

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

JONATHAN DANIEL,)	
)	
Plaintiff,)	
)	No. 14 CV 01232
vs.)	
)	
THE CITY OF PEORIA, JIM ARDIS,)	
Mayor of Peoria, in his individual capacity;)	Honorable James E. Shadid
PATRICK URICH, City Manager of Peoria,)	Magistrate Judge Schanzle-Haskins
in his individual capacity; CHRISTOPHER SETTI,)	
Assistant City Manager of Peoria, in his)	
individual capacity; SAM RIVERA, Chief)	
Information Officer for the City of)	
Peoria, in his individual capacity; STEVEN)	
SETTINGSGAARD, former Chief of Police of the)	
Peoria Police Department, in his individual)	
capacity; Peoria Police Detectives JAMES)	
FEEHAN and STEVIE HUGHES, JR., in their)	
individual capacities,)	
Defendants.)	

**DEFENDANTS CITY OF PEORIA, JIM ARDIS, PATRICK URICH, CHRISTOPHER
SETTI, SAM RIVERA, STEVEN SETTINGSGAARD, JAMES FEEHAN, AND
STEVIE HUGHES, JR.'S ANSWER TO COMPLAINT**

Defendants City of Peoria, Jim Ardis, Patrick Urich, Christopher Setti, Sam Rivera, Steven Settingsgaard, James Feehan, and Stevie Hughes, Jr. (hereinafter collectively “Defendants”), by and through their attorney, JAMES G. SOTOS of THE SOTOS LAW FIRM, P.C., in answer to Plaintiff’s Complaint, state the following:

I. INTRODUCTION

1. This is a civil rights lawsuit. Mr. Daniel charges a conspiracy to violate and the violation of his rights under the First and Fourth Amendments to the United States Constitution and of Article I, Sections 4 and 6 of the Illinois Constitution and brings his action pursuant to 42

U.S.C. §§ 1983 and 1988, 28 U.S.C. §2201 et seq., and the laws and constitution of the State of Illinois. Mr. Daniel seeks declaratory and injunctive relief and monetary damages.

ANSWER: Defendants admit that Plaintiff is advancing the allegations set forth in paragraph 1, but deny they engaged in any of the misconduct alleged and that they are liable to Plaintiff for declaratory and injunctive relief and monetary damages.

2. From March 9 through March 19, 2014, Mr. Daniel tweeted from a Twitter account, @peoriamayor, which used a picture of Jim Ardis (“Ardis”), the mayor of Peoria, as the account’s avatar. Displeased with the content of the tweets, Defendants embarked on a plan to shut down the account and identify and punish its creator in violation of his constitutional rights. As part of Defendants’ plan, Peoria Police Department officers searched Mr. Daniel’s residence, seized his personal property, reviewed personal information on Mr. Daniel’s electronic devices and in his mail, and arrested, detained, and interrogated Mr. Daniel purportedly for the crime of false personation of a public official.

ANSWER: Defendants admit that from March 9 through March 19, 2014, Plaintiff tweeted from a twitter account, @peoriamayor, which used a picture of Defendant Ardis, the mayor of Peoria, as the account’s avatar. Defendants further admit that they pursued available legal means to shut down the account and to identify and pursue legal action against its creator. Defendants deny that they embarked on a plan to violate Plaintiff’s constitutional rights. Defendants admit that, after obtaining appropriate warrants, Peoria Police Department officers searched Plaintiff’s residence and seized certain of his personal property, and imaged certain personal information as a result. Defendants deny that they arrested, detained and interrogated Plaintiff for the crime of false personation of a public official.

II. JURISDICTION AND VENUE

3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

ANSWER: Defendants admit the allegations contained in paragraph 3.

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

ANSWER: Defendants admit the allegations contained in paragraph 4.

III. PARTIES

5. Plaintiff Jonathan Daniel is 29 years old. He is a U.S. Citizen and resident of Peoria, Illinois.

ANSWER: Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 5.

6. Defendant the City of Peoria (“the City”) is a municipal corporation under the laws of the State of Illinois and operates the Peoria Police Department.

ANSWER: Defendants admit the allegations contained in paragraph 6.

7. Defendant Jim Ardis (“Ardis”) is now and at the time of the events complained of herein was Mayor of Peoria. He is sued in his individual capacity.

ANSWER: Defendants admit Defendant Ardis is now and at the time of the events complained of herein was Mayor of Peoria and that Plaintiff purports to sue Defendant Ardis in his individual capacity.

8. Defendant Patrick Ulrich (“Ulrich”) is now and at the time of the events complained of herein was City Manager of Peoria. The City has delegated to Ulrich as City Manager final policy making authority for all municipal departments, including the Peoria Police Department. *See* Peoria Municipal Code §§ 2-281 and 24-35 to -37; 65 ILCS 5/5-3-7. He is sued in his individual capacity.

ANSWER: Defendants admit Defendant Ulrich is now and at the time of the events complained of herein was City Manager of Peoria and that Plaintiff purports to sue Defendant Ulrich in his individual capacity. Defendants make no response to the remaining legal conclusion contained in paragraph 8.

