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 9

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 12
 13

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

3:21-cv-01718 AJB-KSC

17 Plaintiffs,

**REPLY BRIEF IN SUPPORT OF
 STATE DEFENDANTS' MOTION
 TO DISMISS THE COMPLAINT**

18 v.

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

Date: May 19, 2022
 Time: 2:00 p.m.
 Dept: 4A
 Judge: The Honorable Anthony J.
 Battaglia
 Trial Date: TBD
 Case Filed: 10/4/2021

23 Defendants.
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TABLE OF CONTENTS

	Page
I. Plaintiffs Contradict Supreme Court Caselaw in Trying to Overcome Governor Newsom’s Legislative Immunity	1
II. Plaintiffs Fail to Substantiate any Exception to Sovereign Immunity for Governor Newsom and Secretary Ross	2
III. The Lack of a Clearly Established Right Undercuts Plaintiffs’ Qualified Immunity and § 1983 Damages Arguments.....	3
IV. AB 893 Does Not Trigger the First Amendment and, Alternatively, Would Pass Any Applicable Scrutiny Review	5
A. Plaintiffs Neglect Their Burden to Show AB 893 Impacts Speech	5
B. AB 893 Passes Multiple Levels of Scrutiny	7
V. Plaintiffs Are Not a Suspect Class or Class of One	9
VI. Plaintiffs Concede the State-Law Tort Claims Are Limited to the District, But the District is Also Entitled to Dismissal	10
VII. Conclusion.....	10

1
2
3
4
5
6
7
8
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10
11
12
13
14
15
16
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18
19
20
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23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

CASES

Bauer v. Becerra
858 F.3d 1216 (9th Cir. 2017).....8

Bd. of Trs. of State Univ. of N.Y. v. Fox
492 U.S. 469 (1989).....7

Bogan v. Scott-Harris
523 U.S. 44 (1998).....2

Camreta v. Greene
563 U.S. 692 (2011).....3

Clark v. Cmty. for Creative Non-Violence
468 U.S. 288 (1984).....6

Evans v. Skolnik
997 F.3d 1060 (9th Cir. 2021).....3, 5

Grunert v. Campbell
248 F. App'x 775 (9th Cir. 2007).....5

Hafer v. Melo
502 U.S. 21 (1991).....5

Hamby v. Hammond
821 F.3d 1085 (9th Cir. 2016).....4

Hunt v. City of Los Angeles
638 F.3d 703 (9th Cir. 2011).....7

ITSI T.V. Prod., Inc. v. Agric. Ass'ns
3 F.3d 1289 (9th Cir. 1993).....2

Kisela v. Hughes
138 S.Ct. 1148 (2018).....5

L.A. County Bar Ass'n v. Eu
979 F.2d 697 (9th Cir. 1992).....3

1
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TABLE OF AUTHORITIES

(continued)

Page

Mai v. United States
952 F.3d 1106 (9th Cir. 2020).....8

Miklosy v. Regents of Univ. of Cal.
44 Cal.4th 876 (2008)10

Nichols v. Brown
859 F. Supp. 2d 1118 (C.D. Cal. 2012)2

Nordyke v. King
319 F.3d 1185 (9th Cir. 2003).....6, 7

Nordyke v. King
644 F.3d 776 (9th Cir. 2011).....6, 8, 9

Nordyke v. King
681 F.3d 1041 (9th Cir. 2012).....6, 9

Nordyke v. Santa Clara Cnty.
110 F.3d 707 (9th Cir. 1997).....4, 6, 7, 8

Pena v. Lindley
898 F.3d 969 (9th Cir. 2018).....8

Searcy v. Hemet Unified Sch. Dist.
177 Cal.App.3d 792 (1986).....10

Toranto v. Jaffurs
297 F. Supp. 3d 1073 (S.D. Cal. 2018)9

Torres Rivera v. Calderon Serra
412 F.3d 205 (1st Cir. 2005)2

United States v. Windsor
570 U.S. 744 (2013).....9

White v. Pauly
137 S.Ct. 548 (2017).....4

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TABLE OF AUTHORITIES

(continued)

