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11 *Diane F. Boyer-Vine, in her official capacity*
12 *as Legislative Counsel of California*

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

15 DOE PUBLIUS,

16 Plaintiff,

17 v.

18 DIANE F. BOYER-VINE, in her
19 official capacity as Legislative Counsel
20 of California,

21 Defendant.

CASE NO. 1:16-CV-01152-LJO-SKO

DEFENDANT BOYER-VINE'S
ANSWER TO COMPLAINT FOR
DECLARATORY, INJUNCTIVE, OR
OTHER RELIEF

Complaint Filed: Aug. 5, 2016

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Printed on Recycled Paper

1 Defendant Diane Boyer-Vine (“Defendant”) answers the Complaint for
2 Declaratory, Injunctive, or Other Relief as follows:

3 1. In response to Paragraph 1 of the Complaint, Defendant answers that the
4 allegations contained therein are legal conclusions rather than factual allegations and
5 that the cited statute speaks for itself. On that basis, Defendant denies each and every
6 allegation contained in Paragraph 1.

7 2. In response to Paragraph 2 of the Complaint, Defendant lacks sufficient
8 information and belief upon which to admit or deny the allegations contained therein,
9 and on this basis denies each and every allegation contained in Paragraph 2.

10 3. In response to Paragraph 3 of the Complaint, Defendant affirmatively
11 alleges that on or about July 8, 2016, Deputy Legislative Counsel Kathryn
12 Londenberg transmitted two demand letters to WordPress.com, one by email and one
13 via its website, requesting the removal of the home addresses of 14 Senators and 26
14 Assembly Members that had been posted without their permission for public display
15 on an internet web site hosted by WordPress.com by the user on its platform that goes
16 by the name of “therealwritewinger” at [https://therealwritewinger.wordpress.com/
17 2016/07/05/tyrants-to-be-registered-with-gun-owners](https://therealwritewinger.wordpress.com/2016/07/05/tyrants-to-be-registered-with-gun-owners). Defendant further alleges that
18 the content of the July 8, 2016, letters speak for themselves. Except as expressly
19 admitted or alleged herein, Defendant denies all other allegations contained in
20 Paragraph 3.

21 4. In response to Paragraph 4 of the Complaint, Defendant answers that the
22 second sentence of the paragraph contains legal conclusions rather than factual
23 allegations and that the statute cited therein speaks for itself. With respect to the first
24 sentence of Paragraph 4, Defendant lacks sufficient information and belief upon which
25 to admit or deny the allegations contained therein, and on this basis denies each and
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1 every allegation contained in Paragraph 4.

2 5. In response to Paragraph 5 of the Complaint, Defendant answers that the
3 allegations contained in Paragraph 5 are argumentative and legal conclusions rather
4 than factual allegations. On that basis, Defendant denies each and every allegation
5 contained in Paragraph 5.

6 6. In response to Paragraph 6 of the Complaint, Defendant answers that the
7 allegations contained in Paragraph 6 are argumentative and legal conclusions rather
8 than factual allegations. On that basis, Defendant denies each and every allegation
9 contained in Paragraph 6. To the extent that Paragraph 6 may be construed as
10 containing any factual allegations, Defendant denies each and every such allegation
11 contained in Paragraph 6.

12 7. In response to Paragraph 7 of the Complaint, Defendant answers that the
13 allegations contained in Paragraph 7 are argumentative and legal conclusions rather
14 than factual allegations. On that basis, Defendant denies each and every allegation
15 contained in Paragraph 7.

16 8. In response to Paragraph 8 of the Complaint, Defendant admits that
17 Plaintiff's Complaint seeks declaratory and injunctive relief to invalidate and to enjoin
18 enforcement of California Government Code section 6254.21(c). Defendant answers
19 that the remaining allegations contained in Paragraph 8 are argumentative and legal
20 conclusions rather than factual allegations. Except as expressly admitted or alleged
21 herein, Defendant denies all other allegations contained in Paragraph 8.

22 9. In response to Paragraph 9 of the Complaint, Defendant admits that the
23 Complaint raises claims for relief under the First Amendment and 42 U.S.C. § 1983.
24 Defendant answers that the remaining allegations contained in Paragraph 9 are legal
25 conclusions rather than factual allegations. Except as expressly admitted or alleged
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1 herein, Defendant denies all other allegations contained in Paragraph 9.

2 10. In response to Paragraph 10 of the Complaint, Defendant lacks sufficient
3 information and belief upon which to admit or deny the allegations contained therein,
4 and on this basis denies each and every allegation contained in Paragraph 10.

