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*In memory of Philip Davis
1908 - 1998*

*In memory of James E. Mitchell
1941 - 2016*

April 9, 2021

[REDACTED]
Falmouth, Maine 04105

RE: [REDACTED]

Dear Attorney [REDACTED]

September 16, 2019 will be remembered as a day of utter devastation for many people – one losing his life and many others losing their livelihoods and health – due to [REDACTED]'s negligence.

[REDACTED]'s life – as it was – literally ended that day.

Until 8:17am, [REDACTED] was a very healthy, active, athletic, outgoing, social, 69-year-old wife, mother and grandmother who enjoyed a wide variety of physical activities including reading, writing and editing books, writing and editing her music, singing, playing her instruments, cooking, baking, cleaning her home, gardening, yard work, traveling in her car, operating a yearly family bakery and farmers' market business, spending time with her children, playing with and caring for her eight grandchildren enjoying many diverse physically active outdoor activities with them, attending college, professional writing, paid and volunteer teaching activities, paid work for [REDACTED] and other volunteer work.

[REDACTED] is a college graduate who earned a Bachelor's Degree of Fine Arts in Creative Writing. She attended schools in Ireland and Switzerland, studied French and Chinese languages and is fluent in German.

[REDACTED]'s entire life revolves around her ability to communicate through spoken and written words. She is a published author, poet, journalist, editor, teacher, adult education and college creative writing instructor, non-fiction, and advertisement writer. Until the moment of the explosion, reading, writing, and communicating comprised a vital part of [REDACTED]'s daily activities.

[REDACTED] – being a lifetime literary scholar – looked forward every day to being able to read, write and edit her manuscripts for hours – sometimes days – on end, and communicating with her writing students on the computer or in person while reviewing and editing their writings.

██████████ is also a musician and singer who plays the lyre, fiddle, and flute with other musicians for patients at local hospitals and mental health facilities. From 2006 until the explosion, during her job at ██████████ and volunteer work, ██████████ used her musical and singing skills when she worked with mentally disabled and elderly individuals and when she was spending time with and caring for her grandchildren.

When ██████████ was not spending time playing with her grandchildren or teaching them how to tend a garden, she was teaching them how to bake, cook, read, and write, or they sat quietly while they enjoyed ██████████ singing to them or playing her instruments.

When ██████████ was not working at ██████████, volunteering, playing music, reading, writing her manuscripts, or teaching writing, she was working in her family's business – ██████████ – where she spent most days baking items for sale, helping with business bookkeeping, interacting with hundreds of customers from all over the world, and attending to business inventory tasks.

Those activities required ██████████ to stand on her feet, bend, twist, turn, lift, carry, reach, raise her arms, use one or both of her hands, walk, sit, stand, climb ladders and stairs, move her head side to side, up and down, rotate from stove to counter, from refrigerator to sink, and other physical motions.

She never before got dizzy or nauseous when she moved her hands in front of her, when she turned or moved in any way, when she sat, stood, or engaged in any type of physical movement with any part of her body.

██████████ regularly tended a garden with her family where she grew produce for personal consumption and sale at farmers' markets. She and her family sold their produce, baked goods, and ██████████'s books every year at farmers' markets throughout Maine while speaking and interacting with hundreds of customers without any difficulty.

When ██████████ was not volunteering, teaching, reading, writing, baking, cooking, gardening, managing her family business, attending farmers' markets, and interacting with her customers, she was caring for and enjoying her eight grandchildren.

Some of the activities she enjoyed doing with her grandchildren included taking them for rides to the store in her car, reading books to them, playing music for them, and singing to her youngest grandchildren, walking outside in the woods, running, hiking, swimming, boating, skiing, horseback riding and many varied outdoor activities that required good athletic abilities.

As noted in the attached neuropsychological evaluation of ██████████ by Dr. ██████████ on February 15, 2021, on September 16 at 8:15am, ██████████ had just gotten into her van. In the back, there were a lot of plastic crates stacked high that she and her husband used to transport her goods to farmers' markets.

Dr. [REDACTED] recounts what [REDACTED] told her, *"She got into the vehicle. It was parked facing the building right in front of it. She had to turn away from the building to follow the proper route out of the parking lot, so she was facing the road instead of the building when the explosion happened. Just seconds earlier, she would have been much closer and facing the building..."*

As she turned and drove away from the building at 8:18 am, [REDACTED]'s life was instantaneously, permanently, and devastatingly transformed.

"... 'Everything exploded. It was a huge blast.' She had no visibility. 'the color was yellow and white.' She could remember that she had not seen any other cars in the area. The blast had propelled her across the street; she was 'just praying that there was nothing in front of [her].' 'Objects were falling...huge objects, clunking on top of [her] van and crashing through the windows.' She was holding on and being 'jerked around.' By the time the air cleared and things were still falling out of the sky, she could see that she had landed across the road and 'into another mini road' where there were 'tall fir trees right in front of [her]' and the van had stopped up against a bank just short of hitting the trees..."

