

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

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THOMAS ELSMAN, as Representative of
the Estate of ALYSSA ELSMAN, DECEASED,
THOMAS ELSMAN, as Parent and Natural Guardian of Index No: _____
A.E. an Infant, and THOMAS ELSMAN,
Individually, DESTINY LIGHTFOOT,
CAROLINE JOHNS, GAYATRI JARIWALA,
SHAHIL JARIWALA, WILLIAM MCCOLLOUGH,
and CATHERINE MCCOLLOUGH,

Plaintiffs,

VERIFIED COMPLAINT

-against-

RICHARD ROJAS, THE CITY OF NEW YORK,
THE CITY OF NEW YORK DEPARTMENT OF
TRANSPORTATION and THE NEW YORK CITY
POLICE DEPARTMENT,Defendants.
-----X

Plaintiffs, THOMAS ELSMAN, as Representative of the Estate of ALYSSA ELSMAN,
DECEASED, THOMAS ELSMAN, as Parent and Natural Guardian of A. E., an Infant, and
THOMAS ELSMAN, Individually, DESTINY LIGHTFOOT, CAROLINE JOHNS, GAYATRI
JARIWALA, SHAHIL JARIWALA, WILLIAM MCCOLLOUGH
and CATHERINE MCCOLLOUGH, by their attorneys, SOBO & SOBO, L.L.P., as and for the
Verified Complaint, herein allege the following:

THE PARTIES

1. At all times hereinafter mentioned, the above-mentioned plaintiff decedent,
ALYSSA ELSMAN, resided in the County of Kalamazoo, State of Michigan on May 18, 2017,
and at all other relevant times herein.

2. Prior to the commencement of this action, by Decree of the Michigan State Surrogate's Court for the County of Kalamazoo, the plaintiff, THOMAS ELSMAN, was granted Letters of Representation for the deceased plaintiff, ALYSSA ELSMAN, and is thus duly authorized and empowered to perform all acts requisite to the proper administration and disposition of the estate of said deceased plaintiff, and is now acting in such capacity.

3. At the time of death on May 18, 2017, the Decedent was in good health, industrious, and possessed of all faculties.

4. At all times hereinafter mentioned, upon information and belief, the plaintiffs, THOMAS ELSMAN and A.E., an Infant, were and still are residents of the County of Kalamazoo, State of Michigan.

5. At at all times hereinafter mentioned, upon information and belief, the plaintiff, DESTINY LIGHTFOOT, was and still is a resident of the County of Middlesex, State of New Jersey.

6. At all times hereinafter mentioned, upon information and belief, the plaintiff, CAROLINE JOHNS, was and still is a resident of the County of Queens, State of New York.

7. At all times hereinafter mentioned, upon information and belief, the plaintiffs, GAYATRI JARIWALA and SHAHIL JARIWALA, were and still are residents of the County of Essex, State of New Jersey.

8. At all times hereinafter mentioned, upon information and belief, the plaintiffs, WILLIAM MCCOLLOUGH and CATHERINE MCCOLLOUGH, were and still are residents of the County of Fairfax, State of Virginia.

9. At all times hereinafter mentioned, upon information and belief, the defendant, RICHARD ROJAS, was and still is a resident of the County of Bronx, State of New York.

10. At all times herein mentioned the defendant, THE CITY OF NEW YORK, was and still is a municipal corporation duly organized and existing under the laws of the State of New York.

11. At all times herein mentioned the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, was and still is a municipal corporation duly organized and existing under the laws of the State of New York.

12. At all times hereinafter mentioned, the defendant, THE NEW YORK CITY POLICE DEPARTMENT, was and still is a municipal corporation duly organized and existing under the laws of the State of New York.

**AS AND FOR A FIRST CAUSE FOR PLAINTIFF ALYSSA ELSMAN, DECEASED
AGAINST THE DEFENDANT, RICHARD ROJAS**

13. At all times hereinafter mentioned, upon information and belief, the defendant, RICHARD ROJAS, was the titled owner of a motor vehicle, bearing License Plate # HNY-7012, for the State of New York.

