

2019-CP-10-4193

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2019-CP-23-02304

Gregory Muxlow, individually and as  
Personal Representative of the  
Estate of Jennifer Muxlow,

Plaintiff,

v.

Natasha Anglin, Henrietta Benson,  
Donita Failey, Arnold Harris,  
Yokeema Harris, Ruby Tuesday,  
KC Mulligan's, ARIUM St. Ives,  
Carroll Management Group, South  
Carolina Department of Transportation,  
City of North Charleston, and  
Charleston County,

Defendants.

2019 AUG -8 PM 4:10  
JULIE J. ARMSTRONG  
CLERK OF COURT

**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; CITY OF NORTH  
CHARLESTON AND CHARLESTON COUNTY ANSWER TO AMENDED  
COMPLAINT**

**TO: JOSHUA T. HAWKINS AND HELENA L. JEDNINIAC, ATTORNEYS FOR  
PLAINTIFF, GREGORY MUXLOW, INDIVIDUALLY AND AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF JENNIFER MUXLOW:**

AND NOW COME THE DEFENDANTS, THE SOUTH CAROLINA DEPARTMENT  
OF TRANSPORTATION (hereinafter "SCDOT"), THE CITY OF NORTH CHARLESTON  
AND CHARLESTON COUNTY by and through their undersigned counsel, and file this Answer  
and Defenses to Plaintiff's Complaint, showing the Court as follows:

**FOR A FIRST DEFENSE AND BY WAY OF ANSWER**

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is  
denied, and these Defendants demand strict proof thereof.

A Certified Copy  
Paul D. Wickens  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Dated 8-5-2019

2. Defendants deny for lack of knowledge the allegations contained in Paragraph 1 of Plaintiff's Complaint.
3. Defendants deny for lack of knowledge the allegations contained in Paragraph 2 of Plaintiff's Complaint.
4. Defendants deny for lack of knowledge the allegations contained in Paragraph 3 of Plaintiff's Complaint.
5. Defendants deny for lack of knowledge the allegations contained in Paragraph 4 of Plaintiff's Complaint.
6. Defendants deny for lack of knowledge the allegations contained in Paragraph 5 of Plaintiff's Complaint.
7. Defendants deny for lack of knowledge the allegations contained in Paragraph 6 of Plaintiff's Complaint.
8. Defendants deny for lack of knowledge the allegations contained in Paragraph 6 of Plaintiff's Complaint.
9. Defendants deny for lack of knowledge the allegations contained in Paragraph 7 of Plaintiff's Complaint.
10. Defendants deny for lack of knowledge the allegations contained in Paragraph 8 of Plaintiff's Complaint.
11. Defendants deny for lack of knowledge the allegations contained in Paragraph 9 of Plaintiff's Complaint.
12. Defendants deny for lack of knowledge the allegations contained in Paragraph 10 of Plaintiff's Complaint.

13. Defendants deny for lack of knowledge the allegations contained in Paragraph 11 of Plaintiff's complaint.
14. Defendant, South Carolina Department of Transportation (SCDOT) admits to the allegations contained in Paragraph 12 to the extent that it is an entity created by the State of South Carolina and operates in every county in South Carolina and denies for lack of knowledge the remaining allegations contained in Paragraph 12. Defendants Charleston County and the City of Charleston deny for lack of knowledge the allegations contained in Paragraph 12.
15. Defendant, the City of North Charleston admits to the allegations contained in Paragraph 13 of Plaintiff's Complaint that it is a governmental entity and political subdivision with the State of South Carolina. Defendants, SCDOT and Charleston County deny for lack of knowledge the allegations contained in Paragraph 13 of Plaintiff's complaint.
16. Defendant, Charleston County admits to the allegations contained in Paragraph 14 of Plaintiff's Complaint that it is a governmental entity and political subdivision with the State of South Carolina. Defendants SCDOT and the City of North Charleston deny for the lack of knowledge the allegations contained in Paragraph 14 of Plaintiff's Complaint.
17. Defendants admit to the allegations contained in Paragraph 15 of Plaintiff's Complaint.
18. The allegations contained in Paragraph 16 constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary, Defendants deny the allegations contained in Paragraph 16 and demand strict proof thereof.
19. Defendants admit or deny the allegations contained in Paragraph 17 of Plaintiff's Complaint as previously admitted or denied.

