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COUNSEL FOR DEFENDANTS

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

MONTANA SPORTS SHOOTING	)	
ASSOCIATION, INC. GARY S. MARBUT,	)	
ROBERT C. CLARK, CAROL LATTA,	)	
Plaintiff,	)	
	)	
v.	)	Case No. DV-06-94
	)	
THE STATE OF MONTANA, MIKE	)	<b>ANSWER TO THE COMPLAINT FOR</b>
MCGRATH, ATTORNEY GENERAL OF	)	<b>DECLARATORY JUDGMENT AND</b>
THE STATE OF MONTANA, THE	)	<b>PERMANENT INJUNCTION</b>
MONTANA DEPARTMENT OF FISH,	)	
WILDLIFE AND PARKS,	)	
Defendant	)	
	)	

COMES NOW Defendants, State of Montana et al. and for their Answer to the Complaint for Declaratory Judgment and Permanent Injunction admit, deny and allege as follows:

I.

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

## II.

### SECOND DEFENSE

2. Deny the allegations of paragraphs 1 through 4 because Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations concerning their status and interests.
3. Admit the allegations of paragraph 5, but informs the Court that the correct agency charged with enforcing Mont. Code Ann., Title 87 is the Defendant the Department of Fish, Wildlife and Parks.
4. Admit the allegations of paragraph 6.
5. Admit Jurisdiction and Venue are proper.
6. Admit the allegations of paragraphs 10 through 12 and assert that at all times material hereto Mont. Code Ann. §§ 87-2-106, 87-2-202 and 42 U.S.C § 654 (26) mandated that the Defendant state agency have safeguards in place and Defendants, in fact, did have safeguards in place to protect Plaintiffs' social security numbers from public dissemination and moreover the Defendants sole purpose in collecting social security numbers is to improve the effectiveness of Child Support Enforcement in conformity with 42 USC 666 (a) (13).
7. Admit the allegations of paragraph 13.
8. Admit that Montanans have a reasonable expectation that their social security numbers will be used only for the purposes required and allowed by law and

will be kept confidential. In addition Defendants assert that, in fact, Defendants do keep Montanans social security numbers confidential and allege that Plaintiffs in this action are seeking to keep private, a piece of information that Montanans regularly provide to governmental agencies.

9. Deny the allegations of paragraph 15 because Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiff Latta's allegations concerning identity theft. In addition Defendants assert that there is nothing to indicate that any of the Defendants perpetrated or facilitated identity theft. Further Defendant FWP's records show that Plaintiff Latta used her driver's licenses to apply for hunting licenses at a time before the Defendants were required to begin collecting social security numbers.
10. Deny the allegations of paragraph 16 because Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiff Clark's allegations concerning his refusal to purchase licenses and assert that although there is a hunting heritage constitutional provision there is no constitutionally protected right to hunt or fish.
11. Admit the allegations of paragraph 17 that Plaintiff Marbut was denied entry into the May 2002 special drawing. Further, Defendants allege that Plaintiff Marbut did use his social security number to apply for the May 2001 special drawing. The Automated License System (ALS) wasn't active at that time. Had it been, as it has been since 2002, his social security number would have been retained in ALS, he would not have to provide it again to apply for a license or special drawing, and would not be denied entry.

12. Deny the allegations of paragraph 18 because Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations concerning Plaintiff MSSA members applications for licenses.
13. Deny the allegations of paragraph 19.
14. Deny the allegations of paragraph 20 and assert that federal exemptions are within the sole discretion of the Secretary of Health and Human Services.
15. Deny the allegations of paragraph 21 and assert that Defendants are required to maintain and do maintain sufficient safeguards to keep Plaintiffs' social security numbers confidential and moreover the Defendants sole purpose in collecting social security numbers is to improve the effectiveness of Child Support Enforcement in conformity with 42 USC 666 (a) (13).
16. Deny the allegations of paragraph 22 and assert that the Defendants' interest here outweighs the Plaintiffs' interest and nothing alleged indicates that the social security numbers Defendants collected were or will be publicly disseminated.
17. Deny the allegations of paragraphs 23 and 24 and assert that social security numbers are deleted 5 years after the date that application for a license is made.
18. Deny the allegations of paragraphs 25 through 28 and assert that Plaintiffs have not failed to properly enforce interests which are significant to its citizens and that the Private Attorney General Doctrine should not be applied to the facts of this case.

19. Deny that Plaintiffs are entitled to the relief requested.

THIRD DEFENSE

20. The award of Plaintiffs' attorney fees are not allowable.

FOURTH DEFENSE

21. The Complaint failed to join a necessary party.

FIFTH DEFENSE

22. The Complaint is barred by the equitable doctrines of estoppel, laches, and unclean hands.

SIXTH DEFENSE


23. Defendant reserves the right to plead other affirmative defenses that might arise during the course of this litigation.

WHEREFORE, having fully answered the complaint and raised its defenses the Defendants prays this Honorable Court to:

1. Deny Plaintiffs request for declaratory relief;
2. Deny Plaintiffs request for injunctive relief;
3. Award Defendants their costs as are equitable and just; and
4. Award such other and further relief as the Court deems appropriate.

DATED this 29<sup>th</sup> day of March, 2006

JOHN F. LYNCH

  
One of the attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and accurate copy of the DEFENDANTS' ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION, postage prepaid, by U.S. Mail, to the following:

Quentin M Rhoades  
Jason Jewett  
SULLIVAN TABARACCI & RHOADES  
1821 SOUTH AVENUE WEST  
Missoula, MT 59801

Dated 3-29-06

By: John F. Lynch