

ATT: No

(Attachments: No)

Please print out and scan as first page for Complaints filed without attachments.

PAUL M. da COSTA, ESQ.- I.D. #042042003
SNYDER SARNO D'ANIELLO
MACERI & da COSTA LLC
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Roseland, New Jersey 07068
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Attorneys for Plaintiffs

<p>PAULA M. COSTIGAN on behalf of her minor son, WILLIAM T. DELGROSSO, and PAULA M. COSTIGAN, individually,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>THE WANAQUE CENTER FOR NURSING & REHABILITATION, WANAQUE NURSING AND REHABILITATION LLC, WANAQUE NURSING HOME & REHABILITATION CENTER, CONTINUUM HEALTHCARE LLC, CONTINUUM HEALTHCARE, INC., ROWENA BAUTISTA, RN, LNHA, KATHRYN REAP, RN, CDONA, MICHELLE MALIKZAY, JEAN BRUZZONE, DANIEL BRUCKSTEIN, EUGENE EHRENFELD, John Does, 1-100 (representing presently unknown healthcare providers, including, but not limited to, doctors, fellows, residents, interns, nurses, technicians, etc.), Jane Does 1-100, (representing presently unknown health care providers, including, but not limited to, doctors, fellows, residents, interns, nurses, technicians, etc.) and ABC Corporations 1-100 (representing presently unknown facilities or entities who rendered, managed and/or controlled care given to the Plaintiff, William T. DelGrosso),</p>	<p>SUPERIOR COURT OF NEW JERSEY PASSAIC COUNTY: LAW DIVISION DOCKET NO.:</p> <p style="text-align: center;">Civil Action</p> <p><u>COMPLAINT AND JURY DEMAND, DESIGNATION OF TRIAL COUNSEL, REJECTION OF NOTICE OF ALLOCATION, DEMAND FOR INSURANCE COVERAGE, DEMAND FOR DOCUMENTS, DEMAND FOR TRANSCRIPTION, DEMAND FOR INTERROGATORIES AND CERTIFICATION</u></p>
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Defendants.	
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PARTIES

1. Plaintiff, William T. DelGrosso, is a minor and son of Plaintiff, Paula M. Costigan, and was one of twenty eight victims of an adenovirus outbreak occurring at Defendants', The Wanaque Center for Nursing & Rehabilitation, Wanaque Nursing and Rehabilitation LLC and Wanaque Nursing Home & Rehabilitation Center, facility on or around September 26, 2018 to October 21, 2018.
2. At all times mentioned herein, Defendants, The Wanaque Center for Nursing & Rehabilitation, Wanaque Nursing and Rehabilitation LLC and Wanaque Nursing Home & Rehabilitation Center (hereinafter "The Wanaque Center"), were and are a long-term care facility and skilled nursing facility duly registered and licensed by the State of New Jersey, located at 1433 Ringwood Avenue, Haskell, New Jersey.
3. At all times mentioned herein, Defendants, The Wanaque Center, Continuum Healthcare LLC, Continuum Healthcare, Inc. and ABC Corporations are professional associations, corporations, trade names, and/or other business entities that are duly incorporated and registered pursuant to the laws of the State of New Jersey, which owned, controlled, managed and/or operated The Wanaque Center located at 1433 Ringwood Avenue, Haskell, New Jersey.
4. Defendants, Rowena Bautista, RN, LNHA, Kathryn Reap, RN, CDONA, Michelle Malikzay, Jean Bruzzone, Daniel Bruckstein, Eugene Ehrenfeld, John Does 1-100 and Jane Does 1-100 were owners, principals, shareholders, executives, administrators, directors and/or employees of Defendants, The Wanaque Center, Continuum Healthcare,

LLC, Continuum Healthcare, Inc. and ABC Corporations 1-100 at all times herein mentioned in this Complaint.

FACTS COMMON TO ALL COUNTS

5. On or around March 5, 2015, Plaintiff was admitted to Defendants, The Wanaque Center, for long-term care and treatment of his medical conditions.
6. On or around May 5, 2015, the New Jersey Department of Health (hereinafter "DOH") conducted an inspection at Defendants', The Wanaque Center, facility.
7. During the May 5, 2015 inspection, DOH officials documented violations to section 483.80 of the Code of Federal Regulations (hereinafter, "CFR") and section 8:39-31.4(a) of the New Jersey Administrative Code (hereinafter "NJAC"), which relate to the duty of Defendants to maintain a safe, clean and orderly environment for its residents and to have an infection prevention and control program.
8. During the May 5, 2015 inspection, DOH officials documented excessive erosion on faucets throughout the premises, dark stains embedded in the floor, black substances and dirt embedded in a bathroom area, and accumulation of debris on heating/air condition units.
9. On or around March 17, 2016, the DOH conducted an inspection at Defendants', The Wanaque Center, facility.
10. During the March 17, 2016 inspection, DOH officials documented violations of CFR 483.80 and NJAC 8:39-31.4(a), which relate to the duty of Defendants to maintain a safe, clean and orderly environment for its residents and to have an infection prevention and control program.

