

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CARL LEVINE

Plaintiff,

-against-

DR. ROBERT WERBOFF,

Defendant.
-----X

INDEX NO.:

VERIFIED COMPLAINT

FILED

OCT 19 2009

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHES

Plaintiff, Carl Levine, as and for his Verified Complaint, by his attorneys Finger & Finger, A

Professional Corporation respectfully alleges:

COMMON ALLEGATIONS

1 The Plaintiff herein, Carl Levine ("Carl Levine" or "Plaintiff") at all times hereinafter mentioned is and was a resident of Westchester County, State of New York.

2 Carl Levine at all times hereinafter mentioned is and was married to Susan Levine ("Susan Levine" or "Plaintiff's wife, Susan Levine").

3 At all the times herein mentioned Defendant Robert Werboff was and still is licensed to practice medicine in the State of New York.

4 Upon information and belief, at all the times herein mentioned Carl Levine cohabited with Susan Levine.

5 Upon information and belief, at all the times herein mentioned the Defendant Robert Werboff ("Werboff") was and still is a psychiatrist.

6 Upon information and belief, at all the times herein mentioned Werboff was and still is a resident of the County of Westchester, State of New York.

7 Upon information and belief, at all the times herein mentioned the Defendant Werboff was and still is a medical doctor, duly licensed to practice medicine in the State of New York with a specialty in the field of psychiatry and is to be believed a Board Certified psychiatrist.

8 Upon information and belief, at all the times herein mentioned Werboff maintained an office for the practice of medicine in Westchester County.

9 Upon information and belief, at all the times herein mentioned on or about 2000, Werboff and Susan Levine entered into a physician – patient relationship.

10 As a result of the physician – patient relationship, Werboff became aware of certain emotional and/or psychological and /or psychiatric problems that Susan Levine had.

11 Susan Levine sought treatment for certain emotional and/or psychological and /or psychiatric problems from Werboff.

12 Upon information and belief, at all the times herein mentioned Werboff treated Susan Levine for certain emotional and/or psychological and/or psychiatric problems and / or conditions that she sought treatment for from Werboff.

13 Upon information and belief, at all the times herein mentioned Werboff and Susan Levine commenced and continued having sexual relations for a period of time.

14 Upon information and belief, at all the times herein mentioned the Defendant Werboff seduced and convinced Susan Levine to have sexual relations with him.

15 Upon information and belief, at or prior to the time Werboff had sexual relations with Susan Levine, he contracted Herpes Simplex Disease (“HSP”).

16 Upon information and belief, at all the times herein mentioned Werboff was aware that he had contracted Herpes Simplex Disease (“HSP”).

17 Upon information and belief, at all the times herein mentioned Werboff sought treatment for Herpes Simplex Disease (“HSP”).

18 Upon information and belief, at all the times herein mentioned Werboff had HSP at a time when he was having sexual relations with Susan Levine.

19 Upon information and belief, at all the times herein mentioned Werboff had HSP at a time when he was having sexual relations with Susan Levine and continued having sexual relations with Susan Levine even after he was aware that he had HSP.

20 Upon information and belief, at all the times herein mentioned at some time after she commenced having sexual relations with Werboff, Susan Levine became infected with HSP.

21 Upon information and belief, at all the times herein mentioned, at all times during which Defendant Werboff was having sexual relations with Susan Levine he was aware that she was married to Carl Levine.

22 Upon information and belief, at all the times herein mentioned , at all times during which Defendant Werboff was having sexual relations with Susan Levine he was aware that she was having sexual relations and continued to have sexual relations with her husband Carl Levine.

23 Upon information and belief Susan Levine contracted HSP with an active infection in 2007.

24 Upon information and belief, after she contracted HSP, Susan Levine continued to have sexual relations with Carl Levine

25 Carl Levine contracted HSP.

26 Carl Levine was infected with HSP by Susan Levine.

27 Upon information and belief, Werboff and Susan Levine continued their sexual relationship and continued having sexual relations after Werboff had contracted HSP.

28 Carl Levine did not have HSP prior to Susan Levine having sexual relations with Werboff.

29 Carl Levine did not have sexual relations with anyone other than his wife from the time he did not have HSP until he contracted HSP and thereafter.

30 The only person from whom Carl Levine could have contracted HSP was from his wife.

31 Upon information and belief, at all the times herein mentioned the only person Susan Levine could have contracted HSP from was Werboff.

FIRST CAUSE OF ACTION

(For Intentional Infliction Of Emotional Distress Against Defendant)

30. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

31. Throughout the course of dealings with Carl Levine's wife and afterwards, Defendant as alleged above in this complaint, engaged in an intentional and injurious course of conduct that was in conscious disregard of Carl Levine's rights.

32. Upon information and belief, at all the times herein mentioned the Defendant knew and was aware that he had HSP and/or a sexually transmittable disease.

33. Defendant knew before he engaged in sexual relations with Carl Levine's wife and before he engaged in sexual relations with Carl Levine's wife Susan Levine that he was infected with HSP.

Defendant intentionally and with a conscious disregard for Carl Levine's safety and well-being, hid this information from Carl Levine and upon information and belief his wife Susan Levine.

34. Upon information and belief, Defendant infected Carl Levine's wife Susan Levine with HSP without her knowledge.

35. Upon information and belief, if Carl Levine's wife Susan Levine had known of any of these facts prior to engaging in sexual relations with Defendant she would not have engaged in sexual relations with Defendant.

36. Defendant knowingly, intentionally, and with a conscious disregard for Carl Levine's safety, infected Carl Levine's wife Susan Levine with HSP.

37. Carl Levine's wife Susan Levine was unaware, until she discovered prior to the institution of this litigation, on or about April, 2007 that she had HSP.

38. Not only did Defendant hide the HSP from Carl Levine and presumably from Carl Levine's wife, Susan Levine, but Defendant was aware and he knew all along he had HSP and he had infected Carl Levine's wife Susan Levine with the disease.

39. Upon information and belief, at all the times herein mentioned the Defendant failed to take reasonable or in fact any precautions to prevent the transmission of the HSP.

40. Upon information and belief, at all the times herein mentioned the Defendant knew, or acted with a conscious disregard, that his abusive and outrageous conduct would cause, and did cause Carl Levine mental distress, and was so extreme as to exceed all bounds of that usually tolerated in a decent and civilized society and moreover this was extreme conduct and was in reckless disregard of consequences to Plaintiff's wife Susan Levine and to Carl Levine.

41. The acts of the Defendant were the cause of the injuries and damages to the Plaintiff as hereinafter alleged.

42. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and

in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

43. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

44. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

45. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

**SECOND CAUSE OF ACTION
(For Negligent Infliction Of Emotional Distress Against Defendant)**

46. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

47. The Defendant engaged in negligent conduct.

48. The negligence of the defendant consisted in, among other things, in negligently, carelessly and imprudently: failing to warn and advise the Plaintiff's wife Susan Levine and also the Plaintiff Carl Levine of the Defendant's contraction of HSP a sexually transmitted and transmittable disease; the

concealment of his infection with HSP; the contracting of his HSP; his failure to inform Susan Levine and/or Carl Levine of his infection with HSP; failing to prevent transmission of HSP to Susan Levine and also to Carl Levine; failure to abstain from sexual contact or other exchange of bodily fluids; failure to use a condom; breach of a duty of care; failure to take reasonable care in determining the existence of infection; failure to disclose a relevant medical condition to Susan Levine and to Carl Levine; failure to warn Susan Levine and Carl Levine; failure to take precautionary, reasonable or in fact any measures so as to not transmit HSP and/or a sexually transmittable disease to Susan Levine and Carl Levine; carelessly exposing himself to HSP and/or a sexually transmittable disease; engaging in sexual relations with a patient; engaging in sexual relations with a patient when he knew or reasonably should have known that he had HSP or a sexually transmittable disease; transmitting HSP and / or a sexually transmittable disease; failure to inform a sexual partner of the disease and the fact that he was infected with HSP; contracting HSP; failing to take steps to prevent contracting HSP; failing to take any steps and/or reasonable steps to prevent the transmission of HSP to others; breaching both the confidential patient-doctor relationship and using an unacceptable and in fact harmful method of treatment in negligently causing Carl Levine's wife to have sexual relations with her; in negligently causing and/or inducing Carl Levine's wife to have sexual relations with him; in persuading Carl Levine's wife to have sexual relations with him in order for him to obtain a benefit; in failing to take reasonable care in preventing others to be exposed to HSP; in failing to take reasonable care in failing to prevent others from contracting HSP; in failing to detect the presence of HSP in himself; in failing to inform his sexual partner of the fact that he had HSP; in failing to abstain from sexual contact with a person who did not have HSP; in the failure to take reasonable care in determining the risk of infection; failure to disclose a relevant medical condition to Susan Levine and Carl Levine; failure to stop engaging in sexual relations when he knew or should have known or reasonably should have known of his infection with HSP; in not telling the truth or in telling a lie about his medical condition; withholding information about his medical condition; in violating a duty to Carl

Levine's wife; in failing to comply with the duty of care to the Plaintiff Carl Levine's wife and in being otherwise negligent, careless and imprudent under the circumstances then and there existing.

49. The injuries and damages suffered and sustained by the Plaintiff Carl Levine were caused wholly and solely due to the negligence of the Defendant and were in no wise due to the negligence of the Plaintiff Carl Levine contributing thereto.

50. At all times Defendant knew or had a reasonable belief that he had HSP.

51. Defendant's negligence caused Carl Levine to be exposed to HSP.

52. As a result of this exposure, Carl Levine suffers from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP.

53. Defendant knew, or in the exercise of reasonable care should have known, that his abusive and outrageous conduct would cause, and did cause, Carl Levine mental distress, and was so extreme so as to exceed all bounds of that usually tolerated in a decent and civilized society.

54. Defendant made the above representations knowing that Carl Levine's wife would rely on his representations to Carl Levine's detriment, and in particular, that Carl Levine's wife would become his lover and have sex with him.

55. Defendant, as a doctor understood the health risk that he was placing Carl Levine's wife and therefore also Carl Levine in.

56. Defendant had or should have had knowledge of the health risks at which he placed Carl Levine's wife and therefore Carl Levine.

57. Defendant knew that he should not have sexual relations with Carl Levine's wife given his HSP status.

58. Upon information and belief, Carl Levine's wife did rely upon Defendant's misrepresentations and had sexual relations with the Defendant and also had sexual relations with Carl Levine, thereby exposing Carl Levine to the HSP which she contracted from the Defendant.

59. As a direct and proximate result of Defendant's actions and activities herein, the Defendant was the proximate cause of the injuries and damages sustained by the Plaintiff.

60. Carl Levine suffered general and special damages, as alleged herein.

61. The Defendant's representations and misrepresentations were outrageous and made fraudulently, oppressively and maliciously. Carl Levine is entitled to punitive damages as a result thereof.

62. Upon information and belief, Carl Levine's wife Susan Levine was unaware when she engaged in sexual relations with Defendant that he had HSP and therefore Susan Levine would not have engaged in sexual relations with Defendant if she had known he had HSP.

63. Since on or about March, 2009, Carl Levine has learned that Defendant engaged in sexual relations with Carl Levine's wife, Susan Levine, during Carl Levine's marriage.

64. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief

alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

65. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

66. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

67. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

THIRD CAUSE OF ACTION (For Fraud Against the Defendant)

68. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

69. Upon information and belief, Defendant represented to Carl Levine's wife that he was healthy and had no major health problems.

70. Upon information and belief, Defendant represented to Carl Levine's wife that he did not have any communicable diseases, including HSP.

71. Defendant made such representations with the expectation and intent that Carl Levine's wife would rely on them.

72. Defendant knew said representations were untrue when he made same.

73. Upon information and belief, Carl Levine's wife relied on such representations and engaged in sexual relations with Defendant.

