

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2025-001578-CA-01

GIANCARLO SCHWARZ and
DIANA SCHWARZ, as parents and
natural guardians of G.S., a minor,

Plaintiffs,

v.

CITY OF NORTH MIAMI BEACH,
a Political Subdivision of that State of Florida,

Defendant.

**DEFENDANT, CITY OF NORTH MIAMI BEACH'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' COMPLAINT**

Defendant, THE CITY OF NORTH MIAMI BEACH ("City") answers the Complaint filed by Plaintiffs GIANCARLO SCHWARZ and DIANA SCHWARZ, as parents and natural guardians of G.S., a minor (collectively the "Plaintiffs") as follows:

GENERAL ALLEGATIONS

1. City is without knowledge and therefore demands strict proof thereof.
2. City is without knowledge and therefore demands strict proof thereof.
3. City is without knowledge and therefore demands strict proof thereof.
4. City is without knowledge and therefore demands strict proof thereof.
5. City is without knowledge and therefore demands strict proof thereof.
6. City is without knowledge and therefore demands strict proof thereof.
7. City is without knowledge and therefore demands strict proof thereof.
8. City is without knowledge and therefore demands strict proof thereof.
9. Denied.

10. City is without knowledge and therefore demands strict proof thereof

COUNT I
CLAIM OF GIANCARLO SCHWARZ and DIANA SCHWARZ,
ON BEHALF OF G.S., A MINOR

11. The City incorporates by reference its responses set forth in paragraphs 1 through 10 as if fully set forth herein and further states:

12. City is without knowledge and therefore demands strict proof thereof
13. City is without knowledge and therefore demands strict proof thereof
14. Denied; including all subparts.
15. Denied; including all subparts.
16. Denied; including all subparts.
17. City is without knowledge and therefore demands strict proof thereof

COUNT II
CLAIM OF GIANCARLO SCHWARZ, INDIVIDUALLY

18. The City incorporates by reference its responses set forth in paragraphs 1 through 10 as if fully set forth herein and further states:

19. City is without knowledge and therefore demands strict proof thereof
20. City is without knowledge and therefore demands strict proof thereof
21. City is without knowledge and therefore demands strict proof thereof
22. Denied; including all subparts.
23. Denied; including all subparts.

COUNT III
CLAIM OF DIANA SCHWARZ, INDIVIDUALLY

24. The City incorporates by reference its responses set forth in paragraphs 1 through 10 as if fully set forth herein and further states:

25. City is without knowledge and therefore demands strict proof thereof

26. City is without knowledge and therefore demands strict proof thereof
27. City is without knowledge and therefore demands strict proof thereof
28. Denied; including all subparts.
29. Denied; including all subparts.
30. As to any part of the Complaint not specifically admitted, denied or discussed with respect to the City's knowledge, the City denies the allegations, including, but not limited to, any allegations contained in the Complaint's preamble, headings, subheadings, and Wherefore clauses. Further, any averments in the Complaint to which no responsive pleadings are applicable or required shall be deemed denied.

WHEREFORE, the City requests that this Court enter final judgment in favor of the City on all claims asserted by Plaintiffs in the Complaint, together with its costs and all other relief in favor of the City that the Court deems proper.

AFFIRMATIVE DEFENSES

The City has not yet had the opportunity to engage in discovery in this matter, and therefore relies upon the following affirmative and other defenses, which may prove applicable after discovery or at trial. The City reserves the right to assert additional defenses after engaging in discovery.

First Affirmative Defense

The City is immune as a sovereign for the acts or omissions complained of.

Second Affirmative Defense

Plaintiffs' injuries and damages, if any, were caused, in whole or part, by Plaintiffs' own negligence. Therefore, Plaintiffs' claims should be barred or reduced under the doctrines of contributory fault and comparative negligence. *See* § 768.81, Fla. Stat.

Third Affirmative Defense

Plaintiffs' injuries and damages, if any, were caused, in whole or part, by Plaintiffs' own voluntary actions taken in full knowledge of any associated risk, of which the Plaintiffs, in the exercise of due care, should have known or appreciated, and therefore, the Plaintiffs' voluntary assumption of the risk is a complete bar to this action.

Fourth Affirmative Defense

Any recovery for or on behalf of Plaintiffs should be reduced by the amount of collateral source payments as described in Fla. Stat. § 768.76.

Fifth Affirmative Defense

A recovery for or on behalf of Plaintiffs, if any is found, should be reduced pursuant to Fla. Stat. § 768.041 by the sum of any payment received by Plaintiffs for settlement, release, or covenant not to sue on the claims alleged.

Sixth Affirmative Defense

Defendant is entitled to a setoff, under Fla. Stat. § 768.31(5)(a), for all sums of money by settlement or judgment, or otherwise received by Plaintiffs in connection with this action.

Seventh Affirmative Defense

Plaintiffs failed to take reasonable steps to avoid or otherwise mitigate any damages and therefore Plaintiffs' claims should be barred in whole or in part.

Eighth Affirmative Defense

The medical treatments that Plaintiffs have incurred were neither reasonable nor necessary. Additionally, any medical treatments that Plaintiffs claim that they will incur in the future are not reasonably certain to occur.

Ninth Affirmative Defense

The City is entitled to and avails itself of all defenses available pursuant to Fla. Stat. § 768.28, and the limitations contained therein.

Tenth Affirmative Defense

Pursuant to *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), any damages awarded to the Plaintiffs are subject to apportionment by the jury of the total fault of all persons, parties or others who may be responsible for any of the Plaintiff's damages.

WHEREFORE, the City respectfully requests that judgment be entered in favor of the City, award the City its reasonable attorneys' fees and costs, as applicable, and any additional relief the Court finds just and proper.

Respectfully submitted,

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/s/ Ahmand Johnson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2025 a true and correct copy of the foregoing was e-filed and served through the Florida Courts Electronic Filing Portal, which will send electronic notification to all counsel of record in accordance with Florida Rule of Judicial Administration 2.516.

/s/ Ahmand R. Johnson
Ahmand R. Johnson, Esq.