9. Defendant Christopher Setti (“Setti”) is now and at the time of the events

complained of herein was Assistant City Manager of Peoria. He is sued in his individual capacity.

ANSWER: Defendants admit Defendant Setti is now and at the time of the events complained of herein was Assistant City Manager of Peoria and that Plaintiff purports to sue Defendant Setti in his individual capacity.

10. Defendant Sam Rivera (“Rivera”) is now and at the time of the events complained of herein was Chief Information Officer for the City of Peoria. He is sued in his individual capacity.

ANSWER: Defendants admit Defendant Rivera is now and at the time of the events complained of herein was Chief Information Officer for the City of Peoria and that Plaintiff purports to sue Defendant Rivera in his individual capacity.

11. Defendant Steve Settingsgaard (“Settingsgaard”) was at the time of the events complained of herein Chief of Police of the Peoria Police Department. He is sued in his individual capacity.

ANSWER: Defendants admit Defendant Settingsgaard was at the time of the events complained of herein Chief of Police of the Peoria Police Department and that Plaintiff purports to sue Defendant Settingsgaard in his individual capacity.

12. Defendant James Feehan (“Feehan”) and Stevie Hughes, Jr. (“Hughes”) are now and at the time of the events complained of herein were detectives in the Peoria Police Department. They are sued in their individual capacities.

ANSWER: Defendants admit Defendants Feehan and Hughes are now and at the time of the events complained of herein were detectives in the Peoria Police Department and that Plaintiff purports to sue Defendants Feehan and Hughes in their individual capacities.

13. At all times relevant to this complaint, all Defendants were acting under color of state law and their conduct constituted state action.

ANSWER: Defendants admit that, at all times relevant, they were acting under color of law and that some of the actions they took could be construed as state action.

IV. FACTS

Illinois' False Personation Statute

14. Illinois' false personation statute, 720 ILCS 5/17-2, prohibits various types of false personation, which the statute divides into five categories: False personation for the purpose of soliciting a material benefit, 720 ILCS 5/17-2 (a), false personation of public officials and employees, 720 ILCS 5/17-2 (b), fraudulent advertisement of a corporate name, 720 ILCS 5/17-2 (c), producing, selling, and distributing false law enforcement badges, 720 ILCS 5/17-2 (d), and falsely representing oneself as having received a government medal, 720 ILCS 5/17-2 (e). The statute provides that false personation may be accomplished through the internet or electronic communication under 720 ILCS 5/17-2 (a)(1) through (a)(7) and (e) only. 720 ILCS 5/17-2 (g).

ANSWER: Defendants admit Plaintiff's description of the statute, except Defendants deny that the statute states that false personation may be accomplished through the internet or electronic communication only under 720 ILCS 5/17-2 (a)(1) through (a)(7) and (e).

15. False personation of a public official, 720 ILCS 5/17-2 (b)(2), prohibits a person from "knowingly and falsely represent[ing] himself or herself to be . . . [a] public officer or a public employee or an official or employee of the federal government."

ANSWER: Defendants admit the allegations contained in paragraph 15.

16. Illinois' provision for false personation of a public official criminalizes only representations made in person. Illinois courts require as an element of the offense that there be an intent to deceive the public that the impersonator is acting in the official capacity of a public official. Application of Illinois' provision for false personation of a public official to speech

made without such an intent violates the First Amendment and Article I, Section 4 of the Illinois State Constitution.

ANSWER: Defendants deny that Illinois' provision for false personation of a public official states that it criminalizes only representations made in person. Defendants further deny that Illinois courts have required as an element of the offense of false personation of a public official that there be an intent to deceive the public that the impersonator is acting in the official capacity of a public official. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in the last sentence of paragraph 16.

Events of March and April 2014

17. On or around March 9, 2014, Mr. Daniel began posting tweets to a Twitter account he created, @peoriamayor (the "Twitter account"), which used a picture of Ardis as the account's avatar. The avatar's Twitter biography read "I am honored to serve the citizens of our great city."

ANSWER: Defendants admit the allegations contained in paragraph 17 and state further that the account's profile page displayed Defendant Ardis' actual email address and website. (See Group Ex. 1, attached hereto, Defendant Feehan's Affidavit ("Affidavit"), ¶¶ 3–4, and Affidavit Attachment A, Twitter Profile Page.)

18. On or before March 12, 2014, Mr. Daniel added the words "parody account" to the end of the Twitter account biography.

ANSWER: Defendants admit the allegations contained in paragraph 18.

19. The Twitter account—which juxtaposed the mayor's clean-cut image with a series of tweets conveying in a crude or vulgar manner an exaggerated preoccupation with sex, drugs, and alcohol—was a satiric form of expression protected by the First Amendment and the Illinois Constitution. The Twitter account was not reasonably believable as conveying the voice or message of the actual mayor. Mr. Daniel had no intention of deceiving people into believing the

account was actually operated by a representative of the mayor or the mayor himself, and no reasonable person could conclude such an intent from the content of the tweets or the Twitter account's profile page.

ANSWER: Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 19, except that Defendants deny that no reasonable person could conclude that Plaintiff intended to deceive people into believing his twitter account was actually operated by a representative of the Mayor or the Mayor himself, and that no reasonable person could conclude such an intent from the contents of the tweets or the twitter account profile page. (*See* Group Ex. 1, attached hereto, Affidavit Attachment A, Twitter Profile Page.)

