

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

RESPONSE TO THE
PRELIMINARY
CONFERENCE
ORDER

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiffs,

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendants.

-----X

PLEASE TAKE NOTICE, that the defendant(s), REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC., by their attorneys, the LAW OFFICE OF ANDREA G. SAWYERS, hereby sets forth the following upon information and belief as a response to the Preliminary Conference Order of the Honorable Justice Modica dated June 14, 2017:

(1). At the time of this occurrence the answering defendant were insured by Travelers Insurance Company under a policy issued to SHIMENTI, with a policy limit of \$2,000,000 per occurrence.

(6)(a). The aforesaid defendants are aware the following individuals may have been witnesses to the subject incident: David Hurado; and Manuel Lucero. Upon information and belief they were employed by third-party defendant, TRI-STATE

DISMANTLING CORP., at the time of the incident. In the event they are no longer in the employ of TRI-STATE, request for last known addresses should be directed to TRI-STATE.

The aforesaid defendants are in possession of three photographs which may depict the accident location. Copies of those photographs are annexed to said defendants Response to Combined Demands dated October 6, 2017.

At the present time the aforesaid defendants are not in possession of any adverse party statements, if and when any such adverse party statements are discovered, they will be provided to all parties.

(6)(b) At the present time the defendant(s) has/have not retained the services of an expert witness. If and when an expert witness is retained, expert witness disclosure will be provided pursuant to CPLR 3101.

(6)(d) Annexed hereto are copies of all previously exchanged discovery.

PLEASE TAKE FURTHER NOTICE, that the undersigned reserves all rights to supplement and/or alter any or all of the foregoing if and when additional and/or different information becomes available.

Dated: October 6, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 
DAVID R. HOLLAND

Attorneys for Defendants
REALTY INCOME CORPORATION
DICK'S SPORTING GOODS, INC. AND
SCHIMENTI CONSTRUCTION
COMPANY, LLC

Mailing Address

P.O. Box 2903

Hartford, CT 06104-2903

(631) 501-3100

Matter No.: 2017012061DRH

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

BLACK MARJIEH LEFF & SANFORD LLP
Attorneys for Third-Party Defendant
TRI STATE DISMANTLING CORP.
100 Clearbrook Road, Suite 345
Elmsford, New York 10523
914-704-4400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. 700276/17

CESAR ZAMBRANO,

Plaintiff(s),

-against-

AFFIDAVIT OF SERVICE

WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY
INCOME COPORATION, DICK'S SPORTING GOODS,
INC., SPORTS AUTHORITY, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC,

Defendant(s),

REALTY INCOME COPORATION, DICK'S SPORTING
GOODS, and SCHIMENTI CONSTRUCTION COMPANY, LLC,
Third Party Plaintiffs,

-against-

TRI-STATE DISMANTLING CORP.,

Third Party Defendants,

STATE OF NEW YORK
COUNTY OF ROCKLAND

The undersigned, being duly sworn, deposes and says: deponent is not a party herein, is over 18 years of age and resides in the State of New York

That on April 25, 2017 at 11:40 am at 207 Dupont Street, Brooklyn, New York
deponent served the within Third Party Summons & Complaint on Tri-State Dismantling Corp.,

Individual: by delivering a true copy of each to said defendant personally; deponent knew the person to be served to be the person described as said defendant therein

Corporation: a domestic corporation, by delivering thereat a true copy of each to Charley, personally, deponent knew said corporation so served to be the corporation described in said Summon as said recipient and knew said individual to be managing agent thereof

Description of Recipient:	Sex	Race	Hair	Approx. Age	Approx. Ht.	Approx. Wt.
<input checked="" type="checkbox"/>	M	White	Bald	30's	5'11"	180 lbs.

Michael Flury
MICHAEL FLURY

Sworn to before me on the
25TH day of April, 2017

Andrea T. Reynolds
NOTARY PUBLIC

ANDREA T. REYNOLDS
Notary Public, State of New York
Registration #01RE6223976
Qualified In Orange County
Commission Expires July 26, 2018

Attorney(s)
Purchased/Filed:
State of New York
Court: Supreme
County: Queens

AFFIDAVIT OF SERVICE - SECRETARY OF STATE - THIRD PARTY ACTION

Desar Zambrano Plaintiff

against

Woodhaven Retail Associates LLC, Realty Income Corporation, Dick's Sporting Goods Inc,
Sports Authority Inc and Schimenti Construction Company LLC Defendant
Index # 700276/17

Realty Income Corporation, Dick's Sporting Goods Inc, Sports Authority Inc and Schimenti
Construction Company LLC Third Party Plaintiff

against

Tri-State Dismantling Corp Third Party Defendant

Index #

STATE OF NEW YORK)
COUNTY OF ALBANY) SS
CITY OF ALBANY)
DESCRIPTION OF PERSON SERVED: Approx. Age: 55 yrs
Weight: 120 lbs Height: 5' 1" Sex: Female Color of skin: White
Hair color: Brown Other:

Sean Warner, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on May 1, 2017, at 2:01 PM, at the office of the Secretary of State of the State of New York in the City of Albany, New York deponent served the annexed Third-Party Summons & Complaint and Notice of Impleader Pursuant to CPLR 3017(C)

on Tri-State Dismantling Corp, the Defendant in this action, by delivering to and leaving with Nancy Dougherty AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of 40 dollars; That said service was made pursuant to Section BUSINESS CORPORATION LAW §306 Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

1st day of May 2017

YVONNE STRAIN
NOTARY PUBLIC, State of New York
01ST6314054, Schenectady
Commission Expires November 3, 2018

Sean Warner
Invoice-Work Order # 1709239

**#7636
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

-----X
CESAR ZAMBRANO,

Index: 700276/17

Plaintiff,

-against-

**WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.**

Defendants,

-----X
**REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.**

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
-----X

**Plaintiff by his attorneys, SILBERSTEIN, AWAD & MIKLOS, P.C., as and for
their Verified Bill of Particulars, in response to the demand of defendant, REALTY
INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC., upon information and belief alleges as follows:**

1. The subject accident occurred on August 07, 2016 at approximately 9:00 AM.
2. (a-g). The accident occurred at 73-25 Woodhaven Blvd Ridgewood, NY 11385 more specifically when plaintiff was struck by debris that fell from an elevated height.

3. **Objection.** A statement of each and every act and omission by defendants is an unduly burdensome and patently improper demand for a bill of particulars, as CPLR § 3043 authorizes defendants to require only a "[g]eneral statement of the acts or omissions constituting the negligence claimed."

Without waiving such objection Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a reasonably safe, proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the debris once the garbage truck where full; in failing to properly supervise the workers during the debris disposal; in failing to provide a safety equipment for employees; in failing to have another worker or employee secure the area of work, the area of traffic, the area where the garbage trucks where being fill up with debris ; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the debris was secure; in having actual notice and constructive notice of the lose debris; in failing to provide a safe place to work; in failing to take additional precautions to make sure all planks were properly secure; in allowing and creating a trap like

condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition; in negligently instructing the workers to use improper and inadequate safety equipment; in failing to use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances.

That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing to warn of the debris; in creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless, careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site threat; in

violating the New York State Labor Law §200(1) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless, reckless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a reasonably safe, proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the debris once garbage truck was full; in failing to properly supervise the workers that where disposing of the debris; in failing to provide a safety equipment for employees working on the ground; in failing to have another worker or employee secure the area of work, the area of traffic, the area of ascending and descending from the garbage truck; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the debris was secure; in having actual notice and constructive notice of the lose debris; in failing to provide a safe place to work; in failing to take additional precautions to make sure all planks were properly secure; in allowing and creating a trap like condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition;

in negligently instructing the workers to use improper and inadequate safety equipment; in failing to use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances. That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing to warn of the debris; in exposing plaintiff to an unreasonable risk of harmful injury; In creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless, careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site threat; in violating Sections of the New York State Labor Law (for example, §240) and other applicable statutes, laws, rules, regulations, and ordinances

then and there prevailing.

Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless, reckless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a reasonably safe, proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the plank before lifting said plank; in failing to properly supervise the workers while disposing of the debris; in failing to provide a safety equipment for employees working on the ground; in failing to have another worker or employee secure the area of work, the area of traffic, the area of ascending and descending from the debris; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the plank was secure; in having actual notice and constructive notice of the loose plank; in failing to provide a safe place to work; in failing to take additional precautions to make sure all debris was properly secure; in allowing and creating a trap like condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition; in negligently instructing the workers to use improper and inadequate safety equipment; in failing to

use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances. That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing and neglecting to maintain the aforesaid area in a safe and proper condition, free from any and all defects, hazards, foreign objects, etc., and to provide safe passage for those persons lawfully using said construction site; in failing to properly secure the objects; in failing to warn of the loose debris; in failing to prevent the happening of the accident; in failing to foresee the happening of the accident which was foreseeable; in exposing plaintiff to an unreasonable risk of harmful injury; in creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless,

careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site threat; in violating Sections of the New York State Labor; 241(6) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

4. (a). Plaintiff claims that an unsecured, loose and unbalanced debris that was caused to fall from above onto plaintiff while he was working constituted a dangerous condition and unsafe work environment.
- (b). The exact location of where this was located at the time of the plaintiff's accident is information exclusively in the possession of the defendants. Plaintiff specifically reserves the right to supplement this response upon the completion of discovery.
- (c). It is claimed that defendants had both actual and constructive notice of the dangerous condition.

(d-f). Plaintiff claims actual notice is not necessary because the defendant, its employees, and/or agents created the defective and dangerous condition. Without waiving said objection, it is claimed that defendants, and each of them, had actual notice of the afore-described dangerous, defective and hazardous condition. The person to whom such notice was given, from whom such notice was given, whether such notice was written or oral, and the date, time and place that defendants through their agents, servants and licensees and/or employees received such notice, is information which is exclusively and particularly within the knowledge and control of the defendants herein, and as such, plaintiff specifically reserves the right to discover same and supplement this response upon the completion of discovery.

Plaintiff claims constructive notice is not necessary because the defendant, its employees, and/or agents created the defective and dangerous condition. Without waiving

said objection, it shall be claimed that defendants, and each of them, had constructive notice of the afore-described dangerous, defective and hazardous conditions in so far as they existed for a sufficient length of time such that in the exercise of reasonable care and due diligence, defendants, through their agents, servants, licensees and/or employees, knew or should have known of its continued presence for such a length of time so as to remedy those dangerous, defective and hazardous conditions prior to the occurrence herein. The precise length of time that such dangerous, defective and hazardous conditions prevail, the identities of those persons or personnel of the defendants, their agents, servants, licensees and employees, who knew or should have known of its presence, is information which is exclusively and particularly within the knowledge and control of the defendants herein and as such, plaintiffs specifically reserve the right to supplement this response upon completion of discovery.

5-6. Plaintiff did not enter into any agreements, bailments, contracts, leases, permits, or warranties with answering defendant. To the extent there were contracts, agreements, leases, bailments, permits, or warranties with the owner of the building to provide safe work environment and properly and safely secure the construction site and/or objects thereat, plaintiff alleges that those were breached. Plaintiff is unaware whether the said agreements, bailments, contracts, leases, permits, or warranties were oral or in writing. Plaintiff reserves the right to supplement this response upon completion of discovery.

7. Plaintiff does claim strict liability against the answering defendant, as they violated Labor Laws §§ 200, 240 and 241(6).

8. Plaintiff alleges a violation of Section 200 of the Labor law, in that the

defendant failed to provide a safe work place that was constructed, equipped, arranged, operated and conducted as to provide a reasonable and adequate protection of the plaintiff.

(a) Information regarding the connection of the answering defendant to the methods and details of the work being performed is within the knowledge and control of the defendants herein, and as such, plaintiff specifically reserves the right to discover same and supplement this response upon the completion of discovery.

(b) Plaintiff claims that defendants herein failed to properly secure construction objects/materials at the construction site, more specifically, debris, which allowed an unsecured, unsteady and loose pieces of debris to fall onto plaintiff from truck. Plaintiff also claims that defendants failed to ensure that construction materials are safely transported at the construction site in a manner that would not result in a heavy object falling on plaintiff from an elevated height. For a further response see answer to Particular # 3 above.

Plaintiff alleges that the defendants herein violated Section 240 of the Labor Law. For a further response see answer to Particular # 3 above.

Plaintiff alleges the defendant violated section 241(6) of the Labor law. For a further response see answer to Particular # 3 above.

9. Not applicable, plaintiff reserves the right to supplement this response upon the completion of discovery.

10. Plaintiff intends to rely on the doctrine of res ipsa loquitur. Defendants were in exclusive control of the worksite and materials that caused the accident. In the absence of negligence on the part of the defendants, the plaintiff would not have sustained the injuries claimed herein. Such accidents and/or injuries are not expected

to occur in the ordinary or regular course of events as they transpired in this case.

11. All questions of law, regarding any rule, regulation, statute or ordinance shall be respectfully referred to the Trial Court for determination thereby. However, the plaintiff will claim that the defendants violated, *inter alia*, violations of the labor law in the State of New York including but not limited to §200, 240 and 241(6) and the rules and regulations promulgated there under including but not necessarily limited to 12 NYCRR §23-1.5(a), §23-1.5(b), §23-1.5(c)(1), §23-1.5(c)(2), §23-1.6, §23-1.7(a)(1), §23-1.7(a)(2), §23-1.8(c)(1), §23-1.30, §23-1.31, §23-1.32, §23-2.1(a)(1), §23-2.1(a)(2), §23-2.1(b), §23-3.3(b)(2), §23-3.3(b)(3), §23-3.3(c), §23-3.3(e)(1), §23-3.3(e)(2) and §23-3.3(e)(3). Plaintiff will also claim that the defendants, including their agents, servants and/or employees, violated OSHA Construction Industry Standards, including 29 CFR 1910.22, 1910.23, 1910.30, 1926.21; 1926.301; 1926.302; 1926.305; 1926.851; 1926.1000 and 1926.1053. Plaintiff reserves the right to supplement this response upon completion of discovery.

12. That by reason of the foregoing, plaintiff, CESAR ZAMBRANO, was caused to sustain and suffer the following injuries, exacerbations and aggravations:

CERVICAL SPINE:

- SPASMS THROUGHOUT PALPATION OF MID TO LOW CERVICAL SPINE.
- CERVICAL SPINE DERANGEMENT.

LUMBAR SPINE:

- SPASMS ALONG MID TO LOW LUMBAR SPINE.
- LUMBOSACRAL SPINE DERANGEMENT.

HEAD INJURY:

- CONCUSSION
- FACIAL CONTUSION.
- LACERATION IN FACE.

INJURY TO BOTH ARMS:

- WEAKNESS IN LEFT SHOULDER ABDUCTION.
- LEFT SHOULDER DERANGEMENT.

HERNIA:

- UMBILICAL HERNIA REPAIR SURGERY ON OCTOBER 21, 2016.

OTHER:

- RADIATING PAIN INTO BOTH UPPER EXTREMITIES
- RADIATING PAIN INTO BOTH LOWER EXTREMITIES
- POSSIBLE NEED FOR INJECTIONS
- DIFFICULTY WALKING
- DIFFICULTY SITTING FOR PROLONGED PERIODS OF TIME
- DIFFICULTY BENDING
- DIFFICULTY STANDING FOR PROLONGED PERIODS OF TIME
- INABILITY TO LIFT WEIGHT
- INABILITY TO RETURN TO WORK
- NEED FOR FUTURE SURGERY
- NEED FOR PHYSICAL THERAPY
- NEED FOR PAIN MEDICATION
- NEED FOR ANTI-INFLAMMATORIES
- DIFFICULTY IN PERFORMING HIS DAILY ROUTINES AND ACTIVITIES
- DIFFICULTY CARRYING, LIFTING AND HOLDING

CONSCIOUS PAIN AND SUFFERING

All of the aforementioned injuries, resulting disabilities, aggravations, exacerbations and involvements are associated with future soft tissue injuries to the areas traumatically affected, including: fracture, tearing, derangement and damage to the associated muscle groups, ligaments, tendons, cartilage, blood vessels, tissue, epithelial tissue, all concomitant to the specific injuries and related to the specific portions of the body mentioned herein above, with resultant scars, hemorrhage, pain, ecchymosis, deformity, disability, stiffness, tenderness, weakness and partial restriction and limitation of motion, pain on motion and loss of use of the abovementioned parts; atrophy, anxiety and mental anguish, all of which have subsequently prevented the plaintiff from enjoying the normal fruits of her activities.

Plaintiff suffered, still suffers, and upon information and belief will continue to suffer pain, discomfort and limited movement of the injured portions of his body, including the adjacent and surrounding muscles, tendons, nerves, joints, fascia, vessels and soft tissues. It is claimed that the arthritis will develop as a result of this injury is also a permanent consequence of these injuries. The plaintiff reserves the right to prove any and all further consequences and any and all further medical expenses up to and at the time of trial.

- 13. (a). As a result of this accident, plaintiff was confined to bed for approximately two (4) weeks following the accident.
- (b). Upon information and belief, plaintiff has been confined to home since the date of the accident up until and including the present time, except for those days when plaintiff receives treatment from medical providers.
- (c). As a result of this accident, Plaintiff was confined to a Elmhurst hospital for 3 days.

- 14. (a). Plaintiff, Cesar Zambrano, was born in Ecuador on January 30, 1958.
- (b). Plaintiff at the time of the accident was working as a demolition worker.
- (c). Plaintiff's employer at the time of the accident was Tri State Dismantling Corp located at 207 Duport Street, Brooklyn, NY 11222.
- (d). Plaintiff at the time of the accident was making \$1440.00 weekly.
- (e). Not applicable plaintiff was not self employed at the time of the incident.
- (f). Plaintiff claims that all injuries sustained as a result of this accident from the date of the accident to the present time are permanent.
- (g). Not applicable plaintiff was not a student at the time of the accident.

15. Please be advised that all plaintiff's medical expenses were paid by a collateral source the workers' compensation carrier of plaintiff's employer. Plaintiff intends on introducing the workers compensation lien as evidence of past and future medical expenses.

Plaintiff reserves the right to serve expert witness reports pursuant to CPLR 3101(d) to discuss past and future medical expenses.

At the present time, plaintiff is not in possession of any billing records pertaining to his treatment as a result of the subject accident, including records from the workers' compensation carrier. Upon receipt of such information, plaintiff will supplement his Bill of Particulars stating the specific amounts pertaining to his medical treatment, including the amount of the workers' compensation lien.

Plaintiff alleges the following future special damages:

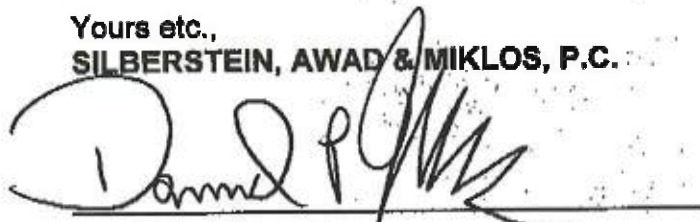
- (a) Physician services..... Approximately \$500,000
- (b) Nurses services..... Approximately \$250,000

- (c) Medical Supplies..... Approximately \$350,000
- (d) Hospital Expenses..... Approximately \$500,000
- (e) Other..... Approximately \$500,000

16. Plaintiff currently resides at 19 Kirkwood Avenue 1st Floor Port Washington, NY, 11050.

Dated: Garden City, New York
May 23, 2017

Yours etc.,
SILBERSTEIN, AWAD & MIKLOS, P.C.



