

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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RACHIL NSIRI,

Plaintiff(s),

-against-

YESHIVAT DARCHE ERES, INC.,,

Defendant(s).

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YESHIVAT DARCHE ERES, INC.,

Third-Party Plaintiff,

-against-

NURTURING ANGELS HOME CARE, INC. and  
“JANE DOE” (fictitious name to represent plaintiff’s  
Aide at time of accident),

Third-Party Defendants.  
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The Third-Party Defendants, **NURTURING ANGELS HOME CARE, INC. and “JANE DOE”**, by their attorneys, BARKER PATTERSON NICHOLS, LLP, answering the third party complaint upon information and belief, respectfully shows to this Court and alleges:

1. Deny any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs “1,” “8,” “9,” “10,” and “16” of the third-party complaint and refers all questions of fact to trier of fact and all questions of law to the Court..

2. Deny each and every allegation contained in paragraphs “2” and “3” of the third party complaint except admits **NUTURING ANGELS HOME CARE, INC** is a domestic corporation authorized to do business in the State of New York and refers all questions of fact to trier of fact and all questions of law to the Court.

3. Deny each and every allegation in the form alleged contained in paragraphs “4” and “5” of the third-party complaint except admits that **NURTURING ANGELS HOME CARE, INC.**, provided a home health aide to RACHIL NSIRI and refers all questions of fact to trier of fact and all questions of law to the Court.

4. Deny each and every allegation in the form alleged contained in paragraphs “6” and “7” of the third party complaint except admit that **JANE DOE** was an employee of **NURTURING ANGLES HOME CARE INC**, and at all times provided appropriate care to RACHIL NSIRI and refers all questions of fact to trier of fact and all questions of law to the Court.

5. Deny each and every allegation in the form alleged contained in paragraphs “11” and “12” of the third-party complaint and refers all questions of fact to trier of fact and all questions of law to the Court.

**CAUSE OF ACTION: CONTRIBUTION**

6. Deny each and every allegation contained in paragraphs “13,” “14,” and “15,” and of the third-party complaint.

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

7. That any injuries sustained by first party plaintiff at the time and place mentioned in the complaint were caused solely and wholly by reason of the carelessness, negligence, recklessness and acts or omissions on the part of the first party plaintiff and were not caused or contributed to by reason of any carelessness, negligence, recklessness or acts or omissions on the part of these answering defendants.

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

8. 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 A THIRD DEFENSE,  
ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

9. In the event the plaintiffs recover a verdict or judgment against Third-Party 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 FOURTH DEFENSE,  
ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

10. If plaintiffs are entitled to recover damages for loss of earnings or impairment of earning ability as against Third-Party Defendants **NURTURING ANGELS HOME CARE, INC. and "JANE DOE"** by reason of the matters alleged in the Complaint, liability for which is hereby denied, then pursuant to CPLR §4546 the amount of damages recoverable against said defendant, 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 FIFTH DEFENSE,  
ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

11. The Third-Party Defendants assert the defense of set-off to reduce the plaintiffs claims under §15-108 of the General Obligations Law.

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

12. If the first party plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the complaint and in the manner alleged therein through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty

and/or contract other than of the plaintiff then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or statute, and/or warranty, and/or contract in fact or implied in law, upon the part of non-parties subject to in-personam jurisdiction, and if this pleading defendant is found negligent as to the plaintiff for the injuries and damages set forth in the plaintiff's complaint, then and in that event, the relative responsibilities of said pleading defendant must be apportioned by the percentage of liability of said non-parties subject to in-personam jurisdiction.

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

13. The Third-Party 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 AN EIGHTH DEFENSE,  
ANSWERING DEFENDANTS ALLEGE UPON INFORMATION AND BELIEF:**

14. The third party complaint fails to state a cause of action as against these answering defendants upon which relief can be granted.

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

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

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

16. The damages allegedly suffered by Plaintiff, Rachel Nsiri were caused in whole or in part by the culpable conduct of Plaintiff. Plaintiff claims are therefore barred or diminished in the proportion that such culpable conduct bears to the total culpable conduct causing the damages.

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

17. That upon information and belief, that if any dangerous or hazardous condition existed at the premises as alleged in the complaint, then same was open and obvious to the Plaintiff, Rachel Nsiri, susceptible to being perceived by the Plaintiff utilizing her ordinary senses and, as such, Third-Party Defendants bore no duty to warn the plaintiff of the existence of said dangerous or hazardous condition.

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

18. That if the defect existed as alleged in Plaintiff's Complaint, then same was de minimis, trivial and minuscule in nature and did not constitute a hazard, and therefore, non-actionable as a matter of law.

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

19. The Third-Party Defendants had no actual or constructive notice of the alleged defect(s) and did not create the alleged conditions.

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

20. The injuries allegedly sustained by Plaintiff, Rachel Nsiri, were the result of the acts or omissions third parties over whom Third-Party Defendants exercised no direction or control.

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