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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

SECOND AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

(Negligence/Professional
Malpractice/Respondeat Superior Liability;
Negligent Training and Supervision of
Defendant Greer; Negligence Per
Se/Professional Malpractice/Respondeat
Superior Liability; Negligent Infliction of
Emotional Distress/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: \$2,780,000

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.

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”).

2.

Plaintiff Jed Freifeld (“Plaintiff Jed Freifeld”) is an adult, male Oregon resident. At all relevant times, Plaintiff Jed Freifeld 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.

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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1 5.

2 Upon information and belief, at all relevant times, SMG Properties Oregon, LLC
3 (“SMG”), was registered in Oregon as a foreign limited liability company with its principal
4 place of business in Tigard, Oregon. Upon information and belief, at all relevant times,
5 SMG was licensed to do business in Oregon, and conducting regular and sustained business
6 activity in Oregon. Upon information and belief, at all relevant times, SMG was the owner
7 of Defendant ClubSport.
8

9 6.

10 Upon information and belief, Defendant ClubSport is operating in Washington
11 County, Oregon as an assumed business name, owned by SMG. Upon information and
12 belief, ClubSport is an athletic facility and sports complex in Tigard, Oregon. ClubSport
13 offers massage therapy and has licensed massage therapists on staff.
14

15 7.

16 At all times throughout this complaint, Leisure Sports, SMG, and ClubSport will be
17 referred to collectively as “ClubSport”.
18

19 8.

20 On information and belief, at all relevant times, Defendant Samuel Greer was an
21 adult, male Oregon resident who was licensed by the Oregon Board of Massage Therapists to
22 provide massage therapy.
23

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26

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

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. In the alternative, Greer touched Plaintiff in a sexually inappropriate
3 manner, and Defendants are liable whether Greer was seeking sexual gratification or not
4

5 21.

6 As a result of the sexual battery by Greer, Plaintiff has suffered severe emotional and
7 psychological damage, all to her non-economic damages of \$1,000,000.
8

9 22.

10 As a further result of the sexual battery by Greer, Plaintiff has incurred or will incur
11 costs for counseling, psychiatric and psychological medical treatment all to her economic
12 damages in the approximate amount of \$250,000. Plaintiff reserves the right to amend the
13 pleadings to conform to the evidence prior to and at trial.
14

15 23.

16 As a result of the sexual battery of Plaintiff by Greer and the conduct of ClubSport
17 and Greer as set forth above, Plaintiff Jed Freifeld has suffered the loss of society, company,
18 cooperation, companionship, support, aid in every conjugal relation, and material services of
19 his wife. Plaintiff Jed Freifeld's loss society, company, cooperation, companionship,
20 support, aid in every conjugal relation, and material services of his wife is continuing.
21

22 24.

23 As a result of the loss of society, company, cooperation, companionship, support, aid
24 in every conjugal relation, and material services of his wife, Plaintiff Jed Freifeld has
25 suffered loss of consortium damages in the amount of \$530,000.
26

1 **FIRST CLAIM FOR RELIEF--NEGLIGENCE**
2 *Against Defendants ClubSport only, by Plaintiff*

3 **a. Count One: Negligence/Professional Malpractice/Respondeat Superior Liability**

4 25.

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

7 26.

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

11 27.

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

17
18 28.

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

1 massage, act reasonably, act professionally, avoid touching Plaintiff in a physically
2 inappropriate manner, and avoid making sexual noises (such as moaning and groaning) and
3 sexually inappropriate remarks in the context of a massage session.

4
5 29.

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

8
9 30.

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

12
13 31.

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

18
19
20 32.

21 Defendants ClubSport knew or should have known that sexual battery was a risk to
22 massage patients and that the sexual battery of a massage patient by a massage therapist
23 could occur because, upon information and belief, prior to the sexual battery of Plaintiff, at
24 least one other massage patient was sexually battered by a ClubSport massage therapist, at
25 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 37.

