SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY COURT

==========X

MARY ANN SPADACINI, AS ADMINISTRATOR OF THE ESTATE OF ROBERT SPADACINI, DECEASED

Plaintiff,

-against-

PROVIDENCE REST (A/K/A ARCHCARE AT PROVIDENCE REST), ARCHCARE (A/K/A CATHOLIC HEALTH CARE SYSTEM), PROVIDENCE REST NURSING HOME COMPANY, INC., ARCHCARE COMMUNITY SERVICES, INC. CATHOLIC HEALTH CARE FOUNDATION OF THE ARCHDIOCESE OF NY INC., BENEFICE ADVANTAGE INC., ESSEN MEDICAL ASSOCIATES, P.C., BADRI D. TAPARIA, MD, AND WIN MYINT, MD,

Defendant(s),

==========X

SUMMONS

Index No:
Date of Purchase:

Plaintiff designates BRONX COUNTY as the place of trial

The basis of venue is Plaintiff resides within Bronx County

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:
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):

ARCHCARE AT PROVIDENCE REST
C/O New York Secretary of State

PROVIDENCE REST
C/O New York Secretary of State

ARCHCARE
C/O New York Secretary of State

CATHOLIC HEALTH CARE SYSTEM
C/O New York Secretary of State

PROVIDENCE REST NURSING HOME COMPANY, INC.
C/O New York Secretary of State

CATHOLIC HEALTH CARE FOUNDATION OF THE ARCHDIOCESE OF NY INC.
C/O New York Secretary of State

ARCHCARE COMMUNITY SERVICES, INC.
C/O New York Secretary of State

BENEFICE ADVANTAGE INC.
C/O New York Secretary of State

ESSEN MEDICAL ASSOCIATES, P.C.
C/O New York Secretary of State

BADRI D. TAPARIA, MD
C/O ESSEN MEDICAL ASSOCIATES, P.C.
2015 Grand Concourse
Bronx NY 10453

WIN MYINT, MD
C/O ESSEN MEDICAL ASSOCIATES, P.C.
2015 Grand Concourse
Bronx NY 10453

PLEASE FORWARD THIS TO YOUR INSURANCE COMPANY

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY COURT

==========X

MARY ANN SPADACINI, AS ADMINISTRATOR OF THE ESTATE OF ROBERT SPADACINI, DECEASED

Plaintiff,

-against-

PROVIDENCE REST (A/K/A ARCHCARE AT PROVIDENCE REST), ARCHCARE (A/K/A CATHOLIC HEALTH CARE SYSTEM), PROVIDENCE REST NURSING HOME COMPANY, INC., ARCHCARE COMMUNITY SERVICES, INC. CATHOLIC HEALTH CARE FOUNDATION OF THE ARCHDIOCESE OF NY INC., BENEFICE ADVANTAGE INC., ESSEN MEDICAL ASSOCIATES, P.C., BADRI D. TAPARIA, MD, AND WIN MYINT, MD,

Defendant(s),

==========X

CERTIFICATE OF MERIT

Index No.:

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

1. I am a partner with the law firm of German Rubenstein LLP, attorneys for the plaintiff and as such am fully familiar with the facts and circumstances herein.

2. I have consulted with a physician duly licensed to practice in the State of Ohio concerning the underlying medical malpractice claims and the facts as alleged in the annexed complaint. The doctor had knowledge of the relevant issues herein.

3. Based upon my consultation with the doctor as well as review of prior submissions from said physician, I have been informed that there were departures from good and accepted medical practice which caused injury to the plaintiff, and that there is a basis for the commencement of this action.

WHEREFORE, based upon the foregoing, I have concluded that a meritorious case exists.

