

SUPREME COURT OF THE STATE OF NEW YORK  
COUNT OF WESTCHESTER

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LUZ BAEZ BY RAFAELA ALBERT VALDEZ,

Plaintiffs,

Index No. 55160/2024

**VERIFIED ANSWER**

-against-

WESTCHESTER CENTER FOR REHABILITATION  
& NURSING and THE ENCLAVE AT RYE  
REHABILITATION AND NURSING CENTER,

Defendants.

-----X  
C O U N S E L O R S :

Defendant, PARKVIEW OPERATING CO., LLC d/b/a WESTCHESTER CENTER FOR REHABILITATION & NURSING, by its attorneys, BARKER PATTERSON NICHOLS, LLP, answering the Verified Complaint of the plaintiff, upon information and belief, respectfully shows to this Court and alleges:

1. Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraphs “1,” “2,” “8,” “9,” “10,” “11,” “12,” “17,” “18” and “19” of plaintiff’s Verified Complaint.

2. Denies each and every allegation in the form alleged contained within paragraphs “3,” “4,” “5,” “6,” “7,” “13,” “14,” “15” and “16” of plaintiff’s Verified Complaint.

3. Denies each and every allegation contained within paragraph “20” of plaintiff’s Verified Complaint.

**ANSWERING THE FIRST CAUSE OF ACTION**

4. In response to paragraph “21” of plaintiff’s Verified Complaint, defendant repeats, reiterates and realleges each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of the plaintiff’s Verified

Complaint, designated as paragraphs “1” through “20” inclusive, with the same force and effect as though more fully set forth at length herein.

5. Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraphs “22,” “23,” “26,” “27,” “28” and “29” of plaintiff’s Verified Complaint.

6. Denies each and every allegation contained within paragraphs “24,” “25,” “30,” “31” and “32” of plaintiff’s Verified Complaint.

### **ANSWERING THE SECOND CAUSE OF ACTION**

7. In response to paragraph “33” of plaintiff’s Verified Complaint, defendant repeats, reiterates and realleges each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of the plaintiff’s Verified Complaint, designated as paragraphs “1” through “32” inclusive, with the same force and effect as though more fully set forth at length herein.

8. Denies each and every allegation contained within paragraphs “34,” “35,” “36” and “37” of plaintiff’s Verified Complaint.

### **ANSWERING THE THIRD CAUSE OF ACTION**

9. In response to paragraph “38” of plaintiff’s Verified Complaint, defendant repeats, reiterates and realleges each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of the plaintiff’s Verified Complaint, designated as paragraphs “1” through “37” inclusive, with the same force and effect as though more fully set forth at length herein.

10. Denies each and every allegation contained within paragraphs “39,” “40,” “41,” “42,” “43” and “44” of plaintiff’s Verified Complaint.

**ANSWERING THE FOURTH CAUSE OF ACTION**

11. In response to paragraph “44” of plaintiff’s Verified Complaint, defendant repeats, reiterates and realleges each and every denial and denial of knowledge or information sufficient to form a belief heretofore made in regard to each and every paragraph of the plaintiff’s Verified Complaint, designated as paragraphs “1” through “43” inclusive, with the same force and effect as though more fully set forth at length herein.

12. Denies having knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “45” of plaintiff’s Verified Complaint.

13. Denies each and every allegation contained within paragraphs “46,” “47,” “48” and “49” of plaintiff’s Verified Complaint.

**ANY PARAGRAPH NOT ANSWERED IS DEEMED DENIED**

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

14. That any injuries sustained by plaintiff(s) at the time and place mentioned in the complaint were caused solely and wholly by reason of the carelessness, negligence, recklessness and acts or omissions on the part of the plaintiff and were not caused or contributed to by reason of any carelessness, negligence, recklessness or acts or omissions on the part of this answering defendant.

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

15. That the answering defendant(s) reserve(s) the right to claim the limitations of liability pursuant to Article 16 of the CPLR, for any recovery herein by the plaintiff for non-economic loss.

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

16. In the event plaintiffs recover a verdict or judgment against defendants, such verdict or judgment must be reduced pursuant to §4545 of the CPLR by those amounts which have been, or will, with reasonable certainty replace or indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source.

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

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

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

18. The defendant asserts the defense of set-off to reduce the plaintiff's claims under §15-108 of the General Obligations Law.

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

19. 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 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 must be apportioned by the percentage of liability of said non-parties subject to in-personam jurisdiction.

**AS AND FOR A SEVENTH DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

20. The alleged causes of action set forth in the complaint did not accrue within the applicable statutory period preceding the commencement of said actions, and said actions are barred by the statute of limitations.

**AS AND FOR AN EIGHTH DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

21. Plaintiff(s)' complaint should be dismissed as a frivolous action pursuant to §8303-a of the CPLR and defendant is entitled to costs pursuant to such.

**AS AND FOR AN NINTH DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

22. That the defendant acted in accordance with the appropriate provisions of Section 2805-d of the Public Health Law and relies on the defenses set out therein.

**AS AND FOR AN TENTH DEFENSE,  
THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:**

23. The plaintiff(s), as set forth in the caption, lack the legal capacity to commence this action. Therefore, the complaint must be dismissed.

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