

STATE OF INDIANA) IN THE ELKHART SUPERIOR COURT
)
COUNTY OF ELKHART)

LINDA GIEREK and FRANK GIEREK)
on behalf of themselves and all others)
similarly situated,)

Plaintiff,)

-vs-)

CAUSE NO. 20D02-1911-CT-243

ANONYMOUS 1,)
ANONYMOUS 2, and)
ANONYMOUS 3,)

Defendants.)

**DEFENDANTS, ANONYMOUS 1, ANONYMOUS 2, and ANONYMOUS 3's
ANSWER TO FIRST AMENDED COMPLAINT**

FIRST DEFENSE

Defendants, Anonymous 1, Anonymous 2, and Anonymous 3's (collectively "Defendants"), by counsel, hereby submits the following Answer and Affirmative Defenses to Plaintiffs' First Amended Class Action Complaint:

1. From April to September 2019, Anonymous Healthcare Provider failed to properly sterilize surgical instruments.

ANSWER: The Defendants deny the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. These improperly sterilized surgical instruments were used in surgeries on more than 1,000 patients of Anonymous Healthcare Provider, exposing them to numerous infectious diseases, including without limitation Hepatitis B, Hepatitis C, and Human Immunodeficiency Virus ("HIV").

ANSWER: The Defendants deny the allegations contained in Paragraph 2 of Plaintiffs' Complaint.

3. Plaintiff Linda Gierek had surgery at Anonymous Hospital on June 24, 2019 and, due to Anonymous Healthcare Provider's failure to properly sterilize its surgical instruments, may have been exposed to innumerable infectious diseases, many of which could be incurable and/or fatal.

ANSWER: Defendants admit Linda Gierek had surgery at Anonymous Hospital on June 24, 2019. Defendants deny remaining material allegations in Paragraph 3 of Plaintiffs' Complaint.

4. Frank Gierek is the husband of Linda Gierek.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. Linda Gierek brings this proposed class action on behalf of herself and a proposed Class, defined below, of Anonymous Healthcare Provider patients who underwent surgery at Anonymous Healthcare Provider from April to September 2019, and who were similarly exposed to infectious diseases.

ANSWER: Defendants admit that Linda Gierek purports to bring this proposed class action on behalf of herself and a proposed Class of Anonymous Healthcare Provider patients who underwent surgery at Anonymous Healthcare Provider from April to September 2019. The defendants otherwise deny the remaining allegations contained in Paragraph 5 of plaintiff's complaint.

6. Frank Gierek brings this action on behalf of himself and a proposed Class, defined below, of persons married to Anonymous Healthcare Provider patients who underwent surgery at Anonymous Healthcare Provider from April to September 2019, and who were

similarly exposed to infectious diseases.

ANSWER: Defendants admit that Frank Gierek purports to bring this proposed class action on behalf of himself and a proposed Class of persons. The defendants otherwise deny the remaining allegations contained in Paragraph 6 of Plaintiff's complaint

7. Linda Gierek and Frank Gierek seek certification of two Plaintiff Classes and a judgment in favor of each Class for the emotional trauma, medical expenses, and other injuries and damages that they and each Class have and will suffer as a result of Anonymous Healthcare Provider's negligent acts.

ANSWER: The Defendants admit that the plaintiffs seek certification of two Plaintiff Classes and a Judgment in favor of each Class but deny that they are entitled to this relief. The Defendants further deny the remaining allegations contained in Paragraph 7 of Plaintiffs' Complaint.

Parties

8. Plaintiff Linda Gierek is and was an Indiana resident and citizen at all relevant times.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Plaintiff Frank Gierek is and was an Indiana resident and citizen at all relevant times.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

10. Defendant Anonymous 1 is an Indiana non-profit corporation.

ANSWER: The Defendants admit the allegations in Paragraph 10 of Plaintiffs' Complaint.

11. Defendant Anonymous 1's Registered Agent in the State of Indiana is Alan L. Weldy, VP of Human Resources & Corporate Compliance, 200 High Park Avenue, Goshen, IN 46526. Anonymous 1 is the parent company of Defendant Anonymous 2.

ANSWER: The Defendants admit the allegations in Paragraph 11 of Plaintiffs' Complaint.

12. Defendant Anonymous 2 is an Indiana non-profit Corporation.

ANSWER: The Defendants admit the allegations in Paragraph 12 of Plaintiffs' Complaint.

13. Defendant Anonymous 2's Registered Agent in the State of Indiana is Alan L. Weldy, VP of Human Resources & Corporate Compliance, 200 High Park Avenue, Goshen, IN 46526.

ANSWER: The Defendants admit the allegations in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant Anonymous 3 is an Indiana limited liability company.

ANSWER: The Defendants admit the allegations in Paragraph 14 of Plaintiffs' Complaint.

15. Defendant Anonymous 3's Registered Agent in the State of Indiana is Alan L. Weldy, VP of Human Resources & Corporate Compliance, 200 High Park Avenue, Goshen, IN 46526.