11. During the March 17, 2018 inspection, DOH officials observed nurses at Defendants', The Wanaque Center, facility practicing poor hand hygiene while caring for patients and also documented that Defendants, The Wanaque Center, were deficient in providing sufficient certified nursing assistant hours as required by New Jersey regulations.

12. On or around May 5, 2017, the DOH conducted an inspection at Defendants', The Wanaque Center, facility.

13. During the May 5, 2017 inspection, DOH officials documented violations of CFR 483.80 and NJAC 8:39-31.4(a), which relate to the duty of Defendants to maintain a safe, clean and orderly environment for its residents and to have an infection prevention and control program.

14. During the May 5, 2017 inspection, DOH officials noted that nurses on the pediatric floors of Defendants', The Wanaque Center, facility used medication syringes in an unsanitary manner and failed to utilize germicide wipes to disinfect surfaces.

15. The findings of the May 5, 2017 DOH inspection were discussed with the Defendants', The Wanaque Center, Director of Nursing, Kathryn Reap, RN, and the Administrator, Rowena Bautista, RN, who acknowledged that the procedure for utilizing, storing, and reusing syringes was not being followed by Defendants.

16. Defendant, Rowena Bautista, RN, also agreed that the medication trays had to be sanitized and dried between every resident and that scoopers should not be stored in powder canisters; rather, scoopers should be stored separately so as not to introduce bacteria.

17. On or around August 13, 2018, the DOH conducted an inspection at Defendants', The Wanaque Center, facility.

18. During the August 13, 2018 inspection, DOH officials documented violations of CFR 483.10 and 483.24, which relate to the duty of Defendants to provide a safe, clean, comfortable homelike environment for its residents, including, but not limited to, providing adequate hygiene.

19. During the August 13, 2018 inspection, DOH officials documented a strong and unpleasant odor when entering the sleeping area of the a resident on the fourth floor. The area smelled of old carpet and mildew, and was pervasive throughout the entire floor. The carpet had embedded stains and areas of discoloration. Upon information and belief, the carpet is more than fifteen years old and incapable of sustaining a routine cleaning.

20. On or around September 26, 2018, one of the Defendants', The Wanaque Center, patients on the pediatric unit was caused to contract adenovirus.

21. Adenovirus is a virus that can be life-threatening to children with compromised immune systems such as the Plaintiff, William T. DelGrosso, and the adenovirus can spread when proper hygiene and proper infection control and prevention standards are not met.

22. At the time of the initial case of adenovirus, the Defendants did not have proper infection prevention and control programs, protocols, or procedures in place to remedy the infection and prevent it from spreading throughout its pediatric residents.

23. On or around October 9, 2018, Defendants notified the DOH about the adenovirus outbreak. Defendants, however, failed to inform the patients' parents and/or legal guardians of the outbreak and failed to transfer the affected patients out to acute care facilities.

24. On or around October 11, 2018, Plaintiff developed a high fever and respiratory complications that persisted for the following weeks.

25. In addition to the Plaintiff, twenty seven other patients became infected with the adenovirus at the Defendants', The Wanaque Center, pediatric unit requiring the State of New Jersey to intervene.

26. On or around October 22, 2018, Plaintiff, Paula M. Costigan, received a letter from Defendants, The Wanaque Center, informing her about an adenovirus outbreak at its facility.

27. On or around October 18, 2018, Plaintiff developed serious respiratory complications caused by contracting the adenovirus, and Plaintiff was transferred to Hackensack University Medical Center in critical and life-threatening condition.

28. On or around October 21, 2018, DOH conducted an inspection at Defendants', The Wanaque Center, facility.

29. During the October 21, 2018 inspection, DOH officials documented violations of CFR 483.80 and NJAC 8:39-31.4(a), which relate to the duty of Defendants to maintain a safe, clean and orderly environment for its residents and to have a proper infection prevention and control program.

