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MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 2, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Mateo, Jose v. Erie County Medical Center Corporation, County of Erie, Thom Loree, M.D. and Erie County Home*
Document Received:	Summons and Complaint
Name of Claimant:	Jose Mateo 8 Esperar Street Buffalo, New York 14201
Claimant's attorney:	Glenn M. Race, Esq. The Law Office of Glenn M. Race 954 Lexington Avenue, #331 New York, New York 10021

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Attachment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Index No.:

----------X

JOSE MATEO,

Plaintiff,

-against-

ERIE COUNTY MEDICAL CENTER CORPORATION, COUNTY OF ERIE, THOM LOREE, M.D. and ERIE COUNTY HOME

Defendants.

----------X

PLAINTIFF DESIGNATES ERIE COUNTY AS THE PLACE OF THE TRIAL

SUMMONS

THE BASIS OF VENUE IS PLAINTIFF'S RESIDENCE:
8 Esperar Street
Buffalo, NY 14201

TO THE ABOVE NAMED DEFENDANTS:

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 notice of appearance on the plaintiff's attorneys within twenty [20] days after the service of this summons, exclusive of the day of service of this summons, 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).

In case of your failure to appear or answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the interest costs and/or disbursements of this action.

FILED
04/17/2013/ 16:24:03
ERIE COUNTY CLERK
RCPT # 13062098
I 2013001197

DATED: New York, New York
April 15th, 2013

This paper received at the
Erie County Attorney's Office
from Michael Hadden on
the 24 day of April, 2013
at 2:10 a.m./p.m.
Assistant County Attorney

THE LAW OFFICE OF GLENN M. RACE

BY: _____
Glenn M. Race
Attorneys For Plaintiff
954 Lexington Avenue, #331
New York, New York 10021
Phone: 888.875.1059
Fax: 888.887.0073

DEFENDANTS' ADDRESSES:

Erie County Medical Center Corporation
462 Grinder Street
Buffalo, NY 14202

County of Erie
95 Franklin Street
Buffalo, NY 14202

Thom Loree, M.D.
462 Grinder Street
Buffalo, NY 14202

Erie County Home
11580 Walden Avenue
Alden, NY 14004

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE
----------X
JOSE MATEO

Plaintiff,

-against-

ERIE COUNTY MEDICAL CENTER CORPORATION, COUNTY OF ERIE, THOM LOREE, M.D. and ERIE COUNTY HOME

Defendants.
----------X

Index No.:

VERIFIED COMPLAINT

FILED
ACTIONS & PROCEEDINGS
APR 17 2013
ERIE COUNTY
CLERK'S OFFICE

Plaintiff, JOSE MATEO, as and for his complaint, by and through his attorney, The Law Office of Glenn M. Race, respectfully alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. That at all times hereinafter mentioned, plaintiff was and still is a resident of the County of Erie, State of New York.

2. That at all times hereinafter mentioned, defendant, ERIE COUNTY MEDICAL CENTER (hereinafter referred to as "ECMC"), was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

3. That at all times hereinafter mentioned, defendant, COUNTY OF ERIE, was and still is a municipal corporation, duly organized and existing under the laws of the State of New York.

4. That at all times hereinafter mentioned, defendant ERIE COUNTY HOME was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

5. That pursuant to Section 50-e of the General Municipal Law of the State of New York, within the time prescribed by law, a duly executed and verified Notice of Claim setting forth the name and address of the claimant and the claimant's attorney, the nature of the claim, the time when, the place where and the manner in which the claim arose, as well as a

general description of the items of damage or injury, was duly served upon defendants, ERIE COUNTY MEDICAL CENTER CORPORATION, COUNTY OF ERIE and ERIE COUNTY HOME.

6. That pursuant to Section 50-H of the General Municipal Law of the State of New York, the plaintiff attended a hearing held on October 25th, 2012, at plaintiff's residence located at 8 Esperar Street, Buffalo, NY 14201.

7. That pursuant to Section 50-e of the General Municipal Law of the State of New York, plaintiff has waited thirty (30) days for the defendants to make adjustment, settlement or payment thereon, and that said defendants have failed, refused or neglected to make adjustment, settlement or payment thereon, and that thereafter this action has been timely commenced.

8. That at all times hereinafter mentioned, defendant, ECMC, owned operated, maintained, managed and controlled a hospital for the care and treatment of sick and injured people located at 462 Grinder Street, Buffalo, NY 14202.

9. That at all times herein mentioned, defendant, ECMC, was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

10. That at all times hereinafter mentioned, defendant, ECMC, was under the ownership, control, operation and/or management of defendant, COUNTY OF ERIE, its agents, servants and/or employees.

