

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000129

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SC Court of Appeals

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

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, Charleston County, Defendants,

of whom Ruby Tuesday, KC Mulligan's, ARIUM St. Ives and Carroll
Management Group are the..... Respondents

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INDEX

Pleadings

Plaintiff’s original Complaint filed on April 24, 2019	1
Ruby Tuesday’s answer filed May 28, 2019	17
Ruby Tuesday’s answer to amended complaint filed July 22, 2019.....	26
KC Mulligan’s answer filed on February 19, 2020	36
ARIUM St. Ives’ answer filed May 31, 2019	40
ARIUM St. Ives’ answer to amended complaint filed July 25, 2019	51
Carroll Management Group’s answer filed May 31, 2019	62
Carroll Management Group’s answer to the amended complaint filed July 25, 2019	73

Motions

Ruby Tuesday’s Motion for Judgment on the Pleadings filed September 9, 2019.....	85
Ruby Tuesday’s Motion to Amend the Order Granting Motion to Dismiss filed January 22, 2020	90
Carroll Management Group’s Motion to Amend the Order Granting Motion to Dismiss filed January 23, 2020	92

Transcripts

Transcript of Hearing, dated January 10, 2020 (pp. 1-3).....	94
Transcript of Hearing, dated January 10, 2020 (p. 16)	97
Transcript of Hearing, dated January 10, 2020 (pp. 18-22).....	98

Other Documents

Certificate of Counsel	104
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow,	)	CASE NO. 2019-CP-23-
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
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.	)	
	)	

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, 1225 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

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Greenville, South Carolina
April 24, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow,	)	CASE NO. 2019-CP-23-
	)	
Plaintiff,	)	COMPLAINT
	)	(Jury Trial Requested)
vs.	)	
	)	
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.	)	
	)	

COMES NOW, the plaintiff, as Personal Representative for the Estate of Jennifer Muxlow, alleging and complaining of the defendants as follows:

PARTIES, JURISDICTION, AND VENUE

1. Gregory Muxlow is a citizen and resident of Greenville County, South Carolina.
2. At the time of her death, Jennifer Muxlow ("Jennifer") was a citizen and resident of Charleston County, South Carolina.
3. Upon information and belief, Natasha Marie Anglin ("Anglin") is a citizen and resident of Charleston County, South Carolina.
4. Upon information and belief, Henrietta Benson ("Benson") is a citizen and resident of Charleston County, South Carolina.
5. Upon information and belief, Donita Failey ("Failey") is a citizen and resident of Charleston County, South Carolina.
6. Upon information and belief, Arnold Harris ("Harris") is a citizen and resident of Charleston County, South Carolina.
7. Upon information and belief, Yokeema Harris is a citizen and resident of Charleston County, South Carolina.
8. Upon information and belief, Ruby Tuesday is a Tennessee company doing business

throughout South Carolina, including Charleston County.

9. Upon information and belief, KC Mulligan's is a South Carolina company doing business in Charleston County, South Carolina.
10. Upon information and belief, ARIUM St. Ives ("St. Ives") is a South Carolina company doing business in Charleston County.
11. Upon information and belief, Carroll Management Group, LLC ("Carroll") is a property management group based in Georgia and doing business in South Carolina, including Charleston County.
12. The South Carolina Department of Transportation ("DoT") is an entity created by the State of South Carolina for the purpose of overseeing road construction and maintenance. Upon information and belief, DoT operates in every county in South Carolina, including Charleston County.
13. The City of North Charleston is a governmental entity and political subdivision of the State of South Carolina.
14. Charleston County is a governmental entity and political subdivision of the State of South Carolina.
15. The collision giving rise to this action occurred in Charleston County, South Carolina.
16. Venue and jurisdiction are proper for the foregoing reasons.

FACTUAL BACKGROUND

17. The plaintiff repeats the general allegations of the complaint as if stated again verbatim.
18. In or about August 2016, Jennifer began working as a server at the Ruby Tuesday located at 7400 Northside Drive in North Charleston, South Carolina.
19. Upon information and belief, at all times that Jennifer was employed by Ruby Tuesday, the company had a policy that forbade managers from dating subordinates. According to Ruby Tuesday's employee handbook, "Dating or other personal involvement of a romantic nature between a manager and a team member he or she directly supervises is not permitted." According to the policy, "Managers who disregard this policy will be subject to disciplinary action, up to and including termination."
20. Upon further information and belief, at all times that Jennifer was employed by Ruby Tuesday, the company's policies also prohibited "verbal abuse of any nature [...] any offensive or abusive physical conduct [...] unwelcome touches or other unwelcome physical contact, whether on or off Company property, whether on or off duty, or in conjunction with work in any way."

21. Despite Ruby Tuesday's clearly-established policies prohibiting managers from forming romantic relationships with team members, Harris, the manager of the location where Jennifer worked, pursued Jennifer and began a romantic relationship with her.
22. Shortly after Harris and Jennifer began their romantic relationship, Harris began to verbally, psychologically, and physically abuse Jennifer. He also began to regularly take Jennifer's car without her permission, often leaving Jennifer without her only means of transportation. Upon information and belief, Arnold used Jennifer's car to engage in sexual activities with other women outside of his allegedly monogamous relationship with Jennifer and to sell and purchase illegal drugs.
23. After learning of Jennifer's relationship with Harris, Billy Muxlow, Jennifer's father, reported the relationship to Jay Isaac, the district manager responsible for the location where Jennifer and Harris worked. Mr. Muxlow also called Ruby Tuesday's corporate office and spoke with Meg Goodrich. Mr. Muxlow expressed his concerns that Harris was violating the company's policies by dating his daughter, who was not only Harris' subordinate but who was also younger than Harris. Mr. Muxlow worried that Harris was taking advantage of his daughter, both because of the power imbalance in their relationship and because of the age difference between them.
24. Upon information and belief, no Ruby Tuesday's agent or employee terminated, suspended, or otherwise disciplined Harris for his relationship with Jennifer, despite Ruby Tuesday's clear policies and Isaac's and Goodrich's actual knowledge of Harris' relationship with Jennifer. Instead, Ruby Tuesday's ignored the violation of company policy and allowed Harris to continue dating Jennifer.
25. After Mr. Muxlow became aware that Harris was abusing his daughter, he again contacted Ruby Tuesday's employees and agents. Mr. Muxlow reported Harris' physical abuse of Jennifer to Isaac. He also reported the abuse to Ruby Tuesday's corporate office. The corporate representative with whom Mr. Muxlow spoke assured Mr. Muxlow he would investigate his report.
26. Despite having knowledge of Harris' continued violation of Ruby Tuesday's policy prohibiting managers from dating employees and despite receiving these reports of physical abuse, Ruby Tuesday did not terminate, suspend, or otherwise reprimand Harris. Instead, management reduced the number of hours that Jennifer was put on the schedule every week. Upon information and belief, management reduced the hours that Jennifer worked – and, consequently, her income – in retaliation for Mr. Muxlow's reports of Harris's continued

misconduct.

27. In August 2018, Jennifer and Harris moved into the St. Ives Apartments at 7930 St. Ives Road in North Charleston, South Carolina. Jennifer and Harris moved into an apartment with Harris' sister, Yokeema Harris.
28. On the night of November 20, 2018, Harris took Jennifer's car without her permission or her knowledge for the purpose of engaging in sexual relations with a paramour and purchasing cocaine. Along with Jennifer's car, Harris took her wallet, which included her identification, all of her money, and all her debit and/or credit cards.
29. After learning that Harris had taken her car, Jennifer became distressed and began to search for Harris, her car, and her wallet.
30. In an effort to locate Harris, Jennifer called KC Mulligan's, a bar that Harris frequented. At the time that Jennifer called, Harris was with his paramour at KC Mulligan's. Although KC Mulligan's employees knew that Harris was in the establishment, they negligently and recklessly misled the plaintiff as to Harris' whereabouts, causing Jennifer to search frantically for her car.
31. Upon information and belief, KC Mulligan's actions were motivated by the desire for unreasonable financial gain. KC Mulligan's agents and/or employees knowingly disseminated misleading information to Jennifer, when they knew or should have known doing so would put Jennifer in danger by causing her to continue to look for Harris. Upon information and belief, the agents and/or employees did this in order to keep the business of Harris, his paramour, his friends, and others involved in the sale and/or purchase of drugs to and/or from Harris.
32. Eventually, as part of her continued efforts to locate her car, Jennifer crossed Highway 52/Rivers Avenue, where she was struck by a vehicle driven by Anglin, who was distracted and acting in a grossly negligent manner. At the time of the collision, Anglin was driving at a high rate of speed. Upon information and belief, she and Failey, her passenger, were also engaged in conversation and/or using electronic devices, which distracted Anglin from the roadway and made her oblivious to Jennifer's presence as a pedestrian crossing the roadway.
33. After striking Jennifer, Anglin and Failey exited their vehicle with their phones in their hands. Anglin asked a witness to the collision, Derek Callen, if he had seen the vehicle that struck Jennifer. Callen told Anglin that he saw her strike Jennifer. Upon information and belief, Anglin knew that she recklessly struck Jennifer and asked this question in an effort to influence an uninvolved party's account of the collision and to imply that another vehicle

struck Jennifer.

34. Rather than calling 9-1-1 after striking Jennifer, Anglin began to call friends and to ask them to come to the scene of the collision. Approximately seven of Anglin's friends came to the scene and falsely claimed to be witnesses to the collision. Upon information and belief, Anglin called her friends and asked them to falsely claim that they witnessed the collision in order to convince actual witnesses and law enforcement personnel that another driver was responsible for the collision.
35. After exiting their vehicle, neither Anglin nor Failey approached Jennifer, spoke with her, or attempted to render aid. Callen asked Anglin if she would attempt to speak with Jennifer while he called 9-1-1. Anglin refused.
36. EMS arrived on the scene and transported Jennifer to Trident Medical Center, where physicians rendered medical treatment. Jennifer died as result of the injuries that she sustained in the collision.
37. After Jennifer's tragic and untimely death, her family went to her apartment to collect her belongings. Harris and Yokeema Harris told Jennifer's family that they had taken all Jennifer's belongings to the hospital and that none of her possessions remained in the apartment. This statement was not true. Harris and Yokeema Harris conspired and acted in concert with one another in order to prevent the family from gathering Jennifer's belongings, which caused her family members to experience unnecessary pain and anguish at an already traumatic time.
38. Jennifer's parents reported Jennifer's death to an agent/employee of St. Ives and provided St. Ives with official documentation of her death, as requested. Despite having proper notice of Jennifer's death, St. Ives and Carroll initiated eviction proceedings against Jennifer. This process caused Jennifer's family additional pain and anguish during an already traumatic time.
39. DoT and/or the City of North Charleston was grossly negligent in failing to implement a crosswalk in the area of the collision, despite having actual or constructive knowledge that a number of pedestrians regularly cross the roadway at or near that location. Because DoT and/or the City of North Charleston failed to implement a crosswalk, Jennifer was forced to cross the roadway without the benefit or safety of a crosswalk.
40. Upon information belief, pedestrians face an increased risk of death or serious injury because of the lack of crosswalks in several parts of Charleston County and the City of North Charleston. Charleston County and the City of North Charleston have actual knowledge of

pedestrian fatalities and serious injuries related to the lack of crosswalks in areas where they are needed. See the article at this link: https://www.postandcourier.com/news/pedestrian-killed-at-charleston-intersection-reignites-conversation-about-deadly-crossing/article_7db186c0-38cb-11e8-88e9-1360cc5be644.html.

41. St. Ives' and Carroll's employees and agents knew that a number of the complex's tenants must cross Highway 52/Rivers Avenue on a daily basis. St. Ives and Carroll were negligent in choosing to subject the decedent and others to the dangers of crossing the roadway without a crosswalk on a daily basis in order to further the complex's unreasonable endeavor to bolster profits.
42. The government entities named herein acted in a grossly negligent and reckless manner. Several different and distinct occurrences give rise to this action, and the governmental entities are not protected by only one limit pursuant to the Tort Claims Act. Upon information and belief, 33 pedestrians were injured or killed on Highway 52 in Charleston County in the past three years. The governmental entities knew or should have known that information, and in the face of that information, it was grossly negligent and reckless to implement no crosswalks in the area, especially when apartments located nearby house thousands of tenants who travel on foot every day.
43. Some of the decedent's suffering and damage was caused by one or more of the defendants' material misrepresentations and false statements.
44. As a direct and proximate result of the actions and omissions of the defendants, the decedent was damaged.
45. All defendants are jointly and severally liable for the tortious conduct of all other defendants.
46. The corporate defendants named herein are both directly liable for their actions and vicariously liable through the doctrine of *respondeat superior* for the actions of their agents and/or employees.
47. The Personal Representative is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages.

