STATE OF MICHIGAN
IN THE GRATIOT COUNTY CIRCUIT COURT

Samantha Sam Plaintiff, v. Dennis A. Menace Defendant.	)	**BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY DISPOSITION** File No: 08-13579-NI Hon. **MICHELLE M. RICK**

Donald J. Lewis (S55813)
Attorney for the Plaintiff
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Larry J. Brown, Jr. (P33333)
Attorney for the Defendant
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BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

STATEMENT OF FACTS

On the morning of February 8, 2007, Defendant was on his way to Lansing from Detroit. He had a cold and took two tablets of over-the-counter cold medication on the way. (Deposition of Dennis A. Menace at 4:23-5:12, 22, attached as **Exhibit A.**) Defendant arrived that morning at Waverly Park Apartments where he lived and began to pull into the parking lot. As he was pulling in he blacked out. The next thing Defendant remembered was being pulled from his car over to the curb by a police officer. (Menace, dep. at 8:5-17.) Defendant was later told that he ran into a gas box on the side of the apartment building. (*Id*. at 11:2-12.)

An eye-witness to the incident, Vickie Nettles, "heard a horn . . . [and] tires squealing like somebody was sitting there burning rubber." (Deposition of Vickie Nettles at 2:7-9, attached as **Exhibit B.**) When she went to see what was happening she saw a car sitting in the parking lot spinning the back tires. The person in the car was laying back in his seat and not moving. While Ms. Nettles was on the phone with 911, the car "just went into the building." (*Id*. at 2:11-17.)

After the car hit the building the Defendant was upright but laid there in his car. (Nettles, dep. at 3:31; 4:11, 12.) Defendant woke up all of a sudden, but he just sat there until the police came and got him out. Then the building blew up. (*Id*. at 4:28-33.) Defendant was later told he was diagnosed in the hospital as having a seizure. (Menace, dep. at 6:11-15; 19:17.)

At the time of this incident on February 8, 2007, Plaintiff was living at Waverly Park Apartments. (Examination Under Oath of Samantha Sam at 10:9-13, attached as **Exhibit C.**) That morning she was awakened when someone knocked on her door and said there was a gas leak. (*Id*. at 77:9.) Plaintiff then went to the bathroom to get her clothes and was washing up when she heard an explosion. (*Id*. at 79:23-25; 80:5.) The explosion caused things in her bathroom and kitchen to break, and that is when she realized something was wrong. Plaintiff finished putting on her clothes as things became smokier. Plaintiff could not safely exit her apartment through the door because the explosion had broken up the concrete floor and several pieces were missing. (*Id*. at 81:19-25; 85:4-6.)

Plaintiff grabbed a book and went out onto her [third-floor] balcony. (Sam, exam.

at 85:12-16.) While Plaintiff was on the balcony a police officer told her to "stay right there . . . the firemen are going to bring a ladder around here." (*Id*. at 86:12-15.) Plaintiff waited on the balcony for three minutes before attempting to climb down. (*Id*. at 86:16, 17, 22-24.) She fell from the balcony and landed on her right side. (*Id*. at 89:16; 91:21.)

Plaintiff sustained injuries including breaking her right wrist. She cannot fully extend the fingers on her right hand. Plaintiff believes that further surgery could completely correct the problem. (Deposition of Samantha Sam at 10:20-23; 14:23, 24; 15:3, 4, attached as **Exhibit D.**) Plaintiff declined to have surgery. (*Id*. at 13:18, 19.)

After the accident Plaintiff does housework (Sam, exam. at 124:3-11), stays home alone (*Id*. at 126:11-12), bathes and showers (*Id*. at 128:18-21), gets dressed (*Id*. at 128:22-25), fixes her own lunch (*Id*. at 129:11-12), and is able to work. (*Id*. at 132:15-18.)

STANDARDS FOR DECISION ON A MOTION FOR SUMMARY DISPOSITION

MCR 2.116(C)(10)

When a trial court decides a motion for summary disposition under MCR 2.116(C)(10) it must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The trial court must view this evidence in a light most favorable to the nonmoving party. *Rice v ISI Mfg., Inc.*, 207 Mich App 634, 636; 525 NW2d 533 (1994).

