

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
FOSTER SEKYERE and DEBORAH EMMANUEL,

Plaintiffs,

Index No: 536715/2023

- against -

VERIFIED ANSWER

GFO TRANSPORT CORP, FREDY OCHOA,
JOSE XAVIER VILLACRES CEDENO and
JONATHAN TEJADA,

Defendants.

-----X
The defendants, GFP TRANSPORT CORP. S/H/AGFO TRANSPORT CORP FREDY OCHOA, JOSE XAVIER VILLACRES CEDENO and JONATHAN TEJADA by their attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answers the plaintiffs' Complaint herein as follows:

ANSWERING THE FIRST CAUSE OF ACTION

1. Denies 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," and "24."

2. Admits each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "3," "4," "5," "13," "14," "17," "19," and "21."

3. Denies each and every allegation contained the paragraphs or subdivisions of the Complaint designated: "6," "7," "8," "9," "10," "11," "12," "15," "16," "18," "20," "22," "25," "26," "27," "28," and "29."

4. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated: "23," and respectfully refers all questions of law to this honorable court.

ANSWERING THE SECOND CAUSE OF ACTION

5. Denies 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: "30" and "31."

6. As to the paragraph of the Complaint designated "32", answering defendant repeats, reiterates and realleges each and every denial heretofore made with respect to paragraphs "1" through "31" inclusive, with the same force and effect as if fully set forth at length herein.

7. Denies each and every allegation contained the paragraphs or subdivisions of the Complaint designated: "33," "34," "35," and "36."

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

8. 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

9. 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

10. 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

11. If the plaintiff was not wearing seat belts at the time of the accident, answering defendants plead the failure to wear same, or to wear same properly, in mitigation of damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

12. 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

13. 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

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

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

15. The plaintiff failed to mitigate his damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

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

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

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

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

18. If the plaintiff sustained damages as alleged, such damages occurred while the plaintiff was engaged in an activity into which he (or she) entered, knowing the hazard, risk and danger of the activity and he (or she) assumed the risks incidental to and attending the activity.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

19. Defendant asserts Section 15-108 of the General Obligations Law and will ask the Court that the defendant be entitled to a set-off for any settlements, releases or discontinuances.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

20. The defendants are not liable to the plaintiff as the plaintiff's actions were the sole proximate cause of the alleged occurrence.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

21. 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 FIFTEENTH AFFIRMATIVE DEFENSE

22. Some or all of the plaintiff's claims are barred, in whole or in part, by the limits of liability, endorsements and other terms, conditions, limitations and exclusions in the alleged policies.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

23. Upon information and belief, any damages sustained by plaintiff was caused, in whole or in part, by the culpable conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppels, laches and/or unclean hands.

WHEREFORE, answering defendant demands judgment dismissing the Complaint as to the defendant, together with the costs, interest and disbursements of this action.

Dated: New York, New York
April 2, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF

Vincent Finnegan

By: _____

Vincent Finnegan
Attorneys for Defendant
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
FOSTER SEKYERE and DEBORAH EMMANUEL,

Plaintiffs,

Index No: 536715/2023

- against -

DEMAND FOR A
VERIFIED BILL OF
PARTICULARS

GFO TRANSPORT CORP, FREDY OCHOA,
JOSE XAVIER VILLACRES CEDENO and
JONATHAN TEJADA,

Defendants.

-----X
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:

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