

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

-----X
JOHANNA PAGAN-ALOMAR,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, P.O. KONTI MARKVUKAJ, SHIELD NO.
7228; OF THE 46TH PCT., P.O. THERESA LUSTICA, SHIELD
NO. 1534; OF THE 46TH PCT., P.O. "JOHN DOE" #1 AND
P.O. "JOHN DOE" #2
(the names herein to be fictitious as they are currently unknown),

Defendants

Index No:
Date Purchased:

The basis of venue is:
Plaintiff Designates Bronx
County as the place of trial

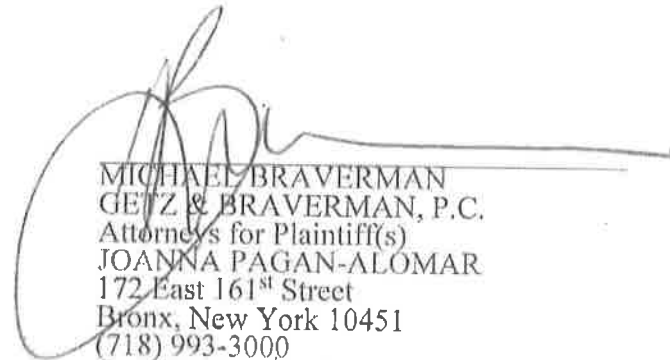
SUMMONS

Plaintiff resides at:
1750 Grand Concourse #47
Bronx, New York 10451

-----X County of Bronx

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York
January 3, 2019


MICHAEL BRAVERMAN
GETZ & BRAVERMAN, P.C.
Attorneys for Plaintiff(s)
JOANNA PAGAN-ALOMAR
172 East 161st Street
Bronx, New York 10451
(718) 993-3000
Our File No.: 8945

Defendants' Addresses:

THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

NEW YORK CITY POLICE DEPARTMENT
100 Church Street
New York, New York 10038

P.O. THERESA LUSTICA, SHIELD NO.: 1534
46TH PRECINCT
BRONX, NEW YORK

P.O. KONTI MARKVUKAJ, SHIELD NO.: 7228
46TH PRECINCT
BRONX, NEWYORK

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

-----X
JOHANNA PAGAN-ALOMAR,

Plaintiff,

Index No.:

-against-

COMPLAINT

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, P.O. KONTI MARKVUKAJ, SHIELD
NO. 7228 OF THE 46TH PCT, P.O. THERESA LUSTICA,
SHIELD NO. 1534 OF THE 46TH PCT, P.O. "JOHN DOE"
#1 AND P.O. "JOHN DOE" #2,
(the names herein to be fictitious as they are currently
unknown),

Defendants
-----X

JOHANNA PAGAN-ALOMAR, by her attorneys, **GETZ & BRAVERMAN, P.C.**,
respectfully alleges as follows:

I. PRELIMINARY STATEMENT

1. This is an action brought under 42 U.S.C. §§ 1981, 1983 and 1985 as well as concurrent claims under New York State law, claims sounding in intentional infliction of emotional distress, assault, battery, false arrest, false imprisonment, malicious prosecution and failure to intervene, regarding the actions of the Defendants.
2. Due to the defendants' actions and deliberate inactions, plaintiff was caused to suffer severe and debilitating physical, emotional, and psychological injuries, and was deprived of rights afforded to her by the constitution and laws of both the United States and the State of New York.

3. Plaintiff now seeks damages for the substantial pain and suffering, assault and battery, false arrest, malicious prosecution, deprivation of her civil rights, emotional distress, and humiliation.

II. VENUE

4. Venue is laid pursuant to the plaintiff's residence as well as where the incident occurred, at the corner of Burnside Avenue and Jerome Avenue, County of Bronx, State of New York, where a substantial part of the acts and omissions giving rise to these causes of action occurred, to wit, in the County of Bronx.

