

**Manewan v Huerta**

2025 NY Slip Op 33422(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 805186/2019

Judge: Kathy J. King

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

**PRESENT: HON. KATHY J. KING**

**PART**

**06**

*Justice*

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PIYANATE MANEWAN,

Plaintiff,

- v -

CARLOS J. HUERTA, THE DENTAL BOUTIQUE, HUERTA DENTISTRY, P.C., ANTONIO DEL VALLE, MANHATTAN MAXILLOFACIAL SURGERY GROUP, P.C., NAOIMI A. RAMER, MOUNT SINAI PATHOLOGY ASSOCIATES, ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI, and MOUNT SINAI MEDICAL CENTER,

Defendants.

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INDEX NO.	805186/2019
MOTION DATE	07/08/2024, 07/11/2024
MOTION SEQ. NO.	002 003 004

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 109, 113, 116, 117, 120, 145 were read on this motion to/for REFERENCE - OTHER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 110, 114, 118, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 143, 146, 149 were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 004) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 115, 119, 122, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 144, 147, 148, 150 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and oral arguments having been heard, Mot. Seq. 002, 003, and 004 are consolidated for purposes of disposition.

In the within medical malpractice action, Defendants move for an order, pursuant to CPLR 3212, as follows:

Defendants Carlos J. Huerta DDS d/b/a The Dental Boutique, Huerta Dentistry PC, s/h/a Carlos J. Huerta, DDS, The Dental Boutique, Huerta Dentistry, PC (“Huerta Defendants”) move for summary judgment in favor of Defendants (Mot. Seq. No. 002).

Defendants Antonio Del Valle, MD and Manhattan Maxillofacial Surgery Group, PC (“Del Valle Defendants”) move for summary judgment dismissing the complaint in its entirety with prejudice (Mot. Seq. No.003).

Defendants Naomi A. Ramer DDS and Icahn School of Medicine at Mount Sinai (“Icahn”) (collectively referred to as “Icahn Defendants”) Icahn Defendants move for relief on the following orders (Mot. Seq. No. 004):

- 1) Summary judgment and dismissal of the Plaintiff’s complaint in its entirety and any crossclaims against them with prejudice, pursuant to CPLR 3212(b);
- 2) Severing the claims against Naomi A. Ramer, DDS, and Icahn School of Medicine at Mount Sinai; and
- 3) Pursuant to CPLR 3215(c), dismissing the complaint as against Mount Sinai Pathology Associates and Mount Sinai Medical Center in its entirety with prejudice as abandoned since Plaintiff failed to take a default against them and more than a year has elapsed since their default.

### **BACKGROUND**

On September 6, 2016, Plaintiff presented to Dr. Huerta for a general check-up. During her appointment, Dr. Huerta observed asymptomatic leukoplakia<sup>1</sup> with a verrucous (“warty”) characteristic on her tongue, photographed it, and referred her to Dr. Del Valle for further

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<sup>1</sup> Leukoplakia is the clinical description for a predominantly white patch that cannot be scraped off and cannot be characterized clinically as any other lesion.

evaluation and a biopsy. Dr. Del Valle examined her on September 21 and 30, 2016. On Plaintiff's first visit, Dr. Del Valle performed a biopsy of the left lateral lesion, a portion of which was excised and sent to Dr. Ramer at Mount Sinai Pathology Laboratory, who diagnosed it as "Epithelial hyperplasia and hyperkeratosis."

When Plaintiff returned to Dr. Del Valle on September 30, 2016, he acknowledged the benign pathology report and advised a follow-up in two years. Four months later, on January 10, 2017, Plaintiff had a follow-up with Dr. Huerta, with no changes reported in her medical history or oral examination. Dr. Huerta's notes indicated a stable lesion on the left ventral tongue with no dysplasia, with a plan for continued monitoring.

From January 25 to May 31, 2017, Plaintiff did not seek further dental or medical treatment. On May 31, 2017, she presented at NYU College of Dentistry complaining of left-sided tongue pain, which she initially believed to be a canker sore and initiated two weeks prior. Subsequently, a biopsy revealed squamous cell carcinoma, necessitating both surgery and radiation therapy.

