

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

*HOW TO SUCCESSFULLY LITIGATE A  
PERSONAL INJURY CASE SERIES –  
PART 3: YOUR ADVERSARY,  
THE PRELIMINARY CONFERENCE  
& INITIAL DISCOVERY*

Live Streamed – March 3, 2021

Materials By:  
Andrew Smiley, Esq.



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**Andrew J. Smiley, Esq.**  
**Smiley & Smiley, LLP**  
**122 East 42<sup>nd</sup> Street, NYC 10168**  
**212.986.2022**  
**asmiley@smileylaw.com**  
**www.smileylaw.com**  
**www.thementoresq.com**

### ***CURRICULUM VITAE***

#### **Education:**

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)  
Moot Court Honor Society - Competitor - National Appellate Trademark Competition  
Moot Court Honor Society – Coach, National Trial Team – Regional Champions  
CALI Excellence For The Future Award - Advanced Legal Research  
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

#### **Professional:**

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation.

## **Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 2**

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

### Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District & Southern District of New York
- United State District Court of Vermont.

### Organizations/Affiliations:

- New York State Academy of Trial Lawyers
  - Immediate Past President (May 2018- May 2019)
  - President (May 2017 – May 2018)
  - President-Elect – (April 2016- May 2017)
  - Vice President – 1st Dept. (July 2013-May 2016)
  - Executive Committee ( May 2019 – present)
  - Board of Directors (2013- present)
  - Judicial Screening Committee (2013- present)
- New York City Trial Lawyers Alliance
  - Chairman of Board of Governors (July 2017 – July 2019)
  - President (July 2015 – July 2017)
  - Vice President (June 2013 – July 2015)
  - Treasurer (June 2011 – June 2013)
  - Secretary (June 2009- June 2011)
  - Board of Directors (2000-present)
- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
  - Brooklyn Bar Association
    - Medical Malpractice Committee
    - Supreme Courts Committee
- The American Association for Justice
- American Bar Association
- Brooklyn Law School Alumni Association
- National Order of Barristers
- Friars Club - member



**Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 3**

Continuing Legal Education (CLE) Presentations:

*How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

*Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

*Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

*Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

*Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

*Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

*Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

*Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

*Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

*Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

*Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

*Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 4**

Continuing Legal Education (CLE) Presentations Continued:

*Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

*Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

*Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

*Powerful Opening Statements*, Clear Law Institute, January 13, 2015

*The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

*Killer Cross Examination Strategies*, Lawline.com, November 20, 2014

*Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014

*Personal Trainer Negligence Update*, Lawline.com, October 14, 2014

*Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

*Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014

*Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013

*Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013

*Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012

*“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012

*Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012

*The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

*Personal Trainer Negligence*, Lawline.com, March 22, 2011

*Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 5**

Continuing Legal Education (CLE) Presentations Continued:

*Trial Techniques: The Tricks of the Trade*, Lawline.com, February 16, 2011

*Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011

*Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010

*Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010

*Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances – Legal Commentary:

*Fox News Channel*

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
  - America's News Room
  - Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

*CNN -Anderson Cooper 360*

*ET – Entertainment Tonight*

*Bloomberg TV*

*Headline News*

*Tru TV*

*Court TV*

*The Morning Show with Mike and Juliet*

Interests, Hobbies:

Tennis, Porsche Club, Sim Racing, Yoga, Cooking

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.: 12345/2021

-----X  
JENNIE DOE,

Plaintiff,

-against-

STREB, INC.,

Defendant.  
-----X

**STIPULATION**

*IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED*, by and between the attorneys for the respective parties that the **SIXTH AFFIRMATIVE DEFENSE** contained in the Answer of the defendant, STREB, INC., alleging that the Court lacks personal jurisdiction in this action, is hereby withdrawn with prejudice.

Dated: New York, New York  
January 7, 2019

SMILEY & SMILEY, LLP

LAW FIRM, LLP

By: \_\_\_\_\_

ANDREW J. SMILEY

Attorneys for Plaintiff  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

By: \_\_\_\_\_

Attorneys for Defendant  
1 Broadway, Suite 1234  
New York, New York 10038  
Tel.: (212) 000-0000

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

Index No.: 12345/2021

-----X  
JAMES DOE,

Plaintiff,

**STIPULATION**

-against-

THE CITY OF NEW YORK, CITY OF NEW YORK  
DEPARTMENT OF PARKS AND RECREATION and  
RIVERSIDE PARK CONSERVANCY, INC.,

Defendants.  
-----X

*IT IS HEREBY STIPULATED AND AGREED*, by and between the attorneys for the respective parties that the **TENTH** AFFIRMATIVE DEFENSE contained in the Answer of the defendants, THE CITY OF NEW YORK, CITY OF NEW YORK DEPARTMENT OF PARKS AND RECREATION and RIVERSIDE PARK CONSERVANCY, INC., alleging that the plaintiff, JAMES DOE, did not appear for an oral examination pursuant to Section 50h of the General Municipal Law, before the commencement of this action, is hereby withdrawn with prejudice.

Dated: New York, New York  
February 26, 2021

SMILEY & SMILEY, LLP

JAMES E. JOHNSON



By: \_\_\_\_\_

ANDREW J. SMILEY

Attorneys for Plaintiff,  
JAMES DOE  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

By: \_\_\_\_\_

Corporation Counsel  
Attorneys for Defendants,  
THE CITY OF NEW YORK, CITY OF NEW  
YORK DEPARTMENT OF PARKS AND  
RECREATION and RIVERSIDE PARK  
CONSERVANCY, INC.  
100 Church Street  
New York, New York 10007  
Tel.: (212) 356-2725

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

X

\_\_\_\_\_  
Plaintiff(s),

- VS -

\_\_\_\_\_  
Defendant(s).

X

**REQUEST FOR  
PRELIMINARY CONFERENCE**

Index No.: \_\_\_\_\_

The undersigned hereby requests a preliminary conference.

