

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
JOSE PAGAN SOTO,

Index No: 819333/2023/E

Plaintiff,

-against-

VERIFIED ANSWER

ARIAN LOGISTICS, LLC, ALVAREZ LUNA
TRANSPORT, LLC, and ARIAN MODESTO LUNA,

Defendants.
-----X

The defendants, ARIAN LOGISTICS, LLC, ALVAREZ LUNA TRANSPORT, LLC, and ARIAN MODESTO LUNA 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. Deny each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "2," "5," "17," "20," "21," "29," "30," "31," "32," "33," and "34," and respectfully refer all questions of law to this honorable court.

3. Deny any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: "3," "4," "6," "7," "8," "9," "12," "13," "14," "18," "19," "22," "23," "24," "25," "26," "27," and "28," and respectfully refer all questions of law to this honorable court.

4. Admit each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "10," "11," "15," and "16."

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

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

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

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

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. 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

8. The plaintiff failed to mitigate his damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

9. 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

10. 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

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

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

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

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

13. The Court lacks subject matter jurisdiction.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

14. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

15. The defendant was not negligent because they were faced with an emergency situation, not of their own making, and acted as a reasonable prudent person would act in the same emergency.

WHEREFORE, answering defendants demand judgment dismissing the Complaint as to the defendant(s), together with the costs, interest and disbursements of this action.

Dated: New York, New York
March 26, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PTICOFF

Amanda M. Zefi

By: _____

Amanda M. Zefi
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JOSE PAGAN SOTO,

Plaintiff,

-against-

ARIAN LOGISTICS, LLC, ALVAREZ LUNA
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DEMAND FOR A
VERIFIED BILL OF
PARTICULARS

COUNSELLORS:

PLEASE TAKE NOTICE that pursuant to Section 3041, Rules 3042 and 3043 and Section 3044 of the Civil Practice Law and Rules, you are hereby required to serve a Verified Bill of Particulars upon the undersigned within twenty (20) days after receipt of this Demand.

In the event of your failure to comply with this Demand for a Verified Bill of Particulars within that time, a motion will be made for an Order precluding you from offering any evidence on the causes of action alleged in the Complaint concerning the following items as they concern the answering defendant(s):

1. The date and time of the occurrence alleged in the Complaint.
2. The location of the occurrence alleged in the Complaint.
3. A statement of all the acts or omissions constituting negligence which plaintiff(s) will claim against the answering defendant(s).
4. A statement of:
 - (a) The injuries plaintiff(s) suffered as a result of the alleged occurrence; and
 - (b) A description of those claimed by plaintiff(s) to be permanent.
5. If this is an action designated in subsection (a) of Section 5104 of the Insurance Law, for personal injuries arising out of negligence in the use or operation of a motor vehicle, state in what respect plaintiff has sustained a serious injury, as defined in subsection (d) of Section 5102 of the Insurance Law, or economic loss greater than basic economic loss, as defined in subsection (a) of Section 5102 of the Insurance Law.
6. The length of time plaintiff(s) was/were confined to each of the following:
 - (a) Bed;
 - (b) House; and

(c) Hospital.

7. State the following:

- (a) The occupation of plaintiff(s);
- (b) The length of time plaintiff(s) was/were incapacitated from employment; and
- (c) The name and address of plaintiff(s)' employer.

8. I. State separately the total amounts or economic loss claimed by plaintiff(s) as special damages for each of the following:

- (a) Physicians' services;
- (b) Nurses' services;
- (c) Medical supplies;
- (d) Hospital expenses;
- (e) Loss of earnings; and
- (f) Other (describe).

II. Pursuant to Article 50-A or 50-B of the CPLR, itemize which of the special damages or economic loss represent past damages and in which amount:

- (a) Physicians' services;
- (b) Nurses' services;
- (c) Medical supplies;
- (d) Hospital expenses;
- (e) Loss of earnings; and
- (f) Other (describe).

III. Itemize which of the special damages or economic loss represent future damages and in what amount:

- (a) Physicians' services;
- (b) Nurses' services;
- (c) Medical supplies;
- (d) Hospital expenses;
- (e) Loss of earnings; and
- (f) Other (describe).

IV. Over what period of time does plaintiff(s) claim each of future expenses or losses shall occur:

SPECIAL DAMAGES

PERIOD OF TIME

- (a) Physicians' services;
- (b) Nurses' services;
- (c) Medical supplies;

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