Thereafter, Plaintiff commenced two separate actions alleging negligent dental care from September 1, 2016 through June 1, 2017, arising from failure to properly diagnosis, failure to identify and gather further information, and failure to recommend proper treatment during September 1, through June 1, 2017. Plaintiff further alleges that as a result of the dental malpractice of the moving Defendants, she sustained, *inter alia*, cancer of the tongue, 40% tongue loss, lymphedema, and was caused to undergo, among other things, tongue reconstruction, tracheotomy, left neck dissection, and left partial glossectomy.

The first action bearing Index No. 805007/2019E was commenced on January 8, 2019 and named Antonio Del Valle, M.D. and Manhattan Maxillofacial Surgery Group, P.C., Naomi A. Ramer, DDS., Mount Sinai Pathology Associates, and Ichan School of Medicine at Mount Sinai

and Mount Sinai Medical Center as co-defendants. On June 5, 2019, Plaintiff commenced the within action against Defendants Carlos J. Huerta, DDS, The Dental Boutique, and Huerta Dentistry, P.C. alleging dental malpractice against Dr. Huerta and vicarious liability as to The Dental Boutique, and Huerta Dentistry, P.C.

By order of the Court dated December 20, 2019, (J. Rakower), the two actions were subsequently consolidated under Index No. 805186/2019.

The Huerta Defendants, Del Valle Defendants, Ichan Defendants now move for summary judgment dismissing the respective claims against them with prejudice.

### **LEGAL STANDARD FOR SUMMARY JUDGMENT**

A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice, or by establishing that the plaintiff was not injured by such treatment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept 2009]; *McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; *see generally Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]). To satisfy this burden, a defendant must present expert opinion 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 Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Joyner-Pack v Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]). Furthermore, to satisfy his or her burden on a motion for summary judgment, a defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043 [2d Dept 2010];

*Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874 [2d Dept 2008]; *Terranova v Finklea*, 45 AD3d 572 [2d Dept 2007]).

“Where competent evidence is presented by a defendant in support of a motion for summary judgment, the burden shifts to plaintiff to produce proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action...” (*IDX Capital, LLC v. Phoenix Partners Group LLC*, 83 AD3d 569, [1st Dept 2011], *affd* 19 NY3d 850, 970 [2012]; *Alvarez v Prospect Hosp.*, 68 NY2d at 324; *see also Menzel v Plotnick*, 202 AD2d 558 [2d Dept 1994]; *Salamone v Rehman*, 178 AD2d 638 [2d Dept 1991]; *Zuckerman v City of New York*, 49 NY2d 557, 558-59 [1980]).

#### **SUMMARY JUDGMENT AS TO THE HUERTA DEFENDANTS (Mot. Seq. No.2)**

The Huerta Defendants submit the expert affirmation of Allan Kucine, DDS (“Dr. Kucine”), a board-certified Oral and Maxillofacial Surgeon, who opines, to a reasonable degree of medical certainty, that when Dr. Huerta observed the lesion on September 16, 2016, he appropriately photographed it and documented it in detail. Dr. Kucine also opines that he timely referred Plaintiff to Dr. Del Valle, a qualified oral and maxillofacial surgeon, and relied on Dr. Del Valle’s findings and Dr. Naomi Ramer’s biopsy report, which indicated the lesion was benign. Dr. Kucine indicated that when Plaintiff returned to Dr. Huerta on January 10, 2017 (four months after her initial visit), Dr. Huerta properly documented that the lesion remained unchanged. Finally, Dr. Kucine opines that Dr. Huerta appropriately supervised, controlled, and observed his staff. Dr. Kucine concludes that Dr. Huerta’s treatment was completely appropriate at all times and there was neither anything that Dr. Huerta did or did not do to cause the tongue lesion and squamous

cell carcinoma nor any of the treatment that Plaintiff had to unfortunately undergo after the diagnosis of the carcinoma.

