

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

JOHN ZEISS

Index No.

Plaintiff(s),

**Summons**

*-against-*

ISABELLA GERIATRIC CENTER, INC.

Date Index No. Purchased:

Defendant(s).

To the above named Defendant(s)

ISABELLA GERIATRIC CENTER, INC., 515 Audubon Avenue, New York, NY 10040

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 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.

The basis of venue is DEFENDANT'S RESIDENCE AND PRESENCE  
which is 515 Audubon Avenue, New York, NY 10040

Dated: New York, NY

May 7, 2018

FRANK LLP

by 

Marvin L. Frank

Attorneys for Plaintiff

John Zeiss

Frank LLP  
370 Lexington Ave., Suite 1706  
New York, NY 10017

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

-----X	:	
<b>JOHN ZEISS,</b>	:	<b>VERIFIED COMPLAINT</b>
	:	<b>Index No.</b>
<b>Plaintiff,</b>	:	
	:	
<b>-against-</b>	:	<b>Plaintiff Demands a Trial by Jury</b>
	:	
<b>ISABELLA GERIATRIC CENTER, INC.,</b>	:	<b>JURISDICTION AND VENUE ARE</b>
	:	<b>PREDICATED ON</b>
<b>Defendant.</b>	:	<b>DEFENDANT’S RESIDENCE AND</b>
_____	:	<b>PRESENCE</b>

Plaintiff, by his attorneys, alleges for his Verified Complaint as follows:

**NATURE OF THE ACTION**

1. This action arises out of Defendant Isabella Geriatric Center, Inc.’s (“Isabella”) refusal to pay accrued vacation and personal time owed to Plaintiff John Zeiss, its former Vice President of Operations and interim Co-Chief Executive Officer, upon his leaving Isabella’s employment after almost 19 years.

2. On January 10, 2000, Plaintiff began work as Isabella’s Vice President of Operations. To induce Plaintiff to take the job, he was offered a substantial compensation package. That compensation package included six weeks’ vacation and four personal days annually. Isabella assured Plaintiff that the time not used would be accrued and carried over from year to year, so that it could either be used in future years, or cashed out on leaving.

3. Annually, on or around Plaintiff’s date of hire, January 10, Isabella provided Plaintiff with an accounting of his vacation and personal time not taken and accrued throughout that year and the preceding years. Plaintiff relied on that accounting.

4. After Plaintiff had submitted his resignation, but before he had left, a final accounting of accrued vacation and personal time was given to Plaintiff by Isabella's Vice President of Human Resources, after Isabella conducted its own investigation and internal audit. According to Isabella's own final accounting, Plaintiff was entitled to 441 vacation hours and 392 personal hours, for a total of 833 hours accumulated over his years of employment. Isabella's records matched Plaintiff's records.

5. Plaintiff relied on the agreement he made with Isabella when he accepted the job at Isabella on January 10, 2000, relied on the annual updates to the official Isabella-provided accounting, and relied on that final accounting when he tendered his resignation and left Isabella's employment on November 10, 2017.

6. Isabella, nevertheless, refuses to pay Plaintiff for those hours.

#### **THE PARTIES**

7. Plaintiff John Zeiss is a citizen of the State of New York who resides in Westchester County.

8. Defendant Isabella Geriatric Center, Inc. is incorporated in the State of New York with its principal place of business at 515 Audubon Avenue, New York, NY 10040. Isabella is a 705-bed residential health care facility providing rehabilitation and nursing care. As of a December 21, 2017 news release Isabella became an affiliated agency of MJHS Health System.

#### **JURISDICTION AND VENUE**

9. Defendant does business in the State of New York, and has its principal place of business in New York County. Further, the acts and omissions underlying this action took place

in New York County. Venue in New York County is proper, and this Court has jurisdiction over this action.

### FACTS

10. Plaintiff was interviewed and hired by Mark J. Kator, Isabella's President and Chief Executive Officer until Mr. Kator left effective March 31, 2017. Plaintiff accepted the employment offer and began work at Isabella on January 10, 2000, as Vice President of Operations.

11. Plaintiff was induced to accept the job at Isabella when he was offered a substantial compensation package. Part of that compensation package was six weeks' annual vacation and four personal days per year, which, if not used during the year earned, would be accrued (*i.e.*, carried over from year to year) so that those days could be taken in future years or cashed out on leaving. There was no maximum number of days (accounted for as hours) that could be accrued.

12. Year after year, Plaintiff did not take all of the personal and vacation time he was entitled to take. The time he did take was reported to Isabella's Human Resources department.

13. Annually, on or about the anniversary of Plaintiff's date of hire, January 10, Isabella's Human Resources department provided Plaintiff with reports informing him of his earned but unpaid time since his employment began.

14. On or about October 2, 2017, Plaintiff notified Hila Richardson, Chairperson of the Board, and others, of his intention to resign effective November 10, 2017, giving six weeks' notice.

15. On October 31, 2017, at 2:12 pm, Miriam D'Ambrosio, Payroll Manager, sent an email to Eileen Casey, Vice President of Human Resources, entitled "Subject: Zeiss benefit time as of 10/21/2017." The email calculated, as of October 21, 2017, Plaintiff's accrued 441 vacation hours, and accrued 392 personal hours, for a total of 833 hours.

16. At no time during Plaintiff's employment was he told that he could no longer accrue vacation time or that he had to use his already accrued vacation or personal time.

17. At no time during Plaintiff's employment was he told that he would not be paid for his already accrued vacation and personal time.