The names, address and telephone numbers of all attorneys/pro se litigants appearing in the action are as follows:

☐ Attorney for Plaintiff(s)

☐ Plaintiff(s), Pro se

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(     )     -     \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(     )     -     \_\_\_\_\_

☐ Attorney for Defendant(s)

☐ Defendant(s), Pro se

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(     )     -     \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(     )     -     \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

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





# REQUEST FOR JUDICIAL INTERVENTION

UCS-840  
(rev. 07/29/2019)

\_\_\_\_\_ COURT, COUNTY OF \_\_\_\_\_

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

## For Court Use Only:

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.		IAS Entry Date
-against-	Plaintiff(s)/Petitioner(s)	Judge Assigned
	Defendant(s)/Respondent(s)	RJI Filed Date

## NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL	MATRIMONIAL
<input type="checkbox"/> Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.) <input type="checkbox"/> Contract <input type="checkbox"/> Insurance (where insurance company is a party, except arbitration) <input type="checkbox"/> UCC (includes sales and negotiable instruments) <input type="checkbox"/> Other Commercial (specify): _____ <b>NOTE:</b> For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the <b>COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)</b> .	<input type="checkbox"/> Contested <b>NOTE:</b> If there are children under the age of 18, complete and attach the <b>MATRIMONIAL RJI ADDENDUM (UCS-840M)</b> . For Uncontested Matrimonial actions, use the Uncontested Divorce RJI ( <b>UD-13</b> ).
<b>REAL PROPERTY</b> Specify how many properties the application includes: _____ <input type="checkbox"/> Condemnation <input type="checkbox"/> Mortgage Foreclosure (specify): <input type="checkbox"/> Residential <input type="checkbox"/> Commercial Property Address: _____ <b>NOTE:</b> For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the <b>FORECLOSURE RJI ADDENDUM (UCS-840F)</b> . <input type="checkbox"/> Tax Certiorari <input type="checkbox"/> Tax Foreclosure <input type="checkbox"/> Other Real Property (specify): _____	<b>TORTS</b> <input type="checkbox"/> Asbestos <input type="checkbox"/> Child Victims Act <input type="checkbox"/> Environmental (specify): _____ <input type="checkbox"/> Medical, Dental or Podiatric Malpractice <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Products Liability (specify): _____ <input type="checkbox"/> Other Negligence (specify): _____ <input type="checkbox"/> Other Professional Malpractice (specify): _____ <input type="checkbox"/> Other Tort (specify): _____
<b>OTHER MATTERS</b> <input type="checkbox"/> Certificate of Incorporation/Dissolution [see <b>NOTE</b> in <b>COMMERCIAL</b> section] <input type="checkbox"/> Emergency Medical Treatment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Local Court Appeal <input type="checkbox"/> Mechanic's Lien <input type="checkbox"/> Name Change <input type="checkbox"/> Pistol Permit Revocation Hearing <input type="checkbox"/> Sale or Finance of Religious/Not-for-Profit Property <input type="checkbox"/> Other (specify): _____	<b>SPECIAL PROCEEDINGS</b> <input type="checkbox"/> CPLR Article 75 (Arbitration) [see <b>NOTE</b> in <b>COMMERCIAL</b> section] <input type="checkbox"/> CPLR Article 78 (Body or Officer) <input type="checkbox"/> Election Law <input type="checkbox"/> Extreme Risk Protection Order <input type="checkbox"/> MHL Article 9.60 (Kendra's Law) <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Initial) <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Review) <input type="checkbox"/> MHL Article 81 (Guardianship) <input type="checkbox"/> Other Mental Hygiene (specify): _____ <input type="checkbox"/> Other Special Proceeding (specify): _____

## STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

	YES	NO
Has a summons and complaint or summons with notice been filed?	<input type="checkbox"/>	<input type="checkbox"/> If yes, date filed: ____/____/____
Has a summons and complaint or summons with notice been served?	<input type="checkbox"/>	<input type="checkbox"/> If yes, date served: ____/____/____
Is this action/proceeding being filed post-judgment?	<input type="checkbox"/>	<input type="checkbox"/> If yes, judgment date: ____/____/____

## NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

<input type="checkbox"/> Infant's Compromise	
<input type="checkbox"/> Extreme Risk Protection Order Application	
<input type="checkbox"/> Note of Issue/Certificate of Readiness	
<input type="checkbox"/> Notice of Medical, Dental or Podiatric Malpractice	Date Issue Joined: ____/____/____
<input type="checkbox"/> Notice of Motion	Relief Requested: _____ Return Date: ____/____/____
<input type="checkbox"/> Notice of Petition	Relief Requested: _____ Return Date: ____/____/____
<input type="checkbox"/> Order to Show Cause	Relief Requested: _____ Return Date: ____/____/____
<input type="checkbox"/> Other Ex Parte Application	Relief Requested: _____
<input type="checkbox"/> Poor Person Application	
<input type="checkbox"/> Request for Preliminary Conference	
<input type="checkbox"/> Residential Mortgage Foreclosure Settlement Conference	
<input type="checkbox"/> Writ of Habeas Corpus	
<input type="checkbox"/> Other (specify): _____	



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

Index No.: 1 [REDACTED] 1

-----X  
[REDACTED], individually and as parent  
and natural guardian of L.E., an infant,

Plaintiff,

-against-

**NOTICE OF  
DISCOVERY  
AND INSPECTION**

[REDACTED]  
[REDACTED]  
Defendants.

-----X  
**PLEASE TAKE NOTICE**, that pursuant to C.P.L.R. 3120(a) and the Rules of the Appellate Division, the plaintiff, by her attorneys, SMILEY & SMILEY, LLP, herein demands production of the following for inspection and copying:

1. Produce and provide copies of any and all photographs, slides, videotapes, or motion pictures in defendant's custody and control depicting:

(a) The scene of the accident and of the infant plaintiff. If no such photographs are in the possession, custody of any parties you represent in this action, state so in the sworn reply to this demand.

(b) The infant plaintiff taken prior to and during the trial of the above-captioned litigation. This is a continuous demand.

(c) Any damage to the defendant's vehicle caused by the accident.

2. Surveillance tapes and photographs of the infant plaintiff. This is a continuing demand.

3. The names and current address of all persons that witnessed the occurrence alleged in the complaint.

4. Statements of the infant plaintiff whether oral, written, taped, stenographic, signed or photographic, in the custody or possession of the defendants.

5. Accident reports of the defendants made in the regular course of business.

6. Invoices and/or bills for any repairs that were made to the defendant's vehicle following the accident.

7. Copy of defendant, [REDACTED], drivers license.

**PLEASE TAKE FURTHER NOTICE**, that these items are to be produced within twenty (20) days of receipt of the Notice at the offices of SMILEY & SMILEY, LLP, attorneys for the plaintiff, 122 East 42<sup>nd</sup> Street, Suite 3900, New York, New York 10168.

