

==New York State==
**ACADEMY
OF TRIAL LAWYERS**

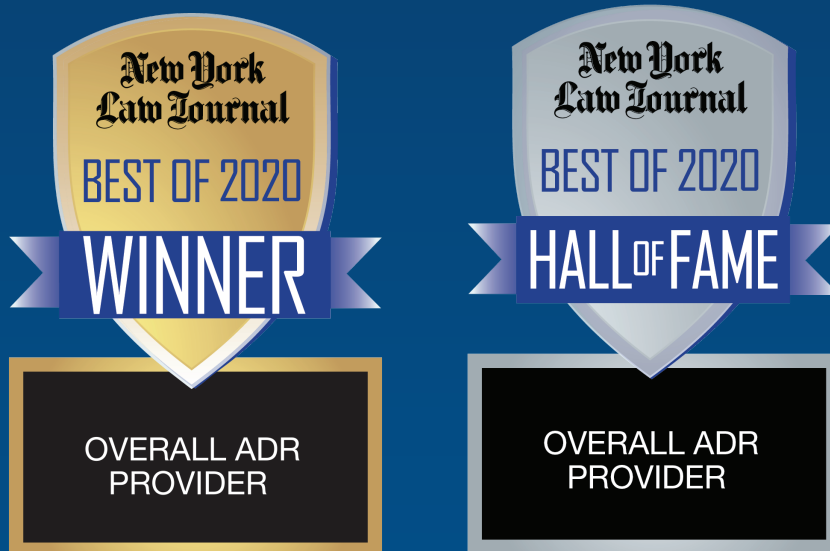
*HOW TO SUCCESSFULLY LITIGATE A
PERSONAL INJURY CASE SERIES –
PART 2: EARLY SETTLEMENT,
JURISDICTION, VENUE &
COMMENCING THE LAWSUIT*

Live Streamed – February 3, 2021

Presented By:
Andrew Smiley, Esq.

HONORED TO SERVE THE LEGAL COMMUNITY

THANK YOU FOR YOUR SUPPORT.



Through a combination of award-winning mediators and arbitrators, exceptional case management and industry leadership, **NAM is proud to serve as the ADR venue of choice as voted by the New York legal community for the past decade.**



The background of the advertisement features a hand holding a pen, poised to write on a globe. The globe is overlaid with a complex network of lines and dots, suggesting a digital or technological theme. The text is prominently displayed in the center, with a large blue circular graphic element on the right side.

GET SMART About Managing Your Cases

AWARD WINNING Case Management Software
Created by Lawyers and Paralegals

SmartAdvocate®

Contact us today to bring the benefits of SmartAdvocate into your firm.

Call 1-(877)GET-SMART (1-877-438-7627)

Connect www.smartadvocate.com



JOIN THE ACADEMY FOR FREE CLE

**Academy members now get FREE access to
all live AND on-demand CLE courses!**

- ▶ The Academy presents CLE webinars providing CLE credits in all categories, including Diversity, Inclusion and Elimination of Bias.
- ▶ All of our courses are video recorded and made available to view on-demand on our website.

Interested in joining? Contact us for more information



518-364-4044



info@trialacademy.org



McKinney's CPLR § 302

§ 302. Personal jurisdiction by acts of non-domiciliaries

Effective: April 28, 2008

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
 - (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
 - (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state. The family court may exercise personal jurisdiction over a non-resident respondent to the extent provided in sections one hundred fifty-four and one thousand thirty-six and article five-B of the family court act and article five-A of the domestic relations law.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

(d) Foreign defamation judgment. The courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York or is a person or entity amenable to jurisdiction in New York who has assets in New York or may have to take actions in New York to comply with the judgment, for the purposes of rendering declaratory relief with respect to that person's liability for the judgment, and/or for the purpose of determining whether said judgment should be deemed non-recognizable pursuant to section fifty-three hundred four of this chapter, to the fullest extent permitted by the United States constitution, provided:

1. the publication at issue was published in New York, and

2. that resident or person amenable to jurisdiction in New York (i) has assets in New York which might be used to satisfy the foreign defamation judgment, or (ii) may have to take actions in New York to comply with the foreign defamation judgment. The provisions of this subdivision shall apply to persons who obtained judgments in defamation proceedings outside the United States prior to and/or after the effective date of this subdivision.

Credits

(L.1962, c. 308. Amended L.1966, c. 590, § 1; L.1974, c. 859, § 1; L.1979, c. 252, §§ 1, 2; L.1980, c. 281, § 22; L.1982, c. 505, § 1; L.1991, c. 69, § 7; L.1995, c. 441, § 2; L.2006, c. 184, § 5, eff. July 26, 2006; L.2008, c. 66, § 3, eff. April 28, 2008.)

N.Y. C.P.L.R. 302 (McKinney)

McKinney's CPLR § 503

§ 503. Venue based on residence

Effective: October 23, 2017

(a) Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

(b) Executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver. An executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver shall be deemed a resident of the county of his appointment as well as the county in which he actually resides.

(c) Corporation. A domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located; except that such a corporation, if a railroad or other common carrier, shall also be deemed a resident of the county where the cause of action arose.

(d) Unincorporated association, partnership, or individually-owned business. A president or treasurer of an unincorporated association, suing or being sued on behalf of the association, shall be deemed a resident of any county in which the association has its principal office, as well as the county in which he actually resides. A partnership or an individually-owned business shall be deemed a resident of any county in which it has its principal office, as well as the county in which the partner or individual owner suing or being sued actually resides.

(e) Assignee. In an action for a sum of money only, brought by an assignee other than an assignee for the benefit of creditors or a holder in due course of a negotiable instrument, the assignee's residence shall be deemed the same as that of the original assignor at the time of the original assignment.

(f) Consumer credit transaction. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the place of trial shall be the residence of a defendant, if one resides within the state or the county where such transaction took place, if it is within the state, or, in other cases, as set forth in subdivision (a).

Credits

(L.1962, c. 308. Amended L.1965, c. 114, § 1; L.1973, c. 238, § 3; L.1981, c. 115, § 17; [L.2017, c. 366, § 1, eff. Oct. 23, 2017.](#))



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Validity Called into Doubt by [Abramson v. Marriott Ownership Resorts, Inc.](#), C.D.Cal., Jan. 04, 2016



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[United States Code Annotated](#)

[Title 28. Judiciary and Judicial Procedure \(Refs & Annos\)](#)

[Part IV. Jurisdiction and Venue \(Refs & Annos\)](#)

[Chapter 85. District Courts; Jurisdiction \(Refs & Annos\)](#)

28 U.S.C.A. § 1332

§ 1332. Diversity of citizenship; amount in controversy; costs
[Statutory Text & Notes of Decisions subdivisions I to V]

[Currentness](#)

<Notes of Decisions for [28 USCA § 1332](#) are displayed in multiple documents.>

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in [section 1603\(a\)](#) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and [section 1441](#) of this title--

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a

policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of--

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)(1) In this subsection--

(A) the term “class” means all of the class members in a class action;

(B) the term “class action” means any civil action filed under [rule 23 of the Federal Rules of Civil Procedure](#) or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term “class certification order” means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term “class members” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which--

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed

plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of--

- (A) whether the claims asserted involve matters of national or interstate interest;
- (B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;
- (C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;
- (D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;
- (E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and
- (F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)--

(A)(i) over a class action in which--

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant--

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

- (ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or
- (B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.
- (5) Paragraphs (2) through (4) shall not apply to any class action in which--
- (A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or
- (B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.
- (6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.
- (7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.
- (8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.
- (9) Paragraph (2) shall not apply to any class action that solely involves a claim--
- (A) concerning a covered security as defined under 16(f)(3)¹ of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)²) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));
- (B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or
- (C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).
- (10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)(A) For purposes of this subsection and [section 1453](#), a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)(i) As used in subparagraph (A), the term “mass action” means any civil action (except a civil action within the scope of [section 1711\(2\)](#)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term “mass action” shall not include any civil action in which--

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to [section 1407](#), or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to [section 1407](#).

