

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MARIE PIRO,

Plaintiff,

Index No.: 152321/2023

VERIFIED ANSWER

-against-

FRANK V. TAMBURRINO, MD, GREGORY MANIATIS, MD,
YEFIM OLKOVSKY, MD and STATEN ISLAND UNIVERSITY
HOSPITAL/NORTHWELL HEALTH,

Defendants.
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Defendant, **GREGORY MANIATIS, MD**, by his attorneys, KAUFMAN BORGEEST & RYAN LLP, hereby responds to Plaintiff’s Verified Complaint, upon information and belief as follows:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

1. Denies knowledge and information as to each and every allegation contained in those paragraphs designated as “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36”, “37”, “38”, “39”, “40”, “41”, “42”, “43”, “44”, “45”, “46”, “47”, “48”, “49”, “50”, “51”, “52”, “53”, “54”, “55”, “56”, “57” and “58” of the Verified Complaint and refers questions of law to this Honorable Court.

2. Denies in the form alleged each and every allegation contained in those paragraphs designated at “12” and “13”, of the Verified Complaint, except admits that Defendant **GREGORY MANIATIS, MD** was a cardiologist and interventional cardiologist, and refers questions of law to this Honorable Court.

3. Denies in the form alleged each and every allegation contained in those paragraphs designated at “14” of the Verified Complaint, except admits that at all times Defendant

GREGORY MANIATIS, MD was duly qualified and skilled to perform his profession and function.

4. Denies each and every allegation contained in those paragraphs designated as "15", "16", "17", "18", "20", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69" and "70".

5. Denies in the form alleged each and every allegation contained in those paragraphs designated at "19" of the Verified Complaint, except admits that Defendant **GREGORY MANIATIS, MD** was an employee of Defendant **STATEN ISLAND UNIVERSITY HOSPITAL s/h/a STATEN ISLAND UNIVERSITY HOSPITAL/NORTHWELL HEALTH** and refers questions of law to this Honorable Court.

6. Denies in the form alleged each and every allegation contained in those paragraphs designated as "30", "31", "32", "33", "34", "35", "36", "37", "38", "39" and "42" of the Verified Complaint, except admits that at all relevant times, Defendant **STATEN ISLAND UNIVERSITY HOSPITAL s/h/a STATEN ISLAND UNIVERSITY HOPITAL/NORTHWELL** was a non-for-profit corporation organized pursuant to New York State law and duly staffed and equipped to perform its function and refers all questions of law to the Court.

7. Denies in the form alleged each and every allegation contained in those paragraphs designated as "41" of the Verified Complaint, except admits that at all times Defendant **STATEN ISLAND UNIVERSITY HOSPITAL s/h/a STATEN ISLAND UNIVERSITY HOSPITAL/NORTHWELL HEALTH** was **duly and** appropriately staffed and capable to perform its function and refers questions of law to this Honorable Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

8. With respect to that paragraph of the Plaintiff's Verified Complaint designated as "71" answering defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "70" of Plaintiff's Verified Complaint.

9. Denies each and every allegation contained in those paragraphs designated as "72", "73", "74" and "75".

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

10. With respect to that paragraph of the plaintiff's Verified Complaint designated as "76" answering defendant repeats, reiterates and realleges each and every admission or denial heretofore made in response to paragraphs "1" through "75" of Plaintiff's Verified Complaint.

11. Denies in the form alleged each and every allegation contained in those paragraphs designated as "77", "78", "79" and "80" of the Verified Complaint and refers questions of law to this Honorable Court.

12. Denies each and every allegation contained in those paragraphs designated as "81", "82", "83", "84" and "85".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. Upon information and belief, whatever damages the Plaintiff may have sustained at the time(s) and place(s) mentioned in the Verified Complaint, were caused in whole or in part, by Plaintiff's culpable conduct. The amount of damages recovered, if any, shall therefore be diminished in the proportion to which said culpable conduct is attributable.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. Defendant invokes the protection of Public Health Law §2805-d (4) with respect to the cause of action for lack of informed consent, and reserves all rights pursuant thereto.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. That the Complaint fails to state a cause or causes of action upon which relief can be granted against the answering defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. Upon information and belief, any past or future costs or expenses incurred or to be incurred by the Plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545 (c) of the New York Civil Practice Law and Rules.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. If any damages are recoverable against this answering defendant, the amount of such damages shall be diminished by the amount of the funds which Plaintiff has or shall receive from such collateral source.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. That pursuant to CPLR §1600 *et seq.*, if it is determined by verdict or decision that two or more tortfeasors are jointly liable to the plaintiff, and if the liability of the answering defendant is found to be 50% or less of the total liability assigned to all persons liable, the liability of such defendant to the plaintiff for non-economic loss shall not exceed this defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

19. That the Complaint and the cause(s) of action contained therein may not be maintained because they are barred by the applicable statute of limitations prescribed by the CPLR and the laws of the State of New York.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

20. The answering Defendant is immune from liability for the acts, omissions, and injuries alleged in the Complaint, pursuant to Executive Orders (A. Cuomo) 202 *et seq.* (9 NYCRR §8.202 *et seq.*), including but not limited to Executive Order (A. Cuomo) 202.10 (9 NYCRR §8.202 *et seq.*), and/or the Emergency or Disaster Treatment Protection Act ("EDTPA") (Public Health Law Article 30-D) as it was in effect at the time of the care rendered in this case.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

21. The answering defendant is immune from liability for the acts, omissions, and injuries alleged in the Complaint, pursuant to the United States Public Readiness and Emergency Preparedness ("PREP") Act (42 USC §247d-6d *et seq.*) and/or the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020, §4113c (42 USC §247d-6d[i][1], as added by Pub L 116-136, 116 US Stat 3548).

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

22. Plaintiff's state law claims must be dismissed, as they are preempted by the United States Public Readiness and Emergency Preparedness ("PREP") Act (42 USC §247d-6d *et seq.*) and/or the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020, §4113c (42 USC §247d-6d[i][1], as added by Pub L 116-136, 116 US Stat 3548).

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