

1 C. D. Michel – SBN 144258
cmichel@michellawyers.com
2 Joshua Robert Dale – SBN 209942
jdale@michellawyers.com
3 Konstadinos T. Moros – SBN 306610
kmoros@michellawyers.com
4 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
5 Long Beach, CA 90802
Telephone: (562) 216-4444
6 Facsimile: (562) 216-4445
www.michellawyers.com
7

8 Attorneys for Plaintiffs South Bay Rod & Gun Club, Inc. Gary Brennan, Cory
Henry, Patrick Lovette, Virginia Duncan, Randy Ricks, Gun Owners of California,
9 Second Amendment Law Center, and California Rifle and Pistol Association,
Incorporated

10 Donald Kilmer-SBN 179986
Law Offices of Donald Kilmer, APC
11 14085 Silver Ridge Road
Caldwell, Idaho 83607
12 Telephone: (408) 264-8489
Email: Don@DKLawOffice.com
13

14 Attorneys for Plaintiff Citizens Committee for the Right to Keep and Bear Arms

15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SOUTH BAY ROD & GUN CLUB,
INC.; GARY BRENNAN, an
18 individual; CORY HENRY, an
individual; PATRICK LOVETTE, an
19 individual; VIRGINIA DUNCAN, an
individual; RANDY RICKS, an
20 individual; CITIZENS COMMITTEE
FOR THE RIGHT TO KEEP AND
21 BEAR ARMS; GUN OWNERS OF
CALIFORNIA; SECOND
22 AMENDMENT LAW CENTER; and
CALIFORNIA RIFLE & PISTOL
23 ASSOCIATION, INCORPORATED,

24 Plaintiffs,

25 v.

26 ROBERT BONTA, in his official
capacity as Attorney General of the
State of California; and DOES 1-10,
27

28 Defendants.

CASE NO: '22CV1461 JO WVG

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**42 U.S.C. §§ 1983 & 1988 and
28 U.S.C. § 1651**

1 NOW COME Plaintiffs South Bay Rod & Gun Club, Inc., Gary Brennan,
2 Cory Henry, Patrick Lovette, Virginia Duncan, Randy Ricks, Citizens Committee
3 for the Right to Keep and Bear Arms, Gun Owners of California, Second
4 Amendment Law Center, and California Rifle & Pistol Association, Incorporated,
5 and through their respective counsel, bring this action against Defendants Attorney
6 General Robert Bonta, in his official capacity, and make the following allegations.

7 **INTRODUCTION**

8 1. After Texas passed Texas Senate Bill (“SB”) 8, which created a
9 private right of action against abortion providers, a challenge to the constitutionality
10 of that law was rejected by the U.S. Supreme Court. *See Whole Woman’s Health v.*
11 *Jackson* 593 U.S. ___, 142 S. Ct. 522 (2021).

12 2. California Governor Gavin Newsom expressed his outrage over the
13 Supreme Court’s decision by promising to use the same legislative tactics behind
14 SB 8 to attack the gun rights community.



Office of the Governor of California
@CAgovernor

...

17 If states can shield their laws from review by federal
18 courts, then CA will use that authority to help protect
19 lives.

20 We will work to create the ability for private citizens to
21 sue anyone who manufactures, distributes, or sells an
22 assault weapon or ghost gun kit or parts in CA.



1 3. Not long after, the U.S. Supreme Court’s decision in *New York Rifle &*
2 *Pistol Association, Inc. v. Bruen*, 597 U.S. at ___, 142 S. Ct. 2111 (2022) (“*Bruen*”)
3 firmly cemented the right to keep and bear firearms for self-defense both inside and
4 outside the home, while also ratifying a mode of analysis first set out in *District of*
5 *Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561
6 U.S. 742 (2010). *Bruen* at 2126. California’s Legislature responded by enacting a
7 number of laws in response. One of these post-*Bruen* laws was California Senate
8 Bill 1327.

9 4. At the time he signed California’s SB 1327, Newsom stated “While
10 the Supreme Court rolls back reasonable gun safety measures, California continues
11 adding new ways to protect the lives of our kids. California will use every tool at its
12 disposal to save lives, especially in the face of an increasingly extreme Supreme
13 Court,”¹

14 5. And because SB 1327 is more about revenge against the *Bruen*
15 decision and Texas’s Senate Bill 8 (and with the Supreme Court’s holding in *Dobbs*
16 *v. Jackson Women’s Health Org.*, 597 U.S. ___, 142 S. Ct. 2228 (2021) adding fuel
17 the fire) California’s legislature and its governor are no longer interested in making
18 sound public policy. They are more interested in expressing an all-too common
19 legislative animus against gun rights wholly unrelated to keeping AR-15’s, ghost
20 guns, or .50 BMG rifles “off the streets.” Despite *Bruen*’s holding recognizing that
21 the Second Amendment was broader and encompassed more uses of firearms for
22 self-defense than California’s politicians were willing to permit, rather than
23 recognize the constitutional mandate in *Bruen*, Newsom and California’s legislators
24 decided to punish gun rights supporters by including in SB 1327 a “poison pill”
25

26 ¹ Californians Will Be Able to Sue Those Responsible for Illegal Assault Weapons
27 and Ghost Guns (July 22, 2022), <[https://www.gov.ca.gov/2022/07/22/californians-](https://www.gov.ca.gov/2022/07/22/californians-will-be-able-to-sue-those-responsible-for-illegal-assault-weapons-and-ghost-guns/)
28 [will-be-able-to-sue-those-responsible-for-illegal-assault-weapons-and-ghost-guns/](https://www.gov.ca.gov/2022/07/22/californians-will-be-able-to-sue-those-responsible-for-illegal-assault-weapons-and-ghost-guns/)>
(as of September 27, 2022).

1 designed to punish anyone who would sue the state (or any local government) as a
2 check against the excesses of *any* gun law that was unconstitutionally restrictive.

3 6. Newsom wants to eradicate “gun culture” and punish those who
4 lawfully exercise their First Amendment right to advocate for firearms and the
5 Second Amendment or seek redress from government for unjust laws that
6 unconstitutionally restrict the self defense right. Thus, at the time Newsom signed
7 SB 1327, he also signed another anti-gun law that effectively ended junior shooting
8 sports by making promotion of such sports illegal under a broad and facially
9 unconstitutional restriction on commercial and advocacy speech that promotes
10 youth firearms participation. In signing that bill, Newsom blithely chided those
11 who would be opposed to an inexcusable attempt to unconstitutionally silence
12 protected pro-firearms speech: “From members of the Supreme Court to right-wing
13 Republicans all across the country, have you no common decency, respect, or even
14 common understanding?”²

15 7. Alas, the demagoguery of Governor Newsom and the California
16 legislature is immunized from personal suits for damages, and litigation to correct
17 their wanton assault on civil rights must be directed at striking down
18 unconstitutional laws by seeking declaratory and injunctive relief against California
19 Attorney General Rob Bonta and his subordinates in their official capacities. But
20 California’s Attorney General is not just the head of an executive branch agency
21 charged with enforcing California’s laws, the office is charged with supervising the
22 state’s lawyers and all county-level district attorneys. *See* CAL. CONST. Art. V, § 13.
23 Indeed, Attorney General Rob Bonta’s name appears at the top of every pleading
24 filed by California in any litigation in which the state is a party, as required by
25 Federal Rule of Civil Procedure 11(a). Furthermore, his signature (and those of his

26 _____
27 ² Ryan King, *Newsom signs laws restricting gun sales*, Washington Examiner (July
28 1, 2022), <<https://www.washingtonexaminer.com/restoring-america/faith-freedom-self-reliance/newsom-signs-laws-banning-marketing-guns-children>> (as of September 12, 2022).

1 subordinates) also certifies, to this Court, the integrity of the claims and defenses
2 made in those pleadings. *Id.*, Rule 11(b).

3 8. As noted, Governor Newsom expressed his outrage at Texas’s SB 8
4 that targeted abortion rights. But Attorney General Rob Bonta went several steps
5 further. In his capacity as California’s lawyer, AG Bonta joined in a brief filed
6 before the U.S. Supreme Court, arguing that the Texas law’s fee shifting provision
7 (among other parts of that law) is unconstitutional. That brief argued against the
8 “one-sided attorney’s fees provisions that award attorney’s fees and costs to any
9 plaintiff who prevails, [...] while statutorily barring providers from recovering their
10 attorney’s fees and costs even if they prevail.” *See Br. of Mass. et al. as Amici*
11 *Curiae in Supp. of Pet’rs* at 21, *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522
12 (2021).

13 9. Furthermore, Attorney General Rob Bonta issued a press release upon
14 the filing of this amicus brief on October 27, 2021, in which he called Texas’s SB
15 8, which includes the fee shifting provisions, “blatantly unconstitutional.” *See*
16 *Attorney General Bonta: Texas Cannot Avoid Judicial Review of Its*
17 *Unconstitutional Abortion Ban (October 27, 2021)*, <[https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-texas-cannot-avoid-judicial-review-its-unconstitutional)
18 [releases/attorney-general-bonta-texas-cannot-avoid-judicial-review-its-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-texas-cannot-avoid-judicial-review-its-unconstitutional)
19 [unconstitutional](https://oag.ca.gov/news/press-releases/attorney-general-bonta-texas-cannot-avoid-judicial-review-its-unconstitutional)> (as of September 26, 2022).

