

CASE NUMBER: CGC17559587

ANSWER TO COMPLAINT (TRANSACTION ID # 60936074 FILED BY DEFENDANT MCGINNIS, SEAN WILLIAM

Document prepared for:

CASE NAME

SAMANTHA BRIASCO-STEWART VS. SEAN WILLIAM MCGINNIS
ET AL

DOCUMENT FILED DATE

Aug. 3rd, 2017

CASE FILING DATE

June 16th, 2017

COUNTY

San francisco county, CA

JUDGE

Teri L. Jackson

CATEGORY

PERSONAL INJURY/PROPERTY DAMAGE - VEHICLE RELATED

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ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
08/03/2017
Clerk of the Court
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Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO
CIVIL - UNLIMITED JURISDICTION

SAMANTHA BRIASCO-STEWART,

Plaintiff,

vs.

SEAN WILLIAM MCGINNIS and DOES
1-45,

Defendants.

Case No. CGC-17-559587

ANSWER TO COMPLAINT

Action Filed: 6/16/2017

COMES NOW defendant, SEAN WILLIAM MCGINNIS, and in answer to plaintiff's
unverified complaint on file herein, admits, denies and alleges as follows:

Answering the allegations of plaintiff's complaint on file herein, this answering defendant
denies each and every, all and singular, generally and specifically, the allegations contained in
said complaint, and each and every part thereof, and in this connection this defendant denies that
plaintiff has been injured or damaged in any sum, or otherwise, or at all, by reason of any
carelessness, negligence, act or omission of this answering defendant.

WHEREFORE, this answering defendant prays for judgment as hereinafter set forth.

AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
THE COMPLAINT, and each and every cause of action therein, this answering defendant alleges
that the complaint fails to state facts sufficient to constitute a cause of action against this
answering defendant.

1 AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
2 TO THE COMPLAINT, and each and every cause of action therein, this answering defendant
3 alleges that plaintiff herself was guilty of carelessness, negligence and other wrongful conduct in
4 and about the matters set forth in the complaint on file herein, and that said carelessness,
5 negligence and other wrongful conduct on the part of said plaintiff proximately contributed in
6 some degree to the alleged incident and to the damages and injuries, if any, alleged to have been
7 sustained by said plaintiff and therefore said carelessness, negligence and wrongful conduct
8 completely bars any recovery, or in the alternative, it reduces the right of recovery by that amount
9 which contributed to this incident as set forth under the doctrine of comparative negligence.

10 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
11 THE COMPLAINT, and each and every cause of action therein, this answering defendant alleges
12 that others, including parties and unnamed individuals and entities, were careless and negligent in
13 and about the matters alleged in the complaint on file herein, and that said carelessness and
14 negligence on the part of said others proximately contributed to the happening of the incident, and
15 to the injuries, loss and damages complained of, if any there were; should plaintiff recover
16 damages against this answering defendant, said defendant is entitled to have the amount abated,
17 reduced, or eliminated in proportion to the percentage of negligence of said others, including
18 parties and unnamed individuals and entities, proximately causing plaintiff's injuries and
19 damages, if any there were.

20 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
21 TO THE COMPLAINT, and each and every cause of action therein, this answering defendant
22 alleges that plaintiff failed to mitigate her damages, if any, and accordingly, is not entitled to the
23 relief sought in the complaint.

24 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
25 THE COMPLAINT, and each and every cause of action therein, this answering defendant alleges
26 that plaintiff voluntarily and knowingly assumed any and all risks involved in the situation
27 underlying the subject complaint.

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1 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
2 THE COMPLAINT, and each and every cause of action therein, this answering defendant alleges
3 that plaintiff is barred by the applicable statutes of limitation (CCP §335.1).

4 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
5 TO THE COMPLAINT, and each and every cause of action therein, this answering defendant
6 alleges that some or all of the plaintiff's alleged damages and loss are barred by the provisions of
7 Proposition 213 (Civil Code, Section 3333.4).

8 AS AND FOR A EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
9 TO THE COMPLAINT, and each and every cause of action therein, this answering defendant
10 alleges the complaint is barred by collateral estoppel and res judicata.

11 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
12 TO THE COMPLAINT, and each and every cause of action therein, plaintiff has incurred
13 property damage that was paid by plaintiff's insurer. If plaintiff's insurer is subrogated by
14 plaintiff's policy of insurance, plaintiff's has failed to join said insurer as a necessary party
15 pursuant to *Ferraro v. Lyle Construction of California* (1980) 102 Cal.App.3d 33.

16 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,
17 TO THE COMPLAINT, and each and every cause of action therein, this answering defendant
18 alleges that plaintiff's claim for, and right of, recovery is limited by the doctrine set forth in *Witt*
19 *v. Jackson* (1961) 57 Cal.2d 57, 17 Cal. Rptr. 369, 360 P.2d 641. It is further alleged that plaintiff
20 was in the course and scope of her employment with this answering defendant. Therefore, the
21 Worker's Compensation statutes and/or laws and the Worker's Compensation Appeals Board
22 have exclusive jurisdiction over and concerning plaintiff's claims and as a result the complaint is
23 barred with this court having no jurisdiction.

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DEMAND FOR JURY TRIAL

This answering defendant hereby demands that the matter be heard before a jury.

WHEREFORE, this answering defendant prays that plaintiff take nothing by way of her complaint on file herein, that defendant be hence dismissed with her costs of suit incurred, and for such other and further relief as the court deems just and proper.

Dated: August 1, 2017

McNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP

By: 

Peter J. Hirsig
Denise J. Serra
Attorneys for Defendant
SEAN WILLIAM MCGINNIS

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1 PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

2 I hereby declare that I am a citizen of the United States, am over the age of eighteen years,
3 and not a party to the within action; my business address is 639 Kentucky Street, First Floor,
4 Fairfield, California 94533-5530.

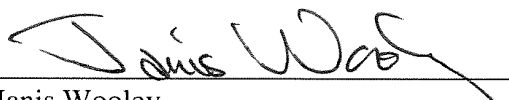
5 On this date I served the foregoing **ANSWER TO COMPLAINT** on the parties in said
6 action, by placing a true copy thereof enclosed in a sealed envelope addressed as listed below for
7 mailing. I am readily familiar with this firm's practice of collection and processing
8 correspondence for mailing. Under that practice, it would be deposited with the United States
9 Postal Service on that same day with postage thereon fully prepaid, in the United States Post
10 Office mail box at Fairfield, California, addressed as follows:

11 **Attorneys For Plaintiff:**

12 Craig A. Kroner
13 LAW OFFICES OF CRAIG A. KRONER
14 1141 Ringwood Court, #10
San Jose, CA 95131-1757

15 Phone: 408-433-9893
E-Mail: locak@sbcglobal.net

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct and that this declaration was executed on August 3, 2017 at
18 Fairfield, California.

19
20 
Janis Wooley