

**FILE**

**ABRAHAMSEN LAW FIRM, L.L.C.**

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**Richard J. Abrahamsen \* Δ**

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March 15, 2016

*Via: Regular Mail*

Clerk of The Superior Court  
Bergen County Justice Center  
10 Main Street  
Hackensack, NJ 07601  
Attn: Filing Intake

Re: 10 Morton Street, LLC vs. Borough of East Rutherford  
Docket No: Ber-L-5912-15

Dear Sir or Madam:

Please be advised that the Abrahamsen Law Firm has been retained to represent the interest of Intervener 10 Morton LLC/

Enclosed herein please find an original and three copies of Answer and Affirmative Defenses, ase Information Sheet along with the necessary filing fee, check #1563 in the amount of \$175.00 payable to the Treasurer of the State of New Jersey.

Upon your receipt and review, kindly forward a filed stamp copy in the self addressed stamped envelope provided for your convenience.

Thank you for your anticipated cooperation in this regard.

Respectfully submitted,

*s/Richard J. Abrahamsen*

Richard J. Abrahamsen, Esq.

Abrahamsen Law Firm, LLC

RJA:mt

CC: Kipp & Allen, LLP

James T. Novello, Esq.

ABRAHAMSEN LAW FIRM, L.L.C.  
Attorney Id: #030061978  
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(201) 840-5660; (201) 840-5663 Fax  
Attorneys for  
10 Morton LLC, Intervener

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IN THE MATTER OF THE	:	SUPERIOR COURT OF NEW JERSEY
APPLICATION OF THE BOROUGH	:	LAW DIVISION: BERGEN COUNTY
OF EAST RUTHERFORD FOR	:	
JUDGMENT OF COMPLIANCE AND	:	
REPOSE	:	Docket No.: L-5912-15
	:	
	:	Civil Action
Plaintiff/Petitioner.	:	( <u>Mount Laurel</u> )
	:	
	:	
	:	ANSWER AND
	:	AFFIRMATIVE DEFENSES

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Intervenor, 10 Morton LLC, by way of Answer to Plaintiff/Petitioner, Borough of East Rutherford's Complaint for Declaratory Judgment says:

Jurisdiction

1. Intervenor admits to the allegations set forth in Paragraph 1 of the Complaint.
2. Intervenor is without information and lacks sufficient information to form a belief as to the truth or validity of the allegations set forth in Paragraph 2 of the Complaint.

3. Intervenor is without information and lacks sufficient information to form a belief as to the truth or validity of the allegations set forth in Paragraph 3 of the Complaint, but leaves the Plaintiff to its proofs.

4. Intervenor neither admits nor denies the allegations set forth in Paragraph 4 of the Complaint, but leaves the Plaintiff to its proofs.

5. Intervenor denies the allegations set forth in Paragraph 5 of the Complaint, but leaves the Plaintiff to its proofs.

#### Background and Prior Round Obligations

6. Intervenor admits to the allegations set forth in Paragraph 6 of the Complaint, but leaves the Plaintiff to its proofs.

7. Intervenor admits to the allegations set forth in Paragraph 7 of the Complaint, but leaves the Plaintiff to its proofs.

8. Intervenor admits to the allegations set forth in Paragraph 8 of the Complaint, but leaves the Plaintiff to its proofs.

9. Intervenor admits to the allegations set forth in Paragraph 9 of the Complaint, but leaves the Plaintiff to its proofs.

10. Intervenor admits to the allegations set forth in Paragraph 10 of the Complaint, but leaves the Plaintiff to its proofs.

11. Intervenor admits to the allegations set forth in Paragraph 11 of the Complaint, but leaves the Plaintiff to its proofs.

12. Intervenor admits to the allegations set forth in Paragraph 12 of the Complaint, but leaves the Plaintiff to its proofs.

13. Intervenor admits to the allegations set forth in Paragraph 13 of the Complaint, but leaves the Plaintiff to its proofs.

14. Intervenor is without information and lacks sufficient information to form a belief as to the truth or validity of the allegations set forth in Paragraph 14 of the Complaint, but leaves the Plaintiff to its proofs.

15. Intervenor admits the allegations set forth in Paragraph 15 of the Complaint.

16. Intervenor is without information and lacks sufficient information to form a belief as to the truth or validity of the allegations set forth in Paragraph 16 of the Complaint, but leaves the Plaintiff to its proofs.

