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Our File Number: 47620-148
Attorney for Defendant, City of North Wildwood

FILED

AUG 12 2014

CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

SANDRA SMITH, INDIVIDUALLY AND
AS EXECUTRIX OF THE ESTATE OF
HER LATE HUSBAND, GEORGE
BRADLEY SMITH,

Plaintiff,

v.

CITY OF NORTH WILDWOOD,
COUNTY OF CAPE MAY, STATE OF
NEW JERSEY, JOHN DOE, MARY
DOES, ABC PARTNERSHIPS, and XYZ
CORPORATIONS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY
DOCKET NO. CPM-L-331-14

Civil Action

ANSWER, with:

- **Separate and Affirmative Defenses**
- **Crossclaims for Contribution and Indemnification**
- **Reservation of Rights**
- **Jury Demand**
- **Designation of Trial Counsel**
- **Statement of Damages Claimed**
- **Certification of Compliance with R. 1:38-7**
- **Demand to Preserve Evidence**

NOW COMES the Defendant, City of North Wildwood and by
way of Answer to the Complaint state the following.

COUNT ONE

1-3 The answering Defendant presently has insufficient information upon which to admit or deny the allegations of this paragraph and therefore enters a formal denial and puts Plaintiff to proof.

4. Denied.

5-7 The answering Defendant presently has insufficient information upon which to admit or deny the allegations of this paragraph and therefore enters a formal denial and puts Plaintiff to proof.

8. Admit that Brandy Smith was rescued and otherwise denied.

9. The answering Defendant presently has insufficient information upon which to admit or deny the allegations of this paragraph and therefore enters a formal denial and puts Plaintiff to proof.

10. Admit that Brad Smith's body was found approximately three days later and otherwise denied.

11-23. Denied.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT TWO

(Dangerous Condition Claim – State of New Jersey)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2-12 The allegations are not directed to the answering Defendant and therefore, no answer is required; however, to the extent the allegations are considered to be a basis to inculcate the answering Defendant, directly or indirectly, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT THREE

(Dangerous Condition Claim – County of Cape May)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2-12 The allegations are not directed to the answering Defendant and therefore, no answer is required; however, to the extent the allegations are considered to be a basis to inculcate the answering Defendant, directly or indirectly, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT FOUR

(Negligent Supervision Claim – City of North Wildwood)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2-13 Denied.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT FIVE
(Improper Warnings Claim)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

3-10 The allegations are not directed to the answering Defendant and therefore, no answer is required; however, to the extent the allegations are considered to be a basis to inculcate the answering Defendant, directly or indirectly, the same are denied and the Plaintiff is put to proof.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT SEVEN
(Survivorship Claim)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2-4 Denied.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT EIGHT
(Wrongful Death Claim)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2-6 Denied.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

COUNT NINE
(Injunctive Relief)

1. The answering Defendant repeats and incorporates herein by reference each and every answer to each of the preceding paragraphs of the Complaint.

2. Denied as to the answering Defendant.

3-5 Presently the answering Defendant has insufficient information upon which to admit or deny and enters a formal denial and puts Plaintiff to proof.

6. Denied.

WHEREFORE, the answering Defendant demands judgment dismissing the Complaint and for such further relief as the Court deems to be just and equitable including but not limited to an award for attorneys fees and/or costs of suit.

SEPARATE AND AFFIRMATIVE DEFENSES

1. Any injuries or damages sustained by the Plaintiff are the result of the act or acts of independent, intervening agencies over which this answering Defendant has no power or control.

2. This answering Defendant did not breach any duty which may have been owed to the Plaintiff in this action.

3. The Plaintiff's Complaint fails to set forth a cause of action and the answering Defendant reserves the right to move to dismiss the Plaintiff's Complaint on that ground.

4. The claims of the Plaintiff are barred by reason of the Statutory Immunity of the answering Defendant; and, the answering Defendant reserves the right to move to dismiss the Plaintiff's Complaint on that ground.

5. The claims of the Plaintiff are barred by the provisions of the New Jersey Tort Claims Act. [NJSA 59:1-1, et. seq.]

6. The answering Defendant is immune from liability pursuant to the provisions of NJSA 59:2-1, et. seq.

7. The answering Defendant asserts the applicability of the provisions of NJSA 59:2-1, and NJSA 59:2-2, as to the immunities available to a public entity and/or a public employee.

8. The answering Defendant is not liable to the Plaintiff in that there is no liability upon any public employees pursuant to the provisions of NJSA 59:2-2(b).

9. The answering Defendant is immune from liability pursuant to the provisions of NJSA 59:3-1, et. seq.

10. The answering Defendant asserts the applicability of the provisions of NJSA 59:2-3 through NJSA 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

11. The answering Defendant acted in good faith in the execution of enforcement of law and is not liable pursuant to NJSA 59:3-3.