30. During the October 21, 2018 inspection, DOH officials documented that the nursing staff in the pediatric unit failed to utilize hand hygiene techniques according to acceptable standards of infection control practice according to the Centers for Disease Control and Prevention.

FIRST COUNT

31. Plaintiffs repeat each and every allegation of the prior count as if set forth herein at length.

32. All Defendants aforesaid, their agents, servants and employees were negligent,

grossly negligent, careless and reckless and did deviate from accepted standards of medical and nursing practices and did deviate from accepted standards of long-term care facility practices, including, but not limited to, in failing to create and maintain appropriate infection control and prevention programs, policies, protocols and procedures. As a result of the deviations from accepted standards of practice of these Defendants, Plaintiff contracted the adenovirus in the pediatric unit of Defendants, The Wanaque Center, which rendered him to be in critical and life-threatening condition.

33. As a result of Defendants' negligence, gross negligence, recklessness and carelessness, lack of skill, and deviations from accepted standards of medical, nursing and long-term care facility practices, Plaintiff, William T. DelGrosso, was obliged to undergo extensive medical treatment, incur great expense for medical and attendant care, and was caused to suffer great physical and mental pain and anguish all of which will continue indefinitely into the future.

WHEREFORE, Plaintiffs demand judgment for damages against these Defendants, together with interest and costs of suit.

SECOND COUNT

34. Plaintiffs repeat each and every allegation of the prior count as if set forth herein at length.

35. All Defendants aforesaid, their agents, servants and employees were negligent, grossly negligent, careless and reckless and did deviate from accepted standards of medical, nursing and long-term care facility practices in failing to provide Plaintiff a safe, sanitary and hygienic environment to prevent the development and spread of communicable disease and infections, such as adenovirus. As a result of the deviations

from accepted standards of practice of these Defendants, Plaintiff contracted the adenovirus while a patient of the Defendants.

36. As a result of Defendants' negligence, gross negligence, recklessness and carelessness, lack of skill, and deviations from accepted medical, nursing and long-term care facility standards, Plaintiff was obliged to undergo extensive medical treatment, incur great expense for medical and attendant care, and was caused to suffer great physical and mental pain and anguish all of which will continue indefinitely into the future.

WHEREFORE, Plaintiffs demand judgment for damages against these Defendants, together with interest and costs of suit.

THIRD COUNT

37. Plaintiffs repeat each and every allegation of the prior counts as if set forth herein at length.

38. All Defendants aforesaid, their agents, servants and employees were negligent, grossly negligent, careless and reckless and did deviate from accepted standards of medical, nursing and long-term care practices in failing to create and maintain necessary systems and procedures to prevent, identify, report, investigate, and control infections and communicable diseases for its patients in accordance with the applicable federal and state laws, rules, and regulations. As a result of the deviations from accepted standards of practice by the Defendants, Plaintiff contracted the adenovirus.

39. As a result of Defendants' negligence, gross negligence, recklessness and carelessness, lack of skill, and deviations from accepted medical, nursing and long-term care facility standards, Plaintiff was obliged to undergo extensive medical treatment, incur

great expense for medical and attendant care, and was caused to suffer great physical and mental pain and anguish all of which will continue indefinitely into the future.

WHEREFORE, Plaintiffs demand judgment for damages against these Defendants, together with interest and costs of suit.

FOURTH COUNT

40. Plaintiffs repeat each and every allegation of the prior counts as if set forth herein at length.

41. All Defendants aforesaid, their agents, servants and employees were negligent, grossly negligent, careless and reckless and did deviate from accepted standards of medical, nursing and long-term care facility practices in billing and receiving Medicaid payments for medical care and treatment relating to the Plaintiff and all other residents in the pediatric unit insofar as such care and treatment amounted to fraud.

42. From the time that the Defendants offered and granted admission to Plaintiff into its Facility, and continuing to the time of his discharge to Hackensack University Medical Center, Defendants represented that the Plaintiff would receive medical care and treatment within accepted standards of care in exchange for the right to bill Plaintiffs' health insurance companies, including Medicaid.

43. At the time that the Defendants offered and granted Plaintiff admission into its facility, Defendants knew that its facility and its medical providers could not provide Plaintiff with medical care and treatment within accepted standards of care that would meet acceptable standards of care.

