



## Freteluco vs Smith's Food and Drug Centers, Inc.

2021 | Cited 0 times | D. Nevada | August 6, 2021

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CLAC 6445891.1 JERRY S. BUSBY Nevada Bar #001107 GREGORY A. KRAEMER Nevada Bar #010911 COOPER LEVENSON, P.A. 1835 Village Center Circle Las Vegas, Nevada 89134 (702) 366-1125 FAX: (702) 366-1857 jbusby@cooperlevenson.com gkraemer@cooperlevenson.com Attorneys for Defendant SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA ANNA MARIE FRETUUCO, Plaintiff, vs. SMITH'S FOOD AND DRUG CENTERS, INC., a foreign corporation; DOES 1-10; ROE CORPORATIONS 10-10; inclusive Defendants.

Case No. 2:19-cv-00759-JCM-GWF

JOINT PRETRIAL ORDER

Following pretrial proceedings in this cause, IT IS ORDERED:

I. NATURE OF THE ACTION This is an action for: Personal injuries sustained by Plaintiff from an alleged slip and fall accident at SMITH'S Store #372 located at 1421 North Jones Boulevard, Las Vegas, Nevada on July 7, 2017. Plaintiff seeks damages that she claims are related to the accident at SMITH'S. PARTIES: Plaintiff: ANNA MARIE FRETUUCO Defendant: SMITH'S FOOD & DRUG CENTERS, INC. RELIEF SOUGHT:

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2 CLAC 6445891.1 Plaintiff seeks general damages for pain, suffering, and special damages for medical expenses incurred and to be incurred in the future. CONTENTIONS OF PARTIES: Plaintiff contends that Smith's was negligent. Plaintiff contends she was injured in the accident which proximately caused her to incur past and future medical damages. Defendant denies Plaintiff's allegation and contends that Plaintiff's fall was the result of her own actions and not the result of any negligence on the part of Defendant. In the alternative, Defendant further contends that if it was negligent, Plaintiff was also negligent and that Plaintiff's negligence exceed s the alleged negligence of Defendant and/or that Defendant is entitled to an offset on damages for any negligence attributed



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to Plaintiff. Defendant further contends that the injuries claimed by Plaintiff were not proximately caused by the incident at Smith's and that Plaintiff failed to mitigate her damages.

II. STATEMENT OF JURISDICTION This Court has jurisdiction pursuant to 28 U.S.C. 1332 because diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.00.

III. FACTS ADMITTED BY THE PARTIES AND REQUIRE NO PROOF 1. Plaintiff resides in Las Vegas, Nevada. 2. Defendant is a resident of Ohio, the State in which it is incorporated and has its principle place of business in Utah.

IV. FACTS, THOUGH NOT ADMITTED, WILL NOT BE CONTESTED AT TRIAL BY EVIDENCE TO THE CONTRARY 1. Plaintiff was at Smith's Store No. 372 located at 1421 North Jones Boulevard, Las

Vegas, Nevada on July 7, 2017.////////

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V. ISSUES OF FACT TO BE TRIED AND DETERMINED UPON TRIAL 1. Whether Plaintiff was negligent; 2. Whether Plaintiff's negligence proximately caused Plaintiff's injuries; 3. Whether Defendant was negligent; 4. Whether Defendant's negligence proximately caused Plaintiff's injuries; 5. The nature and extent of any injuries proximately caused by the accident concerned herein;

6. The nature and extent of Plaintiff's preexisting medical conditions; 7. Whether Plaintiff's treatment for her alleged injuries and the charges related thereto are reasonable and customary;

8. Whether Plaintiff's alleged damages meet the legal standard for admission at trial; 9. Whether the incident at Smith's proximately caused the injuries claimed by Plaintiff in this case;

VI. ISSUES OF LAW TO BE TRIED AND DETERMINED UPON TRIAL 1. Whether Smith's acted negligently; 2. Whether Plaintiff acted negligently; 3. Whether Smith's breached any duty of care owed to Plaintiff; 4. Whether Plaintiff's damage claims are recoverable pursuant to the requirements of the law.

