

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
KEVIN JOHN McMAHON,

Plaintiff,

-against-

JAMAICA HOSPITAL MEDICAL CENTER,

Defendant.  
-----X

Index No.:

Date Purchased:

***SUMMONS***

Plaintiff designates Queens  
County as the place of trial.

The basis of venue is:  
Defendant place of business:  
8900 Van Wyck Expressway,  
Richmond Hill, New York  
11418

**To the above named Defendant:**

***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 attorneys 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: Rockville Centre, New York  
November 3, 2021

Yours, etc.,

**ISAACSON, SCHIOWITZ & KORSON, LLP**

  
JEREMY SCHIOWITZ, ESQ.

*Attorneys for Plaintiff*

371 Merrick Road, Suite 302  
Rockville Centre, New York 11570  
(516) 800-9000

**TO:**

JAMAICA HOSPITAL MEDICAL CENTER  
8900 Van Wyck Expressway  
Richmond Hill, New York 11418

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS-----X  
KEVIN JOHN McMAHON,

Plaintiff,

Index No.:

Date Purchased:

**VERIFIED COMPLAINT**

-against-

JAMAICA HOSPITAL MEDICAL CENTER,

Defendant.  
-----X

Plaintiff, KEVIN JOHN McMAHON, by his attorneys, *ISAACSON, SCHIOWITZ & KORSON, LLP*, complaining of the defendant, respectfully alleges, upon information and belief, as follows:

1. At the time of the commencement of this action, plaintiff was a resident of the State of New York, County of Suffolk.

2. Upon information and belief, at all times herein mentioned, the defendant owned a medical facility known as JAMAICA HOSPITAL MEDICAL CENTER, located at 8900 Van Wyck Expressway, Richmond Hill 11418 in the County of Queens, City and State of New York.

3. Upon information and belief, at all time herein mentioned the defendant was a Domestic Not for Profit Corporation, duly organized and existing under the laws of the State of New York.

4. Upon information and belief, at all times herein mentioned, the defendant employed certain professional and administrative staff including but not limited to, doctors, nurses, orderlies, and nurse's assistants.

5. At all times mentioned herein, defendant JAMAICA HOSPITAL MEDICAL CENTER owned, operated, controlled, and managed the hospital pursuant to the laws of the State

of New York.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**AGAINST THE DEFENDANT - NEGLIGENCE**

6. On May 26, 1960, while under the care and supervision of defendant, JAMAICA HOSPITAL MEDICAL CENTER, plaintiff, KEVIN JOHN McMAHON was born. Unbeknownst to the plaintiff's parents, their newborn was switched with another newborn and sent home with the wrong parents.

7. In October of 2020, members of the plaintiff's family, including the plaintiff's sister, Carol Vignola, submitted their DNA to Ancestry.com. Upon receiving the results, they found relatives with the same last name that they were not familiar with. One of the relatives was Ross McMahon, which Ancestry.com matched as a brother to Carol Vignola. After doing some investigation, they came to realize that Ross McMahon shared the same date of birth (May 26, 1960) as the plaintiff, KEVIN JOHN McMAHON, were both born within two hours of each other at JAMAICA HOSPITAL MEDICAL CENTER and of course shared the same last name. Upon further research, they came to learn that the numbers on their birth certificates were consecutive. KEVIN JOHN McMAHON's certificate number is 156-60-412710 and Ross McMahon's certificate number is 156-60-112711.

8. On December 2, 2020, Carol Vignola informed her "brother," the plaintiff, KEVIN JOHN McMAHON of everything mentioned in Paragraph 8. The plaintiff immediately ordered a test kit from Ancestry.com, then submitted his DNA and received the results on January 24, 2021. The results did not reveal any relationship to his "sister," Carol Vignola, his niece nor anyone else he thought he was related to. It instead revealed a match with Keith McMahon, who Ancestry.com matched him as the plaintiff's brother. Until this point, Ross McMahon and Keith McMahon

thought that they were brothers, and Carol Vignola and the plaintiff, KEVIN JOHN McMAHON thought they were siblings.

9. On January 24, 2021, the plaintiff, KEVIN JOHN McMAHON, learned that he and Ross McMahon were switched at birth at JAMAICA HOSPITAL MEDICAL CENTER soon after they were born on May 26, 1960 and went home with the wrong parents.

10. That defendant JAMAICA HOSPITAL MEDICAL CENTER, its agents, servants and employees were negligent in hiring, supervising, training, instructing, directing, controlling, and otherwise managing its employees.

11. That defendant JAMAICA HOSPITAL MEDICAL CENTER was negligent in failing to supervise, or adequately supervise the newborn plaintiff, KEVIN JOHN McMAHON, while he was in the sole custody and care of the defendant while at the defendant's hospital located in Richmond Hill, New York on or around the aforementioned date.