11. That at all times herein mentioned, defendant, ECMC, held itself out to the public as a facility in which members of the public, including plaintiff, JOSE MATEO, could receive care and treatment in a competent, safe manner and in accordance with accepted medical standards of practice existing in the community.

12. That at all times herein mentioned, defendant, ECMC, provided personnel, including physicians, nursing staff, technicians, physician assistants, residents, interns and others for the work-up, care, treatment and monitoring of patients to whom the facility was made available, including the plaintiff, JOSE MATEO, and held itself out to the public as furnishing

treatment facilities where patients, including the plaintiff, JOSE MATEO, could be treated for various conditions, illnesses and ailments.

13. At all times herein mentioned, it was the duty of defendant, ECMC, its agents, servants and/or employees, to afford to the plaintiff, JOSE MATEO, safe, reasonable and proper diagnostic work-up, treatment, follow-up medical, surgical and hospital care.

14. That at all times hereinafter mentioned, defendant, ERIE COUNTY HOME, owned, operated, maintained, managed and controlled a hospital for the care and treatment of sick and injured people located at 11580 Walden Avenue, Alden, NY 14004.

15. At all times herein mentioned, defendant, ERIE COUNTY HOME, was and still remains engaged in the ownership of a nursing home known as ERIE COUNTY HOME, located at 11580 Walden Avenue, Alden, NY 14004 and is governed by the laws and regulations of the State of New York and Federal laws and regulations.

16. At all times herein mentioned, defendant, ERIE COUNTY HOME, was and still remains engaged in the maintenance of a nursing home known as ERIE COUNTY HOME, located at 11580 Walden Avenue, Alden, NY 14004 and is governed by the laws and regulations of the State of New York and Federal laws and regulations.

17. At all times herein mentioned, defendant, ERIE COUNTY HOME, was and still remains engaged in the management of a nursing home known as ERIE COUNTY HOME, located at 11580 Walden Avenue, Alden, NY 14004 and is governed by the laws and regulations of the State of New York and Federal laws and regulations.

18. At all times herein mentioned, defendant, ERIE COUNTY HOME, was and still is a proprietary business engaged in the not for profit operation of a nursing home.

19. That at all times herein mentioned, defendant, ERIE COUNTY HOME, was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

20. That at all times hereinafter mentioned, defendant, ERIE COUNTY HOME, was under the ownership, control, operation and/or management of defendant, COUNTY OF ERIE,

its agents, servants and/or employees.

21. That at all times herein mentioned, defendant, ERIE COUNTY HOME, held itself out to the public as a facility in which members of the public, including plaintiff, JOSE MATEO, could receive care and treatment in a competent, safe manner and in accordance with accepted medical standards of practice existing in the community.

22. At all times herein mentioned, defendant, ERIE COUNTY HOME, provided personnel, including physicians, nursing staff, technicians, physician assistants, residents, interns and others for the work-up, care, treatment and monitoring of patients to whom the facility was made available, including the plaintiff, JOSE MATEO, and held itself out to the public as furnishing treatment facilities where patients, including the plaintiff, JOSE MATEO, could be treated for various conditions, illnesses and ailments.

23. At all times herein mentioned, it was the duty of defendant, ERIE COUNTY HOME, its agents, servants and/or employees, to afford to the plaintiff, JOSE MATEO, safe, reasonable and proper diagnostic work-up, treatment, follow-up medical, surgical and hospital care.

24. That at all times herein mentioned, defendant , THOM LOREE, M.D., was a physician duly licenced to practice medicine in the State of New York.

25. That at all times herein mentioned, defendant, THOM LOREE, M.D., held himself out to the general public and to the plaintiff in particular, to be a specialist in the field of surgery.

26. That at all times herein mentioned, defendant, THOM LOREE, M.D., was a physician who held himself out to the general public, including the plaintiff, JOSE MATEO, as being competent in the diagnosis, care and treatment of patients, and as being able to treat patients in general, and the plaintiff, JOSE MATEO, in particular, in accordance with standards of good and accepted medical and surgical care and practice.

27. That at all times herein mentioned, defendant, THOM LOREE, M.D., was an employee of defendant, ECMC.

28. That at all times herein mentioned, defendant, THOM LOREE, M.D., was affiliated with defendant, ECMC, and was authorized to treat patients at that facility by defendant, ECMC.

29. That at all times herein mentioned, defendant, THOM LOREE, M.D., was an agent, servant and /or employee of defendant, ECMC, and was acting within said scope and capacity with the knowledge, consent and authority of defendant, ECMC.

