

19-CV-2077

CAUSE NO. \_\_\_\_\_

MELISSA FOSTER

*Plaintiff,*

v.

BEN G. RAIMER

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

Galveston County - 10th District Court

\_\_\_\_ JUDICIAL DISTRICT

GALVESTON COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION AND DISCOVERY REQUEST**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, MELISSA FOSTER, complaining of BEN G. RAIMER (hereinafter ‘Defendant’), and files this Plaintiff’s Original Petition and Discovery Request and for cause of action would respectfully show the Court as follows:

**I.  
DISCOVERY LEVEL**

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.1, Plaintiff intends to conduct discovery in this case under Level 3 as prescribed by TEXAS RULE OF CIVIL PROCEDURE 190.4.

**II.  
PARTIES & SERVICE OF CITATION**

Plaintiff, MELISSA FOSTER, is an individual and resident of Temple, Texas, at the time of the events made the basis of this suit.

Defendant, BEN G. RAIMER, is an individual whose last known address is 2900 Dominique Drive, Galveston, TX 77551. Service of process may be obtained on BEN G. RAIMER by serving him at the above-listed address, or wherever found in the State of Texas, via private process server.

**III.**  
**JURISDICTION**

Jurisdiction is proper in this Court because Plaintiff is entitled to damages in excess of the minimum jurisdiction of this Court. Specifically, Plaintiff seeks monetary relief over one million dollars (\$1,000,000.00).

**IV.**  
**VENUE**

Pursuant to Section 15.002(A)(1) of the TEXAS CIVIL PRACTICE & REMEDIES CODE, venue is proper in Galveston County because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

**V.**  
**FACTUAL BACKGROUND**

Plaintiff, MELISSA FOSTER, brings this suit to recover damages for personal injuries sustained on Defendant's property located at 2224 Church St., Galveston, Texas 77550 (hereinafter "Premises") on or about February 11, 2018. Prior to this date, Defendant, who owned the Premises, had agreed to allow Derek Anderson to reside at the Premises. On February 11, 2018, Plaintiff Melissa Foster was visiting the Premises as a guest of the Derek Anderson. At the Premises, the interior stairway did not have handrails, did not have lighting, and had uneven steps. Due to these dangerous conditions, when Plaintiff arose in the early morning to walk down the stairs, Plaintiff fell down the staircase, causing her injuries. Defendant's creation of the dangerous condition, failure to correct or prevent the condition, and/or failure to warn Plaintiff of the condition constituted negligence, and such was a proximate cause of the occurrence in question and resulting Plaintiff's injuries. Due to the Defendant's negligence, the Plaintiff sustained significant personal injuries and damages.

**VI.**  
**ALLEGATIONS OF NEGLIGENCE AGAINST DEFENDANT**

Plaintiff alleges that on the occasion in question, Defendant failed to use ordinary care by various acts and omissions in at least the following ways:

- a. Creation of an unsafe condition on the premises;
- b. Failure to exercise ordinary care in maintaining the premises in a reasonably safe condition;
- c. Failure to protect and safeguard invitees such as Plaintiff from unreasonably unsafe and dangerous conditions; and
- d. Failure to exercise reasonable care to reduce or eliminate the risk to invitees such as Plaintiff of the unreasonably unsafe and dangerous conditions, and/or its failure to warn invitees such as Plaintiff of the unreasonably unsafe and dangerous conditions at the time of this incident, including but not limited to the following respects:
  - (1) Defendant negligently caused a dangerous condition to exist on the premises in question;
  - (2) Defendant negligently permitted a dangerous condition to exist and/or remain on the premises in question; and
  - (3) Defendant negligently failed to exercise that degree of care in the maintenance of the premises in question as would a person of ordinary prudence under the same or similar circumstances on the occasion in question.

Each and all of the above stated acts and / or omissions constitute negligence and the same area proximate cause of the injuries and damages sustained by Plaintiff.

At all times relevant to this lawsuit, Defendant knew or in the exercise of ordinary and reasonable care should have known of the dangerous condition on the premises and of the foreseeable harm that its negligent acts and/or omissions posed to invitees such as Plaintiff. The negligence described herein should be imputed to Defendant because the negligence alleged herein occurred as a result of the acts and/or omissions of Defendant's employees, agents,

servants, representatives, and/or officers and with Defendant's knowledge and or consent.