19
20 Plaintiffs incorporate and re-allege Paragraphs 1-36 above. In sexually battering
21 Plaintiff, Defendant Greer was acting within the course and scope of his employment for
22 ClubSport. Additionally, upon information and belief, ClubSport ratified Defendant Greer's
23 conduct. Upon information and belief, ClubSport did not fire Defendant Greer after the
24 sexual battery of Plaintiff and Defendant Greer was allowed to continue to perform massages
25 at ClubSport until he resigned voluntarily. Upon information and belief, ClubSport had prior
26

1 notice that there was another massage client of ClubSport Oregon who did not want to be
2 massaged by Defendant Greer ever again, but ClubSport did nothing with that information.
3 Upon information and belief, ClubSport had prior notice that other ClubSport Oregon
4 massage therapists performed massages close to the breasts and under neath the underwear
5 during massages. Upon information and belief, ClubSport had prior notice that Defendant
6 Greer made noises when he performed massages, but did nothing with that information.
7 ClubSport's conduct was deliberate, intentional, wanton, and was done with a reckless and
8 outrageous indifference to a highly unreasonable risk of harm. Upon information and belief,
9 ClubSport acted with a conscious indifference to the health, safety and welfare of others, and
10 ClubSport should be required to pay punitive damages of \$1,000,000 in order to deter
11 ClubSport and others similarly situated from this and similar types of conduct in the future.
12
13

14 **b. Count Two: Negligent Training and Supervision of Defendant Greer**

15
16 38.

17 Plaintiff realleges and incorporates by reference paragraphs 1 through 37, as set forth
18 above.
19

20 39.

21 ClubSport failed to adequately train Defendant Greer in one or more of the following
22 ways, which created a foreseeable and unreasonable risk of injury to Plaintiff:

23 (a.) In failing to provide Defendant Greer with any massage-specific training from a
24 licensed massage therapist before he began work at ClubSport Oregon;

25 (b.) In failing to involve a licensed massage therapist in any of Defendant Greer's
26

1 employment reviews;

2 (c.) In failing to provide Defendant Greer with any training regarding the
3 inappropriate touching, unwanted sexual touching, or sexual harassment of club members
4 and club guests; and/or

5 (d.) In failing to provide Defendant Greer with any general training regarding keeping
6 club members and club guests safe from sexual touching;

7 (e.) In failing to ensure that Defendant Greer understood the power differential
8 between a massage therapist and a massage client.
9

10 40.

11 ClubSport failed to adequately supervise Defendant Greer in one or more of the
12 following ways, which created a foreseeable and unreasonable risk of injury to Plaintiff:

13 (a.) In failing to ensure that Defendant Greer did a “practical exam” or a “tryout
14 massage” with a licensed massage therapist so that ClubSport could evaluate him as a
15 massage therapist;
16

17 (b.) In failing to ensure that Defendant Greer was supervised by a licensed massage
18 therapist, someone with massage training, and/or someone with some kind of massage
19 education;

20 (c.) In failing to ensure that Defendant Greer was supervised by someone who had
21 any sort of training or education concerning the power differential between a massage
22 therapist and a massage client.
23

24 (d.) In failing to ensure that the massage area at ClubSport Oregon was supervised by
25 someone while massages of club members and guests were taking place;

26 (e.) In failing to ensure that there were rules concerning whether, when, and/or how

1 often the massage coordinator or head of the massage department would check on or directly
2 supervise the massage therapists;

3 (f.) In failing to ensure that the massage coordinator or head of the massage
4 department's office at ClubSport Oregon was physically near and/or within sight of and/or
5 within earshot of the massage rooms;

6 (g.) In failing to ensure that the massage coordinator or head of the massage
7 department's office at ClubSport Oregon was physically on the premises of ClubSport
8 Oregon while massages were taking place in order to properly conduct supervision of the
9 massage therapists;

10 (h.) In failing to mandate that massage therapists at ClubSport make treatment notes
11 that would allow someone, such as a supervisor, to determine what occurred in any particular
12 message; and/or
13

14 (i.) In failing to ensure that Defendant Greer's employment reviews involved or were
15 conducted by a licensed massage therapist.
16

17 41.

18 Plaintiff is entitled to punitive damages for ClubSport's actions, as alleged above in
19 Paragraph 37.
20

21 **c. Count Three: Negligence Per Se**

22 42.

23
24 Plaintiffs incorporate and re-allege Paragraphs 1-41, above.

25 ///

1 43.

2 Upon information and belief, Plaintiff did not need a breast massage to treat a medical
3 condition, in violation of OAR 334-010-0028(1).
4

5 44.

