

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IYARE ESEMUEDE,	:	
	:	Civil Action No.:
Plaintiff,	:	
	:	
v.	:	<u>COMPLAINT</u>
	:	
MONTEFIORE MEDICAL CENTER and DR.	:	
ROBERT MICHLER,	:	<u>Jury Trial Demanded</u>
	:	
Defendants.	:	
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Plaintiff Iyare Esemuede (“Plaintiff” or “Dr. Esemuede”), by and through his attorneys, Wigdor LLP, against Defendants Montefiore Medical Center (“Montefiore” or the “Hospital”) and Dr. Robert Michler, the Surgeon-in-Chief for the Montefiore Health System and the Albert Einstein College of Medicine, alleges as follows:

PRELIMINARY STATEMENT

1. Montefiore repeatedly disregarded Dr. Esemuede’s concerns regarding dangerous patient care practices that caused active harm to patients and, in one instance, death. Indeed, instead of heeding his warnings and remedying the egregiously problematic practices, Montefiore retaliated against Dr. Esemuede and ultimately terminated his employment in an effort to sweep its misdeeds under the rug.

2. Dr. Esemuede is a highly trained general and colorectal surgeon. He completed a combined B.S./M.D. program at Howard University and Howard University College of Medicine, completed surgical training and fellowships at multiple institutions, became board certified in general surgery and colon and rectal surgery, and worked as a colorectal and general surgeon before joining Montefiore. At Montefiore, he carried a demanding workload, including

more than 100 to 200 colonoscopies per year and more than 300 operative procedures per year, exceeding the 200-case threshold in his contract.

3. From the start, Montefiore assigned Dr. Esemuede to its Wakefield Campus, where Black surgeons and their patients were systemically under-supported and subjected to racial discrimination on an ongoing basis.

4. The discrimination affected operating room access, staffing support, scheduling priority, patient care, and compensation. Dr. Esemuede and his Black colleagues were regularly shunted aside or de-prioritized in favor of white surgeons, and their urgent and emergent general surgery cases were often delayed and deprioritized – while their patients continued to suffer in pain – in favor of more lucrative operations performed by white surgeons.

5. Dr. Esemuede repeatedly complained about both the dangerous patient care practices and the discrimination, both verbally and in writing. These complaints included, but were by no means limited to:

- After surgery on an 86-year-old patient with free air in the abdomen, the patient was transferred to the ICU, where the attending physician left care to a first-year resident, directed that IV fluids be stopped despite dropping blood pressure after major open abdominal surgery and refused to provide adequate IV fluids after Dr. Esemuede and others raised concerns. ***The patient died the next day.*** Dr. Esemuede complained in writing about the incident.
- Dr. Esemuede reported in writing that anesthesia had delayed an emergent incision and drainage for a septic patient with necrotizing fasciitis for almost five hours, despite his warning that the patient needed to be in the operating room, and that by the time the patient reached the room she was hypotensive, hyperglycemic, and on pressors. He warned: “This case was delayed literally until the ***patient almost died.*** This is unacceptable. There is unfortunately a habit of delaying general surgery cases here for any reason, and it can lead to fatal outcomes.”

- Dr. Esemuede also complained that a laparoscopic cholecystectomy patient had been left waiting because in-house anesthesiologists apparently went home early, that some anesthesiologists appeared to have “an issue with doing urgent and emergent general surgery cases,” and that general surgery patients were repeatedly pushed to the end of the day despite empty rooms and available staff.
- After Dr. Esemuede performed a laparoscopic ileostomy reversal on a 73-year-old patient, he requested that a foley catheter be replaced because the patient was experiencing urinary retention, pain, and elevated BUN and Creatinine levels, but he was overruled by non-surgeons, resulting in a week of additional pain and discomfort before the catheter was replaced. He later reported that administrators and other personnel had cancelled specimens or told nurses not to follow surgical-team orders in postoperative patients, conduct he described as highly unusual and disruptive to patient care.
- Dr. Esemuede made complaints about absent nursing staff, nonfunctioning equipment, case rearrangements, and an anesthesiologist whose conduct nearly caused a patient to fall off the operating table twice.
- Dr. Esemuede complained that “there have been all types of issues in the operating room with prioritizing cases, and *nurses basically being put in a position to make really bad medical decisions* and thus delaying our care of our patients.”
- Dr. Esemuede complained that his *patients were being “put[] [] in danger.”*
- Dr. Esemuede complained expressly about one doctor, Roman Margulis, having a “*back of the bus*” mentality when it came to Black surgeons and patients, and that Dr. Esemuede *and others* believed that Dr. Margulis was “*racist*.”
- Dr. Esemuede complained that he was paid less than his white peers because of his race.
- Dr. Esemuede relayed a colleague’s perspective that “the operating room at Wakefield seems to prioritize taking care of orthopedic surgery patients (and physicians) over the mostly black general surgery patients.”

6. Montefiore failed to take any remedial action in response to these complaints. What is worse, it affirmatively chastised Dr. Esemuede for advocating for proper patient care and race neutral decision-making. By way of example, one would expect the Hospital to take seriously Dr. Esemuede's concern that dangerous patient care practices almost killed one patient. Instead, Dr. Michler responded outrageously, writing, "[y]ou seem to have more issues than any other surgeon in any Department. As surgeon-in-chief, I follow these issues carefully across the health system. You and Scott need to review and perhaps, you need some coaching from HR." In other words, Dr. Esemuede complained that a patient was almost killed, and Montefiore's Surgeon-In-Chief threatened suggested that he needed human resources coaching. This was anon-sequitur and also completely unwarranted, as evidenced by the fact that Montefiore did not even bother to follow up with any purportedly necessary coaching.

7. In response to other complaints, Dr. Robert Bernholz yelled and swore at Dr. Esemuede, and told him that if he complained again he would "get shit in [his] face."

8. When Dr. Esemuede complained about racism and retaliation to Human Resources ("HR"), HR brushed aside his concerns and told him he would have to "take it" or have "no path forward" at the Hospital, a threat that proved true in April 2026.

9. On April 6, 2026, Dr. Esemuede complained after a patient with anorectal sepsis and severe pain had surgery delayed for hours to accommodate an elective orthopedic case and then delayed further for an organ harvest involving a deceased patient. The very next day, Dr. Esemuede was unlawfully terminated. As a final demonstration of discriminatory animus, Dr. Esemuede was treated like a criminal on the way out, being confronted by security, slammed to the ground and escorted off of the premises.

10. Accordingly, Plaintiff asserts claims against Defendants for discrimination and retaliation in violation of 42 U.S.C. § 1981 (“§ 1981”), the New York State Human Rights Law (“NYSHRL”), the New York City Human Rights Law (“NYCHRL”), New York Labor Law (“NYLL”) §§ 740 and 741 and New York Not-for-Profit Corporation Law (“NYNPL”) § 715-b.

JURISDICTION AND VENUE

11. This 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 42 U.S.C. § 1981.

12. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff’s claims occurred in this district.

ADMINISTRATIVE PROCEDURES

13. Dr. Esemuede will file a Charge of Discrimination with the Equal Employment Opportunity Commission alleging violations of Title VII of the Civil Rights Act of 1964 (“Title VII”). Upon receipt of a Right to Sue, Dr. Esemuede will seek to amend the Complaint to add claims under Title VII.

PARTIES

14. Plaintiff Iyare Esemuede is a citizen of New York and a former employee of Defendants. At all relevant times, Plaintiff worked for Defendants and met the definition of an “employee” as that term is defined by the applicable statutes.

15. Defendant Montefiore Medical Center is a non-profit academic health system that is headquartered at 111 East 210th Street, Bronx, NY 10467. At all relevant times, Montefiore met the definition of an “employer” as that term is defined by the applicable statutes.

16. Defendant Dr. Robert Michler, the Surgeon-in-Chief for the Montefiore Health System and the Albert Einstein College of Medicine. At all relevant times, Dr. Michler met the definition of an “employer” and “aided and abetted” unlawful conduct as those terms are defined by the applicable statutes

FACTUAL ALLEGATIONS

I. DR. ESEMUEDE’S BACKGROUND AND PROFESSIONAL RECORD

17. Dr. Esemuede is a highly trained general and colorectal surgeon. He completed a combined B.S./M.D. program at Howard University and Howard University College of Medicine.

18. Dr. Esemuede completed his general surgery residency at Howard University Hospital, research fellowships at Memorial Sloan Kettering Cancer Center and New York Presbyterian/Columbia University, a surgical oncology fellowship at Roswell Park Cancer Institute, and a colon and rectal surgery fellowship at Grant Medical Center/Ohio State University.

19. Dr. Esemuede became board certified by the American Board of Surgery in 2013 and by the American Board of Colon and Rectal Surgery in 2021.

20. Before joining Montefiore, Dr. Esemuede worked as a colorectal/general surgeon at Saint Mary’s Hospital, Lewis County General Hospital, and Penn Highlands Healthcare.

21. At Montefiore, Dr. Esemuede carried a demanding clinical workload despite repeated institutional obstruction.

22. By December 2024, Dr. Esemuede was performing more than 100-200 colonoscopies per year in addition to more than 300 operative procedures per year.

23. In 2025, Dr. Esemuede again performed more than 300 cases even though his contract required only 200 cases for his bonus threshold.

24. Dr. Esemuede has also contributed meaningfully to the surgical literature and profession.

25. He has authored or co-authored numerous publications and papers concerning colorectal surgery, surgical-site infections, laparoscopic and open colorectal procedures, readmission risk, obesity-related surgical outcomes, complex inflammatory bowel disease, and colorectal cancer diagnostics.

26. Dr. Esemuede has presented research before professional organizations including the American College of Surgeons, the American Society of Colon and Rectal Surgeons, the Society of Surgical Oncology, and the National Medical Association Drew-Walker Surgical Forum.

27. Dr. Esemuede's work has also received recognition, including by the Connecticut Chapter of the American College of Surgeons Clinical Oncology and the National Medical Association Drew-Walker Surgical Forum.

II. MONTEFIORE ASSIGNED DR. ESEMUEDE TO WAKEFIELD, WHERE BLACK GENERAL SURGEONS AND THEIR PATIENTS WERE SYSTEMATICALLY DE-PRIORITIZED

28. Throughout his entire tenure with Montefiore, Dr. Esemuede was stationed at the Hospital's Wakefield Campus, which is located in the Bronx.

29. Dr. Esemuede was assigned there to assist Dr. Robert Plummer, a fellow Black surgeon who was overwhelmed and under-resourced.

30. Due to a lack of institutional support, Dr. Plummer was forced to perform important surgeries on patients with painful symptoms, like gallbladder and hernia issues, at all

hours of the day and even in the middle of the night (including for instance, at approximately 2am) due to operating room (“OR”) availability.¹

31. Dr. Plummer was the only Black surgeon at Wakefield who used the OR at the time of Dr. Esemuede’s arrival, and Dr. Esemuede learned that the conditions at Wakefield had cause the attrition of several other Black surgeons in the past.

32. In one instance, a Black urologist who was denied the opportunity to complete his residency without legitimate cause and subsequently abruptly left the practice without explanation.

33. As Dr. Esemuede soon found, the lack of OR availability was a systemic issue.

34. As set forth below, he and Dr. Plummer, the two Black general surgeons, were regularly shunted aside or de-prioritized in favor of white surgeons.

35. Dr. Esemuede also began to observe consistent lapses in standards of patient care. Mere examples of these issues are:

- On May 4, 2022, Dr. Esemuede was unable to perform a patient’s laparoscopic right colectomy, supposedly because there was no OR available (a problem in itself). However, there was an OR room that would typically be used for vascular surgery that was open that day, but Dr. Esemuede was told he could not use it because he needed to provide 24 hours’ notice – a preposterous requirement given that the room was unused and the surgery was planned for that day.
- In July of 2022, Dr. Esemuede had an OR case delayed because of a lack of equipment. He promptly complained about this, but his concerns were dismissed.
- On August 1, 2022, Dr. Esemuede raised a concern after one of his cases (again) was not put on the OR schedule despite the request of his team. This happened routinely, which caused patients to endure significant delays and procedures performed at odd hours, including

¹ These late cases violated work hour rules, which can result in aa violation of Accreditation Council for Graduate Medical Education rules.

late at night when certain elective procedures should not ordinarily be performed.

- In September of 2022, Dr. Esemuede experienced a problem with a nurse who would cancel patient visits and procedures without telling him.
- In October 2022, a complaint was made against Dr. Esemuede in connection with the treatment of a patient that he never even treated, demonstrating the Hospital's complete dysfunction.
- On November 23, 2022, Dr. Esemuede treated an emergency pelvic sepsis case – a very serious condition. However, he was unable to operate on the case for many hours because the anesthesia doctor, Elilary Montilla Medrano, incompetently insisted on various unnecessary pre-procedure courses of treatment. Even once her unnecessary hurdles were cleared, she continued to delay treatment in favor of assisting white orthopedic surgeons on non-urgent cases. As a result, of the delay, the patient was hypotensive, hyperglycemic and on pressors by the time she got into the OR. She also had necrotizing fasciitis – an extremely serious “flesh eating” bacterial infection, that required ongoing treatment. This patient literally almost died.
- On December 13, 2022, Dr. Esemuede had a laparoscopic cholecystectomy delayed for hours because the in-house anesthesiologists decided to go home early. This was far from a unique situation.
- On December 14, 2022, the very next day, something similar occurred.

36. To be very clear, these are mere examples of some of the earliest discriminatory disparate treatment and dangerous patient care practices observed by Dr. Esemuede.

37. Matters like these were, unfortunately, commonplace.

38. Moreover, in general, urgent and emergent general surgery cases were often delayed by anesthesiologists who were either MIA, assisting white surgeons or prioritizing more lucrative operations over ones that required immediate attention.

III. **DR. ESEMUEDE REPORTS DANGEROUS PATIENT CARE PRACTICES AND THE NEAR-DEATH OF A PATIENT DUE TO HOSPITAL INCOMPETENCE**

39. Given all of the foregoing, Dr. Esemuede sent an email to Dr. Jessica Dekhtyar, Wakefield's Medical Director, and Reginald Jordan, the Hospital's Clinical Services & Executive Director. The email read, *inter alia*:

Hello, I just wanted to follow up on our meeting yesterday. Dr. Dekhtyar. The patient with the necrotizing fasciitis whose case was delayed for almost 5 hours by Dr. Montilla was Chanelle Phillips (01498346). In brief, at 11am on 11/23/22 I told the anesthesia staff that I wanted to do an I&D of a perineal abscess in a septic patient. They said I could go at 1:30pm. At 1:30, Dr. Montilla said she will not do the case because the patient was "hyperglycemic." She said we should start an insulin drip and draw labs. I expressed to her that in a septic patient, it is difficult to control hyperglycemia and the patient needs to be in the operating room. She refused still. She also wanted endocrine consult for this emergent case. We did all of these things and she still refused to do the case. I eventually had to speak with staff in the operating room and we were finally able to bring the patient down. She still delayed the case even then and by the time we got into the room, the patient was now hypotensive, hyperglycemic, and on pressors. She had pretty bad necrotizing fasciitis in the perineum which had to be extensively debrided. We had to bring her back the next day for further debridement. **This case was delayed literally until the patient almost died.** This is unacceptable. There is unfortunately a habit of delaying general surgery cases here for any reason, and **it can lead to fatal outcomes.** The antagonism from some of the anesthesia staff leads to poor patient care and experience.

There was another issue yesterday (12/13) which was pointed out by nursing staff in the preoperative area. I had a laparoscopic cholecystectomy scheduled for after the PEG/diagnostic lap yesterday. The patient was in preop at 11am but was not taken to the operating room until almost 2pm. This is because apparently the in-house anesthesiologists went home early (1pm) and left my case to be done by I guess the anesthesiologist on call (it was someone I am not familiar with). Apparently the patient was upset by the delay. For whatever reason, **some of the anesthesiologists here (not all) seem to have an issue with doing urgent and emergent general surgery cases.** Those individuals always find a way to delay our

cases, even with the extra room and extra staff. There are several times where there are empty rooms and a paucity of cases, and our cases and patients get pushed until the end of the day.

Now today (12/14), Dr. Margulis told me that there was a Class I orthopedics case so my 2nd case (lap chole) may be delayed despite there being 5 other orthopedics rooms running (out of 7 total rooms). But initially he told me that my case was going to go, so we all rushed to get the patient to preop. After the patient was down there, then he told me that we could not do the case yet, essentially recreating the same situation from yesterday. The other issue is that on multiple occasions, Dr. Margulis has refused to do general surgery class I cases [*i.e.*, cases present a need for urgent intervention] unless we talk to the surgeon we are bumping.

40. On the same day, Dr. Esemuede forwarded this email to Dr. Michler and Dr.

Melvin Adler, the Director of General Surgery at Wakefield.

41. Dr. Esemuede's email was describing dangerous patient care practices that almost killed a patient. Any rational human being with even the slightest regard for patient care – much less someone who has taken the Hippocratic Oath – would have taken this complaint seriously and launched an immediate investigation.

42. Instead, Dr. Michler chastised Dr. Esemuede, stating:

You seem to have more issues than any other surgeon in any Department. As surgeon-in-chief, I follow these issues carefully across the health system. You and Scott need to review and perhaps, you need some coaching from HR?

43. This is a flabbergasting response to a serious complaint. Clearly, Dr. Michler clearly did not care that the Hospital's incompetence almost killed one of its patients and, unfortunately, no remedial action was taken.

44. The natural consequence of this blatant disregard for patient safety was, of course, the endangerment of additional patients.

45. The Hospital never bothered to provide Dr. Esemuede with coaching on these issues, which further demonstrates that the email was driven by apathy and retaliatory animus, and, of course, that no coaching was actually needed.

IV. THE HOSPITAL CONTINUES TO PUT LIVES AT RISK, WHICH, EVENTUALLY, RESULTS IN A PATIENT'S DEATH

46. On June 7, 2023, Dr. Esemuede performed a laparoscopic ileostomy reversal on a 73-year-old patient.

47. In connection with the procedure, a foley catheter was put into place to drain urine during the recovery period.

48. It was removed the following day, but the patient continued to experience urinary retention, resulting in periodic lower abdominal pain and elevated Blood Urea Nitrogen and Creatinine levels.

49. Dr. Esemuede appropriately requested that the foley catheter be replaced, but was incomprehensibly overruled by Dr. Dekhtyar and Marie Morelli, an Administrative Nurse Manager.

50. As a result, the patient experienced a week of additional pain and discomfort and, predictably, had to have the foley catheter replaced seven days after the operation.

51. This was not the only time that Dr. Esemuede's foley catheter directives were overruled by unqualified decisionmakers.

52. As a result, he sent an email to Mr. Jordan that read, *inter alia*,

Hello, I did a laparoscopic ileostomy reversal last week (6/7), and this 73 year old pleasant patient has been having urinary retention to the point that her BUN and Creatinine are elevated and she has been having recurrent lower abdominal pain. The foley was removed 6/8, but she had urinary retention going into 6/9. So I asked the foley to be replaced. Marie Morelli and Dr. Dekhtyar refused and actually countermanded my order. The patient was intermittently straight-

catheter for several days which basically did not resolve the issue. So now we have to put the foley back in POD7 and are calling a urology consult. This is very disappointing because if you had listened to me in the first place, **we could have avoided unnecessary discomfort for the patient and probably cut her length of stay in half.** This whole thing is very frustrating. I have excellent surgical results based on my clinical knowledge and **for some reason Marie and Dr. Dekhtyar somehow feel they can overrule the collective knowledge of the surgical team which is not turning out so well.** This is the only campus where things like this happen (I operate at Moses and Weiler). How can this best be fixed moving forward? Because this is unacceptable and very frustrating.

53. Mr. Jordan asked some follow-up questions, to which Dr. Esemuede responded,

inter alia:

There have been several instances where Dr. Dekhytar, Marie, and/or Dr. Corpuz(ID) have literally called the lab to cancel specimens or told nurses not to put in foleys in patients with obvious postop urinary retention. I just hear about it on the back end from the residents or Pas, who are also very frustrated about this. I attempted to speak with Dr. Dekhytar and Corpuz about these issues last week, but they were not very responsive and just flat out refused to listen to my expertise in these matters involving complex colorectal surgery patients. **I've never seen any nurse or nonsurgeon ever cancel any of a surgical team's orders on their postoperative patients, anywhere. This is highly unusual . . .** This patient in particular had 3 bladder scans over 5 days which showed that she was retaining more than 500ml of urine and Marie refused to have the nurses replace the foley. That's pretty ridiculous. Now that the foley catheter is in, the patient feels better and her creatinine came down. As I mentioned yesterday, we manage surgical patients in a fairly standard fashion and as you can see from infection rates and SSI rates, it is working. **I have no idea why Dr. Dekhtyar would just start coming in and disrupting our process, which we see is working!**

54. No remedial action was taken, nor were any steps taken to ensure patient safety going forward. As a result, patients continued to be put at risk.

- On November 16, 2023 incident, Dr. Esemuede was treating an Examination Under Anesthesia (“EUA”) sphincterotomy. A nurse

never showed up and the bed was not working. Dr. Esemuede filed a MIDAS complaint, yet the exact same thing happened in relation to a hemorrhoid operation Dr. Esemuede was supposed to perform on December 14, 2023.

- On November 30, 2023, Dr. Esemuede's cases were rearranged without any notice to him (and, again, the bed he was supposed to use to perform his operations was not functioning).
- On December 8, 2023, Dr. Alexandra Bastien remarked, "physicians don't file MIDAS" reports, which was an acknowledgment of a culture of coverup at the Hospital.
- In December 2023, Dr. David Weithorn, a white general surgeon, operated on a patient. During the operation, Dr. Weithorn injured the patient's bowel, but did not realize that he had done so, and cleared her to leave the Hospital. Luckily, a resident kept the patient for continued evaluation. Dr. Esemuede was called in to repair the damage that had been done. Dr. Weithorn then proceeded to blame Dr. Esemuede for the issue in a morbidity and mortality ("M&M") conference, and falsely claimed that Dr. Esemuede had not notified him of the issue or the surgery performed to repair it. Upon information and belief, this patient later filed suit as a result (Dr. Esemuede was not named).
- On December 23, 2023, Dr. Robert Bernholc, an anesthesiologist at Wakefield, was asleep at the switch while Dr. Esemuede was performing surgery. As a result, the patient at issue almost fell off the operating bed twice. When Dr. Esemuede attempted to get Dr. Bernholc to focus, Dr. Bernholc yelled and swore at him. When Dr. Esemuede attempted to discuss this matter with Dr. Bernholc, Dr. Esemuede was told that if he complained, he would "get shit in [his] face." This was not the first instance in which Dr. Bernholc swore at Dr. Esemuede. In July 2023, Dr. Bernholc told Dr. Esemuede to "get [his] ass" in the OR after Dr. Bernholc showed up late for a procedure. Dr. Esemuede reported this conduct in December 2023 to no avail.

55. Dr. Esemuede repeatedly complained as the instances of malpractice and disregard for patient safety continued to pile up.

56. Among many other complaints, he complained specifically about the conduct of Dr. Bernholz, described above, to Dr. Melvin and Dr. Tracey Straker, the Vice Chair of Clinical Operations.

57. When nothing was done, Dr. Esemuede filed a formal complaint.

58. During a follow up interview with Human Resources, Dr. Esemuede noted, “we don’t all have to like each other, but we still have to be professionals and provide adequate patient care” . . . “I’m trying to protect my patients, protect the hospital, you know, make sure everybody’s kind of on the same page in terms of patient care.”

59. During the same follow-up interview, HR told Dr. Esemuede that he would not be retaliated against for raising his concerns.

60. This, as Dr. Esemuede already knew and would continue to learn, was simply untrue.

61. Despite his complaints, issues continued to abound in 2024.

62. On one occasion Dr. Carlos Alvarado delayed one of Dr. Esemuede’s surgeries (to the detriment of the patient) and cursed at him for no legitimate reason.

63. On another occasion, an OR nurse instigated an argument with a Muslim resident, which ultimately resulted in the resident suffering a miscarriage and having to leave the rotation.

64. Also in 2024, the Hospital hired a secretary named Elizabeth Rodriguez. Ms. Rodriguez engaged in various acts of discriminatory behavior, including cancelling the operations of Black surgeons and harassing the location’s only Black nurse, a woman named Andrea.

65. Ms. Rodriguez’s supervisor, Ragini Mehta, herself refused to hire a Black nurse candidate, Mariama Balde, without explanation.

66. Dr. Esemuede would later be told by one of the other secretaries that “Liz said she was afraid of [him] because ‘Africans will do anything.’”

67. In November 2024, the Hospital’s negligence killed one of Dr. Esemuede’s patients.

68. On November 14, 2024, the surgical team was called in for an 86-year-old patient who had free air in the abdomen on imaging, signifying a likely bowel perforation.

69. After a successful operation, the patient was transferred to the Intensive Care Unit (“ICU”), where the attending physician left the patient’s care in the hands of a first-year resident.

70. More to the point, the attending physician had directed the first-year resident to cease providing IV fluids on the patient even though he had just had a major open abdominal surgery and his blood pressure was dropping.

71. When Dr. Esemuede attempted to discuss this with the attending physician, she became defensive and insisted that the patient was doing fine even though it was obvious he was not.

72. Dr. Esemuede continued to monitor the situation and eventually he, Dr. Plummer and the Chief resident all went to speak with the ICU attending physician.

73. Rather than heeding the warning signs, the attending physician acted in a hostile manner and refused to provide adequate IV fluids.

74. The patient died the next day.

75. Dr. Esemuede wrote an email to Dr. Dekhytar complaining about this situation, as this was not the first time that the ICU failed to adequately monitor patient fluid levels (among other acts of malpractice).

76. This email was forwarded to Dr. Daniel Fein, the Director of the ICU.

77. Dr. Fein agreed with Dr. Esemuede's assessment of the situation.

78. There was also a morbidity and mortality conference held (without notice being provided to Dr. Esemuede) regarding this patient's death.

79. Shortly thereafter, the attending physician filed a retaliatory complaint against Dr. Esemuede.

80. Although HR initially asked to meet with Dr. Esemuede, it was eventually forced to back down after Dr. Esemuede forwarded the entire sequence of events to HR.

81. A few weeks later, on December 3, 2024, Dr. Esemuede wrote to Dr. Michler and asked to discuss his contract.

82. Specifically, Dr. Esemuede was well aware that he was significantly underpaid given his contributions, particularly in comparison to his white peers (some of whom were earning hundreds of thousands of dollars more than Dr. Esemuede).

83. In an obvious act of retaliation, Dr. Michler refused to even discuss Dr. Esemuede's contract, purportedly because he had received "too many complaints" about Dr. Esemuede.

84. As explained in further detail below, these "complaints" were nothing more than retaliatory gripes lodged against Dr. Esemuede by individuals who were the subject of his own complaints of discrimination and dangerous patient care practices.

85. Dr. Esemuede pushed back, explaining that he was performing 200 colonoscopies and 300 surgeries per year, well more than what was called for in his contract.

86. Dr. Esemuede added, "[w]ith all due respect sir, these 'complaints' are from people who try to impede my ability to deliver good and efficient patient care. And me trying to elevate their practices and processes when it comes to patient care delivery."

87. Dr. Esemuede's email was ignored.

V. MATTERS CONTINUE TO DETERIORATE

88. Matters continued to deteriorate when, in June 2025, Dr. Michler directed that, due to "considerable financial pressure," the Hospital was looking to increase in-patient surgeries (and corresponding revenues associated with patients being kept for post-operation observation).

89. To facilitate this endeavor, the Hospital decided to move in-patient orthopedic joints procedures to Wakefield even though the location was already down one OR due to renovations.

90. As a result, Dr. Michler reassigned blocks of time that were reserved for general and urological surgeries and held them instead for outpatient surgeries.

91. This money grab was, of course, highly detrimental to the many, many, patients – disproportionately minorities² – who could no longer receive ambulatory surgery at Wakefield.

92. Then, in or around July 2025, Dr. Esemuede and a team of medical professionals ordered a patient x-ray.

93. The x-ray technician responsible for taking the x-ray, acting insubordinately and outside of his expertise, authority and competence, flat out refused to do the x-ray.

94. This, of course, constituted substandard patient care.

95. This technician then proceeded to simply leave the floor and disclosure HIPAA protected information about this patient to individuals without a need to know.

96. He apparently then made a complaint concerning Dr. Esemuede's "tone" (i.e., a euphemism for the stereotypical "angry Black man") during the relevant interactions.

² It bears noting that Drs. Esemuede and Plummer were almost always on call during the day for the Wakefield location, which was obviously because the Hospital felt that they should pair Black doctors with a patient pool that was disproportionately Black.

97. To be clear, Dr. Esemuede's tone was at all times appropriate, but it also bears noting that Dr. Esemuede had every right to be frustrated when a non-clinician refused to do his job, which in turn compromised patient care in a dangerous way.

98. Another set of issues arose on August 28, 2025.

99. First, one of Dr. Esemuede's scheduled gallbladder surgeries was delayed because a non-emergency orthopedic case was scheduled over the surgery.

100. Then, a nurse violated a written and verbal NPO order (i.e., an order forbidding a patient from consuming food or drink prior to an operation).

101. Specifically, the patient was given orange juice and, to make matters worse, no one on the surgical team was informed.

102. Ultimately, the surgery had to be cancelled.

103. When Dr. Esemuede and Dr. Abdulrahman Hassab appropriately and calmly attempted to explain the mistake to the nurse, she became defensive and argumentative, as did one of her colleagues who overheard the interaction.

104. Drs. Esemuede and Hassab filed a MIDAS complaint about the situation, and the nurse, incredulously, raised a retaliatory complaint with HR and falsely claimed that he was "harsh," another euphemism for the stereotypical "angry Black man."

105. Then, in September 2025, Dr. Esemuede was told that he would have to meet with HR.

106. When he asked for more details, Dr. Esemuede was told, "[w]e do not disclose the details to the meeting prior to meeting following our normal process."

107. He also was told, “[w]e have two HR concerns that have been brought to our attention that we will discuss with you in the meeting for your feedback regarding your interactions with colleagues.”

108. Dr. Esemuede responded:

I have excellent and appropriate interactions with colleagues. Even when **they do things that put my patients in danger**, as we have discussed in the past. Would this meeting have anything to do with nurses at Wakefield utilizing Epic Chat to antagonize and demonize the surgical service here? Because we **just had another patient care situation** similar to the one my resident and I were involved in a month ago when a nurse **delayed a patient’s surgery** and tried to use Epic chat as an excuse.

109. In the meantime, on October 6, 2025, while HR and Dr. Esemuede were still working to set a meeting date, Dr. Esemuede complained to Mr. Jordan about another instance of a delayed surgery after a non-emergency orthopedic surgery was scheduled over one of Dr. Esemuede’s operations in violation of the Hospital’s scheduling policy.

110. Mr. Jordan’s response was entirely unhelpful and obfuscated with respect to the actual policy.

111. Even Dr. Melvin conceded that there was a “problem” and “frustration” and a lack of “guidelines or rules or consistency.”

112. Nevertheless, the nurse who booked the orthopedic procedure over Dr. Esemuede’s surgery raised a complaint with HR in which she apparently suggested that Dr. Esemuede had “yelled” at her (again, a euphemism for the stereotypical “angry Black man”).

113. On October 14, 2025, Dr. Esemuede met with HR Director, Sara Chivelly, and HR Manager, Lothis Loinaz.

114. During the meeting, Misses Chivelly and Loinaz asked Dr. Esemuede about the interactions described above.

115. Dr. Esemuede explained the circumstances around each, and repeatedly pointed out that the complaints were obviously lodged in retaliation for his own complaints about substandard patient care practices and endangerment.

116. Throughout the meeting with HR, Dr. Esemuede also engaged in additional protected activity, stating, *inter alia*:

- And I feel like these HR complaints are retaliation against me for pointing out very poor medical care that happened in all these instances and hostility towards me.”
- And they did things to impede patient care. And I guess to try to, I guess, I don't know, stop themselves from getting fired or something, they filed these false HR complaints.
- [P]articularly in general surgery service, we try to get cases done, and you end up, you know, having to talk to a nurse who makes a decision about, you know, which case goes ahead of more urgent, emergent cases. I mean, there have been all types of issues in the operating room with prioritizing cases, and nurses basically being put in a position to make really bad medical decisions and thus delaying our care of our patients.
- The fact that everybody feels that they can just throw my name into a HR complaint every time they make a bad medical decision, I mean, this is not like I'm walking down the hall and I start yelling at somebody. This is somebody screws up something with my patient, delays their patient care in every single one of these situations, and somebody's trying to tell them, hey, look, that is not the best way to do things. And then they immediately start, they immediately get hostile, they immediately start arguing with me, and then I get in trouble for it.

117. Nothing was done to address these issues.

118. In or around November 2025, a new nurse, Ann Dowd, was introduced to the OR. Ms. Dowd's incompetence created yet additional patient safety issues, including: (i) one occasion in which she falsely stated that there was no stapler available (untrue) while Dr.

Esemuede was attempting to reconnect a patient's bowel during surgery; (ii) pulling out the suction during an operation and lying about it; and (iii) opening the wrong equipment during surgery.

119. Dr. Esemuede complained about these issues as well. Of course, no remedial action was taken.

120. In fact, instead of remedial action, Dr. Esemuede was denied a bonus for 2025 despite his superior performance.

121. In response, on December 22, 2025, he wrote an email to Drs. Michler and Melvin that read, *inter alia*:

Hello, it has come to my understanding that the reason you decided to withhold the \$25,000 bonus is because "anesthesia complained" about me. That is unacceptable, as the previous anesthesia group who was here was **led by an absolute racist individual** (Dr. Margulis) who tried to make my and Dr. Plummer's lives miserable.

...

On many occasions, I have had patients with painful cholecystitis or appendicitis have to wait hours or even days to get necessary surgery. On one particular occasion, Dr. Roman Margulis, then the Anesthesia site director, blocked me from doing a laparoscopic lysis of adhesions on a sick older patient with a high-grade small bowel obstruction because he wanted to let another surgeon do an endoscopic carpal tunnel surgery first. Dr. Margulis was very clearly a racist individual who always prevented myself and Dr. Plummer (black surgeons)^[3] from doing our surgeries early in the day, or before orthopedic cases. He would always push our cases to the end of the day, almost like a "back of the bus" type of mentality towards black surgeons.

...

In fact, one of the other anesthesiologists, Dr. Alexandra Bastien also feels that Dr. Margulis was a racist. As does Dr. Plummer. Dr. Bastien has also remarked that the operating room at Wakefield

³ Another Black transplant surgeon was also unjustly fired in 2025.

seems to prioritize taking care of orthopedic surgery patients (and physicians) over the mostly black general surgery patients (and surgeons).

...

I have given you ample opportunity to discuss all of these issues, and you have ignored or chastised me. This situation needs to be rectified now.

122. The situation was not rectified.

VI. DR. ESEMUEDE IS TERMINATED IN RETALIATION FOR HIS COMPLAINTS

123. Just a few weeks after his December 22, 2025 complaint, Dr. Esemuede received another meeting request from Ms. Chivelly.

124. As it turned out, the meeting (also attended by Dr. Melvin) was apparently instigated by another retaliatory complaint, this one made by Carmen, a staff supervisor at Wakefield who was frustrated with Dr. Esemuede for asking that Ms. Dowd not be assigned to his procedures.

125. Playing again off the trope of an angry Black man, Carmen apparently claimed that Dr. Esemuede raised his voice and cursed at her.

126. Anyone who spends any amount of time with Dr. Esemuede would instantly know that such behavior is not in keeping with his demeanor and personality.

127. During the February meeting with Ms. Chivelly and Dr. Melvin, Dr. Esemuede complained again about racism and retaliatory abuse.

128. Dr. Esemuede's concerns were brushed aside. He was told that he would simply have to "take it" or he would have "no path forward" at the Hospital.

129. Ms. Chivelly also denied (obviously, without investigating) that any complaints made about Dr. Esemuede were retaliatory.

130. Incidentally, that very same day, in an illustration of the systematic issues at Montefiore as to race, two Black residents at Wakefield were terminated.

131. On February 25, 2026, Dr. Esemuede sent a follow-up email to Ms. Chivelly and Dr. Melvin in which he explained the truth regarding the interactions at issue, including his patient safety concerns related to Ms. Dowd's incompetence, as described above.

132. Dr. Esemuede encountered yet another egregious example of poor patient care on April 6, 2026.

133. On that date, he had a patient with anorectal sepsis, caused by a peritoneal abscess, who had been (and was) in severe pain for over 12 hours.

134. Instead of ensuring prompt treatment, the staff caused the necessary surgery to be delayed for over four hours to accommodate an elective orthopedic case.

135. Then, they delayed it even further by attempting to prioritize a deceased patient organ harvest over the surgery needed by a living patient in excruciating pain.

136. Dr. Esemuede, once again complained via MIDAS.

137. He also sent emails to Dr. Michler and Dr. Melvin about the situation and had a phone call with Dr. Dekhytar.

138. On April 7, 2026, Dr. Esemuede arrived at Wakefield and checked on the patient. Thankfully, the patient was feeling better.

139. Dr. Esemuede then got to work, performing approximately ten colonoscopies before receiving a text from Dr. Melvin, asking that Dr. Esemuede join a 3pm meeting with HR.

140. Dr. Esemuede received conflicting instructions, though, as he also was asked by a resident to remove a patient's gallbladder.

141. Security was already waiting for him when he exited the GI suite.

142. When Dr. Esemuede attempted to get past the security guard, informing him that he was required to perform a surgery, the guard attempted to physically prevent Dr. Esemuede from going to the OR.

143. Eventually, Dr. Esemuede was slammed to the ground and directed to leave the Hospital.

FIRST CAUSE OF ACTION
(Discrimination in Violation of § 1981)
Against All Defendants

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

145. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, subjecting Plaintiff to disparate treatment.

146. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, creating a hostile work environment for Plaintiff.

147. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

148. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

149. Defendants' discriminatory treatment constitutes malicious, willful and wanton violation of § 1981 for which Plaintiff is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION
(Retaliation in Violation of § 1981)
Against All Defendants

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

151. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

152. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

153. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

154. Defendants' retaliatory treatment constitutes malicious, willful and wanton violation of § 1981 for which Plaintiff is entitled to an award of punitive damages.

THIRD CAUSE OF ACTION
(Discrimination in Violation of the NYSHRL)
Against All Defendants

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

156. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, subjecting Plaintiff to disparate treatment.

157. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, creating a hostile work environment for Plaintiff.

158. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

159. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

160. Defendants' discriminatory treatment constitutes malicious, willful and wanton violation of the NYSHRL for which Plaintiff is entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of the NYSHRL)
Against All Defendants

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

162. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

163. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

164. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

165. Defendants' retaliatory treatment constitutes malicious, willful and wanton violation of the NYSHRL for which Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Discrimination in Violation of the NYCHRL)
Against All Defendants

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

167. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, subjecting Plaintiff to disparate treatment.

168. As described herein, Defendants discriminated against Plaintiff because of his race, by, *inter alia*, creating a hostile work environment for Plaintiff.

169. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

170. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

171. Defendants' discriminatory treatment constitutes malicious, willful and wanton violation of the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION
(Retaliation in Violation of the NYCHRL)
Against All Defendants

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

173. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

174. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

175. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

176. Defendants' retaliatory treatment constitutes malicious, willful and wanton violation of the NYCHRL for which Plaintiff is entitled to an award of punitive damages.

SEVENTH CAUSE OF ACTION
(Unlawful Retaliation Under New York Labor Law § 740, *et seq.*)
Against All Defendants

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

178. New York Labor Law § 740 provides, "An employer shall not take any retaliatory action against an employee . . . because such employee . . . discloses, or threatens to disclose to a supervisor . . . an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety . . . or [] objects to, or refuses to participate in any such activity, policy or practice."

179. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

180. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYLL § 740, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

181. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYLL § 740, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

182. Defendants' retaliatory treatment constitutes malicious, willful and wanton violation of NYLL § 740 for which Plaintiff is entitled to an award of punitive damages.

EIGHTH CAUSE OF ACTION
(Unlawful Retaliation Under New York Labor Law § 741, *et seq.*)
Against All Defendants

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

184. NYLL § 741 provides that “no employer shall take retaliatory action against any employee because the employee . . . discloses or threatens to disclose to a supervisor . . . an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety . . . or [] objects to . . . any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.”

185. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

186. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYLL § 741, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

187. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYLL § 741, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

NINTH CAUSE OF ACTION
(Unlawful Retaliation Under New York Not-for-Profit Corporation Law § 715-b, *et seq.*)
Against All Defendants

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

189. NYNPL § 715-b provides that every applicable organization have a policy confirming that “no director, officer, key person, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.”

190. Montefiore either does not have a policy compliant with NYNPL § 715-b or has a written policy that is compliant but does not follow such policy in practice. Furthermore, Montefiore and its executives are on notice of and have acquiesced to non-compliance with such policy.

191. Defendants retaliated against Plaintiff for engaging in protected activity, by, *inter alia*, subjecting him to disparate treatment and terminating his employment.

192. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYNPL § 715-b, Plaintiff has suffered, and continues to suffer, economic damages for which he is entitled to an award of damages.

193. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of NYNPL § 715-b, Plaintiff has suffered, and continues to suffer, severe mental and emotional distress for which he is entitled to an award of damages.

194. Defendants' retaliatory treatment constitutes malicious, willful and wanton violation of NYNPL § 715-b for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that a judgment be entered in his favor and against Defendants, containing 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 injunction and order be issued permanently restraining Defendants from engaging in any such further unlawful conduct, including the policies and practices complained of herein and any further retaliation and/or tortious conduct;

C. An award of damages against Defendants in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all past and future monetary and/or economic damages;

D. An award of damages against Defendants, in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, damage to professional and personal reputation and earning capacity, emotional distress, and physical illness;

E. An award of punitive damages against Defendants, in an amount to be determined at trial;

F. Prejudgment interest on all and any other amounts due to Plaintiff;

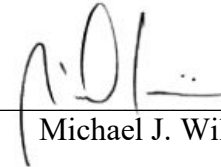
G. An award of costs that Plaintiff has incurred in this action, including, but not limited to, expert witness fees, as well as Plaintiff's reasonable attorneys' fees and costs to the fullest extent permitted by law; and

H. Such other and further relief that is available under applicable law and/or as may be deemed just and proper.

Dated: September 29, 2026
New York, New York

Respectfully submitted,

WIGDOR LLP

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