Page

STATUTES

42 U.S.C. § 1983.....3, 5

California Food & Agriculture Code § 4158(a).....6

California Government Claims Act.....10

California Government Code

 § 810.6.....10

 § 815(a)10

 § 815.6.....10

CONSTITUTIONAL PROVISIONS

First Amendment*passim*

Eleventh Amendment.....2

1 The State Defendants’ Motion to Dismiss explains why legislative, sovereign,
2 and qualified immunity bar Plaintiffs’ claims against Governor Newsom, Attorney
3 General Bonta, and/or Secretary Ross. Plaintiffs respond by either disagreeing with
4 or simply ignoring the governing caselaw as to each form of immunity. The official
5 defendants should be dismissed on immunity grounds alone.

6 On the merits, Plaintiffs’ argument is built on the assertion that AB 893
7 regulates speech. But that premise is wrong, and Plaintiffs’ argument collapses as a
8 result. As Plaintiffs ultimately concede, AB 893 explicitly prohibits only the sale
9 of firearms and ammunition. Opp. 4, 20. Unlike the prior policy governing the Del
10 Mar Fairgrounds, AB 893 does not prohibit gun shows. Nor does it impact whether
11 Plaintiffs or their customers may gather at events to express their message that
12 “guns are really good.” Opp. 5. Nor does it prevent over 60 percent of vendors
13 from continuing to operate at gun shows. Rather, as AB 893’s plain language
14 makes clear, the law is targeted to prevent illicit firearm and ammunition sales that
15 still occur at gun shows despite the various laws governing them. And as the Ninth
16 Circuit has held, prohibiting firearm sales is not a restriction on speech at all.
17 Plaintiffs’ First Amendment and equal protection claims fail under well-established
18 precedents, and they admit most of their state-law tort claims fail. The Court
19 should therefore dismiss all claims without leave to amend.

20 **I. PLAINTIFFS CONTRADICT SUPREME COURT CASELAW IN TRYING TO**
21 **OVERCOME GOVERNOR NEWSOM’S LEGISLATIVE IMMUNITY**

22 In response to Governor Newsom’s legislative immunity defense, Plaintiffs
23 assert, without supporting authority, that legislative immunity should not apply in a
24 “context where an executive officer signs legislation into law” because recognizing
25 such immunity “does not make sense” and is “unseemly.” Opp. 16. But Plaintiffs’
26 view of what the law *ought* to be is inconsistent with what the Supreme Court and
27 Ninth Circuit have said that the law *is*. The Supreme Court has long held that an
28 executive official, such as a governor or mayor, is entitled to legislative immunity

1 for signing legislation into law. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998)
 2 (citing *Smiley v. Holm*, 285 U.S. 355, 372-373 (1932); see *Jones v. Allison*, 9 F.4th
 3 1136, 1139-1140 (9th Cir. 2021)). Applying that rule, courts have recognized that
 4 the Governor of California has legislative immunity when signing a bill into law.
 5 See, e.g., *Nichols v. Brown*, 859 F. Supp. 2d 1118, 1132 (C.D. Cal. 2012); see also
 6 *Torres Rivera v. Calderon Serra*, 412 F.3d 205, 213 (1st Cir. 2005). Ignoring this,
 7 Plaintiffs instead note the Governor appoints the board of the 22nd District
 8 Agricultural Association (“District”). Opp. 16. They fail to, and cannot, explain
 9 the relevance of the Governor’s appointment power to his legislative immunity.

10 **II. PLAINTIFFS FAIL TO SUBSTANTIATE ANY EXCEPTION TO SOVEREIGN**
 11 **IMMUNITY FOR GOVERNOR NEWSOM AND SECRETARY ROSS**

12 Plaintiffs’ arguments against sovereign immunity fare no better. First,
 13 Plaintiffs assert that *Ex parte Young* does not apply because the District is not a
 14 state actor and “its officials” are thus not entitled to Eleventh Amendment
 15 immunity. Opp. 17. Plaintiffs are correct that the District itself is not entitled to
 16 sovereign immunity under current Ninth Circuit case law—and that is why the State
 17 Defendants’ Motion does not assert sovereign immunity as to the District. *ITSI*
 18 *T.V. Prod., Inc. v. Agric. Ass’ns*, 3 F.3d 1289, 1292-1294 (9th Cir. 1993). But
 19 Governor Newsom and Secretary Ross are not officials of the District, and no
 20 authority supports Plaintiffs’ contention that the District’s lack of sovereign
 21 immunity extends *up* the chain of authority to Governor Newsom and Secretary
 22 Ross in their official capacities. On the contrary, Judge Bencivengo’s prior ruling
 23 recognizes that state officials without any enforcement role *do* have sovereign
 24 immunity in precisely these circumstances. See Mot. 9.

