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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  
ASSOCIATION, INCORPORATED,

23 Plaintiffs,

24 v.

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

27 Defendants.  
28

**CASE NO: 3:22-cv-01461-RBM-WVG**

**DECLARATION OF ALAN  
GOTTLIEB OF CCRKBA IN  
SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

DATE: November 21, 2022  
COURTROOM: 5B

**DECLARATION OF ALAN GOTTLIEB**

1  
2 1. I, ALAN GOTTLIEB, declare that I am the chairman of the Citizens  
3 Committee for the Right to Keep and Bear Arms (“CCRKBA”), a plaintiff in the  
4 above-entitled action. I make this declaration of my own personal knowledge and,  
5 if called as a witness, I could and would testify competently to the truth of the  
6 matters set forth herein. I have been authorized to make this declaration on behalf  
7 of CCRKBA.

8 2. CCRKBA is a nonprofit organization incorporated in Washington and  
9 with its principal place of business in that state. CCRKBA was formed in 1972 and  
10 is dedicated to protecting firearms rights. CCRKBA educates grass root activists,  
11 the public, legislators and the media about the Second Amendment. Their programs  
12 are designed to help all Americans understand the importance of the Second  
13 Amendment and its role in keeping Americans free. CCRKBA has a nationwide  
14 membership and has members throughout California.

15 3. CCRKBA has participated in Second Amendment-related litigation in  
16 California in the past and would continue to do so in the future, but for CCP §  
17 1021.11. For example, CCKRBA is currently a plaintiff in *Renna v. Bonta*, 535 F.  
18 Supp. 3d 931 (S.D. Cal. 2021), a pending case which challenges California’s  
19 Handgun Roster. As this case was being filed, CCRKBA’s lawyers in the *Renna*  
20 case (we are represented by a different firm in this matter) negotiated a waiver of  
21 attorney fees and costs under § 1021.11. The existence of that waiver highlights,  
22 rather than diminishes, the dangers of that statute. CCRKBA remains exposed to  
23 the risks posed by § 1021.11 in any future challenges in which the California  
24 Attorney General’s Office elects to forego such negotiations.

25 4. CCP § 1021.11 has put CCRKBA in extreme financial danger. Under  
26 that law, if we are not successful in all our claims in gun-related litigation, it is  
27 possible that CCRKBA could be found to be liable (together with its attorneys and  
28 the other plaintiffs) for the State’s attorney’s fees and costs.

1           5.       To our understanding, this law applies to existing cases because  
2 §1021.11 is not just limited to cases filed after its effective date. This law's *ex post*  
3 *facto* effect allows California to recover fees in cases that were already resolved up  
4 to three years ago. This would ensnare some of the lawyers CCRKBA has used  
5 even in cases in which CCRKBA was not a named party. If the lawyers we use on a  
6 regular basis, because of their experience and familiarity with this area of law drop  
7 out of pending litigation, or refuse to take future cases, the loss of this resource of  
8 experienced attorneys would deprive CCRKBA of the advocates we want to hire  
9 for future cases.

10           6.       Before § 1021.11 was signed into law, CCRKBA's understanding and  
11 experience was that if we managed to get an unconstitutional law enjoined under  
12 any legal theory, we would have been considered the prevailing party under federal  
13 law and entitled to ask the court to recoup our attorney's fees and costs. With the  
14 State being declared the de facto prevailing party under § 1021.11's perverse rules,  
15 for merely knocking out any one of the legal theories plead in any given case, we  
16 anticipate the State's fees and costs would be ruinous to our ability to challenge  
17 unconstitutional policies by state and local governments in California.

18           7.       CCRKBA has closely monitored all Second Amendment litigation in  
19 the United States. Prior to the U.S. Supreme Court's landmark decision in in  
20 *District of Columbia v. Heller*, 554 U.S. 570 (2008), and even after its publication,  
21 CCRKBA has been witness to Second Amendment litigants losing case after case  
22 that they should have won. Yet it was only through the persistence of our  
23 organization and those of our co-plaintiffs in continuing to bring challenges against  
24 unconstitutional laws that we prevailed. That persistence has finally paid off. On  
25 June 23, 2022, the U.S. Supreme Court issued its opinion in *N.Y. State Rifle &*  
26 *Pistol Ass'n v. Bruen*, \_\_U.S.\_\_, 142 S.Ct. 2111 (2022).

