SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

==========X

SHA-RON PIERRE-KOVLER, AS ADMINISTRATOR OF THE ESTATE OF BEVERLY PIERRE, DECEASED

Plaintiff,

-against-

NEWYORK-PRESBYTERIAN/QUEENS, THE NEW YORK PRESBYTERIAN HOSPITAL, NEW YORK PRESBYTERIAN HEATHCARE SYSTEM, INC., NEWYORK-PRESBYTERIAN PHYSICIAN SERVICES ORGANIZATION, LLC, NYP GLOBAL SERVICES, INC. (A/K/A NEW YORK-PRESBYTERIAN GLOBAL SERVICES, INC.), NEW YORK-PRESBYTERIAN GLOBAL, INC., NEWYORK-PRESBYTERIAN GLOBAL SERVICES, LLC and NEWYORK-PRESBYTERIAN HEALTHCARE SYSTEM IPA, LLC, MARGARET TIETZ NURSING AND REHABILITATION CENTER, MARGARET TIETZ CENTER FOR NURSING, PENINSULA NURSING AND REHABILITATION CENTER, AND PENINSULA GENERAL NURSING HOME CORP.

Defendant(s),

SUMMONS

Index No:
Date of Purchase:

Plaintiff designates Queens County as the place of trial

The basis of venue is PLAINTIFF'S RESIDENCE

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 2, 2023
New York, New York

Defendant(s) address(es):

SEE ANNEXED RIDER

Yours, etc.,
By: /s/ Joel M. Rubenstein
Joel M. Rubenstein, Esq.
German Rubenstein, LLP
Attorneys for Plaintiff
19 West 44th Street
Suite 1500
New York, NY 10036
(212) 704-2020

THIS ACTION IS NOT BASED UPON A CONSUMER CREDIT TRANSACTION
THIS ACTION SEEKS RECOVERY FOR PERSONAL INJURY/MEDICAL MALPRACTICE

RIDER:

Defendant(s) Address(es):

THE NEW YORK AND PRESBYTERIAN HOSPITAL
C/O New York Secretary of State

NEWYORK-PRESBYTERIAN/QUEENS
C/O New York Secretary of State

NEW YORK-PRESBYTERIAN HEATHCARE SYSTEM, INC.
C/O New York Secretary of State

NEWYORK-PRESBYTERIAN PHYSICIAN SERVICES ORGANIZATION, LLC
C/O New York Secretary of State

NYP GLOBAL SERVICES, INC
C/O New York Secretary of State

NEW YORK-PRESBYTERIAN GLOBAL, INC.
C/O New York Secretary of State

NEWYORK-PRESBYTERIAN GLOBAL SERVICES, LLC
C/O New York Secretary of State

NEWYORK-PRESBYTERIAN HEALTHCARE SYSTEM IPA, LLC
C/O New York Secretary of State

MARGARET TIETZ NURSING AND REHABILITATION CENTER,
C/O New York Secretary of State

MARGARET TIETZ CENTER FOR NURSING
164-11 Chapin Pkwy.
Jamaica, NY 11432

PENINSULA NURSING AND REHABILITATION CENTER
51-15 Beach Channel Dr.
Far Rockaway, NY, 11691

PENINSULA GENERAL NURSING HOME CORP.
C/O New York Secretary of State

PLEASE FORWARD THIS TO YOUR INSURANCE COMPANY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

==========X

SHA-RON PIERRE-KOVLER, AS ADMINISTRATOR OF THE ESTATE OF BEVERLY PIERRE, DECEASED

Plaintiff,

-against-

NEWYORK-PRESBYTERIAN/QUEENS, THE NEW YORK PRESBYTERIAN HOSPITAL, NEW YORK PRESBYTERIAN HEATHCARE SYSTEM, INC., NEWYORK-PRESBYTERIAN PHYSICIAN SERVICES ORGANIZATION, LLC, NYP GLOBAL SERVICES, INC. (A/K/A NEW YORK-PRESBYTERIAN GLOBAL SERVICES, INC.), NEW YORK-PRESBYTERIAN GLOBAL, INC., NEWYORK-PRESBYTERIAN GLOBAL SERVICES, LLC and NEWYORK-PRESBYTERIAN HEALTHCARE SYSTEM IPA, LLC, MARGARET TIETZ NURSING AND REHABILITATION CENTER, MARGARET TIETZ CENTER FOR NURSING, PENINSULA NURSING AND REHABILITATION CENTER, AND PENINSULA GENERAL NURSING HOME CORP.

Defendant(s),

==========X

VERIFIED COMPLAINT

Index No.:

Plaintiff, by his/her attorneys German Rubenstein, LLP, as and for their complaint as to the defendant(s) respectfully show to this Honorable Court and allege upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, the plaintiff Sha-Ron Pierre-Kovler, as Administrator of the Estate of Beverly Pierre, deceased (hereinafter "plaintiff") was, and still is, a resident of the State of New York, County of Queens.

2. That at all times hereinafter mentioned, the defendant, THE NEW YORK PRESBYTERIAN HOSPITAL ("New York Presbyterian"), not-for-profit corporation in the County of New York with offices in the State of New York.

3. That at all times hereinafter mentioned, the defendant, New York Presbyterian, was doing business in the State of New York.

4. That at all times hereinafter mentioned, the defendant, NEWYORK-PRESBYTERIAN/QUEENS ("New York Presbyterian – Queens"), was a domestic not-for-profit corporation duly existing under and by virtue of the laws of the State of New York.

5. That at all times hereinafter mentioned, the defendant, New York Presbyterian – Queens, was doing business in the State of New York.

6. At all times hereinafter mentioned, the defendant New York Presbyterian – Queens was located at 56-45 Main Street Flushing, NY 11355.

7. At all times hereinafter mentioned, NewYork-Presbyterian Regional Hospital Network is a division of New York Presbyterian.

8. At all times hereinafter mentioned, NewYork-Presbyterian Regional Hospital Network was comprised of NewYork-Presbyterian Hudson Valley Hospital and New York Presbyterian – Queens.

9. At all times hereinafter mentioned, the defendant New York Presbyterian – Queens was part of NewYork-Presbyterian Regional Hospital Network.

10. At all times hereinafter mentioned, the defendant, NEWYORK-PRESBYTERIAN HEATHCARE SYSTEM, INC. (hereinafter, "HEATHCARE SYSTEM"), was, and still is, a domestic not-for-profit corporation with offices in the State of New York.

11. That all times hereinafter mentioned, the defendant HEATHCARE SYSTEM was

doing business in the State of New York, pursuant to the laws of the State of New York.

12. At all times hereinafter mentioned, the defendant NEWYORK-PRESBYTERIAN PHYSICIAN SERVICES ORGANIZATION, LLC (hereinafter "PHYSICIAN SERVICES") was, and still is, a domestic limited liability company with offices in the State of New York.