"... 'there was just devastation. There was nothing left anymore. The ground was covered with insulation. It looked like a foot of snow...and rubbish everywhere...paperwork...the file cabinets had just let out all of the paper and so much of it....' ... Large beams had come through her back window and had been stopped by the bins and had gone up through the roof. She noted, with the bins, the beams would have hit her or her seat and propelled her into the front window. Her airbags had 'exploded. The front window was about to explode.' It was fragmented and cracking. She was able to inch out of the driver's door but first she had to kick it repeatedly. It was eerily quiet. 'There was just nothing.'"

Seeing her life flash before her eyes while she was thrown around inside the van as it flew through the air, feeling herself falling and crashing down to the ground with the van, watching as a large beam flew toward the van and pierced the rear window to be stopped only by the plastic bins just a few feet from her head, and hearing heavy debris repeatedly crashing into the roof, [REDACTED] still cannot comprehend how her life was saved that day; so, she now suffers from survivor's guilt and erratic suicidal ideation.

When [REDACTED] emerged from the van, she was not at all the same woman who had got into the van and drove away.

"She was checked out at one of the ambulances... Physically she felt very numb... She describes feeling fatigued and things seeming bizarre. She said it took a while for most of her symptoms to come on. Headache and light sensitivity were there immediately, but the extreme dizziness and balance issues developed over weeks."

Every time she describes or reads about the explosion, or hears a loud or unexpected noise, [REDACTED] instantly relives that devastating moment causing her to experience and suffer from severely traumatizing panic attacks.

██████'s close proximate exposure to the blast caused her to endure bodily and cognitive damage caused by strong shock wave echoes ricocheting inside the van; primary, secondary, and tertiary blast injuries; blast concussion; blast-induced Traumatic Brain Injury (bTBI); Post-Traumatic Stress Disorder (PTSD) and a varied multitude of physical, cognitive, mental, emotional, social, and financial injuries.

Some of the injuries ██████ has suffered due to ██████'s negligence are listed below:

- Survivor's guilt
- Erratic feelings of suicidal ideation
- Exposure to transient shock waves
- Tertiary blast injury
- Blast concussion
- Post-concussion symptoms
- Blast-induced traumatic brain injury (bTBI)
- Post-traumatic Stress Disorder
- Grieving loss of job due to injuries
- Hearing loss (left ear)
- Confusion
- Chronic Headaches, Migraines
- Anxiety
- Difficulty concentrating
- Mood disturbances
- Sleep disturbances
- Chronically unbalanced (need walking stick for stability and balance)
- Chronic dizziness (worsened by noises, lights, walking, motion)
- Nausea
- Irritation
- Difficulty doing math
- Chronic physical and mental exhaustion
- Difficulty with word recall when speaking
- Difficulty talking with people verbally
- Exhausted physically and mentally by all communications
- Vertigo from speaking more than 20 minutes
- Nauseous from speaking more than 20 minutes
- Computer work limited to 10 minute intervals
- Head spins (varies from slow to fast)
- Feeling detached from reality
- Feeling like I'm floating
- Back injury, back pain
- Neck injury, neck pain
- Foot injury, foot pain
- Decreased eye/body coordination
- Cannot watch TV
- Cannot listen to the radio or news
- Reading a book limited to 1 page per interval
- Noises cause severe physical and mental disturbances
- Need to wear ear plugs at home and in noisy places
- Poor memory
- Poor concentration
- Inability to focus
- Difficulty driving a car
- Turning corners causes me to feel nauseous
- Walking on uneven ground jolts my head which brings on worsening dizziness and imbalance and creates an unsettling vibration in my body
- Need to rest often
- Need to sit down often
- Need to be alone more than before

██████'s injuries now substantially interfere with and at times completely prevent her from engaging in most activities she enjoyed prior to the explosion. Activities that ██████ can no longer enjoy, or which she tries to enjoy with strict limitations, include but are certainly not limited to:

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- Moving her body in any way
- Walking, esp. on uneven ground
- Hearing any noises
- Seeing or looking at any lights
- Cooking and measuring recipes
- Baking and handling ingredients
- Reading anything
- Writing anything
- Writing books
- Editing books
- Talking for more than 10min.
- Listening to talking, music, radio
- Abrupt sounds cause panic attacks
- Turning corners
- Bending over
- Running
- Driving a car any distance
- Swimming or wading (no balance)
- Boating (no balance)
- Hiking (no balance)
- Skiing (no balance)
- Horseback riding (no balance)
- Multiple outdoor activities
- Playing with grandchildren
- Caring for grandchildren
- Working in family business
- Working in garden and yard
- Working any job
- Playing and writing music
- Singing
- Socializing
- Physical activity limited to less than 2hrs every 2 days
- Memory impairments
- Concentration difficulty
- Focus difficulty
- Mathematics and problem-solving impairments
- Multi-tasking impossible now
- Need a lot of quiet, alone time
- Need help cleaning my house
- Need help tending my garden
- Need a driver to transport me - loss of independence
- Need daily physical therapy
- Need emotional counseling
- Need neuropsychological treatment
- Need vestibular therapy (balance, dizziness)

██████████ will now need several types of assistance for the rest of her life including, but not limited to:

- housekeeping,
- yard and garden work,
- chauffer to travel,
- medical,
- acupuncture,
- chiropractor,
- cranial-spatial,
- hearing,
- physical therapy,
- vestibular therapy,
- occupational therapy,
- emotional counseling,
- cognitive behavior therapy,
- neuropsychology evaluations,
- travel costs for medical visits,
- Evaluation and Rx copays, and
- Medical equipment (walking canes, walkers, hearing aids, etc)

Up until the moment of the explosion, ██████████ was a very happy, social, active, athletic, and physically healthy woman. Because of the explosion, she has become very isolated, depressed, and lonely and has gained more than 20 pounds due to her inability to be physically active.

