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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13

14 FIREARMS POLICY COALITION,  
15 INC.; CALIFORNIA GUN RIGHTS  
16 FOUNDATION; SAN DIEGO  
17 COUNTY GUN OWNERS PAC,

Plaintiffs,

v.

18 CITY OF SAN DIEGO; COUNTY OF  
19 IMPERIAL; COUNTY OF ALAMEDA;  
20 COUNTY OF VENTURA; COUNTY  
21 OF LOS ANGELES; CITY OF SAN  
22 JOSE; and COUNTY OF SANTA  
23 CLARA,

Defendants.

Case No.: **'23CV0400 LL AGS**

**COMPLAINT FOR  
DECLARATORY, INJUNCTIVE,  
OR OTHER RELIEF**

1 Plaintiffs Firearms Policy Coalition, Inc.; California Gun Rights Foundation;  
2 and San Diego County Gun Owners PAC complain of Defendants and allege:

### 3 INTRODUCTION

4 1. Plaintiffs bring this suit to challenge the constitutionality of California  
5 Code of Civil Procedure section 1021.11's one-sided fee-shifting provisions and seek  
6 an injunction against the statute's application or enforcement by several local  
7 jurisdictions.

8 2. Plaintiffs intend to seek declaratory and injunctive relief against the  
9 enforcement of firearm regulations in each of the Defendants' jurisdictions. Before  
10 doing so, however, Plaintiffs bring this lawsuit to remove the cloud hanging over those  
11 claims by virtue of the operation of Section 1021.11.

12 3. Section 1021.11 is an unconstitutional attempt by the State of California  
13 to deter citizens and firearms advocacy groups—through a novel, one-way fee-shifting  
14 penalty—from accessing the courts to litigate claims over firearms regulations.

15 4. In *Miller v. Bonta*, this Court enjoined the State from enforcing Section  
16 1021.11. No. 3:22-cv-1446-BEN-MDD, --- F.Supp.3d ----, 2022 WL 17811114 (S.D.  
17 Cal. Dec. 19, 2022). Specifically, the Court held that Section 1021.11 violated the  
18 First Amendment (*id.* at \*2–4); the Supremacy Clause (*id.* at \*4–7); and noted that it  
19 likewise ran afoul of the Due Process and Equal Protection Clauses (see *id.* at \*2–3).  
20 “A state law that threatens its citizens for questioning the legitimacy of its firearms  
21 regulations may be familiar to autocratic and tyrannical governments, but not  
22 American government. American law counsels vigilance and suspiciousness of laws  
23 that thwart judicial scrutiny.” *Id.* at \*3. Because “the purpose and effect of § 1021.11  
24 is to trench on a citizen's right of access to the courts and to discourage the peaceful  
25 vindication of an enumerated constitutional right,” the Court declared the statute  
26 invalid. *Id.* at \*4.

27 5. Because the Defendant local jurisdictions were not defendants in *Miller*,  
28 they are not directly bound by the injunction. Plaintiffs have requested that Defendants

1 stipulate to non-enforcement of the provisions of Section 1021.11 in light of *Miller*,  
 2 but they have refused to do so. But Section 1021.11's enforcement is unconstitutional,  
 3 regardless of whether the State or these local-government Defendants seek to enforce  
 4 it, so Plaintiffs now seek declaratory and injunctive relief a second time, to enjoin its  
 5 application by the Defendants.

## 6 JURISDICTION AND VENUE

7 6. This Court has jurisdiction over all claims for relief pursuant to 28 U.S.C.  
 8 §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988, as this action seeks to redress  
 9 the deprivation under color of the laws, statutes, ordinances, regulations, customs, and  
 10 usages of the State of California, of the rights, privileges or immunities secured by the  
 11 United States Constitution.

12 7. Venue is proper under 28 U.S.C. § 1391(b)(1).

## 13 THE PARTIES

14 8. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a non-profit  
 15 organization incorporated under the laws of Delaware with its principal place of  
 16 business in Clark County, Nevada. The purposes of FPC include defending and  
 17 promoting the People's rights—especially the fundamental, individual Second  
 18 Amendment right to keep and bear arms—advancing individual liberty, and restoring  
 19 freedom. FPC serves its members and the public through legislative advocacy,  
 20 grassroots advocacy, litigation and legal efforts, research, education, outreach, and  
 21 other programs. FPC's members reside both within and outside the State of California,  
 22 including in all cities and counties that are parties to this action. FPC represents its  
 23 members and supporters—who include gun owners, prospective gun owners, licensed  
 24 California firearm retailers, and others—and brings this action on behalf of itself and  
 25 its members. The risk of fee liability imposed by Section 1021.11 has caused FPC to  
 26 refrain from filing suits or litigating constitutional claims that it is otherwise prepared  
 27 to file and litigate, including litigation against Defendants as set forth below. FPC has  
 28 also expended and diverted resources because of the enactment of Section 1021.11.

1           9. Plaintiff California Gun Rights Foundation (“CGF”) is a non-profit  
2 foundation incorporated under the laws of California with its principal place of  
3 business in Sacramento, California. CGF serves its members, supporters, and the  
4 public through educational, cultural, and judicial efforts to defend and advance Second  
5 Amendment and related rights. CGF has tens of thousands of members and supporters  
6 in California. CGF brings this action on behalf of itself and its members. The laws,  
7 policies, practices, and customs challenged in this case, and Defendants’ actions and  
8 failures alleged herein, have caused CGF to dedicate resources that would otherwise  
9 be available for other purposes to protect the rights and property of its members,  
10 supporters, and the general public, including by and through this action. The risk of  
11 fee liability imposed by Section 1021.11 has caused CGF to refrain from filing suits  
12 or litigating constitutional claims that it is otherwise prepared to file and litigate,  
13 including litigation against Defendants as set forth below.

14           10. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a political  
15 organization whose purpose is to protect and advance the Second Amendment rights  
16 of residents of San Diego County, California, through their efforts to support and elect  
17 local and state representatives who support the Second Amendment right to keep and  
18 bear arms. SDCGO’s membership and donors consist of Second Amendment  
19 supporters, people who own guns for self-defense and sport, firearms dealers, shooting  
20 ranges, and elected officials who want to restore and protect the right to keep and bear  
21 arms in California. The interests that SDCGO seeks to protect in this lawsuit are  
22 germane to the organization’s purposes, and, therefore, SDCGO sues on its own  
23 behalf, and on behalf of its members. The risk of fee liability imposed by Section  
24 1021.11 has caused SDCGO to refrain from filing suits or litigating constitutional  
25 claims against Defendant City of San Diego and County of Imperial that it is otherwise  
26 prepared to file and litigate, including litigation against Defendants as set forth below.

27           11. Defendant City of San Diego is a charter city organized and existing  
28 under the laws of the State of California and located in the County of San Diego.

12. Defendant County of Imperial is a general law county organized and existing as a legal subdivision under the laws of the State of California

13. Defendant County of Alameda is a charter county organized and existing as a legal subdivision under the laws of the State of California.

14. Defendant County of Ventura is a general law county organized and existing as a legal subdivision under the laws of the State of California.

15. Defendant County of Los Angeles is a charter county organized and existing as a legal subdivision under the laws of the State of California.

16. Defendant City of San Jose is a charter city organized and existing under the laws of the State of California and located in the County of Santa Clara.

17. Defendant County of Santa Clara is a charter county organized and existing as a legal subdivision under the laws of the State of California.

### GENERAL ALLEGATIONS

#### **I. Section 1021.11 Creates A State-Law Fee-Shifting Regime, Applicable Only To Firearms Litigation, Designed To Suppress Such Cases And Insulate Firearms Regulations From Judicial Review.**

18. Senate Bill 1327, enacted as Code of Civil Procedure §1021.11, is based largely word-for-word on Texas's SB 8, enacted in 2021 in the abortion context. This case challenges Section 1021.11's radical effort to suppress firearms-related litigation by putting civil rights litigants and their attorneys on the hook for the government's attorney's fees if a case results in anything short of victory on every claim alleged in a complaint.<sup>1</sup>

19. Section 1021.11 provides, in relevant part:

Notwithstanding any other law, 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, ordinance, rule, regulation, or any other type of law that

<sup>1</sup> Senate Bill 1327 also created a private right of action to enforce state laws relating to the unlawful manufacture, distribution, or sale of specified firearms. 2022 Cal. Stat. ch. 146, § 1 (adding Bus. & Prof. Code §§ 22949.60–.71). This case does not challenge SB 1327's private attorney general features.

1 regulates or restricts firearms, or that represents any litigant seeking  
2 that relief, is jointly and severally liable to pay the attorney's fees and  
costs of the prevailing party.

3 Cal. Code Civ. Proc. § 1021.11(a).

4 20. Due to the unique political circumstances in which it was enacted—  
5 namely, targeting firearms litigation as a form of protest over Texas's targeting of  
6 abortion litigation in SB 8—Section 1021.11's unconstitutionality has never been in  
7 question. Attorney General Rob Bonta has described SB 8 as “blatantly  
8 unconstitutional.” Press Release, Cal. Dep't of Just., *Att'y Gen. Bonta: Texas Cannot*  
9 *Avoid Judicial Review of Its Constitutional Abortion Ban* (Oct. 27, 2021),  
10 <https://bit.ly/3pRWA4F>. Despite signing SB 1327 into law, Gov. Newsom had  
11 likewise blasted the Supreme Court's refusal to block the Texas law on which it was  
12 based as “outrageous” and “an abomination.” Gavin Newsom, Opinion, *The Supreme*  
13 *Court Opened the Door to Legal Vigilantism in Texas. California Will Use the Same*  
14 *Tool To Save Lives.*, WASH. POST (Dec. 20, 2021), <https://wapo.st/3wxWoel>. And SB  
15 1327's legislative history includes similar acknowledgements. *See* S.B. 1327, S. Floor  
16 Analysis, p. 6 (June 28, 2022) (“While the goal of repurposing the Texas law may be  
17 sound, these problematic provisions may not justify those ends. They insulate  
18 government action from meaningful challenge by creating a strong, punitive deterrent  
19 for any that try and in the end, may violate due process guarantees.”); S.B. 1327, A.  
20 Jud. Comm. Analysis, p. 13 (June 10, 2022) (describing SB 1327's fee-shifting as “a  
21 lose-lose scenario for plaintiffs who challenge the bill or a gun law; and a win-win  
22 scenario for the government”).