(ii) This subparagraph will not apply--

(I) to cases certified pursuant to [rule 23 of the Federal Rules of Civil Procedure](#); or

(II) if plaintiffs propose that the action proceed as a class action pursuant to [rule 23 of the Federal Rules of Civil Procedure](#).

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word “States”, as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658; [Pub.L. 85-554](#), § 2, July 25, 1958, 72 Stat. 415; [Pub.L. 88-439](#), § 1, Aug. 14, 1964, 78 Stat. 445; [Pub.L. 94-583](#), § 3, Oct. 21, 1976, 90 Stat. 2891; [Pub.L. 100-702, Title II, §§ 201\(a\), 202\(a\), 203\(a\)](#), Nov. 19, 1988, 102 Stat. 4646; [Pub.L. 104-317, Title II, § 205\(a\)](#), Oct. 19, 1996, 110 Stat. 3850; [Pub.L. 109-2](#), § 4(a), Feb. 18, 2005, 119 Stat. 9; [Pub.L. 112-63, Title I, §§ 101, 102](#), Dec. 7, 2011, 125 Stat. 758.)

[Notes of Decisions \(972\)](#)

Footnotes

[1](#) So in original. Reference to “16(f)(3)” probably should be preceded by “section”.

[2](#) So in original. Probably should be “77p(f)(3)”.

28 U.S.C.A. § 1332, 28 USCA § 1332

Current through P.L. 116-259. Some statute sections may be more current, see credits for details.

SUPREME COURT OF THE STATE OF NEW YORK Index No.:
COUNTY OF BRONX

-----X
GLENN WALKER,

Plaintiff,

VERIFIED COMPLAINT

-against-

CLAUDIO F. VARGAS, RENELLE SIMMONDS and
LOIS V. SIMMONDS,

Defendants.
-----X

Plaintiff, GLENN WALKER, by his attorneys, SMILEY & SMILEY, LLP, complaining
of the defendants, hereinafter alleges at all times, upon information and belief, as follows:

1. Plaintiff, GLENN WALKER, [REDACTED]
[REDACTED].
2. Defendant, CLAUDIO F. VARGAS, (hereinafter referred to as "VARGAS"),
resides at [REDACTED]
3. Defendant, RENELLE SIMMONDS, (hereinafter referred to as "R.
SIMMONDS"), resides at [REDACTED]
4. Defendant, LOIS V. SIMMONDS, (hereinafter referred to as "L.V.
SIMMONDS"), resides at [REDACTED]
5. On December 22, 2013, defendant, VARGAS, was the owner and operator of a
certain motor vehicle bearing New York State license plate number [REDACTED]
6. On December 22, 2013, defendant, L.V. SIMMONDS, was the owner or a certain
motor vehicle bearing New York State license plate number [REDACTED].
7. On December 22, 2013, defendant, R. SIMMONDS, was the operator of a certain
motor vehicle bearing New York State license plate number [REDACTED].

8. On December 22, 2013, defendant, R. SIMMONDS, was operating the aforementioned motor vehicle owned by the defendant, L.V. SIMMONDS, with the knowledge, permission and consent of its owner, either expressed or implied.

9. On December 22, 2013, at approximately 8:25 P.M., the plaintiff, GLENN WALKER, was a lawful passenger in the motor vehicle owned and operated by defendant, VARGAS, which was travelling southbound on Broadway in the vicinity of 215th Street in the County, City and State of New York.

10. On December 22, 2013, at approximately 8:25 P.M., the motor vehicle owned by defendant, L.V. SIMMONDS and operated by R. SIMMONDS, was in the southbound lane of Broadway in the vicinity of 215th Street in the County, City and State of New York, at which time she made a u-turn which caused a collision.

11. The defendants were negligent and careless in the ownership, operation, management and control of their motor vehicles; in operating their aforesaid motor vehicles at a greater rate of speed than care and caution would permit under the circumstances; in operating their vehicles in a negligent, careless and reckless manner; in failing to operate horns, lights and/or signaling devices; in failing and omitting to provide or give any signal or warning of approach; in failing and omitting to provide and/or make timely and adequate use of brakes, signaling devices and steering mechanisms; in making a u-turn in violation of the Vehicle and Traffic Laws of the State of New York; and in violating provisions of the Vehicle and Traffic Laws of the State of New York.

12. Solely as a result of the defendants' negligence, the plaintiff, GLENN WALKER, was seriously and permanently injured and was caused to suffer and will continue to suffer great physical pain and mental anguish.

13. The action falls within one or more of the exceptions set forth in CPLR Section 1602.

14. The plaintiff has sustained serious injuries as defined by Section 5102 of the Insurance Law of the State of New York.

15. The amounts of damages sought in this action exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, GLENN WALKER, demands judgment against the defendants, CLAUDIO F. VARGAS, RENELLE SIMMONDS and LOIS V. SIMMONDS, together with the costs and disbursements of this action.

Dated: New York, New York
June 25, 2014

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: _____

ANDREW J. SMILEY
122 East 42nd Street, 39th Floor
New York, New York 10168
(212) 986-2022

INDIVIDUAL VERIFICATION

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

GLENN WALKER, being sworn says: that I am the plaintiff in the action herein; I have read the annexed **COMPLAINT** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Dated: New York, New York
3rd day of June, 2014



GLENN WALKER

Sworn to before me
the 3rd day of June, 2014



NOTARY PUBLIC

ALEIDA TAVERAS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TA4962123
Qualified in New York County
My Commission Expires April 30, 2018

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

-----X
ROBERTA COLORES-MARTINEZ and CARMEN
ARIANA CARDOSO,

INDEX NO.

Plaintiffs,

-against-

VERIFIED COMPLAINT

THE CITY OF NEW YORK and CENTRAL PARK
CONSERVANCY, INC.,

Defendants.

-----X

Plaintiffs, by their attorneys, SMILEY & SMILEY, LLP, complaining of the
defendants, hereinafter alleges at all times, upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF ROBERTA COLORES-MARTINEZ**

1. The plaintiff, ROBERTA COLORES-MARTINEZ, resides at [REDACTED],
[REDACTED].

2. Upon information and belief, at all times hereinafter mentioned, defendant, THE
CITY OF NEW YORK was and still is a domestic municipal corporation duly organized and
existing under and by virtue of the laws of the State of New York.

3. Upon information and belief, at all times hereinafter mentioned, defendant
CENTRAL PARK CONSERVANCY, INC. was and still is a domestic not-for-profit corporation
duly organized and existing under and by virtue of the laws of the State of New York with a
principal place of business in the County of New York, State of New York.

4. Upon information and belief, defendant CENTRAL PARK CONSERVANCY, INC. maintained and still maintains a principal place of business at 14 East 60th Street, New York, New York.

5. On July 15, 2010, and within ninety (90) days of the occurrence complained of herein, a verified notice of claim containing claims upon which this action is based and information otherwise required by law (hereinafter, "Notice of Claim") was duly served upon and presented to defendant THE CITY OF NEW YORK.

6. More than thirty (30) days have elapsed since the claims upon which this action is based were presented to defendant THE CITY OF NEW YORK, and defendant THE CITY OF NEW YORK has neglected and/or refused to make payment or adjustment thereof.

7. On October 21, 2010, plaintiff ROBERTA COLORES-MARTINEZ appeared for and gave testimony under oath at an oral examination requested and conducted by defendant THE CITY OF NEW YORK, pursuant to General Municipal Law § 50-h.

8. This action is commenced against defendant THE CITY OF NEW YORK within one (1) year and ninety (90) days of both the accrual of the claims and causes of action alleged herein and the occurrence complained of herein.

9. At all times mentioned, Central Park was and still is a public park in the County of New York, State of New York, (hereinafter, "Central Park").

10. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owned Central Park.

11. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK managed, maintained, operated and controlled Central Park.

12. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owed a duty to maintain and keep Central park in a reasonably safe condition.

13. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC. managed, operated, maintained and controlled Central Park, pursuant to a contract with defendant THE CITY OF NEW YORK (hereinafter, "Contract").

14. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC., owed a duty to maintain and keep Central Park in a reasonably safe condition, pursuant to the Contract.

15. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owned the trees located in Central Park, including but not limited to, the tree hereinafter complained of (hereinafter, "subject Tree") which was, and still is, located near the area of the Boathouse around 74th Street near the East Drive, New York, New York, approximately 41 feet directly east, on a direct straight line from light pole fixture #E7211. Affixed to said light pole fixture is police call box #7238. The tree is also located at latitude **north 40.77393** and **longitude west 73.96909**.

16. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK managed, maintained and controlled the subject Tree.

17. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owed a duty to maintain and keep the subject Tree in a reasonably safe condition.

18. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owed a duty to inspect the subject Tree.

19. Upon information and belief, at all times hereinafter mentioned, defendant THE CITY OF NEW YORK owed a duty to prune, fertilize and otherwise care for the subject Tree.

20. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC. managed, maintained and controlled the subject Tree, pursuant to the Contract.

21. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC. owed a duty to maintain and keep the subject Tree in a reasonably safe condition, pursuant to the Contract.

22. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC. owed a duty to inspect the subject Tree, pursuant to the Contract.

23. Upon information and belief, at all times hereinafter mentioned, defendant CENTRAL PARK CONSERVANCY, INC. owed a duty to prune, fertilize and otherwise care for the subject Tree, pursuant to the Contract.

24. On May 31, 2010, at approximately 12:30 P.M., ROBERTA COLORES-MARTINEZ, was lawfully in Central Park and in the vicinity of the subject Tree.

25. Upon information and belief, at the aforementioned time and place, a limb from the subject Tree did snap, break and fall, causing the subject Tree limb to violently strike plaintiff, ROBERTA COLORES-MARTINEZ, on and about the head and body.

26. By reason of said occurrence, plaintiff ROBERTA COLORES-MARTINEZ, suffered serious and devastating injuries, including but not limited to, traumatic brain injuries, resulting in multiple surgical procedures and extensive hospital, medical and rehabilitative care; suffered serious and permanent pain and suffering; suffered permanently disabling injuries with

consequential effects; was and continues to be disabled from her occupation and incapacitated from her ability to enjoy life and to perform normal daily activities.

27. Upon information and belief, at the time of said occurrence and for some time prior thereto, the subject Tree contained dead, rotted, diseased and/or decayed tree limbs and branches, including but not limited to, the subject Tree limb, which rendered the subject Tree unsafe and dangerous.

28. Upon information and belief, for some time prior to the aforesaid occurrence, the subject Tree limb was in danger of falling by reason of its dead, rotted, diseased, decayed and/or otherwise unsafe and dangerous condition.

29. Upon information and belief, the subject Tree limb fell by reason of its dead, rotted, diseased, decayed and/or otherwise unsafe and dangerous condition.

30. Upon information and belief, for some time prior to the aforesaid occurrence, the defendants knew or should have known through the exercise of reasonable care that the subject Tree limb was in a dead, rotted, diseased, decayed and/or otherwise unsafe and dangerous condition and in danger of falling.

31. Upon information and belief, defendants could and should have, in the exercise of reasonable care, cut down and removed the subject Tree limb prior to the aforesaid occurrence, but failed to do so.

32. On May 31, 2010 at approximately 12:30 P.M., plaintiffs were picnicking at the aforesaid location when the aforesaid tree limb snapped and broke causing a large part thereof to break off from said tree and to violently strike said plaintiffs about their heads and bodies as it fell to the ground, thereby causing said plaintiffs to suffer severe, serious and permanent personal injuries. Said tree and said tree limb in particular, was in a rotted, dead, decayed, damaged, diseased, unsafe,

dangerous and/or hazardous condition, which caused and precipitated said tree limb to snap, break and fall and to thereby violently strike said plaintiffs. Said occurrence and resulting injuries to said plaintiffs were caused by reason of the negligence, carelessness and/or recklessness of defendants, THE CITY OF NEW YORK and CENTRAL PARK CONSERVANCY, INC., their agents, employees, contractors and/or servants, in causing, permitting, allowing and suffering said tree limb to snap, break and fall and to violently strike said plaintiffs, in breaching their non-delegable duty to maintain said tree in a reasonably safe condition; in failing to maintain said tree in a reasonably safe condition; in failing to exercise reasonable care in the ownership, management, maintenance, care and repair of said tree including said tree limb; in causing, permitting, allowing and suffering said tree and said tree limb in particular, to become, be and remain in a rotted, decayed, diseased, dead, damaged, unsafe, dangerous and/or hazardous condition; in failing to repair and/or properly repair said tree including said tree limb prior to the aforesaid occurrence; in failing to maintain and and/or properly maintain said tree including said tree limb; in failing to manage and/or properly manage said tree; in failing to inspect and/or properly inspect said tree including said tree limb; in failing to prune and/or properly prune said tree including said tree limb; in failing to control and/or properly control said tree including said tree limb; in failing to remove, cut down and/or properly cut down said tree limb prior to the aforesaid occurrence; in failing to maintain and/or properly maintain the root structure of said tree; in failing to warn and/or properly warn pedestrians of the unsafe, dangerous and hazardous condition of said tree and said tree limb in particular; in having actual and/or constructive notice of the aforesaid unsafe, dangerous and/or hazardous condition and thereafter failing to take proper action to remove and/or otherwise remedy same prior to said occurrence, although they had a reasonable opportunity to do so; in failing to barricade, fence or otherwise close off the aforesaid area of said tree and/or tree limb to prevent pedestrians from

walking or sitting under or in the area of said tree and/or said tree limb; in failing to barricade, fence or otherwise close off the area to prevent pedestrians from walking or sitting under or in the area of said tree and/or said tree limb; in failing to comply with applicable statutes, codes, rules and regulations; in causing and creating said unsafe, dangerous and hazardous condition; and in otherwise being negligent, careless and/or reckless in causing said tree limb to snap, break, fall and violently strike said plaintiffs thereby causing them to be seriously and permanently injured. Further, while it is claimed that New York City Administrative Code §7-201 is not applicable to this claim, if it is judicially determined that said code section is applicable, then, without conceding its application, it is further claimed that the defendants, THE CITY OF NEW YORK and CENTRAL PARK CONSERVANCY, INC., violated said section in that written notice of the aforesaid defective, unsafe, dangerous and/or hazardous condition was actually given to defendants, THE CITY OF NEW YORK and CENTRAL PARK CONSERVANCY, INC., commissioner of transportations or any person or department authorized by the commissioner to receive such notice and there was a failure or neglect within 15 days after the receipt of such notice to repair or remove the defect, danger or hazard complained of or otherwise make the place reasonably safe.

33. Upon information and belief, the limitations on liability set forth in CPLR § 1601 do not apply to this action.

34. Upon information and belief, the limitations on liability set forth in CPLR § 1601 do not apply to this action by reason of one or more of the exemptions set forth in CPLR § 1602, including but not limited to those set forth in subdivisions 2 (iv) and 7 thereof.

35. By reason of the foregoing, plaintiff ROBERTA COLORES-MARTINEZ, has been damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF CARMEN ARIANA CARDOSO**

36. Plaintiffs repeat, reallege and reiterate each and every allegation set forth above with the same force and effect as if fully set forth at length below.

37. Plaintiff, CARMEN ARIANA CARDOSO, [REDACTED],
[REDACTED].

38. On October 21, 2010, plaintiff CARMEN ARIANA CARDOSO appeared for and gave testimony under oath at an oral examination requested and conducted by defendant THE CITY OF NEW YORK, pursuant to General Municipal Law § 50-h.

39. On May 31, 2010, at approximately 12:30 P.M., CARMEN ARIANA CARDOSO, was lawfully in Central Park and in the vicinity of the subject Tree.

40. Upon information and belief, at the aforementioned time and place, a limb from the subject Tree did snap, break and fall, causing the subject Tree limb to violently strike plaintiff, CARMEN ARIANA CARDOSO, on and about the head and body.

41. By reason of said occurrence, plaintiff CARMEN ARIANA CARDOSO, suffered serious and devastating injuries, including but not limited to, contusion of the liver, resulting in hospital care; suffered serious and permanent pain and suffering; suffered permanently disabling injuries with consequential effects; was and continues to be incapacitated from her ability to enjoy life and to perform normal daily activities.

