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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

28 Defendants.

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

**DECLARATION OF RICHARD
MINNICH OF CRPA IN SUPPORT
OF PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

DATE: November 21, 2022
COURTROOM: 5B

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DECLARATION OF RICHARD MINNICH

1. I, Richard Minnich, am the Treasurer of the California Rifle & Pistol Association, Incorporated ("CRPA"), a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein. I have been authorized to make this declaration on behalf of the Directors of CRPA.

2. CRPA is a non-profit membership organization classified as a non-profit public benefit corporation under section 501(c)(4) of the Internal Revenue Code and incorporated under the laws of California. CRPA's headquarters are in Fullerton, California.

3. Founded in 1875, CRPA seeks to defend the Second Amendment and advance laws that protect the rights of individual citizens. CRPA works to preserve the constitutional and statutory rights of gun ownership, including the right to self defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to promoting the shooting sports, and providing education, training, and organized competition for adult and junior shooters. CRPA's members include law enforcement officers, prosecutors, professionals, firearm experts, and members of the public.

4. CRPA is currently a plaintiff in several lawsuits pending in California and federal courts challenging California gun laws, including (but not limited to): *Kim Rhode v. Bonta*, No. 20-55437, 2022 U.S. App. LEXIS 17486 (9th Cir. June 24, 2022); *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (*en banc*), *vacated, remanded, at Duncan v. Bonta*, __ U.S. __, 142 S. Ct. 2895 (2022); *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); *Rupp v. Bonta*, No. 19-56004, 2022 U.S. App. LEXIS 18769 (9th Cir. June 28, 2022).

5. These examples, along with the several other cases Plaintiff CRPA is involved in that relate to gun laws, now put CRPA in extreme financial danger due

1 to the newly enacted California Code of Civil Procedure section 1021.11. Under
2 that law, if we are not successful in all our claims in gun-related litigation, it is
3 possible that CRPA could be found to be liable (together with its attorneys and the
4 other Plaintiffs) for the State's attorney's fees and costs. To our understanding, this
5 applies to existing cases because section 1021.11 is not limited to cases filed after
6 its effective date.

7 6. As one example of a case in which we understand we will now be
8 liable even though the case was filed before Section 1021.11 was proposed, signed,
9 or will take effect is *Duncan v. Bonta*, a challenge to California's ban on the
10 possession of firearm magazines with a capacity to hold more than 10 rounds of
11 ammunition. We prevailed on our claims in that matter in the District Court and
12 again primarily prevailed in front of a three-judge panel of the Ninth Circuit Court
13 of Appeals. However, in front of an *en banc* Ninth Circuit panel, we lost.
14 Subsequently, the Supreme Court granted certiorari, then vacated and remanded the
15 matter to the Ninth Circuit for reconsideration of the case in light of the Supreme
16 Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*. The Ninth Circuit
17 recently remanded the case to the District Court for further decision consistent with
18 *Bruen*. When that case is once again decided by the District Court, if we do not
19 prevail on every legal theory, *even if we get the law enjoined from enforcement*,
20 under Section 1021.11, we will be deemed the losing party, the State will be
21 deemed the prevailing party, and we will be obligated to pay the State's attorney's
22 fees incurred, including fees for the District Court and appellate court matters in
23 which we prevailed.

24 7. Before Section 1021.11 was signed into law, our understanding and
25 experience is that if we got the magazine ban enjoined under any legal theory, we
26 would have been considered the prevailing party under federal law and entitled to
27 ask the court to recoup our attorney's fees and costs. In the case of *Duncan*, since
28 we and the other plaintiffs fought the matter through a District Court proceeding

1 and two appeals, those fees are significant. With the State being declared the de
2 facto prevailing party under Section 1021.11 for eventually beating any one of the
3 many legal theories we initially successfully argued for defeating the law, we
4 anticipate the State's fees that they will claim for having unsuccessfully defended
5 the law through the original District Court proceeding, one appeal, and through
6 certiorari grant and remand by the Supreme Court, will be significant. We estimate
7 that the fees that will be claimed by the State could amount to a figure somewhere
8 between \$400,000 and \$1.5 million for all of their efforts in *Duncan*.

9 8. As Treasurer, I am aware of the annual expenditures and revenues of
10 CRPA. A fee award in favor of the State and against CRPA of \$400,000 and \$1.5
11 million would constitute 20 to 60 percent of CRPA's typical annual revenues and
12 would devastate the organization financially. And that's the financial liability in
13 just one case. CRPA is or has been a party to at least ten gun law challenge cases
14 within the past three years.

15 9. At the time the CRPA approved the filing of *Duncan*, it did so with the
16 understanding that the award of fees to either plaintiffs or the State would be
17 governed by federal law, i.e., 42 U.S.C. § 1988. Under that standard, we understood
18 the only way the State would be entitled to recover a significant fee award against
19 CRPA or other plaintiffs was if we brought a frivolous suit or appeal that lacked
20 merit. Because our challenge to the magazine ban was righteous and based on what
21 we understood to be solid legal principles and arguments, we had no belief that the
22 State could ever meet its burden of showing that our challenge in *Duncan* was
23 frivolous such that CRPA might ever have to pay the State's fees. Thus, CRPA
24 was comfortable investing the time and money it has thus far invested in the
25 litigation given that the understood financial risk to CRPA in bringing a
26 constitutional challenge to the magazine ban was limited to only the resources that
27 CRPA would expend on that challenge, and not any other exposure.