FOR A FIRST CAUSE OF ACTION
(Common Law Recklessness and Negligence)

48. The plaintiff repeats the general allegations of the complaint as if stated again verbatim.
49. The defendants owed Jennifer Muxlow one or more duties of care, including, but not limited to, the following:
 - a. obeying the rules and laws governing the roadways of South Carolina;

- b. operating a vehicle in a reasonably safe manner;
 - c. keeping brakes in a safe operating condition;
 - d. keeping a vehicle under proper control;
 - e. avoiding the use of electronic devices while driving;
 - f. avoiding needlessly endangering the decedent and the public in general;
 - g. avoiding operating a vehicle while intoxicated;
 - h. avoiding the dissemination of false information to the decedent and the decedent's family;
 - i. avoiding causing the decedent's family additional and unnecessary pain and grief following the decedent's death;
 - j. avoiding taking the decedent's automobile and causing her to search for it;
 - k. installing crosswalks, traffic signals, and other safety implements where necessary;
 - l. avoiding causing the family unnecessary pain and grief following Jennifer's death; and
 - m. in other ways as will be shown through discovery and at trial.
50. Defendant Ruby Tuesday, through its policies and procedures, undertook certain duties to the plaintiff and other employees. By creating, implementing, and enforcing duties to prohibit employees from dating their subordinates and from engaging in physical or verbal abuse, even when such abuse occurs off company property and is unrelated to work, Ruby Tuesday undertook duties to prevent its employees from being subjected to such conduct, to prohibit employees from forming relationships with their subordinates, to prohibit employees from engaging in abusive language or actions either in the workplace or outside of work, and to properly discipline and terminate employees who violate these policies.
51. Breaches of these duties constitute negligence and, in some cases, recklessness.
52. The defendants breached one or more duties of care, and, consequently, were negligent, grossly negligent, and reckless in one or more of the following ways:
- a. in failing to obey the rules and laws governing the roadways of South Carolina;
 - b. in failing to operate a vehicle in a reasonably safe manner;
 - c. in failing to keep brakes in a safe operating condition;
 - d. in failing to keep a vehicle under proper control;
 - e. in using electronic devices while driving;
 - f. in needlessly endangering the decedent and the public in general;
 - g. in operating a vehicle while intoxicated;
 - h. in disseminating false information to the decedent and the decedent's family;

- i. in causing the decedent's family additional and unnecessary pain and grief following the decedent's death;
 - j. in taking the decedent's automobile and causing her to search for it;
 - k. in failing to install crosswalks, traffic signals, and other safety implements where necessary;
 - l. in causing the family unnecessary pain and grief following Jennifer's death; and
 - m. in making misrepresentations to the decedent and others;
 - n. in taking Jennifer's car and debit card, causing her to search frantically;
 - o. in initiating eviction proceedings post-mortem;
 - p. in allowing employees to openly and continuously violate company policies without taking any remedial action, such as terminating, suspending, or otherwise reprimanding the employee; and
 - q. in such other ways as will become evident through discovery and at trial.
53. As a direct and proximate result of the defendants' negligence and recklessness, Jennifer and the decedent's family have suffered some or all of the following injuries and damages:
- a. expenses for medical care and treatment;
 - b. physical pain and suffering;
 - c. emotional trauma;
 - d. property damage;
 - e. loss of enjoyment of life;
 - f. loss of life; and
 - g. such other damages as will be shown through discovery and at trial.
54. The Personal Representative is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Entrustment)

55. The plaintiff repeats the foregoing paragraphs as if repeated here, verbatim.
56. One or more defendants, including Henrietta Benson, owed a duty to the decedent to avoid entrusting the vehicle that struck Jennifer to individuals whom the defendants knew or should have known were addicted to intoxicants or had the habit of drinking and/or were incompetent, unfit, inexperienced, or reckless.
57. The defendants breached their duty to the decedent by entrusting the vehicle to individuals known to be intoxicated and/or known to habitually use intoxicants.

58. The entrustor knew or had reason to know that the entrustee was addicted to intoxicants or had the habit of drinking and was likely to drive while intoxicated and/or knew or had reason to know that the entrustee was incompetent, unfit, inexperienced, or reckless.
59. By negligently entrusting the vehicle, the entrustor created an appreciable risk of harm to others, including Jennifer Muxlow.
60. The defendants' negligent and reckless entrustment of the vehicle was the proximate cause of Jennifer Muxlow's injuries and damages.
61. The Personal Representative is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages.

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

62. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.
63. One or more defendants had a duty to hire competent and fit employees; to perform background checks; to require appropriate education, experience, and other qualifications; to properly supervise employees; and to terminate unfit employees.
64. The defendants breached their duties to adequately supervise, hire, and retain employees and acted in a negligent and grossly negligent/reckless manner in some or all of the following particulars:
- a. in failing to ensure that employees comply with procedures regarding incidents such as those described herein;
 - b. in failing to provide proper training;
 - c. in failing to ensure that employees complied with employment policies and procedures regarding interaction with persons such as the decedent and the decedent's situation post-mortem;
 - d. in failing to adequately investigate the conduct of employees toward the decedent and her family;
 - e. in failing to appropriately interview candidates or require that candidates be qualified before hiring them;
 - f. in failing to require sufficient education and training before hiring employees;
 - g. in failing to properly screen applicants, perform appropriate background checks, check references, and perform sufficient and formal interviews; and
 - h. in other such particulars as the evidence may show.

65. As a direct and proximate result of the negligent and grossly negligent/reckless acts and omissions of the defendants, the decedent, her family, and the Estate suffered damages, including those set forth above.

66. The Personal Representative is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages.

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

67. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.

68. Pursuant to S.C. Code § 15-5-90, Gregory Muxlow brings this statutory survival action as Personal Representative to recover for any and all injuries that the defendants caused to the decedent, Jennifer Muxlow.

69. The defendants owed one or more duties of care to the decedent, including those set forth above and those that will be shown through discovery and at trial.

70. The defendants breached their duties of care in a negligent, grossly negligent, and reckless manner in some or all of the particulars described above and in other ways as will be shown through discovery and at trial.

71. As a direct and proximate result of the acts and omissions of the defendants, the decedent was damaged, in that she experienced conscious pain and suffering before her death.

72. The Personal Representative is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages for the decedent's pain and suffering before death.

FOR A FIFTH CAUSE OF ACTION
(Wrongful Death)

73. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby re-alleged as if set forth herein verbatim.

74. The defendants owed the decedent one or more duties of care as described above and as will be shown through discovery and at trial.

75. The defendants negligently and recklessly breached one or more of their duties to the decedent as set forth above and as will be shown through discovery and at trial.

76. As a proximate result of the defendants' breach, the decedent was killed.

77. The plaintiff is therefore informed and believes the Estate is entitled to judgment against the defendants for actual and punitive damages for the decedent's wrongful death.

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

78. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
79. One or more of the corporate defendants' actions concerning Jennifer Muxlow and/or her family were unfair, deceptive, adverse to public interests, and are capable of repetition.
80. St. Ives, Carroll's, KC Mulligan's, and Ruby Tuesday each operated in a manner that was unfair to others in the community and in ways that were likely to injure people. St. Ives and Carroll's failed to implement safety measures, such as crosswalks; failed to communicate with DoT, Charleston County, and/or the City of North Charleston; and initiated eviction proceedings after the decedent's death and even though they had knowledge of the decedent's death. Failure to install crosswalks, to warn tenants of the dangers of the roadway, or to communicate with DoT, Charleston County, and/or the City of North Charleston is adverse to public interest and harmful to the public, as demonstrated by the deaths of the decedent and others. To the extent that warning mechanisms or crosswalks are present but insufficient, St. Ives' and Carroll's actions are deceptive because they led to a presumption that appropriate safety and warning mechanisms exist or will be implemented as necessary. KC Mulligan's gave false information to the decedent, causing her to frantically search for her vehicle. Ruby Tuesday failed to enforce company policies designed for the protection of both employees and the general public.
81. St. Ives, Carroll's, KC Mulligan's, and Ruby Tuesday each interact with the local community and engage in business that affects commerce. Each of their actions outlined in the paragraph above is directly related to each business' unreasonable efforts to bolster their profits at the expense of members of the local community, such as the decedent. These unreasonable efforts to bolster profits are harmful to members of the public, including the decedent.
82. As a direct and proximate result of the defendants' unfair trade practices and illegal acts, the decedent was been damaged as set forth above.
83. The plaintiff is entitled to relief pursuant to *S.C. Code Ann.* §§ 39-5-10 through 39-5-180.
84. The plaintiff is therefore informed and believes the Estate is entitled to judgment against the defendants for actual damages, punitive damages, multiple damages, costs, and reasonable attorney's fees.

FOR A SEVENTH CAUSE OF ACTION
(Class Action)

85. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
86. Upon information and belief, multiple potential plaintiffs have been injured by the defendants' negligence at the roadway described herein.
87. Under Rule 23, *SCRCP*, the plaintiff brings this action on behalf of the decedent and the plaintiff class, initially defined as the following:
- a. all persons using the public roads located where the collision described herein occurred who have been injured by the defendants' negligence and recklessness;
 - b. all persons harmed by the defendants' recklessness and negligence involving other public roads in Charleston County and the City of North Charleston that do not have crossways or other proper safety precautions; and
 - c. other persons and plaintiffs who become known through discovery and at trial.
88. Upon information and belief, the plaintiff's class consists of multiple individuals who have been injured by motor vehicles while crossing roadways maintained by the defendants and potentially multiple persons denied records and information by the defendants, making individual joinder impracticable, in satisfaction of Rule 23(a)(1), *SCRCP*. The disposition of the claims of the class members in a single class action will provide substantial benefit to all parties and to the Court.
89. The factual and legal bases of the claims are common to all class members and represent a common injury to the plaintiff and members of the class as required by Rule 23(a)(2), *SCRCP*.
90. There are questions of law and fact common to the plaintiff and the class. These questions include, but are not limited to, the following:
- a. whether failure to install crosswalks or other safety measures constitutes negligence, and the number of people harmed thereby;
 - b. whether failure to maintain a safe field of vision near and around the road constitutes negligence, and the number of people harmed thereby; and
 - c. other questions that will become known through discovery and trial.
91. The conditions, acts, failures to act, and policies at issue in this action apply in substantially the same manner to the named plaintiff and likely to all members of the class, so that the claims of the named plaintiff are typical of those of the class.

92. The named plaintiff will fairly and adequately represent the interests of the class, possesses a personal interest in the subject matter of this suit, and is represented by counsel who is experienced in complex litigation and issues similar to the issues described herein.
93. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as a whole.
94. The plaintiff is therefore informed and believes the Estate is entitled to judgment against the defendants.

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

95. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
96. Upon information and belief, during all times described herein, DoT, Charleston County, and/or the City of North Charleston was responsible for maintaining the roadways described herein and for making those roadways safe for motorists, pedestrians, and others. "Pedestrian Safety on Rural Highways" includes data related to pedestrian fatalities. That document is incorporated herein by reference and attached hereto as a link to show measures DoT, Charleston County, and/or the City of North Charleston should have taken in order to prevent deaths of pedestrians such as the decedent:

http://caatpresources.org/docs/Ped_Safety_RuralHighways.pdf.

97. Because there was no crosswalk, Anglin struck the decedent with her vehicle so hard that she hurled the decedent forward.
98. As a direct and proximate result of the defendants' recklessness and negligence, the decedent was killed.
99. The defendants owed Jennifer Muxlow one or more of the following duties:
- a. a duty to maintain roadways;
 - b. a duty to provide sufficient lighting in areas of known pedestrian traffic;
 - c. a duty to implement crosswalks in areas known to be used by pedestrians;
 - d. a duty to maintain sufficient shoulder space on a roadway known to be used by pedestrians;
 - e. a duty to take one or more measures described in "Pedestrian Safety on Rural Highways"; and
 - f. such other duties as will be shown through discovery and at trial.
100. The defendants breached one or more duties of care and were grossly negligent and/or

reckless in one or more of the following ways:

- a. in failing to properly maintain the pertinent roadway;
- b. in failing to provide sufficient lighting near the roadway known to be used by pedestrians;
- c. in failing to maintain a shoulder area sufficient for pedestrians in a roadway known to be used by pedestrians;
- d. in failing to take measures described in “Pedestrian Safety on Rural Highways”; and
- e. in such other ways as will be shown through discovery and at trial.

101. As a direct and proximate result of the defendants’ gross negligence and recklessness, the decedent and her family have suffered some or all of the following injuries and damages:
 - a. expenses for medical care and treatment, including treatment immediately following the collision and treatment involving the coroner and first responders;
 - b. physical pain and suffering during the collision and before her death;
 - c. emotional trauma;
 - d. partial and permanent impairment of physical function;
 - e. inconvenience;
 - f. temporary total inability to engage in activities of daily living;
 - g. lost time and opportunity to earn income;
 - h. property damage;
 - i. loss of enjoyment of life;
 - j. loss of life; and
 - k. other damages that will be shown through discovery and at trial.
102. To the extent the defendants had actual or constructive notice that pedestrians were injured on the involved roadway prior to the decedent’s death, the defendants are liable for Jennifer Muxlow’s death. Upon information and belief, other pedestrians were injured and/or killed in close proximity prior to the events described herein, and the defendants knew that failure to implement a crosswalk would lead to the injury and death of others such as the decedent.
103. To the extent the defendants failed to take action when it should have as described in “Pedestrian Safety on Rural Highways,” the defendants are liable for Jennifer Muxlow’s death.
104. The plaintiff is therefore informed and believes the Estate is entitled to judgment against the defendants for actual damages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff, as Personal Representative of the Estate of Jennifer Muxlow, prays for judgment against the defendants for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

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Attorneys for Plaintiff

Greenville, South Carolina
April 24, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE No.: 2019-CP-23-02304
	)	
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	ANSWER OF RUBY TUESDAY, INC.,
Plaintiff,	)	IMPROPERLY IDENTIFIED AS RUBY
	)	TUESDAY
v.	)	
	)	(Jury Trial Demanded)
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, Charleston County,	)	
	)	
Defendants.	)	

Subject to its Motion for Judgment on the Pleadings and Motion to Dismiss, Defendant, Ruby Tuesday, Inc., improperly identified as Ruby Tuesday, answers the Complaint of the plaintiff as follows:

FOR A FIRST DEFENSE

1. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs one (1), two (2), three (3), four (4), five (5), six (6), and seven (7) of the Complaint and, therefore, denies the same and demands strict proof thereof.
2. Admits Ruby Tuesday, Inc. does business in Charleston County, S.C., but denies the remaining allegations of paragraph eight (8) of the Complaint.
3. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14),

and fifteen (15) of the Complaint and, therefore, denies the same and demands strict proof thereof.

