SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

WILLIE LEE KIRBY, SR., as Executor of the Estate of DANNY HINNANT, Deceased, and WILLIE LEE KIRBY, SR., Individually,

Plaintiff,

-against-

ALEXANDRE B. DE MOURA, M.D.; KAREN L. GRAUER, R.P.A.; ALEXANDRE B. DE MOURA, M.D., P.C.; NEW YORK SPINE SURGERY, PLLC; NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC; and MERCY MEDICAL CENTER,

Defendants.

Index No.:

Plaintiff designates Nassau County as the place of trial.

SUMMONS

The basis of venue is: Defendants' principal place of business.

Defendants' principal place of business includes 761 Merrick Avenue, Westbury, NY 11590.

To the above named Defendants:

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

Dated: Garden City, New York
October 16, 2018

TARVER LAW FIRM, P.C.

By: _____
TERRENCE L. TARVER
Attorneys for Plaintiffs
1140 Franklin Avenue, Suite 200
Garden City, New York 11530
516-506-7187

Defendants' addresses:
ALEXANDRE B. DE MOURA, M.D., 761 Merrick Avenue, Westbury, NY 11590;
KAREN L. GRAUER, R.P.A., 9 Kenworth Road, Port Washington, NY 11050;
ALEXANDRE B. DE MOURA, M.D., P.C., 761 Merrick Avenue, Westbury, NY 11590;
NEW YORK SPINE SURGERY, PLLC, 761 Merrick Avenue, Westbury, NY 11590;
NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC, 761 Merrick Avenue, Westbury, NY 11590; and
MERCY MEDICAL CENTER, 1000 North Village Avenue, Rockville Centre, NY 11570

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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WILLIE LEE KIRBY, SR., as Executor of the Estate of DANNY HINNANT, Deceased, and WILLIE LEE KIRBY, SR., Individually,

Plaintiffs,

-against-

ALEXANDRE B. DE MOURA, M.D.; KAREN L. GRAUER, R.P.A.; ALEXANDRE B. DE MOURA, M.D., P.C.; NEW YORK SPINE SURGERY, PLLC; NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC; and MERCY MEDICAL CENTER,

Defendants.

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Index No.:

VERIFIED COMPLAINT

Plaintiff, WILLIE LEE KIRBY, SR. (hereinafter "KIRBY"), as Executor of the Estate of DANNY HINNANT (hereinafter "HINNANT"), Deceased, and KIRBY, Individually, by his attorneys, TARVER LAW FIRM, P.C., complaining of the defendants, ALEXANDRE B. DE MOURA, M.D. (hereinafter "DE MOURA); KAREN L. GRAUER, R.P.A. (hereinafter "GRAUER"); ALEXANDRE B. DE MOURA, M.D., P.C. (hereinafter "DE MOURA P.C."); NEW YORK SPINE SURGERY, PLLC (hereinafter "NY SPINE"); NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC (hereinafter "NY ORTHO"); and MERCY MEDICAL CENTER (hereinafter "MERCY"); alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION FOR WRONGFUL DEATH

1. Plaintiff, KIRBY, was and is a resident of Nassau County.

2. Decedent, HINNANT, passed away on October 16, 2016, in Nassau University Medical Center, 2201 Hempstead Turnpike, East Meadow, NY 11554.

3. Decedent, HINNANT, was survived by his uncle, Plaintiff, KIRBY.

4. On June 30, 2017, Letters Testamentary appointing Plaintiff, KIRBY, to be the Executor of the Estate of HINNANT, deceased, were issued by order of the Honorable Margaret C. Reilly, Surrogate of Surrogate's Court of the State of New York, County of Nassau.

5. Defendant, DE MOURA, was and is a physician duly licensed to practice medicine in the State of New York.

6. Defendant, DE MOURA, was and is a physician who specialized in orthopedic surgery.

7. Defendant, DE MOURA, was and is a physician who specialized in spinal surgery.

8. Defendant, DE MOURA, held himself out as a physician who practiced his specialty of orthopedic surgery in accordance with known and accepted standards of medical care in the community.

9. Defendant, DE MOURA, held himself out as a physician who practiced his specialty of spinal surgery in accordance with known and accepted standards of medical care in the community.

10. Defendant, DE MOURA, had an office for his practice of orthopedic surgery at defendant, DE MOURA PC, 761 Merrick Avenue, Westbury, NY 11590.

