

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

Plaintiff,

v.

Case Number: _____

Defendant.

_____ /

MOTION TO COMPEL DISCOVERY RESPONSES

COMES NOW, Plaintiff, _____, by and through the undersigned attorney and moves this honorable court for entry of an order compelling Defendant to provide responses to Plaintiff's First Request for Production and to provide better answers to Plaintiff's Interrogatories to Defendant and in support thereof, states as follows:

1. On July 15, 2010, Plaintiff served Defendant with Plaintiff's First Request for Production to Defendant. (Attached hereto as Exhibit "A")

2. On August 13, 2010, Defendant filed Defendant's Response to Plaintiff's First Request for Production. (Attached hereto as Exhibit "B")

3. Plaintiff's Request for Production number 7 requests "Any and all records or documents relating to any similar accidents involving subject location of Defendant's premises."

4. Defendant's response to Plaintiff's Request for Production number 7 was as follows: "Objection, immaterial, irrelevant and not calculated to lead to the discovery of admissible evidence."

5. Plaintiff's request number 7 seeks any and all records of similar incidents involving the subject premises. Said similar incidents are discoverable pursuant to Kimball v. Publix Super Markets, Inc., 901 So.2d 293 (Fla. App., 2005) which stated: "the list could create

a genuine issue of material fact regarding whether Publix had actual or constructive knowledge of prior similar incidents at other similar locations, which may be sufficient to establish foreseeability for purposes of proximate causation.”

6. Plaintiff served Defendant with Interrogatories on July 15, 2010. (Attached hereto as Exhibit “C”)

7. Defendant served answers to Plaintiff’s Interrogatories on August 16, 2010. (Attached hereto as Exhibit “D”)

8. Plaintiff Interrogatory number 3 states: “Describe in detail how the incident described in the Complaint happened, including all actions taken by you to prevent the incident.”

9. Defendant’s response to Plaintiff’s Interrogatory number 3 was as follows: “Objection, privileged, attorney work product and/or risk management investigation.”

10. Plaintiff’s Interrogatory number 8 states: “Have you heard or do you know about any statement or remark made by or on behalf of any party to this lawsuit, other than yourself, concerning any issue in this lawsuit? If so, state the name and address of each person who made the statement or statements, the name and address of each person who heard it, and the date, time, place, and substance of each statement.”

11. Defendant’s response to Plaintiff’s Interrogatory number 8 was as follows: “See response to Interrogatory No. 3.”

12. Plaintiff’s Interrogatory number 9 states: “State the name and address of every person known to you, your agents or attorneys who has knowledge about, or possession, custody or control of any model, plat, map, drawing, motion picture, video tape, or photograph pertaining to any fact or issue involved in this controversy; and describe as to each, what such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.”

13. Defendant’s answer to Plaintiff’s Answer to Interrogatory number 9 was as follows: “See response to Interrogatory No. 3.”

14. Florida Rules of Civil Procedure Rule 1.340 (a) states that: “*Each interrogatory shall be answered separately and fully* in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the attorney making it. (*emphasis added*)”

15. Although Defendant has asserted work product privilege in their answers to number 3, 8 and 9, no privilege log was included in Defendant’s answers.

16. Interrogatory numbers 3, 8 and 9 are standard and taken directly from the Appendix of the Florida Rules of Civil Procedure. As such, it has been well established that these interrogatories seek discoverable information. Florida Rules of Civil Procedure Rule 1.340 (a) states ”If the supreme court has approved a form of interrogatories for the type of action, the initial interrogatories shall be in the form approved by the court.”

17. On August 24, 2010, correspondence was forwarded to Defendant’s counsel detailing several issues with Defendant’s discovery responses in a good faith attempt to avoid filing this Motion to Compel, however, Defendant has failed to address or amend any of the above referenced responses to date. (Attached hereto as Exhibit “E”)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to opposing_counsel@example.com Opposing Counsel, 123 Main Street, Any City, Florida.

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