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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12
13 **B&L PRODUCTIONS, INC., d/b/a**
14 **CROSSROADS OF THE WEST, et**
al.,

15 Plaintiffs,

16 v.

17 **GAVIN NEWSOM, et al.,**

18 Defendants.

8:22-cv-01518 JWH (JDEx)

**STATE DEFENDANTS’
OPPOSITION TO PLAINTIFFS’
MOTION FOR LEAVE TO FILE
SECOND AMENDED
COMPLAINT**

Date: February 27, 2026
Time: 9:00 AM
Courtroom: 9D
Judge: The Honorable John W.
Holcomb
Action Filed: 8/12/2022

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INTRODUCTION

1
2 Plaintiffs describe their motion for leave to file an amended complaint as a
3 “good-faith effort to conform their pleading” to the “Ninth Circuit’s interlocutory
4 decision,” but their proposed amended complaint directly contravenes the Ninth
5 Circuit’s wholesale rejection of their constitutional claims as a matter of law. Mot.
6 Leave, ECF No. 79-1 at 1. Granting leave to amend here would be futile because
7 the proposed amended complaint—like the operative complaint—would be
8 dismissed for failure to state a claim pursuant to the Ninth Circuit’s opinion, review
9 of which was denied by the en banc Ninth Circuit Court of Appeals and by the U.S.
10 Supreme Court, 145 S. Ct. 1958 (2025). Such futility is an independently sufficient
11 basis to deny this motion.

12 The Ninth Circuit consolidated the appeal of the preliminary injunction in this
13 case with the appeal of the motion to dismiss in the related Southern District of
14 California case, and analyzed the three statutes challenged across both cases
15 collectively because they imposed the “same restrictions” and were challenged
16 “under the same legal theories.” *B&L Prods., Inc. v. Newsom*, 104 F.4th 108, 112
17 (9th Cir. 2024). The Ninth Circuit concluded that in both cases Plaintiffs had failed
18 to establish that any of the three statutes “violate [their] constitutional rights.” *Id.* at
19 120. With regard to the preliminary injunction at issue in this case, the Ninth
20 Circuit additionally noted that Plaintiffs “failed to show even ‘serious questions
21 going to the merits.’” *Id.* at 120 n.21.

22 In other words, the Ninth Circuit rejected Plaintiffs’ facial constitutional
23 challenges in this case as much as it did in the Southern District case. Yet,
24 Plaintiffs’ proposed amended complaint continues to mount the same facial
25 challenges that were already rejected by the Ninth Circuit. Plaintiffs’ alleged
26 “factual developments” that are described in the proposed amended complaint—to
27 the extent they are new developments—are equally foreclosed by the Ninth
28 Circuit’s opinion. As much as Plaintiffs might disagree with the Ninth Circuit’s

1 opinion, the proposed amended complaint would meet the same fate as Plaintiffs’
2 complaint in the Southern District case. Granting leave to amend the proposed
3 amended complaint would therefore be an exercise in futility, and leave should
4 accordingly be denied.

5 BACKGROUND

6 I. PLAINTIFFS CHALLENGED THREE STATE LAWS IN TWO SEPARATE 7 LAWSUITS

8 Plaintiffs challenged three California laws that prohibit the sale of firearms
9 and ammunition at any event at the Orange County Fair and Events Center (Orange
10 County Fairgrounds), on state property, and at the Del Mar Fairgrounds in San
11 Diego County. These three laws (the “Challenged Statutes”) were enacted by
12 Senate Bill 264, Senate Bill 915, and Assembly Bill 893.¹ Each law prohibits
13 “contract[ing] for, authoriz[ing], or allow[ing] the sale of any firearm [or]
14 ammunition” on the property specified in each respective statute, that is, the Orange
15 County Fairgrounds (Cal. Pen. Code § 27575(a)), state property (Cal. Pen. Code
16 § 27573(a)), and the Del Mar Fairgrounds in San Diego County (Cal. Food &
17 Agric. Code § 4158(a)).

18 Plaintiffs challenged the constitutionality of Senate Bills 264 and 915 in this
19 Court, and similarly challenged Assembly Bill 893 in the Southern District of
20 California. This Court granted Plaintiffs’ motion for a preliminary injunction after
21 concluding that they were likely to succeed on the merits of their constitutional
22 claims. Prelim. Inj. Order, ECF No. 43. In the Southern District case, the district
23 court twice dismissed the claims for failure to state a claim and Petitioners declined
24 the court’s invitation to amend their Second Amendment claim. *B&L Prods., Inc.*
25 *v. Newsom*, 661 F. Supp. 3d 999 (S.D. Cal. March 14, 2023); *B&L Prods., Inc. v.*
26 *Newsom*, No. 21-CV-01718-AJB-DDL, ECF No. 52 (March 24, 2023).