11. Defendant, GRAUER, was and is a physician's assistant duly licensed in the State of New York.

12. The physician's assistant License Number of defendant, GRAUER, is 005251.

13. Defendant, GRAUER, resides at 9 Kenworth Road, Port Washington, NY 11050.

14. Defendant, DE MOURA PC, was and is a domestic professional corporation duly existing under and by virtue of the laws of the State of New York.

15. Defendant, DE MOURA PC, is doing business as NEW YORK SPINE INSTITUTE.

16. Defendant, DE MOURA PC, has a principal executive office at 761 Merrick Avenue, Westbury, NY 11590.

17. Defendant, DE MOURA PC, has a business address at 761 Merrick Avenue, Westbury, NY 11590.

18. Defendant, DE MOURA PC, held itself out to the general public as specializing in orthopedic surgery.

19. Defendant, DE MOURA PC, held itself out to the general public as specializing in spinal surgery.

20. Defendant, DE MOURA PC, owned offices for the purpose of providing medical care and treatment.

21. Defendant, DE MOURA PC, operated offices for the purpose of providing medical care and treatment.

22. Defendant, DE MOURA PC, managed offices for the purpose of providing medical care and treatment.

23. Defendant, DE MOURA PC, maintained offices for the purpose of providing medical care and treatment.

24. Defendant, DE MOURA PC, supervised offices for the purpose of providing medical care and treatment.

25. Defendant, DE MOURA PC, controlled offices for the purpose of providing medical care and treatment.

26. Defendant, DE MOURA PC, was responsible for offices for the purpose of providing medical care and treatment.

27. Defendant, DE MOURA, was and is a shareholder of defendant, DE MOURA PC.

28. Defendant, DE MOURA, was and is a principal of defendant, DE MOURA PC.

29. Defendant, DE MOURA, was and is an officer of defendant, DE MOURA PC.

30. Defendant, DE MOURA, was is and the Chief Executive Office of defendant, DE MOURA PC.

31. Defendant, DE MOURA, was and is an employee of the defendant, DE MOURA PC.

32. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, DE MOURA PC, pursuant to a written agreement.

33. Defendant, GRAUER, is employed by defendant, DE MOURA.

34. Defendant, GRAUER, is employed by defendant, DE MOURA PC.

35. Defendant, GRAUER, provided medical care and treatment to patients of defendant, DE MOURA PC, pursuant to a written agreement.

36. Defendant, NY SPINE, was and is a domestic professional service limited liability company duly existing under and by virtue of the laws of the State of New York.

37. Defendant, NY SPINE, is doing business as NEW YORK SPINE INSTITUTE.

38. Defendant, NY SPINE, has a principal executive office at 761 Merrick Avenue, Westbury, NY 11590.

39. Defendant, NY SPINE, has a business address at 761 Merrick Avenue, Westbury, NY 11590.

40. Defendant, NY SPINE, held itself out to the general public as specializing in orthopedic surgery.

41. Defendant, NY SPINE, held itself out to the general public as specializing in spinal surgery.

42. Defendant, NY SPINE, owned offices for the purpose of providing medical care and treatment.

43. Defendant, NY SPINE, operated offices for the purpose of providing medical care and treatment.

44. Defendant, NY SPINE, managed offices for the purpose of providing medical care and treatment.

45. Defendant, NY SPINE, maintained offices for the purpose of providing medical care and treatment.

46. Defendant, NY SPINE, supervised offices for the purpose of providing medical care and treatment.

47. Defendant, NY SPINE, controlled offices for the purpose of providing medical care and treatment.

48. Defendant, NY SPINE, was responsible for offices for the purpose of providing medical care and treatment.

49. Defendant, DE MOURA, was and is a shareholder of defendant, NY SPINE.

50. Defendant, DE MOURA, was and is a principal of defendant, NY SPINE.

51. Defendant, DE MOURA, was and is an officer of defendant, NY SPINE.

52. Defendant, DE MOURA, was is and the Chief Executive Office of defendant, NY SPINE.

53. Defendant, DE MOURA, was and is an employee of the defendant, NY SPINE.

54. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, NY SPINE, pursuant to a written agreement.

55. Defendant, GRAUER, is employed by defendant, NY SPINE.

56. Defendant, GRAUER, provided medical care and treatment to patients of defendant, NY SPINE, pursuant to a written agreement.

57. Defendant, NY ORTHO, was and is a domestic professional service limited liability corporation duly existing under and by virtue of the laws of the State of New York.

