

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

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JANE DOE,

Plaintiff,

-against-

ERIC MARLON BISHOP, a/k/a JAMIE FOXX, CATCH
NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM,
CATCH HOSPITALITY GROUP, 25 NINTH AVENUE
CORP., LLC, CA 21-27 NINTH AVENUE, LLC, and
JOHN/JANE DOES 1-10, *said names being fictitious and
intended for unknown names of staff of the other Defendants,*

Defendants.
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Index No.:

SUMMONS

Plaintiff designates NEW YORK
County as the place of trial.

The basis of venue is
Location of Incident:

21 9th Avenue
New York, New York

JURY TRIAL DEMANDED

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 Plaintiff's attorneys within twenty days after the services 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, New York
November 20, 2023



CRAIG PHEMISTER, ESQ.
LAW OFFICES OF
MICHAEL S. LAMONSOFF, PLLC
Attorneys for Plaintiff
JANE DOE
32 Old Slip, 8th Floor
New York, New York 10005
T: (212) 962-1020

To:

ERIC MARLON BISHOP
A/K/A JAMIE FOXX
VENTURA, CALIFORNIA
VIA SECRETARY OF STATE

CATCH RESTAURANT
A/K/A CATCH NYC & ROOF
21 9 AVENUE ,
NEW YORK, NY 10014

CATCH NYC INC. A/K/ A CATCH NYC & ROOF
429 ATLANTIC AVENUE
SUITE 2A
FREEPORT, NEW YORK, 11520

CATCH NYC INC. A/K/A CATCH NYC & ROOF
ARIE KOVANT
15 EAST 32ND STREET
4TH FLOOR
NEW YORK, NEW YORK, 10016

CATCH ROOFTOP A/K/A CATCH NY & ROOF
21 9 AVENUE , 4 FL
NEW YORK, NY 10014

CATCH HOSPITALITY GROUP
21 9 AVENUE , 4 FL
NEW YORK, NY 10014

MARK BIRNBAUM
C/O CATCH NYC & ROOF
21 9 AVENUE , 4 FL
NEW YORK, NY 10014

25 NINTH AVENUE CORP. LLC
C/O DEANNA DURSO
15 COLONY LANE
MANHASSET, NEW YORK, 11030

CA 21-27 NINTH AVENUE LLC
1407 BROADWAY
41ST FLOOR
NEW YORK, NEW YORK, 10018

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

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JANE DOE,

Plaintiff,

VERIFIED COMPLAINT

-against-

Index No.: 626761/2023

ERIC MARLON BISHOP, a/k/a JAMIE FOXX, CATCH
NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM,
CATCH HOSPITALITY GROUP, 25 NINTH AVENUE
CORP., LLC, CA 21-27 NINTH AVENUE, LLC, and
JOHN/JANE DOES 1-10, *said names being fictitious and
intended for unknown names of staff of the other Defendants,*

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Plaintiff, **JANE DOE**, by her attorneys, **LAW OFFICES OF MICHAEL S.
LAMONSOFF, PLLC**, as and for their Verified Complaint, alleges the following, upon
information and belief:

PARTIES:

1. That at all times relevant hereto, Plaintiff **JANE DOE** was a resident of Kings County, State of New York.
2. That upon information and belief, at all times relevant hereto, Defendant **ERIC MARLON BISHOP, a/k/a JAMIE FOXX** was and still is a resident of Ventura County, State of California.
3. On or about August 26, 2015, Defendant **ERIC MARLON BISHOP, a/k/a JAMIE FOXX** was at a restaurant and rooftop lounge and bar located at 21^{9th} Avenue, New York, New York in the City, County and State of New York.
4. That at all times relevant hereto, Defendant **CATCH NYC & ROOF** (a/k/a CATCH ROOFTOP), was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York.
5. That at all times relevant hereto, Defendant **CATCH NYC & ROOF** (a/k/a CATCH ROOFTOP), was and still is a foreign corporation duly authorized to conduct business in New York.

6. That at all times relevant hereto, Defendant **CATCH NYC & ROOF** (a/k/a CATCH ROOFTOP), was duly authorized to transact business in the State of New York.
7. That at all times relevant hereto, Defendant **CATCH NYC & ROOF** (a/k/a CATCH ROOFTOP), owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.
8. That at all times relevant hereto, Defendant **CATCH NYC & ROOF** (a/k/a CATCH ROOFTOP), was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
9. That at all times relevant hereto, Defendant **CATCH NYC, INC.**, was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York.
10. That at all times relevant hereto, Defendant **CATCH NYC, INC.**, was and still is a foreign corporation duly authorized to conduct business in New York.
11. That at all times relevant hereto, Defendant **CATCH NYC, INC.**, was duly authorized to transact business in the State of New York.
12. That at all times relevant hereto, Defendant **CATCH NYC, INC.**, owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.
13. That at all times relevant hereto, Defendant **CATCH NYC, INC.**, was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
14. That upon information and belief, at all times relevant hereto, Defendant **MARK BIRNBAUM** was and still is a resident of the City, County and State of New York.
15. That at all times relevant hereto, Defendant **MARK BIRNBAUM** owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.
16. That at all times relevant hereto, Defendant **MARK BIRNBAUM** owned, operated, maintained,

managed and controlled Defendant **CATCH HOSPITALITY GROUP**.

17. That at all times relevant hereto, Defendant **MARK BIRNBAUM** was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
18. That at all times relevant hereto, Defendant **CATCH HOSPITALITY GROUP** was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York.
19. That at all times relevant hereto, Defendant **CATCH HOSPITALITY GROUP** was and still is a foreign corporation duly authorized to conduct business in New York.
20. That at all times relevant hereto, Defendant **CATCH HOSPITALITY GROUP** was duly authorized to transact business in the State of New York.
21. That at all times relevant hereto, Defendant **CATCH HOSPITALITY GROUP** owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.
22. That at all times relevant hereto, Defendant **CATCH HOSPITALITY GROUP** was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
23. That at all times relevant hereto, Defendant **25 NINTH AVENUE CORP., LLC** was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York.
24. That at all times relevant hereto, Defendant **25 NINTH AVENUE CORP., LLC** was and still is a foreign corporation duly authorized to conduct business in New York.
25. That at all times relevant hereto, Defendant **25 NINTH AVENUE CORP., LLC** was duly authorized to transact business in the State of New York.
26. That at all times relevant hereto, Defendant **25 NINTH AVENUE CORP., LLC** owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.

27. That at all times relevant hereto, Defendant **25 NINTH AVENUE CORP., LLC** was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
28. That at all times relevant hereto, Defendant **CA 21-27 NINTH AVENUE, LLC** was and still is a domestic corporation duly organized under and existing by virtue of the laws of the State of New York.
29. That at all times relevant hereto, Defendant **CA 21-27 NINTH AVENUE, LLC** was and still is a foreign corporation duly authorized to conduct business in New York.
30. That at all times relevant hereto, Defendant **CA 21-27 NINTH AVENUE, LLC** was duly authorized to transact business in the State of New York.
31. That at all times relevant hereto, Defendant **CA 21-27 NINTH AVENUE, LLC** owned, operated, maintained, managed and controlled a restaurant and rooftop lounge and bar located at 21 9th Avenue, New York, New York.
32. That at all times relevant hereto, Defendant **CA 21-27 NINTH AVENUE, LLC** was under a duty to own, operate, maintain, manage and control the aforesaid premises in a proper, safe and lawful manner.
33. That at all times relevant hereto, Defendants **JOHN/JANE DOES 1-10** are fictitious names intended to be the currently unknown security guards, employees, independent contractors and/or agents of the Defendants who were present and working at the aforesaid premises on or about August 26, 2015.

STATEMENT OF FACTS:

34. This matter is filed timely as it is brought pursuant to the Adult Survivors Act - N.Y. C.P.L.R. § 214-J, which states in pertinent part:

Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or

omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against such person who was eighteen years of age or older, or incest as defined in section 255.26 or 255.27 of the penal law committed against such person who was eighteen years of age or older, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date of this section. In any such claim or action, dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

35. The Defendants' actions described herein all occurred when Plaintiff was over the age of eighteen years old, and brought within the time frame of the Adult Survivors Acts above.
36. On or about August 26, 2015 at approximately 11:00pm, Plaintiff and a friend arrived at 21 9th Avenue for the purpose of getting seats at the rooftop lounge & bar. Upon being seated, Plaintiff noticed that Defendant **MARK BIRNBAUM** was seated one table away having drinks with Defendant **ERIC MARLON BISHOP, a/k/a JAMIE FOXX** (hereinafter "**BIRNBAUM**" and "**FOXX**").
37. Not long after being seated, Plaintiff and her friend observed a large crowd growing around Defendants **BIRNBAUM** and **FOXX**'s table. As a result, Defendants **JOHN/JANE DOES 1-10** began moving the crowd of patrons away, including nearly all of the patrons seated at tables near **BIRNBAUM** and **FOXX**.
38. Despite them being the only two remaining in the area, Plaintiff and her friend were never asked to move from their table located beside **BIRNBAUM** and **FOXX**'s table.
39. At some point near approximately 1:00am on August 27, 2015 after many patrons had left the area, Plaintiff's friend stood up from the table, walked over to Defendant **FOXX** and asked if he would take a picture with her and Plaintiff. **FOXX** stated "sure baby anything for you" and walked to Plaintiff's table. Several photographs were taken.
40. While taking photographs, Plaintiff observed that **FOXX** seemed intoxicated. At one point

FOXX roughly grabbed Plaintiff's phone out of her hand and took additional photographs.

41. **FOXX** then made several comments to Plaintiff including "Wow, you have that super model body", "You smell so good" and "You look like Nickie". When Plaintiff asked "Who's Nickie?", **FOXX** replied "Gabrielle Union". **FOXX** proceeded to grab Plaintiff by her arm and pulled her to the back area of the rooftop.
42. Once in a more secluded area, **FOXX** placed both of his hands on Plaintiff's waist, moved them under Plaintiff's "crop top" and began rubbing her breasts. Plaintiff was caught off guard and attempted to step away from **FOXX**. Plaintiff noticed Defendant **JOHN DOE**, a security guard of one of the Defendants some distance away who saw what was happening but walked further away. **FOXX** proceeded to slide his hands into Plaintiff pants and put his fingers on and in Plaintiff's vagina and anus. As this was happening, Plaintiff's friend walked over looking for Plaintiff. **FOXX** stopped touching Plaintiff and walked over to where Defendant **JOHN DOE**, a security guard, was standing.
43. That no negligence or intentional acts on the part of the Plaintiff caused or contributed to the said heinous touching and sexual assault of Plaintiff.
44. That by reason of the foregoing, Plaintiff was injured; was rendered sick, sore, lame and disabled; was caused to undergo medical treatment and advice; was unable to pursue her usual and regular activities; was caused to undergo great conscious pain and suffering, continues to undergo such, and will permanently be affected by the injuries and emotional distress she incurred as a result of the sexual assault, abuse, assault and battery.
45. That, as a result of the heinous acts, negligence and gross negligence of the Defendants as aforesaid, Plaintiff suffered and continues to suffer severe emotional distress and anxiety, humiliation, embarrassment, post-traumatic stress disorder and other physical and emotional damages.

46. Plaintiff is entitled to recover damages from Defendants in an amount that exceeds the monetary limit of all lower courts that would have jurisdiction over this matter plus punitive damages.

47. This cause of action falls within one or more of the exemptions set forth in CPLR §1602.

FIRST CAUSE OF ACTION:
Sexual Assault and Battery
Against Defendant Foxx

48. Plaintiff repeats and realleges the allegations of paragraphs "1" through "47" as though same were more fully set forth at length herein.

49. That on the night of August 26, 2015 and into the early morning hours of August 27, 2015, and at all times herein mentioned, Defendant **FOXX**, operating through his position as a well-known celebrity committed the heinous acts as set forth above. These unlawful actions constitute a sexual assault and battery upon Plaintiff as **FOXX** intentionally and without consent used force to offensively touch Plaintiff's person. **FOXX**'s actions violated N.Y. Penal Law §§ 130.52, 130.55, and 130.65.

50. **FOXX**'s actions were willful, wanton and malicious. At all times described herein **FOXX** consciously disregarded Plaintiff's rights and feelings, acted with the knowledge of or with reckless disregard for the fact that his conduct would cause Plaintiff to feel violated, humiliated, would cause emotional and mental injuries to Plaintiff and would result in her enduring pain and suffering.

51. As a result of **FOXX**'s conduct described herein Plaintiff has suffered and continues to suffer physical and emotional injuries, anxiety, distress, embarrassment and economic harm.

52. Plaintiff is claiming, and is entitled to recover, all applicable damages, including but not

limited to damages for pain and suffering, economic loss as well as punitive damages in an amount that exceeds the jurisdiction of all lower courts.

SECOND CAUSE OF ACTION:

Negligent Hiring Training and Supervision

Against Defendants Catch NYC & Roof, Catch NYC, Inc., Mark Birnbaum, Catch Hospitality Group, 25 Ninth Avenue Corp., LLC, Ca 21-27 Ninth Avenue, LLC

53. Plaintiff repeats and re-alleges the allegations of paragraphs "1" through "52" as though same were fully set forth at length herein.
54. That the Defendants, **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, and CA 21-27 NINTH AVENUE, LLC** through their owners, managers, supervisors, officers, directors, agents and/or employees were negligent in the hiring, training, lack of supervision, management, control and retention of their employees and more specifically of Defendants **JOHN/JANE DOES 1-10**, who were working on the night of August 26, 2015 into the early morning hours of August 27, 2015.
55. That the Defendants, **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, and CA 21-27 NINTH AVENUE, LLC** through their owners, managers, supervisors, officers, directors, agents and/or employees were under a duty to exercise reasonable care for their patrons, including Plaintiff, so as to prevent the intentional heinous acts that **FOXX** inflicted on the Plaintiff.
56. That the Defendants **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, and CA 21-27 NINTH AVENUE, LLC** through their owners, managers, supervisors, officers, directors,

agents and/or employees had knowledge of **FOXX's** propensities for aggressive behavior towards females, the potential for unwanted sexual touching and his bad disposition when consuming excessive alcohol.

57. The above Defendants failed to properly train their staff, including Defendants **JOHN/JANE DOES 1-10**, how to properly observe, report and prevent the situation in which plaintiff found herself, how to observe when a patron such as **FOXX** has consumed an excessive amount of alcohol and should not be served any more, and in otherwise ensuring the safety of their patrons from unwanted and abusive sexual touching.

58. Defendants **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, and CA 21-27 NINTH AVENUE, LLC** through their owners, managers, supervisors, officers, directors, agents and/or employees including Defendants **JOHN/JANE DOES 1-10** failed to use reasonable care to prevent the acts described herein.

59. That the Defendants **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, CA 21-27 NINTH AVENUE, LLC and JOHN/JANE DOES 1-10** breached their duty of care to Plaintiff by failing to provide adequately for the protection of persons lawfully upon, within, and wherein the premises and more particularly for the Plaintiff herein; in failing to protect the Plaintiff against injury caused by the conduct of their employees/agents, in failing to provide security, adequate security and or proper security within the premises, although they knew or should have known of the dangers existing thereabouts, in failing to operate the premises in a reasonably safe manner in order to protect all persons lawfully upon the premises; in that they knowingly and intentionally placed the Plaintiff in a dangerous situation and a position of peril; in that they caused, created and or contributed

to the dangerous conditions and situations existing on the premises at the time of this occurrence; in failing to supervise and or adequately supervise the activities of the employees, in violating those statutes, rules, regulations, and ordinances governing the management, security, and control of the premises held out to the Plaintiff; and in failing to exercise the care, caution, and judgment required of the Defendants under all of the circumstances that existed at the time of the occurrence, and earlier. The Defendants, their agents, servants, and employees were otherwise careless, reckless, and negligent under the circumstances then and their existing.

60. As a result of the actions and inactions of Defendants **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, CA 21-27 NINTH AVENUE, LLC** and **JOHN/JANE DOES 1-10** as described herein, Plaintiff has suffered and continues to suffer physical and emotional injuries, anxiety, distress, embarrassment and economic harm.
61. Plaintiff is claiming, and is entitled to recover, all applicable damages, including but not limited to damages for pain and suffering, economic loss as well as punitive damages in an amount that exceeds the jurisdiction of all lower courts.

THIRD CAUSE OF ACTION:
Violation Of the Victims Of Gender-Motivated Violence Act, N.Y.C. Admin. Code
§§ 10-1101, et seq. (“VGMVPL”)
Against All Defendants

62. Plaintiff repeats and re-alleges the allegations of paragraphs "1" through "61" as though same were fully set forth at length herein.
63. The unlawful conduct of Defendant **FOXX**, as described herein including, but not limited to **FOXX**'s physical and sexual assault of Plaintiff in New York City constitutes a “crime of violence” and a “crime of violence motivated by gender” against Plaintiff as defined

by the New York City VGMVPL.

64. The unlawful conduct of Defendant **FOXX**, as described herein including, but not limited to **FOXX**'s physical and sexual assault of Plaintiff in New York City constitutes a "crime of violence" and a "crime of violence motivated by gender" against Plaintiff as defined in § 10-1103 ("The term 'crime of violence' means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction," and "The term 'crime of violence motivated by gender' means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.").
65. Defendants **CATCH NYC & ROOF, CATCH NYC, INC., MARK BIRNBAUM, CATCH HOSPITALITY GROUP, 25 NINTH AVENUE CORP., LLC, CA 21-27 NINTH AVENUE, LLC and JOHN/JANE DOES 1-10** enabled **FOXX**'s commission of the crime of violence motivated by gender and are therefore also liable under the VGMVPL.
66. As a direct and proximate result of the aforementioned crime of violence and gender-motivated violence, Plaintiff has sustained and will continue to sustain, monetary damages, physical injury, pain and suffering, and serious psychological and emotional distress, entitling her to an award of compensatory and punitive damages, injunctive and declaratory relief, attorneys fees and costs, and other remedies as the Court may deem appropriate damages as set forth in §10-1104.
67. The unlawful conduct of Defendant **FOXX** as described herein constitutes a sexual offense as defined in Article 130 of the New York Penal law.

68. Pursuant to §10-1105(a), this cause of action is timely because it is commenced within “two years and six months after September 1, 2022.”

69. As a result of the actions and inactions of all Defendants as described herein, Plaintiff has suffered and continues to suffer physical and emotional injuries, anxiety, distress, embarrassment and economic harm.

70. Plaintiff is claiming, and is entitled to recover, all applicable damages, including but not limited to damages for pain and suffering, economic loss as well as punitive damages in an amount that exceeds the jurisdiction of all lower courts.

WHEREFORE, Plaintiff demands judgment against the Defendants herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, plus punitive damages where permitted, together with the costs and disbursements of this action.

Dated: New York, New York
November 20, 2023

Yours, etc.



CRAIG PHEMISTER, ESQ.

ATTORNEY VERIFICATION

I, CRAIG PHEMISTER, the undersigned, an attorney admitted to practice in the courts of the State of New York, and associated with the law firm of LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC the attorneys of record for Plaintiff in the within action. I have read the foregoing **SUMMONS AND VERIFIED COMPLAINT** in the within action and know the contents thereof, 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. The reason this verification is made by the undersigned attorney and not by the Plaintiff is that Plaintiff reside(s) in a county other than which this law office maintains its offices or are otherwise unavailable.

The grounds of my belief as to those matters therein not stated upon knowledge is based upon facts, records, and other pertinent information contained in our legal files maintained in the ordinary course of business.

Dated: New York, New York
November 20, 2023



CRAIG PHEMISTER, ESQ.