42. By reason of the foregoing, plaintiff CARMEN ARIANA CARDOSO, has been damaged in an amount in excess of the jurisdictional limits of all lower courts in which this action could otherwise have been brought.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ROBERTA COLORES-MARTINEZ**

43. At the time the plaintiff, CARMEN ARIANA CARDOSO, was injured, as heretofore stated, the plaintiff ROBERTA COLORES-MARTINEZ, was within the zone of danger of the occurrence.

44. The plaintiff ROBERTA COLORES-MARTINEZ, witnessed injury to her daughter, the plaintiff CARMEN ARIANA CARDOSO.

45. By reason of the foregoing, the plaintiff ROBERTA COLORES-MARTINEZ, sustained emotional distress.

46. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF CARMEN ARIANA CARDOSO**

47. At the time the plaintiff, ROBERTA COLORES-MARTINEZ, was injured, as heretofore stated, the plaintiff CARMEN ARIANA CARDOSO, was within the zone of danger of the occurrence.

48. The plaintiff CARMEN ARIANA CARDOSO, witnessed injury to her mother, the plaintiff ROBERTA COLORES-MARTINEZ.

49. By reason of the foregoing, the plaintiff CARMEN ARIANA CARDOSO, sustained emotional distress.

50. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiffs demand judgment against the defendants, THE CITY OF NEW YORK and CENTRAL PARK CONSERVANCY, INC., on the First, Second, Third and Fourth Causes of Action, together with the appropriate costs and disbursements of these actions.

Dated: New York, New York
October 22, 2010

Yours, etc.,

SMILEY & SMILEY, LLP

By: _____

GUY I. SMILEY

Attorneys for Plaintiff

Office and P.O. Address

60 East 42nd Street

New York, New York 10165

(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 60747/2018

-----x
ALEXA BONNES and ARIEL BONNES, as Co-
Administrators of the Estate of KEITH P. BONNES,
Deceased,

Date filed: 7/13/2018

**AMENDED
SUMMONS**

Plaintiffs,

-against-

Plaintiffs designate
WESTCHESTER COUNTY as
the place of trial

LIA BREWSTER REALTY, LLC and BBL
CONSTRUCTION SERVICES, LLC, d/b/a BBL
ALBANY GROUP V

The basis of venue is: CPLR
§503(b)

Defendants.

-----x
To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: New York, New York
August 8, 2018

SMILEY & SMILEY, LLP
Attorneys for Plaintiffs

By: 

ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022



Defendants:

LIA BREWSTER REALTY, LLC

c/o Sean O'Connor/SCLA, AIC
Complex Loss Casualty Specialist
Utica National Insurance Group
1000 Woodbury Road 4th Floor
Woodbury, NY 11797

**BBL CONSTRUCTION SERVICES,
LLC, d/b/a BBL ALBANY GROUP V**

c/o Patrick J. Leathem, SCLA
The Travelers Companies, Inc.
One Tower Square MS07B
Hartford, CT 06183



-----X
ALEXA BONNES and ARIEL BONNES, as Co-
Administrators of the Estate of KEITH P. BONNES,
Deceased,

Plaintiffs,

-against-

LIA BREWSTER REALTY, LLC and BBL
CONSTRUCTION SERVICES, LLC d/b/a BBL
ALBANY GROUP V,

Defendants.

**AMENDED
VERIFIED
COMPLAINT**

-----X
Plaintiffs, ALEXA BONNES and ARIEL BONNES, as Co-Administrators of the Estate
of KEITH P. BONNES, Deceased, by their attorneys, SMILEY & SMILEY, LLP, complaining
of the defendants, LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION SERVICES,
LLC d/b/a BBL ALBANY GROUP V, hereinafter allege at all times relevant hereto and upon
information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. On the 4th day of October, 2017, KEITH P. BONNES, died.
2. The decedent left surviving his daughters, ALEXA BONNES and ARIEL
BONNES, the plaintiffs/co-administrators herein.

3. Plaintiff, ALEXA BONNES, resides [REDACTED]

[REDACTED] and Plaintiff, ARIEL BONNES, resides at [REDACTED]
[REDACTED].



4. On the 14th day of March, 2018, Letters of Administration were duly issued and granted to the plaintiffs herein, ALEXA BONNES and ARIEL BONNES, by the Honorable Brandon R. Sall, Surrogate of the County of Westchester, State of New York.

5. Defendant, LIA BREWSTER REALTY, LLC, (hereinafter referred to as “LIA”) was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, with an office in the County of Albany, State of New York, located 1258 Central Avenue, Albany, New York 12205, for acceptance of service.

6. Defendant, BBL CONSTRUCTION SERVICES, LLC, d/b/a BBL ALBANY GROUP V, (hereinafter referred to a “BBL”) was and still is a domestic corporation under and by virtue of the laws of the State of New York, having a place of business located at 302 Washington Avenue Ext., Albany, New York 12203.

7. On October 4, 2017, and for some time prior thereto, the premises located at 899 Route 22, Brewster, New York, (hereinafter referred to as “Premises”), was under construction.

8. On October 4, 2017, defendant, LIA, was the owner of the Premises under construction.

9. On October 4, 2017, BBL was the general contractor of the Premises under construction.

10. On October 4, 2017, the plaintiffs’ decedent, KEITH P. BONNES, was employed as a construction worker by Fregosi Landscaping, Inc., who was subcontracted by the aforesaid defendants to perform construction at the aforesaid Premises.

11. On October 4, 2017, at approximately 10:00 A.M., the plaintiffs’ decedent, KEITH P. BONNES, was rightfully and legally on the aforesaid Premises at the invitation and request and with the knowledge, permission and consent of the defendants.

12. On October 4, 2017, at approximately 10:00 A.M., while the plaintiffs' decedent, KEITH P. BONNES, was performing construction work at the Premises, he fell from a scaffold, causing him to sustain catastrophic and devastating personal injuries which resulted in his death.

13. The aforesaid occurrence was caused by the negligence, carelessness and recklessness of the defendants, their agents, servants and employees.

14. By reason of the foregoing plaintiffs' decedent, KEITH P. BONNES, sustained severe and permanent injuries resulting in his death on October 4, 2017 following conscious pain and suffering.

15. All of the foregoing was caused solely by reason of the negligence of the defendants herein, and plaintiffs' decedent, KEITH P. BONNES in no way contributed to same.

16. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION

17. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "16" inclusive, with the same force and effect as if hereinafter set forth more fully at length.

18. By reason of the severe and serious injuries sustained by plaintiffs' decedent as a result of the aforesaid occurrence, plaintiff's decedent died on October 4, 2017.

19. By reason of the foregoing, funeral, medical and other expenses were incurred, as well as present and future loss of earnings and loss of inheritance.

20. Plaintiffs have suffered pecuniary losses as a result of the foregoing occurrence and wrongful death of the decedent.

21. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "21", inclusive of this complaint.

23. Defendants, their agents, servants and/or employees violated §200 of the Labor Law of the State of New York.

24. By reason of the foregoing, plaintiffs claim damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION

25. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "24".

26. Defendants, their agents, servants and employees violated §240 of the Labor Law of the State of New York.

27. By reason of the foregoing, plaintiffs claim damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION

28. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "27".

29. Defendants, their agents, servants and employees violated §241 of the Labor Law of the State of New York.

30. By reason of the foregoing, plaintiffs claim damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiffs ALEXA BONNES and ARIEL BONNES, as Co-Administrators of the Estate of KEITH BONNES, Deceased, demand judgment against the defendants, LIA BREWSTER REALTY, LLC and BBL CONSTRUCTION SERVICES, LLC d/b/a BBL ALBANY GROUP V, on the First, Second, Third, Fourth and Fifth Causes of Action, together with interest, costs and disbursements of these actions.

