

DMD/am 33-160
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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GORDON N. ROSALES AND NEIDE M. ROSALES,

Index No. 605042/2023

Plaintiffs

VERIFIED ANSWER

-against-

ANAM SARFARAZ, M.D., MUSTAFA
AL-ROUBAIE, M.D., ADVANTAGECARE
PHYSICIANS, LIJ VALLEY STREAM and
NORTHWELL HEALTH,

Defendants.
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Defendant, MUSTAFA AL-ROUBAIE, M.D., by his attorneys, WAGNER, DOMAN,
LETO & DI LEO, P.C., answering the complaint of the Plaintiffs herein, upon information and
belief:

1. Denies each and every allegation contained in paragraphs designated "10",
"11", "12", "13", "25", "26", "27", "28", "33", "34", "35", "36", "41", "42", "43", "46", "47",
"48", "49", "50" and "51".

2. Denies any knowledge or information thereof sufficient to form a belief as to the
allegations contained in paragraphs designated "1", "2", "3", "4", "5", "6", "7", "8", "17",
"18", "19", "20", "21", "22", "23", "24" and "45".

3. Denies any knowledge or information thereof sufficient to form a belief as to the
allegations contained in paragraphs designated "14", "15", "16", "30", "31", "32", "38", "39"
and "40" in the form alleged.

4. Answering paragraph "44", defendant repeats, reiterates, and realleges above
denials for paragraphs designated "1" through "43".

5. Defendant, MUSTAFA AL-ROUBAIE, M.D., demands that the liability, if any, be apportioned.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

6. The alleged cause of action sounding in medical malpractice is barred by the statute of limitations in that the plaintiff failed to bring this action within two and one-half (2-1/2) years as set forth in Section 214-a of the CPLR.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

7. The alleged cause of action asserted by the plaintiff(s) in paragraphs "1" through "51" fails to state a cause of action in that they do not contain any allegations of injury to the plaintiff(s) for which the answering defendant(s) can be held liable.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

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

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

9. Defendant will rely upon the provision of Article 16 of the CPLR with regard to the limitation of joint and several liability.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

10. Any award to plaintiff for the cost of medical care, custodial care or rehabilitation services, loss of earnings or other economic loss should be reduced by the amount such expense has been or will be replaced or indemnified in whole or in part from any collateral source in accordance with the provisions and limitations set forth in CPLR § 4545.

AS AND FOR A SIXTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

11. Answering defendant will rely upon the New York General Obligations Law § 15-108, and is thereby entitled to a set-off of damages based on any prior settlements regarding the injuries alleged in this lawsuit.

AS AND FOR A SEVENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

12. That pursuant to the “Coronavirus Aid Relief and Economic Security Act” signed into law on March 27, 2020, MUSTAFA AL-ROUBAIE, M.D., is immune from any cause of action arising under the Federal or State law for any harm caused by an act or omission of the professional in the provision of health care services during the COVID-19 public health emergency.

AS AND FOR AN EIGHTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

13. That this matter is barred pursuant to the applicable provision of New York Emergency or Disaster Treatment Act, Art 30-D, N.Y. Public Health Law §§3080-82, as

enacted on April 3, 2020 New York Executive Order 202.10, and any and all related Executive Orders issued by the Governor of the State of New York.

AS AND FOR A NINTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

14. That this matter is barred pursuant to the applicable provisions of the Public Readiness and Emergency Preparedness Act.

AS AND FOR A TENTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION IN THE COMPLAINT, ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

15. That at all times, MUSTAFA AL-ROUBAIE, M.D., acted within the scope of the crisis standards of care, as well as the standards of care in place in the location in question at the time of the COVID-19 emergency.

WHEREFORE, defendant, MUSTAFA AL-ROUBAIE, M.D., demands judgment dismissing the complaint herein together with interest, costs, disbursements, or judgment over, as may be required by law.

Dated: May 19, 2023
Mineola, New York

Yours, etc.,

WAGNER, DOMAN, LETO & DI LEO, P.C.



By: _____
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