

STATE OF NEW YORK
COURT OF CLAIMS

DAVID M. MORSE, as Administrator of the Estate of
PEYTON L.S. MORSE, Deceased, and DAVID M. MORSE
and STACY SNYDER-MORSE, Individually,

Claimants, **VERIFIED CLAIM**
-against-

THE STATE OF NEW YORK

Defendant.

David M. Morse, as Administrator of the Estate of Peyton L.S. Morse, Deceased, and David M. Morse and Stacy Snyder-Morse, Individually, by and through their attorneys, O'Connell and Aronowitz, P.C., submit the following as and for a Verified Claim herein and allege that:

1. At all times herein relevant, the Claimant, David M. Morse, has resided at 20010 County Route 181, LaFargeville, New York 13656.
2. At all times herein relevant, the Claimant, Stacy Snyder-Morse, has resided 20010 County Route 181, LaFargeville, New York 13656.
3. At all times herein relevant, the Claimants, David M. Morse and Stacy Snyder-Morse, were married and resided together as husband and wife.
4. At all times herein relevant, the Claimants' Decedent, Peyton L.S. Morse, was the son of David M. Morse and Stacy Snyder-Morse.
5. At all times herein relevant, the Claimants' Decedent, Peyton L.S. Morse, resided at 20010 County Route 181, LaFargeville, New York 13656.
6. The Claimants' Decedent, Peyton L.S. Morse, died intestate on March 12, 2021, in the City of Sayre, County of Bradford, and State of Pennsylvania.

7. On May 25, 2021, the Claimant, David M. Morse, was appointed Administrator of the Estate of Peyton L.S. Morse.

8. At all times herein relevant, the Defendant, the State of New York, was and is a governmental/public entity.

9. Pursuant to the New York State Court of Claims Act, Section 8, the Defendant, the State of New York, has waived its immunity from liability and action and further assumes and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations.

10. At all times herein relevant, the New York State Division of Homeland Security was and is, upon information and belief, a unit, department, office and/or agency of the Defendant, the State of New York.

11. At all times herein relevant, the New York State Office of Fire Prevention and Control was and is, upon information and belief, a unit, department, office and/or agency of the Defendant, the State of New York.

12. At all times herein relevant, the Defendant, the State of New York, through its agents, servants, employees, units, departments, offices and/or agencies, provided certain instruction and training to persons who sought to become firefighters.

13. At all times herein relevant, the New York State Division of Homeland Security, through its agents, servants, employees, units, departments, offices and/or agencies, provided certain instruction and training to persons who sought to become firefighters.

14. At all times herein relevant, the New York State Office of Fire Prevention and Control, through its agents, servants, employees, units, departments, offices and/or agencies, provided certain instruction and training to persons who sought to become firefighters.

15. At all times herein relevant, upon information and belief, such persons who sought instruction and training were referred to as recruits.

16. At all times herein relevant, the Defendant, the State of New York, owned the New York State Academy of Fire Science located in Montour Falls, New York.

17. At all times herein relevant, the Defendant, the State of New York, operated the New York State Academy of Fire Science located in Montour Falls, New York.

18. At all times herein relevant, the Defendant, the State of New York, controlled the New York State Academy of Fire Science located in Montour Falls, New York.

19. At all times herein relevant, the Defendant, the State of New York, maintained the New York State Academy of Fire Science located in Montour Falls, New York.

20. At all times herein relevant, the New York State Division of Homeland Security owned the New York State Academy of Fire Science located in Montour Falls, New York.

21. At all times herein relevant, the New York State Division of Homeland Security operated the New York State Academy of Fire Science located in Montour Falls, New York.

22. At all times herein relevant, the New York State Division of Homeland Security controlled the New York State Academy of Fire Science located in Montour Falls, New York.

23. At all times herein relevant, the New York State Division of Homeland Security maintained the New York State Academy of Fire Science located in Montour Falls, New York.

24. At all times herein relevant, the New York State Office of Fire Prevention and Control owned the New York State Academy of Fire Science located in Montour Falls, New York.

25. At all times herein relevant, the New York State Office of Fire Prevention and Control operated the New York State Academy of Fire Science located in Montour Falls, New York.

