

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

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JOHN WOYTHALER; and MEREDITH, WOYTHALER	: :
Plaintiffs,	: :
v.	: :
MATTHEW DIPERNA; WILLIAM MOORE; KEVIN COYLE; WILLIAM NELSON; NOLAN KELLY; PATRICK KELLY; and JOAN KELLY,	: : : :
Defendants.	: :
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SUMMONS

Plaintiffs designate
NASSAU COUNTY
as the place of trial

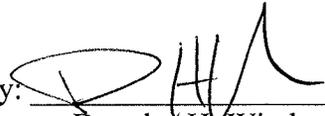
The basis of venue is:
Plaintiffs John and Meredith
Woythaler's residence and location
of actions giving rise to claims

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' counsel within twenty (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: June 13, 2013
New York, New York

THOMPSON WIGDOR LLP

By: 

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

-----X
JOHN WOYTHALER; and MEREDITH, :
WOYTHALER : **COMPLAINT**
 :
Plaintiffs, :
 :
 :
v. :
 :
Case No. _____
 :
MATTHEW DIPERNA; WILLIAM MOORE; :
KEVIN COYLE; WILLIAM NELSON; NOLAN :
KELLY; PATRICK KELLY; and JOAN KELLY, : **DEMAND FOR JURY TRIAL**
 :
Defendants. :
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Plaintiffs John Woythaler (“Mr. Woythaler”) and Meredith Woythaler (“Mrs. Woythaler”) (collectively, “Plaintiffs”), by and through their undersigned counsel, Thompson Wigdor LLP, as and for their Complaint in this action against Defendants Matthew DiPerna (“Defendant DiPerna”), William Moore (“Defendant Moore”), Kevin Coyle (“Defendant Coyle”), William Nelson (“Defendant Nelson”), Nolan Kelly (“Defendant N. Kelly”) (collectively, “the Assailants”), Patrick Kelly (“Defendant P. Kelly”) and Joan Kelly (“Defendant J. Kelly”) (collectively, “Defendants”), hereby state and allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs John and Meredith Woythaler bring claims against Assailants for assault, battery, false imprisonment and negligent and intentional infliction of emotional distress, as well claims against Defendants P. Kelly and J. Kelly for violations of New York General Obligations Law § 11-100 *et seq.* Plaintiffs seek injunctive and equitable relief, as well as monetary damages.

2. On the evening of June 18, 2012, Plaintiff Meredith Woythaler left her home to take her dog for what she believed would be a routine walk around the block. Instead, it was the

first in a series of events that would lead to her and her husband, Plaintiff John Woythaler, being viciously assaulted by a gang of drunken high schoolers. Indeed, only minutes after Mrs. Woythaler left her home, she was confronted by approximately ten individuals carrying twelve-packs of beer. These individuals, which included Defendants DiPerna, Moore, Coyle, Nelson and N. Kelly, started yelling to Mrs. Woythaler that she was “sexy.” When Mrs. Woythaler asked them to stop, these individuals moved closer and began to scream obscenities at Mrs. Woythaler, including “fuck you,” “cunt,” “whore” and “bitch.” Terrified, Mrs. Woythaler ran back to her home while the Assailants and their friends threatened: “we’re going to get you!”

3. When Mrs. Woythaler returned home, it was apparent that she was distraught. Mr. Woythaler listened as his wife explained what had happened, and then he left the home to investigate. Mr. Woythaler simply sought an apology for his wife, but instead, when he confronted the Assailants, they viciously assaulted him, inflicting serious medical injury from which Mr. Woythaler still suffers. Mr. Woythaler was punched and kicked in the face, and the attackers forcefully threw full cans of beer at him. When Mrs. Woythaler attempted to intervene, she was grabbed and hurled to the ground. From that vantage point she was forced to watch as her husband was kicked, punched and ultimately knocked unconscious.

THE PARTIES

4. Plaintiff John Woythaler lives in Rockville Centre, New York. On June 18, 2012, Mr. Woythaler was assaulted and battered by the Assailants.

