

**Motion ALLOWED**

This the 18th day of July, 2016.

/s/ Louise W. Flanagan

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

**Doris Mercer and Stephen Mercer** )  
 )  
 Plaintiffs, )

**vs**

**WAL-MART STORES, INC.,** )  
 Defendants, )

Civil Action No.  
5:15-CV-311-FL

**Motion To Voluntary  
Dismiss Lawsuit With Out  
Prejudice by Plaintiff  
and Re-File This Lawsuit  
In One Year**

Now comes the Plaintiff, Doris Mercer and Stephen Mercer,  
Requesting of the Court to grant our Motion to Voluntary Dismiss  
This Lawsuit without Prejudice, and leaving us with the option  
To re-file this lawsuit within one year, Pursuant to Federal  
Rule of Civil Procedure 41(a)(1)(2) or Federal Rule of Civil  
Procedure 41(2), stating that an action may be dismissed at  
Plaintiff's request only by the court order, on terms that the  
Court consider proper. Several weeks ago I made a telephone call  
To the Attorney for Defendant, Tyler Radtke. I talked to him  
As he had before suggested that I call him if I had any concerns  
Or questions that he could help me out with. I was not having  
The best day of my life, but held it emotionally together as I  
Explained to him the extreme difficulties' that we were dealing

With not only in the injuries I had and explained to him that I  
Being scheduled for Oral/Maxillofacial Surgery at UNC Hospital  
And reconstructive surgery for Trauma Dental Repair. Those were  
Actually going to done in as many as 6 surgeries. My mouth and  
Teeth were injured so badly due to the fall that I live in  
Horrorific pain can't eat, have lost my taste buds, and ability  
To smell. My doctor has to put me on antibiotics' way too often  
Because my mouth stays seriously infected. My right arm has  
Gotten worse, not at all better. I have two MRI's scheduled  
At Wake Med in Cary next week. My shoulder, arm, wrist, hand  
And fingers do not work properly anymore, and tests given by  
My doctors showed that I have lost my ability to be able to  
Grasp anything in my fingers, nor do I have any reflexes in my  
Hand. I am right handed. I am a Published Author. I have lost  
My abilities to earn a living and I am not able to write and  
Finish two books I have had in the works. My doctor has had to  
Change my pain medications to much stronger medications. I  
can't

Stay awake and I have no control what's so ever.

As I fell backwards onto concrete with no way of knowing I was  
Going to step into debris left on Wal-Mart's floor in their  
Garden center, I had no control over my fall. I could not and  
Did not stop the fall...I fell fast and hard onto my head, back,  
Arms, legs, hip, neck, and spine. My body is a train wreck. I

Received so many injuries due to Wal-Mart's refusal to clean up  
The remains of their employees breaking apart a crate leaving  
Pieces of broken wood from the lid on the crate...sawdust that  
Was used as packing in the crate...and packing tape that was  
Wrapped around the patio chairs that were being removed by the  
Employees of Wal-Mart. The manager of the employees knew they  
Were unpacking that crate and he allowed them to leave at noon  
On a Saturday on June 9, 2012 without checking to make certain  
The employees did clean up from their job. They did not clean up  
Anything and left the debris on the floor where all customers  
Were allowed to traverse. Unfortunately there was no way to see  
The debris coming from the middle aisle and turning right into  
It as I did and turned right and within a few steps my feet went  
Out from under me and I violently fell. One of my witnesses is  
A store employee who told me and my friend that he had called  
For help to clean up the debris three times as he was concerned  
That someone was going to fall and be seriously hurt. No one  
Ever came to clean up the debris. Not even the entire time that  
I was there. This employee said to me and my friend that he  
Sees this all the time. He said that Wal-Mart does not follow  
Their own policy about safety and they do not care about their  
Neither customers nor their own employees. It is with great  
sadness and  
Misfortune that I had to be seriously injured due to such a

Gross misconduct by the defendant, and their lack of concern  
For me as a customer and human being as they showed no duty of  
Care as even the law requires. Defendant is negligent in that

1. A dangerous condition caused my injuries.
2. The Defendant knew of the dangerous condition.
3. The Defendant failed to eliminate the dangerous condition
4. I didn't do anything to contribute to my own injuries
5. The dangerous condition was the direct and proximate  
cause of my injuries
6. My injuries and subsequent damages are real

I have not been able to secure any attorney to represent me.

I am suffering with so many injuries to my body, including  
Severe depression...the fear of leaving my home...I have lost my  
Ability to dress myself put on makeup and fix my hair. As I  
Can only use one arm taking a shower is one of the most  
Difficult things I ever thought I would have to do. I have sever  
Headaches and nose bleeds, and all I can do is lay in my bed  
With my drapes closed. My back never stops hurting and the pain  
Radiates into my buttocks, legs, hips, feet and ankles.