**PLEASE TAKE FURTHER NOTICE**, that the party served may submit copies of all documents requested, on or before the return date of this Notice in lieu of personal appearance.


**PLEASE TAKE FURTHER NOTICE**, that upon failure to comply with this demand, a motion will be made pursuant to C.P.L.R. 3126.

**PLEASE TAKE FURTHER NOTICE**, that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.

Dated: New York, New York  
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By:   
\_\_\_\_\_  
ANDREW J. SMILEY  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.  
Attorney(s) for the Defendants

██  
One Metrotech Center, 8<sup>th</sup> Fl  
Brooklyn, NY, 11201  
(212) 857-8230

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

Index No.: 1 [REDACTED]

-----X  
[REDACTED], individually and as parent  
and natural guardian of L.E., an infant,

Plaintiff,

**DEMAND  
FOR EXPERTS**

-against-

[REDACTED]  
[REDACTED]

Defendants.

-----X  
**PLEASE TAKE NOTICE**, that the plaintiff, by her attorneys, SMILEY & SMILEY, LLP, pursuant to C.P.L.R. 3101(d), demands that the defendants provide the following information:

1. Identify each person with whom the defendants expect to call as an expert witness at trial;
2. Disclose in reasonable detail the subject matter on which expert is expected to testify;
3. State the substance of the facts and opinions on which expert is expected to testify;
4. State the qualifications of each expert; and
5. A summary of the grounds upon which expert's opinion is based.

Defendants are required to produce the demanded information at the offices of SMILEY & SMILEY, LLP, 122 East 42<sup>nd</sup> Street, Suite 3900, New York, New York 10168 within twenty (20) days of this Demand.




**PLEASE TAKE FURTHER NOTICE**, that the party served may submit copies of all documents requested, on or before the return date of this Notice in lieu of personal appearance.

**PLEASE TAKE FURTHER NOTICE**, that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.


Dated: New York, New York  
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By:   
ANDREW J. SMILEY  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.  
Attorney(s) for the Defendants

  
One Metrotech Center, 8<sup>th</sup> Fl  
Brooklyn, NY, 11201  
(212) 857-8230

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

Index No.: 1 [REDACTED]

-----X  
[REDACTED], individually and as parent  
and natural guardian of L.E., an infant,

Plaintiff,

-against-

**DEMAND FOR  
PRODUCTION OF  
INSURANCE  
AGREEMENTS**

[REDACTED]  
[REDACTED],

Defendants.

-----X


**PLEASE TAKE NOTICE**, that demand is hereby made upon you, pursuant to C.P.L.R. 3101(d) to produce and permit plaintiff or the undersigned attorneys of the plaintiff, to inspect and copy the contents of (a) each and every primary, contributing and excess insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment, and (b) each and every insurance agreement in which the insurer is obligated to defend this action.

**PLEASE TAKE FURTHER NOTICE**, that said insurance agreements are to be produced at the offices of SMILEY & SMILEY, LLP, 122 East 42<sup>nd</sup> Street, Suite 3900, New York, New York 10168 within twenty (20) days of receipt of this demand at which time they will be physically inspected, copied, or mechanically reproduced and returned.

Dated: New York, New York  
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By:  \_\_\_\_\_  
ANDREW SMILEY  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

TO: BAKER, MCEVOY & MOSKOVITS, P.C.  
Attorney(s) for the Defendants

  
One Metrotech Center, 8<sup>th</sup> Fl  
Brooklyn, NY, 11201  
(212) 857-8230

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

Index No.: 1 [REDACTED]

-----X

[REDACTED], individually and as  
parent and natural guardian of L.E., an infant,

Plaintiff,

-against-

[REDACTED]  
[REDACTED]

Defendants.

-----X

**DEMAND A BILL OF  
PARTICULARS TO  
DEFENDANT'S  
AFFIRMATIVE  
DEFENSE OF  
CULPABLE  
CONDUCT OF  
PLAINTIFF**

The plaintiff, by her attorneys, SMILEY & SMILEY, LLP, hereby demands that the defendants serve a response to the plaintiff's Demand for a Bill of Particulars within twenty (20) days of the service of this demand.

1. The time and date of infant plaintiff's alleged culpable conduct.
2. The location of infant plaintiff's alleged culpable conduct.
3. A general statement of each and every act and omission constituting infant plaintiff's alleged culpable conduct.

Dated: New York, New York  
February 11, 2021

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By: 

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

TO: BAKER, MCEVOY & MOSKOVITS, P.C.  
Attorney(s) for the Defendants

[REDACTED]  
One Metrotech Center, 8<sup>th</sup> Fl  
Brooklyn, NY, 11201  
(212) 857-8230

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK  
INDIVIDUAL ASSIGNMENT PART [OR JUSTICE] \_\_\_\_\_

Index No. \_\_\_\_\_

DCM Track \_\_\_\_\_

*Plaintiff(s),*

- against -

*Defendant(s).*

**PRELIMINARY CONFERENCE  
ORDER**

(202.8, 202.12 and 202.19  
of the Uniform Rules)

**APPEARANCES**

Plaintiff(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is hereby ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by \_\_\_\_\_ on or before \_\_\_\_\_.
- (2) **Bill of Particulars:**  
(a) Demand for a bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_.  
(b) Bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_.  
(c) A supplemental bill of particulars shall be served by \_\_\_\_\_ as to Items \_\_\_\_\_ on or before \_\_\_\_\_.
- (3) **Medical Reports and Authorizations:**  
Shall be served as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (4) **Physical Examination:**  
(a) Examination of \_\_\_\_\_ shall be held \_\_\_\_\_  
\_\_\_\_\_  
(b) A copy of the physician's report shall be furnished to plaintiff within \_\_\_\_\_ days of the examination.
- (5) **Depositions:** Depositions of ☐ Plaintiff(s) ☐ Defendant(s) ☐ All Parties shall be held \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (6) **Other Disclosure:**  
(a) All parties, on or before \_\_\_\_\_, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.  
(b) Authorization for plaintiff(s)' employment records for the period \_\_\_\_\_ shall be furnished on or before \_\_\_\_\_.  
(c) Demand for discovery and inspection shall be served by \_\_\_\_\_ on or before \_\_\_\_\_. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before \_\_\_\_\_.  
(d) Other [interrogatories, etc.] \_\_\_\_\_  
\_\_\_\_\_



**(7) End Date for All Disclosure:**

(8) **Impleader:** Shall be completed on or before \_\_\_\_\_.

