

PARTIES

5. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit that defendant Sinnigen was employed and/or lived within the Northern District of New York in 2010.

7. Defendants admit that defendant Sinnigen was employed as a special agent of the Drug Enforcement Administration (“DEA”) working out of an office located within the Northern District of New York in 2010.

8. Paragraph 8 of the Complaint contains a conclusion of law which requires no response.

GENERAL ALLEGATIONS

9. Defendants admit the allegations of Paragraph 9 of the Complaint.

10. Defendants admit that Agent Sinnigen created an undercover Facebook page in Plaintiff’s name, but deny that it was “publicly available”.

11. In response to Paragraph 11 of the Complaint, Defendants admit that Plaintiff did not give express permission for the creation of the Facebook page, but state the Plaintiff implicitly consented by granting access to the information stored in her cell phone and by consenting to the use of that information to aid in an ongoing criminal investigations.

12. Defendants admit that Sinnigen posted photographs from Plaintiff’s phone, to which he had been granted access, to the undercover Facebook page, and otherwise deny the allegations of Paragraph 12 of the Complaint.

13. In response to Paragraph 13 of the Complaint, Defendants admit that Plaintiff did not give express permission for the use of photographs contained on her phone on an undercover

Facebook page, but state the Plaintiff implicitly consented by granting access to the information stored in her cell phone and by consenting to the use of that information to aid in an ongoing criminal investigations.

14. In response to Paragraph 14 of the Complaint, Defendants admit that in one photograph of Plaintiff that was used on the undercover Facebook page, Plaintiff was wearing either a two-piece bathing suit or a bra and underwear, but deny the characterization of the photograph as suggestive.

15. In response to Paragraph 15 of the Complaint, Defendants admit that Sinnigen used the undercover Facebook page to send a “friend” request to a wanted fugitive who was evading arrest.

16. In response to Paragraph 16 of the Complaint, Defendant admits that Sinnigen accepted “friend” requests sent by others to the undercover Facebook page.

17. In response to Paragraph 17 of the Complaint, Defendants admits that Sinnigen created an undercover Facebook page which was used for a legitimate law enforcement purpose, during the course of which he posed as Plaintiff on the undercover Facebook page.

18. Defendants deny the allegations of Paragraph 18 of the Complaint.

19. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. In response to Paragraph 20 of the Complaint, Defendants respectfully refer the Court to the document referenced therein, which speaks for itself, and otherwise denies the allegations of Paragraph 20 of the Complaint.

21. In response to Paragraph 21 of the Complaint, Defendants admit that Plaintiff submitted a Notice of Claim to the DEA alleging certain tort claims against the United States.

22. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

23. Defendants admit the allegations of Paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint states a legal conclusion requiring no response.

25. Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 25 of the Complaint.

FIRST CAUSE OF ACTION – BIVENS ACTION

26. Defendants repeat and reallege every response to each of the foregoing allegations as if the same were fully set forth herein.

27. Paragraph 27 of the Complaint contains a legal argument requiring no response.

28. Defendants deny the allegations of Paragraph 28 of the Complaint.

29. Defendants deny the allegations of Paragraph 29 of the Complaint.

30. Defendants deny the allegations of Paragraph 30 of the Complaint.

SECOND CAUSE OF ACTION – FEDERAL TORT CLAIMS ACT
(Intentional Infliction of Emotional Distress)

31. Defendants repeat and reallege every response to each of the foregoing allegations as if the same were fully set forth herein.

32. Defendants deny the allegations of Paragraph 32 of the Complaint.

33. Defendants deny the allegations of Paragraph 33 of the Complaint.

34. Defendants deny the allegations of Paragraph 34 of the Complaint.

35. Defendants deny the allegations of Paragraph 35 of the Complaint.

THIRD CAUSE OF ACTION –FEDERAL TORT CLAIMS ACT
(Prima Facie Tort)

36. Defendants repeat and reallege every response to each of the foregoing allegations as if the same were fully set forth herein.

37. Defendants deny the allegations of Paragraph 37 of the Complaint.

38. Defendants deny the allegations of Paragraph 38 of the Complaint.

39. Defendants deny the allegations of Paragraph 39 of the Complaint.

40. Defendants deny the allegations of Paragraph 40 of the Complaint.

AFFIRMATIVE DEFENSES

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

2. Defendant Sinnigen is entitled to qualified immunity.

3. Plaintiff does not have a First Amendment Right to Privacy in the photographs contained on her cell phone.

4. Plaintiff relinquished any expectation of privacy she may have had to the photographs contained on her cell phone.

5. Plaintiff consented to the search of her cell phone.

6. Plaintiff consented to use of information contained on her cell phone in ongoing criminal investigations.

7. Plaintiff cannot establish a violation of her substantive due process rights because she has not, and cannot, allege that Defendant Sinnigen's alleged actions were taken with the absence of a legitimate governmental interest.

WHEREFORE, having fully answered all counts of the Complaint, Defendants pray that Plaintiff take nothing by way of the Complaint, that the same be dismissed, and that judgment be awarded in favor of Defendants, together with costs and such other and further relief as the Court deems appropriate in this case.

Dated: August 6, 2014
Albany, NY

Respectfully submitted,

RICHARD S. HARTUNIAN
United States Attorney

By: /s/Karen Folster Lesperance
KAREN FOLSTER LESPERANCE
Assistant United States Attorney
Bar Roll No. 514108
James T. Foley U.S. Courthouse
445 Broadway, Room 218
Albany, NY 12207
Telephone: (518) 431-0247
Facsimile: (518) 431-0249
Karen.Lesperance@usdoj.gov