

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JONATHAN CORBETT, ELISE DOMYAN,

Index No.: 151446/2017

Plaintiffs,

**VERIFIED ANSWER
WITH CROSS-CLAIMS**

- against -

28 SG HOSPITALITY GROUP, LLC d/b/a FLASH
FACTORY, UNKNOWN SECURITY FIRM d/b/a "M2",
Jane Doe,

Defendants.
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Defendant, **28 SG HOSPITALITY GROUP, LLC d/b/a FLASH FACTORY**, by and
through its attorneys, **BOEGGEMAN, GEORGE & CORDE, P.C.**, as and for a Verified
Answer to plaintiffs' Verified Complaint dated February 14, 2017, states as follows:

NATURE OF THE ACTION

1. This defendant denies knowledge or information sufficient to form a belief as to
the truth of the allegations set forth in paragraphs designated "1" and "2" of plaintiffs' Verified
Complaint.

2. This defendant denies each and every allegation set forth in paragraphs marked and
designated "3" and "4" of plaintiffs' Verified Complaint and respectfully refers all questions of law
to the Court and all questions of fact to the trier of fact.

JURY TRIAL

3. This defendant denies each and every allegation set forth in paragraph marked and
designated "5" of plaintiffs' Verified Complaint and respectfully refers all questions of law to the
Court and all questions of fact to the trier of fact.

PARTIES

4. This defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs marked and designated “6”, “7”, “9” and “10” of plaintiffs’ Verified Complaint.

5. This defendant denies each and every allegation set forth in paragraph marked and designated “8” of plaintiffs’ Verified Complaint.

JURISDICTION & VENUE

6. This defendant denies each and every allegation set forth in paragraphs marked and designated “11”, “12” and “13” of plaintiffs’ Verified Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

ALLEGATIONS OF FACT

7. This defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs marked and designated “14”, “16”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27” and “28” of plaintiffs’ Verified Complaint.

8. Admit the allegation of paragraph of the Amended Verified Complaint marked and designated “15” of plaintiffs’ Verified Complaint.

9. This defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph marked and designated “17” of plaintiffs’ Verified Complaint except admits that defendant retained an independent contractor to perform security.

10. This defendant denies each and every allegation set forth in paragraph marked and designated “29” of plaintiffs’ Verified Complaint.

AS AND FOR AN ANSWER TO COUNTS 1 & 2

11. This defendant repeats, reiterates and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph marked and designated "30" of plaintiffs' Verified Complaint.

12. This defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs marked and designated "31", "32", "33", "34" and "35" of plaintiffs' Verified Complaint.

13. This defendant denies each and every allegation set forth in paragraphs marked and designated "36" and "37" of plaintiffs' Verified Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO COUNTS 3 & 4

14. This defendant repeats, reiterates and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph marked and designated "38" of plaintiffs' Verified Complaint.

15. This defendant denies each and every allegation set forth in paragraphs marked and designated "39", "40" and "41" of plaintiffs' Verified Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO COUNTS 5 & 6

16. This defendant repeats, reiterates and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph marked and designated "42" of plaintiffs' Verified Complaint.

17. Admit the allegation of paragraph of the Amended Verified Complaint marked and designated "43" of plaintiffs' Verified Complaint.

18. This defendant denies each and every allegation set forth in paragraphs marked and designated “44”, “45” and “46” of plaintiffs’ Verified Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO COUNTS 7 & 8

19. This defendant repeats, reiterates and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph marked and designated “47” of plaintiffs’ Verified Complaint.

20. This defendant denies each and every allegation set forth in paragraphs marked and designated “48”, “49”, “50”, “51”, “52”, “53” and “54” of plaintiffs’ Verified Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

21. Any injuries and/or damages sustained by the plaintiffs, as alleged in the plaintiffs’ Verified Complaint, which this answering defendant denies, were caused, in whole or in part, by the contributory negligence and/or culpable conduct of the plaintiffs and not as a result of any negligence and/or culpable conduct on the part of this answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. That by entering into the activity in which the plaintiffs were engaged at the time of the occurrence set forth in the Verified Complaint, said plaintiffs knew the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiffs herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiffs in the activities and such risks were assumed and accepted by the plaintiffs in performing and engaging in said activities.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. Upon information and belief, the injuries and damages, if any, allegedly sustained by the plaintiffs as alleged in the Verified Complaint were caused by the intervening and superseding acts of third parties other than this answering defendant and, by reason of the foregoing, the Verified Complaint should be dismissed as to this answering defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

