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 Attorneys for Plaintiff Class

)	
LAUREN MARRERO & JULIO)	
C. MARRERO)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION
Plaintiffs)	BERGEN COUNTY
)	
)	DOCKET NO.: _____
v.)	
)	Civil Action
)	
HEALTHPLUS SURGERY CENTER, LLC,)	
)	
Defendant)	COMPLAINT
)	AND JURY DEMAND
)	(Class Action)
)	

Plaintiffs Lauren Marrero & Julio C. Marrero, residing at 40 Bailey Avenue, in the Borough of Bloomingdale, County of Passaic, State of New Jersey, bring this action on behalf of themselves and on behalf of a class of all similarly situated persons, by way of this Complaint against Defendant HealthPlus Surgery Center, LLC and say:

JURISDICTION AND PARTIES

1. At all times relevant, the Plaintiffs, Lauren Marrero and Julio C. Marrero, were and continue to be residents of the County of Passaic, State of New Jersey.
2. Plaintiff Julio C. Marrero is the spouse of Lauren Marrero.
3. Defendant HealthPlus Surgery Center, LLC (hereinafter referred to as “HealthPlus”) is incorporated in the State of New Jersey. HealthPlus maintains its principal offices

and carries on regular business in Bergen County, New Jersey. HealthPlus Surgery Center, LLC operates an ambulatory surgery center located at 190 Midland Ave, Saddle Brook, NJ 07663.

4. HealthPlus Surgery Center, LLC provided medical treatment through its agents, servants and/or employees to Lauren Marrero between January 1, 2018 and September 7, 2018.

5. The Plaintiffs bring this Class Action on behalf of all persons who received medical care and treatment at HealthPlus Surgery Center, LLC between January 1, 2018 and September 7, 2018, and their spouses.

6. Personal jurisdiction is appropriate over the Defendants because they have their corporate headquarters in Bergen County, New Jersey, and as indicated above, carry on a regular business in Bergen County, New Jersey where the tortious and other conduct complained of occurred.

7. Additionally, jurisdiction is appropriate over the Defendants because greater than two-thirds of the members of the proposed Claimants' Class are citizens of the State of New Jersey.

FACTS COMMON TO ALL COUNTS

8. On or about December 26, 2018, the Defendant HealthPlus released a statement disclosing that on September 7, 2018, the New Jersey Department of Health closed the HealthPlus Surgery Center because some members of its staff “were not following proper sterile processing procedures and failed to comply with other regulations regarding the dispensing and storage of medication, as well as infection control planning and procedures.”¹

9. The statement further revealed that an investigation by the New Jersey Department of Health found that during the time period of January 1, 2018 and September 7, 2018,

¹ Statement by HealthPlus Surgery Center Administrator Betty McCABE on Possible Patient Exposure to Bloodborne Pathogens, dated December 26, Available: https://www.prweb.com/releases/statement_by_healthplus_surgery_center_administrator_betty_mccabe_on_possible_patient_exposure_to_bloodborne_pathogens/prweb16006837.htm

“deficiencies in infection control in both our sterilization/cleaning of instruments and the injection of medications may have exposed patients to blood borne pathogens (diseases in people’s blood), such as hepatitis B, hepatitis C, and human immunodeficiency virus (HIV).”²

10. On information and belief, the Defendant HealthPlus additionally issued notices to an estimated 3,700 former patients, advising that “lapses in infection control in sterilization/cleaning instruments and the injection of medications may have exposed patients to bloodborne pathogens (diseases in people’s blood), such as hepatitis B, hepatitis C, and human immunodeficiency virus (HIV).”^{3 4}

11. HIV can lead to acquired immunodeficiency syndrome (“AIDS”), if not treated. Once infected by the HIV virus, the human body cannot get rid of the virus completely, even with treatment. HIV attacks the body’s immune system, specifically the CD4 cells (T cells), which help the immune system fight off infections. Untreated, HIV reduces the number of CD4 cells (T cells) in the body, making the person more likely to get other infections or infection-related cancers. Over time, HIV can destroy so many of these cells that the body cannot fight off infections and disease.⁵

12. Hepatitis is an inflammation of the liver. Hepatitis Type B commonly occurs through contact with infected blood, semen or other bodily fluid through sex, sharing needles or other drug-injection equipment or from mother to baby at birth. Hepatitis type C is a blood-borne

² *Id.*

³ Letter patients of HealthPlus Surgery Center, obtained by NBC News, http://media1.s-nbcnews.com/i/today/z_creative/HealthPlusPatientNoticeLetteronHPLetterheadDec42018.pdf, and attached as Exhibit 1.

⁴ “More than 3,000 patients at New Jersey surgery center possibly exposed to HIV, hepatitis.” Kalhan Rosenblatt, NBC News. <https://www.nbcnews.com/news/us-news/more-3-000-patients-new-jersey-surgery-center-possibly-exposed-n951791>.

