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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

B&L PRODUCTIONS, INC., et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No.: 8:22-cv-01518 JWH (JDEx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Hearing Date: February 27, 2026
Hearing Time: 9:00 AM
Courtroom: 9D
Judge: Hon. John W. Holcomb

Action Filed: August 12, 2022

INTRODUCTION

Plaintiffs' proposed Second Amended Complaint reflects Plaintiffs' good-faith effort to conform their pleading to the Ninth Circuit's guidance, to allege factual developments that arose during and after the appeal, and to clarify the scope of the challenged laws as they are now being interpreted and enforced by Defendants. The proposed amendments address: (1) the Ninth Circuit's articulation of the applicable legal framework for Plaintiffs' First and Second Amendment claims; (2) the State's post-appeal rejection of Plaintiffs' proposed business plan for conducting gun shows on state-owned property; and (3) the State's recent interpretation of the challenged gun-show ban to prohibit firearm and ammunition raffles and auctions, including those conducted by nonprofit organizations.

Rule 15 embodies a strong presumption in favor of amendment, and leave should be denied only where undue prejudice, bad faith, or futility are likely. None of those circumstances is present here. The case remains at an early stage, discovery has not begun, and the proposed amendments neither introduce unrelated claims nor unfairly prejudice the State. Nor does the Ninth Circuit's interlocutory decision—which addressed preliminary injunctive relief and the sufficiency of earlier pleadings on a different factual record—bar amendment.

Because Plaintiffs seek leave to amend in good faith and in response to intervening appellate guidance and new facts, justice requires that leave be granted.

FACTUAL BACKGROUND

For decades, Plaintiff B&L Productions organized and operated popular, safe, legal, and family-friendly gun shows in California, including events historically held on state-owned properties, such as the Orange County Fair & Event Center. First Am. Compl. ("FAC") ¶ 1. Plaintiffs challenge Senate Bill 264 and Senate Bill 915, two state laws that prohibit events involving the "sale" of firearms, ammunition, and "firearm precursor parts" on state-owned properties (the "gun-show ban"), alleging that the laws violate the First Amendment, the Second Amendment, and the Equal

Protection Clause. FAC ¶¶ 179-240.

Plaintiffs brought suit in August 2022 and soon filed a First Amended Complaint, mainly to address the post-filing adoption of SB 915. Plaintiffs promptly moved for a preliminary injunction, which the Court granted after supplemental briefing and hearing. Order Granting Mot. Prelim. Inj. (ECF No. 43). The State appealed and, on June 11, 2024, the Ninth Circuit reversed. *B&L Prods., Inc. v. Newsom*, 104 F. 4th 108 (9th Cir. 2024). In the same opinion, the Ninth Circuit also resolved a related appeal in a separate matter, affirming the Rule 12(b)(6) dismissal of similar claims challenging Assembly Bill 893, a nearly identical gun show ban involving events at the Del Mar Fairgrounds. *Id.* Because the Del Mar case resulted in the Ninth Circuit upholding a final judgment in that matter, whereas the decision in this case is merely interlocutory, Plaintiffs have elected to pursue their remaining viable claims here alone.

Shortly after the Ninth Circuit announced its decision (but while Plaintiffs' petition for certiorari was still pending), the State announced its interpretation of the gun-show ban as also barring firearm and ammunition raffles and auctions on state-owned property. [Proposed] SAC ¶¶ 233-234 (attached hereto as Exhibit A). Plaintiffs learned of this interpretation in Fall 2024, after the California Department of Food & Agriculture sent an email notifying nonprofits of the Department of Justice's clarification "that raffles or auctions involving [firearms, firearm precursor parts, and ammunition] are also not permitted on state property, including fairgrounds where many fundraising activities occur." *Id.* ¶ 234.

After the Supreme Court denied certiorari, Plaintiffs took time to "analyz[e] the ruling's implications and consult[] with gun show vendors to assess whether and how they might continue operating within the constraints imposed by the challenged statute, as informed by the panel's decision." Barvir Decl. ¶ 2 (quoting Pls.' Status Report (July 16, 2025), ECF No. 71). The Parties also met and conferred to consider their options for resolving this matter without further litigation. *Id.* ¶ 4 (citing Jt.

