

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

-----X
ESTATE OF MAUREEN LACAPRIA and
ROCCO LACAPRIA,

Index No.:

Plaintiffs,

SUMMONS

-against-

NORTH SHORE LONG ISLAND JEWISH
STATEN ISLAND UNIVERSITY HOSPITAL,
NEW YORK RADIOLOGY PARTNERS
(*a.k.a.* WEST SIDE RADIOLOGY ASSOCIATES, P.C.),
GILBERT LEDERMAN, M.D.,
WAI-KWOK TAM, M.D.,
UNIVERSITY PHYSICIANS GROUP,
RICHMOND PRIMARY CARE SPECIALISTS,
MIGUEL TIRADO, M.D.
CARMEL RICHMOND HEALTHCARE AND
REHAB CENTER,

Defendants.

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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer in this action and serve a copy of your answer at Supreme Court of the State of New York, 60 Centre Street, New York, NY 10007, or if the complaint is not served with the summons to serve a notice of appearance, on the plaintiff's attorney within twenty one (21) days after the service of this summons, exclusive of the day of service. If this service is not personally served upon you, or if this summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within thirty (30) days. 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: Brooklyn, New York
October 24, 2018

Respectfully Submitted,

Dwayne L. Bentley

By: Dwayne L. Bentley, Esq.

DL BENTLEY LAW GROUP PLLC

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

-----X
ESTATE OF MAUREEN LACAPRIA and
ROCCO LACAPRIA,

Plaintiffs,

Index No.:

**VERIFIED
COMPLAINT**

Filed October 24,
2018

-against-

NORTH SHORE LONG ISLAND JEWISH
STATEN ISLAND UNIVERSITY HOSPITAL,
NEW YORK RADIOLOGY PARTNERS
(*a.k.a.* WEST SIDE RADIOLOGY ASSOCIATES, P.C.),
GILBERT LEDERMAN, M.D.,
WAI-KWOK TAM, M.D.,
UNIVERSITY PHYSICIANS GROUP,
RICHMOND PRIMARY CARE SPECIALISTS,
MIGUEL TIRADO, M.D.
CARMEL RICHMOND HEALTHCARE AND
REHAB CENTER,

Defendants.

-----X

The plaintiffs above named, complaining of the defendant, by their attorney,
DWAYNE L. BENTLEY, ESQ of DL BENTLEY LAW GROUP PLLC., respectfully
allege:

1. Plaintiff ESTATE OF MAUREEN LACAPRIA (hereinafter referred to as "Estate") was at all relevant times, and was a resident of the County of New York, State of New York.
2. Plaintiff ROCCO LACAPRIA ("hereinafter referred to as Mr. LaCapria") was at all relevant times, and is a resident of the County of New York, State of New York.

3. Upon information and belief, at all relevant times, defendant NORTH SHORE LONG ISLAND JEWISH STATEN ISLAND UNIVERSITY HOSPITAL (hereinafter referred to as "Hospital") was and is a corporation having its principal place of business in the State of New York.

4. Upon information and belief, at all relevant times, defendant NEW YORK RADIOLOGY PARTNERS (*a.k.a.* WEST SIDE RADIOLOGY ASSOCIATES, P.C.) (hereinafter referred to as "Radiology Partners") was and is a corporation having its principal place of business in the State of New York.

5. Upon information and belief, at all relevant times, defendant GILBERT LEDERMAN, M.D. (hereinafter referred to as "Dr. Lederman") was and is an employee or agent of Radiology Partners and of Hospital. Dr. Lederman, through Hospital and Radiology Partners, has transacted business in New York.

6. Upon information and belief, at all relevant times, defendant WAI-KWOK TAM, M.D. (hereinafter referred to as "Dr. Tam") was and is an employee or agent of University Physicians Group and of Hospital. Dr. Tam, through Hospital and University Physicians Group, has transacted business in New York.

