]o manage and promote a world-class, multi-use,
9 public assembly facility with an emphasis on agriculture, education, entertainment,
10 and recreation in a fiscally sound and environmentally conscientious manner *for the*
11 *benefit of all.*” 22nd District Agricultural District, *2008 Master Plan: Del Mar*
12 *Fairgrounds and Horsepark* 13 (April 2011), available at
13 https://delmarfairgrounds.com/pdf/11EIR_000_2008_master_plan.pdf (last visited
14 Sept. 29, 2021) (emphasis added).

15 89. The Fairgrounds has held non-gun-show events in which criminal
16 activity has taken place—including theft and a shooting. These criminal incidents
17 are no more likely to happen at a gun show than at other types of events, but the
18 Defendants have not banned these promoters or their events.

19 **[Contracting for Use of the Fairgrounds]**

20 90. Defendant District has a process for securing returning contractors who
21 would like to secure specific dates into future years before the contracts can be
22 drafted and executed.

23 91. Each year, returning and regular contractors, including Plaintiff
24 Crossroads, submit preferred dates for the next calendar year, so Defendant District
25 can confirm availability and so that Plaintiff Crossroads can begin to reserve
26 vendors and materials for the show weekends.

27 92. Because of the size and extensive planning that goes into producing gun
28 show events, Defendant District has—for decades—provided and held preferred

1 dates for Plaintiff Crossroads, a long-time contractor, until the contracts can fully be
2 executed.

3 93. Defendant District’s “hold” system essentially operates as a right of
4 first refusal to the benefit of returning contractors. For example, if another contractor
5 wanted the same preferred dates as Plaintiff Crossroads, Defendant District would
6 not allow another vendor to come in and take those dates from Plaintiff Crossroads
7 even though there is no official contract in place yet.

8 94. The “hold” system also provides Defendant District with the security of
9 knowing its venue is booked with experienced and knowledgeable repeat contractors
10 that have a demonstrated record of running safe and profitable events at the
11 Fairgrounds.

12 95. The “hold” system also permits the promoter to spend advertising
13 dollars to promote its events, but when governments announce plans to ban gun
14 shows at particular venues, vendors, and patrons rationally make plans to attend gun
15 show events at other venues or seek other states to conduct their commerce.

16 96. Defendant District also considers the “hold” dates and shows during
17 budget discussions which are typically held in the year before the contracts are
18 commenced.

19 97. Upon information and belief, Plaintiffs allege that the “hold” system is
20 widely used by similar state fair board venues and is standard industry practice.

21 98. Plaintiff Crossroads, after doing business in this customary manner for
22 more than 30 years, had no reason to doubt that Defendant District would continue
23 to honor such relationship with Plaintiff Crossroads.

24 **[Previous Ban on Gun Shows at the Fairgrounds & Resulting Litigation]**

25 99. Despite the long history that Plaintiff Crossroads has had with the
26 Fairgrounds in operating safe and legal events, the political environment has become
27 hostile toward gun show events and (more generally) toward the “gun culture” in
28 recent years.

1 100. Indeed, gun-show-banning activists are at work throughout the state
2 and the country to ban *all* gun shows *everywhere*, not because they are “dangerous
3 for the community,” but because they do not subscribe to the same values as gun
4 show promoters, vendors, and participants.

5 101. These activists rely on unfounded fears about the security of gun show
6 events, false claims that gun shows are inherently dangerous because they normalize
7 the “gun culture,” and stereotypes about the people that attend gun shows. *See City*
8 *of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (striking an ordinance
9 requiring a special permit for a group home for the intellectually disabled and citing
10 direct evidence of negative attitudes toward persons with disabilities expressed by
11 community members and recorded in the legislative history).

12 102. In 2017, gun-show-banning activists using the same tactics described
13 above began pressuring Defendant District to prohibit gun show events at the
14 Fairgrounds.

15 103. In response, Defendant District began a series of meetings and public
16 comment periods to determine whether it would continue to contract with Plaintiff
17 Crossroads or other promoters for the use of the Fairgrounds for gun show events.

18 104. Defendant District also engaged in communications with other
19 government agencies and with Crossroads to determine whether gun shows at the
20 Fairgrounds were operated in full compliance with state and federal law, and if the
21 events pose any real danger to the community.

22 105. Defendant District also appointed a non-public, ad hoc committee of
23 two members of the District to investigate the gun show operation at the Fairgrounds
24 and report to the District with recommendations for the continued use of the
25 Fairgrounds for gun show events.

26 106. On April 23, 2018, Defendant Newsom sent a letter to the District
27 urging the District to ban gun shows at the Fairgrounds, citing his concerns that
28 “[p]ermitting the sale of firearms and ammunition on state-owned property only

1 perpetuates America’s gun culture.” Letter from Governor Gavin Newsom to Board
2 Members of 22nd District Agricultural Association (April 23, 2018) (attached as
3 Exhibit 2).

4 107. On September 10, 2018, Assembly member Todd Gloria (D) sent a
5 letter to the District, stating his “firm belief that the State of California should in no
6 way help to facilitate the sale of firearms.” He also praised the District’s
7 “willingness to consider options for limiting or eliminating these gun shows” and
8 vowed to “act by way of legislation should the 22nd DAA Board be unable to take
9 meaningful action.” Letter from Assembly Member Todd Gloria to Board Members
10 of 22nd District Agricultural Association (Sept. 10, 2018) (attached as Exhibit 3).

11 108. At a public hearing, the ad hoc “Contracts Committee” recommended
12 that the District “not consider any contracts with the producers of gun shows beyond
13 December 31st 2018 until the District has put into place a more thorough policy
14 related to the conduct of gun shows.

15 109. In testimony before the District at the September 11, 2018, hearing,
16 Patrick Kerins, who was then the Public Safety Director for the District, reported on
17 the laws that apply to gun shows in California, as well as Plaintiff Crossroads
18 history of events at the Fairgrounds.

19 110. During his comments at the September 11, 2018, hearing, Mr. Kerins
20 referenced a memorandum that he prepared for the District’s Board of Directors in.
21 In that memorandum, he reported that:

22 As Chief of Security for the 22nd DAA, I routinely inspect the
23 gun show and on a regular basis communicate with the San
24 Diego Sheriff’s Department re: compliance with all the
25 applicable laws and regulations and the Security Plan required
26 by the California Department of Justice Firearms Division. I
27 recently spoke to Detective Jaime Rodriguez of the Sheriff’s
28 North Coastal Station who supervises the four Deputies
assigned to the gun show security detail and Detective Stacey
Smith who is assigned to the Sheriff’s Licensing Division. Both
Detectives said the Crossroads of the West Gun Show is in
complete compliance with all the local, State and Federal laws
that govern gun shows and that there have not been any

violations of law. Both Detectives had high praise for the show promoters and the 22 DAA staff.

Memorandum of Patrick Kerins, Public Safety Director, 22nd District Agricultural Association, to Board of Directors, 22nd District Agricultural Association, at 17 (2016) (attached as Exhibit 14).

111. Mr. Kerins’ 2016 memorandum continued:

In my considered opinion, as Chief of Security for the 22 DAA for the last 17 years, the CROSSROADS OF THE WEST GUN SHOWS (5 per year) are in compliance with all the local, state and federal regulatory statutes and have operated without any violations of those laws Under the laws of the State of California you must comply with all the laws of purchasing, selling and/or transferring of firearms at a gun show as you would at licensed gun dealer’s store Due to the strict California gun show regulations there are no so called loop holes that you so often hear about in the media.

Ex. 14 at 17.

112. Ultimately, the long process of meetings, public comment, and communications with stakeholders resulted in no finding that allowing the (already heavily regulated) gun show events to continue at the Fairgrounds posed a definite or unique risk to public safety.

113. Indeed, Defendant District presented *no* evidence of any safety concerns within the community that could be linked to the over-30-year-old gun show at the Fairgrounds.

114. To the contrary, banning highly regulated gun shows in California communities, like Del Mar, serves to distort the gun market, potentially pushing California gun buyers into less restrictive gun-buying environments.⁴

⁴ Joyce Lupiani, *Nevada Gun Shows Tied to California Gun Violence*, KTNV (2017), <https://www.ktnv.com/news/crime/study-nevada-gun-shows-tied-to-california-gun-violence> (last visited Jan. 21, 2019); Brett Israel, *Study: Gun Deaths, Injuries in California Spike Following Nevada Gun Shows*, Berkeley News (2017), <https://news.berkeley.edu/2017/10/23/embargoed-until-1023-2pm-pdt-study-gun-deaths-injuries-in-california-spike-following-nevada-gun-shows/> (last visited Jan. 21, 2019). *But see* Mariel Alper, Ph.D., & Lauren Glaze, Bureau of Justice Statistics, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*

1 115. Even so, relying on contrived possibilities of unknown dangers and
2 unfounded claims that prohibiting gun shows might prevent suicide and violent
3 crime because the “gun culture” would be censored,⁵ Defendant District voted to
4 impose a one-year moratorium (for the year 2019) on gun show events at the
5 Fairgrounds while they study potential safety concerns.

6 116. Plaintiffs Crossroads, Bardack, Diaz, Dupree, Irick, Walsh, CRPA,
7 South Bay, SAF, and others sued Defendants District, Ross, and others in federal
8 court under to prevent enforcement of the moratorium, alleging violations of various
9 constitutional rights, including the rights to free speech, assembly, and equal
10 protection. *See B&L Prods. v. 22nd Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226 (S.D.
11 Cal. 2019) (“*B&L I*”) (attached as Exhibit 4).

12 117. Denying Defendant District’s motion to dismiss and granting plaintiffs
13 a preliminary injunction—*sua sponte*—on the ground that plaintiffs were
14 exceedingly likely to succeed on the merits of their constitutional claims, the court
15 in *B&L I* temporarily enjoined the enforcement of the District’s gun show
16 moratorium and ordered the District to contract with Crossroads as it would any
17 other similar event promoter at the Fairgrounds. Ex. 4.

18 118. Soon after, the *B&L I* plaintiffs negotiated a settlement with the
19 District, represented by attorneys for the California Department of Justice,
20 permanently terminating the 2019 gun show moratorium, reinstating Crossroads’
21

22 (2019), available at <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf> (last visited
23 Jan. 21, 2019); Garen J. Wintemute, et al., *Gun Shows and Gun Violence: Fatally
24 Flawed Study Yields Misleading Results*, 100 Am. J. Pub. Health 1856-60 (2010),
25 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2936974/> (last visited
26 Jan. 21, 2019).

26 ⁵ *But see* Alvaro Castillo-Caniglia, Ph.D., et al., *California’s Comprehensive
27 Background Check and Misdemeanor Violence Prohibition Policies and Firearm
28 Mortality*, *Annals of Epidemiology* (Oct. 11, 2018) (noting that, in California
communities with the most stringent gun restrictions, there has been a marked
increase in both property and violent crime).

1 right to promote gun show events at the Fairgrounds, and permanently barring the
 2 District from unilaterally halting B&L’s gun show events at the Fairgrounds. *See*
 3 Parties’ Joint Notice of Settlement and Motion for Dismissal, *B&L Prods. v. 22nd*
 4 *Dist. Agric. Ass’n*, 394 F. Supp. 3d 1226 (S.D. Cal. 2020) (attached as Exhibit 5).

5 **[California’s Assembly Bill 893 (Gloria)]**

6 119. Making good on his threat, and fully aware of the court’s decision in
 7 *B&L I*, Assembly member Gloria introduced Assembly Bill 893 (“AB 893”) on or
 8 about February 20, 2019. Assem. Bill 893, 2019-2020 Reg. Sess. (Cal. 2019)
 9 (attached as Exhibit 6).

10 120. AB 893, which added section 4158 to the California Food &
 11 Agricultural Code, bars any “officer, employee, operator, lessee, or licensee of the
 12 [District]” from “contract[ing] for, authoriz[ing], or allow[ing] the sale of any
 13 firearm or ammunition on the property or in the buildings that comprise the Del Mar
 14 Fairgrounds....” Violation of the law is a misdemeanor. *Id.*; *see also* Cal. Food &
 15 Agric. § 9.

16 121. AB 893 does not bar the possession of firearms or ammunition on the
 17 property or in the buildings that comprise the Del Mar Fairgrounds. Ex. 6.

18 122. The text of AB 893 expressly identifies the ongoing presence at the
 19 Fairgrounds of “marketplaces popularly known as ‘gun shows,’ at which firearms
 20 and ammunition and other items are sold to the public approximately five times a
 21 year.” *Id.*

22 123. AB 893 also clearly recognizes that “[p]romoters maintain relationships
 23 with a core group of vendors, some selling guns and some selling other
 24 merchandise, who travel as the schedule dictates from city to city and state to state
 25 and in the West, for example, many of the same vendors can be seen at Crossroads
 26 of the West Gun Shows from San Francisco, California, to Tucson, Arizona.” *Id.*

27 124. AB 893 failed to identify, however, any real public safety or security
 28 concern specifically related to the existence of gun show events at the Fairgrounds.

1 125. To be sure, AB 893 claims, without support, that “[g]un shows bring
2 grave danger to a community” and that “dangerous incidents” have taken place at
3 gun shows at the Fairgrounds, including “an official vendor accused of trafficking
4 illegal firearms, sales of firearms to individuals registered in the Department of
5 Justice Bureau of Firearms Armed Prohibited Persons System, and illegal
6 importation of large-capacity magazines.” *Id.* But AB 893 makes no effort to show
7 that these incidents are any more likely to occur at gun shows in California, which
8 are regulated at least as heavily as retailers operating out of brick-and-mortar stores.

9 126. AB 893 also claims that “between the years 2013 and 2017, the San
10 Diego County Sheriff recorded 14 crimes” at gun shows at the Fairgrounds. *Id.* But
11 even if the Legislature had proof of these crimes, AB 893 makes no attempt to
12 compare this to the number of crimes recorded at other similarly sized events at the
13 Fairgrounds during that period. Nor does it distinguish between the type of crimes
14 this bill purports to target (e.g., illegal firearm transfers, straw purchases, sales of
15 illegal firearms or accessories) and run-of-the-mill crimes likely to occur whenever
16 thousands of people descend on one venue for a trade show or fair (e.g., petty thefts,
17 parking or traffic violations, public drunkenness, and simple assault).

18 127. Instead, AB 893’s legislative history reveals only general concerns
19 about gun violence occurring all over the country and legislators’ beliefs that the
20 state should not profit from sales of firearms and ammunition. *See* Matthew
21 Fleming, Assem. Comm. Pub. Safety, Bill Analysis Re: AB 819 (Gloria), 2019-2020
22 Reg. Sess., at 3 (Cal. 2019) (attached as Exhibit 7).

23 128. Indeed, AB 893 opens with a list of tragedies, including the horrific
24 mass murders that took place at Columbine High School, Sandy Hook Elementary
25 School, and Marjory Stoneman Douglas High School—none of which were carried
26 out with firearms traced to gun show events at the Fairgrounds. Ex. 6.

27 129. What’s more, a March 26, 2019, analysis of AB 893 presented to the
28 Assembly Committee on Public Safety quoted claims by Assembly member Gloria,

1 the bill’s sponsor, that “[t]here is an ever apparent link between the gun violence we
2 see virtually every week and the number of guns in our communities.” These
3 statements, however, made no attempt to link gun violence to gun shows, generally,
4 or to gun shows at the Fairgrounds, specifically. Ex. 7 at 2.

5 130. The Public Safety Committee’s March 26, 2019, analysis also quoted
6 Gloria as lamenting that “the State of California should not be profiting or
7 benefitting from the sale of firearms.” He continued, “[f]undamentally, I believe it is
8 wrong for the state of California to profit or to benefit from the sale of firearms and
9 ammunition.” Ex. 7 at 2.

10 131. Assembly member Lorena Gonzalez, who co-sponsored AB 893,
11 expressed a similar sentiment: “The State of California shouldn’t be in the business
12 of using our public land to join with the firearms industry to profit off the sale of
13 guns and ammo.” Chris Jennewein, *Assembly Passes Todd Gloria’s Bill to Thwart*
14 *Gun Shows at Del Mar Fairgrounds*, timesofsandiego.com (April 25, 2019),
15 [https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/)
16 [to-thwart-gun-shows-at-del-mar-fairgrounds/](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/) (last visited Sept. 29, 2021).

17 132. The Public Safety Committee’s March 26, 2019, analysis also cited a
18 decade-old report from the Violence Prevention Research Program at the UC Davis
19 School of Medicine, identifying gun shows as a source of illegally trafficked
20 firearms. Ex. 7 at 3.

21 133. But neither the VPRP report nor AB 893’s legislative history links any
22 illegally trafficked firearm or gun used in crime to gun shows at the Fairgrounds (or
23 even to gun shows in California). See Garen Wintemute, MD, *Inside Gun Shows:*
24 *What Goes on When Everybody Thinks Nobody’s Watching*, ch. 1 (2009) (attached
25 as Exhibit 8). This is unsurprising because, as the study states, “[m]uch of the
26 concern about gun shows as a source of crime guns focuses on private party gun
27 sales, *since no background checks are conducted and no records are kept.*” *Id.* at 32.
28 But such concerns are simply irrelevant in California where private party transfers—

1 even those started at gun shows—must be processed by a licensed firearm dealer
2 and are subject to background checks and registration under state law.

3 134. The VPRP report cited by the Public Safety Committee’s analysis of
4 AB 893 also tries to implicate licensed firearm retailers operating at gun shows as
5 sources of crime guns in America, claiming that “30% of dealers with gun show
6 sales, but 22% of all dealers, had previously had a crime gun traced to them.” But it
7 expressly recognizes that “in California, where both gun shows themselves and gun
8 commerce generally are regulated, *sales at gun shows are not a risk factor among*
9 *licensed retailers for disproportionate sales of crime guns.*” *Id.* at 33 (emphasis
10 added).

11 135. The Public Safety Committee’s March 26, 2019, analysis also cited a
12 report from the Government Accountability Office, claiming that a GAO report
13 “regarding gun trafficking to Mexico confirmed that many traffickers buy guns at
14 gun shows.” Ex. 7 at 3.

15 136. But again, neither the BATFE report nor AB 893’s legislative history
16 links any illegally trafficked firearm to gun shows at the Fairgrounds (or even to gun
17 shows in California). *See* U.S. Gov’t Accountability Off., GAO-16-223, *Firearms*
18 *Trafficking: U.S. Efforts to Combat Firearms Trafficking to Mexico Have Improved,*
19 *but Some Collaboration Challenges Remain* (2016) (attached as Exhibit 9). To be
20 sure, the GAO report identifies U.S. Southwest border states, including Texas
21 (41%), California (19%), and Arizona (15%), as the largest sources of firearms
22 illegally trafficked into Mexico from the United States. *Id.* at 14. But it does not
23 trace these illegally trafficked guns to licensed dealers, generally, or to those
24 operating at gun shows, specifically. Rather, it says only that “there were about
25 10,134 licensed dealers and pawnbrokers in the four Southwest border states, many
26 of them along the border,” and that “these licensed dealers and pawnbrokers can
27 operate in locations such as gun shops, pawn shops, their own homes, or gun
28 shows.” *Id.*

1 137. The Public Safety Committee’s March 26, 2019 analysis did concede
2 that “less than one percent of inmates incarcerated in state prisons for gun crimes
3 acquired their firearms at a gun show”—though it transparently tries to diminish that
4 fact by citing only a website of the National Rifle Association as the source of the
5 statistic, instead of the U.S. Department of Justice, Bureau of Justice Statistics
6 reports from which the NRA drew it. Ex. 7 at 2-3 (citing NRA-ILA, *Background*
7 *Checks*|NICS, <https://www.nraila.org/get-the-facts/background-checks-nics> (last
8 visited Sept. 29, 2021)); *but see* Caroline Wolf Harlow, Ph.D., Bureau of Justice
9 Statistics, *Firearm Use by Offenders* (Nov. 2001) (attached as Exhibit 10).

10 138. While the Public Safety Committee’s March 26, 2019, analysis also
11 concedes that “violent criminals do not appear to regularly purchase their guns
12 directly from gun shows,” the analysis immediately shifts to “criticism” (from the
13 partisan Center for American Progress) that gun shows are somehow “the critical
14 moment in the chain of custody for many guns, the point at which they move from
15 the somewhat-regulated legal market to the shadowy, no-questions-asked illegal
16 market.” Ex. 7 at 3 (citing Arkadi Gerney, Center for American Progress, *The Gun*
17 *Debate 1 Year After Newtown: Assessing Six Key Claims About Gun Background*
18 *Checks* (Dec. 2013), available at [https://www.americanprogress.org/issues/guns-](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/)
19 [crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/](https://www.americanprogress.org/issues/guns-crime/reports/2013/12/13/80795/the-gun-debate-1-year-after-newtown/) (last visited
20 Sept. 29, 2021)). Neither the Center for American Progress editorial nor AB 893’s
21 bill analysis show how, in California where sales at gun shows are regulated *at least*
22 as heavily as sales at brick-and-mortar retailers, guns originating at gun shows are
23 any more likely to enter the “shadowy, no-questions-asked illegal market” than
24 those sold at gun stores.

25 139. Councilman Dwight Worden from the city of Del Mar, which was “at
26 the helm of city-level efforts to oppose the shows,” spoke in strong support of AB
27 893. He made clear that hostility toward the pro-gun speech at gun shows has long
28 driven the movement to put an end to the events: “Councilman Dwight Worden said

1 Del Mar’s City Council is ‘unanimously on the same page with this [AB 893] and
 2 very much behind the effort to discontinue the sale of guns and ammo’ at the
 3 Fairgrounds. ‘For decades in Del Mar, we felt that the *promotion and glorification*
 4 *of guns at the gun show are not consistent with our community values.*’ ” Lexy
 5 Brodt, *Boerner Horvath, Gloria Introduce Bill to Ban Gun Shows at Fairgrounds*,
 6 Coast News Group (Feb. 28, 2019), [https://thecoastnews.com/boerner-horvath-](https://thecoastnews.com/boerner-horvath-gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/)
 7 [gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/](https://thecoastnews.com/boerner-horvath-gloria-introduce-bill-to-ban-gun-shows-on-state-land-2/) (last visited Sept. 29, 2019)
 8 (emphasis added).

9 140. On October 11, 2019, Governor Newsom signed AB 893 into law.

10 141. Defendant Newsom, who is ultimately responsible for enforcing the AB
 11 893, has long harbored animus towards gun show promotion.

12 142. Indeed, Defendant Newsom has supported the closure of gun shows at
 13 other state venues and specifically wrote to Defendant District in 2018 in support of
 14 its unconstitutional gun show moratorium. He wrote: “[p]ermitting the sale of
 15 firearms and ammunition on state owned property only perpetuates America’s gun
 16 culture at a time when 73 percent of Californians support gun reform measures.”

17 143. And just “weeks after he cast the lone no-vote on the [District’s 2018]
 18 gun show [moratorium], Russ Penniman, a retired rear admiral, lost his spot.
 19 [Governor] Newsom replaced Penniman but kept two other board members alone.”

20 **[AB 893 Directly Bans Speech Necessary to Sales of Firearm & Ammunition]**

21 144. By banning the “sale of any firearm or ammunition on the property or
 22 in the buildings that comprise the Del Mar Fairgrounds,” AB 893 acts as a direct ban
 23 on speech. While the mere “act of exchanging of money for” firearms or
 24 ammunition may not itself constitute speech, *see Nordyke*, 110 F.3d at 710, any real-
 25 world “sale” *necessarily* involves speech.

26 145. On information and belief, Plaintiffs allege that AB 893’s ban on
 27 “sales” of firearm and ammunition at the Fairgrounds includes the speech or
 28 expressive conduct necessary to initiate or engage in the sale of firearms or

1 ammunition, including offering such products for sale, even if the act of transferring
2 ownership and possession does not take place onsite. Recall, AB 893
3 notwithstanding, state law already bars actual firearm transfers from taking place at
4 any gun show in California. *See supra* ¶ 58 & n. 3.

5 146. Speech that is necessary for any sale includes but is not limited to:
6 communication of intent to sell or buy; offers to sell or buy; discussion of price,
7 availability, and condition of the goods; discussion of any conditions on the sale;
8 and acceptance of the terms of a sale.

9 147. Speech that generally accompanies any sale of firearms or ammunition
10 includes, but is not limited to, conversations relating to the suitability of the firearm
11 or ammunition for an intended use (e.g., suitability for self-defense or sport
12 shooting, caliber, weight, size, fit).

13 148. State law also requires that certain speech take place during sales of
14 firearms, including safety instruction, a safe loading and unloading demonstration,
15 inquiries to ensure the sale is not a straw purchase, background check
16 communications (e.g., age, criminal record status, and immigration status), and
17 discussions related to possession of firearm safes or locking devices and locked-
18 storage requirements.

19 149. At gun shows, specifically, firearm sales from the event attendee to a
20 vendor require discussions about whether the firearm is stolen, whether is the
21 firearm is legal for sale in California, and establishing proof of ownership.

22 150. And for San Jose residents who may be legally purchasing a firearm at
23 a gun show at the Fairgrounds, a firearm sale requires showing proof of insurance
24 and payment of annual fee.

25 **[AB 893 Indirectly (But Intentionally) Bans Gun Shows at the Fairgrounds]**

26 151. The sale of firearms and ammunition is an essential function of gun
27 shows, and it is one of the main reasons people attend these events; if gun shows are
28 not economically viable because they have been stripped of an essential function,

1 they will cease to exist.

2 152. AB 893 thus has the same practical effect as the District’s
3 unconstitutional gun show moratorium—that is, by permanently banning the
4 commercial sale of firearms and ammunition at the Fairgrounds, it has the effect of
5 banning gun shows at the Fairgrounds *and all the educational, ideological, and*
6 *commercial speech that takes place at such events.*

7 153. The Legislature was well-aware when it passed AB 893 that a gun
8 show without the sale of firearms and ammunition cannot survive financially.
9 Indeed, the intended purpose of AB 893 was to end gun shows at the Fairgrounds.

10 154. Indeed, the March 26, 2019, Public Safety Committee’s analysis of AB
11 893 expressly admitted that:

This bill would add a section to the Food and Agricultural
Code that prohibits the sale of firearms and ammunitions at
the Del Mar Fairgrounds. By default, a violation of any
provision of the Food 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.

16 Ex. 7 at 4.

17 155. Similarly, the April 1, 2019, Assembly Appropriations Committee’s
18 April 1, 2019, analysis of AB 893 acknowledged:

This bill would add a section to the Food and Agricultural Code
that prohibits the sale of firearms and ammunitions at the Del Mar
Fairgrounds. By default, a violation of any provision of the Food
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. On
three prior occasions, former Governors Brown and
Schwarzenegger vetoed similar legislation to ban gun shows at the
Cow Palace in San Francisco.

24 See Kimberly Horiuchi, Assem. Comm. Approps., Bill Analysis Re: AB 819
25 (Gloria), 2019-2020 Reg. Sess., at 1-2 (Cal. 2019) (attached as Exhibit 11).

26 156. Reporting that AB 893 “would effectively shut down gun shows like
27 Crossroads of the West at the fairgrounds,” the Times of San Diego quoted Gloria as
28 saying that “[t]he communities around the Del Mar Fairgrounds have been clear:

1 they do not want these gun shows taking place on this state-owned land.” Chris
2 Jennewein, *Assembly Passes Todd Gloria’s Bill to Thwart Gun Shows at Del Mar*
3 *Fairgrounds*, timesofsandiego.com (April 25, 2019),
4 [https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/)
5 [to-thwart-gun-shows-at-del-mar-fairgrounds/](https://timesofsandiego.com/politics/2019/04/25/assembly-passes-todd-glorias-bill-to-thwart-gun-shows-at-del-mar-fairgrounds/) (last visited Sept. 29, 2021).

6 157. And further evidencing the Legislature’s intended effect of AB 893,
7 Senator Dave Min recently wrote to the Board of the 32nd District Agricultural
8 Association in Orange County, warning the Board Members not to hinder his bill
9 that would ban sales of firearms, ammunition, and firearm precursor parts at the
10 Orange County Fairgrounds in Costa Mesa. In that letter, he addressed members’
11 concerns that their venue was being unfairly and exclusively targeted, responding
12 that AB 893 was a similar action banning gun shows at a single fairground:

13 Furthermore, the substantive merits of any such communication to
14 the Governor are dubious. While Item 6A expresses a concern that
15 SB 264 “exclusively targets the 32nd DAA,” such action to **ban**
16 **gun shows** at a single fairground site has recent precedent. In
17 2019, Gov. Newsom signed Assembly Bill 893 (Gloria) into law,
ending the sale of firearms and ammunition at the Del Mar
Fairgrounds, operated by the 22nd District Agricultural
Association.

18 Letter from Senator Dave Min to Board Members of 32nd District Agricultural
19 Association (on or about Sept. 13, 2021) (attached as Exhibit 12) (emphases added).

20 158. Even so, Plaintiff Crossroads has repeatedly reached out to Defendant
21 District to request dates for events at the Fairground in 2021.

22 159. Plaintiff Crossroads has been unable to secure dates and enter into new
23 contracts for events at the Fairgrounds in 2021 or 2022 due to the Defendants’
24 intentional act of adopting and enforcing AB 893.

25 160. Indeed, in compliance with AB 893, Defendant District cannot and will
26 not enter into contracts for gun shows at the Fairgrounds if firearms and ammunition
27 will be sold.

28 161. Even though Plaintiff Crossroads has offered to attempt to hold events

1 without sales of firearms or ammunition to preserve its longstanding relationship
2 with the District, mitigate damages, and continue planning and promoting its family-
3 friendly events until its claims can be heard, Defendant District dragged its feet and
4 never provided dates for events in 2021 or 2022.

5 162. As a result of Defendant District’s stalling, Plaintiff Crossroads’
6 requested dates in 2021 have all passed.

7 163. Because of the time and resources needed to plan and implement its
8 gun show events, Plaintiff Crossroads must plan its shows about one year in
9 advance, but Defendant District has not allowed Plaintiff Crossroads to secure dates
10 in 2022 either.