Dated:
New York, New York

/s/: Joel Rubenstein
JOEL M. RUBENSTEIN

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY COURT

==========X

MARY ANN SPADACINI, AS ADMINISTRATOR OF THE ESTATE OF ROBERT SPADACINI, DECEASED, and MARY ANN SPADACINI, INDIVIDUALLY

Plaintiff,

-against-

PROVIDENCE REST (A/K/A ARCHCARE AT PROVIDENCE REST), ARCHCARE (A/K/A CATHOLIC HEALTH CARE SYSTEM), PROVIDENCE REST NURSING HOME COMPANY, INC., ARCHCARE COMMUNITY SERVICES, INC. CATHOLIC HEALTH CARE FOUNDATION OF THE ARCHDIOCESE OF NY INC., BENEFICE ADVANTAGE INC., ESSEN MEDICAL ASSOCIATES, P.C., BADRI D. TAPARIA, MD, AND WIN MYINT, MD,

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 MARY ANN SPADACINI, as Administrator of the Estate of ROBERT SPADACINI, deceased, and in her capacity individually (hereinafter "plaintiff") was, and still is, a resident of the State of New York, County of Bronx.

2. That at all times hereinafter mentioned, the defendant, PROVIDENCE REST A/K/A ARCHCARE AT PROVIDENCE REST ("Providence Rest"), was a domestic not-for-profit corporation in the County of Bronx with offices in the State of New York.

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

4. That at all times hereinafter mentioned, the defendant, ARCHCARE A/K/A CATHOLIC HEALTH CARE SYSTEM ("Archcare"), 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, Archcare, was doing business in the State of New York.

6. That at all times hereinafter mentioned, the defendant, CATHOLIC HEALTH CARE FOUNDATION OF THE ARCHDIOCESE OF NY INC. ("Catholic Health Care Foundation"), was a domestic not-for-profit corporation duly existing under and by virtue of the laws of the State of New York.

7. That at all times hereinafter mentioned, the defendant, Catholic Health Care Foundation, was doing business in the State of New York.

8. That at all times hereinafter mentioned, the defendant, ARCHCARE A/K/A COMMUNITY SERVICES, INC. ("Archcare Community Services"), was a domestic not-for-profit corporation duly existing under and by virtue of the laws of the State of New York.

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

10. That at all times hereinafter mentioned, the defendant, PROVIDENCE REST NURSING HOME COMPANY, INC. ("Providence Rest Nursing Home Co."), was a domestic not-for-profit corporation in the County of Bronx with offices in the State of New York.

11. That at all times hereinafter mentioned, the defendant, Providence Rest Nursing Home Co., was doing business in the State of New York.

12. That at all times hereinafter mentioned, the defendant, BENEFICE ADVANTAGE INC. ("Benefice Advantage"), was a domestic not-for-profit corporation duly existing under and by virtue of the laws of the State of New York.

13. That at all times hereinafter mentioned, the defendant, Benefice Advantage, was doing business in the State of New York.

14. That at all times hereinafter mentioned, the defendant, ESSEN MEDICAL ASSOCIATES, P.C. ("Essen Medical"), was a domestic for-profit professional corporation duly existing under and by virtue of the laws of the State of New York.

15. That at all times hereinafter mentioned, the defendant, Essen Medical, was doing business in the State of New York.

16. That at all times hereinafter mentioned, the defendant, BADRI D. TAPARIA, MD ("Dr. Taparia"), was a medical doctor licensed to practice medicine in the State of New York, and residing within the State of New York.

17. That at all times hereinafter mentioned, the defendant, Dr. Taparia, was practicing medicine as an employee and/or agent of defendant, Essen Medical, and at all times hereinafter mentioned was acting within the scope of his employment and/or agency relationship with defendant, Essen Medical, for the financial benefit of defendant, Essen Medical.

18. That at all times hereinafter mentioned, the defendant, WIN MYINT, MD ("Dr. Myint"), was a medical doctor licensed to practice medicine in the State of New York, and residing within the State of New York.

19. That at all times hereinafter mentioned, the defendant, Dr. Myint, was practicing medicine as an employee and/or agent of defendant, Essen Medical, and at all times hereinafter

mentioned was acting within the scope of his employment and/or agency relationship with defendant, Essen Medical, for the financial benefit of defendant, Essen Medical.

20. At all times hereinafter mentioned, the defendant Providence Rest was located at 3304 Waterbury Ave., Bronx, NY 10465.

21. At all times hereinafter mentioned, Providence Rest is a division of Archcare.

22. At all times hereinafter mentioned, Providence Rest Nursing Home Co. is a division of Archcare.

23. At all times hereinafter mentioned, Archare Community Services is a division of Archcare.

24. At all times hereinafter mentioned, Catholic Health Care Foundation is a division of Archcare.

25. At all times hereinafter mentioned, Benefice Advantage is a division of Archcare.

26. On or about November 28, 2023, and subsequent thereto, Robert Spadacini came under the care and treatment of one or all of the defendants, simultaneously and/or at various times.

