

3. Upon discovering his daughter's illness, Mr. McCarthy immediately requested time off to care for her, as any loving father would. Mr. McCarthy expected sympathy and understanding from Daleview, but instead the Center and its management responded with hostility.

4. Despite the fact that Daleview was well aware of the tragic circumstances under which Mr. McCarthy was requesting time off, the Center's management continually badgered Mr. McCarthy to take fewer days off and pressured him to go on medical leave, rather than use his accrued, earned vacation days.

5. At one point, Daleview even insinuated to Mr. McCarthy that he was using the situation to take an impromptu paid vacation.

6. At this point, it became clear to Mr. McCarthy that Daleview did not respect and would not tolerate his need to take time off from work, even to care for his daughter who was being treated for cancer.

7. This intolerable situation came to a head in January 2017, when Mr. McCarthy noticed that a white, female nurse was violating Daleview policy by failing to wear a mask around patients, despite her not having gotten a flu shot.

8. This serious violation put the Center's elderly patients at risk, and so Mr. McCarthy sought to discipline the nurse by issuing her a one-day suspension. This was the same level of discipline that had been handed down to a Black employee who had previously committed the same infraction.

9. However, Daleview and Defendant Mary Kochaniwsky, Mr. McCarthy's boss, claimed to see the situation differently. Ms. Kochaniwsky demanded that a more lenient standard be applied to the white employee.

10. Mr. McCarthy repeatedly objected and persistently tried to explain to Ms. Kochaniwsky that applying a different disciplinary standard to employees based on race amounted to discrimination.

11. Ms. Kochaniwsky responded by shouting over him, “Enough! I don’t want to hear it!”

12. Mr. McCarthy, whose shift was ending, made it clear he was unwilling to engage in race discrimination and punched out for the day.

13. After receiving a voicemail informing him that he was being suspended, he was called into work the next day and was summarily terminated.

14. Mr. McCarthy brings this action for damages and all other available relief under the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.* (“FMLA”), Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”) and the New York State Human Rights Law (“NYSHRL”), § 290 *et seq.*

JURISDICTION AND VENUE

15. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of Plaintiff’s rights under the FMLA and Section 1981.

16. The Court has supplemental jurisdiction over Plaintiff’s related claims under State and local law pursuant to 28 U.S.C. § 1367(a).

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action, including the employment practices alleged herein, occurred in this district.

ADMINISTRATIVE REQUIREMENTS

18. Concurrent with the filing of this Complaint, Plaintiff will file a Charge of Discrimination, arising out of the facts described herein, with the Equal Employment Opportunity Commission (“EEOC”), alleging, among other things, violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”) and the Americans with Disabilities Act and the Americans with Disabilities Amendments Act of 2008, 42 U.S.C. §§ 12101 *et seq.* (together, the “ADA”).

19. Plaintiff therefore intends to file an Amended Complaint alleging, *inter alia*, violations of Title VII and the ADA following the EEOC’s completion of its investigation and/or issuance of a Notice of Right to Sue.

20. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

21. Plaintiff Daniel McCarthy is a former employee of Daleview. Mr. McCarthy currently resides in Suffolk County, New York. At all relevant times, Mr. McCarthy met the definition of a “person” and/or an “employee” under all applicable statutes.

22. Defendant MMR Care Corp., d/b/a Daleview Care Center, is a domestic business corporation with its principal place of business located at 574 Fulton Street, Farmingdale, New York 11735. At all relevant times, Daleview was an “employer” within the meaning of all applicable statutes.

23. Defendant Mary Kochaniwsky is the Nursing Home Administrator at Daleview and a current resident of the State of New York. At all relevant times, Ms. Kochaniwsky met the definition of an “employer” under all applicable statutes.

24. Defendants Kimberly Deschamps is the Nursing Home Director at Daleview and a current resident of the State of New York. At all relevant times, Ms. Deschamps met the definition of an “employer” under all applicable statutes.

FACTUAL ALLEGATIONS

Mr. McCarthy’s Exceptional Performance at Daleview and Numerous Accolades

25. Mr. McCarthy was hired by Daleview in October 2011 as a RN Supervisor.

26. Due to his exceptional performance at the Center, Mr. McCarthy was promoted to Nurse Manager in September 2013.

27. When his son was born in March 2015, Mr. McCarthy voluntarily and temporarily resumed the role of RN Supervisor. However, in August 2015 he was promoted to Assistant Director of Nursing.

