

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

George A. Prutting, Jr.
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Attorneys for Defendants, Erin Fahey and Care Plus NJ, Inc.

DONELL L. PRINCE : CIVIL ACTION NO.2:09-CV-5429

Plaintiff :

vs. :

: Document

Filed Electronically

SGT. THOMAS AIELLOS BADGE :
#221, INDIVIDUALLY AND AS :
POLICE OFFICER IN POLICE :
DEPARTMENT, CITY OF :
HACKENSACK, ET AL :

Defendants :

: **ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

Defendants, E. Fahey, M.A. and Care Plus NJ, Inc., way of
Answer to Plaintiff's Complaint, state that:

INTRODUCTION

1. This paragraph contains conclusion of law to which no
response is required. Further, this paragraph contains
allegations that are not directed to Answering Defendants and
accordingly no answer is required to said allegations; and
Answering Defendants state further that this paragraph is
otherwise denied and Plaintiff is left strictly to his proofs at
the time of trial.

2. This paragraph contains conclusion of law to which no
response is required. Further, this paragraph contains
allegations that are not directed to Answering Defendants and
accordingly no answer is required to said allegations; and

Answering Defendants state further that this paragraph is otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

3. The allegations of this paragraph contain conclusion of law to which no answer is required and these allegations are otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

4. Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph and leave the Plaintiff strictly to his proofs at time of trial.

5. This paragraph contains conclusions of law to which no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

6. Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph and leave the Plaintiff strictly to his proofs at time of trial.

7. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

8. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise

left strictly to his proofs at the time of trial.

9. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

10. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

11. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

12. Denied as stated.

13. Denied as to Answering Defendants.

14. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

15. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise left strictly to his proofs at the time of trial.

16. The allegations of this paragraph are not directed to these answering Defendants and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is otherwise

left strictly to his proofs at the time of trial.

17. This paragraph does not set forth any allegations of fact as to the Answering Defendants or the incident complained of and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

18. This paragraph does not contain allegations of facts relative to the incident complained of or any allegations of fact as against Answering Defendants, but rather presents a narrative of unrelated events and accordingly, no answer is required and this paragraph is otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

19. (a,b,c,&d) These paragraphs do not contain allegations of facts relative to the incident complained of or any allegations of fact as against Answering Defendants, but rather presents a narrative of unrelated events and accordingly no answer is required and this paragraph is otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

20. (a&b) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and further Answering Defendants are without sufficient knowledge as to form a belief as to the truth or falsity of these statements and Plaintiff is left strictly to his proofs at the time of trial.

21. The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required

and further Answering Defendants are without sufficient knowledge as to form a belief as to the truth or falsity of these statements and Plaintiff is left strictly to his proofs at the time of trial.

22. (a,b&c) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and further Answering Defendants are without sufficient knowledge as to form a belief as to the truth or falsity of these statements and Plaintiff is left strictly to his proofs at the time of trial.

23. (a,b,c,d,e,f&g) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

24. (a) Denied.

(b) Denied.

25. (a,b,c&d) The allegations of these paragraphs are not directed to this Answering Defendants and accordingly no answer is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

25. (e) Denied as to Answering Defendants. As to the balance of the allegations of this paragraph, they are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

26. (a,b&c) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer

is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

27. (a,b,c&d) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

28. (a,b,c,&d) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

29. (a&b) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied as stated and Plaintiff is left strictly to his proofs at the time of trial.

30. (a&b) The allegations of these paragraphs are not directed to these Answering Defendants and accordingly no answer is required and these allegations are otherwise denied and Plaintiff is left strictly to his proofs at the time of trial.

31. (a,b,c,d&e) Denied as to Answering Defendants.

32. (a&b) Denied.

33. (a,b&c) Denied.

AFFIRMATIVE DEFENSES

1. Defendants state they are not guilty of any negligence.
2. Defendants state they violated no duty or obligation which they owed to the Plaintiff.
3. Defendants state that the Plaintiff was guilty of

negligence and/or contributory negligence.

4. Any claim against these Defendants is barred or diminished by the contributory negligence and/or comparative negligence or other conduct of the Plaintiff and/or that of other parties to this litigation.

5. Any loss or damage sustained by the Plaintiff was due to the negligence or other conduct of persons over whom these Defendants exercised no control, nor right of control.

6. The Complaint herein fails to state a claim upon which relief can be granted and these Defendants reserve their right to move at or before time of trial to dismiss the Plaintiff's Complaint.