26. At all times herein relevant, the New York State Office of Fire Prevention and Control controlled the New York State Academy of Fire Science located in Montour Falls, New York.

27. At all times herein relevant, the New York State Office of Fire Prevention and Control maintained the New York State Academy of Fire Science located in Montour Falls, New York.

28. At all times herein relevant, the New York State Academy of Fire Science was used, among other things, for the purpose of providing instruction and training to persons who sought to become firefighters.

29. In order to provide the aforesaid instruction and training at the New York State Academy of Fire Science the Defendant, the State of New York, employed and had under its control certain instructors.

30. At all times herein relevant, such instructors were agents, servants and/or employees of the Defendant, the State of New York.

31. In order to provide the aforesaid instruction and training at the New York State Academy of Fire Science, the New York State Division of Homeland Security employed and had under its control certain instructors.

32. At all times herein relevant, such instructors were agents, servants and/or employees of the New York State Division of Homeland Security.

33. In order to provide the aforesaid instruction and training at the New York State Academy of Fire Science, the New York State Office of Fire Prevention and Control employed and had under its control certain instructors.

34. At all times herein relevant, such instructors were agents, servants and/or employees of the New York State Office of Fire Prevention and Control.

35. At all times herein relevant, Christopher Rea was an instructor at the New York State Academy of Fire Science.

36. At all times herein relevant, Christopher Rea was an agent, servant and/or employee of the State of New York.

37. At all times herein relevant, Christopher Rea was an agent, servant and/or employee of the New York State Division of Homeland Security.

38. At all times herein relevant, Christopher Rea was an agent, servant and/or employee of the New York State Office of Fire Prevention and Control.

39. At all times herein relevant, Christopher Rea was acting pursuant to, within the scope of, and in furtherance of, his employment with the State of New York.

40. At all times herein relevant, Christopher Rea was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Division of Homeland Security.

41. At all times herein relevant, Christopher Rea was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Office of Fire Prevention and Control.

42. At all times herein relevant, Bruce E. Heberer was an instructor at the New York State Academy of Fire Science.

43. At all times herein relevant, Bruce E. Heberer was an agent, servant and/or employee of the State of New York.

44. At all times herein relevant, Bruce E. Heberer was an agent, servant and/or employee of the New York State Division of Homeland Security.

45. At all times herein relevant, Bruce E. Heberer was an agent, servant and/or employee of the New York State Office of Fire Prevention and Control.

46. At all times herein relevant, Bruce E. Heberer was acting pursuant to, within the scope of, and in furtherance of, his employment with the State of New York.

47. At all times herein relevant, Bruce E. Heberer was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Division of Homeland Security.

48. At all times herein relevant, Bruce E. Heberer was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Office of Fire Prevention and Control.

49. At all times herein relevant, Scott P. Deninno was an instructor at the New York State Academy of Fire Science.

50. At all times herein relevant, Scott P. Deninno was an agent, servant and/or employee of the State of New York.

51. At all times herein relevant, Scott P. Deninno was an agent, servant and/or employee of the New York State Division of Homeland Security.

52. At all times herein relevant, Scott P. Deninno was an agent, servant and/or employee of the New York State Office of Fire Prevention and Control.

53. At all times herein relevant, Scott P. Deninno was acting pursuant to, within the scope of, and in furtherance of, his employment with the State of New York.

54. At all times herein relevant, Scott P. Deninno was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Division of Homeland Security.

55. At all times herein relevant, Scott P. Deninno was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Office of Fire Prevention and Control.

56. At all times herein relevant, Warren T. Ward was an instructor at the New York State Academy of Fire Science.

57. At all times herein relevant, Warren T. Ward was an agent, servant and/or employee of the State of New York.

58. At all times herein relevant, Warren T. Ward was an agent, servant and/or employee of the New York State Division of Homeland Security.

59. At all times herein relevant, Warren T. Warren was an agent, servant and/or employee of the New York State Office of Fire Prevention and Control.

60. At all times herein relevant, Warren T. Ward was acting pursuant to, within the scope of, and in furtherance of, his employment with the State of New York.

61. At all times herein relevant, Warren T. Ward was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Division of Homeland Security.