III. PARTIES

5. Plaintiff JOANNA PAGAN-ALOMAR, 44 years of age, was at all times relevant to this complaint a citizen of the United States and a resident of the County of the Bronx, City of New York in the State of New York.
6. Defendant CITY OF NEW YORK is a municipal corporation, and political subdivision, of the State of New York, organized and existing through the Constitution and laws of the State of New York.
7. The New York City Police Department was established and exists through the authority of Chapter 18 of the New York City Charter, and pursuant to said Charter and laws enacted there under, defendant CITY owns, operates, manages, directs, and controls the New York City Police Department, which also employs all JOHN DOE POLICE OFFICERS involved in this case as well as all named defendant POLICE OFFICERS, to wit: THERESA LUSTICA, SHIELD

NUMBER 1534 OF THE 46TH PCT and KONTI MARKVUKAJ, SHIELD NUMBER 7228 OF THE 46TH PCT.

8. POLICE OFFICER THERESA LUSTICA , SHIELD NUMBER 1534 OF THE 46TH PCT, is and was at all times relevant to this Complaint an employee of defendant CITY, duly appointed and acting as a POLICE OFFICER with the aforementioned New York City Police Department. She is sued in her individual capacity.
9. POLICE OFFICER KONTI MARKVUKAJ, SHIELD NUMBER 7228 OF THE 46TH PCT, is and was at all times relevant to this Complaint an employee of defendant CITY, duly appointed and acting as a POLICE OFFICER with the aforementioned New York City Police Department. He is sued in his individual capacity.
10. JOHN DOE NEW YORK CITY POLICE OFFICER NUMBER ONE is and was at all times relevant to this Complaint an employee of defendant CITY, duly appointed and acting as a POLICE OFFICER with the aforementioned New York City Police Department. He is sued in his individual capacity.
11. JOHN DOE NEW YORK POLICE OFFICER NUMBER TWO is and was at all times relevant to this Complaint an employee of defendant CITY, duly appointed and acting as a POLICE OFFICER with the aforementioned New York City Police Department. He is sued in his individual capacity.

12. At all times relevant to this Complaint, all defendants acted in concert and conspired together through both their acts and omissions and are jointly and severally liable for the harms caused to plaintiff.
13. At all times relevant to this Complaint, all defendants were acting under the color of state law, to wit, the statutes, ordinances, regulations, policies, customs, and usages of defendant CITY and of the State of York.

IV. NOTICE OF CLAIM

14. On June 27, 2018, within ninety days following the occurrence of the incidents complained of in this Complaint, plaintiff filed a written Notice of Claim with defendant CITY pursuant to General Municipal Law § 50-e. Thirty days since the filing thereof have elapsed without adjustment or payment of plaintiff's claim.
15. On or about October 24, 2018, pursuant to General Municipal Law section 50-H, Plaintiff sat for her statutory 50-H hearing, conducted by the defendant, City of New York.

FACTUAL ALLEGATIONS

16. On June 7, 2018, between 10:00 a.m. and 11:00 a.m., Plaintiff was walking to meet her boyfriend, ANDY RODRIGUEZ, at the corner of Burnside Avenue and Jerome Avenue, County of Bronx, State of New York, in front of First Arden Grocery Corporation.
17. As plaintiff was walking towards the corner of Burnside Avenue and Jerome Avenue, County of Bronx, State of New York, she observed POLICE OFFICERS with ANDY RODRIGUEZ. As plaintiff was getting closer, she saw ANDY

RODRIGUEZ being placed in handcuffs by defendant, LUSTICA. ANDY RODRIGUEZ was not resisting arrest.

18. As plaintiff approached the corner of Burnside Avenue and Jerome Avenue, she saw two POLICE OFFICERS; one female and one male. She saw that POLICE OFFICER LUSTICA and POLICE OFFICER MARKVUKAJ were in police uniforms.
19. As plaintiff approached, plaintiff was asking POLICE OFFICER LUSTICA what was wrong and why were they arresting ANDY RODRIGUEZ. Plaintiff was speaking Spanish to POLICE OFFICER LUSTICA. When POLICE OFFICER LUSTICA told the Plaintiff to back up, plaintiff complied. Plaintiff backed up, and remained there while POLICE OFFICER LUSTICA was handcuffing ANDY RODRIGUEZ. POLICE OFFICER MARKVUKAJ was standing a little bit to the side of POLICE OFFICER LUSTICA. POLICE OFFICER MARKVUKAJ was standing next to a marked patrol car.
20. After MR. RODRIGUEZ was searched and handcuffed, POLICE OFFICER LUSTICA was walking MR. RODRIGUEZ towards the marked police car. POLICE OFFICER LUSTICA picked up from the ground an empty small plastic bag, and told plaintiff that this was why she was arresting MR. RODRIGUEZ.
21. POLICE OFFICER LUSTICA then waved the empty small plastic bag in front of plaintiff's face, almost striking plaintiff in the face. In response, plaintiff stated in Spanish "look at this one, the way she is disrespecting me." Plaintiff said this as POLICE OFFICER LUSTICA was walking by plaintiff.

