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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs. Case No. 12012447CI-011

HEATHER CLEM, *et al.*,

Defendants.
_____/

DEFENDANT GAWKER MEDIA, LLC'S REPLY IN SUPPORT OF ITS EXCEPTIONS TO REPORT & RECOMMENDATION AUTHORIZING PLAINTIFF TO SERVE 30 ADDITIONAL INTERROGATORIES

Plaintiff Terry Gene Bollea responds to Gawker's exceptions by contending that Gawker "presents no compelling reason why the Special Discovery Magistrate" erred in doubling his interrogatories. Resp. at 1. But, this response misses the point. The Rules do not require *Gawker* to defeat a request for more interrogatories by "present[ing] a compelling reason"; they demand that *plaintiff* bear the burden of justifying his request and meeting that burden by showing *good cause*. Plaintiff has not done that. Indeed, he has not even made an attempt.

1. Rule 1.340 of the Florida Rules of Civil Procedure states that the number of interrogatories shall not exceed thirty "unless the court permits a larger number on motion and notice and for good cause." Plaintiff did not comply with any of the Rule's three requirements – motion, notice, or good cause.

2. Plaintiff concedes that (a) he did not file a motion and (b) he did not file a notice that his request would be heard. Rather, as plaintiff admits, his request for permission to propound thirty additional interrogatories was contained in a letter to the Special Discovery Magistrate. *See* Resp. at 1-2. Two days after the letter was sent, at an unrelated hearing, without

proper notice, and without Gawker having an opportunity to file a written response, the Special Discovery Magistrate granted the request. Procedurally, plaintiff's actions fell short of Rule 1.340's mandate.

3. Substantively, the Report and Recommendation granting Plaintiff's request should be overruled, as Plaintiff has not met the requisite showing of good cause.

4. Plaintiff seeks to justify his request merely by discussing the number of interrogatories he and the defendants have been allowed to propound thus far. *See* Resp. at 3. In doing so, he merely restates the logical outcome of any case involving one plaintiff and multiple co-defendants: Plaintiff has been required to answer multiple interrogatories from the multiple defendants he sued (for a sum total of forty-six interrogatories), while he has only been allowed to ask each defendant a maximum of thirty interrogatories. This is not "good cause." This is the functional effect of Florida's Rules of Civil Procedure. Under Rule 1.340, plaintiff is entitled to serve the same number of interrogatories on the Gawker Defendants as a group as they can serve on him.

5. Plaintiff has not provided any information about the nature of the discovery he would like to seek, nor has he offered any factual basis showing that additional discovery from Gawker is necessary to establish his claims. Instead, he merely claims that "[t]he additional interrogatories will allow Mr. Bollea to efficiently take discovery on key issues in the case."[1] Resp. at 3.

6. Good cause is not established by this kind of conclusory statement. *See Stanton Inv. Co. of Mo. v. Simon*, 255 So. 2d 557, 558 (Fla. 2d DCA 1971) (good cause was not shown

[1] Plaintiff's claim that he wants to take "discovery on key issues" is curious in light of his simultaneous request that the Court set a trial date on the theory that any remaining discovery is not "crucial to the core issues of the case." Motion for Setting of Trial Date and for Severance of Claims Against Kinja, KFT at 3.

by "a mere conclusory statement alleging that" the requested discovery "constitute[s] or contain[s] evidence on the contested issues" and "may reveal relevant and material evidence on the contested issues"). And, a party is not permitted to use additional interrogatories simply to go on an unfettered fishing expedition. *See James v. James*, 542 So. 2d 486 (Fla. 4th DCA 1989) (overturning trial court order allowing additional interrogatories because the proposed interrogatories were a fishing expedition).

7. Rather, to show good cause and to be granted permission to exceed the number of interrogatories allowed by the Rules, a party must set forth the additional interrogatories it would like to ask and explain why those interrogatories are necessary. *See, e.g.*, *Capacchione v. Charlotte-Mecklenburg Sch.*, 182 F.R.D. 486, 492 (W.D.N.C. 1998) (instructing party that it can seek additional interrogatories only by "set[ting] forth the interrogatories to be served" and "mak[ing] an express showing of good cause, i.e., that the benefits of further discovery by interrogatories outweigh the burdens imposed on the responding party").[2] Indeed, that is precisely what the moving parties did in the cases plaintiff cites in his Response: they submitted the proposed additional interrogatories. *See Denmeade v. King*, 2001 WL 1823579 (W.D.N.Y. Dec. 6, 2001) (cited in Resp. at 3) (allowing moving party to ask five additional interrogatories after court review of proposed interrogatories); *Vukadinovich v. Griffith Pub. Sch.*, 2008 WL 5141388 (N.D. Ind. Dec. 5, 2008) (cited in Resp. at 3) (granting motion to serve additional interrogatories after reviewing proposed interrogatories).

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[2] The Florida Rule on seeking additional interrogatories is "derived from Federal Rule of Civil Procedure 33." Fla. R. Civ. P. 1.340 Comm. Note (1972); *accord Slatnick v. Leadership Hous. Sys. of Florida, Inc.*, 368 So. 2d 78, 80 (Fla. 4th DCA 1979) ("Florida Rule 1.340 is essentially an embodiment of Federal Rule 33 and as such, federal case law is highly persuasive in this area.").

8. Before granting plaintiff thirty additional interrogatories of unlimited scope, this Court should require him to produce his proposed interrogatories to show that he has good cause to seek them. Because plaintiff has made no showing of good cause, reviewing the interrogatories that plaintiff claims to need would allow this Court to decide whether they are material to his claims. This is particularly appropriate here, where plaintiff's discovery requests have, over time, moved increasingly far afield from the core issues in this case. Indeed, plaintiff recently served on defendant Denton voluminous discovery requests (including document requests, interrogatories and requests for admissions) about his wedding and honeymoon, which Denton answered.

9. Plaintiff simply has not met his procedural or substantive burden to merit thirty additional interrogatories; at the very least, he should produce his proposed interrogatories for this Court to consider.

CONCLUSION

The Report and Recommendation granting Plaintiffs' request for thirty additional interrogatories to propound to Gawker should be overruled, and plaintiff should not be allowed to propound more than thirty total interrogatories to Gawker. Pursuant to Rule 1.490(i), Gawker respectfully requests that this Court resolve these exceptions at a hearing.

Dated: October 16, 2014

Respectfully submitted,

THOMAS & LOCICERO PL

By: */s/ Gregg D. Thomas*
Gregg D. Thomas
Florida Bar No.: 223913
Rachel E. Fugate
Florida Bar No.: 0144029
601 South Boulevard
P.O. Box 2602 (33601)
Tampa, FL 33606

Telephone: (813) 984-3060
Facsimile: (813) 984-3070
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com

Seth D. Berlin
Pro Hac Vice Number: 103440
Michael Sullivan
Pro Hac Vice Number: 53347
Michael Berry
Pro Hac Vice Number: 108191
Alia L. Smith
Pro Hac Vice Number: 104249
Paul J. Safier
Pro Hac Vice Number: 103437
Julie B. Ehrlich
Pro Hac Vice Number: 108190
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, DC 20036
Telephone: (202) 508-1122
Facsimile: (202) 861-9888
sberlin@lskslaw.com
msullivan@lskslaw.com
mberry@lskslaw.com
asmith@lskslaw.com
psafier@lskslaw.com
jehrlich@lskslaw.com

Counsel for Gawker Media, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2014, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Christina K. Ramirez, Esq.
cramirez@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

David Houston, Esq.
dhouston@houstonatlaw.com
Law Office of David Houston
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601

Attorneys for Plaintiff

Barry A. Cohen, Esq.
bcohen@tampalawfirm.com
Michael W. Gaines, Esq.
mgaines@tampalawfirm.com
Barry A. Cohen Law Group
201 East Kennedy Boulevard, Suite 1000
Tampa, FL 33602
Tel: (813) 225-1655
Fax: (813) 225-1921

Attorneys for Defendant Heather Clem

/s/ *Gregg D. Thomas*
Attorney