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United States of America

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

CASE NO.: 22-cv-0442-W-NLS

13 JANINE BOUEY

**ANSWER TO PLAINTIFF'S
COMPLAINT**

15 Plaintiff,

16 v.

17 UNITED STATES OF AMERICA and
18 CBP OFFICER JANE DOE.

19 Defendants.

21 The United States of America (hereinafter "Defendant") through its attorneys,
22 Randy S. Grossman, United States Attorney, Ernie Cordero, Jr., and Linda A. Frakes,
23 Assistant United States Attorneys, answers Plaintiff's Complaint as follows:

24 **JURISDICTION AND VENUE**

25 1. Answering Paragraph 1 of the Complaint, Defendant alleges that said
26 Paragraph contains legal conclusions and questions of law to be determined solely by the
27 Court, to which no answer is required. To the extent an answer is required, Defendant
28 generally and specifically denies all allegations in Paragraph 1.

FACTS

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2 8. Answering Paragraph 8 of the Complaint, Defendant admits that on June 16,
3 2020, Plaintiff was 60 years old and that she entered the United States from Mexico at the
4 Otay Mesa Port of Entry via the pedestrian lanes. Except as specifically admitted,
5 Defendant alleges that it lacks knowledge or information sufficient to admit or deny the
6 allegations in Paragraph 8 and, on that basis, generally and specifically denies all
7 allegations in Paragraph 8.

8 9. Answering Paragraph 9 of the Complaint, Defendant admits a Customs and
9 Border Protection Officer spoke to Plaintiff while she was in the pre-primary pedestrian
10 area. Except as specifically admitted, Defendant alleges that it lacks knowledge or
11 information sufficient to admit or deny the allegations in Paragraph 9 and, on that basis,
12 generally and specifically denies all allegations in Paragraph 9.

13 10. Answering Paragraph 10 of the Complaint, Defendant generally and
14 specifically denies all allegations in Paragraph 10.

15 11. Answering Paragraph 11 of the Complaint, Defendant generally and
16 specifically denies all allegations in Paragraph 11.

17 12. Answering Paragraph 12 of the Complaint, Defendant admits that Plaintiff
18 was referred to secondary inspection where she was placed in a holding area then known
19 as “soft secondary.” Defendant admits that other individuals were also in soft secondary.

20 13. Answering Paragraph 13 of the Complaint, Defendant alleges that it lacks
21 knowledge or information sufficient to admit or deny the allegations in Paragraph 13 and,
22 on that basis, generally and specifically denies all allegations in Paragraph 13.

23 14. Answering Paragraph 14 of the Complaint, Defendant admits that Plaintiff
24 was subject to a canine inspection while she was in soft secondary at the Otay Mesa Port
25 of Entry. Except as specifically admitted, Defendant denies the remaining allegations in
26 this paragraph.

27 15. Answering Paragraph 15 of the Complaint, Defendant generally and
28 specifically denies all allegations in Paragraph 15.

1 16. Answering Paragraph 16 of the Complaint, Defendant generally and
2 specifically denies all allegations in Paragraph 16.

3 17. Answering Paragraph 17 of the Complaint, Defendant alleges that it lacks
4 knowledge or information sufficient to admit or deny the allegations in Paragraph 17 and,
5 on that basis, generally and specifically denies all allegations in Paragraph 17.

6 18. Answering Paragraph 18 of the Complaint, Defendant admits that Plaintiff
7 was subject to a partial body search, and that the search required her to remove clothing
8 covering the area of the search. Except as specifically admitted, Defendant alleges that it
9 lacks knowledge or information sufficient to admit or deny the allegations in Paragraph 18
10 and, on that basis, generally and specifically denies all allegations in Paragraph 18.

11 19. Answering Paragraph 19 of the Complaint, Defendant admits that Plaintiff's
12 partial body search was conducted in room where the door was not closed completely for
13 the safety of the Plaintiff and officers in the room. Except as specifically admitted,
14 Defendant alleges that it lacks knowledge or information sufficient to admit or deny the
15 allegations in Paragraph 19 and, on that basis, generally and specifically denies all
16 allegations in Paragraph 19.