14. At all times hereinafter mentioned, upon information and belief, the defendant, RICHARD ROJAS, was the registered owner of a motor vehicle, bearing License Plate # HNY-7012, for the State of New York

15. At all times hereinafter mentioned, upon information and belief, the defendant, RICHARD ROJAS, was the operator of the aforesaid motor vehicle, bearing License Plate # HNY-7012, for the State of New York, and owed a duty to operate his vehicle in a safe manner.

16. At all times hereinafter mentioned, 7th Avenue between 42nd Street and 45th Street, known as "Times Square", located in the City of New York, County of New York and State of New York, was and still is a public highway and thoroughfare and was the situs of the incident herein.

17. At all times hereinafter mentioned, the deceased plaintiff, ALYSSA ELSMAN, was a pedestrian upon the aforesaid situs, and was struck by the vehicle operated by RICHARD ROJAS.

18. That the defendant, RICHARD ROJAS, was negligent in:

- (a) driving recklessly in a crowded area;
- (b) driving on the sidewalk;
- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;
- (e) recklessly driving into an area where pedestrians are known to gather, congregate, and travel; and
- (f) striking the plaintiff with the aforesaid vehicle.

19. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

20. As a result of the aforesaid occurrence and the injuries sustained, ALYSSA ELSMAN passed. THOMAS ELSMAN and the decedent's Estate are entitled to recovery under the Decedent Estate Law, and any and all applicable wrongful death laws, having suffered extensive monetary and/or pecuniary losses, and also incurred necessary medical, hospital, funeral and concomitant expenses.

21. This Plaintiff is also entitled to be compensated for physical pain and suffering having sustained a serious injury, as defined in Subdivision four (4) Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic economic loss, as defined in Subdivision one (1) of section 5102 of the Insurance Law of the State of New York, including pain, suffering, and fear of impending death.

22. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A SECOND CAUSE OF ACTION FOR PLAINTIFF A.E., an Infant,
AGAINST THE DEFENDANT, RICHARD ROJAS**

23. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the First Cause of Action with the same force and effect as if more fully set forth herein at length.

24. At all times hereinafter mentioned, the Infant plaintiff, A.E., was lawfully a pedestrian upon the aforesaid situs.

25. The contact and injuries alleged herein to the Infant Plaintiff, A.E., were caused by the negligent, wanton, reckless and careless acts of the defendant herein.

26. That the defendant, RICHARD ROJAS, was negligent in:

- (a) driving recklessly in a crowded area;
- (b) driving on the sidewalk;
- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;

(e) recklessly driving into an area where pedestrians are known to gather, congregate and travel; and

(f) striking the plaintiff with the aforesaid vehicle;

27. This Plaintiff is also entitled to be compensated for physical pain and suffering having sustained a serious injury, as defined in Subdivision four (4) Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic economic loss, as defined in Subdivision one (1) of section 5102 of the Insurance Law of the State of New York, including pain, suffering and fear of impending death.

28. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

29. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A THIRD CAUSE OF ACTION FOR PLAINTIFF A.E., an Infant,
AGAINST THE DEFENDANT, RICHARD ROJAS**

30. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the First Cause of Action and paragraphs number "23" through "29" with the same force and effect as if more fully set forth herein at length.

31. The plaintiff, ALYSSA ELSMAN, sustained serious injuries and death as a result of the defendant's negligence and subsequent contact.

32. Plaintiff, A.E. is the sister of ALYSSA ELSMAN.

33. A.E. and ALYSSA ELSMAN were in immediate and close proximity when the defendant's vehicle struck and killed ALYSSA ELSMAN.

34. A.E. suffered shock, fright, peril and terror from contemporaneous observation of the catastrophic injuries and death inflicted upon Plaintiff, ALYSSA ELSMAN.