58. Defendant, NY ORTHO, is doing business as NEW YORK SPINE INSTITUTE.

59. Defendant, NY ORTHO, has a principal executive office at 761 Merrick Avenue, Westbury, NY 11590.

60. Defendant, NY ORTHO, has a business address at 761 Merrick Avenue, Westbury, NY 11590.

61. Defendant, NY ORTHO, held itself out to the general public as specializing in orthopedic surgery.

62. Defendant, NY ORTHO, held itself out to the general public as specializing in spinal surgery.

63. Defendant, NY ORTHO, owned offices for the purpose of providing medical care and treatment.

64. Defendant, NY ORTHO, operated offices for the purpose of providing medical care and treatment.

65. Defendant, NY ORTHO, managed offices for the purpose of providing medical care and treatment.

66. Defendant, NY ORTHO, maintained offices for the purpose of providing medical care and treatment.

67. Defendant, NY ORTHO, supervised offices for the purpose of providing medical care and treatment.

68. Defendant, NY ORTHO, controlled offices for the purpose of providing medical care and treatment.

69. Defendant, NY ORTHO, was responsible for offices for the purpose of providing medical care and treatment.

70. Defendant, DE MOURA, was and is a shareholder of defendant, NY ORTHO.

71. Defendant, DE MOURA, was and is a principal of defendant, NY ORTHO.

72. Defendant, DE MOURA, was and is an officer of defendant, NY ORTHO.

73. Defendant, DE MOURA, was is and the Chief Executive Office of defendant, NY ORTHO.

74. Defendant, DE MOURA, was and is an employee of the defendant, NY ORTHO.

75. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, NY ORTHO, pursuant to a written agreement.

76. Defendant, GRAUER, is employed by defendant, NY ORTHO.

77. Defendant, GRAUER, provided medical care and treatment to patients of defendant, NY ORTHO, pursuant to a written agreement.

78. Defendant, MERCY, was and is a domestic, not-for-profit corporation organized and existing under the laws of the State of New York.

79. Defendant, MERCY, has an office for the conduct of business at 1000 North Village Avenue, Rockville Centre, NY 11570.

80. Defendant, MERCY, owned a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

81. Defendant, MERCY, operated a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

82. Defendant, MERCY, managed a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

83. Defendant, MERCY, maintained a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

84. Defendant, MERCY, supervised a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

85. Defendant, MERCY, controlled a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

86. Defendant, MERCY, was responsible for a hospital called Mercy Medical Center located at 1000 North Village Avenue, Rockville Centre, NY 11570.

87. Defendant, DE MOURA, was an employee of defendant, MERCY.

88. Defendant, DE MOURA, was a physician associated with defendant, MERCY.

89. Defendant, DE MOURA, was and is a physician with surgical privileges with defendant, MERCY.

90. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, MERCY.

91. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, DE MOURA, and defendant, MERCY.

92. Defendant, DE MOURA, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, DE MOURA PC, and defendant, MERCY.

93. Defendant, DE MOURA PC, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, NY SPINE, and defendant, MERCY.

94. Defendant, DE MOURA PC, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, NY ORTHO, and defendant, MERCY.

95. Defendant, GRAUER, was an employee of defendant, MERCY.

96. Defendant, GRAUER, was a physician's assistant associated with defendant, MERCY.

97. Defendant, GRAUER, was and is a physician's assistant with privileges with defendant, MERCY.

98. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY.

99. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, GRAUER, and defendant, MERCY.

100. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, DE MOURA, and defendant, MERCY.

101. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, DE MOURA PC, and defendant, MERCY.

102. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, NY SPINE, and defendant, MERCY.

103. Defendant, GRAUER, provided medical care and treatment to patients of defendant, MERCY, pursuant to a written agreement between defendant, NY ORTHO, and defendant, MERCY.

104. Decedent, HINNANT, received medical care and treatment from defendant, DE MOURA, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

105. Decedent, HINNANT, received medical care and treatment from defendant, DE MOURA, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

106. Defendant, DE MOURA, performed an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, on October 11, 2016, at the hospital of defendant, MERCY.

107. Decedent, HINNANT, received medical care and treatment from defendant, GRAUER, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

108. Decedent, HINNANT, received medical care and treatment from defendant, GRAUER, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

109. Defendant, GRAUER, assisted and/or participated in an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, on October 11, 2016, at the hospital of defendant, MERCY.

