

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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ZULMA ZUNIGA,

Plaintiff,

Index No.: 703468/2024

-against-

VERIFIED ANSWER

METROPOLITAN TRANSPORTATION AUTHORITY, MTA NEW YORK CITY TRANSIT, MTA NEW YORK CITY TRANSIT DIVISION OF PARATRANSIT, NEW YORK CITY TRANSIT AUTHORITY DIVISION OF PARATRANSIT and "JOHN/JANE DOE" name being fictitious, true name unknown, person intended being the operator of the vehicle involved in the occurrence alleged in the complaint,

Defendants.

-----X
The defendants, METROPOLITAN TRANSPORTATION AUTHORITY, MTA NEW YORK CITY TRANSIT, MTA NEW YORK CITY TRANSIT DIVISION OF PARATRANSIT, NEW YORK CITY TRANSIT AUTHORITY DIVISION OF PARATRANSIT by their attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answer(s) the plaintiff(s)' Complaint herein as follows:

1. Deny each and every allegation contained the paragraphs or subdivisions of the Complaint designated: "1," "2," "3," "10," "11," "12," "13," "14," "15," "17," "18," "19," "20," "21," "22," "23," "25," "26," "27," "29," "30," "31," "33," "34," "35," "37," "38," "39," "41," "42," "44," "46," "47," "50," "51," "52," "53," "56," "57," and "58."

2. Deny any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated: "4," "5," "6," "7," "8," "9," "32," "36," "40," "45," and "55," and respectfully refer all questions of law to this honorable court.

3. Deny 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: "16," "24," "28," "43," "48," "49," and "54."

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Any damages which may have been sustained by the plaintiffs were contributed to in whole or in part by the culpable conduct of the plaintiffs, pursuant to Section 14-A, CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. 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 defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. 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

7. 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

8. 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

9. 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

10. The Court lacks personal jurisdiction over the answering defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

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

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

12. The plaintiff failed to mitigate his damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

13. That the action against the answering defendants cannot be prosecuted due to the plaintiff's failure to name and likewise prosecute an indispensable party to this litigation.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

14. This action is a nullity in that the summons has not been filed with the Clerk of the Court pursuant to CPLR Section 304.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

15. This action is a nullity in that the summons does not contain the index number and/or date of filing pursuant to CPLR 306-a and 306-b.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

16. The lawsuit was not commenced by the plaintiff within the time prescribed by law, and the plaintiff, therefore, is barred from recovery, pursuant to Section 214, CPLR.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

17. Answering defendants are entitled to limitation of liability pursuant to Article 16 of the CPLR.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

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

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

19. This action lacks merit and is contrary to established law and fact and answering defendants are entitled to costs in the sum of \$10,000 for this frivolous action.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

20. Plaintiff is bound by the provisions of the Workers' Compensation Law of the State of New York and, by virtue of the statutes therein contained are restricted and limited to recovery under the provisions of said law.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

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

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

22. Defendants assert Section 15-108 of the General Obligations Law and will ask the Court that the defendants be entitled to a set-off for any settlements, releases or discontinuances.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

23. The defendants were not negligent because they were faced with an emergency situation, not of their own making, and acted as a reasonable prudent person would act in the same emergency.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

24. Plaintiff was involved in an activity inherently dangerous.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

25. 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 TWENTY-THIRD AFFIRMATIVE DEFENSE

26. The plaintiff has a **duty to mitigate all damages** with specific reference to future medical damages and under the Patient Protection and Affordable Care Act has a federally mandated mechanism in which to do so.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

27. The answering defendants have no liability or financial responsibility with respect to the subject vehicle under recent federal legislation. *See* sec. 10208 to H.R. 3 (2005), which amends Subchapter I of title 49 of the U.S. Code by adding, in relevant part, as follows:

Sec. 30106: (a) an owner of a motor vehicle that rents or leases the vehicle to a person... shall not be liable under the law of any state...by reason of being the owner of the vehicle...for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease...

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

28. If plaintiff is entitled to recover damages for loss of earnings or impairment of earning ability as against defendant 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 answering defendant, if any, shall be reduced by the amount of federal, state and local income taxes which the plaintiff would be obligated by law to pay.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

29. Improper Forum.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

30. The Venue of the within action is improper.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

31. The Court lacks subject matter jurisdiction.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

32. Plaintiff did not serve a proper Notice of Claim upon defendant as required by Public Authorities Law.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

33. The plaintiff failed to satisfy a condition precedent.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

34. Answering defendant did not own, lease or control the area where the vehicle in question, and therefore, cannot be found negligent.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

35. **The plaintiff did not appear for a General Municipal Law 50H Hearing prior to answering the lawsuit.**

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

Dated: New York, New York
March 22, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF

Michael V. Campanile

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