20 10. Attorney General Rob Bonta is being named as a party in this action
21 because of his constitutional duties. And now the Attorney General will have to
22 defend a legislative scheme, based on those constitutional duties, that he has
23 publicly—and in a prior court filing—condemned as unconstitutional. The fact that
24 the U.S. Supreme Court refused to address the merits of the Texas law in *Whole*
25 *Woman’s Health v. Jackson*, 142 S. Ct. 522 (2021), is not a license to treat that
26 disposition as an endorsement of the Texas scheme, any more than it should be an
27 endorsement of California’s SB 1327. Dispositions in the U.S. Supreme Court that
28 do not reach the merits of the underlying controversy are not dispositive of that

1 controversy. This is black letter law. *See generally Singleton v. Commissioner*, 439
2 U.S. 940, 942 (1978), and *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 917-
3 18 (1950).

4 11. An Attorney General refusing to defend a California law that in his
5 judgment was unconstitutional is not without precedent. *See Perry v. Brown*, 671
6 F.3d 1051, 1071, n.9 (9th Cir. 2012) (California Attorney General refusing to
7 defend Proposition 8 in federal court challenge), *vacated and remanded*,
8 *Hollingsworth v. Perry*, 570 U.S. 693 (2013), *on remand, appeal dismissed, Perry*
9 *v. Brown*, 725 F.3d 1140 (9th Cir. 2013).

10 12. Attorney General Rob Bonta's clients have put him, as the lawyer for
11 California and the nominal defender of California's policies, in the unenviable
12 position of either following in the footsteps of his predecessor, the Honorable
13 Edmund G. Brown, Jr., or finding a way to square the circle of complying with
14 Federal Rule of Civil Procedure 11(b) in filing pleadings and advancing arguments
15 to defend a law he has previously argued in court is unconstitutional and
16 indefensible.

17 13. Regardless of what course of action the Attorney General takes, it is
18 clear that California's petulant defiance in the face of U.S. Supreme Court holdings
19 on the Second Amendment is nothing new. Many southern states reacted the same
20 way to *Brown v. Board of Education*, 347 U.S. 482 (1954). There are other
21 parallels, but it would appear that California's legislature and Governor Newsom
22 are following in the footsteps of the Arkansas legislature and Governor Orval
23 Faubus, that culminated in *Cooper v. Aaron*, 358 U.S. 1 (1958).

24 14. SB 1327 is touted as a "bounty law," modeled on Texas SB 8, which
25 created a private right of action by individuals against abortion providers and
26 facilitators. California's SB 1327 swapped out "abortion" for "firearms," creating
27 an incentive for well-funded anti-gun advocacy groups to file lawsuits against
28 firearms manufacturers and distributors who sell otherwise legal firearms parts and

1 accessories because those parts and accessories may be used in manufacturing an
2 “assault weapon.” The Legislature justified this bounty law based on a public
3 safety rationale.

4 15. But what demonstrates the animus against those who believe in and
5 promote the Second Amendment and gun rights are the other provisions of SB
6 1327. Besides creating a bounty for private lawsuits against lawful gun businesses,
7 SB 1327 enacted the same perverse and unconstitutional statute designed to quash
8 Second Amendment advocacy that had been included in Texas’s SB 8 to quash
9 abortion advocacy: California Code of Civil Procedure section 1021.11. *Bruen*
10 reminded California and other states seeking to trench upon fundamental rights that
11 “The constitutional right to bear arms in public for self-defense is not “ ‘a second-
12 class right, subject to an entirely different body of rules than the other *Bill of Rights*
13 guarantees.’ ” *Bruen*, 142 S. Ct. at 2156 (quoting *McDonald v. City of Chicago*, 561
14 U.S. 742, 780 (2010)). But California, by enacting Section 1021.11—a fee shifting
15 provision that Defendant Bonta himself believed was unconstitutional when applied
16 to abortion challenges—insists that gun owners in this state be subject to second-
17 class status and continue to sit in the back of the proverbial bus.

18 16. Unlike the adjudication by a citizen in a court of any other
19 infringement of a civil right by California malefactors, Section 1021.11 singles out
20 and punishes those who seek to protect their Second Amendment rights or push
21 back against the plethora of gun legislation passed to unconstitutionally thwart
22 *Bruen*. Having nothing to do with AR-15’s, ghost guns, or .50 BMG rifles, and
23 with no stated rationale other than to discourage lawsuits challenging the state’s
24 demonstrably one-sided gun laws, Section 1021.11 allows government entities that
25 defend against good-faith challenges to unconstitutional gun laws to recover their
26 attorney’s fees and costs of suit from plaintiffs in almost all instances, including
27 when the plaintiff prevails in striking down or circumscribing the law at issue.
28 California has unapologetically tipped the scales of justice in its favor by making

1 litigating a constitutional challenge to a gun law a potentially bankrupting exercise
2 for anyone who does not share Newsom’s and legislators’ antipathy towards the
3 Second Amendment, self defense, and “gun culture.”

4 17. Like AG Bonta, the Legislature knew SB 1327 was unconstitutional
5 when they enacted it. The legislative history of the bill includes all sorts of
6 warnings that the bill exceeded constitutional bounds. For example, in discussing
7 the attorney’s fees provision that is the subject of this action, a California Senate
8 Floor Analysis explained:

9 However, concerns have arisen that there is a risk that utilizing the
10 Texas model only legitimizes it further, which could have negative
11 ramifications across the nation. Beyond just simply allowing for private
12 rights of action, the bill also includes a series of procedural mechanisms
13 that are particularly problematic, and arguably raise serious due process
14 concerns. In her opinion in *Whole Woman’s Health*, Justice Sotomayor
15 outlines the Texas law’s “numerous procedural and substantive
16 anomalies,” which she denounces as the “manipulation of state-court
17 procedures and defenses.” She ultimately concludes:

14 “As a whole, these provisions go beyond imposing liability
15 on the exercise of a constitutional right. If enforced, they
16 prevent providers from seeking effective pre-enforcement
17 relief (in both state and federal court) while simultaneously
18 depriving them of effective postenforcement adjudication,
19 potentially violating procedural due process.”

18 While the goal of repurposing the Texas law may be sound, these
19 problematic provisions may not justify those ends. They insulate
20 government action from meaningful challenge by creating a strong,
21 punitive deterrent for any that try and in the end, may violate due process
22 guarantees.

21 S. BILL 1327, S. FLOOR ANALYSIS (Cal. June 28, 2022)

22 18. Similarly, a California Assembly Judiciary Committee Analysis
23 explained:

24 It’s a lose-lose scenario for plaintiffs who challenge the bill or a gun
25 law; and a win-win scenario for the government. An attorney could
26 properly represent a client in seeking to strike down an unconstitutional
27 law, win on all but one count, and break no other statutory or
28 professional duties, but then be held responsible (along with their client)
for paying the defendant’s attorney’s fees. In fact, even if the defendant
failed to seek attorney’s fees in the underlying action or the court refused
to award them and found this bill to unconstitutional, this bill would
allow the defendant government entity to bring an action within three

1 years to hold the attorney responsible for those fees and costs.

2 This language appears to be unprecedented in California law and likely
3 would not be endorsed by this Committee but for the fact that it is
4 included in this bill and modeled on Texas law.

5 S. BILL 1327, A. JUD. COMM. ANALYSIS (Cal. June 10, 2022)

6 19. Governor Newsom also implicitly confirmed he knew SB 1327 was
7 unconstitutional, because in passing it he stated: “Texas and [Gov.] Greg Abbott
8 and their Republican leadership, if they’re going to use this framework to put
9 women’s lives at risk, we’re going to use it to save people’s lives here in the state
10 of California.”³

11 20. And as if to reaffirm this was more of a political stunt focused on the
12 Governor’s presidential ambitions rather than a serious and constitutionally
13 permissible effort to combat criminal gun violence, Governor Newsom ran
14 advertisements in *Texas* newspapers touting SB 1327.⁴

15 21. The Governor’s political stunt should be struck down in its entirety,
16 but this complaint focuses only on one distinct part of SB 1327: Code of Civil
17 Procedure section 1021.11. The equivalent fee shifting portion of Texas’s SB 8 did
18 not become a major issue in the litigation over that law and that question was left
19 open. In fact, the most recent development in *Whole Woman’s Health v. Jackson*
20 was the case being remanded to determine whether plaintiffs there had standing to
21 challenge Texas’s fee-shifting provision,⁵ which is identical to Section 1021.11

22 ³ Dan Walters, *Newsom’s new gun control bill just a stunt*, CAL MATTERS (July 27,
23 2022), <<https://calmatters.org/commentary/2022/07/newsoms-new-gun-control-bill-just-a-stunt/>> (as of September 12, 2022).

24 ⁴ Meredith Deliso, *California governor signs gun bill modeled after Texas abortion*
25 *law*, ABC NEWS (July 22, 2022, 11:55 AM) <<https://abcnews.go.com/Politics/california-governor-signs-gun-bill-modeled-texas-abortion/story?id=87253528>>
26 (as of September 12, 2022) (“Further driving home this point, Newsom ran full-
page ads in several Texas newspapers Friday touting California’s answer to the
Texas bill.”).

27 ⁵ “Having received the ruling of the Texas Supreme Court that named official
28 defendants may not enforce the provisions of the Texas Heartbeat Act, S.B. 8, this
court REMANDS the case with instructions to dismiss all challenges to the private

1 except in its focus on abortion laws instead of firearms laws. (See TEX. CIV. PRAC.
2 & REM. CODE § 30.022.)

