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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000678

Camille Bird, ... Appellant.

v.

PetSmart, LLC, and FreshPet, Inc., ... Defendants,

Of which PetSmart, LLC is the Respondent.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2300564

Camille Bird
PLAINTIFF(S)

PetSmart LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See page 2 below

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/22/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendant PetSmart, LLC's Motion for Summary Judgment. Based on a review of the file, submissions of the parties, and the thorough arguments of both counsel, Defendant's motion is hereby respectfully granted. The Court finds there is no genuine issue of material fact. Rule 56 SCRCP; *The Kitchen Planners, LLC, v. Freidman* 440 S.C. 456 (2023). The plaintiff has the burden to prove the defendant placed the water there or had actual or constructive notice the water was present at the time the plaintiff fell. Despite plaintiff counsel's strong argument in opposition to the motion, the Court finds insufficient evidence defendant either placed the water or had actual or constructive notice at the time of the fall. Defendant's counsel is to prepare a formal order.

It is so ordered.



Greenville Common Pleas

Case Caption: Camille Bird vs. PetSmart LLC , defendant, et al
Case Number: 2022CP2300564
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-01-22 17:16:23 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Camille Bird,

Plaintiff,

vs.

PetSmart, LLC and FreshPet, Inc.,

Defendants.

IN THE COURT OF COMMONS PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2022-CP-23-00564

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANT PETSMART, LLC**

This matter was before the Court on January 10, 2024, for a hearing on Defendant PetSmart, LLC's [hereinafter referred to as "PetSmart"] Motion for Summary Judgment as to Plaintiff's sole cause of action for negligence in premises liability. Present at the hearing were Thomas M. Creech, counsel for Plaintiff, Matthew C. LaFave, counsel for Defendant PetSmart, LLC, and David L. Moore, counsel for Defendant FreshPet, Inc. Having taken the matter under advisement and considered the filings and evidence, as well as the arguments of counsel, the Court finds that there is no genuine issue as to any material fact as there was insufficient evidence establishing PetSmart either placed the water on the floor or had actual or constructive notice of the water at the time of the fall. As such, Defendant is entitled to judgment as a matter of law.

BACKGROUND AND FACTS

This case arises from a September 6, 2019, incident in which Plaintiff slipped and fell after having retrieved food from a refrigerator owned by Defendant FreshPet, Inc. Following her fall Plaintiff noticed water on the floor appearing to be coming out from under the refrigerator. Employees of PetSmart responded to the location of the fall, aided Plaintiff, and also viewed the

water on the floor. Plaintiff alleges a sole cause of action for negligence in premises liability and demands both actual and punitive damages.

There is no dispute that Plaintiff fell on the aforementioned date and location or that there was water on the floor in the area of the fall. Plaintiff was discovered in a seated position leaning against the refrigerator. Likewise, there is no dispute that water was on the floor or the source and origin of the water. Employees of PetSmart investigated the water and discovered a drain pan under the refrigerator had become full and was overflowing.

PetSmart submitted, numerous exhibits, in support of the motion, which included numerous deposition transcripts along with the incident report prepared by the assistant manager, a work order dated July 23, 2019, addressing a leaking issue with a refrigerator, and a ticket reflecting the aforementioned leaking issue had been resolved. In light of the prevailing evidence counsel for PetSmart argued it is irrefutable that the water was not placed on the floor by its employee. Likewise, it was argued, that the record was devoid of any evidence indicating an employee had actual knowledge of the water prior to Plaintiff's fall. Counsel argued that, for Plaintiff to survive the instant motion, she was left only with the option of presenting evidence, or asserting a reasonable inference drawn therefrom, that supported an assertion that PetSmart had constructive notice.

Plaintiff in opposition to Defendant's Motion for Summary Judgment also submitted numerous exhibits. Specifically, Plaintiff introduced specific excerpts of deposition testimony, a photograph of the location of the fall, a work order regarding the leaking refrigerator indicating repairs required, portions of Defendant FreshPet, Inc.'s Answers to Plaintiff's First Set of Interrogatories, an email exchange involving PetSmart employees regarding the incident giving rise to this lawsuit and the leaking refrigerator issue, the incident report prepared by PetSmart's

assistant manager, and an Affidavit of Bryan R. Durig, Ph.D. and P.E. At the hearing Plaintiff's counsel handed to the Court, subject to a confidentiality agreement, a copy of a specific PetSmart policy and procedure regarding their response to a spill once one is discovered. Plaintiff's counsel argued that there was evidence in the record sufficient to establish PetSmart had either actual or constructive knowledge of the water prior to the fall. In support of this argument Plaintiff's counsel focused largely on two points. First, it was argued that language in the incident report, along with the internal email, supported an argument that PetSmart knew of a leaking issue with the refrigerator prior to the fall. Second, Counsel claimed that PetSmart knew of the water as evidenced by references to a wet floor sign having been placed in the area prior to the fall.

STANDARD OF REVIEW

“Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment if the evidence before the court shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (internal quotations omitted) (also clarifying that “mere scintilla of evidence” was not correct standard of proof for deciding motions under Rule 56(c)). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing

that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCF. Thus, “to survive a motion for summary judgment, the plaintiff must offer some evidence that a genuine issue of material fact exists as to each element of the claim unless that element is either uncontested or agreed to by stipulation; otherwise, the plaintiff cannot meet his burden of proof and the claim may be determined as a matter of law by the trial judge.” *Eadie v. Krause*, 381 S.C. 55, 64 n.5, 671 S.E.2d 389, 393 n.5 (Ct. App. 2008). “Conjecture and speculation... does not create any genuine issue of material fact.” *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009).

ANALYSIS

To establish negligence on the part of a merchant in South Carolina, a plaintiff must prove: (1) a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty by some act or omission; and (3) that the plaintiff suffered damages proximately caused by the breach. *See Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 780 (Ct. App. 2010). Where a Plaintiff is attempting to recover for damages or injuries allegedly resulting from the presence of a foreign substance on the floor of a shopkeeper’s premises, the plaintiff is required to show “either that the substance was placed there by the defendant or its agents, or that the defendant had actual or constructive notice the substance was on the floor at the time of the slip and fall.” *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729-30; (see also *Calvert v. House Beautiful Paint & Decorating Ctr., Inc.*, 313 S.C. 494, 443 S.E.2d 398 (1994); *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 165 S.E.2d 627 (1969); *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969); *Orr v. Saylor*, 253 S.C. 155, 169 S.E.2d 396 (1969); *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957); *Gilliland v. Pierce*, 235 S.C. 268, 111 S.E.2d 521 (1959); *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 394 S.E.2d 24 (Ct.App. 1990)).

In South Carolina, a merchant owes a customer a duty of ordinary care to keep his premises in a reasonably safe condition. *Wimberley v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 165 S.E.2d 627 (1969). Regarding slip and fall cases generally, “It has long been the law in South Carolina that a merchant is not an insurer of the safety of his customer but owes them only the duty of exercising ordinary care to keep the premises in reasonably safe condition.” *Milligan v. Winn-Dixie Raleigh, Inc.*, 273 S.C. 118, 120-121, 254 S.E.2d 798, 799 (1979).

Here, the plain and undisputed evidence is that the water, in the area of the fall, came to be present on the floor when the drain pan located under the refrigerator filled with water and began to overflow. The overflowing water then spread from under the refrigerator onto the floor of the aisleway. Therefore, it is clear PetSmart did not place the water on the floor. Plaintiff, to survive this Motion for Summary Judgment is obligated to show the existence of evidence or a reasonable inference drawn from the evidence that PetSmart had actual or constructive knowledge of the water prior to the fall and failed to remedy the condition. Counsel for Plaintiff repeatedly and primarily referenced two (2) documents, which were the incident report and the internal email exchange. In relying on these documents Plaintiff’s counsel argued that a reasonable inference could be drawn from the language contained therein that the refrigeration leaking on September 6, 2019, had prior leaking issues and those issues were known by PetSmart. PetSmart acknowledged a prior leaking issue but directed the Court to evidence that plainly established an isolated leaking issue from July 23, 2019, that was fixed and resolved without any further issues.

Finally, Plaintiff’s counsel, while not admitting the presence of a wet floor sign, claimed PetSmart employees were adamant it had been placed prior to Plaintiff’s fall. In reliance on this Plaintiff’s counsel argued its placement established knowledge, on the part of PetSmart, of water on the floor prior to Plaintiff’s fall. Unfortunately, there is insufficient evidence, relative to the

placement, that is sufficient to establish the sign, if placed there, was placed in response to the puddle of water Plaintiff claims to be the cause of her fall.

Therefore, this Court finds that there is no genuine issue of material fact and PetSmart is entitled to a judgment as a matter of law.

CONCLUSION AND ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED, the PetSmart's Motion for Summary Judgment is GRANTED, judgment is hereby entered for and on behalf of PetSmart as to all claims, and this cause is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON FOLLOWING PAGE]



Greenville Common Pleas

Case Caption: Camille Bird vs. PetSmart LLC , defendant, et al
Case Number: 2022CP2300564
Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-02-05 18:09:56 page 7 of 7

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2300564

Camille Bird
PLAINTIFF(S)

PetSmart LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Motion to Reconsider pursuant to Rule 59(e) SCRPC. Based on the submissions of the parties, the motion is respectfully denied. No hearing is necessary and the matter is decided on the briefs. See Rule 59(f) SCRPC.

It is So Ordered.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/01/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Camille Bird vs. PetSmart LLC , defendant, et al
Case Number: 2022CP2300564
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-04-01 13:58:30 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No. 2022-CP-23-
	)	
Camille Bird,	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	<i>(Jury Trial Demanded)</i>
PetSmart, LLC, and FreshPet, Inc.	)	
Defendants.	)	
	)	
	)	

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer on the subscriber at their offices at: P.O. Box 10411, Greenville, SC 29603 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

LAW OFFICES OF THOMAS M. CREECH, JR. LLC

s/Thomas M. Creech, Jr.
 Thomas M. Creech Jr. (SC Bar No. 13797)
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February 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No. 2022-CP-23-
	)	
Camille Bird,	)	
Plaintiff,	)	
vs.	)	
	)	COMPLAINT
PetSmart, LLC., and FreshPet, Inc.	)	<i>(Jury Trial Requested)</i>
Defendants.	)	

The Plaintiff, by and through their undersigned attorney, for a Complaint against the Defendant above named, do hereby allege as follows:

PARTIES AND JURISDICTION

COMES NOW THE PLAINTIFF, above-named, who, requesting a jury trial would show unto this honorable court:

Parties and Jurisdiction

1. The Plaintiff is a citizen and resident of the County of Greenville, State of South Carolina; plaintiff was a business invitee of defendant PetSmart LLC at all times relevant to this lawsuit including the day that she fell and was injured while shopping on the premises of the defendant or under the control of the defendant at 1125 Woodruff Road, Suite 900, Greenville, South Carolina
2. The Defendant, PetSmart, LLC. is a for-profit corporation organized and existing under the laws of one of the 50 states and is registered to transact and in

facts, transacts significant business in the State of South Carolina, County of Greenville.

3. The defendant FreshPet Inc. is a for-profit corporation and is incorporated and headquartered in one of the 50 states. FreshPet transacts business in South Carolina, including entering into contracts to be performed in South Carolina, as well as owning property located in South Carolina, including its “FreshPet Fridge” refrigerators that it owns and are located in South Carolina. Moreover, FreshPet derives revenues from its business activity that it does within the state of South Carolina

4. This Court has jurisdiction over the parties to this lawsuit.

5. This Court has jurisdiction over the subject matter of the lawsuit in this case.

6. At all times relevant to this lawsuit, the defendant PetSmart, LLC. was the owner of or in the control of the premises located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina where it does business as PetSmart, LLC #1300.

7. At all times relevant to this lawsuit, defendant FreshPet Inc. owned the “FreshPet Fridge” that was located at the PetSmart at 1125 Woodruff Road, Suite 900, in Greenville County S.C., and that was in a state of malfunction and disrepair leaking water, said water that caused the plaintiff to slip and fall and become injured on September 6, 2019.

8. That all acts, delicts, and/or omissions alleged in this Complaint were undertaken and performed by duly authorized officers, agents, or employees of the defendants while acting within the scope of their agency, authority, and employment with the defendants.

FACTS

9. All allegations in the preceding paragraphs are hereby re-alleged as if fully set forth herein.

10. On September 6, 2019, at approximately 9:15AM, plaintiff Camille Bird went into the PetSmart, located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina to purchase FreshPet dog food for her dog.

11. As Ms. Bird approached the Fresh Pet refrigerators (there were three) hereinafter "FreshPet Fridge" Ms. Bird noticed the light was out on the middle the refrigerator.

12. Ms. Bird went to the FreshPet Fridge to her left and reached in and got a roll of FreshPet dog food and turned to leave when suddenly and without warning she slipped and fell.

13. Ms. Bird's sandals fell off her feet and she landed on her behind and her back against the refrigerator and she was leaning on the center FreshPet Fridge when she noticed water leaking from the middle FreshPet Fridge which was the same refrigerator that did not have a light.

14. Ms. Bird also noticed that the FreshPet Fridge was empty.

15. The water leaking form the FreshPet Fridge had been on the floor for some time prior to Ms. Bird slipping and falling in aid water, to the extent that defendant PetSmart knew or should have known of the existence of the water and failed to warn of the existence of the water or clean it up.

16. Ms. Bird was wearing shorts which the water she fell on soaked through the shorts she was wearing, and Ms. Bird immediately felt pain.

17. She was then lifted into a chair by some employees from PetSmart. Ms. Bird had to be assisted to her car.

18. The following day, Ms. Bird went to an urgent care as her pain did not go away.

19. Ms. Bird suffers from constant pain and sought medical treatment from various medical providers including Urgent Care, pain management, orthopedic doctors, and MRI, X-rays, and medication for her pain.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessnes/Willfullness/Wantoness
against defendant PetSmart, LLC.)

20. All allegations in preceding paragraphs are hereby re-alleged as if fully set forth herein.

21. At all times relevant herein, defendant PetSmart agents and/or employees had a duty to maintain the area around the FreshPet Fridge in a reasonably safe condition and to clean up or remove any hazardous conditions which it knew or should have known about, including water leaking from the FreshPet Fridge.

22. Defendant PetSmart acting through its agents and employees failed to clean up the water even though it knew or should have known about the presence of the water on the floor.

23. The injuries suffered by Camille Bird were directly and proximately caused by one or more of the following negligent, grossly negligent, reckless, careless, willful and wanton acts, delicts and/or omissions on the part of the defendant PetSmart by

and through its duly authorized agents and/or employees in the following particulars, to-wit:

- a. Failing to properly inspect heavily traveled customer area for potential dangers and hazards;
- b. Failing to clean a hazardous, dangerous substance off of the floor when PetSmart, through its employees, knew or should have known there was a dangerous condition on the floor;
- c. Failing to keep the floors in its store in a reasonably safe condition;
- d. Failing to provide its customer Ms. Bird with a reasonably safe environment within a highly used area of its store;
- e. Failing to warn its customers of a dangerous condition on the floor when it knew or should have known of the wet condition.
- f. In other ways that may be ascertained during the discovery phase of this lawsuit.

24. That as a direct and proximate result of the aforementioned acts of negligence, gross negligence, recklessness, willfulness, and wantonness on the part of the defendant through its employees, Camile Bird was injured, harmed, and damaged and required medical treatment for her injuries.

25. Plaintiff therefore requests that judgment be entered in her favor and against the defendant PetSmart on this cause of action in an amount of actual and punitive damages in an amount to be determined by the jury at the trial of this case.

FOR A SECOND CAUSE OF ACTION

(Negligence/Gross Negligence/Recklessnes/Willfullness/Wantoness
against defendant FreshPet Inc.)

26. All allegations in preceding paragraphs are hereby re-alleged as if fully set forth herein.

27. At all times relevant to this lawsuit, Defendant FreshPet Inc. owned the “FreshPet Fridge” that was located inside the PetSmart where plaintiff fell on September 6, 2019.

28. As owner, Defendant FreshPet was responsible for the maintenance, repair, upkeep, and inspection of the aforementioned FreshPet Fridge.

29. Prior to the plaintiff falling and becoming injured on September 6, 2019, FreshPet knew, should have known, or was on notice of its FreshPet Fridge malfunctioning and causing water to leak from the FreshPet Fridge onto the floor and thereafter presenting a hazard for the customers at PetSmart, including the plaintiff, Ms. Bird.

30. Despite having known or having notice of the malfunctioning FreshPet Fridge and its leaking water onto the floor, defendant FreshPet did not replace or otherwise repair or have repaired its FreshPet Fridge.

31. FreshPet Inc., was negligent, grossly negligent, reckless, wilfull, and wanton in the following particulars:

- a. in failing to maintain the FreshPet Fridge;
- b. in failing to repair or fix the FreshPet Fridge;
- c. In failing to replace the FreshPet Fridge with another FreshPet Fridge

- d. In failing to take the FreshPet Fridge out of service until a replacement could be installed;
- e. In failing to warn users or others of the hazard that the leaking water presented;
- f. In other ways that may be ascertained during the discovery phase of this lawsuit;

32. As a direct and proximate result of the negligence, gross negligence, recklessness, wilfulness and wantonness of defendant FreshPet, Inc. the plaintiff Ms. Bird was seriously injured, harmed, and damaged and required medical treatment for her injuries.

33. Plaintiff therefore requests that judgment be entered in her favor and against the defendant FreshPet Inc. on this cause of action in an amount of actual and punitive damages to be determined by the jury at the trial of this case.

WHEREFORE Plaintiff has suffered losses, injuries, and damages and she is further entitled to judgment against the defendants, jointly and severally, and she would therefore request that the court enter judgment in the plaintiff's favor and against the defendants PetSmart LLC and FreshPet Inc., jointly and severally, in an amount of actual damages, a reasonable sum of punitive damages, as determined by the jury at the trial of this case; as well as the costs of prosecution of this action, prejudgment interest, attorneys fees, and such other and further relief as the court may deem just and proper.

Respectfully submitted,

LAW OFFICES OF THOMAS M. CREECH, JR. LLC

s/Thomas M. Creech, Jr.
Thomas M. Creech Jr. (SC Bar No. 13797)
Attorney for the Plaintiff
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Greenville, SC 29615
PO Box 10411
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Telephone: 864-235-4999
Facsimile: 864-235-4991
tmcreech@bellsouth.net

February 1, 2022

The Plaintiff demands a jury trial

s/Thomas M. Creech, Jr.
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Camille Bird,

Plaintiff,

vs.

PetSmart, LLC and FreshPet, Inc.,

Defendants.

IN THE COURT OF COMMONS PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2022-CP-23-00564

**DEFENDANT, PETSMART, LLC'S,
ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant, PetSmart, LLC, [hereinafter referred to as "this Defendant"], by and through its undersigned counsel, hereby responds to Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, this Defendant admits, of the allegations contained in Paragraph One (1) of Plaintiff's Complaint upon information and belief, that Plaintiff is a citizen and resident of Greenville County and was present at Defendant's store located at the address alleged. Defendant denies all remaining allegations and demands strict proof thereof.
2. This Defendant admits the allegations contained in Paragraph Two (2) of Plaintiff's Complaint.
3. The allegations in Paragraph Three (3) of Plaintiff's Complaint are directed at a party other than this Defendant. PetSmart lacks sufficient information and knowledge to know the details of FreshPet's business and operations in South Carolina or other states. As a result, PetSmart denies the allegations contained therein and demands strict proof thereof.
4. This Defendant agrees, as stated in Paragraph Four (4) of Plaintiff's Complaint, that this Court has jurisdiction over the parties.

5. This Defendant agrees, as stated in Paragraph Five (5) of Plaintiff's Complaint. that this Court has jurisdiction over the subject matter at issue in this action.
6. This Defendant admits that it operated the subject store location identified in Paragraph Six (6) of Plaintiff's Complaint. However, PetSmart denies any facts or inferences not specifically admitted herein, and the admission made is not intended to be nor shall it be construed as an admission of any wrongdoing by this Defendant.
7. This Defendant admits, of the allegations contained in Paragraph Seven (7) of Plaintiff's Complaint, that Defendant FreshPet was the owner of a "FreshPet Fridge" in the area where Plaintiff alleges to have fallen. This Defendant is without sufficient knowledge or information as to the truth and veracity of the remaining allegations thus, they are denied, and strict proof is demanded thereof.
8. This Defendant denies the occurrence of any negligent acts or omissions by any of its authorized officers, agents, or employees as alleged in Paragraph Eight (8) of Plaintiff's Complaint and demands strict proof thereof. By way of further answer, Plaintiff has failed to identify any individual to allow PetSmart to makes such a determination.
9. Paragraph Nine (9) of Plaintiff's Complaint is summary in nature as it merely serves to re-allege all allegations of preceding paragraphs and as such this Defendant simply repeats and restates all admissions and denials accordingly.
10. This Defendant admits, of the allegations contained in Paragraph Ten (10) of Plaintiff's Complaint, Plaintiff was present in its store on the date, and at the time and location stated therein. However, this Defendant is without sufficient knowledge or information as to the as to the truth and veracity of the remaining allegations. As such, those allegations are denied, and strict proof is demanded thereof.

11. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Eleven (11) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
12. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Twelve (12) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
13. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Thirteen (13) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
14. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Fourteen (14) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
15. This Defendant denies the allegations contained in Paragraph Fifteen (15) of Plaintiff's Complaint and strict proof is demanded thereof.
16. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Sixteen (16) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
17. This Defendant admits the allegations contained in Paragraph Seventeen (17) of Plaintiff's Complaint.
18. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Eighteen (18) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.

19. This Defendant is without sufficient knowledge or information as to the truth and veracity of the allegations contained in Paragraph Nineteen (19) of Plaintiff's Complaint thus, they are denied, and strict proof is demanded thereof.
20. Paragraph Twenty (20) of Plaintiff's Complaint is summary in nature as it merely serves to re-allege all allegations of preceding paragraphs and as such this Defendant simply repeats and restates all admissions and denials accordingly.
21. Paragraph Twenty-one (21) of Plaintiff's Complaint contains legal conclusions to which no response is required. However, to the extent that Paragraph Twenty-one (21) of Plaintiff's Complaint can be interpreted as alleging or are intended to infer wrongdoing on the part of this Defendant same are denied and strict proof is demanded thereof.
22. This Defendant denies the allegations contained in Paragraph Twenty-two (22) of Plaintiff's Complaint and demands strict proof thereof.
23. This Defendant denies the allegations contained in Paragraph Twenty-three (23) of Plaintiff's Complaint, including subsections (a) through (f), and demands strict proof thereof.
24. This Defendant denies the allegations contained in Paragraph Twenty-four (24) of Plaintiff's Complaint and strict proof is demanded thereof.
25. This Defendant denies the allegations contained in Paragraph Twenty-five (25) of Plaintiff's Complaint and strict proof is demanded thereof.
26. Paragraphs Twenty-six (26) through Thirty-three (33) of Plaintiff's Complaint do not pertain to this Defendant thus no responses are required thereto. However, to the extent these paragraphs can be interpreted as alleging or are intended to infer wrongdoing on the part of this Defendant same are denied and strict proof is demanded thereof.

27. As to Plaintiff's prayer for relief this Defendant expressly denies that Plaintiff is entitled to any recovery against them.

FOR A SECOND DEFENSE

28. Paragraphs One (1) through Twenty-seven (27) are hereby incorporated herein as if repeated verbatim.
29. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A THIRD DEFENSE

30. Paragraphs One (1) through Twenty-nine (29) are hereby incorporated herein as if repeated verbatim.
31. The Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed. This Defendant reserves its right to file motions pursuant to 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A FOURTH DEFENSE
(Comparative Negligence)**

32. Paragraphs One (1) through Thirty-one (31) are hereby incorporated herein as if repeated verbatim.
33. This Defendant alleges, and would show, that if the Plaintiff sustained any injuries or damages as set forth in the Complaint, the same were due to the willful, wanton, reckless, careless and negligent act and conduct of the Plaintiff which combined with concurred with and exceeded any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant, which is specifically denied, to bring about the injuries and damages, if any, as

the proximate cause, thereof, and without which the same would not have occurred and bars any recovery by the Plaintiff.

34. That if this Defendant were equally as negligent as the Plaintiff, or more negligent than the Plaintiff, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of Plaintiff's negligence.

**FOR A FIFTH DEFENSE
(Failure to Mitigate)**

35. Paragraphs One (1) through Thirty-four (34) are hereby incorporated herein as if repeated verbatim.
36. That the Plaintiff failed to take reasonable actions to adequately mitigate her damages, if any, by not undertaking proper preventative or curative measures or, in the alternative, sought treatment that was not reasonable and necessary or was excessive in nature.

**FOR A SIXTH DEFENSE
(Open and Obvious)**

37. Paragraphs One (1) through Thirty-six (36) are hereby incorporated herein as if repeated verbatim.
38. This Defendant alleges, and would show, that the Plaintiff's claims are barred even if the Defendant were negligent as alleged, which is expressly denied, because the purported dangerous condition was open and obvious.
39. Further, this Defendant alleges, and would show, that condition in question was not latent or concealed and was one that, through the exercise of reasonable diligence, Plaintiff should have discovered and avoided coming into contact with.

**FOR A SEVENTH DEFENSE
(Negligence of Others)**

40. Paragraphs One (1) through Thirty-nine (39) are hereby incorporated herein as if repeated verbatim.

41. This Defendant alleges, and would show, that if any injuries and damages were sustained by the Plaintiff, and the existence of such alleged injuries and damages is denied, said injuries were caused by an intervening, superseding act of negligence of third-parties named or unnamed in this action for which this Defendant is not liable; thus, Plaintiff's claims are barred.

**FOR AN EIGHTH DEFENSE
(Punitive Damages)**

42. Paragraphs One (1) through Forty-one (41) are hereby incorporated herein as if repeated verbatim.

43. This Defendant would show the claim by Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

44. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law of the State of South Carolina.

45. This Defendant alleges the claim by Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- (a) Provided with sufficient clear standards for determining the appropriateness of a punitive damage award of the size of such award;
- (b) Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- (c) Instructed that awarding punitive damages on individually discriminatory characteristics of this Defendant is improper;
- (d) Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of this Defendant upon which an award of punitive damages may be based; and
- (e) Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate this Defendant's equal protection and due process rights as guaranteed by the United State Constitution and the South Carolina constitution and would also violate the laws of the State of South Carolina.

**FOR A NINTH DEFENSE
(Amendments)**

- 46. Paragraph One (1) through Forty-five (45) are hereby incorporated herein as if repeated verbatim.
- 47. Defendant hereby reserves its right to amend this Answer to assert any additional defenses pursuant to South Carolina Rules of Civil Procedure, Rule 15 as they become known throughout the discovery process.

WHEREFORE, having fully answered the Complaint, Defendant demands that:

- (a) the Complaint be dismissed;
- (b) for costs of this action;
- (c) for and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave

Matthew C. LaFave – S.C. Bar No. 75365

CROWE LAFAVE, LLC

Post Office Box 1149

Columbia, South Carolina 29202

Phone: 803.724.5727

Facsimile: 803.724.5726

matt@crowelafave.com

ATTORNEY FOR DEFENDANT

This 8th day of March 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Camille Bird,

Plaintiff,

vs.

PetSmart, LLC and FreshPet, Inc.,

Defendants.

IN THE COURT OF COMMONS PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2022-CP-23-00564

**DEFENDANT PETSMART, LLC'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Defendant, PetSmart, LLC, by and through their undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas, Thirteenth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting this Defendants' Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action because there are no genuine issues of material facts and because Defendant is entitled to judgment as a matter of law as Plaintiff has failed to present any tangible evidence to establish any of the requisite elements for the premises liability/negligence claim she has brought against Defendant.

Specifically, Plaintiff cannot establish, through any admissible evidence any support for the allegations that Defendant knew or should have known of the presence of a foreign substance on its floor. Plaintiff's Complaint alleges specifically that the water was "leaking form [sic] the FreshPet Fridge ... for some time." *See Plaintiff's Complaint* ¶15 yet has presented no evidence to substantiate this assertion. Moreover, Plaintiff contends Defendant was negligent in "failing to properly inspect heavily traveled customer area for potential dangers and hazards" but again has produced, in discovery, no evidence of such failure. Plaintiff's case rests exclusively on the fact

that she fell, in an area where there was water on the floor, and that said fall occurred in Defendant's store. The mere occurrence of an accident is not evidence of negligence and Defendant cannot be held liable for a fall simply because it occurred on its premises. Plaintiff's case rests exclusively on unsupported allegations in her Complaint. For the foregoing reasons summary judgment is warranted.

This motion is based upon the pleadings, the discovery responses of the parties, the deposition(s) taken in this case, and any affidavits and/or memorandum of law to be filed by the Defendants.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave

Matthew C. LaFave, SC BAR #75365
CROWE LAFAVE GARFIELD & BAGLEY, LLC
2019 Park Street
Columbia, SC 29201
803.724.5727
matt@crowelafave.com

Attorney for Defendant PetSmart, LLC

This 8th day of November 2023
Columbia, South Carolina

Danny C. Crowe*
Matthew C. LaFave*
Mary D. LaFave*
Robert D. Garfield
Lee Ellen Bagley*

CROWE LAFAVE
GARFIELD & BAGLEY

ATTORNEYS AT LAW

Steven R. Spreewuers
Laura R. Baer
Douglas E. Leadbitter
Joseph E. Thoensen

*Certified Mediator
*Also Licensed in NC

January 10, 2024

Ms. Brice Garrett
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Camille Bird v. PetSmart, LLC and FreshPet, Inc.
Civil Action No: 2022-CP-23-00564

Dear Ms. Garrett:

Attached hereto is the Deposition Transcript of Mr. Don Johnson which is being submitted as an additional exhibit to Defendant PetSmart's Motion for Summary Judgment filed in the above-referenced matter. We would appreciate your attaching this exhibit to Defendant PetSmart's Memorandum In Support of Motion for Summary Judgment which is scheduled for hearing at 2:00 p.m. today before Judge Morgan.

If you should have any questions or concerns, please do not hesitate to contact me at my office. I can be reached at (803) 724-5727.

With kindest regards, I remain.

Yours very truly,

s/Matthew C. LaFave

Matthew C. LaFave
Crowe LaFave Garfield & Bagley, LLC

MCL/maj
Enclosures

Transcript of the Testimony of **Don Johnson**

Date: April 6, 2023

In the Matter of:

Camille Bird v. PetSmart, LLC, et al

2022-CP-23-00564

APS Legal Ease, LLC
601 East McBee Ave., Suite 101
Greenville, SC 29601
Phone: 864-235-3426
Email: greenville@apslegalease.com

Don Johnson April 6, 2023 Page 1 STATE OF SOUTH CAROLINA)) IN THE COURT OF COMMON PLEAS COUNTY OF GREENVILLE) Camille Bird,)) Plaintiff,)) -vs-)CA NO. 2022-CP-23-00564) PetSmart, LLC and FreshPet,) Inc.,)) Defendants.))) DEPOSITION OF DON JOHNSON APRIL 6, 2022 PURSUANT to Notice and/or agreement between the parties, the deposition of DON JOHNSON, called by the Plaintiff, was taken commencing at the hour of 11:02 A.M. on Thursday, April 6, 2023 at the law offices of Thomas M. Creech, Jr., 15 Brendan Way, Suite 215, Greenville, South Carolina. Barbara M. McCurley, Court Reporter Camille Bird v. PetSmart, LLC, et al APS Legal EaseGreenville, SC 864-235-3426	Don Johnson April 6, 2023 Page 3 STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure. WAIVER: Examination and reading of the deposition are waived by the witness and by the parties. INDEX OF EXHIBITS <table><tr><th>Exhibit</th><th>Page</th></tr><tr><th>Number</th><th>Number</th></tr><tr><td>1. Chiller Hardware/Software Agreement.....</td><td>23</td></tr><tr><td>2. Store Appearance Procedure (DEF-94 - 96)....</td><td>26</td></tr><tr><td>3. Incident Report Form (DEF-02).....</td><td>28</td></tr><tr><td>4. Email dated 9/6/2019 (DEF-105 & 106).....</td><td>32</td></tr><tr><td>5. Work Order 7/29/19 Tracing 122973325.....</td><td>40</td></tr></table> INDEX OF EXAMINATION <table><tr><th></th><th>PAGE</th></tr><tr><td>By Mr. Creech.....</td><td>4</td></tr><tr><td>By Mr. Moore.....</td><td>43</td></tr><tr><td>By Mr. Creech.....</td><td>49</td></tr><tr><td>Certificate.....</td><td>52</td></tr></table> Camille Bird v. PetSmart, LLC, et al APS Legal EaseGreenville, SC 864-235-3426	Exhibit	Page	Number	Number	1. Chiller Hardware/Software Agreement.....	23	2. Store Appearance Procedure (DEF-94 - 96)....	26	3. Incident Report Form (DEF-02).....	28	4. Email dated 9/6/2019 (DEF-105 & 106).....	32	5. Work Order 7/29/19 Tracing 122973325.....	40		PAGE	By Mr. Creech.....	4	By Mr. Moore.....	43	By Mr. Creech.....	49	Certificate.....	52
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Don Johnson April 6, 2023 Page 2 APPEARANCES: Law Offices of Thomas M. Creech, Jr., LLC 15 Brendan Way, Suite 215 Greenville, South Carolina 29615 By: Thomas M. Creech, Jr., Esquire Celeste Thomason, Paralegal On behalf of the Plaintiff Crowe LaFave Garfield & Bagley, LLC Post Office Box 1149 Columbia, South Carolina By: Laura R. Baer, Esquire On behalf of Defendant PetSmart, LLC Turner Padget Graham & Laney, P.A. 200 East Broad Street, Suite 250 (29601) P.O. Box 1509 Greenville, South Carolina 29602 By: David L. Moore, Jr., Esquire, via Zoom On behalf of Defendant FreshPet, Inc. Also attending: Jeannie Rogalla, FreshPet, Inc., via Zoom Camille Bird v. PetSmart, LLC, et al APS Legal EaseGreenville, SC 864-235-3426	Don Johnson April 6, 2023 Page 4 1 DON JOHNSON, having first been duly sworn to tell 2 the truth, testified as follows: 3 EXAMINATION 4 By Mr. Creech: 5 Q. Good morning. 6 A. Good morning. 7 Q. We met earlier, off the record, but my name is Tom 8 Creech. I'm a lawyer here in Greenville and I 9 represent Camille Bird in this case, the Plaintiff. 10 And I don't know if you've ever had your deposition 11 taken before, but the rules require me to just 12 basically let you know that if you have any 13 questions about my questions, if you will direct 14 those to me, as opposed to counsel for PetSmart. 15 If you don't understand something, just ask me to 16 clarify it or if you need to ask me a question 17 because you're not understanding, just direct those 18 questions to me. 19 A. Okay. 20 Q. Does that sound good? 21 A. Good. 22 Q. All right. A couple of other things. If you will 23 verbalize your answers as opposed to nodding or 24 shaking your head. Again, that's just for the 25 clarity of the record. If you will also answer Camille Bird v. PetSmart, LLC, et al APS Legal EaseGreenville, SC 864-235-3426																								

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- 1 with a "yes" or a "no", as opposed to an "uh-huh"
2 or an "uh-uh", again, that's so that we understand
3 what your answer is when we have -- for the clarity
4 purposes of the record, so. All right. Mr.
5 Johnson, could you state your full name for the
6 record, please?
7 A. Donald J. Johnson.
8 Q. Okay. And Mr. Johnson, what -- where -- what is
9 your current address?
10 A. [REDACTED]
11 Q. And is that 5-0 or 5-1?
12 A. 5-0.
13 Q. Okay. Very good. And where are you -- how old are
14 you?
15 A. [REDACTED]
16 Q. Okay. And did you -- how far did you go in school?
17 A. Two years of college.
18 Q. Okay. Where did you graduate from high school?
19 A. Horseheads High School in New York.
20 Q. And what part of New York?
21 A. Horseheads, New York.
22 Q. Horseheads and how do you spell that?
23 A. H-o-r-s-e-h-e-a-d-s.
24 Q. Horsehead, okay. Is it one word or two?
25 A. One word.

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- 1 store leader there, what -- let me ask you this:
2 How long have you worked for PetSmart?
3 A. Almost 14 years.
4 Q. Okay. And where did you start off with PetSmart?
5 A. I started out at the Laurens Road store -- store
6 number 400.
7 Q. Okay.
8 (Off the record.)
9 Examination resumed by Mr. Creech:
10 Q. All right. So you started out at the Laurens Road
11 store.
12 A. Yes.
13 Q. What was your position there? What did you start
14 out in a position?
15 A. Assistant.
16 Q. Store manager?
17 A. Yeah. Assistant store manager. Yes.
18 Q. Okay. And then how -- how long were you at Laurens
19 Road?
20 A. About a year and a half, and then I went to the
21 Taylors store as an assistant, which is 1301. And
22 then from there to Simpsonville as a store manager
23 for about a year. And then to store 400 in
24 Spartanburg for about three years.
25 Q. Okay. And then -- and then you ended up at

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- 1 Q. Okay. In what part of New York is that located?
2 A. Near Binghamton; south of Buffalo; east of
3 Rochester.
4 Q. Okay. All right. And where did you do two years
5 of college?
6 A. Corning College.
7 Q. Okay. Very good. All right. What -- where are
8 you currently employed?
9 A. Where?
10 Q. Yeah.
11 A. PetSmart at Woodruff Road.
12 Q. Okay. And what's your position there?
13 A. Store leader.
14 Q. And that is -- store leader, that's just another
15 word for store manager. Is that correct?
16 A. Yes.
17 Q. And how long have you been the store manager at
18 PetSmart on Woodruff Road?
19 A. About six years.
20 Q. Okay. So, what is the -- what is the store number
21 for the Woodruff Road PetSmart?
22 A. The address or the store number?
23 Q. The store number.
24 A. 1300.
25 Q. Okay. All right. And just prior to being the

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- 1 Woodruff Road. You've been there for the past six
2 years?
3 A. Uh-huh (Affirmative answer).
4 Q. Okay.
5 A. Yes.
6 Q. All right. And as a store manager, what are your
7 duties and responsibilities just generally
8 speaking?
9 A. Control assets; run register; all aspects of the
10 store; every department.
11 Q. Okay. What are your normal hours at the store?
12 A. Mine or the store?
13 Q. Your normal hours at the store.
14 A. 9 to -- 9 to 6, 9 to 7.
15 Q. Okay. What time does the store open, generally?
16 A. 9 o'clock.
17 Q. All right.
18 A. 9 o'clock.
19 Q. Okay. So you're there when it first opens. Is
20 that correct?
21 A. Yes.
22 Q. What time do the first store employees get to the
23 store?
24 A. 4:30.
25 Q. Okay. Very good. Now, let's see here. How did

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- 1 you prepare for your deposition today?
2 A. What do you mean?
3 Q. Did you -- okay. You knew you had this deposition
4 today, correct?
5 A. Yes, yes.
6 Q. What did you do to prepare for your deposition?
7 A. Nothing.
8 Q. Okay. Did you -- did you look at any documents?
9 A. No.
10 Q. All right. Did you talk to any other store
11 employees or anyone else about this?
12 A. No.
13 Q. Okay. Did you meet with an attorney? Without
14 telling me what you talked about, if you did in
15 fact meet with an attorney?
16 A. No.
17 Q. Okay. All right. So, basically, you just were
18 informed of the date and time of the deposition,
19 and you showed up. Is that right?
20 A. Oh, well.
21 MS. BAER: Do you understand that I'm an attorney?
22 A. Yes.
23 MS. BAER: Okay. Sorry.
24 A. She had called me this week.
25 Q. Okay.

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- 1 A. Yes.
2 Q. Okay. Do you know Jordan Coates?
3 A. Yes.
4 Q. And did he work at the Woodruff Road store with you
5 for a while?
6 A. Yes.
7 Q. And he was the assistant store manager.
8 A. Yes.
9 Q. Is that right?
10 A. Yeah.
11 Q. And he would have been familiar with safety
12 inspections and things like that, and how they were
13 done?
14 A. Yes, sir.
15 Q. Okay. Let's see here. Did you ever talk -- have
16 you talked to Jordan about this case, at all?
17 A. No.
18 Q. All right. Were you working on September the 6th
19 of 2019?
20 A. No.
21 Q. You were not?
22 A. No.
23 Q. You were not in the store at all?
24 A. No.
25 Q. Okay. Did you hear about a customer -- do you

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- 1 A. I guess that's -- I wasn't sure what ...
2 Q. And that's Ms. Baer, correct?
3 A. Yes.
4 Q. All right.
5 A. She called me Tuesday, I believe.
6 Q. Okay. Well, let me ask you this: Do you understand
7 what the underlying allegations are in this
8 lawsuit?
9 A. Yes.
10 Q. Okay. You understand it's -- it's about a customer
11 falling on the premises at the PetSmart store that
12 you manage. Is that right?
13 A. Yes.
14 Q. And that happened back on September the 6th of
15 2019. Is that correct?
16 A. Yes.
17 Q. Okay. All right. So -- okay. Fair enough. Let
18 me ask you this: Now, PetSmart, through it's
19 employees, conducts store safety inspections daily.
20 Is that right?
21 A. Yes.
22 Q. All right. And obviously, customer safety is a
23 very high priority for PetSmart.
24 A. Yes.
25 Q. Agree?

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- 1 remember hearing about a customer falling in the
2 store and becoming injured?
3 A. Yes.
4 Q. All right. Just talk to me a little bit about
5 that. What -- what -- what do you first -- you
6 know, when were you first informed that this had
7 happened?
8 A. On like, three days later. I was off, so when I
9 came back to work, that's when Jordan explained
10 what happened.
11 Q. Okay. And did you guys talk about the -- what --
12 kind of the facts of what had happened?
13 A. Yes. He told me what had happened and walked me
14 through then what happened.
15 Q. Okay. What do you remember him telling you about
16 what happened?
17 A. That a woman was in aisle -- they're different now.
18 I think aisle 11 now or maybe now it's 6, but that
19 she had slipped on some moisture in the aisle. And
20 I asked if -- you know, how -- how she was. He
21 said she was good. I said did an ambulance come.
22 He said no. She said she was okay and she left on
23 her own accord.
24 Q. Okay. Did he tell you where the moisture was
25 coming from?

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- 1 A. No.
2 Q. Okay.
3 A. Didn't know then.
4 Q. Did he tell you -- did he point you to the -- did
5 he point out the exact location where the fall
6 occurred?
7 A. Yes.
8 Q. All right. And was it in front of a FreshPet
9 cooler?
10 A. Yes.
11 Q. And did you guys -- did he tell you that water was
12 leaking from the cooler and that's what she fell
13 in?
14 A. No.
15 Q. Okay. He just told you moisture was on the floor?
16 A. Yes.
17 Q. And nothing more than that?
18 A. Yes.
19 Q. Okay. Did he point you -- point out the area -- he
20 pointed out the area immediately in front of the
21 FreshPet cooler, though. Is that right?
22 A. Yes.
23 Q. All right. Do you remember thinking, well, gosh,
24 maybe she felt water was leaking out of the cooler?
25 A. Not at the time, no.

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- 1 -- about her falling?
2 A. No.
3 Q. Okay. Now, let's talk about you -- so you began
4 working out there as the manager at the Woodruff
5 Road store about 2017? Is that about right?
6 A. About right, yeah.
7 Q. Okay. And the FreshPet coolers that were in that
8 store, have they been there the whole time you were
9 the store manager?
10 A. It's fairly new -- they're fairly new to us. It's
11 not like they've been there, but I don't recall
12 when they were put in.
13 Q. Okay. But they were there on the day of this ...
14 A. Yes.
15 Q. ... Ms. Bird fell, correct?
16 A. Yes.
17 Q. Okay. Now, have you -- while you've been a store
18 manager there, have you noticed any kind of
19 malfunctioning or the FreshPet coolers not working
20 properly?
21 A. No. Not anything that we've -- you know, we had
22 some issues with a power issue once.
23 Q. Okay. Tell me about that.
24 A. That we noticed on the walk in the morning, that it
25 wasn't lit or keeping cold at all, so we did a work

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- 1 Q. Okay. At any time?
2 A. No.
3 Q. Okay. So, did Jordan show you any pictures or
4 anything like that, that were taken?
5 A. No.
6 Q. All right. Did you read an accident report that
7 any of your employees may have put together?
8 A. Just the incident report that they sent back to us
9 ...
10 Q. Okay.
11 A. ... verifying that an incident was put in.
12 Q. Okay. So when you say "they", who is that?
13 A. We submit it on the computer and then they send
14 back an acknowledgment that corporate got the
15 incident.
16 Q. Okay. Did you ever speak with anybody at corporate
17 about this incident at all?
18 A. No.
19 Q. Did you do any kind of report or documentation of
20 this -- Ms. Bird falling in your store?
21 A. Me? No.
22 Q. You personally, yes.
23 A. No.
24 Q. Okay. All right. Did you speak with Ms. Bird at
25 all, at any time, at any point, about the incident

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- 1 order. Then someone came out and got it running.
2 Q. Okay. And when was that? Do you remember?
3 A. No.
4 Q. Okay. Do you remember any FreshPet -- the FreshPet
5 cooler leaking water, ever, while you've been the
6 store manager there?
7 A. Yes. I don't know when. We did have one issue
8 where the overflow underneath was dripping out.
9 Q. So overflow from a pan?
10 A. A pan.
11 Q. Okay. Was dripping out onto the -- leaking out
12 from the pan onto the floor?
13 A. Right.
14 Q. In front of the cooler?
15 A. Yes.
16 Q. And water was getting in front of the cooler?
17 A. Yes.
18 Q. Okay. Tell me about that.
19 A. So, we put a towel up underneath cause it's not --
20 it wasn't running. It dropped drops and we did a
21 work order, and they came out and fixed it.
22 Q. Okay. And how did you submit the -- how did you do
23 the work order?
24 A. We did ...
25 Q. Can you walk me through that process?

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1 A. Yeah. We -- back then we used to have two
2 different sites we went to, depending on what
3 equipment needed fixing. I think Facilities One
4 and Service Now was the thing that we went to. So
5 we would submit it and then we would get a --
6 usually a response back if it's something urgent,
7 something safety-wise, then they would send someone
8 out that day.
9 **Q. Okay. And whose -- so tell me what was -- you**
10 **know, which -- under what circumstances would you**
11 **report to Facilities One and what circumstances**
12 **would you report to Service Now?**
13 A. Depending back then, what the equipment was. If it
14 was a -- like a hole in a wall, it would be through
15 Facilities.
16 **Q. Okay.**
17 A. Usually, if it was a vendor, I believe it went
18 through Service Now.
19 **Q. So if it was a vendor's owned equipment, you would**
20 **report that through Service Now. Is that correct?**
21 A. I believe -- yeah, it's been a long time, but I
22 knew there was two that we did. Yes.
23 **Q. Okay. And did you do that or was -- did you have**
24 **an assistant store manager do that?**
25 A. Assistant.

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1 **know?**
2 A. Jordan.
3 **Q. Jordan would have? Okay. Very good. And you**
4 **remember just one time. Is that right?**
5 A. Yes. I don't recall because usually the assistant,
6 Jordan, handles all those.
7 **Q. Okay.**
8 A. So that was kind of his project, if things were
9 broken.
10 **Q. Right. Okay. Were you ever instructed by anybody**
11 **at corporate to call FreshPet directly to report**
12 **problems with the FreshPet coolers?**
13 A. No.
14 **Q. All right. Were you ever given a number to call to**
15 **report problems with FreshPet coolers?**
16 A. Not that I recall.
17 **Q. Okay. If -- if a FreshPet cooler malfunctioned,**
18 **how did you normally handle that? Did you just go**
19 **through the Service Now ...**
20 A. Yes.
21 **Q. ... I guess, platform?**
22 A. Uh-huh (Affirmative answer).
23 **Q. That's how you did it every time. Is that right?**
24 A. Yes.
25 **Q. Did -- were y'all responsible for -- was your store**

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1 **Q. Okay. And who all were the assistant -- since**
2 **you've been there at that store, since 2017, who**
3 **all have been the assistant store managers? We**
4 **know Jordan Coates.**
5 A. Jordan Coates. Taylor Staton. He is in the Easley
6 store, 1752. Tyler Mabe, a-b-e. He is at the
7 Spartanburg store.
8 **Q. Okay. And they were familiar with the reporting --**
9 **incident reporting ...**
10 A. Yes.
11 **Q. ... I guess, details at ...**
12 A. Process.
13 **Q. ... PetSmart?**
14 A. Right.
15 **Q. Process, okay. Very good. Now, the FreshPet --**
16 **let me see here. Do -- you remember reporting**
17 **about the FreshPet cooler leaking, but you just**
18 **can't remember when that was, correct?**
19 A. No, sir.
20 **Q. Okay. Do you have any clue as to whether it was**
21 **before Ms. Bird fell or after Ms. Bird fell?**
22 A. I do not recall.
23 **Q. Okay. And who -- who would have made that report**
24 **to -- I guess, through Service Now -- which of your**
25 **employees would have made that report? Do you**

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1 **responsible for maintaining, fixing, or repairing a**
2 **malfunctioning FreshPet cooler?**
3 A. No.
4 **Q. Okay. So how did that process work? If you**
5 **noticed a FreshPet cooler -- I know you -- you**
6 **would just report it up the chain. Is that**
7 **correct?**
8 A. Yes.
9 **Q. If there were any problems with the FreshPet**
10 **cooler?**
11 A. Yes. Any -- anything that breaks.
12 **Q. Okay.**
13 A. We submit it and then people show up.
14 **Q. Right. Do you remember ever seeing any -- anyone**
15 **coming out and inspecting the FreshPet coolers**
16 **while you've been -- since you've been a manager at**
17 **the store -- since 2017?**
18 A. There was a FreshPet regional person that came
19 like, every other week. Not necessarily to check
20 refrigeration, but she would rotate product. She
21 would check temperatures -- also other products in
22 the store. But she was in about every two weeks.
23 **Q. Okay. So she stocked the product in the cooler.**
24 **Is that right?**
25 A. No. The product, most of the time, would come in

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1 UPS and we would put up.
2 **Q. Okay.**
3 A. She just went through and checked for dating,
4 rotation. She would fill, if we have extra product
5 in the back.
6 **Q. Do you remember her name?**
7 A. I do not.
8 **Q. All right. And she was a FreshPet regional**
9 **representative?**
10 A. Right.
11 **Q. Is that correct?**
12 A. Yes.
13 **Q. Okay. Do you -- did you -- do you know or do you**
14 **remember if you or any other PetSmart employee**
15 **talked to her about a malfunctioning or leaking**
16 **FreshPet cooler there in the store?**
17 A. No.
18 **Q. To your knowledge, did FreshPet have any type of**
19 **camera system or software monitoring system on its**
20 **coolers there in your store?**
21 A. Not that I know of.
22 **Q. Okay. Are you aware of cooler monitoring software,**
23 **generally?**
24 A. No.
25 **Q. Have you ever heard of that product?**

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1 A. No.
2 **Q. Okay. All right. Let's see here. Okay.**
3 **MR. CREECH:** David, I'm gonna hand him an exhibit.
4 It's the Chiller Hardware/Software Agreement that was
5 dated April 7th, 2021. You produced it in your
6 discovery, but there's not a Bates stamp number on it,
7 so I can't give you a Bates stamp number. But it's a
8 two page document.
9 **MR. MOORE:** All right. Just attach it to the
10 deposition.
11 **MR. CREECH:** Yeah.
12 (Exhibit number 1 marked for identification.)
13 **MS. BAER:** That's Plaintiff's 1?
14 **COURT REPORTER:** Yes.
15 **MS. BAER:** Thank you.
16 **MR. CREECH:** And if for some reason I have a
17 document, David, that you don't. I mean, we can -- we
18 can email it or if we -- if you need it, we can get it
19 to you.
20 **MR. MOORE:** Okay. That's fine.
21 **MR. CREECH:** So, just speak up if I need -- if we
22 need to do that. Okay. I'm just gonna let you -- I
23 don't have a copy for you.
24 **MS. BAER:** It's okay.
25 **MR. CREECH:** If you just want to -- or maybe y'all

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1 A. No.
2 **Q. Do -- so, you don't use -- it's not being used at**
3 **any of your store -- any of your coolers in your**
4 **store now, correct?**
5 A. Not that I know of, no.
6 **Q. All right. So to your knowledge, PetSmart never**
7 **required FreshPet to do any kind of -- use any kind**
8 **of software monitoring or camera installs on the**
9 **coolers?**
10 A. No.
11 **MS. BAER:** Object to the form.
12 **Q. Okay. Now, you would agree that PetSmart must keep**
13 **its floors in a safe condition for its customers,**
14 **correct?**
15 A. Yes.
16 **MS. BAER:** Object to the form.
17 **Q. Would you agree that water on the floor at PetSmart**
18 **can be a dangerous hazard for a customer?**
19 A. Yes.
20 **Q. Let me ask you -- do you know who -- a person named**
21 **Francheska Schedl, S-c-h-e-d-l?**
22 A. No.
23 **Q. Okay. Has a -- has there ever been a store**
24 **employee at your store on Woodruff Road named**
25 **Francheska, that you can remember?**

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1 can -- can y'all share and then I'll just ...
2 **MS. BAER:** Sure. I was gonna say, don't you need
3 it.
4 **MR. CREECH:** Yeah.
5 **Q. Okay. So this -- I mean, this is -- I've handed**
6 **you what's exhibit -- Plaintiff's Exhibit number 1.**
7 **It just states at the top, it's a Chiller**
8 **Hardware/Software Agreement. You have probably**
9 **never seen this document. Have you?**
10 A. No.
11 **Q. Okay. But it's entered in between -- it's entered**
12 **into between FreshPet and PetSmart. I mean, you**
13 **can see that. The document speaks for itself,**
14 **right. Do you know a person at PetSmart named --**
15 **can you tell that signature? James -- it looks**
16 **like a James, maybe.**
17 A. No.
18 **Q. You can't tell that signature. But if you look**
19 **over this, it talks about chiller hardware or**
20 **software and/or any kind of camera monitoring**
21 **systems placed in FreshPet coolers. I'll just**
22 **represent that to you. But you -- you do not -- do**
23 **you know if -- have there ever been cameras in**
24 **those coolers since you've been the store manager**
25 **at the Woodruff Road location?**

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- 1 A. Not anything that we would see or know, no.
2 **Q. Okay. Have you ever gone and opened up the cooler**
3 **door and looked in to see if there's a camera in**
4 **there?**
5 A. No.
6 **Q. Okay.**
7 A. I will now because ...
8 **Q. I'm sure.**
9 A. I didn't -- if it has it, I -- it isn't anything
10 accessible for us.
11 **Q. I understand. But -- but I was just asking if you**
12 **have any general knowledge of -- of those coolers -**
13 **- those FreshPet coolers have cameras in them. Do**
14 **you know that?**
15 A. No.
16 **Q. Okay. All right. Let's see here.**
17 **MR. CREECH:** Okay. David, I'm gonna hand him --
18 this is PetSmart Bates stamped numbers 94, 95, 96.
19 These are just store appearance procedure policies. You
20 should have these.
21 **MR. MOORE:** Okay.
22 **MR. CREECH:** Y'all have had -- y'all have disclosed
23 this confidentially, but I think we can talk about it in
24 depositions and stuff like that.
25 **MS. BAER:** That's fine.

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- 1 -- it's our daily processes.
2 **Q. Okay. So it's -- this is a -- you follow these --**
3 **you follow these policies and procedures in this**
4 **document, correct?**
5 A. Yes.
6 **Q. Your store employees are supposed to follow these**
7 **policies and procedures. Is that correct?**
8 A. Yes.
9 **Q. Okay. Under the "Floors" section, the document**
10 **states that the stores employees are to "inspect**
11 **the floors throughout the day and perform**
12 **maintenance that is required". Would you agree**
13 **with that?**
14 A. Yes.
15 **Q. Okay. Would you agree that there is usually a**
16 **safety inspection done of the entire store**
17 **immediately before the store opens?**
18 A. Yes.
19 **Q. Okay. And during that inspection, employees walk**
20 **the floors to look for hazards, that kind of thing,**
21 **correct?**
22 A. Yes.
23 **Q. Okay. And the store employees have been trained to**
24 **look for hazards. Is that right?**
25 A. Yes.

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- 1 **MR. CREECH:** If we can mark that as Plaintiff's
2 Exhibit number 2.
3 (Exhibit number 2 marked for identification.)
4 **MS. BAER:** I haven't looked at the confidentiality
5 order in this case. Does it say something like, that we
6 have to put on the record at the deposition that ...
7 **MR. CREECH:** Well, there may be stuff like that,
8 but I think Matt just ...
9 **MS. BAER:** He didn't worry about it?
10 **MR. CREECH:** In a prior deposition, we just freely
11 talked about it.
12 **MS. BAER:** Okay. That's fine.
13 **MR. CREECH:** But I mean, it would be subject to the
14 -- that order.
15 **MS. BAER:** Perfect.
16 **MR. CREECH:** Okay. This number 2 -- Plaintiff's
17 Exhibit number 2.
18 **Q. Mr. Johnson and -- this is the store appearance**
19 **procedure. Would you agree with that?**
20 A. Yes.
21 **Q. Do you -- do you -- have you seen this before?**
22 A. Yes.
23 **Q. Do you refer to it on a -- on some -- on any kind**
24 **of basis at all, when you're operating your store?**
25 A. No. New managers would go through this. But it's

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- 1 **Q. And also trained to recognize the hazards, correct?**
2 A. Yes.
3 **Q. Okay. Let's see here.**
4 **MR. CREECH:** This is the incident report form,
5 David, the two part ...
6 **MR. MOORE:** Okay.
7 **MR. CREECH:** ... two page, PetSmart incident report
8 form. It's Defendant's 2 -- Bates stamp 2.
9 **MR. MOORE:** And that's Exhibit number 3 on this
10 deposition?
11 **MR. CREECH:** Yes. Plaintiff's Exhibit 3.
12 **MR. MOORE:** Okay.
13 (Exhibit number 3 marked for identification.)
14 **Q. Mr. Johnson, if you look at that document, can you**
15 **tell me what that is?**
16 A. A PetSmart incident report.
17 **Q. Okay. And it appears to be for this incident that**
18 **we -- that's the subject of this case, correct?**
19 A. Yes.
20 **Q. Okay. And it was filled out by Jordan Coates. Is**
21 **that right?**
22 A. Yes.
23 **Q. Okay. Let's see here. And you see here where it**
24 **says, describe the incident? Well, let me ask you**
25 **this: When we say -- yeah, description of the**

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1 incident, here -- I believe -- do you recognize
2 Jordan's handwriting?
3 A. Yes.
4 Q. And that's his handwriting?
5 A. Yes.
6 Q. Okay. And you agree, he states that, "customer
7 slipped on water", correct?
8 A. Yes.
9 Q. He states, "no damage". Is that correct?
10 A. Yes.
11 Q. And then he states, "Pet food fridge has been
12 leaking", correct?
13 A. Yes.
14 Q. Okay. And did you -- when he said "pet food fridge
15 has been leaking", were you aware that it had been
16 leaking?
17 A. No.
18 Q. Okay. Did Jordan -- when you and Jordan talked
19 about the facts of the -- of the incident, did he
20 tell you that the fridge -- the fridge -- the pet
21 food fridge had been leaking?
22 A. No.
23 Q. Okay. And he says, "wet floor signs were present".
24 Is that correct?
25 A. Yes.

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1 Q. Okay.
2 A. So he went over to help and saw the wet floor
3 signs.
4 Q. I see. Okay. Very good. But he said they were
5 there -- but he -- so, how was he able to know if
6 they were there before she fell if he wasn't there
7 before she fell? He came on the scene after she
8 fell, correct?
9 A. Right.
10 Q. Okay. He just saw a sign when he got there.
11 A. Right.
12 Q. Is that right?
13 A. Exactly. Yes.
14 Q. Okay. So that sign could have been there before,
15 or someone could have come and put the sign up
16 after she fell as well. Is that correct?
17 A. I guess. I ...
18 Q. Yeah.
19 A. I don't know how, but yes.
20 Q. Okay. Were there any other employees -- or did
21 Jordan tell you any other employees who may have
22 come on the scene after the fall or witnessed the
23 fall, or was there before the fall, or anything?
24 A. Not that I know of, no.
25 Q. Okay. All right. Okay. I'm gonna hand you ...

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1 Q. Okay. Did he ever tell you anything about there
2 being wet floor signs?
3 A. Yes.
4 Q. He did tell you that?
5 A. Yes.
6 Q. You remember him saying that?
7 A. I asked.
8 Q. Okay.
9 A. Yeah.
10 Q. Tell me about that conversation.
11 A. Well, my first concern is -- if someone falls is --
12 you know, is the person okay.
13 Q. Right.
14 A. Then I want to know if we were able to -- if we saw
15 the issue, so I had asked if there were floor --
16 wet floor signs there. And he said, yes.
17 Q. Okay. And do you know how they got there?
18 A. No.
19 Q. All right. And were there wet floor signs there
20 before Ms. Bird fell? Do you know that?
21 A. I don't know.
22 Q. Okay. All right. Did Jordan tell you there were
23 wet floor signs there before Ms. Bird fell?
24 A. Yes. He said they were there in the aisle because
25 he didn't put them there.

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1 MR. CREECH: Okay. David, this is PetSmart exhibit
2 Defense 105 and 106. Can you make a quick copy of that
3 Celeste. That's the only copy I have.
4 (Off the record.)
5 Examination resumed by Mr. Creech:
6 (Exhibit number 4 marked for identification.)
7 MR. CREECH: Okay. So, this is Plaintiff's Exhibit
8 number 4, David.
9 MR. MOORE: Okay.
10 Q. Okay. So, can you tell me what this document is,
11 Mr. Johnson?
12 A. This is confirmation that an incident was put in.
13 Q. All right. And would you have sent this?
14 A. No.
15 Q. Okay. Who would have sent this?
16 A. Jordan.
17 Q. All right.
18 A. Well ...
19 Q. And this -- this is the confirmation you get back
20 from reporting the -- the incident.
21 A. Yes.
22 Q. Is that right?
23 A. Yes.
24 Q. All right. And in that, where it says,
25 "description of incident", it say's, "the

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- 1 refrigerator had been leaking". Is that right?
- 2 A. Yes.
- 3 Q. Okay. All right. And based on these documents and
- 4 Jordan's representation that the pet food fridge
- 5 had or has been leaking, does that refresh your
- 6 recollection at all as to whether or not this
- 7 FreshPet fridge had been leaking or any maintenance
- 8 issues with these FreshPet -- the FreshPet fridge
- 9 in your store?
- 10 A. You mean prior or before?
- 11 Q. Prior at any time.
- 12 A. No.
- 13 Q. You just have no recollection of a FreshPet cooler
- 14 leaking in your store at all?
- 15 A. No. If it was leaking, we would have done a work
- 16 order.
- 17 Q. Okay. And the -- did you ever -- did your -- did
- 18 corporate -- PetSmart corporate in Arizona -- I
- 19 guess, do they have like, a maintenance -- like, a
- 20 supervisor or person in charge of maintenance
- 21 nationwide? Do you know?
- 22 A. I don't know.
- 23 Q. Okay. Is there a maintenance -- a person in charge
- 24 of maintenance within your local store?
- 25 A. No.

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- 1 stores?
- 2 A. No.
- 3 Q. You never have any -- any interactions with the
- 4 corporate maintenance people?
- 5 A. No.
- 6 Q. Okay. Do you know who Carl Fuller is?
- 7 A. No.
- 8 Q. The name does not ring a bell at all?
- 9 A. No.
- 10 Q. Okay. Do you -- have you ever been given a
- 11 telephone number by anyone at corporate to report
- 12 problems with FreshPet coolers to FreshPet?
- 13 A. No.
- 14 Q. Okay. The FreshPet regional representative that --
- 15 they came in the store every two weeks or so. Is
- 16 that right?
- 17 A. Yes.
- 18 Q. Did she -- it was a female. Is that correct?
- 19 A. Yes.
- 20 Q. And has it been the same person all the seven years
- 21 -- six years you've been manager of the store?
- 22 A. They don't do it any more. They stopped about
- 23 three or four years ago doing it.
- 24 Q. Okay. So, when were they doing that -- what years?
- 25 2017, when you started. 2018?

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- 1 Q. All right. Who cleans the store -- the floors?
- 2 A. We have a floor company that does it some days.
- 3 Q. Okay.
- 4 A. And then we do it the other days.
- 5 Q. All right. And just whoever -- whoever employee
- 6 just happens to be there does it or is there ...
- 7 A. No. It's usually one of the leaders -- one of the
- 8 managers.
- 9 Q. Okay. And they just -- they go through the store
- 10 with a mop or do they have a -- a cleaning system
- 11 or what -- can you describe it?
- 12 A. They don't -- they don't use the machines. That's
- 13 for the floor people.
- 14 Q. Okay.
- 15 A. So they would go around with a -- a big, wide
- 16 sweeper.
- 17 Q. A broom?
- 18 A. Like a broom.
- 19 Q. Okay. And who cleans up like, when there's a pet
- 20 incidents like, pet urine and stuff like that? Who
- 21 cleans that up?
- 22 A. We do. All of -- everyone.
- 23 Q. Okay. All right. So, do you -- are you aware of
- 24 anyone on the corporate level that handles
- 25 maintenance issues for the stores -- the individual

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- 1 A. Oh, yeah.
- 2 Q. Okay. 2019?
- 3 A. Yeah.
- 4 Q. Okay. So all of 2019?
- 5 A. I would say probably -- yeah, probably stopped
- 6 about two years ago -- before COVID.
- 7 Q. Okay. Stopped before COVID. So, sometime in 2019
- 8 -- the later part of 2019, they stopped coming out
- 9 there. Is that right?
- 10 A. About right. Yeah.
- 11 Q. Okay. And it was the same female that was doing
- 12 this?
- 13 A. Yes.
- 14 Q. And you have no recollection of her name?
- 15 A. I'm awful with names. No. No, I don't. I -- no.
- 16 Q. Did you ever talk to her?
- 17 A. Oh, yeah. Occasionally, I'd be there on the day
- 18 she came.
- 19 Q. And what -- just, can you talk about ...
- 20 A. Usually ...
- 21 Q. ... those conversations at all?
- 22 A. She would come in and if she found out-of-date
- 23 product, she'd bring it up -- and/or getting close
- 24 dated, and we would mark it down for her and go put
- 25 it back out. Sometimes she would let us do it and

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1 she would go put it back on the shelf -- and she
2 did the rotation.
3 **Q. Okay. So she would be in and around the cooler.**
4 **Is that right?**
5 A. Oh, yes.
6 **Q. Okay. Does she -- do you know if she lived in this**
7 **-- in Greenville, or the Upstate -- or was she out**
8 **of state? Do you have any clue?**
9 A. No.
10 **Q. Would she -- she would bring product with her.**
11 A. No.
12 **Q. Correct? No. Would not bring product with her?**
13 A. No.
14 **Q. Okay. All right. But she would wear like, a**
15 **FreshPet uniform or something?**
16 A. She had a shirt that would be FreshPet.
17 **Q. Okay. And she would come in every two weeks?**
18 A. I believe it was two to three weeks.
19 **Q. Yeah. Okay. All right. Do you remember this**
20 **FreshPet cooler leaking in July of 2019?**
21 A. No.
22 **Q. Okay. Do you remember Jordan Coates making any**
23 **kind of report to the PetSmart -- I guess through**
24 **its reporting system, about the fridge is leaking**
25 **pretty bad and will need a tech to take a look?**

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1 **Q. Is there any way -- does the cooler have an on/off**
2 **switch?**
3 A. Yes.
4 **Q. Okay. Can a store employee go and cut the machine**
5 **off using the on/off switch, if necessary?**
6 A. If they knew how, probably.
7 **Q. Okay. So for instance, if a machine -- if a**
8 **FreshPet fridge was leaking water and no one was**
9 **coming out there to fix it, can a PetSmart employee**
10 **go out there and just -- go out to the machine and**
11 **cut it off?**
12 A. An associate? No.
13 **Q. Well, can a manager or assistant manager do that?**
14 A. Could they?
15 **Q. Yes.**
16 A. They could. They wouldn't, but they could.
17 **Q. Okay. And why would they not do that?**
18 A. Unless we're -- once we put a work order in -- if
19 they told us to do it, we would. But I've never
20 seen where they would tell us to turn it off. They
21 usually get someone out ...
22 **Q. Right. But in your own judgment, if you saw that**
23 **this FreshPet fridge was leaking water and causing**
24 **a -- presenting a hazard to either -- employees or**
25 **customers, a store employee at your direction or an**

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1 A. I don't recall. No.
2 **Q. Okay. All right. Do you know who Jill Coppola is?**
3 A. No.
4 **Q. Okay. Let's see here. Were you -- were you or any**
5 **of your PetSmart employees that manage or**
6 **supervisor able to go and just unplug the -- the**
7 **FreshPet fridge if necessary? Did you have that**
8 **ability and authority to do that?**
9 A. I mean, if someone told us to unplug it, you mean,
10 could we get to it?
11 **Q. Yes.**
12 A. Not without moving the freezers out.
13 **Q. Okay.**
14 A. It wasn't accessible for us. I mean, it's --
15 they're wired in, behind.
16 **Q. Well, and if you -- if you or your store employees**
17 **felt like that the cooler needed to be unplugged --**
18 **let's say it presented a safety hazard to store**
19 **employees or store customers -- would you be able**
20 **to get in there and turn it off somehow?**
21 A. I don't think so. I mean, it's hard wired in, I'm
22 sure. I don't think it's a plug. I've never seen
23 behind them. I've never -- I mean, they -- they
24 installed them. I never pulled them out to look
25 behind. I don't know of a way to do it.

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1 **assistant manager, could go and just cut the**
2 **machine off if they felt like it was a hazard.**
3 **Would you agree with that?**
4 **MS. BAER: Object to the form.**
5 A. I guess they could. I -- I can't imagine anyone
6 telling anyone to turn it off, though.
7 **Q. Okay.**
8 A. I mean, I wouldn't even know how to turn -- turn it
9 off if I walked over right now.
10 **Q. But if they knew how to turn it off, they could go**
11 **and flip the machine off, correct?**
12 A. Yes.
13 **Q. Okay. All right. Let me hand you Exhibit number -**
14 **- we're gonna mark this as Exhibit number -- what**
15 **are we on, 5? Yeah.**
16 **MR. MOORE: Five.**
17 **MR. CREECH: Okay. So, David, this is the -- the**
18 **documents that y'all produced prior to the last**
19 **deposition via email. These are FreshPet -- I guess**
20 **these are work orders.**
21 **MR. MOORE: Okay.**
22 **MR. CREECH: So this is just the work order from --**
23 **it looks like a July 29th work order.**
24 **(Exhibit number 5 marked for identification.)**
25 **MS. BAER: What year?**

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1 MR. CREECH: 2019.
2 MS. BAER: Thank you.
3 MR. CREECH: And you can -- you can look at it if
4 you need to.
5 MS. BAER: Thanks. I don't think that I had seen
6 this before today, but that's fine. I'm sure Matt has
7 seen it before.
8 Q. Have you ever seen this document or a document like
9 this, at all, in all your years as a employee of
10 PetSmart -- have you ever seen a document like
11 this, Plaintiff's Exhibit number 5?
12 MR. MOORE: Tom, is this a four page document or
13 just one page?
14 MR. CREECH: It's just one of those four -- yeah,
15 this is just the -- this is just the July -- it's dated
16 July 29th, 2019.
17 MR. MOORE: Okay.
18 MR. CREECH: Yeah, but you're right. Y'all did
19 produce four pages.
20 MS. BAER: Did the other ones -- I'm sorry. Just
21 so I understand. Do the others have different dates?
22 So, this one was like the only one for that date?
23 MR. CREECH: Yes.
24 MS. BAER: Okay. That's easy. I'll get copies of
25 it when we get ...

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1 Q. It states that, yeah. But you never -- in the
2 course of your job duties as a supervisor, you've
3 never seen a document like that come across your
4 desk, your computer, or nothing like this ever?
5 A. No.
6 Q. Okay. Have you ever seen any kind of documentation
7 from PetSmart itself, any memorandum, emails,
8 anything talking about maintenance issues or
9 leaking issues of FreshPet coolers that are in
10 PetSmart stores throughout the country?
11 A. No.
12 Q. Ever gotten an email from corporate maintenance or
13 anybody talking anything about maintenance of
14 FreshPet coolers in these PetSmart stores?
15 A. No.
16 Q. Okay. Okay. Those are all the questions I have.
17 -----
18 Examination by Mr. Moore:
19 Q. Mr. Johnson, my name is David Moore. I represent
20 FreshPet in this particular litigation. Let's
21 start off where you ended your deposition, which is
22 with regard to Exhibit number 5, and that is the
23 document from FreshPet dated -- the top date is
24 July 29, 2019. Are you with me?
25 A. Yes.

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1 MR. CREECH: Yeah. No problem.
2 Q. Have you ever -- ever seen this document or what it
3 looked like? Can you tell me what this document
4 is?
5 A. No.
6 Q. Without studying it close, I mean, if you --
7 sometimes I can hand you like, a tax return and
8 you'll say, oh, that's a tax return. You look at
9 this document, I mean, do you have any clue what
10 this document is?
11 A. No.
12 Q. Okay. Now, if you look at it, it states about a
13 description -- a leaking -- on the description
14 part, it says, "leaking refrigerator".
15 A. Oh, okay. Yes. I see that.
16 Q. Okay. And this document is -- there's a date on
17 here. There's several dates. But "July 29th,
18 2019, created by Francheska".
19 A. Yes. I see that.
20 Q. You don't know -- you don't know who Francheska is?
21 A. No.
22 Q. Okay. All right. And it says here at the top of
23 the document, "refrigerator not functioning",
24 correct?
25 A. Yes.

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1 Q. Have you got that document in front of you?
2 A. Yes.
3 MR. CREECH: Yes, he does.
4 Q. All right. And over on the lefthand side, they're
5 saying they have a leaking refrigerator. Do you
6 see that?
7 A. Yes.
8 Q. Okay. My understanding is the procedure, when you
9 have a leaking cooler like this, is that you
10 contact somebody with corporate. Am I correct on
11 that?
12 A. Yes.
13 Q. You don't contact FreshPet directly?
14 A. No.
15 Q. Okay. Now, FreshPet obviously has a unit -- one or
16 more units in your store there, as I understand it,
17 correct?
18 A. Yes.
19 Q. Okay. Do they have any employees there on a
20 regular basis?
21 A. Do they have what?
22 Q. Any employees at your store on a regular basis?
23 A. Yes.
24 Q. Okay. When is any employee there on a regular
25 basis?

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- 1 A. From 5 in the morning til -- I have them 24 hours
2 a day in my store, so.
3 MS. BAER: I don't think ...
4 Q. No, no, no. I'm sorry. You misunderstand my
5 question. What I'm asking is whether FreshPet has
6 any employees in the store?
7 A. Oh, no. Sorry.
8 Q. Okay. All right. So, when a problem arises with a
9 unit, FreshPet is not gonna be aware of that
10 problem until they're notified through corporate.
11 Am I correct on that?
12 A. Yes.
13 Q. Okay. So this document that you have in front of
14 you is after FreshPet has been notified of some
15 kind of problem with the unit.
16 A. Okay.
17 Q. Is that correct?
18 A. I don't know what the document is so, I guess,
19 okay.
20 Q. Okay. Now, what does that document indicate the
21 problem was?
22 A. It says, "tech installed thermostat".
23 Q. Okay. Is there an indication that that was
24 actually done?
25 A. It just says on resolution, "closed: tech installed

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- 1 A. I don't -- I don't know if they contact FreshPet or
2 if they just send a tech out.
3 Q. Okay. Do you know whether FreshPet was contacted
4 with regard to this unit?
5 A. I do not know.
6 Q. Okay. And do you know whether anybody came out
7 from FreshPet to correct any problems with this
8 unit?
9 A. You mean from FreshPet exclusively?
10 Q. No. One of their tech -- a tech came out on behalf
11 of FreshPet to correct the unit?
12 A. I don't know.
13 Q. Okay. Do you know whether there were any ongoing
14 problems with this unit after -- let's start off
15 with September 6, 2019, when this fall occurred?
16 A. No.
17 Q. Okay. When this fall occurred, my understanding is
18 somebody came and cleaned up the moisture on the
19 floor?
20 A. That's what -- yes.
21 Q. Okay. And at some point warning signs were put out
22 in the area?
23 A. Yes.
24 Q. Okay. Now, when you returned to the store, was
25 there an ongoing problem with that unit? In other

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- 1 thermostat; manager on duty Francheska Delgado ..."
2 Q. Delgado, yeah. All right. Now, between August,
3 apparently, 2, 2019 and the time this accident
4 occurred on September 6, 2019, are you aware of any
5 leaking from this unit?
6 A. No.
7 Q. Okay. The first time you learned of it is when you
8 got back, I assume, from vacation. Am I right?
9 A. Yes.
10 Q. Okay. Are you aware of anyone else in your
11 particular store who was aware of any leaking from
12 that unit?
13 A. No.
14 Q. Now, do you know if the particular problem with
15 regard to that unit in September 2019 was reported
16 to corporate?
17 A. I don't know.
18 Q. Okay. Did -- did Jordan Coates make an incident --
19 prepare an incident report?
20 A. Yes.
21 Q. Okay. And where does that incident report go?
22 A. To corporate.
23 Q. Okay. And does corporate then follow up with that
24 if it's a problem with a FreshPet cooler? Do they
25 contact FreshPet at that point?

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- 1 words, was there moisture being leaked out?
2 A. I don't know. I mean -- was it still leaking?
3 Q. Yes, sir.
4 A. Very little. They put a towel underneath that ...
5 Q. That's what I was gonna ask you. And a towel would
6 soak up whatever leakage might have been there?
7 A. Yeah. Cause it's just -- it was just drops. It's
8 not -- it wasn't flowing or anything.
9 Q. Okay. All right. And do you know where the
10 moisture was coming from on this particular unit?
11 A. Yes. The evaporation pan.
12 Q. All right. And the evaporation pan is located
13 where on the unit? Is it on the bottom of it?
14 A. Underneath it, yes.
15 Q. Okay. What's the depth of that pan? Do you know?
16 A. Two inches-ish.
17 Q. Okay. So, if moisture accumulates more than two
18 inches, it'll overflow that pan and possibly get on
19 the floor?
20 A. Yes.
21 Q. Okay. And if that's occurring, you can stop that
22 problem by virtue of just putting some towels down
23 there to soak up the overflow?
24 A. Yes.
25 Q. And my understanding is that was done in this

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1 situation once you had knowledge of the overflow.
2 A. Yes.
3 Q. Okay. And y'all didn't have knowledge of the
4 overflow, it doesn't sound like, until this
5 accident occurred.
6 MR. CREECH Object to the form.
7 Q. You can go ahead and answer.
8 A. No.
9 Q. Okay. Okay. That's all I have. Appreciate it.
10 -----
11 Examination by Mr. Creech:
12 Q. And just -- I just want to make sure. You have not
13 talked with Camille Bird at all about her falling,
14 her injury, how she's doing, in any way. Is that
15 correct?
16 A. No.
17 Q. All right. You don't know who Ms. Bird is,
18 correct?
19 A. No.
20 Q. Okay. You haven't seen her in the store since this
21 fall?
22 A. I wouldn't know.
23 Q. Okay. Haven't talked to her?
24 A. Oh, no.
25 Q. Checked in on her?

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1 second break. I want to ask him one more question about
2 something else.
3 MR. MOORE: Sure.
4 MR. CREECH: If we could go off the record for just
5 a second.
6 (Off the record.)
7 Examination resumed by Mr. Creech:
8 Q. Just to conclude, Mr. Johnson, if a FreshPet
9 employee notices water on the floor -- or excuse
10 me. If a PetSmart employee notices water on the
11 floor at the store, it's that employee's duty to
12 immediately clean it up.
13 A. Yes.
14 Q. Do you agree with that?
15 MS. BAER: Object to the form.
16 Q. Do you agree with that?
17 A. Yeah.
18 Q. Okay. Very good. I have no further questions.
19 MR. MOORE: I have no further questions.
20 MS. BAER: I don't have any questions.
21
22
23
24 (There being no further questions
25 the deposition concluded at 11:58 A.M.)

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1 A. No.
2 Q. You haven't asked her how she's doing or anything
3 like that?
4 A. Not me, no.
5 Q. Anybody with your store?
6 A. I don't know that ...
7 Q. Okay.
8 A. ... Jordan did or didn't.
9 Q. Okay.
10 A. Usually, we call the next day.
11 Q. But you did not. You have not. Is that right?
12 A. I didn't. No.
13 Q. Okay. All right. What -- the FreshPet cooler is
14 still in the store. Is that right?
15 A. Yes.
16 Q. Same one that was in there on the day that this
17 slip and fall happened. Is that right?
18 A. Yes.
19 Q. Okay. And what aisle is it located on?
20 A. Like, six or seven on the lefthand side.
21 Q. And it's in the same location. The aisle numbers
22 have just been changed. Is that right?
23 A. Yes.
24 Q. Okay.
25 MR. CREECH: David, if we could just take like, a

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STATE OF SOUTH CAROLINA)
: CERTIFICATE
COUNTY OF GREENVILLE)
Be it known that I took the deposition of DON
JOHNSON;
That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;
That by virtue thereof, I was duly authorized
to administer an oath;
That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth concerning the matter in controversy aforesaid;
That the foregoing transcript of 51 pages is a
true and correct transcript of the testimony given in
this matter;
That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.
WITNESS MY HAND AND SEAL this 21st day of
April, 2023.

Barbara M. McCurley

Barbara M. McCurley
Notary Public for South Carolina
My Commission Expires: 07/02/2024



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January 10, 2024

Ms. Brice Garrett
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Camille Bird v. PetSmart, LLC and FreshPet, Inc.
Civil Action No: 2022-CP-23-00564

Dear Ms. Garrett:

Attached hereto is a color photograph of a wet floor sign which is being submitted as an additional exhibit to Defendant PetSmart's Motion for Summary Judgment filed in the above-referenced matter. We would appreciate your attaching this exhibit to Defendant PetSmart's Memorandum In Support of Motion for Summary Judgment which is scheduled for hearing at 2:00 p.m. today before Judge Morgan.

If you should have any questions or concerns, please do not hesitate to contact me at my office. I can be reached at (803) 724-5727.

With kindest regards, I remain.

Yours very truly,

s/Matthew C. LaFave

Matthew C. LaFave
Crowe LaFave Garfield & Bagley, LLC

MCL/maj
Enclosures



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2022-CP-23-00564
	)	
Camille Bird,	)	
Plaintiff,	)	PLAINTIFF'S MOTION
	)	FOR COURT TO RECONSIDER
	)	SCRCP 59e
vs.	)	
	)	
PetSmart, LLC, and FreshPet, Inc.	)	
Defendants.	)	

TO: The Defendant PetSmart LLC and its Counsel Matt LaFave

Pursuant to the South Carolina Rules of Civil Procedure Rule 59(e), the plaintiff by and through her counsel hereby moves the court to alter or amend the judgment in this case by re-considering its various rulings in its Order filed and served on February 6th, 2024, granting Defendant PetSmart LLC summary judgment under Rule 56 of the SCRCP. The plaintiff would show unto this honorable court and ask the court to reconsider pursuant to SCRCP 59(e) the following:

1. That plaintiff was required to prove or produce evidence that the defendant PetSmart LLC (hereinafter "PetSmart") knew of the water on the floor *on the day* that the plaintiff Ms. Bird fell. The plaintiff is not required to produce evidence that the defendant knew, precisely on the day of the fall, that water was on the floor before the plaintiff fell that day. Garrison vs Target, 435 S.C. 566 869 S.E.2d 797 (2022)(plaintiff not required to show how long the syringe had been in the parking lot prior to plaintiff's injury such that defendant should have discovered and removed it); Henderson v. St. Francis Community Hosp., 303 S.C. 177, 399 S.E.2d 767

(1990)(Court held defendant had actual and constructive notice of the dangers of sweetball in its parking lot, but no evidence presented that defendant knew on the day of the plaintiff's injury of the presence of sweetball); See Anderson v. Racetrac Petroleum, Inc., 296 S.C. 204, 371 S.E.2d 530 (1988); See also Cook v. Food Lion, Inc., 328 S.C. 324, 327, 491 S.E.2d 690, 691 (Ct. App. 1997). For constructive notice, plaintiff is only required to show that the foreign substance had been on the floor for a sufficient time that would allow a storekeeper exercising ordinary care to remove it. Id.

2. To reconsider the court's ruling that the references to leaks from the FreshPet Fridge in PetSmart internal email documents and the PetSmart Incident Report were solely in relation to pre-July 23rd, 2019, leaks in this same FreshPet Fridge. The PetSmart Incident Report prepared by its Assistant Store manager Jordan Coates in response to the plaintiff's fall, stated that the FreshPet Fridge "has been leaking". The Incident Report was prepared in response to, and in the context of, and would contain the relevant facts pertaining to, the plaintiff's fall on September 6, 2019. The Incident Report was created to identify relevant factors of the plaintiff's fall on September 6, 2019, and the facts having a bearing or relationship to her fall, including the causes of the fall. A reasonable inference is that the leaks referenced in the Incident Report referred to post-July 23rd leaks. There is a reasonable inference that an Incident Report would not refer to leaks that had occurred in the past that had been repaired and no longer presented a hazard. The court acknowledged as much at the hearing when it pointed out to defense counsel that the

FreshPet Fridge had been repaired. The Incident Report itself, and the facts contained therein, creates the reasonable inference resolved in favor of the plaintiff, and in a light most favorable to the plaintiff, that FreshPet Fridge began leaking **again after July 2019 repair**. In fact, that is what happened. The FreshPet Fridge began leaking again after July 2019 repairs and required a new wicking pad kit repair to stop the leaking of water that caused Ms. Bird to fall on September 6th, 2019. The repair was not made until after Ms. Bird fell.

Moreover, The Incident Report did not state that it was referring solely to pre-July 2019 leaks. And the store employee Jordan Coates, author of the Incident Report, did not endorse that position in his deposition. In fact, the Incident Report did not state anything specifically about July 2019 leaks. Instead, Mr. Coates said that if he was referring to ongoing leaking of the machine in the Incident Report he wrote, it would have been referring to a short term leak as in “noticed that day”. Deposition of Coates, Jordan, (Pages 54:10 to 55:14).

The Incident Report and internal corporate email discussing the plaintiff’s September 6, 2019, fall constitute documentary evidence of PetSmart’s constructive notice of the leaking FreshPet refrigerator, and those documents speak for themselves. To the extent there are ambiguities, those ambiguities must be resolved in favor of the plaintiff. Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)(*quoting Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976))“On appeal from an order granting summary judgment, the appellate court will review all

ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below.”)

Moreover, any conflicting interpretations of these documents by the plaintiff and defendant presents an issue of fact for the jury to resolve and the court must refrain from resolving those factual disputes. The information contained within the documents created an inference that the FreshPet Fridge was leaking before and at the time of the fall and that PetSmart knew about the leaks.

3. That PetSmart had actual or constructive notice of the leaking FreshPet Fridge because there is evidence that a PetSmart employee placed wet floor sign in the area of the water before the plaintiff fell, the obvious inference being to warn customers of a hazardous condition. Deposition of Jordan Coates, Pages 46:10 to 47:25. Deposition of Jordan Coates, Pages 81:14 to 85:12. Moreover, the PetSmart Incident Report stated that “wet floor signs were present”, creating an inference to be resolved in favor of the plaintiff that the Pet Smart was on notice of water on the floor.

That there is evidence that signs were present at the area where plaintiff fell speaks for itself as to notice. The presence of the wet floor sign, along with the defendant admission and position that the signs were present before the plaintiff fell, creates a reasonable inference that it was placed there by store employees in response to the water being on the floor. The defendant has admitted and acknowledged that the wet floor signs were present before the plaintiff fell. Id.

4. That PetSmart had constructive notice of the water on its floor because according to the affidavit of plaintiff’s mechanical engineering and safety expert

witness Brian During, Ph.D., P.E., the leak would have been a **continuous** leak, and thus not an isolated incident, due to the old wicking pads in the pan not functioning properly, which were replaced after the plaintiff fell. Thus, a continuous leak would be an ongoing leak and hazard which PetSmart employees should have noticed during daily inspections. The presence of a continuous leak also offers an explanation and creates a reasonable inference as to the alleged placement of the wet floor or warning sign by PetSmart in response to a continuous leak.

5. That PetSmart had actual or constructive notice of the water on the floor because on the morning before the PetSmart store opened, approximately 2-3 hours before the plaintiff fell, employees performed visual safety inspections of the floors of the aisle of the store, including the aisle where the leaking FreshPet Fridge was located, considering the size of the puddle of water as reflected in the picture that was taken by FreshPet employees and submitted as an exhibit in this case as well as the nature of the leak. Moreover, PetSmart employees were trained to, and did in fact conduct, constant inspections and to be on a constant lookout for spills of liquids, including pet urine, on the floors of its store. Constructive notice is “notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts.” LeFont v. City of Myrtle Beach, 430 S.C. 534, 544, 846 S.E.2d 355, 360 (Ct. App. 2020). Plaintiff is not required to prove how long or precisely when the water got on the floor, only that the storekeeper had actual or constructive notice of the hazard. There is no evidence that water was gushing or quickly flowing from the pan underneath the

refrigerator. Assistant Manager Jordan Coates in his deposition testified that he did not see water flowing or gushing out of the refrigerator when he arrived to the plaintiff's fall location shortly after plaintiff fell. Deposition of Jordan Coates, Page 40:1 to 40:16.

6. That PetSmart had constructive notice of the leaking water because this FreshPet Fridge had a recent history of malfunctions and defects which would have put PetSmart on notice of potential leaking problems associated with the machine and thereafter removing the machine from service or requesting repairs. LeFont v. City of Myrtle Beach, Id.

7. To consider the affidavit, and all of the conclusions and opinions reached therein, of Brian During, Phd. P.E., that was filed in this case, including that the leak would have been a continuous problem due to the wicking pad replacement and that the placement of a warning sign would indicate knowledge/notice on PetSmart's part of the leaking FreshPet Fridge before the plaintiff fell.

Based on the above, pursuant to Rule 59(e) SCRPC, the plaintiff asks this court to amend, alter, or reconsider its Order granting the defendant PetSmart's Motion for Summary Judgment and thereafter deny the defendant PetSmart's motion for summary judgment.

Respectfully submitted,

LAW OFFICES OF THOMAS M. CREECH, JR. LLC

s/Thomas M. Creech, Jr.
Thomas M. Creech Jr. (SC Bar No. 13797)

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February 15th, 2024

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April 6, 2023

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Camille Bird,)
)
 Plaintiff,)
)
 - vs -) CA NO. 2022-CP-23-00564
)
PetSmart, LLC and FreshPet,)
Inc.,)
)
 Defendants.)
)

)

DEPOSITION OF DON JOHNSON
APRIL 6, 2022

PURSUANT to Notice and/or agreement between the parties, the deposition of DON JOHNSON, called by the Plaintiff, was taken commencing at the hour of 11:02 A.M. on Thursday, April 6, 2023 at the law offices of Thomas M. Creech, Jr., 15 Brendan Way, Suite 215, Greenville, South Carolina.

Barbara M. McCurley, Court Reporter

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APPEARANCES:

Law Offices of Thomas M. Creech, Jr., LLC
15 Brendan Way, Suite 215
Greenville, South Carolina 29615
By: Thomas M. Creech, Jr., Esquire
Celeste Thomason, Paralegal
.....On behalf of the Plaintiff

Crowe LaFave Garfield & Bagley, LLC
Post Office Box 1149
Columbia, South Carolina
By: Laura R. Baer, Esquire
.....On behalf of Defendant PetSmart, LLC

Turner Padgett Graham & Laney, P.A.
200 East Broad Street, Suite 250 (29601)
P.O. Box 1509
Greenville, South Carolina 29602
By: David L. Moore, Jr., Esquire, via Zoom
.....On behalf of Defendant FreshPet, Inc.

Also attending:

Jeannie Rogalla, FreshPet, Inc., via Zoom

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STIPULATIONS: The within deposition was taken pursuant to
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

INDEX OF EXHIBITS

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1. Chiller Hardware/Software Agreement.....	23
2. Store Appearance Procedure (DEF-94 - 96).....	26
3. Incident Report Form (DEF-02).....	28
4. Email dated 9/6/2019 (DEF-105 & 106).....	32
5. Work Order 7/29/19 Tracing 122973325.....	40

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1 DON JOHNSON, having first been duly sworn to tell
2 the truth, testified as follows:

3 EXAMINATION

4 By Mr. Creech:

5 Q. Good morning.

6 A. Good morning.

7 Q. We met earlier, off the record, but my name is Tom
8 Creech. I'm a lawyer here in Greenville and I
9 represent Camille Bird in this case, the Plaintiff.
10 And I don't know if you've ever had your deposition
11 taken before, but the rules require me to just
12 basically let you know that if you have any
13 questions about my questions, if you will direct
14 those to me, as opposed to counsel for PetSmart.
15 If you don't understand something, just ask me to
16 clarify it or if you need to ask me a question
17 because you're not understanding, just direct those
18 questions to me.

19 A. Okay.

20 Q. Does that sound good?

21 A. Good.

22 Q. All right. A couple of other things. If you will
23 verbalize your answers as opposed to nodding or
24 shaking your head. Again, that's just for the
25 clarity of the record. If you will also answer

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1 with a "yes" or a "no", as opposed to an "uh-huh"
2 or an "uh-uh", again, that's so that we understand
3 what your answer is when we have -- for the clarity
4 purposes of the record, so. All right. Mr.
5 Johnson, could you state your full name for the
6 record, please?
7 A. Donald J. Johnson.
8 Q. Okay. And Mr. Johnson, what -- where -- what is
9 your current address?
10 A. 104 Glen Willow Court, Greer, South Carolina.
11 Q. And is that 5-0 or 5-1?
12 A. 5-0.
13 Q. Okay. Very good. And where are you -- how old are
14 you?
15 A. 59.
16 Q. Okay. And did you -- how far did you go in school?
17 A. Two years of college.
18 Q. Okay. Where did you graduate from high school?
19 A. Horseheads High School in New York.
20 Q. And what part of New York?
21 A. Horseheads, New York.
22 Q. Horseheads and how do you spell that?
23 A. H-o-r-s-e-h-e-a-d-s.
24 Q. Horsehead, okay. Is it one word or two?
25 A. One word.

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- 1 Q. Okay. In what part of New York is that located?
- 2 A. Near Binghamton; south of Buffalo; east of
- 3 Rochester.
- 4 Q. Okay. All right. And where did you do two years
- 5 of college?
- 6 A. Corning College.
- 7 Q. Okay. Very good. All right. What -- where are
- 8 you currently employed?
- 9 A. Where?
- 10 Q. Yeah.
- 11 A. PetSmart at Woodruff Road.
- 12 Q. Okay. And what's your position there?
- 13 A. Store leader.
- 14 Q. And that is -- store leader, that's just another
- 15 word for store manager. Is that correct?
- 16 A. Yes.
- 17 Q. And how long have you been the store manager at
- 18 PetSmart on Woodruff Road?
- 19 A. About six years.
- 20 Q. Okay. So, what is the -- what is the store number
- 21 for the Woodruff Road PetSmart?
- 22 A. The address or the store number?
- 23 Q. The store number.
- 24 A. 1300.
- 25 Q. Okay. All right. And just prior to being the

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1 store leader there, what -- let me ask you this:
2 How long have you worked for PetSmart?
3 A. Almost 14 years.
4 Q. Okay. And where did you start off with PetSmart?
5 A. I started out at the Laurens Road store -- store
6 number 400.
7 Q. Okay.
8 (Off the record.)
9 Examination resumed by Mr. Creech:
10 Q. All right. So you started out at the Laurens Road
11 store.
12 A. Yes.
13 Q. What was your position there? What did you start
14 out in a position?
15 A. Assistant.
16 Q. Store manager?
17 A. Yeah. Assistant store manager. Yes.
18 Q. Okay. And then how -- how long were you at Laurens
19 Road?
20 A. About a year and a half, and then I went to the
21 Taylors store as an assistant, which is 1301. And
22 then from there to Simpsonville as a store manager
23 for about a year. And then to store 400 in
24 Spartanburg for about three years.
25 Q. Okay. And then -- and then you ended up at

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1 Woodruff Road. You've been there for the past six
2 years?
3 A. Uh-huh (Affirmative answer).
4 Q. Okay.
5 A. Yes.
6 Q. All right. And as a store manager, what are your
7 duties and responsibilities just generally
8 speaking?
9 A. Control assets; run register; all aspects of the
10 store; every department.
11 Q. Okay. What are your normal hours at the store?
12 A. Mine or the store?
13 Q. Your normal hours at the store.
14 A. 9 to -- 9 to 6, 9 to 7.
15 Q. Okay. What time does the store open, generally?
16 A. 9 o'clock.
17 Q. All right.
18 A. 9 o'clock.
19 Q. Okay. So you're there when it first opens. Is
20 that correct?
21 A. Yes.
22 Q. What time do the first store employees get to the
23 store?
24 A. 4:30.
25 Q. Okay. Very good. Now, let's see here. How did

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1 you prepare for your deposition today?

2 A. What do you mean?

3 Q. Did you -- okay. You knew you had this deposition

4 today, correct?

5 A. Yes, yes.

6 Q. What did you do to prepare for your deposition?

7 A. Nothing.

8 Q. Okay. Did you -- did you look at any documents?

9 A. No.

10 Q. All right. Did you talk to any other store

11 employees or anyone else about this?

12 A. No.

13 Q. Okay. Did you meet with an attorney? Without

14 telling me what you talked about, if you did in

15 fact meet with an attorney?

16 A. No.

17 Q. Okay. All right. So, basically, you just were

18 informed of the date and time of the deposition,

19 and you showed up. Is that right?

20 A. Oh, well.

21 MS. BAER: Do you understand that I'm an attorney?

22 A. Yes.

23 MS. BAER: Okay. Sorry.

24 A. She had called me this week.

25 Q. Okay.

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1 A. I guess that's -- I wasn't sure what ...
2 Q. And that's Ms. Baer, correct?
3 A. Yes.
4 Q. All right.
5 A. She called me Tuesday, I believe.
6 Q. Okay. Well, let me ask you this: Do you understand
7 what the underlying allegations are in this
8 lawsuit?
9 A. Yes.
10 Q. Okay. You understand it's -- it's about a customer
11 falling on the premises at the PetSmart store that
12 you manage. Is that right?
13 A. Yes.
14 Q. And that happened back on September the 6th of
15 2019. Is that correct?
16 A. Yes.
17 Q. Okay. All right. So -- okay. Fair enough. Let
18 me ask you this: Now, PetSmart, through it's
19 employees, conducts store safety inspections daily.
20 Is that right?
21 A. Yes.
22 Q. All right. And obviously, customer safety is a
23 very high priority for PetSmart.
24 A. Yes.
25 Q. Agree?

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1 A. Yes.
2 Q. Okay. Do you know Jordan Coates?
3 A. Yes.
4 Q. And did he work at the Woodruff Road store with you
5 for a while?
6 A. Yes.
7 Q. And he was the assistant store manager.
8 A. Yes.
9 Q. Is that right?
10 A. Yeah.
11 Q. And he would have been familiar with safety
12 inspections and things like that, and how they were
13 done?
14 A. Yes, sir.
15 Q. Okay. Let's see here. Did you ever talk -- have
16 you talked to Jordan about this case, at all?
17 A. No.
18 Q. All right. Were you working on September the 6th
19 of 2019?
20 A. No.
21 Q. You were not?
22 A. No.
23 Q. You were not in the store at all?
24 A. No.
25 Q. Okay. Did you hear about a customer -- do you

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1 remember hearing about a customer falling in the
2 store and becoming injured?
3 A. Yes.
4 Q. All right. Just talk to me a little bit about
5 that. What -- what -- what do you first -- you
6 know, when were you first informed that this had
7 happened?
8 A. On like, three days later. I was off, so when I
9 came back to work, that's when Jordan explained
10 what happened.
11 Q. Okay. And did you guys talk about the -- what --
12 kind of the facts of what had happened?
13 A. Yes. He told me what had happened and walked me
14 through then what happened.
15 Q. Okay. What do you remember him telling you about
16 what happened?
17 A. That a woman was in aisle -- they're different now.
18 I think aisle 11 now or maybe now it's 6, but that
19 she had slipped on some moisture in the aisle. And
20 I asked if -- you know, how -- how she was. He
21 said she was good. I said did an ambulance come.
22 He said no. She said she was okay and she left on
23 her own accord.
24 Q. Okay. Did he tell you where the moisture was
25 coming from?

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1 A. No.

2 Q. Okay.

3 A. Didn't know then.

4 Q. Did he tell you -- did he point you to the -- did

5 he point out the exact location where the fall

6 occurred?

7 A. Yes.

8 Q. All right. And was it in front of a FreshPet

9 cooler?

10 A. Yes.

11 Q. And did you guys -- did he tell you that water was

12 leaking from the cooler and that's what she fell

13 in?

14 A. No.

15 Q. Okay. He just told you moisture was on the floor?

16 A. Yes.

17 Q. And nothing more than that?

18 A. Yes.

19 Q. Okay. Did he point you -- point out the area -- he

20 pointed out the area immediately in front of the

21 FreshPet cooler, though. Is that right?

22 A. Yes.

23 Q. All right. Do you remember thinking, well, gosh,

24 maybe she felt water was leaking out of the cooler?

25 A. Not at the time, no.

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- 1 Q. Okay. At any time?
- 2 A. No.
- 3 Q. Okay. So, did Jordan show you any pictures or
- 4 anything like that, that were taken?
- 5 A. No.
- 6 Q. All right. Did you read an accident report that
- 7 any of your employees may have put together?
- 8 A. Just the incident report that they sent back to us
- 9 ...
- 10 Q. Okay.
- 11 A. ... verifying that an incident was put in.
- 12 Q. Okay. So when you say "they", who is that?
- 13 A. We submit it on the computer and then they send
- 14 back an acknowledgment that corporate got the
- 15 incident.
- 16 Q. Okay. Did you ever speak with anybody at corporate
- 17 about this incident at all?
- 18 A. No.
- 19 Q. Did you do any kind of report or documentation of
- 20 this -- Ms. Bird falling in your store?
- 21 A. Me? No.
- 22 Q. You personally, yes.
- 23 A. No.
- 24 Q. Okay. All right. Did you speak with Ms. Bird at
- 25 all, at any time, at any point, about the incident

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1 -- about her falling?

2 A. No.

3 Q. Okay. Now, let's talk about you -- so you began

4 working out there as the manager at the Woodruff

5 Road store about 2017? Is that about right?

6 A. About right, yeah.

7 Q. Okay. And the FreshPet coolers that were in that

8 store, have they been there the whole time you were

9 the store manager?

10 A. It's fairly new -- they're fairly new to us. It's

11 not like they've been there, but I don't recall

12 when they were put in.

13 Q. Okay. But they were there on the day of this ...

14 A. Yes.

15 Q. ... Ms. Bird fell, correct?

16 A. Yes.

17 Q. Okay. Now, have you -- while you've been a store

18 manager there, have you noticed any kind of

19 malfunctioning or the FreshPet coolers not working

20 properly?

21 A. No. Not anything that we've -- you know, we had

22 some issues with a power issue once.

23 Q. Okay. Tell me about that.

24 A. That we noticed on the walk in the morning, that it

25 wasn't lit or keeping cold at all, so we did a work

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1 order. Then someone came out and got it running.
2 Q. Okay. And when was that? Do you remember?
3 A. No.
4 Q. Okay. Do you remember any FreshPet -- the FreshPet
5 cooler leaking water, ever, while you've been the
6 store manager there?
7 A. Yes. I don't know when. We did have one issue
8 where the overflow underneath was dripping out.
9 Q. So overflow from a pan?
10 A. A pan.
11 Q. Okay. Was dripping out onto the -- leaking out
12 from the pan onto the floor?
13 A. Right.
14 Q. In front of the cooler?
15 A. Yes.
16 Q. And water was getting in front of the cooler?
17 A. Yes.
18 Q. Okay. Tell me about that.
19 A. So, we put a towel up underneath cause it's not --
20 it wasn't running. It dropped drops and we did a
21 work order, and they came out and fixed it.
22 Q. Okay. And how did you submit the -- how did you do
23 the work order?
24 A. We did ...
25 Q. Can you walk me through that process?

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- 1 A. Yeah. We -- back then we used to have two
2 different sites we went to, depending on what
3 equipment needed fixing. I think Facilities One
4 and Service Now was the thing that we went to. So
5 we would submit it and then we would get a --
6 usually a response back if it's something urgent,
7 something safety-wise, then they would send someone
8 out that day.
- 9 Q. Okay. And whose -- so tell me what was -- you
10 know, which -- under what circumstances would you
11 report to Facilities One and what circumstances
12 would you report to Service Now?
- 13 A. Depending back then, what the equipment was. If it
14 was a -- like a hole in a wall, it would be through
15 Facilities.
- 16 Q. Okay.
- 17 A. Usually, if it was a vendor, I believe it went
18 through Service Now.
- 19 Q. So if it was a vendor's owned equipment, you would
20 report that through Service Now. Is that correct?
- 21 A. I believe -- yeah, it's been a long time, but I
22 knew there was two that we did. Yes.
- 23 Q. Okay. And did you do that or was -- did you have
24 an assistant store manager do that?
- 25 A. Assistant.

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1 Q. Okay. And who all were the assistant -- since
2 you've been there at that store, since 2017, who
3 all have been the assistant store managers? We
4 know Jordan Coates.
5 A. Jordan Coates. Taylor Staton. He is in the Easley
6 store, 1752. Tyler Mabe, a-b-e. He is at the
7 Spartanburg store.
8 Q. Okay. And they were familiar with the reporting --
9 incident reporting ...
10 A. Yes.
11 Q. ... I guess, details at ...
12 A. Process.
13 Q. ... PetSmart?
14 A. Right.
15 Q. Process, okay. Very good. Now, the FreshPet --
16 let me see here. Do -- you remember reporting
17 about the FreshPet cooler leaking, but you just
18 can't remember when that was, correct?
19 A. No, sir.
20 Q. Okay. Do you have any clue as to whether it was
21 before Ms. Bird fell or after Ms. Bird fell?
22 A. I do not recall.
23 Q. Okay. And who -- who would have made that report
24 to -- I guess, through Service Now -- which of your
25 employees would have made that report? Do you

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1 know?
2 A. Jordan.
3 Q. Jordan would have? Okay. Very good. And you
4 remember just one time. Is that right?
5 A. Yes. I don't recall because usually the assistant,
6 Jordan, handles all those.
7 Q. Okay.
8 A. So that was kind of his project, if things were
9 broken.
10 Q. Right. Okay. Were you ever instructed by anybody
11 at corporate to call FreshPet directly to report
12 problems with the FreshPet coolers?
13 A. No.
14 Q. All right. Were you ever given a number to call to
15 report problems with FreshPet coolers?
16 A. Not that I recall.
17 Q. Okay. If -- if a FreshPet cooler malfunctioned,
18 how did you normally handle that? Did you just go
19 through the Service Now ...
20 A. Yes.
21 Q. ... I guess, platform?
22 A. Uh-huh (Affirmative answer).
23 Q. That's how you did it every time. Is that right?
24 A. Yes.
25 Q. Did -- were y'all responsible for -- was your store

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1 responsible for maintaining, fixing, or repairing a
2 malfunctioning FreshPet cooler?

3 A. No.

4 Q. Okay. So how did that process work? If you
5 noticed a FreshPet cooler -- I know you -- you
6 would just report it up the chain. Is that
7 correct?

8 A. Yes.

9 Q. If there were any problems with the FreshPet
10 cooler?

11 A. Yes. Any -- anything that breaks.

12 Q. Okay.

13 A. We submit it and then people show up.

14 Q. Right. Do you remember ever seeing any -- anyone
15 coming out and inspecting the FreshPet coolers
16 while you've been -- since you've been a manager at
17 the store -- since 2017?

18 A. There was a FreshPet regional person that came
19 like, every other week. Not necessarily to check
20 refrigeration, but she would rotate product. She
21 would check temperatures -- also other products in
22 the store. But she was in about every two weeks.

23 Q. Okay. So she stocked the product in the cooler.
24 Is that right?

25 A. No. The product, most of the time, would come in

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1 UPS and we would put up.
2 Q. Okay.
3 A. She just went through and checked for dating,
4 rotation. She would fill, if we have extra product
5 in the back.
6 Q. Do you remember her name?
7 A. I do not.
8 Q. All right. And she was a FreshPet regional
9 representative?
10 A. Right.
11 Q. Is that correct?
12 A. Yes.
13 Q. Okay. Do you -- did you -- do you know or do you
14 remember if you or any other PetSmart employee
15 talked to her about a malfunctioning or leaking
16 FreshPet cooler there in the store?
17 A. No.
18 Q. To your knowledge, did FreshPet have any type of
19 camera system or software monitoring system on its
20 coolers there in your store?
21 A. Not that I know of.
22 Q. Okay. Are you aware of cooler monitoring software,
23 generally?
24 A. No.
25 Q. Have you ever heard of that product?

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1 A. No.

2 Q. Do -- so, you don't use -- it's not being used at
3 any of your store -- any of your coolers in your
4 store now, correct?

5 A. Not that I know of, no.

6 Q. All right. So to your knowledge, PetSmart never
7 required FreshPet to do any kind of -- use any kind
8 of software monitoring or camera installs on the
9 coolers?

10 A. No.

11 MS. BAER: Object to the form.

12 Q. Okay. Now, you would agree that PetSmart must keep
13 its floors in a safe condition for its customers,
14 correct?

15 A. Yes.

16 MS. BAER: Object to the form.

17 Q. Would you agree that water on the floor at PetSmart
18 can be a dangerous hazard for a customer?

19 A. Yes.

20 Q. Let me ask you -- do you know who -- a person named
21 Francheska Schedl, S-c-h-e-d-l?

22 A. No.

23 Q. Okay. Has a -- has there ever been a store
24 employee at your store on Woodruff Road named
25 Francheska, that you can remember?

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1 A. No.

2 Q. Okay. All right. Let's see here. Okay.

3 MR. CREECH: David, I'm gonna hand him an exhibit.
4 It's the Chiller Hardware/Software Agreement that was
5 dated April 7th, 2021. You produced it in your
6 discovery, but there's not a Bates stamp number on it,
7 so I can't give you a Bates stamp number. But it's a
8 two page document.

9 MR. MOORE: All right. Just attach it to the
10 deposition.

11 MR. CREECH: Yeah.

12 (Exhibit number 1 marked for identification.)

13 MS. BAER: That's Plaintiff's 1?

14 COURT REPORTER: Yes.

15 MS. BAER: Thank you.

16 MR. CREECH: And if for some reason I have a
17 document, David, that you don't. I mean, we can -- we
18 can email it or if we -- if you need it, we can get it
19 to you.

20 MR. MOORE: Okay. That's fine.

21 MR. CREECH: So, just speak up if I need -- if we
22 need to do that. Okay. I'm just gonna let you -- I
23 don't have a copy for you.

24 MS. BAER: It's okay.

25 MR. CREECH: If you just want to -- or maybe y'all

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1 can -- can y'all share and then I'll just ...

2 MS. BAER: Sure. I was gonna say, don't you need
3 it.

4 MR. CREECH: Yeah.

5 Q. Okay. So this -- I mean, this is -- I've handed
6 you what's exhibit -- Plaintiff's Exhibit number 1.
7 It just states at the top, it's a Chiller
8 Hardware/Software Agreement. You have probably
9 never seen this document. Have you?

10 A. No.

11 Q. Okay. But it's entered in between -- it's entered
12 into between FreshPet and PetSmart. I mean, you
13 can see that. The document speaks for itself,
14 right. Do you know a person at PetSmart named --
15 can you tell that signature? James -- it looks
16 like a James, maybe.

17 A. No.

18 Q. You can't tell that signature. But if you look
19 over this, it talks about chiller hardware or
20 software and/or any kind of camera monitoring
21 systems placed in FreshPet coolers. I'll just
22 represent that to you. But you -- you do not -- do
23 you know if -- have there ever been cameras in
24 those coolers since you've been the store manager
25 at the Woodruff Road location?

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1 A. Not anything that we would see or know, no.
2 Q. Okay. Have you ever gone and opened up the cooler
3 door and looked in to see if there's a camera in
4 there?
5 A. No.
6 Q. Okay.
7 A. I will now because ...
8 Q. I'm sure.
9 A. I didn't -- if it has it, I -- it isn't anything
10 accessible for us.
11 Q. I understand. But -- but I was just asking if you
12 have any general knowledge of -- of those coolers -
13 - those FreshPet coolers have cameras in them. Do
14 you know that?
15 A. No.
16 Q. Okay. All right. Let's see here.
17 MR. CREECH: Okay. David, I'm gonna hand him --
18 this is PetSmart Bates stamped numbers 94, 95, 96.
19 These are just store appearance procedure policies. You
20 should have these.
21 MR. MOORE: Okay.
22 MR. CREECH: Y'all have had -- y'all have disclosed
23 this confidentially, but I think we can talk about it in
24 depositions and stuff like that.
25 MS. BAER: That's fine.

1 MR. CREECH: If we can mark that as Plaintiff's
2 Exhibit number 2.

3 (Exhibit number 2 marked for identification.)

4 MS. BAER: I haven't looked at the confidentiality
5 order in this case. Does it say something like, that we
6 have to put on the record at the deposition that ...

7 MR. CREECH: Well, there may be stuff like that,
8 but I think Matt just ...

9 MS. BAER: He didn't worry about it?

10 MR. CREECH: In a prior deposition, we just freely
11 talked about it.

12 MS. BAER: Okay. That's fine.

13 MR. CREECH: But I mean, it would be subject to the
14 -- that order.

15 MS. BAER: Perfect.

16 MR. CREECH: Okay. This number 2 -- Plaintiff's
17 Exhibit number 2.

18 Q. Mr. Johnson and -- this is the store appearance
19 procedure. Would you agree with that?

20 A. Yes.

21 Q. Do you -- do you -- have you seen this before?

22 A. Yes.

23 Q. Do you refer to it on a -- on some -- on any kind
24 of basis at all, when you're operating your store?

25 A. No. New managers would go through this. But it's

1 -- it's our daily processes.

2 Q. Okay. So it's -- this is a -- you follow these --

3 you follow these policies and procedures in this

4 document, correct?

5 A. Yes.

6 Q. Your store employees are supposed to follow these

7 policies and procedures. Is that correct?

8 A. Yes.

9 Q. Okay. Under the "Floors" section, the document

10 states that the stores employees are to "inspect

11 the floors throughout the day and perform

12 maintenance that is required". Would you agree

13 with that?

14 A. Yes.

15 Q. Okay. Would you agree that there is usually a

16 safety inspection done of the entire store

17 immediately before the store opens?

18 A. Yes.

19 Q. Okay. And during that inspection, employees walk

20 the floors to look for hazards, that kind of thing,

21 correct?

22 A. Yes.

23 Q. Okay. And the store employees have been trained to

24 look for hazards. Is that right?

25 A. Yes.

1 Q. And also trained to recognize the hazards, correct?

2 A. Yes.

3 Q. Okay. Let's see here.

4 MR. CREECH: This is the incident report form,
5 David, the two part ...

6 MR. MOORE: Okay.

7 MR. CREECH: ... two page, PetSmart incident report
8 form. It's Defendant's 2 -- Bates stamp 2.

9 MR. MOORE: And that's Exhibit number 3 on this
10 deposition?

11 MR. CREECH: Yes. Plaintiff's Exhibit 3.

12 MR. MOORE: Okay.

13 (Exhibit number 3 marked for identification.)

14 Q. Mr. Johnson, if you look at that document, can you
15 tell me what that is?

16 A. A PetSmart incident report.

17 Q. Okay. And it appears to be for this incident that
18 we -- that's the subject of this case, correct?

19 A. Yes.

20 Q. Okay. And it was filled out by Jordan Coates. Is
21 that right?

22 A. Yes.

23 Q. Okay. Let's see here. And you see here where it
24 says, describe the incident? Well, let me ask you
25 this: When we say -- yeah, description of the

1 incident, here -- I believe -- do you recognize
2 Jordan's handwriting?
3 A. Yes.
4 Q. And that's his handwriting?
5 A. Yes.
6 Q. Okay. And you agree, he states that, "customer
7 slipped on water", correct?
8 A. Yes.
9 Q. He states, "no damage". Is that correct?
10 A. Yes.
11 Q. And then he states, "Pet food fridge has been
12 leaking", correct?
13 A. Yes.
14 Q. Okay. And did you -- when he said "pet food fridge
15 has been leaking", were you aware that it had been
16 leaking?
17 A. No.
18 Q. Okay. Did Jordan -- when you and Jordan talked
19 about the facts of the -- of the incident, did he
20 tell you that the fridge -- the fridge -- the pet
21 food fridge had been leaking?
22 A. No.
23 Q. Okay. And he says, "wet floor signs were present".
24 Is that correct?
25 A. Yes.

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1 Q. Okay. Did he ever tell you anything about there
2 being wet floor signs?
3 A. Yes.
4 Q. He did tell you that?
5 A. Yes.
6 Q. You remember him saying that?
7 A. I asked.
8 Q. Okay.
9 A. Yeah.
10 Q. Tell me about that conversation.
11 A. Well, my first concern is -- if someone falls is --
12 you know, is the person okay.
13 Q. Right.
14 A. Then I want to know if we were able to -- if we saw
15 the issue, so I had asked if there were floor --
16 wet floor signs there. And he said, yes.
17 Q. Okay. And do you know how they got there?
18 A. No.
19 Q. All right. And were there wet floor signs there
20 before Ms. Bird fell? Do you know that?
21 A. I don't know.
22 Q. Okay. All right. Did Jordan tell you there were
23 wet floor signs there before Ms. Bird fell?
24 A. Yes. He said they were there in the aisle because
25 he didn't put them there.

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1 Q. Okay.

2 A. So he went over to help and saw the wet floor
3 signs.

4 Q. I see. Okay. Very good. But he said they were
5 there -- but he -- so, how was he able to know if
6 they were there before she fell if he wasn't there
7 before she fell? He came on the scene after she
8 fell, correct?

9 A. Right.

10 Q. Okay. He just saw a sign when he got there.

11 A. Right.

12 Q. Is that right?

13 A. Exactly. Yes.

14 Q. Okay. So that sign could have been there before,
15 or someone could have come and put the sign up
16 after she fell as well. Is that correct?

17 A. I guess. I ...

18 Q. Yeah.

19 A. I don't know how, but yes.

20 Q. Okay. Were there any other employees -- or did
21 Jordan tell you any other employees who may have
22 come on the scene after the fall or witnessed the
23 fall, or was there before the fall, or anything?

24 A. Not that I know of, no.

25 Q. Okay. All right. Okay. I'm gonna hand you ...

1 MR. CREECH: Okay. David, this is PetSmart exhibit
2 Defense 105 and 106. Can you make a quick copy of that
3 Celeste. That's the only copy I have.

4 (Off the record.)

5 Examination resumed by Mr. Creech:

6 (Exhibit number 4 marked for identification.)

7 MR. CREECH: Okay. So, this is Plaintiff's Exhibit
8 number 4, David.

9 MR. MOORE: Okay.

10 Q. Okay. So, can you tell me what this document is,
11 Mr. Johnson?

12 A. This is confirmation that an incident was put in.

13 Q. All right. And would you have sent this?

14 A. No.

15 Q. Okay. Who would have sent this?

16 A. Jordan.

17 Q. All right.

18 A. Well ...

19 Q. And this -- this is the confirmation you get back
20 from reporting the -- the incident.

21 A. Yes.

22 Q. Is that right?

23 A. Yes.

24 Q. All right. And in that, where it says,
25 "description of incident", it say's, "the

1 refrigerator had been leaking". Is that right?

2 A. Yes.

3 Q. Okay. All right. And based on these documents and

4 Jordan's representation that the pet food fridge

5 had or has been leaking, does that refresh your

6 recollection at all as to whether or not this

7 FreshPet fridge had been leaking or any maintenance

8 issues with these FreshPet -- the FreshPet fridge

9 in your store?

10 A. You mean prior or before?

11 Q. Prior at any time.

12 A. No.

13 Q. You just have no recollection of a FreshPet cooler

14 leaking in your store at all?

15 A. No. If it was leaking, we would have done a work

16 order.

17 Q. Okay. And the -- did you ever -- did your -- did

18 corporate -- PetSmart corporate in Arizona -- I

19 guess, do they have like, a maintenance -- like, a

20 supervisor or person in charge of maintenance

21 nationwide? Do you know?

22 A. I don't know.

23 Q. Okay. Is there a maintenance -- a person in charge

24 of maintenance within your local store?

