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**Attorney(s) for Plaintiffs Estate of Joseph Maglioli, Bernard Maglioli and Dante Maglioli  
Attorney ID#: 004291998**

		: SUPERIOR COURT OF NEW JERSEY
<b>ESTATE OF JOSEPH MAGLIOLI,</b>	:	<b>LAW DIVISION: SUSSEX COUNTY</b>
<b>BERNARD MAGLIOLI and DANTE</b>	:	
<b>MAGLIOLI,</b>	:	<b>DOCKET NO.: SSX-L-           -20</b>
	:	
<b>Plaintiffs,</b>	:	<b><u>CIVIL ACTION</u></b>
	:	
<b>v.</b>	:	
	:	<b>COMPLAINT</b>
<b>ANDOVER SUBACUTE</b>	:	<b>(Class Action)</b>
<b>REHABILITATION CENTER I;</b>	:	
<b>ANDOVER SUBACUTE</b>	:	
<b>REHABILITATION CENTER II;</b>	:	
<b>ALTITUDE HEALTH SERVICES</b>	:	
<b>INC.; ALTITUDE INVESTMENTS,</b>	:	
<b>LTD; ALLIANCE HEALTHCARE;</b>	:	
<b>CHAIM “MUTTY” SCHEINBAUM;</b>	:	
<b>LOUIS SCHWARTZ; JOHN AND</b>	:	
<b>JANE DOES 1-10; and ABC AND XYZ</b>	:	
<b>CORPORATIONS 1-10,</b>	:	
	:	
<b>Defendants.</b>		

This is an individual, and Class Action, pursuant to Rule 4:32 of the Rules Governing the Courts of the State of New Jersey, on behalf of all persons on and after January 1, 2020 through the Present, who were residents and/or patients of Defendants Andover Subacute Rehabilitation I and Andover Subacute Rehabilitation II (hereinafter also referred to as the “Class”) and who died as a result of the Covid-19 outbreak at those facilities, and Plaintiffs, by and through their attorney(s) do say:

**PARTIES**

1. Plaintiff Bernard Maglioli is the son of the deceased, Joseph Maglioli, and is a resident of the State of New Jersey and has applied to become administrator of the Estate of Joseph Maglioli. Plaintiff Dante Maglioli is also the son of the deceased, Joseph Maglioli, and is a resident of the State of New York, and has also applied to become co-administrator of the Estate of Joseph Maglioli. Together they bring this action on behalf of the Estate of Joseph Maglioli, and themselves in their own right and on behalf of all “others similarly situated,” whether deceased or next of kin and/or heirs of the deceased.

2. Plaintiff(s) are representing all “others similarly situated,” in this Class Action, such as those residents and/or patients that died as a result of the Defendants’ failures in protecting them from the Covid-19 virus during and throughout the outbreak and pandemic, and their heirs, survivors and next of kin.

3. Defendant Andover Subacute Rehabilitation Center I is located at: 1 Obrien Lane, Lafayette Township, NJ 07848.

4. Defendant Andover Subacute Rehabilitation Center II is located at: 99 Mulford Road, Lafayette Township, New Jersey 07848.

5. Defendants Altitude Health Services, Inc. and/or Altitude Investments, LTD, are entities that lease the properties where Defendants Andover Subacute Rehabilitation Centers I and II operate and has a business address of: 2201 Main Street, Evanston, Illinois 60202.

6. Defendant Alliance Healthcare is a New Jersey domiciled company, with a business address at:1382 Lanes Mill Road, Lakewood, New Jersey 08701, USA, and is owned and/or operated by Defendant Chaim “Muttu” Scheinbaum and Defendant Louis Schwartz, who also hold the same address. Defendant Alliance Healthcare’s motto is: “The

Greatest Care in the Most Home-Like Environment.” Defendant Alliance Healthcare operates both Defendants Andover Subacute Rehabilitation Centers I and II.

7. JOHN and JANE Does 1-10 are as yet unnamed health care professionals (medical doctors, nurses, physician’s assistants and other medical professionals duly licensed to practice medicine under the laws of the State of New Jersey), and/or administrators, and/or aides, and/or sanitation workers, and/or orderlies and/or food preparation employees, and/or security officers, who worked at Defendants Andover Subacute Rehabilitation Centers I and II.