13. That all times hereinafter mentioned, the defendant PHYSICIAN SERVICES was doing business in the State of New York, pursuant to the laws of the State of New York.

14. At all times hereinafter mentioned, the defendant NYP GLOBAL SERVICES, INC. (A/K/A NEW YORK-PRESBYTERIAN GLOBAL SERVICES, INC.) (hereinafter "NYP GLOBAL SERVICES") was, and still is, a domestic CORPORATION with offices in the State of New York.

15. That all times hereinafter mentioned, the defendant NYP GLOBAL SERVICES was doing business in the State of New York, pursuant to the laws of the State of New York.

16. At all times hereinafter mentioned, the defendant NEW YORK-PRESBYTERIAN GLOBAL, INC. (hereinafter "GLOBAL INC.") was, and still is, a domestic not-for-profit corporation with offices in the State of New York.

17. That all times hereinafter mentioned, the defendant GLOBAL INC. was doing business in the State of New York, pursuant to the laws of the State of New York.

18. At all times hereinafter mentioned, the defendant NEWYORK-PRESBYTERIAN GLOBAL SERVICES, LLC. (hereinafter "GLOBAL SERVICES LLC") was, and still is, a domestic limited liability company with offices in the State of New York.

19. That all times hereinafter mentioned, the defendant GLOBAL SERVICES LLC was doing business in the State of New York, pursuant to the laws of the State of New York.

20. At all times hereinafter mentioned, the defendant, NEWYORK-PRESBYTERIAN

HEALTHCARE SYSTEM IPA, LLC (hereinafter "HEALTHCARE SYSTEM IPA") was, and still is, a domestic limited liability company with offices in the State of New York.

21. That all times hereinafter mentioned, the defendant HEALTHCARE SYSTEM IPA was doing business in the State of New York, pursuant to the laws of the State of New York.

22. That at all times hereinafter mentioned, the defendant, MARGARET TIETZ NURSING AND REHABILITATION CENTER ("MT Rehab"), was a domestic corporation duly existing under and by virtue of the laws of the State of New York

23. That at all times hereinafter mentioned, the defendant, MT Rehab, was a domestic corporation duly existing under and by virtue of the laws of the State of New York

24. That at all times hereinafter mentioned, the defendant, MARGARET TIETZ CENTER FOR NURSING ("MT Nursing"), was a foreign corporation duly authorized to conduct business in the State of New York.

25. That at all times hereinafter mentioned, the defendant, MT Nursing was doing business in the State of New York.

26. That at all times hereinafter mentioned, the defendant, PENINSULA NURSING AND REHABILITATION CENTER ("PENINSULA NURSING"), was a domestic corporation duly existing under and by virtue of the laws of the State of New York

27. That at all times hereinafter mentioned, the defendant, PENINSULA NURSING, was a foreign corporation duly authorized to conduct business in the State of New York.

28. That at all times hereinafter mentioned, the defendant, PENINSULA NURSING was doing business in the State of New York.

29. That at all times hereinafter mentioned, the defendant, PENINSULA GENERAL NURSING HOME CORP. ("PENINSULA GENERAL"), was a domestic corporation duly existing under and by virtue of the laws of the State of New York

30. That at all times hereinafter mentioned, the defendant, PENINSULA GENERAL, was a foreign corporation duly authorized to conduct business in the State of New York.

31. That at all times hereinafter mentioned, the defendant, PENINSULA GENERAL was doing business in the State of New York.

32. On or about August 2, 2020 – March 16, 2022, and prior and subsequent thereto, plaintiff came under the care and treatment of one or all of the defendants, simultaneously and/or at various times.

33. On or about August 2, 2020 – March 16, 2022, prior and subsequent thereto, plaintiff sought care and treatment from one or all of the defendants, simultaneously and/or at various times.

34. At all times hereinafter mentioned, and prior to and on August 2, 2020 – March 16, 2022, the defendants, jointly and severally, provided medical treatment, counseling, and services to plaintiff.

35. On or about February 3, 2021, prior and subsequent thereto, plaintiff was residing and receiving services at the facility/nursing home known as Margaret Tietz Nursing and Rehabilitation Center (the "Margaret Tietz Nursing Home"), located at 164-11 Chapin Pkwy, Jamaica Hills, NY 11432.

36. On or about February 3, 2021, prior and subsequent thereto, plaintiff sought care and treatment at the medical facility/hospital known as NewYork-Presbyterian Queens (the "Hospital"), located at 56-45 Main Street, Flushing, NY, in the County of Queens, City and State of New York.

37. Upon leaving the Margaret Tietz Nursing Home on February 3, 2021, plaintiff had a bacterial infection.

38. Upon leaving the Margaret Tietz Nursing Home on February 3, 2021, plaintiff had a pressure sore, bedsore, or skin ulcer of the sacral region.

39. Upon presenting at the Hospital on February 3, 2021, plaintiff had a bacterial infection.

40. Upon presenting at the Hospital on February 3, 2021, plaintiff had a pressure sore, bedsore, or skin ulcer of the sacral region.

41. On or about April 22, 2021, plaintiff was discharged from the Hospital.

42. At the time of plaintiff's discharge from the Hospital, plaintiff did not have plaintiff had a bacterial infection.

43. At the time of plaintiff's discharge from the Hospital, plaintiff had a pressure sore, bedsore, or skin ulcer of the sacral region.

44. That subsequent to April 22, 20021, plaintiff resided at 5015 Beach Channel Drive, Far Rockaway, NY 11691 ("Peninsula Nursing Home").

45. Upon presenting at the Peninsula Nursing Home, plaintiff had a pressure sore, bedsore, or skin ulcer of the sacral region.

FIRST CAUSE OF ACTION

46. On and about February 3, 2021 and before and subsequent thereto, New York Presbyterian, owned the Hospital.

47. That at all times herein mentioned, the defendant, New York Presbyterian, operated the Hospital.

48. On and about February 3, 2021 and before and subsequent thereto, New York Presbyterian – Queens, owned the Hospital.

49. That at all times herein mentioned, the defendant, New York Presbyterian – Queens, operated the Hospital.

50. On and about February 3, 2021 and before and subsequent thereto, HEATHCARE SYSTEM, owned the Hospital.

51. That at all times herein mentioned, the defendant, HEATHCARE SYSTEM, operated the Hospital.

52. On and about February 3, 2021 and before and subsequent thereto, PHYSICIAN SERVICES, owned the Hospital.

53. That at all times mentioned herein, the defendant, PHYSICIAN SERVICES, operated the Hospital.

54. On and about February 3, 2021 and before and subsequent thereto, NYP GLOBAL SERVICES, owned the Hospital.

55. That at all times herein mentioned, the defendant, NYP GLOBAL SERVICES, operated the Hospital.

56. On and about February 3, 2021 and before and subsequent thereto, GLOBAL INC., owned the Hospital.

57. That at all times mentioned herein, the defendant, GLOBAL INC., operated the Hospital.

58. On and about February 3, 2021 and before and subsequent thereto, GLOBAL SERVICES LLC, owned the Hospital.

59. That at all times herein mentioned, the defendant, GLOBAL SERVICES LLC, operated the Hospital.

60. On and about February 3, 2021 and before and subsequent thereto, HEALTHCARE SYSTEM IPA, owned the Hospital.

61. That at all times herein mentioned, the defendant, HEALTHCARE SYSTEM IPA, operated the Hospital.

62. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the Hospital as a health care facility, as licensed and defined under New York Public Health Law section 2801(1).

63. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the Hospital as a facility that provided services, including diagnosis and treatment services, by or under the supervision of a physician, pursuant to New York Public Health Law section 2801(1).

64. That at all times mentioned herein, defendants, and each of them, jointly and severally, operated the Hospital, subject to the provisions of New York Public Health Law section 2801-d and 2803.

65. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the Hospital, subject to the provisions of 42 U.S.C. section 1395(i), et seq., 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

66. That at all times herein mentioned, the Hospital was certified to receive reimbursement under the Medicare and Medicaid programs and, therefore, was subject to the regulations governing adequate and appropriate standards of care.

67. That at all times herein mentioned, the Hospital was certified to receive reimbursement under the Medicare and Medicaid programs and, therefore, was subject to the regulations governing adequate and appropriate standards of care.

68. That at all times herein mentioned, the defendants, and each of them, jointly and severally, were/was certified to receive reimbursement under the Medicare and Medicaid programs and, therefore, was subject to the regulations governing adequate and appropriate standards of care.

69. That at all times herein mentioned, the defendants, and each of them, jointly and severally, represented that the Hospital was competent and capable of diagnosing, treating, supervising, and protecting people with various health infirmities, including the plaintiff here.

70. That at all times hereinafter mentioned, the defendants, and each of them, jointly and severally, held the Hospital out as duly qualified and capable of rendering competent medical and nursing and supervisory care, treatment, supervision, and protection and to the general public, including the plaintiff herein.

71. That at all times hereinafter mentioned, it was the duty of the defendants, and each of them, jointly and severally, and their respective physicians, servants, agents, affiliated nurses, attendants and/or employees to provide for the safety, security, health, protection, and well-being of patients of the Hospital.

72. That at all times hereinafter mentioned, and prior and subsequent thereto, the defendants, and each of them, jointly and severally, together with their respective agents, servants and/or employees undertook for good and valuable consideration the care and treatment of the plaintiff and were obligated to care for plaintiff in accordance with the standards of care and treatment generally accepted in the community, and to use in said care and treatment of

plaintiff approved methods in general use, reasonable care and skill, and defendant's best judgment.

73. That at all times hereinafter mentioned, the defendants, and each of them, jointly and severally, did agree to and did hold the Hospital and itself out as maintaining the Hospital as an adequate and competent staff, including doctors, nurses, and other medical and nursing personnel, and further warranted that the members of its said staff were qualified and trained for the purpose of providing such medical, and nursing care, advice, referral, recommendation, supervision, protection, management, treatment and attention as they would be required to provide in accordance with the accepted standards of medical/hospital practice to persons seeking and requiring such care, attention, protection, safeguarding and supervision, including the plaintiff herein, and said defendant further held itself out as being equipped in sufficient manner to render such care, advice, supervision, protection, safeguarding, referral, recommendation, management and treatment at the Hospital.

74. That at all times hereinafter mentioned, the Hospital was and is fully accredited by the Joint Commission on Accreditation of Health Care Organizations and said defendant's manuals, rules, regulations, practices, procedures, protocols, techniques, and functions were required to be in accordance with the standards and conditions of the said Joint Commission on Accreditation of Health Care Organizations.

75. That the defendants, and each of them, jointly and severally, were/was responsible for the negligent acts and omissions of those working at and/or employed by the Hospital, including the Hospital’s agents and servants, affiliated nurses, doctors, attendants, and/or employees at the Hospital under the theory of respondeat superior.

76. That the defendants, and each of them, jointly and severally, were/was responsible for the negligent acts and omissions of its agents, servants, affiliated nurses, doctors, attendants, and/or employees at the Hospital under the theory of respondeat superior.

77. That from February 3, 2021 to April 22, 20021, the plaintiff herein was under the exclusive care, custody, and control of the defendants, jointly and severally.

78. That from February 3, 2021 to April 22, 20021, the plaintiff herein was under the exclusive care, custody, and control of the Hospital.

79. That from August 3, 2020 to February 3, 2021, the plaintiff herein was under the exclusive care, custody, and control of the defendants, jointly and severally.

80. That commencing on/or about August 3, 2020, and subsequent thereto, the defendants, together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel did, jointly and severally, undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, hospital, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Hospital.

81. That commencing on/or about February 3, 2021 to April 22, 2021, and subsequent thereto the plaintiff was an admitted patient and/or resident at the Hospital.

82. That commencing on/or about February 3, 2021 to April 22, 2021, and subsequent thereto, the defendants, together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the Hospital facility did, jointly and severally, undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Hospital.

83. That commencing on/or about February 3, 2021 to April 22, 2021, and subsequent thereto, the plaintiff was under the care and custody of the defendants, jointly and severally, and its servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel at the Hospital in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and treatment to be rendered to the plaintiff, by the said defendants, its servants, agents, doctors, nurses, and/or employees at the Hospital.

84. That commencing on/or about August 3, 2020, and subsequent thereto, the plaintiff was under the care and custody of the defendants, jointly and severally, and its servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel at the Hospital in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and treatment to be rendered to the plaintiff, by the said defendants, its servants, agents, doctors, nurses, and/or employees at the Hospital.

85. That the defendants, and each of them, jointly and severally, together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the said Hospital did undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Hospital.

86. That the defendants, and each of them, jointly and severally, together with their respective servants, agents, affiliated physicians, residents, interns, nurses, aides, employees and/or medical personnel at the Hospital undertook to and/or did order, recommend, request, advise, refer, perform, render, or provide medical, surgical and/or nursing examinations,

evaluations, consultations, supervision, safeguarding, protection, care, treatments, procedures, protocols, tests, studies, services, or advice for and to the plaintiff.

87. That the foregoing treatment and management of the plaintiff by the defendants, and each of them, jointly and severally, as well as their respective servants, agents, affiliated physicians, residents, interns, surgeons, nurses, aides, employees and/or medical personnel at the Hospital was performed in such a careless, negligent, wanton, reckless, heedless, and willful manner as to manifest and evidence a reckless disregard for the safety and well-being of others, including the plaintiff herein, departed and not in accordance with the good and accepted standards of nursing home, medical and hospital care and practice, thereby causing the plaintiff to sustain severe injuries and damages.