27. On or about November 28, 2023, and subsequent thereto, Robert Spadacini sought care and treatment from one or all of the defendants, simultaneously and/or at various times.

28. At all times hereinafter mentioned, on or about November 28, 2023, and subsequent thereto, the defendants, jointly and severally, provided medical treatment, counseling, and services to Robert Spadacini.

29. On or about November 28, 2023, and subsequent thereto, Robert Spadacini was residing and receiving services at the facility/nursing home known as Providence Rest, located at 3304 Waterbury Ave., Bronx, NY 10465 (“Nursing Home”).

30. Upon arriving at the Nursing Home on or about November 28, 2023, Robert

Spadacini had been discharged after a brief hospitalization at Jack D. Weiler Hospital for lower extremity swelling and shortness of breath, and was admitted to Providence Rest for short-term rehabilitation with a plan to return to his home where he lived with his wife, Mary Ann Spadacini.

31. Upon arriving at the Nursing Home on or about November 28, 2023, Robert Spadacini did not have pneumonia and did not have any pressure sores, bedsores, or skin ulcers on his body.

32. Upon arriving at the Nursing Home on or about November 28, 2023, and subsequent thereto, Robert Spadacini came under the care of Dr. Taparia and Dr. Myint.

33. On or about January 12, 2024, Robert Spadacini was admitted to Jack D. Weiler Hospital from the Nursing Home.

34. Upon presenting at the Hospital on or about January 12, 2024, Robert Spadacini had a bacterial infection, multi-lobar pneumonia, and was in sepsis.

35. Upon presenting at the Hospital on or about January 12, 2024, Robert Spadacini had a pressure sore, bedsore, or skin ulcer of the sacral region categorized as a Stage 4 ulcer, meaning the full thickness of his skin and underlying tissues of the sacrum area had died off exposing muscle and bone.

36. On or about January 12, 2024, and up to about January 24, 2024, Robert Spadacini remained admitted to the Hospital to receive treatment for his bacterial infection, multi-lobar pneumonia, sepsis, and pressure sore, bedsore, or skin ulcer of the sacral region.

37. On or about January 24, 2024, Robert Spadacini passed away while admitted to the Hospital.

38. On or about Jauary 25, 2024, Dr. Chenyang Zhang completed the death certificate of Robert Spadacini, and certified sepsis due to multi lobar pneumonia as the cause of Robert

Spadacini's death, with a duration of "weeks."

FIRST CAUSE OF ACTION

39. On and about November 28, 2023, and before and subsequent thereto, Providence Rest owned the Nursing Home.

40. That at all times herein mentioned, the defendant, Providence Rest, operated the Nursing Home.

41. On and about November 28, 2023, and before and subsequent thereto, Archcare owned the Nursing Home.

42. That at all times herein mentioned, the defendant, Archcare, operated the Nursing Home.

43. On and about November 28, 2023, and before and subsequent thereto, Archcare Community Services owned the Nursing Home.

44. That at all times herein mentioned, the defendant, Archcare Community Services, operated the Nursing Home.

45. On and about November 28, 2023, and before and subsequent thereto, Providence Rest Nursing Home Co. owned the Nursing Home.

46. That at all times herein mentioned, the defendant, Providence Rest Nursing Home Co., operated the Nursing Home.

47. On and about November 28, 2023, and before and subsequent thereto, Catholic Health Care Foundation owned the Nursing Home.

48. That at all times herein mentioned, the defendant, Catholic Health Care Foundation, operated the Nursing Home.

49. On and about November 28, 2023, and before and subsequent thereto, Benefice Advantage owned the Nursing Home.

50. That at all times herein mentioned, the defendant, Benefice Advantage, operated the Nursing Home.

51. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the Nursing Home as a health care facility, as licensed and defined under New York Public Health Law section 2801(2), (3).

52. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the 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).

53. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the 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.

54. That at all times herein mentioned, the defendants, and each of them, jointly and severally, operated the Nursing Home, subject to the provisions of 42 C.F.R. Part 483 and 10 N.Y.C.R.R Part 415.