In total deviation from her life before the explosion, every day since has been a constant struggle because of her injuries caused by the explosion.

██████████ now needs to spend a substantial amount of time each and every day by herself, in a dark, quiet room away from all the noises of her family's daily activities. ██████████'s need for quiet alone time is contributing substantially to her physical, mental, emotional and mood difficulties.

██████████'s need to avoid the noises of daily life prevents her from taking care of her home; substantially interferes with her cooking and baking; directly interferes with her relationship with family members; impairs her friendships and socialization; prevents her from volunteering and working; and prevents her from helping to maintain and build her family business, among many other activities ██████████'s injuries prevent or impair.

On February 10 and 15, 2021, ██████████ participated in a Civil Forensic Neuropsychological evaluation by Dr. ██████████ Ph.D., ABPP-CN, and Board Certified in Clinical Neuropsychology who works at ██████████

Dr. ██████████'s report said ██████████ has *"...observable screen-sensitivity. She squinted and looked down... Initially she was organized in her thoughts, but over time during the interview, she had difficulty putting her thoughts together. She had some word finding difficulty but mostly was very slow to compose her thoughts. She generally seemed slowed down and tired, and this progressed over the interview. By the end, she seemed to be having significant difficulty communicating effectively."*

██████████'s self-reported injuries were confirmed through Dr. ██████████'s personal observations and neuropsychological evaluation, who then concluded, *"Given how long [██████████] has been struggling with these symptoms, a neurology consultation is appropriate. Additionally, she should definitely be having some cognitive behavioral therapy specifically for posttraumatic stress with associated mood issues and the possibility that emotional issues related to the accident are contributing to her somatic and cognitive dysfunctions. Finally, some cognitive rehabilitation with Speech Therapy may help her to improve her strategies and coping."*

At the moment before the explosion, ██████████'s life was overflowing with cherished, productive activities and healthy relationships; since the explosion, ██████████'s life has necessarily become very lonely, isolated, and anti-social.

██████████'s daily tasks now focus on trying to stand and walk without assistance; walking, turning and bending without getting nauseous and dizzy; listening to her grandchildren's laughter or loud noises without experiencing dizziness, nausea or panic attacks; reading and writing anything for more than ten minutes at a time; having any verbal conversations with anyone for more than fifteen minutes at a time; not being able to leave the house or drive herself to a store; trying to bake products for her bakery without having to sit down every five minutes from feeling dizzy or exhausted; not being able to read or enjoy outdoor activities with her grandchildren; not being able to sing or play music; not being able to listen to the noises of a

vacuum cleaner or clean her home; and numerous other tasks of daily life that provided great joy and never caused her any difficulty prior to the explosion.

Now, when her grandchildren ask her to make them a sandwich, instead of being able to provide that sandwich within a few minutes, [REDACTED] now has to move very slowly from the counter to the refrigerator while turning ever so slowly – sometimes taking as many as five to ten seconds to turn her head and body ninety degrees from the counter to the stove – as not to be dazed and overcome by dizziness and nausea. It now takes [REDACTED] substantially longer to complete a simple task like making a sandwich that never before caused her any difficulty whatsoever.

Natural body movements that never caused [REDACTED] any issues before the explosion are now daily – and sometimes moment to moment – obstacles that substantially interfere with and absolutely prevent [REDACTED] from living her life the way she did before.

Some of [REDACTED]'s current limitations include movement sensitivity where any movement affects her in significantly negative ways. Turning from her stove to the kitchen table, turning to look out the window, washing dishes and looking down with the slightest movement of her head is torture for her.

She now has to learn how to do these movements much more slowly while still experiencing dizziness and nausea with every physical movement. Her work of cooking and managing food with nausea is what she calls a nightmare but with her need for the income she knows it has to be done so she moves as slowly as she needs which has substantially reduced her productivity and resulting income.

Before the explosion, [REDACTED] had no problems with memory loss, brain fog, migraines, dizziness, or nausea. She regularly worked on computer screens in her spare time, writing and communicating with people. She now has every moment chronic symptoms that are quite often physically unbearable and disabling.

[REDACTED]'s entire educational and professional careers have fully revolved around reading, writing, communicating, interacting with, and helping people while her personal desires have been devoted to creating and maintaining strong, open, healthy relationships with her husband, children, grandchildren, friends, and customers.

