

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

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BARBARA BRINKERHOFF, ADMINISTRATOR  
OF THE ESTATE OF DAVID BRINKERHOFF,  
DECEASED,

Plaintiff,

-against-

THE COUNTY OF ST. LAWRENCE, THE  
ST. LAWRENCE COUNTY PROBATION  
DEPARTMENT, FRANCINE PERETTA,  
ALLYSON BROWN, and SAI BRISTOL,

Defendants.  
-----X

Index No.:

**SUMMONS**

Filed in Supreme Court, St.  
Lawrence County on  
\_\_\_\_\_.

**TO THE ABOVE NAMED DEFENDANTS:**

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, of if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within twenty days after the services 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.

Plaintiff designates St. Lawrence County as the venue for trial. The basis of venue is Defendant's residence.

Dated: New York, New York  
August 22, 2008

Yours, etc:

  
**SEGER WEISS LLP**

By: Christopher A. Seeger, Esq.  
Moshe Horn, Esq.  
Marc S. Albert, Esq.  
Attorneys for Plaintiffs  
One William Street  
New York NY 10004  
(212) 584-0700

To: County of St. Lawrence, c/o Peter Lekki, Esq, 48 Court Street, Canton, NY 13617  
To: St. Lawrence County Probation Department, 48 Court Street, Canton, NY 13617  
To: Francine Perretta, 48 Court Street, Canton, NY 13617  
To: Allyson Brown, 48 Court Street, Canton, NY 13617  
To: Sai Bristol, 48 Court Street, Canton, NY 13617

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

-----X  
BARBARA BRINKERHOFF, ADMINISTRATOR  
OF THE ESTATE OF DAVID BRINKERHOFF,  
DECEASED,

**VERIFIED COMPLAINT**

Index No.: 20660/06

Plaintiffs,

-against-

THE COUNTY OF ST. LAWRENCE, THE  
ST. LAWRENCE COUNTY PROBATION  
DEPARTMENT, FRANCINE PERETTA,  
ALLYSON BROWN, and SAI BRISTOL,

Defendants,

-----X  
Plaintiffs, BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF  
DAVID BRINKERHOFF, DECEASED as and for a cause of action against the defendants, alleges,  
upon information and belief, as follows:

**PARTIES AND JURISDICTION**

1. At the time of the commencement of this action and all times hereinafter mentioned, plaintiff Barbara Brinkerhoff, both Individually and as Administrator of the Estate of David Brinkerhoff, is a resident of the County of Schenectady and State of New York.

2. Prior to the commencement of this action, on or about November 8, 2007, Limited Letters of Administration on the Estate of DAVID BRINKERHOFF were issued to plaintiff BARBARA BRINKERHOFF by Order of the Surrogate of the County of Greene, State of New York. A copy of the Limited Letters of Administration is annexed to this Complaint.

3. That on April 25, 2007 and at all times hereinafter mentioned, defendant THE COUNTY OF ST. LAWRENCE was and still is a domestic municipal corporation which resided in

the County of St. Lawrence and State of New York.

4. That on April 25, 2007 and at all times hereinafter mentioned, defendant ST. LAWRENCE COUNTY DEPARTMENT OF PROBATION was and still is a domestic municipal corporation which resided in the County of St. Lawrence and State of New York.

5. That on April 25, 2007 and at all times hereinafter mentioned, defendant FRANCINE PERRETTA was an employee of defendant ST. LAWRENCE COUNTY DEPARTMENT OF PROBATION and/or THE COUNTY OF ST. LAWRENCE. At all times mentioned herein, defendant FRANCINE PERRETTA was the Probation Director of the St. Lawrence County Probation Department.

6. That on April 25, 2007 and at all times hereinafter mentioned, defendant ALLYSON BROWN was an employee of defendant ST. LAWRENCE COUNTY DEPARTMENT OF PROBATION and/or THE COUNTY OF ST. LAWRENCE. At all times mentioned herein, defendant ALLYSON BROWN was the Probation Officer for the St. Lawrence County Probation Department.

7. That on April 25, 2007 and at all times hereinafter mentioned, defendant SAI BRISTOL was an employee of defendant ST. LAWRENCE COUNTY DEPARTMENT OF PROBATION and/or THE COUNTY OF ST. LAWRENCE. At all times mentioned herein, defendant SAI BRISTOL was the Probation Supervisor for the St. Lawrence County Probation Department.

8. That prior hereto, on February 6, 2008 and within the time prescribed by law, a sworn Notice of Claim stating, among other things, the time when and place where the injuries and damages were sustained, together with plaintiff's demands for adjustment thereof was duly served

on the claimant's behalf on the County of St. Lawrence and the St. Lawrence County Probation Department and that thereafter said defendants refused or neglected for more than thirty (30) days and up to the commencement of this action to make any adjustment or payment thereof, and that thereafter, and within the time provided by law, this action was commenced.

9. That this action is being brought within two years of the date of accrual.

10. Under the facts and circumstances of this case and pursuant to CPLR §503, venue and jurisdiction are proper in this Court.

### **SUMMARY OF THE CASE**

11. At the time of the events set forth in this Complaint, Travis Trim (hereafter "Trim") was a 23 year old resident of St. Lawrence County in the State of New York.

12. That on August 23, 2005, Trim was convicted of Petit Larceny charges in Franklin County in New York. Trim was sentenced to three (3) years probation on October 6, 2005.

13. Trim's supervision was subsequently transferred to St. Lawrence County in New York where he was ultimately assigned to Probation Officer Allyson Brown (hereafter "P.O. Brown") of the St. Lawrence County Probation Department.

14. On September 9, 2006, Travis Trim violated his probation when he was arrested for Unlawfully Dealing with a Child in the First Degree after purchasing alcohol for three underage friends.

15. Trim notified P.O. Brown of his arrest within two weeks of the said arrest and P.O. Brown was again notified of the arrest by a "Hit Notification" on September 25, 2006.

16. Division of Probation and Correctional Alternatives (hereafter "DPCA") Rules and Regulations, Part 352.1(a) provide that "Each local probation director shall establish local

written procedures governing handling of new offense violations and technical violations of probationers under their department's supervision and court notification of alleged violation(s) of probation".

17. St. Lawrence County Probation Violation policies provide that "If the alleged violation is in regards to an arrest for a new offense, the Probation Officer, after gathering the basic facts, will within five working days of notification of the arrest, send a memorandum to the sentencing Court and the Court who has jurisdiction (if different) informing said Court of the arrest."

18. In contravention of their own policies, P.O. Brown failed to notify the Court of Trim's arrest. Probation Director Francine Perretta (hereafter "Perretta") and Probation Supervisor Sai Bristol (hereafter "Bristol") similarly failed to notify the Court of the arrest.

19. Between September 16, 2006 and November 1, 2006, during which time Trim was enrolled at the State University at Canton, the University's Police reported to Trim's dorm room on three (3) separate occasions to respond to Complaints.

20. On one of these occasions, October 20, 2006, University Police discovered Trim and three (3) other students in possession of alcohol and marijuana. Trim was issued an Appearance Ticket for Possession of Marijuana.

21. On another of these occasions, November 1, 2006, University Police found Trim to be in possession of alcohol, marijuana and a digital scale on top of a locked footlocker in their room. Suspected to contain drugs, attempts were made to open the footlocker, but Trim could not produce the right key.

22. On November 3, 2006, the St. Lawrence Probation Department received the three

(3) incident reports from University Police.

23. Also on November 3, 2006, Trim's next scheduled reporting date to the probation department, University Police contacted P.O. Brown to discuss Trim. P.O. Brown advised University Police that she would attempt to produce Trim at the University. However, Trim never reported and, in fact, P.O. Brown never saw Trim again.

24. On November 6, 2006, University Police notified P.O. Brown that Trim was no longer living on campus. Trim had failed to notify P.O. Brown of his move out of his SUNY Canton dormitory room, a violation.

25. In direct contravention of St. Lawrence County Probation Department rules and regulations, neither P.O. Brown, Perretta, Bristol nor anyone else at the St. Lawrence County Probation Department ordered an investigation as to the facts of the violation.

26. It was not until December 18, 2006, that a violation package containing the sworn affidavit of P.O. Brown and requesting a Declaration of Delinquency was finally sent to the Court.

27. As such, it wasn't until December 29, 2006, that Canton Village Justice Michael Crowe signed a Declaration of Delinquency and issued a Warrant for the arrest of Travis Trim.

