

SUPREME COURT NEW YORK COUNTY  
STATE OF NEW YORK

-----X  
ELIZABETH LAPP

Plaintiff,

- against -

SILVERSTEIN PROPERTIES, INC., CLUB 7,  
THE GYM AT UNION SQUARE, LLC, CLAY,  
TODD DOE, BLACK MOUNTAIN  
PRODUCTS, INC., BMP FITNESS  
EQUIPMENT, INC., JOHN DOE 1 and  
JOHN DOE 2,

Defendants.  
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**SUMMONS**

Index No.:

Date Filed:

Plaintiffs designate New York  
County as the place of trial.

The basis of the venue is the  
the place of the occurrence.

**TO THE ABOVE NAMED DEFENDANT:**

**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 Plaintiffs' Attorney within twenty (20) days after the service of this 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.

Dated: Armonk, New York  
October 1, 2014

Very truly yours,

  
\_\_\_\_\_  
**URS BRODERICK FURRER, ESQ.**  
**HARRITON & FURRER, LLP**  
Attorneys for Plaintiff  
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**ANTHONY J. GRACEFFO**  
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(201) 342-8550 Facsimile  
AJ@graceffo.com

**DEFENDANT'S ADDRESS:**

**SILVERSTEIN PROPERTIES, INC.**

250 Greenwich Street  
New York, New York 10007

**CLUB 7**

620 West 42<sup>nd</sup> Street  
New York, New York 10036

**THE GYM AT UNION SQUARE, LLC**

25 West 14<sup>th</sup> Street  
New York, New York 10011

**CLAY**

25 West 14<sup>th</sup> Street  
New York, New York 10011

**TODD DOE**

Address unknown

**BLACK MOUNTAIN PRODUCTS, INC.**

481 Scotland Road  
#102  
Lakemoor, Illinois 60051

**BMP FITNESS EQUIPMENT, INC.**

481 Scotland Road  
#102  
Lakemoor, Illinois 60051

**JOHN DOE 1**

Address unknown

**JOHN DOE 2**

Address unknown

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Defendants.  
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**VERIFIED COMPLAINT**

Index No.:  
Date Filed:

Plaintiff Elizabeth Lapp, through her undersigned attorneys, alleges upon personal knowledge as to Plaintiff, and upon information and belief as to all other matters, as follows:

**GRAVAMEN OF THE ACTION**

1. This is an action brought against Defendants Silverstein Properties, Inc., Club 7, The Gym at Union Square, LLC, Clay, Todd Doe, Black Mountain Products, Inc., John Doe 1 and John Doe 2 to recover for personal injuries that Plaintiff sustained at a health and fitness club located within the Silver Towers apartment building at 620 West 42<sup>nd</sup> Street, New York, New York 10036.

2. Plaintiff Elizabeth Lapp is a resident and citizen of the State of New Jersey. She was injured while exercising at an instructor led fitness class at Club 7 by CLAY located within the Silver Towers apartment building at 620 West 42<sup>nd</sup> Street, New York, New York 10036.

3. Defendant Silverstein Properties, Inc. ("Silverstein") is a New York corporation that was authorized to do and doing business in the State of New York at all times relevant herein.

4. Upon information and belief, at all times relevant herein, Defendant Silverstein was the owner and/or manager and/or operator of the property located at 620 West 42<sup>nd</sup> Street, New York, New York 10036 ("the site" or "the property") including the health and fitness club operated as Club 7 on site.

5. Upon information and belief, Defendant Club 7 is a New York entity that was authorized to do and doing business in the State of New York at all times relevant herein.

6. Upon information and belief, Defendant Club 7 is a foreign entity that was authorized to do and doing business in the State of New York at all times relevant herein.

7. Upon information and belief, Defendant Club 7 was the owner and/or manager and/or operator of the health and fitness club located on site at all times relevant herein.

8. The Gym at Union Square, LLC ("The Gym") is a New York limited liability company that was authorized to do and doing business in the State of New York at all times relevant herein.

9. Upon information and belief, The Gym was the owner and/or manager and/or operator of the health and fitness club located in site at all times relevant herein.

10. Upon information and belief, Defendant Clay is a New York entity that was authorized to do and doing business in the State of New York at all times relevant herein.

11. Upon information and belief, Defendant Clay is a foreign entity that was authorized to do and doing business in the State of New York at all times relevant herein.

12. Upon information and belief, Defendant Clay was the owner and/or manager and/or operator of the health and fitness club located in site at all times relevant herein.

