

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No. 504550/2024

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STACEY THOMAS and MONIQUE CUNIN, as CO- :  
ADMINISTRATORS of the ESTATE of DENZIL :  
THOMAS, DECEASED, :

Plaintiffs, :

-against- :

NEW YORK CITY HEALTH AND HOSPITALS: :  
CORPORATION/KINGS COUNTY HOSPITAL: :  
CENTER, OFER AZOULAY, M.D., YURIY: :  
YUSUPOV, M.D., LEO BOUDOURAKIS, M.D., and: :  
KELSEY ENSOR, M.D., :

Defendants. :

**VERIFIED ANSWER**

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**PLEASE TAKE NOTICE** that Defendant, OFER AZOULAY, M.D., by and through his attorneys, FURMAN KORNFELD & BRENNAN LLP, hereby responds to the plaintiffs' Verified Complaint as follows:

**(GENERAL AVERMENTS)**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "1", "2", "3", "4", "5", "6", "9", "10", "11", "12", "13", "14", "15", "16", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35" and "36" of the Verified Complaint.

2. Denies each and every allegation contained in paragraphs "7" and "20" of the Verified Complaint except admits that defendant OFER AZOULAY, M.D. was and is a physician duly licensed to practice medicine in the state of New York and was employed by New York City Health and Hospitals Corporation pursuant to section 50-k of the General Municipal Law at the time of the alleged incident for care and treatment at New York City Health and

Hospitals Corporation facilities only and otherwise refers all questions of law to the Court and all questions of fact to the triers of fact.

3. Denies each and every allegation contained in paragraphs “8”, “18”, “19” and “31” of the Verified Complaint insofar as the allegations present questions of law and/or fact to be preserved for trial.

4. Denies each and every allegation contained in paragraphs “17”, “21”, “22”, “23” and “37” of the Verified Complaint.

**FIRST CAUSE OF ACTION**  
**(Malpractice)**

5. In response to paragraph “38” of the Verified Complaint, Defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “1” through “37” of the Verified Complaint, with the same force and effect as if fully set forth at length herein.

6. Denies each and every allegation contained in paragraphs “39”, “40”, “41”, “43” and “44” of the Verified Complaint insofar as the allegations present questions of law and/or fact to be preserved for trial.

7. Denies each and every allegation contained in paragraphs “42”, “51”, “52”, “53”, “54”, “55”, “56”, “57” and “58” of the Verified Complaint.

8. Denies each and every allegation contained in paragraphs “45”, “46”, “47”, “48”, “49” and “50” of the Verified Complaint except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

**SECOND CAUSE OF ACTION**  
**(Informed Consent)**

9. In response to paragraph “59” of the Verified Complaint, Defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “1” through “58” of the Verified Complaint, with the same force and effect as if fully set forth at length herein.

10. Denies each and every allegation contained in paragraphs “60”, “61”, “62” and “63” of the Verified Complaint.

**THIRD CAUSE OF ACTION**  
**(Wrongful Death)**

11. In response to paragraph “64” of the Verified Complaint, Defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “1” through “63” of the Verified Complaint, with the same force and effect as if fully set forth at length herein.

12. Denies each and every allegation contained in paragraphs “65”, “67” and “68” of the Verified Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Verified Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Verified Complaint fails to state a cause of action against the answering defendant for which relief may be granted and should be dismissed.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiffs lack standing and capacity to bring this action.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

The answering party Defendant alleges that the incident and all the injuries and damages resulting therefrom were caused in whole or in part by the culpable conduct of the Plaintiffs and/or plaintiffs' decedent, including but not limited to Plaintiffs and/or plaintiffs' decedent's intentional acts, contributory negligence and/or assumption of risk, and the defendant therefore requests that this Court determine the proportionate share that such culpable conduct contributes in whole or in part to the incident and the damages claimed therefrom.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

To the extent that plaintiffs and/or plaintiffs' decedent sustained any alleged damages which Defendant expressly denies, it was caused by the culpable conduct, wrongdoing, negligence, lack of care, breaches, omissions and failure to act of third parties, their agents, servants or employees over whom Defendant had no control and for which Defendant bears no legal responsibility.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The Verified Complaint and all its causes of action are barred by the applicable statute of limitations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Kings County Hospital Center is not a jural entity.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from seeking all or part of the damages sought in this lawsuit as a result of their failure to mitigate the damages allegedly sustained.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

Defendant invokes the protection of Public Health Law § 2805(d)(4) with respect to the alleged cause of action for informed consent and reserves all rights pursuant thereto.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The answering defendant hereby gives notice that they intend to rely upon such other defenses as may become apparent during the discovery proceeding in this case and hereby reserves their right to amend this Answer to assert any such defenses.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

Pursuant to CPLR §4545 if it be determined or established that plaintiffs or plaintiffs' decedent have 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, social security, workers' compensation or employee benefit programs, then and in that event defendant hereby pleads in mitigation of damages the assessments of any cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

Pursuant to Article 16, the liability, if any, of the answering Defendant, for non-economic loss shall not exceed its equitable shares of liability.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

Defendant is entitled to a set-off if any tortfeasor has or will settle with Plaintiffs pursuant to G.O.L. 15-108.

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