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Attorneys for Defendants, Township of Brick
and Recreation Department of the Township of Brick

GIANNA ZAPPULLA, by her
Guardian Ad Litem SARA ZAPPULLA
and SARA ZAPPULLA,
individually,

Plaintiffs,

vs.

TOWNSHIP OF BRICK, RECREATION
DEPARTMENT OF THE TOWNSHIP OF
BRICK, JOHN DOES 1-5
(fictitious names), ABC
COMPANIES 1-5 (fictitious
names), ABC COMPANIES 1-5
(fictitious entities), XYZ
CORPORATIONS 1-5 (fictitious
entities),

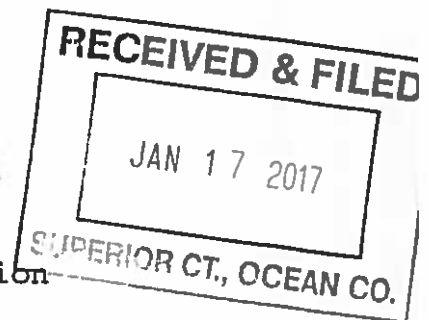
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-OCEAN COUNTY

Docket No. OCN-L-2725-16

Civil Action

ANSWER, SEPARATE DEFENSES,
CROSSCLAIMS FOR CONTRIBUTION
AND INDEMNIFICATION,
DEMAND FOR STATEMENT OF
DAMAGES, DEMAND FOR ANSWERS TO
INTERROGATORIES, DESIGNATION
OF TRIAL COUNSEL AND JURY
DEMAND



Defendants, Township of Brick and Recreation
Department of the Township of Brick, through their
attorneys, Starkey, Kelly, Kenneally, Cunningham &
Turnbach, by way of Answer to Plaintiffs' Complaint, say:

FIRST COUNT

1. Defendants have insufficient knowledge and

information with which to form a belief as to the truth of the allegations contained in Paragraph 1 of the First Count of the Complaint and, therefore, Plaintiffs are left to their proofs thereon.

2. Defendants have insufficient knowledge and information with which to form a belief as to the truth of the allegations contained in Paragraph 2 of the First Count of the Complaint and, therefore, Plaintiffs are left to their proofs thereon.

3. Defendants admit that the Township of Brick owns maintains and controls Edmund H. Hibbard Park on Cherry Quay Avenue in the Township of Brick, County of Ocean, State of New Jersey. The remaining allegations contained in Paragraph 3 of the First Count of the Complaint consist of a legal conclusion and, therefore, no responsive pleading is required.

4. Defendants admit that the Township of Brick owns, maintains and controls Edmund H. Hibbard Park on Cherry Quay Avenue in the Township of Brick. Defendants deny the remaining allegations contained in Paragraph 4 of the First Count of the Complaint.

5. Denied.

6. Denied.

WHEREFORE, Defendants, Township of Brick and

Recreation Department of the Township of Brick, demand judgment against Plaintiffs, dismissing the Complaint with prejudice and for attorney's fees, costs of suit and such other relief as the Court deems just and equitable.

SECOND COUNT

1. Defendants hereby repeat and reassert each and every answer to the allegations contained in Paragraphs 1 through 6 of the First Count of the Complaint as if set forth at length herein.

2. The allegations contained in Paragraph 2 of the Second Count of the Complaint are not directed at these Defendants and, therefore, no responsive pleading is required.

WHEREFORE, Defendants, Township of Brick and Recreation Department of the Township of Brick, demand judgment against Plaintiffs, dismissing the Complaint with prejudice and for attorney's fees, costs of suit and such other relief as the Court deems just and equitable.

SEPARATE DEFENSES

1. Plaintiffs have failed to set forth a cause of action upon which relief may be granted, and Defendants reserve the right to move for the dismissal of the Complaint on this ground.

2. The Complaint is barred by the doctrine of laches.

3. The Complaint is barred by the doctrine of waiver.

4. The Complaint is barred by the doctrine of estoppel.

5. The Complaint is barred by the applicable statute of limitations.

6. The Complaint is barred by the doctrine of avoidable consequences.

7. The Complaint is barred due to insufficiency of process and/or insufficiency of service of process.

8. The alleged injuries claimed by Plaintiffs resulted from their own negligence.

9. These Defendants interpose the defense of contributory and comparative negligence as set forth pursuant to N.J.S.A. 2A:15-5.1 et seq. or, in the alternative, any recovery should be diminished by the percentage of Plaintiffs' negligence.

10. The damages, if any, sustained by the Plaintiffs, were the result of an unavoidable accident or incident over which these Defendants had no control.

11. The damages, if any, sustained by Plaintiffs were the result of the actions of third parties over whom these Defendants had no control.

12. Plaintiffs' claim is barred by N.J.S.A. 59:1-1 et

seq.

13. Defendants plead 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.

14. Defendants plead the provisions of N.J.S.A. 59:2-1 and N.J.S.A. 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

15. Defendants plead the provisions of N.J.S.A. 59:4-2 and N.J.S.A. 59:4-3 as to the condition of property, including, but not limited to, issues of actual or constructive notice and the condition of its public property.

16. Defendants plead the provisions of N.J.S.A. 59:4-4 and N.J.S.A. 59:4-5.

17. Defendants plead 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.

18. Defendants plead the provisions of N.J.S.A. 59:8-11 regarding failure to timely file notice of claim and/or failure to file notice of claim as set forth therein.

19. Defendants plead the provisions of N.J.S.A. 59:9-1 through N.J.S.A. 59:9-7 concerning conditions of suit and judgment.

20. Defendants, public entities within the

contemplation of the New Jersey Tort Claims Act, are entitled to all of the provisions, immunities, exemptions and limitations of said Act, and consequently are not liable to the claimants or, if liable only as limited by the Act.

21. Defendants reserve the right to plead any additional separate defenses which are determined to apply as a result of continuing discovery in this matter.

CROSSCLAIM FOR CONTRIBUTION

While Defendants, Township of Brick and Recreation Department of the Township of Brick, assert the damages claimed in the Complaint result solely from the negligence of the other parties, if there is any negligence on the part of these Defendants, the negligence of the other co-Defendants was a major contributing factor and therefore the other co-Defendants are jointly liable with these Defendants.

DEMAND FOR INDEMNIFICATION

Although these Defendants deny any liability herein to the Plaintiffs, in the event there should be a verdict against these Defendants, such verdict will have been based upon secondary or vicarious liability through the acts of negligence of the other co-Defendants and, in such case, these Defendants are entitled to indemnity in the amount of

any verdict returned against them.

ANSWER TO ALL CROSSCLAIMS

Defendants, Township of Brick and Recreation Department of the Township of Brick, by way of Answer to any and all Crossclaims heretofore and hereafter asserted against them, deny each and every allegation contained in such Crossclaims.

WHEREFORE, Defendants, Township of Brick and Recreation Department of the Township of Brick, demand judgment dismissing any and all Crossclaims either heretofore or hereafter asserted against them plus costs.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to Rule 4:10-2(b), demand is made that Plaintiffs disclose to these Defendants' attorneys whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide these Defendants' attorneys with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe and umbrella policies.

DEMAND FOR ANSWERS TO INTERROGATORIES

Pursuant to R. 4:17(b), Defendants hereby demand that Plaintiffs provide answers to the Uniform Interrogatories as set forth in Form A of Appendix II of the Rules Governing the Courts of the State of New Jersey.

DEMAND FOR STATEMENT OF DAMAGES

Defendants demand that counsel for Plaintiffs serve upon the attorneys for Defendants a Statement of Damages claimed in this matter within the time provided by the Rules of Court.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Kevin N. Starkey, Esq., is hereby designated as trial counsel in the within action.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that Defendants, Township of Brick and Recreation Department of the Township of Brick, demand trial by jury as to all issues.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that I am not aware of the matter in controversy being the subject of any other action pending in any court or arbitration forum. I certify that I am not aware of any other action or arbitration proceeding that is presently contemplated. I further certify that, at this time, the undersigned knows of no other parties who should be joined in this action.

STARKEY, KELLY, KENNEALLY,
CUNNINGHAM & TURNBACH
Attorneys for Defendants,
Township of Brick and
Recreation Department of the
Township of Brick

Dated: January 13, 2017

By: Dina R. Khajezadeh
DINA R. KHAJEZADEH

CERTIFICATION PURSUANT TO R. 4:6-1

The undersigned hereby certifies that a copy of the within pleading was served and filed within the time provided by R. 4:6, as extended.

STARKEY, KELLY, KENNEALLY,
CUNNINGHAM & TURNBACH
Attorneys for Defendants,
Township of Brick and
Recreation Department of the
Township of Brick

Dated: January 13, 2017

By: Dina R. Khajezadeh
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