

Salcedo v Kapusuz
2022 NY Slip Op 30714(U)
March 2, 2022
Supreme Court, New York County
Docket Number: Index No. 805273/2018
Judge: Judith N. McMahon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDITH MCMAHON **PART** **30M**

Justice

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INDEX NO. 805273/2018

BERKYS SALCEDO, EDY SALCEDO,

Plaintiff,

MOTION DATE 01/27/2022,
01/27/2022,
01/27/2022

- v -

MOTION SEQ. NO. 001 002 003

TOLGA KAPUSUZ, MIKHAIL KOGAN, ADVANTAGECARE
PHYSICIANS, P.C., PAIN SOLUTIONS MEDICAL, P.C.

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 192, 198

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 161, 175, 176, 177, 178, 179, 180, 181, 182, 183, 193, 199

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 162, 184, 185, 186, 187, 188, 189, 190, 191, 194, 200, 201, 202

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that the defendants' motions for summary judgment pursuant to CPLR §3212 are denied in part and granted in part as set forth below.

This matter arises out of alleged medical malpractice committed upon plaintiff, Berkys Salcedo, from January 2017 through June 29, 2017, while undergoing treatment for pain management of her lower back. Plaintiff claims to have sustained permanent personal injuries, inclusive of a right foot drop, due to the defendants' delay in properly diagnosing, with the support of timely radiological studies, her lower back condition, and in continuing to recommend an unnecessary course of treatment by way of, *inter alia*, (1) a **May 27, 2017** lumbar epidural

steroid injection (hereinafter “**LESI**”), performed by defendant, Dr. **Kapusuz**¹, and (2) a **June 23, 2017** transforaminal epidural steroid injection (hereinafter “**TESI**”),² performed by defendant, **Dr. Kogan**. Defendants maintain, generally, that plaintiff’s foot drop was caused by the progression of her underlying pathology (*i.e.*, a herniated disc at L5-S1 that compressed the nerve root), and not from defendants’ negligence in diagnosing, treating, or administering the injections.

During oral argument it was conceded that no malpractice is alleged for the way in which the injections were administered, nor does plaintiff claim that the injections in and of themselves caused her foot drop. Rather, plaintiffs allege that defendants’ delay in timely ordering the appropriate diagnostic testing (*i.e.*, an MRI of the lumbar spine) and failure to refer plaintiff for a surgical consult despite her steadily worsening condition constitutes the malpractice.

Plaintiffs commenced this action on August 18, 2018 with the filing of a summons and complaint alleging four causes of action against defendants: (1) medical malpractice; (2) failure to furnish plaintiff with informed consent; (3) negligent hiring by AdvantageCare Physicians, P.C., (the employer of, among others, defendant, Tolga Kapusuz, M.D.), negligent hiring by Pain Solutions Medical, P.C., (the employer of, among others, defendant, Mikhail Kogan, M.D.) and (4) loss of consortium on behalf of plaintiff’s husband, Edy Salcedo (*see* NYSCEF Doc. No. 1).

It appears undisputed that plaintiff, a retired schoolteacher, injured her lower back in late 2014 while assisting a child. She visited her primary care physician, Lubov Sychikov, M.D., an employee of defendant AdvantageCare Physicians, P.C. (hereinafter “**ACP**”) on January 10,

¹ Plaintiff was required to undergo a “blood patch” to stop leakage of cerebral spinal fluid following this procedure.

² Plaintiff underwent emergent discectomy on June 30, 2017 following this procedure.

2015, at which time Dr. Sychikov ordered an MRI of the lumbar spine³, and referred plaintiff to defendant Pain Solutions Medical, P.C. (hereinafter “PSM”) for treatment (*see* Plaintiff’s November 1, 2019 EBT, p. 22, ll. 19-22; NYSCEF Doc. No. 110). Two weeks later plaintiff was seen at PSM by Dr. Sekhar Upadhyayula, to whom she complained of lower right back pain radiating into the right leg. Dr. Upadhyayula recommended a LESI, which was successfully performed⁴ by defendant, Dr. Kogan, the next day, on January 29, 2015.