110. Decedent, HINNANT, received medical care and treatment from defendant, DE MOURA P.C., on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

111. Decedent, HINNANT, received medical care and treatment from defendant, DE MOURA P.C., on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

112. Defendant, DE MOURA P.C., performed an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, October 11, 2016, at the hospital of defendant, MERCY.

113. Decedent, HINNANT, received medical care and treatment from defendant, NY SPINE, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

114. Decedent, HINNANT, received medical care and treatment from defendant, NY SPINE, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

115. Defendant, NY SPINE, performed an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, October 11, 2016, at the hospital of defendant, MERCY.

116. Decedent, HINNANT, received medical care and treatment from defendant, NY ORTHO, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

117. Decedent, HINNANT, received medical care and treatment from defendant, NY ORTHO, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

118. Defendant, NY ORTHO, performed an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, October 11, 2016, at the hospital of defendant, MERCY.

119. Decedent, HINNANT, received medical care and treatment from defendant, MERCY, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same.

120. Decedent, HINNANT, received medical care and treatment from defendant, MERCY, on October 11, 2016, for the same conditions, signs and symptoms and the sequellae of same, including to his cervical spine, cervical spine herniation, and cervical radiculopathy, the consequences of surgery for treatment of same and the complications of same.

121. Defendant, MERCY, performed an Anterior Cervical Diskectomy at C5-6 and C6-7; an Arthrodesis at C5-6 and C6-7; an Anterior Cervical Instrumentation; an Lliac Crest Bone Marrow Harvest for Transplant with Structural Allograft operation on decedent, HINNANT, on October 11, 2016, at the hospital of defendant, MERCY.

122. During his care at defendant, MERCY, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, MERCY.

123. During his care at defendant, MERCY, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, DE MOURA PC.

124. During his care at defendant, MERCY, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY SPINE.

125. During his care at defendant, MERCY, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY ORTHO.

126. During his care at defendant, MERCY, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, MERCY.

127. During his care at defendant, MERCY, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, DE MOURA PC.

128. During his care at defendant, MERCY, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY SPINE.

129. During his care at defendant, MERCY, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY ORTHO.

130. During his care at defendant, MERCY, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, MERCY

131. During his care at defendant, MERCY, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, DE MOURA PC.

132. During his care at defendant, MERCY, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY SPINE.

133. During his care at defendant, MERCY, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendants, DE MOURA and GRAUER, of defendant, NY ORTHO.

134. During his care at defendant, DE MOURA PC, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, DE MOURA PC.

135. During his care at defendant, DE MOURA PC, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, DE MOURA PC.

136. During his care at defendant, DE MOURA PC, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, DE MOURA PC.

137. During his care at defendant, NY SPINE, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY SPINE.

138. During his care at defendant, NY SPINE, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY SPINE.

139. During his care at defendant, NY SPINE, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY SPINE.

140. During his care at defendant, NY ORTHO, Decedent, HINNANT, was examined by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY ORTHO.

141. During his care at defendant, NY ORTHO, Decedent, HINNANT, was diagnosed by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY ORTHO.

142. During his care at defendant, NY ORTHO, Decedent, HINNANT, was treated by the employees, agents, servants, and/or agents by estoppel, including defendant, DE MOURA and GRAUER, of defendant, NY ORTHO.

143. On October 11, 2016, defendant, DE MOURA, performed a surgical operation on the cervical spine of the Decedent, HINNANT.

144. On October 11, 2016, defendant, DE MOURA, performed a surgical operation on the cervical spine of Decedent, HINNANT, at the hospital of defendant, MERCY.

145. On October 11, 2016, defendant, GRAUER, participated in the surgical operation on the cervical spine of the Decedent, HINNANT.

146. On October 11, 2016, defendant, GRAUER, participated in the surgical operation on the cervical spine of Decedent, HINNANT, at the hospital of defendant, MERCY.

147. The aforesaid surgical operation to the cervical spine was performed by the defendant, DE MOURA, pursuant to his association and/or employment by the defendant, MERCY.

148. The aforesaid surgical operation to the cervical spine was performed by the defendant, DE MOURA, pursuant to his association and/or employment by the defendant, DE MOURA PC.

149. The aforesaid surgical operation to the cervical spine was performed by the defendant, DE MOURA, pursuant to his association and/or employment by the defendant, NY SPINE.