Daniel P. Miklos, Esq.
Attorneys for Plaintiff
600 Old Country Road, Suite 505
Garden City, NY 11530

To: **LAW OFFICE OF ANDREA G. SAWYERS**
Attorney for Defendants
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
(631) 501-3133

ATTORNEY'S VERIFICATION

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, stated that I am an associate in the firm of SILBERSTEIN, AWAD & MIKLOS, P.C. the attorneys of record for the plaintiff in the within action; I have read the foregoing

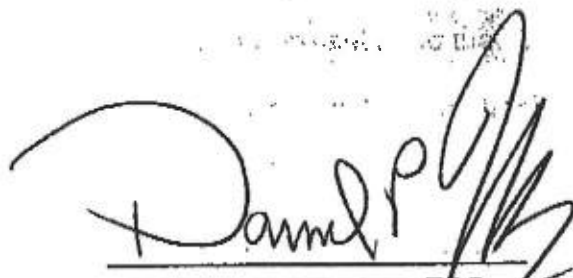
VERIFIED BILL OF PARTICULARS

and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not by plaintiff is that plaintiff resides in a County other than the one in which your affirmant maintains his office. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, memoranda, etc. in office file.

I affirm that the foregoing is true, under the penalties of perjury.

Dated: Garden City, New York
May 23, 2017


DANIEL P. MIKLOS, ESQ.

#7636

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CESAR ZAMBRANO,

Plaintiff,

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants,
_____X

REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
_____X

C O U N S E L O R S :

PLEASE TAKE NOTICE, that within twenty (20) days from the date
hereof, plaintiffs demand that Defendants, REALTY INCOME CORPORATION,
DICK'S
SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC,
serve upon the undersigned a Verified Bill of Particulars with regard to the allegations
contained in the affirmative defenses raised in the Answer of Defendant:

1. As and for Defendant's First Affirmative Defense, set forth a statement to
the following:

Index No.: 700276/17

**PLAINTIFF'S
DEMAND FOR A
VERIFIED BILL OF
PARTICULARS
AS TO AFFIRMATIVE
DEFENSES**

- a. What risks did the plaintiff assume?
- b. State in what manner did the plaintiff assume the risks of the injuries;
- c. State on what basis the defendant is claiming that all the dangers and risks alleged were open, obvious and apparent.

2. As and for Defendant's Second Affirmative Defense, set forth a statement to the following:

- a. Set forth and particularize the dangerous conditions present at the Site at the time of plaintiff's accident;
- b. State the basis for claiming that such dangerous conditions were obvious and apparent;
- c. State the basis for claiming that such dangerous conditions could have been discovered by the exercise of reasonable care;
- d. State the basis for claiming that plaintiff failed to exercise reasonable care.

3. As and for Defendant's Third Affirmative Defense, set forth a statement to the following:

- a. State the basis for claiming that plaintiff has received or will receive compensation for some or all of his economic loss from collateral sources, and why the answering defendant is entitled to have plaintiff's award reduced;

4. As and for Defendant's Fourth Affirmative Defense, set forth a statement to the following:

- a. Set forth the reasons and justification of defendant's reliance on Article

- 16 of the CPLR;
- b. State in detail the specific rights that the defendants will be asserting pursuant to CPLR Sections 1601, 1602, and 1603. In this regard, please state how defendants, if found liable, would be liable for fifty percent (50%) or less of the total liability assigned to all persons liable;
 - c. Identify all potentially liable person(s) and/or entities, and the last known address of each individuals and/or entities, and the last known address of each individual and/or entity;
 - d. Set forth all reasons and rationale that defendant's liability should be limited in this action.
5. As and for Defendant's Fifth Affirmative Defense, set forth a statement to the following:
- a. Set forth the acts and omissions constituting negligence, carelessness or culpable conduct on the part of plaintiff;
 - b. State the date, time and place in which the aforementioned acts or omissions took place;
 - c. State the manner in which the aforementioned items of negligence, careless and culpable conduct caused or contributed to plaintiff's injuries;
 - d. State the injuries attributable to plaintiff's alleged culpable conduct;
 - e. State the damages attributable to plaintiff's alleged culpable conduct;
 - f. State how the plaintiff failed to take all proper, appropriate and reasonable steps to assure his safety.

6. As and for Defendant's Sixth Affirmative Defense, set forth a statement to the following:

- a. Set forth and particularize the manner in which plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in the Verified Complaint.

7. As and for Defendant's Seventh Affirmative Defense, set forth a statement to the following:

- a. Identify all potential liable person(s) and/or entities, and the last known address of each individual and/or entity, whom the defendants claim to have caused or contributed to plaintiff's accident and over whom defendants claim not having authority to control;
- b. State the acts and omissions constituting negligence, carelessness or culpable conduct on the part of such persons;
- c. State the date, time and place in which the aforementioned acts or omissions took place;
- d. State the manner in which the aforementioned items of negligence, careless and culpable conduct caused or contributed to plaintiff's injuries;
- e. State the injuries attributable to such persons' alleged culpable conduct;
- f. State the basis for claiming that the answering defendant did not exercise any supervision and/or control over such persons and/or entities.

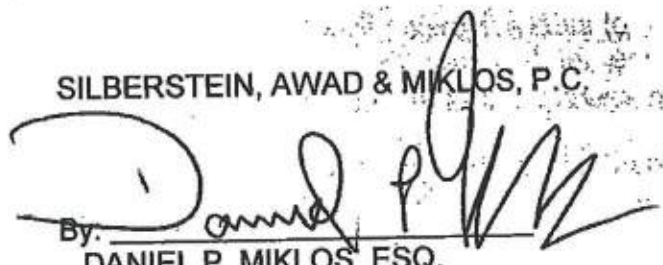
8. As and for Defendant's Eighth Affirmative Defense, set forth a statement to the following:

- a. State the basis for claiming that plaintiff is a "recalcitrant worker";

- b. Set forth and particularize which safety devices the defendant claims should have been used by the plaintiff at the time of his accident;
 - c. State the basis for claiming that plaintiff willfully refused to utilize available safety devices;
 - d. State the basis for claiming that such safety devices were available to plaintiff at the time of his accident.
9. As and for Defendant's Ninth Affirmative Defense, set forth a statement to the following:
- a. State the basis for claiming that plaintiff's own actions are the sole proximate cause of the accident;
 - b. Set forth which actions of the plaintiff are claimed to be the sole proximate cause of the accident.

Dated: Garden City, New York
May 24, 2017

SILBERSTEIN, AWAD & MIKLOS, P.C.



By: DANIEL P. MIKLOS, ESQ.
Attorneys for Plaintiffs
600 Old Country Road, Suite 505
Garden City, New York 11530
(516) 832-7777
Our File No. 7636

TO: LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendants
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
(631) 501-3133

#7636

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 700276/17

-----X
CESAR ZAMBRANO,

Plaintiff,

- against -

**PLAINTIFF'S
COMBINED DEMANDS**

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants,

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
-----X

COUNSELORS:

PLEASE TAKE NOTICE, that the undersigned, SILBERSTEIN, AWAD & MIKLOS,
P.C., attorneys for the plaintiff herein, hereby demand that defendants REALTY INCOME
CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION
COMPANY, LLC, serve upon the undersigned at the address set forth below, the following within
twenty (20) days hereof:

DEMAND FOR WITNESS INFORMATION

1. Set forth the full names and last known addresses of all persons claimed or

2. Identify employer and/or trade that provided the demolition site involved in this accident.

DEMAND FOR ADVERSE PARTY STATEMENTS

3. Statements, abstracts, writings and/or records, audio or video, made by or taken from any party represented by the undersigned, whether in writing or transcribed from oral declarations or tape recordings, etc., signed or unsigned, or the transcript of any electronically recorded statement or the substance, whether recorded by memorandum or otherwise, of any oral statement, now in your possession, custody or control or that of any party you represent in this action.

DEMAND FOR INSURANCE INFORMATION

4. A verified statement, setting forth the existence and complete contents of all applicable agreements under which any person or firm carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in this action or to indemnify or reimburse defendant for payment made to satisfy any judgment herein, including but not limited to the limits of coverage, the name and address of each carrier, policy number(s), the specific amounts of coverage, the named insured(s). If no such insurance coverage is available, so state in a sworn writing.

5. Copy of all insurance policies in effect on the date of the occurrence, including a sworn statement from the defendants as to the existence of excess insurance coverage.

DEMAND FOR ACCIDENT/INCIDENT/OCCURRENCE REPORTS

6. Copies of any written reports concerning the accident which is the subject matter of this lawsuit prepared by or on behalf of the defendant(s) and which were prepared in the regular course of business operations or practices of any person, firm, insurance company, corporation,

believed to have witnessed, or have first-hand knowledge of, any of the following:

- a. The accident or occurrence in question or the events surrounding the accident or occurrence in question;
- b. The existence of a defective condition(s) which was a competent producing cause of this accident. Zayas v. Morales, 45 A.D.2d 610, N.Y.S.2d 279 (2d Dep't 1974);
- c. Any acts or omissions claimed to constitute the negligence of any party to this action;
- d. As to any injuries, damages and/or pain claimed to have been suffered by the plaintiff and observations of the physical condition of the plaintiff;
- e. Any facts or circumstances alleged to have constituted actual or constructive notice to any party of the condition alleged to have caused the claimed injuries and damages;
- f. The name and address of any person claiming actual notice to any party of any condition which allegedly caused the condition complained of;
- g. The making of any statements or admissions made by plaintiff on the issues of negligence, contributory negligence and/or culpable conduct of any party thereto;
- h. Any other facts or information relevant to the within action.

If no such persons are known to defendant(s) or defendant(s)' representatives, so state in reply to this Demand. Plaintiff(s) will object at the time of trial to the testimony of any persons not so identified. Zellman v. Metropolitan Transportation Authority, 40 A.D.2d 248, 339 N.Y.S.2d 255 (2d Dep't 1973).

association or other public or private entity.

7. Copies of any written reports concerning this accident created by plaintiff's employer, TRI STATE DISMANTLING CORP., and provided to the defendant(s) in the regular course of business.

8. Copies of C2/C3 reports concerning this accident.

9. Copies of any and all accident/investigation reports and/or findings concerning this accident prepared by a private Site Safety Company retained by the owner, general contractor, construction manager, project manager, or any other party to this action.

10. Copies of any and all documents prepared or signed by the defendant(s) in connection with any state or federal investigations (including but not limited to OSHA, Department of Labor and/or Department of Buildings) which were conducted following the plaintiff's accident.

11. Copies of any and all reports created by the police, fire department and/or any other emergency response agency(-ies) in connection with this accident.

DEMAND FOR CONTRACTS/AGREEMENTS

12. Copies of all fully executed contracts pertaining to the Construction Project 73-25 Woodhaven Blvd Ridgewood NY, 11385 with general and specific conditions, which were in effect on August 07, 2016 including, but not limited to the following:

- a. Contracts between the Owner and Architect;
- b. Contracts between the Owner and Consulting Engineers;
- c. Contracts between the Owner and General Contractor(s), Construction Manager(s) and/or Project Manager(s);
- d. Contract(s) between the Owner and Prime Contractor(s);
- e. Contracts between the General Contractor/Construction Manager/Project

Manager and all involved subcontractors;

- f. Contracts between plaintiff's employer, TRI STATE DISMANTLING CORP. , and the entity that hired or retained plaintiff's employer for the performance of work at the subject Construction Project.
 - g. Contracts between the Site Safety Company and the entity that hired or retained the Site Safety Company for the subject Construction Project.
13. Copies of all purchase order contracts pertaining to the subject Construction Project.

DEMAND FOR LEASES/CONTRACTS

14. Provide copies of any and all lease agreements entered into by any and all defendants for the premises located at 73-25 Woodhaven Blvd Ridgewood NY, 11385.
15. Provide copies of any and all management agreements/contracts entered into by any and all defendants for the premises located 73-25 Woodhaven Blvd Ridgewood NY, 11385.

DEMAND FOR PHOTOGRAPHS/VIDEOTAPES

16. Any and all photographs or moving pictures in possession of the defendant(s), including surveillance videotapes, films and photographs, and audio tapes, including transcripts and memoranda thereof. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use at trial. This is a continuing demand.
17. Each and every photograph, videotape, film, audiotape, including out-takes, memoranda and/or transcripts thereof, of any of the parties, their agents, servants, employees or others allegedly acting on behalf of parties. There shall be disclosure of all portions of such material, including out-takes, rather than only those portions a party intends to use at trial. This is a continuing demand.

18. Any and all photographs in possession of the defendant(s), insurance representatives or attorneys, taken of the scene of the subject occurrence.
19. Any and all photographs or videotapes taken of the site of the subject occurrence as it existed immediately prior to, during, and/or following the occurrence alleged in the complaint.
20. Any and all photographs or videotapes of the demolition site involved in the subject accident.
21. Any and all photographs or videotapes concerning the equipment and/or materials plaintiff was using at the time of the accident.
22. Any and all photographs or videotapes depicting physical condition of the plaintiff after the subject accident.
23. Any and all progress photographs or videotapes depicting the construction, demolition, renovation and/or repair work in progress at the subject site during the project, including ninety (90) days prior to and ninety (90) days subsequent to, and including, August '07, 2016.

DEMAND FOR EXPERT WITNESS INFORMATION

24. PLEASE TAKE NOTICE, that pursuant to CPLR §3101(d), you are hereby required to produce, within twenty (20) days hereof, the following:

- a. The name of all expert witness(es) each party will call to testify at trial;
- b. The qualifications of each expert in the field he or she will be offered as an expert witness, including educational background and degrees, publications, memberships in professional organizations and societies, certifications and licenses;

- c. The subject matter on which each expert is expected to testify;
- d. The substance of the facts and opinions on which the expert will be called to testify;
- e. The ground forming the basis for the expert's opinion.

**DEMAND FOR DOCUMENTS AND INFORMATION PERTAINING TO THE
CONSTRUCTION SITE**

- 25. Copies of the plans and specifications for the subject construction site which specifically relate to work being performed by the plaintiff at the time of the accident.
- 26. Copies of all permits and permit applications for the work performed by defendant(s) at the subject premises.
- 27. Copies of the submittals relative to the subject worksite.
- 28. Copies of shop drawings relative to the subject worksite.
- 29. Daily and/or weekly Job Reports, Foreman's Reports, Superintendent's Reports, Log Books, Progress Reports, Sign-In Logs/Sheets, Inspection Logs/Sheets, and Manpower Reports maintained for the subject construction site for ninety (90) days prior to, and including, August 07, 2016 the date of the subject accident.
- 30. Names and addresses of all supervisory personnel involved in the subject construction site, including the project superintendent, persons in charge of the site safety, and the construction foreman for August 07, 2016 and ninety (90) days prior thereto.
- 31. Copies of the sign-in sheets pertaining to the subject work site for August 07, 2016.
- 32. Copies of pay records/payroll documents relative to the subject worksite for August 07, 2016.
- 33. The job file maintained by the defendant(s) for the subject construction site August

07, 2016 and ninety (90) days prior thereto.

34. Records of any prior complaints regarding the area or the defects involved in plaintiff's accident at the subject construction site for August 07, 2016 and ninety (90) days prior thereto.

35. The name, address, and employment status of the Local shop steward, as well as copies of his investigation file pertaining to plaintiff's accident.

DEMAND FOR SAFETY INFORMATION

36. Provide any and all project safety manuals in place for the construction site on August 07, 2016.

37. Provide copies of any and all project safety plans in place for the construction site on August 07, 2016.

38. Provide copies of this(these) answering defendant(s) written safety rules in effect at the time of plaintiff's accident of August 07, 2016 and ninety (90) days prior thereto.

39. Provide copies of the defendant(s)' OSHA file for the subject construction site, including but not limited to the following:

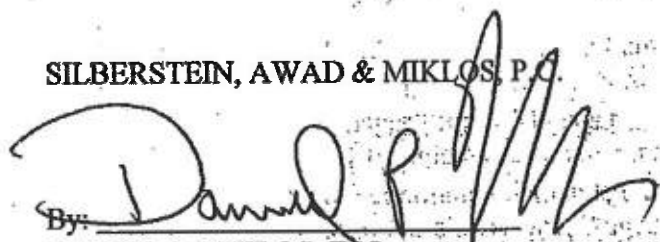
- a. Copies of any and all correspondence between defendant(s) and OSHA pertaining to this construction project;
- b. Copy of the Log of Work-Related Injuries and Illnesses for the year 2016 (OSHA Form 300);
- c. Copy of the OSHA Injury and Illness Incident Report (OSHA Form 301) pertaining to plaintiff's accident of August 07, 2016;
- d. Copies of any and all other reports of this accident sent by defendants to OSHA;

- e. Copies of any and all other documents submitted to OSHA pertaining to the plaintiff's accident;
 - f. Copies of OSHA investigation reports pertaining to plaintiff's accident August 07, 2016.
40. Provide job meeting/safety meeting records in the defendant(s) possession for the subject construction site, as well as names and addresses of all individuals who participated in those meetings.
41. Provide copies of any and all Tool Box Talk minutes, attendance sheets, records, reports and log books, pertaining to the Tool Box Talks maintained by this(these) answering defendant(s) for the subject construction site for ninety (90) days prior to, and including, August 07, 2016.
42. Copies of the minutes of any and all safety committees for for ninety (90) days prior to, and including, August 07, 2016..
43. Daily and/or weekly Site Safety Manager reports, log books and progress reports maintained by this(these) answering defendant(s) for the subject construction site for ninety (90) days prior to, and including, August 07, 2016..
44. Records regarding fall protection safety training, confined space training and any other safety training requirements put in writing by the Site Safety Manager/Project Manager.

PLEASE TAKE FURTHER NOTICE, that the foregoing are continuing demands that if any of the above items are obtained after the date of this demand, they are to be furnished to the undersigned pursuant to this demand. The undersigned will object upon the trial of this matter, to the testimony or introduction of any items sought herein and not provided.

Dated: Garden City, New York
May 24, 2017

SILBERSTEIN, AWAD & MIKLOS, P.C.



By: Daniel P. Miklos
DANIEL P. MIKLOS, ESQ.
Attorneys for Plaintiff
600 Old Country Road, Suite 505
Garden City, New York 11530
(516) 832-7777
Our File No.: #7636

TO: LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendants
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
(631) 501-3133

#7636

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 700276/17

-----X
CESAR ZAMBRANO,

Plaintiff,

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants,

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
-----X

PLEASE TAKE NOTICE that plaintiffs by their attorneys, SILBERSTEIN AWAD & MIKLOS,

PC, hereby responds to the combined discovery demands of defendants upon information and belief as follows:

RESPONSE TO DEMAND FOR WITNESSES INFORMATION

Plaintiff is not in the possession of the name of any person known or claimed to be a witness to this occurrence, event or conversation other than the named defendants, their agents, servants and/or employees. Plaintiff reserves the right to supplement this response upon the completion of discovery.

