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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

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

(Negligence/Professional
Malpractice/Respondeat Superior Liability;
Intentional Infliction of Emotional
Distress/Respondeat Superior Liability;
Sexual Assault and Battery/Respondeat
Superior Liability; and Loss of Consortium)

(Not subject to mandatory arbitration)

Amount in controversy: \$1,780,000

Filing fee authority of \$834 (ORS
21.160(1)(d))

Demand for Jury Trial

Plaintiffs demand a jury trial and allege:

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(The Parties)

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1.
2.

Plaintiff Charmion Freifeld (hereinafter “Plaintiff”) is an adult, female Oregon resident. At all relevant times, Plaintiff was a customer, member, client, and massage therapy patient of Defendant ClubSport Oregon (“ClubSport”).

Plaintiff Jed Freifeld (“Plaintiff Jed Freifeld”) is an adult, male Oregon resident. At all relevant times, Plaintiff Jed Friefeld was and is the legal husband of Plaintiff. At all relevant times, Plaintiff Jed Freifeld was a customer, member, and client of Defendant ClubSport.

3.
4.
At all relevant times, Plaintiff and Plaintiff Jed Freifeld were engaged in a marriage of mutual support, care and companionship.

4.
On information and belief, at all relevant times, Defendant Leisure Sports, Inc. (“Leisure Sports”), is a foreign corporation licensed to do business in Oregon and conducting regular and sustained business activity within the State of Oregon. Upon information and belief, at all relevant times, Leisure Sports operated ClubSport.

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5.

Upon information and belief, at all relevant times, SMG Properties Oregon, LLC (“SMG”), was registered in Oregon as a foreign limited liability company with its principal place of business in Tigard, Oregon. Upon information and belief, at all relevant times, SMG was licensed to do business in Oregon, and conducting regular and sustained business activity in Oregon. Upon information and belief, at all relevant times, SMG was the owner of Defendant ClubSport.

6.

Upon information and belief, Defendant ClubSport is operating in Washington County, Oregon as an assumed business name, owned by SMG. Upon information and belief, ClubSport is an athletic facility and sports complex in Tigard, Oregon. ClubSport offers massage therapy and has licensed massage therapists on staff.

7.

At all times throughout this complaint, Leisure Sports, SMG, and ClubSport will be referred to collectively as “ClubSport”.

8.

On information and belief, at all relevant times, Defendant Samuel Greer was an adult, male Oregon resident who was licensed by the Oregon Board of Massage Therapists to provide massage therapy.

///

1 9.

2 On information and belief, at all relevant times, Greer was employed by ClubSport
3 for the purposes of providing massage therapy to massage patients, clients, and members of
4 ClubSport.
5

6 (Common Allegations Against All Defendants)
7

8 10.

9 This complaint arises out of what was supposed to be a therapeutic massage that
10 Plaintiff received by Greer at ClubSport on or about October 17 or October 18, 2017.
11

12 11.

13 At all relevant times, on information and belief, Greer was employed by ClubSport
14 for the purpose of providing ClubSport's members with massage services. (Greer and
15 ClubSport will be known collectively as "Defendants".) Plaintiff made an appointment with
16 ClubSport for a massage because she was recovering from an athletic injury to her calf
17 muscle. She wanted some relief from the pain in her calf area. She discussed this with a
18 massage scheduler at ClubSport. The massage scheduler at ClubSport recommended,
19 directed, and encouraged Plaintiff to see Greer and said that Greer would be "a really good"
20 choice for Plaintiff's calf injury. Plaintiff trusted ClubSport's recommendation and made a
21 massage appointment with Greer.
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12.

The position of massage therapist is a position of trust in which the massage therapist is alone with massage patients, and ClubSport recommended Greer to Plaintiff and placed Greer in this position of trust, knowing that customers, members, massage therapy patients, and clients of ClubSport would be alone with Greer and vulnerable, both physically and emotionally, during massages with Greer at ClubSport. This trust made Plaintiff particularly susceptible and vulnerable to Greer.

