

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**GEORGIACARRY.ORG, INC. and)
REBECCA BREED,)**

Plaintiff,)

v.)

**KIPLING L. MCVAY in her official)
Capacity as Probate Judge for)
Cherokee County, Georgia)**

Defendant.)

**CIVIL ACTION FILE
NO. 1:07-CV-2128**

DEFENDANT’S ANSWER AND DEFENSES

COMES NOW KIPLING L. MCVAY, in her official capacity as a judicial officer of the Probate Court for Cherokee County, and files her Answer and Defenses to the Plaintiffs’ complaint as follows:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state or set forth claims against Defendant upon which relief can be granted in accordance with F.R.Civ.P. 12(b).

SECOND DEFENSE

Plaintiffs lack standing to pursue their claims.

THIRD DEFENSE

Plaintiffs’ claims against Defendant are barred, in whole or in part, by the

doctrines of official, governmental, judicial and sovereign immunity.

FOURTH DEFENSE

Plaintiffs' claims are barred by the doctrine of laches and unclean hands.

FIFTH DEFENSE

Plaintiffs' claims against Defendant are barred by the doctrines of estoppel, waiver, and release.

SIXTH DEFENSE

Plaintiffs' claims for injunctive relief fail because there is no immediate and irreparable harm to the status quo between the parties.

SEVENTH DEFENSE

Plaintiffs' claims against Defendant are barred because such claims are not ripe.

EIGHTH DEFENSE

Plaintiffs' claims against Defendant fail because Defendant did not engage in the acts described in Plaintiffs' Complaint and had no policy, practice, or custom of her office engaging in the acts described in Plaintiffs' Complaint.

NINTH DEFENSE

As a Ninth Defense, Defendant answers the numbered paragraphs of the Complaint filed in the above-styled case as follows:

I. INTRODUCTION

1.

Defendant denies the allegations contained in the first sentence of Paragraph 1 of Plaintiffs' Complaint as conclusions of law. Defendant denies the allegations contained in the second sentence of Paragraph 1 of Plaintiffs' Complaint.

2.

Defendant denies the allegations contained in Paragraph 2 of Plaintiffs' Complaint.

3.

Defendant denies the allegations contained in Paragraph 3 of Plaintiffs' Complaint.

4.

Defendant denies the allegations contained in Paragraph 4 of Plaintiffs' Complaint as conclusions of law. Answering further, Defendant denies that Plaintiffs are entitled to the relief sought in Paragraph 4.

II. JURISDICTION

5.

Defendant denies the allegations contained in Paragraph 5 of Plaintiffs' Complaint as conclusions of law. Answering further, Defendant admits that

jurisdiction is proper in this Court.

III. VENUE

6.

Defendant denies the allegations contained in Paragraph 6 of Plaintiffs' Complaint due to the apparent typographical errors that make the allegations unclear. Answering further, Defendant admits that venue is proper.

IV. PARTIES

7.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations in contained Paragraph 7 of Plaintiffs' Complaint, and therefore, Defendant denies same.

8.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiffs' Complaint, and therefore, Defendant denies same. By way of further answer, and to the extent any answer is required, it is specifically denied that Plaintiffs applied for a Georgia Firearms License from Defendant.

9.

Defendant admits the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

V. FACTUAL BACKGROUND

10.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiffs' Complaint, and therefore, Defendant denies same. Answering further, Defendant states that there is no record of any application for a GFL being submitted by Plaintiffs on or about August 31, 2007.

11.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint because Defendant has no record of any application for a GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same. Answering further, Defendant affirmatively states that Defendant does not require the provision of social security numbers for an application for a GFL.

12.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiffs' Complaint as Defendant has no record of any application for GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same.

13.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiffs' Complaint as Defendant has no record of any application for GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same.

14.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiffs' Complaint as Defendant has no record of any application for GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same.

15.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiffs' Complaint as

Defendant has no record of any application for GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same. Answering further, the allegations regarding an exhibit to the Complaint are specifically denied as there is no such exhibit attached to the Complaint with which Defendant was served.

16.

Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiffs' Complaint as Defendant has no record of any application for GFL being submitted by Plaintiffs on or about August 31, 2007, and therefore, Defendant denies same.

17.

Defendant denies the allegations contained in Paragraph 17 of Plaintiffs' Complaint as conclusions of law.

18.

Defendant denies the allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19.

Defendant denies the allegations contained in Paragraph 19 of Plaintiffs' Complaint specifically and as conclusions of law.

20.

Defendant admits the allegations contained in the first sentence of Paragraph 20 of Plaintiffs' Complaint. Defendant denies the allegations contained in the second sentence of Paragraph 20 of Plaintiffs' Complaint. Answering further, Defendant states that Defendant's clerk advised Plaintiffs' counsel that Plaintiffs' counsel was mistaken as to the policy of the Probate Court in that social security numbers were not required and Defendant's clerk did encourage Plaintiffs' counsel to have his client return to the Probate Court to file an application as no such application had been filed by Plaintiffs at that time.

21.

Defendant denies the allegations as pled in Paragraph 21 of Plaintiffs' Complaint, and specifically denies that Defendant violated the Privacy Act.

VI. LEGAL BASIS

Count 1 – Violation of Section 7(a) of the Privacy Act

22.

Defendant denies the allegations contained in Paragraph 22 of Plaintiffs' Complaint as conclusions of law.

23.

Defendant denies the allegations contained in Paragraph 23 of Plaintiffs'

Complaint as conclusions of law.

24.

Defendant denies the allegations contained in Paragraph 24 of Plaintiffs'

Complaint as conclusions of law.

25.

Defendant denies the allegations contained in Paragraph 25 of Plaintiffs'

Complaint as the documents speak for themselves.

26.

Defendant denies the allegations contained in Paragraph 26 of Plaintiffs'

Complaint as the documents speak for themselves.

27.

Defendant denies the allegations contained in Paragraph 27 of Plaintiffs'

Complaint.

28.

Defendant denies the allegations contained in Paragraph 28 of Plaintiffs'

Complaint as conclusions of law.

Count 2 – Violation of Section 7(b) of the Privacy Act

29.

Defendant denies the allegations contained in Paragraph 29 of Plaintiffs'

Complaint as conclusions of law.

30.

Defendant denies the allegations contained in Paragraph 30 of Plaintiffs' Complaint.

31.

Defendant denies the allegations contained in Paragraph 31 of Plaintiffs' Complaint as conclusions of law.

Count 3 – Violations of Georgia Firearms Act

32.

Defendant denies the allegations contained in Paragraph 32 of Plaintiffs' Complaint as conclusions of law.

33.

Defendant denies the allegations contained in Paragraph 33 of Plaintiffs' Complaint specifically and as conclusions of law.

34.

Defendant denies the allegations contained in Paragraph 34 of Plaintiffs' Complaint specifically and as conclusions of law.

VII. DECLARATORY AND INJUNCTIVE RELIEF UNDER 42 U.S.C. 1983 FOR VIOLATIONS OF THE FEDERAL PRIVACY ACT

35.

Defendant denies the allegations contained in Paragraph 35 of Plaintiffs' Complaint specifically and as conclusions of law.

36.

Defendant denies the allegations contained in Paragraph 36 of Plaintiffs' Complaint specifically and as conclusions of law.

37.

Defendant denies the allegations contained in Paragraph 37 of Plaintiffs' Complaint specifically and as conclusions of law.

38.

Defendant denies the allegations contained in Paragraph 38 of Plaintiffs' Complaint specifically and as conclusions of law.

39.

Defendant denies the allegations contained in Paragraph 39 of Plaintiffs' Complaint specifically and as conclusions of law.

40.

Defendant denies the allegations contained in Paragraph 40 of Plaintiffs'

Complaint, and specifically denies that Plaintiffs are entitled to any of the relief requested in the *ad damnum* section of Paragraph 40 of Plaintiffs' Complaint.

**DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF
O.C.G.A. OF THE FEDERAL PRIVACY ACT**

41.

Defendant denies the allegations contained in Paragraph 41 of Plaintiffs' Complaint specifically and as conclusions of law.

42.

Defendant denies the allegations contained in Paragraph 42 of Plaintiffs' Complaint, and specifically denies that Plaintiffs are entitled to any of the relief requested in the *ad damnum* section of Paragraph 42 of Plaintiffs' Complaint.

43.

All other allegations not expressly responded to above are hereby denied as if denied with specificity and particularity.

WHEREFORE, Defendant prays that:

- (a) Plaintiffs' Complaint be dismissed in its entirety with prejudice;
- (b) Plaintiffs bear all costs of this action, including attorneys' fees and litigation expenses;
- (c) Defendant have judgment against Plaintiffs;

- (d) The Court order a trial by jury on Plaintiffs' Action to the extent this action is not subject to summary dismissal; and
- (e) Defendant be granted such other and further relief as this Court deems just, equitable, and proper, including attorney's fees.

Respectfully submitted this 15th day of October, 2007.

JARRARD & DAVIS, LLP

/s/ Mark E. Scott
Angela E. Davis
Georgia Bar No. 240126
Mark E. Scott
Georgia Bar No. 141849

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Attorneys for Defendant

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CERTIFICATE OF SERVICE

I certify that on the date shown below, I electronically filed **Answer of Defendant** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

John R. Monroe, Esq.
Attorney for Plaintiff
9640 Coleman Road
Roswell, Georgia 30075

It is further hereby certified that the above pleading meets the requirements set forth in L.R. 5.1 and has been prepared in Times New Roman (14 point) font.

This 15th day of October, 2007.

/s/ Mark E. Scott
Mark E. Scott
Georgia Bar No. 141849