20. On or around March 11, 2014, Defendants Ardis, Ulrich, Setti, Rivera, Settingsgaard, Feehan, and Hughes, communicated about the Twitter account, came to a meeting of the minds, and agreed to shut it down and punish its creator. In furtherance of this conspiring agreement, Defendants engaged in the conduct set forth in paragraphs 21 through 49 below.

ANSWER: Defendants deny the allegations contained in paragraph 20.

21. From March 11, 2014 through April 18, 2014, Defendants Ardis, Ulrich, Setti, Rivera, Settingsgaard, Brady, Feehan, and Hughes worked jointly and individually to have the Twitter account shut down and to punish the creator of the accounts because Ardis and the other defendants objected to the lawful, protected content of the tweets and because Ardis was personally offended by the Twitter account.

ANSWER: Defendants deny the allegations contained in paragraph 21.

22. On March 11, 2014, Ulrich directed Rivera and Feehan to work to shut down the Twitter account and find out the identity of its creator. Rivera then contacted Twitter and ordered the account be shut down, or that control of the account be given to the City. In response, Twitter requested Rivera upload a copy of a government-issued photo identification of

Ardis in order to demonstrate Rivera had authority to act on Ardis' behalf. Rivera then asked Setti to upload Ardis' driver's license, which he did.

ANSWER: Defendants admit the allegations contained in paragraph 22, except Defendants deny that Defendant Rivera "ordered" the account be shut down.

23. Also on March 11, 2014, Feehan began investigating whether the account violated any criminal statutes, and concluded that it did not. He communicated his conclusions to Settingsgaard, who reported Feehan's findings to Ardis, Urich, and Rivera.

ANSWER: Defendants admit that, on March 11, 2014, Defendant Feehan first investigated whether the account violated any criminal statutes, and preliminarily concluded that same day that it did not. Defendants admit Defendant Feehan communicated his preliminary conclusions to Defendant Settingsgaard, who reported those findings to other Defendants.

24. On March 12, 2014, Ardis directed Urich, Settingsgaard, and Rivera to act with a "sense of urgency" with respect to shutting down the Twitter account. Settingsgaard reported to Urich he thought Rivera was handling the matter. By the evening, Rivera had been unable to get a response from Twitter, so Setti asked Settingsgaard if the police department could continue working on shutting down the account and identifying who created it.

ANSWER: Defendants admit the allegations contained in paragraph 24.

25. On March 13, 2014 Settingsgaard asked Feehan if there was anything he could do to speed up shutting down the account. Feehan then tried to contact Twitter and resumed investigating whether the account violated a criminal statute. Feehan erroneously claimed that the Twitter account violated Illinois' criminal prohibition of false personation of a public official under 720 ILCS 5-17-2 (b)(2) [*sic*]. Settingsgaard then reported to Ardis and Urich that Feehan had identified a statute which the Twitter account violated, the false personation statute, and

asked Ardis if he wanted to file a formal complaint and pursue prosecuting the creator of the Twitter account. Ardis reported that he “absolutely” wanted to prosecute.

ANSWER: Defendants admit the allegations contained in paragraph 25, except Defendants lack sufficient information or knowledge to either admit or deny whether Defendant Feehan’s claim that the account violated 720 ILCS 5/17-2(b)(2) was “erroneous.”

26. On or around March 14, 2014, Feehan, at Settingsgaard’s direction, applied in the Circuit Court of Peoria County for a warrant to obtain from Twitter evidence of the offense of false personation. Feehan did not have probable cause or any other lawful basis to apply for the warrant. A Peoria County Circuit Court judge issued the warrant and Defendants used the warrant to obtain the internet protocol address (“IP address”) use to connect to the Twitter account.

ANSWER: Defendants admit the allegations contained in paragraph 26, except Defendants deny that Defendant Feehan lacked probable cause or any other lawful basis to apply for the warrant.

27. On March 17, 2014, Settingsgaard reported to Ardis and Urich that a warrant had been issued and sent to Twitter.

ANSWER: Defendants admit the allegations contained in paragraph 27.

28. On March 20, 2014, Ardis and the City, in a letter to Twitter written by the Interim Corporation Counsel for the City, threatened to file a federal lawsuit seeking an injunction against Twitter to terminate the Twitter account. Twitter suspended the Twitter account that same day.

ANSWER: Defendants admit the allegations contained in paragraph 28, except Defendants deny the characterization of the letter as “threatening.”

29. On or around March 29, 2014, Hughes applied in the Circuit Court of Peoria County for a warrant to obtain from Comcast evidence of the offense of false personation. Hughes did not have probable cause or any other lawful basis to apply for the warrant. A Peoria County Circuit Court judge issued the warrant to obtain evidence of false personation. Defendants used the warrant to obtain the name and address of the subscriber associated with the IP address used to connect to the Twitter account.