35. A.E. sustained serious and significant emotional distress and psychological injuries as a result of the accident.

36. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS FOR A FOURTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
THOMAS ELSMAN, INDIVIDUALLY**

37. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the First Cause of Action and paragraphs number "23" through "29" of the Second Cause of Action and paragraphs numbered "30" through "36" of the Third Cause of Action with the same force and effect as if more fully set forth herein at length.

38. At all times stated and relevant herein, plaintiff, THOMAS ELSMAN, was and still is a lawful Guardian and Father of plaintiff, A.E., an Infant and as such, is responsible for her medical bills and entitled to her services.

39. At all times hereinafter mentioned, Plaintiff, THOMAS ELSMAN, lost the services of infant Plaintiff, A.E., and became responsible, and upon information and belief, will

in the future continue to become responsible for medical and/or hospital expenditures for infant Plaintiff, A.E..

40. That by reason of the foregoing, the plaintiff, THOMAS ELSMAN, has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
DESTINY LIGHTFOOT**

41. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the First Cause of Action and paragraphs number "23" through "29" of the Second Cause of Action and paragraphs numbered "30" through "36" of the Third Cause of Action and paragraphs numbered "37" through "40" of the Fourth Cause of Action with the same force and effect as if more fully set forth herein at length.

42. At all times hereinafter mentioned, plaintiff, DESTINY LIGHTFOOT, was lawfully a pedestrian upon the aforesaid situs.

43. The contact and injuries alleged herein to the Plaintiff, DESTINY LIGHTFOOT, were caused by the negligent, wanton, reckless and careless acts of the defendant herein.

44. That the defendant, RICHARD ROJAS, was negligent in:

- (a) driving recklessly in a crowded area;
- (b) driving on the sidewalk;
- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;

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(e) recklessly driving into an area where pedestrians are known to gather, congregate and travel; and

(f) striking the plaintiff with the aforesaid vehicle;

45. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

46. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A SIXTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
CAROLINE JOHNS

47. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered “1” through “22” of the First Cause of Action and paragraphs number “23” through “29” of the Second Cause of Action and paragraphs numbered “30” through “36” of the Third Cause of Action, paragraphs numbered “37” through “40” of the Fourth Cause of Action and paragraphs numbered “41” through “46” of the Fifth Cause of Action with the same force and effect as if more fully set forth herein at length.

48. At all times hereinafter mentioned, plaintiff, CAROLINE JOHNS, was lawfully a pedestrian upon the aforesaid situs.

49. The contact and injuries alleged herein to the Plaintiff, CAROLINE JOHNS, were caused by the negligent, wanton, reckless and careless acts of the defendant herein.

50. That the defendant, RICHARD ROJAS, was negligent in:

(a) driving recklessly in a crowded area;

(b) driving on the sidewalk;

- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;
- (e) recklessly driving into an area where pedestrians are known to gather, congregate and travel; and
- (f) striking the plaintiff with the aforesaid vehicle;

51. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

52. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

**AS AND FOR A SEVENTH CAUSE OF ACTION ON BEHALF OF
PLAINTIFF GAYATRI JARIWALA**

53. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered “1” through “22” of the First Cause of Action and paragraphs number “23” through “29” of the Second Cause of Action and paragraphs numbered “30” through “36” of the Third Cause of Action, paragraphs numbered “37” through “40” of the Fourth Cause of Action, paragraphs numbered “41” through “46” of the Fifth Cause of Action and paragraphs numbered “47” through “52” of the Sixth Cause of Action with the same force and effect as if more fully set forth herein at length.

54. At all times hereinafter mentioned, plaintiff, GAYATRI JARIWALA, was lawfully a pedestrian upon the aforesaid situs.

55. The contact and injuries alleged herein to the Plaintiff, GAYATRI JARIWALA, were caused by the negligent, wanton, reckless and careless acts of the defendant herein.

56. That the defendant, RICHARD ROJAS, was negligent in:

- (a) driving recklessly in a crowded area;
- (b) driving on the sidewalk;
- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;
- (e) recklessly driving into an area where pedestrians are known to gather, congregate and travel; and
- (f) striking the plaintiff with the aforesaid vehicle;

57. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

58. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A EIGHTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
SHAHIL JARIWALA

59. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered “1” through “22” of the First Cause of Action and paragraphs number “23” through “29” of the Second Cause of Action and paragraphs numbered “30” through “36” of the Third Cause of Action, paragraphs numbered “37” through “40” of the Fourth Cause of Action, paragraphs numbered “41” through “46” of the Fifth Cause of Action, paragraphs

numbered “47” through “52” of the Sixth Cause of Action and paragraphs numbered “53” through “58” of the Seventh Cause of Action with the same force and effect as if more fully set forth herein at length.

60. That as a result of the aforementioned, this Plaintiff, the lawful wedded spouse of the Plaintiff GAYATRI JARIWALA.

61. That as a result of the aforementioned, SHAHIL JARIWALA, has and will suffer the loss and impairment of his spouse’s services, society and consortium, in the sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A NINTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
WILLIAM MCCOLLOUGH

62. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered “1” through “22” of the First Cause of Action and paragraphs number “23” through “29” of the Second Cause of Action and paragraphs numbered “30” through “36” of the Third Cause of Action, paragraphs numbered “37” through “40” of the Fourth Cause of Action, paragraphs numbered “41” through “46” of the Fifth Cause of Action, paragraphs numbered “47” through “52” of the Sixth Cause of Action, paragraphs numbered “53” through “58” of the Seventh Cause of Action and paragraphs numbered “59” through “61” of the Eighth Cause of Action with the same force and effect as if more fully set forth herein at length.

63. At all times hereinafter mentioned, plaintiff, WILLIAM MCCOLLOUGH, was lawfully a pedestrian upon the aforesaid situs.

64. The contact and injuries alleged herein to the Plaintiff, WILLIAM MCCOLLOUGH, were caused by the negligent, wanton, reckless and careless acts of the defendant herein.

65. That the defendant, RICHARD ROJAS, was negligent in:

- (a) driving recklessly in a crowded area;
- (b) driving on the sidewalk;
- (c) taking/ingesting substances that impair the ability to operate a motor vehicle, yet subsequently attempting to operate a motor vehicle;
- (d) failing to keep the aforesaid vehicle in the thoroughfare/roadway;
- (e) recklessly driving into an area where pedestrians are known to gather, congregate and travel; and
- (f) striking the plaintiff with the aforesaid vehicle;

66. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

67. That by reason of the foregoing, this Plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A TENTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
CATHERINE MCCOLLOUGH

68. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the First Cause of Action and paragraphs number "23" through "29" of the Second Cause of Action and paragraphs numbered "30" through "36" of the Third Cause of Action, paragraphs numbered "37" through "40" of the Fourth Cause of Action,

paragraphs numbered “41” through “46” of the Fifth Cause of Action, paragraphs numbered “47” through “52” of the Sixth Cause of Action, paragraphs numbered “53” through “58” of the Seventh Cause of Action, paragraphs numbered “59” through “61” of the Eighth Cause of Action and paragraphs numbered “62” through “67” of the Ninth Cause of Action with the same force and effect as if more fully set forth herein at length.

69. That as a result of the aforementioned, this Plaintiff, the lawful wedded spouse of the Plaintiff WILLIAM MCCOLLOUGH.

70. That as a result of the aforementioned, CATHERINE MCCOLLOUGH, has and will suffer the loss and impairment of her spouse’s services, society and consortium, in the sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR AN ELEVENTH CAUSE OF ACTION FOR PLAINTIFFS ALYSSA ELSMAN, DECEASED, A.E., an Infant, THOMAS ELSMAN, Individually, DESTINY LIGHTFOOT, CAROLINE JOHNS, GAYATRI JARIWALA, SHAHIL JARIWALA, WILLIAM MCCOLLOUGH, and CATHERINE MCCOLLOUGH AGAINST DEFENDANTS THE CITY OF NEW YORK, THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT

71. The plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs numbered “1” through “22” of the First Cause of Action and paragraphs number “23” through “29” of the Second Cause of Action and paragraphs numbered “30” through “36” of the Third Cause of Action, paragraphs numbered “37” through “40” of the Fourth Cause of Action, paragraphs numbered “41” through “46” of the Fifth Cause of Action, paragraphs numbered “47” through “52” of the Sixth Cause of Action, paragraphs numbered “53” through “58” of the

Seventh Cause of Action, paragraphs numbered “59” through “61” of the Eighth Cause of Action paragraphs numbered “62” through “67” of the Ninth Cause of Action and paragraphs numbered “68” through “70” of the Tenth Cause of Action with the same force and effect as if more fully set forth herein at length.

72. At all times hereinafter mentioned, upon information and belief, the defendant, THE CITY OF NEW YORK, was the owner of the public sidewalk/plaza/walkway known as “Times Square” located between West 42nd Street and 7th Avenue, West 44th Street and 7th Avenue and 45th Street and Broadway located in Manhattan, County of New York and State of New York.

73. That at all times hereinafter mentioned, upon information and belief, the defendant, THE CITY OF NEW YORK, maintained the aforesaid public sidewalk/plaza/walkway known as “Times Square”.

74. That at all times hereinafter mentioned, upon information and belief, the defendant, THE CITY OF NEW YORK, managed the aforesaid public sidewalk/plaza/walkway known as “Times Square”.

75. That at all times hereinafter mentioned, upon information and belief, the defendant, THE CITY OF NEW YORK, controlled the aforesaid public sidewalk/plaza/walkway known as “Times Square” .

76. That at all times hereinafter mentioned, upon information and belief, the defendant, THE CITY OF NEW YORK, operated the aforesaid public sidewalk/plaza/walkway known as “Times Square” and was responsible for the pedestrian and traffic design.

77. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, was the owner of the public sidewalk/plaza/walkway known as “Times Square” located between West 42nd Street and 7th

Avenue, West 44th Street and 7th Avenue and 45th Street and Broadway located in Manhattan, County of New York and State of New York.

78. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, maintained the aforesaid public sidewalk/plaza/walkway known as "Times Square".

79. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, managed the aforesaid public sidewalk/plaza/walkway known as "Times Square".

80. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, controlled the aforesaid public sidewalk/plaza/walkway known as "Times Square".

81. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, operated the aforesaid public sidewalk/plaza/walkway known as "Times Square".

82. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY POLICE DEPARTMENT, maintained the aforesaid public sidewalk/plaza/walkway known as "Times Square".

83. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY POLICE DEPARTMENT, managed the aforesaid public sidewalk/plaza/walkway known as "Times Square".

84. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY POLICE DEPARTMENT, controlled the aforesaid public sidewalk/plaza/walkway known as "Times Square".

85. That at all times hereinafter mentioned, upon information and belief, the defendant, THE NEW YORK CITY POLICE DEPARTMENT, operated the aforesaid public sidewalk/plaza/walkway known as "Times Square".

86. The negligent, wanton, reckless and careless acts of the defendants, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT their agents, servants and/or employees (collectively "The City" or "New York City") were a cause of the ROJAS incident and resultant injuries.

87. The defendants, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT, were negligent, wanton, reckless and careless in their failure to provide adequate protection to the citizens of the City of New York and visitors alike; failing to provide adequate protection to visitors and tourists who visit Times Square; failing to provide adequate restriction of vehicular traffic; failing to provide a safe design for traffic and pedestrians, alike; failure to install necessary safety devices that would have prevented the subject catastrophe; failing to properly position bollards or other structures in a manner and place as would have protected the claimants; failing to provide adequate security in the form of properly positioned barriers, obstacles, or road blocks to adequately protect pedestrians; failing to undertake reasonable studies with an eye toward alleviating clear and present dangers; formulating remedial plans and designs to address clear and present security issues, yet delaying the implementation of the plans without justification; failing to act; failing to supervise with reasonable care; failing to take those steps necessary to avoid the contingency which occurred herein; failing to use that degree of caution, prudence, and care which was reasonable and proper under the controlling circumstances and

failing to take cognizance of the notorious and hazardous conditions which in the exercise of reasonable diligence should have been known and recognized.

88. That the defendants, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT, their agents, servants and/or employees should have known, and in fact did know, that the location of Times Square, and particularly 7th Avenue from 42nd Street to 45th Street, is an area where pedestrians gather, walk, and traverse in great number, as fostered, attracted, and encouraged by the City of New York, requiring the City to provide adequate protection from all types of motor vehicle accidents and terrorist attacks. Moreover, it is claimed that New York City knew that pedestrians in this area were targeted previously, and remained a target, for criminal activity and terrorist acts, yet the City failed to provide reasonable and expected protection and security from such criminal activity and terrorist acts.

89. That the defendant, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT, should have known, and in fact did know, that Times Square, of which 7th Avenue from 42nd Street to 45th Street is an integral part, was considered a target for criminal activity and potential terror attacks, and specifically a terror attack in which a motorized vehicle would attempt to strike and severely injure or kill multiple pedestrians. Such notice includes, but is not limited to, notification from the domestic not-for-profit corporation, Transportation Alternatives, reporting in at least 2007 that New York City has “severely underexploited” the use of bollards to protect pedestrians, and that New York City should use additional bollards to “improve pedestrian safety”; New York City received further notice in November, 2016, when U.S. authorities charged Mohamed Rafik Naji with planning to drive a vehicle through

pedestrian sidewalks in Times Square; the City received further notice in 2012 when David C. Kelly, the former acting Police Department's assistant commissioner for counterterrorism, provided New York City with Al Qaeda's English-language magazine, which called on its followers to "mow down" pedestrians with vehicles; the City received further notice on July 14, 2016 when a vehicle drove through a large gathering of pedestrians, killing 86 pedestrians and injuring approximately 434 more in Nice, France; the City received further notice on December 19, 2016 when a vehicle drove through a large gathering of pedestrians in Berlin, Germany, killing approximately 12 people and injuring approximately 56 more; the City received further notice on April 7, 2017 when a vehicle drove through a large gathering of pedestrians in Stockholm, Sweden along Queen Street killing five people and injuring approximately 15 others; the City was further aware of the danger and likelihood of such an event, as demonstrated by prior proposed legislation and municipal "Action Plans" to address the potential danger, yet failed to implement appropriate safety measures, and failed to take required actions within a reasonable amount of time.

90. It will be further claimed that New York City knew, or should have known, that there exists an incredible volume of pedestrians and traffic in Times Square, resulting in a numerous amount of incidents where vehicles have struck and injured or killed pedestrians. It is also claimed that New York City was aware that approximately 62 pedestrians, cyclists and car occupants were injured on average per year in Times Square from 2006 to 2008, and approximately 37 were injured from 2014 to 2016.

91. To prevent mass tragedy from vehicles driven into pedestrians either intentionally, negligently, or accidentally, New York City should have (a) completely restricted vehicular travel in Times Square, specifically in the area of the subject event (Seventh Avenue from 42nd to

47th Streets), (b) properly installed bollards or other structures to prevent a vehicle from entering, striking, and severely injuring innocent pedestrians, or (c) provided basic and expected security in the form of temporary barriers, obstacles, or road blocks to prevent vehicles from entering, striking, and severely injuring innocent pedestrians.