22. After plaintiff said "look at this one, the way she is disrespecting me", POLICE OFFICER LUSTICA pushed MR. RODRIGUEZ towards POLICE OFFICER MARKVUKAJ. POLICE OFFICER LUSTICA then grabbed plaintiff's hand and threw the plaintiff to the ground.
23. While plaintiff was lying face up on the ground, POLICE OFFICER LUSTICA sat on top of plaintiff, and placed one leg on each of plaintiff's arms. Plaintiff could not move her arms.
24. POLICE OFFICER LUSTICA repeatedly punched the plaintiff in her left eye and left face area.
25. POLICE OFFICER LUSTICA then began to punch the plaintiff with both of her fists. While POLICE OFFICER LUSTICA was punching the plaintiff, POLICE OFFICER LUSTICA had in one of her hands, the key to the handcuffs. As POLICE OFFICER LUSTICA was striking the plaintiff in her left eye and face, she had keys in her hand. Plaintiff was struck numerous times in her face, while her arms were being pinned down by POLICE OFFICER LUSTICA's legs. There was nothing the plaintiff could do to ward off the blows coming from POLICE OFFICER LUSTICA too plaintiff's face.
26. After a period of time that the plaintiff was being assaulted by POLICE OFFICER LUSTICA, another unidentified POLICE OFFICER showed up, and told POLICE OFFICER LUSTICA to place plaintiff under arrest.
27. At no time did POLICE OFFICER MARKVUKAJ, or any other POLICE OFFICER, all of whom were physically and actually present and able to observe

said actions, do anything to stop or intervene POLICE OFFICER LUSTICA from assaulting and battering the plaintiff. POLICE OFFICER MARKVUKAJ nor any other POLICE OFFICER intervened to stop the assault upon the plaintiff by POLICE OFFICER LUSTICA.

28. Plaintiff was handcuffed and taken to the 46th Precinct.
29. At this point, plaintiff's left eye was hanging out of its socket, and there was blood coming out of her left eye socket.
30. Once POLICE OFFICERS in the 46th Precinct saw that plaintiff was bleeding from her eye, they called EMS.
31. Plaintiff was placed under arrest and charged with Assault in the Second Degree, specifically with an alleged assault upon POLICE OFFICER LUSTICA.
32. Plaintiff was initially transported to St. Barnabas Hospital, where she was examined and treated. Plaintiff was diagnosed as having extensive left intraorbital and retro-orbital hematomas concerning for a ruptured left glob. There was a non-displaced fracture of the lateral orbital wall, as well as extrusion of intraocular contents.
33. Plaintiff was required to have an immediate transfer to Bronx Lebanon Hospital for surgical exploration.
34. Plaintiff was transferred emergently to Bronx Lebanon Hospital where she remained until June 12, 2018.
35. From the date of the incident, June 7, 2018, until her discharge on June 12, 2018, plaintiff remained in the custody of the New York City Police Department. As a

result, plaintiff was handcuffed to her medical bed from June 7, 2018 until her arraignment on June 12, 2018.

36. On August 28, 2018, plaintiff underwent surgery for traumatic blind painful left eye which was an evisceration of plaintiff's left eye with implant.
37. As a direct and proximate result of the acts and omissions of defendants, plaintiff sustained severe and permanent injuries including, but not limited to, the following:
 - a. Blindness in plaintiff's left eye
 - b. bruising and swelling about the face and body
 - c. extensive left intraorbital and retro-orbital hematomas concerning for a ruptured left glob.
 - d. There was a non-displaced fracture of the lateral orbital wall, as well as extrusion of intraocular contents.
 - e. Evisceration of the left globe with prosthetic silicon implant.
 - f. substantial pain
 - g. discomfort
 - h. fear
 - i. embarrassment
 - j. humiliation
 - k. emotional distress and severe emotional distress
 - l. mental anguish, requiring continued psychological treatment for the incident and the loss of plaintiff's left eye.