4. Denies the allegations of paragraph sixteen (16) of the Complaint.

5. Re-alleges and reasserts its responses to paragraphs one (1) through sixteen (16) of the Complaint in response to paragraph seventeen (17) of the Complaint as if fully reiterated here in verbatim.

6. Denies the allegations of paragraph eighteen (18) of the Complaint and further alleges that Muxlow became an employee in August of 2015.

7. Admits that Ruby Tuesday, Inc. has a policy and craves reference to its policy in its Employees' Handbook and, therefore, denies the allegations of paragraph nineteen (19) of the Complaint.

8. Craves reference to any of the company's policies content and, therefore denies the allegations of paragraph twenty-one (21) of the Complaint. Defendant further alleges that Jennifer Muxlow was no longer an employee of Ruby Tuesday, Inc. as of April 27, 2017.

9. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-one (21) and twenty-two (22) of the Complaint and, therefore denies the same and demands strict proof thereof.

10. Admits that Muxlow talked with employees of Ruby Tuesday, Inc., but does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph twenty-three (23) of the Complaint and, therefore, denies the same and demands strict proof thereof.

11. Admits that Ruby Tuesday, Inc. did not suspend or terminate Harris based on the call from Mr. Muxlow regarding his adult daughter, but denies the remaining allegations of paragraph twenty-four (24) of the Complaint.

12. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty-five (25) of the Complaint and, therefore, denies the same and demands strict proof thereof.

13. Denies the allegations of paragraph twenty-six (26) of the Complaint.

14. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), and forty-two (42) of the Complaint and, therefore, denies the same and demands strict proof thereof.

15. Denies the allegations of paragraph forty-three (43) of the Complaint as it relates to this Defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph forty-three (43) of the Complaint and, therefore, denies the same and demands strict proof thereof.

16. Denies the allegations of paragraph forty-four (44) of the Complaint as it relates to this Defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph forty-four (44) of the Complaint and, therefore, denies the same and demands strict proof thereof.

17. Denies the allegations of paragraph forty-five (45) of the Complaint.

18. Denies the allegations of paragraph forty-six (46) of the Complaint.

19. Denies the allegations of paragraph forty-seven (47) of the Complaint.

20. Re-alleges and reasserts its responses to paragraphs one (1) through forty-seven (47) of the Complaint in response to paragraph forty (48) of the Complaint as if fully reiterated here in verbatim.

21. Denies the allegations of paragraph forty-nine (49), subparts (a) through (m), of the Complaint.

22. Denies the allegations of paragraph fifty (50) of the Complaint.

23. Denies the allegations of paragraph fifty-one (51) of the Complaint.

24. Denies the allegations of paragraph fifty-two (52), subparts (a) through (q), of the Complaint.

25. Denies the allegations of paragraph fifty-three (53), subparts (a) through (g), of the Complaint.

26. Denies the allegations of paragraph fifty-four (54) of the Complaint.

27. Re-alleges and reasserts its responses to paragraphs one (1) through fifty-four (54) of the Complaint in response to paragraph fifty-five (55) of the Complaint as if fully reiterated here in verbatim.

28. Denies the allegations of paragraphs fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), and sixty-one (61) of the Complaint.

29. Re-alleges and reasserts its responses to paragraphs one (1) through sixty-one (61) of the Complaint in response to paragraph sixty-two (62) of the Complaint as if fully reiterated here in verbatim.

30. Denies the allegations of paragraph sixty-three (63) of the Complaint.

31. Denies the allegations of paragraph sixty-four (64), subparts (a) through (h), of the Complaint.

32. Denies the allegations of paragraph sixty-five (65) of the Complaint.

33. Denies the allegations of paragraph sixty-six (66) of the Complaint.

34. Re-alleges and reasserts its responses to paragraphs one (1) through sixty-six (66) of the Complaint in response to paragraph sixty-seven (67) of the Complaint as if fully reiterated here in verbatim.

35. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph sixty-eight (68) of the Complaint and, therefore, denies the same and demands strict proof thereof.

36. Denies the allegations of paragraphs sixty-nine (69), seventy (70), seventy-one (71), and seventy-two (72) of the Complaint as it relates to this Defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraphs sixty-nine (69), seventy (70), seventy-one (71), and seventy-two (72) of the Complaint and, therefore, denies the same and demands strict proof thereof.

37. Re-alleges and reasserts its responses to paragraphs one (1) through seventy-two (72) of the Complaint in response to paragraph seventy-three (73) of the Complaint as if fully reiterated here in verbatim.

38. Denies the allegations of paragraphs seventy-four (74), seventy-five (75), seventy-six (76), and seventy-seven (77) of the Complaint and, therefore, denies the same and demands strict proof thereof.

39. Re-alleges and reasserts its responses to paragraphs one (1) through seventy-seven (77) of the Complaint in response to paragraph seventy-eight (78) of the Complaint as if fully reiterated here in verbatim.

40. Denies the allegations of paragraphs seventy-nine (79), eighty (80), eighty-one (81), eighty-two (82), eighty-three (83), and eighty-four (84) of the Complaint and, therefore, denies the same and demands strict proof thereof.

41. Re-alleges and reasserts its responses to paragraphs one (1) through eighty-four (84) of the Complaint in response to paragraph eighty-five (85) of the Complaint as if fully reiterated here in verbatim.

42. Denies the allegations of paragraphs eighty-six (86), eighty-seven (87), subparts (a) through (c), eighty-eighty (88), eighty-nine (89), ninety (90), subparts (a) through (c), ninety-one (91), ninety-two (92), ninety-three (93), and ninety-four (94) of the Complaint.

43. Re-alleges and reasserts its responses to paragraphs one (1) through ninety-four (94) of the Complaint in response to paragraph ninety-five (95) of the Complaint as if fully reiterated here in verbatim.

44. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs ninety-six (96), ninety-seven (97), ninety-eight (98), subparts (a) through (f), one hundred (100), subparts (a) through (e), one hundred-one (101), subparts (a) through (k), one hundred-two (102), one hundred-three (103), and one hundred-four (104) of the Complaint and, therefore, denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE

45. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE

46. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE

47. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

FOR A FIFTH DEFENSE

48. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE

49. To the extent punitive damages are claimed, this Defendant demands a bifurcated jury trial pursuant to South Carolina Code Ann. § 15-32-520 and that said damages, if any, are limited to three times the amount of compensatory damages or the sum of \$500,000.00 whichever is greater, if any.

FOR A SEVENTH DEFENSE

50. The negligence, recklessness, willfulness and wantonness of the Plaintiff, Jennifer Muxlow, combining and concurring with this Defendant, if any, and the same is denied, was a

direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of this Defendant, if any, and same is denied, and, therefore, the Plaintiff may not recover from the Defendant for any of her alleged injuries or damages complained of in the Complaint. This Defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff, Jennifer Muxlow, as a bar to any recovery against this Defendant.

FOR AN EIGHTH DEFENSE

51. The Plaintiff has failed to set forth sufficient facts to constitute a cause of action against Ruby Tuesday, Inc. under any of the decedent's causes of action.

FOR A NINTH DEFENSE

52. The Plaintiff's cause of action for violation of unfair trade practices should be dismissed as to this Defendant insofar as these allegations do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FOR A TENTH DEFENSE

53. This action is barred by the applicable statute of limitations, statute of repose, and any other applicable statute.

FOR AN ELEVENTH DEFENSE

54. Venue is not proper in Greenville County and should be transferred to Charleston County.

FOR A TWELFTH DEFENSE

55. Plaintiff Gregory Muxlow has failed to set forth sufficient facts to constitute a cause of action for any claim he has individually.

FOR A THIRTEENTH DEFENSE

56. Plaintiffs' claims are barred, in whole or in part, because the sole proximate legal efficient cause of any alleged injury to the Plaintiff and the Plaintiff's decedent and any alleged damages suffered by the Plaintiff and the Plaintiff's decedent were caused, in whole or in part, by acts or omissions of others for whose conduct this Defendant is not responsible.

FOR A FOURTEENTH DEFENSE

58. Defendant pleads content as a complete defense.

FOR A FIFTEENTH DEFENSE

59. The Plaintiff's claim for a violation of the South Carolina Unfair Trade Practices Act should be dismissed for the following reasons: the Plaintiff is suing in his representative capacity which is prohibited by the Act and the allegations involve an employment relationship which is not actionable under the Act.

WHEREFORE, having fully answered, this defendant demands a trial by jury and that the complaint of the plaintiff be dismissed and that this defendant be granted such other and further relief as may be appropriate in an amount to be determined by the court.

/s/ Catharine Garbee Griffin
Catharine Garbee Griffin
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Attorneys for Defendant Ruby Tuesday, Inc.

May 28, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE No.: 2019-CP-23-02304
	)	
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	
	)	ANSWER OF RUBY TUESDAY, INC.
Plaintiff,	)	TO THE AMENDED COMPLAINT
	)	
v.	)	(Jury Trial Demanded)
	)	
Natasha Anglin, the Personal	)	
Representative of the Estate of 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.	)	
	)	

Subject to Defendant Ruby Tuesday, Inc.'s Motion to Dismiss and Motion for Judgment on the Pleadings, improperly identified as Ruby Tuesday, Ruby Tuesday, Inc. answers the Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Denies each and every allegation of the Amended Complaint not herein specifically admitted, qualified, or explained.
 2. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs one (1), two (2), three (3), four (4), five (5), six (6), and seven (7) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.
 3. Denies the allegations of paragraph eight (8) of the Amended Complaint as stated.
- The correct corporate name is Ruby Tuesday, Inc.

4. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

5. Denies the allegations of paragraph sixteen (16) of the Amended Complaint.

6. Re-alleges and reasserts its responses to paragraphs one (1) through sixteen (16) of the Amended Complaint in response to paragraph seventeen (17) of the Amended Complaint as if fully reiterated here in verbatim.

7. Admits, upon information and belief, the allegations of paragraph eighteen (18) of the Amended Complaint.

8. Admits, upon information and belief, the allegations of paragraph nineteen (19) of the Amended Complaint, and further alleges that Jennifer Muxlow was no longer an employee an employee of Ruby Tuesday and permanently stopped working at Ruby Tuesday, Inc. on April 20, 2017.

9. Craves reference to the handbook for its terms, and, therefore, denies the allegations of paragraph twenty (20) of the Amended Complaint. Defendant further alleges that Muxlow was no longer an employee of Ruby Tuesday and permanently stopped working at Ruby Tuesday, Inc. on April 20, 2017.

10. Craves reference to the handbook for its terms, and, therefore, denies the allegations of paragraph twenty-one (21) of the Amended Complaint. Defendant further alleges that Muxlow was no longer an employee and permanently stopped working at Ruby Tuesday, Inc. on April 20, 2017.

11. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-two (22) and twenty-three (23) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

12. Admits that Billy Muxlow called Ruby Tuesday, Inc., but denies the remaining allegations of paragraph twenty-four (24) of the Amended Complaint.

13. Admits that Harris was not disciplined as a result of Billy Muxlow's allegations, but denies the remaining allegations of paragraph twenty-five (25) of the Amended Complaint.

14. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph twenty-six (26) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

15. Denies the allegations of paragraph twenty-seven (27) of the Amended Complaint.

16. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), and forty-four (44) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

17. Denies the allegations of paragraph forty-five (45) of the Amended Complaint as it relates to this Defendant; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph forty-five (45) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

18. Denies the allegations of paragraphs forty-six (46), forty-seven (47), forty-eight (48), and forty-nine (49) of the Amended Complaint.

19. Re-alleges and reasserts its responses to paragraphs one (1) through forty-nine (49) of the Amended Complaint in response to paragraph fifty (50) of the Amended Complaint as if fully reiterated here in verbatim.

20. Denies the allegations of paragraph fifty-one (51), subparts (a) through (n), of the Amended Complaint.

21. Denies the allegations of paragraph fifty-two (52) of the Amended Complaint.

22. Denies the allegations of paragraph fifty-three (53) of the Amended Complaint.

23. Denies the allegations of paragraph fifty-four (54), subparts (a) through (q), of the Amended Complaint.

24. Denies the allegations of paragraph fifty-five (55), subparts (a) to (g), of the Amended Complaint.

25. Denies the allegations of paragraph fifty-six (56) of the Amended Complaint.

26. Re-alleges and reasserts its responses to paragraphs one (1) through fifty-six (56) of the Amended Complaint in response to paragraph fifty-seven (57) of the Amended Complaint as if fully reiterated here in verbatim.

