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**FILED**  
ALAMEDA COUNTY  
SEP 26 2019  
*Manuel Diaz*

ORIGINAL

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9 EASTERN JUNGLE GYM, INC.

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

13 JEREMY OPPERMAN and LEANNE  
14 OPPERMAN,

15 Plaintiffs,

16 v.

17 FIRST PRESBYTERIAN CHURCH OF  
18 NEWARK dba PARK SIDE  
19 PRESCHOOL and HEATHER  
20 MITCHELL and DOES ONE through  
21 ONE HUNDRED, inclusive,

22 Defendants.

CASE NO. RG19002975

**ANSWER OF EASTERN JUNGLE GYM,  
INC. TO CROSS-COMPLAINT OF FIRST  
PRESBYTERIAN CHURCH OF NEWARK,  
dba PARK SIDE PRESCHOOL, AND  
HEATHER MITCHELL**

Action Filed: January 17, 2019  
Cross-Comp Filed: July 29, 2019  
Trial Date: June 15, 2020

23 FIRST PRESBYTERIAN CHURCH OF  
24 NEWARK dba PARK SIDE  
25 PRESCHOOL and HEATHER  
26 MITCHELL,

27 Cross-Complainants,

28 v.

EASTERN JUNGLE GYM, INC. and  
ROES ONE through TEN, inclusive,

Cross-Defendants.

Cross-Defendant EASTERN JUNGLE GYM, INC., in answer to the Cross-Complaint of  
FIRST PRESBYTERIAN CHURCH OF NEWARK, dba PARK SIDE PRESCHOOL, and  
4848-6231-2871.1

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
San Jose

BY FAX

1 HEATHER MITCHELL herein, herewith denies each and every, all and singular, the allegations  
2 of said Cross-Complaint, and in this connection Cross-Defendant denies that Cross-Complainants  
3 have been injured or damaged in any of the sums mentioned in said Cross-Complaint, or in any  
4 sum, or at all as the result of any act or omission of this answering Cross-Defendant.

5 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
6 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
7 CONTAINED THEREIN, this answering Cross-Defendant alleges that said Cross-Complaint  
8 fails to state facts sufficient to constitute a cause of action against this answering Cross-  
9 Defendant.

10 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
11 COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION  
12 CONTAINED THEREIN, this answering Cross-Defendant alleges that the Cross-Complaint, and  
13 each cause of action thereof, is barred by the statutes of limitation set forth in the California Code  
14 of Civil Procedure, commencing with section 335 and continuing through section 349.4, and any  
15 other applicable periods of limitation.

16 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
17 COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF ACTION  
18 CONTAINED THEREIN, this answering Cross-Defendant alleges that said injuries sustained by  
19 Cross-Complainants were either wholly or in part negligently caused by persons, firms,  
20 corporations or entities other than this answering Cross-Defendant, and said negligence is either  
21 imputed to Cross-Complainants by reason of the relationship of said parties to Cross-  
22 Complainants and/or said negligence comparatively reduces the percentage of negligence, if any,  
23 by this answering Cross-Defendant.

24 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
25 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
26 CONTAINED THEREIN, this answering Cross-Defendant is informed and believes and thereon  
27 alleges that at all times mentioned herein, Cross-Complainants were negligent, careless, reckless,  
28 and unlawfully conducted themselves so as to directly and proximately contribute to the

1 happening of the incident and the occurrence of the alleged damages. This negligence bars either  
2 completely or partially the recovery sought by Cross-Complainants.

3 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
4 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
5 CONTAINED THEREIN, this answering Cross-Defendant is informed and believes, and thereon  
6 alleges, that the injuries and damages which are the subject of the Cross-Complaint were  
7 proximately caused by the acts of other defendants, persons, and/or other entities, and that these  
8 acts were an intervening and superseding cause of the injuries and damages, if any, of which  
9 Cross-Complainants complain, thus barring Cross-Complainants from any recovery against this  
10 answering Cross-Defendant.

11 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
12 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
13 CONTAINED THEREIN, this answering Cross-Defendant alleges that the injury, damage or  
14 loss, if any sustained by Cross-Complainants was due to and proximately caused by the misuse,  
15 mishandling and misapplication of the products described in the Cross-Complaint.

16 AS AN SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
17 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
18 CONTAINED THEREIN, this answering Cross-Defendant is informed and believes and thereon  
19 alleges that Cross-Complainants did not rely upon any representations made by this answering  
20 Cross-Defendant, and therefore, any injuries, losses or damages complained of by Cross-  
21 Complainants, if any there were, were not occasioned by any representations made by this  
22 answering Cross-Defendant.

23 AS A EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
24 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
25 CONTAINED THEREIN, this answering Cross-Defendant alleges that if the products referred to  
26 in the Cross-Complaint were defective in any respect, such defects were proximately caused by  
27 the alterations, modifications, improper maintenance, improper handling or improper use of said  
28 products by Cross-Complainants, or by similar such conduct of Cross-Complainants' agents,

1 employees or contractors.