6 Upon information and belief, at the time of the sexual battery of Plaintiff, Samuel
7 Greer could not present evidence of the completion specialized contract hours of training
8 beyond the minimum competencies, including but not limited to training in indications,
9 contraindications, therapeutic treatment techniques, expected outcomes, client safety, client
10 consent, client communication, draping techniques, sanitation, and ethical responsibilities
11 related to breast massage, and Samuel Greer thereby violated OAR 334-010-0028(1)(a).
12

13 45.

14 Upon information and belief, at the time of the sexual battery of Plaintiff, Samuel
15 Greer could not articulate a therapeutic rationale that was acknowledged by Ms. Freifeld,
16 such as a medical prescription or consultation with Ms. Freifeld's health care providers, and
17 thereby violated OAR 334-010-0028(1)(b).
18

19 46.

20 Upon information and belief, Samuel Greer and ClubSport never acquired prior
21 written and verbal consent before proceeding with a breast massage of Plaintiff in violation
22 of OAR 334-010-0028(1)(c).
23

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1 47.

2
3 At all relevant times, OAR 334-010-0028 was in full force and effect and was
4 intended to protect business invitees, individuals, and patrons of LMTs and commercial
5 establishments that offer massage, such as ClubSport, within the State of Oregon. At all
6 relevant times, OAR 334-010-0028 was intended to protect Plaintiff from the type of harm
7 that ultimately befell her.

8
9 48.

10 As a result of Samuel Greer’s negligence per se, Defendants ClubSport are strictly
11 and vicariously liable, as set out in Paragraphs 25 through 35 above, for Plaintiff’s damages,
12 set forth in Paragraphs 21 and 22 above, as a result of Samuel Greer’s sexual battery because
13 Defendants ClubSport placed Samuel Greer in a position of trust, and the sexual battery was
14 the culmination of a series of acts stemming from and causally related to his employment
15 duties.

16
17 49.

18 Plaintiff is entitled to punitive damages for ClubSport’s actions, as alleged above in
19 Paragraph 37.

20
21 **SECOND CLAIM FOR RELIEF—NEGLIGENT INFLICTION OF EMOTIONAL**
22 **DISTRESS/RESPONDEAT SUPERIOR LIABILITY**
23 *Against Defendants ClubSport only, by Plaintiff*

24 50.

25 Plaintiff realleges and incorporates by reference paragraphs 1 through 49, as set forth
26 above.

1 51.

2 Defendants ClubSport as a provider of massage services to consumers, had a special
3 duty to ensure that Plaintiff was not touched in any sexually inappropriate manner.

4 52.

5 Plaintiff has a legally protected interest in her bodily integrity, especially the
6 protection of her sexually intimate areas. In the course of the massage performed by
7 Defendant Greer, Greer infringed upon Plaintiff's sexually intimate areas by touching them
8 without her express or implied consent, thereby causing severe emotional distress. The
9 sanctity of one's sexually intimate areas is legally protected and that protection is of
10 sufficient importance as a matter of public policy to merit shielding from the emotional
11 impact of unwelcome touching in the course of a massage.
12

13 54.

14 Defendants ClubSport are strictly and vicariously liable, as set out in Paragraphs 25
15 through 35, above, for Plaintiff's damages set out in Paragraphs 21 and 22 above, as a result
16 of Greer's negligent infliction of emotional distress because ClubSport placed Greer in a
17 position of trust, and the negligent infliction of emotional distress was the culmination of a
18 series of acts stemming from and causally related to his employment duties as a massage
19 therapist.
20

21 55.

22 Plaintiff is entitled to punitive damages from ClubSport for ClubSport's actions, as
23 alleged above in Paragraph 37.
24

25 ///

26 ///

1 **THIRD CLAIM FOR RELIEF—INTENTIONAL INFLICTION OF EMOTIONAL**
2 **DISTRESS/RESPONDEAT SUPERIOR LIABILITY**
3 *Against Defendants ClubSport and Greer, by Plaintiff*

4 56.

5 Plaintiff realleges and incorporates by reference paragraphs 1 through 55, as set forth
6 above.

7 57.

8 Upon information and belief, Greer knowingly and intentionally caused severe
9 emotional distress to Plaintiff when he sexually battered Plaintiff in the course of a massage.
10 Plaintiff did in fact suffer severe emotional distress as a result of this sexual contact, and the
11 sexual touching of a massage patient is beyond the bounds of all socially tolerable conduct.
12 Furthermore, Samuel Greer, Plaintiff's massage therapist, had a special duty to refrain from
13 touching Plaintiff sexually.
14

15 58.