28. The warrant and Declaration of Delinquency was sent via facsimile and regular mail by the Canton Village Court to the St. Lawrence County Probation Department on January 2, 2007. The warrant and the accompanying Declaration of Delinquency was received by the St. Lawrence County Probation Department, but was promptly shredded and/or destroyed.

29. At no time after receiving and destroying the above warrant did the St. Lawrence County Probation Department contact the Court, the sheriff or the Village of Canton Police

Department in order to confirm receipt of the warrant or to forward same to the appropriate authorities for enforcement.

30. At no time after receiving and destroying the above warrant did the St. Lawrence County Probation Department enter the warrant and/or confirm that the warrant was entered in the DPCA Warrant Entry/Registrant System, nor did the St. Lawrence County Probation Department have a policy in place for same, as is required.

31. As a sole proximate result of the St. Lawrence County Probation Department's above-mentioned failures to comply with ministerial duties which were not discretionary, but rather, were mandatory, local and state law enforcement agencies had no knowledge of the warrant or the need to detain and/or arrest Trim.

32. On or about April 24, 2007, Trooper Matthew Gombosi stopped Trim for a minor traffic infraction in Margaretville, New York, unaware that a warrant had been issued for Trim's arrest. During the course of the traffic stop, Trim pulled a handgun from his waistband and shot Trooper Gombosi.

33. The following day, April 25, 2007, the elite Mobile Response Team, of which Trooper David Brinkerhoff was a member, was summoned to search for Trim. Brinkerhoff and six other members of the Mobile Response Team were searching for Trim in a home on Cemetery Road in Margaretville after a burglar alarm signal was received by local police when Trim, who was in the house and had a gun, opened fire upon Brinkerhoff and the other members of the Mobile Response Team and gunfire ensued.

34. During the course of the gunfire between Trim and the members of the Mobile Response Team, Trooper David Brinkerhoff was shot, wounded and ultimately killed.

35. The within incident and the resultant injuries and eventual death suffered by David Brinkerhoff was completely avoidable and would not have occurred but for the negligence, carelessness and gross negligence of the defendants, as discussed in detail below.

36. The horrific result of the defendants' actions and inaction is the death of a man who was by all accounts a "real life hero", 29 year old David Brinkerhoff, who leaves behind a spouse, Barbara Brinkerhoff and a 7 month old daughter, Isabella Brinkerhoff. Barbara Brinkerhoff and Isabella Brinkerhoff will tragically be forever deprived of the financial assistance, monetary support, parental guidance, nurturing, intellectual, moral and physical training, assistance and services of David Brinkerhoff.

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF  
BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF DAVID  
BRINKERHOFF PURSUANT TO GENERAL OBLIGATIONS LAW §11-106**

37. Plaintiff repeats, realleges and reiterates each and every allegation set forth above with the same force and effect as if fully set forth herein at length.

38. That on April 25, 2007 and at all other times herein mentioned, defendant The County of St. Lawrence owned, operated, maintained and controlled a Probation Department known as the St. Lawrence County Probation Department.

39. That on April 25, 2007 and at all other times herein mentioned, defendant St. Lawrence County owned, operated, maintained and controlled the St. Lawrence County Probation Department.

40. That on April 25, 2007 and at all other times herein mentioned, defendants P.O. Brown, Perretta and Bristol were employees, agents and/or servants of defendant the County of St. Lawrence and/or defendant St. Lawrence County Probation Department.

41. That at all relevant times mentioned herein, the County of St. Lawrence and St. Lawrence County Probation Department, their agents, servants, licensees and/or employees had a duty to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, to carry out the ministerial functions and responsibilities assigned to their department in a reasonable and non-negligent manner.

42. That at all relevant times mentioned herein, the County of St. Lawrence and St. Lawrence County Probation Department, their agents, servants, licensees and/or employees had a duty to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, to maintain and not destroy copies of arrest warrants issued to them by the Canton Village Court, amongst other Courts, and to deliver such warrants to law enforcement personnel, including but not limited to the sheriff and/or the Village of Canton Police Department.

43. That at all relevant times mentioned herein, the County of St. Lawrence and St. Lawrence County Probation Department, their agents, servants, licensees and/or employees had a duty to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, to ensure that law enforcement personnel, including but not limited to the sheriff and/or the Village of Canton Police Department were advised of and/or provided with arrest warrants received by them so as allow such law enforcement personnel to take action on the said warrants.

44. That at all relevant times mentioned herein, the County of St. Lawrence and St. Lawrence County Probation Department, their agents, servants, licensees and/or employees had a duty to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, to notify the Courts, including but not limited to the Canton Village Court, of violations of probation of individuals assigned to their department, including but not limited to Travis Trim.

45. That at all relevant times mentioned herein, the County of St. Lawrence and St. Lawrence County Probation Department, their agents, servants, licensees and/or employees had a duty to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, to comply with Division of Probation and Correctional Alternatives (DCPA) rules and regulations, including but not limited to DCPA §355.3, §347.4, §348.2, §350.5, §352.1(a) and (b).

46. That at all relevant times mentioned herein, defendants P.O. Brown, Perretta and Bristol had a duty to the general public by virtue of their employment with the County of St. Lawrence and/or the St. Lawrence County Probation Department, including but not limited to the plaintiff's decedent David Brinkerhoff, to carry out the ministerial functions and responsibilities assigned to their department in a reasonable and non-negligent manner.

47. That at all relevant times mentioned herein, defendants P.O. Brown, Perretta and Bristol had a duty to the general public by virtue of their employment with the County of St. Lawrence and/or the St. Lawrence County Probation Department,, including but not limited to the plaintiff's decedent David Brinkerhoff, to maintain and not destroy copies of arrest warrants issued to them by the Canton Village Court, amongst other Courts, and to deliver such warrants to law enforcement personnel, including but not limited to the sheriff and/or the Village of Canton Police Department.

48. That at all relevant times mentioned herein, defendants P.O. Brown, Perretta and Bristol had a duty to the general public by virtue of their employment with the County of St. Lawrence and/or the St. Lawrence County Probation Department, including but not limited to the plaintiff's decedent David Brinkerhoff, to ensure that law enforcement personnel, including but not limited to the sheriff and/or the Village of Canton Police Department were advised of and/or

provided with arrest warrants received by them so as allow such law enforcement personnel to take action on the said warrants.

49. That at all relevant times mentioned herein, defendants P.O. Brown, Perretta and Bristol had a duty to the general public by virtue of their employment with the County of St. Lawrence and/or the St. Lawrence County Probation Department, including but not limited to the plaintiff's decedent David Brinkerhoff, to notify the Courts, including but not limited to the Canton Village Court, of violations of probation of individuals assigned to their department, including but not limited to Travis Trim.

50. That at all relevant times mentioned herein, defendants P.O. Brown, Perretta and Bristol had a duty to the general public by virtue of their employment with the County of St. Lawrence and/or the St. Lawrence County Probation Department, including but not limited to the plaintiff's decedent David Brinkerhoff, to comply with Division of Probation and Correctional Alternatives (DCPA) rules and regulations, including but not limited to DCPA §355.3, §347.4, §348.2, §350.5, §352.1(a) and (b).

51. Defendants the County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees breached the above-mentioned ministerial duties which they owed to the general public, including but not limited to the plaintiff's decedent David Brinkerhoff, and were negligent and careless in the following respects:

(a) in failing to deliver the warrant for Travis Trim's arrest that had been delivered to them and/or failing to take any action to ensure that said warrant was delivered to the sheriff or the Village of Canton Police Department;

(b) in failing to notify the sheriff or the Village of Canton Police Department of the aforesaid warrant;

(c) in shredding and/or discarding the aforesaid warrant;

(d) in failing to follow up with the Court for an original warrant;

(e) in failing to take reasonable steps to follow up with police personnel to ensure receipt of the aforesaid warrant;

(f) in failing to notify and/or timely notify the Court of two prior violations of Travis Trim's probation as they were required to do;

(g) in failing to provide the Court with necessary information so as to allow an arrest warrant to be issued at an earlier time;

(h) in failing to enter the subject warrant of Justice Michael Crowe in the Warrant Entry System;

(i) in failing to have and/or maintain an internal process for confirming that warrants such as the one issued for Travis Trim's arrest were entered in the Warrant Entry System and for determining the holding agency;

(j) in failing to take reasonable steps to ensure that the subject warrant was executed properly;

(k) in negligently failing to comply with Division of Probation and Correctional Alternatives Regulations;

(l) in failing to have written protocols for the timely processing and tracking of violation of probation warrants with the Courts and law enforcement agencies;

(m) in failing to abide by its own internal rules and regulations;

(n) in allowing Travis Trim to remain free for some four months without advising the Court of violations of his probation, as they are required to do;

(o) in failing to train and/or properly or adequately train its personnel;

(p) in negligently hiring and retaining its personnel; and

(q) in failing to properly and/or adequately supervise its personnel;

52. That the above-mentioned duties on the part of the defendants did not entail the exercise of discretion or judgment.

53. That the above-mentioned negligence and breach of ministerial duties owed by the defendants to the general public, including the plaintiff's decedent, David Brinkerhoff, was a proximate cause of the events of April 25, 2007 and the resultant death of David Brinkerhoff.

54. That defendants the County of St. Lawrence and the St. Lawrence County Probation Department are liable for the negligent acts and omissions of their agents, servants and/or employees, including but not limited to those of defendant employees P.O. Brown, Perretta and Bristol.

55. That no negligence on the part of the plaintiff's decedent contributed to the occurrence alleged herein in any manner whatsoever.

56. The plaintiff's decedent, David Brinkerhoff, died leaving surviving distributees, including but not limited to a spouse, Barbara Brinkerhoff and one minor child, Isabella Brinkerhoff.

57. The aforementioned distributees received financial assistance, monetary support, parental guidance, nurturing, intellectual, moral and physical training, assistance and services from plaintiff's decedent David Brinkerhoff and were entitled to the continued receipt of same.

58. By reason of the foregoing negligence on the part of the defendants, the aforementioned distributees sustained pecuniary loss and were deprived and will continue to be deprived in the future of the financial assistance, monetary support, inheritance, parental guidance, nurturing, intellectual, moral and physical training, assistance and services of plaintiff's decedent David Brinkerhoff.

59. The aforementioned distributees received comfort, society, love and affection from plaintiff's decedent David Brinkerhoff and were entitled to the continued receipt of same.

60. By reason of the foregoing negligence on the part of the defendants, the aforementioned distributees sustained pecuniary loss and were deprived and will continue to be deprived of the comfort, society, love and affection from plaintiff's decedent David Brinkerhoff.

61. By reason of the foregoing negligence on the part of the defendants, the aforementioned distributees were further obliged to expend diverse sums of money for medical expenses and funeral and burial expenses occasioned by the death of David Brinkerhoff.

62. This action falls within one or more of the exemptions set forth in CPLR §1602.

63. This cause of action is brought pursuant to General Obligations Law §11-106.

64. That by reason of the foregoing negligence on the part of the defendants, plaintiff BARBARA BRINKERHOFF, in her capacity as ADMINISTRATOR of the Estate of DAVID BRINKERHOFF was damaged in an amount that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF  
BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF DAVID  
BRINKERHOFF PURSUANT TO GENERAL OBLIGATIONS LAW §11-106**

65. Plaintiff repeats, realleges and reiterates each and every allegation set forth above

with the same force and effect as if fully set forth herein at length.

66. By reason of the foregoing and the negligence and carelessness on the part of the defendants, plaintiff's decedent was allowed, caused and permitted to sustain conscious pain and suffering and was caused to suffer from permanent, severe, disabling injuries, physical disability, mental anguish and emotional distress up until the time of his death.

67. The aforesaid negligence and carelessness on the part of the defendants was a proximate cause of the subject incident's occurrence on April 25, 2007 and the conscious pain and suffering, mental anguish and emotional distress up sustained by David Brinkerhoff up until the time of his death.

68. That as a result of the foregoing, plaintiff BARBARA BRINKERHOFF in her capacity as ADMINISTRATOR of the Estate of DAVID BRINKERHOFF was damaged in an amount that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF  
BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF DAVID  
BRINKERHOFF PURSUANT TO GENERAL MUNICIPAL LAW §205-c**

69. Plaintiff repeats, realleges and reiterates each and every allegation set forth above with the same force and effect as if fully set forth herein at length.

70. That defendants The County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees, by and through the negligent actions and inaction discussed above, and their breach of ministerial duties assigned to them violated and/or failed to comply with certain statutes, ordinances, rules and/or regulations.

71. That pursuant to General Municipal Law §205-e, plaintiff brings this cause of action for injuries and death suffered in the line of duty as a proximate result of the defendants' violations of the said statutes, ordinances, rules and/or regulations.

