

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 25264/2009

LISA HUMPHERY, RALPH NICHOLAS, an infant by
his mother LISA HUMPHERY, and SADE
NICHOLAS, an infant by her mother LISA
HUMPHERY,

Plaintiffs,

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

Defendants.

**NOTICE OF
MOTION TO
AMEND
COMPLAINT**

ORAL ARGUMENT REQUESTED
Hon. B. Bunyan

PLEASE TAKE NOTICE, that upon the annexed affirmation of Gene Berardelli, Esq., duly affirmed on October 9, 2012, the summons heretofore served herein and the proposed amended summons, all of which are annexed hereto, a will be made at a Term of this court, Motion Submission Part, Room 130 to be held at the courthouse thereof, located at 60 Centre St., New York, NY 10007 on November 21, 2012 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

- a. pursuant to N.Y. C.P.L.R. §§ 3025 amending the Verified Summons & Complaint to add an additional "zone of danger" claim for Plaintiff-Infant SADE NICHOLAS; and
- b. for such other and further relief as may be just, proper, and equitable.

The above-entitled action was brought for purposes of adding an additional defendant identified by the existing defendants.

Pursuant to N.Y. C.P.L.R. 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

Dated: New York, New York
October 9, 2012

Yours, etc., 

GENE BERARDELLI, ESQ.

Novo Law Firm, PC

Attorneys for Plaintiff

LISA HUMPHERY, RALPH NICHOLAS, an
infant by his mother LISA HUMPHERY, and
SADE NICHOLAS, an infant by her mother
LISA HUMPHERY,

299 Broadway, 17th Floor

New York, New York 10007

212-233-6686

TO:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 25264/2009

LISA HUMPHERY, RALPH NICHOLAS, an infant by
his mother LISA HUMPHERY, and SADE
NICHOLAS, an infant by her mother LISA
HUMPHERY,

Plaintiffs,

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

Defendants.

**ATTORNEY'S
AFFIRMATION**

ORAL ARGUMENT REQUESTED
Hon. B. Bunyan

GENE BERARDELLI, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the truth under penalty of perjury:

- 1) I am an associate of NOVO LAW FIRM, P.C., attorneys for the Plaintiffs LISA HUMPHERY and her infant children RALPH NICHOLAS and SADE NICHOLAS, and as such, I am familiar with the facts of this case and submit this affirmation in support of this application to be relieved as attorneys of record for the plaintiff.
- 2) I write this affirmation in support of Plaintiff's Motion to Amend the Summons & Complaint herein by adding an additional "zone of danger" claim for Plaintiff-Infant SADE NICHOLAS.
- 3) Attached hereto and marked "EXHIBIT A" is a copy of the last Summons & Verified Complaint filed herein.
- 4) Attached hereto and marked "EXHIBIT B" is a copy of the Proposed Amended Summons & Verified Complaint adding an additional "zone of danger" claim on behalf of Plaintiff-Infant SADE NICHOLAS.
- 5) CPLR § 3025(b) provides that a party may amend and/or supplement pleadings by leave of court or by stipulation of all parties at any time.

- 6) CPLR § 3025(c) also provides that the Court the discretion to permit pleadings to be amended before or after judgment to conform them to the evidence.
- 7) A plaintiff may recover damages for injuries suffered in consequence of shock or fright resulting from the contemporaneous observation of serious physical injury or death of a member of her immediate family, where (1) the defendant's conduct negligently exposes the plaintiff to unreasonable risk of bodily injury or death, and (2) is also a substantial factor bringing about injury or death of plaintiff's immediate family member. Bovsun v. Sanperi, 61 N.Y.2d 219, 473 N.Y.S.2d 357, 461 N.E.2d 843 (1984); Miller ex rel. Miller v. Chalom, 269 A.D.2d 37, 710 N.Y.S.2d 154 (3d Dep't 2000); Malstrom v. Mackey, 182 A.D.2d 1006, 583 N.Y.S.2d 28 (3d Dep't 1992).
- 8) The plaintiff must present evidence of contemporaneous awareness of the seriousness of the family member's injuries. Lopez v. Gomez, 305 A.D.2d 292, 761 N.Y.S.2d 601 (1st Dep't 2003).
- 9) This "zone of danger" rule applies even when the plaintiff's shock or fright is not due to any fear for her own safety, but only to fear for the safety of a spouse or child. Hass v. Manhattan and Bronx Surface Transit Operating Authority, 204 A.D.2d 208, 612 N.Y.S.2d 134 (1st Dep't 1994). However, an action may not be based on witnessing death or injury to
 - a. a family member not in the immediate family, Trombetta v. Conkling, 187 A.D.2d 213, 593 N.Y.S.2d 670 (4th Dep't 1993), *aff'd*, 82 N.Y.2d 549, 605 N.Y.S.2d 678, 626 N.E.2d 653 (1993)
 - b. to a friend and coworker, Casale v. Unipunch, Inc., 177 A.D.2d 1029, 578 N.Y.S.2d 46 (4th Dep't 1991) or
 - c. to strangers. Jorgenson v. B.F. Yenney Const. Co., Inc., 255 A.D.2d 1008, 679 N.Y.S.2d 775 (4th Dep't 1998)
- 10) Here, Plaintiff-Infant SADE NICHOLAS was crossing the street with her mother and brother when Defendant ran them all down with his vehicle.
- 11) In addition to being hit herself, Plaintiff-Infant SADE NICHOLAS witnessed her mother and brother absorbing the full force of the vehicle as her mother attempted to push her out of harm's way.
- 12) In Plaintiff-Infant SADE NICHOLAS's examination before trial dated June 30, 2010 (which is attached hereto and marked "EXHIBIT C"), she details her own experiences of this accident. She details seeing headlights two seconds before she and her family are struck by the vehicle. Nicholas EBT p. 11, line 6- 13, line 6.

- 13) She also discusses seeing her mother, who has suffered extreme trauma including among other injuries a broken jaw, loss of many teeth, broken right knee, broken right shoulder, collapsed lung and lacerated liver, who told her to see to her brother, who has been thrown "way across the street" by the impact and knocked unconscious. Nicholas EBT, p. 13, lines 7 - 22.
- 14) SADE is entitled to interpose this additional claim. The Court must grant this motion to allow SADE to have her full "day in Court" with all claims determined.

WHEREFORE, your affirmant respectfully requests that the Court issue an order pursuant

- a. pursuant to N.Y. C.P.L.R. §§ 3025 amending the Verified Summons & Complaint to add an additional "zone of danger" claim for Plaintiff-Infant SADE NICHOLAS; and
- b. for such other and further relief as may be just, proper, and equitable.

Dated: New York, New York
October 9, 2012

Yours, etc.,



GENE BERARDELLI, ESQ.

Novo Law Firm, PC
Attorneys for Plaintiff

LISA HUMPHERY, RALPH NICHOLAS, an
infant by his mother LISA HUMPHERY, and
SADE NICHOLAS, an infant by her mother
LISA HUMPHERY,
299 Broadway, 17th Floor
New York, New York 10007
212-233-6686

TO: BAKER, McEVOY, MORRISEY & MOSKOVITS, P.C.
Attorneys for Defendants
GARRY BROWN and
R&S CAR & LIMO, INC.
330 W. 34th Street, 7th Floor
New York, New York 10001
212-857-8203
Your File: 754230

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 25264/2009

-----X
LISA HUMPHERY, RALPH NICHOLAS, an infant by his
mother LISA HUMPHERY, and SADE NICHOLAS,
an infant by her mother LISA HUMPHERY,

**SECOND AMENDED
SUMMONS**

Plaintiffs,

Plaintiffs designate Kings
County as the place of trial.

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

Plaintiffs reside at:
5715 Avenue H, Apt. 5C
Brooklyn, NY 11234

Defendants.
-----X

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 Plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, NY
October 8, 2012



Gene Berardelli, Esq.
NOVO LAW FIRM, P.C.

Attorneys for Plaintiffs

LISA HUMPHERY, RALPH NICHOLAS,
an infant by his mother LISA HUMPHERY,
and SADE NICHOLAS,

an infant by her mother LISA HUMPHERY

299 Broadway, 17th Floor
New York, New York 10007

212-233-6686

Our File: 09-0825

TO: Ronit Z. Moscovits, Esq.
BAKER. McEVOY, MORRISEY &
MOSKOVITS, P.C.
Attorneys for Defendants
GARRY BROWN and
R&S CAR & LIMO, INC.
330 W. 34th Street, 7th Floor
New York, New York 10001
212-857-8203
Your File: 754230

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LISA HUMPHERY, RALPH NICHOLAS, an infant by his
mother LISA HUMPHERY, and SADE NICHOLAS,
an infant by her mother LISA HUMPHERY,

Plaintiffs,

**SECOND AMENDED
VERIFIED
COMPLAINT**

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

Defendants.
-----X

Plaintiffs, by their attorneys, NOVO LAW FIRM, P.C., complaining of Defendants, respectfully allege, upon information and belief:

1. At all times herein mentioned, Plaintiff LISA HUMPHERY was and still is a resident of the County of Kings, State of New York.
2. At all times herein mentioned, Plaintiff RALPH NICHOLAS, an infant by his mother LISA HUMPHERY, was and still is a resident of the County of Kings, State of New York.
3. At all times herein mentioned, Plaintiff SADE NICHOLAS, an infant by her mother LISA HUMPHERY, was and still is a resident of the County of Kings, State of New York.
4. That at all times hereinafter mentioned, Defendant R&S CAR & LIMO, INC. was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
5. That at all times hereinafter mentioned, Defendant R&S CAR & LIMO, INC. was and still is a foreign corporation duly authorized to do business in the State of New York.

6. At all time herein mentioned, Defendant GARRY BROWN was and still is a resident of the County of Queens, State of New York.

7. At all times herein mentioned, and on February 8, 2009, Defendant R&S CAR & LIMO, INC. owned a motor vehicle bearing New York license plate number T494773C.

8. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN operated the aforesaid motor vehicle.

9. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN operated the aforesaid motor vehicle with the permission of its owner, Defendant R&S CAR & LIMO, INC.

10. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN operated the aforesaid motor vehicle with the knowledge of its owner, Defendant R&S CAR & LIMO, INC.

11. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN operated the aforesaid motor vehicle with the consent of its owner, Defendant R&S CAR & LIMO, INC.

12. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN operated said motor vehicle bearing New York license plate number T494773C within the scope of his employment with Defendant R&S CAR & LIMO, INC.

13. At all times herein mentioned and on February 8, 2009, Defendant R&S CAR & LIMO, INC. maintained the aforesaid motor vehicle.

14. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN maintained said motor vehicle.

15. At all times herein mentioned and on February 8, 2009, Defendant R&S CAR &

LIMO, INC. managed the aforesaid motor vehicle.

16. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN managed the aforesaid motor vehicle.

17. At all times herein mentioned and on February 8, 2009, Defendant R&S CAR & LIMO, INC. controlled the aforesaid motor vehicle.

18. At all times herein mentioned and on February 8, 2009, Defendant GARRY BROWN controlled the aforesaid motor vehicle.

19. That on February 8, 2009, Utica Avenue at or near the intersection of Avenue H was a public thoroughfare.

20. That on February 8, 2009, Defendant GARRY BROWN operated and controlled said motor vehicle bearing New York license plate number T494773C at or about the above-mentioned location.

21. That on February 8, 2009, Plaintiff LISA HUMPHERY was a lawful pedestrian at the above-mentioned location.

22. That on February 8, 2009, Plaintiff RALPH NICHOLAS was a lawful pedestrian at the above-mentioned location.

23. That on February 8, 2009, Plaintiff SADE NICHOLAS was a lawful pedestrian at the above-mentioned location.

24. That on February 8, 2009 at the aforementioned location, the motor vehicle owned by R&S CAR & LIMO, INC. and operated by Defendant GARRY BROWN came into contact with Plaintiff LISA HUMPHERY at the above-mentioned location.

25. That on February 8, 2009 at the aforementioned location, the motor vehicle owned by R&S CAR & LIMO, INC. and operated by Defendant GARRY BROWN came into

contact with Plaintiff RALPH NICHOLAS at the above-mentioned location.

26. That on February 8, 2009 at the aforementioned location, the motor vehicle owned by R&S CAR & LIMO, INC. and operated by Defendant GARRY BROWN came into contact with Plaintiff SADE NICHOLAS at the above-mentioned location.

27. That as a result of the aforesaid contact, Plaintiff LISA HUMPHERY was injured.

28. That as a result of the aforesaid contact, Plaintiff RALPH NICHOLAS was injured.

29. That as a result of the aforesaid contact, Plaintiff SADE NICHOLAS was injured.

30. That the above-stated occurrence and the results thereof were in no way due to any negligence on the part of Plaintiffs contributing thereto, but were caused by the joint, several and/or concurrent negligence of Defendants and/or said Defendants' agents, servants, employees and/or licensees in the ownership, operation, management, maintenance and control of their said motor vehicle.

31. Defendants were negligent, careless and reckless in the ownership, management, maintenance, supervision and control of their aforesaid vehicle, and Defendants were otherwise negligent, careless and reckless under the circumstances then and there prevailing.

32. That Plaintiff LISA HUMPHERY sustained serious injuries as defined by § 5102(d) of the Insurance Law of the State of New York and loss greater than basic economic loss as defined by § 5104 of the Insurance Law of the State of New York.

33. That Plaintiff RALPH NICHOLAS sustained serious injuries as defined by § 5102(d) of the Insurance Law of the State of New York and loss greater than basic economic loss as defined by § 5104 of the Insurance Law of the State of New York.

34. That Plaintiff SADE NICHOLAS sustained serious injuries as defined by §

5102(d) of the Insurance Law of the State of New York and loss greater than basic economic loss as defined by § 5104 of the Insurance Law of the State of New York.

35. That this action falls within one or more of the exceptions set forth in CPLR § 1602.

36. That by reason of the foregoing, Plaintiff LISA HUMPHERY was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

37. That by reason of the foregoing, Plaintiff RALPH NICHOLAS was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

38. That by reason of the foregoing, Plaintiff SADE NICHOLAS was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

"ZONE OF DANGER" CLAIM AS TO PLAINTIFF-INFANT SADE NICHOLAS

39. Plaintiffs repeat and reallege each and every allegation set forth above with the same force and effect as if set forth at length herein.

40. Defendant GARRY BROWN and R&S CAR & LIMO, INC., were negligent, careless and reckless in the ownership, management, maintenance, supervision and control of their aforesaid vehicle and Defendants were otherwise negligent, careless and reckless under the circumstances then and there prevailing.

41. That the above-stated occurrence and the results thereof were in no way due to any negligence on the part of the Plaintiff contributing thereto, but were caused by the joint, several and/or concurrent negligence of the Defendants GARRY BROWN and R&S CAR & LIMO, INC., in the ownership, operation, management, maintenance and control of their said motor vehicle.

42. As a result of Defendants GARRY BROWN and R&S CAR & LIMO, INC.'s negligence, Plaintiff SADE NICHOLAS was forced to witness the violent injury of her mother, Plaintiff LISA HUMPHERY.

43. As a result of Defendants GARRY BROWN and R&S CAR & LIMO, INC.'s negligence, Plaintiff SADE NICHOLAS was forced to witness the violent injury of her brother, Plaintiff-Infant, RALPH NICHOLAS

44. As a result of witnessing the serious injuries to her mother and her brother, Plaintiff-Infant SADE NICHOLAS suffered severe mental anguish and distress, emotional and psychological injury and distress and physical consequences resulting from said emotional and mental anguish and distress.

45. That by reason of the foregoing, Plaintiff-Infant SADE NICHOLAS was damaged in a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiffs demand judgment against Defendants herein, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: New York, NY
October 8, 2012



Gene Berardelli, Esq.
NOVO LAW FIRM, P.C.

Attorneys for Plaintiffs

LISA HUMPHERY, RALPH NICHOLAS,
an infant by his mother LISA HUMPHERY,
and SADE NICHOLAS,

an infant by her mother LISA HUMPHERY

299 Broadway, 17th Floor

New York, New York 10007

212-233-6686

Our File: 09-0825

TO: Ronit Z. Moscovits, Esq.
BAKER, McEVOY, MORRISEY &
MOSKOVITS, P.C.

Attorneys for Defendants

GARRY BROWN and

R&S CAR & LIMO, INC.

330 W. 34th Street, 7th Floor

New York, New York 10001

212-857-8203

Your File: 754230

ATTORNEY'S VERIFICATION

State of New York)
)
County of New York) ss.

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

Dated: New York, New York
 October 8, 2012



GENE BERARDELLI, ESQ.

Index No. 25264/2009
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

LISA HUMPHERY, RALPH NICHOLAS, an infant by his mother LISA HUMPHERY, and
SADE NICHOLAS, an infant by her mother LISA HUMPHERY,

Plaintiffs,

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

Defendants.

SECOND AMENDED SUMMONS AND SECOND AMENDED VERIFIED COMPLAINT

Novo Law Firm, P.C.
Attorneys for Plaintiffs
299 Broadway, 17th Floor
New York, New York 10007
212-233-6686

TO: Ronit Z. Moscovits, Esq.
BAKER. McEVOY, MORRISEY &
MOSKOVITS, P.C.
Attorneys for Defendants
GARRY BROWN and
R&S CAR & LIMO, INC.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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-----X
LISA HUMPHERY, RALPH NICHOLAS, an infant by his
mother LISA HUMPHERY, and SADE NICHOLAS,
an infant by her mother LISA HUMPHERY,

Plaintiffs,

**REPLY
AFFIRMATION**

-against-

GARRY BROWN and R&S CAR & LIMO, INC.,

ORAL ARGUMENT REQUESTED

Defendants.
-----X

GENE BERARDELLI, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the truth under penalty of perjury:

1. My name is GENE BERARDELLI, ESQ. and I am an associate of NOVO LAW FIRM, P.C., attorneys for the Plaintiff, LISA HUMPHERY, RALPH NICHOLAS, an infant by his mother LISA HUMPHERY, and SADE NICHOLAS, an infant by her mother LISA HUMPHERY, and, as such, I am familiar with the facts and circumstances contained herein. I submit this affirmation as a reply to the opposition of the Defendants' to Plaintiffs' instant motion for leave to amend to include SADE's "zone of danger" claims.
2. Defendants' contentions in their opposition to our motion border on frivolity. Defendants well know that their clients are liable for the accident herein. After a thorough investigation by the NYPD, they determined that Defendant GARRY BROWN hit Plaintiffs violently with his vehicle. Said investigation included an admission by Defendant BROWN that "BOOM" – he hit the Plaintiffs.
3. Further, Plaintiff LISA HUMPHERY has already sworn on the record that her daughter SADE has suffered greatly emotionally as a result of his horrific accident, noting that SADE's school has recommended counseling.
4. In Sade's Deposition of June 30, 2010 marked as Defendants' "EXHIBIT B", Sade discusses being struck by the car, the immediate aftermath when she checked on her unconscious brother when her mother, who was lying on the ground and then subsequently became unconscious herself, told her to do so. She also discusses how her life changed.

5. In addition, the affidavit of Lisa Humphery submitted in opposition to Defendant's Motion for Summary Judgment, the original of which was filed with the Court on May 29, 2012, and is hereby incorporated herein. An unsigned copy of same is attached hereto and marked "EXHIBIT A".
6. In her affidavit, SADE's mother has seen first-hand how this accident has effected Sade emotionally, noting extreme changes in her behavior and outlook on life. (Humphery Affidavit, p. 3-4).
7. According to her mother, Sade is scared to cross streets and experiences nightmares that persist to this day. (Humphery Affidavit, p.3). Her mother also notes that Sade's school counselor has recommended therapy for Sade, but the family has been unable to start therapy given the many challenges – physical, mental and emotional – that they all have had to overcome since the occurrence.
8. Sade's fragile emotional state directly resulting from exposure to Defendants' "zone of danger" as sworn to by her mother stands uncontroverted by Defendants.
9. As to Defendant's contention that Defendant is not culpable herein, Plaintiff notes that this is not the first time that Defendant has attempted to "pull the wool" over the eyes of the Court. Attached hereto and marked "EXHIBIT A" is
10. Incredibly, this is Defendants' second attempt to deliberately mislead this Court. In its motion for summary judgment, Defendants' attempted to dupe the Court into believing that an incomplete Police Report was a true and accurate account of the accident.
11. What Defendants failed to attach to their motion papers then and to their opposition now is the AMENDED Police Report, which eliminates their original belief that this was a "hit and run" accident.
12. Attached hereto and marked "EXHIBIT C" is a copy of the Amended Police Report made by Detective Daniel Ryan, along with three follow-up informational reports made by Det. Ryan. In this updated and final report, Det. Ryan determined:

*AT T/P/O THIS COLLISION WAS ORIGINALLY REPORTED AS
A "LEAVING THE SCENE". INVESTIGATION DID REVEAL
THAT NO OTHER VEHICLES WERE INVOLVED.*

13. Det. Ryan, "made this determination based on the evidence and after interviews with witnesses and the victim", (Exhibit C, p.2, para. 2), including Defendant BROWN. In

fact, Defendant Brown met at the Highway 2 station house with a Detective Daniel Ryan) and stated:

I was driving N/B (Northbound) on Utica Ave. in the left lane to drop off my F/Pass (Front Seat Passenger) when I got to the middle of the intersection of Ave. H. I saw someone crossing from my left to right (W to E) (wearing an orangy colored jacket). I tried to swerve to the left then "BOOM" and I pulled right over (by the KFC). I then called 911.

14. In addition to the handwritten statement discussed above, Detective Ryan further notes his interview with Defendant BROWN:

Mr. Brown was also asked if there were any other vehicles involved or in the immediate vicinity when the collision occurred. He said no.

[Detective Ryan] then asked if he had heard that a white vehicle might have also been involved. Mr. Brown said that he had heard that also, but again stated no. No other cars or trucks were involved or had passed him just prior to the collision.

(Exhibit C, p. 3, para. 5).

15. It should be noted the handwritten statement was made as a part of the interview by Detective Ryan for this amended report (Exhibit C, p. 3, para. 4).
16. An admission by a party contained in a police report may be properly considered in a motion for summary judgment. In Kemenyash v. McGoey, 306 AD 2d 516, 762 NYS2d 629 (2d Dept. 2003), the Second Department reversed the lower court's denial of a motion for summary judgment, holding that the defendant's statement to the police officer at the scene of the accident, was admissible as an admission of a party. Further, in Vaden v. Rose, 4 AD3d 468, 771 NYS2d 670, 2004 Slip. Op. 01019, the Appellate Division reversed the lower's court's decision finding that an admission contained in a police report was sufficient to warrant granting summary judgment on the issue of liability.
17. The Court should be astonished at the lengths which Defendants attempted to go to mislead it into believing that they are free from liability. If anything, the amended report leaves little doubt that Defendants are completely liable for this accident.

18. Defendants' arguments cannot be taken at face value. Plaintiffs' motion to amend must be granted and Sade's claim of "zone of danger" must be heard.

WHEREFORE, Plaintiffs request that their motion for leave to amend their Summons & Complaint be granted in its entirety.

Dated: New York, New York
February 5, 2013

Respectfully submitted,



GENE BERARDELLI, ESQ.

NOVO LAW FIRM, PC

Attorney for Plaintiff(s)

LISA HUMPHERY, RALPH NICHOLAS, an
infant by his mother LISA HUMPHERY, and
SADE NICHOLAS, an infant by her mother
LISA HUMPHERY,

299 Broadway, 17th floor

New York, New York 10007

(212) 233-6686

Our File No. 09-0825

TO:

Bhumika P. Trivedi, Esq.

BAKER. McEVOY, MORRISEY & MOSKOVITS, P.C.

Attorneys for Defendants

GARRY BROWN and R&S CAR & LIMO, INC.

330 W. 34th Street, 7th Floor

New York, New York 10001

212-857-8203

File No. 754230

