

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SHMUEL COHEN, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Case No. 2:20-cv-3411
	:	
vs.	:	
	:	Judge Graham
ALLEGIANCE ADMINISTRATORS, LLC	:	
d/b/a PERFORMANCE FIRST and	:	Magistrate Judge Jolson
AUTOGUARD ADVANTAGE	:	
CORPORATION,	:	
	:	
Defendants.	:	

**ANSWER OF DEFENDANT  
ALLEGIANCE ADMINISTRATORS, LLC  
[JURY DEMAND ENDORSED HEREON]**

For its Answer to Plaintiffs’ Second Amended Complaint (“Complaint”), Defendant Allegiance Administrators, LLC (“Allegiance” or “Defendant”) hereby states as follows:

1. Allegiance admits that Plaintiffs purport to bring this action as a class action against Defendant Allegiance and Defendant Autoguard Advantage Corporation (“Autoguard”) and that Plaintiffs assert claims of breach of contract. Allegiance denies that Plaintiffs bring any claims for any alleged violations of the New York General Business Law §§ 349 & 350 because the Court has already ruled that such claims fail as a matter of law. Allegiance denies all remaining allegations contained in paragraph 1 of the Complaint.

2. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 2 of the Complaint, and as such, those allegations are denied.

3. Allegiance admits that through an agreement known as an “Excess Wear & Tear Protection Waiver (the “Waiver Agreement”), certain consumers were provided an opportunity to shift the risk of loss of excess wear and tear charges in whole or in part to Defendant Autoguard. Allegiance denies all remaining allegations contained in paragraph 3 of the Complaint.

4. Allegiance denies that it marketed or was ever a party to the Waiver Agreement, the terms of which speak for themselves. Allegiance denies all remaining allegations contained in paragraph 4 of the Complaint.

5. In response to paragraph 5 of the Complaint, Allegiance states that the terms of the Waiver Agreement speak for themselves and denies all remaining allegations contained in paragraph 5 of the Complaint.

6. Allegiance denies the allegations contained in paragraph 6 of the Complaint.

7. Allegiance denies the allegations contained in paragraph 7 of the Complaint.

8. Allegiance admits that Plaintiffs seek to represent a class of other consumers seeking damages for breach of contract. Allegiance denies that Plaintiffs’ proposed class is composed of “similarly situated individuals” and/or that Plaintiff satisfies the requirements necessary for class certification. Allegiance denies all remaining allegations contained in paragraph 8 of the Complaint.

9. Allegiance admits that Plaintiffs’ Complaint purports to also seek injunctive and declaratory relief. Allegiance denies that Plaintiffs are entitled to any such relief and denies all remaining allegations contained in paragraph 9 of the Complaint.

10. The allegations of paragraph 10 of Plaintiffs’ Complaint call for a legal conclusion for which no response is warranted. To the extent paragraph 10 contains allegations requiring a response, Allegiance denies all allegations contained in paragraph 10 of the Complaint.

11. The allegations of paragraph 11 of Plaintiffs' Complaint call for a legal conclusion for which no response is warranted. To the extent paragraph 11 contains allegations requiring a response, Allegiance admits that this Court has personal jurisdiction over Allegiance. Allegiance denies all remaining allegations contained in paragraph 11 of the Complaint.

12. The allegations of paragraph 12 of Plaintiffs' Complaint call for a legal conclusion for which no response is warranted. To the extent paragraph 12 contains allegations requiring a response, Allegiance admits that venue is proper in this Court. Allegiance denies all remaining allegations contained in paragraph 12 of the Complaint.

13. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff Shmuel Cohen's residence, and therefore, such allegations are denied. Allegiance admits that Plaintiff Cohen purported to execute a Waiver Agreement dated August 16, 2017, the terms of which speak for themselves. Allegiance denies all remaining allegations contained in paragraph 13 of the Complaint and expressly denies that it is a party to the Waiver Agreement.

14. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff Yehuda Fischer's residence, and therefore, such allegations are denied. Allegiance admits that Plaintiff Fischer purported to execute a Waiver Agreement dated May 26, 2016, the terms of which speak for themselves. Allegiance denies all remaining allegations contained in paragraph 14 of the Complaint and expressly denies that it is a party to the Waiver Agreement.

15. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff Elizer Rosenberger's residence, and therefore, such allegations are denied. Allegiance admits that Plaintiff Rosenberger purported to execute a Waiver

Agreement dated May 1, 2017, the terms of which speak for themselves. Allegiance denies all remaining allegations contained in paragraph 15 of the Complaint and expressly denies that it is a party to the Waiver Agreement.

16. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff Mayer Tannenbaum's residence, and therefore, such allegations are denied. Allegiance admits that Plaintiff Tannenbaum purported to execute a Waiver Agreement dated May 1, 2017, the terms of which speak for themselves. Allegiance denies all remaining allegations contained in paragraph 16 of the Complaint and expressly denies that it is a party to the Waiver Agreement.

17. Allegiance admits that it is a limited liability company organized under the laws of Ohio with its principal executive offices located at 5500 Frantz Road, Suite 100, Dublin, Ohio 43017. Defendant denies that it does or has done business as "Performance First" and denies all remaining allegations contained in paragraph 17 of the Complaint.

18. Allegiance admits that Defendant Autoguard Advantage Corporation is an Ohio corporation within its principal executive offices located at 550 Frantz Road, Suite 120, Dublin, Ohio 43017. Defendant denies all remaining allegations contained in paragraph 18 of the Complaint.

19. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 19, and therefore, such allegations are denied.

20. Allegiance admits that on March 11, 2020, District Court Judge Sarah D. Morrison issued an Opinion & Order concerning the Court's subject matter jurisdiction over a dispute involving, among others, Haytham ElZayn and Allegiance, which Opinion & Order speaks for itself. Allegiance denies that Judge Morrison determined that ElZayn is one of the members of

Allegiance and further denies that ElZayn has ever been a member of Allegiance. Allegiance denies all remaining allegations contained in paragraph 20 of the Complaint.

21. Allegiance admits that between April 1, 2018 through May 2020, ElZayn served as the President and CEO of Allegiance. Allegiance denies all remaining allegations contained in paragraph 21 of the Complaint.

22. Allegiance denies the allegations contained in paragraph 22 of the Complaint.

23. Allegiance denies the allegations contained in paragraph 23 of the Complaint.

24. Allegiance denies the allegations contained in paragraph 24 of the Complaint.

25. Allegiance denies the allegations contained in paragraph 25 of the Complaint and specifically denies that the online publication quoted therein refers to Allegiance.

26. Allegiance admits that automobile leases generally place upon the lessee liability for excess wear and tear existing at the end of the lease term. Defendant denies the remaining allegations contained in paragraph 26 of the Complaint.

27. In response to paragraph 27 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves. Allegiance denies that it is a party to the Waiver Agreements and denies the remaining allegations contained in paragraph 27 of the Complaint.

28. In response to paragraph 28 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves. Allegiance denies that it is a party to the Waiver Agreements and denies the remaining allegations contained in paragraph 28 of the Complaint.

29. In response to paragraph 29 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves. Allegiance denies

that it is a party to the Waiver Agreements and denies the remaining allegations contained in paragraph 29 of the Complaint.

30. Allegiance denies the allegations contained in paragraph 30 of the Complaint.

31. Allegiance denies the allegations contained in paragraph 31 of the Complaint.

32. In response to paragraph 32 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves. Allegiance denies that it is a party to the Waiver Agreements and denies the remaining allegations contained in paragraph 32 of the Complaint.

33. Allegiance denies the allegations contained in paragraph 33 of the Complaint.

34. Allegiance denies the allegations contained in paragraph 34 of the Complaint.

35. In response to paragraph 35 of the Complaint, Allegiance states that the Waiver Agreement Brochure referenced therein speaks for itself. Allegiance denies the remaining allegations contained in paragraph 35 of the Complaint.

36. Allegiance denies the allegations contained in paragraph 36 of the Complaint.

37. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 37 of the Complaint, and therefore, such allegations are denied.

38. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 38 of the Complaint, and therefore, such allegations are denied.

39. Allegiance denies that it is a party to the Waiver Agreement. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 39 of the Complaint, and therefore, such allegations are denied.

40. In response to paragraph 40 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 40 of the Complaint, and therefore, such allegations are denied.