20. Defendants admit to the allegations contained in Paragraph 198 to the extent that it has filed an answer on July 15, 2019 and denies for lack of knowledge the remaining allegations contained on paragraph 18.
21. Defendants deny for lack of knowledge the allegations contained in Paragraph 19 of Plaintiff's Complaint.
22. Defendants deny for lack of knowledge the allegations contained in Paragraph 20 of Plaintiff's Complaint.
23. Defendants deny for lack of knowledge the allegations contained in Paragraph 21 of Plaintiff's Complaint.
24. Defendants deny for lack of knowledge the allegations contained in Paragraph 22 of Plaintiff's Complaint.
25. Defendants deny for lack of knowledge the allegations contained in Paragraph 23 of Plaintiff's Complaint.
26. Defendants deny for lack of knowledge the allegations contained in Paragraph 24 of Plaintiff's Complaint.
27. Defendants deny for lack of knowledge the allegations contained in Paragraph 25 of Plaintiff's Complaint.
28. Defendants deny for lack of knowledge the allegations contained in Paragraph 26 of Plaintiff's Complaint.
29. Defendants deny for lack of knowledge the allegations contained in Paragraph 27 of Plaintiff's Complaint.
30. Defendants deny for lack of knowledge the allegations contained in Paragraph 28 of Plaintiff's Complaint.

31. Defendants deny for lack of knowledge the allegations contained in Paragraph 29 of Plaintiff's Complaint.
32. Defendants deny for lack of knowledge the allegations contained in Paragraph 30 of Plaintiff's Complaint.
33. Defendants deny for lack of knowledge the allegations contained in Paragraph 31 of Plaintiff's Complaint.
34. Defendants deny for lack of knowledge the allegations contained in Paragraph 32 of Plaintiff's Complaint.
35. Defendants deny for lack of knowledge the allegations contained in Paragraph 33 of Plaintiff's Complaint.
36. Defendants deny for lack of knowledge the allegations contained in Paragraph 34 of Plaintiff's Complaint.
37. Defendants deny for lack of knowledge the allegations contained in Paragraph 35 of Plaintiff's Complaint.
38. Defendants deny for lack of knowledge the allegations contained in Paragraph 36 of Plaintiff's Complaint.
39. Defendants deny for lack of knowledge the allegations contained in Paragraph 37 of Plaintiff's Complaint.
40. Defendants deny for lack of knowledge the allegations contained in Paragraph 38 of Plaintiff's Complaint.
41. Defendants deny for lack of knowledge the allegations contained in Paragraph 39 of Plaintiff's Complaint.

42. Defendants deny for lack of knowledge the allegations contained in Paragraph 40 of Plaintiff's complaint.
43. Defendants SCDOT and the City of North Charleston deny the allegations contained in Paragraph 41 of Plaintiff's Complaint. Defendant, Charleston County states that they allegations contained in Paragraph 41 do not pertain to it and therefore no response is necessary and, to the extent that a response is deemed necessary, denies the allegations contained in Paragraph 41.
44. Defendants Charleston County and the City of North Charleston deny the allegations contained in Paragraph 42 of Plaintiff's Complaint. Defendant, SCDOT states that the allegations contained in Paragraph 42 do not pertain to it and therefore no response is necessary and, to the extent that a response is deemed necessary denies the allegations contained in Paragraph 42.
45. Defendants deny for lack of knowledge the allegations contained in Paragraph 43 of Plaintiff's Complaint.
46. Defendants deny the allegations contained in Paragraph 44 of Plaintiff's Complaint.
47. Defendants deny the allegations contained in Paragraph 45 of Plaintiff's Complaint.
48. Defendants deny the allegations contained in Paragraph 46 of Plaintiff's Complaint.
49. Defendants deny the allegations contained in Paragraph 47 of Plaintiff's Complaint.
50. Defendants state that the allegations contained in Paragraph 48 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 48 of Plaintiff's Complaint.
51. Defendants deny the allegations contained in Paragraph 49 of Plaintiff's Complaint.