27 ¹ Senate Bill 264 added section 27575 to the Penal Code. Senate Bill 915
28 added section 27573 to the Penal Code. And, Assembly Bill 893 added section
4158 to the Food and Agricultural Code.

1 **II. THE NINTH CIRCUIT COURT OF APPEALS CONSOLIDATED THE TWO**
2 **CASES AND CONCLUDED THAT PLAINTIFFS HAD “FAILED TO ESTABLISH**
3 **A CONSTITUTIONAL VIOLATION” IN BOTH CASES**

4 The parties appealed in the respective cases and the Ninth Circuit “coordinated
5 the two cases for oral argument and ultimately consolidated them for decision.”
6 *B&L Prods.*, 104 F.4th at 112. The Ninth Circuit acknowledged that even though
7 the standard of review for legal questions—de novo—was the same across the two
8 cases, the “two cases involve different standards of review for questions of fact.”
9 *Id.* at 112, & 112 n.5. However, the differing standards did “not affect” the Ninth
10 Circuit’s analysis because “even accepting [Plaintiffs’] factual allegations and the
11 Orange County district court’s findings of fact as true,” the Ninth Circuit concluded
12 that Plaintiffs had “failed to establish a constitutional violation.” *Id.*

13 For both cases, the Ninth Circuit concluded that “the Challenged Statutes do
14 not infringe on [Plaintiffs’] constitutional rights.” *B&L Prods.*, 104 F.4th at 110.
15 And, for this case in particular, the Ninth Circuit did not consider the other factors
16 relevant to considering a preliminary injunction because the Plaintiffs had “failed to
17 show even ‘serious questions going to the merits.’” *Id.* at 120 n.21.

18 As to the First Amendment claims, the Ninth Circuit addressed each of
19 Plaintiffs’ two theories and concluded that under either theory, because “the
20 Challenged Statutes do not directly or inevitably restrict any expressive activity,
21 they do not implicate the First Amendment.” *B&L Prods.*, 104 F.4th at 113. With
22 regard to why the Challenged Statutes do not directly restrict any expressive
23 activity, the Ninth Circuit explained that the language of the Challenged Statutes
24 “solely regulates the moment at which a binding contract is formally
25 consummated,” and because “acceptance is what determines when a contract
26 becomes binding, the Challenged Statutes prohibit accepting an offer to sell
27 firearms or ammunition on state property.” *Id.* at 113-14. Because neither
28 consummating a business transaction nor acceptance of an offer constitute
expressive conduct, the Challenged Statutes do not directly regulate protected

1 speech. *Id.* The Ninth Circuit additionally rejected the theory that the Challenged
2 Statutes indirectly regulate speech because the “indirect economic impacts
3 [Plaintiffs] allege[] do not implicate the First Amendment.” *Id.* at 115. In doing so,
4 the Ninth Circuit acknowledged that Plaintiffs “may choose not to provide a forum
5 for pro-gun speech if it decides gun shows are not profitable without firearm sales,”
6 but noted that “doing so would be its own decision, not the ‘inevitable effect’ of the
7 Challenged Statutes.” *Id.* Plaintiffs’ contention that “anti-gun animus underlies the
8 Challenged Statutes” fared no better because “clear precedent” established that
9 Plaintiffs had to also demonstrate that the Challenged Statutes actually restricted
10 protected expression, but they failed to do so. *Id.* at 116-17.

11 The Equal Protection claims, as Plaintiffs conceded, “essentially duplicate[d]
12 its First Amendment claims,” and thus failed for the same reasons. *Id.* at 112 n.6.