7. Upon information and belief, at all relevant times, defendant UNIVERSITY PHYSICIANS GROUP (hereinafter referred to as "UPG") was and is a corporation having its principal place of business in the State of New York.

8. Upon information and belief, at all relevant times, defendant RICHMOND PRIMARY CARE SPECIALISTS (hereinafter referred to as "Primary Care Specialists") was and is a corporation having its principal place of business in the State of New York.

9. Upon information and belief, at all relevant times, defendant MIGUEL TIRADO, M.D. (hereinafter referred to as "Dr. Tirado") was and is an employee or agent of Primary Care Specialists. Dr. Tirado, through Primary Care Specialists and Carmel Richmond Healthcare and Rehab Center, has transacted business in New York.

10. Upon information and belief, at all relevant times, defendant CARMEL RICHMOND HEALTHCARE AND REHAB CENTER (hereinafter referred to as "Rehab Center") is owned by Dr. Tirado and was and is a corporation having its principal place of business in the State of New York.

STATEMENT OF FACTS

11. Maureen LaCapria (hereinafter referred to as "Mrs. LaCapria") had Stage 4 Colon Cancer.

12. Mrs. LaCapria engaged Hospital, Dr. Lederman and Radiology Partners to treat the Cancer.

13. Dr. Lederman directed his staff to treat Mrs. LaCapria's Cancer with pin-point radiation.

14. Dr. Lederman or his technicians administered the radiation.

15. However, following radiation treatment (as well as the application of other measures) provided by Hospital, Dr. Lederman and Radiology Partners, Mrs. LaCapria became very ill and was unable to eat. She explained that she was in extreme pain to Dr. Lederman, who summarily dismissed her representations, telling her "discomfort is normal." According to Dr. Lederman, the pin-point radiation harmed her esophagus and other parts of her body.

16. When Mrs. LaCapria advised Dr. Lederman and Hospital of the extreme pain she was suffering as a result of the pin-point radiation (and other measures) provided by Hospital, Dr. Lederman and Radiology Partners, Dr. Lederman minimized Mrs. LaCapria's Stage 4 Colon Cancer and instructed her "not to worry," that "the problem would go away" and she "would be able to eat soon."

17. Mrs. LaCapria consulted with Gastroenterologist, Dr. Tam, at Hospital.

18. Dr. Tam minimized Mrs. LaCapria's Stage 4 Colon Cancer, repeating to Mrs. LaCapria that she should "not worry," that "the problem would go away" and she "would be able to eat soon."

19. However, immediately following the pin-point radiation treatment and after consulting with Hospital, Dr. Lederman, Radiology Partners and UPG through Dr. Tam, Mrs. LaCapria still could neither eat, nor drink. Consequently, she lost forty pounds in a very short amount of time, became extremely ill and was in serious danger of dying.

20. Despite the false and unreliable representations made by Hospital, Dr. Lederman, Radiology Partners and UPG through Dr. Tam, "the problem" never "went away."

21. Shortly after consulting with Hospital, Dr. Lederman, Radiology Partners, and UPG through Dr. Tam, Mrs. LaCapria became dehydrated and was in critical condition.

22. In or about mid-January 2018, Mrs. LaCapria was taken back to Hospital, at which point, Hospital administered oxygen treatment, an I.V., as well as placed a feeding tube in her.

23. Dr. Tam (of and for UPG and Rehab Center) and Dr. Lederman both minimized the illness when they spoke with Mrs. LaCapria and instructed her “not to worry.”

24. On January 22, 2018, approximately eight days later, after her health was greatly restored, Mrs. LaCapria was transferred to Rehab Center to obtain additional rehabilitation.

25. Mrs. LaCapria was transferred to Rehab Center, so that she would become stronger.

26. However, instead of becoming stronger, Mrs. LaCapria became much weaker, in a very short amount of time.

27. Mrs. LaCapria’s health began to decline dramatically and precipitously.

28. While at Rehab Center, Mrs. LaCapria was placed on Oxygen. Consequently, she became incoherent and entered a coma-like state.

