

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
ANGELA SAWHNEY and VENEET SAWHNEY,

Index No: 601304/2024

Plaintiffs,

VERIFIED ANSWER TO  
VERIFIED COMPLAINT

-against-

BRUCE K. DARROCH,

Defendant.

-----X

The defendant, BRUCE K. DARROCH, answering the Verified Complaint of plaintiff, allege(s) upon information and belief, the following:

1. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Verified Complaint designated FIRST and THIRD.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

2. Responding to the paragraph of the Verified Complaint designated "FIFTH", repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

3. Denies each and every allegation contained in the paragraphs of the Verified Complaint designated SIXTH, EIGHTH, NINTH, ELEVENTH, TWELFTH, THIRTEENTH, FOURTEENTH & SIXTEENTH.

4. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Verified Complaint designated SEVENTH, and respectfully refers all questions of law to the Trial Court.

4. Denies each and every allegation contained in the paragraphs of the Verified Complaint designated TENTH, FIFTEENTH & SEVENTEENTH and respectfully refers all questions of law to the Trial Court.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

5. Responding to the paragraph of the Verified Complaint designated “EIGHTEENTH ”, repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

6. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Verified Complaint designated NINETEENTH.

7. Denies each and every allegation contained in the paragraphs of the Verified Complaint designated TWENTIETH AND TWENTY-FIRST and respectfully refers all questions of law to the Trial Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

That the plaintiff's alleged damages representing the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss were or will, with reasonable certainty, be replaced or indemnified, in whole or in part, by or from a collateral source and this Court shall, pursuant to CPLR Section 4545, reduce the amount of such alleged damages by the amount such damages were or will be replaced or indemnified by such collateral source.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The injuries and damages allegedly sustained by plaintiff were caused in whole or in part by the culpable conduct of plaintiff, including negligence and assumption of risk, as a result of which the claim of plaintiff is therefore barred or diminished in the proportion that such culpable conduct of plaintiff bears to the total culpable conduct causing the alleged injuries and damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Upon information and belief plaintiff(s) failed to mitigate damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

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.

Plaintiff did not sustain a serious and permanent injury as defined by Section 5102 of the Insurance Law of the State of New York, and his exclusive remedy is confined and limited to the benefits and provisions of Article 51 thereof.

Plaintiff's cause of action is barred by Article 51, Section 5104 of the Insurance Law of the State of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

That if it is determined that plaintiff failed to use available seatbelts, defendant hereby pleads such fact in mitigation of damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

That this action is barred by reason of the fact that plaintiff did not sustained a "serious injury" as defined in Section 5102 of the Insurance Law and, thus, has no right of recovery under Sec. 5104 of the Insurance Law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

That at all times hereinafter mentioned, the answering defendant was confronted with an emergency and, thus, his actions are governed by the common law standard of care in an emergency situation.

**WHEREFORE**, this party demands judgment dismissing the action herein, together with costs and disbursements.

Dated: April 4, 2024

LAW OFFICE OF ERIC D. FELDMAN



Samantha L. DeSousa

**Mailing Address:**<sup>[1]</sup>

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**ATTORNEY VERIFICATION**

SAMANTHA DESOUSA, affirms as follows:

I am an attorney at law admitted to practice in the Courts of the State of New York, and am associated with the LAW OFFICE OF ERIC D. FELDMAN, attorneys for defendant in the within action, and as such, I am fully familiar with all the facts and circumstances therein.

That the foregoing Answer is true to the knowledge of affirmant, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters affirmant believes it to be true.

Affirmant further states that the reason that this verification is made by affirmant and not by defendant(s) is that the defendant(s) is/are not within this County of Suffolk where affirmant maintains her office.

Affirmant further states that the sources of her knowledge and information are reports of investigations, conversations, writings, memoranda, and other data concerning the subject matter of the litigation.

The undersigned attorney affirms that the foregoing statements are true, under the penalties of perjury pursuant to Rule 2106 of the CPLR.

Dated: April 4, 2024

LAW OFFICE OF ERIC D. FELDMAN



Samantha L. DeSousa

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