23 21. Unlike any other ordinary “fee shifting” statute, SB 1327 says a  
24 “prevailing party” *cannot be a plaintiff* who brings a case seeking declaratory or  
25 injunctive relief regarding a state or local firearm regulation. Code Civ. Proc. §  
26 1021.11(e). And it says government defendants in a firearms case will be treated as a  
27 “prevailing party” if the court either “[d]ismisses *any* claim or cause of action” in the  
28 case, “regardless of the reason for the dismissal,” or “[e]nters judgment in favor of the

[government] party” “on any claim or cause of action.” Code Civ. Proc. § 1021.11(b) (emphasis added). In simple terms, then, SB 1327 would enable government defendants to recover fees if a firearms plaintiff loses *on any claim* in the case, while the plaintiff can only avoid liability for fees if it prevails on *every claim* in the case. This means, among other things, that a plaintiff could be liable for the government’s fees even if the plaintiff obtained all of the relief sought in the litigation.

22. Section 1021.11(c) further gives these “prevailing party” government defendants a three-year window to bring a state law action to recover their fees, notwithstanding that the vast majority of firearms litigation, like this case, is brought under 42 U.S.C. § 1983, and that federal law already provides for the treatment of attorney’s fees in those cases: 42 U.S.C. § 1988(b) provides that “prevailing part[ies]” in federal civil rights actions may recover “a reasonable attorney’s fee as part of [their] costs” in the action itself.

**II. Section 1021.11’s Fee-Shifting Regime Is Unconstitutional And Should Be Enjoined As To Defendants For The Same Reasons It Was Enjoined As To The State In *Miller*.**

23. The State is now enjoined from enforcing Section 1021.11 under *Miller v. Bonta*. 2022 WL 17811114 (S.D. Cal. Dec. 19, 2022).<sup>2</sup> The Court in *Miller* found that Section 1021.11 violated the First Amendment and is pre-empted under the Supremacy Clause by 42 U.S.C. § 1988. For the same reasons, Section 1021.11 should be enjoined here.

**A. Section 1021.11’s Fee-Shifting Regime Violates the First Amendment.**

24. Section 1021.11 encourages state and local governments to push the constitutional envelope when crafting firearms regulations by threatening would-be plaintiffs considering suing over those regulations with a potentially ruinous fee

<sup>2</sup> The Court issued a substantively identical ruling in a related case. *South Bay Rod & Gun Club, Inc. v. Bonta*, S.D. Cal. Case No. 3:22-cv-1461-BEN-JLB, 2022 WL 17811113 (S.D. Cal. Dec. 19, 2022).



1 award. As the court in *Miller* observed, “[t]he principal defect of § 1021.11 is that it  
 2 threatens to financially punish plaintiffs and their attorneys who seek judicial review  
 3 of laws impinging on federal constitutional rights.” 2022 WL 17811114 at \*2. “Laws  
 4 like § 1021.11 that exact an unaffordable price to be heard in a court of law are  
 5 intolerable.” *Id.* at \*3. The threat posed by Section 1021.11 extends beyond imposing  
 6 financial ruin on would-be plaintiffs by imposing the same threat of fee liability on  
 7 attorneys and law firms. The *Miller* court recognized this “does a disservice to the  
 8 courts” through suppressing “novel,” “substantial” claims, thereby “threaten[ing]  
 9 severe impairment of the judicial function” by “insulat[ing] the Government’s laws  
 10 from judicial inquiry.” *Id.* at \*4 (citations omitted).

11 25. Section 1021.11 thus improperly threatens the right of access to the  
 12 courts. The right to petition the government for redress of grievances includes “[t]he  
 13 right of access to the courts,” which “is indeed but one aspect of the right of petition.”  
 14 *Cal. Motor Trans. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). The *Miller*  
 15 court noted that Section 1021.11 struck at the core of this right. “In our ordered system  
 16 of civil justice, the Second Amendment right, and for that matter all constitutional  
 17 rights, are ultimately protected by the First Amendment right to identify  
 18 unconstitutional infringements and seek relief from the courts.” 2022 WL 17811114  
 19 at \*2. And the court further emphasized “that maintaining the courts as a setting to  
 20 resolve questions about defective laws is necessary for a peaceful society.” *Id.*

21 26. This isn’t the first time a state has erected and enforced regulatory  
 22 barriers to avoid civil rights litigation. The Supreme Court rejected Virginia’s attempt  
 23 to keep the NAACP out of court in *Nat’l Ass’n for Advancement of Colored People v.*  
 24 *Button*, 371 U.S. 415 (1963) (concerning the state’s ban against the “improper  
 25 solicitation” of legal business), and struck down South Carolina’s efforts to punish the  
 26 ACLU’s counsel in *In re Primus*, 436 U.S. 412 (1978) (concerning the state’s  
 27 prohibition against solicitation of prospective litigants).



1           27. The Supreme Court has recognized the central role the First Amendment  
 2 plays in securing access to the courts to preserve civil rights, particularly for groups  
 3 unable protect their rights through the political channels. “Groups which find  
 4 themselves unable to achieve their objectives through the ballot frequently turn to the  
 5 courts. . . . [U]nder the conditions of modern government, litigation may well be the  
 6 sole practicable avenue open to a minority to petition for redress of grievances.”  
 7 *Button*, 371 U.S. at 429–30. Such is the case here, where Plaintiffs seek to assert their  
 8 constitutional rights in litigation against local governments that disfavor Second  
 9 Amendment rights.

10           28. Since *Button*, the Supreme Court has consistently enjoined state action  
 11 that imposes barriers on litigation that may chill protected activity. *See, e.g., Bhd. of*  
 12 *R. R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 7 (1964) (a state cannot  
 13 “handicap[]” “[t]he right to petition the courts” through indirect regulation that  
 14 “infringe[s] in any way the right of individuals and the public to be fairly represented  
 15 in lawsuits authorized by Congress to effectuate a basic public interest”); *United Mine*  
 16 *Workers of Am., Dist. 12 v. Illinois State Bar Ass’n*, 389 U.S. 217, 222–23 (1967) (the  
 17 state cannot “erode [the First Amendment’s] guarantees by indirect restraints” on  
 18 citizens’ ability to assert their legal rights); *United Transp. Union v. State Bar of*  
 19 *Mich.*, 401 U.S. 576, 580–81, 585–86 (1971) (“the First Amendment forbids . . .  
 20 restraints” that effectively prevent groups from “unit[ing] to assert their legal rights,”  
 21 and striking down economic regulation that denied union members “meaningful  
 22 access to the courts”).

23           29. Section 1021.11’s obvious and impermissible purpose is to give state and  
 24 local governments in California a free hand to regulate firearms by suppressing  
 25 litigation over firearm regulations. Because “[t]he Constitution does not permit” the  
 26 government to “insulate [its] interpretation of the Constitution from judicial  
 27 challenge,” courts “must be vigilant when [the government] imposes rules and  
 28

1 conditions which in effect insulate its own laws from legitimate judicial challenge.”  
 2 *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 548–49 (2001).

3 30. Section 1021.11’s fee-shifting regime further violates the First  
 4 Amendment because it is content-based and viewpoint-discriminatory: It imposes a  
 5 unique burden on those who seek to vindicate their civil rights through firearms  
 6 litigation while favoring all other sorts of constitutional and statutory civil rights  
 7 claims. Civil-rights litigation involves core protected speech. *See Button*, 436 U.S. at  
 8 431 (civil rights litigation “form of political expression”); *Primus*, 436 U.S. at 429;  
 9 *Velazquez*, 531 U.S. at 545. Yet Section 1021.11 singles out speech over firearms  
 10 restrictions for special unfavorable treatment. Laws that impose special burdens on  
 11 disfavored speech and single out disfavored speakers are constitutionally suspect.  
 12 *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564–66 (2011). States are not permitted to  
 13 advance their policy goals “through the indirect means of restraining certain speech  
 14 by certain speakers,” *id.* at 577, and “may not burden the speech of others in order to  
 15 tilt public debate in a preferred direction.” *Id.* at 578–79. Indeed, “the First  
 16 Amendment is plainly offended” when the government “attempt[s] to give one side of  
 17 a debatable public question an advantage in expressing its views to the people.” *First*  
 18 *Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785–86 (1978).

19 31. There is also no legitimate historical precedent for a fee-shifting statute  
 20 that only allows government defendants to recover fees in civil rights litigation.  
 21 Section 1021.11 thus falls outside of the history and tradition of the First Amendment  
 22 that is the touchstone of First Amendment analysis. *See, e.g., United States v. Stevens*,  
 23 559 U.S. 460, 468–71 (2010) (placing the burden on the government to show that a  
 24 type of speech belongs to one of the “historic and traditional categories” of  
 25 constitutionally unprotected speech); *accord Kennedy v. Bremerton Sch. Dist.*, 142  
 26 S.Ct. 2407, 2428 (2022) (Establishment Clause analysis must be anchored to  
 27 “historical practices and understandings”); *New York State Rifle & Pistol Ass’n, Inc.*  
 28 *v. Bruen*, 142 S.Ct. 2111, 2130 (2022) (“[T]o carry [its] burden, the government must

generally point to *historical* evidence about the reach of the First Amendment’s protections.”) (emphasis in original). The lack of historical precedent further demonstrates that SB 1327 violates the First Amendment.