7. This action is barred by any applicable Statute of Limitations of actions, and/or Statute of repose.

8. There is a lack of jurisdiction over the person of the Defendants by reason of the insufficiency of process and insufficiency of service of process. These Defendants, therefore, reserve the right to move for dismissal of the Complaint.

9. This Court lacks subject matter jurisdiction.

10. These Defendants specifically deny being liable for punitive damages.

11. Defendant hereby adopts any and all rights and defenses under the New Jersey Punitive Damages Act, NJS 2A:15-5.9, et seq.

12. Plaintiff's claim for punitive damages is unconstitutional.

13. Plaintiff's claim for punitive damage violates these Defendants' right to protection from "excessive fines" as is provided in the Eighth Amendment of the United States Constitution and the Constitution of the State of New Jersey and violates these Defendants rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of New Jersey.

14. Plaintiff's claim for punitive damages violates these Defendants' rights to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of New Jersey.

15. By virtue of Plaintiff's baseless claims, Defendants are entitled to recovery of attorneys' fees, costs of suit, and expenses in accordance with the New Jersey Frivolous Litigation Statute, N.J.S.A. 28:15-59.1.

16. Plaintiff has not been deprived any right, privilege or immunity secured to him by the United States Constitution, any Act of Congress or the New Jersey State Constitution.

17. These Answering Defendants are immune from suit by virtue of N.J.S. 2A:53A-7.

18. These Answering Defendants are protected from suit by the Doctrine of Qualified Immunity.

19. These Answering Defendants are protected from suit by the Doctrine of Good Faith.

20. These Answering Defendants at all times were acting

pursuant to contract with and funding provided by the New Jersey State Division of Mental Health Services and at all times were acting pursuant to the lawful authority invested in them by the State. All acts so performed were the result of the appropriate exercise of these Defendants' discretion.

21. Answering Defendants acted at all times relevant hereto with good faith and without any fraud or malice.

22. Answering Defendants herein did not know and were not reasonably expected to know that any actions taken by them with respect to this Plaintiff, at all times relevant hereto, were in violation of Plaintiff's constitutional, statutory or other rights.

23. Answering Defendants are protected from suit by the immunity conferred by N.J.S. 30:4-27.7(a).

24. Plaintiff's Complaint is barred, limited and/or controlled by the provisions of the New Jersey Tort Claims Act, N.J.S. 59:1-1, et seq., as applicable to Answering Defendants through the Doctrine of Derivative Immunity and the Complaint further is barred by the failure of Plaintiff to give timely notice of a claim or to present a claim thereunder.

25. Through the Doctrine of Derivative Immunity, the Answering Defendants are immune from liability pursuant to the provisions of N.J.S. 59:1-1, et seq.

26. Plaintiff has not suffered any injury or damages attributable to any conduct of Answering Defendants.

27. Answering Defendants assert all rights and defenses to

which they may be entitled under the United States Constitution and Amendments thereto, as well as the New Jersey State Constitution.

28. All acts of the Answering Defendants were the result of the appropriate exercise of their accepted professional judgment following accepted procedures.

29. The Defendants hereby reserve the right to interpose such other defenses and objections as a continuing investigation may disclose.

CROSSCLAIM FOR INDEMNIFICATION

These Defendants by way of Crossclaim against all Co-Defendants says that without admitting any liability herein, if these Defendants are found liable to the Plaintiff, such liability is secondary, passive, constructive, or otherwise imputed by law, whereas the liability of Co-Defendants was active and primary.

WHEREFORE, these Defendant demand(s) judgment by way of indemnity against all Co-Defendants together with interest, costs of suit and counsel fees.

CROSSCLAIM FOR CONTRIBUTION

These Defendants demand(s) contribution under the Joint Tortfeasors Act, NJSA 2A:53A-1 et seq. and Comparative Negligence Act, NJSA 2A-15-5.3 against all co-defendants.

VERIFICATION PURSUANT TO LOCAL RULE 11.2

1. I hereby certify that to my knowledge, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding.

2. To my knowledge, no other action or arbitration proceeding is contemplated.

3. I have no knowledge at this time of the names of any other party who should be joined to this action.

PRUTTING

& LOMBARDI

BY: __s/

George A. Prutting, Jr.
GEORGE A. PRUTTING, JR.
Attorney for Defendants
E. Fahey, M.A. and Care Plus NJ, Inc.

DATE: March 12, 2010