It is then up to the opposing party to establish a case on the law and produce

admissible evidence to support its allegations as to any material fact. *Durant v Stahlin*, 375 Mich 628, 638; 135 NW2d 392 (1965). If reasonable minds cannot not differ, then there is no genuine issue of material fact. *West v General Motors Corp*., 469 Mich 177, 183; 665 NW2d 468 (2003). If the opposing party presents no genuine issue as to any material fact, the moving party is entitled to judgment as a matter of law. *Kreager v State Farm Mut. Auto. Ins. Co.*, 197 Mich App 577, 579; 496 NW2d 346 (1992).

ARGUMENT

I. IN A VEHICLE ACCIDENT IN MICHIGAN, A DEFENDANT IS NOT LIABLE IF THE PLAINTIFF IS MORE THAN 50% AT FAULT, FAILS TO MEET THE THRESHOLD INJURY, OR THE DEFENDANT HAS A SUDDEN EMERGENCY. MR. MENACE HAD A SEIZURE JUST BEFORE COLLIDING WITH THE PLAINTIFF'S APARTMENT. AFTER THE COLLISION MS. SAM FAILED TO REACT IN THE MIDST OF DANGER AND DISOBEYED A POLICE OFFICER'S DIRECT INSTRUCTION. MOREOVER, MS. SAM'S INJURIES DO NOT MEET THE THRESHOLD REQUIRED UNDER MCL 500.3135. MR. MENACE IS NOT LIABLE FOR MS. SAM'S INJURIES.

Under MCR 2.116(C)(10), Defendant, Dennis A. Menace, is entitled to summary disposition of Plaintiff's Complaint for several reasons. First, Plaintiff was more than 50% at fault for her own injuries. Second, Defendant was suffering from a sudden emergency at the time of the accident. Finally, Plaintiff does not meet the threshold injury requirement for recovery under MCL 500.3135. In viewing the evidence and testimony in a light most favorable to the plaintiff, Plaintiff has presented no genuine issue of material fact about which reasonable minds could differ. Defendant is therefore entitled to summary judgment as a matter of law.

This case is covered under Michigan's No-Fault Insurance Act (“Act”) because Plaintiff alleges that her injuries were caused by Defendant's operation of a motor

vehicle. *McKenzie v Auto Club Ins. Ass'n*, 458 Mich 214, 220; 580 NW2d 424 (1998). In a negligence claim under the Act, as in any negligence claim, a plaintiff must prove that (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) causation, and (4) damages. *Locklear v Stinson*, 161 Mich App 713, 714; 411 NW2d 834 (1987). Claims and allegations under the Act should be narrowly construed against the plaintiff. "One of the specific purposes of adopting no-fault legislation was to partially abolish tort remedies in favor of first-party insurance benefits by creating the tort-remedy threshold found at [MCL] 500.3135. . . . Thus, a liberal construction of § 3135 is not warranted." *Churchman v Rickerson*, 240 Mich App 223, 229; 611 NW2d 333 (2000); *Ester v Gatie*, unpublished opinion per curiam of the Court of Appeals, issued [April 10, 2008] (Docket No. 276578) (Attached as **Exhibit E.**)

A. Samantha Sam was more than 50% at fault for her own injuries because she did not exit the building promptly after being warned of danger, and she disregarded a direct instruction by a police officer.

Plaintiff claims that Defendant's negligence was the proximate cause of her injuries. Plaintiff cannot sustain this claim when she did not attempt to exit the building after being warned of danger, and when she disregarded a direct instruction by a police officer to wait for help. Defendant is not liable because Plaintiff was more than 50% at fault for her own injury and damages.

Michigan has adopted the doctrine of pure comparative fault. The purpose for this is to "hold a person fully responsible for his or her acts and to the full extent to which they cause injury. That is justice." *Kirby v Larson*, 400 Mich 585, 644; 256 NW2d 400 (1977). Under the Act, "[d]amages shall be assessed on the basis of comparative

fault, *except* that damages shall not be assessed in favor of a party who is more than 50% at fault." § 3135(2)(b). (Emphasis added.) The Michigan legislature has defined fault to mean "an act, an omission, [or] conduct . . . that is a proximate cause of damage sustained by a party." MCL 600.6304(8). The Michigan Supreme Court has interpreted proximate cause to mean "'a foreseeable, natural, and probable cause [of] the plaintiff's injury and damages.'" *Kaiser v Allen*, 480 Mich 31, 38; 746 NW2d 92 (2008) (quoting *Shinholster v Annapolis Hosp.*, 471 Mich 540, 546; 685 NW2d 275 (2004)).

