

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN AND  
FOR BREVARD COUNTY, FLORIDA

CASE NO

KIMBERLY JENKINS,

Plaintiff,

vs.

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS and  
GRAND HAVEN MASTER  
HOMEOWNERS ASSOCIATION, INC.,

Defendants.

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COMPLAINT

COMES NOW the Plaintiff, KIMBERLY JENKINS, by and through her undersigned counsel, and sues Defendants, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS and GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., and alleges:

1. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs and attorneys' fees.
2. At all times material hereto, Plaintiff is a resident of Brevard County, Florida.
3. At all times material hereto, Defendant, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS is a political subdivision of the State of Florida, who owns and maintains the sidewalk located at or near the Grand Haven subdivision in Melbourne, Brevard County, Florida.

4. The notice requirements of Florida § 768.28 (6) (a) § 768.28 (6) (a) have been satisfied and is attached hereto as Exhibit "A".

5. At all times material hereto, Defendant, GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., is a Florida Not For Profit Corporation licensed to do business in the state of Florida.

6. At all times material hereto, Defendant GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., was in possession of and maintained the sidewalks in the Grand Haven subdivision, open to the general public, including the Plaintiff herein.

7. On or about June 12, 2017, the Plaintiff was walking on a sidewalk on a common area at or near the Grand Haven subdivision in Melbourne, Brevard County, Florida.

8. At said time and place the Plaintiff tripped and fell on an uneven portion of the sidewalk, injuring her teeth, knees, chin, and sustaining further injuries.

**COUNT I – CLAIM OF NEGLIGENCE AS TO BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

9. Plaintiff realleges and incorporates by reference paragraphs one through eight and further states:

10. At said time and place, Plaintiff was lawfully upon said premises, and Defendant, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, owed Plaintiff a duty to exercise reasonable care for her safety.

11. At said time and place, Defendant, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

a. Negligently failing to maintain or adequately maintain the uneven sidewalk, failing to post any caution signs, thus creating a hazardous condition to members of the public walking on said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;

b. Negligently failing to inspect or adequately inspect the uneven sidewalk as specified above, to ascertain whether the uneven sidewalk constituted a hazard to pedestrians utilizing said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;

c. Negligently failing to inspect or adequately warn the Plaintiff of the dangers as specified above, when Defendant knew or through the exercise of reasonable care should have known that said uneven sidewalk was unreasonably dangerous and that Plaintiff was unaware of same; and

d. Negligently failing to correct or adequately correct the unreasonably dangerous condition when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had Defendant exercised reasonable care.

12. As a direct and proximate result of the negligence of Defendant, Plaintiff suffered bodily injury in and about her body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, KIMBERLY JENKINS, demands judgment for damages against Defendant, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, and other such relief deemed proper by the Court. Plaintiff also demands a jury trial on all issues so triable.

**COUNT II- CLAIM OF NEGLIGENCE AS TO DEFENDANT, GRAND HAVEN  
MASTER HOMEOWNERS ASSOCIATION, INC.**

13. Plaintiff realleges and incorporates by reference paragraphs one through eight and further states:

14. At said time and place, Plaintiff was lawfully upon said premises, and Defendant, GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., owed Plaintiff a duty to exercise reasonable care for her safety.

15. At said time and place, Defendant, GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

a. Negligently failing to maintain or adequately maintain the uneven sidewalk and failing to post any caution signs, thus creating a hazardous condition to members of the public walking on said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;

b. Negligently failing to inspect or adequately inspect the uneven sidewalk as specified above, to ascertain whether the uneven sidewalk constituted a hazard to pedestrians utilizing said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;

c. Negligently failing to inspect or adequately warn the Plaintiff of the dangers as specified above, when Defendant knew or through the exercise of reasonable care should have known that said uneven sidewalk was unreasonably dangerous and that Plaintiff was unaware of same; and

d. Negligently failing to correct or adequately correct the unreasonably dangerous condition when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had Defendant exercised reasonable care.

16. As a direct and proximate result of the negligence of Defendant, Plaintiff suffered bodily injury in and about her body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, KIMBERLY JENKINS, demands judgment for damages against Defendant, GRAND HAVEN MASTER HOMEOWNERS ASSOCIATION, INC., and other such relief deemed proper by the Court. Plaintiff also demands a jury trial on all issues so triable.

RESPECTFULLY submitted this 4<sup>th</sup> day of April, 2019

/s/ W. Clay Mitchell, Jr.

W. Clay Mitchell, Jr., Esquire

FBN 0077488

Morgan & Morgan, P.A.

