

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JANIS R. SMITH, as Executor of the Estate of
SHELDON L. SMITH, deceased,

INDEX NO.: 500608/2024

Plaintiffs,

**AMENDED
VERIFIED ANSWER**

-against-

MAIMONIDES HOSPITAL, HAYM SOLOMON
HOME FOR THE AGED LLC, HAYM SOLOMON
HOME FOR THE AGED LLC d/b/a HAYM SALOMON
HOME FOR NURSING & REHABILITATION, CNH
OPERATING, LLC, CNH OPERATING, LLC d/b/a
THE CHATEAU AT BROOKLYN REHABILITATION
AND NURSING CENTER, THE CHATEAU AT
BROOKLYN REHABILITATION AND NURSING
CENTER,

Defendants.

Defendant, **MAIMONIDES MEDICAL CENTER i/s/h/a MAIMONIDES
HOSPITAL**, by its attorneys, **McALOON & FRIEDMAN, P.C.**, as and for its Amended
Verified Answer to the Verified Complaint of the plaintiffs, respectfully alleges upon information
and belief as follows:

ANSWERING THE FIRST CAUSE OF ACTION

1. Denies any knowledge or information sufficient to form a belief as to each
and every allegation set forth in Paragraphs 1, 2, 3, 4, 6, 7 and 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69,
70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95,
96, 97, 98, 99, 100, 101, 102, 103, 104, 105, of plaintiffs' Verified Complaint.

2. Denies each and every allegation set forth in Paragraph 5 of plaintiffs' Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

3. The answering defendant repeats and reiterates each and every denial or denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint repeated and realleged by plaintiffs in Paragraph 106 of the Verified Complaint.

4. Denies any knowledge or information sufficient to form a belief as to each and every allegation set forth in Paragraphs 107, 108, 109, 110, 126, 111 and 112 of plaintiffs' Verified Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

5. The answering defendant repeats and reiterates each and every denial or denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint repeated and realleged by plaintiffs in Paragraph 113 of the Verified Complaint.

6. Denies each and every allegation set forth in Paragraphs 114, 115, 116, 117, 118, 119 and 120 of plaintiffs' Verified Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

7. The answering defendant repeats and reiterates each and every denial or denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint repeated and realleged by plaintiffs in Paragraph 121 of the Verified Complaint.

8. Denies each and every allegation set forth in Paragraph 122 of plaintiffs' Verified Complaint.

9. Denies each and every allegation set forth in Paragraph 123 of plaintiffs' Verified Complaint except admits that defendant, MAIMONIDES MEDICAL CENTER, is/was a licensed New York State hospital corporation.

10. Denies each and every allegation set forth in Paragraphs 126 and 127 of plaintiffs' Verified Complaint.

11. Denies each and every allegation set forth in Paragraph 130 of plaintiffs' Verified Complaint and refers the question of "control" to the court.

12. Denies in the form alleged each and every allegation set forth in Paragraphs 131 and 132 of plaintiffs' Verified Complaint.

13. Denies each and every allegation set forth in Paragraph 133 of plaintiffs' Verified Complaint except admits that defendant, MAIMONIDES MEDICAL CENTER, is/was a licensed New York State hospital corporation.

14. Admits each and every allegation set forth in Paragraph 134 of plaintiffs' Verified Complaint only as to the specific dates listed and denies as to all other dates "prior and/or subsequent thereto."

15. Denies each and every allegation set forth in Paragraphs 135, 136 and 137 of plaintiffs' Verified Complaint except admits that patient, SHELDON L. SMITH, was treated at defendant, MAIMONIDES MEDICAL CENTER, by qualified and competent healthcare professionals who met the standards of care.

16. Denies each and every allegation set forth in Paragraphs 138, 139, 140, 141 and 142 of plaintiffs' Verified Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION

17. The answering defendant repeats and reiterates each and every denial or denial of knowledge or information sufficient to form a belief as to each of the allegations of the Complaint repeated and realleged by plaintiffs in Paragraph 143 of the Verified Complaint.

18. Denies each and every allegation set forth in Paragraphs 144, 145, 146, 147, 148 and 149 of plaintiffs' Verified Complaint.

**AS AND FOR A FIRST, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

19. The action is time-barred by the applicable statutes of limitations.

**AS AND FOR A SECOND, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

20. The defendant's liability, if any, is limited pursuant to CPLR §1600, et seq.

**AS AND FOR A THIRD, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

21. Defendant, MAIMONIDES MEDICAL CENTER, does not maintain insurance for gross negligence.

**AS AND FOR A FOURTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

22. Plaintiffs fail to assert a valid cause of action for damages for gross negligence.

**AS AND FOR A FIFTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

23. Any verdict or judgment should be reduced by the amounts of past or future collateral source reimbursements of alleged special damage pursuant to CPLR §4545(c).

**AS AND FOR A SIXTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

24. Plaintiffs' Fourth Cause of Action, if any, is barred pursuant to §2805-d of the Public Health Law to the extent that plaintiffs are or may be claiming lack of informed consent against defendant, MAIMONIDES MEDICAL CENTER.

**AS AND FOR A SEVENTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

25. Plaintiffs failed to mitigate damages.

**AS AND FOR A EIGHTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

26. If any one of the parties or non-parties settles with plaintiffs, defendant is entitled to an offset under G.O.L. §15-108.

**AS AND FOR A NINTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

27. The injuries and damages of the plaintiff, for which these causes of action have been instituted, were caused wholly or in part through the culpable conduct and contributory negligence on the part of plaintiff and therefore the amount of damages, if any, shall be diminished in the proportion which said conduct attributable to plaintiff bears to the defendant's conduct, if any, which caused the damages.

**AS AND FOR AN TENTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

28. The plaintiff's right to recover damages is barred in whole or in part pursuant to the Patient Protection and Affordable Care Act 26 USC Section 5000A.

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