SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ALAN BRODY, as Administrator of the Estate of ELLEN BRODY a/k/a ELLEN GAIL SCHAEFFER BRODY, and ALAN BRODY, Individually,

SUMMONS

Plaintiff,

-against-

METRO-NORTH COMMUTER RAILROAD COMPANY also known as METRO-NORTH RAILROAD, METROPOLITAN TRANSPORTATION AUTHORITY, STEPHEN SMALLS, COUNTY OF WESTCHESTER, TOWN OF MOUNT PLEASANT, ARGENT VENTURES, LLC and MIDTOWN TDR VENTURES LLC,

Defendants.

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TO THE ABOVE NAMED DEFENDANT(s):

YOU ARE HEREBY SUMMONED to appear in this action by serving an answer on plaintiff's attorneys within 20 days after service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates Westchester County as the place of trial. The basis of venue is pursuant to CPLR §§ 504 and 505. Plaintiff resides at 91 Highland Road, Scarsdale, NY 10583.

DATED: New York, New York
February 3, 2016

Yours, etc.,

By: PHILIP A. RUSSOTTI
WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP
Attorney for Plaintiff(s)
420 Lexington Avenue
New York, NY 10170
(212) 986-7353

DEFENDANTS' ADDRESS(ES):

METRO-NORTH COMMUTER RAILROAD
Legal Department
420 Lexington Avenue, 11th Floor
New York, New York 10170

METROPOLITAN TRANSPORTATION AUTHORITY
General Counsel
2 Broadway
New York, New York 10004

STEPHEN SMALLS
c/o METRO-NORTH COMMUTER RAILROAD
Legal Department
420 Lexington Avenue, 11th Floor
New York, New York 10170

COUNTY OF WESTCHESTER
Michaelian Office Building
Department of Law
148 Martine Avenue
White Plains, New York 10601

TOWN OF MT. PLEASANT
One Town Hall Plaza
Valhalla, New York 10595

ARGENT VENTURES, LLC
c/o Andrew Penson
551 Fifth Avenue, 34th Floor
New York, New York 10176

MIDTOWN TDR VENTURES, LLC
551 Fifth Avenue, 34th Floor
New York, New York 10176

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ALAN BRODY, as Administrator of the Estate of ELLEN BRODY a/k/a ELLEN GAIL SCHAEFFER BRODY, and ALAN BRODY, Individually,

Plaintiff,

-against-

METRO-NORTH COMMUTER RAILROAD COMPANY also known as METRO-NORTH RAILROAD, METROPOLITAN TRANSPORTATION AUTHORITY, STEPHEN SMALLS, COUNTY OF WESTCHESTER, TOWN OF MOUNT PLEASANT, ARGENT VENTURES, LLC and MIDTOWN TDR VENTURES LLC,

Defendants.

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VERIFIED COMPLAINT

Index No.:

Plaintiff, ALAN BRODY, Individually and as Administrator of the Estate of ELLEN BRODY, by his attorneys, WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP, complaining of the defendants, upon information and belief, allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, plaintiff ALAN BRODY was and still is a resident of the State of New York, County of Westchester.

2. At all times hereinafter mentioned, plaintiff ALAN BRODY was the husband of ELLEN BRODY a/k/a ELLEN GAIL SCHAEFFER BRODY (hereinafter "ELLEN BRODY") deceased.

3. On April 13, 2015, ALAN BRODY was appointed as the Administrator of the Estate of ELLEN BRODY by the Surrogate's Court, Westchester County.

4. On or about May 1, 2015, and within ninety days of the incident complained of herein, plaintiff served a notice of claim upon METROPOLITAN TRANSPORTATION AUTHORITY (hereinafter "MTA") pursuant to Section 50-e of the General Municipal Law and Section 1276(2) of the Public Authorities Law.

5. On or about May 1, 2015, and within ninety days of the incident complained of herein, plaintiff served a notice of claim upon defendant METRO-NORTH RAILROAD (hereinafter "METRO-NORTH") pursuant to Section 50-e of the General Municipal Law and Section 1276 of the Public Authorities Law.

6. On or about May 1, 2015, and within ninety days of the incident complained of herein, plaintiff served a notice of claim upon defendant COUNTY OF WESTCHESTER pursuant to Section 50-e of the General Municipal Law.

7. On or about May 1, 2015, and within ninety days of the incident complained of herein, plaintiff served a notice of claim upon defendant TOWN OF MOUNT PLEASANT pursuant to Section 50-e of the General Municipal Law.

