

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

DENNIS KILKENNY AND PATRICIA KILKENNY,

Plaintiff(s),

-against-

AII ACQUISITION, LLC, *et al.*,

Defendant(s).

Index No.: 190011/2024

**VERIFIED ANSWER ON
BEHALF OF DEFENDANT
KOHLER**

Defendant, KOHLER, improperly pled as KOHLER Company, (hereinafter “KOHLER”), by its attorneys, GOLDBERG SEGALLA LLP, for its verified answer to the supplemental summons and verified third amended complaint (“Complaint”) herein states:

1. Defendant Kohler denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 5 and 9 of the Complaint.
2. Defendant Kohler denies each and every allegation contained in paragraph 2 of the Complaint insofar as they pertain to KOHLER, except avers that KOHLER is a foreign corporation authorized to do business in the State of New York, denies knowledge or information sufficient to form a belief as to the truth of remaining allegations insofar as they pertain to other defendants, and refers all questions of law to this Court at the time of trial.
3. Defendant Kohler denies each and every allegation contained in paragraphs 3, 4, 6, 7, and 8 of the Complaint insofar as they pertain to KOHLER, denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to the Court.

AS TO THE FIRST CAUSE OF ACTION

4. With respect to the unnumbered sentence, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 9 of the Complaint as if fully set forth herein.

5. The allegations contained in paragraph 10 of the Complaint pertain to other parties and, therefore, do not require a response. However, to the extent these allegations do require a response, KOHLER denies each and every allegation in paragraph 10 of the Complaint, and refers all questions of law to this Court at the time of trial.

6. Defendant Kohler denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Complaint.

7. Defendant Kohler denies each and every allegation contained in paragraphs 12, 13, 14, 15, 16, 17 (including subparagraphs a-h), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 (including subparagraphs a-j), 34, and 35 of the Complaint insofar as they pertain to KOHLER, denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to the Court.

AS TO THE SECOND CAUSE OF ACTION

8. With respect to the unnumbered sentence, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 35 of the Complaint as if fully set forth herein.

9. Defendant Kohler denies each and every allegation contained in paragraphs 36, 37, 38, and 39 of the Complaint insofar as they pertain to KOHLER, denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to the Court.

AS TO THE THIRD CAUSE OF ACTION

10. With respect to the unnumbered sentence, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 39 of the Complaint as if fully set forth herein.

11. Defendant Kohler denies each and every allegation contained in paragraphs 40 and 41 of the Complaint insofar as they pertain to KOHLER, denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to the Court.

AS TO THE FOURTH CAUSE OF ACTION

12. With respect to the unnumbered sentence and paragraph 42, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 41 of the Complaint as if fully set forth herein.

13. Defendant Kohler denies each and every allegation contained in paragraphs 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 (including subparagraphs a-1), 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 68 of the Complaint insofar as they pertain to KOHLER CO., denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to this Court at the time of trial.

14. Defendant KOHLER CO. denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 67 of the Complaint.

AS TO THE FIFTH CAUSE OF ACTION

15. With respect to the unnumbered sentence and paragraph 69, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 68 of the Complaint as if fully set forth herein.

16. The allegations contained in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82 of the Complaint pertain to other parties and, therefore, do not require a response. However, to the extent these allegations do require a response, KOHLER denies each and every allegation in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82 of the Complaint, and refers all questions of law to this Court at the time of trial.

AS TO THE SIXTH CAUSE OF ACTION

17. With respect to the unnumbered sentence and paragraph 83, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 82 of the Complaint as if fully set forth herein.

18. The allegations contained in paragraphs 84, 85, 86, 87, 88, 89, 90, 92, and 93 of the Complaint pertain to other parties and, therefore, do not require a response. However, to the extent these allegations do require a response, KOHLER denies each and every allegation in paragraphs 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93 of the Complaint.

19. Defendant Kohler denies each and every allegation contained in paragraphs 91, 94, 95, 96, and 97 of the Complaint insofar as they pertain to KOHLER CO., denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants, and respectfully refers all questions of law to this Court at the time of trial.

20. The allegations contained in paragraph 98 of the Complaint do not require a response; however, to the extent a response is required, KOHLER denies the allegations contained in paragraph 98 of the Complaint, and refers all questions of law to this Court at the time of trial.

AS TO THE SEVENTH CAUSE OF ACTION

21. With respect to the unnumbered sentence, KOHLER repeats, reiterates and realleges each and every response to paragraphs 1 through 98 of the Complaint as if fully set forth herein.

22. Defendant KOHLER denies each and every allegation contained in paragraph 99 of the Complaint insofar as they pertain to KOHLER, denies knowledge or information sufficient to form a belief as to the truth of those allegations insofar as they pertain to other defendants and refers all questions of law to this Court at the time of trial.

23. KOHLER denies all other allegations not otherwise admitted or denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

24. That defendant, KOHLER, denies any negligence, culpable conduct or liability on its part, but if said defendant is ultimately found to be liable to plaintiffs, then, pursuant to Article 16 of the Civil Practice Law & Rules, it shall only be liable for its equitable share of plaintiff's recovery since any liability which will be found against it will be insufficient to impose joint liability.

Second Affirmative Defense

25. To the extent that the Complaint herein and the claims made by plaintiffs were not commenced within the time limited by law, the Complaint is barred by the applicable statute of limitations.

Third Affirmative Defense

26. That to the extent that plaintiffs have failed and neglected to maintain this action in a swift, diligent and timely fashion, the plaintiffs' Complaint is barred by laches.

Fourth Affirmative Defense

27. Plaintiffs have failed to plead the claims of fraud and conspiracy with proper specificity and, as such, all claims premised on fraud and conspiracy must be dismissed.

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