8. ABC and XYZ CORPORATIONS 1-10 are as yet unnamed entities, agents, managers, owners, operators that owned and/or operated Defendants Andover Subacute Rehabilitation Centers I and II.

### **STATEMENT OF FACTS**

9. In or about January of 2020, Defendants were made aware of a virus spreading world-wide and nationally, known as Covid-19, that caused severe medical distress and death in individuals who caught the disease, especially the elderly.

10. COVID-19 can spread rapidly in long-term residential care facilities and persons with chronic underlying medical conditions are at greater risk for COVID-19.

11. In fact, in February 2020, at a health care facility in Washington State, residents and/or patients there were the first in the nation to suffer from and die as a result of the Covid-19 virus; news of the dire situation and the first deaths in the United States at the Life Care Center in Kirkland, Washington was widespread.

12. Defendants Andover Subacute Rehabilitation Centers I and II first declared a Covid-19 outbreak on March 26, 2020.

13. Despite these facts, Defendants failed to take the proper steps to protect the residents and/or patients at their facilities from the Covid-19 virus.

14. Evidently, at first, Defendants' management provided masks only to registered nurses, not to others who also interacted with residents, including housekeepers, recreation therapists and nursing assistants, among other potential miscues.

15. As a consequence of Defendants' failures in this regard, Joseph Maglioli, a resident/patient, died on April 9, 2020, with his cause of death confirmed as "Covid-19 infection."

16. In the wake of the outbreak and the aforementioned failures, at least 83-plus other patients were infected and died at Defendants Andover Subacute and Rehabilitation Centers I and II facilities from Covid-19 infections, and there may be more deaths.

17. Mr. Maglioli's death and that of the other residents/patients were a direct result of Defendants' failures to take measures to protect them at the facilities from the deadly Covid-19 virus, and/or medical malpractice.

18. As a direct and foreseeable consequence of the Defendants' failures in taking safety precautions during the Covid-19 outbreak (pandemic), members of the Class sustained loss, damages, injury and death, and their survivors and/or heirs have also sustained loss and damages as a direct consequence of the same.

19. The claims asserted herein are premised on negligence and gross negligence, wrongful death and medical malpractice. Plaintiffs also seek recovery of damages, replete with punitive damages, from all of the Defendants based upon the aforementioned causes of action, and, conduct that was grossly reckless, willful, and wanton, in the face of the Covid-19 outbreak and pandemic.

**CLASS REPRESENTATION ALLEGATIONS**

20. As described above, this is an individual and Class Action pursuant to Rule 4:32 of the Rules Governing the Courts of the State of New Jersey on behalf of all persons that, on and after January 1, 2020 through the Present, were residents and/or patients of Defendants Andover Subacute Rehabilitation I and Andover Subacute Rehabilitation II and who died as a result of the Covid-19 outbreak at those facilities.

21. There are questions of law and fact which are common to members of the Class which predominate over questions affecting any individual class member. The common questions include, *inter alia*, the following:

- (a) Whether the fact that the Defendants permitted visitors and/or employees to come to work without first taking their temperatures or requiring them to wear protective masks and/or gear while working with or near the residents and/or patients at the Defendant facilities;
- (b) Whether the fact that the lack of safety and/or preventative measures in the wake of the Covid-19 outbreak and pandemic caused the putative Plaintiff(s) to suffer needlessly and die;
- (c) Whether the actions or inactions of the Defendants that precipitated and/or caused these safety measure lapses were abnormally dangerous and/or in wanton, willful or reckless disregard of the safety and interests of the members of the Class;
- (d) Whether the actions of the Defendants were negligent causing damages to the members of the Class;
- (e) Whether members of the Class sustained damages as a result of the Defendants' safety measures breakdowns and failures;

- (f) Whether the damages sustained by members of the Class were foreseeable by the Defendants, given the widespread news of the injury and death in the wake of the Covid-19 outbreak and pandemic in the United States and the lack of preparedness and taking of proper measures to ensure resident and/or patient safety at the Defendant facilities;
- (g) Whether the conduct of the Defendants, was reckless and/or grossly negligent; and
- (h) Whether the Defendants are liable to the Class for punitive damages.