13.

At all relevant times, Greer was: acting as an employee of, subject to the control of, acting within the course and scope of his employment for, acting on behalf of, and acting as an agent of, ClubSport. Plaintiff's massage with Greer took place on the premises of ClubSport in Tigard, Oregon.

14.

At all relevant times, ClubSport had the right and the ability to control Greer, including controlling the level and degree of a female patron's bodily areas subject to treatment. At all relevant times, ClubSport is vicariously liable for the acts and omissions of its employees, agents or apparent agents, specifically including Greer.

15.

Plaintiff told Greer that the purpose of the massage was to relieve pain and tension in her injured calf muscle. However, once Greer began the massage, he started moaning and

1 groaning and making statements like, “Oh that feels so good” and “Ooooh, yeah, right there”
2 (“the statements”). The moaning, groaning, and the statements continued throughout the
3 entire massage. Although Plaintiff stated to Defendants that the sole purpose of the massage
4 was to address the issues in her calf and mentioned no other body parts, Greer told Plaintiff
5 that her pubic bone was out of place. Greer pulled Plaintiff’s underwear down, exposing her
6 pubic area and her pubic hair--an intimate part of her body (“the area”). Greer placed one of
7 Plaintiff’s hands on the area and on Plaintiff’s vagina, and then placed his hand on her hand,
8 and began massaging the area and Plaintiff’s vagina while moaning and groaning. Greer
9 then stated that Plaintiff had “ribs out of place” and that he was going to “adjust” her ribs.
10 Using that statement as a pretext, he began fondling, rubbing, massaging, and touching the
11 sides of both of Plaintiff’s breasts while continuing to moan and groan and make the
12 statements. When the massage finally concluded, Greer told Plaintiff to that she should
13 “massage” her “pubic area” at her leisure to “realign” her pubic bone. The unreasonable and
14 wrongful conduct by Greer described in this Paragraph will hereinafter be referred to as the
15 “sexual battery”. At all relevant times, Plaintiff never consented to the sexual battery by
16 Greer.
17
18
19

20 16.

21 At all relevant times, Greer’s sexual battery of Plaintiff resulted from the
22 employment-related conduct as a licensed massage therapist at ClubSport. Greer used the
23 massage to accomplish his sexual battery of Plaintiff. Greer’s massage was: (1) committed
24 in direct connection with, and for the purposes of, fulfilling Greer’s employment and agency
25 with ClubSport; (2) committed within the time and space limits of his employment and
26

1 agency as massage therapist; (3) done directly in the performance of his duties as a massage
2 therapist; (4) generally actions of a kind and nature that Greer was required to perform as a
3 massage therapist for ClubSport; (5) performed with an intent to serve ClubSport; (6) on
4 ClubSport's premises; and (7) was done at the direction of, and pursuant to, the power vested
5 in him by ClubSport.
6

7 17.

8
9 At all relevant times, Greer was motivated, at least partially, by a purpose to serve
10 ClubSport.

11 18.

12
13 Plaintiff, while undressed to her underwear and engaged as a massage therapy patient
14 and client of Greer, a ClubSport licensed massage therapist, was in a uniquely emotionally
15 and physically vulnerable position. Plaintiff and Plaintiff Jed Freifeld trusted Defendants to:
16 keep Plaintiff safe from harm, act reasonably, and avoid injury to Plaintiff.
17

18 19.

19 Greer's job at ClubSport as a licensed massage therapist led to and/or resulted in the
20 sexual battery of Plaintiff.
21

22 20.

23
24 Upon information and belief, Greer used his unique position of trust over Plaintiff in
25 order to obtain unwanted and non-consensual sexual gratification for himself and to subject
26 Plaintiff to the sexual battery and to subject Plaintiff to harmful and offensive physical and

1 auditory sexual contact, all of which caused Plaintiff's injuries and damage as described
2 more fully herein.

3
4 21.