3 22. In a naked effort to discourage lawsuits attacking unconstitutional gun
4 laws, the Legislature included provisions in Section 1021.11 that include the power
5 to override a federal court's determination under 42 U.S.C. § 1988 as to whether a
6 plaintiff who challenged a law is a prevailing party for purposes of fees and costs
7 recovery. Section 1021.11 purports to override Section 1988 precedent regarding
8 the legal standard and burden of proof for when a defending government entity can
9 be awarded attorney's fees. Regardless of what a federal court may hold or enter as
10 a judgment in a particular gun law challenge, the defending government entity
11 always gets a second attempt to recover its attorney's fees and costs in a friendly
12 state court after the federal court proceeding. And Section 1021.11 circumscribes
13 the authority of federal court judgments by making federal court rulings as to the
14 enforceability of a given challenged gun law merely advisory as to state and local
15 governments, and not subject to *res judicata* or the Supremacy Clause of the U.S.
16 Constitution. This exact issue was litigated in *Cooper v. Aaron*, 358 U.S. 1 (1958),
17 more than 60 years ago. "No state legislator or executive or judicial officer can war
18 against the Constitution without violating his undertaking to support it. Chief
19 Justice Marshall spoke for a unanimous Court in saying that: 'If the legislatures of
20 the several states may, at will, annul the judgments of the courts of the United
21 States, and destroy the rights acquired under those judgments, the constitution itself
22 becomes a solemn mockery. . . .' *United States v. Peters*, 5 Cranch 115, 136."
23 *Cooper v. Aaron*, 358 U.S. at 18.

24 23. To further act as a deterrent to lawsuits challenging unconstitutional
25 gun laws, Section 1021.11 not only tips the balance in favor of government entities
26

27 _____
28 enforcement provisions of the statute and to consider whether plaintiffs have
standing to challenge Tex. Civ. Prac. & Rem. Code Ann. Sec. 30.022." *Whole
Woman's Health v. Jackson*, 31 F.4th 1004, 1006 (5th Cir. 2022).

1 in awarding attorney’s fees and costs to them in gun law challenges, but it also
2 imposes the monetary liability for reimbursing the government for such fees and
3 costs on the attorneys who represent plaintiffs in those cases. The attorneys who
4 ably represent their clients challenging a questionable or even unconstitutional law
5 are subject to the mandatory imposition of joint and several liability for reimbursing
6 the government its attorney’s fees and costs. California’s longstanding public
7 policy only imposes fees and costs on an attorney as a sanction for litigation
8 misconduct or unethical attorney behavior. And consistent with that public policy,
9 California enacted Section 1021.11 to sanction and deter attorneys who would
10 represent plaintiffs who want to fight for their Second Amendment rights. In
11 enacting Section 1021.11, California’s Legislature treats any lawyer who supports a
12 client litigating firearms rights as committing sanctionable misconduct, without
13 regard to whether an objection to a particular law is well taken or a legal theory
14 advanced in support of the client’s case is sound and justifiable. It is, in fact, a
15 legislative adjudication of fault, without regard to due process of law, against any
16 lawyer or law firm seeking to vindicate constitutional rights, but only if those rights
17 are derived from the disfavored Second Amendment.

18 24. To further punish the “misconduct” of attorneys and parties who
19 would litigate to protect or affirm constitutional rights, the Legislature made
20 Section 1021.11 retrospective. Thus, although the law does not take effect until
21 2023, the Legislature is so antithetical to gun rights and those who fight to protect
22 them that it made the fee-shifting and attorney liability provisions of Section
23 1021.11 applicable to existing gun challenge lawsuits filed as early as 2021.

24 25. All of these provisions favoring the government defendant, discarding
25 federal court decisions, and punishing counsel who represent plaintiffs, go one way.
26 Only the government benefits from Section 1021.11’s fee shifting and liability
27 provisions; plaintiffs can never benefit. In no other area of constitutional
28 jurisprudence does California treat those citizens litigating in favor of an

1 established constitutional right in such an unfair and biased manner. To silence
2 critics of gun laws and immunize the state from colorable lawsuits challenging
3 California’s ill-conceived gun laws, the Legislature completely ignored *Bruen*’s
4 mandate that the Second Amendment should not be treated as a “second-class”
5 right.

6 26. Plaintiffs are organizations and attorneys who frequently challenge
7 unfavorable, unfair, or unconstitutional gun laws in California and intend to
8 continue to do so, but for Section 1021.11. Plaintiffs are plaintiffs in other legal
9 challenges that are now subject to Section 1021.11’s provisions.⁶ In some of those
10 cases, they may prevail on the merits, they may get an award of attorney’s fees and
11 costs by a federal court, but nonetheless will still be considered losers for purposes
12 of Section 1021.11 and be forced to pay attorney’s fees and costs to the state in a
13 separate action even though Plaintiffs got the law at issue in those matters struck
14 down or circumscribed. This fee shifting disadvantage would inure under the law
15 even if Plaintiffs abandoned those cases *right now* before the law took effect.

16 27. Section 1021.11 is not only an affront to the Second Amendment, but
17 it also insults the *raison d’être* for the Fourteenth Amendment itself. Aside from its
18 function as a mechanism for incorporating the Bill of Rights against state
19 usurpations following the Civil War, the ratification debates for the Fourteenth
20

21 ⁶ Plaintiff California Rifle & Pistol Association, Incorporated, for example, is also
22 a Plaintiff in the matter of *Duncan v. Bonta*. While the en banc decision in that
23 matter has now been vacated by the Supreme Court and the matter is being
24 remanded on Second Amendment grounds, the en banc panel also ruled against
25 Plaintiffs on their takings and due process claims. *Duncan v. Bonta*, 19 F.4th 1087,
26 1096 (9th Cir. 2021) (*en banc*), *vacated, remanded, at Duncan v. Bonta*, ___ U.S. ___,
27 142 S. Ct. 2895 (2022). If those losses remain, the State can seek its legal fees and
28 costs despite Plaintiffs likely prevailing on their Second Amendment claim. Similarly, Plaintiffs California Rifle & Pistol Association, Incorporated and South Bay Rod and Gun Club, Inc. are also Plaintiffs in *B&L Productions, Inc. v. Newsom*. There, the District Court recently dismissed several of Plaintiffs’ claims with prejudice, while granting leave to amend on others. *B&L Prods. v. Newsom*, No. 21-cv-01718-AJB-KSC, 2022 U.S. Dist. LEXIS 148596, at *3 (S.D. Cal. Aug. 18, 2022). The claims dismissed with prejudice, if not reversed on appeal, create dangerous exposure for Plaintiffs under Section 1021.11.

1 Amendment, rightly referred to as the second founding, specifically intended to
2 create enforceable remedies against recalcitrant, rebellious, and as time would
3 reveal, recidivist state actors hostile to the concept of equal rights for all. The
4 original public meaning of that enforcement mechanism was to become access to
5 courts, and to competent legal counsel willing to risk their time and effort to
6 enforce the Constitution and hold constitutional tort-feasors accountable. *See* 42
7 U.S.C §§ 1981-1988 (2022) (referred to as “The Enforcement Act of 1871” or the
8 “Ku Klux Klan Act”).

9 28. SB 1327’s amendments to California Code of Civil Procedure section
10 1021.11 also defy the Supremacy Clause, the doctrine of *res judicata*, and the
11 federal Due Process and Equal Protection Rights of individuals who seek to petition
12 courts for redress regarding Second Amendment rights. The vague application of
13 the statutes to litigation challenges to laws and regulations that “regulate or restrict
14 firearms” is so vague as to further violate the due process rights of those who might
15 challenge such laws and regulations.

16 29. And because the law’s effect and intent are to punish those citizens
17 and their attorneys who have attacked unfair and unconstitutional gun laws prior to
18 Section 1021.11’s enactment, Section 1021.11 constitutes an impermissible Bill of
19 Attainder.

20 30. “[C]onstitutional rights [. . .] can neither be nullified openly and
21 directly by state legislators or state executive or judicial officers, nor nullified
22 indirectly by them through evasive schemes.” *Cooper*, 358 U.S. at 16-17.

23 31. Plaintiffs seek relief from this Court declaring Section 1021.11
24 unconstitutional and enjoining the state from seeking attorney’s fees in any
25 litigation under it.

PARTIES

1
2 32. Plaintiff Gary Brennan is a natural person and citizen of the United
3 States. Plaintiff Brennan is not prohibited from owning or possessing firearms or
4 ammunition under federal or California law. He is president of the San Diego
5 County Wildlife Federation, a Bureau of Security and Investigative Services
6 (“BSIS”) certified Firearms Training Instructor, and volunteers his time as a Master
7 Hunter Education Instructor and Master Bowhunting Education Instructor under the
8 California Department of Fish and Wildlife’s Hunter Education Program. Mr.
9 Brennan is also a named plaintiff in another high-profile Second Amendment-
10 related matter which originated in the Southern District and may soon be remanded
11 back to it. *See Rhode v. Bonta*, No. 20-55437, 2022 U.S. App. LEXIS 17486 (9th
12 Cir. June 24, 2022). As a result of Code of Civil Procedure section 1021.11, he
13 fears being personally liable for paying opposing attorney’s fees and costs of suit if
14 he continues to be a plaintiff in gun law challenges that fail on even just one claim.
15 He has no idea what to do in his current litigation in *Rhode*, i.e., because Section
16 1021.11 acts as a Bill of Attainder, even if he dismissed his lawsuit right now,
17 under Section 1021.11, he would still be liable for the government’s attorney’s fees
18 and costs of suit due to Section 1021.11 retrospective application to his pending
19 matter. And the law has dissuaded him from participating in new challenges. But
20 for his fear of being personally liable for the government’s attorney’s fees even on
21 righteous gun law challenges where he essentially wins the case, he would continue
22 to challenge California’s overbearing gun laws, which he deeply believes are
23 unconstitutional. Section 1021.11 would thus effectively end his right to petition
24 the courts for redress of grievances.

25 33. Plaintiff Cory Henry is a natural person and citizen of the United
26 States. Plaintiff Henry is not prohibited from owning or possessing firearms or
27 ammunition under federal or California law. He is a former active duty U.S. Army
28 Officer now serving as a drilling reservist with the rank of Colonel. Like Mr.