In *Huggins v Scripter*, unpublished opinion per curiam of the Court of Appeals, issued [December 20, 2002] (Docket No. 235763) (Attached as **Exhibit F.**), the plaintiff's decedent ("decedent") was a pedestrian wearing dark clothes in an unlit area. The defendant motorist crested over a hill and struck the decedent. At trial the defendant moved for summary disposition.

Evidence suggested, however, that the decedent was apparently visible in the defendant's lights or in the line of sight. There was also evidence that the defendant may have looked away from the road just as he crested the hill. The trial court denied the defendant's motion. The Court of Appeals affirmed. The court held that reasonable minds could differ whether defendant breached his duty of ordinary care.

On appeal, the Supreme Court in *Huggins v Scripter*, 469 Mich 898; 669 NW2d 813 (Table) (2003), disagreed and reversed. The court ordered the case remanded back to the trial court for an entry of summary judgment in favor of the defendant. The court reasoned that "[a]ssuming arguendo defendant's conduct of taking his eyes off the road to look at is watch that [sic] while traveling under the posted speed limit was

negligent, no reasonable juror could find that defendant was more at fault than the decedent in the accident." *Huggins, supra*. In its holding the court went on to explain that no driver could have avoided hitting the decedent, who was wearing dark clothes in the middle of the night just beyond the crest of a hill. Because there was no genuine issue as to any material fact, the defendant was entitled to summary judgment as a matter of law. *Id*. At 898.

The court in *Huggins, supra*, found that the plaintiff's actions were negligent and the proximate cause of the accident. As in *Keiser, supra*, the plaintiff should have foreseen the potential hazards of his actions. Plaintiff in this case is like the plaintiff in *Huggins, supra*. Plaintiff did not make any effort to exit the building when she first learned there was a gas leak. (Sam, exam. at 77:9.) A reasonable person acting prudently would have foreseen the potential danger related to a gas leak in the building. Plaintiff did nothing until there was an actual explosion. (*Id*. at 80:5.) Plaintiff then grabbed a book, finished dressing, and went onto her balcony where she was instructed by a police officer to wait for help. (*Id*. at 85:12-16; 86:12-15.) Plaintiff waited *three minutes* before disregarding the officer's instruction and scaling the balcony herself. (*Id*. at 86:16, 17, 22-24.) (Emphasis added.) The decision to disregard the officer's instruction and act on her own led to her fall and subsequent injuries. Plaintiffs injuries were caused by her own negligence and failure to act reasonably in the midst of foreseeable danger. Because of this, Plaintiff is more than 50% at fault for her own injuries. Plaintiff has presented no genuine issue of material fact that would warrant this matter going to trial. Defendant's Motion for Summary Disposition should be granted on

this issue.

B. Having no prior indication or incidence of blackout or seizure, Dennis Menace is not liable because he suffered a sudden emergency when he blacked out and had a seizure just before hitting the apartment building.

Plaintiff claims that Defendant negligently operated his car and collided with her apartment building. Defendant was not negligent because he suffered from a sudden and totally unexpected emergency through no fault of his own when he had a seizure and blacked out. The Plaintiff's claim cannot be sustained because the evidence and testimony does not support it.

A person who is faced with a sudden emergency is not guilty of negligence unless that person causes the emergency. *Socony Vacuum Oil Co. v Marvin*, 313 Mich 528, 546; 21 NW2d 841 (1946). When examining the factual background of a case "it is essential that the [emergency] . . . was totally unexpected[1]." *Vander Laan v Miedema*, 385 Mich 226, 232; 188 NW2d 564 (1971). "'Unsuspected' facts are those which . . . take place so suddenly that the normal expectations of due and ordinary care are . . . modified by the attenuating factual conditions.'" *Vsetula v Whitmyer*, 187 Mich App 675, 681; 468 NW2d 53 (1991) (quoting *Amick v Baller*, 102 Mich App 339, 342; 301 NW2d 530 (1980)).

The principles of the sudden emergency doctrine were recently applied in the case of *White v Taylor Distributing Co., Inc.*, 482 Mich 136; 753 NW2d 591 (2008). In *White, supra*, the defendant stopped at a rest area in Canton, Michigan on his way from Cincinnati to Novi because he experienced "an *urgent* onset of *severe* diarrhea." *Id*. at

1 This phrase is connoted in the term 'unsuspected' as it relates to the sudden emergency doctrine. See *Vander Laan* at 232.

136. (Emphasis Added.) After about 20 minutes he felt better and continued on his trip. As the defendant exited onto Novi Road he recalled seeing a car 250-300 yards ahead of him stopped at a red light. The defendant applied the brakes and began to slow down when he blacked out. The defendant was jarred awake again when he collided with the plaintiff's car in front of him. He was then taken to the hospital where he was diagnosed with intestinal inflammation with secondary blackout. The plaintiff filed suit, and the trial court granted summary disposition to the defendant based on the sudden emergency doctrine. The Court of Appeals reversed. The Supreme Court affirmed the holding of the Court of Appeals.

The court explained that for the sudden emergency doctrine to apply, the defendant's emergency must have been "'totally unexpected.'" *White, supra* at 136 (quoting *Vander Laan, supra* at 232.) It reasoned that there was "evidence that [the] defendant may have known or should have known that he was not feeling well when he continued driving after his *urgent* stop at the Canton rest area." *Id*. at 136. (Emphasis added.) In the court's opinion a genuine issue of material fact was raised as to whether the defendant's emergency was totally unexpected. Moreover, "inconsistent statements about the cause of [the defendant's] illness create[d] issues of material fact [that precluded] summary disposition." *Id*. at 136.

Defendant is unlike the plaintiff in *White, supra*, for many reasons. Defendant never experienced an *urgent* symptom that would give him cause for concern before his accident. He was merely experiencing what millions of Americans experience every year, a common cold. (Menace, dep. at 5:10-12.) Defendant suffered a sudden

emergency *for the first time* when he had a seizure just before the accident. He did not make an urgent stop to rest on his trip and then continue traveling a few minutes later. Again, Defendant was merely experiencing a common cold. Defendant had never blacked out or had a seizure before this incident. (*Id*. at 4:4.) He could not have known that he would have a seizure based merely on the fact that he had a common cold. Also unlike the defendant in *White, supra*, Defendant's statements are consistent throughout his deposition testimony; that is, his seizure was sudden, totally unexpected, and caused through no fault of his own.

Defendant suffered from a sudden emergency as that doctrine has been applied under Michigan law. Furthermore, Plaintiff has presented no genuine issue of material fact that would warrant this matter being presented to a jury. Therefore, Defendant is entitled to summary judgment on this issue.

C. Samantha Sam does not meet the threshold injury requirement under MCL 500.3135 because she continues to perform normal daily tasks and does not suffer a permanent serious disfigurement.

Under Michigan law a plaintiff can recover damages for noneconomic loss "*only* if the injured [plaintiff] has suffered . . . serious impairment of body function, or permanent serious disfigurement." *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004) (quoting MCL 500.3135(1)). (Emphasis added.) Whether a plaintiff has met the threshold injury requirement of MCL 500.3135 is a question of law for the court to decide. *Id*. at 121.

(a) Samantha Sam was generally able to perform the tasks of her normal life and did not suffer a serious impairment of body function within the meaning of MCL 500.3135.

Plaintiff claims that she suffers a serious impairment of body function that impairs her general ability to lead a normal life. This claim cannot be sustained when Plaintiff continues to perform the activities she performed before her injuries. Defendant did not cause plaintiff to suffer a serious impairment of body function.

A plaintiff does not suffer from a serious impairment of body function unless there is an "'objectively manifested impairment' . . . [that] affects [the] plaintiff's 'general ability' to lead [her] normal life." *Kreiner, supra* at 130. In requiring the plaintiff to prove a serious impairment of body function the legislature intended it to be "as significant an obstacle to recovery as that posed by the requirement of permanent serious disfigurement and death." *Netter v Bowman*, 272 Mich App 289, 305-306; 725 NW2d 353 (2006).

In *Kreiner, supra*, the plaintiff was injured in a car accident. The extent of his injuries included chronic back and leg pain that radiated throughout his right side. Before the accident the plaintiff worked eight hours a day as a construction worker. His duties required him to perform lifting, bending, and standing. After his accident the plaintiff was forced to cut his work day back to six hours a day, and he could no longer lift anything over eighty pounds. Although restricted, the plaintiff was still able to engage in lifting, bending, and standing. The court held that summary disposition was proper because the plaintiff "failed to establish that his impairment affected his general

ability to conduct the course of his normal life, [and] he did not satisfy the 'serious impairment of body function' threshold" *Kreiner, supra* at 138.

