



4. On or about August 22, 2011, Plaintiff Jean Lowell filed a complaint against Defendant/Third-Party Plaintiff Farmers Market, alleging that while she was attending the farmer's market on August 23, 2011 at 60 State Street, she stepped into a pothole and fell, injuring herself.

5. Plaintiffs' Complaint alleges that the Defendants/Third-Party Plaintiffs are liable based on the following theories:

- a. that Defendant negligently maintained the premises;
- b. that Defendant failed to "provide a safely marked walkway for Plaintiff to use to access the premises";
- c. that Defendant "failed to maintain the premises properly";
- d. that Defendant "failed to maintain the premises so that occupants could walk safely without a hazardous condition being present";
- e. that Defendant failed to warn Plaintiff of the allegedly dangerous condition;  
and
- f. *res ipsa loquitur*.

6. Farmers Market is not the owner of 60 State Street, Montpelier, Vermont.

7. At the time of the alleged event, Farmers Market was not even a lessee. See Affidavit of Kevin Thompson, attached hereto as Exhibit B, ¶¶ 5-6. The Farmers Market was allowed by the City to use the property on Saturdays between approximately 6 a.m. and 2 p.m. during the months of May through October, but the Farmers Market had no lease, oral or written, and so had no property interest. See Exhibit B, ¶¶ 6-8.

8. Farmers Market could not, even if it wished to, alter, maintain or repair the premises in which it had no property interest. See Exhibit B, ¶¶ 10-13.

9. The Heney Trusts own the premises and are responsible for maintaining or repairing the premises at issue.

10. If the Defendant/Third-Party Plaintiff, Capital City Farmers Market, Inc., is held liable to the Plaintiff for damages arising from her fall on the premises of 60 State Street, then Third-Party Defendants Heney Trusts shall be obligated to indemnify Defendant/Third-Party Plaintiff against all loss, damages, and expenses imposed by the court and/or a jury against the Defendant/Third-Party Plaintiff Farmers Market.

WHEREFORE, Defendant/Third-Party Plaintiff, Capital City Farmers Market, Inc. demands judgment against Third-Party Defendants for indemnification with respect to any and all judgments against Defendant/Third-Party Plaintiff, together with any and all damages and costs as the court deems just and proper.

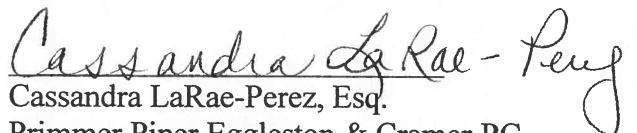
**JURY DEMAND**

Defendant/Third-Party Plaintiff Capital City Farmers Market, Inc. demands a trial by jury on all issues so triable with respect to the Third-Party Complaint.

Montpelier, Vermont

November 21, 2012

CAPITAL CITY FARMERS MARKET,  
INC.

By:   
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Counsel to Capital City Farmers Market,  
Inc.

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 518-8-11

JEAN LOWELL	)
Plaintiff	)
v.	)
	)
CAPITAL CITY FARMERS MARKET, INC.	)
Defendant/Third-Party Plaintiff	)
v.	)
	)
MARY M. HENEY AS TRUSTEE OF THE	)
LAWRENCE P. HENEY FAMILY TRUST AND	)
MARY M. HENEY AS TRUSTEE OF THE	)
MARY M. HENEY FAMILY TRUST	)
Third-Party Defendants	)

**AFFIDAIT OF KEVIN THOMPSON**  
**IN SUPPORT OF CAPITAL CITY FARMERS MARKET INC.'S**  
**THIRD-PARTY COMPLAINT**

NOW COMES KEVIN THOMPSON, being duly sworn, and states the following under oath:

1. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.
2. I am the Treasurer of the Capital City Farmers' Market, Inc. ("Farmers Market") and a duly authorized representative.
3. At the time of the alleged incident, I was not an officer of the Farmers Market, but I actively participated as a seller, attended annual meetings and was aware of certain of the Farmers Market operations.
4. Farmers Market is not and has never been the owner of 60 State Street, Montpelier, Vermont.

5. On August 23, 2008, the date when Jean Lowell claims to have fallen at 60 State Street, the Farmers Market did not have any written or oral lease agreed between it and the City of Montpelier, which leased the property from the owners, the Heney Trusts.

6. On August 23, 2008, the Farmers Market did not have any written or oral lease agreed between it and the owners, the Heney Trusts.

7. At that time, the Farmers Market operated at 60 State Street only at the informal invitation and at the discretion of the City of Montpelier, the lessee of the premises.

8. The Farmers Market was allowed to use the space at 60 State Street only between the hours of 6 a.m. to 2 p.m. on Saturdays during the months May through October.

9. The operation of the Farmers Market at 60 State Street only became formalized and more permanent after the date when Plaintiff allegedly fell. The Farmers Market and the City of Montpelier entered a lease and the Farmers Market started paying rent to the City in 2009.

10. At the time of the event complained of, the Farmers Market had no lease, and so it could exercise no rights on the premises.

11. On a number of occasions, the Farmers Market attempted to make certain safety changes to the premises, but it was denied permission to do so.

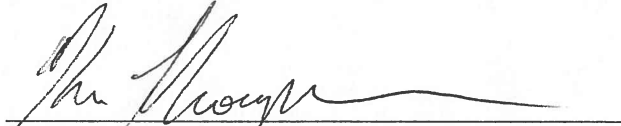
12. For example, the Farmers Market obtained a grant to build granite steps down to the parking area from the higher-elevation neighboring property to prevent market participants and attendees from slipping down the grassy bank. Farmers Market was denied permission to install the steps, and so the steps were never installed and the grant was returned to its donors.

13. With no ownership or even leasehold rights in the premises, Farmers Market could not alter, maintain or repair the premises at 60 State Street.

14. On August 23, 2008, Farmers Market was neither owner nor leaseholder of the premises.

I hereby swear that the foregoing is true and accurate to the best of my personal knowledge.

DATED at Montpelier, Vermont this 21<sup>st</sup> day of November, 2012


  
Kevin Thompson, Treasurer, Capital City Farmers Market, Inc.

State of VERMONT

County of Washington, ss.

At Montpelier, Vermont this 21st day of November, 2012, personally appeared Kevin Thompson, the Treasurer of Capital City Farmers Market, Inc., a person to me known, and averred the truth of the foregoing.

Before me,

  
Notary Public

My commission expires: 2/10/15