

EXHIBIT H

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United States District Court, S.D. Florida.

SANDY DALE BEASLEY and KANDACE
FRANCES HOWE-BEASLEY, Plaintiffs,
v.

TRACTOR SUPPLY COMPANY, Defendant.

Case No. 23-cv-14131-Moore/McCabe

|

Entered on FLSD Docket 01/11/2024

ORDER

RYON M. MCCABE U.S. MAGISTRATE JUDGE

*1 THIS CAUSE comes before the Court on Plaintiffs' Motion to Compel Discovery ("Motion") (DE 22). As set forth below, the Motion is **GRANTED IN PART** and **DENIED IN PART**.

I. Background

A. Complaint

This is a trip-and-fall case originally filed in state court against the corporate owner of a tractor supply store ("Tractor Supply"), as well as the store's manager Todd Thomas, a Florida resident (DE 1-2). The Complaint alleges that one of the Plaintiffs "tripped and fell on what appeared to be a floor mat on the floor of the store" (DE 1-2 ¶ 30).

B. Remand Battle

Tractor Supply removed the case to federal court, despite the apparent lack of complete diversity of citizenship between the parties, arguing that Plaintiffs had fraudulently joined Thomas solely to defeat diversity jurisdiction (DE 1 ¶ 11). A remand battle ensued, during which Tractor Supply sought to show that Plaintiffs had no possible claim against Thomas based on *White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357, 358 (Fla. 1st DCA 2005) and other Florida cases defining the circumstances under which a corporate employee can become personally liable for torts committed on the job (DE 12 at 5-9). Tractor Supply argued that Plaintiffs failed to plead sufficient facts to show that Thomas owed any duty, in his

individual capacity, to Plaintiffs, or that he breached any such duty "through personal (as opposed to technical or vicarious) fault" (DE 12 at 5).

As part of the remand battle, Tractor Supply submitted an affidavit signed by Thomas, injecting two new pieces of fact into the dispute:

(1) On the date of the injury, Thomas was not on duty and, indeed, was not even present in the store.

(2) Tractor Supply did not own the "floor mat in question."

Instead, "the floor mat in question was the sole property of Unifirst Corporation" ("Unifirst"), and "all Unifirst mats[] were placed, inspected, and replaced when necessary, solely by agents of [Unifirst] and [were] not in any way controlled by [Thomas] or any Team Member of Tractor Supply."

(DE 12-1 ¶¶ 3, 9).

The District Judge ultimately agreed that Plaintiffs had failed to allege facts indicating that Thomas breached a legal duty "through personal (as opposed to technical or vicarious) fault" (DE 14 at 8). As such, the District Judge found that Plaintiffs had no possible claim against Thomas and that they had fraudulently joined him to the suit (DE 14 at 9). The District Judge dismissed all claims against Thomas and denied Plaintiffs' motion to remand the case back to state court (DE 14 at 9).

C. First Request for Production

Following the remand battle, in September 2023, Plaintiffs propounded a First Request for Production ("RFP") on Tractor Supply (DE 22-1). Given Thomas's assertions, by way of his affidavit, that Unifirst owned and controlled the "floor mat in question," Plaintiffs propounded a great number of requests regarding Tractor Supply's relationship with Unifirst and its control over the floor mat (DE 22-1). Tractor Supply objected based on, among other grounds, relevance (DE 22-2, DE 22-3).

*2 A lengthy period of negotiation followed, during which the parties attempted to resolve the objections. During the negotiations, Tractor Supply took the position, as it takes now, that Unifirst played no role whatsoever in connection with the floor mat in question, and that Thomas's previous affidavit was wrong (DE 27 at 1, 3-4). Tractor Supply attributes Thomas's false statement to confusion over the location of the floor mat at the time of the fall. That is to say, while

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Unifirst owns and controls floor mats *inside* the store, it does not own or control floor mats *outside* the store, where the fall apparently took place. The Complaint did not specify the exact location of the fall, and Thomas mistakenly assumed it took place inside the four walls of the store itself. Having since learned otherwise, Tractor Supply objected to any Unifirst-related discovery as irrelevant, and Tractor Supply maintained these objections throughout the meet-and-confer efforts. This Motion followed.

II. Discussion

The Motion raises disputes over numerous RFP requests, grouping them together by topic. The Court will address the requests in the same order presented by the Motion.

A. Unifirst-Related Documents: RFP Nos. 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 & 26

RFP Numbers 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 and 26 seek documents relating to the business relationship between Tractor Supply and Unifirst, including contracts with Unifirst, inspection schedules for floor mats, communications with Unifirst relating to floor mats, and the like (DE 22-1). Tractor Supply maintains its relevance objections on the grounds that Unifirst had no ownership, care, custody, or control over the floor mat at issue (DE 27 at 3-4). As such, Tractor Supply argues that Unifirst “has no role in this case whatsoever,” and that the requests are “completely irrelevant” (DE 27 at 1, 3-4).

The Court disagrees and overrules Tractor Supply's objections for three reasons. First, Tractor Supply injected the issue of Unifirst into this case by submitting Thomas's affidavit, which claimed that Unifirst owned and controlled the floor mat at issue (DE 12-1 ¶ 9). Having injected this issue into the case, Tractor Supply cannot oppose discovery based on relevance. The issue became relevant because Tractor Supply made it relevant.

Second, the record contains no evidence to support Tractor Supply's new assertion that Unifirst had no control over the floor mat. Tractor Supply failed to submit evidence, by way of affidavit or otherwise, in opposition to this Motion. As such, the only evidence before the Court on this issue consists of Thomas's affidavit, which remains unrebutted (DE 12-1). Although Tractor Supply's counsel maintains that the affidavit is wrong, the Court cannot accept lawyer statements as evidence.

Third and finally, even if Tractor Supply had submitted evidence to support its new assertions, adversaries in litigation need not accept their opponent's view of the underlying facts showing relevance. *See Turner v. Office Depot, Inc.*, No. 2:18-CV-779-ALB-SRW, 2019 WL 11278355, at *2-3 (M.D. Ala. Sept. 25, 2019) (noting that a defendant could not resist discovery based on its “own conclusory say so” as to underlying facts concerning relevance). Here, Plaintiffs need not accept Tractor Supply's assertion that Unifirst “has no role in this case whatsoever” (DE 27 at 1). Rather – and especially given Tractor Supply's past contradictory statements on the issue – Plaintiffs should be allowed to explore the issue in discovery.

The Court has considered, but finds unpersuasive, Tractor Supply's argument that it recently entered into a settlement agreement with Unifirst, which might prohibit it from producing the documents Plaintiffs request (DE 27 at 4). Specifically, Tractor Supply argues that it recently settled a case with Unifirst and that the settlement agreement prohibits Tractor Supply from “taking action against Unifirst on their mats” (DE 27 at 4). Tractor Supply has not provided the Court with a copy of the settlement agreement. Nevertheless, the existence of a settlement agreement from a past case does not normally stand in the way of legitimate discovery in a new, unrelated case. *See, e.g., Kadiyala v. Pupke*, Case No. 17-80732-CIV, 2019 WL 3752654, at *4 (S.D. Fla. Aug. 8, 2019) (noting that “[p]arties cannot insulate a document from discovery merely because they decide[d] to label it as confidential” pursuant to a past settlement agreement). To mitigate any concerns on this issue, the Court orders any Unifirst-related documents subject to this Order to be produced as “CONFIDENTIAL” as set forth in Section III.1 below.

B. Walking Surfaces & Floor Mats “at” or “in” the Store: RFP Nos. 5 & 17

*3 RFP Numbers 5 and 17 sought training materials related to the maintenance of walking surfaces and floor mats “at” or “in” Tractor Supply's store:

5. Any and all memoranda, manuals, handbooks, training videos or other materials that reflect policies and procedures at the subject TRACTOR SUPPLY COMPANY store related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, sidewalks, walkways and other means of ingress and egress upon the premises, including but not limited to pedestrian crosswalks upon which mats were regularly maintained.

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17. Any and all training manuals, correspondence or training videos related to the Defendant's policies and procedures for the placement, maintenance, repair or replacement of mats in the Defendant's store described in the Complaint.

(DE 22-1).

Tractor Supply maintains its relevance objection, arguing these RFPs apply only to walking surfaces and floor mats "in" Tractor Supply's store (DE 27 at 5-6). Since the alleged fall here took place outside the store, Tractor Supply argues it should not be required to produce responsive documents (DE 27 at 5-6). As to RFP 5, Tractor Supply also added the following caveat to its relevance objections: "Subject to and without waiving said objection, on information and belief, Tractor Supply does not have documents responsive to this request in its possession, custody, or control" (DE 22-3).

The Court overrules all objections to these RFPs for three reasons. First, the Court finds the language of the RFPs reasonably covers walking surfaces and floor mats both inside and outside of the four walls of the physical store building itself. This includes outdoor areas open to customers, such as walkways approaching doors to the building.

Second, even if the Court were to restrict the language of the RFPs to their most narrow possible reading, i.e., only covering walking surfaces and floor mats *inside the four walls of the physical building itself*, the documents would nevertheless remain relevant. That is to say, a plaintiff might reasonably argue that a business should be expected to apply the same standards both inside and outside the four walls of the physical store building.

Third, as to RFP 5, Tractor Supply's caveat violates this Court's Order Setting Discovery Procedures (DE 7 at 4). As noted there, "[i]t has become common practice for a party to object ... and then state, 'notwithstanding the above,' the party will respond to the discovery request, subject to or without waiving such objection" (DE 7 at 4). "This type of response leaves the requesting party uncertain as to whether the response has been fully answered or whether only a portion of the response has been answered" (DE 7 at 4). For this reason as well, the Court overrules the objections to RFPs 5 and 17.

C. "On Information and Belief": RFP Nos. 7, 8, 9, 11, 12, 13, 16 & 28

Tractor Supply answered RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28 with the following response: "On information and belief, Tractor Supply does not have material responsive to this request in its possession, custody, or control" (DE 22-2, DE 22-3). Plaintiffs urge the Court to order Tractor Supply to re-do these responses as the current ones are "improperly equivocal" (DE 22 at 5).

*4 The Court disagrees. Pursuant to [Fed. R. Civ. P. 26\(g\)\(1\)\(A\)](#), when an attorney signs a discovery response, he or she certifies that "to the best of the person's knowledge, information, and belief formed after a reasonable inquiry," the response is "complete and correct as of the time it is made." In the Court's view, the attorneys who signed Tractor Supply's responses to RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28 merely affirmed their compliance with [Fed. R. Civ. P. 26\(g\)\(1\)\(A\)](#). The Court denies this portion of the Motion.

D. Store Manager-Related Documents: RFP Nos. 19, 20, 21 & 22

RFP Number 19 sought documents relating to the job duties and description of a Tractor Supply Store Manager (DE 22-1). RFP Numbers 20, 21 and 22 then sought documents relating to the following statement made in Store Manager Thomas's affidavit: "As the Store Manager my duties include supervising all Team Members, enforcing company *regulations*, handling administrative tasks, and maintaining *paperwork, logs* and other required documentation" (DE 12-1 ¶ 4) (emphasis added). Specifically, RFP Numbers 20, 21 and 22 sought, respectively, the "regulations," "paperwork," and "logs" referred to in Thomas's affidavit (DE 22-1).

Tractor Supply maintains its relevance objection on the grounds that Thomas has been dismissed as a party in this case (DE 27 at 7-8). As such, Tractor Supply argues, the role of Store Manager is no longer relevant to the case (DE 27 at 7-8).

The Court disagrees. The role of Store Manager remains relevant despite the dismissal of the individual claim against Store Manager Thomas. The District Judge dismissed Thomas based on Plaintiffs' inability to allege a claim of individual – as opposed to vicarious – fault against Thomas (DE 14 at 7). The issue of vicarious fault remains an open issue in the case. Put another way, a jury may hold Tractor Supply vicariously liable for the failure of the Store Manager on duty that day (apparently not Thomas) to perform his or her job properly. Discovery into the job duties and responsibilities of a Store Manager therefore falls squarely within the scope

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of relevant discovery. The Court therefore overrules the objection to RFP Number 19 in its entirety.

As to RFP Numbers 20, 21 and 22, the Court reaches a different conclusion and sustains the objections in part. When read literally, these RFPs would require Tractor Supply to produce every “company regulation” that Store Managers enforce, and all “paperwork” and “logs” they maintain. This would exceed the scope of relevance, potentially including everything from ordering new inventory to keeping track of tardy employees. Accordingly, the Court narrows RFP Numbers 20, 21, and 22 by adding the following modifier to each RFP: “related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, whether inside or outside store, including floor mats.”

The Court has considered, but finds unpersuasive, Tractor Supply's argument that Plaintiffs seek this discovery solely as a backdoor means to revive the claim against Thomas and thereby un-do the District Judge's order of remand (DE 27 at 7). The Court disagrees and finds that Plaintiffs have a valid, relevant basis to seek this discovery. The Court doubts, moreover, that Plaintiffs would have any success in reviving an individual claim against a company employee who was not even present on the day of the incident. During the hearing on this matter, Plaintiffs' counsel conceded as much, indicating she has no intent to attempt to revive the claim.

III. Conclusion

***5** For the reasons set forth above, the Motion is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. The Court overrules the objections to RFP Numbers 1, 2, 3, 4, 10, 15, 18, 23, 24, 25 and 26. As to any Unifirst documents that Tractor Supply believes to be confidential, Tractor Supply may label such documents “CONFIDENTIAL,” and Plaintiffs shall make use of such documents only for purposes

of this litigation and shall not disclose such documents to any third-parties (absent consent of Tractor Supply), apart from photocopying or other vendors used for litigation purposes. To the extent the parties enter into a confidentiality agreement or order, Tractor Supply may label such documents as “CONFIDENTIAL” for purposes of that agreement or order as well.

2. The Court overrules the objections to RFP Numbers 5 and 17.
3. The Court denies any relief as to RFP Numbers 7, 8, 9, 11, 12, 13, 16 and 28.
4. The Court overrules the objections as to RFP 19.
5. As to RFP Numbers 20, 21 and 22, the Court sustains the objections in part. As to these RFPs, Tractor Supply shall produce responsive documents subject to the following modifier: “related to the maintenance, upkeep, inspection, alteration or condition of walking surfaces, whether inside or outside store, including floor mats.”
6. Tractor Supply shall produce all responsive documents subject to this Order within ten (10) days unless otherwise agreed to by the parties.
7. Finally, the Court declines to shift attorneys' fees pursuant to [Fed. R. Civ. P. 37](#), as the Court finds the arguments on these issues were substantially justified.

DONE and ORDERED in Chambers at West Palm Beach in the Southern District of Florida, this 11th day of January 2024.

All Citations

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