ANSWER: The Defendants admit the allegations in Paragraph 15 of Plaintiffs' Complaint.

Facts

16. Plaintiff Linda Gierek underwent surgery at Anonymous Healthcare Provider on June 24, 2019.

ANSWER: The Defendants admit the allegations in Paragraph 16 of Plaintiffs' Complaint.

17. In November 2019, Linda Gierek received a letter from Anonymous Healthcare Provider notifying her that the surgical instruments used during her surgery may not have been properly sterilized.

ANSWER: The Defendants admit that it sent a letter in November 2019 to Plaintiff notifying her that surgical instruments may not have been properly sterilized. Defendants lack knowledge or information sufficient to form a belief as to when Linda Gierek received this letter.

18. As a result, the surgical instruments used during Linda Gierek's surgery "may or may not have been completely sterile."

ANSWER: The Defendants admit that the letter referred to in Paragraph 17 contained the quoted phrase contained in Paragraph 18. Paragraph 18 does not provide specificity as to what "as a result" is referring to. Thus, the Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. According to the letter, due to Anonymous Healthcare Provider's faulty sterilization of the surgical instruments, Linda Gierek may have been exposed to countless infectious diseases, including without limitation Hepatitis B, Hepatitis C, and Human Immunodeficiency Virus ("HIV").

ANSWER: The Defendants admit that the letter informed Ms. Gierek that she may have been exposed to "infection such as the hepatitis C virus, hepatitis B virus and human immunodeficiency virus." The Defendants otherwise deny the remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint.

20. Learning of potential exposure to these and other diseases has caused Linda Gierek extreme emotional distress and trauma, which is and will be ongoing for months and years to come.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiffs' Complaint.

21. Linda Gierek will also incur medical testing and other expenses for months or years to come.

ANSWER: The Defendants deny the allegations in Paragraph 21 of Plaintiffs' Complaint.

22. Frank Gierek is and at all times relevant was married to Linda Gierek.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of Plaintiffs' Complaint.

23. Frank Gierek fears and feared for his spouse's wellbeing as well as his own wellbeing, upon learning that his spouse had undergone a surgery by Anonymous Healthcare Provider in which the surgical instruments may not have been properly sterilized, thereby potentially exposing both himself and his spouse to countless infectious diseases, including without limitation Hepatitis B, Hepatitis C, and HIV.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 regarding

Frank Gierek's fears. The Defendants otherwise deny the remaining allegations contained in Paragraph 23 of Plaintiffs' Complaint.

Hepatitis B

24. Hepatitis B is a liver infection caused by the hepatitis B virus. Hepatitis B can range from a mild illness with a short lifespan to a serious, lifelong illness. Chronic hepatitis B can cause serious health problems, including but not limited to liver damage, cirrhosis, liver cancer, and even death.

ANSWER: Paragraph 24 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

25. The hepatitis B virus is spread when blood, semen, or another type of body fluid infected with the virus enters the body of a person who is not infected. One of the recognized means by which a person can become infected with the virus is through exposure to infected blood or other body fluids due to contact with medical surgical equipment that has been previously used on an infected person and has not been properly sterilized.

ANSWER: Paragraph 25 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

26. A non-exhaustive list of symptoms of acute hepatitis B include: fever; fatigue; loss of appetite; nausea; vomiting; abdominal pain; dark urine; clay-colored bowel movements; joint pain; and jaundice.

ANSWER: Paragraph 26 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and

terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

27. Symptoms of hepatitis B often do not immediately manifest in the infected individual upon exposure. According to the Center for Disease Control, if symptoms occur, they begin an average of 90 days (or approximately three months) after exposure.

ANSWER: Paragraph 27 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

28. Many individuals who have acquired a hepatitis B virus infection may not know they are infected, but they may still spread the virus to others.

ANSWER: Paragraph 28 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

29. Although some individuals infected with hepatitis B may successfully treat the disease and clear the virus, many others will remain infected for life because they are unable to clear the virus from their bodies.

ANSWER: Paragraph 29 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

30. Chronic hepatitis B can develop into serious disease resulting in long-term health problems. In 2016, there were at least 1,698 deaths related to the hepatitis B virus reported

to the Center for Disease Control, and this statistic likely underestimates the actual loss of lives.

ANSWER: Paragraph 30 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

31. According to the Center for Disease Control, people with chronic hepatitis B should be monitored regularly by a doctor experienced in caring for people with hepatitis B in order to check for signs of liver disease and evaluate for possible treatments, including medication.

ANSWER: Paragraph 31 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

32. Although not every person with chronic hepatitis B will need to be on medication, once a person starts treatment, he or she will need to take medication for life.

ANSWER: Paragraph 32 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

33. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the hepatitis B virus undergo regular blood testing to determine the presence or absence of the disease.

ANSWER: Deny. Pursuant to the Center for Disease Control, many different blood tests are available to diagnose hepatitis B, including the Hepatitis B Surface Antigen (HBsAg) and the Hepatitis B Surface Antibody (anti-HBs) tests. Regular testing is not necessary.

Hepatitis C

34. Hepatitis C is a liver infection caused by the hepatitis C virus.

Hepatitis C can range from a mild illness with a short lifespan to a serious, lifelong illness.

ANSWER: Paragraph 34 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

35. The hepatitis C virus is most commonly spread when blood infected with the virus enters the body of a person who is not infected. One of the recognized means by which a person can become infected with the virus is through exposure to infected blood or other body fluids due to contact with medical surgical equipment that has been previously used on an infected person and has not been properly sterilized.

ANSWER: Paragraph 35 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

36. Chronic hepatitis C can cause serious health problems in the infected individual, including liver damage, cirrhosis, liver cancer, and even death.

ANSWER: Paragraph 36 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

37. A non-exhaustive list of symptoms of acute hepatitis C include: fever; fatigue; loss of appetite; nausea; vomiting; abdominal pain; dark urine; clay-colored bowel movements; joint pain; and jaundice.

ANSWER: Paragraph 37 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

38. Many individuals who have acquired a hepatitis C virus infection may not know they are infected, but they may still spread the virus to others.

ANSWER: Paragraph 38 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

39. Chronic hepatitis C can develop into serious disease resulting in long-term health problems. In 2016, there were at least 18,153 deaths related to the hepatitis C virus reported to the Center for Disease Control, and this statistic likely underestimates the actual loss of lives.

ANSWER: Paragraph 39 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

40. According to the Center for Disease Control, people with chronic hepatitis C should be monitored regularly by a doctor experienced in caring for people with hepatitis C in order to check for signs of liver disease and evaluate for possible treatments if the infection should progress from acute to chronic in nature.

ANSWER: Paragraph 40 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

41. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the hepatitis C virus undergo regular blood testing to determine the presence or absence of the disease.

ANSWER: Deny. Pursuant to the Center for Disease Control, a blood test, called a hepatitis C antibody test, can tell if you have ever been infected with the hepatitis C virus. A reactive antibody test requires an additional test, called a hepatitis C virus RNA test (or PCR), to confirm whether the virus is still present in the person's bloodstream. Regular testing is not necessary.

Human Immunodeficiency Virus (HIV)

42. HIV, the Human Immunodeficiency Virus, is the virus that causes Acquired Immunodeficiency Syndrome ("AIDS").

ANSWER: Paragraph 42 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

43. The HIV virus spreads through certain body fluids that attack the human body's immune system—specifically, the CD4 or “T” cells, which the immune system requires to combat infection. Left untreated, HIV reduces the number of CD4 / T-cells in the body.

ANSWER: Paragraph 43 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

44. Over time, the HIV virus weakens an affected individual's immune system so that the body cannot fight off infection properly, making the individual more vulnerable to the development of various infections or cancers that take advantage of the body's compromised condition.

ANSWER: Paragraph 44 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

45. Although HIV is most commonly transmitted from one affected individual to another through sexual contact, there are many other recognized means by which a person can become infected with the virus, including exposure to infected blood due to contact with medical surgical equipment that has been previously used on an infected person and have not been properly sterilized.

ANSWER: Paragraph 45 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

46. Unlike many other viruses, an individual affected with HIV cannot completely eliminate the presence of the virus, even though treatment. Once an individual acquires HIV, it remains with that person for life.

ANSWER: Paragraph 46 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

47. No effective cure currently exists for HIV. It can only be controlled through proper medical care, which most commonly includes antiretroviral therapy (ART).

ANSWER: Paragraph 47 is comprised of self-serving conclusory allegations and statements of purported fact regarding medical definitions and terminology that do not require a response from Defendants. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

48. For the wellbeing of the individual as well as the public, it is imperative that any individual who suspects a potential risk of exposure to the HIV virus undergo immediate and regular blood testing to determine the presence or absence of the disease as well as prevent the potential further transmission of the disease.

ANSWER: Paragraph 48 of Plaintiff's Complaint contains no allegations against Defendant and requires not response. To the extent that any part of that paragraph can be construed as an allegation against Defendants, Defendants admit that any individual who suspects a potential risk of exposure to the HIV virus should undergo immediate blood testing and denies any remaining material allegations within the paragraph.

*Over 1000 Anonymous Healthcare Provider
Patients Were Exposed to Infectious Diseases*

49. Linda Gierak is among more than 1000 surgical patients of Anonymous Healthcare Provider who were potentially exposed to Hepatitis B, Hepatitis C, HIV, and other infectious diseases due to Anonymous Healthcare Provider's failure to properly sterilize its surgical instruments.

ANSWER: The Defendants deny the allegations contained in Paragraph 49 of Plaintiffs' Complaint.

50. Anonymous Healthcare Provider sent letters to many, but likely not all, of these surgical patients that were identical or substantially similar to the letter it sent to Linda Gierak.

ANSWER: Defendant admits that it sent letters to all patients who were potentially exposed. Defendants deny the remaining allegations contained in Paragraph of 50 of Plaintiffs' Complaint.

51. Multiple print and television news outlets also reported on Anonymous Healthcare Provider's failure to properly sterilize surgical instruments, further notifying the more than 1000 other surgical patients of their potential exposure to infectious diseases.

ANSWER: The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of Plaintiffs' Complaint.

52. Like Linda Gierak, the other surgical patients have and will undoubtedly suffer extreme emotional distress due to their exposure to infectious diseases.

ANSWER: The Defendants deny the allegations contained in paragraph 52 of Plaintiffs' Complaint.

53. Also like Linda Gierek, the other surgical patients will incur medical testing and other expenses for months or years to come.

ANSWER: The Defendants deny the allegations contained in paragraph 53 of Plaintiffs' Complaint.

54. Mrs. Gierek's husband, Frank Gierek, and the spouses of other surgical patients, were also potentially exposed to infectious diseases.

ANSWER: The Defendants are without knowledge or sufficient to form a belief as to the truth of the allegations in Paragraph 54 of Plaintiffs' Complaint.

55. Frank Gierek and the spouses of other surgical patients have and will undoubtedly suffer extreme emotional distress due to their exposure to infectious diseases.

ANSWER: The Defendants deny the allegations contained in paragraph 55 of Plaintiffs' Complaint.

56. Frank Gierek and the spouses of other surgical patients have and will incur testing and other medical expenses for months or years to come.

ANSWER: The Defendants deny the allegations contained in paragraph 56 of Plaintiffs' Complaint.

57. Anonymous Healthcare Provider's failure to properly sterilize surgical instruments was unreasonable, negligent, careless, reckless, and below the appropriate standard of care.

ANSWER: The Defendants deny the allegations contained in paragraph 57 of Plaintiffs' Complaint.

58. Anonymous Healthcare Provider's wrongful acts are the direct and proximate result, without limitation, of its failures to properly train and monitor its employees, and its failures to establish and implement proper safety and sterilization policies and procedures.

ANSWER: The Defendants deny the allegations contained in paragraph 58 of Plaintiffs' Complaint.

59. The injuries sustained by Linda Gierek, the other surgical patients, and the spouses of the surgical patients, were the direct and foreseeable consequences of Anonymous Healthcare Provider's negligent acts.

ANSWER: The Defendants deny the allegations contained in paragraph 59 of Plaintiffs' Complaint.

Class Allegations

Class 1

60. Plaintiff Linda Gierek seeks relief pursuant to Rule 23 of the Indiana Rules of Trial Procedure on behalf of Proposed Class 1 of similarly situated persons.

ANSWER: The Defendants admit that the Plaintiff, Linda Gierek, seeks relief pursuant to Ind. Trial Rule 23 but deny that she is entitled to this relief.

61. The "Proposed Class 1" is defined as:

All patients of Anonymous Healthcare Provider to whom Anonymous Healthcare Provider sent a letter identical or substantially similar to the letter it sent to Linda Gierek or to whom Anonymous Healthcare Provider did not send such a letter but who underwent surgery or other procedures that involved the use of surgical instruments, during the period of time when one or more employees of Anonymous Healthcare Provider did not complete all steps in the surgical instrument sterilization process (approximately but not necessarily limited to April 1, 2019 to September 30, 2019).

ANSWER: The Defendants admit that the Plaintiffs seek to define the Proposed Class 1 as set forth in Paragraph 61 but deny that the Plaintiffs are entitled to class certification. The Defendants deny that there are other

patients who underwent surgical procedures using a surgical instrument that may or may not have been completely sterile to whom it did not send the letter that it sent to Linda Gierk. The Defendants further deny that the surgical instruments that may or may not have been completely sterile were used in “other procedures.” Finally, the Defendants deny that there were any surgeries using these instruments before April 2019 or after September 2019.

62. Plaintiffs reserve the right to alter or amend this proposed definition as the lawsuit proceeds.

ANSWER: The Defendants admit that the Plaintiffs seek to reserve the right to alter or amend this proposed definition but deny that they are entitled to this relief.

63. This action is properly maintainable as a class action under Trial Rule 23(A).

ANSWER: The Defendants deny the allegations contained in Paragraph 63 of Plaintiffs’ Complaint.

64. The Proposed Class 1 consists of more than a thousand persons, such that joinder of all Proposed Class 1 members is impracticable.

ANSWER: The Defendants deny the allegations contained in Paragraph 64 of Plaintiffs’ Complaint.

65. There are questions of law and fact that are common to the Proposed Class members.

ANSWER: The Defendants deny the allegations contained in Paragraph 65 of Plaintiffs’ Complaint.

66. Anonymous Healthcare Provider's failure to properly sterilize its surgical instruments was the direct and proximate result of a systematic and common course of conduct.

ANSWER: The Defendants deny the allegations contained in Paragraph 66 of Plaintiffs' Complaint.

67. The claims of Linda Gierek are typical of the claims of the Proposed Class 1 because they are based on the same nucleus of operative facts and legal theories, and Linda Gierek has no interests that are antagonistic to the interests of the Proposed Class members.

ANSWER: The Defendants deny the allegations contained in Paragraph 67 of Plaintiffs' Complaint.

68. Linda Gierek is an adequate representative of the Proposed Class 1 and has retained competent legal counsel experienced in class actions and complex litigation.

ANSWER: The Defendants deny the allegations contained in Paragraph 68 of Plaintiffs' Complaint.

69. This action is properly maintainable as a class action under Trial Rule 23(B)(1), (2) & (3) because questions of law or fact common to the members of the Proposed Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

ANSWER: The Defendants deny the allegations contained in Paragraph 69 of Plaintiffs' Complaint.

70. The questions of law and fact common to the Proposed Class 1 predominate over any questions affecting only individual Proposed Class 1 members, particularly because the focus of the litigation will be on the conduct of the Anonymous Healthcare Provider. The predominant questions of law and fact in this litigation include, but are not limited to:

- a. Whether Anonymous Healthcare Provider failed to properly sterilize surgical instruments;
- b. Whether Anonymous Healthcare Provider failed to properly train employees on each step of the sterilization procedure;
- c. Whether Anonymous Healthcare Provider failed to properly supervise and monitor employees who were responsible for sterilizing surgical instruments;
- d. Whether Anonymous Healthcare Provider failed to establish and implement appropriate and reliable policies and procedures to sterilize surgical instruments;
- e. Whether Anonymous Healthcare Provider established and implemented quality control procedures regarding the sterilization of its surgical instruments; and
- f. Whether Anonymous Healthcare Provider was negligent with respect to its sterilization of its surgical instruments;
- g. Whether Anonymous Healthcare Provider's actions and the resulting injuries to the Proposed Class 1 constitute negligent infliction of emotional distress;
- h. Whether Anonymous Healthcare Provider's actions and the resulting injuries to the Proposed Class 1 constitute common law negligence;
- i. In the alternative, whether Anonymous Healthcare Provider's actions and the resulting injuries to the Proposed Class 1 constitute medical malpractice; and
- j. The type and amount of relief to which the Linda Gierk and Proposed Class 1 members are entitled.

ANSWER: The Defendants deny the allegations contained in Paragraph 70 of Plaintiffs' Complaint.

71. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of thousands of individual lawsuits would not be economically feasible for individual Proposed Class 1 members and would cause a strain on judicial resources, yet each Proposed Class 1 member would be required to prove an identical set of facts in order to recover damages.

ANSWER: The Defendants deny the allegations contained in Paragraph 70 of Plaintiffs' Complaint.

72. On information and belief, no other persons who fall within the Proposed Class 1 definition set forth above have initiated similar litigation, such that individual Proposed Class 1 members do not wish to control the prosecution of separate actions.

ANSWER: The Defendants deny the allegations contained in Paragraph 72 of Plaintiffs' Complaint.

73. This class action does not present any unique management difficulties.

ANSWER: The Defendants deny the allegations contained in Paragraph 73 of Plaintiffs' Complaint.

Class 2

74. Plaintiff Frank Gieriek seeks relief pursuant to Rule 23 of the Indiana Rules of Trial Procedure on behalf of Proposed Class 2 of similarly situated persons.

ANSWER: The Defendants admit that the Plaintiff seeks relief pursuant to Ind.Trial Rule 23 but denies that he is entitled to this relief.

75. The "Proposed Class 2" is defined as:

All persons who are currently married to a member of Proposed Class 1 or who were married to a member of Proposed Class 1 at any time after the corresponding member of Proposed Class 1 underwent surgery or other procedures that involved the use of surgical

instruments, during the period of time when one or more employees of Anonymous Healthcare Provider did not complete all steps in the surgical instrument sterilization process (approximately but not necessarily limited to April 1, 2019 to September 30, 2019).

ANSWER: The Defendants admit that the Plaintiffs seek to define the “Proposed Class 2” as set forth in Paragraph 75 but deny that the Plaintiffs are entitled to class certification. The Defendants further deny that the surgical instruments that may or may not have been completely sterile were used in “other procedures.” Finally, the Defendants deny that there were any surgeries using these instruments before April 2019 or after September 2019.

76. Plaintiffs reserve the right to alter or amend this proposed definition as the lawsuit proceeds.

ANSWER: The Defendants admit that the Plaintiffs seek to reserve the right to alter or amend this proposed definition but deny that they are entitled to this relief.

77. This action is properly maintainable as a class action under Trial Rule 23(A).

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 77 of Plaintiffs’ Complaint.

78. The Proposed Class 2 consists of hundreds of persons, such that joinder of all Proposed Class members is impracticable.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 78 of Plaintiffs’ Complaint.

79. There are questions of law and fact that are common to the Proposed Class 2 members.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 79 of Plaintiffs’ Complaint.

80. Anonymous Healthcare Provider's failure to properly sterilize its surgical instruments was the direct and proximate result of a systematic and common course of conduct.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 80 of Plaintiffs' Complaint.

81. The claims of Frank Gierek are typical of the claims of the Proposed Class 2 because they are based on the same nucleus of operative facts and legal theories, and Frank Gierek has no interests that are antagonistic to the interests of the Proposed Class 2 members.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 81 of Plaintiffs' Complaint.