[REDACTED]'s husband recently told [REDACTED] that his observations of her today in contrast with her abilities a year ago are that [REDACTED] has lost a great deal of physical functioning. A year ago, [REDACTED] was able to drive herself to Farmington to welcome [REDACTED] home from the hospital; whereas, today, [REDACTED] cannot drive herself any distance in the car due to her movement sensitivities and other disabling injuries.

After a year of fully engaging in vestibular therapy to alleviate her dizziness and movement sensitivities, [REDACTED] is now experiencing set-backs.

Aside from the physical, emotional, and cognitive challenges [REDACTED] is enduring, she is also enduring the pain of watching her husband and family struggle with their inability to help her and their resulting frustration. These emotional challenges that [REDACTED] and every family

member are dealing with directly, substantially, and negatively impact the quality of their relationships.

On Saturday, April 3, 2021, [REDACTED] went to a farmers' market to help her family. While there, she sat behind one of their stalls with ear plugs in her ears, dark glasses on her eyes and a visor hat on her head. Despite all the precautions and medicine she took, [REDACTED] was overwhelmed by the noises made by the cars, customers, and other normal activities. As a result, [REDACTED] suffered an extreme migraine, fogginess, dizziness, and nausea which incapacitated her for the rest of that day and the next day. [REDACTED] spent the majority of Sunday, April 4, in bed with a migraine, nausea and increased dizziness and fogginess.

Notwithstanding her physical challenges and disabilities, [REDACTED] now finds herself overcome on a daily basis by her deep sadness, grief, loneliness, and feelings of disconnection from the rest of the world. [REDACTED] had devoted her entire life to creating open, unobstructed communications with people in her life, and now she is not able to even write a letter or speak with someone for more than ten (10) minutes without being overcome with physical fatigue.

Had it not been for [REDACTED]'s negligence and resulting devastation, [REDACTED] would still be fully engaged in all the activities with her family, friends, and other activities that she previously enjoyed.

For more than the past 560 days and ongoing for the foreseeable future, [REDACTED]'s life has suffered extreme special losses that cannot be measured with money – aside from the complete devastation of every aspect of her life, there is no monetary equivalent for being able to listen to and enjoy her grandchildren's laughter without panicking because of the loudness of their voices, being able to sing to them while walking in the yard holding their hands or reading them a book at bedtime.

Please see the table below of [REDACTED]'s damages and losses.


Source	Notes	Loss
[REDACTED] (family business) (\$20k per year x 15 yrs)	able to work 25% of time bakery is open	\$ 300,000.00
Yearly farmers markets (\$3k per year x 15 yrs)	cannot transport products without van	45,000.00
Loss of business van	Destroyed in explosion - can't afford to replace	55,000.00
Writing job, Reiki practice (\$27k per year x 15 yrs)	Can't write, focus, or concentrate	405,000.00
Job loss at [REDACTED] (\$7k per year x 5yrs)	Loss of job due to bTBI symptoms	35,000.00
Driving instructor	rehabilitate from PTSD, bTBI	20,000.00

Future medical and dental expenses	acupuncture, chiropractor, cranial-spatial, hearing, physical and vestibular therapy, occupational therapy, neuropsychology eval/therapy, dental, Rx copays, therapeutic equipment (walking canes, walkers, hearing aids, etc)	300,000.00
Pain and suffering, inability to read, write and communicate without suffering physical ailments	Lifetime (x 20yrs) symptoms	2,000,000.00
	TOTAL DAMAGES	\$3,160,000.00

Despite [REDACTED]'s goal of being a strong source of support for her family into her golden years while being a successful writer and operating her own business, [REDACTED] is now struggling with completing her activities of daily living. As such, she is being deprived of numerous joyful activities she recently enjoyed and should have been able to enjoy for many years to come.

No amount of money can replace [REDACTED]'s ability to move, walk, turn her body or head without getting dizzy and feeling nauseous, or spending quality time with her husband, friends, children, and grandchildren, being able to attend farmers' markets, or being able to read, write, sing, play music, bake, cook and the numerous athletic activities as she did before.

Very truly yours,


Jed Davis, Esq,

JD:gt

Enclosure

cc: [REDACTED]

Gina Turcotte, Paralegal
3924 W. River Rd, Sidney, Maine 04330
(207) 209-1767 Email: gina@mitchellanddavis.com

August 17, 2021

Michele Lumbert, Clerk
Augusta District Court
Capital Judicial Center
1 Court Street
Augusta, Maine 04330

RE: Turcotte v. Fesenmaier
Docket No. CV-2020-41

Dear Michele,

Enclosed please find the following documents for filing in this matter:

1. Plaintiff's Motion to Dismiss without Prejudice
2. Gina Turcotte's Affidavit in Support of Plaintiff's Motion to Dismiss
3. Email from Rob Overton to Gina Turcotte 10-09-2020
4. Email from Stephen Langsdorf to Gina Turcotte 10-30-2020
5. Maine Judicial Branch Order pmo-sjc-2, August 16, 2021
6. Affidavit of Jed Davis in Support of Plaintiff's Motion to Dismiss
7. Affidavit of Danny Daniels in Support of Plaintiff's Motion to Dismiss
8. Draft Order on Plaintiff's Motion to Dismiss without Prejudice

There is a trial management conference scheduled in this matter on August 24. Please bring these filings to the attention of the judge before that conference.