41. Allegiance admits that a claim under the Waiver Agreement was submitted on behalf of Plaintiff Fischer in the amount of \$3,069.78. Allegiance denies the remaining allegations contained in paragraph 41 of the Complaint.

42. Allegiance admits that it approved Autoguard's payment of \$1,278.50 of the claim submitted on behalf of Plaintiff Fischer under the Waiver Agreement. Allegiance denies the remaining allegations contained in paragraph 42 of the Complaint.

43. Allegiance admits that a copy of the Claims Report relating to the claim submitted on behalf of Plaintiff Fischer is attached as Exhibit A to the Complaint, which Claims Report speaks for itself. Allegiance denies the remaining allegations contained in paragraph 43 of the Complaint.

44. In response to paragraph 44 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 44 of the Complaint.

45. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 45 of the Complaint, and therefore, such allegations are denied.

46. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 46 of the Complaint, and therefore, such allegations are denied.

47. Allegiance denies that it is a party to the Waiver Agreement. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 47 of the Complaint, and therefore, such allegations are denied.

48. In response to paragraph 48 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 48 of the Complaint, and therefore, such allegations are denied.

49. Allegiance admits that a claim under the Waiver Agreement was submitted on behalf of Plaintiff Rosenberger in the amount of \$2,183.06. Allegiance denies the remaining allegations contained in paragraph 49 of the Complaint.

50. Allegiance admits that it approved Autoguard's payment of \$711.35 of the claim submitted on behalf of Plaintiff Rosenberger under the Waiver Agreement. Allegiance denies the remaining allegations contained in paragraph 50 of the Complaint.

51. Allegiance admits that a copy of the Claims Report relating to the claim submitted on behalf of Plaintiff Rosenberger is attached as Exhibit B to the Complaint, which Claims Report speaks for itself. Allegiance denies the remaining allegations contained in paragraph 51 of the Complaint.

52. In response to paragraph 52 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it

is a party to the Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 52 of the Complaint.

53. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 53 of the Complaint, and therefore, such allegations are denied.

54. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 54 of the Complaint, and therefore, such allegations are denied.

55. Allegiance denies that it is a party to the Waiver Agreement. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 55 of the Complaint, and therefore, such allegations are denied.

56. In response to paragraph 56 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 56 of the Complaint, and therefore, such allegations are denied.

57. Allegiance admits that a claim under the Waiver Agreement was submitted on behalf of Plaintiff Tannenbaum in the amount of \$2,863.67. Allegiance denies the remaining allegations contained in paragraph 57 of the Complaint.

58. Allegiance admits that it approved Autoguard's payment of \$828.00 of the claim submitted on behalf of Plaintiff Tannenbaum under the Waiver Agreement. Allegiance denies the remaining allegations contained in paragraph 58 of the Complaint.

59. Allegiance admits that a copy of the Claims Report relating to the claim submitted on behalf of Plaintiff Tannenbaum is attached as Exhibit C to the Complaint, which Claims Report speaks for itself. Allegiance denies the remaining allegations contained in paragraph 59 of the Complaint.

60. In response to paragraph 60 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 60 of the Complaint.

61. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 61 of the Complaint, and therefore, such allegations are denied.

62. In response to paragraph 62 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 62 of the Complaint, and therefore, such allegations are denied.

63. Allegiance admits that a claim under the Waiver Agreement was submitted on behalf of Plaintiff Cohen in the amount of \$168.00. Allegiance denies the remaining allegations contained in paragraph 63 of the Complaint.

64. Allegiance admits that it did not approve any payment by Autoguard for the claim submitted on behalf of Plaintiff Cohen under the Waiver Agreement. Allegiance admits that a copy of the Claims Report relating to the claim submitted on behalf of Plaintiff Cohen is attached as

Exhibit D to the Complaint, which Claims Report speaks for itself. Allegiance denies the remaining allegations contained in paragraph 64 of the Complaint.

65. In response to paragraph 65 of the Complaint, Allegiance states that the applicable Waiver Agreements purportedly entered into by Plaintiffs speak for themselves and denies that it is a party to the Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 65 of the Complaint.

66. Allegiance admits that Plaintiffs have purportedly alleged a class action and seek certification of a “Nationwide Class” defined in paragraph 66 of the Complaint. Allegiance denies all remaining allegations, suggestions, and/or implications set forth in paragraph 66 of the Complaint and expressly denies that Plaintiffs’ lawsuit has any merit factually or legally or that Plaintiffs have adequately alleged a proper class action or that a class action can or should be certified.

