

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
HASSAN ENNEJARI and ASMAA RAFAI,

Plaintiffs,

Index No.: 503877/2024

VERIFIED ANSWER

-against-

CARL JEAN, D.P.M., OLATUNDE OSOFISAN, D.P.M.
THE FOOT SPECIALTY PRACTICE, P.C., and
THE BROOKLYN HOSPITAL CENTER,

Defendants.
-----X

The defendants, CARL JEAN, D.P.M. and THE FOOT SPECIALTY PRACTICE, P.C., by their attorneys, BARKER PATTERSON NICHOLS, LLP, answering the Verified Complaint of the plaintiffs, upon information and belief, respectfully shows to this Court and alleges:

1. Deny in the form alleged in paragraph "1".
2. Deny each and every allegation in paragraphs "2", "13", "15", "16" and "17" in the form alleged except admit at all relevant times CARL JEAN, D.P.M. was duly licensed to practice podiatry in the State of New York and at all times rendered care in accordance with the standard of care that existed at the time and respectfully refer all questions of law to this Honorable Court and all questions of fact to the trier of fact.
3. Deny having knowledge or information sufficient to form a belief as to the allegations contained within paragraph "3", "7", "8", "9" and "10" of the Verified Complaint.
4. Deny each and every allegation in paragraph "4" in the form alleged except admit at all relevant times hereinafter mentioned defendant THE FOOT SPECIALTY PRACTICE, P.C. was and still a professional corporation duly organized and existing under and by virtue laws of

the State of New York and respectfully refer all questions of law to this Honorable court and all questions of fact to the trier of fact.

5. Deny each and every allegation in paragraph “5” and “6” in the form alleged except admit at all relevant time CARL JEAN, D.P.M. maintained an office at 903 Utica Avenue, Brooklyn, New York, as well as other office locations, and at all times hereinafter rendered care at 903 Utica Avenue, Brooklyn, New York, to the plaintiff, in accordance with the standard of care that existed at the time and respectfully refer all questions of law to this Honorable Court and all questions of fact to the trier of fact.

6. Deny each and every allegation contained in paragraphs “11”, “12” and “14” of the Verified Complaint.

ANSWERING THE FIRST CAUSE OF ACTION:

7. Deny each and every allegation contained in paragraphs “18”, “19” and “20” of the Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION:

8. In response to paragraph “21”, defendants repeat and reallege each admission or denial made herein with the same force and effect herein as to paragraphs “1” through “20” as though same were more fully set forth herein at length.

9. Deny each and every allegation contained in paragraphs “22”, “23”, “24”, “25” and “26” of the Verified Complaint.

ANSWERING THE THIRD CAUSE OF ACTION:

10. In response to paragraph “27”, defendants repeat and reallege each admission or denial made herein with the same force and effect herein as to paragraphs “1” through “26” as though same were more fully set forth herein at length.

11. Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraph “28” of the Verified Complaint.

12. Deny each and every allegation contained in paragraphs “29” and “30” of the Verified Complaint.

13. Any paragraph not answered is deemed denied.

**AS AND FOR A FIRST DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

14. In the event plaintiff recovers a verdict or judgment against defendants, such verdict or judgment must be reduced pursuant to §4545 of the CPLR by those amounts which have been, or will, with reasonable certainty replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source.

**AS AND FOR A SECOND DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

15. If plaintiff is entitled to recover damages for loss of earnings or impairment of earning ability as against defendants CARL JEAN, D.P.M. and THE FOOT SPECIALTY PRACTICE, P.C. by reason of the matters alleged in the Verified Complaint, liability for which is hereby denied, then pursuant to CPLR §4546 the amount of damages recoverable against said defendants, if any, shall be reduced by the amount of federal, state and local income taxes which the plaintiff would have been obligated by law to pay.

**AS AND FOR A THIRD DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

16. That the statute of limitations set forth in CPLR 214(A) bars any claim with regard to the professional services rendered more than two and one-half (2½) years prior to the commencement of the within action.

**AS AND FOR A FOURTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

17. That the defendants acted in accordance with the appropriate provisions of Section 2805-d of the Public Health Law and relies on the defenses set out therein.

**AS AND FOR A FIFTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

18. The defendants assert the defense of set-off to reduce the plaintiff's claims under §15-108 of the General Obligations Law.

**AS AND FOR A SIXTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

19. That the damages of the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A SEVENTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

20. That the answering defendants reserve the right to claim the limitations of liability pursuant to Article 16 of the CPLR, for any recovery herein by the plaintiff for non-economic loss.

**AS AND FOR AN EIGHTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

21. The defendants will offer proof regarding the Affordable Care Act including the cost of premiums and out-of-pocket limits that were made available to plaintiff under the Affordable Care Act, and will offer proof of the medical costs which plaintiff will not incur under the Affordable Care Act.

**AS AND FOR A NINTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

22. Plaintiff failed to mitigate, diminish or otherwise act to lessen or reduce the injuries and damages alleged in the Complaint.

**AS AND FOR A TENTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

23. The complaint fails to state a valid cause of action upon which relief can be granted to the plaintiff as and against the defendants.

**AS AND FOR AN ELEVENTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

24. These claims must be dismissed on the basis of the absolute and qualified immunities granted by Governor Cuomo's March 7, 2020 and subsequent Executive Orders ("EO"), Article 30-D, §3082(2) of the Public Health Law [now known as the Emergency or Disaster Treatment Protection Act ("EDTPA")] and Good Samaritan doctrine and laws.

**AS AND FOR A TWELFTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

25. These claims must be dismissed in whole or in part pursuant to the EDTPA, which affords absolute and/or qualified immunity from the allegations in the claims, including any claims that allegedly pre-date March 7, 2020, as such claims are covered under the EDTPA and amount to allegations of staffing or resource shortage which is subject to an absolute immunity.

**AS AND FOR A THIRTEENTH DEFENSE,
THE ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

26. Defendants acted at all times within the proper standards of care generally, as well as the standards of care in place in the locality in question at the time of the COVID-19 emergency.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.