**VII.**  
**DAMAGES**

Plaintiff would show that, as a direct and proximate result of the above-mentioned incident, Plaintiff sustained significant personal injuries and damages, including but not limited to the following:

- a. Past and future physical pain and suffering;
- b. Past and future mental anguish;
- c. Past and future disfigurement;
- d. Past and future medical expenses;
- e. Past and future physical impairment; and
- f. Past and future loss of enjoyment of life.

**VIII.**  
**REQUEST FOR DISCLOSURE**

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, you are requested to disclose, within fifty (50) days of service of this request, the information or material described in TEXAS RULE OF CIVIL PROCEDURE 194.2.

**IX.**  
**PRAYER**

WHEREFORE PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer and that on final hearing Plaintiff have judgment against Defendant for an amount within the jurisdictional limits of this Court, together with pre-judgment and post-judgment interest as provided by law, costs of court and for such other and further relief, at law or in equity to which Plaintiff is justly entitled.

**X.**  
**INTERROGATORIES**

**TABLE OF DEFINITIONS/ABBREVIATIONS**

Plaintiff sets forth the following definitions or abbreviations of various words and phrases which are contained in the Interrogatories. Plaintiff provides the following definitions and abbreviations for the purpose of clarifying the meaning of various words and phrases contained herein in order to expedite discovery, i.e., (1) to help the Defendant fully and accurately understand the objectives of the Plaintiff's discovery efforts and (2) to simplify and assist the Plaintiff in his effort to locate and furnish the relevant information and documents. It is expressly stipulated and agreed by the Plaintiff that an affirmative response on the part of the Defendant will not be construed as an admission, that any definition or abbreviation contained hereto is either factually correct or legally binding on the Defendant.

- A. "You" or "your" or "yours" refers to the named Defendants' to this suit, your attorneys, agents, and all other persons or entities acting or purporting to act on your behalf, whether authorized or not.
- B. "Persons". The term "persons" shall include individuals, and every type of entity, whether formed for business purposes or not.
- C. "Documents". The term "documents" shall mean writings of every type and from any source, including originals and non- identical copies thereof, that are in your possession, custody, or control or known by you to exist. This would include documents sent outside your organization to any source as well as documents intended for internal use.

The term also includes communications not only in words, but in symbols, pictures, sound recordings, film, tapes and information stored in, or accessible through, computer or other information storage or retrieval systems. If the information is kept in a computer or informational retrieval system, the term also includes codes and programming instructions and other materials necessary to understand such systems.

The term includes, but is not limited to: calendars, checkbooks, agenda, agreements, analyses, bills, invoices, records of obligations and expenditures, corporate bylaws and charters, correspondence, diaries, files, legal documents, financial documents including balance sheets and profit and loss statements, letters, memorandum recording telephone or in-person conferences, manuals, books, press releases, purchase orders, records, schedules, memos of interviews, evaluations, written reports of tests or experiments, public relations releases, telegrams, teletypes, work papers, drafts of documents, and all other writings whose contents relate to the subject matter of the discovery request.

- D. If you claim a privilege or exemption from discovery for any of the material, please

be prepared to state the specific ground for each privilege or immunity claimed, in order that the Plaintiff can determine the merit of the objection. In this event, the parties may discuss the merits of the objection and determine whether a Court determination on the objection will be necessary.

E. "Identify" or "Identification":

- a. As to a person: When used in reference to a person or individual, the terms "identify" or "identification" means to state his/her full name, address, and telephone number.
- b. As to an entity: The term "identify" or "identification" when used in reference to an entity such as a corporation, partnership or association, means to state the name of the entity, its business address, telephone number, and name of its chief executive officer and the agent for service of process.
- c. As to a document: When used in reference to a document, the terms "identify" or "identification" shall include the following:
  - i. As a title, heading or caption of such document.
  - ii. The date appearing on such document; or if no date appears, the approximate date on which the document was prepared.
  - iii. A general description of the document.
  - iv. The name of the person who signed the document or statement that it was unsigned.
  - v. Name of the person or persons who prepared the document.
  - vi. Name of the person or persons to whom the document was addressed and to whom the document was sent.
  - vii. The physical location of the document.
- d. As to a statement: The terms "Identify" or "Identification" when used to identify a statement means to identify who made it, who took or recorded it, and all others, if any, present during the making thereof; to state when, where and how it was taken or recorded, and to identify who was present or last known possession, custody or control thereof.
- e. To any other tangible thing: The terms "Identify" or "Identification" means to give a reasonably detailed description thereof, including, if applicable, when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody or control thereof.

F. To an insurance agreement: The terms "identify" or "Identification" mean to list the policy holder, all additional insureds, the policy number, the insurance company carrying the policy, its anniversary dates, and the policy limits of the policy.

G. "Incident in question" or "occurrence in question" refers to the incident described in Plaintiff's Original Petition;

H. "Statements" includes any written or graphic statement signed or otherwise adopted or approved by the person making it and any stenographic, mechanical, electrical, or

other recordings, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

- I. "Custodian" means the person or entity with care, custody and control of the item or document which is the subject of inquiry. A request to identify the custodian of any item or document is a request to provide the name, address and telephone number of said custodian.
  
- J. "Settlement" as used herein, means any oral or written, disclosed or undisclosed agreement, bargain, contract, settlement, partial settlement, limited settlement, arrangement, deal, understanding, loan arrangement, credit arrangement, contingent settlement, limitation on the amount of liability or judgment, or a promise by or between Plaintiff and any Defendant whereby Plaintiff and any Defendant have in any way released or compromised, in whole or in part, directly or indirectly, or agreed to do in the future, any of the matters in controversy in this lawsuit whether before, after or during trial or before or after any jury verdict is returned herein or a judgment is entered or rendered herein. "Settlement" also includes any resolution of the differences between the Plaintiff and the Defendant by loan to the Plaintiff or any other device which is repayable in whole or in part out of any judgement the Plaintiff may recover against Defendant. These also include "Mary Carter" agreements.
  
- K. Premises" or "premises in question" refers to the location owned by Defendant located at 2224 Church St., Galveston, Texas 77550, where Plaintiff fell on February 11, 2018, as alleged in Plaintiff's Original Petition.

### **INTERROGATORIES**

1. Please state the full name, address, job title and employer of each person answering and assisting in answering these Interrogatories.

ANSWER:

2. State the full legal name and address and/or P.O. Box of the owner of the premises located 2224 Church St., Galveston, Texas 77550 as of February 11, 2018.

ANSWER:

3. Describe and identify any insurance agreement under which any insurance business may be liable to satisfy part or all of the judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the person insured, the name of the insurer, and the amount of any liability insurance converge.

ANSWER:

4. If you, or anyone acting on your behalf, know of any oral, written or recorded admission or any type by the Plaintiff pertaining to this suit, please identify the nature of each admission, the content of each admission, whether it was oral, written or recorded, the circumstances under which each was made, the name, address and telephone number of each person who was present when each was made, the date and location of each admission, and who has possession of each written or recorded admission.

ANSWER:

5. Prior to the present case, please state the name and address of each person who has ever sued you or has ever written or caused another to write any letter threatening to sue you for trip and fall cases occurring in the state of Texas for three years prior to the incident that serves the basis of this suit. With respect to prior lawsuits or threats of a lawsuit, specify the following:
  - a. the nature of the lawsuit or threatened lawsuit;
  - b. the name of any attorney who represented you and any other person in the lawsuit(s);
  - c. the name of any and all experts hired;
  - d. the name of any and all employees, past or present, who have given a deposition, including the date(s) of deposition;
  - e. the final disposition of each suit or threatened suit; and
  - f. state the style, cause number, and court of each suit filed.

ANSWER:

6. Please describe in detail any changes made by the Defendant, employees, or agents, in the physical site of the accident before and after the occurrence in question. If the Defendant corrected, repaired or fixed the area in question in anyway or condition, please state what the cost of repair was, the date the repairs were done, and the name, address and telephone number of the person or firm carrying out such repair work.

ANSWER:

7. If Defendant, Defendant's corporate representative, employee or agent has given a statement to anyone other than Defendant's attorney with respect to the occurrence in question, please state the name, address and telephone number of the person to whom such statement was given, the date on which the statement was given, the substance of such statement and whether such statement was a written or an oral statement.

ANSWER:

8. Was it a regular course of business of the Defendant to conduct a post-incident investigation into an incident of this sort, whether or not litigation was anticipated? If so, state whether an investigation was conducted, the date(s), full descriptions of the investigation(s), who conducted the investigation(s), and findings or conclusions of the investigation(s). If you are claiming privilege as to any investigation based on its



allegedly being done in anticipation of litigation, describe specifically what you are relying on to establish that you had reason to believe the litigation would ensue, including what overt acts or statements were made by Plaintiff or someone acting on behalf of the Plaintiff.

ANSWER:

9. If you have alleged that some other third party's conduct or some other condition, disease, injury or event was the "sole proximate cause" of the incident in question, describe in detail the identity of such other third party person, event or condition, be it pre-existing or subsequent disease or injury.

ANSWER:

10. State the name, address, and telephone number of the person or people who were responsible for managing the Premises at 2224 Church St., Galveston, Texas 77550 in question on November 26, 2016.

ANSWER:

11. Please state the name, address and telephone number of each employee and/or agent on duty at the time of the incident made the basis of this lawsuit.

ANSWER:

12. If the Defendant was not the owner of the Premises at 2224 Church St., Galveston, Texas 77550 at the time of the occurrence in question, please state:
  - a. the nature of the defendant's relationship with the owners of the premises where the incident in question occurred;
  - b. the correct names and addresses of the owners of the premises in question as of the date of the incident;
  - c. the correct names and addresses of the owners of the premises in question for the preceding five (5) years; and
  - d. the complete names of all management companies for the Premises in question for the last five (5) years.

ANSWER:

13. Please list all ways of ingress and egress to access the apartment above the art studio located at Premises at 2224 Church St., Galveston, Texas 77550.

ANSWER:

14. Please describe the nature of your relationship with Derek Anderson.

ANSWER:

15. Please identify all persons who had resided at Premises at 2224 Church St., Galveston, Texas 77550 at the time of the incident in question and for the five years prior to the incident in question.

ANSWER:

16. Please identify all persons who managed the Premises at 2224 Church St., Galveston, Texas 77550 at the time of the incident in question and for the five years prior to the incident in question.

ANSWER:

## **XI.** **PRODUCTION**

### **TABLE OF DEFINITIONS/ABBREVIATIONS**

For the purposes of the following requests, the following definitions apply:  
"You", "your" and "Defendant" means and refers to EAST LAKE BUCHANAN RV PARK AND STORE LLC DBA SILVER CREEK ONE STOP.

"Incident in question" and "occurrence in question" refers to the incident of November 26, 2016, described in the Plaintiff's Original Petition.

"Document" means and includes writings of every type and from any source, including originals and non-identical copies thereof, that are in your possession, custody, or control or known by you to exist. This would include documents sent outside your organization to any source as well as documents intended for internal use.

The term also includes communications not only in words, but also in symbols, pictures, sound recordings, film, tapes and information stored in, or accessible through, computer or other information storage or retrieval systems. If the information is kept in a computer or informational retrieval system, the term also includes codes and programming instructions and other materials necessary to understand such systems.

The term includes, but is not limited to: calendars, checkbooks, agenda, agreements, analyses, bills, invoices, records of obligations and expenditures, corporate bylaws and charters, correspondence, diaries, files, legal documents, financial documents including balance sheets and profit and loss statements, letters, memorandum recording telephone or in-person conferences, manuals, books, press releases, purchase orders, records, schedules, memos of interviews, evaluations, written reports of tests or experiments, public relations releases, telegrams, teletypes, work papers, drafts of documents, and all other writings whose contents relate to the subject matter of the discovery request.

"Custodian" means the person or entity with care, custody, control of the item or

document, which is subject of inquiry. A request to identify the custodian of any item or document is a request to provide the name, address and telephone number of said custodian.

"Photograph" means and includes any motion picture, still picture, transparency, videotape, drawing, sketch, negatives or any other recording of any non-verbal communication in tangible form.

### **PRODUCTION REQUESTS**

1. The architectural plans and drawings for the premises in question, specifically with respect to the location where the Plaintiff was injured.

RESPONSE:

2. Any contracts between the owner and/or former owners and contractor who constructed the premises in question.

RESPONSE:

3. Any contracts between the owner and the manager or managing entity at the time of the Plaintiff's injury, and for the year immediately preceding Plaintiff's injury.

RESPONSE:

4. Contracts between the owner and any maintenance and/or cleaning service in effect at the time of Plaintiff's injury.

RESPONSE:

5. Any contract between the owner and any other person or entity responsible for caring for, maintaining or cleaning the premises at the time of Plaintiff's injuries.

RESPONSE:

6. Any indemnity agreement between any party to this case and any non-party, which is relevant to the accident and injuries, made the basis of this suit.

RESPONSE:

7. Any indemnity agreement between any of the parties to this case.

RESPONSE:

8. A copy of any legal documents that document Defendant's status as a corporation, partnership, sole proprietorship or joint venture.

RESPONSE:

9. Any joint venture agreement between the parties or between any party to this suit and any non-party regarding the ownership, operation, repair, maintenance, cleaning or other service of or for the premises in question.

RESPONSE:

10. Any rules, management guidelines, operating guidelines, or other similar writing or document that purports to show operating procedures for the management, care, maintenance, repair, cleaning and service of the premises in question.

RESPONSE:

11. All documents evidencing ownership or occupancy rights to the Premises in Question for the time of the Incident in Question.

RESPONSE:

12. Any contract or document of any type evidencing an agreement of compromise, settlement, release, covenant not to sue, "Mary Carter" agreement or any other kind of settlement, agreement, understanding, or deal any party or potential party to this lawsuit has with any other person, firm, corporation, party or potential party with respect to the subject matter of this lawsuit (including Plaintiff's claim for damages), any testimony to be provided during the course of this lawsuit, or any other matter concerning the handling of discovery or the trial of this lawsuit. This includes any past, present and future settlements, deals, agreements, understandings, or conduct by or between Defendant (or their attorneys) and any other person or entity whatsoever (or their attorneys).

RESPONSE:

13. Any and all photographs that Defendant has of the scene of the accident or the resulting injuries to the Plaintiff.

RESPONSE:

14. Any and all books, documents, photographs, or other tangible things which may be used at time of trial, which may have a bearing on this case.

RESPONSE:

15. Any and all expert reports which have been obtained from any expert. If a report has not been prepared, the preparation of a report is hereby requested.

RESPONSE:

16. Any and all expert reports that were or will be relied upon in whole or in part and/or was or will be reviewed by a testifying expert in this case.

RESPONSE:

17. Any and all workpapers, notes, documents, treatises relied upon, in the file of any expert witness who is expected to testify, or in the file of any expert witness who has written a report which is or will be relied upon in whole or in part by a testifying expert.

RESPONSE:

18. Copies of any documents or statements which any witness of the Defendant will use or you anticipate may use to refresh his/her memory, either for deposition or trial.

RESPONSE:

19. Any and all documents and tangible things whose production has not been requested pursuant to any other item of this request which you intend to offer into evidence at the trial of this case.

RESPONSE:

20. Any and all documents and tangible things whose production has not been requested pursuant to any other item of this request which you do not intend to offer into evidence at the trial of this case, but which may be used as demonstrative evidence at trial.

RESPONSE:

21. Copies of any and all statements previously made by the Plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by this lawsuit, including any written statement signed or otherwise adopted or approved by the Plaintiff hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof made by Plaintiff hereto and contemporaneously recorded.

RESPONSE:

22. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

RESPONSE:

23. Any and all drawings, maps, or sketches of the scene of the incident in question, which has been, made the basis of this lawsuit.

RESPONSE:

24. A copy of any surveillance movies or videos that were taken the day of the incident.

RESPONSE:

25. Copies of reports of all similar accidents prepared by any and all employees or agents of the premises in question from November 26, 2013 through the date of the incident.

RESPONSE:

26. All materials including, but not limited to, employee manuals, memoranda, and correspondence pertaining to safety rules and/or regulations to be followed by the employees to ensure customer safety within the Premises in question. This includes any training films and/or videotapes used by Defendant concerning previous occurrences similar to the incident in question made the basis of this lawsuit.

RESPONSE:

27. A current copy of the curriculum vitae of any expert who may be called to testify at trial.

RESPONSE:

28. Any police report or other report of investigation of any governmental agency or private organization relating to the incident made the basis of this lawsuit.

RESPONSE:

29. The entire claim and investigation file of the Defendant, Defendant's attorney, agent or insurers relevant to the incident made the basis of this suit acquired prior to the institution of this suit.

RESPONSE:

30. All documents pertaining to any disciplinary actions taken against any employee or agent of the Defendant as a result of the incident made the basis of this lawsuit.

RESPONSE:

31. Any documents regarding maintenance of the Premises in Question for three years before the Incident in Question through the day of the Incident in Question, including all maintenance requests by tenants.

RESPONSE:

32. Any documents regarding inspections of the Premises in Question for three years before the Incident in Question through the day of the Incident in Question.

Respectfully submitted,

THE CARLSON LAW FIRM, P.C.  
100 E. Central Texas Expressway  
Killeen, Texas 76541  
(254) 526-5688  
FAX (254) 526-8204

By: /s/ Timothy Roehrs

Timothy Roehrs

SBN: 24082512

[troehrs@carlsonattorneys.com](mailto:troehrs@carlsonattorneys.com)

cc: [awood@carlsonattorneys.com](mailto:awood@carlsonattorneys.com)

E-Service Only: [efilekpi@carlsonattorneys.com](mailto:efilekpi@carlsonattorneys.com)

**ATTORNEY FOR PLAINTIFF**