17 20. Answering Paragraph 20 of the Complaint, Defendant admits that Plaintiff
18 was subjected to a partial body search, and that that search required her to remove clothing
19 covering the area of the search. Defendant admits that the door to the private room where
20 Plaintiff's partial body search was conducted was not closed completely for the safety of
21 the Plaintiff and the officers in the room. Except as specifically admitted, Defendant
22 alleges that it lacks knowledge or information sufficient to admit or deny the allegations in
23 Paragraph 20 and, on that basis, generally and specifically denies all allegations in
24 Paragraph 20.

25 21. Answering Paragraph 21 of the Complaint, Defendant admits that Plaintiff
26 was required to manipulate her own body as required to permit adequate visual examination
27 of the exterior skin around the anus and/or vagina. Except as specifically admitted,
28 Defendant alleges that it lacks knowledge or information sufficient to admit or deny the

1 allegations in Paragraph 21 and, on that basis, generally and specifically denies all
2 allegations in Paragraph 21.

3 22. Answering Paragraph 22 of the Complaint, Defendant generally and
4 specifically denies all allegations in Paragraph 22.

5 23. Answering Paragraph 23 of the Complaint, Defendant admits that after
6 Plaintiff's partial body search, Plaintiff was returned to the security office and sat on a
7 bench with her wrist shackled to the bench. Except as specifically admitted, Defendant
8 denies the remaining allegations in this paragraph.

9 24. Answering Paragraph 24 of the Complaint, Defendant alleges that it lacks
10 knowledge or information sufficient to admit or deny the allegations in Paragraph 24 and,
11 on that basis, generally and specifically denies all allegations in Paragraph 24.

12 25. Answering Paragraph 25 of the Complaint, Defendant alleges that it lacks
13 knowledge or information sufficient to admit or deny the allegations in Paragraph 25 and,
14 on that basis, generally and specifically denies all allegations in Paragraph 25.

15 26. Answering Paragraph 26 of the Complaint, Defendant alleges that it lacks
16 knowledge or information sufficient to admit or deny the allegations in Paragraph 26 and,
17 on that basis, generally and specifically denies all allegations in Paragraph 26.

18 27. Answering Paragraph 27 of the Complaint, Defendant admits Plaintiff was in
19 possession of her United States passport. Except as specifically admitted, Defendant
20 alleges that it lacks knowledge or information sufficient to admit or deny the allegations in
21 Paragraph 27 and, on that basis, generally and specifically denies all allegations in
22 Paragraph 27.

23 28. Answering Paragraph 28 of the Complaint, Defendant generally and
24 specifically denies all allegations in Paragraph 28.

25 **DAMAGES**

26 29. Answering Paragraph 29 of the Complaint, Defendant generally and
27 specifically denies all allegations in Paragraph 29.

28

1 40. Answering Paragraph 40 of the Complaint, Defendant generally and
2 specifically denies all allegations in Paragraph 40.

3 41. Answering Paragraph 41 of the Complaint, Defendant generally and
4 specifically denies all allegations in Paragraph 41.

5 42. Answering Paragraph 42 of the Complaint, Defendant alleges that it lacks
6 knowledge or information sufficient to admit or deny the allegations in Paragraph 42 and,
7 on that basis, generally and specifically denies all allegations in Paragraph 42.

8 43. Answering Paragraph 43 of the Complaint, Defendant generally and
9 specifically denies all allegations in Paragraph 43.

10 **FOURTH CAUSE OF ACTION**

11 44. Answering Paragraph 44 of the Complaint, Defendant incorporates by
12 reference its answers in Paragraphs 1-43.

13 45. Answering Paragraph 45 of the Complaint, Defendant generally and
14 specifically denies all allegations in Paragraph 45.

15 46. Answering Paragraph 46 of the Complaint, Defendant generally and
16 specifically denies all allegations in Paragraph 46.

17 47. Answering Paragraph 47 of the Complaint, Defendant alleges that it lacks
18 knowledge or information sufficient to admit or deny the allegations in Paragraph 47 and,
19 on that basis, generally and specifically denies all allegations in Paragraph 47.

20 48. Answering Paragraph 48 of the Complaint, Defendant generally and
21 specifically denies all allegations in Paragraph 48.

22 **FIFTH CAUSE OF ACTION**

23 49. Answering Paragraph 49 of the Complaint, Defendant incorporates by
24 reference its answers in Paragraphs 1-48.

25 50. Answering Paragraph 50 of the Complaint, Defendant alleges that said
26 Paragraph contains allegations directed to another Defendant and therefore do not require
27 a response from Defendant United States. To the extent an answer is required, Defendant
28 generally and specifically denies all allegations in Paragraph 50. Additionally, the

1 Supreme Court’s decision in Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) forecloses
2 Bivens claims against individual Customs and Border Protection Officers.

3 51. Answering Paragraph 51 of the Complaint, Defendant alleges that said
4 Paragraph contains allegations directed to another Defendant and therefore do not require
5 a response from Defendant United States. To the extent an answer is required, Defendant
6 generally and specifically denies all allegations in Paragraph 51. Additionally, the
7 Supreme Court’s decision in Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) forecloses
8 Bivens claims against individual Customs and Border Protection Officers.

9 52. Answering Paragraph 52 of the Complaint, Defendant alleges that said
10 Paragraph contains allegations directed to another Defendant and therefore do not require
11 a response from Defendant United States. To the extent an answer is required, Defendant
12 generally and specifically denies all allegations in Paragraph 52. Additionally, the
13 Supreme Court’s decision in Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) forecloses
14 Bivens claims against individual Customs and Border Protection Officers.

15 53. Answering Paragraph 53 of the Complaint, Defendant alleges that said
16 Paragraph contains allegations directed to another Defendant and therefore do not require
17 a response from Defendant United States. To the extent an answer is required, Defendant
18 generally and specifically denies all allegations in Paragraph 53. Additionally, the
19 Supreme Court’s decision in Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) forecloses
20 Bivens claims against individual Customs and Border Protection Officers.

21 54. Answering Paragraph 54 of the Complaint, Defendant alleges that said
22 Paragraph contains allegations directed to another Defendant and therefore do not require
23 a response from Defendant United States. To the extent an answer is required, Defendant
24 generally and specifically denies all allegations in Paragraph 54. Additionally, the
25 Supreme Court’s decision in Egbert v. Boule, 142 S. Ct. 1793, 1803 (2022) forecloses
26 Bivens claims against individual Customs and Border Protection Officers.

1 **PRAYER OF RELIEF**

2 The remainder of Plaintiff's Complaint represents a Prayer for Relief, to which no
3 response is required. To the extent an answer is required, Defendant generally and
4 specifically denies all allegations in the remainder of Plaintiff's Complaint.

5 **AFFIRMATIVE DEFENSES**

6 1. Plaintiff has failed to state a claim for which relief can be granted.

7 2. Plaintiff's recovery, if any, is limited to the amount claimed administratively
8 in accordance with 28 U.S.C. § 2675(b).

9 3. The injuries and harm alleged by Plaintiff were not proximately caused by the
10 negligent or wrongful acts of an agent or employee of the United States.

11 4. Defendant denies that it or any of its agents or employees were negligent
12 and/or breached any standard of care due Plaintiff and/or engaged in any conduct which
13 was the proximate cause of the injuries, damages and losses allegedly incurred by the
14 Plaintiff.

15 5. Plaintiff's recovery, if any, must be reduced by the degree of her comparative
16 fault or contributory negligence, if any.

17 6. To the extent any employee of the United States used force with respect to
18 Plaintiff, that employee was justified in the use of force, and the force used was reasonable
19 under the circumstances.

20 7. Plaintiff's future damages, if any, must be reduced to present value.

21 8. Income taxes must be deducted from all alleged past and future lost earnings,
22 if any.

23 9. Defendant is entitled to an offset against damages, if any, for all monies paid
24 to Plaintiff by the United States as a result of Plaintiff's injuries.

25 10. With respect to her alleged medical expenses, Plaintiff may only recover the
26 lesser of: (a) the amount she paid or incurred for medical services; or (b) the reasonable
27 value of the medical services she received.

28

1 11. Plaintiff is not entitled to attorney’s fees or pre-judgment interest. [28 U.S.C.
2 § 2674.] Attorney fees are not recoverable under the Federal Tort Claims Act, 28 U.S.C.
3 § 2671 et seq. (Order [ECF 8].)

4 WHEREFORE, having fully answered all counts of the Complaint, Defendant prays
5 that Plaintiff take nothing by way of her Complaint against it, that the same be dismissed,
6 and that judgment be awarded in favor of Defendant, together with costs and such other
7 and further relief as the Court deems appropriate in this case.

8
9 Dated: July 28, 2022

Respectfully submitted,

RANDY S. GROSSMAN
United States Attorney

s/ Linda A. Frakes
LINDA A. FRAKES
ERNEST CORDERO, JR.
Assistant United States Attorney
Attorneys for Defendant