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**DISTRICT COURT OF THE UNITED STATES
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

B&L PRODUCTIONS, INC., d/b/a
CROSSROADS OF THE WEST; GERALD
CLARK; ERIC JOHNSON; CHAD
LITRELL; JAN STEVEN MERSON;
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED;
ASIAN PACIFIC AMERICAN GUN
OWNERS ASSOCIATION; SECOND
AMENDMENT LAW CENTER, INC.; and
SECOND AMENDMENT FOUNDATION,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity
as Governor of the State of California; ROB
BONTA, in his official capacity as Attorney
General of the State of California; KAREN
ROSS, in her official capacity as Secretary
of California Department of Food &
Agriculture and in his personal capacity;
TODD SPITZER, in his official capacity as
District Attorney of Orange County; 32nd
DISTRICT AGRICULTURAL
ASSOCIATION; DOES 1-10;

Defendants.

Case No.: 8:22-cv-01518-JWH

JOINT STATUS REPORT

Conf. Date: October 25, 2024
Conf. Time: 11:00 AM
Courtroom: 9D
Judge: Hon. John W. Holcomb

Action Filed: August 12, 2022

1 On October 3, 2024, Plaintiffs B&L Productions, Inc., d/b/a Crossroads of the
2 West, Gerald Clark, Eric Johnson, Chad Littrell, Jan Steven Merson, California Rifle &
3 Pistol Association, Incorporated, Second Amendment Law Center, Inc., Asian Pacific
4 American Gun Owners Association, and Second Amendment Foundation, Inc.,
5 (“Plaintiffs”) and Defendants Gavin Newsom, Rob Bonta, Karen Ross, and the 32nd
6 District Agricultural Association (“State Defendants”), through their counsel of record,
7 held a conference pursuant to this Court’s September 26, 2024 Order (ECF No. 65).

8 The parties hereby submit this Joint Status Report in advance of the Scheduling
9 Conference set for October 25, 2024.

10 **A. Posture of the Case**

11 Procedural History

12 California Senate Bills 264 and 915, codified in Penal Code sections 27575 and
13 27573, prohibit the sale of firearms, ammunition, and firearm precursor parts at the
14 Orange County Fair & Event Center and all state property, respectively. Plaintiffs allege
15 that SB 264 and SB 915 violate the First and Second Amendments and the Equal
16 Protection Clause. The State Defendants deny these claims and filed an Answer to the
17 First Amended Complaint on November 20, 2023.

18 On October 30, 2023, this Court granted Plaintiffs’ Motion for Preliminary
19 Injunction, temporarily enjoining the enforcement of Penal Code sections 27573 and
20 27575. The State Defendants moved for reconsideration, but this Court denied the motion
21 on December 6, 2023. The State Defendants appealed the preliminary injunction order on
22 November 27, 2023.

23 On appeal, a three-judge panel of the Ninth Circuit heard this case together with a
24 similar case from the Southern District of California¹ and consolidated the appeals for

25
26 ¹ As the Court may recall, the Southern District case involved a challenge to
27 Assembly Bill 893 (codified at Food & Agricultural Code section 4158), which prohibits
28 the sale of firearms and ammunition at the state-owned Del Mar Fairgrounds. The
Southern District granted the defendants’ motion to dismiss, and the plaintiffs in that case
appealed.

1 decision. The panel affirmed the Southern District’s dismissal and reversed this Court’s
2 order granting preliminary injunction. The plaintiffs in both cases timely petitioned for
3 rehearing en banc, and the Ninth Circuit denied the petition on August 30, 2024.

4 The plaintiffs then filed a motion to stay the mandate pending the filing and
5 disposition of their anticipated petition for certiorari or, alternatively, for an administrative
6 stay. The State Defendants informed the Ninth Circuit that they would not file an
7 opposition to the motion. The Ninth Circuit panel denied the motion on September 17,
8 2024, and the mandate issued on September 25, 2024.

