

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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JOSE PESANTEZ,

Plaintiff,

Index No. 727047/2023

-against-

VERIFIED ANSWER

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, ISLAMIC
SERVICE FOUNDATION OF NY INC, AND KACEM
SALIH,

Defendants.
-----X

The defendants, ISLAMIC SERVICE FOUNDATION OF NY INC, AND KACEM SALIH by their attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answer the plaintiff’s Complaint herein as follows:

1. 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: “1,” “2,” “3,” “4,” “5,” “6,” “7,” “8,” “9,” “10,” “11,” “12,” “13,” “14,” “15,” “16,” “17,” “18,” “19,” “20,” “21,” “22,” “23,” “24,” “25,” “26,” “27,” “28,” “29,” “30,” “31,” “32,” “33,” “34,” “36,” and “37.”

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: “35,” and respectfully refer all questions of law to this honorable court.

3. Deny each and every allegation contained the paragraphs or subdivisions of the Complaint designated: “38,” “39,” “40,” “41,” “42,” “43,” “44,” “45,” “46,” and “47.”

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. 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

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 defendant.

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 jurisdiction over the answering defendants due to improper service of process.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

11. The plaintiff failed to mitigate his damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

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

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

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

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

14. 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

15. 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

16. 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.

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 29, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF

Ardinez Domgjoni

By: _____

Ardinez Domgjoni
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THE CITY OF NEW YORK and
THE NEW YORK CITY DEPARTMENT
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

JOSE PESANTEZ,

Plaintiff,

Index No. 727047/2023

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, ISLAMIC
SERVICE FOUNDATION OF NY INC, AND KACEM
SALIH,

DEMAND FOR A
VERIFIED BILL OF
PARTICULARS

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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