12. The answering Defendant asserts the applicability of the provisions of NJSA 59:8-3 through NJSA 59:8-7 regarding failure to provide adequate and timely notice of claim.

13. The answering Defendant asserts the applicability of the provisions of NJSA 59:8-8 through NJSA 59:8-11 regarding failure to timely file notice of claim and/or failure to file adequate notice of claim as set forth therein.

14. Any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accord with the judgments, damages and interest provided in NJSA 59:9-2.

15. The answering Defendant asserts the applicability of NJSA 59:9-3, NJSA 59:9-3.1 (limitations in contribution) and NJSA

59:9-4 regarding joint tortfeasors and the comparative negligence of the Plaintiff.

16. The answering Defendant asserts the applicability of NJSA 59:9-5 to limit fees and costs.

17. The answering Defendant, by pressing the aforementioned defenses, does not intend to limit its defenses and/or rights under the Act and hereby affirmatively pleads the procedural and substantive provisions of the New Jersey Tort Claims Act [NJSA 59:1-1, et. seq.] which are applicable and have not been previously cited in this Answer.

18. The answering Defendant acted without malice and in good faith; therefore, the answering Defendant is not responsible to the Plaintiff in damages.

19. The answering Defendant asserts that the actions taken were privileged or subject to immunity or qualified immunity and/or as authorized by law.

20. The answering Defendant denies that the co-defendants, or any of them, at the time of the incident underlying the Plaintiff's

Complaint, were the agents, servants, or employees of this defendant.

21. The claims of the Plaintiff are barred by the Statute of Limitations in such case made and provided.

22. The answering Defendants reserve the right to amend this Answer to assert additional affirmative defenses as revealed or suggested by the completion of on-going investigation and discovery.

**CROSSCLAIM FOR CONTRIBUTION AND/OR SETTLEMENT
CREDIT**

While denying any liability to the plaintiffs, this Answering Defendant nevertheless asserts a claim for contribution from co-defendants pursuant to NJSA 2A:15-5.3 and NJSA 2A:53A and also under the provisions of New Jersey Tort Claims Act, as recited above in separate defenses; and, this Answering Defendant contends that in the event that proofs develop in discovery or at trial to establish a basis for liability on the part of any other defendant, and such other defendant or defendants enter into a settlement agreement or settlement agreements, in whole and/or in part with the plaintiffs, then this Answering Defendant asserts a

claim for credit reducing the amount of any judgment in favor of the plaintiffs against this Answering Defendant to reflect the degree of fault to the settling defendant or defendants pursuant to Young v. Latta, 123 N.J. 584 (1991).

RESERVATION OF RIGHTS

The Defendant reserves the right, at or before trial, to move to dismiss the Plaintiff's Complaint and/or for summary judgment, on the grounds that the Complaint fails to state a claim upon which relief can be granted and/or that the Defendant is entitled to judgment as a matter of law, based on any or all of the above defenses.

REQUEST FOR STATEMENT OF DAMAGES CLAIMED

Pursuant to the provisions of R. 4:5-2, this Answering Defendant demands that within five days of service hereof, the plaintiffs furnish a written statement specifying the amount of damage claimed by the plaintiffs in the above-entitled action.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, A. Michael Barker, Esq. is hereby designated as trial counsel.

JURY DEMAND

This answering Defendant hereby demands a trial by jury on all issues subject to trial by jury. Notice is hereby given that this demand shall continue and become effective upon the drawing of the jury of six persons and that the stipulation customarily deemed to have been agreed to pursuant to Rule 1:8-2(c) is specifically rejected. This Answering Defendant hereby places on the record a refusal to stipulate to a verdict by less than six jurors on any question before the jury.

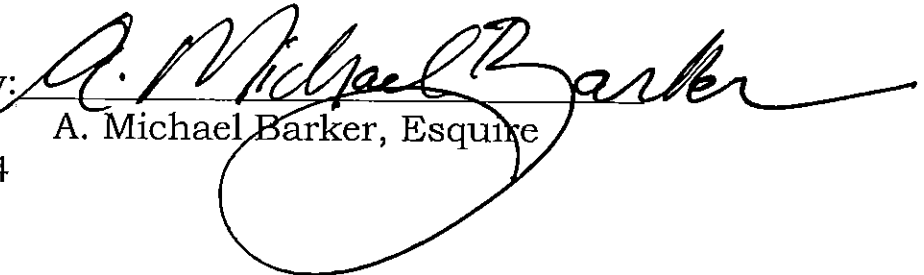
NOTICE PURSUANT TO R. 1:5-1(a) and R. 4:17-4(c)

Please take notice that the undersigned attorney does hereby demand, pursuant to the above-cited Rules of Court, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve all copies of such pleadings and answered interrogatories, and all documents, papers and other material referred to therein, received from any party, upon the undersigned attorney; and take notice that this is a continuing demand.