24. The causes of action set forth in the Verified Complaint fail to state a claim upon which relief can be granted.

AS AND FOR A FIFTH AFFRMAITIVE DEFENSE

25. A necessary or indispensable party has not been joined and, therefore, the action should not proceed and should be dismissed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

26. Plaintiffs destroyed evidence that was subject to discovery in this law suit and would be admissible in evidence at trial, thereby depriving this Court and this answering defendant of such evidence and, therefore, plaintiffs' suit should be barred.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

27. An unknown third-party destroyed evidence that was subject to discovery in this law suit and would be admissible in evidence at trial, thereby depriving this Court and this answering defendant of such evidence and, therefore, plaintiffs' suit should be barred.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

28. Plaintiffs failed to exercise ordinary care to effect a cure and to prevent aggravation of the alleged injury and damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

29. In the event plaintiffs recover a verdict or judgment against this answering defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545 (c) 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 such as insurance, social security, Workers' Compensation or employee benefit programs.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

30. Pursuant to the provisions of Article 16 of the C.P.L.R., should this answering defendant be found liable for damages, such liability being 50 percent or less of the total liability assigned to all persons liable, the liability of this answering defendant for non-economic loss shall not exceed its equitable share determined in accordance with the relative culpability of all parties liable.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

31. The provisions, requirements, and terms of CPLR Art. 16 §1601, et seq. apply to the action and non-compliance with such provisions, requirements or terms operates to vitiate plaintiffs' right to maintain the subject action, and any verdict plaintiffs may recover thereby.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

32. The provisions of C.P.L.R. Article 50-B apply to any verdict in this case.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

33. That the plaintiffs' case must be dismissed based upon improper service.

AS AND FOR A CROSS-CLAIM AGAINST UNKNOWN SECURITY FIRM d/b/a "M2"
and JANE DOE

34. If plaintiffs sustained any injuries or damages as alleged in the plaintiffs' Verified Complaint, which this answering defendant denies, then such injuries or damages were caused by reason of the culpable conduct, acts or omissions, negligence or statutory violation of the defendants above-named.

35. By reason of the foregoing, this answering defendant is entitled to indemnification or contribution from, and to have judgment against the defendants above-named, for all or part of any verdict or judgment that plaintiffs may recover against this answering defendant.

WHEREFORE, defendant **28 SG HOSPITALITY GROUP, LLC d/b/a FLASH FACTORY** demands judgment dismissing the Verified Complaint together with the attorneys' fees, costs and disbursements of this action, pursuant to CPLR 8303-a and Part 130 of the Rules of this Court, that an award of costs and reasonable attorneys' fees be assessed against plaintiffs and their counsel for a frivolous claim or in the event the plaintiffs recover a verdict or judgment against this defendant, then this defendant demand judgment against the co-defendants above-named, for all or part of any such verdict or judgment, together with the attorneys' fees, costs and disbursements of this, and for such additional relief as the Court may determine just and proper.

Dated: White Plains, New York
March 2, 2017

BOEGGEMAN, GEORGE & CORDE, P.C.

By: 

KAREN A. ONDROVIC, ESQ.

Attorney for Defendant

28 SG HOSPITALITY GROUP, LLC

d/b/a FLASH FACTORY

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TO:

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Plaintiff Pro Se

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VERIFICATION

Karen A. Ondrovic, an attorney admitted to practice in the courts of New York State, and say that:

I am the attorney of record or of counsel with the attorney of record, for the defendant **28 SG HOSPITALITY GROUP, LLC d/b/a FLASH FACTORY**. I have read the annexed, **VERIFIED ANSWER** and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following: medical records and reports, investigation, correspondence, interviews and file information contained in my possession.

The reason I make this affirmation instead of said defendant/third party plaintiff is your deponent maintains his office outside of the county in which the answering defendant/third party plaintiff maintain their place of business and/or residence.

I affirm that the foregoing statements are true under penalties of perjury.

DATED: White Plains, New York
March 2, 2017



KAREN A. ONDROVIC