

1 ROBIN B. JOHANSEN, State Bar No. 79084
2 THOMAS A. WILLIS, State Bar No. 160989
3 KRISTEN MAH ROGERS, State Bar No. 274672
4 INEZ KAMINSKI, State Bar No. 345584
5 OLSON REMCHO, LLP
6 1901 Harrison Street, Suite 1550
7 Oakland, CA 94612
8 Phone: (510) 346-6200
9 Fax: (510) 574-7061

10 Attorneys for [Proposed] Intervenor
11 Governor Gavin Newsom

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

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

26 Plaintiffs,

27 vs.

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

Defendants.

No.: 3:22-cv-1461-BEN-JLB

**EX PARTE APPLICATION FOR
AN ORDER SHORTENING TIME
AND ADJUSTING DATES**

Crtrm.: 5A (5th Floor)
Judge: The Honorable Roger T. Benitez

1 Pursuant to Civil Local Rule 7.1(e), Proposed Intervenor Governor Gavin
2 Newsom seeks an order shortening time for a hearing on his motion for leave to
3 intervene. He also seeks permission to file a supplemental brief on the motion for
4 preliminary injunction hearing and consolidated trial on the merits by no later than
5 Monday, December 12, 2022.

6 On December 1, 2022, this Court set a hearing on Plaintiffs’ motion for
7 preliminary injunction and trial on the merits for December 16, 2022. On December 7,
8 2022, staff for the Governor were informed that Attorney General did not intend to
9 defend the validity of California Code of Civil Procedure Section 1021.11, a fee-shifting
10 statute enacted pursuant to S.B. 1327 and modeled on Texas’s recently enacted S.B. 8,
11 in his supplemental brief due December 9. The next day, one day prior to his deadline,
12 the Attorney General filed his supplemental brief in which he confirmed that he believes
13 he is not in a position to defend the constitutionality of Section 1021.11. Def’s. Supp.
14 Br, Dkt. No. 29, at 7.

15 In light of the Attorney General’s decision not to defend Section 1021.11
16 on the merits, counsel for the Governor promptly informed counsel for all parties in this
17 case that the Governor intended to seek leave to intervene. Declaration of Thomas
18 Willis in Support of Ex Parte Application (“Willis Decl.”), ¶ 2. In an email on
19 December 8, 2022, counsel explained that the Governor’s motion is appropriate under
20 Rule 24 of the Federal Rules of Civil Procedure and the Supreme Court’s recent
21 decision in *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191 (2022). Willis
22 Decl., ¶ 4. Counsel also explained that although the Governor will ask the court to hear
23 the motion at the same time as the preliminary injunction hearing and trial on
24 December 16, and would not be seeking a continuance of that hearing, the Governor
25 would be seeking a short extension to allow him to lodge a supplemental brief with the
26 court on Monday, December 12, instead of by Friday, December 9. Willis Decl., ¶ 4.

1 Counsel explained that all of the above issues would be raised in the instant
2 *ex parte* application and offered to include a suggestion that plaintiffs’ reply brief
3 deadline be extended to Wednesday, December 14 in light of the Governor’s request for
4 a modest extension of his own deadline. Willis Decl., ¶ 4. On December 9, 2022,
5 counsel for the *Miller* plaintiffs indicated that they intended to submit an objection to
6 the Governor’s proposed briefing schedule, and counsel for the *South Bay* plaintiffs
7 indicated that they object to the request.

8 On December 9, 2022, Governor Gavin Newsom filed a motion for leave to
9 intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a).
10 Pursuant to Local Rule 7, that motion is set to be heard on January 5, 2023. As
11 explained in that motion, given the Attorney General’s determination that he cannot
12 defend the constitutionality of Section 1021.11, the legal issue at the heart of this case,
13 and the Governor’s constitutional right to defend that duly enacted state law, the
14 Governor should be granted leave to intervene as of right.

15 Granting the instant *ex parte* application to shorten time and adjust briefing
16 dates will permit the Governor to prepare and file a brief defending SB 1327 when the
17 Attorney General is unable to do so without requiring any change to the Court’s current
18 schedule in this case. The Governor respectfully submits that this would best advance
19 “the principle of party presentation” that is core to “our adversary system” of litigation,
20 and promote informed federal court decision-making by avoiding the risk of setting
21 aside a duly enacted state law based on an incomplete airing of relevant state interests.
22 *Greenlaw v. United States*, 554 U.S. 237, 243 (2008).

23 For these reasons, the Governor requests that his motion for leave to
24 intervene be granted before or heard on December 16, 2022, the same date as the
25 hearing on preliminary injunctions and consolidated trial on the merits in this case, and
26 that he be permitted to lodge a proposed supplemental brief on December 12, 2022 (or
27 file a supplemental brief on that date if intervention has already been granted).

1 Dated: December 9, 2022

Respectfully submitted,

2 OLSON REMCHO, LLP

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4 s/ Robin B. Johansen
5 Attorneys for [Proposed] Intervenor
6 Governor Gavin Newsom
7 Email: rjohansen@olsonremcho.com

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