13 With respect to the Second Amendment claims, the Ninth Circuit concluded
14 that the “plain text of the Second Amendment does not cover [Plaintiffs’] proposed
15 conduct—namely, contracting for the sale of firearms and ammunition on state
16 property.” *B&L Prods.*, 104 F.4th at 117. In other words, Plaintiffs failed to get past
17 the threshold step for a Second Amendment challenge under the framework
18 outlined in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24
19 (2022). After confirming that the Ninth Circuit’s en banc opinion in *Teixeira v.*
20 *County of Alameda*, 873 F.3d 670 (9th Cir. 2017) “remains good law” (*B&L Prods.*,
21 104 F.4th at 118 n.18), the Ninth Circuit explained that the acquisition of firearms
22 is an ancillary right that “only implicates the Second Amendment in limited
23 circumstances.” *Id.* at 118. Because the Challenged Statutes constituted “laws
24 imposing conditions and qualifications on the commercial sale of arms”—a
25 presumptively lawful regulatory measure under *District of Columbia v. Heller*, 554
26 U.S. 570, 626-27 (2008)—the Ninth Circuit looked to whether the Challenged
27 Statutes “‘meaningfully constrain[]’ the right to keep and bear arms for the purpose
28 of self-defense.” *B&L Prods.*, 104 F.4th at 118-19. The Ninth Circuit concluded

1 that they did not. *Id.* The Ninth Circuit noted that in addition to the Plaintiff’s
2 concession “that the Challenged Statutes do not ‘meaningfully constrain’ the right
3 to keep and bear arms,” Plaintiffs made “no allegation that a ban on sales on state
4 property would impair a single individual from keeping and bearing firearms, even
5 after having an opportunity to amend its complaint [in the Southern District case] to
6 add one.” *Id.* at 119.

7 Accordingly, the Ninth Circuit rejected Plaintiffs’ facial challenges across
8 both cases because Plaintiffs had “failed to establish that the Challenged Statutes
9 violate [their] constitutional rights.” *B&L Prods.*, 104 F.4th at 120.

10 **III. PLAINTIFFS UNSUCCESSFULLY SOUGHT REVIEW OF THE NINTH** 11 **CIRCUIT’S OPINION**

12 Plaintiffs petitioned the Ninth Circuit for rehearing en banc, but the petition
13 was denied with “no judge of the court” having “requested a vote on it.” *B&L*
14 *Prods., Inc. v. Newsom*, Case No. 23-3793, ECF No. 49.1 (Aug. 30, 2024). The
15 Ninth Circuit accordingly issued the mandate on September 25, 2024. ECF No. 64.
16 Plaintiffs requested that the U.S. Supreme Court recall and stay the mandate, and
17 additionally petitioned for a writ of certiorari; both requests were denied. *B&L*
18 *Prods., Inc. v. Newsom*, Case No. 24A315, 2024 WL 4424798 (Oct. 4, 2024)
19 (denial of application for recall and stay of the mandate); *B&L Prods., Inc. v.*
20 *Newsom*, 145 S. Ct. 1958 (Apr. 28, 2025) (denial of petition for writ of certiorari).

21 **LEGAL STANDARD**

22 While a district court “should freely give leave” to amend a pleading “when
23 justice so requires” under Rule 15(a) of the Federal Rules of Civil Procedure, such
24 “leave to amend ‘is not automatic.’” *Next Vietnam Projects Found., Inc. v. Koster*
25 *Films, LLC*, 751 F. Supp. 3d 1005, 1010 (C.D. Cal. 2024) (citation omitted). The
26 “general rule that parties are allowed to amend their pleadings . . . does not extend
27 to cases in which any amendment would be an exercise in futility [] or where the
28 amended complaint would also be subject to dismissal.” *Steckman v. Hart Brewing*,

1 *Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (citations omitted). While other factors
2 can be considered when deciding a motion for leave to amend under Rule 15(a)—
3 including bad faith, undue delay, prejudice to the opposing party, and prior
4 amendments—“[f]utility of amendment can, by itself, justify the denial of a motion
5 for leave to amend.” *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). This
6 includes instances “where the movant presents no new facts but only new theories
7 and provides no satisfactory explanation for his failure to fully develop his
8 contentions originally.” *Id.*

9 ARGUMENT

10 I. PLAINTIFFS’ REQUEST FOR LEAVE TO AMEND SHOULD BE DENIED 11 BECAUSE PROCEEDING WITH THE PROPOSED SECOND AMENDED 12 COMPLAINT WOULD BE AN EXERCISE IN FUTILITY

13 At the outset, Plaintiffs try to minimize the Ninth Circuit’s opinion in this case
14 as merely an “interlocutory decision” with conclusions that rely on “doctrinal
15 underpinnings [that] have been substantially undermined” in an “area of
16 constitutional law that remains unsettled.” Mot. Leave, 7-8 & n.1. But Plaintiffs
17 cannot evade the controlling nature of the Ninth Circuit’s opinion simply because
18 they disagree with how the constitutional questions in this case have been resolved
19 to foreclose their claims. *See, e.g.*, Barvir Decl., Ex. A (Proposed SAC), ¶ 6, nn. 2-
20 3, ¶ 82 n.7 (disagreeing with the Ninth Circuit’s analysis of their Second
21 Amendment claims and calling it “erroneous”); *id.* at ¶¶ 21, 25, 29, 39, 49, 112
(calling the Ninth Circuit’s First Amendment conclusions “burdensome”).

22 As previously explained in Background Section II, the Ninth Circuit
23 consolidated the preliminary injunction appeal in this case with the final judgment
24 appeal in the Southern District case, and decided both cases together using the same
25 standard of review for legal questions and noting that the differing standards of
26 review for factual questions did not impact the analysis. *B&L Prods.*, 104 F.4th at
27 112, & 112 n.5. Additionally, the Ninth Circuit analyzed the two statutes at issue in
28 this case and the statute at issue in the Southern District case as a unitary group

1 called the “Challenged Statutes,” and wholesale rejected the facial constitutional
2 challenges to all three of the Challenged Statutes equally. *Id.* at 110, 115 n.12, 116
3 n.15, 120. The Ninth Circuit did not merely conclude that Plaintiffs were unlikely
4 to succeed on the merits of their claims. Rather, the Ninth Circuit conclusively held
5 that Plaintiffs “failed to show even ‘serious questions going to the merits,’” and that
6 Plaintiffs “failed to establish that the Challenged Statutes violate [their]
7 constitutional rights.” *Id.* at 120, & 120 n.21. The Ninth Circuit thus entirely
8 foreclosed Plaintiffs’ facial constitutional challenges under the First Amendment,
9 Second Amendment, and Equal Protection Clause. *Id.* at 110, 112 n.6.

10 Yet, Plaintiffs proposed amended complaint continues to assert such futile
11 facial challenges. Indeed, the Prayer for Relief in the proposed amended complaint
12 seeks a declaration that the two statutes at issue here, Senate Bills 264 and 915, are
13 facially unconstitutional under the First and Second Amendments as well as the
14 Equal Protection Clause; and, the Prayer seeks a permanent injunction to
15 completely bar enforcement of both statutes. Proposed SAC, pp. 78-81. Requests
16 for such facial relief do not square with the Ninth Circuit’s outright rejection of
17 Plaintiff’s facial constitutional challenges, nor do they square with the high bar for
18 mounting a facial challenge. *See United States v. Rahimi*, 144 S. Ct. 1889, 1898
19 (2024) (a facial challenge “is the ‘most difficult challenge to mount successfully.’”
20 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987))).

21 To the extent that Plaintiffs continue to question the validity of the conclusions
22 reached by the Ninth Circuit in this case, any such doubts are belied by the citation
23 of, and reliance on, the Ninth Circuit opinion in other Ninth Circuit cases
24 addressing constitutional claims under the First and Second Amendments. *See, e.g.,*
25 *Duncan v. Bonta*, 133 F.4th 852, 867 (9th Cir. 2025) (en banc), *petition for cert.*
26 *filed*, No. 25-198 (U.S. Aug. 15, 2025); *United States v. Vlha*, 142 F.4th 1194,
27 1197-1200 (9th Cir. 2025); *Nguyen v. Bonta*, 140 F.4th 1237, 1241 (9th Cir. 2025);
28 *X Corp. v. Bonta*, 116 F.4th 888, 899 n.8 (9th Cir. 2024).

1 At bottom, while Plaintiffs claim that the proposed amended complaint is a
2 “good-faith effort to conform their pleading to the Ninth Circuit’s guidance,” the
3 remaining and new allegations in the proposed amended complaint belie that claim.
4 Mot. Leave, 1.

5 **A. The First Amendment Claims Advance the Same Theories that**
6 **Were Rejected by the Ninth Circuit**

7 The Ninth Circuit held that Plaintiffs “fail[ed] to establish that” Senate Bills
8 264 and 915 “regulate any speech cognizable under the First Amendment,” and
9 failed to establish that these laws “directly or inevitably restrict any expressive
10 activity.” *B&L Prods.*, 104 F.4th at 113. Yet, the proposed amended complaint
11 continues to assert that Senate Bills 264 and 915 directly and indirectly violate their
12 First Amendment rights.