Status Report (Oct. 17, 2025), ECF No. 73). In November 2025, Plaintiffs presented the State with a proposed business plan for conducting gun shows on state-owned property that, in Plaintiffs' view, complied with the Ninth Circuit's opinion. Jt. Status Report (Dec. 29, 2025), ECF No. 77. The proposal envisioned events where firearms and ammunition could be displayed and advertised at gun shows on state property, while sales would be consummated via internet sales or option contracts. *Id.* The State rejected that proposal without offering alternative terms, *id.* at 3-4, confirming that the challenged laws bar events even where no sales are consummated on state-owned property.

Plaintiffs sought the State's consent to file a SAC, but after reviewing the proposed pleading, the State declined to stipulate, asserting that the Ninth Circuit's decision forecloses the proposed amendment. *Id.*; Barvir Decl. ¶¶ 4-8

ARGUMENT

I. LEGAL STANDARD

After a party has amended its pleading once as a matter of right, further amendment requires either "the opposing party's written consent or the court's leave." Fed. R. Civ. Pr. 15(a)(2). While Rule 15 places leave to amend "within the sound discretion of the trial court," *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981), it also embodies a *strong presumption in favor of amendment*. Indeed, leave to amend should be granted with "extreme liberality," *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (quoting *Webb*, 655 F.2d at 979), and denial is proper only if a showing of futility, undue prejudice, or bad faith or dilatory motive is made, *Foman v. Davis*, 371 U.S. 178, 182 (1962). Since none of the above factors are present here, the presumption applies.

II. THE COURT SHOULD GRANT PLAINTIFFS LEAVE TO FILE THEIR SECOND AMENDED COMPLAINT

A. Plaintiffs Have Not Acted in Bad Faith or with Dilatory Motive

Plaintiffs do not seek amendment in bad faith or for any dilatory purpose. On

the contrary, the proposed SAC is prompted in good-faith by three legitimate and material developments: (1) guidance provided by the Ninth Circuit in its opinion resolving the State's interlocutory appeal, [Proposed] SAC at 3:20-4:12, 4:20-5:1, 5:14-28, 8:13-23, 9:15-27, 10:23-11:4, 12:1-10, 15:8-18, 17:2-11, 25:4-25, 26:25-28, 27:22-28:3, 28:20-29:10, 37:12-16, 55:20-56:4, 76:21-77:2; (2) the State's rejection of Plaintiffs' proposed business plan for gun shows on state-owned property, *id.* at 8:13-26, 25:4-25, 27:22-28:3, 33:4-35:9. 37:12-16; and (3) the State's adoption of an expanded interpretation of the challenged gun-show ban to prohibit raffles and auctions, 4:13-19, 4:27-28, 15:2-13, 18:24-21:7, 61:20-63:16, 64:7-14, 69:5-12, 76:14-17.

First, Plaintiffs have acted in good faith to conform their pleading to the contours of the Ninth Circuit's opinion. Courts routinely grant leave to amend where plaintiffs, as here, seek to clarify allegations or refine legal theories in response to intervening judicial guidance. *See, e.g.*, *Moss v. United States Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009) (granting leave to amend in light of *Bell Atl. Corp. v. Twombly*, which was decided after the plaintiffs brought suit). Granting leave to amend in such circumstances ensures that the operative pleading reflects the governing analytical framework articulated by the appellate court.

Second, leave to amend is particularly appropriate where new facts materially change the scope of the challenged conduct. The proposed SAC includes allegations regarding two material factual developments that occurred since the FAC was filed and therefore could not have been pleaded earlier.

The proposed SAC alleges that, following the appeal, Plaintiffs presented the State with a proposed business plan for conducting gun shows on state property that, in Plaintiffs' view, complies with the Ninth Circuit's guidance relating to appropriate regulation of commercial speech for lawful products. [Proposed] SAC at 8:13-21. 34:4-35:1. The SAC further alleges that the State rejected that proposal, effectively confirming that it interprets the challenged laws as barring events even

where no firearm or ammunition sales are consummated on state property, including where acceptance occurs off-site. *Id.* at 8:22-23, 35:5-9. This post-appeal rejection materially clarifies the scope of the State's interpretation of the challenged laws and is relevant to adjudicating Plaintiffs' First and Second Amendment claims and provides new factual support for Plaintiffs' Fourteenth Amendment claims.

The proposed SAC also alleges that the State has recently interpreted the challenged laws to ban firearm and ammunition raffles and auctions, *id.* at 61:28-62:9, thereby materially expanding the scope of the challenged laws and their impact on Plaintiffs' conduct. Plaintiffs only learned of this interpretation during the pendency of the appeal and thus could not have pleaded these allegations earlier.

Taken together, these developments demonstrate that Plaintiffs' request for leave to amend reflects diligent and good-faith litigation conduct and weighs strongly in favor of granting leave under Rule 15(a)(2).

B. The State Will Not Suffer Undue Prejudice from Amendment

Undue "prejudice is the 'touchstone of the inquiry under Rule 15(a).'" *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Lone Star Ladies Inv. Club v. Schlotzky's, Inc.*, 238 F.3d 363, 368 (5th Cir. 2001); *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973). It is the party opposing amendment that bears the burden of proving prejudice, *DCD Programs*, 833 F.2d at 186-87, and the State cannot make such a showing here.

The proposed SAC does not introduce unrelated claims or fundamentally alter the nature of the case. Rather, Plaintiffs continue to challenge the same two state laws that restrict the "sales" of firearms, ammunition, and "firearm precursor parts" on state-owned property. The SAC simply clarifies the nature of the burden imposed by the ban and alleges additional facts relevant to the First and Second Amendment analyses as articulated by the Ninth Circuit. It also addresses post-appeal conduct, including the State's rejection of Plaintiffs' business proposal and its recent interpretation of the ban to include raffles and auctions, supporting Plaintiffs' First

and Second Amendment claims and bolstering their "class of one" theory under the Equal Protection Clause that the Defendants' ill-will toward "people of the gun culture" is the impetus behind the challenged laws.

C. The Ninth Circuit's Interlocutory Decision Does Not Render the SAC Futile

In declining to stipulate to the filing of the SAC, the State claimed that the Ninth Circuit decision forecloses challenges that Plaintiffs' proposed pleading continues to assert. To the extent that the State is arguing that the amendment would be futile in light of that decision, the State overreads the scope of the Ninth Circuit's decision and misunderstands the standard governing leave to amend.[1]

Plaintiffs recognize that the Ninth Circuit's decision resolved both the State's preliminary injunction appeal here and a related appeal from the Southern District's Rule 12(b)(6) dismissal in another matter. But the decision addressed the sufficiency of the complaints (and the record) as they then existed—based on the allegations and theories presented at that time. It did not hold that Plaintiffs could not amend their pleadings to cure deficiencies identified by the court, nor did it foreclose amendment as a matter of law. Importantly, many of the proposed amendments concern developments that occurred after the operative complaints were filed and were thus not (and could not have been) before the Ninth Circuit. These include the State's post-appeal rejection of Plaintiffs' business proposal and the State's newly articulated interpretation of the challenged laws as banning raffles and auctions. The Ninth Circuit could not have addressed the viability of Plaintiffs' claims based on the materially expanded factual record alleged in the proposed SAC.

To the extent the Ninth Circuit decision clarified the legal framework governing Plaintiffs' claims, Plaintiffs wish to amend precisely to conform their

[1] The discussion that follows is not offered to ask this Court to resolve the merits of Plaintiffs' constitutional claims now. Rather, it demonstrates that amendment is not futile and that Plaintiffs' proposed amendments are raised in good faith in an area of constitutional law that remains unsettled.

allegations to that guidance. Amendment is particularly appropriate where, as here, the proposed amendments seek to respond to the reviewing court's analysis and allege facts bearing on the constitutional inquiry.

The Ninth Circuit applied a "meaningful constraint" test in evaluating Plaintiffs' Second Amendment claims. While that requirement is now the law of the case, the appellate decision left unresolved significant questions about how and when that test is to be applied in Second Amendment litigation. The "meaningful constraint" test emerged from a line of Ninth Circuit cases culminating in *Teixeira v. Cnty. of Alameda*, 873 F.3d 670 (9th Cir. 2017) (en banc), and related cases including *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016), *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953 (9th Cir. 2014), and *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013). That line of authority, however, was grounded in the now-abrogated two-step approach to Second Amendment cases that the Supreme Court rejected in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). And although the Supreme Court has not expressly overruled these decisions, their doctrinal underpinnings have been substantially undermined. Still, the Ninth Circuit continues to apply a "meaningful constraint" test without providing any parameters for what constitutes a "meaningful constraint."

What's more, the panel decision did not resolve whether the inquiry is to be applied as part of an Article III standing analysis or as part of a substantive Second Amendment analysis. Regardless of when/where the test applies, the Supreme Court has repeatedly rejected *judicial* interest balancing in Second Amendment cases. *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008); *Bruen*, 597 U.S. at 22-23. That necessarily leaves the factual (and somewhat subjective) determination of what a "meaningful constraint" is to a jury; but only (Plaintiffs contend) after the parties have exhausted their right to have any disputed facts determined by a jury when the amount in controversy exceeds $20.00.

Plaintiffs acknowledge that the Ninth Circuit's application of the "meaningful

constraint" test has made their Second Amendment claims more difficult to prove. But the Supreme Court's denial of certiorari is not a ruling on the merits, and Plaintiffs maintain, in good faith, that the Ninth Circuit's approach is inconsistent with Supreme Court precedent. They wish to preserve the issue if they have another opportunity for a petition for rehearing en banc or certiorari.

Plaintiffs' good-faith belief is supported by a long and well-documented history that the Ninth Circuit is consistently wrong in its interpretation of the Second Amendment, including recent questioning of the "meaningful constraint" test by the United States itself. *See* En Banc Brief for the United States as Amicus Curiae at 6-7, *Rhode v. Bonta*, No. 24-542 (9th Cir. Jan. 5, 2026), ECF No. 98.1. For instance, the court in *Fresno Rifle & Pistol Club, Inc., v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992), upheld California's "assault weapon" ban, championing a "collective rights" view of the Second Amendment and rejecting incorporation of the right against the states. *Id.* at 729-31. The court repeated those same errors four years later in *Hickman v. Block*, 81 F.3d 98 (9th Cir. 1996). And it doubled down in *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), which was denied en banc review with several dissents.[2] *Silveira v. Lockyer*, 328 F.3d 567 (9th Cir. 2003), *cert. denied* 540 U.S. 1046 (2003). Of course, the Supreme Court soundly rejected the Ninth Circuit's reasoning in this line of cases in *Heller* and *McDonald*.

More recently, Justices Scalia and Thomas dissented from the denial of certiorari in *Jackson v. City and County of San Francisco*, 576 U.S. 1013 (2015), after the Ninth Circuit upheld San Francisco's gun control ordinances. Justices Thomas and Gorsuch dissented from the denial of certiorari in *Peruta v. California*, 582 U.S. 943 (2017), after an en banc panel of the Ninth Circuit upheld a California ban on bearing arms in public similar to the ban that was eventually struck down in

[2] More dissents from the denial of en banc review of Second Amendment claims were filed in *Nordyke v. King*, 364 F.3d 1025 (9th Cir. 2004), *cert. denied at* 543 U.S. 820, documenting that the internal conflict attached to the Second Amendment in the Ninth Circuit has lasted for at least a quarter century now.

Bruen. *See Peruta v. San Diego Cnty.*, 824 F.3d 919 (9th Cir. 2016). And Justice Thomas dissented from the denial of certiorari in *Silvester v. Becerra*, 583 U.S. 1139 (2018), after the Ninth Circuit upheld California's 10-day waiting period.

In light of all this, it cannot reasonably be argued that Second Amendment law in this circuit is settled law, even if the "meaningful constraint" test is the law of this case. What is equally not settled law is whether that test is a question of fact for the jury or a legal question to be decided in some kind of balancing test by a judge.

CONCLUSION

For the foregoing reasons, Plaintiffs ask the Court to grant leave to file the Second Amended Complaint attached to Plaintiffs' Notice of Motion as Exhibit A.

Dated: January 16, 2026

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: January 16, 2026

LAW OFFICES OF DONALD KILMER, APC

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Parties, certifies that this brief contains 2,795 which complies with the word limit of L.R. 11-6.1.

Date: January 16, 2026

/s/ Anna M. Barvir
Anna M. Barvir

ATTESTATION OF E-FILED SIGNATURES

I, Anna M. Barvir, am the ECF User whose ID and password are being used to file this MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT. In compliance with Central District of California L.R. 5-4.3.4, I attest that all signatories are registered CM/ECF filers and have concurred in this filing.

Dated: January 16, 2026

/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, Inc., et al. v. Newsom, et al.*
Case No.: 8:22-cv-01518 JWH (JDEx)

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:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE 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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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed January 16, 2026.

Laura Fera