

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

HALEY PATTON,

Plaintiff,

v.

ALTIMATE AIR, LLC and PHOENIX  
TRAMPOLINE PARK MANAGEMENT,  
LLC,

Defendants,

v.

KYLE BERK,

Additional Defendant.

CASE NUMBER: GD-17-004878

ISSUE NUMBER:

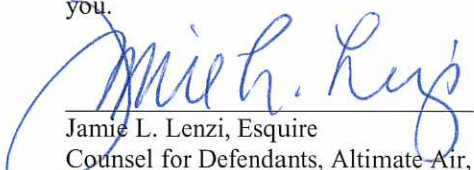
PLEADING:

**AMENDED ANSWER  
AND NEW MATTER**

NOTICE TO PLEAD:

TO: PLAINTIFF

You are hereby notified to file a written response to the enclosed NEW MATTER PURSUANT TO PA. R.C.P. 1031.1 within twenty (20) days from service hereof or a judgment may be entered against you.

  
\_\_\_\_\_  
Jamie L. Lenzi, Esquire  
Counsel for Defendants, Altimate Air, LLC and  
Phoenix Trampoline Park Management, LLC

FILED ON BEHALF OF:

ALTIMATE AIR, LLC and PHOENIX  
TRAMPOLINE PARK MANAGEMENT,  
LLC, Defendants.

COUNSEL OF RECORD:

JAMIE L. LENZI, ESQUIRE  
Pa. ID# 51865

CIPRIANI & WERNER, P.C.  
650 Washington Road, Suite 700  
Pittsburgh, PA 15228  
(412) 563-2500

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

HALEY PATTON,	)	
	)	
Plaintiff,	)	
	)	
V.	)	
	)	
ALTIMATE AIR, LLC and PHOENIX	)	
TRAMPOLINE PARK MANAGEMENT,	)	
LLC,	)	<b>CASE NO: GD-17-004878</b>
	)	
Defendants,	)	
	)	
v.	)	
	)	
KYLE BERK,	)	
	)	
Additional Defendant..	)	

**AMENDED ANSWER AND NEW MATTER**

DEFENDANTS ALTIMATE AIR, LLC and PHOENIX TRAMPOLINE PARK MANAGEMENT, LLC, ("Defendants") by and through their attorneys, CIPRIANI & WERNER, P.C. by JAMIE L. LENZI, ESQUIRE, hereby file their Amended Answer and New Matter and state as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1 of the Complaint and therefore the averments are denied and strict proof is demanded.
2. Admitted.
3. Admitted.

4. Denied as stated. Defendant Altimate Air operates the Facility at issue located at Pittsburgh Plaza East Shopping Center, 1701 Lincoln Highway, North Versailles, Allegheny County, Pennsylvania 15137.

5. Denied as stated. Defendant Phoenix manages the Facility.

6. It is admitted only that the Facility is an indoor trampoline park and entertainment complex for families and is utilized by patron including adolescents, teenagers, and adults. The remaining allegations are relative and do not require a response. To the extent a response is required, the allegations are denied and strict proof is demanded.

7. It is admitted only that Plaintiff was at the Facility on January 16, 2016 at or about the time indicated. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 and the same are denied and strict proof is demanded.

8. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and the same are denied and strict proof is demanded.

9. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and the same are denied and strict proof is demanded.

10. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and the same are denied and strict proof is demanded.

11. Admitted in part, denied in part. It is admitted that the Facility is open for teen night, it is specifically denied that the Facility was very busy and overcrowded and strict proof is demanded.

12. Denied. The averments of paragraph 12 are denied and strict proof is demanded.

13. Denied. The averments of paragraph 13 are denied and strict proof is demanded.

14. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and the same are denied and strict proof is demanded.

15. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and the same are denied and strict proof is demanded.

16. It is admitted only that Plaintiff suffered an injury and transported out of the Facility on a stretcher and taken by ambulance. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 16 and the same are denied and strict proof is demanded.

17. The allegations of paragraph 17 are legal conclusions for which no response is required.

18. The allegations of paragraph 18 are legal conclusions for which no response is required.

19. The averments of paragraph 19 are denied and strict proof is demanded.

20. The averments of paragraph 20 are denied and strict proof is demanded.

COUNT I  
HALEY PATON v. ALTIMATE AIR, LLC  
NEGLIGENCE

21. Paragraphs 1 through 20 above are incorporated herein by reference.

22. Denied. The allegations in paragraph 22 a. through r. are specifically denied and strict proof is demanded. It is denied that Defendant engaged in any acts or omissions that were reckless, grossly negligent, intentional, willful and/or careless. It is further denied that any injuries sustained by Plaintiff were the direct result of any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

23. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 a. through h. regarding Plaintiff's alleged injuries and the same are denied and strict proof is demanded. It is denied that any injuries sustained by Plaintiff were the direct and proximate result of any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

24. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 regarding damages allegedly suffered by Plaintiff and the same are denied and strict proof is demanded. It is denied that any damages allegedly suffered by Plaintiff were the direct and proximate result of any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

WHEREFORE, Defendants Altimate Air, LLC and Phoenix Trampoline Park Management, LLC, demands judgment in their favor and against Plaintiff plus interest, costs and attorneys fees and such other relief as the Court deems necessary and proper.