Thank you.

Respectfully Submitted,



Gina Turcotte

Enclosure

Cc: Daniel Bernier, Esq.

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**PLAINTIFF'S MOTION TO DISMISS
WITHOUT PREJUDICE**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court to dismiss this case without prejudice, and reserve Plaintiff's right to refile at a later date, for the following reasons:

1. On February 4, 2020, Plaintiff filed her Complaint with this Court pursuant to normal, pre-pandemic court procedures.
2. "On May 27, 2020, the State of Maine Judicial Branch issued its COVID-19 Phased Management Plan in response to the novel coronavirus pandemic that had engulfed the country and rendered normal judicial proceedings impossible."
3. As of October 21, 2020, "To enter a Judicial Branch building or Maine state court: Any person over age two must wear a face covering or mask..."
4. On February 22, 2021, Plaintiff notified the Court that the Parties completed discovery.
5. "Effective July 1, 2021, individuals who are fully vaccinated are not required to wear face coverings while inside a courthouse or other Judicial Branch facility. Any person who is not fully vaccinated must continue to wear an approved face covering or mask..."

<https://www.courts.maine.gov/covid19/pmp-final-addendum.pdf>

<https://www.courts.maine.gov/courts/alerts.shtml>

6. Plaintiff is not, and will not be, vaccinated due to pre-existing medical conditions, including asthma, *inter alia*, that prohibit the use of face coverings. See Plaintiff's Affidavit.
7. Because of the Judicial Branch's July 1, 2021 Order, Plaintiff will not be allowed to enter any Maine courthouse while the mask mandate and vaccine requirement are in effect.
8. If the mask mandate had been effective when Plaintiff filed her Complaint in February 2020, Plaintiff would not have filed at that time; instead, Plaintiff would have waited until the pandemic court rules were lifted, or before expiration of the statute of limitations.
9. If this Court holds the trial while the mask mandate is effective, Plaintiff will be unable to participate in the trial, properly examine and cross-examine witnesses or present evidence.
10. In June 2021, WGME TV reported, "Statewide, there are 28 percent, or nearly 6,000, more cases pending this May over last." District Attorney Maeghan Maloney was quoted saying that Kennebec County has 9% more cases pending in June 2021 than the same time last year.
<https://wgme.com/news/local/maine-courts-still-battling-case-backlog>
11. Today, the Maine Judicial Branch announced that due to an increase in the number of infections statewide, the Supreme Judicial Court has issued a revised Post-Pandemic Management Order (PPMO) effective August 16, 2021 reinstating the requirement for all visitors to wear a face covering or mask at all times while in a courthouse regardless of vaccination status. Any person who refuses to wear a face covering will be refused entrance and provided with a contact number for assistance. See Exhibit E.
12. Due to the severe backlog of civil and criminal trials for Maine courts, it is in the interest of justice and judicial economy to dismiss this case without prejudice and reserve the Plaintiff's right to refile at a later date after pandemic court rules and mask mandates are lifted.

WHEREFORE, the Plaintiff respectfully moves this Court to dismiss this case without prejudice and reserve the Plaintiff's right to refile at a later date.

Date: August 17, 2021



Gina Turcotte
3924 W. River Rd
Sidney, Maine 04330
(207) 209-1767
gina@mitchellanddavis.com

IMPORTANT NOTICE

PURSUANT TO RULE 7(b)(1)(A) OF THE MAINE RULES OF CIVIL PROCEDURE, YOU ARE HEREBY NOTIFIED THAT OPPOSITION TO THIS MOTION MUST BE FILED NO LATER THAN 21 DAYS AFTER THE FILING OF THE MOTION, UNLESS OTHERWISE PROVIDED BY THE MAINE RULES OF CIVIL PROCEDURE OR BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION, WHICH MAY RESULT IN THE GRANTING OF THIS MOTION WITHOUT FURTHER NOTICE OR HEARING.

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**AFFIDAVIT OF GINA TURCOTTE IN
SUPPORT OF PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE**

Gina Turcotte, being duly sworn, deposes and says:

1. I am the Plaintiff in this matter.
2. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
3. When I was a child, I was raised in a physically and emotionally abusive environment that resulted in my suffering from lifelong Post-Traumatic Stress Disorder.
4. Because of this trauma, I have refused – for the entirety of my life – to cover my nose or mouth with any type of covering, including my bed sheets and blankets.
5. When I sleep – even to this day – I never cover my nose and mouth if I bring blankets over my head; I always make sure my nose and mouth are exposed.
6. Having to wear a mask or use any type of face covering causes me to suffer traumatic anxiety like that of a person who has been forcibly and physically muzzled during an attack.
7. When I was a child, I endured weekly clinical testing in Lewiston Maine related to my dermatological and breathing problems.
8. When I was in the 8th grade, I was diagnosed with asthma with several allergies which required me to use an inhaler and undergo weekly dermatological treatments.
9. At the age of 17, with my father's consent, I tried to enlist with the US Air Force; to that end, I took Armed Services Vocational Aptitude Battery of tests and passed with high scores.
10. After the Air Force recruiter received and reviewed my medical records, he determined I was not qualified to enlist with the Air Force because of my diagnosis of asthma.
11. Other than antibiotics and medications for PTSD symptoms, I resolutely and consistently refused to inject any chemicals into my body and have rejected all vaccinations, including flu.

