

1 JERRY S. BUSBY  
 Nevada Bar #001107  
 2 COOPER LEVENSON, P.A.  
 6060 Elton Avenue – Suite A  
 3 Las Vegas, Nevada 89107  
 (702) 366-1125  
 4 FAX: (702) 366-1857  
 jbusby@cooperlevenson.com  
 5 Attorneys for Defendant  
 SMITH’S FOOD & DRUG CENTERS, INC.

6  
 7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 RALPH IAZZETTA, an individual;  
 ELIZABETH IAZZETTA, an individual

10 Plaintiff,

11 vs.

12 SMITH’S FOOD & DRUG CENTERS, INC.,  
 a foreign corporation d/b/a SMITH’S FOOD  
 13 & DRUG #346; DOES I through XV,  
 inclusive, and ROE CORPORATIONS I  
 14 through X, inclusive,

15 Defendants.

CASE NO. 2:14-cv-01810-JAD-NJK

16  
 17 **ORDER GRANTING**

18 **DEFENDANT’S MOTION FOR**  
**MISCELLANEOUS RELIEF - REQUEST**  
**TO ALLOW ITS CORPORATE**  
**REPRESENTATIVE PARTICIPATE**  
**TELEPHONICALLY AT THE**  
**SETTLEMENT CONFERENCE**

19 COMES NOW Defendant SMITH’S FOOD & DRUG CENTERS, INC. (“SMITH’S”) by  
 20 and through its counsel of record JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON,  
 21 P.A. and submits the following Motion for Miscellaneous Relief - Request to Allow its Corporate  
 Representative Participate Telephonically at the Settlement Conference scheduled to take place on  
 22 October 14, 2015.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 The Honorable Nancy J. Koppe’s Order [Doc. #20] requires that each party and their  
 25 respective counsel personally attend the Settlement Conference scheduled for October 14, 2015.  
 26 Plaintiffs, their attorney, and SMITH’S counsel all reside in the Las Vegas Valley and can attend the  
 27 Settlement Conference with little expense. SMITH’S, on the other hand, is an Ohio corporation and  
 28 oversees all of its litigation from its office in Cincinnati, Ohio. Thus, any representative with  
 binding settlement authority resides in, or near, Cincinnati and would incur significant expense to

1 travel to Nevada to attend the Settlement Conference. As such, SMITH'S hereby requests that its  
2 corporate designee, "with binding authority to settle this matter up to the full amount of [Plaintiffs']  
3 last demand" (Doc. #20 1:24), be allowed to attend the Settlement Conference on October 14, 2015  
4 by telephone.

5 While SMITH'S appreciates the value of a settlement conference and realizes that these  
6 conferences, much like private mediations, can often result in a settlement even when a settlement  
7 seemed unlikely before the conference, the circumstances of this case – as set forth, below – are such  
8 that settlement is highly unlikely and SMITH'S representatives should not be compelled to  
9 personally attend this Settlement Conference. Further, Plaintiffs' attorney has recently sent an email  
10 to Defense counsel in which he stated that he would stipulate to SMITH'S appearing at the  
11 Settlement Conference telephonically.

12 After this Court's Order to appear at the Settlement Conference was received, SMITH'S  
13 counsel reached out to Plaintiffs' attorney to see if he wanted to jointly request that the settlement  
14 conference be cancelled – based on previous failed attempts to settle the case. In the alternative,  
15 Defense counsel asked if Plaintiffs' attorney would agree to allow SMITH'S representative to attend  
16 the conference by telephone. After conferring with Plaintiffs, Plaintiffs' attorney sent an email to  
17 Defense counsel stating that his clients wanted to proceed with the Settlement Conference but he  
18 would "stipulate to allow [SMITH'S] rep to be there telephonically ...." A copy of the email from  
19 Plaintiffs' attorney is attached hereto as Exhibit "A". As such, SMITH'S requests that this Court  
20 permit the parties to participate in the Settlement Conference pursuant to this understanding.

21 SMITH'S realizes, however, that travel expenses and out-of-state appearances are part of the  
22 typical course of business for interstate corporations. SMITH'S would not request permission to  
23 attend a court-mandated Settlement Conference telephonically without justification beyond simply  
24 trying to save money on travel expenses. Some background information on this case will illustrate  
25 for this Court why SMITH'S does not believe that settlement is possible, and why SMITH'S should  
26 not bear the expense of sending its representative across the country.

27 Despite repeated requests from SMITH'S counsel, Plaintiffs have **never** produced a demand  
28 or made any offer to settle the case. SMITH'S, on the other hand, has made offers, pushed

1 settlement talks, and suggested other means of alternative dispute resolution. On February 27, 2015,  
2 SMITH'S served Offers of Judgment on Plaintiffs for an amount that would have covered all  
3 medical liens, paid Plaintiffs' attorney a typical contingent fee, and still left Plaintiffs with a  
4 reasonable amount of money in their pockets. This offer lapsed and was deemed rejected without  
5 Plaintiffs ever responding to the offer.

6 After the Offers of Judgment lapsed, this litigation and discovery continued. Sometime later,  
7 Plaintiffs' depositions were scheduled and later re-scheduled due to several unforeseeable conflicts.  
8 As counsels for the parties worked through the scheduling of the depositions, SMITH'S counsel  
9 repeatedly asked Plaintiffs' attorney to consider SMITH'S Offers of Judgment, and asserted that  
10 SMITH'S would keep that offer on the table up until the time of the depositions eventually  
11 scheduled for April 30, 2015.

12 On the morning of the depositions, Plaintiffs' attorney and Defense counsel had face-to-face  
13 discussions during which SMITH'S made an offer in excess of its Offer of Judgment. Said offer was  
14 made to avoid litigation expenses and was expressly retracted once the deposition began. Sadly,  
15 Plaintiffs never made any counteroffer. SMITH'S counsel was in constant contact with SMITH'S  
16 binding representative in order to actively negotiate a settlement prior to the depositions, but  
17 Plaintiffs made no effort to negotiate or settle the case. SMITH'S counsel was clear that if  
18 SMITH'S had to spend money to take depositions, defend depositions of its employees, and fully  
19 participate in discovery, the money was off the table. Still, no counteroffer was made.

20 Even after the depositions, SMITH'S repeatedly requested a demand or counteroffer from  
21 Plaintiffs, to see if settlement was possible. Nothing. SMITH'S was not going to negotiate against  
22 itself, and the settlement talks without the good-faith participation of Plaintiffs were entirely  
23 fruitless. As such, SMITH'S is now prepared to defend this case up to and including a jury trial.

24 SMITH'S was reasonable and made good faith offers<sup>1</sup> to end this case. Part of the  
25 consideration in making its offers was that it could save money on defense costs by ending the  
26 litigation. However, now that SMITH'S has been forced to pay defense costs to litigate this case,

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27 <sup>1</sup> Perhaps even **generous** offers, given the underlying facts.  
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1 any offers it will make will not be above the amount previously offered in its Offers of Judgment.  
2 Again, SMITH'S is prepared to defend itself to the fullest at trial, where it feels it has a strong  
3 defense to the causes of action alleged by Plaintiffs.

4 Considering all of the justifications above, including that Plaintiffs' attorney is agreeable that  
5 SMITH'S can participate telephonically, SMITH'S requests that it **not** be compelled to fly a  
6 corporate representative across the country to attend the Settlement Conference scheduled on this  
7 matter. As such, SMITH'S requests that its corporate representative be allowed to telephonically  
8 attend the Settlement Conference currently scheduled to occur on October 14, 2015.

9 Dated this 17th day of August, 2015.

10 COOPER LEVENSON, P.A.

11  
12 By /s/ Jerry S. Busby  
13 Jerry S. Busby  
14 Nevada Bar No. 001107  
15 6060 Elton Avenue – Suite A  
16 Las Vegas, Nevada 89107  
17 Attorneys for Defendant  
18 SMITH'S FOOD & DRUG CENTERS, INC.

19 IT IS SO ORDERED.  
20 Dated: August 18, 2015

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22 \_\_\_\_\_  
23 United States Magistrate Judge  
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