(9) **Compliance Conference:** Shall be held on \_\_\_\_\_.

(10) **Motions:** Any dispositive motion(s) shall be made on or before \_\_\_\_\_.

(11) **Note of Issue:** \_\_\_\_\_ shall file a note of issue/certificate of readiness on or before \_\_\_\_\_. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

**FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.**

**SO ORDERED:**

**Dated:**

J.S.C.

## ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

**Dated:**

**SO ORDERED:**

TS-13a (REV 4/15/02)

J.S.C.

## PRELIMINARY CONFERENCE ORDER

**X. ADDITIONAL DIRECTIVES:**

## X. ADDITIONAL DIRECTIVES

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

-----X

\_\_\_\_\_  
\_\_\_\_\_

**Plaintiff(s)**

**-against-**

- (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_  
(4) \_\_\_\_\_  
(5) \_\_\_\_\_

**Defendant(s)**

-----X

**BREIF CASE DESCRIPTION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPEARANCES:**

Plaintiff:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

**Hon.** \_\_\_\_\_

**IAS Part** \_\_\_\_\_

**Index No.:** \_\_\_\_\_

**DCM Track:** \_\_\_\_\_

**Preliminary Conference  
Stipulation and Order  
For Medical, Dental and  
Podiatric Malpractice  
Actions**

**Appearance No:** \_\_\_\_\_

**RJI Date:** \_\_\_\_\_

\*not for service purposes

NAME OF CASE: \_\_\_\_\_ INDEX NO. \_\_\_\_\_ PAGE 2

Defendant 1:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

\*not for service purposes

Defendant 2:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

\*not for service purposes

Defendant 3:	
Firm:	
By:	
Phone/Fax:*	
Email:*	

\*not for service purposes

**If there are Defendants #4 or #5 or others in this case, please insert pages for additional parties.**

**THIS ACTION** having come on for a Preliminary Conference pursuant to Section 202.56 of the Uniform Rules of the New York State Trial Courts in order to establish a schedule for the completion of disclosure and other related matters. The parties stipulate and it is hereby:

**ORDERED** that the action is entitles to a preference pursuant to CPLR 3403(A)(5), and it is further

**ORDERED** *that there is to be timely compliance with each of the items below within the time set forth unless the time is extended by a “so-ordered” OR court-approved written stipulation.*

**I. INSURANCE INFORMATION**

Insurance coverage information shall be provided in writing with respect to each defendant for all applicable periods within 30 (thirty) days as follows [check applicable spaces]

- ☐ Primary Coverage, including insurance carrier, policy number(s) and policy coverage periods;
- ☐ Excess coverage, including insurance carrier, policy number(s) and policy coverage periods; and
- ☐ Declaration sheets.

**II. BILL OF PARTICULARS**

(a) A further Verified Bill of Particulars shall be served upon each defendant within 2 (twenty) days as to the following items: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(b) Defendant(s) shall serve upon plaintiff a Verified Bill of Particulars as to the affirmative defenses and/or counterclaims in the Answer (when demanded) within 20 (twenty) days.

**III. MEDICAL RECORDS AND AUTHORIZATIONS**

(a) HIPAA-compliant medical authorizations, *if not already provided with the Bill of Particulars*, shall be furnished to defendant(s) within 20 (twenty) days as to the following healthcare providers; \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(b) Following plaintiff's deposition, plaintiff shall provide HIPAA-compliant authorizations for appropriate records within 10 (ten) days of receipt of a written request from the defendant(s).

(c) Medical records shall be furnished by the defendant(s) within 30 (thirty) days as follows [check where applicable, and identify specifically]:

1. ☐ Office records, including reports and correspondence \_\_\_\_\_
2. ☐ Hospital chart. \_\_\_\_\_
3. ☐ Billing records. \_\_\_\_\_
4. ☐ Autopsy Report. \_\_\_\_\_
5. ☐ Radiology film/report. \_\_\_\_\_
6. ☐ Curriculum vitae of defendant(s) \_\_\_\_\_
7. ☐ Hospital rules and regulations. \_\_\_\_\_
8. ☐ Other. \_\_\_\_\_

\_\_\_\_\_

- (d) If a medical record to be supplied by a defendant is not available, within 30 (thirty) days, an affidavit shall be supplied by defendant, or by a records custodian with personal knowledge, which shall set forth a statement concerning the customary record-keeping practices of the physician/hospital, and the date, nature and location of the search conducted, including all efforts undertaken to locate such records.
- (e) If the records described in paragraph (d) above are subsequently located, they shall be promptly supplied to all parties. Any party who fails to produce such items more than 30 (thirty) days after they are located but, in any event, no later than 30 (thirty) days prior shall be precluded from introducing the items into evidence unless good cause is demonstrated.

#### IV. DEPOSITIONS

- \* All dates listed below are dates certain and may ***NOT*** be adjourned unless the  
- ***OR*** court-approved written stipulation.
- \* Inability to obtain medical records prior to the deposition dates shall ***NOT*** be cause for adjournment of the deposition. If the records obtained reveal the need for additional information, a further limited deposition may be held by agreement of the parties or by Order of the Court.

**(a) Dates:**

Plaintiff(s) on or before \_\_\_\_\_

Defendant \_\_\_\_\_ on or before \_\_\_\_\_

Defendant \_\_\_\_\_ on or before \_\_\_\_\_

Defendant \_\_\_\_\_ on or before \_\_\_\_\_

Defendant \_\_\_\_\_ on or before \_\_\_\_\_

Defendant \_\_\_\_\_ on or before \_\_\_\_\_

**THE DEPOSITION OF EACH DEFENDANT SHALL BE CONDUCTED ON THE DATE SET FORTH ABOVE EVEN THOUGH AN EARLIER SCHEDULED DEPOSITION OR ANOTHER DEFENDANT WAS NOT CONDUCTED.**



**(b) Deposition of Institutional Defendant(s)**

institutional defendant(s) a demand for the identification of no more than 5 (five) health care providers who are referred to, or made entries, in the medical records. Within 20 (twenty) days of service of the demand, the institutional defendant(s) shall provide the full name and employment status of each of these individuals, and, if not under the institution(s) control, the last known address of each individual. Within 5 (five) business days thereafter, plaintiff shall designate the

produce said witness. Plaintiff shall then designate additional witnesses under the defendant(s) control for the deposition within 5 (five) business days after said EBT. If the institutional defendant(s) do not voluntarily produce the additional requested witnesses within 20 (twenty) days of  
to statue.

All of these individuals shall be deposed on or before \_\_\_\_\_.

**(c) Non-Party Witness Depositions:**

Plaintiff is to advise defendant(s) within 30 (thirty) days of this Preliminary Conference Order whether the following non-party witnesses will be produced for deposition voluntarily, or whether  
last known  
addresses within 30 (thirty) days of this Stipulation and Order.

Name of Non- Party Witness: \_\_\_\_\_

Name of Non- Party Witness: \_\_\_\_\_

**(d) Time and Place:**

\_\_\_\_\_ s) shall be held at \_\_\_\_\_,  
commencing at \_\_\_\_\_ (a.m.) (p.m.)

deposition];

**(e) Objections:**

- \* ALL questions asked at any deposition must be answered UNLESS they (a) infringe upon privilege, (b) bear SOLELY on the negligence of a co-defendant and NOT in any way on the potential negligence of the deponent, or (c) are palpably irrelevant.
- \* If a party makes an objection as to *form*, the objector shall immediately and succinctly indicate the nature of the defect so as to permit correction. In any event, the witness shall answer the question.
- \* Depositions shall not be interrupted for an attorney-deponent conference.

\* Counsel for the deponent shall NOT engage in coaching during the deposition and shall

## **V. PHYSICAL EXAMINATIONS**

Defendant(s) who wishes to conduct a physical or mental examination pursuant to CPLR 3121 shall designate in writing an examining physician or other specialist within 30 (thirty) days of

before the filing of the Note of Issue.

Specialty: \_\_\_\_\_

Defendant(s) shall serve upon all parties written reports of any examining physician within 60 (sixty) days after the examination, and at least 30 (thirty) days before trial. Pursuant to CPLR 3121, plaintiff shall provide defendant(s) with a written report by any non-treating examining physician within 60 (sixty) days after an examination, and at least 60 (sixty) days before trial.

## **VI. OTHER DISCLOSURE \***

**(a) Witnesses:** Parties shall exchange names and addresses of all FACT WITNESSES concerning liability and/or damages (other than expert witnesses) no later than 60 (sixty) days before trial. Parties shall also exchange adverse party statements within that same period.

**(b) Photographs and Videotapes:** Parties shall exchange all photographs and/or videotapes within 60 (sixty) days after their creation and/or availability but not less than 30 (thirty) days before trial absent a showing of good cause.

**(c) Employment:**

(including W-malpractice and continuing to date, shall be provided within 30 (thirty) days.

**(d) Collateral Sources:** Plaintiff shall provide authorizations for the following collateral source providers within 30 (thirty) days: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(e) Discovery Notices:** Responses to the following outstanding Discovery and Inspection Notices shall be furnished within 30 (thirty) days: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*This disclosure demand shall be considered ongoing and continuous. If requested items subsequently become available, they are to be supplied immediately upon receipt of the same to all parties to the action.

## VII. EXPERT EXCHANGE

Plaintiff shall serve a CPLR 3101(D) expert disclosure no later than 60 (sixty) days before trial.

Defendant(s) shall serve a CPLR 3101(d) expert disclosure no later than 45 (forty-five) days before trial.

## VIII. DEATH ACTIONS

In wrongful death actions, plaintiff shall provide the following when available within 30 (thirty) days. If no currently available, then within 30 (thirty) days after receipt of the document: death certificate, letters of administration or letters testamentary, marriage certificate, and authorization for the autopsy reports.

## IX. ADDITIONAL DIRECTIVES

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

**X. NOTE OF ISSUE:** The Note of Issue and certificate of Readiness shall be filed on or before

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**\*\*\*REQUEST FOR REFERRAL TO ADR: YES \_\_\_\_ NO \_\_\_\_ (Parties seeking court-referred ADR shall check the box and await further instruction from the court)\*\*\***

## XI. SUMMARY JUDGEMENT AND/OR OTHER DISPOSITIVE MOTIONS

Motions for Summary Judgement and/or other dispositive motions shall be made no later than **90 (ninety) days** from the filing of the Note of Issue, unless the Court directs otherwise.

**XII. FURTHER DIRECTIVES: It is**

**ORDERED** that failure to comply with the terms of this STIPULATION AND ORDER may result in sanctions as authorized by CPLR 3126, and it is further

**ORDERED** that a compliance conference shall be held on \_\_\_\_\_ at \_\_\_\_\_ (AM)(PM), and it is further

**ORDERED** that **ALL *prior* discovery** orders of this court be brought to any and all subsequent conference.

**SO STIPULATED**

Plaintiff: \_\_\_\_\_

Defendant #1 \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Defendant #2: \_\_\_\_\_

Defendant #3 \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Defendant #4: \_\_\_\_\_

Defendant #5 \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**SO ORDERED:**

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

\_\_\_\_\_  
**JUSTICE OF THE SUPREME COURT**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----		:
		:
		:
_____		:
	Plaintiff(s),	:
-against-		:
_____		:
	Defendant(s).	:
-----		:

\_\_\_ CIV. NO. \_\_\_\_\_

**[Proposed] Civil Case  
Management Plan and  
Scheduling Order**

The parties submit this [Proposed] Civil Case Management Plan and Order pursuant to Federal Rule of Civil Procedure 26(f):

1. **Meet and Confer:** The parties met and conferred pursuant to Fed. R. Civ. P. 16(c) and 26(f) on \_\_\_\_\_.
2. **Alternative Dispute Resolution / Settlement:**
  - a. Settlement discussions have \_\_\_ / have not \_\_\_ taken place.
  - b. The parties have discussed an informal exchange of information in aid of early settlement and have agreed to exchange the following:
  - c. The parties have discussed use of alternative dispute resolution mechanisms for use in this case, such as (i) a settlement conference before the Magistrate Judge, (ii) participation in the District's Mediation Program, and (ii) retention of a private mediator. The parties propose the following alternative dispute mechanism for this case:

d. The parties recommend that the alternative dispute resolution mechanism designated above be employed at the following point in the case (e.g., within the next 30 days; after exchange of specific information; after deposition of plaintiff; etc.):

e. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

**3. The Parties' Summary of Their Claims, Defenses, and Relevant Issues:**

Plaintiff(s):

Defendant(s):

**4. The Parties' Asserted Basis of Subject Matter Jurisdiction:**

**5. Subjects on Which Discovery May Be Needed:**

Plaintiff(s):