25 Plaintiffs nevertheless contend that the *Ex parte Young* exception applies to
 26 Governor Newsom because he appoints the District’s board of directors. Opp. 17-
 27 18. But the *Ex parte Young* exception is limited to those officials who directly
 28 enforce a law, not those who have only “a generalized duty to enforce state law or

1 general supervisory power over the persons responsible for enforcing the
 2 challenged provision.” *L.A. County Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir.
 3 1992); *see* Mot. 8-9. And the power to appoint or remove is a supervisory power,
 4 not a direct enforcement power.

5 As for Secretary Ross, Plaintiffs note the CDFFA provides legal counsel and a
 6 legislative coordinator for all district agricultural associations, and they point to
 7 letters concerning a different district agricultural association and a different
 8 fairgrounds. Opp. 18. But again, none of this goes to whether Secretary Ross is
 9 responsible for the direct enforcement of AB 893. On the contrary, these alleged
 10 facts just tend to confirm Judge Bencivengo’s conclusion that Secretary Ross’s
 11 “alleged wrongdoing amounts to supervision over the District,” thus entitling her to
 12 sovereign immunity. Compl., Exh. 4 at 16-17.¹

13 **III. THE LACK OF A CLEARLY ESTABLISHED RIGHT UNDERCUTS**
 14 **PLAINTIFFS’ QUALIFIED IMMUNITY AND § 1983 DAMAGES ARGUMENTS**

15 Plaintiffs contend that Governor Newsom, Attorney General Bonta, and
 16 Secretary Ross are not entitled to qualified immunity and are liable for damages
 17 under § 1983—as well as punitive damages—because AB 893 “plainly violates
 18 clearly established constitutional rights.” Opp. 19. Plaintiffs are incorrect.

19 They first point to Judge Bencivengo’s June 2019 preliminary injunction
 20 order. Opp. 19-20. But “district court decisions—unlike those from the courts of
 21 appeals—do not necessarily settle constitutional standards.” *Camreta v. Greene*,
 22 563 U.S. 692, 709 n.7 (2011). And so only opinions by the Supreme Court or
 23 Ninth Circuit, not one or multiple district court decisions, count as binding “clearly
 24 established” law for qualified immunity purposes. *Evans v. Skolnik*, 997 F.3d 1060,

25 _____
 26 ¹ Plaintiffs also theorize that Secretary Ross determines whether the District
 27 can approve a contract for a gun show because the CDFFA must approve “revenue-
 28 generating contracts involving hazardous activities.” Opp. 19, citing Cal. Food &
 Agric. Code § 3965.1. But it is up to the CDFFA to determine what constitutes a
 hazardous activity, and Plaintiffs point to nothing showing CDFFA has concluded
 that a gun show where no firearms or ammunition are sold is a hazardous activity.

1 1066-1067 (9th Cir. 2021); *see also Hamby v. Hammond*, 821 F.3d 1085, 1095 (9th
2 Cir. 2016). Plaintiffs cite no case stating otherwise. Indeed, Judge Bencivengo’s
3 order itself concluded there was no clearly established law on “propos[ing] or
4 vot[ing] for a rule banning gun shows from a public fairground,” thus entitling two
5 District board members to qualified immunity. Compl., Exh. 4 at 15. In any event,
6 even if a district court order could be clearly established law, that order involved a
7 moratorium on gun shows at the Fairgrounds and is thus “not particularized to the
8 facts of the case” here (*White v. Pauly*, 137 S.Ct. 548, 552 (2017)), which involves
9 a statute prohibiting only the sale of firearms and ammunition. Plaintiffs admit that
10 AB 893 does not expressly prohibit gun shows at the Fairgrounds. Opp. 4, 20.
11 Moreover, the very nature of a preliminary injunction means the order concluded
12 there was merely a “likelihood of success,” but not guaranteed success, on the First
13 Amendment and equal protection claims. Compl., Exh. 4 at 19, 25-26.