ANSWER: Defendants admit that, on March 29, 2014, Defendant Hughes applied in the Circuit Court of Peoria County for a warrant to obtain from Comcast evidence of the offense of false personation. Defendants further state that the warrant was sought after Defendants had obtained, from Twitter, a response to the warrant issued to Twitter, which provided the internet protocol and email addresses associated with the suspect Twitter account. (*See* Group Ex. 1, attached hereto, Affidavit, ¶¶ 4–10, and Affidavit Attachment B, Twitter Response.) Defendants deny that Defendant Hughes did not have probable cause or any other lawful basis to apply for the warrant. Defendants admit a Peoria County Circuit Court Judge issued the warrant to Comcast to obtain evidence of false personation, and that certain Defendants used the warrants to obtain the name and address of the subscriber associated with the IP address used to connect to the Twitter account.

30. On April 8, 2014, Ardis was informed that Comcast had returned information to the police department in response to the warrant.

ANSWER: Defendants admit that, at some point, Defendant Ardis was informed that Comcast had returned information to the police department in response to the warrant.

31. On April 14, 2014, Ardis requested information from the police department on the status of the investigation of the Twitter account.

ANSWER: Defendants admit the allegations contained in paragraph 31.

32. On or around April 15, 2014, Hughes applied in the Circuit Court of Peoria County for a warrant to search the premises identified by Comcast as the residence of the IP subscriber, 1220 N. University Street in Peoria (“the premises”), and seize evidence pertaining to the offense of false personation, including any electronic device which can store digital media, “books, papers, records, photographs, recordings, [and] documents,” and any “cocaine, heroin, [and] drug paraphernalia.”

ANSWER: Defendants admit the allegations contained in paragraph 32. Defendants further state affirmatively that the search warrant authorized the seizure of “cellular telephones.” (*See* Ex. 2, attached hereto, Search Warrant.)

33. On April 15, 2014, Defendants [*sic*] Hughes executed the search warrant for the premises. Two of Mr. Daniel’s roommates and two guests were at the premises when the police officers arrived to execute the search warrant. A number of pieces of mail, as well as computers, telephones, and other electronic devices were seized, including Mr. Daniel’s laptop, computer processor, and mail.

ANSWER: Defendants admit the allegations contained in paragraph 33, except Defendants deny the description of and number of other individuals who were at the premises when the officers arrived, and further state affirmatively that other officers were present during the execution of the search warrant.

34. At the time the search warrant was executed, Mr. Daniel was at his place of employment.

ANSWER: Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 34.

35. Shortly after his work shift had ended, Mr. Daniel received a telephone call from Hughes, who told Mr. Daniel that he needed to come to the station. Mr. Daniel informed Hughes of his whereabouts and Hughes then directed two police officers to bring Mr. Daniel to the police

station. Hughes did not have an arrest warrant, probable cause, or any other lawful basis to direct the arrest [*sic*] Mr. Daniel.

ANSWER: Defendants admit that after the warrant was executed, Defendant Hughes called Plaintiff, but deny that Defendant Hughes told Plaintiff he “needed to come to the station,” and lack sufficient information or knowledge to either admit or deny that the call occurred shortly after Plaintiff’s work shift had ended. Defendants admit that Plaintiff informed Defendant Hughes of his whereabouts and that, after Plaintiff agreed to come to the police station but stated that he needed a ride, Defendant Hughes asked two Peoria police officers to pick Plaintiff up. Defendants deny that Defendant Hughes directed the arrest of Plaintiff or that Plaintiff was arrested, and further deny that they lacked probable cause or any other lawful basis for their actions. Defendants admit that Defendant Hughes did not have an arrest warrant.

36. When the police officers arrived at Mr. Daniel’s place of employment, they ordered Mr. Daniel to get in the police car, performed a pat-down search of Mr. Daniel, placed him into the car, and brought him to the police station. During this period, Mr. Daniel reasonably believed he was not free to leave the officer’s [*sic*] presence.

ANSWER: Defendants deny that the police officers ordered Plaintiff to get in the police car when they picked Plaintiff up at the bar he stated he worked at, and further deny that Plaintiff reasonably believed he was not free to leave the officers’ presence. Defendants lack sufficient information or knowledge to either admit or deny the allegation that the officers performed a pat down search of Plaintiff before driving him to the police station.

37. At the police station, Mr. Daniel was told he had to take everything out of his pockets before entering an interrogation room. Mr. Daniel emptied the contents of his pockets, which included his cellular telephone, and placed the items on a chair in the station. He was then taken into an interrogation room. Mr. Daniel reasonably believed he was not free to leave the interrogation room or the police station.

ANSWER: Defendants admit the allegations contained in paragraph 37, except Defendants deny Plaintiff’s characterization of the interview room as an interrogation room,

and further deny that Plaintiff reasonably believed he was not free to leave when he was at the police station.

38. In the interrogation room, Hughes told Mr. Daniel that he wanted to talk to Mr. Daniel about impersonating a public official on social media. Hughes then orally informed Daniel of his rights under *Miranda v. Arizona*. Mr. Daniel invoked his right to an attorney and Hughes then left the room.

ANSWER: Defendants admit the allegations contained in paragraph 38, except Defendants deny that Defendant Hughes “told Mr. Daniel that he wanted to talk to Mr. Daniel about impersonating a public official on social media.” Defendants further deny Plaintiff’s characterization of the interview room as an interrogation room.