8. A hearing pursuant to Section 50(h) of the General Municipal Law was held of Plaintiff, ALAN BRODY on or about October 13, 2015. The COUNTY OF WESTCHESTER did not appear at the hearing and waived its right to conduct a 50-h hearing of ALAN BRODY.

9. More than thirty days have passed since the date of service of the respective notices of claims and defendants have not settled or otherwise adjusted this claim and that this action is brought within one year and ninety days of the occurrence.

10. All conditions precedent to the bringing of this action against the

defendants have been satisfied.

11. On February 3, 2015 at approximately 6:26 PM, ELLEN BRODY was killed when the vehicle which she was operating (Mercedes Benz ML350) was struck by a northbound METRO-NORTH passenger train, number 659, on the Harlem Line of METRO-NORTH at the Commerce Street highway-rail grade crossing (U.S. DOT Grade Crossing I.D. No. 529902V) located in the hamlet of Valhalla, Town of Mount Pleasant, County of Westchester, State of New York.

12. At all times hereinafter mentioned the defendant, METRO-NORTH was a public benefit corporation duly organized and existing under the laws of the State of New York.

13. At all times hereinafter mentioned, defendant MTA was a public benefit corporation duly organized and existing under the laws of the State of New York.

14. At all times hereinafter mentioned, the defendant METRO-NORTH is a wholly owned subsidiary and division of defendant MTA.

15. At all times hereinafter mentioned, defendant METRO-NORTH owned, operated, managed, maintained and controlled a commuter rail service, known as METRO-NORTH, from the City of New York to portions of the State of Connecticut, and Dutchess, Putnam and Westchester Counties, which included the aforementioned METRO-NORTH train No. 659 which was involved in the subject accident.

16. At all times hereinafter mentioned, defendant MTA owned, operated, managed, maintained and controlled a commuter rail service, known as METRO-NORTH, from the City of New York to portions of the State of Connecticut, and Dutchess, Putnam and

Westchester Counties, which included the aforementioned METRO-NORTH train No. 659 which was involved in the subject accident.

17. At all times hereinafter mentioned, defendant METRO-NORTH owned, operated, managed, maintained and controlled the Harlem line of METRO-NORTH.

18. At all times hereinafter mentioned, defendant MTA owned, operated, managed, maintained and controlled the Harlem line of METRO-NORTH.

19. At all times hereinafter mentioned, METRO-NORTH and MTA owned, operated, managed, maintained, and controlled the land, tracks, entire roadway intersection including the crossing, safety devices, roadway markings, signage, signals, pre-emption systems and devices, gates, lighting, and devices and vegetation in the vicinity of the surrounding tracks at and near the aforementioned Commerce Street highway-rail grade crossing.

20. At all times hereinafter mentioned, defendant ARGENT VENTURE, LLC ("hereinafter "ARGENT") was and still is a New York Limited Liability Company organized and existing under the laws of the State of New York, and authorized to do business and doing business in the State of New York.

21. At all times hereinafter mentioned, defendant MIDTOWN TDR VENTURES, LLC ("TDR") TDR was and still is a foreign limited liability corporation authorized to do business and doing business in the State of New York.

22. At all times hereinafter mentioned, ARGENT and TDR owned, operated, managed, maintained, and controlled the land, tracks, entire roadway intersection including the crossing, safety devices, roadway markings, signage, signals, pre-emption systems and devices,

gates, lighting, and devices and vegetation in the vicinity of the surrounding tracks at and near the aforementioned Commerce Street highway-rail grade crossing.

23. At all times hereinafter mentioned, MTA and METRO-NORTH had a long term lease with ARGENT and/or TDR granting MTA and METRO-NORTH operation, management, maintenance and control of land, tracks, entire roadway intersection including the crossing, safety devices, roadway markings, signage, signals, pre-emption systems and devices, gates, lighting, and devices and vegetation in the vicinity of the surrounding tracks at and near the aforementioned Commerce Street highway-rail grade crossing

24. At all times hereinafter mentioned, the defendant, TOWN OF MOUNT PLEASANT, was and still is a municipal government established by the State of New York.

25. At all times hereinafter mentioned, the defendant, TOWN OF MOUNT PLEASANT, was and still is a municipal corporation organized and existing under the laws of the State of New York.