22. Plaintiff(s) in this proposed class action assert claims typical of those of the individual members of the proposed Class, namely: negligence, gross negligence, wrongful death and medical malpractice. Plaintiff(s) interests are not antagonistic to or in conflict with the Class as a whole. Moreover, Plaintiff(s) and the members of the Class suffered damages in the same or similar ways as a result of the Defendants' actions and/or inactions as described, *infra* and *supra*. In addition, Plaintiff(s) and the members of the Class are relying on the same legal theories and causes of action.

23. There are approximately 83 total members of this Class currently (possibly more), without consideration of next of kin, survivors and/or heirs. Therefore, joinder of all members of the Class would be impracticable.

24. The named Plaintiff(s) will fairly and adequately protect and represent the interests of each member of the Class. Among other things, Plaintiffs have suffered the same or similar harm as the other members of the Class and will zealously pursue their claims against the Defendants. In addition, Counsel for Plaintiffs(s) is amply qualified to represent the interests of the Class. Counsel is a respected member of his legal community, who has been continuously Certified by the Supreme Court as a Civil Trial Attorney since March 6, 2007 (re-certified in 2013, and re-certified again in 2017/2018), and has engaged

in complex civil litigation in the State of New Jersey for the past nearly twenty-two (22) years, including medical malpractice matters and class action case(s).

25. A class action is superior method for adjudicating the controversy. First, the thousands of dollars that would be required to litigate this case on an individual basis make it unlikely that members of the Class will seek redress for the wrongful conduct alleged. Moreover, it is desirable to concentrate the litigation in a single forum since the disposition of Class members' claims in a class action will provide substantial benefits to both the parties and the Court, and denial of class certification may result in a multitude of individual suits, with the potential for incongruity of adjudication and results. Finally, no unusual difficulties are likely to be encountered in the management of this class action, as it is fairly straight forward. The proceedings can be structured to simplify the initial trial on common issues. In addition, the Court has flexibility to manage special claims through the creation of a subclass or subclasses and though deferral of individual claims to subsequent claims proceedings.

**FIRST COUNT**

**(Negligence – Wrongful Death**

**as to Defendants Andover Subacute Rehabilitation Centers I and II, Altitude Health Services Inc., Altitude Investments, LTD, Alliance Healthcare, Chaim “Muttu” Scheinbaum, and Louis Schwartz)**

26. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

27. Defendants Andover Subacute Rehabilitation Centers I and II, Altitude Health Services Inc.; Altitude Investments, LTD, Alliance Healthcare, Chaim “Muttu” Scheinbaum, and Louis Schwartz owed a duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II facilities to keep them safe from outside diseases and/or outbreaks of viruses.

28. Said Defendants breached their duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II by failing to monitor outside visitors to the facilities, food preparation, employees, etc. when the same were dealing with the residents and/or patients at the facilities in order to prevent the spread of the Covid-19 virus therein.

29. As a direct, proximate and foreseeable consequence of that negligent and careless conduct, Joseph Maglioli and members of the Class caught the Covid-19 infection and thereafter sustained death, loss and injury, and are entitled to damages.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the Class, respectfully seek and demand judgment as follows:

- A. A determination that this action is a proper class action maintainable under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey; and
- B. An Order certifying the Class defined above and appointing the undersigned as counsel for the Plaintiffs and the Class, pursuant to Rule 4:32; and
- C. Damages in an amount to be determined at trial; and
- D. Pre-judgment and post-judgment interest at the maximum rate allowable at law; and
- E. Punitive damages in an amount to be determined at trial; and
- F. The costs and disbursements incurred by the Plaintiffs in connection with this action, including reasonable attorney's fees; and
- G. Such other and further relief as the Court deems just and proper.

**SECOND COUNT**

**(Negligence – Wrongful Death  
as to John and Jane Does 1-10 and ABC and XYZ Corporations 1-10)**

30. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.



31. Defendants John and Jane Does 1-10 and ABC and XYZ Corporations 1-10 owed a duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II facilities to keep them safe from outside diseases and/or outbreaks of viruses.

32. Said Defendants breached their duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II by failing to monitor outside visitors to the facilities, food preparation, employees, etc. when the same were dealing with Joseph Maglioli and the residents and/or patients at the facilities in order to prevent the spread of the Covid-19 virus therein.

33. As a direct, proximate and foreseeable consequence of that negligent and careless conduct, Joseph Maglioli and the other residents and/or patients at Andover Subacute Rehabilitation Centers I and II caught the Covid-19 infection and thereafter sustained death, loss and injury, and are entitled to damages.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the Class, respectfully seek and demand judgment as follows:

- A. A determination that this action is a proper class action maintainable under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey; and
- B. An Order certifying the Class defined above and appointing the undersigned as counsel for the Plaintiffs and the Class, pursuant to Rule 4:32; and
- C. Damages in an amount to be determined at trial; and
- D. Pre-judgment and post-judgment interest at the maximum rate allowable at law; and
- E. Punitive damages in an amount to be determined at trial; and
- F. The costs and disbursements incurred by the Plaintiffs in connection with this action, including reasonable attorney's fees; and

G. Such other and further relief as the Court deems just and proper.

**THIRD COUNT**

**(Negligence – Medical Malpractice  
as to John and Jane Does 1-10 – medical doctors, nurses, physician’s assistants and  
other medical professionals duly licensed to practice medicine under the laws of the  
State of New Jersey)**

34. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

35. Defendants John and Jane Does 1-10 and ABC and XYZ Corporations 1-10 owed a duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II facilities to keep them safe from outside diseases and/or outbreaks of viruses.

36. Said Defendants breached their duty to Joseph Maglioli and the residents and/or patients at the Andover Subacute Rehabilitation Centers I and II by failing to monitor outside visitors to the facilities, food preparation, employees, etc. when the same were dealing with Joseph Maglioli and the residents and/or patients at the facilities in order to prevent the spread of the Covid-19 virus therein.

37. During the course of treating the Joseph Maglioli and/or other residents and/or patients and in connection with medical services provided to them at Defendants Andover Subacute Rehabilitation Centers I and II, the Defendants negligently and carelessly failed to exercise ordinary care, failed to exercise that degree of skill, diligence and care commonly exercised by other doctors in like circumstances giving due regard to the existing state of knowledge in medicine, failed to properly treat the Joseph Maglioli and/or other residents and/or patients, failed to timely diagnose the their condition, failed to apprise them of the risks and options available to them in connection with the services rendered, failed to properly treat their condition and otherwise failed to act as prudent,

skillful and careful medical doctors in connection with the services provided to the them prior to and during the outbreak at said facilities.

38. As a direct and proximate result of the negligence and professional malpractice of the Defendants, as aforesaid, the Joseph Maglioli and the other residents and/or patients at the Andover Subacute Rehabilitation Centers I and II caught the Covid-19 infection and thereafter sustained great pain and suffering of the mind and body, has and did sustain permanent bodily injuries, has and did incur medical expenses in order to correct the conditions caused by the Defendants, has and was unable to attend to their ordinary routine, employment and affairs and were otherwise damaged and died.

39. As a direct, proximate and foreseeable consequence of that negligent and careless conduct, Joseph Maglioli and members of the Class sustained death, loss and injury, and are entitled to damages.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the Class, respectfully seek and demand judgment as follows:

- A. A determination that this action is a proper class action maintainable under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey; and
- B. An Order certifying the Class defined above and appointing the undersigned as counsel for the Plaintiffs and the Class, pursuant to Rule 4:32; and
- C. Damages in an amount to be determined at trial; and
- D. Pre-judgment and post-judgment interest at the maximum rate allowable at law; and
- E. Punitive damages in an amount to be determined at trial; and
- F. The costs and disbursements incurred by the Plaintiffs in connection with this action, including reasonable attorney's fees; and
- G. Such other and further relief as the Court deems just and proper.

**FOURTH COUNT**

**(Negligence as proximate cause of incident/injury)**

40. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

41. The incident, and Joseph Maglioli's and the other residents' and/or patients' injuries and damages and deaths, were proximately caused by the negligence of the Defendants as herein alleged.