**FIRST CAUSE OF ACTION**  
**(Common Law Recklessness and Negligence)**

52. Defendants admit or deny the allegations contained in Paragraph 50 of Plaintiff's Complaint as previously admitted or denied.
53. Defendants state that the allegations contained in Paragraph 51, sub-parts a through j and l of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 51, sub-parts a through j and l of Plaintiff's Complaint and Defendants further deny the allegations contained in Paragraph 49, sub-parts k and m of Plaintiff's Complaint.
54. Defendants state that the allegations contained in Paragraph 52 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 52 of Plaintiff's Complaint
55. Defendants deny the allegations contained in Paragraph 53 of Plaintiff's Complaint.
56. Defendants state that the allegations contained in Paragraph 54, sub-parts a through j and l through p of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 54, sub-parts a through j and l through p of Plaintiff's Complaint and Defendants further deny the allegations contained in Paragraph 54, sub-parts k and q of Plaintiff's Complaint.
57. Defendants deny the allegations contained in Paragraph 55 of Plaintiff's Complaint.
58. Defendants deny the allegations contained in Paragraph 56 of Plaintiff's Complaint.

**SECOND CAUSE OF ACTION  
(Negligent Entrustment)**

59. Defendants admit or deny the allegations contained in Paragraph 57 of Plaintiff's Complaint as previously admitted or denied.
60. Defendants state that the allegations contained in Paragraph 58 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 58 of Plaintiff's Complaint.
61. Defendants state that the allegations contained in Paragraph 59 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 59 of Plaintiff's Complaint.
62. Defendants state that the allegations contained in Paragraph 60 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 60 of Plaintiff's Complaint.
63. Defendants state that the allegations contained in Paragraph 61 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 61 of Plaintiff's Complaint.
64. Defendants state that the allegations contained in Paragraph 62 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, these Defendants deny the allegations contained in Paragraph 62 of Plaintiff's Complaint.



65. Defendants state that the allegations contained in Paragraph 63 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 63 of Plaintiff's Complaint.

**FOR A THIRD CAUSE OF ACTION  
(Negligent Hiring, Supervision, and Retention)**

66. Defendants admit or deny the allegations contained in Paragraph 64 of Plaintiff's Complaint as previously admitted or denied.
67. Defendants state that the allegations contained in Paragraph 65 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 65 of Plaintiff's Complaint.
68. Defendants state that the allegations contained in Paragraph 66 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 66 of Plaintiff's Complaint.
69. Defendants state that the allegations contained in Paragraph 67 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 67 of Plaintiff's Complaint.
70. Defendants state that the allegations contained in Paragraph 68 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 68 of Plaintiff's Complaint.

**FOR A FOURTH CAUSE OF ACTION  
(Survival Action, S.C. Code Ann. § 15-5-90)**

71. Defendants admit or deny the allegations contained in Paragraph 69 of Plaintiff's Complaint as previously admitted or denied.
72. Defendants state that the allegations contained in Paragraph 70 of Plaintiff's Complaint constitute statements of law to which no response is required and, to the extent that a response is deemed to be required, Defendants deny the allegations contained in Paragraph 70 of Plaintiff's Complaint.
73. Defendants deny the allegations contained in Paragraph 71 of Plaintiff's Complaint.
74. Defendants deny the allegations contained in Paragraph 72 of Plaintiff's Complaint.
75. Defendants deny the allegations contained in Paragraph 73 of Plaintiff's Complaint.
76. Defendants deny the allegations contained in Paragraph 74 of Plaintiff's Complaint.