5. Whether Plaintiff can sustained her burden of proving damages pursuant to the requirement of the law.

6. All pending motions have been decided and are being redressed by the moving party.



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VII. EXHIBITS (a) The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

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(1) Plaintiff's exhibits: None stipulated to at this time. (2) Defendant Smith's exhibits: None stipulated to at this time. (b) As to the following additional exhibits the parties have reached the stipulations stated:

(1) Plaintiff's exhibits: None stipulated to at this time. (2) Defendant Smith's exhibits: None stipulated to at this time. (c) As to the following exhibits, the party against whom the same will be offered objects to their admission upon the grounds stated:

The parties reserve the right to object to exhibits. Plaintiff's exhibits :

1. Records and billing from Mountain View Hospital 2. Billing from Fremont Emergency Services 3. Billing from Radiology Specialists 4. Records and billing from Dr. Victoria 5. Records and billing from Dr. Dixit 6. Records and billing from Steinberg Diagnostics 7. Records and billing from Southwest Medical Associates 8. Records and billing from Dr. Mahajan 9. Records and billing from Dr. Khavkin 10. Records and billing from Fyzical Therapy 11. Records and billing from Dr. Milford 12. Records and billing from Dr. Ismail 13. Records and billing from Desert Valley Therapy/ATI 14. Records and billing from Dr. Garber 15. Records and billing from Dr. Fazzini 16. Records and billing from Fyzical Therapy 17. Records from Speech Therapy Associates

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18. Sales information from Anti Slip Protection USA regarding slip resistant coating

that defense counsel referred to as pixie dust 19. Sales information from Slip Doctors regarding slip resistant coating that defense

counsel referred to as pixie dust 20. Sales information from Slip Resistant Solutions regarding slip resistant coating

that defense counsel referred to as pixie dust 21. Sales information from National Sealing regarding slip resistant coating that



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defense counsel referred to as pixie dust 22. Records and billing from Dr. Rosenman 23. Records and billing from First Physical Therapy 24. Expert reports from Dr. Garber 25. Expert reports from Dr. Filler 26. Expert reports from Dr. Roitman 27. Expert reports from John Peterson Defendant's objections: Defendant objects to any documents that were not timely disclosed during discovery and reserves any and all other exhibits until the time of trial. At this time, Defendant objects to Plaintiff's exhibits on the following basis:

1. Defendant objects to Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22,

23 on the grounds of relevance, foundation, authenticity and hearsay. 2. Defendant objects to Plaintiff's exhibits 24, 25, 26 and 27 on the grounds of hearsay, irrelevant,

foundation and subject to limiting order from this Court. Defendant's Exhibits :

1. Incident Report (DEF-0000001 – DEF-0000003); 2. Customer Statement (DEF-0000004 – DEF-0000005); 3. Witness Statement – Tyler Freteluco (DEF-0000006); 4. Witness Statement – Deborah Overweg (DEF-0000007); 5. Witness Statement – Brandie Batalona (DEF-0000008); 6. Evidence Report (DEF-0000009 – DEF-0000011); 7. Sweeps/Floor Inspection Report (DEF-0000012);

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8. Letter from Scott P. Guido, Esq. to Sedgwick CMS, dated July 19, 2017 (DEF-0000013); 9. Letter from Sedgwick CMS to Scott P. Guido, Esq. dated July 24, 2017 (DEF-0000014); 10. Letter from Sedgwick CMS to Scott P. Guido, Esq. dated September 6, 2017 (DEF-0000015); 11. Letter from Scott P. Guido, Esq. to Sedgwick CMS, dated October 13, 2017 (DEF-0000016); 12. Letter from Scott P. Guido, Esq. to Sedgwick CMS, dated October 27, 2017 (DEF-0000017); 13. Letter from Catherine Hernandez, Esq. to Sedgwick CMS, dated December 12, 2017 (DEF-0000018); 14. One (1) compilation DVD from the day of the incident: 30178189861 – Anna Freteluco – Date of Loss: 07/07/17 – Store 372 -- DXA Files (1 of 1); 15. Expert reports of Louis Etcoff; 16. Expert reports of Mark Winkler; 17. Expert reports of Daniel Grant; 18. Video of Plaintiff's deposition; 19. Diagram of the SMITH'S Store; In addition to documents specifically listed above, Defendant may offer into evidence records produced in this litigation documenting Plaintiff's medical condition before and after the incident at SMITH'S. In addition, Defendant reserves the right to utilize any or all of the medical evidence disclosed and/or produced by Plaintiff and by Plaintiff's experts during this litigation. Below is a list of some medical records that Defendant may offer into evidence at trial: 1. ATI Physical Therapy (ATI-0000001 – ATI-0000105); 2. Fyzical Therapy & Balance Centers (FT-0000001 – FT-0000058); 3. Khavkin Clinic (KC-0000001 – KC-0000019); 4. Las Vegas Neurology Center (LVN-0000001 – LVN-0000021); 5. Quest Diagnostics (QD-0000001 – QD-0000019); 6. Soluna Family Medicine (SFM-0000001 – SFM-0000076); and 7. Southwest Medical Associates (SMA-0000001 – SMA-000 8.



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Silver State Neurology (SSN-0000001 – SSN-0000280). 9. ATI Physical Therapy (ATI-0000106 – ATI-0000288); 10. LVNI Center for Spine and Brain Injury (LVNI-0000001 – LVNI-0000065); 11. Eugene Roseman, M.D. (ER-0000001 – ER-0000008); and 12. Soluna Family Medicine (SFM-0000077 – SFM-0000084). 13. Enrico Fazzini, D.O. (EF-0000001 – EF-0000006); and 14. Speech Therapy Associates (STA-0000001 – STA-0000014).

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7 CLAC 6445891.1 15. Steinberg Diagnostic Medical Imaging Centers (SDM-0000001 – SDM-0000091). Defendant also specifically reserves the right to utilize portions of the expert reports of Plaintiff's experts. Defendant also reserves the right to use medical records and any other documents produced by Plaintiff during discovery and any exhibits to depositions. In addition, Defendant reserves the right to use any other documents needed to rebut or impeach evidence offered by Plaintiff at trial. Plaintiff's objections: To be determined. Plaintiff objects to any documents that were not timely disclosed during discovery and reserves any and all other exhibits until the time of trial. At this time, Plaintiff objects to Defendant's exhibits on the following basis:

1. Plaintiff objects to Defendant's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 14, 15, 16, 17

and 19 on the grounds of hearsay, relevance, foundation and authenticity. 2. Plaintiff has no objection to Exhibit 18. (d) Electronic evidence: The parties anticipate utilizing the court's electronic evidence display system. The parties do not anticipate utilizing native electronic evidence but will be displaying video electronically. This includes the presentation of video electronically to the jury for deliberations. The parties will coordinate with the courtroom administrator as contemplated by the Local Rules.

(e) Depositions: Plaintiff does not anticipate offering any depositions unless a witness becomes unavailable at the time of trial. Plaintiff reserves the right to use any deposition at trial for purposes of impeachment.

Defendant does not anticipate offering any depositions unless a witness becomes unavailable at the time of trial. Defendant reserves the right to use any deposition at trial for purposes of impeachment.

VIII. WITNESSES The following witnesses may be called by the parties upon trial:

(a) Plaintiff's Witnesses : ///

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### 1. Anna Freteluco

c/o The Galliher Law Firm 1850 E. Sahara Avenue, Ste. 107 Las Vegas, Nevada 89104 2. Tyler Freteluco

c/o The Galliher Law Firm 1850 E. Sahara Avenue, Ste. 107 Las Vegas, Nevada 89104 3. Roger Gough

Construction Manager Smiths Food and Drug Centers, Inc. 1550 South Wood Road Salt Lake City, Utah 84104 4. Christopher Milford, M.D.