30. That at all times herein mentioned, defendant, THOM LOREE, M.D., in the care and/or treatment of plaintiff, was acting within the scope of employment and/or agency with defendant, ECMC.

31. That at all times herein mentioned, defendant, THOM LOREE, M.D., had privileges at defendant, ECMC, and was authorized to treat patients at that facility by defendant, ECMC.

32. That at all times herein mentioned, defendant, THOM LOREE, M.D., was associated with defendant, ECMC, and was authorized to treat patients at that facility.

33. That at all times herein mentioned, defendant, THOM LOREE, M.D., was on staff at defendant, ECMC, and was authorized to treat patients at that facility by defendant, ECMC.

34. That at all times herein mentioned, defendant, THOM LOREE, M.D., was an employee of defendant, ERIE COUNTY HOME.

35. That at all times herein mentioned, defendant, THOM LOREE, M.D., was affiliated with defendant, ERIE COUNTY HOME, and was authorized to treat patients at that facility by defendant, ERIE COUNTY HOME.

36. That at all times herein mentioned, defendant, THOM LOREE, M.D., was an agent, servant and /or employee of defendant, ERIE COUNTY HOME, and was acting within said scope and capacity with the knowledge, consent and authority of defendant, ERIE COUNTY HOME.

37. That at all times herein mentioned, defendant, THOM LOREE, M.D., in the care and/or treatment of plaintiff, was acting within the scope of employment and/or agency with

defendant, ERIE COUNTY HOME.

38. That at all times herein mentioned, defendant, THOM LOREE, M.D., had privileges at defendant, ERIE COUNTY HOME, and was authorized to treat patients at that facility by defendant, ERIE COUNTY HOME.

39. That at all times herein mentioned, defendant, THOM LOREE, M.D., was associated with defendant, ERIE COUNTY HOME, and was authorized to treat patients at that facility.

40. That at all times herein mentioned, defendant, THOM LOREE, M.D., was on staff at defendant, ERIE COUNTY HOME, and was authorized to treat patients at that facility by defendant, ERIE COUNTY HOME.

41. That beginning on or about September 26th, 2011, and for a period prior and subsequent thereto to present, with regard to certain signs, symptoms and complaints relating to his physical condition, plaintiff, JOSE MATEO, came under the care of the defendants, ECMC, COUNTY OF ERIE, THOM LOREE, M.D. and ERIE COUNTY HOME, in their professional capacity as a physician and/or medical facility charged with the responsibility of caring for patients in accordance with standards of accepted medical and/or surgical practice.

42. At all times herein mentioned, it was the duty of the defendants and their agents, servants and/or employees, to possess such reasonable degree of skill and learning as is ordinarily possessed by physicians and surgeons in the community and to render medical and surgical care and treatment in accordance with standards of good and accepted practice and to use reasonable care, diligence and judgment in the exercise of such skill and in the application of such learning, and to employ in the treatment of patients in general, and of the plaintiff, JOSE MATEO, in particular, approved methods of care and treatment in general use in the community, and to afford patients in general, and the plaintiff, JOSE MATEO, in particular, due, reasonable and proper skill, care diagnosis and treatment.

43. That at all times herein mentioned, the work-up, diagnosis, care and treatement rendered to plaintiff, JOSE MATEO, by defendants, ECMC, COUNTY OF ERIE, THOM

LOREE, M.D. and ERIE COUNTY HOME, their agents, servants and/or employees, was rendered in an improper, negligent and/or careless manner, in that the defendants, their agents, servants and/or employees, failed to properly, timely or adequately attend to and care for plaintiff, JOSE MATEO; in failing to treat plaintiff's condition; in failing to allow plaintiff the opportunity of proper treatment of his condition; in failing to render a timely and properly pathological diagnosis; in failing to properly perform surgery; in failing to timely institute appropriate therapy for plaintiff's post-surgical complaints; in failing to timely diagnose a postoperative problem; in failing to properly treat a surgical error, in misleading plaintiff as to the true nature of his medical condition; in failing to properly supervise and monitor plaintiff's condition; in causing, allowing and permitting the plaintiff's condition to worsen and deteriorate; in failing to properly diagnose plaintiff's condition; in failing to perform the necessary and proper diagnostic tests and procedures to determine the true condition of plaintiff; in causing, allowing and permitting plaintiff to sustain injuries due to improper procedures performed by the defendants; in causing, allowing and permitting the worsening of plaintiff's condition; in failing to hire and adequately train competent personnel; and in otherwise being careless and negligent under the circumstances. In addition, plaintiff claims the doctrine of res ipsa loquitur applies herein.

