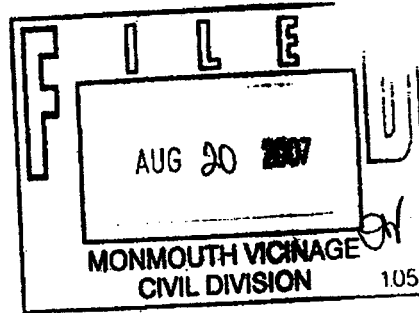




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Attorneys for Plaintiff



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY
DOCKET NO. L3927-07

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:  :
: :
: :
: Plaintiff, : Civil Action
: :
: :
v. : COMPLAINT, JURY
: DEMAND AND
: DESIGNATION OF TRIAL
BOROUGH OF HIGHLANDS; GARY : COUNSEL
BRANIN, JR.; HIGHLAND FIRE :
DEPARTMENT, INC.; JOHN AND :
JANE DOES 1-10; ABC ENTITIES :
1-10; :
: :
: Defendants. :
: :
-----X

Plaintiff  by and through her attorneys, by way of Complaint against the above named defendants, says:

1. Plaintiff is female resident of the Township of Colts Neck, County of Monmouth, State of New Jersey.
2. Defendant Borough of Highlands is a political subdivision of the State of New Jersey and County of Monmouth.

At all relevant times, Defendant Borough of Highlands was responsible for hiring, approving, training, supervising and disciplining members of the Highlands Fire Department, and ensuring that the premises of the Highlands Fire Department were used in a safe and appropriate manner.

3. Defendant Gary Branin, Jr., is a male who is presently in the custody of the New Jersey Department of Corrections following the entry of a judgment of conviction in a criminal case by the Superior Court of New Jersey, Law Division, Monmouth County. At all relevant times, Branin was a member and agent of the Highlands Fire Department, Inc.

4. Defendant Highlands Fire Department, Inc., is a not for profit corporation incorporated under the laws of the State of New Jersey, with its principal place of business at 171 Bay Avenue, Highlands, New Jersey. At all relevant times, defendant Highlands Fire Department, Inc. had as its member and agent defendant Branin.

5. At all relevant times, Defendant Highlands Fire Department, Inc. was responsible for hiring, approving, training, supervising and disciplining members of the Highlands Fire Department, and ensuring that the premises of the Highlands Fire Department were used in a safe and appropriate manner.

6. Defendants John and Jane Does (1-10) are fictitious designations for individuals whose precise identities are as yet unknown, but whom Plaintiff expects to identify during the course of discovery. Defendant John and Jane Does (1-10) are supervisory and/or managing officials or agents of defendant Borough of Highlands and/or Highlands Fire Department, Inc., whose duties at all relevant times included hiring, approving, training, supervising and disciplining members of the Highlands Fire Department and ensuring that the premises of the Highlands Fire Department were used in a safe and appropriate manner.

7. Defendants ABC Entities (1-10) are fictitious designations for corporations, limited liability companies, partnerships, associations or other similar entities whose precise identities are as yet unknown, but whom Plaintiff expects to identify during the course of discovery. Defendants ABC Entities (1-10) at all relevant times operated or supervised the Highlands Fire Department, and had the responsibility and duty to hire, approve, train, supervise and discipline members of the Highlands Fire Department, and ensure that the premises of the Highlands Fire Department were used in a safe and appropriate manner.

8. On or about September 3, 2005, Plaintiff became separated from her boyfriend while at an establishment known as the Sugar Shack in Highlands.

9. In an effort to find her boyfriend, plaintiff began walking through the Borough of Highlands, stopping at various locations she thought he might be.

10. While she was searching for her boyfriend, Plaintiff came upon defendant Branin, who was riding his bicycle.

11. Defendant Branin, under the pretext and ruse of helping Plaintiff, coaxed and lured her inside the confines of the Highlands Fire Department.

12. Defendant Branin, as a member of the Highlands Fire Department, knew that he would be unsupervised and free to engage in criminal acts inside of the Highlands Fire Department.

13. On or about September 3, 2005, Plaintiff was the victim of a sexual assault committed upon her by Defendant Branin inside of the premises of the Highlands Fire Department.

14. The sexual assault perpetrated upon Plaintiff by Branin was immediately reported to law enforcement authorities.

15. Following an investigation, Branin was arrested and subsequently indicted for committing acts of sexual assault upon Plaintiff.

16. Following a trial by jury, Branin was convicted and ultimately sentenced to serve a term in State Prison.

COUNT ONE

(claims against defendant Branin)

17. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint.

18. Defendant Branin committed a sexual assault upon the Plaintiff.

19. Defendant Branin committed an assault and battery upon the Plaintiff.

20. Defendant Branin committed the tort of outrage upon the Plaintiff.

21. Defendant Branin purposefully and knowingly inflicted emotional distress upon the Plaintiff.

22. As a results of the defendant Branin's actions and inactions, Plaintiff has been harmed.

COUNT TWO

(state law claims against defendants other than Branin)

23. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint.

24. The remaining defendants (other than Branin) appointed Branin as a fireman without conducting a reasonable or appropriate background investigation.

25. The remaining defendants (other than Branin) retained Branin as a member of the Highlands Fire Department and permitted him to have unsupervised access to the premises of the Highlands Fire Department when they knew or should have known that he was not fit to be a member of the Highlands Fire Department.

26. The remaining defendants (other than Branin) failed to enact, have in place and adhere to policies, practices and customs designed to ensure that, on an on-going basis, members of the Highlands Fire Department, were fit to continue in their membership.

27. The remaining defendants (other than Branin) failed to properly supervise Branin.

28. The remaining defendants (other than Branin) failed to properly discipline Branin.

29. The remaining defendants (other than Branin) failed to take reasonable steps to ensure that the premises of the Highlands Fire Department were used in a safe and appropriate manner.

30. The remaining defendants (other than Branin) negligently entrusted to Branin the unfettered and unsupervised right to access the premises of the Highlands Fire Department.

31. It was or should have been foreseeable to the defendants (other than Branin) that their acts and omissions created a foreseeable risk of injury of the type suffered by Plaintiff.

32. To the extent that the acts or omissions complained of in this Complaint arise from the exercise of discretion in the face of competing demands and a determination of how to utilize or apply existing resources, including those allocated for equipment, facilities and personnel, the acts or omissions were palpably unreasonable.

33. A timely Notice of Tort Claim was served upon defendants and more than six months have since elapsed.

34. As a results of the defendants actions and inactions, Plaintiff has been harmed.

COUNT THREE

(Claims under 42 U.S.C. § 1983 against
defendants other than Branin)

35. Plaintiff repeats the allegations contained in the previous paragraphs of the Complaint.

36. At all relevant times, defendants (other than Branin) acted under color of state law.

37. The defendants (other than Branin) exhibited a deliberate indifference to the potential for Branin to use his position as a fireman and his access to the premises of the Highlands Fire Department to commit criminal acts.

38. The actions and omissions of defendants (other than Branin), and their deliberate indifference to the potential for Branin to use his position as a fireman and his access to the premises of the Highlands Fire Department to commit criminal acts, independently and collectively constituted a practice, custom or policy which made possible the acts of Branin and therefore, defendants (other than Branin) are directly liable and responsible for the injuries suffered by Plaintiff.

39. Defendants (other than Branin) are liable for violating the constitutional rights of Plaintiff including, but not limited to, her rights under the Fifth and Fourteenth Amendments to the due process of law; and their rights under the

Fifth and Fourteenth Amendments to life, liberty and the pursuit of happiness.

40. As a results of the defendants actions and inactions, Plaintiff has been harmed.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly, severally or in the alternative, and an award of compensatory and punitive damages, attorneys' fees and costs, and such further relief as the Court may deem necessary and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

RULE 4:5-1 CERTIFICATION

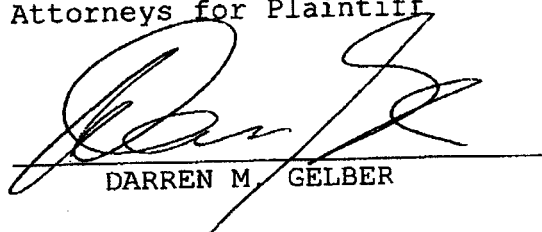
The undersigned certifies that the matter and controversy is not the subject of any other pending litigation or arbitration proceeding, and that there are presently no other known parties who should be joined in this action.

DESIGNATING OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, plaintiffs hereby designate Darren M. Gelber, Esq. as trial counsel in the within matter.

WILENTZ, GOLDMAN & SPITZER, P.A.
90 Woodbridge Center Drive
Post Office Box 10
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Plaintiff

Dated: August 13, 2007 By:


DARREN M. GELBER

Release

This Release, dated March 22, 2010, is given _____

BY the Releasor(s) [REDACTED]

referred to as "I," _____

TO Borough of Highlands Highlands Fire Department

referred to as "You."

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. **Release.** I release, give up and forever discharge any and all claims and rights which I may have against You. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims as outlined in the civil action now pending in Monmouth County Superior Court bearing docket number L-3927-07. This release does not apply to any claims against Gary Branin, Jr.

2. **Payment.** I have been paid a total of \$7,500.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in full payment for making this Release. I agree that I will not seek anything further, including any other payment, from You.

3. **Who is bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

[REDACTED]

(Seal)

(Seal)

STATE OF NEW JERSEY, COUNTY OF Middlesex SS:

I CERTIFY that on April 5, 2010

[REDACTED]

personally came before me and stated under oath to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and,
- (b) executed this instrument as his or her own act.

Karen A. Dzenis

Print name and title below signature

Karen A. Dzenis

Notary Public of New Jersey

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