

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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VIVIAN RIVERA-ZAYAS, as the Proposed  
Administrator of the Estate of ANA MARTINEZ,  
Deceased,

Plaintiff(s),

-against-

OUR LADY OF CONSOLATION GERIATRIC CARE  
CENTER, OUR LADY OF CONSOLATION GERIATRIC  
CARE CENTER d/b/a OUR LADY OF CONSOLATION  
NURSING AND REHABILITATIVE CARE CENTER,  
and OUR LADY OF CONSOLATION NURSING AND  
REHABILITATIVE CARE CENTER,

Defendants.

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**SUMMONS**

Plaintiff(s) designate  
KINGS County  
as the place of trial.

The basis of the venue is  
Plaintiff's residence:  
121 Wilson Street,  
Brooklyn, New York 11249

Index No.:  
Date Summons &  
Complaint Filed:

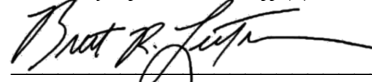
**To the above named Defendant(s)**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Melville, New York  
June 5, 2020

**LEITNER VARUGHESE WARYWODA PLLC**

*Attorneys for Plaintiff(s)*



By: Brett R. Leitner, Esq.  
Justin Varughese, Esq.  
Nicholas E. Warywoda, Esq.

425 Broadhollow Road, Suite 417  
Melville, New York 11747  
(212) 671-1110  
File No. 20056

Defendants' Addresses:

**OUR LADY OF CONSOLATION GERIATRIC CARE CENTER**

111 Beach Drive, West Islip, NY 11795

**OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF  
CONSOLATION NURSING AND REHABILITATIVE CARE CENTER**

111 Beach Drive, West Islip, NY 11795

**OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER**

111 Beach Drive, West Islip, NY 11795

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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VIVIAN RIVERA-ZAYAS, as the Proposed  
Administrator of the Estate of ANA MARTINEZ,  
Deceased,

**VERIFIED COMPLAINT**

Plaintiff(s),

Index No.:

-against-

OUR LADY OF CONSOLATION GERIATRIC CARE  
CENTER, OUR LADY OF CONSOLATION GERIATRIC  
CARE CENTER d/b/a OUR LADY OF CONSOLATION  
NURSING AND REHABILITATIVE CARE CENTER,  
and OUR LADY OF CONSOLATION NURSING AND  
REHABILITATIVE CARE CENTER,

Defendants.

-----X

Plaintiff(s), by their attorneys, **LEITNER VARUGHESE WARYWODA PLLC**,  
complaining of the Defendants, OUR LADY OF CONSOLATION GERIATRIC CARE CENTER,  
OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF  
CONSOLATION NURSING AND REHABILITATIVE CARE CENTER, and OUR LADY OF  
CONSOLATION NURSING AND REHABILITATIVE CARE CENTER (collectively  
“Defendants” or “Our Lady of Consolation”), upon information and belief respectfully alleges as  
follows:

**INTRODUCTION**

1. This action is being commenced due to Defendants’ abject and longstanding failure to  
maintain a system for preventing, identifying, reporting, investigating, and controlling infections and  
communicable diseases for all residents, staff, volunteers, visitors, and other individuals, and  
Defendants’ failure to adequately care for and protect its elderly and vulnerable residents, which led  
to the death of the decedent, ANA MARTINEZ, from COVID-19 (known colloquially as the  
“coronavirus”) infection on April 1, 2020.

2. In 2019, prior to the current coronavirus outbreak, Our Lady of Consolation was cited by government inspectors and regulators multiple times for violations of federal and state regulations for failing to provide and implement proper infection and control procedures, and failing to implement contact isolation precautions for residents known or suspected to have serious illness easily transmitted.

3. In addition, prior to the coronavirus emergency in New York, on February 6, 2020, Our Lady of Consolation was placed on notice by Centers for Medicare & Medicaid Services that coronavirus infections can rapidly appear and spread, and that it was critical that the nursing home be prepared by planning for infectious disease response, including having sufficient personal protective equipment (PPE) available.