13 First, the proposed amended complaint continues to erroneously assert that
14 Senate Bills 264 and 915 directly regulate expressive activity. *See, e.g.*, Proposed
15 SAC ¶¶ 4-5, 10, 255-56, 258, 263, 266-68, 273-76, 282-84. But the Ninth Circuit
16 already held that the conduct prohibited by Senate Bills 264 and 915—
17 “consummating a business transaction” and “acceptance of an offer”—constitute
18 “nonexpressive conduct unprotected by the First Amendment.” *B&L Prods.*, 104
19 F.4th at 114. Plaintiffs’ new allegations about option contracts and internet sales do
20 not revive their claims under the Ninth Circuit’s binding precedent. The Ninth
21 Circuit understood that Senate Bills 264 and 915 bar “the preliminary steps” of
22 “agree[ing] to purchase firearms and immediately begin[ning] the background
23 check process” until gun show attendees have left state property. *Id.* at 111. The
24 Ninth Circuit even cited California Penal Code section 26805(b)(1), which
25 describes how licensed firearms dealers may “commence preparation of registers
26 for the sale, delivery, or transfer of firearms at any gun show or event,” as an
27 example of the conduct that is barred on state property. *B&L Prods.*, 104 F.4th at
28

1 111. Yet, that is the type of activity that Plaintiffs seek to conduct on state property
2 through their proposal of option contracts and internet sales.

3 The proposed amended complaint also continues to advance theories about
4 indirect regulation of protected speech that the Ninth Circuit expressly rejected.
5 Specifically, the Ninth Circuit concluded that Senate Bills 264 and 915 “do not
6 restrict” the “pro-gun speech that occurs at gun shows.” *B&L Prods.*, 104 F.4th at
7 114. Moreover, the Ninth Circuit rejected Plaintiffs’ theory that any indirect
8 economic impact of Senate Bills 264 and 915 implicates the First Amendment. *Id.*
9 at 115. Yet, the proposed amended complaint still alleges that Senate Bills 264 and
10 915 “has the effect of banning gun shows” on state property because a “‘gunless’
11 gun show would not survive financially” and thus indirectly violates Plaintiffs’
12 First Amendment rights. Proposed SAC ¶¶ 209-10, 258. The Ninth Circuit
13 considered this very argument when it explained that while Plaintiffs “may choose
14 not to provide a forum for pro-gun speech if it decides gun shows are not profitable
15 without firearm sales, [] doing so would be its own decision, not the ‘inevitable
16 effect’ of” Senate Bills 264 and 915. *Id.* at 115; *see also id.* at 115 n.12 (noting that
17 Plaintiffs “may stop hosting gun shows in the absence of firearm sales,” but finding
18 this assertion undermined by Plaintiffs’ previously expressed willingness to do just
19 that, and also finding as “speculative” the assertion that “no other entity would step
20 in to provide a forum for pro-gun speech on state property”).

21 The proposed amended complaint also seems to ignore the fact that the
22 California Department of Justice (Department) has made clear that gun shows may
23 occur on state property. An October 31, 2024 information bulletin that was
24 distributed to all California law enforcement agencies and made publicly available
25 on the Department’s website stated that California Penal Code section 27573(a):

26 [P]rohibit[s] the sale of firearms, firearm precursor parts, [and]
27 ammunition on state property, [as well as] the contracting of sales or
28 authorization of sales. The law does not, however, prohibit offers for

1 sale or advertising. *Gun shows may lawfully occur on state property,*
2 *as long as no firearms, firearm precursor parts, or ammunition are*
3 *sold.*

4 Cal. Dep’t of Justice, Division of Law Enforcement Information Bulletin, *Amended*
5 *Notice Regarding Prohibition of Gun Sales on State Property, 2024-DLE-16* (Oct.
6 31, 2024), <https://oag.ca.gov/system/files/media/2024-dle-16.pdf> (italics added).

7 The futile claims of indirect regulation continue with the proposed amended
8 complaint’s ongoing assertions that “anti-gun animus underlies” Senate Bills 264
9 and 915. *B&L Prods.*, 104 F.4th at 116; *see, e.g.*, Proposed SAC ¶¶ 3, 62, 93, 207-
10 13. The Ninth Circuit explained that this theory is foreclosed by “clear precedent”
11 that “courts will not invalidate a statute that is ‘constitutional on its face, on the
12 basis of what fewer than a handful of [legislators] said about it.’” *Id.* (quoting
13 *United States v. O’Brien* 391 U.S. 367, 384).

