

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK-----X  
CHENIN DUCLOS,

Plaintiff,

Index No.:

-against-

Date Purchased:

THE CITY OF NEW YORK (NYC), NEW YORK  
CITY POLICE DEPARTMENT (NYPD),  
JOHN DOE NYPD EMPLOYEES,  
POLICE OFFICER CRAIG MATTHEWS,  
POLICE OFFICER ROBERT SINISHTAJ, and  
JOHN DOE NYPD OFFICERS # 1-40,**SUMMONS**Defendants.  
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To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, of, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's Attorney within twenty (2) days after the service of the summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, NY  
January 22, 2013By: Amy Marion, Esq.  
Barket Marion Epstein & Kearon  
666 Old County Road-Suite 700  
Garden City, N.Y. 11530  
(516) 745-0101**DEFENDANTS' ADDRESSES:**THE CITY OF NEW YORK  
New York City Law Department  
Office of Corporation Counsel  
100 Church Street  
New York, NY 10007NEW YORK CITY POLICE DEPARTMENT  
POLICE OFFICER CRAIG MATTHEWS  
POLICE OFFICER ROBERT SINISHTAJ  
ONE POLICE PLAZA  
New York, New York 10038

SUPREME COURT OF THE STATE OF NEW YORK  
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Plaintiff,

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THE CITY OF NEW YORK (NYC), NEW YORK  
CITY POLICE DEPARTMENT (NYPD),  
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POLICE OFFICER CRAIG MATTHEWS,  
POLICE OFFICER ROBERT SINISHTAJ, and  
JOHN DOE NYPD OFFICERS # 1-40,

**COMPLAINT**

Defendants.

-----X

Plaintiff, appearing by her attorney, BARKET, MARION, EPSTEIN & KEARON, LLP,  
hereby alleges against Defendants as follows:

**PARTIES**

1. Plaintiff, Chenin Duclos, is a resident of Chapel Hill, in the State of North Carolina.
2. At all times hereinafter mentioned, the defendant, City of New York (NYC), was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. Upon information and belief, that at all times relevant and all times mentioned herein, the defendant, NYC, its agents, servants and employees operated, maintained and controlled THE NEW YORK CITY POLICE DEPARTMENT (NYPD), including all the police officers thereof and that NYC is vicariously liable for the violations of New York State tort law by its servants, agents and employees via the principle of *respondeat superior* as at all times relevant POLICE OFFICER CRAIG MATTHEWS, POLICE OFFICER ROBERT SINISHTAJ,

and JOHN DOE NYPD OFFICERS were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

4. Upon information and belief, that at all times relevant and all times mentioned herein, POLICE OFFICER CRAIG MATTHEWS, POLICE OFFICER ROBERT SINISHTAJ, and JOHN DOE NYPD OFFICERS were employed by the defendant, NYC, as police officers in New York City, New York.

5. JOHN DOE NYPD OFFICERS "JOHN DOE DEFENDANTS" are supervisors who are and were responsible for the hiring, training, retaining and supervising the defendants POLICE OFFICER CRAIG MATTHEWS and POLICE OFFICER ROBERT SINISHTAJ.

6. Upon information and belief, that at all times relevant and all times mentioned herein, POLICE OFFICER CRAIG MATTHEWS and POLICE OFFICER ROBERT SINISHTAJ (the individually named Defendant officers), were employed by the defendant, NYC, as police officers in New York City, New York.

7. Upon information and belief, that at all times relevant and all times mentioned herein, JOHN DOE NYPD EMPLOYEES were employed by the defendant, NYC, as police officers and/or supervisors and/or those in charge of hiring, retaining, training, and supervising POLICE OFFICER CRAIG MATTHEWS and POLICE OFFICER ROBERT SINISHTAJ in New York City, New York.

8. THE NYPD, is a local governmental agency, duly formed and operating under and by virtue of the laws and Constitution of the State of New York and the Commissioner of the NYPD is responsible for the policies, practices and customs of the NYPD as well as the hiring, screening, training, supervising, controlling and disciplining of its police officers and civilian employees.



9. Each and all of the acts of the Defendants alleged herein were performed by the Defendants, their agents, servants and employees, and each of them not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York, and under the authority of their office as police officers and/or supervisors of said state and city.

### **NOTICE OF CLAIM**

10. That on or about September 5, 2012, within ninety (90) days after the claim herein sued upon accrued, Plaintiff filed with Defendants a written Notice of Claim setting forth the time, place, nature and manner in which the claim arose.

11. That a hearing pursuant to Section 50-H of the General Municipal Law was demanded and held on November 20, 2012.

12. That more than thirty (30) days have elapsed from the date that said Notice of Claim was filed and Defendants have neglected and refused to make payment or adjust said claim.

13. That this action was commenced within one (1) year from the date of the cause of action accrued hereafter.

### **FACTS**

14. On August 24, 2012 at approximately nine o'clock in the morning hours, Plaintiff was walking in the crosswalk between the southwest and northwest corners of 34<sup>th</sup> Street and Fifth Avenue in the County of New York.

15. While Plaintiff was in the crosswalk she was shot by a bullet fired from the gun of one of the individually named defendant officers.

16. Plaintiff was not a suspect of criminal activity; she was merely an innocent

bystander crossing the street.

17. Upon information and belief on August 24, 2012 defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were working in their official capacity as members of the NYPD in the vicinity of the Empire State Building.

18. Upon information and belief defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were somehow alerted to the fact that Jeffrey T. Johnson ("Johnson") was an individual who had discharged a weapon and shot another individual in the vicinity of the Empire State Building.

19. Upon information and belief defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ engaged Johnson and failed to follow and to exercise proper police tactics and procedures during the incident giving rise to the injuries sustained by Plaintiff.

20. Upon information and belief defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ failed to follow and/or employ proper police tactics and procedures.

21. The tactics and procedures which defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ failed to properly follow and/or employ include, but are not limited to, the following:

- a) Abandonment of the tactic of surprise;
- b) Rapidly giving chase to Johnson;
- c) Improper tactical decision regarding the timing of alerting and/or engaging Johnson;
- d) Failing to draw their weapons in a timely fashion;

- e) Failure to establish cover prior to alerting and/or engaging Johnson;
- f) Failing to follow Johnson to a location which would limit danger, injury, and unnecessary risk to innocent bystanders;
- g) Failing to follow Johnson to a location which was not crowded with innocent bystanders;
- h) Failing to position themselves properly and in a tactically appropriate manner in relation to Johnson;
- i) Pointing directly at Johnson while at an extremely close distance to Johnson;
- j) Pointing directly at Johnson while running directly at Johnson, getting within touching distance of Johnson;
- k) Rushing up upon Johnson;
- l) Confronting Johnson on a crowded street with numerous innocent bystanders, including two small children, within inches of Johnson and both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- m) Firing weapons while located within inches of and in the midst of numerous innocent bystanders, including two small children, located within an extremely close distance to Johnson and both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- n) Firing weapons while innocent bystanders are in the direct line of fire of both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- o) Failed to properly and accurately discharge their weapons;



- p) Failed to fire weapons only as necessary;
- q) Unnecessarily discharged rounds;
- r) Failing to follow Johnson and keep a close but safe distance until more officers could respond and assist defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- s) Failing to request back-up officers before confronting Johnson.

22. Upon information and belief, at the time that defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ engaged Johnson, Johnson was walking down the street holding a briefcase, the weapon he had used to shoot his ex-co-worker was not visible and was secreted in his briefcase.

23. Upon information and belief, at the time that defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ engaged Johnson, Johnson was rapidly moving away from the scene with his weapon secreted in his briefcase, he did not turn around, he did not approach, nor did he attempt to confront and civilians or police officers.

24. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ rapidly gave chase to Johnson.

25. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ alerted Johnson that they were giving chase to him.

26. Upon information and belief, at the time that defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ alerted Johnson

that they were giving chase to him, he did not present a clear and present danger to any individual.

27. Upon information and belief, one of the individually named defendant officers pointed directly at Johnson while at an extremely close distance to Johnson.

28. Upon information and belief, one of the individually named defendant officers pointed directly at Johnson while running directly at Johnson, getting within touching distance of Johnson.

29. Upon information and belief, one of the individually named defendant officers rushed up upon Johnson.

30. Upon information and belief, Johnson pulled his weapon from his briefcase and pointed it at one of the individually named defendant officers, only after being rushed upon by that officer.

31. Upon information and belief, after Johnson pointed his weapon at the individually named defendant officer, both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ fired their weapons, killing Johnson and injuring innocent bystanders.

32. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ confronted and engaged Johnson while they were within inches of, and in the midst of, numerous innocent bystanders, including two small children.

33. Upon information and belief, both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ fired their weapons while they were within inches of, and in the midst of, numerous innocent bystanders, including



two small children.

34. Upon information and belief, there were three individuals seated on a bench within inches of Johnson's location when he was confronted by defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ.

35. Upon information and belief, there were three individuals seated on a bench within inches of Johnson's location and in the direct line of fire of defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ when they began to shoot at Johnson.

36. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ confronted and engaged Johnson on this visibly crowded street during the morning commute, in front of the Empire State Building.

37. Upon information and belief, Johnson drew his weapon only when defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ escalated this situation into a dangerous and deadly confrontation.

38. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ ran up upon Johnson, pointed at him, called out to him, approached him, and attempted to grab him, causing him to draw his weapon, instead of following at a safe distance, calling for back-up officers, and waiting to confront Johnson at a location away from the crowded street.

39. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ fired sixteen shots within feet of Johnson.

40. Upon information and belief, defendant POLICE OFFICER CRAIG MATTHEWS fired seven shots.

41. Upon information and belief, defendant POLICE OFFICER ROBERT SINISHTAJ fired nine shots.

42. Upon information and belief, nine bystanders were wounded from the sixteen shots fired by defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ.

43. Plaintiff Chenin Duclos was shot by a bullet fired from the gun of one of the individually named police officers while frantically running to get away from the bedlam and hysteria that was unfolding on the street around her.

44. The gunshot hit Ms. Duclos with such force that she was thrown to the ground.

45. She remained in the crosswalk, shot, motionless, and fearing for her life.

#### **DAMAGES**

46. Plaintiff realleges and incorporates by reference paragraphs 1 through 45.

47. The unlawful, intentional, willful, deliberately indifferent, reckless, careless, negligent, and/or bad-faith acts and omissions of the Defendants caused Plaintiff the following injuries and damages, which were foreseeable to the Defendants at the time of their acts and omissions, and which continue to date into the future:

48. The bullet that hit Plaintiff lodged in the anterior portion of Plaintiff's left femoral neck causing a femoral neck fracture.

49. Plaintiff's femur was completely destroyed and Plaintiff remains at high risk for avascular necrosis.

50. Plaintiff was hospitalized from August 24, 2012 until September 8, 2012 and was

discharged to receive rehabilitation.

51. Plaintiff is still undergoing intensive physical therapy.

52. Plaintiff immediately experienced and continues to experience physical pain and injury and continues to suffer.

53. Plaintiff has experienced and continues to experience emotional distress, pain and suffering and mental anguish and continues to suffer.

54. Plaintiff has suffered loss of professional opportunity and loss of income for which she is entitled to monetary relief.

55. The damages suffered by Plaintiff were a result of the actions of defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ.

56. The damages suffered by Plaintiff were also a result of the actions of JOHN DOE DEFENDANTS' failure to properly hire, train, retain and supervise defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ.

57. All the acts and omissions committed by all of the Defendants herein for which liability is claimed were done intentionally, unlawfully, maliciously, wantonly, recklessly, negligently, carelessly, and/or with bad faith, and said acts meet all of the standards for imposition of punitive damages.

58. The aforesaid injuries did not result from any negligence or fault on the part of the Plaintiff herein.

59. Plaintiff has been damaged in an amount in excess of the jurisdictional limits of all other Courts that could otherwise have jurisdiction over this matter.



## **AS AND FOR A FIRST CAUSE OF ACTION**

### **NEGLIGENCE**

60. Plaintiff realleges and incorporates by reference paragraphs 1 through 58.

61. Defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were negligent in failing to properly follow and/or employ proper police procedure and tactics.

62. Defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were negligent in:

- a) Abandoning the tactic of surprise;
- b) Rapidly giving chase to Johnson;
- c) Failing in the tactical decision regarding the timing of alerting and/or engaging Johnson;
- d) Failing to draw their weapons in a timely fashion;
- e) Failing to establish cover prior to alerting and/or engaging Johnson;
- f) Failing to follow Johnson to a location which would limit danger, injury, and unnecessary risk to innocent bystanders;
- g) Failing to follow Johnson to a location which was not crowded with innocent bystanders;
- h) Failing to position themselves properly and in a tactically appropriate manner in relation to Johnson;
- i) Pointing directly at Johnson while running directly at Johnson;
- j) Getting within touching distance of Johnson;
- k) Rushing up upon Johnson;

- l) Confronting Johnson on a crowded street with numerous innocent bystanders, including two small children, within inches of Johnson and both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- m) Firing weapons while located within inches of and in the midst of numerous innocent bystanders, including two small children, located within an extremely close distance to Johnson and both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- n) Failed to properly and accurately discharge their weapons;
- o) Failed to fire weapons only as necessary;
- p) Unnecessarily discharged rounds;
- q) Firing weapons while innocent bystanders are in the direct line of fire of both defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ;
- r) Failing to request back-up officers before confronting Johnson;
- s) Failing to follow Johnson and keep a close but safe distance until more officers could respond and assist defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ, and defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were otherwise negligent.

63. Defendant POLICE OFFICER CRAIG MATTHEWS and defendant POLICE OFFICER ROBERT SINISHTAJ were negligent in failing to follow and/or employ proper

police procedures and tactics included in, but not limited to, the above negligent acts and failures set forth in paragraphs 61 and 62.

64. The individually named Defendants were negligent in, upon information and belief, escalating this situation into a dangerous and deadly confrontation on a crowded Manhattan street with innocent people within inches of the encounter, and they were otherwise negligent.

65. The individually named Defendants were negligent in, upon information and belief, escalating this situation into a dangerous and deadly confrontation causing Johnson to draw his weapon, and they were otherwise negligent.

66. The individually named Defendants were negligent in, upon information and belief, escalating this situation into a dangerous and deadly confrontation and then opening fire at Johnson while innocent bystanders stood inches away from the defendant officers, and they were otherwise negligent.

67. The individually named Defendants were negligent in, upon information and belief, escalating this situation into a dangerous and deadly confrontation causing the officers to fire at Johnson while innocent bystanders stood inches away from the defendant officers, and they were otherwise negligent.

68. The individually named Defendants were negligent in, upon information and belief, not following at a safe distance, in not calling for back-up officers, and in not waiting to confront Johnson until he was away from this crowded location, and they were otherwise negligent.

69. The individually named Defendants were negligent in, upon information and belief, firing sixteen shots on a crowded New York City street, during the morning commute and



at the location of one of the world's largest tourist attractions, and they were otherwise negligent.

70. The individually named Defendant officers failed to use proper judgment in that, upon information and belief, they fired upon Johnson when numerous innocent bystanders, including Plaintiff, were directly in their line of fire, and they were otherwise negligent.

71. The individually named Defendant officers failed to use proper judgment in that, upon information and belief, they fired upon Johnson when numerous innocent bystanders, including Plaintiff, were located within several feet of the officers and some of the bystanders were so close to the officers they were practically touching the officers, and they were otherwise negligent.

72. Upon information and belief, the individually named Defendant officers were aware of the presence of these numerous innocent bystanders as the officers were walking, jogging, and running up to Johnson amongst these innocent bystanders who the individually named Defendant officers were so close to they could have reached out and touched them.

73. Upon information and belief, when the individually named Defendant officers shot at Johnson, the presence and close proximity of these numerous innocent bystanders was blatantly obvious.

74. Upon information and belief, when the individually named Defendant officers shot at Johnson the presence and close proximity of these numerous innocent bystanders, in the direct line of fire of the individually named Defendant officers, was blatantly obvious to the individually named Defendant officers.

75. Upon information and belief, when the individually named Defendant officers shot at Johnson, three individuals seated on the bench directly next to Johnson, and in the individually named Defendant officers' clear line of sight, jumped up and fled.

76. Upon information and belief, when the individually named Defendant officers shot at Johnson, the presence and close proximity of these numerous innocent bystanders in the individually named Defendant officers' direct line of fire was blatantly obvious to the individually named Defendant officers as the individuals standing and walking on the sidewalk directly next to Johnson and in the individually named Defendant officers' clear line of sight, began to run and frantically dive out of the way fleeing for their lives.

77. The negligence and negligent acts of the individually named Defendant officers were the proximate cause of Plaintiff's injuries.

78. Plaintiff additionally relies upon the doctrine of *res ipsa loquitur*.

79. At the time and place of the occurrences herein described, the individually named Defendant officers were acting in the course and scope of their employment by the defendant NYPD.

80. That the defendant NYPD is liable for the acts of the individually named Defendant officers under the doctrine of *respondeat superior*.

81. By reason of the foregoing, Plaintiff demands compensatory damages against the individually named Defendant officers and compensatory and punitive damages against NYC and NYPD.

## **AS AND FOR A SECOND CAUSE OF ACTION**

### **NEGLIGENT SUPERVISION, TRAINING, HIRING AND RETENTION**

82. Plaintiff realleges and incorporates by reference paragraphs 1 through 80.

83. At all times hereinafter mentioned and at the time of the occurrences herein and prior thereto, the Defendants, NYC, NYPD, and JOHN DOE DEFENDANTS owed a duty of care to Plaintiff to use reasonable care in the hiring, training, supervision and retention of its



employees, including the individually named Defendant officers.

84. At all times hereinafter mentioned and at the time of the occurrences herein and prior thereto, the Defendants, NYC, NYPD, and JOHN DOE DEFENDANTS owed a duty of care to Plaintiff to use reasonable care in the hiring, training, supervision and retention of its employees, including the individually named Defendant officers, to ensure that they properly performed their duties without unnecessarily endangering innocent people, such as the Plaintiff.

85. Upon information and belief, the Defendants, NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in hiring, training, retaining and supervising the individually named Defendant officers whom NYC, NYPD, and JOHN DOE DEFENDANTS knew, or in the exercise of due care, should have known, were unfit to perform their duties as police officers.

86. NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in hiring, training, retaining and supervising the individually named defendant officers whom NYC, NYPD, and JOHN DOE DEFENDANTS knew, or in the exercise of due care, should have known, were unfit to follow and carry out decision making skills, police protocols, procedures, and/or tactics.

87. NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in training and supervising the individually named Defendant officers in proper police procedures and/or tactics, including but not limited to the following procedures and/or tactics:

- a) The tactic/procedure of surprise;
- b) The tactic/procedure of timing in alerting and/or engaging an armed suspect;
- c) The tactic/procedure of timing in drawing a weapon on an armed suspect;
- d) The tactic/procedure of establishing proper cover before engaging and/or confronting an armed suspect;
- e) The tactic/procedure of not engaging and/or confronting an armed suspect



while they are located in a location which is likely to cause unnecessary risk to innocent bystanders;

- f) The tactic/procedure of following a believed-to-be armed suspect and waiting to engage and/or confront an armed suspect until they are located at a location which is not likely to cause unnecessary risk to innocent bystanders;
- g) The tactic/procedure of proper positioning in relation to an armed suspect;
- h) The tactic/procedure of not firing weapons while located at a location which is likely to cause unnecessary risk to innocent bystanders;
- i) The tactic/procedure of properly and accurately discharging weapons;
- j) The tactic/procedure of firing weapons only as necessary;
- k) The tactic/procedure of not unnecessarily discharging rounds;
- l) The tactic/procedure of not firing weapons while innocent bystanders are in the direct line of fire;
- m) The tactic/procedure of waiting for back-up officers before confronting armed suspects;
- n) The tactic/procedure of keeping a close but safe distance until back-up officers arrive before confronting armed suspects; and
- o) The tactic/procedure of not escalating a situation into a dangerous and deadly confrontation in a crowded location.

88. NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in failing to exercise proper supervision; in negligently hiring, training, retaining and otherwise supervising the individually named Defendant officers whom NYC, NYPD, and JOHN DOE DEFENDANTS knew, or in the exercise of due care, should have known, did not have the

proper comportment and judgment to carry out and perform their duties as police officers.

89. NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in failing to exercise proper supervision; in negligently hiring, training, retaining and otherwise supervising the individually named Defendant officers whom NYC, NYPD, and JOHN DOE DEFENDANTS knew, or in the exercise of due care, should have known, did not have the proper comportment and judgment to follow, exercise, and employ proper police procedures and/or tactics.

90. Upon information and belief, the Defendants, NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in failing to have, use and enforce proper protocols and procedures to uncover, investigate, discharge, suspend or otherwise discipline employees including the individually named Defendant officers.

91. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS knew that individual officers, including the individually named Defendant officers, would confront said issues/encounters/situations in their work, namely, but not limited to, confronting armed suspects in crowded streets during the course of their employment as police officers.

92. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS knew that individual officers, including the individually named Defendant officers, would confront said issues/encounters/situations in their work, and that, without training, would fail to employ proper police tactics and procedures.

93. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS knew that individual officers, including the individually named Defendant officers, would confront said issues/encounters/situations in their work, and that, without the proper comportment, and/or judgment, and/or decision making skills would make fail to employ proper police tactics and



procedures.

94. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS were negligent, careless, reckless and deliberately indifferent in training and supervising, as and for its employees, including the individually named Defendant officers, in that the said Defendants would confront said issues/encounters/situations in their work and that, without proper training and supervision, would make wrong, incorrect and potentially deadly decisions regarding the apprehension of armed suspects, regarding the attempt to apprehend armed suspects, regarding the discharge of a duty weapon, regarding the discharge of a duty weapon in a crowded location, regarding the discharge of a duty weapon at a crowded Manhattan location, home to the largest tourist attraction, and would otherwise fail to follow proper police procedures and tactics.

95. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS were negligent, careless, reckless and deliberately indifferent in training and supervising, as and for its employees, including the individually named Defendant officers, in that the said Defendants, were aware of deficiencies in their training programs, were aware of police officers' deficient shooting techniques, shooting skills, use of force tactics, and decision making skills; were aware of deficiencies in their methods of evaluating police officers' shooting techniques, use of force tactics and decision making skills; and, despite being on notice of such deficiencies, as documented in among other things, the Rand report<sup>1</sup>, failed to properly train defendant officers.

96. The Rand report was intended to insure that the NYPD did everything necessary to minimize the unnecessary discharge of firearms and the risks inherent to innocent victims, such as the Plaintiff.

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<sup>1</sup> Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process, Rand Corporation, Center on Quality Policing, 2008.



97. Certain recommendations were made in the Rand report to improve training and to insure and document that police officers have mastered basic and complex use of force tactics and decision making skills.

98. Upon information and belief, certain recommendations in the Rand report were not followed. This, among the other negligent acts, omissions, and conduct of Defendants NYC, NYPD, and JOHN DOE DEFENDANTS, was the cause of the injuries sustained by the plaintiff.

99. Upon information and belief, Defendants NYC, NYPD, and JOHN DOE DEFENDANTS failed to train officers in complex use of force tactics and decision making skills as recommended by the Rand report; thus, among other negligent acts and omissions in failing to exercise proper supervision, and in negligently hiring, training, retaining and otherwise supervising the individually named Defendants, caused the injuries sustained by the Plaintiff.

100. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS were negligent in failing to exercise proper supervision; in negligently hiring, training, retaining and otherwise supervising the individually named Defendants whom NYPD knew, as they were specifically informed by the Rand Corporation in its report, or in the exercise of due care, should have known, were unfit to be entrusted with the duty of patrolling crowded NYC streets, were unfit to be entrusted with the duty of apprehending suspects without unnecessary risk to innocent people, were unfit to fire their weapons, were unfit to aim their weapons, were unfit to fire and aim their weapons during a tense street encounter, were unfit to fire and aim their weapons without unnecessary risk to innocent people at the time and place of the occurrences herein, did not have the necessary decision making skills, and were otherwise unfit to follow and carry out proper police procedures and tactics.

101. The negligence and negligent acts of the Defendants were the proximate cause of

Plaintiff's injuries.

102. Plaintiff additionally relies upon the doctrine of *res ipsa loquitur*.

103. At the time and place of the occurrences herein described, the individually named Defendant officers were acting in the course and scope of their employment by the defendant NYPD.

104. That the defendant NYPD is liable for the acts of the individually named Defendants under the doctrine of *respondeat superior*.

105. By reason of the foregoing, Plaintiff demands compensatory damages and punitive damages against all of the Defendants.

#### **AS AND FOR A THIRD CAUSE OF ACTION**

##### **GROSS NEGLIGENCE**

106. Plaintiff realleges and incorporates by reference paragraphs 1 through 104.

107. Defendants had a duty to act with reasonable care toward Plaintiff.

108. Defendants were grossly negligent in causing Plaintiff to be shot by one of its officers.

109. Defendants NYC, NYPD, and JOHN DOE DEFENDANTS were grossly negligent in failing to exercise proper supervision; in negligently hiring, training and retaining the individually named Defendants whom Defendants NYC, NYPD, and JOHN DOE DEFENDANTS knew, or in the exercise of due care, should have known, were unfit to be entrusted with the duty of patrolling crowded NYC streets, were unfit to be entrusted with the duty of apprehending suspects without unnecessary risk to innocent people, were unfit to fire their weapons, were unfit to aim their weapons, were unfit to fire and aim their weapons during a tense street encounter, and were unfit to fire and aim their weapons without unnecessary risk to

innocent people at the time and place of the occurrences herein.

110. Defendants were grossly negligent in failing to follow proper police procedures and tactics.

111. Defendants were grossly negligent in not requesting back-up officers before confronting Johnson.

112. Defendants were grossly negligent in not following Johnson and in not keeping a close but safe distance until more officers could respond and assist the two individually named Defendant officers.

113. Defendants were grossly negligent in rapidly giving chase to Johnson.

114. Defendants were grossly negligent in pointing at Johnson while running directly at him and getting within reaching distance of him.

115. Defendants were grossly negligent in rushing up upon Johnson and confronting Johnson, causing him to pull his weapon from his briefcase.

116. Defendants were grossly negligent in running up upon and approaching Johnson when there were numerous individuals and two small children within inches of Johnson and the individual Defendant officers.

117. Defendants were grossly negligent in confronting Johnson on this visibly crowded street during the morning commute.

118. Defendants were grossly negligent in escalating this situation into a dangerous and deadly confrontation on a crowded Manhattan street with innocent people within inches of the encounter.

119. Defendants were grossly negligent in escalating this situation into a dangerous and deadly confrontation and then opening fire at Johnson while innocent bystanders stood



inches away from the Defendant officers.

120. Defendants were grossly negligent in not waiting to confront Johnson until he moved to a location where innocent bystanders were not present.

121. Defendants were grossly negligent in firing sixteen shots on a crowded New York City street, during the morning commute and at the location of one of the world's largest tourist attractions.

122. The gross negligence and grossly negligent acts of the Defendants were the proximate cause of Plaintiff's injuries.

123. Plaintiff additionally relies upon the doctrine of *res ipsa loquitur*.

124. At the time and place of the occurrences herein described, the individually named Defendants were acting in the course and scope of their employment by the defendant NYPD.

125. That the defendant NYPD is liable for the acts of the individually named Defendants under the doctrine of *respondeat superior*.

126. The gross negligence and grossly negligent acts of the Defendants caused Plaintiff to suffer and to sustain physical pain, suffering and injury, extreme emotional pain, suffering and distress, fear of imminent death, and to otherwise sustain physical and emotional damages. Upon information and belief, such damages are continuing.

127. By reason of foregoing, Plaintiff demands compensatory and punitive damages against Defendants.

#### **AS AND FOR A FOURTH CAUSE OF ACTION**

##### **INTENTIONAL AND/OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS**

128. Plaintiff realleges and incorporates by reference paragraphs 1 through 126.

129. The Defendants by engaging in the conduct hereinabove described, intentionally

and/or recklessly, and with the intention to cause the Plaintiff severe emotional distress, acted in a shocking and outrageous manner exceeding all bounds of decency.

130. The Defendants' conduct proximately caused the Plaintiff to suffer and to sustain physical pain, suffering and injury, extreme emotional pain, suffering and distress, fear of imminent death, and to otherwise sustain physical and emotional damages. Upon information and belief, such damages are continuing.

131. The Defendants acted intentionally and/or recklessly, and showed utter disregard for the safety and wellbeing of the Plaintiff.

132. The Defendants acted willfully, wantonly, recklessly, negligently, carelessly and maliciously, with utter disregard for the health and safety of the Plaintiff.

133. That the negligence of the Defendants, its agents, servants and employees, while acting in the course and scope of their employment, proximately caused and permitted the individually named Defendants to be placed in a position where they intentionally, recklessly and/or negligently caused Plaintiff to suffer and to sustain physical pain, suffering and injury, extreme emotional pain, suffering and distress, fear of imminent death, and to otherwise sustain physical and emotional damages. Upon information and belief, such damages are continuing.

134. The Defendants' conduct proximately caused the Plaintiff to suffer and Plaintiff continues to suffer physical pain and injury, extreme emotional pain, suffering and distress, fear of losing her life, fear of losing use of her leg, fear of never being able to run, compete in athletic events, remain physically active at the level she was physically active before the incident, work as a masseuse, train and work as a physical therapist, and to otherwise sustain emotional damages.

135. Plaintiff additionally relies upon the doctrine of *res ipsa loquitur*.

136. At the time and place of the occurrences herein described, the individually named Defendants were acting in the course and scope of their employment by the defendant NYPD.

137. That the defendant NYPD is liable for the acts of the individually named Defendants under the doctrine of *respondeat superior*.

138. By reason of foregoing, Plaintiff demands compensatory and punitive damages against all Defendants.

#### **AS AND FOR A FIFTH CAUSE OF ACTION**

##### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

139. Plaintiff realleges and incorporates by reference paragraphs 1 through 137.

140. The Defendants by engaging in the conduct hereinabove described, negligently caused the Plaintiff to sustain severe emotional distress.

141. The Defendants' conduct proximately caused the Plaintiff to suffer and continue to suffer physical pain and injury, extreme emotional pain, suffering and distress, fear of losing her life, fear of losing use of her leg, fear of never being able to run, compete in athletic events, remain physically active at the level she was physically active before the incident, work as a masseuse, work as a physical therapist, and to otherwise sustain emotional damages.

142. At the time and place of the occurrences herein described, the individually named Defendants were acting in the course and scope of their employment by the defendant NYPD.

143. That the defendant NYPD is liable for the acts of the individually named Defendants under the doctrine of *respondeat superior*.

144. Plaintiff additionally relies upon the doctrine of *res ipsa loquitur*.

145. By reason of foregoing, Plaintiff demands compensatory and punitive damages against Defendants.



**WHEREFORE**, Plaintiff requests relief jointly and severally as against all of the Defendants:

1. A trial by jury;
2. An award of full and fair compensatory damages as decided by the jury;
3. An award of full and fair punitive damages as decided by the jury; and
4. Granting such other and further relief as this Court may deem just and proper.

Dated: January 21, 2013  
Garden City, New York

BARKET MARION EPSTEIN & KEARON, LLP

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

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