29. While at Rehab Center, Plaintiff Rocco LaCapria pleaded with Dr. Tirado to transfer Mrs. LaCapria back to Hospital.

30. However, Dr. Tirado and Rehab Center staff refused to transfer Mrs. LaCapria to Hospital, stating that Mrs. LaCapria signed a form entitled, “Medical Orders for Life-Sustaining Treatment (MOLST)” (hereinafter referred to as “Healthcare Directive”), which states, “DNR Order: Do Not Attempt Resuscitation (Allow Natural Death).”

31. While at Rehab Center, Dr. Tirado and Rehab Center cut off Mrs. LaCapria’s food supply, refusing to insert a feeding tube.

32. While at Rehab Center, Dr. Tirado and Rehab Center staff refused to attempt to resuscitate Mrs. LaCapria.

33. While at Rehab Center, Dr. Tirado and Rehab Center staff let Mrs. LaCapria deteriorate and die.

34. Both, before and after Mrs. LaCapria died, Defendants stated to Plaintiff Rocco LaCapria that, Dr. Tirado and Rehab Center's staff refused to transfer her to Hospital, cut off her food supply and refused to attempt to resuscitate Mrs. LaCapria because they relied upon the "Healthcare Directive."

35. However, the aforementioned Healthcare Directive, which directs providers not to resuscitate Mrs. LaCapria, was invalid, as it contained a forgery of Mrs. LaCapria's signature.

36. It is not known whether Mrs. LaCapria's signature was forged on the Healthcare Directive before or after Mrs. LaCapria's death.

37. In addition to containing a forgery of Mrs. LaCapria's signature, the Healthcare Directive has the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page.

38. Apparently recognizing the invalidity of the aforementioned Healthcare Directive, on February 3, 2018, Rehab Center staff attempted to execute a second Healthcare Directive. However, it was never signed by Mrs. LaCapria.

39. Rehab Center, which is owned by Dr. Tirado, who, in 2012 was in the news for being sued in Federal Court for Sexual Harassment by one of his former employees, as a result of making her watch pornography with him at work and sending her "horribly degrading sexually-charged text messages," was not permitted to rely

upon a forged Healthcare Directive, which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page.

40. As it relates to the bogus and invalid Healthcare Directive, which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page, Defendants negligently failed to update the electronic medical record and remove the "Do Not Resuscitate" designation.

41. Mrs. LaCapria died on February 8, 2018, in part, as a result of being starved to death by Rehab Center.

AS AND FOR A FIRST CAUSE OF ACTION FOR WRONGFUL DEATH

42. Plaintiffs repeat the allegations made in paragraphs 1 through 41 hereof with the same force and effect as though set forth at length herein.

43. Defendants negligently treated Mrs. LaCapria.

44. Defendants Hospital, Dr. Lederman and Radiology Partners negligently transferred Mrs. LaCapria to Rehab Center.

45. Defendants Hospital, Dr. Lederman, Radiology Partners, UPG and Dr. Tam, during a campaign of negligence, misdiagnosed the severity of Mrs. LaCapria's condition.

46. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center recklessly or intentionally cut off Mrs. LaCapria's food supply, starving Mrs. LaCapria to death.

47. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center recklessly or intentionally refused to attempt to resuscitate Mrs. LaCapria.

48. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center recklessly or intentionally permitted Mrs. LaCapria deteriorate and die.

49. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center recklessly or intentionally refused to attempt to resuscitate Mrs. LaCapria.

50. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center recklessly or intentionally relied upon a form entitled "Healthcare Directive" when they starved Mrs. LaCapria to death, which was invalid.

51. As a direct and proximate result of Defendants' negligent or reckless or intentional acts, Maureen LaCapria was killed as a result of being starved to death.