28. In that role, he reported to Nancy Ciaffone, the Center’s Director of Nursing, who in turn reported to Nursing Home Administrator Mary Kochaniwsky.

29. Throughout his tenure at Daleview, Mr. McCarthy, who also serves as a volunteer firefighter in West Babylon, was frequently recognized for his exceptional work and his valuable contributions to the surrounding community.

30. By way of example only, in recognition of his exceptional work as an RN, Mr. McCarthy has received two certificates of appreciation from the Town of Babylon, two proclamations from New York State Senator Phil Boyle for being an outstanding citizen and another from Farmingdale Village for displaying excellence, dedication and selflessness.

31. Moreover, the Town of Babylon has twice awarded Mr. McCarthy a Certificate of Appreciation, and on May 6, 2015, it honored him with the Babylon Heroism Award. On that

same day, Mr. McCarthy was also formally acknowledged by Nassau County Executive Edward Mangano.

32. Mr. McCarthy has also been consistently recognized in the media for his heroics as an RN, including one occasion on which he saved the same woman's life three times.²

33. Further, in June 2016, Mr. McCarthy was recognized as Registered Nurse of the Year by the New York State Health Facility Association. Notably, Daleview had recommended Mr. McCarthy for this award.

34. Indeed, throughout his time at Daleview, Mr. McCarthy's objectively outstanding work as an RN was repeatedly recognized and affirmed by Daleview and countless others.

Mr. McCarthy's Daughter Is Diagnosed with Cancer, and Daleview Management Responds Callously to Mr. McCarthy's Need for Time Off to Care for His Daughter

35. In October 12, 2016, Mr. McCarthy's four-year-old daughter was diagnosed with stage four renal cell carcinoma, a form of kidney cancer, which had spread to her lungs.

36. As any good father would, Mr. McCarthy immediately requested time off, and planned to be out until October 30, 2016.

37. Rather than allowing Mr. McCarthy to use vacation time he had earned and accrued, Daleview pressured him to use paid sick time instead. Eventually, the Center gave in and allowed Mr. McCarthy to use his vacation days.

38. After working normally during November, toward the end of December 2016, Mr. McCarthy was forced to use around four sick days in early December. His daughter had caught the flu after a round of chemotherapy and radiation, and Mr. McCarthy had then caught the flu from his daughter.

² <http://www.newsday.com/long-island/suffolk/registered-nurse-who-revived-patient-wins-rn-of-the-year-1.11979423>

39. While he was out sick, he asked for time off from December 27, 2016 through December 30, 2016, as these dates coincided with his daughter's next round of chemotherapy.

40. Director Kimberly Deschamps began sending Mr. McCarthy text messages questioning why he had taken time off, despite knowing about his daughter's condition, and insinuating that he was taking an impromptu vacation.

41. Ms. Deschamps also began to pressure Mr. McCarthy to take FMLA-qualifying leave rather than using his accrued sick or vacation time.

42. Due to the pressure Daleview was putting on him to return, Mr. McCarthy changed his plans and worked the last week of December 2016, though he switched to the 5:00 a.m. shift in order to maximize his time with his daughter.

43. Around this same time, Ms. Kochaniwsky urged Mr. McCarthy to take a leave of absence "for [his] protection." In response to this cryptic remark, Mr. McCarthy asked why he would need protection. Ms. Kochaniwsky quickly backtracked from her comment and provided no further explanation.

44. That same day, Mr. McCarthy began taking his personal pictures, including family photos, home from the Center, as he sensed that his days at Daleview were now numbered due to his daughter's medical needs and his resulting need for additional time off.

45. On or around January 10, 2017, Mr. McCarthy requested, and was eventually granted, FMLA-qualifying for February 27, 2017 through March 3, 2017, as well as April 17, 2017 through April 21, 2017 and May 22, 2017.

46. However, Daleview would later ensure that Mr. McCarthy would never actually take those days off.

Mr. McCarthy's Opposition to Racially Disparate and Discriminatory Discipline of Employees

47. On January 24, 2017, Mr. McCarthy noticed that a white female nurse who he directly supervised at the Center, and who had not received a flu shot that season, was standing in a patient area without wearing a mask.