62. At all times herein relevant, Warren T. Ward was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Office of Fire Prevention and Control.

63. At all times herein relevant, Dustin Contri was an instructor at the New York State Academy of Fire Science.

64. At all times herein relevant, Dustin Contri was an agent, servant and/or employee of the State of New York.

65. At all times herein relevant, Dustin Contri was an agent, servant and/or employee of the New York State Division of Homeland Security.

66. At all times herein relevant, Dustin Contri was an agent, servant and/or employee of the New York State Office of Fire Prevention and Control.

67. At all times herein relevant, Dustin Contri was acting pursuant to, within the scope of, and in furtherance of, his employment with the State of New York.

68. At all times herein relevant, Dustin Contri was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Division of Homeland Security.

69. At all times herein relevant, Dustin Contri was acting pursuant to, within the scope of, and in furtherance of, his employment with the New York State Office of Fire Prevention and Control.

70. Upon information and belief, at all times herein relevant, there were other personnel, whose names and identities are presently unknown, who were instructors at the New York State Academy of Fire Science.

71. Upon information and belief, at all times herein relevant, such other personnel, whose names and identities are presently unknown, were instructors at the New York State Academy of Fire Science and were agents, servants and/or employees of the Defendant, the State of New York.

72. Upon information and belief, at all times herein relevant, such other unknown personnel, whose names and identities are presently unknown, were instructors at the New York State Academy of Fire Science and were agents, servants and/or employees of the New York State Division of Homeland Security.

73. Upon information and belief, at all times herein relevant, such other unknown personnel, whose names and identities are presently unknown, were instructors at the New York State Academy of Fire Science and were agents, servants and/or employees of the New York State Office of Fire Prevention and Control.

74. Upon information and belief, at all times herein relevant, such other unknown personnel, were acting pursuant to, within the scope of, and in furtherance of, their employment with the Defendant, the State of New York.

75. Upon information and belief, at all times herein relevant, such other unknown personnel, were acting pursuant to, within the scope of, and in furtherance of, their employment with the New York State Division of Homeland Security.

76. Upon information and belief, at all times herein relevant, such other unknown personnel, were acting pursuant to, within the scope of, and in furtherance of, their employment with the New York State Office of Fire Prevention and Control.

77. On or about May 28, 2021, and within ninety (90) days of the claim herein sued upon herein, a duly verified Notice of Intention to File a Claim was served upon the State of

New York, by serving a copy thereof on the Attorney General of the State of New York by certified mail, return receipt requested.

78. At least thirty (30) days have elapsed prior to the commencement of this action since the service of such Notice of Intention to File a Claim.

79. This matter has not been settled or resolved.

80. This claim has not been assigned, nor has it been submitted to any other tribunal officer for audit or determination.

81. This action was commenced within the time period as prescribed by the applicable laws and statutes.

AS AND FOR A FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION

82. Claimants repeat all prior allegations contained herein.

83. That in or about February 2021, the Claimants' Decedent, Peyton L.S. Morse, arrived at the New York State Academy of Fire Science for the purpose of receiving instruction and training to become a career firefighter.

84. The Claimants' Decedent, Peyton L.S. Morse's instruction and training continued until March 3, 2021.

85. At all times herein relevant, the Defendant, the State of New York, represented that its Fire Science instructors, in particular, Christopher Rea, possessed appropriate training, education and experience to properly and safely train recruits at the New York State Academy of Fire Science.

86. At all times herein relevant, the Defendant, the State of New York, represented that its Fire Science instructors, in particular, Bruce E. Heberer, possessed appropriate training,

education and experience to properly and safely train recruits at the New York State Academy of Fire Science.

87. At all times herein relevant, the Defendant, the State of New York, represented that its Fire Science instructors, in particular, Scott P. Deninno, possessed appropriate training, education and experience to properly and safely train recruits at the New York State Academy of Fire Science.

88. At all times herein relevant, the Defendant, the State of New York, represented that its Fire Science instructors, in particular, Warren T. Ward, possessed appropriate training, education and experience to properly and safely train recruits at the New York State Academy of Fire Science.