COUNT II  
HALEY PATON: v. PHOENIX TRAMPOLINE MANAGEMENT, LLC  
NEGLIGENCE

25. Defendants incorporate by reference paragraphs 1- 24.

26. Denied. The allegations in paragraph 26 a. through r. are specifically denied and strict proof is demanded. It is denied that Defendant engaged in any acts or omissions that were reckless, grossly negligent, intentional, willful and/or careless. It is further denied that any injuries sustained by Plaintiff were the direct result of any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

27. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 a. through h. regarding Plaintiff's alleged injuries and the same are denied and strict proof is demanded. It is denied that any injuries sustained by Plaintiff were the direct and proximate result of any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

28. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 regarding damages allegedly suffered by Plaintiff and the same are denied and strict proof is demanded. It is denied that any damages allegedly suffered by Plaintiff were the direct and proximate result of

any actions or inaction of Defendant. By way of further response, Defendant at all times relevant acted with due care with regard to patrons of the Facility, including Plaintiff.

WHEREFORE, Defendants Altimate Air, LLC and Phoenix Trampoline Park Management, LLC, demands judgment in their favor and against Plaintiff plus interest, costs and attorneys fees and such other relief as the Court deems necessary and proper.

### **NEW MATTER**

29. Defendants incorporate by reference paragraphs 1 through 28.

30. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

31. At all times relevant hereto, Plaintiff was or should have been aware of her surroundings and, to the extent any condition existed, such condition, if any, was visible and open and obvious to Plaintiff. As such, there is no duty owed by Defendants to Plaintiff.

32. Plaintiff was negligent, careless, and or reckless generally, and in the following particulars:

- a. In failing to see what was there to be seen;
- b. In failing to take proper precautions under the circumstances;
- c. In knowingly exposing herself to risks associated with use of the Facility and the trampolines given her prior existing physical abilities and/or limitations;
- d. In being inattentive and generally unaware of conditions around her;
- e. In failing to conduct herself appropriately in the use of the Facility and/or the trampolines;
- f. In engaging in conduct while on the trampoline that caused her to fall and or come in contact with equipment and/or other participants;
- g. In failing to adhere to warning signs and posted rules existing at the time;

- h. In being careless, negligent, and/or reckless in the use of the Facility and the trampolines.

33. Accordingly, Plaintiff was contributorily negligent in excess of fifty (50%) percent, and Plaintiff is barred from maintaining this action.

34. Alternatively, Plaintiffs' claims are limited and/or reduced pursuant to the provisions of comparative negligence set forth in 42 Pa. C.S.A. § 7201 et seq.

35. At all times relevant, Plaintiff was a participant in recreational activities at the Facility including the use of the trampolines and was fully aware of the risks associated therewith, and freely accepted those risks.

36. Additionally, at all times relevant, Plaintiff was aware of the risks inherent in the recreational activity at issue including any and all risks in and/or around the trampolines.

37. Accordingly, Plaintiff assumed the risk of any and all injuries, damages and/or losses and Plaintiff's claims are barred by the Pennsylvania no-duty rule and/or assumption of the risk.

38. Any injuries, damages, or losses allegedly suffered by Plaintiff were the result of a superseding and/or intervening cause or causes not of Defendants doing and over which Defendants had no control.

39. Any injuries, damages, or losses allegedly suffered by Plaintiff were the proximate and/or legal cause of the actions and/or inactions of other parties and/or persons over whom Defendants exercised no control.

40. Plaintiff's claims are barred in whole or in part on grounds of release.

41. To the extent that discovery should so reveal, Defendants plead the doctrine of payment, waiver, set off, and estoppel as a bar and/or set off to any recovery in this case.



42. The actions and/or inactions of Plaintiff were the sole cause, or in the alternative, the intervening and/or superseding cause of the incident and all alleged injuries and/or damages in the Complaint.

43. Plaintiff's injuries and/or damages were pre-existing in nature and did not result from any alleged actions and/or inaction of Defendants.

44. Plaintiff failed to mitigate any alleged damages and/or losses.

WHEREFORE, Defendants Altimate Air, LLC and Phoenix Trampoline Management, LLC demand judgment in their favor and against Plaintiff plus interest, costs and attorneys fees and such other relief as the Court deems necessary and proper.

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY:



JAMIE L. LENZI, ESQUIRE

Attorney for the Defendants


Altimate Air, LLC and Phoenix Trampoline Management, LLC

A JURY TRIAL IS DEMANDED

**VERIFICATION**

I, Mike Chelel, an authorized representative of Altimate Air, LLC and Phoenix Trampoline Park Management, LLC hereby certify that the statements in this AMENDED ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief, including information obtained from employees of the above referenced organization. This statement and verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

5-7-18  
Date

  
Title: Manager

**CERTIFICATE OF SERVICE**

Counsel for the defendants, Altimate Air, LLC and Phoenix Trampoline Management, LLC, hereby certifies that a true and correct copy of its **AMENDED ANSWER AND NEW MATTER** has been served on all counsel of record, by first-class mail, postage prepaid, according to the Pennsylvania Rules of Civil Procedure, on the 7<sup>th</sup> day of May, 2018.

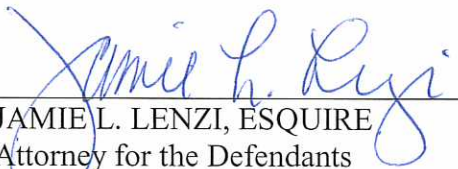
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Rhonda J. Sudina, Esquire  
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2300 One Mellon Bank Center  
Pittsburgh, PA 15219-2508  
*Attorneys for Additional Defendant*

Respectfully submitted,

CIPRIANI & WERNER, P.C.

BY:

  
\_\_\_\_\_  
JAMIE L. LENZI, ESQUIRE  
Attorney for the Defendants  
Altimate Air, LLC and Phoenix Trampoline  
Management, LLC