27. Denies the allegations of paragraphs fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), and sixty-three (63) of the Amended Complaint.

28. Re-alleges and reasserts its responses to paragraphs one (1) through sixty-three (63) of the Amended Complaint in response to paragraph sixty-four (64) of the Amended Complaint as if fully reiterated here in verbatim.

29. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph sixty-five (65) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

30. Denies the allegations of paragraph sixty-six (66), subparts (a) through (h), of the Amended Complaint.

31. Denies the allegations of paragraphs sixty-seven (67) and sixty-eight (68) of the Amended Complaint.

32. Re-alleges and reasserts its responses to paragraphs one (1) through sixty-eight (68) of the Amended Complaint in response to paragraph sixty-nine (69) of the Amended Complaint as if fully reiterated here in verbatim.

33. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph seventy (70) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

34. Denies the allegations of paragraphs seventy-one (71), seventy-two (72), seventy-three (73), and seventy-four (74) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

35. Re-alleges and reasserts its responses to paragraphs one (1) through seventy-four (74) of the Amended Complaint in response to paragraph seventy-five (75) of the Amended Complaint as if fully reiterated here in verbatim.

36. Denies the allegations of paragraphs seventy-six (76), seventy-seven (77), seventy-eight (78), and seventy-nine (79) of the Amended Complaint.

37. Re-alleges and reasserts its responses to paragraphs one (1) through seventy-nine (79) of the Amended Complaint in response to paragraph eighty (80) of the Amended Complaint as if fully reiterated here in verbatim.

38. Denies the allegations of paragraphs eighty-one (81), eighty-two (82), eighty-three (83), eighty-four (84), eighty-five (85), and eighty-six (86) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

39. Re-alleges and reasserts its responses to paragraphs one (1) through eighty-six (86) of the Amended Complaint in response to paragraph eighty-seven (87) of the Amended Complaint as if fully reiterated here in verbatim.

40. Denies the allegations of paragraphs eighty-eight (88), eighty-nine (89), subparts (a) through (c), ninety (90), ninety-one (91), ninety-two (92), subparts (a) through (c), ninety-three (93), ninety-four (94), ninety-five (95), and ninety-six (96) of the Amended Complaint.

41. Re-alleges and reasserts its responses to paragraphs one (1) through ninety-six (96) of the Amended Complaint in response to paragraph ninety-seven (97) of the Amended Complaint as if fully reiterated here in verbatim.

42. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs ninety-eight (98), ninety-nine (99), one hundred (100), one hundred-one (101), subparts (a) through (f), one hundred-two (102), subparts (a) through (e), one hundred-three (103), subparts (a) through (k), one hundred-four, (104), one hundred-five (105), and one hundred-six (106) of the Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

FOR A SECOND DEFENSE

43. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE

44. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE

45. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

FOR A FIFTH DEFENSE

46. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE

47. To the extent punitive damages are claimed, this Defendant demands a bifurcated jury trial pursuant to South Carolina Code Ann. § 15-32-520 and that said damages, if any, are limited to three times the amount of compensatory damages or the sum of \$500,000.00 whichever is greater, if any.

FOR A SEVENTH DEFENSE

48. The negligence, recklessness, willfulness and wantonness of the Plaintiff's decedent, Jennifer Muxlow, combining and concurring with this Defendant, if any, and the same is denied, was a direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of this Defendant, if any, and same is denied, and, therefore, the Plaintiff may not recover from the Defendant for any of the personal representatives alleged injuries or damages complained of in the Amended Complaint. This Defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff's decedent, Jennifer Muxlow, as a bar to any recovery against this Defendant.

FOR AN EIGHTH DEFENSE

49. The Plaintiff has failed to set forth sufficient facts to constitute a cause of action against Ruby Tuesday, Inc. under any of the causes of action.

FOR A NINTH DEFENSE

50. The Plaintiff's cause of action for violation of unfair trade practices should be dismissed as to this Defendant insofar as these allegations do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FOR A TENTH DEFENSE

51. This action is barred by the applicable statute of limitations, statute of repose, and any other applicable statute.

FOR AN ELEVENTH DEFENSE

52. Venue is not proper in Greenville County and should be transferred to Charleston County.

FOR A TWELFTH DEFENSE

53. Plaintiff Gregory Muxlow has failed to set forth sufficient facts to constitute a cause of action for any claim he has individually.

FOR A THIRTEENTH DEFENSE

54. Plaintiffs' claims are barred, in whole or in part, because the sole proximate legal efficient cause of any alleged injury to the Plaintiff and the Plaintiff's decedent and any alleged damages suffered by the Plaintiff and the Plaintiff's decedent were caused, in whole or in part, by acts or omissions of others for whose conduct this Defendant is not responsible.

FOR A FOURTEENTH DEFENSE

55. Defendant pleads consent as a complete defense.

FOR A FIFTEENTH DEFENSE

56. The Plaintiff's claim for a violation of the South Carolina Unfair Trade Practices Act should be dismissed for the following reasons: the Plaintiff is suing in his representative capacity which is prohibited by the Act and the allegations involve an employment relationship which is not actionable under the Act.

WHEREFORE, having fully answered, this defendant demands a trial by jury and that the Amended Complaint of the plaintiff be dismissed and that this defendant be granted such other and further relief as may be appropriate in an amount to be determined by the court.

July 22, 2019

s/Catharine Garbee Griffin
Catharine Garbee Griffin
SC Bar No.: 9821
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Post Office Box 8057
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E-Mail: cgriffin@brblegal.com
Attorneys for Defendant Ruby Tuesday, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-06674
	)	
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow	)	
	)	DEFENDANT KC MULLIGAN'S
Plaintiff,	)	ANSWER TO PLAINTIFF'S
	)	COMPLAINT
	)	
vs.	)	
	)	
KC Mulligan's, John Doe, Larry Wade as	)	
Manager of KC Mulligan's and Bianca	)	
Lincoln	)	
	)	
Defendants.	)	
	)	

Subject to its Motion to Dismiss, Defendant, KC Mulligan's, above named, answers the Complaint of the Plaintiff and would respectfully show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Defendant Mulligan's denies each and every allegation of the Plaintiff's Complaint not hereafter specifically and unconditionally admitted and demands strict proof thereof.

DEFENDANT'S ANSWER

2. Defendant Mulligan's admits the allegations contained in Paragraphs One (1), Two (2), and Three (3) of Plaintiff's Complaint.

3. Defendant Mulligan's would deny the allegations of Paragraph Four (4) and demands strict proof thereof.

4. Defendant Mulligan's has insufficient information upon which to admit or deny the allegations contained in Paragraphs Five (5), Six (6), Seven (7), and Eight (8) and therefore denies the same and demands strict proof thereof.

5. No response is required to Paragraph Nine (9) of the Plaintiff's Complaint. Inasmuch as a response is required, Defendant Mulligan's denies Paragraph Nine (9) and demands strict proof thereof.

6. Defendant Mulligan's denies the allegations contained in Paragraph Ten (10) of Plaintiff's Complaint and demands strict proof thereof.

7. Defendant Mulligan's has insufficient information upon which to admit or deny the allegations contained in Paragraph Eleven (11) of Plaintiff's Complaint, and therefore denies the same and demands strict proof thereof.

8. Defendant Mulligan's denies the allegations contained in Paragraphs Twelve (12), Thirteen (13), and Fourteen (14) and demands strict proof thereof.

9. Defendant Mulligan's has insufficient information upon which to admit or deny the allegations contained in Paragraphs Fifteen (15) and Sixteen (16) of Plaintiff's Complaint, and therefore denies the same and demands strict proof thereof.

10. Defendant Mulligan's denies the allegations contained in Paragraphs Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), Twenty-Two (22), and Twenty-Three (23) and demands strict proof thereof.

11. Defendant Mulligan's has insufficient information upon which to admit or deny the allegations contained in Paragraphs Twenty-Four (24), Twenty-Five (25), Twenty-Six (26),

Twenty-Seven (27), Twenty-Eight, and Twenty-Nine (29) of Plaintiff's Complaint, and therefore denies the same and demands strict proof thereof.

12. Defendant Mulligan's denies the allegations contained in Paragraphs Thirty (30), Thirty-One (31), Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), Thirty-Seven (37), Thirty-Eight (38), Thirty-Nine (39), Forty (40), Forty-One (41), Forty-Two (42), Forty-Three (43), Forty-Four (44), Forty-Five (45), Forty-Six (46), Forty-Seven (47), Forty-Eight (48), Forty-Nine (49), Fifty (50), Fifty-One (51), Fifty-Two (52), Fifty-Three (53), Fifty-Four (54), Fifty-Five (55), Fifty-Six (56), Fifty-Seven (57) and Fifty-Eight (58) and demands strict proof thereof.

FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

For a First Affirmative Defense

13. All admissions, denials, explanations, and allegations set forth above are incorporated herein as if repeated verbatim.

14. Defendant Mulligan's hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of litigation, and thus reserves the right to amend their Answer to assert any such defenses.

FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

For a Second Affirmative Defense

15. Defendant Mulligan's asserts the defense of condonation that Plaintiffs were fully aware of any fundraising events and received monies from said fundraiser and participating therein.

FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES**For a Third Affirmative Defense**

16. Defendant Mulligan's asserts the defense of payments that all monies collected from such fundraising events or paid out the Plaintiffs or their representatives.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Mulligan's prays for an Order of this Court that this matter be dismissed, that Defendant be awarded attorney's fees and costs, and for any further relief that this Court may deem to be appropriate and just.

LIZZI LAW FIRM, LLC

s/ Christopher D. Lizzi

Christopher D. Lizzi

SC Bar No.: 64325

Attorney for Defendant

2170 Ashley Phosphate Road, Suite 402

North Charleston, SC 29406

Telephone: (843) 797-0222

Facsimile: (843) 797-0202

E-mail: lizzlaw@aol.com

February 18, 2020

North Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, so hereby certify that I have this 18th day of February, 2020 caused the foregoing Defendant's Answers to Plaintiff's Complaint to be served upon all counsel of record listed below by depositing in the USPS First Class Mail, with sufficient postage prepaid, addressed as follows:

Joshua T. Hawkins, Esquire
1225 South Church Street
Greenville, SC 29604

s/Tammy Rutland

Tammy Rutland

Paralegal to Christopher D. Lizzi

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT
	)	
Gregory Muxlow, individually and as	)	CASE NO: 2019-CP-23-02304
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
Plaintiff,	)	
	)	DEFENDANT ARIUM ST. IVES'
vs.	)	ANSWER TO PLAINTIFF'S
	)	COMPLAINT
	)	(Jury Trial Demanded)
Natasha Anglin, Henrietta Benson, Donita	)	
Failley, Arnold Harris, Yokeema Harris,	)	
Ruby Tuesday, KC Mulligan's, ARIUM St.	)	
Ives, Carroll Management Group, South	)	
Carolina Department of Transportation, City	)	
of North Charleston, Charleston County,	)	
	)	
Defendants.	)	
	)	

TO: JOSHUA T. HAWKINS, ESQ. AND HELENA L. JEDZINIAK, ESQ., ATTORNEYS FOR PLAINTIFF:

COMES NOW Defendant ARIUM St. Ives, (hereinafter referred to as "Defendant" or "ARIUM"), by and through its undersigned counsel, answers the Complaint of Plaintiff Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow (hereinafter referred to as "Plaintiff") and would show this Honorable Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 1 through 9 of the Complaint, and therefore, denies the same.
2. ARIUM denies the allegations of Paragraph 10 of the Complaint. Responding further, ARIUM is neither a company, business nor entity – it is a registered trademark.
3. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 11 through 15 of the Complaint, and therefore, denies the same.

4. The allegations in Paragraph 16 of the Complaint sets forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations.
5. Responding to Paragraph 17 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
6. ARIUM does not believe these allegations are directed toward ARIUM, but notwithstanding, ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 18 through 37 of the Complaint, and therefore, denies the same and demands strict proof thereof.
7. ARIUM denies the allegations of Paragraph 38 and demands strict proof thereof.
8. The allegations contained in Paragraphs 39 and 40 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
9. ARIUM denies the allegation of Paragraph 41 and demands strict proof thereof.
10. The allegations contained in Paragraph 42 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
11. ARIUM denies the allegations of Paragraphs 43 and 44 and demands strict proof thereof.
12. The allegations in Paragraphs 45 and 46 of the Complaint set forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.

13. ARIUM denies the allegations of Paragraphs 47 and demands strict proof thereof.
14. Responding to Paragraph 48 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
15. ARIUM denies the allegations of Paragraph 49, including all subparagraphs, and demands strict proof thereof.
16. The allegations contained in Paragraph 50 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
17. The allegations in Paragraph 51 of the Complaint sets forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.
18. ARIUM denies the allegations of Paragraphs 52 and 53, including all subparagraphs, and demands strict proof thereof.
19. ARIUM denies the allegations of Paragraph 54 and demands strict proof thereof.
20. Responding to Paragraph 55 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
21. The allegations contained in Paragraphs 56 through 60 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
22. ARIUM denies the allegations of Paragraph 61 and demands strict proof thereof.