4. However, Our Lady of Consolation failed to take proper precautions to help prevent the development of infections prior to and leading up to the COVID-19 pandemic. As a direct and foreseeable consequence of the Defendants' failures, as of June 2, 2020, there was a confirmed COVID-related death count of 39 residents who died inside Our Lady of Consolation due to COVID-19, as well as an unknown, but potentially greater, number of Our Lady of Consolation COVID-19 resident deaths outside of the facility. According to the New York State Department of Health, Our Lady of Consolation claims the highest COVID-related death count of any nursing facility in Suffolk County, and the sixth highest death count in the State of New York.

5. The claims against Defendants asserted herein are premised on violations of residents' rights laws pursuant to Public Health Law sec. 2801-d, negligence and gross negligence, and wrongful death. Plaintiff also seeks recovery for punitive damages from the Defendants based upon its longstanding grossly negligent and reckless actions in failing to protect residents from harm.

**PARTIES TO THIS ACTION:**

6. That at all times hereinafter mentioned, the Plaintiff, VIVIAN RIVERA-ZAYAS, is the daughter of the decedent, ANA MARTINEZ, and is a resident of the County of Suffolk, State of New York.

7. Plaintiff, VIVIAN RIVERA-ZAYAS, is the proposed administrator of the Estate of ANA MARTINEZ, representing the interests of the decedent, ANA MARTINEZ, and her Estate, in this action.

8. At all times hereinafter mentioned, the decedent, ANA MARTINEZ, was a resident of the County of Kings, City and State of New York.

9. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER was and still is a domestic corporation duly existing under and by virtue of the laws of the State of New York, having its principal place of business at 111 Beach Drive, West Islip, New York 11795.

10. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER was and still is a domestic corporation duly existing under and by virtue of the laws of the State of New York, having its principal place of business at 111 Beach Drive, West Islip, New York 11795.

11. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER was and still is a domestic corporation duly existing under and by virtue of the laws of the State of New York, having its principal place of business at 111 Beach Drive, West Islip, New York 11795.

12. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER was authorized to do business as a nursing home at 111 Beach Drive, West Islip, New York 11795.

13. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER was authorized to do business as a nursing home at 111 Beach Drive, West Islip, New York 11795.

14. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CENTER was authorized to do business as a nursing home at 111 Beach Drive, West Islip, New York 11795.

15. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER owned a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

16. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CENTER owned a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

17. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owned a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

18. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER operated a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

19. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER operated a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

20. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER operated a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

21. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER was the lessor of a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

22. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER was the lessor of a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

23. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION AND REHABILITATIVE CARE CENTER was the lessor of a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

24. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER was the lessee of a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

25. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER was the lessee of a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

26. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER maintained a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

27. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER maintained a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

28. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER maintained a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

29. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER managed a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

30. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER managed a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

31. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER managed a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

32. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER supervised a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

33. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER supervised a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

34. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER supervised a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

35. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER inspected a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

36. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER inspected a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

37. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER inspected a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.



38. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER controlled a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

39. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER controlled a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

40. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER controlled a nursing home facility located at 111 Beach Drive, West Islip, New York 11795.

41. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER conducted business as an adult care facility at 111 Beach Drive, West Islip, New York 11795, licensed and defined under New York Public Health Law §2801(2).

42. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER conducted business as an adult care facility at 111 Beach Drive, West Islip, New York 11795, licensed and defined under New York Public Health Law §2801(2).

43. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER conducted business as an adult care facility at 111 Beach Drive, West Islip, New York 11795, licensed and defined under New York Public Health Law §2801(2).

44. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER had possession and control of the building located at 111 Beach Drive, West Islip, New York 11795.

45. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND

REHABILITATIVE CARE CENTER had possession and control of the building located at 111 Beach Drive, West Islip, New York 11795.

46. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had possession and control of the building located at 111 Beach Drive, West Islip, New York 11795.

**STATEMENT OF FACTS:**

47. Our Lady of Consolation was issued 31 citations during Certification and Complaint Surveys for violations of public health code between 2016 and 2020, more than the average nursing home, according the New York State Department of Health (“DOH”) data.

48. On or about September 12, 2019, Our Lady of Consolation was cited by the New York State Department of Health (“DOH”) for federal violations, and violations of its own written policies and procedures, for failing to order Contact Isolation Precautions for a resident infected with Multi-Drug Resistant Organism. Our Lady of Consolation was found to be in violation of CFR 483.21(b)(1), with the potential to cause more than minimal harm to residents. It was mandated that “all residents that are on contact precautions will have their comprehensive care plans audited monthly x3 and then quarterly x 3 to ensure an appropriate care plan documented regarding contact precautions”.

49. On or about September 12, 2019, Our Lady of Consolation was cited by the DOH for failing to “ensure that an infection prevention and control program designed to help prevent the development of infections was maintained”. Our Lady of Consolation was found to be in violation of CFR 483.80, titled “Infection Control”, which requires that “The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary and comfortable environment and to help prevent the development and transmission of communicable diseases and infections”.

50. On November 8, 2016, Our Lady of Consolation was cited for failing to “ensure that food was stored, prepared, distributed and served under sanitary conditions”. It was ordered that “environmental rounds will be done in the kitchen to ensure that all areas of the kitchen are in

compliance regarding sanitary conditions” ... and that “Dietary employees responsible for delivering the meal service on the nursing units will be observed to ensure appropriate compliance with hand washing and glove changes”.

51. New York State law, 10 NYCRR 415.1s – “Infection Control” requires that Our Lady of Consolation “maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection”, “investigates, controls and takes action to prevent infections in the facility”; and “determines what procedures such as isolation and universal precautions should be utilized for an individual resident and implements the appropriate procedures”.

52. Federal law, including CFR 483.65, further mandates that Our Lady of Consolation maintain a sufficient Infection Prevention and Control Program, and that the facility maintains and utilizes sufficient Personal Protective Equipment (“PPE”), including gloves, gowns and masks.

53. In or about January 2020, and likely earlier, Defendants were made aware of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) spreading world-wide and nationally, known colloquially as the coronavirus, that caused severe medical distress and death in individuals who contracted the disease, especially the elderly.

54. SARS-CoV-2 is known and documented to cause a debilitating and deadly disease, the Coronavirus Disease 2019 (“COVID-19”).

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

56. As of June 1, 2020, at least 40,600 residents and workers have died from COVID-19 at nursing homes and other long-term care facilities for older adults in the United States, including 6,062 deaths in New York State nursing homes.<sup>1</sup>

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<sup>1</sup> *‘A national disgrace’: 40,600 deaths tied to US nursing homes* (June 1, 2020), <https://www.usatoday.com/story/news/investigations/2020/06/01/coronavirus-nursing-home-deaths-top-40-600/5273075002/>

57. On February 6, 2020, the Centers for Medicare & Medicaid Services (CMS) issued written memoranda to Our Lady of Consolation advising that coronavirus infections can rapidly appear and spread, and facilities must take steps to prepare for this, including reviewing their infection control policies and practices to prevent the spread of infection. CMS confirmed that nursing homes had prior notice, including from prior recent public health events such as the Ebola virus, 2009 pandemic H1N1 influenza, and Zika outbreaks, of the critical need for nursing homes to be prepared by planning for infectious disease response. CMS stated that this includes being prepared with appropriate personal protective equipment (PPE) use and availability, such as gloves, gowns, respirators, and eye protection.<sup>2</sup>

58. On March 12, 2020, Our Lady of Consolation sent a letter to residents' family members advising that they were suspending all visitation, and representing to families that: "We want to assure you that we are fully functioning and have put every precaution in place".

59. Our Lady of Consolation has been the subject of multiple protests and news reports concerning its total failure to safeguard its residents from infection, failure to contact and advise family members when their loved ones contracted coronavirus, or in any substantial regard during this pandemic, failure to permit family members to contact residents or even see them before they died, amongst many other complaints.<sup>3</sup>

60. On or about January 8, 2020 through on or about March 30, 2020, Plaintiff's decedent ANA MARTINEZ was admitted to Defendants' facility, and during her admission, was infected with

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<sup>2</sup> *Information for Healthcare Facilities Concerning 2019 Novel Coronavirus Illness (2019-nCoV)*  
<https://www.cms.gov/files/document/qso-20-09-all.pdf>

<sup>3</sup> *LI Group Calls For Nursing Home Reform After Coronavirus Deaths*, <https://patch.com/new-york/westislip/li-group-calls-nursing-home-reform-after-coronavirus-deaths>  
*West Islip nursing home protesters demand probe into deaths*, <https://www.newsday.com/news/health/coronavirus/west-islip-nursing-home-protest-1.44536272>  
*Family demands changes at nursing homes after mom dies of coronavirus*, <https://nypost.com/2020/05/07/family-demands-changes-at-nursing-homes-after-coronavirus-deaths/>  
*New York Times: Nursing Homes Are Hot Spots in the Crisis. But Don't Try Suing Them*, <https://www.nytimes.com/2020/05/13/nyregion/nursing-homes-coronavirus-new-york.html?auth=link-dismiss-google1tap>

SARS-CoV-2 and COVID-19, and developed respiratory distress and hypoxia, which resulted in her untimely death on April 1, 2020.

61. Prior to the arrival of coronavirus, Our Lady of Consolation had a longstanding history of failing to provide proper infection prevention and control procedures, and despite being armed with knowledge of prior public health infection events, failed to take steps to prepare to prevent the spread of future infections.

62. As a direct and foreseeable consequence of such failures, Plaintiff's decedent ANA MARTINEZ has sustained loss, damages, injury and death, and her survivors also suffered loss and damages as a direct consequences of the same.

63. As set forth below, the claims asserted herein are premised on violations of residents' rights laws pursuant to Public Health Law sec. 2801-d, negligence and gross negligence, and wrongful death. Plaintiff also seeks recovery for punitive damages from the Defendants based upon the aforementioned causes of action, and conduct that was grossly reckless, willful, and wanton.

**AS AND FOR A FIRST CAUSE OF ACTION PURSUANT TO  
NEW YORK PUBLIC HEALTH LAW 2801-D and 2803C**

64. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER is a facility providing therein nursing care to sick, invalid, infirmed, disabled, or convalescent persons in addition to lodging and board or health related services pursuant to New York Public Health Law §2801(2).

65. at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a facility providing therein nursing care to sick, invalid, infirmed, disabled, or convalescent persons in addition to lodging and board or health related services pursuant to New York Public Health Law §2801(2).

66. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a facility providing therein nursing care

to sick, invalid, infirmed, disabled, or convalescent persons in addition to lodging and board or health related services pursuant to New York Public Health Law §2801(2).

67. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER is a residential health care facility as defined in New York Public Health Law §2801(3).

68. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a residential health care facility as defined in New York Public Health Law §2801(3).

69. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a residential health care facility as defined in New York Public Health Law §2801(3).

70. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER is a residential health care facility within the meaning of New York Public Health Law §2801-d.

71. at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a residential health care facility within the meaning of New York Public Health Law §2801-d.

72. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER is a residential health care facility within the meaning of New York Public Health Law §2801-d.

73. That at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER's nursing home was a facility subject to the provisions of New York Public Health Law §2803-c.

74. at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION

NURSING AND REHABILITATIVE CARE CENTER's nursing home was a facility subject to the provisions of New York Public Health Law §2803-c.

75. at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's nursing home was a facility subject to the provisions of New York Public Health Law §2803-c.

76. That at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER's nursing home was a facility subject to the rules and regulations set forth in 42 U.S.C. §1395(i) et seq., and 42 C.F.R. Part 483, Public Health Law Article 28 and New York Code Rules and Regulation, Title 10, Part 415.

77. That at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's nursing home was a facility subject to the rules and regulations set forth in 42 U.S.C. §1395(i) et seq., and 42 C.F.R. Part 483, Public Health Law Article 28 and New York Code Rules and Regulation, Title 10, Part 415.

78. That at all times hereinafter mentioned and material hereto, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's nursing home was a facility subject to the rules and regulations set forth in 42 U.S.C. §1395(i) et seq., and 42 C.F.R. Part 483, Public Health Law Article 28 and New York Code Rules and Regulation, Title 10, Part 415.

79. That on or about January 8, 2020 through on or about March 30, 2020, Plaintiff's decedent ANA MARTINEZ was admitted to and was a resident at Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER's facility, and during her admission, was infected with SARS-CoV-2 and COVID-19.

80. That on or about January 8, 2020 through on or about March 30, 2020, Plaintiff's decedent ANA MARTINEZ was admitted to and was a resident at Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's facility, and during her admission, was infected with SARS-CoV-2 and COVID-19.

81. That on or about January 8, 2020 through on or about March 30, 2020, Plaintiff's decedent ANA MARTINEZ was admitted to and was a resident at Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's facility, and during her admission, was infected with SARS-CoV-2 and COVID-19.

82. That during the course of her admission, Plaintiff's decedent ANA MARTINEZ was caused to sustain injury due to the negligent acts and omissions of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER, resulting in severe and permanent personal injuries, and untimely death.

83. That during the course of her admission, Plaintiff's decedent ANA MARTINEZ was caused to sustain injury due to the negligent acts and omissions of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER, resulting in severe and permanent personal injuries, and untimely death.

84. during the course of her admission, Plaintiff's decedent ANA MARTINEZ was caused to sustain injury due to the negligent acts and omissions of Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER, resulting in severe and permanent personal injuries, and untimely death.

85. That at all times mentioned herein, during her residency, Plaintiff's decedent ANA MARTINEZ was under the exclusive care, custody, control and management of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER.

86. That at all times mentioned herein, during her residency, Plaintiff's decedent ANA MARTINEZ was under the exclusive care, custody, control and management of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER.

87. That at all times mentioned herein, during her residency, Plaintiff's decedent ANA MARTINEZ was under the exclusive care, custody, control and management of Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER.



88. That at all times hereinafter mentioned, during Plaintiff's decedent ANA MARTINEZ's stay at Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER's nursing home, she was infected with SARS-CoV-2 and contracted COVID-19, and suffered respiratory distress, hypoxia, and other injuries, caused by the negligence of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER and violation of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER contract with Plaintiff's decedent ANA MARTINEZ, laws, rules, statutes and ordinances without any negligence on the part of the Plaintiff's decedent ANA MARTINEZ, which caused her death.

89. That at all times hereinafter mentioned, during Plaintiff's decedent ANA MARTINEZ's stay at Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's nursing home, she was infected with SARS-CoV-2 and contracted COVID-19, and suffered respiratory distress, hypoxia, and other injuries, caused by the negligence of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER and violation of Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER contract with Plaintiff's decedent ANA MARTINEZ, laws, rules, statutes and ordinances without any negligence on the part of the Plaintiff's decedent ANA MARTINEZ, which caused her death.

90. That at all times hereinafter mentioned, during Plaintiff's decedent ANA MARTINEZ's stay at Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER's nursing home, she was infected with SARS-CoV-2 and contracted COVID-19, and suffered respiratory distress, hypoxia, and other injuries, caused by the negligence of Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER and violation of Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER contract with Plaintiff's decedent ANA MARTINEZ, laws, rules, statutes and ordinances

without any negligence on the part of the Plaintiff's decedent ANA MARTINEZ, which caused her death.

91. That on April 1, 2020, Plaintiff's decedent ANA MARTINEZ died.

92. That "death" is an enumerated injury pursuant to New York Public Health Law sec. 2801-d.

93. That at all times hereinafter mentioned, Plaintiff's decedent ANA MARTINEZ's injuries were substantially contributed to by the negligent acts and/or omissions of the Defendants as well as the violation of the resident's rights pursuant to New York Public Health Law §2801-d and enumerated in New York Public Health Law §2803-c.