DEMAND TO PRESERVE EVIDENCE

Plaintiff and co-defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiffs' cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including but not limited to, Facebook, twitter, MySpace, etc.) and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

**BARKER, GELFAND & JAMES
a Professional Corporation**

By: 
A. Michael Barker, Esquire

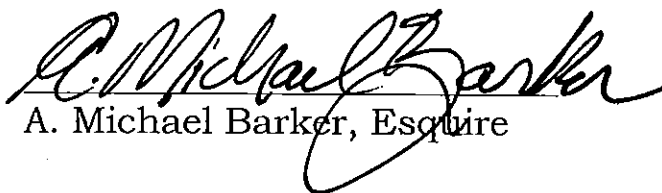
Dated: August 11, 2014

CERTIFICATION

A. Michael Barker, Esquire, of full age, certifies:

1. I am a member of the Barker, Gelfand & James law firm and am entrusted with the preparation and trial of this case.
2. This case is not subject to any other court action or arbitration proceeding.

I certify that 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.


A. Michael Barker, Esquire

Dated: August 11, 2014

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-78(c)

I, A. Michael Barker, esquire, 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).

Dated: August 11, 2014


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Attorney for Defendant, City of North Wildwood

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
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DOCKET NO. CPM-L-331-14

Civil Action

CERTIFICATION OF SERVICE

The original of the within Answer, Separate and Affirmative Defenses, Crossclaims for Contribution and Indemnification, Reservation of Rights, Jury Demand, Designation of Trial Counsel, Statement of Damages Claimed, Certification of Compliance with R. 1:38-7 and Demand to Preserve Evidence on behalf of the answering Defendant, the City of North Wildwood has been

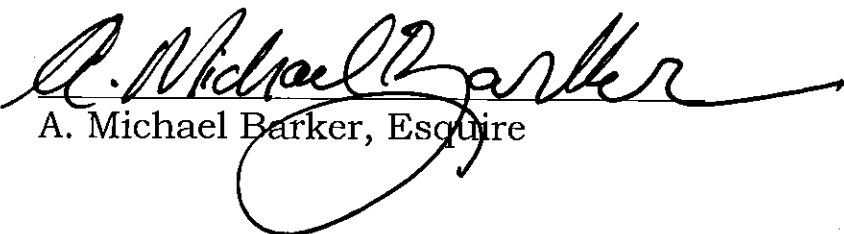
forwarded to the Superior Court of New Jersey, County of Cape May, for filing.

On Monday, August 11, 2014, a true and correct copy of the Answer, Separate and Affirmative Defenses, Crossclaims for Contribution and Indemnification, Reservation of Rights, Jury Demand, Designation of Trial Counsel, Statement of Damages Claimed, Certification of Compliance with R. 1:38-7 and Demand to Preserve Evidence on behalf of the answering Defendant, the City of North Wildwood, was forwarded to:

Dominic A. Spezialli, Esquire
D'AMATO LAW FIRM
2900 Fire Road ~ Suite 200
Egg Harbor Township, New Jersey 08234
Attorney for Plaintiff



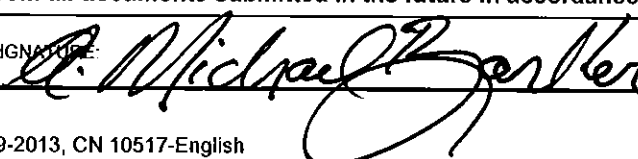
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**BARKER, GELFAND & JAMES
A PROFESSIONAL CORPORATION**

By: 
A. Michael Barker, Esquire

Dated: August 11, 2014

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT (CIS)</h2> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO SE NAME A. Michael Barker, Esquire	TELEPHONE NUMBER (609) 601-8677	COUNTY OF VENUE Cape May
	FIRM NAME (if applicable) Barker, Gelfand & James		DOCKET NUMBER (when available) CPM-L-331-14
	OFFICE ADDRESS 210 New Road ~ Suite 12 Linwood Greene Linwood, New Jersey 08221		DOCUMENT TYPE Answer
			JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) Defendant, City of North Wildwood		CAPTION Sandra Smith, Individually and As executrix of the State of her late husband, George Bradley Smith v. City of North Wildwood, County of Cape May, State of new Jersey	
CASE TYPE NUMBER (See reverse side for listing) 605	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> 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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) Qual-Lynx <input type="checkbox"/> NONE <input type="checkbox"/> 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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> 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</i> 1:38-7(b).			
ATTORNEY SIGNATURE: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETA/AREDIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 284 NUVARING | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 601 ASBESTOS |
| 287 YAZ/YASMIN/OCELLA | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59