13. On the evening of June 20, 2013, Plaintiff Elizabeth Lapp attended an instructor led fitness class at the health and fitness club located on site, where she was a paying member.

14. During the instructor led fitness class on June 20, 2013, Ms. Lapp was given a resistance band to and told to perform several exercises with the band, which were essential to the instructor led fitness class.

15. Ms. Lapp was not given any written instruction nor did the resistance band contain any warnings.

16. While Ms. Lapp was using the resistance band during the instructor led fitness class, it snapped lose causing the band to abruptly and violently hit Ms. Lapp in the eyes.

17. Ms. Lapp suffered traumatic iritis and hemorrhage of both eyes as the result of this blunt force trauma and has suffered permanent loss of vision in her left eye.

18. Todd Doe is the individual who led the fitness class described above on June 20, 2013, whose last name and address are currently unknown.

19. Upon information and belief, Black Mountain Products, Inc. ("Black Mountain Products") is an Illinois corporation that was authorized to do and doing business in the State of New York at all relevant times herein.

20. Upon information and belief, Black Mountain Products is the entity responsible for manufacturing the resistance band provided to Ms. Lapp for her use during the June 20, 2013 instructor led fitness class at the health and fitness club on site.

21. Upon information and belief, BMP Fitness Equipment, Inc. ("BMP Fitness Equipment") is an Illinois corporation that was authorized to do and doing business in the State of New York at all relevant times herein.

22. Upon information and belief, BMP Fitness Equipment is the entity responsible for manufacturing the resistance band provided to Ms. Lapp for her use during the June 20, 2013 instructor led fitness class at the health and fitness club on site.

23. Upon information and belief, John Doe 1 is a New York entity that was authorized to do and doing business in the State of New York at all relevant times herein.

24. Upon information and belief, John Doe 1 is a foreign entity that was authorized to do and doing business in the State of New York at all relevant times herein.

25. Upon information and belief, John Doe 1 is the entity responsible for distributing the resistance band provided to Ms. Lapp for her use during the June 20, 2013 instructor led fitness class at the health and fitness club on site, whose name and address are currently unknown.

26. Upon information and belief, John Doe 2 is a New York entity that was authorized to do and doing business in the State of New York at all relevant times herein.

27. Upon information and belief, John Doe 2 is a foreign entity that was authorized to do and doing business in the State of New York at all relevant times herein.

28. Upon information and belief, John Doe 2 is the entity responsible for selling the resistance band provided to Ms. Lapp for her use during the June 20, 2013 instructor led fitness class at the health and fitness club on site, whose name and address are currently unknown.

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

29. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 28 of this Complaint, as if each were fully set forth herein.

30. At all times relevant herein, the Defendants owed a duty to the general public and, particularly, to the Plaintiff herein to provide reasonably safe facilities, to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes, to provide reasonably products essential to the instructor led exercise classes, to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards and not to design, manufacture, distribute and sell inherently dangerous products.

31. The Defendants breached their duty and the aforesaid accident occurred solely as a result of the carelessness, recklessness, negligence and culpable conduct of the

Defendants, their agents, servants and/or employees: in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat; in failing to provide reasonably safe facilities; in failing to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes including the subject resistance band; in failing to provide reasonably safe products essential to the instructor led exercise classes; in failing to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards; in designing, manufacturing, distributing and selling inherently dangerous products; in failing to take any precautions under the circumstances which would have prevented the occurrence of this accident in reckless disregard of the safety of others; in placing Plaintiff in a dangerous and perilous condition; in endangering the life and limb of Plaintiff; in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat in violation of the applicable regulations, ordinances and statutes of the State and City of New York in reckless disregard of the safety of others; in designing, manufacturing, distributing and selling the subject resistance band in a dangerous, defective and/or hazardous condition; in permitting and/or allowing the resistance band to remain in a dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to remedy the defective and inherently dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to warn Plaintiff that the resistance band was dangerous, defective and/or hazardous at any time prior to the subject accident; in manufacturing, distributing and selling a product materially different from its design or performance standards; in designing, manufacturing, distributing and selling a product that is inherently and/or unreasonably dangerous; in designing, manufacturing, distributing and selling a product that was inherently and/or unreasonably dangerous but was not inspected and/or tested; by breaching certain express warranties; by breaching the implied

warranty of merchantability; by breaching the implied warranty of fitness for a particular purpose; and in other ways acting in a careless, reckless and negligent manner.