2 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
3 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
4 CONTAINED THEREIN, this answering Cross-Defendant alleges is informed and believes and  
5 thereon alleges that, by the exercise of reasonable effort, Cross-Complainants could have  
6 mitigated the damages allegedly suffered; however, Cross-Complainants failed and refused, and  
7 continue to fail and refuse, to exercise a reasonable effort to mitigate the damages.

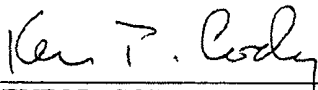
8 AS AN TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE CROSS-  
9 COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF ACTION  
10 CONTAINED THEREIN, this answering Cross-Defendant alleges that in the event it is  
11 determined that the products in question were defective, then and in such event, each defect was  
12 discovered by Cross-Complainants, or in the exercise of reasonable care should have been  
13 discovered by Cross-Complainants, who nevertheless continued to unreasonably, improperly and  
14 negligently use said products, all of which operates as a bar to recovery.

15 WHEREFORE, this answering Cross-Defendant prays as follows:

- 16 1. That Cross-Complainants take nothing from this answering Cross-Defendant by  
17 their Cross-Complaint;
- 18 2. That this answering Cross-Defendant be awarded judgment in this action;
- 19 3. For attorneys' fees incurred herein;
- 20 4. For costs of suit incurred herein;///
- 21 5. For such other and further relief as the Court deems proper.

22  
23 Dated: September 25, 2019

ROPERS, MAJESKI, KOHN & BENTLEY

24  
25 By:   
26 KEVIN P. CODY  
27 Attorneys for Cross-Defendant  
28 EASTERN JUNGLE GYM, INC.

1 **CASE NAME: Opperman, et al. v. First Presbyterian Church of Newark, et al.**

2 **ACTION NO.: Alameda County Superior Court Case No. RG19002975**

3 **PROOF OF SERVICE**

4 **METHOD OF SERVICE**

- 5  First Class Mail                       Facsimile                       Messenger Service  
6  Overnight Delivery                       E-Mail/Electronic Delivery

7 1. At the time of service I was over 18 years of age, not a party to this action and a resident  
8 of Santa Clara County.

9 2. My business address is 50 West San Fernando Street, Suite 1300, San Jose, CA 95113.

10 3. On September 26, 2019 I served the following documents:

11 **ANSWER OF EASTERN JUNGLE GYM, INC. TO CROSS-COMPLAINT OF  
12 FIRST PRESBYTERIAN CHURCH OF NEWARK, dba PARK SIDE  
13 PRESCHOOL, AND HEATHER MITCHELL**

14 4. I served the documents on the persons on the attached service list (along with their fax  
15 numbers and/or email addresses if service was by fax or email).

16 5. I served the documents by the following means:

17 a.  By United States Mail: I enclosed the documents in a sealed envelope or package  
18 addressed to the persons at the addresses specified on the attached service list and placed the  
19 envelope for collection and mailing, following our ordinary business practices. I am readily  
20 familiar with this business's practice for collecting and processing correspondence for mailing.  
21 On the same day that correspondence is placed for collection and mailing, it is deposited in the  
22 ordinary course of business with the United States Postal Service, in a sealed envelope with  
23 postage fully prepaid at the address listed in paragraph 2, above.

24 b.  By Overnight Delivery: I enclosed the documents in an envelope or package  
25 provided by an overnight delivery carrier and addressed to the persons at the addresses on the  
26 attached service list. I placed the envelope or package for collection and overnight delivery at an  
27 office or a regularly utilized drop box of the overnight delivery carrier.

28 c.  By Messenger: I served the documents by placing them in an envelope or package  
addressed to the persons at the addresses listed on the attached service list and providing them to  
a messenger for service. (Separate declaration of personal service to be provided by the  
messenger.)

d.  By Fax Transmission: Based on an agreement between the parties and in  
conformance with Rule 2.306, and/or as a courtesy, I faxed the documents to the persons at the  
fax numbers listed on the attached service list. (Separate Proof of Transmission by Fax to be  
provided.)

e.  By Email or Electronic Transmission: Based on an agreement between the parties  
and/or as a courtesy, I sent the documents via my electronic service address to the persons at the  
email addresses listed on the attached service list. I did not receive, within a reasonable time after  
the transmission, any electronic message or other indication that the transmission was  
unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Dated: August 26, 2019

  
Michelle Cecchini

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**SERVICE LIST**

*Opperman, et al. v. First Presbyterian Church of Newark, et al.*  
Alameda County Superior Court Case No. RG19002975

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<p>David F. Beach Sarah Jane T.C. Truong Perry, Johnson, Anderson, Miller &amp; Moskowitz LLP 438 First Street, Fourth Floor Santa Rosa, CA 95401</p>	<p>Attorneys for Defendants First Presbyterian Church of Newark dba Park Side Preschool and Heather Mitchell  T: (707) 525-8800 F: (707) 545-8242 E: beach@perrylaw.net truong@perrylaw.net</p>