

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CATHERINE MANZIONE,

Plaintiff,

-against-

GRIGORIY MASHKEVICH, M.D.,  
GRIGORIY MASHKEVICH, M.D., P.C., and,  
NSE MEDIA,

Defendants.

INDEX NO. 155545/2013

FILED: 6/17/13

Plaintiff designates  
New York County as  
the place of trial

The basis of the venue  
is location of defendants' business

**SUPPLEMENTAL SUMMONS**


Plaintiff resides at  
172-10 32 Ave.  
Flushing, New York 11358

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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 notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and 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: New York, New York  
June 25, 2013

  
LAW OFFICE OF BRYAN J. SWERLING  
By: Bryan Swerling, Esq.  
Attorneys for Plaintiff  
150 Broadway – Suite 1600  
New York, New York 10038  
(212) 571-5757

Defendants' Addresses:

- Grigoriy Mashkevich, M.D. 108-12 72nd Avenue, 3rd Floor, Forest Hills, New York 11375
- Grigoriy Mashkevich, M.D., P.C., 108-12 72nd Avenue, 3rd Floor, Forest Hills, New York 11375
- NSE MEDIA: 2920 Aldrich Ave. S #453, Minneapolis, MN 55408

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CATHERINE MANZIONE,

Plaintiff,

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GRIGORIY MASHKEVICH, M.D., P.C., and,  
NSE MEDIA,

Defendants.  
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**AMENDED  
VERIFIED COMPLAINT**

Plaintiff CATHERINE MANZIONE, by her attorneys, THE LAW OFFICE OF BRYAN J. SWERLING, P.C., complaining of Defendants GRIGORIY MASHKEVICH, M.D., GRIGORIY MASHKEVICH, M.D. P.C., and NSE MEDIA respectfully alleges as follows:

1. Plaintiff CATHERINE MANZIONE is a resident of the State of New York residing at 172-10 32 Ave., Flushing, New York 11358 (hereinafter "Plaintiff").
2. Upon information and belief Defendant GRIGORIY MASHKEVICH, M.D. (hereinafter "Dr. Mashkevich") is a resident of the State of New York and maintains his principal place of business and executive office at 1430 Second Ave., Suite 110, New York, New York 10021.
3. Upon information and belief, Dr. MASHKEVICH is a physician duly licensed to practice medicine in the State of New York.
4. That at all times hereinafter mentioned, Defendant GRIGORIY MASHKEVICH, M.D., P.C. (hereinafter "GM") is a domestic professional corporation duly formed and existing under the laws of the State of New York with its principal place of business and executive office located at 1430 Second Ave., Suite 110, New York, New York 10021.

5. That all times hereinafter mentioned upon information and belief, DR. MASHKEVICH was and is a principal and/or officer of Defendant GM.

6. That all times hereinafter mentioned, Defendants GM and DR. MASHKEVICH were and are now engaged in the business of performing plastic and aesthetic surgery.

7. Defendant NSE MEDIA is a foreign business duly formed and existing under the laws of the State of MINNESOTA with its principal place of business located at 2920 Aldrich Ave. S #453, Minneapolis, MN 55408.

8. That all times hereinafter mentioned, Defendant NSE MEDIA was and is now engaged in the business of website design, development, hosting and maintenance.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS  
FOR VIOLATION OF PLAINTIFF'S RIGHT TO PRIVACY**

9. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "8" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

10. That all times herein mentioned and for years prior thereto the Plaintiff was a well and favorably known resident of high standing and reputation in her community.

11. On January 28, 2011, the Plaintiff engaged the services of Defendants GM and DR. MASHKEVICH who performed rhinoplasty to improve her appearance, self esteem and confidence.

12. From a date which remains currently unknown GM, DR. MASHHKEVICH and NSE MEDIA (collectively hereinafter the "Defendants") continuously, knowingly and without the written consent or authorization of the Plaintiff, and contrary to and in direct violation of the provisions of sections 50 and 51 of the Civil Rights Law of the State of New York, used Plaintiff's photographs for commercial advertising and marketing purposes.

13. Defendants' violations of sections 50 and 51 of the Civil Rights Law of the State of

New York consisted of publishing for commercial use four (4) photographs (hereinafter the "Photographs") of the Plaintiff without her written consent and/or authorization on a website. See, Exhibit A, Photographic Release and Consent Form.

14. The Photographs consisted of two (2) pre-operative and two (2) post-operative ("before and after") photographs of the Plaintiff.

15. That all times hereinafter mentioned, the website on which Defendants published Plaintiff's photographs was [www.moderncontours.com](http://www.moderncontours.com) (hereinafter the "Website").

16. That at all times hereinafter mentioned, upon information and belief, the Website is owned by Defendants individually or collectively.

17. That at all times hereinafter mentioned, the Website was custom designed and/or developed for DR. MASHKEVICH and/or GM by NSE MEDIA.

18. That at all times hereinafter mentioned, the Website was and is maintained, managed and controlled exclusively by NSE MEDIA under the direction of DR. MASHKEVICH and/or GM.

19. That all times hereinafter mentioned, the purpose of the Website was and is for commercial marketing, advertising and trade purposes for all Defendants.

20. That at all times hereinafter mentioned, Defendants Dr. MASHKEVICH and GM published Plaintiff's Photographs on the Website in order to demonstrate their surgical skill and ability and the successful cosmetic results of their services in order to entice the public at large to purchase their services.

21. That at all times hereinafter mentioned, Defendant NSE MEDIA advertised its own services on the Website by prominently displaying its name on WebPages.

22. That at all times hereinafter mentioned, Defendant NSE MEDIA'S name and logo are hyperlinks to NSE MEDIA'S own home page which advertises its services for website development,

maintenance and hosting.

23. That at all times hereinafter mentioned, due to the nature of the World Wide Web, Plaintiff's Photographs were viewable globally resulting in global unauthorized publication.

24. That in or about February 2013, Plaintiff discovered the Defendants' unauthorized use of her Photographs.

25. That at all times hereinafter mentioned, such cached versions are maintained by many servers, websites, hops and search engines.

26. That at all times hereinafter mentioned, by reason of the Defendants' acts, Plaintiff has been, is and will continue to be greatly distressed and humiliated, has been, is and will continue to be exposed to public ridicule and contempt; and the plaintiff has been, is and will continue to be greatly injured in her reputation and has been, is and will continue to be otherwise greatly injured.

27. As Plaintiff's photographs are still available for viewing on the World Wide Web, Plaintiff's damages continue to accrue to date and will continue for an undeterminable period of time.

28. That at all times hereinafter mentioned, Defendants have been unjustly enriched by unlawful and unauthorized use of the Plaintiff's Photographs.

29. By reason of the foregoing the Plaintiff has been damaged and is entitled to recover from the defendant the sum of One Million Dollars (\$1,000,000.00) for compensatory damages and Ten Million (\$10,000,000.00) in exemplary damages.

**AS AND FOR A SECOND CAUSE OF ACTION  
AS AGAINST ALL DEFENDANTS  
FOR UNJUST ENRICHMENT**

30. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "29" of this Verified Complaint with the same force and effect as if fully set forth at length

herein.

31. That at all times hereinafter mentioned, Defendants' unauthorized use of Plaintiff's Photographs for advertising, marketing and trade have benefited Defendants monetarily.

32. As such, Defendants have been unjustly enriched at Plaintiff's expense.

33. Equity and good conscience require restitution to Plaintiff.

34. That at all times hereinafter mentioned, by reason of the foregoing the Plaintiff is entitled to recover from the Defendants the sum of One Million Dollars (\$1,000,000.00).

**AS AND FOR A THIRD CAUSE OF ACTION  
AS AGAINST DEFEDNANTS DR. MASHKEVICH AND GM  
FOR BREACH OF FIDUCIARY DUTY OF CONFIDENTIALITY**

35. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "34" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

36. That at all times hereinafter mentioned, Defendant DR. MASHKEVICH and Plaintiff have a physician-patient relationship by virtue of DR. MASHKEVICH's medical treatment of Plaintiff as a patient.

