

SUMMONS

Ionno & Higbee Attorneys at Law, LLC 140 South Broadway, Suite 5 Pitman, NJ 08071 (856) 553-6810 Attorney(s) for Plaintiff JOAN GIRESI, Plaintiff, V. BOROUGH OF AVALON, OFFICER JUSTIN MILLER, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.	Superior Court of New Jersey CAPE MAY COUNTY CIVIL DIVISION Docket No: CPM-L-378-15 CIVIL ACTION SUMMONS
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From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

Michelle M. Smith

Clerk of the Superior Court

DATED: 8/21/15

Name of Defendant to be Served: Borough of Avalon

Address of Defendant to be Served: C/O Borough Clerk

3100 Dune Drive

Avalon, NJ 08202

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO. _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____	
	ATTORNEY / PRO SE NAME Sebastian B. Ionno II, Esq.		TELEPHONE NUMBER (856) 553-6810	
	COUNTY OF VENUE Cape May		DOCKET NUMBER (when available) CPM-L-378-15	
FIRM NAME (if applicable) Ionno & Higbee, LLC.			DOCUMENT TYPE Complaint	
OFFICE ADDRESS 140 South Broadway Suite 5 Pitman, NJ 08071			JURY DEMAND ☒ Yes ☐ No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Joan Giresi		CAPTION Joan Giresi v. Borough of Avalon, Officer Justin Miller and John Does 1-25, Inclusive, Fictitious Named Defendants, J/S/A/		
CASE TYPE NUMBER (See reverse side for listing) 005	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? ☐ YES ☒ NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☒ UNKNOWN		
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? ☒ YES ☐ NO		IF YES, IS THAT RELATIONSHIP: ☒ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☒ YES ☐ NO				
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? ☐ YES ☒ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ 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 <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: _____				

IONNO & HIGBEE, ATTORNEYS AT LAW, LLC
SEBASTIAN B. IONNO, ESQUIRE
ATTORNEY ID 025992002
140 S. BROADWAY, SUITE 5
PITMAN, NJ 08071
TELEPHONE: (856) 553-6810
sebastian@ionnolaw.com
ATTORNEYS FOR THE PLAINTIFF

FILED

AUG 06 2015

CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

JOAN GIRESI, Plaintiff, V. BOROUGH OF AVALON, OFFICER JUSTIN MILLER, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY. Docket No.: <i>CPM-L-378-15</i> Civil Action COMPLAINT, DEMAND FOR JURY TRIAL, DESIGNATION OF TRIAL COUNSEL AND DEMAND PURSUANT TO RULE 1:4-8
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Plaintiff Joan Giresi by way of Complaint against the defendants says:

FIRST COUNT

1. At all relevant times herein, Defendant Borough of Avalon (hereinafter "Defendant Avalon") was an entity created and existing pursuant to the law of the State of New Jersey and was the employer of Defendant Officer Justin Miller (hereinafter "Defendant Miller"), who was a member of the Avalon Police Department (hereinafter "the Department").
2. At all relevant times herein, Defendants John Does 1 through 25, inclusive, are fictitious names for persons, corporations, or other legal entities, the identities of which are unknown at present, but who are responsible to Plaintiff by reason of their knowing participation in the deprivation of Plaintiff's constitutional and statutory rights and/or by reason

of their aiding, abetting, authorizing, ratifying, condoning, participating in, or conspiring with their co-Defendants to participate in and commit the wrongful acts referred to herein.

3. On or about August 7, 2013, Defendant Miller and other officers of the Department entered Plaintiff's parents' residence at 330 70th Street in the Borough of Avalon in response to a call from Plaintiff's sister alleging a disturbance between herself and Plaintiff.

4. In fact, it was Plaintiff's sister, who has a lengthy history of mental illness, who had caused the disturbance by responding to Plaintiff's request that she not involve her children in a disagreement with Plaintiff by screaming that Plaintiff's husband and father of her children had cheated on Plaintiff with another woman in close proximity to Plaintiff's children.

5. What followed included Plaintiff practically begging her sister to stop screaming hurtful, ugly and personal things to her children, Plaintiff's sister using her fingernails to scratch Plaintiff's chest bloody, Plaintiff's sister pushing Plaintiff down onto the bed and jumping on top of her, and Plaintiff maneuvering to get herself on top of her sister before their mother broke them up.

6. Plaintiff's sister then ran to the common area of the house where she continued to scream that she needed a phone and, inexplicably refusing to use any of the phones available at the house, went outside screaming "help, me" as she went door to door until a neighbor allowed her to use a phone to call the police.

7. All of which histrionics lasted approximately 15 minutes and during which time Plaintiff remained in the house with her sister's children.

