

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 TO FIRST AMENDED |
| similarly-situated persons, |) | COMPLAINT AND |
| |) | COUNTERCLAIM OF |
| Plaintiffs, |) | TIGERSWAN LLC 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 to the First Amended Complaint.

¶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 1-5 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 1-5, and therefore **DENIES Para. 1-5.**

¶3 As to Para. 6-10 relating to the closing of Highway 1806, TigerSwan specifically denies that TigerSwan had any authority relating to that closing and therefore **DENIES Para. 6-10.**

¶4 As to Para. 11-13 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. 14-17 relating to identification of the Plaintiffs, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraphs 14-17, and therefore **DENIES Para. 14-17.**

¶6 As to Para. 18-23 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 18-23, and therefore **DENIES Para. 18-23.**

¶7 As to Para. 24 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. 24.** TigerSwan further explains this denial as follows:

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

2. TigerSwan provided only consultation to the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
3. TigerSwan did not provide security; ETP hired others to perform security functions.
4. TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
5. 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.
6. TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
7. As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
8. 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.
9. 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. 25 relating to additional unnamed defendants, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 25, and therefore **DENIES Para. 25**.

¶9 As to Para. 26 relating to acts within the course and scope of their employment, TigerSwan **DENIES Para. 26** because any employment of TigerSwan related only to employment by ETP and not by any governmental entity.

¶10 As to Para. 27 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. 27.**

¶11 As to Para. 28 relating to acting as the agent, servant, employee or in concert with the other defendants, TigerSwan **DENIES Para. 28.**

¶12 As to Para. 29-85 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 29-85, and therefore **DENIES Para. 29-85**, 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. 86-92 relating to the Plaintiffs, TigerSwan is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 86-92, and therefore **DENIES Para. 86-92.**

¶14 As to Para. 93-101 relating to TigerSwan, TigerSwan generally **DENIES Para. 93-101.** TigerSwan specifically responds as follows to the allegations contained in Para. 93-101:

1. TigerSwan did not “coordinate” the activities of the security companies, law enforcement, or state or federal persons and provided only consultation to

- the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
2. TigerSwan did not provide security; ETP hired others to perform security functions.
 3. TigerSwan had nothing to do with public property or public roads; TigerSwan only assisted ETP as to private property, generally owned by ETP.
 4. As to “intelligence” operations, TigerSwan merely took information from third persons and placed such information into daily reports in an organized manner; the only “intelligence” operations “conducted” by TigerSwan was the monitoring of open source information from its headquarters in North Carolina.
 5. Any recommendations or reports prepared by TigerSwan were provided to its client ETP, who made its own independent decisions as to what to do and what to task others to do; TigerSwan’s reports were given to ETP and distributed by ETP, which dealt directly with any security hired to be on site or law enforcement, state, or federal persons.
 6. TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
 7. TigerSwan was not part of or “intertwined” with the other defendants; ETP worked directly with the other defendants, including law enforcement and state and federal authority; the liaison officer “liaisoned” with ETP and not the other defendants.
 8. TigerSwan did not have any aircraft and did not “direct” any aircraft; ETP or the other defendants might have employed aircraft, but TigerSwan did not employ any aircraft. Any reference by anyone to a “DAPL air asset” does not relate to TigerSwan. DAPL is synonymous with ETP. TigerSwan did not conduct any surveillance by helicopter, or arrange any live feed or surveillance done by such means.
 9. TigerSwan did not create “folders” on any persons but merely provided lists of persons who were on site and trespassing or had been arrested, all of which was derived from open source information that indicated proposed illegal action.
 10. 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.

11. TigerSwan did not provide any “evidence” or other information to prosecutors; all recommendations and any information was provided to ETP and it had the right to provide whatever it wanted to provide to prosecutors.
12. Any reference in a report (one time) of an “Islamic” individual does not relate to any misconduct or discriminatory act by TigerSwan; TigerSwan merely took the information provided by third parties (including law enforcement) and placed it in a report and provided that report to ETP which distributed it. Such reference to such a person was not a discriminatory act. To the best of our knowledge, the reference to “company Intel” does not refer to TigerSwan but some other “company.”
13. TigerSwan did not provide misinformation or misleading information; third persons provided information and TigerSwan merely placed it in a report that was provided to ETP. Any reference of the actions or proclivities of the protesters was gathered and submitted by third persons and not TigerSwan. The only information gathered by TigerSwan was the observation and collection of social media postings made by the protesters, which are public record and not a discriminatory act. TigerSwan did conduct surveillance or “infiltrate” the camps.
14. TigerSwan has no idea what “coding techniques” is.
15. TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
16. As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
17. 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.
18. When the bridge was closed by the proper legal authorities, those authorities made that decision; TigerSwan had nothing to do with that decision.

