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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

CHARMION FREIFELD AND JED
FREIFELD, a married couple residing in
the State of Oregon

Plaintiffs,

v.

LEISURE SPORTS, INC., a foreign
corporation; CLUBSPORT OREGON, an
assumed business name, SMG
PROPERTIES OREGON LLC, registered as
a foreign LLC in the State of Oregon, and
SAMUEL GREER, an individual residing in
the State of Oregon,

Defendants.

Case No. 18CV12178

**ORDER ON PLAINTIFFS' MOTION
TO AMEND**

ORDER

This matter came before the Court for hearing on April 1, 2019, on Plaintiffs' Motion to Amend. Plaintiffs Charmion and Jed Freifeld appeared through their attorney T. Beau Ellis, of Vial Fotheringham LLP. Defendant Leisure Sports, Inc., and SMG Properties LLC, d/b/a ClubSport Oregon, appeared through their attorney Tessan Wess, Esq., of Lewis Brisbois Bisgaard & Smith LLP, and Defendant Samuel Greer present for argument through his attorney Jessica Warner, Esq., of Lindsay Hart, LLP. The Court being fully advised in the matter orders as follows:

1 The Court hereby **ORDERS**:

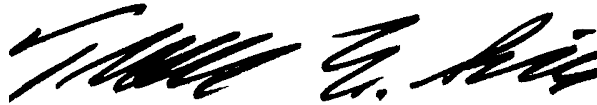
2 1. Plaintiffs' motion to amend to add allegations of punitive damages to Plaintiffs'
3 *respondeat superior* and negligence claims against Defendants Leisure Sports, Inc., and SMG
4 Properties LLC is **GRANTED**;

5 2. Plaintiffs' motion to amend to add claims for negligent infliction of emotional
6 distress, negligent supervision and training, and negligence *per se* against Defendants Leisure
7 Sports, Inc., and SMG Properties LLC is **GRANTED**;

8 3. Plaintiffs shall file their amended complaint within 14 days' time from the entry
9 of this order; and

10 4. Defendants are hereby granted leave by the Court to file a motion for summary
11 judgment on any claims or issues not previously addressed in Defendants' pending motion for
12 summary judgment currently in briefing before the Court, after the filing of Plaintiffs' amended
13 complaint.

14
15
16 Signed: 4/10/2019 08:55 AM

17 

18
19 **Circuit Court Judge, Theodore E. Sims**

20 Submitted by
21 Kristian Roggendorf, OSB #013990
22 T. Beau Ellis, OSB #093437
23 Vial Fotheringham LLP
17355 SW Boones Ferry Rd, Suite A
Lake Oswego, OR 97035
Phone: 503-684-4111
Fax: 503-598-7758

1 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.100**

2 I hereby certify that I served the foregoing ORDER GRANTING PLAINTIFFS'
3 MOTION TO AMEND on April 1, 2019, by causing a full, true and correct copy thereof,
4 addressed to the last known address of said attorneys, to be sent by the following method(s):

5 Email to: Tessan.Wess@lewisbrisbois.com; Ken.Abere@lewisbrisbois.com;
6 Jwarner@lindsayhart.com; CMcKelvey@lindsayhart.com

7 This proposed order is ready for judicial signature because:

8 1. Each opposing party affected by this order or judgment has stipulated to the order
9 or judgment, as shown by each opposing party's signature on the document being submitted.

10 2. Each opposing party affected by this order or judgment has approved the order or
11 judgment, as shown by signature on the document being submitted or by written confirmation of
12 approval sent to me or by an accompanying stipulation by opposing counsel that no objection
13 exists as to the judgment or order.

14 3. I have served a copy of this order on all parties entitled to service and:

15 a. No objection has been served on me from Defendant Greer.

16 b. I received objections from ClubSport Defendants that I could not
17 resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of
18 the objections I received and indicated which objections remain unresolved.

19 c. After conferring about objections, counsel for Defendants agreed
20 to independently file any remaining objections.

21 4. The relief sought is against an opposing party who has been found in default.

22 5. An order of default is being requested with this proposed judgment.

23 6. Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or

1 otherwise.

2 7. This is a proposed judgment that includes an award of punitive damages and
3 notice has been served on the Director of the Crime Victims' Assistance Section as required by
4 UTCR 5.100(4).