RESPONSE TO DEMAND FOR EXPERT WITNESS MATERIAL

At the present time, attorneys for plaintiff has not retained or designated a medical expert or experts whom plaintiff has determined will be called as an expert witness at the time of trial. When such experts are retained by the plaintiff for the purposes of providing expert testimony at the time of trial, a timely and adequate response pursuant to CPLR §3101(d) will be provided.

RESPONSE TO DEMAND FOR PARTY STATEMENTS

At the present time, attorneys for plaintiff are not aware of any statements, signed or unsigned, oral or written, made by the defendants, their agents, servants and/or employees, except those statements set forth in the hospital records and medical records concerning the care and treatment of this plaintiff.

Plaintiff reserves the right to supplement this response upon the completion of discovery.

RESPONSE TO DEMAND FOR PHOTOGRAPHS

At the present time, attorneys for the plaintiff are not aware of any photographs of the plaintiff's taken before or after the subject occurrence, nor are attorneys for the plaintiffs aware at the present time of any such photographs/ videotapes to be in the plaintiffs' possession, custody or control.

Plaintiff reserves the right to supplement this response upon the completion of discovery.

RESPONSE TO DEMAND FOR MEDICARE/MEDICAID INFORMATION

Please be advised that plaintiff has never applied for or been a recipient of Medicaid/Medicare benefits.

RESPONSE TO DEMAND FOR TAX RECORDS AND AUTHORIZATIONS

A duly executed authorization to obtain plaintiff's W-2's for the years 2014, 2015 and

2016 are annexed hereto.

Please be advised that tax returns are not discoverable absent a showing of overriding necessity and a showing that the relevant information cannot be obtained from any alternative source. *See, e.g., Midborough Accupuncture v. State Farm Ins. Co.*, 867 N.Y.S.2d 842, 21 Misc.3d 10 (2008); *Kerman v. Martin Friedman P.C.*, 21 A.D.3d 997, 801 N.Y.S.2d 387 (2 Dept. 2005); *Four Aces Jewelry Corp. V. Smith*, 256 A.D.2d 42, 680 N.Y.S.2d 539 (1 Dept. 1998).

RESPONSE TO DEMAND FOR COLLATERAL SOURCE INFORMATION

Annexed hereto are duly executed authorizations to obtain plaintiff's Workers Compensation/collateral source records from the following entities:

1. State of New York Worker's Compensation Board, P.O. Box 5205, Binghamton, NY 13902.

RESPONSE TO DEMAND FOR CONTRACTS AND OTHER DOCUMENTARY DISCOVERY

At the present time, plaintiff is not in possession of any agreements, contracts, purchase orders, proposals, estimates, invoices, work orders, permits, cancelled checks for payments to safety company, tool box talk records, safety meeting minutes, maintenance records, daily logs and/or attendance records pertaining to the construction project where plaintiff's accident of October 07, 2016 occurred.

RESPONSE TO DEMAND FOR LITIGATION FUNDING INFORMATION

Objection. Information about whether plaintiffs obtained litigation funding is not relevant to proof of any of plaintiffs' causes of action or damages. As such, this information is outside the scope of discovery.

**RESPONSE TO DEMAND FOR MEDICAL INFORMATION AND
AUTHORIZATIONS**

Annexed hereto are duly executed HIPAA-compliant authorizations to obtain plaintiff's medical records from the following health care providers:

- a. Sport Medicine & Spine Rehab, P.C., 160 N. Franklin Street Hempstead, NY 11550.
- b. Elmhurst Hospital Center, 79-01 Broadway Elmhurst NY, 11373

Annexed hereto is a CD-rom with presently available medical records from the following medical providers:

- a. Sport Medicine & Spine Rehab, P.C., 160 N. Franklin Street Hempstead, NY 11550.
- b. Elmhurst Hospital Center, 79-01 Broadway Elmhurst NY, 11373.

RESPONSE TO AD DAMNUM DEMAND (PURSUANT TO CPLR 3017(C))

To be provided upon plaintiff's medical treatment, final diagnosis, final prognosis, and evaluation.

Dated: Garden City, New York
May 26, 2017

Yours, etc.,
SILBERSTEIN, AWAD & MIKLOS, P.C.



By: DANIEL P. MIKLOS, ESQ.
Attorneys for Plaintiffs
600 Old Country Road, Suite 505
Garden City, New York 11530
T. (516) 832-7777
F. (516) 832-7877
Our File No.: 7636

TO: LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendants
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
(631) 501-3133

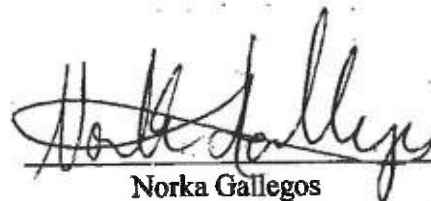
AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss. :
COUNTY OF NASSAU)

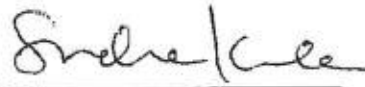
Norka Gallegos , being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in Nassau County, New York. On May 25, 2017, I served the within **DEMAND FOR A VERIFIED BILL OF PARTICULARS AS TO AFFIRMATIVE DEFENSES** by depositing a true copy thereof enclosed in a postpaid wrapper, in an official depository under the exclusive care and custody of United State Postal Service within New York State, for regular delivery addressed to each of the following persons at the last known address set forth after each name:

LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendants
REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC.
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
(631) 501-3133


Norka Gallegos

Sworn to before me on this
26 day of May 2017


NOTARY PUBLIC





OCA Official Form No.: 960

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name CESAR ZAMBRANO	Date of Birth 01/30/1958	Social Security Number
Patient Address 19 KIRKWOOD ROAD, 1st FLOOR, PORT WASHINGTON, NY 11050		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:
Elmhurst Hospital Center 9-01 Broadway Elmhurst NY 11373

8. Name and address of person(s) or category of person to whom this information will be sent:
Law Office of Andrea G. Sawyers 3 Huntington Quadrangle Suite 102 Melville New York 11777

9(a). Specific information to be released:

Medical Record from (insert date) 08/07/16 to (insert date) present

Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: _____

Include: (Indicate by Initialing)

Alcohol/Drug Treatment

Mental Health Information

HIV-Related Information

Authorization to Discuss Health Information

(b) By initialing here _____ I authorize _____

 Initials Name of individual health care provider
 to discuss my health information with my attorney, or a governmental agency, listed here:

 (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: LITIGATION	11. Date or event on which this authorization will expire: ONE YEAR FROM DATE OF SIGNATURE
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Cesar Zambrano
 Signature of patient or representative authorized by law.

Date: 05/25/17

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.



OCA Official Form No.: 960

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name CESAR ZAMBRANO	Date of Birth 01/30/1958	Social Security Number
Patient Address 19 KIRKWOOD ROAD, 1st FLOOR, PORT WASHINGTON, NY 11050		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:
SPORTMEDICINE & SPINE RENOV, P.C 160 N. Franklin Street Hempstead NY

8. Name and address of person(s) or category of person to whom this information will be sent:
law office of Andrea G. Sanjers 3 Huntington Quadrangle Suite 1025 Melville NY 11747

9(a). Specific information to be released:
 Medical Record from (insert date) 08/07/10 to (insert date) present
 Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.
 Other: _____

Include: (Indicate by Initialing)
 Alcohol/Drug Treatment
 Mental Health Information
 HIV-Related Information

Authorization to Discuss Health Information
 (b) By initialing here _____ I authorize _____ Name of individual health care provider
 _____ Initials
 to discuss my health information with my attorney, or a governmental agency, listed here:
 _____ (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information:
 At request of individual
 Other: **LITIGATION**

11. Date or event on which this authorization will expire:
ONE YEAR FROM DATE OF SIGNATURE

12. If not the patient, name of person signing form:

13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Cesar Zambrano
Signature of patient or representative authorized by law.

Date: 08/25/17

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

Form **4506**

Request for Copy of Tax Return

(Rev. September 2013)

OMB No. 1545-0429

Department of the Treasury
Internal Revenue Service

▶ Request may be rejected if the form is incomplete or illegible.

Tip: You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a Tax Return Transcript for many returns free of charge. The transcript provides most of the line entries from the original tax return and usually contains the information that a third party (such as a mortgage company) requires. See Form 4506-T, Request for Transcript of Tax Return, or you can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Return or Account Transcript" or call 1-800-908-9946.

1a Name shown on tax return. If a joint return, enter the name shown first. CEZAR ZAMBRANO	1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions). 050-97-6880
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number or individual taxpayer identification number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)
19 Kierwood Road 1st Floor, Port Washington, NY 11050

4 Previous address shown on the last return filed if different from line 3 (see instructions)

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

LAW OFFICE OF ANDREA G. SAWYERS 3 Huntington Quadrangle Suite 102 Melville NY 11747

6 Tax return requested. Form 1040, 1120, 991, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. **n2 only**

Note: If the copies must be certified for court or administrative proceedings, check here

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than eight years or periods, you must attach another Form 4506.

12/31/14	12/31/15	12/31/16	
-----------------	-----------------	-----------------	--

8 Fee. There is a \$50 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, ITIN, or EIN and "Form 4506 request" on your check or money order.

a Cost for each return	\$ 50.00
b Number of returns requested on line 7	
c Total cost. Multiply line 8a by line 8b	\$

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here

Caution: Do not sign this form unless all applicable lines have been completed.
Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. Note: For tax returns being sent to a third party, this form must be received within 120 days of the signature date.

Sign Here

Signature (see instructions) **X [Signature]** Date **05/30/17**

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature _____ Date _____

Phone number of taxpayer on line 1a or 2a

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

- against -

**NOTICE FOR DISCOVERY
AND INSPECTION TO
3rd PARTY DEFENDANT
TRI-STATE**

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant

-----X

PLEASE TAKE NOTICE, that pursuant to CPLR 3101 et seq. and the applicable case law, second third party defendant, TRI-STATE DISMANTLING CORP., is hereby required to produce for discovery and supply to the undersigned attorneys for REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC., within twenty (20) days from the date of service of this demand, the following information, documents and items requested for the purpose of inspection and/or copying:

PLEASE TAKE FURTHER NOTICE, that submission to the undersigned of true and conformed certified copies of the documents and/or items demanded herein on or before the aforesaid return date will be deemed compliance with this demand notice.

1. Copies of contracts, including all attachments thereto, between TRI-STATE and any other entities for work being performed at the subject site at the time of the alleged accident.
2. Photographs or videotapes concerning the scene of the accident; progress photographs and/or videotapes; photographs/videotapes depicting plaintiff.
3. Adverse party statements including any and all statements in the possession, custody or control of any party you represent in this action and/or on whose behalf the statements were taken, whether such statements were oral, written, or electronically recorded, irrespective of whether or not such statements have been transcribed or reduced to typed or written form.
4. Daily and/or weekly job reports, logs, foreman's reports, superintendent's reports, log books, progress reports, job file, job safety meeting minute minutes including the names and addresses of those participating in such meetings, for a period of sixty (60) days prior to the subject accident.
5. Copies of all accident reports, including but not limited to, writings, inter-office memos, e-mails, text messages regarding the plaintiff's accident made in the regular course of business of defendants and third-party defendants.
6. Names and business address of third-party defendant's employees (if still employed by third-party defendant) and names and last known residence address of third-party defendant's employees (if not still employed by third-party defendant) who were on site on the date of the accident.
7. Names and addresses of persons expected to be called as expert witnesses at the time of the trial of this action including the subject matter on which each

expert is expected to testify; the substance of the facts and opinions upon which each expert is expected to testify; a summary of the grounds for each expert's opinion; the qualifications of each expert witness whom third-party defendants intend to call at the time of trial.

8. A complete, true and accurate copy of the policies of insurance covering each and every primary, contributing, umbrella, and/or excess insurance agreement under which any person or entity carrying on any insurance business may be liable to satisfy or all part of a judgment that may be entered in this action against the defendants/third-party defendants or to indemnify or reimburse for payments made to satisfy the judgment; each and every insurance agreement in which the insurer is obligated to defend this action; any applicable insurance agreements insuring the third-party defendants in this action; the policy limits of any and all agreements, the full name and address of each insurers, the policy limits of such insurance policies and the policy numbers.
9. Names and addresses of the individuals who witnessed plaintiff's accident; individuals who received actual and/or constructive notice of the underlying conditions which constituted a contributing factor to plaintiff's accident; any individual who third-party defendant will call at trial to testify in connection with or pertaining to plaintiff's physical condition, disabilities, injuries, pre-existing conditions, re-injuries and damages; and any witnesses who plaintiff spoke to after the incident regarding the facts surrounding same.

10. Copies of bidding documents pertaining to the work performed by TRI-STATE and the subject site.

PLEASE TAKE FURTHER NOTICE that in the event any of the requested documents and/or items do not exist, a verified statement to that effect is to be served on the undersigned on or before the aforesaid return date.

PLEASE TAKE FURTHER NOTICE, that this is a continuing demand notice and in the event any of the requested documents and/or items are obtained after the aforesaid return date, same are to be furnished to the undersigned within thirty (30) days after receipt.

PLEASE TAKE FURTHER NOTICE, that upon the failure to produce the requested documents and/or items on the date and at the time and place demanded, a Motion will be made for the appropriate relief.

Dated: July 25, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 

DAVID R HOLLAND

Attorneys for Defendants/Third-Party
Plaintiffs

REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.,

Mailing Address:

P.O. Box 2903

Hartford, CT 06104-2903

(631) 501-3100

Matter No.: 2017012061DIR

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

BLACK MARJIEH LEFF & SANFORD LLP
Attorneys for Third-Party Defendant
TRI STATE DISMANTLING CORP.
100 Clearbrook Road, Suite 345
Elmsford, New York 10523
914-704-4400

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

VITTORIA LENZO being duly sworn, says that deponent is not a party to the action; is over the age of 18 years; that on the 25th day of July, 2017 deponent served the within **NOTICE FOR DISCOVERY AND INSPECTION TO 3RD PARTY DEFENDANT TRI-STATE**, upon:

BLACK MARJIEH LEFF & SANFORD LLP
Attorneys for Third-Party Defendant
TRI STATE DISMANTLING CORP.
100 Clearbrook Road, Suite 345
Elmsford, New York 10523
914-704-4400

SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

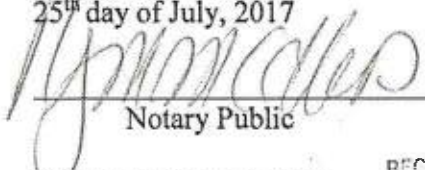
CATALANO GALLARDO & PETROPOULOS, LLP
By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

The address designated for such service, by depositing a true copy in an official depository under the care and custody of the U.S. Postal Service, within the State of New York.




VITTORIA LENZO

Sworn to before me this
25th day of July, 2017



Notary Public

Zambrano v. Woodhaven Retail
Matter No.: 2017012061DRH

REGINA M. COLLINS
Notary Public - State of New York
4875927
Qualified in SUFFOLK County
My Comm. Expires DECEMBER 26, 2018 

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 700276/17

CESAR ZAMBRANO,

Plaintiff,

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC. AND SCHIMENTI CONSTRUCTION
COMPANY, LLC.

Defendants.

.... And a third-party action

**NOTICE FOR DISCOVERY AND INSPECTION TO 3RD PARTY
DEFENDANT TRI-STATE**

Law Office of Andrea G. Sawyers

Attorneys for Defendant

REALTY INCOME CORPORATION

DICK'S SPORTING GOODS, INC. AND SCHIMENTI CONSTRUCTION COMPANY, LLC

Mailing Address:

P.O. Box 2903

Hartford, CT 06104-2903

(631) 501-3100

Facsimile (877) 220-7166 (Not for Service)

Matter No.: 2017012061DRH

Claim No.: A4N8929

TO:

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

NOTICE OF ENTRY:

PLEASE TAKE NOTICE that the within is a true copy of an order entered in office of the Clerk of the above Court on

NOTICE OF SETTLEMENT:

PLEASE TAKE NOTICE that the within proposed order will be presented for settlement and entry at the Courthouse on
at 10:00 a.m. at the office of the Clerk of the Part of this Court where the within described motion was heard.

Dated: Melville, New York

Law Office of Andrea G. Sawyers
Attorneys for Defendant(s)
As Designated Above

DRH

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Plaintiff,

Index No.: 700276/2017

- against -

**RESPONSE TO
COMBINED
DEMANDS**

WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY
INCOME CORPORATION, DICK'S SPORTING GOODS, INC.,
SPORTS AUTHORITY, INC. And SCHIMENTI
CONSTRUCTION COMPANY, LLC

Defendants,

-----X
REALTY INCOME CORPORATION, DICK'S SPORTING
GOODS, INC., and SCHIMENTI CONSTRUCTION
COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant

-----X
Plaintiff, CESAR ZAMBRANO, by his attorneys, SILBERSTEIN, AWAD & MIKLOS,
PC, hereby respectfully respond to the Combined Discovery Demands of the defendants, upon
information and belief as follows:

**RESPONSE TO DEMAND FOR CONTRACTS AND OTHER DOCUMENTARY
DISCOVERY**

At the present time, plaintiff is not in possession of any agreements, contracts, purchase
orders, proposals, estimates, invoices, work orders, permits, cancelled checks for payments to safety
company, tool box talk records, safety meeting minutes, maintenance records, daily logs and/or

attendance records pertaining to the construction project where plaintiff's accident of October 7, 2016 occurred.

RESPONSE TO DEMAND FOR INSURANCE/WORKERS' COMPENSATION STATEMENTS

At the present time, attorneys for plaintiff are not aware of any statements, signed or unsigned, oral or written, made by the defendants, their agents, servants and/or employees, except those statements set forth in the hospital records and medical records concerning the care and treatment of this plaintiff.

RESPONSE TO DEMAND FOR MEDICAL INFORMATION AND AUTHORIZATIONS

Annexed hereto are duly executed HIPAA-compliant authorizations to obtain plaintiff's medical records from the following health care providers:

- A) Elmhurst Hospital: 79-01 Broadway, Elmhurst, NY 11373
- B) Sports Medicine & Spine Rehab: 160 N. Franklin Street, Hempstead, NY 11550

RESPONSE TO DEMAND FOR WITNESSES INFORMATION

A search for witnesses is ongoing, and upon discovery, responses will be supplemented to reflect same.

RESPONSE TO DEMAND FOR EMPLOYMENT RECORDS AUTHORIZATIONS

Duly executed authorizations permitting attorneys of all defendants to obtain plaintiff's employment records for October 7, 2016 to current, including attendance, W-2 and pay records, from Tri-State Dismantling Corporation, plaintiff's employer at the time of the accident, is annexed hereto.

RESPONSE TO DEMAND FOR EXPERT WITNESS MATERIAL

At the present time, attorneys for plaintiff has not retained or designated a medical expert or experts whom plaintiff has determined will be called as an expert witness at the time of trial.

When such experts are retained by the plaintiff for the purposes of providing expert testimony at the time of trial, a timely and adequate response pursuant to CPLR §3101(d) will be provided.