74. Carl Levine's wife was infected with HSP from Defendant.

75. Upon information and belief, Carl Levine's wife reasonably relied on these representations and promises and materially changed her position in reliance on such representations and promises and had sexual relations with Defendant.

76. At the time Defendant made such representations, he knew that such representations were false in that Defendant had HSP and had sexual relationships with others, contracted HSP and transmitted HSP to Carl Levine's wife.

77. At the time Defendant made such representations, upon information and belief, Carl Levine's wife believed them to be true.

78. Upon information and belief, Carl Levine's wife was unaware, until she discovered in or about April, 2007 that Defendant had HSP and put her at risk for HSP and other sexually transmitted diseases.

79. Upon information and belief, if Carl Levine's wife had known of any of these facts prior to engaging in sexual relations with Werboff she would not have engaged in sexual relations with Defendant.

80. Carl Levine's wife, Susan Levine, relied on the representations of the defendant to her detriment.

81. As a result of the foregoing, Carl Levine contracted HSP.

82. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

83. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

84. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

FOURTH CAUSE OF ACTION

(For Negligence Against the Defendant)

85. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

86. Upon information and belief, the Defendant knew that Carl Levine's wife was married to Carl Levine.

87. Upon information and belief, the Defendant knew that Carl Levine's wife was married to Carl Levine and Carl Levine's wife was, during the time that the Defendant was having sexual relations with Carl Levine's wife, having sexual relations with Carl Levine.

88. Upon information and belief, the Defendant knew or should have known that HSP was a contagious and/or communicable disease.

89. Upon information and belief, the Defendant knew or should have known that HSP was a contagious and/or communicable disease that could be transmitted by sexual contact between sexual partners.

90. Upon information and belief, at all the relevant times herein, the Defendant knew or should have known that he had HSP and that HSP was a communicable and/or contagious disease and that HSP was communicable by sexual relations.

91. Defendant owed Carl Levine and Carl Levine's wife a duty of care to disclose to Carl Levine's wife the fact that he was infected with HSP before he engaged in sexual relations with Carl Levine's wife.

92. Defendant owed Carl Levine's wife a duty to tell her, among other things: that he had HSP and that he engaged in behavior that put her at great risk for HSP and other sexually transmitted diseases, because Defendant knew Carl Levine's wife was unaware of this and therefore Carl Levine's wife was unable to make any informed choices or take any chances to protect herself; that he had HSP; that he

had a sexually transmittable disease; that she could become infected if she engaged in sexual relations with him.

93. Defendant was putting Susan Levine and Carl Levine at great risk for HSP and other sexually transmitted diseases; that because he knew Carl Levine's wife was unaware of this and therefore Carl Levine's wife was unable to make any informed choices or take any chances to protect herself and that she was having sexual relations with Carl Levine and reasonably could and would in all probability transmit HSP to Carl Levine.

94. Defendant breached his duty to Carl Levine and is guilty of one or more of the following negligent, careless and/or imprudent acts and/or omissions:

- a. Failed to warn Carl Levine that he was infected with HSP before engaging in sexual intercourse with Carl Levine's wife;
- b. Engaged in sexual intercourse with Carl Levine's wife when he knew that he had HSP;
- c. Failed to warn Carl Levine's wife of the substantial risk of contracting HSP through sexual intercourse with him.
- d. Failed to warn Carl Levine that he was infected with HSP before engaging in unprotected sexual intercourse with Carl Levine's wife;
- e. Engaged in unprotected sexual intercourse with Carl Levine's wife when he knew that he had HSP;
- f. Failed to warn Carl Levine's wife of the substantial risk of contracting HSP through unprotected sexual intercourse with him.
- g. failing to warn and advise the Plaintiff's wife Susan Levine and also the Plaintiff Carl Levine of the Defendant's contraction of HSP a sexually transmitted and transmittable disease;
- h. the concealment of his infection with HSP;
- i. the contracting of his HSP;

