

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

Cissy Thunderhawk, Waste'Win Young)	Civil No. 1:18-cv-00212-CSM
Young, and Reverend John Floberg,)	
on behalf of themselves and all)	ANSWER AND
similarly-situated persons,)	COUNTERCLAIM OF
)	TIGERSWAN LLC
Plaintiffs,)	AND
)	DEMAND FOR JURY TRIAL
vs.)	
)	
County of Morton, North Dakota;)	
Sheriff Kyle Kirchmeier; Governor)	
Doug Burgum; Former Governor Jack)	
Dalrymple; Director Grant Levi;)	
Superintendent Michael Gerhardt, Jr.;)	
TigerSwan LLC, Does 1 to 100,)	
)	
Defendants.)	

COMES NOW the Defendant TigerSwan, LLC (hereinafter TigerSwan), for its Answer in the above-referenced matter.

¶1 TigerSwan denies each and every allegation, matter and thing in Plaintiffs' Complaint except that which is hereinafter admitted, qualified, or explained.

¶2 As to Paragraphs 1-4 which provide an introduction of the Plaintiffs and various activities of the Plaintiffs, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 1-4, and therefore **DENIES Para. 1-4.**

¶3 As to Para. 5-9 relating to the closing of Highway 1806, TigerSwan specifically denies that TigerSwan had any authority relating to that closing and therefore **DENIES Para. 5-9.**

¶4 As to Para. 10-12 relating to jurisdiction of this Court, TigerSwan **ADMITS** that this court has subject matter jurisdiction and venue is proper but **DENIES** any supplemental jurisdiction as to state law claims and asserts that any state matters or claims should be brought in state court and the various doctrines of abstention and other related doctrines should apply.

¶5 As to Para. 13-15 relating to identification of the Plaintiffs, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 13-15, and therefore **DENIES Para. 13-15.**

¶6 As to Para. 16-21 relating to identification of the defendants other than TigerSwan, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 16-21, and therefore **DENIES Para. 16-21.**

¶7 As to Para. 22 relating to identification of TigerSwan, TigerSwan **ADMITS** only that it is a limited liability company organized under the laws of North Carolina and **DENIES** the rest of **Para. 22.** TigerSwan further explains this denial as follows:

- TigerSwan specifically denies that it acted under color of state law.

- TigerSwan provided only consultation to the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
- TigerSwan did not provide security; ETP hired others to perform security functions.
- TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
- Any reports prepared by TigerSwan were prepared for the owner Energy Transfer Partners and any decisions made relating to all issues raised in the Complaint were made by ETP or the authorized law enforcement authorities on site and as such TigerSwan was not responsible for any of the actions alleged in the Complaint.
- TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
- As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
- The bridge was closed initially not by the lawful authorities but by the protesters by ignited fires on the bridge; the bridge was thereafter considered unstable by the proper legal authorities.
- When the bridge was closed by the proper legal authorities, those authorities made that decision; TigerSwan had nothing to do with that decision.

¶8 As to Para. 23 relating to additional unnamed defendants, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 23, and therefore **DENIES Para. 23**.

¶9 As to Para. 24 relating to acts within the course and scope of their employment, TigerSwan **DENIES Para. 24** because any employment of TigerSwan related only to employment by ETP and not by any governmental entity.

¶10 As to Para. 25 relating to acting under color of authority or color of law, TigerSwan is a private company hired by another private company and as

such was not acting under color of authority or of law; however, because all decisions made relating to the actions asserted in the Complaint were made by proper lawful authorities and not by TigerSwan, TigerSwan has no liability relating to any of the allegations listed in the Complaint. TigerSwan therefore **DENIES Para. 25.**

¶11 As to Para. 26 relating to acting as the agent, servant, employee or in concert with the other defendants, TigerSwan **DENIES Para. 26.**

¶12 As to Para. 27-67 relating to the allegations as to the protests and road closure, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 27-67, and therefore **DENIES Para. 27-67**, and specifically asserts that TigerSwan had no control or authority as to any of the decisions made relating to the protests or the closing of the highway or the bridge and as such as these allegations supposedly relate to TigerSwan, these allegations are **DENIED.**

¶13 As to Para. 68-71 relating to the Plaintiffs, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 68-71, and therefore **DENIES Para. 68-71.**

¶14 As to Para. 72-80 relating to the allegations against the persons with lawful authority over the site, TigerSwan is not one of the persons or entities with lawful authority as to the acts alleged in these paragraphs and is without sufficient

knowledge or information to either admit or deny the allegations contained in Paragraph 72-80, and therefore **DENIES Para. 72-80.**

¶15 As to Para. 81-93 relating to the request for class action status, TigerSwan **DENIES** any and all allegations contained in the entire Complaint that could be attributable to TigerSwan, TigerSwan **DENIES** that class action status is necessary or appropriate, and generally **DENIES Para. 81-93.**

¶16 As to Para. 94 relating to the allegations that the Defendants subjected the Plaintiffs and the proposed class to improper closure of local roads, TigerSwan **DENIES Para. 94.**

¶17 As to Para. 95 relating to the allegation that the Plaintiffs have experienced any damages, TigerSwan **DENIES Para. 95.**

¶18 As to Para. 99-103 relating to Count I, TigerSwan **DENIES Para. 99-103.**

¶19 As to Para. 104-111 relating to Count II, TigerSwan **DENIES Para. 104-111.**

¶20 As to Para. 112-122 relating to Count III, TigerSwan **DENIES Para. 112-122.**

¶21 As to Para. 123-130 relating to Count IV, TigerSwan **DENIES Para. 123-130.**

¶22 As to Para. 131-134 relating to Count V, TigerSwan **DENIES Para. 131-134.**

¶23 As to Para. 135-139 relating to Count VI, TigerSwan **DENIES Para. 135-139.**

¶24 As to Para. 140-144 relating to Count VII, TigerSwan **DENIES Para. 140-144.**

DEFENSES

¶25 TigerSwan realleges all previous allegations and denials.

¶26 TigerSwan allege plaintiff's Complaint fails to state a claim upon which relief may be granted.

¶27 The plaintiffs lack standing to pursue this lawsuit and/or the causes of action asserted.

¶28 TigerSwan asserts the defenses of waiver and estoppel.

¶29 TigerSwan alleges that plaintiffs failed to pursue and/or exhaust administrative remedies.

¶30 TigerSwan asserts that plaintiffs' claims are barred under the doctrines of res judicata, collateral estoppel, issue preclusion, and/or claim preclusion.

¶31 TigerSwan asserts that plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose.

¶32 TigerSwan asserts that as a consultant only to ETP and hired only by ETP and given the fact that TigerSwan had no authority as to the closing of 1806 or blocking the bridge at issue, that plaintiffs have improperly sued TigerSwan and have failed to sue the proper party and as such TigerSwan should be dismissed from this matter and the plaintiffs should be required to bring in the proper party or parties necessary or appropriate to this action.

¶33 Pending completion of discovery, TigerSwan asserts and incorporates by reference all affirmative defenses available pursuant to Rule 8, 9, and 12 of the North Dakota Rules of Civil Procedure.

¶34 As to the Prayer for Relief, TigerSwan **DENIES** any relief should be granted to the Plaintiffs.

COUNTERCLAIM

¶35 TigerSwan hereby asserts its counterclaim against each of the Plaintiffs. In this regard, TigerSwan reasserts and reaffirms each of the paragraphs listed above. In addition, TigerSwan specifically alleges the following:

- TigerSwan specifically denies that it acted under color of state law.
- TigerSwan provided only consultation to the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
- TigerSwan did not provide security; ETP hired others to perform security functions.
- TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
- Any reports prepared by TigerSwan were prepared for the owner Energy Transfer Partners and any decisions made relating to all issues raised in the

Complaint were made by ETP or the authorized law enforcement authorities on site and as such TigerSwan was not responsible for any of the actions alleged in the Complaint.

- TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
- As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
- The bridge was closed initially not by the lawful authorities but by the protesters by ignited fires on the bridge; the bridge was thereafter considered unstable by the proper legal authorities.
- When the bridge was closed by the proper legal authorities, those authorities made that decision; TigerSwan had nothing to do with that decision.
- The claim against TigerSwan is not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.
- The factual contentions made against TigerSwan do not have evidentiary support or did not likely have evidentiary support after a reasonable opportunity for further investigation or discovery.
- The bringing of this action against TigerSwan constitutes misconduct that was for an ulterior purpose.
- The bringing this action against TigerSwan constitutes a willful act in the use of the process not proper in the regular conduct of the proceeding.

¶36 Based on these facts listed immediately above, TigerSwan claims that it has been damaged by the Plaintiffs bringing this action against TigerSwan, that these damages are a proximate cause of the Plaintiffs actions and misconduct, and that TigerSwan should be awarded attorney fees and costs for having to defend against this action.

PRAYER FOR RELIEF

¶37 WHEREFORE, TigerSwan asserts that the following relief should be granted to the Defendant TigerSwan:

1. The action should be dismissed.
2. TigerSwan should be dismissed as a party.
3. Class action status should be denied.
4. The action is frivolous as it relates to TigerSwan and as such attorney fees should be awarded to TigerSwan.
5. TigerSwan should be awarded costs and disbursement, including attorney fees, as allowed under law and Rule 11.
6. Through its Counterclaim TigerSwan should be awarded judgment against each of the plaintiffs individually and jointly for the amount of attorney fees and costs incurred in having to defend this action, in an amount determined by the Court upon proper motion.
7. The Court should provide any other further relief the Court deems appropriate.

DEMAND FOR JURY TRIAL

¶38 TigerSwan hereby demands a jury trial by the highest number of jurors allowed.

¶39 Dated this 11th day of January, 2019.

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on January 11th, 2019, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the Following:

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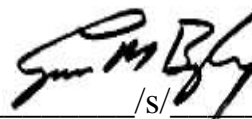
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