11 164. What’s more, Defendant District seems to have stripped Plaintiff
12 Crossroads of its effective right of first refusal under the District’s “hold” system
13 described above. Indeed, it has not only failed to give Crossroads first choice of its
14 dates for the coming year, but it has also prohibited Crossroads from securing dates
15 for gun show events at the Fairgrounds since 2020.

16 165. Because California prohibits the building of similar venues within their
17 districts as a way to prevent competition for available space, there are no venues in
18 the area that offer comparable space and parking needed for gun show events.
19 Plaintiff Crossroads has thus been unable to find a suitable alternate location to the
20 Fairgrounds.

21 166. Defendants’ adoption and enforcement of AB 893, which has the
22 intended and practical effect of banning gun shows at the Fairgrounds, has and will
23 continue to cause Plaintiff Crossroads significant economic damages, including loss
24 of event revenue, breakdown of relationships and agreements with long-time event
25 vendors and companies used as suppliers for gun show events, relinquishment of
26 future show dates, and loss of business reputation and goodwill that has been built
27 by Plaintiff Crossroads for more than 30 years.

28 167. Plaintiff Crossroads has already lost all revenue for gun show events at

1 the Fairgrounds in 2021 because the Fair Board will not finalize event dates, citing
2 AB 893 as the reason. If shows do not return to the Fairgrounds in 2022, Plaintiff
3 Crossroads will lose all revenue for gun show events at the Fairgrounds in 2022 as
4 well.

5 168. Even if Plaintiff Crossroads could secure dates, plan, promote, and host
6 gun shows in the remaining months of 2022, AB 893 interferes with Crossroads
7 generating the profits its events typically generate because the ban on firearm and
8 ammunition sales will significantly impact paid event attendance and the types and
9 numbers of paid vendors who will do business with Crossroads at the Del Mar gun
10 show.

11 169. Plaintiff Crossroads has and will continue to suffer loss of business
12 goodwill resulting from Defendants' adoption and enforcement of AB 893 under the
13 (unsupported) pretense that gun shows, generally, and Crossroads' shows, in
14 particular, threaten public safety. The message this sends to other venues, attendees,
15 and vendors that do business with Crossroads will no doubt affect Crossroads for
16 years.

17 170. Defendants' adoption and enforcement of AB 893, which has the
18 intended and practical effect of banning gun shows at the Fairgrounds, also causes
19 economic damage to the organizational plaintiffs, CRPA, SAF, and South Bay,
20 which use their vendor spaces, in part, to sell organization memberships, advertise
21 their educational courses, request donations, and sell organization merchandise, like
22 hats and stickers.

23 171. Defendants' adoption and enforcement of AB 893, which has the
24 intended and practical effect of banning gun shows at the Fairgrounds, also causes
25 economic damage to the vendor plaintiffs, Solis, Walsh, Captain Jon's, and LAX
26 Ammo, who uses their vendor spaces, in part, to sell firearms, ammunition, and/or
27 related accessories.

28 172. Defendants' adoption and enforcement of AB 893, which has the

1 intended and practical effect of banning gun shows at the Fairgrounds, prohibits
2 Plaintiffs and all those similarly situate from making use of a state-owned “public
3 assembly facility” to host gun show events, a lawful business activity, in violation of
4 Plaintiffs’ rights to engage in free speech and peaceful assembly, and their right to
5 equal protection under the law.

6 173. Defendants’ conduct complained of here strips Plaintiffs Bardack, Diaz,
7 Dupree, Irick, Solis, and Walsh, as well as the organizational plaintiffs, CRPA, SAF,
8 and South Bay, of a vital opportunity to assemble and engage in pure speech about,
9 among other things, the rights and responsibilities of gun owners, the Second
10 Amendment, patriotism, and political activism with like-minded individuals.

11 174. Defendants’ conduct complained of here also strips Plaintiff Crossroads
12 of the right to promote gun show events, acting as a “clearinghouse” for both
13 political speech and commercial speech.

14 175. Defendants’ conduct complained of here also strips Plaintiffs Solis,
15 Walsh, Captain Jon’s, and LAX Ammo of a vital opportunity to assemble and
16 engage in lawful commercial speech, including the offer and acceptance of sales of
17 firearms, ammunition, and related accessories.

18 176. Furthermore, even if the Court grants injunctive relief, Plaintiff
19 Crossroads will have incurred damages in having to devote extraordinary advertising
20 dollars to inform the public that gun shows will continue to be held and have not
21 been banned at the Fairgrounds.

22 177. The economic and non-economic harms and injuries to Plaintiffs are of
23 a continuing nature; they continue to compound everyday AB 893 remains the law.

24 **[Government Tort Claim]**

25 178. On August 2, 2021, Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA,
26 and SAF notified Defendants Newsom, Bonta, Ross, and District of their claims for
27 intentional and/or negligent interference with prospective advantage by filing a
28 timely Government Tort Claim under California’s Tort Claims Act. B&L

1 Productions, Inc., et al., Government Tort Claim (filed Aug. 2, 2021) (attached as
2 Exhibit 13).

3 179. Defendants Newsom, Bonta, Ross, and District neither accepted nor
4 rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the claim
5 was rejected by operation of law.

6 180. On August 2, 2021, Plaintiff Crossroads of its claim for intentional
7 interference with contract by filing a timely Government Tort Claim under
8 California’s Tort Claims Act. Ex. 7.

9 181. Defendants Newsom, Bonta, Ross, and District neither accepted nor
10 rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the claim
11 was rejected by operation of law.

12 **FIRST CAUSE OF ACTION**
13 **Violation of Right to Free Speech Under U.S. Const., amend. I**
14 **42 U.S.C. § 1983**
(By Plaintiffs CRPA, South Bay, SAF, and All Individuals Against Defendants
15 Bonta, Stephan, and District)

16 182. Plaintiffs incorporate by reference paragraphs 1 through 181 of this
17 Complaint as though fully set forth herein in their entirety.

18 183. The state of California owns the Fairgrounds, a public venue. It is
19 rented to the public, including community-based organizations and businesses, for
20 its use and enjoyment, including for concerts, festivals, and industry shows.

21 184. Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack, Diaz,
22 Dupree, Irick, Solis, and Walsh have attended and wish to again attend Crossroads
23 gun shows at the Fairgrounds so they may exchange ideas, information, and
24 knowledge, as well discuss political issues and the importance of protecting and
25 defending the Second Amendment.

26 185. Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack, Diaz,
27 Dupree, Irick, Solis, and Walsh have a right under the First Amendment to use the
28 Fairgrounds for their expressive activity on the same basis as other members of the
public without regard to the viewpoints they seek to express.

1 186. Defendants Bonta and Stephan, acting under color of state law, are the
2 government actors responsible for enforcing and prosecuting violations of AB 893,
3 which deprives Plaintiffs CRPA, South Bay, SAF, and Individuals Bardack, Diaz,
4 Dupree, Irick, Solis, and Walsh of free speech rights secured by the First
5 Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

6 187. Defendant District interprets, implements, and enforces state laws and
7 policies as regards the Fairgrounds, including AB 893, which deprives Plaintiffs of
8 free speech rights secured by the First Amendment of the United States Constitution
9 in violation of 42 U.S.C. § 1983.

10 188. Defendants’ enforcement of AB 893, which prohibits the sale of
11 firearms and ammunition at the Fairgrounds with the purpose and intention (or at
12 least the effect) of ending gun show events at the Fairgrounds, is an impermissible
13 content-based restriction of speech. Such enforcement constitutes a direct violation
14 of the free speech rights of Plaintiffs CRPA, South Bay, SAF, and Individuals
15 Bardack, Diaz, Dupree, Irick, Solis, and Walsh.

16 189. Similarly, by expressly banning the sale of firearms and ammunition at
17 the Fairgrounds, AB 893 strips gun shows of an essential function and one of the
18 main reasons people attend these events, limiting the number and types of vendors at
19 the gun shows and the number of individuals in attendance. Thus, AB 893 has a
20 chilling effect on the First Amendment.

21 190. Defendants have no compelling (or even legitimate) interest in banning
22 the otherwise lawful (and constitutionally protected) sale of lawful firearms and
23 ammunition at the Fairgrounds, or in banning gun show events and the unique
24 expression and exchange of ideas related to promoting and preserving the “gun
25 culture” that takes place at those events. Any purported interest in “public safety” is
26 betrayed by the fact that AB 893 does not ban the possession of firearms or
27 ammunition on Fairgrounds property and state law already governs sales at gun
28 shows *at least* as strictly as it governs sales at “brick-and-mortar” stores.

1 191. Further, AB 893 is neither narrowly tailored to nor the least restrictive
2 means of achieving the state’s dubious interests. Indeed, by intentionally and
3 effectively banning gun shows at the Fairgrounds, it sweeps up *all* forms of speech
4 and expressive conduct that occurs at such events and impermissibly banishes that
5 speech from a public venue.

6 192. Similarly, AB 893 is unconstitutionally overbroad because, in an effort
7 to restrict the commercial sale of firearms and ammunition, the law intentionally and
8 effectively bans gun shows events altogether, seriously and deliberately burdening a
9 vast amount of speech that does not constitute such a communication and is fully
10 protected by the First Amendment.

11 193. As a direct and proximate result of Defendants’ conduct, Plaintiffs
12 Clark, Johnson, Littrell, Merson, CRPA, APAGOA, 2ALC, and SAF have suffered
13 irreparable harm, including the violation of their constitutional right to free speech,
14 entitling them to declaratory and injunctive relief. Without intervention by this
15 Court, through declaratory and injunctive relief, Plaintiffs will continue to suffer this
16 irreparable harm.

17
18 **SECOND CAUSE OF ACTION**
19 **Violation of Right to Free Speech Under U.S. Const., amend. I**
20 **42 U.S.C. § 1983**

(By Plaintiff Crossroads Against Defendants Bonta, Stephan, and District)

21 194. Plaintiffs incorporate by reference paragraphs 1 through 193 of this
22 Complaint as though fully set forth herein in their entirety.

23 195. The state of California owns the Fairgrounds, a public venue. It is
24 rented to the public, including community-based organizations and businesses, for
25 its use and enjoyment, including for concerts, festivals, and industry shows.

26 196. Plaintiff Crossroads seeks to engage in protected speech at the
27 Fairgrounds, a noted “public assembly facility,” through the promotion and
28 production of events for lawful expressive activity, including events that bring
together like-minded individuals to engage in pure political and educational speech,

1 as well as commercial speech of vendor and individual participants to communicate
2 offer and acceptance for the sale of legal goods and services.

3 197. Event promoters, though they generally promote events for profit, “still
4 enjoy the protections of the First Amendment.” *Id.* at 567. For “[t]he role of a
5 promoter in ensuring access to the public is at least as critical as the role of a
6 bookseller or theater owner and . . . is in a far better position than a concert goer or
7 individual performers to vindicate First Amendment rights and ensure public
8 access.” *Id.* at 568. The conduct they engage in is protected expression.

9 198. Plaintiff Crossroads has a right under the First Amendment to use the
10 Fairgrounds for its expressive activity on the same basis as other members of the
11 public without regard to the content or viewpoint it seeks to express and promote.

12 199. Defendants Bonta and Stephan, acting under color of state law, are the
13 government actors responsible for enforcing and prosecuting violations of AB 893,
14 which deprives Plaintiff Crossroads of free speech rights secured by the First
15 Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

16 200. Defendant District interprets, implements, and enforces state laws and
17 policies as regards the Fairgrounds, including AB 893, which deprives Plaintiff
18 Crossroads of free speech rights secured by the First Amendment of the United
19 States Constitution in violation of 42 U.S.C. § 1983.

20 201. Defendants’ enforcement of AB 893, which prohibits the sale of
21 firearms and ammunition at the Fairgrounds with the purpose and intention (or at
22 least the effect) of ending gun show events at the Fairgrounds, is an impermissible
23 content-based restriction of speech. Such enforcement constitutes a direct violation
24 of the free speech rights of Plaintiff Crossroads.

25 202. Similarly, by expressly banning the sale of firearms and ammunition at
26 the Fairgrounds, AB 893 strips gun shows of an essential function and one of the
27 main reasons people attend these events, limiting the number and types of vendors at
28 the gun shows and the number of individuals in attendance. Thus, AB 893 has a

1 chilling effect on the First Amendment.

2 203. Defendants have no compelling (or even legitimate) interest in banning
3 the otherwise lawful (and constitutionally protected) sale of lawful firearms,
4 ammunition, and firearm precursor parts at the Fairgrounds, or in banning gun show
5 events and the unique expression and exchange of ideas related to promoting and
6 preserving the “gun culture” that takes place at those events. Any purported interest
7 in “public safety” is betrayed by the fact that AB 893 does not ban the possession of
8 firearms or ammunition on Fairgrounds property and state law already governs sales
9 at gun shows *at least* as strictly as it governs sales at “brick-and-mortar” stores.

10 204. Further, AB 893 is neither narrowly tailored to nor the least restrictive
11 means of achieving the state’s dubious interests. Indeed, by intentionally and
12 effectively banning gun shows at the Fairgrounds, it sweeps up *all* forms of speech
13 and expressive conduct that occurs at such events and banishes from a public venue.

14 205. Similarly, AB 893 is unconstitutionally overbroad because, in an effort
15 to restrict the commercial sale of firearms, ammunition, and firearm precursor parts,
16 the law effectively and intentionally bans gun shows events altogether, seriously and
17 deliberately burdening a vast amount of speech that does not constitute such a
18 communication and is fully protected by the First Amendment.

19 206. As a direct and proximate result of Defendants’ conduct, Plaintiff
20 Crossroads has suffered irreparable harm, including the violation of its constitutional
21 right to free speech, entitling Crossroads to declaratory and injunctive relief.
22 Without intervention by this Court, through declaratory and injunctive relief,
23 Plaintiffs will continue to suffer this irreparable harm.

24 **THIRD CAUSE OF ACTION**
25 **Violation of Right to Free Speech Under U.S. Const., amend. I**
26 **42 U.S.C. § 1983**
(By Plaintiffs Solis, Walsh, Captain Jon’s, LAX Ammo, and CRPA Against
27 Defendants Bonta, Stephan, and District)

28 207. Plaintiffs incorporate by reference paragraphs 1 through 206 of this
Complaint as though fully set forth herein in their entirety.

1 208. The state of California owns the Fairgrounds, a public venue. It is
2 rented to the public, including community-based organizations and businesses, for
3 its use and enjoyment, including for concerts, festivals, and industry shows.

4 209. Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as
5 business members of CRPA, have attended and wish to again attend Crossroads gun
6 shows at the Fairgrounds to engage in lawful commercial speech with individual
7 attendees.

8 210. Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as
9 business members of CRPA, have a right under the First Amendment to use the
10 Fairgrounds for expressive activity on the same basis as other members of the public
11 without regard to the viewpoints they seek to express and promote.

12 211. Defendants Bonta and Stephan, acting under color of state law, are the
13 government actors responsible for enforcing and prosecuting violations of AB 893,
14 which deprives Plaintiffs Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as
15 business members of CRPA, of free speech rights secured by the First Amendment
16 of the United States Constitution in violation of 42 U.S.C. § 1983.

17 212. Defendant District interprets, implements, and enforces state laws and
18 policies as regards the Fairgrounds, including AB 893, which deprives Plaintiffs
19 Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of
20 CRPA, of free speech rights secured by the First Amendment of the United States
21 Constitution in violation of 42 U.S.C. § 1983.

22 213. Defendants’ enforcement of AB 893, which prohibits the sale of
23 firearms and ammunition at the Fairgrounds with the purpose and intention (or at
24 least the effect) of ending gun show events at the Fairgrounds, is an impermissible
25 content-based restriction of speech. Such enforcement constitutes a direct violation
26 of the First Amendment commercial speech rights of the Plaintiffs.

27 214. Further, by directly barring the rights of vendors, like Plaintiffs Solis,
28 Walsh, and LAX Ammo, to sell firearms and ammunition (*which necessarily*

1 *involves commercial speech*), AB 893 defies existing case law in the Ninth Circuit
2 protecting the commercial speech associated with firearm sales on public property.
3 *See Nordyke*, 110 F.3d 707 (holding that a ban on the sale of firearms on county-
4 owned land was overbroad as abridging commercial speech associated with the sale
5 of lawful products).

6 215. Finally, by expressly banning the sale of firearms and ammunition at
7 the Fairgrounds, AB 893 strips gun shows of an essential function and one of the
8 main reasons people attend these events, limiting the number and types of vendors at
9 the gun shows and the number of individuals in attendance. Thus, AB 893 has a
10 chilling effect on the First Amendment.

11 216. Defendants have no substantial (or even legitimate) interest in banning
12 the otherwise lawful (and constitutionally protected) sale of lawful firearms and
13 ammunition at the Fairgrounds, or in banning gun show events and the unique
14 expression and exchange of ideas related to promoting and preserving the “gun
15 culture” that takes place at those events. Any purported interest in “public safety” is
16 betrayed by the fact that AB 893 does not ban the possession of firearms or
17 ammunition on Fairgrounds property and state law already governs sales at gun
18 shows *at least* as strictly as it governs sales at “brick-and-mortar” stores.

19 217. Even if there were a substantial governmental interest in restricting gun
20 shows and the commercial speech that occurs at such events, it would not be directly
21 served by a ban on sales of firearms and ammunition (and the speech necessary to
22 such sales) at the Fairgrounds.

23 218. Even if there were a substantial government interest in restricting gun
24 shows and the commercial speech that occurs at such events, banning commercial
25 speech about firearms and ammunition at the Fairgrounds altogether is more
26 extensive than necessary to serve any such interest.

27 219. As a direct and proximate result of Defendants’ conduct, Plaintiffs
28 Solis, Walsh, Captain Jon’s, and LAX Ammo, as well as business members of

1 CRPA, have suffered irreparable harm, including the violation of their constitutional
2 right to free speech, entitling them to declaratory and injunctive relief. Without
3 intervention by this Court, through declaratory and injunctive relief, Plaintiffs will
4 continue to suffer this irreparable harm.

5
6 **FOURTH CAUSE OF ACTION**
7 **Prior Restraint on Right to Free Speech Under U.S. Const., amend. I**
8 **42 U.S.C. § 1983**
9 (By All Plaintiffs Against Defendants Bonta, Stephan, and District)

10 220. Plaintiffs incorporate by reference paragraphs 1 through 219 of this
11 Complaint as though fully set forth herein in their entirety.

12 221. The First Amendment affords special protection against policies or
13 orders that impose a previous or prior restraint on speech. “[P]rior restraints on
14 speech and publication are the most serious and least tolerable infringement on First
15 Amendment Rights.” *Ass’n for L.A. Deputy Sheriffs*, 239 Cal. App. 4th at 811 (citing
16 *Neb. Press Ass’n*, 427 U.S. at 559. A prior restraint is especially bad when it falls
17 upon the communication of news, commentary, current events, political speech, and
18 association. *N.Y. Times Co.*, 403 U.S. at 715.

19 222. Prior restraint also involves the “unbridled discretion doctrine” where a
20 policy, or lack thereof, allows for a single person or body to act at their sole
21 discretion, without regard for any constitutional rights possessed by the person on
22 which the action is taken, and where there is no remedy for challenging the
23 discretion of the decision makers. *Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S.
24 750, 757 (1988).

25 223. Defendants Bonta, Stephan, and District are the state and local actors
26 responsible for enforcing and prosecuting violations of AB 893, which is a content-
27 based restriction of speech that will have a chilling effect on Plaintiffs’ First
28 Amendment rights, thus acting as a de facto prior restraint on Plaintiffs’ rights.

224. Under AB 893, Defendant District has unfettered discretion to
determine what constitutes a “sale” under the law and is thereby prohibited at the

1 Fairgrounds.

2 225. Defendants’ policies and practices complained of here impose an
3 unconstitutional prior restraint because they vest the District with unbridled
4 discretion to permit or refuse protected expression by members of the public,
5 including Plaintiffs.

6 226. Defendants’ policies and practices complained of here give unbridled
7 discretion to local agricultural district boards and board members to decide what
8 forms of expression members of the public may engage in on at the Fairgrounds and
9 to ban any other expression at the whim of those boards and board members in
10 violation of the First Amendment.

11 227. As a direct and proximate result of Defendants’ conduct, Plaintiffs have
12 suffered and will continue to suffer irreparable harm, including the violation of their
13 constitutional right to freedom of expression, entitling them to declaratory and
14 injunctive relief and nominal damages.

15
16 **FIFTH CAUSE OF ACTION**
17 **Violation of Right to Assembly and Association Under U.S. Const., amend. I**
18 **42 U.S.C. § 1983**

(By All Plaintiffs Against Defendants Bonta, Stephan, and District)

19 228. Plaintiffs incorporate by reference paragraphs 1 through 227 of this
20 Complaint as though fully set forth herein in their entirety.

21 229. The state of California owns the Fairgrounds, a public venue. It is
22 rented to the public, including community-based organizations and businesses, for
23 its use and enjoyment, including for concerts, festivals, and industry shows.

24 230. Plaintiffs have promoted or attended in the past and wish to again
25 promote or attend Crossroads gun shows at the Fairgrounds so they may assemble
26 and associate with one another to engage in lawful commerce, fellowship, and
27 expressive activities, including political and educational speech about the lawful
28 ownership, possession, and use of firearms and related products.

231. Plaintiffs have a right under the First Amendment to use the

1 Fairgrounds to assemble and associate on the same basis as other members of the
2 public without regard to the content or viewpoint it seeks to express and promote.

3 232. Defendants Bonta and Stephan, acting under color of state law, are the
4 government actors responsible for enforcing and prosecuting violations of AB 893,
5 which deprives Plaintiffs of their rights of assembly and association secured by the
6 First Amendment of the United States Constitution in violation of 42 U.S.C. § 1983.

7 233. Defendant District interprets, implements, and enforces state laws and
8 policies in regard to the Fairgrounds, including AB 893, which deprives Plaintiffs of
9 their rights of assembly and association secured by the First Amendment of the
10 United States Constitution in violation of 42 U.S.C. § 1983.

11 234. Defendants’ enforcement of AB 893, which prohibits the sale of
12 firearms and ammunition at the Fairgrounds with the purpose and intention (or at
13 least the effect) of banning gun show events at the Fairgrounds, violates Plaintiffs’
14 rights to assembly and association by denying them the right to use the Fairgrounds,
15 a “public assembly facility,” to assemble and engage in political and other types of
16 expression—a right Defendants extend to other members of the public so long as
17 they are not meeting to hold a gun show event.

18 235. Defendants have no compelling (or even legitimate) governmental
19 interest in banning the otherwise lawful (and constitutionally protected) sale of
20 lawful firearms and ammunition at the Fairgrounds, or in banning gun show events
21 and, by extension, the rights of Plaintiffs to assemble and associate at such events at
22 the Fairgrounds. Any purported interest in “public safety” is betrayed by the fact that
23 AB 893 does not ban the possession of firearms or ammunition on Fairgrounds
24 property and state law already governs sales at gun shows *at least* as strictly as it
25 governs sales at “brick-and-mortar” stores.

26 236. But even if Defendants had a “legitimate and substantial” interest in
27 limiting a key aspect of gun show events, and thus barring Plaintiffs from freely
28 assembling and associating at the Fairgrounds, they have imposed an

1 unconstitutional and overly broad restriction on Plaintiffs’ rights by prohibiting the
2 sale of firearms and ammunition at the Fairgrounds.

3 237. As a direct and proximate result of Defendants’ conduct, all Plaintiffs
4 have suffered irreparable harm, including the violation of their constitutional right to
5 free association and assembly, entitling them to declaratory and injunctive relief.
6 Without intervention by this Court, through declaratory and injunctive relief,
7 Plaintiffs will continue to suffer this irreparable harm.

8 **SIXTH CAUSE OF ACTION**
9 **Violation of Right to Keep & Bear Arms Under U.S. Const., amend. II**
10 **42 U.S.C. § 1983**

(By Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, Walsh, LAX Ammo, CRPA,
11 South Bay, and SAF Against Defendants Bonta, Stephan, and District)

12 238. Plaintiffs incorporate by reference paragraphs 1 through 237 of this
13 Complaint as if fully set forth herein in their entirety.

14 239. Plaintiffs Bardack, Diaz, Dupree, Irick, Solis, Walsh, LAX Ammo, and
15 members and supporters of Plaintiffs CRPA, South Bay, and SAF, have sold or
16 bought firearms or ammunition at gun show events at the Fairgrounds in the past
17 and, but for the adoption and enforcement of AB 893, they would do so again.

18 240. Plaintiffs have a right, under the Second Amendment, to buy and sell
19 firearms and the ammunition necessary for the effective operation of those firearms.

20 241. Defendants Bonta and Stephan, acting under color of state law, are the
21 government actors responsible for enforcing and prosecuting violations of AB 893,
22 which deprives Plaintiffs of their right to access firearms and ammunition secured
23 by the Second Amendment of the United States Constitution in violation of 42
24 U.S.C. § 1983.

25 242. Defendant District interprets, implements, and enforces state laws and
26 policies in regard to the Fairgrounds, including AB 893, which deprives Plaintiffs of
27 their right to access firearms and ammunition secured by the Second Amendment of
28 the United States Constitution in violation of 42 U.S.C. § 1983.

243. Defendants’ enforcement of AB 893, which prohibits the sale of

1 firearms and ammunition at the Fairgrounds with the purpose and intention (or at
2 least the effect) of banning gun show events at the Fairgrounds, violates Plaintiffs’
3 Second Amendment right to buy and sell firearms and the ammunition necessary to
4 the effective operation of those firearms.

5 244. Defendants cannot satisfy their burden to justify their ban on the sale of
6 firearms and ammunition at the Fairgrounds under the history- and tradition-based
7 test applied in *Heller* and recently confirmed in *Bruen*.

8 245. As a direct and proximate result of Defendants’ conduct, all Plaintiffs
9 have suffered irreparable harm, including the violation of their constitutional right to
10 buy and sell firearms and ammunition, entitling them to declaratory and injunctive
11 relief. Without intervention by this Court, through declaratory and injunctive relief,
12 Plaintiffs will continue to suffer this irreparable harm.

13 **SEVENTH CAUSE OF ACTION**
14 **Violation of the Right to Equal Protection Under U.S. Const., amend. XIV**
15 **42 U.S.C. § 1983**
(By All Plaintiffs Against Defendants Bonta, Stephan, and District)

16 246. Plaintiffs incorporate by reference paragraphs 1 through 245 of this
17 Complaint as if fully set forth herein in their entirety.

18 247. Defendants, acting under color of state law, are enforcing AB 893,
19 which deprives Plaintiffs of right to equal protection under the law secured by the
20 Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. §
21 1983.

22 248. On its face and as applied, AB 893 is an unconstitutional abridgement
23 of Plaintiffs’ right to equal protection under the law guaranteed by the Fourteenth
24 Amendment because it is a viewpoint-discriminatory and animus-based restriction
25 on Plaintiffs’ protected speech that serves no compelling governmental interest

26 249. Although Plaintiff Crossroads operates a legal and legitimate business
27 and the Fairgrounds is suitable for the purposes of hosting a gun show at its public
28 facility, as shown by over 30 years of unfringed use of the Fairgrounds, AB 893

1 prevents Plaintiffs from equally participating in the use of the publicly owned venue
2 by unconstitutionally eliminating Plaintiffs’ ability to freely conduct otherwise
3 lawful business transactions and freely express their beliefs with like-minded
4 people.

5 250. Defendants’ refusal to permit Plaintiffs equal access to the Fairgrounds
6 to host its gun show events and engage in the speech, assembly, and association that
7 takes place at such events, does not further any compelling (or even legitimate)
8 governmental interest.

9 251. Defendants’ refusal to allow Plaintiffs equal use of the public facility
10 while continuing to allow contracts for the use of the facility with other similarly
11 situated legal and legitimate businesses violates Plaintiffs’ right to equal protection
12 under the law because it is based on a “bare desire to harm a politically unpopular
13 group.” *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)

14 252. As a direct and proximate result of Defendants’ conduct, Plaintiffs have
15 suffered irreparable harm, including the violation of their constitutional right to
16 equal protection under the law, entitling them to declaratory and injunctive relief
17 and nominal damages. Without intervention by this Court, through declaratory and
18 injunctive relief, Plaintiffs will continue to suffer this irreparable harm.

19
20 **EIGHTH CAUSE OF ACTION**
21 **Intentional Interference with Prospective Economic Advantage**
(By Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF Against
22 Defendants Newsom, Bonta, Ross, and District)

23 253. Plaintiffs incorporate by reference paragraphs 1 through 252 of this
24 Complaint as if fully set forth herein in their entirety.

25 254. For more than 30 years, Plaintiff Crossroads has maintained contracts
26 with Defendant District, under which Plaintiff Crossroads annually hosts about five
27 gun-show events at the Fairgrounds. An economic relationship has been in effect
28 between Plaintiff Crossroads and Defendant District to operate gun shows on the
state fairground property for over 30 years.

1 255. In turn, Plaintiff Crossroads maintains countless economic relationships
2 with for-profit and nonprofit vendors, including but not limited to, Plaintiffs Walsh,
3 LAX Ammo, CRPA, and SAF. These vendors pay for space at Plaintiff Crossroads’
4 Del Mar gun shows to sell merchandise (including firearms and ammunition) and
5 organization memberships, among other things.

6 256. Defendants Newsom, Bonta, Ross, and District had actual knowledge
7 of the existence of these relationships.

8 257. By adopting and enforcing AB 893, which bans the sale of firearms and
9 ammunition at the Fairgrounds and effectively bans gun shows at the Fairgrounds,
10 Defendants Newsom, Bonta, Ross, and District engaged in an intentional act
11 designed to disrupt these economic relationships.

12 258. The adoption and enforcement of AB 893 by Defendants Newsom,
13 Bonta, Ross, and District did, in fact, disrupt the known economic relationships
14 between Plaintiff Crossroads and Defendant District and between Plaintiff
15 Crossroads and its vendors, including Plaintiffs Walsh, LAX Ammo, CRPA, and
16 SAF.

17 259. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF have
18 suffered actual damages as a result of the conduct of Defendants Newsom, Bonta,
19 Ross, and District complained of herein.

20 260. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF notified
21 Defendants Newsom, Bonta, Ross, and District of this claim by filing a Government
22 Tort Claim under California’s Tort Claims Act. Ex. 7.