32. But even under First Amendment balancing tests, Section 1021.11 cannot withstand the appropriate strict scrutiny. For example, it is impossible to imagine any interest the Defendants could assert as compelling, or even permissible, in support of this statute. Indeed, Defendants cannot possibly sustain their burden of identifying a compelling interest, as there is no compelling interest for targeting a particular type of civil rights litigant for unfavorable treatment when exercising the fundamental right to assert constitutional claims. Moreover, Section 1021.11 is not narrowly tailored: the State failed even to consider less restrictive alternatives that would serve such an interest without imposing such severe burdens on core protected rights. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

33. In short, Section 1021.11’s fee-shifting penalty violates the First Amendment to the Constitution.

**B. Section 1021.11’s Fee-Shifting Regime is Preempted by 42 U.S.C. § 1988.**

34. The Supremacy Clause provides that federal law “shall be the supreme Law of the Land.” U.S. Const. Art. VI, Cl. 2. “Consistent with that command, [the Supreme Court has] long recognized that state laws that conflict with federal law are ‘without effect.’” *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008). To that end, “state law is naturally preempted to the extent of any conflict with a federal statute,” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000), and “[w]here state and federal law ‘directly conflict,’ state law must give way.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617 (2011) (citation omitted); *see also Gade v. National Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (“[U]nder the Supremacy Clause . . . any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.”) (internal quotation marks and citation omitted).

35. Section 1021.11’s attempt to shift the government’s fees onto the shoulders of civil rights plaintiffs conflicts with the text and structure of Section 1988, and it strongly undermines Section 1988’s purposes. Section 1988 provides that, in most categories of federal civil rights litigation, the court “may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs” of the case. 42 U.S.C. § 1988(b). “[A] prevailing *plaintiff* ‘should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.’” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (emphasis added). By contrast, the Supreme Court has repeatedly held that, given the purposes of Section 1988, prevailing *defendants* may recover fees only “where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant.” *Id.* at 429 n.2; *see Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978) (under analogous fee award language in Title VII, establishing standard that “a plaintiff should not be assessed his opponent’s attorney’s fees unless a court finds that his claim was frivolous, unreasonable, or groundless”).

36. Section 1021.11 directly conflicts with Section 1988 by establishing a wholly separate state law fee regime. As the *Miller* court observed, “[t]hrough its unfair legal stratagems, the state law chills the First Amendment right to petition government for the redress of grievances, which, in turn, chills the Second Amendment right. The chill is deepened by the extraordinary provision that declares a plaintiff shall not be a prevailing party. In the end, this state statute undercuts and attempts to nullify 42 U.S.C. § 1988.” 2022 WL 17811114 at \*4. Not only does “California’s fee shifting provision turns [the federal] approach upside down,” “California attorney’s fee-shifting construct goes beyond § 1988 by discouraging attorneys from representing civil rights plaintiffs.” *Id.* at \*6. And because Section 1021.11 “will have the effect of thwarting federal court orders enforcing Second Amendment rights through § 1988 attorney’s fee awards, then” the statute “cannot survive.” *Id.* at \*7.

1           37. Section 1988 doesn't require a plaintiff to win every claim in order to be  
 2 a "prevailing party." Relying on congressional guidance, the Supreme Court has  
 3 "made clear that plaintiffs may receive fees under [Section] 1988 even if they are not  
 4 victorious on every claim. A civil rights plaintiff who obtains meaningful relief has  
 5 corrected a violation of federal law and, in so doing, has vindicated Congress's  
 6 statutory purposes." *Fox v. Vice*, 563 U.S. 826, 834 (2011); *see Texas State Teachers*  
 7 *Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989) (Section 1988 fees are  
 8 appropriate if a party has "prevailed on a significant issue in the litigation and have  
 9 obtained some of the relief they sought").

10           38. Section 1021.11(e), however, says that only government defendants can  
 11 be "prevailing parties." And because it also says a government defendant is a  
 12 "prevailing party" if the plaintiff loses on any of its claims, the government would be  
 13 entitled to fees even where it has been found to violate the Constitution on other claims  
 14 in the case. In other words, Section 1021.11 flips Section 1988, putting government  
 15 defendants in a similar if not better position than plaintiffs under Section 1988.

16           39. Indeed, Section 1021.11 asserts *reverse* supremacy over federal law. The  
 17 statute remarkably asserts that Section 1021.11 applies regardless of what any federal  
 18 court does in an underlying Section 1983 case: Section 1021.11 pronounces that  
 19 government officials may plow ahead with enforcing the fee-shifting penalty against  
 20 a Section 1983 plaintiff with a state court collection action even when "[t]he court in  
 21 the underlying action held that any provision of this section is invalid,  
 22 unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue  
 23 or claim preclusion." Code Civ. Proc. § 1021.11(d)(3) (emphasis added).

24           40. Section 1021.11 also undermines the manifest purpose of Section 1988.  
 25 Shortly after the Civil Rights Act's passage, the Supreme Court recognized the link  
 26 between fee-shifting and effective enforcement of civil rights laws. "When the Civil  
 27 Rights Act of 1964 was passed, it was evident that enforcement would prove difficult  
 28 and that the Nation would have to rely in part upon private litigation as a means of

1 securing broad compliance with the law. . . . If successful plaintiffs were routinely  
 2 forced to bear their own attorneys’ fees, few aggrieved parties would be in a position  
 3 to advance the public interest by invoking the injunctive powers of the federal courts.  
 4 Congress therefore enacted the provision for counsel fees . . . to encourage individuals  
 5 injured by racial discrimination to seek judicial relief . . . .” *Newman v. Piggie Park*  
 6 *Enters., Inc.*, 390 U.S. 400, 401–02 (1968).

7 41. In short, “[t]he purpose of [Section] 1988 is to ensure ‘effective access  
 8 to the judicial process’ for persons with civil rights grievances.” *Hensley*, 461 U.S.  
 9 424, 429 (1983) (quoting H.R. Rep. No. 94–1558 at 1 (1976)); *see also* S. Rep. No.  
 10 94-1011 at 2 (June 29, 1976) (explaining that the federal “civil rights laws depend  
 11 heavily upon private enforcement, and fee awards have proved an essential remedy if  
 12 private citizens are to have a meaningful opportunity to vindicate the important  
 13 Congressional policies” embodied in those laws).

14 42. In direct conflict with Section 1988’s purpose, Section 1021.11 threatens  
 15 to bankrupt any plaintiff considering a challenge to a state or local firearm regulation  
 16 if the plaintiff does not achieve complete victory in the litigation. This is a heavy-  
 17 handed deterrent to asserting civil rights claims, whereas Section 1988 expresses  
 18 Congressional intent to *encourage* civil rights litigation.

19 43. Because Section 1021.11 “stands as an obstacle to the accomplishment  
 20 and execution of the full purposes and objective of Congress,” California’s law “must  
 21 give way.” *PLIVA, Inc.*, 564 U.S. 634, 617. Section 1021.11’s fee-shifting penalty is  
 22 preempted and its application is unconstitutional under the Supremacy Clause.

23 **C. Section 1021.11’s Fee-Shifting Regime Violates The Equal**  
 24 **Protection And Due Process Clauses.**

25 44. For the many reasons described above with respect to discrimination  
 26 against federal constitutional rights, discrimination against gun rights plaintiffs in  
 27 particular, and discrimination related to viewpoint, Section 1021.11 also violates the  
 28 Equal Protection Clause. Indeed, while such discrimination against those who seek to



1 exercise First and Second Amendment rights would be subject to, and plainly fail,  
 2 strict scrutiny, as explained above the classifications at issue here could not even  
 3 survive rational basis scrutiny.

4 **45.** As Judge Benitez explained in *Miller*, “[l]aws like § 1021.11 that exact  
 5 an unaffordable price to be heard in a court of law are intolerable.” 2022 WL  
 6 17811114 at \*3. Section 1021.11 strikes at the core of the due process guarantee,  
 7 which “requires that a citizen be able to be heard in court.” *Id.* at \*2. And it likewise  
 8 implicates equal protection: “Where money determines not merely ‘the kind of trial a  
 9 man gets,’ but whether he gets into court at all, the great principle of equal protection  
 10 becomes a mockery.” *Id.* at \*3 (citation omitted).

11 **III. Section 1021.11 Has Unconstitutionally Infringed Plaintiffs’ Ability To**  
 12 **Access The Courts To Sue Defendants.**

13 46. As detailed in *Miller*, Section 1021.11 unconstitutionally chilled  
 14 Plaintiffs’ ability to bring and continue to prosecute civil rights cases challenging  
 15 California firearm regulations. After the *Miller* ruling, Plaintiffs FPC and CGF asked  
 16 Defendants to stipulate that they would not enforce Section 1021.11, either in a  
 17 current case or a case that Plaintiffs intend to file. Each Defendant refused. This  
 18 resistance is indefensible in light of the *Miller* ruling enjoining the law as to the State  
 19 of California. Indeed, the Attorney General’s office refused to defend the law’s  
 20 constitutionality in *Miller*. 2022 WL 17811114 at \*1.<sup>3</sup>

21 47. On December 30, 2022, counsel for the plaintiffs (which include FPC  
 22 and SDCGO) in *Fahr v. City of San Diego*, S.D. Cal. Case No. 3:21-cv-01676-BAS-  
 23 BGS, sent a letter to the San Diego City Attorney asking that it stipulate not to enforce  
 24 Section 1021.11 against the plaintiffs or their attorneys and law firms based on the  
 25 outcome of the case. A true and correct copy of the letter is attached as Exhibit 1. On  
 26

27 <sup>3</sup> After Attorney General Bonta declined to defend Section 1021.11, Governor  
 28 Newsom intervened to litigate its constitutionality on the merits. *Miller*, 2022 WL  
 17811114 at \*1.



1 January 11, 2023, the City Attorney's office responded that "the City is not in a  
2 position to stipulate as requested," and that it did "not believe" that the Court decision  
3 in *Miller* "warrants an unequivocal waiver from the City."

4 48. On January 20, counsel for FPC and CGF sent a letter to the Office of  
5 the County Counsel for the County of Imperial asking that it stipulate not to enforce  
6 Section 1021.11 against the intended plaintiffs or their attorneys and law firms in a  
7 case they intend to file challenging the constitutionality of a county ordinance  
8 prohibiting the possession of firearms in any recreational park within the county's  
9 jurisdiction. A true and correct copy of the letter is attached as Exhibit 2. Imperial  
10 County has not responded to the letter.

11 49. On December 30, 2022, counsel for FPC and CGF sent a letter to the  
12 Office of the County Counsel for the County of Alameda asking that it stipulate not  
13 to enforce Section 1021.11 against the intended plaintiffs or their attorneys and law  
14 firms in a case they intend to file challenging the constitutionality of the Alameda  
15 County Sherriff's Office's application and enforcement of the County's licensing  
16 regime for carrying concealed firearms. A true and correct copy of the letter is attached  
17 as Exhibit 3. On January 3, 2023, County Counsel responded by letter that it would  
18 not agree to non-enforcement. A true and correct copy of the County's response is  
19 attached as Exhibit 4.

20 50. The Alamada County Counsel vaguely accused Plaintiffs' counsel of  
21 ethical breaches and "encouraged" counsel to "be mindful of your duties obligations  
22 [sic] before you make averments in any pleading regarding the intentions of the Sheriff  
23 and the County" regarding Section 1021.11, because claims against them purportedly  
24 "do not exist and would not be ripe despite your attempts to manufacture a claim."  
25 Ex. 4, p.2. But as explained below, Plaintiffs' claims do, in fact, exist (and are ripe):  
26 Plaintiffs are prepared to file a lawsuit but have deferred doing so because of the threat  
27 of fee-shifting. Indeed, the tone of Alameda County Counsel's letter confirms why  
28 injunctive relief is necessary in this case: If a request not to enforce a statute that has

1 already been held unconstitutional is met with such vitriol, litigation over the County's  
2 unconstitutional conduct will surely be contentious, drawn-out, and expensive.

3 51. On January 20, counsel for FPC and CGF sent a letter to the Office of  
4 the County Counsel for the County of Ventura asking that it stipulate not to enforce  
5 Section 1021.11 against the intended plaintiffs or their attorneys and law firms in a  
6 case they intend to file challenging the constitutionality of the Ventura County  
7 Sherriff's Office's application and enforcement of the County's licensing regime for  
8 carrying concealed firearms. A true and correct copy of the letter is attached as Exhibit  
9 5. Ventura County has not responded to the letter.

10 52. On January 20, counsel for FPC and CGF sent a letter to the Office of  
11 the County Counsel for the County of Los Angeles asking that it stipulate not to  
12 enforce Section 1021.11 against the intended plaintiffs or their attorneys and law firms  
13 in a case they intend to file challenging the constitutionality of (1) the Los Angeles  
14 County Sherriff's Office's application and enforcement of the County's licensing  
15 regime for carrying concealed firearms; and (2) a provision of the county code  
16 prohibiting the possession of firearms in any public park within the county's  
17 jurisdiction. A true and correct copy of the letter is attached as Exhibit 6. On January  
18 27, 2023, County Counsel responded by letter that it would not agree to non-  
19 enforcement, but that it "would be willing to discuss entereing into a case-specific  
20 situation." A true and correct copy of the County's response is attached as Exhibit 7.

21 53. On January 27, counsel for FPC and CGF sent a letter to counsel for the  
22 City of San Jose asking that the city stipulate not to enforce Section 1021.11 against  
23 the intended plaintiffs or their attorneys and law firms in a case they intend to re-file  
24 challenging the constitutionality of city ordinances requiring firearm owners to pay an  
25 annual fee to a City-designated non-profit organization and obtain firearm-related  
26 insurance. A true and correct copy of the letter is attached as Exhibit 8. FPC had  
27 previously sued to invalidate those same regulations, but dismissed the lawsuit in  
28 August 2022 because of the threat posed by Section 1021.11. *Glass v. City of San*

1 *Jose*, N.D. Cal. Case No 5:22-cv-02533-BL. FPC is prepared to re-file this challenge  
2 against San Jose once San Jose is enjoined from attempting to enforce Section  
3 1021.11.

4 54. On February 2, counsel for San Jose responded by letter that it would not  
5 agree to non-enforcement, claiming that it was “inappropriate to respond” outside of  
6 the context of an actual lawsuit—counsel “decline[d] to comment on what positions  
7 the City might take, or what remedies it might seek, in hypothetical future litigation  
8 against the City.” A true and correct copy of the response is attached as Exhibit 9.  
9 Counsel for San Jose claimed it was “impossible to know what specific City laws [the  
10 Plaintiffs] intend to file a lawsuit over,” *id.*, despite being advised that Plaintiffs “are  
11 now prepared to re-file litigation seeking declaratory and injunctive relief as to at least  
12 the[] same regulations” at issue in the *Glass* litigation. Ex. 8. And counsel for San Jose  
13 accused Plaintiffs of sending the letter to gain “some advantage in [their] ongoing  
14 lawsuit” in the *Miller* case, despite the fact that the *Miller* court had already entered a  
15 permanent injunction 45 days earlier.

16 55. On February 24, counsel for FPC and CGF sent a letter to the Office of  
17 the County Counsel for the County of Santa Clara asking that it stipulate not to enforce  
18 Section 1021.11 against the intended plaintiffs or their attorneys and law firms in a  
19 case they intend to file challenging the constitutionality of the Santa Clara County  
20 Sherriff’s Office’s application and enforcement of the County’s licensing regime for  
21 carrying concealed firearms. A true and correct copy of the letter is attached as Exhibit  
22 10. Santa Clara County has not responded to the letter

23 56. Defendants’ refusal to stipulate to non-enforcement of Section 1021.11  
24 has infringed Plaintiffs’ constitutional rights.

25 57. As set forth above, in each of the Defendant local jurisdictions, Plaintiffs  
26 FPC and CGF have refrained from filing constitutional challenges against laws,  
27 regulations, and practices that are inconsistent with the Supreme Court’s decision in  
28 *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). FPC and CGF

1 have incurred fees to investigate, research, and prepare these lawsuits, which have  
 2 been put on hold because of Section 1021.11's threat of fee shifting. But Section's  
 3 1021.11's impact extends beyond these organizational Plaintiffs and counsel to the  
 4 would-be individuals in these cases who are suffering an ongoing deprivation of their  
 5 Second Amendment rights because of the Defendants' actions. Plaintiffs are unable  
 6 to seek to vindicate those rights without the certainty, which Defendants' counsel have  
 7 not provided, that they would not face potentially ruinous fee liability for bringing the  
 8 suits they intend to bring.

9 58. In San Diego, Plaintiffs FPC and SDCGO are plaintiffs in *Fahr*, where  
 10 they are forced to continue litigating under the threat of Section 1021.11 fee liability.  
 11 The uncertainty about potential enforcement has created a chilling effect on the *Fahr*  
 12 Plaintiffs' (and their counsel's) ability to proceed with the case.

13 59. But for Section 1021.11's fee-shifting provisions, Plaintiffs would  
 14 forthwith engage in litigation they have refrained from bringing against Defendants  
 15 due to the law's threat of ruinous fee liability.

### 16 **FIRST CLAIM FOR RELIEF**

#### 17 **VIOLATION OF FIRST AMENDMENT (42 U.S.C. § 1983)**

18 60. Plaintiffs incorporate here by reference paragraphs 1 through 59, *supra*,  
 19 as if fully set forth herein.

20 61. The First Amendment provides in relevant part that "Congress shall  
 21 make no law . . . abridging the freedom of speech . . . or the right of the people . . . to  
 22 petition the government for a redress of grievances." U.S. CONST. amend. I. The First  
 23 Amendment is applicable against the States. *See Gitlow v. New York*, 268 U.S. 652,  
 24 666 (1925).

25 62. For the reasons set forth above in Part II.A, Section 1021.11's fee-  
 26 shifting penalty violates the First Amendment to the Constitution.

1 **SECOND CLAIM FOR RELIEF**

2 **VIOLATION OF SUPREMACY CLAUSE (42 U.S.C. § 1983)**

3 63. Plaintiffs incorporate here by reference paragraphs 1 through 59, *supra*,  
4 as if fully set forth herein.

5 64. The Supremacy Clause provides in relevant part that “[t]his Constitution,  
6 and the laws of the United States which shall be made in pursuance thereof . . . shall  
7 be the supreme law of the land . . . any thing in the constitution or laws of any State  
8 to the contrary notwithstanding.” U.S. CONST. art. VI, § 2.

9 65. Section 1988(b) provides in relevant part that, “[i]n any action or  
10 proceeding to enforce a provision of [42 U.S.C. § 1983], the court, in its discretion,  
11 may allow the prevailing party, other than the United States, a reasonable attorney’s  
12 fee as part of the costs.” 42 U.S.C. § 1988(b).

13 66. For the reasons set forth above in Part II.B, Section 1021.11’s fee-  
14 shifting penalty is preempted by Section 1988(b) and its application is unconstitutional  
15 under the Supremacy Clause.

16 **THIRD CLAIM FOR RELIEF**

17 **VIOLATION OF EQUAL PROTECTION (42 U.S.C. § 1983)**

18 65. Plaintiffs incorporate here by reference paragraphs 1 through 59, *supra*,  
19 as if fully set forth herein.

20 66. The Equal Protection Clause of the Fourteenth Amendment provides that  
21 “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of  
22 the laws.” U.S. CONST. amend. XIV, § 1.

23 67. For the reasons set forth above in Part II.C, Section 1021.11’s fee-  
24 shifting penalty violates the Equal Protection Clause of the Fourteenth Amendment to  
25 the Constitution.

1 **FOURTH CLAIM FOR RELIEF**

2 **VIOLATION OF DUE PROCESS (42 U.S.C. § 1983)**

3 68. Plaintiffs incorporate here by reference paragraphs 1 through 59, *supra*,  
4 as if fully set forth herein.

5 69. The Due Process Clause of the Fourteenth Amendment provides that  
6 provides that no state shall “deprive any person of life, liberty, or property, without  
7 due process of law.” U.S. CONST. amend. XIV, § 1.

8 70. For the reasons set forth above in Part II.C, Section 1021.11’s fee-  
9 shifting penalty violates the Due Process Clause of the Fourteenth Amendment to the  
10 Constitution.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiffs pray for judgment as follows:

13 1. Plaintiffs respectfully request that this Court enter a declaratory judgment  
14 stating that SB 1327’s fee-shifting penalty set forth in California Code of Civil  
15 Procedure section 1021.11 violates the First Amendment to the Constitution.

