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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

CELAL DEDE, individually and as
Personal Representative of the Estate
of Diren Dede, Deceased and on behalf
of Gulcin Dede, Basak Dede and Esra
Dede,

Plaintiff,

vs.

MARKUS KAARMA and JANELLE
PFLAGER,

Defendants.

Case No.: CV-15-16-M-DWM

**DEFENDANT
JANELLE PFLAGER'S ANSWER,
AFFIRMATIVE DEFENSES AND
DEMAND FOR JURY TRIAL**

COMES NOW Defendant Janelle Pflager (hereinafter "Janelle"), by and through her counsel of record and sets forth the following answers and affirmative defenses to Plaintiff's Complaint and Jury Demand (hereinafter "Complaint") as follows:

1. With respect to Paragraph 1 of Plaintiff's Complaint, Janelle lacks sufficient information to admit or deny whether Diren Dede was a citizen of Hamburg, Germany before his death on April 27, 2014. Janelle does admit, to the best of her knowledge, that Diren Dede was a foreign exchange student attending high school in Missoula, Montana.
2. With respect to Paragraph 2 of Plaintiff's Complaint, to the extent that Plaintiff alleges that Diren Dede "died in the manner alleged below," Janelle denies the same. Janelle admits that Diren Dede died on or about April 27, 2014.
3. Janelle lacks sufficient information to admit or deny Paragraph 3 of Plaintiff's Complaint and therefore denies the same.
4. Janelle lacks sufficient information to admit or deny Paragraph 4 of Plaintiff's Complaint and therefore denies the same.
5. Janelle lacks sufficient information to admit or deny Paragraph 5 of Plaintiff's Complaint and therefore denies the same.
6. Janelle admits Paragraph 6 of Plaintiff's Complaint.
7. Janelle admits Paragraph 7 of Plaintiff's Complaint.
8. With respect to Paragraph 8 of Plaintiff's Complaint, Janelle admits the amount in controversy exceeds \$75,000. Janelle admits that she is a resident of the state of Montana. Janelle lacks sufficient information to admit or deny whether this

action involves a “citizen or subject of a foreign state” and therefore denies the same.

9. With respect to Paragraph 9 of Plaintiff’s Complaint, Janelle lacks sufficient information to admit or deny that all filings regarding the Estate of Diren Dede are filed in this division and therefore denies the same. Janelle admits that certain filings for the Estate of Diren Dede have been filed in Missoula County, however, she is unaware if “all” filings regarding such estate have been made in the this division.

10. Janelle admits Paragraph 10 of Plaintiff’s Complaint.

11. Janelle admits Paragraph 11 of Plaintiff’s Complaint.

12. Janelle denies Paragraph 12 of Plaintiff’s Complaint.

13. Janelle admits Paragraph 13 of Plaintiff’s Complaint.

14. Janelle admits Paragraph 14 of Plaintiff’s Complaint.

COUNT I – NEGLIGENCE (ALL DEFENDANTS)

15. Paragraph 15 of Plaintiff’s Complaint does not contain any allegations other than references to previous allegations made in the Complaint which Janelle has already answered. Janelle therefore denies Paragraph 15 of Plaintiff’s Complaint.

16. Janelle denies Paragraph 16 of Plaintiff’s Complaint.

17. Janelle denies Paragraph 17 of Plaintiff’s Complaint.

18. Janelle denies Paragraph 18 of Plaintiff’s Complaint.

COUNT II – WRONGFUL DEATH ACTION (ALL DEFENDANTS)

19. Paragraph 19 of Plaintiff's Complaint does not contain any allegations other than references to previous allegations made in the Complaint which Janelle has already answered. Janelle therefore denies Paragraph 19 of Plaintiff's Complaint.

20. Janelle lacks sufficient information to admit or deny the allegations in Paragraph 20 of Plaintiff's Complaint and therefore denies the same.

21. Janelle denies Paragraph 21 of Plaintiff's Complaint.

22. To the extent Paragraph 22 of Plaintiff's Complaint implies that Janelle in any way caused Diren Dede's death and any subsequent loss of his care, comfort, love, society, and companionship, she denies the same. Janelle does admit Paragraph 22 of Plaintiff's Complaint to the extent that the loss of a child for any family deprives a family *de facto* of the child's care, comfort, love, society, and companionship.