1 Brennan and Ms. Rhode, Mr. Henry is a named Plaintiff in *Rhode v. Bonta*, No. 20-
2 55437, 2022 U.S. App. LEXIS 17486 (9th Cir. June 24, 2022). As a result of
3 Section 1021.11, he fears being personally liable for paying opposing attorney's
4 fees and costs of suit if he continues to be a plaintiff in gun law challenges that fail
5 on even just one claim. He has no idea what to do in his current litigation in *Rhode*,
6 i.e., because Section 1021.11 acts as a Bill of Attainder, even if he dismissed his
7 lawsuit right now, under Section 1021.11, he would still be liable for the
8 government's attorney's fees and costs of suit due to Section 1021.11 retrospective
9 application to his pending matter. And the law has dissuaded him from participating
10 in new challenges. But for his fear of being personally liable for the government's
11 attorney's fees even on righteous gun law challenges where he essentially wins the
12 case, he would continue to challenge California's overbearing gun laws, which he
13 deeply believes are unconstitutional. Section 1021.11 would thus effectively end his
14 right to petition the courts for redress of grievances.

15 34. Plaintiff Richard Randall Ricks is a natural person and citizen of the
16 United States. Plaintiff Ricks is not prohibited from owning or possessing firearms
17 or ammunition under federal or California law. He is a certified public accountant.
18 Like Mr. Brennan, Ms. Rhode, and Mr. Henry, Mr. Ricks is a named Plaintiff in
19 *Rhode v. Bonta*, No. 20-55437, 2022 U.S. App. LEXIS 17486 (9th Cir. June 24,
20 2022). As a result of Section 1021.11, he fears being personally liable for paying
21 opposing attorney's fees and costs of suit if he continues to be a plaintiff in gun law
22 challenges that fail on even just one claim. He has no idea what to do in his current
23 litigation in *Rhode*, i.e., because Section 1021.11 acts as a Bill of Attainder, even if
24 he dismissed his lawsuit right now, under Section 1021.11, he would still be liable
25 for the government's attorney's fees and costs of suit due to Section 1021.11
26 retrospective application to his pending matter. And the law has dissuaded him
27 from participating in new challenges. But for his fear of being personally liable for
28 the government's attorney's fees even on righteous gun law challenges where he

1 essentially wins the case, he would continue to challenge California's overbearing
2 gun laws, which he deeply believes are unconstitutional. Section 1021.11 would
3 thus effectively end his right to petition the courts for redress of grievances.

4 35. Plaintiff Patrick Lovette is a natural person and citizen of the United
5 States. Plaintiff Lovette is not prohibited from owning or possessing firearms or
6 ammunition under federal or California law. Mr. Lovette is also a named plaintiff in
7 another high-profile Second Amendment-related matter which originated in the
8 Southern District and may soon be remanded back to it. *See Duncan v. Bonta*, No.
9 19-55376, 2022 U.S. App. LEXIS 21320 (9th Cir. Aug. 2, 2022). As a result of
10 Section 1021.11, he fears being personally liable for paying opposing attorney's
11 fees and costs of suit if he continues to be a plaintiff in gun law challenges that fail
12 on even just one claim. He has no idea what to do in his current litigation in
13 *Duncan*, i.e., because Section 1021.11 acts as a Bill of Attainder, even if he
14 dismissed his lawsuit right now, under Section 1021.11, he would still be liable for
15 the government's attorney's fees and costs of suit due to Section 1021.11
16 retrospective application to his pending matter. And the law has dissuaded him
17 from participating in new challenges. But for his fear of being personally liable for
18 the government's attorney's fees even on righteous gun law challenges where he
19 essentially wins the case, he would continue to challenge California's overbearing
20 gun laws, which he deeply believes are unconstitutional. Section 1021.11 would
21 thus effectively end his right to petition the courts for redress of grievances.

22 36. Plaintiff Virginia Duncan is a natural person and citizen of the United
23 States. Plaintiff Duncan is not prohibited from owning or possessing firearms or
24 ammunition under federal or California law. Plaintiff Duncan is the lead Plaintiff in
25 *Duncan v. Bonta*, No. 19-55376, 2022 U.S. App. LEXIS 21320 (9th Cir. Aug. 2,
26 2022), the same litigation Plaintiff Lovette is also a Plaintiff in. As a result of
27 Section 1021.11, she fears being personally liable for paying opposing attorney's
28 fees and costs of suit if she continues to be a plaintiff in gun law challenges that fail

1 on even just one claim. She has no idea what to do in her current litigation in
2 *Duncan*, i.e., because Section 1021.11 acts as a Bill of Attainder, even if she
3 dismissed her lawsuit right now, under Section 1021.11, she would still be liable for
4 the government's attorney's fees and costs of suit due to Section 1021.11
5 retrospective application to her pending matter. And the law has dissuaded her from
6 participating in new challenges. But for her fear of being personally liable for the
7 government's attorney's fees even on righteous gun law challenges where she
8 essentially wins the case, she would continue to challenge California's overbearing
9 gun laws, which she deeply believes are unconstitutional. Section 1021.11 would
10 thus effectively end her right to petition the courts for redress of grievances.

11 37. Plaintiff South Bay Rod & Gun Club, Inc. ("SBRGC") is a private
12 nonprofit corporation incorporated under the laws of California, with headquarters
13 in San Diego County, California. It was formed in 1955 with a mission to operate a
14 properly managed nonprofit shooting club that is efficiently designed, contracted,
15 and safely operated with diligently maintained shooting ranges, support structures,
16 and facilities so that all authorized members and guests may use the facility with
17 pride, confidence, and satisfaction. SBRGC seeks to promote and encourage the
18 safe handling and use of firearms. Through this lawsuit, SBRGC represents not
19 only its own interests, but also the interests of its members and supporters of the
20 right to keep and bear arms for lawful purposes.

21 38. SBRGC regularly participates as a party in litigation challenging
22 unlawful restrictions on the right to keep and bear arms. For example, it is currently
23 a named Plaintiff in another gun-related case pending in the Southern District. *See*
24 *B&L Prods. v. Newsom*, No. 21-cv-01718-AJB-KSC, 2022 U.S. Dist. LEXIS
25 148596 (S.D. Cal. Aug. 18, 2022). As a result of Code of Civil Procedure section
26 1021.11, its members fear that the organization would be liable for paying opposing
27 attorney's fees and costs of suit if it continues to pursue gun law challenges as a
28 plaintiff in lawsuits challenging California's often-unconstitutional gun laws, even

1 if the organization substantially prevailed on such suits and achieved the aims of the
2 litigation. Because Section 1021.11 acts as a Bill of Attainder, upon the law's
3 enrollment, SBRGC became liable for all past attorney's fees and costs of its
4 government opponents in the lawsuits it is or has participated in, notwithstanding it
5 may ultimately prevail on that suit.

6 39. Thus, even if SBRGC decided now, or had decided at the moment that
7 Section 1021.11 was enrolled to abandon its current lawsuit, under Section
8 1021.11, it still is liable for all fees and costs of its opponents in those matters. In
9 fact, at this point, if SBRGC abandoned its lawsuit where it still is not yet liable for
10 the government's attorney's fees and costs under Section 1021.11, the fact that
11 SBRGC abandoned that litigation to avoid the possibility of liability for fees and
12 costs would be enough under Section 1021.11 for SBRGC to then be liable for the
13 government's fees and costs once the law took effect on January 1st. Thus,
14 SBRGC, and organizational plaintiffs like it who are currently challenging
15 California's gun laws are in a no-win situation given Section 1021.11's
16 retrospective nature.

17 40. SBRGC's members desire to challenge unconstitutional or other infirm
18 gun laws, of which California has adopted many, particularly following the *Bruen*
19 decision. Section 1021.11 inhibits SBRGC from challenging such laws on
20 members' behalf. Thus, to the extent that members desire to strike down
21 unconstitutional laws through litigation conducted by their organization, Section
22 1021.11 has a chilling effect on such efforts.

23 41. Plaintiff Citizens Committee for the Right to Keep and Bear Arms
24 ("CCRKBA") is a nonprofit organization incorporated in Washington and with its
25 principal place of business in that state. CCRKBA was formed in 1972 and is
26 dedicated to protecting firearms rights. CCRKBA educates grass root activists, the
27 public, legislators and the media about the Second Amendment. Their programs are
28 designed to help all Americans understand the importance of the Second

1 Amendment and its role in keeping Americans free. CCRKBA has a nationwide
2 membership and has members throughout California. CCRKBA has participated in
3 Second Amendment-related litigation in the past and would continue to do so in the
4 future, but for Section 1021.11. For example, CCKRBA is currently a Plaintiff in
5 *Renna v. Bonta*, 535 F. Supp. 3d 931 (S.D. Cal. 2021), a pending case which
6 challenges California’s Handgun Roster.

7 42. Plaintiff Gun Owners of California, Inc. (“GOC”) is a non-profit
8 organization incorporated under the laws of the state of California, with
9 headquarters in El Dorado Hills, California. GOC is dedicated to the restoration of
10 the Second Amendment in California and has participated in Second Amendment-
11 related litigation in the past and would continue to do so in the future, but for
12 Section 1021.11. For example, GOC is a plaintiff in *Junior Sports Magazines, Inc.*
13 *v. Rob Bonta* (Case No. 2:22-cv-05663-CAS), a recently filed case pending in the
14 Central District of California which challenges California’s new unconstitutional
15 restrictions on firearm-related advertising.