14 In sum, the proposed amended complaint continues to advance First
15 Amendment legal theories that were soundly rejected by the Ninth Circuit. The
16 proposed amended complaint fails to cure the multiple deficiencies identified by the
17 Ninth Circuit despite Plaintiffs’ contention that they sought “to conform their
18 pleading to the contours of the Ninth Circuit’s opinion.” Mot. Leave, 5. Plaintiffs
19 fail to explain in their Motion why the proposed amendments to their First
20 Amendment claims are not futile. Mot. Leave, 7-10 (addressing the futility of only
21 the Second Amendment claim).

22 **B. The Equal Protection Claims Advance the Same Theories that**
23 **Were Rejected by the Ninth Circuit**

24 The proposed amended complaint continues to advance Equal Protection
25 claims even though, as the Ninth Circuit noted, the Plaintiffs “concede[]” that the
26 “claims essentially duplicate [their] First Amendment claims because both sets of
27 “claims rely on [Plaintiffs’] assertion that the Challenged Statutes target pro-gun
28 speech.” *B&L Prods.*, 104 F.4th 112 n.6; *see* Proposed SAC ¶¶ 88-93, 286-90.

1 While Plaintiffs will contend that the Ninth Circuit failed to address their Equal
2 Protection claims, this assertion misreads the Ninth Circuit’s declination to
3 separately address those claims to mean the claims were overlooked. *Id.* at 112 n.6;
4 *see also B&L Prods., Inc. v. Newsom*, Case No. 23-3793, Pet. for Rehearing En
5 Banc (June 25, 2024), ECF No. 45.1, at 15. Rather, the Ninth Circuit indeed
6 rejected Plaintiffs’ Equal Protection claims for the same reasons that it rejected
7 their First Amendment claims. *B&L Prods.*, 104 F.4th at 112 n.6. The few proposed
8 amendments to the Equal Protection claims do not cure the deficiencies identified
9 by the Ninth Circuit and thus permitting such amendments would be futile.

10 **C. The Second Amendment Claim Advances the Same Theories**
11 **that Were Rejected by the Ninth Circuit**

12 The Ninth Circuit concluded that Plaintiffs’ Second Amendment claim lacked
13 merit because the Second Amendment’s plain text does not cover Plaintiffs’
14 proposed conduct of “contracting for the sale of firearms and ammunition on state
15 property.” *B&L Prods.*, 104 F.4th at 117. Specifically, the Ninth Circuit explained
16 that gun show attendees on state property “can peruse such offers, leave the
17 premises, and immediately order their desired goods from the vendor,” but the
18 “only thing attendees can no longer do is *agree* to buy firearms while physically
19 present at the gun show,” and that “[n]othing in the Second Amendment’s text
20 provides a right to the contrary.” *Id.* at 119-20 (italics in original).

21 Nevertheless, the proposed amended complaint continues to assert a Second
22 Amendment claim while simultaneously calling the Ninth Circuit’s analysis an
23 “erroneous test” that is “contrary to Supreme Court precedent.” Proposed SAC,
24 ¶ 82 n.7, ¶ 6 n.3. Plaintiffs’ clear hostility toward the Ninth Circuit’s Second
25 Amendment analysis animates why their effort to “conform their pleading” to the
26 Ninth Circuit’s opinion falls short. Mot. Leave, 5, 8-10.

27 Plaintiffs allege that their Second Amendment rights are meaningfully
28 constrained because Senate Bills 264 and 915 “forbid gun shows on state-owned