RESPONSE TO DEMAND FOR COLLATERAL SOURCE INFORMATION

Annexed hereto are duly executed authorizations to obtain plaintiff's Workers Compensation/collateral source records from the following entities:

1. State of New York Worker's Compensation Board, P.O. Box 5205, Binghamton, NY 13902. WCB# G1726342. Carrier Case No: 005616001304WC01

RESPONSE TO DEMAND FOR MEDICARE/MEDICAID INFORMATION

Please be advised that plaintiff has never applied for or been a recipient of Medicaid/Medicare benefits.

RESPONSE TO DEMAND FOR SOCIAL SECURITY DISABILITY INFORMATION

Please be advised that plaintiff has never applied for or been a recipient of Social Security Disability benefits.

RESPONSE TO DEMAND FOR TAX RECORDS AND AUTHORIZATIONS

A duly executed authorization to obtain plaintiff's W-2's for the years 2007, 2008 and 2009 are annexed hereto.

Please be advised that tax returns are not discoverable absent a showing of overriding necessity and a showing that the relevant information cannot be obtained from any alternative source. *See, e.g., Midborough Accupuncture v. State Farm Ins.Co.*, 867 N.Y.S.2d 842, 21 Misc.3d 10 (2008); *Kerman v. Martin Friedman P.C.*, 21 A.D.3d 997, 801 N.Y.S.2d 387 (2 Dept. 2005); *Four Aces Jewelry Corp. V. Smith*, 256 A.D.2d 42, 680 N.Y.S.2d 539 (1 Dept. 1998).

RESPONSE TO DEMAND FOR DISCLOSURE OF PLAINTIFF'S IMMIGRANT STATUS

Objection. The demand is irrelevant and outside the scope of discovery. Plaintiff's immigration status has no bearing on plaintiff's right to recover lost wages in personal injury actions absent proof that plaintiff tendered false work authorization documents to obtain employment. See Balbuena v. IDR Realty LLC, 6 N.Y.3d 338, 845 N.E.2d 1246, 812 N.Y.S.2d 416 (2006).

RESPONSE TO DEMAND FOR DOCUMENTS AUTHORIZING EMPLOYMENT

Objection. The demand is irrelevant to the instant litigation and outside the scope of discovery. Without waiving such objection, please be advised that plaintiff is currently not in possession of any employment authorizing documents.

RESPONSE TO DEMAND FOR ELECTRONICALLY STORED INFORMATION

Objection. Demand for disclosure of the entire contents of social media internet accounts maintained by plaintiff is overbroad, vague, without foundation and palpably improper in a personal injury action where it is made without factual predicate with respect to relevancy of the evidence.

RESPONSE TO DEMAND FOR SOCIAL MEDIA INFORMATION AND AUTHORIZATIONS

Objection. Demand for disclosure of the entire contents of social media internet accounts maintained by plaintiff is overbroad, vague, without foundation and palpably improper in a personal injury action where it is made without factual predicate with respect to relevancy of the evidence. See Kregg v. Maldonado, 98 A.D.3d 1289, 951 N.Y.S.2d 301 (4th Dep't 2012). Discovery of social media account must show that "at least some" of the discovery sought will contain relevant evidence. Richards v. Hertz Corp., 100 A.D.3d 728, 953 N.Y.S.2d 654 (2d Dep't 2012).

RESPONSE TO DEMAND FOR DISCLOSURE OF PLAINTIFF'S IMMIGRANT STATUS

Objection. The demand is irrelevant and outside the scope of discovery. Plaintiff's

immigration status has no bearing on plaintiff's right to recover lost wages in personal injury actions absent proof that plaintiff tendered false work authorization documents to obtain employment. See Balbuena v. IDR Realty LLC, 6 N.Y.3d 338, 845 N.E.2d 1246, 812 N.Y.S.2d 416 (2006).

Dated: Garden City, New York
August 14, 2017

Yours, Etc.

SILBERSTEIN, AWAD & MIKLOS, P.C.

BY: 

DANIEL MIKLOS, ESQ.
Attorneys for Plaintiffs
600 Old Country Road
Garden City, NY 11530
(516)832-7777

To:
BLACK MARJIEH LEFF & SANFORD, LLP
Attorneys for Third-Party Defendant
TRI STATE DISMANTLING CORP.
100 Clearbrook Road, Suite 345
Elmsford, New York 10523
914.704.4400

LAW OFFICE OF ANDREA G. SAWYERS
Attorney for Defendants
**REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.**
3 Huntington Quadrangle, Suite 102S
Melville, New York 11747
631.501.3133

CATALANO GALLARDO & PETROPOULOS, LLP
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753



OCA Official Form No.: 960
AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA
 [This form has been approved by the New York State Department of Health]

Patient Name CESAR ZAMBRANO	Date of Birth 1/30/1958	Social Security Number
Patient Address 19 Kirkwood Road, 1st Floor, Port Washington, NY 11050		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:
Elmhurst Hospital: 79-01 Broadway Elmhurst, NY 11373

8. Name and address of person(s) or category of person to whom this information will be sent:
Law Office of Andrea Sampedro 3 Huntington Blvd Ste 1025 Melville, NY 11747

9(a). Specific information to be released:

Medical Record from (insert date) 10/7/16 to (insert date) Present

Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: _____

Include: (Indicate by Initialing)

_____ Alcohol/Drug Treatment

_____ Mental Health Information

_____ HIV-Related Information

Authorization to Discuss Health Information

(b) By initialing here _____ I authorize _____

Initials Name of individual health care provider

to discuss my health information with my attorney, or a governmental agency, listed here:

 (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Legal	11. Date or event on which this authorization will expire: At conclusion of litigation
12. If not the patient, name of person signing form: Laura Graziano/Silberstein, Awad & Miklos Rep	13. Authority to sign on behalf of patient: POWER OF ATTORNEY

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Laura Graziano Date: 8/7/17
 Signature of patient or representative authorized by law.

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.



OCA Official Form No.: 960

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name CESAR ZAMBRANO	Date of Birth 1/30/1958	Social Security Number
Patient Address 19 Kirkwood Road, 1st Floor, Port Washington, NY 11050		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:

Sports Medicine + Spine Rehab 160 N. Franklin St. Hempstead, ny 11550

8. Name and address of person(s) or category of person to whom this information will be sent:

Law Office of Andrea Sawyer 3 Huntington Quad Ste 1025 Melville, ny 11747

9(a). Specific information to be released:

 Medical Record from (insert date) 10/7/16 to (insert date) Present
 Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

 Other: _____

Include: (Indicate by Initialing)

_____ Alcohol/Drug Treatment

_____ Mental Health Information

_____ HIV-Related Information

Authorization to Discuss Health Information

(b) By initialing here _____ I authorize _____

Initials

Name of individual health care provider

to discuss my health information with my attorney, or a governmental agency, listed here:

(Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information:

 At request of individual

 Other: **Legal**

11. Date or event on which this authorization will expire:

At conclusion of litigation

12. If not the patient, name of person signing form:

Laura Graziano/Silberstein, Awad & Miklos Rep

13. Authority to sign on behalf of patient:

POWER OF ATTORNEY

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Laura Graziano
Signature of patient or representative authorized by law.

Date: 8/7/17

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.



OCA Official Form No.: 960

AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name CESAR ZAMBRANO	Date of Birth 1/30/1958	Social Security Number
Patient Address 19 Kirkwood Road, 1st Floor, Port Washington, NY 11050		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:
Tri-State Dismantling Corp: 207 Duport St. Brooklyn, ny 11222

8. Name and address of person(s) or category of person to whom this information will be sent:
law office of doreen sawyer, 3 Huntington Quad, Ste 1025, Melville, ny 11747

9(a). Specific information to be released:

Medical Record from (insert date) _____ to (insert date) _____

Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: full + complete employment records Include: (Indicate by Initialing)

_____ Alcohol/Drug Treatment

_____ Mental Health Information

_____ HIV-Related Information

Authorization to Discuss Health Information

(b) By initialing here _____ I authorize _____ Name of individual health care provider

Initials Name of individual health care provider

to discuss my health information with my attorney, or a governmental agency, listed here:

(Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Legal	11. Date or event on which this authorization will expire: At conclusion of litigation
12. If not the patient, name of person signing form: Laura Graziano/Silberstein, Awad & Miklos Rep	13. Authority to sign on behalf of patient: POWER OF ATTORNEY

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Laura Graziano Date: 8/7/17

Signature of patient or representative authorized by law.

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.



Workers' Compensation Board

PO Box 5205, Binghamton, NY 13902-5205

State of New York WORKERS' COMPENSATION BOARD

CLAIMANT'S AUTHORIZATION TO DISCLOSE WORKERS' COMPENSATION RECORDS (Pursuant to Workers' Compensation Law Section 110-a)

PLEASE COMPLETE ALL ITEMS. AN INCOMPLETE FORM WILL DELAY THE PROCESSING OF YOUR REQUEST.

Form with fields for Claimant's Name (Cesar Zambrano), Social Security No. (XXX-XX-6880), Case Number (G1726342), and checkboxes for WCB, DB, and Discrimination. Includes a prohibition statement for prospective employers.

INSTRUCTIONS: Submit original to the Workers' Compensation Board and retain a copy for your records. THIS AUTHORIZATION DOES NOT PERMIT YOU TO OPEN AN INDIVIDUAL eCASE ACCOUNT OR TO VIEW CASES VIA eCASE OUTSIDE OF A BOARD LOCATION.

Pursuant to Section 110-a of the Workers' Compensation Law, I, Cesar Zambrano, Claimant's Name

represent that I am a person who is/was the subject of the Workers' Compensation case(s) indicated above, and I authorize the Workers' Compensation Board to discuss the above-referenced Workers' Compensation

Board records with and/or release a copy of the above-referenced records to Law Office of Andrea Sawyer, at 3 Huntington Quadrangle Ste 1025 Melville, NY 11747

I understand that the requesting party may be required to pay a statutory fee prior to being provided copies of these records by the Workers' Compensation Board.

Cesar Zambrano (Signature) 8/7/17 (Date)

Failure to provide the information requested on this form will not result in the denial of your authorization, but may delay the processing of your request.

#7636
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,
Plaintiff,

Index No.: 700276/17

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.

**PLAINTIFF'S
DEMAND FOR A
VERIFIED BILL OF
PARTICULARS
AS TO AFFIRMATIVE
DEFENSES**

Defendants,

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant

-----X
C O U N S E L O R S :

PLEASE TAKE NOTICE, that within twenty (20) days from the date hereof, plaintiffs demand that Defendants, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC, serve upon the undersigned a Verified Bill of Particulars with regard to the allegations contained in the affirmative defenses raised in the Answer of Defendant:

1. As and for Defendant's First Affirmative Defense, set forth a statement to the following:

- a. What risks did the plaintiff assume?
- b. State in what manner did the plaintiff assume the risks of the injuries;
- c. State on what basis the defendant is claiming that all the dangers and risks alleged were open, obvious and apparent.

2. As and for Defendant's Second Affirmative Defense, set forth a statement to the following:

- a. Set forth and particularize the dangerous conditions present at the Site at the time of plaintiff's accident;
- b. State the basis for claiming that such dangerous conditions were obvious and apparent;
- c. State the basis for claiming that such dangerous conditions could have been discovered by the exercise of reasonable care;
- d. State the basis for claiming that plaintiff failed to exercise reasonable care.

3. As and for Defendant's Third Affirmative Defense, set forth a statement to the following:

- a. State the basis for claiming that plaintiff has received or will receive compensation for some or all of his economic loss from collateral sources, and why the answering defendant is entitled to have plaintiff's award reduced;

4. As and for Defendant's Fourth Affirmative Defense, set forth a statement to the following:

- a. Set forth the reasons and justification of defendant's reliance on Article

- 16 of the CPLR;
- b. State in detail the specific rights that the defendants will be asserting pursuant to CPLR Sections 1601, 1602, and 1603. In this regard, please state how defendants, if found liable, would be liable for fifty percent (50%) or less of the total liability assigned to all persons liable;
 - c. Identify all potentially liable person(s) and/or entities, and the last known address of each individuals and/or entities, and the last known address of each individual and/or entity;
 - d. Set forth all reasons and rationale that defendant's liability should be limited in this action.
5. As and for Defendant's Fifth Affirmative Defense, set forth a statement to the following:
- a. Set forth the acts and omissions constituting negligence, carelessness or culpable conduct on the part of plaintiff;
 - b. State the date, time and place in which the aforementioned acts or omissions took place;
 - c. State the manner in which the aforementioned items of negligence, careless and culpable conduct caused or contributed to plaintiff's injuries;
 - d. State the injuries attributable to plaintiff's alleged culpable conduct;
 - e. State the damages attributable to plaintiff's alleged culpable conduct;
 - f. State how the plaintiff failed to take all proper, appropriate and reasonable steps to assure his safety.

6. As and for Defendant's Sixth Affirmative Defense, set forth a statement to the following:
- a. Set forth and particularize the manner in which plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in the Verified Complaint.
7. As and for Defendant's Seventh Affirmative Defense, set forth a statement to the following:
- a. Identify all potential liable person(s) and/or entities, and the last known address of each individual and/or entity, whom the defendants claim to have caused or contributed to plaintiff's accident and over whom defendants claim not having authority to control;
 - b. State the acts and omissions constituting negligence, carelessness or culpable conduct on the part of such persons;
 - c. State the date, time and place in which the aforementioned acts or omissions took place;
 - d. State the manner in which the aforementioned items of negligence, careless and culpable conduct caused or contributed to plaintiff's injuries;
 - e. State the injuries attributable to such persons' alleged culpable conduct;
 - f. State the basis for claiming that the answering defendant did not exercise any supervision and/or control over such persons and/or entities.
8. As and for Defendant's Eighth Affirmative Defense, set forth a statement to the following:
- a. State the basis for claiming that plaintiff is a "recalcitrant worker";

- b. Set forth and particularize which safety devices the defendant claims should have been used by the plaintiff at the time of his accident;
 - c. State the basis for claiming that plaintiff willfully refused to utilize available safety devices;
 - d. State the basis for claiming that such safety devices were available to plaintiff at the time of his accident.
9. As and for Defendant's Ninth Affirmative Defense, set forth a statement

to the following:

- a. State the basis for claiming that plaintiff's own actions are the sole proximate cause of the accident;
- b. Set forth which actions of the plaintiff are claimed to be the sole proximate cause of the accident.

Dated: Garden City, New York
August 14, 2017

SILBERSTEIN, AWAD & MIKLOS P.C.

By: 

DANIEL P. MIKLOS, ESQ.

Attorneys for Plaintiffs

600 Old Country Road, Suite 505

Garden City, New York 11530

(516) 832-7777

Our File No. 7636

TO:

BLACK MARJIEH LEFF & SANFORD, LLP

Attorneys for Third-Party Defendant

TRI STATE DISMANTLING CORP.

100 Clearbrook Road, Suite 345

Elmsford, New York 10523

914.704.4400

LAW OFFICE OF ANDREA G. SAWYERS

Attorney for Defendants

REALTY INCOME CORPORATION, DICK'S

SPORTING GOODS, INC., and SCHIMENTI

CONSTRUCTION COMPANY, LLC.

3 Huntington Quadrangle, Suite 102S

Melville, New York 11747

631.501.3133

CATALANO GALLARDO & PETROPOULOS, LLP

Attorneys for Defendant

WOODHAVEN RETAIL ASSOCIATES, LLC

100 Jericho Quadrangle, Suite 326

Jericho, New York 11753

#7636
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index: 700276/17

Plaintiff,

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC.

VERIFIED
BILL OF PARTICULARS

Defendants,

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
-----X

Plaintiff by his attorneys, SILBERSTEIN, AWAD & MIKLOS, P.C., as and for
their Verified Bill of Particulars, in response to the demand of third-party defendant,
TRI-STATE DISMANTLING CORP., upon information and belief alleges as follows:

1. Plaintiff's full name is CESAR ZAMBRANO, and his date of birth is January 30, 1958.

Plaintiff is not required to disclose his social security number pursuant to General Business Law
399-dd(6);

2. The subject accident occurred on October 7, 2016;
3. The subject accident occurred at approximately 9:00 AM;
4. The accident occurred at Sports Authority, located at 73-25 Woodhaven Blvd., Ridgewood, New York 11385;
5. Further information pertaining to a more specific location of said accident will be provided at plaintiff's deposition;
6. Plaintiff was performing demolition at said job site when he was struck by debris that fell from above.
7. Said occurrence was not occasioned by a slippery or unstable surface
8. It is claimed that debris in the area of the said occurrence cause and/or contributed to the happening of the alleged occurrence, The debris that was being discarded fell from an elevated height and struck the plaintiff.

9. See Paragraph 10

10. Objection. A statement of each and every act and omission by defendants is an unduly burdensome and patently improper demand for a bill of particulars, as CPLR § 3043 authorizes defendants to require only a "[g]eneral statement of the acts or omissions constituting the negligence claimed."

Without waiving such objection Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a

reasonably safe, proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the debris once the garbage truck where full; in failing to properly supervise the workers during the debris disposal; in failing to provide a safety equipment for employees; in failing to have another worker or employee secure the area of work, the area of traffic, the area where the garbage trucks where being fill up with debris ; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the debris was secure; in having actual notice and constructive notice of the lose debris; in failing to provide a safe place to work; in failing to take additional precautions to make sure all planks were properly secure; in allowing and creating a trap like condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition; in negligently instructing the workers to use improper and inadequate safety equipment; in failing to use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances.