12. Into my middle-adulthood, I was receiving treatment for PTSD and was prescribed many medications through the years; in August 2006, I stopped taking all prescription medications.
13. Other than taking a single dose of antibiotics for a mouth infection in 2011, I have not taken any prescription or over-the-counter medications for any ailment I have had since 2006.
14. Since 2006, when I have an internal infection or flesh injury, I only use organic cures which include, but are not limited to, baking soda, coconut oil, spices and herbs; I have cured mouth infections and flesh injuries many times with coconut oil.
15. When I filed my Complaint with this Court on February 4, 2020, I filed it pursuant to normal, pre-pandemic court procedures.
16. At that time, I had no reason to believe the COVID-19 pandemic would materialize, that the Governor would mandate the wearing of masks in all public places, or the Judicial Branch would modify the court schedule and its procedures.
17. It was not until May 27, 2020 that the Maine Judicial Branch issued its COVID-19 Phased Management Plan in response to the COVID-19 pandemic.
18. The Governor and Judicial Branch still require the wearing of masks to enter any Judicial Branch building or Maine state court.
19. When the Governor first implemented the statewide mask mandate earlier in 2020, I stopped going into public stores and businesses completely; instead, I hired friends and family to shop for me, or I ordered by phone and online and received delivery or curbside pickup.
20. From October 6 – 9, 2020, I negotiated with City of Augusta Code Enforcement to provide me with access to very old public records that were stored only on microfiche without having to enter the building because the mask mandate was in effect. See Exhibits A and B.
21. I have never entered a public business with a mask on my face.
22. When going to my office to retrieve my paychecks, they were taped to the outside of the door; or else, they were mailed to my home. See Exhibits C and D.
23. I am not, and will not be, vaccinated due to my aforementioned medical conditions, *inter alia*, and I cannot use of any type of face covering for the same reasons.

24. Because of the Judicial Branch's July 1, 2021 Order requiring all unvaccinated people to wear a mask when entering a Maine courthouse, I will not be allowed to enter any Maine courthouse while the vaccine requirement and mask mandate are in effect.

25. If the mask mandate and/or the vaccine requirement had been effective when I filed my Complaint in February 2020, I would not have filed at that time; instead, I would have waited until the pandemic court rules were lifted, or before expiration of the statute of limitations, whichever was expected to occur first.

26. If this Court holds the trial while the mask mandate is effective, I will not be able to participate in the trial, properly examine and cross-examine witnesses or present evidence.

Date: August 17, 2021



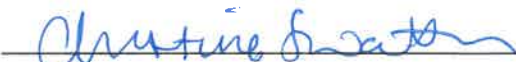
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STATE OF MAINE
KENNEBEC, ss.

Date: 

Personally appeared before me the above-named Gina Turcotte who made oath that the above statements are true and accurate to the best of her knowledge, information and belief.

Before me,


Notary Public

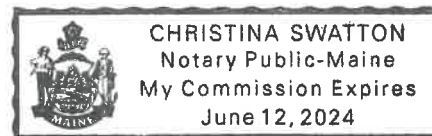


EXHIBIT C

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**AFFIDAVIT OF JED DAVIS IN SUPPORT
OF PLAINTIFF'S MOTION TO DISMISS
WITHOUT PREJUDICE**

Jed Davis, Esq., being duly sworn, deposes and says:

1. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
2. I have owned and operated Jim Mitchell and Jed Davis, P.A. in Augusta, Maine for more than 50 years, and I have worked with the Plaintiff in this matter as my full-time paralegal since January 1, 2019.
3. The Plaintiff has received weekly paychecks since she began working with my office, has come into the building every week to get her checks and to talk with me and office staff.
4. When the pandemic began and mask mandates went into effect, our office complied with those mandates which caused the Plaintiff not to come into the building for any reason.
5. The Plaintiff said she had medical conditions that proscribed the wearing of masks.
6. While the mask mandate was in effect, the Plaintiff never entered my private office, unlike before when she would occasionally come to visit and talk.
7. Since the mask mandate was lifted, the Plaintiff again comes into the building.

Date: August 17, 2021



Jed Davis, Esq., Maine Bar No. 001686
Jim Mitchell and Jed Davis, P.A.
86 Winthrop Street, Suite One
Augusta, Maine 04330
(207) 622-6339
jed@mitchellanddavis.com

STATE OF MAINE
KENNEBEC, ss.

Date: 8/17/21

Personally appeared before me the above-named Jed Davis, Esq. who made oath that the above statements are true and accurate to the best of his knowledge, information and belief.

Before me,

Christina Swatton
Notary Public

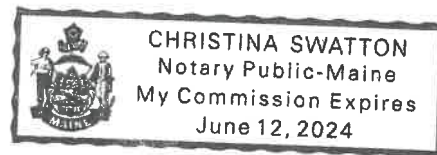


EXHIBIT D

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

AFFIDAVIT OF DANNY DANIELS IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE

Danny Daniels, being duly sworn, deposes and says:

1. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
2. I have been employed by Jim Mitchell and Jed Davis, P.A. in Augusta Maine as the office Accountant for more than 20 years, and have worked with the Plaintiff since January 1, 2019.
3. The Plaintiff has received weekly paychecks since she began working with our office and has come into the office to get her paychecks; at that time, she would spend time chatting with myself and other office staff, sometimes for more than an hour.
4. When the pandemic began and mask mandates went into effect, our office complied with those mandates which caused the Plaintiff not to come into the office for any reason.
5. The Plaintiff said she had medical conditions that prevented her from wearing a mask.
6. When the Plaintiff told us that she was on the way to the office to get her check, either I or another staff would tape the check to the outside of the door where Plaintiff would get it.
7. During the entire time that the mask mandate was in effect, the Plaintiff never entered the office of Jim Mitchell and Jed Davis.
8. Since the mask mandate has been lifted, the Plaintiff now comes into the office and chats with me and other staff when she gets her paychecks.

Date: August 17, 2021


Danny Daniels
Jim Mitchell and Jed Davis, P.A.
86 Winthrop Street, Suite One
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(207) 622-6339
danny@mitchellanddavis.com

STATE OF MAINE
KENNEBEC, ss.

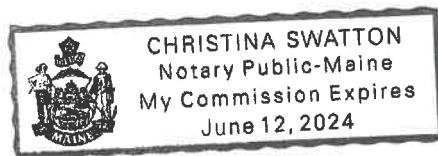
Date: 8/17/21

Personally appeared before me the above-named Danny Daniels who made oath that the above statements are true and accurate to the best of his knowledge, information and belief.

Before me,

Christina Swatton

Notary Public/Attorney at Law



STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**ORDER ON PLAINTIFF'S MOTION TO
DISMISS WITHOUT PREJUDICE**

Based on Plaintiff's Motion to Dismiss Without Prejudice,

IT IS HEREBY ORDERED that the Motion is GRANTED.

The Court ORDERS that this matter is hereby **DISMISSED WITHOUT PREJUDICE**.

The Court ORDERS that the Plaintiff may refile her Complaint at a later date in either District or Superior Court, provided that it is filed within the statute of limitations from the date the Plaintiff moved out of the Defendant's property, specifically October 31, 2019.

It is further ORDERED that all discovery documents and information that was obtained by, and exchanged between, both parties shall be preserved in full by each party for use in the subsequent proceedings, and that evidence shall not be discarded, damaged or destroyed until expiration of the statute of limitations referenced herein.

The Court hereby ORDERS the Clerk to record this Order in the Docket Record.

Date: _____, 2021

Judge, District Court

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**PLAINTIFF'S 2nd MOTION IN LIMINE TO
PRECLUDE DEFENDANT FROM ASSERTING
AFFIRMATIVE DEFENSES OR COUNTERCLAIMS
AGAINST PLAINTIFF DURING TRIAL
MRCivP 15(a)**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court pursuant to Maine Rules of Civil Procedure Rule 15(a), to preclude Defendant and her attorney from asserting affirmative defenses or counterclaims against the Plaintiff during trial.

Plaintiff filed her Complaint with this Court, and served Defendant's attorney via email on February 4, 2020. More than 20 days later, on March 11, Defendant filed her Answer with this Court and served Plaintiff via email.

Defendant's Answer categorically denied all facts and allegations, except the first fact, in the Plaintiff's Complaint, and provided no affirmative defenses, nor alleged any counterclaims against the Plaintiff.

This court issued the Scheduling Order on March 18.

On August 20, 2020, Defendant's attorney filed a Witness and Exhibit List estimating the length of trial as one day and the issues for trial were:

1. The Plaintiff asserts six counts against defendant. The defendant disputes all six counts in full.

Later, on February 18, 2021, Defendant's attorney filed another Witness and Exhibit list (that was not marked as the 2nd list), and which was exactly identical to the first list except that the Defendant is now claiming there are more issues for trial, to wit:

2. Estoppel, mitigation of damages, and waiver.

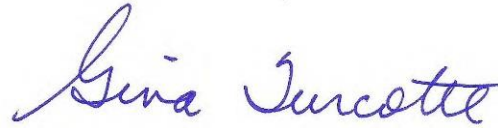
Defendant's claim that they are going to raise the aforementioned issues for trial was never brought to the Plaintiff's or the Court's attention before February 18, 2021.

Moreover, the Defendant's time to amend the Answer to include any affirmative defenses or counterclaims has long expired.

WHEREFORE, Plaintiff moves this Court to grant this Motion in Limine to:

1) preclude the Defendant or her attorney from asserting any affirmative defenses or counterclaims against the Plaintiff during trial.

