

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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DOUGLAS GOTAY, Index No. 034434/2023

Plaintiffs, VERIFIED ANSWER
- against -

LAWRENCE F. SIMON, M.D., HIGHLAND MEDICAL, P.C.,
And MONTEFIORE NYACK HOSPITAL,

Defendants.

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Defendant, LAWRENCE F. SIMON, M.D., by his attorneys, VOUTÉ,
LOHRFINK, McANDREW, MEISNER & ROBERTS, LLP, answering the plaintiff's
complaint:

1. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 1, 8 and 9 of the verified complaint.

2. Denies each and every allegation contained in paragraph 2 of the verified complaint in the form alleged and otherwise begs leave to refer all questions of law to the court and all questions of fact to the triar thereof, except admits that at all relevant times herein, LAWRENCE F. SIMON, M.D. was and is a physician licensed to practice medicine in the state of New York.

3. Denies each and every allegation contained in paragraphs 3, 4 and 11 of the verified complaint in the form alleged and otherwise begs leave to refer all questions of law to the court and all questions of fact to the triar thereof.

4. Denies each and every allegation contained in paragraphs 5, 6, 7 and 12 of the verified complaint in the form alleged and otherwise begs leave to refer all questions of law to the court and all questions of fact to the triar thereof.

5. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 8, of the verified complaint.

6. Denies each and every allegation contained in paragraphs 10 of the verified complaint in the form alleged and otherwise begs leave to refer all questions of law to the court and all questions of fact to the triar thereof, as to defendant, LAWRENCE F. SIMON, M.D.

7. Denies each and every allegation contained in paragraphs 13, 14 and 15 of the verified complaint.

Any and all paragraphs not answered herein are deemed denied.

**AS AND FOR A FIRST DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

8. The physical condition of plaintiff was not brought about by any negligence on the part of defendant(s), but rather due to the physical condition, illness, contributory negligence, assumption of risk, contributory fault and/or culpable conduct attributable to plaintiff to the extent of total and/or partial diminution of the damages alleged in the complaint.

**AS AND FOR A SECOND DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

9. The provisions of Public Health Law §2805-d(4) constitute an absolute defense to the cause of action for lack of informed consent.

**AS AND FOR A THIRD DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

10. This action must be dismissed as barred by the applicable statute of limitations.

**AS AND FOR A FOURTH DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

11. If the plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the plaintiff's complaint and in the manner alleged therein through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract other than of the plaintiff, then the said injuries and

damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or statute, and/or warranty and/or contract in fact or implied in law, upon the part of non-parties subject to *in personam* jurisdiction, and if this pleading defendant(s) is found negligent as to the plaintiff for the injuries and damages set forth in the plaintiff's complaint, then and in that event, the relative responsibilities of said pleading defendant(s) must be apportioned by the percentage of liability of said nonparties subject to *in personam* jurisdiction.

**AS AND FOR A FIFTH DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

12. Any settlement, discontinuance or agreement not to sue, made with responsible or potentially responsible persons and/or entities, shall constitute a set off and reduction of any recovery against the answering defendant(s) pursuant to the provisions of General Obligations Law § 15-108, CPLR Article 14 and/or CPLR Article 16.

**AS AND FOR A SIXTH DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

13. The complaint fails to state facts sufficient to constitute any cause of action upon which relief can be granted.

**AS AND FOR AN SEVENTH DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

14. Any award to plaintiffs 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 AN EIGHTH DEFENSE, THE ANSWERING DEFENDANT
ALLEGES UPON INFORMATION AND BELIEF**

15. Pursuant to the "Coronavirus Aid, Relief and Economic Security Act" signed into law on March 27, 2020, the defendant(s) are immune from any cause of action arising

under 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 A NINTH AFFIRMATIVE DEFENSE, THE ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF

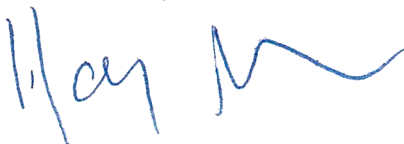
16. The Court lacks jurisdiction over the person of the defendant and/or this action has not been properly commenced for, among other reasons, plaintiff's failure to comply with CPLR 305, 306-a and/or 306-b and the action is thereby dismissed.

WHEREFORE, the defendant, Lawrence F. Simon, M.D., demands judgement dismissing the plaintiff's complaint with the costs and disbursements of this action.

Dated: White Plains, New York
October 3, 2023

Yours, etc.

VOUTÉ, LOHRFINK, McANDREW, MEISNER
& ROBERTS, LLP



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Attorney's Verification by Affirmation

DAVID M. JAVER, an attorney admitted to practice in the courts of the State of New York, hereby affirms the truth of the following under penalty of perjury:

Your affirmant's office is the attorney of record for defendant, LAWRENCE F. SIMON, M.D.

Your affirmant has read the annexed VERIFIED ANSWER and knows the contents thereof and the same are true to his/her knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters your affirmant believes them to be true. Your affirmant's belief, as to those matters therein not stated upon knowledge, is based upon the materials, information and reports contained in the file, which is maintained in your affirmant's office.

The reason that your affirmant makes this affirmation instead of defendant, LAWRENCE F. SIMON, M.D., because said defendant is not in the county in which your affirmant is located.

Dated: White Plains, New York
October 3, 2023



David M. Javer