That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing to warn of the debris; in creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless, careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site threat; in violating the New York State Labor Law §200(1) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless, reckless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a reasonably safe,

proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the debris once garbage truck was full; in failing to properly supervise the workers that were disposing of the debris; in failing to provide a safety equipment for employees working on the ground; in failing to have another worker or employee secure the area of work, the area of traffic, the area of ascending and descending from the garbage truck; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the debris was secure; in having actual notice and constructive notice of the loose debris; in failing to provide a safe place to work; in failing to take additional precautions to make sure all planks were properly secure; in allowing and creating a trap like condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition; in negligently instructing the workers to use improper and inadequate safety equipment; in failing to use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances. That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises

to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing to warn of the debris; in exposing plaintiff to an unreasonable risk of harmful injury; in creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless, careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site threat; in violating Sections of the New York State Labor Law (for example, §240) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

Defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless, reckless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and hazard; in failing to maintain the premises and the work site in a reasonably safe,

proper and suitable condition; in failing to provide safety equipment; in failing to provide a safe and proper area to work in the construction site; in failing to properly secure the plank before lifting said plank; in failing to properly supervise the workers while disposing of the debris; in failing to provide a safety equipment for employees working on the ground; in failing to have another worker or employee secure the area of work, the area of traffic, the area of ascending and descending from the debris; in failing to take measures to prevent the happening of the within accident; in failing to provide a safe work area to the plaintiff while working within the construction site; in instructing the plaintiff to work without proper safety equipment; in failing to have a clean work site; in failing to provide additional workers to make sure the plank was secure; in having actual notice and constructive notice of the lose plank; in failing to provide a safe place to work; in failing to take additional precautions to make sure all debris was properly secure; in allowing and creating a trap like condition to exist; in failing to provide area of work in a safe and proper condition; in failing to provide a safe place to work; in creating a dangerous and defective condition; in negligently instructing the workers to use improper and inadequate safety equipment; in failing to use safety equipment; in failing to conduct proper and reasonable inspection of the premises and work site; in failing to properly and/or timely remove, minimize and/or warn of the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances. That the defendants, their agents, servants and/or employees were negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition; thereby constituting a nuisance, danger, menace and

hazard; in knowingly and for a long and unreasonable length of time, failing to see that said premises was maintained in a safe, proper and suitable condition; in failing and neglecting to remedy the aforesaid dangerous condition; in failing to provide a safe place to work; and in otherwise being careless, reckless and negligent under the circumstances; in failing and neglecting to maintain the aforesaid area in a safe and proper condition, free from any and all defects, hazards, foreign objects, etc., and to provide safe passage for those persons lawfully using said construction site; in failing to properly secure the objects; in failing to warn of the loose debris; in failing to prevent the happening of the accident; in failing to foresee the happening of the accident which was foreseeable; in exposing plaintiff to an unreasonable risk of harmful injury; in creating a menace, nuisance and trap thereat; in failing to give any notice or warning to persons lawfully and legally working at said construction site of the dangerous and hazardous conditions existing thereat; in failing to remedy said dangerous and hazardous conditions existing thereat; its agents, servants and/or employees, were otherwise careless and negligent in failing and omitting to take proper and suitable precautions for plaintiff's safety, and in being otherwise reckless, careless and negligent under the circumstances in the ownership, operation, maintenance, management and control of the construction site thereat; in violating Sections of the New York State Labor Law; 241(6) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

11. Plaintiff claims the work sites removal of debris was an unsafe condition.

12. Plaintiff claims the defendants created the unsafe and dangerous conditions.

13. Without waving said objection, it is claimed that defendants, and each of them, had actual notice of the afore-described dangerous, defective and hazardous condition. The person to whom such notice was given, from whom such notice was given, whether such notice was written or oral, and the date, time and place that defendants through their agents, servant and licensees and/or employees received such notice, is information which is exclusively and particularly within the knowledge and control of the defendants herein, and as such, plaintiff specifically reserves the right to discover same and supplement this response upon the completion of discovery.

14. Plaintiff claims constructive notice is not necessary because defendant, its employees, and/or agents created the defective and dangerous condition. Without waving said objection, it shall be claimed that defendants, and each of them, had constructive notice of the afore-described dangerous, defective and hazardous conditions in so far as they existed for a sufficient length of time such that in the exercise of reasonable care and due diligence, defendants, through their agents, servants, licensees and/or employees, knew or should have known of its continued presence for such a length of time so as to remedy those dangerous, defective and hazardous conditions prior to the occurrence herein. The precise length of time that such dangerous, defective and hazardous conditions prevail, the identities of those persons or personnel of the defendants, their agents, servants, licensees and employees, who knew or should have known of its presence, is information which is exclusively and particularly within the knowledge and control of the defendants herein and as such, plaintiffs specifically reserve the right to supplement this response upon completion of discovery.

15. See paragraph 10

16. That by reason of the foregoing, plaintiff, CESAR ZAMBRANO, was caused to sustain and suffer the following injuries, exacerbations and aggravations:

CERVICAL SPINE:

- SPASMS THROUGHOUT PALPATION OF MID TO LOW CERVICAL SPINE.
- CERVICAL SPINE DERANGEMENT.

LUMBAR SPINE:

- SPASMS ALONG MID TO LOW LUMBAR SPINE.
- LUMBOSACRAL SPINE DERANGEMENT.

HEAD INJURY:

- CONCUSSION
- FACIAL CONTUSION.
- LACERATION IN FACE.

INJURY TO BOTH ARMS:

- WEAKNESS IN LEFT SHOULDER ABDUCTION.
- LEFT SHOULDER DERANGEMENT.

HERNIA:

- UMBILICAL HERNIA REPAIR SURGERY ON OCTOBER 21, 2016.

OTHER:

- RADIATING PAIN INTO BOTH UPPER EXTREMITIES
- RADIATING PAIN INTO BOTH LOWER EXTREMITIES
- POSSIBLE NEED FOR INJECTIONS
- DIFFICULTY WALKING
- DIFFICULTY SITTING FOR PROLONGED PERIODS OF TIME

- DIFFICULTY BENDING
- DIFFICULTY STANDING FOR PROLONGED PERIODS OF TIME
- INABILITY TO LIFT WEIGHT
- INABILITY TO RETURN TO WORK
- NEED FOR FUTURE SURGERY
- NEED FOR PHYSICAL THERAPY
- NEED FOR PAIN MEDICATION
- NEED FOR ANTI-INFLAMMATORIES
- DIFFICULTY IN PERFORMING HIS DAILY ROUTINES AND ACTIVITIES
- DIFFICULTY CARRYING, LIFTING AND HOLDING
- CONSCIOUS PAIN AND SUFFERING

All of the aforementioned injuries, resulting disabilities, aggravations, exacerbations and involvements are associated with future soft tissue injuries to the areas traumatically affected, including: fracture, tearing, derangement and damage to the associated muscle groups, ligaments, tendons, cartilage, blood vessels, tissue, epithelial tissue, all concomitant to the specific injuries and related to the specific portions of the body mentioned herein above, with resultant scars, hemorrhage, pain, ecchymosis, deformity, disability, stiffness, tenderness, weakness and partial restriction and limitation of motion, pain on motion and loss of use of the abovementioned parts; atrophy, anxiety and mental anguish, all of which have subsequently prevented the plaintiff from enjoying the normal fruits of her activities.

Plaintiff suffered, still suffers, and upon information and belief will continue to suffer pain, discomfort and limited movement of the injured portions of his body, including the adjacent and

surrounding muscles, tendons, nerves, joints, fascia, vessels and soft tissues. It is claimed that the arthritis will develop as a result of this injury is also a permanent consequence of these injuries. The plaintiff reserves the right to prove any and all further consequences and any and all further medical expenses up to and at the time of trial.

17. Loss of earnings:

a) Plaintiff's employer at the time of the accident was Tri State Dismantling Corp located at 207 Duport Street, Brooklyn, NY 11222.

b) October 7, 2016 to present

c) Plaintiff at the time of the accident was making \$1440.00 weekly

d) none

e) Plaintiff has not returned to work since October 7, 2016

18. As a result of this accident, Plaintiff was confined to a Elmhurst hospital, located at 79-01 Broadway, Elmhurst, NY 11373, for 3 days.

19. As a result of this accident, plaintiff was confined to bed for approximately four (4) weeks following the accident. Upon information and belief, plaintiff has been confined to home since the date of the accident up until and including the present time, except for those days when plaintiff receives treatment from medical providers.

20. Plaintiff alleges the following future special damages:

- (a) Hospitality..... Approximately \$500,000
- (b) Physician Services..... Approximately \$5000,000
- (c) Nurses..... Approximately \$250,000
- (d) Medicines..... Approximately \$250,000
- (e) Med supplies..... Approximately \$350,000

(f) Medical testing.....Approximately \$250,000

21. Plaintiff's residence at the time of the alleged occurrence was 19 Kirkwood Avenue, Apt 1, Floor, Port Washington, NY 11050;

22. Objection. All questions of law, regarding any rule, regulation, statute or ordinance shall be respectfully referred to the Trial Court for determination thereby. However, the plaintiff will claim that the defendants violated, *inter alia*, violations of the labor law in the State of New York including but not limited §200, 240 and 241(6) and the rules and regulations promulgated there under including but not necessarily limited to 23-1.5 (c)(2), 23-1.5(c)(3), 23-1.7(a)(1), 23-1.7(a)(2), 23-1.7(e)(2), 23-1.7(f), 23-2.1(a)(1), 23-2.1(a)(1), 23-2.1(b), 23-3.3(c), 23-3.3(e)(1), 23-3.3(e)(2), 23-3.3(f)(3), Plaintiff will also claim that the defendants, including their agents, servants and/or employees, violated OSHA Construction Industry Standards, including 29 CFR 1910.22, 1910.23, 1910.30, 1926.21; 1926.301; 1926.302; 1926.305; 1926.851; 1926.1000 and 1926.1053. Plaintiff reserves the right to supplement this response upon completion of discovery;

23. Plaintiff is not in possession of any statements made by or on behalf of the defendants, or its employees, agents and/or servants in writing with respect to the occurrence;

24. Not applicable;

25. Not applicable;

26. Not applicable;

27. Not applicable;

28. See negligence paragraph;

29. Not applicable;

30. See paragraph 14;

31. Plaintiff's occupation was a demolition worker. He was working for Tri State Dismantling Corp. Located at 207 Duport Street, Brooklyn, NY 11222, at the time of accident;

32. Plaintiff was not a student at the time of the alleged occurrence;

33. Not applicable; plaintiff was not a student;

34. See paragraphs "16" and "17"

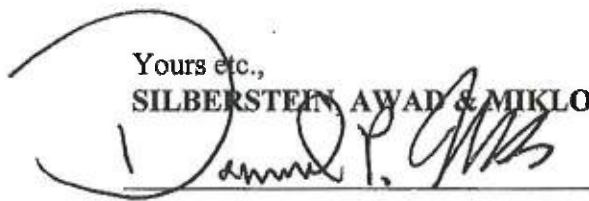
35. Plaintiff does not receive benefits from either Medicare or Medicaid;

36. Information beyond what has previously been provided in this bill of particulars is to be given at plaintiff's deposition.

Dated: Garden City, New York
August 28, 2017

Yours etc.,

SILBERSTEIN, AWAD & MIKLOS, P.C.


Daniel P. Miklos, Esq.
Attorneys for Plaintiff
600 Old Country Road, Suite 505
Garden City, NY 11530

To:

BLACK MARJIEH LEFF & SANFORD, LLP

Attorneys for Third-Party Defendant

TRI STATE DISMANTLING CORP.

100 Clearbrook Road, Suite 345

Elmsford, New York 10523

914.704.4400

LAW OFFICE OF ANDREA G. SAWYERS

Attorney for Defendants

REALTY INCOME CORPORATION, DICK'S

SPORTING GOODS, INC., and SCHIMENTI

CONSTRUCTION COMPANY, LLC.

3 Huntington Quadrangle, Suite 102S

Melville, New York 11747

631.501.3133

CATALANO GALLARDO & PETROPOULOS, LLP
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753

ATTORNEY'S VERIFICATION

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, stated that I am an associate in the firm of SILBERSTEIN, AWAD & MIKLOS, P.C. the attorneys of record for the plaintiff in the within action; I have read the foregoing

VERIFIED BILL OF PARTICULARS

and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not by plaintiff is that plaintiff resides in a County other than the one in which your affirmant maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, memoranda, etc. in office file.

I affirm that the foregoing is true, under the penalties of perjury.

Dated: Garden City, New York
August 28, 2017

A handwritten signature in black ink, appearing to read "Daniel P. Miklos". The signature is stylized and written over a horizontal line.

DANIEL P. MIKLOS, ESQ.

#7636
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CESAR ZAMBRANO,

Plaintiffs,

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION,
DICK'S SPORTING GOODS, INC.,
SPORT AUTHORITY, INC., and
SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants.
_____X

Index#: 700276/17
Index Purchased: 1/9/17

SUMMONS

Basis of Venue
Defendant's Place of
Business.
Defendant's Conducted
Business at:
73-25 Woodhaven Blvd,
Ridgewood NY, 11385

To the Above Named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified complaint in this action and to serve a copy of your Answer, or, if the Verified Complaint is not served with this Summons, to serve notice of appearance on the plaintiffs' attorneys within twenty [20] days after the service of this Summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: Garden City, New York
January 03, 2017



SILBERSTEIN, AWAD & MIKLOS, P.C.

By: [Signature]
DANIEL P. MIKLOS
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

DEFENDANTS' ADDRESSES:

WOODHAVEN RETAIL ASSOCIATES, LLC
(Via Secretary of State)

REALTY INCOME CORPORATION
(Via Secretary of State)

DICK'S SPORTING GOODS, INC.
(Via Secretary of State)

SPORTS AUTHORITY, INC.
(Via Secretary of State)

SCHIMENTI CONSTRUCTION COMPANY
(Via Secretary of State)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index #: 700276/17

CESAR ZAMBRANO,

Plaintiffs,

VERIFIED COMPLAINT

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION,
DICK'S SPORTING GOODS, INC.,
SPORT AUTHORITY, INC., and
SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants.

Plaintiffs, by and through his attorneys, SILBERSTEIN, AWAD & MIKLOS, P.C.,
complaining of the defendants herein, alleges, upon information and belief; as follows:

JURISDICTIONAL ALLEGATIONS

1. That at all times hereinafter mentioned, plaintiff was and still is a resident of the County of Queens of the State of New York.
2. That at all times herein mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC was and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. That at all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, was and still is a foreign business corporation duly authorized to do business in the State of New York.
4. That at all times herein mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC, maintained a principal place of business in the State of New York.
5. That at all times herein mentioned, defendant, REALTY INCOME

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CORPORATION, was and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. That at all times herein mentioned, defendant, REALTY INCOME CORPORATION, was and still is a foreign business corporation duly authorized to do business in the State of New York.

7. That at all times herein mentioned, defendant, REALTY INCOME CORPORATION, maintained a principal place of business in the State of New York.

8. That at all times herein mentioned, defendant, DICK'S SPORTING GOODS, INC., was and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.

9. That at all times herein mentioned, defendant DICK'S SPORTING GOODS, INC., was and still is a foreign business corporation duly authorized to do business in the State of New York.

10. That at all times herein mentioned, defendant, DICK'S SPORTING GOODS, INC., maintained a principal place of business in the State of New York.

11. That at all times herein mentioned, defendant, SPORT AUTHORITY, INC., was and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.

12. That at all times herein mentioned, defendant SPORT AUTHORITY, INC., was and still is a foreign business corporation duly authorized to do business in the State of New York.

13. That at all times herein mentioned, defendant, SPORT AUTHORITY, INC., maintained a principal place of business in the State of New York.

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14. That at all times herein mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., was and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.

15. That at all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., was and still is a foreign ^{LLC} business corporation duly authorized to do business in the State of New York.

16. That at all times herein mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., maintained a principal place of business in the State of New York.

GENERAL ALLEGATIONS AGAINST
DEFENDANT WOODHAVEN RETAIL ASSOCIATES, LLC.

17. On October 07, 2016, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., owned the real property and facilities thereon, located at 73-25 Woodhaven Blvd , Ridgewood, NY 11385. (Hereinafter referred to as "the Premises").

18. At all times herein after mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC., was the sole Lessee of a certain Real Estate Ground Lease and Conveyance of Facilities of the Premises.

19. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., operated the Premises.

20. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., maintained the Premises.

21. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., controlled the Premises.

22. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL

Handwritten signature and initials 'DCL' in the left margin.

ASSOCIATES, LLC., managed the Premises.

23. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., repaired the Premises.

24. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., constructed the Premises.

25. At all times hereinafter mentioned, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC., had possession of the premises.

**GENERAL ALLEGATIONS AGAINST
DEFENDANT REALTY INCOME CORPORATION**

26. On October 07, 2016, defendant, REALTY INCOME CORPORATION, owned the real property and facilities thereon, located at 73-25 Woodhaven Blvd, Ridgewood, NY 11385 (Hereinafter referred to as "the Premises").

27. At all times herein after mentioned, defendant, REALTY INCOME CORPORATION, was the sole Lessee of a certain Real Estate Ground Lease and Conveyance of Facilities of the Premises.

28. At all times hereinafter mentioned, defendant, REALTY INCOME CORPORATION, operated the Premises.

29. At all times hereinafter mentioned, defendant, REALTY INCOME CORPORATION, maintained the Premises.

30. At all times hereinafter mentioned, defendant, REALTY INCOME CORPORATION, controlled the Premises.

31. At all times hereinafter mentioned, defendant, REALTY INCOME CORPORATION, managed the Premises.

32. At all times hereinafter mentioned, defendant, REALTY INCOME CORPORATION, repaired the Premises.

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43. At all times hereinafter mentioned, defendant, DICK'S SPORTING GOODS, INC., had possession of the premises.

GENERAL ALLEGATIONS AGAINST
DEFENDANT SPORT AUTHORITY, INC.

44. On October 07, 2016, defendant, SPORT AUTHORITY, INC., owned the real property and facilities thereon, located at 73-25 Woodhaven Blvd, Ridgewood, NY 11385 (Hereinafter referred to as "the Premises").

45. At all times herein after mentioned, defendant, SPORT AUTHORITY, INC., was the sole Lessee of a certain Real Estate Ground Lease and Conveyance of Facilities of the Premises.

46. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., operated the Premises.

47. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., maintained the Premises.

48. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., controlled the Premises.

49. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., managed the Premises.

50. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., repaired the Premises.

51. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., constructed the Premises.

52. At all times hereinafter mentioned, defendant, SPORT AUTHORITY, INC., had possession of the premises.

**GENERAL ALLEGATIONS AGAINST
DEFENDANT SCHIMENTI CONSTRUCTION COMPANY, LLC.**

53. On October 07, 2016, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., owned the real property and facilities thereon, located at 73-25 Woodhaven Blvd , Ridgewood, NY 11385 (Hereinafter referred to as "the Premises").

54. At all times herein after mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., was the solé Lessee of a certain Real Estate Ground Lease and Conveyance of Facilities of the Premises.

55. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., operated the Premises.

56. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., maintained the Premises.

57. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., controlled the Premises.

58. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., managed the Premises.

59. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., repaired the Premises.

60. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., constructed the Premises.

61. At all times hereinafter mentioned, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC., had possession of the premises.

**GENERAL ALLEGATIONS REGARDING
CONSTRUCTION PROJECT**



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62. On or about October 07, 2016, there was ongoing construction, renovation and demolition at the subject premises, located at 73-25 Woodhaven Blvd Ridgewood, NY 11385. (Hereinafter referred to as "the Construction Project")

63. The said Construction Project generally involved the erection, demolition, repairing, altering, cleaning or painting of buildings or structures of certain facilities located at 73-25 Woodhaven Blvd Ridgewood, NY 11385.

64. Prior to October 07, 2016, defendant, WOODHAVEN RETAIL ASSOCIATES, LLC, contracted with defendants, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., SPORT AUTHORITY, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC. for the performance of the work at the Construction Project.

65. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, was the general contractor for the Construction Project.

66. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, was the Construction Manager for the Construction Project.

67. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, provided construction services for the Construction Project.

68. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, was a contractor or subcontractor for the Construction Project.

69. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, hired and retained contractors or subcontractors for the Construction Project.

70. At all times herein mentioned, defendant WOODHAVEN RETAIL

ASSOCIATES, LLC, hired or retained contractors or subcontractors to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project.

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71. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, controlled the manner and method of the work being performed by the contractors and subcontractors at the Construction Project.

72. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC, was responsible for work site safety at the Construction Project.

73. At all times herein mentioned, defendant WOODHAVEN RETAIL ASSOCIATES, LLC inspected the Premises during the Construction Project.