5 DATED this 9th day of April, 2019.

6 **VIAL FOTHERINGHAM LLP**

7 *s/ Kristian Roggendorf*

8 Kristian Roggendorf, OSB #013990
9 T. Beau Ellis, OSB #093437
10 Email: ksr@vf-law.com
11 Email: beau.ellis@vf-law.com
12 17355 SW Boones Ferry Rd, Suite A
13 Lake Oswego, OR 97035
14 Phone: 503-684-4111
15 Fax: 503-598-7758

13 **OLSON BROOKSBY PC**

14 KRISTIN L. OLSON
15 OSB #031333
16 E-Mail: kolson@olsonbrooksby.com
17 Telephone: (503) 740-7608
18 *Trial attorney*

17 SCOTT A. BROOKSBY
18 OSB #950562
19 E-Mail: sbrooksby@olsonbrooksby.com
20 Telephone: (503) 290-2420

21 *Of Attorneys for Plaintiffs*

22

23

From: Wess, Tessan
To: [Kristian S. Roggendorf](#); ["Kristin Olson"](#); [Abere, Kenneth](#)
Cc: [Jessica A. Warner \(Jwarner@lindsayhart.com\)](#); [Connie Elkins McKelvey](#); [T. Beau Ellis](#)
Subject: RE: Freifeld--Plaintiffs' RFP 57 and the 4/18 depositions
Date: Monday, April 8, 2019 4:52:47 PM
Attachments: [image001.png](#)
[image002.png](#)
[LB-Logo_7c9c5bd0-0a1e-47b8-a3b1-a4b5cdfed8fa.png](#)

Kristin,

I have responded to your points below.

Thank you,

Tessan

From: Kristian S. Roggendorf [mailto:KSR@vf-law.com]
Sent: Monday, April 08, 2019 3:44 PM
To: Wess, Tessan; 'Kristin Olson'; Abere, Kenneth
Cc: Jessica A. Warner (Jwarner@lindsayhart.com); Connie Elkins McKelvey; T. Beau Ellis
Subject: [EXT] RE: Freifeld--Plaintiffs' RFP 57 and the 4/18 depositions

Tessan,

Our side does need to file the motion to amend order. However, it occurred to me that you and I did not discuss your objections as required by the rules before I can submit the draft order.

We do not agree to your revisions, but would like to discuss them pursuant to UTCR 5.100(3)(b). We suggest filing the proposed orders as-is, and allow Judge Sims to decide the issue of the correct language.

Specifically, we do not agree to an order simply stating that the motion to amend is "Granted" without explaining what is in fact granted. That is simply confusing on the record, should there be any appeal, and does not indicate the actual ruling of the court, which is that punitive damages were allowed for [a, b, and c] and the claims for [x, y, and z] were also allowed.

- I would agree if the motion were partially granted and partially denied, but this motion was granted in its entirety, so it's not confusing.

Second, while we conceded here at argument that ClubSport should not be listed as a party, that was not part of the motion, so it should not be part of the order. We can agree among ourselves to file the amended complaint not alleging ClubSport Oregon as a party, but it has no place in an order allowing punitive damages and additional claims, especially since dismissing the d/b/a was part of your summary judgment motion.

- That's fine. That language can be removed from this order.

Third, I don't see a need in the order for specifying the "second" amended complaint. That is not a firm objection, and we can include that, as long as it would not delay submission of the order to the court for review.

- That's fine. That language can be removed from this order.

Finally, I don't think the judge allowed a full new look at the amended complaint for summary judgment purposes. We believe that you raised your arguments to the First Amended Complaint, and those issues are baked in the cake in the motion before the court right now. If there is some issue you raised in the summary judgment motion but want to revise for the new complaint, we would object.

- I agree and I don't believe that the proposed revisions to the order indicate anything to the contrary.

Please let me know if it would be fruitful to discuss these issues. Otherwise we can simply submit both orders to the court. My cell is 503-730-2573.

Kristian

Kristian Roggendorf

Attorney (Oregon Licensed)

Colorado practice temporarily authorized pending admission under C.R.C.P. 205.6

Vial Fotheringham LLP
12600 W. Colfax Ave, STE C200
Lakewood, CO 80215
Telephone: 720-943-8811

www.vf-law.com

From: Wess, Tessan <Tessan.Wess@lewisbrisbois.com>

Sent: Monday, April 1, 2019 5:45 PM

To: Kristian S. Roggendorf <KSR@vf-law.com>; 'Kristin Olson' <kolson@olsonbrooksby.com>; Abere, Kenneth <Ken.Abere@lewisbrisbois.com>

Cc: Jessica A. Warner (Jwarner@lindsayhart.com) <Jwarner@lindsayhart.com>; Connie Elkins McKelvey <CMcKelvey@lindsayhart.com>; T. Beau Ellis <Beau.Ellis@vf-law.com>

Subject: RE: Freifeld--Plaintiffs' RFP 57 and the 4/18 depositions

Apologies. Here is the attachment.

From: Wess, Tessan

Sent: Monday, April 01, 2019 4:44 PM

To: 'Kristian S. Roggendorf'; 'Kristin Olson'; Abere, Kenneth

Cc: Jessica A. Warner (Jwarner@lindsayhart.com); Connie Elkins McKelvey; T. Beau Ellis

Subject: RE: Freifeld--Plaintiffs' RFP 57 and the 4/18 depositions

Good afternoon,

Please find the attached order with proposed revisions.