Dated: New York, New York
August 8, 2018

Yours, etc.,

SMILEY & SMILEY, LLP

By: 

ANDREW J. SMILEY

Attorneys for Plaintiffs
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022



ATTORNEY'S VERIFICATION

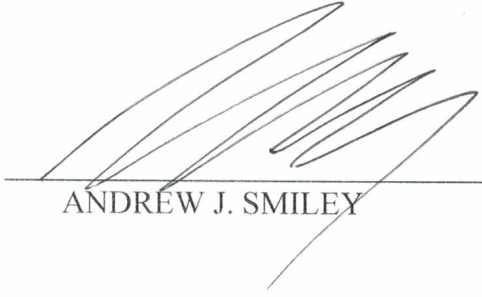
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANDREW J. SMILEY, affirms the following under the penalty of perjury:

That I am the attorney for the plaintiffs in the within action; that I have read the foregoing **AMENDED COMPLAINT** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Affirmant further states that the reason this verification is made by deponent and not by the plaintiffs is that said plaintiff are not within the County of New York where deponent has his office. The source of affirmant's information and belief is reports and documentation in the file.

Dated: New York, New York
August 8, 2018



ANDREW J. SMILEY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
-----, **Index No.:**

Plaintiff,

VERIFIED COMPLAINT

-against-

----- and -----
and GAVIN "DOE", the last name being a fictitious name,

Defendants.

-----X

Plaintiff, by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendants,
hereinafter alleges upon information and belief at all times relevant hereto, as follows:

1. Plaintiff, -----, resides at, , Brooklyn, New York .
2. Defendant, -----, was and still is a foreign corporation authorized to transact
business in the State of New York.
3. Defendant, ----- -----, was and still is a foreign corporation authorized
to transact business in the State of New York.
4. On January 28, 2009, defendant, -----, owned and operated a health club and gym
located at premises -----, Brooklyn, New York
5. Defendant, ----- -----, was and still is a domestic corporation duly
organized and existing under and by virtue of the laws of the State of New York with a principal
place of business located at, , New York, New York 10011.
6. Defendants, ----- ----- its servants, agents and/or employees managed,
operated, supervised, maintained and controlled all of the aforesaid premises and the various

portions thereof, and hired, trained, managed, supervised and controlled all of the fitness trainers and staff at said premises.

7. On January 28, 2009, defendants, GAVIN “DOE” was employed as a personal trainer at ----- located at ----, Brooklyn, New York 11217.

8. On January 28, 2009, at approximately 10:30 A.M., plaintiff, -----, was receiving personal fitness training with defendant, GAVIN “DOE”.

9. On January 28, 2009 at approximately 10:30 A.M., defendant, GAVIN “DOE”, instructed plaintiff to do “hops” onto a bench at which time the plaintiff’s foot got caught under the bench causing plaintiff to fall backwards onto her wrists and to sustain serious and permanent injuries.

10. The defendants, -----, ----- ----- and GAVIN “DOE”, its agents, servants and/or employees, were negligent, careless and reckless in improperly instructing the plaintiff on how to perform physical exercise; in pushing the plaintiff beyond her physical capabilities;; in failing to provide properly trained and qualified fitness trainers; in breaching its duty to employ fitness trainers who were able to perform their responsibilities with reasonable care; in failing to adequately and properly train fitness trainers to carry out their duties and responsibilities; in failing to properly train defendant, GAVIN “DOE”; in subjecting said plaintiff to unnecessary and unusual hazards and risks; in failing to provide the plaintiff with a safe means for her to exercise; in failing to properly spot plaintiff while she was exercising; and in the negligent hiring and training of fitness trainers.

11. As a result of the carelessness and negligence of the defendants as aforesaid, plaintiff, -----, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

12. Plaintiff, -----, in no way contributed to the foregoing, and her injuries were solely due to the negligence and carelessness of the defendants, its agents, servants and/or employees.

13. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against the defendants, ----- and -----
--- ----- and GAVIN "DOE", together with the appropriate costs and disbursements of this action.

Dated: New York, New York
September 3, 2020

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: _____
ANDREW J. SMILEY, ESQ.
122 East 42nd Street
New York, New York 10168
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
MARVIN W. OLBRICH,

Plaintiff,

-against-

ANTHONY MICELI, M.D.,

Defendant.
-----X

INDEX NO.:

VERIFIED COMPLAINT

Plaintiff, by his attorneys, SMILEY & SMILEY, LLP, complaining of the defendant,
hereinafter alleges upon information and belief, and at all times relevant hereto as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff, MARVIN W. OLBRICH, [REDACTED]

[REDACTED]

2. Defendant, ANTHONY MICELI, M.D. was and still is a physician licensed to
practice medicine within the State of New York, and maintains an office for the practice of his
profession located at [REDACTED]

3. Defendant, ANTHONY MICELI, M.D., held himself out to the public and the
plaintiff as being a skillful, knowledgeable and experienced physician with an expertise in the
specialty practice of Ear, Nose & Throat.

6. Defendant, ANTHONY MICELI, M.D., represented that he was competent to
perform and render all the medical care, treatment, services and advice required by the plaintiff,
MARVIN W. OLBRICH.

7. On or about February 19, 2001, the defendant, ANTHONY MICELI, M.D., performed an surgical procedure to remove a bump/lump from the plaintiff's face, at his office located at 271 Mason Avenue, Staten Island, New York.

8. It was the duty of the defendant to care for and treat plaintiff in accordance with good and accepted medical practice and standards.

9. Defendant, ANTHONY MICELI, M.D., was negligent and guilty of medical malpractice in failing and neglecting to render proper and adequate medical care and treatment to the plaintiff, MARVIN W. OLBRICH, in failing and neglecting to properly perform a surgical procedure to remove a bump/lump from the plaintiff's face, near his eyebrow, in accordance with good and acceptable medical practice; in negligently and carelessly failing to surgically remove the entire bump/lump from the plaintiff's face, near his eyebrow; in failing and neglecting to take the appropriate and necessary measures which would have ensured a successful surgical removal of the bump/lump from the plaintiff's face, near his eyebrow; in failing and neglecting to use proper skills in performing the removal of the bump/lump from the plaintiff's face, near his eyebrow; in failing and neglecting to inform the plaintiff of the pathology report stating the diagnosis of "basal cell carcinoma, incompletely excised"; in failing and neglecting to take the appropriate and necessary measures which would have ensured an accurate assessment, diagnosis and proper treatment of plaintiff's condition; in failing to timely refer the plaintiff to an appropriate specialist for treatment of basal cell carcinoma; in failing and neglecting to render timely and accurate medical care and treatment to the plaintiff; in recklessly and carelessly allowing the plaintiff to remain untreated for such a prolonged period of time that in March 2003 he was caused to undergo several surgical procedures, including having layers of skin removed from his nose down to the bone, and reconstructive nose surgery, and plaintiff will be required to undergo additional surgical procedures

in the future in an effort to cure himself; in failing and neglecting to timely determine the true condition from which said plaintiff was suffering; in failing and neglecting to render a timely course of treatment; in failing and neglecting to conduct proper consultations with specialists for treatment of basal cell carcinoma; in failing to employ due, reasonable, proper and appropriate skill and care in the treatment and management of plaintiff; and in rendering care contrary to the accepted standards of medical care and treatment existing in the community and elsewhere.

10. By reason of the foregoing, the plaintiff, MARVIN W. OLBRICH, was severely and permanently injured and was caused to suffer and will continue to suffer great physical and mental pain, and psychological anguish, and was caused to expend and become obligated to expend sums of money for medical services and related expenses which continue into the future.

11. All of the foregoing was caused solely by reason of the recklessness, carelessness and malpractice of the defendant herein, and the plaintiff, MARVIN W. OLBRICH, in no way contributed to same.

12. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION

13. Plaintiff, MARVIN W. OLBRICH, repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "12" inclusive of this complaint.

14. Defendant owed the plaintiff, MARVIN W. OLBRICH, the obligation to properly inform said plaintiff of the pathology results which showed basal cell carcinoma, and his options for consultations and treatments with specialists in the field of basal cell carcinoma.

15. That had the plaintiff, MARVIN W. OLBRICH, been properly informed of the pathology results, neither he nor any other reasonably prudent person in his position would have

chosen not to seek further consultation and treatment in an effort to cure himself of basal cell carcinoma.