12. That said incident and resulting injuries, including emotional pain and suffering were caused by the defendant, JAMAICA HOSPITAL MEDICAL CENTER's failure to provide the proper and necessary care and supervision of the then newborn plaintiff; and the defendant's failure to exercise ordinary and reasonable care to ensure that no unnecessary harm befell the newborn plaintiff who was within the control and custody of the defendant.

13. That the aforementioned occurrence was a result of the negligence, carelessness and recklessness of defendant by the lack of proper supervision, in failing to properly supervise the newborn plaintiff, in failing to exercise ordinary and reasonable care; in failing to properly monitor the newborn plaintiff, in placing the newborn plaintiff in a dangerous and hazardous situation; in sending the newborn plaintiff home with the wrong parents; in failing to follow proper protocol to prevent newborns from going home with the wrong parents, in violating its

own internal procedures, in failing to have sufficient and proper procedures in place to prevent newborns from going home with the wrong parents, in otherwise being negligent, reckless and careless; and in violating applicable rules, laws, statutes, codes and/or regulations, all of which the defendant knew, or in the exercise of reasonable procedure should have known (the doctrine *Res Ipsa Loquitur* applies).

14. The aforesaid occurrence and resulting emotional injuries resulting therefrom were caused solely and wholly by reason of the negligence of the defendant, its agents, servants and/or employees without any fault, wrongdoing want of care or culpable conduct on the part of the plaintiff contributing thereto.

15. That as a result of the above, the plaintiff sustained negligent infliction of emotional distress, causing plaintiff severe mental distress and emotional shock by being given the news that he was switched at birth; realizing that he lived his entire life (approximately 60 years) with the wrong family; learning that his entire life has been a falsehood; learning that his siblings are not his blood relatives; learning that he has blood related siblings and other blood related family members that he was deprived of ever knowing, including his biological mother and father who died before he could meet them; that the plaintiff has been and continues to suffer great emotional pain and anguish; in coming to understand that he did not need to be raised in an emotionally abusive home; and has incurred and will continue to incur expenses for the care and treatment of his severe emotional injuries.

16. That this action comes within one or more of the exceptions contained in Rule 1602 of the CPLR.

17. By reason of the foregoing, the plaintiff has been damaged over an amount which will fairly compensate for all losses sustained and which exceeds the jurisdictional monetary

limits of all the lower Courts in the State of New York which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**AGAINST THE DEFENDANT – MEDICAL MALPRACTICE**

18. Plaintiff repeats and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth at length herein.

19. That at all times hereinafter mentioned, defendant, JAMAICA HOSPITAL MEDICAL CENTER, held itself out to the public generally, and to the plaintiff in particular, as a competent and qualified hospital which was staffed and equipped to provide full and proper medical and surgical care, in accordance with accepted medical standards.

20. That at all times hereinafter mentioned, defendant JAMAICA HOSPITAL MEDICAL CENTER represented to the public that it was committed to giving its patients high quality and technologically advanced care by competent professionals in order to maintain and improve the health and wellbeing of the community.

21. That at all times hereinafter mentioned, defendant JAMAICA HOSPITAL MEDICAL CENTER was a medical facility duly licensed by the State of New York, Department of Health and by the New York State Department of Mental Hygiene.

22. That at all times hereinafter mentioned, the Health Code of the State of New York required defendant JAMAICA HOSPITAL MEDICAL CENTER to promulgate rules and regulations.

23. That at all times hereinafter mentioned, defendant JAMAICA HOSPITAL MEDICAL CENTER was accredited by the Joint Commission on Accreditation of Healthcare organizations.

24. That at all times hereinafter mentioned, defendant JAMAICA HOSPITAL MEDICAL CENTER represented that said hospital's agents, servants and/or employees and attending physicians to whom it extended privileges had the necessary and requisite training and experience to treat and care for patients.

25. That on or about May 26, 1960, defendant JAMAICA HOSPITAL MEDICAL CENTER, its agents, servants and/or employees undertook to render medical services to plaintiff KEVIN JOHN McMAHON, his biological mother, Helen McMahon, deceased, and Catherine Margaret McMahon, deceased, which care, treatment and services continued for several days.

26. On May 26, 1960, plaintiff, KEVIN JOHN McMAHON was born to Helen McMahon, deceased, at the defendant's medical facility known as JAMAICA HOSPITAL MEDICAL CENTER wherein defendant owed a duty to send the plaintiff home with the correct family; defendant, its agents, servants and employees breached this duty of professional care by causing the plaintiff to be switched with Ross McMahon, another newborn, and causing the plaintiff to go home with Catherine Margaret McMahon instead of Helen McMahon, and causing Ross McMahon to go home with Helen McMahon instead of Catherine Margaret McMahon.

27. That the defendants, their agents, servants and/or employees were reckless, careless and negligent in departing from accepted medical customs, practice and standards in the care, treatment and services rendered to plaintiff; in failing to properly monitor the plaintiff during and following his birth on May 26, 1960; in failing to properly observe and monitor the plaintiff; in abandoning the care of plaintiff; in failing to provide adequate nursing and/or medical services to the plaintiff; in failing to prevent the plaintiff from going home with the

wrong parents; in failing to properly maintain medical records; in failing to timely and properly make entries in the plaintiff and his mother's chart; in failing to provide proper discharge instructions, medications and care; in otherwise being reckless, careless and negligent under the circumstances; and in failing to properly review the credentials of its medical personnel and attendants. In addition, the plaintiff claims the doctrine of *res ipsa loquitur* applies herein.

28. Defendant, JAMAICA HOSPITAL MEDICAL CENTER its agents, servants and employees were negligent in its medical care, treatment and services rendered to newborn plaintiff KEVIN JOHN McMAHON. Defendant rendered carelessly, unskillfully, negligently, and not in accordance with accepted standards of medical care, and services in the community. Newborn plaintiff for unknown reasons, was switched at birth and given to the wrong parents to go home with.

29. By reason of the above, plaintiff KEVIN JOHN McMAHON has sustained great emotional mental anguish, distress, pain, and agony.

30. That by reason of the foregoing medical malpractice and the negligence of the said defendant, its agents, servants and/or employees, the plaintiff has sustained severe emotional distress and emotional shock, when given the news that he was switched at birth; realizing that he lived his entire life (approximately 60 years) with the wrong family; learning that his entire life has been a falsehood; learning that his siblings are not his blood relatives; learning that he has blood related siblings and other blood related family members that he was deprived of ever knowing, including his biological mother and father who died before he could meet them; that the plaintiff has and continues to suffer great emotional pain and anguish; in coming to understand that he did not need to be raised in an emotionally abusive home; and has incurred and will continue to incur expenses for the care and treatment of his severe emotional injuries.



That he has been unable to attend to his usual vocation and activities and that he has been obliged to expend, and will expend in the future, sums of money for medical aid and attention, and that by reason of the foregoing, plaintiff has been damaged in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

31. Defendant, JAMAICA HOSPITAL MEDICAL CENTER was negligent in hiring and supervising medical personnel who were careless, unskillful, negligent, and who did not possess the requisite knowledge and skill of medical professionals in the community.

32. That this action falls within one or more exemptions set forth in CPLR §1602.


33. By reason of the above, plaintiff, KEVIN JOHN McMAHON has sustained great emotional mental anguish, distress, pain, and agony.

**WHEREFORE**, plaintiff demands judgment on all causes of action against the defendant in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the costs and disbursements of this action.

Dated: Rockville Centre, New York  
November 3, 2021

Yours, etc.,

**ISAACSON, SCHIOWITZ & KORSON, LLP**



JEREMY SCHIOWITZ, ESQ.

*Attorneys for Plaintiff*

371 Merrick Road, Suite 302  
Rockville Centre, New York 11570  
(516) 800-9000

**ATTORNEY'S VERIFICATION**

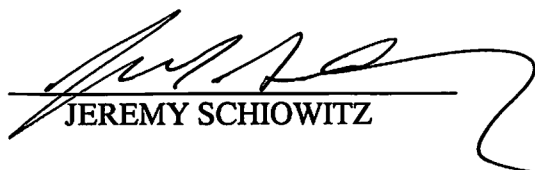
STATE OF NEW YORK     )  
                                  SS.:  
COUNTY OF NASSAU     )

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am the attorney of record for plaintiff. I have read the annexed **COMPLAINT** and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon investigation and documents contained in deponent's file.

The reason I make this Affirmation instead of plaintiff is because plaintiff resides outside the County wherein your deponent maintains his office.

Dated: Rockville Centre, New York  
November 3, 2021

  
JEREMY SCHIOWITZ

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS-----X  
KEVIN JOHN McMAHON,

Plaintiff,

-against-

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Defendant.  
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Index No.:

**CERTIFICATE  
PURSUANT TO  
CPLR 3012 (a)**

***JEREMY SCHIOWITZ***, and attorney duly licensed to practice law in the State of New York, affirms the following statements to be true under penalties of perjury:

1. I am a member of the law firm of *ISAACSON, SCHIOWITZ & KORSON, LLP*, attorneys for the plaintiff herein, and after a review of the file I am fully familiar with the contents of the file as maintained in this office.

2. Pursuant to CPLR 3012(a), I have consulted with a physician licensed to practice medicine in the State of New York who is knowledgeable of the relevant issues regarding this matter and that I have concluded on the basis of such consultation that there is reasonable basis for the commencement of the action.

