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**PHILIP GODLEWSKI**

**PLAINTIFF,**

**V.**

**BRIENNA L. DUBORGEL**

**DEFENDANT.**

**IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY**

**CIVIL ACTION - LAW**

**JURY TRIAL DEMANDED**

**NO.: CV-2023-1354**

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL  
JUDGEMENT ON THE PLEADINGS**

AND NOW COMES the Defendant, Brienna L. DuBorgel ("Defendant"), by and through her legal counsel, Felleman and Ciarimboli Law PC, to hereby submit this Response to Plaintiff's Motion for Partial Judgement on the Pleadings and in support thereof, avers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

**COUNT I – DEEMED ADMISSION OF PLAINTIFF’S ALLEGATIONS –**  
**Pa.R.C.P 1029(b)**

7. Paragraph seven (7) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.
8. Admitted.
9. Admitted.
10. Admitted.
11. Denied. As set forth in greater detail in Defendant’s Brief in Opposition to Plaintiff’s Motion for Partial Judgement on the Pleadings (hereinafter “Defendant’s Brief”), the phrase “Denied as stated” is legally sufficient where additional information is provided in the paragraph, elsewhere in the response, and/or elsewhere in the pleadings that factually supports the denial in the paragraph. Cercone v. Cercone, 254 Pa. Super. 381. In paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 of Defendant’s Answer and New Matter to Plaintiff’s Complaint and Counterclaim, Defendant cites to additional material in the record to support her denial. In paragraphs 6-11, 13, 19, 22, 44 and 45, Defendant cites to an Affidavit attached to Plaintiff’s Complaint as Exhibit 1 (*see* ¶¶ 6-11, 13, 19, 22, 44 and 45 of Defendant’s Answer and New Matter to Plaintiff’s Complaint and Counterclaim, and Exhibit 1 to Plaintiff’s Complaint.) In paragraphs 15-16, Defendant cites to the “Information” attached as Exhibit 2 or Plaintiff’s Complaint (*see* ¶¶ 15-16 of Defendant’s Answer and New Matter to Plaintiff’s Complaint and Counterclaim, and Exhibit 2 to Plaintiff’s Complaint). In paragraphs 17-18, Defendant cites to the “Guilty Plea Colloquy” attached to Plaintiff’s Complaint as Exhibit 3 (*see* ¶¶ 17-18 of Defendant’s Answer and New Matter to Plaintiff’s Complaint and

- Counterclaim, and Exhibit 3 to Plaintiff's Complaint). In paragraph 14, Defendant cites to Plaintiff's conviction as a reference to both Exhibit 2 and Exhibit 3 read together (*see* ¶ 14 of Defendant's Answer and New Matter to Plaintiff's Complaint and Counterclaim.
12. Denied. *See* Defendant's Response to Paragraph 11 above. By way of further response, each response directly refutes the allegations of its corresponding paragraph and offers evidence in support of an opposing argument through its citation to documents in the record, which must be read in whole to properly contextualize such statements.
13. Admitted.
14. Denied. As set forth in further detail in Defendant's Brief, Defendant adequately denied the allegations made in Paragraph 12 throughout her Answer and New Matter to Plaintiff's Complaint and Defendant's Counterclaim as well as elsewhere in the record. *See* ¶20 of Defendant's Answer, ¶¶1-12, 19, 55-73 of Defendant's Counterclaim, ¶¶1-13 of the Affidavit attached to Plaintiff's Complaint as Exhibit A.
15. Denied. *See* Defendant's Response to Paragraph 14 above.
16. Denied. As set forth in further detail in Defendant's Brief, Defendant adequately denied the allegations made in Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 throughout her Answer and New Matter to Plaintiff's Complaint and Defendant's Counterclaim as well as elsewhere in the record.
17. Denied. *See* Paragraph 16 above. By way of further response, each response directly refutes the allegations of its corresponding paragraph and offers evidence in support of an opposing argument throughout the record.
18. Denied. *See* Paragraphs 16-17 above.

**COUNT I - STATUTE OF LIMITATIONS - ASSAULT**

19. Paragraph nineteen (19) is an incorporation paragraph to which no response is required.

To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to support a finding that her sexual conduct with Plaintiff was the result of forcible compulsion and/or threat of forceable compulsion. *See* ¶¶3, 5-6, 8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1, ¶¶1-4, 8, 11, 55, 62, 68, 77, and 82 of Defendant's Counterclaim, and ¶20 of Defendant's Answer.

30. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.

31. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.

32. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. See ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
33. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to entitle Defendant to the extended statute of limitations afforded by 42. Pa. C.S.A. §5533 (b)(2)(i).
34. Denied. As set forth in further detail in Defendant's Brief, Defendant's claims are not barred by the statute of limitations.
35. Denied. As set forth in further detail in Defendant's Brief, Defendant's Assault claim must be allowed to proceed.

**COUNT II - STATUTE OF LIMITATIONS - BATTERY**

36. Paragraph thirty-six (36) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.
37. Admitted.
38. Admitted.
39. Admitted.
40. Admitted.
41. Admitted.
42. Admitted.
43. Admitted.
44. Admitted.
45. Admitted.

46. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to support a finding that her sexual conduct with Plaintiff was the result of forcible compulsion and/or threat of forceable compulsion. *See* ¶¶3, 5-6, 8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1, ¶¶1-4, 8, 11, 55, 62, 68, 77, and 82 of Defendant's Counterclaim, and ¶20 of Defendant's Answer.
47. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
48. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
49. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
50. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to entitle Defendant to the extended statute of limitations afforded by 42. Pa. C.S.A. §5533 (b)(2)(i).
51. Denied. As set forth in further detail in Defendant's Brief, Defendant's claims are not barred by the statute of limitations.
52. Denied. As set forth in further detail in Defendant's Brief, Defendant's Battery claim must be allowed to proceed.

**COUNT III – STATUTE OF LIMITATIONS –**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)**

53. Paragraph fifty-three (53) is an incorporation paragraph to which no response is required.

To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

54. Admitted.

55. Admitted.

56. Admitted.

57. Admitted.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to support a finding that her sexual conduct with Plaintiff was the result of forcible compulsion and/or threat of forceable compulsion. See ¶¶3, 5-6, 8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1, ¶¶1-4, 8, 11, 55, 62, 68, 77, and 82 of Defendant's Counterclaim, and ¶20 of Defendant's Answer.

65. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. See ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.

66. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. See ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
67. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. See ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
68. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to entitle Defendant to the extended statute of limitations afforded by 42. Pa. C.S.A. §5533 (b)(2)(i).
69. Denied. As set forth in further detail in Defendant's Brief, Defendant's claims are not barred by the statute of limitations.
70. Denied. As set forth in further detail in Defendant's Brief, Defendant's IIED claim must be allowed to proceed.

**COUNT IV – STATUTE OF LIMITATIONS –**

**NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS (NIED)**

71. Paragraph seventy-one (71) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.
72. Admitted.
73. Admitted.
74. Admitted.
75. Admitted.
76. Admitted.



77. Admitted.
78. Admitted.
79. Admitted.
80. Admitted.
81. Admitted.
82. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to support a finding that her sexual conduct with Plaintiff was the result of forcible compulsion and/or threat of forceable compulsion. *See* ¶¶3, 5-6, 8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1, ¶¶1-4, 8, 11, 55, 62, 68, 77, and 82 of Defendant's Counterclaim, and ¶20 of Defendant's Answer.
83. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
84. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
85. Denied. Defendant states that Plaintiff and Defendant engaged in sexual intercourse, sex, and a sexual relationship. *See* ¶¶1-11, 55, 62, 68, 69, 72 of Defendant's Counterclaim and ¶8 of the Affidavit attached to Plaintiff's Complaint as Exhibit 1.
86. Denied. As set forth in further detail in Defendant's Brief, Defendant has pled sufficient facts to entitle Defendant to the extended statute of limitations afforded by 42. Pa. C.S.A. §5533 (b)(2)(i).

87. Denied. As set forth in further detail in Defendant's Brief, Defendant's claims are not barred by the statute of limitations.

88. Denied. As set forth in further detail in Defendant's Brief, Defendant's NIED claim must be allowed to proceed.

#### **COUNT V – DEMURRER - ASSAULT**

89. Paragraph eighty-nine (89) is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

90. Admitted.

91. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to show Plaintiff intended to cause contact with Defendant that Defendant would consider harmful and/or offensive. *See* ¶¶55-57 of Defendant's Counterclaim.

92. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to show Plaintiff intended to put Defendant in reasonable apprehension of offensive physical contact. *See* ¶¶55-58 of Defendants Counterclaim.

93. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to show Defendant experienced apprehension as a result of Plaintiff's acts. *See* ¶¶55-58 of Defendant's Counterclaims.

94. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a claim for Assault.

95. Denied. As set forth in further detail in Defendant's Brief, Defendant's claim for assault must be allowed to proceed.

#### **COUNT VI – DEMURRER – BATTERY**

96. Paragraph ninety-six (96) is an incorporation paragraph to which no response is required.

To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

97. Admitted.

98. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to show Plaintiff intentionally subjected Defendant to unwanted physical contact. *See*

¶¶62-64 of Defendant's Counterclaim.

99. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a claim for Battery.

100. Denied. As set forth in further detail in Defendant's Brief, Defendant's claim for Battery must be allowed to proceed.

**COUNT VII – DEMURRER –**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)**

101. Paragraph 101 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth.

102. Admitted.

103. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a finding of extreme and outrageous conduct by Plaintiff. *See* ¶¶67-77 of Defendant's Counterclaim along with the Text Messages attached as Exhibit A to Defendant's Answer and New Matter to Plaintiff's Complaint and Counterclaim.

104. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a finding of intentional and reckless conduct by Plaintiff. *See*

¶¶67-77 of Defendant's Counterclaim along with the Text Messages attached as Exhibit A to Defendant's Answer and New Matter to Plaintiff's Complaint and Counterclaim.

105. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a finding that Plaintiff caused Defendant severe emotional distress. *See* ¶¶67-80 of Defendant's Counterclaim along with the Text Messages attached as Exhibit A to Defendant's Answer and New Matter to Plaintiff's Complaint and Counterclaim.

106. Denied. As set forth in further detail in Defendant's Brief, Defendant has alleged sufficient facts to show harm. *See* ¶¶79-80 of Defendant's Counterclaim.

107. Denied. As set forth in further detail in Defendant's Brief, Defendant pled sufficient facts to support a claim for IIED.

108. Denied. As set forth in further detail in Defendant's Brief, Defendant's claim for IIED must be allowed to proceed.

**COUNT VIII – DEMURRER –**

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

109. Paragraph 109 is an incorporation paragraph to which no response is required. To the extent a response is deemed required, Defendant incorporates the paragraphs of this pleading as though fully set forth

110. Admitted.

111. Admitted.

112. Denied. As set forth in further detail in Defendant's Brief, Defendant has sufficiently identified a special relationship between Plaintiff and Defendant. *See* ¶¶83-85 of Defendant's Counterclaim.

113. Denied. As set forth in further detail in Defendant's Brief, Defendant has sufficiently alleged that Plaintiff owed a duty to Defendant.
114. Denied. As set forth in further detail in Defendant's Brief, Defendant has sufficiently alleged that Plaintiff breached that duty.
115. Denied. As set forth in further detail in Defendant's Brief, Defendant has sufficiently alleged that Defendant was harmed as a result of Plaintiff's actions.
116. Denied. As set forth in further detail in Defendant's Brief, Defendant has sufficiently stated a cause of action for NIED.
117. Denied. As set forth in further detail in Defendant's Brief, Defendant's NIED claim must be allowed to proceed.

**WHEREFORE**, Defendant, Brienna L. DuBorgel, respectfully requests this Honorable Court deny Plaintiff's Motion and enter judgement in favor of Defendant, and enter an order to the following effect:

- A. Declining to deem paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 of the Complaint admitted.
- B. Declining to deem paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 of the Complaint admitted.
- C. Allowing Count III of Defendant's Counterclaim (Assault) to proceed.
- D. Allowing Count IV of Defendant's Counterclaim (Battery) to proceed.
- E. Allowing Count V of Defendant's Counterclaim (Intentional Infliction of Emotional Distress) to proceed.
- F. Allowing Count VI of Defendant's Counterclaim (Negligent Infliction of Emotional Distress) to proceed.

Respectfully submitted,

**FELLERMAN & CIARIMBOLI LAW, PC**

*Molly Dempsey Clark*

By: \_\_\_\_\_  
EDWARD J. CIARIMBOLI, ESQUIRE  
MOLLY DEMPSEY CLARK, ESQUIRE  
*Attorneys for the Defendant*

Date: January 16, 2024