

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No. 800162/2024E

DIORKA SANTOS,  
ESTHEFANY VILLANUEVA,

Plaintiffs,

VERIFIED ANSWER WITH  
CROSS CLAIMS

-against-

JASON COLON,  
JAYWINNIE TRUCKING CORP.,  
ALEXANDER JOSE LUCIANO GUILLOTI,  
EAN HOLDINGS LLC,

Defendants

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The defendants **JASON COLON and JAYWINNIE TRUCKING CORP.**, by their attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answer the plaintiff's Complaint herein as follows:

1. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12" and "13" except admit JAYWINNIE TRUCKING CORP's principal place of business is located at 3921 Blossom Dew Drive in the State of Florida and JASON COLON was the operator of a 2000 Peterbilt Tractor Trailer, registered in the State of Florida, bearing license place number AB41QV.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

2. As to the paragraph of the Complaint designated "14", answering defendants repeat, reiterate and reallege each and every denial heretofore made with respect to paragraphs "1" through "13" inclusive, with the same force and effect as if fully set forth at length herein.

3. Deny each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "15", "16", "17", "18", "19", "20", "21", "22", "23", "24" and "25".

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

4. As to the paragraph of the Complaint designated "26", answering defendants repeat, reiterate and reallege each and every denial heretofore made with respect to paragraphs "1" through "25" inclusive, with the same force and effect as if fully set forth at length herein.

5. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36” and “37”.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

6. As to the paragraph of the Complaint designated “38”, answering defendants repeat, reiterate and reallege each and every denial heretofore made with respect to paragraphs “1” through “37” inclusive, with the same force and effect as if fully set forth at length herein.

7. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: “39”, “40” “41”, “42”, “43”, “44”, “45”, “46”, “47”, “48” and “49”.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION**

8. As to the paragraph of the Complaint designated “50”, answering defendants repeat, reiterate and reallege each and every denial heretofore made with respect to paragraphs “1” through “49” inclusive, with the same force and effect as if fully set forth at length herein.

9. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: “51”, “52”, “53”, “54”, “55”, “56”, “57”, “58”, “59”, “60” and “61”.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND  
AS AND FOR A FIRST CROSS CLAIM AGAINST  
CO-DEFENDANTS ALEXANDER JOSE LUCIANO  
GUILLOTI and EAN HOLDINGS LLC ANSWERING  
DEFENDANT ALLEGES:**

10. If plaintiff was caused to sustain injuries and damages at the time and place set forth in plaintiff's Complaint through any carelessness, recklessness and negligence other than plaintiff's own, those damages arose in whole or in part from the acts of co-defendant, and if any judgment is recovered herein by plaintiff against answering defendant, then this defendant will be damaged thereby and will be entitled to apportionment or indemnification, in whole or in part, on the basis of proportionate responsibility or obligation to indemnify of co-defendant.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND  
AS AND FOR A FIRST CROSS CLAIM AGAINST  
CO-DEFENDANTS ALEXANDER JOSE LUCIANO  
GUILLOTI and EAN HOLDINGS LLC ANSWERING  
DEFENDANT ALLEGES:**

11. If the plaintiff was caused to sustain injuries and damages at the time and in the manner set forth in her Complaint through any carelessness, recklessness or negligence other than that of plaintiff's own, which is expressly denied, such injuries and damages will have been caused,

brought about and sustained solely by reason of the active, primary and affirmative negligence, carelessness and wrongdoing of the co-defendant, by their agents, servants and/or employees, without any negligence on the part of the answering defendant contributing thereto, or if there be any negligence on the part of the answering defendant, the same was merely passive and secondary in nature.

12. That by reason of the foregoing, if the plaintiff recovers any judgment against the answering defendant, then this defendant is entitled to be fully indemnified by the co-defendant in a like amount, together with the costs, disbursements, expenses and attorneys' fees of the defense of this action by reason of the active and primary negligence of the co-defendant.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND  
AS AND FOR A FIRST CROSS CLAIM AGAINST  
CO-DEFENDANTS ALEXANDER JOSE LUCIANO  
GUILLOTI and EAN HOLDINGS LLC ANSWERING  
DEFENDANT ALLEGES:**

13. If plaintiff sustained damages as alleged in the Complaint through any fault other than the plaintiff's own fault, then such damages were sustained due to the sole fault of the co-defendant, and if plaintiff should obtain and/or recover judgment against the answering defendant, then the co-defendant shall be liable pursuant to common law for the full indemnification of the answering defendant.

14. In view of the foregoing, the answering defendant is entitled to complete common law indemnification for all loss, damage, cost or expense, including, without limitation, judgments, attorneys' fees, Court costs and the cost of appellate proceedings from the co-defendant.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

15. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of the plaintiffs, pursuant to Section 14-A, CPLR.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

16. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of third parties not under the control of answering defendants.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

17. Pursuant to CPLR 4545(c), if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security Act), workers' compensation or employee benefit programs (except such collateral source

entitled by law to liens against any recovery of the plaintiff), then and in that event answering defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

18. If the plaintiff was not wearing seat belts at the time of the accident, answering defendants plead the failure to wear same, or to wear same properly, in mitigation of damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

19. The injuries and damages alleged, all of which are denied by the answering defendants, were caused by the intervening, interceding and superseding acts of third parties not under the control of answering defendants.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

20. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

21. The Court lacks personal jurisdiction over the answering defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

22. The Court lacks jurisdiction over the answering defendants due to improper service of process.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

23. The plaintiff failed to mitigate his damages

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

24. Answering defendant is entitled to limitation of liability pursuant to Article 16 of the CPLR.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

25. Defendant asserts Section 15-108 of the General Obligations Law and will ask the Court that the defendant be entitled to a set-off for any settlements, releases or discontinuances.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

26. The plaintiff's sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51 of the Insurance Law of the State of New York.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

27. The answering defendants have no liability or financial responsibility with respect to the subject vehicle under recent federal legislation. *See* sec. 10208 to H.R. 3 (2005), which amends Subchapter I of title 49 of the U.S. Code by adding, in relevant part, as follows:


Sec. 30106: (a) an owner of a motor vehicle that rents or leases the vehicle to a person... shall not be liable under the law of any state...by reason of being the owner of the vehicle...for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease...

**WHEREFORE**, answering Defendant demands judgment dismissing the Complaint with costs and further demands that the ultimate rights of the answering Defendants and co-defendants, as between themselves, be determined in this action, and that answering Defendants have judgment over and against co-defendants for all or a part of any verdict or judgment which may be obtained by the plaintiff against answering defendants, together with the costs, interest and disbursements of this action.

DATED: New York, New York  
March 26, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF

By:   
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