Defendant(s):

6. **Initial Disclosures** pursuant to Fed. R. Civ. P. 26(a)(1) will be exchanged no later than \_\_\_\_\_.
7. **Amended Pleadings:**
- a. No additional parties may be joined after \_\_\_\_\_, without consent or leave of Court.
- b. No amended pleadings may be filed after \_\_\_\_\_, without consent or leave of Court.
8. **Fact Discovery:**
- a. All fact discovery shall be completed by \_\_\_\_\_.
- b. Initial requests for production were/will be served by \_\_\_\_\_. Any subsequent requests for production must be served no later than 45 days prior to the discovery completion deadline.
- c. Initial interrogatories shall be served by \_\_\_\_\_. Any subsequent interrogatories must be served no later than 45 days prior to the discovery completion deadline.
- d. Depositions shall be completed by \_\_\_\_\_.
- e. Requests to admit shall be served by \_\_\_\_\_.
- f. The parties propose the following limits on discovery:
- g. Except as otherwise modified in 8(f) above, the parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The interim fact discovery deadlines may be altered by the parties on consent without application to

the Court, provided that the parties meet the deadline for completing fact discovery.

- h.** The parties would like to address at the conference with the Court the following disputes, if any, concerning fact discovery:

**9. Expert Discovery (if applicable):**

- a.** The parties do \_\_\_\_ / do not \_\_\_\_ anticipate using testifying experts.
- b.** Anticipated areas of expertise:
- c.** Expert discovery shall be completed by \_\_\_\_\_.
- d.** By \_\_\_\_\_, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth above.
- e.** The parties would like to address at the conference with the Court the following disputes, if any, concerning expert discovery:

**10. Electronic Discovery and Preservation of Documents and Information:**

(If appropriate for the case, use the Court's Joint Electronic Discovery Submission and Proposed Order available at:

<https://nysd.uscourts.gov/hon-robert-w-lehrburger>.

- a.** The parties have \_\_\_\_ / have not \_\_\_\_ discussed electronic discovery.
- b.** If applicable, the parties shall have a protocol for electronic discovery in place by \_\_\_\_\_.



- c. The parties would like to address at the conference with the Court the following disputes, if any, concerning electronic discovery:

**11. Anticipated Motions** (other than summary judgment, if any):

- 12. Summary Judgment Motions:** No less than 30 days before a party intends to file a summary judgment motion, and in no event later than the close of discovery, the party shall notify this Court, and the District Judge, that it intends to move for summary judgment and, if required by the District Judge's Individual Practices, request a pre-motion conference.

If pre-motion clearance has been obtained from the District Judge where required, summary judgment motions must be filed no later than 30 days following the close of all discovery if no date was set by the District Judge or, if a date was set by the District Judge, in accordance with the schedule set by the District Judge. If no pre-motion conference is required, summary judgment motions must be filed no later than 30 days following the close of discovery.

Any summary judgment motion must comply with the Federal Rules of Civil Procedure, the Local Rules of this District, and the Individual Practices of the District Judge to whom the case is assigned.

- 13. Pretrial Submissions:** The parties shall submit a joint proposed pretrial order and any required accompanying submissions 30 days after decision on the summary judgment motion(s), or, if no summary judgment motion is made, 30 days after the close of all discovery.

**14. Trial:**

- a. All parties do \_\_\_\_ / do not \_\_\_\_ consent to a trial before a Magistrate Judge at this time.
- b. The case is \_\_\_\_ / is not \_\_\_\_ to be tried to a jury.

c. The parties anticipate that the trial of this case will require \_\_\_\_\_ days.

**15. Other Matters the Parties Wish to Address (if any):**

**16. The Court will fill in the following:**

A status conference will be held before the undersigned on \_\_\_\_\_  
at \_\_\_\_\_m. in Courtroom 18D, 500 Pearl Street.

The parties shall submit a joint status letter every \_\_\_\_\_ days and shall also  
inform the Court at the time the parties believe a settlement conference would  
be fruitful.

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

SO ORDERED.

\_\_\_\_\_  
ROBERT W. LEHRBURGER  
United States Magistrate Judge

PLAINTIFF(S):

DEFENDANT(S):

\_\_\_\_\_  
ATTORNEY NAME(s):

\_\_\_\_\_  
ATTORNEY NAME(s)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

TEL: \_\_\_\_\_

TEL: \_\_\_\_\_

EMAIL: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**D ID/cj**  
[REDACTED]

-----X

SSA [REDACTED]RS,

Plaintiff,

Index No. ██████████ 2020

-against-

██████████ FAN ██████████ NE ██████████ ENT ██████████ P. ██████████  
██████████ MPSON ██████████ LLC,

Defendants.

-----X

**PLEASE TAKE NOTICE**, that in accordance with Section 3041, Rules 3042 and 3043

and Section 3044 of the CPLR, you are hereby required to serve upon the Law Office of

██████████aret ██████████ein ██████████ntes, located at 200 Madison Avenue, New York, NY 10016 on

**SEPTEMBER 4, 2020 at 10:00 a.m.**, a Verified Bill of Particulars pursuant to the following

1. State the date and time of day of the occurrence.
2. State the location of the occurrence, giving its address (by number, street, city or town or if the place of the occurrence had no address, describing its location from fixed geographical sites):
  - (a) if within a building, give the floor number and the location thereon; street floor or ground floor to be considered as the first floor;
  - (b) if upon a stairway, set forth the location of the stairway in the premises, stating between what floors it is situated; also the particular step on said stairway, counting from the bottom;

- (c) if on the sidewalk, the distance from the nearest intersection and from the curb and building lines;
  - (d) if within an elevator, describe the elevator sufficiently to differentiate it from other elevators in the building.
- 3. If the plaintiff claims a dangerous, unsafe, or defective condition was the cause of the occurrence:
  - (a) describe that condition;
  - (b) set forth in what manner the condition described was dangerous, defective and/or unsafe;
  - (c) specify the date and time when the condition was caused or created;
  - (d) set forth the identity of the person or entity who caused or created the condition.
- 4. State the manner in which it is claimed the alleged accident occurred.
- 5. State the acts or omissions constituting the negligence claimed, specifying the exact date or dates when the alleged acts were committed and, if there is more than one defendant, the acts or omissions of each defendant constituting the alleged negligence.
- 6. If actual notice is claimed, set forth:
  - (a) the name(s) of the person(s) who is/are claimed to have given such notice;
  - (b) the name(s) of the person(s) to whom notice is claimed to have been given;
  - (c) whether the notice was written or oral;
  - (d) the date the notice was given; and
  - (e) if in writing, provide a true copy thereof.
- 7. If constructive notice is claimed, set forth the length of time it will be claimed the alleged condition existed.
- 8. State the injuries claimed, giving the location, duration and extent of each and specifying those claimed to be permanent.

9. State the length of time plaintiff was confined:
  - (a) to hospital;
  - (b) to bed;
  - (c) to house.
10. The names and addresses of doctors, hospitals and any other medical providers and dates treatment was rendered.
11. State the length of time plaintiff(s) will claim incapacity from employment.
12. State the following:
  - (a) vocation of plaintiff(s) at time of alleged occurrence;
  - (b) name and address of employer;
  - (c) average weekly earnings;
  - (d) if self-employed, a detailed statement of how alleged loss of earnings or income is calculated.
13. If the plaintiff attended school at the time of this incident, provide:
  - (a) the name of the school;
  - (b) the plaintiff's grade;
  - (c) the amount of time missed from school due to the occurrence.
14. Set forth a detailed statement of amounts claimed as special damages, if any, for:
  - (a) physician's services;
  - (b) hospital expenses;
  - (c) nurses' services;
  - (d) medical supplies;
  - (e) loss of earnings;
  - (f) any additional or other special damages.

15. Set forth a true copy of any contract, lease or express warranty referred to in the complaint; if an oral contract, express warranty or lease is claimed, state the names of the persons who allegedly entered into the same, the date and place the same was allegedly entered and the substance thereof.
16. If violation of any rule, regulation, code, ordinance, law or statute is claimed, specify the Chapter, Article, Section and Paragraph of same allegedly violated by each defendant.
17. With respect to each plaintiff, separately, state:
  - (a) residence address at time of the alleged occurrence;
  - (b) residence address at present time;
  - (c) date of birth;
  - (d) social security number.
18. If loss or diminution of services, society and/or consortium is claimed, specify precisely the services, society and/or consortium claimed to have been lost or diminished, the dates between which loss or diminution is claimed and the manner in which the damages claimed have been computed.

**IN THE EVENT THAT THE WITHIN CLAIM INCLUDES A CLAIM FOR  
VICARIOUS LIABILITY**

19. State the basis upon which it is claimed that defendant is vicariously liable.
20. Specify the acts or omissions of the individual(s) or entity(ies) upon which you base your claim of vicarious liability.
21. Specify whether or not it is claimed that defendant(s) and said individual(s) or entity(ies) had:
  - a) an employer-employee relationship;
  - b) a principal-agent relationship;
  - c) an employer-independent contractor relationship;
  - d) If none of the above, state the nature of the relationship between defendant and the said individual(s) or entity(ies) allegedly giving rise to vicarious liability on the part of defendant(s).
22. Specify all acts or omissions of the said individual(s) or entity(ies) which allegedly caused or contributed to the injury complained of herein.

23. Do you claim that the defendant(s) had notice, either actual or constructive, of any facts indicating that the defendant(s) knew or should have known that the said individual(s) or entity(ies) had engaged in acts or omissions of the same type as alleged herein prior to the date of the subject occurrence? If so, state whether such notice is actual and/or constructive. If actual notice is claimed, identify the person(s) by name, title and/or job description, who possessed such actual notice. If constructive notice is alleged, state the facts upon which such claim is predicated.
24. Specify any policies and/or provisions allegedly violated which caused and/or contributed to the injury complained of in connection with the claim of vicarious liability.
25. Specify any statutes, rules, regulations and/or ordinances allegedly violated in connection with the claim of vicarious liability.

**PLEASE TAKE FURTHER NOTICE**, that unless the above demand is complied with within thirty (30) days, an application will be made to preclude the plaintiff(s) from giving any evidence in accordance with the aforementioned rules.

Dated: New York, New York  
July 22, 2020

Yours, etc.

LAW OFFICE OF

[REDACTED] ET AL. [REDACTED] IN [REDACTED] [REDACTED] TES

[REDACTED] RT [REDACTED] AN  
[REDACTED] ure [REDACTED] nt [REDACTED] L [REDACTED] (2)

Attorney for Defendants

[REDACTED] [REDACTED] AN [REDACTED] NE [REDACTED] ENT CORP.,  
and [REDACTED] MPSON LLC  
200 Madison Avenue, 2nd Floor  
New York, New York 10016  
Phone: (646) [REDACTED] 250

TO: SMILEY & SMILEY, LLP  
Attorney For: [REDACTED] SA [REDACTED] RS  
122 East 42nd Street, Suite 3900  
New York, NY 10168  
Phone: (212) 986-2022



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

Index No.: 1 [REDACTED]

-----X  
[REDACTED],

Plaintiffs,

-against-

**BILL OF  
PARTICULARS**

[REDACTED]  
[REDACTED]

Defendants.

-----X

Plaintiff, [REDACTED], by her attorneys, SMILEY & SMILEY, LLP, hereby submit the following as and for their Verified Bill of Particulars in response to the demand of the defendants, [REDACTED]. and [REDACTED] LLC, as follows:

1. The date and time of the accident was January 21, 2020 at approximately 8:25 A.M.
2.
  - (a) Not applicable
  - (b) Not applicable
  - (c) The accident occurred on the sidewalk directly in front of 55 Thompson Street, New York, New York 10012.
  - (d) Not applicable.
3.
  - (a) On January 21, 2020 at approximately 8:25 A.M., the weather in New York City was around 30 degrees Fahrenheit. The sidewalk directly outside 55 Thompson Street was hosed down with water creating an icy and slippery condition.
  - (b) The sidewalk was hosed down with water and the temperature outside was below freezing, creating the icy and slippery condition.
  - (c) The dangerous and defective condition of the sidewalk occurred sometime prior to plaintiff traversing on the above-mentioned sidewalk.

(d) The dangerous and defective condition was created by an agent, servant or employee of [REDACTED], and B [REDACTED] LLC.

4. Defendants, [REDACTED], [REDACTED], by a servant, agent, and/or employee, in below freezing weather conditions, hosed down the sidewalk with water creating an icy and slippery condition.