39. Shortly thereafter Hughes returned to the room with Mr. Daniel’s cellular telephone and ordered Mr. Daniel to power off the phone because it was being confiscated. Mr. Daniel objected to the confiscation of his only phone, particularly because he used it to coordinate visits with his three and five year old sons and with his sick grandmother, who often called him when she needed help. Hughes told Mr. Daniel he could not have his phone back, but that he was now free to leave.

ANSWER: Defendants admit that Defendant Hughes advised Plaintiff that he would not be able to keep his phone, and admit that Defendant Hughes asked Plaintiff to turn the power off. Defendants admit that Plaintiff objected to the seizure of the phone. Defendants admit that Defendant Hughes advised Plaintiff he was free to leave. Defendants lack sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 39.

40. In the evening of April 15, 2014, and again on April 16, 2014, Ardis communicated with Settingsgaard and affirmed his desire to prosecute whoever created the Twitter account.

ANSWER: Defendants admit the allegations contained in paragraph 40.

41. On April 17, 2014 Hughes applied in the Circuit Court of Peoria County for a warrant to search the contents of Mr. Daniel's cellular telephone for evidence of false personation and for a warrant to obtain from Google evidence of false personation in the email account associated with the Twitter account. Hughes did not have probable cause or any other lawful basis to apply for either warrant. A Peoria County Circuit Court judge issued both warrants.

ANSWER: Defendants admit the allegations contained in paragraph 41, except Defendants deny that Defendant Hughes lacked probable cause or any other lawful basis to apply for either warrant.

42. On information and belief, Hughes and Feehan thereafter searched Mr. Daniel's electronic devices for records of communications and other data.

ANSWER: Defendants deny that Defendant Hughes searched Plaintiff's electronic devices. Defendants admit that Defendant Feehan imaged Plaintiff's cell phone, and that other electronic devices which may have belonged to Plaintiff may also have been imaged for subsequent review by detectives, but state affirmatively that the State's Attorney's Office indicated it would not be pursuing charges against Plaintiff before any such data was reviewed and that, as a result, it was determined that the data would not be reviewed.

43. After being released from police custody, Mr. Daniel believed he would be charged and prosecuted for a crime for which he could serve up to a year in prison. His relationships with his roommates were strained because of the search of the premises and the seizure of his roommates' property. He worried police officers would view highly personal digital photographs, written electronic documents, and texts on his laptop, computer, and telephone.

ANSWER: Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 43.

44. Mr. Daniel was forced to not visit with his children on April 18 and 19 because he feared his children would witness his arrest. He believed he might have to leave Peoria because Defendants had shown they would take illegal actions against him and he feared they would continue to do so in retaliation for the Twitter account.

ANSWER: Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 44.

45. Mr. Daniel learned he would not be charged with a crime when it was reported in the Peoria Journal Star on April 23, 2014. The Peoria Journal Star article stated that the State's Attorney of Peoria County decided not to prosecute Mr. Daniel for false personation of a public official. The State's Attorney stated that Mr. Daniel's conduct did not violate the statute because false personation of a public official under 720 ILCS 5/17-2 (b)(2) had to be done in person and the statute could not be violated over the Internet or through electronic communication.

ANSWER: Defendants admit the allegations contained in paragraph 45, except that Defendants lack sufficient information or knowledge to either admit or deny Plaintiff's allegations that he learned he would not be charged with a crime when it was reported in the Peoria Journal Star on April 23, 2014.

46. After learning he would not be charged with a crime, Mr. Daniel twice went to the police station to request the return of his property. His requests were denied. On April 24, 2014 Mr. Daniel's counsel made a demand by email to Ardis and Settingsgaard for the immediate return of Mr. Daniel's property. Mr. Daniel's personal property was returned to him on or around May 2, 2014.

ANSWER: Defendants admit the allegations contained in paragraph 46, except Defendants lack sufficient information or knowledge to either admit or deny that Plaintiff twice went to the police station to request return of his property.

47. Each of the Defendants personally participated in the unlawful conduct described herein which deprived Mr. Daniel of his constitutional rights, acted jointly and in concert with the other Defendants who participated in or acquiesced to the unlawful conduct, failed to intervene or stop other Defendants from engaging in the unlawful conduct though possessing the power to do so, or knew of and condoned or approved of the unlawful conduct.

ANSWER: Defendants deny the allegations contained in paragraph 47.

48. Each Defendant acted knowingly and intentionally, willfully and wantonly, or with reckless or callous disregard for, or with deliberate indifference to Mr. Daniel's rights.

ANSWER: Defendants deny the allegations contained in paragraph 48.

49. Defendants' unlawful conduct described herein directly and proximately caused Mr. Daniel's mental and emotional distress, loss of appetite, insomnia, anxiety, discomfort, damage to reputation, and deprivation of his constitutional rights.

ANSWER: Defendants deny the allegations contained in paragraph 49.

50. Defendants' unlawful conduct described herein directly and proximately caused Mr. Daniel the loss of opportunity to engage in expression during the period when his cell phone and other electronic devices were confiscated.

ANSWER: Defendants deny the allegations contained in paragraph 50.