17. Intervenor denies the allegations set forth in Paragraph 17 of the Complaint, but leaves the Plaintiff to its proofs.

18. Intervenor is without information and lacks sufficient information to form a belief as to the truth or validity of the allegations set forth in Paragraph 18 of the Complaint, but leaves the Plaintiff to its proofs.

19. Intervenor denies the allegations set forth in Paragraph 19 of the Complaint, but leaves the Plaintiff to its proofs.

Third Round Obligation

20. Intervenor admits to the allegations set forth in Paragraph 20 of the Complaint, but leaves the Plaintiff to its proofs.

21. Intervenor admits to the allegations set forth in Paragraph 21 of the Complaint, but leaves the Plaintiff to its proofs.

22. Intervenor admits to the allegations set forth in Paragraph 22 of the Complaint, but leaves the Plaintiff to its proofs.

23. Intervenor neither admits or denies the allegations set forth in Paragraph 23 of the Complaint, but leaves the Plaintiff to its proofs.

24. Intervenor denies the allegations set forth in Paragraph 24 of the Complaint.

25. Intervenor denies the allegations set forth in Paragraph 25 of the Complaint.

26. Intervenor denies the allegations set forth in Paragraph 26 of the Complaint.

27. Intervenor denies the allegations set forth in Paragraph 27 of the Complaint.

: The Transfer of Jurisdiction to the Courts

28. Intervenor denies the allegations set forth in Paragraph 28 of the Complaint.

29. Intervenor denies the allegations set forth in Paragraph 29 of the Complaint.

30. Intervenor admits to the allegations set forth in Paragraph 30 of the Complaint.

31. Intervenor admits to the allegations set forth in Paragraph 31 of the Complaint.

32. Intervenor admits to the allegations set forth in Paragraph 32 of the Complaint.

33. Intervenor admits to the allegations set forth in paragraph 33 of the Complaint.

34. Intervenor denies the allegations set forth in Paragraph 34 of the Complaint.

35. Intervenor denies the allegations set forth in Paragraph 35 of the Complaint.

36. Intervenor denies the allegations set forth in Paragraph 36 of the Complaint.

37. Intervenor denies the allegations set forth in Paragraph 37 of the Complaint.

COUNT ONE  
DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE

38. Intervenor repeats and incorporates herein its responses to Paragraphs 1 through 37 of the Complaint as if same were set forth fully herein.

39. Intervenor denies the allegations set forth in Paragraph 39 of Count One of the Complaint.

COUNT TWO  
FIVE MONTHS TO PREPARE HEFSP

40. Intervenor repeats and incorporates herein its responses to Paragraphs 1 through 39 of the Complaint as if same were set forth fully herein.

41. Intervenor denies the allegations set forth in Paragraph 41 of Count Two of the Complaint.

42. Intervenor denies the allegations set forth in Paragraph 42 of Count Two of the Complaint.

43. Intervenor denies the allegations set forth in Paragraph 43 of Count Two of the Complaint.

44. Intervenor denies the allegations set forth in Paragraph 44 of Count Two of the Complaint.

45. Intervenor denies the allegations set forth in Paragraph 45 of Count Two of the Complaint.

**COUNT THREE**  
**REQUEST FOR IMMUNITY**

46. Intervenor repeats and incorporates herein its responses to Paragraphs 1 through 45 of the Complaint as if same were set forth fully herein.

47. Intervenor denies the allegations set forth in Paragraph 45 of Count Three of the Complaint.

48. Intervenor denies the allegations set forth in Paragraph 48 of Count Three of the Complaint.

49. Intervenor denies the allegations set forth in Paragraph 49 of Count Three of the Complaint.

50. Intervenor denies the allegations set forth in Paragraph 50 of Count Three of the Complaint.

51. Intervenor denies the allegations set forth in Paragraph 51 of Count Three of the Complaint.



COUNT FOUR  
JURISDICTION OVER UNAPPROVED SPENDING PLAN

52. Intervenor repeats and incorporates herein its responses to Paragraphs 1 through 51 of the Complaint as if same were set forth fully herein.

53. Intervenor denies the allegations set forth in Paragraph 53 of Count Four of the Complaint.

54. Intervenor denies the allegations set forth in Paragraph 54 of Count Four of the Complaint.

55. Intervenor denies the allegations set forth in Paragraph 55 of Count Four of the Complaint.

56. Intervenor denies the allegations set forth in Paragraph 56 of Count Four of the Complaint.

57. Intervenor denies the allegations set forth in Paragraph

**WHEREFORE**, Defendant/Intervenor 10 Morton, respectfully requests an Order containing the following relief:

- a. Denying the relief sought by the Borough of East Rutherford in its Complaint;
- b. Granting Defendant/Intervenor 10 Morton, the right to file a counterclaim and/or builder's remedy lawsuit in the event that the Borough of East Rutherford

## Affirmative Defenses

### First Affirmative Defense

The Borough of East Rutherford has failed to submit a Housing Element that satisfies its constitutional obligations to create sufficient realistic and reasonable opportunities for the construction of low and moderate income housing to satisfy the Borough of East Rutherford's fair share of the region's unmet affordable housing needs.

### Second Affirmative Defense

The Borough of East Rutherford has failed to submit a Fair Share Plan that satisfies its constitutional obligations to create sufficient realistic and reasonable opportunities for the construction of low and moderate income housing to satisfy the Borough of East Rutherford's fair share of the region's unmet affordable housing needs.

### Third Affirmative Defense

The Borough of East Rutherford has not satisfied its obligations, both constitutional and statutory, with respect to providing a realistic and reasonable opportunity for the construction of low and moderate income housing to satisfy the Borough of East Rutherford's fair share of the region's unmet affordable housing needs.

#### Fourth Affirmative Defense

The Borough of East Rutherford has not adopted zoning ordinances and land use regulations which create a realistic and reasonable opportunity to provide for the Borough of East Rutherford's fair share of affordable housing and, as such, has failed to meet its constitutional obligations.

**WHEREFORE,** Defendant/Intervenor 10 Morton, respectfully requests an Order containing the following relief:

- a. Denying the relief sought by the Borough of East Rutherford in its Complaint;
- b. Ordering the Borough of East Rutherford to include the Property in its Fair Share Plan;
- c. Ordering the Borough of East Rutherford to submit to the Court, within a time period to be set by the Court, a compliance plan incorporating the Property, which compliance plan will bring the Borough of East Rutherford into compliance with the requirements of the Constitution;
- d. Granting Defendant/Intervenor 10 Morton, the right to file a counterclaim and/or builder's remedy lawsuit in the event that the Borough of East Rutherford fails to file a Housing Element and Fair Share Plan that complies

with the Borough of East Rutherford's constitutional obligations;

- e. Ordering the Borough of East Rutherford to pay Defendant's attorney's fees and costs; and
- f. Such other relief as this Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Richard J. Abrahamsen, Esq., Attorney for the Defendant/Intervenor, is designated as trial counsel in the above captioned matter.

Dated:

  
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ABRAHAMSEN LAW FIRM, L.L.C.  
Richard J. Abrahamsen, Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R. 4:5-1, I hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and, no other action or arbitration proceeding is contemplated.

Further, I am unaware of any non-parties who should otherwise be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same facts.

  
\_\_\_\_\_  
ABRAHAMSEN LAW FIRM, L.L.C.  
Richard J. Abrahamsen, Esq.

Dated:



# 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)

- |  |   |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN              | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION                |
| 274 RISPERDAL/SEROQUEL/ZYPREXA         | 291 PELVIC MESH/GYNECARE                                  |
| 278 ZOMETHA/AREXIA                     | 292 PELVIC MESH/BARD                                      |
| 279 GADOLINIUM                         | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 282 FOSAMAX                            | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS       | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                           | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR              |
| 287 YAZ/YASMIN/OCELLA                  | 300 TALC-BASED BODY POWDERS                               |
| 288 PRUDENTIAL TORT LITIGATION         | 601 ASBESTOS  |
| 289 REGLAN                             | 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

**Appendix XII-B1**

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>		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 Richard J. Abrahamsen, Esq.		TELEPHONE NUMBER (201) 840-5660	COUNTY OF VENUE Bergen	
FIRM NAME (if applicable) Abrahamsen Law Firm, LLC		DOCKET NUMBER (when available) 5912-15		
OFFICE ADDRESS 115 River Road, Suite 828 Edgewater, NJ 07020		DOCUMENT TYPE Answer		
		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) Intervener, 10 Morton, LLC		CAPTION In The Matter of the Application of the Borough of East Rutherford for Judgment of Compliance and Repose		
CASE TYPE NUMBER (See reverse side for listing) 303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input 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 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 type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>				
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 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 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 Rule 1:38-7(b).				
ATTORNEY SIGNATURE:		