94. That at all times hereinafter mentioned, Defendants had a statutorily mandated responsibility to provide Plaintiff's decedent ANA MARTINEZ with the rights granted to nursing home residents by New York Public Health Law §2801-d and enumerated in Public Health Law §2803-c.

95. That at all times hereinafter mentioned, Defendants' responsibilities and obligations to Plaintiff's decedent ANA MARTINEZ, as outlined in Public Health Law §2803-c, are nondelegable and Defendants had direct and/or vicarious liability for violations, deprivations and infringements of such responsibilities and obligations by any person or entity under Defendants' control, direct or indirect, including their employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies, pools, or caused by Defendant's policies, whether written or unwritten, or common practices.

96. That at all times hereinafter mentioned, Defendants, their employees, agents, consultants and independent contractors, deprived Plaintiff's decedent ANA MARTINEZ of the rights granted to her pursuant to Public Health Law §2801-d and as enumerated in Public Health Law §2803-c.

97. That at all times hereinafter mentioned, the acts and omissions committed by employees and agents of the Defendants were pervasive events which occurred since at least 2019 when Defendants were cited for improper infection control violations, and continued throughout Plaintiff's

decedent ANA MARTINEZ's residency, and were such that supervisors, administrators and managing agents of Defendants should have been aware of them.

98. That at all times hereinafter mentioned, in addition to the damages suffered by Plaintiff's decedent ANA MARTINEZ as the result of Defendants' deprivation of her rights as a nursing home resident, Plaintiff VIVIAN RIVERA-ZAYAS, the daughter and proposed Administrator of the Estate of ANA MARTINEZ, and Alexa Rivera, also the decedent's daughter, is entitled to recovery of compensatory damages pursuant to Public Health Law §2801-d, attorney's fees pursuant to Public Health Law §2801-d(6), punitive damages pursuant to Public Health Law §2801-d(2) and costs.

99. That at all times hereinafter mentioned, as a result of the foregoing acts and/or omissions, Plaintiff's decedent ANA MARTINEZ was denied her rights under Public Health Law §2801-d, and as enumerated in Public Health Law §2803-c, and such denial caused injury.

100. That by reason of the foregoing, Plaintiff's decedent ANA MARTINEZ was forced to undergo medical treatment, incurred medical expense, suffered disfigurement, disability, pain and suffering, mental anguish, loss of enjoyment of life, loss of dignity and death.

101. That at all times hereinafter mentioned, as a result of the foregoing, Plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower Courts, as well as punitive damages pursuant to Public Health Law §2801-d(2), attorney's fees pursuant to Public Health Law §2801-d(6) and costs.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
DEFENDANTS**

102. That at all times hereinafter mentioned, Plaintiff repeats, reiterates and realleges each and every allegation above with the same force and effect as if more fully set forth at length herewith.

103. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER owed a duty to patients, including Plaintiff's decedent ANA MARTINEZ, to protect its patient's rights.

104. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to patients, including Plaintiff's decedent ANA MARTINEZ, to protect its patient's rights.

105. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to patients, including Plaintiff's decedent ANA MARTINEZ, to protect its patient's rights.

106. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, train, retain, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

107. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, train, retain, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

108. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, train, retain, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

109. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER had notice of Plaintiff's decedent ANA MARTINEZ's need of appropriate intervention to prevent injury and did not implement appropriate intervention.

110. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had notice of Plaintiff's decedent ANA MARTINEZ's need of appropriate intervention to prevent injury and did not implement appropriate intervention.

111. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had notice of Plaintiff's decedent ANA MARTINEZ's need of appropriate intervention to prevent injury and did not implement appropriate intervention.

112. That at all times hereinafter mentioned, due to the negligence of Defendants, Plaintiff's decedent ANA MARTINEZ was infected with SARS-CoV-2 and contracted COVID-19, suffered respiratory distress, hypoxia, and other injuries, at Defendants' facility, which resulted in her death.

113. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER had a duty to protect the patients from injury and to provide reasonable care under the circumstances.

114. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had a duty to protect the patients from injury and to provide reasonable care under the circumstances.

115. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had a duty to protect the patients from injury and to provide reasonable care under the circumstances.

116. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER negligently breached its duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

117. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND

REHABILITATIVE CARE CENTER negligently breached its duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

118. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER negligently breached its duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

119. That at all times hereinafter mentioned, as a result of the foregoing acts and/or omissions, Plaintiff's decedent ANA MARTINEZ was subject to the negligence of Defendants, causing Plaintiff's decedent ANA MARTINEZ to be forced to undergo medical treatment, incur medical expenses, suffer disfigurement, disability, pain and suffering, mental anguish, loss of enjoyment of life, loss of dignity and death.

120. That at all times hereinafter mentioned, as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ was damaged in a sum which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A THIRD CAUSE OF ACTION FOR  
NEGLIGENCE AGAINST DEFENDANTS**

121. That at all times hereinafter mentioned, Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint herein, as though more fully set forth herein at length.

122. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER owed a duty to residents, including Plaintiff's decedent ANA MARTINEZ, to protect her nursing home resident's rights pursuant to Public Health Law §2801-d and as enumerated in Public Health Law §2803-c.

123. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to residents, including Plaintiff's decedent ANA MARTINEZ, to protect her nursing home resident's rights pursuant to Public Health Law §2801-d and as enumerated in Public Health Law §2803-c.

124. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to residents, including Plaintiff's decedent ANA MARTINEZ, to protect her nursing home resident's rights pursuant to Public Health Law §2801-d and as enumerated in Public Health Law §2803-c.

125. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, retain, train, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

126. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, retain, train, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

127. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER owed a duty to Plaintiff's decedent ANA MARTINEZ to hire, retain, train, and supervise employees and independent contractors, both licensed and unlicensed, so that such employees and independent contractors delivered care and services to Plaintiff's decedent in a reasonably safe and beneficial manner.

128. at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER had a statutory obligation to protect the nursing home resident's rights of Plaintiff's decedent ANA MARTINEZ as set forth in Public Health Law §2803-c and to provide reasonable care under the circumstances.

129. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had a statutory obligation to protect the nursing home

resident's rights of Plaintiff's decedent ANA MARTINEZ as set forth in Public Health Law §2803-c and to provide reasonable care under the circumstances.

130. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER had a statutory obligation to protect the nursing home resident's rights of Plaintiff's decedent ANA MARTINEZ as set forth in Public Health Law §2803-c and to provide reasonable care under the circumstances.

131. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER negligently breached their duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

132. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER negligently breached their duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

133. That at all times hereinafter mentioned, Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER negligently breached their duties owed to the Plaintiff's decedent ANA MARTINEZ by statute and common-law.

134. That at all times hereinafter mentioned, as a result of the foregoing acts and/or omissions, Plaintiff's decedent ANA MARTINEZ was subject to the negligence of Defendants, causing Plaintiff's decedent to be forced to undergo medical treatment, incur medical expenses, suffer permanent disfigurement, disability, pain and suffering, mental anguish, loss of enjoyment of life, loss of dignity, and death.

135. That at all times hereinafter mentioned, as a result of the foregoing, Plaintiff was damaged in a sum which exceeds the jurisdictional limits of all lower Courts.



**AS AND FOR A FOURTH CAUSE OF ACTION FOR  
GROSS NEGLIGENCE AGAINST DEFENDANTS**

136. That at all times hereinafter mentioned, Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint herein, as though more fully set forth herein at length.

137. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER acted in so careless a manner as to show complete disregard for the rights and safety of others

138. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted in so careless a manner as to show complete disregard for the rights and safety of others.

139. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted in so careless a manner as to show complete disregard for the rights and safety of others.

140. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER acted or failed to act knowing that their conduct would probably result in injury or damage.

141. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted or failed to act knowing that their conduct would probably result in injury or damage.

142. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted or failed to act knowing that their conduct would probably result in injury or damage.

143. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER acted in so reckless a manner or failed to act in

circumstances where an act was clearly required, so as to indicate disregard of the consequences of their actions or inactions.

144. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted in so reckless a manner or failed to act in circumstances where an act was clearly required, so as to indicate disregard of the consequences of their actions or inactions.

145. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER acted in so reckless a manner or failed to act in circumstances where an act was clearly required, so as to indicate disregard of the consequences of their actions or inactions.

146. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER conduct, as outlined above, was willful.

147. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER conduct, as outlined above, was willful.

148. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER conduct, as outlined above, was willful.

149. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER conduct, as outlined above, was in reckless disregard.

150. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION GERIATRIC CARE CENTER d/b/a OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER conduct, as outlined above, was in reckless disregard.

151. That at all times hereinafter mentioned, the Defendant OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER conduct, as outlined above, was in reckless disregard.

152. That at all times hereinafter mentioned, as a result of the foregoing, Plaintiff is entitled to punitive damages, attorney's fees, and costs.

153. That at all times hereinafter mentioned, solely as a result of the foregoing, the Plaintiff has been damaged in a sum which exceeds the jurisdictional limits of all lower Courts, plus punitive damages, attorney's fees and costs.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR  
WRONGFUL DEATH AGAINST DEFENDANTS**

154. That at all times hereinafter mentioned, Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint herein, as though more fully set forth herein at length.

155. That by reason of the foregoing, Plaintiff's decedent ANA MARTINEZ sustained severe bodily injury resulting in wrongful death.

156. That as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ left surviving next of kin and distributees, including her two daughters, Vivian Rivera-Zayas and Alexa Rivera.

157. That as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ's estate became liable for and expended money for funeral and other expenses.

158. That as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ's estate suffered pecuniary damages.


159. That as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ's estate sustained all other damages allowed by law.

160. That as a result of the foregoing, Plaintiff's decedent ANA MARTINEZ's Next of Kin have been damaged in a sum which exceeds the jurisdictional limits of all lower Courts.

WHEREFORE, Plaintiff demands judgment against the Defendants herein on the

FIRST Cause of Action in a sum which exceeds the jurisdictional limits of all lower Courts as well as punitive damages pursuant to PHL §2801-d(2), attorney's fees pursuant to PHL §2801-d(6), and costs; on the SECOND Cause of Action in a sum which exceeds the jurisdictional limits of all lower Courts; on the THIRD Cause of Action in a sum which exceeds the jurisdictional limits of all lower Courts; on the FOURTH Cause of Action in a sum which exceeds the jurisdictional limits of all lower Courts plus punitive damages, attorney's fees and costs; and on the FIFTH Cause of Action in a sum which exceeds the jurisdictional limits of all lower Court, along with disbursements of this action.

Dated: Melville, New York  
June 5, 2020

**LEITNER VARUGHESE WARYWODA PLLC***Attorneys for Plaintiff*

By: Brett R. Leitner, Esq.  
Justin Varughese, Esq.  
Nicholas E. Warywoda, Esq.

425 Broadhollow Road, Suite 417  
Melville, New York 11747  
(212) 671-1110  
File No. 20056

**INDIVIDUAL VERIFICATION**

STATE OF NEW YORK

ss.:

COUNTY OF SUFFOLK

Vivian Rivera-Zayas, being duly sworn deposes and says:

I am the plaintiff(s) herein; I have read the annexed VERIFIED COMPLAINT and know the contents thereof and the same are true to my knowledge, except those matter therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true.



\_\_\_\_\_  
Vivian Rivera-Zayas

Sworn to before me this

5 day of June, 2020

  
\_\_\_\_\_  
Notary Public

**JUSTIN VARUGHESI**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02VA6313069  
Qualified in Suffolk County  
My Commission Expires 10/14/22