67. Allegiance admits that Plaintiffs have purportedly alleged a class action and seek certification of a “NYGBL Subclass” defined in paragraph 67 of the Complaint. Allegiance denies all remaining allegations, suggestions, and/or implications set forth in paragraph 67 of the Complaint and expressly denies that Plaintiffs’ lawsuit has any merit factually or legally or that Plaintiffs have adequately alleged a proper class action or that a class action can or should be certified. Allegiance further denies that Plaintiffs may seek certification of the NYGBL Subclass because the Court has dismissed Counts II and III of Plaintiffs’ Complaint because such claims fail as a matter of law.

68. Allegiance admits that Plaintiffs have purportedly alleged a class action and seek certification of a “Nationwide Class” and the “NYGBL Subclass” Allegiance denies all remaining allegations, suggestions, and/or implications set forth in paragraph 68 of the Complaint and

expressly denies that Plaintiffs' lawsuit has any merit factually or legally or that Plaintiffs have adequately alleged a proper class action or that a class action can or should be certified. Allegiance further denies that Plaintiffs may seek certification of the NYGBL Subclass because the Court has already dismissed Counts II and III of Plaintiffs' Complaint because such claims fail as a matter of law.

69. Paragraph 69 of the Complaint sets forth no allegations to which a response is required. To the extent a response is required, Allegiance denies the allegations contained in paragraph 69 of the Complaint.

70. Allegiance admits that paragraph 70 of the Complaint purports to identify individuals to be excluded from Plaintiffs' proposed class. Allegiance denies all remaining allegations, suggestions, and/or implications set forth in paragraph 70 of the Complaint and expressly denies that Plaintiffs' lawsuit has any merit factually or legally or that Plaintiffs have adequately alleged a proper class action or that a class action can or should be certified.

71. Paragraph 71 of the Complaint sets forth no allegations to which a response is required. To the extent a response is required, Allegiance denies the allegations contained in paragraph 71 of the Complaint.

72. Allegiance denies the allegations contained in paragraph 72 of the Complaint.

73. Allegiance denies the allegations contained in paragraph 73 of the Complaint.

74. Allegiance denies the allegations contained in paragraph 74 of the Complaint.

75. Allegiance denies the allegations contained in paragraph 75 of the Complaint.

76. Allegiance denies the allegations contained in paragraph 76 of the Complaint.

77. Allegiance denies the allegations contained in paragraph 77 of the Complaint.

78. Allegiance denies the allegations contained in paragraph 78 of the Complaint.

79. Allegiance denies the allegations contained in paragraph 79 of the Complaint.

80. Allegiance denies the allegations contained in paragraph 80 of the Complaint.

81. In response to paragraph 81 of the Complaint, Allegiance incorporates by reference its responses to each of the previous paragraphs of the Complaint as if fully restated herein.

82. In response to paragraph 82 of the Complaint, Allegiance states that the applicable Waiver Agreements entered into by any class member speak for themselves and denies that it is a party to any such Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 82 of the Complaint.

83. In response to paragraph 83 of the Complaint, Allegiance states that the applicable Waiver Agreements entered into by any class member speak for themselves and denies that it is a party to any such Waiver Agreements. Allegiance denies the remaining allegations contained in paragraph 83 of the Complaint.

84. Allegiance denies the allegations contained in paragraph 84 of the Complaint.

85. Allegiance denies the allegations contained in paragraph 85 of the Complaint.

86. In response to paragraph 86 of the Complaint, Allegiance incorporates by reference its responses to each of the previous paragraphs of the Complaint as if fully restated herein.

87. Paragraph 87 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 87 of the Complaint.

88. Paragraph 88 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To

the extent a response is required, Allegiance denies the allegations contained in paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 90 of the Complaint.

91. Paragraph 91 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 91 of the Complaint.

92. Paragraph 92 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 92 of the Complaint.

93. Paragraph 93 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 93 of the Complaint.

94. In response to paragraph 94 of the Complaint, Allegiance incorporates by reference its responses to each of the previous paragraphs of the Complaint as if fully restated herein.

