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Attorneys for Defendants, Daniel Rodrick, individually and in his official capacity as mayor and council member for the Township of Toms River and the Council for the Township of Toms River

JILLIAN MESSINA,

Plaintiff,

v.

DANIEL RODRICK, individually and in his official capacity as mayor and council member for the Township of Toms River, and THE COUNCIL FOR THE TOWNSHIP OF TOMS RIVER,

Defendant.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY: LAW DIVISION
DOCKET NO.: OCN-L-951-24

CIVIL ACTION

**ANSWER TO COMPLAINT, SEPARATE
AFFIRMATIVE DEFENSES, AND JURY
DEMAND**

Defendants, Daniel Rodrick, individually and in his official capacity as mayor and council member for the Township of Toms River and the Council for the Township of Toms River, by way of Answer to Plaintiff’s Complaint, hereby states as follows:

THE PARTIES

1. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

2. Admit that Daniel Rodrick is the Mayor of the Township of Toms River. Denied as to the remainder.

3. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

4. The within paragraph constitutes a legal conclusion to which no response is required. To the extent response is required, denied.

5. Admit that the Council is organized under the laws of the State of New Jersey and is located at 33 Washington Street, Toms River, New Jersey. Denied as to the remainder as Plaintiff is left to her proofs.

6. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

7. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

8. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

FACTS COMMON TO ALL COUNTS

9. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

10. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

11. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

12. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

13. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

14. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

15. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

16. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

17. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

18. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

19. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

20. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

21. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

22. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

23. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

24. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

25. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

26. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

27. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

28. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

29. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

30. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

31. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

32. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

33. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

34. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

35. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

36. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

37. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

38. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

39. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

40. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

41. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

42. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

43. Admitted.

44. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

45. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

46. Denied.

47. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

48. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

49. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

50. Denied.

51. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

52. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

53. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

54. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

55. Denied.

56. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

57. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

58. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

59. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

60. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

61. Denied.

62. Denied.

63. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

64. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

65. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

66. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

67. Denied.

68. Denied.

69. Denied.

70. The within paragraph references a document which speaks for itself. To the extent further response is required, denied.

71. Denied.

72. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

73. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

74. The within paragraph references public documents which speak for themselves. To the extent further response is required, denied.

75. The within paragraph references a public document which speaks for itself. To the extent further response is required, denied.

76. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

77. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

78. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

79. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

80. Denied.

81. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

82. Denied.

83. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

84. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

85. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

86. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

87. The within Defendants neither admit nor deny the allegations and plaintiff is left to her proofs. To the extent further response is required, denied.

FIRST CAUSE OF ACTION

88. The within Defendants hereby repeat and reassert the preceding paragraphs as if set forth herein at length.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

WHEREFORE, Defendants, Daniel Rodrick and the Council of the Township of Toms River, demand judgment dismissing the Complaint with prejudice and awarding costs and disbursements, including reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

SECOND CAUSE OF ACTION

93. The within Defendants hereby repeat and reassert the preceding paragraphs as if set forth herein at length.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

- a. Denied.
- b. Denied.
- c. Denied.
- d. Denied.
- e. Denied.
- f. Denied.
- g. Denied.

99. Denied.

100. Denied.

WHEREFORE, Defendants, Daniel Rodrick and the Council of the Township of Toms River, demand judgment dismissing the Complaint with prejudice and awarding costs and disbursements, including reasonable attorney’s fees, and such other and further relief as the Court may deem just and proper.