5 11. In response to Paragraph 11 of the Complaint, Defendant lacks sufficient
6 information and belief upon which to admit or deny the allegations contained therein,
7 and on this basis denies each and every allegation contained in Paragraph 11.

8 12. In response to Paragraph 12 of the Complaint, Defendant admits the
9 allegations in Paragraph 12.

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11 **ANSWER TO GENERAL ALLEGATIONS**

12 13. In response to Paragraph 13 of the Complaint, Defendant lacks sufficient
13 information and belief upon which to admit or deny the allegations contained therein,
14 and on this basis denies each and every allegation contained in Paragraph 13.

15 14. In response to Paragraph 14 of the Complaint, Defendant affirmatively
16 alleges that on July 1, 2016, California Governor Jerry Brown signed a number of bills
17 relating to firearms and ammunition, and that among those bills was Senate Bill
18 No. 1235 (Stats.2016, ch. 55), which added, amended, and repealed various provisions
19 of the Penal Code. Defendant further answers that Paragraph 14 contains legal
20 conclusions rather than factual allegations and that the legislation cited therein speaks
21 for itself. Except as expressly admitted or alleged herein, Defendant denies all other
22 allegations contained in Paragraph 14.

23 15. In response to Paragraph 15 of the Complaint, Defendant affirmatively
24 alleges that as of July 8, 2016, an entry was posted on an internet web site hosted by
25 WordPress.com by the user on its platform that goes by the name of
26 “therealwritewinger” at <https://therealwritewinger.wordpress.com/2016/07/05/tyrants->
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1 to-be-registered-with-gun-owners that included the home addresses of 14 Senators and
2 26 Assembly Members without their permission. Defendant admits that what appears
3 to be a correct copy of that website posting, in printed format, is attached to the
4 Complaint as Exhibit A. Defendant further alleges that the content of the posting
5 speaks for itself. Except as expressly admitted or alleged herein, Defendant lacks
6 sufficient information and belief upon which to admit or deny the allegations
7 contained in Paragraph 15, and on this basis denies each and every allegation
8 contained therein.
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10 16. In response to Paragraph 16 of the Complaint, Defendant lacks sufficient
11 information and belief upon which to admit or deny the allegations contained therein,
12 and on this basis denies each and every allegation contained in Paragraph 16.

13 17. In response to Paragraph 17 of the Complaint, Defendant affirmatively
14 alleges that on or before July 11, 2016, Deputy Legislative Counsel Kathryn
15 Londenberg transmitted two demand letters to WordPress.com, one by email and one
16 via its website, requesting the removal of the home addresses of 14 Senators and 26
17 Assembly Members that had been posted without their permission for public display
18 on an internet web site hosted by WordPress.com by the user on its platform that goes
19 by the name of “therealwritewinger” at [https://therealwritewinger.wordpress.com/
20 2016/07/05/tyrants-to-be-registered-with-gun-owners](https://therealwritewinger.wordpress.com/2016/07/05/tyrants-to-be-registered-with-gun-owners). Defendant admits that a
21 redacted portion of the text of one of those demand letters is set forth in Paragraph 17.
22 Defendant further alleges that the content of the July 8, 2016, letter quoted in
23 Paragraph 17 speaks for itself. Except as expressly admitted or alleged herein,
24 Defendant denies all other allegations contained in Paragraph 17.
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26 18. In response to Paragraph 18 of the Complaint, Defendant lacks sufficient
27 information and belief upon which to admit or deny the allegations contained therein,
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1 and on this basis denies each and every allegation contained in Paragraph 18.

2 19. In response to Paragraph 19 of the Complaint, Defendant affirmatively
3 alleges that as of July 11, 2016, an entry was posted on a second internet web site
4 hosted by WordPress.com by a blogroll that goes by the name of “Burst Updates,” at
5 <https://burstupdates.wordpress.com/2016/07/10/government-warns-site-to-remove->
6 [list-of-state-senators-who-passed-gun-control-requiring-personal-info-on-owners,](https://burstupdates.wordpress.com/2016/07/10/government-warns-site-to-remove-)
7 which also included a list of the home addresses of the same 14 Senators and 26
8 Assembly Members without their permission. Defendant lacks sufficient information
9 and belief upon which to admit or deny all other allegations contained in
10 Paragraph 19, and on that basis, except as expressly admitted or alleged herein,
11 Defendant denies all other allegations contained in Paragraph 19.

13 20. In response to Paragraph 20 of the Complaint, Defendant affirmatively
14 alleges that on or about July 11, 2016, Deputy Legislative Counsel Kathryn
15 Londenberg transmitted an email to WordPress.com requesting the removal of the
16 home addresses of the 14 Senators and 26 Assembly Members that had been posted
17 without their permission for public display on the internet web site hosted by
18 WordPress.com by a blogroll that goes by the name of “Burst Updates,” at
19 <https://burstupdates.wordpress.com/2016/07/10/government-warns-site-to-remove->
20 [list-of-state-senators-who-passed-gun-control-requiring-personal-info-on-owners.](https://burstupdates.wordpress.com/2016/07/10/government-warns-site-to-remove-)
21 Except as expressly admitted or alleged herein, Defendant denies all other allegations
22 contained in Paragraph 20.

24 21. In response to Paragraph 21 of the Complaint, Defendant admits that a
25 portion of the text of California Government Code section 6254.21, subdivision (c),
26 is set forth in Paragraph 21. Defendant further alleges that the statute speaks for itself.
27 Except as expressly admitted or alleged herein, Defendant denies all other allegations
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1 contained in Paragraph 21.

2 22. In response to Paragraph 22 of the Complaint, Defendant answers that
3 the allegations contained in Paragraph 22 are argumentative and legal conclusions
4 rather than factual allegations. On that basis, Defendant denies each and every
5 allegation contained in Paragraph 22.

6 23. In response to Paragraph 23 of the Complaint, Defendant answers that
7 the allegations contained in Paragraph 23 are argumentative and legal conclusions
8 rather than factual allegations. On that basis, Defendant denies each and every
9 allegation contained in Paragraph 23.

10 24. In response to Paragraph 24 of the Complaint, Defendant admits that a
11 portion of the post published at [https://therealwritewinger.wordpress.com/2016/07/
12 05/tyrants-to-be-registered-with-gun-owners](https://therealwritewinger.wordpress.com/2016/07/05/tyrants-to-be-registered-with-gun-owners) is set forth in Paragraph 24. Except as
13 expressly admitted or alleged herein, Defendant denies all other allegations contained
14 in Paragraph 24.

15 25. In response to Paragraph 25 of the Complaint, Defendant answers that
16 the allegations contained in Paragraph 25 are argumentative and legal conclusions
17 rather than factual allegations. On that basis, Defendant denies each and every
18 allegation contained in Paragraph 25.

19 26. In response to Paragraph 26 of the Complaint, Defendant answers that
20 the allegations contained in Paragraph 26 are argumentative and legal conclusions
21 rather than factual allegations. On that basis, Defendant denies each and every
22 allegation contained in Paragraph 26.

23 27. In response to Paragraph 27 of the Complaint, Defendant answers that
24 the allegations contained in Paragraph 27 are argumentative and legal conclusions
25 rather than factual allegations. On that basis, Defendant denies each and every
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1 allegation contained in Paragraph 27.

2 28. In response to Paragraph 28 of the Complaint, Defendant answers that
3 the allegations contained in Paragraph 28 are argumentative and legal conclusions
4 rather than factual allegations. On that basis, Defendant denies each and every
5 allegation contained in Paragraph 28.

6 29. In response to Paragraph 29 of the Complaint, Defendant answers that
7 the allegations contained in Paragraph 29 are argumentative and legal conclusions
8 rather than factual allegations. On that basis, Defendant denies each and every
9 allegation contained in Paragraph 29.

10 30. In response to Paragraph 30 of the Complaint, Defendant answers that
11 the allegations contained in Paragraph 30 are argumentative and legal conclusions
12 rather than factual allegations. On that basis, Defendant denies each and every
13 allegation contained in Paragraph 30.

14 31. In response to Paragraph 31 of the Complaint, Defendant answers that
15 the allegations contained in Paragraph 31 are argumentative and legal conclusions
16 rather than factual allegations. On that basis, Defendant denies each and every
17 allegation contained in Paragraph 31.

18 32. In response to Paragraph 32 of the Complaint, Defendant answers that
19 the allegations contained in Paragraph 32 are argumentative and legal conclusions
20 rather than factual allegations. On that basis, Defendant denies each and every
21 allegation contained in Paragraph 32.