18. Just before Plaintiff left Isabella's employ, Eileen Casey assured Plaintiff that he would be paid for his 833 accrued and unused hours.

19. On November 14, 2017 at 11:13 am, after Plaintiff had left Isabella's employment, Eileen Casey confirmed in an email to Miriam D'Ambrosio that:

The new/revised policy dated November 1, 2017 goes into effect for "New" employees re: vacation. Not for present incumbents. Just as the Free Day [*i.e.*, personal day] policy went into effect [in] 2015--nothing was taken away from previous [employees] only going forward, the same applies with vacation policy. [Plaintiff] is entitled to 2016 vacation day.

20. On information and belief, Isabella paid its other executives their accrued vacation and personal hours upon their retirement or resignation.

21. On information and belief, Isabella had estimated and reserved for the dollar value of its employees' unused vacation and personal hours on its official financial records (*i.e.*, its Books).

22. Plaintiff relied on the agreement he made with Isabella when he resigned from his previous employment and accepted the job at Isabella in January 2000, relied on the annual updates to the Isabella-provided annual accounting, and relied on the Isabella-provided final accounting when he resigned and left Isabella's employment on November 10, 2017.

**AS AND FOR A FIRST  
CAUSE OF ACTION  
(Breach of Contract)**

23. Plaintiff repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

24. Plaintiff's consideration when he accepted the job at Isabella included the promise that his unused vacation and personal time would be accrued and carried forward from year to year so that he could take those hours in future years or be paid for them when he left Isabella's employ.

25. Isabella confirmed and acknowledged its promise to Plaintiff each year throughout his employment when it reported his accrued vacation and personal time.

26. Just before Plaintiff left Isabella's employee, Plaintiff was assured by Isabella's Vice President of Human Resources that he had accrued and would be paid for 441 vacation hours.

27. Just before Plaintiff left Isabella's employee, Plaintiff was assured by Isabella's Vice President of Human Resources that he had accrued and would be paid for 392 personal hours.

28. Plaintiff's final hourly rate of pay at Isabella was \$164.85.

29. Plaintiff relied, to his detriment, on the promise that he would be paid for unused and accrued vacation hours.

30. Plaintiff relied, to his detriment, on the promise that he would be paid for unused and accrued personal hours.

31. After Plaintiff left Isabella's employ, Isabella's Vice President of Human Resources confirmed in an email that Plaintiff was owed the demanded vacation and personal hours.

32. Isabella's conduct constitutes breach of contract with Plaintiff, entitling Plaintiff to obtain payment of accrued and unused vacation and personal time, plus interest, attorneys' fees, costs, and disbursements, together with punitive damages.

**AS AND FOR A SECOND  
CAUSE OF ACTION  
(QUANTUM MERUIT)**

33. Plaintiff repeats and realleges paragraphs 1 through 32 as if fully set forth herein.

- 34. Plaintiff performed his job in good faith.
- 35. Isabella accepted Plaintiff's services.
- 36. Plaintiff had an expectation of compensation in full.
- 37. Plaintiff demands the reasonable value of the services that he rendered (*i.e.*, the 833 hours at his final hourly rate), plus interest, attorneys' fees, costs, and disbursements, together with punitive damages.

**AS AND FOR A THIRD  
CAUSE OF ACTION  
(UNJUST ENRICHMENT)**

- 38. Plaintiff repeats and realleges paragraphs 1 through 37 as if fully set forth herein.
- 39. Plaintiff is entitled to recover from Isabella under the theory of unjust enrichment, which lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice.
- 40. Plaintiff accrued unused vacation and personal time over 18 years of employment. Isabella refuses to pay Plaintiff for that accrued time.
- 41. Isabella was enriched at Plaintiff's expense, because Isabella has denied and taken away from Plaintiff payment of his accrued and unused vacation and personal time, to which he is entitled.
- 42. It is against equity and good conscience to permit Isabella to keep this money to which Plaintiff is entitled.
- 43. Plaintiff is entitled to the reasonable value of his accrued and unused vacation and personal time (*i.e.*, the 833 hours at his final hourly rate), plus interest, attorneys' fees, costs, and disbursements, together with punitive damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment be entered for the relief demanded in each claim herein, together with punitive damages, costs and disbursements of this action, reasonable attorneys' fees, and such and other further relief as may be deemed just and proper under the circumstances.

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues in this action, pursuant to CPLR article 41.

Dated: New York, New York  
May 7, 2018

**FRANK LLP**


By: \_\_\_\_\_  
Marvin L. Frank  
Asher Hawkins  
370 Lexington Avenue, Suite 1706  
New York, New York 10017  
Tel: (212) 682-1853  
Fax: (212) 682-1892  
  
Attorneys for Plaintiff



**VERIFICATION**

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

- 1. I am a member of Frank LLP, attorneys for Plaintiff.
- 2. I have read the foregoing Verified Complaint. The same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.
- 3. The sources of my information and the basis of my belief concerning all matters not alleged upon my personal knowledge are a review of Plaintiff's documents and records, and interviews of Plaintiff.
- 4. This verification is made by me on the ground that Plaintiff is not located in the county where his attorneys have their offices.

  
\_\_\_\_\_  
Marvin L. Frank

Sworn to before me  
May 7, 2018



**ASHER HAWKINS**  
Notary Public, State of New York  
Registration #02HA6334262  
Qualified in Kings County  
Commission Expires Dec. 14, 2019