74. Prior to October 07, 2016, defendant, REALTY INCOME CORPORATION contracted with defendant, WOODHAVEN RETAIL ASSOCIATES, LLC, DICK'S SPORTING GOODS, INC., SPORT AUTHORITY, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC., for the performance of the work at the Construction Project.

75. At all times herein mentioned, defendant REALTY INCOME CORPORATION, was the general contractor for the Construction Project.

76. At all times herein mentioned, defendant REALTY INCOME CORPORATION, was the Construction Manager for the Construction Project.

77. At all times herein mentioned, defendant REALTY INCOME CORPORATION, provided construction services for the Construction Project.

78. At all times herein mentioned, defendant REALTY INCOME CORPORATION was a contractor or subcontractor for the Construction Project.

79. At all times herein mentioned, defendant REALTY INCOME

CORPORATION hired and retained contractors or subcontractors for the Construction Project.

80. At all times herein mentioned, defendant REALTY INCOME CORPORATION, hired or retained contractors or subcontractors to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project.

81. At all times herein mentioned, defendant REALTY INCOME CORPORATION, controlled the manner and method of the work being performed by the contractors and subcontractors at the Construction Project.

82. At all times herein mentioned, defendant REALTY INCOME CORPORATION, was responsible for work site safety at the Construction Project.

83. At all times herein mentioned, defendant REALTY INCOME CORPORATION, inspected the Premises during the Construction Project.

84. Prior to October 07, 2016, defendant, DICK'S SPORTING GOODS, INC. contracted with defendants WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION, SPORT AUTHORITY, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC. for the performance of the work at the Construction Project.

85. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC. , was the general contractor for the Construction Project.

86. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC. , was the Construction Manager for the Construction Project.

87. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC. , provided construction services for the Construction Project.

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88. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC., was a contractor or subcontractor for the Construction Project.

89. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC., hired and retained contractors or subcontractors for the Construction Project.

90. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC., hired or retained contractors or subcontractors to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project.

91. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC., controlled the manner and method of the work being performed by the contractors and subcontractors at the Construction Project.

92. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC. was responsible for work site safety at the Construction Project.

93. At all times herein mentioned, defendant DICK'S SPORTING GOODS, INC. inspected the Premises during the Construction Project.

94. Prior to October 07, 2016, defendant, SPORT AUTHORITY, INC. contracted with defendants, WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC. and SCHIMENTI CONSTRUCTION COMPANY, LLC. for the performance of the work at the Construction Project.

95. At all times herein mentioned, defendant SPORT AUTHORITY, INC., was the general contractor for the Construction Project.

96. At all times herein mentioned, defendant SPORT AUTHORITY, INC.,

was the Construction Manager for the Construction Project.

97. At all times herein mentioned, defendant SPORT AUTHORITY, INC., provided construction services for the Construction Project.

98. At all times herein mentioned, defendant SPORT AUTHORITY, INC., was a contractor or subcontractor for the Construction Project.

99. At all times herein mentioned, defendant SPORT AUTHORITY, INC., hired and retained contractors or subcontractors for the Construction Project.

100. At all times herein mentioned, defendant SPORT AUTHORITY, INC., hired or retained contractors or subcontractors to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project.

101. At all times herein mentioned, defendant SPORT AUTHORITY, INC., controlled the manner and method of the work being performed by the contractors and subcontractors at the Construction Project.

102. At all times herein mentioned, defendant SPORT AUTHORITY, INC., was responsible for work site safety at the Construction Project.

103. At all times herein mentioned, defendant SPORT AUTHORITY, INC., inspected the Premises during the Construction Project.

104. Prior to October 07, 2016, defendant, SCHIMENTI CONSTRUCTION COMPANY, LLC. contracted with defendants ~~WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION,~~ DICK'S SPORTING GOODS, INC. and SPORT AUTHORITY, INC. for the performance of the work at the Construction Project.

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105. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., was the general contractor for the Construction Project.

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106. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., was the Construction Manager for the Construction Project.

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107. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., provided construction services for the Construction Project.

108. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., was a contractor or subcontractor for the Construction Project.

109. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., hired and retained contractors or subcontractors for the Construction Project.

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110. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., hired or retained contractors or subcontractors to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project.

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111. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., controlled the manner and method of the work being performed by the contractors and subcontractors at the Construction Project.

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112. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC., was responsible for work site safety at the Construction Project.

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113. At all times herein mentioned, defendant SCHIMENTI CONSTRUCTION COMPANY, LLC. inspected the Premises during the Construction Project.

114. All Defendant's WOODHAVEN RETAIL ASSOCIATES, LLC REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., SPORT AUTHORITY,

INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC., hired plaintiff's employer TRI STATE DISMANTLING CORP. located at 207 Dupont Street, Brooklyn, NY 11222 to perform erection, demolition, repairing, altering, cleaning or painting of buildings or structures at the Construction Project

**AS AND FOR A FIRST CAUSE OF ACTION
FOR COMMON LAW NEGLIGENCE**

115. On or about October 07, 2016, plaintiff, CESAR ZAMBRANO, was lawfully on the premises located at 73-25 Woodhaven Blvd Ridgewood, NY 11385.

116. On or about October 07, 2016, plaintiff, CESAR ZAMBRANO, was involved in the erection, demolition, repairing, altering, cleaning or painting of buildings or structures at subject Construction Project.

117. At the aforesaid time and place, plaintiff, CESAR ZAMBRANO, was caused to suffer serious and permanent injuries as a result of an unsafe work environment at the Construction Project.

118. By reason of the foregoing, plaintiff sustained serious injuries; was rendered, sick, sore, lame and disabled; suffered injuries both internal and external, pain and mental anguish; he was caused to suffer from pain; was confined to bed and home; was compelled to seek medical care and attention, and upon information and belief, will in the future be compelled to seek medical care and attention; was and will be prevented from following his usual occupation; and was otherwise injured and damaged.

119. That the aforesaid happening occurred solely and wholly as a result of the negligence of the defendants herein, its employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to

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exercise, supervision and control, without any negligence on the part of the plaintiff contributing thereto.

120. That the defendants, their agents, employees representatives, servants, and/or independent contractors over whom they exercised, or had authority to exercise, supervision and control, created and/or had actual and/or constructive notice of the dangerous condition.

121. That the defendants, their employees, agents, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control were careless, reckless and negligent in causing, allowing and permitting the aforesaid premises to be, become and remain in a defective and unsafe condition.

122. That the limitations of liability set forth in Article 16 of the CPLR does not apply to the within action.

123. That as a result of the foregoing, plaintiff, CESAR ZAMBRANO, was caused to sustain damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

AS AND FOR A SECOND CAUSE OF ACTION
BASED ON LABOR LAW SECTION 200

124. Plaintiff, CESAR ZAMBRANO, repeats and realleges each and every paragraph of the complaint numbered "1" through "123" as if the same were fully set forth herein with the same force and effect.

125. That as a person employed in the performance of construction and

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renovation work, plaintiff, CESAR ZAMBRANO, was entitled to the protections afforded to persons employed under the Labor Law of the State of New York, including Labor Law Section 200.

126. That the negligence, carelessness and recklessness of the defendants, their agents, employees representatives, servants, and/or independent contractors over whom they exercised or had authority to exercise supervision and control, in the ownership, operation, maintenance, management and control of the premises was in violation of the Labor Law §200 and Rules and Regulations of the Occupational Safety and Health Administration.

127. That the defendants, their agents, employees representatives, servants, and/or independent contractors over whom they exercised or had authority to exercise supervision and control were in violation of the applicable laws, status, ordinances, administrative enactments, rules and regulations including the New York State Labor Law §200.

128. That the defendants herein, including its agents, servants, and/or employees, created and/or had actual and/or constructive notice of the dangerous condition and/or had control over the worksite, and/or exercised control or supervision over the work performed by plaintiff.

129. That the defendants, their agents, employees representatives, servants, and/or independent contractors over whom they exercised or had authority to exercise supervision and controlled, were negligent, careless and reckless in failing to construct, equip, arrange, operate and conduct the worksite as to provide reasonable and adequate protection to the lives, health and safety of all persons, plaintiff in particular, employed therein or lawfully frequenting such places.

130. That the defendants, their agents, employees, representatives, servants and/or independent contractors failed to properly provide reasonable and adequate protection to all such persons; in causing, permitting and allowing said portion of the construction site to be, become and remain in an unsafe manner and dangerous condition, in causing, allowing and permitting the said construction site to be and to remain in a dangerous condition.

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131. By reason of the foregoing, plaintiff was rendered, sick, sore, lame and disabled, suffered injuries both internal and external, pain and mental anguish; he was caused to suffer from pain; was confined to bed and home; was compelled to seek medical care and attention, and upon information and belief, will in the future be compelled to seek medical care and attention; was prevented from following his usual occupation; and was otherwise injured and damaged.

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132. That the limitations of liability set forth in Article 16 of the CPLR do not apply to the within action.

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133. That as a result of the foregoing, plaintiff, CESAR ZAMBRANO, was caused to sustain damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

AS AND FOR A THIRD CAUSE OF ACTION
BASED ON LABOR LAW SECTION 240

134. Plaintiff, CESAR ZAMBRANO, repeats and realleges each and every paragraph of the complaint numbered "1" through "133" as if the same were fully set forth herein with the same force and effect.

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135. That as a person employed in the performance of construction and

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renovation work, plaintiff was entitled to the protections afforded to persons so employed under the Labor Law of the State of New York including the Labor Law Section 240.

136. That the negligence, carelessness and recklessness of the defendants, their agents, servants and or employees in the ownership, operation, maintenance, management and control of the premises was in violation of the Rules and Regulations of the Occupational Safety and Health Administration, the Labor Law of the State of New York, specifically §240.

137. That the defendants herein, including its agents, servants, and/or employees, were in violation of the applicable laws, status, ordinances, administrative enactments, rules and regulations including the New York State Labor Law Section §240.

138. That the defendants, their agents, employees, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control failed to furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

139. That the defendants, their agents, employees, representatives, servants and/or independent contractors in causing plaintiff to be exposed to a type of risks contemplated by Labor Law §240(1).

140. That the defendants, their agents, employees, representatives, servants and/or independent contractors failed to provide the plaintiff with proper and adequate protection contemplated by labor law §240(1).

141. By reason of the foregoing, plaintiff was rendered, sick, sore, lame and

disabled, suffered injuries both internal and external, pain and mental anguish; he was caused to suffer from pain; was confined to bed and home; was compelled to seek medical care and attention, and upon information and belief, will in the future be compelled to seek medical care and attention; was and will be prevented from following his usual occupation; and was otherwise injured and damaged.

142. That the limitations of liability set forth in Article 16 of the CPLR does not apply to the within action.

143. As a result of the foregoing, plaintiff, CESAR ZAMBRANO, was caused to sustain damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

**AS AND FOR A FOURTH CAUSE OF ACTION
BASED ON LABOR LAW SECTION 241(6)**

144. Plaintiff, CESAR ZAMBRANO, repeats and realleges each and every paragraph of the complaint numbered "1" through "143" as if the same were fully set forth herein with the same force and effect.

145. That as a person employed in the performance of construction and demolition work, plaintiff was entitled to the protections afforded to persons so employed under the labor law of the State of New York including the Labor Law §241(6).

146. That the negligence, carelessness and recklessness of the defendants, their agents, servants and or employees in the ownership, operation, maintenance, management and control of the premises was in violation of the Rules and Regulations of the Occupational Safety and Health Administration; the New York State Industrial Codes and the Labor Law of the State of New York, specifically §241(6).

147. That the defendants herein, including their agents, servants, and/or

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employees, were in violation of the applicable laws, statutes, ordinances, administrative enactments, rules and regulations including the New York State Labor Law §241(6).

148. That the defendants herein, including their agents, servants, and/or employees, were in violation of various New York State Industrial Codes and OSHA Regulations.

149. The defendants, their agents, employees, representatives, servants and/or independent contractors over whom defendants exercised, or had authority to exercise, supervision and control failed to construct, shore, equip, guard, arrange, operate and conduct the worksite as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places, in particular, plaintiff; in causing, permitting and allowing said portion of the construction site to be, become and remain in an unsafe manner and dangerous condition, in violating Sections of the New York State Labor, 241(6) and other applicable statutes, laws, rules, regulations, and ordinances then and there prevailing.

150. By reason of the foregoing, plaintiff was rendered, sick, sore, lame and disabled, suffered injuries both internal and external, pain and mental anguish; he was caused to suffer from pain; was confined to bed and home; was compelled to seek medical care and attention, and upon information and belief, will in the future be compelled to seek medical care and attention; was and will be prevented from following his usual occupation; and was otherwise injured and damaged.

151. That the limitations of liability set forth in Article 16 of the CPLR do not apply to the within action.

152. That as a result of the foregoing, plaintiff, CESAR ZAMBRANO, was

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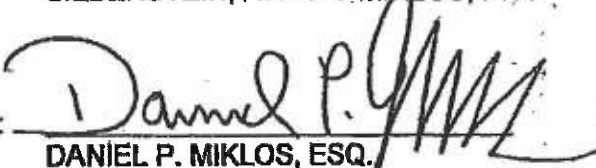
caused to sustain damages in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action.

WHEREFORE, plaintiffs demands judgment against all defendants for all four causes of action in a sum which exceeds the jurisdictional limitation of all lower Courts which would otherwise have jurisdiction over this action, together with costs and disbursements and interest computed from the date of any verdict rendered herein.

Dated: Garden City, New York
January 05, 2016

Yours, etc.

SILBERSTEIN, AWAD & MIKLOS, P.C.

By: 

DANIEL P. MIKLOS, ESQ.
Attorney for Plaintiffs
600 Old Country Road, Suite 505
Garden City, New York 11530
516-832-7777

ATTORNEY'S VERIFICATION

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, stated that I am an associate in the firm of SILBERSTEIN, AWAD & MIKLOS, P.C. the attorneys of record for the plaintiffs in the within action; I have read the foregoing

SUMMONS & VERIFIED COMPLAINT

and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not by plaintiffs is that plaintiffs resides in a County other than the one in which your affirmant maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: books, records, memoranda, etc. in office file.

I affirm that the foregoing is true, under the penalties of perjury.

Dated: Garden City, New York
January 05, 2016



DANIEL P. MIKLOS, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

VERIFIED ANSWER

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

-----X
The Law Office of ANDREA G. SAWYERS, as attorney and on behalf of
defendants REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC.
and SCHIMENTI CONSTRUCTION COMPANY, LLC, answering the Complaint of
plaintiff herein, upon information and belief, respectfully alleges:

AS AND FOR AN ANSWER TO THE JURISDICTIONAL ALLEGATIONS

FIRST: Denies any knowledge or information sufficient to form a belief as to
the truth or falsity of the allegations contained in paragraphs of the Complaint designated
"1", "2", "3", "4", "11", "12", "13", "14", "15" and "16".

SECOND: Denies each and every allegation contained in the paragraph of the
Complaint designated "5", "7", "8", and "10".

**AS AND FOR AND ANSWER TO THE GENERAL ALLEGATIONS AGAINST
DEFENDANT WOODHAVEN RETAIL ASSOCIATES, LLC.**

THIRD: Denies any knowledge or information sufficient to form a belief as to
the truth or falsity of the allegations contained in paragraphs of the Complaint designated
"17", "18", "19", "20", "21", "22", "23", "24" and "25".

**AS AND FOR AN ANSWER TO THE GENERAL ALLEGATIONS
AGAINST DEFENDANT REALTY INCOME CORPORATION**

FOURTH: Denies each and every allegation contained in the paragraphs of the Complaint designated "26", except admits that on October 07, 2016, defendant, REALTY INCOME CORPORATION, owned the real property and facilities thereon, located at Condominium Unit 2, 73-25 Woodhaven Blvd, Ridgewood, New York 11385 (Hereinafter Referred to as the Premises").

FIFTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated "27", "28", "29", "30", "31", "32", "33" and "34".

**AS AND FOR AN ANSWER TO THE GENERAL ALLEGATIONS
AGAINST DEFENDANT DICK'S SPORTING GOODS, INC.**

SIXTH: Denies each and every allegation contained in the paragraph of the Complaint designated "35".

SEVENTH: Denies each and every allegation contained in the paragraphs of the Complaint designated "36", except admits that DICK'S SPORTING GOODS, INC., was the sole Lessee of condominium unite 2 at 73-25 Woodhaven Blvd. in Ridgewood, New York 11385.

EIGHTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated "37", "38", "39", "40", "41", "42" and "43".

**AS AND FOR AN ANSWER TO THE GENERAL ALLEGATIONS
AGAINST DEFENDANT SPORT AUTHORITY, INC.**

NINTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated "44", "45", "46", "47", "48", "49", "50", "51" and "52".

**AS AND FOR AN ANSWER TO THE GENERAL ALLEGATIONS
AGAINST DEFENDANT SCHIMENTI CONSTRUCTION COMPANY, LLC.**

TENTH: Denies each and every allegation contained in the paragraph of the Complaint designated "53" and "54".

ELEVENTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated "55", "56", "57", "58", "59", "60" and "61".

**AS AND FOR AN ANSWER TO THE GENERAL ALLEGATIONS
REGARDING CONSTRUCTION PROJECT**

TWELFTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs of the Complaint designated "63" and "90", and refers all questions of law to the Court.

THIRTEENTH: Denies each and every allegation contained in the paragraph of the Complaint designated "64", "74", "75", "76", "77", "78", "79", "80", "81", "83", "85", "86", "87", "88", "91" and "93".

FOURTEENTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated "65", "66", "67", "68", "69", "70", "71", "72", "73", "94", "95", "96", "97", "98", "99", "100", "101", "102", "103", "104", "105", "106", "107", "108", "109", "110", "111", "112" and "113".

FIFTEENTH: Denies each and every allegation contained in the paragraph of the Complaint designated **"82" and "92"** and respectfully refers all questions of law and fact contained therein to the Trial Court.

SIXTEENTH: Denies each and every allegation contained in the paragraphs of the Complaint designated **"84"**, except admits that prior to October 07, 2016, defendant, DICK'S SPORTING GOODS, INC. contracted with defendants SCHIMENTI CONSTRUCTION COMPANY, LLC. for the performance of work at the Construction project.

SEVENTEENTH: Denies each and every allegation contained in the paragraphs of the Complaint designated **"114"**, except admits that SCHIMENTI CONSTRUCTION COMPANY, LLC., hired plaintiff's employer TRI STATE DISMANTLING CORP. located at 207 Dupont Street, Brooklyn, New York 11222 to work at the subject project.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION FOR COMMON
LAW NEGLIGENCE**

EIGHTEENTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs of the Complaint designated **"115"**.

NINETEENTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs of the Complaint designated **"116" and "122"** and refers all questions of law to the Court.

TWENTIETH: Denies each and every allegation contained in the paragraph of the Complaint designated **"117", "118", "119", "120" and "123"**.

TWENTY-FIRST: Denies each and every allegation contained in the paragraph of the Complaint designated "**121**" and respectfully refers all questions of law and fact contained therein to the Trial Court.

AS AND FOR A SECOND CAUSE OF ACTION BASED ON LABOR LAW
SECTION 200

TWENTY-SECOND: Responding to the paragraph of the Complaint designated "**124**" repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

TWENTY-THIRD: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs of the Complaint designated "**125**" and "**132**" and refers all questions of law to the Court.