38. The actions and omissions of defendants violated the following clearly established and well settled federal rights of plaintiff's under the Fourth and Fourteenth Amendments to the United States Constitution:

- a. freedom from unreasonable seizure of person
- b. freedom from the use of excessive force
- c. freedom from unreasonable force
- d. freedom from unjustified force

COUNT ONE (Federal cause of action pursuant to 42 U.S.C. §§ 1981, 1983, 1985 against the individual defendants for violation of plaintiff's Fourth and Fourteenth Amendment rights)

39. Paragraphs 1 through 39 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.

40. The actions of all named defendants violated plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from the use of excessive and unreasonable force, unreasonable seizure, and the application of force, applied in a bad faith, maliciously, and sadistically for the sole purpose of causing harm.

41. As a direct and proximate result thereof, plaintiff claims damages for the injuries set forth above.

COUNT TWO (Federal cause of action pursuant to 42 U.S.C. §§ 1981, 1983, 1985, and Monell v. Dept. Of Soc. Serv., 436 U.S. 658 (1978) against the municipal defendant)

42. Paragraphs 1 through 42 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.
43. Defendant CITY knew or should have known its employees', agents', or servants' propensity to engage in illegal and wrongful acts detailed above.
44. Prior to August 30, 2014, Defendant CITY and NEW YORK CITY POLICE DEPARTMENT developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons incarcerated in the custody of the New York City Police Department, which policies and/or customs caused the violation of plaintiff's rights.
45. Based upon information and belief, it was the policy and/or custom of defendant CITY and the NEW YORK CITY POLICE DEPARTMENT to improperly or inadequately investigate complaints of people in the custody of the NEW YORK CITY POLICE DEPARTMENT, and acts of abuse, excessive force, and misconduct were instead tolerated, encouraged, and ratified by defendant CITY and the NEW YORK CITY POLICE DEPARTMENT, including incidents in the past where officials from the New York City Police Department beat individuals in police custody in violation of state and federal law; retaliated against persons in police custody for exercising their right to be free from excessive force of the use of force and otherwise obstructed and manipulated any investigations thereto.

46. These customs and policies regarding the use of such force were, indeed, pervasive and well known around the Department of Corrections and with defendant CITY and NEW YORK POLICE DEPARTMENT.
47. As a result of the above described policies and/or customs, corrections officers of defendant CITY believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but, instead, would be tolerated and even encouraged.
48. The above policies and/or customs demonstrated a deliberate indifference on the part of policymakers of defendant CITY to the constitutional rights of persons within CITY who were detained or in the custody of the New York City Police Department, and were the cause of violations of plaintiff's rights alleged herein.
49. As a result of the wrongful, deliberately indifferent and illegal acts of defendants CITY and NEW YORK CITY POLICE DEPARTMENT, plaintiff claims damages against defendant CITY for the injuries set forth above.

COUNT THREE (Cause of action for assault against the individual defendants, THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT and P.O. KONTI MARKVUKAJ, SHIELD NO. 7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2

50. Paragraphs 1 through 50 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.
51. Upon illegally grabbing the Plaintiff, pushing her to the ground, punching her about her body and face, hitting her with keys in her face and left eye, striking him with fists, tightening plaintiff's handcuffs, striking the Plaintiff repeatedly in her left eye,

defendants **P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2** while acting in concert, intentionally made plaintiff fear for her physical well-being and safety and placed her in apprehension of immediate harmful and/or offensive touching.

52. As a direct and proximate result thereof, plaintiff claims damages for the injuries set forth above.

COUNT FOUR (Cause of action for battery against the individual defendants, P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O."JOHN DOE" #2

53. Paragraphs 1 through 53 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.
54. Upon illegally grabbing and pushing the Plaintiff to the ground, striking her with fists about the face and body, striking her with metal keys in her right eye and face, **P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2** while acting in concert, touched and otherwise laid hands on plaintiff intentionally subjecting him to harmful and/or offensive conduct.
55. As a direct and proximate result thereof, plaintiff claims damages for the injuries set forth above.

COUNT FIVE (Cause of action for intentional infliction of emotional distress against the individual defendants P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA OF THE 46TH PCT, SHIELD NO. 1534; P.O. "JOHN DOE" #1 AND P.O."JOHN DOE" #2

- 56. Paragraphs 1 through 56 are each repeated, realleged, and reiterated as if set forth fully and are incorporated herein by reference.
- 57. Upon threatening plaintiff, striking plaintiff about the face and body with fists, and intentionally striking the Plaintiff in her face and right eye with a closed fist and the use of metal keys, defendants **P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2** while acting in concert, intentionally and recklessly conducted themselves toward plaintiff in a manner so shocking and outrageous that it exceeded all reasonable bounds of decency so as to cause severe emotional distress.
- 58. As a direct and proximate result thereof, plaintiff claims damages for the injuries set forth above.

COUNT SIX (cause of action against the municipal defendant under the doctrine of Respondeat Superior) P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2

- 59. Paragraphs 1 through 59 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.

60. Defendant CITY and THE NEW YORK CITY POLICE DEPARTMENT are liable for all injuries sustained by plaintiff as alleged in this complaint starting on or about June 7, 2018, and continuing thereafter, as a result of the conduct of its agents, servants, and employees, under the doctrine of respondeat superior.
61. Defendant CITY and THE NEW YORK CITY POLICE DEPARTMENT, by its agents, servants, and employees, committed the torts of intentional infliction of emotional distress, assault and battery.
62. As a direct and proximate result thereof, plaintiff claims damages for the injuries set forth above.

COUNT SEVEN(cause of action against the named individual POLICE OFFICERs for failure to intervene, P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2

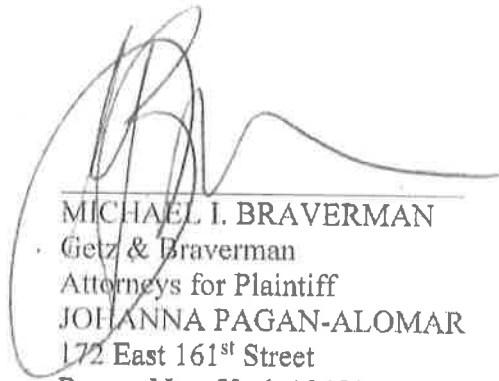
63. Paragraphs 1 through 63 are each repeated, realleged, and reiterated as if fully set forth herein and are incorporated by reference.
64. While POLICE OFFICER LUSTICA and POLICE OFFICER MARKVUKAJ were threatening plaintiff, striking plaintiff about the face and body with fists, and intentionally striking the Plaintiff in her face and right eye with a closed fist and the use of metal keys, defendants **P.O. KONTI MARKVUKAJ, SHIELD NO.7228 OF THE 46TH PCT; P.O. THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT; P.O. "JOHN DOE" #1 AND P.O. "JOHN DOE" #2** while acting in concert, did intentionally, knowingly and recklessly failed to intervene to stop the violent assault and battery upon the plaintiff.

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally, respectively as to each and every cause of action alleged herein above for compensatory damages on each count; for punitive damages on each count; awarding plaintiff reasonable attorney's fees, costs, and disbursements of this action; and granting such other and further relief as this court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury

Dated: Bronx, New York
January 3, 2019



MICHAEL I. BRAVERMAN
Getz & Braverman
Attorneys for Plaintiff
JOHANNA PAGAN-ALOMAR
172 East 161st Street
Bronx, New York 10451
718-993-3000
Getzandbraverman@aol.com

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK

COUNTY OF BRONX

ss:

Johanna Pagan

, being duly sworn, says:

summons & complaint

I am a Plaintiff in the action herein: I have read the annexed and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files.

DATED:

Bronx, New York
January 3, 2019

X Johanna Pagan

Sworn to before me this
3rd day of January, 2019
MICHAEL IRA REAVERMAN
NOTARY PUBLIC, STATE OF NEW YORK
BRONX COUNTY 02BR6035120
Certificate Filed in
Bronx County
Commission Expires 12-27-2021

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
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Plaintiff(s),

- against -

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THERESA LUSTICA, SHIELD NO. 1534 OF THE 46TH PCT, P.O. "JOHN DOE" #1 AND
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Defendant(s).

SUMMONS AND VERIFIED COMPLAINT

GETZ & BRAVERMAN, P.C.
Attorneys for JOHANNA PAGAN-ALOMAR
172 East 161st Street
Bronx, New York 10451
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TO: