Donald E.J. Kilmer, Jr.

Attorney At Law

Defending Life, Liberty and Property

1645 Willow Street • Suite 150
San Jose, California 95125
Telephone (408) 264-8489
Facsimile (408) 264-8487
Email: don@dklawoffice.com
www.dklawoffice.com

September 17, 2009

Via: **U.S. Mail and Facsimile**

Kirk D. Yake
WARD & HAGEN, LLP
440 Stevens Avenue, Suite 350
Solana Beach, California 92075

Fax: (858) 847-0105

Re: Lynch & Upholt v. Wiese

Dear Mr. Yake:

I am in receipt of a letter dated September 11, 2009 that was addressed to me and Jason Davis, Attorney at Law. I am pleased that you came to the understanding that neither Calguns.net, nor Calguns Foundation are proper parties. I continue to assert that you misread the law with regard to public figures and defamation as it applies to my client Mr. Wiese.

Please also take note that titles of nobility were outlawed by the United States Constitution in Article I, Section 9, Clause 8. Please do not refer to me as "Esquire" in future correspondence. Thank you for this consideration.

My client (Mr. Wiese) has not threatened an anti-SLAPP suit. We have promised to file a special motion to strike if you follow through on your threat to file a defamation action (SLAPP suit) against Mr. Wiese.

Let us make this clear here and now, we have not threatened to file any actions against Ms. Lynch or Mr. Upholt. Mr. Wiese wants nothing to do with Ms. Lynch and Mr. Upholt. In fact he still holds the opinion that gun manufacturers, firearm retailers, gun owners and hunters in California would be better served if Ms. Lynch and Mr. Upholt quit representing these groups in Sacramento. The unpleasantness between Lynch/Upholt and Mr. Wiese is a war of ideas. Its only legal significance is that it constitutes core First Amendment activities about California Gun Policy amplified by passionate disagreements.

Why do you cite Mr. Upholt's separation from employment (*coup*? really?) with the California Rifle and Pistol Association (CRPA) in a letter that is nominally addressed to Mr. Wiese. Mr. Weiss does not serve on the CRPA board and has no power over hiring/firing CRPA employees. I fail to see what Mr. Upholt's separation from CRPA has to do with Mr. Wiese, or Ms. Lynch for that matter.

I cited *Anderson v. Liberty Lobby* for the broad proposition that Ms. Lynch and Mr. Upholt (since you apparently now represent him) are public figures. Some rather unremarkable skills in legal research should lead you to other cases. In the interests of avoiding needless litigation, I will direct your attention to *1-800 Contacts, Inc., v. Steinberg*; 107 Cal.App.4th 568 (2003).

Mr. Wiese made whatever statements of opinion he did about public figures, on a public website, created and maintained for the purpose of public comment on California Gun Policy. (Get it? Its called Calguns.net.)

It doesn't get any more First Amendment than that.

One source (for the fact that Ms. Lynch and Mr. Upholt shared office space) – which you can check for yourself – is the archive from the Secretary of State's website that lists office addresses for Sacramento Lobbyists. You will find that Ms. Lynch and Mr. Upholt have historically had the same office address.

Your crack about abusive discovery is sophistry. Your client(s) is/are wealthy and well-connected lobbyists. My client is a private citizen engaged in public debate on matters of public policy of both state and national import. Make no mistake: we will leave no stone unturned if we have to defend this action.

I presently hold the opinion that you will not be able to prove one dime of damages, even if you could persuade a jury on the underlying substantive issues, and these letters are getting tiresome. So I will try and end this litigation foreplay right now. You may choose either option to resolve this matter.

Option #1

1. Ms. Lynch and Mr. Upholt will execute releases on behalf of themselves and any corporation/partnership/LLC in which they hold an interest. Said document will release any and all claims against Mr. Wiese.

2. In consideration, Mr. Wiese, without admission of fact or admission of liability, will take the following actions:

    a. Since my client has never made a defamatory statement, nor has he any intention of ever making a defamatory statement, your demand poses no undue burden on him. Therefore he will agree to cease and desist publishing defamatory statements about Ms. Lynch and/or Mr. Upholt. To interpret enforcement of this provision, the parties agree that for any future dispute, Ms. Lynch and Mr. Upholt will be deemed public figures under the standards set forth in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974), *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

b. Mr. Wiese will post an apology on Calguns.net for using coarse language directed toward Ms. Lynch. (i.e., He will retract the statement describing Ms. Lynch as a tumor, and admit that it was an intemperate and rude remark.)

c. Mr. Wiese will admit that he has never met, talked to, nor corresponded with Ms. Lynch. Mr. Wiese will admit that he has never talked to nor corresponded with Mr. Upholt.

Option #2

1. Ms. Lynch and Mr. Upholt will execute releases on behalf of themselves and any corporation/partnership/LLC in which they hold an interest. Said releases will release any and all claims against Mr. Wiese. Furthermore, Ms. Lynch and Mr. Upholt will execute an agreement that for the next 20 years, they will not represent as lobbyists, anywhere in California, any corporation, firm, association, or other entity in the firearm business, including but not limited to gun and ammunition manufacturers, gun owners, hunters, sportsmen, etc.

2. In consideration, Mr. Wiese, without admission of fact or admission of liability, will agree to all four (4) terms set forth on page 7 of your September 11, 2009 letter. Please be advised, with regard to #2, Mr. Wiese can only provide sources in his immediate possession and under his control. To interpret enforcement of this agreement, the parties agree that in any future dispute Ms. Lynch and Mr. Upholt will be deemed public figures under the standards set forth in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974), *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).

3. Of course neither I or Mr. Wiese are authorized to make any agreements on behalf of Calguns.net or Calguns Foundation.

Cordially,

Donald Kilmer
Attorney for Bill Wiese

cc: Bill Wiese