92. The limited liability provisions of CPLR §1601 do not apply pursuant to the exceptions of CPLR §1602 (6) and (7).

93. On or about June 28, 2017, August 1, 2017 and August 16, 2017 Plaintiff duly served a Notice of Claim upon the defendants, THE CITY OF NEW YORK, THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION and THE NEW YORK CITY POLICE DEPARTMENT.

94. A valid Notice of Claim was served upon the City of New York and the New York City Department of Transportation within the time limits prescribed by the General Municipal Law.

95. At least thirty days have elapsed since the service of each of the aforementioned Notice of Claims and that adjustment or payment thereof has been neglected or refused.

96. As a result of the aforesaid occurrence and the injuries sustained and the death of the deceased plaintiff herein resulting therefrom, as aforesaid, THOMAS ELSMAN and the Decedent's Estate are entitled to take under the Decedent Estate Law and New York wrongful death laws, having suffered extensive monetary and/or pecuniary losses.

97. That by reason of the foregoing, the Plaintiffs have been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

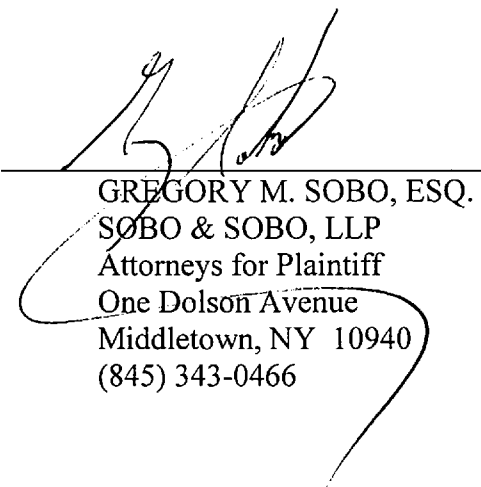
WHEREFORE, plaintiff demands judgment against the defendants as follows:

1. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the First Cause of Action;
2. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Second Cause of Action;
3. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Third Cause of Action;
4. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Fourth Cause of Action;
5. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Fifth Cause of Action;
6. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Sixth Cause of Action;
7. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Seventh Cause of Action;
8. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Eighth Cause of Action;
9. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Ninth Cause of Action;

10. A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction on the Tenth Cause of Action;

11. A sum that exceeds the jurisdictional limits of all lower courts on the Eleventh Cause of Action together with the costs and disbursements of this action;

DATED: July , 2018
Middletown, New York



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

-----X
THOMAS ELSMAN, as Representative of
the Estate of ALYSSA ELSMAN, DECEASED,
THOMAS ELSMAN, as Parent and Natural Guardian of Index No: _____
A.E. an Infant, and THOMAS ELSMAN,
Individually, DESTINY LIGHTFOOT,
CAROLINE JOHNS, GAYATRI JARIWALA,
SHAHIL JARIWALA, WILLIAM MCCOLLOUGH,
and CATHERINE MCCOLLOUGH,
Plaintiff(s),

-against-

AFFIRMATION

Index No.:

RICHARD ROJAS, THE CITY OF NEW YORK,
THE CITY OF NEW YORK DEPARTMENT OF
TRANSPORTATION and THE NEW YORK CITY
POLICE DEPARTMENT,,

Defendant(s).

-----X
STATE OF NEW YORK

COUNTY OF ORANGE ss:

I, the undersigned, am an attorney admitted to practice in the courts of New
York State, and say that:

I am the attorney of record, or of counsel with the attorney(s) of record, for
the plaintiff(s). I have read the annexed VERIFIED COMPLAINT, know the contents
thereof and I believe them to be true, based upon the facts and information
contained in deponent's file. The reason I make this affirmation instead of the

plaintiffs is because the plaintiffs are not within the County of New York

where affirmant's law office is located.

Dated: July 30, 2018



Gregory M. Sobo, Esq.
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