

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C/A No.: 2019-CP-38-00668
)	
Joshua Stanley, as Personal Representative)	
Of the Estate of Amber Stanley, Jack Stanley))	
And Autumn Stanley, deceased)	
)	
Plaintiffs)	SOUTH CAROLINA DEPARTMENT
)	OF TRANSPORTATION'S
vs.)	ANSWER
)	(Jury Trial Demanded)
)	
KIA Motors Corp., a foreign corporation;)	
KIA Motors America, Inc., a foreign)	
Corporation; HYUNDAI America Technical)	
Center, Inc., a foreign corporation, d/b/a)	
KIA Design Center America; and South)	
Carolina Department of Transportation.)	
)	
Defendants.)	

Defendant, South Carolina Department of Transportation, (hereinafter "SCDOT"), answering the Complaint of Plaintiff herein would respectfully show unto this Honorable Court as follows:

1. Each and every allegation not hereinafter specifically, admitted, qualified or explained is denied and strict proof demanded thereof.

FOR A FIRST DEFENSE
(Failure to State a Cause of Action)

2. Defendant, SCDOT would respectfully show that each and every cause of action set forth in the Compliant fails to state a claim upon which relief can be granted as to this Defendant, and the Plaintiff's Complaint should, therefore, be dismissed pursuant to Rule 12, SCRPC.

FOR A SECOND DEFENSE
(Qualified Denial)

3. Further answering the Complaint herein, the Defendant, SCDOT, reiterates all of the allegations of the First Defense above, as fully as if repeated herein

4. As to Paragraphs 1, 2, 3, 4, 7, 8, 9, 10 11, 12, 14, 15, 16, 17, 18, 19, , 21, 22 and 26 of the Complaint, Defendant, SCDOT, lacks sufficient information on which to form a belief and therefore denies the allegations.

5. As to Paragraphs 5 and 6 of the Complaint, the same state conclusions of law to which no response is required but to the extent any response may be required the allegations are denied.

6. As to Paragraph 13 and 20 of the Complaint, Defendant, SCDOT admits that it is a “Governmental entity” defined in 1976 South Carolina Code Section 15-78-30 (d) and an action which is brought against this Defendant, SCDOT, may be brought only pursuant to S. C. Code Section 15-78-10 et. Seq. which provides for jurisdiction in the Circuit Court and venue in Orangeburg County.

7. As to Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 ,44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of the Complaint, the allegations are not directed to the Defendant, SCDOT, and no response is required.

8. As to Paragraphs 60, 61, 62, 63 and 64 of the Complaint, Defendant, SCDOT, denies the allegations and demands strict proof thereof, and asserts the public duty rule, as the South Carolina Supreme Court has held that applicable South Carolina statutes and laws do not create a special duty upon which an individual may base a tort action.

FOR A THIRD DEFENSE
(Sole negligence)

9. Further answering the Complaint herein, the Defendant, SCDOT, reiterates all of the allegations of the First and Second Defenses above, as fully as if repeated herein.

10. The Defendant, SCDOT, alleges that if the Plaintiff sustained any injuries or damages as set forth in the Complaint, the same were due to and proximately caused by the sole, willful,

wanton, reckless, careless and negligent acts and conduct of a third party or parties over which this defendant had no control resulting in injuries and damages for which the Defendant SCDOT has no liability.

FOR A FOURTH DEFENSE
(Comparative Negligence)

11. Further answering the Complaint herein, the Defendant, SCDOT, reiterates all of the allegations of the First, Second and Third Defenses above, as fully as if repeated herein.

12. Further answering said Complaint, the Defendant, SCDOT alleges that the Plaintiff is barred from recovery by the doctrine of comparative negligence in that the negligence of the Plaintiff's Decedent in causing the injuries and damages was greater than fifty percent (50%). In the alternative, Plaintiff's recovery as to this Defendant, SCDOT, if any, should be reduced by virtue of the negligence of Plaintiff's decedent.

FOR A FIFTH DEFENSE
(SC Tort Claims Act)

13. Further answering the Complaint herein, the Defendant, SCDOT, reiterates all of the allegations set forth in the First, Second, Third and Fourth Defenses, as fully as if repeated herein verbatim.

14. The Defendant, SCDOT, has the protection of sovereign immunity except as waived under the SC Tort Claims Act and is entitled to the limitations, immunities, and defenses to the Plaintiff's claims under the South Carolina Tort Claims Act, codified as *S.C. Code Ann. §15-78-10 et seq.*, including, the limitations, immunities and defenses afforded by *S.C. Code Ann. § 15-78-60*, and to the extent that such limitations, immunities and defenses are available to it, the

Defendant, SCDOT, pleads the various limitation, defenses and immunities afforded by the South Carolina Tort Claims Act as an affirmative defense to the claims alleged by the Plaintiff.

FOR A SIXTH DEFENSE
(All Affirmative Defenses)

15. Further, answering the Complaint herein, the Defendant, SCDOT, reiterates all of the allegations contained in the First, Second, Third, Fourth and Fifth Defenses above as fully as if repeated herein.

17. The facts not having been fully developed, Defendant, SCDOT, further affirmatively pleads all affirmative defenses as may be applicable in this action including: statute of limitations, fraud, comparative negligence, assumption of risk, and any other matter constituting an affirmative defense.

WHEREFORE, having fully answered, Defendant, SCDOT, prays that the Complaint be dismissed as to the Defendant, SCDOT, for the costs of this action and for such other relief as the Court and jury deem just and proper.

June 28, 2019

MICHAEL P. HORGER, LLC

s/ Michael P. Horger _____

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