52. The deceased would have pursued many Causes of Action, including Medical Malpractice, Negligence, etc., in this honorable Court if her death had not occurred.

53. Plaintiffs Rocco LaCapria (and the Estate of Maureen LaCapria) suffered an unspeakably tragic loss as the result of Maureen LaCapria being killed at the hands of Defendants, as a result of being starved to death.

54. As a direct, specific and proximate consequence of Defendants' acts and Maureen LaCapria's death, Plaintiffs have suffered terrible mental anguish, have been unable to sleep, have been subjected to physical pain as a result of being unable to sleep, have been unable to participate in the majority of their daily activities and have suffered (and will continue to suffer) severe and debilitating emotional injury and anguish.

55. Punitive damages are justified because of the aforesaid conduct of Defendants and the following facts:

- a. defendants' acts were intentional or reckless or grossly negligent;

- b. defendants had the opportunity to obtain facts that would have contradicted defendants' statements;
- c. defendants knew or should have known that their conduct was illegal;
- d. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- e. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, Plaintiffs pray judgment against the defendants on this First Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

**AS AND FOR A SECOND CAUSE OF ACTION FOR MEDICAL
MALPRACTICE**

- 56. Plaintiffs repeat the allegations made in paragraphs 1 through 55 hereof with the same force and effect as though set forth at length herein.
- 57. As previously mentioned, Maureen LaCapria died on February 8, 2018.
- 58. Defendants had a duty to care for patient, Maureen LaCapria.
- 59. Defendants breached their duty to care for patient, Maureen LaCapria.

60. Defendants breached their duty to care for patient, Maureen LaCapria, by failing to provide the care a reasonable professional in a similar situation with similar training would provide.

61. Defendants Hospital, Dr. Lederman, Radiology Partners, UPG and Dr. Tam, during a campaign of negligence, misdiagnosed the severity of Mrs. LaCapria's condition.

62. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center negligently relied upon a form entitled "Healthcare Directive" when they starved Mrs. LaCapria to death, which was invalid.

63. As it relates to the bogus and invalid Healthcare Directive, which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page, Defendants Primary Care Specialists through Dr. Tirado and Rehab Center negligently failed to update the electronic medical record and remove the "Do Not Resuscitate" designation.

64. As a direct, specific and proximate result of Defendants' negligent and intentional acts and failure to fulfill their respective duties to the patient, Maureen LaCapria was first made to starve until she died.

65. As a direct, specific and proximate result of Defendants' negligent and intentional acts and failure to fulfill their respective duties to the patient, Maureen LaCapria suffered unspeakable pain.

66. As a direct, specific and proximate consequence of Defendant's negligent and intentional acts and failure to fulfill their respective duties to the patient, Maureen LaCapria suffered terrible mental anguish, was forced into a coma, was subjected to physical pain as a result of being unable to move, was unable to participate in the

majority of her daily activities and suffered severe and debilitating emotional injury and anguish.

67. Punitive damages are justified because of the aforesaid conduct of Defendants and the following facts:

- a. defendants' acts were intentional or reckless or grossly negligent;
- b. defendants had the opportunity to obtain facts that would have contradicted defendants' statements;
- c. defendants knew or should have known that their conduct was illegal;
- d. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- e. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, the plaintiff prays judgment against the defendants on this Second Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

AS AND FOR A THIRD CAUSE OF ACTION FOR FRAUD

68. Plaintiffs repeat the allegations made in paragraphs 1 through 67 hereof with the same force and effect as though set forth at length herein.

69. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate."

70. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated that they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate," so they could falsely represent to Plaintiff Rocco LaCapria they were legally-required to keep Mrs. LaCapria at the Rehab Center.

71. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated that they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate," so they could cut off her food supply and starve Mrs. LaCapria to death.

72. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated that they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate," so they could refuse to attempt to resuscitate Mrs. LaCapria.

73. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated that they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate," so they could permit Mrs. LaCapria to deteriorate and die.

74. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center made a material misrepresentation of a presently existing or past fact when they stated that they possessed the Health Initiative, signed by Mrs. LaCapria, which allegedly directed Defendants "Do Not Resuscitate," so they could fraudulently charge Mrs. LaCapria's insurance carrier for certain so-called healthcare-related "services" she neither needed, nor required under the law, nor requested.

75. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center knew the aforementioned material misrepresentations they made were false.

76. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center intended for Plaintiffs to rely on their material misrepresentations.

77. Plaintiffs relied upon Defendants' material misrepresentations.

78. As a direct result of the conduct of Defendants, plaintiff Rocco LaCapria was caused to have general damages, including, but not limited to mental anguish, has been unable to sleep, has been subjected to physical pain as a result of being unable to sleep and has been unable to participate in the majority of his daily activities, now and into the future.

79. The damages of plaintiff are, or may be, permanent.

80. The aforementioned acts and omissions of defendants were intentional, malicious, morally reprehensible, morally culpable, highly immoral, oppressive, aggravated, continuous and systematic, aimed at the public, willful, or wanton and reckless or were a reckless, conscious, callous or utter indifference or disregard to the health, safety, and rights of plaintiff and the public.

81. Punitive damages are justified because of the aforesaid conduct of

Defendants and the following facts:

- a. defendants' acts were intentional;
- b. defendants had the opportunity to obtain facts that would have contradicted defendants' statements;
- c. defendants knew or should have known that their conduct was illegal;
- d. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- e. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, the plaintiff prays judgment against the defendants on this Third Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

**AS AND FOR A FOURTH CAUSE OF ACTION INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

82. Plaintiffs hereby repeat the allegations of paragraphs 1-81, inclusive, with the same force and effect as though set forth at length herein.

83. Defendants (hereinafter referred to as "Defendants") engaged in intentional or reckless conduct, which was extreme and outrageous and exceeding all bounds acceptable in a civilized society.

84. Defendants Hospital, Dr. Lederman, Radiology Partners, UPG and Dr. Tam, obfuscated or ignored obvious symptoms of injury as a result of radiation and other causes, which directly misled Mrs. LaCapria and Plaintiff Rocco LaCapria into believing such symptoms were innocuous.

85. Defendants Hospital, Dr. Lederman, Radiology Partners, UPG and Dr. Tam, obfuscated or ignored obvious symptoms of injury as a result of radiation and other causes, which resulted in the hastening of the death of Mrs. LaCapria.

86. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center caused Plaintiffs to suffer severe and debilitating emotional injury and anguish, as a result of hastening the death of Mrs. LaCapria, by refusing to update (sufficiently) the electronic medical record.

87. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center caused Plaintiffs to suffer severe and debilitating emotional injury and anguish, as a result of hastening the death of Mrs. LaCapria, by inexcusably relying on a forgery of Mrs. LaCapria's signature on the Healthcare Directive, which purported to designate "Do Not Resuscitate," which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page.

88. Further, as mentioned above, on January 22, 2018 until February 8, 2018, Defendants Primary Care Specialists through Dr. Tirado and Rehab Center specifically as a result of refusing to update (sufficiently) the electronic medical record and inexcusably relying on a forgery of Mrs. LaCapria's signature on the Healthcare Directive, which

purported to designate "Do Not Resuscitate," which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page, caused Plaintiffs to suffer severe and debilitating emotional injury and anguish, thereby making Defendants Primary Care Specialists through Dr. Tirado and Rehab Center actors in the intentional infliction of emotional distress upon Plaintiff Rocco LaCapria.

89. Defendants aforementioned acts demonstrate that their sole intention was to cause harm and damage to Plaintiffs.

90. As a direct result of the past conduct and continuing conduct of Defendants, Plaintiffs were caused to have, and to continue to have, damages set forth hereinafter.