26. At all times hereinafter mentioned, the defendant, TOWN OF MOUNT PLEASANT, owned, managed, controlled, maintained, and operated the land, tracks, entire roadway intersection including the crossing, safety devices, roadway markings, signage, signals, pre-emption systems and devices, gates, lighting, and devices and vegetation in the vicinity of the surrounding tracks at and near the aforementioned Commerce Street highway-rail grade crossing, as well as the entrance to the Taconic State Parkway and its intersection.

27. At all times hereinafter mentioned, defendant, COUNTY OF WESTCHESTER, was and still is a municipal corporation organized and existing under the laws of the state of New York.

28. At all times hereinafter mentioned, the defendant, COUNTY OF WESTCHESTER, owned, managed, controlled, maintained, and operated the land, tracks, entire roadway intersection including the crossing, safety devices, roadway markings, signage, signals, pre-emption systems and devices, gates, lighting, and devices and vegetation in the vicinity of the surrounding tracks at and near the aforementioned Commerce Street highway-rail grade crossing, as well as the entrance to the Taconic State Parkway and its intersection.

29. At all times hereinafter mentioned, defendant STEPHEN SMALLS was an agent, servant, and/or employee of defendant METRO-NORTH.

30. At all times hereinafter mentioned, defendant STEPHEN SMALLS was an agent, servant, and/or employee of defendant MTA.

31. At all times hereinafter mentioned, defendant STEPHEN SMALLS was acting within the scope of his employment and/or agency with defendants METRO-NORTH and/or MTA.

32. On February 3, 2015, defendant STEPHEN SMALLS was the engineer and operator of the aforementioned METRO-NORTH train number 659 involved in the subject collision.

AS AND FOR A FIRST CAUSE OF ACTION – NEGLIGENCE, PERSONAL INJURY AND PAIN AND SUFFERING

33. Plaintiffs hereby repeat, reiterate and reallege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

34. The defendants by their agents, servants, licensees, contractors, subcontractors, affiliates, and employees were negligent, careless and reckless in the ownership, construction, operation, design, maintenance, control and management of the

Commerce Street highway-rail grade crossing, including, but not limited to, negligence in the ownership, construction, operation, maintenance, design, control and management of the roadway, signage, lighting, barriers, gates, signals, tracks, visible and audible warning devices, lights, pre-emption systems and devices, power substations, signal houses, vegetation at and near said crossing, appurtenances, at and around said crossing in that the crossing had multiple hazards and failed to meet minimum safe construction standards and minimum standards of Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) and Railroad Highway Grade Crossing Handbook and generally accepted standards for safe railroad crossings. The defendants were further negligent, careless and reckless in allowing and failing to correct multiple safety hazards and defects at the subject highway-rail grade crossing including, but not limited to: a hazardous and defective pre-emption system which failed to provide first priority to train activation and sufficient time for vehicular traffic to clear, in violation of the MUTCD; a hazardous skew/angle of the roadway and tracks of 117 degrees, which limits a motorists field of view and line of sight to see an oncoming train from the south, especially on the westernmost track and limits a motorist's ability to hear the train's audible warnings system because of the topography which renders the audible warning system ineffective; a building structure located in the southeast quadrant of the intersection which further interferes with a train's audible warning system emanating from northbound trains, and blocks a motorist's line of sight of the northbound tracks of an approaching train, and has a bright light facing a motorist trying to look south, creating a glare interfering with the motorist's vision; vegetation which blocks a motorist's line of sight of the tracks and an approaching train, and; an elevated railway design (i.e. hump) of the crossing, especially

together with a depressed roadway immediately preceding the crossing, which presents a hazard, including limits on the ability of a motorist to see traffic conditions beyond the crossing which can cause difficulty in making decisions on how to proceed; the ambient lighting at and near the crossing which is inadequate and does not meet minimum, national standards, preventing a motorist from seeing the crossing or signs at or near the crossing; the existence of a short queue between the railroad tracks and the traffic signal beyond the crossing at the intersection of Commerce Street and the Taconic State Parkway, which creates a hazard and increases the likelihood that a car can get trapped on the tracks due to stopped traffic; the absence of an escape area for a vehicle to move to away from the crossing in the event that a motorist becomes trapped between another vehicle and the gate.

35. Because of the aforesaid safety hazards and defects at the subject highway-rail grade crossing, coupled with the heavy train volume at the crossing, low utility of said crossing due to the normally low level of vehicular traffic on Commerce Street and availability of two nearby safe crossings at West Stevens Street and at Lakeview Avenue (2044 feet away) and because of the considerations set forth in the Railroad Highway Grade Crossing Handbook recommending closure of redundant crossings, the hazardous Commerce Street crossing was redundant and unnecessary, and defendants were negligent, careless and reckless in failing to petition the Commissioner of the New York State Department of Transportation to close and eliminate this grade crossing, pursuant to Section 222 of the New York Transportation Law, which would have resulted in its closing due to of all of the above and because the cost to close the crossing would have been nominal without the necessity of constructing an alternative route.

36. In the absence of closure of the subject highway-rail grade crossing, as set forth above, the defendants were negligent, careless and reckless in failing to take the following remedial action to make the crossing safe, particularly in light of a prior auto/train accident at this crossing in 1984, including, but not limited to: providing a pre-emption system which gave first priority to train activation in all circumstances; failing to utilize funds allocated by the New York State Department of Transportation in 2009 or thereafter for planned upgrade of safety at the crossing by installation of additional warning lights/signs and failing to follow-up to have lights/signs installed pursuant to that plan for over 5 years; Because the quantity, quality, placement and content of the signage and warning signal light near the crossing did not provide sufficient, adequate or safe advance warning to motorists of the presence of the crossing, approaching train traffic or the hazards presented, together with ineffective reflectivity of existing signage, and because Commerce Street curves to the right shortly before the crossing, additional signage, warning signals and lights were required on the left side of Commerce Street (the north side as it approaches the railroad crossing) to ensure that the signs and warning signals/lights were in the line of sight of motorists, and supplemental flashing light signals were required on the left side of Commerce Street, as illustrated in figure 28 of the Railroad Highway Grade Crossing Handbook, Rev. 2nd Ed. August 2007; A supplemental reflector crossbuck sign with the above described lights was required to be installed on the left hand side of Commerce Street because of restricted sight distance and unfavorable highway geometry approaching the grade crossing, as required by Section 8B.03 (06) of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD); An overhead cantilever railroad crossing sign with lights was required on

Commerce Street at the crossing, pursuant to Section 8C.04(16) of MUTCD; An active advanced warning sign approximately 170 feet prior to the crossing, was required pursuant to Railroad Highway Grade Crossing Handbook (Rev. 2nd Ed., Aug. 2007), p. 112, and the MUTCD Section 2C.05 and Table 2 C-4; A wayside horn system was required as provided for in the Railroad Highway Grade Crossing Handbook (Rev. 2nd Ed., Aug. 2007), p.110; Signage warning of humped crossing and skewed track/road interface as set forth in MUTCD was required; Sufficient additional illumination at the crossing was required; defendants should have ensured that existing reflective signs were sufficiently visible; the crossing was equipped with simultaneous pre-emption, which was insufficient to allow traffic to clear from the roadway prior to a train crossing, and the crossing should have been equipped with advance pre-emption or, if so provided, defendants were negligent in not ensuring that it worked properly; the pre-emption system should have provided first priority to train activation, in compliance with the MUTCD; defendants were negligent in permitting and not properly maintaining and trimming vegetation at and near the crossing, which interfered with sight lines to warning signs, tracks and crossing; defendants METRO-NORTH and MTA were negligent in failing to have a sufficient pilot/cowcatcher/fender or other device on the subject train to deflect and push to the side an obstacle on the track, including a vehicle; defendants METRO-NORTH and MTA were negligent in failing to initiate a program to educate motorists of dangers at grade crossings, particularly those crossings without four-quadrant gates and lights and how to proceed safely, and failed to establish a public awareness program pursuant to Operation Lifesaver or independently, to educate residents regarding safety issues at grade crossings including, but not limited to, the fact that crossing gates were designed to be easily

broken by motor vehicles to provide escape route if trapped on a track or in a crossing.

37. Defendants METRO-NORTH and MTA, through its agents, servants and employees, including defendant STEPHEN SMALLS, were negligent, careless and reckless in the operation of the aforesaid train number 659, including, but not limited to, failing to observe decedent's vehicle; failing to timely observe decedent's vehicle; traveling at an excessive, unsafe speed under the circumstances; failing to apply the brakes of the train; failing to timely and adequately apply the brakes of the train; failing to sound the train's horn and/or audible warning device; failing to timely and adequately sound the train's horn and/or audible warning device; failing to avoid an impact with decedent's vehicle; failing to limit the train speeds through the subject crossing, particularly in light of the heavy vehicular traffic due to an accident on the Taconic in the area of the crossing; in failing to properly and adequately train and educate defendant STEPHEN SMALLS, with respect to the safe operation of a train; in negligently hiring and retaining defendant STEPHEN SMALLS as a train engineer/operator.