89. At all times herein relevant, the Defendant, the State of New York, represented that its Fire Science instructors, in particular, Dustin Contri, possessed appropriate training, education and experience to properly and safely train recruits at the New York State Academy of Fire Science.

90. At all times herein relevant, the New York State Division of Homeland Security represented that its agents, servants, employees, and instructors, in particular, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other personnel, whose identities are presently unknown, were competent and qualified instructors.

91. At all times herein relevant, the New York State Office of Fire Prevention and Control represented that its agents, servants, employees, and instructors, in particular, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other personnel, whose identities are presently unknown, were competent and qualified instructors.

92. At all times herein relevant, the Defendant, the State of New York, for the purpose of training recruits at the New York State Academy of Fire Science in Montour Falls, New York, employed and had under its control, certain instructors, trainers, agents, servants and/or employees, who were engaged in providing instruction and training to recruits at said facility, including Peyton L.S. Morse.

93. At all times herein relevant, the New York State Division of Homeland Security, for the purpose of training recruits at the New York State Academy of Fire Science in Montour Falls, New York, employed and had under its control, certain instructors, trainers, agents, servants and/or employees, who were engaged in providing instruction and training to recruits at said facility, including Peyton L.S. Morse.

94. At all times herein relevant, the New York State Office of Fire Prevention and Control, for the purpose of training recruits at the New York State Academy of Fire Science in Montour Falls, New York, employed and had under its control, certain instructors, trainers, agents, servants and/or employees, who were engaged in providing instruction and training to recruits at said facility, including Peyton L.S. Morse.

95. At all times herein relevant, the Defendant, the State of New York, maintained and/or employed a staff of instructors, trainers, and other personnel, were agents, servants and/or employees of the Defendant, the State of New York.

96. At all times herein relevant, the New York State Division of Homeland Security maintained and/or employed a staff of instructors, trainers, and other personnel, were agents, servants and/or employees of the Defendant, the State of New York and/or the New York State Division of Homeland Security.

97. At all times herein relevant, the New York State Office of Fire Prevention and Control maintained and/or employed a staff of instructors, trainers, and other personnel, who were agents, servants and/or employees of the Defendant, the State of New York and/or the New York State Office of Fire Prevention and Control.

98. At all times herein relevant, the Defendant, the State of New York, maintained and/or employed a staff of instructors, trainers, and other personnel, who were acting within the course and scope of their employment.

99. At all times herein relevant, the New York State Division of Homeland Security maintained and/or employed a staff of instructors, trainers, and other personnel, who were acting within the course and scope of their employment.

100. At all times herein relevant, the New York State Office of Fire Prevention and Control maintained and/or employed a staff of instructors, trainers, and other personnel, who were acting within the course and scope of their employment.

101. At all times herein relevant, the Defendant, the State of New York, was under a duty to employ only competent, skilled, and qualified instructors, trainers, medical personnel, agents, servants and/or employees.

102. At all times herein relevant, the New York State Division of Homeland Security was under a duty to employ only competent, skilled, and qualified instructors, trainers, medical personnel, agents, servants and/or employees.

103. At all times herein relevant, the New York State Office of Fire Prevention and Control was under a duty to employ only competent, skilled, and qualified instructors, trainers, medical personnel, agents, servants and/or employees.

104. At all times herein relevant, the Defendant, the State of New York, owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide proper and safe training.

105. At all times herein relevant, the New York State Division of Homeland Security owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide proper and safe training.

106. At all times herein relevant, the New York State Office of Fire Prevention and Control owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide proper and safe training.

107. The Defendant, the State of New York, owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide reasonably safe premises to receive such instruction and training.

108. The New York State Division of Homeland Security owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide reasonably safe premises to receive such instruction and training.

109. The New York State Office of Fire Prevention and Control owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide a reasonably safe premises to receive such instruction and training.

110. The Defendant, the State of New York, owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide reasonably safe equipment for recruits engaged in such instruction and training.

111. The New York State Division of Homeland Security owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide reasonably safe equipment for recruits engaged in such instruction and training.

112. The New York State Office of Fire Prevention and Control owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide reasonably safe equipment for recruits engaged in such instruction and training.

