

IN THE MONTGOMERY COUNTY COMMON PLEAS COURT
CIVIL DIVISION

MICHAEL J. SOLLENBERGER : **CASE NO.**
330 West First Street, Apt. 803
Dayton, Ohio 45402 : **JUDGE**

PLAINTIFF :

v. :

JENNIFER A. SOLLENBERGER :
254 Oak Street
Dayton, Ohio 45410 :

and :

DANNIELLE ESTRIDGE :
4300 Pinycastle Court
Dayton, Ohio 45424 :

and :

SHERIFF PHIL PLUMMER :
c/o Montgomery County Sheriff's Office
345 West Second Street :
PO Box 972
Dayton, Ohio 45422 :

and :

DAVID PARIN :
c/o Montgomery County Sheriff's Office
345 West Second Street :
PO Box 972
Dayton, Ohio 45422 :

and :

BRYAN CAVENDER :
c/o Montgomery County Sheriff's Office
345 West Second Street :
PO Box 972
Dayton, Ohio 45422 :

COMPLAINT WITH JURY
DEMAND ENDORSED HEREON

and

TONY HUTSON :
c/o Montgomery County Sheriff's Office :
345 West Second Street :
PO Box 972 :
Dayton, Ohio 45427 :

DEFENDANTS

Now comes the Plaintiff, Michael J. Sollenberger, by and through Counsel, and for his Complaint against the Defendants states as follows:

PARTIES, JURISDICTION & BACKGROUND

1. Plaintiff, Michael J. Sollenberger ("Michael"), was and is a resident of Montgomery County, Ohio.
2. Defendant, Jennifer A. Sollenberger ("Jennifer"), was and is a resident of Montgomery County, Ohio.
3. Defendant, Dannielle Estridge ("Dannielle"), was and is a resident of Montgomery County, Ohio.
4. Defendant, Sheriff Phil Plummer, is the duly elected Sheriff of Montgomery County and is being sued in his official capacity as the Sheriff of Montgomery County.
5. Defendant, David Parin, was an employee of the Montgomery County Sheriff's Office during the relevant time period, and was operating within the scope of employment at all times alleged herein.
6. Defendant, Bryan Cavender, was an employee of the Montgomery County Sheriff's Office during the relevant time period, and was operating within the scope of employment at all times alleged herein.
7. Defendant, Tony Hutson, was an employee of the Montgomery County Sheriff's Office during the relevant time period, and was operating within the scope of employment at all times alleged herein.
8. Venue is proper in Montgomery County, Ohio under Civ. R. 3(B)(1), (2), (3), and (6).
9. This Court may properly exercise personal jurisdiction over all Defendants in this action and has subject matter jurisdiction over this action.

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10. Michael and Jennifer are currently married but are going through a divorce in the Montgomery County Court of Common Pleas, Case No. 2013DR00158 (“the divorce proceeding”). The divorce is not yet final.

11. Michael was employed by the Montgomery County Sheriff’s Office and was recently terminated from employment as a result of the actions of the Defendants alleged in this Complaint.

12. In April or May of 2014, during the divorce proceeding and while they were physically separated, Jennifer took Michael’s personal cell phone without his knowledge or consent after their son told Jennifer that Michael wanted the phone.

13. Jennifer took Michael’s personal cell phone shortly after a Guardian ad Litem, who was appointed in the divorce proceeding, issued a report and recommendation that Michael be granted custody of their children if they could not agree on a shared parenting arrangement.

14. While speaking with some friends, Jennifer concluded that Michael probably wanted the cell phone back because there might be something on it that he did not want her to see.

15. In May 2014, Jennifer turned the cell phone over to Dannielle, who accessed and extracted digital information from the cell phone, including, but not limited to, text messages between Michael and his co-workers, pictures, and other deleted, digital information.

16. Dannielle used the Wondershare program to access and extract deleted files from the cell phone and backed up everything she downloaded on an iTunes account and on the hard drive of her computer.

17. Jennifer and Dannielle reviewed all of the digital information together.

18. In August 2014, after obtaining the digital information, Jennifer turned over some of the digital information she obtained from Dannielle to the National Association for the Advancement of Colored People (“NAACP”).

19. In December 2014, a representative from the NAACP provided Major Daryl Wilson (“Major Wilson”) from the Montgomery County Sheriff’s Office with 105 copied pages of text messages.

20. Major Wilson and other employees of the Montgomery County Sheriff’s Office reviewed the 105 copied pages of text messages and initiated an investigation against Michael and other Montgomery County Sheriff’s Office employees.

21. On December 16, 2014, Jennifer met with an employee of the Montgomery County Sheriff’s Office to explain how she came into possession of the information from Michael’s personal cell phone.

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22. On December 16, 2014, Jennifer presented the employee with one of Michael's cell phones, at which time Detective Tony Hutson imaged the phone with the Montgomery County Sheriff's Office Cellebrite phone imaging devices and software and made a copy of the files contained on the phone for forensic imaging. After imaging, the phone was returned to Jennifer. None of the information provided by the NAACP was present on this cell phone. Jennifer indicated the data was on a different cell phone.

23. On January 12, 2015, Detective Bryan Cavendar and Detective Tony Hutson arrived at Jennifer's residence to copy Michael's personal cell phone. However, Jennifer did not have the cell phone available at that time.

24. On January 13, 2015, Dannielle met with an employee of the Montgomery County Sheriff's Office, during which time the employee copied files from Dannielle's computer onto a hard drive. However, the employee had problems opening some of the files.

25. On January 16, 2015, Dannielle returned to the Montgomery County Sheriff's Office and transferred files from her computer to an iPhone 4 that was provided to her by an employee of the Montgomery County Sheriff's Office. Dannielle also provided the Montgomery County Sheriff's Office with a flash drive containing additional, digital information from Michael's personal cell phone.

26. On January 20, 2015, Jennifer and Dannielle took Michael's personal cell phone to the Montgomery County Sheriff's Office, at which time Detective Tony Hutson imaged the phone with the Montgomery County Sheriff's Office Cellebrite phone imaging devices and software and made a copy of the files contained on the phone for forensic imaging. After imaging, the phone was returned to Jennifer.

27. Without any warrant, court order, subpoena, or Michael's consent, employees of the Montgomery County Sheriff's Office conducted a forensic examination of the information contained in Michael's personal cell phone, extracted digital information similar to or the same as the digital information Jennifer and Danielle were able to extract, and used the information in the investigation against him.

28. As result of the investigation, the Montgomery County Sheriff's Office determined that Michael violated the Sheriff's Office Professional Conduct Rules.

29. Michael was placed on administrative leave on December 1, 2014, and terminated from employment on February 6, 2015.

COUNT I
INVASION OF PRIVACY

30. Plaintiff incorporates all previous allegations as if fully rewritten.

31. Michael has a right of privacy I information contained on his personal cell phone.

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32. Defendants intentionally intruded, physically or otherwise, in the private activities of Michael, including, but not limited to, text message exchanges with his girlfriend and friends.

33. Defendants' intrusion is highly offensive to a reasonable person.

34. As a result, Defendants violated Michael's right of privacy by wrongfully intruding into his private activities.

35. As a direct and proximate result of Defendants' actions, Michael has suffered damages in excess of \$25,000.

COUNT II
CIVIL CLAIM UNDER R.C. 2307.60

36. Plaintiff incorporates all previous allegations as if fully rewritten.

37. Under Section 2307.04 of the Ohio Revised Code, anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action against the person or entity who committed the criminal act.

38. Under Section 2913.04 of the Ohio Revised Code, "no person, in any manner and by any means, including, but not limited to, computer hacking, shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent."

39. A person who violates Section 2913.04 of the Ohio Revised Code commits a crime and can be punished under the criminal laws of Ohio.

40. Michael owns the cell phone accessed by Defendants.

41. Michael did not give consent, express or implied, for Defendants to access his personal cell phone in any way.

42. Jennifer did not have authority to give consent for anyone else to access Michael's personal cell phone.

43. Defendants violated Section 2913.04 of the Ohio Revised Code by engaging in the conduct alleged in this Complaint and, as a result, Michael has a civil cause of action against Defendants under Section 2307.60 of the Ohio Revised Code.

44. Upon information and belief, none of the Defendants have been charged with a violation of Section 2913.04 of the Ohio Revised Code.

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45. As a direct and proximate result of Defendants' violation of Section 2913.04 of the Ohio Revised Code, Michael has suffered damages in excess of \$25,000.

COUNT III
TORTIOUS INTERFERENCE

46. Plaintiff incorporates all previous allegations as if fully rewritten.

47. In 2014, there was an employment relationship between Michael and the Montgomery County Sheriff's Office.

48. Jennifer and Dannielle knew of Michael's employment relationship with the Montgomery County Sheriff's Office.

49. Jennifer and Dannielle acted with the intent to interfere with Michael's employment relationship.

50. Neither Jennifer nor Dannielle had any justification or privilege to interfere with Michael's employment relationship, since Jennifer's motivation was to gain an advantage in the divorce proceeding and Dannielle was assisting Jennifer in this unlawful endeavor.

51. As a direct and proximate result of the acts of Jennifer and Dannielle, Michael was placed on administrative leave and recently terminated.

52. As a direct and proximate result of the acts of Jennifer and Dannielle, Michael has suffered damages in excess of \$25,000.

COUNT IV
VIOLATION OF 42 U.S.C. § 1983 AGAINST DEFENDANT EMPLOYEES

53. Plaintiff incorporates all previous allegations as if fully rewritten.

54. This count is brought against the Defendant employees of the Montgomery County Sheriff's Office for their unlawful search of Michael's personal cell phone and unlawful seizure of his private and personal information.

55. Michael has a reasonable expectation that the information contained in his cell phone will remain private and free from unreasonable searches and seizures.

56. Michael's constitutional rights, as implicated by this case, fall under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

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57. No employee of the Montgomery County Sheriff's Office, at the time of the above-mentioned search and seizure, had consent from Michael to search his personal cell phone and seize information from it.

58. No employee of the Montgomery County Sheriff's Office, at the time of the above-mentioned search and seizure, had in their possession a warrant, subpoena, or any other court order issued by any judge, court, or magistrate authorizing a search of Michael's cell phone or seizure of information contained on it.

59. Defendant employees of the Montgomery County Sheriff's Office acted under pretense and color of law, but such acts were beyond the scope of their jurisdiction and without authorization of law.

60. Defendant employees of the Montgomery County Sheriff's Office acted willfully, knowingly, maliciously, and with specific intent to deprive Michael of his constitutional and statutory rights, privileges, and immunities of freedom from illegal searches and seizures of his papers and effects, which are secured to Michael by the Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 14 of the Ohio Constitution, and by 42 U.S.C. § 1983.

61. The Montgomery County Sheriff's Office employees' conduct was objectively unreasonable, constitutionally impermissible, and not entitled to any form of immunity.

62. As a direct and proximate result of the above-mentioned actions, Michael has suffered damages in excess of \$25,000.

COUNT V
VIOLATION OF 42 U.S.C. § 1983 AGAINST DEFENDANT EMPLOYER

63. Plaintiff incorporates all previous allegations as if fully rewritten.

64. This count is brought against Sheriff Phil Plummer in his official capacity as the Montgomery County Sheriff (the equivalent of the County) for the unlawful conduct of his agents, servants, or employees, including the employees named herein; the policy, practices, and customs with respect to such agents, servants, or employees; and his deliberate indifference towards Michael's constitutional rights.

65. At all times relevant to this action, the Defendant employees were acting under the direction and control of the Sheriff.

66. The Sheriff is liable to Michael under 42 U.S.C. § 1983 due to:

- a. A policy, practice, and custom in the operation of his department, by failing to adequately investigate the work history of individuals before hiring them as police officers, or before authorizing them to work as agents or representatives;

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- b. A policy, practice, and custom of hiring or authorizing individual Defendant employees, having knowledge of their inadequate training and experience for the job;
- c. A policy, practice, and custom of failing to properly train and educate police officers to carry out their duties as required by law;
- d. A failure to oversee and supervise the individual Defendant employees so as to ensure the civil rights of others were at all times observed, specifically the rights of Michael; and
- e. A policy, practice, and custom of approving of and/or failing to disapprove of and/or failing to discipline practices by police officers which tend to violate the constitutional rights of citizens.

67. The Sheriff failed to instruct, supervise, control, or discipline on a continuing basis the Defendant employees regarding their duties to refrain from unlawfully gaining access to a computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service.

68. The Sheriff knew, or had he diligently exercised his duties of instruction, supervision, control, and discipline on a continuing basis, would have known that the wrongs committed upon Michael were about to be committed.

69. The Sheriff, directly or indirectly, and under color of law, acted with deliberate indifference towards Michael's constitutional rights, and is not entitled to immunity.

70. As a direct and proximate result of the above-detailed actions of the Montgomery County Sheriff's Office, Michael has suffered damages in an amount in excess of \$25,000.

COUNT VI
CIVIL CONSPIRACY

71. Plaintiff incorporates all previous allegations as if fully rewritten.

72. Defendants participated in a malicious combination to commit the unlawful acts as alleged herein and, more specifically, to invade Michael's right of privacy.

73. As a direct and proximate result of Defendants' conduct, Michael has suffered damages in excess of \$25,000.

WHEREFORE, Plaintiff demands the following relief:

- A. Compensatory damages in an amount in excess of \$25,000.
- B. Injunctive relief prohibiting Defendants from further disseminating any and all information they obtained from Plaintiff's personal cell phone.

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- C. An award of attorney fees and costs incurred by Plaintiff.
- D. All other relief as may be deemed just and equitable by this Court.

Respectfully Submitted,

/s/ John D. Smith

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JURY DEMAND

Pursuant to Civ. R. 38, Plaintiff hereby demands a Trial by Jury as to each and every cause of action presented herein.

/s/ John D. Smith

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