Based on the expert affirmation of Dr. Kucine, the Huerta Defendants have established prima facie entitlement to summary judgment as to Plaintiff's claim of failure to diagnose tongue cancer and vicarious liability, which necessitated reconstructive surgery. Since Plaintiff has failed to submit opposition to rebut the Huerta Defendants' prima facie showing, the motion of the Huerta Defendants is granted as a matter of law.

**SUMMARY JUDGMENT AS TO DEL VALLE (Mot. Seq. No.3) and**  
**ICHAN DEFENDANTS (Mot. Seq. No.4)<sup>2</sup>**

In support of his motion, Dr. Del Valle submits the expert affirmation of Mark Stein, DDS, MD ("Dr. Stein"), a board-certified Oral and Maxillofacial Surgeon, who opines, with reasonable medical certainty, that the Del Valle Defendants neither did or did not do anything to contribute to the Plaintiff's alleged injuries or damages nor proximately caused the Plaintiff's injuries. Specifically, Dr. Stein opines that there is no evidence of deviation from the standard of care by Dr. Del Valle in the performance of the incisional biopsy of the leukoplakia (white lesion) on Plaintiff's left lateral tongue particularly since there was no issue with the adequacy of the sample taken. Dr. Stein indicates that Dr. Del Valle removed sufficient tissue and provided adequate sampling to be analyzed by the pathologist. Given Del Valle's expertise in interpreting tissue samples, it was reasonable for Dr. Del Valle to rely on their interpretations, findings, and report, which, in this instance, indicated no malignancy or squamous cell carcinoma. As a result, Dr. Stein opines that there was no need for Dr. Del Valle to repeat the biopsy since there was a benign

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<sup>2</sup> Plaintiff submitted combined opposition to Mot Seq Nos 3 and 4; thus, the Court will address both motions as a combined application.

finding that did not warrant any further investigation. Dr. Stein also opines that there were no delays in Dr. Del Valle scheduling a follow-up appointment since Plaintiff treated with Dr. Huerta four (4) months later. Dr. Stein highlights that Plaintiff remained asymptomatic, and there were no changes in the lesion on January 10, 2017.

Dr. Ramer, in support of her motion, submits the expert affirmation of Robert Douglas Kelsch, DMD (“Dr. Kelsch”), a board-certified Oral and Maxillofacial Pathologist, who opines, to a reasonable degree of medical certainty, that there were no departures of care by Icahn or any of its staff and nothing which either Dr. Ramer or Icahn did or did not do caused harm to Plaintiff. He opines that Dr. Ramer’s analysis of Plaintiff’s biopsy specimen and her diagnosis of the same were accurate, complete, and within the standard of care. Dr. Kelsch concludes that there were no departures from the standard of care on Dr. Ramer’s part as an Oral Pathologist. He further opines that Dr. Ramer’s diagnosis of the biopsy specimen was properly communicated to Plaintiff’s treating physicians.

The Court finds that both Dr. Del Valle and Dr. Ramer have established prima facie entitlement to summary judgment, and the burden now shifts to Plaintiff to establish a triable issue of fact.

In opposition, the Plaintiff submits the expert affirmation of a board-certified Pathologist with a sub-specialty certification in Cytopathology.<sup>3</sup> Expert A opines, to a reasonable degree of medical certainty, that Defendants Dr. Del Valle and Dr. Ramer should have consulted with each other regarding the lesion since leukoplakia is a lesion that is known for its propensity to transition

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<sup>3</sup> Plaintiff has redacted the name of their expert pursuant to CPLR 3101(d). The expert shall be referred to as “Expert A.”

into oral cancer. Expert A further opines that Defendants Dr. Del Valle and Dr. Ramer failed to investigate and consider the serious clinical presentation of the Plaintiff's lesion and history when providing her treatment despite being aware of the cancerous nature of this type of lesion. Expert A indicates that both Dr. Del Valle and Dr. Ramer failed to take an appropriate biopsy and properly read the Plaintiff's tissue sample. Lastly, Expert A opines that Dr. Del Valle and Dr. Ramer failed to provide appropriate post biopsy monitoring and treatment. According to Expert A, said departures led Plaintiff to a false sense of security and caused a delay in diagnosis of Stage II squamous cell carcinoma and the resultant injuries.

