

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

JOHANNA FURTADO for
RYAN FURTADO, deceased,

Plaintiff,

Index No.: 507437/2023

VERIFIED ANSWER

-against-

PELOTON INTERACTIVE INC.,
d/b/a PELOTON,

Defendant.

Defendant, Peloton Interactive, Inc. (“Peloton”), by its attorneys, Goldberg Segalla LLP, answering the complaint herein:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the complaint.
2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.
3. Admits the allegations contained in paragraph 3 of the complaint.
4. Admits the allegations contained in paragraph 4 of the complaint.
5. Admits the allegations contained in paragraph 5 of the complaint.
6. Admits that it is in the business of distributing Peloton Bikes and denies knowledge or information sufficient to form a belief as to “the Bike involved in this action” as alleged in paragraph 6 of the complaint.
7. States that it is subject to the jurisdiction of the courts of New York in response to the allegations contained in paragraph 7 of the complaint.
8. States that it is subject to the jurisdiction of the courts of New York in response to the allegations contained in paragraph 8 of the complaint.
9. States that it is subject to the jurisdiction of the courts of New York in response to

the allegations contained in paragraph 9 of the complaint.

10. States that it is subject to the jurisdiction of the courts of New York in response to the allegations contained in paragraph 10 of the complaint.

11. States that it is subject to the jurisdiction of the courts of New York in response to the allegations contained in paragraph 11 of the complaint.

12. States that it is subject to the jurisdiction of the courts of New York in response to the allegations contained in paragraph 12 of the complaint.

13. States that this action is subject to a binding arbitration provision contained in the Peloton Terms of Service agreed to by plaintiff's decedent in response to the allegations contained in paragraph 13 of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 of the complaint.

15. Denies the allegations contained in paragraph 15 of the complaint.

16. Denies the allegations contained in paragraph 16 of the complaint.

17. Admits that plaintiff's decedent purchased and received a Peloton Bike as alleged in paragraph 17 of the complaint.

18. Denies the allegations contained in paragraph 18 of the complaint.

19. Repeats and realleges the responses to the above paragraphs as if set forth in full herein.

20. Admits the allegations contained in paragraph 20 of the complaint.

21. Admits that a Peloton Bike was sold to plaintiff's decedent as alleged in paragraph 21 of the complaint.

22. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 of the complaint.

23. Denies the allegations contained in paragraph 23 of the complaint.
24. Denies the allegations contained in paragraph 24 of the complaint.
25. Denies the allegations contained in paragraph 25 of the complaint.
26. Denies the allegations contained in paragraph 26 of the complaint.
27. Denies the allegations contained in paragraph 27 of the complaint.
28. Denies the allegations contained in paragraph 28 of the complaint.
29. Denies the allegations contained in paragraph 29 of the complaint.
30. Denies the allegations contained in paragraph 30 of the complaint.
31. Denies the allegations contained in paragraph 31 of the complaint.
32. Denies the allegations contained in paragraph 32 of the complaint.
33. Denies the allegations contained in paragraph 33 of the complaint.
34. Denies the allegations contained in paragraph 34 of the complaint.
35. Denies the allegations contained in paragraph 35 of the complaint.
36. Repeats and realleges the responses to the above paragraphs as if set forth in full herein.
37. Admits that a Peloton Bike was sold to plaintiff's decedent as alleged in paragraph 37 of the complaint.
38. States that it is subject to such duties as are imposed by law and denies the characterizations contained in paragraph 38 of the complaint.
39. States that it is subject to such duties as are imposed by law and denies the characterizations contained in paragraph 39 of the complaint.
40. States that it is subject to such duties as are imposed by law and denies the characterizations contained in paragraph 40 of the complaint.
41. Denies the allegations contained in paragraph 41 of the complaint.

42. Denies the allegations contained in paragraph 42 of the complaint.
43. Denies the allegations contained in paragraph 43 of the complaint.
44. Denies the allegations contained in paragraph 44 of the complaint.
45. Denies the allegations contained in paragraph 45 of the complaint.
46. Denies the allegations contained in paragraph 46 of the complaint.
47. Denies the allegations contained in paragraph 47 of the complaint.
48. Refers the court to the warranties and representations actually made and denies the characterizations contained in paragraph 48 of the complaint.
49. Denies the allegations contained in paragraph 49 of the complaint.
50. Denies the allegations contained in paragraph 50 of the complaint.
51. Denies the allegations contained in paragraph 51 of the complaint.
52. Denies each and every allegation of the complaint not hereinbefore specifically admitted, denied or otherwise controverted.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a cause of action upon which relief may be granted as against Peloton.
2. Plaintiff fails to allege or otherwise establish that she is a legal representative of the estate of Ryan Furtado empowered to act on its behalf, and this action should therefore be dismissed.
3. This action is subject to mandatory, binding arbitration as set forth in the Peloton Terms of Service to which plaintiff's decedent agreed.
4. This action is barred by the Peloton Terms of Service.
5. Some or all of the causes of action in the complaint may be barred by the applicable statute of limitations.

6. Upon information and belief, plaintiff's and plaintiff's decedent's alleged injuries or damages, if any, were caused or contributed to by plaintiff's decedent's own negligence, intentional act and/or fault.

7. Upon information and belief, the incident giving rise to this action was caused by the negligence or other culpable conduct of one or more parties for which Peloton is not responsible, and, therefore, Peloton is not legally responsible.

8. No action or inaction by Peloton was the proximate cause of plaintiff's or plaintiff's decedent's alleged injuries or damages, and, therefore, Peloton is not legally responsible.

9. Upon information and belief, plaintiff's and plaintiff's decedent's alleged injuries or damages, if any, were the result of an independent, intervening and superseding cause or event, and/or an act or omission on the part of one or more persons or entities over whom Peloton had no control, with whom Peloton had no legal relationship, and whose acts or omissions Peloton had no reason to anticipate, and, therefore, Peloton is not legally responsible.

10. Upon information and belief, the incident giving rise to this action and the alleged injuries were proximately caused by products that were not designed, manufactured, engineered, assembled, inspected and/or supplied by Peloton.

11. Upon information and belief, the incident giving rise to this action and the alleged injuries were caused by misuse or abuse of the product.

12. Upon information and belief, plaintiff's decedent knew and assumed the risks and hazards associated with the activity in which he was engaged at the time of the alleged incident, and any damages were the result of such risks voluntarily undertaken.

13. To the extent that any substantial changes, alterations and modifications were made to any product that caused or contributed to the alleged injuries and damages, such were

brought about by the acts and omissions of other parties after the product left the care, custody and control of Peloton and, therefore, Peloton is not legally responsible.

14. The condition of the product at the time of the alleged accident was not within the control or responsibility of Peloton.

15. Upon information and belief, some or all of plaintiff's alleged damages were replaced or indemnified by collateral sources, for which Peloton is entitled to an offset.

16. Peloton reserves and asserts all rights under General Obligations Law Section 15-108 in the event plaintiff settles with or discontinues claims against other parties, whether or not such parties are named herein.

17. Peloton reserves and asserts all rights to limitation of damages as set forth in CPLR Article 16.

18. Upon information and belief, failure to preserve evidence, or spoliation of evidence, has compromised Peloton's ability to present a complete defense, and plaintiff's ability to prove causes of action.

19. Upon information and belief, plaintiff's alleged damages should be reduced or offset by an amount reflecting the failure to mitigate.

20. Plaintiff is obligated to defend, indemnify and hold Peloton harmless based upon the provisions set forth in the Peloton Terms of Service.

21. Other parties, whether named or unnamed in the complaint, and whether known or presently unknown, were negligent, legally responsible, or otherwise at fault for the damages alleged, if any. In the event that plaintiff recovers against defendants, Peloton requests that an apportionment of fault be made by the Court or jury as to all parties, and it further requests a judgment or declaration of indemnification and/or contribution against each and every party or person in accordance with the apportionment of fault and the law of New York.

WHEREFORE, it is respectfully requested that judgment be entered dismissing the action against Peloton in the entirety, granting relief consistent with the several affirmative defenses and granting such other and further relief as may be just and proper.

RESERVATIONS

1. Peloton bases its Affirmative Defenses upon the information and belief it currently possesses, and reserves the right to amend its Answer and Affirmative Defenses and assert such other affirmative defenses as may be warranted as facts and issues develop during the course of the investigation, discovery and litigation of this action.

2. Nothing set forth herein as an affirmative defense is in any way intended to waive or alter any burden of proof and is set forth to put the plaintiff on notice of defense-related issues that Peloton may raise in the course of this litigation.

Dated: New York, New York
April 17, 2023

GOLDBERG SEGALLA LLP



Matthew G. Miller
John P. Freedenberg
Attorneys for Defendant
Peloton Interactive, Inc.
711 3rd Avenue, Suite 1900
New York, New York 10017
(646) 292-8727
mmiller@goldbergsegalla.com
jfreedenberg@goldbergsegalla.com

To: Gennady Voldz, Esq.
Morgan & Morgan NY PLLC
Attorneys for Plaintiff

350 Fifth Avenue, Suite 6705
New York, New York 10018
(917) 344-7305

ATTORNEY VERIFICATION

MATTHEW G. MILLER, being duly sworn, deposes and says:

That he is a member of the law firm of **GOLDBERG SEGALLA LLP**, the attorneys for defendant, **PELTON INTERACTIVE INC., d/b/a PELOTON**, in the above entitled action; that he has read and knows the contents of the foregoing answer, and that same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Deponent further says that the grounds for his belief as to all matters therein stated upon information and belief are statements made to him by the answering defendant and papers and documents received by deponent from the answering defendant, or its representatives and which are now in his possession.

Deponent further says that the reason why this verification is made by deponent and not by the answering defendant is that its place of business/residence is not within the County of New York, where deponent has his office.

Dated: New York, New York
April 17, 2023



MATTHEW G. MILLER

CERTIFICATION

MATTHEW G. MILLER, ESQ., an attorney admitted to practice law in the Courts of the State of New York, affirms under the penalties of perjury, that the following statements are true:

1. I am the attorney for Defendant, **PELOTON INTERACTIVE INC., d/b/a PELOTON.**
2. I certify to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that presentation of Defendant's Verified Answer and the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1-a, et seq.

Dated: New York, New York
April 17, 2023



MATTHEW G. MILLER