20 N. Orange Avenue, 9<sup>th</sup> Floor

Orlando, FL 32801

Telephone: (407) 420-1414

Facsimile: (407) 245-3416

Primary email: CMitchell@forthepeople.com

Secondary email: daliarivera@forthepeople.com

Attorneys for Plaintiff

# MORGAN & MORGAN®

--- Attorneys At Law ---

20 N. ORANGE AVENUE, 16TH FLOOR  
POST OFFICE BOX 4979  
ORLANDO, FL 32802-4979  
(407) 236-5973  
FAX: (407) 204-2107

Exhibit A

June 19, 2017

## NOTICE OF CLAIM – FLORIDA STATUTES 768-28(6)

### TO:

#### CERTIFIED MAIL-RETURN RECEIPT



\* 3 0 6 6 6 6 3 \*

Chief Financial Officer  
Department of Financial Services  
State of Florida  
200 East Gaines Street  
Tallahassee, Florida 32314

#### CERTIFIED MAIL-RETURN RECEIPT



\* 3 0 6 6 6 6 3 \*

Brevard County Board of Commissioners  
700 Park Avenue  
Titusville, FL 32780

#### CERTIFIED MAIL-RETURN RECEIPT



\* 3 0 6 6 6 6 3 \*

Brevard County Risk Management  
2725 Judge Fran Jamieson Way Building B  
Melbourne, FL 32904

#### CERTIFIED MAIL-RETURN RECEIPT



\* 3 0 6 6 6 6 3 \*

City of Melbourne  
City Manager: Mike McNees  
City Hall, Fifth Floor  
900 E. Strawbridge Ave., Melbourne, FL 32901

### CLAIMANT:

Kimberly Ann Jenkins

Date of Birth:

Place of Birth:

N/A

Social Security No:

### CONSORTIUM CLAIMANT:

Mark Jenkins

Date of Birth:

N/A

Place of Birth:

N/A

Social Security No.:

N/A

### PRIOR ADJUDICATED UNPAID CLAIMS: (if none, so state)

Claimant: None

Consortium Claimant: None

### DATE OF INCIDENT:

June 12, 2017

### PLACE OF INCIDENT:

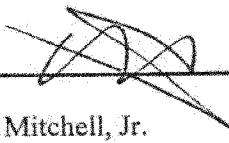
vs At the entrance in front of Chastain Manor subdivision on the sidewalk next to the pond on Chastain Drive while walking toward the Chastain subdivision in

**PLACE OF INCIDENT:** At the entrance in front of Chastain Manor subdivision on the sidewalk next to the pond on Chastain Drive while walking toward the Chastain subdivision in Melbourne, Florida.

**DESCRIPTION OF INCIDENT:** While walking on sidewalk on Chastain Drive, our client tripped and fell due to uneven pavement.

IF ADDITIONAL INFORMATION IS NEEDED, PLEASE CONTACT THE UNDERSIGNED.  
PLEASE ACKNOWLEDGE RECEIPT HEREOF.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to the above agencies, this 20th day of June, 2017.

  
\_\_\_\_\_

W. Clay Mitchell, Jr.

FBN 0077488

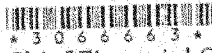
Morgan and Morgan, P.A.  
20 N. Orange Ave., St.1600  
Orlando, FL 32802-4979  
(407) 236-5973  
Attorneys for Plaintiff



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:



\* 3 0 6 6 4 6 3 \*

Chief Financial Officer  
Department of Financial Services  
State of Florida  
200 East Gaines Street



Tallahassee, Florida 32314  
9590 9402 2956 7094 0152 71

2. Article Number (Transfer from service label)

7017 0190 0000 6898 1922

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Willis Clark*

- Agent  
 Addressee

B. Received by (Printed Name)

Received by: Willis Clark

C. Date of Delivery

DEPT OF FINANCIAL SERVICES

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail®  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Mail  
 Mail Restricted Delivery
- Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Return Receipt for Merchandise  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery

(over 900)

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:



\* 7 7 3 0 7 7 0 \*

Brevard County Public Works  
ATTN: Risk Management  
4690 N. Wickham Road  
Melbourne, FL 32935



9590 9402 2956 7094 0153 49

2. Article Number (Transfer from service label)

7017 0190 0000 6898 1977

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *J. D. M.*

- Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/20/17

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type



- Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail®  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery
- Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Return Receipt for Merchandise  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery

(over 900)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY														
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>														
<p>1. Article Addressed to:</p>  <p>* 3 0 6 6 6 6 3 *</p> <p>City of Melbourne  City Manager: Mike McNeas  City Hall, Fifth Floor  900 E. Strawbridge Ave., Melbourne, FL 32901</p>  <p>9590 9402 2956 7094 0153 18</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>														
<p>2. Article Number (Transfer from service label)</p> <p>7017 0190 0000 6898 1946</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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