95. Paragraph 95 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 95 of the Complaint.

96. Paragraph 96 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 96 of the Complaint.

97. Paragraph 97 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 97 of the Complaint.

98. Paragraph 98 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 98 of the Complaint.

99. Paragraph 99 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 99 of the Complaint.

100. Paragraph 100 of the Complaint sets forth no allegations to which a response is required because the Court has ruled that Plaintiffs' Counts II and III fail as a matter of law. To the extent a response is required, Allegiance denies the allegations contained in paragraph 100 of the Complaint.

101. Allegiance denies the allegations contained in Plaintiffs' Prayer for Relief and denies that Plaintiffs are entitled to any of the relief requested therein.

102. Allegiance denies all allegations contained in the Complaint not specifically and expressly admitted to be true herein.

#### ADDITIONAL DEFENSES

Without assuming any burdens that it would not otherwise bear, Allegiance asserts the following additional defenses:

103. Plaintiffs' Complaint is barred in whole or in part for failure to state a claim upon which relief can be granted.

104. Plaintiffs' Complaint is barred in whole or in part because Plaintiffs lack standing.

105. Plaintiffs' Complaint is barred in whole or in part because Plaintiffs are not the real parties in interest.

106. Plaintiffs' Complaint is barred in whole or in part due to a lack of privity because Allegiance is not a party to the Waiver Agreements.

107. Plaintiffs' Complaint is barred in whole or in part due to the doctrines of estoppel, waiver, and/or laches.

108. Plaintiffs' Complaint is barred in whole or in part because Plaintiffs failed to mitigate their alleged damages, if any.

109. Plaintiffs' Complaint is barred in whole or in part because Plaintiffs failed to comply with their obligations under the Waiver Agreement.

110. Plaintiffs' Complaint is barred in whole or in part because of a lack of and/or failure of consideration.

111. Plaintiffs' Complaint is barred in whole or in part because of payment and/or accord and satisfaction.

112. Plaintiffs' Complaint is barred in whole or in part because a lack of damages and/or Plaintiffs' alleged damages are based upon pure speculation and conjecture.

113. Plaintiffs' Complaint should be dismissed for a lack of subject matter jurisdiction.

114. Plaintiff's Complaint fails because questions of law or fact are not common to the class.

115. Plaintiff's Complaint fails because the claims or defenses of the representative parties are not typical of the claims or defenses of the class.

116. Plaintiffs' Complaint fails because the representative parties will not fairly and adequately protect the interests of the class.

117. Plaintiffs' Complaint fails because Plaintiffs' purported class is a fail safe class, which is not proper.

118. Plaintiffs' Complaint fails because the Court will need to have an individualized hearing on the merits of each class members' claim to determine whether there was a breach of the Waiver Agreement as to that member.

119. Plaintiffs' request for punitive and/or exemplary damages is barred because no such damages are awardable in a breach of contract claim and because Allegiance's conduct was not:

(1) malicious; (2) conspicuously bad; (3) flagrant; (4) due to outrageous hatred; (5) as a result of ill will; or (6) with a spirit of revenge.

120. Plaintiffs' claims are barred because Defendant's alleged actions were lawful, privileged, unintentional, performed in good faith, and authorized.

121. Defendant reserves the right to assert any additional affirmative defenses as discovery is ongoing.

**WHEREFORE**, Allegiance demands that Plaintiffs' Complaint be dismissed; that Allegiance be awarded its attorney fees, costs, and expenses incurred in the defense of this action; and for any and all relief, whether legal or equitable that this Court deems just and proper.

Respectfully submitted,

/s/ Damion M. Clifford

Damion M. Clifford (0077777)

*Trial Counsel*

Gerhardt A. Gosnell II (0064919)

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*Counsel for Defendant Allegiance*

*Administrators, LLC*

**Jury Demand**

Allegiance demands a trial by jury on all issues so triable.

/s/ Damion M. Clifford

Damion M. Clifford

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 29, 2022, a true and accurate copy of the foregoing *Answer of Defendant Allegiance Administrators, LLC* was filed with the Court using the Clerk of Court's electronic filing system, which by its operation will send notice of this filing to all parties that have entered an appearance in this matter.

*/s/ Damion M. Clifford*

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Damion M. Clifford