5 As a result of the sexual battery by Greer, Plaintiff has suffered severe emotional and
6 psychological damage, all to her non-economic damages of \$750,000.

7
8 22.

9 As a further result of the sexual battery by Greer, Plaintiff has incurred or will incur
10 costs for counseling, psychiatric and psychological medical treatment all to her economic
11 damages in the approximate amount of \$250,000.

12
13 23.

14 As a result of the sexual battery of Plaintiff by Greer and the conduct of ClubSport
15 and Greer as set forth above, Plaintiff Jed Freifeld has suffered the loss of society, company,
16 cooperation, companionship, support, aid in every conjugal relation, and material services of
17 his wife. Plaintiff Jed Freifeld's loss society, company, cooperation, companionship,
18 support, aid in every conjugal relation, and material services of his wife is continuing.

19
20 24.

21 As a result of the loss of society, company, cooperation, companionship, support, aid
22 in every conjugal relation, and material services of his wife, Plaintiff Jed Freifeld has
23 suffered loss of consortium damages in the amount of \$530,000.

24
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26 ///

1 **FIRST CLAIM FOR RELIEF**

2 Against Defendants ClubSport only, by Plaintiff
3 *Negligence/Professional Malpractice/Respondeat Superior Liability*

4 25.

5 Plaintiff realleges and incorporates by reference paragraphs 1 through 24, above.

6 26.

7
8 ClubSport invited and helped establish a professional therapist-client/massage
9 therapist-patient relationship between Plaintiff and ClubSport’s employee Greer.

10 27.

11
12 The relationship between a professional massage therapist and a massage patient is a
13 unique relationship wherein the massage patient is physically and emotionally vulnerable.
14 While lying down and in a state of undress typical of massage patients, Plaintiff was
15 physically and emotionally vulnerable during the sexual battery.

16 28.

17
18 As part of his employment duties, Greer created a professional therapist-
19 client/professional therapist-patient relationship with Plaintiff. Specifically, Plaintiff placed
20 her body in Greer’s control, and was placed in a position of reliance upon Greer. As a result
21 of that special, professional relationship, Greer had a general duty to Plaintiff to: avoid
22 creating a danger to his massage patients such as Plaintiff, not unreasonably expose massage
23 patients such as Plaintiff to a foreseeable risk of harm, ensure Plaintiff’s safety during the
24 massage, act reasonably, act professionally, avoid touching Plaintiff in a physically
25
26

1 inappropriate manner, and avoid making sexual noises (such as moaning and groaning) and
2 sexually inappropriate remarks in the context of a massage session.

3
4 29.

5 Greer breached those duties, as alleged above, resulting in reasonably foreseeable
6 injuries to plaintiffs as set forth herein.

7
8 30.

9 As a result of the breach of those duties, Plaintiff has incurred the damages set forth
10 in Paragraphs 21 and 22 above.

11
12 31.

13 ClubSport is strictly and vicariously liable, as set out in the paragraphs above, for
14 Plaintiff's damages, as set out in Paragraphs 21 and 22 above, as a result of placing Greer in
15 a position of trust. The professional malpractice and wrongful conduct by Greer was the
16 culmination of a series of acts stemming from and causally related to his employment duties.

17
18 32.

19 Defendants ClubSport knew or should have known that sexual battery was a risk to
20 massage patients and that the sexual battery of a massage patient by a massage therapist
21 could occur because, upon information and belief, prior to the sexual battery of Plaintiff, at
22 least one other massage patient was sexually battered by a ClubSport massage therapist, at
23 the same ClubSport location ("the prior sexual battery").
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33.