TWENTY-FOURTH: Denies each and every allegation contained in the paragraph of the Complaint designated "**126**", "**128**", "**129**", "**130**", "**131**" and "**133**".

TWENTY-FIFTH: Denies each and every allegation contained in the paragraph of the Complaint designated "**127**", and respectfully refers all questions of law and fact contained therein to the Trial Court.

AS AND FOR A THIRD CAUSE OF ACTION BASED ON LABOR LAW SECTION
240

TWENTY-SIXTH: Responding to the paragraph of the Complaint designated "**134**" repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

TWENTY-SEVENTH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs of the Complaint designated "135", "138" and "142" and refers all questions of law to the Court.

TWENTY-EIGHTH: Denies each and every allegation contained in the paragraph of the Complaint designated "136", "137", "139", "140", "141" and "143".

AS AND FOR A FOURTH CAUSE OF ACTION BASED ON LABOR LAW
SECTION 241(6)

TWENTY-NINTH: Responding to the paragraph of the Complaint designated "144" repeats and reiterates each and every admission, denial and other response heretofore made to the preceding paragraphs with the same force and effect as if set forth at length herein.

THIRTIETH: Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs of the Complaint designated "145" and "151" and refers all questions of law to the Court.

THIRTY-FIRST: Denies each and every allegation contained in the paragraph of the Complaint designated "146", "147", "148", "149", "150" and "152".

AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE
(Assumption of Risk)

That by entering into the activity in which plaintiff was engaged at the time of the occurrence set forth in the Complaint, said plaintiff knew the hazards thereof, the risks inherent thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by plaintiff as alleged in the Complaint arose from and were caused by reason of such inherent risks voluntarily undertaken by the plaintiff in his/her activities

and such risks were assumed and accepted by him/her in performing and engaging in said activities.

**AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE**
(Assumption of Risk – Open & Obvious)

That all the dangers and risks incident to the situation referred to in plaintiff's Complaint were open, obvious and apparent, and were known and assumed by plaintiff.

**AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE**
(Collateral Source)

That the plaintiff's alleged damages representing the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss were or will, with reasonable certainty, be replaced or indemnified, in whole or in part, by or from a collateral source and this Court shall, pursuant to CPLR Section 4545, reduce the amount of such alleged damages by the amount such damages were or will be replaced or indemnified by such collateral source.

**AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE**
(CPLR Article 16)

Answering defendant(s) responsibility for non-economic loss, if any, which is expressly denied herein, is less than 50% of any responsibility attributed to any tortfeasor, whether or not a party hereto, who is or may be responsible for the happening of plaintiff's alleged accident and, thus, such party is entitled to a limitation of damages as set forth in CPLR Article 16.

AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE
(Culpable Conduct)

The injuries and damages allegedly sustained by plaintiff were caused in whole or in part by the culpable conduct of plaintiff, including negligence and assumption of risk, as a result of which the claim of plaintiff is therefore barred or diminished in the proportion that such culpable conduct of plaintiff bears to the total culpable conduct causing the alleged injuries and damages.

AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE
(Mitigation)

Upon information and belief plaintiff(s) failed to mitigate damages.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE
(Negligence of Other Parties)

Plaintiff's injuries, if any, were caused by the culpable conduct of parties other than the answering defendant and over whom defendant had no control.

AS AND FOR AN EIGHTH SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE
(Recalcitrant Worker)

Plaintiff's Complaint should be dismissed on the ground that plaintiff was, at all times hereinafter mentioned, a "recalcitrant worker," and willfully failed and refused to utilize available safety devices.

AS AND FOR A NINTH SEPARATE AND COMPLETE AFFIRMATIVE
DEFENSE
(Sole Proximate Cause)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

DEMAND FOR A VERIFIED
BILL OF PARTICULARS

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

-----X
S I R :

PLEASE TAKE NOTICE that this answering party, represented by the LAW
OFFICE OF ANDREA G. SAWYERS, the undersigned attorneys, requires that you serve
upon said attorneys within thirty (30) days after service upon you of a copy of this demand,
a verified Bill of Particulars, setting forth the following:

1. The date and time of day of the alleged occurrence.
2. With respect to the location where it is alleged the occurrence took place,
state:
 - (a) the address of the premises in, at or near where the occurrence took place;
 - (b) the location where the occurrence took place as nearly as may be stated so as to permit ready identification and location;
 - (c) with regard to any stairway involved, specify the location of the stairway and of the step from which plaintiff claims he fell (street or ground floor to be counted as the first floor);
 - (d) with regard to any sidewalk involved, the location of the condition on the sidewalk, setting forth the distance from the nearest curb or intersecting street or from the building line or from another

described fixed object;

- (e) with regard to any other floor or other surface, the location thereof in sufficient detail to permit ready identification and location and by distance from at least three described fixed objects;
- (f) the location within the premises of any involved equipment, part or appurtenance (describe in adequate detail to permit ready identification and location);
- (g) with regard to any elevator involved, the specific elevator involved (if there were more than one) and on what floor (or between what floors) was the elevator at the time of the occurrence.

3. Statement of the acts or omissions constituting the negligence claimed, if any, of the answering defendant.

4. If any dangerous or defective condition is alleged:

- (a) State the nature of the alleged dangerous or defective condition.
- (b) Set forth the exact location of the defect.
- (c) State whether it will be claimed that the answering defendant had actual or constructive notice of said condition.
- (d) If actual notice is claimed, a statement of when and to whom same was given, stating the names and date.
- (e) If it is alleged that the answering defendant or the agent, servant and/or employee of the answering defendant caused or created the condition, state the name of the person who caused or created the condition and the date when said condition was caused or created.
- (f) If constructive notice is claimed, state:
 - (i) nature of condition;
 - (ii) location of condition;
 - (iii) duration of condition with date of inception to date constructive notice will be claimed to be given the answering defendant.

5. If it is claimed that the answering defendants breached any agreement, bailment, contract, lease, permit or warranty, or is liable pursuant to the terms of any agreement, bailment, contract, lease, permit or warranty:
- (a) State whether such agreement, bailment, contract, lease, permit or warranty was oral or in writing.
 - (b) If oral:
 - (i) On what date was said agreement, bailment, contract, lease, permit or warranty entered into?
 - (ii) There was it entered into?
 - (iii) Who acted on behalf of each party to it?
 - (iv) Set forth all of the terms and conditions of the agreement, bailment, contract, lease, permit or warranty.
 - (c) If in writing, set forth a full, true and complete copy of the agreement, bailment, contract, lease, permit or warranty.
6. State the manner in which it will be claimed that the answering defendant breached its (their) agreement, bailment, contract, lease, permit or warranty.
7. If strict liability is claimed against the answering defendant, state:
- (a) the nature and basis of same;
 - (b) the manner in which the answering defendant is strictly liable.
8. If Labor Law violations are claimed, state:
- (a) section or regulation by number alleged to have been violated by the answering defendant;
 - (b) nature and basis of same;
 - (c) the manner in which the answering defendant is alleged to have violated same.
9. If a nuisance and/or trespass is claimed, state:
- (a) condition allegedly constituting same;
 - (b) nature of said condition;

- (c) length of time it was in existence prior to the date of the occurrence.

10. If res ipsa loquitur is claimed against the answering defendant, state the nature and basis of same.

11. If it is claimed that the answering defendant violated any law, ordinance, regulation, rule or statute, specify the title, chapter and section of the law, ordinance, regulation, rule or statute which it is alleged that the answering defendant violated.

12. Set forth each and every injury and/or condition allegedly sustained by each plaintiff as a result of the said occurrence indicating:

- (a) its nature, extent, location and duration;
- (b) a complete description of any injury and/or condition claimed to be residual or permanent; and
- (c) the name and address of each physician, dentist, osteopath, chiropractor, nurse, physiotherapist or other medical practitioner treating or examining the plaintiff; the date of each visit; and, whether treatment has ceased or is continuing.

13. Give the length of time and specific dates it is claimed that each plaintiff was confined by reason of the alleged injuries:

- (a) to bed;
- (b) to house; and,
- (c) if treated at or confined to a hospital or other medical facility, state the name and address thereof, and the dates of admission and discharge. If not confined to a hospital or other medical facility, so state.

14. State with respect to each plaintiff:

- (a) Plaintiff's place and date of birth and social security number. If plaintiff is a married woman, state maiden name.
- (b) Plaintiff's occupation at the time of the occurrence, with a description of plaintiff's duties;
- (c) The name and address of plaintiff's employer at the time of the alleged occurrence.

- (d) The daily or weekly earnings (gross and net) at the time of the occurrence.
- (e) If plaintiff was self-employed, set forth the business name and address of the plaintiff and the annual income (gross and net) of plaintiff from said business.
- (f) Whether the plaintiff was incapacitated from said employment; if so, the length of time including the specific dates that the plaintiff was allegedly incapacitated from attending to said employment.
- (g) If the plaintiff was a student, the name and address of the school attended and the dates, if any, when the plaintiff was absent from school.

15. Set forth the total amounts claimed to have been spent or incurred by or on behalf of each plaintiff (setting forth the name of each provider of services along with the amount of the bill) for:

- (a) hospital, clinic or other medical institutions' expenses;
- (b) x-rays;
- (c) physicians' services;
- (d) nurses services;
- (e) medical supplies;
- (f) loss of earnings and the basis of computation thereof; and,
- (g) amount and nature (describing in detail) of any other special damages claimed.

16. Pursuant to Rule 3118 of the Civil Practice Law and Rules, demand is hereby made that you furnish the undersigned with a verified statement setting forth the post office address and residence of each plaintiff indicating the street and number as well as the city and state.

PLEASE TAKE FURTHER NOTICE, that in the event you have no knowledge of any or all of the above, same shall be so stated.

PLEASE TAKE FURTHER NOTICE, that these are continuing demands and supplemental responses up to the time the case is placed on the trial calendar are required.

PLEASE TAKE FURTHER NOTICE, that in the event of your failure to furnish such a Bill of Particulars within the said period of thirty (30) days, a motion will be made for an order precluding you from giving any evidence at the trial of the above items for which particulars have not been delivered in accordance with said demand.

Dated: April 17, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 
DAVID R. HOLLAND

Attorneys for Defendants
REALTY INCOME CORPORATION
DICK'S SPORTING GOODS, INC. AND
SCHIMENTI CONSTRUCTION
COMPANY, LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3133
Matter No.: 2017012061DIR

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.

By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP

By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS-----X
CESAR ZAMBRANO,*Index No.: 700276/17*

Plaintiff,

COMBINED DEMANDS

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.
-----X

SIR:

PLEASE TAKE NOTICE, that the undersigned hereby makes the following demands upon you, returnable at the office of the undersigned on the 17th day of May, 2017.

1. Demand for the Names and Addresses of all Witnesses;
2. Demand for Expert Information;
3. Demand for the Discovery and Inspection of any Statement by or on behalf of a Party Represented by the Undersigned;
4. Notice of Discovery and Inspection for Medical Information and Authorizations;
5. Notice of Discovery and Inspection of Photographs;
6. Notices of any liens and listings of all bills for medical providers submitted to Medicare/Medicaid; and
7. Demand for Income Tax Returns.
8. Demand for Collateral Source.
9. Demand for Litigation Funding.
10. Demand for Production of Documents.

That, in lieu of the foregoing, you may submit readable photocopies of the aforesaid documents by mailing them to the LAW OFFICE OF ANDREA G. SAWYERS, 3 Huntington Quadrangle, Suite 102S, Melville, New York 11747, on or before the date the documents are to be produced.

DEMAND FOR THE NAMES AND ADDRESS OF WITNESSES

PLEASE TAKE FURTHER NOTICE, that the undersigned hereby demands, pursuant to CPLR 3101(a), that you set forth in writing and under oath, the name and address of each person claimed by any party you represent, to be a witness to any of the following:

- (a) The occurrence alleged in the Complaint; or
- (b) Any acts, omissions or conditions which allegedly caused the occurrence alleged in the Complaint; or
- (c) Any actual notice allegedly given to defendant or any servant, agent or employee of defendant of any condition which allegedly caused the occurrence alleged in the Complaint; or
- (d) The nature and duration of any alleged condition which allegedly caused the occurrence alleged in the Complaint.

If no such witnesses are known to you, so state in the sworn reply to this Demand. The undersigned will object upon trial to the testimony of any witnesses not so identified.

DEMAND FOR EXPERT INFORMATION

PLEASE TAKE FURTHER NOTICE, that the undersigned hereby demands, pursuant to CPLR Section 3101(d), that you set forth, in writing and under oath, the following information for each party you represent, after each expert is retained and prior to filing a Note of Issue:

- (a) The name and business affiliation of each expert witness each party will call to testify at trial or whose opinion will be relied upon by any witness testifying at trial and the qualifications of each such expert in the field in which he will be offered to testify.
- (b) The substance of the facts and opinions on which each expert is expected to testify.
- (c) Each factual basis for said expert's opinion.
- (d) The dates of all oral and written reports provided by each expert.

If no such witnesses are known to you, so state in the sworn reply to this Demand. The undersigned will object upon trial to the testimony of any witness not so identified.

**DEMAND FOR THE DISCOVERY AND INSPECTION
OF ANY STATEMENT BY OR ON BEHALF OF A
PARTY REPRESENTED BY THE UNDERSIGNED**

PLEASE TAKE FURTHER NOTICE, that the undersigned demands, on behalf of the party it represents in this action, that pursuant to CPLR 3101(e) and 3120, you produce at the time and place herein specified, and permit the undersigned to discover, inspect and copy each and every statement made by or taken from such party and its agents, servants or employees now in your possession, custody or control or in the possession, custody or control of any party you represent in this action, if such statement in any manner bears on the issues in this action.

**NOTICE FOR DISCOVERY AND INSPECTION
FOR MEDICAL INFORMATION, ETC.**

PLEASE TAKE FURTHER NOTICE, that pursuant Section 164.508 of the Federally mandated Health Insurance Portability and Accountability Act of 1996, (HIPAA), which became effective on April 14, 2003, all authorizations must be HIPAA compliant.

We hereby demand that you produce any and all HIPAA compliant authorizations (**form provided**) in addition to the authorizations demanded below.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 3101, et seq. (including Rule 3120) of the Civil Practice Law and Rules, you are required to produce and allow discovery to be made by this answering party of the following:

- (a) Copies of the medical reports of those physicians or other health providers who have previously treated, consulted or examined the party seeking recovery and who will testify in its behalf for any condition caused by or exacerbated by the occurrence alleged in the complaint. These shall include but not be limited to a detailed recital of the injuries and conditions as to which testimony will be offered at the trial of this action referring to and identifying those x-ray and technicians' reports which shall be offered at the trial of this action and the date of each such treatment, consultation and examination.
- (b) Duly executed and acknowledged written authorizations permitting this party to obtain and make copies of all hospital or other health care facility records including x-rays and technicians' reports as may be referred to and identified in the reports of that party's physicians and other health care providers, along with the complete billing records of such provider(s) that pertain to the diagnosis, care, evaluation and treatment of the plaintiff.

- (c) Any and all other medical data (including CAT scans, MRI's, EEG's, EKG's, and other diagnostic tests) not hereinabove specifically referred to upon which you will rely upon or offer for consideration in the proceeding, along with the complete billing records of such provider(s) that pertain to the diagnosis, care, evaluation and treatment of the plaintiff.
- (d) Any and all bills, invoices or receipts for treatment, medicines or appliances given for injuries or other physical conditions resulting from the occurrence referred to in the Complaint.
- (e) Fully executed and acknowledged written authorizations to obtain and copy No-Fault medical and wage records of each plaintiff from the date of the occurrence alleged in the Complaint to present setting forth the name, address, claim number and policy number for each company to which a claim has been made.
- (f) Fully executed and acknowledged written authorizations to obtain and copy Worker's Compensation records of each plaintiff from the date of the occurrence alleged in the complaint to present setting forth the name, address, claim number and policy number for each company to which a claim has been made.
- (g) Fully executed and acknowledged written authorizations to obtain records of disability benefits pursuant to Social Security Laws of each plaintiff from the date of the occurrence alleged in the Complaint to present setting forth the name, address, claim number and policy number for each company to which a claim has been made.

DEMAND FOR DISCOVERY AND INSPECTION OF PHOTOGRAPHS

PLEASE TAKE FURTHER NOTICE, that the undersigned demands on behalf of the party it represents in this action, that pursuant to Section 3101 et seq., you produce at the time and place herein specified and permit the undersigned to discover, inspect and copy any and all photographs taken of the alleged scene or place of the occurrence and/or vehicles involved and complained of which are now in your possession, custody and control, or in the possession, custody and control of any party you represent in this action, if such photograph in any manner bears upon the issues in this action.

DEMAND FOR NOTICES OF ANY LIENS AND LISTINGS OF ALL BILLS FOR MEDICAL PROVIDERS SUBMITTED TO MEDICARE/MEDICAID

PLEASE TAKE FURTHER NOTICE, that the undersigned hereby demands, pursuant to CPLR Section 3101(a), that you set forth in writing and under oath, the following information for each party you represent, and prior to filing a Note of Issue, the following collateral source providers/potential lien holders:

- (a) Medicare/Medicaid;
- (b) Workers Compensation;
- (c) Health Insurance;
- (d) Disability; and
- (e) Health Care Provider.

DEMAND FOR INCOME TAX RETURNS

PLEASE TAKE FURTHER NOTICE, that the undersigned demands on behalf of the party it represents in this action that you produce at the time and place herein specified and permit the undersigned to discover, inspect and copy the complete Income Tax returns for each party who is claiming or has claimed reimbursement for lost income due to the occurrence alleged in the Complaint for a three (3) year period preceding the date of the occurrence as alleged in the complaint. If said complete returns are not available, the undersigned is to be furnished with full and complete authorizations to obtain same in a form accepted by the United States Department of Internal Revenue.

PLEASE TAKE FURTHER NOTICE, that all of the foregoing are continuing demands and that if any of the above items are obtained after the date of this Demand, they are to be furnished to the attorney for this party, pursuant to these demands.

DEMAND FOR COLLATERAL SOURCE

PLEASE TAKE NOTICE, that defendant requires that plaintiff produce for discovery, inspection and copying to undersigned counsel the following:

- (a) Any and all books, records, bills, insurance applications, insurance receipts, cancelled checks, copies of checks and any and all other records pertaining to collateral source reimbursement received by plaintiff or on behalf of plaintiff for the special damages alleged in the instant claim including, but not limited to, records of any person, institution, facility or government agency which has provided or will provide any reimbursement.

DEMAND TO PLAINTIFF REGARDING LITIGATION FUNDING CO.

PLEASE TAKE FURTHER NOTICE, that the undersigned demands on behalf of the party it represents in this action that you state whether you, your attorney(s), or anyone on the behalf of you of your attorney(s) has entered into an agreement, contract, contingency or loan with a lender, litigation funding company, litigation lending company, medical funding company or other similar entity, company, corporation, partnership or person that is

engaged in loaning money, advancing money or financially assisting you or your attorney in any aspect of this case, whether it be for payment of medical bills, litigation expenses, witness expenses, lost wages or an advancement against a portion or all of any potential recovery you may receive.