- j. failing to inform Susan Levine and/or Carl Levine of his infection with HSP;
- k. failing to prevent transmission of HSP to Susan Levine and also to Carl Levine;
- l. failing to abstain from sexual contact or other exchange of bodily fluids;
- m. failing to use a condom;
- n. failing to take reasonable care in determining the existence of infection;
- o. failing to disclose a relevant medical condition to Susan Levine and to Carl Levine;
- p. failing to warn Susan Levine and Carl Levine of the dangers facing them and/or other conditions and circumstances that they should be aware of;
- q. failing to take precautionary, reasonable or in fact any measures so as to not transmit HSP and/or a sexually transmittable disease to Susan Levine and Carl Levine;
- r. in exposing himself to HSP and/or a sexually transmittable disease;
- s. in engaging in sexual relations with a patient;
- t. in engaging in sexual relations with a patient when he knew or reasonably should have known that he had HSP or a sexually transmittable disease;
- u. in transmitting HSP and / or a sexually transmittable disease;
- v. in failing to inform a sexual partner of the disease and the fact that he was infected with HSP;
- w. in contracting HSP;
- x. in failing to take steps to prevent contracting HSP;
- y. in failing to take any steps and/or reasonable steps to prevent the transmission of HSP to others;
- z. in breaching both the confidential patient-doctor relationship and using an unacceptable and in fact harmful method of treatment;
- aa. in causing Carl Levine's wife to have sexual relations with him;

- bb. in causing and/or inducing Carl Levine's wife to have unprotected sexual relations with him;
- cc. in persuading Carl Levine's wife to have sexual relations with him in order for her to obtain a benefit;
- dd. in failing to take reasonable care in preventing others to be exposed to HSP;
- ee. in failing to take reasonable care in failing to prevent others from contracting HSP;
- ff. in failing to detect the presence of HSP in himself;
- gg. in failing to inform his sexual partner of the fact that he had HSP;
- hh. in failing to abstain from sexual contact with a person who did not have HSP; in the failure to take reasonable care in determining the risk of infection;
- ii. in failing to disclose a relevant medical condition to Susan Levine and Carl Levine;
- jj. in failing to stop engaging in sexual relations when he knew or should have known or reasonably should have known of his infection with HSP;
- kk. in having sexual relations when he had HSP;
- ll. in not telling the truth or in telling a lie about his medical condition;
- mm. in withholding information about his medical condition;
- nn. in violating a duty to Carl Levine's wife,
- oo. in failing to comply with the duty of care to the Plaintiff Carl Levine's wife;
- pp. violating the Public Health Law, Mental Hygiene Law, County Health Code and other relevant statutes, codes and regulations;
- qq. in being otherwise negligent, careless and imprudent under the circumstances then and there existing.

95. As a direct and proximate result of Defendant's negligent acts and/or omissions, Carl Levine did become infected with HSP and is infected with HSP.

96. Upon information and belief, Defendant, knowing Carl Levine's wife was unable to take any chances to protect herself from any sexually transmitted diseases, including HSP, because she was unaware of the risk that he was placing on her, still refused to take any steps to protect Carl Levine's wife.

97. Upon information and belief, Carl Levine's wife contracted HSP from Defendant.

98. Upon information and belief, Carl Levine's wife contracted HSP from Defendant and transmitted it to Carl Levine.

99. Upon information and belief, Carl Levine's wife contracted HSP from Defendant and transmitted it to Carl Levine.

100. Upon information and belief, Carl Levine, through his wife contracted HSP from Defendant.

101. Defendant breached all of these duties to Carl Levine's wife.

102. Defendant breached all of these duties to Carl Levine.

103. Carl Levine was unaware, until he discovered in or about March 2009 that Defendant engaged in a sexual relationship with his wife that put her and therefore put him at great risk for HSP and other sexually transmitted diseases.

104. Since 2008 to 2009 Carl Levine has learned that his wife engaged in sexual relations with Defendant during their marriage and learned for the first time that she was infected by Defendant with HSP.

105. If Carl Levine had known of any of these facts prior 2008 he would not have had sexual relations with his wife and therefore not been exposed to HSP.

106. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both

internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

107. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, who was a person reasonably intended to be within the zone of danger and/or one who would have sexual relations with his wife, with whom the Defendant was also having sexual relations and the Defendant knew or reasonably should have known that Carl Levine's wife had, would continue to have and would in the future have sexual relations with his wife and therefore knew, should have known and reasonably should have known that he would expose Carl Levine to HSP through Carl Levine's wife and by infecting Carl Levine's wife thereby put Carl Levine at risk and knew, should have known and reasonably should have known that he would put Carl Levine

at risk, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

108. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

109. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

**FIFTH CAUSE OF ACTION
(For Negligent Misrepresentation Against the Defendant)**

110. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

111. The Defendant made the above misrepresentations negligently without regard to the rights and health of Carl Levine's wife and Carl Levine and in violation of the Public Health Law, Mental Hygiene Law, County Health Code and other relevant statutes, codes and regulations.

112. As a direct and proximate result of Defendant's negligent misrepresentations, Carl Levine has and will continue to suffer general and special damages, all of which are alleged above.

113. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl

Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

114. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, who was a person reasonably intended to be within the zone of danger and/or one who would have sexual relations with his wife, with whom the Defendant was also having sexual relations and the Defendant knew or reasonably should have known that Carl Levine's wife had, would continue to have and would in the future have sexual relations with his wife and therefore knew, should have known and reasonably should have known that he would expose Carl Levine to HSP through Carl Levine's wife and by infecting Carl Levine's wife thereby put Carl Levine at risk and knew, should have known and reasonably should have known that he would put Carl Levine at risk, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

115. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

116. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

SIXTH CAUSE OF ACTION
(For Negligence Per Se Against the Defendant)

117. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

118. Upon information and belief, the Defendant is required under the law and the codes of the United States, State of New York and the County of Westchester to disclose his HSP status to a sexual partner as well as comply with other statutory requirements.

119. Carl Levine's wife is a member of the class protected and for whose benefit the aforementioned statutory provision was enacted.

120. Defendant breached his obligations under the aforementioned statute and is therefore negligent per se for his acts and omissions.

121. As a direct and proximate result of said negligence, Carl Levine has suffered general and special damages as alleged above.

122. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl

Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

123. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, who was a person reasonably intended to be within the zone of danger and/or one who would have sexual relations with his wife, with whom the Defendant was also having sexual relations and the Defendant knew or reasonably should have known that Carl Levine's wife had, would continue to have and would in the future have sexual relations with his wife and therefore knew, should have known and reasonably should have known that he would expose Carl Levine to HSP through Carl Levine's wife and by infecting Carl Levine's wife thereby put Carl Levine at risk and knew, should have known and reasonably should have known that he would put Carl Levine at risk, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

124. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

125. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence)

126. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

127. As a direct and proximate result of said negligence, Carl Levine has suffered general and special damages as alleged above.

128. By reason of the above, the acts complained of were and constituted "gross negligence."

129. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental

distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

130. The above-mentioned acts of Defendant, were willful, wanton, malicious, intentional, fraudulent, oppressive, and despicable, and were done in willful and conscious disregard of the rights, welfare, and safety of Carl Levine, who was a person reasonably intended to be within the zone of danger and/or one who would have sexual relations with his wife, with whom the Defendant was also having sexual relations and the Defendant knew or reasonably should have known that Carl Levine's wife had, would continue to have and would in the future have sexual relations with his wife and therefore knew, should have known and reasonably should have known that he would expose Carl Levine to HSP through Carl Levine's wife and by infecting Carl Levine's wife thereby put Carl Levine at risk and knew, should have known and reasonably should have known that he would put Carl Levine at risk, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

131. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

132. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Malpractice)

133. Plaintiff repeats, repleads and realleges all of paragraphs and allegations contained therein as heretofore alleged in this complaint and incorporates them by reference with the full force and effect as if set forth at length herein.