23. Responding to Paragraph 62 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
24. ARIUM denies the allegations contained in Paragraph 63 of the Complaint and demands strict proof thereof.
25. ARIUM denies the allegations contained in Paragraph 64 of the Complaint, including all subparagraphs, and demands strict proof thereof.
26. ARIUM denies the allegations contained in Paragraph 65 and 66 of the Complaint and demands strict proof thereof.
27. Responding to Paragraph 67 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
28. The allegations of Paragraph 68 of the Complaint set forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies that Plaintiff is entitled to recover any damages from ARIUM and demands strict proof thereof.
29. ARIUM denies the allegations of Paragraphs 69 through 72 and demands strict proof thereof.
30. Responding to Paragraph 73 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
31. ARIUM denies the allegations of Paragraphs 74 through 77 and demands strict proof thereof.
32. Responding to Paragraph 78 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
33. ARIUM denies the allegations of Paragraphs 79 through 84 and demands strict proof thereof.
34. Responding to Paragraph 85 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.

35. ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 86 through 92 of the Complaint, including all subparagraphs, and therefore, denies the same and demands strict proof thereof.
36. ARIUM denies the allegations of Paragraphs 93 through 94 and demands strict proof thereof.
37. Responding to Paragraph 95 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
38. The allegations contained in Paragraphs 96 and 97 of the Complaint are directed to parties other than ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
39. ARIUM denies the allegations of Paragraph 98 and demands strict proof thereof.
40. ARIUM denies the allegations of Paragraphs 99 through 101, including all subparagraphs, and demands strict proof thereof.
41. ARIUM denies the allegations of Paragraphs 102 through 104 and demands strict proof thereof.
42. ARIUM denies the request for relief set forth in the "Wherefore" paragraphs of the Complaint and demands strict proof thereof.
43. Each and every allegation not specifically herein admitted by ARIUM is denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Service)

44. Plaintiff has failed to properly serve ARIUM with the copies of the pleadings, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

45. This Court lacks personal jurisdiction over ARIUM, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Venue)

46. Venue is not proper in Greenville County, and this case must be dismissed, or in the alternative, transferred to Charleston County, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

47. Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against ARIUM, specifically that ARIUM is a registered trademark and has no ownership, control or management over the apartment complex located at 7930 St. Ives Road, North Charleston, South Carolina, notwithstanding none of the allegation asserted against ARIUM or Carroll Management Group, LLC, give rise to viable causes of action, and therefore, this Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

48. ARIUM would show that any damages suffered by the Plaintiff, which are denied, were not the proximate cause of any acts or omissions by ARIUM, which is a complete bar to recovery from ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

49. That Deceased, possessing knowledge of the conditions present while in the subject area, assumed the risk of her alleged injury in that she failed to take reasonable precautions necessary for her own safety to ensure that her health and welfare would not be adversely affected, and as such, Deceased's assumption of the risk was the proximate cause of the injury complained of, and Plaintiff's recovery is therefore barred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Control)

50. Defendant does not own, possess, control or maintain the subject highway where the subject collision occurred, and therefore, Plaintiff is barred from recovery against Defendant for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

51. Any injury or damages as alleged in Plaintiff's Complaint were due to and caused solely by negligent actions and omissions of other entities over whom ARIUM has no control and were not due to or caused by any negligence or act attributable to ARIUM. As a result thereof, ARIUM is in no way liable to Plaintiff for the matters set forth in the Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

52. That the injury or damage allegedly suffered by Plaintiff, if any, was due to, and caused by, and was the proximate result of, the intervening and superseding negligence, willfulness, wantonness, and recklessness of Plaintiff and/or others, and as such constitutes a complete defense to Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

53. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of this Defendant, if any, and which is expressly denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence of Others)

54. ARIUM alleges, upon information and belief, that Plaintiff's damages, which are denied, were due to the sole negligence of others not associated with or under the control of ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Duty Breached)

55. To the extent ARIUM owed any legal duty to Plaintiff, which are denied, any actions alleged to have been taken or not taken by ARIUM do not give rise to a breach of any duty owed to Plaintiff, and therefore, Plaintiff is barred from recovery against ARIUM for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

56. Plaintiff's claim for unfair trade practices should be dismissed on the basis that the allegations against ARIUM do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

57. Plaintiff's claim for unfair trade practices should be dismissed due to the fact Gregory Muxlow brought this action in his representative capacity as the Personal Representative for Jennifer Muxlow. By statute, a South Carolina Unfair Trade Practices Act ("SCUTPA")

claim cannot be brought in a representative capacity. S.C. Code Ann. § 39-5-140(a) (Supp. 2004) The statute therefore precludes Plaintiff from maintaining a SCUTPA action in his capacity as Personal Representative for the Estate of Jennifer Muxlow.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(a), SCRCP)

58. Plaintiff's claim for a class action should be dismissed on the basis that the Deceased's damages do not satisfy the prerequisites to filing a class action, specifically that (1) any alleged class is not so numerous that joinder of all members is impracticable, (2) questions of law or fact are not common to other hypothetical class members of the class, (3) the of the representative parties are not typical of the claims of the purported class, and (4) the specificity of these factual allegations demonstrate that the representative party cannot fairly and adequately protect the interests of the purported class.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

59. An award or assessment of punitive or exemplary damages against ARIUM as prayed for by Plaintiff in the Complaint would violate ARIUM's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and ARIUM pleads such constitutional provisions as a complete defense to any claim for punitive damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Bifurcation of Punitive Damages)

60. ARIUM requests bifurcation of the punitive damages phase of trial as required by statute.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Set-Off)

61. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, ARIUM is entitled to a set-off of that amount for any damages that may or may not be assessed to ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contribution)

62. ARIUM invokes the protections afforded by law regarding the limitations on joint and several liability pursuant to S.C. Code § 15-38-10 *et. seq.*

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Incorporation)

63. ARIUM hereby incorporates and assert all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

64. ARIUM reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully responded to Plaintiff's Complaint herein, Defendant ARIUM St. Ives prays that this action be dismissed with prejudice, for costs of defending this action, for a trial by jury, and for other such relief this Court deems just and proper.

Respectfully submitted this 31st day of May, 2019, in Mount Pleasant, South Carolina.

[Signature Page to Follow]

HALL BOOTH SMITH, P.C.

/s/ Jack G. Gresh

Jack G. Gresh (S.C. Bar 75188)

Elizabeth F. Fulton (S.C. Bar 100611)

111 Coleman Blvd, Suite 301

Mount Pleasant, SC 29464

Phone: 843-720-3470

Fax: 843-606.6536

Email: jgresh@hallboothsmith.com

efulton@hallboothsmith.com

*Attorneys for Defendants ARIUM St. Ives and
Carroll Management Group, LLC*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT
	)	
Gregory Muxlow, individually and as	)	CASE NO: 2019-CP-23-02304
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT ARIUM ST. IVES'
vs.	)	ANSWER TO PLAINTIFF'S
	)	COMPLAINT
	)	(Jury Trial Demanded)
Natasha Anglin, the Personal Representative	)	
of the Estate of 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, Charleston County,	)	
	)	
Defendants.	)	

**TO: JOSHUA T. HAWKINS, ESQ. AND HELENA L. JEDZINIAK, ESQ.,
ATTORNEYS FOR PLAINTIFF:**

COMES NOW Defendant ARIUM St. Ives, (hereinafter referred to as "Defendant" or "ARIUM"), by and through its undersigned counsel, answers the Amended Complaint of Plaintiff Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow (hereinafter referred to as "Plaintiff") and would show this Honorable Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 1 through 9 of the Complaint, and therefore, denies the same.
2. ARIUM denies the allegations of Paragraph 10 of the Complaint. Responding further, ARIUM is neither a company, business nor entity – it is a registered trademark.

3. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 11 through 15 of the Complaint, and therefore, denies the same.
4. The allegations in Paragraph 16 of the Complaint sets forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations.
5. Responding to Paragraph 17 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
6. The allegations in Paragraph 18 of the Complaint sets forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations.
7. ARIUM does not believe these allegations are directed toward ARIUM, but notwithstanding, ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 19 through 39 of the Complaint, and therefore, denies the same and demands strict proof thereof.
8. ARIUM denies the allegations of Paragraph 40 and demands strict proof thereof.
9. The allegations contained in Paragraphs 41 and 42 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
10. ARIUM denies the allegation of Paragraph 43 and demands strict proof thereof.
11. The allegations contained in Paragraph 44 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore

denies the same and demands strict proof thereof.

12. ARIUM denies the allegations of Paragraphs 45 and 46 and demands strict proof thereof.

13. The allegations in Paragraphs 47 and 48 of the Complaint set forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.

14. ARIUM denies the allegations of Paragraphs 49 and demands strict proof thereof.

15. Responding to Paragraph 50 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.

16. ARIUM denies the allegations of Paragraph 51, including subparagraphs a. through n., and demands strict proof thereof.

17. The allegations contained in Paragraph 52 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.

18. The allegations in Paragraph 53 of the Complaint sets forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.

19. ARIUM denies the allegations of Paragraphs 54 and 55, including all subparagraphs, and demands strict proof thereof.

20. ARIUM denies the allegations of Paragraph 56 and demands strict proof thereof.

21. Responding to Paragraph 57 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.

22. The allegations contained in Paragraphs 58 through 62 of Plaintiff's Complaint are directed

to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.

23. ARIUM denies the allegations of Paragraph 63 and demands strict proof thereof.
24. Responding to Paragraph 64 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
25. ARIUM denies the allegations contained in Paragraph 65 of the Complaint and demands strict proof thereof.
26. ARIUM denies the allegations contained in Paragraph 66 of the Complaint, including subparagraphs a. through h., and demands strict proof thereof.
27. ARIUM denies the allegations contained in Paragraph 67 and 68 of the Complaint and demands strict proof thereof.
28. Responding to Paragraph 69 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
29. The allegations of Paragraph 70 of the Complaint set forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies that Plaintiff is entitled to recover any damages from ARIUM and demands strict proof thereof.
30. ARIUM denies the allegations of Paragraphs 71 through 74 and demands strict proof thereof.
31. Responding to Paragraph 75 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
32. ARIUM denies the allegations of Paragraphs 76 through 79 and demands strict proof thereof.
33. Responding to Paragraph 80 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.

34. ARIUM denies the allegations of Paragraphs 81 through 86 and demands strict proof thereof.
35. Responding to Paragraph 87 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
36. ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 88 through 94 of the Complaint, including all subparagraphs, and therefore, denies the same and demands strict proof thereof.
37. ARIUM denies the allegations of Paragraphs 95 through 96 and demands strict proof thereof.
38. Responding to Paragraph 97 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
39. The allegations contained in Paragraphs 98 and 99 of the Complaint are directed to parties other than ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
40. ARIUM denies the allegations of Paragraph 100 and demands strict proof thereof.
41. ARIUM denies the allegations of Paragraphs 101 through 103, including all subparagraphs, and demands strict proof thereof.
42. ARIUM denies the allegations of Paragraphs 104 through 106 and demands strict proof thereof.
43. ARIUM denies the request for relief set forth in the "Wherefore" paragraphs of the Complaint and demands strict proof thereof.
44. Each and every allegation not specifically herein admitted by ARIUM is denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Service)

45. Plaintiff has failed to properly serve ARIUM with the copies of the pleadings, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

46. This Court lacks personal jurisdiction over ARIUM, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Venue)

47. Venue is not proper in Greenville County, and this case must be dismissed, or in the alternative, transferred to Charleston County, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

48. Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against ARIUM, specifically that ARIUM is a registered trademark and has no ownership, control or management over the apartment complex located at 7930 St. Ives Road, North Charleston, South Carolina, notwithstanding none of the allegation asserted against ARIUM or Carroll Management Group, LLC, give rise to viable causes of action, and therefore, this Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

49. ARIUM would show that any damages suffered by the Plaintiff, which are denied, were not the proximate cause of any acts or omissions by ARIUM, which is a complete bar to recovery from ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

50. That Deceased, possessing knowledge of the conditions present while in the subject area, assumed the risk of her alleged injury in that she failed to take reasonable precautions necessary for her own safety to ensure that her health and welfare would not be adversely affected, and as such, Deceased's assumption of the risk was the proximate cause of the injury complained of, and Plaintiff's recovery is therefore barred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Control)

51. Defendant does not own, possess, control or maintain the subject highway where the subject collision occurred, and therefore, Plaintiff is barred from recovery against Defendant for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

52. Any injury or damages as alleged in Plaintiff's Complaint were due to and caused solely by negligent actions and omissions of other entities over whom ARIUM has no control and were not due to or caused by any negligence or act attributable to ARIUM. As a result thereof, ARIUM is in no way liable to Plaintiff for the matters set forth in the Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

53. That the injury or damage allegedly suffered by Plaintiff, if any, was due to, and caused by, and was the proximate result of, the intervening and superseding negligence, willfulness,

wantonness, and recklessness of Plaintiff and/or others, and as such constitutes a complete defense to Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

54. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of this Defendant, if any, and which is expressly denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence of Others)

55. ARIUM alleges, upon information and belief, that Plaintiff's damages, which are denied, were due to the sole negligence of others not associated with or under the control of ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Duty Breached)