Dated: Rockville Centre, New York  
November 3, 2021

  
JEREMY SCHIOWITZ

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS-----X  
KEVIN JOHN McMAHON,

Index No.:

Plaintiff,

CONSENT TO E-FILING

-against-

JAMAICA HOSPITAL MEDICAL CENTER,

Defendant.  
-----X

I, \_\_\_\_\_, am an attorney in good standing representing a party in the above-captioned action, and hereby consent to the use of the New York State Courts Electronic Filing System ("NYSCEF") in this case. I agree to be bound by the regulations governing the NYSCEF System (22 NYCRR §§ 202.5-b) and the procedures of the NYSCEF system as reflected in the User's Manual approved by the Chief Administrator of the Courts and posted on the NYSCEF website.

If, as indicated below, I am not currently an authorized e-filing user in the NYSCEF System, I understand that I must first obtain a user ID and password before I may file any documents with NYSCEF and that I may do so by accessing the Create an Account button on the NYSCEF Login screen (<https://iapps.courts.state.ny.us/nyscef/Login>). I also understand that once I receive these credentials, my primary e-mail address, listed below, will be used for service of documents.

Dated: \_\_\_\_\_

Registered User: [ ] Yes [ ] No

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Firm Name \_\_\_\_\_

Party(s) Represented \_\_\_\_\_

Address \_\_\_\_\_

UCS Attorney Registration # \_\_\_\_\_

Phone Number \_\_\_\_\_

E-Mail \_\_\_\_\_  
(Primary – to be used for service)2<sup>nd</sup> E-Mail \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
KEVIN JOHN McMAHON,

Plaintiff,

- against -

JAMAICA HOSPITAL MEDICAL CENTER,

Defendant.  
-----X

Index No.:

**NOTICE REGARDING  
AVAILABILITY OF  
ELECTRONIC FILING**

***PLEASE TAKE NOTICE*** that plaintiff in the case captioned above intends that this matter proceed as an electronically-filed case in the New York State Courts Electronic Filing System ("NYSCEF") in accordance with the procedures there for, set forth in Uniform Rule 202.5-b and described below. Under that Rule, filing and service of papers by electronic means cannot be made by a party nor can electronic service be made upon a party unless that party has consented to use of the System for the case in question. Each party served with this Notice must promptly file with the court and serve on all other parties either a consent or a declination of consent to electronic filing and service through NYSCEF for this case. (See Instruction # 2 below.)

**General Information**

Electronic filing offers significant benefits for attorneys and litigants, permitting documents to be filed with the County Clerk and the court and served, between or among consenting parties, by posting the documents on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. There is no fee to use the NYSCEF System, whether for filing, service, or consultation of the electronic docket, nor is there a charge to print documents from the docket. Normal filing fees must be paid, but this can be done by credit or bank card on-line. For additional procedures and information, see Uniform Rule 202.5-b, any e-filing protocol that may have been promulgated by the court in question, and the NYSCEF Website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

**Instructions**

1. Service of this Notice constitutes consent to e-filing and a statement of intent by the undersigned to use the NYSCEF System in this case. When an action or proceeding is being commenced through the NYSCEF System, this Notice must accompany service of the initiating papers.

2. Each party served with this Notice may consent to e-filing either: (i) by filing with the court and serving on all parties of record a consent to e-filing, or (ii) if an authorized e-filing user, by filing a consent electronically in the manner provided at the NYSCEF site. Parties who do not wish to consent must file and serve a written declination of consent. If one party or some but fewer than all parties consent, NYSCEF may be used by and between or among consenting parties.

3. Each participating attorney, unless already registered, or self-represented party must PROMPTLY create a NYSCEF account and obtain the confidential Filing User Identification Number and Password necessary to use the system. To create a NYSCEF account, go to [www.nycourts.gov/efile](http://www.nycourts.gov/efile) click the Create an Account link, and follow the instructions.

4. For additional information about NYSCEF, see the User's Manual and Frequently Asked Questions on the Website, or contact the court in question or the NYSCEF Resource Center (at 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us)).

Dated: Rockville Center, New York  
November 3, 2021

Yours, etc.,

**ISAACSON, SCHIOWITZ & KORSON LLP**

  
JEREMY SCHIOWITZ, ESQ.

*Attorneys for Plaintiff*

371 Merrick Road, Suite 302  
Rockville Center, New York 11570  
(516) 800-9000

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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KEVIN JOHN McMAHON,

Plaintiff,

-against-

JAMAICA HOSPITAL MEDICAL CENTER,

Defendant.

-----X

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***SUMMONS & VERIFIED COMPLAINT***

---

**ISAACSON, SCHIOWITZ & KORSON, LLP**

*Attorneys for Plaintiff*

371 Merrick Road, Suite 302

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Fax No: (866) 240-4535