44. That by reason of the foregoing, plaintiff, JOSE MATEO, was caused to sustain and suffer certain serious, severe and permanent personal injuries and/or conditions, conscious pain and suffering, sever and disabling injuries, scarring, disfigurement, neurological impairment, mental anguish and emotional distress, has been compelled to undergo future hospitalizations as well as other care, and has otherwise been caused to be damaged thereby.

45. That causes of action alleged herein fall within one or more of the exemptions set forth in CPLR 1601 and/or 1602.

46. That by reason of the foregoing, plaintiffs have sustained damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction of this action.

AS AND FOR A SECOND CAUSE OF ACTION

47. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "46", with the same force and effect as if fully set forth at length herein.

48. That defendants and/or each of them, their agents, servants and/or employees failed to obtain an informed consent from plaintiff; failed to reasonably advise him of the foreseeable risks, benefits, hazards and complications attendant to the medical and surgical procedures to be performed; failed to advise plaintiff of the available alternative methods and modalities of treatment; failed to advise plaintiff of the risks, benefits, hazards and complications attendant to the available alternative methods and modalities of treatment; failed to treat plaintiff's condition with available alternative methods; and otherwise failed to disclose that information as would a reasonable medical practitioner under similar circumstances.

49. That the plaintiff and a reasonable person in the plaintiff's position would not have consented to the surgical procedure performed and would have sought prompt treatment had he/she been informed of the risks attendant to same.

50. As a result of the foregoing, plaintiff was proximately caused to sustain damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction of this action.

AS AND FOR A THIRD CAUSE OF ACTION PURSUANT TO PUBLIC HEALTH LAW SECTION 2801-D AGAINST DEFENDANT ERIE COUNTY HOME

51. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "50", with the same force and effect as though set forth herein at length.

52. During the period of plaintiff, JOSE MATEO's, residency in defendant, ERIE COUNTY HOME, said defendant, through their officers, employees, agents and staff, violated Public Health Law Section 2801-d by depriving the resident of rights or benefits created or established for the well being of the resident by the terms of a contract(s) and/or State and Federal statutes, rules and regulations.

53. By reason of the foregoing, plaintiff, JOSE MATEO, was caused to suffer and

sustain severe and permanent serious personal injuries, severe and serious pain and suffering and mental anguish; has been caused to expend and become obligated to expend and be liable for sums of money for medical services and related expenses, and was thereby injured and damaged in a sum which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction.

54. By virtue thereof, plaintiff additionally demands as damages, attorney's fees based upon reasonable value of legal services rendered pursuant to Public Health Law Section 2801-d. By virtue thereof, plaintiff additionally demands as damages no less than the per diem damages pursuant to Public Health Law Section 2801-d.

55. That the conduct afore described involved gross abuse, willful malfeasance and gross neglect on the part of the defendants.

56. As a consequence thereof, the plaintiff, JOSE MATEO, demands punitive damages.

WHEREFORE, plaintiffs demand judgment against the defendants on the first, second and third causes of action in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action, together with costs and disbursements and interest computed from the date of any verdict rendered herein.

THE LAW OFFICE OF GLENN M. RACE

By: _____

Glenn M. Race
Attorneys For Plaintiff
954 Lexington Avenue, #331
New York, New York 10021
Phone: 888.875.1059
Fax: 888.887.0073

ATTORNEY'S VERIFICATION

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, stated that I am a member of The Law Office of Glenn M. Race, the attorneys of record for the plaintiff in the within action; I have read the foregoing complaint and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not by plaintiff is that plaintiff resides in a County other than the one in which your affirmant maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, memoranda, etc. in office file.

I affirm that the foregoing is true, under the penalties of perjury.

Dated: New York, New York
April 15th, 2013

Glenn M. Race

CERTIFICATE OF MERIT

I, Glenn M. Race, an attorney duly licensed to practice law in the State of New York, affirms the following statements to be true under penalties of perjury:

1. I am an attorney in the Law Office of Glenn M. Race, attorneys for the plaintiff herein and, after a review of the file, I am fully familiar with the contents of the file as maintained in this office.

2. Pursuant to CPLR 3012(a), I have consulted with a physician licensed to practice medicine in the State of New York who is knowledgeable of the relevant issues regarding this matter and that I have concluded on the basis of such consultation that there is reasonable basis for the commencement of the action.

Dated: New York, New York
April 15th, 2013

Glenn M. Race