14 Plaintiffs next highlight *Nordyke v. Santa Clara Cnty.*, 110 F.3d 707, 710 (9th
15 Cir. 1997) (“*Nordyke 1997*”), and mistakenly assert that its circumstances are
16 identical to those here. Opp. 8, 20. The Ninth Circuit held there that “the act of
17 exchanging money for a gun is not ‘speech’ within the meaning of the First
18 Amendment,” and that an offer to sell a firearm is commercial speech. *Id.* But AB
19 893 does not explicitly apply to offers for sale, unlike the contract provision at issue
20 in *Nordyke 1997*. Also, as the Ninth Circuit stressed, “critical” to its analysis was
21 the fact that *Nordyke 1997* involved a *contractual* prohibition, and that no *law* (like
22 a county ordinance) had been “enacted . . . to prohibit such sales.” *Id.* at 710-711.
23 It was only because the regulated conduct had *not* been rendered unlawful by a law
24 like AB 893 that *Nordyke 1997* found the commercial speech to be “protected.” *Id.*
25 Because of these differences, *Nordyke 1997* did not place “beyond debate” the
26 questions raised by Plaintiffs’ constitutional claims such that it defeats qualified
27 immunity. *White*, 137 S.Ct. at 551. Indeed, *Nordyke 1997* instead demonstrates
28 why Plaintiffs’ claims are actually wrong on the merits. Mot. 17-18.

1 Plaintiffs lastly rely on general precedent regarding commercial speech,
2 assembly rights, and equal protection rights. Opp. 20-21. But courts cannot extract
3 clearly established law from the broad history and purpose of a constitutional
4 amendment (*Evans*, 997 F.3d at 1067), or from the general rules outlined in
5 prominent cases regarding the same amendment (*Kisela v. Hughes*, 138 S.Ct. 1148,
6 1153 (2018)). Such generality is exactly what the Supreme Court has repeatedly
7 warned against because it fails to give officials “fair and clear warning.” *Id.*

8 Without a clearly established right, Plaintiffs cannot avoid qualified immunity
9 or the preclusion of damages claims under § 1983. For the first time and without
10 alleging as much in the Complaint, Plaintiffs assert they will seek punitive damages
11 against Governor Newsom, Attorney General Bonta, and Secretary Ross. Opp. 22.
12 In doing so, Plaintiffs attempt to rewrite their Complaint and surmise what
13 discovery might show (Opp. 22); these are efforts this Court should reject as
14 impermissible and irrelevant at this stage. Plaintiffs acknowledge, by relying on
15 *Hafer v. Melo*, 502 U.S. 21, 26-27 (1991), that the official-capacity damages claims
16 are precluded. Opp. 22. As to the individual-capacity damages claims, they do not
17 address why such claims are not “mere pleading device[s]” for the official-capacity
18 claims. *Id.*; *Grunert v. Campbell*, 248 F. App’x 775, 778 (9th Cir. 2007). They cite
19 no alleged individual action by Attorney General Bonta. The alleged individual
20 action by Governor Newsom occurred *before* he became governor. Opp. 23. And,
21 Secretary Ross’s alleged action concerned letters regarding the *Ventura County*
22 fairgrounds, not AB 893. Opp. 23. The damages claims are precluded entirely.

23 **IV. AB 893 DOES NOT TRIGGER THE FIRST AMENDMENT AND,**
24 **ALTERNATIVELY, WOULD PASS ANY APPLICABLE SCRUTINY REVIEW**

25 **A. Plaintiffs Neglect Their Burden to Show AB 893 Impacts Speech**

26 Plaintiffs’ arguments about their First Amendment claims put the cart before
27 the horse. They start from the assumption that AB 893 is a content-based
28 restriction on speech and emphasize the heightened scrutiny that must be applied.

1 Opp. 8, 10. But they fail to first meet their burden of showing that AB 893
2 regulates speech at all. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288,
3 293 n.5 (1984). Plaintiffs admit that AB 893 “does not expressly ban gun shows
4 from” the Fairgrounds. Opp. 20, *see also* Opp. 4. The plain language of AB 893
5 merely prohibits the sale of firearms and ammunition at the Fairgrounds. Cal. Food
6 & Agric. Code § 4158(a). And, the Ninth Circuit has long held that the sale of a
7 firearm is *not* speech under the First Amendment. *Nordyke 1997*, 110 F.3d at 710;
8 *see also Nordyke v. King*, 319 F.3d 1185, 1191 (9th Cir. 2003) (“*Nordyke 2003*”).
9 If AB 893 prohibits only sales, and sales do not constitute speech, then AB 893
10 does not regulate speech. Plaintiffs fail to address this major hurdle.

11 Instead, Plaintiffs baselessly assert that AB 893 “directly bans . . . otherwise
12 lawful speech related to the sale of legal firearms and ammunition.” Opp. 6. But,
13 as the State Defendants’ Motion demonstrates (Mot. 11-14), AB 893 does not
14 prohibit the expressive activities that Plaintiffs describe typically occur at gun
15 shows (Opp. 1, 5, 9), nor does AB 893 prohibit the transactions handled by more
16 than 60 percent of the vendors at B&L gun shows. Compl. ¶ 57. The only case
17 Plaintiffs cite to support their argument that AB 893 regulates speech is *Nordyke*
18 *1997*, but they misread its facts and its holdings. Opp. 6, 8-9. As explained *ante*, in
19 Section III (*see also* Mot. 17-18), *Nordyke 1997* involved no “enacted” law, unlike
20 AB 893, and it involved a contract provision that explicitly prohibited offers to sell
21 a firearm, whereas AB 893 has no such explicit prohibition. 110 F.3d at 710.
22 Plaintiffs insist that AB 893 does apply to offers for sale (Opp. 1, 6), but they point
23 to no language in AB 893 providing as much.²

24 Plaintiffs also contend that the sale of firearms and ammunition at gun shows
25 is “inextricably intertwined” with the expressive activities that occur at gun shows.

26 ² Plaintiffs also misread the holding in *Nordyke v. King*, 681 F.3d 1041, 1043
27 n. 2 (9th Cir. 2012) (“*Nordyke 2012*”). Opp. 8-9. *Nordyke 2012* endorsed the First
28 Amendment analysis in *Nordyke v. King*, 644 F.3d 776, 794 (9th Cir. 2011)
 (“*Nordyke 2011*”), which held that a county prohibition on the possession of
 firearms and ammunition on county property was constitutional.

1 Opp. 9. Under this theory, when commercial speech is inextricably intertwined
2 with non-commercial speech, the entirety of the speech is entitled to non-
3 commercial speech protections. *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S.
4 469, 474 (1989); *Hunt v. City of Los Angeles*, 638 F.3d 703, 715-716 (9th Cir.
5 2011). This theory is inapplicable here in multiple respects. First, as stated
6 previously, the sale of a firearm or ammunition is not even commercial speech; it is
7 not speech at all. *Nordyke 1997*, 110 F.3d at 710. Also, “a gun itself is not
8 speech,” nor is the possession of a gun. *Nordyke 2003*, 319 F.3d at 1189. There is
9 thus no commercial speech for the non-commercial speech to intertwine with.

10 This intertwined theory also does not apply when “the two components of
11 speech can be easily separated.” *Hunt*, 638 F.3d at 715. The only nexus between
12 firearm sales and non-commercial speech regarding firearms noted by Plaintiffs is
13 the alleged profitability of gun shows when such sales take place there. Compl.
14 ¶ 59. But profitability is not a “meaningful nexus” supporting a determination that
15 firearm sales and non-commercial speech are inextricably intertwined. *Hunt*, 638
16 F.3d at 716. Courts have repeatedly rejected the argument that the *sale* of a
17 regulated item is inextricably intertwined with *speech pertaining to* that item, and
18 this Court should follow that rule here. *Id.* at 716-717 (the plaintiffs’ sale of shea
19 butter and incense was not inextricably intertwined with the spiritual messages they
20 incorporated into their sales pitches); *see also Fox*, 492 U.S. at 474 (prohibiting the
21 sale of housewares in a college dorm did not “prevent[] the speaker from
22 conveying, or the audience from hearing” non-commercial speech about home
23 economics). Nor is it “impossible” (*id.*) for Plaintiffs to express their view that
24 “guns really are good” (Opp. 5) without firearm sales also occurring at gun shows;
25 they may gather and express that view without implicating anything in AB 893.