56. To the extent ARIUM owed any legal duty to Plaintiff, which is denied, any actions alleged to have been taken or not taken by ARIUM do not give rise to a breach of any duty owed to Plaintiff, and therefore, Plaintiff is barred from recovery against ARIUM for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

57. Plaintiff's claim for unfair trade practices should be dismissed on the basis that the allegations against ARIUM do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

58. Plaintiff's claim for unfair trade practices should be dismissed due to the fact Gregory Muxlow brought this action in his representative capacity as the Personal Representative for Jennifer Muxlow. By statute, a South Carolina Unfair Trade Practices Act ("SCUTPA") claim cannot be brought in a representative capacity. S.C. Code Ann. § 39-5-140(a) (Supp. 2004) The statute therefore precludes Plaintiff from maintaining a SCUTPA action in his capacity as Personal Representative for the Estate of Jennifer Muxlow.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(a), SCRPC)

59. Plaintiff's claim for a class action should be dismissed on the basis that the Deceased's damages do not satisfy the prerequisites to filing a class action, specifically that (1) any alleged class is not so numerous that joinder of all members is impracticable, (2) questions of law or fact are not common to other hypothetical class members of the class, (3) the claims of the representative parties are not typical of the claims of the purported class, and (4) the specificity of these factual allegations demonstrate that the representative party cannot fairly and adequately protect the interests of the purported class.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

60. An award or assessment of punitive or exemplary damages against ARIUM as prayed for by Plaintiff in the Complaint would violate ARIUM's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and ARIUM pleads such constitutional provisions as a complete defense to any claim for punitive damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Bifurcation of Punitive Damages)

61. ARIUM requests bifurcation of the punitive damages phase of trial as required by statute.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Set-Off)

62. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, ARIUM is entitled to a set-off of that amount for any damages that may or may not be assessed to ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contribution)

63. ARIUM invokes the protections afforded by law regarding the limitations on joint and several liability pursuant to S.C. Code § 15-38-10 *et. seq.*

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Incorporation)

64. ARIUM hereby incorporates and asserts all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

65. ARIUM reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully responded to Plaintiff's Amended Complaint herein, Defendant ARIUM St. Ives prays that this action be dismissed with prejudice, for costs of defending this action, for a trial by jury, and for other such relief this Court deems just and proper.

Respectfully submitted this 25th day of July, 2019, in Mount Pleasant, South Carolina.

HALL BOOTH SMITH, P.C.

/s/ Elizabeth F. Fulton

Jack G. Gresh (S.C. Bar 75188)

Elizabeth F. Fulton (S.C. Bar 100611)

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*Attorneys for Defendants ARIUM St. Ives and
Carroll Management Group, LLC*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT
	)	
Gregory Muxlow, individually and as	)	CASE NO: 2019-CP-23-02304
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
Plaintiff,	)	
	)	DEFENDANT ARIUM ST. IVES'
vs.	)	ANSWER TO PLAINTIFF'S
	)	COMPLAINT
	)	(Jury Trial Demanded)
Natasha Anglin, Henrietta Benson, Donita	)	
Failley, Arnold Harris, Yokeema Harris,	)	
Ruby Tuesday, KC Mulligan's, ARIUM St.	)	
Ives, Carroll Management Group, South	)	
Carolina Department of Transportation, City	)	
of North Charleston, Charleston County,	)	
	)	
Defendants.	)	
	)	

**TO: JOSHUA T. HAWKINS, ESQ. AND HELENA L. JEDZINIAK, ESQ.,
ATTORNEYS FOR PLAINTIFF:**

COMES NOW Defendant ARIUM St. Ives, (hereinafter referred to as "Defendant" or "ARIUM"), by and through its undersigned counsel, answers the Complaint of Plaintiff Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow (hereinafter referred to as "Plaintiff") and would show this Honorable Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 1 through 9 of the Complaint, and therefore, denies the same.
2. ARIUM denies the allegations of Paragraph 10 of the Complaint. Responding further, ARIUM is neither a company, business nor entity – it is a registered trademark.
3. ARIUM lacks sufficient evidence to admit or deny the allegations of Paragraphs 11 through 15 of the Complaint, and therefore, denies the same.

4. The allegations in Paragraph 16 of the Complaint sets forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations.
5. Responding to Paragraph 17 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
6. ARIUM does not believe these allegations are directed toward ARIUM, but notwithstanding, ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 18 through 37 of the Complaint, and therefore, denies the same and demands strict proof thereof.
7. ARIUM denies the allegations of Paragraph 38 and demands strict proof thereof.
8. The allegations contained in Paragraphs 39 and 40 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
9. ARIUM denies the allegation of Paragraph 41 and demands strict proof thereof.
10. The allegations contained in Paragraph 42 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
11. ARIUM denies the allegations of Paragraphs 43 and 44 and demands strict proof thereof.
12. The allegations in Paragraphs 45 and 46 of the Complaint set forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.

13. ARIUM denies the allegations of Paragraphs 47 and demands strict proof thereof.
14. Responding to Paragraph 48 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
15. ARIUM denies the allegations of Paragraph 49, including all subparagraphs, and demands strict proof thereof.
16. The allegations contained in Paragraph 50 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
17. The allegations in Paragraph 51 of the Complaint sets forth legal conclusions that do not require a response from ARIUM. To the extent a response is required, ARIUM denies the allegations, and demands strict proof thereof.
18. ARIUM denies the allegations of Paragraphs 52 and 53, including all subparagraphs, and demands strict proof thereof.
19. ARIUM denies the allegations of Paragraph 54 and demands strict proof thereof.
20. Responding to Paragraph 55 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
21. The allegations contained in Paragraphs 56 through 60 of Plaintiff's Complaint are directed to parties other than this ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
22. ARIUM denies the allegations of Paragraph 61 and demands strict proof thereof.

23. Responding to Paragraph 62 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
24. ARIUM denies the allegations contained in Paragraph 63 of the Complaint and demands strict proof thereof.
25. ARIUM denies the allegations contained in Paragraph 64 of the Complaint, including all subparagraphs, and demands strict proof thereof.
26. ARIUM denies the allegations contained in Paragraph 65 and 66 of the Complaint and demands strict proof thereof.
27. Responding to Paragraph 67 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
28. The allegations of Paragraph 68 of the Complaint set forth a legal conclusion that does not require a response from ARIUM. To the extent a response is required, ARIUM denies that Plaintiff is entitled to recover any damages from ARIUM and demands strict proof thereof.
29. ARIUM denies the allegations of Paragraphs 69 through 72 and demands strict proof thereof.
30. Responding to Paragraph 73 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
31. ARIUM denies the allegations of Paragraphs 74 through 77 and demands strict proof thereof.
32. Responding to Paragraph 78 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
33. ARIUM denies the allegations of Paragraphs 79 through 84 and demands strict proof thereof.
34. Responding to Paragraph 85 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.

35. ARIUM lacks sufficient information to admit or deny the allegations of Paragraphs 86 through 92 of the Complaint, including all subparagraphs, and therefore, denies the same and demands strict proof thereof.
36. ARIUM denies the allegations of Paragraphs 93 through 94 and demands strict proof thereof.
37. Responding to Paragraph 95 of the Complaint, ARIUM reincorporates its responses hereinabove as if set forth here verbatim.
38. The allegations contained in Paragraphs 96 and 97 of the Complaint are directed to parties other than ARIUM, and therefore no response is required. To the extent a response is required, ARIUM is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
39. ARIUM denies the allegations of Paragraph 98 and demands strict proof thereof.
40. ARIUM denies the allegations of Paragraphs 99 through 101, including all subparagraphs, and demands strict proof thereof.
41. ARIUM denies the allegations of Paragraphs 102 through 104 and demands strict proof thereof.
42. ARIUM denies the request for relief set forth in the "Wherefore" paragraphs of the Complaint and demands strict proof thereof.
43. Each and every allegation not specifically herein admitted by ARIUM is denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Service)

44. Plaintiff has failed to properly serve ARIUM with the copies of the pleadings, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

45. This Court lacks personal jurisdiction over ARIUM, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Venue)

46. Venue is not proper in Greenville County, and this case must be dismissed, or in the alternative, transferred to Charleston County, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

47. Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against ARIUM, specifically that ARIUM is a registered trademark and has no ownership, control or management over the apartment complex located at 7930 St. Ives Road, North Charleston, South Carolina, notwithstanding none of the allegation asserted against ARIUM or Carroll Management Group, LLC, give rise to viable causes of action, and therefore, this Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

48. ARIUM would show that any damages suffered by the Plaintiff, which are denied, were not the proximate cause of any acts or omissions by ARIUM, which is a complete bar to recovery from ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

49. That Deceased, possessing knowledge of the conditions present while in the subject area, assumed the risk of her alleged injury in that she failed to take reasonable precautions necessary for her own safety to ensure that her health and welfare would not be adversely affected, and as such, Deceased's assumption of the risk was the proximate cause of the injury complained of, and Plaintiff's recovery is therefore barred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Control)

50. Defendant does not own, possess, control or maintain the subject highway where the subject collision occurred, and therefore, Plaintiff is barred from recovery against Defendant for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

51. Any injury or damages as alleged in Plaintiff's Complaint were due to and caused solely by negligent actions and omissions of other entities over whom ARIUM has no control and were not due to or caused by any negligence or act attributable to ARIUM. As a result thereof, ARIUM is in no way liable to Plaintiff for the matters set forth in the Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

52. That the injury or damage allegedly suffered by Plaintiff, if any, was due to, and caused by, and was the proximate result of, the intervening and superseding negligence, willfulness, wantonness, and recklessness of Plaintiff and/or others, and as such constitutes a complete defense to Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

53. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of this Defendant, if any, and which is expressly denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence of Others)

54. ARIUM alleges, upon information and belief, that Plaintiff's damages, which are denied, were due to the sole negligence of others not associated with or under the control of ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Duty Breached)

55. To the extent ARIUM owed any legal duty to Plaintiff, which are denied, any actions alleged to have been taken or not taken by ARIUM do not give rise to a breach of any duty owed to Plaintiff, and therefore, Plaintiff is barred from recovery against ARIUM for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

56. Plaintiff's claim for unfair trade practices should be dismissed on the basis that the allegations against ARIUM do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

57. Plaintiff's claim for unfair trade practices should be dismissed due to the fact Gregory Muxlow brought this action in his representative capacity as the Personal Representative for Jennifer Muxlow. By statute, a South Carolina Unfair Trade Practices Act ("SCUTPA")

claim cannot be brought in a representative capacity. S.C. Code Ann. § 39-5-140(a) (Supp. 2004) The statute therefore precludes Plaintiff from maintaining a SCUTPA action in his capacity as Personal Representative for the Estate of Jennifer Muxlow.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(a), SCRCP)

58. Plaintiff's claim for a class action should be dismissed on the basis that the Deceased's damages do not satisfy the prerequisites to filing a class action, specifically that (1) any alleged class is not so numerous that joinder of all members is impracticable, (2) questions of law or fact are not common to other hypothetical class members of the class, (3) the of the representative parties are not typical of the claims of the purported class, and (4) the specificity of these factual allegations demonstrate that the representative party cannot fairly and adequately protect the interests of the purported class.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

59. An award or assessment of punitive or exemplary damages against ARIUM as prayed for by Plaintiff in the Complaint would violate ARIUM's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines clause of the Eighth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and ARIUM pleads such constitutional provisions as a complete defense to any claim for punitive damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Bifurcation of Punitive Damages)

60. ARIUM requests bifurcation of the punitive damages phase of trial as required by statute.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Set-Off)

61. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, ARIUM is entitled to a set-off of that amount for any damages that may or may not be assessed to ARIUM.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contribution)

62. ARIUM invokes the protections afforded by law regarding the limitations on joint and several liability pursuant to S.C. Code § 15-38-10 *et. seq.*

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Incorporation)

63. ARIUM hereby incorporates and assert all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

64. ARIUM reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully responded to Plaintiff's Complaint herein, Defendant ARIUM St. Ives prays that this action be dismissed with prejudice, for costs of defending this action, for a trial by jury, and for other such relief this Court deems just and proper.

Respectfully submitted this 31st day of May, 2019, in Mount Pleasant, South Carolina.

[Signature Page to Follow]

HALL BOOTH SMITH, P.C.

/s/ Jack G. Gresh

Jack G. Gresh (S.C. Bar 75188)

Elizabeth F. Fulton (S.C. Bar 100611)

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*Attorneys for Defendants ARIUM St. Ives and
Carroll Management Group, LLC*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL
COUNTY OF GREENVILLE	)	CIRCUIT
	)	
Gregory Muxlow, individually and as	)	CASE NO: 2019-CP-23-02304
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT CARROLL
	)	MANAGEMENT GROUP, LLC'S
	)	ANSWER TO PLAINTIFF'S AMENDED
	)	COMPLAINT
	)	(Jury Trial Demanded)
Natasha Anglin, the Personal Representative	)	
of the Estate of Henrietta Benson, Donita	)	
Failley, Arnold Harris, Yokeema Harris,	)	
Ruby Tuesday, KC Mulligan's, ARIUM St.	)	
Ives, Carroll Management Group, South	)	
Carolina Department of Transportation, City	)	
of North Charleston, Charleston County,	)	
	)	
Defendants.	)	
	)	

TO: JOSHUA T. HAWKINS, ESQ. AND HELENA L. JEDZINIAK, ESQ., ATTORNEYS FOR THE PLAINTIFF:

COMES NOW Defendant Carroll Management Group, LLC, improperly identified as Carroll Management Group (hereinafter referred to as "Defendant" or "Carroll"), by and through its undersigned counsel, answers the Amended Complaint of Plaintiff Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow (hereinafter referred to as "Plaintiff") and would show this Honorable Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 1 through 9 of the Complaint, and therefore denies the same.
2. Defendant denies the allegations of Paragraph 10 of the Complaint.
3. Responding to the allegations of Paragraph 11, Defendant admits that it is a Georgia

Corporation. It denies that it does business in Greenville County, South Carolina and demands strict proof thereof.

4. Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 12 through 15 of the Complaint, and demands strict proof thereof.
5. The allegations in Paragraph 16 of the Complaint sets forth a legal conclusion that does not require a response from Defendant. To the extent a response is required, Defendant denies the allegations, and would show that venue and jurisdiction are proper in Charleston County.
6. Responding to Paragraph 17 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth herein verbatim.
7. The allegations in Paragraph 18 of the Complaint sets forth a legal conclusion that does not require a response from Defendant. To the extent a response is required, Defendant craves reference to the pleadings on file in this matter.
8. Defendant does not believe the allegations set forth in Paragraphs 19 through 27 are directed toward Defendant, but notwithstanding, Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 19 through 27 of the Complaint, and therefore, denies the same and demands strict proof thereof.
9. Responding to Paragraph 28, Defendant admits that on or about June 11, 2018, Jennifer and Harris executed a lease for an apartment at 7930 St. Ives Road in North Charleston, South Carolina. Defendant denies all of the remaining allegations of Paragraph 28.
10. Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 29 through 39 of the Complaint, and therefore, denies the same and demands strict proof thereof.

11. Responding to Paragraph 40 of the Complaint, Defendant admits that Jennifer's parents did report her death to a representative of Defendant, but at no time was any documentation of her death provided as requested by Defendant to remove her from the lease. Due to the lack of documentation confirming Jennifer's death, which was requested but never provided, Defendant proceeded with initiating an eviction against both leaseholders, Jennifer and Harris. Defendant lacks sufficient information to admit or deny the remaining allegations of Paragraph 40, and therefore, denies the same and demands strict proof thereof. Further, answering Defendant denies that anyone acted on behalf of Defendant ARIUM St. Ives as it is not an entity, rather it is a trademark.
12. The allegations contained in Paragraphs 41 and 42 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required, Defendant is without sufficient knowledge and information to respond and therefore denies the same and demand strict thereof.
13. Defendant denies the allegation of Paragraph 43 and demands strict proof thereof.
14. The allegations contained in Paragraph 44 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required, Defendant is without sufficient knowledge and information to respond and therefore denies the same and demands strict thereof.
15. Defendant denies the allegations of Paragraphs 45 and 46 and demands strict proof thereof.
16. The allegations in Paragraphs 47 and 48 of the Complaint set forth legal conclusions that do not require a response from Defendant. To the extent a response is required, Defendant denies the allegations, and demands strict proof thereof.
17. Defendant denies the allegations of Paragraphs 49 and demands strict proof thereof.

18. Responding to Paragraph 50 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
19. Defendant denies the allegations of Paragraph 51, including subparagraphs a. through n., and demands strict proof thereof.
20. The allegations contained in Paragraph 52 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required, Defendant is without sufficient knowledge and information to respond and therefore denies the same and demands strict proof thereof.
21. The allegations in Paragraph 53 of the Complaint sets forth legal conclusions that do not require a response from Defendant. To the extent a response is required, Defendant denies the allegations, and demands strict proof thereof.
22. Defendant denies the allegations of Paragraphs 54 and 55, including all subparagraphs, and demands strict proof thereof.
23. Defendant denies the allegations of Paragraph 56 and demands strict proof thereof.
24. Responding to Paragraph 57 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
25. The allegations contained in Paragraphs 58 through 62 of Plaintiff's Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required, Defendant is without sufficient knowledge and information to respond and therefore, denies the same and demand strict thereof.
26. Defendant denies the allegations of Paragraph 63 and demands strict proof thereof.
27. Responding to Paragraph 64 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.

28. Defendant denies the allegations contained in Paragraph 65 of the Complaint and demands strict proof thereof.
29. Defendant denies the allegations contained in Paragraph 66 of the Complaint, including subparagraphs a. through h., and demands strict proof thereof.
30. Defendant denies the allegations contained in Paragraphs 67 and 68 of the Complaint and demands strict proof thereof.
31. Responding to Paragraph 69 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
32. The allegations of Paragraph 70 of the Complaint set forth a legal conclusion that does not require a response from Defendant. To the extent a response is required, Defendant denies that Plaintiff is entitled to recover any damages from Defendant and demands strict proof thereof.
33. Defendant denies the allegations of Paragraphs 71 through 74 and demands strict proof thereof.
34. Responding to Paragraph 75 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
35. Defendant denies the allegations of Paragraphs 76 through 79 and demands strict proof thereof.
36. Responding to Paragraph 80 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
37. Defendant denies the allegations of Paragraphs 81 through 86 and demands strict proof thereof.
38. Responding to Paragraph 87 of the Complaint, Defendant reincorporates its responses

hereinabove as if set forth here verbatim.

39. Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 88 through 94 of the Complaint, including all subparagraphs, and therefore, denies the same and demands strict proof thereof.
40. Defendant denies the allegations of Paragraphs 95 through 96 and demands strict proof thereof.
41. Responding to Paragraph 97 of the Complaint, Defendant reincorporates its responses hereinabove as if set forth here verbatim.
42. The allegations contained in Paragraphs 98 and 99 of the Complaint are directed to parties other than this Defendant, and therefore no response is required. To the extent a response is required, Defendant is without sufficient knowledge and information to respond and therefore denies the same and demand strict thereof.
43. Defendant denies the allegations of Paragraph 100 and demands strict proof thereof.
44. Defendant denies the allegations of Paragraphs 101 through 103, including all subparagraphs, and demands strict proof thereof.
45. Defendant denies the allegations of Paragraphs 104 through 106 and demands strict proof thereof.
46. Defendant denies the request for relief set forth in the "Wherefore" paragraphs of the Complaint and demands strict proof thereof.
47. Each and every allegation not specifically herein admitted by Defendant is denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

48. This Court lacks personal jurisdiction over Defendant, and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil

Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Improper Venue)

49. Venue is not proper in Greenville County, and this case must be dismissed, or in the alternative, transferred to Charleston County, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

50. All of Plaintiff's Causes of Action fail to state facts sufficient to constitute a cause of action against this Defendant, and therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

51. Defendant would show that any damages suffered by the Plaintiff, which are denied, were not the proximate cause of any acts or omissions by Defendant, which is a complete bar to recovery from Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Notice)

52. Defendant lacked actual and constructive notice of any alleged hazardous condition described by the Plaintiff, and therefore is not liable for Plaintiff's damages, which are denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Open and Obvious)

53. Any condition alleged to have existed and/or which allegedly contributed to the incident out of which this matter arises was an open and obvious condition which Plaintiff knew or

should have known existed then and there, and Plaintiff's knowledge or expected knowledge of the existence of the alleged danger is a bar to any recovery from Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

54. That Deceased, possessing knowledge of the conditions present while in the subject area, assumed the risk of her alleged injury in that she failed to take reasonable precautions necessary for her own safety to ensure that her health and welfare would not be adversely affected, and as such, Deceased's assumption of the risk was the proximate cause of the injury complained of, and Plaintiff's recovery is therefore barred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

55. Any injury or damages as alleged in Plaintiff's Complaint were due to and caused solely by negligent actions and omissions of other entities over whom this Defendant has no control, and were not due to or caused by any negligence or act attributable to this Defendant. As a result thereof, this Defendant is in no way liable to Plaintiff for the matters set forth in the Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

56. That the injury or damage allegedly suffered by Plaintiff, if any, was due to, and caused by, and was the proximate result of, the intervening and superseding negligence, willfulness, wantonness, and recklessness of Plaintiff and/or others, and as such constitutes a complete defense to Plaintiff's claims.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)

57. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own contributory and

comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of this Defendant, if any, and which is expressly denied.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence of Others)

58. Defendant alleges, upon information and belief, that Plaintiff's damages, which are denied, were due to the sole negligence of others not associated with or under the control of Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Control)

59. Defendant does not own, possess, control or maintain the subject highway where the subject collision occurred, and therefore, Plaintiff is barred from recovery against Defendant for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(No Duty Breached)

60. To the extent Defendant owed any legal duty to Plaintiff, which is denied, any actions alleged to have been taken or not taken by Defendant do not give rise to a breach of any duty owed to Plaintiff, and therefore, Plaintiff is barred from recovery against Defendant for any negligence actions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

61. Plaintiff's claim for unfair trade practices should be dismissed on the basis that the allegations against Defendant do not affect the public interest, were not unfair, or deceptive, are not capable of repetition, and do not affect trade or commerce.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unfair Trade Practices)

62. Plaintiff's claim for unfair trade practices should be dismissed due to the fact Gregory Muxlow brought this action in his representative capacity as the Personal Representative for Jennifer Muxlow. By statute, a South Carolina Unfair Trade Practices Act ("SCUTPA") claim cannot be brought in a representative capacity. In pertinent part, the act provides:

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 **may bring an action individually, but not in a representative capacity, to recover actual damages.**

S.C. Code Ann. § 39-5-140(a) (Supp. 2004) (emphasis added). The statute therefore precludes Plaintiff from maintaining a SCUTPA action in his capacity as Personal Representative for the Estate of Jennifer Muxlow.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Satisfy Rule 23(a), SCRPC)

63. Plaintiff's claim for a class action should be dismissed on the basis that the decedent's damages do not satisfy the prerequisites to filing a class action, specifically that (1) any alleged class is not so numerous that joinder of all members is impracticable, (2) questions of law or fact are not common to other hypothetical class members of the class, (3) the claims of the representative parties are not typical of the claims of the purported class, and (4) the specificity of these factual allegations demonstrates that the representative party cannot fairly and adequately protect the interests of the purported class.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

64. An award or assessment of punitive or exemplary damages against Defendant as prayed for by Plaintiff in the Complaint would violate Defendant's constitutional rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution, the

Excessive Fines clause of the Eighth Amendment to the United States Constitution, and similar provisions in the South Carolina Constitution, applicable statutes and court rules, and Defendant pleads such constitutional provisions as a complete defense to any claim for punitive damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Bifurcation of Punitive Damages)

65. Defendant requests bifurcation of the punitive damages phase of trial as required by statute.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Set-Off)

66. To the extent Plaintiff receives compensation for injuries complained of in the Complaint from any other party to this action and/or any other source, Defendant is entitled to a set-off of that amount for any damages that may or may not be assessed to Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contribution)

67. This Defendant invokes the protections afforded by law regarding the limitations on joint and several liability pursuant to S.C. Code § 15-38-10 *et. seq.*

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Incorporation)

68. This Defendant hereby incorporates and assert all defenses, counterclaims, set-offs, and credits pled by other parties to this action, to include any pleadings filed after this Answer, and specifically, without limitation, all defenses, counterclaims, set-offs, and credits pled to Plaintiff's claims, to the extent not inconsistent with its Answer herein and its denial of liability of any kind.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

69. This Defendant reserves and does not waive any additional or further defenses as may be

revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully responded to Plaintiff's Amended Complaint herein, Defendant Carroll Management Group, LLC, prays that this action be dismissed with prejudice, for costs of defending this action, for a trial by jury, and for other such relief this Court deems just and proper.

Respectfully submitted this 25th day of July, 2019, in Mount Pleasant, South Carolina.

HALL BOOTH SMITH, P.C.

/s/Elizabeth F. Fulton

Jack G. Gresh (S.C. Bar 75188)

Elizabeth F. Fulton (S.C. Bar 100611)

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*Attorneys for Defendants ARIUM St. Ives and
Carroll Management Group, LLC*

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

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, Charleston
County,

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE No.: 2019-CP-23-02304

2019-CP-10-4193

**DEFENDANT RUBY TUESDAY, INC.'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

2019 AUG -8 PM 3:05
JULIE J. ARMSTRONG
CLERK OF COURT

TO: JOSHUA T. HAWKINS, ESQUIRE, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, that the Defendant, Ruby Tuesday, Inc., improperly identified as Ruby Tuesday, will move as soon as practicable before this Honorable Court pursuant to Rule 12 (c) of the South Carolina Rules of Civil Procedure for an order granting it judgment on the pleadings because the Plaintiff's alleged facts do not provide a basis for his claims and judgment should be granted as a matter of law. A Motion for Judgment on the Pleadings should be granted "when accepting the facts set forth in the pleadings, the case can be decided as a matter of law. Fitchett v County of Horry, 2011 U.S. Dist. Lexis 113951 (D.S.C. 2011). Accepting the facts in the instant case for the purposes of this motion, the plaintiff has no evidence of any duty owed to the plaintiffs by Ruby Tuesday, Inc. and, even if there was a duty owed, which is denied, that the breach of the duty did not cause the plaintiff's death. In the complaint, Plaintiff, individually and as the Personal Representative of the Estate of Jennifer

A Certified Copy

Paul B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 8-5-2019

Muxlow, alleges that Defendant was: (1) negligent in causing the subject accident, (2) negligent in hiring, supervising, and retaining Defendant Arnold Harris, (3) liable for the wrongful death and survival of Plaintiff's Decedent, and (4) liable for a violation of the Unfair Trade Practices Act because Plaintiff's Decedent, who admittedly was not an agent or employee of Ruby Tuesday, was struck and killed on November 20, 2018 when a vehicle driven by Defendant Natasha Anglin hit the plaintiff's Decedent while she crossed a road on foot at night. Furthermore, the plaintiff's Decedent's claim for a violation of the South Carolina Unfair Trade Practices Act should be dismissed because a cause of action for a violation of the South Carolina Unfair Trade Practices Act does not apply to personal injury actions; does not survive the death of the decedent; does not apply in an employment relationship; does not affect the public interest; does not apply to acts which do not affect trade or commerce; does not allow claims to be brought in a representative capacity; and, if the South Carolina Unfair Trade Practices Act applies, then, as a matter of law, the acts of Ruby Tuesday, Inc. did not proximately cause the plaintiff's damage. As a result, the defendant is entitled to judgment on the pleadings as a matter of law.