COUNT THREE

101. The within Defendants hereby repeat and reassert the preceding paragraphs as if set forth herein at length.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

WHEREFORE, Defendants, Daniel Rodrick and the Council of the Township of Toms River, demand judgment dismissing the Complaint with prejudice and awarding costs and disbursements, including reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

SEPARATE DEFENSES

1. The Complaint fails to set forth a cause of action upon which relief can be granted.
2. Recovery is barred in this action by reason of the applicable statute of limitations.
3. Plaintiff's claims are frivolous and without any reasonable basis in law or fact, in violation of Court Rule 1:4-8(a).
4. Plaintiff's claims are barred, in whole or in part, because Answering Defendant acted in accordance with all applicable laws of the State of New Jersey and the United States of America.
5. Plaintiff's claims are barred by laches.
6. Plaintiff's claims are barred by the doctrine of collateral estoppel.
7. Plaintiff has failed to exhaust his administrative remedies.
8. Plaintiff's claims are barred by the doctrine of unclean hands.
9. Plaintiff cannot prove any discrimination under the Law Against Discrimination.
10. No adverse actions were taken against Plaintiff by Defendants.
11. The conditions of Plaintiff's employment were not severe or pervasive so as to constitute a hostile work environment.
12. Plaintiff cannot prove any discrimination on the basis of a protected class.

13. Defendants are entitled to all affirmative defenses as set forth in Aguas v. State of New Jersey, 20 N.J. 494 (2015).

14. Defendants did not engage in retaliatory behavior against Plaintiff under the LAD.

15. Plaintiff is not entitled to attorneys fees as to any statutory claims as Plaintiff will not be the prevailing party to these claims.

16. Any and all disciplinary actions taken against Plaintiff by Defendants were for legitimate, disciplinary purposes and was implemented in accordance with applicable law.

17. Answering Defendants affirmatively plead each defense, limitation, and immunity provided to them under the New Jersey Tort Claims act, N.J.S.A. 59:1-1 et. seq., inclusive, and assert that Plaintiff's action is barred, limited, and/or controlled by the provisions of that statute.

18. Plaintiff failed to comply with the conditions precedent for making claims against Answering Defendant by not filing the claim in the manner and within the time provided by N.J.S.A. 59:8-3, 59:8-4, 59:8-5, 59:8-6, 59:8-7 and 59:8-8 and is barred from now making the claim.

19. Answering Defendants did not engage in any conduct that constitutes a wrongful, intentional act.

20. Answering Defendants took no action at any time to deprive Plaintiff of any federal, constitutional, or statutory rights or law.

21. Answering Defendants acted on reasonable grounds and without malice and therefore, are not responsible in damages to Plaintiff.

22. Plaintiff's claims are barred, in whole or in part, because all actions taken by Answering Defendants with regard to Plaintiff were done in good faith, for legitimate and non-retaliatory reasons, and were justified.

23. Plaintiff's Complaint fails to state a claim upon which an award of any punitive damages may be granted.

24. Plaintiff's damages, if any, are wholly attributable to the wrongful acts, omissions, or conduct of Plaintiff.

25. Answering Defendants' liability, if any, must be reduced by amount of any payment received by Plaintiff by way of settlement or judgment from any other tortfeasor by virtue of N.J.S.A 59:9-3.

26. Answering Defendants are not liable for attorneys' fees under the facts of this case.

27. Any recovery against Answering Defendant must be reduced to the extent Plaintiff has failed to mitigate, minimize or avoid his claimed damages.

28. Damages, if any, sustained by Plaintiff was the result of actions of persons and/or entities over which Answering Defendants had no control.

29. Answering Defendants at all times conducted a diligent and prompt investigation of any and all claims of discrimination, harassment or retaliation made by Plaintiff.

30. Plaintiff has not suffered any adverse employment actions under NJLAD.

31. Plaintiff cannot establish a causal connection between his alleged whistle blowing activity and any adverse employment actions or actions of the Answering Defendant.

32. Plaintiff cannot establish that Answering Defendants' legitimate, non-discriminatory, and non-retaliatory reasons for its actions were a pretext for discrimination or retaliation.

33. Plaintiff cannot establish he engaged in a protected activity known to the employer.

34. Plaintiff cannot establish that any of the alleged conduct occurred as a result of his alleged protected activity.

35. Plaintiff's contract claims are barred due to the doctrine of impossibility of performance, frustration of purpose, and estoppel.

36. Plaintiff's claims are barred, in whole or in part, pursuant to the doctrine of waiver.

37. Plaintiff's claims are barred, in whole or in part, pursuant to Plaintiff's own contributory actions including negligence.

38. Plaintiff's failure to allege and identify specific rights or privileges violated by the Answering Defendant is a basis to bar Plaintiff's claims, in whole or in part.

39. Plaintiff's claims are barred, in whole or in part, by the doctrines of collateral estoppel, res judicata, judicial estoppel, unclean hands, and accord and satisfaction.

40. Defendants assert all rights and defenses to which he may be entitled under the New Jersey State Constitution as well as under the United States Constitution.

41. Any action or inaction on the part of the Defendants are the result of the exercise of judgment, discretion, or executive function vested in the Defendants within the meaning of N.J.S.A. 59:3-2 for which no liability may be imposed.

42. Plaintiff failed to pursue and exhaust the available administrative remedies such that he is barred or estopped from claiming a deprivation of rights under the procedures provided.

43. Plaintiff cannot demonstrate a claim under discrimination under the New Jersey Civil Rights Act.

44. Plaintiff cannot demonstrate a violation of her freedom of speech and freedom of association.

45. Plaintiff's Complaint does not demonstrate a cause of action for discrimination on the basis of gender.

46. Answering Defendants reserves the right to assert any other affirmative defenses

that discovery reveals to be applicable as to avoid waiver of same.

RESERVATION OF RIGHTS

Defendants reserve the right, at or before trial, to move to dismiss the Complaint and/or for summary judgment, on the ground that the Complaint fails to state a claim upon which relief can be granted, that the allegations within the complaint are frivolous and/or the Defendants are entitled to judgment as a matter of law, based on any or all of the above defenses.

CERTIFICATON PURSUANT TO R. 1:38-7(c)

I hereby certify that all 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).

JURY DEMAND

Defendants demand a trial by jury on all of the issues herein.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to R. 4:5-2, Plaintiff is hereby requested and required to furnish the undersigned, within five (5) days, a written statement of the amount of damages claimed in this action.

DEMAND FOR DOCUMENTS REFERRED TO IN PLEADING

In accordance with R. 4:18-2, demand is hereby made that all parties serve on us copies of those documents referred to in the pleadings. Please serve these documents on us within five (5) days pursuant to the Court Rule.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Matthew R. Tavares, Esq. is hereby designated as trial counsel.

RAINONE COUGHLIN MINCHELLO, LLC
*Attorneys for Defendants, Daniel Rodrick,
individually and in his official capacity as mayor
and council member for the Township of Toms
River and the Council for the Township of Toms
River*

Dated: June 21, 2024

By: s/ Matthew R. Tavares
Matthew R. Tavares, Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned certifies in accordance with R. 4:5-1(b) (2) that the within matter is not the subject of any other action pending in any Court or a pending arbitration proceeding; that no such action or arbitration proceeding is contemplated; and that Defendant are not currently aware of any non-party who should be joined in this action or who is subject to joinder.

RAINONE COUGHLIN MINCHELLO, LLC
*Attorneys for Defendants, Daniel Rodrick,
individually and in his official capacity as mayor
and council member for the Township of Toms
River and the Council for the Township of Toms
River*

Dated: June 21, 2024

By: s/ Matthew R. Tavares
Matthew R. Tavares, Esq.

Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-000951-24

Case Caption: MESSINA JILLIAN VS RODRICK DANIEL

Case Initiation Date: 04/10/2024

Attorney Name: MATTHEW R TAVARES

Firm Name: RAINONE COUGHLIN MINCHELLO, LLC

Address: 555 US HIGHWAY ONE SOUTH STE 440

ISELIN NJ 08830

Phone: 7327094182

Name of Party: DEFENDANT : RODRICK, DANIEL

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: CIVIL RIGHTS

Document Type: Answer W/Jury Demand

Jury Demand: YES - 6 JURORS

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

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: JILLIAN MESSINA? 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? 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? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

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)

06/21/2024

Dated

/s/ MATTHEW R TAVARES

Signed

