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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IN RE DIET DRUGS LITIGATION) JUDICIAL COUNCIL COORDINATION
_____) NO.: 4032
)
) HEALTH CARE PROVIDER
v.) DEFENDANTS' MASTER ANSWER TO
) COMPLAINT
)
GENERIC FILING _____)

Defendant Health Care Providers, regardless of the manner in which each has been listed and named as a defendant in this coordinated litigation, whether as an individual physician, a "diet center" or other, do hereby answer plaintiff's complaint as follows:

1. The use of a feminine pronoun in this answer includes male, neuter and plural pronouns.

2. Any singular in this answer, referring to "plaintiff" or "defendants", shall include both the singular and plural reference.

3. Pursuant to California Code of Civil Procedure Section 431.30, defendants deny each and every allegation of plaintiff's complaint for damages and further deny that plaintiff has or

1 will sustain injuries, damages or loss in any sum, or at all,
2 by reason of any act or omission, fault, negligence or conduct
3 on the part of or attributable to these defendants.

4 Defendants assert the following affirmative defenses to the
5 plaintiff's complaint:

6 AFFIRMATIVE DEFENSES

7 FIRST AFFIRMATIVE DEFENSE

8 Defendants allege that plaintiff's complaint, and each and
9 every cause of action therein, fails to state facts sufficient
10 to constitute a cause of action against this answering
11 defendant.

12 SECOND AFFIRMATIVE DEFENSE

13 Defendants allege that plaintiff's complaint, and each and
14 every cause of action contained therein, is barred in whole or
15 in part by the Statute of Limitations, as set forth in
16 California Code of Civil Procedure, Section 338, 339, 340(3),
17 and 340.5.

18 THIRD AFFIRMATIVE DEFENSE

19 Plaintiff's complaint fails to allege a cause of action in
20 that there is an improper failure of joinder of parties.
21 Defendant is informed and believe that other necessary
22 indispensable parties to this action exist and are not joined.

23 FOURTH AFFIRMATIVE DEFENSE

24 Defendants whether categorized as a "Diet Center", medical
25 group or clinic, or individual physician defendant, are health
26 care providers, and are entitled to all benefits, defenses,
27 rights, immunities, and provisions that are enumerated and set
28 forth in the Medical Injury Compensation Reform Act; that said

1 benefits, defenses, immunities, and provisions are set forth and
2 contained within the California Business and Professions Code
3 Section 6146, Code of Civil Procedure, Sections 364, 425.13,
4 667.7, and Civil Code Sections 1714.8, 3333.1 and 3333.2.

5 FIFTH AFFIRMATIVE DEFENSE

6 Plaintiff was negligent in and about the matters referred
7 to in said complaint, that such negligence proximately and
8 concurrently contributed to the happening of the incident and
9 to the loss and damages thereof, if any there was, and that such
10 negligence bars plaintiff's recovery, totally or comparatively.

11 SIXTH AFFIRMATIVE DEFENSE

12 At all times mentioned in plaintiff's complaint, plaintiff
13 knew, or in the exercise of ordinary care was charged with the
14 knowledge, that she was submitting to a medical technique,
15 treatment plan and/or medication with full knowledge of the
16 risks attendant thereto. Accordingly, plaintiff freely,
17 voluntarily and expressly assumed all risks attendant to the
18 medical technique, treatment plan and/or medication, barring
19 plaintiff's recovery.

20 SEVENTH AFFIRMATIVE DEFENSE

21 Plaintiff, in her actions, knew of and appreciated the
22 risks involved, and knowingly, voluntarily and reasonably
23 assumed the risks of said injuries, proximately causing or
24 contributing to the damages alleged.

25 EIGHTH AFFIRMATIVE DEFENSE

26 Defendants deny that plaintiff has suffered any injuries,
27 damages and losses.

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NINTH AFFIRMATIVE DEFENSE

Defendants allege that if plaintiff suffered any damages, then, the allegations against these answering defendants are barred by the superseding intervening actions of other persons.

TENTH AFFIRMATIVE DEFENSE

Defendants allege that if plaintiff suffered or sustained any injuries, damages or losses as alleged in said complaint, that such damages were proximately caused and contributed to by persons or entities other than these defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that if plaintiff sustained any injuries or damages, they were caused wholly or in part by the conduct, negligent acts or omissions and/or defective products of third parties or entities not parties to this action, which conduct, acts and omissions were the sole proximate cause or an intervening or superseding cause of any injury or damage. Plaintiff's causes of action and damages sought with respect thereto, if any, against these answering defendants are barred completely or must be reduced in proportion to the fault attributable to such other third parties or entities as are found culpable. California Civil Code Sections 1430 and 1431.2.

