

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
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STEPHEN T. PACHECO
CLERK OF THE COURT
Desiree Brooks

CAUSE NO.: D-101-CV-2019-01095

D. MARIA SCHMIDT, as Personal Representative
of the WRONGFUL DEATH ESTATE OF
IAN SWEATT, Deceased,

Plaintiff,

v.

GENERAL MOTORS, LLC and
MANSOOR KARIMI,

Defendants.

**DEFENDANT MANSOOR KARIMI'S ANSWER TO PLAINTIFF'S
COMPLAINT FOR WRONGFUL DEATH AND PUNITIVE DAMAGES**

Defendant, MANSOOR KARIMI (hereinafter "Defendant"), by and through his attorneys, DEGRAAUW LAW FIRM, P.C. (J. Andrew deGraauw and Bryan M. Rowland), hereby submits his Answer to Plaintiff's Complaint for Wrongful Death and Punitive Damages (hereinafter referred to as "Complaint"). Defendants deny each and every allegation in said Complaint not specifically admitted herein.

I. PARTIES

1. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 1 of the Complaint and therefore denies the same and demands strict proof thereof.

2. The allegations contained in ¶ 2 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

3. Defendants admit the allegations contained in ¶ 3 of the Complaint.

II. JURISDICTION, VENUE AND JOINDER

4. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 4 of the Complaint and therefore denies the same and demands strict proof thereof.

5. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 5 of the Complaint and therefore denies the same and demands strict proof thereof.

6. Objection is made to the allegations contained in ¶ 6 of the Complaint on the grounds that the allegations call for a legal conclusion in violation of the New Mexico Rules of Civil Procedure. To the extent an answer is warranted in response to said allegations and/or to the extent said allegations can be construed against Defendant, those allegations are denied.

III. FACTUAL BACKGROUND

7. As to the allegations contained in ¶ 7, Defendant re-alleges and incorporates all of his answers contained in the above paragraphs, as if fully set forth herein.

8. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 8 of the Complaint and therefore denies the same and demands strict proof thereof.

9. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 9 of the Complaint and therefore denies the same and demands strict proof thereof.

10. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 10 of the Complaint and therefore denies the same and demands strict proof thereof.

11. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 11 of the Complaint and therefore denies the same and demands strict proof thereof.

12. Defendant denies the allegations contained in ¶ 12 of the Complaint and demands strict proof thereof.

13. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 13 of the Complaint and therefore denies the same and demands strict proof thereof.

14. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 14 of the Complaint and therefore denies the same and demands strict proof thereof.

15. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 15 of the Complaint and therefore denies the same and demands strict proof thereof.

16. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 16 and all sub-parts of the Complaint and therefore denies the same and demands strict proof thereof.

17. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 17 of the Complaint and therefore denies the same and demands strict proof thereof.

18. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 18 of the Complaint and therefore denies the same and demands strict proof thereof.

19. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 19 of the Complaint and therefore denies the same and demands strict proof thereof.

20. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in ¶ 20 of the Complaint and therefore denies the same and demands strict proof thereof.

IV. CLAIMS FOR RELIEF

COUNT 1: Negligence Against Defendant Karimi

21. As to the allegations contained in ¶ 22, Defendant re-alleges and incorporates all of his answers contained in the above paragraphs, as if fully set forth herein.

22. Defendant denies the allegations contained in ¶ 22 of the Complaint and demands strict proof thereof.

23. Objection is made to the allegations contained in ¶ 23 of the Complaint on the grounds that the allegations call for a legal conclusion in violation of the New Mexico Rules of Civil Procedure. To the extent an answer is warranted in response to said allegations and/or to the extent said allegations can be construed against Defendant, those allegations are denied.

24. Defendant denies the allegations contained in ¶ 24 of the Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in ¶ 25 of the Complaint and demands strict proof thereof.

26. Defendant denies the allegations contained in ¶ 26 of the Complaint and demands strict proof thereof.

27. Defendant denies the allegations contained in ¶ 27 of the Complaint and demands strict proof thereof.

28. Defendant denies the allegations contained in ¶ 28 of the Complaint and demands strict proof thereof.

29. Defendant denies the allegations contained in ¶ 29 and all sub-parts of the Complaint and demands strict proof thereof.