51. Because Defendants Ardis, Urich, and Settingsgaard continue to maintain publicly that the actions taken against Mr. Daniel were lawful and proper, Mr. Daniel remains in danger of being punished for exercising his right to free expression if he engages in the future in speech that is derogatory towards the mayor.

ANSWER: Defendants deny the allegations contained in paragraph 51.

52. Mr. Daniel has no adequate remedy at law and is irreparably harmed in that he wishes to be able to parody, satirize, and otherwise engage in humorous expression about the mayor and the City of Peoria in the future—including through the use of risqué language—but is chilled from doing so because he reasonably fears retaliation from Defendants if he engages in such protected expression.

ANSWER: Defendants deny the allegations contained in paragraph 52.

VI. CLAIMS FOR RELIEF

COUNT ONE:

53. The allegations of paragraphs 1 through 52 are realleged and incorporated by reference as if fully set forth herein.

ANSWER: Defendants hereby incorporate their answers to paragraphs 1 through 52 of Count One as if fully set forth herein.

54. The actions of the Defendants described herein violate the rights of Mr. Daniel to freedom of expression as guaranteed by the First Amendment of the United States Constitution.

ANSWER: Defendants deny the allegations contained in paragraph 54.

COUNT TWO:

55. The allegations of paragraphs 1 through 54 are realleged and incorporated by reference as if fully set forth herein.

ANSWER: Defendants hereby incorporate their answers to paragraphs 1 through 54 of Count Two as if fully set forth herein.

56. The actions of the Defendants described herein violate the rights of Mr. Daniel to be free from unreasonable searches, seizures, and invasions of privacy guaranteed by the Fourth Amendment of the United States Constitution.

ANSWER: Defendants deny the allegations contained in paragraph 56.

COUNT THREE:

57. The allegations of paragraphs 1 through 56 are realleged and incorporated by reference as if fully set forth herein.

ANSWER: Defendants hereby incorporate their answers to paragraphs 1 through 56 of Count Three as if fully set forth herein.

58. The actions of the Defendants described herein violate the rights of Mr. Daniel to speak, write, and publish freely as guaranteed by Article I, Section 4 of the Illinois Constitution.

ANSWER: Defendants deny the allegations contained in paragraph 58.

COUNT FOUR:

59. The allegations of paragraphs 1 through 58 are realleged and incorporated by reference as if fully set forth herein.

ANSWER: Defendants hereby incorporate their answers to paragraphs 1 through 58 of Count Four as if fully set forth herein.

60. The actions of the Defendants described herein violate the rights of Mr. Daniel to be free from unreasonable searches, seizures, and invasions of privacy as guaranteed by Article I, Section 6 of the Illinois Constitution.

ANSWER: Defendants deny the allegations contained in paragraph 60.

COUNT FIVE:

61. The allegations of paragraphs 1 through 60 are realleged and incorporated by reference as if fully set forth herein.

ANSWER: Defendants hereby incorporate their answers to paragraphs 1 through 60 of Count Five as if fully set forth herein.

62. The actions of the Defendants described herein constitute a conspiracy that caused the violation of Mr. Daniel's right to freedom of expression and freedom from unreasonable searches, seizures, and invasions of privacy as guaranteed by the First and Fourth Amendments of the United States Constitution.

ANSWER: Defendants deny the allegations contained in paragraph 62.

WHEREFORE, Defendants request that this Court enters judgment in their favor and against Plaintiff and grant such further relief as this Court deems just and proper.

Dated: August 14, 2014

/s/ James G. Sotos
JAMES G. SOTOS, Atty No. 06191975
*One of the Attorneys for Defendants City of Peoria,
Jim Ardis, Patrick Urich, Christopher Setti, Sam
Rivera, Steven Settingsgaard, James Feehan, and
Stevie Hughes, Jr.*

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AFFIRMATIVE DEFENSES

Defendants City of Peoria, Jim Ardis, Patrick Urich, Christopher Setti, Sam Rivera, Steven Settingsgaard, James Feehan, and Stevie Hughes, Jr., by and through their attorney, JAMES G. SOTOS of THE SOTOS LAW FIRM, P.C., assert the following affirmative defenses to Plaintiff's Complaint:

1. With regard to Plaintiff's Fourth Amendment claim, Defendants have qualified immunity from liability for the damages claimed by Plaintiff because Defendants did not violate any clearly established constitutional rights of which a reasonable person would have known.

2. With regard to Plaintiff's First Amendment claim, Defendants have qualified immunity from liability for the damages claimed by Plaintiff because Defendants did not violate any clearly established constitutional rights of which a reasonable person would have known.

3. With regard to Plaintiff's First and Fourth Amendment claims, Defendants had probable cause for all of the challenged actions.

4. With regard to Plaintiff's state constitutional claims, Defendants possessed probable cause for all of the challenged actions.

5. Defendant City of Peoria is not liable to pay punitive or exemplary damages. 745 ILCS 10/2-102.

6. Defendant City of Peoria is not liable for any injury resulting from an act or omission of its employee where the employee is not liable. Defendants Ardis, Urich, Setti, Rivera, Settingsgaard, Feehan, and Hughes deny that they committed any act or omission which caused injuries to Plaintiff. 745 ILCS 10/2-109.