1 land” and the Second Amendment “protects sales of firearms . . . through internet
2 sales and/or option contracts.” Proposed SAC ¶ 87. Both theories are futile. First,
3 the Ninth Circuit already concluded that Senate Bills 264 and 915 do not directly or
4 indirectly prohibit gun shows. *B&L Prods.*, 104 F.4th at 115-16, 119. Moreover, as
5 previously mentioned, the Department has publicly informed all law enforcement
6 agencies that gun shows may continue to occur on state property under Senate Bills
7 264 and 915. *See supra* pp. 9-10 in Arg. Section I.A. As to the allegations
8 regarding internet sales and option contracts, they are foreclosed by the Ninth
9 Circuit’s conclusion that “[m]erely eliminating one environment where individuals
10 may purchase guns does not constitute a meaningful constraint on Second
11 Amendment rights when they can acquire the same firearms down the street.” *B&L*
12 *Prods.*, 104 F.4th at 119. Indeed, the Ninth Circuit relied on the factual record
13 developed in this case—noting “there are six licensed firearm dealers in the same
14 zip code as the Orange County Fairgrounds”—to reach this conclusion. *Id.* In other
15 words, the Ninth Circuit already determined based on the record in this case that no
16 meaningful constraint existed. Instead of addressing the lack of any “allegation that
17 a ban on sales on state property would impair a single individual from keeping and
18 bearing firearms,” *id.*, the proposed amended complaint simply expresses
19 disagreement with the Ninth Circuit’s analysis and advances a theory of compliance
20 that unsuccessfully seeks an end-run around the opinion. This failure confirms
21 Plaintiffs’ “implicit concession” that Senate Bills 264 and 915 “do not
22 ‘meaningfully constrain’ the right to keep and bear arms,” as further demonstrated
23 by Plaintiffs declining the opportunity to add such allegations in the Southern
24 District case. *Id.*

25 The proposed amended complaint fails to assert a non-futile Second
26 Amendment claim because, ultimately, Plaintiffs believe “that the Ninth Circuit’s
27 approach is inconsistent with Supreme Court precedent.” Mot. Leave, 9. But
28 disagreement with controlling Ninth Circuit precedent does not entitle Plaintiffs

1 leave to amend their complaint; rather, it demonstrates that granting leave would be
2 an exercise in futility.

3 **D. The New Allegations about Auctions and Raffles Are Similarly**
4 **Futile Pursuant to the Ninth Circuit’s Opinion**

5 The proposed amended complaint advances multiple new allegations that the
6 application of the sales prohibition in Senate Bills 264 and 915 to auctions and
7 raffles of firearms on state property violates their First and Second Amendment
8 rights. *See, e.g.*, Proposed SAC ¶¶ 232-40, 245, 264. At the outset, these allegations
9 are futile for the same reasons that the allegations which advance Plaintiffs’
10 existing constitutional theories are futile—the Ninth Circuit opinion forecloses
11 them. As the Ninth Circuit explained, consummating a business transaction and
12 acceptance of an offer constitute “nonexpressive conduct unprotected by the First
13 Amendment.” *B&L Prods.*, 104 F.4th at 114. As to the Second Amendment claim,
14 the Ninth Circuit’s conclusion that a prohibition on firearm sales on state property
15 does not meaningfully constrain the right to keep and bear arms logically extends to
16 auctions and raffles of firearms on state property. *Id.* at 119. In other words,
17 “[m]erely eliminating one environment where” raffles and auctions of firearms can
18 occur “does not constitute a meaningful constraint on Second Amendment rights
19 when” the raffles and auctions can occur at other nearby locations, which the
20 proposed amended complaint fails to address. *Id.* While the Ninth Circuit’s opinion
21 did not directly address allegations about auctions and raffles, the analysis applies
22 equally to such allegations and thus makes them futile. The futility of these
23 allegations should end the analysis.

24 In any event, while the prohibition in Senate Bills 264 and 915 apply to
25 auctions of firearms on state property, it does not apply to raffles of firearms on
26 state property. Auction sales contain the elements of offer and acceptance that are
27 present in a traditional sales transaction. For example, California Civil Code section
28 1812.601(b) defines an auction as:

1 [A] sale transaction conducted by means of oral or written
2 exchanges . . . between an auctioneer and the members of his or her
3 audience, which exchanges consist of a series of invitations for offers
4 for the purchase of goods made by the auctioneer and offers to
5 purchase made by members of the audience and culminate in the
6 acceptance by the auctioneer of the highest or most favorable offer
7 made by a member of the participating audience.

8 Additionally, the California Commercial Code explains that a “sale by
9 auction is complete when the auctioneer so announces by the fall of the
10 hammer or in other customary manner.” Cal. Com. Code § 2328(2); *see also*
11 Cal. Rev. & Tax. Code § 6006.6 (“sale at an auction” is a “sale” for purposes
12 of taxation if certain conditions are met); 1 Witkin, Summary of Cal. Law
13 (11th ed. 2025) Contracts, § 131 (“An auctioneer normally solicits or calls
14 for offers, and the bidders are the offerors. This offer is revocable, i.e., no
15 sale is complete until the fall of the auctioneer’s hammer”). Because Senate
16 Bills 264 and 915 bar “consummating a contract to purchase firearms” while
17 on state property, the sales prohibition in these statutes extend to sales by
18 auction. *See B&L Prods.*, 104 F.4th at 111; *see also id.* at 113 (explaining
19 that the language in Senate Bills 264 and 915 “regulate[] the moment at
20 which a binding contract is formally consummated”).

