

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

DENNIS KILKENNY AND PATRICIA KILKENNY,**Plaintiffs,**

v.

AII ACQUISITION, LLC,**Defendants.****Index No. 190011/2024****VERIFIED ANSWER TO
PLAINTIFFS' VERIFIED
COMPLAINT, CROSS-
CLAIM AND ANSWER TO
CROSS-CLAIMS OF SPIRAX
SARCO, INC.**

Defendant Spirax Sarco, Inc., sued incorrectly as “Spirax Sarco, Inc. ind. and as suc. to Sarco Company, Inc.”, hereinafter (“Spirax Sarco”), by its attorneys Leader Berkon Colao & Silverstein LLP, hereby answers the Verified Complaint (hereinafter “Complaint”) filed on January 9, 2024, as follows:

1. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Spirax Sarco denies the allegations contained in paragraph 2 of the Complaint insofar as they are directed against Spirax Sarco, except admits that it has conducted business in the City and the State of New York and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Spirax Sarco denies the truth of the allegations contained in paragraphs 3 through 7 of the Complaint insofar as they are directed against Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3 through 7 of the Complaint and refers all questions of law to the Court.
4. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8 and 9 of the Complaint.

FIRST CAUSE OF ACTION

5. With regard to the unnumbered paragraph under the section labeled “FIRST CAUSE OF ACTION”, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 9 of the Complaint as if more fully set forth herein.

6. Spirax Sarco denies the truth of the allegations contained in paragraphs 10 through 35 (inclusive) of the Complaint, including all sub-parts therein, insofar as they are directed against Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10 through 35 of the Complaint.

SECOND CAUSE OF ACTION

7. With regard to the unnumbered paragraph under the section labeled “SECOND CAUSE OF ACTION”, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 35 of the Complaint as if more fully set forth herein.

8. Spirax Sarco denies the truth of the allegations contained in paragraph (inclusive) of the Complaint, insofar as they are directed against Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in 36 through 39 of the Complaint.

THIRD CAUSE OF ACTION

9. With regard to the unnumbered paragraph under the section labeled “THIRD CAUSE OF ACTION”, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 39 of the Complaint as if more fully set forth herein.

10. Spirax Sarco denies the truth of the allegations contained in paragraphs 40 and 41 of the Complaint, insofar as they are directed against Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 40 and 41 of the Complaint and refers all questions of law to the Court.

FOURTH CAUSE OF ACTION

11. With regard to paragraph 42 of the complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 41 of the Complaint as if more fully set forth herein.

12. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 43 through 68 of the Complaint, including all sub-parts, as these allegations do not pertain to it.

FIFTH CAUSE OF ACTION

13. With regard to paragraph 69 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 68 of the Complaint as if more fully set forth herein.

14. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 70 through 82 of the Complaint, as these allegations do not pertain to it.

SIXTH CAUSE OF ACTION

15. With regard to paragraph 83 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 82 of the Complaint as if more fully set forth herein.

16. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 84 through 92 of the Complaint, as these allegations do not pertain to it.

17. Spirax Sarco denies the truth of the allegations contained in paragraphs 93 through 98 of the Complaint, insofar as they are directed against Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 93 through 98 of the Complaint and refers all questions of law to the Court.

SEVENTH CAUSE OF ACTION

18. With regard to the unnumbered paragraph under the section labeled “SEVENTH CAUSE OF ACTION”, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 98 of the Complaint as if more fully set forth herein.

19. Spirax Sarco denies the truth of the allegations contained in paragraph 99 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

20. The Complaint fails to state a cause of action upon which relief can be granted against Spirax Sarco.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

21. Plaintiffs’ claims are time barred by reason of the applicable statute(s) of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

22. Plaintiffs’ claims are barred by the operation of the doctrine of estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

23. Plaintiff has waived all claims against Spirax Sarco.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

24. This Court lacks both general and specific personal jurisdiction over Spirax Sarco. Spirax Sarco further objects to and denies an exercise of general jurisdiction over it, notwithstanding any Plaintiff’ allegations in the complaint purporting to establish a basis for general jurisdiction (see, e.g., Daimler AG v. Bauman, 571 U.S. 117 (2014); BNSF Ry. Co. v. Tyrrell, 137 S.Ct. 1549 (2017); Bristol-Myers Squibb Co. v. Sup. Ct. of Cal., S.F. Cty, 137 S.Ct. 1773 (2017); cf., Gibson v. Air & Liquid Sys. Corp., 173 AD3d 519 [1st Dept., 2019]).

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

25. The venue of this action is improper.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

26. Plaintiffs' claims are barred by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

27. Plaintiffs' speculative, uncertain and/or contingent damages have not accrued and are not recoverable.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

28. This cause of action must be dismissed in the event Plaintiff has another action pending against Spirax Sarco for the same cause of action in another court.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

29. In the event Plaintiff executed a settlement agreement releasing and discharging Spirax Sarco from all claims arising out of Plaintiffs' alleged injury, all claims alleged by Plaintiff should be dismissed.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

30. To the extent that Plaintiff has given a release or covenant not to sue or not to enforce a judgment to an alleged co-tortfeasor of Spirax Sarco, Plaintiffs' claim herein is reduced to the extent of any amount stipulated by the release or covenant, in the amount of the consideration paid for it, or in the amount of the released tortfeasor's equitable share of the damages, whichever is greater.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

31. Plaintiff was not injured by exposure to Spirax Sarco's products.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

32. In the event that Plaintiff was employed by any of the Defendants, Plaintiffs' sole and exclusive remedy is under the Worker's Compensation Law of the State of New York.

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