

To Sue or Not to Sue: What Everyone Must Know as of January 2023

People who were affected by the DOJ's leak of the confidential CCW information of roughly 200,000 people in June of 2022 have multiple courses of action to choose from as of January 2023.

As explained in previous CRPA updates, California law requires people who may want to sue a public entity like the DOJ to submit a letter to the DOJ explaining the event that gave rise to the suit, what causes of action are likely to arise from it, and what damages the person suffered.

The deadline to do that was within six months of the June 2022 leak (December 2022). There are limited excuses for not having done so already, but they are hard to qualify for. So, if you didn't submit that letter, you have likely lost your right to sue the DOJ at this point. If you did submit that letter, the DOJ either rejected your claims with a letter to you informing you of the rejection or did nothing within 45 days. A claim is considered rejected by operation of law if you do not receive a written response within 45 days. Rejection by letter gives you 6 months to sue from the date you received the letter but if the DOJ does not send a letter you have two years from the date of the injury.

CRPA will not be doing a class action lawsuit. CRPA is **not** spearheading a class action lawsuit arising from the leak. CRPA has determined that a class action lawsuit is not viable. There was another attempt at a class action by another group and that attempt failed in the beginning stages. Unfortunately, the law is complicated and often does not align with intuitive expectations.

The primary issue is that class actions require that the members of the class all essentially have the same type of damages and the same measurement of damages, which is not the situation here. But that does not mean that individuals have no shot at justice at all. CRPA is aware that an out-of-state-based firearms rights advocacy group has filed a class action, but will not be commenting on that lawsuit any further at this time.

If you want to proceed with a lawsuit, there are several considerations you need to be aware of:

- 1) Whether to pursue a lawsuit essentially depends on what you're trying to achieve with the lawsuit and your chance of success at achieving it. This usually means getting money, but not always. If you want money (i.e. "damages" in legal ease) then you have to be able to prove the extent of your damages. Conjectural damages are not going to get you anything.
 - a. If you felt compelled to spend money to increase your security precautions, that may be a form of damages you could be compensated for.
 - b. If you suffered a lot of anxiety and concern about the leak, and there's some way to show that you really did suffer other than just your word that you did, then you may be entitled to damages compensation for that as well. Your word alone is not necessarily worth nothing, but it's likely not worth what you might think it should be worth.

- 2) Ordinary citizens have a weaker argument in establishing damages arising from the leak than people whom California law acknowledges have a heightened privacy interest in their private information because of the proximity to danger that accompanies their work. Think law enforcement, judges, prosecutors, prison guards, and other people in the criminal justice system who interact with dangerous people who may harbor grudges or seek revenge.
- 3) Generally, lawyers get paid in cash for time worked or they get paid on contingency. Contingency is how virtually all personal injury/tort lawyers work. Usually, contingency agreements provide that if the case earns money the lawyer keeps anywhere between 30-45%, but earns nothing if the case is not successful. Given that, such attorneys are unlikely to take cases that pose difficulties in establishing damages or that present low potential damages recovery. It simply doesn't make sense to take cases that are unlikely to pay and that won't pay well even if they do succeed. And if a case doesn't present big damages recovery potential, then paying a lawyer to litigate the case means you are virtually guaranteed to spend more on the case than you would ever recover in damages. Sometimes people want justice at any cost and are willing to pay for it, but that is very rare because it takes deep pockets.
 - a. Contingency lawyers are more likely to take cases when there is a statute that allows them to recover attorneys' fees for successfully bringing a lawsuit. Ordinarily, in the United States, parties pay their own attorneys fees win, lose, or draw. The only exceptions are statutes that say otherwise or when parties contractually agree for attorneys fees to be recovered.
 - b. California has a law, under the Information Privacy Act, that authorizes an attorney to recover fees. (Cal. Civ. Code § 1798.48). However, this is money that goes to the attorney, not to the client.
- 4) This means that for most people, a small claims action is probably the best option if you still want to take the DOJ to court. Small claims proceedings are very informal. The rules of evidence and civil procedure largely do not apply. If you are the plaintiff in a small claims action, you are not allowed to appeal your loss. Only a defendant can appeal. You are not allowed to be represented by an attorney either, so you will be on your own. These cases are very cheap to initiate, and you will have a hearing/trial relatively quickly.
 - a. CRPA has created a sample memorandum of points and authorities to append to your small claims complaint. This will explain the legal basis for the DOJ's liability. Download it here.
 - b. Unfortunately, a person who represents themselves in a small claims action **cannot** get attorneys fees under § 1798.48. A person must be a licensed attorney to recover attorneys fees; merely acting as your own attorney (this is called "pro per" or "in propria persona" in legal ease) will not qualify you to get attorneys fees.
- 5) The DOJ hired a law firm to investigate the leak and that law firm wrote an extensive report on what it learned. You can, and should, read that report here:
<https://oag.ca.gov/system/files/attachments/press-docs/ca-doj-report.pdf>

Conclusion: Suing the DOJ in small claims court is probably your best bet. CRPA and our attorneys cannot answer every individual's questions one by one. However, there is a landing page where we are attempting to keep information relevant for you, there is a sample complaint and more information located on this same page and there you should consult with an attorney and to see if you have a strong enough damages situation to warrant a lawsuit.

You can view the CRPA landing page with all information at <https://crpa.org/ca-doj-dox-gate/>