⁵ National Institute of Allergy and Infectious Diseases, HIV Page, <https://www.niaid.nih.gov/diseases-conditions/hivaids>

virus that is largely spread by exposure to infected needles or other drug injection equipment. Chronic infection with these viruses can lead to cirrhosis of the liver, end-stage liver disease, and liver cancer.⁶

13. As a result of these failures, individuals who sought medical treatment at HealthPlus, as well as their spouses, with whom they have been in close physical and sexual contact, were exposed to harmful and potentially fatal viruses, including but not limited to HIV, hepatitis B, and hepatitis C. The Plaintiffs and others similarly situated now live in fear of their exposure to these potentially fatal viruses.

CLASS ACTION ALLEGATIONS

14. The class represented by Plaintiffs in this action and of which Plaintiffs are members consists of all persons who received medical care and treatment between January 1, 2018 and September 7, 2018 at Defendant HealthPlus Surgery Center, LLC, and their spouses.

15. On information and belief, it is alleged that the number of members of the Class is in excess of 3,700 members, and therefore, are so numerous that joinder is impracticable.

16. There are common questions of law and fact in this action which are not only common to the Class, but which predominate over any question affecting only individuals. The predominating questions include, but are not limited to:

- a. Whether HealthPlus Surgery Center, LLC was negligent in the administration of medical treatment, to include in the sterilization of medical equipment, tools and/or instrumentation, and/or in the dispensing and storage of medication; and

⁶ National Institute of Allergy and Infectious Diseases, Hepatitis Page, <https://www.niaid.nih.gov/diseases-conditions/hepatitis>

b. Whether HealthPlus Surgery Center, LLC was negligent in the hiring, training, formulation of protocols and procedures, monitoring, and/or supervision, of their agents, servants, and/or employees with respect to the dispensing and storage of medication, sterilization of medical equipment, tools and/or instrumentation, and infection control planning and procedures.

17. The claims or defenses of the Plaintiffs are typical of the claims or defenses of the class.

18. The named Plaintiffs are represented parties for the class and are able to, and will, fairly and adequately represent and protect the rights and interests of the class.

19. This action is properly maintained as a class action pursuant to R. 4:32-1(a) and R. 4:32-1(b)(1), (2) and (3).

20. The maintenance of this action as a class action is superior to other available methods of adjudication in promoting the convenient administration of justice in achieving a fair and efficient adjudication of the controversy in this matter because:

(a) the prosecution of separate actions by or against individual members of the class would create a risk of:

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the defendants with incompatible standards of conduct because similarly situated plaintiffs would be treated differently, and

(ii) adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of other members of the class not parties to the adjudication, or would substantially impair or impede their ability to protect their interests;

- (b) the action is manageable as a class action;
- (c) in view of the complexity of the issues and the expense of litigation, the separate claims of the individual class members may be insufficient in amount to support the prosecution of separate actions;
- (d) it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering this action to justify a class action because the class members will benefit through monetary compensation as well as a declaratory relief and;
- (e) the members of the class do not have a significant interest in controlling the prosecution or defense of separate actions involving the subject matter of this action because there are common legal issues and the benefit to the class members would be consistent among the class members.

COUNT ONE
(Patient's Claim for Negligence)

21. The Plaintiffs incorporate in this Count those facts set forth hereinabove by reference thereto intending that each and every allegation hereinabove be deemed part hereof as if the same were repeated herein.

22. The Defendant HealthPlus is responsible to assure and maintain the safety of all patients who received treatment from their agents, apparent agents, servants, and/or employees.

23. It is alleged that HealthPlus, through its agents, servants and employees, owed to the Plaintiffs and others similarly situated a duty to exercise a degree of care, skill and judgment expected of a competent medical corporation acting in the same or similar circumstances, which duty included the performance of adequate and proper inspection and maintenance of sterilization equipment, proper sterilization of tools, and proper supervision and oversight of staff responsible

the sterilization of medical tools and equipment, such that Plaintiffs' can undergo medical procedures and surgery without the risk of contracting blood pathogens, including but not limited to HIV, Hepatitis B and Hepatitis C.

24. Between January 1, 2018 and September 7, 2018, the Defendants had a duty under applicable standards of medical practice and common law to properly investigate, credential, qualify, select, monitor, supervise, and retain only lawful and competent staff who act in accordance with the standards of care.

25. Between January 1, 2018 and September 7, 2018, the Defendants had a duty under applicable standards of medical practice and common law to promulgate proper and effective standards, procedures, protocols, systems and rules to ensure quality care, safety, privacy and lawful care of their patients.

26. It is alleged that these Defendant knew or should have known that the sterilization procedures at their facility were insufficient and posed a substantial risk of harm to the Plaintiffs and others similarly situated between January 1, 2018 and September 7, 2018.

27. The Defendant HealthPlus, through its agents, servants and/or employees, was negligent in that it failed to adequately and properly inspect and maintain its sterilization equipment, conduct the proper sterilization of tools, and properly supervise and oversee staff responsible the sterilization of medical tools and equipment, and were otherwise negligence.

28. The Defendant breached its common law duties and the applicable standards of medical practice on an ongoing basis by negligently failing to investigate, credential, qualify, select, monitor and supervise its medical personnel and staff to perform adequate sterilization.