37. That at all times hereinafter mentioned, DR. MASHKEVICH's physician-patient relationship extends to Defendant GM, the professional corporation under which DR. MASHKEVICH practices medicine.

38. That at all times hereinafter mentioned, by agreeing to administer medical treatment to his patient, the Plaintiff, DR. MASHKEVICH expressly and impliedly covenanted that the Plaintiff's medical treatment, physical condition, and medical records, including but not limited to all photographs, would be kept in the strictest of confidence.

39. That at all times hereinafter mentioned, by virtue of such express and implied

covenants and by virtue of the physician-patient relationship, Defendants DR. MASHKEVICH and GM undertook a fiduciary duty of confidentiality to the Plaintiff.

40. That at all times hereinafter mentioned, by publishing Plaintiff's Photographs to the entire world on the World Wide Web, Defendants DR. MASHKEVICH and GM breached their fiduciary duty of confidentiality to the Plaintiff.

41. That at all times hereinafter mentioned, by reason of the foregoing the Plaintiff has been damaged and is entitled to recover from the defendant the sum of One Million Dollars (\$1,000,000.00).

**AS AND FOR A FOURTH CAUSE OF ACTION AS AGAINST  
ALL DEFENDANTS FOR NEGLIGENCE *PER SE*  
FOR VIOLATION OF CIVIL RIGHTS LAW §50**

42. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "41" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

43. That at all times hereinafter mentioned, Defendants owed a duty to Plaintiff under New York Civil Rights Law §50 which provides "A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person. . . is guilty of a misdemeanor."

44. That at all times hereinafter mentioned, Plaintiff was in the class of persons intended to be protected by such statute.

45. That at all times hereinafter mentioned, such statute was designed to prevent the type of harm suffered by the Plaintiff.

46. That at all times hereinafter mentioned, such statute was clearly defined as to what standard of conduct was expected, where and when it was expected and of whom it was expected.



47. That at all times hereinafter mentioned, by publishing Plaintiffs Photographs to the entire world on the World Wide Web, Defendants violated this statute.

48. That at all times hereinafter mentioned, Plaintiff's damages were proximately caused by Defendants' violation of such statute.

49. As such, Defendants are liable to Plaintiff for negligence *per se*.

50. By reason of the foregoing the Plaintiff is entitled to recover from the Defendants in a sum to be determined by the Court which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction herein.

**AS AND FOR A FIFTH CAUSE OF ACTION AS AGAINST DEFEDNANTS  
DR. MASHKEVICH AND GM FOR NEGLIGENCE *PER SE*  
FOR VIOLATION OF THE HIPAA PRIVACY RULE**

51. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "50" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

52. That at all times hereinafter mentioned, Defendants owed a duty to Plaintiff under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule under the 45 CFR 164.501, 164.508(a)(3) which requires an individual's written authorization before a use or disclosure of her protected health information to be used for marketing.

53. That at all times hereinafter mentioned, Plaintiff was is the class of persons intended to be protected by such statute.

54. That at all times hereinafter mentioned, such statute was designed to prevent the type of harm suffered by the Plaintiff.

55. That at all times hereinafter mentioned, such statute was clearly defined as to what standard of conduct was expected, where and when it was expected and of whom it was expected.

56. That at all times hereinafter mentioned, by publishing Plaintiffs Photographs to the entire world on the World Wide Web, Defendants violated this statute.

57. That at all times hereinafter mentioned, Plaintiff's damages were proximately caused by Defendants' violation of such statute.

58. As such, Defendants are liable to Plaintiff for negligence *per se*.

59. By reason of the foregoing the Plaintiff is entitled to recover from the Defendants in a sum to be determined by the Court which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction herein.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST DEFENDANTS DR. MASHKEVICH AND GM  
FOR NEGLIGENCE PER SE FOR VIOLATION OF CPLR §4504(a)**

60. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "59" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

61. That at all times hereinafter mentioned, Defendants DR. MASHKEVICH and GM owed a duty to Plaintiff under CPLR § 4504(a) which provides in part "Unless the patient waives the privilege, a person shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity."

62. That at all times hereinafter mentioned, Plaintiff did not waive the privilege of confidentiality.

63. That at all times hereinafter mentioned, Plaintiff was is the class of persons intended to be protected by such statute

64. That at all times hereinafter mentioned, such statute was designed to prevent the type of harm suffered by the Plaintiff.

65. That at all times hereinafter mentioned, such statute was clearly defined as to what standard of conduct was expected, where and when it was expected and of whom it was expected.

66. That at all times hereinafter mentioned, by publishing Plaintiffs photographs to the entire world on the World Wide Web, Defendants DR. MASHKEVICH and GM violated this statute.

67. That at all times hereinafter mentioned, Plaintiff's damages were proximately caused by Defendants' violation of such statute.

68. As such, Defendants are liable to Plaintiff for negligence *per se*.

69. By reason of the foregoing the Plaintiff is entitled to recover from the Defendants in a sum to be determined by the Court which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction herein.

**AS AND FOR A SEVENTH CAUSE OF ACTION AS AGAINST  
DEFENDANTS DR. MASHKEVICH AND GM FOR NEGLIGENCE *PER SE*  
FOR VIOLATION OF EDUCATION LAW §6509(9) AND 8 NYCRR 60.1(d)(3)**

70. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "69" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

71. That at all times hereinafter mentioned, Defendants DR. MASHKEVICH and GM owed a duty to Plaintiff under Education Law §6509(9) and 8 NYCRR 60.1(d)(3).

72. That at all times hereinafter mentioned, Education Law §6509(9) provides in relevant part: "Each of the following is professional misconduct: . . .(9) Committing unprofessional conduct, as defined by the board of regents in its rules or by the commissioner in regulations approved by the board of regents."

73. That at all times hereinafter mentioned, 8 NYCRR 60.1(d)(3) provides in relevant

part: “Unprofessional conduct in the practice of medicine shall include . . . the revealing of facts, data, or information obtained in a professional capacity relating to a patient or his records without first obtaining the consent of the patient. . .”

74. That at all times hereinafter mentioned, Plaintiff did not consent to waive the privilege of confidentiality and Defendants did not obtain such consent.

75. That at all times hereinafter mentioned, Plaintiff was and is the class of persons intended to be protected by such statutes.

76. That at all times hereinafter mentioned, such statutes were designed to prevent the type of harm suffered by the Plaintiff.

77. That at all times hereinafter mentioned, such statutes were clearly defined as to what standard of conduct was expected, where and when it was expected and of whom it was expected.

78. That at all times hereinafter mentioned, by publishing Plaintiffs Photographs to the entire world on the World Wide Web, Defendants DR. MASHKEVICH and GM violated these statutes.

79. That at all times hereinafter mentioned, Plaintiff’s damages were proximately caused by Defendants’ violation of such statutes.

80. As such, Defendants are liable to Plaintiff for negligence *per se*.

81. By reason of the foregoing the Plaintiff is entitled to recover from the Defendants in a sum to be determined by the Court which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction herein.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AS AGAINST  
ALL DEFENDANTS FOR PUBLIC DISCLOSURE  
OF PRIVATE FACTS ABOUT PLAINTIFF**

82. Plaintiff repeats and reiterates each and every allegation contained in paragraphs “1”

through "81" of this Verified Complaint with the same force and effect as if fully set forth at length herein.

83. That at all times hereinafter mentioned, by publishing Plaintiff's unauthorized Photographs, Defendants publicly disclosed private facts about Plaintiff which a reasonably prudent person would object to having made public.

84. That at all times hereinafter mentioned, Plaintiff's damages were proximately caused by Defendants' public disclosure of Plaintiff's private facts.

85. By reason of the foregoing the Plaintiff is entitled to recover from the Defendants in a sum to be determined by the Court which exceeds the jurisdictional limits of all lower Courts which might otherwise have jurisdiction herein.

**AS AND FOR A NINTH CAUSE  
OF ACTION FOR PUNITIVE DAMAGES**

89. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 88, inclusive, of this complaint, with the same force and effect as though more fully set forth at length herein.

90. That all of the aforesaid acts of the defendant were willful, malicious, wanton and reckless, were committed with the knowledge and consent of the defendant, and the plaintiff therefore requests punitive damages against the defendant in a sum to be determined by a jury.

**WHEREFORE**, the plaintiff demands judgment that the Defendants be enjoined and restrained from continuing to use Plaintiff's Photographs for advertising or trade purposes and that she recover from the Defendants:

- a. On the First Cause of Action, One Million Dollars (\$1,000,000.00) as general compensatory damages and Ten Million Dollars (\$10,000,000.00), exemplary damages;
- b. On the Second Cause of Action, One Million Dollars (\$1,000,000.00) as

general compensatory damages;

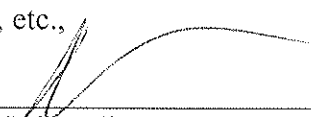
c. On the Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action, One Million Dollars (\$1,000,000.00) for each cause of action as general compensatory damages;

c. On the Ninth Cause of action Five Million Dollars (\$5,000,000.00) as punitive damages.

d) Together with such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: June 25, 2013  
New York, New York

Yours, etc.,



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Bryan J. Swerling, Esq.  
Bryan J. Swerling, P.C.  
Attorney for Plaintiff  
150 Broadway – 16<sup>th</sup> Floor  
New York, New York 10038  
(212) 619-3100

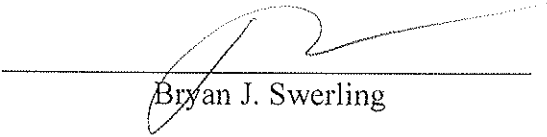
ATTORNEY VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

I, BRYAN J. SWERLING, an attorney admitted to practice in the Courts of the State of New York, state that I am the attorney of record for Petitioner in the within action; I have read the foregoing AMENDED VERIFIED COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because the Plaintiff resides in a different county than New York County where I maintain my office. The grounds of my belief as to all matters not stated to be upon my own knowledge is information contained in my file.

I affirm the foregoing statements to be true under the penalties of perjury.

Dated: June 25, 2013  
New York, New York

  
Bryan J. Swerling

## EXHIBIT A



**Grigoriy Mashkevich, MD**  
Facial Plastic & Reconstructive Surgery

1430 Second Ave, Suite 110  
New York, NY 10021  
Tel (212) 979-4665

108-12 72<sup>nd</sup> Ave, 3<sup>rd</sup> Floor  
Forest Hills, NY 11375  
Tel (718) 544-9300

**PHOTOGRAPHIC RELEASE AND CONSENT**  
Record of Authorization for Taking and Publication of Photographs

I, Ca New'e, consent to having photographs and/or video taken of the procedure being performed on me by Grigoriy Mashkevich, M.D. I understand that Dr. Mashkevich can use these photographs and/or films for medical, scientific, or promotional purposes. These may include publication in medical journals, print advertisement, and web publishing. **My name will not be used and will be kept strictly confidential.**

Patient Signature \_\_\_\_\_

Date \_\_\_\_\_

Witness Signature \_\_\_\_\_

Date \_\_\_\_\_

I do not want my photos to be used. I understand that the photographs will be placed in my confidential records only.

Patient Signature [Signature]

Date 1/17/10

Witness Signature [Signature]

Date 1/17/10

INDEX NO.: 155545/2013

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Defendants.

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**SUPPLEMENTAL SUMMONS AND AMENDED VERIFIED COMPLAINT**

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Law Office of Bryan J. Swerling, P.C.  
Attorney for Plaintiff  
Office and Post Office Address, Telephone  
150 Broadway, Suite 1600  
New York, New York 10038  
Tel.: (212) 571-5757

Signature Pursuant to Rule 130-1.1-a

  
Bryan J. Swerling

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To:

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