Thank you,

Tessan

From: Kristian S. Roggendorf [<mailto:KSR@vf-law.com>]

Sent: Monday, April 01, 2019 4:14 PM

To: Wess, Tessan; 'Kristin Olson'; Abere, Kenneth

Cc: Jessica A. Warner (Jwarner@lindsayhart.com); Connie Elkins McKelvey; T. Beau Ellis

Subject: [EXT] RE: Freifeld--Plaintiffs' RFP 57 and the 4/18 depositions

Dear Counsel,

Please find attached the draft order on the motion to amend. Please let us know if you have any objections per UTCR 5.100.

Thank you,

Kristian

Kristian Roggendorf

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

CHARMION FREIFELD AND JED
FREIFELD, a married couple residing in
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Plaintiffs,

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LEISURE SPORTS, INC., a foreign
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PROPERTIES OREGON LLC, registered as
a foreign LLC in the State of Oregon, and
SAMUEL GREER, an individual residing in
the State of Oregon,

Defendants.

Case No. 18CV12178

**ORDER ON PLAINTIFFS' MOTION
TO AMEND**

ORDER

This matter came before the Court for hearing on April 1, 2019, on Plaintiffs' Motion to Amend. Plaintiffs Charmion and Jed Freifeld appeared through their attorney T. Beau Ellis, of Vial Fotheringham LLP. Defendant Leisure Sports, Inc., and SMG Properties LLC, d/b/a ClubSport Oregon, appeared through their attorney Tessan Wess, Esq., of Lewis Brisbois Bisgaard & Smith LLP, and Defendant Samuel Greer present for argument through his attorney Jessica Warner, Esq., of Lindsay Hart, LLP. The Court being fully advised in the matter orders as follows:

1 The Court hereby **ORDERS**:

2 1. Plaintiffs' motion to amend ~~to add allegations of punitive damages to Plaintiffs'~~
3 ~~respondeat superior and negligence claims against Defendants Leisure Sports, Inc., and SMG~~
4 ~~Properties LLC~~ is **GRANTED**;

5 ~~2. Plaintiffs' motion to amend to add claims for negligent infliction of emotional~~
6 ~~distress, negligent supervision and training, and negligence per se against Defendants Leisure~~
7 ~~Sports, Inc., and SMG Properties LLC~~ is **GRANTED**;

8 ~~3.~~ 2. Plaintiffs shall file their second amended complaint within 14 days' time from the
9 entry of this order;

10 ~~3.~~ Plaintiffs shall amend the caption of the second amended complaint to properly
11 identify ClubSport Oregon as an assumed business name of SMG Properties Oregon, LLC; and

12 4. Defendants are hereby granted leave by the Court to file a motion for summary
13 judgment on any new claims not alleged in the operative complaint (the First Amended
14 Complaint or issues not previously addressed in Defendants' pending motion for summary
15 judgment currently in briefing before the Court, after the filing of Plaintiffs' second amended
16 complaint.

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22 Submitted by
23 T. Beau Ellis, OSB #093437
Vial Fotheringham LLP

1 17355 SW Boones Ferry Rd, Suite A
Lake Oswego, OR 97035
2 Phone: 503-684-4111
Fax: 503-598-7758

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 9, 2019, I served a true and correct copy of the foregoing
3 document on the below-stated persons, using one of the following methods of service.

4 **Mail** Means to place in the post by first-class mail, postage prepaid to the last known
5 address of the persons identified below;

6 **E-Service** Means service electronically by the court’s eFiling system. Service was
7 accomplished at the party’s email address as recorded on the date of service in the
8 eFiling system. (UTCRC 21.100.)

9 **E-mail** Means service by electronic mail to the last known e-mail address of the persons
10 identified below, and if sent by electronic mail only, under agreement pursuant to
11 ORCP 9. Otherwise email service is for courtesy only.

<i>Name/Address</i>	<i>Relationship</i>	<i>Manner of Service</i>
Kenneth J. Abere, Jr. Lewis Brisbois Bisgaard & Smith LLP 888 SW Fifth Ave., Ste 00 Portland, OR 97204-2025	<i>Attorneys for Defendant ClubSport, et al</i>	E-Service
Connie Elkins McKelvey Lindsay Hart LLP 1300 SW 5 th Ave., Ste 3400 Portland, OR 97201-5640	<i>Attorneys for Defendant Samuel Greer</i>	E-Service

17 Document:

18 **PROPOSED ORDER ON
MOTION TO AMEND**

19
20 DATED this 9th day of April, 2019.

21 **VIAL FOTHERINGHAM LLP**

22
23 s/ *Kristian Roggendorf*

24 Kristian Roggendorf, OSB #013990
25 Email: ksr@vf-law.com
26 17355 SW Boones Ferry Rd., Suite A
27 Lake Oswego, OR 97035
28 Phone: 503-684-4111
Fax: 503-598-7798