



responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of Plaintiff's Amended Complaint.

4. In answer to paragraph 31 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and defenses made and contained in response to paragraphs 1 through 30 of Plaintiff's Amended Complaint, as if fully rewritten herein.

5. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 of Plaintiff's Amended Complaint.

6. In answer to paragraph 44 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and defenses made and contained in response to paragraphs 1 through 43 of Plaintiff's Amended Complaint, as if fully rewritten herein.

7. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 45, 46, 47, 48, 49, 50, 51 and 52 of Plaintiff's Amended Complaint.

8. In answer to paragraph 53 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800

defenses made and contained in response to paragraphs 1 through 52 of Plaintiff's Amended Complaint, as if fully rewritten herein.

9. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 54, 55, 56, 57, 58 and 59 of Plaintiff's Amended Complaint.

10. In answer to paragraph 60 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and defenses made and contained in response to paragraphs 1 through 59 of Plaintiff's Amended Complaint, as if fully rewritten herein.

11. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 61, 62, 63 and 64 of Plaintiff's Amended Complaint.

12. In answer to paragraph 65 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and defenses made and contained in response to paragraphs 1 through 64 of Plaintiff's Amended Complaint, as if fully rewritten herein.

13. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 66, 67 and 68 of Plaintiff's Amended Complaint.

14. In answer to paragraph 69 of Plaintiff's Amended Complaint, this answering Defendant re-alleges and re-avers any and all answers, responses and

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800

defenses made and contained in response to paragraphs 1 through 68 of Plaintiff's Amended Complaint.

15. For want of knowledge, because they are not true, or as a matter of form because the allegations are not directed at this answering Defendant and/or require no responsive pleading, this answering Defendant denies any and all allegations made and contained in paragraphs 70, 71 and 72 of Plaintiff's Amended Complaint.

16. This answering Defendant denies any and all allegations set forth in Plaintiff's Amended Complaint that are not specifically admitted as true herein.

### **AFFIRMATIVE DEFENSES**

17. This Defendant is immune to this suit and not liable in damages in this tort or any tort of this nature pursuant to statute set forth in R.C. 1337.15 et. seq. and R.C. 2133.11 et. seq.

18. Plaintiff's Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

19. Plaintiff's claims for recovery are barred by the equitable doctrines of waiver, estoppel (and promissory estoppel) and/or laches.

20. Plaintiff has failed to join necessary and/or indispensable parties pursuant to Rules 19 and 19.1 of the Ohio Rules of Civil Procedure.

21. Plaintiff and/or Plaintiff's decedent's claimed injuries and damages were caused by the superseding and/or intervening acts of other parties or persons over whom this Defendant had and could have had no control.

22. This Defendant is entitled to a set-off of damages and/or limitation of damages pursuant to statute.

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800

23. The injuries and damages of which Plaintiff complains are contributed to by one or more persons from whom Plaintiff did not seek recovery in this action pursuant to R.C. 2307.23(C).

24. Plaintiff may not be the real party in interest over all or part of this claim.

25. Plaintiff may lack capacity to pursue this action.

26. Defendant asserts the defense of failure to mitigate damages.

27. Defendant asserts the defense of legal waiver.

28. Plaintiff's claims, in whole or in part, are barred by the applicable statutes of limitations.

29. As to the third cause of action in Plaintiff's Amended Complaint, Defendant asserts the defense of the statute of frauds.

30. As to the third cause of action in Plaintiff's Amended Complaint, Defendant asserts the defense of parol evidence.

31. As to the third cause of action in Plaintiff's Amended Complaint, Defendant asserts a lack of privity.

32. This answering Defendant respectfully reserves the right to assert additional affirmative defenses if ongoing discovery reveals that such defenses are warranted.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant William S. Husel, D.O., prays that Plaintiff's Amended Complaint be dismissed as against him with prejudice and that he be allowed to go hence without delay and with his costs.

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800

ARNOLD TODARO WELCH & FOLIANO CO., L.P.A.

By: /s/ Gregory B. Foliano  
Gregory B. Foliano (0047239)  
2075 Marble Cliff Office Park  
Columbus, Ohio 43215  
[gfoliano@arnoldlaw.net](mailto:gfoliano@arnoldlaw.net)  
Phone: (614) 324-4533  
Fax: (614) 324-4534  
Counsel for Defendant  
William S. Husel, D.O.

**JURY DEMAND**

Defendant William S. Husel, D.O., hereby demands a trial by jury of the within  
action.

/s/ Gregory B. Foliano  
Gregory B. Foliano (0047239)

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk via this Court's ECF/eFiling system this 8<sup>th</sup> day of March, 2019, which will provide service to all counsel of record. In addition, the undersigned certifies that an electronic copy of the foregoing has been served on the following:

Neil F. Freund  
Shannon K. Bockelman  
Freund, Freeze & Arnold  
Fifth Third Center  
1 S. Main Street, Suite 1800  
Dayton, Ohio 45402  
[nfreund@ffalaw.com](mailto:nfreund@ffalaw.com)  
[sbockelman@ffalaw.com](mailto:sbockelman@ffalaw.com)  
Counsel for Defendants  
Joshua Jackson, Tyler A. Rudman and  
Mariah Baird

/s/ Gregory B. Foliano  
Gregory B. Foliano (0047239)

LAW OFFICES OF

ARNOLD TODARO  
WELCH & FOLIANO

2075 MARBLE CLIFF OFFICE PARK  
COLUMBUS, OHIO 43215-1053  
(614) 485-1800