The court reasoned that although restricted, the plaintiff's injuries "did not affect his *overall or broad ability* to conduct the course of his normal life." *Id*. at 137. (Emphasis added.) When determining whether the plaintiff met the threshold injury requirement, the court considered the plaintiff's "life as a whole, before and after the accident." *Id*. at 137. Moreover, "[a] negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still *generally able* to lead his normal life." *Id*. at 137. (Emphasis added.)

Plaintiff in this case does not meet the threshold injury requirement under *Kreiner, supra*. Plaintiff continues to do housework (Sam, exam. at 124:3-11), stay home alone (*Id*. at 126:11-12), bathe and shower (*Id*. at 128:18-21), get dressed (*Id*. at 128:22-25), fix her own lunch (*Id*. at 129:11-12), and is able to work. (*Id*. at 132:15-18.) Even if Plaintiff is restricted in some particular aspect of her life, she has failed to overcome the significant obstacle required for recovery as intended under *Netter, supra*, because Plaintiff's *general ability to lead a normal life* has not been seriously impaired. When Plaintiff's life as a whole is considered, she cannot sustain the claim that her injuries are within the purview of § 3135 as interpreted under *Kreiner, supra*.

The Court of Appeals has specifically considered the application of § 3135 to the activities of cooking and housekeeping in *Harris v Lemicex*, 152 Mich App 149; 393 NW2d 559 (1986). In that case the plaintiff suffered injuries to her back, neck, arms, and legs when the defendant rear-ended the bus she was on. As a result of her injuries

the plaintiff "could not perform her day-to-day activities, which included cooking and housekeeping." *Harris, supra* at 154. The trial court granted the defendant's motion for summary disposition. The Court of Appeals reversed and remanded.

The court considered several factors including extent of the injury, treatment required, duration, extent of residual impairment, and prognosis for eventual recovery. *Harris, supra* at 154. When these factors were applied to the plaintiff, the court reasoned that "[a]lthough [the] plaintiff's threshold showing of serious impairment of a body function was *marginal*, it was sufficient to defeat defendants' motion for summary judgment." *Id*. at 154. (Emphasis added.)

In his dissenting opinion, Judge Warshawsky concluded that when the required objective standard is applied, the plaintiff could not meet the threshold, even marginally. *Harris, supra* at 155. In the plaintiff's own deposition she stated that she suffers dizziness and neck pain if she stands too long, and lower-back pain after bending too long. *Id*. at 155. In his reasoning the information available to the court required that the trial court's grant of summary judgment be affirmed.

Unlike the plaintiff in *Harris, supra*, Plaintiff in this case continues her general ability to lead a normal life. Again, Plaintiff continues to do housework (Sam, exam. at 124:3-11), stay home alone (*Id*. at 126:11-12), bathe and shower (*Id*. at 128:18-21), get dressed (*Id*. at 128:22-25), fix her own lunch (*Id*. at 129:11-12), and is able to work. (*Id*. at 132:15-18.)

The plaintiff's inability to do housework and cooking in *Harris, supra*, was considered a *marginal* question. In this case the question is not marginal. In light of

Plaintiff's own testimony and the evidence presented, Plaintiff has failed to present any material facts about which reasonable minds could differ. Therefore, Defendant is entitled to judgment as a matter of law on this issue.

(b) The injury to Samantha Sam's hand does not constitute a permanent serious disfigurement within the meaning of MCL 500.3135 when Ms. Sam has refused surgery that could make her hand completely normal.

Plaintiff claims that her hand is disfigured within the meaning of § 3135 of the Act. Plaintiff's claim cannot be sustained when in her own deposition testimony she refused to undergo corrective surgery that would make her hand completely normal. Defendant did not cause Plaintiff to suffer permanent serious disfigurement within the meaning of the statute.

The legislature intended "to make the determination of . . . permanent serious disfigurement[ ] an issue of law rather than an issue of fact." *Kern v Blethen-Coluni*, 240 Mich App 333, 338; 612 NW2d 838 (2000). Whether a plaintiff has suffered a permanent serious disfigurement is a question of law when "[t]here is no factual dispute concerning the nature and extent of the person's injuries[, or] . . . the dispute is not material to the determination as to whether the person has suffered . . . permanent serious disfigurement." *Minter v City of Grand Rapids*, 275 Mich App 220, 227; 739 NW2d 108 (quoting MCL 500.3135(2)(a)).