32. It was reasonably foreseeable that the Defendants' breaches would result in injury to guests and paying members of the health and fitness club on site, such as Ms. Lapp, and the Defendants' negligence, carelessness and recklessness did, in fact, cause Ms. Lapp to suffer and sustain extensive and continuing personal injuries.

33. As a result of the Defendants' negligence, carelessness and recklessness, Ms. Lapp has suffered actual damages. More specifically, Plaintiff: was and will be caused to sustain painful and serious personal injuries in and about her limbs and body; became sick, sore, lame and disabled; suffered from, presently suffers from and will continue to suffer from contusions, abrasions, lacerations, traumatic iritis and hemorrhage of both eyes and loss of vision; endured great physical pain, mental anguish, bodily injury and pain and suffering; was and will be confined to a hospital, bed and home for a long period of time; was and will be compelled to undergo hospital and medical care, surgery, treatment and attention; was and will be caused to expend diverse sums of money for said aid, treatment and attention; was and will be prevented from engaging in her usual activities and employment for a long period of time all with attendant losses; and will continue to so suffer continuous pain, inconvenience and damage into the future since some of the said injuries are of a permanent and long lasting nature.

**AS AND FOR A SECOND CAUSE OF ACTION FOR GROSS NEGLIGENCE**

34. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 33 of this Complaint, as if each were fully set forth herein.

35. At all times relevant herein, the Defendants owed a duty to the general public and, particularly, to the Plaintiff herein to provide reasonably safe facilities, to provide reasonable instruction on how to use all equipment essential to the instructor led exercise



classes, to provide reasonably products essential to the instructor led exercise classes, to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards and not to design, manufacture, distribute and sell inherently dangerous products.

36. The Defendants breached their duty and the aforesaid accident occurred solely as a result of the Defendants, their agents, servants and/or employees', gross negligence and wanton, willful and reckless disregard for the safety of Plaintiff: in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat; in failing to provide reasonably safe facilities; in failing to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes including the subject resistance band; in failing to provide reasonably safe products essential to the instructor led exercise classes; in failing to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards; in designing, manufacturing, distributing and selling inherently dangerous products; in failing to take any precautions under the circumstances which would have prevented the occurrence of this accident in reckless disregard of the safety of others; in placing Plaintiff in a dangerous and perilous condition; in endangering the life and limb of Plaintiff; in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat in violation of the applicable regulations, ordinances and statutes of the State and City of New York in reckless disregard of the safety of others; in designing, manufacturing, distributing and selling the subject resistance band in a dangerous, defective and/or hazardous condition; in permitting and/or allowing the resistance band to remain in a dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to remedy the defective and inherently dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to warn

Plaintiff that the resistance band was dangerous, defective and/or hazardous at any time prior to the subject accident; in manufacturing, distributing and selling a product materially different from its design or performance standards; in designing, manufacturing, distributing and selling a product that is inherently and/or unreasonably dangerous; in designing, manufacturing, distributing and selling a product that was inherently and/or unreasonably dangerous but was not inspected and/or tested; by breaching certain express warranties; by breaching the implied warranty of merchantability; by breaching the implied warranty of fitness for a particular purpose; and in other ways acting in a careless, reckless and negligent manner.

37. It was reasonably foreseeable that the Defendants' gross negligence and wanton, willful and reckless disregard for the safety of Plaintiff would result in injury to guests and paying members of the health and fitness club on site, such as Ms. Lapp, and the Defendants' gross negligence and wanton, willful and reckless disregard for the safety of Plaintiff did, in fact, cause Ms. Lapp to suffer and sustain extensive and continuing personal injuries.

38. As a result of the Defendants' gross negligence and wanton, willful and reckless disregard for the safety of Plaintiff, Ms. Lapp has suffered actual damages. More specifically, Plaintiff: was and will be caused to sustain painful and serious personal injuries in and about her limbs and body; became sick, sore, lame and disabled; suffered from, presently suffers from and will continue to suffer from contusions, abrasions, lacerations, traumatic iritis and hemorrhage of both eyes and loss of vision; endured great physical pain, mental anguish, bodily injury and pain and suffering; was and will be confined to a hospital, bed and home for a long period of time; was and will be compelled to undergo hospital and medical care, surgery, treatment and attention; was and will be caused to expend diverse sums of money for said aid, treatment and attention; was and will be prevented from engaging in her usual activities and employment for a long period of time all with attendant losses; and will continue to so suffer

continuous pain, inconvenience and damage into the future since some of the said injuries are of a permanent and long lasting nature.

39. Since the Defendants' conduct was grossly negligent and wanton, willful and in reckless disregard for the safety of the Plaintiff, punitive damages should also be awarded against them in an amount to be determined at trial.

**AS AND FOR A THIRD CAUSE OF ACTION FOR STRICT LIABILITY**

40. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 of this Complaint, as if each were fully set forth herein.

41. At all times relevant herein, the Defendants owed a duty to the general public and, particularly, to the Plaintiff herein to provide reasonably safe facilities, to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes, to provide reasonably products essential to the instructor led exercise classes, to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards and not to design, manufacture, distribute and sell inherently dangerous products.

42. The Defendants breached their duty: in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat; in failing to provide reasonably safe facilities; in failing to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes including the subject resistance band; in failing to provide reasonably safe products essential to the instructor led exercise classes; in failing to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards; in designing, manufacturing, distributing and selling inherently dangerous products; in failing to take any precautions under the circumstances which would have prevented the occurrence of this accident in reckless disregard of the safety of others; in placing Plaintiff in a dangerous and

perilous condition; in endangering the life and limb of Plaintiff; in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat in violation of the applicable regulations, ordinances and statutes of the State and City of New York in reckless disregard of the safety of others; in designing, manufacturing, distributing and selling the subject resistance band in a dangerous, defective and/or hazardous condition; in permitting and/or allowing the resistance band to remain in a dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to remedy the defective and inherently dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to warn Plaintiff that the resistance band was dangerous, defective and/or hazardous at any time prior to the subject accident; in manufacturing, distributing and selling a product materially different from its design or performance standards; in designing, manufacturing, distributing and selling a product that is inherently and/or unreasonably dangerous; in designing, manufacturing, distributing and selling a product that was inherently and/or unreasonably dangerous but was not inspected and/or tested; by breaching certain express warranties; by breaching the implied warranty of merchantability; by breaching the implied warranty of fitness for a particular purpose; and in other ways acting in a careless, reckless and negligent manner.

43. As a result of the foregoing, the Defendants are strictly liable for Plaintiff's injuries.

44. At the time of the subject incident, Plaintiff was using the resistance band for a purpose and in a manner reasonably foreseeable to the Defendants.

45. It was reasonably foreseeable that the dangerous, defective and/or hazardous condition of the resistance band would result in injury to guests and paying members of the health and fitness club on site, such as Ms. Lapp, and the dangerous, defective and/or

hazardous condition of the resistance band did, in fact, cause Ms. Lapp to suffer and sustain extensive and continuing personal injuries.

46. Plaintiff's injuries occurred solely as a result of the actions and/or inactions of the Defendants, their agents, servants and/or employees.

47. As a result of the dangerous, defective and/or hazardous condition of the resistance band, Ms. Lapp has suffered actual damages. More specifically, Plaintiff: was and will be caused to sustain painful and serious personal injuries in and about her limbs and body; became sick, sore, lame and disabled; suffered from, presently suffers from and will continue to suffer from contusions, abrasions, lacerations, traumatic iritis and hemorrhage of both eyes and loss of vision; endured great physical pain, mental anguish, bodily injury and pain and suffering; was and will be confined to a hospital, bed and home for a long period of time; was and will be compelled to undergo hospital and medical care, surgery, treatment and attention; was and will be caused to expend diverse sums of money for said aid, treatment and attention; was and will be prevented from engaging in her usual activities and employment for a long period of time all with attendant losses; and will continue to so suffer continuous pain, inconvenience and damage into the future since some of the said injuries are of a permanent and long lasting nature.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR BREACH OF WARRANTY**

48. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 47 of this Complaint, as if each were fully set forth herein.

49. The Defendants expressly warranted the safety of the health and fitness club, the instructor led fitness classes and equipment thereat including the resistance band.

50. The Defendants warranted the safety of the health and fitness club, the instructor led fitness classes and equipment thereat including the resistance band as a result of the implied warranty of merchantability.

51. The Defendant warranted the safety of the health and fitness club, the instructor led fitness classes and equipment thereat including the resistance band as a result of the implied warranty of fitness for a particular purpose.

52. The Defendants breached their express warranties, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose: in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat; in failing to provide reasonably safe facilities; in failing to provide reasonable instruction on how to use all equipment essential to the instructor led exercise classes including the subject resistance band; in failing to provide reasonably safe products essential to the instructor led exercise classes; in failing to design, manufacture, distribute and sell the subject resistance band in a reasonably safe condition free from dangerous hazards; in designing, manufacturing, distributing and selling inherently dangerous products; in failing to take any precautions under the circumstances which would have prevented the occurrence of this accident in reckless disregard of the safety of others; in placing Plaintiff in a dangerous and perilous condition; in endangering the life and limb of Plaintiff, in owning, entrusting, operating, managing, maintaining and controlling the aforesaid health and fitness club and health and fitness classes offered thereat in violation of the applicable regulations, ordinances and statutes of the State and City of New York in reckless disregard of the safety of others; in designing, manufacturing, distributing and selling the subject resistance band in a dangerous, defective and/or hazardous condition; in permitting and/or allowing the resistance band to remain in a dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to remedy the defective and inherently dangerous, defective and/or hazardous condition despite having actual and/or constructive notice of same; in failing to warn Plaintiff that the resistance band was dangerous, defective and/or hazardous at any time prior to the subject accident; in

manufacturing, distributing and selling a product materially different from its design or performance standards; in designing, manufacturing, distributing and selling a product that is inherently and/or unreasonably dangerous; in designing, manufacturing, distributing and selling a product that was inherently and/or unreasonably dangerous but was not inspected and/or tested; by breaching certain express warranties; by breaching the implied warranty of merchantability; by breaching the implied warranty of fitness for a particular purpose; and in other ways acting in a careless, reckless and negligent manner.

53. It was reasonably foreseeable that the Defendants' breaches of their express warranties, the implied warranty of merchantability and implied warranty of fitness for a particular purpose would result in injury to guests and paying members of the health and fitness club on site, such as Ms. Lapp, and the Defendants' breaches of their express warranties, the implied warranty of merchantability and implied warranty of fitness for a particular purpose did, in fact, cause Ms. Lapp to suffer and sustain extensive and continuing personal injuries.

54. As a result of the Defendants' breaches of their express warranties, the implied warranty of merchantability and implied warranty of fitness for a particular purpose, Ms. Lapp has suffered actual damages. More specifically, Plaintiff: was and will be caused to sustain painful and serious personal injuries in and about her limbs and body; became sick, sore, lame and disabled; suffered from, presently suffers from and will continue to suffer from contusions, abrasions, lacerations, traumatic iritis and hemorrhage of both eyes and loss of vision; endured great physical pain, mental anguish, bodily injury and pain and suffering; was and will be confined to a hospital, bed and home for a long period of time; was and will be compelled to undergo hospital and medical care, surgery, treatment and attention; was and will be caused to expend diverse sums of money for said aid, treatment and attention; was and will be prevented from engaging in her usual activities and employment for a long period of time all with attendant

losses; and will continue to so suffer continuous pain, inconvenience and damage into the future since some of the said injuries are of a permanent and long lasting nature.

**JURY DEMAND**

55. Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands the following relief against Defendants:

- A) Awarding actual damages resulting from Defendants' wrongdoing in excess of one million dollars (\$1,000,000.00);
- B) Punitive damages in an amount to be proven at trial;
- C) Pre- and post-judgment costs, interest and attorneys' fees;
- D) For such other and further relief as this Court may deem just and proper.

Dated: Armonk, New York  
October 1, 2014

Very truly yours,

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**URS BRODERICK FURRER**  
**HARRITON & FURRER, LLP**  
Attorneys for Plaintiffs  
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Armonk, New York 10504  
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(914) 730-3405 Facsimile  
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**ANTHONY J. GRACEFFO**  
Attorneys for Plaintiff  
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Hackensack, New Jersey 07601  
(201) 342-9300  
(201) 342-8550 Facsimile  
AJ@graceffo.com



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ELIZABETH LAPP

Plaintiff,

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JOHN DOE 2,

Defendants.

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

**ELIZABETH LAPP**, being duly sworn, deposes and says that she has read the annexed **VERIFIED COMPLAINT**, knows the contents thereof and the same is true to her knowledge, except those matters therein which are stated to be alleged on information and belief and, as to those matters, she believes them to be true

*Elizabeth M. Lapp*  
\_\_\_\_\_  
**ELIZABETH LAPP**

Sworn to before me this  
8<sup>th</sup> day of October, 2014

*[Signature]*  
\_\_\_\_\_  
**NOTARY PUBLIC**