44. From the time Defendants offered and granted Plaintiff admission into its facility, Plaintiffs believed the Defendants' representations regarding the level of care and treatment that would be provided to Plaintiff to be true and accurate, and Plaintiffs genuinely relied upon the Defendants' representations and agreed to have Defendants admit Plaintiff and bill Plaintiffs' health insurance companies for services to be rendered to Plaintiff.

45. As a result of Defendants' fraud, Plaintiff was obliged to undergo extensive medical treatment, incur great expense for medical and attendant care, and was caused to suffer great physical and mental pain and anguish all of which will continue indefinitely into the future.

WHEREFORE, Plaintiffs demand judgment for damages against these Defendants, together with interest and costs of suit.

FIFTH COUNT

46. Plaintiffs repeat each and every allegation of the prior counts as if set forth herein at length.

47. The Defendants also failed to disclose to Plaintiff, Paula M. Costigan, all necessary information that would have enabled Plaintiff to consider, weigh and choose knowledgeably the options available regarding the admission into Defendants' facility, as well as the options relating to care and treatment available to Plaintiff, William T. DelGrosso, thereby precluding Plaintiff, Paula M. Costigan, from being able to make an informed decision regarding the treatment of her son.

48. As a result of that failure, Defendants were negligent, grossly negligent, careless and

reckless in their care and treatment that was rendered to Plaintiff, William T. DelGrosso, and did deviate from accepted standards of practice in rendering said medical care, and as a result of which Plaintiffs was obliged to undergo extensive medical treatment, incur great expense for medical and attendant care, and was caused to suffer great physical and mental pain and anguish all of which will continue indefinitely into the future.

WHEREFORE, Plaintiffs demand judgment for damages against these Defendants together with interest and costs of suit.

REJECTION OF ANY NOTICES OF ALLOCATION

Plaintiffs reject any Notices of Allocation asserted by any Defendant, whether made pursuant to Rule 4:7-5 or otherwise. Plaintiffs insist that the details upon which any claim of allocation is based be provided to Plaintiffs in a timely manner in discovery as is required by Young v. Latta, 123 N.J. 584 (1991).

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury as to all issues involved herein.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Paul M. da Costa has been designated as trial counsel in the above matter.

DEMAND FOR INSURANCE COVERAGE

In accordance with Rule 4:10-2, Defendants are demanded to provide a complete copy of their applicable liability insurance policies including any excess or umbrella policies, with declaration sheets, as well as the requisite Certifications regarding same pursuant to Rule 4:18-1(c) within fifty (50) days of service of this Complaint.

DEMAND FOR DOCUMENTS

Plaintiffs demand that the Defendants within thirty (30) days of service of this Complaint each produce certified copies of their complete records regarding the Plaintiff, William T. DelGrosso, and those documents requested in the attached Notice to Produce.

DEMAND FOR TRANSCRIPTION

Plaintiffs demand that each Defendant produce a typed transcription of any and all of his/her handwritten medical records within thirty (30) days of service of the Complaint.

DEMAND FOR INTERROGATORIES

Plaintiffs demand that Defendants answer Form C and C(3) Interrogatories and the Supplemental Interrogatories attached hereto.

NOTICE TO PRODUCE

PLEASE TAKE NOTICE that in accordance with Rule 4:18 of the Rules governing the Courts of New Jersey, Plaintiffs hereby demand that you produce the following documents and permit them to be inspected and copied at the offices of Snyder Sarno D’Aniello Maceri & da Costa LLC, 425 Eagle Rock Avenue, Roseland, NJ 07068:

1. A complete copy of all medical records of the Plaintiff at The Wanaque Center, including, but not limited to, progress notes, consult reports, history and physicals, discharge reports, vital signs records, medication administration records, respiratory therapy notes, ventilator setting records, nutrition records, physical and/or occupational therapy records, educational records, or any other type of records of any kind relating to the Plaintiff.
2. A complete copy of Plaintiff’s school records while at The Wanaque Center,

including, but not limited to, any schooling assessments, plans, grades, tests, etc.