During a February 25, 2015 follow up, Dr. Upadhyayula’s physical examination revealed positive straight leg raise and a decreased right Achilles 1+. This time the doctor suggested a TESI at L4, L5 and S1.⁵ Dr. Kogan performed the TESI on March 3, 2015, and plaintiff’s pain improved to the point that she decided to forego a further TESI that had been scheduled for her two-week follow up, and another TESI tentatively scheduled for August 31, 2015, her last 2015 visit.

Plaintiff had no medical visits related to back pain with any of the defendants between September 1, 2015 and January 10, 2017.

On January 11, 2017, plaintiff returned to Dr. Sychikov with complaints of headaches, numbness and tingling in the right shoulder and arm, and nighttime leg cramps. Dr. Sychikov ordered a cervical MRI which was performed on February 12, 2017, and an EMG which was performed on January 18, 2017. At an April 11, 2017 follow-up, plaintiff complained of increased lower back pain. While no updated lumbar MRI had been ordered (the last lumbar MRI of her lumbar spine was in January of 2015), Dr. Sychikov diagnosed plaintiff with a

³ The January 10, 2015 lumbar MRI revealed a right paracentral disc herniation at L4-5 with right L5 nerve root impingement as well as an L3-L4 disc bulge and facet hypertrophy.

⁴ Plaintiff described a 25% reduction in pain following the January 29, 2015 LESI.

⁵ The LESI involves injection of the steroid into the center of the spinal canal, while with the TESI the medication is injected into the side of the epidural space closest to the nerve root (*see, generally*, NYSCEF Doc. No. 104, para. 22).

lumbar disc herniation with radiculopathy and referred her to a neurosurgeon, Dr. Eisenberg, and to ACP's pain management specialist, Dr. Kapusuz.

On April 12, 2017, Dr. Eisenberg performed a focused neurological assessment of plaintiff's head and neck, reviewed the recent cervical MRI and the earlier January 2015 lumbar MRI, and recommended that plaintiff commence physical therapy, consider undergoing cervical epidural steroid injections, and consider commencing lumbar epidural injections for the lower back.

Two weeks later, on April 28, 2017, plaintiff presented to Dr. Kapusuz with complaints of, *inter alia*, radiating cervical and lumbar pain which was exacerbated by walking and other activity. A physical examination revealed decreased range of motion in plaintiff's cervical and lumbar spine, and positive straight leg raising tests bilaterally. Dr. Kapusuz diagnosed plaintiff as suffering from sciatica and recommended that she undergo a LESI at L5-S1.

One month later, on May 27, 2017, Dr. Kapusuz performed the LESI. It is noted that no updated MRI of the lumbar spine had been ordered in the interim by either Dr. Sychikov, Dr. Eisenberg (non-party) or Dr. Kapusuz.

On May 31, 2017, plaintiff presented to the emergency department of Long Island Jewish-Forest Hills with complaints of severe headache, nausea, and lower back pain. She was advised by hospital staff to return to Dr. Kapusuz out of concern that she was suffering from leakage of the cerebral spinal fluid, a risk of the LESI, which would necessitate a blood patch. Plaintiff saw Dr. Kapusuz again on June 2, 2017, at which time he ordered an MRI of the lumbar spine (the first since January of 2015) to rule out an epidural hematoma.

On June 3, 2017, Dr. Kapusuz performed the lumbar epidural blood patch by drawing blood from plaintiff's right antecubital vein and injecting it into the epidural space at L5-S1.

Plaintiff was immediately relieved of her headache. Dr. Kapusuz was also verbally advised by the radiologist, who read the lumbar MRI from the preceding day, that the exam showed, *inter alia*, a “broad posterior disc protrusion greater on the right with severe right subarticular/lateral recess impingement on the proximal S1 root sleeves” (*i.e.*, severe right side S1 nerve impingement). Dr. Kapusuz agreed during his deposition that these MRI findings were “most probably” present when he performed the LESI on May 27, 2017, and that the S1 nerve impingement was the likely cause of plaintiff’s pain.

On June 5, 2017, June 10, 2017, and June 12, 2017, plaintiff messaged both Dr. Kapusuz and Dr. Sychikov complaining of increased (“horrible”) pain, difficulty walking, balance issues and headaches. No responses were allegedly forthcoming, but on June 13, 2017, plaintiff presented to Dr. Sychikov who, after a physical examination, again referred her to PSM for another LESI.

On June 19, 2017, plaintiff saw Dr. Upadhyayula at PSM. His examination uncovered new objective neurological findings, *i.e.*, diminished reflexes along with sensory and motor deficits. Notably, during this visit plaintiff: (1) was barely walking with a cane; (2) reported her pain score as 10 out of 10, now extending down below her right calf; (3) reported that Oxycodone was not effective; (4) demonstrated an antalgic gait favoring the right side, and (5) reported that her condition had in fact worsened after the May 27, 2021 epidural steroid injection. Dr. Upadhyayula reviewed the MRI report of June 2, 2017 and recommended that plaintiff undergo a right TESI at L4, L5 and S1.

On June 23, 2017 Dr. Kogan performed the TESI at S1, L5 and L4.

By June 29, 2017, plaintiff called PSM complaining that her right leg was numb, that she had increased lower back pain and that her pain was 10/10, not relieved by Oxycodone. On June

29, 2017, Dr. Kogan examined plaintiff, diagnosed her with a right foot drop, and urgently referred her to the emergency room for emergent neurosurgery. On the evening of June 29, 2017, plaintiff had a pre-surgery MRI of the lumbar spine, this time revealing, *inter alia*, disc extrusion at L5-S1 with contact of the downward nerve root.

On June 30, 2017, plaintiff underwent emergent surgical decompression of the lumbar spine, namely a L5-S1 laminectomy, L5-S1 right sided partial medial facetectomy and microdiscectomy for right L5-S1 herniated nucleus pulposus with foot drop. Within hours of the surgery plaintiff reported that her lower back pain had improved, but that she did not have control of her right leg or foot.

Plaintiff alleges that she still experiences pain and suffers from neurological deficits and limitations due to permanent nerve injury and right foot drop.

All defendants move for summary judgment dismissing plaintiffs' complaint pursuant to CPLR §3212 (*i.e.*, defendants Dr. Kogan and PSM move under Mot. Seq. No. **001**, the defendant ACP moves under Mot. Seq. No. **002** and the defendant Dr. Kapusuz moves under Mot. Seq. No. **003**). Plaintiffs oppose each motion.

Dr. Kogan's and PSM's treatment of plaintiff from June 19, 2017 to June 29, 2017

As previously indicated, Dr. Kogan treated plaintiff uneventfully in 2015. For purposes of this litigation, she was treated by PSM's Dr. Upadhyayula on June 19, 2017 and Dr. Kogan, who administered the June 23, 2017 TESI at S1, L5 and L4. Prior to the TESI, plaintiff signed and initialed each paragraph of the informed consent (*see* NYSCEF Doc. No. 118, pp. 38-39). Within six days of the procedure, and immediately upon learning of plaintiff's complaints, Dr. Kogan instructed plaintiff to return to the hospital for emergent surgery to release the S1 nerve, the compression of which was causing her right foot drop.

These defendants seek dismissal of plaintiffs' complaint arguing that their treatment of plaintiff was in accordance with good and accepted standards of medical practice, and further, that their care and treatment was not the proximate cause of plaintiff's alleged injuries.

In support of summary judgment on the first cause of action, moving defendants attach, *inter alia*, the December 7, 2021 affidavit of expert anesthesiologist, Daniel H. Sajewski, M.D. (*see* NYSCEF Doc. No. 104) who sets forth, within a reasonable degree of medical certainty, that "all of the care and treatment provided by Dr. Kogan, Dr. Upadhyayula and PSM conformed with the standard of care" and that it was entirely appropriate for Dr. Upadhyayula to recommend the more conservative TESI on June 19, 2017 (rather than surgery) based upon plaintiff's history, complaints, MRI imaging and physical examination. As for Dr. Kogan individually, Dr. Sajewski opines that (1) the informed consent provided and obtained by Dr. Kogan on June 23, 2017 was within the standard of care, as it was extremely detailed and notified plaintiff of the possibility of nerve damage as a risk of a TESI; (2) Dr. Kogan performed the June 23, 2017 TESI properly and in complete accordance with accepted standards of medical practice; (3) the images contained within the PSM record are of a classic epidurogram showing proper placement of the needles at S1, L5 and L4 and, based upon placement, it was not possible for a needle to cause plaintiff's foot drop; (4) following the procedure, plaintiff met all criteria to be discharged, having normal vital signs and no evidence of weakness, paresthesia, burning or pain in her legs; (5) Dr. Kogan timely referred plaintiff for proper treatment of her right foot drop, as evidenced by her having surgery on the morning of June 30, 2017; (6) nothing Dr. Kogan or PSM did or did not do proximately caused plaintiff's injuries because the cause of her right foot drop was the progression of the underlying pathology, namely a L5-S1 disc herniation compressing the nerve root, as shown on the MRI performed immediately prior to the surgery;

(7) had Dr. Kogan injured the nerve during the TESI, plaintiff would have suffered instant and extreme pain; (8) the only reason for a foot drop to occur three to four days post TESI is a slow epidural hematoma, not depicted in the June 30, 2017 pre-surgery MRI or in the surgeon's report and (13) Dr. Kogan did not injure any nerve during the performance of the TESI, as evidenced by the absence of a hematoma following the TESI.

Defendants seek dismissal of plaintiff's second cause of action (*i.e.*, failure to obtain informed consent) prior to the June 23, 2017 TESI, pointing to plaintiff's initials at each numbered paragraph, including the paragraphs stating: "I am aware that there are no guarantees" and "I understand that the procedure may not help at all." Defendants argue that a reasonable person in plaintiff's position would have chosen to undergo the more conservative TESI rather than surgery, despite the known risks.

PCM seeks dismissal of the third cause of action for negligent hiring, and both Dr. Kogan and PCM argue that since plaintiff is unable to establish her primary claim for negligence, the derivative cause of action on behalf of plaintiff's husband must be dismissed as well.

ACP's treatment of plaintiff from January of 2017 through June of 2017

In support of its motion, ACP attaches the December 13, 2021 affidavit of its expert orthopedic surgeon, Alfred P. Faust, M.D. (*see* NYSCEF Doc. No. 127). The affidavit is notable in that it is the **only** document referring to a May 25, 2017 lumbar MRI. In fact, there is no record of a 2017 lumbar MRI other than the one ordered by Dr. Kapusuz on June 2, 2017.

Dr. Faust sets forth, generally, that plaintiff's primary physician, Dr. Sychikov, and the staff at ACP at all times treated plaintiff in accordance with the accepted standards of medical care, made the appropriate referrals, ordered the right tests, and could not have caused nerve

damage which resulted in foot drop. He adds that since Dr. Sychikov's treatment was non-invasive, there was no requirement for plaintiff's primary care doctor to obtain informed consent.

ACP seeks dismissal of plaintiffs' cause of action for the negligent hiring of Dr. Sychikov and Dr. Kapusuz.

Dr. Kapusuz' treatment of plaintiff from April of 2017 through May 31, 2017

In support of his motion, Dr. Kapusuz attaches the December 13, 2021 affidavit of Christopher G. Gharibo, M.D., (*see* NYSCEF Doc. No 145), an anesthesiologist with a subspecialty certification in pain medicine, who opines to a reasonable degree of medical certainty that the treatment rendered by Dr. Kapusuz was in accordance with accepted standards of care, and that (1) plaintiff's claimed injuries were caused by the natural progression and acute exacerbation of her underlying pre-existing disc disease, and not by any acts or omissions made by Dr. Kapusuz; (2) the May 27, 2017 LESI was indicated and properly performed in accordance with the standard of care; (3) the needle was properly placed in a location that could not result in nerve damage or cause foot drop; (4) no complications arose during the LESI procedure and no cerebral spinal fluid came out of the needle; (5) dural punctures/leaks occur in the absence of negligence; (6) post-dural puncture headaches are a known complication of the procedure and not indicative of a departure from good and accepted practice; (7) a dural puncture does not cause foot drop; (8) plaintiff was properly advised of the risks and benefits prior to undergoing the LESI and blood patch procedures, and (9) the disc herniation at L5-S1 was the cause of plaintiff's right foot drop, because the disc compressed the nerve root, evidenced by the June 30, 2017 MRI. According to Dr. Gharibo, the June 2, 2017 MRI showed only an L5-S1 broad posterior protrusion with mild moderate left subarticular/lateral recess impingement on the S1 root sleeves, and compression of the nerve root was not seen until the later MRI).

Pursuant to CPLR §3212(b), a motion for summary judgment “shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR §3212[b]). A party seeking summary judgment must show that there are no material issues of fact that are in dispute and that it is entitled to judgment as a matter of law (*see Dallas-Stephenson v. Waisman*, 39 AD3d 303, 306 [1st Dept. 2007]). Once a movant makes such a showing, “the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial” (*id.*).

A defendant moving for summary judgment in a medical malpractice action must make a *prima facie* showing of entitlement to judgment as a matter of law by demonstrating that “in treating the plaintiff, there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged” (*Roques v. Nobel*, 73 AD3d 204, 206 [1st Dept. 2010]; *see also Assunta v. Rubin*, 189 AD3d 1321, 1323 [2d Dept. 2020]). To satisfy the burden, defendant must present expert testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific and factual in nature (*see Joyner-Pack v. Sykes*, 54 AD3d 727, 729 [2d Dept. 2008]). “Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Perre v. Vassar Bros. Hosp.*, 52 AD3d 727, 729 [2d Dept. 2008]), *quoting Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Once defendant has met his or her burden on the motion, the plaintiff must “submit evidentiary facts or materials to rebut the *prima facie* showing by the defendant that it was not negligent in treating plaintiff, so as to demonstrate the existence of a triable issue of

fact...general allegations of medical malpractice, merely conclusory or unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat the summary judgment motion” (*Alvarez v. Prospect Hospital*, 68 NY2d 320, 324-325 [1986]). Thus, in opposing the motion, plaintiff’s expert “must demonstrate ‘the requisite nexus between the malpractice allegedly committed’ and the harm suffered” (*Dallas-Stephenson v. Waisman*, 39 AD3d 303 [1st Dept. 2007], quoting *Ferrara v. South Shore Orthopedic Associates, P.C.*, 178 AD2d 364, 366 [1st Dept. 1991]). Moreover, plaintiff’s expert must address and refute the specific assertions of defendants’ experts with respect to negligence and causation (see *Janelle M. v. New York City Health & Hospitals Corp.*, 148 AD3d 519 [1st Dept. 2017]).

Here, each defendant has established *prima facie* entitlement to judgment as a matter of law by submitting the parties’ depositions, medical records and reports, and the detailed affidavits of three experts who opine that the diagnosis, care, and treatment of plaintiff did not deviate from the accepted standard of medical care and that such treatment did not proximately cause the plaintiff’s injuries (see *Wiater v. Lewis*, 197 AD3d 782 [2d Dept. 2021]).

With respect to the June 23, 2017 TESI, Dr. Kogan has established, *inter alia*, that he did not injure the S1 nerve or cause plaintiff’s foot drop during the procedure (because, *e.g.*, plaintiff would have suffered instant and extreme pain in that moment), that he immediately referred plaintiff for emergent surgery, and that he did nothing to delay plaintiff from obtaining appropriate treatment.

Dr. Kapusuz has established that the LESI he performed three weeks earlier, on May 27, 2017, did not cause plaintiff’s lingering nerve damage, that he promptly and correctly applied the blood patch, and that his conduct did not delay plaintiff from obtaining proper treatment.

Plaintiffs' opposition, however, has raised a triable issue of fact sufficient to defeat summary judgment on plaintiffs' first, second and fourth causes of action.

The redacted affidavits of plaintiff's two medical experts (internal medicine and anesthesiologist/pain management specialist) sufficiently rebut defendants' *prima facie* showing and serve to raise triable issues of fact as to whether the LESI and TESI procedures and sequelae, were necessary—particularly considering the June 3, 2017 lumbar MRI--and whether defendants departed from the standard of care or proximately caused plaintiff's alleged injuries.

In this regard, plaintiff's anesthesiologist's opinion that had a lumbar MRI been ordered and reviewed by ACP's doctors and/or Dr. Kapusuz *before* the May 27, 2017 LESI, it would have shown the procedure to be unnecessary and effectively useless, since "the findings that were subsequently seen on the June 2, 2017 MRI of the lumbar spine would have been present and established that the underlying pathology (severe right-sided nerve compression) would **not have been amenable** to treatment by epidural steroid injection and instead required surgical intervention and decompression" (emphasis supplied).

According to her expert, plaintiff was not a candidate for the June 23, 2017 TESI performed by Dr. Kogan. PSM's and Dr. Kogan's departures consisted of (1) failing to refer plaintiff for a neurosurgical evaluation; (2) failing to recognize the need for mechanical decompression (lumbar decompression surgery) rather than the temporizing chemical approach, and (3) failing to fully inform plaintiff of the reasonably foreseeable risks and reasonable alternatives to having a TESI at that time.

"Whether a diagnostic delay affected a patient's prognosis is typically an issue that should be presented to a jury" (*Walter v. Lewis*, 197 AD3d 782 [2d Dept. 2021]). Thus, the

defendants' respective motions for summary judgment dismissing plaintiffs' first cause of action for medical malpractice are denied.

Likewise denied is that branch of defendants' motions for summary judgment dismissing plaintiff's second cause of action for lack of informed consent. Plaintiffs have presented sufficient evidentiary facts (*i.e.*, the lack of information from a timely lumbar MRI) to rebut defendants' *prima facie* proof regarding informed consent prior to undergoing the May 27, 2017 LESI and the June 23, 2017 TESI. Whether or not plaintiff was properly informed of the risks of each procedure, to the extent that "a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if she had been fully informed" (*see* Public Health Law §2805-d[3]) is a question to be resolved by the finder of fact.

That branch of defendants' motions for summary judgment dismissing plaintiffs' third cause of action for negligent hiring against ACP and PSM, is granted, and the third cause of action is hereby severed and dismissed. It is well settled that where (as here) an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of *respondeat superior*, no claim may proceed against the employer for negligent hiring or retention (*see Weinberg v. Guttman Breast and Diagnostic Institute*, 254 AD2d 213 [1st Dept. 1998]; [*internal citations omitted*]). Thus, the only remaining theory of liability against defendants ACP and PSM is vicarious liability for the negligence of their respective employees, as follows: ACP as employer of plaintiff's primary care physician, Dr. Sychikov and Dr. Kapusuz, and PSM as employer of Dr. Upadhyayula and Dr. Kogan.

Since plaintiff's fourth cause of action for loss of services on behalf of plaintiff, Edy Salcedo, is a derivative claim, summary judgment must likewise be denied.

Accordingly, it is

ORDERED, that the motion for summary judgment by defendants Mikhail Kogan, M.D. and Pain Solutions Medical, P. C. (Mot. Seq. No. 001) to dismiss plaintiff's cause of action for negligent hiring is granted, and plaintiff's third cause of action for negligent hiring against Pain Solutions Medical, P.C. is hereby severed and dismissed; and it is further

ORDERED, that the balance of defendants Mikhail Kogan, M.D.'s and Pain Solutions Medical, P.C.'s summary judgment motion to dismiss the first, second and fourth causes of action is denied; and it is further

ORDERED, that the motion for summary judgment by defendant AdvantageCare Physicians, P.C. (Mot. Seq. No. 002) to dismiss plaintiff's cause of action for negligent hiring is granted, and plaintiff's third cause of action for negligent hiring against AdvantageCare is hereby severed and dismissed; and it is further

ORDERED, that the balance of defendant AdvantageCare Physicians, P.C.'s summary judgment motion, including the question of its vicarious liability for defendant, Tolga Kapuzuz, M.D., and non-party, Dr. Sychikov, is denied; and it is further

ORDERED, that the motion for summary judgment by defendant Tolga Kapusuz, M.D. (Mot. Seq. No. 003) to dismiss plaintiff's complaint is denied; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment severing and dismissing plaintiffs' third cause of action as against all defendants; and it is further

ORDERED, that the parties will appear for a pre-trial conference via Microsoft Teams on May 5, 2022, at 3:00 p.m.

3/2/2022
DATE

CHECK ONE:

☐

CASE DISPOSED

☐

GRANTED

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DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

JUDITH MCMAHON, JSC

Hon. Judith N. McMahon
J.S.C.