

DISTRICT COURT, LARIMER COUNTY, COLORADO  
201 La Porte Avenue  
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Fort Collins, CO 80521  
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CASE NUMBER: 2016CV30886

CALEB HERNANDEZ,

Plaintiff ,

v.

CITY OF LOVELAND and ELIZABETH ANDERSON in  
her official capacity as Director of Parks and Recreation for  
the City of Loveland.

Defendants.

Ashley Hernandez-Schlagel, Reg. No. 43914  
J. Andrew Nathan, Reg. No. 3295  
NATHAN DUMM & MAYER P.C.  
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Case Number: 2016CV030886  
Div.: Ctrm:

**ANSWER AND JURY DEMAND**

Defendants, the City of Loveland (the “City”) and Elizabeth Anderson (“Ms. Anderson”), by and through their attorneys, Nathan Dumm & Mayer P.C., as and for their Answer to Plaintiff’s Complaint, states and alleges as follows:

1. With reference to paragraph 1 of Plaintiff’s Complaint, Defendants currently have insufficient information to admit or deny the allegations contained therein, and, therefore, at this time, deny the same.

2. With reference to paragraph 2 of Plaintiff's Complaint, Defendants admit that the City operates the Loveland Sports Park, which is located at 950 N. Boyd Lake Avenue, Loveland, CO 80537, and that it is a public facility used for recreational purposes. Any allegations within this paragraph that are inconsistent with these admissions are denied.

3. With reference to paragraph 3 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

4. With reference to paragraph 4 of Plaintiff's Complaint, Defendants admit they were informed that the incident at issue occurred on or about April 22, 2015, at the Loveland Sports Park in Loveland, Colorado, which is located in Larimer County. Any allegations within this paragraph that are inconsistent with these admissions are denied.

5. With reference to paragraph 5 of Plaintiff's Complaint, Defendants do not dispute venue, but deny any implication of a valid claim.

6. With reference to paragraph 6 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

7. With reference to paragraph 7 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

8. With reference to paragraph 8 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

9. With reference to paragraph 9 of Plaintiff's Complaint, Defendants admit that the City owns and operates the Loveland Sports Park, which is a public park, and that they were informed that the incident at issue occurred on or about April 22, 2015 at the Loveland Sports

Park. Any allegations within this paragraph that are inconsistent with these admissions are denied.

10. With reference to paragraph 10 of Plaintiff's Complaint, Defendants admit that on or about April 22, 2015, Elizabeth Anderson was the Director of Parks and Recreation for the City of Loveland. Defendants deny any remaining allegations in this paragraph.

11. With reference to paragraph 11 of Plaintiff's Complaint, Defendants admit they were informed that the incident at issue occurred on or about April 22, 2015, within the Skate Park at the Loveland Sports Park, and that Plaintiff was injured while riding his skateboard. Defendants currently have insufficient information to admit or deny the allegations contained in this paragraph, and, therefore, at this time, deny the same.

12. With reference to paragraph 12 of Plaintiff's Complaint, Defendants currently have insufficient information to admit or deny the allegations contained in this paragraph, and, therefore, at this time, deny the same.

13. With reference to paragraph 13 of Plaintiff's Complaint, Defendants currently have insufficient information to admit or deny the allegations contained in this paragraph, and, therefore, at this time, deny the same.

14. With reference to paragraph 14 of Plaintiff's Complaint, Defendants admit that the City Attorney received what purported to be notice pursuant to C.R.S. § 24-10-109 within 182 days of the alleged incident.

15. With reference to paragraph 15 of Plaintiff's Complaint, Defendants incorporate their responses to the allegations contained therein.

16. With reference to paragraph 16 of Plaintiff's Complaint, Defendants currently have insufficient information to admit or deny the allegations contained therein, and, therefore, at this time, deny the same.

17. With reference to paragraph 17 of Plaintiff's Complaint, the City admits it maintains the Skate Park, including the skate bowls, within the Loveland Sports Park. Any allegations that are inconsistent with this admission are denied.

18. With reference to paragraph 18 of Plaintiff's Complaint, Ms. Anderson admits that as the Director of Parks and Recreation for the City, she develops and enforces policies and procedures related to the maintenance of the Skate Park in the Loveland Sports Park, and oversees the department that is responsible for maintaining the Skate Park in the Loveland Sports Park. Any allegations that are inconsistent with these admissions are denied.

19. With reference to paragraph 19 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

20. With reference to paragraph 20 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

21. With reference to paragraph 21 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

22. With reference to paragraph 22 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

23. With reference to paragraph 23 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

24. With reference to paragraph 24 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

25. With reference to paragraph 25 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

26. With reference to paragraph 26 of Plaintiff's Complaint, Defendants currently have insufficient information to admit or deny the allegations contained therein, and, therefore, at this time, deny the same.

27. With reference to paragraph 27 of Plaintiff's Complaint, Defendants currently have insufficient information to admit or deny the allegations contained therein, and, therefore, at this time, deny the same.

28. With reference to paragraph 28 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

29. With reference to paragraph 29 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

30. With reference to paragraph 30 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

31. Defendants deny each and every other allegation contained in Plaintiff's Complaint not heretofore specifically admitted.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims fail to state a cause of action upon which relief can be granted against the Defendants.

## **SECOND AFFIRMATIVE DEFENSE**

Defendants assert the defenses of comparative negligence and/or assumption of the risk pursuant to C.R.S. §13-21-111 and §13-21-111.7.

## **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims against Defendants are governed, barred and/or limited by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

## **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are governed and/or limited by C.R.S. §13-21-115. Defendants assert all protections provided by that statute.

## **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are governed and/or limited by the provisions of C.R.S. §33-41-103. Defendants assert all protections provided by that statute.

## **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's accident was not reasonably foreseeable to Defendants.

## **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff may have suffered from pre-existing conditions for which Defendants are not responsible.

## **EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff may not be the real party in interest for all or a portion of his claimed damages and, if so, Plaintiff has failed to name and include an indispensable party or parties in whose absence complete relief cannot be provided to the present parties.

## **NINTH AFFIRMATIVE DEFENSE**

Plaintiff may have failed to mitigate his damages, if any, as required by law.

## **TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be limited by applicable state statutory damage caps.

## **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against Ms. Anderson in her official capacity are limited to those made against the City.

## **RESERVATION OF OTHER DEFENSES**

Defendants reserve the right to assert any other defenses which may be disclosed as discovery and investigation are accomplished and hereby request leave of Court to amend this Answer, if necessary, at a later date.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray the same be dismissed and denied, and that Defendants have judgment against Plaintiff for all costs herein expended, for expert witness fees, for attorney's fees as provided by law, and for such other and further relief as this Court may deem just and proper.

DEFENDANTS REQUEST A TRIAL BY JURY OF ALL ISSUES CONTAINED  
HEREIN WHICH ARE SO TRIABLE.

Respectfully submitted,

NATHAN DUMM & MAYER P.C.

/s/ Ashley Hernandez-Schlagel  
Ashley Hernandez-Schlagel, #43914  
J. Andrew Nathan, #3295  
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*Attorneys for Defendants*

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of November, 2016, a true and correct copy of the foregoing **ANSWER AND JURY DEMAND** was served via the State of Colorado's ICCES e-filing system upon each of the following::

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*/s/ Lauren Pembo*  
Lauren Pembo, Paralegal  
NATHAN DUMM & MAYER P.C.