

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHRISTINE VON DER HAAR,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:14-cv-247-JMS-DML
)	
UNITED STATES, <i>et al.</i>)	
)	
Defendants.)	

UNITED STATES’ ANSWER AND AFFIRMATIVE DEFENSES

The Defendant, United States of America, by counsel, for its answer to the Amended Complaint states as follows:¹

Introduction

1. On June 8, 2012, Christine Von Der Haar was seized and detained without cause by two United States Customs and Border Protection agents. This violated her rights under the Fourth Amendment to the United States Constitution. Additionally, under the Federal Tort Claims Act, The Defendant is liable for false imprisonment.

ANSWER: The Defendant denies the allegations set forth in paragraph 1 of the Amended Complaint.

¹ The individual Defendants, Sherlana Leiba and Clarence Cones, incorporate their individual Answers to Plaintiff’s original Complaint in this case as fully stated herein. To the extent there is an inadvertent conflict between the United States’ Answer to the Amended Complaint and the individual Defendants’ Answers to the original Complaint, the individual Defendants’ Answers govern with respect to the claims alleged against them under *Bivens v. Six Unknown Name Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Jurisdiction, Venue, and Cause of Action

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1331.

ANSWER: The Defendant admits the allegations set forth in paragraph 2 of the Amended Complaint.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

ANSWER: The Defendant admits the allegations set forth in paragraph 3 of the Amended Complaint.

4. This action is brought pursuant to the Fourth Amendment of the U.S. Constitution and pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and pursuant to the Federal Tort Claims Act (“FTCA”).

ANSWER: The Defendant admits that, in paragraph 4 of the Amended Complaint, Plaintiff has set forth allegations under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and pursuant to the Federal Tort Claims Act (“FTCA”) but denies that Defendant violated Plaintiff’s rights or committed a tort. *See also* footnote 1, *supra*.

5. Plaintiff has complied with all prerequisites for claims under the FTCA. Pursuant to 28 U.S.C. § 2675, Dr. Von Der Haar sent her administrative claim to the Department of Homeland Security and to United States Custom and Border Protection on February 18, 2014. There has been no reply and therefore, with the passage of six months, Dr. Von Der Haar is deeming the claim to be denied pursuant to 28 U.S.C. § 2675(a).

ANSWER: The Defendant admits that the Plaintiff has met all prerequisites under the FTCA for filing the FTCA claim alleged in the first paragraph 5 of the Amended Complaint.

Parties

5 [sic]. Christine Von Der Haar is an adult resident of Bloomington, Indiana.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in the second paragraph 5 of the Amended Complaint.

6. Sherlana Leiba and Mr. Combs were, on June 8, 2012, employed by The Defendant Customs and Border Protection in Indianapolis, Indiana.

ANSWER: The Defendant admits the allegations set forth in paragraph 6 of the Amended Complaint.

Factual Allegations

7. Dr. Von Der Haar is a Senior Lecturer in the Department of Sociology at Indiana University in Bloomington, Indiana. She holds a Ph.D. that she received from Indiana University in 1985 and she holds masters degrees in both journalism and secondary education.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 7 of the Amended Complaint.

8. As a teenager, she was in an educational program in Europe where she met Dimitris Papatheodoropoulos, a Greek national.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 8 of the Amended Complaint.

9. Approximately 40 years later she became reacquainted with Mr. Papatheodoropoulos via the internet.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 9 of the Amended Complaint.

10. By that point Mr. Papatheodoropoulos had become successful as a transportation manager, employed in two Olympic games and also at the Arab Games in Qatar.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 10 of the Amended Complaint.

11. Dr. Von Der Haar and Mr. Papatheodoropoulos communicated frequently through e-mails. Some of these emails were flirtatious and romantic in nature.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 11 of the Amended Complaint.

12. In June of 2012 Mr. Papatheodoropoulos arrived in the United States to visit with Dr. Von Der Haar. He also planned to conduct business while in the United States.

ANSWER: The Defendant admits that Mr. Papatheodoropoulos arrived in the United States in May of 2012, but is without knowledge or information sufficient to answer the remaining allegations set forth in paragraph 12 of the Amended Complaint.

13. Mr. Papatheodoropoulos arrived with a B1/B2 visa issued by The Defendant Embassy in Athens. This is a business/leisure visa with an expiration date of May 2, 2022. Mr. Papatheodoropoulos planned to stay until October of 2012 and intended to work as well as visit Dr. Von Der Haar.

ANSWER: The Defendant admits that Mr. Papatheodoropoulos arrived in the United States with a B1/B2 visa, but is without knowledge or information sufficient to answer the remaining allegations set forth in paragraph 13 of the Amended Complaint.

14. Mr. Papatheodoropoulos flew into Indianapolis and cleared customs. He had in his possession a laptop computer and hard drives for a computer server.

ANSWER: The Defendant admits that Mr. Papatheodoropoulos initially arrived, was inspected, and admitted into the United States at the U.S. Customs and Border Protection Port of New York, then traveled to Indianapolis. The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 14 of the Amended Complaint.

15. The computer server (minus its hard drive), as well as other items, were not carried by Mr. Papatheodoropoulos through customs but were shipped separately. They arrived a few days after he arrived.

ANSWER: The Defendant admits that a shipment arrived for Mr. Papatheodoropoulos that contained, among other items, computer hardware, but is without knowledge or information sufficient to answer the remaining allegations set forth in paragraph 15 of the Amended Complaint.

16. Dr. Von Der Haar and Mr. Papatheodoropoulos returned to the Indianapolis airport on June 5, 2012, after receiving word from the airline that had transported the above items that the items had arrived.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations set forth in paragraph 16 of the Amended Complaint

17. When Mr. Papatheodoropoulos and Dr. Von Der Haar went to the airline office to retrieve the items they were informed that they had to go to the offices of Customs and Border Protection to get the necessary paperwork.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 17 of the Amended Complaint.

18. They went to the offices of Customs and Border Protection, located in a separate building on the grounds of the Indianapolis airport. They were told that they had arrived too late and should return on June 8, 2012.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 18 of the Amended Complaint.

19. On June 8, 2012, Dr. Von Der Haar and Mr. Papatheodoropoulos returned to the offices of Customs and Border Protection.

ANSWER: The Defendant admits that Dr. Von Der Haar and Mr. Papatheodoropoulos were at the Indianapolis office of Customs and Border Protection on June 8, 2012.

20. There is a small waiting area at the Customs and Border Protection offices with a small window that allows visitors to converse with persons inside the office.

ANSWER: The Defendant admits the allegations set forth in paragraph 20 of the Amended Complaint.

21. There was a Customs and Border Protection agent who was at the window who, upon being informed of the identity of Mr. Papatheodoropoulos and Dr. Von Der Haar, asked them if they were planning to marry, which perplexed them.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 21 of the Amended Complaint.

22. The agent indicated that Customs and Border Protection agents had to speak with Mr. Papatheodoropoulos inside the office and he was taken, through a previously locked door, into the interior of the office.

ANSWER: The Defendant admits that Customs and Border Protection officers requested to speak with Mr. Papatheodoropoulos, that he willingly acquiesced, and that he was escorted through a door that was locked to the waiting room only into the “interior” of the Indianapolis Customs and Border Protection office, but the Defendant is without knowledge or information sufficient to answer the remaining allegations in paragraph 22 of the Amended Complaint.

23. Dr. Von Der Haar remained in the waiting room.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 23 of the Amended Complaint

24. After approximately one hour Customs and Border Protection agents, Defendants Ms. Leiba and Mr. Combs, came to the waiting room and told Dr. Von Der Haar that they needed to talk to her.

ANSWER: The Defendant does not recall the length of time that Mr. Papatheodoropoulos was questioned prior to requesting information from Dr. Von Der Haar, but estimates that one hour is a reasonable approximation. The Defendant admits that Leiba requested to speak with Dr. Von Der Haar and that Dr. Von Der Haar willingly acquiesced with her request.

