

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

LYNSIE PAIGE MURLEY,	§	
Plaintiff,	§	
	§	
vs.	§	Civil No. 2:10-CV-124-J
	§	ECF
UNITED STATES OF AMERICA,	§	
Defendant.	§	

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED COMPLAINT**

The United States of America, by and through the United States Attorney for the Northern District of Texas, files its Original Answer to Plaintiff's First Amended Complaint, responding according to the numbered paragraphs thereof, and respectfully shows the Court as follows:

**I.
NATURE OF ACTION**

1.01 Paragraph 1.01 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

**II.
JURISDICTION AND VENUE**

2.01 Defendant admits Congress has authorized suits against the United States under 28 U.S.C. §§ 1346(b) and 2671, *et. seq.*, also known as the Federal Tort Claims Act; otherwise, deny.

2.02 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.02 of the Complaint. To the extent an answer is deemed necessary, deny.

III.
PARTIES

3.01 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.01 of the Complaint. To the extent an answer is deemed necessary, deny.

3.02 Defendant admits the United States of America is a sovereign entity. The remaining allegations constitute legal conclusions to which no response is required. To the extent any of the remaining allegations require a response, deny.

IV.
ALLEGATIONS

4.01 Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in the first sentence of paragraph 4.01, therefore deny. Defendant denies the second sentence of paragraph 4.01, except Defendant admits Plaintiff went through secondary screening at a Transportation Security Administration (TSA) checkpoint. Defendant denies the remaining allegations in sentences three through eight of paragraph 4.01. Unless expressly admitted herein, Defendant denies all allegations in paragraph 4.01.

V.
ADMINISTRATIVE CLAIM

5.01 Defendant admits the allegations in the first sentence of paragraph 5.01. As to the second sentence of paragraph 5.01, Defendant admits that TSA did not render a final decision concerning Plaintiff's claim; otherwise deny. The third sentence of paragraph 5.01 contains legal conclusions to which no response is required; to the extent a response is deemed necessary, deny.

VI.
COUNT 1
NEGLIGENCE

6.01 Defendant incorporates by reference its responses to the preceding paragraphs.

6.02 Paragraph 6.02 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

6.03 Paragraph 6.03 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

6.04 The introductory sentence to Paragraph 6.04 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

A. Defendant denies the allegations contained in paragraph 6.04 A.

B. Defendant denies the allegations contained in paragraph 6.04 B.

C. Defendant denies the allegations contained in paragraph 6.04 C.

D. Defendant denies the allegations contained in paragraph 6.04 D.

E. Defendant denies the allegations contained in paragraph 6.04 E.

6.05 Paragraph 6.05 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

6.06 Paragraph 6.06 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

VII.
COUNT 2
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

7.01 Defendant incorporates by reference its responses to the preceding paragraphs.

7.02 Deny.

7.03 Paragraph 7.03 constitutes a legal conclusion and/or characterization of Plaintiff's suit, not allegations of fact requiring an answer; to the extent an answer is deemed necessary, deny.

VIII.
DAMAGES

8.01 Deny.

No answer is required to the last paragraph of Plaintiff's First Amended Complaint because such allegations are in the nature of a prayer for relief. To the extent an answer is deemed necessary, Defendant denies all allegations contained in the last paragraph. Defendant denies Plaintiff's entitlement to any relief whatsoever in this matter.

In addition to the foregoing, and without waiver of same, Defendant raises the following affirmative defenses:

FIRST DEFENSE

No negligent or wrongful act or omission of any employees of the United States, while acting within the course and scope of their employment, caused or in any way contributed to the damages allegedly sustained by Plaintiff. Thus, Defendant specifically denies liability of any kind or nature whatsoever.

SECOND DEFENSE

Plaintiff's claims are barred insofar as they challenge an act or omission of a Government employee exercising due care in the execution of a statute or regulation. 28 U.S.C. § 2680(a).

THIRD DEFENSE

Plaintiff's claims are barred insofar as they are based on the exercise or performance or failure to exercise or perform a discretionary function. 28 U.S.C. § 2680(a).