16 As a result of Samuel Greer's intentional infliction of emotional distress, Plaintiff has
17 suffered and continues to suffer damages as set out in Paragraphs 21 and 22, above.
18

19 59.

20 Defendants ClubSport are strictly and vicariously liable, as set out in Paragraphs 25
21 through 35, above, for Plaintiff's damages set out in Paragraphs 21 and 22 above, as a result
22 of Greer's intentional infliction of emotional distress because ClubSport placed Greer in a
23 position of trust, and the intentional infliction of emotional distress was the culmination of a
24 series of acts stemming from and causally related to his employment duties as a massage
25 therapist.
26

1 60.

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

4 61.

5 Plaintiff is entitled to punitive damages from ClubSport for ClubSport’s actions, as
6 alleged above in Paragraph 37.
7

8 **FOURTH CLAIM FOR RELIEF—SEXUAL ASSAULT AND**
9 **BATTERY/RESPONDEAT SUPERIOR LIABILITY**
10 *Against Defendants ClubSport and Greer, by Plaintiff*

11 62.

12 Plaintiff realleges and incorporates by reference Paragraphs 1 through 61, above.
13

14 63.

15 Upon information and belief, Samuel Greer, without consent of Plaintiff, intentionally
16 sexually assaulted Plaintiff, and/or caused an imminent apprehension of such contact, as
17 alleged above. This constituted harmful and offensive touching of Plaintiff and/or imminent
18 apprehension of such contact.
19

20 64.

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

24 ///

25 ///

1 65.

2 Samuel Greer is liable for these damages, and Defendants ClubSport are strictly and
3 vicariously liable, as set out in Paragraphs 25 through 35 above, for Plaintiff's damages, set
4 forth in Paragraphs 21 and 22 above, as a result of Samuel Greer's sexual battery because
5 Defendants ClubSport placed Samuel Greer in a position of trust, and the sexual battery was
6 the culmination of a series of acts stemming from and causally related to his employment
7 duties.
8

9 66.

10 Plaintiff is entitled to punitive damages for ClubSport's actions, as alleged above in
11 Paragraph 37.
12

13 **FIFTH CLAIM FOR RELIEF—LOSS OF CONSORTIUM**
14 *Against Defendants ClubSport only, by Plaintiff Jed Freifeld*

15 67.

16 Plaintiff Jed Freifeld re-alleges and incorporates Paragraphs 1-66, above.
17

18 68.

19 Defendants ClubSport are liable for torts that caused Plaintiff Jed Freifeld's spouse,
20 Plaintiff Charmion Freifeld, direct physical injury.
21

22 69.

23 Defendants ClubSport are liable for torts that caused Plaintiff severe emotional
24 distress.
25
26

1 70.

2 As a result of Defendants ClubSport's tortious actions, Plaintiff Jed Freifeld suffered
3 damages as alleged above in Paragraphs 23-24.
4

5 71.

6 Plaintiff Jed Freifeld is entitled to punitive damages from ClubSport for ClubSport's
7 actions, as alleged above in Paragraph 37.
8

9 WHEREFORE, Plaintiff and Plaintiff Jed Freifeld pray for judgment against
10 Defendants as follows:
11

- 12 1. On Plaintiff's First, Second, Third, and Fourth Claims for Relief,
13 noneconomic damages for Plaintiff in the amount of at least \$1,000,000, the
14 exact amount to be determined by the jury at the time of trial;
- 15 2. On Plaintiff's First, Second, Third, and Fourth Claims for Relief, economic
16 damages for Plaintiff in the amount of at least \$250,000, the exact amount
17 to be determined by the jury at the time of trial;
- 18 3. On the Fifth Claim for Relief by Plaintiff Jed Freifeld, loss of consortium
19 damages in the amount of at least \$530,000, the exact amount to be
20 determined by the jury at the time of trial.
- 21 4. For \$1,000,000 in punitive damages against ClubSport;
- 22 5. For Plaintiff and Plaintiff Jed Freifeld's costs and disbursements incurred;
- 23 6. For such other and further relief as the Court deems just and proper.
24
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1 Plaintiff and Plaintiff Jed Freifeld request a trial by jury.
2

3 Dated this ___th day of _____, 2019.
4
5

6 By OLSON BROOKSBY PC

7 s/ Kristin L. Olson

8 KRISTIN L. OLSON

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22 *Of Attorneys for Plaintiffs*
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