23 261. Defendants Newsom, Bonta, Ross, and District neither accepted nor
24 rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the claim
25 was rejected by operation of law.

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NINTH CAUSE OF ACTION

Negligent Interference with Prospective Economic Advantage
(By Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF Against
Defendants Newsom, Bonta, Ross, and District)

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262. Plaintiffs incorporate by reference paragraphs 1 through 261 of this Complaint as if fully set forth herein in their entirety.

263. For more than 30 years, Plaintiff Crossroads has maintained contracts with Defendant District, under which Plaintiff Crossroads annually hosts about five gun-show events at the Fairgrounds. An economic relationship has been in effect between Plaintiff Crossroads and Defendant District to operate gun shows on the state fairground property for over 30 years.

264. In turn, Plaintiff Crossroads maintains countless economic relationships with for-profit and nonprofit vendors, including, but not limited to, Plaintiffs Walsh, LAX Ammo, CRPA, and SAF. These vendors pay for space at Plaintiff Crossroads’ Del Mar gun shows to sell merchandise (including firearms and ammunition) and organization memberships, among other things.

265. Defendants Newsom, Bonta, Ross, and District had actual knowledge of the existence of these relationships.

266. Defendants Newsom, Bonta, Ross, and District knew that, by adopting and enforcing AB 893, which bans the sale of firearms and ammunition at the Fairgrounds and effectively bans gun shows at the Fairgrounds, these economic relationships would be disrupted if they did not act with reasonable care.

267. Defendants Newsom, Bonta, Ross, and District knew that, by adopting and enforcing AB 893, which bans the sale of firearms and ammunition at the Fairgrounds and effectively bans gun shows at the Fairgrounds, in fact failed to act with reasonable care.

268. The adoption and enforcement of AB 893 by Defendants Newsom, Bonta, Ross, and District did, in fact, disrupt the known economic relationships between Plaintiff Crossroads and Defendant 2nd DAA and between Plaintiff Crossroads and its vendors, including Plaintiffs Walsh, LAX Ammo, CRPA, and

1 SAF.

2 269. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF have
3 suffered actual damages as a result of the conduct of Defendants Newsom, Bonta,
4 Ross, and District complained of herein.

5 270. Plaintiffs Crossroads, Walsh, LAX Ammo, CRPA, and SAF notified
6 Defendants Newsom, Bonta, Ross, and District of this claim by filing a Government
7 Tort Claim under California’s Tort Claims Act. Ex. 7.

8 271. Defendants Newsom, Bonta, Ross, and District neither accepted nor
9 rejected Plaintiffs’ Government Tort Claim in writing within 45 days, so the claim
10 was rejected by operation of law.

11 **TENTH CAUSE OF ACTION**
12 **Intentional Interference with Contract**
(By Plaintiff Crossroads Against Defendants Newsom, Bonta, Ross, and District)

13 272. Plaintiffs incorporate by reference paragraphs 1 through 271 of this
14 Complaint as if fully set forth herein in their entirety.

15 273. For more than 30 years, Plaintiff Crossroads has maintained contracts
16 with Defendant District, under which Plaintiff Crossroads annually hosts about five
17 gun-show events at the Fairgrounds. Thus, an economic relationship has been in
18 effect between Plaintiff Crossroads and the District to operate gun shows on state
19 fairground property for over 30 years.

20 274. For decades, Defendant District has given Plaintiff Crossroads an
21 effective right of first refusal to secure event dates for the coming year as a returning
22 contractor at the Fairgrounds under the District’s longstanding “hold” system.

23 275. Defendants Newsom, Bonta, Ross, and District had actual knowledge
24 of the existence of these relationships.

25 276. By adopting and enforcing AB 893, which bans the sale of firearms and
26 ammunition at the Fairgrounds and effectively bans gun shows at the Fairgrounds,
27 Defendants Newsom, Bonta, Ross, and District engaged in an intentional act
28 designed to disrupt these economic relationships.

1 their speech;

2 5. A declaration that AB 893, codified at California Food & Agricultural
3 Code section 4158, violates the rights of assembly and association of all Plaintiffs
4 under the First Amendment to the United States Constitution;

5 6. A declaration that AB 893, codified at California Food & Agricultural
6 Code section 4158, violates the rights of all Plaintiffs to keep and bear arms under
7 the Second Amendment to the United States Constitution;

8 7. A declaration that AB 893, codified at California Food & Agricultural
9 Code section 4158, violates the rights of all Plaintiffs to equal protection under the
10 law per the Fourteenth Amendment to the United States Constitution;

11 8. A preliminary and permanent injunction prohibiting Defendants Bonta,
12 Stephan, and District, their employees, agents, and successors in office, from
13 enforcing AB 893, codified at California Food & Agricultural Code section 4158;

14 9. An order for damages, including punitive and nominal damages,
15 according to proof;

16 10. An award of costs and expenses, including attorney’s fees, under 42
17 U.S.C. § 1988 or other appropriate state or federal law; and

18 11. Any such other relief the Court deems just and equitable.

19 Dated: August 31, 2022

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir

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

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Dated: August 31, 2022

LAW OFFICES OF DON KILMER

s/ Don Kilmer

Don Kilmer
Counsel for Plaintiff Second Amendment
Foundation

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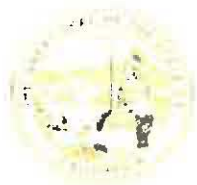
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EXHIBIT 1

TABLE OF FAIRGROUND INFORMATION

Fair Name and Location	Property Ownership	Incorporated in City	Unincorporated in County	Vesting Title	Site Area (Acres)	Ownership
14th DAA, Santa Cruz County Fair, Watsonville	14th DAA		Unincorporated Santa Cruz County	14th District Agricultural Association, an institution of the State of California	105	DAA
15th DAA Kern County Fair, Bakersfield (Leased)	Lease from Kern County		Unincorporated Kern County	County of Kern, a political subdivision of the State of California	168	County
16th DAA, Mid-State Fair, Paso Robles	16th DAA	City of El Paso de Robles		State of California as to Lots 3, 5, 6, 7, 8 and 10 in Block 1; and 16th District Agricultural Association, as to the remainder	42	DAA
17th DAA, Nevada County Fair, Grass Valley	17th DAA			No information available	100	DAA
18th DAA, Eastern Sierra Tri-County Fair, Bishop	Lease from Los Angeles Water and Power	City of Bishop		The City of Los Angeles, a Municipal Corporation	65	LADWP
19th DAA, Earl Warren Show grounds, Santa Barbara	19th DAA		Unincorporated Santa Barbara County	State of California, acting by and through the manager of the 19th District Agricultural Association, with the approval of the California Department of Food and Agriculture, who acquired title as 19th District Agricultural Association	34	DAA
20th DAA, Gold Country Fair, Auburn	20th DAA	City of Auburn		20 th District Agricultural Association, and Institution of the State of California	38	DAA
21st DAA, Big Fresno Fair, Fresno	Lease from Fresno County		Unincorporated Fresno County	The County of Fresno, a public corporation.	82	DAA
21-A DAA, Madera District Fair, Madera	21-A DAA		Unincorporated Madera County	21-A District Agricultural Association, an Institution of the State of California, as to Parcels 1 and 3; and 21-A District Agricultural Association, as to Parcel 2	165	County
22nd DAA San Diego County Fair, Del Mar	22nd DAA		Unincorporated San Diego County	22nd District Agricultural Association of the State of California	364	DAA
23rd DAA, Contra Costa County Fair, Antioch	23rd DAA		Unincorporated Contra Costa County	23rd District Agricultural Association, an institution of the state of California, as to parcels one and two, the State of California, as to parcel three.	80	DAA

EXHIBIT 2



GAVIN NEWSOM
LIEUTENANT GOVERNOR

ATTN: Board of Directors
22nd District Agricultural Association
2260 Jimmy Durante Blvd.
Del Mar, CA 92014

RE: Gun shows on the Del Mar Fairgrounds

April 23, 2018

Dear Members of the Board,

I write to urge that the Board of Directors ban gun shows at the Del Mar Fairgrounds, a public-owned land, and invite the Board of Directors to discuss the issue at its next hearing and facilitate a productive conversation with public input.

In the wake of recent mass shootings, the public has demonstrated outpouring support for gun reform. Permitting the sale of firearms and ammunition on state-owned property only perpetuates America's gun culture at a time when 73% of Californians support gun reform measures and 73% of Californians cite concern about the threat of mass shootings in our schools, according to a recent poll conducted by the Public Policy Institute of California.

There is widespread support for this ban within immediate communities; the neighboring cities of the Del Mar Fairgrounds—Del Mar, Solana Beach, and Encinitas—have adopted resolutions supporting the ban of gun shows at the Fairgrounds. As Mayor of San Francisco, I pressed to end gun shows in neighboring Daly City because the impact of gun violence isn't hindered by municipal boundaries.

The public is demanding action from government, evident in the significant participation in recent protests and walkouts. It is imperative that we answer their call to action and make meaningful strides toward ending gun violence. If California continues to permit the sale of firearms and ammunition on state-owned property, we are sending a signal that we value the sale of firearms above the lives of Americans.

Sincerely,

Gavin Newsom
Lieutenant Governor of California

STATE CAPITOL ROOM 1114, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 445-8904
WWW.LTG.CA.GOV



EXHIBIT 3

STATE CAPITOL
P.O. BOX 912849
SACRAMENTO, CA 94249-0078
(916) 319-2078
FAX (916) 319-2178

DISTRICT OFFICE
1350 FRONT STREET, SUITE 6054
SAN DIEGO, CA 92101
(619) 645-3090
FAX (619) 645-3004

E-MAIL
Assemblymember.Gloria@assembly.ca.gov

Assembly California Legislature



TODD GLORIA
MAJORITY WHIP

ASSEMBLYMEMBER, SEVENTY-EIGHTH DISTRICT

COMMITTEES
AGING AND LONG-TERM CARE
GOVERNMENTAL ORGANIZATION
HOUSING AND COMMUNITY
DEVELOPMENT
VETERANS AFFAIRS
WATER, PARKS, AND WILDLIFE

September 10, 2018

22nd District Agricultural Association
Attn: Board of Directors
2260 Jimmy Durante Blvd.
Del Mar, CA 92014

Dear Members of the Board,

As the Assemblymember representing the 78th District, which includes the Del Mar Fairgrounds, I am writing in support of the Contracts Committee recommendation that no new contracts with producers of gun shows be approved. As stated in my letter of March 12, 2018, it is my firm belief that the State of California should in no way help to facilitate the sale of firearms.

I applaud the 22nd District Agricultural Association (22nd DAA)'s willingness to consider options for limiting or eliminating these gun shows, and believe that this recommendation reflects the desires of the surrounding community. It is my firm belief that the Board itself should carry out this directive, however, I am prepared to act by way of legislation should the 22nd DAA Board be unable to take meaningful action. I have prepared language for introduction in the next legislative session should that become necessary.

With the continued prevalence of gun violence in our nation, it is impossible to ignore the link to the number of guns in our communities. That is why I believe it is imperative to remove the State, to the extent possible, from complicity in these tragedies by restricting gun shows at the Del Mar Fairgrounds.

I appreciate the Board's time and consideration of this matter.

Sincerely,


TODD GLORIA
Assemblymember, 78th District

CC: Tim Fennell, Del Mar Fairgrounds CEO/General Manager

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0078
(916) 319-2078
FAX (916) 319-2178

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1350 FRONT STREET, SUITE 6054
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Assembly California Legislature



TODD GLORIA
MAJORITY WHIP

ASSEMBLYMEMBER, SEVENTY-EIGHTH DISTRICT

COMMITTEES
AGING AND LONG-TERM CARE
GOVERNMENTAL ORGANIZATION
HOUSING AND COMMUNITY
DEVELOPMENT
VETERANS AFFAIRS
WATER, PARKS, AND WILDLIFE

March 12, 2018

22nd District Agricultural Association
Attn: Board of Directors
2260 Jimmy Durante Blvd.
Del Mar, CA 92014

Dear Members of the Board,

As the California State Assemblymember representing the 78th District, I am writing to urge you to limit the reoccurrences of gun shows at the Del Mar Fairgrounds. It is my firm belief that the State of California should in no way help to facilitate the sale of firearms.

According to the U.S. Centers for Disease Control and Prevention, 96 Americans are killed every day with a firearm. Sixty-two percent of firearm deaths are suicides. The CDC also estimates more than 200 people are injured daily by firearms -- double the lives lost. Just this year alone, more than 2,500 people in the U.S. have been killed due to gun violence and we have experienced more than 40 mass shootings -- including the massacre of seventeen students and faculty at Stoneman Douglas High School in Parkland, Florida.

Although California has some of the most restrictive gun laws in the nation, we must do more to prevent gun violence and injuries. With the continued prevalence of gun violence in our nation, it is impossible to ignore the link to the number of guns in our communities. That is why I believe it is imperative to remove the State, to the extent possible, from complicity in these tragedies by limiting the frequency of gun shows at the Del Mar Fairgrounds.

I appreciate your time and consideration to this matter. Should you have any questions, please feel free to contact me at (619) 645-3090.

Sincerely,

TODD GLORIA
Assemblymember, 78th District

CC: Tim Fennell, Del Mar Fairgrounds CEO

EXHIBIT 4



User Name: Laura Palmerin

Date and Time: Thursday, September 30, 2021 5:02:00 PM PDT

Job Number: 154238224

Document (1)

1. [B & L Prods. v. 22nd Dist. Agric. Ass'n, 394 F. Supp. 3d 1226](#)

Client/Matter: 2518

Search Terms: 394 F. Supp. 3d 1226 (S.D. Cal. 2019)

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Neutral

As of: October 1, 2021 12:02 AM Z

B & L Prods. v. 22nd Dist. Agric. Ass'n

United States District Court for the Southern District of California

June 25, 2019, Decided; June 25, 2019, Filed

Case No.: 3:19-CV-134-CAB-NLS

Reporter

394 F. Supp. 3d 1226 *; 2019 U.S. Dist. LEXIS 106334 **; 2019 WL 2602546

B & L PRODUCTIONS, INC. d/b/a
CROSSROADS OF THE WEST et al.,
Plaintiffs, v. 22ND DISTRICT
AGRICULTURAL ASSOCIATION et al.,
Defendants.

Associates, P. C., Long Beach, CA.

For [Second Amendment](#) Foundation, Plaintiff:
Carl D. Michel, LEAD ATTORNEY, Michel &
Associates PC, Long Beach, CA; Donald
Edward Kilmer, Jr., LEAD ATTORNEY, Law
Offices of Donald Kilmer, A Professional
Corporation, San Jose, CA.

Subsequent History: Motion denied by [B & L Prods. v. 22nd Dist. Agric. Ass'n, 2020 U.S. Dist. LEXIS 73950 \(S.D. Cal., Apr. 27, 2020\)](#)

For 22nd District Agricultural Association,
Defendant: Peiyin Patty Li, LEAD ATTORNEY,
California Department of Justice, Office of the
Attorney General, San Francisco, CA.

Core Terms

Moratorium, gun show, discovery,
Fairgrounds, content-based, regulation, gun,
summary judgment, public safety, rights,
motion to dismiss, restrictions, content-neutral,
viewpoint, strict scrutiny, quotation, marks,
governmental interest, public forum,
allegations, firearm, preliminary injunction,
irreparable, satisfies, immunity, subject to strict
scrutiny, compelling state interest, summary
judgment motion, constitutional right, narrowly
tailored

Judges: Hon. Cathy Ann Bencivengo, United
States District Judge.

Opinion by: Cathy Ann Bencivengo

Opinion

**[*1233] MEMORANDUM OPINION RE JUNE
18, 2019 ORDER**

[*1234] At a hearing on June 17, 2019, and in
an order dated June 18, 2019, the Court
granted in part and denied in part a motion to
dismiss filed by Defendants, denied Plaintiffs'
request for entry of summary judgment, and
issued a preliminary **[**2]** injunction against
Defendant 22nd District Agricultural District
(the "District"). The purpose of this opinion is to
provide the reasoning for the Court's order.

Counsel: **[**1]** For B & L Productions, Inc.,
doing business as Crossroads of the West,
Barry Bardack, Ronald J. Diaz, Sr., John
Dupree, Christopher Irick, Lawrence Walsh,
Maximum Wholesale, Inc., doing business as
Ammo Bros., California Rifle & Pistol
Association, Incorporated, South Bay Rod and
Gun Club, Inc., Plaintiffs: Carl D. Michel, Sean
Brady, LEAD ATTORNEYS, Tiffany D.
Cheuvront, Michel & Associates PC, Long
Beach, CA; Anna M. Barvir, Michel &

I. Background

Plaintiff B&L Productions, Inc. d/b/a Crossroads of the West ("Crossroads") operates gun show events in California, including at the Del Mar Fairgrounds (the "Fairgrounds"). [Doc. No. 1 at ¶ 1.] Plaintiffs California Rifle & Pistol Association, Inc. ("CRPA"); South Bay Rod and Gun Club, Inc. ("SBRGC"); [Second Amendment](#) Foundation, Inc. ("SAF"); Barry Bardack; Ronald J. Diaz, Sr.; John Dupree; Christopher Irick; Lawrence Michael Walsh; and Maximum Wholesale, Inc. d/b/a Ammo Bros ("MW"), attend and participate in the Crossroads gun show at the Fairgrounds. [*Id.* at ¶ 7.] The Complaint describes gun shows as:

a modern bazaar—a convention of like-minded individuals who meet in this unique public forum that has been set aside by state local governments for all manner of commerce. Gun shows just happen to include the exchange of products and ideas, knowledge, services, education, entertainment, and recreation, related to the lawful uses of firearms. Those lawful uses include (but are not limited to):

- a. Firearm safety training;
- b. Self-defense; **[**3]**
- c. Defense of others;
- d. Defense of community;
- e. Defense of state;
- f. Defense of nation;
- g. Hunting;
- h. Target shooting;
- i. Gunsmithing;
- j. Admiration of guns as art;
- k. Appreciation of guns as technological artifacts; and
- l. Study of guns as historical objects.

[*Id.* at ¶ 47.] The complaint further alleges that:

Gun shows in general, and the Del Mar show in particular, are a celebration of America's "gun culture" that is a natural

and essential outgrowth of the constitutional rights that flow from the [Second Amendment to the United States Constitution](#). Participating in that culture is one of the primary reasons people attend Crossroads gun shows as vendors, exhibitors, customers, and guests (even if particular vendors/attendees are not in the firearm business or in the market to buy a gun at a particular event.)

[*Id.* at ¶ 49.]

According to the complaint, individuals attending and participating in these gun shows engage in commercial activities [*id.* at ¶ 3], but "[a]ctual firearm transfers are prohibited from taking place at any gun show in California absent very limited exceptions applicable only to law enforcement" [*id.* at ¶ 43]. "Only a small percentage (usually less than 40%) of the vendors actually offer firearms or ammunition for sale. The **[**4]** remaining vendors offer accessories, collectibles, home goods, lifestyle **[*1235]** products, food and other refreshments." [*Id.* at ¶ 48.]

In addition, according to the complaint, these gun show events include activities and discussions related to: "firearms, firearm technology, firearm safety, gun-politics, and gun-law (both pending legislation and proper compliance with existing law.) Other topics include: where to shoot, where and from whom to receive training, gun-lore, gun-repair, gunsmithing, gun-art, and many other topics, that arise from the right to acquire, own, possess, enjoy, and celebrate arms as a quintessentially American artifact with Constitutional significance." [*Id.* at ¶ 3.] The complaint also alleges that at gun shows, "literature and information are shared, speakers provide valuable live lectures, classes are conducted, political forums are held where gun rights discussions take place, and candidates for political office can meet to

discuss political issues, the government, and the Constitution with constituents who are part of the California gun culture." [*Id.* at ¶ 52.]

The Fairgrounds is owned by the state of California and managed by the board of directors of Defendant 22nd [**5] District Agricultural Association (the "District"). [*Id.* at ¶¶ 23, 58, 112.] According to the complaint, the Fairgrounds "is used by many different public groups and is a major event venue for large gatherings of people to engage in expressive activities, including concerts, festivals, and industry shows." [*Id.* at ¶ 63.] The Fairgrounds' website allegedly describes its mission as "[t]o manage and promote a world-class, multi-use, *public assembly facility* with an emphasis on agriculture, education, entertainment, and recreation in a fiscally sound and environmentally conscientious manner *for the benefit of all.*" [*Id.* at ¶ 66 (*emphasis* originally in complaint); Doc. No. 1-2 at 2-33; Doc. No. 14-5 at 206.]¹

Defendant Karen Ross is the Secretary of the California Department of Food & Agriculture (the "CDFA"), the entity responsible for policy oversight of the Fairgrounds. [Doc. No. 1 at ¶ 24.] According to the complaint, she oversees the operation of the District, and authorized the other Defendants "to interpret, enforce, and implement [the CDFA's] policies for the operation and management of the [Fairgrounds]." [*Id.* at ¶¶ 59, 113.]

Defendants Steve Shewmaker and Richard Valdez [**6] are president and vice-president of the District Board of Directors, respectively. [*Id.* at ¶¶ 25, 26.] Shewmaker and Valdez were also the members of an "ad hoc committee responsible for developing the plan, in closed session, to effectively ban gun shows from the [Fairgrounds]." [*Id.*; see also ¶ 84] At a public

hearing on September 11, 2018, this committee:

recommended that the District not consider any contracts with the producers of gun shows beyond December 31, 2018 until such time as the District has put into place a more thorough policy regarding the conduct of gun shows that:

- a. Considers the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property[;]
- b. Aligns gun show contract language with recent changes to state and federal law[;]
- c. Details enhanced security plan for the conduct of future shows[;]
- d. Proposes a safety plan[;]
- e. Considers the age appropriateness of the event[;]

[*1236] f. Grants rights for the [District] to perform an audit to ensure full compliance with [California Penal Code Sections 171b](#) and 12071.1 and 12071.4.

[*Id.* at ¶ 88.] The District then "voted (8-to-1) to impose a one-year moratorium (for the year 2019) on gun show [**7] events at the Venue while they study potential safety concerns." [*Id.* at ¶ 94.] According to the complaint, there was "no finding that allowing the (already heavily regulated) gun show events to continue at the [Fairgrounds] posed a definite or unique risk to public safety." [*Id.* at ¶ 92.] The complaint also alleges that the Fairgrounds "has held other non-gun-show events in which criminal activity has taken place—including theft and a shooting. These criminal incidents are no more likely to happen at a gun show event [than at] the non-gun-show event. The District has taken no actions to ban or impose a moratorium on these promoters or events." [*Id.*

¹ See also <http://www.delmarfairgrounds.com/index.php?fuseaction=about.home>

at ¶ 67.]

II. Procedural History

On January 21, 2019, Plaintiffs filed the complaint in this action. The complaint asserts several claims for violation of the right to free speech under the [First Amendment to the Constitution](#) by various combinations of Plaintiffs, as well as claims by all Plaintiffs for violation of the right to assembly and association under the [First Amendment](#), violation of the right to equal protection under the [Fourteenth Amendment to the Constitution](#), and conspiracy to violate civil rights under [42 U.S.C. § 1985](#). The complaint prays for declaratory relief that Defendants' actions in enacting the moratorium on gun shows violated **[**8]** Plaintiffs' [First Amendment](#) Rights, injunctive relief compelling Defendants to allow Crossroads to hold gun shows at the Fairgrounds in 2019, compensatory damages, and punitive damages.

On March 27, 2019, Defendants moved to dismiss the complaint in its entirety. In their opposition to the motion, Plaintiffs asked the Court to convert the motion to dismiss into cross-motions for summary judgment. Upon review of the briefing, and because in a [First Amendment](#) case, "plaintiffs have a special interest in obtaining a prompt adjudication of their rights," [Sorrell v. IMS Health Inc., 564 U.S. 552, 563, 131 S. Ct. 2653, 180 L. Ed. 2d 544 \(2011\)](#), the Court was inclined to adopt Plaintiffs' proposal. The Court then ordered further briefing to give Defendants the opportunity to fully oppose summary judgment in favor of Plaintiffs. After that supplemental briefing was complete, the Court held a hearing on June 17, 2019. As memorialized by a written order the following day, at that hearing the Court informed the parties that it was granting in part and denying in part Defendants' motion to dismiss, denying without

prejudice Plaintiffs' motion for summary judgment based on Defendants' claim that they need discovery to adequately oppose the motion, and set a discovery schedule and briefing schedule for motions for **[**9]** summary judgment. The Court also granted a preliminary injunction to Plaintiffs that enjoined Defendants from enforcing the moratorium on gun shows adopted at the September 11, 2018 meeting (the "Moratorium"). This opinion provides the Court's reasoning for the rulings it issued at the June 17, 2019 hearing and memorialized in the June 18, 2019 order.

III. Defendants' Motion to Dismiss

Although one might think otherwise based on the quantity of outside evidence submitted by Defendants with their motion to dismiss, "evidence outside the pleadings . . . cannot normally be considered in deciding a 12(b)(6) motion." [Cervantes v. City of San Diego, 5 F.3d 1273, 1274 \(9th Cir. 1993\)](#) (quoting **[*1237]** [Farr v. United States, 990 F.2d 451, 454 \(9th Cir. 1993\)](#)).² "The question presented

²Defendants ask for judicial notice of various policies, manuals, reports, meeting minutes and transcripts from the District, on the grounds that they are public records. [Doc. 12-2.] "Judicial notice under [Rule 201](#) permits a court to notice an adjudicative fact if it is 'not subject to reasonable dispute.'" [Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 999 \(9th Cir. 2018\)](#) (quoting [Fed. R. Evid. 201\(b\)](#)). Although "a court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment, . . . [it] cannot take judicial notice of disputed facts contained in such public records." *Id.* (internal citation and quotation marks omitted). Here, it is not clear from the request for judicial notice which facts from these documents Defendants are asking the Court to notice because the request asks the Court only to take notice of the documents themselves. The accuracy of the documents may not reasonably be questioned, "but accuracy is only part of the inquiry under [Rule 201\(b\)](#)." *Id.* "Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth." *Id.* Regardless, even after considering the documents attached to Defendants' request, the Court finds that the complaint states a claim against the District.

. . . is not whether the plaintiff will ultimately prevail, but whether the plaintiff has alleged sufficient factual grounds to support a plausible claim to relief, thereby entitling the plaintiff to offer evidence in support of its claim." Mazal Grp., LLC v. Espana, No. 217CV05856RSWLKS, 2017 U.S. Dist. LEXIS 200108, 2017 WL 6001721, at *2 (C.D. Cal. Dec. 4, 2017).

Thus, when considering a motion to dismiss the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). To survive the motion, the "complaint must contain sufficient [*10] factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). On the other hand, the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Nor is the Court "required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

Accordingly, the need not address the merits of Defendants' request for judicial notice.

A. Claims Against the District

In the motion to dismiss, Defendants argue that the free speech claims should be dismissed because the Moratorium does not regulate speech or expressive conduct, is viewpoint and content-neutral, and survives either rational basis review or intermediate scrutiny. As discussed in detail below, the Court disagrees with Defendants and finds that the Moratorium is a content-based restriction of speech on its face. As a result, [*11] the Court is satisfied that the complaint states plausible claims against the District for violation of Plaintiffs' First Amendment rights and for violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment. [*1238] It is for this reason that the Court denied the motion to dismiss with respect to the District.³

³ Defendants make a host of objections to evidence submitted by Plaintiffs with their opposition to the motion to dismiss and request for summary judgment. [Doc. No. 15-1.] Because the language of the Moratorium and allegations in the complaint were sufficient for this ruling, the Court did not need to consider any of this evidence to determine that the complaint states a claim against the District and to deny the motion to dismiss as to the District. Nor was this evidence material to the Court's decision to deny Plaintiffs' motion for summary judgment based on Defendants' claimed need for discovery. Regardless, Defendants' formulaic objections to the relevance of Plaintiffs' evidence are generally inappropriate in the context of a motion for summary judgment. Instead of objecting to the relevance of the evidence, Defendants would be better served by arguing that the facts are not material. See Burch v. Regents of Univ. of California, 433 F.Supp. 2d 1110, 1119 (E.D. Cal. 2006). As to objections as to the foundation for the evidence, many of the objections are targeted to the exact sort of evidence Defendants submitted in their request for judicial notice. Defendants even object to Plaintiff's submission of some of the exact same documents it included with its motion as also being irrelevant. Compare Exhibit D to Defendants' Request for Judicial Notice [Doc. No. 12-3 at 30] with Exhibit 18 to the Barvir Declaration [Doc. No. 14-6 at 304]. It is unclear what Defendants intend to accomplish with such objections, considering that Defendants believe the evidence is admissible and relevant in some form. Ultimately, the District bears the burden of proof that the gun show moratorium satisfies the requisite level of scrutiny, see United

B. Qualified Immunity as to Shewmaker and Valdez

The motion to dismiss also argues that Defendants Shewmaker and Valdez are entitled to qualified immunity. "Qualified immunity shields government actors from civil liability under [42 U.S.C. § 1983](#) if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" [Castro v. Cty. of Los Angeles](#), [833 F.3d 1060, 1066 \(9th Cir. 2016\)](#) (en banc) (quoting [Harlow v. Fitzgerald](#), [457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 \(1982\)](#)). It "protects 'all but the plainly incompetent or those who knowingly violate the law,'" [Mueller v. Aufer](#), [576 F.3d 979, 992 \(9th Cir. 2009\)](#) (quoting [Malley v. Briggs](#), [475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 \(1986\)](#)), and it assumes that government actors "do not knowingly violate the law," [Gasho v. United States](#), [39 F.3d 1420, 1438 \(9th Cir. 1994\)](#). Because "[i]t is 'an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial.'" [Mueller](#), [576 F.3d at 992](#) (emphasis in original) (quoting [Mitchell v. Forsyth](#), [472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 \(1985\)](#)). To that end, the Supreme Court has "repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in **[**12]** litigation." [Hunter v. Bryant](#), [502 U.S. 224, 227, 112 S. Ct. 534, 116 L. Ed. 2d 589 \(1991\)](#).