9 Pursuant to the mandate, this Court lifted the preliminary injunction previously
10 issued in this case on September 26, 2024. (ECF No. 64.) On September 30, 2024, the
11 plaintiffs in both appeals filed an emergency application to the Supreme Court, asking
12 Justice Elena Kagan, the circuit justice for the Ninth Circuit, to recall and stay the Ninth
13 Circuit’s mandate. Justice Kagan denied the application in chambers on October 4, 2024.

14 Plaintiffs will file a Petition for Writ of Certiorari in the Supreme Court. The
15 deadline is currently November 27, 2024.

16 Plaintiffs’ Statement Re: Posture of the Case

17 Plaintiffs’ position is that this case cannot be resolved on the pleadings because the
18 Ninth Circuit’s opinion (in addition to its other defects that will be highlighted in
19 Plaintiffs’ forthcoming petition for certiorari) fails to resolve the legal controversy
20 between the parties. On the contrary, it merely adds layers of complexity—particularly
21 with respect to Plaintiffs’ commercial speech claims. The panel decision acknowledges
22 that the challenged statutes do not *technically* ban “gun shows” on state-owned property.
23 And it holds (as it must under existing circuit precedent) that “offers for sale” are still
24 protected speech while finding, contrary to the State Defendants’ admissions before this
25 Court, that the law bans only “acceptances” and the exchange of “consideration,” which
26 are not protected. In so doing, the decision injects even more ambiguity into the
27 challenged statutes and invites further litigation by way of declaratory relief to determine
28 the full meaning and impact of the law and the Ninth Circuit’s decision interpreting it.

1 For example, if an “offer for sale” of a firearm on state-owned property is still
2 lawful and protected, but “acceptance” is now a violation of public policy, does that mean
3 only a “full acceptance” is outlawed? This, of course, invites another series of questions
4 about what constitutes an “acceptance” and is unlawful and unprotected. For instance:

- 5 ■ Can sellers take deposits at gun shows for the future sale/transfer of a firearm at
6 the physical gun store where the firearm must be picked up 10 days later, as is
7 already the law?
- 8 ■ Can sellers implement layaway plans, again with the actual sale/transfer to take
9 place later at the brick-and-mortar store?
- 10 ■ Can a buyer begin the background check process at the gun show with the later
11 sale/transfer contingent upon passing the background check?
- 12 ■ Can sellers charge a handling fee for reserving a gun that can be “offered for
13 sale” at the gun show, but which cannot be sold because this buyer cannot pass
14 the background check or changes their mind after leaving the gun store?
- 15 ■ Can the “offer for sale” of ammunition proceed in a similar fashion? For
16 example, since ammunition can be displayed at gun shows along with an “offer
17 for sale” (i.e., price, quantity, availability), can a buyer place the order at the gun
18 show, obtain a purchase order, and then travel to a physical location away from
19 the fairgrounds to make payment and take possession of the order, also
20 conducting the background check for the ammunition purchase away from the
21 fairgrounds?

22 Along with these and other questions about what constitutes an unlawful acceptance
23 under the challenged statutes, the consequences of the Ninth Circuit’s decision for
24 centuries of Anglo-American contract law are also yet to be fully understood. Indeed, the
25 decision raises all sorts of questions of contract law. For instance, can an offer for the sale
26 of a particular gun for which a “future” buyer has made a deposit be unilaterally revoked
27 by the seller if, for example, a subsequent “future” buyer agrees to a higher price? Without
28 a binding acceptance to form a contract, does the first “future” buyer who paid earnest

1 money have a problem proving an enforceable agreement? Are their damages limited only
2 to the refund of the deposit? And how will fraudulent “offers for sale” be resolved?
3 Suppose an unscrupulous dealer presents “offers for sale” that are too good to be true.
4 Normally presentment of “offers for sale” with fixed prices that merely require
5 “acceptance” can work to lock in a price guarantee. How does this consumer protection
6 work if an “acceptance” at a gun show is not valid but “offers for sale” are? *See generally*
7 Cal. U. Com. Code § 2721.

