

Exhibit “B”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ISAIAS FLORES MARTINEZ,

Index No.: 813531/2022E

Plaintiff,

VERIFIED ANSWER

-against-

DENNIS ALGARIN AND QLR FIVE LLC,

Defendants.

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Defendants, **DENNIS ALGARIN and QLR FIVE LLC**, by their attorneys, MILLER, LEIBY & ASSOCIATES, P.C., answer the Verified Complaint, dated September 13, 2022, of the plaintiff herein, and allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the allegations as contained in Paragraph "1" of plaintiff's Verified Complaint.
2. Deny knowledge or information sufficient to form a belief as to the allegations as contained in Paragraph "2" of plaintiff's Verified Complaint.
3. Deny the allegations as contained in Paragraph "3" of plaintiff's Verified Complaint.
4. Admit the allegations as contained in Paragraph "4" of plaintiff's Verified Complaint.
5. Admit the allegations as contained in Paragraph "5" of plaintiff's Verified Complaint.
6. Admit the allegations as contained in Paragraph "6" of plaintiff's Verified Complaint.
7. Admit the allegations as contained in Paragraph "7" of plaintiff's Verified Complaint.
8. Deny in the form alleged the allegations as contained in Paragraph "8" of plaintiff's Verified Complaint.
9. Deny the allegations as contained in Paragraph "9" of plaintiff's Verified Complaint.
10. Deny in the form alleged the allegations as contained in Paragraph "10" of plaintiff's Verified Complaint.
11. Admit the allegations as contained in Paragraph "11" of plaintiff's Verified Complaint.

12. Admit the allegations as contained in Paragraph "12" of plaintiff's Verified Complaint.
13. Deny in the form alleged the allegations as contained in Paragraph "13" of plaintiff's Verified Complaint.
14. Deny in the form alleged the allegations as contained in Paragraph "14" of plaintiff's Verified Complaint.
15. Deny the allegations as contained in Paragraph "15" of plaintiff's Verified Complaint.
16. Deny the allegations as contained in Paragraph "16" of plaintiff's Verified Complaint.
17. Deny knowledge or information sufficient to form a belief as to the allegations as contained in Paragraph "17" of plaintiff's Verified Complaint.
18. Deny the allegations as contained in Paragraph "18" of plaintiff's Verified Complaint.
19. Deny the allegations as contained in Paragraph "19" of plaintiff's Verified Complaint.
20. Deny the allegations as contained in Paragraph "20" of plaintiff's Verified Complaint.
21. Deny the allegations as contained in Paragraph "21" of plaintiff's Verified Complaint.
22. Deny the allegations as contained in Paragraph "22" of plaintiff's Verified Complaint.
23. Deny the allegations as contained in Paragraph "23" of plaintiff's Verified Complaint and respectfully refer all matters of law to the Court.
24. Deny the allegations as contained in Paragraph "24" of plaintiff's Verified Complaint and respectfully refer all matters of law to the Court.
25. Deny the allegations as contained in Paragraph "25" of plaintiff's Verified Complaint.
26. Deny the allegations as contained in Paragraph "26" of plaintiff's Verified Complaint and respectfully refer all matters of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

27. That to the extent the defendants may be found liable to the plaintiff, upon information and belief, the conduct of the plaintiff, including plaintiff's contributory negligence, as a matter of fact and law, and including plaintiff's assumption of the risks inherent in the activities engaged in, were such so that the amount of damages otherwise recoverable must be diminished in that proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct alleged to have caused damages.
28. Defendants assert that this case falls within the limited liability provisions of Section 1601 of the Civil Practice Law and Rules, and that said defendants' liability, if any, shall be limited to the equitable share of the total liability.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

29. That if it should be found after trial that the defendants are liable to the plaintiff in the amount of fifty percent (50%) or less of the total liability assigned to all persons liable, the liability of the defendants to the plaintiff for non-economic loss shall not exceed the defendants' equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss in accordance with Article 16 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

30. If any damages are recoverable against defendants, the amount of such damages shall be diminished by the amount of the funds which plaintiffs have or shall receive from such collateral source.
31. Upon information and belief, any past costs or expenses incurred or to be incurred by the plaintiffs for medical care, 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 FOURTH AFFIRMATIVE DEFENSE

32. That the plaintiff's damages, if any, were caused, in whole or in part, by the culpable conduct of a plaintiff, third-party or parties over whom the defendants exercised no control and for whom the answering defendant is not legally responsible.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

33. That by reason of all of the provisions of Article 51 of the New York Comprehensive Motor Vehicle Insurance Reparations Act, Sections 5101 to 5108, this Court lacks jurisdiction over the subject matter of this action and plaintiffs are expressly prohibited by the above mentioned law from maintaining this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

34. That if it be determined hereafter that plaintiffs or any party to this lawsuit have proceeded to arbitration with respect to any issue relevant to this action which results in an adverse ruling to said plaintiffs or parties, then and in that event, the answering defendant hereby pleads said adverse ruling or award on the theory of collateral estoppel under the authority of MATTER OF AMERICAN INSURANCE CO. (MESSENGER-AETNA CAS. & SUR. CO.), 43 N.Y.2d 184, 401 N.Y.S. 2d 36; ALTMAN v. QUEENS TR. CORP., 94 Misc. 2d 184, 549, 405 N.Y.S. 212; DERMATOSSIAN v. NEW YORK CITY TRANSIT AUTHORITY, 67 N.Y.2d 219, 501 N.Y.S. 2d 784; c.f. BALDWIN v. BROOKS, 83 A.D. 2d 85, 443 N.Y.S.2d 906; CLEMMENS v. APPLE, 65 N.Y.2d 746 and SCHULTZ v. BOYSCOUTS OF AMERICA, 65 N.Y.2d 189.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

35. Plaintiff's alleged injuries, if any, were caused in whole or in part by pre-existing conditions. Plaintiff failed to mitigate and/or are exaggerating claims made in the instant occurrence.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

36. That the plaintiff's damages, if any, were caused, in whole or in part, by superseding and intervening acts over which the defendants exercised no control and for whom the defendants are not legally responsible.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

37. Plaintiff fails to assert a viable cause of action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

38. Defendants invoke the affirmative defense of the emergency doctrine

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

39. That if the plaintiff suffered injury and damages in the manner and at the time and place alleged in the Complaint, which the defendants denies and it be determined that said injury and damages were caused and contributed to by reason of the plaintiff's failure to use or properly use seat belts or restraining devices, pursuant to the authority of SPIER V. BARKER, 35 N.Y. 2d 444, 363 N.Y.S.2d 916, defendant hereby pleads said failure in mitigation of damages.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

40. QLR FIVE LLC cannot be held liable as an "owner" of a motor vehicle under Vehicle & Traffic Law §388 based upon the application of federal statute known as 49 U.S.C.A §30106.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

41. That the Defendants has/have not been served in any manner in accordance with the laws of the State of New York and therefore, there is no jurisdiction over the person of this/these defendants.

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