¶15 As to Para. 102-111 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 102-111, and therefore **DENIES Para. 102-111.**

¶16 As to Para. 112-124 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. 112-124.**

¶17 As to Para. 125 relating to the allegations that the Defendants subjected the Plaintiffs and the proposed class to improper closure of local roads, TigerSwan **DENIES Para. 125.**

¶18 As to Para. 126 relating to the allegation that the Plaintiffs have experienced any damages, TigerSwan **DENIES Para. 126.**

¶19 As to Para. 127-135 relating to Count I, TigerSwan **DENIES Para. 127-135.**

¶20 As to Para. 136-144 relating to Count II, TigerSwan **DENIES Para. 136-144.**

¶21 As to Para. 145-155 relating to Count III, TigerSwan **DENIES Para. 145-155.**

¶22 As to Para. 156-165 relating to Count IV, TigerSwan **DENIES Para. 156-165.**

¶23 As to Para. 166-70 relating to Count V, TigerSwan **DENIES Para. 166-170.**

¶24 As to Para. 171-175 relating to Count VI, TigerSwan **DENIES Para. 171-175.**

¶25 As to Para. 176-180 relating to Count VII, TigerSwan **DENIES Para. 176-180.**

DEFENSES

¶26 TigerSwan realleges all previous allegations and denials.

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

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

¶29 TigerSwan asserts the defenses of waiver and estoppel.

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

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

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

¶33 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.

¶34 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.

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

COUNTERCLAIM

¶36 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 re-alleges the paragraphs above and specifically alleges the following:

1. TigerSwan did not act under color of state law.
2. TigerSwan provided only consultation to the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
3. TigerSwan did not provide security; ETP hired others to perform security functions.
4. TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
5. 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.

6. TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
7. As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
8. 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.
9. When the bridge was closed by the proper legal authorities, those authorities made that decision; TigerSwan had nothing to do with that decision.
10. TigerSwan did not “coordinate” the activities of the security companies, law enforcement, or state or federal persons and provided only consultation to the owners of the pipeline Energy Transfer Partners (ETP) who made all decisions relating to security matters.
11. TigerSwan did not provide security; ETP hired others to perform security functions.
12. TigerSwan had nothing to do with public property or public roads; TigerSwan only assisted ETP as to private property, generally owned by ETP.
13. As to “intelligence” operations, TigerSwan merely took information from third persons and placed such information into daily reports in an organized manner; the only “intelligence” operations “conducted” by TigerSwan was the monitoring of open source information from its headquarters in North Carolina.
14. Any recommendations or reports prepared by TigerSwan were provided to its client ETP, who made its own independent decisions as to what to do and what to task others to do; TigerSwan’s reports were given to ETP and distributed by ETP, which dealt directly with any security hired to be on site or law enforcement, state, or federal persons.
15. TigerSwan was not hired by or acting in concert with any of the Defendants listed and only provided consultation to ETP.
16. TigerSwan was not part of or “intertwined” with the other defendants; ETP worked directly with the other defendants, including law enforcement and state and federal authority; the liaison officer “liaisoned” with ETP and not the other defendants.
17. TigerSwan did not have any aircraft and did not “direct” any aircraft; ETP or the other defendants might have employed aircraft, but TigerSwan did not employ any aircraft. Any reference by anyone to a “DAPL air asset” does not relate to TigerSwan. DAPL is synonymous with ETP. TigerSwan did not conduct any surveillance by helicopter, or arrange any live feed or surveillance done by such means.

18. TigerSwan did not create “folders” on any persons but merely provided lists of persons who were on site and trespassing or had been arrested, all of which was derived from open source information that indicated proposed illegal action.
19. 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.
20. TigerSwan did not provide any “evidence” or other information to prosecutors; all recommendations and any information was provided to ETP and it had the right to provide whatever it wanted to provide to prosecutors.
21. Any reference in a report (one time) of an “Islamic” individual does not relate to any misconduct or discriminatory act by TigerSwan; TigerSwan merely took the information provided by third parties (including law enforcement) and placed it in a report and provided that report to ETP which distributed it. Such reference to such a person was not a discriminatory act. To the best of our knowledge, the reference to “company Intel” does not refer to TigerSwan but some other “company.”
22. TigerSwan did not provide misinformation or misleading information; third persons provided information and TigerSwan merely placed it in a report that was provided to ETP. Any reference of the actions or proclivities of the protesters was gathered and submitted by third persons and not TigerSwan. The only information gathered by TigerSwan was the observation and collection of social media postings made by the protesters, which are public record and not a discriminatory act. TigerSwan did not conduct surveillance or “infiltrate” the camps.
23. TigerSwan has no idea what “coding techniques” is.
24. TigerSwan had nothing to do with the decision to close 1806 as that decision was made by proper lawful authorities.
25. As to the bridge, TigerSwan had nothing to do with the closing of the bridge as that decision was made by proper lawful authorities.
26. 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.
27. When the bridge was closed by the proper legal authorities, those authorities made that decision; TigerSwan had nothing to do with that decision.

¶37 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

¶38 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

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

¶40 Dated this 21st day of February, 2019.

_____/s/_____
Lynn Boughey (#04046)

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CERTIFICATE OF SERVICE

I hereby certify that on February 21st, 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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