COUNT III – SURVIVAL ACTIONS (ALL PARTIES)

23. Paragraph 23 of Plaintiff's Complaint does not contain any allegations other than references to previous allegations made in the Complaint which Janelle has already answered. Janelle therefore denies Paragraph 23 of Plaintiff's Complaint.

24. Janelle denies Paragraph 24 of Plaintiff's Complaint to the extent the allegations are legal conclusions and Janelle lacks sufficient information to admit or deny the basis for Plaintiff bringing this action.

25. Janelle denies Paragraph 25 of Plaintiff's Complaint.

26. Janelle denies Paragraph 26 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Janelle alleges that the following affirmative defenses may be asserted on grounds that may at a later date not be supported by facts of the case and as discovery is an on-going process, reserves the right to amend, by addition or deletion, or totally dismiss any of the following, and that these are asserted in the fashion plead so as not to waive the right to assert any of the following.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's injuries and alleged damages, if any, were caused in whole or in part by the negligence or wrongful conduct of other parties, joined or unjoined, and liability must be apportioned among all such persons in accordance with the facts and applicable law including apportionment of all potentially negligent tortfeasors under Mont. Code Ann. § 27-1-703.

SECOND AFFIRMATIVE DEFENSE

Janelle alleges her liability, if any, should be reduced in proportion to the negligence or responsibility of Plaintiff or other parties or non-parties to this action pursuant to Mont. Code Ann. § 27-1-703.

THIRD AFFIRMATIVE DEFENSE

Some or all of the alleged damages and injuries of Plaintiff are the result of actions, inactions, and admissions of other parties or third parties, and not as a result of the actions or inactions of Janelle.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to damages to the extent they were caused by events or conditions other than those alleged in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

Decedent, Diren Dede, assumed any and all risks associated with entering the garage at Janelle's residence.

SIXTH AFFIRMATIVE DEFENSE

Decedent, Diren Dede, in whole or in part was contributorily and comparatively negligent to a degree equal to or exceeding that of Janelle, and as such, any claims by Plaintiff against Janelle are barred or proportionally reduced.

SEVENTH AFFIRMATIVE DEFENSE

Any and all damages purportedly sustained were the proximate result of independent and intervening acts, conduct, fault, negligence, breach of duty, or misconduct by persons or entities other than Janelle.

EIGHTH AFFIRMATIVE DEFENSE

Due to extensive media coverage of the underlying criminal trial of Markus Kaarma resulting in his conviction, the jury pool in this division had been presumably and actually prejudiced and as a result, Janelle is unable to obtain a fair trial and the interests of justice require that the venue be changed/transferred to another venue in this division pursuant to 28 U.S.C. § 1404.

RESERVATION

Janelle reserves the right to raise any additional affirmative defense(s) which may be discovered through participation and discovery in this case and will do so in accordance with the Federal Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, Janelle prays that Plaintiff take nothing from her by reason of the Complaint, and judgment be entered in favor of Janelle, awarding the costs of suit, attorneys' fees where applicable, and such other and further relief as this Court deems just and necessary; and dismissing Plaintiff's Complaint and Jury Demand with prejudice.

DEMAND FOR JURY TRIAL

Janelle hereby demands a trial by jury on all issues so triable.

DATED this 13th day of March, 2015.

BROWN LAW FIRM, P.C.

BY /s/ Scott G. Gratton
Scott G. Gratton
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2015, a copy of the foregoing was electronically filed and served on the following persons by the following means:

- 1-3 CM/ECF
- Hand Delivery
- Mail
- Overnight Delivery Service
- Fax
- E-Mail

- 1. Clerk, U.S. District Court
- 2. David Paoli
Paoli Kutzman, P.C.
257 W. Front St., Suite A
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Attorneys for Plaintiff
- 3. Robert Phillips
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Attorney for Defendant Markus Kaarma

By: /s/ Scott G. Gratton
Scott G. Gratton