55. That at all times herein mentioned, the 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.

56. That at all times herein mentioned, the 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.

57. 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.

58. That at all times herein mentioned, the defendants, and each of them, jointly and severally, represented that the Nursing Home was competent and capable of diagnosing, treating, supervising, and protecting people with various health infirmities, including Robert Spadacini.

59. That at all times hereinafter mentioned, the defendants, and each of them, jointly and severally, held the Nursing Home 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 Robert Spadacini.

60. 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 Nursing Home.

61. 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 Robert Spadacini and were obligated to care for Robert Spadacini in accordance with the standards of care and treatment generally accepted in the community, and to use in said care and treatment of Robert Spadacini approved methods in general use, reasonable care and skill, and defendant's best judgment.

62. That at all times hereinafter mentioned, the defendants, and each of them, jointly and severally, did agree to and did hold the Nursing Home and itself out as maintaining the Nursing Home 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 Nursing Home.

63. 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 Nursing Home, including the Nursing Home agents and servants, affiliated nurses, doctors, attendants, and/or employees at the Nursing Home under the theory of respondeat superior.

64. 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.

65. That from November 28, 2023, to January 12, 2024, Robert Spadacini was under the exclusive care, custody, and control of the defendants, jointly and severally.

66. That from November 28, 2023, to January 12, 2024, Robert Spadacini was under the exclusive care, custody, and control of the Nursing Home.

67. That commencing on/or about November 28, 2023, 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 Robert Spadacini providing Robert Spadacini with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the Robert Spadacini as a patient at the Nursing Home.

68. That commencing on/or about November 28, 2023, to January 12, 2024, and subsequent thereto, Robert Spadacini was an admitted patient and/or resident at the Nursing Home.

69. That commencing on/or about November 28, 2023, to January 12, 2024, and subsequent thereto, the defendants, together with their respective servants, agents, affiliated physicians, nurses, aides, employees and/or medical personnel at the Nursing Home facility did, jointly and severally, undertake the treatment, supervision, safeguarding, protection and management of the Robert Spadacini providing Robert Spadacini with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted the Robert Spadacini as a patient at the Nursing Home.

70. That commencing on/or about November 28, 2023, to January 12, 2024, and subsequent thereto, the Robert Spadacini 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 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 Robert Spadacini, by the said defendants, its servants, agents, doctors, nurses, and/or employees at the Nursing Home.

71. 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 Nursing Home did undertake the treatment, supervision, safeguarding, protection and management of Robert Spadacini providing plaintiff with medical, nursing and/or rehabilitative care, management, treatment, supervision and attention, and accepted Robert Spadacini as a patient at the Nursing Home.

72. 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 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 Robert Spadacini.

73. That the foregoing treatment and management of Robert Spadacini 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 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 hospital care and practice, thereby causing Robert Spadacini to sustain severe injuries and damages, including premature death.

74. 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 Robert Spadacini 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 Robert Spadacini.

75. 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 Robert Spadacini at said nursing homes and the Nursing Home 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 Robert Spadacini.

76. That the 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, and/or nursing procedures, examinations, evaluations, care, treatments, tests, studies, services, or advice to and/or for the patients at the Nursing Home, including Robert Spadacini.

77. That by reason of the foregoing, Robert Spadacini sustained serious personal injuries, bacterial infection, multi lobar pneumonia, sepsis, bedsores, ulcers, and other medical conditions which resulted in severe and excruciating conscious pain, suffering, premature death, and other related damages which resulted from the injuries sustained by reason of the negligence and malpractice of the defendants.

78. 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.

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

80. On or about November 28, 2023, 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 Robert Spadacini as a reasonably prudent physician would have; failed to properly diagnose and treat Robert Spadacini; failed to conduct proper testing, and that the defendants were otherwise careless, reckless and negligent in the instance.

81. That by reason of the foregoing, Robert Spadacini 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 were permanent in nature and duration, and Robert Spadacini was permanently caused to suffer pain, inconvenience and other effects of such injuries; Robert Spadacini incurred further medical care, hospitalization, and/or medical expenses in an effort to be cured of said injuries; and Robert Spadacini was unable to pursue the usual duties with the same degree of efficiency as prior to the negligence and malpractice of the defendants up to the time of his premature death, all to decedent's great damage.

82. That as a result of the aforesaid treatment, management, and misconduct of the Defendants, plaintiff decedent, Robert Spadacini, was seriously injured and later died from his injuries.

83. That as a result of the aforesaid treatment, management, and misconduct of the Defendants, plaintiff decedent, Robert Spadacini, suffered serious physical injuries, fear of impending death, pre-impact terror, conscious pain and suffering and ultimately died from his injuries.

84. Upon information and belief, the aforementioned collision was proximately caused by the negligence, carelessness, and recklessness, gross recklessness, gross negligence and negligent entrustment of the defendants and each of them, in the ownership, operation and control of the aforementioned motor vehicle owned by them or under their control, without any negligence on the part of the plaintiff decedent contributing thereto.

85. Upon information and belief, as a proximate result of the negligence, carelessness, and recklessness of the defendants, the plaintiff decedent, Robert Spadacini has been caused to suffer severe physical and emotional injuries, fear of impending death, conscious pain and suffering and was caused to lose his life; and plaintiff decedent, Robert Spadacini, has incurred medical and other expenses, has been unable to pursue said plaintiff's usual vocations, and has suffered severe physical and emotional pain, including death, all to said plaintiff decedent’s great detriment and damage.

86. Upon information and belief, by reason of the foregoing, the plaintiff decedent has sustained a serious injury as defined by Section 5102 of the Insurance Law of the State of New York, and/or economic loss greater than basic economic loss as defined by Section 5102 of the Insurance Law of the State of New York.

87. That this cause of action that the plaintiff, MARY ANN SPADACIN, brings on behalf of the decedent, Robert Spadacini, for injuries and pain and suffering which the decedent suffered as a result of the defendant's negligence, is one which the decedent would have been entitled to maintain, had he lived, and survived and thus is entitled maintain this action pursuant to New York Wrongful Death Statute as more fully set forth in EPT Section 11-3.2.

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

89. 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.

90. 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.

91. 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

92. 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

93. 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.

94. 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.

95. 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.

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

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

98. 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.

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

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

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

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

103. 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.

THIRD CAUSE OF ACTION

104. 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.

105. 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 Robert Spadacini relative to the serious, progressive and deteriorating injuries and illness he was suffering while under the care, custody and management of the defendants.

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

107. 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.

FOURTH CAUSE OF ACTION

108. 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.

109. That on January 24, 2024, Robert Spadacini died as a result of the injuries he suffered related to the above-described events and misconduct of the Defendants.

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

111. By reason of the above, plaintiff Mary Ann Spadacini brings this action for the wrongful death, fear of impending death, pre-impact terror and conscious pain and suffering of the plaintiff decedent Robert Spadacini on behalf of herself, and on behalf of all others entitled to compensation for damages, both general and specific, as well as loss of consortium, supervision and parental guidance in an amount which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction, and is further entitled to punitive and/or exemplary damages in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

FIFTH CAUSE OF ACTION

112. 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.

113. Prior to and at all times hereinafter mentioned, plaintiff Mary Ann Spadacini was and still is the wife of the plaintiff decedent, Robert Spadacini and as such is entitled to his services.

114. That as a result of the foregoing, plaintiff Mary Ann Spadacini, has suffered and continues to suffer serious and extreme physical and emotional anguish, distress, psychological damages, loss of guidance, loss of supervision, loss of services, loss of economic support, medical expenses, prospects of inheritance, loss of care, nurturing, physical, moral and intellectual training, suffers extreme pain, torment, anguish and other difficulties arising out of the trauma and death to decedent husband Robert Spadacini, all to her great detriment in an amount which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction, and is further entitled to punitive and/or exemplary damages in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

115. That prior to the injuries and damages complained of, Robert Spadacini was healthy and sound and was able to, and did in fact, provide Mary Ann Spadacini with consortium, love, aid, and affection typical of the husband-wife relationship.

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

117. 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.

Dated:
New York, New York

Yours, etc.,

By: /s/ Joel M. Rubenstein

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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:
New York, New York

/s/: Joel Rubenstein
JOEL M. RUBENSTEIN