26 **B. AB 893 Passes Multiple Levels of Scrutiny**

27 Because AB 893 does not regulate speech, it is subject to rational basis
28 review. Mot. 14. It easily satisfies such review. Mot. 14-15. In the alternative,

1 AB 893 also satisfies the other possibly applicable review standards, including: (1)
2 the reasonableness standard for a type of nonpublic forum called a limited public
3 forum (Mot. 15-17)³; (2) the test for commercial speech regulations (Mot. 17-18);
4 and (3) intermediate scrutiny (Mot. 18-21).

5 Plaintiffs contend that AB 893 fails all these levels of scrutiny because, in
6 part, the “State has no sufficient interest” in prohibiting firearm and ammunition
7 sales at the Fairgrounds. Opp. 12. In criticizing AB 893’s clear public safety
8 interest, Plaintiffs demand support such as peer reviewed studies, evidence of
9 dangerous incidents at B&L gun shows at the Fairgrounds, and a comparison of
10 crimes at gun shows to those at other Fairgrounds events. Opp. 6, 13-14. But this
11 imposes a standard not required by the Ninth Circuit. For example, when applying
12 intermediate scrutiny, courts “do not impose an ‘unnecessarily rigid burden of
13 proof,’” and must remember they are “weighing a legislative judgment, not
14 evidence in a criminal trial.” *Pena v. Lindley*, 898 F.3d 969, 979 (9th Cir. 2018)
15 (citing First and Second Amendment caselaw). Courts also “do not require
16 ‘scientific precision’” (*Mai v. United States*, 952 F.3d 1106, 1118 (9th Cir. 2020)),
17 and must accord substantial deference to the Legislature’s judgment in the face of
18 policy disagreements and conflicting evidence. *Pena*, 898 F.3d at 979-980. And,
19 there need not be a showing that B&L itself contributed to the problem motivating
20 AB 893. *Nordyke 2011*, 644 F.3d at 793. Plaintiffs’ arguments are untenable under
21 these authorities as they improperly seek to replace the Legislature’s policy
22 judgment with their own. The Ninth Circuit has long held there is a substantial
23 government interest in preventing gun violence resulting from illicit firearm and
24 ammunition transactions—the same interest motivating AB 893. *Nordyke 1997*,
25 110 F.3d at 713; *see also Bauer v. Becerra*, 858 F.3d 1216, 1223 (9th Cir. 2017).
26 Plaintiffs point to statements by Governor Newsom before he was governor and by

27 ³ Plaintiffs wrongly assert that Judge Bencivengo held the Fairgrounds is a
28 public forum. Opp. 7, n.8. Judge Bencivengo did not rule on this issue because the
conclusion was the same “[r]egardless of the type of forum.” Compl., Exh. 4 at 22.

1 AB 893’s author to argue this interest is a pretext (Opp. 15), but this ignores Ninth
2 Circuit authority that such statements are irrelevant to the analysis. Mot. 19.

3 Plaintiffs further assert that AB 893’s sales prohibition is too broad to serve
4 the public safety interest. Opp. 15. But, as Plaintiffs allege, California has a
5 “rigorous regulatory regime” for firearm and ammunition sales (Compl. ¶ 30), and
6 yet, illicit transactions still occur at gun shows. *Id.*, Exh. 6 at 54. This suggests that
7 stricter laws are not possible and would not solve the problem. The Ninth Circuit
8 has held that prohibiting firearm possession on county land was a “straightforward
9 response” to the risk of gun violence. *Nordyke 2011*, 644 F.3d at 794. The same is
10 true for prohibiting firearm and ammunition sales on public land in AB 893.
11 Dismissal of the First Amendment claims is warranted.⁴