30. Defendant denies the allegations contained in ¶ 30 of the Complaint and demands strict proof thereof.

**COUNT 2:
Strict Products Liability Against GM**

31. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

32. The allegations contained in ¶ 32 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

33. The allegations contained in ¶ 33 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

34. The allegations contained in ¶ 34 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

35. The allegations contained in ¶ 35 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

36. The allegations contained in ¶ 36 and all sub-parts do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

37. The allegations contained in ¶ 37 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

38. The allegations contained in ¶ 38 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

39. The allegations contained in ¶ 39 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

40. The allegations contained in ¶ 40 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

**COUNT 3:
Negligence Against GM**

41. The allegations contained in ¶ 41 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

42. The allegations contained in ¶ 42 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

43. The allegations contained in ¶ 43 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

44. The allegations contained in ¶ 44 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

45. The allegations contained in ¶ 45 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

46. The allegations contained in ¶ 46 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

47. The allegations contained in ¶ 47 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

48. The allegations contained in ¶ 48 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

49. The allegations contained in ¶ 49 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

50. The allegations contained in ¶ 50 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

51. The allegations contained in ¶ 51 and all sub-parts do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

52. The allegations contained in ¶ 52 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

53. The allegations contained in ¶ 53 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

54. The allegations contained in ¶ 54 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

**COUNT 4:
Breach of Implied Warranty of Merchantability
Against GM**

55. The allegations contained in ¶ 55 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

56. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

57. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

58. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

59. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

60. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

61. The allegations contained in ¶ 31 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

**COUNT 5:
Damages**

62. As to the allegations contained in ¶ 62, Defendant re-alleges and incorporates all of his answers contained in the above paragraphs, as if fully set forth herein.

63. Defendant denies the allegations contained in ¶ 63 of the Complaint and demands strict proof thereof.

64. Defendant denies the allegations contained in ¶ 64 and all sub-parts of the Complaint and demands strict proof thereof.

**COUNT 6:
Punitive Damages Against GM**

65. The allegations contained in ¶ 65 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

66. The allegations contained in ¶ 66 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

67. The allegations contained in ¶ 67 do not appear to be directed towards this Defendant, and thus no answer is warranted in response to said allegations. However, to the extent an answer is warranted and/or said allegations can be construed against this Defendant, those allegations are denied.

AFFIRMATIVE DEFENSES

Defendant denies Plaintiffs' prayer for relief in its entirety.

FIRST AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states Plaintiffs may have failed to mitigate their damages.

SECOND AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states Plaintiffs may have failed to state claims upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states Plaintiffs have failed to state a claim upon which relief can be granted in regard to their claim for punitive damages.

FOURTH AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states Plaintiffs may have been negligent, and negligence may have been the sole proximate cause or contributing proximate cause of the accident and injuries as alleged.

FIFTH AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states Plaintiffs' injuries may have been the direct and proximate result of the negligence of other persons or entities not party to this lawsuit whose negligence must be considered in accordance with the doctrine of comparative fault.

SIXTH AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states notice is hereby given that said Defendants intend to rely on other defenses as they may become apparent or available during discovery proceedings.

SEVENTH AFFIRMATIVE DEFENSE

As a separate, alternative and affirmative defense, Defendant states that the claims of the Plaintiffs herein for punitive damages are barred by the Fifth and Fourteenth Amendments to the Constitution of the United States of America, as well as Article I, §10; Article II, §13; and Article II, §19 of the Constitution of the State of New Mexico, inasmuch as under the facts of this case, and an award of punitive damages would constitute a denial of equal protection, a denial of due process, and/or the imposition of an excessive fine.

WHEREFORE, Defendants, having fully answered Plaintiff's Complaint for Wrongful Death and Punitive Damages, requests that the Court dismiss the Complaint in its entirety and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

DEGRAAUW LAW FIRM, P.C.

By: /s/ J. Andrew deGraauw

J. Andrew deGraauw
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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2019, I filed the foregoing pleading electronically through the tyler tech system, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

I also hereby certify that on September 12, 2019 the foregoing was e-mailed to the following:

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/s/ J. Andrew deGraauw

J. Andrew deGraauw