5. Plaintiff Meredith Woythaler lives in Rockville Centre, New York. On June 18, 2012, Mr. Woythaler was assaulted and battered by the Assailants.

6. Matthew DiPerna is an 18 year old male who, on June 18, 2012, lived in Rockville Centre, New York.

7. William Moore is an 18 year old male who, on June 18, 2012, lived in Rockville Centre, New York.

8. Kevin Coyle is an 18 year old male who, on June 18, 2012, lived in Rockville Centre, New York.

9. William Nelson is an 18 year old male who, on June 18, 2012, lived in Rockville Centre, New York.

10. Nolan Kelly is an 18 year old male who, on June 18, 2012, lived in Rockville Centre, New York.

11. Patrick Kelly is the father of Defendant N. Kelly. On the evening of June 18, 2012, Defendant P. Kelly unlawfully furnished to, and/or unlawfully assisted in procuring alcohol for, the Assailants, within the meaning of New York General Obligations Law § 11-100.

12. Joan Kelly is the mother of Defendant N. Kelly. On the evening of June 18, 2012, Defendant J. Kelly unlawfully furnished to, and/or unlawfully assisted in procuring alcohol for, the Assailants, within the meaning of New York General Obligations Law § 11-100.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Defendants pursuant to Civil Practice Law and Rules (“CPLR”) § 301 because Defendants reside and are domiciled in the State of New York and/or resided and were domiciled in the State of New York during the relevant time period.

14. Venue is proper in Nassau County pursuant to CPLR § 503 because Plaintiffs reside in Nassau County and their causes of action arose in Nassau County.

FACTUAL ALLEGATIONS

15. On the evening of June 18, 2012, after putting her three young children to bed, Plaintiff Meredith Woythaler left home to take the family’s dog for a walk.

16. Mrs. Woythaler took her usual route around the block. As she approached the third turn, at the intersection of Nottingham Road and Arleigh Road in Rockville Centre, New York, she encountered a group of approximately ten individuals.

17. These individuals, who included the Assailants, had come to the intersection via a “cut through.”

18. Upon information and belief, the Assailants’ path through the “cut through” was videotaped by the security camera of a nearby homeowner. Upon information and belief, the Assailants and their friends were also captured on videotape drinking beer and fighting amongst themselves.

19. Indeed, the Assailants and their friends possessed two twelve-packs of beer as they approached Mrs. Woythaler.

20. Almost immediately, the Assailants and their friends began making crude remarks to Mrs. Woythaler, including that she was a “sexy lady.”

21. Not yet realizing the severity of the threat presented by the Assailants and their friends, Mrs. Woythaler responded by saying “okay guys . . . goodnight.”

22. The Assailants and their friends moved further into the street, partially blocking Mrs. Woythaler’s path home.

23. Mrs. Woythaler, simply wanting to get home, said “guys, that’s enough.”

24. In response, the Assailants and their friends began yelling at Mrs. Woythaler and using terms such as “fuck you,” “cunt,” “whore” and “bitch.” The Assailants and their friends again moved closer to Mrs. Woythaler.

25. At this point Mrs. Woythaler was terrified and feared for her physical safety. Fortunately, she was able to escape the Assailants and their friends by running around them and

to her home. While she did so, many of the individuals yelled "I'm going to get you," which heightened Mrs. Woythaler's fears.

26. Mrs. Woythaler arrived home distraught and yelling "Oh my God." Mr. Woythaler, obviously concerned for his wife of nearly 17 years, asked what had happened. Mrs. Woythaler relayed the entire terrifying experience.

27. In an effort to obtain an apology from the Assailants and their friends, and not yet realizing the danger they posed, Mr. Woythaler left the house on foot to try to find them.

28. When he did not return quickly, Mrs. Woythaler got in her car to try to find Mr. Woythaler. She located him, and he got in the car. Still wanting an apology, the Woythaler's continued to look for the drunken high schoolers. They found them soon thereafter, on Roxen Road, in Rockville Centre, New York.

29. Mr. Woythaler got out of the car, and asked that whoever had called Mrs. Woythaler a whore apologize to her.

30. Instead, one of the Assailants punched Mr. Woythaler in the face, and the other Assailants joined in.

31. Mr. Woythaler was repeatedly punched and kicked by the Assailants.

32. The Assailants also threw full cans of beer at Mr. Woythaler.

33. Mr. Woythaler fell to the ground, but the Assailants continued to punch and kick Mr. Woythaler. According to witnesses, Defendant DiPerna kicked Mr. Woythaler in the head as though he were kicking a football.

34. Mrs. Woythaler attempted to pull one of the Assailants off of her husband, but was forcefully thrown to the ground.

35. No Assailant made any attempt to stop the beating, and the Assailants continued to enthusiastically kick and punch Mr. Woythaler, while yelling, in sum and substance, “how does it feel old man. I’m a senior in high school and am kicking your ass.”

36. The assault continued until it was broken up by neighbors.

37. At that point, Mr. Woythaler was able to get back on his feet. However, because of the assault he had difficulty keeping his balance. Clearly badly injured, and with his shirt ripped and bloodied, Mr. Woythaler said that all he wanted was an apology, and that the Assailants owed his wife an apology. It seemed as though the fight was over.

38. At that time Defendant Coyle approached Mrs. Woythaler and threatened that she would never be able to prove any of this.

39. Moments later, Defendant Moore, without any provocation and after the assault had already died down, “sucker punched” Mr. Woythaler in the face. Mr. Woythaler’s mouth split open and blood spurted out. He fell to the ground, unconscious.

40. As a result of Assailants’ actions, Mr. Woythaler suffered severe physical injuries, including, but not limited to, a fractured rib, a dislocated jaw and lacerations requiring 15 stiches. Mr. Woythaler was unable to close his mouth or properly set his teeth, and had difficulty breathing. He also was unable to work for a period of time and continues to suffer from debilitating migraines and memory loss. Mr. Woythaler has required, and will require, considerable medical treatment in connection with these physical injuries.

41. Mr. Woythaler has also suffered severe emotional distress, mental anguish, fear, anxiety and depression as a result of the Assailants’ actions. He has been forced to seek treatment for these mental health injuries.

42. Mrs. Woythaler likewise has suffered severe emotional distress, mental anguish, fear, anxiety and depression as a result of the Assailants' actions. She has been forced to seek treatment for these mental health injuries.

43. Prior to confronting Mrs. Woythaler while she was walking the family's dog, the Assailants consumed alcohol at the home of Defendants P. and J. Kelly. Indeed, P. Kelly has stated that the Assailants were drinking alcohol at his home prior to the assault. Defendants P. and J. Kelly knew that the Assailants were all under the age of twenty-one. Defendants P. and J. Kelly also were aware of, and, upon information and belief, had given their permission to, the Assailants, to consume alcohol at their home.

44. Upon information and belief, the Assailants would not have threatened and attacked Mr. and Mrs. Woythaler had they not been drinking alcohol prior to these events. As such, upon information and belief, Mr. and Mrs. Woythaler were injured by reason of the intoxication or impairment of persons under the age of twenty-one.

45. Each of the Assailants was subsequently arrested and charged with, *inter alia*, felony Assault with the Intent to Cause Injury with a Weapon and Gang Assault in the Second Degree.

46. Upon information and belief, each of the Assailants have made admissions of guilt *via* postings on the websites facebook.com and twitter.com, including postings wherein the Assailants laud themselves for assaulting Plaintiffs.

47. Plaintiffs have been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, This amount will be determined at trial in this action.

FIRST CAUSE OF ACTION
(Assault as Against the Assailants)

48. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

49. The violent acts committed by Assailants against Plaintiff John Woythaler, including, *inter alia*, repeatedly punching and kicking Mr. Woythaler in the face and body and throwing full cans of beer at Mr. Woythaler, amounted to a series of events creating a reasonable apprehension in Mr. Woythaler of immediate harmful or offensive contact to Mr. Woythaler's person, all of which were done intentionally and without consent.

50. The violent and threatening acts committed by Assailants against Plaintiff Meredith Woythaler, including, *inter alia*, approaching Mrs. Woythaler while screaming "fuck you," "cunt," "whore" and "bitch," yelling to Mrs. Woythaler that they would "get her" and physically throwing Mrs. Woythaler to the ground, amounted to a series of events creating a reasonable apprehension in Mrs. Woythaler of immediate harmful or offensive contact to Mrs. Woythaler's person, all of which were done intentionally and without consent.

51. As a direct and proximate result of the aforementioned assaults, Mr. and Mrs. Woythaler have sustained in the past, and will sustain in the future, *inter alia*, physical injury, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

52. The Assailants' conduct was wanton, malicious, willful and/or cruel, entitling Plaintiffs to an award of punitive damages.

SECOND CAUSE OF ACTION
(Battery as Against the Assailants)

53. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

54. The violent acts committed by Assailants against Plaintiff John Woythaler, including, *inter alia*, repeatedly punching and kicking Mr. Woythaler in the face and body and throwing full cans of beer at Mr. Woythaler, amounted to a series of harmful or offensive contacts to Mr. Woythaler's person, all of which were done intentionally and without consent.

55. The violent acts committed by Assailants against Plaintiff Meredith Woythaler, including, *inter alia*, physically throwing Mrs. Woythaler to the ground, amounted to harmful or offensive contact to Mrs. Woythaler's person, which was done intentionally and without consent.

56. As a direct and proximate result of the aforementioned batteries, Mr. and Mrs. Woythaler have sustained in the past, and will sustain in the future, *inter alia*, physical injury, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

57. The Assailants' conduct was wanton, malicious, willful and/or cruel, entitling Plaintiffs to an award of punitive damages.

THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress as Against the Assailants)

58. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

59. As set forth above, the Assailants engaged in extreme and outrageous conduct towards Mr. Woythaler, including, *inter alia*, repeatedly punching and kicking him in the face and body, throwing full cans of beer at him, threatening his emotional well-being and assaulting

and battering Mrs. Woythaler. These actions were taken with intent to cause, or disregard for the substantial probability of causing, severe emotional distress.

60. As set forth above, the Assailants engaged in extreme and outrageous conduct towards Mrs. Woythaler, including, *inter alia*, approaching her while screaming “fuck you,” “cunt,” “whore” and “bitch,” yelling to her that they would “get her,” physically throwing her to the ground, threatening her emotional well-being and assaulting and battering Mr. Woythaler. These actions were taken with intent to cause, or disregard for the substantial probability of causing, severe emotional distress.

61. As a direct and proximate result of the Assailants’ extreme and outrageous conduct, Plaintiffs have suffered severe emotional distress, including continuing mental anguish, fear, anxiety and depression, which require continuing mental health treatment.

62. The Assailants’ conduct was wanton, malicious, willful and/or cruel, entitling Plaintiffs to an award of punitive damages.

FOURTH CAUSE OF ACTION
(False Imprisonment as Against the Assailants)

63. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

64. As set forth above, the Assailants intended to confine both Mr. and Mrs. Woythaler.

65. With respect to Mrs. Woythaler, the Assailants intended to confine her by, *inter alia*, approaching Mrs. Woythaler when she tried to turn the corner of Nottingham Road and Arleigh Road to get home, screaming “fuck you,” “cunt,” “whore” and “bitch,” yelling to Mrs. Woythaler that they would “get her,” and later physically throwing Mrs. Woythaler to the

ground. Mrs. Woythaler was conscious of her confinement, and did not consent to it. Mrs. Woythaler's confinement was not privileged.

66. With respect to Mr. Woythaler, the Assailants intended to confine him by, *inter alia*, repeatedly punching and kicking Mr. Woythaler in the face and body and throwing full cans of beer at Mr. Woythaler such that he was unable to escape. Mr. Woythaler was conscious of his confinement, and did not consent to it. Mr. Woythaler's confinement was not privileged.

67. As a direct and proximate result of the aforementioned confinements, Mr. and Mrs. Woythaler have sustained in the past, and will sustain in the future, *inter alia*, physical injury, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

68. The Assailants' conduct was wanton, malicious, willful and/or cruel, entitling Plaintiffs to an award of punitive damages.

FIFTH CAUSE OF ACTION
(Aiding and Abetting Tortious Conduct as Against the Assailants)

69. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

70. Each of the Assailants aided and abetted the tortious conduct of each of the other Assailants, including by aiding and abetting the assaults, batteries, intentional inflictions of emotional distress and unlawful imprisonments committed by each Assailant against Plaintiffs.

71. As a direct and proximate result of the aforementioned assaults, batteries, intentional inflictions of emotional distress and unlawful imprisonments, Mr. and Mrs. Woythaler have sustained in the past, and will sustain in the future, *inter alia*, physical injury, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

72. Each of the Assailants was aware of their role as part of the overall tortious conduct committed against Plaintiffs, and knowingly and substantially assisted the principal violations.

73. The Assailants' conduct was wanton, malicious, willful and/or cruel, entitling Plaintiffs to an award of punitive damages.

SIXTH CAUSE OF ACTION
(Violations of N.Y. Gen. Oblig. Law § 11-100 as Against Defendants P. and J. Kelly)

74. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

75. The Assailants were all under the age of twenty-one at the time of the events giving rise to the claims herein.

76. Upon information and belief, the assailants would not have repeatedly punched Mr. Woythaler in the face and body, thrown full cans of beer at Mr. Woythaler or threatened Mr. Woythaler's emotional well-being had they not been drinking alcohol prior to these events. As such, upon information and belief, Mr. Woythaler was injured by reason of the intoxication or impairment of persons under the age of twenty-one; namely, the Assailants.

77. Likewise, upon information and belief, the assailants would not have approached Mrs. Woythaler while screaming "fuck you," "cunt," "whore" and "bitch," yelled to Mrs. Woythaler that they would "get her," physically thrown Mrs. Woythaler to the ground and threatened her emotional well-being had they not been drinking alcohol prior to these events. As such, upon information and belief, Mrs. Woythaler was injured by reason of the intoxication or impairment of persons under the age of twenty-one; namely, the Assailants.

78. Defendants P. and J. Kelly unlawfully furnished and/or unlawfully assisted in procuring alcoholic beverages for the Assailants prior to the aforementioned events. Defendants P. and J. Kelly knew or had reasonable cause to believe the Assailants were under the age of 21.

79. As a direct and proximate result of Defendants P. and J. Kelly's actions, Mr. and Mrs. Woythaler have sustained in the past, and will sustain in the future, *inter alia*, physical injury, pain and suffering, psychological and emotional distress, mental anguish, embarrassment, humiliation and loss of career fulfillment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and against Defendants, containing the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the State of New York;

B. Judgment against Defendants for the amount sought on each cause of action, exceeding the monetary jurisdictional limits of any and all lower courts that would otherwise have jurisdiction herein, together with the costs and disbursements of this action and with prejudgment interest;

C. An award of damages to compensate Plaintiffs for economic, direct, compensatory, general, special, consequential, incidental, exemplary and aggravated damages, as well as interest, resulting from severe bodily injuries, severe physical anguish, emotional distress, mental anguish and other psychological injuries, pain and suffering, fear, anxiety and loss of income, suffered by Plaintiffs;

D. An award of damages to be determined at trial, plus prejudgment interest, to compensate Plaintiffs for harm to their professional and personal reputations and loss of career fulfillment;

E. An award of punitive damages;

F. An award of costs that Plaintiffs have incurred in this action, as well as Plaintiffs' reasonable attorneys' fees to the fullest extent permitted by law; and

G. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: June 13, 2013
New York, New York

Respectfully submitted,

THOMPSON WIGDOR LLP

By:



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