48. All RNs and nurses at Daleview previously were informed that, if they had not gotten the flu shot, they were required to wear a mask any time they were near patients.

49. Employees were also informed that they would be subject to discipline if they failed to adhere to this rule.

50. Moreover, about one year earlier, a Black housekeeper had been suspended without pay for breaking the same rule.

51. Indeed, it was clear not only from the Center's established policy, but also prior employment actions taken by Daleview, that this was a rule to be taken extremely seriously.

52. Accordingly, Mr. McCarthy concluded that the only appropriate response was to issue the same discipline to the white female nurse who had violated the rule. In fact, as Mr. McCarthy observed, because the white female nurse was a medical professional, the nurse should be held more accountable for her infraction, given that she was certainly aware of the risk she posed to the Center's patients by failing to wear a mask. By contrast, a housekeeping employee might not have the training or expertise to understand the importance of the rule.

53. Mr. McCarthy informed Ms. Kochaniwsky of his intent to discipline the employee, and Ms. Kochaniwsky initially expressed support for the decision, as did Ms. Deschamps.

54. In due course, Mr. McCarthy issued the suspension.

55. However, when the employee protested, Ms. Deschamps withdrew her support for Mr. McCarthy's decision, and instead took the position that the one-day suspension was too harsh a punishment.

56. Mr. McCarthy then approached Ms. Kochaniwsky to ensure that she would still support the discipline. However, he was shocked when Ms. Kochaniwsky declared that she now supposedly agreed with Ms. Deschamps and wanted to downgrade the suspension to a written warning.

57. Mr. McCarthy objected and attempted to explain to Ms. Kochaniwsky that the decision not to discipline this particular white employee after previously suspending a Black employee for the same exact infraction seemed to be racially discriminatory.

58. Ms. Kochaniwsky would not listen, instead shouting over Mr. McCarthy, "Enough! I don't want to hear it!" Ms. Kochaniwsky then instructed Mr. McCarthy that he was to issue the employee a mere written warning instead.

59. When Mr. McCarthy refused, Ms. Kochaniwsky rebuked him: "You'll do whatever I deem necessary."

60. Mr. McCarthy, however, was unwilling to carry out the discriminatory instruction, regardless of whether Ms. Kochaniwsky deemed it "necessary." Accordingly, as it was the end of his shift, he clocked out and left work for the day.

61. The same day, Mr. McCarthy received a voicemail informing him that he was being suspended.

62. Shortly thereafter, Ms. Deschamps also sent Mr. McCarthy several antagonistic text messages, demanding that he apologize to Ms. Kochaniwsky, yet conspicuously without providing any assurance regarding his job security.

63. If it was not abundantly clear already, this left no doubt that Daleview was intent on continuing to treat Mr. McCarthy with total indignity despite his undeniable dedication and contributions to the Center.

Mr. McCarthy's Summary Termination and Loss of His Daughter's Insurance

64. On January 26, 2017 – just two days later, and on his first day back at work since his run-in with Ms. Kochaniwsky – Mr. McCarthy was notified in writing that he was being terminated, effective immediately.

65. Mr. McCarthy was blindsided by this news, as he had never been issued any kind of formal discipline during his tenure at Daleview. Indeed, the immediate termination did not make any sense in light of the Center's past practices or his performance record.

66. Further, the sudden loss of his job, and at the very end of the month, left Mr. McCarthy temporarily without insurance for his daughter, which caused him and his family tremendous fear and distress.

FIRST CAUSE OF ACTION
(Interference in Violation of the FMLA)

67. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs, as though fully set forth herein.

68. At all times relevant herein, Plaintiff was an "eligible employee" within the meaning of the FMLA. Plaintiff, a full-time employee of Daleview, at all relevant times worked at least 1,250 hours in any 12-month period, and specifically, in the 12-month period preceding his termination.

69. At all times relevant herein, Daleview was a "covered employer" within the meaning of the FMLA. Daleview employs 50 or more employees in at least 20 calendar weeks within a 75-mile radius of the Center.

70. By the actions described above, among others, Daleview violated the FMLA by unlawfully interfering with, restraining, and/or denying the exercise of Plaintiff's rights by, *inter alia*, terminating his employment shortly after he requested FMLA-qualifying leave.

71. As a direct and proximate result of Daleview's unlawful conduct in violation of the FMLA, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

SECOND CAUSE OF ACTION
(Retaliation in Violation of the FMLA)

72. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs, as though fully set forth herein.

73. At all times relevant herein, Plaintiff was an "eligible employee" within the meaning of the FMLA. Plaintiff, a full-time employee of Daleview, at all relevant times worked at least 1,250 hours in any 12-month period, and specifically, in the 12-month period preceding his termination.

74. At all times relevant herein, Daleview was a "covered employer" within the meaning of the FMLA. Daleview employs 50 or more employees in at least 20 calendar weeks within a 75-mile radius of the Center.

75. By the actions described above, among others, Daleview retaliated and Plaintiff after he requested FMLA-qualifying leave by, *inter alia*, harassing him regarding the time he intended to take off, accusing him of using FMLA-qualifying leave as pretext to take vacation and ultimately terminating his employment.

76. As a direct and proximate result of Daleview's unlawful conduct in violation of the FMLA, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an

award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

THIRD CAUSE OF ACTION
(Aiding and Abetting in Violation of the FMLA)

77. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs, as though fully set forth herein.

78. At all times relevant herein, Plaintiff was an "eligible employee" within the meaning of the FMLA. Plaintiff, a full-time employee of Daleview, at all relevant times worked at least 1,250 hours in any 12-month period, and specifically, in the 12-month period preceding his termination.

79. At all times relevant herein, Defendants Mary Kochaniwsky and Kimberly Deschamps were "covered employers" within the meaning of the FMLA, as they acted, directly or indirectly, in the interest of the employer when, by the actions described above, among others, they interfered with Plaintiff's exercising of his rights under the FMLA and retaliated against him for exercising those rights.

80. As a direct and proximate result of Ms. Kochaniwsky's unlawful conduct in violation of the FMLA, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of Section 1981)

81. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs, as though set forth fully herein.

82. Defendants retaliated against Plaintiff in violation of Section 1981 by terminating him in response to his opposition to Defendants' discriminatorily disparate discipline of Black and white employees.

83. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

84. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of Section 1981, for which Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Aiding and Abetting in Violation of Section 1981)

85. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs, as though set forth fully herein.

86. Defendants Mary Kochaniwsky and Kimberly Deschamps directly participated in the retaliatory conduct perpetrated against Plaintiff in violation of Section 1981, including by, *inter alia*, terminating him in response to his opposition to Defendants' discriminatorily disparate discipline of Black and white employees.

87. At all relevant times, Defendants Mary Kochaniwsky and Kimberly Deschamps had the ability to control the terms and conditions of Plaintiffs' employment, including, but not limited to, the power to terminate Plaintiffs' employment.

88. Defendants Mary Kochaniwsky and Kimberly Deschamps knowingly and recklessly aided and abetted the unlawful retaliation against Mr. McCarthy for his opposition to the Center's discriminatory practice.

89. As a direct and proximate result of Defendants Mary Kochaniwsky's and Kimberly Deschamps's unlawful retaliatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

90. Defendants Mary Kochaniwsky's and Kimberly Deschamps's unlawful and discriminatory actions constitute malicious, willful and wanton violations of Section 1981, for which Plaintiff is entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
(Discrimination in Violation of the NYSHRL)

91. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs, as though set forth fully herein.

92. Defendants discriminated against Plaintiff in violation of the NYSHRL by terminating him because of his relationship with his daughter, who has a known disability.

93. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

SEVENTH CAUSE OF ACTION
(Retaliation in Violation of the NYSHRL)

94. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs, as though set forth fully herein.

95. Defendants retaliated against Plaintiff in violation of the NYSHRL by terminating him in response to his opposition to Daleview's discriminatorily disparate discipline of Black and white employees.

96. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

EIGHTH CAUSE OF ACTION
(Aiding and Abetting in Violation of the NYSHRL)

97. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs, as though set forth fully herein.

98. Defendants Mary Kochaniwsky and Kimberly Deschamps directly participated in the retaliatory conduct perpetrated against Plaintiff in violation of the NYSHRL, including by, *inter alia*, terminating him in response to his opposition to Defendants' discriminatorily disparate discipline of Black and white employees.

99. At all relevant times, Defendants Mary Kochaniwsky and Kimberly Deschamps had the ability to control the terms and conditions of Plaintiffs' employment, including, but not limited to, the power to terminate Plaintiffs' employment.

100. Defendants Mary Kochaniwsky and Kimberly Deschamps knowingly and recklessly aided and abetted the unlawful retaliation against Mr. McCarthy for his opposition to the Center's discriminatory practice.

101. As a direct and proximate result of Defendants Mary Kochaniwsky's and Kimberly Deschamps's unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, harm for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

102. Defendants Mary Kochaniwsky's and Kimberly Deschamps's unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYSHRL, for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States and the State of New York;
- B. An award of damages, including all monetary and compensatory damages, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all losses and/or hardship incurred as a result of Defendants' unlawful actions;
- C. An award of compensatory damages for emotional distress and any other injuries in an amount to be determined at trial;
- D. An award of damages to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment;
- E. An award of punitive damages in an amount to be determined at trial;
- F. An award of fees and costs that Plaintiff has incurred in this action, including, but not limited to, expert witness fees, as well as Plaintiff's reasonable attorneys' fees and other costs to the fullest extent permitted by law; and
- G. Such other and further relief as Plaintiff is entitled to under the law, and/or which the Court may deem just and proper.

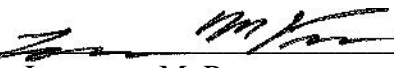
JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: April 23, 2017
New York, New York

Respectfully submitted,

WIGDOR LLP

By: 

Lawrence M. Pearson
Alex J. Hartzband

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
lpearson@wigdorlaw.com
ahartzband@wigdorlaw.com

Counsel for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DANIEL MCCARTHY, (b) County of Residence of First Listed Plaintiff Suffolk County (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) Lawrence M. Pearson, Esq. Wigdor LLP (212) 257-6800 Alex J. Hartzband, Esq. 85 Fifth Avenue New York, NY 10003

DEFENDANTS MMR CARE CORP. d/b/a DALEVIEW CARE CENTER, et al. County of Residence of First Listed Defendant Nassau County (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Christopher Valentino, Esq. Jackson Lewis, P.C. (631) 247-0404 58 South Service Road Melville, NY 11747

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) [1] U.S. Government Plaintiff [2] U.S. Government Defendant [X] 3 Federal Question (U.S. Government Not a Party) [4] Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) Citizen of This State [] PTF [] DEF [] 1 [] 1 Incorporated or Principal Place of Business In This State [] 4 [] 4 Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business In Another State [] 5 [] 5 Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only) [X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from Another District (specify) [] 6 Multidistrict Litigation - Transfer [] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause: The Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq.

VII. REQUESTED IN COMPLAINT: [] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 04/23/2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Lawrence M. Pearson, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: [Handwritten Signature]

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DANIEL MCCARTHY,

Plaintiff(s)

v.

MMR CARE CORP. d/b/a DALEVIEW CARE CENTER, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MMR Care Corp. d/b/a Daleview Care Center
574 Fulton Street
Farmingdale, New York 11735

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lawrence M. Pearson, Esq.
Alex J. Hartzband, Esq.
Wigdor LLP
85 Fifth Avenue
Fifth Floor
New York, New York 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DANIEL MCCARTHY,

Plaintiff(s)

v.

MMR CARE CORP. d/b/a DALEVIEW CARE CENTER, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Mary Kochaniwsky
574 Fulton Street
Farmingdale, New York 11735

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lawrence M. Pearson, Esq.
Alex J. Hartzband, Esq.
Wigdor LLP
85 Fifth Avenue
Fifth Floor
New York, New York 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DANIEL MCCARTHY,

Plaintiff(s)

v.

MMR CARE CORP. d/b/a DALEVIEW CARE CENTER, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Kimberly Deschamps
574 Fulton Street
Farmingdale, New York 11735

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lawrence M. Pearson, Esq.
Alex J. Hartzband, Esq.
Wigdor LLP
85 Fifth Avenue
Fifth Floor
New York, New York 10003

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
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I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: