

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

Index No.:
Date Purchased:

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THEODORA RAY

SUMMONS

Plaintiff(s),

Plaintiff designates NEW YORK County as the place of trial.

-against-

THE CITY OF NEW YORK AND JOHN DOE POLICE OFFICERS,

The basis of venue is:
Place of shooting

Defendant(s).
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Plaintiff resides at:
255 West 43rd Street
New York, NY 10038
County of NEW YORK

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: NEW YORK, NEW YORK
April 11, 2014

JOHN J. NONNENMACHER, ESQ.
BADER YAKAITIS & NONNENMACHER, LLP
Attorneys for Plaintiff(s) THEODORA RAY
1430 Broadway, Suite 1802
New York, New York 10018
(212) 465-1110

TO: THE CITY OF NEW YORK
100 Church Street
New York, NY 10007

John Doe Police Officers
NEW YORK CITY POLICE DEPARTMENT
1 Police Plaza
New York, NY

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

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THEODORA RAY

VERIFIED COMPLAINT

Plaintiff(s),

-against-

THE CITY OF NEW YORK AND JOHN DOE POLICE
OFFICERS,

Defendant(s).

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Plaintiff, complaining of the defendants by her attorneys, Bader Yakaitis & Nonnenmacher, LLP, respectfully sets forth and alleges as follows:

1. That at all times hereinafter mentioned the plaintiff resided and continues to reside at 255 West 43rd Street, New York, NY.
2. That at all times hereinafter mentioned defendant, The City of New York 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. That at all times hereinafter mentioned defendant, The City of New York maintained a Police Department which has its principal place of business at One Police Plaza, New York, NY.
4. That at all times hereinafter mentioned the defendant, The City of New York employed individuals that were Police Officers.
5. That at all times hereinafter mentioned the defendant, The City of New York is vicariously responsible for the actions of its police officers.
6. Yet to be identified John Doe Police Officers were employed by the City of New York as police officers.

7. These John Doe police officers were agents, servants and/or employees of the City of New York.

8. This incident occurred on September 14, 2013 at approximately 9:45 pm while the plaintiff was a pedestrian in the vicinity of 42nd Street and 8th Avenue, New York, NY.

9. This incident occurred on a Saturday night in a heavy populated and traversed area.

10. At approximately 9:30 pm a man by the name of Glenn Broadnax was observed walking in traffic near 42nd Street and 8th Avenue, New York, NY.

11. At approximately 9:30 pm unknown and yet to be identified police officers attempted to take this man into custody.

12. These unknown and yet to be named police officers failed to take this individual into custody.

13. These unknown and yet to be named police officers failed to subdue this individual.

14. These unknown and yet to be named police officers then pursued this individual through a crowd of people.

15. The police officers had their guns drawn as they pursued this individual.

16. Glenn Broadnax was unarmed.

17. The suspect was not endangering the lives of the police officers or the public.

18. The suspect did nothing to endanger the lives of the police officers or the public.

19. The police officers were not in danger.

20. The public was not in danger.

21. The police officers did not have probable cause to believe they had to discharge their weapons to protect themselves.

22. The police officers did not have probable cause to believe they had to discharge their weapons to protect the public.

23. The police officers did not have probable cause to believe that they had to discharge their weapons to protect another person present from imminent death or serious injury.

24. Prior to the shooting, no ranking officer took control.

25. Prior to the shooting, not one police officer took command.

26. At the time of the shooting no one was in command.

27. No commands in furtherance of firearm control were given.

28. The police officers present failed to call the Emergency Services Unit.

29. At the time of the shooting the police officers who fired their weapons were adequately protected by cover.

30. Just prior to the shooting, the police officers who fired their weapons misapprehended what the suspect was doing.

31. As a result of misapprehending what the suspect was doing, two unknown and yet to be identified police officers fired at the suspect.

32. The suspect was standing near a crowd of people when the shots were fired.

33. At the time of the shooting the area was full of pedestrians, tourists, passing vehicles, food vendors, tour buses and public transportation.

34. One police officer fired one shot, another police officer fired two shots.

35. None of the bullets hit their intended target.

36. One of the bullets struck the plaintiff who was a pedestrian and was standing by a food cart.

37. As a result the plaintiff **THEODORA RAY** was caused to sustain gunshot wounds and suffered tremendous pain, agony, suffering, mental anguish, emotional distress and has been rendered sick, sore lame and disabled; has been forced to seek and undergo medical and hospital care and attention, all with attendant loss.

38. The police officers were attempting to use deadly force against the suspect.

39. The police officers were attempting to use deadly force against the suspect which was not justified.
40. The police officers were attempting to use deadly force against an unarmed suspect.
41. This discharge of their weapons unnecessarily endangered innocent bystanders.
42. The police officers involved in this incident failed to check for bystanders before firing their weapons.
43. The police officers involved in this incident failed to appreciate the presence of bystanders before firing their weapons.
44. The actions of the police officers endangered the lives and well being of the public.
45. The police officers did not have a clear and unobstructed view of the suspect.
46. The plaintiff, a pedestrian was in the police officer's line of fire.
47. The police officers failed to appreciate plaintiff's presence.
48. The aforesaid officers of the City of New York were acting as agents, servants and/or employees of the City of New York.
49. The aforesaid police officers of the City of New York were acting within the course and scope of their employment.
50. The police officers discharged their weapons in the performance of their official duties as a police officer.
51. Defendant The City of New York is liable for the aforesaid actions of the police officers.
52. At the time of this shooting, the police department had in effect NYPD Procedure No. 203.12 (a) and (b).
53. NYPD procedure No. 203.12(a) provides that Police Officers shall not use deadly

force against another person unless they have probable cause to believe that they must protect themselves or another person present from imminent death or serious injury.

54. NYPD Procedure No. 203.12(b) provides that Police Officers shall not discharge their weapons when doing so will necessarily endanger innocent persons.

55. The Police Officers who discharged their weapons violated NYPD Procedure No. 203.12(a) and (b).

COMPLIANCE WITH GENERAL MUNICIPAL LAW

56. On October 18, 2013, a notice of claim was filed on behalf of the plaintiff, with respect to her causes of action which occurred on September 14, 2013 setting forth the time when, the place where and the manner in which this incident occurred.

57. This notice of claim was presented within ninety (90) days after the causes of action accrued and more than thirty (30) days have elapsed since such presentation and the defendants have wholly failed to adjust same or make payment thereon.

58. On February 26, 2014 the plaintiff testified at a statutory hearing in compliance with section 50H of the General Municipal Law. More than thirty (30) days have elapsed since the presentation of these claims and the defendants have not requested a physical examination of the plaintiff pursuant to General Municipal Law section 50H, the same having been waived by the defendants.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST
THE DEFENDANTS

59. Plaintiff repeats each and every allegation contained in paragraphs "1 through 58" as if reiterated here.

60. The Police Officers who fired their weapons should not have been employed by the City of New York as police officers.

61. The Police Officers who fired their weapons lacked the mental temperament to be police officers.

62. The Police Officers who fired their weapons lacked the mental capacity to be armed.

63. The Police Officers who fired their weapons should not have been employed by the City of New York as police officer.

64. The Police Officers who fired their weapons lacked the training to be armed.

65. The Police Officers who fired their weapons should not have been armed.

66. The Police Officers who fired their weapons lacked the physical attributes necessary to be armed.

67. The Police Officers who fired their weapons lacked the physical attributes necessary to fire a gun.

68. The defendant THE CITY OF NEW YORK was careless and negligent in their training of the police officers who fired their guns at Glenn Broadnax.

69. The defendant THE CITY OF NEW YORK negligently hired, retained and trained the police officers who fired their guns at Glenn Broadnax.

70. The defendant THE CITY OF NEW YORK failed to recognize the need to retrain these police officers.

71. The defendant THE CITY OF NEW YORK failed to retrain the police officers who fired their guns at Glenn Broadnax.

72. As a result, the plaintiff was shot by an unknown police officer and seriously injured.

73. The defendant the City of New York failed to train and/or instruct the police officers involved on police department procedures including but not limited to 203-12(a) and (b).

74. As a result, the plaintiff was shot by an unknown police officer and seriously injured.

AS AND FOR A SECOND CAUSE OF ACTION
FOR ASSAULT AGAINST THE DEFENDANTS

75. Plaintiff repeats each and every allegation contained in paragraphs "1 through 74" as

if reiterated here.

76. The yet to be named police officers carelessly and negligently created a situation that presented a danger to pedestrians and the public at large.

77. The yet to be named police officers carelessly and negligently fired their guns at an unarmed man.

78. The Police officers involved carelessly and negligently discharged their weapons under circumstances which unnecessarily endangered innocent bystanders.

79. The police officers involved did not act reasonably in discharging their weapons based on the prevailing conditions.

80. The police officers involved carelessly and negligently responded to the actions of the suspect.

81. The police officers involved carelessly and negligently failed to check for bystanders before discharging their weapons.

82. The police officers involved carelessly and negligently failed to appreciate the presence of bystanders before discharging their weapons.

83. The police officers involved carelessly and negligently failed to follow NYPD guidelines, policies and internal rules and regulations.

84. The police officers involved carelessly and negligently failed to take command of the situation.

85. The police officers involved carelessly and negligently failed to call members from the Emergency Services Unit.

86. The police officers involved carelessly and negligently discharged their firearms in violation of departmental guidelines.

87. As a result of firing their guns at this unarmed man, the police officers shot and injured two pedestrians.

88. Plaintiff is one of the pedestrians who was shot.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST THE DEFENDANTS

89. Plaintiff repeats each and every allegation contained in paragraphs “1 through 88” as if reiterated here.

90. The aforementioned acts of the police officers were reckless.

91. The aforementioned acts of the police officers were performed in reckless disregard of the safety of bystanders.

92. The yet to be named police officers recklessly created a situation that presented a danger to pedestrians and the public at large.

93. The yet to be named police officers recklessly fired their guns at an unarmed man.

94. The police officers involved recklessly discharged their weapons under the circumstances which unnecessarily endangered innocent bystanders.

95. The police officers involved recklessly discharged their weapons based on the prevailing conditions.

96. The police officers involved recklessly responded to the actions of the suspect.

97. The police officers involved recklessly discharged their firearms in violation of departmental guidelines.

98. As a result of firing their guns at this unarmed man, the police officers shot and injured two pedestrians.

99. Plaintiff is one of the pedestrians who was shot.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST THE DEFENDANTS

100. Plaintiff repeats each and every allegation contained in paragraphs “1 through 99” as if reiterated here.

101. On September 14, 2013 the police officers involved in this incident used deadly force against an unarmed man.

102. On September 14, 2013 the police officers involved in this incident used deadly force that was not justified under the circumstances.

103. The actions of these police officers failed to comport with relevant guidelines.

104. The actions of these police officers were contrary to the training they received at the police academy.

105. The actions of these police officers were in violation of department guidelines for the use of firearms.

106. The actions of these police officers were in violation of NYPD Department Procedure No. 203.120 (a) and (b).

107. The police officers' actions in discharging their weapons unnecessarily endangered innocent bystanders.

108. The police officers discharged their weapons in reckless disregard of the safety of innocent bystanders.

109. The judgment and discretion exercised by the police officers was not in compliance with NYPD procedures, internal rules, regulations and internal policies.

110. The manner in which the police officers approached this individual was not in compliance with NYPD procedures, internal rule, regulations and internal policies.

111. The manner in which the police officers attempted to subdue this individual was not in compliance with NYPD procedures, internal rules, regulations and internal policies.

112. The manner in which the police officers discharged their weapons given the prevailing conditions and the presence of a crowd was not in compliance with NYPD procedures, internal rules and regulations and internal policies.

113. Given the prevailing conditions and the presence of a crowd, it was an inappropriate

act of discretion to fire their weapons at this individual.

114. The police officers involved in this incident failed to exercise appropriate discretion in discharging their weapons.

115. The police officers involved in this incident failed to exercise appropriate judgment when discharging their weapons in light of the prevailing conditions and the presence of a crowd.

116. Defendants' (the officers who discharged their weapons) exercise of judgment under the circumstances was not in compliance with municipal procedures.

117. Defendants' (the officers who discharged their weapons) exercise of discretion under the circumstances was not in compliance with municipal procedures.

118. Defendants' (the officers who discharged their weapons) violated departmental guidelines prohibiting actions that unnecessarily endanger innocent persons.

119. As a result of these departures and failures, the plaintiff was shot by a police officer.

**AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST THE DEFENDANTS**

120. Plaintiff repeats each and every allegation contained in paragraphs "1 through 119" as if reiterated here.

121. Police officers assaulted the plaintiff.

122. On September 14, 2013 the yet to be identified police officers battered the plaintiff.

123. As a result of being assaulted and battered the plaintiff suffered very serious and permanent injuries.

PUNITIVE DAMAGES

124. Plaintiff will be seeding punitive damages against each of the named police officers.

125. This action falls within all of the exceptions enumerated by Section 1602 of the CPLR.

126. Plaintiff herewith demands a trial by jury.

WHEREFORE, plaintiffs demand judgment against the defendants in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter.

Dated: New York, New York
April 11, 2014

Yours etc.

Bader Yakaitis & Nonnenmacher LLP
Attorneys for Plaintiff
1430 Broadway, suite 1802
New York, NY 10018
(212) 465-1110

BY: 

JOHN J. NONNENMACHER, ESQ.

VERIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

The undersigned, being an attorney duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury; that I am one of the attorneys for the plaintiff(s) in the within action.

That I have read and know the contents of the foregoing summons and complaint and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

This verification is made by affirmant and not by the plaintiff(s) herein because the plaintiff(s) is/are not within the county where affirmant maintains his/her office.

This verification is based on information furnished to affirmant by the plaintiff(s) in this action and information contained in affirmant's file.

Dated: New York, New York
 April 11, 2014



JOHN J. NONNENMACHER, ESQ.