8 These questions are all the more acute because the challenged laws impose criminal
9 liability, not just on the gun show promoters and vendors but also on the government
10 employees and government contractors who manage the properties in question. The latter
11 group will no doubt interpret the Ninth Circuit’s opinion narrowly to avoid even the
12 possibility of being charged with a crime, e.g., no layaway plans or deposits for later sales
13 allowed, as they are too much like a dreaded “acceptance.” On the other hand, gun show
14 vendors and promoters might argue that the decision still allows some form of Second
15 Amendment commerce since “offers for sale” are still protected conduct. Or, under the
16 threat of criminal liability, they too might interpret the decision very narrowly, censoring
17 even more of their own speech than even the statute was meant to curb. These are issues
18 that must be resolved in the courts.

19 Finally, the Ninth Circuit’s opinion fails to address the 14th Amendment Equal
20 Protection claims borne of alleged animus, including a class-of-one claim. Even if the
21 Supreme Court denies certiorari in this case, Plaintiffs intend to amend their complaint to
22 address this issue, especially in light of public statements made by state actors both before
23 and after the Ninth Circuit issued its mandate.

24 Defendants’ Proposed Case Schedule

25 The State Defendants do not oppose Plaintiffs’ request to stay this case as stated
26 below. However, if the stay is not granted, the State Defendants intend to file a brief
27 motion for judgment on the pleadings. Defendants request the following briefing and
28 hearing schedule:

- Motion due on December 6, 2024
- Opposition brief due on December 13, 2024
- Reply brief due on December 20, 2024
- Hearing on January 10, 2025

Plaintiffs do not object to the State Defendants’ proposed briefing and hearing schedule.

Defendants do not address the argument included in Plaintiffs’ statement because the Court’s order called only for the parties’ positions “regarding the posture of the case and a proposed case schedule.” (ECF No. 65.) Defendants reserve the right to oppose those arguments at the appropriate time.

B. Request for Stay

Plaintiffs request to stay the proceedings before this Court pending the filing and disposition of the Plaintiffs’ Petition for a Writ of Certiorari and to remove the scheduling conference set for October 25, 2024, from the calendar.

The State Defendants do not oppose this request.

Dated: October 10, 2024

MICHEL & ASSOCIATES, P.C.

s/ Anna M. Barvir
 Anna M. Barvir
 Counsel for Plaintiffs B&L Productions, Inc.,
 California Rifle & Pistol Association,
 Incorporated, Gerald Clark, Eric Johnson, Chad
 Littrell, Jan Steven Merson, Asian Pacific
 American Gun Owner Association, Second
 Amendment Law Center, Inc.

Dated: October 10, 2024

LAW OFFICES OF DONALD KILMER, APC

s/ Donald Kilmer
 Donald Kilmer
 Counsel for Plaintiff Second Amendment
 Foundation

1 Dated: October 10, 2024

ROB BONTA
Attorney General of California

2 *s/ Nicole J. Kau*
3 _____
4 NICOLE J. KAU
5 Deputy Attorney General
6 Attorneys for Defendants Gavin Newsom, Rob
7 Bonta, Karen Ross, and the 32nd District
8 Agricultural Association

9 **ATTESTATION OF E-FILED SIGNATURES**

10 I, Anna M. Barvir, am the ECF User whose ID and password are being used to file
11 this JOINT STATUS REPORT. In compliance with Central District of California L.R. 5-
12 4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this
13 filing.

14 Dated: October 10, 2024

s/ Anna M. Barvir

Anna M. Barvir

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

Case Name: *B&L Productions, et al. v. Gavin Newsom, et al.*
Case No.: 8:22-cv-01518-JWH

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:

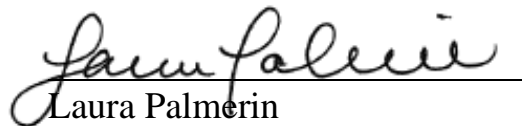
JOINT STATUS REPORT

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

Nicole J. Kau, Deputy Attorney General
nicole.kau@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Attorney for Defendants

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

Executed October 10, 2024.



Laura Palmerin