113. The Defendant, the State of New York, owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide training that did not involve unreasonable risk of injury or death.

114. The New York State Division of Homeland Security owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide training that did not involve unreasonable risk of injury or death.

115. The New York State Office of Fire Prevention and Control owed the Claimants' Decedent, Peyton L.S. Morse, a duty to provide training that did not involve unreasonable risk of injury or death.

116. Upon information and belief, Peyton L.S. Morse began receiving instruction and training by the Defendant, the State of New York, by and through its agents, servants, employees and/or instructors, at the New York State Academy of Fire Science on or around February 2021.

117. The Defendant, the State of New York, owed the Claimants' Decedent, Peyton L.S. Morse, a duty to ensure that its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, were competent and qualified to properly, timely and appropriately supervise, instruct, train and/or monitor the Claimants' Decedent.

118. The New York State Division of Homeland Security owed the Claimants' Decedent, Peyton L.S. Morse, a duty to ensure that its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P.

Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, were competent and qualified to properly, timely and appropriately supervise, instruct, train and/or monitor the Claimants' Decedent.

119. The New York State Office of Fire Prevention and Control owed the Claimants' Decedent, Peyton L.S. Morse, a duty to ensure that its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, were competent and qualified to properly, timely and appropriately supervise, instruct, train and/or monitor the Claimants' Decedent.

120. At all times herein relevant, the Defendant, the State of New York, had knowledge of the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

121. At all times herein relevant, the New York State Division of Homeland Security had knowledge of the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

122. At all times herein relevant, the New York State Office of Fire Prevention and Control had knowledge of the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

123. At all times herein relevant, the Defendant, the State of New York, approved of the actions of its instructors, trainers, agents, servants and/or employees, including, but not

limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

124. At all times herein relevant the New York State Division of Homeland Security approved of the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

125. At all times herein relevant, the New York State Office of Fire Prevention and Control approved of the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

126. At all times herein relevant, the Defendant, the State of New York, ratified the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

127. At all times herein relevant, the New York State Division of Homeland Security ratified the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

128. At all times herein relevant, the New York State Office of Fire Prevention and Control ratified the actions of its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

129. At all times herein relevant, the Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, was under a duty to exercise appropriate and reasonable care to protect Claimants' Decedent, Peyton L.S. Morse, during the course of training at the New York State Academy of Fire Science.

130. At all times herein relevant, the New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, was under a duty to exercise appropriate and reasonable care to protect Claimants' Decedent, Peyton L.S. Morse, during the course of training at the New York State Academy of Fire Science.

131. At all times herein relevant, the New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, was under a duty to exercise appropriate and reasonable care to protect Claimants' Decedent, Peyton L.S. Morse, during the course of training at the New York State Academy of Fire Science.

132. On or about March 3, 2021, the Claimants' Decedent, Peyton L.S. Morse, was a recruit attending the New York State Academy of Fire Science in Montour Falls, New York.

133. On the afternoon of March 3, 2021, the Claimants' Decedent, Peyton L.S. Morse, was participating in training exercises and evolution(s) at the New York State Academy of Fire Science.

134. Upon information and belief, such aforementioned training exercises and evolution(s) required the Claimants' Decedent, Peyton L.S. Morse, to crawl through a wooden box meant to represent a confined space.

135. During the aforesaid training exercises and evolution(s), the Claimants' Decedent, Peyton L.S. Morse, complained of shortness of breath and inability to breathe.

136. The Claimants' Decedent, Peyton L.S. Morse, expressed such distress to instructors at the New York State Academy of Fire Science who were present, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri and/or other presently unknown personnel.

137. Said complaints were made to one or more of the instructors present including, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri.

138. Said complaints should have been heard by one or more of the instructors present, including Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri.

139. Despite his complaints, the Claimants' Decedent, Peyton L.S. Morse, was compelled by one or more of said instructors to continue the training exercise and evolution.

140. Said instructors, including, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, ignored Claimants' Decedent, Peyton L.S. Morse's complaints of shortness of breath and inability to breathe.

141. Said instructors, including, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri failed to immediately assess the Claimants' Decedent, Peyton L.S. Morse, despite his complaints of shortness of breath and inability to breathe.

