

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

Index No.:
Date Purchased:

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DOROTHY BUXTON,

Plaintiff,

Plaintiff designates Bronx
County as the place of venue.
The basis of venue is the
Plaintiff's address.

-against-

Plaintiff resides at
731 East 161st Street,
Bronx, New York.

VISITING NURSE SERVICE OF NEW YORK INC.,
VISITING NURSE SERVICE OF NEW YORK HOME
CARE INC. and JANE DOE 1-10,

Defendants.
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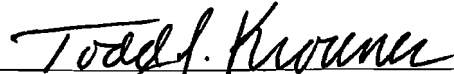
SUMMONS

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 Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 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 relief demanded in the complaint.

Dated: Chappaqua, New York
September 4, 2014

LAW OFFICE OF TODD J. KROUNER



By: TODD J. KROUNER
Attorneys for Plaintiff
93 North Greeley Avenue
Chappaqua, New York 10514
(914) 238-5800

To: Visiting Nurse Service of New York Inc.
ATTN: Office of General Counsel
1250 Broadway, 5th Floor
New York, New York 10001

Visiting Nurse Service of New York Home Care Inc.
ATTN: General Counsel's Office
170 East 70th Street
New York, New York 10021

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

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DOROTHY BUXTON,

Plaintiff,

-against-

VISITING NURSE SERVICE OF NEW YORK INC.,
VISITING NURSE SERVICE OF NEW YORK HOME
CARE INC. and JANE DOE 1-10,

Defendants.
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**VERIFIED
COMPLAINT**

Index No.:

Plaintiff DOROTHY BUXTON, by her attorneys, LAW OFFICE OF TODD J.

KROUNER, as and for her verified complaint, alleges upon information and belief as follows:

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DOROTHY BUXTON
FOR NEGLIGENCE**

1. Plaintiff DOROTHY BUXTON, at all times relevant to this action, resided at 731 East 161st Street, Apartment 15F, in the Borough of The Bronx, New York City, Bronx County, New York 10456.

2. Defendant VISITING NURSE SERVICE OF NEW YORK INC. (“Visiting Nurse Service”) is a not-for-profit corporation, incorporated under the laws of the State of New York, and maintains its principal place of business at 1250 Broadway, in the Borough of Manhattan, New York City, New York County, New York 10001.

3. Plaintiff DOROTHY BUXTON is currently a 96-year-old woman who has been under the care of the defendant Visiting Nurse Service and its subsidiaries, affiliates, and/or acquired entities for more than 10 years. Due to her significant disabilities, plaintiff DOROTHY BUXTON is substantially impaired in her ability to speak.

4. Defendant VISITING NURSE SERVICE OF NEW YORK HOME CARE INC. (“Visiting Nurse Service Home Care”) is a not-for-profit corporation, incorporated under the laws of the State of New York, and maintains its principal place of business at 170 East 70th Street, in the Borough of Manhattan, New York City, New York County, New York 10021.

5. Defendant Visiting Nurse Service Home Care is a subsidiary and/or affiliated entity of Visiting Nurse Service.

6. Defendants JANE DOE 1-10 (collectively, the “Jane Doe Defendants”) are persons whose true names are not currently known to plaintiff, who were home health aides who cared for plaintiff as employees, agents and/or independent contractors of defendant Visiting Nurse Service.

7. The Jane Doe Defendants were home health aides who cared for plaintiff as employees, agents and/or independent contractors of defendant Visiting Nurse Service Home Care.

8. While under the care of defendant Visiting Nurse Service and its subsidiaries, affiliates, and/or acquired entities, plaintiff DOROTHY BUXTON became increasingly reliant on the use of defendant Visiting Nurse Service’s home health aides’ use of a Hoyer Lift to move her.

9. While under the care of defendant Visiting Nurse Service Home Care, plaintiff DOROTHY BUXTON became increasingly reliant on the use of defendant Visiting Nurse Service Home Care’s home health aides’ use of a Hoyer Lift to move her.

10. A Hoyer Lift is a device used to hoist an immobile person, such as plaintiff DOROTHY BUXTON, in and out of her bed or chair.

11. On or about October 4, 2013, including some time prior thereto, plaintiff DOROTHY BUXTON was under the constant care and supervision of defendant Visiting Nurse Service, 24 hours per day, seven days per week.

12. On or about October 4, 2013, including some time prior thereto, plaintiff DOROTHY BUXTON was under the constant care and supervision of defendant Visiting Nurse Service Home Care, 24 hours per day, seven days per week.

13. On or about October 4, 2013, plaintiff DOROTHY BUXTON, suffered serious personal injuries, including a complete displaced fracture of her proximal right femur, while under the care and supervision of one or more of the Jane Doe Defendants.

14. Defendant Visiting Nurse Service was negligent in its care and supervision of plaintiff DOROTHY BUXTON.

15. Defendant Visiting Nurse Service Home Care was negligent in its care and supervision of plaintiff DOROTHY BUXTON.

16. One or more of the Jane Doe Defendants was negligent in her care and supervision of plaintiff DOROTHY BUXTON.

17. The negligence of defendant Visiting Nurse Service caused, or was a proximate cause of, the injuries suffered by DOROTHY BUXTON, on or about October 4, 2013.

18. The negligence of defendant Visiting Nurse Service Home Care caused, or was a proximate cause of, the injuries suffered by DOROTHY BUXTON, on or about October 4, 2013.

19. The negligence of one or more of the Jane Doe Defendants caused, or was a proximate cause of, the injuries suffered by DOROTHY BUXTON, on or about October 4, 2013.

20. Defendant Visiting Nurse Service was directly negligent in its failure to hire, train, retain and/or supervise one or more of the Jane Doe Defendants, including without

limitation in the caring for plaintiff DOROTHY BUXTON in the safe and proper use of the Hoyer Lift.

21. Defendant Visiting Nurse Service Home Care was directly negligent in its failure to hire, train, retain and/or supervise one or more of the Jane Doe Defendants, including without limitation in the caring for plaintiff DOROTHY BUXTON in the safe and proper use of the Hoyer Lift.

22. Defendant Visiting Nurse Service was vicariously liable for the negligence of one or more of the Jane Doe Defendants. Plaintiff DOROTHY BUXTON relies upon theories of vicarious liability and *respondeat superior*.

23. Defendant Visiting Nurse Service Home Care was vicariously liable for the negligence of one or more of the Jane Doe Defendants. Plaintiff DOROTHY BUXTON relies upon theories of vicarious liability and *respondeat superior*.

24. At all times mentioned herein, further by reason of the foregoing negligence of the defendants as aforesaid, plaintiff DOROTHY BUXTON was seriously, severely, and permanently injured, shocked, bruised, and wounded, and suffered great physical and mental pain and injury to her body and limbs, and was rendered sick, sore, and disabled, and required and received medical care and treatment, and will require future medical care and treatment and has incurred reasonable and necessary expenses for such medical care and treatment and may incur future expenses therefore.

25. On or about October 4, 2013, defendant Visiting Nurse Service was wanton and reckless and/or grossly negligent in its care and supervision of plaintiff DOROTHY BUXTON.

26. On or about October 4, 2013, defendant Visiting Nurse Service Home Care was wanton and reckless and/or grossly negligent in its care and supervision of plaintiff DOROTHY BUXTON.

27. On or about October 4, 2013, one or more of the Jane Defendants was wanton and reckless and/or grossly negligent in her care and supervision of plaintiff DOROTHY BUXTON.

28. Defendant Visiting Nurse Service was vicariously liable for the gross negligence of one or more of the Jane Doe Defendants. Plaintiff DOROTHY BUXTON relies upon theories of vicarious liability and *respondeat superior*.

29. Defendant Visiting Nurse Service Home Care was vicariously liable for the gross negligence of one or more of the Jane Doe Defendants. Plaintiff DOROTHY BUXTON relies upon theories of vicarious liability and *respondeat superior*.

30. The limited liability provisions of the C.P.L.R. § 1601 do not apply pursuant to one or more exceptions of the C.P.L.R. § 1602.

31. The amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

32. By reason of the foregoing, plaintiff DOROTHY BUXTON has been damaged in such amount as a jury may award.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DOROTHY BUXTON
FOR FRAUD**

33. Plaintiff DOROTHY BUXTON re-alleges and incorporates paragraphs 1 through 32, above.

34. At all times relevant to this action, defendant Visiting Nurse Service had a duty to report injuries suffered by plaintiff DOROTHY BUXTON while under its care and supervision.

35. At all times relevant to this action, defendant Visiting Nurse Service Home Care had a duty to report injuries suffered by plaintiff DOROTHY BUXTON while under its care and supervision.

36. At all times relevant to this action, one or more of the Jane Doe Defendants had a duty to report injuries suffered by plaintiff DOROTHY BUXTON while under her care and supervision.

37. On or about October 4, 2013, one or more of the Jane Doe Defendants injured plaintiff DOROTHY BUXTON by dropping her while using a Hoyer Lift, or by other means.

38. On or about October 4, 2013, one or more of the Jane Doe Defendants knew, or had reason to know, that plaintiff DOROTHY BUXTON had suffered serious personal injuries.

39. On or about October 4, 2013, including some time thereafter, one or more of the Jane Doe Defendants failed to report plaintiff DOROTHY BUXTON's injuries to any member of plaintiff DOROTHY BUXTON's immediate family.

40. On or about October 4, 2013, including some time thereafter, one or more of the Jane Doe Defendants concealed the material fact that (a) she had dropped plaintiff DOROTHY BUXTON; and (b) she had caused plaintiff DOROTHY BUXTON serious personal injuries.

41. On or about October 4, 2013, including some time thereafter, one or more of the Jane Doe Defendants knew that her representation of plaintiff DOROTHY BUXTON's condition was false or recklessly made such representation of plaintiff DOROTHY BUXTON's condition.

42. On or about October 4, 2013, including some time thereafter, one or more of the Jane Doe Defendants concealed plaintiff DOROTHY BUXTON's injuries to avoid adverse job action.

43. On or about October 4, 2013, including some time thereafter, one or more of the Jane Doe Defendants' fraudulent intent to conceal the injuries that she caused plaintiff DOROTHY BUXTON is reflected by the following actions without limitation:


- (a) failure to report that plaintiff DOROTHY BUXTON had been dropped on or about October 4, 2013;
- (b) failure to report that plaintiff DOROTHY BUXTON had sustained serious personal injuries on or about October 4, 2013;
- (c) failure to inform members of plaintiff DOROTHY BUXTON's immediate family that she had been dropped and had sustained serious personal injuries;
and
- (d) failure to seek medical attention for plaintiff DOROTHY BUXTON's serious personal injuries.

44. Plaintiff DOROTHY BUXTON and members of her immediate family trusted defendants Visiting Nurse Service, Visiting Nurse Service Home Care and the Jane Doe Defendants, and reasonably relied on them to care for plaintiff DOROTHY BUXTON in a safe manner.

WHEREFORE, plaintiff DOROTHY BUXTON demands judgment against the defendants on the First Cause and Second Causes of Action in such sums as a jury may find fair, reasonable and just, all together with punitive damages, interest, costs and disbursements of this action.

Dated: Chappaqua, New York
September 4, 2013

Yours, etc.
LAW OFFICE OF TODD J. KROUNER

By: 
Todd J. Krouner
Attorneys for Plaintiff
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