134. At all times herein mentioned the Plaintiff's wife, Susan Levine was a patient of the Defendant.

135. Upon information and belief, at all the times herein mentioned the Plaintiff's wife, Susan Levine sought treatment from Defendant for psychiatric, mental and/or emotional complaints.

136. The Defendant had a duty of care to "do his patient no harm" and to treat her in accordance with the ethics and practice of the medical profession.

137. Upon information and belief, at all the times herein mentioned, the Plaintiff's wife and the defendant had a confidential patient – physician relationship.

138. Upon information and belief, at all the times herein mentioned the Defendant had a duty to treat the Plaintiff's wife in accordance with professional standards.

139. Upon information and belief, at all the times herein mentioned the Defendant violated his duty of care to the to the Plaintiff and the Plaintiff's wife by among other things, abusing the confidential patient-doctor relationship and of professional standards by the therapist in using an unacceptable and in fact harmful method of treatment; and by causing the plaintiff's wife to have sexual relations with him in allegedly in order for her to obtain a therapeutic benefit.

140. By reason of the above-described acts and conduct of Defendant, as a result of the acts of the Defendant, Carl Levine has been rendered sick, sore and disabled, directly and legally caused to suffer actual damages including, but not limited to, physical, mental, emotional and psychological damage, medical and related expenses for care and procedures both now and in the future, and other pecuniary loss not at present ascertained; he was further rendered sick, sore, lame, disabled and disordered, both internally and externally, and suffered, among other things, infection with HSP, numerous internal


injuries; illness and sickness, severe fright, shock, pain, discomfort, and anxiety and is informed and believes, and on the basis of such information and belief alleges, that the injuries, illness, sickness and damages are permanent. As a further legal result of the acts and omissions of the Defendant, Carl Levine has been forced to incur expenses for medical care, X-rays, and laboratory costs and other care and attention and Carl Levine is informed and believes, and on the basis of such information and belief alleges, that he will in the future be required to incur additional expenses of the same nature; he is and will be incapacitated and unable to perform his usual activities for an indefinite period of time now and in the future; in causing Carl Levine to suffer from serious and genuine physical, emotional and mental distress including, but not limited to, a reasonable fear of developing conditions associated with HSP, and in fact Carl Levine has developed HSP and is in fear of developing further illness and sickness associated with HSP, all to Carl Levine's damage in an amount that is at present unascertained. As a further direct and legal result of the acts and conduct of Defendant Carl Levine has been caused to, and did suffer, and continues to suffer severe and permanent physical, emotional and mental distress and anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety and has suffered permanent injuries and damages.

141. Upon information and belief, the amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

142. By reason of the foregoing the Plaintiff Carl Levine was injured and damaged in an amount to be determined by the Court.

WHEREFORE, Carl Levine requests judgment against Defendant, as follows:

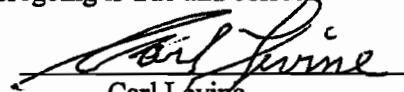
- 1) For general damages, on each of the causes of action set forth above, in an amount within the jurisdictional limits of this court to be proved at the trial of this action;
- 2) For punitive damages in an amount to be determined at the trial;
- 3) For costs and disbursements of this action.



Dorothy M. Finger, Esq.
Finger & Finger, A Professional Corporation
Attorneys for Plaintiff, Carl Levine
 158 Grand Street
 White Plains, New York 10601
 (914) 949-0308

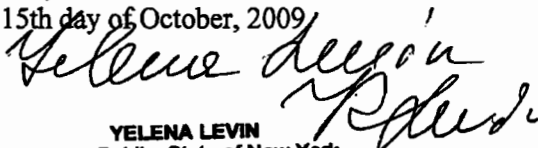
Verification

I, Carl Levine, am Plaintiff in this action. I have read the foregoing Complaint. The matters stated in the Complaint are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.



 Carl Levine

Duly sworn to before me this
15th day of October, 2009


YELENA LEVIN
 Notary Public, State of New York
 No. 01LE6110724
 Qualified in New York County
 Commission Expires 06/01/20 12