38. Defendants, their agents, servants and employees, were negligent in failing to adequately control, direct and divert vehicular traffic on the Taconic Parkway and the roads in the area of Commerce Street highway-rail grade crossing in light of the accident on the Taconic Parkway.

39. By reason of the foregoing, ELLEN BRODY was not alerted of the presence of the crossing before she encountered it, which caused decedent to be incapable of appreciating and protecting herself from the approaching danger and caused her to become trapped on the tracks without a known escape route, so that decedent was caused to be unknowingly in the path of an oncoming train without sufficient time or notice of the

approaching train to protect herself from the extreme danger.

40. By reason of the foregoing, on February 3, 2015, decedent ELLEN BRODY's vehicle was caused to be struck by the aforesaid METRO-NORTH train number 659, resulting in multiple bodily injuries to her, including, but not limited to, blunt force trauma with fractures of the ribs and clavicle, contusions of the lung, laceration of the liver, burns of the body, pain, suffering, pre-impact terror, emotional distress, all ultimately resulting in her death.

41. The aforesaid collision was due entirely to the negligence, carelessness and recklessness of defendants without any fault on the part of ELLEN BRODY, deceased.

42. By reason of the foregoing, decedent, ELLEN BRODY was damaged and ALAN BRODY, as Administrator of her estate, seeks an award of money damages in a sum which exceeds the jurisdictional limit of all lower Courts which would otherwise have jurisdiction.

43. This action falls within one or more of the exceptions set forth in Section 1602 of the CPLR, including section 1602(7).

AS AND FOR AN SECOND CAUSE OF ACTION – WRONGFUL DEATH

44. Plaintiffs hereby repeat, reiterate and reallege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

45. By reason of the foregoing, ELLEN BRODY died on February 3, 2015.

46. As such, the distributees of the estate of ELLEN BRODY, suffered pecuniary loss, including medical expenses, funeral and burial expenses, loss of support, loss of parental guidance and nurture, loss of services and loss of estate accumulations.

47. As a result of the foregoing, plaintiff ALAN BRODY, as the Administrator of the Estate of ELLEN BRODY seeks an award of money damages on behalf of the distributees in a sum which exceeds the jurisdictional limit of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff ALAN BRODY, Individually and as Administrator of the Estate of ELLEN BRODY, demands judgment against the defendants, jointly and severally, on the First and Second Causes of Action in amounts which exceed the monetary jurisdiction of all other courts, together with costs, disbursements and interest.

Dated: New York, New York
February 3, 2016

Yours, etc.,

PHILIP A. RUSSOTTI
WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP.
Attorneys for Plaintiff
ALAN BRODY
420 Lexington Avenue Suite 2750
New York, NY 10170
(212) 986-7353

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------X

ALAN BRODY, as Administrator of the Estate of ELLEN BRODY a/k/a ELLEN GAIL SCHAEFFER BRODY, and ALAN BRODY, Individually,

VERIFICATION

Plaintiff,

Index No.:

-against-

METRO-NORTH COMMUTER RAILROAD COMPANY also known as METRO-NORTH RAILROAD, METROPOLITAN TRANSPORTATION AUTHORITY, STEPHEN SMALLS, COUNTY OF WESTCHESTER, TOWN OF MOUNT PLEASANT, ARGENT VENTURES, LLC and MIDTOWN TDR VENTURES, LLC,

Defendants.

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PHILIP A. RUSSOTTI, an attorney admitted to practice law in the Courts of this State, affirms the following under the penalties of perjury:

1. I am a member of the law firm of **WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP,** attorneys for plaintiff. I make this verification pursuant to C.P.L.R. §3020(d)(3) in that plaintiff is not presently in the County wherein my office is located.

2. I have read the foregoing **SUMMONS** and **COMPLAINT** and know the contents thereof. The same is true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

3. My belief as to the matters not stated upon my own knowledge is grounded upon information supplied to me by the plaintiff and the information contained within the case file maintained by this office.

Dated: New York, New York
February 3, 2016

PHILIP A. RUSSOTTI