16 43. Plaintiff Second Amendment Law Center (2ALC) is a Second
17 Amendment scholarship and legal resource center committed to the preservation of
18 the Second Amendment. Its mission is to reinforce the Second Amendment’s
19 solemn command that our government never unduly restrict law-abiding
20 individuals from responsibly owning and using firearms. 2ALC brings together
21 lawyers, legal and historical scholars, political advisors, and technical experts that
22 have been involved in numerous lawsuits on behalf of non-profit advocacy
23 associations such as the National Rifle Association, the California Rifle & Pistol
24 Association, Gun Owners of California, and many others. 2ALC is a young
25 organization that was expecting to soon begin filing or joining Second Amendment-
26 related lawsuits against California gun laws. Due to Section 1021.11, it cannot do
27 so. As a new organization, it would immediately be bankrupted if it were found to
28 be liable for the State’s legal fees and expenses.

1 44. Plaintiff California Rifle & Pistol Association, Incorporated (“CRPA”)
 2 is a non-profit membership and donor-supported organization qualified as tax-
 3 exempt under 26 U.S.C. § 501(c)(4) with its headquarters in Fullerton, California.
 4 Founded in 1875, the CRPA seeks to defend the civil rights of all law-abiding
 5 individuals, including the fundamental right to bear firearms for lawful purposes,
 6 including the core purpose of self-defense.

7 45. CRPA regularly participates as a party or amicus in litigation
 8 challenging unlawful restrictions on the right to keep and bear arms. As a result of
 9 Code of Civil Procedure section 1021.11, its directors fear that the organization
 10 would be liable for paying opposing attorney’s fees and costs of suit if it continues
 11 to pursue gun law challenges as a plaintiff in lawsuits challenging California’s
 12 often-unconstitutional gun laws, even if the organization substantially prevailed on
 13 such suits and achieved the aims of the litigation.

14 46. CRPA is currently a plaintiff in several lawsuits pending in California
 15 and federal courts challenging California gun laws, including (but not limited to):
 16 *Kim Rhode v. Bonta*, No. 20-55437, 2022 U.S. App. LEXIS 17486 (9th Cir. June
 17 24, 2022); *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (*en banc*), *vacated*,
 18 *remanded*, at *Duncan v. Bonta*, __ U.S. __, 142 S. Ct. 2895 (2022); *B&L Prods. v.*
 19 *Newsom*, No. 21-cv-01718-AJB-KSC, 2022 U.S. Dist. LEXIS 148596, at *3 (S.D.
 20 Cal. Aug. 18, 2022); *Rupp v. Bonta*, No. 19-56004, 2022 U.S. App. LEXIS 18769
 21 (9th Cir. June 28, 2022).⁷ Because Section 1021.11 acts as a Bill of Attainder, upon
 22 the law’s enrollment, CRPA became liable for all past attorney’s fees and costs of
 23 its government opponents in the lawsuits it is or has participated in,
 24 notwithstanding it may ultimately prevail on that suit.

25 47. For example, in the case of *Duncan v. Bonta*, CRPA alleged several
 26 legal theories as to why the law challenged there should be struck down. Although

27 _____
 28 ⁷ A non-comprehensive listing of other active CRPA-backed cases can be found
 here: <<https://crpa.org/programs/litigation-program/>> (as of September 9, 2022).

1 the district court agreed with those theories, the appellate court sitting en banc
2 reversed. *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (*en banc*), *vacated*,
3 *remanded*, at *Duncan v. Bonta*, __U.S.__, 142 S. Ct. 2895 (2022). While the en
4 banc ruling has been vacated and remanded in light of *Bruen* which may give
5 CRPA a legal victory on their Second Amendment claim, the takings clause and
6 due process claims are unlikely to be decided differently on remand. Even if CRPA
7 ultimately succeeds in getting the law stricken in *Duncan*, because Section 1021.11
8 is retrospective, and because CRPA had *some* of its theories defeated, it is deemed
9 to have lost the case under Section 1021.11 and the government is entitled as the
10 prevailing party to seek its attorney's fees and costs of suit from CRPA.

11 48. Thus, even if CRPA decided now, or had decided at the moment that
12 Section 1021.11 was enrolled, to abandon all of its current litigation challenging
13 California's gun laws, under Section 1021.11, it still is liable for all fees and costs
14 of its opponents in those matters. In fact, at this point, if CRPA abandoned those
15 matters where it still is not yet liable for the government's attorney's fees and costs
16 under Section 1021.11, the fact that CRPA abandoned that litigation to avoid the
17 possibility of liability for fees and costs would be enough under Section 1021.11 for
18 CRPA to then be liable on January 1, 2023 for the government's fees and costs for
19 the government's legal efforts prior to the case being abandoned. Thus, CRPA, and
20 organizational plaintiffs like it who are currently challenging California's gun laws
21 are in a no-win situation given Section 1021.11's retrospective nature.

22 49. CRPA's members are also harmed by CRPA's liability for past and
23 future attorney's fees and costs of suit of opponents in gun law cases. Many CRPA
24 members are attorneys who have challenged gun laws in California, or plan to do so
25 in the future, and would be liable for fees under Section 1021.11 CRPA's members
26 desire to challenge unconstitutional or other infirm gun laws, of which California
27 has adopted many, particularly following the *Bruen* decision. Section 1021.11
28 inhibits CRPA from challenging such laws on members' behalf. Thus, to the extent

1 that members desire to strike down unconstitutional laws through litigation
2 conducted by their organization, Section 1021.11 has a chilling effect on such
3 efforts.

4 **Defendants**

5 50. Defendant Robert Bonta is the Attorney General of California. He is
6 the chief law enforcement officer of California. Defendant Bonta is charged by
7 Article V, Section 13 of the California Constitution with the duty to see that the
8 laws of California are uniformly and adequately enforced. Defendant Bonta also
9 has direct supervision over every district attorney and sheriff in all matters
10 pertaining to the duties of their respective officers. Defendant Bonta's duties also
11 include informing the public, local prosecutors, and law enforcement regarding the
12 meaning of the laws of California, including enforcing the law on places where
13 concealed carry is forbidden as defined by SB 918. He is sued in his official
14 capacity.

15 51. The true names or capacities—whether individual, corporate,
16 associate, or otherwise—of the Defendants named herein as Does 1 through 10, are
17 presently unknown to Plaintiffs, and are therefore sued by these fictitious names.
18 Plaintiffs pray for leave to amend this Complaint to show the true names or
19 capacities of these Defendants if and when they have been determined.

20 **JURISDICTION AND VENUE**

21 52. The Court has original jurisdiction of this civil action under 28 U.S.C.
22 § 1331, because the action arises under the Constitution and laws of the United
23 States, thus raising federal questions. The Court also has jurisdiction under 28
24 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 since this action seeks to redress the
25 deprivation, under color of the laws, statutes, ordinances, regulations, customs and
26 usages of the State of California and political subdivisions thereof, of rights,
27 privileges or immunities secured by the United States Constitution and by Acts of
28 Congress.

1 53. Plaintiffs' claims for declaratory and injunctive relief are authorized by
2 28 U.S.C. §§ 2201-2202, and their claim for attorneys' fees is authorized by 42
3 U.S.C. § 1988.

4 54. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2)
5 because a substantial part of the events or omissions giving rise to the claims
6 occurred in this district. Plaintiff Brennan resides within this District. Plaintiff
7 SBRGC is incorporated in and maintains its primary place of business in this
8 District.

9 Contextual Facts

10 55. In *Duncan*, Ninth Circuit Judge VanDyke observed in his dissent that
11 Second Amendment challenges in this circuit (to use a sports analogy) have 0 wins
12 and 50 losses. *Id.*, at 1167, n.8.

13 56. Some of these "losses" occurred prior to *Heller* and *McDonald*. No
14 doubt some cases will be won and lost after *Bruen*. This shifting jurisprudence on
15 the Second Amendment is not anyone's fault. But this does invite (sadly for those
16 litigants who braved the early waters of Second Amendment litigation) the
17 rhetorical question: Can some of the plaintiffs who would now be liable under
18 California Code of Civil Procedure section 1021.11, who already risked money and
19 time, go back and recover prevailing party attorney fees for their "losses" that have
20 been turned into victories after the Supreme Court's corrections to this circuit's
21 mistakes identified in *Heller/McDonald* and now *Bruen*?

22 57. California's gun laws germinated under a state constitution that
23 contains no Second Amendment analog. It took *Heller* and *McDonald* to force
24 California into constitutional compliance with a right to keep and bear arms,
25 already set forth in most other states' constitutions.⁸

26 _____
27 ⁸ "If plaintiffs are implying that a right to bear arms is one of the rights recognized
28 in the California Constitution's declaration of rights, they are simply wrong. No
mention is made in it of a right to bear arms. *See In re Rameriz* (1924) 193 Cal.
633, 651 ("The constitution of this state contains no provision on the subject").

1 58. Prior to *Heller*, *McDonald*, and now *Bruen*, California already had a
2 maze of laws that trenched on Second Amendment rights. Indeed, California’s gun
3 laws had become so complex that even the anti-gun California legislature felt
4 compelled to reorganize and renumber them.⁹

5 59. This recodification grew out of a comprehensive 1100-page study and
6 recommendation¹⁰ by the California Law Revision Commission (“CLRC”). The
7 project was launched after then Governor Schwarzenegger had stated in a veto
8 message:

9 Before a government exercises its power to take away one’s liberty, it
10 should be clear to every person what actions will cause them to forfeit
11 their freedom. Instead of adding to the lengthy and complex area of
12 firearm laws, a reorganization of the current laws should be undertaken
to ensure that statutes that impose criminal penalties are easily
understandable.¹¹

13 60. The need for simplification was described by then Assembly Member
14 Kevin McCarthy as necessary because:

15 Firearms owners, licensed dealers, and law enforcement need to be
16 able to interpret these provisions in order to comply with the law and
17 avoid criminal liability. Ambiguity and confusion do not promote the
public policy goals that those laws were designed to accomplish.

18 . . .

19 Gun owners shouldn’t have to consult an attorney specializing in
20 firearms law just to find out what they need to do to avoid committing
a crime. Law enforcement should have clear, bright line, easily

21 Moreover, “[i]t is long since settled in this state that regulation of firearms is a
22 proper police function. *Galvan v. Superior Court* (1969) 70 Cal. 2d 851, 866; and
see Kasler v. Lockyer, 23 Cal. 4th 472, 481 (2000).

23 ⁹ The Deadly Weapons Recodification Act of 2010. S. BILL 1080, 2010 Cal. Stat.
24 ch. 711 (West).

25 ¹⁰ See California Law Revision Commission - Nonsubstantive Reorganization of
26 Deadly Weapons Statutes. June 2009 ed., <<http://www.clrc.ca.gov/pub/Printed-Reports/Pub233.pdf>> (as of September 12, 2022).

27 ¹¹ The cited language is from the Governor’s veto message on Senate Bill 1140
28 (Scott) (2004), which would have made changes to provisions regulating the
storage of firearms.

1 understandable guidelines on how to enforce these laws. This
 2 resolution is offered in the hope that an independent, expert body of
 3 legal experts can offer up some helpful suggestions on ways that these
 laws can be clarified so that our citizens will be able to determine, with
 relative ease, what the law requires and prohibits in the area of
 firearms regulation.

4 S. FLOOR ANALYSIS OF A. CON. RES. 73 (Cal. Aug. 26, 2006), pp. 4-5.

5 61. The fact is, by 2006 California's gun laws had morphed into a tangled
 6 briar patch of regulations that required consultation with attorneys just so that
 7 ordinary citizens could exercise what would be reaffirmed as a fundamental right in
 8 2008 with the publication of *Heller*. Even after the reorganization was signed into
 9 law, but before it took effect in 2012, the CLRC published a "clean-up" study in
 10 2011, and additional clean-up work was completed in 2012 and 2013.¹²

11 62. The regulatory scheme was so complex that a 62-page single-spaced
 12 cross-reference table is needed just to translate old statutes numbers into the new
 13 statute numbers. This suggests a level of complexity that rivals tax codes and
 14 environmental regulations.¹³

15 63. Furthermore, this monumental effort was achieved solely to re-number
 16 and "simplify" California's gun laws. The project was specifically undertaken
 17 without the objective of making any substantive changes to California gun law. *See*
 18 n.10, *supra*.

19 64. Did this simplification satiate the California legislature? No. In the ten
 20 years since the recodification/simplification took effect in 2012, the California
 21 legislature has not bothered to slowed down, even after the Supreme Court
 22 published *Heller* in 2008 and *McDonald* in 2010. On its Legislative Information
 23

24
 25
 26 ¹² 2011 Cal. Stat. ch. 285, 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal.
 Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 2.

27 ¹³ *See* Nonsubstantive Reorganization of Deadly Weapon Statutes: Disposition of
 28 Existing Law, <[http://www.clrc.ca.gov/pub/Misc-Report/M300-
 Tables/UpdatedDispoTable.pdf](http://www.clrc.ca.gov/pub/Misc-Report/M300-Tables/UpdatedDispoTable.pdf)> (as of September 12, 2022).

1 webpage, a keyword search for bills introduced that include the word “firearm”
 2 yields the following results:

CA Legislative Session:	Firearm Bills Introduced:
2011-2012	156
2013-2014	173
2015-2016	168
2017-2018	191
2019-2020	184
2021-2022	176

3
4
5
6
7
8
9 65. That’s more than one-thousand (1,000) gun control regulations taken
 10 up by the California legislature since the Supreme Court affirmed in *McDonald* that
 11 states’ gun laws are subject to compliance with the Second Amendment. To be sure,
 12 not all these bills became law, though that research would probably produce
 13 surprising results. The point is this: California has become a one-party state, and
 14 that party has decided to defy the U.S. Supreme Court’s holdings on the Second
 15 Amendment.

16 66. Now comes the State of California hoping to achieve though sheer
 17 brute force of confusing, contradictory, and in many instances unconstitutional
 18 legislation, to continue to “lacerate the Second Amendment, deepen[] the wound,
 19 and [bring about its] Death by a Thousand Cuts.” *Teixeira v. Cty. of Alameda*, 873
 20 F.3d 670, 694 (9th Cir. 2017) (*en banc*) (Tallman, J., dissenting).

21 **FACTS APPLICABLE TO ALL CLAIMS**

22 67. California Code of Civil Procedure section 1021.11 was enacted as
 23 part of SB 1327, the “bounty” law that California cynically enacted to copy Texas’s
 24 SB 8 law on abortion. California essentially copied SB 8 word-for-word but
 25 substituted in the word “firearms” everywhere that “abortion” was mentioned.

26 68. Section 1021.11 commands that “notwithstanding any other law” (thus
 27 including even federal laws), “any person, including an entity, attorney, or law firm,
 28 who seeks declaratory or injunctive relief to prevent this state, a political

1 subdivision, a governmental entity or public official in this state, or a person in this
2 state from enforcing any statute, ordinance, rule, regulation, or any other type of
3 law that regulates or restricts firearms, or that represents any litigant seeking that
4 relief, is jointly and severally liable to pay the attorney’s fees and costs of the
5 prevailing party.”

6 69. Under the plain language of Section 1021.11, if anyone seeks to
7 challenge a state or local law in California related to firearms, they and their
8 attorneys must be willing to bear the cost of the government’s attorney’s fees if
9 they are not the prevailing party. And to be the “prevailing party” as defined under
10 Section 1021.11, they must prevail on all claims. Under section 1021.11(b), if the
11 government defendant prevails on *even a single cause of action*, the challenging
12 parties and attorneys are not the prevailing party and must pay the government’s
13 attorney’s fees and costs.

14 70. Under Section 1021.11, fees don’t even need to be obtained in the
15 immediate matter. Under subdivision (c), the government has three years to bring a
16 separate civil action to recover fees and costs. What’s more, if Plaintiffs and their
17 attorneys are sued in such a civil action, under subdivision (d)(2) fees and costs not
18 being granted to defendants in the original matter are *not a defense* to the
19 subsequent civil matter, in violation of basic principles of *res judicata*, collateral
20 estoppel, and federal Supremacy. Defendants could have this Court deny with
21 finality a request for attorney’s fees, yet nonetheless sue Plaintiffs and their
22 attorneys in a state civil action up to three years later to try and retrieve them in that
23 forum, as though this Court’s ruling and judgment on the fees issue was a nullity or
24 merely advisory.

25 71. Additionally, in an outrageous act of contempt for the rule of law and
26 our federal system, Section 1021.11(d)(3) declares that the “court in the underlying
27 action [holding] that any provision of [Section 1021.11] is invalid, unconstitutional,
28 or preempted by federal law” is not enough to bar the subsequent civil action for

1 attorney's fees and costs. California is telling this Court that as far as the State is
2 concerned, the Court's rulings on fee and cost awards aren't worth the paper they
3 are printed on and will be ignored. This Court should not tolerate such defiance.

4 72. Section 1021.11 is an existential threat for the associational Plaintiffs.
5 SBRGC, CRPA, GOC and CCRKBA serve as Plaintiffs in Second Amendment-
6 related lawsuits on behalf of their thousands of members. Critically, they also pay
7 for the expenses of such litigation. If Section 1021.11 is allowed to impact the
8 parties' liability for attorney's fees and costs in those matters, their ability to
9 petition courts to resolve their grievances would be chilled, if not entirely
10 eliminated. The risk of losing on even a single claim and then having to pay the
11 State's attorney's fees and costs would be too great. They also may struggle to find
12 attorneys willing to challenge gun laws, given attorneys are also liable for these
13 expenses under Section 1021.11.

14 73. Section 1021.11 takes effect January 1, 2023, but is retrospective,
15 applying to any lawsuit that that was pending at any point in the three years prior to
16 enactment of the law. That means that matters being currently litigated, and that
17 were filed well before SB 1327 was first proposed, are currently being affected by
18 the law.

19 74. Unsurprisingly, Section 1021.11 is unconstitutional for a number of
20 reasons. It violates the First Amendment by chilling Plaintiffs' right to petition the
21 government for resolution of their grievances. Future plaintiffs may not bring
22 lawsuits out of fear they will need to pay the entirety of the State's expenses if they
23 don't prevail on every claim they bring. The associational Plaintiffs in this matter
24 may have to reconsider this very lawsuit if Section 1021.11 is upheld after it takes
25 effect.

26 75. Because Section 1021.11 is retrospective and is designed to punish
27 those who previously filed lawsuits challenging California's gun laws and deter
28 them from filing future lawsuits, Section 1021.11 constitutes an unlawful Bill of

1 Attainder.

2 76. Section 1021.11 additionally violates Plaintiffs' Fourteenth
3 Amendment Due Process right by interfering in the attorney-client relationship as
4 well as the right to counsel of one's choosing. Because Section 1021.11 imposes a
5 monetary liability tilted heavily in the State's favor on not just plaintiffs but on their
6 attorneys as well, the choice of counsel willing to take on Second Amendment
7 cases in California will be severely curtailed, and existing counsel may decide not
8 to proceed further. This is unacceptable, as litigants freely choosing their counsel is
9 a very basic right.¹⁴

10 77. Section 1021.11 also insults Equal Protection by singling out plaintiffs
11 bringing Second Amendment claims without a compelling reason for doing so. The
12 State may not treat one constitutional right as disfavored compared to the rest. And
13 in this case, it has not even a rational basis for doing so, inasmuch as it is tilting the
14 playing field in favor of the government, an entity that is better able to bear the
15 burden of litigating civil rights matters than the plaintiffs whose rights are being
16 vindicated.

17 78. Most egregiously, however, Section 1021.11 violates the
18 Constitution's Supremacy Clause. U.S. CONST. Art. VI, Cl. 2. Congress has decided
19 that the purview of deciding attorney fee awards in federal civil rights cases are the
20 federal courts that decide those matter. *See* 42 U.S.C. § 1988 (2022). Several courts
21 have recognized that in Congress doing so, Section 1988 takes supremacy over any
22 state laws purporting to alter the outcome of a fee award granted or denied under
23 Section 1988. "We agree with the Fifth Circuit that a state cannot frustrate the

24 _____
25 ¹⁴ "While right to counsel in the criminal and civil context are not identical, a civil
26 litigant does have a constitutional right, deriving from due process, to retain hired
27 counsel in a civil case." *Gray v. New England Tel. & Tel. Co.*, 792 F.2d 251, 257
28 (1st Cir. 1986); "Given the constitutional dimension of the right to select counsel . . .
the presumption must be in favor of the party's choice of counsel and may not be
overridden absent compelling reasons." *Lehtonen*, No. 2:04-cv-00625-KJD-GWF,
2007 U.S. Dist. LEXIS 118124, at *19 (D. Nev. Dec. 18, 2007).

1 intent of section 1988 by setting up state law barriers to block enforcement of an
2 attorney's fees award.” *Spain v. Mountanos*, 690 F.2d 742, 746 (9th Cir. 1982); *see*
3 *also Brinn v. Tidewater Transp. Dist. Comm'n*, 242 F.3d 227, 233 (4th Cir. 2001).

4 79. Even California state courts have long since addressed this question.
5 “It follows from [the legislative history of Section 1988] and from the Supremacy
6 Clause that the [attorneys] fee provision is part of the § 1983 remedy whether the
7 action is brought in federal or state court.” *Green v. Obledo*, 161 Cal. App. 3d 678,
8 682-83 (1984). *See also Gatto v. Cty. of Sonoma*, 98 Cal. App. 4th 744, 764
9 (2002)). Section 1021.11 ignores both state and federal precedent in bypassing the
10 supremacy of Section 1988 in determining civil rights fee awards.

11 80. Finally, because of the grave constitutional violations inherent in
12 Section 1021.11, writ relief against Section 1021.11 is appropriate under the All
13 Writs Act. Under that Act, federal courts “may issue all writs necessary or
14 appropriate in aid of their respective jurisdictions and agreeable to the usages and
15 principles of law.” 28 U.S.C. § 1651(a) (2022). It is appropriate that this Court
16 issue a writ directing and preventing Defendants from commencing or entertaining
17 any action, or entering any order or judgment, that would undermine any order,
18 ruling, determination, or judgment made by this Court or any other federal court
19 under Section 1988. As further relief, this Court should issue declaratory relief to
20 Plaintiffs and issue a permanent injunction barring all Defendants from enforcing
21 Section 1021.11.¹⁵

22
23
24
25
26 ¹⁵ The Anti-Injunction Act is not a limitation on this Court in this circumstances.
27 Writs are appropriately issues when “expressly authorized by Act of Congress, or
28 where necessary in aid of [the court’s] jurisdiction, or to protect or effectuate [the
court’s] judgments.” *Ocean Thermal Energy Corp. v. Coe*, No. LACV19-05299-
VAP-JPR, 2020 U.S. Dist. LEXIS 242115, at *10 (C.D. Cal. Nov. 16, 2020), citing
28 U.S.C. § 2283 (2022).

INJUNCTIVE RELIEF ALLEGATIONS

1
2 81. Injunctive relief is necessary to prevent the State from enforcing
3 California Code of Civil Procedure section 1021.11’s attorney’s fee and cost
4 shifting statute.

5 82. If not enjoined, Section 1021.11 will chill Plaintiffs’ ability to proceed
6 on preexisting and future Second Amendment lawsuits, because of the risks of the
7 government’s attorney’s fees and costs of suit being imposed on them if they lose
8 on *any* of their claims.

9 83. The injunctive relief sought would eliminate that irreparable harm and
10 allow Plaintiffs to exercise their right to petition courts for redress of their
11 constitutional rights. Accordingly, injunctive relief is appropriate.

12 **FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
13 **U.S. CONST. ART. 1, § 3, CL. 9;**
14 **U.S. CONST. ART. 1, § 10, CL. 1;**
15 **UNLAWFUL BILL OF ATTAINDER**
16 **42 U.S.C. § 1983**
17 **AGAINST ALL DEFENDANTS**

18 84. Plaintiffs hereby re-allege and incorporate by reference the allegations
19 in the foregoing paragraphs as if set forth fully herein.

20 85. California Code of Civil Procedure section 1021.11 makes Plaintiffs
21 and their counsel financially liable for the State’s attorney’s fees and costs if they
22 lose on even a single cause of action in firearm-related cases. Section 1021.11
23 applies to cases existing at the time of its enrollment as a law, meaning that cases
24 currently being litigated by Plaintiffs and others are subject to the law, even if
25 Plaintiffs abandoned those cases at the time Section 1021.11 was enrolled as a law.

26 86. The imposition of liability for attorney’s fees and costs for cases
27 preexisting the enrollment of Section 1021.11 is designed to discourage persons and
28 organizations who have challenged unconstitutional or otherwise infirm gun laws.
It has no purpose in its design beyond that.

87. Under California law and policy, attorneys are only liable for the fees

1 and costs of an opponent as a sanction for behavior deemed by the trier of fact to be
2 abnormal or improper by the attorney. Further, liability of the attorney for fees and
3 costs as a sanction is always in the discretion of the trier of fact. Thus, only in
4 instances where the attorney has been adjudged by the court to have engaged in
5 some malfeasance or other act justifying the imposition of the fees and costs on the
6 attorney as a punishment may liability for such fees and costs be imposed.

7 88. Section 1021.11 makes imposition of such fees mandatory, disallowing
8 the discretion judges have to assess the culpability of the attorney for any
9 abnormality or malfeasance by that attorney in representing a party who has
10 challenged a gun law.

11 89. In making current litigants liable for attorney's fees and costs of
12 opponents for preexisting litigation as a punishment for having brought or
13 maintained those suits, Section 1021.11 operates as a Bill of Attainder. In making
14 the attorneys of current litigants liable for attorney's fees and costs of opponents for
15 preexisting litigation as a punishment for having represented those plaintiffs who
16 brought or maintained those suits, Section 1021.11 operates as a Bill of Attainder.

17 90. Plaintiffs are thus entitled to declaratory and injunctive relief striking
18 the retrospective provisions of Section 1021.11 as unlawful Bills of Attainder.

19 **SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
20 **U.S. CONST. AMEND. I**
21 **RIGHT TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES**
22 **42 U.S.C. § 1983**
23 **AGAINST ALL DEFENDANTS**

24 91. Plaintiffs hereby re-allege and incorporate by reference the allegations
25 in the foregoing paragraphs as if set forth fully herein.

26 92. California Code of Civil Procedure section 1021.11 makes Plaintiffs
27 and their counsel financially liable for the State's attorney's fees and costs if they
28 lose on even a single cause of action in a lawsuit challenging firearm laws or
regulations, notwithstanding that this Court may determine Plaintiffs to be
prevailing parties on the matter or make an award or denial of an award on the

1 matter.

2 93. This has the effect of chilling Plaintiffs’ First Amendment right to
3 petition the government for redress of their grievances on firearms-related cases,
4 because they will be too afraid of having to pay the enormous expense of the State’s
5 legal fees and costs.

6 94. The First Amendment right to petition government for redress of
7 grievances is fundamental: “We start with the premise that the rights to assemble
8 peaceably and to petition for a redress of grievances are among the most precious of
9 the liberties safeguarded by the Bill of Rights.” *United Mine Workers v. Ill. State*
10 *Bar Ass’n*, 389 U.S. 217, 222 (1967).

11 95. Defendants are thus propagating customs, policies, and practices that
12 deprive California residents, including Plaintiffs, of their constitutional right to
13 petition the government for redress of their grievances, as guaranteed by the First
14 Amendment.

15 96. Defendants cannot satisfy their burden to justify these customs,
16 policies, and practices that violate due process.

17 97. Plaintiffs are thus entitled to declaratory and injunctive relief against
18 such unconstitutional customs, policies, and practices.

19 **THIRD CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
20 **U.S. CONST. AMEND. XIV**
21 **DUE PROCESS (INTERFERENCE WITH ATTORNEY-CLIENT**
22 **RELATIONSHIP AND RIGHT TO COUNSEL)**
23 **42 U.S.C. § 1983**
24 **AGAINST ALL DEFENDANTS**

25 98. Plaintiffs hereby re-allege and incorporate by reference the allegations
26 in the foregoing paragraphs as if set forth fully herein.

27 99. California Code of Civil Procedure section 1021.11 makes Plaintiffs
28 *and their counsel* financially liable for the State’s attorney’s fees and costs if they
lose on even a single cause of action in firearm-related cases.

100. This makes it much more difficult for Plaintiffs to acquire counsel of

1 their choosing in firearm-related cases, because attorneys who currently represent
2 Plaintiffs, as well as future possible counsel who may represent Plaintiffs, will
3 choose not to proceed with the representation any longer as to Second Amendment
4 cases out of fear of being liable for the State's legal fees. In this way, Section
5 1021.11 violates Plaintiffs' due process both by interfering with their right to
6 counsel of their choosing and by interfering with existing attorney-client
7 relationships.

8 101. Defendants are thus propagating customs, policies, and practices that
9 deprive California residents, including Plaintiffs, of their constitutional right to
10 counsel and their right to have their attorney-client relationships not disrupted by
11 the government, as guaranteed by the Fourteenth Amendment.

12 102. Defendants cannot satisfy their burden to justify these customs,
13 policies, and practices that violate due process.

14 103. Plaintiffs are thus entitled to declaratory and injunctive relief against
15 such unconstitutional customs, policies, and practices.

16 **FOURTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
17 **U.S. CONST. AMEND. XIV**
18 **EQUAL PROTECTION**
19 **42 U.S.C. § 1983**
20 **AGAINST ALL DEFENDANTS**

21 104. Plaintiffs hereby re-allege and incorporate by reference the allegations
22 in the foregoing paragraphs as if set forth fully herein.

23 105. California Code of Civil Procedure section 1021.11 makes Plaintiffs
24 and their counsel financially liable for the State's attorney's fees and costs if they
25 lose on even a single cause of action in firearm-related cases.

26 106. The State of California therefore discriminates against Plaintiffs just
27 because they bring Second Amendment claims challenging gun laws, treating them
28 very differently from other litigants who seek to vindicate any other constitutional
right.

107. While gun owners and Second Amendment litigants are not a

1 recognized protected class, federal caselaw has long “recognized successful equal
2 protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has
3 been intentionally treated differently from others similarly situated and that there is
4 no rational basis for the difference in treatment.” *Willowbrook v. Olech*, 528 U.S.
5 562, 564 (2000).

6 108. There is no rational basis for disparate treatment of litigants based on
7 which constitutional right they seek to vindicate, and because of that, Section
8 1021.11 violates Plaintiffs’ rights to Equal Protection under the Fourteenth
9 Amendment.

10 109. Defendants are thus propagating customs, policies, and practices that
11 deprive California residents, including Plaintiffs, of their right to equal protection,
12 as guaranteed by the Fourteenth Amendment.

13 110. Defendants cannot satisfy their burden to justify these customs,
14 policies, and practices that violate equal protection.

15 111. Plaintiffs are thus entitled to declaratory and injunctive relief against
16 such unconstitutional customs, policies, and practices.

17 **FIFTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
18 **U.S. CONST. ART. VI, CL 2**
19 **SUPREMACY CLAUSE**
20 **42 U.S.C. § 1983**
21 **AGAINST ALL DEFENDANTS**

22 112. Plaintiffs hereby re-allege and incorporate by reference the allegations
23 in the foregoing paragraphs as if set forth fully herein.

24 113. California Code of Civil Procedure section 1021.11 makes Plaintiffs
25 and their counsel financially liable for the State’s attorney’s fees and costs if they
26 lose on even a single cause of action in firearm-related cases.

27 114. Section 1021.11 commands that “*notwithstanding any other law,*”
28 “any person, including an entity, attorney, or law firm, who seeks declaratory or
injunctive relief to prevent this state, a political subdivision, a governmental entity
or public official in this state, or a person in this state from enforcing any statute,

1 ordinance, rule, regulation, or any other type of law that regulates or restricts
2 firearms, or that represents any litigant seeking that relief, is jointly and severally
3 liable to pay the attorney’s fees and costs of the prevailing party.”

4 115. Section 1021.11 is not limited to California state court cases and
5 makes no exceptions for federal litigation.

6 116. Section 1021.11 also declares that the “court in the underlying action
7 [holding] that any provision of [Section 1021.11] is invalid, unconstitutional, or
8 preempted by federal law” is not enough to bar a subsequent civil action for
9 attorney’s fees and costs.

10 117. All of this is in plain violation of the federal Supremacy Clause found
11 in Article Six of the Constitution. It has been long decided that 42 U.S.C. § 1988—
12 and only Section 1988—governs attorney’s fee awards in cases brought under 42
13 U.S.C. § 1983. California Code of Civil Procedure section 1021.11 thus frustrates
14 the aim of federal law and is void.

15 118. Defendants are thus propagating customs, policies, and practices that
16 violate the Supremacy Clause of the U.S. Constitution.

17 119. Defendants cannot satisfy their burden to justify these customs,
18 policies, and practices that violate the Supremacy Clause.

19 120. Plaintiffs are thus entitled to declaratory and injunctive relief against
20 such unconstitutional customs, policies, and practices.

21 **SIXTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
22 **VOID FOR VAGUENESS**
23 **U.S. CONST. AMEND XIV**
24 **42 U.S.C. § 1983**
25 **AGAINST ALL DEFENDANTS**

26 121. Plaintiffs hereby re-allege and incorporate by reference the allegations
27 in the foregoing paragraphs as if set forth fully herein.

28 122. The Fourteenth Amendment to the United States Constitution
guarantees due process by requiring adequate guidance to those who would be
law-abiding that they may have a reasonable opportunity to know what is

1 prohibited. Vague statutes are thus prohibited because they impermissibly
2 delegate basic policy matters to law enforcement, judges, and
3 juries on an ad hoc and subjective basis.

4 123. California Code of Civil Procedure section 1021.11, which burdens
5 plaintiffs who challenge or want to challenge unconstitutional or otherwise
6 impermissible laws by making them responsible for attorney’s fees and costs of the
7 government if those plaintiffs are not 100 percent successful, is so vague that a
8 person of ordinary intelligence cannot understand its scope, which renders it subject
9 to arbitrary enforcement. The potential for arbitrary and inconsistent application of
10 the exercise of the right to petition courts for redress of grievances against
11 California firearms laws violates the guarantee of due process of law in the
12 Fourteenth Amendment of the U.S. Constitution.

13 124. As but one example, because Section 1021.11 applies to any litigation
14 challenge to “any statute, ordinance, rule, regulation, or any other type of law that
15 regulates or restricts firearms,” it is unclear whether this challenge to Section
16 1021.11 itself, which arguably “regulates” firearms by discouraging lawsuits
17 challenging firearms restrictions, comes within the ambit of Section 1021.11, thus
18 obligating these Plaintiffs to pay the State’s attorney’s fees and costs of suit if they
19 do not prevail 100 percent on this matter.

20 125. Section 1021.11 is accordingly void for vagueness, both facially and as
21 applied against the individual Plaintiffs in this action.

22 126. Defendants are thus propagating customs, policies, and practices that
23 deprive California residents, including Plaintiffs, of their right to due process, as
24 guaranteed by the Fourteenth Amendment.

25 127. Defendants cannot satisfy their burden to justify these customs,
26 policies, and practices that violate due process.

27 128. Plaintiffs are thus entitled to declaratory and injunctive relief against
28 such unconstitutional customs, policies, and practices.

1 **SEVENTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
2 **ALL WRITS ACT**
3 **28 U.S.C. § 1651**
4 **AGAINST ALL DEFENDANTS**

5 129. Plaintiffs hereby re-allege and incorporate by reference the allegations
6 in the foregoing paragraphs as if set forth fully herein.

7 130. California Code of Civil Procedure section 1021.11 makes Plaintiffs
8 and their counsel financially liable for the State’s attorney’s fees and costs if they
9 lose on even a single cause of action in firearm-related cases.

10 131. Section 1021.11 commands that “*notwithstanding any other law,*”
11 “any person, including an entity, attorney, or law firm, who seeks declaratory or
12 injunctive relief to prevent this state, a political subdivision, a governmental entity
13 or public official in this state, or a person in this state from enforcing any statute,
14 ordinance, rule, regulation, or any other type of law that regulates or restricts
15 firearms, or that represents any litigant seeking that relief, is jointly and severally
16 liable to pay the attorney’s fees and costs of the prevailing party.”

17 132. Section 1021.11 is not limited to California cases and makes no
18 exceptions for federal litigation.

19 133. Section 1021.11 also declares that the “court in the underlying action
20 [holding] that any provision of [Section 1021.11] is invalid, unconstitutional, or
21 preempted by federal law” is not enough to bar a subsequent civil action for
22 attorney’s fees and costs.

23 134. Plaintiffs are entitled under the All Writs Act to declaratory and
24 injunctive relief against Defendants enjoining enforcement of Section 1021.11 as
25 well as enjoining State from taking any action in a state court that would
26 undermine, alter, nullify, or impair the enforcement or effect of any judgment,
27 ruling, order, or award this Court makes as to a prevailing party and the
28 determination of attorney’s fees and costs of suit under 42 U.S.C. § 1988.

PRAYER

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. A declaration that California Code of Civil Procedure section 1021.11 is an unlawful and unenforceable Bill of Attainder;
2. A declaration that California Code of Civil Procedure section 1021.11 violates the Supremacy Clause;
3. A declaration that California Code of Civil Procedure section 1021.11 violates the First Amendment;
4. A declaration that California Code of Civil Procedure section 1021.11 violates the Fourteenth Amendment;
5. An order permanently enjoining Defendants from enforcing California Code of Civil Procedure section 1021.11 in all other matters;
6. Costs of suit, including attorney’s fees and costs pursuant to 42 U.S.C. § 1988; and
7. All other relief the court deems appropriate.

Dated: September 28, 2022

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
 C.D. Michel
 Counsel for Plaintiffs South Bay Rod & Gun Club, Inc. Gary Brennan, Cory Henry, Patrick Lovette, Virginia Duncan, Randy Ricks, Gun Owners of California, Second Amendment Law Center, and California Rifle and Pistol Association, Incorporated
 e-mail: cmichel@michellawyers.com

Dated: September 28, 2022

LAW OFFICES OF DON KILMER

s/ Don Kilmer
 Don Kilmer
 Counsel for Plaintiff Citizens Committee for the Right to Keep and Bear Arms