42. As a direct and proximate result of the aforesaid negligence and or carelessness of the Defendants, Joseph Maglioli and the other residents and/or patients of Andover Subacute Rehabilitation Centers I and II caught the Covid-19 infection and thereafter sustained death, loss and injury, and are entitled to damages.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the Class, respectfully seek and demand judgment as follows:

- A. A determination that this action is a proper class action maintainable under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey; and
- B. An Order certifying the Class defined above and appointing the undersigned as counsel for the Plaintiffs and the Class, pursuant to Rule 4:32; and
- C. Damages in an amount to be determined at trial; and
- D. Pre-judgment and post-judgment interest at the maximum rate allowable at law; and
- E. Punitive damages in an amount to be determined at trial; and
- F. The costs and disbursements incurred by the Plaintiffs in connection with this action, including reasonable attorney's fees; and
- G. Such other and further relief as the Court deems just and proper.

**FIFTH COUNT**  
**(Punitive Damages)**

43. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

44. The actions and/or inactions of the Defendants in the wake of the Covid-19 outbreak and pandemic constituted deliberate acts and/or omissions with knowledge of a high degree of probability of harm and reckless indifference to the consequences.

45. In that regard, the conduct of the Defendants created a known and likely risk of injury and harm to Joseph Maglioli and other members of the Class.

46. Despite and notwithstanding that risk, Defendants acted with conscious indifference to the rights, safety, and welfare of members of the Class.

47. As a direct, proximate and foreseeable consequence of the Defendants' reckless conduct, Joseph Maglioli and the other residents and/or patients of Andover Subacute Rehabilitation Centers I and II caught the Covid-19 infection and thereafter sustained loss and injury, and are entitled to punitive damages.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the Class, respectfully seek and demand judgment as follows:

- A. A determination that this action is a proper class action maintainable under Rule 4:32 of the Rules Governing the Courts of the State of New Jersey; and
- B. An Order certifying the Class defined above and appointing the undersigned as counsel for the Plaintiffs and the Class, pursuant to Rule 4:32; and
- C. Damages in an amount to be determined at trial; and
- D. Pre-judgment and post-judgment interest at the maximum rate allowable at law; and
- E. Punitive damages in an amount to be determined at trial; and

- F. The costs and disbursements incurred by the Plaintiffs in connection with this action, including reasonable attorney's fees; and
- G. Such other and further relief as the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury as to all issues.

**DEMAND FOR ANSWERS TO UNIFORM AND SUPPLEMENTAL INTERROGATORIES**

PLEASE TAKE NOTICE that pursuant to Rule 4:17-1(b)(ii)(2), Plaintiffs hereby demand answers to Uniform Interrogatories Form C and Form C(3) within sixty (60) days of the filing of Defendants' Answer to this Complaint.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 4:17-1(b)(i)(1) and Rule 4:17-2, Plaintiffs hereby demand answers to the attached Supplemental Interrogatories within sixty (60) days of the filing of Defendants' Answer to this Complaint.

**DEMAND FOR DISCOVERY OF INSURANCE COVERAGE**

Pursuant to New Jersey Court Rule 4:10-2(b), demand is made that Defendants disclose to Plaintiffs' attorney whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the judgment and provide plaintiff's attorney with true copies of those insurance agreements or policies, including, but not limited to, any and all declaration sheets. This demand shall include and cover not only primary coverage, but also any and all excess, catastrophe and umbrella policies.

**DEMAND FOR TRANSCRIPTION AND OFFICE RECORDS**

Plaintiffs hereby demand that the Defendants produce a certified copy of all office/facility records, telephone calls, billing and payments as well as a typed transcription of any and all of his/her handwritten office records and/or hospital records, within thirty (30) days of service of the Complaint.

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that Daniel G.P. Marchese, Esq. is hereby designated as Trial Counsel in this above-captioned matter for the firm of The Marchese Law Firm pursuant to Rule 4:25 et. seq.

**THE MARCHESE LAW FIRM, LLC**

Attorney(s) for the Plaintiffs Estate of  
Joseph Maglioli, Bernard Maglioli and  
Dante Maglioli



By: \_\_\_\_\_  
DANIEL G.P. MARCHESE, ESQ.  
Attorney ID#: 004291998

Dated: April 27, 2020