ClubSport has a duty to protect Plaintiff as a business invitee to prevent, or warn her of, foreseeable dangers. ClubSport's duties to Plaintiff include, but are not limited to, a duty to: take significant action to safeguard ClubSport's massage patients such as Plaintiff; warn against general risks, including the risk of sexual battery and/or inappropriate sexual touching by a massage therapist; use due care for Plaintiff's safety; avoid creating a danger to its massage patients; avoid unreasonably exposing its massage patients to a foreseeable risk of harm; formulate, effectuate, and/or enforce policies to prevent and/or minimize the risk of sexual battery to massage patients by its agents, servants, employees or others within its control or right to control; take reasonable steps to change its protocol in regard to massage patients; train Greer so as to prevent him for engaging in inappropriate sexual behavior with its patients; act reasonably; protect against risks of harm, including the risk of harm posed by ClubSport's employees; and act professionally.

34.

Reasonable persons in ClubSport's position would have foreseen a risk to Plaintiff's safety of the kind of harm that befell her. Upon information and belief, ClubSport exposed Plaintiff to a danger that ClubSport knew or should have known about because of the prior sexual battery, creating an unreasonable risk of harm to Plaintiff. ClubSport's actions and/or failure to act reasonably created a foreseeable risk of the harm suffered by Plaintiff. As a massage patient, Plaintiff was in the class of individuals at risk of harm, specifically sexual battery, from a massage therapist. The type of harm that befell Plaintiff, sexual battery, was within the class of harms at risk. Upon information and belief, the harm that befell Plaintiff

1 was the same harm of which ClubSport was aware, and the sexual battery of Plaintiff was
2 therefore reasonably foreseeable to ClubSport. The link between ClubSport's negligent
3 conduct and the actual harm that befell Plaintiff was direct: upon information and belief,
4 ClubSport knew or should have known that there was a risk that Plaintiff could be sexually
5 battered by another one of ClubSport's massage therapists at the same ClubSport location
6 because of the prior sexual battery.
7

8 35.

9
10 ClubSport failed in its duty to protect Plaintiff as a business invitee to and/or to
11 prevent foreseeable dangers from harming Plaintiff and/or warn her of foreseeable dangers,
12 as outlined in Paragraphs 25-34, above.
13

14 36.

15 ClubSport's unreasonable actions as alleged above caused Plaintiff's damages as
16 alleged above in Paragraphs 21 and 22.
17

18 **SECOND CLAIM FOR RELIEF**

19 Against Defendants ClubSport and Greer, by Plaintiff

20 *Intentional Infliction of Emotional Distress/Respondeat Superior Liability*

21 37.

22 Plaintiff realleges and incorporates by reference paragraphs 1 through 36, as set forth
23 above.
24

25 38.

26 Upon information and belief, Greer knowingly and intentionally caused severe

1 emotional distress to Plaintiff when he sexually battered Plaintiff in the course of a massage.
2 Plaintiff did in fact suffer severe emotional distress as a result of this sexual contact, and the
3 sexual touching of a massage patient is beyond the bounds of all socially tolerable conduct.
4 Furthermore, Samuel Greer, Plaintiff's massage therapist, had a special duty to refrain from
5 touching Plaintiff sexually.

6
7 39.

8 As a result of Samuel Greer's intentional infliction of emotional distress, Plaintiff has
9 suffered and continues to suffer damages as set out in Paragraphs 21 and 22, above.

10 40.

11 Defendants ClubSport are strictly and vicariously liable, as set out in Paragraphs 25
12 through 35, above, for Plaintiff's damages set out in Paragraphs 21 and 22 above, as a result
13 of Greer's intentional infliction of emotional distress because ClubSport placed Greer in a
14 position of trust, and the intentional infliction of emotional distress was the culmination of a
15 series of acts stemming from and causally related to his employment duties as a massage
16 therapist.

17
18 41.

19 As a result of ClubSport's intentional infliction of emotional distress, Plaintiff has
20 suffered and continues to suffer damages as set out in the paragraphs above.

21
22 **THIRD CLAIM FOR RELIEF**

23 **Against Defendants ClubSport and Greer, by Plaintiff**
24 ***Sexual Assault and Battery/Respondeat Superior Liability***

25 42.

26 Plaintiff realleges and incorporates by reference Paragraphs 1 through 41, above.

1 43.