142. Said instructors, including, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri failed to immediately assist the Claimants' Decedent, Peyton L.S. Morse, despite his complaints of shortness of breath and inability to breathe.

143. The Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper instruction to the Claimants' Decedent, Peyton L.S. Morse.

144. The New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper instruction to the Claimants' Decedent, Peyton L.S. Morse.

145. The New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper instruction to the Claimants' Decedent, Peyton L.S. Morse.

146. The Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper and safe training to the Claimants' Decedent, Peyton L.S. Morse.

147. The New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce

E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper and safe training to the Claimants' Decedent, Peyton L.S. Morse.

148. The New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper and safe training to the Claimants' Decedent, Peyton L.S. Morse.

149. The Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper supervision to the Claimants' Decedent, Peyton L.S. Morse.

150. The New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper supervision to the Claimants' Decedent, Peyton L.S. Morse.

151. The New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to provide proper supervision to the Claimants' Decedent, Peyton L.S. Morse.

152. The Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assess the Claimants' Decedent, Peyton L.S. Morse.

153. The New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assess the Claimants' Decedent, Peyton L.S. Morse.

154. The New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assess the Claimants' Decedent, Peyton L.S. Morse.

155. The Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assist the Claimants' Decedent, Peyton L.S. Morse.

156. The New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assist the Claimants' Decedent, Peyton L.S. Morse.

157. The New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, failed to properly and timely assist the Claimants' Decedent, Peyton L.S. Morse.

158. On the aforesaid date, time and place the Defendant, the State of New York, by and through its instructor, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, breached their aforementioned duty to the Claimants' Decedent, Peyton L.S. Morse, resulting in Claimants' Decedent suffering certain severe and permanent injuries.

159. On the aforesaid date, time and place, the New York State Division of Homeland Security, by and through its instructor, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, breached their aforementioned duty to the Claimants' Decedent, Peyton L.S. Morse, resulting in Claimants' Decedent suffering certain severe and permanent injuries.

160. On the aforesaid date, time and place, the New York State Office of Fire Prevention and Control, by and through its instructor, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, breached their aforementioned duty to the Claimants' Decedent, Peyton L.S. Morse, resulting in Claimants' Decedent suffering certain severe and permanent injuries.

161. As a result of the foregoing failures, as set forth herein, the Claimants' Decedent, Peyton L.S. Morse, suffered a major medical and/or cardiac event, resulting in certain catastrophic and permanent injuries.

162. The aforementioned injuries were caused by the Defendant, the State of New York, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, which breached its aforementioned duties by negligently and carelessly failing to provide safe training; failing to provide proper instruction; failing to properly supervise its instructors, trainers, agents, servants and/or employees; failing to provide a safe and appropriate environment for training; failing to provide safe and appropriate equipment for training; failing to properly observe and monitor the Claimants' Decedent during the training exercise(s) and evolution(s); failing to properly assess and monitor the well-being of recruits, and in particular, Peyton L.S. Morse; ignoring the Claimants' Decedent's complaints; ignoring the Claimants' Decedent's pleas for help; denying the requests of the Claimants' Decedent to exit the training evolution due to severe respiratory distress; failing to appreciate the Claimants' Decedent's serious medical condition; failing to immediately evacuate the Claimants' Decedent from the training evolution for necessary medical care and treatment; failing to immediately provide medical care and attention; failing to provide adequate and necessary medical personnel at the training; failing to provide adequate and necessary medical equipment at the training; failing to properly train and instruct personnel present on emergency life saving measures; failing to ensure an Automated External Defibrillator (AED) was present; and the Defendant, the State of New York, was in other ways negligent and careless.