8. Several officers employed by Avalon with the Department arrived at the house shortly thereafter.

9. An officer took Plaintiff to the back of the house, asked her if she was in pain due to the scratches on her chest and asked her what happened.
10. A second officer then came to where Plaintiff was and told Plaintiff that her sister claimed Plaintiff had held her down and punched her repeatedly with a closed fist and that Plaintiff's mother had told the officers the same story.
11. Defendant Miller then told Plaintiff she was under arrest.
12. Plaintiff then told the officers that she knew her mother would not have said that because it did not happen and that they needed to speak to her mother to clear things up.
13. Plaintiff then walked up the porch steps to where she could see her mother in the house through the screen door and called to her mother.
14. Plaintiff did not try to open the gate onto the porch, nor did she even approach the screen door or do anything that showed aggression toward the officers or any attempt to flee the scene.
15. When Plaintiff reached the top of the porch steps, Defendant Miller grabbed Plaintiff and forcibly pulled Plaintiff backward down six (6) steps into the stones on the yard, bruising Plaintiff's right hip and elbow, as Plaintiff's mother came onto the porch and began to shout that Plaintiff had done nothing wrong and should not be arrested.
16. Defendant Miller then tackled Plaintiff to the ground, face first, and handcuffed her as she begged him not to.
17. Plaintiff, who is a severe claustrophobic and told Defendant Miller that, immediately began to hyperventilate and became dizzy.
18. More than once throughout the duration of Defendant Miller's battering of Plaintiff, Plaintiff told Defendant Miller that she was a stroke survivor and was on blood

thinners, to which Defendant Miller responded, "yeah, right" and "whatever" and continued to use grossly excessive force in effecting Plaintiff's arrest.

19. After handcuffing Plaintiff, Defendant Miller began to drag Plaintiff away from the house.

20. Plaintiff's mother was by that time down on the street level and approached Plaintiff and Defendant Miller, asking him not to drag Plaintiff and, again, asking them not to arrest her because she had not done anything wrong.

21. Defendant Miller then, turned to Plaintiff's mother, in what can really only be described as enraged, and yelled at her to get away from his gun.

22. By this time, all of Plaintiff's neighbors, including children, had come out of their houses because of her sister's spectacle and the police cars parked in front of the house.

23. Plaintiff asked to be placed in the patrol car parked directly in front of the house.

24. Defendant Miller refused to do so and told Plaintiff he was going to take her to the patrol car parked down the block and around the corner, saying to Plaintiff, "No, we are going for a little walk right past all of your neighbors," in an obvious attempt to embarrass and humiliate Plaintiff.

25. As Defendant Miller drug Plaintiff along the sidewalk she told him again that she could not walk that fast and that she was a stroke survivor on blood thinners and asked him to slow down because he was scaring her.

26. Defendant Miller's response was, "Not a chance."

27. When they finally reached the patrol car, Defendant Miller threw Plaintiff in causing her to hit her head on the upper edge of the doorway of the car.

28. When Plaintiff got into the car she told Defendant Miller that she wanted another officer to drive the car because she did not want to be alone with him.

29. Another officer who had walked with Defendant Miller as he drug Plaintiff down the sidewalk did get into the patrol car and drove Plaintiff back to the front of her house where another patrol car that Defendant Miller refused to put her in was still parked.

30. After approximately 15 minutes of Plaintiff sitting in the patrol car in front of the house, Defendant Miller came out of the house, at which time the other officer exited the patrol car and Defendant Miller got in with Plaintiff.

31. Plaintiff begged to have a different officer drive her because she was terrified of Defendant Miller, to which Defendant Miller responded, "Shut up."

32. When Defendant Miller and Plaintiff arrived at the Avalon Police Station Defendant Miller yanked Plaintiff out of the patrol car, causing her to fall to the ground of the parking garage.

33. He then dragged her around to the front of the car as she was trying to get back onto her feet.

34. Plaintiff asked Defendant Miller to give her the opportunity to get onto her feet, to which he responded, "Too late."

35. Defendant Miller then dragged Plaintiff up the steps into the stationhouse.

36. Defendant Miller was holding Plaintiff's right arm with his left hand with his hand clenched around Plaintiff's biceps.

37. As Defendant Miller was pushing Plaintiff to the left into the doorway of the stationhouse his hand/knuckles were pushing into Plaintiff's right breast.

38. When Plaintiff asked Defendant Miller to stop touching her breast, Defendant Miller responded by saying "I don't want to touch your breast," after which he looked Plaintiff in the eye and jabbed his hand into her breast again even harder and clearly on purpose.

39. Plaintiff then moved her body to the left in an attempt to pull her arm away from her breast to keep Defendant Miller's hand from touching her breast, in response to which Defendant Miller responded by grabbing her arm harder and twisting it which caused bruising.

40. Two other officers were present and saw the entire incident and neither said one word.

41. Once Plaintiff was in an interrogation room and Officer Miller and others began questioning her, she reminded the officers that she had never been read her Miranda rights.

42. After a consultation, Plaintiff was presented with a paper to sign stating she had been read her rights, which she refused to sign.

43. Plaintiff then told the officers that she wanted Defendant Miller out of the room because he was scaring her.

44. After another consultation in hushed tones, Defendant Miller left the room.

45. After Defendant Miller left, two other officers remained in the room with her, one of whom was the officer who first questioned Plaintiff at the house.

46. After Officer Miller left the interrogation room that officer asked Plaintiff the following series of questions: "Are you ok," "[Officer Miller] was the one who was disrespectful to you. Not me, right?" "Did I treat you with respect?" and "Did I do anything to offend you? Questions that clearly demonstrated that this officer realized how egregious Defendant Miller had behaved throughout Plaintiff's arrest.

47. While Plaintiff was being fingerprinted, another officer was typing up the charges.

48. Defendant Miller then entered the room leaned down and said something to the officer typing the charges.

49. Plaintiff heard Officer Miller say the words "resisting arrest" to which the other officer said, "no she wasn't resisting."

50. Plaintiff did not realize at that time that Officer Miller had added a charge of resisting arrest against her based on no facts whatsoever.

51. When the officers told Plaintiff she was free to leave as they had finished processing her arrest Plaintiff had to remind them to photograph her very obvious injuries.

52. Plaintiff then asked, "Given that I was the only one injured, why was I the one arrested?" To which the officer responded, "Because she's the one who called 911. If you had called 911, we would have arrested her instead of you."

53. A second officer then encouraged Plaintiff to get a restraining order against her sister and asked if Plaintiff wanted to press charges against her sister.

54. The officers then asked Plaintiff if her sister would be coming back to the house. Plaintiff advised them that she was fairly certain her sister would not be coming back to the house but that she would call them if her sister returned.

55. The police report is absolutely riddled with flat out lies; virtually nothing in the report is accurate or true.

56. Plaintiff suffered physical injuries, including but not limited to her arm, hip, and breast, as a result of Defendant Miller's use of grossly excessive force.

57. Following the incident, Plaintiff also suffered from severe emotional distress injuries, which continues to the present.

58. Defendants acted unreasonably and with the intention to punish plaintiff without due process of law and confining a woman such as plaintiff who advised defendants of her severe claustrophobia and medical condition as a stroke survivor on blood thinners because she questioned their decision to arrest her based on lies.

59. There was neither factual nor legal justification for the amount and kind of force defendants utilized against the plaintiff, nor for the punitive conditions of dragging Plaintiff several hundred feet from an available patrol car solely to embarrassed and humiliated her.

60. There was neither factual nor legal need your justification for the use of such force upon Plaintiff, nor was there any justification for or need to seize the person of Plaintiff in such manner.

61. The seizures and the administration of this level and kind of force was excessive, and was intended and designed to inflict pain and suffering upon Plaintiff, without just cause.

62. Plaintiff suffered injuries to her arm hip and breast, injuries proximately and directly caused by Defendants' use of excessive and unreasonable force.

63. At all times, Defendant Miller and all officers of the Avalon Police Department involved in Plaintiff's arrest were acting under color of state law.

64. The conduct of Defendants Avalon and Miller violated Plaintiff's rights under the New Jersey State Constitution New Jersey Civil Rights Act of 2004 to be free from unreasonable seizure of her person and from the administration of excessive force by police officers, and from the wanton and unnecessary infliction of pain and injury by such officers.

65. As such, the aforesaid conduct constitutes an intentional violation of Plaintiff's rights to freedom from unlawful restraint/seizure, right to freedom from the use of excessive force, right to freedom from punishment without due process of law, and right to privacy and bodily integrity under the New Jersey State Constitution and the New Jersey Civil Rights Act of 2004 and other statutes and laws of the State of New Jersey, as a result of which Plaintiff has been damaged.

66. The conduct of Defendants was knowing, intentional, occurred with actual malice, and with a willful and wanton disregard of Plaintiff's civil and constitutional rights, and was especially egregious, as a result of which Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly, severally, and in the alternative, for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

SECOND COUNT

67. Plaintiff hereby incorporates paragraphs 1 through 66 as though set forth in full herein.

68. Defendant Avalon has a non-eligible duty to hire, train and supervise, investigate and discipline or sanction members of its police force and to institute policies, practices and customs so as to ensure that no member of the police force utilizes excessive force or perpetrates unreasonable seizures or detentions upon individuals within its jurisdiction.

69. Upon information and belief, defendant Avalon was on actual and/or constructive notice that defendant Miller and other members of the department engaged from time to time in the practice or custom of administering or utilizing excessive force in police -

citizen encounters, including the use of unnecessarily painful or injurious techniques upon physically vulnerable suspects, such as what was done to plaintiff in the present case.

70. Defendant Avalon has a duty to hire, train, supervise and discipline the employees of its police department to refrain from the use of excessive force and unnecessarily painful and injurious tactics for detaining, immobilizing or otherwise incapacitating citizens that are the subject of inquiries, investigations or detentions.

71. Defendant Avalon has knowingly and recklessly failed to fulfill said duty and has failed to institute policies and/or practices to prevent, penalize and to order such abuses.