88. That the nursing, medical, and hospital procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided to plaintiff by the defendants, and each of them, jointly and severally,, were ordered, requested, recommended, advised, performed, rendered, or provided by persons who were incompetent or unqualified to order, recommend, request, advise, perform, render or provide examinations, evaluations, care, treatments, procedures, tests, studies, services or advice to and/or for the plaintiff.

89. That the defendants, and each of them, jointly and severally, and those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice to and/or for the plaintiff at said nursing homes and the Hospital were incompetent and/or unqualified to order, recommend, request, advise, perform, render, or provide such professional examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice of, for, and to plaintiff

90. The d defendants, and each of them, jointly and severally, failed to promulgate, enforce, abide by, or follow appropriate rules, regulations, guidelines, procedures, policies, or protocols with respect to the performing, rendering or providing of medical, nursing, hospital, medical, surgical, and/or nursing procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice to and/or for the patients at the Hospital, including the plaintiff herein.

91. That by reason of the foregoing, the plaintiff sustained serious personal injuries, bedsores, ulcers, and other medical conditions which resulted in severe and excruciating conscious pain, suffering and other related damages which resulted from the injuries sustained by reason of the negligence and malpractice of the defendants.

92. That the foregoing personal injuries and the severe pain and suffering were caused solely by reason of the carelessness, negligence, malpractice, departure from the accepted standard of care, from the wanton and willful disregard on the part of the defendants, and each of them, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

93. That the foregoing negligence and malpractice claimed was done with reckless, grossly negligent disregard for the welfare, health, and well-being of the plaintiff.

94. On or about August 3, 2020, and prior and subsequent thereto, the defendants together with said defendants' agents, servants and/or employees, jointly and severally, were careless, reckless, negligent, and grossly reckless in rendering medical services, care, and treatment in that the defendants departed from good and accepted standards of medical practice: failed to act in accordance with accepted standards; failed to treat the plaintiff as a reasonably prudent physician would have; failed to properly diagnose and treat the plaintiff; failed to

conduct proper testing, and that the defendants were otherwise careless, reckless and negligent in the instance.

95. That by reason of the foregoing, plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred further medical care, hospitalization, nursing home and/or rehabilitation facility and/or medical expenses in an effort to be cured of said injuries; and plaintiff has suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to the negligence and malpractice of the defendants, all to decedent's great damage.

96. That this action falls within one or more of the exceptions set forth in CPLR 1602.

97. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages herein, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants owed the plaintiff a non-delegable duty of care.

98. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted with reckless disregard of the safety of others.

99. Pursuant to CPLR Section 1602(2)(iv), the defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss,

irrespective of the provisions of the CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omissions of each other and/or others who caused or contributed to the plaintiff's damages

100. Pursuant to CPLR Section 1602(11), defendants are jointly and severally liable for all of plaintiff's and/or decedent's damages, including but not limited to plaintiff's and/or decedent's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted knowingly or intentionally, and in concert, to cause the acts or failures which are a proximate cause of plaintiff's injuries.

SECOND CAUSE OF ACTION

101. That plaintiff repeats, reiterates and realleges each and every allegation as contained above of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

102. On and about February 3, 2021 and before and subsequent thereto, MT Rehab, owned the Margaret Tietz Nursing Home.

103. At all times herein mentioned, the defendant, MT Rehab, operated the Margaret Tietz Nursing Home as a health care facility, as licensed and defined under New York Public Health Law section 2801(2),(3).

104. That at all times herein mentioned, the defendant, MT Rehab, operated the Margaret Tietz Nursing Home as a health care facility that provided nursing care to sick, invalid, infirm, disabled, or convalescent persons, in addition to lodging, board and health-related services, pursuant to New York Public Health Law section 2801(2,(3).

105. That at all times herein mentioned, the defendant, MT Rehab operated the Margaret Tietz Nursing Home as a residential health care facility and nursing home, subject to the provisions of New York Public Health Law section 2801-d and 2803-c.

106. That at all times herein mentioned, the defendant, MT Rehab, operated the Margaret Tietz Nursing Home as a health care facility and nursing home, subject to the provisions of 42 U.S.C. section 1395(i), et seq., 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

107. That at all times mentioned herein, the defendant, MT Rehab, operated the Margaret Tietz Nursing Home as a residential health care facility and nursing home, as licensed and defined under New York Public Health Law section 2801(2,(3).

108. On and about February 3, 2021 and before and subsequent thereto, MT NURSING, owned the Margaret Tietz Nursing Home.

109. That at all times herein mentioned, the defendant, MT NURSING, operated the Margaret Tietz Nursing Home as a health care facility, as licensed and defined under New York Public Health Law section 2801(2),(3).

110. That at all times herein mentioned, the defendant, MT NURSING, operated the Margaret Tietz Nursing Home as a health care facility that provided nursing care to sick, invalid, infirm, disabled, or convalescent persons, in addition to lodging, board and health-related services, pursuant to New York Public Health Law section 2801(2,(3).

111. That at all times mentioned herein, the defendant, MT NURSING operated the Margaret Tietz Nursing Home as a residential health care facility and nursing home, subject to the provisions of New York Public Health Law section 2801-d and 2803-c.

112. That at all times herein mentioned, the defendant, MT NURSING, operated the Margaret Tietz Nursing Home as a health care facility and nursing home, subject to the provisions of 42 U.S.C. section 1395(i), et seq., 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

113. That at all times mentioned herein, the defendant, MT NURSING, operated the Margaret Tietz Nursing Home as a residential health care facility and nursing home, as licensed and defined under New York Public Health Law section 2801(2,(3).

114. That at all times herein mentioned, the defendant, Margaret Tietz Nursing Home was certified to receive reimbursement under the Medicare and Medicaid programs and, therefore, was subject to the regulations governing adequate and appropriate standards of care.

115. That at all times herein mentioned, the defendants, MT Rehab and MT NURSING, jointly and severally, represented that Margaret Tietz Nursing Home was competent and capable of treating, supervising, and protecting people with various health infirmities, including the plaintiff here.

116. That at all times hereinafter mentioned, the defendants, MT Rehab and MT NURSING, jointly and severally, held the Margaret Tietz Nursing Home out as a nursing home duly qualified and capable of rendering competent medical and nursing and supervisory care, treatment, supervision, and protection and to the general public, including the plaintiff herein.

117. That at all times hereinafter mentioned, it was the duty of defendants, MT Rehab and MT NURSING, jointly and severally, its servants, agents, affiliated nurses, attendants and/or employees to provide for the safety, security, health, protection, and well-being of patients of the Margaret Tietz Nursing Home.