My life is not a good one anymore. It was before I walked into  
Wal-Mart on June 9, 2012. I have not only lost my joy for living  
But I have lost my companionship from my husband. He sleeps in  
Another room...we have no social life...friends...we can't  
boat...travel...

We don't even go out to eat. We have lost everything we owned,  
And on June 27, 2016 we go to court as our mortgage company has  
Foreclosed on our home. We have no money to move, we can't pack

Or lift or even hire someone to do it for us. We have nowhere  
To go. In February my daughter tried to kill herself. She is  
An alcoholic and wrecked my husband's car trying to kill  
herself.

Then again in March she attempted to kill herself again. She is  
Now as of a month ago in a recovery center. This has caused me  
Such an emotional time that I had a breakdown. I couldn't do  
Anything. I was sick and unable to focus...I just shut down.  
I stopped eating, even the soft foods and became a complete  
Worthless person and had no abilities to function as a normal  
Person would.

When I made the telephone call a few weeks ago to Defendants  
Attorney Tyler Radike, he seemed to have compassion for what  
All I had to deal with. He suggested to me that I file  
For a Voluntary Dismissal and refile my lawsuit in one year.  
He even gave me the Rule number being 41, and suggested that I  
Meet with a Lawyer to have this accomplished. I thanked him.  
The next day I called and got an appointment with a lawyer in  
Cary to discuss doing this. I told him that the Defendants  
Lawyer suggested it to me and gave the the Rule number 41.  
The Lawyer I saw was Dan Tittswell. He told me that I did  
Have the legal right to file for a Voluntary Dismissal and I  
Would be able to refile in one year. With everything going on  
In my life he felt this was the best choice for me at this time.

He suggested that since Tyler Radtke the lawyer for the Defendant had suggested that I do ahead and do a Voluntary Dismissal and refile in a year that it would be best to file A Stipulation Notice of a Voluntary Dismissal, which is under The Federal Rule of Civil Procedure (a)(1)(A)(ii)(B). This Would only require a Notice of Stipulation to the Court with All Attorneys who have appeared sign. I called Tyler Radtke Back on June 14, 2016 and told him that I had met with Attorney Dan Tittswell and he agreed with him that I needed to go ahead And file the Voluntary Dismissal without prejudice. When I told This to Mr. Radtke he acted nothing like the same person that Had suggested, even given me the Federal Rule 41, to take this Action. He told me that he did not tell me that he would agree With me filing this Motion and he would have to think about it For the rest of the week. I confronted him that he most Certainly did suggest that I take this action. He told me that He could not do that without the permission of Wal-Mart. I was Shocked and in dis-belief. I do not trust his intentions at this Time. He has cost me several weeks of working on this Action That he suggested I take, knowing that I have some Discovery Left to turn in my June 30, 2016. Not feeling safe or secure The Actions of Mr. Radtke is unethical and I will not wait for Him to get back to me. I have to look out for my best interest So I am requesting my Motion to Voluntary Dismiss this lawsuit

Leaving me with the option of re-filing it in one year, as the Federal Rules of Civil Procedure 41 grants me this right.

I do have sufficient cause and contributing factors to file this Motion. I did file a Motion for a Stay in which the judge Did agree that I had good cause for my request.

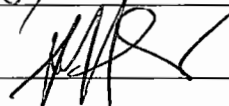
**Wherefore...** the plaintiffs pray to the Court to please accept

This Motion and grant me a Voluntary Dismissal without Prejudice.

Leaving me with the right to re-file this lawsuit in a year.

We will have an attorney that will represent us, I do not have The ability to act as though I am a Law firm with a full staff. I am one person and a lame one at that.

Doris Mercer  ProSe

Stephen J. Mercer  ProSe

This 17 Day June, of 2016

401 Pyracantha Drive  
Holly Springs, NC 27540  
919-987-4491

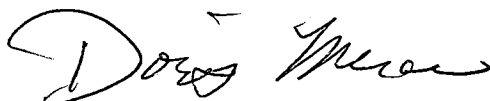
**CERTIFICATE OF SERVICE**

We hereby certify that the foregoing Motion To Voluntary Dismiss Lawsuit With Out Prejudice by Plaintiff and Re-File This Lawsuit in One Year, has been duly served on the Defendant by my depositing a copy of the same in the United States Post Mail, first class mail addressed to the Defendants as follows:

From  
Stephen and Doris Mercer  
401 Pyracantha Drive  
Holly Springs, NC 27540

This the 17 day of June, 2016

To  
Attorney Tyler Radtke  
One Bank of America Plaza  
421 Fayetteville Street Suite 1601  
Raleigh, North Carolina 27601



Doris Mercer

Date June 17, 2016



Stephen J. Mercer

Date June 17, 2016