21 Raffles, however, distribute items based on chance and are thus less
22 similar to the consummation of a contract through offer and acceptance.
23 California Penal Code section 320.5(b) defines a raffle to mean “a scheme
24 for the distribution of prizes by chance among persons who have paid money
25 for paper tickets that provide the opportunity to win these prizes” where
26 certain conditions are met. Accordingly, a raffle of firearms does not appear
27 to fall within the Ninth Circuit’s description of the prohibition to include the
28

1 consummation of a contract to purchase a firearm and acceptance of an offer
2 to sell a firearm. *B&L Prods.*, 104 F.4th at 113-14.

3 At bottom, the addition of allegations regarding auctions and raffles of
4 firearms on state property do not alter the conclusion that granting leave to
5 file the proposed amended complaint would be an exercise in futility.

6 **II. THE PROPOSED AMENDED COMPLAINT’S RELIANCE ON SETTLEMENT**
7 **COMMUNICATIONS TO PROVE THE VALIDITY OF THEIR CLAIMS IS**
8 **BARRED UNDER FEDERAL RULE OF EVIDENCE 408**

9 Several of the new allegations in the proposed amended complaint rely on
10 Plaintiffs’ submission of a “business plan” to the State Defendants that was
11 ultimately rejected. Proposed SAC ¶ 17; *see also* Barvir Decl. ¶¶ 5-8. As the
12 proposed amended complaint suggests, the proposed business plan was submitted
13 to State Defendants pursuant to an effort to “resolve this matter without further
14 litigation.” Proposed SAC ¶ 17. Indeed, the memorandum that outlined Plaintiffs’
15 business plan was labeled at the outset in all capital letters as a “CONFIDENTIAL
16 SETTLEMENT COMMUNICATION.”

17 Now that State Defendants have declined to agree to this proposed business
18 plan, Plaintiffs seek to use this settlement communication as a sword to prove their
19 constitutional claims. *See, e.g.*, Proposed SAC ¶¶ 18, 21, 77-78, 87, 110-11, 130.
20 While this effort would fail because Plaintiffs’ claims remain foreclosed by the
21 Ninth Circuit’s opinion, *see supra* Argument Section I, this bait-and-switch tactic is
22 barred by Rule 408 of the Federal Rules of Evidence. *See Agster v. Maricopa Cnty.*,
23 422 F.3d 836, 839 (9th Cir. 2005) (federal law of privilege applies for federal
24 question claims); *Next Vietnam Projects Found.*, 751 F. Supp. 3d at 1011-13 (in a
25 case involving state law claims, applying California’s litigation privilege to dismiss
26 a counterclaim that relied on alleged settlement communications). Specifically,
27 Rule 408(a)(2) bars the admissibility of “conduct or a statement made during
28 compromise negotiations about the claim” when such evidence is offered to “prove
or disprove the validity . . . of a disputed claim.” Fed. R. Evid. 408(a)(2). The Ninth

1 Circuit has recognized that Rule 408 “is designed to ensure that parties may make
2 offers during settlement negotiations without fear that those same offers will be
3 used to establish liability should settlement efforts fail.” *Rhoades v. Avon Prods.,*
4 *Inc.*, 504 F.3d 1151, 1161-62 (9th Cir. 2007). The settlement communications that
5 are the foundation of the allegations concerning internet sales and option contracts
6 are not admissible under Rule 408. As such, these allegations are futile because
7 Plaintiffs lack any admissible evidence to substantiate the allegations.

8 **CONCLUSION**

9 Plaintiffs’ motion for leave to amend to file the proposed amended complaint
10 should be denied because the complaint advances theories that were soundly
11 rejected by the Ninth Circuit in this case. Granting leave to amend here would thus
12 be futile.

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Dated: January 30, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Governor Gavin Newsom, Attorney General Rob Bonta, Secretary Karen Ross, and 32nd District Agricultural Association, certifies that this brief contains 5,053 words, which:

X complies with the word limit of L.R. 11-6.1.

___ complies with the word limit set by court order dated.

Dated: January 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

I hereby certify that on January 30, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 30, 2026, at Los Angeles, California.

A. Conklin
Declarant

/s/ A. Conklin
Signature

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