**FOR A FIFTH CAUSE OF ACTION  
(Wrongful Death)**

77. Defendants admit or deny the allegations contained in Paragraph 75 of Plaintiff's Complaint as previously admitted or denied.
78. Defendants deny the allegations contained in Paragraph 76 of Plaintiff's Complaint.
79. Defendants deny the allegations contained in Paragraph 77 of Plaintiff's Complaint.
80. Defendants deny the allegations contained in Paragraph 78 of Plaintiff's Complaint.
81. Defendants deny the allegations contained in Paragraph 79 of Plaintiff's Complaint.

**FOR A SIXTH CAUSE OF ACTION  
(South Carolina Unfair Trade Practice Act Violation)**

82. Defendants admit or deny the allegations contained in Paragraph 80 of Plaintiff's Complaint as previously admitted or denied.

83. Defendants state that the allegations contained in Paragraph 81 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 81 of Plaintiff's Complaint.
84. Defendants state that the allegations contained in Paragraph 82 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 82 of Plaintiff's Complaint.
85. Defendants state that the allegations contained in Paragraph 83 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 83 of Plaintiff's Complaint.
86. Defendants state that the allegations contained in Paragraph 84 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 84 of Plaintiff's Complaint.
87. Defendants state that the allegations contained in Paragraph 85 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 85 of Plaintiff's Complaint.
88. Defendants state that the allegations contained in Paragraph 86 of Plaintiff's Complaint do not appear to apply to these Defendants and that an answer is therefore not appropriate or

required. To the extent that an answer is deemed to be required, Defendants deny the allegations contained in Paragraph 86 of Plaintiff's Complaint.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Class Action)**

89. Defendants admit or deny the allegations contained in Paragraph 87 of Plaintiff's Complaint as previously admitted or denied.
90. Defendants deny the allegations contained in Paragraph 88 of Plaintiff's Complaint.
91. Defendants deny the allegations contained in Paragraph 89 of Plaintiff's Complaint.
92. Defendants deny the allegations contained in Paragraph 90 of Plaintiff's Complaint.
93. Defendants deny the allegations contained in Paragraph 91 of Plaintiff's Complaint.
94. Defendants deny the allegations contained in Paragraph 92 of Plaintiff's Complaint.
95. Defendants deny the allegations contained in Paragraph 93 of Plaintiff's Complaint.
96. Defendants deny the allegations contained in Paragraph 94 of Plaintiff's Complaint.
- Defendants deny the allegations contained in Paragraph 95 of Plaintiff's Complaint.
97. Defendants deny the allegations contained in Paragraph 96 of Plaintiff's Complaint.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(Gross Negligence and Recklessness as to DOT, Charleston County,**  
**and the City of North Charleston)**

98. Defendants admit or deny the allegations contained in Paragraph 97 of Plaintiff's Complaint as previously admitted or denied.
99. Defendants deny for lack of knowledge the allegations contained in Paragraph 98 of Plaintiff's Complaint.
100. Defendants deny the allegations contained in Paragraph 99 of Plaintiff's Complaint.
101. Defendants deny the allegations contained in Paragraph 100 of Plaintiff's Complaint.

- 102. Defendants deny the allegations contained in Paragraph 101, including sub-parts a through f of Plaintiff's Complaint.
- 103. Defendants deny the allegations contained in Paragraph 102, including sub-parts a through e of Plaintiff's Complaint.
- 104. Defendants deny the allegations contained in Paragraph 103, including sub-parts a through k of Plaintiff's Complaint.
- 105. Defendants deny the allegations contained in Paragraph 104 of Plaintiff's Complaint.
- 106. Defendants deny the allegations contained in Paragraph 105 of Plaintiff's Complaint.
- 107. Defendants deny the allegations contained in Paragraph 106 of Plaintiff's Complaint.

**FOR A SECOND DEFENSE  
(Improper Venue)**

- 108. That the proper venue for this action is Charleston County, South Carolina pursuant to S.C. Code Ann. §15-78-100(b) and §15-7-30.

**FOR A THIRD DEFENSE  
(Sole Negligence)**

- 109. That any damage suffered by the Plaintiff is the direct and proximate result of her own negligence, carelessness and recklessness, so as to bar the Plaintiff from recovery against this Defendant.

**FOR A FOURTH DEFENSE  
(Intervening and Superseding Acts of a Third Person or Entity)**

- 110. That, upon information and belief, even if these Defendants were negligent in the manner described in the Plaintiff's Complaint, which is specifically denied, whatever injuries or damages which may have been sustained by the Plaintiff were the direct and proximate result of the intervening and superseding negligence of others, for whose conduct these

Defendants bear no responsibility. Therefore, the Plaintiff is barred from recovery against these Defendants.

**FOR A FIFTH DEFENSE  
(Contributory/Comparative Negligence)**

111. That any damage suffered by the Plaintiff is the direct and proximate cause of her own comparative and contributory negligence, and therefore, Plaintiff's recovery should be barred, or alternatively reduced, proportionately to the Plaintiff's own comparative and contributory negligence.

**FOR A SIXTH DEFENSE  
(South Carolina Tort Claims Act)**

112. That the South Carolina Tort Claims Act, S.C. Code Sec. 15-78-10, *et seq.*, provides for immunity from liability and suit for any tort, except as waived by the Chapter, for the State and political subdivisions. Defendants are political subdivisions of the State of South Carolina, and thus, are entitled to the immunity provided by the Tort Claims Act including any and all applicable sections of S.C. Code Sec. 15-78-60 which Defendants hereby reserve the right to assert.

**FOR A SEVENTH DEFENSE  
(South Carolina Tort Claims Act)**

113. That the South Carolina Tort Claims Act S.C. Code Sec. 15-78-60(13) precludes liability for regulatory inspection powers or functions. The South Carolina Tort Claims Act S.C. Code Sec. 15-78-60 (15) precludes liability arising from the initial placement of signs, signals, warning devices or median barriers when the failure is the result a discretionary act of the government entity and precludes liability for the design of public highways and other public ways. The South Carolina Tort Claims Act S.C. Code Sec. 15-78-60(5)

precludes liability arising from the exercise of discretion or judgment by a government entity or the performance or failure to perform any act or service which is in the discretion or judgment of the government entity. The South Carolina Tort Claims Act S.C. Code Sec. 15-78-60(20) precludes liability for an act or omission of a person, other than an employee, including but not limited to the criminal actions of third persons.

**FOR AN EIGHTH DEFENSE  
(No Liability for Punitive Damages)**

114. That the South Carolina Tort Claims Act S.C. Code Ann. § 15-78-120(b) prohibits any award of punitive or exemplary damages.

**FOR A NINTH DEFENSE  
(Lack of Proximate Causation)**

115. That the damages suffered by Plaintiff were not proximately caused by any action or omission by Defendants.

**FOR A TENTH DEFENSE  
(Failure to State a Claim for Which Relief can be Granted)**

116. That the Plaintiff has failed to state a claim upon which relief can be granted.

**FOR AN ELEVENTH DEFENSE  
(Reservation of Additional Defenses)**

117. Defendants reserve the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

**PRAYER**

WHEREFORE, having fully answered Plaintiff's Complaint in this matter, Defendants respectfully pray:

- a. That Plaintiff's claims be dismissed;
- b. That Plaintiff take nothing by reason of this suit
- c. That the Defendants recover their costs
- d. For trial by jury, and
- e. For any such further relief to which it may be entitled.

Respectfully submitted,

s/ M. Dawes Cooke, Jr.

M. Dawes Cooke, Jr. (SC #1376)

Christopher M. Kovach (SC #79158)

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*ATTORNEYS FOR DEFENDANTS SOUTH  
CAROLINA DEPARTMENT OF  
TRANSPORTATION, CITY OF NORTH  
CHARLESTON AND CHARLESTON COUNTY*