16 2. Plaintiffs respectfully request that this Court enter a declaratory judgment  
17 stating that SB 1327’s fee-shifting penalty set forth in California Code of Civil  
18 Procedure section 1021.11 is preempted and its application is unconstitutional under  
19 the Supremacy Clause of the Constitution.

20 3. Plaintiffs respectfully request that this Court enter a declaratory judgment  
21 stating that SB 1327’s fee-shifting penalty set forth in California Code of Civil  
22 Procedure section 1021.11 violates the Equal Protection Clause of the Fourteenth  
23 Amendment to the Constitution.

24 4. Plaintiffs respectfully request that this Court enter a declaratory judgment  
25 stating that SB 1327’s fee-shifting penalty set forth in California Code of Civil  
26 Procedure section 1021.11 violates the Due Process Clause of the Fourteenth  
27 Amendment to the Constitution.

1           5.     Plaintiffs respectfully request that this Court enter a preliminary and  
2 permanent injunction enjoining enforcement or application of SB 1327's fee-shifting  
3 penalty set forth in California Code of Civil Procedure section 1021.11 against  
4 Plaintiffs, Plaintiffs' members, and any attorney or law firm representing any Plaintiff  
5 in any litigation involving Defendants potentially subject to SB 1327's fee-shifting  
6 penalty.

7           6.     Plaintiffs respectfully request costs of suit, including reasonable  
8 attorneys' fees under 42 U.S.C. § 1988 and any other applicable law, and all further  
9 relief to which Plaintiffs may be justly entitled.

10     Dated: March 2, 2023

BENBROOK LAW GROUP, PC

11  
12                     By s/ Bradley A. Benbrook  
13                     BRADLEY A. BENBROOK  
                      Attorneys for Plaintiffs

14                     COOPER & KIRK, PLLC

15  
16                     By s/ David H. Thompson  
17                     DAVID H. THOMPSON  
                      Attorneys for Plaintiffs



# EXHIBIT 1

December 30, 2022

Via email to: mzollman@sandiego.gov

Matthew L. Zollman  
Office of the San Diego City Attorney  
City of San Diego, California  
1200 Third Avenue Suite 1100  
San Diego, CA 92101

Re: URGENT – California Code of Civil Procedure Section 1021.11  
With respect to *Fahr v. City of San Diego, California*  
S.D. Cal. Case No. 3:21-cv-01676-BAS-BGS

Dear Counsel:

I am writing to you on behalf of the plaintiffs, plaintiffs' counsel, including me, and the plaintiffs' counsels' respective firms in the above-referenced matter regarding California Code of Civil Procedure ("CCP") Section 1021.11 ("§ 1021.11"), which becomes effective on January 1, 2023.

As you are likely aware, Governor Newsom signed Senate Bill No. 1327 (2021 – 2022 Reg. Sess.) ("SB 1327") into law on July 22, 2022. Among its changes was the addition of § 1021.11, which provides:

(a) Notwithstanding any other law, 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, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a court does either of the following:

(1) Dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a), regardless of the reason for the dismissal.

(2) Enters judgment in favor of the party opposing the declaratory or injunctive relief described by subdivision (a), on any claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover attorney's fees or costs in the underlying action, a prevailing party under this section may bring a civil action to recover attorney's fees and costs against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by subdivision (a) not later than the third anniversary of the date on which, as applicable:

(1) The dismissal or judgment described by subdivision (b) becomes final upon the conclusion of appellate review.

(2) The time for seeking appellate review expires.

(d) None of the following are a defense to an action brought under subdivision (c):

(1) A prevailing party under this section failed to seek recovery of attorney's fees or costs in the underlying action.

(2) The court in the underlying action declined to recognize or enforce the requirements of this section.

(3) The court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(e) Any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief as described in subdivision (a), shall not be deemed a prevailing party under this section or any other provision of this chapter.

(SB 1327, Sec. 2.)

As you may know, on December 19, 2022, the Honorable United States District Judge Roger T. Benitez issued an Opinion And Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD ("*Miller II*"), ECF No. 43 (online at <https://bit.ly/miller2order>). In its Opinion and Order, the Court ordered that:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order,

are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Regardless of whether or not defendants read the Court's Order as applying to them, or read CCP § 1021.11 as generally applying to parties in suits (and their counsel/firms) seeking declaratory or injunctive relief (as provided in subdivision (a) of CCP § 1021.11) filed before January 1, 2023, or any person, including an entity, attorney, or law firm that represents any litigant seeking that relief in such a case, we request that defendants stipulate that they will not seek to enforce CCP § 1021.11 based on the outcome of this case against plaintiffs' counsel of record (including myself), any other counsel who appears in this case at any time or in any court, the various counsels' respective firms, the plaintiffs (active or dismissed), and any other person representing any litigant seeking declaratory or injunctive relief in this matter.

Please inform me if any defendant in this case (or any of their officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) intends to bring a civil action, motion, application, petition, or any other proceeding to recover attorney's fees and/or costs under CCP § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff in this case) seeking declaratory or injunctive relief at any time.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of CCP § 1021.11 on behalf of all defendants, such as a suggestion of a "reservation of rights" or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that one or more defendants intend to seek remedies under CCP § 1021.11.

If we do not receive from defendant or defendant's counsel by no later than **5 p.m. Pacific time on Tuesday, January 3, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce CCP § 1021.11 against any person with respect to this case, we will be forced to assume that defendants will not agree to a stipulation of waiver and non-enforcement of CCP § 1021.11 and that defendants do intend to enforce CCP § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Very truly yours,

/s/ Raymond M. DiGuiseppe  
Raymond M. DiGuiseppe  
The DiGuiseppe Law Firm, P.C.

# **EXHIBIT 2**

BENBROOK LAW GROUP

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SACRAMENTO, CALIFORNIA 95825

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TELEPHONE: (916) 447-4900  
FACSIMILE: (916) 447-4904

BRADLEY A. BENBROOK

brad@benbrooklawgroup.com

January 20, 2023

**Via email**

Eric R. Havens  
County Counsel  
Office of County Counsel  
940 W. Main St., Suite 205  
El Centro, CA 92243  
erichavens@co.imperial.ca.us  
countycounsel@co.imperial.ca.us

Re: California Code of Civil Procedure § 1021.11

Dear Counsel:

I am writing to you on behalf of Firearms Policy Coalition, among other intended plaintiffs, and their counsel in a case to be filed challenging various laws, policies, practices, and customs of Imperial County regarding the regulation of firearms that individually and collectively violate the Second and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in Imperial County. Among other things, the Imperial County generally prohibits the possession of firearms in any recreational public park within the county's jurisdiction (Imperial County Code of Ordinances § 11.08.020), which violates the Second Amendment. We intend to seek declaratory and injunctive relief as to the enforcement of at least this law and policy.

However, we write you in hopes that we can eliminate the need to also litigate and seek relief regarding your enforcement of California Code of Civil Procedure Section 1021.11 ("§ 1021.11"), in connection with the litigation. Governor Newsom signed Senate Bill No. 1327 ("SB 1327") into law in July 2022. Among its changes was the addition of § 1021.11, which became effective on January 1, 2023, and provides:

Notwithstanding any other law, 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, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant

BENBROOK LAW GROUP, PC

Eric R. Havens  
January 20, 2023  
Page 2

seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

Cal. Code Civ. Proc. § 1021.11(a).

Section 1021.11 goes on to provide that a plaintiff in such a case cannot be a “prevailing party,” and that the government defendant is the prevailing party if the court dismisses “any claim or cause of action brought by the party seeking the declaratory or injunctive relief . . . , regardless of the reason for the dismissal.” *Id.* §§ (b), (e). It authorizes the government defendant to pursue a civil claim for these fees, *id.* § (c), and it purports to allow such claims even if “[t]he court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.” *Id.* §(d)(3).

Section 1021.11 is unconstitutional for several reasons. Governor Newsom and Attorney General Bonta have repeatedly asserted that the Texas law on which SB 1327 was modeled (Texas’s Senate Bill 8), is unconstitutional. When our firm recently filed an action to enjoin the State from enforcing § 1021.11, the Attorney General refused to defend the law. On December 19, 2022, United States District Judge Roger T. Benitez enjoined the State of California from implementing or enforcing the law as follows:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Opinion and Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD (“*Miller II*”), ECF No. 43 (online at <https://bit.ly/miller2order>).

We recognize that your office may take the position that the *Miller II* injunction does not *directly* apply to prevent your office from seeking to enforce § 1021.11 in situations where the statute might apply. Nevertheless, for the reasons set forth in the *Miller II* opinion, we submit there can be no reasonable argument that your office could constitutionally enforce § 1021.11. We therefore request that your office stipulate that it will not seek to enforce § 1021.11 based on the outcome of the forthcoming case against the plaintiffs, plaintiffs’ counsel of record, any other counsel who appears in this case at any time or in any court, the various counsels’ respective firms, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.



BENBROOK LAW GROUP, PC

Eric R. Havens  
January 20, 2023  
Page 3

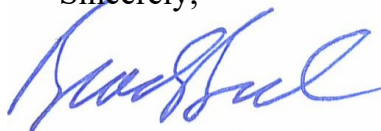
Please inform me whether Imperial County (or any of its officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) (“Prospective Defendants”) intend to bring a civil action, motion, application, petition, or any other proceeding to recover attorney’s fees and/or costs under § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon these prospective claims.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of § 1021.11 on behalf of the Prospective Defendants, such as a suggestion of a “reservation of rights” or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under § 1021.11.

Please be advised that if we do not receive from your office, or counsel for the Prospective Defendants by no later than **5:00 p.m. on Friday, January 27, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce § 1021.11 against any person with respect to this anticipated case, we will be forced to conclude that Prospective Defendants will not agree to a stipulation of waiver and non-enforcement of § 1021.11 and that the Prospective Defendants do intend to enforce § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Bradley A. Benbrook

# **EXHIBIT 3**

# SEILER EPSTEIN LLP

ATTORNEYS AT LAW

GML@SEILEREPSTEIN.COM

December 30, 2022

Via email: [donna.ziegler@acgov.org](mailto:donna.ziegler@acgov.org), [clay.christianson@acgov.org](mailto:clay.christianson@acgov.org)

Donna Ziegler, County Counsel  
Clay J. Christianson, Deputy County Counsel  
OFFICE OF THE COUNTY COUNSEL  
County of Alameda, California  
1221 Oak Street, Suite 450  
Oakland, CA 94612

Re: URGENT – California Code of Civil Procedure Section 1021.11

Dear Counsel:

I am writing to you on behalf of the intended plaintiffs, plaintiffs' counsel, including me, and the plaintiffs' counsels' respective firms in a case to be filed challenging various laws, policies, practices, and customs of Alameda County Sheriff Gregory Ahern, the Alameda County Sheriff's Office, and the County of Alameda, regarding applications for and issuance of licenses to carry firearms that individually and collectively violate the Second and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in County of Alameda, California. We intend to seek declaratory and injunctive relief as to the enforcement of those laws, policies, customs, and practices. However, we write you in hopes that we can eliminate the need to also litigate and seek relief regarding your enforcement of California Code of Civil Procedure Section 1021.11 ("§ 1021.11"), which becomes effective on January 1, 2023.

As you are likely aware, Governor Newsom signed Senate Bill No. 1327 (2021 – 2022 Reg. Sess.) ("SB 1327") into law on July 22, 2022. Among its changes was the addition of CCP § 1021.11, which provides:

(a) Notwithstanding any other law, 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, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

## **SEILER EPSTEIN LLP**

ATTORNEYS AT LAW

Page 2

(b) For purposes of this section, a party is considered a prevailing party if a court does either of the following:

(1) Dismisses any claim or cause of action brought by the party seeking the declaratory or injunctive relief described by subdivision (a), regardless of the reason for the dismissal.

(2) Enters judgment in favor of the party opposing the declaratory or injunctive relief described by subdivision (a), on any claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover attorney's fees or costs in the underlying action, a prevailing party under this section may bring a civil action to recover attorney's fees and costs against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by subdivision (a) not later than the third anniversary of the date on which, as applicable:

(1) The dismissal or judgment described by subdivision (b) becomes final upon the conclusion of appellate review.

(2) The time for seeking appellate review expires.

(d) None of the following are a defense to an action brought under subdivision (c):

(1) A prevailing party under this section failed to seek recovery of attorney's fees or costs in the underlying action.

(2) The court in the underlying action declined to recognize or enforce the requirements of this section.

(3) The court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(e) Any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief as described in subdivision (a), shall not be deemed a prevailing party under this section or any other provision of this chapter.

(SB 1327, Sec. 2.)

## SEILER EPSTEIN LLP

ATTORNEYS AT LAW

Page 3

As you may know, on December 19, 2022, United States District Judge Roger T. Benitez issued an Opinion and Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD (“*Miller II*”), ECF No. 43 (online at <https://bit.ly/miller2order>). In its Opinion and Order, the Court ordered that:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Regardless of whether or not the County of Alameda, the Alameda County Sheriff, and the Alameda County Sheriff’s Office read the Court’s Order as applying to them, we request that the County of Alameda, the Alameda County Sheriff, and the Alameda County Sheriff’s Office stipulate that they will not seek to enforce CCP § 1021.11 based on the outcome of the forthcoming case against plaintiffs’ counsel of record (including myself), any other counsel who appears in this case at any time or in any court, the various counsels’ respective firms, the plaintiffs, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.

Please inform me if the County of Alameda, the Alameda County Sheriff, and the Alameda County Sheriff’s Office (or any of their officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) (“Prospective Defendants”) intend to bring a civil action, motion, application, petition, or any other proceeding to recover attorney’s fees and/or costs under CCP § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon these prospective claims.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of CCP § 1021.11 on behalf of the Prospective Defendants, such as a suggestion of a “reservation of rights” or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under CCP § 1021.11.

Please be advised that if we do not receive from your office, or counsel for the Prospective Defendants by no later than **5 p.m. Pacific time on Tuesday, January 3, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce CCP § 1021.11 against any person with respect to this case, we will be forced to assume that Prospective Defendants will or would not agree to a stipulation of waiver and non-enforcement of CCP § 1021.11 and that the Prospective Defendants do intend to enforce CCP § 1021.11 against one or more such persons with respect to this case.

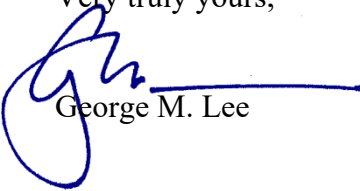
**SEILER EPSTEIN LLP**

ATTORNEYS AT LAW

Page 4

Thank you for your attention to this matter. We look forward to your timely response.

Very truly yours,



George M. Lee

# **EXHIBIT 4**





## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER  
COUNTY COUNSEL

January 3, 2023

### VIA EMAIL AND U.S. MAIL

George M. Lee  
Seiler Epstein LLP  
4 Embarcadero Center, 14<sup>th</sup> Floor  
San Francisco, California 94111  
Email: [gml@seilerepstein.com](mailto:gml@seilerepstein.com)

Re: California Code of Civil Procedure Section 1021.11

Dear Mr. Lee:

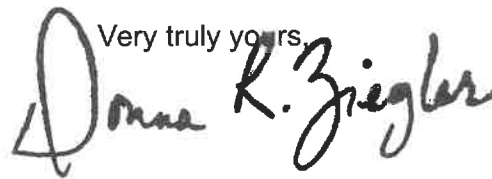
This responds to your letter addressed to me and Clay Christianson, dated December 30, 2022, and received by email delivery at 12:44 p.m., on the 30<sup>th</sup>. You allege that you and others are planning to initiate litigation (at some unspecified date and time) regarding applications for and issuance of licenses to carry firearms. You request that the Sheriff and the County of Alameda stipulate that they will not seek to enforce California Code of Civil Procedure ("CCP") Section 1021.11 based on the outcome of your unfiled and unattached litigation. You further advise that any statement that does not unequivocally stipulate to waiver and non-enforcement of CCP Section 1021.11 will be deemed to be confirmation that the "Prospective Defendants" intend to seek remedies under CCP Section 1021.11. You further advise that if you do not receive a written stipulation by January 3, 2023, at 5:00 p.m. (approximately one business day after you tendered your request to this office), you "will be forced to assume that Prospective Defendants . . . do intend to enforce CCP Section 1021.11 against one or more such persons with respect to" your unfiled and unattached litigation.

This letter confirms that you are not able to manufacture facts regarding the Sheriff's and the County's intentions in the manner your letter suggests. If the County and the Sheriff do not comply with your terms, you will not be "forced to assume" anything, and certainly not the facts you state you will be forced to assume.

On the contrary, rules that govern your practice require that you have a much higher standard of knowledge of the accuracy of facts you allege in a court filing. You are not able to allege as fact, even on information or belief, the intentions of my clients, simply because they did not perform an act that they lacked any obligation to perform (i.e., entering a stipulation in the manner and on the terms, you propose and on an unreasonable deadline).

George M. Lee  
January 3, 2023  
Page 2

You are encouraged to be mindful of your duties and obligations before you make averments in any pleading regarding the intentions of the Sheriff and the County regarding California Code of Civil Procedure Section 1021.11. Claims against the County and the Sheriff regarding California Code of Civil Procedure Section 1021.11 do not exist and would not be ripe despite your attempts to manufacture a claim.

Very truly yours,  
A handwritten signature in black ink that reads "Donna R. Ziegler". The signature is written in a cursive, flowing style. The first letter "D" is large and loops around the first part of the name. The "R" is also large and loops around the "Ziegler" part of the name.

DONNA R. ZIEGLER  
County Counsel

# EXHIBIT 5

BENBROOK LAW GROUP

Professional Corporation  
701 UNIVERSITY AVENUE, SUITE 106  
SACRAMENTO, CALIFORNIA 95825

www.benbrooklawgroup.com

TELEPHONE: (916) 447-4900  
FACSIMILE: (916) 447-4904

BRADLEY A. BENBROOK

brad@benbrooklawgroup.com

January 20, 2023

**Via email**

Tiffany N. North  
County Counsel, County of Ventura  
Christine A. Renshaw  
Assistant County Counsel  
County Government Center  
800 South Victoria Avenue, L/C #1830  
Ventura, CA 93009  
tiffany.north@ventura.org  
christine.renshaw@ventura.org

Re: California Code of Civil Procedure § 1021.11

Dear Counsel:

I am writing to you on behalf of Firearms Policy Coalition, among other intended plaintiffs, and their counsel in a case to be filed challenging the Ventura County Sheriff's Office's application and enforcement of the County's licensing regime for carrying concealed firearms, which violates the Second Amendment and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in Ventura County. We intend to seek declaratory and injunctive relief as to the enforcement of at least this policy, custom, and practice.

However, we write you in hopes that we can eliminate the need to also litigate and seek relief regarding your enforcement of California Code of Civil Procedure Section 1021.11 ("§ 1021.11"), in connection with the litigation. Governor Newsom signed Senate Bill No. 1327 ("SB 1327") into law in July 2022. Among its changes was the addition of § 1021.11, which became effective on January 1, 2023, and provides:

Notwithstanding any other law, 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, ordinance, rule, regulation, or any other type of law that regulates or restricts firearms, or that represents any litigant

BENBROOK LAW GROUP, PC

Tiffany N. North  
Christine A. Renshaw  
January 20, 2023  
Page 2

seeking that relief, is jointly and severally liable to pay the attorney's fees and costs of the prevailing party.

Cal. Code Civ. Proc. § 1021.11(a).

Section 1021.11 goes on to provide that a plaintiff in such a case cannot be a "prevailing party," and that the government defendant is the prevailing party if the court dismisses "any claim or cause of action brought by the party seeking the declaratory or injunctive relief . . . , regardless of the reason for the dismissal." *Id.* §§ (b), (e). It authorizes the government defendant to pursue a civil claim for these fees, *id.* § (c), and it purports to allow such claims even if "[t]he court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion." *Id.* §(d)(3).

Section 1021.11 is unconstitutional for several reasons. Governor Newsom and Attorney General Bonta have repeatedly asserted that the Texas law on which SB 1327 was modeled (Texas's Senate Bill 8), is unconstitutional. When our firm recently filed an action to enjoin the State from enforcing § 1021.11, the Attorney General refused to defend the law. On December 19, 2022, United States District Judge Roger T. Benitez enjoined the State of California from implementing or enforcing the law as follows:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Opinion and Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD ("*Miller II*"), ECF No. 43 (online at <https://bit.ly/miller2order>).

We recognize that your office may take the position that the *Miller II* injunction does not *directly* apply to prevent your office from seeking to enforce § 1021.11 in situations where the statute might apply. Nevertheless, for the reasons set forth in the *Miller II* opinion, we submit there can be no reasonable argument that your office could constitutionally enforce § 1021.11. We therefore request that your office stipulate that it will not seek to enforce § 1021.11 based on the outcome of the forthcoming case against the plaintiffs, plaintiffs' counsel of record, any other counsel who appears in this case at any time or in any court, the various counsels' respective

BENBROOK LAW GROUP, PC

Tiffany N. North  
Christine A. Renshaw  
January 20, 2023  
Page 3

firms, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.

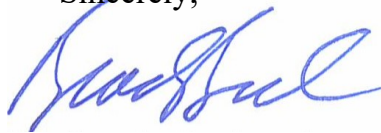
Please inform me whether the County of Ventura or Ventura County Sheriff's Office (or any of their officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) ("Prospective Defendants") intend to bring a civil action, motion, application, petition, or any other proceeding to recover attorney's fees and/or costs under § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon these prospective claims.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of § 1021.11 on behalf of the Prospective Defendants, such as a suggestion of a "reservation of rights" or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under § 1021.11.

Please be advised that if we do not receive from your office, or counsel for the Prospective Defendants by no later than **5:00 p.m. on Friday, January 27, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce § 1021.11 against any person with respect to this anticipated case, we will be forced to conclude that Prospective Defendants will not agree to a stipulation of waiver and non-enforcement of § 1021.11 and that the Prospective Defendants do intend to enforce § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Bradley A. Benbrook

# EXHIBIT 6



BENBROOK LAW GROUP

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SACRAMENTO, CALIFORNIA 95825

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FACSIMILE: (916) 447-4904

BRADLEY A. BENBROOK

brad@benbrooklawgroup.com

January 20, 2023

**Via email**

Dawyn R. Harrison  
Interim County Counsel, County of Los  
Angeles  
500 West Temple St., Floor 6  
Los Angeles, CA 90012  
dharrison@counsel.lacounty.gov

Re: California Code of Civil Procedure § 1021.11

Dear Counsel:

I am writing to you on behalf of Firearms Policy Coalition, among other intended plaintiffs, and their counsel in a case to be filed challenging various laws, policies, practices, and customs of the County of Los Angeles regarding the regulation of firearms that individually and collectively violate the Second and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in Los Angeles County. Among other things, the Los Angeles County Sheriff's Office's application and enforcement of the County's licensing regime for carrying concealed firearms violates the Second Amendment and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in Los Angeles County. Furthermore, the Los Angeles County Code generally prohibits the possession of firearms in any public park within the county's jurisdiction (§ 17.04.620), which likewise violates the Second Amendment. We intend to seek declaratory and injunctive relief as to the enforcement of at least those laws, policies, customs, and practices.

However, we write you in hopes that we can eliminate the need to also litigate and seek relief regarding your enforcement of California Code of Civil Procedure Section 1021.11 ("§ 1021.11"), in connection with the litigation. Governor Newsom signed Senate Bill No. 1327 ("SB 1327") into law in July 2022. Among its changes was the addition of § 1021.11, which became effective on January 1, 2023, and provides:

Notwithstanding any other law, 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

BENBROOK LAW GROUP, PC

Dawyn R. Harrison  
January 20, 2023  
Page 2

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

Cal. Code Civ. Proc. § 1021.11(a).

Section 1021.11 goes on to provide that a plaintiff in such a case cannot be a “prevailing party,” and that the government defendant is the prevailing party if the court dismisses “any claim or cause of action brought by the party seeking the declaratory or injunctive relief . . . , regardless of the reason for the dismissal.” *Id.* §§ (b), (e). It authorizes the government defendant to pursue a civil claim for these fees, *id.* § (c), and it purports to allow such claims even if “[t]he court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.” *Id.* §(d)(3).

Section 1021.11 is unconstitutional for several reasons. Governor Newsom and Attorney General Bonta have repeatedly asserted that the Texas law on which SB 1327 was modeled (Texas’s Senate Bill 8), is unconstitutional. When our firm recently filed an action to enjoin the State from enforcing § 1021.11, the Attorney General refused to defend the law. On December 19, 2022, United States District Judge Roger T. Benitez enjoined the State of California from implementing or enforcing the law as follows:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Opinion and Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD (“*Miller II*”), ECF No. 43 (online at <https://bit.ly/miller2order>).

We recognize that your office may take the position that the *Miller II* injunction does not *directly* apply to prevent your office from seeking to enforce § 1021.11 in situations where the statute might apply. Nevertheless, for the reasons set forth in the *Miller II* opinion, we submit there can be no reasonable argument that your office could constitutionally enforce § 1021.11. We therefore request that your office stipulate that it will not seek to enforce § 1021.11 based on the outcome of the forthcoming case against the plaintiffs, plaintiffs’ counsel of record, any other counsel who appears in this case at any time or in any court, the various counsels’ respective

BENBROOK LAW GROUP, PC

Dawyn R. Harrison  
January 20, 2023  
Page 3

firms, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.

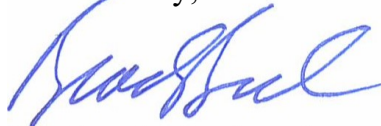
Please inform me whether the County of Los Angeles or Los Angeles County Sheriff's Office (or any of their officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) ("Prospective Defendants") intend to bring a civil action, motion, application, petition, or any other proceeding to recover attorney's fees and/or costs under § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon these prospective claims.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of § 1021.11 on behalf of the Prospective Defendants, such as a suggestion of a "reservation of rights" or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under § 1021.11.

Please be advised that if we do not receive from your office, or counsel for the Prospective Defendants by no later than **5:00 p.m. on Friday, January 27, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce § 1021.11 against any person with respect to this anticipated case, we will be forced to conclude that Prospective Defendants will not agree to a stipulation of waiver and non-enforcement of § 1021.11 and that the Prospective Defendants do intend to enforce § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Bradley A. Benbrook

# **EXHIBIT 7**



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE  
(213) 972-5780  
FACSIMILE  
(213) 626-5578  
TDD  
(213) 633-0901

DAWYN R. HARRISON  
Acting County Counsel

January 27, 2023

VIA E-MAIL AND U.S. MAIL

Bradley A. Benbrook  
Benbrook Law Group  
701 University Avenue, Suite 106  
Sacramento, California 95825  
[brad@benbrooklawgroup.com](mailto:brad@benbrooklawgroup.com)

**Re: January 20, 2023 Letter Regarding California Code of Civil  
Procedure Section 1021.11**

Dear Mr. Benbrook:

This is in response to your letter dated January 20, 2023 regarding California Code of Civil Procedure ("CCP") section 1021.11, in which you request this office "unequivocally stipulate to waiver and non-enforcement of section 1021.11" on behalf of "prospective" County defendants. You request this waiver "in a case to be filed challenging various laws, policies, practices, and customs of the County of Los Angeles regarding the regulation of firearms that individually and collectively violate the Second and Fourteenth Amendment rights of" certain unidentified plaintiffs.

While we understand your position regarding the legality of CCP section 1021.11, it would be inappropriate for this office to stipulate as you request outside of an actual litigation. Should a complaint be filed, we would be willing to discuss entering into a case-specific stipulation with respect to CCP section 1021.11 (if applicable), which we understand has been done in other cases involving the State of California. In addition, we would consider entering a stipulation in a prospective case for which you provide specific information regarding claims and parties.

Bradley A. Benbrook  
January 27, 2023  
Page 2

Accordingly, please present a draft stipulation that is clearly and specifically connected with a particular lawsuit you filed or plan to file for our review and consideration.

Very truly yours,

DAWYN R. HARRISON  
Acting County Counsel

By  
LANA CHOI  
Senior Deputy County Counsel  
Justice and Safety Division

LC:ga

# EXHIBIT 8



BENBROOK LAW GROUP

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FACSIMILE: (916) 447-4904

BRADLEY A. BENBROOK

brad@benbrooklawgroup.com

January 27, 2023

**Via email**

Joseph W. Cotchett  
jcotchett@cpmlegal.com  
Tamarah P. Prevost  
tprevost@cpmlegal.com  
Andrew F. Kirtley  
akirtley@cpmlegal.com  
Melissa Montenegro  
mmontenegro@cpmlegal.com  
Cotchett, Pitre & McCarthy, LLP  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010

Re: California Code of Civil Procedure § 1021.11

Dear Counsel:

I am writing to you on behalf of Firearms Policy Coalition, among other intended plaintiffs, and their counsel in a case to be filed challenging various laws of the City of San Jose regarding the regulation of firearms that violate the Second and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in San Jose. As you may recall, my firm previously served as counsel of record for the Plaintiffs in *Glass v. City of San Jose*, N.D. Cal. Case No 5:22-cv-02533-BL, which challenged City ordinances requiring firearm owners to pay an annual fee to a City-designated non-profit organization and obtain firearm-related insurance. Plaintiffs dismissed that lawsuit on August 24, 2022, because of the threat posed by California Code of Civil Procedure Section 1021.11's one-sided fee-shifting provisions. We are now prepared to re-file litigation seeking declaratory and injunctive relief as to at least these same regulations.

To that end, we write you in hopes that we can eliminate the need to also litigate and seek relief regarding any potential enforcement of § 1021.11, in connection with the litigation. Governor Newsom signed Senate Bill No. 1327 ("SB 1327") into law in July 2022. Among its changes was the addition of § 1021.11, which became effective on January 1, 2023, and provides:

January 27, 2023

Page 2

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

Cal. Code Civ. Proc. § 1021.11(a).

Section 1021.11 goes on to provide that a plaintiff in such a case cannot be a “prevailing party,” and that the government defendant is the prevailing party if the court dismisses “any claim or cause of action brought by the party seeking the declaratory or injunctive relief . . . , regardless of the reason for the dismissal.” *Id.* §§ (b), (e). It authorizes the government defendant to pursue a civil claim for these fees, *id.* § (c), and it purports to allow such claims even if “[t]he court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.” *Id.* §(d)(3).

Section 1021.11 is unconstitutional for several reasons. Governor Newsom and Attorney General Bonta have repeatedly asserted that the Texas law on which SB 1327 was modeled (Texas’s Senate Bill 8), is unconstitutional. When our firm recently filed an action to enjoin the State from enforcing § 1021.11, the Attorney General refused to defend the law. On December 19, 2022, United States District Judge Roger T. Benitez enjoined the State of California from implementing or enforcing the law as follows:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Opinion and Order Enjoining Enforcement of California Code Of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD (“*Miller II*”), ECF No. 43 (online at <https://bit.ly/miller2order>).

We recognize that the City may take the position that the *Miller II* injunction does not *directly* apply to prevent the City from seeking to enforce § 1021.11 in situations where the statute might apply. Nevertheless, for the reasons set forth in the *Miller II* opinion, we submit

BENBROOK LAW GROUP, PC

January 27, 2023

Page 3

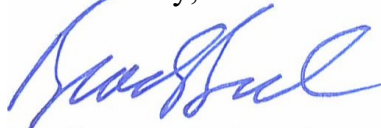
there can be no reasonable argument that the City could constitutionally enforce § 1021.11. We therefore request that the City stipulate that it will not seek to enforce § 1021.11 based on the outcome of the forthcoming case against the plaintiffs, plaintiffs' counsel of record, any other counsel who appears in this case at any time or in any court, the various counsels' respective firms, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.

Please confirm whether the City of San Jose will stipulate that it will not bring a civil action, motion, application, petition, or any other proceeding to recover attorney's fees and/or costs under § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon these prospective claims. Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of § 1021.11 on behalf of the City and its officers, agents and employees (the "Prospective Defendants"), such as a suggestion of a "reservation of rights" or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under § 1021.11.

Please be further advised that if we do not receive from your office, or other counsel for the City by no later than **12:00 p.m. on Thursday, February 2, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce § 1021.11 against any person with respect to this anticipated case, we will be forced to conclude that the Prospective Defendants do intend to enforce § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Bradley A. Benbrook

# EXHIBIT 9

LOS ANGELES  
SEATTLE  
NEW YORK

LAW OFFICES  
COTCHETT, PITRE & McCARTHY, LLP  
SAN FRANCISCO AIRPORT OFFICE CENTER  
840 MALCOLM ROAD  
BURLINGAME, CALIFORNIA 94010  
TELEPHONE (650) 697-6000  
FAX (650) 697-0577  
cpmlegal.com

February 2, 2023

**Sent Via E-mail to:**

Bradley A. Benbrook  
Benbrook Law Group  
701 University Avenue, Suite 106  
Sacramento, CA 95825  
*brad@benbrooklawgroup.com*

**Re: California Code of Civil Procedure § 1021.11**

Mr. Benbrook:

We are in receipt of your letter dated January 27, 2023. It is unclear from your letter what City of San Jose (“City”) ordinance or law specifically you intend to file litigation against, and on behalf of which plaintiffs. *See, e.g.*, January 27 Letter at 1 (noting the letter is sent on behalf of your client and “other intended plaintiffs,” and anticipating “a case to be filed challenging various laws of the City of San Jose”). Your language makes it impossible to know what specific City laws you intend to file a lawsuit over, and on behalf of whom, which makes it difficult to evaluate your request. Moreover, my firm represents the City in defense of the 2022 Gun Harm Reduction Ordinance (the “Ordinance”), and not for all purposes or with respect to all possible claims, making it further inappropriate to respond.

To the extent some portion of your letter relates to the Ordinance, your clients voluntarily dismissed their lawsuit in the Northern District of California challenging the Ordinance and have not re-filed a new one. Because the other two lawsuits challenging the Ordinance are still pending in federal court, it would not be appropriate for the City to comment on that pending litigation, for this additional reason.

Nor would it be appropriate for the City to comment on state legislation, whether under Cal. Code Civ. Proc. § 1021.11 or any other state law, that your firm on your client’s behalf is currently seeking to invalidate in the Southern District of California. Indeed, in August 2022, just before filing that suit, your firm sent me a similar demand and request. Before the City even had the chance to respond, your client dismissed its claims in the Northern District case, then used that non-response to bolster your client’s standing to challenge § 1021.11 in the Southern District. Based on this history, we are concerned that your most recent letter is not intended as a

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good faith offer to resolve (unspecified) future claims against the City, but rather to give your client some advantage in its ongoing lawsuit challenging the constitutionality of § 1021.11.

Accordingly, we respectfully decline to comment on what positions the City might take, or what remedies it might seek, in hypothetical future litigation against the City.

Best,



TAMARAH P. PREVOST

cc: Joseph W. Cotchett  
Andrew F. Kirtley

# **EXHIBIT 10**



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BRADLEY A. BENBROOK

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February 24, 2023

**Via email**

James R. Williams  
County Counsel, County of Santa Clara  
70 West Hedding Street  
East Wing, 9th Floor  
San Jose, CA 95110  
county.counsel@cco.sccgov.org

Re: California Code of Civil Procedure § 1021.11

Dear Counsel:

I am writing to you on behalf of Firearms Policy Coalition, among other intended plaintiffs, and their counsel in a case to be filed challenging the Santa Clara County Sheriff's Office's application and enforcement of the County's licensing regime for carrying concealed firearms, which violates the Second Amendment and Fourteenth Amendment rights of the plaintiffs, plaintiffs' members, and other similarly situated individuals in Santa Clara County. We intend to seek declaratory and injunctive relief as to the enforcement of at least those laws, policies, customs, and practices.

However, we write to you in hopes that we can eliminate the need to also litigate and seek relief regarding your enforcement of California Code of Civil Procedure Section 1021.11 ("§ 1021.11"), in connection with the litigation. Governor Newsom signed Senate Bill No. 1327 ("SB 1327") into law in July 2022. Among its changes was the addition of § 1021.11, which became effective on January 1, 2023, and provides:

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

Cal. Code Civ. Proc. § 1021.11(a).

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Section 1021.11 goes on to provide that a plaintiff in such a case cannot be a “prevailing party,” and that the government defendant is the prevailing party if the court dismisses “any claim or cause of action brought by the party seeking the declaratory or injunctive relief . . . , regardless of the reason for the dismissal.” *Id.* §§ (b), (e). It authorizes the government defendant to pursue a civil claim for these fees, *id.* § (c), and it purports to allow such claims even if “[t]he court in the underlying action held that any provision of this section is invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.” *Id.* §(d)(3).

Section 1021.11 is unconstitutional for several reasons. In fact, Governor Newsom and Attorney General Bonta have repeatedly asserted that the Texas law on which SB 1327 was modeled (Texas’s Senate Bill 8), is unconstitutional. And when our firm recently filed an action to enjoin the State from enforcing § 1021.11, the Attorney General refused to defend the law. On December 19, 2022, United States District Judge Roger T. Benitez enjoined the State of California from implementing or enforcing the law as follows:

Defendant Attorney General Rob Bonta and Intervenor-Defendant Governor Gavin Newsom, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of this injunction order or know of the existence of this injunction order, are enjoined from implementing or enforcing California Code of Civil Procedure § 1021.11, as enacted by S.B. 1327.

Opinion and Order Enjoining Enforcement of California Code of Civil Procedure § 1021.11 in *Miller v. Bonta*, S.D. Cal. Case. No. 3:22-cv-01446-BEN-MDD (“*Miller II*”), ECF No. 43 (online at <https://bit.ly/miller2order>).

We recognize that your office may take the position that the *Miller II* injunction does not *directly* apply to prevent your office from seeking to enforce § 1021.11 in situations where the statute might apply. Nevertheless, for the reasons set forth in the *Miller II* opinion, we submit there can be no reasonable argument that your office could constitutionally enforce § 1021.11. We therefore request that your office stipulate that it will not seek to enforce § 1021.11, based on the outcome of the forthcoming case, against the plaintiffs, plaintiffs’ counsel of record, any other counsel who appears in this case at any time or in any court, the various counsels’ respective firms, and any other person representing any litigant seeking declaratory or injunctive relief in the forthcoming matter.

Please inform me whether the County of Santa Clara or the Santa Clara County Sheriff’s Office (or any of their officers, agents, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) (“Prospective Defendants”) will

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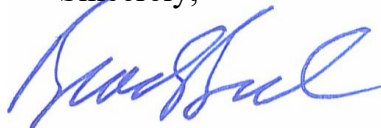
stipulate to refrain from bringing a civil action, motion, application, or any other proceeding to recover attorney's fees and/or costs under § 1021.11 against any person (including an entity, attorney, or law firm representing a plaintiff) seeking declaratory or injunctive relief based upon the prospective claims described above.

Please be advised that any statement that does not unequivocally stipulate to waiver and non-enforcement of § 1021.11 on behalf of the Prospective Defendants, such as a suggestion of a "reservation of rights" or other equivocation as to waiver/non-enforcement, will be deemed to be confirmation that the Prospective Defendants intend to seek remedies under § 1021.11.

Please be advised that if we do not receive from your office, or counsel for the Prospective Defendants by no later than **12:00 p.m. on Wednesday, March 1, 2023**, a written agreement to stipulate to unconditional waiver and non-enforcement of CCP § 1021.11 in the manner stated above or an unequivocal statement otherwise making clear that Prospective Defendants (and any/all officers, agents, servants, employees, or others acting in concert or participation with them in enforcing or implementing the laws at issue) will not enforce § 1021.11 against any person with respect to this anticipated case, we will be forced to conclude that Prospective Defendants will not agree to a stipulation of waiver and non-enforcement of § 1021.11 and that the Prospective Defendants do intend to enforce § 1021.11 against one or more such persons with respect to this case.

Thank you for your attention to this matter. We look forward to your timely response.

Sincerely,



Bradley A. Benbrook