FOURTH DEFENSE

Plaintiff's claims are barred insofar as they are based on acts or omissions arising out of assault, battery, or any other intentional tort excepted from the FTCA's waiver of sovereign immunity. 28 U.S.C. § 2680(h).

FIFTH DEFENSE

The United States is not liable to Plaintiff under the law of the place where the alleged negligent or wrongful acts or omissions occurred, based on the facts and claims alleged. 28 U.S.C. § 1346(b)(1).

SIXTH DEFENSE

Defendant owed no legal duty of care to Plaintiff with respect to the alleged infliction of mental anguish or emotional distress.

SEVENTH DEFENSE

To the extent any of Plaintiff's injuries or damages alleged in her First Amended Complaint were proximately and/or solely caused by a third party, and not the United States, Plaintiff's claim for recovery is therefore reduced and/or barred accordingly.

EIGHTH DEFENSE

Defendant denies Plaintiff's alleged injuries and/or damages were caused and/or contributed to by any fault of the United States, but, in the event this Court does attribute such fault to the United States, then, in the alternative, the United States specifically pleads the applicability of superseding and intervening cause (or new and independent

cause) as a defense, with such cause breaking any causal connection between the United States' alleged negligence and Plaintiff's alleged injuries, thus barring recovery by Plaintiff.

NINTH DEFENSE

Defendant denies Plaintiff's alleged injuries and/or damages were caused and/or contributed to by any fault of the United States, but, in the event this Court does attribute such fault to the United States, then the United States is entitled to contribution, credit and/or indemnity as provided by the laws and statutes of Texas, including but not limited to Chapter 33 of the Texas Civil Practice and Remedies Code, with respect to Plaintiff and all named and unnamed tortfeasors. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 33.003, 33.012-.013, 33.015-.016. Defendant is also entitled to a submission of the relative responsibility of Plaintiff and any other claimant, defendant, settling person, or responsible third party. Should Plaintiff compromise, settle and/or release any claim against any other defendant in this suit, Defendant gives notice that it will pursue the statutory options set forth in Texas Civil Practice and Remedies Code § 33.012(c).

TENTH DEFENSE

Defendant gives notice of its intent to file a motion for leave to designate a responsible third party if evidence exists demonstrating another person or entity is responsible for any portion of Plaintiff's alleged injury or damage. TEX. CIV. PRAC. & REM. CODE § 33.004.

ELEVENTH DEFENSE

Plaintiffs' recovery, if any, is reduced and/or barred by the applicable Texas common or statutory law governing Plaintiff's contributory or comparative negligence. *See* Tex. Civ. Prac. & Rem. Code Ann., §§ 33.001 and 33.012.

TWELFTH DEFENSE

Plaintiff's recovery is jurisdictionally limited to the amount claimed in Plaintiff's administrative tort claim filed with the TSA.

THIRTEENTH DEFENSE

The United States is not liable for Plaintiff's attorney's fees under the Federal Tort Claims Act. *See* 28 U.S.C. § 2678.

FOURTEENTH DEFENSE

Plaintiff's relief under the Federal Tort Claims Act is limited to "money damages" only. *See* 28 U.S.C. § 1346(b). Accordingly, this Court lacks jurisdiction to award any other type of relief in law or in equity.

FIFTEENTH DEFENSE

The United States is not liable for punitive damages as a matter of law. *See* 28 U.S.C. § 2674.

SIXTEENTH DEFENSE

No party is entitled to a jury trial as to any issue, claim, cause of action or matter concerning the United States.

SEVENTEENTH DEFENSE

The United States is not liable for prejudgment interest. *See* 28 U.S.C. § 2674.

The United States is not liable for post-judgment interest except as permitted by federal law.

Wherefore, Defendant requests that Plaintiff take nothing by her First Amended Complaint, that Plaintiff's First Amended Complaint be dismissed with prejudice, and that Defendant be granted such further relief that the Court may deem proper in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2010, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/D. Gordon Bryant, Jr.
D. GORDON BRYANT, JR.
Assistant United States Attorney