If so, please identify fully the following:

- (a) The complete name and address of the lender, litigation funding company, litigation lending company, medical funding company or similar entity as described above.
- (b) The date on which agreement, advance or loan was made.
- (c) The amount of such agreement, advance or loan.
- (d) All information, including documents of any kind provided to the lender, litigation funding company, litigation lending company, either pursuant to the request of the litigation funding company, litigation lending company, or voluntarily.

REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF

PLEASE TAKE FURTHER NOTICE, that the undersigned demands on behalf of the party it represents in this action that you provide legible copies of all documents related to the above demand.

PLEASE TAKE FURTHER NOTICE, that the undersigned demands on behalf of the party it represents in this action that you provide legible copies of all brochures, applications, contracts, agreements, liens, correspondence or other similar documents received by you, completed by you, anyone on your behalf and your attorney(s) as part of the process of entering into all agreements, negotiations and contracts with a lender, litigation funding company, litigation lending company, medical funding company, or similar entity.

PLEASE TAKE FURTHER NOTICE, that in the event any of the requested documents and/or items do not exist, a verified statement to that effect is to be served on the undersigned on or before the aforesaid return date.

PLEASE TAKE FURTHER NOTICE, that this is a continuing demand notice and in the event any of the requested documents and/or items are obtained after the aforesaid return date, same are to be furnished to the undersigned within thirty (30) days after receipt.

PLEASE TAKE FURTHER NOTICE, that upon the failure to produce the requested documents and/or items on the date and at the time and place demanded, a Motion will be made for the appropriate relief.

Dated: April 17, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 

DAVID R. HOLLAND

Attorneys for Defendants
REALTY INCOME CORPORATION
DICK'S SPORTING GOODS, INC. AND
SCHIMENTI CONSTRUCTION
COMPANY, LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3133
Matter No.: 2017012061DIR

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

NOTICE OF
EXAMINATION
BEFORE TRIAL

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.
-----X

SIR:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, the testimony upon oral examination of all adverse parties will be taken before a Notary Public who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein at time and place stated below:

To be deposed: Plaintiff
Place: To be determined

on the 15th day of June, 2017, at 10:00 o'clock in the forenoon of that day with respect to evidence material and necessary in the defense of this action.

That the said person to be examined is required to produce at such examination all papers, records and other data pertaining to this matter.

Dated: April 17, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 
DAVID R. HOLLAND

Attorneys for Defendants
REALTY INCOME CORPORATION
DICK'S SPORTING GOODS, INC. AND
SCHIMENTI CONSTRUCTION
COMPANY, LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3133
Matter No.: 2017012061DIR

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.

By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP

By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

DEMAND PURSUANT TO
CPLR 3017(c)

- against -

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

-----X
COUNSELORS:

Pursuant to CPLR §3017(c) within fifteen (15) days from the date of service of this request, you are hereby required to set forth the total damages to which plaintiff deems himself entitled and list same separately for each cause of action.

Dated: April 17, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS

By: 
DAVID R. HOLLAND

Attorneys for Defendants
REALTY INCOME CORPORATION
DICK'S SPORTING GOODS, INC. AND
SCHIMENTI CONSTRUCTION
COMPANY, LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3133
Matter No.: 2017012061DIR

TO: SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP

By: Domingo R. Gallardo, Esq.

Attorneys for Defendant

WOODHAVEN RETAIL ASSOCIATES, LLC

100 Jericho Quadrangle, Suite 326

Jericho, New York 11753

File No.: 40-1914

ATTORNEY VERIFICATION

DAVID R. HOLLAND, affirms as follows:

I am an attorney at law admitted to practice in the Courts of the State of New York, and am associated with the LAW OFFICE OF ANDREA G. SAWYERS, attorneys for defendants in the within action, and as such, I am fully familiar with all the facts and circumstances therein.

That the foregoing Answer is true to the knowledge of affirmant, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters affirmant believes it to be true.

Affirmant further states that the reason that this verification is made by affirmant and not by defendant(s) is that the defendant(s) is/are not within this County of Suffolk where affirmant maintains her office.

Affirmant further states that the sources of her knowledge and information are reports of investigations, conversations, writings, memoranda, and other data concerning the subject matter of the litigation.

The undersigned attorney affirms that the foregoing statements are true, under the penalties of perjury pursuant to Rule 2106 of the CPLR.

Dated: April 17, 2017
Melville, New York



DAVID R. HOLLAND

STATE OF NEW YORK)
)
) ss:
COUNTY OF SUFFOLK)

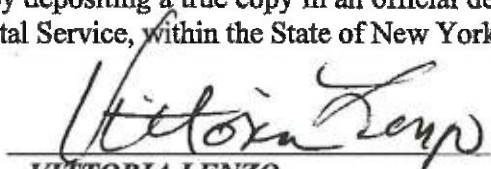
AFFIDAVIT OF SERVICE

VITTORIA LENZO being duly sworn, says that deponent is not a party to the action; is over the age of 18 years; that on the 15th day of April, 2017 deponent served the within **VERIFIED ANSWER WITH VARIOUS DISCOVERY DEMANDS**, upon:


SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

The address designated for such service, by depositing a true copy in an official depository under the care and custody of the U.S. Postal Service, within the State of New York.


VITTORIA LENZO

Sworn to before me this 15th day of April, 2017


Notary Public

Zambrano v. Woodhaven Retail
Matter No.: 2017012061DRH

MARY P. ORLOWSKI
Notary Public - State of New York
No. 010R5004990
Qualified in Suffolk
My Commission Expires 11/30/18

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 700276/17

CESAR ZAMBRANO,

Plaintiff,

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC. AND SCHIMENTI CONSTRUCTION
COMPANY, LLC.

Defendants.

VERIFIED ANSWER WITH VARIOUS DISCOVERY DEMANDS

Law Office of Andrea G. Sawyers

Attorneys for Defendant

REALTY INCOME CORPORATION

DICK'S SPORTING GOODS, INC. AND SCHIMENTI CONSTRUCTION COMPANY, LLC

3 Huntington Quadrangle, Suite 102S

Melville, New York 11747

(631) 501-3100

Facsimile (877) 220-7166 *(Not for Service)*

Matter No.: 2017012061DRH

Claim No.: A4N8929

TO:

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

NOTICE OF ENTRY:

PLEASE TAKE NOTICE that the within is a true copy of an order entered in office of the Clerk of the
above Court on

NOTICE OF SETTLEMENT:

PLEASE TAKE NOTICE that the within proposed order will be presented for settlement and entry at the
Courthouse on
at 10:00 a.m. at the office of the Clerk of the Part of this Court where the within described motion was heard.

Dated: Melville, New York

Law Office of Andrea G. Sawyers
Attorneys for Defendant(s)
As Designated Above

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Plaintiff,

- against -

Index No.: 700276/17

**NOTICE OF IMPLEADER
PURSUANT TO CPLR 3017(e)**

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants.
-----X

C O U N S E L :

PLEASE TAKE NOTICE that defendant/third-party plaintiffs, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY LLC., by service of a Third-Party Summons and Complaint, dated the 18th day of April, 2017, have impleaded, TRI-STATE DISMANTLING CORP., as a third-party defendant in this action, and the above-captioned title of this action has been changed as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Plaintiff,

- against -

Index No.: 700276/17

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants.
-----X

REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

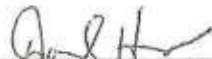
Third-Party Defendant
-----X

PLEASE TAKE FURTHER NOTICE that a Note of Issue has not been filed in the original action.

Dated: April 18, 2017
Melville, NY

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS



By: DAVID R HOLLAND
Attorneys for Defendants/Third-Party Plaintiffs
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION CO., LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3100

TO: *Service to be effectuated through the
Secretary of State*
TRI-STATE DISMANTLING CORP.,
207 Dupont Street
Brooklyn NY 11222

SILBERSTEIN, AWAD & MIKLOS, P.C.
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753

SPORTS AUTHORITY, INC.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

- against -

THIRD-PARTY SUMMONS

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.
Defendants.

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant

-----X
TO THE ABOVE NAMED THIRD-PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Third-Party Complaint of defendant/third-party plaintiff, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC, a copy of which is herewith served upon you, and to serve copies of your Answer upon the undersigned attorney for said defendants/third-party plaintiffs, and upon SILBERSTEIN, AWAD & MIKLOS, P.C., attorneys for Plaintiff, at their office address of 600 Old Country Road, Garden City, New York 11530; and upon CATALANO GALLARDO & PETROPOULOS, LLP, attorneys for defendant, WOODHAVEN RETAIL ASSOCIATES, LLC, at their office address of 100 Jericho Quadrangle, Suite 326, Jericho, New York 11753; within twenty (20) days after

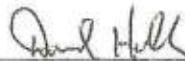
service of the Third-Party Summons and Complaint upon you, exclusive of the date of service.

In the event you fail to answer the Third-Party Complaint of defendant/third-party plaintiff, judgment will be taken against you by default for the relief demanded in the Third-Party Complaint.

Dated: April 18, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS



By: DAVID R HOLLAND
Attorneys for Defendant/Third-Party Plaintiff
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI
CONSTRUCTION CO., LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3100

TO: *Service to be effectuated through the
Secretary of State*
TRI-STATE DISMANTLING CORP.,
207 Dupont Street
Brooklyn NY 11222

SILBERSTEIN, AWAD & MIKLOS, P.C.
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753

SPORTS AUTHORITY, INC.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CESAR ZAMBRANO,

Index No.: 700276/17

Plaintiff,

- against -

**VERIFIED THIRD-PARTY
COMPLAINT**

WOODHAVEN RETAIL ASSOCIATES, LLC,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORTS AUTHORITY, INC.
And SCHIMENTI CONSTRUCTION COMPANY, LLC.

Defendants.

-----X
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SCHIMENTI
CONSTRUCTION COMPANY, LLC.

Third-Party Plaintiff

-against-

TRI-STATE DISMANTLING CORP.,

Third-Party Defendant
-----X

Defendants/Third-Party Plaintiffs, REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SCHIMENTI CONSTRUCTION COMPANY, LLC, by
their attorney, THE LAW OFFICE OF ANDREA G. SAWYERS, as and for their Third-Party
Complaint against third-party defendant, TRI-STATE DISMANTLING CORP., respectfully
allege, upon information and belief, as follows:

1. That defendant/third-party plaintiff, REALTY INCOME CORPORATION, is
a foreign Corporation authorized to do business in the State of New York.

2. That defendant/third-party plaintiff, DICK'S SPORTING GOODS, INC., is a foreign corporation authorized to do business in the State of New York.

3. That defendant/third-party plaintiff, SCHIMENTI CONSTRUCTION COMPANY, LLC, is a foreign Limited Liability Company authorized to do business in the State of New York.

4. That at all times hereinafter mentioned third-party defendant TRI-STATE DISMANTLING CORP., was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

5. That at all times hereinafter mentioned, third-party defendant TRI-STATE DISMANTLING CORP., was a foreign corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. That at all times hereinafter mentioned, third-party defendant TRI-STATE DISMANTLING CORP., was transacting business within the State of New York.

7. That on and prior to October 7, 2016, third-party defendant TRI-STATE DISMANTLING CORP., was providing services and transacting business from an office located at 207 Dupont St. Brooklyn NY 1122.

8. Plaintiff CESAR ZAMBRANO filed and served a Summons & Verified Complaint, dated January 3, 2017, a copy of which is annexed as *Exhibit "A"*. Issue was joined by defendant/third-party plaintiff, SCHIMENTI CONSTRUCTION COMPANY, LLC, by service of an Answer, dated February 23, 2017, a copy of which are annexed as *Exhibit "B"*. Issue was joined by defendants/third-party plaintiffs, REALTY INCOME CORPORATION and DICK'S SPORTING GOODS, INC., by service of an Answer, dated April 18, 2017, a copy of which are annexed as *Exhibit "C"*.

9. Plaintiff CESAR ZAMBRANO alleges in his Complaint that he was injured on October 7, 2016, while working at a construction site located inside a Dick's Sporting Goods store located at 7325 Woodhaven Blvd. Glendale, NY 11385, while in the employ of TRI-STATE DISMANTLING CORP.

10. That prior to the date of the alleged accident, defendant/third-party plaintiff SCHIMENTI CONSTRUCTION COMPANY, LLC. contracted, by written contract, with third-party defendant, TRI-STATE DISMANTLING CORP., to perform the work plaintiff was performing at the site.

11. Pursuant to the aforesaid written contract, which was in effect on the date of plaintiff's alleged accident, October 7, 2016, third-party defendant, TRI-STATE DISMANTLING CORP., agreed, to the fullest extent permitted by the law, to indemnify, defend and hold harmless both defendant/third-party plaintiff SCHIMENTI CONSTRUCTION COMPANY, LLC., and the "Owner" of the aforesaid project, from any and all claims, loss, suits, damages and liabilities including attorneys' fees, arising out of or in any way connected with the performance or lack of performance of the of the subcontracted work.

12. Third-party defendant, TRI-STATE DISMANTLING CORP., further agreed to purchase comprehensive general liability insurance, in an amount not less than \$1,000,000 primary and \$2,000,000 excess, naming SCHIMENTI CONSTRUCTION COMPANY, LLC, as additional named insured on a primary and non-contributory basis.

13. That in the course of his employment with TRI-STATE DISMANTLING CORP., at the aforesaid site, plaintiff was allegedly injured.

AS AND FOR A FIRST CAUSE OF ACTION

14. That by reason of the aforementioned contract between defendant/third-party plaintiff, SCHIMENTI CONSTRUCTION COMPANY, LLC, and third-party defendant TRI-STATE DISMANTLING CORP., said third-party defendant will be liable in contribution and/or indemnity to defendants/third-party plaintiffs, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SHIMENTI CONSTRUCTION COMPANY, LLC, in whole or in part, for the amount of any recovery which may be obtained herein by plaintiff against said defendants/third-party plaintiffs, or in such amount as the Court or jury may direct, together with the costs and disbursements of the action.

AS AND FOR A SECOND CAUSE OF ACTION

15. The defendants/third-party plaintiffs repeat, reiterate and re-allege each and every allegation set forth in the foregoing paragraphs as if each were more fully set forth at length herein.

16. That if plaintiff is entitled to recover from defendants/third-party plaintiffs, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SHIMENTI CONSTRUCTION COMPANY, LLC, then third-party defendant, TRI-STATE DISMANTLING CORP., will be obliged to indemnify said defendants/third-party plaintiffs pursuant to the terms of the aforementioned contract, which provides that said defendants/third-party plaintiff's shall be named as additional named insured on the policy of liability insurance obtained by the third-party defendant, TRI-STATE DISMANTLING CORP.

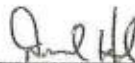
17. That in the event third-party defendant TRI-STATE DISMANTLING CORP., failed to procure such insurance coverage for defendants/third-party plaintiffs, then, third-party defendant TRI-STATE DISMANTLING CORP., shall be liable for and will indemnify and hold harmless defendants/third-party plaintiffs, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SHIMENTI CONSTRUCTION COMPANY, LLC, for any and all amounts awarded to plaintiffs, as well as all costs and disbursements associated with this litigation and/or for any other damages recoverable.

WHEREFORE, defendants/third-party plaintiffs, REALTY INCOME CORPORATION, DICK'S SPORTING GOODS, INC., and SHIMENTI CONSTRUCTION COMPANY, LLC, demand judgment over against third-party defendant, TRI-STATE DISMANTLING CORP., for all or any part of any verdict which shall or may be made against defendants/third-party plaintiffs in this action, plus attorneys' fees and costs and disbursements of this action.

Dated: April 18, 2017
Melville, New York

Yours, etc.

LAW OFFICE OF ANDREA G. SAWYERS



By: DAVID R HOLLAND

Attorneys for Defendants/Third-Party Plaintiffs,
REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., and SHIMENTI
CONSTRUCTION COMPANY, LLC
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3100

TO: *Service to be effectuated through the
Secretary of State*
TRI-STATE DISMANTLING CORP.,
207 Dupont Street
Brooklyn NY 11222

SILBERSTEIN, AWAD & MIKLOS, P.C.
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

CATALANO GALLARDO & PETROPOULOS, LLP
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753

SPORTS AUTHORITY, INC.

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

VITTORIA LENZO being duly sworn, says that deponent is not a party to the action; is over the age of 18 years; that on the **16TH** day of October, 2017 deponent served the within RESPONSE TO PRELIMINARY CONFERENCE ORDER, upon:

SILBERSTEIN, AWAD & MIKLOS, P.C.
By: Daniel P. Miklos
Attorneys for Plaintiffs
600 Old Country Road
Garden City, New York 11530
516-832-7777

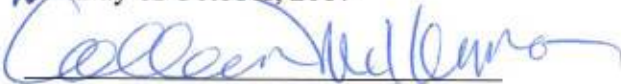
CATALANO GALLARDO & PETROPOULOS, LLP
By: Domingo R. Gallardo, Esq.
Attorneys for Defendant
WOODHAVEN RETAIL ASSOCIATES, LLC
100 Jericho Quadrangle, Suite 326
Jericho, New York 11753
File No.: 40-1914

BLACK MARJIEH LEFF & SANFORD LLP
Attorneys for Third-Party Defendant
TRI STATE DISMANTLING CORP.
100 Clearbrook Road, Suite 345
Elmsford, New York 10523
914-704-4400

Via Efiling.


VITTORIA LENZO

Sworn to before me this
16TH Day of October, 2017


Notary Public

Zambrano v. Woodhaven Retail
Matter No.: 2017012061DRH

COLLEEN McKENNA
Notary Public-State of New York
No. 01MC4723487
Qualified in Suffolk County
My Commission Expires **9-30-18**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.: 700276/17

CESAR ZAMBRANO,

Plaintiff,

-against-

WOODHAVEN RETAIL ASSOCIATES, LLC, REALTY INCOME CORPORATION, DICK'S
SPORTING GOODS, INC., SPORT AUTHORITY, INC. AND SCHIMENTI CONSTRUCTION
COMPANY, LLC.

Defendants.

.... And a third-party action

RESPONSE TO PRELIMINARY CONFERENCE ORDER

Law Office of Andrea G. Sawyers

Attorneys for Defendant

REALTY INCOME CORPORATION

DICK'S SPORTING GOODS, INC. AND SCHIMENTI CONSTRUCTION COMPANY, LLC

Mailing Address:

P.O. Box 2903

Hartford, CT 06104-2903

(631) 501-3100

Facsimile (877) 220-7166 *(Not for Service)*

Matter No.: 2017012061DRH

Claim No.: A4N8929

TO:

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

NOTICE OF ENTRY:

PLEASE TAKE NOTICE that the within is a true copy of an order entered in office of the Clerk of the above Court on

NOTICE OF SETTLEMENT:

PLEASE TAKE NOTICE that the within proposed order will be presented for settlement and entry at the Courthouse on
at 10:00 a.m. at the office of the Clerk of the Part of this Court where the within described motion was heard.

Dated: Melville, New York

Law Office of Andrea G. Sawyers
Attorneys for Defendant(s)
As Designated Above