3. A complete copy of any incident reports relating to Plaintiff.
4. A complete copy of any reports of any reviews of any aspect of the care rendered to Plaintiff, including, but not limited to, any quality assurance, quality control or similar committees, or any morbidity and mortality or similar committees.
5. A complete copy of any records or reports forwarded to the Joint Commission on Accreditation related to the Plaintiff, including reports or records related to sentinel events, including, but not limited to, the adenovirus outbreak at The Wanaque Center.
6. All records which disclose the name and last known address of every person who made any notation in Plaintiff's medical records while at The Wanaque Center.
7. All records which disclose the name and last known address of every person who rendered any care or treatment to Plaintiff at The Wanaque Center.
8. The name and last known address of all persons employed by The Wanaque Center and who were assigned to, or caring for, the Plaintiff while at The Wanaque Center.
9. A complete copy of any and all protocols, policies, procedures or guidelines (as they existed from 2014 to the present) relating to the following departments or procedures of the Defendants:
 - a. Pediatrics;
 - b. Hygiene;
 - c. Infection control and/or prevention;
 - d. Quarantine of patients;
 - e. Ventilators;
 - f. Nursing care and treatment;

g. Respiratory therapy care and treatment; and

h. Medical billing.

10. A copy of each and every protocol or other written policy and procedure maintained by any department of the Defendants which in any way relate to the treatment of Plaintiff.

11. Any and all documentation relating to the notification of the Plaintiffs, or any representative of the Plaintiffs, of any "serious preventable adverse event" and/or "adverse event" as defined by the Patient Safety Act, N.J.S.A. 26H: 2h-12.25 et seq.

This request includes patient safety plans, reports, documentation and notification that Plaintiffs were made aware of any and all adverse events that are relevant to the subject matter of this litigation as defined by the above-referenced statute.

12. Any and all documents, records, notes, reports, log books, etc. related to inspections carried out by any state and/or federal agency from the year 2010 to the present.

13. Any and all documentation in narrative form, including all factual medical information that cannot otherwise be discernible from reviewing Defendants' records relating to the Plaintiff. See Brugaletta.

14. Any and all documentation regarding internal investigations of Plaintiff's medical condition relevant to the subject matter of this Complaint.

SUPPLEMENTAL INTERROGATORIES

1. Identify all times periods when the Plaintiff was a patient at The Wanaque Center.

2. Transcribe each and every statement of fact or history taken from the Plaintiff at the time of each admission of the Plaintiff to The Wanaque Center.

3. State the names, address, employer and occupation of each and every treating physician, nurse, respiratory therapist, nurse aid, or medical provider of any kind who attended, observed, examined or treated the Plaintiff during each admission of the to The Wanaque Center.
4. State the name, address, employer and occupation of each and every person who made any notation on the medical record, and attach a copy of all medical records, without limitation, hereto.
5. State the name, address and occupation of all employees of The Wanaque Center who attended, observed, examined or treated the Plaintiff, and state the date(s) and time(s) of attendance, observation or examination.
6. Attach copies of each and every written document which relates in any way to any review or investigation of any medical procedure, examination, treatment or operation performed upon the Plaintiff while at The Wanaque Center.
7. For each review or investigation of any examination, treatment, medical procedure or operation performed upon the Plaintiff, state the name, address and occupation of each person who participated in such review, the reason for such review, all information considered by the parties conducting such review, and the conclusion of the parties conducting such review.
8. Was any incident report, or other report of any kind, ever filed with regard to the Plaintiff or any procedure performed on the Plaintiff while at The Wanaque Center? If so, state the name and address of the person who filed the report, the content and substance of the report, the date the report was filed, the name and address of the person with whom said report was filed, and attach copies of each and every report.

9. State whether any medical record or other document of any kind relating to the Plaintiff, or the treatment of the Plaintiff, has ever been removed, replaced, altered, changed, erased or otherwise adjusted. If so, attach a copy of the record prior to such replacement, alteration, change, erasure or adjustment and a copy of all versions of the record subsequent to such replacement (s), alteration (s), change (s), erasure (s) or adjustments (s).

CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any Court or a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. All parties known to Plaintiff at this time who should have been joined in this action have been joined.

**SNYDER SARNO D'ANIELLO,
MACERI & da COSTA LLC**
Attorneys for Plaintiffs



Paul M. da Costa, Esq.

Dated: November 7, 2018

Civil Case Information Statement

Case Details: PASSAIC | Civil Part Docket# L-003667-18

Case Caption: COSTIGAN PAULA VS THE WANAQUE CENTER F OR NURSIN

Case Initiation Date: 11/07/2018

Attorney Name: PAUL MANUEL DA COSTA

Firm Name: SNYDER SARNO D'ANIELLO MACERI DA COSTA

Address: 425 EAGLE ROCK AVE ROSELAND NJ 070681028

Phone:

Name of Party: PLAINTIFF : Costigan, Paula, M

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: MEDICAL MALPRACTICE

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

11/07/2018
Dated

/s/ PAUL MANUEL DA COSTA
Signed