Date: August 13, 2021



Gina Turcotte
3924 W. River Rd
Sidney, Maine 04330
(207) 209-1767
gina@mitchellanddavis.com

IMPORTANT NOTICE

PURSUANT TO RULE 7(b)(1)(A) OF THE MAINE RULES OF CIVIL PROCEDURE, YOU ARE HEREBY NOTIFIED THAT OPPOSITION TO THIS MOTION MUST BE FILED NO LATER THAN 21 DAYS AFTER THE FILING OF THE MOTION, UNLESS OTHERWISE PROVIDED BY THE MAINE RULES OF CIVIL PROCEDURE OR BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION, WHICH MAY RESULT IN THE GRANTING OF THIS MOTION WITHOUT FURTHER NOTICE OR HEARING.

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,

v.

SUSAN FESENMAIER
Defendant.

**PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE IRRELEVANT EVIDENCE
RELATING TO PLAINTIFF'S PRIOR
LAWSUITS PURSUANT TO RULES 401,
402 and 406 OF RULES OF EVIDENCE**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court pursuant to Maine Rules of Evidence Rules 401, 402 and 406, to prevent the Defendant from introducing as evidence all court orders and other filings from prior state and federal lawsuits to which Plaintiff has been a party.

Rule 401, Test for Relevant Evidence, says *"Evidence is relevant if (a) [i]t has any tendency to make a fact more or less probable than it would be without the evidence; and (b) [t]he fact is of consequence in determining the action."*

Rule 402, General Admissibility of Relevant Evidence, says *"Irrelevant evidence is not admissible."*

Rule 406, Habit; Routine Practice, says *"(a) Admissibility. Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice..."* and *"(b) Method of proof. Habit or routine practice may be proved by proof of a sufficient number of instances of conduct to support a finding that the habit existed or that the practice was routine."*

Here, Plaintiff made a six-count complaint against Defendant: Count 1, Violation of the Implied Warranty and Covenant of Habitability; Count 2, Violation of Maine Unfair Trade Practices Act; Count 3, Wrongful Retention of Security Deposit; Count 4, Treatment of Security Deposit; Count 5, Breach of Contract; and Count 6, Negligence.

Plaintiff filed her Complaint and served Defendant on or about February 4, 2020. Defendant accepted service on March 6 and Answered the Complaint on March 11.

The parties have since been conducting their discovery and attended a Rule 26g hearing on September 9, 2020 because of Defendant's objections and insufficient responses. This Court ordered Defendant to provide certain documents to Plaintiff within 14 days.

Defendant has been untimely and negligent with providing responses to Plaintiff's requests for discovery thereby causing more than a 3-month delay in finishing the discovery process.

Therefore, Defendant has been rescheduled to be deposed on October 8, 2020, and her 3 witnesses will be deposed directly thereafter. Plaintiff is awaiting this Court's ruling on her motion to extend the discovery deadline due to Defendant's delays.

To date, the Defendant has not filed any motions to dismiss or for summary judgment in this case.

On September 16, Defendant's counsel sent Plaintiff and the Court a letter with an attached Order on Pending Motions and After Review Pursuant to 28 U.S.C. § 1915 and Cok Warning, from United States District Court, District of Maine in the case *GinA v. City of Augusta, et al*, Docket No. 1:16-cv-100-NT.

Defendant's letter says they are adding the federal court Order to their Exhibits List to "...show that you have been warned by Court's [sic] before that groundless and frivolous filing [sic] will not be tolerated." Defendant's letter is attempting to show that Plaintiff has a habit or routinely practices the act of filing "groundless and frivolous filings".

Under Rule 401(a), the Order from *GinA v. City of Augusta*, or any other prior lawsuit, fails the test for relevancy as it has absolutely no tendency to make any fact in this case against either party more or less probable than it would be without admission of those Orders, and under (b), because those Orders will have absolutely no consequence in determining the action against Defendant in this case.

Rule 402 clearly prohibits admission of evidence that is not relevant.

Defendant has not filed any motions to dismiss or for any other purpose with this Court claiming Plaintiff's lawsuit, or any claims she has made therein, are groundless and frivolous.

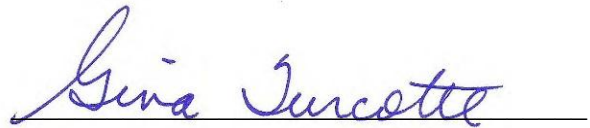
If Defendant believed Plaintiff's claims, or any one of them, are frivolous and groundless, this Court must ask why Defendant has not filed any motions to have this case dismissed or for summary judgment, either in part or in whole.

WHEREFORE, Plaintiff moves this Court to grant this Motion in Limine to:

1) exclude the Order on Pending Motions and After Review Pursuant to 28 U.S.C. § 1915 and Cok Warning in the case *GinA v. City of Augusta, et al*, Docket No. 1:16-cv-100-NT, and

2) exclude all Orders and filings from all prior lawsuits to which Plaintiff was a party.

Date: September 18, 2020



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gina@mitchellanddavis.com

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