To determine whether Shewmaker and Valdez are immune from suit, the court must "evaluate

[States v. Playboy Entmt. Grp., Inc.](#), [529 U.S. 803, 816, 120 S. Ct. 1878, 146 L. Ed. 2d 865 \(2000\)](#), and it is the District's complete lack of evidence, rather than Plaintiffs' evidence, that causes the Court to conclude that Plaintiffs have a likelihood of success on the merits and otherwise satisfy the requirements for a preliminary injunction. Accordingly, Defendants' objections to Plaintiffs' evidence [Doc. No. 15-1] are **OVERRULED**.

two independent questions: (1) whether [their] conduct violated a constitutional right, and (2) whether that right was clearly established at the time of the incident." [Castro](#), [833 F.3d at 1066](#). "[A] right is clearly established when the 'contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" [Id.](#) [at 1067](#) (quoting **[*1239]** [Serrano v. Francis](#), [345 F.3d 1071, 1077 \(9th Cir. 2003\)](#)). "This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." [Mueller](#), [576 F.3d at 994](#) (internal quotation marks and citation omitted). "[T]he clearly established law must be 'particularized' to the facts of the case." [White v. Pauly](#), [137 S.Ct. 548, 552, 196 L. Ed. 2d 463 \(2017\)](#) (citing [Anderson v. Creighton](#), [483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 \(1987\)](#)). "The standard is an objective one that leaves 'ample room for mistaken judgments.'" [Mueller](#), [576 F.3d at 992](#) (quoting [Malley](#), [475 U.S. at 343](#)).

Here, the Court need not resolve whether Plaintiffs' Shewmaker and Valdez violated Plaintiffs' constitutional rights, because even assuming they did, those rights were not clearly established. Plaintiffs' constitutional rights "would be 'clearly established' if 'controlling authority or a robust consensus of cases of persuasive authority' had previously held that" it is a violation **[**13]** of the [First Amendment](#) right to free speech or [Fourteenth Amendment](#) right to equal protection to propose or vote for a rule banning gun shows from a public fairground. [Hines v. Youseff](#), [914 F.3d 1218, 1229-30 \(9th Cir. 2019\)](#) (quoting [Dist. of Columbia v. Wesby](#), [U.S. , 138 S.Ct. 577, 589-90, 199 L.Ed.2d 453 \(2018\)](#)). Plaintiffs point to no such precedent, and the Court has not located any on its own. The absence of such authority means that the rights in question here were not clearly established when Shewmaker and Valdez took actions related to the Moratorium. Accordingly,

they are entitled to qualified immunity.

C. Sovereign Immunity as to Ross

The motion to dismiss argues that the claims against Ross should be dismissed because she has sovereign immunity under the [Eleventh Amendment to the Constitution](#). The [Eleventh Amendment](#) states:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

It "enacts a sovereign immunity from suit." [Idaho v. Coeur d'Alene Tribe of Idaho](#), 521 U.S. 261, 267, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997). The Supreme Court has "extended a State's protection from suit to suits brought by the State's own citizens . . . [and] suits invoking the federal-question jurisdiction of Article III courts may also be barred by the Amendment." [Id. at 268](#). Thus, "[Eleventh Amendment](#) immunity represents a real limitation on a federal **[**14]** court's federal-question jurisdiction." [Id. at 270](#). Sovereign immunity is an affirmative defense, and therefore, "[l]ike any other such defense . . . must be proved by the party that asserts it and would benefit from its acceptance." [ITSI TV Prods., Inc. v. Agric. Associations](#), 3 F.3d 1289, 1291 (9th Cir. 1993).

"Naming state officials as defendants rather than the state itself will not avoid the [eleventh amendment](#) when the state is the real party in interest. The state is the real party in interest when the judgment would tap the state's treasury or restrain or compel government action." [Almond Hill Sch. v. U.S. Dep't of Agric.](#), 768 F.2d 1030, 1033 (9th Cir. 1985). Under the exception created by [Ex Parte Young](#), 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed.

[714 \(1908\)](#), however, "individuals who, as officers of the state, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil **[*1240]** or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action." [Ex parte Young](#), 209 U.S. at 155-56. Pursuant to this exception, "the [eleventh amendment](#) does not bar an injunctive action against a state official that is based on a theory that the officer acted unconstitutionally." [Almond Hill Sch.](#), 768 F.2d at 1034. This exception does not allow suit against officers of the state simply "to enjoin the enforcement of an act alleged to **[**15]** be unconstitutional" unless the officer has "some connection with the enforcement of the act." [Ex parte Young](#), 209 U.S. at 157. Otherwise, the suit "is merely making [the officer] a party as a representative of the state, and thereby attempting to make the state a party." *Id.*

Ross does not have a connection with the enforcement of the Moratorium.⁴ The only allegations about Ross in the complaint are that she delegated operation and management of the Fairgrounds to the District and left it within the District's discretion to have gun

⁴ Plaintiffs argue in their opposition that Ross does not have sovereign immunity regardless of *Ex Parte Young* because "when Ross acts as supervisor of and delegates authority to the local District, she is not acting in her capacity as a state actor." [Doc. No. 14 at 24.] Yet, on the previous page of their brief, Plaintiffs state that they are suing Ross "in her official capacity as a state actor only." [*Id.* at 23.] Moreover, the complaint itself identifies Ross as "Secretary of the California Department of Food & Agriculture—the entity responsible for the policy oversight of the network of California fair venues" [Doc. No. 1 at ¶ 24], indicating that she is a party simply because of her title and not because of any specific actions she took with respect to the Moratorium. By suing her in her official capacity as a state actor, the suit can stand only if an exception to sovereign immunity applies. [Almond Hill Sch.](#), 768 F.2d at 1033.

show events at the Fairgrounds. [See, e.g., Doc. No. 1 at ¶ 127.] There are no allegations that Ross was tasked with enforcing the Moratorium by preventing gun shows at the Fairgrounds. Instead, Ross' alleged wrongdoing amounts to supervision over the District, Shewmaker, and Valdez, who are alleged to have been responsible for the Moratorium. This "general supervisory power over the persons responsible for enforcing" the Moratorium does not subject Ross to suit. Los Angeles Cty. Bar Ass'n v. Eu, 979 F.2d 697, 704 (9th Cir. 1992). Accordingly, Ross is entitled to sovereign immunity.

IV. Plaintiffs' Motion for Summary Judgment and Defendants' Rule 56(d) Declaration

Under Federal Rule of Civil Procedure 56, the court shall grant summary judgment "if the movant shows that there is no genuine **[**16]** dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). To avoid summary judgment, disputes must be both 1) material, meaning concerning facts that are relevant and necessary and that might affect the outcome of the action under governing law, and 2) genuine, meaning the evidence must be such that a reasonable judge or jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). When ruling on a summary judgment motion, the court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). "Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." **[*1241]** T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

In opposition to summary judgment here, however, the District's primary argument is that it is entitled to discovery needed to oppose the motion. Federal Rule of Civil Procedure 56(d)⁵ "provides that if a party opposing summary judgment demonstrates a need for further discovery in order to obtain facts essential to justify the party's opposition, the trial court may deny the motion for summary judgment or continue the hearing to allow for such discovery." Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998). In making a Rule 56(d) motion, "a party opposing summary judgment 'must make clear what information is sought and **[**17]** how it would preclude summary judgment.'" *Id.* (quoting Garrett v. City and County of San Francisco, 818 F.2d 1515, 1518 (9th Cir. 1987)). "The facts sought must be 'essential' to the party's opposition to summary judgment . . . and it must be 'likely' that those facts will be discovered during further discovery." Sec. & Exch. Comm'n v. Stein, 906 F.3d 823, 833 (9th Cir. 2018). "In other words, there must be a 'basis or factual support for [the] assertions that further discovery would lead to the facts and testimony' described in an affidavit submitted pursuant to Rule 56(d)." Haines v. Home Depot U.S.A., Inc., No. 1:10-CV-01763-SKO, 2012 U.S. Dist. LEXIS 8087, 2012 WL 217767, at *2 (E.D. Cal. Jan. 24, 2012) (quoting Margolis, 140 F.3d at 854)). Evidence that is "the object of mere speculation . . . is insufficient to satisfy the rule." Stein, 906 F.3d at 833 (citing Ohno v. Yasuma, 723 F.3d 984, 1013 n.29 (9th Cir. 2013)).

Although this rule "facially gives judges the discretion to disallow discovery when the non-

⁵ Federal Rule of Civil Procedure 56(d) states: "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order."

moving party cannot yet submit evidence supporting its opposition, the Supreme Court has restated the rule as requiring, rather than merely permitting, discovery "where the nonmoving party has not had the opportunity to discover information that is essential to its opposition." Metabolife Int'l, Inc. v. Wornick, 264 F.3d 832, 846 (9th Cir. 2001) (quoting Anderson, 477 U.S. at 250 n.5). Thus, when "a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any [Rule 56(d)] **[**18]** motion fairly freely." Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation, 323 F.3d 767, 773 (9th Cir. 2003).

This right to discovery does not fit well with litigation like this one involving prior restraints on speech. Content-based restrictions on speech, of which the District's moratorium on gun shows is one, "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015). In other words, as discussed in the next section, the Moratorium is subject to strict scrutiny. This finding is compelled by the language of the Moratorium itself. No discovery is needed from either side to arrive at this conclusion, and no additional discovery would result in a different standard of scrutiny being applied by the Court. See id. at 2228 ("A law that is content based on its face is subject to strict scrutiny regardless of the government's **[*1242]** benign motive, content-neutral justification, or lack of 'animus toward the ideas contained'"). Thus, the only question on which discovery could be useful is whether the Moratorium satisfies strict scrutiny.

The District, however, has never taken the

position that the Moratorium satisfies strict scrutiny. To the contrary, the District's position is that the Moratorium **[**19]** does not regulate speech at all and that it is subject only to rational basis review. [Doc. No. 12-1 at 20-22.] In the alternative, the District argues that the Moratorium satisfies intermediate scrutiny. It was only when faced with summary judgment in favor of Plaintiffs that the District asserts that it needs discovery to satisfy its burden. Yet, considering that the District has never argued that the Moratorium satisfies strict scrutiny, the discovery it now purports to need necessarily is based merely on speculation that the District will uncover evidence supporting a finding that the Moratorium satisfies strict scrutiny. The Court is not persuaded that the government can enact a facially content-based speech restriction based on a misguided belief that the regulation would have to satisfy only rational basis review, and then when told strict scrutiny applies, be allowed to delay summary judgment in favor of the party whose speech has been restricted in the hopes of finding support for the new position that the restriction satisfies strict scrutiny. Surely, the District's right to discovery to justify a facially content-based speech restriction does not take precedence over the **[**20]** First Amendment rights of Plaintiffs that would be restricted while such discovery takes place.

Moreover, the Court is not convinced that any of the discovery sought by the District will help it overcome summary judgment in favor of Plaintiffs. First, the District contends it needs discovery on whether the Moratorium regulates non-commercial speech that is inextricably intertwined with commercial speech. Yet, if both commercial and noncommercial speech occur at gun shows, the Moratorium restricts both commercial and noncommercial speech. If these types of speech at guns shows are inextricably intertwined, strict scrutiny applies to them both.

Cf. Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc., 487 U.S. 781, 795-96, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988) (holding that strict scrutiny applies where the commercial and non-commercial "component parts of a single speech are inextricably intertwined"). On the other hand, even if the non-commercial and commercial speech at gun shows are not inextricably intertwined, the Moratorium remains subject to strict scrutiny based on its restriction of non-commercial speech. Either way, the discovery the District contends it needs will not result in an easing of the District's burden.

Next, the District claims it needs discovery on whether the Moratorium "targets gun culture." **[**21]** Yet, even if the Moratorium does not target gun culture, it is still subject to strict scrutiny. See Reed, 135 S.Ct. at 2230 (noting that although "discrimination among viewpoints—or the regulation of speech based on the specific motivating ideology or the opinion or perspective of the speaker—is a more blatant and egregious form of content discrimination . . . the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.") (internal quotation marks and citations omitted). Thus, it is unclear how such discovery would preclude summary judgment here.

Finally, the District contends that it requires discovery on "how the [Moratorium] serves the compelling government interest **[*1243]** of protecting public safety." [Doc. No. 20 at 20.] Yet, despite its arguments to the contrary, an amorphous concern for "public safety" is not the public interest that the District stated was the interest served by the Moratorium. Instead, the interest purportedly served by the Moratorium, based on the language of the Moratorium itself, is the District's ability to "put into place a more thorough policy regarding

the conduct of gun shows." **[**22]** In other words, the District does not seek discovery to support its stated interest for the Moratorium; it seeks discovery in the hopes of supporting a new state interest. This speculative discovery does not satisfy Rule 56(d). Stein, 906 F.3d at 833.

Notwithstanding the foregoing, there is a middle ground here that would protect both any entitlement to discovery that the District may have before ruling on summary judgment, as well as Plaintiffs' constitutional rights—a preliminary injunction. As discussed below, Plaintiffs satisfy the requirements for a preliminary injunction on enforcement of the Moratorium. Accordingly, although the Court is skeptical that any of the discovery sought by the District would preclude summary judgment for Plaintiffs, Plaintiffs' motion for summary judgment is denied without prejudice based on Rule 56(d). The June 18, 2019 order provides a briefing schedule for a renewed motion for summary judgment by Plaintiffs (and the District if desired) after the discovery period.

V. Preliminary Injunction

Although Plaintiffs did not expressly move for a preliminary injunction, the briefing demonstrates that such an injunction is warranted while the District pursues the discovery it contends it needs to oppose **[**23]** summary judgment. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). Each of these four requirements is satisfied here.

A. Likelihood of Success Against the District

1. First Amendment Claims

"The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that abridge the freedom of speech." Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S.Ct. 2361, 2371, 201 L. Ed. 2d 835 (2018). Under the First Amendment, "a government, including a municipal government vested with state authority, 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" Reed, 135 S.Ct. at 2226 (quoting Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972)); see also Texas v. Johnson, 491 U.S. 397, 414, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."). "Content-based regulations 'target speech based on its communicative content.'" Nat'l Inst. of Family & Life Advocates, 138 S.Ct. at 2371 (quoting Reed, 135 S.Ct. at 2226). "[T]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." Reed, 135 S.Ct. at 2230.

Content-based **[**24]** regulations "are presumptively unconstitutional and may be **[*1244]** justified only if the government proves that they are narrowly tailored to serve compelling state interests." Reed, 135 S.Ct. at 2226; see also R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 382, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) ("Content-based regulations are presumptively invalid."). "It is rare that a regulation restricting speech

because of its content will ever be permissible." Playboy Entm't Grp., Inc., 529 U.S. at 818; see also Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 230, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987) ("Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." (quoting Regan v. Time, Inc., 468 U.S. 641, 648-649, 104 S. Ct. 3262, 82 L. Ed. 2d 487 (1984))). On the other hand, "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). "A content-neutral regulation will be sustained under the First Amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." Turner Broad. Sys., Inc. v. F.C.C., 520 U.S. 180, 189, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997). Accordingly, the Court first must decide whether the Moratorium is content neutral because resolution of that question determines the appropriate level of scrutiny. See McCullen v. Coakley, 573 U.S. 464, 478, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014) ("The content-neutrality prong of the Ward test is logically antecedent to the narrow-tailoring **[**25]** prong, because it determines the appropriate level of scrutiny.").

a. *Is the Moratorium Content-Based or Content-Neutral?*

"Although it is common to place the burden upon the Government to justify impingements on First Amendment interests, it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies." Clark

v. Community for Creative Non-Violence, 468 U.S. 288, 293 n.5, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984). Here, there is little question that speech and conduct protected by the First Amendment occurs at Crossroads' gun shows. Moreover, the speech in question is not merely commercial speech, as Defendants attempt to frame it in their motion. Rather, the types of speech alleged to occur at gun shows includes pure speech that warrants full First Amendment protection.

Further, the Moratorium is a restriction on speech based on the "communicative content" of that speech, Reed, 135 S.Ct. at 2226, with the communicative content being guns, gun rights, and gun-related issues. By its plain terms, the Moratorium applies only to gun shows. Put differently, on its face, the Moratorium accords preferential treatment to shows featuring speech on all issues aside from these gun-related subjects. The Moratorium "thus slips from the neutrality of time, place, and circumstance [**26] into a concern about content. This is never permitted." Mosley, 408 U.S. at 99 (internal quotation marks and citation omitted). Notwithstanding this seemingly obvious conclusion, Defendants argue that "the fact that the [Moratorium] applies only to gun shows, and not all other types of events, does not transform it into a content-based regulation; otherwise, any legislative or regulatory action taken with respect to a particular type of activity or subject matter would be deemed to be content-based and subject to [*1245] strict scrutiny." [Doc. No. 12-1 at 25.] Defendants' reliance on McCullen v. Coakley, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014), for this argument is misplaced.

In McCullen, the regulation in question was a Massachusetts statute making "it a crime to knowingly stand on a 'public way or sidewalk' within 35 feet of an entrance to any place,

other than a hospital, where abortions are performed." McCullen, 573 U.S. at 469. In holding that the statute was content-neutral, the Supreme Court noted that the statute "does not draw content-based distinctions on its face," and stated that the statute "would be content based if it required 'enforcement authorities 'to examine the content of the message that is conveyed to determine whether' a violation has occurred." Id. at 479 (quoting FCC v. League of Women Voters of Cal., 468 U.S. 364, 383, 104 S. Ct. 3106, 82 L. Ed. 2d 278 (1984)). Here, in contrast, [**27] the content of a show or event, i.e., whether it is a gun show or is not a gun show, is determinative of whether it is eligible to hold an event at the Fairgrounds in 2019. Thus, whereas the buffer zone in McCullen may have had the "'inevitable effect' of restricting abortion-related speech more than speech on other subjects," id. at 480 (emphasis added), the Moratorium here has the *intended* effect of restricting gun-related speech more than speech on other subjects.

Defendants conflate the government interests purportedly served by the Moratorium with the determination of whether the Moratorium is content-based or content-neutral. A court, however, must consider "whether a law is content neutral on its face *before* turning to the law's justification or purpose." Reed, 135 S.Ct. at 2228 (emphasis in original). Ignoring Reed, Defendants argue that because, according to Defendants, the Moratorium is focused on public safety issues, it "'serves purposes unrelated to the content of expression,' and so should be 'deemed neutral.'" [Doc. No. 12-1 at 26 (quoting McCullen, 573 U.S. at 480).]

Defendants' justifications for the Moratorium may be relevant to the determination of whether it satisfies the requisite level of scrutiny, but they do not render [**28] a content-based law content neutral. Reed, 135 S.Ct. at 2228 ("[A]n innocuous justification

cannot transform a facially content-based law into one that is content-neutral."). In *McCullen*, because the statute was facially neutral, the Court needed to go beyond the face of the statute to determine whether its purposes were intended to be content-based. See *Reed*, 135 S.Ct. at 2228 ("Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny."). Here, on the other hand, the Moratorium is content-based on its face, the content being gun shows, which include speech related to guns and gun issues. "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Id.* at 2228. Defendants' proffered content-neutral justification does not render the Moratorium, a facially content-based policy, content-neutral.

Indeed, because the speech at gun shows is likely to be predominantly, **[**29]** if not exclusively, favorable to guns and gun rights, "[i]n its practical operation," the Moratorium "goes even beyond mere content discrimination, to actual viewpoint discrimination." *R.A.V.*, 505 U.S. at 391. "A regulation engages in viewpoint **[*1246]** discrimination when it regulates speech based on the specific motivating ideology or perspective of the speaker." *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879, 899 (9th Cir. 2018) (internal quotation marks and citation omitted). "The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed." *R.A.V.*, 505 U.S. at 386. "Discrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828, 115 S. Ct. 2510,

132 L. Ed. 2d 700 (1995). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the *First Amendment* is all the more blatant." *Id.* at 829. "Viewpoint discrimination is the most noxious form of speech suppression." *R.A.V.*, 505 U.S. at 386. Here, it is difficult to conceive of the Moratorium on gun shows as anything other than a restriction of speech with a *pro-gun* or *pro-second amendment* viewpoint. Normally, this conclusion is all but dispositive. *Sorrell*, 564 U.S. at 571 ("In the ordinary case it is all but dispositive to conclude that a law is content-based and, in practice, viewpoint-discriminatory.").

In this context, whether the Fairgrounds is a **[**30]** public forum, as Plaintiffs argue, or a "limited public forum" or nonpublic forum, as Defendants argue, has no impact on the result here. The Supreme Court has "identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum." *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 802, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985). Regardless of the type of forum, however, "the fundamental principle that underlies [the Court's] concern about 'content-based' speech regulations [is] that 'government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.'" *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48-49, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986) (quoting *Mosley*, 408 U.S. at 95-96). "Although a speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed within the purpose of the forum, or if he is not a member of the class of speakers for whose special benefit the forum was created, the government violates the *First Amendment* when it denies access to a speaker solely to suppress the point of view

he espouses on an otherwise includible subject." Cornelius, 473 U.S. at 806 (internal citations omitted); see also Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 679, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010) (holding that any restrictions based on the limited or nonpublic nature of the forum are subject to a "key caveat: Any access [**31] barrier must be reasonable and viewpoint neutral.").

"The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place." Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983); see also Cinevision Corp. v. City of Burbank, 745 F.2d 560, 571 (9th Cir. 1984) ("Although the City was not required to open the Starlight Bowl and is not required to leave it open indefinitely, it cannot, absent a compelling governmental interest, open the forum to some and close it to others solely in order to suppress the content of protected expression."). "Once a forum is [*1247] opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." Mosley, 408 U.S. at 96 (internal footnote omitted). "Reasonable time, place and manner regulations are permissible, [but] a content-based prohibition must be narrowly drawn to effectuate a compelling state interest." Perry Educ. Ass'n, 460 U.S. at 46. Here, having opened up the Fairgrounds to shows of all types that are put on by all members of the public, the District cannot restrict use of the Fairgrounds based on the content, [**32] let alone viewpoint, expressed by the show and its participants. See Martinez, 561 U.S. at 685 ("Once it has

opened a limited public forum, . . . the State must respect the lawful boundaries it has itself set.") (internal quotation marks and brackets omitted).

In sum, "[i]t is well established that '[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to a public discussion of an entire topic." Reed, 135 S.Ct. at 2230 (quoting Consol. Edison Co. v. Pub. Serv. Comm'n of New York, 447 U.S. 530, 537, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980)); cf. Rosenberger, 515 U.S. at 831 ("If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint."). At a minimum, based on the allegations in the complaint, the Moratorium is a "content-based" regulation of speech. Because the Moratorium regulates speech based on its content, it is subject to strict scrutiny, meaning "it must be narrowly tailored to promote a compelling Government interest." Playboy Entm't Grp., Inc., 529 U.S. at 813. Further, because the District is a political body, its decision on the Moratorium "must be scrutinized most carefully—if [**33] only because such a body is at all times, by its very nature, the object of political pressures." Cinevision Corp., 745 F.2d at 575.

b. Compelling State Interest

Having determined that the Moratorium is a content-based restriction of speech, it is presumptively unconstitutional. Reed, 135 S.Ct. at 2226; R.A.V., 505 U.S. at 382. Content based restrictions are rarely upheld. "When the Government restricts speech, the

Government bears the burden of proving the constitutionality of its actions." McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 210, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (quoting Playboy Entm't Grp., Inc., 529 U.S. at 816). Thus, the District bears the burden of proving that the Moratorium is narrowly tailored to promote a compelling government interest.

In its briefs (and again at the hearing), the District relies vague claims that the Moratorium is based on an interest in "public safety." Both the language of the Moratorium itself and the District's briefs, however, are largely silent as what members of the public are endangered by gun shows or the speech therein. Nor does the District point to any evidence that attendees of gun shows at the Fairgrounds have suffered injuries in the past or are in greater danger than attendees of other events at the Fairgrounds.⁶ Indeed, at the [*1248] hearing, counsel for the District could not answer why, after years of gun shows at the Fairgrounds, the [**34] District decided to enact the Moratorium when it did. The District's "[m]ere speculation of harm does not constitute a compelling state interest." Consol. Edison Co. of New York, 447 U.S. at 543. A general fear that people attending gun shows will violate state and local laws about gun possession or even commit acts of gun violence in the community upon leaving the show cannot justify the Moratorium. See Cinevision Corp., 745 F.2d at 572 ("[A] general fear that state or local narcotics or other laws will be broken by people attending the concerts cannot justify a content-based restriction on expression."); see also Sorrell, 564 U.S. at 577 ("Those who seek to censor or burden free expression often assert that disfavored speech has adverse effects. But the

fear that people would make bad decisions if given truthful information cannot justify content-based burdens on speech.") (internal quotation marks and citation omitted); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 773, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976) (holding that a State may not "completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients"); Bay Area Peace Navy v. United States, 914 F.2d 1224, 1228 (9th Cir. 1990) ("[The government] is not free to foreclose expressive activity in public areas on mere speculation about danger.").

Although "[t]here is no doubt that [**35] the City has a substantial interest in safeguarding its citizens against violence," Edwards v. City of Coeur d'Alene, 262 F.3d 856, 863 (9th Cir. 2001), "even the most legitimate goal may not be advanced in a constitutionally impermissible manner," Carey v. Brown, 447 U.S. 455, 464-65, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980). "[M]erely invoking interests . . . is insufficient. The government must also show that the proposed communicative activity endangers those interests." Kuba v. 1-A Agric. Ass'n, 387 F.3d 850, 859 (9th Cir. 2004) (citation omitted). Thus, "the First Amendment demands that municipalities provide tangible evidence that speech-restrictive regulations are necessary to advance the proffered interest in public safety." Edwards, 262 F.3d at 863 (internal quotation marks and citation omitted). That the District enacted the Moratorium without any evidence of actual public safety concerns caused by the speech that takes place at gun shows (as opposed to general gun violence in the community) makes it exceedingly likely that the District will not be able to satisfy its burden of demonstrating the existence of a compelling state interest for the Moratorium.

⁶ Plaintiffs, on the other hand, submitted records from the San Diego County Sheriff's office indicating that recent gun shows at the Fairgrounds did not result in any major safety incidents. [Doc. No. 14-2 at 13-46.]

c. *Narrowly Tailored*

Regardless, even if the Moratorium serves a compelling governmental interest in "public safety", the Moratorium is not narrowly tailored to serve that interest. "To meet the requirement of narrow tailoring, **[**36]** the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495. Indeed, the complete ban on gun shows effected by the Moratorium would not even survive lesser scrutiny because it unquestionably burdens substantially more **[*1249]** speech than necessary to accomplish the District's alleged goal of ensuring public safety. Cf. *id.* at 496-97 (applying lesser scrutiny applicable to content neutral speech restrictions to statute creating buffer zones around abortion clinics and holding that it was not narrowly tailored to the government's claimed interests, one of which was public safety); *Turner Broad. Sys., Inc.*, 520 U.S. at 213-14 ("Under intermediate scrutiny, the Government may employ the means of its choosing so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and does not burden substantially more speech than is necessary to further that interest.") (internal quotation marks and ellipses omitted). In reality, the District appears to have taken "the path of least resistance," because of a belief that the gun-related speech that takes place **[**37]** at gun shows "is associated with particular problems," namely gun violence in the community. See *McCullen*, 573 U.S. at 485. Such a path is not narrowly tailored to the District's stated interest in public safety and therefore does not survive scrutiny.

Accordingly, for the foregoing reasons, Plaintiffs have a likelihood of success on their

First Amendment free speech claims.

2. Equal Protection Claim Against the District

Because the Moratorium treats some events (and therefore event promoters, vendors, and attendees) differently from others, it implicates the *Equal Protection Clause of the Fourteenth Amendment* as well. *Mosley*, 408 U.S. at 94-95 ("Because Chicago treats some picketing differently from others, we analyze this ordinance in terms of the *Equal Protection Clause of the Fourteenth Amendment*"); see also *Dariano v. Morgan Hill Unif. Sch. Dist.*, 767 F.3d 764, 779-780 (9th Cir. 2014) ("Government action that suppresses protected speech in a discriminatory manner may violate both the *First Amendment* and the *Equal Protection Clause*.") The analysis of this claim is "essentially the same" as under the *First Amendment*. *Dariano*, 767 F.3d at 780.

"The *Equal Protection Clause* requires that statutes affecting *First Amendment* interests be narrowly tailored to their legitimate objectives." *Mosley*, 408 U.S. at 101. "When government regulation discriminates among speech-related activities in a public forum, the *Equal Protection Clause* mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully **[**38]** scrutinized." *Carey*, 447 U.S. at 461-62. "Necessarily, then, under the *Equal Protection Clause*, not to mention the *First Amendment* itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Mosley*, 408 U.S. at 96.

As with the *First Amendment*, "under the *Equal Protection Clause*, . . . [o]nce a forum is

opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." *Id. at 96* (internal footnote omitted). Thus, the District may not maintain that gun shows pose a safety risk unless those shows are clearly more dangerous than the shows and events the District permits at the Fairgrounds. *Id. at 100* ("[U]nder the Equal Protection Clause, Chicago may not maintain that other picketing [*1250] disrupts the school unless that picketing is clearly more disruptive than the picketing Chicago already permits."). As discussed above, the District, who has the burden of proof, offers no evidence that gun shows pose a greater safety risk to the public than any other shows at the Fairgrounds. General statements about gun violence or dislike [**39] of gun culture do not justify the unequal treatment resulting from the Moratorium. "(I)n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Id. at 101* (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)). Accordingly, Plaintiffs also have a likelihood of success on their claims under the Equal Protection Clause of the Fourteenth Amendment.

B. Irreparable Harm

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); see also *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights unquestionably constitutes

irreparable injury.") (internal quotation marks omitted). "Under the law of this circuit, a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (internal brackets and citation omitted). Here, the harm suffered by Plaintiffs is the violation of their First Amendment rights. By demonstrating a likelihood of success on the merits of their First Amendment claims, Plaintiffs have demonstrated that irreparable harm will result from the continued restriction of their protected speech.

C. Balance of Equities

Balanced against the irreparable injury [**40] faced by Plaintiffs as a result of the continued enforcement of the Moratorium is the District's interest in evaluating the feasibility of gun shows at the Fairgrounds and in determining whether gun shows impact public safety. Considering the complete lack of evidence of any public safety concerns resulting from gun shows at the Fairgrounds (or at least any greater concerns than those resulting from any show at the Fairgrounds), the scales tilt decidedly in favor of Plaintiffs. The District is fully able to revise its policies and procedures for gun shows while gun shows continue to occur at the Fairgrounds. Indeed, the District even allowed a gun show to occur in 2018 after it passed the Moratorium banning gun shows in 2019.

