

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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TOUHID HODA,

Index No.:536183/2023

Plaintiff,

**VERIFIED AMENDED  
ANSWER WITH  
CROSS CLAIMS**

-against-

PARAGON MOTORS OF WOODSIDE, INC. and SONIA  
CRUZ,

Defendants.

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Defendant, Paragon Motors of Woodside, Inc. d/b/a Paragon Honda, by CARTAFALSA, TURPIN & LENOFF, its attorneys, answering the plaintiff's complaint herein, respectfully shows to the Court, upon information and belief, the following:

**AS AND FOR A FIRST CAUSE OF ACTION**

FIRST: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs of plaintiff's complaint numbered and designated as 1, 2, 8, 9, 18, 19, 20, 21, 23 and 24.

SECOND: Defendant denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 6, 7, 11, 12, 13, 14, 15, 22, 31 and respectfully refers all questions of law to this Honorable Court.

THIRD: Defendant denies any knowledge or information sufficient to form a belief each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 16 and respectfully refers all questions of law to this Honorable Court, except admits that at all times hereinafter mentioned, defendant, SONIA CRUZ, operated the motor vehicle bearing license

plate number KVV9044 with the permission and/or consent of defendant PARAGON MOTORS OF WOODSIDE, INC..

FOURTH: Defendant denies upon information and belief, each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 17 and 27.

FIFTH: Defendant denies upon information and belief, each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 25 and 26 as to defendant PARAGON MOTORS OF WOODSIDE, INC.

SIXTH: Defendant admits each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 3, 4, 5 and 10.

SEVENTH: Defendant denies each and every allegation contained in paragraphs of plaintiff's complaint numbered and designated as 28, 29, 30 and 32 and respectfully refers all questions of law to this Honorable Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

EIGHTH: That if the plaintiff sustained injuries as alleged in the Complaint, said injuries would have been brought about and caused in whole or in part by the plaintiff's own negligent and/or culpable conduct.

NINTH: That any damages to which plaintiff may become entitled should be diminished in the same proportion, as plaintiff's own negligent and/or culpable conduct bears to the total negligent and/or culpable conduct responsible for the injuries sustained.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

TENTH: That this action is barred by the provisions of Insurance Law Section 5101 et seq., which constitute the "No-Fault" Law of the State of New York.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

ELEVENTH: That at the time of the alleged accident, the plaintiff was engaged in activity which she knew to be hazardous of its very nature and the plaintiff assumed the risk inherent in said activity.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

TWELVETH: The Complaint fails to state a cause of action and this defendant reserves the right to move to dismiss the same at or before trial.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

THIRTEENTH: That the plaintiff was guilty of negligence and culpable conduct in plaintiff's failure to exercise ordinary care by using a helmet or other protective devices.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

FOURTEENTH: If the answering defendant is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and therefore these answering defendant's liability shall be limited to their equitable share, pursuant to CPLR Article 16.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

FIFTEENTH: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care of rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:**

SIXTEENTH: The plaintiff's action is barred by the operation of the Workers' Compensation Law of New York State.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

SEVENTEENTH: Plaintiff has failed to mitigate damages and thus should be barred from recovery.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

EIGHTEENTH: Pursuant to 49 USCS §30106, also known as The Graves Amendment, the answering defendant cannot be held liable under the law of any State or political subdivision thereof, by reason of being an owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle used during the rental or lease period as the answering defendant is engaged in the trade or business of renting or leasing motor vehicles and therefore all claims and cross claims against the answering defendant must be dismissed.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**

NINETEENTH: That plaintiff is subject to those codes, provisions, rules, regulations, of the City of New York including *inter alia* New York City Traffic Rules and Regulations, Title 34, Chapter 4, §4-01(b), §4-02(a), §4-12(o), §4-12(p); New York City Administrative Code provisions *inter alia* §10-157, §19-195.1; New York State Vehicle and Traffic Law §1231, and that Plaintiff violated such provisions as set forth herein.

**AS AND FOR A CROSS CLAIM AGAINST CO-DEFENDANT, SONIA CRUZ, THE ANSWERING DEFENDANT, PARAGON MOTORS OF WOODSIDE, INC. D/B/A PARAGON HONDA, ALLEGES UPON INFORMATION AND BELIEF:**

TWENTIETH: That if plaintiff was caused damages as alleged in the complaint through

any acts other than the plaintiff own negligence, carelessness and recklessness, said damages sustained due to the breach of lease/contract/warranty by the above-named co-defendant, their agents, servants and/or employees.

If plaintiff should recover judgment against the defendant, then the above-named co-defendant shall be liable to the answering defendant because of this breach and for the alleged occurrence and the answering defendant is hereby entitled to indemnification from and judgment over and against the above-named co-defendant for all or part of any verdict or judgment which plaintiff may recover in such amounts as a Jury or Court may direct.

That by reason of this action, said answering defendant has been and will be put to costs and expenses, including attorneys' fees.

The answering defendant demands judgment dismissing the complaint herein as to the answering defendant and further demands judgment over and against the above-named co-defendant for the amount of any judgment which may be obtained herein by the plaintiff against the answering defendant or in such amount as the Court or Jury may direct together with the costs and disbursements of the action.

**AS AND FOR A CROSS CLAIM AGAINST CO-DEFENDANT, SONIA CRUZ, THE ANSWERING DEFENDANT, PARAGON MOTORS OF WOODSIDE, INC. D/B/A PARAGON HONDA, ALLEGES UPON INFORMATION AND BELIEF:**

TWENTY-FIRST: That if the plaintiff was caused to sustain damages at the time and place set forth in the plaintiff complaint through any carelessness, recklessness and/or negligence other than the plaintiff own, such damages were sustained solely and directly by reason of the carelessness, recklessness and negligence and/or negligent acts of omission or commission by the co-defendant named above, their agents, servants and/or employees.

That the co-defendant and answering defendant herein entered into a contract/agreement/lease wherein the co-defendant agreed to hold harmless and indemnify and

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