This motion will be supplemented by a memorandum of law to be filed at a later date.

s/Catharine Garbee Griffin
 Catharine Garbee Griffin
 SC Bar No.: 9821
 BAKER, RAVENEL & BENDER, LLP
 3710 Landmark Drive, Suite 400
 Post Office Box 8057
 Columbia, South Carolina 29202
 Phone (803) 799-9091; Fax: (803) 779-3423
 E-Mail: cgriffin@brblegal.com
Attorneys for Defendant Ruby Tuesday, Inc.

May 28, 2019

2019-CP-10-493

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP2302304

Official File Stamp:

05-28-2019 05:01:11 PM

Court:

CIRCUIT COURT

Common Pleas

Greenville

Case Caption:

Gregory Muxlow , plaintiff, et al vs. Natasha Anglin , defendant, et al

Document(s) Submitted:

Motion/Judgment on the Pleadings

Motion/Dismiss

Filed by or on behalf of:

Catharine Garbee Griffin

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

M. Dawes Cooke, Jr. for Charleston County,
North Charleston City Of

Christopher David Lizzi for Kc Mulligans

Joshua Thomas Hawkins for Gregory Muxlow

Catharine Garbee Griffin for Ruby Tuesday

Christopher Mark Kovach for Charleston County,
North Charleston City Of

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Arium St Ives

Carroll Management Group

Gregory Muxlow Prs

Jennifer Muxlow

Jennifer Muxlow Estate

FILED
2019 AUG -8 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT

Transportation South Carolina Department Of

Henrietta Benson

Donita Failey

Arnold Harris

Yokeema Harris

Natasha Anglin

Certificate of Electronic Notification

Recipients

Catharine Griffin - Notification transmitted on 05-28-2019 05:02:22 PM.

M. Cooke - Notification transmitted on 05-28-2019 05:02:22 PM.

Christopher Kovach - Notification transmitted on 05-28-2019 05:02:22 PM.

Christopher Lizzi - Notification transmitted on 05-28-2019 05:02:22 PM.

Joshua Hawkins - Notification transmitted on 05-28-2019 05:02:22 PM.

A Certified Copy

Paul D. Winkens

Clerk of Court C.P. & G.S.

Greenville County, SC

Dated 8-5-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE No.: 2019-CP-10-04193
	)	
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	
	)	DEFENDANT RUBY TUESDAY, INC.'s
Plaintiff,	)	MOTION TO AMEND ORDER
	)	GRANTING MOTION TO DISMISS
v.	)	
	)	
Natasha Anglin, the Personal	)	
Representative of the Estate of 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.	)	
	)	

Defendant, Ruby Tuesday, Inc., by and through its undersigned attorney, hereby moves pursuant to Rule 59(e), SCRCP for an order amending the Honorable Bentley D. Price's January 13, 2020 Form 4 order granting defendant's motion to dismiss and motion for judgment on the pleadings to include the factual and legal reasoning for granting the motions. Defendant respectfully requests that the Court amend the Form 4 order to include the basis for the Court's conclusions and ruling. A proposed Amended Order is attached to this motion for the Court's consideration.

The Form 4 Order was received by undersigned counsel when it was filed on January 13, 2020. Therefore, this motion to amend is filed within the ten day time period allowed under Rule 59(e) and timely. Defendant has also provided a copy of this motion by email and regular mail to trial court.

s/Catharine Garbee Griffin
Catharine Garbee Griffin
SC Bar No.: 9821
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E-Mail: cgriffin@brblegal.com
Attorneys for Defendant Ruby Tuesday, Inc.

January 22, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO: 2019-CP-10-04193
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	DEFENDANT CARROLL
Plaintiff,	)	MANAGEMENT GROUP, LLC'S
	)	MOTION TO AMEND ORDER
vs.	)	GRANTING MOTION TO DISMISS
	)	
Natasha Anglin, the Personal	)	
Representative of the Estate of 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.	)	
	)	

PLEASE TAKE NOTICE that Defendant Carroll Management Group, LLC ("CMG"), by and through its undersigned counsel, hereby moves for an order amending the Honorable Bentley D. Price's January 13, 2020, Form 4 Order granting CMG's motion to dismiss to include the factual and legal reasoning for granting the motions. CMG respectfully requests that the Court amend the Form 4 order to include the basis for the Court's conclusions and ruling. A proposed Amended Order is attached to this motion for the Court's consideration.

The Form 4 Order was received by undersigned counsel when it was e-filed on January 13, 2020. Accordingly, this motion to amend is filed within the ten day time period allowed under Rule 59(e) and timely. Defendant has also provided a copy of this motion by email to Judge Price's chambers.

[Signature Page to Follow]

Respectfully submitted this 23rd day of January 2020, in Mount Pleasant, South Carolina.

HALL BOOTH SMITH, P.C.

/s/ Elizabeth F. Morrison

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*Attorneys for Defendants Arium St. Ives and Carroll
Management Group, LLC*

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2019-CP-10-04193
3 Gregory Muxlow,)
4 individually and as)
5 Personal) Transcript of Record
6 Representative of the)
7 Estate of Jennifer)
8 Muxlow,)
9 Plaintiff,) Date: January 10, 2020
10 vs.)
11 Natasha Anglin, et.)
12 al.,)
13 Defendants.)
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B E F O R E:

The Honorable Bentley Price

Denise J. Lauder, RPR
Ninth Judicial Circuit

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

JOSHUA T. HAWKINS, ESQUIRE
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1225 South Church Street
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REPRESENTING THE DEFENDANT RUBY TUESDAY:

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REPRESENTING THE DEFENDANT CARROLL MANAGEMENT
COMPANY:

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1 REPRESENTING THE DEFENDANT KC MULLIGAN'S
2 CHRISTOPHER LIZZI, ESQUIRE
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4 2170 Ashley Phosphate Road
5 Suite 402
6 North Charleston, SC 29406
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1 he had done a bunch of times before, and she was
2 frantically looking all over Charleston or all over
3 the area where she was for that car.

4 He was in KC Mulligan's, we found out
5 later, buying drugs.

6 THE COURT: Let me ask you this: When
7 was -- when was her employment terminated from Ruby
8 Tuesday?

9 MR. HAWKINS: I think she left Ruby
10 Tuesday several months before her death. I don't
11 know the exact time, Your Honor.

12 THE COURT: Okay. All right.

13 MR. HAWKINS: But I think, Your Honor,
14 it's important, like in these cases -- and I
15 will --

16 THE COURT: Was it true that they were
17 living together?

18 MR. HAWKINS: They were living together
19 at the time.

20 THE COURT: Okay. Keep going.

21 MR. HAWKINS: Looking through the
22 cases, you know, we sought this in the initial
23 response that we filed and then again in the
24 supplemental response we filed, because it -- I
25 guess I need to back up a little bit.

1 That's exactly what happened. He
2 continued to do whatever he wanted to the point
3 where he -- I mean, I don't want to say it in a
4 crass or overly blunt way, especially not with
5 Jennifer's dad sitting in here, but, I mean, that's
6 what killed her. She was out looking for him
7 because he took her wallet and keys and her car.

8 And he was able to do that because of
9 what Ruby Tuesday was supposed to do and didn't do
10 and because of their decision to violate their own
11 policy and procedures over and over and over again.
12 Even when the daddy called.

13 THE COURT: All right. Ms. Morrison,
14 do you want to go next?

15 MS. MORRISON: Yes, Your Honor. May it
16 please the Court. I represent ARIUM St. Ives and
17 Carroll Management Group. ARIUM St. Ives is not an
18 entity; it's a trademark. I think -- Mr. Hawkins
19 and I agree; they should not be a party to this.
20 They are not a thing.

21 Carroll Management Group is the
22 property manager --

23 THE COURT: Well, hold on. So ARIUM
24 St. Ives is out?

25 MS. MORRISON: Yes, Your Honor.

1 THE COURT: All right. Granted.
2 Carroll Management Group.

3 MS. MORRISON: Carroll Management Group
4 is the property management company for the
5 apartment complex known as ARIUM St. Ives which --
6 where we're talking about, Your Honor, we're in
7 North Charleston here where Rivers Avenue splits
8 and you can go to Charleston this way.
9 (Indicating) We're off that. You have to go off
10 Green Ridge Road, and then we're not -- we do not
11 have an ingress or egress off of Rivers Avenue.

12 The allegations against my client,
13 Carroll Management Group, is that -- first and
14 foremost, that our employment agents knew that
15 their tenants must cross Highway 52. So we had a
16 duty to request that a crosswalk be installed on
17 52. That's where that negligence cause of action
18 is from.

19 I believe in speaking with Mr. Hawkins
20 right before this hearing, he's agreed to withdraw
21 those arguments in terms of negligence -- if that's
22 correct?

23 MR. HAWKINS: That's correct, Your
24 Honor. I think the only remaining issue is the
25 eviction issue.

1 MS. MORRISON: So the other allegation,
2 it was pled under negligence, but the way I read it
3 and assuming it's true is that after Ms. Muxlow's
4 death, there was a wrongful eviction of Ms. Muxlow.
5 The allegation is that the Muxlow family provided
6 proof that Ms. Muxlow had passed away, but they
7 proceeded with the eviction anyway.

8 For purposes of this motion only,
9 assuming that is true, that's -- there's no cause
10 of action because a wrongful eviction is only for
11 the tenant. It's under the landlord tenant act;
12 it's 27-46-60. And that's the one that talks about
13 if the landlord kicks you out, you can get treble
14 damages.

15 Unfortunately, in this case, Ms. Muxlow
16 was dead so there was nothing to pursue.

17 THE COURT: All right.

18 MS. MORRISON: But then there's another
19 allegation that perhaps these -- it caused
20 additional pain and anguish during an already
21 traumatic time, which would be emotional damages.
22 And that is something that our courts -- that's
23 bystander liability. You can't get that either
24 under a wrongful eviction.

25 In my memo, I talked through the

1 different case law about that, you know, specific
2 harm and specific threat. That's not something
3 that is recognized under our laws that a family who
4 -- also, I should mention is not a party to this
5 lawsuit, cannot recover from Carroll Management
6 Group because it's not a cause of action.

7 So, basically, all of the causes of
8 action against Carroll Management Group stems from
9 that. There is SCUTPA, there is a class action in
10 there, negligent entrustment, negligence, negligent
11 hiring and retention. So all of those really come
12 down to is there a cause of action for wrongful
13 eviction? Taking again what's true -- what is
14 true, there's just not under our laws.

15 THE COURT: Anything, Mr. Hawkins?

16 MR. HAWKINS: Yes, Your Honor. In
17 response to that, my colleague is correct,
18 withdrawing our allegations about the duty to
19 implement a crosswalk due to the location and
20 everything.

21 But the cause of action related to the
22 wrongful eviction, Jennifer's brother, Gregory
23 Muxlow, the personal representative -- he would be
24 here but for his work schedule.

25 But, in any event, her claims -- I

1 mean, he's bringing claims for her. And if that's
2 going to cause an unnecessary creditor/debtor or
3 any kind of claim on the estate, that claim is now
4 his.

5 He's also named, I think, in the
6 complaint as Gregory Muxlow, individually and as
7 personal representative for the estate. So to the
8 extent they're -- I mean, obviously, when they're
9 trying to get a funeral together and, you know,
10 deal with the passing of this 22-year-old girl,
11 that didn't need to be exacerbated by them trying
12 to initiate the eviction proceeding.

13 I think we still have a claim. You
14 know, I think we have a claim related to that.
15 Especially if it falls under general negligence,
16 because we put defendants, plural, which would
17 include that defendant. So I agree with her on the
18 location issue.

19 The eviction issue, they did have
20 notice that she was deceased. They instituted this
21 eviction proceeding. For what reason, I don't
22 know. We alleged it caused damages, and I think
23 that's all we have to have to deny our motion and
24 dismiss it.

25 MS. MORRISON: May I respond, Your

1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 16th day of March, 2020 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17 S/Carol Denise Lauder
18 Registered Professional
19 Reporter, CP
My Commission expires
February 27, 2028
20
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24
25

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 7, 2020

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/Joshua T. Hawkins

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Aug 07 2020
SC Court of Appeals