

IN THE _____ COURT OF _____ COUNTY
STATE OF _____

_____)	
)	
)	
Petitioner/Plaintiff,)	
)	
Vs.)	NO. _____
)	
_____)	
Respondent/Defendant)	
)	

**RESPONSE TO MOTION FOR JUDGMENT NOTWITHSTANDING
THE VERDICT, OR, IN THE ALTERNATIVE. FOR A NEW TRIAL**

Defendant, _____, by and through counsel, moves the Court for a denial of the motion for a Judgment Notwithstanding the Verdict, or, in the Alternative, for a New Trial, and in support thereof states as follows:

1. On the ____ day of _____, 20____, this case was tried before a _____ County jury. The jury voted 11-1 in favor of the Defendant.

2. Plaintiff's contentions that the Defendant unduly prejudiced and misled the jury are without any merit. Plaintiff put her character and personal life in issue during the opening statement and direct examination. Plaintiff's attorneys painted a picture of an idyllic family life, which was supposedly marred by the injury sustained due to Defendant's alleged negligence. The plaintiff claimed that she could no longer attend her kids' baseball games or spend time with the kids as she used to as a result of this alleged injury. Defense counsel delved into these aspects to show that such was not the case. The Plaintiff "opened the door" for Defense counsel's cross-examination. _____ v. _____, _____ (____. ____).

In Plaintiff's sworn complaint for Divorce, the Plaintiff stated "her children were taken away from her when she was arrested and taken into custody by the _____ County Sheriff's Department." Defense counsel questioned the Plaintiff about this arrest to rebut Plaintiff's version of a happy family life torn asunder by the alleged incident at the Defendant's store. The Plaintiff's husband's Answer and counterclaim for Divorce alleged habitual cruel and inhuman treatment, habitual drunkenness, and uncondoned adultery as his grounds for divorce. Although there were no findings by the Court as to these issues, the Final Judgment of Divorce granted custody of the children to the father and ordered the Plaintiff to start paying child support upon employment. During the trial of the case at hand, Plaintiff's counsel objected to Defense counsel's cross-examination as to these matters, but the Judge overruled the objection in light of Defense counsel's reasoning and basis for the questioning.

3. The Defense counsel whittled away at the evidence that Plaintiff offered in support of her case. The Plaintiff had alleged that she and her friend, _____, went into the store manager's office to fill out a customer incident report. Plaintiff identified _____, at the trial, as the manager who filled out the report. _____, on the other hand, testified that she had never seen _____ before the trial. The Plaintiff had testified that the alleged injury made it impossible for her to sit for long periods of time. The Jury could not have failed to notice that the Plaintiff sat through the day-long trial without any obvious discomfort. The Jury determines the credibility of the witnesses and the Jury was not required to believe the Plaintiff's version. The Jury was entitled to disregard the Plaintiff's contradictory testimony and to rely on Defendant's contention that they received no notice of such an incident. Defendant's employee vaguely remembered some lady approaching him on Memorial Day weekend about a slip and fall. The employee did not recognize the Plaintiff as the person who might have approached him. The Plaintiff and her witnesses testified that there were no track marks on the

floor. The Jury could have concluded from this that the alleged incident did not occur. It is worth noting that the Plaintiff alleges that this happened during the busy Memorial Day weekend. In the regular and ordinary course of business, Defendant's employees would have received notice, but such was not the case here.

4. The medical physician, testifying for the Plaintiff, had no personal knowledge of the Plaintiff's alleged incident at the store. The physician admitted she took no past medical history of the Plaintiff and had only the self-serving statements of the Plaintiff to rely on. Thus, the Plaintiff's contention that the evidence was overwhelmingly in favor of the Plaintiff is without any merit.

5. In any event, the burden was on the Plaintiff to prove by a preponderance of the evidence that:

- a. Plaintiff fell as the result of a substance on the floor at store, and;
- b. Either that the substance that the Plaintiff claimed to have slipped on was caused by a _____ employee, or that _____ employees knew that the substance was on the floor, or that the substance had been on the floor for such a long period of time that _____ employees should have discovered that the substance was on the floor.
_____ v. _____, _____ (____. ____).

The burden of proof was not on the Defendant to prove that Plaintiff had not been injured, or that Plaintiff had not been injured as a result of some act of the Defendant. _____ law places the burden on the Plaintiff to persuade the Jury that the Defendant knew of the condition and the Plaintiff failed to sustain that burden.

6. The _____ Court has stated that a Jury's verdict be allowed to stand and the motion denied if there is "substantial evidence opposed to the motion, that is evidence of such

quality and weight that reasonable fair-minded men, in the exercise of impartial judgment, might have reached different conclusions.” _____ v. _____, _____ (____. ____).

The Jury fairly viewed all of the evidence and returned a fair and just verdict.

WHEREFORE, Defendant, _____, respectfully requests this Court to deny Plaintiff's motion for Judgment Notwithstanding the Verdict, or, in the Alternative for a New Trial, and let the Jury's verdict stand.

This the _____ day of _____, 20____.

Respectfully submitted,

Dated: _____

Name:

Title:

Address:

Address:

City, State, Zip:

Phone:

Fax:

E-Mail:

Attorney No.:

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I have this day mailed,
U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to
_____, at the following address;

THIS the ____ day of _____, 20____.