16. By reason of the foregoing, the plaintiff, MARVIN W. OLBRICH, was severely and permanently injured.

17. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff demands judgment against the defendant, ANTHONY MICELI, M.D., on the First and Second Causes of Action, together with the appropriate costs and disbursements of these actions.

Dated: New York, New York
April 21, 2003

Yours, etc.

SMILEY & SMILEY, LLP

By:
ANDREW J. SMILEY
Attorneys for Plaintiff
60 East 42nd Street
Suite 950
New York, New York 10165
(212) 986-2022

ATTORNEY'S CERTIFICATION

ANDREW J. SMILEY, an attorney duly admitted to practice before the Courts of this State, certifies the follows:

1. I am the attorney for the plaintiff.
2. I have reviewed the facts of this case and have consulted with a physician duly licensed to practice medicine in the State of New York and reasonably believe that said physician is knowledgeable with respect to the relevant issues involved in this action.
3. Based upon the discussions had with the aforesaid physician, I have concluded on the basis of my review and consultation, that there is a reasonable basis for the commencement of this action.

Dated: New York, New York
April 21, 2003

ANDREW J. SMILEY

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

CHANEL LUGO, as Administrator of the Estate of JOSE LUIS LUGO,
deceased

DEFENDANTS

RIZWAN SABIR

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

SMILEY & SMILEY, LLP

122 East 42nd Street, Suite 3900, New York, New York 10168

(212) 986-2022

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 USC Section 1331

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE?

No ☒

Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 151 MEDICARE ACT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- ☐ 180 STOCKHOLDERS SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☒ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 382 PERSONAL INJURY - MED MALPRACTICE

ACTIONS UNDER STATUTES

- ☐ 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- ☐ 448 AMERICANS WITH DISABILITIES -OTHER
- ☐ 448 EDUCATION

- ☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- ☐ 365 PERSONAL INJURY PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY
- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING

PRISONER PETITIONS

- ☐ 463 ALIEN DETAINEE
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS

- ☐ 550 CIVIL RIGHTS
- ☐ 555 PRISON CONDITION
- ☐ 580 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

FORFEITURE/PENALTY

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
- ☐ 21 USC 881
- ☐ 690 OTHER

LABOR

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL RET INC SECURITY ACT (ERISA)

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- ☐ 422 APPEAL
- ☐ 28 USC 158
- ☐ 423 WITHDRAWAL
- ☐ 28 USC 157

PROPERTY RIGHTS

- ☐ 820 COPYRIGHTS
- ☐ 830 PATENT
- ☐ 840 TRADEMARK

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 884 SSID TITLE XVI
- ☐ 885 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-THIRD PARTY
- ☐ 26 USC 7609

OTHER STATUTES

- ☐ 375 FALSE CLAIMS
- ☐ 378 QUI TAM
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 410 ANTITRUST
- ☐ 430 BANKS & BANKING
- ☐ 450 COMMERCE
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 896 ARBITRATION
- ☐ 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 137
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation (Transferred) ☐ 7 Appeal to District Judge from Magistrate Judge
- ☐ a. all parties represented ☐ b. At least one party is pro se. ☐ 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [X] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [X] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

CHANEL LUGO, 2415 Creston Avenue, Bronx, New York 10468

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

RIZWAN SABIR, 43921 Torncroft Terrace, Ashburn, VA 20148

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21. DO NOT check either box if this is a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN

DATE 4/7/17

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

☒ YES (DATE ADMITTED Mo. March Yr. 1997)

Attorney Bar Code # AJS 2924

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Clear Form

Save

Print

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
JAMES JIMENEZ, as Administrator of the Estate of
HAYDEE SILVA, deceased,

Plaintiff,

-against-

KHALED HASSAN, M.D. and ST. JOSEPH'S
MEDICAL CENTER,

Defendants.
-----X

Index No.:

CERTIFICATE
OF MERIT

JASON D. FRIEDMAN, an attorney duly admitted to practice before the Courts of this State, certifies the following:

1. I am the attorney for the plaintiff, JAMES JIMENEZ, as Administrator of the Estate of HAYDEE SILVA, deceased.

2. I have reviewed the facts of this case and have consulted with a physician duly licensed to practice medicine in the State of New York and reasonably believe that said physician is knowledgeable with respect to the relevant issues involved in this action.

3. Based upon the discussions I had with the aforesaid physician, I have concluded on the basis of my review and consultation, that there is a reasonable basis for the commencement of this action.

Dated: New York, New York
January 16, 2018

JASON D. FRIEDMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civ.:

-----X
CHANEL LUGO, as Administrator of the Estate of JOSE
LUIS LUGO, deceased,

Plaintiff,

-against-

RIZWAN SABIR,

Defendant.
-----X

VERIFIED COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

Plaintiff, by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendant, hereinafter alleges at all times, upon information and belief, at all times hereinafter relevant hereto, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy Five Thousand (\$75,000) Dollars as to the plaintiff, exclusive of interest and costs.

2. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

THE PARTIES

3. Plaintiff, CHANEL LUGO, is a citizen of the State of New York, domiciled and residing at [REDACTED]

4. On the 27th day of September 2016, JOSE LUIS LUGO, died intestate, and thereafter on or about the 13th day of December, 2016, Letters of Administration were duly issued and granted to the plaintiff herein, CHANEL LUGO, by Honorable Nelida Malave-Torres, Judge of the Bronx County Surrogate's Court.

5. Defendant, RIZWAN SABIR, (hereinafter referred to as "SABIR") is a citizen of the State of Virginia, domiciled and residing at [REDACTED]
[REDACTED]

AS AND FOR A FIRST CAUSE OF ACTION

6. That at all times hereinafter mentioned, on September 24, 2016, the plaintiff's decedent, JOSE LUIS LUGO, was a pedestrian lawfully crossing West 52nd Street and Avenue of the Americas, in the County of New York, State of New York.

7. On September 24, 2016, defendant, SABIR, was the operator of a certain motor vehicle bearing Pennsylvania license plate number [REDACTED].

8. That at all times hereinafter mentioned, West 52nd Street and Avenue of the Americas, in the County of New York, State of New York was and still is a public roadway.

9. That on or about the 24th day of September 2016, at approximately 3:57 p.m., while the plaintiff's decedent, JOSE LUIS LUGO, was a pedestrian crossing Avenue of the Americas the aforesaid motor vehicle being operated, managed and controlled by the defendant, SABIR, struck the plaintiff's decedent.

10. That at the time and place aforesaid, the defendant negligently, recklessly and carelessly operated, managed and controlled his motor vehicle so as to strike the plaintiff's decedent causing the plaintiff's decedent's death as hereinafter alleged.

11. The negligence of the defendant consisted of permitting and allowing his motor vehicle to be operated in a negligent, careless and reckless manner; in carelessly driving the motor vehicle in reverse; in striking the plaintiff's decedent while driving in reverse; in carelessly, negligently and recklessly failing and omitting to have said motor vehicle under



reasonable and proper condition and control; in failing and omitting to keep a proper lookout and to be reasonably alert; in failing to look in the direction in which his motor vehicle was proceeding; in driving in reverse and causing and allowing said motor vehicle to come into violent contact with the plaintiff's decedent although due care and caution on the part of the defendant would have and should have avoided the occurrence; in failing to avoid a collision; in carelessly and negligently omitting to provide and/or make prompt and timely use of braking devices, steering mechanisms, horns and signaling devices; in further operating his motor vehicle in reckless disregard for the safety and well-being of another, including the plaintiff's decedent; in carelessly and negligently failing to give signs, signals and/or warnings of approach by horn or otherwise; in negligently failing to observe the safety rules, regulations, statutes, promulgations and ordinances of the State of New York.

12. As a result of the negligence, carelessness and recklessness of the defendant, plaintiff's decedent, JOSE LUIS LUGO, sustained severe and permanent injuries resulting in his death following conscious pain and suffering.

13. That as a result of the negligence, carelessness and recklessness of the defendant, plaintiff's decedent had sustained a serious injury resulting in his death as defined in Section 5102(d) of the Insurance Law of the State of New York.