163. The aforementioned injuries were caused by the New York State Division of Homeland Security, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, which breached its aforementioned duties by negligently and carelessly failing to provide safe training; failing to provide proper instruction; failing to properly supervise its instructors, trainers, agents, servants and/or employees; failing to provide a safe and appropriate environment for training; failing to provide safe and appropriate equipment for training; failing to properly observe and monitor the Claimants' Decedent during the training exercise(s) and evolution(s); failing to properly assess and monitor the well-being of recruits, and in particular, Peyton L.S. Morse; ignoring the Claimants' Decedent's complaints; ignoring the Claimants' Decedent's pleas for help; denying the requests of the Claimants' Decedent to exit the training evolution due to severe respiratory distress; failing to appreciate the Claimants' Decedent's serious medical condition; failing to immediately evacuate the Claimants' Decedent from the training evolution for necessary medical care and treatment; failing to immediately provide medical care and attention; failing to provide adequate and necessary medical personnel at the training; failing to provide adequate and necessary medical equipment at the training; failing to properly train and instruct personnel present on emergency life saving measures; failing to ensure an Automated External Defibrillator (AED) was present; and the New York State Division of Homeland Security was in other ways negligent and careless.

164. The aforementioned medical/cardiac event was caused by the New York State Office of Fire Prevention and Control, through its instructors, trainers, agents, servants and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno,

Warren T. Ward and/or Dustin Contri, and other presently unknown personnel, which breached its aforementioned duties by negligently and carelessly failing to provide safe training; failing to provide proper instruction; failing to properly supervise its instructors, trainers, agents, servants and/or employees; failing to provide a safe and appropriate environment for training; failing to provide safe and appropriate equipment for training; failing to properly observe and monitor the Claimants' Decedent during the training exercise(s) and evolution(s); failing to properly assess and monitor the well-being of recruits, and in particular, Peyton L.S. Morse; ignoring the Claimants' Decedent's complaints; ignoring the Claimants' Decedent's pleas for help; denying the requests of the Claimants' Decedent to exit the training evolution due to severe respiratory distress; failing to appreciate the Claimants' Decedent's serious medical condition; failing to immediately evacuate the Claimants' Decedent from the training evolution for necessary medical care and treatment; failing to immediately provide medical care and attention; failing to provide adequate and necessary medical personnel at the training; failing to provide adequate and necessary medical equipment at the training; failing to properly train and instruct personnel present on emergency life saving measures; failing to ensure an Automated External Defibrillator (AED) was present; and the New York State Office of Fire Prevention and Control was in other ways negligent and careless.

165. As a direct and proximate result of the aforesaid negligence, carelessness, and breach of duty, Claimants' Decedent, Peyton L.S. Morse, was caused to sustain certain serious and catastrophic personal injuries, including but not limited to, severe and excruciating conscious pain and suffering, fear, difficulty breathing, respiratory distress, anoxia, prolonged period of in-patient hospitalization, and death.

166. Pursuant to the doctrine of *respondeat superior*, the Defendant, the State of New York, is vicariously liable and responsible for the negligent acts, omissions and/or conduct of its personnel, agents, servants, employees and/or instructors, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

167. Pursuant to the doctrine of *respondeat superior*, the New York State Division of Homeland Security is vicariously liable and responsible for the negligent acts, omissions and/or conduct of its personnel, agents, servants, employees and/or instructors, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel.

168. Pursuant to the doctrine of *respondeat superior*, the New York State Office of Fire Prevention and Control is vicariously liable and responsible for the negligent acts, omissions and/or conduct of its personnel, agents, servants, employees and/or instructors, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri and other presently unknown personnel.

169. The aforesaid injuries, damages and the sequelae thereof, sustained by the Claimants' Decedent, Peyton L.S. Morse, were caused by the negligent acts, omissions and/or conduct on the part of the Defendant, the State of New York, by and through its agents, servants, personnel and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, and their negligent and reckless acts and/or conduct, without any fault on the part of the Claimants' Decedent contributing thereto.

170. The aforesaid injuries, damages and the sequelae thereof, sustained by the Claimants' Decedent, Peyton L.S. Morse, were caused by the negligent acts, omissions and/or conduct on the part of the New York State Division of Homeland Security, by and through its agents, servants, personnel and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, and their negligent and reckless acts and/or conduct, without any fault on the part of the Claimants' Decedent contributing thereto.

171. The aforesaid injuries, damages and the sequelae thereof, sustained by the Claimants' Decedent, Peyton L.S. Morse, were caused by the negligent acts, omissions and/or conduct on the part of the New York State Office of Fire Prevention and Control, by and through its agents, servants, personnel and/or employees, including, but not limited to, Christopher Rea, Bruce E. Heberer, Scott P. Deninno, Warren T. Ward, Dustin Contri, and other presently unknown personnel, and their negligent and reckless acts and/or conduct, without any fault on the part of the Claimants' Decedent contributing thereto.