Silver State Neurology 2575 Montessouri Street, Ste. 110 Las Vegas, Nevada 89117 5. Jason Garber, M.D.

LVNI Center for Spine and Brain Surgery 3012 S. Durango Drive Las Vegas, Nevada 89117 6. Barbara Schwarts, M.S. CCC-SLP Speech Therapy Associates 501 S. Rancho Drive, Ste. I-60 Las Vegas, Nevada 89106 7. Enrico Fazzini, M.D. 201 N. Pecos Road Henderson, Nevada 89074 8. Aaron Filler, M.D. Neurography Institute 2716 Ocean Park Blvd., Ste. 1007B Santa Monica, CA 90405 9. Norton A. Rotiman, M.D. 2340 Paseo Del Prado, D307 Las Vegas, Nevada 89102 10. John Peterson Retail Litigation Consultants 6620 Buckskin Avenue Las Vegas, Nevada 89108

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11. Travis Childers c/o Smith's Store No. 355 450 North Nellis Boulevard Las Vegas, Nevada 89110 12. Deborah Overweg Cashier Smith's Food and Drug Centers, Inc. c/o Smiths Store No. 372 1412 North Jones Boulevard Las Vegas, Nevada 89107 13. Brandi Batalona c/o Smith's Store No. 372 1412 North Jones Boulevard Las Vegas, Nevada 89107 14. Mayra Corona c/o Smiths Store 372 1412 North Jones Boulevard Las Vegas, Nevada 89107 15. Store Director or other Knowledgeable Representative of Smiths c/o Cooper Levenson P.A. 3016 W. Charleston Blvd. Ste. 195 Las Vegas, Nevada 89102 16. Toby Freteluco 6363 Clarice Avenue, Bldg. 15, Apt. 240 Las Vegas, Nevada 89107 17. Teddy Freteluco 6363 Clarice Avenue, Bldg. 15, Apt. 240 Las Vegas, Nevada 89107 18. Timothy Charles Killian 1611 Buffalo Trail Drive Henderson, Nevada 89014 (b) Defendant's Witnesses :

1. Anna Marie Freteluco, Plaintiff c/o GALLIHER LAW FIRM 1850 East Sahara Avenue, #104 Las Vegas, Nevada 89107 (702) 735-0049 2. Tyler Freteluco

c/o GALLIHER LAW FIRM 1850 East Sahara Avenue, #104 Las Vegas, Nevada 89107 (702) 701-1745

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10 CLAC 6445891.1 3. Travis Childers

c/o Smith's Store No. 355 450 North Nellis Boulevard Las Vegas, NV 89110 (702) 452-4718 4. Deborah Overweg

c/o Smith's Store No. 372 1421 North Jones Boulevard Las Vegas, NV 89107 (702) 631-1932 5. Brandie Batalona

c/o Smith's Store No. 372 1421 North Jones Boulevard Las Vegas, NV 89108 (702) 631-1932 6. Mayra Corona

c/o Smith's Store No. 372 1421 North Jones Boulevard Las Vegas, NV 89108 (702) 631-1932 7. Store Director or other Knowledgeable Representative of SMITH'S c/o COOPER LEVENSON, P.A. 3016 West Charleston Blvd. #195 Las Vegas, NV 89102 (702) 366-1125

8. Toby Freteluco 6363 Clarice Avenue – Building 15 – Apt. 240 Las Vegas, NV 89107 Unknown 9. Teddy Freteluco 6363 Clarice Avenue – Building 15 – Apt. 240 Las Vegas, NV 89107 Unknown

10. Timothy Charles Killian

1611 Buffalo Trail Drive Henderson, NV 89014 Unknown 11. Lewis Etcoff, Ph. D.

8475 South Eastern Avenue, Suite 204 Las Vegas, NV 89123 (702) 876-1977 12. Mark Winkler

8 Morning Sky Lane Las Vegas, NV 89135 (702) 595-6712

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13. Christopher Grubbs, P.E.

and/or Daniel S. Grant R.A., NCARB, CXL, DPSI 6001 South Decatur Boulevard, Suite P Las Vegas, NV 89118 (702) 304-1508 Defendant reserves the right to call any of the healthcare providers identified by either party during this litigation as a witness. Defendant may also call healthcare providers, including their custodians of records, if needed to impeach or rebut evidence presented by Plaintiff. Below is a list of some providers that Defendant may call to testify.