2 Upon information and belief, Samuel Greer, without consent of Plaintiff, intentionally
3 sexually assaulted Plaintiff, and/or caused an imminent apprehension of such contact, as
4 alleged above. This constituted harmful and offensive touching of Plaintiff and/or imminent
5 apprehension of such contact.
6

7 44.

8
9 As a result of Samuel Greer's intentional harmful and offensive touching, Plaintiff
10 has suffered and continues to suffer damages as set out in Paragraphs 21 and 22, above.
11

12 45.

13 Samuel Greer is liable for these damages, and Defendants ClubSport are strictly and
14 vicariously liable, as set out in Paragraphs 25 through 35 above, for Plaintiff's damages, set
15 forth in Paragraphs 21 and 22 above, as a result of Samuel Greer's sexual battery because
16 Defendants ClubSport placed Samuel Greer in a position of trust, and the sexual battery was
17 the culmination of a series of acts stemming from and causally related to his employment
18 duties.
19

20
21 **FOURTH CLAIM FOR RELIEF**
22 Against Defendants ClubSport only, by Plaintiff Jed Freifeld
23 *Loss of Consortium*

24 46.

25 Plaintiff Jed Freifeld re-alleges and incorporates Paragraphs 1-45, above.
26

1 47.

2 Defendants are liable for torts that caused Plaintiff Jed Freifeld's spouse, Plaintiff
3 Charmion Freifeld, direct physical injury.
4

5 48.

6
7 Defendants are liable for torts that caused Plaintiff severe emotional distress.

8 49.

9
10 As a result of Defendants' tortious actions, Plaintiff Jed Freifeld suffered damages as
11 alleged above.

12
13 **RESERVATION OF THE RIGHT TO MOVE THE COURT TO AMEND TO ADD A**
14 **CLAIM FOR PUNITIVE DAMAGES**

15 50.

16 Plaintiff and Plaintiff Jed Freifeld reserve the right to move the court to amend this
17 complaint to add a claim for punitive damages against Defendants under ORS 31.725.
18

19 WHEREFORE, Plaintiff and Plaintiff Jed Freifeld pray for judgment against
20 Defendants as follows:

- 21
- 22 1. On Plaintiff's First, Second and Third Claims for Relief, noneconomic
23 damages for Plaintiff in the amount of at least \$1,000,000, the exact amount
24 to be determined by the jury at the time of trial;
 - 25 2. On Plaintiff's First, Second and Third Claims for Relief, economic damages
26 for Plaintiff in the amount of at least \$250,000, the exact amount to be

determined by the jury at the time of trial;

3. On the Fourth Claim for Relief by Plaintiff Jed Freifeld, loss of consortium damages in the amount of at least \$530,000, the exact amount to be determined by the jury at the time of trial.
4. For Plaintiff and Plaintiff Jed Freifeld's costs and disbursements incurred;
5. For such other and further relief as the Court deems just and proper.

Plaintiff and Plaintiff Jed Freifeld request a trial by jury.

Dated this 16th day of July, 2018.

By s/ Kristin L. Olson

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Attorneys for Plaintiffs

1
2 **CERTIFICATE OF SERVICE**

3
4 I certify that I served the foregoing FIRST AMENDED COMPLAINT on the following attorneys by the method indicated below on the 16th day of July 2018:

5 Attorneys for Defendant ClubSport, et al.: Via First Class Mail
Kenneth J. Abere, Jr.
6 Lewis Brisbois Bisgaard & Smith LLP Via Hand-Delivery
888 SW Fifth Avenue, Suite 900
7 Portland, Oregon 97204-2025 Via E-Mail
ken.abere@lewisbrisbois.com

8
9 Attorney for Samuel Greer: Via First Class Mail
10 Connie Elkins McKelvey Via Hand-Delivery
LINDSAY HART, LLP
11 1300 SW 5TH AVENUE, SUITE 3400 Via E-Mail
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12 cmckelvey@lindsayhart.com

13
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15 By s/ Kristin L. Olson
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