In *Kern, supra*, the plaintiff was a child-pedestrian who suffered a fracture of his right femur when he was hit by the defendant's car while crossing an intersection. The plaintiff underwent surgery that required four pins being drilled into his bone. The plaintiff claimed that he suffered permanent serious disfigurement as a result of surgical

scarring. The trial court *mistakenly* submitted the question of threshold injury to the jury. *Kern, supra* at 335. (Emphasis added.)

The court's review in that case was *de novo*. *Kern, supra* at 344. The plaintiff's four surgical scars were depicted in detail to the jury, but the court was not provided sufficient evidence for review. The court reasoned that because determination of permanent serious disfigurement is a matter of law, and because there was insufficient evidence for review, the case must be remanded. On remand the trial court was to determine as a matter of law whether the plaintiff's injuries satisfied the threshold requirement. *Id*. at 345.

Plaintiff in this case has presented no factual dispute that would warrant presentation to a jury when, by her own deposition testimony, she stated that surgical treatment would make her hand completely normal. (Sam, dep. at 14:23-15:4.) Unlike the plaintiff in *Kern, supra*, Plaintiff in this case has presented sufficient evidence by her own testimony that warrants judgment as a matter of law. Furthermore, when medical treatment can reduce the extent of a plaintiff's injury, that injury is not permanent as a matter of law. *Kosack v Moore*, 144 Mich App. 485, 491; 375 NW2d 742 (1985).

Plaintiff's hand is not disfigured within the meaning of § 3135 because the disfigurement is not permanent. Moreover, when Plaintiff's hand could be made 100% fully useful, the injury is not serious.

The plaintiff in *Kosack, supra*, was involved in an automobile accident. As a result of the accident the plaintiff sustained lacerations on his hands and right leg which required seventeen stitches in total. The trial court held that the plaintiff's injuries did

not constitute a permanent serious disfigurement. The Court of Appeals affirmed.

The court reasoned that "[b]ecause evidence, *including plaintiff's own testimony*, suggests that medical treatment could reduce the extent of scarring, plaintiff's scars cannot be said to be permanent as a matter of law." *Kosack, supra* at 491. (Emphasis added.) The court further held that "evidence in the record demonstrates that plaintiff's scars cannot be characterized as serious disfigurements." *Id*. at 491.

Unlike the plaintiff in *Kosack, supra*, Plaintiff's own testimony not only suggests, but plainly states, that the injury to her hand is not permanent. Furthermore, Plaintiff's injury in this case would not merely be reduced but would be made "fully useful, 100 percent." (Sam, dep. at 15:4.) Because Plaintiff's hand could be made 100 percent, it is also logical that the injury is not serious within the meaning of § 3135. Plaintiff cannot dispute her own testimony and has offered no material facts that would warrant decision by a jury. Defendant is entitled to judgment as a matter of law on this issue.

CONCLUSION

Defendant, Dennis A. Menace, is entitled to summary disposition of Plaintiff's Complaint under MCR 2.116(C)(10). Plaintiff was more than 50% at fault for her injuries and damages when she failed to act reasonably after being warned of danger, and when she disregarded the direct instruction of a police officer to wait on her balcony for help to arrive. Defendant is not liable for Plaintiff's injuries when he blacked out and suffered a totally unexpected and sudden seizure through no fault of his own. Finally, Plaintiff cannot recover under § 3135 of the Act when she has not suffered serious impairment of body function or permanent serious disfigurement, and therefore cannot

satisfy the required threshold injury.

Viewing the evidence and testimony in a light most favorable to the plaintiff, Plaintiff has raised no genuine issue of material fact about which reasonable minds could differ. Therefore, Defendant is entitled to judgment as a matter of law, and his Motion for Summary Disposition of Plaintiff's Complaint should be granted.

REQUEST FOR RELIEF

Defendant, Dennis A. Menace, respectfully requests this court to grant his Motion for Summary Disposition of Plaintiff's Complaint.

Respectfully Submitted:

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Larry J. Brown, Jr. (P33333)
Attorney for the Defendant
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Dated: October 25, 2008