D. Public Interest

For similar reasons, the public interest favors Plaintiffs' exercise of their First Amendment rights. The Ninth Circuit has "consistently recognized the significant public interest in

upholding First Amendment principles." Doe v. Harris, 772 F.3d 563, 583 (9th Cir. 2014). Neither the District's speculative general interest in "public safety" nor its specific interest in re-evaluating its gun show policies and procedures outweigh the public interest in ensuring that First Amendment free speech rights are upheld.

VI. Conclusion

For the foregoing **[**41]** reasons, Plaintiffs claims against the individual defendants are dismissed, the motion to dismiss claims against the District is denied, and the District is enjoined from enforcing the Moratorium, **[*1251]** as stated in the Court's June 18, 2019 order.

Dated: June 25, 2019

/s/ Cathy Ann Bencivengo

Hon. Cathy Ann Bencivengo

United States District Judge

End of Document

EXHIBIT 5

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Attorney for Plaintiff Second Amendment Foundation

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

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

18 Plaintiffs,

19 v.

20 22nd DISTRICT AGRICULTURAL
21 ASSOCIATION, et al.,

22 Defendants.

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

**PARTIES' JOINT NOTICE OF
SETTLEMENT AND MOTION FOR
DISMISSAL**

23 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

24 PLEASE TAKE NOTICE THAT Plaintiffs B & L Productions, Inc., Barry
25 Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Lawrence Walsh,
26 Maximum Wholesale, Inc., California Rifle & Pistol Association, Incorporated,
27 South Bay Rod and Gun Club, Inc., and Second Amended Foundation, (“Plaintiffs”) and
28 Defendant 22nd District Agricultural Association (“Defendant”), collectively

1 “Parties,” have reached and circulated a settlement agreement to resolve the issues in
2 the above-referenced case, which all parties have executed.

3 PLEASE TAKE FURTHER NOTICE THAT pursuant to Local Rule 7.2 and
4 Federal Rule of Civil Procedures 41, the Parties, by and through their counsel of
5 record, submit this joint motion for dismissal of Plaintiffs’ claims against Defendant
6 with prejudice, subject to the Court retaining jurisdiction for the purpose of enforcing
7 the terms of the Parties’ settlement agreement.

8 WHEREAS, at a public meeting held on September 11, 2018, the Defendant’s
9 Board of Directors voted not to consider any contracts with producers of gun show
10 events beyond December 31, 2018, until such time as the District put into place a
11 more thorough policy regarding the conduct of gun show events that considers
12 certain criteria (the “September 2018 Policy”).

13 WHEREAS, on January 21, 2019, Plaintiffs brought suit against Defendant in
14 the above-named court under 42 U.S.C. §§ 1983 and 1985, seeking declaratory and
15 injunctive relief, and as well as various types of money damages.

16 WHEREAS, in addition to the District, Plaintiffs originally sued Steve
17 Shewmaker, former President of the District, in his official and individual capacity;
18 Richard Valdez, Vice President of the District, in his official and individual
19 capacity; and Karen Ross, Secretary of the California Department of Food &
20 Agriculture, in her official capacity (collectively, “Individual Defendants”). By
21 order dated June 18, 2019, the Court dismissed all claims against the Individual
22 Defendants.

23 WHEREAS, the gravamen of Plaintiffs’ complaint was that Defendant’s
24 September 2018 Policy violated Plaintiffs’ rights to free speech, free association, and
25 equal protection.

26 WHEREAS, Defendant denied Plaintiffs’ claims.

27 WHEREAS, the Court, by order dated June 18, 2019, issued a preliminary
28 injunction, enjoining the District “from enforcing the policy it adopted on

1 September 11, 2018, pursuant to which it refused to allow any gun show events to
2 be held at the Del Mar Fairgrounds during the 2019 calendar year.” The Court also
3 ordered the District to allow Crossroads “to reserve dates for gun show events (and
4 to hold such events) at the Fairgrounds as the District would any other show
5 promoters who have previously held events at the Fairgrounds.”

6 WHEREAS, in order to avoid the delay, uncertainty, inconvenience, and
7 expense of protracted litigation of these disputed claims, and as a result of a mutual
8 desire to settle their disputes, the Parties have reached a full and final settlement
9 agreement (attached hereto as Attachment 1).

10 NOW, THEREFORE, pursuant to the mutual agreement of the Parties, the
11 Parties respectfully request that the Court enter an order:

12 1. Dismissing with prejudice all claims asserted in Plaintiffs’ Complaint for
13 Monetary, Declaratory & Injunctive Relief (ECF No. 1), and dismissing this action
14 without costs;

15 2. Retaining jurisdiction to enforce the terms of the Parties’ settlement
16 agreement.

17

18 Dated: April 30, 2020

MICHEL & ASSOCIATES, P.C.

19

s/ Anna M. Barvir

Anna M. Barvir
Attorneys for Plaintiffs B & L Productions, Inc.,
Barry Bardack, Ronald J. Diaz, Sr., John Dupree,
Christopher Irick, Lawrence Walsh, Maximum
Wholesale, Inc., California Rifle & Pistol
Association, Incorporated, South Bay Rod and Gun
Club, Inc.
Email: abarvir@michellawyers.com

24

25 Dated: April 30, 2020

LAW OFFICES OF DONALD KILMER, APC

26

s/ Donald Kilmer

Donald Kilmer
Attorney for Plaintiff Second Amendment Foundation
Email: Don@DKLawOffice.com

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Dated: April 30, 2020

XAVIER BECERRA
Attorney General of California
PAUL STEIN
Supervising Deputy Attorney General

s/ P. Patty Li

P. PATTY LI
Deputy Attorney General
*Attorneys for Defendants 22nd District Agricultural
Association, Steve Shewmaker, Richard Valdez, and
Karen Ross*
Email: patty.li@doj.ca.gov

ATTESTATION OF E-FILED SIGNATURES

I, Anna M. Barvir, am the ECF User whose ID and password are being used to file this Parties’ Joint Notice of Settlement and Motion for Dismissal. In compliance with Southern District of California Electronic Case Filing Administrative Policies and Procedures Section 2(f)(4), I attest that Defendant’s Counsel P. Patty Li has concurred in this filing.

s/ Anna M. Barvir

Anna M. Barvir

Attachment 1

SETTLEMENT AGREEMENT

This settlement agreement (“Agreement”) is made and entered into between B&L Productions, Inc., d/b/a/ Crossroads of the West (“Crossroads”), Barry Bardack, Ronald J. Diaz, Sr., John Dupree, Christopher Irick, Lawrence Walsh, Maximum Wholesale, Inc., d/b/a Ammo Bros., California Rifle & Pistol Association, Incorporated, South Bay Rod and Gun Club, Inc., Second Amendment Foundation (collectively, “Plaintiffs”), and the 22nd District Agricultural Association (“District” or “Defendant”). All the parties to this Agreement may collectively be referred to as “the Parties.”

WHEREAS, Plaintiffs and Defendant are the Parties to the action entitled *B&L Productions, Inc., et al. v. 22nd District Agricultural Association, et al.*, currently pending before the United States District Court for the Southern District of California (the “Court”), Case Number 19-CV-0134 (the “Action”).

WHEREAS, the Parties, through counsel, have negotiated in good faith to resolve this matter on the terms set forth below with the Court retaining jurisdiction to enforce the settlement if necessary.

WHEREAS, the Court has jurisdiction over the Action pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

WHEREAS, Plaintiffs brought suit under 42 U.S.C. §§ 1983 and 1985, and the Court has subject matter jurisdiction over Plaintiffs’ claims, which arise under federal law. 28 U.S.C. § 1331.

WHEREAS, the District is responsible for operating the San Diego County Fairgrounds (“Fairgrounds”), and is managed by a Board of Directors. The District is a proper party to this action.

WHEREAS, at a public meeting held on September 11, 2018, the District’s Board of Directors voted not to consider any contracts with producers of gun show

collaborative fashion under the terms of this Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual promises and releases set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. This Agreement is a compromise and settlement of disputed claims and nothing contained in this Agreement is or shall be construed as an admission of any kind on the part of the District. However, as this Agreement is a public record, the language and terms of the Agreement may not be excluded from evidence in any state or federal proceeding, except under applicable rules of civil procedure or evidence.

2. The District will allow Crossroads to reserve dates for gun show events (and to hold such events) at the Fairgrounds as the District would any other show promoters who have previously held events at the Fairgrounds, so long as the District may lawfully contract for, authorize, or allow gun show events to take place at the Fairgrounds. The security and operation requirements governing the December 2019 gun show will remain in place for future gun show events, subject to the provisions of Paragraphs 3 through 6 of this Agreement.

3. The District maintains authority to evaluate, consider, propose, and implement changes to its policies, consistent with state and federal law, regarding the operation of all events at the Fairgrounds, including gun show events. The District agrees that it will not preclude gun show events from taking place at the Fairgrounds while the process of evaluation and consideration is ongoing. This process will involve good-faith consideration of input from members of the public and stakeholders, including Plaintiffs. This paragraph does not preclude the District from postponing or rescheduling gun show events in the event of a public

Agriculture Code section 4051.2; and (3) the Court has dismissed the Action as described hereafter in this paragraph. The Parties further agree that within three (3) business days after the later of (a) the approval of this Agreement by the District's Board of Directors, (b) the approval of this Agreement by the California Department of Food and Agriculture in accordance with California Food & Agriculture Code section 4051.2, or (c) an order of the Court granting or denying Plaintiffs' March 27, 2020 motion for leave to file a supplemental complaint, the Parties will submit to the Court for its signature and approval a stipulated order which either (i) dismisses with prejudice all claims asserted in the original complaint filed in this Action (ECF No. 1), or (ii) dismisses with prejudice Causes of Action 1 through 7 of the supplemental complaint and strikes from the Prayer for Relief portion of the supplemental complaint Paragraphs 1-7, 14, 18, and the first sentence of Paragraph 16 (ending with "July 5, 2018"), but retains the Court's jurisdiction to enforce this Agreement if necessary. This Agreement shall take effect once the Court has either (i) dismissed with prejudice all claims asserted in the original complaint filed in this Action (ECF No. 1), or (ii) dismissed with prejudice Causes of Action 1 through 7 of the supplemental complaint and stricken from the Prayer for Relief portion of the supplemental complaint Paragraphs 1-7, 14, 18, and the first sentence of Paragraph 16 (ending with "July 5, 2018"), and retained jurisdiction to enforce this Agreement (the "Effective Date").

13. Nothing in this Agreement constitutes a consent or waiver of objections by the District, any previously dismissed defendants, or any defendants named in a supplemental complaint, to the filing of a supplemental complaint in this Action.

14. The Parties agree to work cooperatively to ensure that the Court retains jurisdiction over this Action and to enter such further relief as may be necessary for the effectuation of the terms of this Agreement.

15. Except as specified in Paragraphs 7 and 8 above, each party shall bear its own costs and fees in connection with the Action.

16. The signatories to this Agreement represent that they are authorized to execute and bind themselves or their respective organizations or agencies to this Agreement.

Releases

17. Except for claims to enforce the terms of this Agreement, and in consideration of the mutual promises set forth in this Agreement:

- (a) Plaintiffs hereby release and discharge the District and each of its predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs, administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents and each of their respective successors and assigns from any and all liabilities, actions, claims, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, promises, acts, costs, expenses (including, but not limited to, reasonable attorneys' fees), damages, judgments and demands, contingent or vested, in law or equity, Plaintiffs ever had or now have against the District arising out of or relating to the District's September 2018 Policy, from the beginning of the world through the Effective Date of this Agreement.
- (b) The District hereby releases and discharges the Plaintiffs and each of their predecessors-in-interest, successors-in-interest, divisions, subsidiaries (whether wholly, partially or indirectly owned), co-venturers, affiliates under common ownership, executors, heirs,

administrators, parents, officers, managers, shareholders, directors, employees, insurers, attorneys, agents and each of their respective successors and assigns from any and all liabilities, actions, claims, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, promises, acts, costs, expenses (including, but not limited to, reasonable attorneys' fees), damages, judgments and demands, contingent or vested, in law or equity, the District ever had or now have against Plaintiffs arising out of or relating to the District's September 2018 Policy, from the beginning of the world through the Effective Date of this Agreement.

18. Nothing in this Agreement is intended or shall be construed to release or discharge any claim(s) of the California Attorney General, or any officer or agency of the State of California, other than the District.

Entire Agreement

19. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

Counterparts

20. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which shall constitute one document.

Accepted and Agreed:

B&L Productions, Inc.

Barry Bardack

By: *Margy J. Scott*
Its: President

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

John Dupree

By: *[Signature]*
Its: Chief Operations Officer

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: _____
Its: _____

South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

By: _____
Its: _____

By: _____
Its: _____

22nd District Agricultural Association

By: _____
Its: _____

Accepted and Agreed:

B&L Productions, Inc.

Barry Bardack

By: _____

Its: _____

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

John Dupree


By: _____

Its: _____

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: 

Its: Vice President

South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

By: Jon Sivert 4-16-2020
Its: Treasurer

By: _____
Its: _____

22nd District Agricultural Association

By: _____

Its: _____

Accepted and Agreed:

B&L Productions, Inc.



Barry Bardack

By: _____

Its: _____

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

John Dupree

By: _____

Its: _____

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: _____

Its: _____

South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

By: _____

Its: _____

By: _____

Its: _____

22nd District Agricultural Association

By: _____

Its: _____

Accepted and Agreed:

B&L Productions, Inc.

By: _____
Its: _____

Barry Bardack

Ronald J. Diaz, Sr.
Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

By: _____
Its: _____

John Dupree

Christopher Irick

California Rifle & Pistol Association, Inc.

By: _____
Its: _____

Lawrence Walsh

South Bay Rod and Gun Club, Inc.

By: _____
Its: _____

Second Amendment Foundation

By: _____
Its: _____

22nd District Agricultural Association

By: _____
Its: _____

Accepted and Agreed:

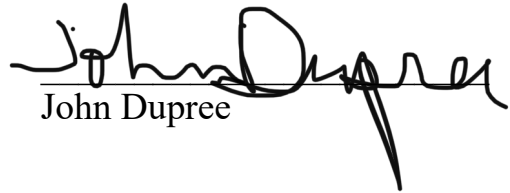
B&L Productions, Inc.

Barry Bardack

By: _____
Its: _____

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.



John Dupree

By: _____
Its: _____

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: _____
Its: _____

South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

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22nd District Agricultural Association

By: _____
Its: _____

Accepted and Agreed:

B&L Productions, Inc.

Barry Bardack

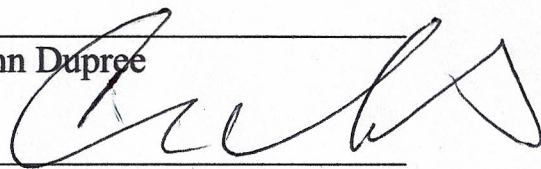
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California Rifle & Pistol Association, Inc.

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South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

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22nd District Agricultural Association

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Its: _____

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Barry Bardack

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Its: _____

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

John Dupree

By: _____

Its: _____

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: _____

Its: _____

South Bay Rod and Gun Club, Inc.

Second Amendment Foundation

By: _____

Its: _____

By: *Donald K. K...*
Its: ATTORNEY of RECORD

22nd District Agricultural Association

By: _____

Its: _____

Accepted and Agreed:

B&L Productions, Inc.

Barry Bardack

By: _____
Its: _____

Ronald J. Diaz, Sr.

Maximum Wholesale, Inc.

John Dupree

By: _____
Its: _____

Christopher Irick

California Rifle & Pistol Association, Inc.

Lawrence Walsh

By: _____
Its: _____

South Bay Rod and Gun Club, Inc.

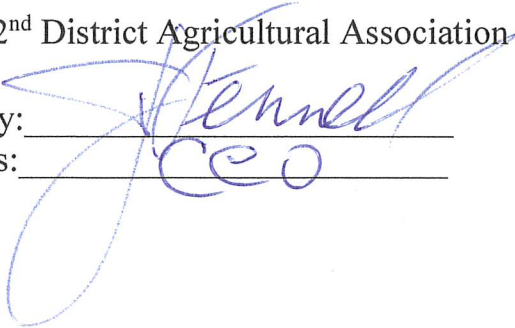
Second Amendment Foundation

By: _____
Its: _____

By: _____
Its: _____

22nd District Agricultural Association

By: _____
Its: _____



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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:

**PARTIES' JOINT NOTICE OF SETTLEMENT
AND MOTION FOR DISMISSAL**

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

Xavier Becerra
Attorney General of California
P. Patty Li
Deputy Attorney General
E-mail: patty.li@doj.ca.gov
Natasha Saggar Sheth
Deputy Attorney General
E-mail: natasha.sheth@doj.ca.gov
Chad A. Stegeman
Deputy Attorney General
E-mail: chad.stegeman@doj.ca.gov
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Attorneys for Defendants

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

Executed April 30, 2020.

s/ Laura Palmerin

Laura Palmerin

EXHIBIT 6

Assembly Bill No. 893

CHAPTER 731

An act to add Section 4158 to the Food and Agricultural Code, relating to agricultural districts.

[Approved by Governor October 11, 2019. Filed with Secretary of State October 11, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 893, Gloria. 22nd District Agricultural Association: firearm and ammunition sales at the Del Mar Fairgrounds.

Existing law generally regulates the transfer of firearms and divides the state into agricultural districts. The 22nd District Agricultural Association is comprised of the County of San Diego and includes the Cities of Del Mar and San Diego. A violation of the statutes governing agricultural districts is generally a misdemeanor.

This bill would, on and after January 1, 2021, prohibit the sale of firearms and ammunition at the Del Mar Fairgrounds property located in the 22nd District Agricultural Association, as specified, and would thereby make a violation of that prohibition a misdemeanor. The bill would exclude from its provisions a gun buyback event held by a law enforcement agency.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The property known as the Del Mar Fairgrounds (DMFG) is owned by the State of California and managed by the Board of Directors of the 22nd District Agricultural Association (22nd DAA). The 22nd DAA has leased a portion of the DMFG to entities that sponsor marketplaces popularly known as “gun shows,” at which firearms and ammunition and other items are sold to the public approximately five times a year.

(b) The United States has experienced many gun-related tragedies with increasing severity and frequency in the last 30 years, including mass murders at Columbine High School, Sandy Hook Elementary School, and

Marjory Stoneman Douglas High School, and an increasing rate of suicide by gun among all levels of society.

(c) The Cities of Del Mar, Solana Beach, and Encinitas have adopted resolutions requesting that the DMFG Board discontinue leasing any portion of its property for use as a gun show. A committee appointed by the Board of Directors of the 22nd DAA to study gun shows conducted research, including inspection tours of the Del Mar Gun Show by members of the committee as well as by several other members of the DMFG Board.

(d) On September 11, 2018, the DMFG Board, by a vote of eight in favor and one against, adopted a recommendation to consider the feasibility of conducting gun shows for only educational and safety training purposes and to prohibit the possession of guns and ammunition on state property.

(e) Gun shows bring grave danger to a community, and the following dangerous incidents, among others, have occurred at gun shows, including, but not limited to, an official vendor accused of trafficking illegal firearms, sales of firearms to individuals registered in the Department of Justice Bureau of Firearms Armed Prohibited Persons System, and illegal importation of large-capacity magazines.

(f) Each of the foregoing arrests was based on gun show enforcement efforts under the Armed Prohibited Persons System, and the department announced in late 2018 that these gun show enforcement efforts had been discontinued and, between the years 2013 and 2017, the San Diego County Sheriff recorded 14 crimes at the Crossroads of the West Gun Shows at the DMFG.

(g) Promoters maintain relationships with a core group of vendors, some selling guns and some selling other merchandise, who travel as the schedule dictates from city to city and state to state and in the West, for example, many of the same vendors can be seen at Crossroads of the West Gun Shows from San Francisco, California, to Tucson, Arizona.

SEC. 2. Section 4158 is added to the Food and Agricultural Code, to read:

4158. (a) Notwithstanding any other law, an officer, employee, operator, lessee, or licensee of the 22nd District Agricultural Association, as defined in Section 3873, shall not contract for, authorize, or allow the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar 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.

(b) For purposes of this section:

(1) The definition of “firearm” means the term as included in Section 12001 of the Penal Code.

(2) The term “ammunition” includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.

(c) This section does not apply to a gun buyback event held by a law enforcement agency.

(d) This section shall become operative on January 1, 2021.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

EXHIBIT 7

Date of Hearing: March 26, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 893 (Gloria) – As Introduced February 20, 2019

SUMMARY: Prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar and thereby creates a misdemeanor offense for a violation of that prohibition. Specifically, **this bill:**

- 1) Prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar or any successor or additional property owned, leased, or otherwise occupied or operated by the district.
- 2) Provides that the term “ammunition” includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.
- 3) Provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.
- 4) States that this section will become operative on January 1, 2021.

EXISTING LAW:

- 1) Divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)
- 2) Allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)
- 3) Provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)
- 4) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)

- 5) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)
- 6) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)
- 7) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)
- 8) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)
- 9) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)
- 10) Specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is an ever apparent link between the gun violence we see virtually every week and the number of guns in our communities. Additionally, the State of California should not be profiting or benefitting from the sale of firearms. This bill demonstrates that we value people over guns and public safety above all

"Fundamentally, I believe it is wrong for the State of California to profit or to benefit from the sale of firearms and ammunition. I acknowledge that gun ownership is a Constitutional right in the United States, and I know that there are plenty of responsible gun owners out there. However, the fact remains that widespread accessibility to these deadly weapons produces a public safety threat that we must address."
- 2) **Gun Shows:** A "gun show" is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999, available at: <https://www.atf.gov/file/57506/download>, [as of March 18, 2019].)

According to the NRA's Institute for Legislative Action (NRA-ILA), less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show.

(NRA-ILA, <https://www.nra.org/get-the-facts/background-checks-nics>.) However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 20, 2019].) Though violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being “the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market.” (Gerney, *The Gun Debate 1 Year After Newtown*, Center for American Progress, December 13, 2013, available at: <http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/>, [as of March 18, 2019].)

A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. (<https://www.gao.gov/assets/680/674570.pdf>, [as of March 15].) 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (<https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf>, [as of March 15].)

- 3) **Gun Show Regulations in California:** In 1999, California enacted the nation’s broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least \$1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements.

In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser.

California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries,” *Annals of Internal Medicine* (2017) Vol. 1 Iss. 8.)

4) **Current State of Gun Shows at the Del Mar Fairgrounds:** According to a Fairgrounds press release, last year the 22nd District Agricultural Association’s Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun shows. (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396 [as of March 20, 2019].) The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors’ decision on the grounds that it violates the U.S. Constitution’s First Amendment guarantee to free expression. (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: <https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315-htmlstory.html>, [as of March 20, 2019].)

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunitions at the Del Mar Fairgrounds. By default, a violation of any provision of the Food 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.

5) **Veto Messages on Previous Attempts to Ban Gun Shows in Agricultural Districts:** There have been several legislative attempts to regulate gun shows in Agricultural District 1A in San Mateo and San Francisco Counties at a location commonly known as the “Cow Palace.” The Cow Palace is substantially similar to the Del Mar Fairgrounds inasmuch as it is a state-owned property located within the jurisdiction of a county. SB 221 (Wiener), of 2018, SB 475 (Leno) of 2013, SB 585 (Leno) of 2009, and others, all attempted to either ban gun shows at the Cow Palace altogether, or require prior approval from the county Board Supervisors prior to entering into a contract for holding a gun show there. All three attempts were vetoed by the Governor.

In regards to SB 221, Governor Brown stated: “This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow

Palace. This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger. The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.”

SB 475 was also vetoed by Governor Brown with the following message: “This bill requires the District Agricultural Association 1-A (Cow Palace) to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. I encourage all District Agricultural Associations to work with their local communities when determining their operations and events. This bill, however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.”

SB 585 was vetoed by Governor Schwarzenegger, who stated: “This bill would prohibit the sale of firearms and ammunition at the Cow Palace. This bill would set a confusing precedent at the state level by statutorily prohibiting one District Agricultural Association (DAA) from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, this bill would result in decreased state and local tax revenues by restricting events at the Cow Palace.”

- 6) **Argument in Support:** According to the *NeverAgainCA*: “NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds. attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

“NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.”

- 7) **Argument in Opposition:** According to the *California Rifle and Pistol Association, Inc.*: “Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

...

“Gun shows are very much a family event. Many of them have training and education, guest speakers, lifestyle vendors, safety training, and more. Ever hear of a shooting spree at a gun

show? No, because people that attend gun shows are the law-abiding citizens that attend for the educational value and to stay up on new products that are available. It is no different than any other trade show that occurs in other industries across the state. Criminals would never subject themselves to this much scrutiny and regulation in the hopes of getting their hands on a firearm. These types of false and scare-tactic narratives have no place in modern discourse.”

- 8) **Related Legislation:** SB 281 (Wiener), among other things, would prohibit the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County.
- 9) **Prior Legislation:**
- a) SB 221 (Wiener) of the 2017-18 Legislative Session, would have prohibited the sale of firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco County. SB 221 was vetoed by Governor Brown.
 - b) SB 475 (Leno), of the 2013-14 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 475 was vetoed by Governor Brown.
 - c) SB 585 (Leno), of the 2009-10 Legislative Session, would have prohibited events at which any firearm or ammunition is sold at the Cow Palace, as specified. SB 585 was vetoed by Governor Schwarzenegger.
 - d) AB 2948 (Leno), of the 2007-08 Legislative Session, would have prohibited the sale of firearms or ammunition at the Cow Palace. AB 2948 failed passage on the Senate Floor.
 - e) SB 1733 (Speier), of the 2003-04 Legislative Session, would have required gun shows at the Cow Palace to have prior approval of both the Board of Supervisors of the County of San Mateo and the City and County of San Francisco, as specified. SB 1733 failed passage on the Assembly Floor.
 - f) AB 295 (Corbett), Chapter 247, Statutes of 1999, established the Gun Show Enforcement and Security Act of 2000, which includes a number of requirements for producers that promote gun shows.
 - g) AB 1107 (Ortiz), of the 1997-98 Legislative Session, would have authorized any city, county or agricultural association to prohibit gun sales at gun shows or events. AB 1107 failed in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Student Activists
 City of Del Mar
 City of Encinitas

City of Solana Beach
NeverAgainCA

Oppose

B & L Productions, d.b.a. Crossroads of the West Gun Shows
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters
Western Fairs Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

EXHIBIT 8

Gun Shows in Context

1

The United States and Gun Violence

Americans owned between 220 and 280 million guns in 2004, including at least 86 million handguns.¹ Millions of guns are added to that total each year. Just ten years earlier, America's gun stockpile was estimated to hold 192 million weapons.² As of 2004, some 38% of households and 26% of all adults had at least one gun; 41% of gun-owning households, and 48% of individual gun owners, had four guns or more.¹

More than 360,000 violent crimes involving guns, including an estimated 11,512 homicides, were committed in the United States in 2007.^{3,4} After dropping steadily through much of the 1990s,⁵ rates of gun-related and other violent crimes have changed little in recent years and have risen rapidly in some areas.^{6,7} Preliminary data for 2008⁸ and early 2009⁹ suggest a downward trend, which would be very good news, but rates of gun-related violence remain unacceptably high.

American Exceptionalism

America's rates of gun ownership are unique. We account



Assault rifles for sale, Dayton, Ohio.

Mexico and Canada pose very different images when it comes to violent crime. [They] have one thing in common when it comes to armed violence—the underground gun market in the United States, which is a major source of supply to criminals and gangs in both nations...The USA represents a low-cost supplier of guns both because of lax regulations and of the great number of guns already circulating in private hands.

—Researchers Philip Cook, Wendy Cukier, and Keith Krause.¹⁵

There is “no reason why [Mexican] drug cartels would go through the difficulty of acquiring a gun somewhere else in the world and transporting it to Mexico when it is so easy for them to do so from the United States.

—U.S. and Mexican government and law enforcement officials interviewed by the Government Accountability Office for its study of cross-border gun trafficking.¹⁷

for less than 5% of the world’s population but 35% to 50% of all firearms in civilian hands.¹⁰ Not surprisingly, death rates from gun violence are far higher in the United States than in other high-income countries.^{11, 12}

But America is not a uniquely violent society. As Franklin Zimring and Gordon Hawkins demonstrated some years ago,¹³ our rates of violent crime do not exceed those of other high-income countries—though they are above average. It is our rate of death from violent crime that is unique, and this high mortality rate results from our unique propensity to use firearms to commit violent crimes.

Exporting Crime Guns

Sadly, American firearms now also figure prominently in crimes committed elsewhere. Most crime guns that are recovered by law enforcement agencies in major Canadian cities, and for which a point of origin can be established, are imported illegally from the United States.^{14, 15} The problem has become particularly acute in Mexico, where drug-related gun violence has become so prevalent that the United States Joint Forces Command has warned of a possible “rapid and sudden collapse” with “serious implications for [US] homeland security.”¹⁶ By April 2008, Mexican drug trafficking organizations had established a presence in at least 46 U.S. states.¹⁷ Of crime guns recovered in Mexico since 2006 for which the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has established a chain of ownership, more than 90% come across the border from the United States, and nearly 70% are American-made.^{17, 18}

Gun Shows and Gun Violence: An Introductory Case

At lunchtime on April 20, 1999, high schoolers Eric Harris and Dylan Klebold shot and killed 12 fellow students and a teacher at Columbine High School in Littleton, Colorado, and wounded 23 others. After exchanging fire with the police, they shot themselves.

All four guns used in the massacre were purchased at local gun shows, but none of them by Harris and Klebold.¹⁹ Three guns—two Savage shotguns and a Hi-Point 9mm carbine—were bought for them by an 18-year-old friend, Robyn Anderson, at a Tanner Gun Show near Denver the previous December.

Anderson bought the guns from private parties rather than from licensed gun retailers. “While we were walking around [the show],” she would later testify, “Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because there would be no paperwork or background check.”²⁰ Anderson stressed that “[a]ll I had to do was show my driver’s license to prove I was 18. I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit to any kind of check at all.”²¹

Just the day before, in fact, Harris and Klebold had tried to buy guns themselves at the show. The boys were 17 years old at the time. No one who would sell to them, but they were told that they could buy the guns if they brought someone with them who was at least 18 years old. Anderson believed it should have been obvious that she was buying the guns for Harris and Klebold; though she was making the payment, “they were handling the guns and asking the questions.”²²

The fourth gun, a semiautomatic TEC-DC9 assault pistol, was bought at a Tanner Gun Show in August 1998 by Mark Manes—again from a private party, not a licensed retailer—and sold to Harris and Klebold the following January.¹⁹ Because the TEC-DC9 is a handgun, Manes was charged with providing a firearm to a minor (Harris and Klebold were still 17 when they bought the gun).

Anderson’s rifle and shotgun purchases broke no federal or state laws, and she was not charged with any crime. J. D. Tanner, promoter of the shows, had this to say about her gun purchases: “All I can say is apparently it was all done legally. That makes me have a good feeling.”²³

The first Tanner Gun Show held after the massacre took place the weekend of June 5 and 6; Tanner had canceled a show scheduled for the weekend after the shootings. On June 6, Corey Tucker, age 18, and David Winkler, age 17, used \$600 in cash provided by the Colorado Coalition Against Gun Violence to buy a TEC-9 pistol similar to the gun used by Harris and Klebold. They believed they were buying from a private party—there was apparently no evidence to the contrary—and their intent was to demonstrate how easily this could be done. “He didn’t ask me my name or my age,” Tucker said at a news conference the following week, and there was no identification check.²⁴ But the seller had been interviewed at the show on June 5 by *Denver*

*While we were walking around, Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because there would be no paperwork or background check.*²⁰

*All I had to do was show my driver’s license to prove I was 18. I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit to any kind of check at all.*²¹

—Robyn Anderson, on buying three of the guns used in the Columbine High School shootings.

All I can say is apparently it was all done legally. That makes me have a good feeling.

*—J. D. Tanner of Tanner Gun Shows.*²³

Post reporter David Olinger, who was writing a story on the resumption of the Tanner shows. He was Terry Kern, a licensed gun retailer and gun store owner. When Olinger contacted him following Tucker and Winkler’s news conference, Kern confirmed that he had sold the gun. But when told that his failure to document the sale or perform any identification check had become public knowledge, “Kern changed his account. The sale ‘didn’t have anything to do with me,’ he said.”²⁴

The sale was investigated by the Bureau of Alcohol, Tobacco and Firearms (ATF) and determined to have been illegal. Kern surrendered his firearms license.²⁵

Promoter J. D. Tanner himself sells guns at Tanner Gun Shows as an unlicensed vendor. A year after the massacre in Littleton, the prospective buyer of a handgun asked him, “You have to do a background check on this?” “No,” he replied, “there’s no law says I have to.”²⁶

A Paradox

The events surrounding the Columbine massacre exemplify many of the difficult problems posed by gun shows. Prohibited persons are able to acquire guns by using others as their agents. Guns can be sold anonymously, without background checks or records. Sellers, including licensed retailers, can be corrupt.

There is solid evidence that gun shows are an important source of crime guns, which we will review later in the chapter. The best of that evidence comes from ATF investigations of illegal gun trafficking—the organized procurement of guns for criminal use.²⁷⁻²⁹

But two highly-regarded surveys conducted under the auspices of the U.S. Bureau of Justice Statistics have found that less than 2% of felons incarcerated for crimes involving guns acquired those guns themselves at gun shows.^{30, 31} This poses a seeming paradox: How can gun shows be an important source of crime guns if criminals get their guns elsewhere? To clarify this, we need to take a step back and examine American gun commerce generally and the role gun shows play in that larger enterprise.

America's Two Systems of Gun Commerce

Modern gun commerce operates under the terms of the oft-amended Gun Control Act of 1968 (GCA), which is enforced by ATF. Congress drew on its authority to regulate interstate commerce in drafting GCA as it had with GCA's predecessor, the Federal Firearms Act of 1938.³² Those "engaged in the business" of selling guns, as the law terms it, were required to obtain federal licenses and to buy and sell guns following specified procedures. Private parties who sold guns infrequently and not in the course of business were exempted, however. As a result, the United States has two very different systems of gun commerce that operate in parallel. At gun shows, they can operate literally side by side.

In 1995, Philip Cook and colleagues published a study that has done much to shape and clarify our understanding of how gun commerce operates.³³ By convention, the two systems mentioned above are referred to as the *primary market* and the *secondary market* for guns. The primary market comprises all transfers of guns by federally licensed firearms retailers such as gun dealers and pawnbrokers. These transfers may be of new or used guns.

The secondary market consists of transfers involving unlicensed sellers, such as the unlicensed vendors and individual attendees at gun shows.^{33,34} This secondary gun market is much larger than is commonly thought. According to the Police Foundation's National Survey of Private Ownership of Firearms, it accounted for approximately 40% of all gun acquisitions in the mid-1990s.^{2,33} Thirty years earlier, at the time Congress was debating the Gun Control Act, at least 25% of all gun acquisitions occurred through the private party transfers that were exempted from the terms of the Act.³⁵

As with other commodities, there is a *legal market* and an *illegal market* for guns. The movement of guns from the legal to the illegal market is the illegal market's chief source of supply. Gun trafficking is the intentional diversion of guns from the legal to the illegal market.

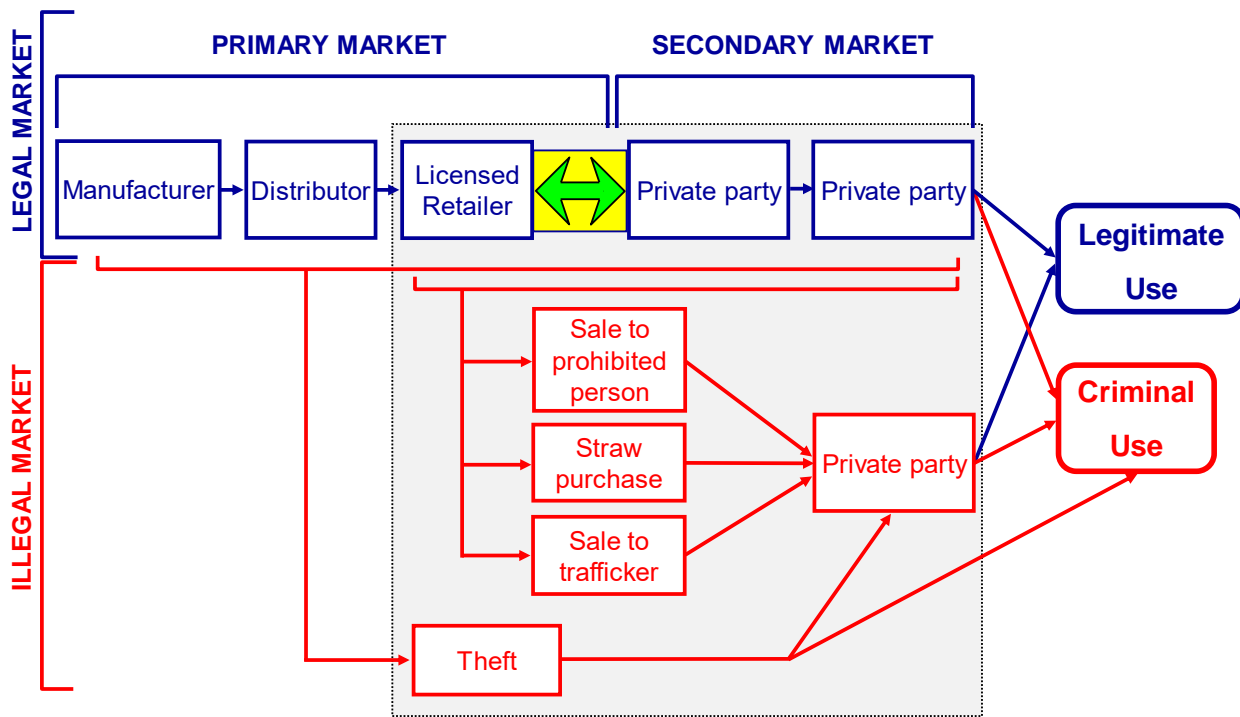
Finally, in considering how guns become available for use in crime, it is useful to consider *point sources* and *diffuse sources* of those guns.³⁴ Point sources are the venues linked to many known crime guns, usually licensed retailers. Diffuse sources are the many small-volume transactions between individuals that are

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dispersed in time and place, such as transfers of single guns between acquaintances or fellow gang members. Point sources provide the most readily identifiable targets for prevention activity, but diffuse sources, taken together, are the leading proximate source of crime guns.

An overview of America’s gun markets is in Figure 1-1.

Figure 1-1. An overview of gun commerce in the United States. Activities within the shaded area occur at gun shows.



Gun manufacturers typically sell their products to distributors, who in turn sell them to federally licensed retailers such as gun dealers or pawnbrokers. Sales by manufacturers, distributors, and retailers make up the primary gun market. After its first sale by a licensed retailer to a private party, a gun may experience many subsequent sales or other changes of possession between private parties (through trades, for example). These transactions make up the secondary gun market. A private party may also sell his gun to a licensed retailer; most retailers sell both new and used guns. Guns enter the illegal market predominantly through sales to prohibited persons, straw purchasing and other trafficking operations, and theft. As with the legal market, guns in the illegal market may undergo many subsequent transfers of ownership. The shaded area of the figure identifies transactions that occur at gun shows.

Modified from Wintemute GJ. Where guns come from: the gun industry and gun commerce. *The Future of Children* 2002;12 (2):55-71.

Regulating Gun Sellers

Federal Policy

In order to sell a gun to you, whether at a gun show or elsewhere, a federally licensed retailer such as a gun dealer or pawnbroker must see your identification. He must have you complete a lengthy Firearms Transaction Record on which you certify, under penalty of perjury, that you are buying the gun for yourself and that you are not prohibited from owning it. He must submit your identifying information to the National Instant Criminal Background Check System (NICS), administered by the Federal Bureau of Investigation.

Staff at NICS perform a background check on you, comparing your information to the records in a centralized archive of criminal histories and other databases to verify your eligibility to purchase firearms. In over 90% of cases this background check is completed within minutes,³⁶ but if important information is missing you may have to wait up to three business days to get your gun. (In 17 states, the background check can be waived for holders of permits to carry concealed weapons.)

The retailer must keep a permanent record of your purchase. If you buy more than one handgun from him within five business days, the retailer must file a special report with ATF. (This requirement does not apply to purchases of rifles or shotguns.)

These procedural safeguards are intended to ensure that you are who you say you are, that you and not someone else will be the actual owner of the gun, and that you are not prohibited from owning it. They also establish a paper trail that will help law enforcement authorities link the gun to you if it is used in a crime later.

But a private party, such as an unlicensed vendor or individual attendee at a gun show, can sell you that same gun—or as many guns as you want—and none of these federal safeguards will be in place. Private party gun sellers are not required to ask for your identification. They *cannot* initiate a background check, except in Delaware, Nevada, and Oregon, where they may do so voluntarily. There are no forms for you to fill out, and no records need be kept.

Again, the provisions of the Gun Control Act regulating gun sales apply only to those who are engaged in the business of



Attendee with several guns for sale, Houston, Texas.

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selling guns. As originally enacted, GCA established that standard but did not define it. ATF considered the sale of five or more firearms annually to signify engagement in the business,³⁴ and federal courts upheld convictions for selling guns without a license in cases involving as few as six firearms.³⁷

Any clear understanding of what “engaged in the business” might mean was abolished by the 1986 Firearm Owners Protection Act (FOPA). The new law ambiguously defined a person as “engaged in the business” who “devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”³⁸ Muddying the waters further, FOPA defined “with the principal objective of livelihood and profit” to mean “that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.”³⁸ It specifically excluded from its definition of engagement in the business a person who makes “occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”^{28, 38}

The practical result was to make it much more difficult to set an upper limit to the frequency of buying and selling guns that did not require a license and compliance with the procedural safeguards described above. Today, private parties sometimes sell large numbers of new and used firearms while claiming hobbyist status and exemption from the requirements imposed on licensed retailers.²⁸ ATF put it this way in an important study of gun shows in 1999: “Unfortunately, the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.”³⁷

State Policy

In 33 states, statutes regulating gun sales do not go beyond the ambiguous standards set by Congress. But 17 states regulate at least some sales by unlicensed private parties (Table 1-1). Some require that these transactions be routed through a licensed retailer; such transactions are subject to the same procedural safeguards that apply to the licensed retailer’s own sales.

There is no limit to the amount of guns that a private collector can have. Some have 10, some have 1,000. If I go to a gun show and state that this is my private collection, I am not required by law to ask you for identification, ask you to fill out any paperwork, or conduct a background check. It is simply cash and carry.

—Tom Mangan, Special Agent, ATF, Phoenix, Arizona.³⁹

Unfortunately, the effect of the 1986 amendments has often been to frustrate the prosecution of unlicensed dealers masquerading as collectors or hobbyists but who are really trafficking firearms to felons or other prohibited persons.

—ATF gun show study, 1999.³⁷

Other states require that purchasers obtain a permit or undergo a background check through a law enforcement agency.⁴⁰ Of these 17 states, six regulate all private party gun sales and nine more regulate all private party sales of handguns. Two states, Colorado and Oregon, regulate all private party sales at gun shows only.

Table 1-1. State regulation of private party gun sales*

State	Handgun Sales		Long Gun Sales	
	All Sales	Gun Shows Only	All Sales	Gun Shows Only
California	●		●	
Colorado		●		●
Connecticut	●			●
Hawaii	●		●	
Illinois	●		●	
Iowa	●			
Maryland	●			
Massachusetts	●		●	
Michigan	●			
Missouri	●			
Nebraska	●			
New Jersey	●		●	
New York	●			●
North Carolina	●			
Oregon		●		●
Pennsylvania	●			
Rhode Island	●		●	

* In the remaining 33 states, private party gun sales are not regulated.

From *Survey of state procedures related to firearm sales, 2005*. Washington, DC: Bureau of Justice Statistics; 2006. NCJ 214645. See Table 6.

Regulating Gun Buyers

Federal Policy

Federal statutes prohibit several categories of persons from purchasing or otherwise acquiring firearms, whether from a licensed retailer or a private party, and from possessing firearms at any time.⁴⁰ (See Table 1-2.) Most of the prohibitions arise from criminal convictions. These were expanded to include convictions for misdemeanor crimes of domestic violence in 1996. Convictions for other violent and firearm-related misdemeanors, such as battery and brandishing a firearm, do not prohibit firearm ownership under federal law. A federal prohibition is permanent unless it arises from a domestic violence restraining order, in which case it exists only as long as the restraining order remains in effect.

Persons less than 21 years of age may not purchase handguns from licensed retailers, but persons ages 18 to 20 may purchase handguns from private parties. Those less than 18 years of age cannot purchase long guns (rifles and shotguns).⁴⁰

Table 1-2. Categories of persons who are generally prohibited from purchasing or possessing firearms under federal law

A person is prohibited who:	
•	Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year
•	Is a fugitive from justice
•	Is an unlawful user of or addicted to any controlled substance
•	Has been adjudicated as a mental defective or has been committed to any mental institution
•	Who, being an alien, is illegally or unlawfully in the United States or has been admitted to the United States under a nonimmigrant visa
•	Who has been discharged from the Armed Forces under dishonorable conditions
•	Who, having been a citizen of the United States, has renounced his citizenship
•	Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person
•	Has been convicted in any court of a misdemeanor crime of domestic violence

From *United States Code*, Title 18, Section 922(d).

Federal law also makes it a felony to purchase a firearm from a licensed retailer for another person while representing oneself to be the intended owner of that firearm. Such transactions are known as surrogate or “straw” purchases. Although illegal, such purchases are common and are an important source of guns for prohibited persons. Straw purchases will be discussed in more detail later in the chapter and in Chapter 3.

State Policy

Many states have broadened the federal criteria for prohibiting the purchase and possession of firearms. Details for each state are available in the regularly-updated *Survey of State Procedures Related to Firearm Sales*, compiled by the Justice Department’s Bureau of Justice Statistics and available at <http://www.ojp.usdoj.gov/bjs/>. In California, for example, persons convicted of most violent misdemeanors are prohibited from possessing firearms for 10 years following their convictions.

California, Maryland, Virginia, and New Jersey also prohibit individuals from purchasing more than one handgun in any 30-day period. Because California has a centralized record of handgun purchases, this prohibition applies statewide, not just to multiple purchases from an individual retailer. Private party sales are exempted, however.

Screening and Denial

Since March 1, 1994, the Brady Handgun Violence Prevention Act has required background checks on persons purchasing firearms from federally licensed firearm retailers. Federal and state agencies have conducted 97,080,000 Brady Act background checks as of December 2008. The checks have resulted in 1,778,000 denials, for a denial rate of 1.8%.⁴¹

In 2008 alone, 9,901,000 background checks were conducted, 147,000 of which led to denials (a denial rate of 1.5%). A large majority of these denials resulted from the fact that the prospective purchasers had been convicted of, or were under indictment for, serious crimes. (See Table 1-3.)

Prior to the Brady Act, in 32 states no background check was required to verify purchasers’ statements that they were not prohibited persons. The 18 other states had enacted background check requirements of their own, sometimes many years earlier.⁴²

Okay, I want it, but I just bought a gun June 2. I’ll have to wait.

—An attendee making a deposit on a Walther pistol on June 6, in Orange County, California. Because of the state’s prohibition on the purchase of more than one handgun within 30 days, he will not be able to purchase the gun until July.

Vendor: It’s my understanding that if you’ve got a conviction, you can’t buy guns forever.

Attendee: That’s right. You don’t ever want to hit the old lady, ‘cause then you’re through.

—Advice given to a man shopping for parts for an AR rifle, Las Vegas, Nevada.

When the Brady Act first took effect, states where no background checks had previously been required found that as many as 9.4% of persons who sought to purchase firearms from licensed retailers, and who had just certified under penalty of perjury that they were eligible to own guns, were in fact prohibited from owning them.⁴³

Table 1-3. Reasons for denial of firearm transfer application in 2008

Reason for Denial	Agency Type	
	Federal (%)	State (%)
Felony indictment/conviction	55.9	45.7
State law prohibition	6.8	10.5
Domestic violence		
Misdemeanor conviction	7.3	9.9
Restraining order	4.1	4.0
Fugitive	13.4	8.6
Illegal alien	1.4	0.5
Mental illness or disability	1.1	3.7
Drug user/addict	9.5	3.1
Other	0.6	13.9
Total	100	100

From *Background checks for firearm transfers, 2008—statistical tables*. Washington, DC: Bureau of Justice Statistics, 2008. NCJ 227471. See Table 4. Results for local agencies are omitted.

Does Denial Work?

The goal of screening and denial programs is to prevent gun-related violence by preventing persons thought to be at high risk of committing such violence from acquiring guns. There are no systematic data on the intermediate question: How often do people who are denied the purchase of a gun from a licensed retailer go on to acquire a gun from some other source? There are, however, several studies that collectively describe the effect of these programs on violent crime.

It appears that denial of gun purchase significantly lowers the risk of committing violent and gun-related crimes among the persons who are directly affected. The best example of this effect

comes from California, which in 1991 expanded its criteria for a prohibition on gun ownership to include prior convictions for almost all violent misdemeanors. Over three years of follow-up, there was a 23% drop in crimes involving guns or violence among those whose gun purchases were denied in the year after the new policy took effect, as compared to a group of violent misdemeanants who legally purchased handguns under the previous policy.⁴⁴ For persons ages 21 to 24, among whom absolute rates of violent criminal activity were highest, the decrease was 27%. There was no difference for crimes involving neither guns nor violence. This specificity of effect supports the inference that the observed results were produced by the change in policy rather than some other factor.

Similarly, denial based on a felony conviction appears to result in a decrease in risk for crimes involving guns or violence of 20% to 25%.⁴⁵ This is a sizeable effect. Its importance is reinforced by a new research finding concerning risk for new criminal activity among persons who have previously been arrested for serious crimes.⁴⁶ As much as 20 years may need to pass before their risk of re-arrest falls enough to approximate the risk of first arrest among persons their age who have no prior arrest record. Policies intended to reduce that elevated risk for new criminal activity appear to be well-advised.

However, the federal screening and denial program put in place by the Brady Act may have had little effect on population-wide rates of gun-related violent crime. Careful researchers studying rates of gun homicide determined that while a decrease occurred in states where Brady led to the institution of screening and denial for the first time, that decrease also occurred in states where similar programs had been in place all along.⁴² They found no effect on rates of gun homicide that could be attributed to the Brady Act itself.

Several explanations have been proposed for these seemingly contradictory findings. One is that the federal criteria for prohibiting an individual from purchasing a gun are quite narrow. Most violent misdemeanors are not prohibiting offenses, for example. As a result, many high-risk persons are still able to purchase guns, and the number of persons denied may be too small for any beneficial effect on them as individuals to be reflected in overall crime rates.⁴⁷

Another, probably more important, is that the Brady Act's mandate applies only to gun sales by federally licensed retailers.

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The secondary market's private party gun sales—accounting, again, for perhaps 40% of all gun transfers every year—are unaffected. A new evaluation of state-level regulations on gun sales provides evidence in support of this possibility. Gun trafficking, which facilitates firearm-related violent crime, appears to be significantly reduced in states that regulate private party sales of handguns.⁴⁸

Summing Up: Why Private Party Gun Sales Matter

Of course, if I don't ask, nobody knows.

— A seller contemplating the sale of a handgun to a possibly prohibited party, Reno, Nevada.

Three and a half out the door. I'm not a dealer so just pay cash for it and you're outta here.

— An unlicensed vendor selling a Ruger revolver, tagged at \$425, Waukesha, Wisconsin.

Private party gun sales are quick and convenient. Even a completely law-abiding gun purchaser might appreciate the absence of paperwork that characterizes private party sales. And their anonymity will attract those who put privacy at a premium.

But the same attributes of private party sales that make them convenient for legal gun buyers make them the principal option for a felon, fugitive, domestic violence offender, or other prohibited person. The key is that while it is always illegal for a prohibited person to buy a gun, it is only illegal to sell a gun to a prohibited person if the seller knows or has “reasonable cause to believe” that he is doing so.⁴⁹ Again, a private party seller *cannot* initiate a background check. He is under no obligation to inquire directly. The matter is easily finessed. As one gun seller said while contemplating a possibly illegal handgun sale, “Of course, if I don't ask, nobody knows.”

Where Crime Guns Come From

Licensed Retailers: The Primary Gun Market

In the early 1990s, the United States had more licensed gun retailers than gas stations.⁵⁰ More rigorous licensing and oversight policies led to a large decrease in licensed retailers by 2001.^{5, 34, 51} The sellers of one-third of crime guns traced in 1994 were out of business by 1998.⁵²

Licensed retailers remain an important source of crime guns, however.^{27, 28, 53-55} Of persons incarcerated during the 1990s for serious crimes involving guns, 12% to 19% of those in state prisons³¹ and 19% of those in federal prisons³⁰ purchased their guns personally from a retail store or pawnshop.

Others employ surrogate or “straw” purchasers to buy guns from licensed retailers on their behalf. In a typical straw

purchase, the actual buyer determines which gun is to be bought and provides the funds. The straw purchaser, acting as the buyer's agent, makes the purchase by falsely representing himself (or, frequently, herself) to be the actual buyer of the gun. The details can vary. For example, the actual buyer may make the selection at the time of purchase and transfer the funds to the straw purchaser in full view of the retailer. Alternatively, the straw purchaser may operate with a shopping list of desirable guns or communicate with the actual buyer by cell phone (sometimes sending pictures of the guns in question).⁵⁶ Straw purchasers may be compensated with cash, drugs, or other currency.

Criminal gang members may be particularly likely to use straw purchasers, even if they themselves are not prohibited persons, for the simple reason that it is unsafe for them to travel outside their territories to a licensed retailer's place of business.⁵⁷ Gun traffickers, needing to mask their gun purchases, may employ whole networks of straw purchasers. Straw purchases have emerged as a leading source of supply for Mexican drug trafficking organizations.

Consider, for example, the case of John Philip Hernandez of Houston.^{58, 59} Between June 2006 and June 2007, Hernandez spent nearly \$25,000 to buy 23 firearms, including 5.7mm FN Herstal Five-seveN "cop killer" pistols and 15 AR rifles, from Houston-area retailers. The guns were smuggled into Mexico, where several have since been used in homicides and other violent crimes—as soon as two months after Hernandez purchased them. Hernandez recruited others to buy guns for him; they purchased another approximately 80 guns. The larger operation of which Hernandez and his confederates were just one segment is believed to have shipped well over 300 guns across the border. Most of the 22 members of that operation remain at large.

When all this began, Hernandez was 24 years old. In April 2009, he was sentenced to 97 months in prison by a judge who held that the maximum term recommended by the U.S. Sentencing Guidelines was not a sufficient deterrent to others.

Straw purchasers are often the intimate partners of actual buyers. Women make up about 10% of gun owners overall,^{1, 2} but 18% of straw purchasers working with gun trafficking operations were the girlfriends or spouses of the traffickers.²⁷

A straw purchase is a felony under federal law for both the actual buyer and the straw purchaser—and for the retailer, if he

If she's buying the gun, she's got to act like she's buying the gun. Come on up here.

—A licensed retailer in Las Vegas, Nevada, to two young men who are negotiating the purchase of a handgun and have just indicated that one of two women standing well behind them will be the purchaser. All four leave immediately.

Inside Gun Shows

sells the gun despite knowledge or reasonable cause for belief that a straw purchase is in progress. There is clear evidence from criminal investigations that straw purchases are nonetheless an important source of crime guns.^{27, 55} In a 1993 survey, 32% of student-age correctional inmates and, perhaps even more surprisingly, 18% of inner city high school students had asked someone to purchase a gun for them from a retail outlet.^{60, 61} More recently, 53% of licensed retailers telephoned by a sham prospective purchaser indicated that they would sell a handgun to that person because his or her intimate partner “needs it.”⁶²

The question arises: Why risk a straw purchase from a licensed retailer when private party gun sales offer a convenient and anonymous, if still illegal, alternative? The answer may be in part that licensed retailers have larger inventories than private party sellers do⁶³ and in particular are more likely to stock new assault rifles and similar weapons sought after by criminal users. Buying a new gun also avoids the risk of being linked through the gun to prior crimes in which it was used. This proposition would be unconvincing if the risk of apprehension during a straw purchase were high, but it is not.⁶³



**PRIVATE SALES
SEE KEVIN.**

—Multiple signs at this licensed retailer specializing in custom-assembled AR and AK rifles. The signs were seen at a show in Reno, Nevada, but not at subsequent shows in Las Vegas, Nevada; Phoenix, Arizona; or San Francisco, California. The photograph was taken in San Francisco.

Tracing Crime Guns

An individual licensed retailer’s importance as a source of crime guns is estimated by determining the number of recovered crime guns sold by that retailer. Linking crime guns to their points of sale is accomplished by a procedure called gun tracing, which ordinarily reconstructs the chain of ownership of a gun from its manufacturer to its first retail purchaser. Gun traces are conducted by ATF in response to requests from law enforcement agencies all over the world, and annual reports on traced guns for each state in the U.S. are provided by ATF at its web site: http://www.atf.gov/firearms/trace_data/index.htm. In 2005, ATF received more than 260,000 requests for gun traces.⁶⁴

Some retailers sell more crime guns than others do. In 1998, of 83,272 licensed retailers nationwide, just 1,020 (1.2%) accounted for 57.4% of all traced guns.⁶⁵ At that time, many licensed retailers sold few guns or none at all, however. In a later California study of 421 retailers who sold at least 100 handguns a year, just 10 retailers (2.4%) accounted for 29.2% of all handguns sold by the entire group that were traced after use in a violent or firearm-related crime.⁶⁶

The National Rifle Association has suggested that the number of traced guns linked to an individual retailer reflects only that retailer's sales volume.⁶⁷ This is not the case. Some licensed retailers are linked to crime guns not just frequently, but *disproportionately*: more frequently than would be expected from the overall number of guns they sell. In the California study cited above, the 11.2% of retailers who had disproportionate sales of crime guns accounted for 46.1% of handguns linked to violent or firearm-related crimes.⁶⁶

Perhaps of greatest concern, some licensed retailers are corrupt. Such retailers are the immediate source of nearly half of all guns that are trafficked—diverted intentionally into illegal gun commerce.²⁷ They account for two-thirds of trafficked guns coming from gun shows.²⁸

Private Parties: The Secondary Gun Market

Far and away, the leading proximate source of crime guns is the secondary gun market. More than 85% of the recovered crime guns traced by ATF are in the possession of someone other than their first retail purchaser when the crime is committed; the percentage is even higher for guns recovered from juveniles and youth.⁶⁸⁻⁷⁰ These guns have gone through at least one private party gun sale (or some other type of private party transfer of possession, such as a trade). Correspondingly, the great majority of persons who have committed violent crimes with guns report that they acquired their guns through a private party transaction.³¹ (See Table 1-4.)

At least two of the reasons for this are clear. As discussed, private party gun sales offer anonymity and are available to those who would be prohibited from buying from licensed retailers. Accessibility is also important. Licensed retailers can be few and far between, at least in some large cities. There are an estimated 57 million adult gun owners in the United States,¹ any one of whom can become a private party gun seller.

The lack of documentation for private party gun sales creates missing links in the chain connecting the first retail purchaser and the criminal from whom the gun has been recovered. Finding those missing links can be impossible, or at best very expensive. In states that require records to be kept for all gun sales, however, investigators seek to identify the most recent purchaser of a crime gun, not just the first.⁷⁰ This is of real practical value; it can

Gun shows, flea markets, hotel rooms, just about anywhere. He's not asking for any identification, he's not asking to have somebody have a record check being done, so he'll sell to anybody for a price.

— ATF agent Thomas Stankiewicz describing Kurt Radovich, accused of gun trafficking in Pennsylvania in 2008. More than 500 guns and thousands of rounds of ammunition were taken from Radovich's home at the time of his arrest.⁷¹

I don't fill out any paperwork or anything.

—An unlicensed vendor in San Antonio, Texas, buying a Smith & Wesson .357 revolver for \$350 from an attendee at the show. The vendor has about 60 guns for sale, including at least 5 AK rifles.

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convert a crime gun whose first retail purchase was in another state several years earlier into a gun sold just weeks before the crime, just miles from the crime scene. (Examples are in Table 1-5.) The same information can be critically important in identifying gun trafficking networks and in linking one crime to another.

Table 1-4. Sources of guns used in crime by state prison inmates

Source	Percentage	
	1997	1991
Purchased or traded from retail outlet	13.9	20.8
Retail store, pawnshop	12.1	18.9
Flea market, gun show	1.7	1.9
Family or friend	39.6	33.8
Purchased or traded	12.8	13.5
Rented or borrowed	18.5	10.1
Other	8.3	10.2
Street, illegal source	39.2	40.8
Theft, burglary	9.9	10.5
Drug dealer, off street	20.8	22.5
Fence, black market	8.4	7.8
Other	7.4	4.6

From Harlow CW. *Firearm use by offenders*. Washington, DC: Bureau of Justice Statistics; 2001. NCJ 189369. See Table 8.

Table 1-5. Results of standard ATF traces and traces incorporating additional California sales records for handguns recovered from young people in California and traced in 1999

Gun	Date of Recovery by Law Enforcement	ATF Sale Date	ATF Time from Sale to Recovery	California Sale Date	California Time from Sale to Recovery
GLC 23, .40	03/06/99	Unknown	Unknown	06/08/96	2.7 y
				05/22/98	288 d
				06/13/98	266 d
SW 910, 9mm	02/01/99	02/28/96	2.9 y	02/28/96	2.9 y
				09/20/98	135 d
SW Sigma, 9mm	09/28/99	04/28/95	4.4 y	03/19/97	2.5 y
				06/25/99	95 d
GLC 19, 9mm	12/22/98	04/21/98	245 d	12/01/98	22 d
CLT .25	02/17/99	Unknown	Unknown	12/19/98	62 d

Summary of example cases:

In case 1, a Glock Model 23, .40 caliber semiautomatic pistol was recovered on March 6, 1999 in Los Angeles. The standard trace identified the retailer who first sold the gun, but the date of purchase and time from sale to recovery were unknown. California sales records identified three transactions, two of which occurred less than a year before the gun’s recovery.

In Case 2, a Smith and Wesson Model 910, 9mm semiautomatic pistol was recovered February 1, 1999. Both the standard trace and the sales records identified a first sale in February, 1996, but the sales records included a subsequent transfer just over four months prior to the gun’s recovery.

(Y denotes years; d denotes days.)

From Wintemute GJ. The life cycle of crime guns: a description based on guns recovered from young people in California. *Annals of Emergency Medicine* 2004;43:733-742.

Gun Shows and Gun Commerce

Since the adoption of the Firearm Owner’s Protection Act in 1986, federal law has permitted licensed retailers to sell guns of any type at gun shows in their home states. They can sell long guns at shows elsewhere.³⁴ Prior to 1984, retailers could sell only at the premises listed on their license; from 1984 to 1986, they were allowed to conduct business at gun shows under a new ATF

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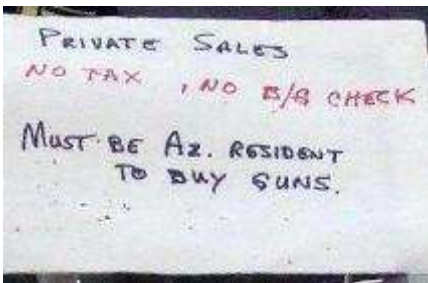
regulation.⁷² By creating an ambiguous definition of the term “engaged in the business,” FOPA also expanded opportunities for private parties to buy and sell guns regularly while claiming to be indulging a hobby.

Although systematic data are lacking, the result appears to have been a rapid increase in both the number and size of gun shows during the 1980s and 1990s. An informal survey in 1996 by the Violence Policy Center yielded the following impressions, among others.⁷² From a regional ATF official: “Several out of my eight supervisors said we definitely had an increase of more than 50 percent in the last 10 years.” From David Cook, show organizer for the North Texas Gun Club, a promoter of large gun shows in Dallas: “They’ve become more popular. I remember the days when there was a show only once every three months. Now you can go to one just about every weekend.”

Today, gun shows continue to play a unique role in gun commerce, stemming from the fact that dozens to hundreds of gun sellers—licensed retailers, unlicensed vendors, and individual attendees—are present and competing with one another for business. Licensed retailers rent table space from the shows’ promoters and display their inventory from a fixed location, but unlicensed vendors do this as well. ATF, based on interviews with promoters, estimates that 25% to 50% of all gun sellers at gun shows who rent table space are unlicensed vendors.³⁷ A separate study, based on observations at gun shows, raises this estimate to 70%.⁶³ (The reasons for the discrepancy will be discussed later.)

The same absence of regulation that characterizes private party gun sales generally is also true of sales by unlicensed vendors at gun shows. Some advertise their unregulated status; at one show, an unlicensed vendor posted this sign: “No background checks required; we only need to know where you live and how old you are.”³⁷ It is of great concern that some unlicensed vendors are likely to be “corrupt licensed gun dealers who were squeezed out of the primary market by recent...ATF efforts to make it more difficult to obtain and renew a federal firearms license.”²⁸

Individual attendees who have brought guns to sell probably outnumber licensed retailers and unlicensed vendors put together. Some are active traders, both buying and selling guns.



Signs posted by unlicensed vendors, Tucson and Phoenix, Arizona.

Economies of Scale

Major gun shows can usefully be considered the big-box retailers of gun commerce. Some individual licensed retailers at these shows are as large and well-staffed as a good-sized gun store. When dozens or hundreds of gun sellers are together in the same place along with thousands of potential customers, collective effects become important. Competition allows for multiple business strategies to be successful. Larger retailers can stock a wide range of products and maximize their sales volume at the expense of profit per item sold; small vendors may specialize to achieve excellence in a niche market. As a result, these gun shows offer their customers a breadth and depth of weaponry to choose from that can be found nowhere else, at prices that are as low as the market will bear.

This effect may not be particularly important for conventional handguns and long guns—the core of the inventory of a typical gun dealer or pawnshop. On the other hand, a customer might need to visit several retailers scattered across a metropolitan area in order to inspect a single .50 BMG rifle or one of the new semiautomatic pistols based on AR or AK rifle designs (more on these in Chapter 4). At a large gun show, however, he is likely to find at least half a dozen licensed retailers with several of these weapons to sell. Simply by walking back and forth between them he can comparison shop and negotiate a low selling price. Not uncommonly, he can buy them anonymously from an unlicensed vendor or another attendee.

The sheer quantity of weapons for sale at any one time, whether arrayed on tables or carried by attendees, can be eye-opening. A reasonable working estimate of the number of guns per seller renting table space is 25. (In a prior study, the median number of guns per seller was 22 in California and 26 in other states.⁶³) At the low end are unlicensed vendors who have just one or two guns on display and are mostly selling something else. At the other extreme, Shoot Straight Sports (see Chapter 2) had an estimated 1,354 guns laid out at a show in Orlando, Florida; some of these were atop stacks of boxes holding additional guns.

At a show with 200 gun vendors, then, an attendee walking the aisles might have about 5,000 guns on display to choose from at any one time. This does not include guns still in their boxes or carried by other attendees.

Inside Gun Shows

See that guy over there? He's at every show. And he sells some of the same guns I do, only he charges more. Now why do you think some people are willing to pay more at his table than mine? Because he doesn't have to run them through a background check.

—Licensed retailer Merlin Scales at a 2008 gun show in Norfolk, Virginia, describing a nearby unlicensed seller.⁷³

Seller: I'm not really supposed to sell handguns to...non-Vermont residents.

Buyer: I was just hoping I'd be able to find somebody up here and let money do the talking, you know?

Seller: Well, you know the old Italian saying: make me an offer I can't refuse. You know what I mean? Then we can do something illegal.

Buyer: I'm willing to do \$2,500 cash.

Seller: Twenty-five hundred cash, that's tempting. I was figuring around the same thing. You got that kind of money?

Buyer: I'll go do what I gotta do.

—Conversation between an unlicensed vendor and a reporter, posing as a gun buyer, at a gun show in Vermont in 2008 or late 2007. The reporter is from Massachusetts. It is illegal for the vendor to sell a handgun to a buyer from another state.⁷⁴

Gun Shows and Crime Guns

Much of the concern about gun shows as a source of crime guns focuses on private party gun sales, since no background checks are conducted and no records are kept.^{28, 37, 63} ATF emphasizes that “[u]nder current law, large numbers of firearms at these public markets are sold anonymously... there is virtually no way to trace them.” As a result, “too often the shows provide a ready supply of firearms to prohibited persons, gangs, violent criminals, and illegal firearms traffickers.”³⁷ A 2009 Government Accountability Office report identified both the lack of background checks and the lack of records for private party gun purchases, including specifically those at gun shows, as “key challenges” to efforts to interdict gun trafficking across the border to criminal organizations in Mexico.¹⁷

Licensed retailers have not been silent. “Many Federal firearms licensees,” ATF notes, “have complained to ATF about the conduct of non-licensees at gun shows.”³⁷ At ATF briefings for licensed retailers attended by the author, licensees have reported flagrantly illegal activity by unlicensed vendors and private party sellers.

Perhaps the most vocal of these licensed retailers was the late Bill Bridgewater, head of the National Association of Stocking Gun Dealers. In 1993 he wrote to the House Judiciary Committee’s Subcommittee on Crime and Criminal Justice:

The BATF has established rules and regulations for these things they call “gun shows.” The opportunity for the black marketers is that the BATF doesn’t enforce those regulations and there isn’t anyone else to do so. Consequently, there are literally hundreds of “gun shows” scattered around the country where you may rent tables, display your wares, sell what you please to whomever you please and once again the sale that is made with no records, no questions and no papers, earns the highest sales price... There are wide open “gun shows” the length and breadth of the United States, wherein anyone may do as he chooses, including buy firearms for children.⁷²

But licensed retailers themselves are implicated; there is

evidence that among gun dealers, at least, those who sell at gun shows are more likely to have crime guns traced to them than are those who do not. ATF's 1998 Operation Snapshot, which compiled data on random samples of 382 gun dealers and 370 pawnbrokers, found that 30% of dealers with gun show sales, but 22% of all dealers, had previously had a crime gun traced to them. For pawnbrokers the difference was in the opposite direction; 36% of those with sales at gun shows, but 44% overall, had prior gun traces.⁷⁵ And in California, where both gun shows themselves and gun commerce generally are regulated, sales at gun shows are not a risk factor among licensed retailers for disproportionate sales of crime guns.⁶⁶

The best available data on gun shows as a source of crime guns come from ATF investigations of illegal gun trafficking.²⁷⁻²⁹ Example cases are given in Table 1-6.

In 2000, ATF published a detailed study of 1,530 such investigations initiated from July 1996 through December 1998, of which 212 (13.9%) involved gun shows and flea markets.²⁷ These cases accounted for 25,862 guns—30.7% of all the guns in the study.²⁷ Half the cases involved 40 guns or more. Nearly half (46%) involved felons either buying or selling guns at the shows. In more than a third, one or more of the involved guns were known to have been used in subsequent crimes, including homicide, assault, robbery, and drug offenses.³⁷

A follow-up study of 314 gun show investigations found that individual cases involved as many as 10,000 guns.²⁸ Trafficking at gun shows accounted for 9.9% of all firearms in cases linked to juveniles and youth.⁵⁴

ATF trafficking investigations also suggest that corrupt licensed retailers may preferentially do business at gun shows, as oversight is less stringent.^{27, 28} Nearly 20% of investigations concerning gun shows involved FFLs selling firearms without conducting background checks or retaining records.³⁷

Gun Show Exports

Gun shows are now frequently identified as the source of guns exported to Mexico,^{17, 58, 76} Canada,⁷⁷ and elsewhere. A lack of information, most importantly the absence of records for private party sales, has made it impossible to quantify the extent of the problem.¹⁷ Sales by licensed retailers and by private parties are both involved.

I use my discretion. Most people who come to the shows, you see them a lot. You know who's "right" and who's "wrong." I don't have to, but I ask everybody to see their driver's license, and if they're not "right," they usually move on at that point.

—Unlicensed vendor Jim Caton at a 2008 gun show in Norfolk, Virginia.⁷³

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Table 1-6. Examples of gun trafficking cases involving gun shows

Year	Case Description
1993	A licensed retailer in Tennessee “purchased more than 7,000 firearms, altered the serial numbers, and resold them to two unlicensed [vendors] who...sold the firearms at gun shows and flea markets.” The licensed retailer was sentenced to 15 months in prison and the unlicensed vendors to 21 and 25 months, respectively. ³⁷
1995	A convicted felon in Michigan “used a false police identification to buy handguns at gun shows and resold them for profit.” The guns included 16 new, inexpensive, 9mm and .380 semiautomatic pistols. The subject was sentenced to 27 months in prison. ³⁷
1996	An unlicensed vendor who was a convicted felon operated a network of straw purchasers and had trafficked more than 1,000 guns, some acquired at gun shows. He “offered to sell agents an unlimited number of firearms, including fully automatic weapons and silencers.” One gun “was recovered from the scene of a shootout in which two Mexican military officials were killed by drug traffickers.” Another was recovered from the apartment of a Mexican drug czar. The trafficker was eventually sentenced to 78 months in prison; two licensed retailers who collaborated with him received probation. ²⁷
2004	Dorian Bennett Carr, Jr., and Alvin Eugene Edwards were indicted for operating a straw purchasing ring that acquired approximately 240 new semiautomatic pistols from licensed retailers at Oklahoma gun shows and gun stores in six months. The guns were trafficked to Baltimore. Seven alleged straw purchasers were also indicted. ⁸¹
2006	“Operation Flea Collar” began as an investigation of two traffickers who purchased firearms from a licensed retailer in Alabama and sold them at gun shows and flea markets there. The investigation grew to involve thousands of firearms recovered from at least 12 states; gangs routinely sent buyers to Alabama to purchase the guns in bulk. Twelve guns were linked to homicides. Eighteen persons were arrested and convicted, and 556 firearms, including a Streetsweeper shotgun, were seized. ^{82, 83}
2006	Between 1994 and 2001, unlicensed vendor Richard Clausen bought and resold 300-400 firearms at gun shows and swap meets in Arizona. Clausen bought the guns from licensed retailers; the guns were sometimes resold, without background checks or records, within days. Clausen was sentenced to 27 months in prison. The judge said this of Clausen’s conduct: “It was like spreading poison in the public water supply.” ⁸⁴

They send over a scout on Saturday to see if there’s anything they want. Then they show up on Sunday with a big wad of money and somebody who’s got a clean record, who’s legal to buy.

—A seller of trigger activators— devices that increase the rate of fire of semi-automatic guns—on how Mexican gangs acquire guns at gun shows, Tucson, Arizona.⁷⁶

When somebody walks in and says, “I need eight of these,” it becomes apparent what’s happening.

—A licensed retailer in Tucson, Arizona. As reported by the New York Times, “[o]n May 18, 2008, a man bought two military-style rifles from him at a gun show on the Arizona State Fairgrounds. Two days later, the man showed up at the dealer’s home with a friend and bought eight more rifles for more than \$5,000 cash. Despite the dealer’s help [to law enforcement], members of the ring managed to smuggle at least 112 weapons, bought at a half dozen locations, into Mexico before they were arrested in February [2009].”⁸⁸

Table 1-6, continued.

Year	Case Description
2006	Mark Andrew Nelson of Ohio pleaded guilty to operating a straw purchasing ring that acquired guns from licensed retailers for him to sell at area gun shows and directly to prohibited persons. The straw purchasers, who also pleaded guilty, were members of his family: Phaedra Ann Nelson, his wife (173 guns); Ricky Frank Nelson, his brother (83 guns); and James Robert Crook, his father-in-law (71 guns). Licensed retailer Robert L. Cook pleaded guilty of selling a firearm to a prohibited person. ⁸⁵
2008	In October, 2005, Antrinna Collins purchased 3 semi-automatic pistols and 3 AK-47 rifles at the Cuyahoga County gun show in Ohio. One of the pistols was used by a convicted felon in a shooting 27 days later. On at least 3 occasions, guns she purchased were found in the possession of convicted felons. She was sentenced to 4 years in prison. ⁸⁶
2008	During 2006-2007, Ernesto Olvera-Garza directed a trafficking network in San Antonio, Texas, that specialized in “high-powered, high-capacity handguns and assault rifles” ⁸⁷ acquired at gun shows and elsewhere. At least 9 straw purchasers were involved. ⁸⁸ A woman who straw purchased a gun for him at a San Antonio gun show testified that, when she delivered the gun to him in the parking lot, he showed her 10 more guns that other straw purchasers had bought. ⁸⁹ Garza’s operation smuggled at least 50 guns into Mexico, one of which was used in a gunfight that killed two Mexican soldiers. He was sentenced to 12 years in prison. ⁹⁰
2008	During 2007-2008, Jonatan Lopez-Gutierrez and John Avelar operated a straw-purchasing ring in El Paso, Texas, that bought more than 90 firearms from licensed retailers at gun shows and elsewhere. The guns were smuggled into Mexico. Twenty-four guns were seized, including .50-caliber and .308-caliber sniper rifles and AR-15 rifles. The men were sentenced to 48 and 37 months in prison, respectively. ⁹¹
2009	Marvin Acevedo, a 35-year-old Guatemalan linked to a narcotics cartel in that country, was sentenced to four years in prison in February. He had purchased “more than ten” FN Five-seveN pistols and several thousand rounds of ammunition at gun shows and gun stores in North Texas and elsewhere. ⁹²

I have had people that failed background checks, and yet they are carrying guns out of here that they bought from someone else.

—Licensed retailer Bruce A. Schluderman, at a gun show in Pharr, Texas.⁵⁸

Referring to the widely-reported increase in gun trafficking from this country to Mexico, ATF's Assistant Director for Field Operations, William Hoover, emphasized the importance of "a readily accessible source of firearms and ammunition originating in mostly the secondary market such as gun shows, flea markets and private sales."⁷⁸ Canada's Criminal Intelligence Service, in its 2005 annual report on organized crime, referred to unregulated gun shows in the United States as a "serious threat."⁷⁹ And in 2003, the Congressional Research Service suggested that gun shows may be an attractive source of firearms for foreign terrorists.⁸⁰

Federal and State Policy on Gun Shows

Federal Policy

There is no federal regulation of gun shows *per se*. Existing law sets the terms for legal gun sales by licensed retailers and private parties, whether at a gun show or elsewhere. ATF regulations define gun shows and specify that the business procedures licensed retailers are required to follow at their usual premises apply at gun shows as well. Figure 1-2 reproduces an ATF circular outlining "activities permitted at bona fide gun shows."

State Policy

Eight states regulate gun shows, but the nature and scope of those regulations vary widely.^{40, 93} California "requires a show organizer to obtain a Certificate of Eligibility from the Department of Justice, provide local law enforcement with a list of the show's sellers, and exclude minors unless they are accompanied at all times by a parent or guardian."⁴⁰ Details for each state are in Table 1-7.

Table 1-7. Summary of state statutes regulating gun shows

State	Key Provisions of Statutes
California	Promoters must obtain a certificate of eligibility; provide a list of licensed retailers who will be attending, and of all vendors if requested; provide an approved security plan; and maintain liability insurance. Vendors must execute written contracts, certify that they will not display prohibited items and will process all gun sales through licensed retailers, and provide a list of all employees in attendance. All firearms brought by attendees must be tagged with the possessor's name, signature, and identifying information. Persons under 18 years of age are not admitted unless accompanied by a parent or legal guardian. (Other requirements have been omitted; see CA Penal Code Sections 12070-12071.4.)
Colorado	Records must be kept of all firearm transfers at gun shows, including private party transfers, by licensed retailers. (A licensed retailer must initiate a background check for a private party transfer at a gun show.)
Connecticut	Promoters must provide 30 days' advance notice of gun shows to law enforcement. (The Department of Public Safety must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Illinois	Records must be kept of all firearm transfers at gun shows by gun sellers, including private party sellers, for 10 years. The record must include the buyer's Firearm Owner Identification Card number. (The Department of State Police must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Maryland	Private party sellers of handguns and assault weapons at gun shows must obtain a temporary transfer permit for each show they attend, but only if they sell "from a table or fixed display." The permit requires a background check, and an individual may only be issued five permits per year.
New York	Promoters must post signs and provide written notification to vendors that all firearm sales require background checks initiated by licensed retailers and must identify a retailer who will initiate checks for private party sales. The retailer must retain records of sales at gun shows for 10 years.
Oregon	Promoters must post signs stating the requirement for a background check prior to the sale of any firearm at a gun show and must provide forms for requesting background checks. Records must be kept of all firearm transfers at gun shows by gun sellers, including private party sellers, for 5 years. (The Department of State Police must conduct a background check for a private party transfer at a gun show, which is requested by the seller.)
Virginia	Promoters must provide 30 days' advance notice of gun shows to law enforcement and provide a list of all vendors within five days following the show. There is an exemption for "shows held in any town with a population of not less than 1,995 and not more than 2,010, according to the 1990 United States census."

Adapted in part from *Regulating guns in America: an evaluation and comparative analysis of federal, state and selected local gun laws*. San Francisco, CA: Legal Community Against Violence, 2008.

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Figure 1-2 ATF circular outlining procedures to be followed at gun shows

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Important Notice to Dealers and Other Participants at this Gun Show



This **NOTICE** applies to activities permitted at bona fide gun shows, as defined in Title 27 of the Code of Federal Regulations, Section 478.100. Federal firearms licensees ("FFLs" or "Dealers") may only sell firearms at gun shows within the State in which their licensed premises is located.

DEALERS LICENSED IN THIS STATE

- **MUST** display license.
- **MUST** comply with all recordkeeping requirements of ATF regulations concerning acquisitions and dispositions of firearms, including the recording of the place of sale.
- **MAY** dispose of handguns to residents of this State only, provided that the purchaser is at least 21 years of age and all provisions of the Brady law are met.
- **MAY** dispose of long guns to residents of any State, provided that the purchaser is at least 18 years of age, the laws of both States are complied with, and all provisions of the Brady law are met.
- **MAY** dispose of firearms to any FFL.
- **MAY** acquire firearms from any FFL licensed in the State and from any non-licensed individual.
- **MAY** take orders of any firearm from a non-licensee and ship the same to a licensee in the purchaser's State of residence from whom the purchaser can then take possession after the provisions of the Brady law are met.

DEALERS NOT LICENSED IN THIS STATE

- **MUST** display license.
- **MUST** comply with all ATF recordkeeping requirements concerning the acquisition of firearms.
- **MAY** acquire firearms from any FFL licensed in this State and from any non-licensed individual.
- **MAY** make a sale and deliver curio or relic firearms to any other FFL licensed in any State as long as the laws of both States are complied.
- **MAY** ship curio or relic firearms from this show to any other FFL.
- **MAY** display and take orders.

NON-LICENSED RESIDENTS OF THIS STATE

- **MAY** acquire long guns or handguns from FFLs licensed in this State, provided all provisions of the Brady law are met.
- **MAY** dispose of personal firearms to any FFL.
- **MAY** acquire from and dispose of personal firearms to non-licensed residents of the State. However, non-licensed individuals may not be engaged in the business of dealing in firearms without a Federal firearms license.
- **CANNOT** acquire from or dispose of firearms to non-licensed residents of any other State.
- **CANNOT** ship in interstate commerce, except to themselves or an FFL, a firearm that has otherwise been lawfully acquired; must, when shipping to themselves, declare the firearm to the commercial or contract carrier.

NON-LICENSED RESIDENTS FROM ANOTHER STATE

- **MAY** dispose of firearms to any FFL.
- **MAY** acquire long guns only from FFLs licensed in the State, provided the laws of both States are complied with and all provisions of the Brady law are met.
- **MAY** order firearms from any FFL and have them shipped from the show to an FFL in their State of residence by a commercial or contract carrier in accordance with State and Federal law.
- **CANNOT** acquire handguns.
- **CANNOT** acquire from or dispose of firearms to non-licensed individuals.

ATF 15300.23A
Revised March 2006

Law Enforcement at Gun Shows

ATF has had no proactive program of gun show enforcement.⁹⁴ Instead, its investigations traditionally have been reactive, originating in information developed from complaints or, more recently, patterns developed in gun tracing data or reports of multiple handgun sales. For example, of the 314 ATF trafficking investigations involving gun shows in the late 1990s, over 40% began with complaints or tips from informants (including 9% from FFLs or show promoters), and another 23% arose from analysis of trace and multiple sales records. Only 14% arose from “prior ATF attention to gun shows.”²⁸

From 2004 to 2006, gun show operations accounted for 3.2% of all trafficking investigations initiated by ATF and affected 3.3% of the gun shows estimated by the Department of Justice to have occurred during those years.⁹⁴ During those years ATF conducted 202 investigative operations at 195 gun shows, resulting in 121 arrests (with at least 83 convictions) and the seizure of 5,345 firearms.⁹⁴ Of the 202 operations, 156 (77%) focused on specific individuals who were suspected of gun trafficking; only 46 (23%) addressed “general illegal activity related to firearms trafficking occurring at gun shows.”⁹⁴ Examples of operations directed at firearms trafficking generally at gun shows are in Table 1-8. These have been covert operations, conducted in some cases without the knowledge of the shows’ promoters. ATF’s operations at a series of gun shows in Richmond will be discussed in Chapter 7.

Gun show operations are also part of ATF’s recently established Project Gunrunner, intended to disrupt the flow of guns from the United States into Mexico for use by drug trafficking organizations. The project’s gun show component targets “widespread international trafficking by individuals and gangs that cross the U.S. border carrying drugs and then return to Mexico carrying guns that they obtained through straw purchases at gun shows in the southwestern states.”⁹⁴ No separate data have been published on Gunrunner’s impact on gun shows. Altogether, from its onset in 2004 through mid-February of 2009, Gunrunner “has referred for prosecution 795 cases involving 1,658 defendants; those cases include 382 firearms trafficking cases involving 1,035 defendants and an estimated 12,835 guns.”¹⁸

The limitations on ATF’s enforcement activities stem in

*Alcohol, Tobacco, Firearms
should be a convenience store,
not a government agency.*

*—T-shirt worn by an attendee,
Phoenix, Arizona.*

Inside Gun Shows

large part from a lack of resources. For a sense of how serious a problem the under-resourcing of ATF has been, consider the border states of the Southwest. ATF estimated in 2008 that there were 6,647 licensed retailers in the area, while their workforce comprised just 100 special agents and 35 industry operations investigators. Nationwide, ATF at that time employed only about 2,500 investigators and 750 special agents.⁷⁸ When asked by a reporter in 2007 about the possibility of routine patrols at gun shows, William Newell, the head of ATF's office in Phoenix, responded simply, "We don't have enough agents to do that."⁹⁵

Table 1-8. Examples of ATF enforcement operations at gun shows targeting general firearms trafficking, by ATF field division

Year	Field Division	Description of Operation
2006	Columbus, OH	Investigations were conducted at 3 gun shows in Cleveland based on intelligence that "many of the guns recovered in high-crime areas of the city had been purchased at local gun shows" and that others were trafficked to other states and to Canada. The operations resulted in the seizure of 5 guns, 1 indictment, and 2 pending indictments.
2005-2006	Houston, TX	Operations were undertaken at 2 shows in Pharr, a suburb of McAllen on the border with Mexico. Four Mexican nationals were arrested. Three had purchased 14 firearms and 3,000 rounds of ammunition; the fourth had coordinated the straw purchases of 10 "high-priced" firearms.
2004-2006	New Orleans, LA	Gun shows in Kenner, a suburb of New Orleans, were identified through a review of tracing records as "a source used by local gang members and other criminals" for guns acquired through straw purchases or private party transfers. Operations resulted in 12 arrests, 6 convictions, and the seizure of 4 guns.
2004-2006	Phoenix, AZ	Gun shows in the Southwest "attracted large numbers of gang members from Mexico and California" who "bought large quantities of assault weapons." Operations at 8 shows in Phoenix, Yuma, and Tucson, AZ, and in Albuquerque, NM resulted in 13 arrests, 3 convictions, and the seizure of 193 guns.
2004-2005	San Francisco, CA	Gun shows in Reno are "a gateway for illegal firearms trafficking into California." In undercover operations at 6 shows, ATF agents identified illegal sales to out-of-state residents, illegal off-paper sales, and cases of dealing in firearms without a license. The operations resulted in 14 arrests and 11 convictions; 1000 firearms were purchased or seized.

Adapted from *The Bureau of Alcohol, Tobacco, Firearms and Explosives' investigative operations at gun shows*. Washington, DC: Office of the Inspector General, US Department of Justice; 2007. The report was published not long after the operations were conducted. Outcomes for criminal cases arising from the investigations were not always available, and additional filings were expected.

Public Education

ATF occasionally sets up educational displays at gun shows; staff answer questions and distribute materials covering gun laws and purchase procedures. In collaboration with ATF, the National Shooting Sports Foundation administers a public education program, “Don’t Lie for the Other Guy,” intended to prevent straw purchases.⁹⁶ Begun in 2000, the program is now operational in approximately 15 states or metropolitan areas selected by ATF. Don’t Lie is not specific to gun shows; it offers training and display materials to all licensed retailers in the targeted areas. The materials stress the fine (up to \$250,000) and long prison term (up to ten years) that await a convicted straw purchaser.

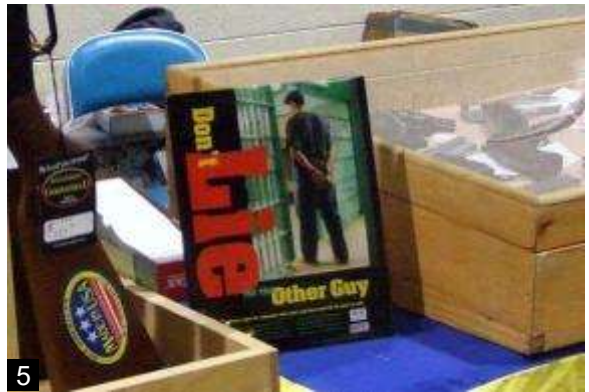
These educational efforts, like ATF’s operations generally, receive a mixed reception at gun shows (see pages 42-43).

Other Federal Efforts

United States Immigration and Customs Enforcement (ICE), now the primary investigative agency of the Department of Homeland Security, has targeted cross-border gun trafficking generally since 2005, if not earlier. Fifteen multi-agency Border Enforcement Security Task Forces have seized more than 2,000 weapons and made high-profile arrests of traffickers.⁹⁷ An apparently separate partnership with other agencies and the government of Mexico, Operation Armas Cruzadas, has recovered more than 1,400 firearms and 120,000 rounds of ammunition. No results specific to operations at gun shows are available.

A June 2009 review by the Government Accountability Office of efforts to combat gun trafficking into Mexico criticized both ATF and ICE for a failure to “consistently and effectively coordinate their efforts,” which “has resulted in some instances of duplicate initiatives and confusion during operations.”¹⁷ By the end of the month, the agencies had signed an agreement intended to clarify their areas of responsibility and facilitate collaborative work.⁹⁸

Inside Gun Shows



ATF and Its "Don't Lie" Campaign

ATF rents table space at gun shows (1-3). This is not common, and it is a lonely job. The emphasis is on their "Don't Lie" campaign to deter straw purchases. Some licensed retailers display Don't Lie materials prominently; purchasers cannot help but see them. (In the straw purchase on pages 148-149, four piles of cash were counted out on a Don't Lie counter mat.) Some view ATF's work with hostility. Manifestations include displaying Firearms Transaction Records beside a Nazi flag (10) and throwing Don't Lie postcards on the ground (11,12). The photographs were taken in Orlando, FL (1,3,10); Atlanta, GA (2); Dayton, OH (4); Reno, NV (5); Dallas, TX (6); Richmond, VA (7,9); and Phoenix, AZ (8,11,12).



State-Level Enforcement

WARNING. Undercover law enforcement officers are actively working at this show. Do not under any circumstances allow yourself to sell a firearm without conducting the sale through a licensed dealer.

—Sign posted at a licensed retailer acting as a transfer station for private party gun sales, Orange County, California.

The California Department of Justice has conducted systematic law enforcement operations at gun shows at least since 2001. Its Gun Show Enforcement Program (GSEP), which is supported by allocations from the state’s general funds, was mandated by the legislature as part of a larger effort to regulate gun shows. Teams of experienced special agents, working undercover, are at “every single major gun show” in the state—and most of the smaller shows as well—according to agency officials interviewed for this report. Individual operations are sometimes collaborative efforts involving local law enforcement, agencies from other states (particularly Arizona and Nevada), and ATF. A continuing series of joint operations involving gun shows in Reno, for example, was initiated at the request of chiefs of police in the San Francisco Bay Area after it became clear that the shows were important sources of guns used in crimes in Bay Area cities. As measured by gun recoveries, investigative operations generally have been “very lucrative” and have “put a dent” in gun trafficking. Individual cases have involved dozens of guns.

GSEP agents work closely with promoters, both as enforcers of the law and as educators. Promoters “assume we’re always there and know we’re not an absentee landlord,” said agency officials. The program makes active use of the materials that gun show promoters must provide in advance of each event: a security plan and a list of all those who are renting table space to sell guns, among others. The administrative requirements of the law have teeth; a promoter who does not meet them faces the loss of his license.

The program appears to have undergone an important transition. After some initial resistance, many promoters and individual retailers have become quite supportive. With them, at least, program operations have entered what might be considered a maintenance phase. Agency officials report “a sizeable amount” of self-policing and stress the importance of ethical promoters and retailers as sources of leads on criminal activity.

Some Additional Data and Preliminary Inferences

As the discussion to this point hopefully establishes, the role that gun shows play in gun commerce and gun violence cannot be described simply. As the Columbine massacre and many

gun trafficking cases demonstrate, gun shows may be particularly important as an indirect source of crime guns—they supply guns to intermediaries who in turn supply active criminals. This point has been most clearly made by Anthony Braga and David Kennedy, two leading experts in the field:

Assessing any problem presented by gun shows is a difficult analytic task. While an important question is *whether prohibited persons personally buy firearms at gun shows*, which might be answered by surveys, an equally important one is *whether gun shows are sources of firearms that are trafficked to prohibited persons by straw purchasers, street dealers, and the like*. However, this question cannot be answered by surveys.²⁸
[Italics in original.]

At the same time, the available evidence suggests the following interim conclusions, which are worth considering as additional evidence accumulates.

The proportion of all gun sales nationwide that occurs at gun shows is relatively small.

The best published information we have on where guns come from is in the Police Foundation's 1996 National Survey on Private Ownership of Firearms (NSPOF). In that survey, gun owners were asked a series of questions about the most recent gun they had acquired, including where they had acquired it. Four percent of the guns had been acquired at gun shows; the survey did not ask these gun buyers if they had made their purchases from licensed retailers or private parties.² Unpublished data from a second nationwide survey¹ yield a similar result; of 566 gun owners, 9% acquired their most recent guns at a gun show.

Such estimates do not come from surveys alone. California's records of handgun sales identify transactions occurring at gun shows. For the 10 years 1998 through 2007, the archive contains records for more than 1.8 million transactions. Of these, 2.7% were recorded as occurring at gun shows. This figure would include both direct sales by licensed retailers and private party sales that were processed by licensed retailers, as required by state law.

Survey results can be imprecise, particularly for infrequent events as appears to be the case here. Clearly, a gun most recently purchased by a survey respondent at a location other than a gun show may have passed through a gun show earlier in its lifetime. And it is entirely possible that some gun show sales in the California records were not identified as such. That said, all the available estimates support the general statement that gun shows account for a relatively small proportion of overall gun commerce.

Most sales at gun shows involve licensed retailers.

ATF estimates that 50% to 75% of gun sellers who rent table space at gun shows are licensed retailers.³⁷ Our prior study⁶³ yielded an estimate of only 30%, but this was based on observational data and almost certainly an underestimate. Many licensed retailers at gun shows do not identify themselves as such—at least not until consummating a gun sale—though they are required to do so. The largest and most active vendors at gun shows are almost always licensed retailers.

Given that licensed retailers probably make up a majority of vendors who rent table space, and that they account for essentially all the largest and most active vendors, it is likely that they account for most sales at gun shows. Even allowing for sales by individual attendees who have not rented table space, it is reasonable to estimate that perhaps two-thirds of gun sales are made by licensed retailers. There are, unfortunately, no published data on this point.

Private party sales at gun shows account for a relatively small percentage of gun sales in the United States.

Taken together, three estimates—that 40% of all gun sales are private party transactions, that 4% to 9% of all gun sales occur at gun shows, and that two thirds of gun show sales are made by licensed retailers—allow for the rough approximations in Table 1-9 of the importance of private party gun sales at gun shows to gun commerce generally. If the 4% estimate is used, then of 1,000 hypothetical gun sales overall, 13 would be private party sales occurring at gun shows. These 13 guns account for 3.3% of private party gun sales and 1.3% of gun sales overall. Using the

9% estimate, 30 of every 1,000 hypothetical gun sales would be private party sales at gun shows. These 30 guns account for 7.5% of private party gun sales and 3% of gun sales overall.

Table 1-9. Allocation of 1,000 hypothetical gun sales between licensed retailers and private party gun sellers, and between gun shows and other venues

a. Assuming that 4% of all gun sales occur at gun shows

Venue	Private Party	Licensed Retailer	Total
Gun Show	13	27	40
Other	387	573	960
Total	400	600	1,000

b. Assuming that 9% of all gun sales occur at gun shows

Venue	Private Party	Licensed Retailer	Total
Gun Show	30	60	90
Other	370	540	910
Total	400	600	1,000

Licensed retailers are probably the primary source of crime guns acquired at gun shows.

The one peer-reviewed study of gun shows as sources of crime guns, discussed previously, developed data from 314 ATF investigations of gun trafficking at gun shows.²⁸ Nearly 55,000 guns were involved. While an unlicensed seller was the main subject in most of the investigations (54.1%), two thirds of the trafficked guns were linked to investigations in which the main suspect was (or had been) a licensed retailer. These retailer cases involved an average of 452 guns apiece and 33,445 guns in total; those centered on unlicensed sellers involved an average of 112 guns each and 15,551 guns altogether. Licensed retailers are able to buy guns in large quantities, and an increase in the number of guns linked to trafficking investigations when licensed retailers are involved is not unique to gun shows.²⁷

These data are not the whole story, however. First, trafficking operations that do not involve licensed retailers might be less likely to be brought to ATF’s attention and trigger an investigation, precisely because they are smaller than operations in

which retailers participate. This could lead an assessment based just on trafficking investigations to underestimate the importance of private-party trafficking.

Complicating this is the fact that ATF, because of limitations in the data it is allowed to collect, is not able to provide an estimate other than from those trafficking investigations of the number of trafficked guns that are obtained at gun shows, whether from licensed retailers or private parties.¹⁷ Records of trafficking investigations cannot possibly capture all the guns acquired at gun shows with criminal intent—recall that ATF enforcement operations affect a very small percentage of gun shows. This means that the best available evidence we have on the role of gun shows as a source of crime guns probably underestimates their importance.

References

1. Hepburn LM, Miller M, Azrael D, et al. The U.S. gun stock: results from the 2004 national firearms survey. *Injury Prevention*. 2007;13:15-19.
2. Cook PJ, Ludwig J. *Guns in America: results of a comprehensive national survey on firearms ownership and use*. Washington (DC): The Police Foundation; 1996.
3. Rand MR. *Criminal victimization, 2007*. Washington (DC): Bureau of Justice Statistics; 2008. Report No.: NCJ 224390.
4. Federal Bureau of Investigation. *Crime in the United States, 2007*. Washington (DC): Federal Bureau of Investigation; 2008.
5. Wintemute GJ. Guns and gun violence. In: Blumstein A, Wallman J, editors. *The crime drop in America*. New York: Cambridge University Press; 2000. p. 45-96.
6. Police Executive Research Forum. *Violent crime in America: 24 months of alarming trends*. Washington (DC): Police Executive Research Forum; 2007.
7. Police Executive Research Forum. *Violent crime in America: a tale of two cities*. Washington (DC): Police Executive Research Forum; 2007.
8. Federal Bureau of Investigation. *Preliminary annual Uniform Crime Report, 2008*. 2009 June 1. Available from: <http://www.fbi.gov/ucr/08aprelim/index.html>
9. Klein A. Major cities' plummeting crime rates mystifying. *The Washington Post*. 2009 Jul 20. Available from: http://www.washingtonpost.com/wp-dyn/content/article/2009/07/19/AR2009071902154_pf.html.
10. Graduate Institute of International Studies. *Small arms survey 2007*. Geneva: Cambridge University Press; 2007.
11. Krug EG, Powell K, Dahlberg L. Firearm-related deaths in the United States and 35 other high- and upper-middle-income countries. *International Journal of Epidemiology*. 1998;27:214-221.
12. Richmond T, Cheney R, Schwab C. The global burden of non-conflict related firearm mortality. *Injury Prevention*. 2005;11(6):348-352.

13. Zimring FE, Hawkins G. *Crime is not the problem: lethal violence in America*. New York: Oxford University Press; 1997.
14. Graduate Institute of International Studies. *Small arms survey 2002: counting the human cost*. Oxford: Oxford University Press; 2002.
15. Cook PJ, Cukier W, Krause K. The illicit firearms trade in North America. *Criminology & Criminal Justice*. 2009;9(3):265-286.
16. United States Joint Forces Command. *The joint operating environment (JOE) 2008*. Suffolk (VA): United States Joint Forces Command; 2008.
17. Government Accountability Office. *Firearms trafficking: U.S. efforts to combat arms trafficking to Mexico face planning and coordination challenges*. Washington (DC): Government Accountability Office; 2009. Report No.: GAO-09-709.
18. Testimony of William Newell before the Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies. United States House of Representatives. Washington (DC). March 24, 2009.
19. Olinger D. Following the guns. *The Denver Post*. 1999 Aug 2. Available from: <http://extras.denverpost.com/news/shot0801.htm>.
20. Testimony of Robyn Anderson before the Judiciary Committee. Colorado House of Representatives. As quoted by Lautenberg F. *Congressional record-Senate*. February 9, 2000. S555.
21. Bartles L. Gun dealers rejected Columbine killers. *Rocky Mountain News*. 2000 Jan 27. Available from: <http://rockymountainnews.com/shooting/0127roby1.shtml>.
22. Soraghan M. Owens: Columbine gun buyer no victim. *The Denver Post*. 2000 Jan 29. Available from: <http://extras.denverpost.com/news/shotarch1.htm>.
23. Olinger D. Only the name has changed. Tanner gun show back with a new moniker. *The Denver Post*. 1999 Jun 6.
24. Olinger D. Teen's gun purchase may have been illegal. Licensed dealer claims sale was private. *The Denver Post*. 1999 Jun 11.
25. Olinger D. Gun dealer surrenders firearms license. *The Denver Post*. 1999 Oct 14. Available from: <http://extras.denverpost.com/news/shot1014b.htm>.
26. Crowder C. A look inside the gun show world. *Rocky Mountain News*. 2000 Mar 22.
27. Bureau of Alcohol, Tobacco and Firearms. *Following the gun: enforcing federal laws against firearms traffickers*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2000.
28. Braga AA, Kennedy DM. Gun shows and the illegal diversion of firearms. *Georgetown Public Policy Review*. 2000;6:7-24.
29. Testimony of Michael Bouchard before the Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security. United States House of Representatives. Washington (DC). February 28, 2006.
30. Scalia J. *Federal firearm offenders, 1992-98*. Washington (DC): Bureau of Justice Statistics; 2000. Report No.: NCJ 180795.
31. Harlow CW. *Firearm use by offenders*. Washington (DC): Bureau of Justice Statistics; 2001. Report No.: NCJ 189369.
32. Zimring FE. Firearms and federal law: the Gun Control Act of 1968. *Journal of Legal Studies*. 1975;4:133-198.
33. Cook PJ, Molliconi S, Cole TB. Regulating gun markets. *Journal of Criminal Law and Criminology*. 1995;86:59-92.

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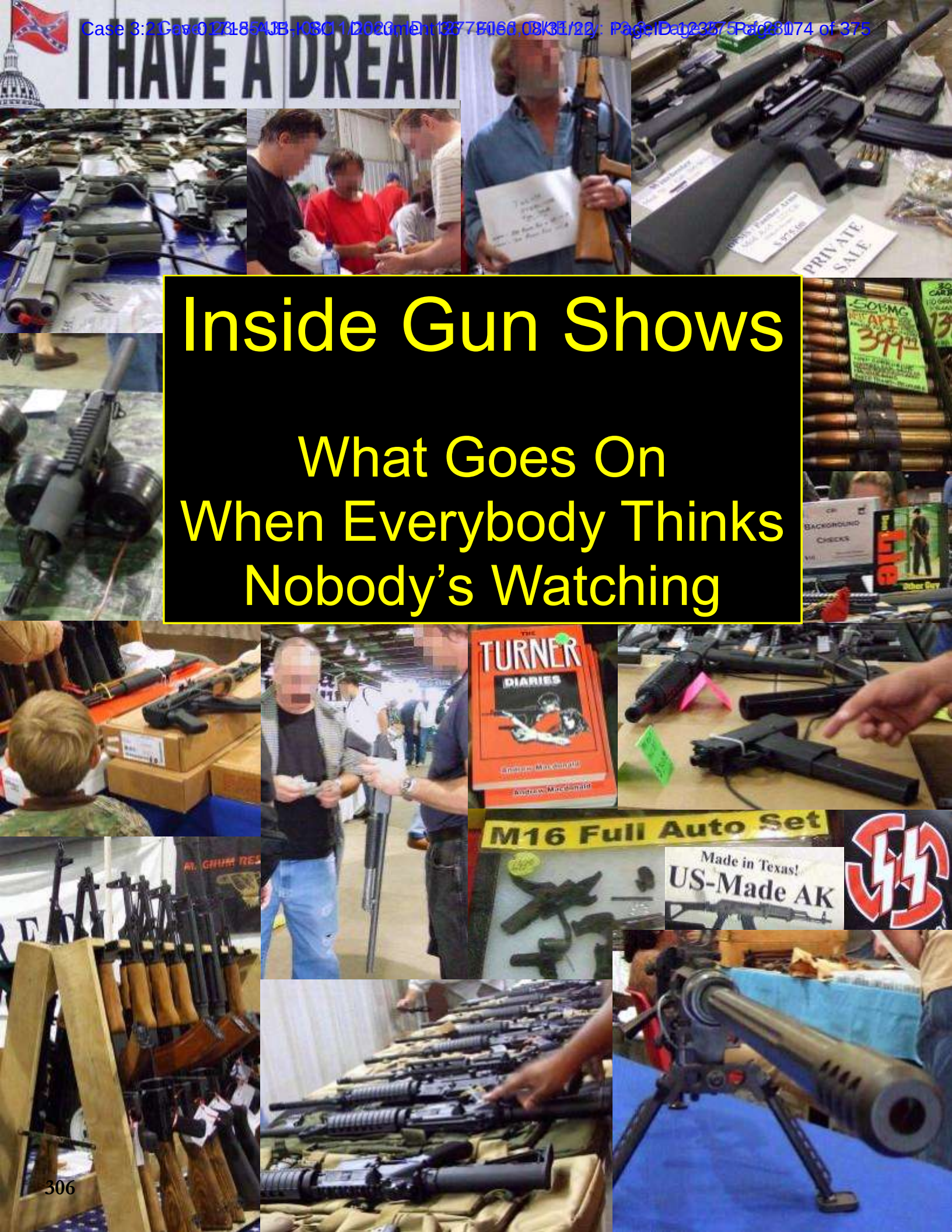
34. Braga AA, Cook PJ, Kennedy DM, et al. The illegal supply of firearms. In: Tonry M, editor. *Crime and justice: a review of research*. Chicago: The University of Chicago Press; 2002. p. 319-352.
35. Newton G, Zimring FE. *Firearms and violence in American life: a staff report submitted to the National Commission on the Cause and Prevention of Violence*. Washington (DC): National Commission on the Causes and Prevention of Violence; 1969.
36. Federal Bureau of Investigation. *National Instant Criminal Background Check System (NICS) operation 2006*. Washington (DC): Federal Bureau of Investigation; 2007.
37. Bureau of Alcohol, Tobacco and Firearms. *Gun shows: Brady checks and crime gun traces*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 1999.
38. United States Code. Title 18, Part 1, Chapter 44, Section 921(a)(21)(C).
39. Montini E. Pursuing honor students more than gangsters. *Arizona Republic*. 2007 Sep 16. Available from: <http://www.azcentral.com/arizonarepublic/local/articles/0916montini0916.html>.
40. Bureau of Justice Statistics. *Survey of state procedures related to firearm sales, 2005*. Washington (DC): Bureau of Justice Statistics; 2006. Report No.: NCJ 214645.
41. Bureau of Justice Statistics. *Background checks for firearm transfers 2008 - statistical tables*. Washington (DC): Bureau of Justice Statistics; 2009. Report No.: NCJ 227471.
42. Ludwig JA, Cook PJ. Homicide and suicide rates associated with implementation of the Brady Handgun Violence Prevention Act. *Journal of the American Medical Association*. 2000;284:585-591.
43. Manson D, Gilliard D. *Presale handgun checks, 1996: a national estimate*. Washington (DC): Bureau of Justice Statistics; 1997. Report No.: NCJ-165704.
44. Wintemute GJ, Wright MA, Drake CM, et al. Subsequent criminal activity among violent misdemeanants who seek to purchase handguns: risk factors and effectiveness of denying handgun purchase. *Journal of the American Medical Association*. 2001;285:1019-1026.
45. Wright MA, Wintemute GJ, Rivara FA. Effectiveness of denial of handgun purchase to persons believed to be at high risk for firearm violence. *American Journal of Public Health*. 1999;89:88-90.
46. Blumstein A, Nakamura K. Redemption in the presence of widespread criminal background checks. *Criminology*. 2009;47(2):327-359.
47. Wintemute GJ. Impact of the Brady Act on homicide and suicide rates (letter). *Journal of the American Medical Association*. 2000;284:2719-2720.
48. Webster DW, Vernick JS, Bulzacchelli MT. Effects of state-level firearm seller accountability policies on firearm trafficking. *Journal of Urban Health*. 2009;86:525-537.
49. United States Code. Title 18, Part 1, Chapter 44, Section 922(d).
50. Sugarmann J, Rand K. *More gun dealers than gas stations: a study of federally licensed firearm dealers in America*. Washington (DC): Violence Policy Center; 1992.
51. Bureau of Alcohol, Tobacco and Firearms. *Firearms commerce in the United States, 2001/2002*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2002.
52. Koper CS. Federal legislation and gun markets: How much have recent reforms of the federal firearms licensing system reduced criminal gun suppliers? *Criminology and Public Policy*. 2002;1:151-178.

53. Wachtel J. Sources of crime guns in Los Angeles, California. *Policing: An International Journal of Police Strategies & Management*. 1998;21:220-239.
54. Braga AA, Kennedy DM. The illicit acquisition of firearms by youth and juveniles. *Journal of Criminal Justice*. 2001;29:379-388.
55. Cook PJ, Braga AA. Comprehensive firearms tracing: strategic and investigative uses of new data on firearms markets. *Arizona Law Review*. 2001;43:277-309.
56. Hartocollis A. Officials say gunrunners used cellphone pictures to advertise. *The New York Times*. 2007 Mar 22. Available from: <http://www.nytimes.com/2007/03/22/nyregion/22guns.html?pagew>.
57. Cook PJ, Ludwig JA, Venkatesh SA, et al. *Underground gun markets*. Cambridge: National Bureau of Economic Research; 2005. Working paper No. 11737.
58. McKinley Jr. JC. U.S. stymied as guns flow to Mexican cartels. *The New York Times*. 2009 April 15. Available from: http://www.nytimes.com/2009/04/15/us/15guns.html?_r=1&scp=1&sq=u.s.%20stymied%20as%20guns%20flow%20to%20Mexican%20cartels&st=cse.
59. U.S. Attorney's Office, Southern District of Texas. Houstonian sentenced to prison for lying to buy guns. Houston (TX): U.S. Attorney's Office, Southern District of Texas; April 17, 2009.
60. Sheley JF, Wright JD. *Gun acquisition and possession in selected juvenile samples*. Washington (DC): National Institute of Justice/Office of Juvenile Justice and Delinquency Prevention; 1993. Report No.: NCJ-145326.
61. Smith MD. Sources of firearm acquisition among a sample of inner-city youths: research results and policy implications. *Journal of Criminal Justice*. 1996;24:361-367.
62. Sorenson SB, Vittes K. Buying a handgun for someone else: firearm dealer willingness to sell. *Injury Prevention*. 2003;9:147-150.
63. Wintemute GJ. Gun shows across a multistate American gun market: observational evidence of the effects of regulatory policies. *Injury Prevention*. 2007;13:150-156.
64. Bureau of Alcohol, Tobacco, Firearms and Explosives. *ATF 2005 annual report*. Washington (DC): Bureau of Alcohol, Tobacco, Firearms and Explosives; 2006. Report No.: 1000.4.
65. Bureau of Alcohol, Tobacco and Firearms. *Commerce in firearms in the United States*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2000.
66. Wintemute GJ, Cook P, Wright MA. Risk factors among handgun retailers for frequent and disproportionate sales of guns used in violent and firearm related crimes. *Injury Prevention*. 2005;11:357-363.
67. National Rifle Association. White House plan nothing new, targets licensed, lawful dealers. 2000 Feb 4. Available from: <http://www.nraila.org/News/Read/InTheNews.aspx?ID=538>.
68. Bureau of Alcohol, Tobacco and Firearms. *Crime gun trace reports (1999)*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2000.
69. Bureau of Alcohol, Tobacco and Firearms. *Crime gun trace reports (2000)*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2002.
70. Wintemute GJ, Romero MP, Wright MA, et al. The life cycle of crime guns: a description based on guns recovered from young people in California. *Annals of Emergency Medicine*. 2004;43:733-742.
71. KDKA-TV. Police, ATF raid Butler home, remove 500 guns. *KDKA-TV*. 2008 Feb 7. Available from: <http://kdka.com/local/Butler.Gun.Raid.2.648818.html>.

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72. Violence Policy Center. *Gun shows in America: Tupperware parties for criminals*. Washington (DC): Violence Policy Center; 1996.
73. Kimberlin J. Gun sale rules can be easy to avoid. Virginia's gun shows offer weapons to almost any buyer—with few questions asked. *The (Norfolk) Virginian-Pilot*. 2008 Mar 3. Available from: <http://www.roanoke.com/news/roanoke/wb/152970>.
74. Kelly S. Team 5 Investigates exposes underground gun trade. Weapons easy to get; traffickers go unpunished. *WCVB-TV News (Boston)*. 2008 Feb 1. Available from: <http://www.thebostonchannel.com/news/15189840/detail.html?rss=bos&psp=news>.
75. Bureau of Alcohol, Tobacco and Firearms. *Operation Snapshot: an analysis of the retail regulated firearms industry*. Washington (DC): Bureau of Alcohol, Tobacco and Firearms; 2000.
76. Hawley C, Solache S. U.S. guns pour into Mexico: arms race among drug cartels, end of ban in America result in flood of high-power weapons over border. *The Arizona Republic*. 2007 Jan 16. Available from: www.azcentral.com/arizonarepublic/news/articles/0116americanguns0116.html.
77. Montgomery S. Gunrunner gets six years. *The Gazette (Montreal)*. 2006 May 27. Available from: <http://www.canada.com/montrealgazette/news/montreal/story.html?id=66aa79c0-190f-4c46-8c6d-d7759ef42baa&k=60047>.
78. Testimony of William Hoover before the Committee on Foreign Affairs, Subcommittee on the Western Hemisphere. United States House of Representatives. Washington (DC). February 7, 2008.
79. Criminal Intelligence Service Canada. *Annual report on organized crime in Canada*. Ottawa (Canada): Criminal Intelligence Service Canada; 2005.
80. Krouse W. Memorandum to Senator Frank Lautenberg: Foreign terrorists and the availability of firearms and black powder in the United States. Washington (DC): Congressional Research Service; May 16, 2003.
81. U.S. Department of Justice. Ten individuals charged in interstate firearms trafficking scheme (news release). Tulsa (OK): U.S. Department of Justice; 2004.
82. Testimony of Michael J. Sullivan before the Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies. United States House of Representatives. Washington (DC). March 28, 2007.
83. U.S. Department of Justice. Operation Flea Collar - Alabama ICE strikes illegal suppliers selling guns at area flea markets (press release). Birmingham (AL): U.S. Department of Justice; 2006.
84. Bureau of Alcohol, Tobacco, Firearms and Explosives. Mesa man sentenced to prison for dealing in hundreds of firearms without a license (press release). Phoenix (AZ): Bureau of Alcohol, Tobacco, Firearms and Explosives; 2006.
85. Bureau of Alcohol, Tobacco, Firearms and Explosives. Five plead guilty to illegal gun trafficking (press release). Columbus (OH): Bureau of Alcohol, Tobacco, Firearms and Explosives; 2006.
86. Bureau of Alcohol, Tobacco, Firearms and Explosives. Female firearm trafficker sentenced to 4 years. Cleveland woman bought firearms and provided them to felons and criminals. Columbus (OH): Bureau of Alcohol, Tobacco, Firearms and Explosives; 2008.
87. U.S. Immigration and Customs Enforcement. Mexican national pleads guilty to smuggling firearms to Mexico. San Antonio (TX): U.S. Immigration and Customs Enforcement; 2008.

88. Testimony of Marcy Forman before the Committee on Appropriations, Subcommittee on Homeland Security. United States House of Representatives. Washington (DC). March 10, 2009.
89. Violence Policy Center. *Indicted: types of firearms and methods of gun trafficking from the United States to Mexico as revealed in U.S. court documents*. Washington (DC): Violence Policy Center; 2009.
90. U.S. Immigration and Customs Enforcement. Mexican national sentenced to 12 years in federal prison for firearms smuggling. San Antonio (TX): U.S. Immigration and Customs Enforcement; 2008.
91. U.S. Immigration and Customs Enforcement. Two men sentenced to federal prison for firearms trafficking. Arms traffickers were part of conspiracy to smuggle weapons into Mexico. El Paso (TX): U.S. Immigration and Customs Enforcement; 2008.
92. Solis D. Dallas-Fort Worth cases highlight weapons trafficking problem. *Dallas Morning News*. 2009 Apr 18. Available from: http://www.dallasnews.com/sharedcontent/dws/news/politics/local/stories/DN-gunsside_17int.ART.State.Edition1.4a8f6ec.html.
93. Legal Community Against Violence. *Regulating guns in America: an evaluation and comparative analysis of federal, state and selected local gun laws*. San Francisco (CA): Legal Community Against Violence; 2008.
94. Office of the Inspector General. *The Bureau of Alcohol, Tobacco, Fire arms and Explosives' investigative operations at gun shows*. Washington (DC): Office of the Inspector General, US Department of Justice; 2007. Report No.: I-2007-007.
95. Hawley C. Feds short of agents to patrol U.S. gun shows. *The Arizona Republic* 2007 Jun 15; Sect. A:8.
96. The National Shooting Sports Foundation; Bureau of Alcohol, Tobacco, Firearms & Explosives. *Don't lie for the other guy*. 2000. Available from: <http://www.dontlie.org>
97. Testimony of John P. Torres before the Committee on the Judiciary, Subcommittee on Immigration, Refugees and Homeland Security. United States Senate. Washington (DC). May 20, 2009.
98. U.S. Immigration and Customs Enforcement. ATF, ICE update partnership agreement to maximize investigative efforts (news release). Albuquerque (NM): U.S. Immigration and Customs Enforcement; 2009.



Inside Gun Shows

What Goes On When Everybody Thinks Nobody's Watching

Inside Gun Shows

What Goes On
When Everybody Thinks
Nobody's Watching

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<http://www.ucdmc.ucdavis.edu/vprp>.

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2023, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME II 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