25. They escorted her through the locked door into the interior of the office and into a small windowless office that contained a couch and a desk.

ANSWER: The Defendant admits that Leiba requested to speak with Dr. Von Der Haar, that she willingly acquiesced, and that she was escorted through a door that was locked to the waiting room only into the “interior” of the Indianapolis Customs and Border Protection office. The Defendant denies that Leiba brought Dr. Von Der Haar to a “windowless” office, but admits the office contained a couch and a desk.

26. Dr. Von Der Haar sat on the couch and the two agents stood near the doorway of the office. The office door was partly closed and the agents obstructed it.

ANSWER: The Defendant admits that Dr. Von Der Haar sat on the couch, that Leiba stood near the desk, and that Cones stood near the door, but denies the remaining allegations set forth in paragraph 26 of the Amended Complaint.

27. The agents were in uniform and Dr. Von Der Haar believed that they carried weapons.

ANSWER: The Defendant admits that officers Leiba and Cones were in uniform, but is without knowledge or information sufficient to answer the allegation that “Dr. Von Der Haar believed that they carried weapons.”

28. Defendant Leiba asked questions of Dr. Von Der Haar while defendant Combs remained blocking the exit.

ANSWER: The Defendant admits that Leiba asked questions of Dr. Von Der Haar, but denies that Cones was blocking the exit.

29. Defendant Leiba asked Dr. Von Der Haar about the nature of her relationship with Mr. Papatheodoropoulos.

ANSWER: The Defendant admits the allegations set forth in paragraph 29 of the Amended Complaint.

30. Defendant Leiba asked her about the contents of email messages that Dr. Von Der Haar and Mr. Papatheodoropoulos had sent each other.

ANSWER: The Defendant admits that Leiba asked Dr. Von Der Haar questions about subjects that she had learned about through her discussions with Mr. Papatheodoropoulos and hard copies of emails that Mr. Papatheodoropoulos provided to U.S. Customs and Border

Protection, but is without knowledge or information sufficient to answer the remaining allegations set forth in paragraph 30 of the Amended Complaint.

31. Given that Mr. Papatheodoropoulos had retained his hard drive that contained the emails, the only way that the Customs and Border Protection Agents could have reviewed the emails is for someone to have surreptitiously monitored the communications between Dr. Von Der Haar and Mr. Papatheodoropoulos and reported those communications to the agents questioning her.

ANSWER: The Defendant denies the allegations set forth in paragraph 31 of the Amended Complaint.

32. Defendant Leiba admitted that employees of the United States had read email communications between Dr. Von Der Haar and Mr. Papatheodoropoulos.

ANSWER: The Defendant presently does not recall telling Dr. Von Der Haar that employees of the United States had read email communications between Dr. Von Der Haar and Mr. Papatheodoropoulos.

33. Dr. Von Der Haar attempted to answer the inquiries she was receiving about the nature of their relationship, although the reasons for the questions were not clear to her.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegation that “the reasons for the questions were not clear to her” and similarly does not know whether Dr. Von Der Haar “attempted” in good faith to “answer the inquiries she was receiving about the nature of their relationship.”

34. Defendant Leiba asked about parties that Mr. Papatheodoropoulos had mentioned in his emails.

ANSWER: The Defendant admits that Leiba asked Dr. Von Der Haar questions about subjects that she had learned about through her discussions with Mr. Papatheodoropoulos and hard copies of emails that Mr. Papatheodoropoulos provided to U.S. Customs and Border Protection, but the Defendant presently does not recall whether Leiba asked Dr. Von Der Haar about parties that Mr. Papatheodoropoulos had mentioned in his emails.

35. Defendant Leiba asked why Mr. Papatheodoropoulos had so many cell phones and whether Dr. Von Der Haar had bought him a cell phone to use in The Defendant.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar why Mr. Papatheodoropoulos had so many cell phones and whether Dr. Von Der Haar had bought him a cell phone to use in The Defendant.

36. At no time during this questioning did either defendant inform Dr. Von Der Haar that she was free to leave or that she could refuse to answer the questions.

ANSWER: The Defendant admits the allegations set forth in paragraph 36 of the Amended Complaint.

37. Dr. Von Der Haar did not believe that she was free to leave the office and a reasonable person would not have believed that he or she was free to leave the office. She felt that she had to answer the questions and a reasonable person would have felt that he or she had to answer the questions.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations that Dr. Von Der Haar did not believe that she was free to leave the office and that she had to answer the questions during the events giving rise to her lawsuit, but denies that a

reasonable person would not have believed that he or she was free to leave the office or that a reasonable person would have felt that he or she had to answer the questions.

38. After 15-20 minutes the agents finished questioning her and led her back through the locked door into the waiting room.

ANSWER: The Defendant does not recall the length of time that Dr. Von Der Haar was questioned prior to escorting her back to the waiting room, but estimates that 15-20 minutes is a reasonable approximation.

39. Mr. Papatheodoropoulos was still being questioned and had not yet been released.

ANSWER: The Defendant admits that Mr. Papatheodoropoulos was still being questioned, but denies any implication that he was seized or under arrest at the time of the events giving rise to the Amended Complaint.

40. She therefore waited for Mr. Papatheodoropoulos.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 40 of the Amended Complaint.

41. After about 30 minutes both defendants, Ms. Leiba and Mr. Combs, returned and indicated that they had more questions for Dr. Von Der Haar.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, and is therefore without knowledge or information sufficient to answer the allegations set forth in paragraph 41 of the Amended Complaint.

42. Again, Dr. Von Der Haar was led back through the locked door by the uniformed agents who she perceived as armed to the small office where she was before.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, and is therefore without knowledge or information sufficient to answer the allegations set forth in paragraph 42 of the Amended Complaint.

43. Again, she was not informed that she did not have to talk to the agents or that she was free to leave.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, and is therefore without knowledge or information sufficient to answer the allegations set forth in paragraph 43 of the Amended Complaint.

44. Again, she sat on the sofa and the agents stood, blocking the doorway.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, and is therefore without knowledge or information sufficient to answer the allegations set forth in paragraph 44 of the Amended Complaint. The Defendant specifically denied that any officer blocked the doorway while asking Dr. Von Der Haar questions at any time.

45. She did not feel free to leave and a reasonable person would not have felt free to leave. She felt that she had to answer the questions and a reasonable person would have felt that he or she had to answer the questions.

ANSWER: The Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, and is therefore without knowledge or information sufficient to answer the allegations set forth in paragraph 45 of the Amended Complaint, but denies that a reasonable person would not have felt free to leave or that a reasonable person

would have felt that he or she had to answer the questions at any time while Dr. Von Der Haar was being asked questions.

46. Defendant Leiba asked Dr. Von Der Haar if she and Mr. Papatheodoropoulos were having sexual relations.

ANSWER: The Defendant admits that Leiba asked Dr. Von Der Haar if she and Mr. Papatheodoropoulos were having sexual relations, but again the Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012.

47. Dr. Von Der Haar was allowed to leave after five minutes and was escorted back to the waiting room.

ANSWER: Again, the Defendant presently does not recall asking Dr. Von Der Haar to answer questions a second time on June 8, 2012, but denies any implication that Von Der Haar was ever not free to leave. The Defendant therefore is presently without knowledge or information sufficient to answer the allegations in paragraph 47 of the Amended Complaint, but denies that a reasonable person would not have felt free to leave or that a reasonable person would have felt that he or she had to answer the questions at any time while Dr. Von Der Haar was being asked questions.

48. After approximately 4 ½ - 5 hours Mr. Papatheodoropoulos was allowed to leave and was escorted back to the waiting room.

ANSWER: The Defendant does not recall the length of time that Mr. Papatheodoropoulos was questioned prior to escorting him back to the waiting room, but estimates that over 2 hours is a reasonable approximation. The Defendant denies any implication that Mr. Papatheodoropoulos was detained, seized, or under arrest at the time of the events giving rise to the Complaint.

49. However, the Customs and Border Protection agents seized Mr. Papatheodoropoulos' passport.

ANSWER: The Defendant admits that the passport issued to Mr. Papatheodoropoulos was temporarily retained, but denies that it was seized.

50. On June 8, 2012, Mr. Papatheodoropoulos was served with notice that a proceeding was initiated against him for removal from the United States. The notice stated, in relevant part:

You obtained your B1/B2 visa by misrepresenting your intentions to come to the United States to wit; It is your intention to immigrate to the United States, you abandoned your foreign residence, you intend to overstay your admission to the United States.

ANSWER: The Defendant admits that Mr. Papatheodoropoulos was served with a Notice to Appear from the United States Department of Homeland Security on June 8, 2012, and that the Notice is the best evidence of the contents thereof.

51. None of this was true.

ANSWER: The Defendant denies the allegations set forth in paragraph 51 of the Amended Complaint.

52. Mr. Papatheodoropoulos consulted with lawyers and the Greek Consulate in Chicago and the removal action did not proceed.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 52 of the Amended Complaint.

53. His passport was returned to him and he left the United States at the end of August of 2012 and has not returned.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegations in paragraph 53 of the Amended Complaint.

54. The detention of Dr. Von Der Haar was without cause or justification.

ANSWER: The Defendant denies the allegations set forth in paragraph 54 of the Amended Complaint.

55. Such detention constitutes false imprisonment in that Dr. Von Der Haar suffered an unlawful restraint on her freedom of movement against her will.

ANSWER: The Defendant denies the allegations set forth in paragraph 55 of the Amended Complaint.

56. The detention of Dr. Von Der Haar by the United States caused her anxiety, concern, distress, and other damages.

ANSWER: The Defendant is without knowledge or information sufficient to answer the allegation that Dr. Von Der Haar was anxious, concerned, or distressed by the events giving rise to her lawsuit, but denies that she was detained, seized, or placed under arrest or otherwise suffered any damages that give rise to an entitlement to relief.

57. At all times defendants were acting under color of federal law and within the scope of their employment.

ANSWER: The Defendant admits the allegations set forth in paragraph 57 of the Amended Complaint.

Request for jury trial

58. Dr. Von Der Haar requests a jury trial on all claims in this case that may be tried to a jury.

ANSWER: The Defendant acknowledges that any issue of material fact on a claim under the Fourth Amendment pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of*

Narcotics, 403 U.S. 388 (1971) is triable to a jury; but denies that Plaintiff is entitled to a jury trial on any claim alleged under the FTCA.

Cause of action

59. Defendants' detention of Dr. Von Der Haar, without cause or reasonable suspicion, constitutes an unreasonable seizure in violation of the Fourth Amendment. This claim is made pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

ANSWER: Denied. *See also* footnote 1, *supra*.

60. The actions of the defendants, resulting in erroneous detention of, and injury to, Dr. Von Der Haar, caused plaintiff to suffer false imprisonment, causing damages, and the United States is therefore liable under the Federal Tort Claims Act.

ANSWER: Denied. *See also* footnote 1, *supra*.

Request for relief

WHEREFORE, plaintiff respectfully requests that this Court:

- a. Accept jurisdiction of this case.
- b. Award plaintiff her compensatory damages after a trial by jury.
- c. Award all other proper relief.

ANSWER: The Defendant denies that Plaintiff is entitled to any relief in this case.

WHEREFORE, the Defendant, United States of America, respectfully requests that Plaintiff take nothing by way of her Complaint, that this action be dismissed with prejudice, that judgment be entered in favor of the Defendant and against Dr. Von Der Haar, and for all other just and proper relief.

Respectfully submitted,

JOSH J. MINKLER
Acting United States Attorney

By: /s/ Jonathan A. Bont
Jonathan A. Bont
Shelese Woods
Assistant United States Attorneys

UNITED STATES' AFFIRMATIVE DEFENSES

The Defendant, United States of America, by counsel, for its affirmative defenses alleges as follows:²

FIRST AFFIRMATIVE DEFENSE

The Defendant, United States of America, through its agents, servants and employees, acted with due care and diligence at all times in interactions with Plaintiff, and no acts or omissions by the Defendant proximately caused or contributed to any injury or damage to Plaintiff.

SECOND AFFIRMATIVE DEFENSE

In the event Defendant is found to be liable, which the Defendant denies, the Defendants actions and/or inactions were not the cause in fact or proximate cause of alleged damages suffered by Plaintiff.

THIRD AFFIRMATIVE DEFENSE

To the extent the law (common or statutory law) of Indiana, where the alleged acts or omissions occurred, limits damages or limits the Defendants' liability or Plaintiff's cause of action, that law applies to this action against the United States to the extent that it is not inconsistent with the Federal Torts Claims Act.

² The individual Defendants, Sherlana Leiba and Clarence Cones, incorporate their individual Affirmative Defenses to Plaintiff's original Complaint in this case as fully stated herein. To the extent there is an inadvertent conflict between the United States' Affirmative Defenses to the Amended Complaint and the individual Defendants' Affirmative Defenses to the original Complaint, the individual Defendants' Affirmative Defenses govern with respect to the claims alleged against them under *Bivens v. Six Unknown Name Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

FOURTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2675(b), Plaintiff's recovery, if any, is limited to the amount sought by her administratively.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff cannot recover punitive damages or any other non-compensatory damages against the United States.

SIXTH AFFIRMATIVE DEFENSE

The United States has not waived its sovereign immunity for the acts or omissions of contractors. 28 U.S.C. § 2671.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff is not entitled to recovery of pre-judgment interest on any award she may obtain from the United States.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiff obtains any award from the United States, Plaintiff is entitled to post-judgment interest only to the extent provided by law.

NINTH AFFIRMATIVE DEFENSE

Pursuant to 42 U.S.C. § 233(k), any recovery by Plaintiff is subject to the availability of appropriated funds.

TENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial in a Federal Tort Claims Act suit against the United States.

ELEVENTH AFFIRMATIVE DEFENSE

In the event that an employee of the United States is determined to have engaged in tortious conduct, which is expressly denied, Plaintiff's conduct contributed to the alleged damages, thereby mandating that any recovery be proportionately reduced.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent that plaintiff may be found to have sustained any injuries or damages, those alleged injuries or damages were proximately caused by the intervening, joint, and/or superseding acts and/or omissions of persons or entities other than an employee or agency of the United States and were not caused by any acts and/or omission of any employee or entity of the United States.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff is entitled to recover damages from the United States in this action, the United States is entitled to a credit or set-off for any past or future benefits paid to or on behalf of or received by the Plaintiff, to the extent allowed under federal and state common and statutory law.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent applicable, Plaintiff has failed to mitigate damages as required by law.

FIFTEENTH AFFIRMATIVE DEFENSE

Any and all damages alleged in Plaintiffs' Complaint may have been caused in full or in part by a non-party, Dimitris Papatheodoropoulos, and such nonparty fault operates to either bar Plaintiffs' claims or reduce their right to recover from the Defendant to the extent of the fault apportioned to a nonparty or nonparties.

SIXTEENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United States.

SEVENTEENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial against the United States.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to state a plausible claim upon which relief can be granted and/or her claim is so vague and ambiguous that the Defendant cannot reasonably prepare a response. Therefore, Defendant expressly reserves the right to amend its Answer or add Affirmative Defenses as appropriate.

WHEREFORE, Defendant prays that Plaintiff take nothing by way of her Complaint.

Sincerely,

JOSH J. MINKLER
Acting United States Attorney

By: /s/ Jonathan A. Bont
Jonathan A. Bont
Shelese Woods
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on October 24th 2014, a copy of the foregoing **UNITED STATES' ANSWER AND AFFIRMATIVE DEFENSES** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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