

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-01948

Amber Leigh Coleman,

Plaintiff,

vs.

Darian Marie Joyner,

Defendant.

ANSWER
(Jury Trial Demanded)

To: Joseph Ginn, Attorney for Amber Leigh Coleman

The Defendant, Darian Marie Joyner, answering the Complaint of the Plaintiff, above named, and responding to the allegations as follows:

1. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE
(Reservation and Non-Waiver)

2. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

3. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's allegations. Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR A SECOND DEFENSE
(Lack of Proximate Cause)

4. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

5. All or a portion of Plaintiff's damages claimed in this case were not proximately caused by the subject motor vehicle collision, and this defense of lack of proximate cause is pled as a complete and total defense to all claims.

FOR A THIRD DEFENSE
(Punitive Damages Unconstitutional - Procedural Due Process)

6. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

7. To the extent that the Complaint seeks punitive or exemplary damages, it violates the right of the Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FOURTH DEFENSE
(Punitive Damages Unconstitutional - Substantive Due Process)

8. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

9. To the extent that the Complaint seeks punitive or exemplary damages, it violates the Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

10. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

11. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCR Rule 12(b)(6).

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

12. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

13. That the Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

FOR A SEVENTH DEFENSE
(Comparative Negligence)

14. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

15. That the injuries and damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law. That the Plaintiff was comparatively negligent in one or more of the following particulars:

- a. In failing and omitting to use due care;
- b. In failing and omitting to maintain a proper lookout;
- c. In failing to properly observe the road and traffic conditions;
- d. In failing to take evasive action to avoid the accident;

- e. In failing to apply brakes or failing to apply them in a timely manner;
- f. In traveling at an excessive rate of speed too fast for the conditions then and there prevailing;
- g. In failing to keep the subject motor vehicle under proper control;
- h. In failing to take any evasive action, by any means, to keep from striking the Defendants' vehicle;
- i. In failing to properly equip the subject motor vehicle with adequate and safe steering mechanisms, and if so properly equipped, in failing to properly utilize them;
- j. In failing and omitting to take any precaution whatsoever to avoid being struck by the subject vehicle;
- k. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;
- l. Upon such additional grounds as shall become evident through discovery and further development of the facts and issues, reserving all rights to make such further objections or arguments as shall be warranted.

FOR AN EIGHTH DEFENSE
(Comparative Negligence Reduction)

16. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

17. In the event the alleged negligence of the Defendant operated as a fifty (50%) percent or greater proximate cause of the accident, which is expressly denied and admitted solely for the purpose of this defense, Defendant is entitled to a reduction of any amount awarded to Plaintiff in an amount equal to that percentage of his negligence, recklessness and carelessness.

FOR A NINTH DEFENSE
(Sudden Emergency)

18. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

19. That even if the Defendant was negligent, reckless, willful and wanton, which the Defendant denies, such negligence, willfulness, wantonness and recklessness was occasioned and excused by the sudden emergency which presented itself to the Defendant and, as a result, the Defendant acted as a reasonable and prudent person would have acted under the circumstances then and there prevailing.

FOR A TENTH DEFENSE
(Unavoidable Accident)

20. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

21. The subject accident was the result of an unavoidable accident and, by reason thereof, the Defendant should not be liable, and this defense is asserted as a complete and total defense to all claims.

FOR AN ELEVENTH DEFENSE
(Intervening & Superseding Negligence)

22. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

23. That if the Defendant was negligent, which is specifically denied, the injuries and damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of others. This defense is asserted as a

complete and total defense to all claims.

FOR A TWELFTH DEFENSE
(Bifurcated Jury Trial)

24. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

25. To the extent punitive damages are claimed, the Defendant demands a bifurcated jury trial pursuant to S.C. Code Ann. §15-32-200 et. seq. and that said damages, if any, are limited as provided in said act.

26. To the extent punitive damages are claimed, the Defendant would plead the statutory cap identified in S.C. Code Ann. §15-32-530.

FOR A THIRTEENTH DEFENSE
(Negligence of Third Party)

27. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

28. Plaintiff's alleged injuries were directly and proximately caused by a party other than this Defendant, who cannot be held liable for the negligence of others.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Lack of Proper Service)

29. That the court lacks jurisdiction over the person of the Defendant because the Plaintiff has not obtained proper service in the manner required by law and, therefore, the Plaintiff's Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(2)-(6).

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court

may deem just and proper.

CLAWSON and STAUBES, LLC

s/Trey M. Nicolette

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Charleston, South Carolina
December 17, 2020