12 **V. PLAINTIFFS ARE NOT A SUSPECT CLASS OR CLASS OF ONE**

13 Without citing any supporting caselaw or responding to the State Defendants’
14 arguments (Mot. 22-23), Plaintiffs assert their equal protection claim is entitled to
15 heightened scrutiny because “gun culture” members are a suspect class. Opp. 11-
16 12. If true, then any interest group would constitute a suspect class. Such an
17 unsustainable rule would nearly always trigger heightened scrutiny. AB 893, like
18 the county ordinance prohibiting the possession of firearms or ammunition on
19 county property upheld by the Ninth Circuit, “does not classify shows or events on
20 the basis of a suspect class.” *Nordyke 2012*, 681 F.3d at 1043 n. 2. Since Plaintiffs
21 are also not a class of one, rational basis applies and is satisfied here. Mot. 22-23.⁵

22
23 ⁴ Plaintiffs cursorily mention their association and prior restraint claims, but
24 in no way respond to the State Defendants’ arguments regarding them. *Compare*
25 Opp. 7, 10, n.10 with Mot. 21, 22, n.6. They have thus abandoned these claims and
26 they should be dismissed. *Toranto v. Jaffurs*, 297 F. Supp. 3d 1073, 1104 (S.D.
27 Cal. 2018) (dismissing claim as abandoned where plaintiff did not address the claim
28 when opposing a motion).

⁵ Although the term “animus” is used liberally in the Opposition brief and
more often than done so in the Complaint (*compare* Opp. 1, 5, 10, 13, 15, 21 with
Compl. ¶¶ 122, 215), Plaintiffs fail to point to anything in AB 893 demonstrating a
“bare . . . desire to harm a politically unpopular group” or “discriminations of an
unusual character.” *United States v. Windsor*, 570 U.S. 744, 770 (2013).

1 **VI. PLAINTIFFS CONCEDE THE STATE-LAW TORT CLAIMS ARE LIMITED TO**
 2 **THE DISTRICT, BUT THE DISTRICT IS ALSO ENTITLED TO DISMISSAL**

3 At the outset, Plaintiffs concede their state-law tort claims can only survive
 4 against the District. Opp. 24, n.11. But they fail to persuasively explain why this
 5 Court should exercise its supplemental jurisdiction over such claims or why they
 6 are not precluded by California’s Government Claims Act (“GCA”). Mot. 23-25.

7 First, Plaintiffs assert they alleged a statutory basis for their state-law tort
 8 claims because the Complaint identifies the GCA. Opp. 23. This contention turns
 9 the GCA on its head. Under the GCA, a public entity is immune from state-law
 10 claims “[e]xcept as otherwise provided by statute” (Cal. Gov’t Code § 815(a)), or
 11 when the entity “is under a mandatory duty imposed by an enactment.” *Id.* § 815.6;
 12 *id.* § 810.6. There thus must be a statute or enactment, *other than* the GCA, that
 13 authorizes the lawsuit. *Miklosy v. Regents of Univ. of Cal.*, 44 Cal.4th 876, 899
 14 (2008); *Searcy v. Hemet Unified Sch. Dist.*, 177 Cal.App.3d 792, 802 (1986).

15 Plaintiffs argue they timely presented their tort claims since they accrue each
 16 time the District declines to contract for a gun show under AB 893 (Opp. 24), but
 17 this is meritless without an allegation identifying specific dates when such denials
 18 occurred. Compl. ¶¶ 131-137. Although Plaintiffs also highlight AB 893’s
 19 operative date, they facially challenge the *adoption* of AB 893 on October 11, 2019,
 20 and their claims were presented more than the one year after that date.⁶ Mot. 25.

21 **VII. CONCLUSION**

22 The Complaint should be dismissed without leave to amend.

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27 ⁶ Plaintiffs’ concession in footnote 11 confirms the adoption of AB 893 is
 28 gravamen of their tort claims. Opp. 24. They also baselessly accuse Governor
 Newsom and Secretary Ross of a conspiracy without raising such a claim.

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Respectfully submitted,
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