28 10. But with Section 1021.11, the rules have changed while the *Duncan*

1 matter is ongoing and CRPA has already invested hundreds of thousands of dollars
2 of its members' money in *Duncan*. Now, CRPA's financial exposure is much
3 greater, perhaps double what it was when CRPA started (i.e., both the fees and
4 costs CRPA has paid for its own attorneys' efforts as well as the fees and costs that
5 the State will be entitled under Section 1021.11)

6 11. And that significant new monetary exposure is present in multiple
7 cases. For example, CRPA just joined as a plaintiff and is funding litigation
8 challenging the State's handgun roster promulgated under California's Unsafe
9 Handgun Act. This challenge—*Lance Boland, et al. v. Bonta*, Case No. 8:22-cv-
10 01421-DFM ("*Boland*")—seeks to apply the constitutional principles announced in
11 *Bruen* to California's arbitrary and nonsensical restrictions on the retail purchase of
12 modern pistols. But with Section 1021.11 about to take effect, CRPA is at a
13 crossroads to what to do with *Duncan*, *Boland*, and all of the other cases it has
14 participated in within the past three years.

15 12. Whether CRPA should abandon these principled challenges to
16 California's overbearing and often unconstitutional gun laws is a dilemma that even
17 CRPA cannot intelligently answer at this point. Even though the decision in *Bruen*,
18 and the remand of cases like *Rhode* and *Duncan* to the District Court to apply the
19 constitutional standard reiterated in *Bruen* to those cases, bodes well for CRPA and
20 the other plaintiffs ultimately prevailing on those matters under the usual federal
21 standard, all of those cases appear to now be "losses," at least financially, under the
22 new, heavily-tilted standard of Section 1021.11. What's worse, even if CRPA
23 made a reluctant decision right now (before the January 1, 2023 effective date of
24 Section 1021.11) to abandon winning cases on the eve of seeming victory to avoid
25 the harsh application of Section 1021.11 to those seeming victories, it's unclear that
26 CRPA would even avoid fee liability in that circumstance.

27 13. Because Section 1021.11 allows the State to reach back three years to
28 seek attorney's fees, even if we gave up on all of our cases before the effective date

1 of Section 1021.11—gave up on the many years and significant sums spent on
2 litigating *Duncan*, *Rhode*, and other cases to the doorstep of vindication—and
3 succumbed to the intended chilling effect of Section 1021.11 of deterring CRPA
4 from further litigating gun rights cases, it does not seem that would save us from
5 financial peril. In fact, the act of capitulating to Section 1021.11 and abandoning
6 all gun rights litigation would seem to further hand the State grounds for claiming
7 prevailing party status under Section 1021.11 in all of our current matters once the
8 law takes effect in three months, given the law’s retrospective application. Thus,
9 CRPA is in significant financial peril if it continues to litigate its current cases, and
10 it’s in seemingly the same peril if it abandons those cases.

11 14. And that’s just the danger for the existing litigation. The California
12 legislature and local governments passed numerous laws and ordinances in 2022—
13 many in response to *Bruen*—which CRPA desires to challenge as being violative of
14 the Second Amendment or other laws. CRPA’s mission includes advocating for the
15 gun rights of our members, but new restrictive laws enacted regarding where lawful
16 concealed carry weapons (“CCW”) permits holders can carry for self-defense,
17 invasive requirements for obtaining CCW permits, including prying into matters of
18 applicants’ political speech protected by the First Amendment, and other new laws,
19 threaten members’ constitutionally protected use of firearms and their exercise of
20 their right to self-defense. CRPA wants to challenge these laws on its members’
21 behalf. But it cannot do so in conformance with principles of good corporate
22 governance if the effect of Section 1021.11 is that any one case CRPA filed in good
23 faith challenging a gun restriction could readily bankrupt the organization. Because
24 of Section 1021.11, assuming it remains in effect, CRPA will have to cease
25 litigating firearms law challenges. It will have to do so notwithstanding that its
26 belief is that these laws are ripe for constitutional and other legal challenges. And
27 while CRPA’s prior track record in successfully defeating overbroad and
28 unconstitutional gun laws means the risk in losing one or more cases under the

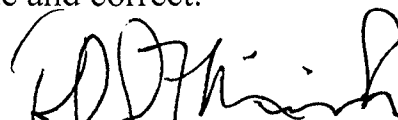
1 federal prevailing party standard was worth the financial risk to the organization of
2 bearing its own attorney's fees to challenge such laws, the risk is not worth it under
3 the new Section 1021.11 prevailing party standard.

4 15. If Section 1021.11 is not enjoined, CRPA will cease bringing new
5 lawsuits in California. CRPA's access to the court system to challenge California
6 gun laws, as well as the access of the tens of thousands of members it represents,
7 will effectively be eliminated.

8 16. Even if CRPA were willing to take the financial risk of bankruptcy to
9 file gun law challenges under the Section 1021.11 prevailing party standard, its
10 attorneys would not be willing to take that risk. Given that CRPA's attorneys would
11 also be liable under Section 1021.11 for the State's legal expenses, CRPA's
12 attorneys have informed CRPA that they will have to cease representing CRPA in
13 gun-related cases. This is both because of the financial risk to them and because of
14 the ethical concerns of the inherent conflicts that could arise in their representation
15 of CRPA under such circumstances.

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

18 Executed on October 11, 2022.



Richard Minnich, declarant

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