118. That at all times hereinafter mentioned, and prior and subsequent thereto, the defendants, MT Rehab and MT NURSING, jointly and severally, together with their respective

agents, servants and/or employees undertook for good and valuable consideration the care and treatment of the plaintiff and were obligated to care for plaintiff in accordance with the standards of care and treatment generally accepted in the community, and to use in said care and treatment of plaintiff approved methods in general use, reasonable care and skill, and defendants' best judgment.

119. That at all times hereinafter mentioned, the defendant, defendants, MT Rehab and MT NURSING, jointly and severally, did agree to and did hold itself out, respectively, as maintaining at the said Margaret Tietz Nursing Home, an adequate and competent staff, including doctors, nurses, and other medical and nursing personnel, and further warranted that the members of its said staff were qualified and trained for the purpose of providing such medical, and nursing care, advice, referral, recommendation, supervision, protection, management, treatment and attention as they would be required to provide in accordance with the accepted standards of medical/Margaret Tietz Nursing Home practice to persons seeking and requiring such care, attention, protection, safeguarding and supervision, including the plaintiff herein, and said defendant further held itself out as being equipped in sufficient manner to render such care, advice, supervision, protection, safeguarding, referral, recommendation, management and treatment at the Margaret Tietz Nursing Home.

120. That at all times hereinafter mentioned, Margaret Tietz Nursing Home was and is fully accredited by the Joint Commission on Accreditation of Health Care Organizations and said defendant's manuals, rules, regulations, practices, procedures, protocols, techniques, and functions were required to be in accordance with the standards and conditions of the said Joint Commission on Accreditation of Health Care Organizations.

121. That the defendants, MT Rehab and MT NURSING, were, jointly and severally, responsible for the negligent acts and omissions of their respective agents, servants, affiliated nurses, doctors, attendants, and/or employees at the Margaret Tietz Nursing Home under the theory of respondeat superior.

122. That from at all times herein mentioned, the plaintiff herein was under the exclusive care, custody, and control of the defendant Margaret Tietz Nursing Home.

123. That commencing on/or about August 3, 2020, and prior and subsequent thereto, the plaintiff was an admitted patient and/or resident at the Margaret Tietz Nursing Home.

124. That commencing on/or about August 3, 2020, and prior and subsequent thereto, the defendants, MT Rehab and MT NURSING, were, jointly and severally together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the Margaret Tietz Nursing Home facility did undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Margaret Tietz Nursing Home.

125. That commencing on/or about August 3, 2020 and prior and subsequent thereto, the plaintiff was under the care and custody of the defendants, MT Rehab and MT NURSING, jointly and severally, and their respective servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel at the Margaret Tietz Nursing Home in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and treatment to be rendered to the plaintiff, by the said defendants, its servants, agents, doctors, nurses, and/or employees at the Margaret Tietz Nursing Home.

126. That commencing on/or about August 3, 2020 and prior and subsequent thereto, the plaintiff was under the care and custody of the defendants, jointly and severally, and their respective servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and treatment to be rendered to the plaintiff, by the said defendants, and their respective servants, agents, doctors, nurses, and/or employees.

127. That the defendants, MT Rehab and MT NURSING, jointly and severally, together with its servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the said Margaret Tietz Nursing Home did undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Margaret Tietz Nursing Home.

128. That the defendants, MT Rehab and MT NURSING, jointly and severally, together with their respective servants, agents, affiliated physicians, residents, interns, nurses, aides, employees and/or medical personnel at the Margaret Tietz Nursing Home undertook to and/or did order, recommend, request, advise, refer, perform, render, or provide medical, surgical and/or nursing examinations, evaluations, consultations, supervision, safeguarding, protection, care, treatments, procedures, protocols, tests, studies, services, or advice for and to the plaintiff.

129. That the foregoing treatment and management of the plaintiff by the defendants, MT Rehab and MT NURSING, jointly and severally, as well as their servants, agents, affiliated physicians, residents, interns, surgeons, nurses, aides, employees and/or medical personnel at the Margaret Tietz Nursing Home was performed in such a careless, negligent, wanton, reckless, heedless, and willful manner as to manifest and evidence a reckless disregard for the safety and

well-being of others, including the plaintiff herein, departed and not in accordance with the good and accepted standards of nursing home, medical and Margaret Tietz Nursing Home care and practice, thereby causing the plaintiff to sustain severe injuries and damages.

130. That the foregoing treatment and management of the plaintiff by the defendants, jointly and severally, as well as their servants, agents, affiliated physicians, residents, interns, surgeons, nurses, aides, employees and/or medical personnel was performed in such a careless, negligent, wanton, reckless, heedless, and willful manner as to manifest and evidence a reckless disregard for the safety and well-being of others, including the plaintiff herein, departed and not in accordance with the good and accepted standards of nursing home, medical care and practice, thereby causing the plaintiff to sustain severe injuries and damages.

131. That the nursing, medical, and nursing home procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided to plaintiff by the defendants, MT Rehab and MT NURSING, jointly and severally, were ordered, requested, recommended, advised, performed, rendered, or provided by persons who were incompetent or unqualified to order, recommend, request, advise, perform, render or provide examinations, evaluations, care, treatments, procedures, tests, studies, services or advice to and/or for the plaintiff.

132. That the defendants, MT Rehab and MT NURSING, jointly and severally, and those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice to and/or for the plaintiff at said nursing home and Margaret Tietz Nursing Homes were incompetent and/or unqualified to order, recommend, request, advise, perform, render, or

provide such professional examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice of, for, and to plaintiff

133. The defendants, MT Rehab and MT NURSING, jointly and severally, failed to promulgate, enforce, abide by, or follow appropriate rules, regulations, guidelines, procedures, policies, or protocols with respect to the performing, rendering or providing of medical, nursing, Margaret Tietz Nursing Home, medical, surgical, and/or nursing procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice to and/or for the patients at the Margaret Tietz Nursing Home, including the plaintiff herein.

134. That by reason of the foregoing, the plaintiff sustained serious personal injuries, bedsores, ulcers, and other medical conditions which resulted in severe and excruciating conscious pain, suffering and other related damages which resulted from the injuries sustained by reason of the negligence and malpractice of the defendants.

135. That the foregoing personal injuries and the severe pain and suffering were caused solely by reason of the carelessness, negligence, malpractice, departure from the accepted standard of care, from the wanton and willful disregard on the part of the defendants, MT Rehab and MT NURSING, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

136. That the foregoing negligence claimed was done with reckless, grossly negligent disregard for the welfare, health, and well-being of the plaintiff.

137. On or about August 3, 2020, and prior and subsequent thereto, the defendants together with said defendants' agents, servants and/or employees, jointly and severally, were careless, reckless, negligent, and grossly reckless in rendering medical services, care, and treatment in that the defendants departed from good and accepted standards of medical practice:

failed to act in accordance with accepted standards; failed to treat the plaintiff as a reasonably prudent physician would have; failed to properly diagnose and treat the plaintiff; failed to conduct proper testing, and that the defendants were otherwise careless, reckless and negligent in the instance.

138. That by reason of the foregoing, plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred further medical care, hospitalization, nursing home and/or rehabilitation facility and/or medical expenses in an effort to be cured of said injuries; and plaintiff has suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to the negligence and malpractice of the defendants, all to decedent's great damage.

139. That this action falls within one or more of the exceptions set forth in CPLR 1602.

140. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages herein, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants owed the plaintiff a non-delegable duty of care.

141. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted with reckless disregard of the safety of others.

142. Pursuant to CPLR Section 1602(2)(iv), the defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omissions of each other and/or others who caused or contributed to the plaintiff's damages

143. Pursuant to CPLR Section 1602(11), defendants are jointly and severally liable for all of plaintiff's and/or decedent's damages, including but not limited to plaintiff's and/or decedent's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted knowingly or intentionally, and in concert, to cause the acts or failures which are a proximate cause of plaintiff's injuries.

THIRD CAUSE OF ACTION

144. That plaintiff repeats, reiterates and realleges each and every allegation as contained above of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

145. On and about August 3, 2020 and before and subsequent thereto, PENINSULA NURSING, owned Peninsula Nursing Home.

146. That at all times mentioned herein, the defendant, PENINSULA NURSING, operated the Peninsula Nursing Home as a health care facility, as licensed and defined under New York Public Health Law section 2801(2),(3).

147. That at all times herein mentioned, the defendant, PENINSULA NURSING, operated the Peninsula Nursing Home as a health care facility that provided nursing care to sick, invalid, infirm, disabled, or convalescent persons, in addition to lodging, board and health-related services, pursuant to New York Public Health Law section 2801(2,(3).

148. That at all times herein mentioned, the defendant, PENINSULA NURSING operated the Peninsula Nursing Home as a residential health care facility and nursing home, subject to the provisions of New York Public Health Law section 2801-d and 2803-c.

149. That at all times herein mentioned, the defendant, PENINSULA NURSING, operated the Peninsula Nursing Home as a health care facility and nursing home, subject to the provisions of 42 U.S.C. section 1395(i), et seq., 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

150. That at all times herein mentioned, the defendant, PENINSULA NURSING, operated the Peninsula Nursing Home as a residential health care facility and nursing home, as licensed and defined under New York Public Health Law section 2801(2,(3).

151. On and about August 3, 2020 and before and subsequent thereto, PENINSULA GENERAL, owned the Peninsula Nursing Home.

152. That at all times mentioned herein, the defendant, PENINSULA GENERAL, operated the Peninsula Nursing Home as a health care facility, as licensed and defined under New York Public Health Law section 2801(2),(3).

153. That at all times herein mentioned, the defendant, PENINSULA GENERAL, operated the Peninsula Nursing Home as a health care facility that provided nursing care to sick, invalid, infirm, disabled, or convalescent persons, in addition to lodging, board and health-related services, pursuant to New York Public Health Law section 2801(2,(3).

154. That at all times mentioned herein, the defendant, PENINSULA GENERAL operated the Peninsula Nursing Home as a residential health care facility and nursing home, subject to the provisions of New York Public Health Law section 2801-d and 2803-c.

155. That at all times herein mentioned, the defendant, PENINSULA GENERAL, operated the Peninsula Nursing Home as a health care facility and nursing home, subject to the provisions of 42 U.S.C. section 1395(i), et seq., 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

156. That at all times mentioned herein, the defendant, PENINSULA GENERAL, operated the Peninsula Nursing Home as a residential health care facility and nursing home, as licensed and defined under New York Public Health Law section 2801(2,(3).

157. That at all times mentioned herein, the defendant, Peninsula Nursing Home was certified to receive reimbursement under the Medicare and Medicaid programs and, therefore, was subject to the regulations governing adequate and appropriate standards of care.

158. That at all times herein mentioned, the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly, and severally, represented that Peninsula Nursing Home was competent and capable of treating, supervising, and protecting people with various health infirmities, including the plaintiff here.

159. That at all times hereinafter mentioned, the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, held the Peninsula Nursing Home out as a nursing home duly qualified and capable of rendering competent medical and nursing and supervisory care, treatment, supervision and protection and to the general public, including the plaintiff herein.

160. That at all times hereinafter mentioned, it was the duty of defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, its servants, agents, affiliated nurses, attendants and/or employees to provide for the safety, security, health, protection, and well-being of patients of the Peninsula Nursing Home.

161. That at all times hereinafter mentioned, and prior and subsequent thereto, the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, together with their respective agents, servants and/or employees undertook for good and valuable consideration the care and treatment of the plaintiff and were obligated to care for plaintiff in accordance with the standards of care and treatment generally accepted in the community, and to use in said care and treatment of plaintiff approved methods in general use, reasonable care and skill, and defendants' best judgment.

162. That at all times hereinafter mentioned, the defendant, defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, did agree to and did hold itself out, respectively, as maintaining at the said Peninsula Nursing Home, an adequate and competent staff, including doctors, nurses, and other medical and nursing personnel, and further warranted that the members of its said staff were qualified and trained for the purpose of providing such medical, and nursing care, advice, referral, recommendation, supervision, protection, management, treatment and attention as they would be required to provide in accordance with the accepted standards of medical/Peninsula Nursing Home practice to persons seeking and requiring such care, attention, protection, safeguarding and supervision, including the plaintiff herein, and said defendant further held itself out as being equipped in sufficient manner to render such care, advice, supervision, protection, safeguarding, referral, recommendation, management and treatment at the Peninsula Nursing Home.

163. That at all times hereinafter mentioned, Peninsula Nursing Home was and is fully accredited by the Joint Commission on Accreditation of Health Care Organizations and said defendant's manuals, rules, regulations, practices, procedures, protocols, techniques and

functions were required to be in accordance with the standards and conditions of the said Joint Commission on Accreditation of Health Care Organizations.

164. That the defendants, PENINSULA NURSING and PENINSULA GENERAL, were, jointly and severally, responsible for the negligent acts and omissions of their respective agents, servants, affiliated nurses, doctors, attendants, and/or employees at the Peninsula Nursing Home under the theory of respondeat superior.

165. That from at all times herein mentioned, the plaintiff herein was under the exclusive care, custody and control of the defendant Peninsula Nursing Home.

166. That subsequent to April 20, 2021, the plaintiff was an admitted patient and/or resident at the Peninsula Nursing Home.

167. That subsequent to April 20, 2021, the defendants, PENINSULA NURSING and PENINSULA GENERAL, were, jointly and severally together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the Peninsula Nursing Home facility did undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Peninsula Nursing Home.

168. That subsequent to April 20, 2021, the plaintiff was under the care and custody of the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, and their respective servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel at the Peninsula Nursing Home in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and

treatment to be rendered to the plaintiff, by the said defendants, its servants, agents, doctors, nurses, and/or employees at the Peninsula Nursing Home.

169. That commencing on/or about August 3, 2020, the plaintiff was under the care and custody of the defendants, jointly and severally, and their respective servants, agents, affiliated nurses, aides, employees, doctors, and/or medical personnel in connection with certain medical and nursing care, management, supervision, safeguarding, fall prevention, bed sore prevention, protection and treatment to be rendered to the plaintiff, by the said defendants, and their respective servants, agents, doctors, nurses, and/or employees.

170. That the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, together with its servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the said Peninsula Nursing Home did undertake the treatment, supervision, safeguarding, protection and management of the plaintiff providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the plaintiff as a patient at the Peninsula Nursing Home.

171. That the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, together with their respective servants, agents, affiliated physicians, residents, interns, nurses, aides, employees and/or medical personnel at the Peninsula Nursing Home undertook to and/or did order, recommend, request, advise, refer, perform, render, or provide medical, surgical and/or nursing examinations, evaluations, consultations, supervision, safeguarding, protection, care, treatments, procedures, protocols, tests, studies, services, or advice for and to the plaintiff.

172. That the foregoing treatment and management of the plaintiff by the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, as well as their

servants, agents, affiliated physicians, residents, interns, surgeons, nurses, aides, employees and/or medical personnel at the Peninsula Nursing Home was performed in such a careless, negligent, wanton, reckless, heedless, and willful manner as to manifest and evidence a reckless disregard for the safety and well-being of others, including the plaintiff herein, departed and not in accordance with the good and accepted standards of nursing home, medical and Peninsula Nursing Home care and practice, thereby causing the plaintiff to sustain severe injuries and damages.

173. That the foregoing treatment and management of the plaintiff by the defendants, jointly and severally, as well as their servants, agents, affiliated physicians, residents, interns, surgeons, nurses, aides, employees and/or medical personnel was performed in such a careless, negligent, wanton, reckless, heedless, and willful manner as to manifest and evidence a reckless disregard for the safety and well-being of others, including the plaintiff herein, departed and not in accordance with the good and accepted standards of nursing home, medical care and practice, thereby causing the plaintiff to sustain severe injuries and damages.

174. That the nursing, medical, and nursing home procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided to plaintiff by the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, were ordered, requested, recommended, advised, performed, rendered, or provided by persons who were incompetent or unqualified to order, recommend, request, advise, perform, render or provide examinations, evaluations, care, treatments, procedures, tests, studies, services or advice to and/or for the plaintiff.

175. That the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, and those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice to and/or for the plaintiff at said nursing home and Peninsula Nursing Homes were incompetent and/or unqualified to order, recommend, request, advise, perform, render, or provide such professional examinations, evaluations, care, treatments, procedures, tests, studies, services, or advice of, for, and to plaintiff

176. The defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, failed to promulgate, enforce, abide by, or follow appropriate rules, regulations, guidelines, procedures, policies, or protocols with respect to the performing, rendering or providing of medical, nursing, Peninsula Nursing Home, medical, surgical, and/or nursing procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice to and/or for the patients at the Peninsula Nursing Home, including the plaintiff herein.

177. That by reason of the foregoing, the plaintiff sustained serious personal injuries, bedsores, ulcers, and other medical conditions which resulted in severe and excruciating conscious pain, suffering and other related damages which resulted from the injuries sustained by reason of the negligence and malpractice of the defendants.

178. That the foregoing personal injuries and the severe pain and suffering were caused solely by reason of the carelessness, negligence, malpractice, departure from the accepted standard of care, from the wanton and willful disregard on the part of the defendants, PENINSULA NURSING and PENINSULA GENERAL, jointly and severally, without any negligence on the part of the plaintiff contributing thereto.

179. That the foregoing negligence claimed was done with reckless, grossly negligent disregard for the welfare, health, and well-being of the plaintiff.

180. On or about August 3, 2020, and prior and subsequent thereto, the defendants together with said defendants' agents, servants and/or employees, jointly and severally, were careless, reckless, negligent, and grossly reckless in rendering medical services, care, and treatment in that the defendants departed from good and accepted standards of medical practice: failed to act in accordance with accepted standards; failed to treat the plaintiff as a reasonably prudent physician would have; failed to properly diagnose and treat the plaintiff; failed to conduct proper testing, and that the defendants were otherwise careless, reckless and negligent in the instance.

181. That by reason of the foregoing, plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred further medical care, hospitalization, nursing home and/or rehabilitation facility and/or medical expenses in an effort to be cured of said injuries; and plaintiff has suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to the negligence and malpractice of the defendants, all to decedent's great damage.

182. That this action falls within one or more of the exceptions set forth in CPLR 1602.

183. Pursuant to CPLR Section 1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages herein, including but not limited to plaintiff's non-economic loss,

irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants owed the plaintiff a non-delegable duty of care.

184. Pursuant to CPLR Section 1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted with reckless disregard of the safety of others.

185. Pursuant to CPLR Section 1602(2)(iv), the defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that said defendants are vicariously liable for the negligent acts and omissions of each other and/or others who caused or contributed to the plaintiff's damages

186. Pursuant to CPLR Section 1602(11), defendants are jointly and severally liable for all of plaintiff's and/or decedent's damages, including but not limited to plaintiff's and/or decedent's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendants acted knowingly or intentionally, and in concert, to cause the acts or failures which are a proximate cause of plaintiff's injuries.

FOURTH CAUSE OF ACTION

187. That plaintiff repeats, reiterates and realleges each and every allegation as contained above of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

188. That plaintiff repeats, reiterates and realleges each and every allegation as contained in the First and Second Causes of Action of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

189. That at all times herein referred to, pursuant to Public Health Law 2801-d, it was the duty of the defendants to provide the plaintiff with all rights granted to their residents as enumerated in Public Health Law 2803-c.

190. The injuries suffered by the plaintiff were a direct and proximate result of the failure of the said defendants' failure, jointly and severally, to comply with their statutory obligations under Public Health Law 2801-d and 2803-c.

191. As a result of the foregoing, the said defendants deprived the plaintiff of her rights under Public Health Law 2801-d and 2803-c.

192. As a result of the foregoing, the defendants violated the plaintiff's rights under Public Health Law 2801-d and 2803-c.

193. The acts, omissions and violations by defendants were pervasive, persistent and continuous, grossly negligent and evinced a reckless disregard for the safety, well-being and lawful rights of the decedent.

194. As a result of the foregoing, pursuant to Public Health Law 2801-d (2), plaintiff is entitled to an award of compensatory damages.

195. As a result of the foregoing, pursuant to Public Health Law 2801-d (2), plaintiff is entitled to an award of punitive damages.

196. As a result of the foregoing, pursuant to Public Health Law 2801-d (6), plaintiff is entitled to an award of attorneys' fees.

197. That by reason of the foregoing, the plaintiff has sustained serious injuries and damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

FIFTH CAUSE OF ACTION

198. That plaintiff repeats, reiterates and realleges each and every allegation as contained above of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

199. That at all times herein mentioned, the defendants, their servants, agents, affiliated physicians, nurses, attendants, aides and/or employees failed, neglected and omitted to promptly, properly, timely and adequately detect, discover, diagnose, consider, evaluate, investigate, treat and manage the plaintiff relative to the serious, progressive and deteriorating injuries and illness he was suffering while under the care, custody and management of the defendants.

200. That by reason of the foregoing, the plaintiff, has sustained serious injuries and damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

SIXTH CAUSE OF ACTION

201. That plaintiff repeats, reiterates and realleges each and every allegation as contained above of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

202. At all of the times herein mentioned, defendants, their agents, servants, employees, or those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice of, for, and to plaintiff on behalf of, jointly with, or under the supervision of defendants herein, failed to inform

and/or failed to fully inform plaintiff or to warn and/or to fully warn plaintiff, or her legal representative, of the nature, purposes, known perils, recognized hazards, risks, or possible complications of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered for, requested for, recommended for, advised for, performed upon, rendered to, or provided to the plaintiff; nor did defendants nor did said persons inform the plaintiff, or her legal representatives, of any alternative methods of treatment; nor did defendants nor did said persons, obtain an informed consent by or on behalf of plaintiff regarding the outcome or possible consequences of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided, or omitted to be ordered, requested, recommended, advised, performed, rendered, or provided, of, for, and to plaintiff.

203. At all of the times herein mentioned, defendants, their agents, servants, employees, or those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, diagnoses, consultations, care, treatments, procedures, supervision, safeguarding, protection, protocols, tests, studies, services, or advice of, for, and to plaintiff on behalf of, jointly with, or under the supervision of defendants herein, failed to inform and/or to fully inform plaintiff, or to warn and/or to fully warn plaintiff, of the nature, purposes, known perils, recognized hazards, risks, or possible complications of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered for, requested for, recommended for, advised for, performed upon, rendered to, or provided to plaintiff; nor did

defendants nor did said persons inform plaintiff or her lawful representatives, of any alternative methods of treatment, supervision, safeguarding, protection, procedures and protocols; nor did defendants, nor did said persons, obtain an informed consent by or on behalf of plaintiff regarding the outcome or possible consequences of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided, or omitted to be ordered, requested, recommended, advised, performed, rendered, or provided, of, for, and to decedent, which failures individually and/or together constituted deceptive acts and/or practices by the defendants in the conduct of their business and/or trade, and/or the furnishing of services by the defendants.

204. As a result of all of the foregoing, plaintiff, was denied the opportunity to make an informed decision as to the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided to him.

205. As a result of all of the foregoing, plaintiff was denied the opportunity to seek alternative examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice which care, treatments, procedures, tests, studies, services, or advice they would have chosen or elected had they been informed and/or fully informed as to the nature, purposes, known perils, recognized hazards, risks, and possible complications of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered for, requested for, recommended for, advised for, performed upon, rendered to, or provided to plaintiff.

206. Had a reasonably prudent person in the condition of plaintiff been fully informed as to the nature, purposes, known perils, recognized hazards, risks, and possible complications of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice which were ordered, requested, recommended, advised, performed, rendered, or provided for, upon, or plaintiff, a reasonably prudent person in the condition of plaintiff would have refused said examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice, or would have sought and/or obtained alternative examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, and/or advice.

207. Had plaintiff been fully informed as to the nature, purposes, known perils, recognized hazards, risks, and possible complications of the examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice ordered, requested, recommended, advised, performed, rendered, or provided for, upon, or to plaintiff, said plaintiff would have refused said examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, or advice, or would have sought and/or obtained alternative examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, tests, studies, services, and/or advice.

208. As a result of all of the foregoing, plaintiff was caused to and did suffer and sustain prolonged, progressive, deteriorating severe and serious personal injuries, illness, and damages.

209. As a result of all of the foregoing, plaintiff was caused to and did suffer and sustain severe and serious conscious pain and suffering.

210. As a result of all of the foregoing, plaintiff was caused to and did suffer and sustain severe and serious mental anguish.

211. As a result of all of the foregoing, plaintiff was caused to and did suffer and sustain severe and serious economic losses.

212. The aforesaid severe and serious personal injuries, severe and serious conscious pain and suffering, severe and serious mental anguish, and severe and serious economic losses suffered and sustained by plaintiff were occasioned by reason of the negligence, carelessness, and/or malpractice of defendants herein, their servants, employees, or those persons who ordered, requested, recommended, advised, performed, rendered, or provided examinations, evaluations, diagnoses, consultations, care, treatments, supervision, safeguarding, protection, procedures, protocols, studies, tests, services, or advice of, for, and to plaintiff on behalf of, jointly with, or under the supervision of defendants herein, and said injuries were in no way contributed to by plaintiff.

213. The aforesaid severe and serious personal injuries, severe and serious conscious pain and suffering, severe and serious mental anguish, and severe and serious economic losses suffered and sustained by plaintiff were occasioned by the deceptive acts and/or practices of the defendants in the conduct of their business and/or trade, and/or the furnishing of services by the defendants, and said injuries were in no way contributed to by plaintiff.

214. That by reason of the foregoing, the plaintiff, has sustained serious injuries and damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiff demands judgment against the defendants, the amount sought on each cause of action exceeding the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, together with the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: August 2, 2023
New York, New York

Yours, etc.,
By: /s/ Joel M. Rubenstein
Joel M. Rubenstein, Esq.
German Rubenstein, LLP
Attorneys for Plaintiff
19 West 44th Street
Suite 1500
New York, NY 10036
(212) 704-2020

ATTORNEY VERIFICATION

STATE OF NEW YORK }
{ss.:
COUNTY OF NEW YORK }

Joel M. Rubenstein an attorney duly admitted to practice law before the Courts of the state of New York, affirms the truth of the following matters under penalty of perjury:

I am a member of the law firm of , attorneys for the plaintiff in the within action, and as such am fully familiar with facts and circumstances constituting the within action.

I have read the foregoing COMPLAINT and know the contents thereof to be true to my own knowledge, except as to those matters alleged therein as upon information and belief, and as to those matters I believe them to be true.

The sources of my belief as those matters alleged as upon information and belief are as follows: conversations with my client, investigation, research, and review of the file in this matter.

The reason that this verification is being made by me and not the plaintiff personally is that plaintiff is currently not within the county where I maintain my office for the practice of law.

Dated: August 2, 2023
New York, New York

/s/: Joel Rubenstein
JOEL M. RUBENSTEIN