27           8.       It should be noted that *Bruen* itself did not purport to alter Second  
28 Amendment jurisprudence. That is primarily because *Bruen* articulated principles

1 of adjudication and an approach to analyzing the Second Amendment that the  
2 Supreme Court had already set out in *District of Columbia v. Heller*, 554 U.S. 570  
3 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). *Bruen* at 2126.

4 9. The Supreme Court's justification for issuing what can be viewed as a  
5 remedial (6-3) decision can be traced to the lower federal courts, and some state  
6 courts, ignoring, and in some cases defying, the mode of analysis announced in  
7 *Heller* and *McDonald*. *Bruen* at 2126 *et. seq.*

8 10. In point of fact, the Ninth Circuit and some of the District Courts  
9 located in California, were among the most egregious of the lower courts requiring  
10 remediation. For example, in *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021)(en  
11 banc), *vacated, remanded, at Duncan v. Bonta*, \_\_U.S.\_\_, 142 S. Ct. 2895 (2022),  
12 Judge VanDyke observed in his dissent that Second Amendment challenges in this  
13 circuit (to use a sports analogy) have 0 wins and 50 losses. *Id.*, at fn 8., 1167. He  
14 found this to be evidence of something more than unusually bad luck.

15 11. Between *McDonald* (2010) and *Bruen* (2022) the Ninth Circuit has  
16 been chastised in certiorari denials by the principal author of *Bruen*. See: *Silvester*  
17 *v. Becerra*, \_\_U.S.\_\_, 138 S. Ct. 3020 (2018), *Peruta v. California*, \_\_U.S.\_\_, 137  
18 S. Ct. 1995 (2017), and *Jackson v. City & Cnty. of San Francisco*, 576 U.S. 1013  
19 (2015). Each of these cases was decided under a now discredited legal theory. Still,  
20 the government was named the prevailing party, and under CCP § 1021.11 the  
21 plaintiffs in those cases would have been penalized. Yet the holdings in all of those  
22 cases are constitutionally suspect in a post-*Bruen* legal landscape.

23 12. The *Bruen* Court expressly rejected the two-step approach to Second  
24 Amendment claims first announced in this circuit in *United States v. Chovan*, 735  
25 F.3d 1127 (9th Cir. 2013), *pet. cert. denied at Chovan v. United States*, 574 U.S.  
26 878 (2014). That two-part test was carried forward in *Mai v. United States*, 952  
27 F.3d 1106 (9th Cir. 2020), *en banc review denied at 974 F.3d 1082* (9th Cir. 2020),  
28 *cert. denied at 2021 U.S. Lexis 2191* (2021). *Mai* is now no longer good law.

1           13. The point of this recitation is to illustrate that being wrong in a legal  
2 challenge is not evidence of wrong-doing that must be financially punished. The  
3 reversal of outcomes in Second Amendment litigation in this circuit that will be  
4 precipitated by *Bruen* will also result in reversing the prevailing parties in most of  
5 the 50 Second Amendment losses in this circuit observed by Judge VanDyke in  
6 *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021)(en banc), *vacated, remanded, at*  
7 *Duncan v. Bonta*, \_\_U.S.\_\_, 142 S. Ct. 2895 (2022).


8           14. Whether CCRKBA should abandon principled challenges (in which  
9 their theory of the Second Amendment was vindicated in *Bruen*) to California's  
10 overbearing and often unconstitutional gun laws is a dilemma that even CCRKBA  
11 cannot intelligently answer at this point.

12           15. Even with the result obtained in *Bruen*, and the remand of cases like  
13 *Duncan* to the District Court bodes well for CCRKBA's efforts, CCP § 1021.11  
14 raises the stakes of litigation and chills the right to seek redress in a court of law.

15           16. If CCP § 1021.11 is not enjoined, CCRKBA may have to cease  
16 bringing new lawsuits in California. If that happens, CCRKBA's access to the court  
17 system to challenge California gun laws, as well as the access of the tens of  
18 thousands of members it represents, will effectively be eliminated. Even if  
19 CCRKBA's board was willing to risk bankruptcy to file gun law challenges, under  
20 CCP § 1021.11's prevailing party standard its attorneys would not be willing to  
21 take that risk, nor should they have to represent their clients under a regime that  
22 mandates an inherent conflict between attorney and client.

23           I declare under penalty of perjury of the laws of the State of California and  
24 the United States that the foregoing is true and correct.

25 Executed on October 10, 2022.

26   
27 Alan Gottlieb, for CCRKBA  
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