14. By reason of the foregoing, plaintiff has been damaged in this cause of action for conscious pain and suffering in the amount of TWO MILLION (\$2,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION

15. Plaintiff repeats, reiterates and realleges each and every allegation of the complaint marked "1" through "16" with the same force and effect as if more fully set forth

herein at length.

16. By reason of the severe and serious injuries sustained by plaintiff's decedent, JOSE LUIS LUGO, as a result of the aforesaid occurrence, plaintiff's decedent died on September 27, 2016.

17. By reason of the foregoing, funeral, medical and other expenses were incurred, as well as loss of inheritance.

18. By reason of the foregoing, the plaintiff has suffered pecuniary losses as a result of the foregoing occurrence and wrongful death of the decedent.

19. By reason of the foregoing, plaintiff has been damaged in this cause of action for wrongful death in the amount of TWO MILLION (\$2,000,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendant RIZWAN SABIR on the First Cause of Action in the sum of TWO MILLION (\$2,000,000) DOLLARS and on the Second Cause of Action in the sum of TWO MILLION (\$2,000,000) DOLLARS, together with interest, costs and disbursements of this action.

Dated: New York, New York
April 6, 2017

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10165
(212) 986-2022

By: 
ANDREW J. SMILEY (AJS2924)

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF *New York*) SS:

CHANEL LUGO, being sworn says that I am the plaintiff in the action herein; I have read the annexed **COMPLAINT** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Dated: April 6, 2017

Chanel Lugo

CHANEL LUGO

Sworn to before me this
6th day of April, 2017

Madlyn I. Solivan

NOTARY PUBLIC

MADLYN I. SOLIVAN
Commissioner of Deeds
City of New York - No. 5-1071
Certificate Filed in New York County
Commission Expires 10/17/17

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

MICHAEL SCHMELZER

AMENDED

SUMMONS IN A CIVIL ACTION

V.

HILTON HOTELS CORPORATION and VALEO,
INC.

CASE NUMBER: 05 CV 10307
(Judge Keenan)

TO: (Name and address of Defendant)

HILTON HOTELS CORPORATION
c/o Secretary of State
Albany, New York

VALEO, INC.
W248N 5499 Executive Drive
Sussex, Wisconsin 53089

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

SMILEY & SMILEY, LLP
60 East 42nd Street, Suite 950
New York, New York 10165
(212) 986-2022

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DATE

MAR 01 2006

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL SCHMELZER,

Plaintiff,

-against-

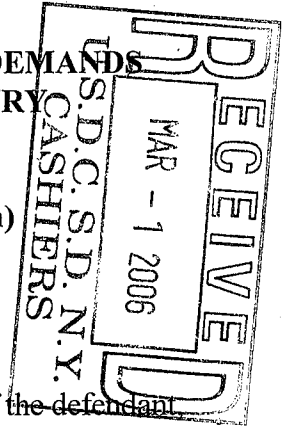
HILTON HOTELS CORPORATION and VALEO, INC.,

Defendants.
-----X

**AMENDED
VERIFIED COMPLAINT**

**PLAINTIFF DEMANDS
TRIAL BY JURY**

**05 CV 10307
(Judge Keenan)**



Plaintiff, by his attorneys, SMILEY & SMILEY, LLP, complaining of the defendant

hereinafter alleges upon information and belief at all times relevant hereto, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars as to the plaintiff, exclusive of interest and costs.

2. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

THE PARTIES

3. Plaintiff, MICHAEL SCHMELZER, is a resident of Frankfurt, Germany, domiciled at [REDACTED].

4. Defendant, HILTON HOTELS CORPORATION, was and still is a foreign corporation authorized to transact business in the State of New York.

5. Defendant, VALEO, INC., was and still is a foreign corporation authorized to transact business in the State of New York.



AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT, HILTON HOTELS CORPORATION

6. On October 7, 2005, defendant, HILTON HOTELS CORPORATION, owned and operated the New York Hilton hotel located at premises 1335 Avenue of the Americas, New York, New York.

7. Defendant, HILTON HOTELS CORPORATION., its servants, agents and/or employees managed, operated, supervised, inspected, maintained, repaired and controlled all of the aforesaid premises and the various portions thereof, including the gym located on the fifth floor in the aforesaid premises, and had possession of said premises.

8. On October 7, 2005, at approximately 8:50 P.M., while the plaintiff, MICHAEL SCHMELZER, was rightfully and lawfully exercising on a body ball/stability ball in the gym located on the fifth floor in the New York Hilton Hotel, located at premises 1335 Avenue of the Americas, New York, New York, the body ball/stability ball he was exercising on suddenly and without warning burst, propelling him to the floor and causing him to sustain serious and permanent personal injuries.

9. The defendant, its agents, servants and/or employees, were negligent in failing to properly manage, inspect, supervise, operate, maintain, repair and control the aforesaid premises, and in particular, the piece of exercise equipment known as a body ball/stability ball which was located in the gym on the fifth floor of the aforesaid premises; in causing and permitting an unsafe and hazardous condition to exist in the aforesaid gym; in providing the plaintiff with a defective body ball/stability ball to exercise upon; in failing to timely and properly inspect the aforementioned body ball/stability ball; in failing to properly maintain or replace the aforementioned body ball/stability ball so that it would not become a hazard and a trap for those persons exercising upon



it; in failing to provide the plaintiff with a safe means of exercising on the aforementioned body ball/stability ball; in causing and permitting the plaintiff to enter into a position of danger; in subjecting said plaintiff to unusual and unnecessary hazards and danger; in failing to employ adequate and sufficient help to properly inspect, maintain, repair or replace the aforementioned defective body ball/stability ball; in creating a trap; in creating a nuisance; in causing and permitting the condition that brought about the fall of the plaintiff in said premises; and in failing to maintain said body ball/stability ball in a reasonable, safe and suitable condition.

10. The defendant had actual and constructive notice of all of the foregoing.

11. As a result of the carelessness and negligence of the defendant as aforesaid, plaintiff, MICHAEL SCHMELZER, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

12. Plaintiff, MICHAEL SCHMELZER, in no way contributed to the foregoing, and his injuries were solely due to the negligence and carelessness of the defendant, its agents, servants and/or employees.

13. By reason of the foregoing, plaintiff, MICHAEL SCHMELZER, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, VALEO, INC.**

14. The defendant, VALEO, INC., placed upon the market, sold or distributed, delivered and supplied for the plaintiff user a body ball/exercise ball which was unreasonably dangerous to its user.

15. At the time of the accident, the plaintiff, MICHAEL SCHMELZER, was using the body ball/exercise ball for the purpose and in the manner in which the body ball/exercise ball was normally intended to be used.

16. On the date of the accident, the body ball/exercise ball was being used by the plaintiff, MICHAEL SCHMELZER, for the purpose and in the manner for which it was designed, manufactured, and sold.

17. The plaintiff, MICHAEL SCHMELZER, as user of the body ball/exercise ball would not, by the exercise of reasonable care, have both discovered the defects in the body ball/exercise ball, perceived its dangers, or otherwise have averted the accident, his injuries or damages.

18. That the design, construction and manufacturing defects in the body ball/exercise ball were substantial factors in causing and bringing about the accident, and the resultant injuries and damages sustained by the plaintiff, MICHAEL SCHMELZER.

19. That the design and manufacture of the body ball/exercise ball by the defendant, VALEO, INC., was the proximate cause of the injuries and damages sustained by the plaintiff.

20. Defendant, VALEO, INC., designed, manufactured and distributed a body ball/exercise ball which was dangerous and unsafe both in design and in manufacture, and was unsafe and unfit for the purposes intended.

21. As a result of the aforesaid the plaintiff, MICHAEL SCHMELZER, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

22. Plaintiff, MICHAEL SCHMELZER, in no way contributed to the foregoing, and his injuries were solely due to the negligence and carelessness of the defendant, its agents, servants and/or employees.