5. The defendants, [REDACTED] [REDACTED] their agents, servants and/or employees, were negligent in failing to properly operate, control, manage, inspect, repair, maintain and supervise the aforesaid premises; in causing and permitting an unsafe and hazardous condition to exist at the aforesaid premises; in hosing down the sidewalk in front of the aforesaid premises with water in 20 degree weather, causing the sidewalk to become icy and slippery; in failing to sand and salt and otherwise remove the ice which had accumulated on the aforesaid sidewalk after having hosed down the sidewalk; in failing to provide the plaintiff with a safe means of traversing the aforesaid area at the aforesaid premises; in failing to provide caution signs thereat; in failing to provide warning signs thereat; in failing to provide barricades; in causing and permitting the plaintiff to enter into a position of danger; in subjecting said plaintiff to unusual and unnecessary hazards and dangers; in failing to employ adequate and sufficient help to properly maintain the aforesaid defective sidewalk at the aforesaid location; in causing and permitting the condition that brought about the fall of the plaintiff at the aforesaid location; in creating a trap-like condition; in creating a nuisance, and in failing to maintain said area in a reasonable, safe and suitable condition.

6. (a)-(e) Plaintiff is unable to further respond to this demand until completion of further discovery proceedings and depositions. However, at this time, plaintiff is not aware that

actual notice of the alleged condition was given to either defendants, its servants, agents, and/or employees.

7. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions. However, without in any way conceding that constructive notice is a necessary prerequisite to suit herein, plaintiff claims that the defendants, its servants, agents and/or employees had constructive notice of the said dangerous and defective conditions and caused, allowed and permitted same to exist and remain for an unreasonably long period of time prior to this accident, when they knew or could and should have known of the existence of said dangerous and defective conditions which existed for an unreasonably long period of time prior to this accident, the exact nature and/or duration of which is not presently known or available to the plaintiff, and subject to further discovery proceedings, and a reasonable inspection would have revealed the existence of said dangerous and defective conditions.

8. The plaintiff, [REDACTED], sustained the following injuries:

DISPLACED INTRAARTICULAR RIGHT DISTAL RADIUS FRACTURE NECESSITATING SURGERY IN THE NATURE OF OPEN REDUCTION AND INTERNAL FIXATION OF RIGHT DISTAL RADIUS INTRAARTICULAR FRACTURE WITH FIXATION OF 2 OR MORE FRAGMENTS ON JANUARY 31, 2020 AT NEW YORK PRESBYTERIAN, LOWER MANHATTAN HOSPITAL;

PLAINTIFF WAS CAUSED AND WILL CONTINUE TO BE CAUSED TO UNDERGO AN EXTENSIVE REGIMEN OF PHYSICAL THERAPY WHICH WILL CONTINUE FOR AN UNSPECIFIED PERIOD OF TIME;

TRAUMATIC ANXIETY;

PSYCHOLOGICAL ANGUISH;

EMOTIONAL DISTRESS AND DEPRESSION;

TRAUMATICALLY INDUCED ARTHRITIS IS EXPECTED TO DEVELOP IN THE FUTURE AT THE AFFECTED SITES AND JOINTS;

LOST AND DECREASED ENJOYMENT OF LIFE;

LOST ENJOYMENT OF PRE-ACCIDENT SOCIAL ENDEAVORS;

SEVERE PAIN, SWELLING, TENDERNESS, LIMITATION OF MOTION, DECREASED RANGE OF MOTION, IMPAIRMENT OF FUNCTION OF SKIN, BONE, MUSCLE, CARTILAGE, LIGAMENTS, TENDONS, JOINTS, BLOOD VESSELS, AND NERVES.

9. (a)-(c) To be provided.
10. New York Presbyterian – Lower Manhattan Hospital  
170 William Street,  
New York, New York 10038  
Admission: January 21, 2020 – Emergency Room  
January 31, 2020-Surgery

██████████, M.D., F.A.A.O.S.  
New York Downtown Orthopedic Associates  
170 William Street, 8<sup>th</sup> Floor  
New York, New York 10038

The dates of treatment are contained within the medical records.

11. To be provided.
12. (a)-(d) To be provided.
13. (a)-(c) Not applicable. The plaintiff was not a student at the time of the accident.
14. (a)-(f) To be provided.
15. Not applicable.
16. At the time of trial, plaintiffs' attorneys will ask the Court to take judicial notice of all statutes, rules, regulations, ordinances, codes, and industry standards. Plaintiffs and their attorneys reserve their right to supplement this response after completion of their discovery.

17. (a) At time of the occurrence, plaintiff resided at [REDACTED] New York, New York 10003.

(b) Plaintiff currently resides at [REDACTED], New York, New York 10003.

(c) Plaintiff's date of birth is [REDACTED]

(d) Pursuant to General Business Law 399-dd(6) "No person may file any document available for public inspection with any state agency, political subdivision, or in any court of this state that contains a social security account number of any other person, unless such other person is a dependent child, or has consented to such filing, except as required by federal or state law or regulation, or by court rule." The plaintiff expressly declines to consent to such filing due to valid concerns regarding possible identity theft. The last 4 digits of the plaintiff's Social Security number are XXX-XX-1686.

18. Not applicable.

19. The defendants, [REDACTED]  
[REDACTED] are vicariously liable for the actions of their agents, servants, and/or employees.

20. See response, paragraph 5.

21. (a)-(d) Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

22. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

23. Plaintiff is unable to further respond to this demand until completion of further discovery proceedings and depositions. However, at this time, plaintiff is not aware that actual

notice and or constructive notice of the alleged condition was given to either defendants and its servants, agents, and/or employees.

24. Plaintiff is unable to respond to this demand until completion of further discovery proceedings and depositions.

25. At the time of trial, plaintiffs' attorneys will ask the Court to take judicial notice of all statutes, rules, regulations, ordinances, codes, and industry standards. Plaintiffs and their attorneys reserve their right to supplement this response after completion of their discovery.

Dated: New York, New York  
August 27, 2020

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

*Michael S. Solomon*

By: \_\_\_\_\_  
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TO:

\_\_\_\_\_  
Attorneys for Defendant,

\_\_\_\_\_  
200 Madison Avenue, 2<sup>nd</sup> Floor  
New York, New York 10016  
(\_\_\_\_\_) \_\_\_\_\_

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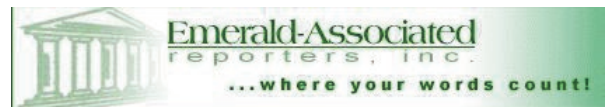
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