25 A. No.

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- 1 Q. All right. Who cleans the store -- the floors?
- 2 A. We have a floor company that does it some days.
- 3 Q. Okay.
- 4 A. And then we do it the other days.
- 5 Q. All right. And just whoever -- whoever employee
- 6 just happens to be there does it or is there ...
- 7 A. No. It's usually one of the leaders -- one of the
- 8 managers.
- 9 Q. Okay. And they just -- they go through the store
- 10 with a mop or do they have a -- a cleaning system
- 11 or what -- can you describe it?
- 12 A. They don't -- they don't use the machines. That's
- 13 for the floor people.
- 14 Q. Okay.
- 15 A. So they would go around with a -- a big, wide
- 16 sweeper.
- 17 Q. A broom?
- 18 A. Like a broom.
- 19 Q. Okay. And who cleans up like, when there's a pet
- 20 incidents like, pet urine and stuff like that? Who
- 21 cleans that up?
- 22 A. We do. All of -- everyone.
- 23 Q. Okay. All right. So, do you -- are you aware of
- 24 anyone on the corporate level that handles
- 25 maintenance issues for the stores -- the individual

1 stores?

2 A. No.

3 Q. You never have any -- any interactions with the

4 corporate maintenance people?

5 A. No.

6 Q. Okay. Do you know who Carl Fuller is?

7 A. No.

8 Q. The name does not ring a bell at all?

9 A. No.

10 Q. Okay. Do you -- have you ever been given a

11 telephone number by anyone at corporate to report

12 problems with FreshPet coolers to FreshPet?

13 A. No.

14 Q. Okay. The FreshPet regional representative that --

15 they came in the store every two weeks or so. Is

16 that right?

17 A. Yes.

18 Q. Did she -- it was a female. Is that correct?

19 A. Yes.

20 Q. And has it been the same person all the seven years

21 -- six years you've been manager of the store?

22 A. They don't do it any more. They stopped about

23 three or four years ago doing it.

24 Q. Okay. So, when were they doing that -- what years?

25 2017, when you started. 2018?

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1 A. Oh, yeah.
2 Q. Okay. 2019?
3 A. Yeah.
4 Q. Okay. So all of 2019?
5 A. I would say probably -- yeah, probably stopped
6 about two years ago -- before COVID.
7 Q. Okay. Stopped before COVID. So, sometime in 2019
8 -- the later part of 2019, they stopped coming out
9 there. Is that right?
10 A. About right. Yeah.
11 Q. Okay. And it was the same female that was doing
12 this?
13 A. Yes.
14 Q. And you have no recollection of her name?
15 A. I'm awful with names. No. No, I don't. I -- no.
16 Q. Did you ever talk to her?
17 A. Oh, yeah. Occasionally, I'd be there on the day
18 she came.
19 Q. And what -- just, can you talk about ...
20 A. Usually ...
21 Q. ... those conversations at all?
22 A. She would come in and if she found out-of-date
23 product, she'd bring it up -- and/or getting close
24 dated, and we would mark it down for her and go put
25 it back out. Sometimes she would let us do it and

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1 she would go put it back on the shelf -- and she
2 did the rotation.
3 Q. Okay. So she would be in and around the cooler.
4 Is that right?
5 A. Oh, yes.
6 Q. Okay. Does she -- do you know if she lived in this
7 -- in Greenville, or the Upstate -- or was she out
8 of state? Do you have any clue?
9 A. No.
10 Q. Would she -- she would bring product with her.
11 A. No.
12 Q. Correct? No. Would not bring product with her?
13 A. No.
14 Q. Okay. All right. But she would wear like, a
15 FreshPet uniform or something?
16 A. She had a shirt that would be FreshPet.
17 Q. Okay. And she would come in every two weeks?
18 A. I believe it was two to three weeks.
19 Q. Yeah. Okay. All right. Do you remember this
20 FreshPet cooler leaking in July of 2019?
21 A. No.
22 Q. Okay. Do you remember Jordan Coates making any
23 kind of report to the PetSmart -- I guess through
24 its reporting system, about the fridge is leaking
25 pretty bad and will need a tech to take a look?

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1 A. I don't recall. No.

2 Q. Okay. All right. Do you know who Jill Coppola is?

3 A. No.

4 Q. Okay. Let's see here. Were you -- were you or any

5 of your PetSmart employees that manage or

6 supervisor able to go and just unplug the -- the

7 FreshPet fridge if necessary? Did you have that

8 ability and authority to do that?

9 A. I mean, if someone told us to unplug it, you mean,

10 could we get to it?

11 Q. Yes.

12 A. Not without moving the freezers out.

13 Q. Okay.

14 A. It wasn't accessible for us. I mean, it's --

15 they're wired in, behind.

16 Q. Well, and if you -- if you or your store employees

17 felt like that the cooler needed to be unplugged --

18 let's say it presented a safety hazard to store

19 employees or store customers -- would you be able

20 to get in there and turn it off somehow?

21 A. I don't think so. I mean, it's hard wired in, I'm

22 sure. I don't think it's a plug. I've never seen

23 behind them. I've never -- I mean, they -- they

24 installed them. I never pulled them out to look

25 behind. I don't know of a way to do it.

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1 Q. Is there any way -- does the cooler have an on/off
2 switch?
3 A. Yes.
4 Q. Okay. Can a store employee go and cut the machine
5 off using the on/off switch, if necessary?
6 A. If they knew how, probably.
7 Q. Okay. So for instance, if a machine -- if a
8 FreshPet fridge was leaking water and no one was
9 coming out there to fix it, can a PetSmart employee
10 go out there and just -- go out to the machine and
11 cut it off?
12 A. An associate? No.
13 Q. Well, can a manager or assistant manager do that?
14 A. Could they?
15 Q. Yes.
16 A. They could. They wouldn't, but they could.
17 Q. Okay. And why would they not do that?
18 A. Unless we're -- once we put a work order in -- if
19 they told us to do it, we would. But I've never
20 seen where they would tell us to turn it off. They
21 usually get someone out ...
22 Q. Right. But in your own judgment, if you saw that
23 this FreshPet fridge was leaking water and causing
24 a -- presenting a hazard to either -- employees or
25 customers, a store employee at your direction or an

1 assistant manager, could go and just cut the
2 machine off if they felt like it was a hazard.
3 Would you agree with that?

4 MS. BAER: Object to the form.

5 A. I guess they could. I -- I can't imagine anyone
6 telling anyone to turn it off, though.

7 Q. Okay.

8 A. I mean, I wouldn't even know how to turn -- turn it
9 off if I walked over right now.

10 Q. But if they knew how to turn it off, they could go
11 and flip the machine off, correct?

12 A. Yes.

13 Q. Okay. All right. Let me hand you Exhibit number -
14 - we're gonna mark this as Exhibit number -- what
15 are we on, 5? Yeah.

16 MR. MOORE: Five.

17 MR. CREECH: Okay. So, David, this is the -- the
18 documents that y'all produced prior to the last
19 deposition via email. These are FreshPet -- I guess
20 these are work orders.

21 MR. MOORE: Okay.

22 MR. CREECH: So this is just the work order from --
23 it looks like a July 29th work order.

24 (Exhibit number 5 marked for identification.)

25 MS. BAER: What year?

1 MR. CREECH: 2019.

2 MS. BAER: Thank you.

3 MR. CREECH: And you can -- you can look at it if
4 you need to.

5 MS. BAER: Thanks. I don't think that I had seen
6 this before today, but that's fine. I'm sure Matt has
7 seen it before.

8 Q. Have you ever seen this document or a document like
9 this, at all, in all your years as a employee of
10 PetSmart -- have you ever seen a document like
11 this, Plaintiff's Exhibit number 5?

12 MR. MOORE: Tom, is this a four page document or
13 just one page?

14 MR. CREECH: It's just one of those four -- yeah,
15 this is just the -- this is just the July -- it's dated
16 July 29th, 2019.

17 MR. MOORE: Okay.

18 MR. CREECH: Yeah, but you're right. Y'all did
19 produce four pages.

20 MS. BAER: Did the other ones -- I'm sorry. Just
21 so I understand. Do the others have different dates?
22 So, this one was like the only one for that date?

23 MR. CREECH: Yes.

24 MS. BAER: Okay. That's easy. I'll get copies of
25 it when we get ...

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1 MR. CREECH: Yeah. No problem.

2 Q. Have you ever -- ever seen this document or what it
3 looked like? Can you tell me what this document
4 is?

5 A. No.

6 Q. Without studying it close, I mean, if you --
7 sometimes I can hand you like, a tax return and
8 you'll say, oh, that's a tax return. You look at
9 this document, I mean, do you have any clue what
10 this document is?

11 A. No.

12 Q. Okay. Now, if you look at it, it states about a
13 description -- a leaking -- on the description
14 part, it says, "leaking refrigerator".

15 A. Oh, okay. Yes. I see that.

16 Q. Okay. And this document is -- there's a date on
17 here. There's several dates. But "July 29th,
18 2019, created by Francheska".

19 A. Yes. I see that.

20 Q. You don't know -- you don't know who Francheska is?

21 A. No.

22 Q. Okay. All right. And it says here at the top of
23 the document, "refrigerator not functioning",
24 correct?

25 A. Yes.

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1 Q. It states that, yeah. But you never -- in the
2 course of your job duties as a supervisor, you've
3 never seen a document like that come across your
4 desk, your computer, or nothing like this ever?

5 A. No.

6 Q. Okay. Have you ever seen any kind of documentation
7 from PetSmart itself, any memorandum, emails,
8 anything talking about maintenance issues or
9 leaking issues of FreshPet coolers that are in
10 PetSmart stores throughout the country?

11 A. No.

12 Q. Ever gotten an email from corporate maintenance or
13 anybody talking anything about maintenance of
14 FreshPet coolers in these PetSmart stores?

15 A. No.

16 Q. Okay. Okay. Those are all the questions I have.

17 -----

18 Examination by Mr. Moore:

19 Q. Mr. Johnson, my name is David Moore. I represent
20 FreshPet in this particular litigation. Let's
21 start off where you ended your deposition, which is
22 with regard to Exhibit number 5, and that is the
23 document from FreshPet dated -- the top date is
24 July 29, 2019. Are you with me?

25 A. Yes.

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1 Q. Have you got that document in front of you?
2 A. Yes.
3 MR. CREECH: Yes, he does.
4 Q. All right. And over on the lefthand side, they're
5 saying they have a leaking refrigerator. Do you
6 see that?
7 A. Yes.
8 Q. Okay. My understanding is the procedure, when you
9 have a leaking cooler like this, is that you
10 contact somebody with corporate. Am I correct on
11 that?
12 A. Yes.
13 Q. You don't contact FreshPet directly?
14 A. No.
15 Q. Okay. Now, FreshPet obviously has a unit -- one or
16 more units in your store there, as I understand it,
17 correct?
18 A. Yes.
19 Q. Okay. Do they have any employees there on a
20 regular basis?
21 A. Do they have what?
22 Q. Any employees at your store on a regular basis?
23 A. Yes.
24 Q. Okay. When is any employee there on a regular
25 basis?

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1 A. From 5 in the morning til -- I have them 24 hours
2 a day in my store, so.
3 MS. BAER: I don't think ...
4 Q. No, no, no. I'm sorry. You misunderstand my
5 question. What I'm asking is whether FreshPet has
6 any employees in the store?
7 A. Oh, no. Sorry.
8 Q. Okay. All right. So, when a problem arises with a
9 unit, FreshPet is not gonna be aware of that
10 problem until they're notified through corporate.
11 Am I correct on that?
12 A. Yes.
13 Q. Okay. So this document that you have in front of
14 you is after FreshPet has been notified of some
15 kind of problem with the unit.
16 A. Okay.
17 Q. Is that correct?
18 A. I don't know what the document is so, I guess,
19 okay.
20 Q. Okay. Now, what does that document indicate the
21 problem was?
22 A. It says, "tech installed thermostat".
23 Q. Okay. Is there an indication that that was
24 actually done?
25 A. It just says on resolution, "closed: tech installed

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1 thermostat; manager on duty Francheska Delgado ..."

2 Q. Delgado, yeah. All right. Now, between August,

3 apparently, 2, 2019 and the time this accident

4 occurred on September 6, 2019, are you aware of any

5 leaking from this unit?

6 A. No.

7 Q. Okay. The first time you learned of it is when you

8 got back, I assume, from vacation. Am I right?

9 A. Yes.

10 Q. Okay. Are you aware of anyone else in your

11 particular store who was aware of any leaking from

12 that unit?

13 A. No.

14 Q. Now, do you know if the particular problem with

15 regard to that unit in September 2019 was reported

16 to corporate?

17 A. I don't know.

18 Q. Okay. Did -- did Jordan Coates make an incident --

19 prepare an incident report?

20 A. Yes.

21 Q. Okay. And where does that incident report go?

22 A. To corporate.

23 Q. Okay. And does corporate then follow up with that

24 if it's a problem with a FreshPet cooler? Do they

25 contact FreshPet at that point?

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- 1 A. I don't -- I don't know if they contact FreshPet or
2 if they just send a tech out.
- 3 Q. Okay. Do you know whether FreshPet was contacted
4 with regard to this unit?
- 5 A. I do not know.
- 6 Q. Okay. And do you know whether anybody came out
7 from FreshPet to correct any problems with this
8 unit?
- 9 A. You mean from FreshPet exclusively?
- 10 Q. No. One of their tech -- a tech came out on behalf
11 of FreshPet to correct the unit?
- 12 A. I don't know.
- 13 Q. Okay. Do you know whether there were any ongoing
14 problems with this unit after -- let's start off
15 with September 6, 2019, when this fall occurred?
- 16 A. No.
- 17 Q. Okay. When this fall occurred, my understanding is
18 somebody came and cleaned up the moisture on the
19 floor?
- 20 A. That's what -- yes.
- 21 Q. Okay. And at some point warning signs were put out
22 in the area?
- 23 A. Yes.
- 24 Q. Okay. Now, when you returned to the store, was
25 there an ongoing problem with that unit? In other

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1 words, was there moisture being leaked out?
2 A. I don't know. I mean -- was it still leaking?
3 Q. Yes, sir.
4 A. Very little. They put a towel underneath that ...
5 Q. That's what I was gonna ask you. And a towel would
6 soak up whatever leakage might have been there?
7 A. Yeah. Cause it's just -- it was just drops. It's
8 not -- it wasn't flowing or anything.
9 Q. Okay. All right. And do you know where the
10 moisture was coming from on this particular unit?
11 A. Yes. The evaporation pan.
12 Q. All right. And the evaporation pan is located
13 where on the unit? Is it on the bottom of it?
14 A. Underneath it, yes.
15 Q. Okay. What's the depth of that pan? Do you know?
16 A. Two inches-ish.
17 Q. Okay. So, if moisture accumulates more than two
18 inches, it'll overflow that pan and possibly get on
19 the floor?
20 A. Yes.
21 Q. Okay. And if that's occurring, you can stop that
22 problem by virtue of just putting some towels down
23 there to soak up the overflow?
24 A. Yes.
25 Q. And my understanding is that was done in this

1 situation once you had knowledge of the overflow.

2 A. Yes.

3 Q. Okay. And y'all didn't have knowledge of the
4 overflow, it doesn't sound like, until this
5 accident occurred.

6 MR. CREECH Object to the form.

7 Q. You can go ahead and answer.

8 A. No.

9 Q. Okay. Okay. That's all I have. Appreciate it.

10 -----

11 Examination by Mr. Creech:

12 Q. And just -- I just want to make sure. You have not
13 talked with Camille Bird at all about her falling,
14 her injury, how she's doing, in any way. Is that
15 correct?

16 A. No.

17 Q. All right. You don't know who Ms. Bird is,
18 correct?

19 A. No.

20 Q. Okay. You haven't seen her in the store since this
21 fall?

22 A. I wouldn't know.

23 Q. Okay. Haven't talked to her?

24 A. Oh, no.

25 Q. Checked in on her?

1 A. No.

2 Q. You haven't asked her how she's doing or anything
3 like that?

4 A. Not me, no.

5 Q. Anybody with your store?

6 A. I don't know that ...

7 Q. Okay.

8 A. ... Jordan did or didn't.

9 Q. Okay.

10 A. Usually, we call the next day.

11 Q. But you did not. You have not. Is that right?

12 A. I didn't. No.

13 Q. Okay. All right. What -- the FreshPet cooler is
14 still in the store. Is that right?

15 A. Yes.

16 Q. Same one that was in there on the day that this
17 slip and fall happened. Is that right?

18 A. Yes.

19 Q. Okay. And what aisle is it located on?

20 A. Like, six or seven on the lefthand side.

21 Q. And it's in the same location. The aisle numbers
22 have just been changed. Is that right?

23 A. Yes.

24 Q. Okay.

25 MR. CREECH: David, if we could just take like, a

1 second break. I want to ask him one more question about
2 something else.

3 MR. MOORE: Sure.

4 MR. CREECH: If we could go off the record for just
5 a second.

6 (Off the record.)

7 Examination resumed by Mr. Creech:

8 Q. Just to conclude, Mr. Johnson, if a FreshPet
9 employee notices water on the floor -- or excuse
10 me. If a PetSmart employee notices water on the
11 floor at the store, it's that employee's duty to
12 immediately clean it up.

13 A. Yes.

14 Q. Do you agree with that?

15 MS. BAER: Object to the form.

16 Q. Do you agree with that?

17 A. Yeah.

18 Q. Okay. Very good. I have no further questions.

19 MR. MOORE: I have no further questions.

20 MS. BAER: I don't have any questions.

21

22

23

24 (There being no further questions
25 the deposition concluded at 11:58 A.M.)

Don Johnson
April 6, 2023

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STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF GREENVILLE)

Be it known that I took the deposition of DON
JOHNSON;

That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 51 pages is a
true and correct transcript of the testimony given in
this matter;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 21ST day
April, 2023.

Barbara M. McCurley



Barbara M. McCurley

Notary Public for South Carolina

My Commission Expires: 07/02/2024

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**Jeannie Rogalla
April 6, 2023**

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Camille Bird,)
)
 Plaintiff,)
)
 -vs-) CA NO. 2022-CP-23-00564
)
PetSmart, LLC and FreshPet,)
Inc.,)
)
 Defendants.)
)

)

30(b)(6) DEPOSITION OF JEANNIE ROGALLA
APRIL 6, 2022

PURSUANT to Notice and/or agreement between the parties, the deposition of JEANNIE ROGALLA, called by the Plaintiff, was taken commencing at the hour of 1:47 P.M. on Thursday, April 6, 2023 at the law offices of Thomas M. Creech, Jr., 15 Brendan Way, Suite 215, Greenville, South Carolina, with the witness appearing via Zoom.

Barbara M. McCurley, Court Reporter

Jeannie Rogalla
April 6, 2023

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APPEARANCES:

Law Offices of Thomas M. Creech, Jr., LLC

15 Brendan Way, Suite 215

Greenville, South Carolina 29615

By: Thomas M. Creech, Jr., Esquire

Celeste Thomason, Paralegal

.....On behalf of the Plaintiff

Crowe LaFave Garfield & Bagley, LLC

Post Office Box 1149

Columbia, South Carolina

By: Laura R. Baer, Esquire

.....On behalf of Defendant PetSmart, LLC

Turner Padgett Graham & Laney, P.A.

200 East Broad Street, Suite 250 (29601)

P.O. Box 1509

Greenville, South Carolina 29602

By: David L. Moore, Jr., Esquire, via Zoom

.....On behalf of Defendant FreshPet, Inc.

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STIPULATIONS: The within deposition was taken pursuant to
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
waived by the witness and by the parties.

INDEX OF EXHIBITS

Plaintiff's

Exhibit

Number

Page

Number

1. Work Order dated 9/10/2019 Tracing 125265680. 19

2. Chiller Hardware/Software Agreement.....

(Exhibit number 2 was marked after the deposition
concluded, but was first mentioned on page 44)

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1 JEANNIE ROGALLA, having first been duly sworn to
2 tell the truth, testified as follows:

3 EXAMINATION

4 By Mr. Creech:

5 Q. All right. Good afternoon, Ms. Rogalla. Where
6 are you located today?

7 A. I'm in New Jersey.

8 Q. Okay. What part of New Jersey?

9 A. Morris County.

10 Q. Could you state your full name for the record?

11 A. Jean Vanessa Rogalla.

12 Q. Ms. Rogalla, my name is Tom Creech and I'm an
13 attorney. I'm an attorney here in Greenville,
14 South Carolina. We're here at my office today.
15 And I represent the Plaintiff in this case, Camille
16 Bird -- the case against PetSmart and FreshPet.
17 Okay. The South Carolina Rules of Civil Procedure,
18 which govern this procedure -- excuse me, this
19 proceeding, it -- they require me to give one
20 instruction and that is if you don't understand
21 something or you don't understand a question that I
22 ask, just direct your questions back to me. Ask me
23 for clarification if you don't understand something
24 that I've asked, just ask me to rephrase it or to
25 re-ask it in a way that you can understand it. I'm

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1 happy to do that. The rules prohibit you from
2 having any privileged, off-the-record conferences
3 with the FreshPet lawyer. If you do insist on
4 having one, I can ask what you talked about. Okay.
5 So, there's no privilege attached to those types of
6 communications. All right. So, do you understand
7 that?

8 A. I understand.

9 Q. Okay. Second thing is -- I don't know -- have you
10 ever had your deposition taken before?

11 A. No.

12 Q. Okay. First time ever, in your life?

13 A. First time ever.

14 Q. Okay.

15 MR. MOORE: Aren't you lucky.

16 Q. Well -- well, it's my privilege to be the first
17 lawyer to have ever taken your deposition, so.

18 A. Hopefully the last, too.

19 Q. Okay. Yeah. Well, I'll do my best. So -- but --
20 but for the -- there are a couple of things just to
21 keep the record clear. If you'll let me ask my
22 question -- finish asking it before you answer it,
23 just so we're not talking over each other. If you
24 will verbally answer "yes" or "no" as opposed -- or
25 verbally answer as opposed to shaking or nodding

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1 your head, cause the court reporter can't get that
2 down. Okay. And then if you'll -- as opposed, say
3 -- answer with a "yes" or a "no", as opposed to an
4 "uh-huh" or an "uh-uh", cause again, we may not get
5 your -- the answer that you want in the record.
6 All right. Does that sound good? So, where are
7 you currently employed?
8 A. FreshPet.
9 Q. All right. How long have you been employed with
10 FreshPet?
11 A. For two years.
12 Q. Two years.
13 A. Since February, 2021.
14 Q. Since when?
15 A. February, 2021.
16 Q. Okay. Let's see here. Okay. So, what is your
17 position with FreshPet?
18 A. I'm an operations manager, and I operate -- I
19 manage several different accounts, being --
20 PetSmart being one of them.
21 Q. All right. And can you just tell me a little bit
22 what you do as an operations manager with the
23 PetSmart account?
24 A. So, the work orders get dispatched to our
25 technicians and then I correspond with the

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1 technicians. If any parts are needed, I order
2 them. We ship them if we have them or if they need
3 to be ordered with the manufacturer, I do that.

4 Q. Okay. And let me -- let me just start back -- I
5 mean, do you have any kind of -- do you have a
6 technical background?

7 A. I do, actually. I worked in HVAC refrigeration for
8 18 years prior to this.

9 Q. Okay. Where were you born and raised?

10 A. I was born in the state of New Jersey and I was
11 raised, you know, in New Jersey, my whole life.

12 Q. Okay. How far did you go in school?

13 A. I finished high school and I went to a, like,
14 technical trade school for two years, and finished
15 that and got my certificate in business and ...

16 Q. And what was your certificate in?

17 A. Business.

18 Q. All right. And then you said you worked in the
19 HVAC industry for 18 years prior to going with
20 FreshPet. Is that correct?

21 A. Correct.

22 Q. And what did you do in the HVAC industry?

23 A. I was a service manager in the service department.
24 And we would -- kind of, similar to the chillers --
25 like, repairing chillers, except we would repair

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1 air conditioners -- any issues with, you know,
2 heating, cooling, leaking, things like that ...
3 Q. Okay.
4 A. ... or installing units.
5 Q. Do you have technical ...
6 MS. BAER: We're having trouble hearing her.
7 MR. CREECH: Yeah, there's a little bit of a --
8 there's a -- I think we're missing some of your answers.
9 There's like an audio space or something. I'm not sure.
10 MS. BAER: Does your computer go any louder?
11 MR. CREECH: Can you turn your computer up a little
12 bit?
13 MS. BAER: I meant yours.
14 MR. CREECH: Oh, okay. Yeah.
15 MS. BAER: Cause you have the speaker.
16 MR. MOORE: Tom, I'm getting a ...
17 WITNESS: It's (audio dropped) ...
18 MR. MOORE: ... feedback.
19 MS. BAER: Yours getting it too?
20 MR. CREECH: Yeah. I am too. Yeah.
21 MR. MOORE: It's not bad, but I can ...
22 MR. CREECH: I'm turned up about as loud as I can
23 be.
24 MS. BAER: Okay. I appreciate it. Thank you.
25 MR. CREECH: Well, we'll just ask you to rephrase

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1 if -- if there's an answer and I can't hear you, I'll
2 just ask for you to -- to rephrase the answer or -- or -
3 - say it again.

4 Q. Okay. So when you worked at the HVAC industry, did
5 you understand like, the technical components of
6 HVAC or are you just kind of -- or are you
7 inputting what's being reported to you by
8 technicians, for instance?

9 A. I wasn't really technical. I did the -- like, the
10 behind the scenes, you know. My technicians were
11 the technical ones.

12 Q. Okay.

13 A. I was the one, you know, managing the office and
14 billing, and things like that.

15 Q. All right. So you may not -- you may not -- oh,
16 I'm sorry. Go ahead.

17 A. I do know basic, you know, parts, but you know,
18 nothing -- like order filters for the unit, things
19 like that, but not technical. I wouldn't say I was
20 technical.

21 Q. Okay. So, you can't tell -- you can't diagnose
22 what would cause a FreshPet fridge cooler to leak,
23 can you?

24 A. I wouldn't feel comfortable, you know, diagnosing
25 that since I don't have a degree in that field.

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- 1 Q. Okay. So you don't -- you don't feel comfortable
2 testifying in court, in front of a jury to that
3 fact -- those facts, correct -- or those opinions,
4 correct?
- 5 A. Repeat that question.
- 6 Q. You don't feel comfortable testifying in front of a
7 jury, giving opinions as to the cause of mechanical
8 breakdowns, failures, or leaks in a FreshPet
9 cooler, do you?
- 10 A. Just the minor things that can cause -- but I don't
11 know, you know, the technicals or the reasons why
12 or, you know, certain reasons, you know, of the
13 unit leaking, but not -- I wouldn't -- I wouldn't
14 be able to go out into the field and say this is
15 what's wrong with it. This is why it's leaking.
- 16 Q. Okay. All right. So you began working at FreshPet
17 in 2021. Is that right?
- 18 A. Yes.
- 19 Q. Okay. And now, tell me again, your position?
- 20 A. I'm a operations manager for different accounts.
21 PetSmart, Petcos, any independent pet stores, and a
22 few grocery stores as well.
- 23 Q. Okay. So, about how many machines, I mean,
24 coolers, would you say are under your supervision?
- 25 A. We have over 30,000 coolers and we have three girls

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1 who work in the chiller department. So we kind of,
2 divide them evenly. I definitely have, you know,
3 over 10,000 coolers that I manage. I don't know
4 the exact number.

5 Q. Okay.

6 A. They're always growing. We're always, you know,
7 growing so the numbers grow.

8 Q. Right. And how does -- how does FreshPet monitor
9 its coolers? I mean, how does it keep track of its
10 coolers?

11 A. We have a logistics team for that. And when you
12 mean tracking coolers? You mean -- can you explain
13 ...

14 Q. Sure.

15 A. ... what ...

16 Q. Yeah. And I'll get -- I'll ask more questions
17 about that, but -- so, FreshPet owns 30,000
18 coolers. About how many would you say are in
19 PetSmart stores?

20 A. I don't know. I don't -- I'm not -- I would -- I
21 would have another team member do a report and they
22 can tell me. But I don't know how to do that on my
23 end. I don't know how to pull up how many PetSmart
24 stores that we have.

25 Q. Okay. How many -- so, I guess, there's a serial

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1 number or some sort of cooler number, machine
2 number, ID number, for each cooler. Is that right?
3 A. Serial number.
4 Q. A serial number for each cooler. Is that correct?
5 A. Correct.
6 Q. Okay. And how does -- how do you -- what all --
7 what do you do to kind of -- to, I guess -- do you
8 follow the coolers for maintenance issues?
9 MR. MOORE: I'm not sure I understand your
10 question.
11 A. We ...
12 Q. Yeah. Do you track maintenance issues with the
13 coolers?
14 A. We don't know there's an issue until the store
15 reports it to us.
16 Q. Okay. You broke up there before you started. I
17 could -- you ...
18 A. We don't -- we don't follow the -- I don't
19 understand what your question is, but we only know
20 there's an issue with a cooler when the store
21 reports it to us.
22 Q. Okay. And then how do you keep up with -- okay, so
23 if a store reports a issue with a cooler, and then
24 you obviously keep a record of that, correct?
25 A. Correct.

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1 Q. Okay. And then, how -- how do you determine
2 whether a cooler is in working order and safe, and
3 non-defective? Because it's your cooler, right?

4 A. Yes. We own the coolers. But we hire technicians
5 to go out and, you know, check these coolers,
6 whatever the issue is. You know, whenever the
7 store calls in and says the unit's not cooling, we
8 would hire a technician in that area. They would
9 go out and then we would follow up with the
10 technicians, making sure, you know, what day
11 they're going, when it's closed out, what the issue
12 is, and then we would close out the work order in
13 our service channel.

14 Q. Okay. And you keep a maintenance history of the --
15 of the coolers. Is that right?

16 A. Meaning, we have a history of -- each unit, if
17 there's any history or any technician that was
18 dispatched to that specific store for that unit, we
19 would have a history on that, yes.

20 Q. Okay. And how do you keep up with -- I mean, do
21 you ever go through your records, or does FreshPet
22 ever go through its records and assess a cooler's
23 maintenance history to determine its safety,
24 whether it's defective, whether it's -- whether it
25 needs replacing?

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1 A. We -- that's kinda, like, a broad question. So, we
2 don't determine -- we can't see -- oh, the unit
3 needs to be replaced. Say, if the unit -- if we
4 dispatch a technician onsite for a unit that's not
5 cooling or a unit not leaking, they would make the
6 determination and say, you know what, this unit
7 needs to be replaced. It can't be repaired. And
8 then we would make the determination. And then we
9 would go ahead and replace the unit. But it has to
10 be reported from the technician because we are not
11 out in the field so we can't see the condition of
12 the unit.

13 Q. Okay. And then who do you -- who do you use for a
14 technician? Are they FreshPet employees?

15 A. No. They're not.

16 Q. Okay. Who do you use for technicians?

17 A. They're all different. We have different
18 companies. There's not one specific company that
19 services all the units because we're, you know, all
20 over, you know, the United the States, so there's
21 different providers, depending on the location of
22 the unit.

23 Q. Okay. Who are the technicians that would have been
24 using -- would have been repairing, servicing the
25 cooler at the PetSmart store at 1125 Woodruff Road

1 in Greenville, South Carolina?

2 A. Konop Refrigeration were the providers that we

3 hired.

4 Q. And who is that? I couldn't understand that. I'm

5 sorry.

6 A. K-o-n-o-p.

7 Q. K-o-n-o-p. Konop ...

8 A. Yes, sir.

9 Q. ... Refrigeration. And where are they located?

10 A. I'm not a hundred percent sure. Give me one second

11 and I can -- even though they're located in one

12 area, they hire technicians. It's like a third

13 party, basically. Like, we hire Konop, but they

14 hire technicians from different, you know,

15 refrigeration companies.

16 Q. Okay. So, when a -- when -- what kind of records

17 do you keep or does FreshPet keep of repairs made

18 to its coolers?

19 A. What do you mean keep? What do you ...

20 Q. Yeah. Okay. So, if -- all right. You keep

21 maintenance history of your coolers. Is that

22 correct?

23 A. It's all in our ...

24 Q. Okay. So ...

25 A. It's all in our service channel. So anytime a work

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1 order is placed, it goes into our system and it's
2 called service channel. And we are able to pull up
3 the work history in that service channel.
4 Q. And does that include what -- what repairs were
5 made to the machine -- to the cooler?
6 A. Yes. But, for example, Konop has their own system
7 too, where they add their tech notes, and we have
8 access to their -- their channel, so we can go in
9 and look at the notes and what the technician did,
10 and what the technician recommends. And then we
11 take those notes and we enter that into our service
12 channel.
13 Q. Okay. And you have those records for the cooler
14 that was in the store at 1125 Woodruff Road in
15 Greenville, South Carolina. Is that correct?
16 A. (Audio dropped.)
17 Q. Okay. I'm sorry. And that's where we can't hear
18 you. I don't know if that was -- is that a yes?
19 What was your answer?
20 A. That is correct.
21 Q. That is -- okay. And -- so, I would like for you
22 to provide those to me in this case. I mean, you
23 obviously give them to your lawyer to look at, but
24 when we -- I would like that information for all
25 repairs that have been made to the cooler at the

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1 Woodruff Road store in Greenville.

2 A. Yes. They -- we have those. I have sent those
3 over -- the four that you guys have been
4 discussing.

5 Q. Okay. Well, let me ask you, are there any -- does
6 -- do those records show what repairs were made to
7 the machine?

8 A. Yes. They do.

9 Q. Okay. All right. So that would be, for instance -
10 - do you have those documents in front of you?

11 A. I do.

12 Q. All right. And that would be -- the documents that
13 you're referring to, that is a -- let's see here.
14 I believe one of those documents was introduced as
15 Plaintiff's Exhibit number 3 in Don Johnson's
16 deposition. Let's see here. So, that's -- you
17 have a tracking number. Is that correct?

18 A. Yes.

19 Q. Okay. And Konop also has -- can you tell who the
20 person working on behalf of Konop was, who did the
21 work -- the maintenance work?

22 A. They don't typically put their full names. We
23 don't -- and they're different. Which one -- which
24 work order are you referring to so I can look at
25 the ...

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1 Q. Yeah. So -- so, let's look at -- I guess this is
2 July 29th, 2019, 11:36.
3 A. Okay. Yeah, so that's tracking number 122973325,
4 correct?
5 Q. Yes, correct. Yeah.
6 A. So the work order came through July 29th. It was
7 emailed to the tech. The tech was onsite that same
8 day. His name at the time was Dean. I don't have
9 any other information.
10 Q. Okay. And is that on this document or is that
11 something else that you're looking at?
12 A. These are the -- the tech notes in -- in the
13 providers database.
14 Q. Okay. At the provider. You mean, Konop?
15 A. Yeah.
16 Q. Okay.
17 A. That is correct.
18 Q. That's correct. Okay. So -- and the -- does the
19 tech -- do you have the tech's full name? You said
20 Dean?
21 A. Yes.
22 Q. And does he have a last name?
23 A. We don't correspond really with the tech for
24 example ...
25 Q. Yeah.

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1 A. ... with Konop. We correspond with Konop.
2 Q. Okay. And ...
3 A. So Konop (talking over) their technicians and they
4 correspond with them. We only correspond with
5 Konop.
6 Q. Okay. But Konop could get you that information.
7 They could tell you the name -- the first and last
8 name of the tech who went out and actually did the
9 work on the machine. Is that correct?
10 A. I don't know. I've never asked or had to ask, so
11 you know, I -- I don't know. I'm sure, but I -- I
12 don't know.
13 Q. Okay. We'll mark this as Plaintiff's Exhibit
14 number 1.
15 (Exhibit number 1 marked for identification.)
16 Q. Okay. So, I'm gonna refer you to a document that's
17 been produced and I think ...
18 MS. BAER: I just want to see that date on it.
19 Thanks.
20 Q. Your lawyer produced this document to us. I
21 believe this -- so this will be Plaintiff's Exhibit
22 number 1 and it's for -- I guess this is a document
23 -- the tracking number is 125265680.
24 A. Okay. Yeah. I have that in front of me.
25 Q. Okay. And when was this -- so this was -- when was

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1 this record created?

2 A. This was created on September 10th, 2019.

3 Q. Okay. And how does it -- how was it created? Can

4 you walk me through that process?

5 A. These work orders are created in service channel.

6 And they automatically get sent to the provider

7 that services that area. So at that time, Konop

8 was the provider who services South Carolina at

9 that time, and that's -- they are also emailed the

10 work order.

11 Q. And when did you receive -- when did you receive

12 this work order? When did FreshPet receive this

13 work order?

14 A. This was created September 10th. It's the same day

15 that we received the work order.

16 Q. And you received that from PetSmart?

17 A. Yes. It was ...

18 Q. Okay.

19 A. ... through service channel.

20 Q. All right. And then, what was the -- okay. And it

21 was created by Jill -- how do you pronounce her

22 last name, Coppola? Is that correct?

23 A. Jill Coppola.

24 Q. Okay. And then who is Francheska Schedl? Do you

25 know?

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1 A. She was the previous employee. She was the -- the
2 operations manager at that time.
3 Q. Okay. And is she -- does she work with FreshPet?
4 Is she employed by FreshPet ...
5 A. She's no longer ...
6 Q. ... currently?
7 A. She no longer works for FreshPet.
8 Q. All right. Okay. Do you know where she's located
9 now?
10 A. I don't. I don't know her personally. I don't
11 know her.
12 Q. Okay. But the -- does anywhere on this document
13 indicate what -- first off, what the problem was?
14 A. Yes. So, the description on the work order was
15 "Pet Fresh fridge is leaking badly. Is a danger to
16 associates and pet parents." PP meaning pet
17 parents.
18 Q. Okay. And who would have written that? Did that
19 come from -- who did that come from?
20 A. It looks like here, the work order was created by
21 Jill Coppola and that's what she had in her
22 description. I'm not sure where she got it from.
23 I'm assuming PetSmart reached out to her and she
24 created the work order.
25 Q. Okay. And does this -- does this document indicate

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1 how long the machine had been leaking badly?

2 A. No. It just came through on September 10th with

3 the description, unit leaking badly. Then we --

4 then a tech was dispatched. They were onsite the

5 next day, 9/11 to -- to find out what the issue

6 was.

7 Q. Okay. And where can you see on this document that

8 they were out there the next day at 9/11 -- on

9 September the 11th?

10 A. I can, through Konop's database.

11 Q. Okay. What does Konop's database say about what

12 the problem was?

13 A. Condensate pan is overfilling. Wicking kit needs

14 to be replaced.

15 Q. Okay. Now, have you produced that document to your

16 defense counsel for FreshPet?

17 A. I -- I'm pretty sure I -- these documents -- it's

18 not a document. It's just like tech notes. It's

19 not ...

20 Q. Can you print that document? Can you print that

21 screen?

22 A. I'm sorry.

23 Q. Can you print the tech notes in any way?

24 A. Yeah. I can. I can send it over. I can, you

25 know, copy and paste the tech notes and send that

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1 over.

2 Q. Okay. But it said the wicking -- what needed to be
3 replaced?

4 A. The wicking kit.

5 Q. Okay. So, just for the sake of the record, could
6 you repeat what the -- I think the tech notes say?
7 Could you just read that into the record, please?

8 A. "The condensate pan is overfilling and it --
9 874655, which is the part number -- wicking kit
10 needs to be replaced".

11 Q. Okay. So it says the condensate pan is overfilling
12 and the wicking kit needs to be replaced, correct?

13 A. Yes.

14 Q. Okay. All right. So, it's obviously, FreshPet's
15 responsibility to get a broken cooler fixed or
16 repaired. Is that right?

17 A. Yes. We own them so it's our responsibility to get
18 them repaired.

19 Q. Yeah. And is that -- that's -- and is that part of
20 the original agreement with PetSmart or ...

21 A. I don't have -- I don't know what the original
22 agreement, you know, with PetSmart and FreshPet ...

23 Q. Right.

24 A. I don't have access to the contracts for each
25 location.

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1 Q. Okay. All right. And then according to the tech
2 notes, what did the technician do to fix the
3 machine, that's part of this tracking number,
4 125265680?

5 A. So when he was onsite on the 11th, 9/11, and he
6 found that the condensate was overfilling, he
7 recommended replacing the wicking kit. We then had
8 ordered that wicking kit with -- we had them ship
9 out the wicking kit to the technician. It
10 delivered to him at the end of the day on September
11 16th, and he was onsite the next day to install.

12 Q. Okay. What was the status of the machine between
13 the 10th and the -- when the ultimate repairs were
14 done?

15 MR. MOORE: The machine being the cooler?

16 MR. CREECH: The cooler. Yes, cooler.

17 A. That, I don't -- that, I don't -- I don't -- I
18 don't know.

19 Q. Was it taken out of service?

20 A. What do you mean taken out of service?

21 Q. Was it -- was it -- was the machine shutdown?

22 A. I don't know.

23 Q. Would the tech have made any kind of note about
24 that?

25 A. Let me look and I can see if they noted that, but I

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1 don't see any notes here. And usually, if a unit
2 is leaking, it is shutdown, but -- yeah, I don't
3 have those specific notes. I'm just going off --
4 based off of the exact notes that Konop has in
5 their database.

6 Q. Okay. Now, in your position, I mean, do you
7 frequently see leaking FreshPet coolers?

8 A. Not frequently, but yes, there are units that do
9 leak.

10 Q. Okay. And how often do you see that problem?
11 Would you say once a month, once a week?

12 A. I don't know the exact numbers.

13 Q. Okay. Generally, speaking.

14 A. We have mostly non-cooling issues.

15 Q. Okay. But what about leaking issues?

16 A. We have a few, but I don't know the exact numbers,
17 but for the most part, the ones that do come in are
18 mostly for non-cooling issues.

19 Q. Okay. So when we talk about leaking issues, are we
20 talking five to six times a week that you're
21 getting reports from PetSmart?

22 A. No.

23 Q. No?

24 A. That's way too much.

25 Q. That's way too much? Okay. How often a week, do

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1 you get reports of problems with FreshPet coolers
2 and PetSmart machines from PetSmart?
3 A. From PetSmart, it varies.
4 Q. Do you get a weekly report?
5 A. Yeah, every week it's different. So, just this
6 week, I have four.
7 Q. Okay. And are any of those leaking machines?
8 A. Some are cosmetic -- no, and non-cooling.
9 Q. Okay. Do you -- now, is it -- is it the protocol
10 between FreshPet and PetSmart for PetSmart to give
11 weekly reports as to FreshPet cooler problems or
12 does -- or does PetSmart just give report to
13 FreshPet when there are problems?
14 A. They report to us when there are problems.
15 Q. Okay. And you get a report from them weekly,
16 correct?
17 A. When you mean a report ...
18 Q. PetSmart -- PetSmart reports to FreshPet problems
19 every week with FreshPet coolers. Would you agree
20 with that?
21 MR. MOORE: I'm not sure I understand your question
22 on that. Are you asking whether they give a summary as
23 to what's happened during the course of the week, or
24 what?
25 MR. CREECH: No. I'm just asking do ...

- 1 Q. Do you get -- does FreshPet get a report once a
2 week -- weekly of problems or malfunctioning
3 FreshPet coolers in PetSmart stores?
- 4 A. We don't get a report from them directly. Whatever
5 work order that is created from PetSmart will be on
6 an Excel form but we don't get one every week. So,
7 that's -- I don't understand, really, the ...
- 8 Q. Okay. So how often does -- how often does PetSmart
9 inform you of malfunctioning FreshPet coolers ...
- 10 A. They come in ...
- 11 Q. ... in PetSmart stores?
- 12 A. As they come in.
- 13 Q. As they come in. So is that on a daily basis, a
14 weekly basis?
- 15 A. As they breakdown. As the unit breaks down, that's
16 when they report it to FreshPet.
- 17 Q. Yeah. So, there's some weeks that you could get
18 reports of 10 or 15 malfunctioning or broken down
19 coolers. There are some weeks where you get five
20 reports. There's some days you might get two or
21 three reports. There's some days you might not get
22 any reports. Is that correct?
- 23 A. Yes. Every day it varies -- every day.
- 24 Q. Okay. So they just -- they report them as they --
25 as the coolers break down, they report. Is that

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1 right?

2 A. Yes.

3 Q. And that could be -- you know, it could be some on
4 a daily basis, some -- you get multiple reports a
5 week. Is that correct?

6 A. Reports. I still don't -- I don't know what
7 reports. I'm -- we -- we ...

8 Q. When PetSmart reports to you a broken down FreshPet
9 cooler in its store and they report that as it
10 happens, you ...

11 A. So, yeah. So as ...

12 Q. .. you're getting those every day.

13 A. ... as they create a work order. Then it gets --
14 it's in our service channel. And then through that
15 -- with that, it gets sent to our technician.

16 Q. Okay. And do you receive those everyday, would you
17 say?

18 A. Yes.

19 Q. Okay. So there's daily complaints with -- by
20 PetSmart ...

21 A. I don't ...

22 Q. Daily reports of ...

23 MR. MOORE: Wait, wait, wait, wait.

24 MR. CREECH: Yeah, let me just -- let me finish my
25 question first.

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1 MR. MOORE: Well, let her finish her answer first.
2 MR. CREECH: Well, I think -- she had finished it.
3 MR. MOORE: I don't think so. She was trying to
4 talk while you were asking the question.
5 MR. CREECH: Okay.
6 MR. MOORE: So, let her finish.
7 MR. CREECH: Okay. Go ahead if you have something
8 else you want to add.
9 A. Yeah. They're not coming in -- in daily. They're
10 coming in as they break down, so. And it's not
11 just PetSmart that -- you know, there's -- I -- I
12 manage other accounts as well.
13 Q. Okay. And you said Petco was the other account --
14 another account?
15 A. Yeah -- yes.
16 Q. But since you've been working there for the past
17 two years, you've got -- you get reports everyday
18 of a FreshPet cooler broken down in one of these
19 stores, in one of the accounts that you're working
20 -- that you work, correct?
21 MR. MOORE: Object to the form.
22 A. I wouldn't call it a report. It's more like a
23 service ticket.
24 Q. Okay. Let's call it a service ticket. You get a
25 service ticket every day -- a report that indicates

1 a FreshPet cooler has broken down ...

2 MR. MOORE: Object to the form.

3 Q. ... in one of the stores of the accounts that
4 you're managing, whether it be PetSmart or Petco,
5 correct?

6 A. Any store that is down ...

7 Q. Was that correct? I'm just -- was that correct? I
8 didn't hear you. It was a mic problem.

9 A. Any store that I manage, that has an issue, I would
10 get a service ticket. And I don't know the -- you
11 know, every day, it's a different amount. It's not
12 the same -- it's not the same location. It's not
13 the same stores. It's not the same units. It's
14 different, you know, they're multiple.

15 Q. But it's everyday. It's daily, correct?

16 MR. MOORE: What's daily?

17 MR. CREECH: The reports of the service tickets.

18 MR. MOORE: Well, you've asked several questions
19 here about reports of service tickets, about breaking
20 down of machinery and that type thing.

21 MR. CREECH: Yeah.

22 MR. MOORE: You need to be more specific on your
23 question as to what you're asking.

24 MR. CREECH: Yeah. So, she gets -- she gets
25 service tickets, which are evidence or indications of

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1 broken down FreshPet coolers in these stores. She gets
2 them daily, correct?
3 A. Yes. They ...
4 Q. Thank you.
5 A. ... they are sent to us daily.
6 Q. Thank you. Okay. And sometimes daily, it's not --
7 it's one machine. Sometimes it's multiple machine
8 -- I'll say coolers, okay. When I say machine, I
9 mean FreshPet cooler, just for the record. I'm not
10 talking about a Coke machine over a FreshPet shop.
11 So, it could -- you might have one FreshPet cooler
12 that breaks down a day. You might get a report --
13 or service tickets -- you might get multiple
14 service tickets in one day. Is that correct?
15 A. (Audio dropped.)
16 Q. Again, we couldn't hear that. What's that?
17 A. That is correct.
18 Q. Okay.
19 MR. CREECH: And Barbara, if you don't get her
20 answer. Let me know.
21 COURT REPORTER: Okay.
22 Q. Let's see here. All right. Does -- does FreshPet
23 ever do any of its own -- inspections of its own
24 machines -- its own coolers?
25 A. Can you, kinda, explain that question a little

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1 more? What do you mean by inspections?

2 Q. Okay. Well, first let me ask -- does -- okay.

3 Does FreshPet ever, with its own employees, go out
4 and look at, visually inspect, make sure that its
5 coolers are working properly?

6 A. No.

7 MR. MOORE: You talking about after placement?

8 MR. CREECH: After placement in the store, yeah.

9 MR. MOORE: Okay.

10 A. No. We don't -- you know, we don't have a team
11 that goes out, that's from -- that works with
12 FreshPet, that just goes out and looks at the
13 coolers, you know, just because.

14 Q. Okay. And does FreshPet have any contractors or
15 people it hires to go out and do that?

16 A. No. We have Acosta reps, but they go in to
17 merchandise and sort out the food inside the
18 coolers. But -- and if they do see a problem,
19 let's say, while they're, you know, adjusting the
20 food and things like that, that they notice that
21 the unit's not cooling, they would give us a call
22 and then we would create a work order.

23 Q. Okay. And those are called Acosta reps? What --
24 what are those? Could you explain that? Could you
25 spell that, first off?

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1 A. It -- Acosta?
2 Q. Yeah.
3 A. A-c-o-s-t-a.
4 Q. And why are they called Acosta reps?
5 A. That's the name of the company.
6 Q. Okay. So, there -- there's a company called
7 Acosta?
8 A. Yeah. Yes.
9 Q. Okay. And FreshPet, I guess, has a contract with
10 Acosta, for Acosta to go out there and refill the
11 machines?
12 A. Yeah, I don't know ...
13 MR. MOORE: Tom, you're breaking up pretty badly
14 there. I could hardly understand what you're saying.
15 Can you repeat it?
16 MR. CREECH: Yeah.
17 Q. FreshPet has a contract with this -- I don't know -
18 - who is Acosta? Is this some, like, national --
19 nationwide staffing company?
20 A. So -- no. This is -- this was what Carl Harper was
21 saying. We have these reps go in the store and
22 they, you know, go through the product, arrange it,
23 make sure that it's appealing to our buyers.
24 They're not technicians. They're not technical.
25 They are not there to repair any units or check

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1 anything besides the product and the visual of the
2 cooler.
3 Q. Okay. How does the -- and they work for a company
4 called Acosta?
5 A. Yes.
6 Q. All right. And FreshPet has a contract with Acosta
7 for the ...
8 A. I don't know. I don't know contract. We hire
9 them. I don't know the -- you know.
10 Q. The legal arrangement?
11 A. Yeah. I don't know that.
12 Q. Okay. But they're working on behalf of FreshPet.
13 Is that correct?
14 A. Yeah. So, for example, we're installing a new
15 cooler at a store. Sometimes we hire Acosta to go
16 in and set it up, put the price tags, makes sure
17 that the food is how the planogram is supposed to
18 be, what it's supposed to look like on the floor.
19 It needs to look a certain way so they're
20 responsible in making sure that the cooler is set
21 up correctly.
22 Q. Okay. So, basically, if I understand your
23 testimony, FreshPet waits for the store to make a
24 complaint about a malfunctioning cooler before
25 FreshPet will go out and do anything to fix the

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1 problem. Is that correct?
2 MR. MOORE: Object to the form.
3 A. That's correct. Otherwise, we would not know.
4 Q. Okay. But -- so, does FreshPet do any kind of --
5 FreshPet owns these machines -- those coolers,
6 right?
7 A. We own the coolers. Yes.
8 Q. Does FreshPet do any kind of routine maintenance on
9 the coolers?
10 A. We do. In certain -- depending on our providers.
11 Like, we do have prepaid providers. Konop is not
12 one of them. So they do not do any type of
13 maintenance or anything like that. They're not
14 hired to do that.
15 Q. Konop isn't?
16 A. Yes.
17 Q. Okay. So who is -- who are the providers? I asked
18 do you have -- do you have routine maintenance
19 performed on the coolers. Who does that for
20 FreshPet?
21 A. I don't know the -- I don't know -- like, which
22 locations, which areas, and I don't know that.
23 Q. Do you -- does FreshPet keep a record of routine
24 maintenance performed on the FreshPet coolers?
25 A. I'm sure.

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1 Q. Okay. Can you -- can you find those and turn those
2 over to Defense counsel, please?
3 A. For which -- for what ...
4 Q. For the -- for the cooler at obviously, 1125
5 Woodruff Road store 1300 in Greenville, South
6 Carolina.
7 A. We don't -- we don't perform general -- they --
8 general maintenance for this location.
9 Q. Okay. Who -- all right. So, no -- but you just
10 told me FreshPet has somebody that does routine
11 maintenance. Who is that?
12 A. It's not Konop.
13 Q. Who is it? Do you know?
14 A. So, we have prepaid providers and as part of their
15 deal with FreshPet, we give them -- they repair our
16 units and they also will perform a PM on those
17 units as well.
18 Q. Okay. Who does that?
19 A. Who does that?
20 Q. Yes. Who are these providers that you're talking
21 about?
22 A. I would have to get a list of those.
23 Q. And do any of them do these routine maintenance or
24 preventative maintenance on the coolers at the
25 Woodruff Road store 1300 in Greenville?

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1 A. They do not.
2 Q. Okay.
3 A. Like, I said, Konop is the provider in that
4 location.
5 Q. Okay. And Konop -- does FreshPet -- go ahead. I'm
6 sorry.
7 A. We don't have any other technicians that service
8 that area, at that time.
9 Q. Okay. Well ...
10 A. (Talking over.)... go ...
11 Q. And I'm talking about routine maintenance,
12 preventative maintenance. Do you have anybody that
13 was doing preventative maintenance of the -- of the
14 FreshPet coolers at store 1300?
15 A. No. We don't.
16 Q. Okay. And did not for the time period of 2019,
17 2018. Is that correct?
18 A. That's correct. Yes.
19 Q. Who are the provider -- who are the -- why does
20 Konop not do the preventative maintenance like you
21 said these other providers do?
22 A. Because they -- because they don't.
23 Q. Okay.
24 A. They're not hired for that. They're hired to
25 repair the unit.

1 Q. Okay. So, on certain -- if I understand you
2 correctly, on certain FreshPet coolers, you have
3 service providers that go out and do preventative
4 maintenance on the cooler -- the FreshPet coolers,
5 but then on other FreshPet coolers, that
6 preventative maintenance is not being done. Is
7 that correct?
8 MR. MOORE: Object to the form.
9 A. You don't -- you don't have to do preventative
10 maintenance on all the units.
11 Q. Okay. But you do on some units, correct?
12 A. Based off of who the provider is, yes.
13 Q. Okay.
14 A. It's not -- it's not something that we have to do.
15 We just -- we just do.
16 Q. Okay. But you -- and you don't deny -- you admit
17 that you do do that.
18 A. That we do certain preventative maintenance on
19 certain units?
20 Q. Correct.
21 A. I mean, we -- we do.
22 Q. Okay. And tell -- explain to me the circumstances
23 when you do that -- when FreshPet does that.
24 A. It's part of our prepaid program, which we prepay
25 technicians, you know, certain periods and it's

1 just part of their agreement. That's ...

2 Q. And who are those -- who are those service

3 providers?

4 A. I'm sorry.

5 Q. Who are those service providers? I know Konop is

6 one that doesn't do it. Who are the service

7 providers that do do it?

8 A. I don't have the list in front of me,

9 unfortunately.

10 Q. What -- okay. What areas of the country do they

11 provide service to?

12 A. I would have -- I don't have that in front of me.

13 Q. Okay. Can you get that and hand it over to Defense

14 counsel? Are you able to get that information?

15 A. I could, yes.

16 Q. Okay. That would be great if you could do that.

17 A. I don't know what those providers have to do with

18 Konop. They're totally out of their -- like,

19 they're not the same.

20 Q. So do those providers keep records of routine

21 maintenance that they do on the machines, that they

22 provide routine maintenance on -- the FreshPet

23 coolers?

24 A. Yeah. I'm sure they do.

25 Q. Okay. All right. So, again, you guys wait to hear

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1 -- you rely on the store to provide you with a --
2 with a complaint ...
3 A. Yes.
4 Q. ... or a report that a machine is not working
5 properly. Is that right?
6 A. Yes.
7 Q. Okay. And so, for instance, in terms of a leak
8 that's on the floor because of a defect, because of
9 one of your malfunctioning coolers, that can
10 provide -- that can provide -- present a hazard to
11 a customer. Is that right?
12 MR. MOORE: Object to the form. Can you repeat
13 that Tom, cause you kinda went in and out?
14 MR. CREECH: I broke out. Okay. I apologize.
15 Yeah.
16 Q. So in terms of a leaking FreshPet cooler, leaking
17 water, that can present a hazard to a customer that
18 may come up and want to use a FreshPet cooler.
19 Would you agree with that?
20 MR. MOORE: Object to the form.
21 A. We wouldn't know the unit is leaking until the
22 store contacts us.
23 Q. But that leak is still hazardous to the customer.
24 Do you agree with that?
25 A. Yes. If a unit is leaking, it can cause hazard

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1 issues.

2 Q. And you own the cooler, correct?

3 A. We own the cooler, yes.

4 Q. Does FreshPet -- now, there has -- you may have
5 been listening in on some of the other depositions,
6 but there's been reference, I think -- in the
7 store manager, Don Johnson's deposition there was
8 reference to a Chiller Hardware/Software Agreement.
9 I wonder if there's -- are you aware of any chiller
10 hardware/software agreement signed, I believe, in
11 April of 2021 between PetSmart and FreshPet?

12 A. I've never seen the agreement.

13 Q. Okay. Have you heard about it?

14 A. I haven't heard specifically of the agreement with
15 PetSmart, but I do -- I've heard of the cameras in
16 the coolers.

17 Q. Okay.

18 A. That's a new thing.

19 Q. I'm sorry.

20 A. It's a new thing.

21 Q. Okay. What -- what -- what have you heard about
22 the cameras? I mean, you -- you know about cameras
23 in the coolers. Is that right?

24 A. I do. Mostly, mine do not have the cameras. It's
25 different locations and they're being deployed with

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1 newer units. This is a new -- a new thing that,
2 you know, is -- we're working on -- these cameras.

3 Q. And what is the purpose of having a camera in the
4 cooler?

5 A. I'm not a hundred percent sure.

6 Q. Do you have any clue?

7 A. It -- I think it -- you -- with the camera, you can
8 see if the unit's not cooling and trafficking, you
9 know, see how many people are, you know, standing
10 in front of the cooler, I guess, or -- I'm not
11 really a hundred percent sure, you know, what the
12 camera, you know, does. I don't get reports on the
13 cameras or, you know -- but ...

14 Q. Okay.

15 A. ... it can track if the unit stops cooling then I
16 can get notified -- like, I said, my coolers that I
17 have, don't have -- I don't have many with cameras,
18 so I've never had an incident where one of my
19 coolers -- let's say that a PetSmart or a Petco
20 went down and they had a -- they had a camera in
21 their cooler. So, I never had that incident where
22 I had to do anything with the camera.

23 Q. Okay. Who at FreshPet would know the reason why
24 the coolers were put in, who, you know, the purpose
25 for why the -- excuse me -- the cameras were put in

1 the coolers, the purpose of the cameras in the
2 coolers, the decision to put cameras in the coolers
3 -- who would that person at FreshPet be?

4 A. I have no idea whose idea was it to put the cameras
5 in.

6 Q. Okay. Does -- does FreshPet have like, a head of
7 maintenance?

8 A. No.

9 Q. Does FreshPet have like, a head of coolers? I
10 mean, who would know at FreshPet about why coolers
11 were -- why cameras were put in coolers? Someone
12 made that decision at FreshPet.

13 A. I mean, the CEO. I really don't know. You know, I
14 don't know whose -- whose idea it was. I don't,
15 you know. I'm not marketing or (talking over).

16 Q. All right. Let's see.

17 MR. CREECH: David, can we somehow provide the
18 Chiller Hardware/Software Agreement to her somehow?

19 MS. BAER: I emailed ...

20 MR. CREECH: I mean, I could ...

21 MS. BAER: I emailed to ...

22 MR. MOORE: I can forwarded it to her, but she has
23 not looked it over. That's the problem.

24 MR. CREECH: Well, that's fine. Well, I just -- I
25 mean, I'm not gonna get into, you know, real details

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1 with her, but I do want to ask her just a question about
2 a couple of things. Just basically, whose signature's
3 on there is a big thing. Does she recognize the
4 signature on the document?

5 MR. MOORE: Jeannie, give me your email address
6 again.

7 MR. CREECH: And we can have -- if necessary, we
8 could probably get an email to her. I mean ...

9 WITNESS: It's jrogalla -- r-o ...

10 MR. MOORE: I got it. I got it. I just needed the
11 first few letters.

12 WITNESS: Got it.

13 MR. MOORE: On it's way.

14 WITNESS: Okay.

15 MR. CREECH: I appreciate y'all accommodating us on
16 this.

17 WITNESS: Okay. I just received it. Okay. I'm
18 looking at it now. So, what is your question?

19 Q. Okay. So -- and this -- we're gonna make this an
20 Exhibit -- Plaintiff's Exhibit number 2 for this
21 deposition. Can you tell whose signature that is
22 on there for -- well, let's see -- for FreshPet
23 it's Thomas Farina. Is that correct?

24 A. I'm scrolling down.

25 Q. On the second page.

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1 A. I don't recognize that signature, but under the
2 name, Thomas Farina, yes. I do know him.

3 Q. All right. And is he still employed there at
4 FreshPet?

5 A. Yes. He is.

6 Q. Okay. Do you -- do you -- can you tell who the
7 person is that signed for PetSmart?

8 A. No.

9 Q. Okay. Are you aware of or have you seen any kind
10 of memorandum or emails, or any kind of
11 correspondence or discussions about putting cameras
12 in FreshPet coolers?

13 MR. MOORE: Are you talking about new or used -- or
14 older coolers?

15 MR. CREECH: Just any FreshPet coolers.

16 A. We've talked about it, you know. I've heard about
17 it -- about these cameras. Like I said, this is
18 just a new thing that they are starting to put in
19 the new coolers that are being shipped out.

20 Q. Well, were you ever any -- were you a party to any
21 kind of correspondence, emails, you know,
22 memorandum recipient, discussing or talking about
23 putting cameras in FreshPet coolers?

24 A. Not that I recall.

25 Q. And I'm sure somebody didn't just go out and buy a

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1 -- at FreshPet, buy a bunch of cameras and say
2 let's put -- let's put them in the coolers. There
3 had to have been a discussion about it before a
4 final decision was made. Would you agree with
5 that?
6 A. Yeah. Obviously, you know, I'm sure they discussed
7 it before, you know, just putting cameras ...
8 Q. Okay. Who do you think would have been involved in
9 that discussion? Were you ever involved in any
10 kind of discussion, correspondence, emails,
11 memorandums, anything?
12 A. No.
13 Q. Okay.
14 A. I don't make those kind of decisions.
15 Q. Oh, I understand. But you manage 10,000 coolers.
16 You don't think they would have wanted your input
17 at all in that kind of decision?
18 A. No.
19 Q. Who is your boss? Who do you report to?
20 A. Rudina.
21 Q. I'm sorry.
22 A. Rudina.
23 Q. How do you spell Rudina?
24 A. R-u-d-i-n a.
25 Q. And what's her last name?

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1 A. I don't know how to pronounce it, but I can spell
2 it for you. It's O-p, like Peter, -a-r-a-k-u.
3 Q. Okay. Would Rudina have had any kind of -- been
4 involved in any discussions about putting cameras
5 in FreshPet coolers?
6 A. It's possible.
7 Q. Okay. Alrighty. But you -- you were not, right?
8 A. No. I'm not -- I don't -- they're not gonna ask
9 me, what you -- hey, Jeannie, what do you think
10 about putting a camera in a cooler. I mean, no.
11 Q. Okay. All right. Okay.
12 A. I'm not (talking over.)
13 Q. All right. And just a few last things and I'll be
14 done. Any routine or preventative maintenance
15 that's performed on the machines by any of your
16 service providers, would FreshPet have access to
17 those records, documenting the preventative
18 maintenance?
19 A. I would have to ask for those documents. I don't
20 specifically have those documents of preventative
21 maintenance.
22 Q. Okay. All right. Those are all the questions I
23 have. Thank you, very much.
24 MS. BAER: I don't have any questions.
25 MR. MOORE: You don't have any?

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1 MS. BAER: No, sir.
2 MR. MOORE: Okay. We're done.
3 (Off the record.)
4 MR. CREECH: Ms. Rogalla, can I ask you one more
5 question?
6 WITNESS: Sure.
7 Q. Okay. And this is about an email that I think you
8 received on September the 8th. Did David give you
9 any -- the emails? This came from Carl. It's on
10 page -- if you have Bates stamped numbers --
11 Defense 14.
12 MR. MOORE: Is that in the email we received
13 earlier?
14 MR. CREECH: Yeah, yeah. It's just -- and it's
15 Bates stamped Defense 14.
16 MR. MOORE: Okay.
17 MR. CREECH: I think that's a PetSmart Bates stamp
18 number.
19 MS. BAER: That's right.
20 MR. MOORE: Yeah. We got you.
21 MR. CREECH: And it's just that one page.
22 MR. MOORE: Jeannie, you got that.
23 WITNESS: I'm pulling up the email now.
24 MR. CREECH: Yeah, it's a big ol' -- it's a big
25 black block on the front. Most of the document is a

Jeannie Rogalla
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1 black block.

2 WITNESS: Yes. I'm here. I can -- I'm in that now.

3 Q. Okay. So, this is -- and I apologize for this --
4 for coming back, and thank you for letting me ask
5 this question. But -- okay. So, Carl sent you an
6 email about, I think, about any reports of problems
7 of machine -- of FreshPet coolers in store 1300 and
8 he gave you some dates. And then you just
9 responded back, I do not have anything from those
10 dates for store 1300. If you look at your email,
11 that's -- I'm just reading it to you. It says, I
12 do not have anything from those dates for store
13 1300. Do you -- do you know why you would have
14 said that? I think it says ...

15 A. The only way -- the only reason why I can think is
16 that when I tried to pull up those work orders,
17 that I had searched in a different -- a different
18 section. So, I'm pulling -- I'm in my system now,
19 under my work orders. And I think it's very
20 possible that when I had searched for that, instead
21 of searching under the location ID, I searched it
22 by the location name and typed in the number 1300
23 and nothing pulled up. If I pull it up with the
24 location ID now, I can see a work order there. So,
25 it was -- it could have been just a mistake on my

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1 part because the location ID and the location name
2 are very close to each other so I could have
3 clicked the wrong one and when I typed in the
4 information, nothing pulled up. So, if it's not
5 specific when you're searching the location ID,
6 then it could have been, you know, missed.

7 Q. Okay. All right. That's all the questions I have.
8 Thank you.

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(There being no further questions
the deposition concluded at 2:51 P.M.)

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April 6, 2023

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STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF GREENVILLE)

Be it known that I took the deposition of
JEANNIE ROGALLA;

That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 50 pages is a
true and correct transcript of the testimony given in
this matter;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

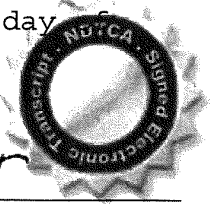
WITNESS MY HAND AND SEAL this 26TH day
April, 2023.

Barbara M. McCurley

Barbara M. McCurley

Notary Public for South Carolina

My Commission Expires: 07/02/2024



Camille Bird v. PetSmart, LLC, et al
APS Legal Ease Greenville, SC 864-235-3426

In the Matter Of:
BIRD V. PETSMART

C.A. 2022-CP-23-00564

CAMILLE BIRD

July 20, 2022



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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE C.A. 2022-CP-23-00564

CAMILLE BIRD *
*
DEPOSITION
PLAINTIFF, *
*
OF
VS. *
*
CAMILLE BIRD
PETSMART, LLC *
AND FRESHPET, INC. *
*
DEFENDANTS. *

PURSUANT TO NOTICE AND/OR AGREEMENT, THE
DEPOSITION OF CAMILLE BIRD, WAS CALLED BY THE
DEFENDANT ON THE 20TH DAY OF JULY, 2022, COMMENCING
AT THE HOUR OF 9:56 A.M., AT THE LAW OFFICES OF THOMAS
CREECH, LLC, 124 EDINBURGH COURT, SUITE 109,
GREENVILLE, SOUTH CAROLINA, ATTENDED BY COUNSEL AS
FOLLOWS:

SALLYE D. NELSON
VERBATIM REPORTER

APPEARANCES

THOMAS M. CREECH, JR., ESQUIRE, OF THE FIRM
LAW OFFICES OF THOMAS CREECH, LLC
124 EDINBURGH COURT, SUITE 109
GREENVILLE, SOUTH CAROLINA 29607

ATTORNEY FOR THE PLAINTIFF,

DAVID L. MOORE, ESQUIRE, OF THE FIRM
TURNER PADGET GRAHAM & LANEY, P.A.
200 EAST BROAD STREET, #250
GREENVILLE, SOUTH CAROLINA 29601

ATTORNEY FOR THE DEFENDANT FRESHPET, INC.,

MATTHEW C. LAFAVE, ESQUIRE, OF THE FIRM
CROWE LAFAVE, LLC
2019 PART STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE DEFENDANT PETSMART, LLC.

ALSO ATTENDING:
WILL BRANDONBURG



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EXHIBITS:

NO EXHIBITS

PURSUANT TO NOTICE AND/OR AGREEMENT TO TAKE
DEPOSITIONS, THE WITHIN DEPOSITION WAS TAKEN BY THE
ABOVE-NAMED COURT REPORTER, A NOTARY PUBLIC FOR THE STATE
OF SOUTH CAROLINA, BY CONSENT OF ALL PARTIES AT THE LAW
OFFICES OF THOMAS CREECH, LLC, GREENVILLE, SOUTH
CAROLINA.

* * * * *

STIPULATIONS:

IT IS AGREED BY AND BETWEEN COUNSEL FOR THE PARTIES
AS FOLLOWS:

1. THE DEPOSITION IS BEING TAKEN PURSUANT TO THE
SOUTH CAROLINA RULES OF CIVIL PROCEDURE.
2. THE READING AND SIGNING OF THE DEPOSITION
TRANSCRIPT ARE RESERVED BY THE WITNESS AND THE
PARTIES.

* * * * *

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
MATTER HEREIN:

* * * * *

CAMILLE BIRD,
BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:
EXAMINATION BY MR. MOORE:

Q. Let me get your name, please.

A. Camille Bird. B-i-r-d.

1 Q. Ms. Bird, my name's David Moore. I'm here on behalf
2 of FreshPet, Inc., which is a defendant in a lawsuit
3 that you've brought, and I'm going to ask you a
4 series of questions related to that lawsuit. These
5 questions will fall within three categories. The
6 first is going to be some background information
7 regarding you, which is essentially to help me pick
8 a jury later on down the road, should we go to
9 trial. The second area will be with regard to the
10 accident you were involved in. The third area will
11 be with regard to what injuries and damages you have
12 from that accident. If I ask you a question and you
13 do not understand it, stop me, and I'll be glad to
14 rephrase or re-ask it. Otherwise, I'm going to
15 assume you understand what I meant, okay?

16 A. Okay.

17 Q. Where do you live?

18 A. Presently, 717 Crestmont Way.

19 Q. In Greenville?

20 A. Yes, sir.

21 Q. Okay. And who do you live there with?

22 A. My son, Chris.

23 Q. How old is Chris?

24 A. Fifty.

25 Q. Okay. Now, is Chris married?

1 A. No.

2 Q. Okay. Ever been married?

3 A. No.

4 Q. Okay. And obviously you have been married. Is your
5 husband or ex-husband, as it might be, still living?

6 A. I was married twice.

7 Q. Okay.

8 A. My first husband is deceased. My second husband is
9 in Florida.

10 Q. Okay. With regard to the first husband -- actually
11 either one of those spouses, do they have any
12 relatives that live in Greenville County?

13 A. No, sir.

14 Q. Okay. All right. Do you have any relatives that
15 live in Greenville County?

16 A. No.

17 Q. Where does Chris work?

18 A. He's currently at 3M.

19 Q. 3M?

20 A. Uh-huh.

21 Q. Okay. What's his position there?

22 A. A machinest.

23 Q. Okay. And do you work outside the home?

24 A. Excuse me?

25 Q. Do you work outside the home?

1 A. I don't work.

2 Q. Okay. Have you worked in the past?

3 A. Yes.

4 Q. Where did you work?

5 A. My last position was in Unum.

6 Q. And what was your position there?

7 A. Claim processor.

8 Q. Okay. And when did you retire from that position?

9 A. 2009.

10 Q. What's your date of birth?

11 A. July 29, 1949.

12 Q. So you got a birthday coming up.

13 A. Yes.

14 Q. Happy birthday.

15 A. Thank you.

16 Q. All right. Let me get your Social Security number.

17 MR. MOORE:

18 And if you would, just put the last four digits
19 down.

20 MR. CREECH:

21 Yeah, it'll -- it'll -- it'll -- it'll be
22 confidential for the record. So if you -- she'll
23 put -- they'll just put your last four digits on the
24 record, but you'll give your whole.

25 THE DEPONENT:

1 Okay.

2 EXAMINATION RESUMED BY MR. MOORE:

3 Q. And the reason we ask this is because a lot of
4 records are set up by virtue of Social Security --
5 you know this, Social Security number.

6 A. Okay. It's XXX ---

7 Q. Okay.

8 A. --- XX-4607.

9 Q. Thank you. How far did you go in school?

10 A. Junior high but then got my GED at 52.

11 Q. Okay. Did you go any further than your GED?

12 A. No, sir.

13 Q. Okay. All right. Have you been involved in any
14 litigation other than this lawsuit before?

15 A. My workman's comp.

16 Q. Okay. And when did you have a workers' comp claim?

17 A. Well, with my injury in 2007 -- I -- it was in 2009,
18 because that's when I lost my -- my job, and I
19 couldn't work anymore.

20 Q. Okay. What was your injury?

21 A. 2009. Excuse me.

22 Q. I'm sorry?

23 A. It was 2009.

24 Q. Okay. And what was the injury?

25 A. My right hand.

1 Q. Can you tell me what you did to your right hand?

2 A. It's constant repetitive work.

3 Q. Carpal tunnel, or...?

4 A. I had carpal tunnel surgery, and I had trigger
5 finger release.

6 Q. Okay. All right. And then you retired after that,
7 or were you let ---

8 A. Yes, I did.

9 Q. Okay. All right. Any other claims?

10 A. No.

11 Q. Okay. Have you -- now, you -- I think you've been
12 in domestic lawsuits with your ex-husbands, am I
13 right on that?

14 A. Yes.

15 Q. Okay. And I assume those took place somewhere other
16 than Greenville County?

17 A. It was considered I believe...

18 Q. I'm sorry?

19 A. I don't remember what county that would be.

20 Q. Okay.

21 A. It wasn't in Greenville.

22 Q. Okay.

23 A. That I ---

24 Q. That's ---

25 A. --- can tell you.

1 Q. That's what I needed. All right. Have you been
2 involved in any other accidents, including
3 automobile accidents where you sustained an injury?

4 A. I had a car accident in 1988.

5 Q. Okay. Where was that?

6 A. Here.

7 Q. Okay. Do you recall who the other party was?

8 A. Excuse me?

9 Q. Do you recall who the other party was that was
10 involved in the accident?

11 A. It was two gentlemen working for Sears at the time.

12 Q. Okay. You don't recall their names?

13 A. Oh, no.

14 Q. Okay.

15 A. No.

16 Q. And how were you injured in that accident?

17 A. My back and my neck.

18 Q. Okay. What part of your back?

19 A. Pretty much all my back.

20 Q. Of the whole thing?

21 A. Yeah.

22 Q. Lumbar, cervical?

23 A. There really wasn't any -- any real physical damage.

24 Q. Uh-huh.

25 A. But the impact of the -- of the accident.

- 1 Q. Okay.
- 2 A. Yeah.
- 3 Q. Did you receive treatment for those injuries?
- 4 A. Just physical therapy.
- 5 Q. Okay.
- 6 A. And actually my shoulder, there was a lot of scar
- 7 tissue, 'cause the seatbelt ---
- 8 Q. Okay.
- 9 A. --- affected the shoulder, yeah.
- 10 Q. How was your shoulder injured; was it rotator cuff
- 11 or do you know?
- 12 A. No. It was just I don't know, they just did surgery
- 13 for scar tissue, that's all ---
- 14 Q. Okay.
- 15 A. --- I remember.
- 16 Q. And was that surgery done at the time of the
- 17 accident, 1988?
- 18 A. Well, I'm not too sure of the time.
- 19 Q. Okay. Shortly after the accident then?
- 20 A. That was around that time.
- 21 Q. Okay.
- 22 A. Just I'm not sure of the ---
- 23 Q. All right.
- 24 A. --- exact time, yes.
- 25 Q. Any other injuries you sustained prior to this

1 particular accident?

2 A. No.

3 Q. Okay. And my understanding is you have never sued
4 another individual or been sued by another
5 individual?

6 A. Well, I actually I've -- now that I talked about the
7 accident, I did go to court for that 1988.

8 Q. Okay.

9 A. Yes.

10 Q. And you don't recall who that -- that was?

11 A. No.

12 Q. All right.

13 A. No.

14 Q. Have you ever sued another company?

15 A. Only workman's comp.

16 Q. Okay.

17 A. Yeah.

18 Q. All right. Have you applied -- I -- I know you're
19 on Social Security -- but Social Security benefits
20 for any injury that you might have had?

21 A. Just for my hand.

22 Q. Okay.

23 A. Yeah.

24 Q. All right. And do you recall, did you receive a
25 disability rating for your hand injury?

- 1 A. I don't recall.
- 2 Q. Okay. Who was your doctor for that?
- 3 A. I had a few of them. Dr. Ugino is the one that did
- 4 the surgery.
- 5 Q. Say it again.
- 6 A. Dr. Ugino.
- 7 Q. And who is he ---
- 8 A. In Mid ---
- 9 Q. --- with?
- 10 A. He's in Midland Orthopaedic.
- 11 Q. Okay.
- 12 A. I believe in Columbia, it's Columbia.
- 13 Q. Okay.
- 14 A. Considered Columbia.
- 15 Q. All right. Who was your family doctor?
- 16 A. Dr. Aragon.
- 17 Q. And where is he?
- 18 A. She is at ---
- 19 Q. I do that every time.
- 20 A. --- Center for Adult -- Adult and Family.
- 21 Q. Is that here in Greenville?
- 22 A. Yeah. Yes.
- 23 Q. Okay. All right. All right. Ever been arrested
- 24 for anything?
- 25 A. No.

1 Q. Okay. All right. Let's talk about this accident.

2 Do you recall when it occurred?

3 A. It was September 6th, ---

4 Q. Okay.

5 A. --- 2019.

6 Q. All right. And my understanding is you had gone to
7 a PetSmart?

8 A. Correct.

9 Q. Okay. Were -- who went with you?

10 A. Just myself. I ---

11 Q. Okay.

12 A. --- took my dog.

13 Q. All right. Which PetSmart are we talking about?

14 A. It's in -- I keep -- Woodruff.

15 Q. Woodruff Road?

16 A. Woodruff, yes.

17 Q. Okay. Did you take your dog with you?

18 A. Yeah, she goes everywhere with me.

19 Q. Okay. Is she still around?

20 A. Yes.

21 Q. Okay. What kind of dog do you got?

22 A. She's a Retriever Beagle Hound mix.

23 Q. Okay. And when you go shopping at the PetSmart, do
24 you take -- do you put her -- or you know, typically
25 there's a place where you can train dogs, that type

1 thing at PetSmart, do you leave her there ---

2 A. No.

3 Q. --- while you do the shopping, or do you take her
4 with you while you're shopping?

5 A. Well, it's -- it wasn't going to be a shopping sort
6 of deal.

7 Q. Okay.

8 A. I was just going in to get the food and coming out.

9 Q. Okay. And ---

10 A. Less than five minutes.

11 Q. --- what were you going to get?

12 A. The Freshpet Chicken Recipe.

13 Q. Did you have to get a buggy for that?

14 A. No.

15 Q. Okay. All right. So you went back to -- my
16 understanding is there's some refrigerators at the
17 PetSmart.

18 A. Yes, sir.

19 Q. Okay. How many refrigerators?

20 A. There were three.

21 Q. Okay. And do you know to whom those refrigerators
22 belong?

23 A. I'm assuming Freshpet.

24 Q. Okay. Do you know whether Freshpet owns all three
25 of them?

1 A. Excuse me?

2 Q. Do you know if Freshpet owns all three of them?

3 A. I -- I don't know.

4 Q. Okay. All right. Now, when you got back to the
5 area where the refrigerators are located, did you --
6 before you had your fall, did you notice any water
7 leaking from any of these refrigerators?

8 A. No, I didn't.

9 Q. Okay. So the first time you became aware of the
10 water being on the floor was after you fell?

11 A. Yes.

12 Q. Okay. Where was the water that you slipped in
13 located in reference to the refrigerators?

14 A. It was right under the refrigerator, 'cause I ended
15 up sitting in a puddle.

16 Q. Okay. Which -- which refrigerator are we talking
17 about?

18 A. The center one.

19 Q. Okay. Now, did that refrigerator have any goods in
20 it at that point in time?

21 A. No. It was empty.

22 Q. Empty, okay. Had you already gotten what you were
23 looking for?

24 A. I don't understand.

25 Q. You -- you went there to pick up some -- some food

1 for your dog. Did you get ---
2 A. Right.
3 Q. --- that already before you fell?
4 A. Yes.
5 Q. Okay.
6 A. Yes.
7 Q. All right. Now, was your dog on a leash at that
8 point in time?
9 A. No. My dog was in the car.
10 Q. Oh, you left the dog in the car. Okay.
11 A. Correct.
12 Q. I'm sorry. I thought you took it in with you. All
13 right. All right. Do you know if anybody saw you
14 fall?
15 A. I'm not sure if they -- anybody saw me.
16 Q. Okay. Now, the water that you slipped in was in
17 front of the center refrigerator, as I understand
18 it?
19 A. Correct.
20 Q. Okay. Was that refrigerator on at that point in
21 time, was it?
22 A. On?
23 Q. Yes, ma'am. Was there power going to it?
24 A. I don't know. There was no lights on, so it may --
25 may not have been on.

1 Q. Okay.

2 A. I'm not sure.

3 Q. All right.

4 A. I don't know.

5 Q. And do you know whether the water was leaking from
6 that center refrigerator, or was it possibly coming
7 from the two adjacent refrigerators?

8 A. I don't know. I was sitting in a puddle ---

9 Q. Okay.

10 A. --- right against that center refrigerator.

11 Q. All right. Do you know how long that puddle of
12 water had been there?

13 A. No.

14 Q. And do you know why that puddle of water was there,
15 what generated it?

16 A. No.

17 Q. All right. When you fell, tell me what part of your
18 body came in contact with either these refrigerators
19 or the floor.

20 A. I fell in a sitting position ---

21 Q. Okay.

22 A. --- with my head slumped to the left side. My back
23 was against the center refrigerator, and my legs
24 were across the aisle.

25 Q. Okay. Did you hit your head on anything when you

1 fell?

2 A. I don't believe so.

3 Q. Okay. And when you fell, did you hit the
4 refrigerators before you hit the floor?

5 A. I'm not too sure. It I -- I think it may have. I
6 may have hit the -- or touched the -- my back on the
7 refrigerator and then -- 'cause I went on a slide
8 down.

9 Q. Gotcha.

10 A. I slipped down.

11 Q. Okay. So my understanding is that you slipped, you
12 hit the center refrigerator?

13 A. Correct.

14 Q. Okay. And then slid down and -- and landed on your
15 buttocks with regard to the floor?

16 A. Correct.

17 Q. Okay. All right. Now, when that occurred, what
18 part of your body was injured?

19 A. My back mainly, my back.

20 Q. And when you say "Back," are you talking about low
21 back?

22 A. Yes.

23 Q. Okay.

24 A. It felt more like the hip down to the leg.

25 Q. Okay. Did you have pain in your leg at that point?

- 1 A. Yes.
- 2 Q. Which leg?
- 3 A. The right one.
- 4 Q. Okay. And did it appear that the pain was coming in
- 5 the low back, hip area, going into your leg or ---
- 6 A. Correct.
- 7 Q. --- or two separate injuries there?
- 8 A. No. The whole from the hip down to actually my
- 9 large toenail is where I felt the whole pain.
- 10 Q. Okay.
- 11 A. Sharp pain.
- 12 Q. Understand. So you -- you got actually pain in low
- 13 back, going down the right leg. What particular
- 14 course does it follow on your right leg? Does it go
- 15 down the front of your leg, behind, the back of your
- 16 leg, the sides; do you know?
- 17 A. The whole leg.
- 18 Q. The whole leg, okay. And does it get into your toes
- 19 you say?
- 20 A. Correct.
- 21 Q. Okay. And which toes does it get into?
- 22 A. I felt it in my large, all the way down to my large
- 23 toenail.
- 24 Q. Okay. Do you recall it getting into your other
- 25 smaller toes?

- 1 A. It -- it's just one sharp pain.
- 2 Q. Okay. Well, let me ask it this ---
- 3 A. Can't ---
- 4 Q. --- way.
- 5 A. I can't -- I can't ---
- 6 Q. You indicated ---
- 7 A. --- distinguish.
- 8 Q. --- sharp pain. Did it continue to hurt there,
- 9 or...?
- 10 A. Yes.
- 11 Q. Okay. Or did it dissipate with time?
- 12 A. No. I kept -- I haven't lost the pain ---
- 13 Q. All right.
- 14 A. --- since then.
- 15 Q. Okay. Now, how large of an area was this water that
- 16 you slipped in?
- 17 A. Pretty much the -- the width of the refrigerator.
- 18 Q. Okay. And was that out in front of the
- 19 refrigerator?
- 20 A. Yes.
- 21 Q. Was it hidden in any way?
- 22 A. Hid?
- 23 Q. Was it hidden, in other words, blocked from your
- 24 view?
- 25 A. No.

1 Q. Okay. All right. After you slipped and fell, were
2 you able to get up?

3 A. No.

4 Q. Did you call out to somebody to come and help you?

5 A. Correct.

6 Q. And I assume one of the -- the PetSmart employees
7 came over?

8 A. Yes.

9 Q. Do you know who that was?

10 A. Not his name?

11 Q. Yes.

12 A. No. I don't ---

13 Q. Okay.

14 A. --- have his name.

15 Q. Man or woman?

16 A. Man.

17 Q. Okay. And did he help -- help you stand up at that
18 point in time; what did he do?

19 A. No. He called for help.

20 Q. Okay. Called for help?

21 A. Yes.

22 Q. And when you say, he called for help, did he call
23 for medical help or other employees?

24 A. No. He called, I'm assuming he called the assistant
25 ---

- 1 Q. Okay.
- 2 A. --- manager.
- 3 Q. If you know who the assistant manager was?
- 4 A. His name is Jordan Coates, I believe.
- 5 Q. Jordan. I'm sorry, I didn't catch the last name.
- 6 Coates?
- 7 A. Coates.
- 8 Q. C-o-a-t ---
- 9 A. C-o-a-t-e-s.
- 10 Q. Okay. Did you speak with Jordan Coates?
- 11 A. Afterwards, yes.
- 12 Q. Okay. All right. When Jordan Coates got there, did
- 13 he help you up, or what did he do?
- 14 A. I'm not too sure who helped me up. I'm assuming it
- 15 was the two gentlemen, because ---
- 16 Q. Okay.
- 17 A. --- there was a woman also that was present.
- 18 Q. All right. Do you know the name of that woman?
- 19 A. Jordan. I saw her tag said Jordan.
- 20 Q. Her name was Jordan, too?
- 21 A. Yes, funny.
- 22 Q. Okay.
- 23 A. Yes.
- 24 Q. Do you remember her last name?
- 25 A. No.

1 Q. Okay.

2 A. No.

3 Q. All right. So three of them or -- or at least two
4 of them helped you up to your feet?

5 A. Right.

6 Q. Okay. Were you able to stand on your feet once they
7 assisted you up?

8 A. No. What they did was they had a chair across the
9 aisle.

10 Q. Right.

11 A. And what they did was pick me up and turn me around.

12 Q. Uh-huh.

13 A. And put me on the chair.

14 Q. Okay. All right. Did you have any conversation
15 with Jordan Coates about what happened?

16 A. Yes.

17 Q. Okay. Do you recall what that conversation was?

18 A. I wanted to make a accident report.

19 Q. Okay. Was one prepared?

20 A. He told me that they didn't do that at the store,
21 that it would have to be done at headquarters or
22 somewhere.

23 Q. All right. Now, other than asking for an accident
24 report, did you have any other conversation with
25 Jordan Coates?

- 1 A. Well, I asked him to give me something in writing of
2 the incident.
- 3 Q. Okay. Did he do that?
- 4 A. Yes, he did.
- 5 Q. And what did this document have on it?
- 6 A. That I fell in front of the refrigerators ---
- 7 Q. Anything ---
- 8 A. --- and hurt my ---
- 9 Q. --- more than that?
- 10 A. --- hurt my hip, right hip.
- 11 Q. Okay. Anything other than the fact you had a fall,
12 injured your right hip in front of the
13 refrigerators?
- 14 A. Right.
- 15 Q. That's it?
- 16 A. Uh-huh.
- 17 Q. Okay. And let me -- let me get you to do this, if
18 you would. Some of these questions will require
19 either a yes or no answer. If you would answer
20 verbally, rather than nodding your head up and down
21 or saying, uh-huh and uh-uh, so the court ---
- 22 A. I'm sorry.
- 23 Q. --- reporter ---
- 24 A. I apologize.
- 25 Q. --- can pick it up. No. And -- and sometimes I'll

1 be rude and -- and correct you on that -- that, but
2 the reason is she needs a verbal answer ---

3 A. Okay.

4 Q. --- to make a proper transcript, okay? All right.
5 Did you talk to the other Jordan who was there?

6 A. Yes.

7 Q. What was your conversation with her?

8 A. Well, some reason we got on a conversation about her
9 dad having the same stomach problems that I had,
10 that's about all.

11 Q. Okay. What kind of stomach problems?

12 A. I have problems with acid reflux.

13 Q. Oh, sorry.

14 A. Yeah.

15 Q. All right.

16 A. And also I asked her to take a picture of my dog,
17 make sure my dog was okay, because she was still in
18 the car.

19 Q. Okay. Now, this is in September. What was the heat
20 like outside at that point?

21 A. It was too bad. I parked under a tree.

22 Q. Okay.

23 A. And rolled the windows down.

24 Q. All right. Now, they got you seated in a chair.

25 Did they call an ambulance or medical personnel to

1 come see you?

2 A. Actually the assistant manager asked me -- I forgot
3 -- he asked me if I wanted an ambulance, and I told
4 him no.

5 Q. Okay. All right. How long did you stay there
6 seated in your chair then?

7 A. About I would say I was in the store a total of a
8 half-hour.

9 Q. Okay. And after that half-hour had elapsed, were
10 you able to get up and move?

11 A. Well, they assisted me out to my car.

12 Q. Okay. And did you get in the car and drive away?

13 A. After a while. I had to sit there a while, and...

14 Q. Okay. Did anybody from the store stay with you
15 during that time period?

16 A. No.

17 Q. Okay. All right. Once you were able to leave in
18 the car, where did you go?

19 A. Well, I wasn't far from home.

20 Q. Okay.

21 A. I was across -- I lived across Woodruff ---

22 Q. Okay.

23 A. --- to PetSmart. All I had to do was go past one
24 light, and I was right there.

25 Q. All right. Did you go home then?

1 A. Yes.

2 Q. Okay. All right. Did you seek medical attention on
3 that day?

4 A. No.

5 Q. Okay. Tell me how you were doing during the evening
6 of this accident.

7 A. I was just sore and hurting and just wanted to stay
8 in bed.

9 Q. Okay. Did the soreness and the pain go to any other
10 areas than your low back and into your right leg?

11 A. I can't recall. I was just in pain. I don't recall
12 specifically.

13 Q. Okay. All right. The next morning, what did you
14 do?

15 A. I went to urgent care 'cause the pain was getting
16 worse.

17 Q. Okay. And which urgent care did you go to?

18 A. The Bon Secour on Woodruff Road.

19 Q. Do you recall who you saw there?

20 A. I'm not sure of his first name was Adams, Dr. Adams,
21 or his last name. I'm not sure.

22 Q. Okay. What -- what did this doctor do for you?

23 A. Well, he did the normal, you know, checking for --

24 Q. Physical -- a physical examination?

25 A. Yes.

- 1 Q. Okay. And at that point in time, were you still
2 having pain in your ---
- 3 A. Yes.
- 4 Q. --- low back, hip?
- 5 A. Yes. Yes.
- 6 Q. Right leg?
- 7 A. Yes.
- 8 Q. Any other areas?
- 9 A. My neck was stiff.
- 10 Q. Okay. And we've been talking about your hip, so is
11 it one hip as opposed to two?
- 12 A. At that day, yes.
- 13 Q. Okay. Now, you got pain going into your right leg.
14 Do you have any pain going into your left leg?
- 15 A. Not until a lot of -- a lot of movement and stuff
16 causes pain on -- on both my legs.
- 17 Q. Okay. All right. All right. What did this doctor
18 do for you as far as physical exam; do you recall?
- 19 A. He just did the normal, you know, the back, and
20 raising legs, and the normal orthopedic ---
- 21 Q. Okay.
- 22 A. --- exam.
- 23 Q. Did he do, for example, straight leg raising; do you
24 know what that is?
- 25 A. Yes.

1 Q. Okay. And do you know what the result of that was?

2 A. No.

3 Q. Okay. Did he have you bend over at some point to
4 see whether that generated any pain?

5 A. I'm assuming he did.

6 Q. Okay.

7 A. I don't recall.

8 Q. Okay. Do you recall one way or the other?

9 A. No.

10 Q. Okay. All right. Did he perform any diagnostic
11 tests, like X-rays or CT scans or anything of that
12 nature?

13 A. I'm sorry.

14 Q. Sure. Did -- did this doctor perform any X-rays of
15 your back, low back, hip, or leg?

16 A. I had X-rays done later on that afternoon.

17 Q. Okay. But not at the urgent care.

18 A. Well, it was a different -- it was urgent care but
19 it was a different ---

20 Q. Different building?

21 A. --- area.

22 Q. Yeah, okay.

23 A. Yeah.

24 Q. All right. So this first urgent care visit that you
25 had on this day was just basically for a physical

- 1 exam?
- 2 A. Correct.
- 3 Q. Okay. And what did that doctor indicate the problem
- 4 was?
- 5 A. I'm not sure. It's in the medical records.
- 6 Q. Okay. You don't recall what he said?
- 7 A. No.
- 8 Q. All right. Now, did he refer you to another urgent
- 9 care center?
- 10 A. He told me that if I continued to have pain that I
- 11 should get an MRI.
- 12 Q. Okay. And did you then go to another urgent care
- 13 later that day?
- 14 A. No.
- 15 Q. Where did you go?
- 16 A. Same -- that afternoon, I went to get X-rays.
- 17 Q. Okay. Where?
- 18 A. In the Bon Secour but a different area. I'm not
- 19 sure where ---
- 20 Q. Okay.
- 21 A. --- the location was.
- 22 Q. All right. All right. Did you get X-rays or an MRI
- 23 at that point?
- 24 A. There I got X-rays.
- 25 Q. All right. And do you know what those X-rays

1 showed?

2 A. I have some degeneration.

3 Q. Okay. In your back?

4 A. Yes.

5 Q. Lumbar region?

6 A. My whole back.

7 Q. Oh, okay. Have you ever had probably with any part

8 of your back before this accident?

9 A. No. I didn't.

10 Q. Okay. All right. Now, you didn't have any I assume

11 any broken bones shown on those X-rays; am I right

12 on that?

13 A. Not on the -- the X-ray. On the MRI, it showed ---

14 Q. Okay.

15 A. --- the fracture.

16 Q. When did you have the MRI performed?

17 A. Trying to think. I'm not too sure of the month, but

18 it was 2019.

19 Q. Okay. And is the MRI what showed the degenerative

20 changes in your back as opposed to the X-rays?

21 A. Yes.

22 Q. Okay. And did the MRI indicate any problems with

23 any discs or any other soft tissues in your back?

24 A. Not the soft tissue but the fracture in the

25 prong(phonetic).

1 Q. Where was the fracture?

2 A. It was on L5.

3 Q. Okay. All right. Any problems with the disc at
4 L5,S1?

5 A. I don't believe so.

6 Q. Okay. Now, the fracture is it to the vertebrae; is
7 that correct, at L5?

8 A. I -- the vertebrae slipped. The bone ---

9 Q. Okay.

10 A. --- was fractured that holds the vertebrae.

11 Q. Actually, the vertebrae is bone.

12 A. If you want to put it that way.

13 Q. So ---

14 A. I'm not a doctor, so I ---

15 Q. I understand.

16 A. --- wouldn't know.

17 Q. That's why I'm asking.

18 A. I'm just telling you what I -- what I was told.

19 Q. Yeah. And there -- and you may not -- let me say
20 this. You may not know the answer to some of these
21 questions. It's perfectly okay to just say, I don't
22 know.

23 A. Okay.

24 Q. I'm not trying to trick you on these things, just
25 trying to find out what you know.

- 1 A. I'm trying to answer the question ---
- 2 Q. Yeah.
- 3 A. --- as best as possible.
- 4 Q. Sure. Do you recall the doctor telling you you had
- 5 a fracture in the disc itself or to the facet or
- 6 anything of that nature?
- 7 A. I just understand ---
- 8 Q. Okay.
- 9 A. --- okay, that's it's called par defect.
- 10 Q. Okay.
- 11 A. Because that bone is fractured, which I believe is
- 12 connected to the facet joint ---
- 13 Q. Yep.
- 14 A. --- that holds the vertebrae.
- 15 Q. Yes.
- 16 A. That's what I understand.
- 17 Q. Okay.
- 18 A. Did I answer that for you?
- 19 Q. You did. All although I'm not going to get into the
- 20 medical part. All right. Now, how did they go
- 21 about treating that fracture, the pars defect that
- 22 you're talking about?
- 23 A. There's nothing other than NSAIDs.
- 24 Q. I'm sorry?
- 25 A. The NSAIDs, anti-inflammatory ---

1 Q. Okay.

2 A. --- medication.

3 Q. And how -- how did they give you the anti-
4 inflammatory, was that oral or what, did you have
5 any injections?

6 A. Well, I can't really take anti-inflammatories
7 because of my stomach.

8 Q. Gotcha. All right.

9 A. But I did get an injection ---

10 Q. Okay.

11 A. --- eventually.

12 Q. All right. All right. So you have an MRI, the MRI
13 indicates you got a fracture or a pars defect at the
14 L5 possibly S1 level, as I understand it?

15 A. Right.

16 Q. Okay. And they prescribed medication, which you
17 couldn't take at that point, as I understand it?

18 A. Right.

19 Q. Did you take any other medication?

20 A. No.

21 Q. For example, any over-the-counter medication, such
22 as Tylenol?

23 A. No. I can't take Tylenol.

24 Q. Can't take Tylenol either. All right. All right.
25 Were you released the same day from St. Francis or

1 the urgent care center?

2 A. The urgent care, yes.

3 Q. I mean, you -- you weren't -- you weren't kept

4 overnight ---

5 A. No.

6 Q. --- in the hospital or anything?

7 A. No.

8 Q. Okay. All right. All right. What follow-up care

9 did you have following the MRI that was taken?

10 A. Well, I -- the -- I had gone to the orthopaedic

11 doctor.

12 Q. Okay. Who was that?

13 A. It's Piedmont Orthopaedic.

14 Q. Okay.

15 A. Dr. Van Pelt, I believe.

16 Q. Okay. And what did he do for you?

17 A. Well, he ordered an MRI.

18 Q. Another one?

19 A. Got that done.

20 Q. Is -- is it ---

21 A. Well, now, this is the one ---

22 Q. Okay. I gotcha.

23 A. Yeah.

24 Q. Okay.

25 A. The MRI and the -- then he ordered the physical

1 therapy.

2 Q. Okay.

3 A. And pain management.

4 Q. Let's go through that one at a time and make sure.

5 Now, you went to Bon Secours, as I understood it, to
6 basically initially go to them, and then you went to
7 a different part fo St. Francis with regard to
8 subsequent diagnostic tests the same day of the
9 accident or the day following the accident?

10 A. I don't understand.

11 Q Yeah, well I ---

12 A. St. Francis, I didn't go to St. Francis for that.

13 Q. You did not? Okay. Let me make sure I understand.
14 You went to St. Francis with regard to your first
15 visit, as I understand it?

16 A. No. The Bon Secour.

17 Q. Okay. And then once you had gone there, did you go
18 to another facility which is part of Bon Secour?

19 A. For the X-rays?

20 Q. Yes, ma'am.

21 A. Yes.

22 Q. Okay. All right. Once the X-rays were done they --
23 they sent you home, as I understand it.

24 A. Correct.

25 Q. Okay. You were referred over to Piedmont

1 Orthopaedist, as I understand?

2 A. Correct.

3 Q. Who referred you over there?

4 A. The doctor from urgent care.

5 Q. Okay. All right. And then you -- then when you
6 went to Piedmont Orthopaedics, that's when you had
7 the MRI?

8 A. Correct.

9 Q. Okay. All right. And then based upon that MRI, it
10 was suggested that you undergo physical therapy, as
11 I understand it?

12 A. Correct.

13 Q. Where did you go to physical therapy?

14 A. ATI.

15 Q. Okay. And how long did you go to ATI?

16 A. I believe it was 15 sessions.

17 Q. Okay. Did that help?

18 A. Not really.

19 Q. Okay. All right. Now, did the orthopaedist refer
20 you to pain management after you'd gone through
21 physical therapy?

22 A. Well, this is what he originally wanted me to do
23 when I went to get my MRI results.

24 Q. Okay. So if I understand then, you went to get the
25 MRI, then based upon those results you were

1 initially going to physical therapy, but the plan
2 all along was to go through to pain ---

3 A. And ---

4 Q. --- management?

5 A. And also go to pain management.

6 Q. Okay.

7 A. Correct.

8 Q. Who, what -- which pain management facility did you
9 go to?

10 A. Piedmont Comprehensive Pain Management.

11 Q. Okay.

12 MR. MOORE:

13 Off the record.

14 (OFF THE RECORD)

15 EXAMINATION RESUMED BY MR. MOORE:

16 Q. All right. Do you recall who you saw at pain
17 management?

18 A. We call him Dr. J. He's got a long -- I can't
19 pronounce his name.

20 Q. Yeah. Okay.

21 A. Everybody calls him -- even there they call him Dr.
22 J.

23 MR. LAFAVE:

24 Can we get off the record?

25 (OFF THE RECORD)

1 EXAMINATION RESUMED BY MR. MOORE:

2 Q. With Dr. J., what treatment did you receive?

3 A. He gave me the epidural.

4 Q. Okay. And how many epidurals did you have?

5 A. I had the one.

6 Q. Did that help?

7 A. No.

8 Q. Okay.

9 A. He also gave me a decompression brace.

10 Q. Gotcha. Did that help?

11 A. It helps me when I have to move around.

12 Q. Okay. Now, was that by prescription, or is that
13 something you can just buy at the drugstore?

14 A. They have it right there ---

15 Q. Okay.

16 A. --- at the office.

17 Q. All right. Did it have to be fitted for you, in
18 other words, specifically?

19 A. Well, I think it goes by they measure ---

20 Q. Okay.

21 A. --- your -- around your ---

22 Q. All right.

23 A. --- abdomen and stuff.

24 Q. And when do you wear that brace?

25 A. I wear it pretty much every day, especially when I

1 have to do house chores, 'cause that's when the
2 bending and all of that ---

3 Q. Okay.

4 A. --- gives me a lot of pain.

5 Q. When -- do you -- let me ask you this. Do you have
6 pain at all times as a result of this injury?

7 A. Some days worse than others.

8 Q. Okay. All right. But you do you have at least some
9 kind of dull pain that ---

10 A. Oh.

11 Q. --- you're aware of?

12 A. So I always have pain.

13 Q. Okay.

14 A. Yes.

15 Q. All right. And then when you undertake certain
16 activities that involve using the low back, such as
17 bending or stooping and that type thing, does that
18 increase the pain?

19 A. Yes.

20 Q. Okay. Has the doctor indicated why that is the
21 case?

22 A. Well, when the vertebrae slipped, it -- and it's
23 bilateral, the break is bilateral ---

24 Q. Uh-huh.

25 A. --- so when the vertebrae slipped, it's compressing

1 my nerve.

2 Q. Okay. Do you know which nerve is compressed?

3 A. The nerves that go to the side. I don't know what it
4 is.

5 Q. Is it sciatic nerve? Do you know?

6 A. I'm assuming, yes.

7 Q. Okay. I mean, and your low back, does it go to
8 follow this nerve down through your hips and through
9 your buttocks?

10 A. Correct.

11 Q. Into your leg?

12 A. Right.

13 Q. Okay. All right. Other than the epidural and the
14 brace, what did the doctor at the pain management
15 center do for you?

16 A. That's all.

17 Q. Okay. All right. Did you follow up with care with
18 anyone else?

19 A. Not in regards to the doctors ---

20 Q. Okay.

21 A. --- the orthopaedic or anything else, but I went to
22 acupuncture.

23 Q. Okay. Where did you receive acupuncture?

24 A. A few places. I went to Upstate Spine & Sports.

25 Q. Okay.

1 A. I went to Carolina Health Innovation. I went to
2 Carolina Holistics ---
3 Q. Did ---
4 A. --- Health. And I'm currently with Dr. Marina at
5 Greenville Natural Health.
6 Q. Okay. Does the acupuncture help?
7 A. Somewhat, but I have to go more than I'm going.
8 Q. Okay. How often are you going now?
9 A. Whenever I can pay for it.
10 Q. Okay. And how long do you be expect to be taking
11 acupuncture?
12 A. Acupuncture is the only thing that I can rely on to
13 help me with the pain, somewhat ---
14 Q. Okay.
15 A. --- with the pain.
16 Q. Okay. Have they tried dry needling at all?
17 A. I -- don't ask me about any -- I only know they
18 stick needles in me. I have no idea ---
19 Q. Okay.
20 A. --- what it is.
21 Q. All right. And what kind of relief does that give
22 you?
23 A. It pretty much makes me relax, I think.
24 Q. Okay.
25 A. A lot of it is stress, too.

- 1 Q. All right.
- 2 A. And my anxiety.
- 3 Q. All right. Do you -- do you have an ongoing anxiety
- 4 condition?
- 5 A. Yes, I do.
- 6 Q. Okay. Did that preexist this particular fall?
- 7 A. Yes.
- 8 Q. And who is treating you for that anxiety?
- 9 A. I don't go to anybody, you know.
- 10 Q. Was your family doctor, for example, giving you some
- 11 treatment?
- 12 A. Yeah, but I don't take any medication for anxiety.
- 13 Q. Well, that was going to be my next question. You
- 14 don't take any medication ---
- 15 A. No.
- 16 Q. --- for that?
- 17 A. No.
- 18 Q. Are you taking any medication now?
- 19 A. I take medication for the nerve problem in my face.
- 20 Q. Okay. And that's unrelated to this, as I understand
- 21 it; am I right?
- 22 A. To?
- 23 Q. To this accident. In other words, you had the nerve
- 24 problem in your face prior to ---
- 25 A. Well ---

1 Q. --- the accident.

2 A. --- I did, but it went away, and then it came back.

3 Q. Okay. When did it come back?

4 A. After the accident.

5 Q. Okay.

6 A. After the fall.

7 Q. And what is -- what is this nerve condition in your
8 face called?

9 A. A triminal(phonetic) ---

10 Q. Okay.

11 A. --- neuralgia.

12 MR. CREECH:

13 Trigeminal?

14 THE DEPONENT:

15 Tri -- I can't pronounce the g-e. I'm sorry.

16 MR. CREECH:

17 Yeah, that's all right. And sorry.

18 THE DEPONENT:

19 Yeah.

20 MR. CREECH:

21 Trigeminal neuralgia.

22 THE DEPONENT:

23 Yes.

24 EXAMINATION RESUMED BY MR. MOORE:

25 Q. Who did you see originally about that?

- 1 A. Dr. Thompson at Bon Secour.
- 2 Q. Do you know his first name?
- 3 A. Brian.
- 4 Q. Okay.
- 5 A. I believe is.
- 6 Q. And how did he go about treating it before this
- 7 accident?
- 8 A. With medication.
- 9 Q. Okay. What kind of medication?
- 10 A. It's called Tegretol.
- 11 Q. Okay.
- 12 A. And he...
- 13 Q. And how -- and were you taking Tegretol at the time
- 14 this accident occurred?
- 15 A. No.
- 16 Q. Okay.
- 17 A. No.
- 18 Q. All right. After this accident occurred, did this
- 19 neurology -- I'm trying to say ---
- 20 A. Neurologist.
- 21 Q. --- reappear?
- 22 A. The problem or the doctor?
- 23 Q. Yeah, the problem.
- 24 A. Oh, yes.
- 25 Q. Okay. All right. When did it reappear?

1 A. I'm not sure exactly the exact time, but I know it
2 was after the fall.

3 Q. All right. Well, can you give me an estimation as
4 to how long after the fall? That fall was in
5 September 2019.

6 A. Well, like let me -- let me think. I started and
7 stopped taking it. Then I started taking the
8 Tegretol again, I believe it was six months after
9 the fall, ---

10 Q. Okay.

11 A. --- I think.

12 Q. All right.

13 A. I'm not too sure, but it was a couple of months
14 after the fall.

15 Q. And who did you go see about it?

16 A. I didn't need to go see anybody. I -- I had the
17 medication at home.

18 Q. So you still just had some ---

19 A. Yeah, but I ---

20 Q. --- medication left over?

21 A. Yeah, I called Dr. Thompson, and I needed him to
22 give me a fresh prescription because I hadn't taken
23 the one that I had at home, so it was old.

24 Q. Okay. Did you go to see Dr. Thompson about this
25 renewed problem?

1 A. No. I didn't have to. I spoke to his nurse on the
2 phone.

3 Q. Okay. Now, obviously this happened in 2019, if it's
4 six months later, it's in the midst of COVID, as I
5 understand it.

6 A. Yes.

7 Q. Is that why you did not go in to see Dr. Thompson?

8 A. Well, there was nothing he could do other than ---

9 Q. Okay.

10 A. --- prescribe this medication.

11 Q. Has any doctor indicated that this neurological
12 problem in your face is a result of this accident,
13 or is it just a renewal of the old condition?

14 A. Dr. Rico at my family primary doctor, Dr. Aragon, he
15 said that it was probably due to stress.

16 Q. Stress?

17 A. Uh-huh.

18 Q. Okay. And you had anxiety before this accident, as
19 I understand it?

20 A. Well, anxiety I've had at times, but I wouldn't say
21 that it's anxiety, fully anxiety at all times.

22 Q. Okay. All right. In looking through your records
23 on this, my understanding is prior to this accident,
24 number one, you lost your job because of the injury
25 you sustained at work I believe, am I right?

- 1 A. Uh-huh.
- 2 Q. Is that correct?
- 3 A. Correct, yes.
- 4 Q. Okay. And as a result of that particular situation,
- 5 did you lose your home as well?
- 6 A. Correct.
- 7 Q. Okay. And did that create stress for you?
- 8 A. Well, that's when my anxiety started.
- 9 Q. Okay.
- 10 A. Yes.
- 11 Q. All right. Now, you're living with your son, as I
- 12 understand it now. Are you living at his house or
- 13 your house?
- 14 A. We're in an apartment.
- 15 Q. You're in an apartment, okay.
- 16 A. Uh-huh.
- 17 Q. All right. Your source of income at this point that
- 18 in time would be then just Social Security?
- 19 A. Correct.
- 20 Q. Did you have a pension from Unum?
- 21 A. No.
- 22 Q. Okay. All right. Now, with regard to we'll call it
- 23 the face injury, because I can't pronounce the word.
- 24 A. T.N.
- 25 Q. T.N., all right.

1 A. Yes.

2 Q. You -- you are taking medication for that now; does
3 that keep it under control?

4 A. I just take enough for it to calm it, but it's
5 always there though.

6 Q. Okay.

7 A. Yeah.

8 Q. All right. All right. And what medication are you
9 taking with regard to your low back, hip, and leg
10 problems?

11 A. I can't take anything.

12 Q. You're not taking anything?

13 A. I can't take anything.

14 Q. Tegretol does not upset your stomach when you take
15 that?

16 A. It does, but I don't have a choice.

17 Q. Okay. Does that help you with regard to your lower
18 back injury at all?

19 A. No. It's not for that kind of pain, it's for ---

20 Q. Okay.

21 A. --- nerve.

22 Q. All right.

23 A. The face.

24 Q. All right. Now, are you continuing to have
25 treatment with acupuncture at this point?

1 A. Yes.

2 Q. Okay. Are you seeing any other medical providers at
3 this juncture?

4 A. No.

5 Q. Okay. Do you have any meetings with any doctors in
6 the future set up, any ---

7 A. Not as ---

8 Q. --- appointments?

9 A. --- today. No.

10 Q. I'm sorry?

11 A. Not as of today.

12 Q. Okay. Are you planning to go see another doctor
13 with regard to your injuries?

14 A. I plan on getting more acupuncture treatments.

15 Q. Okay. Other -- other than that?

16 A. No.

17 Q. Okay. And has there been any indication as to how
18 long you have to take acupuncture treatments?

19 A. Well, the one person at Carolina Holistic, I asked
20 her, and she told me that I should get one every
21 week, but then she wasn't giving me the appointments
22 to have that done.

23 Q. Okay. Do you have anybody who could testify as to
24 how often and how long you're going to have to have
25 these acupuncture treatments?

1 A. No.

2 Q. Okay. All right. Are you still going to your
3 family doctor?

4 A. Yes.

5 Q. Okay. Is she giving you any treatment for any of
6 these injuries?

7 A. Just the Tegretol.

8 Q. Sorry. Say it again.

9 A. Tegretol.

10 Q. Okay. Okay. Tell me what you can't do now that you
11 could do before you had this fall.

12 A. Pretty much everything. I can't ---

13 Q. Are you ---

14 A. --- take my dog out to ---

15 Q. Okay.

16 A. --- the park. I have trouble walking, trouble with
17 my right leg, going picking up my right leg, stairs.

18 Q. Okay. Bending, stooping, that kind of stuff?

19 A. Yes.

20 Q. Okay. Let me ask you something. When you walk,
21 does the -- the mere fact of walking cause greater
22 pain to -- to -- to be generated?

23 A. Yes. Most of the time though it's sitting and
24 getting up from the sitting position or getting up
25 from my bed, ---

1 Q. Okay.

2 A. --- is when there's a lot of pain.

3 Q. So basically the greater pain is from movement, from
4 a sitting or a lying position to either standing or
5 -- or again a sitting position.

6 A. Yes, but when walking, I feel like I'm being pushed
7 back. I have to put a lot of effort ---

8 Q. Okay.

9 A. --- to walk.

10 Q. All right. And really my question is this, if
11 you're walking, does the fact that you walk for a
12 while cause greater pain so that you have to sit
13 down to relieve it?

14 A. Yes.

15 Q. Okay. Did you get diagnosed with claudication?

16 A. With what?

17 Q. Claudication.

18 A. I don't know what that is.

19 Q. Okay. It's just what I described, where -- where
20 you walk. All right. Has anybody indicated you
21 need to undergo surgery with regard to the injury to
22 your low back?

23 A. No.

24 Q. Okay. Has the fracture at the L5 level resolved
25 itself, to your knowledge?

1 A. I don't believe so, 'cause I still feel that pain
2 right there.

3 Q. Okay. Has any doctor given you a permanent
4 impairment rating as a result of that injury?

5 A. No.

6 Q. Okay. Has any doctor indicated how long that
7 particular condition is going to last?

8 A. No.

9 Q. Okay. At this point you don't have any further
10 appointments with any doctors?

11 A. No.

12 Q. Okay. All right. Now, my understanding is you
13 weren't working at the time this accident happened,
14 so you don't have a claim for lost income, as I
15 understand it?

16 A. Correct.

17 Q. Okay. So your claim is obviously for whatever
18 medical expenses you have and the injuries that you
19 had from this accident, along with the pain and
20 suffering and that type of thing?

21 A. Correct.

22 Q. Anything else?

23 A. Well, the mental anguish I'm going through.

24 Q. Okay.

25 A. You know, I've had to be put in humiliating

1 positions.

2 Q. Such as?

3 A. Well, when I got the epidural needle, I was in a
4 room with two men, and I was being exposed right
5 there.

6 Q. Okay. Now, my understanding is you had one
7 epidural; am I right?

8 A. Right.

9 Q. And do you have any appointment for any other?

10 A. No, because they -- they're painful, and they're not
11 doing anything for me.

12 Q. Okay. All right. What other embarrassment or
13 humiliation have you had to go through?

14 A. Well, just, you know, walking around like I'm an old
15 woman, and I don't consider myself old.

16 Q. You're not.

17 A. Just being -- being able to do what I'm doing, what
18 I can't do anymore.

19 Q. Okay. Anything else?

20 A. No.

21 Q. Okay. That's all the questions I have. My cohort
22 here is going to ask you a whole lot more.

23 MR. LAFAVE:

24 No.

25 MR. MOORE:

1 So you may want to take a break.

2 MR. LAFAVE:

3 Do you want to take a break for a bit?

4 THE DEPONENT:

5 No. I'm fine. If anybody wants to, that's
6 fine.

7 MR. LAFAVE:

8 I think I'm all right.

9 MR. MOORE:

10 Oh, I'm fine, yeah.

11 MR. LAFAVE:

12 Okay. All right.

13 EXAMINATION BY MR. LAFAVE:

14 Q. Ms. Bird, my name is Matt LaFave. I'm here as the
15 attorney for PetSmart. Obviously, counsel asked you
16 a number of questions, and I'm going to do my best
17 to not repeat any of them, but I want to start back
18 with some of the background information again. Your
19 visits with your family doctor, I think you said her
20 name was Dr. Aragon?

21 A. Correct.

22 Q. Do you see her on a regular basis?

23 A. Yes.

24 Q. How often do you see her?

25 A. Well, when I have a need to. When I have a problem,

1 I call her. I'm either on the phone with her, or I
2 go into the office.

3 Q. Okay. So you don't see her on any set schedule ---

4 A. No.

5 Q. --- every two months, every six months?

6 A. Well, I do my six month labs, and you know, she
7 prescribes the medication that I need.

8 Q. And that medication being the Tegretol?

9 A. Tegretol and I take Prilosec for my acid reflux, and
10 I take Carafate, which is for ulcers.

11 Q. Any other medicine that you take on a regular basis?

12 A. No. Just those three right now.

13 Q. Which of those three were you actively taking in
14 September when this fall happened?

15 A. Just the acid reflux medication, Prilosec.

16 Q. And I know you mentioned your workers' comp claim.
17 Have you ever filed any claims for disability,
18 short-term, long-term disability?

19 A. No.

20 Q. Have you ever filed for bankruptcy?

21 A. After my divorce, I did.

22 Q. Okay. And when was that?

23 A. I believe 2004 or '05.

24 Q. Okay. And I assume that's since been closed out?

25 A. Yes.

1 Q. Okay. Other than the motor vehicle accident that
2 you talked about in 1988, you ever have any other
3 incidents that caused you back or neck pain?

4 A. No.

5 Q. And I think this may have been asked, and I
6 apologize for ---

7 A. Well, actually I'm sorry. In 2009.

8 Q. Okay.

9 A. I had I would say a slip at Walmart.

10 Q. Okay. Tell me a little bit more about that, what
11 Walmart store?

12 A. It was in Harbison, I think.

13 Q. Down in Columbia then?

14 A. Yes.

15 Q. Okay. What happened in the -- in that slip?

16 A. Well, I was coming around the end of one aisle,
17 going to the next, and having my cart in front of me
18 I didn't see it, so I slipped. My right leg hit the
19 wagon, the cart, and I ended up on my left knee.

20 Q. Okay. So one leg hit the cart, and you went down on
21 your left knee?

22 A. On the left knee, yes. More ---

23 Q. Okay.

24 A. --- like a kind of a split thing.

25 Q. Understand. What caused the slip?

1 A. I don't know. It was something on the -- on the
2 floor.

3 Q. Okay. How did you injure your back in that
4 incident?

5 A. I think I just sprained it, 'cause after physical
6 therapy I was fine.

7 Q. Okay. So you received medical treatment following
8 that incident?

9 A. Yes. I went to urgent care, and I went to
10 orthopaedic, and I went to physical therapy.

11 Q. All right. What urgent care did you go to?

12 A. I believe it's Lexington Medical on St. Andrews.

13 Q. Okay. What orthopaedist?

14 A. Again, in Lexington Medical, it just says Physical
15 Therapy Service.

16 Q. Okay. Do you know the name of the orthopaedist that
17 you saw?

18 A. Not offhand.

19 Q. Oh, that orthopaedist was with Lexington Medical?

20 A. Correct.

21 Q. And if I understood, you were saying you got therapy
22 at Lexington Medical as well?

23 A. Yes, it's a whole big to do ---

24 Q. All right.

25 A. --- everything in there.

1 Q. The orthopaedist, what Lexington facility was he or
2 she at?

3 A. He was with Moore Orthopaedic.

4 Q. Okay. All right. Where was the physical therapy
5 facility located?

6 A. At Lexington Medical.

7 Q. At the main hospital or at a different location?

8 A. It's a couple of -- it's on the same road.

9 Q. Okay.

10 A. Yeah.

11 Q. So over off Sunset Boulevard?

12 A. St. Andrews.

13 Q. Oh, St. Andrews, okay.

14 A. Yes.

15 Q. All right. The treatment that you received back in
16 1988, how much physical therapy did you have after
17 that motor vehicle accident?

18 A. I can't recall. I'm sorry.

19 Q. Do you know ---

20 A. I don't remember.

21 Q. --- where that was?

22 A. No.

23 Q. Did you make a full recovery?

24 A. Yes, I did.

25 Q. Any diagnostic tests that you had after the 1988

1 incident or the 2009 incident?

2 A. No.

3 Q. No MRIs or CT scans?

4 A. I don't recall. But there wasn't a diagnosis or
5 anything.

6 Q. Did you make bodily injury claims for those two
7 incidents?

8 A. The '88, I did.

9 Q. Okay. Did you make a claim against Walmart for the
10 slip incident?

11 A. I just wanted them to pay for my physical therapy.

12 Q. Okay. And did they?

13 A. I hope so, 'cause they released them from me, from
14 it.

15 Q. Okay. So you didn't receive any financial
16 compensation for that incident?

17 A. Not that I recall. No.

18 Q. All right. Do you remember what the financial
19 compensation was for the motor vehicle accident?

20 A. They just paid for the surgery that I had on my
21 shoulder.

22 Q. Okay. So you actually had surgery on your shoulder
23 ---

24 A. Yes.

25 Q. --- following the car accident?

1 A. Correct.

2 Q. Okay. Any other surgeries that you've had?

3 A. No. Not to do with that accident. Is that what
4 you're asking?

5 Q. Just generally speaking.

6 A. Oh. Well, I have had surgery in my left eye in
7 2013, surgery on my stomach for the acid reflux
8 2015, the I think -- I can't remember any other,
9 other than my hand, the two surgeries on my hand.

10 Q. Okay. The surgery that you had on your eye, does
11 the issue that you have, does it affect your vision
12 in any way?

13 A. Oh, no. It was cataract surgery, so they put in a
14 new lens in that.

15 Q. Okay. All right. Do you know what your vision is
16 today?

17 A. Not really.

18 Q. No?

19 A. Do you know what your prescription is?

20 A. Not really.

21 Q. When was the last time you had your eyes checked?

22 A. Recently.

23 Q. Where do you go?

24 A. It's a vision center off of on the parkway.

25 Q. Uh-huh. Are you nearsighted or shortsighted or

1 farsighted?

2 A. I'm both.

3 Q. Okay.

4 A. At my age, I'm both.

5 Q. Okay.

6 MR. MOORE:

7 Join the crowd.

8 EXAMINATION RESUMED BY MR. LAFAVE:

9 Q. Okay. All right. Let's move back to your trip to
10 the store. Tell me where the refrigerators are
11 located after you walk in the front set of doors.

12 A. They're all the way in the back.

13 Q. All right.

14 A. Just before the Benifield (phonetic).

15 Q. All right. On the right side or the left side?

16 A. Depending if I'm walking into the Walmart -- that's
17 into PetSmart?

18 Q. You've just passed -- let's say you've just passed
19 through the entrance doors, and you're walking back
20 towards ---

21 A. It's on the left side of the entrance.

22 Q. Okay. Where are they located in relation to the
23 start or the end of the aisle?

24 A. I was a-quarter-of-the-way in, I believe, that I
25 remember.

1 Q. Okay. So you walk in. You make a left to the
2 aisle, are they on your right side or left side?

3 A. They're on the right side.

4 Q. Okay. Are there any distinct markings on any of the
5 three refrigerators to tell you who operates those
6 refrigerators?

7 A. It says Freshpet on the top.

8 Q. Okay. Say Freshpet on the top of all three of them?

9 A. I don't remember, but it says Freshpet on top.

10 Q. All right. And I know you said that you left your
11 dog in your car, and you didn't have to get a cart;
12 is that right?

13 A. Right.

14 Q. Did you have anything in your hands?

15 A. No, just my bag over my shoulder.

16 Q. Okay. Was there anything blocking your vision from
17 seeing all the way down the aisle?

18 A. I don't believe so.

19 Q. Okay. Anything blocking your vision of seeing the
20 floor?

21 A. There was nothing on the floor.

22 Q. Okay. You testified earlier that you had already
23 gotten the food.

24 A. Right, from the refrigerator on the left side of the
25 center.

1 Q. All right. That was going to be my next question.
2 Okay. So you got the -- the food. Did you slip at
3 all as you approached the cooler to get the food?

4 A. No, because when I walked in, I always do this for
5 visual, I walked to the opposite side. I walked on
6 the left-hand side of the aisle to get a better
7 visual of to find the food that I wanted. So when I
8 didn't see the food that I wanted, I went with what
9 they had, which was the Freshpet in the roll on the
10 left. It was on the top shelf of the left-handed
11 refrigerator.

12 Q. Okay. So that's not the normal food that you get
13 for your dog?

14 A. No.

15 Q. Okay. Had you ever gotten that food for your dog
16 before?

17 A. No. They hardly had anything in the refrigerators.

18 Q. Okay. How old is -- how old was your dog on
19 September 6th?

20 A. She's going to be 12, so she was nine.

21 Q. All right. How often would you go into that
22 particular PetSmart location?

23 A. Actually, I always ordered online and went as far as
24 the register. 'Cause I ordered it online, not the
25 fresh food, you can't order that online, that's why

1 I had to go in. This was the second time I went in
2 to get Freshpet.

3 Q. Okay. When was the first?

4 A. August 29th of 2019.

5 Q. Okay. So you got Freshpet roughly a week before
6 this incident?

7 A. About nine ---

8 Q. Is that ---

9 A. Nine days or so.

10 Q. Okay.

11 A. Right.

12 Q. Anything out of the ordinary with the refrigerators
13 in August?

14 A. Well, the center refrigerator was still same
15 condition that I found it ---

16 Q. Okay.

17 A. --- September 6th.

18 Q. Any water on the floor that day?

19 A. I wasn't paying attention.

20 Q. Okay. But obviously you didn't slip and fall in
21 August, correct?

22 A. Well, obviously, yes.

23 Q. Okay. All right. So you opened the door, get the
24 food, do you turn then to walk away?

25 A. Right. I had stepped back to shut the door.

- 1 Q. Okay.
- 2 A. And walked across the center fridge, I turned to my
3 right to walk away, and that's when I fell.
- 4 Q. How far were you away from the fridge when you fell?
- 5 A. I was right next to it.
- 6 Q. Okay. How -- any idea how far?
- 7 A. Well, it must have been on my second, my -- my one
8 step, I turn, and then when I took the next step is
9 when I fell. It's right next to it.
- 10 Q. Okay. So and I'm just trying to -- I'm trying to
11 process. You back away, close the door, and then
12 you said you turned to your right, correct?
- 13 A. Right.
- 14 Q. And then you took one step, and then on your second
15 step you fell?
- 16 A. Right.
- 17 Q. Okay. So that would -- would it have been your
18 right foot that slipped?
- 19 A. I'm thinking it might have been the left one.
- 20 Q. Okay. As far as your shoulder, your would have been
21 your left shoulder was closest to the refrigerator?
- 22 A. Before I fell?
- 23 Q. Yes, ma'am.
- 24 A. The center refrigerator.
- 25 Q. Correct, but your ---

1 A. Yes.

2 Q. --- left shoulder was closest ---

3 A. Yes.

4 Q. --- to the center refrigerator?

5 A. Yes.

6 Q. Okay. How far was your left shoulder from the
7 refrigerator?

8 A. Oh, I don't know.

9 Q. Okay. How far out away from the center refrigerator
10 did the water extend?

11 A. Well, when I was sitting across, where they sat me,
12 when they turned -- twisted me around and sat me down
13 on the chair, I could still see the clear water
14 there. It was a little smudged from me, but I could
15 still see it up to where I was sitting, to my feet,
16 where I was sitting. So, it was out pretty much...

17 Q. This may sound like a trick question, but it's not.
18 Do you know how far out from the refrigerator it was
19 extending before the fall happened?

20 A. No, I didn't see it before.

21 Q. Okay. So you don't know, other than how it was
22 smudged after you fell, how far out it was
23 extending; is that fair to say?

24 A. Right.

25 Q. Okay. All right. You mentioned a male employee got

1 to you first?

2 A. Correct.

3 Q. All right. Can you describe him for me?

4 A. He was a thin guy, like maybe five, seven. I don't
5 know if he was Spanish or lighter African American
6 man.

7 Q. All right. And what all did he say to you when he
8 got there?

9 A. He just started screaming for help.

10 Q. Okay.

11 A. He seemed upset.

12 Q. Okay. Did he say anything to you directly?

13 A. No.

14 Q. All right. How long were you on the floor before he
15 got there?

16 A. Well, I called out hello three times. I don't think
17 it was that long.

18 Q. Okay. Did he say anything to you about water on the
19 floor?

20 A. No.

21 Q. Did he say anything to you about an issue with the
22 cooler leaking?

23 A. No.

24 Q. Okay. Did you notice anything else in the aisle, on
25 the floor, in the area of the refrigerators?

- 1 A. No.
- 2 Q. Okay. Was there a wet floor sign present?
- 3 A. No.
- 4 Q. And how do you know for sure?
- 5 A. 'Cause I didn't see one.
- 6 Q. Okay. All right. The next person that came I think
- 7 you testified earlier was Jordan Coates?
- 8 A. Well, what after I -- they -- they got me up, 'cause
- 9 I couldn't see anything before I got up, the way I
- 10 fell. With my head slanted, all I could see is the
- 11 -- the floor, the tile.
- 12 Q. Okay.
- 13 A. So when they got me up is when three people were
- 14 there.
- 15 Q. Okay. Do you know the order in which they got to
- 16 you?
- 17 A. Like I said, other than that young first man, ---
- 18 Q. Okay.
- 19 A. --- I'm assuming the other two came afterwards.
- 20 Q. Okay. All right. Did either -- and I think you
- 21 said the female employee's name was also Jordan?
- 22 A. Correct.
- 23 Q. Did either of the Jordans say anything to you about
- 24 knowing that there was water on the floor?
- 25 A. No.

1 Q. Did either of them say anything to you about knowing
2 they had a leaking cooler?

3 A. No.

4 Q. Do you have anything that would indicate that they
5 knew that there was water on the floor before your
6 fall?

7 MR. CREECH:

8 Object to the form.

9 EXAMINATION RESUMED BY MR. LAFAVE:

10 Q. You can answer.

11 A. No.

12 Q. The epidural that you had, that was in your low
13 back?

14 A. Yes.

15 Q. Okay. And where does that go in? Where do they
16 inject the needle in your low back? Did they go
17 above your waistline, below waistline?

18 A. It was below the waistline.

19 Q. Okay. And you said that did not help, correct?

20 A. No.

21 Q. All right. Physical therapy did not help either?

22 A. No.

23 Q. What exactly did they do for you at Piedmont
24 Comprehensive, what kind of treatment?

25 A. That was the getting the -- the brace and the

1 epidural.

2 Q. Okay. So those were the only two things that they
3 did treatment-wise?

4 A. They, well, they took X-rays of my hips.

5 Q. All right. Was that the last place you got medical
6 treatment before you transitioned into the getting
7 acupuncture?

8 A. Yes.

9 Q. Okay. Has there been any treatment recommended for
10 you by a medical doctor that you haven't received?

11 A. No.

12 Q. The trigeminal neuralgia, do you know what the
13 original cause of that was?

14 A. For me or that ---

15 Q. Yes, ma'am. Do you -- do you know, did -- did Dr.
16 Thompson tell you what caused you to start having
17 the trigeminal neuralgia?

18 A. Dr. Thompson didn't, but Dr. Rico at my primary
19 doctor's office told me it could be due to stress.

20 Q. Okay. So back in 2018 when you saw Dr. Thompson, he
21 didn't indicate to you what the cause of it was?

22 A. No.

23 Q. All right. And what type of doctor is Dr. Thompson?

24 A. He's a neurologist.

25 Q. You only saw him on one occasion?

1 A. Correct.

2 Q. The anxiety that you had in the past, did you ever
3 have to take medication for it?

4 A. I took medication for depression and anxiety.

5 Q. Who did you see that was prescribing you with those
6 medications?

7 A. Dr. Tolhurst.

8 Q. Where does Dr. Tolhurst practice?

9 A. I'm assuming it's in Columbia somewhere.

10 Q. Okay. What kind of medication were you taking?

11 A. I was taking Lexapro for depression and Klonopin for
12 anxiety.

13 Q. When did you stop taking those medications?

14 A. Oh, it's been a while.

15 Q. Since this fall have you had to resume taking any of
16 those medications?

17 A. No.

18 Q. The pars defect, has any doctor told you what
19 actually caused that to be present in your low back?

20 A. Has any doctor told me?

21 Q. Yes, ma'am.

22 A. No -- I don't know.

23 Q. And I think the wrapping up question is you were
24 talking about some things that you can't do. Do you
25 have any hobbies that you had prior to this ---

- 1 A. Well, I like ---
- 2 Q. --- that you had to abandon?
- 3 A. I liked to do gardening, and I was doing cardio, and
- 4 dancing is my favorite thing to do.
- 5 Q. Okay.
- 6 A. I used to exercise by dancing.
- 7 Q. Okay. Does ---
- 8 A. Can't do all those things anymore.
- 9 Q. Okay. The location where you live now with your
- 10 son, is that a home or an apartment?
- 11 A. Apartment.
- 12 Q. Okay. At the apartment, would there be a place for
- 13 you to do any gardening?
- 14 A. On my balcony, but I can't even do that.
- 15 Q. Okay. Where would you do your cardio?
- 16 A. Usually in the gym, in the apartment homes.
- 17 Q. Okay. So you wouldn't go to a gym to exercise
- 18 outside of the apartment ---
- 19 A. No.
- 20 Q. --- complex? Okay. All right. But as far as the
- 21 dancing goes, would you go out for dancing?
- 22 A. No, not outside. I dance to videos.
- 23 Q. Okay.
- 24 A. And YouTube.
- 25 Q. Got it.

1 MR. MOORE:

2 Aerobics.

3 MR. LAFAVE:

4 Okay. All right. Those are all the questions
5 I have for you. I appreciate it.

6 THE WITNESS:

7 Okay.

8 MR. MOORE:

9 Before you get started, let me ask a ---

10 MR. CREECH:

11 Sure. Yeah.

12 MR. MOORE:

13 --- couple of follow-ups ---

14 MR. CREECH:

15 Go ahead, sure.

16 MR. MOORE:

17 --- then you can close it.

18 MR. CREECH:

19 No problem.

20 FURTHER EXAMINATION BY MR. MOORE:

21 Q. When you fell, my understanding is you were taken
22 over to a chair to sit down; am I right?

23 A. Yeah, they swung me around ---

24 Q. Okay.

25 A. --- to the -- sit that's ---

1 Q. How far from those refrigerators was that chair
2 located?

3 A. It's -- it was right against the -- the other side
4 of the aisle, on the shelves.

5 Q. What would you estimate that distance to be?

6 A. I'd say maybe, I'm trying to think of -- two, three
7 feet maybe ---

8 Q. Okay.

9 A. --- from the refrigerator.

10 Q. All right. Now, second area, you obviously had an
11 injury to your low back that we've talked about.

12 A. Yes.

13 Q. Did you have an injury to your shoulder and neck
14 region?

15 A. My neck is -- bothers me also.

16 Q. Okay.

17 A. But not the shoulder.

18 Q. Not the shoulder, all right. Are you receiving
19 treatment for your neck?

20 A. No.

21 Q. Okay. Did any -- did they -- they do any MRIs or CT
22 scans or X-rays of your neck?

23 A. Yes, they did.

24 Q. Did they indicate you had any degenerative changes
25 there as well?

- 1 A. Correct.
- 2 Q. Okay.
- 3 A. And a pinched nerve.
- 4 Q. And a pinched nerve, what, where was the pinched
- 5 nerve?
- 6 A. C7.
- 7 Q. Okay. C6,7?
- 8 A. Yes.
- 9 Q. Okay. And other than having I assume that's an MRI
- 10 -- MRI ---
- 11 A. Uh-huh.
- 12 Q. --- there, did they give you any further treatment
- 13 for that particular injury?
- 14 A. Excuse me, for which injury?
- 15 Q. The C6,7 injury, where you said you had ---
- 16 A. Oh.
- 17 Q. --- a pinched nerve.
- 18 A. No. That would be, no. No. I -- I was surprised
- 19 they didn't give me a collar or anything.
- 20 Q. Okay. Did they give you any injections?
- 21 A. The Dr. J. ---
- 22 Q. Yeah.
- 23 A. --- felt it was whiplash.
- 24 Q. Okay. Has that cleared up with time?
- 25 A. No.

1 Q. Okay. All right. Thank you.

2 A. Okay.

3 MR. MOORE:

4 Now, Tom's got another hour's worth, so...

5 MR. CREECH:

6 No. I don't.

7 EXAMINATION BY MR. CREECH:

8 Q. Quick, just a couple of quick questions. The
9 anxiety that you've had, did the fall cause you
10 anxiety?

11 A. Again, yeah, bad -- bad stressing, a lot of
12 stressing.

13 Q. Okay. Tell me about the anxiety and the stress that
14 you had before this accident, if any, and then after
15 the accident, can you just describe that in your own
16 words, the before and after?

17 A. I had a life before my fall. I wasn't stressing
18 about anything and did what I enjoyed doing, enjoyed
19 time with my dog, and now it's completely different,
20 and I'm -- I'm sad. I can't do anything anymore.

21 Q. Okay. How often would you walk your dog before?
22 Let's talk before the accident. Describe your
23 engagement, your involvement with your dog. What's
24 your dog's name?

25 A. Caroline.

1 Q. Okay. Tell us a little bit about your engagement
2 with Caroline before you fell.

3 A. I would take her out about four or five times a day.
4 We'd go to the park when weather allowed.

5 Q. Which park?

6 A. Out here and like with -- with another -- well, I
7 came here beginning of '19 to Greenville. So the
8 park would have been in Columbia.

9 Q. Okay.

10 A. I don't remember the name of the park.

11 Q. Okay. And then how afterwards, after the fall,
12 describe your engagement with Caroline, are you able
13 to walk her at all?

14 A. I don't. Not at first I couldn't. My son was
15 taking her out. Recently, once spring started, I
16 started to go out with her a little bit more. But I
17 take her out later in the evening or early in the
18 morning, because she's very social, and she wants to
19 run to people, and I can't have her pull me. So
20 she's pretty much isolated, too, and I feel bad for
21 her.

22 Q. Okay. The trigeminal neuralgia that you've
23 described, in the days before the accident, weeks
24 before the accident, months before the accident, was
25 it giving you any problems or ---

1 A. No.

2 Q. --- issues?

3 A. No.

4 Q. Did you have any symptoms from trigeminal neuralgia?

5 A. No. It'd gone away.

6 Q. It'd gone away. Were you taking any medication for
7 the trigeminal neuralgia before the accident?

8 A. No.

9 Q. Okay. And then when did you start experiencing
10 symptoms with the tralgemina (phonetic) --
11 trigeminal neuralgia after the accident, how soon
12 after the accident?

13 A. It was a couple of months later, it was maybe
14 between three to six months later. I can't really -
15 - I can't pinpoint when it was, but when I started
16 ordering my medication again, I think I -- it was
17 either March or June.

18 Q. Okay.

19 A. And about I think it was about six months later.

20 Q. Okay.

21 A. If I'm not mistaking.

22 Q. And one of doctors said that it was the -- the
23 stress that was causing you -- causing the flare-up
24 of your trigeminal neuralgia?

25 A. Yes, Dr. Rico at the -- at the center where the --

1 for my primary doctor.

2 Q. And was this the stress from the life changes you
3 were experiencing because of the accident?

4 A. Yes, 'cause I -- I'm depressed all the time, and I
5 worry about what my future's going to be.

6 Q. Okay.

7 A. So...

8 Q. Those are all the questions I have. Thank you.

9 MR. LAFAVE:

10 I think -- I think I have one really quick
11 follow-up.

12 FURTHER EXAMINATION BY MR. LAFAVE:

13 Q. Prior to the accident, had you ever required a cane
14 or a crutch or any ---

15 A. No.

16 Q. --- devices to walk?

17 A. No.

18 Q. What about since the accident?

19 A. I -- I don't require one.

20 Q. Okay. No doctor's prescribed you a cane or anything
21 like that?

22 A. No.

23 Q. Okay. All right. That's all I have.

24 MR. MOORE:

25 We're done.

1 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
2 CONCLUDED AT THE HOUR OF 11:14 A.M.)

3 * THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
4 MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE
5 SPEAKER.
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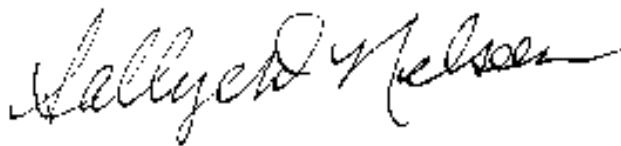
CERTIFICATE OF NOTARY PUBLIC

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED
AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 82 PAGES
REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING
DEPOSITION OF CAMILLE BIRD, TAKEN BY ME ON THE 20TH DAY OF
JULY, 2022.

THAT THE DEPONENT WAS DULY PLACED UNDER OATH AND
ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL
TESTIMONY WAS DULY TAKEN AND TRANSCRIBED AS TO THE
QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL OFFERED EXHIBITS, STIPULATIONS AND
OBJECTIONS, IF ANY, INVOLVED IN THIS CAUSE ARE DULY
ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 1ST DAY
OF AUGUST, 2022.



SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 05/05/2032

DEPOSITION ERRATA SHEET

Assignment No.: J8402631

Case Caption: Camille Bird v. Petsmart, LLC and FreshPet,
Inc.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read
the entire transcript of my deposition taken in the above-
captioned matter or the same has been read to me, and the
same is true and accurate, save and except for changes
and/or corrections, if any, as indicated by me on the
DEPOSITION ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under oath.

Signed on the day of , 20 .

Camille Bird

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CAMILLE BIRD
BIRD V. PETSMART

July 20, 2022

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Jordan Coates
January 12, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Camille Bird,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	CA NO. 2022-CP-23-00564
	)	
PetSmart, LLC and FreshPet,	)	
Inc.,	)	
	)	
Defendants.	)	
	)	
_____	)	

DEPOSITION OF JORDAN COATES
JANUARY 12, 2023

PURSUANT to Notice and/or agreement between the parties, the deposition of JORDAN COATES, called by the Plaintiff, was taken commencing at the hour of 10:04 A.M. on Thursday, January 12, 2023 at the law offices of Thomas M. Creech, Jr., 15 Brendan Way, Suite 215, Greenville, South Carolina.

Barbara M. McCurley, Court Reporter

APPEARANCES:

Law Offices of Thomas M. Creech, Jr., LLC
15 Brendan Way, Suite 215
Greenville, South Carolina 29615
By: Thomas M. Creech, Jr., Esquire.
.....On behalf of the Plaintiff

Crowe LaFave Garfield & Bagley, LLC
Post Office Box 1149
Columbia, South Carolina
By: Matthew C. LaFave, Esquire
.....On behalf of Defendant PetSmart, LLC

Turner Padget Graham & Laney, P.A.
200 East Broad Street, Suite 250 (29601)
P.O. Box 1509
Greenville, South Carolina 29602
By: David L. Moore, Jr., Esquire
.....On behalf of the Defendant FreshPet,
Inc.

STIPULATIONS: The within deposition was taken pursuant to
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
reserved by the witness and by the parties.

Jordan Coates
January 12, 2023

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1 JORDAN COATES, having first been duly sworn to tell
2 the truth, testified as follows:

3 EXAMINATION

4 By Mr. Creech:

5 **Q.** Mr. Coates, good morning. My name is Tom Creech.
6 I'm a lawyer here in Greenville, South Carolina and
7 I represent Camille Bird in her case against
8 PetSmart and FreshPet. The South Carolina Rules of
9 Civil Procedure require me to give you a few
10 instructions as we go forward -- and really, just
11 one instruction. And that is, if you don't
12 understand a question that I ask, if you will just
13 direct your question back to me and I'll try to
14 answer your question or I'll try to clarify. If
15 you don't understand something, just let me know
16 and I'll try to rephrase my question, but if you
17 don't understand something, just ask me. You're
18 not allowed to have any kind of private off-the-
19 record conferences with the lawyer for PetSmart.
20 If you do, I can ask you about what you talked
21 about, okay ...

22 A. Okay.

23 **Q.** ... with him. Just -- have you ever had your
24 deposition taken before?

25 A. I have not.

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1 **Q.** Okay. So, a couple of things just to get started
2 is let me finish my question before you answer it
3 and if you will answer verbally as opposed to
4 nodding or shaking your head.

5 **A.** Okay.

6 **Q.** And if you'll answer with a "yes" or "no", as
7 opposed to an uh-huh or an uh-uh, just so -- and
8 all that's just for the sake of the clarity of the
9 record, so that we understand what your answer is.
10 Understand that?

11 **A.** I do.

12 **Q.** Fair enough.

13 **MR. MOORE:** Jordan, you're a little soft spoken, so
14 ...

15 **MR. CREECH:** Yeah.

16 **WITNESS:** Yeah.

17 **MR. MOORE:** ... for those of us who are semi-deaf,
18 if you can speak up (laughter)...

19 **WITNESS:** I can do that.

20 **Q.** You -- and again, the court reporter has a
21 microphone here, but you may want to, you know,
22 speak loudly enough so that the microphone will
23 pick up everything that you're saying, okay.

24 **A.** Okay.

25 **Q.** Again, if you don't understand a question that I

**Jordan Coates
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1 ask, just -- just feel free to -- feel free to ask
2 me to clarify, okay.

3 A. Absolutely.

4 Q. All right. Very good. Could you state your full
5 name for the record, please.

6 A. Jordan Lee Coates.

7 Q. Okay. And what's your current address, Jordan?

8 A. 202 Farlow Court, Anderson, South Carolina.

9 Q. Okay. And how do you spell Farlow?

10 A. F-a-r-l-o-w.

11 Q. And your zip code?

12 A. 29621.

13 Q. Okay. Very good. Where were -- what's your date
14 of birth?

15 A. 8/5/91.

16 Q. And can you give us your Social Security Number.
17 We can seal this information for the record so it
18 won't be disclosed in a public way at all.

19 MR. MOORE: Put the last four digits on the record.

20 MR. CREECH: Yeah.

21 A. XXX-XX-0179.

22 Q. All right. Jordan, how far did you go in school?

23 A. Master's degree.

24 Q. In what?

25 A. Business.

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- 1 **Q. And from what institution?**
- 2 A. For the Master's degree?
- 3 **Q. Yeah.**
- 4 A. North Carolina A&T State University.
- 5 **Q. Okay. And do you have a bachelor's degree as well?**
- 6 A. Yes.
- 7 **Q. From where?**
- 8 A. Lander University.
- 9 **Q. In business?**
- 10 A. Psychology.
- 11 **Q. Okay. Where did you go to high school?**
- 12 A. I was home schooled.
- 13 **Q. Where were you born and raised?**
- 14 A. Partially in North Carolina -- Mount Airy, North
- 15 Carolina, the first ten years and then the rest
- 16 here, in Greenville.
- 17 **Q. All right. You were born in?**
- 18 A. Statesville, North Carolina.
- 19 **Q. Okay. Where are you currently employed?**
- 20 A. With PetSmart in Anderson, South Carolina.
- 21 **Q. And what's your position there?**
- 22 A. Store leader.
- 23 **Q. How long have you worked for PetSmart?**
- 24 A. Ten -- it'll be ten years this September.
- 25 **Q. Okay. And did you -- so that would be -- you**

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1 **started up in 2013. Is that correct?**

2 A. Correct.

3 **Q. All right. Is that your first job out of ...**

4 A. Out of school, yeah.

5 **Q. ... out of school? Okay. Did you -- your MBA, did**
6 **you do that online or did you do that in person?**

7 A. It was in person.

8 **Q. Okay.**

9 **MR. MOORE: Was it an MBA or just a Master's in**
10 **Business?**

11 **WITNESS: It was a MBA.**

12 **MR. MOORE: Okay.**

13 **Q. And you went to work for PetSmart in 2000 -- I**
14 **mean, when you got your MBA, so that was 2013?**

15 A. Yeah. I started with PetSmart during my master's
16 program, so I started with them -- I think it was
17 maybe, a few months into my master's program, I
18 started with PetSmart.

19 **Q. Okay. So when did you get your MBA? What year was**
20 **that?**

21 A. It would have been -- maybe it was 2014, I think,
22 was when I finished my program.

23 **Q. Okay. All right. So what was your first position**
24 **with PetSmart?**

25 A. Part-time stocker.

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1 **Q. Okay. And was that here in Greenville?**

2 A. It was in -- up in Burlington, North Carolina.

3 **Q. All right. And then when did you go full time?**

4 A. Shortly after. It was maybe, three months after
5 starting.

6 **Q. Okay. And what was your first position full time?**

7 A. It was -- at the time, it was called the pet
8 product manager.

9 **Q. Okay. So what did you do as the pet product**
10 **manager?**

11 A. I was the truck leader, pretty much. It was early
12 morning -- led a stock team.

13 **Q. And what were your duties and responsibilities in**
14 **that regard -- in that position?**

15 A. Most of the duties with that position were making
16 sure that we unloaded freight and got it out on the
17 shelves on time and keep a stock team developed,
18 and ready to go.

19 **Q. Okay. What were -- what are the other positions**
20 **you've held with PetSmart?**

21 A. I've held a lead position, which was just a --
22 like, normal day to day key holder; a merchandising
23 leader; and a assistant store leader, before my
24 current role as a store leader.

25 **Q. Okay. Where were you the -- I think you said the**

1 **lead position.**

2 A. Uh-huh (Affirmative answer).

3 **Q. The lead position, where was that? What store?**

4 A. That was at the Anderson store.

5 **Q. Okay. And then you were the merchandising leader.**

6 **What store?**

7 A. The Anderson store.

8 **Q. All right. And you were assistant store leader**

9 **where?**

10 A. Anderson and Woodruff Road, the Greenville store.

11 **Q. Okay. All right. So, in all those positions have**

12 **you become familiar with the PetSmart policies and**

13 **procedures?**

14 A. Yes.

15 **Q. You know them well, would you say?**

16 A. Yes.

17 **Q. Okay. Have you, in your experience working with**

18 **PetSmart, done inspections of floors to look for**

19 **spills and the presence of water, and other things**

20 **like that?**

21 A. Yes.

22 **Q. Okay. Can you describe for me the training that**

23 **you've had at PetSmart?**

24 A. I'm not really sure what you mean like, in regards

25 to training. Like, as in like positional training

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1 or what do you mean?

2 **Q. Well, I mean the -- you've been trained at**
3 **PetSmart. Is that right?**

4 A. Yes, yes ...

5 **Q. Okay.**

6 A. ... for every position.

7 **Q. Okay. And does that training consist of just on-**
8 **the-job training or is it -- have you taken, you**
9 **know, training, formal training administered by**
10 **PetSmart?**

11 A. Yes. So, we -- we have -- it's mixed between the
12 two. So, we'll have -- we'll have a portion of our
13 training goes from on-the-job, which will be like -
14 - depending on the position, depends on the time
15 that you would have for on-the-job training. And
16 then we have our like, video book work, kind of,
17 training as well for every position.

18 **Q. And what's video book work?**

19 A. That usually covers areas around pet safety;
20 leadership; any sort of management laws that we
21 need to be aware of; any of the system management
22 that we have; any sort of safety related items, as
23 well.

24 **Q. Okay. And is that like, in a -- on a computer that**
25 **you watch at work ...**

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1 A. Yes.

2 **Q. ... or how does that work?**

3 A. Yeah, it's on a computer. So we'll have -- we'll
4 have some -- some are videos and then some is just
5 reading through policies and procedures, but it's
6 all through the computer at the store.

7 **Q. And you do that -- is there a certain location at**
8 **the store, like a -- a room or training room, or**
9 **conference room?**

10 A. Yes. At the time -- PetSmart's grown a lot, so we
11 have -- we have some different things. So, when I
12 first started, we had book work, which was just
13 wherever, and then we've grown to having a training
14 room, where we have a computer in our break room,
15 that we're able to go through the training process,
16 as well.

17 **Q. Okay. And do you get any kind of credit or**
18 **recognition when you complete a training course**
19 **online, I guess ...**

20 A. Yes. We have ...

21 **Q. ... for PetSmart?**

22 A. We have like, a certification piece that we usually
23 answer a couple of questions or some sort of quiz
24 that -- that then gives us a check mark that it's
25 been completed.

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1 **Q.** **Okay. And is there a record -- a computerized**
2 **record kept on you or any employee ...**

3 **A.** **Yes.**

4 **Q.** **... that indicates the training that you've**
5 **completed?**

6 **A.** **Yes.**

7 **Q.** **Okay. So, have you -- what kind of training have**
8 **you received on recognizing -- well, on inspection**
9 **of floors and stuff? Can you tell me about that?**

10 **A.** I think that that -- that would fall under our
11 general safety training, which would go with our
12 slips, trips, and falls, and -- and general store
13 safety.

14 **Q.** **And that would be online ...**

15 **A.** **Yes.**

16 **Q.** **... with PetSmart? Is that right?**

17 **A.** **Yes.**

18 **Q.** **Okay. When do you think you took that online**
19 **course on the general safety training course?**

20 **A.** I'm not sure of the date of that. We do continued
21 education, so we have a slip, trips, and falls
22 continued education that we do every single year.

23 **Q.** **Uh-huh.**

24 **A.** So, every single employee in the -- in the company
25 goes through that every year.

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1 **Q.** **Okay. And you do that every year ...**

2 **A.** **Yes.**

3 **Q.** **... or do you have it just one time or is it ...**

4 **A.** **Annual.**

5 **Q.** **... annual training?**

6 **A.** **It's a annual training.**

7 **Q.** **So the general safety training at PetSmart is done**
8 **for every employee ...**

9 **A.** **Yes.**

10 **Q.** **... every year?**

11 **A.** **Yes.**

12 **Q.** **And it's repeated every year.**

13 **A.** **Yes.**

14 **Q.** **Is that correct?**

15 **A.** **Correct.**

16 **Q.** **Okay. All right. So you've received training from**
17 **PetSmart on hazardous conditions within the store.**
18 **Is that correct?**

19 **A.** **Yes.**

20 **Q.** **Would you agree that water or a liquid substance on**
21 **the floor at PetSmart can present a danger to**
22 **customers, employees, to anyone in there. Is that**
23 **correct?**

24 **Mr. LaFave: Object to the form.**

25 **A.** **Yeah.**

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1 **Q. Do you have -- have you been trained on how to**
2 **handle customer injuries occurring within the**
3 **store?**

4 A. Yes.

5 **Q. Okay. Can you tell me just a little bit about that**
6 **training?**

7 A. That training just involves like how we're supposed
8 to react in those moments. So, we're supposed to
9 go and make sure that -- at first case, if the
10 person's okay and if an ambulance needs to be
11 called. And after that, we have our paperwork
12 process to make sure that the person's taken care
13 of.

14 **Q. Okay. So, describe the process that you've been**
15 **trained in when you first become aware that a**
16 **customer has been injured in the store.**

17 A. For me, it is -- so, what we've been trained as
18 leaders is that we're supposed to step in, make
19 sure -- ask if the person's okay, if we need to
20 call an ambulance for them. And from that response
21 is where we go. If they say yes, then we would
22 immediately call 9-1-1. If they say no, then we're
23 gonna take the next steps as to making sure that
24 they are -- they're okay, whether -- for whatever
25 they need, and then get their information down to

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1 submit into our -- our system for in-store injury.

2 **Q. Okay. And then what -- how do you go about**
3 **gathering information?**

4 A. Usually it's through conversation with the -- with
5 the person that was injured, so I would usually get
6 a notepad or something like that and be able to go
7 over to them and get their name and number, and
8 address, contact information. Sometimes, a
9 statement from them, if needed, depending on what
10 happened.

11 **Q. Okay. Have you been -- or what -- so, that's as a**
12 **store leader. Is that correct?**

13 A. It's as any leader.

14 **Q. Okay.**

15 A. All of our leaders are trained to be able to handle
16 that because it could happen at any point in time
17 during operation.

18 **Q. All right. And when you say leader, is that just**
19 **another name for an employee who may -- they're not**
20 **necessarily a manager. Is that correct?**

21 A. So, we don't -- none of our positions are managers,
22 technically. So when -- I guess, all of our roles
23 are leaders. So, you got store manager, store
24 leader, all the way down to our lead with keys. We
25 just change the manager to leader. But when I say

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1 -- when I say leader, I mean anybody that has the
2 ability to hold keys and be in control of the store
3 at the time.

4 **Q. Okay. What other kinds of employees work at**
5 **PetSmart beside from leaders?**

6 A. Outside of leaders, we have our general associates,
7 which would be either pet care department, cashier,
8 anybody in our services, so it could be training,
9 grooming, bathing. At Woodruff Road, when I was
10 there, they had their whole hotel, as well, which
11 is an entire leadership team along with associates.

12 **Q. Okay. And if an associate -- based on your**
13 **training and experience, if an associate comes upon**
14 **a customer who's been injured on the premises,**
15 **let's say, in a fall, what is the associate's**
16 **responsibility?**

17 A. The associate's responsibility is to react
18 accordingly. If it's -- if it's a danger to the --
19 to the injured party, then they need to react and
20 call 9-1-1. If it's something that's not -- that's
21 not an immediate danger, they usually reach out to
22 a leader.

23 **Q. Okay. So -- and then when you arrive to the scene**
24 **of where the fall may have occurred, again, you**
25 **describe you take down information from the**

1 customer that's been injured. Is that correct?

2 A. Correct.

3 Q. All right. And then after that has been done and
4 you feel like the customer is taken care, you then
5 fill out reports. Is that right?

6 A. Yes.

7 Q. Okay. What do you do in terms of documenting any
8 kind of hazard or injury scene within the store?

9 A. Depending on what it is, I usually -- the
10 expectation is to -- to clean up whatever --
11 whatever issue has caused it. Whether it be a -- I
12 don't even know. It could be between pee on the
13 floor or whether it be a broken fixture or anything
14 like that, the expectation is to be able to get it
15 cleaned up and fixed.

16 Q. Okay. Now, customers are allowed to bring their
17 animals into the PetSmart stores. Is that right?

18 A. Correct.

19 Q. And have you seen in your experience that
20 occasionally, pets will urinate and essentially, go
21 to the bathroom on the floor of the PetSmart. Is
22 that correct?

23 A. Yes.

24 Q. Okay. And then how does -- how do PetSmart
25 employees clean up those types of incidents?

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1 A. We have oops stations gathered throughout the store
2 that will have towels and wet floor signs. The
3 procedure involved with that is that we notice it,
4 we put a wet floor sign down, we go and we clean up
5 the mess, and we keep the wet floor sign in that
6 location.

7 **Q. Okay. And then how are employees at PetSmart to**
8 **inspect the floors for you know, for any substance,**
9 **any foreign substance whether it be water, liquid,**
10 **pet urine, or any other type of substance?**

11 A. Are you referring to like reaction time or like,
12 what are you -- what are you referring to as far as
13 ...

14 **Q. How does PetSmart -- how do PetSmart employees**
15 **detect the presence of water, liquids, pet urine,**
16 **anything on the floor.**

17 A. Usually, through some sort of visual inspection
18 like, when we're -- when we're walking around, just
19 reacting when we see it.

20 **Q. Okay. So, do -- are PetSmart employees trained to**
21 **be on a constant look out for the presence of**
22 **substances on the floor?**

23 A. Yes.

24 **Q. And in your experience, how often would you see**
25 **substances on the floor, like, liquids and stuff,**

1 whether it be water, pets, things like that?

2 A. Regularly.

3 Q. Regularly?

4 A. Yeah.

5 Q. And pets would, I guess, regularly urinate on the

6 floor. Is that correct?

7 A. Yes.

8 Q. Do you recall there ever being a customer falling

9 as a result of stepping into pet urine?

10 A. Yes.

11 Q. And was that at the Woodruff Road store? Do you

12 remember -- recall that happening?

13 A. I do not.

14 Q. Just at one of the stores where you've worked?

15 A. Yeah, yeah. I've seen it happen before, yes.

16 Q. Okay. And -- I mean, how many times would you say

17 you've cleaned up pet urine on the floor at

18 PetSmart?

19 A. Yesterday or ...

20 Q. Yeah. Thank you.

21 A. Regularly ...

22 Q. Two or three times a day?

23 A. Yeah, at least.

24 Q. Are you -- are you familiar with these FreshPet

25 fridges that are in PetSmart stores?

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1 A. Yes.

2 **Q. And are there FreshPet fridges in the store in**
3 **Anderson?**

4 A. Yes.

5 **Q. Were there FreshPet fridges in the store in**
6 **Burlington?**

7 A. Yes. Not at the time when I was there. FreshPet
8 was pretty -- it's still pretty new to the company
9 in that sense. So I don't think -- I think I had
10 left the Burlington store before FreshPet started
11 with PetSmart.

12 **Q. Okay. But they were there when you worked as a**
13 **merchandising leader in Anderson.**

14 A. Yes.

15 **Q. Is that right? And also, at Woodruff Road. Is**
16 **that correct?**

17 A. Yes.

18 **Q. All right. And the FreshPet fridges, had they --**
19 **at Woodruff Road, did they leak?**

20 A. Yes.

21 **Q. Had you seen the FreshPet fridges leak at any other**
22 **store?**

23 A. Yes.

24 **Q. And was that -- be the Anderson store?**

25 A. Yes.

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1 **Q. What was -- did you -- did you ever learn or find**
2 **out about the cause of -- what was causing the**
3 **FreshPet fridges to leak?**

4 **A. Sometimes it's -- it's condensation. Sometimes**
5 **it's -- it could be any sort of fault with the**
6 **fridge. I mean, like most refrigerators, they have**
7 **some sort of drain pans in the bottom of them so if**
8 **they -- if they were to fill up or anything like**
9 **that, it could leak.**

10 **Q. Yeah. Well, tell me about your experience with the**
11 **FreshPet fridges leaking. Can you -- aside from**
12 **this case that we're gonna talk about in just a**
13 **little bit, I want to talk just, you know,**
14 **generally, globally about your experience with the**
15 **FreshPet fridges leaking. Can you tell me your**
16 **experience with that at the different stores that**
17 **you've been an employee of PetSmart?**

18 **A. With my time with FreshPet, working with those**
19 **coolers, it's not crazy often that we've seen them**
20 **happen, but they have leaked on occasion. They**
21 **have like a silver pan on the bottom that we could**
22 **- we could empty out, that we would check pretty**
23 **regularly during hot summers and stuff where --**
24 **where there could be a little more condensation**
25 **pooling at the bottom.**

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1 **Q. And you -- did PetSmart employees check that pan on**
2 **the bottom of the FreshPet fridges?**

3 A. No, not usually.

4 **Q. How was that handled?**

5 A. It was usually handled if -- if we noticed that
6 there was any sort of leak or something, we would
7 check those pans personally to try and keep -- make
8 sure that we didn't have any water pooling on the
9 floor. But usually, if there -- most of the
10 maintenance stuff was handled by FreshPet.

11 **Q. Okay. And is that -- tell me your experience with**
12 **the FreshPet fridges at Anderson. If you can**
13 **recall specifically.**

14 A. I don't -- I don't really -- I don't really know.

15 **Q. Yeah. Do you remember the FreshPet fridges at the**
16 **Anderson store ever spilling out liquid or leaking,**
17 **or anything like that, from the pan?**

18 A. Possibly. I'm not -- I -- I can't recall which
19 times -- if there's -- if it was a FreshPet fridge
20 or if it was another cooler. We've had -- we have
21 pet care fridges as well and stuff, so some -- some
22 take maintenance that we have to put in work orders
23 for if they break or something like that, and can
24 leak. I'm not positive about the FreshPet
25 specifically.

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1 **Q. Right. When did you start working at the**
2 **Greenville store on Woodruff Road?**

3 A. I'm pretty sure it was the -- had to be end of
4 August, beginning of September 17, 18. I was
5 only at Woodruff Road for a year. I'm not -- I'm
6 not positive on the year, though.

7 **Q. Okay. Well, this incident that we're here for**
8 **today happened in 2019.**

9 A. 19, that was probably the year that I started
10 then, so -- cause I was there from -- from like,
11 August through the following September of 2020.

12 **Q. Okay. What was your experience with FreshPet**
13 **fridges leaking at the Woodruff Road store while**
14 **you were there?**

15 A. Outside of this current incident, I don't recall
16 any other issues.

17 **Q. Okay. All right. Do you recall this incident?**

18 A. A little bit. I remember the leaking fridge and
19 somebody slipping in it.

20 **Q. Yeah. What do you remember about the leaking**
21 **fridge?**

22 A. The only thing that I remember is that we had
23 noticed that it was -- that it was pooling at that
24 time -- after she had fallen, that we had looked
25 into the fridge and found that the pan was full and

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1 that it needed to be worked on.

2 **Q. Okay. The -- and that was, you say, after she**
3 **fell, y'all looked into why there was water on the**
4 **floor. Is that right?**

5 **A. Correct.**

6 **Q. And there was water on the floor. Is that right?**

7 **A. Correct.**

8 **Q. All right. And who all looked at the fridge to**
9 **determine that?**

10 **A. It was probably me and the store leader at the**
11 **time.**

12 **Q. And who was that?**

13 **A. Don Johnson.**

14 **Q. And do you remember specifically looking at the**
15 **pan?**

16 **A. I know that that's -- that's the usual action that**
17 **I take. I can't -- I can't remember specifically**
18 **at that situation looking at that, but usually when**
19 **we see a pool of water on the floor and if we have**
20 **determined it's not urine, then usually, I'm**
21 **looking at -- at the pans and seeing if they're**
22 **overflowing or anything like that ...**

23 **Q. Right.**

24 **A. ... and need to be cleaned up.**

25 **Q. And do you have any knowledge of how long it takes**

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1 for those pans to fill up before they start leaking
2 onto the floor?

3 A. No.

4 Q. You remember this incident. Is that right?

5 A. Yes.

6 Q. Okay. Were you working on September the 6th, 2019,
7 which I'll represent to you is the date of this
8 incident?

9 A. Yes.

10 Q. You were?

11 A. Yes.

12 Q. Okay. What time were you reporting to work that
13 day? Do you remember?

14 A. We looked at the time cards. I'm pretty sure I was
15 -- I was 9 to 6 that day, so I'm pretty sure I came
16 in around 9 o'clock.

17 Q. What time does the store open?

18 A. 9am.

19 Q. 9am, okay. And then what is the -- when you first
20 arrive on -- at work, what is your -- what are your
21 first responsibilities?

22 A. Depending on when I come in, my first
23 responsibilities are usually around seeing where --
24 where the morning tasks are and where the team's at
25 with -- with opening procedures and just kind of

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1 generally where the -- where the store's at with --
2 with the day and what tasks were assigned for the
3 day.

4 **Q. And how does that process work?**

5 A. Usually, in the mornings, for me, when I was there
6 as the assistant, I would walk in and probably
7 update myself in the office for a little while.
8 Maybe 30 minutes to an hour of being in there. And
9 then I would walk around the store and check with
10 each department, each associate, and where we're at
11 with the morning.

12 **Q. Okay. And what -- what do you mean by where we're**
13 **at with the morning?**

14 A. As in opening tasks for pet care, where -- what
15 kind of dogs we have in our grooming salon, any
16 sort of safety issues, or anything like that or, if
17 we had any call-outs in any sort of departments, or
18 if we were missing any employees, if we had to
19 react based off of that. I guess, general
20 leadership tasks. So, I would walk around and kind
21 of, make sure that we -- if it was a truck day,
22 where we were at with finishing our trucks out on
23 the floor, but usually around there.

24 **Q. Okay. All right. Did the -- you remember -- do**
25 **you remember which -- where this incident -- this**

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1 **fall took place?**

2 A. I -- I don't recall the exact aisle number. I know
3 that it's the aisle that we keep all of our coolers
4 in.

5 **Q. Okay. And did you -- would you regularly walk up**
6 **and down that aisle when you arrived at work to**
7 **begin your shift?**

8 A. That aisle specifically?

9 **Q. Uh-huh.**

10 A. Probably not, but we would do a -- a walk-through.

11 **Q. Okay. Who would do a walk-through?**

12 A. Depending -- usually, it's the opening leader, so
13 it would be the -- the 4 or 6am leader does the
14 walk-through of the store.

15 **Q. Okay. And who -- who would have been the open**
16 **leader?**

17 A. I believe we determined that it was -- Yojan was
18 our opening leader that morning.

19 **Q. Yojan. Do you know how to spell Yojan's name?**

20 A. I think it was Y-o-j-a-n.

21 **Q. And do you know his last name?**

22 A. If I remember, Berrios, maybe, B-e-r-r-i-o-s.

23 **Q. Okay. What were his responsibilities as the**
24 **opening leader?**

25 A. He was the merchandising leader, so he would be

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1 responsible for the truck and stocking, and ...

2 **Q. Okay. So what would he do -- can you just -- I**
3 **don't know -- I've never worked at PetSmart so is**
4 **it ...**

5 **A. Generally ...**

6 **Q. If he's responsible for the truck and stocking, can**
7 **you explain it to me?**

8 **A. So, for him -- a normal morning for him would**
9 **probably be coming in and if it was a truck day, it**
10 **would be him and a stocker that would come in and**
11 **pull pallets out to the floor and work -- work the**
12 **product onto the shelves.**

13 **Q. Okay. And they would walk through the aisles of**
14 **the store. Is that correct?**

15 **A. Yes.**

16 **Q. Okay. And that would include the aisle where the**
17 **FreshPet fridges were. Is that correct?**

18 **A. Yes.**

19 **Q. Okay. And they would normally walk through every**
20 **aisle in the store. Is that correct?**

21 **A. Depending, I guess, yes.**

22 **Q. If they were -- they were tasked with doing an**
23 **inspection of the store. Is that right?**

24 **A. Yes.**

25 **Q. And that's the -- before the store opened, correct?**

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1 A. Yes.

2 Q. Okay. And so, if they were tasked with inspecting
3 the floors of the store, that would include every
4 aisle of the store. Is that right?

5 A. Yes.

6 Q. Okay. So, it's likely that they would have walked
7 down the aisle where the FreshPet fridges were
8 sometimes between 4 and 6, or between 6 and 9
9 o'clock in the morning. Is that right?

10 A. Yes.

11 Q. Okay. And they would be looking for things on the
12 floor to see if everything was -- if there were any
13 safety issues. Is that correct?

14 A. Yes.

15 Q. Okay. So -- well, just tell me -- what do you
16 remember about this incident involving Ms. Bird?

17 A. For me, the only thing that I truly remember about
18 this incident was that somebody had slipped and
19 fallen by the coolers. One of the -- I can't
20 remember if it was the associate or leader at the
21 time, came and let me know that somebody had
22 fallen, that she was sitting up on a chair at the
23 time, or I think it was one of our step-stools.

24 Q. Hold on. I'm sorry. (Someone coughing.)

25 A. I think she was sitting on one of our step-stools.

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1 **Q. Okay.**

2 A. And had requested me to get the information down.

3 **Q. Did the -- this associate leader that informed you,**
4 **did they tell, you know, what they thought had**
5 **happened or what -- what was that initial**
6 **conversation like? Do you remember?**

7 A. The initial conversation, she -- I -- from what I
8 remember ...

9 **Q. It's between you and the associate leader is what**
10 **I'm talking about.**

11 A. Correct. From what I remember, is that it was over
12 the radio. She just said somebody slipped and
13 fell, and she was requesting me to come over there.

14 **Q. Okay. Then when you got there, what did you see?**
15 **Do you remember?**

16 A. From what I saw -- is that I remember seeing that
17 she was sitting on the -- the red step-stool.

18 **Q. It was red?**

19 A. I believe so.

20 **Q. Okay. And you remember that?**

21 A. I -- I remember that our step-stools are red.

22 **Q. Okay. All right. And you remember she was sitting**
23 **on the step-stool, correct?**

24 A. Correct.

25 **Q. Okay. And then what -- so when you got there, she**

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1 was sitting on the red step-stool. And this -- you
2 say she -- this is the woman that was later
3 identified as Ms. Bird. Is that correct?

4 A. Yes.

5 Q. Okay. And then what did you -- what did you see
6 aside from her sitting on the red step-stool?

7 A. Outside of that, I know that we had -- I'm trying
8 to remember exactly what ...

9 Q. Yeah. Take ...

10 A. ... was going on at the time.

11 Q. Take your time.

12 A. I know that it was her and I'm pretty sure it was
13 either one or two of our associates were in the
14 aisle at the time. And as far as surrounding goes,
15 I remember that we had the wet floor signs by the -
16 - by the cooler and I'm not sure how much water was
17 in front of it, but I do remember seeing that there
18 was water on the floor.

19 Q. Okay. If we could mark this.

20 (Exhibit number 1 marked for identification.)

21 Q. Is that -- do you know who took this picture?

22 A. It was either me or one of the associates when we
23 were filling out our report.

24 Q. Okay. That's Plaintiff's Exhibit number 1. And
25 what -- would you have taken this with a -- what

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- 1 camera would you have taken this with?
- 2 A. Probably one of our phones.
- 3 Q. Okay.
- 4 A. And just sent it to the email.
- 5 Q. All right. And sent it to which email?
- 6 A. Our store email.
- 7 Q. Okay. And what is that store email?
- 8 A. It would be m1300@petsmart.com.
- 9 Q. M as in Mary?
- 10 A. Yes.
- 11 Q. At petsmart.com?
- 12 A. Yeah.
- 13 Q. All right. Have you -- did you ever go back and
- 14 check the email to see if you sent this picture?
- 15 A. I did not because I don't have access to that
- 16 anymore, with me no longer being a leader at that
- 17 store.
- 18 Q. Okay. Were you given a store phone or did you have
- 19 your own personal phone?
- 20 A. It was my own personal phone.
- 21 Q. And if you took this picture with your own personal
- 22 phone -- it would have been with your own personal
- 23 phone. Is that right?
- 24 A. Correct.
- 25 Q. Okay. And you would have emailed it from your own

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1 **personal email address to the store?**

2 A. Yeah, it would be.

3 **Q. Okay. Have you gone back and looked at your email**
4 **to see if you emailed it?**

5 A. I did not.

6 **Q. You have not gone back and looked?**

7 A. I have not gone back and looked. I'm not sure
8 which email it would have been. And it may have
9 been -- I know it was an old phone of mine cause I
10 changed phones a couple of years back. So, I'm not
11 positive what that would have been through.

12 **Q. Okay. Was -- did anyone at PetSmart ever explain**
13 **to you to save any kind of pictures or evidence**
14 **that you may have gathered in this case or in this**
15 **claim?**

16 A. No, because we submit it in our -- in our
17 reporting, the pictures and stuff. So, they
18 wouldn't expect us to hold on to it after that.

19 **Q. Did they tell you not to hang onto that or is that**
20 **just your understanding?**

21 A. That's my understanding.

22 **Q. Okay. But did anyone from PetSmart come to you and**
23 **say you need to save the picture that you took?**

24 A. No.

25 **Q. All right. And you think the picture -- if you**

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1 took it, it would have been taken -- when was that
2 picture taken?

3 A. Probably sometime after the incident.

4 Q. Okay. When you say sometime after the incident, do
5 you mean on the day of the incident or later?

6 A. It would -- it would be on the day of the incident.
7 We would -- this is part of our reporting process
8 so once -- once the injured party was -- was taken
9 care of, after -- after that person had left,
10 that's when we would go and we would take a
11 picture, and we would go through the -- the filing
12 the incident.

13 Q. Okay. When you arrived on the scene initially,
14 where Ms. Bird was sitting on the step-stool, did
15 you see a wet floor sign?

16 A. Yes.

17 Q. How many -- did you -- did I understand you earlier
18 to say that there were wet floor signs or just one
19 sign?

20 A. I can't remember if we had one or two. I can't
21 remember.

22 Q. Had you been down that aisle that morning prior to
23 going over there to see Ms. Bird?

24 A. I don't remember that -- if I had or not.

25 Q. Okay. Do you remember seeing a wet floor sign that

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1 morning at all before you went over to the aisle?

2 A. I ...

3 Q. ... to see about Ms. Bird?

4 A. I do not.

5 Q. Okay. Now, when you got there -- are you able --

6 if we look at Plaintiff's Exhibit number 1, are you

7 able to see any water on the floor in that picture?

8 A. I'm not positive.

9 Q. Well, just looking at it ...

10 A. Yeah, just looking at it, I don't -- I can't -- I

11 can't distinguish between just the shine of the --

12 of the tile and if there's water there or not.

13 Q. Okay. So just looking at this picture, you can't

14 see if there's any water there, in that picture,

15 anywhere, correct?

16 A. Correct.

17 Q. And is the FreshPet fridge the black refrigerator

18 in the middle of the picture?

19 A. Yes.

20 Q. Okay. And is that picture -- I mean, had you ever

21 -- is that the -- the refrigerator that you say had

22 -- the pan had been overflowing with water. Is

23 that ...

24 A. I could assume so. That's usually what would cause

25 those to leak.

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1 **Q.** But you said after Ms. Bird fell, after the
2 incident, you and maybe, the store leader -- I
3 think Mr. Johnson -- was that his name?

4 A. Yeah.

5 **Q.** You guys pulled the pan and it looked like it was
6 overflowing. Is that right?

7 A. Yeah. That's what we usually do whenever there's
8 any sort of cooler leak.

9 **Q.** And when it -- all right. And that's the fridge --
10 the black fridge there in the picture in
11 Plaintiff's Exhibit number 1 that you would have
12 pulled the pan from. Is that right?

13 A. Yes.

14 **Q.** Okay. And do you remember determining that yes,
15 the pan had been overflowing?

16 A. I think so. From -- from what I remember, whenever
17 we've had any sort of -- like if there's -- if
18 there's water coming out of that fridge, we would
19 take towels and have to open that front piece to
20 get the water out of the pan.

21 **Q.** How deep is the pan? Can you describe that for me?

22 A. A couple of inches deep, maybe.

23 **Q.** Okay. And about how wide would you say it is?

24 A. I believe it spans the bottom of the fridge -- of
25 the cooler.

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1 **Q. How long? So, the length of the pan would be the -**
2 **- across the fridge. Is that correct?**

3 A. Correct. It's not like a pan that you would pull
4 out like your personal fridge or something like
5 that. It's -- it's kind of just like a -- a silver
6 base that spans close to the bottom of the cooler.
7 I don't -- I don't think there's a way to remove
8 it. From what I've -- from what I've gathered,
9 whenever we've had any sort of incident like that,
10 where there's some water under there, we just have
11 to grab towels to be able to get the water out.

12 **Q. Okay. And how -- is it -- what is the width of the**
13 **pan?**

14 A. I -- from -- from what I recall is that it's the
15 whole -- close to the whole base of the cooler.

16 **Q. Close to the whole base of the cooler. So what is**
17 **the width of that cooler?**

18 A. A couple of feet, maybe. Three feet, maybe.

19 **Q. Okay.**

20 A. I'm not positive.

21 **Q. And then so, if we look at this picture -- so you**
22 **would estimate this across the front here as about**
23 **three feet. Is that right?**

24 A. It -- yeah, it could be three to four feet.

25 **Q. Okay. And how far back would you say the cooler**

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1 **goes?**

2 A. Two to three feet.

3 **Q. Okay. So the pan would be about two to three feet**
4 **by two to three feet is your estimation?**

5 A. I believe so.

6 **Q. And it's about two or three inches deep.**

7 A. Correct.

8 **Q. Okay. All right. And when you arrived -- I mean,**
9 **there was water on the floor. Is that right?**

10 A. From what I remember, yes.

11 **Q. Okay. How big was the puddle of water, if you can**
12 **remember?**

13 A. I do not remember that. I'm not sure.

14 **Q. All right. And was water -- do you remember seeing**
15 **water flowing out from the machine or ...**

16 A. No.

17 **Q. What do you remember about that?**

18 A. From what I remember is that I remember just seeing
19 that there was water on the floor. I don't -- it
20 wasn't something that was like gathering. If it
21 was something that was gathering, we would -- we
22 would probably have to have done some different
23 stuff, I would imagine.

24 **Q. And when you say gathering, what do you mean**
25 **gathering?**

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1 A. Like, when I say gathering, I mean like -- I used a
2 different word, but when you were saying flowing
3 out. I don't see it -- it wasn't flowing out.

4 **Q. Let me say it -- was there water flowing out**
5 **gushing out of the machine in any way?**

6 A. No.

7 **Q. Okay. Were you able to see the water spilling out?**

8 A. No.

9 **Q. So it wasn't like there was a faucet on and water**
10 **was coming out of a faucet or anything.**

11 A. Correct.

12 **Q. Okay. This just appeared to be water overflowing a**
13 **pan. Would you --**

14 A. Yes.

15 **Q. Is that your assessment?**

16 A. Yes.

17 **Q. Okay. Do you have any knowledge about how long it**
18 **would take for the water to overflow the pan?**

19 A. I do not.

20 **Q. How did Ms. Bird appear to you from what you**
21 **remember?**

22 A. From -- I -- I really don't remember too much of
23 the conversation outside of that I remembered that
24 she had fallen and we were able to have a
25 conversation and get the information placed.

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1 **Q.** **Okay. If you will, will you just draw on that**
2 **Plaintiff's Exhibit number 1 with that blue pen,**
3 **where the water was on the floor, that you saw.**

4 **A.** **From what -- I'm not positive where -- I don't**
5 **remember it being far out, though. That's kind of**
6 **...**

7 **Q.** **You may have to bear down a little bit and make**
8 **that a little stronger.**

9 **A.** **Yeah. That's kind of what I remember is it being**
10 **... about there.**

11 **Q.** **And if you can just write water in there. (Witness**
12 **marking the Exhibit.) Okay. And PetSmart**
13 **employees are trained to look for water on the**
14 **floor. Is that right?**

15 **A.** **Yes.**

16 **Q.** **Okay. When they do the inspections ...**

17 **A.** **Yes.**

18 **Q.** **... the floors?**

19 **A.** **Yes.**

20 **Q.** **Do you know if -- so either you took that picture**
21 **or another employee?**

22 **A.** **Yeah, it could have been one of the associates as**
23 **well. I don't recall if I delegated it or if I did**
24 **it myself.**

25 **Q.** **Okay. All right. Now, on the bottom corner of**

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1 this -- bottom lefthand corner of the picture is a
2 date that says, 9/25/19. Can you see that?

3 A. Yes.

4 Q. All right. Do you know what that date represents?

5 A. Not positive. I am not sure what that date
6 represents.

7 Q. Okay. Could it represent that that was the date
8 that the picture was taken?

9 MR. LAFAVE: Object to the form.

10 A. I'm not -- I'm not sure.

11 Q. All right. Can you be certain that that's not the
12 date that the picture was taken ...

13 MR. LAFAVE: Objection ...

14 Q. ... 9/25/19?

15 MR. MOORE: Same objection. It's already asked and
16 answered.

17 MR. CREECH: You have to still go ahead and answer
18 the question.

19 A. Can you repeat the question?

20 Q. Sure. You stated earlier that you're not sure what
21 that 9/25/19 date is at the lefthand corner of the
22 picture.

23 A. Correct.

24 Q. And I'm saying -- you said, you're not sure if it's
25 the date it -- the picture was taken.

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1 A. Correct, okay.

2 **Q. Can you be certain that that's not the date that**
3 **the picture was taken?**

4 **MR. LAFAVE: Object to the form.**

5 A. Correct. I can't be certain.

6 **Q. Okay. Is it possible that that picture could have**
7 **been taken on 9/25/19?**

8 A. It is possible.

9 **Q. All right. Do you remember -- has anybody ever**
10 **asked you to go take a picture of the cooler?**

11 A. We're required to have some sort of picture with --
12 with our incidents that we -- that we file in the -
13 - for any sort of injury or anything that we're
14 supposed to put -- they have a spot in the form for
15 a picture of the location of the incident.

16 **Q. Okay. Was there any surveillance camera or store**
17 **cameras trained on that location?**

18 A. No.

19 **Q. Did you look to see?**

20 A. I -- I know that there are not. We only have one
21 that covers the front of the store.

22 **Q. Okay. So that -- for loss prevention?**

23 A. Uh-huh (Affirmative answer).

24 **Q. All right. So there's no cameras on this aisle**
25 **where the FreshPet fridges were located. Is that**

1 right?

2 A. Correct.

3 Q. Bear with me for just a second. Let's see here. I
4 thought I had ...

5 MR. MOORE: What do you need?

6 MR. CREECH: The diagram of the store. Did I ...

7 MR. MOORE: Was this in your client's deposition?

8 MR. CREECH: I don't think so. I'm gonna check my
9 office. I'll be right back.

10 (Off the record.)

11 Examination resumed by Mr. Creech:

12 Q. I'll mark this as Plaintiff's 2.

13 (Exhibit number 2 marked for identification.)

14 Q. Mr. Coates, can you take a look at that,
15 Plaintiff's Exhibit number 2? I'm gonna ask you to
16 draw on it again. Will you tell me where -- where
17 is the front of the store?

18 A. It would be right here.

19 Q. Okay. Just write front. And where is the aisle
20 with the FreshPet fridge?

21 A. It would be this aisle here.

22 Q. Okay. If you just want to write FreshPet or
23 something like that. All right. And is that -- is
24 that an accurate -- fair and accurate
25 representation of the Woodruff Road store on the

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1 day that this happened, September 6, 2019?

2 A. Yes.

3 Q. That's what it looked like?

4 A. Yes.

5 Q. Okay. And which side of the aisle is the FreshPet

6 fridges? Which side of the aisle were they on?

7 A. It would be the right side coming in ...

8 Q. Yeah. If a customer comes down and turns to --

9 enters the aisle on the customer's left, the

10 fridges are on the right. Is that right?

11 A. Correct.

12 Q. Okay. Do you happen to remember which one was the

13 FreshPet fridge? Can you fill that in, if you

14 remember?

15 A. I do not. I'm pretty sure that it's this one. It

16 was the second one.

17 Q. Second one. Okay. All right. So, pretty much,

18 soon after entering the aisle. Is that right?

19 A. Correct.

20 Q. And there's no video cameras on that -- that are

21 trained on that aisle. Is that correct?

22 A. Correct.

23 Q. Okay. All right. Now, do you know how that --

24 there's a -- in this picture, that you've

25 represented was -- you believe was taken -- or this

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1 -- this was -- that you believe was taken by you or
2 another employee on the day that Ms. Bird fell, do
3 you know how that sign got there -- that wet floor
4 sign?

5 A. How it got there? I do not.

6 Q. Okay. Do you know who put it there?

7 A. I do not.

8 Q. Do you know why it was put there?

9 A. I do not.

10 Q. Okay. Do you know if it was put there or if it was
11 there before Ms. Bird fell?

12 A. From communication from my team, it was already
13 there.

14 Q. Okay.

15 A. That's -- that's the knowledge that I have.

16 Q. So tell me about that. Who told you that it was
17 there before Ms. Bird fell?

18 A. The -- the person that -- that reacted to her
19 falling.

20 Q. And do you remember who that person was?

21 A. Yeah it was -- her name was Jordan. I can't recall
22 her -- Mills, I think was her last name.

23 Q. Okay. And

24 COURT REPORTER: I'm sorry, Tom.

25 MR. CREECH: Jordan Mills.

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- 1 **Q.** And how do you spell -- M-i-l-l-s?
- 2 A. That's how I believe it's spelled, yes.
- 3 **Q.** Do you know if she's still a PetSmart employee?
- 4 A. She is not.
- 5 **Q.** Okay. Was she a part-time employee or ...
- 6 A. Yes. She was part time.
- 7 **Q.** All right. Do you know -- remember how old she was
- 8 when you interacted with her?
- 9 A. I do not remember her age.
- 10 **Q.** Okay. So what did she tell you about -- what did
- 11 Jordan Mills tell you about the sign?
- 12 A. I just remember her -- her making the statement
- 13 saying, hey, somebody fell and -- and when I had
- 14 come back, and after we had taken care of the
- 15 person that had fallen, that she had mentioned that
- 16 -- that the wet floor sign was already up and --
- 17 and over by where the water was.
- 18 **Q.** Okay. Do you -- but you -- do you have any -- did
- 19 Jordan Mills tell you who put that sign up?
- 20 A. I -- I don't remember that piece. I don't -- I
- 21 don't think she did. From the conversation that I
- 22 have -- that I remember from that time, was just
- 23 that they had made a statement saying that a lady
- 24 fell by a caution -- by a wet floor sign.
- 25 **Q.** Yeah. All right. And do you -- but you -- do you

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1 know -- we don't know when it was put down there.

2 A. I do not.

3 Q. By whom?

4 A. I do not.

5 Q. Or the reason for putting the wet floor sign up

6 there?

7 A. I do not.

8 Q. Do you know how long it had been there?

9 A. No.

10 Q. Do you remember seeing this sign at any time before

11 Ms. Bird fell? Not only the day she fell, but

12 days prior to that?

13 A. No.

14 Q. Did you ever place a sign out in front of the

15 FreshPet fridge? Wet floor sign out in front of

16 the FreshPet fridge in the Woodruff Road store?

17 A. Not that I recall.

18 Q. Okay.

19 A. It's possible.

20 Q. Right. Do you remember if that sign had been put

21 there in response to ongoing leaking of that

22 refrigerator?

23 A. I do not. I don't know.

24 Q. Okay. You did not do that. Is that correct?

25 A. Correct.

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1 **Q. All right. Did anyone tell you that they did?**

2 A. Not that I know of. I don't remember having any
3 sort of cooler conversation. Usually me or the
4 store leader would be contacted if there were any
5 sort of technical issues to be able to call in.

6 **Q. Okay. So the store leader, you mean store manager?**

7 A. Correct.

8 **Q. All right. Mr. Johnson?**

9 A. Yes.

10 **Q. Okay. So in order for there to be an ongoing sign**
11 **or kind of, almost like a permanent sign there in**
12 **front of that FreshPet fridge because of concerns**
13 **for ongoing leaking, that's a decision that you or**
14 **Mr. Johnson would have had to have made. Is that**
15 **correct?**

16 A. I don't -- I don't know if that's necessarily the
17 case. We have wet floor sign wherever there's
18 water or the possibility of water being present.
19 But what I meant -- as far as clarity goes, what I
20 meant was that one of us is usually communicated to
21 if there were issues with any sort of equipment for
22 us to be able to put in work orders to get fixed.

23 **Q. Okay. Who assisted Ms. Bird in leaving the store,**
24 **if anybody? Do you remember?**

25 A. I -- I can't remember if she left on her own

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1 volition or if she was helped. It's possible that
2 she was walked to her car. I cannot remember that.

3 **Q. Okay. Let's see here.**

4 **(Exhibit number 3 marked for identification.)**

5 **Q. I'm gonna hand you what's been marked Plaintiff's**
6 **number 3 and this is -- can you tell me what that**
7 **is?**

8 **A. This is the incident form that we use for any sort**
9 **of third party injuries or anything like that.**

10 **Q. Okay. And do you recognize your handwriting on**
11 **this?**

12 **A. Yes.**

13 **Q. All right. So you filled this out. Is that**
14 **correct?**

15 **A. Yes.**

16 **Q. Okay. When would you have filled this out?**

17 **A. After the -- after the incident.**

18 **Q. All right. How -- how -- how long after the**
19 **incident, you know, that day, two days later ...**

20 **A. It would have been the day of.**

21 **Q. Day of, okay. Very good. Let's see here. So,**
22 **according to this, she did not require first aid.**
23 **Is that correct?**

24 **A. Correct.**

25 **Q. The EMS was not called. Is that correct?**

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1 A. Correct.

2 **Q. It indicates photographs. Does that mean that**
3 **photographs were taken of the scene? Where it says**
4 **photographs, check, yes, what does that mean?**

5 A. That means that I -- I took a photo of the area to
6 post with the form.

7 **Q. Okay. And that -- is that you taking it or was**
8 **anybody, any employee taking the photographs?**

9 A. It could have been anyone. It could have been who
10 -- if I delegated to take a picture of the area to.

11 **Q. Okay. Now, where it says here, describe the**
12 **incident, that's your handwriting. Is that**
13 **correct?**

14 A. Yes.

15 **Q. All right. And you stated that customer slipped on**
16 **water. Is that right?**

17 A. Correct.

18 **Q. All right. And you confirmed there was water on**
19 **the floor, right?**

20 A. Yes.

21 **Q. All right. You indicated no damage. And what did**
22 **you mean by that?**

23 A. As in there wasn't any sort of damage to any sort
24 of like, property or anything like that. Like, if
25 she had fallen and if it was like a cooler had fell

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1 or if shelving or product had fallen or anything
2 like that, if there's damage to the -- to the
3 property as well.

4 **Q. Okay. And then the next line says, pet food fridge**
5 **has been leaking.**

6 **A. Yes.**

7 **Q. Okay. And does that indicate that -- how did you**
8 **know that the pet food fridge had been leaking?**

9 **A. Through the water on the floor.**

10 **Q. Okay. And it says, pet food fridge has been**
11 **leaking. Is that an indication that you were**
12 **having -- that the store was having problems with**
13 **this fridge leaking?**

14 **A. I don't remember if it was having problems with it**
15 **being leaking or if it was just me saying that -- I**
16 **was using the past tense as in like, there was**
17 **water on the floor so obviously the cooler's been**
18 **leaking.**

19 **Q. Okay. Did you mean that the -- there had been**
20 **ongoing leaking problem with the pet food fridge?**

21 **MR. LAFAVE: Object to the form.**

22 **A. I'm not aware if it was an ongoing problem or if it**
23 **was just found that day. I can't remember that**
24 **part.**

25 **Q. All right. And you write wet floor signs were**

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1 **present. Is that correct?**

2 A. Yes.

3 **Q. Okay. And that was wet floor signs were present**
4 **when? What did you mean by that?**

5 A. Wet floor signs were present during -- during the
6 time of me filling this form out or the incident at
7 hand. I'm not sure. I think that that's what I
8 meant. Where that we had wet floor signs up for
9 where the water was.

10 **Q. Okay. When?**

11 A. That's a great question. I -- from the
12 communication that I had, we already had wet floor
13 signs up, so that's what I meant by there were
14 present at the time of the injury.

15 **Q. Okay. You also wrote no witnesses. Is that**
16 **correct?**

17 A. Correct.

18 **Q. And then you wrote injured party did not seek**
19 **medical treatment. Will only see doctor if injury**
20 **worsens. Is that right?**

21 A. Correct.

22 **Q. And is that -- did you get that information from**
23 **whom?**

24 A. From the injured party -- from Ms. Bird, right?
25 Bird, yeah. From Ms. Bird, that when we had asked

1 if she wanted to seek medical treatment, that she
2 said that she would only go see a doctor if she was
3 feeling worse.

4 **Q. Okay. Let me go back to the -- the statement that**
5 **you made about the pet food fridge has been**
6 **leaking. You didn't write anywhere in this**
7 **statement that the -- the water leaked from the**
8 **fridge. Is that correct?**

9 **A. Correct. Yeah, that's not in the statement.**

10 **Q. Right. And so, would you think that a fair**
11 **interpretation is this pet food fridge has been**
12 **leaking that it indicates there had been an ongoing**
13 **leak with the pet food fridge?**

14 **MR. LAFAVE: Object to the form.**

15 **A. It's possible. I'm just not -- I'm not positive as**
16 **to if it had been ongoing. I -- from my knowledge,**
17 **is that -- that if it was ongoing, it would be very**
18 **short term like, noticed that day. Because usually**
19 **we have that communication that if there's any sort**
20 **of issues with the coolers.**

21 **Q. Okay. And it says, noticed that day. What do you**
22 **mean by that?**

23 **A. What I mean by that is that if, somebody had**
24 **noticed that there was water on the floor and put**
25 **the wet floor sign out, that that's when they**

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1 probably initially noticed there could have been an
2 issue.

3 **Q. Okay. That could have been causing the leaking?**

4 A. Yeah.

5 **Q. An issue with the fridge causing the leaking?**

6 A. Yes.

7 **Q. And that's why they would have put a wet floor sign**
8 **out?**

9 A. Correct.

10 **Q. Okay. At that point, an employee that would have**
11 **made that decision, they should have notified a**
12 **team leader to get the problem fixed. Would you**
13 **agree with that?**

14 A. Yes.

15 **Q. Okay. Mark this. It's a two page document.**

16 **(Exhibit number 4 marked for identification.)**

17 **Q. All right. I'm gonna hand you what's been marked**
18 **as Plaintiff's Exhibit number 4. It's two pages.**
19 **Can you tell me what that document is?**

20 A. This looks like this is the confirmation email of
21 the -- of me submitting the incident form.

22 **Q. Okay. What is First Report?**

23 A. First Report would be the system that, I believe,
24 we were using at the time for any incident
25 reporting.

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1 **Q.** **Okay. And it says that this was sent on Friday,**
2 **September the 6th, 2019 at 10:46. Is that right?**

3 **A.** **Yes. The email was sent then.**

4 **Q.** **Okay. And it says subject -- well, it says, To and**
5 **then that part is redacted. Do you know who you**
6 **would have sent this email to?**

7 **A.** **Yeah, that would be whoever would be responsible**
8 **around the submission of this incident report. I'm**
9 **not positive who would have been on that list at**
10 **the time.**

11 **Q.** **Okay. So this is from First Report.**

12 **A.** **Correct.**

13 **Q.** **Okay. So you did not write this email or did you?**

14 **A.** **I did not.**

15 **Q.** **Okay. Where it says store 1300 manager at the top,**
16 **what does -- what does that mean?**

17 **A.** **That's just -- that's just showing -- so this is a**
18 **print of the email, itself. So, it's showing that**
19 **this is the -- this is the -- I guess, the header**
20 **with -- whenever we print out an email, it'll give**
21 **a header for what -- what email system it was**
22 **through.**

23 **Q.** **Okay. But we don't -- you don't -- do you know who**
24 **this would have been sent to or that was -- this**
25 **was -- it appears to be redacted.**

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- 1 A. It probably goes to -- it would go to our store.
2 It would go to field leadership; probably goes to -
3 - might go to a corporate office representative;
4 might go to loss prevention and safety, possibly.
5 I'm not -- I can't -- I can't remember who all it
6 goes to.
- 7 **Q. Okay. And then where it says -- okay. Where it**
8 **says, PetSmart, Inc. and then gives the address.**
- 9 A. Uh-huh (Affirmative answer).
- 10 **Q. Why is that there? Do you know?**
- 11 A. I'm not positive why -- why they have our corporate
12 office address in there.
- 13 **Q. Okay. And it says ...**
- 14 A. I think that's our corporate address.
- 15 **Q. And is that where PetSmart's corporate office is**
16 **located?**
- 17 A. Yes. They're in Phoenix, Arizona.
- 18 **Q. They're in Phoenix, okay. And this says, regarding**
19 **-- now, can you tell me what that information is?**
- 20 A. That's pretty much just confirmation of the
21 incident that happened.
- 22 **Q. Okay. Have you ever seen an email like this**
23 **before?**
- 24 A. Yes.
- 25 **Q. All right. So, how does that -- how does this**

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1 email get populated? I mean, can you walk me
2 through that?

3 A. This email comes through as a -- as truly just a
4 confirmation to make sure that -- we can put this
5 with our -- with our paperwork to make sure that we
6 know that our reporting agency at the time -- I
7 think -- I guess it was First Report at the time --
8 received it, processed it, and sent us the
9 confirmation back that it's been processed -- that
10 they've gotten all the incident information.

11 **Q. And who -- who's they?**

12 A. Sedgwick -- yeah.

13 **Q. Okay. And this -- would this have been information**
14 **come from you where it says regarding and it has**
15 **this ...**

16 A. Correct. Yeah, that would be the information from
17 me.

18 **Q. Okay. So all this information here would be your**
19 **information that your provided. Is that right?**

20 A. Correct. Yeah, on the incident report.

21 **Q. Okay. And then the -- and the description of the**
22 **incident. Are those your words?**

23 A. Yes.

24 **Q. All right. And you would have written those. Is**
25 **that right? You would have written that. Is that**

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1 **correct?**

2 A. Yes. It was written on the report form. Yes.

3 **Q. Okay. And there, it says, the refrigerator had**

4 **been leaking. And do you know what you meant by**

5 **that?**

6 A. What I meant by that was that there was water on the

7 floor at the time of the injury.

8 **Q. Okay. It says, there was a wet floor sign up in**

9 **the area. And what did you mean by that?**

10 A. That I had been communicated that there was a wet

11 floor sign present during the injury.

12 **Q. Okay. And that -- also, was it your understanding**

13 **that the customer slipped and fell in the water on**

14 **the floor. Is that right?**

15 A. Yes.

16 **Q. All right. And that she had fallen on her right**

17 **side?**

18 A. Yes.

19 **Q. And do you know where you had got that information?**

20 A. Through conversations with -- with the -- with Bird

21 -- Ms. Bird.

22 **Q. Okay. And that she -- it says, that the customer**

23 **sustained an unknown injury to the right hip. And**

24 **where did you get that information?**

25 A. This is -- so the description there with the fell

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1 on right side, customer sustained -- so this would
2 be part of the phone conversation with Sedgwick, I
3 believe. So when they were asking me where she
4 fell and if anything was hurt, I would have told
5 them that she fell on her right side and she said
6 that her hip was bothering her.

7 **Q. Okay. So that would have come from Ms. Bird that**
8 **day of the fall. Is that correct?**

9 A. Yes.

10 **Q. And this was at 10:46am, that you sent -- or that**
11 **this email was sent?**

12 A. Yes.

13 **Q. Okay. And what time was it -- was the incident?**

14 A. I'm not -- I'm not positive. It says, time of
15 incident was 9:40am.

16 **Q. Okay. All right. Mark this, please.**

17 **(Exhibit number 5 marked for identification.)**

18 **Q. I'm gonna hand you what's been marked as**
19 **Plaintiff's Exhibit number 5. Do you know what**
20 **that is?**

21 A. This would be, I believe, something that I probably
22 typed up to be able to fax to Sedgwick.

23 **Q. Okay. And who is Sedgwick?**

24 A. Our insurance ...

25 MR. LAFAVE: TPA.

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1 A. ... TPA.

2 **Q. Administrator?**

3 A. Yeah.

4 **Q. Okay. All right. And you -- so is that your**
5 **signature on this document?**

6 A. Yes.

7 **Q. Okay. You would -- so is this -- where would you**
8 **have typed this up? Is this a ...**

9 A. Word -- Microsoft Word. Yeah.

10 **Q. Word document. Okay. And did you make any kind of**
11 **comment there on the presence of water or where the**
12 **water came from?**

13 A. No.

14 **Q. Okay. Do you know when you typed that up?**

15 A. This would have been shortly after speaking with
16 Ms. Bird. My handwriting's pretty horrible so I
17 usually type up all of my notes.

18 **Q. Okay. So then, this would have been -- you typed -**
19 **- what's in Plaintiff's number 5, this -- the kind**
20 **of, manual document that you typed up, that was --**
21 **that was done and sent to an administrator,**
22 **correct?**

23 A. Correct.

24 **Q. All right. Then there's email from the store 1300**
25 **manager. Would you have written that -- that or is**

1 **this filled out and sent to somebody?**

2 A. This is -- this email is created by I'm guessing
3 First Report or whoever the -- the group is that
4 received all my information from the incident.

5 **Q. Okay. That's Plaintiff's Exhibit 4. Is that**
6 **correct?**

7 A. Yes.

8 **Q. Okay. All right. Mark this -- a two page document**
9 **too as number 6.**

10 **(Exhibit number 6 marked for identification.)**

11 **Q. Do you know what this document is?**

12 A. No. Is this the ...

13 **Q. It says call information.**

14 A. Okay. So this must be a record of the call-in for
15 the incident.

16 **Q. And what's a call-in?**

17 A. So, at the time, we didn't have like a computer
18 system for any sort of incident reporting so we had
19 to call the Sedgwick number to file the incident.
20 So this would -- this looks like it's record -- the
21 record of that phone call.

22 **Q. Okay. And you would have made this call?**

23 A. Yes.

24 **Q. All right. And who -- is this -- would Sedgwick**
25 **have inputted this information based on your**

1 telephone call conversation with them? Is that
2 what this is?

3 A. Yes.

4 Q. Okay. All right. Mark this as Plaintiff's Exhibit
5 number 7.

6 (Exhibit number 7 marked for identification.)

7 Q. I'm handing you what's been marked Plaintiff's
8 Exhibit number 7. Can you tell me what that is?

9 A. Uh ...

10 Q. It's a two page document.

11 A. Yeah. I've not seen this before. This looks like
12 it's -- this looks like this is the total form for
13 the incident.

14 Q. Okay. All right. Now, if there's a broken or
15 malfunctioning piece of equipment or fixture at the
16 PetSmart, based on your experience, how is that
17 normally handled?

18 A. We usually file it in our facility system for that
19 -- that area of our corporate office to respond and
20 get a tech out to fix it.

21 Q. Okay. So you say, facility system. What -- tell -
22 - talk to me about that. Tell me what that is.

23 A. It's a system on our computers for any sort of
24 issue, whether it be building, electrical,
25 plumbing, whatever.

1 **Q.** And what's this system called?

2 A. Facilities.

3 **Q.** Okay.

4 A. It might -- I think it was Facilities One at the
5 time -- is what we called it.

6 **Q.** And so if there's -- if something's broken, do you
7 ever try to fix it just in-store, either, you know,
8 yourself or a store leader, or somebody else? Is
9 there -- is there an in-house maintenance that can
10 just go fix something?

11 A. Yes. We can for some things.

12 **Q.** Such as?

13 A. Such as if it's -- if it's something that's simple.
14 Like -- like, if I have an issue with one of the
15 tables that needs a new screw or something, I can
16 go fix that myself. But if it's -- if it's
17 something that is third-party property or anything
18 like that, then we have to go through our
19 facilities to get it fixed.

20 **Q.** Okay. And the Facilities One or the facilities
21 system, that was in place in September of 2019?

22 A. Maybe. I'm not positive. I can't remember when
23 that started.

24 **Q.** Okay. Well, what -- I mean, what were the
25 different system facilities?

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1 A. We ...

2 **Q. I mean, reporting systems that you had?**

3 A. Yeah, we've always -- we've always had a -- a

4 facilities system. I just can't remember if

5 Facilities One was the system we were using at the

6 time. I'm pretty sure it was.

7 **Q. Okay. What is Service Now?**

8 A. Service Now was another facility system that we've

9 used.

10 **Q. Okay. Is that in use currently?**

11 A. I believe so.

12 **Q. All right. And when -- when was Service Now first**

13 **started use?**

14 A. I -- I can't remember that.

15 **Q. Okay. But there is a -- is this facility system --**

16 **or Facilities One, is it on a computer in the**

17 **store? Is that how that works?**

18 A. Yes.

19 **Q. All right. And it's just a software program?**

20 A. Yes.

21 **Q. Is that right?**

22 A. Yes.

23 **Q. Okay. Do you still have it on the computers at**

24 **your Anderson store, for instance?**

25 A. Yes.

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1 **Q.** All right. Do you have any recall as to whether it
2 was on -- in use at the Woodruff Road store in
3 September of 2019?

4 **A.** I believe it was.

5 **Q.** Okay. And so any time there was broken or
6 malfunctioning, not working equipment or fixture,
7 you would enter it into that system. Is that
8 correct?

9 **A.** Yes.

10 **Q.** Okay. And then walk me through the process from
11 there.

12 **A.** From there we usually will be contacted from our
13 facilities department with questions regarding
14 what's wrong, for them to figure out who they need
15 to send to get it fixed.

16 **Q.** Okay. And who is -- where is the facilities
17 department located?

18 **A.** I do not know that.

19 **Q.** And are all these communications online or are they
20 over the phone?

21 **A.** They would be over the phone.

22 **Q.** Okay. Does -- and we talked a little bit about
23 this earlier, but I'd like to kind of revisit the
24 issue. The FreshPet fridges, do you remember them
25 having any issues with water leaking from the

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1 **FreshPet fridges when you were at Woodruff Road?**

2 A. At Woodruff Road, no.

3 **Q. Okay. Any other store?**

4 A. I've -- I've had a leak -- a leaking FreshPet

5 fridge in the store before, yes.

6 **Q. Okay. Was that in Burlington?**

7 A. Anderson.

8 **Q. In Anderson, okay.**

9 A. I believe so.

10 **Q. All right. Okay. And those -- how were those**

11 **fridges normally fixed, if you remember?**

12 A. We have to -- we have to submit -- with them being

13 a third-party owned fridge -- I can't remember

14 which system it is that we submit it through. I

15 can't recall specifically which one, but there's -

16 - there's a way that we're supposed to reach out

17 through our facilities to get FreshPet to come out,

18 with them owning those coolers.

19 **Q. Okay. So if you went back to your store this**

20 **afternoon and saw that a FreshPet fridge was**

21 **leaking, walk me through what you would do.**

22 A. I would go through a facilities request to get it

23 fixed.

24 **Q. And how would you do that specifically?**

25 A. We log into the system, click through each process.

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1 That would just be like, what's the issue and what
2 area, and what cooler, and then we would submit
3 that issue and we'd probably get a phone call
4 pretty soon after, asking what was going on.

5 **Q. And is that in the Facilities One?**

6 A. I believe so, yes.

7 **Q. Okay. And that's what you've been using -- that's**
8 **what you did at the Woodruff Road store for**
9 **instance?**

10 A. Yes.

11 **Q. Okay. All right. Let me see here. Let me -- mark**
12 **this, please.**

13 **(Exhibit number 8 marked for identification.)**

14 **Q. Okay. I'm gonna hand you what's been marked as**
15 **Plaintiff's Exhibit number 8.**

16 **MR. CREECH: Matt, just let me know if you need**
17 **anything.**

18 **Q. Okay. Just tell me generally, what is this form**
19 **that I've handed you -- this document.**

20 A. This looks like it's a call-in for a work order.

21 **Q. Okay. And what system would have generated this?**
22 **Is this a Facilities One generated document?**

23 A. I believe so.

24 **Q. Okay. So that's what a Facilities One document**
25 **looks like. Is that right?**

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1 A. Yes.

2 **Q. Okay. Do you remember a guy named Taylor Staton --**
3 **Staton?**

4 A. Yes.

5 **Q. All right. And did you work with him?**

6 A. I did not. He was a previous store leader.

7 **Q. Okay. All right. And just looking at this -- I**
8 **know you did not create this document but can you**
9 **look at it and interpret it for me and tell me what**
10 **this document -- what it's about?**

11 A. It looks like it's a -- it's a call-in request
12 about a work order that has not been completed.

13 **Q. Okay. And when a work order is not completed, you**
14 **mean, like the machine or malfunctioning equipment**
15 **does not get fixed. Is that right?**

16 A. Correct.

17 **Q. Okay. How do you -- is there -- to your knowledge,**
18 **where is it documented that a malfunctioning or**
19 **broken, you know, piece of equipment, machine,**
20 **fixture, whatever, is fixed? It's -- the repairs**
21 **are completed.**

22 A. We -- we have a -- through that same facility
23 system, whenever they complete the work order, the
24 billing goes through there and we have to fill out
25 a quick survey as to whether it was completed

1 correctly or not.

2 **Q. Okay. And is that also the case for the FreshPet**
3 **fridges that are owned by FreshPet?**

4 A. I believe so. It's -- it's been a little while
5 since I've had anything through FreshPet so I'm
6 trying to remember. I know that FreshPet has been
7 -- is a little bit different because they own those
8 coolers outside of any of the PetSmart owned
9 equipment so sometimes that's been a little
10 different. I believe so, though. I believe that
11 we still have to sign off and do a survey even with
12 FreshPet.

13 **Q. Okay. So when a -- on the Facilities One system,**
14 **once the malfunctioning equipment or -- is fixed or**
15 **repaired, that would be indicated in the Facility**
16 **One documents -- system. Is that correct?**

17 A. Correct.

18 **Q. Okay. So, page 2 of this Exhibit number 8, where**
19 **it talks about -- do you see the event log?**

20 A. Yes.

21 **Q. Okay. Is that where it would be indicated that the**
22 **equipment was repaired or fixed?**

23 A. This doesn't have anything that says that it was
24 repaired or fixed.

25 **Q. Is that -- would it normally be there if the**

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1 machine had been fixed or equipment had been fixed?

2 A. That, I don't know.

3 Q. Okay. But just so I'm understanding this
4 correctly, the Facilities One system has some sort
5 of indication when a machine -- whether -- even a
6 FreshPet fridge has been finally repaired or fixed.
7 Is that correct?

8 A. Because they're FreshPet owned, I'm not sure
9 because we don't -- they don't bill us cause it's
10 FreshPet owned. Whereas, with Facilities One, when
11 they get the billing, that's kind of when -- when
12 we submit the completion of the project. So, I
13 don't know if FreshPet has any sort of completion
14 measures through our system.

15 Q. While you've worked at PetSmart, have you ever
16 unplugged or taken a FreshPet fridge out of
17 service?

18 A. I do not -- I don't think so, no.

19 Q. Okay. Do you ever remember a situation where you
20 saw someone come out and fix a FreshPet fridge at
21 the Woodruff Road store?

22 A. Yes.

23 Q. Okay. Tell me about that.

24 A. It was just a tech that came out and -- and from
25 the one that I remember, we were having a door

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1 issue and they had to -- I think they had to fix
2 the -- the sealant around the doors cause they
3 weren't sliding closed.

4 **Q. Right. Was -- is there ever -- and can that cause**
5 **condensation to leak out? Do you know?**

6 A. I do not know.

7 **Q. Okay. Was there -- if -- if you had seen a leak**
8 **coming from a FreshPet fridge, was it within your**
9 **ability to go and take the machine out of service?**

10 A. We could, yes, if it was -- if it was a high risk,
11 we could -- we could absolutely shut off the
12 machine.

13 **Q. Okay. So, do -- do you know how to do that**
14 **personally?**

15 A. Me personally ...

16 **Q. Yeah.**

17 A. No. I'm pretty sure there's a -- there's a power
18 switch under the -- under the cooler that we could
19 cut off.

20 **Q. Have you seen -- have you ever cut it off?**

21 A. Me personally, no.

22 **Q. Have you had an employee do it at your direction?**

23 A. No.

24 **Q. How do you know there's a switch underneath the**
25 **machine that you can go in there and cut it off?**

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1 A. From looking at the machines. Cause you can cut
2 the light off. There's -- there's two switches.
3 One's for power and one's for light, I believe.

4 **Q. Okay. And that's -- you've seen it. You've looked**
5 **under there ...**

6 A. Yeah.

7 **Q. ... and seen it. Is that correct?**

8 A. Yeah. Cause we've cut the lights off before at
9 night.

10 **Q. Okay. So you can -- you've gone under there and**
11 **cut the lights off at night. And what was the**
12 **purpose of that?**

13 A. Usually, so that way they could stay -- usually,
14 it's like bulk maintenance and stuff. We did that
15 for a period of time. We don't do that anymore.
16 But it was when we first got the coolers, we were
17 directed to cut the lights off at the end of the
18 day.

19 **Q. For -- what -- what for?**

20 A. I -- I have no clue. Honestly, I would think that
21 it's to keep the -- the life of the bulbs in the
22 coolers a little bit longer.

23 **Q. Okay. And who -- who instructed you to cut the**
24 **lights off on the machines?**

25 A. It was in our -- I believe it was in our process

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1 when we first got our coolers in -- was that that
2 was how you completed the day was shutting off the
3 lights.

4 **Q. Was that at the -- I mean, the Woodruff Road store?**

5 A. It would have been at the Anderson store when we
6 first started getting coolers.

7 **Q. Okay. Did you ever cut the -- the lights off on a**
8 **FreshPet fridge at the Woodruff Road store?**

9 A. No.

10 **Q. All right. Did you ever ask anybody or an employee**
11 **to do that?**

12 A. No.

13 **Q. All right. But if there had been an ongoing or**
14 **problematic leak or problem with the FreshPet**
15 **fridge, you -- anyone at PetSmart could go in and**
16 **take that -- shut the fridge down. Is that right,**
17 **if you felt like it presented a danger to**
18 **customers?**

19 A. Yes.

20 **Q. Okay. How many FreshPet fridges were in the**
21 **Woodruff Road store? If we look at this picture,**
22 **was there just one? Is it just the one black one**
23 **right there?**

24 A. I believe at the time, it was just one.

25 **Q. Okay. All right. Let's see here. Mark that --**

1 two page.

2 **(Exhibit number 9 marked for identification.)**

3 **Q. Okay. I'm handing you Plaintiff's Exhibit number**
4 **9. Can you tell me -- all right, did you -- is**
5 **your name anywhere on this document?**

6 **A. Yes.**

7 **Q. Okay. And what does this indicate?**

8 **A. It indicates that we had a work order for a leaking**
9 **fridge. Yeah, back in July, it looks like we have**
10 **a work order for one of the leaking fridges.**

11 **Q. Okay. And -- all right. Do you see on here --**
12 **let's see -- okay. This was the -- was this for a**
13 **FreshPet fridge?**

14 **A. I don't think so because it doesn't say FreshPet on**
15 **here anywhere. Usually, if it's FreshPet related,**
16 **we have to put information on, that it was the**
17 **FreshPet fridge.**

18 **Q. Okay. Is the -- what did you -- what was the**
19 **reason for your call?**

20 **A. That it was leaking.**

21 **Q. Okay. And did you -- did you report that the**
22 **fridge is leaking pretty bad, will need a tech to**
23 **take a look?**

24 **A. Yes.**

25 **Q. Okay. And who is Mike Pullega? Do you know? On**

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1 the second -- if you turn -- if you look at the
2 second page.

3 A. Yeah. I do not know. I would assume he's -- was
4 one of the facilities people.

5 Q. Okay. And can you tell from this Exhibit number 9
6 -- can you tell whether it was -- whether this
7 fridge was ever repaired?

8 A. No.

9 Q. If it had been repaired, would it have been
10 indicated on this document?

11 A. I do not know.

12 Q. On the second page of this document where there's
13 an entry for 7/23/2019 9am:39 seconds, Mike Pullega
14 -- do you see that?

15 A. Uh-huh (Affirmative answer).

16 Q. And it says change work order status from pending
17 dispatch to work order avoidance; Reason: non-
18 critical. Do you know what that means?

19 A. No.

20 Q. Okay. Do you know what work order avoidance means?

21 A. Yes.

22 Q. What does that mean?

23 A. That would mean that -- that it's not a high
24 priority fix. That it could be a longer time
25 period. I know that Facilities has multiple hour

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1 sequence. Whether it's immediate need where
2 somebody needs to be out within four hours or where
3 it could be something that's -- that can be fixed
4 over a period of time.

5 **Q. Okay. But you don't think this was a FreshPet**
6 **fridge that was leaking pretty bad?**

7 A. I don't know. It doesn't say FreshPet on here.

8 **Q. Okay. You report -- this was -- and what call time**
9 **was this -- does the document indicate?**

10 A. What do you mean by call time?

11 **Q. Well, if you look on the first page of this two**
12 **page document ...**

13 A. Oh.

14 **Q. ... it says call time.**

15 A. Yeah. It's -- be 7/23/2019 at 7:43am.

16 **Q. Okay. And do you have any recollection -- and you**
17 **would have been the caller, correct?**

18 A. Yes.

19 **Q. Okay. And this would have been what, forty days or**
20 **so prior to Ms. -- Ms. Bird falling on September**
21 **the 6th?**

22 A. Yes.

23 **Q. Okay. Do you have any recollection of any of these**
24 **pet food fridges leaking prior to Ms. Bird**
25 **falling?**

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1 A. I remember -- I remember that there was a leaking
2 fridge. I don't -- I can't remember which one.

3 **Q. You remember a leaking fridge prior to her falling?**

4 A. Yeah, back in -- when I had first started, we had
5 to put in a work order for one.

6 **Q. Okay. Do you remember whatever happened to the**
7 **fridge? I mean, you called in and reported that it**
8 **was leaking pretty bad. Do you remember anything**
9 **else about the fridge leaking?**

10 A. I do not. I don't remember -- I don't remember
11 anything continuing after that.

12 **Q. Do you know or remember if anybody came out to fix**
13 **it?**

14 A. I do remember somebody coming out to fix cause it
15 was -- that one was an issue.

16 **Q. Okay. Was it -- was it a FreshPet fridge or**
17 **another fridge?**

18 A. I do not remember which fridge it was.

19 **Q. Okay. But you remember somebody coming out and**
20 **fixing it. Is that correct?**

21 A. Correct.

22 **Q. All right. And you said because that one was**
23 **pretty bad. Is that what you said earlier?**

24 A. Yes.

25 **Q. Okay. Do you remember seeing the person out there**

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1 **fixing it?**

2 A. Personally, no.

3 **Q. Okay. How do you remember it being fixed? Tell me**
4 **about that.**

5 A. Because we didn't have any -- we didn't have the
6 issue anymore after that.

7 **Q. And what was the issue?**

8 A. That it was leaking.

9 **Q. Okay. And were you monitoring the machine or the**
10 **fridge to see if it was leaking after this?**

11 A. Nothing outside of like normal daily operation.

12 **Q. Now, Ms. Bird fell on September the 6th and**
13 **obviously when she fell, one of those fridges had**
14 **been leaking. Is that right?**

15 A. Correct.

16 **Q. And you -- it was the FreshPet fridge that had been**
17 **leaking on September the 6th. Is that right?**

18 A. Yes.

19 **Q. Okay. You never witnessed anybody coming out and**
20 **working on or repairing the PetSmart -- I mean, the**
21 **FreshPet fridge after July the 23rd?**

22 **MR. LAFAVE: Object to the form.**

23 A. Repeat the question.

24 **Q. I said, you never -- you never saw -- you never**
25 **witnessed a person come out and fix -- work on any**

1 of the fridges in response to your July the 23rd
2 call?

3 A. No. I don't remember.

4 Q. Okay. So, the -- the second page of this document,
5 does it indicate that there was -- the fridge was
6 ever fixed?

7 A. It does not indicate that.

8 Q. Okay. Let's see here. If we could mark this.
9 (Exhibit number 10 marked for identification.)

10 Q. This is Plaintiff's Exhibit number 10. It's a
11 three page document. I can let you look at it but
12 I don't have any -- I don't have a copy. If you
13 can just give them back to me. And can you tell me
14 what this document is?

15 A. This is our procedure on store appearance.

16 Q. Okay. And this was in place in 2019. Is that
17 correct?

18 A. Yes.

19 Q. And it applied to the Woodruff Road store, just
20 like it applies to all PetSmart stores. Is that
21 right?

22 A. Yes.

23 Q. And how many PetSmart stores are there in the
24 United States? Do you know?

25 A. 1600.

1 **Q.** **In the United States?**

2 A. It might be 1400, maybe, in the United States.

3 **Q.** **Okay. So total, world wide, there's 1600 PetSmart**
4 **stores?**

5 A. I believe so, yes.

6 **Q.** **And this policy applies to all of them. Is that**
7 **correct?**

8 A. Yes.

9 **Q.** **Okay. And this just talks about the store**
10 **interiors. Is that correct?**

11 A. Yes.

12 **Q.** **And inspection of floors. Is that correct?**

13 A. Yes.

14 **Q.** **Okay. You testified earlier that it was your**
15 **understanding that the sign had been out in front**
16 **of the FreshPet fridge prior to Ms. Bird's**
17 **falling. Is that correct?**

18 A. Yes.

19 **Q.** **And that came to you from other store employees?**

20 A. Yes.

21 **Q.** **Okay. And they put it there in response to there**
22 **being a leak. Is that right?**

23 **MR. LAFAVE: Object to the form.**

24 A. I -- I don't know if that -- if it was to say, a
25 leak. It could be from any substance of liquid on

1 the ground.

2 **Q.** **Okay. So they put a sign out there, okay, because**
3 **there's a dangerous, hazardous condition. Matter**
4 **of fact, the sign says caution wet floor.**

5 **A.** **Correct.**

6 **MR. LAFAVE: Object to the form.**

7 **Q.** **So, they put that sign there because there may be**
8 **some liquid on the floor -- is it your**
9 **understanding?**

10 **A.** **Yes.**

11 **Q.** **That's what they're trained to do?**

12 **A.** **Yes.**

13 **Q.** **Okay. And they're also trained to mop up the wet**
14 **spot. Is that correct?**

15 **A.** **Yes.**

16 **Q.** **And they're to do that immediately.**

17 **A.** **Yes.**

18 **Q.** **Is that right, upon recognition of the wet floor?**

19 **A.** **Yes.**

20 **Q.** **All right. And why was that not done in this case?**

21 **A.** **I don't ...**

22 **MR. LAFAVE: Object to the form.**

23 **A.** **I don't know if that is true or not. I don't know**
24 **if it was cleaned up and -- and the floor signs was**
25 **placed or not. I'm not sure what ...**

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1 **Q.** Well, when you got there, there was water on the
2 floor.

3 **A.** Correct.

4 **Q.** There was a puddle?

5 **A.** Yes.

6 **Q.** And she had just fallen?

7 **A.** Yes.

8 **Q.** And the wet floor sign was out?

9 **A.** Yes.

10 **Q.** Okay. So, is it not fair to say that the wet floor
11 sign was put there in response to there being water
12 on the floor?

13 **MR. LAFAVE:** Object to the form.

14 **A.** Yes. You could assume so.

15 **Q.** Okay. Then why wasn't the water mopped up and
16 cleaned up?

17 **MR. LAFAVE:** Object to the form.

18 **A.** I feel like the -- I mean, it -- it could be either
19 way. So, we have wet floor signs in areas and we
20 leave them after we've cleaned them up. So, if we
21 -- if we have urine on the floor or anything like
22 that and we clean up the area, we put the wet floor
23 signs there and we leave them for a period of time,
24 so I don't know how long the period of time was
25 with those wet floor signs there. So, I can't

1 necessarily confidently say that we put a wet floor
2 sign and just ignored that there was water there.

3 **Q. That could have been done. That's one -- that's**
4 **another likely scenario.**

5 A. It is a scenario, yes.

6 **Q. Okay. There's no indication that there was pet**
7 **urine on the floor in front of this cooler.**

8 A. Correct.

9 **Q. At any time. Is that right?**

10 A. I wouldn't know.

11 **Q. There's no evidence of that, correct?**

12 A. Correct.

13 **Q. Okay. And if there -- if that sign was put there**
14 **in response to there being water on the floor, the**
15 **associate should have never left the sign there**
16 **with just the water. They should have stayed there**
17 **until it could have been cleaned up. That's what**
18 **the policy requires. Is that right?**

19 MR. LAFAVE: Object to the form.

20 A. Yes.

21 **Q. Okay.**

22 A. Yeah, so ...

23 **Q. Do you have any -- did any store employee -- you**
24 **never knew who put the wet floor sign down, right?**

25 A. Correct.

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1 **Q.** **Okay. Did any store employee tell you that they**
2 **had come by and mopped up water in front of this**
3 **cooler and then left a wet floor sign?**

4 **A.** **Not that I'm aware of.**

5 **Q.** **Okay. Did you ask any store employees whether they**
6 **did that?**

7 **A.** **No.**

8 **Q.** **Was it your belief that that sign had been out**
9 **there before the -- Ms. Bird had fallen?**

10 **MR. LAFAVE: Object to the form.**

11 **A.** **Yes.**

12 **Q.** **Okay. I have no further questions. Thank you.**

13 -----

14 **Examination by Mr. Moore:**

15 **Q.** **Jordan, my name's David Moore.**

16 **A.** **Uh-huh (Affirmative answer).**

17 **Q.** **I'm here on behalf of FreshPet.**

18 **A.** **Yeah.**

19 **Q.** **Let me ask you a series of questions. I hope it's**
20 **gonna be a whole lot shorter than what you've just**
21 **gone through. (Laughter.)**

22 **MR. CREECH: Listen, I'm gonna take my time. We**
23 **can go off the record for a second. (Laughter.)**
24 **(Off the record.)**

25 **Examination resumed by Mr. Moore:**

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1 **Q.** **FreshPet is not present within the store, as I**
2 **understand. Am I correct?**

3 **A.** **Correct.**

4 **Q.** **No employees there?**

5 **A.** **Correct.**

6 **Q.** **But they have some property there in the form of a**
7 **refrigerator, where they display basically, dog or**
8 **cat food and that type thing, which requires**
9 **refrigeration.**

10 **A.** **Yes.**

11 **Q.** **Okay. If there's a problem with that particular**
12 **refrigerator unit, then they have to be notified of**
13 **that problem in order to respond to it. Am I**
14 **right?**

15 **A.** **Yes.**

16 **Q.** **Okay. In this particular circumstance where an**
17 **accident that took place on September 6, 2019, do**
18 **you recall whether FreshPet had been notified of**
19 **any problem prior to the time that fall occurred**
20 **with regard to this refrigerator unit?**

21 **A.** **I do not remember if that -- if that had happened.**

22 **Q.** **Now, I think Exhibit 10 is a -- a page or three**
23 **from y'all practice and procedure manual.**

24 **A.** **Uh-huh (Affirmative answer).**

25 **Q.** **Is that right?**

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1 A. Yes.

2 **Q.** Okay. As a part of your -- of the store's
3 procedure, my understanding, number one is it opens
4 at 9 o'clock in the morning. Is that right?

5 A. Yes.

6 **Q.** Prior to opening in the morning, is there a walk-
7 through of the store grounds to make sure there are
8 no defects with any machinery or refrigerators,
9 etcetera, or any defects, such as spills on the
10 floor?

11 A. Yes.

12 **Q.** Okay. Now, this water that was on the floor, that
13 -- that Ms. Bird slipped in, do you know how long
14 that particular puddle of water had been on the
15 floor?

16 A. No.

17 **Q.** Did PetSmart or any of it employees have notice of
18 the presence of that water on the floor prior to
19 the time you were notified of her fall?

20 **MR. CREECH:** Object to the form.

21 A. I'm sorry. Repeat that one more time.

22 **Q.** That's no problem. Did PetSmart or any of its
23 employees have notice of this particular pool of
24 water prior to Ms. Bird's fall?

25 A. Not that I'm aware of.

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1 **Q.** **Okay. Was there any indication that there might**
2 **have been water on the floor in that location prior**
3 **to her fall, but had been mopped up?**

4 **A.** **I'm -- what do you mean by that? Sorry.**

5 **Q.** **Sure. And I guess the scenario I'm posing is, you**
6 **know, somebody had cleaned up another puddle of**
7 **water, put down a sign -- a warning sign, and then**
8 **more water comes out of the refrigerator unit.**

9 **A.** **It's very possible, yes.**

10 **Q.** **Okay. Do you know if that in fact, happened?**

11 **A.** **I do not.**

12 **Q.** **Okay. Where did this water come from? I know it**
13 **came from the refrigerator unit, but what -- did it**
14 **come from the pan on the refrigerator unit?**

15 **A.** **Yes. It leaked from the bottom of the pan.**

16 **Q.** **Okay. Where does the water that accumulates in**
17 **that pan come from?**

18 **A.** **From the cooler, itself.**

19 **Q.** **Okay. And what would cause water to accumulate**
20 **there?**

21 **A.** **I -- I'm not positive. I would assume it would be**
22 **some form of either condensation or something from**
23 **the -- from the cooler.**

24 **Q.** **Okay. Is this a normal process?**

25 **A.** **Do you mean like, is the -- is the water going into**

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1 the pan a normal process?

2 **Q.** Yeah, I mean, over just a few days or weeks or
3 whatever process that -- that condensation or water
4 will accumulate in the pan.

5 **A.** No.

6 **Q.** Okay. So, something has occurred to cause the
7 water to accumulate in the pan ...

8 **A.** Yes.

9 **Q.** ... that's unexpected?

10 **A.** Yes.

11 **Q.** Do y'all make a periodic inspection of the pan to
12 see if there's any problem?

13 **A.** No.

14 **Q.** Okay. If water is accumulating in the pan and it's
15 not enough to overflow the pan, then you're not
16 gonna know about any problem there?

17 **A.** Yes. Correct.

18 **Q.** All right. Now, in this situation, my
19 understanding of your testimony is water had
20 accumulated to the extent that it overflowed the
21 pan.

22 **A.** Yes.

23 **Q.** Okay. And y'all cleaned it up after -- after
24 notice of this accident.

25 **A.** Yes.

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1 **Q.** **Okay. Do you know whether there was any further**
2 **problem of water accumulating in the pan after her**
3 **accident and after the cleanup?**

4 **A.** **I do not remember.**

5 **Q.** **Was there any indication that somebody had to come**
6 **back up and cleanup other water that was puddling**
7 **around this refrigerator unit?**

8 **A.** **That, I don't remember.**

9 **Q.** **Okay. Would that have been seen by these periodic**
10 **inspections that are undertaken by the employees?**

11 **A.** **Yes.**

12 **Q.** **Okay. And would the periodic inspections had been**
13 **noted or logged anywhere?**

14 **A.** **No.**

15 **Q.** **Okay. There's no log book or whatever saying we**
16 **undertook an inspection of the store as a whole or**
17 **a particular aisle at any time?**

18 **A.** **No. Not at the time.**

19 **Q.** **Okay. So it's kind of a ad hoc situation where**
20 **employees are walking around the store and see some**
21 **spillage or a dog has an accident, or whatever?**

22 **A.** **Yes.**

23 **Q.** **Now there are three refrigerator units in this area**
24 **as I understand it.**

25 **A.** **Yes.**

- 1 **Q.** The middle is or was, I guess, the FreshPet
2 refrigerator. Am I right?
- 3 **A.** Yes.
- 4 **Q.** Who owns the refrigerators adjacent to it?
- 5 **A.** I believe it's PetSmart owned -- are the other
6 freezers.
- 7 **Q.** Okay. The goods that are kept in the FreshPet
8 refrigerator, are they goods that are sold by
9 FreshPet or do they have a contract with somebody
10 or whatever?
- 11 **A.** I believe that the -- I think it's contracted. I'm
12 not positive.
- 13 **Q.** In other words, there's no mixing and matching with
14 the various ...
- 15 **A.** Correct.
- 16 **Q.** All right. At the time this accident happened, was
17 the unit powered up? In other words, was there
18 electricity ...
- 19 **A.** Yes.
- 20 **Q.** Okay. And the photograph we see in Exhibit 1 is
21 obviously, FreshPet unit is darker, just because
22 it's painted differently, but is there power going
23 to that unit at that point in time?
- 24 **A.** Yes.
- 25 **Q.** Okay. Do you know why there was this condensation

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1 or collection of water in the pan when this
2 accident happened?

3 A. No.

4 Q. Okay. Did anybody inspect that to make a
5 determination as to why that might have occurred?

6 A. I do not remember for that.

7 Q. Did someone from your store -- it may have been you
8 -- call to say, hey, we got a leakage here. We
9 need to get a tech out to inspect this?

10 A. Not that I remember.

11 Q. Okay. How was it determined that -- that FreshPet
12 should get involved in this matter, or do you know?

13 A. I do not know.

14 Q. Do you know when FreshPet was notified of this
15 particular problem?

16 A. No.

17 Q. Okay. Do you know if FreshPet had any knowledge of
18 this particular problem prior to Ms. Bird's fall?

19 A. No.

20 Q. You testified at one time, you had a recall of a
21 tech from -- acting on behalf of FreshPet coming
22 out to repair a refrigerator unit because there was
23 a problem with the door.

24 A. Yes.

25 Q. Do you recall when that was?

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1 A. No.

2 **Q. Okay. Was it prior to this accident or after?**

3 A. I do not know.

4 **Q. Okay. It didn't have anything to do with this**
5 **accident one way or the other?**

6 A. No, no.

7 **Q. All right. On Exhibit 8, this is -- basically,**
8 **you're submitting this with regard to, as I**
9 **understand it, a FreshPet unit. Am I right --**
10 **refrigerator unit?**

11 A. Yes, this was a FreshPet work order placed.

12 **Q. And this is on June 7, 2018?**

13 A. Correct.

14 **Q. So that would be more than a year prior to this**
15 **accident?**

16 A. Correct.

17 **Q. And what was the problem on this particular one?**

18 A. Power, it looks like.

19 **Q. And it said, it appeared no power was going to the**
20 **cooler?**

21 A. Correct.

22 **Q. Do you know why that was?**

23 A. No.

24 **Q. Okay. Was that corrected?**

25 A. I would assume so.

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1 **Q.** Okay. With no power going to the cooler, was there
2 a problem with water leaking from the pan?

3 **A.** No.

4 **Q.** Okay. And do you know whether this is the same
5 unit that's involved with this particular accident
6 or was that unit replaced?

7 **A.** I do not know.

8 **Q.** So, were there any more problems with it, whether
9 it's a new unit or the same unit, after this
10 accident or this problem on June 7, 2018, until the
11 time of Ms. Bird's accident?

12 **A.** Not that I'm aware of.

13 **Q.** Are you aware of any water leakage from this unit
14 up until the time of Ms. Bird's accident for the
15 prior year?

16 **A.** I was not at the store for the entire prior year.

17 **Q.** Okay.

18 **A.** But from the time that I was there, no.

19 **Q.** Okay. And you would agree that there's nothing
20 FreshPet could do about any problem until they got
21 notice of that problem to come out and fix it. Am
22 I right?

23 **MR. CREECH:** Object to the form.

24 **A.** Yes.

25 **Q.** All right. Thank you. That's all I have.

1 MR. CREECH: Hold on just a second. Let me look at
2 one.

3 -----

4 Examination by Mr. Creech:

5 Q. All right. Just quickly, if -- if there had been
6 water leaking -- Plaintiff's Exhibit number 1, if
7 the scenario was that there had been water leaking
8 from that FreshPet fridge and an employee noticed
9 it, per policy and procedure, the employee's
10 supposed to stay there until it's cleaned up. Is
11 that correct?

12 A. Correct.

13 Q. Okay. So, leaving a wet floor sign while the
14 employee goes to get a mop or something to cleanup
15 would be in violation of the policies and
16 procedures of PetSmart. Is that right?

17 A. We would have to react reasonably. I mean ...

18 Q. Well, let me read to you from Plaintiff's Exhibit
19 number 10. Where it says, floors. It says, there
20 must be no wet spots. Do you see that?

21 A. Correct. Yes. So, one would remain while the
22 other gets the equipment.

23 Q. Yeah. This June -- one other question. This is
24 Plaintiff's Exhibit number -- let's see I think
25 it's number ...

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1 MR. MOORE: 8.

2 MR. CREECH: Oh, that's 8. Actually, number --
3 sorry about that -- number 9.

4 Q. The -- when you called in about the fridge is
5 leaking pretty bad, which is captured on
6 Plaintiff's Exhibit number 9, you can't remember if
7 this is for a FreshPet fridge or a PetSmart fridge?

8 A. Correct. I don't remember which one.

9 Q. Do you remember if -- did you ever have any
10 problems with the PetSmart fridges leaking?

11 A. I don't -- we have before, yes.

12 Q. At that store -- at the Woodruff Road store?

13 A. I don't remember if it was Woodruff Road or not.

14 Q. Okay. So despite you -- this was, what? Just a
15 little over two years ago -- well, three years ago
16 when you -- you called in. You made a report about
17 a fridge leaking at the pet store -- at PetSmart,
18 right?

19 A. Correct.

20 Q. And you have no idea -- you can't remember which
21 fridge it was?

22 A. No. I don't remember which one it was that was
23 broken at the time.

24 Q. You have no independent recollection of a fridge
25 leaking that prompted you to call in and make a

1 **report about it?**

2 A. No.

3 Q. I mean, it would have been a dangerous situation.

4 A. Yeah.

5 Q. Would you agree?

6 **MR. LAFAVE: Object to the form.**

7 Q. Let's see here. According to you, the fridge was

8 leaking pretty bad, will need a tech to take a

9 look, right?

10 A. Uh-huh (Affirmative answer).

11 Q. It concerned you enough that you felt like you

12 needed to call-in the problem.'

13 A. Yes.

14 Q. On the Facilities One system.

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. And if this had been a PetSmart fridge, it would --

19 would it have indicated in the document that the

20 fridge had been repaired anywhere?

21 A. I do not know. I'm not familiar with these

22 documents.

23 Q. Okay. If this had been a FreshPet fridge, just --

24 okay. So, in the June, 2018, document, if you look

25 at the second page, it says that PetSmart is not

1 **responsible because it's a FreshPet unit, not**
2 **served by Facilities One.**

3 A. Okay. Yeah, so they would have -- they would have
4 contacted the store and given us the -- the right
5 information.

6 **Q. Okay.**

7 A. Channels to get it fixed.

8 **Q. All right. There's no indication that this was a**
9 **FreshPet unit in the Plaintiff's Exhibit number 9.**
10 **Is that correct?**

11 A. Correct.

12 **Q. Okay. All right. I have no further questions.**

13 **MR. MOORE: Let me just follow up on that real**
14 **quick.**

15 -----

16 **Examination by Mr. Moore:**

17 **Q. That's -- Exhibit number 9 has to do with a report**
18 **on July 23rd, 2019, as I understand it?**

19 A. Yes.

20 **Q. Between that time and the time this accident**
21 **happened in September 6, 2019, did you have a unit**
22 **that was continually leaking water on the floor?**

23 A. Not that I'm aware of. I believe this one was
24 fixed.

25 **Q. Okay. Thank you.**

1 -----

2 **Examination by Mr. Creech:**

3 **Q. Let me just ask him. Why do you say that? That's**
4 **what I want to know. You say you believe. I mean,**
5 **why do you say that you believe it was fixed?**

6 **A. Because we would have had follow-up. Usually, if**
7 **we don't have a tech out within a day or two, we**
8 **would follow-up and have a resubmission.**

9 **Q. Well, this one says -- this says work order**
10 **avoidance; reason: non-critical.**

11 **A. Correct. So, it could have been something as**
12 **simple as they called and -- and walked us through**
13 **and we were able to fix it over the phone.**

14 **Q. Okay. But again, there's no documentation of that.**
15 **I mean, it could have easily just been not**
16 **addressed. Would you agree?**

17 **MR. LAFAVE: Object to the form.**

18 **A. Yes.**

19 **Q. Okay. Maybe -- would you agree that this could**
20 **have been an ongoing leak and that was why the wet**
21 **floor sign was put there?**

22 **MR. LAFAVE: Object to the form.**

23 **A. No.**

24 **Q. Okay. All right. That is my last question.**

25 **MR. LAFAVE: I got just a few quick ones. I think.**

1 **It should be quick.**

2 -----

3 **Examination by Mr. LaFave:**

4 **Q. Jordan, you don't have any responsibility for**
5 **creating or inputting any of the information in**
6 **what's been marked as Plaintiff's Exhibit 8 or 9,**
7 **do you?**

8 **A. Correct. Yeah.**

9 **Q. Okay. The -- you were asked some questions about**
10 **PetSmart's policies and procedures relative to the**
11 **image in picture number 1. Do you recall those**
12 **questions about the placement of the wet floor sign**
13 **and the employee walking away from a standing**
14 **puddle on the floor?**

15 **A. Yes.**

16 **Q. Okay. Is it in compliance with policies and**
17 **procedures for an employee to place a wet floor**
18 **sign after having mopped up a puddle of water on**
19 **the floor?**

20 **A. Yes.**

21 **Q. Okay. So, would it be in compliance for the**
22 **employee to have mopped up water, placed the wet**
23 **floor sign, if water had then, later in the day,**
24 **returned to that area of the store?**

25 **A. Yes.**

1 Q. All right. That's all I have.

2 MR. MOORE: I think you're done.

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24 (There being no further questions

25 the deposition concluded at 12:14 P.M.)

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) : C E R T I F I C A T E

Be it known that I took the deposition of
JORDAN COATES;

That I was then and there a Notary Public in and
for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 101 pages is
a true and correct transcript of the testimony given in
this matter;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

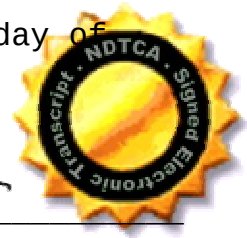
WITNESS MY HAND AND SEAL this 20TH day of
February, 2023.

Barbara M. McCurley

Barbara M. McCurley

Notary Public for South Carolina

My Commission Expires: 07/02/2024





Store Appearance Procedure

Utilize the Title Translation document to translate old management titles to new leadership titles.

Contact: Store Operations
 Issued: 11/05
 Revised: 07/17

This procedure must be followed to ensure proper appearance and sanitation for both interior and exterior of the store.

Tools & Resources

- Daily Store Conditions
- Task Elimination Look Book
- Property Inspection Policy

Interior

To create an inviting and safe environment, we must maintain high standards for our pet parents by keeping the store clean and clutter free. Be diligent in addressing any opportunity areas of your store. This includes the front end, register area, offices, Oops stations, shelves/base decks, window sills, exit doors, etc.

Restrooms

- Conduct an inspection of the restrooms every day at 9am, 1pm, 5pm, 9pm, and perform maintenance as required.
- Fill out the restroom cleanliness section on the Daily Store Conditions Form after each inspection.
- The Daily Store Conditions Form is not left/stored in customer view or access.

Floors

- Inspect the floors throughout the day and perform maintenance that is required. There must be no wet spots, pet waste, debris on the floor, or product blocking traffic flow areas. If any of these are present, have an associate remain while another associate gets the proper tools to clean. Never leave a wet or pet waste on the floor unattended. This could cause a pet or pet parent to injure themselves.
- All the aisles are accessible and easy to shop. There is no equipment or U-boats blocking customer access.
- Wet floor signs must be prominently shown when appropriate.

Shelves

- Shelves must not have dust or debris on them.
- When product is stocked remove any leftover cardboard, labels, hair or dust from the shelves

Exits/Entrances

- All doors, including emergency exits, and surrounding areas must be clean. There must be no cobwebs, dust, or debris around them.
- The areas must be cleaned weekly to maintain a proper brand image for pet parents.

Front End

- The registers are to be clean and organized. There shall be no excessive returns/ products around the area.
- Registers must be cleaned throughout the day as necessary.
- The front end, including the leader's office, is cleaned and maintained. There are no front-door deliveries on the sales floor, no carts with product blocking customer access, and resources are organized in the office.

Company confidential. Intended for PetSmart internal use only. Do not distribute or disclose to third parties.



Breakroom

- Tables in the breakroom must be cleared of trash and debris. Each associate is responsible for cleaning up after him/herself.
- Any spill that takes place in the sink/ refrigerator/ or microwave must be cleaned immediately by the person responsible for the spill.
- Belongings must not remain in the refrigerator/ freezer for extended periods of time. It must be removed at the end of the shift by the associate responsible for bringing it.
- Refer to the Property Inspection Policy regarding the use of employee lockers.

Backroom

- The backroom must be cleaned and organized per backroom guiding principles.

Exterior

The pet parent's first impression of our brand can be impacted by the exterior conditions of our stores. To drive loyalty and traffic, stores must regularly perform the following procedures.

Front sidewalks

- Inspect your front sidewalks throughout the day and sweep as needed. At minimum, front sidewalks must be sprayed with the pressure washer weekly. (As permitted by landlord or local governance.)
- If you co-tenant with another retailer, a great way to be a good neighbor is to offer to clean their sidewalk as well.
- Be sure to use common sense in cold climates; do not pressure wash the front sidewalk if it would cause ice to form and become a hazard for our pet parents.
- Associates must wear safety glasses while using the pressure washer.
- Wet floor signs must be prominently displayed while using the pressure washer and remain in place until the sidewalk is dry.
- If there is gum stuck on the sidewalk, spray the gum with canned air. This will freeze the gum allowing it to be removed easily.

Shopping carts

- There must always be adequate number of shopping carts available for our pet parents.
- Shopping carts must be recovered from the parking lot in a timely manner.
- If a store has a cart corral it must be in good repair.
- Shopping carts must not be left outside after the store is closed.
- Remove any trash left in the carts.
- Remove broken carts from circulation. Contact Facilities for repair.
- Spray down shopping carts with the pressure washer quarterly or more often depending on store volume or season (i.e. Holiday season).
- The Store Leader is responsible for arranging pick up of any abandoned carts upon notification by the city or another person. Such retrieval shall be performed as soon as possible but no later than three days after notification of such abandonment.

Ashtrays

- For stores who have an ashtray filled with sand or cat litter at the front entrance of the store, sift and clean ashtrays each morning prior to opening. Replace gravel or sand monthly or as needed.

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Parking lot and landscaped areas

- Inspect the parking lot and any landscape for trash and dog waste throughout the day.

Trash cans

- Each store is required to have an outdoor trashcan. Empty the trashcans every evening after store closing and the next morning if necessary.
- Thoroughly clean the trashcans weekly. If there is an unpleasant odor or any liquid leaking from the can, the trash should be emptied immediately and the can cleaned.
- Do not leave extra trash bags inside the can if the lid does not have a lock.
- Even if there is a trash removal service provided by the landlord, ultimately it is the stores' responsibility to ensure it meets PetSmart standards of cleanliness.

Front windows and sliding glass doors

- Keep the front windows and sliding glass doors clean and clear of dirt, cobwebs, handprints, nose prints, etc.
- Inspect and clean the front windows and sliding glass doors every morning.

Exterior building signage and parking lot lights

- Inspect exterior signs daily to ensure all lights are working.
- Inspect parking lot lights daily to ensure all lights are working.

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
COUNTY OF GREENVILLE * TRANSCRIPT OF RECORD

-----X
CAMILLE BIRD, *
Plaintiff, *
vs. * Case No. 2022-CP-23-00564
PETSMART, LLC and FRESHPET, *
LLC, *
Defendants. *
-----X

January 10, 2024

B E F O R E:

The Honorable G.D. Morgan, Jr., Presiding Judge

A P P E A R A N C E S:

Thomas M. Creech, Jr., Esq.
Attorney for the Plaintiff

Matthew C. LaFave, Esq.
Attorney for the Defendant

Recorded by: Webex Recording

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

THE COURT: All right. Next matter then is Bird v. PetSmart, 2022-CP-23-0564. Defendant PetSmart's motion for summary judgment.

All right. When y'all get settled, if you would, please identify yourself for the record and who you represent and start with the plaintiff.

MR. CREECH: Yes, Your Honor. Tom Creech. I represent the plaintiff, Camille Bird.

THE COURT: All right.

MR. LaFAVE: Good afternoon, Your Honor. Matt LaFave on behalf of PetSmart.

THE COURT: All right. I believe this is on -- yes, sir, Mr. Moore?

MR. MOORE: David Moore on behalf of FreshPet.

THE COURT: All right. Mr. LaFave, I believe this is your motion; right?

MR. LaFAVE: It is indeed, Your Honor. Did Your Honor happen to receive a copy of the memo that was filed on Monday?

THE COURT: I did.

MR. LaFAVE: You did, okay.

THE COURT: I have read it.

MR. LaFAVE: I have an extra copy if you needed it.

THE COURT: I have read it.

1 MR. LaFAVE: All right. Well, then I will keep my
2 remarks brief on this issue, but, obviously, this is a
3 motion on behalf of PetSmart for summary judgment. This
4 is a standard premises liability negligence claim.

5 I don't exactly know how Mr. Creech is going to
6 approach the opposition because he, I guess, could argue
7 that it was a dangerous condition or he could argue it was
8 a foreign substance, either way.

9 September 6, 2019, his client, Camille Bird, came
10 into the PetSmart store approximately 9:40 to retrieve
11 some pet food for her dog. She approached a cooler, which
12 was the cooler that was maintained by defendant FreshPet.
13 She attempted to retrieve the food, turned to walk away,
14 and as she's testified, she slipped and fell on some water
15 that was on the floor at the base of the particular
16 refrigerator.

17 As Your Honor knows, if this is being approached as
18 a foreign substance case, then Plaintiff has an obligation
19 to establish that either the substance came to be present
20 on the floor through some action of PetSmart or one of
21 their agents or that they had actual or constructive
22 knowledge.

23 The evidence in the case is clear that the issue
24 that gave rise to the substance being on the floor was
25 contained within the pan under the refrigerator, obscured

1 from view, couldn't be seen just in passing by by the
2 employees.

3 Subsequent repairs that were done on or about
4 September 10th indicated there was a problem with the
5 wicking pads. I know Mr. Creech has obviously hired Bryan
6 During, and Bryan During gave an affidavit in the case and
7 said there was a problem with the wicking pads; that they
8 weren't absorbing the moisture, which was allowing the pan
9 to fill up and ultimately spill over on the floor.

10 The problem in this case, Your Honor, is there's no
11 knowledge on the part of PetSmart. There's no evidence
12 that they had actual knowledge of that substance on the
13 floor prior to her fall nor, obviously, is there any
14 evidence that they caused --

15 THE COURT: It had been repaired, though, prior to
16 that; right?

17 MR. LaFAVE: They did a repair to that. And I
18 appreciate Your Honor bringing it up. And I think this is
19 a strong point of contention in this case based on
20 Mr. During's affidavit, which, for the record, I want to
21 note that, obviously, this case was filed February 1st of
22 '22. Plaintiff's counsel responded to discovery June of
23 '22, supplemented December of '22, and only just a couple
24 of days before this hearing was an affidavit produced to
25 Bryan During. Bryan During still, to this date, has not

1 been identified by Plaintiff through discovery as an
2 expert witness in the case, so his affidavit was something
3 that caught us by surprise completely.

4 But be that as it may, it appears that Bryan During
5 is attempting to construe the evidence as opposed to
6 offering opinions. What Mr. During says, which is wholly
7 inaccurate, is that this was a continuous problem, and
8 what he's done is he relies on the previous indication
9 that there was a problem with the cooler that caused it to
10 leak. That was reported July 23rd.

11 The evidence in the record is clear and it's
12 undisputed is that, June 24th, that report made its way to
13 FreshPet. FreshPet sent out one of their vendors to do
14 repair work. That repair work was completed on August
15 1st. The repair work that was necessary in that instance
16 and for that repair had to do with a thermostat. So it
17 was a completely different issue that arose for the
18 September 6th leak. There's no evidence that that leak
19 continued beyond the repairs that were done August 1st.

20 And, in fact -- and I submitted -- and I did it sort
21 of out of habit, Your Honor; as opposed to chopping up the
22 deposition transcript, we just simply added all of them as
23 an exhibit. But there are -- there's testimony from
24 Jordan Coates. There's testimony from Carl Harper.
25 There's also testimony from Don Johnson. And it's Don

1 Johnson's deposition that I will note specifically and
2 Jordan Coates' deposition that I will draw your attention
3 to.

4 Don Johnson said we only had one previous issue.
5 That was the issue from July 23rd.

6 Jordan Coates, on pages 52, 54, and specifically on
7 page 79 was asked about the previous issue and he said
8 that issue was fixed. Mr. Creech asked him, "How do you
9 know the issue was fixed if you weren't there when the
10 repairs were done?" And his response specifically was,
11 "We did not have that issue anymore."

12 There is no evidence that Mr. Creech has put in to
13 indicate anything other than that was an isolated
14 incident, the incident was fixed, the leak did not
15 continue. This was a completely separate issue and a
16 completely separate leak.

17 In order for him to establish the only thing that he
18 then could, which would be constructive notice, is he
19 would have to establish either that the substance had been
20 present for an extended period of time; that through the
21 exercise of reasonable diligence, should have been
22 discovered. There's no evidence to that. His client was
23 asked how long it had been there. She didn't know. The
24 employees from PetSmart that were asked didn't know how
25 long it had been there. Jordan Coates testified, prior to

1 the store opening at 9:00, as they are required to do,
2 they did a sweep of the floor. There was no substance on
3 the floor when they opened the door.

4 30 to 40 minutes later when she comes in, she slips
5 and falls. We don't have any evidence as to when the
6 substance came to be on the floor, and, therefore, the
7 only other means by which he could establish constructive
8 notice is to establish this was a continuous condition
9 that was recurrent and that they had knowledge of
10 previously, and, as a result, they would be charged with
11 constructive knowledge. That's the Henderson case. And I
12 can't think of the name of the other one, but I know it
13 had to do with the poinsettia -- it's Pinckney, the case
14 with the falling poinsettia leaves. Neither one of those
15 cases rested on the fact that it was a recurring
16 condition; they were settled on other issues to establish
17 constructive notice.

18 But in this case, Your Honor, we have one isolated
19 incident in July. This incident was fixed. This is a
20 completely separate isolated incident, and Mr. Creech has
21 put in no evidence thus far in two years that establishes
22 what caused the substance to be on the floor; we created a
23 dangerous condition, had actual knowledge, and there's no
24 evidence that this was a continuous recurring condition
25 such as -- and there's also no evidence that establishes

1 the substance was on the floor for an extended period of
2 time; that we should have discovered it through the
3 exercise of reasonable diligence.

4 That's the law in the cases in the State of South
5 Carolina, Your Honor, and, therefore, we believe that
6 summary judgment is warranted. Thank you.

7 THE COURT: All right. Mr. Creech?

8 MR. CREECH: Yes, Your Honor. I just -- again, you
9 have seen the memo that we filed in the case. I just --
10 we can't say the exact precise minute that the water was
11 on the floor or began to get on the floor, but we can
12 show -- we produced some evidence that the water was there
13 before she fell and they knew about it.

14 THE COURT: All right. That part right there "and
15 they knew about it," what evidence on that?

16 MR. CREECH: Well, if you look at Exhibit No. 7 to
17 our memo -- so this would be PetSmart Defendant 0023,
18 that's an email -- internal corporate PetSmart email that
19 had gone up the corporate chain once this incident had
20 been reported. And that email says clearly these are
21 PetSmart corporate people. It says, "Hi, Judy. The
22 incident occurred on September the 6th, 2019; however, the
23 store is saying that they reported a leak from the
24 refrigerator to corporate before 9/6 because, apparently,
25 it had been leaking before the customer fell." So, I

1 mean, that's where it says the store is saying they
2 reported a leak. I mean, that's obviously, a leak of
3 water. They reported it. That's -- they had knowledge of
4 the leak of the water when they report it.

5 THE COURT: But that's a letter from somebody up in
6 corporate?

7 MR. CREECH: Yeah, that's from -- that's an internal
8 PetSmart email that's through their maintenance
9 department, how issues are -- how maintenance issues are
10 reported up into PetSmart.

11 So the way this works, if there's a maintenance
12 issue with that machine, the local store reports it to
13 corporate. Corporate then reports it over to FreshPet,
14 and then FreshPet comes out and fix -- I mean, yeah, comes
15 out and fixes it.

16 So Mr. Coates, the assistant store manager, reported
17 this leak up the corporate chain. These are internal
18 corporate communications between Michelle Krauss, who is a
19 PetSmart employee, and Judy Ramirez, who is a PetSmart
20 employee, about Store 1300, which is the Woodruff Road
21 store where this occurred, about the FreshPet refrigerator
22 work order. They were looking for these leaks. They were
23 looking for these work orders regarding these leaks.

24 So it says, again, the store is saying that they
25 reported a leak from the refrigerator to corporate before

1 September the 6th because it apparently had been leaking
2 before the customer fell.

3 THE COURT: So what evidence, though, does it
4 have -- is that as to that particular day and that time
5 that even though it may have been previously leaking --
6 and it sounds like that was a July -- back in the
7 July issue; although Mr. LaFave is just saying that was
8 really a -- not necessarily a leaking issue, it was
9 something else.

10 But let's assume for purposes of our -- of my
11 question is that -- let's assume that it had leaked back
12 in July and that was what was fixed and completed on
13 August the 1st. What gets you to this accident to say
14 that they had notice when your client fell?

15 MR. CREECH: Well, again, that's -- that's -- the
16 inference from that memo -- from that email is that they
17 knew because they say that the -- the day of the incident
18 was September 6. That date, September 6, is what's
19 referred in this email. These were documents that were
20 disclosed to us regarding the Store 1300 FreshPet
21 refrigerator work order.

22 THE COURT: I mean, I read the email and I'm reading
23 it now, looking at it again.

24 MR. CREECH: Work order, Camille Bird. So, clearly,
25 they're referencing this incident.

1 THE COURT: But does it -- does it define or say
2 anything about when it had been leaking? Because it says
3 it apparently had been leaking before the customer fell,
4 and that could have been referring back to the
5 July incident or it would have been the day before or the
6 week before.

7 MR. CREECH: Well, it's the store reporting that it
8 was leaking before she fell. I mean, that's the store
9 employees reporting that it had been leaking before she
10 fell. So in the light most favorable to the plaintiff,
11 Your Honor, you would interpret that -- I mean, we get
12 that inference in the light most favorable to us because
13 they're talking about this machine that they knew before
14 she fell.

15 Now, if the July -- if the July repair was done,
16 then -- and the machine was fixed, so, I mean, the
17 inference is obvious. The argument is obvious. I mean,
18 why -- how could that be referring to a prior leak if it
19 had been fixed?

20 THE COURT: Let me ask you this: Let's assume the
21 hypothetical and using your argument that it was leaking
22 prior to her falling. What about the situation of she --
23 it -- they find that it had been leaking right before she
24 fell. Let's assume, say, a minute or two right before she
25 fell that it was leaking or even five minutes before that.

1 Would you still be able to hold a business liable for a
2 slip-and-fall on the notice issue under that situation
3 where, okay, it had been leaking before, but it may have
4 been right before she fell, would a business be liable
5 under that situation under our slip-and-fall law?

6 MR. CREECH: Well, again, that's -- you know, for
7 purposes of summary judgment, just producing a minimum
8 amount of evidence in the inferences in the light most
9 favorable to the plaintiff, I think so.

10 THE COURT: Well, that's -- you know, the standard
11 is a little bit different now. It's not the minimally.
12 It's the reasonable --

13 MR. CREECH: We know it's not a scintilla, but it's
14 a reasonable --

15 THE COURT: Which is funny, I tell you, for the last
16 several years I have been on the bench, the first thing
17 out of the plaintiff's lawyer's mouth, "Well, Judge, you
18 know, there's scintilla of the evidence here."

19 MR. CREECH: Yeah.

20 THE COURT: And it's funny since then, in the last
21 two months, I haven't heard that anymore.

22 MR. CREECH: No, it's not -- "scintilla" is not the
23 word that we use anymore, Your Honor.

24 THE COURT: It's got to be a reasonable inference
25 from the evidence.

1 MR. CREECH: It's not -- we don't have to prove our
2 case here in summary judgment either. It's not a
3 preponderance of the evidence.

4 THE COURT: I agree. I agree with that.

5 MR. CREECH: But, you know, there's other evidence
6 too. There was a sign there that my client adamantly --
7 adamantly denies that there was a sign. There's been a
8 picture that's been produced in discovery. That
9 picture -- and I'd like to hand it up as part of this
10 hearing. That picture was taken apparently on September
11 the 13th. That was not taken the day of the fall. But
12 PetSmart, in any event, is saying that there was a sign up
13 before she fell. That is in the incident report.

14 So the incident -- in the incident report that was
15 written by Mr. Coates -- and this is in our memorandum --
16 Mr. Coates said that the machine -- the FreshPet
17 refrigerator has been leaking. It says that in his
18 incident report.

19 So, again, in the light most favorable to the
20 plaintiff, resolving all the inferences in favor of the
21 plaintiff, that shows knowledge that they knew that this
22 machine was leaking -- leaking water before she fell. It
23 says the refrigerator has been leaking.

24 There was a sign up according to FreshPet -- I mean,
25 according to PetSmart, they had a sign up before she fell.

1 The store manager says it's his understanding that that
2 sign was there before she fell. Mr. During talks about,
3 if that sign was there, which my client adamantly denies
4 that there was a sign there -- we don't have a picture
5 from the date of the incident, so that is a question of
6 fact as to --

7 THE COURT: And not from Mr. During's testimony.
8 That's not -- he doesn't -- I have read his affidavit. He
9 doesn't create a question of fact on that issue there.

10 MR. CREECH: He says -- he just mentions the sign,
11 but he said that would be an inadequate response; that the
12 machine should have been taken out of service. That's
13 what he said in his deposition.

14 THE COURT: I understand your other arguments on
15 question of fact. I'm not -- I'm not -- I'm not agreeing
16 with you on Mr. During's affidavit. But I understand your
17 "has been leaking" and I'm going to ask the defendant
18 about that and the sign being up or issues to consider.

19 MR. CREECH: And I would, Your Honor, say that there
20 was also an exhibit as part of the deposition where the
21 assistant -- Mr. Coates, the assistant store manager drew
22 on the picture where the water was coming out, the size of
23 the puddle, which indicates it's about a 3-foot-wide by
24 1-1/2-foot size of puddle coming out from the machine, out
25 1-1/2 feet.

1 The store policy, which I can hand up as, again, I'd
2 like to make part of the record, is the -- that the
3 employees are not to leave a machine if they are --
4 they're not to leave a wet spot on the floor. They are to
5 stay there with it until it's -- somebody goes and cleans
6 it up.

7 So, you know, that combined -- again, in the light
8 most favorable to the plaintiff and the inferences
9 resolved in favor of the plaintiff, we think that there
10 is -- there's evidence -- reasonable evidence that they --
11 the machine has been leaking -- had been leaking, they
12 knew about it and did nothing to repair it or take it out
13 of service to eliminate the hazard.

14 THE COURT: Let me ask you that, Mr. LaFave. What
15 about that, Mr. Creech's argument there that -- first of
16 all, the email that -- it's an email that does say it was
17 leaking before she fell. And at least -- I know it's not
18 necessarily a scintilla but is that a -- I mean, it's not
19 a scintilla -- it doesn't matter anymore -- anyway
20 anymore, but is that at least a reasonable inference for
21 summary judgment purposes that --

22 MR. LaFAVE: It's not, Your Honor, and I'll tell you
23 why. If you actually look at Exhibit 7 -- and Mr. Creech
24 selected simply the one element of that email without
25 regard to the email that prompted that email and then the

1 email that was received in response.

2 If you start on Exhibit 7, 10:14 a.m., September
3 8th, Store 13 had two tickets during that time frame.
4 Both were completed. 7/23/19, they reported the cooler is
5 leaking pretty bad on the floor. That prompts the
6 response that Mr. Creech is relying on to say that there's
7 a reasonable inference they knew the cooler is leaking
8 prior to this.

9 Obviously, we all know, from looking at a calendar,
10 July 23rd is prior to September 6. The response that
11 Ms. Krauss received from Judy Ramirez was "the work order
12 we received" and it says "was on July 23rd." So
13 basically -- and she talks about how that -- that
14 particular ticket was handled, that work order was
15 handled.

16 The reason I say it's not a reasonable inference,
17 the evidence right there that Mr. Creech has done nothing
18 to refute is the reference to the cooler leaking prior to
19 September 6 was a direct reference to the work order where
20 the cooler was leaking July 23rd, which there's also
21 evidence in the record that says that was fixed August
22 1st. It was a completely separate issue that led to that
23 cooler leaking. That was the thermostat issue as opposed
24 to the September issue which was the wicking pads.

25 I think the inference there is, once the thermostat

1 issue was fixed, the problem was solved. And that is
2 supported in the record by the testimony of Jordan Coates
3 that I referenced the Court to on page 79 when Mr. Creech
4 asked him, "How do you know that issue was fixed?" And he
5 said, "Because we didn't have the issue anymore."

6 Mr. Creech asked him a number of different times.
7 He asked Don Johnson, the store manager, a number of
8 different times about whether or not the leaking of the
9 cooler was an ongoing issue after July, and they both said
10 no. They said there was no leaking issue until
11 September 6.

12 So I'll address Your Honor's -- I presume your next
13 question, which deals with Jordan Coates' language in the
14 incident report. And this is on page 54 of his
15 deposition.

16 THE COURT: I want you to address that and the sign.

17 MR. LaFAVE: Yes, sir. And I'll address that and
18 the sign, and then I think the one other thing that I do
19 need to address is the diagram where Mr. Coates was asked
20 to draw the size of the puddle.

21 Page 54 of Jordan Coates' deposition, Mr. Creech
22 asks him, he says, "Let's go back to the statement you
23 made about the pet food fridge has been leaking. You
24 didn't write anywhere in this statement that water leaked
25 from the fridge; is that correct?"

1 "Yes, that's not in the statement."

2 "And so you would think that a fair interpretation
3 is this pet food fridge has been leaking; that it
4 indicates there's been an ongoing leak with the pet food
5 fridge?"

6 I objected to that, and he said, "It's possible" but
7 he said, "I'm not positive it's been ongoing. It would be
8 very short term like noticed that day."

9 There's no evidence that this is a leak that started
10 any time before September 6th when it was noticed after
11 the plaintiff fell. And the evidence is clear, and
12 Mr. Creech hasn't put in any evidence that there was a
13 leak from the cooler after it was repaired August 1st
14 until there was a leak that was found in discovery on
15 September 6.

16 The issue with the sign, there's -- and it's
17 throughout Mr. Coates' deposition. He indicated at one
18 point that, when he came to the location, he believed the
19 sign was there. There was another employee that said the
20 sign was up prior to the fall. He's not entirely sure.
21 He's even indicated in his testimony that he wasn't sure
22 if the sign was up prior to her fall.

23 Obviously, if the sign was up -- Mr. Creech hasn't
24 fleshed it out sufficiently. His client denies the sign
25 being there. If the sign's there, then they have met

1 their burden to establish that there was a warning. The
2 issue would be is if Mr. Creech can establish the sign was
3 put up because the water was there and an employee, after
4 seeing the water there, placing the sign in violation of
5 their policies and procedures, then left the area to go
6 get a mop. There's no evidence of that, Your Honor. And
7 to argue that would be pure speculation.

8 So the only other thing that I wanted to address
9 that Mr. Creech brought up was the drawing by Mr. Coates.
10 And I expected this to be an issue. Page 41 of Jordan
11 Coates' deposition, starting on line 1, is where
12 Mr. Creech goes through this, and he says, "If you will,
13 just draw on Plaintiff's Exhibit No. 1 with that blue pen
14 where the water was on the floor that you saw."

15 And he says, "From what, I'm not positive where I
16 don't remember it being far out though."

17 And so based on his recollection, he sketches a
18 quick diagram as to where the water was. There's any
19 number of factors at issue here, Your Honor. Mr. Creech
20 hasn't done anything, which presumably, if Bryan During is
21 his expert, he could come in and potentially have done
22 testing prior to now to determine if this is the problem
23 and this is causing the condensate pan to fill up and
24 ultimately spill over and water is to spread on the floor,
25 how long does it take for the water to get this far out

1 from the fridge. He could have done those tests. He
2 didn't. And it's pure speculation to say, based on
3 somebody's recollection in a drawing, that that's an
4 indication of how long that water had been present on the
5 floor.

6 He's not sure. He testified he wasn't sure, and
7 that's not evidence that it had been there for any
8 appreciable amount of time, and, therefore, I do think
9 that summary judgment is warranted, Your Honor.

10 THE COURT: All right. Mr. Creech?

11 MR. CREECH: Just briefly. And the reason I pointed
12 out the sign is that Mr. LaFave said in his opening
13 argument to you that the water was not apparent and it was
14 underneath the machine. And that's clearly contradicted
15 by Mr. Coates' drawing on the picture. The water was
16 out -- out from the machine.

17 I mean, but the picture is what it is. I mean,
18 that's evidence. He can't just act like he didn't do that
19 drawing.

20 THE COURT: But let me ask you this: Is that
21 evidence of -- because the key issue in the case, I think
22 we all agree is, did the defendant either put it there or
23 have actual or constructive notice. And so the drawing of
24 it, how does that lead to any one of those issues?

25 MR. CREECH: It just shows the size of the -- size

1 of the puddle. But it wasn't like a, you know, a little
2 dime-size or size of a quarter. I mean, we're talking --
3 the size of the puddle, and in fair inferences, it can be
4 drawn from that, and that it was not underneath the
5 machine but that it was coming out from the machine, to
6 support the plaintiff's version of events.

7 But, Your Honor, a couple of things I would like to
8 talk about. I mean, these documents speak for themselves.
9 I mean, it's kind of like in a criminal case. I mean, if
10 the defendant gives a confession and it's in writing and
11 then comes up on the stand and says, "I never said that,"
12 that doesn't mean the confession just goes away. We have
13 got these documents --

14 THE COURT: Yeah, but let me ask you about those
15 documents, because now that I have read them in context --
16 and that's why I did mention I'd consider your argument
17 there about, "Hey, it's been leaking," I did ask, too, you
18 know, how long it had been leaking based on this email
19 because it doesn't say.

20 But if you do look at the overall -- if you look at
21 the whole email chain, the question starts out on
22 September the 8th at 10:14 and says that the cooler was
23 leaking. And then the response from Ms. Krauss is that,
24 yeah, the incident occurred on 9/6 and it had been leaking
25 before the customer fell.

1 And then the next line is, "Do we have any record of
2 this?" Talking about that prior leak.

3 And then she responds up there at 6:15, Ms. Ramirez,
4 is that the work order we received was July 23rd. And so
5 it looks like they reported it the same day, 7/23. And
6 does that not put it in context a little bit?

7 MR. CREECH: Well, there was some -- they were
8 trying to figure out which work order they were talking
9 about. Was this for the July 23rd or the September 6th?
10 So then Michelle Krauss says, "No, this is the one -- the
11 incident that occurred about September 6th, is what we're
12 talking about." They're saying -- the store is saying
13 they reported a leak from the refrigerator to corporate
14 before September the 6th because, apparently, it had been
15 leaking before the customer fell.

16 They didn't say it had been leaking back in
17 July or -- I mean, that wouldn't make sense, because if
18 they're referring to the July leak, the July leak was
19 fixed.

20 THE COURT: But it also doesn't say it was before --
21 right before she fell, does it?

22 MR. CREECH: Well, it doesn't -- it doesn't indicate
23 the precise time, but it does say before she fell and that
24 the store had knowledge. I mean, that's -- I think the
25 inference is clear is they would have -- the store had

1 knowledge. I mean, she's referencing a store reporting
2 that the water was on the floor before the plaintiff fell.

3 Again, the -- Mr. Coates wrote in his incident
4 report, "The refrigerator has been leaking." I mean,
5 again, the fair inference there resolved in favor of the
6 plaintiff, in the light most favorable to the plaintiff
7 that he meant it has been leaking prior to her fall. The
8 it was the whole -- it's the incident report regarding
9 September the 6th.

10 THE COURT: But isn't, though, the issue has got to
11 be -- it gets back to my question again. Granted, it
12 might have been leaking but don't you have to have
13 evidence that it was leaking -- it was leaking that day
14 and PetSmart knew about it or should have known about it
15 that day?

16 MR. CREECH: We do have a sign present. We have
17 evidence of a sign being present before she fell. Again,
18 that was -- that's the testimony; that the employees
19 testified --

20 THE COURT: Does that kind of help him a little bit,
21 though, if you have got a sign?

22 MR. CREECH: It goes either way. But, I mean, for
23 the purposes of this hearing, Your Honor -- again, we'll
24 have testimony about -- if there was a sign present, we'll
25 have testimony saying that, you know, that wasn't an

1 adequate --

2 THE COURT: But your client said there wasn't one.

3 MR. CREECH: She's saying that there was not one.

4 But, Your Honor, you know, when I had Mr. Coates in
5 his deposition on page 52, when I asked him what he meant
6 about, "Has this been leaking," he really equivocated.
7 Again, if we go with the plain reading of the document
8 itself, Your Honor, a fair interpretation in the light
9 most favorable to the plaintiff indicates knowledge that
10 the machine had been leaking prior to her fall.

11 But what Mr. Coates said, he didn't -- he said -- I
12 said, "Did you mean that there had been ongoing leaking
13 problems with the pet food fridge?"

14 He said, "I'm not aware if it was an ongoing problem
15 or if it was just found that day. I can't remember that
16 part," is what he said.

17 But he didn't -- he didn't embrace either version.
18 So we're left with what the document says. And, again,
19 that's a fair, reasonable inference that they knew the
20 machine had been leaking. He said the machine has been
21 leaking. Honestly, I think that's enough -- I mean, a
22 jury, if they believe that, could find in favor of my
23 client.

24 THE COURT: Is that enough, Mr. LaFave? Isn't that
25 enough?

1 MR. LaFAVE: It's not, Your Honor. If you read his
2 testimony -- you don't get to go back to the document and
3 ignore the testimony of Jordan Coates. Jordan Coates was
4 specifically asked, "What did you mean by this?" But
5 there's other references throughout his deposition
6 testimony, and I go back specifically to the one that I
7 keep touching on from page 79 where he talks about the
8 leak from July, and he says it was fixed.

9 And Mr. Creech pressed him on it. He says, "How do
10 you know it was fixed? You weren't there when it was
11 fixed."

12 And his testimony was -- and he did not waffle one
13 bit on this -- he said, "Because we did not have that
14 issue anymore."

15 Don Johnson testified the same way. Don Johnson
16 said, "This was not an ongoing leak from this particular
17 cooler."

18 Mr. Creech has had ample opportunity to vet that
19 email. He's known about, obviously, these particular
20 witnesses. He could have called on them. He could have
21 asked Carl Harper, "Was this an ongoing problem?"

22 There's no evidence other than trying to parse words
23 and couch it as a reasonable inference that establishing
24 that PetSmart had any knowledge of a leak from that
25 cooler. Setting aside the July 23rd leak, there's no

1 evidence in the record that there was a known leak from
2 that cooler until after she fell.

3 And the other thing that I'll go back to, because
4 Mr. Creech brought it up again, was the size of the
5 puddle. Again, Jordan Coates is drawing this based on his
6 recollection. There's any number of things that's
7 happened since the fall and since this started to leak.
8 He was not the first employee on-site.

9 Mr. Creech knows of at least one other employee.
10 And specifically to the sign, the employee who Jordan
11 Coates said, "She told me the sign was present before
12 she -- before the plaintiff fell," this lady named Jordan
13 Mills. Her deposition hasn't been taken. It hasn't been
14 noticed. It hasn't been asked for.

15 But the drawing by Jordan Coates was done, from his
16 perspective, his perception, his recollection most
17 importantly, but done when he arrived, which was after she
18 had fallen, after she slipped. In her own words, her feet
19 go forward, which could have spread the water out further
20 than what it was when it dripped. She sat down with her
21 bottom on the ground, which also could have forced the
22 water further out away from the cooler than it had been at
23 the time the leak started.

24 So, again, we're back to pure speculation. We're
25 back to trying to parse just simply what does Jordan

1 Coates mean by the word "has." There's not evidence in
2 the record that establishes he meant "has" as "has been
3 leaking prior to our discovery of this leak on September
4 6th."

5 And based on that, there is no reasonable inference
6 that creates a genuine issue of material fact.

7 MR. CREECH: And my last thing -- I mean, if Mr. --
8 I mean, it's their motion --

9 THE COURT: I was going to call on Mr. Moore in a
10 minute. Go ahead and I'll go back -- I'll go to
11 Mr. Moore. He's been quiet over there. I'm going to give
12 him an opportunity.

13 MR. CREECH: Yeah, he's not joining -- it's not his
14 motion. I mean, he's here, I think, you know, just
15 because of the codefendant.

16 But the -- you know, these sound like arguments in
17 front of a jury, Your Honor. I mean, this is what we need
18 the jury to figure out and to judge and to weigh and to
19 make that decision. You know? So that's -- you know,
20 the -- again, we have presence of a sign. That's clear
21 evidence that they -- I mean, they don't just put the sign
22 out. The obvious inference is they put the sign out
23 because they knew about the presence of a leak or presence
24 of water.

25 Again, Mr. Coates has equivocated as to what he

1 really meant by that. He wrote the statement. He can't
2 tell us in his deposition what he really meant, again,
3 that's his credibility in front of a jury in the face of
4 the plain, obvious reading of his incident report, and the
5 purpose of an incident report is, obviously, to capture
6 the facts of what happened.

7 So, Your Honor, we think the case should be argued
8 in front of a jury. We have presented a reasonable amount
9 of evidence here that they knew -- that they knew there
10 was water on the floor. They certainly should have known,
11 so we'd ask you to deny the motion, Your Honor.

12 THE COURT: All right. Mr. Moore?

13 MR. MOORE: Very quickly, Your Honor. There's been
14 a lot of argument with regard to this email that was given
15 and the inference as to whether it was shortly before this
16 fall or whether it was at the beginning of August/end of
17 July.

18 By virtue of the fact that you can look at equally
19 both ways, this was just shortly before the fall or about
20 a month or so before the fall, that's not an inference.
21 That's an ambiguity.

22 And my understanding, just based on my experience
23 is, when we charge the jury, their verdict is not supposed
24 to be based upon an ambiguity. We don't really have an
25 inference here because we don't know which way it goes.

1 We have an ambiguity because we don't know which way it
2 goes.

3 And, for that reason, I think summary judgment may
4 be apparent here.

5 MR. CREECH: Well, again, putting that all together,
6 you know, with the sign, with the language from the
7 reports, with the email clearly stating the water was
8 there before she fell, I mean, I think that -- when you
9 add all that together in a big picture, Your Honor, I
10 think the case -- but I would like to hand up some
11 exhibits as part of the record here today ---

12 THE COURT: All right.

13 MR. CREECH: --- in addition to what we --

14 THE COURT: Any objection from the defendant? I
15 don't know what you're handing up.

16 MR. LaFAVE: I'm not sure what he's handing up.

17 MR. CREECH: Well, one of these is a store policy --

18 THE COURT: Show it to Mr. LaFave and Mr. Moore.

19 MR. CREECH: There was a protective order for the
20 store policies, so I wanted to hand that up at the hearing
21 as opposed to (indiscernible).

22 MR. LaFAVE: Judge, this is a policy -- an internal
23 policy that we all agreed was going to be marked
24 confidential. I don't know how Your Honor wants to handle
25 that as far as making it part of the record, if it's the

1 confidential document that the parties agreed was going to
2 remain confidential.

3 MR. CREECH: Well, we have a protective order so we
4 can use these documents in a hearing before the Court.

5 MR. LaFAVE: Sure.

6 THE COURT: He's talking about, though, putting it
7 on public index or making it a public record. Is that
8 what you're -- Mr. LaFave, that's --

9 MR. LaFAVE: That's exactly right, Your Honor.

10 MR. CREECH: I understand. We just want to hand
11 this up for the Court to consider as part of the motion.

12 THE COURT: Yeah, I can consider it without putting
13 it on the public record.

14 MR. LaFAVE: That's fine. And the other document it
15 looks like he's going to hand you is the document that we
16 were finally able to track down that looks like it has the
17 date stamp for when the sign was photographed in the area.

18 And I know I'm probably beating a dead horse about
19 it, Your Honor, but if Mr. Creech was, again, mentioning
20 the fact that there was a sign present, you can't have it
21 both ways. You can't say there's a dangerous condition
22 and you knew it because you had a sign present. I argued
23 a very similar case in Charleston County on summary
24 judgment, and the plaintiff said, in response to my
25 argument about what's the evidence of knowledge of a

1 dangerous condition, and he said, "You had a warning
2 sign."

3 How is a warning sign about the presence of a
4 dangerous condition evidence of a dangerous -- evidence of
5 knowledge? So my point about it is this, Judge:
6 Mr. Creech can't stand up here and say, "We had knowledge
7 of a dangerous condition or foreign substance because we
8 had a wet-floor sign out" and then turn right back around
9 and say, "My client said there was no wet-floor sign."

10 There's either a wet-floor sign and he's going to
11 take that position, in which case we would argue that we
12 have warned her of a potential dangerous condition in the
13 area, or there's no wet-floor sign and he doesn't get the
14 benefit of arguing the presence of the sign indicates
15 knowledge of a dangerous condition. You can't argue it
16 both ways.

17 THE COURT: All right. As far as the policies,
18 that's a confidential document. I'll take a look at that.

19 Now, you have marked as Exhibit No. 1 the
20 photograph; is that correct, Mr. Creech?

21 MR. CREECH: Yes, Your Honor. That was taken on
22 September -- the email that was produced to us with the
23 photograph, yeah.

24 MR. LaFAVE: And I think we actually uploaded that
25 as an exhibit earlier this morning, Judge.

1 THE COURT: All right. It may not have come up by
2 the time we came out here, so...

3 All right. I'll -- thank y'all for your arguments.
4 I'll take it under advisement and I'll let you know of my
5 decision -- it will be this week.

6 MR. CREECH: Thank you, Your Honor.

7 MR. LaFAVE: Thank you, Judge.

8 THE COURT: Good to see y'all.

9 (The above matter concluded.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Camille Bird v. PetSmart/FreshPet

3 2022-CP-23-00564

4 DATE OF HEARING: 1/10/24

5 COURT REPORTER/MONITOR: Webex

6 *****

7 I, Bobbi Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; that said proceedings were
10 transcribed to the best of my ability from the audio
11 recording and supporting information, and that I am
12 neither counsel for, related to, nor employed by any of
13 the parties to this case, and I have no interest,
14 financial or otherwise, in its outcome.

15
16 17 /s/ Bobbi Fisher_____

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 5/29/24

20
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#4117

STATE OF SOUTH CAROLINA)

IN THE CIRCUIT COURT)

COUNTY OF GREENVILLE)

13TH JUDICIAL CIRCUIT)Camille Bird,)

Plaintiff(s),)

EXHIBIT LIST

vs.)

PetSmart, LLC and FreshPet, Inc.,)

Defendant(s).)

Docket No. **2022CP2300564**

Plaintiff: Camille Bird	Defendant: PetSmart, LLC and FreshPet, Inc.,
Attorney: Thomas Creech, Jr., Esq.	Attorney: Matthew LaFave, Esq. and David Moore, Jr., Esq.
Hearing Start: 1/10/2024	Judge: G.D. Morgan, Jr.
Hearing End: 1/10/2024	Court Reporter: WebEx

Plaintiff	Exhibit Description	Defendant	Exhibit Description
1.	Email from Matt LaFave to Thomas Creech, Jr. showing picture of Wet Floor Sign in front of the Fresh Pet refridgerator	1.	
2.		2.	
3.		3.	
4.		4.	
5.		5.	
6.		6.	
7.		7.	
8.		8.	

Submitted and received this 10th day of January, 2024.

WebEx
Court Reporter


Kimberly Watford (Deputy) Clerk of Court

Privileged / Confidential

PETS^{SMART}

INCIDENT REPORT FORM (UPDATED 9-1-18)

To be completed by Leader

Name of Leader Making Report: <u>Jordan Coates</u>		Store Number: <u>1380</u>	
Store Leader's Name: <u>Don Johnson</u>		Incident Date: <u>9/6/19</u>	
Store Telephone Number: <u>864-284-6358</u>		Time of Incident: <u>9:45 am</u> ☐ p.m.	
Claim No. (provided to store when incident's called in) <u>361954357360001</u>		Report Date: <u>9/6/19</u>	
Incident Type: ☒ Customer / 3 rd Party Injury ☐ Shopping Cart Damage or 3 rd Party Property Damage			
Customer Information:			
Gender: ☐ Male ☒ Female Date of Birth: <u>Approx 70 yrs old</u>			
Name: <u>Camille Bird</u> Guardian Name (if a Minor): <u> </u>			
Cell Phone: <u>864-438-1589</u> Home Phone: <u> </u> Email: <u> </u>			
Current Address: <u>30 Market Airt Drive</u> City: <u>Greenville</u> State: <u>SC</u> Zip Code: <u>29603</u>			
Customer's Explanation of Incident (use additional pages if necessary) <u>Appt. 2101</u> <u>Slipped and fell on water in front of dog fridge. Hurt</u> <u>hip and right side.</u>			
INCIDENT INFORMATION			
Area of Store	Front End: ☐ Entrance ☐ Vestibule ☐ Cashier ☐ Core: ☐ Drive Isle ☒ Dog ☐ Cat External: Parking Lot Specialty: ☐ Hard Goods ☐ Fish ☐ Bird ☐ Small Animal / Habitat ☐ Reptile Training: ☐ Arena ☐ Room Adoption: ☐ Room Grooming: ☐ Reception PetHotel: ☐ Lobby ☐ Doggie Day Camp SM		
First Aid: ☐ Yes ☒ No Ambulance: ☐ Yes ☒ No Photographs: ☒ Yes ☐ No Video Surveillance: ☐ Yes ☒ No			
If Shopping Cart Damage: Was it windy? ☐ Yes ☐ No Year/Make of Vehicle: <u> </u>			
Describe Incident / Damage / and Observations (use additional pages if necessary) <u>Customer slipped on water. No damage. Pet food fridge</u> <u>has been leaking. Wet floor signs were present.</u> <u>No witnesses. Injured party did not seek medical treatment.</u> <u>Will only see doctor if injury worsens.</u>			

Fax this completed form and the completed Witness Form to Sedgwick at 859-284-4367 with cover sheet. You **MUST** write the claim number on both completed forms and the fax cover sheet. (Claim number will be provided by Sedgwick when the incident is called in.)

Email any incident related photos and/or video to Sedgwick at petsmartphotos@sedgwick.com. You **MUST** type the claim number in the subject line of the email. (Claim number will be provided by Sedgwick when the incident is called in.)



Store 1300 Manager

From: First Report <firstreport@claimhost.com>
Sent: Friday, September 08, 2019 10:46 AM
To: [REDACTED]
Subject: Sedgwick GL Incident # 301934357360001 for PETSMART, INC., DOL: 09/06/2019, Loss Loc State SC

EXTERNAL EMAIL: Ensure you trust this sender and know the content is safe before clicking on any links or attachments.

CONFIDENTIAL

09/06/2019

PETSMART, INC.
19601 N. 27TH AVENUE
PHOENIX, AZ 85027-4010

Regarding:

Incident Date: 09/06/2019
Incident Number: 301934357360001
Claimant Name: CAMILLE BIRD
Caller Name: JORDAN COATES
Caller Phone: (864) 284-6398
Pet Hotel: YES
Store/DC Number: 00001300
Account Name: 1300 GREENVILLE
District: 460 S CAROLINA-GEORGIA
Region Name: 775 SOUTHEAST
Was 911 Called: NO

Description of Incident: THE REFRIGERATOR HAD BEEN LEAKING. THERE WAS A WET FLOOR SIGN UP IN THE AREA. THE CUSTOMER SUPPED AND FELL IN WATER ON THE FLOOR. THE CUSTOMER FELL ON HER RT. SIDE. THE CUSTOMER SUSTAINED AN UNKNOWN INJURY TO THE RT. HIP.

Sedgwick's messaging system has detected that you, as the email recipient, use an email system that supports and enables Transport Layer Security (TLS) email encryption. This message and its contents were transmitted securely to this recipient's email gateway via industry-standard TLS encryption.



09/13/2019 02:33

18646759486

PETSHOTEL

PAGE 04

Report Title: Incident Details
Run Date and Time: 03/08/2022 15:37:47 Mountain Standard Time
Run by: Carl Harper
Table name: incident

Incident

Number:	INC201245762	Impact:	3 - Low
Caller:	Store 1300	Urgency:	3 - Low
Location City:		Priority:	5 - Very Low
Current Phone Contact:	864-284-6398	State:	Closed
Customer Name:	Jordan Coates	Assignment group:	Replenishment: Dog Food Freezers & Refrigerators
Business service:		Assigned to:	Carl Harper
Category:	Hardware	Security Vulnerability?:	false
Configuration item:	Freezer / Refrigerator (Store)		
Cause Code:			
Knowledge:			
When did this start?:		When was Service Restored?:	
Short Description:			
The Fresh Pet Cooler is broken. Please initiate repairs			
Description:			
Business Impact:			
Technical Impact:			
Steps to Resolve:			
Repair Items:			

Vulnerability

Number of Systems Affected:
Total Individual Vulnerability Count:
Aggregate Risk:
Planned Remediation Date:

Notes

Resolution Code:	Solved (Permanently)	Submit for Knowledge Article:	false
Follow up:		SLA Impact:	false
Watch list:		Work notes list:	
Close Notes (to Customer):			
Ticket has been resolved per vendor. Store should validate on-hands to ensure proper replenishment - refer to the Fresh/Frozen Policy and Procedure for more information.			
Additional comments:			

08/05/2019 16:17:44 - Carl Harper (Additional comments)

Ticket has been resolved per vendor. Store should validate on-hands to ensure proper replenishment - refer to the Fresh/Frozen Policy and Procedure for more information.

07/24/2019 16:07:08 - Carl Harper (Additional comments)

Your ticket has been forwarded to the vendor and replenishment left ON.

Work notes:

07/23/2019 13:14:37 - Store 1300 (Work notes)

Problem Description:

The cooler is leaking pretty bad on the floor.

Model Number: GDM-41SL

Serial Number: 6541189

Equipment Type: Cooler

Food Brand: Fresh Pet

Replenishment ON/OFF: On

Related Records

Problem:

Change Request:

Parent Incident:

Caused by Change:

Cloned From:

Reference Information

Resolved by:	Carl Harper	Opened:	07/23/2019 13:14:37
Resolved:	08/05/2019 16:17:44	Opened by:	Store 1300
Closed by:	Carl Harper	Location:	
Closed:	08/12/2019 17:00:05	Contact type:	Self-service
Cause Code:		Time worked:	1 Minute
DC:			

STATE OF SOUTH CAROLINA	)	
COUNTY OF GREENVILLE	)	
	)	IN THE COURT OF COMMON PLEAS
	)	C/A No : 2022-CV-23-00564
	)	
CAMILLE BIRD	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF BRYAN R. DURIG, Ph.D., P.E.
vs.	)	
	)	
PETSMART, LLC and	)	
FRESHPET, INC.	)	
	)	
Defendants	)	
	)	

PERSONALLY APPEARED BEFORE ME, Bryan R. Durig, Ph.D., P.E., who, first being duly sworn deposes and says:

1) My name is Bryan R. Durig. I am fifty-nine (59) years old and reside in Lexington County in South Carolina. I have obtained a B.S., M.S., and Ph.D. in mechanical engineering from the University of South Carolina. I also have obtained a Masters degree in Business Administration from the University of South Carolina. A copy of my CV is attached hereto. I am a licensed engineer in the state of South Carolina.

2) I am a consulting engineer with Summit Engineering, L.L.P. in Columbia, South Carolina. I specialize in the area of engineering analysis of accidents. Over the last 32 plus years, I have conducted numerous engineering analyses and accident investigations involving pedestrian fall incidents. I am familiar with refrigeration equipment, applicable building codes and industry safety standards and guidelines. I have been qualified as a mechanical engineering and safety expert in state and federal courts.

3) I have been retained by the Plaintiff in this case to provide expert testimony regarding, among other things, the safety of the walking surface in front of the FreshPet cooler at the PetSmart store on Woodruff Road in Greenville, South Carolina. Ms. Bird slipped and fell in water leaking from the FreshPet cooler on September 6, 2019, around 9:40 AM.

4) The subject refrigeration cooler is owned by FreshPet and placed in the PetSmart store for selling FreshPet dog and cat food. The FreshPet dog and cat food must be refrigerated. Reportedly, On July 23, 2019, an employee at the subject PetSmart store reported "The fridge is leaking pretty bad, will need a tech to take a look." (See DEF-0012). The service request was made to PetSmart who then forwarded it to FreshPet as the leaking "fridge" was owned by FreshPet. FreshPet responded to the PetSmart store on July 29, 2019, and found the drain pan had overflowed due to a thermostat malfunction. The subject FreshPet cooler was shut down until the thermostat was replaced on August 1, 2019. The FreshPet cooler was restarted on August 1, 2019. Ms. Bird slipped and fell in water that was on the floor in front of the subject FreshPet cooler on September 6, 2019. A service request was reportedly placed by an employee at the Woodruff PetSmart store on September 9, 2019, and reported as "Pet Fresh fridge is leaking badly. Is a danger to associated and PP." (See DeEF-0020). FreshPet dispatched the work order on September 10, 2019, and went to the subject store on September 11, 2019, and "Diagnosed/wicking kit replacement needed". The FreshPet service technician replaced the wicking kit on September 17, 2019, and entered "Checked opts. Unit is up and running fine. Complete."

5) The PetSmart Incident Report Form filled out by hand by Mr. Jordan Coates states Ms. Bird fell around 9:40 AM on September 6, 2019. The PetSmart Incident Report Form also states "Slipped and fell on water in front of the dog fridge. Hurt hip and right side.". The PetSmart Incident Report Form also states "Customer slipped on water. No damage. Pet food fridge has been leaking. Wet floor signs were Present. No Witness. Injured party did no seek medical treatment. Will only see doctor if injury worsens." (See DEF-0002). DEF-0015 shows that on September 9, 2019 "Store 1300 Problem Description: Pet Fresh fridge is leaking badly. Is a danger to associated and PP." DEF-

0023 states "Hi Judy. The incident occurred on 9/6/2019. However, the store is saying that they reported a leak from the refrigerator to corporate before 9/5 because apparently it had been leaking before the customer fell. Do we have any record of this internally or would the first request for repair be the one Carl noted below on 9/9/2019?" An email dated September 06, 2019, at 10:46 AM From First Report (DEF-0105) states "Caller Name: Jordan Coates" and shows "Description of Incident. THE REFRIGERATOR HAD BEEN LEAKING. THERE WAS A WET FLOOR SIGN UP IN THE AREA. THE CUSTOMER SLIPPED AND FELL IN WATER ON THE FLOOR. THE CUSTOMER FELL ON HER RT. SIDE. THE CUSTOMER SUSTAINED AN UNKNOWN INJURY TO THE RT. HIP." There is another PetSmart repair document dated September 10, 2019, that states "Pet Fresh fridge is leaking badly. Is a danger to associates and PP." This document also states, "Leaking Resolution" DRAIN UNPLUG/REPAIR".

6) Mr. Coates testified in his deposition that there was a warning sign placed at/near the subject FreshPet cooler prior to Ms. Bird's fall. The placement of a warning sign indicates that water had been leaking prior to Ms. Bird's fall. The prior service order for leaking water out of the FreshPet cooler was July 23, 2019, and the thermostat was repaired on August 1, 2019. It would be unusual and not recommended to leave a warning sign in front of a properly operating FreshPet cooler since it was reportedly repaired 5 weeks prior to Ms. Bird's fall. Placing warning signs where there are no known hazards is not effective. Mr. Coates also states that on September 6, 2019, the drain pan inside and under the FreshPet refrigerator was leaking out of the bottom of the pan.

7) The subject FreshPet cooler is identified as a True Manufacturing Inc. Model GDM-41SL with Serial number 6541189. True Manufacturer states in the Installation Manual for GDM Freezer/Refrigerator that the units should have monthly, quarterly, and annual inspections. Based on a review of document to date, it does not appear anyone does any preventive maintenance on these True Manufacturing units.

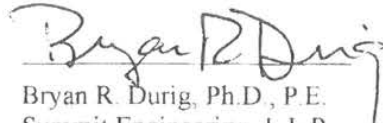
8) The repair documents and incident reports produced by PetSmart suggest that the subject FreshPet refrigerator had been leaking before Ms. Bird's fall and a warning

signed placed at/near the FreshPet refrigerator, but the subject unit had not been turned off but left operating. If the FreshPet refrigerator was leaking water onto the store's floor, the subject FreshPet refrigerator should have been turned off to eliminate the hazard from water spilling out of the drain pan. Furthermore, there are no records produced to date that a service call was initiated unit September 9, 2019 – three full days after Ms. Bird's fall.

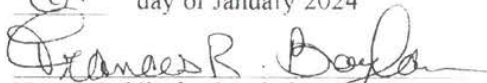
9) DEF-001 shows the floor in front of the FreshPet cooler. Mr. Jordan marked on DEF-001 as Exhibit 1 to his deposition where he had observed the spilled water on the floor where Ms. Bird slipped and fell. The size of the puddle of water extends across the entire front of the cooler and extends out about 1.5 feet. This water was reportedly spilling out of the condenser drain pan. The FreshPet discovery material says the leaking water issue was due to a problem with the wicking pads (that are designed to absorb water and decrease the time it takes for the fan to evaporate the water out of the condenser drain pan). There was no description of what was wrong with the wicking pads that caused the water to overflow the condensate drain pan. The wicking pads assist the water in the condensate drain pan to evaporate off. So, a problem with the wicking pad would take an extended period of time for water to fill the evaporate drain pan and overflow the pan and spill onto the floor then run out from under the True GDM cooler. A problem with the wicking pads would cause a continuous leaking problem – every time the refrigeration system operated to cool the inside temperature of the cooler – water could spill out of the condensate drain pan onto the floor. Mr. Coates testified "It leaked from the bottom of the pan" but does not give a specific location in the bottom of the drain pan where the water was leaking from.

10) The opinions and conclusions stated herein are to a reasonable degree of engineering certainty and are based on information available as of this writing. It is conceivable that additional information may be forthcoming which bears on these conclusions and opinions. The right is reserved, therefore, to review all conclusions and opinions at any future point in time should, in fact, additional information become available.

FURTHER AFFIANT SAITH NOT


Bryan R. Durig, Ph.D., P.E.
Summit Engineering, L.L.P.

SWORN TO BEFORE ME THIS
6th day of January 2024


Notary Public for South Carolina
My Commission Expires: 03-09-2032

 **Frances R. Boylan**
Notary Public for South Carolina
Commission Expires: 03/09/2032

10-1-2024 1:59 PM



SUMMIT ENGINEERING, L.L.P.
P.O. Box 211426
Columbia, SC 29221-6426
TEL (803) 731-1200
FAX (803) 731-1202



BRYAN R. DURIG, Ph.D., P.E.

Engineer: Mechanical, Metallurgical

Technical Investigations

Failure Analysis
Fire Investigations
Machinery & Equipment Accidents
Products Liability
Premises Liability

Education

1993	Master of Business Administration University of South Carolina
1988	Doctor of Philosophy in Mechanical Engineering University of South Carolina
1985	Master of Science in Mechanical Engineering University of South Carolina
1984	Bachelor of Science in Mechanical Engineering University of South Carolina

Experience

January 1994 to Present

Summit Engineering, L.L.P., Columbia, South Carolina. Consulting Engineer performing specialized consulting in the areas of: **Accident Evaluation, Failure Analysis and Products Liability:** (machinery, equipment and consumer products) analysis and evaluation of designs, component testing, controls, guards and warnings, standards and code compliance, and maintenance; **Fire Investigations:** industrial, commercial and residential.

SPECIALISTS IN ENGINEERING ANALYSIS OF ACCIDENTS

ELECTRONICALLY FILED - 2024 Jan 07 1:59 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300564

April 1993 to December 1993

Laboratory Manager, Engineering Design & Testing Corp., Columbia, South Carolina. Responsible for management of the metallurgical laboratory including budgeting, personnel and reporting of results.

June 1991 to December 1993

Consulting Engineer, Engineering Design & Testing Corp., Columbia, South Carolina. Responsibilities included performing specialized consulting in the areas of design, engineering analysis, failure analysis and accident reconstruction. Clients included industrial manufacturing facilities, attorneys, insurance companies and adjusters.

June 1988 to May 1991

Research Engineer, Westinghouse Savannah River Company, Savannah River Laboratory, Aiken, South Carolina. Responsibilities included conducting thermal hydraulic research on SRS reactor assemblies and systems and analytical analyses of reactor hardware to support reactor operations.

January 1986 to May 1988

Research Assistant, College of Engineering, Columbia, South Carolina. Senior research assistant in a research group consisting of several graduate and undergraduate students working in the areas of biomechanics and fracture mechanics. Research consisted of Digital Image Processing and Computer Data Acquisition of fracture specimens and biological tissues.

June 1986 to July 1986

Scientist II, U.S. Naval Research Laboratory. Duties included setting up a digital image processing system (hardware/software) and finite element analysis.

January 1985 to December 1988

Administrative Assistant, College of Science and Mathematics, University of South Carolina. Primary responsibilities included general accounting of the College budget and transferring of the College budget to a Rainbow Personal Computer.

January 1984 to December 1984

Teaching Assistant, Engineering Department, University of South Carolina. Lab instructor for Microprocessor Lab. Duties included explaining and building of a circuit board using a Motorola 6801 chip for experiments such as controlling the speed of a motor and collecting data from a strain gage.

June 1980 to September 1983

(Summers)

Research Assistant, Chemistry Department, University of South Carolina. This research included the purification of chemical samples using a low pressure fractionation column, and performing chemical analysis on a Nicolet.



Courses and Seminars Presented

September 30, 1994

Seminar to University of South Carolina Senior Machine Design class on Products Liability and Design Safety.

December 6, 1994

Three-hour, State of North Carolina Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Charlotte, North Carolina.

July 9, 1997

Three-hour, State of North Carolina Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Charlotte, North Carolina.

May 3, 2003

The Absolute Litigators Conference VIII Course entitled "Fire Investigations", Las Vegas, Nevada.

October 12, 2009

Kitchen Fires and Subrogation, Columbia, South Carolina

Professional Organizations and Honorary Societies

American Society of Mechanical Engineers (Local Chapter Chairman 1992 - 1995)

International Associations of Arson Investigators

National Association of Fire Investigators

National Fire Protection Association

National Safety Council

Publications

"Flow in a Rectangular Closed-Loop with Vertical Heat Transfer Passages," Proceedings from A.S.M.E. Winter Meeting, Paper No. 86-WA/HT-78, 1986 (co-authored with M.A. Shadday).

"Conformational Studies Utilizing Asymmetric Torsional Frequencies," J. Mol. Struct., 126, 83 (1985), (co-authored with J.R. Durig, D.T. Durig and J.F. Sullivan).

"Determination of Mixed Mode Stress Intensity Factors Using Digital Image Correlation," Proceedings for Society of Experimental Mechanics, Spring 1988 Meeting (co-authored with W.H. Peters III, M.A. Sutton, S.R. McNeill and Y.J. Choa).

"Mechanical Testing of Soft Tissue," Proceedings for Society of Experimental Mechanics, Spring 1988 Meeting (co-authored with W.H. Peters III, L. Terracio and T.K. Borg).

"Digital Image Correlation Measurements of Strain in Bovine Retina," Optical Testing and Metrology, Proceedings of the International Symposium on Optical Engineering and Industrial Sensing (SPIE), Vol. 954, pp. 438-443, 1988 (co-authored with W.H. Peters III and M.E. Hammer).



"Experimental Mechanics in Biomechanics," Proceedings for Society of Experimental Mechanics Spring 1989 Meeting (co-authored with W.H. Peters III, M.A. Sutton, J.L. Turner, T. Borg, L. Terracio and E. Berg).

"A Study of Mixed Mode Fracture in Photoelasticity and Digital Image Analysis," Optics and Lasers in Engineering, Vol. 14, pp. 203-215, 1991 (co-authored with W.H. Peters III, F. Zhang, S.R. McNeill and Y.J. Choa).

"Mechanical Stress Relaxation of the Retina," submitted to Journal of Investigative Ophthalmology, April 1989, (co-authored with W.H. Peters III and M.E. Hammer).

"Fracture of Wire Rope Drum Shaft Due to Fretting Fatigue," Proceedings from A.S.M.E. Winter Meeting, Paper No. 93-WA/DE-9, 1993 (co-authored with T.A. Jur).

Materials for Department of Insurance, State of North Carolina, Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Course Number 03489, Provider Number 0445, Date Approved: September 29, 1994.

Registration

Registered Professional Engineer in South Carolina (#14877)
Registered Professional Engineer in North Carolina (#022737)
Registered Professional Engineer in Georgia (#PE030339)
Registered Professional Engineer in Tennessee (#110004)
Registered Professional Engineer in Alabama (#28023-E)
Registered Professional Engineer in Florida (#75756)
Registered Professional Engineer in Mississippi (#21174)
Registered Professional Engineer in Ohio (#84631)
Registered Professional Engineer in Kentucky (#35487)

Continuing Education

December 1991	ASM International Seminar on "Principals of Failure Analysis"
May 1993	Algor Finite Element Training
October 1993	Richardson Engineering Services "General Construction and Process Plant Estimating"
December 1993	Mitchell International's Seminar on Ford Diagnostics



January 1996	Electrical Fire Investigations, International Association of Arson Investigators, Inc.
July 1996	Sprinkler System Design Compliance, Society of Fire Protection Engineers
May 1997	HVAC Plant Improvement, Boiler Efficiency Institute
May 1998	Vehicle Fires, S.C. Chapter IAAI
August 1998	Sponsored and attended "Fire Dynamics-Small Group Seminar", Lilly & Associates
October 1998	Investigation of Electrical Appliance Related Fires, IAAI/Association of Home Appliance Manufacturers
July 1999	Sponsored and attended "Appliance Fires -Small Group Seminar", Jack Sanderson
September 1999	IAAI Annual Seminar; Beckley, West Virginia
September 2000	Sponsored and attended "Electrical Fires - Small Group Seminar", Jim Finneran
November 2000	Investigation of Vehicle Fires, Lee S. Cole & Associates, Inc.
April 2001	Basic Industrial Electricity, Lewellyn Technology, Inc.
September 2001	Electrical Fire Investigation, Tom R. Bradshaw, CFI and Jim Elkins, CFI
October 2001	Sponsored and attended "Electrical Fire Causes - Small Group Seminar", Chris W. Korinek, P.E.
September 2002	DRI Fire and Casualty Seminar, New Orleans, Louisiana
June 2003	Sponsored and attended "Fire Explosion - Small Group Seminar", John DeHaan, Ph.D.
October 2003	7 th Annual Fire Investigative Approaches; "Practical Aspects of Fuel Gas Explosions", Dave Lilley.



October 2003	7 th Annual Fire Investigative Approaches; "Gas Appliance Failure – Product Liability", Jack Sanderson.
April 2004	Sponsored and attended "The Physics of Electrical Fires", Vytenis Babrauskas, Ph.D.
November 2004	NFPA Certified Fire Protection Specialist; Certification Number: 2100
September 2005	Inspection, Testing and Maintenance of Fire Alarm Systems Seminar, NFPA, Charlotte, North Carolina
November 2005	DRI Fire and Casualty Seminar, Chicago, Illinois
June 2006	Sponsored and attended "Flammable Gas Explosions", John L. Schumacher, MChE, PE, CFI
June 2006	International Symposium on Fire Investigation Science and Technology, Cincinnati, Ohio
June 2007	Sponsored and attended "The Ignition of Gases, Liquids and Solids by Hot Bodies", Vytenis Babrauskas, Ph.D.
March 2008	South Carolina Association of Arson Investigators & South Carolina Insurance Fraud Investigators 1 st Quarter Training, Monks Corner, South Carolina
September 2008	Sponsored and attended "Understanding Post-Flashover Fires" - Small Group Seminar", Carman & Associates
November 2008	DRI Fire and Casualty Seminar, Chicago, Illinois
June 2009	Sponsored and attended "Residential Electrical Fire Safety - Small Group Seminar", Charleston, South Carolina
June 2010	Postflashover Fires, CFITrainer
June 2010	Arc Mapping Basics, CFITrainer
September 2010	International Symposium on Fire Investigation Science and Technology, University of Maryland



December 2010	A Ventilation-Focused Approach to the Impact of Building Structures and Systems on Fire, CFITrainer.net
December 2011	Understanding Fire Through the Candle Experiments, CFITrainer.net Explosion Dynamics, CFITrainer.net Digital Photography and the Fire Investigator, CFITrainer.net Documenting the Event, CFITrainer.net
September 2012	International Symposium on Fire Investigation Science and Technology, University of Maryland
December 2013	Critical Thinking Solves Cases, CFITrainer.net Electrical Safety, CFITrainer.net Evidence Examination: What Happens at the Lab, CFITrainer.net Physical Evidence at the First Scene, CFITrainer.net
December 2014	Florida Engineers Laws & Rules Engineering Ethics Energy Performance of LEED for New Construction Buildings 2010 ADA Standards for Accessible Design Part 1
January 2015	2010 ADA Standards for Accessible Design Part 2
December 2015	Safeguarding Equipment: Protecting Workers from Amputations OSHA – Stairway and Ladders Materials Handling and Storage Fire Protection and Prevention During Construction Fall Protection in Construction Engineering Ethics for the North Carolina Controlling Electrical Hazards
December 2016	Introduction to Piping Engineering Florida Engineer Laws & Rules Ethics for U.S. Engineers What Every Engineer Should Know About Fire Protection Electrical Engineering Fundamentals for Non-Electrical Engineers Asbestos Fundamentals



January 2017	Solar Power Part 1 HVAC Design – Fundamentals HVAC Design – Industrial Ventilation Intellectual Property and Patents for the Professional Engineer Forensic Analysis Involving Fugitive Natural Gas and Propane
February 2018	Practical Design Guide for Welded Connections Part 1 Practical Design Guide for Welded Connections Part 2 Work Zone Traffic Control
March 2018	Manual on Uniform Traffic Control Devices
December 2018	Ethics for Engineer Florida Engineering Laws and Rules Repair Techniques for Wood Trusses Part 1 Introduction to the Design of Wood Trusses Pavement Markings Traffic Signs
October 2019	Introduction to the Analysis and Design of Bolted Connections Transformers- What Every Engineering Should Know Introduction to Heat Transfer in Structure Files Welding Technology
November 2019	A Case Study in Engineering Ethics: The Deepwater Horizon Disaster
January 2020	Walkway Safety Auditor
May 2020	Repair Techniques for Metal Plated Wood Trusses Part 2 Forklift Operator Certificate
December 2020	Ethics in Design and Oversight: The Case of the Florida International University Bridge Collapse
January 2021	Florida Laws & Rules for 2021
December 2021	Introduction to Electrical Theory and DC Circuits What Ever Engineer Should Know About Structures- Part D - Bending Fundamentals of Steel – Part A Fundamentals of Steel – Part B



Year 2022	Forensic Engineering Part A - Conducting Failure Analyses of Metallic Materials Forensic Engineering Part B - Four Classes of Metallurgical and Mechanical Failures Forensic Engineering Part C - Case Histories: Metallurgical & Mechanical Failure Analyses Forensic Engineering Part D- Case Histories: Corrosion Failure Analyses The Citicorp Tower: Professional Ethics and Disaster Averted Interior Lighting Design: The Fundamentals Wind Force Calculations on Low Rise Buildings
Year 2023	Florida Engineering Laws & Rules Practical Forensic Engineering Property Part 1 Practical Forensic Engineering Property Part 2 Slips Trips and Falls International Conference (Virtual Appearance)
Rev. 6/21/23	



6-25-2019

501934157380001

PERICHO, Stephen H.
PLAINTIFF'S EXHIBIT
Coates, Jordan

DEF-0001

0020190226030668



GDM-41

True®

GDM-41 Parts Manual

TO PLACE AN ORDER OR OBTAIN INFORMATION:

WEBSITE:

www.truemfg.com (Visit our Parts eStore at: <http://estore.truemfg.com>)
Parts Department e-mail address: parts@truemfg.com

SEND INQUIRIES TO:

TRUE MANUFACTURING COMPANY, INC. ATTN: PARTS DEPARTMENT
2001 EAST TERRA LANE • P.O. Box 970 • O'Fallon, Missouri 63366 • U.S.A

CALL TOLL-FREE:

800-424-TRUE (Direct to Parts Department)
or 800-325-6152 (U.S.A & Canada only)
OR CALL: 636-240-2400

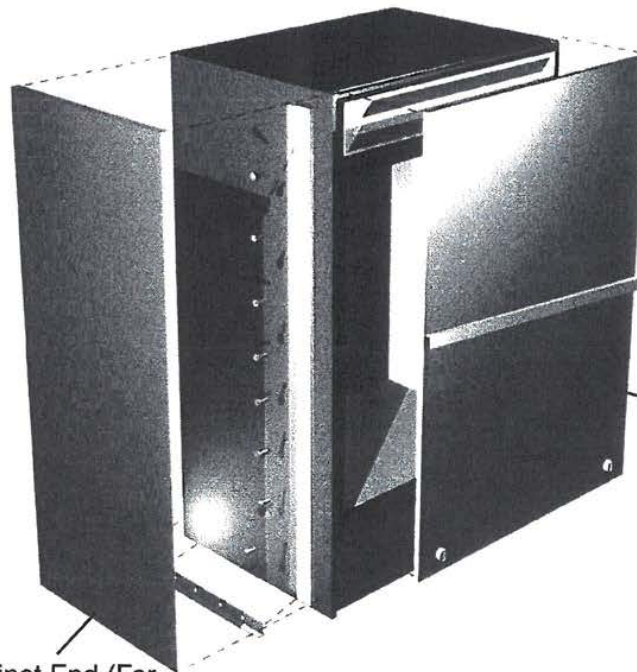
FAX: 636-272-9471

10/13/2006 SB

Key, Vandal
Panel
878818



Lock, Vandal
Panel
872836



Vandal Panel
(Slide Door)
872826

Cabinet End (For
Refurbishing)
875504 - Right
880089 - Left

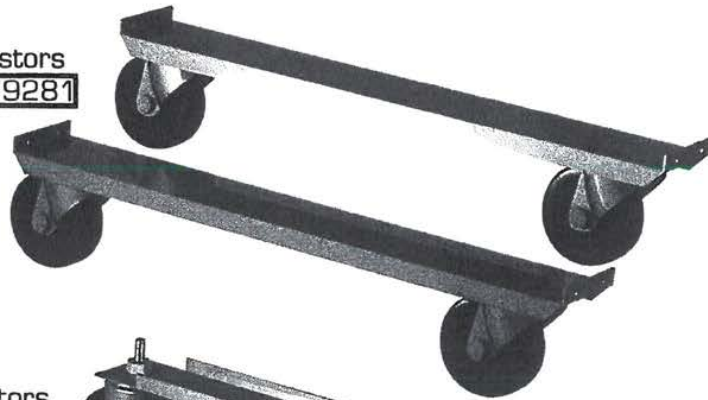
Bumpers



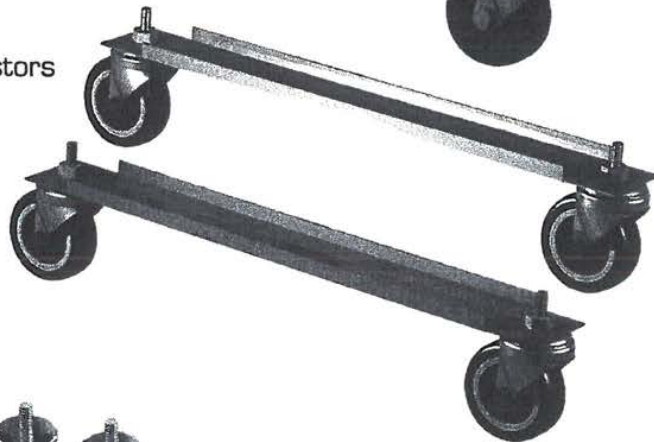
A.

Castors, Legs & Levelers

Castors
B79281



Castors



Castors



Legs
B72025



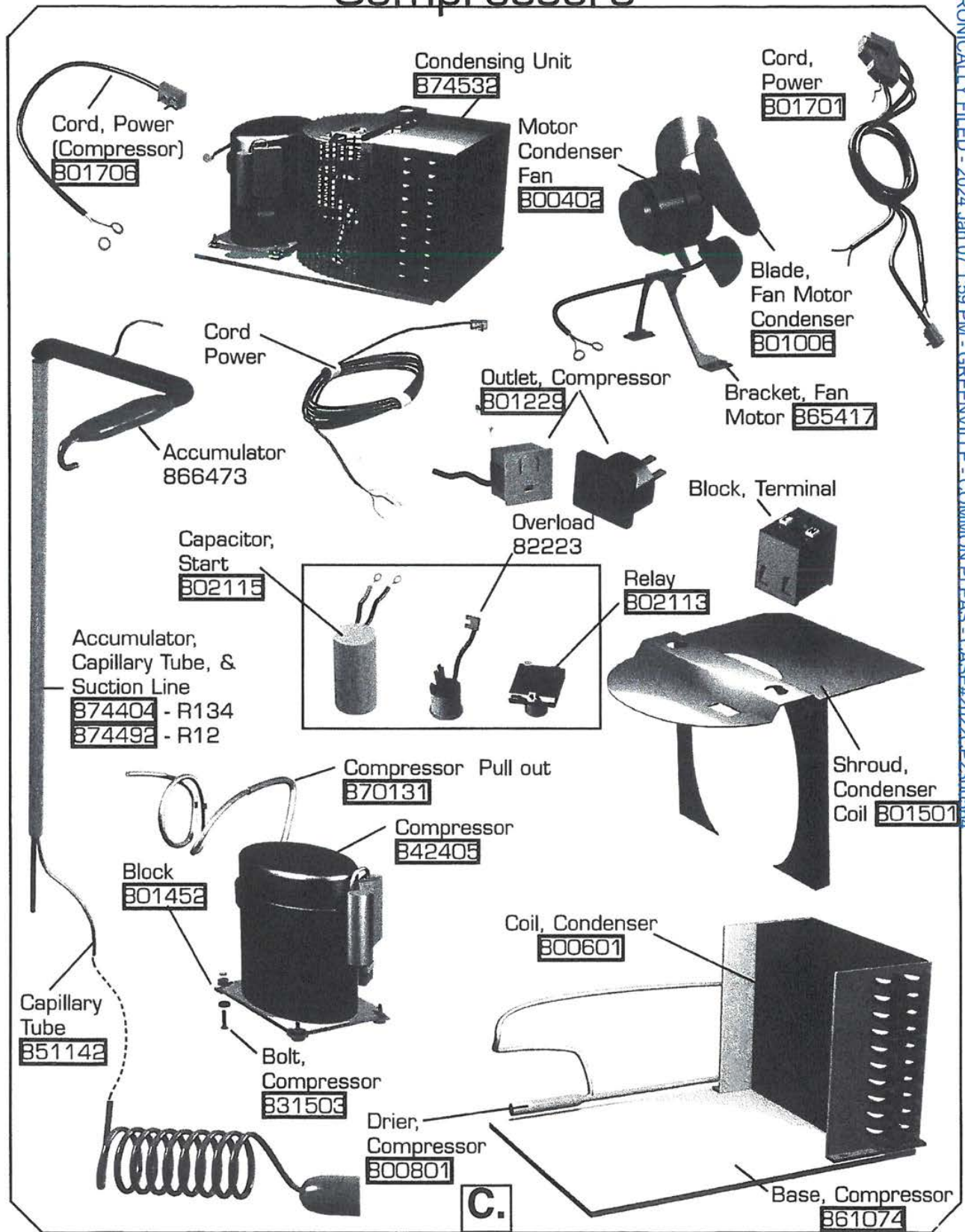
Screw, Leveling
B72050



Castors
B30275 2 1/2"

B.

Compressors



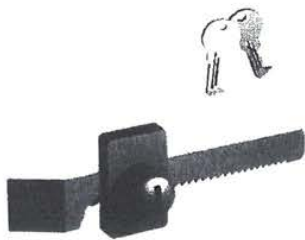
GDM Slide Door



Door Locks



Lock - Slide Door (Barrel Style) **872806**



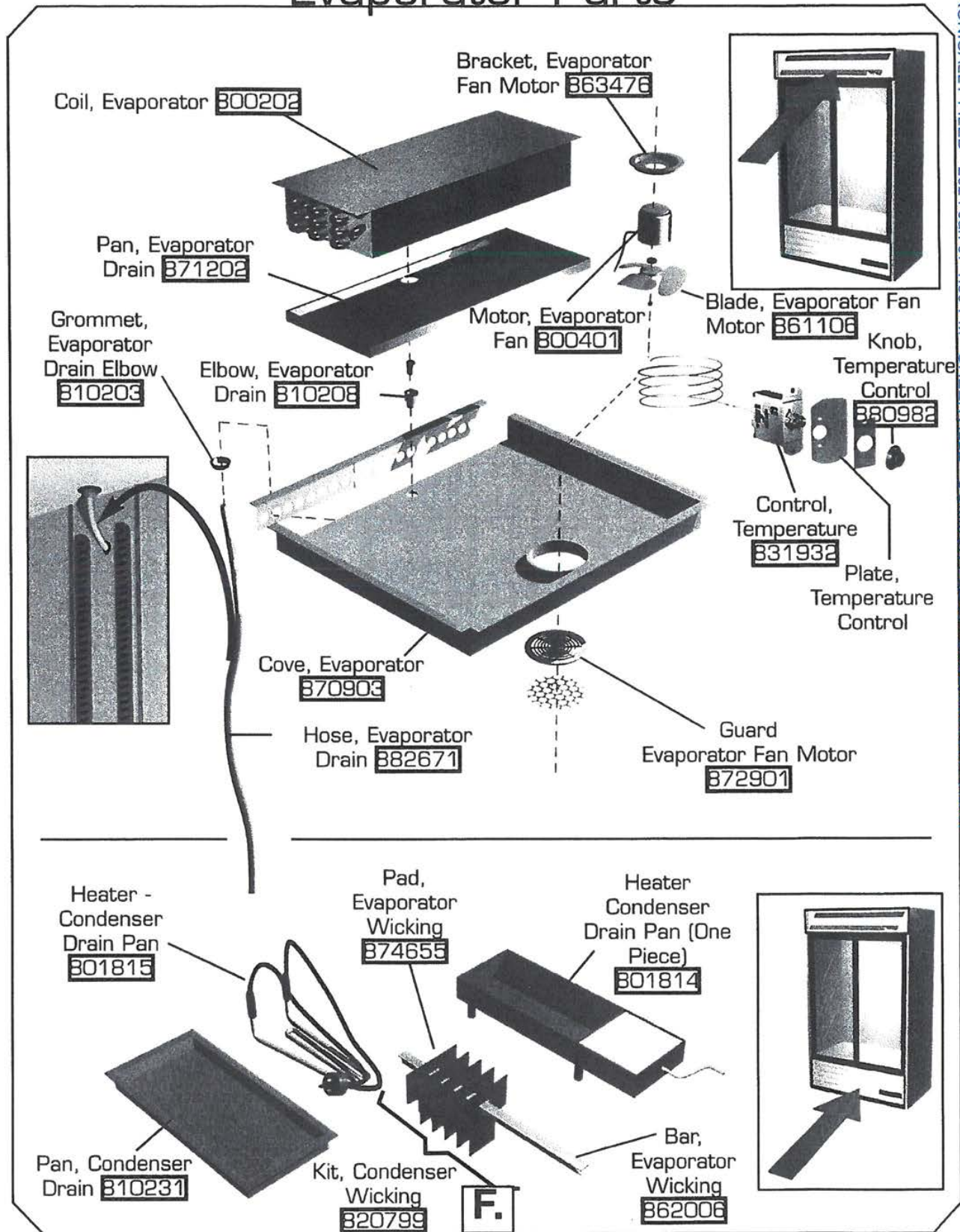
Lock - Slide Door
(Ratchet Style)
872801

Strip, Door
Removal Preventitive **879148**



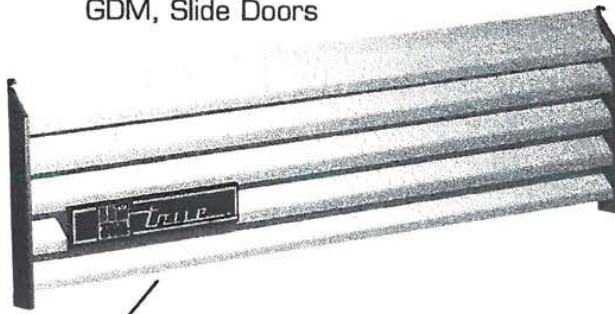
E.

Evaporator Parts



Grill Parts

GDM, Slide Doors



Grill Assembly
379372 - Black



Grill End
310344



Kit, Grill
Mounting
301410

Screw, Grill
Mounting
371625

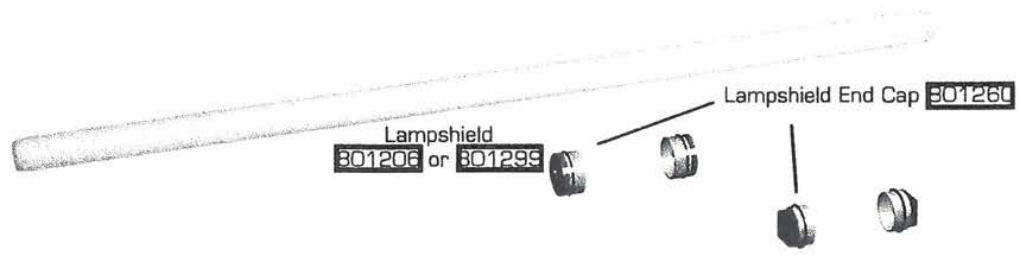
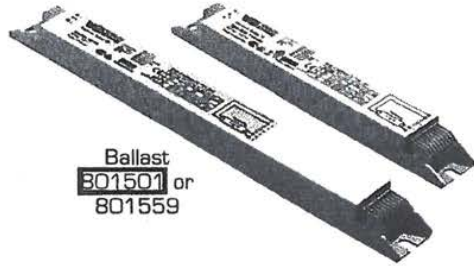
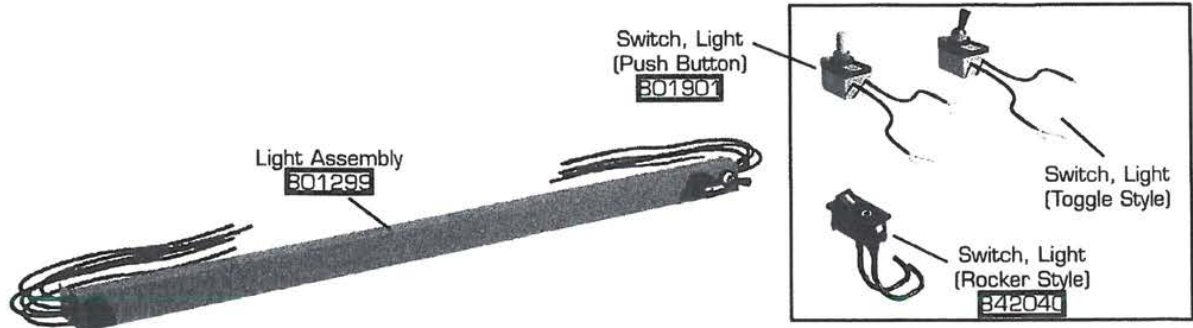


Clip, Grill
Mounting
331604



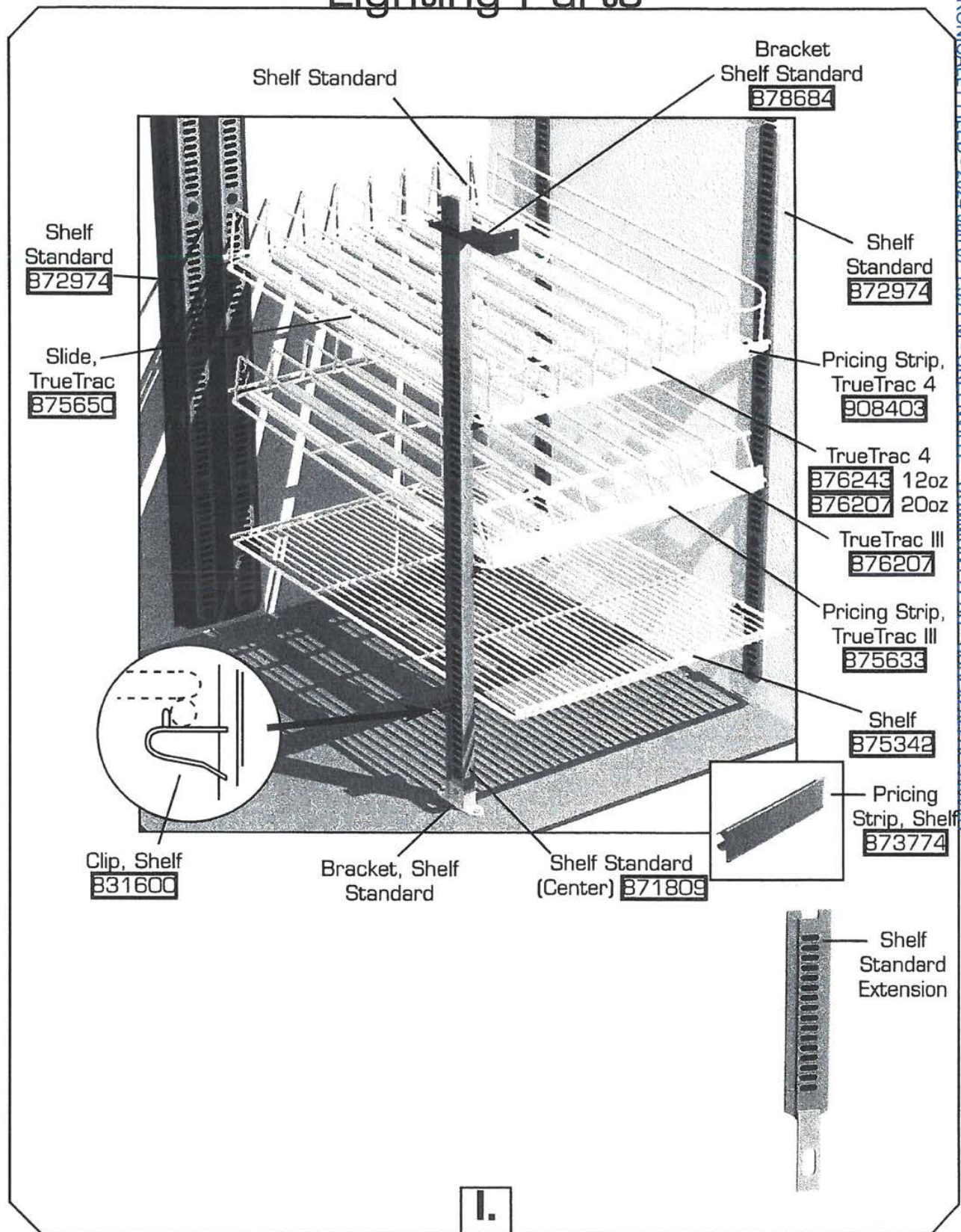
G.

Lighting Parts

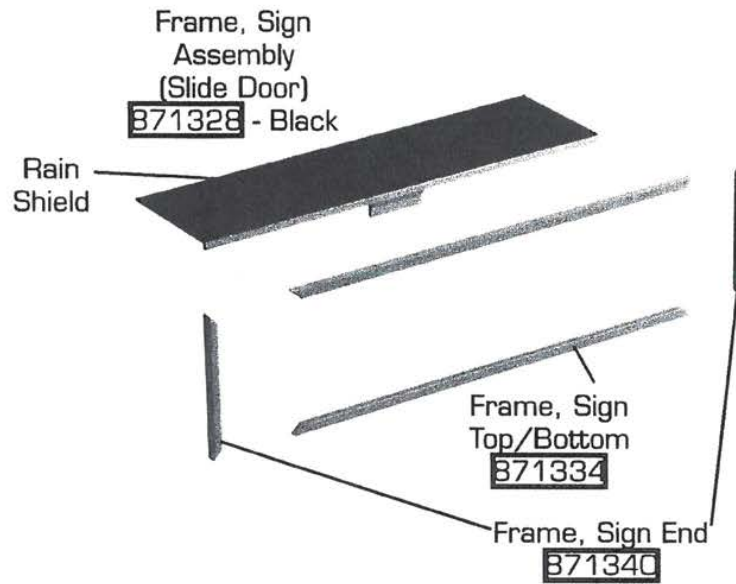


H.

Lighting Parts



Sign & Sign Frame Parts



J.

Request Detail

WO#: B4618483 NTE: \$1,000.00
Status: Work Order Avoidance Work Order Type: Work Order
Response Window: 4 h response
Call Time: 7/23/2019 7:43:51 AM Schedule Start:
Service Type: Raw/Natural Frozen Dog Food Schedule End:
Service Category: Refrigeration
Problem Code: Broken
Caller Name: Jordan Coates Position: Assistant Store Manager
Created By: Store PET1300
Problem Description: Refrigeration->Raw/Natural Frozen Dog Food->Broken
Additional Detail: The fridge is leaking pretty bad, will need a tech to take a look.

Location

District: S Carolina-Georgia Region: Southeast
Store #: 1300 Group: Jason McAtee
Address: Greenville Unit#:
City: Greenville State: SC
Zip: 29607 Phone: (864) 284-6398
Responsibility Entity:

Customer Satisfaction**Troubleshooting**

Please provide an alternate phone number: 8642846398

Key Questions

What is the issue? Leaking
Are any breakers tripped in the breaker panel? No
Has product been lost? No

Landlord

Name:
Phone: Email:
Comment:
Address:
City: Greenville State: SC

From: Carl Harper <CaHarper@PetSmart.com>
Sent: Wednesday, September 8, 2021 10:14 AM
To: Michelle Krause <mkrause@petsmart.com>; Judy Ramirez <JRamirez@PetSmart.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Michelle,

Store 1300 had 2 tickets during that timeframe that were both completed.
 On 7/23/2019 they reported: The cooler is leaking pretty bad on the floor.
 On 9/9/2019 they reported: Pet Fresh fridge is leaking badly. Is a danger to associates and PP.

After that timeframe they created 2 more tickets, but the first one wasn't related to the fridge actually being broken:
 On 8/12/2020 they reported: We are in day two of a power outage due to severe storms. Can you assist by freezing replenishment on Freshpet and Frozen until we determine when power will be restored. As of now hearing may be a few additional days.
 On 8/21/2020 they reported: Cooler door is not closing properly. I could not find the S/N or Model Number. Cooler is really old and condensation builds up quickly.

Let me know if you have any other questions!

Carl Harper | Merchandise Fulfillment Inventory Analyst
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-295-3209
 email: caharper@petsmart.com

From: Michelle Krause <mkrause@petsmart.com>
Sent: Wednesday, September 8, 2021 8:18 AM
To: Judy Ramirez <JRamirez@PetSmart.com>; Carl Harper <CaHarper@PetSmart.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Thank you, Judy.

@Carl Harper was the attached WO service completed? Also were there any subsequent requests/repairs completed?

Thanks,
 Michelle

Michelle Krause | Senior Litigation & Claims Administrator
 Risk Management/Legal
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-587-2860 | cell: 602-376-3822 | fax: 623-580-6103
 email: mkrause@petsmart.com



This email may contain confidential, proprietary, or trade secret information belonging to PetSmart. Unauthorized use, review, distribution, or disclosure is strictly prohibited.

From: Judy Ramirez <JRamirez@PetSmart.com>
Sent: Wednesday, September 8, 2021 8:04 AM
To: Michelle Krause <mkrause@petsmart.com>; Carl Harper <CaHarper@PetSmart.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Michelle,

I can pull that for you. One thing to note, is that the Fresh Pet coolers are vendor owned, so it's possible that repairs could have been coordinated directly by Fresh pet. I show one ticket placed on 7/23/2019, that was redirected to Service Now. DEF-9020 does not specifically call out if it was a Fresh Pet unit.

301934357360001

6020210919004490

Privileged / Confidential

PETSMART **INCIDENT REPORT FORM** (UPDATED 9-1-18) *To be completed by Leader*

Name of Leader Making Report: <u>Jordan Coates</u> Store Leader's Name: <u>Don Johnson</u> Store Telephone Number: <u>864-284-6358</u> Claim No. (provided to store when incident's called in) <u>301954357360681</u>		Store Number: <u>1300</u> Incident Date: <u>9/6/19</u> Time of Incident: <u>9:45</u> a.m. ☐ p.m. Report Date: <u>9/6/19</u>
Incident Type: ☒ Customer / 3 rd Party Injury ☐ Shopping Cart Damage or 3 rd Party Property Damage		
Customer Information: Gender: ☐ Male ☒ Female Date of Birth: <u>Approx 70 yrs old</u> Name: <u>Canine Bird</u> Guardian Name (if a Minor): _____ Cell Phone: <u>864-438-1989</u> Home Phone: _____ Email: _____ Current Address: <u>30 Market Airt Drive</u> City: <u>Greenville</u> State: <u>SC</u> Zip Code: <u>29603</u> Customer's Explanation of Incident (use additional pages if necessary) <u>Apt. 2101</u> <u>Slipped and fell on water in front of dog fridge. Hurt</u> <u>hip and right side.</u>		
INCIDENT INFORMATION		
Area of Store:	Front End: ☐ Entrance ☐ Vestibule ☐ Cashier Core: ☐ Drive Isle ☒ Dog ☐ Cat External: Parking Lot Specialty: ☐ Hard Goods ☐ Fish ☐ Bird ☐ Small Animal / Habitat ☐ Reptile Training: ☐ Arena ☐ Room Adoption: ☐ Room Grooming: ☐ Reception PetHotel: ☐ Lobby ☐ Doggie Day Camp™	
First Aid: ☐ Yes ☒ No Ambulance: ☐ Yes ☒ No Photographs: ☒ Yes ☐ No Video Surveillance: ☐ Yes ☒ No		
If Shopping Cart Damage: Was it windy? ☐ Yes ☒ No Year/Make of Vehicle: _____		
Describe Incident / Damage / and Observations (use additional pages if necessary) <u>Customer slipped on water. No damage. Pet food fridge</u> <u>has been leaking. Wet floor signs were present.</u> <u>No witnesses. Injured party did not seek medical treatment.</u> <u>Will only see doctor if injury worsens.</u>		

Fax this completed form and the completed Witness Form to Sedgwick at 859-264-4367 with cover sheet.
 You **MUST** write the claim number on both completed forms and the fax cover sheet.
 (Claim number will be provided by Sedgwick when the incident is called in.)

Email any incident related photos and/or video to Sedgwick at petsmartphotos@sedgwick.com
 You **MUST** type the claim number in the subject line of the email.
 (Claim number will be provided by Sedgwick when the incident is called in.)

DEF-0002

400 Plaza Drive 1st Floor
 Secaucus, NJ 07094
 O: 201-520-4066
 C: 973-652-6279
 Retailer Help Line: 855-893-7374
freshpet.com



From: Carl Harper <CaHarper@PetSmart.com>
Sent: Wednesday, September 8, 2021 1:38 PM
To: Michelle Krause <mkrause@petsmart.com>; Judy Ramirez <JURamirez@PetSmart.com>; Jeannie Rogalla <jrogalla@Freshpet.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Jeannie – are you able to track down your work order history for store 1300 back around 7/23/2019 and 9/9/2019 please?

Michelle – the 9/9/2019 was submitted to Solution Center at 1:31PM, Incident number INC201270230.

SI
 Store 1300

Work Order
 09/09/2019 13:36

Problem Description
 Pet Fresh fridge is leaking badly. Is a danger to associates and PP

Model Number GDM-41SL
 Serial Number 6541189
 Equipment Type Cooler
 Food Brand Fresh Pet
 Replenishment ON/OFF On

Thanks,

Carl Harper | Merchandise Fulfillment Inventory Analyst
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-295-3209
 email: caharper@petsmart.com

From: Michelle Krause <mkrause@petsmart.com>
Sent: Wednesday, September 8, 2021 10:28 AM
To: Carl Harper <CaHarper@PetSmart.com>; Judy Ramirez <JURamirez@PetSmart.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Thank you, Carl. When was the 7/23/2019 request completed (can you provide proof of that completion)? Also, what time was the 9/9/2019 request reported (can you provide the work order and proof of completion for that request)?

Thanks so much

Michelle Krause | Senior Litigation & Claims Administrator
 Risk Management/Legal
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-587-2850 | cell: 602-376-3822 | fax: 623-580-6103
 email: mkrause@petsmart.com



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DEF-0015

Possible claim number: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)
 From: Judy Ramirez <JURamirez@PetSmart.com>
 To: Michelle Krause <mkrause@petsmart.com>
 Date and Time: 9/8/2021 6:15:39 PM
 CC:

The work order we received was in July 23rd, so basically our group redirected the store to submit through service now which is handled by Carl. It looks like the store reported that the same day 7/23 to service now, as to why it wasn't remedied quickly by fresh pet I couldn't say.



Judy Ramirez | Manager of Facilities
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-587-2158 | mobile: 480-521-8973
 email: juramirez@petsmart.com



MOSAIC
 at PetSmart

MOSAIC is an Associate Resource Group (ARG) promoting education on the value different cultures contribute and awareness of the cultures represented within PetSmart.

From: Michelle Krause <mkrause@petsmart.com>
 Sent: Wednesday, September 8, 2021 10:35 AM
 To: Judy Ramirez <JURamirez@PetSmart.com>
 Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Judy: The incident occurred on 9/6/2019. However, the store is saying that they reported a leak from the refrigerator to corporate before 9/6 because apparently it had been leaking before the customer fell. Do we have any record of this internally or would the first request for repair be the one Carl noted below on 9/9/2019?

Michelle Krause | Senior Litigation & Claims Administrator
 Risk Management/Legal
 19601 N. 27th Ave., Phoenix, AZ 85027
 office: 623-587-2860 | cell: 602-376-3822 | fax: 623-580-6103
 email: mkrause@petsmart.com



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From: Carl Harper <CaHarper@PetSmart.com>
 Sent: Wednesday, September 8, 2021 10:14 AM
 To: Michelle Krause <mkrause@petsmart.com>; Judy Ramirez <JURamirez@PetSmart.com>
 Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Michelle,

Store 1300 had 2 tickets during that timeframe that were both completed.
 On 7/23/2019 they reported: The cooler is leaking pretty bad on the floor.

DEF-0023

6020210919004490

Store 1300 Manager

From: First Report <firstreport@claimhost.com>
Sent: Friday, September 06, 2019 10:46 AM
To: [REDACTED]
Subject: Sedgwick GL Incident # 301934357360001 for PETSMART, INC., DOL: 09/06/2019, Loss Loc State SC

EXTERNAL EMAIL: Ensure you trust this sender and know the content is safe before clicking on any links or attachments.

CONFIDENTIAL

09/06/2019

PETSMART, INC.
19601 N. 27TH AVENUE
PHOENIX, AZ 85027-4010

Regarding:

Incident Date: 09/06/2019
Incident Number: 301934357360001
Claimant Name: CAMILLE BIRD
Caller Name: JORDAN COATES
Caller Phone: (864) 284-6398
Pet Hotel: YES
Store/DC Number: 00001300
Account Name: 1300 GREENVILLE
District: 460 S CAROLINA-GEORGIA
Region Name: 775 SOUTHEAST
Was 911 Called: NO

Description of Incident: THE REFRIGERATOR HAD BEEN LEAKING. THERE WAS A WET FLOOR SIGN UP IN THE AREA. THE CUSTOMER SLIPPED AND FELL IN WATER ON THE FLOOR. THE CUSTOMER FELL ON HER RT. SIDE. THE CUSTOMER SUSTAINED AN UNKNOWN INJURY TO THE RT. HIP.

Sedgwick's messaging system has detected that you, as the email recipient, use an email system that supports and enables Transport Layer Security (TLS) email encryption. This message and its contents were transmitted securely to this recipient's email gateway via industry-standard TLS encryption.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Docket No. 2022-CP-23-564
CAMILLE BIRD,	)	
	)	
PLAINTIFF,	)	FRESHPET'S ANSWERS TO
	)	PLAINTIFF'S FIRST SET OF
v.	)	INTERROGATORIES
	)	
PETSMART, LLC AND FRESHPET, INC.,	)	
	)	
DEFENDANTS.	)	

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY

Defendant FreshPet, Inc., by and through its counsel, submits the following answers to Plaintiff's First Set of Interrogatories:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER

Camille Bird – Plaintiff
c/o Thomas M. Creech, Jr., Esq.
PO Box 10411
Greenville, SC 29603

Plaintiff is expected to testify regarding the subject incident, the pleadings and any medical treatment she received. Defendant is not in possession of any written or recorded statements.

PetSmart LLC – Defendant
c/o Matthew C. LaFave
Crowe LaFave
PO Box 1149
Columbia, SC 29202

Defendant is expected to testify regarding the subject incident. Defendant is not in possession of any written or recorded statements.

Jeannie Rogalla, Current Service Account Owner
FreshPet, Inc. – Defendant
c/o David L. Moore, Esq.

**FreshPet
400 Plaza Drive
Secaucus, NJ 07094**

6. Please state whether FreshPet had ever, at any time, given authorization or permission to PetSmart, or any of PetSmart's agents or employees, to fix or repair the FreshPet cooler or refrigerator(s) located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina.

ANSWER

Defendant has no information which is responsive to this Interrogatory.

7. State the name and address of the owner of the FreshPet cooler or refrigerator(s) in the PetSmart store located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina.

ANSWER

**FreshPet
400 Plaza Drive
Secaucus, NJ 07094**

8. State the name and address of each person having any knowledge of relevant facts related to the accident which is the basis of this suit, the cause thereof, or the damages resulting therefrom.

ANSWER

**Sandra Douris
Chiller Team
973-975-3889
sdouris@freshpet.com**

9. Please state the name of the individual or individuals and the entity that employed the individual or individuals, who performed maintenance on or inspected the FreshPet cooler located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina, for the time period of September 1, 2018 to January 1, 2020.

ANSWER

**Konop Refrigeration
P.O. Box 2477
Green Bay, WI 54306-2477**

10. Please state and list, by date, any all inspections or any maintenance that was done on the FreshPet Coolers located at in the PetSmart store at 1125 Woodruff Road, Suite 900, Greenville, South Carolina from the date of installation of those coolers to December 31st, 2020.

ANSWER

WO# 99468308 Serviced by Konop / Problem: Unit not cooling
6/25/18 Tech replaced compressor

WO# 122973325 Service Provider: Konop / Problem: Unit is leaking

7/29/18 Work order dispatched, Overtime was approved, and tech was onsite on 7/29/2018. Notes: per tech dean, tech is onsite now and the drain pan is overflowed, evaporation drain pan iced up the reason why the unit is iced up is because thermostat was stuck the compressor was still running, condenser coil was cleaned, unit will need new thermostat. tech is shutting unit off to deice and letting manager know he will be back in a few days to replace thermostat

7/29/18 controller ordered

7/30/18 controller shipped due to arrive to tech on 7/31

8/1/2018 tech returned to replace controller and probes

WO# 125265680 Service Provider: Konop / Problem: Unit is leaking

9/10/19 Work order dispatched

9/11/19 Diagnosed/wicking kit replacement needed

9/13/19 parts ordered and shipped, Eta Monday 9/16

9/17/19 Tech installed the wicking kit. Checked opts. Unit is up and running fine. Complete.

WO # 147557910 Service Provider: Konop / Problem: Unit not cooling

8/31/20 – Work order dispatched; tech scheduled today

9/1/20 – Controller ordered

9/2/20 – Parts ordered with manufacturer due to arrive 9/3

9/4/20 – Tech installed the thermostat, and the unit is all set, completed

11. Please state whether or not you have a copy of any statement which the plaintiff has previously made concerning this action or its subject matter and which is in your possession, custody, or control.

ANSWER

Defendant is not in possession of any statements at this time. Defendant reserves the right to supplement this Answer as discovery continues.

12. Describe any insurance agreement under which any insurance business may be liable to satisfy part or all the judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the person or entity insured, the name of the insurer, and the amount of any liability insurance coverage.

ANSWER

Please see Answer to Interrogatory No. 3.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Docket No. 2022-CP-23-564
CAMILLE BIRD,	)	
	)	
PLAINTIFF,	)	FRESHPET'S ANSWERS TO
	)	PLAINTIFF'S FIRST SET OF
v.	)	INTERROGATORIES
	)	
PETSMART, LLC AND FRESHPET, INC.,	)	
	)	
DEFENDANTS.	)	

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY

Defendant FreshPet, Inc., by and through its counsel, submits the following answers to Plaintiff's First Set of Interrogatories:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER

Camille Bird – Plaintiff
c/o Thomas M. Creech, Jr., Esq.
PO Box 10411
Greenville, SC 29603

Plaintiff is expected to testify regarding the subject incident, the pleadings and any medical treatment she received. Defendant is not in possession of any written or recorded statements.

PetSmart LLC – Defendant
c/o Matthew C. LaFave
Crowe LaFave
PO Box 1149
Columbia, SC 29202

Defendant is expected to testify regarding the subject incident. Defendant is not in possession of any written or recorded statements.

Jeannie Rogalla, Current Service Account Owner
FreshPet, Inc. – Defendant
c/o David L. Moore, Esq.

**FreshPet
400 Plaza Drive
Secaucus, NJ 07094**

6. Please state whether FreshPet had ever, at any time, given authorization or permission to PetSmart, or any of PetSmart's agents or employees, to fix or repair the FreshPet cooler or refrigerator(s) located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina.

ANSWER

Defendant has no information which is responsive to this Interrogatory.

7. State the name and address of the owner of the FreshPet cooler or refrigerator(s) in the PetSmart store located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina.

ANSWER

**FreshPet
400 Plaza Drive
Secaucus, NJ 07094**

8. State the name and address of each person having any knowledge of relevant facts related to the accident which is the basis of this suit, the cause thereof, or the damages resulting therefrom.

ANSWER

**Sandra Douris
Chiller Team
973-975-3889
sdouris@freshpet.com**

9. Please state the name of the individual or individuals and the entity that employed the individual or individuals, who performed maintenance on or inspected the FreshPet cooler located at 1125 Woodruff Road, Suite 900, Greenville, South Carolina, for the time period of September 1, 2018 to January 1, 2020.

ANSWER

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P.O. Box 2477
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9/13/19 parts ordered and shipped, Eta Monday 9/16

9/17/19 Tech installed the wicking kit. Checked opts. Unit is up and running fine. Complete.

WO # 147557910 Service Provider: Konop / Problem: Unit not cooling

8/31/20 – Work order dispatched; tech scheduled today

9/1/20 – Controller ordered

9/2/20 – Parts ordered with manufacturer due to arrive 9/3

9/4/20 – Tech installed the thermostat, and the unit is all set, completed

11. Please state whether or not you have a copy of any statement which the plaintiff has previously made concerning this action or its subject matter and which is in your possession, custody, or control.

ANSWER

Defendant is not in possession of any statements at this time. Defendant reserves the right to supplement this Answer as discovery continues.

12. Describe any insurance agreement under which any insurance business may be liable to satisfy part or all the judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, by stating the name of the person or entity insured, the name of the insurer, and the amount of any liability insurance coverage.

ANSWER

Please see Answer to Interrogatory No. 3.

Possible claim number: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)
From: Judy Ramirez <JURamirez@PetSmart.com>
To: Michelle Krause <mkrause@petsmart.com>
Date and Time: 9/8/2021 6:15:39 PM
CC:

The work order we received was in July 23rd, so basically our group redirected the store to submit through service now which is handled by Carl. It looks like the store reported that the same day 7/23 to service now, as to why it wasn't remedied quickly by fresh pet I couldn't say.



Judy Ramirez | Manager of Facilities
19601 N. 27th Ave., Phoenix, AZ 85027
office: 623-587-2158 | mobile: 480-521-8973
email: juramirez@petsmart.com



MOSAIC
at PetSmart

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Sent: Wednesday, September 8, 2021 10:35 AM
To: Judy Ramirez <JURamirez@PetSmart.com>
Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Judy: The incident occurred on 9/6/2019. However, the store is saying that they reported a leak from the refrigerator to corporate before 9/6 because apparently it had been leaking before the customer fell. Do we have any record of this internally or would the first request for repair be the one Carl noted below on 9/9/2019?

Michelle Krause | Senior Litigation & Claims Administrator
Risk Management/Legal
19601 N. 27th Ave. Phoenix, AZ 85027
office: 623-587-2850 | cell: 602-376-3822 | fax: 623-580-6103
email: mkrause@petsmart.com



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Sent: Wednesday, September 8, 2021 10:14 AM
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Subject: RE: Store 1300 Freshpet Refrigerator Workorder (Camille Bird)

Hi Michelle,

Store 1300 had 2 tickets during that timeframe that were both completed.
On 7/23/2019 they reported: The cooler is leaking pretty bad on the floor.

DEF-0023

6020210918004480

ELECTRONICALLY FILED - 2024 JAN 08 12:16 PM - GREENVILLE - COMMON PLEAS CASE#202302300564

0.0

REFRIGERATOR NOT FUNCTIONING

YES/LEAKING/REFRIGERATOR

REFRIGERATION REPAIR LEAKING - WITHIN 24 - 48 HOURS

COMPLETED/CONFIRMED

Sep 10 2019 13:32 EST

Created by Jill Coppola

7 Days 0 Hrs

Dec 18 2020 10:03 EST

0.0	125265680	001D0000020IFYRAAQ	KONOP REFRIGERATION, INC.	Sep 12 2019 13:32 EST
		PETSMART US #1300		
		1125 WOODRUFF RD STE 900	0.00 USD	Sep 12 2019 13:32 EST
		GREENVILLE SC 29607 US		
		864-284-6398		Sep 17 2019 13:43 EST

DESCRIPTION YES / Leaking / Refrigerator "Equip:" a1Hd000000IPafIEAT "Brand" TRUE Warehouse, "Model #" GDM-41SL "Serial #" 6541189 / Refrigerator not functioning / Did you select the correct serial number on the previous page? Yes / Pet Fresh fridge is leaking badly. Is a danger to associates and PP

RESOLUTION Manager On Duty: FRANCHESKA SCHEDL Failing Component: Leaking Resolution: DRAIN UNPLUG/REPAIR

ASSET TAG ID A1HD000000IPAFIEAT

NOTE #6 DEC 18 2020 10:03 EST **Francheska Schedl**
Status has been changed from **COMPLETED/PENDING CONFIRMATION** to **COMPLETED/CONFIRMED**. Manager On Duty: FRANCHESKA SCHEDL Failing Component: Leaking Resolution: DRAIN UNPLUG/REPAIR

Add Note

View Details

Edit Work Order

Attachments 0

More

FW: Camille Bird

AT&T Yahoo Mail/Inbox



Matt LaFave <matt@crowelafave.com>

To: Thomas M. Creech, Jr. (Work) <tmcreech@bellsouth.net>

Cc: David L. Moore (Other) <dmoore@turnerpadget.com>

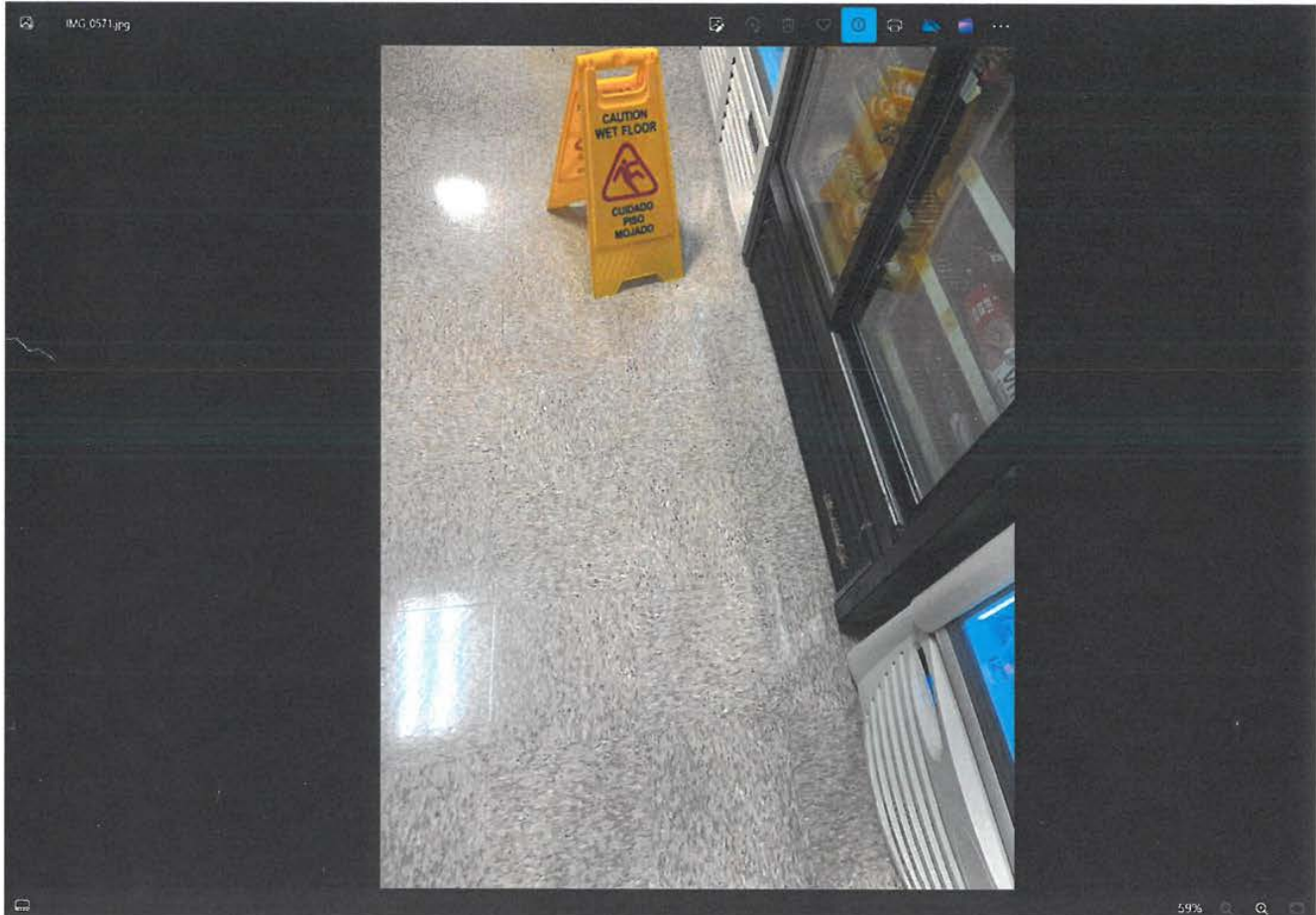
Jan 9 at 10:25 AM

Tom,

Thanks for your patience in regard to the original image of the wet floor sign photograph. Below is what was provided to me by PetSmart, which seems to indicate the subject photo was taken September 13, 2019 at 1:10 pm. Please let me know if you have any questions.

Best,

Matthew C. LaFave
Crowe LaFave Garfield & Bagley, LLC
803.724.5727



CROWE LAFAVE
GARFIELD & BAGLEY

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