While the Moving Defendants contend that Expert A lacks the skills, training and education to opine as to the care and treatment rendered to the Plaintiff, the Court finds that Expert A is a board certified physician who demonstrates the requisite nexus between the malpractice allegedly committed and the harm suffered to Plaintiff (*see Park v Kovachevich*, 116 AD3d 182 [1st Dept 2014]). As a result, the Court finds that Expert A's opinion is sufficient to raise a triable issue of fact to rebut the prima facie showing to summary judgment of Dr. Del Valle and Dr. Ramer. "Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; *see Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

While summary judgment is not warranted as to Dr. Dell Valle and Dr. Ramer, the Court dismisses Plaintiff's complaint as to Manhattan Maxillofacial Surgery Group and Icahn School of Medicine at Mount Sinai, since no opposition was submitted as to that branch of the Defendants'

motion. Additionally, the Court dismisses the complaint in its entirety with prejudice as against Mount Sinai Pathology Associates and Mount Sinai Medical Center as abandoned pursuant to CPLR 3215(c), as Plaintiff failed to take a default against them, and more than a year has elapsed since their default.

Accordingly, it is hereby

**ORDERED** that the Huerta Defendants' motion for summary judgment is granted, and the complaint is dismissed as to these Defendants pursuant to CPLR 3212 (Mot Seq 2); and it is further

**ORDERED** that the Del Valle Defendants' motion for summary judgment is granted to the extent of dismissing the complaint as to the Manhattan Maxillofacial Surgery Group (Mot Seq 3) and in all other respects, the motion is denied; and it is further

**ORDERED** that the Ichan Defendants motion is granted to the extent of dismissing the Complaint in its entirety with prejudice as against Icahn School of Medicine at Mount Sinai, and, pursuant to CPLR 3215(c) Mount Sinai Pathology Associates and Mount Sinai Medical Center as abandoned, and in all other respects the motion is denied; and it is further

**ORDERED** that the Huerta Defendants, Defendants Manhattan Maxillofacial Surgery Group, and Defendants Icahn School of Medicine at Mount Sinai, Mount Sinai Pathology Associates and Mount Sinai Medical Center are to serve a copy of this order upon the Plaintiff with notice of entry within twenty (20) days of entry of this order; and it is further

**ORDERED**, that within twenty (20) days of entry of this order, counsel for the Huerta Defendants, Defendants Manhattan Maxillofacial Surgery Group, Icahn School of Medicine at Mount Sinai, Mount Sinai Pathology Associates and Mount Sinai Medical Center shall serve a

copy of this Order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment in accordance with this order; and it is further

**ORDERED**, that service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further


**ORDERED AND ADJUDGED**, that the Clerk of the Court is directed to dismiss Plaintiff's Complaint and all claims with prejudice against CARLOS J. HUERTA, THE DENTAL BOUTIQUE, and HUERTA DENTISTRY, P.C.; and it is further

**ORDERED AND ADJUDGED**, that the Clerk of the Court is directed to dismiss the Plaintiff's Complaint against MANHATTAN MAXILLOFACIAL SURGERY GROUP, P.C., with prejudice, and summary judgment shall be entered in favor of MANHATTAN MAXILLOFACIAL SURGERY GROUP, P.C.; and it is further

**ORDERED AND ADJUDGED**, that the Clerk of the Court is directed to dismiss the Plaintiff's Complaint against ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI, MOUNT SINAI PATHOLOGY ASSOCIATES and MOUNT SINAI MEDICAL CENTER, with prejudice, and summary judgment shall be entered in favor of ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI, MOUNT SINAI PATHOLOGY ASSOCIATES and MOUNT SINAI MEDICAL CENTER; and it is further

**ORDERED**, that all remaining parties are directed to appear for a settlement conference on December 23<sup>rd</sup>, 2025, at 10am, at 60 Centre Street, Room #351, New York, NY.

This constitutes the decision and order of the Court.

9/10/2025		
DATE		KATHY J. KING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE