

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE**

Index No. 2019-1265

MARIA FITCHER

Plaintiff,

V

BENDERSON DEVELOPMENT COMPANY, LLC,
ED KANE, TJX COMPANIES INC.,

NOTICE OF MOTION

Nature of Action: Personal Injury.

Moving Party: Plaintiff, Maria Fitchett.

Directed To: Defendants, Benderson Development Company, LLC and Ed Kane.

Date and Time: To be determined.

Place: Hon. Debra A. Martin, A.J.S.C.
Monroe County Supreme Court
Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614

Supporting Papers: Affidavit of AI English., sworn to on October _____, 2020, with exhibits, and the accompanying Memorandum of Law.

Answering Papers: Pursuant to CPLR § 2214(b), answering affidavits, if any, and cross-motions, if any, must be served at least seven (7) days prior to the return date.

Relief Requested: An Order pursuant to CPLR § 3212, together with such other and further relief as the Court deems just and proper.

Grounds for Relief: CPLR § 3212.

Oral Argument: Not need

Dated: June 10, 2020

By: **MARIA FITCHETT**
Pro Se Plaintiff
121 Cady Street
Rochester, New York

TO: Matthew A. Leribard, Esq

The Powers Building, Suite 300
16 W. Main Street Rochester,
New York 14614 (585) 381-3400

**RUPP BAASE
PFALZGRAF
CUNNINGHAM LLC,**
Attorneys for Defendants
Benders Development
Company, LLC and Ed
Kane

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE**

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MARIA FITCHER

Plaintiff,

V

BENDERSON DEVELOPMENT COMPANY, LLC,
ED KANE, TJX COMPANIES INC.,

PLAINTIFF'S MOTION TO SUMMARY JUDGMENT

Pro se Plaintiff, MARIA FITCHER (hereinafter referred to as "FITCHER" or PLAINTIFF) and pursuant to CPLR 3212 of the New York Rules of Civil Procedure, hereby moves for summary judgment in her favor as to all counts of Plaintiff's Complaint. Based on the pleadings, there exist no genuine issues of material facts and Defendants are entitled to a summary judgment as a matter of law. In support of her motion, Plaintiff states as follows:

1. PRELIMINARY STATEMENT

1. The Plaintiff herein, Maria Fitchett is a resident of the STATE OF NEW YORK. Mid Fitchett resides at 121 Cady Street, Rochester, New York 14608. She filed a claim for negligence against the above defendants. On or about March 28, 2016 the Plaintiff Maria Fitchett was shopping at Marshalls at approximately 2:30pm, when she exited Marshalls clothing store after making her purchases that day.
2. The Plaintiff Fitchett was hit on the top her head and shoulder by a heavy metal garbage lid (Bonnet) propelled through the air by a gust

of wind. This heavy object was not properly secured to the receptacle with a security cable located outside of Marshalls Department store approximately 5 feet from the entrance.

3. The town of Henrietta ambulance and the Monroe County Sheriff was called to the location, reports were taken. The Plaintiff Fitchett complained of head trauma and dizziness, she was later treated and released. Plaintiff agreed to get medical attention from her own doctor the following day, as a direct consequence of the Defendants, Plaintiff Fitchett sustained said injuries, due to the fact that the metal garbage top did not have a security cable attached to it preventing said injuries to Mrs. Fitchett, it is alleged that the Defendant "Benderson Development" breached his duty of care". Because of said negligence, the Plaintiff suffered a bump and concussion to the head, damage to spine; tendon on right shoulder, stiff neck, insomnia, depression; and other maladies, causing her intense pain and great suffering and considerable inconvenience which will continue in the future.

2. STATEMENTS OF UNDISPUTED FACTS

- a. The parties admitted that on or about March 28, 2016, approximately 2:30pm, Plaintiff was shopping at Marshalls clothing store.
- b. The parties admitted that Defendants owned the garbage can at Marshall Department store. Exhibit 1a.
- c. The parties admitted that the garbage Can lid (Bonnet) was not secured to the receptacle with a security cable. Exhibit 2a.
- d. The parties admitted that the Plaintiff Fitchett was hit on the top her head and shoulder by a heavy metal garbage lid (Bonnet). Exhibit 3a.

- e. The parties admitted that the accident caused plaintiff head trauma and dizziness and the town of Henrietta ambulance and the Monroe County Sheriff was called to the location, and reports were also taken.
- f. Defendant ED KANE admitted and agreed to pay for the hospital bill of the plaintiff. Exhibit 4a.

3. JUDGMENT EVIDENCE

4. The summary judgment evidences tendered by Plaintiff are the following:

- a. Documents showing Defendants owned the garbage Can at Marshall Department store. Exhibit 1a.
- b. Documents showing the garbage Can lid (Bonnet) was not secured to the receptacle with a security cable. Exhibit 2a
- c. Documents showing the nature and extent of injuries sustained by the plaintiff. See Exhibit "5a".
- d. Document showing Defendant ED KANE admitted and agreed to pay for the hospital bills of the plaintiff. Exhibit 4a.
- e. Affidavit of Ai English in support of motion for summary Judgment. Exhibit "6a".
- f. Documents showing the hospital bills of the plaintiff as a result of the injuries sustained at Marshalls clothing store. Exhibit "7a".
- g. Documents showing the expenses made by the plaintiff as a result of the injuries sustained Marshalls clothing store. Exhibit "8a".

ARGUMENTS

STANDARD OF REVIEW

5. Under CPLR 3212, a motion for summary judgment will be granted if the cause of action or defense is adequately established so that a court may direct judgment as a matter of law. *N.Y. C.P.L.R. 1312 (McKinney 2013)*. The movant bears the burden of showing that there are no material issues of fact for trial. *Winegrad v. NY. Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985).
6. A motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." *N.Y. C.P.L.R. 3212(b)*.
7. The moving party must make a prima facie showing of judgment as a matter of law, tendering sufficient evidence to show the absence of material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320,324 (1986); *Zuckerman v. City of NY.*, 49 N.Y.2d 557,562 (1980). Once such a showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial. *N.Y. C.P.L.R. 3212(b)*; *Alvarez*, 68 N.Y.2d at 324; *Zuckerman*, 49 N.Y.2d at 562.
8. Pursuant to CPLR 3212 (b) a court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, that there is no defense to the cause of action or that the cause of action or defense has no merit. Further, all of the evidence must be viewed in the light most favorable to the opponent of the motion (*Boyd v Rome Realty Leasing Limited Partnership*, 21 AD3d 920 [2nd Dept 2005]). Here, are no dispute over the material facts at issue.

POINT I

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AGAINST THE DEFENDANTS AS A MATTER OF LAW;

9. Plaintiff has properly pled Negligence against the defendants, Negligence is the failure to exercise the care that would be exercised by a reasonably prudent person under the circumstances. On a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law. Once the movant has demonstrated entitlement, the burden shifts to the opposing party to produce evidence sufficient enough to raise an issue of fact warranting a trial. *People v Grasso, 50 A.D.3d 535, 545 (1 Dept 2008)*.
10. Pursuant to New York law, "the traditional common-law elements of negligence" are: "duty, breach, damages, causation and foreseeability." *Hyatt v Metro-North Commuter R.R., 16 AD3d 218 (1st Dept 2005)*. The elements of negligence have been properly pled by plaintiff during the discovery process.
11. The defendants were the owners of the Marshalls clothing store and they have duty of care of its customers including the plaintiff. At the time of the accident, plaintiff was a customer to the defendants therefore she deserved adequate protection from the defendant. Due to the breach of that duty by the defendants, Plaintiff Fitchett was hit on the top of her head and shoulder by a heavy metal garbage lid (Bonnet) propelled through the air by a gust of wind. This heavy object was not properly secured to the receptacle with a security cable located outside of Marshalls Department store approximately 5 feet from the entrance.
12. The accident caused plaintiff's trauma and dizziness and the town of Henrietta ambulance and the Monroe County Sheriff was called to the location, and reports were also taken.
13. The Plaintiff has submitted evidence suggesting that Defendants' conducts were the sole proximate cause of the accident. A claim must set forth the nature of the claim and the time and place where it arose (see *Grumet v State of New York, 256 A.D.2d 441, 442 [1998]*).

14. Plaintiff credible states that On or about March 28, 2016 she was shopping at Marshalls at approximately 2:30pm, when she exited Marshalls clothing store after making her purchases that day. The Plaintiff Fitchett was hit on the top her head and shoulder by a heavy metal garbage lid (Bonnet) propelled through the air by a gust of wind. This heavy object was not properly secured to the receptacle with a security cable located outside of Marshalls Department store approximately 5 feet from the entrance. (See attached Plaintiff's complaint hereto, marked as exhibit A and incorporated herein by reference).
15. The town of Henrietta ambulance and the Monroe County Sheriff was called to the location, reports were taken. The Plaintiff Fitchett complained of head trauma and dizziness, she was later treated and released.
16. Plaintiff testified that on March 28, 2016, her significant other, Alvin English, dropped her off at a Marshalls store located at the Property. Exhibit E, pp. 57-58. Mr. English did not enter the store; he left to run other errands. *Id.* at 58-60. Plaintiff shopped for approximately one hour, bought a pair of headphones and exited the Marshalls store. *Id.* at 59- 61. Plaintiff's accident occurred within "[a] couple steps" of exiting the Marshalls store. *Id.* At 62. During her deposition, plaintiff marked the location of where she was standing when the alleged accident occurred on the photograph attached as Exhibit F, authenticating the layout of the area in front of the entrance to the Marshall's store as depicted in the photographs as she did so. *Id.* at 79-83.
17. Plaintiff explained that she "took several steps approaching the edge of the sidewalk" and scanned the parking lot for Mr. English's vehicle; she did not see Mr. English prior to her alleged accident. *Id.* at 63-66, 68. Her body was facing "[s]traight out" towards the parking lot. *Id.* at 66. As plaintiff was looking to the right at a 45-degree angle, she was allegedly struck by a metal object later identified as a garbage can lid. *Id.* at 66-70, 78. The garbage can lid that allegedly struck the plaintiff can be seen in the photographs attached as Exhibit G and Exhibit H.
18. Plaintiff testified that the lid struck her directly on the top of her head and on her right shoulder. *Id.* at 69. She stumbled to her left (facing the parking lot) and gathered her composure on a bench directly next to the Marshalls entrance; she was not knocked to the ground. *Id.* at 70-71, 74-75..

19. During her deposition, plaintiff clarified the mechanics of her alleged accident:

Q: Okay. Let me go back and ask that to make sure we get it correctly. So as you exited the glass doors, the exit doors, you walked ahead towards the parking lot. And as you walked, you turned your head to the left and to the right; is that what you're saying?

A: Yes.

Q: But your feet kept moving straight forward towards the parking lot, correct?

A: I stopped. I literally stopped.

Q: Before you stopped, your feet moved straight forward, correct?

A: Correct.

Q: So despite turning your head left or right, you did not walk to your left or to your right, correct?

A: No.

Q: That's correct?

A: Correct.

Q: And you're still on the pad in front of the glass doors when you were struck by something, correct?

A: Yes.

Q: At the moment that you were struck, were you looking straight ahead into the parking lot?

A: The moment I was struck that's when I had turned my -- before I was struck, I had turned to my right.

Q: Okay. By turn to your right, you mean just turned your head to the right?

A: Yes.

Q: So your shoulders and your body was still facing the parking lot?

A: I would say so, yes.

Id. at 66-67.

20. Plaintiff testified that the lid that struck her came from garbage can located directly next to the bench on her left that she stumbled over to. *Id.* at 78.

Q: And did you see the garbage can from where [the lid] came?

A: Yes.

Q: Where was that?

A: On the right side of the bench.

Q: Okay. Right side as you're sitting on the bench looking out?

A: Yes.

Id. at 78-79.

21. She also testified that both the bench and garbage can at issue can be seen in the photograph attached as Exhibit F. *Id.* at 88-90. Therefore, looking at Exhibit F, plaintiff alleged accident occurred when the garbage can lid located on her left (as she was facing the parking lot), was launched, by assumedly a gust of wind, in a boomerang-type manner and was carried around to the plaintiff's right side where it struck the top of her head and right shoulder.
22. After her accident, plaintiff called Mr. English and an ambulance; both arrived within five minutes of the incident. *Id.* at 85-86, 97. Plaintiff explained her accident to the first responders but, according to plaintiff's testimony, "it was unbelievable to them to see this big thing and it hit me on top of my head. And didn't make a laceration on top of my head. It was just a little bump." *Id.* at 102.
23. Plaintiff's accident is foreseeable, thus defendants should be held liable for plaintiff injuries. Foreseeability . . . determines the scope of the duty once a duty is found to exist"].) " Although the precise manner in which the harm occurred need not be foreseeable, liability does not attach unless the harm is within the reasonably foreseeable hazards that the duty exists to prevent." (*Sanchez v State of New York*, 99 N.Y.2d 247, 252 [2002].) Foreseeability . . . determines the scope of the duty once a duty is found to exist"].) " Although the precise manner in which the harm occurred need not be foreseeable, liability does not attach unless the harm is within the reasonably foreseeable hazards that the duty exists to prevent." (*Sanchez v State of New York*, 99 N.Y.2d 247, 252 [2002].)
24. The issue of foreseeability may only be resolved as a matter of law when "there is only a single inference that can be drawn from the undisputed facts" (*Chen v. Everprime 84 Corp.*, 2006 NY Slip Op 8336, * 1 [1st Dept. 2006]).

25. Here, the occurrence which caused Plaintiff's injuries was "naturally associated with" the defendants' breach of their alleged duty, Defendants have the duty to prevent the occurrence of the accident but failed to take adequate steps to prevent the said occurrence.

26. Plaintiff testified that the lid that struck her came from garbage can located directly next to the bench on her left that she stumbled over to. *Id.* at 78. She also testified that both the bench and garbage can at issue can be seen in the photograph attached as Exhibit F. *Id.* at 88-90. Therefore, looking at Exhibit F, plaintiff alleged accident occurred when the garbage can lid located on her left (as she was facing the parking lot), was launched, by assumedly a gust of wind, in a boomerang-type manner and was carried around to the plaintiff's right side where it struck the top of her head and right shoulder.

27. Therefore, during or after the installation of the garbage can it is reasonably foreseeable that the garbage can or any particles from the garbage Can, can strike someone and caused injuries. As the garbage Can is located directly next to the bench on the left which has probability striking any customer.

28. A rational factfinder could determine that it was foreseeable that placing garbage Can where it could come into contact with a customer, posed a danger to that customer. Similarly, a factfinder could rationally conclude that the Defendants failure to warned any customers of impending danger was a proximate cause of Plaintiff s injuries.

29. Here, plaintiff described her accident in great detail and was certain as to how it occurred. She also properly pled the elements of

Negligence against the defendants therefore plaintiff is entitled to an order of summary judgment as a matter of law.

30. It is also apparent that facts essential to justify the motion for summary judgment are available to plaintiff and Mr Ai English (witness) and, indeed, are likely to be exclusively within the knowledge of everyone, a factor which renders summary judgment relief particularly appropriate. (CPLR 3212.).

POINT II

DEFENDANT BENDERSON DEVELOPMENT COMPANY, LLC, IS LIABLE FOR ITS EMPLOYEES' ACTS OR OMISSION

31. The doctrine of respondeat superior renders an employer vicariously liable for torts committed by an employee acting within the scope of their employment “so long as the tortious conduct is generally foreseeable and a natural incident of the employment.” *Judith M. v. Sisters of Charity Hosp.*, 93 N.Y.2d 932, 933, 693 N.Y.S.2d 67 (1999).
32. If the employee is acting within the scope of their employment, this will render the employer liable for any damages caused by the employee’s negligence. *Weinberg v. Guttman Breast and Diagnostic Institute*, 254 A.D.2d 213, 679 N.Y.S.2d 127 (1st Dep’t 1998). The test of whether an act was done within the scope of employment is whether the act was done while the servant was doing the master’s work, no matter how irregularly, or with what disregard of instructions. *Riviello v. Waldron*, 47 N.Y.2d 297, 418 N.Y.S.2d 300 (1979). While simply stated, the Court in *Riviello* noted that this rule “depends largely on the facts and circumstances peculiar to each case”. *Id.*, 47 N.Y.2d at 302.

33. In this case Defendant Benderson Development Company, LLC is responsible for the conduct of its managers, principals, officers, agents, and employees under the doctrine of respondeat superior. Upon information and believe Defendant ED KANE is an employee of defendant Benderson Development Company, LLC.
34. The acts or conduct of Defendant ED KANE as alleged above took place during the hours he was in fact working for Defendant Benderson Development Company, LLC. These acts were related to or committed in the context of the conduct of Defendant ED KANE which he was hired to perform. The wrongful actions herein complained of were performed by Defendant ED KANE as an employee of Defendant Benderson Development Company, LLC., in the course of Defendant Benderson Development Company, LLC,'s business. Defendant Benderson Development Company, LLC, is thus liable for the actions of Defendant ED KANE under the doctrine of respondeat superior. As a result of these actions, Plaintiff has been damaged and continued to be damaged.
35. Consequently, Defendant ED KANE who is an employee of defendant BENDERSON DEVELOPMENT COMPANY, LLC, admitted and agreed to pay for the hospital bills of the plaintiff. Exhibit 4a.
36. His admission and agreement to pay for the Plaintiff's hospital bills critically indicates that the defendants are liable for plaintiff injuries.

POINT III

DEFENDANTS FAILED TO WARNED PLAINTIFF OF ANY ASSOCIATED RISK WITH ITS PROPERTY

37. Under New York law, duty to warn arises when the injured party is not aware of the specific hazard at issue. See *Liriano v. Hobart Corp.*, 92 N.Y.2d 232, 241, 677 N.Y.S.2d 764, 769 (1998) (“[W]here the injured party was fully aware of the hazard through general knowledge, observation or common sense, or participated in the removal of the safety device whose purpose is obvious, lack of a warning about that danger may well obviate the failure to warn as a legal cause of an injury resulting from that danger.”). “Thus, it may well be the case that a given risk is not ‘obvious,’ but it needs the duty to warn, see *Burke v. Spartanics, Ltd.*, 252 F.3d 131, 139 (2d Cir. 2001) (citing *Brady v. Dunlop Tire Corp.*, 275 A.D.2d 503, 711 N.Y.S.2d 633, 634–36 (3d

Dep't 2000)). Under such circumstances, the failure to warn can be a cause of the harm. *Burke, 252 F.3d at 139.*

38. In this present case, it is well settled that the defendants can be held liable for a dangerous or defective condition on their property since the defendants had notice of such condition. Here, there was dangerous or defective condition on the Property and defendants had notice of such condition. In addition, Benderson had notice, or reason to suspect that an alleged unsecured garbage can lid posed any type of danger to the general public.

POINT IV

PLAINTIFF HAS SUBMITTED ADMISSIBLE EVIDENCE TO SUPPORT ITS MOTION.

39. It is well-settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. (See *Zuckerman v. City of New York, 49 N.Y.2d 557, 562 [1980]*; *Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 [1957]*). Failure to make such a showing requires denial of the motion.

40. Here, Plaintiff prima facie case rest on important admissible evidence attached herein and the affidavit of Mr AI English (which are authenticated and admissible). Mr AI English's was physically present at the time of the accidents and thus has knowledge of the facts of the case.

41. The important admissible evidence attached herein includes but not limited to;

- a. Documents showing Defendants owned the garbage Can at Marshall Department store. Exhibit 1a.
- b. Documents showing the garbage Can lid (Bonnet) was not secured to the receptacle with a security cable. Exhibit 2a
- c. Documents showing the nature and extent of injuries sustained by the plaintiff. See Exhibit “5a”.
- d. Document showing Defendant ED KANE admitted and agreed to pay for the hospital bills of the plaintiff. Exhibit 4a.
- e. Affidavit of Ai English in support of motion for summary Judgment. Exhibit “6a”.
- f. Documents showing the hospital bills of the plaintiff as a result of the injuries sustained at Marshalls clothing store. Exhibit “7a”.
- g. Documents showing the expenses made by the plaintiff as a result of the injuries sustained Marshalls clothing store. Exhibit “8a”.

Mr AI English’s Affidavit Satisfied CPLR 3212(b)

42. CPLR 3212(b) requires a party moving for summary judgment to support its motion with an “affidavit... by a person having knowledge of the facts.” In this case, plaintiff supports her motion with Mr AI English’s affidavit. Mr AI English is plaintiff’s fiance and he was physically present at the time of the accident therefore he has personal knowledge of the facts and events leading up to plaintiff’s accident.
43. Mr AI English’s affidavit asserts several alleged facts, he also cites evidence in the record and attached critical evidence on his affidavit. Examples of such supported statements within Mr AI English’s affidavit include, among others:

- a. On or about March 28, 2016 at approximately 2:30pm, Plaintiff Maria Fitchett and I were shopping at Marshalls clothing store. Exhibit “1a”.
- b. Immediately Plaintiff Maria Fitchett exited the door of Marshalls clothing store, Plaintiff Maria Fitchett was hit on the top head and shoulder by a heavy metal garbage lid (Bonnet) propelled through the air by a gust of wind. Exhibit “5a”.
- c. This heavy object was not properly secured to the receptacle with a security cable located outside of Marshalls Department store approximately 5 feet from the entrance. Exhibit “2a”.
- d. The town of Henrietta ambulance and the Monroe County Sheriff was called to the location. Maria Fitchett was placed in an Ambulance and a report was taken by a local sheriff. Exhibit “8a”.
- e. Plaintiff Fitchett complained of head trauma and dizziness, Plaintiff agreed to get medical attention from her own doctor the following day.
- f. Plaintiff Fitchett sustained said injuries, due to the fact that the metal garbage top did not have a security cable attached to it preventing said injuries to Mrs. Fitchett. Exhibit “5a”.
- g. Plaintiff suffered a bump and concussion to the head, damage to spine; tendon on right shoulder, stiff neck, insomnia, depression; and other maladies, causing her intense pain and great suffering and considerable inconvenience which will continue in the future. Exhibit “5a”.

h. Plaintiff made several expenses to treat herself in other not to complicate her health. Exhibit “7a”.

i. Defendant ED KANE was an employee of defendant BENDERSON DEVELOPMENT COMPANY, LLC, Defendant ED KANE admitted and agreed to pay for the hospital bills of the plaintiff. Exhibit 4a.

44. Therefore, Mr AI English’s Affidavit constitutes evidence that can be considered on a motion for summary judgment. Because of its reliance on admissible evidence, Plaintiff has established a prima facie showing and its motion for summary judgment should be granted.

CONCLUSION

Plaintiff hereby respectfully requests, based on the above Memorandum of Law, the attached evidence, and the entire record, prays this Honorable Court to grant her motion for Summary Judgment.

Dated; October _____ 2020

Respectfully submitted by;

MARIA FITCHETT

Pro Se Plaintiff.

121 Cady Street,

Rochester, New York 14608,

14608 (585) 664-9860

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE**

Index No. 2019-1265

MARIA FITCHER

Plaintiff,

v

BENDERSON DEVELOPMENT COMPANY, LLC,
ED KANE, TJX COMPANIES INC.,

**AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF NEW YORK

COUNTY OF MONROE

BEFORE ME, the undersigned authority, personally appeared AI ENGLISH, (“Witness”), who after being duly sworn by me, the undersigned authority, a notary public within and for the county and state aforesaid, deposes and says upon her own personal knowledge:

1. I am over 18 years of age and duly competent and authorized to provide this Affidavit. I make this Affidavit on my own personal knowledge and not upon information or belief, and the statements herein are true and correct.
2. I am the fiancé of the plaintiff in this lawsuit, and I was physically present at the time of the accident, and by virtue of my position, I am conversant with the facts and circumstances of this suit and other related facts.
3. On or about March 28, 2016 at approximately 2:30pm, Plaintiff Maria Fitchett and I were shopping at Marshalls clothing store. Exhibit “1a”.
4. Immediately Plaintiff Maria Fitchett exited the door of Marshalls clothing store, Plaintiff Maria Fitchett was hit on the top head and shoulder by a heavy metal garbage lid (Bonnet) propelled through the air by a gust of wind. Exhibit “5a”.
5. This heavy object was not properly secured to the receptacle with a security cable located outside of Marshalls Department store approximately 5 feet from the entrance. Exhibit “2a”.
6. The town of Henrietta ambulance and the Monroe County Sheriff was called to the location. Maria Fitchett was placed in an Ambulance and a report was taken by a local sheriff. Exhibit “8a”.

7. Plaintiff Fitchett complained of head trauma and dizziness, Plaintiff agreed to get medical attention from her own doctor the following day.

8. Plaintiff Fitchett sustained said injuries, due to the fact that the metal garbage top did not have a security cable attached to it preventing said injuries to Mrs. Fitchett. Exhibit "5a".

9. Plaintiff suffered a bump and concussion to the head, damage to spine; tendon on right shoulder, stiff neck, insomnia, depression; and other maladies, causing her intense pain and great suffering and considerable inconvenience which will continue in the future. Exhibit "5a".

10. Plaintiff made several expenses to treat herself in other not to complicate her health. Exhibit "7a".

11. Defendant ED KANE was an employee of defendant BENDERSON DEVELOPMENT COMPANY, LLC, Defendant ED KANE admitted and agreed to pay for the hospital bills of the plaintiff. Exhibit 4a.

12. I make the foregoing statements in support of Plaintiff's Motion for Final Summary Judgment.

FURTHER AFFIANT SAYETH NAUGHT.

MARIA FITCHETT

SWORN TO AND SUBSCRIBED before me this _____ day of _____,
2020, MARIA FITCHETT, who is personally known to me or who has produced
_____ as identification and who did take an oath.

Notary Public, State of New York

My Commission Expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this
October _____ **2020**, to all parties on the attached service list.

SERVICE LIST

Matthew A. Leribard, Esq.

RUPP BAASE PFALZGRAF CUNNINGHAM

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Attorneys for Defendants Benders Development Company, LLC and Ed Kane.

MARIA FITCHETT

Pro Se Plaintiff.

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14608 (585) 664-9860.

SAMPLE

SAMPLE