72. Upon information and belief, Defendant Avalon's failure to hire, train and supervise subordinates to refrain from the use of excessive force and to refrain from the violation of citizens' or suspects' civil and constitutional rights, amounts to a pattern, practice and/or policy of lax or no supervision and lax or no correction of subordinates when they engage in conduct that violates the civil and constitutional rights of citizens to be free from such unreasonable seizures and the use of excessive force during inquiries, investigations or detentions.

73. The pattern practice or policy is also exhibited by failure to adequately train and supervise officers regarding, inter alia, the requirements of a constitutionally permissible method of conducting temporary physical seizures or detention of a suspect without resort to barbaric and unduly dangerous tactics such as throwing or propelling a suspect on to the ground banging a suspect's body into the patrol car or forcibly ramming an officer's knuckles into a defenseless detainees breast.

74. Defendant Avalon has failed in its duty to supervise employees such as Defendant Miller, to ensure that they do not utilize excessive force and do not violate the civil and constitutional rights of citizens.

75. The pattern practice or policy and failure to supervise amounts, at minimum, to deliberate indifference to the rights of persons such as Plaintiff.

76. The pattern, practice or policy and the failure to supervise is likewise evidenced by defendant Avalon's failure to discipline officers who engage in inappropriate or unlawful activities during their encounters with citizens. Specifically Defendant Avalon has, upon information and belief, acquiesced in the misconduct of Defendant Miller on other occasions.

77. Despite the clear requirements of the New Jersey State Constitution and the Civil Rights Act of 2004, no officer who has engaged in such unconstitutional conduct toward Plaintiff or others similarly situated has been disciplined for the actions described herein, nor have the Defendant Avalon taken any action to correct or modify such conduct on behalf of Defendant Miller or others.

78. Upon information and belief, defendant Avalon has had prior notice of similar incidents and similar violations of citizens' rights by defendant Miller and other patrol officers in their interactions with the citizenry and visitors of the municipality, and has failed to take appropriate corrective action.

79. The failure to take appropriate action to discipline officers for said conduct content condones, encourages and ratifies such unlawful behavior, and itself constitutes evidence of a pattern, practice and policy of deliberate disregard for the constitutional and civil rights of plaintiff and others.

80. The various injuries suffered by plaintiff both physical and emotional all proximately result from the deliberate indifference of defendant Avalon to the protection of the rights privileges and immunities guaranteed to plaintiff by the New Jersey State Constitution, the New Jersey Civil Rights Act of 2004, and other state laws and statutes.

81. As such, the aforesaid conduct constitutes an intentional violation of Plaintiff's rights under the New Jersey State Constitution and the New Jersey Civil Rights Act of 2004 and other statutes and laws of the State of New Jersey, as a result of which Plaintiff has been damaged.

82. The conduct of Defendant Avalon was knowing, intentional, occurred with actual malice, and with a willful and wanton disregard of Plaintiff's civil and constitutional rights, and was especially egregious, as a result of which Plaintiff has been damaged

83. As a result, plaintiff has suffered great pain anguish and physical injuries and will continue to do so in the future.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

THIRD COUNT

84. Plaintiff hereby incorporates paragraphs 1 through 81 as though set forth in full herein.

85. Plaintiff has a right under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., to be free from sexual harassment and discrimination in connection with her use of a public accommodations.

86. Officer Miller and the Avalon Police Department are public accommodations under New Jersey law.

87. While Plaintiff was detained and restrained by Defendants, Officer Miller deliberately touched Plaintiff's breast and did so a second time, aggressively and in a retaliatory way, after Plaintiff asked him not to touch her breast.

88. As such, the aforesaid conduct constitutes an intentional violation of Plaintiff's rights under the Law Against Discrimination to be free from sexual harassment, as a result of which Plaintiff has been damaged.

89. The conduct of Defendant Miller was knowing, intentional, occurred with actual malice, and with a willful and wanton disregard of Plaintiff's rights, and was especially egregious, as a result of which Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, and such other relief as is just and equitable.

IONNO & HIGBEE, ATTORNEYS AT LAW, LLC
Attorneys for the Plaintiffs

BY: 

SEBASTIAN B. IONNO

Dated: 

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

BY: 

SEBASTIAN B. IONNO

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Sebastian B. Ionno, Esquire as trial counsel in this matter.

BY: 

SEBASTIAN B. IONNO

CERTIFICATION

The undersigned counsel certifies that there are no other actions or arbitrations pending or contemplated involving the subject matter of this controversy at this time; and there are no additional known parties who should be joined to the present action at this time. I certify the foregoing to be true. I am aware if the above is willfully false, I am subject to punishment.

BY: 

SEBASTIAN B. IONNO

DATED: 8/5/15

RULE 1:4-8 DEMAND

Plaintiff and their counsel hereby demand, pursuant to Rule 1:4-8, that the Defendants or their agents, servants, or employees, or attorneys provide any and all facts and documents upon which they base any contention that this Complaint was instituted or continued in whole or in part for improper reasons, or that the claims are, in whole or in part, frivolous or without basis in law or fact.

BY: 

SERASTIAN B. IONNO

CAPE MAY COUNTY DN - 203
SUPERIOR COURT
9 NORTH MAIN STREET
CAPE MAY CRT HSE NJ 08210-3096

COURT TELEPHONE NO. (609) 463-6514
COURT HOURS 8:30 AM - 4:30 PM

TRACK ASSIGNMENT NOTICE

DATE: AUGUST 10, 2015
RE: GIRESI VS BOROUGH OF AVALON ET AL
DOCKET: CPM L -000378 15

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON J C. GIBSON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (609) 463-6514.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: SEBASTIAN B. IONNO
IONNO & HIGBEE
140 S BROADWAY
SUITE 5
PITMAN NJ 08071

JUCKS2

RECEIVED
AUG 14 2015
BY: _____

IONNO & HIGBEE, ATTORNEYS AT LAW, LLC
SEBASTIAN B. IONNO, ESQUIRE
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ATTORNEYS FOR THE PLAINTIFF

JOAN GIRESI, Plaintiff, V. BOROUGH OF AVALON, OFFICER JUSTIN MILLER, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY Docket No.: CPM-L-378-15 Civil Action NOTICE TO TAKE ORAL DEPOSITION
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TO: REPRESENTATIVE OF THE BOROUGH OF AVALON

PLEASE TAKE NOTICE that pursuant to the Rules of Civil Procedure and Evidence which apply to this matter, you are requested to produce the persons and writings specified below at the date, time, and place stated. Please note that this Notice of Deposition shall be deemed continuing in nature, and shall apply to any date to which the deposition is rescheduled or adjourned. Please further note that you are requested, to produce at the time of the deposition the original of all documents you have been requested to produce either in

Initial Interrogatories served upon you, Initial Request for Production of Documents served upon you, or any subsequent Request for Production.

It is requested that you produce the following individuals and writings on December 7, 2015 beginning at 10:00 am at Ionno & Higbee, LLC., 140 South Broadway, Suite 5, Pitman, NJ 08071.

1. A Representative for the Borough of Avalon
2. All writings relating to the areas in Schedule "A".

IONNO & HIGBEE LLC.

BY:  _____

SEBASTIAN B. IONNO

DATED 8/21/15

SCHEDULE "A"

1. The factual basis for any denials, in whole or in part, of any of the allegations of plaintiff's Complaint.
2. The factual basis for any affirmative defenses asserted by you.
3. The factual basis for any affirmative claims asserted by you.
4. All facts and circumstances surrounding the events, incidents, claims, or transactions described in the pleadings.
5. All persons with knowledge of the damage and liability claims in this case, the knowledge held by each, and each such person's last known business and residence address and telephone number.
6. Your answers to the Initial and other Interrogatories propounded by this party.
7. All writings produced or withheld by you in response to the Initial or other Request for Production of Documents propounded by any party.
8. The factual basis for any claim of privilege asserted in response to any Interrogatories or any Request for Production of Documents.
9. All action taken by the designated representative to obtain all the knowledge available to the entity on whose behalf the designated representative is testifying, including a search for all writings and information responsive to Interrogatories or Requests for Production of Documents, and the results of any investigation by or on behalf of the entity of the facts and issues in dispute in this case.
10. All information regarding the manner in which any injuries or damages claimed by any party to this case occurred, together with the nature and extent of the injuries or damages actually suffered.
11. All information as to what, if anything, that has been done by the entity as of the date of the deposition to ensure that the responses to all Interrogatories and all Requests for Production of Documents propounded by this party have been reviewed, are current, and up to date.
12. The creation and maintenance of all documents requested to be identified and produced or attached in Interrogatories or Requests for Production of Documents by any

party.

13. All insurance coverage potentially available to the parties to this litigation, as well as the limits, terms, provisions, and dates of coverage.

14. In the event there is a claim for punitive damages asserted against any party, all facts relating to that claim, all persons with knowledge of those facts and the knowledge held by each, and all documents relating, regarding, referring to, or reflecting those facts, together with all information relating to the ability of the party against whom punitive damages are sought to pay a punitive damage award, including without limitation their financial status, including changes in it, during the period beginning five years prior to the filing of the Complaint in this matter and continuing to the date of trial. Financial status includes the total fair market value of assets, tangible and intangible, the amount of liabilities, liquidated or contingent, the difference between those two, or net worth, and gross and net income.

15. All communications by you or persons on your behalf with any expert or witness or party identified in this matter.

16. Any action taken as a result of the incident or occurrence upon which this suit is based following notice of the occurrence of that incident in response to such notice.

17. All efforts made by any party making affirmative damage claims to mitigate those damages.

18. Any statements or testimony by any party, witness, or expert on any issue involved in this case which is untrue in whole or in part, together with the factual basis for such contention, all persons with knowledge of those facts and the knowledge held by each, and all documents relating, regarding, referring to, or reflecting such facts.

IONNO & HIGBEE, ATTORNEYS AT LAW, LLC
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PITMAN, NJ 08071
TELEPHONE: (856) 553-6810
sebastian@ionnolaw.com
ATTORNEYS FOR THE PLAINTIFF

JOAN GIRESI, Plaintiff, V. BOROUGH OF AVALON, OFFICER JUSTIN MILLER, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY Docket No.: CPM-L-378-15 Civil Action INITIAL INTERROGATORIES
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TO: BOROUGH OF AVALON

Demand is hereby made of the defendant for answers to the following interrogatories separately and under oath, within the time and in the manner prescribed by the Rules of Civil Procedure.

IONNO & HIGBEE, LLC
Attorneys for Plaintiff

BY: 

SEBASTIAN B. IONNO

Dated: 8/21/15

1. If you have denied any of the allegations of the Complaint or any amendments to it in whole or in part, or if you have asserted any affirmative defenses, or if you have asserted any affirmative claims in your pleadings, set forth and describe in detail each and every fact known to you from any source which relates, regards, refers to, or reflects the factual basis for the denials, affirmative defenses, or each allegation of the affirmative claim, identify all persons with knowledge of those facts and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts.

2. For each liability or damage expert consulted by you or upon whose testimony you intend to rely at the time of trial in this matter, identify the expert, set forth and describe in detail the entirety of their expert qualifications, identify and attach copies of their most recent resume or curriculum vitae, including any different versions used in the last 10 years, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify and a summary of all factual or other grounds for each and every opinion, including all standards upon which the opinion is based or to which the expert has referred, and identify and attach hereto true and accurate copies of all reports rendered by that expert witness in connection with this matter.

3. As to each and every affirmative claim for damages or relief by or against you or any other party in this matter, set forth and describe in detail all facts known to you from any source relating, regarding, referring to, or reflecting the type and amount of all damages claimed, that any party is responsible for or caused the damages and the basis upon which responsibility or causation is alleged, identify all persons with knowledge of those facts and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts.

4. If you have produced any writing, as defined by the Rules of Evidence or Procedure that apply to this case, to any party in this litigation, including the party propounding these Interrogatories, identify the writing and the specifics request to which it is responsive, and attach all such writings and requests.

5. If you contend that any statements, admissions, and/or declarations against interest have been made relating to any issues involved in this litigation by any party or by any representative, officer, agent, employee, or attorney of any party, set forth and describe in detail the substance of the communication, with the exact words to the extent known, identify the person making the communication, set forth the date, time, and place of the communication, identify all persons with knowledge of the communication and the knowledge held by each, and identify all documents relating, regarding, referring to or reflecting any such communication.

6. If you are aware of any writings, as defined by the Rules of Evidence and Procedure which apply to this case, which relate, regard, refer to, or reflect any fact in issue in this matter, identify the writing, state whether the writing has been altered or changed in any way since the time of its original creation, and attach a copy of all such writings hereto.

7. If you contend that there are any statutes, regulations, standards, standards of care, guidelines, recommendations, or other factual information which relates to the standard of care or

conduct of any party involved in this matter, set forth and describe in detail the facts upon which you base your contention, identify all persons with knowledge of those facts and set forth the knowledge held by each, and identify and attach hereto copies of all writings relating, regarding, referring to, or reflecting the basis for your contention.

8. If you or persons on your behalf have taken, received, or are aware of any statements, formal or informal, by any person or entity related to any of the issues of this case, set forth and describe in detail all such information known to you, including without limitation the date, time, and place of the statement, the person from whom the statement was taken, the person taking the statement, the substance of the statement, and identify and attach hereto a copy of all such statements.

9. If the person answering these Interrogatories is answering on behalf of an entity (i.e., corporation, partnership, joint venture, association, etc.), identify the answering person, identify the entity on whose behalf the answers are being provided, and set forth and describe in detail all action taken by the person answering to acquire all of the information available to the entity in accordance with the Rules of Procedure which apply to this matter.

10. If you are aware of the existence of any insurance which may apply to any claims by any party to this litigation, identify the party involved, identify the carriers, set forth and describe in detail the type of coverage, the dates of coverage, the amount of primary, secondary, umbrella, or excess coverage, and identify and attach hereto copies of all writings relating, regarding, referring to, or reflecting the terms, conditions, and limits of such insurance coverage.

11. If you have information of any person or entity that may fit the description of any John Doe parties described in any pleading in this matter, or are aware of any person or entity which any party contends should be added or joined to this case, or which may have responsibility for any of the affirmative claims made by any party, set forth and describe in detail all such information, identify all persons with such information and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting such information.

12. Identify each and every writing known to you which relates, regards, refers to, or reflects any information relating to the affirmative liability or damage claims or defenses of all parties to this case, identify, set forth, and describe in detail all information known to you pertaining to how the damages were allegedly suffered, the nature of the damages suffered, the identity of all persons with knowledge of the facts relating to the damages and a description of the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting such information. [Please note that this interrogatory is specifically designed to require the production of any medical, hospital, or other report, record, or writing, including without limitation radiology, CAT scan, MRI, neurodiagnostic, X-ray, or other medical, health care, or diagnostic information pertaining to any party making an affirmative claim, and is further intended to inquire as to information, pertaining to other alleged causes of any damages claimed or suggesting that the damages claimed pre-existed the events upon which this claim is based.].

13. If you contend that any act or omission of any person or entity was a substantial contributing cause to the incident, event, injury, or damages claimed, set forth and describe in detail all facts upon which you base your contention, identify all persons with knowledge of those facts, set forth and describe in detail the knowledge of each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts.

14. As to each and every incident referred to in the pleadings in this matter, set forth and describe in detail all facts known to you relating to each such incident, identify all persons with knowledge of those facts and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts.

15. If this case involves the use of any mechanical device, equipment, machine, or vehicle, identify the item involved, identify its designer, manufacturer, distributors, retailers,

owners, and persons in control as of the date of the incident, and set forth and describe in detail all facts known to you pertaining to the person or entity utilizing the item, manner of operation or use at the time in question, the consequences of the operation or use, and identify and attach hereto copies of all writings relating, regarding, referring to, or reflecting the information requested.

16. If you contend that the statements or testimony of any party, witness, or expert involved in this matter, whether orally or in writing, is untrue in whole or in part, identify the person making the statement and the statement involved, set forth and describe in detail all facts upon which you base your contention, identify all persons with knowledge of those facts and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts.

17. If you have withheld any document or information requested by any party in interrogatories or request for production of documents, provide a description of the writings or information withheld, state the privilege claimed, set forth and describe in detail the factual basis for the claim of privilege, identify all persons with knowledge of those facts and the knowledge held by each, and identify and attach hereto copies of all documents relating, regarding, referring to, or reflecting those facts. [The purpose of this interrogatory is to request a "privilege log" sufficient to permit the propounding party to evaluate any claim of privilege and to seek judicial review of the claim.]

INDIVIDUAL PARTY CERTIFICATION

I am a party to this litigation in my individual capacity, or I have been authorized by the party whose name I have printed below. I have read the interrogatories, have reviewed them with my legal counsel and/or his staff, and have reviewed and read the answers to those interrogatories. I hereby certify that the answers to the interrogatories and the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

(Signature)

SIGNATURE OF ANSWERING PARTY

I hereby certify that the copies of the reports annexed hereto rendered by either treating physicians or proposed expert witnesses are exact copies of all of the entire report or reports rendered by them; that the existence of other reports of said doctors or experts, either written or oral, are unknown to me or my agents, and if such other reports become known or available to me at a later date, I shall promptly serve them upon the party propounding these interrogatories.

I further certify that all documents annexed hereto or supplied in response to any request for production of documents by the propounding party are true and accurate copies of the writings requested, that I have made a diligent search for all writings responsive to the interrogatories or requests and have produced all documents found to which there has not been a claim of privilege, and further certify that in the event the documents requested to be identified or produced become available or become known to me, to the answering defendants, or our agents, servants, attorneys, or employees, I shall serve them promptly on the propounding party.

If this certification is signed by an individual acting in a representative capacity, I certify that I have made a reasonable and diligent search of all writings and inquiry of all persons reasonably available to the entity on whose behalf I am providing these answers, and that the answers provided contain all knowledge of the entity.

(Signature)

(Please type name and Title)

(Please type name of defendant
entity on whose behalf answers
are being provided in a
representative capacity)

DATED: _____

12. All writings by or on behalf of any governmental entity pertaining to this matter, including without limitation police reports, weather reports, investigation reports, criminal records, records of ownership or construction, records of licensure, records of violation, and records of criminal, civil, or administrative proceedings or conviction.

13. All writings reflecting information pertaining to insurance coverage available to any party for any claim made in this litigation, including without limitation the policy itself, the declaration sheet, any amendments or endorsements to the policy, any riders, any reservation of rights letters, any disclaimers, and/or any reports of claims by or on behalf of the insured to the carrier or broker involved. **Please note that this is expressly intended to include primary, secondary, excess, and/or umbrella coverage.**

14. All writings reflecting the title, author, publisher, and date and place of publication of any writing claimed by you or your experts to be authoritative on any issue involved in this matter, or which consists of any earned treatise, periodical, or pamphlet on any subject of history, medicine, science, or art which relates to any issue in this case which are known to you, your experts, or your attorneys, or to which you or your expert may refer to in the course of any hearings or proceedings, including trial, in this matter.

15. All writings pertaining to the credibility of any witness, party, or expert.

16. All writings used to refresh the memory of any witness, party, or expert as to any fact in issue in this matter.

17. All writings produced or provided by any party, witness, expert, or other person or entity to you or your attorneys relating to any fact or issue in dispute.

18. All writings pertaining to the relationship between you and/or your attorneys and any expert upon whose testimony you intend to rely at the time of trial, including without limitation all writings reflecting the number of prior cases in which the expert has been consulted by you or on your behalf or by your attorneys, the total amounts paid, billed or to be billed in each such case by the expert involved, true and accurate copies of each report rendered in those other matters by the expert, and all documents reflecting the date, time, and place of any testimony, whether oral, in deposition, in court, or in writing by the expert in this case, including any transcripts of such testimony.

19. All writings relating to discipline imposed or sought to be imposed upon any party, witness, or expert involved in this matter by any regulatory, administrative, judicial, or other body.

20. All writings upon which you base any claim for counsel fees, litigation costs, or court costs including agreements, bills, timeslips, and evidence of payment.

21. All writings upon which you base any claim for punitive damages, or which pertain to any defense raised by you to claims for punitive damages by this party.

SCHEDULE "A"

1. All writings you were requested to identify or to attach to any interrogatories propounded by this party or by any other parties to this litigation.
2. All writings obtained by you through investigation, authorization signed by any party, through the subpoena power, or otherwise, which relate to any issue in this case.
3. All writings pertaining to the credentials, qualifications, knowledge, skill, experience, training, and/or education of any expert identified by any party to this action, including without limitation the propounding party.
4. All writings pertaining to all facts or data underlying any opinions of your experts.
5. All writings you were requested to produce on the record of any deposition or other proceeding in this matter.
6. All writings pertaining to any request made or to be made to the Court asking that judicial notice be taken of any facts, law, or regulations in this matter.
7. The entire contents of all your files relating to this matter, including without limitation any underlying, related, consolidated, or affiliated cases, and including without limitation the actual file container.
8. All writings reflecting facts in issue in this case, including without limitation all writings reflecting any statements made by any party to this litigation, any witness, or any expert, pertaining to the occurrences, incidents, or claims referred to in any pleading in this matter, any writings pertaining to any damages claimed in this matter and their cause, origin, nature, severity, extent, and duration, and any tangible item to be utilized in any deposition, hearing, or trial of this matter.
9. All writings pertaining to or reflecting the criminal, educational, occupational, medical, psychiatric, and/or litigation background or history of any party, witness, or expert involved in this matter.
10. Each and every such writing pertaining to any claim that any statements or testimony, whether in oral or written form, by any party, witness, or expert, which you contend was untrue in whole or in part.
11. All writings, including transcripts, reflecting or recording the statements and sworn testimony of each party, witness, or expert involved in this matter in any other matter, which relates to any fact or issue in dispute in this matter.

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JOAN GIRESI, Plaintiff, V. BOROUGH OF AVALON, OFFICER JUSTIN MILLER, AND JOHN DOES 1 THROUGH 25, INCLUSIVE, FICTITIOUS NAMED DEFENDANTS, JOINTLY, SEVERALLY, AND IN THE ALTERNATIVE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY Docket No.: CPM-L-378-15 Civil Action REQUEST FOR PRODUCTION OF DOCUMENTS
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TO: BOROUGH OF AVALON

PLEASE TAKE NOTICE that pursuant to the Rules of Civil Procedure and Evidence which apply to this action, counsel for the propounding party demands production of the writings set forth on the attached Schedule "A". Kindly note that the term "writings," as used in this request, shall be construed consistently with the definition of writings in the Rules of Evidence which apply to this matter. The writings requested are the original or, if the originals are not available, true copies, of each writing which relates, regards, refers to, or reflects the information within the scope of each numbered request on the attached Schedule "A". The writings to be produced shall include all writings within your possession, custody, or control, or reasonably available to, you, your servants, agents, employees, attorneys, and representatives. Should you fail to produce any writing based upon any claim of privilege,

22. All writings relating to any affirmative claims for damages by any party to this litigation.

23. True, accurate, and certified transcripts of the post-high school education of any expert upon whose testimony you intend to rely at the time of trial.

24. All writings pertaining to any honors or accolades awarded to or claimed by any expert involved in this matter.

25. Answers to interrogatories by you to any party other than the party propounding this request, together with all documents produced in response to any request for production by any other party.

26. If this case involves a claim of personal injury or property damage, fully responsive answers to the standard interrogatories set forth in Appendix II, in the New Jersey Court Rules, including Form A and/or B as appropriate.

27. All writings sent to or received from any expert upon whose testimony you intend to rely at the time of trial, including without limitation the expert's Curriculum Vitae or resume covering the last 10-year period, the expert's entire file pertaining to this matter and all of its contents, all reports and draft reports, all correspondence, billings, contracts, invoices, evidence of payment, billing information, original billing slips, materials provided by you or your attorneys to the expert, any notes made by or provided to the expert, and/or any photographs or other recorded information reflecting any facts upon which the expert has based AN opinion, and further including without limitation any rulings of any judicial body reflecting any findings pertaining to the expert's qualifications or area of expertise.