7. Defendants are not liable for claims alleged under state law because a public employee serving in a position involving the determination of policy or the exercise of discretion

is not liable for any injury resulting from his acts or omissions in determining policy when acting in the exercise of such discretion, even though abused. 745 ILCS 10/2-201.

8. Defendants are not liable for claims alleged under state law because a public employee is not liable for his acts or omissions in the execution or enforcement of any law unless such acts or omissions constitute willful and wanton conduct. 745 ILCS 10/2-202.

9. Defendants are not liable for claims alleged under state law because a public employee who acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable is not liable for any injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable. 745 ILCS 10/2-203.

10. Defendants are not liable for claims alleged under state law for any injury caused by the acts or omissions of another person. 745 ILCS 10/2-204.

11. Defendants are not liable for claims alleged under state law for injury caused by the instituting or prosecuting of any judicial proceeding within the scope of Defendants' employment, unless Defendants acted maliciously and without probable cause. 745 ILCS 10/2-208.

12. Defendants are not liable for claims alleged under state law because a public employee acting within the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission. 745 ILCS 10/2-210.

13. Defendants are not liable to pay punitive or exemplary damages for an alleged injury arising out of an act or omission occurring within the scope of their employment while serving in a position involving the determination of policy or the exercise of discretion when the

alleged injury is the result of an act or omission occurring in the performance of any legislative, quasi-legislative or quasi-judicial function, even though abused. 745 ILCS 10/2-213.

14. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by negligent, willful, wanton and/or other wrongful conduct on the part of Plaintiff as reflected in the public record, any verdict or judgment obtained by Plaintiff must be reduced by an amount commensurate with the degree of fault attributed to Plaintiff by a jury in this case.

WHEREFORE, Defendants request that this Court enters judgment in their favor and against Plaintiff and grant such further relief as this Court deems just and proper.

Dated: August 14, 2014

/s/ James G. Sotos

JAMES G. SOTOS, Atty No. 06191975

*One of the Attorneys for Defendants City of Peoria,
Jim Ardis, Patrick Urich, Christopher Setti, Sam
Rivera, Steven Settingsgaard, James Feehan, and
Stevie Hughes, Jr.*

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury pursuant to 28 U.S.C.A. § 1746 that the following is true and correct, that on August 14, 2014, I electronically filed **Defendants City of Peoria, Jim Ardis, Patrick Urich, Christopher Setti, Sam Rivera, Steven Settingsgaard, James Feehan, and Stevie Hughes, Jr.'s Answer to Plaintiff's Complaint** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attached service list.

Dated: August 14, 2014

/s/ James G. Sotos

JAMES G. SOTOS, Atty No. 06191975

*One of the Attorneys for Defendants City of Peoria,
Jim Ardis, Patrick Urich, Christopher Setti, Sam
Rivera, Steven Settingsgaard, James Feehan, and
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SERVICE LIST
Daniel v. City of Peoria, et al.
Case No.: 14 CV 01232

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Daniel v. City of Peoria, et al
Case No.: 14 CV 01232

GROUP EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

JONATHAN DANIEL,)	
)	
Plaintiff,)	
)	No. 14 CV 01232
v.)	
)	
THE CITY OF PEORIA, JIM ARDIS,)	
Mayor of Peoria, in his individual)	
capacity; PATRICK URICH, City)	Honorable James E. Shadid
Manager of Peoria, in his individual)	Magistrate Judge Schanzle-Haskins
capacity; CHRISTOPHER SETTI,)	
Assistant City Manager of Peoria, in his)	
individual capacity; SAM RIVERA,)	
Chief Information Officer for the City of)	
Peoria, in his individual capacity;)	
STEVEN SETTINGSGAARD, former)	
Chief of Police of the Peoria Police)	
Department, in his individual capacity;)	
Peoria Police Detectives JAMES)	
FEEHAN and STEVIE HUGHES, JR.,)	
in their individual capacities,)	
)	
Defendants.)	

AFFIDAVIT OF JAMES FEEHAN

STATE OF ILLINOIS)	
)	ss.
PEORIA COUNTY)	

I, James Feehan, having first been duly sworn upon my oath, depose and state as follows:

1. I am now and at all times relevant to the Complaint in this matter have been a detective with the City of Peoria, Illinois, police department. I have specific knowledge of all facts set forth below to which I can competently testify to as follows.

2. On March 11, 2014 at 10:55 AM, I viewed and captured a "screen shot" of the @peoriamayor Twitter account profile. The profile utilized Peoria Mayor Jim Ardis' photograph,

Ardis' actual email address "JArdis@peoriagov.org", and Ardis' actual website Uniform Resource Locator (URL) address "peoriagov.org/mayors-office/".

3. A true and accurate copy of the "screen shot" containing the above described information is attached as "Attachment A".

4. On March 14, 2014, I applied for and obtained a search warrant within the Tenth Judicial Circuit Court of Illinois requiring Twitter to provide subscriber information for the Twitter account, @peoriamayor.

5. On March 14, 2014, I executed the warrant by faxing that search warrant to Twitter.

6. On March 27, 2014, in response to the search warrant, Twitter provided subscriber information to this affiant regarding the @peoriamayor Twitter account.

7. That subscriber information provided by Twitter was in the form of a text file titled "peoriamayor-account.txt". Within that file was subscriber information indicating that the @peoriamayor Twitter account was created March 09, 2014 and was registered to jondani1235@gmail.com.

8. The text file further indicated that the account was created through the use of the internet protocol (IP) address 50.158.181.236, and that it was last updated on March 13, 2014.

9. A true and accurate copy of the text file containing the subscriber information is attached as "Attachment B".

10. At the bottom of "Attachment B" appear the handwritten words "Twitter Response". I wrote those words on the original of "Attachment B" sometime after I obtained it to remind myself of the nature of the document as the investigation went forward.

11. I am an adult, and if called upon to testify in this matter, I could competently testify to the facts stated herein.

ATTESTATION

Under penalties of perjury pursuant to 28 U.S.C.A. § 1746, I, James C. Feehan, Jr., declare I am a Defendant in the above-captioned matter, that I have read the foregoing document and that the statements made herein are true, correct and complete to the best of my knowledge and belief. Executed on August 12, 2014.

/s/ James C. Feehan, Jr.

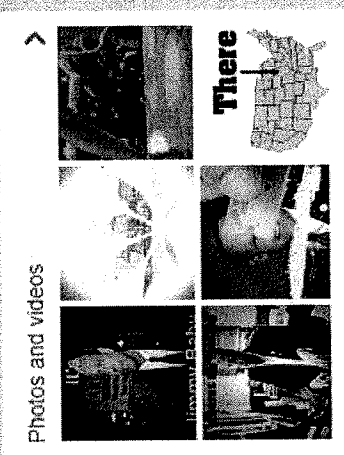
James C. Feehan, Jr., Detective
Peoria Police Department.

Daniel v. City of Peoria, et al
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ATTACHMENT A

- Tweets
- Following
- Followers
- Favorites
- Lists

Tweet to Jim Ardis
@peoriamayor




- Who to follow** · Refresh · View all
- jimmy fallon · @jimmyfal... · Follow
 - Brian Urlacher · @BUrla... · Follow
 - Robbie Gould · @Robbf... · Follow
- Popular accounts · Find friends

Trends · Change

#iTunesFestival SXSW · Promoted

Refugees Turn Carn...





Jim Ardis
@peoriamayor

I am honored to serve the citizens of our great city. JArdis@peoriagov.org
Peoria Illinois · peoriagov.org/jmayors-office/

TWEETS 25 | FOLLOWING 0 | FOLLOWERS 33 | Follow

Tweets

-  **Jim Ardis** @peoriamayor 11h
@visualrinse no but me and Aaron schock like broke back mountain
View conversation
-  **Jim Ardis** @peoriamayor 11h
pic.twitter.com/28nk8Gr1j



Expand

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ATTACHMENT B

-----BEGIN PGP SIGNED MESSAGE-----
Hash: SHA1

account_id: 2381042538
created_at: 2014-03-09 21:22:08 +0000
updated_at: 2014-03-13 06:44:15 +0000
email: jondani1235@gmail.com
created_via: oauth:240182
screen_name: peoriamayor
creation_ip: 50.158.181.236
time_zone:

-----BEGIN PGP SIGNATURE-----
Version: GnuPG v1.4.5 (GNU/Linux)

iD8DBQFTlh28WwJyPIge+SvERAc7kAJ4iYenmM950Ns2722khQeXo8ZmqMQCeNDaN
lwCLn1asJvqrKfR*E3QmtpE=
=kwwE
-----END PGP SIGNATURE-----

Twitter Response

Daniel v. City of Peoria, et al
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EXHIBIT 2

14p242

State of Illinois)
) SS
 County of Peoria)

FILED
 CLERK OF THE
 COUNTY COURT
 PEORIA, ILL.

The Circuit Court
 of the Tenth Judicial
 Circuit of Illinois

2014 SEARCH WARRANT

TO: ALL PEACE OFFICERS OF THE STATE OF ILLINOIS

On this date, Detective ~~ROBERT M SPEARS~~ ^{Stevie Hughes}, Complainant, has signed and sworn to a complaint for a search warrant before me. Upon examination of the said complaint, I find that it states facts sufficient to show probable cause.

I, therefore, command that you search the premises, in the City and the County of Peoria, State of Illinois, located at: 1220 N University St, being a gray vinyl sided, multi level house, family residence, whose current tenant is Jacob Elliot, M/W

and seize the following things: any cocaine, heroin, drug paraphernalia, books, papers, records, photographs, recordings, documents, computers, computer systems, computer disks, computer tapes or other software, computer photographs, cellular telephones, any digital storage media, and related peripherals, the contents thereof; any microscopic or trace evidence, or other things which have been used in the commission of, or which constitute evidence of the offense of False Personation, in violation of 720 Illinois Compiled Statute, 5/17-2(b)(2), 2013, as amended.

I further command that a return of anything so seized shall be made without unnecessary delay before me or before any court of competent jurisdiction.

Time of Issuance: 12³⁴ o'clock p.m.

Date of Issuance: April 15, 2014.


 Judge