82. Frank Gierek is an adequate representative of the Proposed Class and has retained competent legal counsel experienced in class actions and complex litigation.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 82 of Plaintiffs' Complaint.

83. This action is properly maintainable as a class action under Trial Rule 23(B)(1), (2) & (3) because questions of law or fact common to the members of the Proposed Class 2 predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 83 of Plaintiffs' Complaint.

84. The questions of law and fact common to the Proposed Class 2 predominate over any questions affecting only individual Proposed Class 2 members, particularly because the focus of the litigation will be on the conduct of the Anonymous Healthcare Provider. The predominant questions of law and fact in this litigation include, but are not limited to:

- a. Whether Anonymous Healthcare Provider failed to properly sterilize surgical instruments;
- b. Whether Anonymous Healthcare Provider failed to properly train employees on each step of the sterilization procedure;
- c. Whether Anonymous Healthcare Provider failed to properly supervise and monitor employees who were responsible for sterilizing surgical instruments;
- d. Whether Anonymous Healthcare Provider failed to establish and implement appropriate and reliable policies and procedures to sterilize surgical instruments;
- e. Whether Anonymous Healthcare Provider established and implemented quality control procedures regarding the sterilization of its surgical instruments; and
- f. Whether Anonymous Healthcare Provider was negligent with respect to its sterilization of its surgical instruments;
- g. Whether Anonymous Healthcare Provider's actions and the resulting injuries to the Proposed Class 2 constitute negligent infliction of emotional distress;
- h. Whether Anonymous Healthcare Provider's actions and the resulting injuries to the Proposed Class 2 constitute common law negligence;
- i. Whether Frank Gierek and the Proposed Class 2 members were foreseeable victims of Anonymous Healthcare Provider's tortious conduct; and
- j. The type and amount of relief to which Frank Gierek and Proposed Class 2 members are entitled.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 84 of Plaintiffs' Complaint.

85. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of thousands of individual lawsuits would not be economically feasible for individual Proposed Class 2 members and would cause a strain on judicial resources, yet each Proposed Class 2 member would be required to prove an identical set of facts in order to recover damages.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 85 of Plaintiffs' Complaint.

86. On information and belief, no other persons who fall within the Proposed Class 2 definition set forth above have initiated similar litigation, such that individual Proposed Class 2 members do not wish to control the prosecution of separate actions.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 86 of Plaintiffs' Complaint.

87. This class action does not present any unique management difficulties.

ANSWER: The Defendants deny the allegations of negligence contained in Paragraph 87 of Plaintiffs' Complaint.

CAUSES OF ACTION

88. The following is a non-exhaustive list of causes of action supported by the facts of this case. *ARC Constr. Mgmt., LLC v. Zelenak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012) (“Under Indiana’s notice pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case.”). These causes of action shall not in any way limit the legal bases for liability or recovery in this case.

ANSWER: Paragraph 88 does not require a response from Defendants. To the extent any part of that paragraph can be construed as an allegation against Defendants, Defendants deny the same.

COUNT I
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(On Behalf of Proposed Class 1)

89. Plaintiffs incorporate the allegations set forth above as though set forth fully here.

ANSWER: The defendants re-incorporate their answers to the allegations contained in paragraphs 1 through 88 of the complaint as their answers to and for paragraph 89 of the Complaint.

90. Anonymous Healthcare Provider performed surgical and possibly other procedures involving surgical instruments on the members of the Proposed Class 1 from the period of approximately April 1, 2019 to September 30, 2019.

ANSWER: The Defendants admit that it performed surgical procedures involving surgical instruments from April 1, 2019 to September 30, 2019. The Defendants otherwise deny the remaining allegations contained in paragraph 90 of Plaintiffs' Complaint.

91. Anonymous Healthcare Provider had a professional and legal duty to perform those procedures in a safe, sterile, reasonable, and professional manner.

ANSWER: Defendants admit that it assumed the duties placed upon them under applicable law. To the extent Plaintiff's allegation imposes further duties, Defendants deny the same.

92. Anonymous Healthcare Provider breached those duties by using surgical instruments that may not have been properly sterilized.

ANSWER: The Defendants deny the allegations contained in Paragraph 92 of Plaintiffs' Complaint.

93. Anonymous Healthcare Provider's actions constituted direct physical impacts to Line Gierak and each member of the Proposed Class 1.

ANSWER: The Defendants deny the allegations contained in Paragraph 93 of Plaintiffs' Complaint.

94. As a direct and proximate result of Anonymous Healthcare Provider's breaches of these duties, the members of the Proposed Class 1 were potentially exposed to innumerable infectious diseases, including potentially incurable and fatal diseases.

ANSWER: The Defendants deny the allegations contained in Paragraph 94 of Plaintiffs' Complaint.

95. The members of the Proposed Class 1 each suffered extreme and serious emotional distress and trauma as the result of the negligent conduct of Anonymous Healthcare Provider.

ANSWER: The Defendants deny the allegations contained in Paragraph 95 of Plaintiffs' Complaint.

96. The injuries suffered by the members of the Proposed Class 1 were the direct and foreseeable consequences of Anonymous Healthcare Provider's breaches of their professional and legal duties.

ANSWER: The Defendants deny the allegations contained in Paragraph 96 of Plaintiffs' Complaint.

**COUNT II
NEGLIGENCE
(On Behalf of Proposed Class 1)**

97. Plaintiffs incorporate the allegations set forth above as though set forth fully here.

ANSWER: The defendants re-incorporate their answers to the allegations contained in paragraphs 1 through 96 of the complaint as their answers to and for paragraph 97 of the Complaint.

98. Anonymous Healthcare Provider performed surgical and possibly other procedures involving surgical instruments on the members of the Proposed Class 1 from the period of approximately April 1, 2019 to September 30, 2019.

ANSWER: The Defendants admit that it performed surgical procedures involving surgical instruments from April 1, 2019 to September 30, 2019. The Defendants otherwise deny the remaining allegations contained in paragraph 98 of Plaintiffs' Complaint.

99. Anonymous Healthcare Provider had a professional and legal duty to perform those procedures in a safe, sterile, reasonable, and professional manner.

ANSWER: Defendants assumes only those duties placed upon them under applicable law. To the extent Plaintiff's allegation imposes further duties, Defendants deny the same.

100. Anonymous Healthcare Provider breached those duties by using surgical instruments that may not have been properly sterilized.

ANSWER: The Defendants deny the allegations contained in Paragraph 100 of Plaintiffs' Complaint.

101. As a direct and proximate result of Anonymous Healthcare Provider's breaches of these duties, the members of the Proposed Class 1 were potentially exposed to innumerable infectious diseases, including potentially incurable and fatal diseases.

ANSWER: The Defendants deny the allegations contained in Paragraph 101 of Plaintiffs' Complaint.

102. The members of the Proposed Class 1 each suffered extreme and serious emotional distress and trauma, and will incur medical testing and other expenses as the result of the negligent conduct of Anonymous Healthcare Provider.

ANSWER: The Defendants deny the allegations contained in Paragraph 102 of Plaintiffs' Complaint.

103. The injuries suffered by the members of the Proposed Class 1 were the direct and foreseeable consequences of Anonymous Healthcare Provider's breaches of their professional and legal duties.

ANSWER: The Defendants deny the allegations contained in Paragraph 103 of Plaintiffs' Complaint.

COUNT III
(Pleaded in the Alternative)
MEDICAL MALPRACTICE
(On Behalf of Proposed Class 1)

104. Plaintiffs incorporate the allegations set forth above as though set forth fully here.

ANSWER: The defendants re-incorporate their answers to the allegations contained in paragraphs 1 through 103 of the complaint as their answers to and for paragraph 104 of the Complaint.

105. Anonymous Healthcare Provider performed surgical and possibly other procedures involving surgical instruments on the members of the Proposed Class 1 from the period of approximately April 1, 2019 to September 30, 2019.

ANSWER: The Defendants admit that it performed surgical procedures involving surgical instruments from April 1, 2019 to September 30, 2019. The Defendants otherwise deny the remaining allegations contained in paragraph 105 of Plaintiffs' Complaint.

106. Anonymous Healthcare Provider had a legal duty to perform such procedures in a manner that met or exceeded the applicable medical standard of care.

ANSWER: Defendants admit they had a duty to perform such procedures in a manner that met the applicable medical standard of care. Defendants deny the remaining allegations.

107. By performing these procedures with surgical instruments that were not properly sterilized, Anonymous Healthcare Provider failed to meet the applicable standard of medical care.

ANSWER: The Defendants deny the allegations contained in Paragraph 107 of Plaintiffs' Complaint.

108. Anonymous Healthcare Provider's breaches of the standard of care constitute medical malpractice.

ANSWER: The Defendants deny the allegations contained in Paragraph 108 of Plaintiffs' Complaint.

109. As a direct and proximate result of Anonymous Healthcare Provider's medical malpractice, the members of the Proposed Class suffered and will continue to suffer extreme emotional distress and will incur medical testing and other expenses.

ANSWER: The Defendants deny the allegations contained in Paragraph 109 of Plaintiffs' Complaint.

110. As the spouses of members of Proposed Class 1, each member of Proposed Class 2 was potentially exposed to the same innumerable infectious diseases, including potentially incurable and fatal diseases to which the members of Proposed Class 1 were exposed.

ANSWER: The Defendants deny the allegations contained in Paragraph 110 of Plaintiffs' Complaint.

111. The members of the Proposed Class 2 each suffered extreme and serious emotional distress and trauma, and have/will incur medical testing and other expenses as the result of the negligent conduct of Anonymous Healthcare Provider.

ANSWER: The Defendants deny the allegations contained in Paragraph 111 of Plaintiffs' Complaint.

112. As spouses of the members of Proposed Class 1, each member of Proposed Class 2 was a foreseeable victim of Anonymous Healthcare Provider's medical malpractice.

ANSWER: The Defendants deny the allegations contained in Paragraph 112 of Plaintiffs' Complaint.

113. The injuries suffered by the members of the Proposed Class 2 were the direct and foreseeable consequences of Anonymous Healthcare Provider's breaches of their professional and legal duties.

ANSWER: The Defendants deny the allegations contained in Paragraph 113 of Plaintiffs' Complaint.

**COUNT IV
NEGLIGENCE
(On Behalf of Proposed Class 2)**

114. Plaintiffs incorporate the allegations set forth above as though set forth fully here.

ANSWER: The Defendants re-incorporate their answers to the allegations contained in paragraphs 1 through 113 of the complaint as their answers to and for paragraph 114 of the Complaint.

115. Anonymous Healthcare Provider performed surgical and possibly other procedures involving surgical instruments on the members of the Proposed Class 1 from the period of approximately April 1, 2019 to September 30, 2019.

ANSWER: The Defendants admit that it performed surgical procedures involving surgical instruments from April 1, 2019 to September 30, 2019. The Defendants otherwise deny the remaining allegations contained in paragraph 115 of Plaintiffs' Complaint.

116. Anonymous Healthcare Provider had a professional and legal duty to perform those procedures in a safe, sterile, reasonable, and professional manner.

ANSWER: Defendants assumes only those duties placed upon them under applicable law. To the extent Plaintiff's allegation imposes further duties, Defendants deny the same.

117. Anonymous Healthcare Provider breached those duties by using surgical instruments that may not have been properly sterilized.

ANSWER: The Defendants deny the allegations contained in Paragraph 117 of Plaintiffs' Complaint.

118. As a direct and proximate result of Anonymous Healthcare Provider's breaches of these duties, the members of the Proposed Class 1 were potentially exposed to innumerable infectious diseases, including potentially incurable and fatal diseases.

ANSWER: The Defendants deny the allegations contained in Paragraph 118 of Plaintiffs' Complaint.

119. As the spouses of members of Proposed Class 1, each member of Proposed Class 2 was potentially exposed to the same innumerable infectious diseases, including potentially incurable and fatal diseases to which the members of Proposed Class 1 were

exposed.

ANSWER: The Defendants deny the allegations contained in Paragraph 119 of Plaintiffs' Complaint.

120. The members of the Proposed Class 2 each suffered extreme and serious emotional distress and trauma, and have/will incur medical testing and other expenses as the result of the negligent conduct of Anonymous Healthcare Provider.

ANSWER: The Defendants deny the allegations contained in Paragraph 120 of Plaintiffs' Complaint.

121. As spouses of the members of Proposed Class 1, each member of Proposed Class 2 was a foreseeable victim of Anonymous Healthcare Provider's negligence.

ANSWER: The Defendants deny the allegations contained in Paragraph 121 of Plaintiffs' Complaint.

122. The injuries suffered by the members of the Proposed Class 2 were the direct and foreseeable consequences of Anonymous Healthcare Provider's breaches of their professional and legal duties.

ANSWER: The Defendants deny the allegations contained in Paragraph 122 of Plaintiffs' Complaint.

WHEREFORE, Defendants respectfully request that Plaintiffs take nothing by way of their Complaint, for judgment in the favor of Defendants, for the costs of this action, and for all other just and proper relief.

Respectfully submitted,

EICHHORN & EICHHORN, LLP

By: /s/ Alyssa Stamatakos
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SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim against Defendants upon which relief can be granted.

THIRD DEFENSE

If payments have been made to or on behalf of Plaintiff, then Defendants are entitled to full credit for those payments.

FOURTH DEFENSE

Plaintiff has received, or is entitled to, benefits from a collateral source or collateral sources which proportionately reduce or completely satisfy any of the damages claimed.

FIFTH DEFENSE

Plaintiff is not entitled to recover any expenses which have been or will be written off by a creditor.

SIXTH DEFENSE

Defendants are entitled to introduce evidence of the discounted value of medical expenses pursuant to *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009) and *Patchett v. Lee*, 2016 Ind. LEXIS 725 (Ind. 2016).

SEVENTH DEFENSE

Plaintiffs may have failed to mitigate their damages.

WHEREFORE, Defendants, Anonymous 1, Anonymous 2, and Anonymous 3, pray for judgment in their favor and against the Plaintiffs, that Plaintiffs take nothing by way of their Complaint, and for all other just and proper relief.

Respectfully submitted,

EICHHORN & EICHHORN, LLP

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JURY DEMAND

Defendants, Anonymous 1, Anonymous 2, and Anonymous 3, by counsel and pursuant to Rule 38, demands a trial by jury.

Respectfully submitted,

EICHHORN & EICHHORN, LLP

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CERTIFICATE OF SERVICE

I, Alyssa Stamatakos, certify that on the 25th day of February, 2020, I electronically filed the foregoing Answer to First Amended Complaint with the Clerk of the Court using the Indiana E-Filing System, which sent notification of such filing to the following:

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