23. Defendant, VALEO, INC., by reason of the foregoing is strictly liable to the plaintiff, MICHAEL SCHMELZER, for the damages and injuries described above pursuant to and under a doctrine of Strict Products Liability.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, VALEO, INC.**

24. The defendant, VALEO, INC., owed a duty of care to all users of the body ball/exercise ball, including the plaintiff, MICHAEL SCHMELZER, to adequately test, design and warn the users of possible dangers of using the body ball/exercise ball.

25. The defendant, VALEO, INC., breached its duty to the plaintiff by failing to adequately test and design and/or manufacture the body ball/exercise ball and/or warn any and all users of danger of the sudden and unanticipated bursting of the body ball/exercise ball while the plaintiff was exercising upon it.

26. The defendant, VALEO, INC., owed a duty to all users of the body ball/exercise ball to test, service, and/or make available only products of a safe nature.

27. Defendant, VALEO, INC., breached its duty to the plaintiff by failing to inspect and/or test the body ball/exercise ball and thereafter making it available to the general public.

28. As a result of the aforesaid the plaintiff, MICHAEL SCHMELZER, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

29. Plaintiff, MICHAEL SCHMELZER, in no way contributed to the foregoing, and his injuries were solely due to the negligence and carelessness of the defendant, its agents, servants and/or employees.

30. The defendant's negligent manufacture, testing, design, and/or failure to warn constituted a tortious act outside the State of New York that caused injury within the State of New York.

31. By reason of the foregoing, plaintiff, MICHAEL SCHMELZER, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

**AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT, VALEO, INC.**

32. Defendant, VALEO, INC., expressly and/or impliedly warranted that the body ball/exercise ball was of merchantable quality, and fit and safe for the purpose for which it was designed, constructed, and sold.

33. Defendant, VALEO, INC., knew or should have known that the body ball/exercise ball would be used and was used in gyms such as the New York Hilton Hotel, and would be used in the manner in which it was used at the time of the accident.

34. By reason of the foregoing defendant, VALEO, INC., breached the warranties as aforesaid, which breaches were the proximate cause of the injuries and damages sustained by the plaintiff, MICHAEL SCHMELZER.

35. By reason of the foregoing, defendant, VALEO, INC., breached both the expressed and implied warranties which they extended to the intended users, of which the plaintiff was one, including the warranty of merchantability, in that this product, a body ball/exercise ball, was not of the fair average quality and standard, and the warranty of fitness for a particular purpose.

36. Defendant, VALEO, INC., violated the express and implied warranties of merchantability and the warranty of fitness for its intended use and purpose.

37. As a result of the aforesaid the plaintiff, MICHAEL SCHMELZER, was seriously and permanently injured, and was caused to suffer and will continue to suffer great physical and mental pain.

38. By reason of the foregoing, plaintiff, MICHAEL SCHMELZER, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendants, HILTON HOTELS CORPORATION and VALEO, INC. on the First, Second, Third, and Fourth Causes of action in the sum of TWO MILLION (\$2,000,000.00) DOLLARS each, together with the costs and disbursements of this action.

Dated: New York, New York
February 21, 2006

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
60 East 42nd Street Suite 950
New York, New York 10165
212-986-2022

By: 

GUY I. SMILEY (GIS/5926)

ATTORNEY'S VERIFICATION

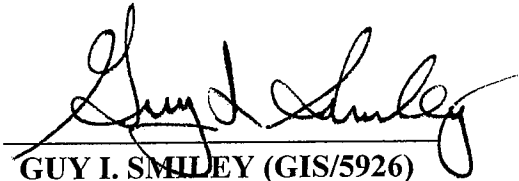
STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

GUY I. SMILEY, affirms the following under the penalty of perjury:

That I am the attorney for the plaintiff in the within action; that he has read the foregoing **AMENDED COMPLAINT** and knows the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Affirmant further states that the reason this verification is made by deponent and not by the plaintiff(s) is that said plaintiff(s) is not within the County of New York where deponent has his office. The source of affirmant's information and belief is reports and documentation in the file.

Dated: New York, New York
February 21, 2006



GUY I. SMILEY (GIS/5926)

SPECIAL THANKS TO ACADEMY SPONSORS



We are physician life care planners, vocational assessment specialists, professional economists, Medicare secondary payer compliance experts, and neuropsychologists.



NAM (National Arbitration and Mediation) is consistently recognized by the legal community for its superb customer service and exceptional panel of arbitrators and mediators.



The attorney's comprehensive resource for structured settlement annuities, consulting and negotiation services.



Provides managed IT services to customers, including proactive support, live monitoring, management and maintenance for their systems.



Attorney operated Medicare, Medicaid, ERISA and other healthcare lien resolution, and MSA allocation firm. Precision resolves liens so that trial attorneys can focus on the task at hand: winning the case.



Your comprehensive plaintiff-loyal settlement planning firm. Negotiation and mediation support, lien resolution and structured settlement plans.



A highly credentialed group of engineers, architects, scientists and fire investigators who assist in disputes and litigation through investigations, reports and testimony.



A fully-integrated case management system designed exclusively for personal injury and mass tort litigation practice.

SPECIAL THANKS TO ACADEMY SPONSORS



Specializing in lawyers' professional liability insurance.



America's leading medical exhibit specialist offering products such as Animations, Interactive Presentations and Timelines, 3-D Models and Exhibit Boards.



JurisPrudent has partnered with Ringler Associates to provide creative attorney fee deferral solutions.



The nation's largest and longest standing settlement planning firm has partnered with JurisPrudent to provide creative attorney fee deferral solutions.



Providing record retrieval services that enable customers to improve productivity, reduce costs and focus more time and energy on their clients.



Deitz Court Reporting, a Lexitas company, has defined a new standard of excellence that you will come to depend upon with each new job we do.



Full-service deposition centers plus interpreters, videographers, video conferencing, an online transcript repository, and more.



Court reporting and videography services since 1989, as well as litigation support, online document management and protected file storage.

SPECIAL THANKS TO ACADEMY SPONSORS



A national Medicare Secondary Payer (MSP) compliance company since 1996.



A medical expert search firm for malpractice, PI and product liability litigation. Record Reform a division of medQuest, will review and retrieve digital medical records.



One of the foremost companies providing Vocational Expert and Life Care Planning Services to law firms throughout the country.



New York and New Jersey's most experienced provider of process service, investigations and court services, investigating more than 5,000 cases every year.



New York's premier full-service process serving agency, providing unparalleled process serving and court services to countless litigation clients.



A litigation support firm working with law firms to industrialize their litigation operations. Reduce your case processing time by 50% at a cost savings of at least 30%.



Hart Settlement Group's focus centers around assisting attorneys as well as individuals and their families with the evaluation design and negotiation of structured settlements.



Professional Investigative Services For Civil and Criminal Cases Before Both State And Federal Courts.

SPECIAL THANKS TO ACADEMY SPONSORS



Partnering with bar associations, law firms and other legal organizations to provide tailored, "CLE-ready" content combined with professional travel assistance and fascinating experiences.

Paul Milano, Financial Advisor

Paul Milano is a Merrill Lynch Financial Advisor and PIA Program Portfolio Advisor.



Investigation firm specializing in trial preparation, including social media & asset searches, plus early rapid-response investigations and all your surveillance needs.



A full service lien resolution company that comes at no cost to law firms and is reducing liens for clients by an average of over 50%.



Providing concise summaries of all torts decisions from the 1st and 2nd Departments and Court of Appeal every week by email, their website, or the NYTW ANYWHERE app.

R&O Rockland · & · Orange · Reporting

Offering full-service court reporting to enhance the outcome of any case, including EBTs, depositions, hearings, arbitration and litigation support.

Litigation Video Services

Providing a complete range of video services from discovery to trial. Assemble documents, video, photos and more into a presentation at trial.



Providing busy lawyers with fast, easy, professional, court appearance and deposition coverage services throughout NY, NJ, and PA for over a decade.

SPECIAL THANKS TO ACADEMY SPONSORS



As a provider of payroll, human resource solutions, and tax service, Reliable Payroll offers a wide range of services.



The nation's largest online deposition bank, exclusively for plaintiff lawyers.



Providing physician assistance in reducing, organizing and reviewing digital files