

IN THE CIRCUIT COURT, OF THE  
FOURTH JUDICIAL CIRCUIT, IN  
AND FOR DUVAL COUNTY,  
FLORIDA

CASE NO.: 16-2014-CA-001254  
DIVISION: CV-H

JONI SABO,  
Plaintiff

v.

WINN-DIXIE STORES, INC.,  
a Florida Corporation  
Defendant.

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FILED 14PM 15M 1004 RUSSELL

**ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER AND  
ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

THIS CASE is before the Court for consideration of the Motion for Protective Order and Motion to Compel Discovery, filed on behalf of plaintiff, Joni Sabo. Each of the two motions seeks a court order compelling defendant, Winn-Dixie Stores, Inc., to produce a recording of the video surveillance showing the alleged slip and fall by the plaintiff that is the subject of this action. The Motion for Protective Order further requests that this Court order that the video surveillance footage be produced to plaintiff prior to defendant being allowed the opportunity to depose plaintiff.

Ordinarily, surveillance of the type at issue is not considered work product and, therefore, the general rule is that such discovery should be produced in the ordinary course, without a justification for withholding the production until the plaintiff has been deposed. See Target Corporation v. Vogel, 41 So. 3d 962 (Fla. 4<sup>th</sup> DCA 2010). Whether to require

production of video surveillance prior to a plaintiff's deposition is a matter left to the discretion of the trial court. See Target 41 So. 3d at 962-963; and McClure v. Publix Supermarkets, Inc., 124 So. 3d 998 (Fla. 4<sup>th</sup> DCA 2013).

In denying review of a court order compelling production of the video surveillance prior to the plaintiff's deposition, the Fourth District in Target noted that there had been no showing as to how production of the video surveillance would further a recognized public policy of preventing fraudulent and overstated claims. Id. In this action, defendant argues that plaintiff has denied a request for an admission that the plaintiff's child removed a liquid absorbing strip at the base of the refrigeration unit adjacent to where the plaintiff fell moments later. Defendant argues that the surveillance video shows that the child did in fact remove the strip and that the denial of the request for admission must be knowingly incorrect and thus suggest that plaintiff may be making a fraudulent or overstated claim. However, denials of requests for admissions cannot be used for impeachment or other evidentiary value. See Winn-Dixie Stores, Inc. v. Gerringer, 563 So. 2d 814, 817 (Fla. 3<sup>rd</sup> DCA 1990).

In this case, there may be various reasons why plaintiff's attorney served a denial of defendant's request for admission. The denial in itself is insufficient to provide a reasonable basis for believing that plaintiff is asserting a fraudulent or overstated claim. In any event, the purpose of discovery is to find out the truth and facilitate settlement of disputed claims. The production of the video may accomplish both of these goals. If the video shows conclusively that plaintiff has no valid claim, such evidence may well help conclude the case on its merits, as opposed to furthering the tactic of inducing a plaintiff to overstate her case and use such overstatement as the vehicle for dismissal.

Accordingly, for the reasons stated it is,

**ORDERED:**

1. The plaintiff's Motion to Compel production of video surveillance is GRANTED.
2. The plaintiff's Motion for Protective Order to require the production of video surveillance prior to the defendant's deposition of plaintiff is GRANTED.
3. The defendant shall produce within 14 from the date of entry of this Order, the surveillance video showing the plaintiff in the Winn-Dixie store at the time and place of the slip and fall that is the subject matter of this action.
4. Following the production of the surveillance video to plaintiff, the defendant may promptly notice and take her deposition.

**DONE AND ORDERED** in chambers, in Jacksonville, Duval County, Florida, on this 15<sup>th</sup> day of May, 2014.

  
WADDELL A. WALLACE  
CIRCUIT COURT JUDGE

Copies to:

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