1. Person Knowledgeable from ATI Physical Therapy; 2. Person Knowledgeable from Fyzical Therapy & Balance Centers; 3. Yevgeniy Khavkin, M.D. or his PMK/COR; 4. Person Knowledgeable from Las Vegas Neurology Center; 5. Person Knowledgeable from Quest Diagnostics; 6. Person





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Knowledgeable from Soluna Family Medicine; 7. Person Knowledgeable from Southwest Medical Associates; 8. Person Knowledgeable from Silver State Neurology; 9. Christopher Milford, M.D. or his PMK/COR; 10. Person Knowledgeable from LVNI Center for Spine and Brain Injury; 11. Person Knowledgeable from Eugene Roseman; 12. Person Knowledgeable from Soluna Family Medicine; 13. Enrico Fazzini, D.O. or his PMK/COR; 14. Person Knowledgeable from Speech Therapy Associates;

15. Person Knowledgeable from Steinberg Diagnostic; 16. Christopher Milford, M.D.; 17. Jason Garber, M.D.; 18. Barbara Schwartz, M.S. CCC-SLP; 19. Norton A. Rotiman, M.D. Defendant also reserves the right to call any witness identified by Plaintiff during this litigation. Further, Defendant reserves the right to call any witness listed in Plaintiff's list of witnesses. Finally, Defendant reserves the right to call witnesses necessary to rebut evidence adduced by Plaintiff at trial. Plaintiff also reserves the right to call any witness identified by Plaintiff during this litigation. Further, Plaintiff reserves the right to call any witness listed in Defendant's list of witnesses. Finally, Plaintiff reserves the right to call witnesses necessary to rebut evidence adduced by Defendant at trial.

IX. AGREED-UPON TRIAL DATES Counsel have met and herewith submit a list of three (3) agreed-upon trial dates:

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(1) March 7, 2022; (2) April 11, 2022; and (3) May 23, 2022. It is expressly understood by the undersigned that the court will set the trial of this matter on one (1) of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the court's calendar.

X. NUMBER OF ESTIMATED DAYS FOR TRIAL It is estimated that the trial herein will take a total of 7 - 10 days. Respectfully submitted this 23rd day of July, 2021. GALLIHER LAW FIRM COOPER LEVENSON, P.A. /s/ Keith E. Galliher, Jr. /s/ Jerry S. Busby KEITH E. GALLIHER, JR., ESQ. JERRY S. BUSBY, ESQ. Nevada Bar No. 000222 Nevada Bar No.001107 1850 East Sahara Avenue, #107 3016 W. Charleston Blvd. #195 Las Vegas, Nevada 89104 Las Vegas, Nevada 89102 Attorneys for Plaintiff Attorneys for Defendant ANNA MARIE FRETUUCO SMITH'S FOOD & DRUG CENTERS, INC.

XI. ACTIONS BY THE COURT This case is set down for court/jury trial on the fixed/stacked calendar on \_\_\_\_\_. Calendar call will be held on \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_ UNITED STATES DISTRICT JUDGE





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August 2, 2021.

1 Warner Stacy From: Busby Jerry S. Sent: Friday, July 23, 2021 1:47 PM To: 'Keith Galliher' Cc: Rutkowski Theresa H.; Warner Stacy; Kraemer, Gregory A. Subject: RE: Freteluco Joint Pre Trial Order

From: Keith Galliher [mailto:KGalliher@galliherlawfirm.com] Sent: Friday, July 23, 2021 1:35 PM To: Busby Jerry S. Subject: RE: Freteluco Joint Pre Trial Order \*\*\* External Sender Please Exercise Caution\*\*\* Approved. You may esign for me. Thanks.