150. The aforesaid surgical operation to the cervical spine was performed by the defendant, DE MOURA, pursuant to his association and/or employment by the defendant, NY ORTHO.

151. The aforesaid medical care and treatment and said surgery was provided and performed by the defendant, DE MOURA, in the course of his employment by the defendant, MERCY.

152. The aforesaid medical care and treatment and said surgery was provided and performed by the defendant, DE MOURA, in the course of his employment by the defendant, DE MOURA PC.

153. The aforesaid medical care and treatment and said surgery was provided and performed by the defendant, DE MOURA, in the course of his employment by the defendant, NY SPINE.

154. The aforesaid medical care and treatment and said surgery was provided and performed by the defendant, DE MOURA, in the course of his employment by the defendant, NY ORTHO.

155. By reason of the aforesaid, defendant, MERCY, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, DE MOURA, to the patients of defendant, MERCY, including the Decedent, HINNANT, herein.

156. By reason of the aforesaid, defendant, DE MOURA PC, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, DE MOURA, to the patients of defendant, DE MOURA PC, including the Decedent, HINNANT, herein.

157. By reason of the aforesaid, defendant, NY SPINE, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, DE MOURA, to the patients of defendant, NY SPINE, including the Decedent, HINNANT, herein.

158. By reason of the aforesaid, defendant, NY ORTHO, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, DE MOURA, to the patients of defendant, NY ORTHO, including the Decedent, HINNANT, herein.

159. The aforesaid surgical operation to the cervical spine was participated in by the defendant, GRAUER, pursuant to her association and/or employment by the defendant, MERCY.

160. The aforesaid surgical operation to the cervical spine was participated in by the defendant, GRAUER, pursuant to her association and/or employment by the defendant, DE MOURA PC.

161. The aforesaid surgical operation to the cervical spine was participated in by the defendant, GRAUER, pursuant to her association and/or employment by the defendant, NY SPINE.

162. The aforesaid surgical operation to the cervical spine was participated in by the defendant, GRAUER, pursuant to her association and/or employment by the defendant, NY ORTHO.

163. The aforesaid medical care and treatment and said surgery was participated in by the defendant, GRAUER, in the course of her employment by the defendant, MERCY.

164. The aforesaid medical care and treatment and said surgery was participated in by the defendant, GRAUER, in the course of her employment by the defendant, DE MOURA PC.

165. The aforesaid medical care and treatment and said surgery was participated in by the defendant, GRAUER, in the course of her employment by the defendant, NY SPINE.

166. The aforesaid medical care and treatment and said surgery was participated in by the defendant, GRAUER, in the course of her employment by the defendant, NY ORTHO.

167. By reason of the aforesaid, defendant, MERCY, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, GRAUER, to the patients of defendant, MERCY, including the Decedent, HINNANT, herein.

168. By reason of the aforesaid, defendant, DE MOURA PC, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, GRAUER, to the patients of defendant, DE MOURA PC, including the Decedent, HINNANT, herein.

169. By reason of the aforesaid, defendant, NY SPINE, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, GRAUER, to the patients of defendant, NY SPINE, including the Decedent, HINNANT, herein.

170. By reason of the aforesaid, defendant, NY ORTHO, was vicariously responsible for the care and treatment rendered by its agents, servants, and/or employees, including defendant, GRAUER, to the patients of defendant, NY ORTHO, including the Decedent, HINNANT, herein.

171. The aforesaid care, treatment, surgery, diagnosis, and postoperative care rendered by the defendants, their agents, servants, and/or employees, was not in conformity with good, known, and accepted medical care, then and there applicable, and said care deviated from accepted medical standards and practice under the circumstances then and there existing, and by reason thereof, the Decedent, HINNANT, was caused to sustain serious and severe personal injuries and death.

172. The damages, personal injuries, and death suffered by the Decedent, HINNANT, was caused by the negligence, carelessness, recklessness, and medical malpractice of the defendants, their agents, servants, and/or employees, in that they failed to exercise due and reasonable care under the circumstances then and there existing.

173. The defendants, their agents, servants and employees, failed to follow good, known, and accepted customs and practices in the medical profession and failed to follow accepted customs, practices, and standards set by their institution and were otherwise careless, reckless, and negligent in committing acts of malpractice, which were the competent and contributing cause of the injuries and death suffered by the Decedent, HINNANT.

174. The aforesaid care, treatment, examination, surgery, diagnosis, and postoperative care rendered by the defendants, their agents, servants and employees, was not in conformity with good, known and accepted medical care, then and there applicable, and said care deviated from accepted medical standards and practice under the circumstances then and there existing, and by reason thereof, the decedent, HINNANT, was caused to sustain serious and severe personal injuries which led to a deterioration of his condition and health and ultimately led to his death.

175. The distributees of the decedent, HINNANT, have suffered the loss of his support, maintenance, care, services, and well-being and the accumulation of his estate and inheritance, all of which were caused by reason of the decedent's wrongful death.

176. The estate of the decedent, HINNANT, has become obligated to pay the funeral and burial expenses and damages by reason of his wrongful death.

177. By reason of the foregoing, the decedent's distributees have suffered a pecuniary loss, all to their damage in a substantial sum of money to be determined by the Court and jury

178. The limitations of liability set forth in CPLR § 1601 do not apply by reason of one of more of the exceptions set forth in § 1602, including § 1602 (7) and § 1602 (11).

179. The amount of damages sustained by the Plaintiff exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction of this action.

AS AND FOR A SECOND CAUSE OF ACTION FOR CONSCIOUS PAIN AND SUFFERING

180. Plaintiff repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if it were fully and specifically recited at length herein.

181. By reason of the foregoing, the decedent, HINNANT, consciously suffered great pain and mental anguish, including fear of impending death, which continued up to the date of his death.

182. The aforesaid pain, suffering, and mental anguish was caused by reason of the carelessness, recklessness, negligence, and medical malpractice of the defendants herein, their agents, servants, and/or employees, including defendants, DE MOURA and GRAUER.

183. By reason thereof, Plaintiff has sustained a monetary loss by reason of the survival of the decedent's cause of action for conscious pain and suffering, all to the Plaintiff's damage in a substantial sum of money to be determined by the Court and jury.

184. The limitations of liability set forth in CPLR § 1601 do not apply by reason of one of more of the exceptions set forth in § 1602, including § 1602 (7) and § 1602 (11).

185. The amount of damages sustained by the Plaintiff exceeds the jurisdictional limits of all lower Courts that would otherwise have jurisdiction of this action.

AS AND FOR A THIRD CAUSE OF ACTION FOR LACK OF INFORMED CONSENT

186. Plaintiff repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if it were fully and specifically recited at length herein.

187. Decedent, HINNANT, was neither advised by defendants, their agents, servants, and/or employees, orally or in writing of the possible risks or dangers of the surgery rendered to him, including death, nor was he advised of the possibility of permanent damage to his body, advised that he could suffer severe and personal injuries and damages, including death, by reason of the surgical procedures and other invasive procedures being provided by the defendants herein, or advised of the alternatives to the procedures and surgery rendered to him, and thus, the decedent, HINNANT, was lulled into a false sense of security.

188. Neither Decedent, HINNANT, nor any reasonable person, would have consented to the course of treatment recommended and performed by defendants, their agents, servants, and/or employees, herein, including, but not limited to the surgery, had he or they been so informed of the severe, serious, and deforming personal injuries and damages and the degree of possible risks involved, including death, as a result of the recommended course of treatment by the defendants, their agents, servants, employees, and/or agents by estoppel.

189. The treatment and surgery rendered and afforded to the decedent, HINNANT, was rendered without first obtaining an informed consent and as such, the decedent was injured and his distributees suffered a pecuniary loss, all to their damage in a substantial sum of money to be determined by the Court and the jury.

190. As a result of the aforesaid wrongful death of defendants, Plaintiff was and is damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction of the action and said damages will be determined at the time of trial by the Court and jury.

191. The limitations of liability set forth in CPLR § 1601 do not apply by reason of one of more of the exceptions set forth in § 1602, including § 1602 (7) and § 1602 (11).

WHEREFORE, the Decedent, HINNANT, demands judgment against the defendants, their agents, servants, and/or employees, in an amount that exceeds the jurisdictional limits of all the lower courts in the State of New York that would otherwise have jurisdiction over this matter on each cause of action as follows:

- On the first cause of action for wrongful death, in a substantial sum of money to be determined by the Court and jury;
- On the second cause of action for conscious pain and suffering, in a substantial sum of money to be determined by the Court and jury;
- On the third cause of action for lack of informed consent, in a substantial sum of money to be determined by Court and jury

All together with costs and attorney's fees associated with this action.

Dated: Garden City, New York
October 16, 2018

Yours, etc.,

TARVER LAW FIRM, P.C.

By: Terrence L. Tarver
TERRENCE L. TARVER
Attorneys for Plaintiff
WILLIE LEE KIRBY, SR., as Executor of the Estate of DANNY HINNANT, Deceased, and WILLIE LEE KIRBY, SR., Individually
1140 Franklin Avenue, Suite 200
Garden City, New York 11530
516-506-7187

VERIFICATION

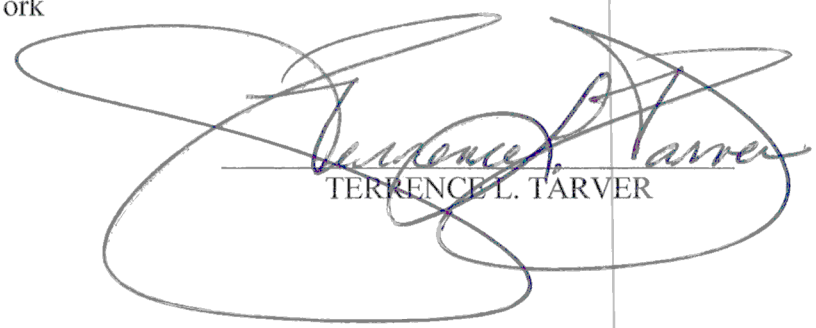
TERRENCE L. TARVER, an attorney duly admitted to practice law in the State of New York, affirms the following under the penalties of perjury and pursuant to CPLR § 2106:

I am an attorney with the firm of TARVER LAW FIRM, P.C., attorneys for the Plaintiff in the above action.

I have read the foregoing VERIFIED COMPLAINT and know the contents thereof, and upon information and belief, affirmant believes the matters alleged therein to be true.

The source of affirmant's information and the grounds of his belief are communications, papers, reports, and investigations contained in the file.

Dated: Garden City, New York
October 16, 2018



TERRENCE L. TARVER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

WILLIE LEE KIRBY, SR., as Executor of the Estate of DANNY HINNANT, Deceased, and WILLIE LEE KIRBY, SR., Individually,

Plaintiff,

-against-

ALEXANDRE B. DE MOURA, M.D.; KAREN L. GRAUER, R.P.A.; ALEXANDRE B. DE MOURA, M.D., P.C.; NEW YORK SPINE SURGERY, PLLC; NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC; and MERCY MEDICAL CENTER,

Defendants.

----------X

Index No.:

AFFIRMATION REGARDING CERTIFICATE OF MERIT PURSUANT TO CPLR 3012-a(2)

TERRENCE L. TARVER, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms, pursuant to CPLR Section 2106:

1. I am a partner of TARVER LAW FIRM, P.C., and I make this Affirmation pursuant to CPLR 3012-a(2).

2. I was unable to obtain the consultation required by CPLR 3012-a(1) because a limitation of time, established by article two of the chapter cited in CPLR 3012-a(2), would bar the action and that the certificate required by CPLR 3012-a(1) could not reasonably be obtained before such time expired.

Dated: Garden City, New York
October 16, 2018

TERRENCE L. TARVER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

WILLIE LEE KIRBY, SR., as Executor of the Estate of DANNY HINNANT, Deceased, and WILLIE LEE KIRBY, SR., Individually,

Plaintiff, Index No.:

v.

ALEXANDRE B. DE MOURA, M.D.; KAREN L. GRAUER, R.P.A.; ALEXANDRE B. DE MOURA, M.D., P.C.; NEW YORK SPINE SURGERY, PLLC; NEW YORK SPINE & ORTHOPAEDIC MEDICAL SERVICES, PLLC; and MERCY MEDICAL CENTER,

Defendants.

TARVER
LAW FIRM
1140 FRANKLIN AVENUE, SUITE 200
GARDEN CITY, NEW YORK 11530
(T) 516-506-7187 (F) 929-999-1633

SUMMONS & VERIFIED COMPLAINT

The undersigned hereby certifies that, to the best of the undersigned's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) the presentation of this paper or the contentions herein are not frivolous as defined in section 22 NYCRR 130-1.1(c), and (2) where the paper is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom, and (ii) the matter was not obtained in violation of 22 NYCRR 1200.41 a [DR 7-111].

Dated: Garden City, NY
October 16, 2018

TERRENCE L. TARVER

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