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Attorneys for **Defendants, Toms River Township, Toms River Police Department and Ptl. B. Mundy Badge #377**

CATHERINE POUCH-MENDOLA,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	OCEAN COUNTY
Plaintiff,	:	
v.	:	DOCKET NO. OCN-L-242-17
CVS PHARMACY AKA CVS HEALTH;	:	CIVIL ACTION
OCEAN COUNTY PROSECUTORS'	:	
OFFICE; TOMS RIVER TOWNSHIP;	:	ANSWER TO AMENDED COMPLAINT,
TOMS RIVER POLICE DEPARTMENT;	:	SEPARATE DEFENSES AND
JOSEPH CORONATO; HILLARY BRICE;	:	CROSS-CLAIMS
PTL B. MUNDY BADGE #377;	:	
NICOLE A. GILI; KARRIE SCLAVUNOS;	:	
JOHN DOE 1-10 (fictitious persons	:	
responsible for the damages suffered by	:	
plaintiff);	:	
	:	
Defendants.	:	

Defendants, **Toms River Township, Toms River Police Department and Ptl. B. Mundy Badge #377**, by way of Answer to the Complaint, says:

FIRST COUNT

1-14. Denied.

WHEREFORE, Defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE DEPARTMENT AND PTL. B. MUNDY BADGE #377**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

SEPARATE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.
2. Defendants were not negligent.
3. Injuries complained of are the result of plaintiff's own negligence.
4. The accident and injuries alleged were caused or contributed to by the negligence of others over whom these Defendants have no control and for whom they had no legal liability.
5. While denying any negligence for the accident and injuries alleged, should the negligence of Plaintiff be found to be not greater than that of Defendants, these Defendants demand damages be diminished by this percentage of negligence attributable to Plaintiff, pursuant to the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 et seq.
6. This suit is barred by the Statute of Limitations.
7. The applicability of the provisions of N.J.S.A. 59:2-1 and N.J.S.A. 59:2-2, as to the immunities available to the public entity and/or public employee are asserted.
8. The applicability of the provisions of N.J.S.A. 59:2-3 and N.J.S.A. 59:3-2, as to the absence of liability from the exercise of judgment or discretion are asserted.
9. The applicability of the provisions of N.J.S.A. 59:2-4, N.J.S.A. 59:3-3 and N.J.S.A. 59:3-4, as to the non-liability for any injury caused by adopting or failing to adopt a law or by failing to enforce a law are asserted.
10. The applicability of the provisions of N.J.S.A. 59:3-5 as to the non-liability of a public employee for an injury caused by its adoption or failure to adopt any law or by its failure to enforce any law are asserted.

11. The applicability of the provisions of N.J.S.A. 59:5-4 as to the failure to provide police protection service are asserted.

12. The applicability of the provisions of N.J.S.A. 59:8-3 through N.J.S.A. 59:8-7 regarding failure to provide adequate notice of claim are asserted.

13. The applicability of the provisions of N.J.S.A. 59:8-8 through N.J.S.A. 59:8-11 regarding failure to timely file notice of claim are asserted.

14. The applicability of the provisions of N.J.S.A. 59:9-1 through N.J.S.A. 59:9-7 concerning conditions of suit and judgment are asserted.

15. The accident and injuries alleged were caused or contributed to by the negligence of others over whom these defendants had no control and for whom they have no legal liability.

16. At all times mentioned in the Complaint any and all actions or omissions of the defendants relating in any way to plaintiff's alleged damages involved decisions of the defendants within an area of non-actionable governmental discretion. By virtue of the said discretion, defendants are not liable to any party herein.

17. At all times defendants acted in good faith and accordingly is immune from any liability to the plaintiff.

18. These defendants did not act in any conspiracy against the plaintiff.

19. Plaintiff's civil rights were not violated.

20. These defendants acted in good faith and their actions were based on reasonable cause.

21. At all times pertinent to the allegations contained within the plaintiff's complaint, these defendants acted within the boundaries of their lawful authority.

22. These defendants, at no time pertinent to the allegations contained within plaintiff's complaint, acted intentionally, knowingly or maliciously in such a manner so as to cause the injuries alleged by the plaintiff.

23. At all times pertinent to the allegations contained within plaintiff's complaint, this defendant acted reasonably and properly in the execution of their duties.

24. The plaintiff is bound by representation of his attorney and the Court that probable cause existed and, therefore, may not maintain this action.

25. These defendants are entitled to qualified immunity.

26. These defendants are entitled to absolute immunity.

27. These defendants were acting in accordance with clearly established standards and accordingly is not liable to the plaintiff.

28. These defendants had probable cause to arrest the plaintiff.

29. Any force used by the defendants was reasonable and necessary and was in response to plaintiff's actions.

30. Any search of the plaintiff was incident to a lawful arrest and based upon probable cause.

31. Defendants' action were reasonable and necessary in order to protect themselves and/or other parties.

32. The municipal defendants and all defendants acting in their official capacity are immune from punitive damages under the Civil Rights Act, 42 *U.S.C.* § 1983 and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

33. The cause of action alleged by the plaintiff is not cognizable under the Civil Rights Act, 42 *U.S.C.* § 1983 and 1985.

34. Plaintiff's complaint is barred by the Doctrine of Collateral Estoppel.

35. The Doctrine of *Respondeat Superior* does not apply in civil actions brought under 42 U.S.C. § 1983.

36. The complaint is insufficient and violates the Court Rules governing the State of New Jersey.

37. Plaintiff fails to state a *Monell* claim.

38. Defendant hereby reserves the right to interpose such other defenses and objections as continuing discovery may disclose.

CROSS-CLAIM FOR CONTRIBUTION

Defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE DEPARTMENT AND PTL. B. MUNDY BADGE #377**, demand contribution from any and all co-defendants, in accordance with the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 et seq.

CROSS-CLAIM FOR INDEMNIFICATION

While not admitting liability herein, if it is determined that defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE DEPARTMENT AND PTL. B. MUNDY BADGE #377**, were guilty of negligence, such negligence was vicarious, passive and secondary and that it was the negligence of co-defendants, which was active, primary and the proximate cause of plaintiff's damages and defendants herein demand indemnification against said co-defendants for the amount of any judgment as against defendants herein and costs.

CROSS-CLAIM FOR CONTRACTUAL INDEMNIFICATION

While denying any liability to plaintiffs for the accident and injuries alleged, should liability be adjudged, defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE**

DEPARTMENT AND PTL. B. MUNDY BADGE #377, seek indemnity, together with attorneys' fees and costs of suit, from any and all co-defendants, for any and all sums which it might be held liable to plaintiff by reason of the contract in existence between the parties at the time of the occurrence of the alleged incident

ANSWER TO CROSS-CLAIMS

Defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE DEPARTMENT AND PTL. B. MUNDY BADGE #377**, by way of Answer to any and all Cross-claims which have been or may be asserted against it, say:

1. The allegations of any Cross-claim are denied and Cross-claimants are not entitled to the relief sought.

WHEREFORE, Defendants, **TOMS RIVER TOWNSHIP, TOMS RIVER POLICE DEPARTMENT AND PTL. B. MUNDY BADGE #377**, demand judgment dismissing the Complaint with prejudice, for reasonable attorney's fees, costs of suit, and for such other relief as the Court deems equitable and just.

DEMAND FOR SPECIFICATION OF DAMAGES

Demand is hereby made for a specification of the amount of damages claimed in the Complaint.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Jared J. Monaco, Esq., has been designated as trial counsel in connection with this matter.

CERTIFICATION

I hereby certify that a copy of the within Answer was duly served within the time prescribed by the Rules of Court.

Pursuant to Rule 4:5-1 upon belief, and based on information known to the undersigned at the time of the filing of this pleading, it appears that there are no other actions or arbitrations related to this suit which are pending or presently contemplated and it appears that there are no other persons who should be joined as parties.

I hereby certify that the within Answer has been filed with the Clerk of the Superior Court, Law Division, Ocean County, New Jersey and that clear copies have been forwarded to all counsel.

GILMORE & MONAHAN, P.A.
Attorneys for **Defendants, Toms River**
Township, Toms River Police Department
and Ptl. B. Mundy Badge #377

/s/ Jared J. Monaco

By _____
JARED J. MONACO
For the Firm

Date: October 12, 2017

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-000242-17

Case Caption: POUCH MENDOLA VS CVS PHARMACY

Case Initiation Date: 01/20/2017

Attorney Name: JARED J MONACO

Firm Name: GILMORE & MONAHAN, PA

Address: TEN ALLEN ST PO BOX 1540

TOMS RIVER NJ 08754

Phone:

Name of Party: DEFENDANT : TOMS RIVER POLICE
DEPT

Name of Defendant's Primary Insurance Company
(if known):

Case Type: CIVIL RIGHTS

Document Type: ANSWER

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/12/2017

Dated

/s/ JARED J MONACO

Signed