TWELFTH AFFIRMATIVE DEFENSE

Defendants are informed and believe and thereon allege that plaintiff's cause of action against these defendants are barred because any rights which plaintiff may have had arising out of the damages and losses alleged in plaintiff's complaint were expressly or impliedly waived by plaintiff.

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THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff unreasonably delayed investigating, pursuing, filing and serving her claims herein, all to the prejudice of these answering defendants. Plaintiff is therefore barred from recovery pursuant to the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff has waived and is estopped and barred from alleging the matters set forth in her complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that plaintiff has improperly joined defendants as parties.

SIXTEENTH AFFIRMATIVE DEFENSE

At all times and places mentioned in the complaint, plaintiff's decedent so carelessly, recklessly, and negligently conducted and maintained himself/herself so as to cause and contribute in some degree to the alleged incident and to the damages and injuries, if any, alleged to have been sustained by said plaintiff and, therefore, said negligence is imputed to plaintiff and completely bars any recovery, or in the alternative, it reduces the right of recovery by that amount which said negligence contributed to this incident as set forth under the doctrine of comparative negligence.

SEVENTEENTH AFFIRMATIVE DEFENSE

The incident described in plaintiff's complaint, as well as the injuries, losses and damages allegedly sustained by plaintiff and plaintiff's decedent, were proximately caused by intervening and superseding causes and forces which were beyond the control of these answering defendants and which, in the

1 exercise of reasonable prudence, were not and could not be
2 anticipated or foreseen by said answering defendants.

3 EIGHTEENTH AFFIRMATIVE DEFENSE

4 Any injury, loss or damage purportedly sustained, if at
5 all, by plaintiff and/or plaintiff's decedent, was directly and
6 proximately caused and contributed to by risks which were fully
7 and actually known to plaintiff and/or plaintiff's decedent, who
8 fully and actually appreciated the nature and scope of the
9 hazards created thereby, and said plaintiff and/or plaintiff's
10 decedent voluntarily assumed said risks and the potential
11 consequences thereof. Said assumption of risk on the part of
12 plaintiff and/or plaintiff's decedent, bars the present
13 plaintiff's recovery.

14 NINETEENTH AFFIRMATIVE DEFENSE

15 All care, treatment and procedures rendered to and
16 performed upon plaintiff's decedent were with the express and
17 implied consent of said plaintiff and/or plaintiff's decedent.

18 TWENTIETH AFFIRMATIVE DEFENSE

19 If plaintiff or plaintiff's decedent sustained any injury
20 or damage whatsoever, it was on the basis of an occurrence or
21 result occasioned by the natural course of a disease or
22 condition, or was the nature or expected result of reasonable
23 treatment rendered for disease or condition, for which these
24 defendants shall not be liable pursuant to Civil Code Section
25 1714.8.

26 TWENTY-FIRST AFFIRMATIVE DEFENSE

27 At all times mentioned in plaintiff's complaint, these
28 answering defendants, in good faith, and upon the request of one

1 or more other physicians, were rendering emergency medical care
2 to plaintiff's decedent for medical complication arising from
3 prior care by one or more other physicians, and all injuries,
4 damages and detriment, if any, as allegedly suffered by
5 plaintiff on account of said medical care so rendered to
6 plaintiff's decedent were suffered as a proximate result of said
7 earlier medical care and/or this answering defendants' rendition
8 of such emergency care, all with the result that these answering
9 defendants are wholly immunized from any civil liability
10 whatsoever to plaintiff, by force of the Good Samaritan statutes
11 set forth in California Business and Professions Code Sections
12 2395 and 2396.

13 TWENTY-SECOND AFFIRMATIVE DEFENSE

14 Plaintiff's complaint is barred as treatment was rendered
15 by Defendants at the scene of an emergency. Health and Safety
16 Code Section 1799.102, *et. seq.*

17 TWENTY-THIRD AFFIRMATIVE DEFENSE

18 Plaintiff has failed to comply with the requirements of
19 Code of Civil Procedure, Section 377.32 and, therefore, this
20 court lacks jurisdiction and plaintiffs lack standing as
21 successors in interest to bring an action on behalf of the
22 Estate of the decedent.

23 TWENTY-FOURTH AFFIRMATIVE DEFENSE

24 That plaintiffs' Complaint is improper in that not all
25 heirs are joined in the above-entitled action.

26 TWENTY-FIFTH AFFIRMATIVE DEFENSE

27 Prior to the incident or incidents complained of in
28 plaintiff's complaint, plaintiff freely and voluntarily entered

1 into a written agreement with defendant to arbitrate all
2 controversies, including controversies arising from alleged
3 medical negligence, and not by recourse through the Civil Courts
4 of this State. Therefore, this action should be stayed, and the
5 matter submitted to Binding Arbitration in accordance with the
6 written agreement entered into by plaintiff and defendant.

7 TWENTY-SIXTH AFFIRMATIVE DEFENSE

8 Plaintiff's employer's respective comparative fault was the
9 cause of plaintiff's injury, if any, and any workers'
10 compensation lien or recovery of benefits paid should be reduced
11 in portion to the fault of the plaintiff, plaintiff's employer
12 and plaintiff's employees.

13 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

14 Defendants allege that the acts and omissions of others
15 including their agents, servants, and employees acting within
16 the course and scope of their employment, contributed to the
17 alleged damages, injuries or losses sustained by plaintiff.
18 Defendants request the Court apply the principles of Witt v.
19 Jackson and the subsequent cases modifying that decision so as
20 to permit the Court or jury to apportion liability according to
21 fault and to grant defendants a corresponding offset against any
22 damages awarded to plaintiff.

23 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

24 Plaintiff's complaint seeking equitable relief is barred
25 due to the impossibility of providing relief sought.

26 TWENTY-NINTH AFFIRMATIVE DEFENSE

27 Plaintiff's complaint seeking equitable relief is barred
28 due to the unclean hands of the Plaintiff.

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THIRTIETH AFFIRMATIVE DEFENSE

That plaintiffs' complaint is barred since Plaintiff has no standing to assert a cause of action.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Defendants state that the injuries and damages complained of by plaintiff, if any there were, were either wholly or in part directly and proximately caused by the negligence of persons or entities other than this defendant, and said negligence is either imputed to Plaintiff, by reason of the relationship between plaintiff and said persons or entities, or comparatively reduces the proportion of negligence and corresponding liability of this defendant.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to state a cause of action for intentional misconduct to support a claim for punitive damages.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Defendants allege that the imposition of punitive or exemplary damages against defendant would violate defendant's constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, similar provisions in the California Constitution, common law, public policy, applicable statutes and court rules.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available.

1 Defendants reserve herein the right to assert additional
2 defenses in the event discovery indicates that they would be
3 appropriate.

4 WHEREFORE, these answering defendants pray for judgment as
5 follows:

6 1. That plaintiff take nothing by reason of the complaint
7 on file herein;

8 2. For reasonable attorney fees;

9 3. For costs of suit incurred herein; and

10 4. For such other and further relief as the Court may
11 deem just and proper.

12 DATED: July 16, 1998 TUVERTSON & HILLYARD

13 _____
14 By Patricia Carmichael
15 Liaison Counsel for Health Care
16 Defendants

17 PC/bh/doc/FEN/Answer.Master
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1 On behalf of Steering Committee for Health Care Provider
2 Defendants:

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PROOF OF SERVICE
C.C.P. §1013a, C.R.C. 2003(3), 2005(i)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the aforesaid County, State of California. I am over the age of 18 years, and not a party to the within action; my business address is 4675 MacArthur Court, Suite 650, Newport Beach, California 92660.

On July 16, 1998, I served the foregoing document described as: **HEALTH CARE PROVIDER DEFENDANTS' MASTER ANSWER TO COMPLAINT** on the interested parties in this action by:

 X **Placing** _____ the original, X a true copy thereof, enclosed in sealed envelopes, addressed as follows:

SEE ATTACHED MAILING LIST

_____ **Facsimile** transmission as stated below.

 X **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion to the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

_____ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the offices of the addressee.

 X **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ **BY FACSIMILE TRANSMISSION:** From Fax No.: (714) 752-5437 to FAX No.: as indicated on the attached Mailing List. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a record of the transmission.

Executed on July 16, 1998, at Newport Beach, California.

Barbara Hamid

PC/bh/doc/FEN/pos

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MAILING LIST
(Diet Drug Coordination)

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/bh