172. By reason of the foregoing, the Claimants' Decedent, Peyton L.S. Morse, has been severely injured and damaged, and the Claimants demand judgment against the Defendant herein for a substantial sum of money therefore.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE
OF ACTION**

173. Plaintiffs repeat all prior allegations herein.

174. By reason of the aforesaid negligent, careless, and reckless acts, omissions and/or conduct of the Defendant, the State of New York, the Claimants' Decedent, Peyton L.S. Morse,

sustained certain serious and catastrophic personal injuries, which ultimately caused his death on or about March 12, 2021.

175. By reason of the aforesaid negligent, careless, and reckless acts, omissions and/or conduct of the New York State Division of Homeland Security, the Claimants' Decedent, Peyton L.S. Morse, sustained certain serious and catastrophic personal injuries, which ultimately caused his death on or about March 12, 2021.

176. By reason of the aforesaid negligent, careless, and reckless acts, omissions and/or conduct of the New York State Office of Fire Prevention and Control, the Claimants' Decedent, Peyton L.S. Morse, sustained certain serious and catastrophic personal injuries, which ultimately caused his death on or about March 12, 2021.

177. As a proximate result of the foregoing, the Claimants' Decedent, Peyton L.S. Morse, left several surviving next of kin and distributees, including the Claimants herein, David M. Morse and Stacy Snyder-Morse.

178. At the time of his death, the Claimants' Decedent, Peyton L.S. Morse, was twenty-one (21) years of age and had been, prior to the aforesaid negligence, in good health, and was, at all times herein relevant, alert, active, industrious and in possession of his faculties.

179. At all times herein relevant, the Claimants, David M. Morse and Stacy Snyder-Morse, as the parents of the Claimants' Decedent, Peyton L.S. Morse, were entitled to his society, love, companionship, and affection.

180. The Claimants' Decedent's distributees, including the Claimants, David M. Morse and Stacy Snyder-Morse, have suffered substantial pecuniary loss and damages as a result of the Claimants' Decedent's death.

181. The Claimants' Decedent's death was caused wholly and solely by the negligent acts, omissions and/or commissions on the part of the Defendant herein, without any fault on the part of the Claimants' Decedent contributing thereto.

182. By reason of the foregoing, the Claimants' Decedent's next of kin and distributees, including the Claimants, David M. Morse and Stacy Snyder-Morse, have suffered substantial pecuniary loss and other damages, and demand judgment against the Defendant herein for a substantial sum of money therefore.

WHEREFORE, the Claimants demand judgment against the Defendant herein on the First and Second Causes of Action herein, in a substantial sum of money; together with the costs of disbursements of this action, and for such other and further relief as this Court may deem just and proper.

Dated: January 24, /2023



O'CONNELL AND ARONOWITZ, P.C.

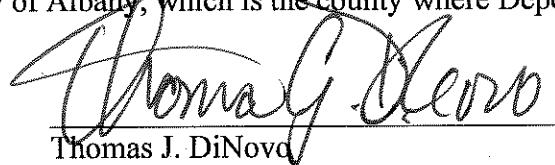
By:

Thomas J. DiNovo, Esq.
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Office & P.O. Address
54 State Street
Albany, New York 12207
(518)-462-5601

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

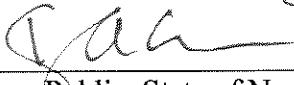
THOMAS J. DINOVO, being duly sworn, deposes and says that he is an attorney-at-law and is a member of the law firm of O'Connell and Aronowitz, P.C., attorneys for the Plaintiffs; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

The reason why this verification is made by Deponent and not by the Plaintiffs, is that the Plaintiffs do not reside within the County of Albany, which is the county where Deponent has his offices.



Thomas J. DiNovo

Sworn to before me this
24th day of January, 2023.



Notary Public, State of New York

TRACEY A. CARTER
Notary Public, State of New York
Qualified in Albany County No. 01CA6357957
Commission Expires May 01, 2025