22 33. In response to Paragraph 33 of the Complaint, Defendant answers that
23 the allegations contained in Paragraph 33 are argumentative and legal conclusions
24 rather than factual allegations. On that basis, Defendant denies each and every
25 allegation contained in Paragraph 33.
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ANSWER TO PRAYER FOR RELIEF

43. In response to Paragraphs 1 through 3, inclusive, of the Prayer for Relief, Defendant denies that Plaintiff is entitled to the relief requested in those paragraphs, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State Claim for Relief)

44. Defendant alleges that the Complaint fails to state a claim upon which relief may be granted or sufficient facts to constitute a claim for relief against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Answering Defendant Not a Proper Party)

45. Defendant alleges that Defendant is not a proper party to this action.

THIRD AFFIRMATIVE DEFENSE

(Failure to Name Necessary and Indispensable Parties)

46. Defendant alleges that the Complaint fails to name necessary and indispensable parties.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Injury in Fact)

47. Defendant alleges that Plaintiff's claims, to the extent alleged against Defendant, are barred on the ground and to the extent that Plaintiff has suffered no injury in fact with respect to the facts alleged in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

(No Legal Cause)

48. Defendant alleges that Plaintiff's claims, to the extent alleged against

1 Defendant, are barred on the ground and to the extent that Defendant's acts and
2 conduct were not the legal cause of any injury alleged to be suffered by Plaintiff.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(Acts of Independent Third Party)**

5 49. Defendant alleges that Plaintiff's claims, to the extent alleged against
6 Defendant, are barred on the ground and to the extent that any injury alleged to be
7 suffered by Plaintiff was not caused by Defendant but was the result of the
8 independent acts of a third party or parties acting outside the scope of agency,
9 employment, or control of Defendant.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Lack of Standing)**

12 50. Defendant alleges that Plaintiff lacks standing because, among other
13 grounds, Plaintiff suffered no injury in fact and Plaintiff was not the object of the
14 actions complained of in the Complaint.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 **(No State Action Under 42 U.S.C. § 1983)**

17 51. Defendant alleges that Plaintiff fails to state a claim under 42 U.S.C.
18 § 1983 because any injury alleged to be suffered by Plaintiff was not the result of any
19 action taken under the color of state law.

20 **NINTH AFFIRMATIVE DEFENSE**

21 **(Lack of Redressability)**

22 52. Defendant alleges that Plaintiff's claims, to the extent alleged against
23 Defendant, are barred on the ground and to the extent that any injury alleged to be
24 suffered by Plaintiff is not likely to be redressed by the relief sought against
25 Defendant in the Complaint.
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TENTH AFFIRMATIVE DEFENSE

(Injury Not Substantially Caused by Conduct of Defendant)

53. Defendant alleges that Plaintiff’s claims, to the extent alleged against Defendant, are barred on the ground and to the extent that any injury alleged to be suffered by Plaintiff was not substantially caused by the conduct of Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

(Sovereign Immunity)

54. Defendant alleges that Plaintiff’s claims, to the extent alleged against Defendant, are barred by the doctrine of sovereign immunity.

TWELFTH AFFIRMATIVE DEFENSE

(Eleventh Amendment)

55. Defendant alleges that Plaintiff’s claims, to the extent alleged against Defendant, are barred by the Eleventh Amendment of the U.S. Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Justiciability — Mootness)

56. Defendant alleges that Plaintiff’s claims, to the extent alleged against Defendant, are barred on the ground that they are moot, and no actual controversy exists between Plaintiff and Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Justiciability — Ripeness)

57. Defendant alleges that Plaintiff’s claims, to the extent alleged against Defendant, are barred on the ground that they are not sufficiently ripe for judicial review, and no actual controversy exists between Plaintiff and Defendant.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Immunity)**

3 58. Defendant alleges that Plaintiff's claims, to the extent alleged against
4 Defendant, are barred on the ground that Defendant is immune for acts undertaken in
5 an official capacity, in good faith, even if mistaken, and without wrongful intent.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 **(Waiver, Estoppel, and Laches)**

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9 59. Defendant alleges that Plaintiff's claims, to the extent alleged against
10 Defendant, are barred by the equitable doctrines of waiver, estoppel, and/or laches.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 **(No Entitlement to Attorneys' Fees)**

13 60. Defendant alleges as a distinct and separate affirmative defense that
14 Plaintiff fails to allege sufficient facts to support an award of attorneys' fees or costs
15 against Defendant on any claim and on any basis.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 **(Reservation of Additional Defenses)**

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19 61. Defendant reserves the right to assert additional defenses that may
20 become known through future discovery or investigation of this action.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Defendant prays for judgment as follows:

- 23 1. That Plaintiff take nothing by reason of the Complaint;
24 2. That Plaintiff's Complaint be dismissed in its entirety with prejudice;
25 3. That Defendant be awarded its attorneys' fees and costs of suit; and
26 4. That Defendant be awarded such other and further relief as the Court
27 deems just and proper.
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September 8, 2016

STRUMWASSER & WOOCHER LLP

By /s/ Fredric Woocher
Fredric D. Woocher

Attorneys for Defendant Diane Boyer-Vine