29. The Defendant breached its common law duties and the applicable standards of medical practice on an ongoing basis by negligently failing to promulgate proper and effective

standards, procedures, protocols, systems and rules to ensure quality care, safety, privacy and lawful care of their patients.

30. The Defendant's continuing breaches of common law and the applicable standards of medical care constituted negligence, gross negligence, carelessness, recklessness and wanton misconduct -- on a continuing basis.

31. As a direct and proximate result of the aforementioned negligence and the Defendant's ongoing breaches of the common law and violations of the standards of care, the Plaintiff class members who received medical care at the Defendant's facility, and others similarly situated, were exposed to dangerous pathogens through inadequately sterilized medical equipment, and have suffered and continue to suffer physical pain, emotional anguish, distress, fear, anxiety, humiliation, embarrassment and other physical and emotional injuries and damages (both economic and non-economic), as well as permanent disability, in the past, present, and future.

32. The Plaintiffs refer to the negligence of the Defendant as the sole and proximate cause of the injuries, damages and permanent disability of the Plaintiffs, and others similarly situated, with the Plaintiffs, and others similarly situated, being in no way contributorily negligent.

33. As a direct, proximate, immediate and foreseeable result of the Defendant's conduct, the Plaintiffs, and others similarly situated, have and/or will suffer permanent economic and non-economic damages including but not limited to:

- (a) Great indignity, humiliation, shame, mortification, and other injuries to their physical, mental, emotional and nervous systems;
- (b) Severe mental anguish and psychological distress;
- (c) The past, present and future cost of medical care, including but not limited to therapy and psychiatric and/or psychological counseling; and

(d) Lost earnings and diminished earnings capacity.

34. The actions of the Defendants were recklessly indifferent to the rights, health and safety of the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory damages, punitive damages, interest, attorney's fees, costs of suit and such other relief that the Court deems just and equitable.

COUNT TWO
(Spousal Claim for Negligence)

35. Plaintiffs incorporate in this Count those facts set forth hereinabove by reference thereto intending that each and every allegation hereinabove be deemed part hereof as if the same were repeated herein.

36. Plaintiff Julio C. Marrero is the spouse of Plaintiff Lauren Marrero.

37. As a result of the Defendant's aforesaid negligence, the Plaintiff Julio Marrero, and other similarly situated spouses, have been exposed to dangerous pathogens through close physical and/or sexual contact with their spouses, who were exposed to these pathogens during their treatment at the Defendant HealthPlus facility.

38. The Plaintiffs refer to the negligence of the Defendant as the sole and proximate cause of the injuries, damages and permanent disability of the Plaintiffs, and others similarly situated, with the Plaintiffs, and others similarly situated, being in no way contributorily negligent.

39. As a direct, proximate, immediate and foreseeable result of the Defendant's conduct, the Plaintiffs, and others similarly situated, have and/or will suffer permanent economic and non-economic damages including but not limited to:

(a) Great indignity, humiliation, shame, mortification, and other injuries to their physical, mental, emotional and nervous systems;

- (b) Severe mental anguish and psychological distress;
- (c) The past, present and future cost of medical care, including but not limited to therapy and psychiatric and/or psychological counseling; and
- (d) Lost earnings and diminished earnings capacity.

WHEREFORE, these Plaintiffs demand judgment against the Defendants for compensatory damages, interest, attorney's fees, costs of suit and such other relief that the Court deems just and equitable.

COUNT THREE
(Loss of Society, Consortium, Companionship and Services)

40. Plaintiffs incorporate in this Count those facts set forth hereinabove by reference thereto intending that each and every allegation hereinabove be deemed part hereof as if the same were repeated herein.

41. Plaintiffs and others similarly situated, as a direct and proximate result of the aforesaid negligence, have suffered emotional distress and have been deprived of the society, consortium, companionship and services of their spouses.

WHEREFORE, these Plaintiffs demand judgment against the Defendants for compensatory damages, interest, attorney's fees, costs of suit and such other relief that the Court deems just and equitable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Michael J. Maggiano, Esquire is hereby designated as trial counsel in the within matter.

DEMAND FOR JURY TRIAL

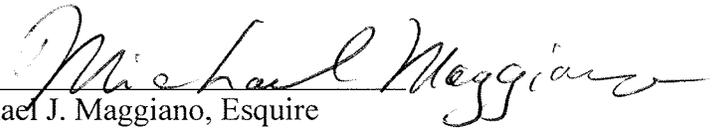
Plaintiffs hereby demand a trial by jury as to all issues so triable.

CERTIFICATION UNDER RULE 4:5-1

I, Michael J. Maggiano, Esquire, hereby certify, pursuant to New Jersey Court Rule 4:5-1, that to the best of my knowledge, the claims raised herein are not the subject of any other action pending in any Court or the subject of any arbitration proceeding, and no such other action or arbitration is contemplated.

I certify that the foregoing statements made by me are true to my personal knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for perjury.

Maggiano, DiGirolamo & Lizzi, PC
Attorneys for Plaintiffs

By: 
Michael J. Maggiano, Esquire

Dated: December 28, 2018