72. That defendants The County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees, by and through the actions and inaction discussed above, violated Division of Probation and Correctional Alternatives (DCPA) rules and regulations, including but not limited to DCPA §355.3, §347.4, §348.2, §350.5, §352.1(a) and (b).

73. That the violation of and/or the failure to comply with the above-mentioned statutes, ordinances, rules and/or regulations on the part of the defendants The County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees was a proximate cause of the injuries and death suffered by David Brinkerhoff.

74. By reason of the foregoing violation of and/or the failure to comply with the above-mentioned statutes, ordinances, rules and/or regulations on the part of the defendants The County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees, the aforementioned distributees sustained pecuniary loss and were deprived and will continue to be deprived in the future of the financial assistance, monetary support, inheritance, parental guidance, nurturing, intellectual, moral and physical training, assistance and services of plaintiff's decedent David Brinkerhoff.

75. By reason of the foregoing violation of and/or the failure to comply with the above-mentioned statutes, ordinances, rules and/or regulations on the part of the defendants The County of

St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees, the aforementioned distributees sustained pecuniary loss and were deprived and will continue to be deprived of the comfort, society, love and affection from plaintiff's decedent David Brinkerhoff.

76. By reason of the foregoing violation of and/or the failure to comply with the above-mentioned statutes, ordinances, rules and/or regulations on the part of the defendants The County of St. Lawrence, St. Lawrence County Probation Department, P.O. Brown, Perretta and Bristol, their respective agents, servants, licensees and/or employees, the aforementioned distributees were further obliged to expend diverse sums of money for medical expenses and funeral and burial expenses occasioned by the death of David Brinkerhoff.

77. That as a result of the foregoing, plaintiff BARBARA BRINKERHOFF in her capacity as ADMINISTRATOR of the Estate of DAVID BRINKERHOFF was damaged in an amount that exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF**  
**BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF DAVID**  
**BRINKERHOFF**  
**(Punitive Damages)**

78. Plaintiff repeats, realleges and reiterates each and every allegation set forth above with the same force and effect as if fully set forth herein at length.

79. The actions and omissions as aforesaid of the defendants, their agents, servants, licensees and/or employees were wanton, willful, reckless and/or malicious and showed a conscious indifference and/or utter disregard for the safety of the lawful citizens of their County and police enforcement personnel, including but not limited to the plaintiff's decedent.

80. The aforesaid wanton, willful, reckless and/or malicious actions and omissions on the part of the defendants, their agents, servants, licensees and/or employees were a proximate cause of the within incident's occurrence and the resultant injuries and death sustained by the plaintiff herein.

81. That as a result of the foregoing, plaintiff BARBARA BRINKERHOFF in her capacity as ADMINISTRATOR of the Estate of DAVID BRINKERHOFF demands punitive damages in an amount to punish Defendants for their willful, intentional, reckless and/or malicious conduct as set forth herein at length, and deter them from similar conduct in the future.

**WHEREFORE**, plaintiff BARBARA BRINKERHOFF, ADMINISTRATOR OF THE ESTATE OF DAVID BRINKERHOFF, DECEASED demands judgment against the defendants herein in the First, Second and Third Causes of Action, amounts that exceed the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, and demands judgment against the defendants herein in the Fourth Cause of Action, punitive damages in an amount to punish Defendants and deter them from similar conduct in the future, together with the interest, costs and disbursements of this action.

Dated: New York, New York  
August 22, 2008

Yours, etc.

**SEGER WEISS LLP**

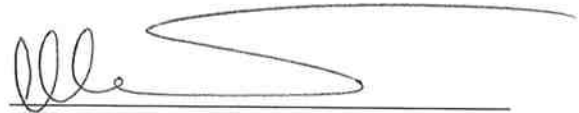


By: Christopher A. Seeger, Esq.  
Moshe Horn, Esq.  
Marc S. Albert, Esq.  
Attorneys for Plaintiffs  
One William Street  
New York, NY 10004  
(212) 584-0700

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

I, the undersigned, an attorney admitted to practice in the Courts of New York State, state under penalty of perjury that I am one of the attorneys for the plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true. The reason this verification is made by me and not by my client(s), is that my client(s) are not presently in the County where I maintain my offices. The grounds of my belief as to all matters not stated upon my own knowledge are the materials in my file and the investigation conducted by my office.

DATED: New York, New York  
August 22, 2008



MARC S. ALBERT