91. As a direct result of the conduct of Defendants, Plaintiffs were caused to have general damages, including, but not limited to pain, suffering, embarrassment, humiliation, anxiety, trauma and inconvenience, now and into the future.

92. As a direct result of the conduct of Defendants, Plaintiff Rocco LaCapria were caused to be unable to do activities and things now that he could do before, including professional activities, personal tasks and recreational acts, and was otherwise deprived of the enjoyment of life.

93. As a direct result of the conduct of Defendants, Plaintiffs were caused to have special damages, including, but not limited to, loss of earnings and medical expenses, now and into the future.

94. As a direct result of the conduct of Defendants, Plaintiffs were caused to have general damages, including, but not limited to pain, suffering, embarrassment, humiliation, anxiety, trauma and inconvenience, now and into the future.

95. The damages of plaintiffs are, or may be, permanent.

96. The aforementioned acts and omissions of Defendants were grossly negligent, malicious, morally reprehensible, morally culpable, highly immoral, oppressive, aggravated, continuous and systematic, aimed at the public, willful, or wanton and reckless or were a reckless, conscious, callous or utter indifference or disregard to the health, safety, and rights of plaintiff and the public.

97. Punitive damages are justified because of the aforesaid conduct of Defendants and the following facts:

- a. defendants' acts were intentional;
- b. defendants had the opportunity to obtain facts that would have contradicted defendants' statements;
- c. defendants knew or should have known that their conduct was illegal;
- d. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- e. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, the plaintiff prays judgment against Defendants on this Fourth Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

AS AND FOR A FIFTH CAUSE OF ACTION NEGLIGENT INFLECTION
OF EMOTIONAL DISTRESS

98. Plaintiffs hereby repeat the allegations of paragraphs 1-97, inclusive, with the same force and effect as though set forth at length herein.

99. Defendants had a duty to care for patient, Maureen LaCapria.

100. Defendants breached their duty to care for patient, Maureen LaCapria.

101. Defendants breached their duty to care for patient, Maureen LaCapria, by failing to provide the care a reasonable professional in a similar situation with similar training would provide.

102. Defendants Hospital, Dr. Lederman, Radiology Partners, UPG and Dr. Tam, during a campaign of negligence, misdiagnosed the severity of Mrs. LaCapria's condition.

103. Defendants Primary Care Specialists through Dr. Tirado and Rehab Center negligently relied upon a form entitled "Healthcare Directive" when they starved Mrs. LaCapria to death, which was invalid.

104. As it relates to the bogus and invalid Healthcare Directive, which had the word "VOID" written across it in large handwriting, with a dark line drawn through the entire page, Defendants Primary Care Specialists through Dr. Tirado and Rehab Center negligently failed to update the electronic medical record and remove the "Do Not Resuscitate" designation.

105. As a direct, specific and proximate result of Defendants' negligent acts and failure to fulfill their respective duties to the patient, Maureen LaCapria was first made to starve until she died.

106. As a direct, specific and proximate result of Defendants' negligent acts and failure to fulfill their respective duties to the patient, Maureen LaCapria suffered unspeakable pain.

107. As a direct, specific and proximate result of Defendants' negligent acts and failure to fulfill their respective duties to the patient, which resulted in the starvation and ultimately, the death of Mrs. LaCapria, Plaintiff Rocco LaCapria suffered grave emotional distress.

108. Defendants caused Plaintiff Rocco LaCapria to suffer severe and debilitating emotional injury and anguish.

109. As a direct result of the past conduct and continuing conduct of Defendants, Plaintiffs were caused to have, and to continue to have, damages set forth hereinafter.

110. As a direct result of the conduct of Defendants, Plaintiffs were caused to have general damages, including, but not limited to pain, suffering, embarrassment, humiliation, anxiety, trauma and inconvenience, now and into the future.

111. As a direct result of the conduct of Defendants, Plaintiff Rocco LaCapria were caused to be unable to do activities and things now that he could do before, including professional activities, personal tasks and recreational acts, and was otherwise deprived of the enjoyment of life.

112. The aforementioned acts and omissions of Defendants were grossly negligent, malicious, morally reprehensible, morally culpable, highly immoral, oppressive, aggravated, continuous and systematic, aimed at the public, willful, or wanton and reckless or were a reckless, conscious, callous or utter indifference or disregard to the health, safety, and rights of plaintiff and the public.

113. Punitive damages are justified because of the aforesaid conduct of

Defendants and the following facts:

- a. defendants' acts were reckless or grossly negligent;
- b. defendants knew or should have known that their conduct was dangerous;
- c. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- d. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, the plaintiff prays judgment against Defendants on this Fifth Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

**AS AND FOR A SIXTH CAUSE OF ACTION FOR VIOLATION OF
PRIMA FACIE TORT**

114. Plaintiffs repeat the allegations contained in paragraphs 1 through 113 hereof with the same force and effect as though set forth at length herein.

115. On information and belief, Defendants have conspired with each other and have acted in combination and concert with each other for the purpose of intimidating and injuring grievously Plaintiff Rocco LaCapria.

116. Defendants have conspired with each other and have acted in combination and concert with each other by minimizing Mrs. LaCapria's Stage 4 Colon Cancer when they spoke with Mrs. LaCapria and instructed her "not to worry," thereby magnifying the damage they intended to cause to Plaintiffs.

117. As a direct result of the past conduct and continuing conduct of Defendants, Plaintiffs were caused to have, and continue to have, damages set forth hereinafter.

118. As a direct result of the conduct of Defendants, Plaintiffs were caused to have special damages, including, but not limited to, out-of-pocket losses, loss of salary, medical expenses, investigation expenses, attorneys fees, and court costs, now and into the future.

119. As a direct result of the conduct of Defendants, Plaintiffs were caused to have general damages, including, but not limited to pain, suffering, trauma, anxiety, and other forms of distress, now and into the future.

120. As a direct result of the conduct of Defendants, Plaintiffs were caused to be unable to do activities and things now that he could do before, including professional activities, personal tasks and recreational acts, and was otherwise deprived of the enjoyment of life.

121. As a direct result of the conduct of Defendants, Plaintiffs were caused to have special damages, including, but not limited to, loss of income from clients that terminated their contracts, a loss of income for clients that sought reimbursement for work already performed, out-of-pocket losses, investigation expenses, attorneys fees, and court costs, now and into the future.

122. As a direct result of the conduct of Defendants, Plaintiffs were caused to have general damages, including, but not limited to a loss of customers and clients, a loss of future customers, future clients and repeat business from past, present and future clients, a loss of good will, a loss of revenues, income and profit, and inconvenience, now and into the future.

123. The damages of plaintiffs are, or may be, permanent.

124. The aforementioned acts and omissions of Defendants were grossly negligent, malicious, morally reprehensible, morally culpable, highly immoral, oppressive, aggravated, continuous and systematic, aimed at the public, willful, or wanton and reckless or were a reckless, conscious, callous or utter indifference or disregard to the health, safety, and rights of plaintiff and the public.

125. Punitive damages are justified because of the aforesaid conduct of Defendants and the following facts:

- a. defendants' acts were intentional;
- b. defendants knew or should have known that their conduct was dangerous;
- c. defendants are physicians and health care organizations, which are required to maintain professional licenses, which are regulated by federal, state and local governments, subjected to standards and rules of professional conduct and subjected to standards and rules of civility;
- d. defendants knew or should have known of the serious and significant consequences of their wrongful conduct.

WHEREFORE, the plaintiffs pray judgment against Defendants on this Fifth Cause of Action in the sum of \$10,000,000 and that the court assess punitive damages, together with the costs of suit and attorney's fees.

RELIEF SOUGHT

126. As a direct, specific and proximate consequence of Defendant's acts, Plaintiff Rocco LaCapria has suffered terrible mental anguish, has been unable to sleep, has been subjected to physical pain as a result of being unable to sleep and has been unable to participate in the majority of his daily activities.

127. Because Mrs. LaCapria suffered physical pain, mental anguish and a profoundly traumatic emotional injury at the hands of Defendants, she was deprived of the ability to live a natural life, which caused immense physical, emotional and mental injury to Plaintiff Rocco LaCapria.

128. In addition, Plaintiff Rocco LaCapria suffered mental anguish and pain and suffering, for which, it will require physical rehabilitation and psychological treatment for the rest of his life, to deal with the various traumas associated with his reputation being destroyed due to the intentional or negligent acts of Defendants.

129. In addition, Plaintiff Rocco LaCapria has been injured by those acts engaged in heretofore by Defendants which has caused his health and quality of life to be profoundly impaired, has lost his ability to work in a meaningful way and to provide, for himself, the basic necessities that a human being requires for survival now and hereafter.

WHEREFORE, the plaintiff prays judgment against the defendants jointly and severally as follows:

- A. in an amount to be determined at trial of this action and that the court assess punitive damages, together with the costs of suit, disbursements and attorney's fees, and
- B. Such other and further relief as to which this Court may deem proper and applicable to award.

Dated: New York, New York
October 24, 2018

Respectfully Submitted,

Dwayne L. Bentley
By: Dwayne L. Bentley, Esq.

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195 Montague St., 14th Floor

Brooklyn, NY 11201

Tel:917-445-5788

Fax:718-228-9137

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

-----X
ESTATE OF MAUREEN LACAPRIA and
ROCCO LACAPRIA,

IndexNo.:

Plaintiffs,

VERIFICATION

-against-

NORTH SHORE LONG ISLAND JEWISH
STATEN ISLAND UNIVERSITY HOSPITAL,
NEW YORK RADIOLOGY PARTNERS
(*a.k.a.* WEST SIDE RADIOLOGY ASSOCIATES, P.C.),
GILBERT LEDERMAN, M.D.,
WAI-KWOK TAM, M.D.,
UNIVERSITY PHYSICIANS GROUP,
RICHMOND PRIMARY CARE SPECIALISTS,
MIGUEL TIRADO, M.D.
CARMEL RICHMOND HEALTHCARE AND
REHAB CENTER.

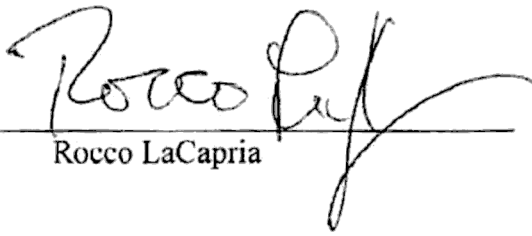
Defendants.

-----X
STATE OF NEW YORK)
)ss.:
COUNTY OF KINGS)

I, ROCCO LACAPRIA, being duly sworn, says:

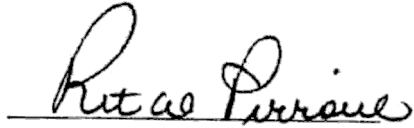
The Deponent is the above named Plaintiff herein, Deponent has read the foregoing SUMMONS AND VERIFIED COMPLAINT and know its contents, the same is true to deponent's knowledge, except as to those matters stated to be alleged upon information and belief, and as to those matters stated to be alleged upon information and belief deponent believes them to be true.

Dated: New York, New York
September , 2018


Rocco LaCapria

Sworn to before me this

9 day of ~~September~~ ^{October}, 2018



NOTARY PUBLIC

RITA PIRRONE
NOTARY PUBLIC, State of New York
No. 01PI5082376
Qualified in Richmond County
Commission Expires July 28, ~~2017~~ ²⁰²¹